



An
Bord
Pleanála

Board Direction
04.RL3612

The submissions on this file and the Inspector's report were considered at a Board meeting held on 18.05.2018.

The Board decided, as set out in the following Order, that

Board Order as follows:-

WHEREAS a question has arisen as to whether:

- a) Whether the change of use of the premises at No. 5 Main Street, Doneraile, from residential to commercial is or is not development or is or is not exempted development; and
- b) Whether the change of use of the premises at No. 5 Main Street, Doneraile from residential / commercial to restaurant / café is or is not development or is or is not exempted development.

AND WHEREAS Mr. Gerry Shallow requested a declaration on this question from Cork County Council and the Council issued a declaration on the 17th day of July, 2017 stating that the matter was development and was not exempted development:

AND WHEREAS Mr. Ray O'Callaghan and Ms. Myra Ryall referred this declaration for review to An Bord Pleanála on the 14th day of August, 2017:

AND WHEREAS An Bord Pleanála, in considering this referral, had regard particularly to –

- a) sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended;
- b) the submissions made in connection with the referral;
- c) the history and pattern of use of the site; and
- d) it has not been proven that the previous use of the ground floor of the subject building for retail / shop purposes was in operation between 1987 and 2007, and, based on the evidence submitted in connection with this referral, the Board is satisfied that this floor area was instead used for residential purposes during this period and accordingly is satisfied that the use for retail purposes has been abandoned.

AND WHEREAS An Bord Pleanála has concluded that:

- a) based on the evidence submitted the period of non-use of the premises in question for any retail activity has extended over such a period that would represent an abandonment of use,
- b) the change of use from a property used for residential purposes to a shop / retail outlet constitutes a change of use which is considered to be a material change of use within the meaning of section 3 of the Planning and Development Act, 2000, as amended, and is therefore development,
- c) the change of use from a property used for residential purposes to a café / restaurant constitutes a change of use which is considered to be a material change of use within the meaning of section 3 of the Planning and Development Act, 2000, as amended, and is therefore development,
- d) there are no provisions in the Act or Regulations, by which such

development would be classified as exempted development.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3) (a) of the 2000 Act, hereby decides that (a) the change of use of the premises at No. 5 Main Street, Doneraile, from residential to commercial; and (b) the change of use of the premises at No. 5 Main Street, Doneraile from residential / commercial to restaurant / café, is development and is not exempted development.

Board Member

Date: 18.05.2018

Terry Prendergast

Note: In arriving at its decision the Board had regard to the submissions on file, and noted that it is established case law that the onus of proof is on the party seeking the exemption and considered that the information provided by the referrers in relation to the previous use(s) of the site had not discharged this onus of proof.

Please issue Board Direction with Order