



An
Bord
Pleanála

Inspector's Report ABP-305791-19.

Development

Whether the use of ground floor of shop for the sale of sandwiches for consumption off the premises, provided that the use is subsidiary to the main retail use, is not development or, in the alternative, is exempted.

Location

No. 72 Main Street, Longford, Co. Longford.

Declaration

Planning Authority

Longford County Council.

Planning Authority Reg. Ref.

DC19/8.

Applicant for Declaration

Philip King.

Referral

Referred by:

Philip King.

Owner:

Philip King

Date of Site Inspection

7th day of February, 2020.

Inspector

Patricia Marie Young

Contents

1.0 Introduction.....	3
2.0 Site Inspection, Location and Description.....	3
3.0 The Question.....	3
4.0 Planning Authority Declaration.....	4
4.1. Declaration.....	4
4.2. Planning Authority Reports.....	4
5.0 Planning History.....	5
6.0 Policy & Context.....	5
6.1. Local Planning Policy Provisions.....	5
6.2. Natural Heritage Designations.....	5
7.0 The Referral.....	6
7.1. Referrer’s Case.....	6
7.2. The Referrers Case as submitted to the Board.....	6
7.3. Planning Authority Response.....	7
8.0 Legislation.....	7
8.1. Planning and Development Act 2000, (as amended).....	7
8.2. Planning and Development Regulations, 2001, (as amended).....	8
9.0 Assessment.....	9
10.0 Conclusion & Recommendation.....	16

1.0 Introduction

- 1.1. This is a referral made by Liam Madden Consultant on behalf of Philip King under Section 5(3) of the Planning and Development Act, 2000, as amended, which seeks a review of the declaration on the question set out under Section 3 of this report below issued by Longford County Council. In this regard, the Planning Authority concluded that the works were '*not exempted development*', but the referring party, Philip King, is not satisfied with the outcome of this determination and thus he has referred the matter to the Board for its determination.
- 1.2. In addition, I note that the referrer also raises a number of procedural concerns in relation to the Planning Authority's handling of this determination. Notwithstanding, for clarity purposes I note that the Board does not have an ombudsman role and it is outside of its jurisdiction to deal with such matters.

2.0 Site Inspection, Location and Description

2.1. Inspection of the Site

- 2.1.1. On the day of inspection, the subject premises were in a vacant and poor state. There was no sign of it being in recent use; however, it would appear that the ground floor level to which this subject case relates was previously used as a shop.

2.2. Site Location and Description

- 2.3. The subject site is located on the eastern side of Main Street c9meters to the north of its complex junction with Chapel Lane, Dublin Street and Ballymahon Street; and, c164m to the south of its T-junction with Richmond Street in the heart of Longford town, County Longford. The site is occupied by a vacant period 3-storey double bay above street level period terrace building that has been subject to alterations and additions. This includes the provision of a modern shopfront to the ground floor level addressing Main Street and extensions to the rear.

3.0 The Question

- 3.1. Whether the use of ground floor of shop for the sale of sandwiches for consumption off the premises provided that the use is subsidiary to the main retail use, is or is not

development or is or is not exempt development within the meaning of the Planning & Development Act, 2000, as amended.

4.0 Planning Authority Declaration

4.1. Declaration

- 4.1.1. On the 9th day of October, 2019, a declaration was issued by Longford County Council stating:

“The change of use of the existing retail shop for the sale of sandwiches or other food for consumption off the premises, where the sale is subsidiary to the main use constitutes a change of use which development as defined by Section 3(1) of the Planning and Development Act 2000 (as amended).

Therefore it is the opinion of the Planning Authority that the change of use, is considered to be development as defined in the Planning and Development Act and is development that is not exempted development”.

4.2. Planning Authority Reports

4.2.1. Planning Reports

The Planning Authority’s report can be summarised as follows:

- An overview of the site’s planning history is provided.
- An overview of the legislative context is provided.
- The applicant has indicated that the exemption relates solely to the sale of sandwiches or other foods for the consumption off the premises. However, the planning history of the site, includes an application for the change of use to a coffee shop with the consumption of food on the premises.
- Article 5(2) Part 2 (d) of the Regulations but it does not provide for the sale of food for consumption on the premises which constitutes a change of use.
- The application relates to the use of the whole premises for the sale of similar items and their consumption on site. Accordingly, the use is not a subsidiary retail use.

- The change of use from the former retail use to a coffee shop raises issues that are material in terms of the proper planning and sustainable development of the area.
- There are no exemptions provided in the Act, as amended, by which this development would constitute exempted development.

5.0 Planning History

5.1. The Site:

P.A. Reg. Ref. No. 19-155: On the 15th day of November, 2019, planning permission was **granted** subject to conditions for a development consisting of:

- Change of use from retail use to coffee shop use with ancillary take away facility;
- The reinstatement of 3 no. windows to the side elevation;
- The installation of individually mounted signage lettering with concealed LED trough lighting; and,
- All associated site works.

P.A. Reg. Ref. No. 03/65: Permission was granted for a proposed retail unit and three number apartment units together with all associated site works and services. The conditions attached do not include any restriction on the type of retail use permitted.

6.0 Policy & Context

6.1. Local Planning Policy Provisions

- 6.1.1. The applicable Development Plan is the Longford County Development Plan, 2015 to 2021. The site is located within the administrative boundaries of the Longford Town & Environs Local Area Plan, 2016 to 2022, and is zoned 'Town Core'.

6.2. Natural Heritage Designations

- 6.2.1. The site is not located within or immediately adjoining any Natura 2000 site, with the nearest such site, Special Area of Conservation: Brown Bog SAC (Site Code: 002346) being located c3.2km to the west.

6.3. EIA Screening

- 6.3.1. Having regard to the limited nature and scale of the proposed development and the absence of any significant environmental sensitivity in the vicinity, the absence of any connectivity to any sensitive location, the serviced nature of the site and its setting, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

7.0 The Referral

7.1. Referrer's Case

- 7.1.1. The Referrer is Philip King, who is the purported owner of No. 72 Main Street, Longford.
- 7.1.2. The Referrer made an application under Section 5 of the Planning and Development Act, 2000, as amended, to Longford County Council, for a determination to be made on the following question:
- Whether the use of an existing retail shop for the sale of sandwiches or other food for consumption off the premises, where the sale is subsidiary to the main use, is or is not development and if determined to be development, whether it is or is not exempt development.

7.2. The Referrers Case as submitted to the Board

- 7.2.1. A referral has been submitted by Liam Madden on behalf of Philip King. It can be summarised as follows:
- A number of contended procedural issues and concerns are raised.
 - It is indicated that the subject premises are subject of a current planning application (Note: P.A. Reg. Ref. No. 19/155) that seeks the change of use to a restaurant. It is intended that the premises would also be used for the subsidiary use of the sale for consumption off the premises of sandwiches and the like. The purpose of the referral is to establish that this is exempted development.

- The subject premises benefits from a grant of permission for the conversion of the premises to a retail shop (Note: P.A. Reg. Ref. No. 03/65). The subject premises was used from 2003 up until recently.
- The ground floor use is a retail shop that permits the sale, display or service principally to visiting members of the public. It was operated as such by Xtra-Vision. Therefore, there is no material change of use.
- The sale of sandwiches and the like for consumption off the premises is considered to be provided for under the definition of a 'shop' in Article 5 of the Regulations, as amended.
- The Board is requested to determine that the said use is exempted development.

7.3. Planning Authority Response

7.3.1. The Planning Authority response can be summarised as follows:

- It is the opinion of the Planning Authority that the change of use, as defined, is considered to be development as defined under the said Act and is development that is not exempted development.

8.0 Legislation

8.1. Planning and Development Act 2000, (as amended).

Section 2(1) – 'works' is defined as follows:

"works" are defined in this section as including any Act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and in relation to a protected structure or a proposed protected structure includes any Act or operation.

Section 3(1) "*development*" is defined as follows:

'*development*' means except where the context otherwise requires, the carrying out of any works on, over or under land or the making of any material change in the use of any structure or other land.

Section 4(1) Exempted Development

4(1) The following shall be exempted developments for the purposes of this Act -

(h) 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.

4(2) (a) The minister may by regulations provide for any class of development to be exempted development for the purposes of this Act.

8.2. **Planning and Development Regulations, 2001, (as amended).**

Part 2 of the Regulations relate to exempted development. Article 5 defines a shop as follows: *“a 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 the wine is defined as any intoxicated liquor which may be sold under a wine retailers off-licence.

(e) For hairdressing.

(f) For the display of goods for sales.

(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 a funeral service or as a funeral home or as a hotel, restaurant or 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, 3 or Part 4 of Schedule 2 applies.

Article 9 specifies ‘Restrictions on Exemption’

9 (1) Development 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 ...

9.0 **Assessment**

9.1. **Introduction**

- 9.1.1. It is relevant from the outset to note that there appears to be no dispute arising by the referrer and the Planning Authority that the subject premises, i.e. No. 72 Main Street, was used as a retail shop in a manner which accorded with the definition of a 'shop' as set out in Article 5(1) of the Planning & Development Regulations, 2001, as amended.
- 9.1.2. This is to say that it would appear from the planning history relating to it and the documentation on file that on foot of a grant of planning permission under P.A. Reg. Ref. No. 03/65, by the Planning Authority, which permitted a retail unit at ground floor level apartment units above together with other associated site works and services, was partially implemented in the form of the provision of the retail unit and its occupation as such only. This retail unit appears to have been functionally used as such between 2003 and up to a number of years ago. When exactly this use ceased is in my view unclear. I also note that the conditions attached to the grant of planning permission P.A. Reg. Ref. No. 03/65 included no restrictions on the type of retail use permitted therein.
- 9.1.3. The last retail operator appears to have been 'HMV – Xtra-Vision' with evidence of their prior occupation still present on the exterior of the building and with the internal fitout that is apparent from views through the shopfront windows reflecting this previous use.
- 9.1.4. This unit is now vacant, and it would appear that the upper floors are similarly vacant. It is also unclear whether the residential component permitted under P.A. Reg. Ref. No. 03/65 was ever implemented and/or whether it expired.

- 9.1.5. Having regard to the planning history of the site it is also of relevance to note that the subject premises benefits from a recent grant of planning permission under P.A. Reg. Ref. No. 19-155 for a development including but not limited to the change of use from retail use to coffee shop use with ancillary takeaway facility. This permission solely relates to the premises subject of this referral case. The associated documentation on file for this application indicate that the subject premises has a stated floor area of 185m² with the majority of the floor area comprised of seating and tables for customers. It also indicates the provision of a WC for public use and a separate accessible WC for public use to the rear of the premises.
- 9.1.6. I also note that Condition No. 2 of this grant of permission states “*the use of the ground floor area of the premises shall be restricted to that of coffee shop use only. The building to which this application relates or any part thereof shall not be converted to uses other than this, without the specific prior planning permission*”. The stated reason for this condition is “*in order to control unauthorised development and in the interests of the proper planning and sustainable development of the area*”.
- 9.1.7. The question that is now presented for determination by the referrer to the Board is whether the use of the ground floor of shop for the sale of sandwiches for consumption off the premises provided always that the use is subsidiary to the main retail use, is or is not development, and thereafter if it is deemed to be development whether or not this development would constitute ‘exempted development’ as defined under the current Planning Acts and Regulations.
- 9.1.8. From an examination of the documentation provided I consider that there is a level of ambiguity to the referral question itself which arises from the comments made in the referrers submission which makes the following comments:
- 1) “*The premises is the subject matter of a current planning application no. 19/155. In effect this Section 5 request is being lodged in parallel with application 19/155*”.
 - 2) “*It is intended to change the use of the ground floor of the premises to (1) a sit-down restaurant and also to use the shop as (2) a takeaway for sandwiches, coffee, buns and other small confections*”. It is asserted that the second use proposed, i.e. (2) is a development that would be subsidiary to the main use.

3) *“It doesn’t matter whether the goods are sandwiches or shoes. Sandwiches and shoes are both take-away goods. Both are goods to be sold in relative small quantities for use and/or consumption off the premises”.*

- 9.1.9. In my opinion the drawings submitted with this application also do not provide further clarity and certainty that the main use that is referred to is the use for which permission was recently granted under P.A. Reg. Ref. No. 19-155 or does it relate to another potential scenario whereby the main use would accord with the definition of a shop as set out in Article 5(1) of the Planning & Development Regulations, 2001, as amended. But on the balance of probability it is my view that it would be the referrer’s submission to the Board; the comments also included in their initial submission to the Planning Authority; and, having regard to the development permitted under P.A. Reg. Ref. No. 19-155, it would appear to suggest that the intended use of the subject premises is as a restaurant/coffee shop.
- 9.1.10. The first question that therefore arises is whether or not the activities proposed constitute ‘works’ in manner that accords with the definition provided for in the Planning & Development Act, 2000, as amended.
- 9.1.11. There could be no doubt that the conversion of a shop to a takeaway for the sale of sandwiches, coffee, buns and other small confections would involve refitting and renovation of the existing shop, which as stated is in a vacant state, and contains none of the modern utilities and facilities required to provide for the functional sale of these goods in its current physical format and fit out. Nor is it likely that it would meet the required standards for such a use that fall outside of planning jurisdictions.
- 9.1.12. The fitout and alterations would in my view fall within the definition of “works” within the meaning of Section 2 of the Act as it involved the “construction”, “alteration”, “repair” and “renewal” of the internal décor of the shop irrespective of whether or not one considers it to be subsidiary to the proposed main use of the premises as provided for under P.A. Reg. Ref. No. 19/155 or not. I note that this grant of planning permission at the time this report was being prepared was not implemented by the applicants (Note: Insomnia Coffee Company).
- 9.1.13. As the fitout involves and requires the carrying out of works for it to proceed it therefore constitutes ‘development’ within the meaning of Section 3 of the Act.

- 9.1.14. I consider it appropriate to also have regard to the planning history and documentation on file with this referral case, as it needs to be examined whether or not a change of use has occurred, and if any change of use is material and therefore development. I therefore refer to Article 5(1), Part 2, of the Planning and Development Regulations, 2001, (as amended), which provides the definition of a “shop” for the purposes of exempted development. It provides that a “shop” means a structure used for *inter alia* the retail sale of goods or 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 where the sale, display or service is principally to visiting members of the public. This definition does not include any use 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 where the sale of food or wine is subsidiary to the main retail use as described above. Therefore, the use as a restaurant is explicitly excluded from the description of what constitutes ‘shop’ use.
- 9.1.15. Under Article 10 (1), 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.”
- 9.1.16. The critical issue with respect to this referral case is whether or not the previous and current uses can both be classified as a “shop” and therefore exempted development. If it is decided that a coffee shop does not fall under the definition of “shop” the change of use is not exempted development.
- 9.1.17. Either way, a material change of use takes place when a retail store becomes a coffee shop of the type permitted under P.A. Reg. Ref. No. 19/155 which includes but is not limited to: c32 seats c6 medium, c24 tables, 1 high table, 1 ‘Accessible’ Public WC, 1 Public WC, 1 retail/food preparation/display counter, c6 medium to large seating booths, 2 couches through to 1 Sluice Room. In my view this is materially different to its previous use as a shop which the referrer in their initial submission to the Planning Authority described as the sale of CDs, Videos, Gameboy Machines, Sweets, Crisps, Popcorn, Mineral Drinks and Other Confections. In relation to the latter the submitted plans indicate that the majority of the floor area of the subject unit consisted of retail floor area and to the rear there was small sundry back of house area that appears to

have included a sales counter at the point where it meets the retail floor area. In addition, to rear there is also one WC which is not accessible to customers.

- 9.1.18. While I am cognisant that the description of the development provided under P.A. Reg. Ref. No. 19-155 indicates that a change of use is sought for the subject premises from retail use to coffee shop with ancillary takeaway facility whereas the referrer in their submission to the Board describes the change of use as including a “sit down restaurant” and also to use the shop as a takeaway for the sandwiches, coffee, buns and other small confections I note that the use of a premises as a restaurant is not contained within any of the Use Classes set out in Part 4 Schedule 2 of the Regulations.
- 9.1.19. Notwithstanding, it is specifically stated under Class 1, however, that a restaurant use or use for the sale of hot food or intoxicating liquor for consumption off the premises is not included under the definition of “shop”.
- 9.1.20. Whereas it also specifically states that 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, is included under the definition of “shop”.
- 9.1.21. It therefore needs to be determined whether the primary purpose of the subject premises as set out by the referrer is as a “shop” in a manner that 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 it is a mixture of both with the takeaway element being subsidiary.
- 9.1.22. Having regard to the documentation provided by the referrer and by the Planning Authority it would appear that the majority of the subject units floor space would be taken up with a significant provision of seating with an estimated capacity of c60 to 65, the provision of two WC’s for public use, the limited area in which goods would be displayed for sale, the availability of a preparation area behind the counter for certain items of food and drinks that would potentially be on offer by a large coffee chain company like the applicants of P.A. Reg. Ref. No. 19/155.
- 9.1.23. In terms of available accepted definitions for ‘Restaurant’ I note that the Oxford Dictionary provides the following meaning “*a place where people pay to sit and eat meals that are cooked and served on the premises*”. I also note the meaning provided

in the Collins Dictionary “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 it is a place of business that serves food and drinks to customers, with that food and drink served and eaten on the premises. It is widely accepted that restaurants vary greatly in their offerings through to service models. This is different to a takeaway use as items of food and beverages are sold to be eaten elsewhere and not on the premises.

- 9.1.24. I would therefore concur with the Planning Authority that the premises use would be 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. Whereas a coffee shop could be defined as a shop where coffee is sold or drunk alongside a limited offer of foods like sandwiches, buns and other small confections, which would include a substantial portion of coffee purchased taken off the premises for consumption. Any significant provision of seating and tables to allow for consumption on the premises should be limited and subsidiary to the primary operations occurring within the unit that allows it to operate under the definition of a ‘shop’.
- 9.1.25. The Regulations do stipulate that the sale of sandwiches or other food etc for consumption off the premises, where the sale of such food or wine is subsidiary to the main retail use, would only be permitted under the definition of “shop”.
- 9.1.26. This I consider is not the case in this situation put forward to the Board by the referrer as the subject premises use more closely resemble a restaurant due to the large quantum of public floor area to sit, eat, drink at leisure, a place to meet with others either individually or in larger numbers with bathroom facilities for customers and with the retail space provided confined to a very limited floor area in comparison. This is irrespective of the limited range of food, drink and other items contended would be on sale.
- 9.1.27. I would therefore conclude that subject premises cannot be defined as a “shop” under Class 1 Part 4 of Schedule 2 of the Regulations as the use proposed takeaway use would be subsidiary for a use that primarily facilitates the use of the subject premises as a restaurant for the consumption of food and beverages within the floor area of the subject premises and as such it does not constitute a “shop” as defined by the Regulations and instead comprises a ‘*sui generis*’ use that is more akin to a restaurant.

Furthermore, I am satisfied that the change of use that facilitates this café/restaurant use at the subject premises together with the takeaway use proposed under P.A. Reg. Ref. No. 19-155 is materially different in planning terms as it 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. 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.

9.2. Precedent Cases:

- 9.2.1. I note the Board's determination of the following referral cases:
- 9.2.2. I refer to the Boards determination in respect of ABP Ref. No. RL3424 wherein it was determined that a change of use from retail to coffee shop constituted development which was not exempted development due to a number of considerations including that the use of the subject premises does not constitute use as a 'shop' as defined in Article 5(1) of the Regulations due to the scale, nature and layout of the coffee shop which is more akin to a restaurant use which is expressly excluded from the definition of a shop under Article 5(1) of the Regulations. They also considered that the use gave rise to issues that are material in relation to the proper planning and sustainable development of the area.
- 9.2.3. I refer to the Boards determination in respect of ABP Ref. No. RL2939 wherein it was determined that the use of a premises as a coffee shop, is development and is not exempted development due to a number of considerations including that a "shop" as defined under Article 5(1), as amended, of the said Regulations does not include use as a coffee shop/bistro (restaurant); the use as a shop and use as a coffee shop/bistro (restaurant) do not fall within the same Class of Use under Part 4 of Schedule 2 to the said Regulations; and, the use classes under Part 4 of Schedule 2 to the said Regulations do not provide any exemption in relation to change of use from a shop to a coffee shop/bistro (restaurant).
- 9.2.4. I refer the Boards determination under ABP Ref. No. RL3402 wherein the question was asked as to whether the change of use of part of the existing retail premises for sale of hot food is or is not development or is or is not exempted development. The Board conclusion included, that the sale of hot food for consumption off the premises

is not subsidiary to the principal shop use and having regard to the definition of 'shop' under article 5(1) of the Planning and Development Regulations, 2001, as amended, this has resulted in a change of use within this shop from the main retail use.

9.2.5. I refer the Boards determination under ABP Ref. No. RL3481 wherein a question was asked whether the change of use of part of the unit from a toy shop to use as a coffee shop is or is not development or is or is not exempted development. The Boards conclusion included, that having regard to the nature and layout of coffee shop is akin to restaurant use which is expressly excluded from the definition of 'shop' under Article 5(1) of the said Regulations, as amended. They considered that this constituted a material change of use and is therefore 'development' within the meaning of section 3 of the Planning and Development Act, 2000, and noted that there are no provisions in the Act or Regulations whereby such development would be exempted.

9.2.6. In light of the Board's determination above, I am of the opinion that, in this instance, the existing use in question is akin to a 'sui generis' café/restaurant use and that said use of the takeaway in this case constitutes development which is not exempted development given the absence of any exemption in the Regulations which would otherwise permit such use.

9.3. **Appropriate Assessment**

9.3.1. Having regard to the nature and scale of the development under consideration, the nature of the receiving environment, the availability of public services, 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.

10.0 **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 the use of premises as a takeaway for sandwiches, coffee, buns and other items of confection, would not be a subsidiary to a retail use at 72 Main Street, Longford town, Longford, and that **is development and is not exempted development.**

A draft order is set out as follows.

ORDER

WHEREAS a question has arisen as to whether the use of ground floor of shop for the sale of sandwiches for consumption off the premises provided that the use is subsidiary to the main retail use at No. 72 Main Street, Longford town, Co. Longford, is not development or, in the alternative, is exempted development.

AND WHEREAS the said question was referred to An Bord Pleanála by Liam Madden Consultant on behalf of Philip King on the 29th day of October, 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, and Class 1 of Part 4 of Schedule 2 of these Regulations;
- d) The previous use of the premises;
- e) The planning history of the site;
- f) The information submitted regarding the scale, nature and layout of the coffee shop together with the services to be provided to visiting members of the public, in particular the extent of seating, tables and the provision of toilet facilities relative to the limited area for the sale of goods;
- g) The material issues such a use ordinarily raises in relation to the proper planning and sustainable development of the area;
- h) Board determinations on similar in nature referral cases.

AND WHEREAS An Bord Pleanála has concluded that:

- a) The use of the subject premises as a coffee shop does not constitute use as a “shop” as defined in Article 5 (1), as amended, because the scale, nature and layout of the coffee shop is more akin to a restaurant use which is expressly excluded from the definition of ‘shop’ under Article 5 (1) of the said Regulations, as amended. As such the takeaway use in this particular case is not subsidiary to the principal use of the subject premises as a “shop” and together with the coffee shop use results in a material change of use to this shop;
- a) The use of the subject premises, from use as a shop to use as a coffee shop with takeaway is material and is therefore “development” within the meaning of Section 3 of the Planning and Development Act, 2000;
- b) The use as a shop and use as a restaurant do not fall within the same Class of Use under Part 4 of Schedule 2 of the Planning and Development Regulations, 2001, as amended.
- c) The change of use of the subject premises, from use as a shop to use as a restaurant raises issues that are material in terms of the proper planning and sustainable development of the area and this change constitutes a material change of use having regard to the considerations outlined above.

NOW THEREFORE An Bord Pleanála in exercise of the powers conferred on it by Section 5 of the 2000 Act, hereby decides that the use of ground floor of shop for the sale of sandwiches for consumption off the premises at 72 Main Street, Longford town, Longford, is development which is not exempted development.

Patricia-Marie Young
Planning Inspector

27th day of February, 2020.