



An  
Bord  
Pleanála

**Board Direction**  
**29S.RL3809**

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The submissions on this file and the Inspector's report were further considered at a Board meeting held on July 30<sup>th</sup> 2018. The Board noted its original decision of June 18<sup>th</sup>, and its subsequent decision of June 22<sup>nd</sup> to defer that decision in order to allow circulation of the referral to the owner and to the occupier, in the interests of justice. The Board noted that the Section 129 notice to those parties was issued on 27<sup>th</sup> June 2018, and allowed the parties to make submissions or observations on the referral within a period of three weeks from the date of that letter. No such submissions or observations have been received within this period, and it was considered that a final decision could therefore be made on the referral.

The Board therefore decided, as set out in the following Order, that the change of use of car showroom to café/shop with ancillary retail, and with business to business wholesale area, outdoor seating area and new gates at 7A Sussex Terrace, Dublin 4, is development and is not exempted development.

Board Order as follows:-

**WHEREAS** a question has arisen as to whether the change of use of car showroom to café/shop with ancillary retail, and with business to business wholesale area, outdoor seating area and new gates is or is not development and is or is not exempted development at 7A Sussex Terrace, Dublin 4.

**AND WHEREAS** David MacNicholas, requested a declaration on this question from Dublin City Council, and the Council issued a declaration on the 24<sup>th</sup> day of August 2017 stating that the sale of hot and cold food for consumption off the premises is

subsidiary to the main retail use and is development and is exempted development, and that the business to business wholesale area is not development, and the outdoor seating area and new gates is development and is not exempted development.

**AND WHEREAS** David MacNicholas referred this declaration for review to An Bord Pleanála, on the 19<sup>th</sup> day of September 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) Articles 5(1), 6(1), 9(1) and 10 of the Planning and Development Regulations 2001, as amended,
- (c) Class 14 of Part 1 and Classes 2 and 5 of Part 4 of the Second Schedule to the Planning and Development Regulations 2001, as amended,
- (d) The planning history of the site, in particular the recent decision of An Bord Pleanála under file reference number PL29S.248876 dated 9<sup>th</sup> November 2017, and
- (e) The submissions on file and the report of the Inspector, including the report of the inspections of the subject premises by the Inspector in this case and by the Inspector in related appeal case PL29S.248876, showing the scale and layout of the premises.
- (f) the nature and range of goods sold on the subject premises, and services provided to visiting members of the public and the layout of the premises, in particular the extent of seating provided:

**AND WHEREAS** An Bord Pleanála has concluded that:

- (a) The subject premises, formerly used as a car showroom, is currently used (based on the documents on file and the details of the inspections carried out by the Board's Inspectors) partly as a café, with ancillary retail use, and partly as a wholesale warehouse;
- (b) These current uses represent changes of use from the former use as a car showroom and associated vehicle parking area and, having regard to the provisions of the legislation, and having regard to the material planning issues raised by the new uses, constitute material changes of use, and are therefore development;
- (c) The provision of an outdoor seating area and the provision of new gates involves the carrying out of works and is therefore development;
- (d) The use of the subject premises primarily as a café does not come within the scope and definition of a "shop" as set out in Article 5 of the Planning and Development regulations, 2001, having regard to the scale and layout of the premises, including areas for the consumption of hot and cold food within and outside the building, and the nature of the goods sold therein, and therefore the change of use from the previous use as a car showroom does not come within the scope of Class 14 (a) of Part 1 of the Second Schedule to the Planning and Development Regulations, 2001, as amended, and is not exempted development;
- (e) The use of part of the subject premises for the wholesale sale of goods does not come within the definition of a "shop" as set out in Article 5 of the Planning and Development Regulations, 2001, as amended, but is within the scope of Class 5 of Part 4 of the Second Schedule to these Regulations, and there is no provision whereby change of use from showroom to wholesale warehouse would be exempted development. This development is therefore not exempted development;

- (f) The use of the seating area for the consumption of hot and cold food is ancillary to the use of the subject premises primarily as a café, which use is not exempted development. Its previous use was for the parking of motor vehicles and there are no exemptions, in the Act and Regulations, by which such material change of use would be classified as exempted development. This development is therefore not exempted development;
- (g) The erection of the gates does not come within the scope of any exemption set out in the Acts and Regulations, having regard to the nature of the premises and the previous use of the area for the parking of motor vehicles, and is therefore not exempted development.

**NOW THEREFORE** An Bord Pleanála, in exercise of the powers conferred on it by Section 5 (3)(a) of the Planning and Development Act, 2000, as amended, hereby decides that the change of use of car showroom to café/shop with ancillary retail, and with business to business wholesale area, outdoor seating area and new gates at 7A Sussex Terrace, Dublin 4, is development and is not exempted development.

**Board Member**

**Date:** 31<sup>st</sup> July 2018

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Philip Jones