



An
Bord
Pleanála

Inspector's Report ABP-318628-23

Question

Whether the use of part of the existing shop as a takeaway at GALA, Aghards House, Thornhill, Celbridge Co. Kildare is or is not exempted development.

Location

GALA, Aghards House, Thornhill, Celbridge Co. Kildare

Declaration

Planning Authority

Kildare County Council

Planning Authority Reg. Ref.

ED/1073

Applicant for Declaration

Mohammad Rahman

Planning Authority Decision

Is not exempted development

Referral

Referred by

Mohammad Rahman

Owner/ Occupier

Mohammad Rahman

Observer(s)

None.

Date of Site Inspection

14th May 2024

Inspector

Emma Nevin

1.0 Site Location and Description

- 1.1. The site is located in an established residential area within Thornhill Gardens, c.2km northwest of the centre of Celbridge. The subject unit is located within a multi-unit development in an area comprising the subject convenience retail unit, a hairdresser shop in the adjoining ground floor unit, and a creche located at first floor level. These uses are long established at this location.
- 1.2. The surrounding use is predominantly residential with ‘Scoil Mochua’ located directly across Aghards Road. There is an open space located directly due north and a park/amenity area located nearby to the south.
- 1.3. The takeaway unit is located to the rear corner of the shop and includes both oven and deep-frying equipment, with a service counter and associated internal signage board.

2.0 The Question

- 2.1. 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)(b) of the Act is, as follows:

“Whether the use of part of the existing shop as a takeaway at GALA, Aghards House, Thornhill, Celbridge Co. Kildare is or is not exempted development”.

3.0 Planning Authority Declaration

3.1 Declaration

On the 9th November 2023 Kildare County Council issued a decision concluding that on the basis of the information submitted advised that the use of part of the existing premises for takeaway food, ancillary to the main shop use at GALA, Aghards House, Thornhill, Celbridge, is development and is not exempted development pursuant to Section 2 and 3 of the Planning and Development Act 2000, as amended, and Article 6, Article 9 and Article 10 (1) of the Planning and Development Regulations 2001, as amended.

3.2. Planning Authority Reports

3.2.1. The basis for the Planning Authority's decision includes:

- In order to determine whether the proposed works are development the existing use on site must be understood.
- The existing use of the premises as a shop is defined in Part 2 Article 5 (1) of the Planning and Development Regulations, 2001, as amended.
- However, Article 5 (1) specifically outlines that this “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 intoxication liquor for consumption off the premises except under paragraph d), or any use which class 3 or Part 4 of Schedule 2 applies”. It is therefore considered that the retention of the sale of hot food does not fall under the use category of the shop as defined in Part 2, Article 5 (1) of the Planning and Development Regulations 2001, as amended.
- It is also noted that the parent permission on site 89/1106 which was granted for a creche, neighbourhood shop, and one apartment at first floor level with associated car parking, had a specific condition attached restricting the use of the shop.
- Therefore, the development is contrary to Article 10 (1)(a), (b) and (c) of the Planning and Development Regulations 2001, as amended which outlines that Development for 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.
- It was considered that the change of use is development and is not exempted development pursuant to Section 2 and 3 of the Planning and Development Act 2000, as amended, and Article 6, Article 9, and Article 10 (1) of the Planning and Development Regulations 2001, as amended.

3.2.2. Other Technical Reports

None.

4.0 Planning History

Planning Reference 2360117 – Permission was refused by Kildare County Council on 5th October 2023 for Change of use of a section (12.5 sqm) of the existing retail unit for the sale of hot food for consumption off the premises, along with all associated site development and facilitating works.

The reasons for refusal stated:

“1. The takeaway use although part of a larger convenience retail store is not considered acceptable as it is an incompatible use (‘not permissible’) in the zoning matrix for which the subject zoning is ‘Existing Residential/Infill’ and ‘Takeaway’. Having regard to the physical setting and context of the site, which is surrounded by/in close proximity to a residential dwellinghouses and a primary school, the retention of the change of use (take-away), would be incompatible with zoning objective, would seriously injure the residential amenity of properties in the vicinity and would depreciate the value of properties in the vicinity. The development is therefore contrary to Section 3.3 Land Use Zoning Objectives of the Celbridge Local Area Plan 2017-2023, Section 15.13.7 of Kildare County Council Development Plan 2023-2029 (which aim to safeguard the location of fast-food outlets to appropriate locations) and accordingly, contrary to the proper planning and sustainable development of the area.

2. Section 15.3.7 of the Kildare County Development Plan 2023-2029 seeks to protect the amenity impacts where a takeaway is proposed/for retention through provision of adequate management and mitigation details. The level of documentation submitted with the application is wholly insufficient. There are no details of cooking area, cooking methods, serving area, menu, hours of operation, delivery service or operations management provided. There are also no details of noise and vibration management, odour ventilation traffic management (pedestrian and vehicular), litter management, refuse and recycling collection provided. It is therefore impossible to assess the amenity impacts of the takeaway facility. In the absence of such details, the Planning Authority cannot therefore be satisfied that the

proposed development would not be prejudicial to public health. The development is contrary to Section 15.13.7(which seeks for provision of adequate management and mitigation details for takeaway units) of Kildare County Council Development Plan 2023-2029 and to the orderly development of the area. The development is therefore contrary to the proper planning and sustainable development of the area.

3. The advertising signage (Gala: Pizza and Kebab House) to the front of the building is both unauthorised and contrary to Condition No.17 of retail parent permission 012105 (two-storey extension to provide for additional retail space). In addition, the advertising signage appears stuck on and does not form an integral part of the shopfront (fascia signage and respective pilasters/columns) and is therefore at odds with the appearance of the retail unit and wider host building. The advertising sign would contravene condition no. 17 of parent permission 012105 and contrary to 15.14.3 Advertising on Shopfronts of Kildare County Council Development Plan 2023-2029 and to the orderly development of the area. The development is therefore contrary to the proper planning and sustainable development of the area”.

Planning Reference 211146 – Permission was granted by Kildare County Council on 12th November 2021, for the provision of off licence subsidiary to the main retail use with an area of 4.8 sq. m.

Planning Reference 052219 – Permission was refused by Kildare County Council on 9th November 2011 for Change of use from video shop to Thai & Chinese takeaway with facilities for preparation of food for consumption off the premises.

The reason for refusal states:

“1. Having regard to - (a) the proximity of the subject site to adjoining dwellings, (b) the existing pattern of development in this area, (c) the provisions of the Celbridge Development Plan, 2002, (d) the zoning of the subject site, it is considered that the proposed development would be an inappropriate form of development at this location, would contravene materially a development objective of the development plan for this area, which is to protect and improve the amenities of existing residential areas and would have the potential to seriously injure the amenities, or depreciate the value of property in the vicinity which individually and collectively would be contrary to the proper planning and sustainable development of the area.

2. The proposed development would establish an undesirable precedent for similar type of development's in this area which individually and collectively would be contrary to the proper planning and sustainable development of the area".

Planning Reference 012105 - Permission was granted by Kildare County Council on 18th November 2002 for a two-storey extension to existing premises at Aghards House, Thornhill, Celbridge to provide for additional retail and creche space and to enlarge and enclose existing porch with associated shop front and signage.

Planning Reference 891106 - Permission was granted by Kildare County Council on 09th May 1990 for creche, neighbourhood shop, and one apartment at first floor level with associated car parking.

Condition No.8 of 891106 is of relevance, which states:

"The use of the shop shall be restricted to uses specified in Article 9 of the Local Government (Planning & Development) Regulations and the Third Schedule Part IV of these Regulations. In particular, the use shall not include use for the sale of hot food for consumption off the premises (i.e., 'take-away'). Reason: To limit the use of the development to use which is considered acceptable within this residential area".

Enforcement

UD8202: - Takeaway being operated from a retail unit. Warning Letter issued; Application to retain/regularise submitted subsequent.

5.0 Policy Context

5.1. Development Plan

- 5.1.1. The relevant Development Plan is the Kildare County development Plan 2023 - 2029.

Celbridge Local Area Plan 2017-2023 – now expired.

- 5.1.2. The site is zoned Objective B – Existing Residential and Infill "*To protect and enhance the amenity of established residential communities and promote sustainable intensification*".

5.1.3. The site is not subject to any specific designations, and it is removed from features of archaeological interest, designated scenic routes, views or and prospects and from sites of nature conservation interest.

5.2. Natural Heritage Designations

5.2.1. The subject site is not located within a designated European Site. The site is located c.3km due south of the Rye Valley Carton SAC (Site Code: 001398).

6.0 The Referral

6.1. Referrer's Case

6.1.1. A first party referral was received on behalf of the operator of the unit Mohammad Rahman, against the decision made by the Planning Authority, that the above works do not constitute exempted development, under the relevant provisions of the Planning and Development Regulations, 2001 (as amended). The case submitted by the referrer can be summarised as follows:

- The area of the shop which has been development for the sale of hot food has a total floor area of 12.5 square metres which represents 7.6% of the total floor area of the shop and therefore can only be considered as an ancillary use to the main shop/ retail business.
- The sale of hot food is only available when the shop is open and cannot operate independently of the shop unit, which further confirms its ancillary use of the shop unit.
- Under Section 2 of the Planning and Development Regulations the definition of a shop in Section D states "*for the sale of sandwiches or other food for consumption off the premises, where the sale of food is subsidiary to the main retail use*".
- It is respectfully contended that the use of this small area of the existing shop premise should be considered exempt under the relevant sections. This practice is in place in a multitude of shop units throughout the county, as deli

counters etc. and no action is taken by the county councils so why is this operator being pursued?

- Kildare County Council's issue with the use of the small area for the sale of hot food is directly as a result of complaints being made by a neighbouring resident, who has continually complained to the Council about various businesses in the neighbourhood centre.
- Over the last number of years every effort has been made on each occasion by the owners and operators of different units to placate the resident however unfortunately none seem to make any difference.
- The building and its commercial uses were granted by Kildare County Council as part of proper planning to function as a neighbourhood centre to enable the residents of ever-expanding town of Celbridge have access to some services within their community without the need to always travel into the centre of town and thereby cause congestion and pollution in doing so.
- It is normal and natural that this neighbourhood centre in providing these services to the public will generate some degree of noise and traffic from customers using the services but given the location this must surely be considered part of urban living with a collection of housing developments and schools etc.
- It would be most regrettable if the position held by the complaint seemed to influence any decision made by Kildare County Council with regard to the matter or any other matter when there was a personal interest.
- It has been requested that Kildare County Council refrain from any further action with regard to the enforcement notice issued in relation to this matter until the application has been fully processed by An Bord Pleanála.

6.2. Planning Authority Response

- 6.2.1. The Planning Authority had no further comment and referred all parties to the information on file submitted to the planning authority, and the planning history.

6.3. Owner/ occupier's response (*where not the referrer*)

None

6.4. Further Responses

None

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000, as amended

7.1.1. Section 2 (1) of the Act provides the following definitions of relevance:

“unauthorised development” means, in relation to land, the carrying out of any unauthorised works (including the construction, erection or making of any unauthorised structure) or the making of any unauthorised use;

“structure” means any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined, and— (a) where the context so admits, includes the land on, in or under which the structure is situate,

“unauthorised structure” means a structure other than—

(a) a structure which was in existence on 1 October 1964, or

(b) a structure, the construction, erection or making of which was the subject of a permission for development granted under Part IV of the Act of 1963 or deemed to be such under section 92 of that Act, being a permission which has not been revoked, or which exists as a result of the carrying out of exempted development (within the meaning of section 4 of the Act of 1963 or section 4 of this Act);

“unauthorised use” means, in relation to land, use commenced on or after 1 October 1964, being a use which is a material change in use of any structure or other land and being development other than— (a) exempted development (within the meaning of section 4 of the Act of 1963 or section 4 of this Act), or (b) development which is the subject of a permission granted under Part IV of the Act of 1963, being a permission which has not been revoked, and which is carried out in compliance with that permission or any condition to which that permission is subject;

Section 3(1) of the Act states the following in respect of ‘development’:

“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.”

Section 4 (1) sets out various forms and circumstances in which development is exempted development for the purposes of the Act. Section 4 (1) (a) – (l) sets out what is exempted development for the purposes of this Act and includes: (f) providing for ‘*development carried out on behalf of, or jointly or in partnership with, a local authority, pursuant to a contract entered into by the local authority concerned, whether in its capacity as a planning authority or in any other capacity*’, and (j) “*development consisting of the use of any structure or other land within the curtilage of a house for any purpose incidental to the enjoyment of the house as such*”.

Section 4(2) of the Act provides that ‘the Minister may, by regulations, provide for any class of development to be exempted development’. The main regulations made under this provision are the Planning and Development Regulations 2001, as amended.

Section 4 (4) states that “notwithstanding paragraphs (a), (i), (ia) and (l) of subsection (1) and any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required”.

Section 4(2) of the Act provides that ‘the Minister may, by regulations, provide for any class of development to be exempted development’. The main regulations made under this provision are the Planning and Development Regulations 2001, as amended.

7.2. Planning and Development Regulations, 2001

7.2.1. Article 5(1) provides interpretations for the purposes of exempted development and defines a 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,
- (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.

7.2.2. Article 6(1) of the Planning and Development Regulations 2001(as amended) (hereinafter ‘the 2001 Regulations’) provide that ‘subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1’.

7.2.3. As provided for in Article 9(1) of the Planning and Development Regulations sets out various restrictions on works that would otherwise be exempted development under Article 6 including.

“(a) if the carrying out of such development would—

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

7.2.4. Class 10 (1) Change of Use of the Planning and Development Regulations states:

“(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 purposes 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....”

This is discussed in section 8 of this report.

7.3. Previous Cases

- 7.3.1. The following cases relate to similar change of use referrals specifically from shop units to incorporate some sort of ‘takeaway’ use, RL2941, and RL2590 relates.

8.0 Assessment

8.1. Preliminary Matters

- 8.1.1. It should be noted that the purpose of this referral is not to determine the acceptability or otherwise of a temporary structure for living accommodation on the lands in association with the development of a single residential dwelling, but rather whether or not the matter in question constitutes development, and if so, falls within the scope of exempted development.
- 8.1.2. As noted above, at the time of the site visit, the temporary living accommodation referred to in the referral was in situ on site and was occupied by the applicant and his family.

8.2. Is or is not development

- 8.2.1. The definition of ‘development’ involves the carrying out of works on, in, over or under land or the making of any material change in the use of any structures or other land, Section 3 (1) of the Planning and Development Act, 2000, as amended refers.
- 8.2.2. Firstly, I will examine whether or not a change of use has occurred and if any change of use is material and, therefore, development. If any change of use is not material, no further question arises but if on the other hand there is a material change of use, then development has occurred, and the Board must determine whether it is

exempted development. It is well established that “material” in the phrase “material change in the use” in section 3(1) of the Act means “material for planning purposes”, for example the judgment of Keane J. Felix²⁵⁷ in the High Court in *Monaghan County Council v. Brogan* [1987] I.R. 333 at p.338. Therefore, if the use would require planning permission, then it is a material change of use.

8.2.3. Article 5(1) of the Regulations provides an interpretation of a “shop” for the purposes of exempted development. A “shop” means a structure used for inter alia the retail sale of goods or the sale of sandwiches or other food or of wine for consumption off the premises, where the sale of such food or wine is subsidiary to the main retail use and where the sale, display or service is principally to visiting members of the public. This definition does not include any use as a hotel, a restaurant or a public house, or for the sale of hot food or intoxicating liquor for consumption off the premises except where the sale of food or wine is subsidiary to the main retail use as described above; or any use to which class 2 or 3 of Part 4 of Schedule 2.

8.2.4. Having inspected the site, reviewed the documentation, and planning history, I note the following with regard to the overall layout of the premises:

- Part of the rear of the shop premises provides a kitchen cooking/preparation area including oven and deep-frying equipment.
- There is a service counter with associated signage box.
- There is no internal seating provided and no external seating outside the shop.
- The remainder of the unit is laid out as a shop i.e., GALA.
- No menus were visible, and the takeaway service was not operational at time of site inspection.
- The use of the shop was restricted to specific uses under Condition No. 8 of Planning Reference 89/1106, which included that the use shall not include a use for the sale of hot food for consumption off the premises (i.e., “take-away”).

8.2.5. The referrer states that the area of the shop which has been developed for the sale of hot food has a total floor area of 12.5 sq. m., which represents 7.6% of the total floor area of the shop, can only be available when the shop is open and cannot

operate independently, and therefore, can be considered as an ancillary use to the main shop.

8.2.6. While the scale of the use could be considered ancillary to the existing shop unit, I reference the permitted use of the shop as per Planning Reference 89/1106, which did not permit/include the provision of a takeaway facility, and as such the use as a takeaway does not come within the scope of the definition of a “shop” provided in Article 5(1), in this instance.

8.2.7. I therefore consider that the change of use of part of the premises from shop to takeaway use in this instance, comes within the scope of the definition of “development”, as defined in Section 3 of the Planning and Development Act, 2000, as amended, and is therefore a material change of use that would require planning permission.

8.3. Is or is not exempted development

8.3.1. Class 1 of Part 4 of Schedule 2 refers to “Use as a shop.” The critical issue is whether or not the subject use can be classified as a “shop” and therefore considered exempted development.

8.3.2. The referrer states that under Section 2 of the Regulations, and given the stated definition of a shop, that the use of the small area of the existing shop premises should be considered exempted development under the relevant sections, and further states that this practice is in place in a multitude of shops throughout the country.

8.3.3. Notwithstanding the above, I reference Article 10(1) of the Planning and Development Regulations, which includes that development consisting of a change of use within any one of the classes of use specified in Part 4 of Schedule 2, shall be exempted development for the purposes of the Act, subject to the following conditions -

Article 10 (b) states “contravene a condition attached to a permission under the Act”.

8.3.4. Condition no. 8 of Planning Ref 89/1106, for a development on site consisting of a creche, neighbourhood shop, and one apartment at first floor level with associated car parking specified:

“The use of the shop shall be restricted to uses specified in Article 9 of the Local Government (Planning and Development) Regulations and the Third Schedule part IV of these Regulations. In particular, the use shall not include use for the sale of hot food for consumption off the premises (i.e., “take-away”).

Reason: To limit the use of the development to use which is considered acceptable within this residential area”.

8.3.5. Therefore, it is considered that the subject use would contravene a condition of an extant permission at the subject site, and I conclude that Article 10(1)(b) applies, i.e., the change of use is not exempted development.

8.3.6. The referrer has stated that the use of the area is subject to numerous complaints to the Council and references other issues such as traffic, etc. However, I note that the question posed under this referral relates to the use of part of the structure for ‘takeaway food ancillary to the main shop use’, and not any complaints or enforcement pertaining to the unit. Therefore, the assessment is based on the question posed only.

8.4. Restrictions on exempted development

8.4.1. I will now consider whether any restrictions on exemption would apply in this case, notwithstanding the above conclusion that the subject change of use is development and is not exempted development, in order to provide as full an assessment as possible.

8.4.2. Article 9 of the Regulations provides restrictions on exemptions. However, Article 9(1)(a)(i) specifies development that would:

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

8.4.3. As previously noted, Condition no. 8 of Planning Ref 89/1106 specified:

“The use of the shop shall be restricted to uses specified in Article 9 of the Local Government (Planning and Development) Regulations and the Third Schedule part IV of these Regulations. In particular, the use shall not include use for the sale of hot food for consumption off the premises (i.e., “take-away”).

Reason: To limit the use of the development to use which is considered acceptable within this residential area”.

- 8.4.4. The use of the part of the existing shop as a takeaway for the sale and consumption of hot food for consumption of the premises contravenes condition no. 8 of Planning Ref 89/1106. The use is, therefore, not exempted development, and constitutes a material change of use and is therefore development, as discussed above.
- 8.4.5. To conclude, it is considered that the subject use would contravene a condition of an extant permission at the subject site. Therefore, Article 9(1)(a)(i) applies, i.e., the change of use is not exempted development.

8.5. Appropriate Assessment

- 8.5.1. Under Section 177U(9) of the Planning and Development Act, 2000 (as amended) it is stated that “in deciding upon a declaration or a referral under section 5 of this Act a planning authority or the Board, as the case may be, shall where appropriate, conduct a screening for appropriate assessment in accordance with the provisions of this section.”
- 8.5.2. Section 4 (4) of the Act also states that “notwithstanding paragraphs (a), (i), (ia) and (l) of subsection (1) and any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required”.
- 8.5.3. As noted in Section 5.2.1 above, the subject site is not located within a designated European Site. Notwithstanding, there are no works relating to the change of use by itself and within the context of the site and surroundings. Having regard to the nature and scale of the development and the nature of the receiving environment and/or proximity 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.

9.0 Recommendation

- 9.1. Having considered the contents of the file, and following inspection of the site and surrounding area, I conclude the change of use as described constitutes

development and is not exempted development. Accordingly, 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 part of premises for takeaway food ancillary to shop use at GALA, Aghards House, Thornhill Gardens, Celbridge, Co. Kildare is or is not development or is or is not exempted development:

AND WHEREAS Mohammad Rahman requested a declaration on this question from Kildare County Council and the Council issued a declaration on the 9th day of November 2023 stating that the matter was development and was not exempted development:

AND WHEREAS referred this declaration for review to An Bord Pleanála on the 5th day of December 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) Articles 5, 6, 9 and 10 of the Planning and Development Regulations, 2001, as amended.
- (c) Class 1 of Part 4, Schedule 2 of the Planning and Development Regulations 2001 as amended.
- (d) the planning history of development on the site and
- (e) the existing use of the retail unit and the layout of the premises as now constituted:

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The planning permission granted in respect of the premises provided for use of the shop only, not including use for the sale of hot food for consumption off the premises (i.e., takeaway).
- (b) The use of part of the shop for takeaway food, would constitute a material change of use and would, therefore, constitute development, in accordance with section 3(2)(b)(i) of the Planning and Development Act 2000 (as amended).
- (c) The change of use is not within the scope of the exemption provided in Article 10(1) of the Planning and Development Regulations 2001, as amended.
- (d) The development does come within the scope of the restrictions on exemption provided in Article 9 of the Planning and Development Regulations 2001, as amended.

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 use of part of the existing shop as a takeaway 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.



Emma Nevin
Planning Inspector

27th May 2024