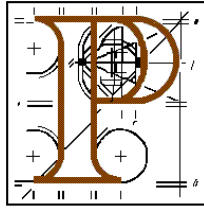


An Bord Pleanála



PLANNING AND DEVELOPMENT ACTS 2000 TO 2015

Kildare County

Planning Authority Reference Number: ED00555

An Bord Pleanála Reference Number: 09.RL.3402

WHEREAS a question has arisen as to whether the change of use of part of the existing retail premises for the sale of hot food for consumption off the premises as an ancillary part of this outlet, at McCann's Newsagents, Calverstown, Kilcullen, County Kildare is or is not development or is or is not exempted development:

AND WHEREAS John McCann care of Vincent J.P. Farry and Company Limited of Suite 180, 28 South Frederick Street, Dublin requested a declaration on the said question from Kildare County Council and the said Council issued a declaration on the 20th day of August, 2015 stating that the use of a portion of an existing retail premises at McCann's Newsagent, Calverstown, for the sale of hot food for consumption off the premises is development and is not exempted development:

AND WHEREAS the said John McCann referred the declaration for review to An Bord Pleanála on the 9th day of September, 2015:

AND WHEREAS An Bord Pleanála decided to reformulate the question as follows:

“whether the change of use of part of the existing retail premises for the sale of hot food for consumption off the premises, at McCann's Newsagent, Calverstown, Kilcullen, County Kildare, 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) Articles 6, 9 and 10 of the Planning and Development Regulations, 2001, as amended, and Part 4 of Schedule 2 to those Regulations,
- (c) the definition of ‘shop’ under article 5(1) of the said Regulations,
- (d) the planning history of the site, including planning register reference number 04/1152, whereby planning permission was granted for a shop on the ground floor, as amended under planning register reference number 07/0206, 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 -

- (a) the sale of hot food for consumption off the premises is not subsidiary to the principal shop use,
- (b) having regard to the definition of ‘shop’ under article 5(1) of the Planning and Development Regulations, 2001, as amended, this has resulted in a change of use within this shop from the main retail use,
- (c) having regard to the potential for material planning consequences in relation to traffic, noise and general disturbance, this change of use is considered to be material in planning terms, and this matter, therefore, constitutes development, and
- (d) this development does not come within the scope of exemptions from the general obligation to obtain planning permission, as provided under planning legislation:

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 said change of use of part of the existing retail premises for the sale of hot food for consumption off the premises at McCann's Newsagents, Calverstown, Kilcullen, County Kildare 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.

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

Dated this day of 2016.