An Bord Pleanála



PLANNING AND DEVELOPMENT ACTS 2000 TO 2015

Dún Laoghaire-Rathdown County

Planning Authority Reference Number: Ref. 316

An Bord Pleanála Reference Number: 06D.RL.3464

WHEREAS a question has arisen as to whether the proposed relocation of the first floor portion of a retail shop back to the ground floor to include a new side emergency exit door and the provision of a small coffee dock at Comfort Furniture Premises, Dwarf Oak Shopping Centre, Church Road, Ballybrack Village, County Dublin is or is not development or is or is not exempted development:

AND WHEREAS James McCumiskey care of Architectural Construction Technology of An Tigh, Ballyogan Avenue, Carrickmines, Dublin requested a declaration on the said question from Dún Laoghaire-Rathdown County Council and the said Council issued a declaration on the 8th day of February, 2016 stating that:

- (a) the proposed relocation of the first floor portion of a retail shop back to the ground floor is not development,
- (b) the new side emergency exit door is development and is exempted development, and
- (c) the provision of a small coffee dock is development and is not exempted development:

AND WHEREAS the said James McCumiskey referred the declaration for review to An Bord Pleanála on the 25th day of February, 2016:

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 5(1), 6(1), 9(1) and 10(1) of the Planning and Development Regulations, 2001, as amended,
- (c) Class 14 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001 and Class 1 of Part 4 of Schedule 2 to the Planning and Development Regulations, 2001,
- (d) the established and existing use of the ground and first floors of the premises as a retail outlet,
- (e) the location of the external door at the side of the premises, and
- (f) the nature and scale of the proposed coffee dock including the layout, provision of seating, incorporation of a food preparation area and its prominent position to the front of the premises:

AND WHEREAS An Bord Pleanála has concluded that -

- (a) retail use at ground floor is an established use,
- (b) provision of an emergency exit door would not materially alter the external appearance of the structure,
- (c) the use of the subject premises as a coffee shop does not constitute use as a "shop" because the scale, nature and layout of the coffee shop is more akin to a restaurant use which is expressly excluded from the definition of 'shop' under Article 5(1) of the Planning and Development Regulations, 2001, as amended, and

(d) the change of use of the subject premises, from use as a shop to use as a coffee shop raises issues that are material in relation to the proper planning and sustainable development of the area and is, therefore, material and is, therefore, "development" within the meaning of section 3 of the Planning and Development Act, 2000:

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:

- (a) the proposed relocation of the first floor portion of a retail shop back to the ground floor is not development,
- (b) the new side emergency exit door is development and is exempted development, and
- (c) the provision of small coffee dock is development and is not exempted development,

all at Comfort Furniture Premises, Dwarf Oak Shopping Centre, Church Road, Ballybrack Village, County Dublin.

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.