



An
Bord
Pleanála

Inspector's Report RL301092-18

Question	Whether the development of premises as a retail pharmacy and the subsequent fitting out of the premises is or is not development or is or is not exempted development
Location	Palatine Road, Newton, Bruff, County Limerick
Declaration	
Planning Authority	Limerick City & County Council
Planning Authority Reg. Ref.	EC 17/79
Applicant for Declaration	Paul Mullins
Planning Authority Decision	Development as retail pharmacy is not development and subsequent fitting out of premises is development and is not exempted development
Referral	
Referred by	Paul Mullins
Owner/ Occupier	Breda Sadlier
Observer(s)	None
Date of Site Inspection	10 th July 2018

1.0 Site Location and Description

- 1.1.** The site is located at the northern end of the main street running north-south through the town of Bruff, which in turn is located approx. 26 km to the south of Limerick City. There is an existing petrol station with forecourt and shop on the site together with a dwelling and several commercial buildings. It is located on the western side of the road with a farm yard to the north and residential properties to the south.
- 1.2.** The site has a stated area of 0.46ha. The shop associated with the petrol station is located adjacent to the northern boundary, close to the road, with the forecourt and canopy immediately to the south. There is an existing dwelling to the west of the petrol station, which is at a higher ground level, and a commercial unit/workshop is located to the south of this dwelling. There are two commercial units to the south of the petrol station forecourt adjoining the southern boundary. One of these is used as a laundrette and the other is the subject of the reference before the Board.
- 1.3.** A site layout plan submitted with the application for declaration shows that the site is labelled “vacant building/intended pharmacy”. However, at the time of my inspection, the unit was operating as a retail pharmacy. The unit appears to be larger than the laundrette and the planning history indicates that two units were merged to form a single unit some years ago. The unit is single storey with a double pitched roof and windows facing the forecourt area. There are three velux roof lights on the northern roof slope. There is a single sign over the door which reads “Bruff Pharmacy”. There are three parking spaces in front of the unit.

2.0 The Question

- 2.1.** The question has arisen as to whether the use of the unit as a retail pharmacy is or is not development and whether the fitting out of the unit is or is not development or is or is not exempted development.

3.0 Planning Authority Declaration

3.1. Declaration

3.1.1. The P.A. made the following declaration on 6th February 2018

[that] “the development of premises as a retail pharmacy is NOT development and [that] the subsequent fitting out of the premises is development and is exempted development under Section 4(1)(h) of the Planning and Development Act 2000, as amended.”

3.2. Planning Authority Reports

3.2.1. Planning history and claims of unauthorised nature of use and/or abandonment of use

In response to claims that the use is either unauthorised or was abandoned, the Development Officer noted the following:

- **Planning history**

98/1309 - Planning permission was granted for the re-development of the petrol station and the erection of a new shop with coffee shop and new car wash (98/1309) subject to conditions. An existing retail unit was shown on the submitted plans as being retained and to be rented separately as a hairdressers or similar (subject to planning). Condition 7 stipulated that the existing building shall not be used for the sale of foodstuffs.

00/2785 – Change of use from shop to hot food take-away - planning reports by P.A. had made reference to certain unauthorised works but the Planning Inspector (124483) had noted that the building was sound and made no references to unauthorised development on the site. The application was refused on grounds of overdevelopment, not on the grounds of an unauthorised structure.

15/256 – change of use from beauty/hairdressing salon to café/restaurant – this was refused by the P.A. and by the Board on appeal (245113) on grounds of overdevelopment and impact on residential amenity. Although the Inspector had made reference to the planning reports relating to the previous refusal in

terms of unauthorised development (00/2785), and that several applications in the intervening period had not mentioned or sought to clarify the question of unauthorised development, it was not refused on the grounds of unauthorised development. The inspector had also noted that the units in question were vacant at the time of inspection.

- **Established use** – on the basis of the foregoing, the P.A. is satisfied that the building has an established authorised use as a shop.
- **Occupancy** – it is accepted on the basis of rates evidence and information submitted by email on 8/09/17 (in respect of EC17/50) that the premises has been used as a hairdressing salon for 15 years, although they were vacant between 2014 and 2016 and again for part of 2017.
- **Abandonment** – it is not accepted that the use has been abandoned due to the information on file regarding the physical condition of the unit, the period of non-use and the lack of evidence of any change of use during the period of vacancy.
- **No material change of use** – on the basis of the foregoing, the P.A. is satisfied that there has been no material change of use and that the use has not been abandoned.

3.2.2. **Definition of shop under Article 5(1) of Planning and Development Regulations 2001 (as amended)**

Given the planning history of the premises and the decisions made by the Board, the Development Inspector was satisfied that the established use of the premises is that of a “shop” as defined under Article 5(1) of the P & D Regulations, 2001 as amended.

This includes use for (a) the retail sale of goods and (e) hairdressing.

3.2.3. **Class 1, Schedule 2, Part 4 of the Planning and Development Regulations 2001 (as amended)**

The Development Inspector (Planning Report) considered that the change of use from a hairdressing salon to a Chemist shop both come within the scope of Class 1 of Part 4 of Schedule 2 of the Regulations and that as such, there is no change of use involved.

It was further considered that the use of the premises as a chemist shop is not development.

3.2.4. Section 4(1)(h) of the Planning and Development Act 2000 (as amended)

It was noted that the internal alterations are works which only affect the interior of the structure and that, as such, could be considered exempted development under Section 4(1)(h) of the Planning and Development Act.

4.0 Planning History

98/1309 – planning permission granted for redevelopment of petrol station and erection of new coffee shop and car wash. Permission granted subject to conditions one of which prohibited the sale of foodstuffs from the retained retail unit. The floor area of this unit is stated to be 110sq.m.

124483 (00/2785) – permission refused by P.A. and the Board for change of use from shop to take-away restaurant, signage, change of external façade and all associated works. The reason for refusal was based on overdevelopment of the site and impact on residential amenity associated with take-away use. A comment was made in a letter from the County Secretary, dated 8/5/01, (in response to the Board’s notification of the appeal) that “the retail units had been recently reconstructed without the benefit of planning permission” and that the existing laundrette was unauthorised.

02/656 – Permission granted for construction of an extension to an existing shop, stores and increased parking area. This related to the petrol station shop, but information on this file confirmed that vacant units across the courtyard were to be leased as hair dressing salon.

245113 (15/256) – permission refused by P.A. and Board for change of use from hairdressing/beauty salon to use as a café/restaurant. The Inspector had recommended refusal on 2 grounds, one of which was that the proposed use relates to a building, the use of which appears to be unauthorised. However, the Board did not include this as a reason for refusal.

17/413 – application withdrawn for change of use to commercial/retail use with signage at existing units.

5.0 Policy Context

5.1. Development Plan

The lands are zoned Town Centre/Mixed Use in the Bruff Local Area Plan 2012-2018 (extended to 2022). The zoning objective is “to provide for and improve retailing, residential, commercial, office, cultural and other uses appropriate to the town centre while guiding the development of an expanded and consolidated Town Centre area.” It is noted that the lands to the north and west are zoned ‘Agricultural’ and the lands to the south are ‘Existing Residential’.

5.2 Natural Heritage Designations

Glen Bog cSAC (001430)– lies approx. 4km to the northeast.

Tory Hill cSAC (000439) – lies approx. 12km to the northwest.

6.0 The Referral

6.1. Referrer’s Case

6.1.1. **Background** – The applicant for referral, Paul Mullins, had sought a request for a Declaration under Section 5 on 21st December 2017. The request was accompanied by a site location map, site layout plan, front elevation drawing, photograph of the building. Prior to this, the applicant had written to the P.A. seeking that enforcement action be taken against the use of the unit. A copy of the letter sent to the P.A. following its decision not to pursue enforcement action, dated 17/12/17, was also attached to the application for a Declaration.

6.1.2. Grounds of reference

Unauthorised development - The Referrer disputes the P.A.’s position that the use of the building as a hairdressing salon is an authorised use. This view is based on the planning history of the site, and in particular, the Inspector’s report in relation to the proposed development in 2015, (245113) and the P.A.’s submission in respect of that development, indicating that it appears that the building is not a permitted development.

Unauthorised use – it is submitted that if the building is unauthorised, then the use of the building as a shop is not an authorised use and therefore the change of use to a retail pharmacy cannot be regarded as exempted development.

Works to fit out the building as a pharmacy – it follows that the works to the interior to fit it out for use as a retail pharmacy cannot be considered to be exempted development.

Signage – the signage erected on the front elevation would not be exempted development under the Exempted Development – Advertisements (Article 6, Schedule 2, Part 2 of the P & D Regulations).

Discontinuance of use – the email letter of 8/09/17 indicated that the premises have been in almost continuous commercial use but it is understood that the premises have been vacant for a considerable period of time. This is supported by the Inspector’s report (245113) that the premises were vacant at the time of inspection on 1/09/15.

6.2. Planning Authority Response

The P.A. has not made any observations in response to the referral.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

7.1.1 Section 2 (1)

“Works” are defined in this section as including any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal.

7.1.2 Section 3 (1) of the Act defines “*Development*” as, ‘except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land’.

7.1.3 **Section 4** of the Act refers to *'Exempted Development'* and Subsection (1) sets out categories of development that shall be exempted development for the purposes of this Act. Subsection (1) (h) states the following:

'development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures'.

In addition to specified exemptions in the Act, Subsection (2) of the Act provides that the Minister may by regulations provide for any class of development being exempted development.

7.2. Planning and Development Regulations, 2001

7.2.1. Article 5(1) sets out various definitions including the definition of a 'shop' as follows:

'Shop' means a structure used for any or all of the following purposes where the sale, display or service is principally to visiting members of the public.

(a) for the sale of retail goods;

(a) for hairdressing;

7.2.2. Article 5(1) sets out various definitions including the definition of a 'shop' as follows:

'Shop' means a structure used for any or all of the following purposes where the sale, display or service is principally to visiting members of the public.

(a) for the sale of retail goods;

(e) for hairdressing;

(h) as a laundrette or drycleaners.

7.2.3. Article 6 of Part 2 of the Regulations provides that subject to Article 9 (1) (a), development specified in Column 1 of Part 1 of the Second Schedule shall be exempted development for the purposes of the Act subject to the conditions and limitations specified in Column 2. The only class of relevance is Class 14 which

refers to development consisting of a change of use including a change of various uses to use as a shop. These uses include sale of hot food (take-away), sale/leasing/display of motor vehicles for sale/lease, public house, funeral home/amusement arcade/restaurant and use to which class 2 of Part 4 of the Schedule applies. Class 2 is as follows:

There are no conditions and limitations of Class 14.

- 7.2.4. Article 9 (1) (a) lists the exceptions where development would not be exempted development (by virtue of Article 6). These included subsection (i) where the development would contravene a condition attached to a planning permission under the Act or be inconsistent with any use specified in a permission under the Act; and subsection (viii) where the development consists of or comprises the extension, alteration, repair or renewal of an unauthorised structure or a structure, the use of which is unauthorised.
- 7.2.5. Article 10(1) provides that development which consists of a change of use within any one of the classes of use specified in Part 4 of Schedule 2, shall be exempted development for the purposes of the Act provided that the development if carried out would not -
- (a) Involve the carrying out of any works other than works which are exempted development;
 - (b) Contravene a condition attached to a permission under the Act;
 - (c) Be inconsistent with any use specified or included in such a permission;
 - (d) Be a development which where the existing use is an unauthorised use, save where such change of use consists of resumption of a use which is not unauthorised and which has not been abandoned.
- 7.2.6. Article 11 provides that development which commenced prior to the coming into operation of this Part and which was exempted development for the purposes of the Act of 1963 or the 1994 Regulations, shall notwithstanding the repeal of that Act

and the revocation of those Regulations, continue to be exempted development for the purposes of the Act.

7.2.7. Part 4 Schedule 2 sets out exempted development in relation to Classes of Use.

Class 1 – Use as a shop.

Class 2 - (a) Use for provision of financial services,

(b) Professional services (other than health or medical services),

(c) Any other services (including use as a betting office),

where services are provided principally to visiting members of the public.

8.0 Relevant Board Decisions The following Board decisions in relation to Section 5 Reference/Referral cases are considered to be of relevance.

8.1 RL2746 – Whether the use of a currently vacated premises, the last use of which being an unauthorised use as a bank, to use as a chemist shop at No. 5 Dublin Street, Longford, is or is not development and is or is not exempted development.

The Board concluded (2011) that the change of use from a currently vacated premises, which was previously in unauthorised use as a bank (for 16 years) to use as a chemist shop is a material change of use that is development and is exempted development. It was noted that the premises had previously been used as a bookmakers and that planning permission had been granted for a change of use to a shop, but that this permission was never implemented. It was therefore concluded that the only authorised use of the premises was as a bookmaker's office (Schedule 2, Part 4, Class 2(c) and that as the proposed use as a chemist shop is exempted development under Schedule 2, Part 1, Class 14(5), change of use from a bookmaker's to a shop.

8.3 RL2146 – whether resumption of permitted use as car sales at Bridge Street, The Glen, Waterford is or is not development or is or is not exempted development.

The Board concluded (2004) that the resumption of use of the premises for car sales does not constitute development as defined by Section 3 of the P & D Act, being the resumption of a permitted use, which has not been abandoned, and therefore not constituting a change of use. Thus, it was concluded that the resumption of the use was not development and that as such, the question of whether it is or is not exempted development does not arise.

In addition, the issue of whether the use had been abandoned had been central to the question before the Board. Reference was made to various case law precedents with regard to the appropriate tests, which were considered to be the length of time that the use had ceased and whether there was evidence of an intention not to resume the use. In this case, the period of cessation was 6 years, four of which had involved an unauthorised use in the intervening period. The Board had concluded on the basis of the evidence presented that the use had not been abandoned.

8.4 RL2099 – Whether the change of use from a permitted garage/store and depot for servicing cranes, engines and jibs etc. to use for maintenance, conversion, open storage and distribution/hire of containers at Brooklodge, Glanmire, Co. Cork is or is not development or is or is not exempted development.

It was noted that Article 10 states that development which consist of a change of use within any one of the classes of use specified in Part 4 of Schedule 2 shall be exempted development for the purposes of the Act. However, there are four provisos, the first of which (a) is the most relevant to the subject case. This means that the exemption would only apply provided that the development, if carried out, would not involve the carrying out of works other than works which are exempted development. It was found that a number of unauthorised extensions (2000sq.ft.) to the permitted structure had been constructed, as well as some other structures. The Inspector considered that the current use could not be classified as exempted development since the change of use involves, or has involved, the carrying out of

works that are not in themselves exempted development, and that to rule otherwise would be to confer an authorised legal status on the extensions and offices in the absence of a planning permission for works of development.

The Board concluded (2004) that both the permitted and current uses came within Class 4, but that as the spray painting facility was accommodated within an unauthorised extension, being works of development and not exempted development, the change of use does not comply with Article 10(1)(a) of the Planning and Development Regulations 2001 as amended. It was further concluded that the storage of containers on the site did not comply with the conditions of Class 22. It was therefore concluded that the change of use was development and was not exempted development.

8.5 RL2181 – Whether the temporary change of use from a nightclub to a café/beer garden at a licensed establishment, Centenary Stores, Commercial Quay, Wexford, is or is not development or is or is not exempted development.

The Board (2004) concluded that there was a change of use, which was material, and that the planning unit had changed. It was noted that the overall premises comprised a public house, a beer garden, a restaurant and a night club. However, the nightclub (in the form of two terraced buildings) had been demolished and replaced by a beer garden with bar and toilets. It was considered that the nightclub use had been extinguished by the unauthorised demolition (by reference to case law – Galway county council v. Connacht Protein Ltd.). in addition, the significant intensification of use and increase in the floor area had given rise to new material planning considerations and a change in the planning unit.

Thus, the Board concluded that the change of use was development and was not exempted development.

9.0 Assessment

The questions arising from this referral fall into a number of main parts. Firstly, whether the change of use is development; secondly, if development, whether the change of use is exempted development under Article 10(1) in terms of consisting of

a change of use within any one of the classes of use specified in Part 4 of Schedule 2; and whether such an exemption is restricted by any of the conditions of Article 10(1), (such as might arise if the structure is unauthorised by virtue of having been demolished and reconstructed and/or whether the use had ceased and thus become abandoned); thirdly, whether the fitting out of the chemist shop is exempted development; and fourthly, whether the signage erected on the premises is exempted development.

It is considered, therefore that the question should be restated as follows:

- Is the change of use from a hairdressing salon to a chemist shop 'development'?
- If development, is the change of use exempted development under Article 10(1) of the P & D Regulations 2001 (as amended)?
- If exempted, is the exemption restricted under subsection (a) or (d) of Article 10(1) by virtue of the structure being unauthorised or the use having been abandoned?
- Are the works carried out in the past to the building authorised or exempted development?
- Are the works of fitting out and conversion of the hairdressing salon to a chemist shop exempted development under S4(1)(h) of the P & D Act 2000 (as amended)?
- Is the signage erected on the premises exempted development under Class 1 of Part 2 of Schedule 2 of the P & D Regulations 2001 (as amended) and are there any restrictions on such exemption?

9.1. Is the change of use from a hairdressing salon to a chemist shop 'development'?

- 9.1.1. 'Development' is defined in Article 3 of the P & D Act as the carrying out of any works on, in, over or under any land or the making of any material change of use of any structure or land. The established use of the premises is accepted by the Planning Authority as being as a shop, which predated the 1998 permission for the redevelopment of the petrol station, the drawings for which indicated that the unit(s) would be leased as a hairdressing salon.

- 9.1.2. The Planning Authority's declaration stated that the change of use from a hairdressing salon to a chemist shop is not development. A review of the planning reports indicate that this was based on the fact that both a hairdressing salon and a chemist shop fall within the definition of the term 'shop' under Article 5(1) and also fall within Class 1 of Part 4 of the P & D Regulations. It was, therefore, concluded that there had been no material change of use, and hence it is not development.
- 9.1.3. I am generally in agreement with this interpretation of the legislation. However, I further note that Article 10(1) provides that development which consists of a change of use within any one of the classes of use specified in Part 4 of Schedule 2, shall be exempted development for the purposes of the Act provided that, inter alia, the development if carried out would not involve the carrying out of works other than works which are exempted development and that it would constitute development which, where the existing use is unauthorised, save where it consists of the resumption of a use that is not unauthorised that had not been abandoned.
- 9.1.4. Notwithstanding the fact that both use for the sale of retail goods and use for hairdressing fall within the definition of a 'shop', (Article 5(1)), it is considered that given that the change of use the subject of this referral relates to a change of use within Class 1 as specified in Part 4 of Schedule 2, the change of use in this instance is considered to be 'development' within the meaning of Article 3.

9.2. If development, is the change of use exempted development under Article 10(1) and are there any restrictions on the exemption?

- 9.2.1. As stated above, the change of use is between two uses that fall within Class 1 of Part 4, Schedule 2 of the P & D Regulations 2001 (as amended). As such, the change of use would constitute exempted development provided that it satisfies the provisos of Article 10(1). The first of these requires that the development, if carried out, would not involve the carrying out of works other than works which are exempted development. In other words, did the works carried out to the building render the structure an unauthorised structure?
- 9.2.2. The Referring Party submits that there is information on the file that indicates that the retail unit in question had been demolished and reconstructed at some time before 2001, without the benefit of planning permission. This is based partly on the

Inspector's Report in respect of 245113 and the Planning Authority's submission in respect of a previous development (124483), and partly on a comparison of photographs on the planning files, namely an aerial photo dated 1997 and a photo of the unit in 2001. The Board should note that these photographs are on the Board's file Ref. 124483.

9.2.3. The Referring Party claims that the differences between the two photos demonstrate that the structure was reconstructed around 2000 and that it is larger in terms of floor area, depth, height, roof profile and front elevation. It is further submitted that the comparison of photographs substantiates the report of the executive planner and subsequent letter from the P.A. to the Board in respect of 124483, which stated "it should be noted that the retail units have recently been reconstructed without the benefit of planning permission and the existing laundrette is unauthorised." The Referring Party further states that on the basis of Photograph 2 (front elevation) "it would appear that this building was not in use for any purpose at the time of the application for a change of use from shop to café and may therefore never have had a shop use, permitted or otherwise before 2001." In conclusion, the Referring Party believes that the building does not have an established authorised use as a shop and that even if the use was authorised, it has lost this status by virtue of having been reconstructed without permission.

9.2.4. Use as a shop

The documentation and plans associated with planning permission 98/1309 make several references to the use of the existing building as a shop. The Area Planner's report dated 21/12/98 states that

"the existing building on site, which is currently used as a shop and storage area, is to remain. It is stated on the drawings that it is to be rented as a hairdressers or similar."

Although this application related to the proposed redevelopment of the northern part of the site only, the P.A. accepted the existing retail use of the units to the south of the forecourt area, as evidenced by condition 7, which prohibited the sale of foodstuffs from the existing buildings. It is also noted from the aerial photo dated 1997 that there are flower pots and other paraphernalia as well as a parked car outside the premises, which would appear to be generally consistent with the Area

Planner's account of the use of the site at the time. The permitted drawings also make reference to the intention to retain the existing commercial units and their future use as hairdressing salon.

9.2.5. The photographs taken by the Inspector in respect of 124483 show that the building was empty but appeared to have undergone some recent building works. These photos are consistent with the photos submitted by the appellant, Katie Lam, with the grounds of appeal for that case, (which is Photo 2 in the Referrer's submission). The grounds of appeal were accompanied by a letter from the owner at the time, Breda McGrath, which stated that the premises had been in her ownership for 4 years, that it had been in use as a commercial site complete with a dwelling house, commercial shop and a petrol garage forecourt for in excess of twenty-five years. It was also stated that since she had purchased the site in 1997, she had carried out major refurbishment.

9.2.6. The photographs taken by the Inspector in respect of 245113 clearly show that the most recent use of the premises at the time was as a hair salon, although the use may have ceased at the time of the application. The Planning Authority appears to be satisfied that the building has an established use as a shop. I would agree that on the basis of the evidence before the Board, the building has a long-established use as a shop, which is likely to predate the renovation works carried out in the early 2000s.

9.2.7. Reconstruction works

A letter was submitted by the P.A., (from the County Secretary, dated 8/05/01), in response to the appeal Ref. 124483. This letter had sought to draw the attention of the Board to the existing retail units, which it was stated had been "recently reconstructed". Notwithstanding the contents of this letter, which was dated after the P.A. decision, it should be noted that the planning authority had not decided to refuse permission on the grounds of unauthorised development. I can find no reference to unauthorised works in the Executive Planner's report. Neither did the Board's Inspector (124483) make any reference in his report to unauthorised works/development, and the Board did not refuse permission on the grounds of unauthorised development. When the Inspector under the following application/appeal (245113) for change of use of the premises recommended

refusal on these grounds, it is noted that the Board decided not to include this as a reason for refusal, (see Board Direction). Thus, there is little, if any, substantive documentary evidence that the unit was demolished and reconstructed.

- 9.2.8. The comparison by the Referring Party of the photographs referred to above makes many assumptions which also need to be addressed. It appears to me that the building has been altered and renovated rather than demolished and reconstructed. This can be seen from Photo 2 which shows that the art deco gable wall in the 1997 photo is still in place today. It is further noted that the yellow painted plasterwork on this gable continues around to the front (northern elevation). It would appear that the plasterwork was covered over by the grey brickwork cladding, and that the corrugated iron roof was replaced by a shallow-pitched slate roof. The footprint of the building appears to be largely the same as that in the aerial photo and the 1998 landscaping drawings, except that the front building line seems to have been brought slightly forward at the western end, where it abuts the laundrette, as these buildings are now flush, whereas the unit in question was recessed by up to a metre. However, the remainder of the footprint is similar and retains the recesses and projections at the eastern end. The party wall on the neighbouring side to the south also appears to have remained largely unchanged. The Board should note that the brick cladding has since been plastered over and repainted.
- 9.2.9. On the basis of the evidence before the Board, it is considered that the alterations that were carried out to the exterior of the building are relatively minor and do not result in a material change which would render it inconsistent with the character of the structure itself or of neighbouring structures. As such, it is considered that these works constitute 'development' under Section 3, but also come within the scope of Section 4(1)(h) of the P & D Act 2000, as amended. As such, the said works are development and are exempted development.

9.3 Are there other restrictions on the exemption?

- 9.3.1 The exemption conferred by Article 10(1) would be further restricted where there would be a contravention of any condition attached to a permission under the Act or by being inconsistent with any use specified under such a permission. Neither of these provisos are relevant in the current case. A further proviso of Article 10(1) is that the exemption would be lost where it would relate to a development where the

existing use is unauthorised, unless the change of use consists of resumption of a use which is not unauthorised and which has not been abandoned.

9.3.2 As stated previously, it is considered that the use is a long established one. However, the question of being authorised/unauthorised would require it to be established that it either commenced prior to 1964 or is development which is the subject of a permission granted under the Act. There is insufficient evidence before to Board to conclude that the use commenced prior to 1964. The 98/1309 permission, however, related to the entire site, as evidenced by the submitted drawings and by the statement on the Landscaping Plan SK05 that the

“The existing unit will remain in position and be rented separately to hairdressers or similar units (subject to planning).”

The planning permission did not, however, prohibit the continued use of the building as a shop but did prohibit the sale of foodstuffs from the existing buildings. Thus, it is considered that the P.A. had effectively accepted the continued use of the building within the complex of uses on the site as a retail use, provided the goods sold were not foodstuffs. The building continued to be used as a shop thereafter and subsequent applications to change the use of the units from a shop or hairdressing salon to a café or restaurant were refused on amenity grounds only. Crucially, permission was not refused by either the P.A. or the Board on the grounds that the unit, or use of the unit, was unauthorised. It is considered, therefore, that the use of the building as a shop (which includes a hairdressing salon) was established as part of the complex of uses permitted under 98/1309, and can therefore be considered to be an authorised use.

9.3.3 The Referring Party has also submitted that the use of the building as a shop may have been abandoned, and as such, any exempted development status would have been lost. The P.A. rejected this by reference to a number of tests of abandonment arising from case law namely, the physical condition of the premises; the period of non-use; and the nature and character of the intervening use, if any. It was concluded that there were no issues with the physical condition of the building and that there was no evidence of any intervening uses. Reference was made in the Development Inspector's report (Feb. 2018) to evidence from rates records and from an email on the Council's records, which had indicated that the units had been

occupied for over 15 years as a hairdressing salon and prior to that as a video rental shop, and that they were vacant from 2014-2016 and again for part of 2016-2017. Reference was also made in this report to the fact that the unit was still advertised as a hair/beauty salon (in February 2018).

9.3.4 I would agree with the P.A. that there is no evidence to suggest that the use has been, or had been in the past, abandoned. There may have been episodes when the building was vacant, which generally seemed to correspond with the times that applications were being considered for a change of use. Thus, I would not agree that the development involving a change of use from a hairdressing salon to a chemist shop is one involving an unauthorised use or one which had been abandoned.

9.3.5 It is, therefore, considered that the change of use would come within the scope of Article 10(1) of the Planning and Development Act 2000, as amended, as it would involve a change of use within class 1 of Part 4, Schedule 2 of the P & D Regulations, 2001 as amended, and that none of the restrictions on exemption as set out in Article 10(1) would apply. Thus, the change of use is development and is exempted development.

9.4 Are the works of conversion exempted development under Section 4(1) (h) of the Planning and Development Act 2000 (as amended)?

The works of conversion from a hairdressing salon to a chemist shop comprise internal shop fitting only. As these works affect only the interior of the structure and there has been no material change in the external appearance of the structure, which would render it inconsistent with the character of the structure or of neighbouring structures, it is considered that the works of conversion come within the scope of the exemption under Section 4(1)(h) of the Planning and Development Act 2000, as amended.

9.5 Is the signage exempted development under Article 6 and Class1, Part 2, Schedule 2 of the Planning and Development Regulations 2001 (as amended)?

The erection of certain advertisements is exempted development under Article 6 of the 2001 Regulations and as set out in Part 2, Schedule 2 of the same Regulations. Class 1 permits advertisements which are wholly related to the business being carried out within the premises. There are 9 conditions and limitations. It is

considered that the non-illuminated fascia sign attached to the front of the premises comes within the exemption provided for under Class 1.

9.6 Conclusion

9.4.1 It is accepted that the change of use from a hairdressing salon to a chemist shop is development within the meaning ascribed by the P & D Act 2000 (as amended). It is also accepted that the works carried out to the building in c. 2001, and the works to convert the retail unit to a chemist shop constitute development within the meaning of the Act. However, the said change of use falls within the scope of the exemption provided by Article 10(1) as it involves a change of use within Class 1 of Part 4, Schedule 2 of the P & D Regulations 2001 (as amended), and is not restricted by any of the subsections of Article 10(1). It is considered that the alterations and refurbishment works carried out in c.2001 and the conversion works to the interior to facilitate the chemist shop use both come within the scope of Section 4(1)(h) of the 2000 Act. The advertisement sign attached to the front of the building comes within the scope of Class 1 of Schedule 2, Part 2 of the Planning and Development Regulations, 2001 (as amended), and is not restricted by the conditions and limitations of this class. Thus, the proposed development is development and is exempted development.

10 Recommendation

10.1 I recommend that the Board should decide this referral in accordance with the following draft order.

WHEREAS a question has arisen as to whether

- (a) change of use from hairdressing salon to a chemist shop is development;
- (b) works of alteration and refurbishment of building c. 2001 is development;
- (c) Said change of use comes within the scope of Article 10(1) and is exempted development;
- (d) Works of alteration and refurbishment of the building in c. 2001 are exempted development under S4(1)(h) of the Planning &

Development Act 2000 (as amended);

- (e) Works of conversion of hairdressing salon to chemist shop are exempted development under S4(1)(h) of the Planning and Development Act 2000 as amended; and
- (f) The erection of an advertisement sign on the front of the premises comes within the scope of Class 1 of Part 2, Schedule 2 of the Planning and Development Regulations 2001, as amended.

AND WHEREAS Brendan McGrath on behalf of Paul Mullins requested a declaration on this question from Limerick City and County Council and the Council issued a declaration on the 7th day of February, 2018 stating that the matter was not development and was exempted development:

AND WHEREAS Brendan McGrath on behalf of Paul Mullins referred this declaration for review to An Bord Pleanála on the 6th day of March, 2018:

AND WHEREAS An Bord Pleanála, in considering this referral, had regard particularly to –

- (a) Sections 2 and 3 of the Planning and Development Act, 2000, as amended,
- (b) Section 4(1)(h) of the Planning and Development Act, 2000, as amended,
- (c) Article 5, article 6(1), article 9(1) and article 10(1) of the Planning and Development Regulations, 2001, as amended,
- (d) Class 1 of Part 4 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (e) Class 1 of Part 2 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (f) the planning history of the site,

(g) the pattern of development in the area:

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The change of use from a hairdressing salon to a chemist shop comes within the scope of 'development' as set out in Section 3 of the Planning and Development Act 2000 (as amended);
- (b) The works of alteration and refurbishment of the building carried out in c. 2001 come within the scope of 'development' as set out in Section 3 of the Planning and Development Act 2000 (as amended);
- (c) The change of use from a hairdressing salon to a chemist shop comes within the scope of the exemption under article 10(1) of the Planning and Development Regulations 2001 (as amended), as each of the uses fall within class 1 of Part 4, Schedule 2 of the said Regulations;
- (d) The works of refurbishment and alteration to the building which were carried out c. 2001 come within the scope of the exemption under Section 4(1)(h) of the Planning and Development Act 2000 (as amended);
- (e) The works of conversion from a hairdressing salon to a chemist shop come within the scope of the exemption under Section 4 (1)(h) of the Planning and Development Act 2000 (as amended);
- (f) The erection of an advertisement sign on the front of the premises comes within the scope of the exemption under Class 1 of Part 2 of Schedule 2 of the Planning and Development Regulations 2001 (as amended).

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 said change of use of the building is development and is exempted

development; (b) the works of alteration and refurbishment of the building carried out in c. 2001 is development and is exempted development; (c) the works of conversion of the hairdressing salon to a chemist shop is development and is exempted development; and (d) the erection of a fascia advertising sign at the front of the building is development and is exempted development.

Mary Kennelly
Planning Inspector

4th December 2018