



An  
Bord  
Pleanála

## Inspector's Report ABP-309803-21

### Question

Whether the use of a shop unit, as a coffee shop, is or is not development and is or is not exempted development.

### Location

Shop Unit 3, 6 Railway Terrace, Dublin Road, Naas, Co. Kildare W91 NYK3.

### Declaration

Planning Authority

Kildare County Council

Planning Authority Reg. Ref.

ED/00838

Applicant for Declaration

Ziba Coffee House Ltd.

Planning Authority Decision

Is development and is not exempted development

### Referral

Referred by

Ziba Coffee House Ltd.

Owner/Occupier

Ziba Coffee House Ltd. is the Occupier

Observer(s)

None

Date of Site Inspection

13.07.2021

**Inspector**

Anthony Kelly

## 1.0 Introduction

- 1.1. This is a referral by Ziba Coffee House Ltd. The referral relates to whether the *'change of use from shop to 'coffee shop' where the sale of coffee to visiting members of the public is the primary use of this speciality retail shop and the sale of hot chocolate, minerals, pastries, sandwiches and rolls to visiting members of the public is a subsidiary retail use at Unit 3, 6 Railway Terrace, Naas, Co. Kildare'* is or is not development and is or is not exempted development.
- 1.2. The purpose of this referral is not to determine the acceptability or otherwise of the change of use in respect of the proper planning and sustainable development of the area, but rather whether or not the matter in question constitutes development, and if so, falls within the scope of exempted development.

## 2.0 Site Location and Description

- 2.1. The site is located in Naas, Co. Kildare in the north eastern area of the town centre.
- 2.2. Ziba Coffee House occupies a narrow 27.7sqm ground floor unit at the north east end of Railway Terrace, a cul-de-sac which runs parallel to the Dublin Road. The terraced building is two-storeys in height. There are other commercial premises also located on the Terrace and elsewhere in the vicinity. Pedestrian access to the unit is from Railway Terrace. The side of the unit addresses The Sycamores. There is external seating to the side which appears to be associated with the coffee shop.

## 3.0 The Question

- 3.1. The 'Introduction' on Page 1 of the 'Planning Report' received by the planning authority with the section 5 application states a section 5 Declaration is sought 'that the use of Shop Unit 3, at 6 Railway Terrace, Dublin Road, Naas, Co. Kildare as a Coffee Shop is Exempt Development'. Q.5 of the Application Form states 'use of shop unit 3 as coffee shop' in reply to the request to state the extent of the proposed development. Kildare County Council considered the question as 'whether the use of Unit 3, 6

Railway Terrace, Naas, Co. Kildare, as a coffee shop, is or is not development and is or is not exempted development’.

3.2. On foot of the planning authority’s Declaration, the wording of the referral to the Board was altered to whether *‘change of use from shop to ‘coffee shop’ where the sale of coffee to visiting members of the public is the primary use of this speciality retail shop and the sale of hot chocolate, minerals, pastries, sandwiches and rolls to visiting members of the public is a subsidiary retail use to the primary speciality retail use of the sale of coffee’*.

3.3. Having regard to the content of the documentation submitted I consider that the wording specifically cited in the referral documentation is generally appropriate subject to a change to aid clarity. The specific question considered is, therefore.

*Whether a change of use from shop to ‘coffee shop’ where the sale of coffee to visiting members of the public is the primary use of this speciality retail shop and the sale of hot chocolate, minerals, pastries, sandwiches and rolls to visiting members of the public is a subsidiary retail use at Unit 3, 6 Railway Terrace, Naas, Co. Kildare is or is not development and is or is not exempted development.*

## 4.0 Planning Authority Declaration

### 4.1. Declaration

4.1.1. The Declaration issued by Kildare County Council concluded:

(a) The current use of the subject premises does not constitute use as a ‘shop’ under article 5(1) of the Planning & Development Regulations, 2001, as amended, because the sale of hot drinks and to a lesser extent other food and drinks for consumption off the premises, are in combination, the predominated rather than the subsidiary use of the premises and so this use does not come within the scope of Paragraph (d) of this article,

(b) The current use of the subject premises does not come within the scope of paragraph (a) of article 5(1) of the Planning & Development Regulations, 2001,

as amended, due to the qualifying statement at the end of the definition of shop and Paragraphs (b), (c), and (e) - (i) are not applicable to this use,

(c) The current use of the subject premises has resulted in a change of use of these premises from their authorised use as a shop and this change of use raises issues that are material in terms of the proper planning and sustainable development of the area, including issues in relation to the planning policy on retailing set out in the current Naas Town Development Plan 2011-2017, the potential for litter and the management of waste arising from the primary use of the sale of coffee, sandwiches and other food for consumption off the premises, and the potential for differing pedestrian and vehicular traffic as compared to the former retail use, and the change of use is, therefore, 'development' within the meaning of section 3 of the Planning & Development Act, 2000, as amended, and,

(d) There are no exemptions in the Planning & Development Act, 2000, as amended, or in the Planning & Development Regulations, 2001, as amended, by which this change of use would constitute exempted development.

Now Therefore Kildare County Council, in exercise of the powers conferred on it by section 5(2)(a) of the 2000 Act, hereby decides that the use of Unit 3, 6 Railway Terrace, Dublin Road, Naas, Co. Kildare currently operating as ZIBA Coffee House, is development and is not exempted development.

## **4.2. Planning Authority Reports**

- 4.2.1. The Planning Report forms the basis of the planning authority's Declaration. A full copy of the Planning Report is included in Appendix II of the applicant's referral submission.
- 4.2.2. The Planning Report considered the central issue to be whether the use as a coffee shop falls within the definition of a shop as set out under article 5(1) of the Planning & Development Regulations, 2001 (as amended). The Report considered that hot drinks are very often accompanied by the purchase of additional items. Essentially, the additional items, in combination with hot drinks, is the predominant rather than subsidiary use. Therefore, the provision of article 5(1)(d) of the Regulations does not apply in this instance and the use would lie outside Schedule 2 Part 4 Class 1 of the

Regulations. The planning authority considered a change of use has arisen and the issue was whether it is a material change of use.

- 4.2.3. The Planning Report stated that, to test whether a material change has occurred, the use should be assessed on the basis of what material considerations would arise if it were subject of a planning application. It was considered that the land use policy of the Naas Town Development Plan 2011-2017, vehicle movements, generation of odours, noise or littering, and opening hours were of material concern to the change of use. It was considered that a material change of use had occurred from the authorised use as a shop and that no provisions in the Act or Regulations bestow exempt development status on the change of use. The Planning Report considered the development to be development and not exempt development.

## **5.0 Planning History**

### **5.1. On Site**

- 5.1.1. There has been an extensive planning history on site. Of note are:

P.A. Reg. Ref. 2439 – Permission was granted in 1990 for a shop use on Unit 3 on the ground floor of 6 Railway Terrace. This appears to be the permission under which the shop use is authorised.

P.A. Reg. Ref. UD7467 – This relates to a warning letter regarding an unauthorised change of use of ground floor Unit 3 to café/coffee shop and associated external signage including mural and three retractable awnings.

### **5.2. Relevant Referrals**

- 5.2.1. There are a number of decisions by the Board which have been considered in this report:

ABP Reg. Ref. ABP-303989-19 – In 2019 the Board decided that the proposed partial change of use from shop to coffee shop at number 12 Cross Street Upper, Galway, is development and is not exempted development. (There were other elements in this referral not directly relevant to the coffee shop use).

ABP Reg. Ref. RL28.RL3810 – In 2018 the Board decided the use of number 11 Saint Patrick’s Street, Cork currently operating as a Starbucks coffee shop was development and was not exempted development.

ABP Reg. Ref. RL28.RL3515 – In 2017 the Board decided the use of a former retail unit as a coffee shop on the ground floor of 11 Saint Patrick’s Street, Cork was development and was not exempted development

ABP Reg. Ref. RL28.RL3424 – In 2016 the Board decided the use of a premises as a coffee shop and the erection of associated signage at 11 Emmet Place, Cork was development and was not exempted development.

ABP Reg. Ref. RL28.RL3425 – In 2016 the Board decided the use of a premises as a coffee shop at 11 Saint Patrick’s Street, Cork was development and was not exempted development.

ABP Reg. Ref. RL28.RL3426 – In 2016 the Board decided the use of a premises as a coffee shop at 39 Prince’s Street, Cork was development and was not exempted development.

## **6.0 Policy Context**

### **6.1. Naas Town Development Plan 2011-2017**

- 6.1.1. The site is in an area zoned ‘A: Town Centre’ which has a zoning objective ‘To provide for the development and improvement of appropriate town centre uses including retail, residential, commercial and civic uses’.

### **6.2. Natural Heritage Designations**

- 6.2.1. The closest Natura 2000 site is Red Bog SAC (Site Code 000397) approx. 8.6km to the east. The closest heritage area is Grand Canal pNHA (Site Code 002104) approx. 550 metres to the west.

## 7.0 The Referral

### 7.1. Referrer's Case

The main points made by the referrer, Ziba Coffee House Ltd., can be summarised as follows:

- Shop Unit 3 is a speciality shop where the primary use is the selling of coffee to the public for consumption off the premises. Article 5(1) states 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'. The definition of Goods in Business are 'tangible things that are purchased, bought or sold, then finally consumed'. Surely a cup of coffee is a tangible thing that is produced, sold and consumed. 60% of overall sales comprises coffee, a figure not disputed by the planning authority. The other retail goods are considered a subsidiary retail use. Subsection (d) is 'for the sale of sandwiches or other food for consumption off the premises, where the sale of such food or wine is subsidiary to the main retail use'. It is clearly evident that these retail goods are subsidiary.
- The coffee shop cannot be considered a café/restaurant as there are no customer toilets or indoor seating.
- No change of use has occurred. However, should the Board consider a change of use has arisen the question is whether it is a material change. *Monaghan v Brogan* established that the test for materiality pertains to whether the change of use would raise material planning considerations if it were to be subject of a planning application:
  1. Where the use would be compatible with the land use policy of the Naas Town Development Plan 2011-2017 – It is evident a speciality coffee shop is compatible with the land use policy. It is Town Centre in both the Plan and the Draft Naas Local Area Plan 2021-2027. The size and scale will not have a fundamental effect on the area having regard to land use in the immediate vicinity.



2. Whether the use would generate odours that would require ventilating – Ventilation must be provided for all types of specialist retail shops including coffee shops. This shop would be no different. It is currently ventilated to prevent odour.
  3. Whether servicing the use would generate vehicle movements etc. – Traffic associated with the use would not add to existing traffic movements and would not create a traffic hazard. There is on-street parking and 535 no. spaces in Naas Town Centre within 70 metres. It is unlikely to attract significant levels of parking and unlikely to exacerbate parking and traffic issues.
  4. Littering – There are litter bins within 15 and 20 metres. ‘Waste’ associated will be collected in bins the same as all other land uses. They are currently stored to the rear.
  5. Opening hours – Opening hours of 9am-5pm are similar to other land uses in the vicinity.
- All ‘works’ are internal and therefore exempt under section 4(1)(h) of the Act. The Extract Ventilation System has been installed internally to comply with building regulations. There is no odour or smells emanating.
  - The ‘external painted mural’ will be painted over and the ‘external canopies’ will be removed.
  - The central issue falls within the definition of shop as set out in article 5(1)(a) of the Planning & Development Regulations, 2001 (as amended). The specialist retail coffee shop is no different to a specialist clothing shop or hairdresser. It complies with (a) – retail sale of goods. 60% of turnover is the sale of coffee. The subsidiary sale of goods comply with subsection (d) – sale of sandwiches and other food for consumption off the premises, where subsidiary to the main retail use. This particular coffee shop is very different to many Board decisions e.g. RL3810.
  - From examination of Board decisions there are numerous types of premises suggesting they are coffee shops. One clear conclusion drawn from Board

decisions is that no two cases of reference of coffee shops to the Board are the same. Each individual case is different.

- Appendices attached to the referral include a copy of P.A. Reg. Ref. 2439, a copy of the planning authority's Planning Report, a non-exhaustive list of Board decisions, a copy of the referrer's response to the warning letter issued under UD7647 and a map showing car parking spaces in the vicinity of the site.

## **7.2. Planning Authority Response**

Kildare County Council has nothing further to add.

## **7.3. Further Responses**

None sought.

## **8.0 Statutory Provisions**

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

#### **8.1.1. Section 2 (1)**

“works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.

#### **8.1.2. Section 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’.

### 8.1.3. Section 4(1)(h)

The following shall be exempted developments for the purpose 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’.

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

### 8.2.1. Article 5(1)

‘In this Part – ‘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, 1910), 10 Edw. 7. & 1 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 launderette 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;’

### 8.2.2. Article 10(1)

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 purpose of the Act, provided that the development, if carried out would not –

- (a) involve the carrying out of any works other than works which are exempted development,
- (b) contravene a condition attached to a permission under the Act,
- (c) be inconsistent with any use specified or included in such a permission, 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.

### 8.2.3. Schedule 2 Part 4 (Exempted development – Classes of Use)

Class 1 – Use as a shop.

## 9.0 **Assessment**

The issues for the Board to consider are whether the change of use comprises development, whether or not it is exempted development and, if considered to be exempt, whether or not there any restrictions that would de-exempt the development. These issues are considered below

### 9.1. **Is or is not development**

9.1.1. Section 3 of the Act defines development as ‘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’.

9.1.2. The application relates to a change of use. In terms of works, all internal works carried out are, according to the referrer, exempt under section 4(1)(h) of the Act. I would not disagree with this assessment. In their letter to the planning authority dated 21.01.2021 in relation to UD7647 it is stated that the mural will be painted, and the retractable awnings will be removed. On inspection it appeared the mural has been

painted over but the retractable awnings were still in place. The question posed specifically relates to a change of use. No external works such as awnings or signage is mentioned. This report relates solely to the question posed. Therefore, I do not consider that 'development' has occurred based on any 'works' that have been carried out. Rather, development may have occurred if it is considered that a material change of use has taken place.

- 9.1.3. There are two tests for a material change of use. There must be an actual change of use and, secondly, that change must be material. Legal judgements have tended to focus on the issues which would be considered if determining the impacts on the respective uses on the proper planning and sustainable development of the area.
- 9.1.4. The referrer does not consider a change of use has occurred. The referrer's position is that the unit is a shop as per Schedule 2 Part 4 Class 1 of the 2001 Regulations (as amended), because it is for the retail sale of goods, i.e. coffee, as set out in subsection (a) of article 5(1) of the 2001 Regulations (as amended). It is described as a 'speciality' retail shop. It is stated that 60% of the turnover is from coffee, therefore the other 40% i.e. hot chocolate, minerals, pastries, sandwiches, and rolls, is subsidiary to the status as a coffee shop. Article 5(1)(d) also describes a shop as a structure used for, inter alia, the sale of sandwiches or other food, where the sale of such food is subsidiary to the main retail use. The referrer considers that as these other items for sale are less than 50% of turnover, they are subsidiary and therefore consistent with subsection (d).
- 9.1.5. There has been a number of previous referrals relating to use of a retail unit as a coffee shop. The specifics of these are varied in terms of their floor area, partial changes of use, seating, toilets etc.
- 9.1.6. A primary question is whether the current use comprises a 'shop'. In the referral documentation the description was changed from a 'coffee shop' as described initially, to a unit where 'the sale of coffee to visiting members of the public is the primary use of this speciality retail shop'. This change in description and terminology appears to have occurred as a result of Kildare County Council's Declaration. In relation to subsection (d), sandwiches, rolls, pastries and more are for sale in the shop. 'Specials' were advertised on a chalk board along with 'sweet, treats & pastries'. The referrer states that these sandwiches, rolls etc. are subsidiary to the sale of coffee. The unit is described as a 'specialist retail coffee shop'. The advertising on the premises and

description of food and beverages for sale would indicate that non-coffee sales contribute substantially to the product offering within the unit and it is reasonable to assume that non-coffee drinking customers would be attracted. Specifying coffee while also selling beverages such as hot chocolate and minerals (and presumably tea and bottled water), as well as hot and cold sandwiches, rolls and pastries implies that the food items cannot reasonably be considered as not contravening the provisions of subsection (d). Taken as a whole, the unit cannot be considered as a shop because, in my opinion, it would contravene subsection (d).

9.1.7. ABP-303989-19 is instructive in this regard. The Inspector had considered that the partial change of use of a shop to a coffee shop was not development. The unit would continue to sell confectionary, nuts, healthy snacks, bottled water, scones, buns and cold packaged readymade food with the coffee dock area amounting to approx. 3.5sqm on the ground floor or approx. 20% of the floor area. The Inspector considered the partial change of use would be subsidiary to the main retail use and therefore no material change of use had occurred, and it was not development. However, in not accepting the recommendation, the Board noted the Inspector's reliance on previous, more historic, referral decisions, 'but had not adverted to more recent decisions by the Board, in a large number of cases, whereby the Board had subsequently determined that use of a premises as a "coffee shop" was not within the definition of use as a "shop", including file reference numbers RL3424, RL3425, RL3246 and RL3515, and that the nature and range of goods sold on the premises is a significant factor, and the presence, or absence, of customer seating and toilet facilities is not a determining factor in this regard'. In the current case, the unit is clearly put forward as a coffee shop and the nature and range of goods sold on the premises is a significant factor. The Board considered that an actual change of use had occurred. The Board concluded that the change of use did not constitute use as a 'shop' because the nature and range of the goods sold such as sandwiches and other food and beverages for consumption off the premises was not subsidiary to any other use and accordingly it did not come within the scope of article 5(1)(d) of the 2001 Regulations.

9.1.8. The second issue is that a change of use must be material. Again, in reference to the Board's conclusion for ABP-303989-19 and the other case references contained within the explanation for not accepting the Inspector's recommendation, it states that the change of use to a coffee shop, 'raises issues that are material in terms of the proper

planning and sustainable development of the area, including the potential for litter and management of waste arising from the use of the premises for the sale of sandwiches and other food (including beverages) off the premises, and the potential for differing pedestrian and vehicular traffic as compared to the former retail use is, therefore, development within the meaning of Section 3 of the Planning and Development Act, 2000, as amended.’ That referral related to a partial change of use of a unit not dissimilar in floor area to that subject of the referral currently under consideration. The implication would be that the current change of use would equally be subject of similar considerations of litter and pedestrian and traffic movements.

9.1.9. Having regard to circumstances of this referral, recent Board precedent establishes that the change of use from a shop unit to a coffee shop comprises development.

## 9.2. **Is or is not exempt development**

9.2.1. I consider that the works that, presumably, have been carried out to refit the interior of the shop unit, can be considered as exempt under section 4(1)(h) of the Planning & Development Act, 200 (as amended) in that they affect only the interior of the structure, and not the exterior. There are two external alterations cited in UD7464, a mural and three retractable awnings on north external elevation. The mural has been painted over but the awnings remained in place on inspection. Notwithstanding, the referral relates solely to a change use and not to any external works. This report makes no comment in relation to these retractable awnings. I am satisfied any internal alterations comprise exempt development under this section.

9.2.2. The change of use is not exempt under Schedule 2 Part 4 Class 1 of the Planning & Development Regulations, 2001 (as amended). Class 1 refers to ‘use as a shop’. Recent Board orders state that use as a coffee shop does not constitute use as a shop as defined in article 5(1) of the Regulations because of the nature and range of goods sold for consumption off the premises. As this use is not subsidiary to any other use it does not come within the scope of article 5(1)(d).

9.2.3. I consider the subject matter of this referral is similar to other recent referrals that have come before the Board where it was concluded that the subject development did not comprise exempt development.

### 9.3. **Restrictions on exempted development**

- 9.3.1. As I do not consider the development to be exempt development, restrictions on exemption do not apply.

### 9.4. **Conclusion**

- 9.4.1. Recent Board precedent establishes that the change of use from a shop unit to a coffee shop comprises development. Commentary on ABP-303989-19 states recent Board decisions, in a large number of cases such as RL3424, RL3425, RL3426 and RL3515, determined ‘that use of a premises as a “coffee shop” was not within the definition of use as a “shop” ... and that the nature and range of goods sold on the premises is a significant factor, and the presence, or absence, of customer seating and toilet facilities is not a determining factor ...’ These Board decisions all state that material issues of the proper planning and sustainable development of the area are raised such as litter, odour and vehicle and pedestrian movements. Similar commentary was included in the Board’s order for RL3515. ABP-303989-19 relates to a unit similar in floor area than that subject of this referral. These precedent decisions form the basis of the conclusion that the change of use to a coffee shop is development and is not exempted development.

## 10.0 **Appropriate Assessment**

- 10.1.1. Having regard to the nature and scale of the development, a change of use, and to the nature of the receiving environment, namely an urban and fully serviced location remote from and with no hydrological or ecological pathway to any European site, no appropriate assessment issues arise and it is not considered that the development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.



## 11.0 Recommendation

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

**WHEREAS** a question has arisen as to whether a change of use from shop to 'coffee shop' where the sale of coffee to visiting members of the public is the primary use of this speciality retail shop and the sale of hot chocolate, minerals, pastries, sandwiches, and rolls to visiting members of the public is a subsidiary retail use at Unit 3, 6 Railway Terrace, Naas, Co. Kildare is or is not development and is or is not exempted development:

**AND WHEREAS** Ziba Coffee Shop Limited care of Maguire & Associates, 6 Railway Terrace, Dublin Road, Naas, Co. Kildare W91 NYK3 requested a declaration on this question from Kildare County Council and the Council issued a declaration on the 24th day of February, 2021 stating that the matter was development and was not exempted development:

**AND WHEREAS** Ziba Coffee House Limited referred this declaration for review to An Bord Pleanála on the 22nd day of March, 2021:

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

- (a) section 2(1) of the Planning and Development Act, 2000, (as amended),
- (b) section 3(1) of the Planning and Development Act, 2000 (as amended)
- (c) section 4(1)(h) of the Planning and Development Act, 2000, (as amended),
- (d) article 5(1) of the Planning and Development Regulations, 2001 (as amended),

- (e) Schedule 2 Part 4 of the Planning and Development Regulations, 2001 (as amended),
- (f) the planning history of the site,
- (g) the information submitted on behalf of the referrer regarding the nature and range of goods to be sold on the premises,
- (h) relevant Board decisions:
- (i) the report of the Inspector:

**AND WHEREAS** An Bord Pleanála has concluded that:

- (a) The previous use of the premises was a shop.
- (b) The works carried out being minor in nature and being works which only affect the interior of the structure or which do not materially affect the external appearance of the structure so as to render the external appearance inconsistent with the character of the structure or of neighbouring structures come within the scope of Section 4(1)(h) of the Planning and Development Act, 2000, and are, therefore, exempted development.
- (c) The change of use of the premises to a 'coffee shop' where the sale of coffee to visiting members of the public is the primary use of this speciality retail shop and the sale of hot chocolate, minerals, pastries, sandwiches, and rolls to visiting members of the public is a subsidiary retail use, does not constitute use as a 'shop' as defined in article 5(1) of the Planning and Development Regulations, 2001 (as amended) because the nature and range of goods sold substantially consists of sandwiches and other food for consumption off the premises. Accordingly, the change of use is not subsidiary to any other retail use and therefore does not come within the scope of paragraph (d) of article 5(1).
- (d) The change of use from a shop to use as a coffee shop raises issues that are material in terms of the proper planning and sustainable

development of the area, including the potential for litter and management of waste arising from the use of the premises for the sale of coffee, sandwiches and other beverages and food for consumption off the premises, odour issues and the potential for differing pedestrian and vehicular traffic as compared to the former shop use and the change of use is, therefore, development within the meaning of section 3 of the Planning and Development Act, 2000 (as amended).

- (e) There are no exemptions in the Planning and Development Act, 2000 (as amended) or in the Planning and Development Regulations, 2001 (as amended), by which this development would constitute exempted development.

**NOW THEREFORE** An Bord Pleanála, in exercise of the powers conferred on it by section 5(3)(a) of the 2000 Act, hereby decides that the change of use from shop to 'coffee shop' where the sale of coffee to visiting members of the public is the primary use of this speciality retail shop and the sale of hot chocolate, minerals, pastries, sandwiches, and rolls to visiting members of the public is a subsidiary retail use at Unit 3, 6 Railway Terrace, Naas, Co. Kildare is development and is not exempted development.

---

Anthony Kelly

Planning Inspector

21.07.2021