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**Planning and Development Acts 2000 to 2018**

**Planning Authority: Fingal County Council**

**Planning Register Reference Number: FS5/020/18**

**WHEREAS** a question has arisen as to whether the inclusion of hot pizzas for consumption off the site in the range of products sold from the existing supermarket at Costcutter Supermarket, Lusk, County Dublin is or is not development or is or is not exempted development:

**AND WHEREAS** the Barry Group and John Wilson care of J. and N. Murphy Limited of Macroom, County Cork requested a declaration on this question from Fingal County Council and the Council issued a declaration on the 3<sup>rd</sup> day of July, 2018 stating that the matter is development and is not exempted development:

**AND WHEREAS** the Barry Group and John Wilson referred the declaration for review to An Bord Pleanála on the 27<sup>th</sup> day of July, 2018:

**AND WHEREAS** An Bord Pleanála, having regard to the content of the referral, and to the nature of the change of use that has occurred within the site, has reformulated the question as follows:

Whether the change of use of part of the existing convenience shop for the sale of food (pizza) for consumption off the premises at Costcutter Supermarket, Lusk, County Dublin is or is not development or is or is not exempted development:

**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 subject premises, and
- (e) the observations of the referrer, 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 -

- (a) the authorised use of these premises is as a shop, as set out in planning permission register reference numbers F95A/0144, F96A/0801, F99A/0408 and F08A/1238,
- (b) the change of use of portion of this shop to use for the sale of food (pizza) for consumption off the premises raises material planning considerations, having regard to the operating hours of the pizza area (which are different to those of the main supermarket), and the extensive signage relating to the pizza use, including issues relating to traffic, that the use would operate as a trip generator in and of itself and that it would generate custom independent of the shop and at later hours, raising issues of residential amenity, noise and general disturbance, and would, therefore, be a material change of use, and constitute development, and
- (c) on the basis of the documentation submitted with the referral, and the layout of the premises, it is considered that the sale of food (pizza) for consumption off the premises is not subsidiary to the principal shop use, as authorised under the planning permissions referred to above, but represents a separate primary use for the sale of hot food for consumption off the premises, located within the overall building containing the shop, and is, therefore, not within the definition of a “shop” as set out in Article 5(1) of the Planning and Development Regulations, 2001, as amended, and is not within the ambit of Class 1 of Part 4 of the Second Schedule to the Planning and Development Regulations, 2001, as amended, and accordingly the development in question is not 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 change of use of part of the existing convenience shop for the sale of food (pizza) for consumption off the premises at Costcutter Supermarket, Lusk, County Dublin is development and is not exempted development.

### **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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**Philip Jones**  
**Member of An Bord Pleanála**  
**duly authorised to authenticate**  
**the seal of the Board.**

**Dated this            day of            2019.**