



An
Coimisiún
Pleanála

Commission Order
ABP-321791-25

Planning and Development Act 2000, as amended

Planning Authority: Kerry County Council

Planning Authority Reference Number: EX1313

WHEREAS a question has arisen as to whether the change in use of rear yard or unauthorised beer garden (area shown outlined in red on figure 2 received by An Coimisiún Pleanála on 4th February 2025) to a smoking area at Sheila Bun's, Upper Bridge Street, Killorglin, County Kerry is or is not development or is or is not exempted development.

AND WHEREAS Kathleen Finnegan and Patrick Finnegan requested a declaration on this question from Kerry County Council and the Council issued a declaration on the 22nd day of January 2025 stating that the matter was not development.

AND WHEREAS Kathleen Finnegan and Patrick Finnegan referred this declaration for review to An Coimisiún Pleanála on the 4th day of February 2025.

AND WHEREAS An Coimisiún Pleanála, in considering this referral, had regard particularly to:

- (a) Sections 3(1) of the Planning and Development Act 2000 (as amended).
- (b) The Planning and Development Regulation 2001 (as amended), Article 10(1) and schedule 2, part 4, class 12.
- (c) The planning history files Planning Register Reference Number 93/871 and Planning Register Reference Number 22/77 (An Coimisiún Pleanála Register Reference Number -ABP-313775-22)
- (d) Circuit Court order dated 26th June 2024 between Patrick Finnegan and Kathleen Finnegan and Tom Crowley – served under Section 160 of Planning and Development Act 2000 to 2021 as amended.
- (e) Documentation of file.
- (f) The location of the site and adjoining development in the surrounding area.

AND WHEREAS An Coimisiún Pleanála has concluded that:

- (a) Use of the entirety of the area outlined in red on figure 2 received by An Coimisiún Pleanála on 4th February 2025 as an outdoor smoking area would constitute an intensification of the permitted use of the premises and would therefore constitute a material change of use and would therefore constitute development.
- (b) The change of use of the entire area outlined in red to smoking area is not an exempted form of development because this change of use does not fall within the provisions of the Planning and Development Regulations 2001, Article 10(1) and Part 4, class 12 because it would be a form of development (change of use) where works have been carried



out without the benefit of planning permission, which are therefore unauthorised.

NOW THEREFORE An Coimisiún 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 the change in use of the rear yard (area shown outlined in red on figure 2 received by An Coimisiún Pleanála on 4th February 2025) to a smoking area at Sheila Bun's, Upper Bridge Street, Killorglin, County Kerry is development and is not exempted development.



Liam McGree

**Planning Commissioner of An Coimisiún
Pleanála duly authorised to authenticate
the seal of the Commission.**



Dated this 27th day of January 2026.