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**Planning and Development Acts 2000 to 2022**

**Planning Authority: Kilkenny County Council**

**Planning Register Reference Number: DEC662**

**WHEREAS** a question has arisen as to whether the use of a permitted warehouse/light industrial unit, permitted under planning permission reference number 01/465 and amended by planning permissions reference numbers 05/1335 and 14/216 as a wholesale warehouse at Unit 27, Hebron Business Park, Kilkenny is or is not development or is or is not exempted development:

**AND WHEREAS** ACCHL Limited of Unit 20, Robinhood Industrial Estate, Clondalkin, Dublin requested a declaration on this question from Kilkenny County Council and the said Council issued a declaration on the 22<sup>nd</sup> day of December, 2021 stating that the matter was development and was not exempted development:

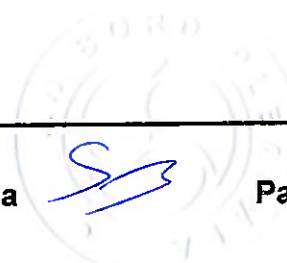
**AND WHEREAS** ACCHL Limited referred the declaration for review to An Bord Pleanála on the 27<sup>th</sup> day of January, 2022:

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

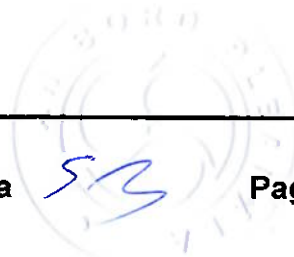
- (a) Sections 2(1), 3(1) and 4(1)(h) of the Planning and Development Act, 2000, as amended,
- (b) Article 6(1) and Article 9(1) and Article 10(1)(b) and (c) of the Planning and Development Regulations, 2001, as amended,
- (c) the planning history of the site, which includes restrictions on the authorised use, that is, condition number 2 of register reference 01/465 and condition number 3 of register reference 05/1335,
- (d) the nature of the current use of the site, and
- (e) the submissions on file and the report of the Inspector:

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



- (a) Unit number 27 has a permitted use as light industrial and/or warehousing use under planning permission reference numbers 01/465 and 05/1335.
- (b) Condition number 2 of planning permission reference number 01/465 and condition number 3 of planning permission reference number 05/1335, restrict the subject unit to light industrial and/or warehouse use. The latter strictly precludes the use of the building for retail/retail warehousing purposes.



- (c) The sale of non-bulky items which as noted in the report of the Inspector does not come within the scope of a 'Retail Warehouse' for the sale of 'bulky goods' as defined in Annex 1 of the Retail Planning Guidelines 2000.
- (d) Accordingly the current use of Unit 27 as a retail unit is a change of use from the authorised use of this unit as light industrial and/or warehousing, and this change of use constitutes development, being a material change of use, having regard to the retail character and its material change of use, having regard to its retail character and its material external impacts (such as its possible impacts on town centre retailing, traffic and parking) on the proper planning and sustainable development of the area.
- (e) This material change of use:
- (i) would be inconsistent with the use specified and included in the permission under planning register reference numbers 01/465 and 05/1335 for light industrial and/or warehousing, and would therefore not be exempted development having regard to Article 10(1)(c) of the Planning and Development Regulations, 2001, as amended, and
  - (ii) materially contravenes condition number 2 of planning register reference number 01/465 and condition number 3 of planning register reference number 05/1335 and would therefore not be exempted development having regard to Article 10(1)(b) of the Planning and Development Regulations, 2001, as amended.



**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 a wholesale warehouse in a unit where there is permission for light industrial and/or warehousing at Unit 27, Hebron Business Park, Kilkenny is development and is not exempted development.

**Stephen Brophy**

**Member of An Bord Pleanála**

**duly authorised to authenticate**

**the seal of the Board.**

Dated this *16<sup>th</sup>* day of *October* 2023.