

Board Order 03.RL.3592

Planning and Development Acts 2000 to 2017 Planning Authority: Clare County Council Planning Register Reference Number: R17-14

WHEREAS a question has arisen as to whether the use of unit number 4 Woodquay as a restaurant for the consumption of food on the premises is consistent with the conditions of Ennis Urban District Council permission 27/1416 at unit number 4 Woodquay, Ennis, County Clare is or is not development or is or is not exempted development:

AND WHEREAS Michal Szymacha care of Michael J. Duffy care of 1 Clós Na hEaglaise, Kilfenora, County Clare requested a declaration on this question from Clare County Council and the Council issued a declaration on the 22nd day of May, 2017 stating that the matter was not development and was not exempted development:

AND WHEREAS Michal Szymacha care of Michael J. Duffy care of 1 Clós Na hEaglaise, Kilfenora, County Clare referred the declaration for review to An Bord Pleanála on the 2nd day of June, 2017:

AND WHEREAS An Bord Pleanála, having regard to the documentation submitted as part of the declaration and referral, has decided to reformulate the question as follows:

"Whether the change of use of unit number 4 Woodquay from shop to use as a restaurant for the consumption of food on the premises at number 4 Woodquay, Ennis, County Clare 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) the definition of 'shop' under article 5(1) of the Planning and Development Regulations, 2001, as amended,
- Articles 6(1), 9(1) and 10(1) of the Planning and Development Regulations,
 2001 as amended, and Class 1 of Part 4 of Schedule 2 to these Regulations, and
- (d) the planning history of the site, including planning permission register
 reference number 27/1416, whereby planning permission was granted for five
 number shop units, which included the unit the subject of this referral:

AND WHEREAS An Bord Pleanála has concluded that -

- (a) the permitted use of the subject unit, as granted under planning permission register reference number 27/1416 is as a shop,
- (b) the proposed change of use of the unit from shop to use as a restaurant for the consumption of food on the premises would be a factual change of use and such change of use would raise material planning considerations, and accordingly would constitute a material change of use, and is, therefore, development,

- (c) the use of the subject premises as a restaurant does not constitute use as a 'shop' as defined in Article 5(1) of the Planning and Development Regulations 2001, as amended, because a restaurant use is expressly excluded from the definition of 'shop' under Article 5(1) of these Regulations, and
- (d) there are no provisions in the Act or Regulations whereby such development would be exempted:

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 change of use of unit number 4 Woodquay from shop to use as a restaurant for the consumption of food on the premises at number 4 Woodquay, Ennis, County Clare 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 2018