An Coimisiún Pleanála

Inspector's Report
ABP-321929-25

Question	Whether the change of use of a retail shop to a patisserie shop is or is not development and, if so, whether the development constitutes exempt development or does not constitute exempt development, and whether works to provide for an internal fit-out as a patisserie shop is or is not development and, if so, whether the development constitutes exempt development or does not constitute exempt development
Location	Krispy Kreme, 42A Saint Patrick's Street, Cork T12 H767

Declaration

Planning Authority	Cork City Council (CCC)
Planning Authority Reg. Ref.	R906/24
Applicant for Declaration	Krispy Kreme Ireland Limited
Planning Authority Decision	For both questions for which a declaration is sought it is development and it is not exempted development

Referral	First Party v CCC Declaration
Referred by	Krispy Kreme Ireland Limited
Owner/ Occupier	Krispy Kreme Ireland Limited
Observer(s)	None

Date of Site Inspection	1st August 2025
Inspector	Anthony Kelly

1.0 Site Location and Description

1.1. The subject unit is a ground floor unit on the corner of St. Patrick's Street and Marlborough St. in Cork city centre. The subject building is four storeys in height. There is glazing to both the northern and eastern elevations of the unit, which are the only two public-facing elevations, and it is occupied by Krispy Kreme. The unit has a floor area of 65.4sqm. It has a sales area, but no customer seating is provided.

2.0 The Question

2.1. The question subject of the referral is as follows. There are two elements to it.

'Whether the change of use of a retail shop to a patisserie shop is or is not development and, if so, whether the development constitutes exempt development or does not constitute exempt development, and whether works to provide for an internal fit-out as a patisserie shop is or is not development and, if so, whether the development constitutes exempt development or does not constitute exempt development'.

3.0 Planning Authority Declaration

3.1. Declaration

3.1.1. Cork City Council (CCC) declared that, in accordance with the question,

'*Part 1 of the specific question for which a declaration is sought* **IS DEVELOPMENT** and **IS NOT EXEMPTED DEVELOPMENT** in accordance with relevant legislation.

Further, *Part 2 of the specific question for which a declaration is sought* **IS DEVELOPMENT** and **IS NOT EXEMPTED DEVELOPMENT** in accordance with relevant legislation' (italics, bold print, and capitalisation not added).

3.2. **Planning Authority Reports**

3.2.1. One Planning Report was prepared. The report, among other things, outlines provisions of the Cork City Development Plan 2022-2028, a planning history including referral decisions from the Commission, relevant legislation, and considers that neither environmental impact assessment (EIA) nor appropriate assessment (AA) are applicable.

3.2.2. The report also contains a planning assessment. It was concluded in relation to the first question that the use of the unit 'as a patisserie shop represents a new and separate use from the previous retail use and does not constitute use as a 'shop' as defined in Article 5(1) of the Planning and Development Regulations 2001, as amended, because the use involves food for consumption off the premises which is not a use which is subsidiary to another retail use'. In relation to the second question, it states that 'Given that the change of use from a retail unit to a patisserie shop is not exempted development, by virtue of its intrinsic connection to same, its fit-out as a patisserie shop therefore' is development and is not exempted development.

3.2.3. No technical reports were prepared by CCC.

4.0 Planning History

4.1.1. The planning history of the site is:

4.1.2. P.A. Reg. Ref. 23/42457 – In 2024, an application for retention and permission for (i) retention of change of use from previous retail to cafe with internal seating for sale of food and drinks for consumption within and off the premises, and (ii) retention of shopfront and signage, was refused for two reasons[1]: (i) the café use is contrary to objectives relating to the prime retail function of the city centre and (ii) the shopfront and signage is visually discordant in the Architectural Conservation Area (ACA). A first party appeal to the Board[2] under ABP-319016-24 was subsequently withdrawn.

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[1] It appears that the 'permission' element of the application related to the proposed internal seating.
[2] An Bord Pleanála changed its name to An Coimisiún Pleanála in 2025. I use the names interchangeably, depending on the circumstances.

4.1.3. P.A. Reg. Ref. 15/36395 / ABP Reg. Ref. PL 28.245203 – In 2015, following a first party appeal of a refusal of permission by CCC for replacement of an outdoor display sign, the Board refused permission because it would have an adverse visual impact by reason of visual obtrusiveness and incompatibility with the character of the area.

4.1.4. P.A. Reg. Ref. 04/28717 – In 2004 CCC granted permission for a new ground floor shopfront and refused retention permission for an external illuminated advertising sign. A first party appeal to the Board was subsequently withdrawn (PL 28.209472).

4.1.5. P.A. Reg. Ref. 91/16568 – Temporary permission was granted to convert an illuminated advertising display to trivonder illuminated display. On appeal, the Board attached a condition that the illuminated sign be removed before 1st January 1999 and that the site then revert to use for static advertising purposes[3].

4.1.6. P.A. Reg. Ref. E8545 – This is a current planning enforcement file related to a change of use from retail to café bakery and new signage.

Precedent

4.1.7. I draw the Commission's attention to a very similar referral case under ABP-321916-25, involving the same referrer and essentially the same question at 27 William Street, Galway. The Commission decided that the change of use of a retail shop to a patisserie shop is not development and the works to provide for an internal fit-out, as a patisserie shop, is development and is exempted development.

5.0 Policy Context

5.1. Cork City Development Plan (CCDP) 2022-2028

5.1.1. The site is in an area zoned 'ZO 05, City Centre'. The zoning objective is 'To consolidate and facilitate the development of the central area and to promote its role as a dynamic mixed used centre for community, economic, civic, cultural and residential growth'.

5.1.2. The site is located within the Oliver Plunkett Street ACA.

[3] This detail was taken from the Planning Report for 04/28717.

5.2. **Natural Heritage Designations**

5.2.1. The nearest area of natural heritage is Cork Lough proposed natural heritage area (pNHA) approx. 1.3km to the southwest. The nearest European site is Cork Harbour special protection area (SPA) approximately 3km to the southeast.

6.0 The Referral

6.1. **Referrer's Case**

6.1.1. The referrer's case can be summarised as follows, based on the 'Referral of Section 5 Declaration' document dated 20th February 2025. The document includes an introduction, a summary of the CCC declaration, a site description, a planning history, excerpts from the CCDP 2022-2028 relating to the zoning objective and ACA, and precedents for exempted development.

- The CCC Planning Report outlines precedent cases referring to café type units, which are not relevant to the subject unit. It is not a café; it does not sell coffee and does not provide internal seating. The unit is for the sale of doughnuts, mineral drinks, and merchandise to be taken away by a consumer. There is no cooking or food preparation on site, and no hot drinks are sold.
- The completed works comprise internal fit-out and upgrades to provide for a contemporary patisserie retail unit e.g. addition of partition walls for a staff washroom and a sales counter/display area. They do not affect the character of the building or area. Signage and external works will be subject of a separate planning application.
- The unit was previously occupied by Porter's Newsagents, not materially different to a retail shop selling boxes of doughnuts, mugs, coffee cups, blankets, caps, or hoodies, as is sold in the unit. The purpose of the unit is to allow customers to purchase a product and bring it from the premises.

Change of Use

- The development complies with and directly relates to the definition of a 'shop' under Article 5 (1)(a) of the Regulations i.e. 'for the retail sale of goods'. CCC incorrectly assessed the use of the unit in the context of Article 5 (1)(d) i.e. ' 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 …' The unit sells a product to be taken by the consumer to enjoy, 'similar to any other retail unit'.

- Article 5 (1)(a) does not differentiate between comparison and convenience goods. Doughnuts, i.e. food, is a convenience good, and is no different to the sale of a chocolate bar from a newsagent.

- There is no production of doughnuts on site. They are produced in Blanchardstown and Naas and are delivered every morning. The unit has no ovens or cookware.

- There is no material change of use at the premises. ABP-305094-19[4] is cited in the context of the reason for the non-exemption being due to the baked goods being prepared and cooked on site. In this current application the sale of products maintains the status of a shop and is not a material change of use.

- Article 9 of the Regulations lists the restrictions on exempt development under Article 6[5]. Each of these is addressed in the document, and none are affected by the subject development. In relation to subsection (xii) (ACA), 'It is contended that no works are proposed to the exterior of the structure or relate to the exterior of the structure in this instance, thus, it will not materially affect the character of the area. The signage and external works are subject to a separate planning application'. Subject to Article 9 the proposed development is exempt.

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[4] The Board decided that the change of use from retail clothes unit to retail bakery unit at Manor Mills Shopping Centre, Maynooth is development and is not exempted development.

[5] In my opinion Articles 6 and 9 of the Regulations do not apply to this referral. Article 6 outlines certain exempt development categories such as Schedule 2 Parts 1 (Exempted Development – General), 2 (Exempted Development – Advertisements), and 3 (Exempted Development – Rural). Article 9 (1) states that development to which article 6 relates shall not be exempted development for the purposes of the Act under certain circumstances. As Article 6 does not relate to the development subject of the referral, then neither does Article 9.

Internal Fit-Out Works

- The fit-out works comprise alterations, repair and improvement works to the interior and minor works to the exterior. They are considered to be exempt development under Section 4 (1)(h) of the Planning & Development Act, 2000 (as amended).
- The site is not located in an area which requires EIA or AA.

6.2. Planning Authority Response

6.2.1. No response was received from the planning authority.

7.0 Statutory Provisions

7.1. Planning & Development Act, 2000 (as amended) (the Act)

7.1.1. Section 3 (1)(a) states 'development' means 'the carrying out of any works in, on, over or under land, or the making of any material change in the use of any land or structures situated on land …' except where the context otherwise requires. The definition of 'works', under section 2 (1), except where the context otherwise requires, 'includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal …'

7.1.2. Section 4 (1) identifies development that shall be exempt for the purposes of the Act. This includes subsection (h) which is 'development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures'. Section 4 (4) states that development shall not be exempted development if an EIA or AA is required.

7.1.3. Section 82 (1) states that, notwithstanding Section 4 (1)(h), 'the carrying out of works to the exterior of a structure located in an architectural conservation area shall be exempted development only if those works would not materially affect the character of the area'.

7.2. Planning & Development Regulations, 2001 (as amended)

7.2.1. Article 5 (1) states a 'shop means a structure used for any or all of the following purposes, where the sale, display or service is principally to visiting members of the public' –

(a) for the retail sale of goods,

(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'.

7.2.2. Schedule 2 Part 4 (Exempted Development – Classes of Use) identifies, as Class 1, 'Use as a shop'. There are 11 other classes of use. Article 10 (1) states '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 …' if it would comply with certain stipulations.

8.0 Assessment

The purpose of this referral is not to determine the acceptability or otherwise of the proposed use in respect of the proper planning and sustainable development of the area, but rather whether or not the matter in question constitutes development, and if so, whether it falls within the scope of exempted development.

As per paragraph 2.1 the question subject of this referral is:

Whether the change of use of a retail shop to a patisserie shop is or is not development and, if so, whether the development constitutes exempt development or does not constitute exempt development, and whether works to provide for an internal fit-out as a patisserie shop is or is not development and, if so, whether the development constitutes exempt development or does not constitute exempt development.

8.1. Is or Is Not Development

8.1.1. There are two elements to this in the overall question: whether the change of use is or is not development and whether the internal fit-out is or is not development.

<u>Change of Use</u>

8.1.2. It is stated in the referral document that no material change of use has occurred at the premises from its use as a newsagent to its occupation by Krispy Kreme. The unit sells doughnuts, minerals and merchandise. There is no cooking or food preparation on site, and no hot drinks are sold. There is no internal seating area and 'the unit sells a product which is taken home by the consumer to enjoy – similar to any other retail unit'. I am satisfied that the unit functions as a normal retail unit in that goods to be sold are produced elsewhere, are delivered to the store, are displayed, and are subsequently sold for enjoyment off the premises. It is no different in practise to, for example, a newsagent or a bookshop. The unit is consistent with Article 5 (1) (Shop)(a) (the retail sale of goods) of the Regulations.

8.1.3. In contrast with the referral document, the CCC Planning Report focuses on Article 5 (1)(d). This relates to '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 …'

8.1.4. As set out previously, in my opinion the subject premises complies with the meaning of Article 5 (1)(Shop)(a) i.e. the unit is used for the retail sale of goods. The definition of 'shop' includes for '*any* or all' (italics added) of the purposes set out in subsections (a) to (i). The premises is used for display and retail sale of doughnuts (and subsidiary items; minerals, and merchandise) principally to visiting members of the public. Therefore, it clearly sits within the definition of a 'shop'. The fact that it may not fall into the definition of subsection (d) does not negate the fact that it fully complies with the definition of subsection (a). It need only comply with one of the nine subsections.

8.1.5. Therefore, I consider that the change of use of a retail shop to a patisserie shop is not development as it does not comprise a material change of use.

Internal Fit-Out

8.1.6. Section 3 (1)(a) states 'development' means 'the carrying out of any works in, on, over or under land …' except where the context otherwise requires. The definition of 'works', under section 2 (1), except where the context otherwise requires, 'includes any act or operation of construction … alteration, repair or renewal …' As per page 6 of the referral document, works have clearly taken place relating to, for example, addition of partition walls, countertops, and a sales counter/display area.

8.1.7. Therefore, in my opinion, the works for the internal fit-out comprise development.

8.2. Is or is Not Exempted Development

Change of Use

8.2.1. As I do not consider the change of use to be a material change of use I consider the change of use to be exempt development.

Internal Fit-Out

8.2.2. The question as set out in the referral clearly only relates to the 'internal fit-out', with commentary (Section 4) and drawings (drawing numbers 22176-PP-020 and 22176-PP-021) indicating that external signage is to be subject to a different application.

8.2.3. Having inspected the site and having regard to the referral documentation, I am satisfied that the internal works that have been carried out are consistent with the relevant requirements of Section 4 (1)(h) of the Act i.e. they are works for the improvement or other alteration of the unit which affect the interior of the structure.

Although the internal works are visible from the exterior, given the extent of glazing on both public elevations, I do not consider that they materially affect the external appearance of the structure.

8.2.4. As such, I consider the internal fit-out works comprise exempt development.

8.3. **Restrictions on exempted development**

8.3.1. I address issues relating to AA and EIA, as per Sections4 (4) of the Act, in Sections 9 and 10 of this IR.

<u>Change of Use</u>

8.3.2. Schedule 2 Part 4 (Exempted Development – Classes of Use) of the Regulations identifies, as Class 1, ‘Use as a shop’. I consider the previous and current uses to be consistent with this. Article 10 (1) of the Regulations states,

> ‘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
>
> (d) be a development where the existing use is an unauthorised use, save where such change of use consists of the resumption of a use which is not unauthorised and which has not been abandoned’.

8.3.3. In relation to subsection (a) this Assessment concludes that relevant works comprise exempted development. In relation to subsections (b) and (c) I am satisfied that it would not contravene a condition attached to a permission or be inconsistent with any use specified or included, as per Section 4 of this IR. In relation to subsection (d) the use continues an authorised use.

8.3.4. Having regard to the foregoing I do not consider that the subject development would be de-exempted having regard to Article 10 (1) of the Regulations.

Internal Fit-Out

8.3.5. The internal fit-out works only materially affect the interior of the unit as per Section 4 (1)(h) of the Act. Therefore, notwithstanding that the site is located within Oliver Plunkett Street ACA, I do not consider that the provisions of Section 82 (1) of the Act apply.

9.0 Appropriate Assessment (AA) Screening

9.1. Section 4 (4) of the Act states that development shall not be exempted development if an AA of the development is required.

9.2. I have considered this application in light of the requirements of section 177U of the Planning & Development Act, 2000 (as amended).

9.3. The ground floor retail unit subject of the referral has a 65.4sqm floor area and is in Cork city centre. The referral involves a change of use of the unit from a retail shop to a patisserie shop and internal fit-out works.

9.4. The nearest European site is Cork Harbour SPA approximately 3m to the southeast. No AA-related issues were raised by any party to the referral.

9.5. Having considered the nature, scale and location of the development I am satisfied that it can be eliminated from further assessment because it could not have any effect on a European site. The reasons for this conclusion are:

- the small scale and nature of the development which comprises a change of a use of a ground floor retail unit in a fully serviced city centre location with the only works being internal.
- the approximate 3km distance from the closest European site and lack of connections (the site is in an urban location and there is no watercourse adjoining the subject building).

9.6. I conclude, on the basis of objective information, that the development would not have a likely significant effect on any European site either alone or in combination with other plans or projects. Likely significant effects are excluded and therefore AA (under section 177V of the Planning & Development Act, 2000 (as amended)) is not required.

10.0 Environmental Impact Assessment (EIA) Screening

10.1. Section 4 (4) of the Act states that development shall not be exempted development if an EIA of the development is required.

10.2. While the change of use cited in the referral does not constitute a project for the purposes of EIA i.e. it does not comprise construction works, demolition, or intervention in the natural surroundings, the internal works to facilitate it would come within the definition of a project. However, these works are not a class for the purposes of EIA as per the classes of development set out in Schedule 5 of the Planning & Development Regulations, 2001 (as amended), or Part V of the 1994 Roads Regulations. No mandatory requirement for EIA therefore arises and there is also no requirement for a screening determination. Refer to appendix 1.

11.0 Recommendation

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

WHEREAS a question has arisen as to whether the change of use of a retail shop to a patisserie shop is or is not development and, if so, whether the development constitutes exempt development or does not constitute exempt development, and whether works to provide for an internal fit-out as a patisserie shop is or is not development and, if so, whether the development constitutes exempt development or does not constitute exempt development at No. 42A Saint Patrick's Street, Cork.

AND WHEREAS Krispy Kreme Ireland Limited care of Hughes Planning and Development Consultants of 85 Merrion Square, Dublin requested a declaration on the said question from Cork City Council and the said Council issued a declaration on the 24th day of January 2025 stating that the said matter is development and is not exempted development.

AND WHEREAS Krispy Kreme Ireland Limited care of Hughes Planning and Development Consultants referred the declaration for review to An Bord Pleanála on the 20th day of February 2025.

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

(a) Sections 2(1), 3(1), 4 (1)(h), 4 (4) and 82 (1) of the Planning & Development Act, 2000 (as amended),

(b) Article 5(1) of the Planning & Development Regulations, 2001 (as amended),

(c) Part 4 of Schedule 2 to the Planning & Development Regulations, 2001 (as amended),

(d) the planning history of the site and authorised use as a shop,

(e) the nature of the use being for the sale of goods,

AND WHEREAS An Coimisiún Pleanála has concluded that:

(a) The change of use of a retail shop to a patisserie shop is not development as the nature of the use has not materially changed.

(b) The works to provide for an internal fit-out, as a patisserie shop, is development and is exempt development as the works are internal, have no external impact, and do not affect the character of Oliver Plunkett Street Architectural Conservation Area.

NOW THEREFORE An Coimisiún Pleanála, in exercise of the powers conferred on it by Section 5 (3)(a) of the 2000 Act, hereby decides that the change of use of a retail shop to a patisserie shop is not development and the works to provide for an internal fit-out, as a patisserie shop, is development and is exempted development, at Number 42A Saint Patrick's Street, Cork.

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 me, directly or indirectly, following my professional assessment and recommendation set out in my report in an improper or inappropriate way.

Anthony Kelly
Senior Planning Inspector
29th June 2026

Appendix 1 – Environmental Impact Assessment (EIA) Pre-Screening

Case Reference	ABP-321929-25
Development Summary	Change of use of retail shop to a patisserie shop and works to provide for an internal fit-out to same
Development Address	Krispy Kreme, 42A Saint Patrick's Street, Cork
	In all cases check box or leave blank
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (For the purposes of the Directive, "Project" means: - The execution of construction works or of other installations or schemes, - Other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources)	☒ Yes, it is a 'Project'. Proceed to Q2. The change of use is not a project but the internal works to facilitate the change of use is a project. ☐ No. No further action required.
2. Is the proposed development of a CLASS specified in Part 1, Schedule 5 of the Planning & Development Regulations 2001 (as amended)?	
☐ Yes, it is a Class specified in Part 1.	
☒ No, it is not a Class specified in Part 1. Proceed to Q3	
3. Is the proposed development of a CLASS specified in Part 2, Schedule 5, Planning & Development Regulations 2001 (as amended) OR a prescribed type of proposed road development under Article 8 of Roads Regulations 1994, AND does it meet/exceed the thresholds?	
☒ No, the development is not of a Class specified in Part 2, Schedule 5 or a prescribed type of proposed road	

development under Article 8 of the Roads Regulations, 1994.	
☐ Yes, the proposed development is of a Class and meets/exceeds the threshold.	
☐ Yes, the proposed development is of a Class but is sub-threshold.	

4. Has Schedule 7A information been submitted AND is the development a Class of development for the purposes of the EIA Directive (as identified in Q3)?	
Yes ☐	
No ☒	Pre-screening determination conclusion remains as above (Q1 to Q3)

Inspector: ________________________ **Date:** _______________