



Planning and Development Acts 2000 to 2019

Planning Authority: Waterford City and County Council

Planning Register Reference Number: D52019/27

WHEREAS a question has arisen as to whether or not the provision of two deli counters (46 square metres in area) instead of one deli counter (46 square metres in area), within a rearranged petrol filling station forecourt building, which has permission for inter alia a 'hot food deli', 'café seating area' and retail shop, constitutes exempted development under the provisions of the Planning and Development Act, 2000 (as amended) and Planning and Development Regulations, 2001 (as amended) at Maxol Station, Kingsmeadow, Cork Road, Waterford, is or is not development or is or is not exempted development:

AND WHEREAS Maxol Limited care of Tom Phillips and Associates of 80 Harcourt Street, Dublin requested a declaration on the question from Waterford City and County Council and no declaration issued by the planning authority:

AND WHEREAS Maxol Limited care of Tom Phillips and Associates of 80 Harcourt Street, Dublin referred the question for decision to An Bord Pleanála on the 25th day of November, 2019:

AND WHEREAS, having regard to the nature of the question and the documentation submitted as part of the referral, An Bord Pleanála decided to reformulate the question as follows:

Whether the alteration of the internal layout of a permitted petrol filling station forecourt building to provide two deli counters with a combined area of 46 square metres instead of one deli counter of 46 square metres, and the use of one of these deli counter areas as a fast food outlet (Abrakebabra) for the sale of hot food for consumption both on the premises, in a dedicated seating area, and off the premises, at Maxol Station, Kingsmeadow, Cork Road, Waterford, 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(1), 3(1) and 4(1)(h) 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 the Planning and Development Regulations, 2001, as amended,

- (d) the planning history of the site, including the description of the development and the layout of the forecourt building permitted under planning register reference number 11/500013 and the amendments granted under planning register reference numbers 13/500036 and 15/513,
- (e) the nature of the Abrakebabra outlet operated on site which is considered to constitute a fast food take-away use, and
- (f) the observations of the referrer and of the inspector in respect of the internal layout of the premises and of the nature of the uses undertaken on site:

AND WHEREAS An Bord Pleanála has concluded that –

- (a) the authorised use of these premises is as set out in planning register reference number PD11/13, as amended by planning register reference numbers 13/36 and 15/513,
- (b) the sub division of permitted hot food deli floorspace would constitute development being works to the permitted structure and that these works would be exempt under section 4(1)(h) of the Planning and Development Act, 2000, being works which only affect the interior of the structure,
- (c) that the nature of the Abrakebabra use on site is a fast food outlet which is different from a hot food deli use and constitutes a change of use which gives rise to potential for traffic, noise, odour and general disturbance would be material in planning terms and would, therefore, constitute development, and

- (d) the fact that 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) (b) of the 2000 Act, hereby decides that the alteration of the internal layout of a permitted petrol filling station forecourt building to provide two deli counters with a combined area of 46 square metres instead of one deli counter of 46 square metres and the use of one of these deli counter areas as a fast food outlet (Abrakebabra) for the sale of hot food for consumption both on the premises, in a dedicated seating area, and off the premises, at Maxol Station, Kingsmeadow, Cork Road, Waterford, 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.

Terry Prendergast
Member of An Bord Pleanála
duly authorised to authenticate
the seal of the Board.

Dated this day of 2020.