



An
Bord
Pleanála

Board Order 29S.RL.3809

Planning and Development Acts 2000 to 2018

Planning Authority: Dublin City Council

Planning Register Reference Number: 0285/17

WHEREAS a question has arisen as to whether the change of use of car showroom to café/shop with ancillary retail, and with business to business wholesale area, outdoor seating area and new gates at 7A Sussex Terrace, Dublin, is or is not development and is or is not exempted development.

AND WHEREAS David MacNicholas, requested a declaration on this question from Dublin City Council, and the Council issued a declaration on the 24th day of August, 2017 stating that the sale of hot and cold food for consumption off the premises is subsidiary to the main retail use and is development and is exempted development, and that the business to business wholesale area is not development, and the outdoor seating area and new gates is development and is not exempted development.

AND WHEREAS David MacNicholas referred this declaration for review to An Bord Pleanála, on the 19th day of September, 2017.

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 of the Planning and Development Regulations 2001, as amended,
- (c) Class 14 of Part 1 and Classes 2 and 5 of Part 4 of the Second Schedule to the Planning and Development Regulations 2001, as amended,
- (d) The planning history of the site, in particular the recent decision of An Bord Pleanála under file reference number PL29S.248876 dated 9th November, 2017,
- (e) The submissions on file and the report of the Inspector, including the report of the inspections of the subject premises by the Inspector in this case and by the Inspector in related appeal case PL29S.248876, showing the scale and layout of the premises, and
- (f) The nature and range of goods sold on the subject premises, and services provided to visiting members of the public and the layout of the premises, in particular the extent of seating provided:

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The subject premises, formerly used as a car showroom, is currently used (based on the documents on file and the details of the inspections carried out by the Board's Inspectors) partly as a café, with ancillary retail use, and partly as a wholesale warehouse;
- (b) These current uses represent changes of use from the former use as a car showroom and associated vehicle parking area and, having regard to the provisions of the legislation, and having regard to the material planning issues raised by the new uses, constitute material changes of use and are, therefore, development;

- (c) The provision of an outdoor seating area and the provision of new gates involves the carrying out of works and is, therefore, development;
- (d) The use of the subject premises primarily as a café does not come within the scope and definition of a “shop” as set out in Article 5 of the Planning and Development Regulations, 2001, as amended, having regard to the scale and layout of the premises, including areas for the consumption of hot and cold food within and outside the building, and the nature of the goods sold therein and, therefore, the change of use from the previous use as a car showroom does not come within the scope of Class 14 (a) of Part 1 of the Second Schedule to the Planning and Development Regulations, 2001, as amended, and is not exempted development;
- (e) The use of part of the subject premises for the wholesale sale of goods does not come within the definition of a “shop” as set out in Article 5 of the Planning and Development Regulations, 2001, as amended, but is within the scope of Class 5 of Part 4 of the Second Schedule to these Regulations, and there is no provision whereby change of use from showroom to wholesale warehouse would be exempted development. This development is, therefore, not exempted development;
- (f) The use of the seating area for the consumption of hot and cold food is ancillary to the use of the subject premises primarily as a café, which use is not exempted development. Its previous use was for the parking of motor vehicles and there are no exemptions in the Act and Regulations by which such material change of use would be classified as exempted development. This development is, therefore, not exempted development; and
- (g) The erection of the gates does not come within the scope of any exemption set out in the Acts and Regulations, having regard to the nature of the premises and the previous use of the area for the parking of motor vehicles, and is, therefore, not exempted development.

