



An
Bord
Pleanála

Inspector's Report ABP-304385-19.

Question

Whether (a) the display and storage of garden pods/sheds; and, (b) the construction of a structure for use as a café is or is not development or is or is not exempted development.

Location

Ashbrook Garden Centre, Coolfore, Ashbourne, County Meath.

Declaration

Planning Authority

Meath County Council.

Planning Authority Reg. Ref.

AAS51911.

Applicant for Declaration

Alan Battersby.

Planning Authority Decision

Is development is not exempted development.

Referrer

Referred by

Alan Battersby.

Owner/Occupier

Alan Battersby.

Date of Site Inspection

16th day of October, 2019; &, 6th day of February, 2020.

Inspector

Patricia-Marie Young.

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1.0 Overview

- 1.1. This referral is sought by Alan Battersby, under Section 5(4) of the Planning & Development Act, 2000, as amended, in respect of whether: (a) the display and storage of garden pods/sheds; and, (b) the construction of a structure for use as a café, is or is not 'development' or, is or is not 'exempted development', at Ashbrook Garden Centre, in the Townland of Coolfore, Ashbourne, Co. Meath. The Planning Authority concluded that the works were '*development*'; '*not exempted development*'; and, required planning permission. The referring party is not satisfied with the outcome of this determination and has therefore decided to refer the matter to the Board for its determination.

2.0 Site Location and Description

- 2.1. The appeal site is situated in the Townland of 'Coolfore' and it benefits from road frontage as well as an entrance onto the heavily trafficked N2, a national primary road, which links Dublin to Derry. It lies c1.1km to the south east of the N2's signalised junction with the R155 and c5km to the north west of the centre of Ashbourne, in County Meath.
- 2.2. The main area of the site, i.e. the commercial component and the associated hardstand area are located within the administrative boundary of County Meath, whereas the entrance providing access and egress to the business offerings therein opens onto the eastern side of the N2 via a long linear driveway, both of which are located within the administrative boundaries of Fingal County Council. The Meath County portion of the site contains several structures of various types, sizes and uses. The signage associated with these structures indicate that they relate to the following businesses: Ashbrook Garden Centre, Lemon Thyme Café, Swan Memorials and EcoLogCabins. In addition to the structures on site there is an outdoor seating area to the front of Lemon Thyme Café; two additional fenced off areas associated with Swan Memorials; a large area of customer; staff parking and the display of goods.
- 2.3. To the rear of structures related to the EcoLogCabins business and towards the eastern and south-eastern boundaries of the main site area there is a controlled entrance into another yard area. This yard contains a number of building types as well as stores various goods in the open on the surrounding grounds.

2.4. The north westernmost portion of the N2 roadside contains an additional entrance which at the times of my inspection of the site was not in use. However, attached to its associated boundary and entrance treatment it contains advertising signage relating to one of the commercial uses on the site.

3.0 The Question

3.1. The question before the Board is whether or not: (a) the display and storage of garden pods/sheds; and, (b) the construction of a structure for use as a café is or is not development or is or is not exempted development within the meaning of the Planning & Development Act, as amended.

3.2. Planning Authority Declaration

3.2.1. Declaration

On the 9th day of April, 2019, a declaration was issued by Meath County Council in relation to the 'Declaration' sought under Part I, Section 5, of the Planning & Development Act, as amended, on the question of whether the use of Ashbrook Garden Centre/Lands at Coolfore, Ashbourne, Co. Meath for (a) the display and storage of garden pods/sheds; and, (b) for the construction of a structure for use as a café is development, is not exempted development and concludes that "*this development is development requiring planning permission*".

3.2.2. Planning Authority Reports

Planning Officers Report

This report sets out a site description; a planning history of the site; and, the legislative context for this referral. The main comments contained in their assessment can be summarised as follows:

- No drawings and elevations have been supplied.
- The flat roof structure that is subject of this application that is referred to as a café/restaurant is located separately on the site and is a relatively new structure.
- There are no exemptions set out within the Planning and Development Regulations, 2018, in relation to this class of development that would render it

exempt; and, this component of the referral is considered to meet the definition of development within the scope of the Planning & Development Act, 2000-2018.

- There are a wide range of sheds being sold on the site and these are positioned on the tarmac surface outside the garden centre structure. The original permission for a garden centre P.A. Ref. No. PP97160 did not relate to the sale of garden sheds. There is also another company operating out of the Garden Centre as 'Eco Log Cabins'. This is operated outside of the Garden Centre and the units on display include structures that can facilitate human habitation including 1 to 2-bedroom log cabins/residential units. The sale of these products including the sale of sunrooms are outside of the scope of the class within which a Garden Centre operates.
- The site has an appearance of morphing into a retail park given the number of businesses now operating from it.
- The display and storage of garden sheds/pods on site constitutes development under the meaning of the Planning & Development Act, 2000, as amended.
- This development is not exempt having regard to Article 9(1)(iii) and (vi) of the Planning and Development Regulations, as amended, on the basis that the development would intensify traffic movements onto the N2 which would in turn endanger public safety by creation of a traffic hazard.
- This report concludes that regard was had to:
 - Section 3(1) of the Planning & Development Acts, 2000-2018;
 - Section 4(1) and Section 4(1)(h) of the Planning & Development Acts, 2000-2018;
 - Article 9(1)(iii) and (vi) of the Planning & Development Regulations, 2001-2018.
- That the proposed development is considered to be development and is not exempted development within the meaning of the Act.

3.2.3. Submissions

The Planning Authority received a submission from 'Transport Infrastructure Ireland' on the 5th day of April, 2019, which can be summarised as follows:

- Reference is made to the DoECLG Guidelines in relation to the creation of new accesses and the intensification of existing accesses to national roads that gives rise to the generation of additional turning movements that introduce additional safety risks to road users.
- The provision of additional facilities at the Garden Centre has the potential to result in the intensification of use of the direct access serving this site onto the N2 in a manner that is contrary to official policy for national roads.
- Reference is made to Article 9 of the Planning & Development Regulations, as amended.
- The question of intensification and road safety implications need to be considered.

4.0 Planning History

4.1. Site

P.A. Ref. No. UD/18267: This relates to a Warning Letter issued in relation to the unauthorised construction and operation of a restaurant and the unauthorised display/storage of garden pods/sheds on site.

P.A. Ref. No. DA900099: Planning permission was **granted** subject to conditions for the construction of an ancillary sales building, car park area and associated site works.

ABP Ref. No. PL17.224620 (P.A. Ref. No. DA70193): Planning permission was **refused** for the retention of polytunnel structures on site, the construction of new sales building and associated car park area alongside the change of use of the premises to a garden centre for the following stated reasons and considerations

“It is considered that retention and completion of the proposed development, which represents an over intensification of use of the site, would endanger public safety by reason of traffic hazard because the site is located alongside the heavily-trafficked National Primary Road N2 (which is identified in the current Meath County Development Plan as a Strategic Corridor) at a point where a speed limit of 100kph applies and the traffic turning movements generated by the development would interfere with the safety and free flow of traffic on the public road. The development proposed to be retained and completed would, therefore, be contrary to the proper planning and sustainable development of the area.”

P.A. Ref. No. UD06059: This relates to unauthorised operation of a garden centre, advertising leather suites, furniture and sale of garden sheds.

P.A. Ref. No. 011274: Planning permission was **granted** for a multi-span poly tunnel for the purpose of plant propagation and a road sign.

P.A. Ref. No. 97160: Planning permission was **granted** to widen the existing entrance from the public road to erect a workshop, office, canteen, toilet and the erection of plastic tunnels for plant growing and a septic tank.

P.A. Ref. No. 94718: Planning permission was **refused** for the erection of new entrance onto the national primary road to erect shed, offices, toilets, plastic tunnels for growing plants, installation of a septic tank and percolation area.

P.A. Ref. No. 931051: Planning permission was **granted** for an agricultural store.

5.0 Policy Context

5.1. The Meath County Development Plan, 2013 to 2019, is the applicable plan, for the main site area under which it is located in the countryside on land that is not subject to specific land use zoning. The subject site is also served by a driveway and access onto the N2 National Road. These are subject to the provisions set out under the Fingal Development Plan, 2017 to 2023, and form part of a larger area of land zoned 'RU'. The zoning objective for 'RU' zoned land is to "*protect and promote in a balanced way, the development of agriculture and rural related enterprise, biodiversity, the rural landscape, and the built and cultural heritage*".

6.0 The Referral

6.1. The Referrers Case

6.1.1. The referrers case can be summarised as follows:

- The referrer was served with a 'Warning Letter' but they did not consider that the activities referred too constituted an unauthorised development and on foot of this a Section 5 application was lodged to clarify the status of the activities on site.
- The referrer seeks to refer the question of whether the use of Ashbrook Garden Centre at Coolfore Ashbourne, (a) for the display and storage of garden

Pods/sheds; and, (b) the construction of a structure for use as a café is development and is exempted development.

- The site is described as being approximately 2.3ha in its size and “*consists of a garden centre with polytunnel structures used as a retail garden centre with an extensive range of plants and garden equipment. The front yard to the south is used for parking, garden displays and stone products, shed displays, garden furniture, and compost and plant sales.*”
- The garden centre is a long-established activity and a canteen was approved on site in 1997 and was initially for staff use.
- It is incorrect of the Planning Authority to refer to there being a restaurant activity on site.
- The café use is ancillary to the garden centre use.
- The pods/sheds are expected and accepted as part of a garden centre retail offer and are therefore exempted development.

6.2. Planning Authority Response

6.2.1. The Planning Authority’s response can be summarised as follows:

- Reference is made to the comments received from the TII.
- Reference is made to the Planners Report.
- The Board is requested to uphold its decision.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

- Section 2(1) provides the following definition for ‘works’ - “*any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal*” and ‘use’ – “*in relation to land does not include the use of the land by the carrying out of any works thereon*”.
- Section 3 provides a definition for ‘*development*’:

3(1) In this Act “*development*” means, 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.

3(2) of the Act indicates that for the purposes of subsection (1) and without prejudice to the generality of that subsection -

“(a) *where any structure or other land or any tree or other object on land becomes used for the exhibition of advertisements, or*

(b) where land becomes used for any of the following purposes-

(i) the placing or keeping of any vans, tents or other objects, whether or nor moveable and whether or not collapsible, for the purpose of caravanning or camping or habitation or the sale of goods”,

... “*the use of the land shall be taken as having materially changed.*”

- Section 4 provides for ‘*exempted development*’.
- Section 4(1) (a) to (l) sets out what is exempted development for the purposes of this Act.
- Section 4(2) (a) the minister may by regulations provide for any class of development to be exempted development for the purposes of this Act.

7.2. **Planning and Development Regulations, 2001, as amended.**

- Article 5 (1), Part 2, provides interpretations for the purposes of exempted development. The following is relevant to this case:

“‘*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 retail sale of goods”

(b) as a post office,

(c) for the sale of tickets or as a travel agency,

(d) for the sale of sandwiches or other food or of wine for consumption off the premises, where the sale of such food or wine is subsidiary to the main retail use, and “wine” is defined as any intoxicating liquor which may be sold under a

wine retailer's off-licence (within the meaning of the Finance (1909-1910) Act, 10 Edw. 7. & Geo. 5, c.8,

(e) for hairdressing,

(f) for the display of goods for sale,

(g) for the hiring out of domestic or personal goods or articles,

(h) as a laundrette or dry cleaners,

(i) for the reception of goods to be washed, cleaned or repaired,

but does not include any use associated with the provision of funeral services or as a funeral home, or as a hotel, a restaurant or a public house, or for the sale of hot food or intoxicating liquor for consumption off the premises except under paragraph (d), or any use to which class 2 or 3 of Part 4 of Schedule 2 applies”;

- Article 6(1) of the Regulations sets out: “Subject to article 9, development of a class specified in Column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1”.
- Class 14 of Part 1 of the Schedule includes development consisting of a change of use –
“(a) from the use for the sale of hot food for consumption off the premises, or for the sale or leasing or display for sale or leasing of motor vehicles, to use as a shop,
(b) from use as a public house, to use as a shop,
(c) from use for the direction of funerals, as a funeral home, as an amusement arcade or a restaurant, to use as a shop,
(d) from use to which class 2 of Part 4 of this Schedule applies, to use as a shop
....”
- Article 9 of the Regulations sets out restrictions on exemptions and Article 9(1) states:
“Developments to which article 6 relates shall not be exempted development for the purposes of the Act –

(a) if the carrying out of such development would...

(i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act" ...

(iii) endanger public safety by reason of traffic hazard or obstruction of road users,

(iv) except in the case of a porch to which class 7 specified in column 1 of Part 1 of Schedule 2 applies and which complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1, comprise the construction, erection, extension or renewal of a building on any street so as to bring forward the building, or any part of the building, beyond the front wall of the building on either side thereof or beyond a line determined as the building line in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,

(viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use".

- Article 10(1) of the Regulations in relation to the matter of change of use states 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" ...*

"(b) contravene a condition attached to a permission under the Act,

(c) be inconsistent with any use specified or included in such a permission, or

(d) be a development where the existing use is an unauthorised use, save where such change of use consists of the resumption of a use which is not unauthorised and which has not been abandoned."

- Class 1 of Part 4 of Schedule 2 refers to: *"use as a shop"*

- Class 2 refers to:

"Use for the provision of -

(a) financial services,

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

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

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

8.0 Assessment

8.1. Introduction

8.1.1. The question at issue is whether: (a) the display and storage of garden pods/sheds; and, (b) the construction of a structure for use as a café, is or is not development, or is or is not exempted development, within the meaning of the Act, at the Ashbrook Garden Centre.

8.1.2. I carried out inspections of the site and I observed that it consists of a number of functionally, physically and commercially separate business enterprises/entities. These can be broadly described as follows:

- ‘Ashbrook Garden Centre’ and ‘Landscaping Services’ with its separate buildings and spaces, office type space and 1 sales counter for all transactions associated with the garden centre’s variety of products that are on display for sale to customers. There is limited propagation of plants apparent within this complex and the products for sale include modest in size and dimensions timber shed structures, plants, trees, shrubs, garden ornaments, plant feeds and the like.

On my last inspection of the site an additional timber canopy structure on concrete bases was in the process of being constructed to the front of the main garden centre building. Though not completed and with workers busy on its construction it was in use for the display of products for sale to customers.

According to signage on site the garden centre business operates Monday to Saturday from 9am to 5:30pm and Sunday and Bank Holidays 10:30pm to 5:30pm.

This commercial operation has a separate building; separate contact phone number; different opening hours to other commercial offerings on site; separate on-site signage/advertisement structures; through to on-line presence that purely relates and refers to the products as well as services provided by Ashbrook Garden Centre. This business also has separate storage/sundry structure to the rear including staff facilities.

In addition, there is dedicated staff on-site for this garden centre that only operate from within its associated complex and there also appears to be a landscaping service operating as part of this garden centres commercial offer.

- 'Lemon Thyme Café': This café operated mainly from a single storey timber framed structure that adjoins the western side of the main Ashbrook Garden Centre complex of buildings with this structure not linking to the interior of the garden centre building.

It appears to be recently erected and it also includes an area of hard stand which is cornered off by mainly a mixture of picket fences and planter boxes. This area contained outdoor tables and chairs. On my last inspection of the site this outdoor seating area was in the process of being covered over by a large timber canopy type structure that extended to include a covered product display area associated with the frontage of the main garden centre structure and there was no seating or tables present but it appeared that the canopy was providing an additional level of covering to make use of this outdoor space more comfortable.

Internally, there is a larger counter area which contains a display of cakes, storage, hot drinks preparation area and associated apparatuses; customer tables and chairs; a toilet that is signed as being restricted for use by customers only; a separate kitchen and cooking preparation for the various cold and hot food that is on offer with many items available on the menu being cooked from scratch on the premises by a separate staff member who appeared to perform the sole 'chef' duties; ancillary internal space for storage, separate staff facilities and the like.

This commercial operation has a separate staff; separate contact phone number; different opening hours; separate on-site signage/advertisement structures; through to having a separate on-line presence.

I also observed during my inspections that it operated as a food destination with the majority of customers dining and not taking away food and/or beverages from it.

On my first inspection I observed customers sitting outside in the outdoor seating area to the front and during each inspection I observed that the majority of customers used it exclusively.

- 'EcoLogCabins': This business appears to be principally operated from a sales office which is located in one of their larger detached timber/log type structures that are located to the south east of the main garden centre building. It is from this office that enquiries and purchases can be made directly to one of their staff. They offer a bespoke and wide product range which do not include any the typical garden shed structures. Examples from their range from their wide product offer are displayed on site and at all inspections various vehicles associated with this business were parked in the immediate vicinity of their office and their products on display.

The products that they offer include a variety of detached structures including structures of mainly timber construction that are capable of functioning as habitable floor areas through to small habitable units that can contain bedrooms, kitchen, toilet through to living spaces.

They also include smaller scale detached and more decorative in design detailing garden buildings that can be used as ancillary passive through to recreational structures within a garden space.

This commercial operation has a separate contact phone number; separate opening hours; separate on-site signage/advertisements; through to separate on-line presence that purely relates to EcoLogCabins. This commercial operation also has its own dedicated staff on site.

- Swan Memorials: This business has a showroom that operates from what has the appearance of a number of amalgamated sunroom structures of varying design. It also includes an area that is cornered off adjoining immediately to the south and an area of hard stand to the north of these structures which are used to display a variety of mainly stone products.

This business has a separate contact phone number; opening hours; on-site signage; through to on-line presence that purely relates to Swan Memorials. It also has its own dedicated staff for enquires and purchases on site from the sunroom type structures that are used as an office space. It is likely that there is an ancillary related business operating from the three amalgamated sunrooms on site relating to the sale of such structures. As such it is probable that these structures are also present for display purposes also.

- 8.1.3. During my inspection of the site I observed several large advertisement structures present on either side of the main entrance onto the N2 relating to the following business operations on site: 1) Ashbrook Garden Centre and Landscaping Services; EcoLogCabins; Swam Memorials; and Lemon Thyme Café. There is also signage relating to EcoLogCabins located on the secondary access that opens onto the N2 on the north-western most road boundary of the site. This access does not appear to be in use.
- 8.1.4. As mentioned above I observed that new works were on-going on my second inspection of the site with a large timber structure being erected to the front of Lemon Thyme Café and the Ashbrook Garden Centre building. In addition, I also observed a number of new structures erected on the site including additional sheds and a marquis structure. Further, a number of large structures connected to the Ashbrook Garden Centre building have been demolished.

8.2. Is or is not development

- 8.2.1. Firstly, the question is whether the “works” in question constitute development. The proposed development which is set out as comprising of: (a) the display and storage of garden pods/sheds; and, (b) the construction of a structure for use as a café comprises “works” in manner that accords with the definition provided for in the Planning & Development Act, 2000, as amended.
- 8.2.2. There is little doubt in my mind that the display and storage of garden pods/shed type structures; and, also the construction of a structure for use as a café has involved a variety of the ‘acts’ and ‘operation’ activities that can be considered as qualifying as ‘works’ under the meaning given in the Act. This includes to various extents ground works in order to provide an area of flat ground to place these structures on and/or excavation works to provide some type of foundations or permanent plinths for the base of a number of the structures that are of more permanent construction that are now *in situ* at the subject site.
- 8.2.3. In addition, there was undoubtedly construction activities involved in erection and assembly of these structures on site. Moreover, there has also been evident physical and functional alterations to the land within this subject site from what it was previously. This can be clearly seen in the available planning history documentation including a

previous appeal case relating to this site determined by the Board under ABP Ref. PL017.224620 (P.A. Reg. Ref. No. DA/70193).

8.2.4. Having regard to Section 2 of the Act, it defines “works” as “*any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal*” and “use” – “*in relation to land does not include the use of the land by the carrying out of any works thereon*”. As such I consider that in this case that: (a) the display and storage of garden pods/shed structures; and, (b) the construction of a structure for use as a café accords with the meaning given under this Section of the Act due to varying degrees of “construction”; “alteration”; “excavation” through to “extension” activities and operations related to their provision on site.

8.2.5. By virtue of requiring (a) and (b) requiring the carrying out of works to be present on site as described by the referrer and having regard to the meaning given under Section 3(1) of the Act to “development”. That is except where the context otherwise requires, the carrying out of any works on, in, over or under land therefore constitutes development within the meaning of the Act. It has to be excepted that both (a) and (b) accord with the definition of what is development in a physical sense of the word.

8.2.6. Having regard to Section 3(2) of the Act it indicates that for the purposes of subsection (1), and “without prejudice to the generality of that subsection” (b) *where land becomes used for any of the following purposes-*

(i) the placing or keeping of any vans, tents or other objects, whether or nor moveable and whether or not collapsible, for the purpose of caravanning or camping or habitation or the sale of goods”,

... “the use of the land shall be taken as having materially changed.”

It is my view that the use of the said land for the display for display and storage sale of garden pods/sheds has resulted in the land having materially changed.

8.2.7. The definition of “development” as provided for under Section 3(1) of the Act also includes “*making of any material change of use of any structures or land*” which I consider is the case in relation to the display and storage of garden pods and sheds on site.

8.2.8. I also note that the referral question before the Board also pertains to “use” of the structure constructed as a ‘café’. Together this reinforces that a change of use has

occurred on site. But it is appropriate to have regard to the planning history pertaining to the subject site and documentation on file with this referral case, as it needs to be examined whether or not a material change of use has occurred in relation to the café structure. As if it is deemed to be a material change of use of the land in this case it is therefore taken that this is also development under the meaning of the Act.

8.2.9. Having regard to the quantum of structures on site and the land uses occurring therein it is my view that the planning history of the site does not provide a clear chronology of the evolution of the site to the present day.

8.2.10. Of particular concern, there is no grant of permission relating to the provision of a garden centre use or the retrospective permission of a garden centre. Nor does the land uses on site and the structures therein reflect permitted development to date. Rather there appears to be a blatant disregard to ensure that development has occurred in a manner that is consistent with planning legislation.

8.2.11. In this regard, I note that the Boards decision PL17.224620 (P.A. Reg. Ref. No. DA/70193) is of note. Under this appeal case retention permission was refused for polytunnel structures on site, construction of new sales building and associated car parking, and change of use of the premises to garden centre for mainly public safety and traffic hazard reasons and considerations. Since the Boards decision there appears to be no regularisation of the works for which retention was refused and more importantly to this case before the Board the garden centre use. It would appear that the garden centre use was provided irrespective of the outcome of this application.

8.2.12. Whilst there appears to be no dispute arising that a garden centre has been operating since at least the time the Board determined ABP Ref. PL17224620, that the garden centre use now appears to be the main use occurring on this site. Notwithstanding, the main operational use of the site appears at odds with its planning history; i.e.

- Under P.A. Reg. Ref. No. 931051 permission was granted for an agricultural store, but there is no evidence of this provided on file that this was implemented, and it does not appear that this store related to the polytunnel type structures for which the garden centre mainly operates from;
- Under P.A. Reg. Ref. No. 97160 permission was granted for a variety of additional buildings relating to plant propagation and growing of plants on site. Of note, Condition No. 7 of the Planning Authority's notification to grant permission states

that *“this development shall operate independently of the development at the existing farmyard where permission for an agricultural produce store was granted planning permission in P93/1051”*; &

- Under P.A. Reg. Ref. No. 011274 permission was granted for a multi-span polytunnel for plant propagation.

8.2.13. Having regard to the available planning history of the site, which I note also includes a new entrance onto the N2 in October 2006, there appears to be no regularisation of quantum of retail floor area that is now present on the site nor do the buildings as well as the various structures including the plethora of large advertisement signs through to high beam spot lights erected on tall monopoles.

8.2.14. I therefore consider that Article 9(1) of the Regulations which indicates that *“developments to which Article 6 relates shall not be exempted development for the purposes of the Act – (a) if the carrying out of such development would”*.... *“(viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use”* is relevant as it would appear that there is substantive unauthorised development present on this site and ergo relative to the display and storage of garden pods/shed structures through to the construction and operation of the café on site.

8.2.15. Further Article 10(1) of the Regulations in relation to the matter of change of use states 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”* ... *“(d) be a development where the existing use is unauthorised”*. I again reiterate my considerations that are stated above in relation to the substantive evidence that supports that the existing use on site is unauthorised and having regard to Article 6; Article 9(1)(viii) and Article 10(1)(d) of the Regulations, the display and storage of garden pods/shed structures through the construction of a structure for use as a café cannot be considered as development that is “exempted development”.

8.2.16. In my view the provisions of the Planning and Development Act, 2000, as amended, in respect of unauthorised development, which prevent the issuance of a warning letter or enforcement notice, or the taking of proceedings for any offence under the Act in respect of unauthorised development after a period of seven years, if it is accepted

that seven years has passed in relation to the unauthorised development on this site do not alter the status of that development nor do they establish it as exempted development.

- 8.2.17. If it is accepted by the Board that there is an established retail use at the subject site, though I again raise a concern the quantum of retail floor area associated with any buildings on site cannot be quantified based on the planning history of the site or by the information provided by the referrer in this case, I raise caution on this approach. Notwithstanding in this case I recommend that the Board should consider whether the retail floor area associated with the garden centre itself accords with the definition of a 'shop' as set out in Article 5(1) Part 2 of the Planning & Development Regulations, 2001, as amended.
- 8.2.18. This provides the definition of a "shop" for the purposes of exempted development and it provides that a "shop" means a structure used for *inter alia* the retail sale of goods including but not limited to the sale of sandwiches or other food or of wine for consumption off the premises, where the sale is subsidiary to the main retail use and where the sale, display or service is principally to visiting members of the public.
- 8.2.19. This definition does not include any use as a restaurant for the sale of hot food for consumption off the premises except where the sale of food is subsidiary to the main retail use. Therefore, the use as a restaurant is explicitly excluded from the description of what constitutes 'shop' use.
- 8.2.20. The critical issue with respect to this referral case is whether or not the previous and current use of the said structure can both be classified as a "shop" and therefore exempted development. If it is decided that the café does not fall under the definition of "shop" then it is taken that the change of use is not exempted development.
- 8.2.21. Under Article 10(1) of the Regulations, development consisting 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, subject to conditions. Class 1 of Part 4 of Schedule 2 refers to "Use as a Shop."
- 8.2.22. The provision of an additional and independently functioning café at this location is in my view materially different to the previous use of this piece of land within the subject site area which potentially could have housed a smaller staff canteen building c2007 with no toilet provisions for staff or for customers through to the obvious no sale or

display of goods. Neither can I find evidence to support that previous to the erection of the café structure that there was additional retail space through to display of goods for sale at this locality within the site prior to the erection of the canteen type structure or prior to the construction of the structure that is currently in use as a café.

- 8.2.23. Further, it needs to be determined whether the primary purpose of the subject structure accords with the definition for this Class of Use under Article 5(1) of the Planning & Development, Regulations, 2001, as amended, or is the primary purpose the consumption of food and beverages on the premises, or whether perhaps it is a mixture of both with the takeaway element being subsidiary to the main use of this structure.
- 8.2.24. Having regard to the documentation provided by the referrer and by the Planning Authority, through to surviving details relating to the planning history of the subject site, all of which I consider to be poor, together from my inspection of this structure it would appear that there is at least a minimal seating capacity of c32 persons internally within the structure constructed for use as a café.
- 8.2.25. Internally the structure contains a WC with associated signage indicating that it is for customer use only; a kitchen for the preparation of a wide variety of hot and cold foods (this contains food preparation area, washing facilities, food storage, food cooking devices through to extractor fans etc); a retail counter which includes a decent in depth area behind the service counter where a variety of tasks take place including but not limited to the preparation of barista coffees, hot/cold beverages through to the plating up of cakes and other confections. This area also included storage and refrigeration devices.
- 8.2.26. I also observed during my first inspection of the site that there was an outdoor seating capacity of c12 persons. To the rear of the structure there appeared to be ancillary storage and/or staff facilities.
- 8.2.27. Overall, the seating and table provisions internally comprise of the majority of the floor area associated with this structure together with additional decent in size areas for various food and beverage preparations.
- 8.2.28. The capacity to serve additional customers is added to by the presence of the dedicated outdoor seating area with tables to the front of it.

- 8.2.29. On my last inspection of the site this outdoor seating area was in the process of being encompassed under a tall timber canopy structure that also extended to the front of the main garden centre building providing an additional area for the display of products for sale.
- 8.2.30. In terms of the word 'Restaurant' I note that the Oxford Dictionary provides the following meaning for it: "*a place where people pay to sit and eat meals that are cooked and served on the premises*". The Collins Dictionary provides a similar definition "*a restaurant is a place where you can eat a meal and pay for it. In restaurants your food is usually served to you at your table by a waiter or waitress*". As such I consider it is taken to mean a place of business that serves food and drinks to customers, with that food and drink served and eaten on the premises.
- 8.2.31. It is widely accepted that restaurants vary greatly in their offerings through to service models.
- 8.2.32. From my observations on my different days inspecting the site I observed that the majority of persons purchased food and drink to consume in the premises.
- 8.2.33. In relation to accepted definitions for café these are considered to be a type of restaurant that typically serves coffee and tea, in addition to light refreshments. The term itself comes from the French word meaning "coffee". The Cambridge Dictionary provides the following definition for café "*a restaurant where simple and usually quite cheap meals are served*".
- 8.2.34. I would consider in this case that the structure's use is more aligned with a restaurant use where the majority of food and beverages that would be in offer would be for consumption on the premises and there is limited takeaway of the goods on sale therein. I consider that the public area is not limited or subsidiary as public floor area for the consumption of food and beverages takes up the majority of the structures internal floor area with this public floor area benefitting from a customer only WC and the availability for sitting, drinking and eating in the outdoor seating area when weather conditions allow. I also observed that service was provided mainly by directing customers to seats and not to the counter to place an order. Orders for food and beverages were mainly taken from the tables and I observed few orders made at the counter for food and/or beverages for take-away. There was limited retail space or area associated with the sale of food and beverages to be taken away from the subject

café structure. I therefore do not consider that the primary use occurring within this structure accords with the definition of a 'shop'. Moreover, there is no tangible connection between its physical, functional through to operational use with the garden centre use or indeed any other commercial operations on the subject site. As such I do not consider it to be subsidiary to any other authorised retail use operating within the subject site area, in particular the garden centre use.

8.2.35. I would therefore conclude that subject structure cannot be defined as a "shop" under Class 1 Part 4 of Schedule 2 of the Regulations and instead comprises a '*sui generis*' use that is more akin to a restaurant.

8.2.36. Furthermore, this use gives rise to other matters that would normally be considered in any assessment of a planning application by the Planning Authority. For example, amenity considerations such as emissions, noise, litter, hours of operation, deliveries through to waste and whether the access serving it onto a National Primary road can safely accommodate the additional traffic generated from it. On this point I also note that there is a dwelling house located in close proximity to the north of the site and the amenities of this property could be adversely impacted. For example, by way of additional noise from the outdoor seating area through to malodours. Accordingly, in my opinion, the change of use in question is 'material'; and, thus constitutes development within the meaning of Section 3 of the Planning and Development Act, 2000, as amended.

8.2.37. In relation to the sale of sheds it would appear that the type of structures on offer for sale on the subject site and as part of the garden centre business goes beyond that of what one would typically find for sale at a garden centre, i.e. it is not normally a place one goes to buy structures that provide additional habitable and/or ancillary residential floor space.

8.2.38. I also observed that there are three separate businesses within the subject site and located at different positions within the site area in a manner to make them functionally through to physically independent where the display, storage through to the transactional sales of these structures occur.

8.2.39. Moreover, two of the businesses appear to offer for display and potential sale of structures that can provide extension to both the habitable and ancillary living spaces

associated with a dwelling unit with these structures coming in a wide variety of sizes; dimensions through to internal utilities and services.

8.2.40. Of further concern, both of the said businesses operate from these additional structures on site with these particular structures appearing to benefit from modern utilities and services. As such these particular structures cannot be considered as fully meeting the definition of display or indeed storage but rather add to the quantum of retail floor area at this location. As such I consider that the garden pods/shed structures are not just on display for sale and/or storage as is contended by the referrer in this case. In turn this adds to my previous concern that both the display and storage of garden pods/shed structures through to the construction of a structure for use as a café is not exempted development due to the provisions set out in Article 6; Article 9(1)(d) and Article 10(1) of the Regulations.

8.2.41. I also consider this extension to the quantum of retail floor are having regard to the permitted uses on the site also gives rise to concern that the Article 9(1) (vi) and (viii) is also applicable in this case.

8.2.42. In this regard I note that Article this indicated that developments to which Article 6 relates shall not be exempted development if the carrying out of such development would in the case of (vi) comprise the 'construction' and 'extension' of a building that brings it forward of the building line. I consider this to be the case in relation to the display and storage of shed structures as well as in relation to the café structure which I note includes an ancillary outdoor seating area with these structures all forward to the permitted line of buildings on this site when regard is had to the planning history of the site. In relation to (viii) these structures to varying degrees result in a significant extension to unauthorised structures and unauthorised uses on this site.

8.2.43. Since the Boards decision under ABP Ref. No. PL17.22460 (P.A. Reg. Ref. No. DA/70193) it would appear that the quantum of uses and structures on site has significantly increased in the absence of regularisation through the planning system. The Boards reasons and considerations for refusal in the states appeal case which related to the retention of the polytunnel structures, the construction of new sales building and associated car parking, change of use of premises to garden centre together with associated works and services reads:

“It is considered that retention and completion of the proposed development, which represents an over intensification of use of the site, would endanger public safety by reason of traffic hazard because the site is located alongside the heavily-trafficked National Primary Road N2 (which is identified in the current Meath County Development Plan as a Strategic Corridor) at a point where a speed limit of 100kph applies and the traffic turning movements generated by the development would interfere with the safety and free flow of traffic on the public road. The development proposed to be retained and completed, would therefore, be contrary to the proper planning and sustainable development of the area”.

- 8.2.44. I observed that access and egress to the subject site is via a driveway and that connects to an entrance on the eastern side of the heavily trafficked N2 at a point where the posted speed limit of 100kph applies. Whilst the alignment of the road is relatively straight at this location, I consider that the sightlines are impaired by the presence of large advertisement signage on either side of it. In addition, there is in my view a lack of adequate in length and depth roadside setback in the vicinity of this entrance. When this is taken into account with the heavy volume of traffic in both directions access and egressing from this entrance onto the N2 access and egress from the entrance serving the site is not without hazard for either those using it or for road users journeying along this national road at permissible high speeds.
- 8.2.45. In this regard I note that the comments made by ‘Transport Infrastructure Ireland’ (TII) on the 5th day of April, 2019, to the Planning Authority. Their comments included that reference should be made to the DoECLG Guidelines in relation to the creation of new accesses and the intensification of existing accesses to national roads that gives rise to the generation of additional turning movements that introduce additional safety risks to road users and they raised concerns that the provision of additional facilities at the subject site has to result in the intensification of use of the N2 access serving the site in a manner that would be contrary to official policy for national roads. It also requests that regard is had to Article 9 of the Regulations. I consider both considerations reasonable given the location of the entrance serving this site.
- 8.2.46. I concur with both TII and the Planning Authority in this case that intensification of uses on national primary routes like the N2 is contrary to DoECLG Guidelines on such matters.

8.2.47. I am also cognisant of the strategic importance of this road and intensification of accesses dependent upon it through to new accesses have both the potential to impact adversely on its operational efficiency of such roads which in the case of N2 is beyond its designed operational capacity. Moreover, there is a real potential in this situation due to the restricted sightlines that there is greater potential for adverse conflict to arise between vehicles accessing and egressing from the entrance serving the site and road users. With the posted speed limit being 100kph the potential for these manoeuvres to result in road safety issues for road users at a point where there is also no real effective roadside verge for any significant length along this stretch of road is a real concern as is any significant increase in traffic generated from land uses, structures and buildings on the subject site.

8.2.48. I note that Article 9(1) of the Regulations sets out restrictions on exemptions stating that *“developments to which article 6 relates shall not be exempted development for the purposes of the Act – (b) if the carrying out of such development would -”*...*“(iii) endanger public safety by reason of traffic hazard or obstruction of road users”*.

8.2.49. In light of the above I consider that both the display and storage of garden pods/sheds and (b) the construction of a structure for use as a café results in the intensification of use of the sites entrance onto the heavily trafficked N2 at a point where the posted speed limit is 100kph. In addition, this development has the potential to endanger public safety by reason of a traffic hazard by the additional traffic movements it would generate which would have the potential to interfere with the safety and free flow of traffic on this national road as well as a result of the poor sightlines available in either direction from the existing entrance. For these reasons Article 9(1)(iii) are applicable and the development is not exempted development.

8.3. Precedent Cases

8.3.1. **ABP Ref. No. 07.RL3023:** In this case the question to the Board was: “whether or not the use of portion of site as a coffee shop within an existing retail sales area is or is not development or is or is not exempted development” at Keane’s Garden Centre, Kilcolgan Village, Co. Galway. The Board concluded on the 12th day of February, 2013, that “the existing use of the premises, for the retail sale of goods and for the display of goods for sale, is a “shop” as defined under Article 5(1) of the Planning and Development Regulations, 2001, as amended by Article 3 of the Planning and

Development Regulations, 2005; and, the proposed partial use of the premises (16.8m²) for coffee sales comes within the scope of the definition of “shop”, and therefore does not constitute a material change of use from use as a shop and is not “development”, as defined at section 3(1) of the Planning and Development Act, 2000”.

8.3.2. This referral case is attached to file.

8.3.3. I consider that issues that this referral gives rise too are different and it is appropriate that the Board consider this referral case on its merits against relevant planning legislation.

8.4. **Appropriate Assessment**

8.4.1. Having regard to the nature and scale of the development under consideration, the nature of the receiving environment, it is my opinion that no appropriate assessment issues arise and that the development would not be likely to have a significant effect, either individually or in combination with other plans or projects, on any Natura 2000 site.

9.0 **Conclusion & Recommendation**

It can be concluded, given the foregoing, having regard to the relevant provisions of the Planning and Development Act, 2000, as amended, and the Planning and Development Regulations, 2001, as amended, that: (a) the display and storage of garden pods/sheds and (b) the construction of a structure for use as a café at Ashbrook Garden Centre, Coolfore, Ashbourne, Co. Meath, **is development and is not exempted development**. A draft order is set out as follows:

ORDER

WHEREAS a question has arisen as to whether: (a) the display and storage of garden pods/sheds; and, (b) the construction of a structure for use as a café at Ashbrook Garden Centre, Coolfore, Ashbourne, Co. Meath, is not development or, in the alternative, is exempted development.

AND WHEREAS the said question was referred to An Bord Pleanála by Alan Battersby on the 3rd day of May, 2019:

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 by the Planning and Development Regulations 2005;
- c) Articles 6(1), 9(1) and 10(1) of the Planning and Development Regulations, 2001 as amended;
- d) Class 1 of Part 4 of Schedule 2 of these Regulations;
- e) The planning history of the site;
- f) The planning context of the site;
- g) The information submitted regarding the scale, nature and extent of development on site;
- h) The existing use of the site; &
- i) The material issues such a use ordinarily raises in relation to the proper planning and sustainable development of the area.

AND WHEREAS An Bord Pleanála has concluded that:

- a) The display and storage of garden pods/sheds; and, the construction of a structure for use as a café constitutes works that are development in the context of Section 3 of the Planning and Development Act, 2000, as amended, and constitute a material change of use of the subject site.
- b) There are no provisions in the Planning and Development Act, 2000, as amended or in the Planning & Development Regulations, 2001, as amended, whereby this development and their associated uses is exempted development.
- c) The Board not being satisfied on the basis of the submissions made and the planning history of the site that the existing garden centre use is an authorised use.

In this regard, the provisions of the Planning and Development Act, 2000, as amended which prevent the issuance of a warning letter or enforcement notice, or the taking of proceedings for any offence under the Act in respect of unauthorised development after a period of seven years from the commencement of that development, do not alter the status of that development nor do they establish it as exempted development.

- d) As the development would endanger public safety by reason of a traffic hazard, obstruction to the free flow of the N2 where the posted speed limit of 100kph applies and would result in an intensification of use of an entrance where sightlines are restricted in both directions. Accordingly, the development would, therefore, not be exempted development under the provisions of Article 9(1)(a)(iii).
- e) This development would give rise to material planning considerations in terms of the potential for impact on properties in the vicinity and traffic safety. Accordingly, the development would represent a material change of use within the meaning of Section 3(1) of the Planning and Development Act, 2000, as amended, which constitutes development.

NOW THEREFORE An Bord Pleanála in exercise of the powers conferred on it by Section 5 of the 2000 Act, hereby decides that (a) the display and storage of garden pods/sheds; and, (b) the construction of a structure for use as a café at Ashbrook Garden Centre, Coolfore, Ashbourne, Co. Meath, **is development which is not exempted development.**

Patricia-Marie Young
Planning Inspector

4th day of March, 2020.