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**Planning and Development Acts 2000 to 2018**

**Planning Authority: Waterford City and County Council**

**Planning Register Reference Number: D52018/5**

**WHEREAS** a question has arisen as to whether the operation of an Abrakababra sit in and take-away hot food outlet from within the existing permitted petrol filling station forecourt shop, at Maxol Filling Station, Kingsmeadow, Cork Road, Waterford is or is not development or is or is not exempted development:

**AND WHEREAS** Patrick Brennan care of Peter Thomson Planning Solutions of 4 Priory Grove, Kells, County Kilkenny requested a declaration on the said question from Waterford City and County Council and the Council issued a declaration on the 5<sup>th</sup> day of April, 2018 stating that the matter is development and is exempted development:

**AND WHEREAS** Patrick Brennan care of Peter Thomson Planning Solutions referred the declaration for review to An Bord Pleanála on the 19<sup>th</sup> day of April, 2018:

**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 definition of ‘shop’ under article 5(1) of the Planning and Development Regulations, 2001, as amended,
- (c) Articles 6, 9 and 10 of the Planning and Development Regulations, 2001, as amended, and Class 1 of Part 4 of the Second Schedule to those Regulations,
- (d) the planning history of the site, and
- (e) the observations of the planning authority and of the Inspector in respect of the internal layout of the premises:

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

1. the authorised use of these premises is as set out in planning register reference number PD11/500013, as amended by planning register reference number 15/513,
2. the change of use from the authorised use of portion of these premises to use as a sit in and take-away food outlet would result in the intensification of the authorised use,

3. this intensification, having regard to the potential for traffic, noise and general disturbance would be material in planning terms and would therefore, constitute development,
4. having regard to the definition of shop as set out in Article 5(1) of the Planning and Development Regulations, 2001, as amended and having regard to the subject development and the attendant relocation of the authorised delicatessen counter into part of the former retail sales area, the development would not be subsidiary to the use authorised by planning register reference number PD11/500013, as amended by planning register reference number 15/513,
5. there are no exemptions in the Planning and Development Act, 2000, as amended, or in the Planning and Development Regulations, 2001, as amended whereby such development would be 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 the operation of an Abrakababra sit in and take-away hot food outlet from within the existing permitted filling station forecourt shop at Maxol Service Station, Kingsmeadow, Cork Road, Waterford, is development and is not exempted development within the meaning of the Act.

## **Matters Considered**

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

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**Terry Ó Niadh**

**Member of An Bord Pleanála**

**duly authorised to authenticate  
the seal of the Board.**

**Dated this            day of            2019**