



An
Bord
Pleanála

Inspector's Report ABP-317404-23

Question

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.

Location

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

Declaration

Planning Authority

Dublin City Council South

Planning Authority Reg. Ref.

0149/23

Applicant for Declaration

La Gourmande

Planning Authority Decision

Is not exempted development

Referral

Referred by

La Gourmande

Owner/ Occupier

Paul Arnold/ La Gourmande

Observer(s)

Paul Arnold

Date of Site Inspection

22nd 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-317344-23 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 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’.

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 25th day of May, 2023, the planning authority declared that the proposed development consisting of the hosting of events or promotions whereby food and alcoholic beverages are consumed for a fee, 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. As this is a planning issue then the question arises as to whether this use comes under the use class as set out in Article 5 (1) of the Regulations
- Regardless of what wine licence the applicant holds, Article 5(1) (d) of the Regulations specifically mention 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 hosting events or promotions on the premises, whereby food and alcoholic beverages are consumed for a fee, 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.
- A material change of use is any change that substantially affects neighbours or the environment. The subject case does constitute a material change of use, as the hosting of events or promotions whereby food and alcoholic beverages are consumed for a fee 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.
- The use is not considered to come within the scope of the definition of a "shop" provided in article 5(1) of the Regulations. Therefore, the exemption

provided under article 10(1) does not apply in this case and the subject development is not exempted development.

4.2.2. Other Technical Reports

None

5.0 Planning History

5.1. Referral Site:

0139/23 / ABP-317344-23: Section 5 application as to 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 considered development and if so does it constitute exempted development under the provisions of the Planning and Development Act 2000 (as amended) and the Planning and Development Regulations, 2001 (as amended). 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, 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 Pleanala 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 317344-23, 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.
- The District Court Summons relating to the site 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.
- Six such 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 occasional activity is ancillary to the use of the premises as a shop and the scale of wine sales is ancillary to the balance of the retail unit.
- 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 tasting of wine is not an “event” as defined in Section 229 of the Planning and Development Act.
- 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. If taken logically it would mean that no supermarket or off licence would host a wine tasting evening.
- DCC planner in their report references the case of Monaghan County Council vs Brogan 1986 [IR.333] to support their conclusion. That case relates to an abitur and the slaughtering of cattle and is not comparable.

7.2. Planning Authority Response

None received.

7.3. Owner’s response

A response was received from the owner of the premises, Paul Arnold. The response can be summarised as follows:

- Supermarkets and off-licences offer tasting of samples of food and wine and grocery stores offer tastings such as at cheese counters. Tastings are established as an integral part of the function of a grocery shop / off-licence.
- The question of direct payment does not feature in planning law, it is of no account if patrons are not charged for these tastings directly; the intention and practice is to recover the cost of such tastings through enhanced sales.

- The practice of grocery shops providing take away coffee with a small bar for condiments where customers can linger and enjoy their coffee is an ancillary use and does not make a grocery a 'café'.
- The premises has availed of a wine on-licence which legalises consumption on the premises while allowing sales of wine for consumption off the premises and are therefore fully within their rights to trade as a grocer and wine seller holding tastings as necessary to support those functions.
- An Bord Pleanála can decree that the tasting functions, being necessary for or ancillary or incidental to the main function, are of minor consequence in planning terms, and could further clarify what level of activity is permissible before the shop and off-licence nature of the premises becomes subsumed into another category.
- Food served is finger food, no meals are served.
- Tastings of wine are offered to groups not exceeding sixteen people, in the context of an informative talk, this should not be confused with a restaurant or café function.

7.4. **Further Responses**

None

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>(aa) from use for the sale of food for consumption on the premises to use for the sale of food for consumption off the premises.</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>	<p>Where a premises is used during the relevant period for the sale of food for consumption off the premises in accordance with Article 3, then, upon the expiration of the relevant period –</p> <p>(a) the premises may be used for the sale of food for consumption on the premises in accordance with the permission that applied in respect of that premises immediately before the commencement of the relevant period, and</p> <p>(b) the use of the premises for the sale of food for consumption off the premises shall not be exempted development</p>
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Part 4 of Schedule 2 sets out exempted development class of use to which Art 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 use of a shop for 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. I refer the Board to another referral currently under consideration on the same site, file reference ABP-317344-23, which 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. 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. Having regard to the content of the documentation submitted I consider that the wording specifically cited in the referral documentation is generally appropriate for consideration in this referral.
- 9.1.4. 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 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 for consumption off the premises 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. I am not aware of any other historic permissions on the site.
- 9.2.3. The sale of food and alcohol for consumption on the premises arises in respect of what the first party in their submission describes as wine tasting with snacks for up to 16 people, that no meal is served, no kitchen equipment is used and no cooking occurs on the premises.
- 9.2.4. 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. From my observations during my site inspection I agree that the retail floor area given over to the sale of wine for consumption off the premises is ancillary to the floor area dedicated to other items for sale. However, the first party has not included details of the floor area that would be given over to serving food and alcohol when the 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.

- 9.2.5. Noting the number of people that would attend, the limited floor area of the shop as observed during my site inspection, and that a fee is charged for the events or promotions, I consider it reasonable to conclude that the two uses would not operate at the same time and that the hosting of events or promotions would take place outside of retail operating hours within the retail floor space. The question refers to 'events' but the referrer argues that this is not as defined in S.229 of the Planning and Development Act 2000, as amended. Attendees would, however, pay a fee to attend. I am satisfied that the events are not events as defined in S. 229 of the Act.
- 9.2.6. Based on the above it is reasonable to conclude that patrons of the events would attend specifically for the purpose of such events or promotions. I therefore do not accept the argument that the events are similar to provision of a taste of cheese at a cheese counter or a taste of wine at an off-licence to retailers for which no fee is charged. In my opinion such tastings occur as part of the retail function where customers accept a free taste of wine or food whilst convenience shopping and are unlikely to attract customers in their own right.
- 9.2.7. Notwithstanding the first party's submission, the question put to the Board refers broadly to consumption of alcoholic beverages and food and no restrictions are set out on such use within the question. I consider the use of the premises for hosting events as described is a separate use to the shop and is not subsidiary to the retail use.
- 9.2.8. 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.
- 9.2.9. The first party in their referral to Dublin City Council state that the events act as a social and recreational opportunity for local residents and friends to gather and socialise. Based on the referral question asked I agree that the use of the premises for hosting events where alcohol and food are consumed for a fee is a social or recreational use.
- 9.2.10. I consider the hosting of events or promotions whereby food and alcoholic beverages are consumed for a fee represents a change of use having regard to the definition of

a shop in Article 5 which does not provide for the sale of food or alcohol for consumption on the premises.

- 9.2.11. 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.
- 9.2.12. In relation to the first party's case that the planning authority has not shown a flexible approach to enforcement as provided for under Section 28 Guidelines I consider that matters relating to enforcement are a matter for the planning authority. 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.
- 9.2.13. 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.
- 9.2.14. The holding of promotions and events and serving of food and alcohol for a fee suggest in my view that the outlet would operate as a standalone event and food and drink outlet and would not be subsidiary to the primary use of the shop. I consider the use of the structure for events where alcoholic beverages and food are served for a fee to visiting members of the public would be an intensification of use which would bring with it material planning considerations. In this regard, I consider that the use is likely to be a trip generator in and of itself and that it would generate custom independent of the shop and at different hours resulting in materially different planning implications than those of a retail shop. For example, people attending the

events would likely be separate from those attracted to the premises for convenience shopping and hours of operation of the events are likely to differ from hours of operation as a shop. Furthermore, the question asked refers to the service of food and does not indicate whether this includes preparation or not and the use therefore has the potential to give rise to odour concerns. Consequently, the use would have different compatibility with neighbouring land uses, which would need to be assessed, particularly with respect to the impacts on the residential amenities of the area.

9.2.15. Having regard to the above, I consider that the uses are materially different and that a material change of use has occurred. I conclude that the use of a shop for hosting of events or promotions whereby food and alcoholic beverages are consumed for a fee is development as defined by Section 3(1) of the Planning and Development Act, 2000 (as amended).

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

9.3.1. The next test, after considering the use to which the referral relates to be development, is whether the development is or is not exempted development.

9.3.2. 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. I consider that the sale of food and alcohol for consumption on the premises is not provided for within the definition of a 'shop'.

9.3.3. I consider there is no scope for reliance on the provisions of Class 14, Schedule 2, Part 1 of the Regulations to support the Referrer's case. The provisions for change of use are confined to a change from other uses including from the use for the sale of hot food for consumption off the premises, from use as a public house or a restaurant, to use as a shop.

9.3.4. I conclude that the effect of the proposed use for hosting of events or promotions whereby food and alcoholic beverages are consumed for a fee introduces an additional use which is a material change of use for which there is no exemption under the Regulations and constitutes a development that is not exempted development.

9.3.5. In my opinion, there are no other legislative provisions under either the Act of the Regulations (or elsewhere) that provide for exemptions which can be availed of in respect of this change of use.

9.4. **Restrictions on exempted development**

9.4.1. As I have concluded that the subject use is development that is not exempted 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 question 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 use of a shop for 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:

AND WHEREAS La Gourmande requested a declaration on this question from Dublin City Council and the Council issued a declaration on the 25th

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 21st 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 planning history of the site,
- (f) the pattern of development in the area:

AND WHEREAS An Bord Pleanála has concluded that:

- (a) the use of the subject premises for hosting of events or promotions whereby food and alcoholic beverages are consumed for a fee 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 alcoholic beverages or food on the premises, and
- (b) the change of use of the subject premises, from use as a shop to use for the hosting of events or promotions whereby food and alcoholic beverages are consumed for a fee 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 and is, therefore, “development” within the meaning of section 3 of the Planning and Development Act, 2000, and

- (c) There are no provisions in the Act or Regulations whereby such development would be exempted.

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 hosting of events or promotions whereby food and alcoholic beverages are consumed for a fee is development and is not exempted 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

13th June 2024