



An  
Bord  
Pleanála

## Inspector's Report ABP-317344-23

### Question

Whether the holding of occasional wine tasting with finger food as an ancillary event at a retail store on a once-per-month basis is or is not development or is or is not exempted development.

### Location

Lennox Street Grocer, 38, Lennox Street, Portobello, Dublin 8

### Declaration

Planning Authority	Dublin City Council South
Planning Authority Reg. Ref.	0139/23
Applicant for Declaration	La Gourmande
Planning Authority Decision	Is not exempted development

### Referral

Referred by	La Gourmande
Owner/ Occupier	Paul Arnold
Observer(s)	None

**Date of Site Inspection**

22<sup>nd</sup> May 2024

**Inspector**

Bernadette Quinn

## 1.0 Introduction

- 1.1. This is a referral case under the provisions of Section 5 of the Planning and Development Act 2000 (as amended). File reference ABP-317404-23 has been submitted in relation to a concurrent referral case on a similar question at the same location.

## 2.0 Site Location and Description

- 2.1. The site contains a two storey mid-terrace building located on the northern side of Lennox Street. The ground floor of the building is in use as a grocery shop, Lennox Street Grocer. The premises is currently in retail use as Lennox Street Grocer selling a range of convenience goods and wine.

## 3.0 The Question

- 3.1. The question referred to the planning authority pursuant to Section 5(1) of the Planning and Development Act, 2000, as amended (“the Act”) and subsequently referred by referrer to the Board, pursuant to Section 5(3)(a) of the Act is, as follows:

‘Whether the holding of occasional wine tasting with finger food as an ancillary event at a retail store on a once-per-month basis is or is not development or is or is not exempted development’.

## 4.0 Planning Authority Declaration

### 4.1. Declaration

Pursuant to Section 5 of the Planning and Development Act 2000, as amended (hereinafter referred to as ‘the Act’), on the 18th day of May, 2023, the planning authority declared that the holding of occasional wine tasting with finger food as an ancillary event at a retail store on a once-per-month basis is considered to constitute development and is not exempted development.

## 4.2. Planning Authority Reports

### 4.2.1. Planning Reports

The recommendation within the report of the Planning Officer reflects the declaration issued by the planning authority. The report can be summarised as follows:

- There is a current enforcement file on this property (Reg.E0640/22) which relates to a change of use from retail to restaurant. The applicant has also been issued with a district court summons. This summons is for the unauthorised use of number 38 Lennox Street for the sale of food and alcoholic beverage for consumption on the premises.
- Whilst the retail shop has a licence to sell wine, the licensing laws in Ireland are a separate code of legislation to Planning.
- Regardless of what wine licence the applicant holds, Article 5(1) (d) of the Regulations specifically mentions 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.
- The applicant by holding wine tasting with finger food on the premises, whereby visiting members of the public are consuming wine and food, albeit an occasional use, would not come under the meaning of 'shop' as set out in Article 5(1) of the Regulations.
- There would be no control of this use, in terms of numbers attending or hours of operation.
- The subject case constitutes a material change of use, as the introduction of wine tasting with food, on the premises, has the potential to cause additional noise and general disturbance to the neighbouring properties and for this reason the use is considered a material change of use in this shop unit, which would require planning permission.
- The use proposed here would be more akin to a café/restaurant use and this would be a distinct use class and would not be ancillary to the grocer shop and therefore constitutes development.

#### 4.2.2. Other Technical Reports

None

## 5.0 Planning History

### 5.1. Referral Site:

0149/23 / ABP-317404-23: Section 5 application as to whether the hosting of events or promotions whereby food and alcoholic beverages are consumed for a fee is or is not development or is or is not exempted development. The Planning Authority considered the use is not exempted development and this file is currently the subject of a referral to An Bord Pleanala.

4115/99: Planning permission granted on 07/07/2000 for a change of use from shops and workshops to offices, to construct a four-storey return extension to rear, incorporating extensions to four apartments, office extensions and toilets, and to carry out alterations to a shopfront. Condition 2 of this permission notes:

The use of the premises at the basement and ground floor of No. 36 & No. 38 Lennox Street as offices shall cease on or before the expiration of a period of ten years from the date of this order, unless prior to the expiration of that period, permission for its retention beyond that date shall have been granted.

Reason: In the interests of preserving residential amenity in a residential conservation area.

## 6.0 Policy Context

### 6.1. Development Plan

The subject site is zoned "Z2" where the objective is "to protect and/ or improve the amenities of residential conservation areas."

Appendix 15 definitions

Shop: Local - A local shop relates to a small convenience store, newsagent or other tertiary services such as butcher and vegetable shop, hairdresser and other similar basic retail services.

## 6.2. Natural Heritage Designations

None.

## 7.0 The Referral

### 7.1. Referrer's Case

The first party appeal is accompanied by documents relating to the site including a copy of a District Court Summons which states that events or promotions shall not take place on the premises whereby food and alcoholic beverage is consumed by patrons on the premises in exchange for a fee; correspondence from DCC relating to enforcement procedures; a wine retailer's On-Licence; a note from Paul Arnold, Conservation Architect Grade 1; and a copy of An Bord Pleanála inspectors report relating to referral reference RL3037.

The grounds of referral can be summarised as follows:

- A referral has been submitted to the Board, reference 317404-23, on a related matter at the same location. The reason for submitting a second section 5 is that in a Hearing before the District Court on the day the previous Section 5 was submitted, Counsel representing DCC deemed that the earlier Section 5 Referral did not sufficiently address the enforcement matter at issue which necessitated the submission of a second Section 5.
- Six wine tasting events have occurred in the 32 months since November 2020 which amounts to one event every five months. In the appeal a worst-case scenario of one event every month is assumed which is more intensive than that which has occurred. The sale of wine is therefore ancillary and the provision of 'wine tasting' events (as described) constitute exempted development.
- The occasional activity is ancillary to the use of the premises as a shop. The retail area is small with the area utilised for the display of wine smaller still.
- The owners have a wine retailers on licence relating to the premises. This licence "authorises sale by retail of the liquor to which the Licence extends for

consumption either on or off the premises”, and the premises is a shop, not a restaurant/café and is fully entitled to sell wine.

- Arising from the planning history on the site, the permitted use has reverted to retail/workshop. The use is not a restaurant, nor purports to be one.
- The Civil Law (Miscellaneous Provisions) Act 2021 made provision, on a temporary basis, for the sale of intoxicating liquor in certain circumstances in seating areas located outside licensed premises.
- Section 28 Guidelines relating to the enforcement of certain planning conditions during the Coronavirus outbreak provide that given the danger to public health arising from COVID-19 and the resultant pressures placed on the restaurant and café sector, planning authorities should take an accommodating and flexible approach to conditions restricting the provision of delivery and take-away services. Neither a flexible nor accommodating approach was taken by the Planning Authority, and the enforcement does not represent a proportionate response.
- The Z2 zoning objective includes café/tearoom, restaurant, shop (local) as open for consideration uses.
- The Development Plan recognises the growing demand and economic wealth creation opportunities involved in the provision of restaurant uses within city centre areas and includes policies in this regard, including in support of restaurants, cafes and the evening and nighttime economy.
- There are no sensitive specific objectives on the site.
- Under Article 5(1) of the Regulations a ‘shop’ includes a structure used for the sales of sandwiches or other food or wine for consumption off the premises, where the sale of such food or wine is subsidiary to the main retail use. The premises has had one wine tasting session every five months, the sale of wine is ancillary and the wine tasting de minimis. The infrequency of the events is ancillary and constitutes exempted development.
- The occasional holding of wine tasting is not an “event” as defined in Section 229 of the Planning and Development Act.

- For a material change of use to occur there must be an actual change in use and the change must be 'material'. Monthly wine tastings ancillary to the sale of wine in the retail unit does not constitute development as no change of use has occurred, nor is any such use material.
- Due to the infrequency of the wine tasting and food events and the uncertainty surrounding the impact, it cannot have a 'substantial affect' on the neighbours or the environment as noted in DCC's planners report and therefore does not constitute a material change of use. Every development has the potential to cause additional noise and general disturbance to neighbouring properties, such potential does not constitute a change in use of a small shop to host inoccasional events.
- Wine tastings are commonly held by wine shops and off-licences without enforcement action against wine retailers hosting such events. The conclusion must be that such events are of the nature of retailing wine, and as such are intrinsic to the shop nature of the activity, and are accordingly exempted development.

## 7.2. Planning Authority Response

None received.

## 8.0 Statutory Provisions

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

8.1.1. Section 2(1) states the following:

- 'development' has the meaning assigned to it by Section 3;
- '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) of the Act states the following:



- ‘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 (2)(a) of the Act enables certain classes of development to be deemed exempted development by way of regulation.

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

8.2.1. Article 5 provides the following definitions:

- “business premises” means (a) any structure or other land (not being an excluded premises) which is normally used for the carrying on of any professional, commercial or industrial undertaking or any structure (not being an excluded premises) which is normally used for the provision therein of services to persons, (b) a hotel, hostel (other than a hostel where care is provided) or public house, or (c) any structure or other land used for the purposes of, or in connection with, the functions of a State authority;
- “shop” as follows: ‘shop’ means a structure used for any or all of the following purposes, where the sale, display or service is principally to visiting members of the public –
  - (a) for the 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) has specific regard to change of use, providing that any change of use within any one of the classes of use specified in Part 4 of Schedule 2, shall be exempted development provided that they 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.

etc.

8.2.3. Article 10(2)(a) notes that a use which is ordinarily incidental to any use specified in Part 4 of Schedule 2 is not excluded from that use as an incident thereto merely by reason of its being specified in the said Part of the said Schedule as a separate use.

8.2.4. Part 1 of Schedule 2 sets out exempted development to which Art 6(1) refers. Class 14 provides for exemptions relating to use as a shop and sale of hot food as follows:

Column 1 Description of Development	Column 2 Conditions and Limitations
Change of use CLASS 14 Development consisting of a change of use— (a) from use for the sale of hot food for consumption off the premises, or for the sale or leasing or display for sale or	

<p>leasing of motor vehicles, to use as a shop,</p> <p>(b) from use as a public house, to use as a shop,</p> <p>(c) from use for the direction of funerals, as a funeral home, as an amusement arcade or a restaurant, to use as a shop,</p> <p>(d) from use to which class 2 of Part 4 of this Schedule applies, to use as a shop</p>	
--	--

Part 4 of Schedule 2 sets out exempted development class of use to which Article 10(1) refers: CLASS 1: Use as a shop.

### 8.3. Precedent Referral Cases

I have searched the Boards database and consider the following precedents to be relevant.

- 8.3.1. In RL3592 the Board considered that the change of use of unit no.4 Woodquay from shop to use as a restaurant for the consumption of food on the premises is development and is not exempted development. In making its decision the Board considered that the proposed change of use of the unit from shop to use as a restaurant for the consumption of food on the premises would be a factual change of use and such change of use would raise material planning considerations and accordingly would constitute a material change of use, that the use of the subject premises as a restaurant does not constitute use as a “shop” because a restaurant use is expressly excluded from the definition of ‘shop’ under Article 5(1) of the Regulations and is therefore development.
- 8.3.2. In 305094 the Board decided that the change of use of an existing retail unit (clothes shop) to use as a bakery including the sale of sandwiches, cakes, breads and other

bakery related products for consumption on and off the premises and ancillary use of the unit for the sale of tea and coffee with ancillary seating is development and is not exempted development. In this case the Board concluded the use of the retail unit (clothes shop) as a retail bakery including the sale of sandwiches, cakes, breads, teas and coffee etc. for consumption on (with limited seating area) and off the premises represents a change of use, and such change of use would raise issues which are material in terms of the proper planning and sustainable development of the area e.g. odour issues arising from the installation of a kitchen, ovens (and other equipment), and the baking of raw materials into finished product (bread and confectionery) etc. The Board concluded that the use of the retail unit as a retail bakery which provides for the sale of food for consumption on and off the premises does not fall within the definition of a 'shop' as provided under Article 5(1) of the Regulations where a shop may include 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. Furthermore, the Board concluded that the definition of a shop does not include any use associated with a restaurant.

8.3.3. In 303153 relating to the change of use of part of a shop for use as a coffee shop at Dunnes Stores, Liffey Valley Shopping Centre, the Board concluded that the use of c. 79 sq.m. of the premises at ground floor level as a coffee shop for the sale of coffee and other items for consumption on and off the premises does not come within the scope of the definition of a shop as set out in Article 5(1) of the Planning and Development Regulations, 2001. The Board considered that this definition does not provide for the consumption of food on the premises and considered the use as a coffee shop is, therefore, a change of use. However, having regard to the minor scale of the coffee shop relative to the size of the overall shop, its operation only during the opening hours of, and in conjunction with, the overall shop, the absence of independent access from the internal shopping mall or from the Shopping Centre car park, and the absence of potential for use as an independent shopping unit, it was considered that the change of use does not constitute a material change of use and, therefore, does not constitute development for the purpose of the Act.

8.3.4. In RL2442 the Board considered the change of use of a premises from public house to off-licence only constituted a material change of use by reason of trading patterns, consumption on the premises versus consumption off the premises, car parking and

traffic, likely impacts on neighbouring residential amenity and social behaviour; and therefore constituted development and was not exempted development.

- 8.3.5. In RL2641 relating to a change of use from a public house to an off-licence and whether a change of use from one commercial unit (a public house) to two commercial units, namely, a public house and an off-licence, the Board considered that the off-licence operated as a separate entity from the public house and therefore could not be considered an ancillary use; that the off-licence use was materially different from the public house use by reason of trading patterns, consumption on / off the premises, traffic, and external impacts and therefore a material change of use had occurred in part of the premises, and therefore constituted development and was not exempted development.
- 8.3.6. RL2573 relates to the change of use of the ground floor of a premises which was previously used exclusively as a public house with an off-licence, into its current use as a convenience store with ancillary off-licence. The Board determined that the change of use was a material change of use and, therefore, development. The Board considered the change from a public house to a shop would come generally within the exempted development scope of Schedule 2 Part 1 Class 14(b); but the change of use in the instant case included an off-licence, which was not included in the definition of "shop" per article 5(1) of PDR, 2001. Therefore, the said change of use, which included use of the premises as a shop with ancillary off-licence use, could not avail of the exempted development provisions of the said class 14(b).
- 8.3.7. RL3037 considered whether the ancillary retailing of wine from the amalgamated unit no's 18/19 is or is not development or is or is not exempted development. The Board concluded that wine falls within the definition of alcohol and that notwithstanding the definition of shop under Article 5 (1), condition 2 of the permission authorising the retail use specifically precluded the sale of alcohol and the sale of wine would materially contravene this condition and was development and was not exempted development.

## 9.0 **Assessment**

### 9.1. **The Question**

- 9.1.1. The purpose of this referral is not to determine the acceptability or otherwise of the matters raised 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 within the meaning of the relevant legislation.
- 9.1.2. The referral asks whether the holding of occasional wine tasting with finger food as an ancillary event at a retail store on a once-per-month basis is or is not development or is or is not exempted development. I refer the Board to another referral currently under consideration on the same site, file reference ABP-317404-23, which asks whether the hosting of events or promotions whereby food and alcoholic beverages are consumed for a fee is or is not development or is or is not exempted development. Whilst I note some similarities between the two cases, because of the specific wording provided for each case I propose to consider each question separately.
- 9.1.3. The question to be determined by the Board relates only to the 'use' of the property and does not include the carrying out of any 'works'.

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

- 9.2.1. The permitted use on the site is as a shop. This is confirmed by the first party and the planning authority and having regard to the planning history on the site and my findings following a site inspection I agree that the current use is as a local convenience shop with the floor area dedicated to a range of groceries and with an area dedicated to the sale of wine. Detailed floor plans have not been submitted relating to the floor area dedicated to convenience goods or to wine sales. From my observations during my site inspection and having reviewed the documents submitted with the appeal, I am satisfied that the floor area given over to the sale of wine is subsidiary to the main retail use as defined in Article 5 which includes the sale of food or wine for consumption off the premises, where the sale of such food or wine is subsidiary to the main retail use.
- 9.2.2. Planning permission 4115/99 on the referral site related to a change of use to office from shop with a condition that the use of offices shall cease on or before the expiration of a period of ten years. This time period has elapsed and the use has reverted to a shop. There were no other conditions relating to the use of the

premises attached to this permission and I am not aware of any other historic permissions on the site.

- 9.2.3. The first party argues that the sale of wine for consumption off the premises is subsidiary to the main retail use, noting the floor area dedicated to wine and the floor area dedicated to other uses. The first party also submits that the limited scale of the use is ancillary to the use as a shop and that the events are not events as defined in the Act. Appendix J *'Note from Conservation Architect'* attached to the first party appeal states that *"As part of the shop activity in the promotion of its offering, occasional wine tastings are hosted: such wine tastings include up to sixteen people tasting a number of selected wines, with snacks to accompany the wine. No meal is served."*
- 9.2.4. Article 10 of the Planning and Development Regulations 2001, as amended, refers to changes of use within classes of use which are exempted development. Part 4 of Schedule 2 identifies the classes of use within which a change of use may be determined to be exempted development. Class 1 of Part 4 refers to use as a shop with the definition of a shop provided for in Article 5(1) as outlined above. There are no other uses listed in Class 1. The definition of a shop makes provision for the sale of food or of wine for consumption off the premises with wine defined as any intoxicating liquor which may be sold under a wine retailer's off-licence. The definition precludes uses including a restaurant or public house and the definition does not include the sale of food or wine for consumption on the premises.
- 9.2.5. Whilst I am satisfied that the events are not events as defined in S. 229 of the Act, the first party has not included details of the floor area that is given over to wine tasting events when such events take place. Nor have they indicated whether the events take place during retail opening hours and are available to retail customers as part of their convenience shopping experience or whether they occur as separate events outside of retail opening hours.
- 9.2.6. The question asked states the events are 'ancillary events' and the submission describes this as part of the shop activity. If it is understood that the ancillary events take place during retail hours with the aim of encouraging wine sales at the premises then such events could be considered to be aligned with similar events which occur in supermarkets and off-licences where some consumption occurs on the premises

in the form of a taste of food or wine available to retailers during retail opening hours as part of the convenience shopping experience, but which does not include the sale of wine for consumption on the premises.

9.2.7. For clarity in the assessment of this referral I consider it appropriate to reword the question to reflect the above considerations as follows:

‘Whether the holding of occasional wine tasting with finger food as an ancillary event during retail store opening hours as part of the convenience retail offer, and which does not include the sale of wine for consumption on the premises, on a once-per-month basis is or is not development or is or is not exempted development’.

9.2.8. I consider the holding of occasional wine tasting with finger food as an ancillary event at a retail store as phrased in section 9.2.7 above to represent a change of use having regard to the definition of a shop in Article 5 which does not provide for the sale of wine for consumption on the premises. There are no other exemptions available which provide for this change of use.

9.2.9. The first party argues that the premises is a shop and is not a restaurant and that the owners have a wine retailer’s licence which authorises the sale of wine for consumption on or off the premises. I note that licencing for the sale of wine is governed under a separate licencing regime and I do not agree that the holding of a ‘wine on-licence’ which allows the licence holder to sell wine for consumption on the premises provides for this use to take place without relevant consideration of the provisions of the Planning and Development Acts and Regulations.

9.2.10. In relation to the first party’s case that the planning authority has not shown a flexible or accommodating approach and that enforcement does not represent a proportionate response as provided for under Section 28, I consider that matters relating to enforcement are a matter for the planning authority. I also note that the Guidelines related to the temporary provision of delivery and take-away services from restaurants and cafes. The appeal site does not contain a café or restaurant and the relevant period to which the Guidelines relate has now expired. I would also question the relevance of the Act of 2021 as detailed by the first party which made provision for the sale of intoxicating liquor in certain circumstances in seating areas



located outside licensed premises as I do not consider such provisions relate to the appeal site and I note that the relevant period to which this Act relates has expired.

9.2.11. If the Board are satisfied that an actual change in use would occur, the second issue to consider is whether this actual change constitutes development or not. The definition of 'development' in the Act includes the 'making of any material change of use of any structures or land'. Case law has dictated that various tests can be applied to determine whether or not a change of use is material in planning terms, including whether there has been an actual change in use, the effects, impacts or consequences in planning terms of the change, the scale of effects and if they give rise to concern.

9.2.12. I consider the availability of food and wine tasting to shoppers whilst carrying out their convenience shopping would be unlikely to attract additional customers. I note that the use does not involve the preparation and service of a meal and is unlikely to result in additional noise, traffic, deliveries, hours of operation, etc. beyond what would be typical of a convenience retail store. I consider that the scale of such a change would be unlikely to give rise to material effects or impact on the proper planning and development of the area. I therefore consider the change of use is not a material change of use.

9.2.13. Having regard to the above, I consider that the holding of occasional wine tasting with finger food as an ancillary event during retail store opening hours as part of the convenience retail offer, and which does not include the sale of wine for consumption on the premises, on a once-per-month basis is not a change of use and is not a material change of use and as defined by Section 3(1) of the Planning and Development Act, 2000 (as amended) is not development.

### **9.3. Is or is not exempted development**

9.3.1. As noted above I consider the use is not development as the change of use is not material.

### **9.4. Restrictions on exempted development**

9.4.1. As I have concluded that the subject use is not development the question of any possible restriction on exempted development does not arise.

## 9.5. **Appropriate Assessment**

- 9.5.1. Having regard to the existing development on site, the minor nature of the development referenced in the questions above, the location of the referral site in a serviced area and the separation distance to the nearest 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.

## 10.0 **Recommendation**

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

**WHEREAS** a question has arisen as to whether the holding of occasional wine tasting with finger food as an ancillary event during retail store opening hours as part of the convenience retail offer, and which does not include the sale of wine for consumption on the premises, on a once-per-month basis is or is not development or is or is not exempted development:

**AND WHEREAS** La Gourmande requested a declaration on this question from Dublin City Council and the Council issued a declaration on the 18<sup>th</sup> day of May, 2023 stating that the matter was development and was not exempted development:

**AND WHEREAS** La Gourmande referred this declaration for review to An Bord Pleanála on the 14<sup>th</sup> day of June 2023:

**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
- (c) Article 6, article 9 and article 10 of the Planning and Development Regulations, 2001, as amended,
- (d) Part 1 and part 4 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (e) The infrequent and subsidiary nature of the use,
- (f) the planning history of the site,
- (g) the pattern of development in the area:

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

- (a) the use of the subject premises for the holding of occasional wine tasting with finger food as an ancillary event during retail store opening hours as part of the convenience retail offer, and which does not include the sale of wine for consumption on the premises, on a once-per-month basis does not constitute use as a "shop" as defined in Article 5(1) of the Planning and Development Regulations 2001, as amended, because the definition of 'shop' under Article 5(1) of the said Regulations does not provide for consumption of wine or food on the premises, and
- (a) the change of use of does not raise issues that are material in terms of the proper planning and sustainable development of the area and this change does not constitutes a material change of use and is not, therefore, "development" within the meaning of section 3 of the Planning and Development Act, 2000, and
- (b) the change of use, not being material, is not development.

**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 a shop for the holding of occasional wine tasting with finger food as an ancillary event

during retail store opening hours as part of the convenience retail offer, and which does not include the sale of wine for consumption on the premises, on a once-per-month basis is not development.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

---

Bernadette Quinn  
Planning Inspector

13<sup>th</sup> June 2024