

An Bord Pleanála



PLANNING AND DEVELOPMENT ACTS 2000 TO 2015

Waterford City and County

Planning Authority Reference Number: D5/201522

An Bord Pleanála Reference Number: 93.RL.3444

WHEREAS a question has arisen as to whether the change of use of part of a shop to use as a coffee shop at Penneys, 32-37 Barronstrand Street, Waterford is or is not development or is or is not exempted development:

AND WHEREAS Primark Limited care of Kieran O'Malley and Company Limited of Saint Heliers, Saint Heliers Copse, Stillorgan Park, Blackrock, County Dublin requested a declaration on the said question from Waterford City and County Council and the said Council issued a declaration on the 19th day of November, 2015 stating that the said matter is development and is not exempted development:

AND WHEREAS the said Primark Limited referred the declaration for review to An Bord Pleanála on the 15th day of December, 2015:

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) the planning history of the site, including An Bord Pleanála appeal reference number PL 31.219213 (planning register reference number 05/500242), whereby planning permission was granted for a substantial shop at this location, as amended under planning register reference number 10/500208, and
- (d) the large scale of the overall shop at circa 5,000 square metres, and the small scale of the coffee shop involved at 120 square metres:

AND WHEREAS An Bord Pleanála has concluded that -

- (a) the existing use of the entire premises is as a “shop” as defined in Article 5(1) of the Planning and Development Regulations, 2001, as amended by Article 3 of the Planning and Development Regulations, 2005,
- (b) the use of the front of the premises for the consumption of food items purchased on the premises does not come within the scope of the definition of a shop, which definition does not provide for the consumption of food on the premises,
- (c) the use of part of the shop as a coffee shop is, therefore, a change of use from use as a shop, and is considered to constitute a restaurant use, particularly given the layout, the extent of seating, and the physical separation from the retail area, and
- (d) having regard to the substantial scale of the overall shop relative to the small scale of the coffee shop, its operation only during the opening hours of and in conjunction with the overall shop, the absence of independent access from the public street, and the absence of potential for use as an independent unit, it is considered that the change of use does not constitute a material change of use and is, therefore, not 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 said change of use of part of a shop to use as a coffee shop at Penneys, 31-37 Barronstrand Street, Waterford is not 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.