



An
Bord
Pleanála

Board Direction 28.RL3810

The submissions on this file and the Inspector's report were considered at a Board meeting held on 11.07.2018.

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

Board Order as follows:-

WHEREAS a question has arisen whether the use of No 11 St Patrick Street Cork for the use of convenience goods (as defined in the Retail Planning guidelines 2012) is or is not development and is or is not development

AND WHEREAS Mestonway Ltd requested a declaration on this question from Cork City Council and the Council decided to reformulate the question and issued a declaration on the 31st day of August, 2017, stating that the matter was development and was not exempted development:

AND WHEREAS Mestonway Ltd referred this declaration for review to An Bord Pleanála on the 27th day of September, 2017 and requested that the question as originally put by it to Cork City Council be determined:

AND WHEREAS An Bord Pleanála decided to reformulate the question as follows: Whether the use of 11 St. Patrick's Street, Cork, as currently operating as a Starbucks coffee shop, is or is not development and is or is

not exempted development?

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

- (a) Section 2(1) of the Planning and Development Act, 2000, as amended,
- (b) Section 3(1) of the Planning and Development Act, 2000, as amended,
- (c) Section 5(1) of the Planning and Development Act, 2000, as amended,
- (d) Article 5(1) and Article 10(1) of the Planning and Development Regulations, 2001, as amended,
- (e) Part 4 of Schedule 2 to article 10 of the Planning and Development Regulations, 2001, as amended,
- (f) The planning history of the site,
- (g) The previous use of the subject premises as a shop,
- (h) The information submitted by the referrer as to the current use of the subject premises, and
- (i) The report of the inspector.

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The current use of the subject premises does not constitute use as a “shop” under Article 5(1) of the Planning and Development Regulations, 2001, as amended, because the sale of hot drinks and to a lesser extent hot food for consumption off the premises are in combination the predominant rather than the subsidiary use of the premises and so this use does not come within the scope of Paragraph (d) of the said Article.

(b) The current use of the subject premises does not come within the scope of Paragraph (a), due to the qualifying statement at the end of the definition of “shop” in Article 5(1) of the Planning and Development Regulations, 2001, as amended, and Paragraphs (b), (c), and (e) – (i) are not applicable to this use.

(c)

The current use of the subject premises has resulted in a change of use of these premises from their authorised use as a shop and this change of use raises issues that are material in terms of the proper planning and sustainable development of the area, including issues in relation to the planning policy on retailing set out in the Cork City Development Plan, the potential for litter and management of waste arising from the primary use of the sale of sandwiches and other food for consumption off the premises, and the potential for differing pedestrian and vehicular traffic as compared to the former retail use, and the change of use is, therefore, “development” within the meaning of section 3 of the Planning and Development Act, 2000, as amended;

(d)

There are no exemptions in the Planning and Development Act 2000, as amended, or in the Planning and Development Regulations, 2001, as amended, by which this change of use would constitute 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 use of 11 St. Patrick’s Street, Cork, as currently operating as a Starbucks coffee shop, is development and is not exempted development.

Board Member

Date: 12.07.2018

Terry Prendergast