



An  
Bord  
Pleanála

## Inspector's Report PL.28.RL3515

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**Question**

Whether the change of use from retail to coffee shop is or is not development and whether it is or is not exempted development.

**Location**

No. 11 Patrick Street, Cork City

**Referrer**

Mestonway Limited

**Planning Authority**

Cork City Council

**Planning Authority Reg. Ref.**

R427/16

**Observer**

Aramark

**Date of Site Inspection**

8<sup>th</sup> February 2017

**Inspector**

Kenneth Moloney

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## 1.0 Site Location and Description

- 1.1. The referral site is located on Patrick Street, Cork City and is a ground floor unit that operates as a Starbucks Café. Patrick Street is a premier shopping street in Cork City.
- 1.2. The café itself has no table or chairs and operates on a hot / cold drinks and hot / cold food take-away basis.
- 1.3. The café also sells a range of retail products including mugs, coffee and tea pots and packaged tea and coffee.

## 2.0 The Declaration

- 2.1. The Planning Authority issued a declaration on the 17<sup>th</sup> October 2016, to the effect that the Starbucks coffee shop represents a new and separate use from the previous retail use and is more akin to a café / restaurant / takeaway. This Declaration has now been referred to the Board, pursuant to Section 5 of the Act, for review.
- 2.2. The Declaration concluded that the sale of hot and cold food and drink for the consumption off the premises is not subsidiary to another retail use, and due to the nature of sales and the layout the premises is akin to a café / restaurant and such uses are expressly excluded from the definition of shop under Article 5(1) of the Planning and Development Regulations.
- 2.3. The main points of the Planner's report, upon which the Declaration decision was based, is summarised as follows: -
  - The first issue is to consider whether the change of use is a material change of use and therefore whether it is development.
  - Previous referral cases have shown that a coffee shop can be either seen as a shop, where the sale of beverages is a subsidiary use or is a use more akin to a restaurant.
  - Determining factor in deciding whether a coffee shop falls into a retail use or a restaurant use depends on the relationship of the development relative to the primary use as well as the provision of seating for customers.

- In this current unit the sale of hot beverages and packaged food for consumption on/off the premises is the primary retailing activity.
- There are also the sale of minor goods such as mugs, packaged tea and coffee, tea and coffee pots. However it cannot be argued that the café / restaurant use is partial or subsidiary to this retailing use.
- The premises is also currently operating as a hot-food takeaway however such food is not subsidiary to the main retail use.
- The number of transactions that relate to the retailing of coffee mugs / cafetieres is likely to be wholly subsidiary.
- It is noted that tables and chairs have been removed since the last referral case relating to the subject site. However the existing counter tables allow the consumption of hot beverages within the premises.
- It is noted that the 1994 Planning Regulations were amended to facilitate the definition of a shop under the 2001 Regulations. This amendment to the regulations was to allow for the sale of sandwiches (including hot food) for the consumption off the premises where it is subsidiary to the main retail use.
- The primary function of the existing unit is for the sale of hot and cold food and drink consumption both on and off the premises and this use is not subsidiary to any other retailing activity on the site.
- Having regard to Article 5 (d) of the Regulations the current use within the unit is more akin to a restaurant / café / takeaway.
- It is therefore considered that a change of use has occurred.
- It is contended that issues that would arise in dealing with the change of use are similar to that which would arise in dealing with a planning application.
- In this regard compliance with zoning and planning policies would be an issue given Objective 13.4 of the County Development Plan in relation to the protection of prime retail frontage of Patrick's St.
- The overriding aim of the objective is to protect the primary retailing land uses on Patrick's Street as the main shopping street in the city.

- Paragraph 13.16 of the County Development Plan states that there is a need to maintain a strong retail character on the street.
- It is a concern that the subject change of use would result in an incremental loss of retailing uses on Patrick's Street.
- In addition to the above it is unclear whether the independent access was ever available to the upper floors. In this regard objective 9.36 of the County Development Plan is noted.
- Other differences to the current use in relation to a retail unit include issues in relation to re-heating equipment / air handling equipment and possible odours arising from new uses that would not be applied to retail.
- The current use also has different impacts on the street compared to retail such as littering related to the take-away use and management of waste disposal.
- Restrictions in relation to opening hours to ensure hot food / late night takeaway does not operate from the site must also be considered.
- The site also impacts on the street in terms of daily delivery of foodstuffs.

### 3.0 The Question

*“Whether the use of no. 11 St. Patrick's Street, Cork, Co. Cork, as a Starbucks coffee shop, having regard to its current nature, layout and scale comprises of a change of use from retail use and as such whether this is or is not development and is or is not exempted development”.*

### 4.0 Policy Context

#### 4.1. Development Plan

The operational Development Plan is the Cork City Development Plan, 2015 – 2021.

The appeal site is zoned City Centre Retail Area where the objective is ‘to provide for the protection, upgrading and expansion of retailing, in particular higher order

comparison retailing, as well as a range of other supporting uses in the City Centre Retail Area’.

## 5.0 The Referral

5.1. The following is the summary of a referral;

### Introduction

- It is contended that the nature, scale and layout of the subject unit is consistent with the definition of a shop.
- A previous determination by An Bord Pleanála in RL3425 concluded that the previous operation in the unit, which included seating, did not consist of a shop.
- All customer seating and the toilet facilities have been removed for this current referral application. These modifications have particular regard to the previous comments of the planning inspector in RL3425.
- The current use comprises the retail sale of goods and falls within the definition of shop under Article 5(1) (a) of the Planning and Development Regulations, 2001 – 2015.
- The current use is not akin to restaurant as there is no kitchen, food preparation, cooker, mechanical extraction systems, and no back of house area.
- It is therefore contended that the change of use from retail use to Starbucks café does not represent a material change of use and is therefore not development.

### Planning History

- In RL3425 (11 Patrick Street) the Board determined that the use of a coffee shop does not constitute a shop as defined in Article 5(1).
- The Planning Inspector in his report (in RL3425) provided a detailed rationale why the use at no. 11 Patrick Street was more akin to a restaurant.

- In RL2940 An Bord Pleanála determined that the change of use of a bank as use to a coffee shop is exempted development as the existing use of the site is a coffee shop which falls within the scope of Class 1 of Part 4 of Schedule 2 of the Planning and Development Regulations, 2001.
- The Board considered that a change of use from Bank to coffee shop was exempted development having regard to Class 14 of Schedule 2 of Part 1 of the Planning and Development Regulations, 2001 and that coffee shop fell within the definition of a shop.
- This determination is important as it confirms that a coffee shop can fall within the definition of a shop. A change of use therefore does not arise.
- The seating area in no. 11 Patrick Street has been entirely removed and is more like a shop than the coffee shop that relates to RL2940.
- The submission includes photographs which illustrate seating within the coffee shop the subject of RL2940.
- In relation to RL3072 An Bord Pleanála determined that the change of use to a coffee shop from bank is development and not exempted development.
- The importance of this current referral are the factors that are relevant in determining whether a coffee shop is classified as a retail use. These factors include the extent of customer seating and facilities provided and the extent of consumption of products sold on the premises.
- In relation to RL2516 the Board determined that the use of a former camera shop as a juice bar is not development.
- This juice bar provided for the retail sale of food and drink for consumption off the premises and the use also included the sale of sandwiches. The Juice Bar is similar to the current coffee shop as both allow for the retail sale of food and drinks for the consumption off the premises. Both operations have limited seating.
- In relation to RL3424 An Bord Pleanála determined that a change of use from retail to coffee shop is development and not exempted development.

- The reasons for this conclusion included that the scale, nature and layout of the unit is more akin to restaurant use, the change of use material and the erection of external signage amounts to works and is therefore development.
- The Board also determined in relation to RL3426 that change of use from retail use to coffee shop is development and not exempted development.
- The Inspector's report makes reference to the extent of seating, the inclusion of customer toilet facilities. These referral cases were dealt with on a case by case basis.
- The property the subject of this referral has been altered to have regard to factors outlined by the Board as being critical to determining what form of coffee shop constitutes a shop.

#### Section 5 Declaration

- Article 5(1) of the Planning and Development Regulations, 2001, sets out the definition of a shop.
- The subject unit will comprise of the retail sale of goods comprising drinks and food, in particular coffee and teas (including packaged products), juices, a variety of confectionary items, pre-packed sandwiches and salads, coffee mugs, coffee presses, cafetieres etc.
- The Regulations outline what a shop use is and this is consistent with the current unit.
- Article 5(1)(d) notes that the subsidiary sale of heated sandwiches fall within the definition of a shop.
- Having regard to the comments in the Planning Inspector's report RL3425 (11 Patrick Street) the applicant has amended the floor area removing seating and toilet facilities.
- In RL3425 An Bord Pleanála concluded that the scale, nature and use of the unit is more akin to a restaurant.
- The current use is clearly not a restaurant nor is the use a hot food 'take-away' use.



- The opening hours of the retail use are similar to other retail uses in the local area. There is no late night hours.
- Heated sandwiches for consumption off the premises accounts for less than 2% of overall transactions.
- No material change of use has occurred to the property and therefore there is no development.

### The Planner's Report

- The planner's report concluded that it cannot be argued that the retail of hot drinks for consumption off the premises is subsidiary the main retail use.
- Hot food is sold on the premises for the consumption on/off the premises. It is acknowledged that this is not sold as a subsidiary use to a main retail use.

### Response to Local Authority's Planner's Report and Declarataion

- It is contended that the logic that the sale of hot beverages for the consumption on / off the premises can only be considered a retail use when it is subsidiary to a primary use disregards supermarkets, butchers and bakers as they sell food for consumption off the premises and the role of such food is not subsidiary to any other retailing activity.
- It is submitted that the Council has mistakenly applied Article 5(1) of the Regulations by relying on Article 5(1) (d) and not referencing 5(1) (a).
- Article 5(1)(d) states that the retail sale of goods falls within the definition of a shop. Hot food is the only exclusion from the retail sale of goods however the exclusion of hot food does not apply when the sale of hot food is subsidiary to the main retail use as is the case no. 11 Patrick Street.
- It is contended that Article 5(1)(d) is an alternative to, and not a restriction of Article 5(1)(a) 'for the retail sale of goods'.
- The conclusion by the Council that a coffee shop cannot be considered a retail use as it is not subsidiary to a primary retail use is contrary to Bord

orders RL2940, 2887, RL3424 and RL3426. These referrals all conclude that a coffee shop can fall within Article 5(1) definition of a shop. The Board concluded that the overall nature and layout of the premises were critical factors.

- It is therefore concluded in line with previous Board determinations that a coffee shop in the current use accords with the Article 5(1) definition of a shop.
- The primary retailing activity comprises of the sale of hot and cold food and drinks for consumption on and off the premises. The primary retail activity is the sale of teas and coffees, juices, pre-packed sandwiches and associated food products. There is also the sale of mugs, coffee and tea pots, packaged tea and coffee all for consumption off the premises.
- There is no customer seating provided.
- The sale of heated or cold sandwiches represents approximately 2% of the overall transactions.
- It is intended from the current layout of the premises that goods sold are intended exclusively for consumption off the premises. There are also no toilet facilities available.
- There is no food preparation on site. All food products are ordered in pre-packed material. As such the use is clearly not a functioning restaurant / café.

## 5.2. Planning Authority Response

The following is the summary of a response submitted by the Planning Authority;

- In response to paragraph 5.7 of the referral submission the Planning Authority notes that supermarket is defined separately than to a shop in the regulations.
- The current use, i.e. the sale of hot and cold food and drink products, which is the main use, is not specified in the regulations.
- In contrary to paragraph 5.8 and paragraph 5.9 of the referral submission the sale of sandwiches or other hot food must be subsidiary to the main retail use

in order for them to be considered to fall within the definition of a shop as set out in Article 5(1) (d) of the regulations.

- The applicant's agent states that the primary use of the current use is for the sale of all products for consumption off the premises and therefore cannot be described as a shop.
- It is contended that the 'non-readily consumable' food products and 'readily consumable' food and drink products have different planning impacts. It is submitted that 'readily consumable' food and drinks products sold in a shop are sold for immediate consumption whereas 'non-readily consumable' food products sold in a supermarket and sold for non-immediate consumption.
- One such impact is the potential for littering on the public realm surrounding the unit.
- It is submitted that the subject premises has counter facilities which are in use by customers consuming product on site and the consumption of food and drink is both permissible and encouraged on site. This would not be the case in a supermarket.
- It is concluded that the use at no. 11 Patrick Street cannot be considered a shop.

### 5.3. Referrer's Response

The following is the summary of a response from the referrer's agent;

- It is submitted that the City Council have misunderstood the key definition of a shop in Article 5(1) of the Planning and Development Regulations, 2001.
- It is submitted that the definition of a shop is any item listed between (a) and (i) of Article 5(1).
- It is contended that the current use falls under the definition of a shop under Article 5(1) (a).
- Accordingly all points by the City Council made in relation to Article 5(1) (d) are of little relevance.

- It is considered that if all shops were dependent of Article 5(1) (d) to be classified as a shop then all shops selling food as their main activity would fall outside the definition of a shop.
- It is contended that the regulation maybe subject to a slight drafting error that should contain the words 'hot food' rather than 'food'. The purpose of Article 5(1) (d) is to allow for the selling of wine and food for consumption off the premises when these sales are subsidiary to the main retail use.
- The sale of heated sandwiches falls under Article 5(1) (d) as these sales transactions only account for 2% of overall transactions.
- All other goods sold in Starbucks Café fall under the category Article 5(1) (a).
- It is contended that if City Council's agreement was correct it would apply that all retail outlets selling food as the primary product, i.e greengrocers, supermarkets, butchers etc., would not fall under the definition of shop.
- The current use at no. 11 Patrick Street fall under the definition of shop having regard to Article 5(1) (a) and (f).
- The City Council distinction between non-readily consumable goods and readily consumable goods is not recognised in planning law, planning guidelines or policies and is without any substance in planning terms.
- However there are many products sold by shops and almost all products of food and drink are readily consumable off the premises. This includes products such as fresh fruit, fresh juices, milk, water etc.
- Furthermore there is no planning substance in relation to food sold which is consumed within a short time of purchase and that which is for non-immediate consumption. This distinction has no basis in planning law, policy or regulations.
- Many shops sell products for immediate consumption off the premises or for consumption within a short timescale of purchase.
- The City Council seek to draw a distinction between the retail sale of different types of goods, which are of no relevance in terms of planning law, policy or practice.

- It is submitted that there is no intension for customers to consume their purchases on the premises although customers may start consuming their purchases on the premises.

#### 5.4. **Observations**

There is an observation from Aramark who submit that they do not wish to make any submissions.

### 6.0 **Evaluation**

#### 6.1. The Facts of the Case

The facts of the matter include the following;

- Planning permission (L.A. Ref. 88/14214) **granted** for the construction of a retail outlet at no. 11 Patrick St.
- Planning permission (L.A. Ref. 95/19448) **granted** for an Early Learning Centre (E.L.C) at no. 11 Patrick St.
- The City Council received a **planning enforcement** complaint (E7622) in August 2015 regarding a proposed Starbucks Café at the ground floor unit of no. 11 Patrick Street.
- On the 2<sup>nd</sup> March 2016 the An Bord Pleanala determined in a referral case **RL.3425** that the use of the premises as a coffee shop (Starbucks Café) at no. 11 Patrick Street, Cork, is development and is not exempted development.
- On the 14<sup>th</sup> of September 2016 a first party **Section 5 application** was submitted to Cork City Council asking the question whether the change of use from retail to coffee shop at no. 11 Patrick Street is or is not development and is or is not exempted development.
- On the 17<sup>th</sup> October 2016 Cork City Council issued a **declarataion** that the planning authority considered that the change of use from retail to coffee shop constitutes a material change of use and is development and is not exempted development.

- On the 14<sup>th</sup> November 2016 a **first party referral** was received by John Spain Associates, Planning Consultants, on behalf of Mestonway Ltd. in accordance with the provisions of Section 5(3)(a) of the 2000 Act.

## 6.2. Statutory Provisions

I consider the following statutory provisions relevant to this referral case:

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

Section 2 (1) states: -

‘development’ has the meaning assigned to it by Section 3, and ‘develop’ shall be construed accordingly;

“‘works’ includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal...”

Section 3 (1) states:-

“In this Act, “development” means, except where the context otherwise requires, the carrying out of works on, in, over or under land, or the making of any material change of 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 (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.

## Planning and Development Regulations, 2001(as amended)

Article 6(1) of the Regulations states as follows:- “(a) Subject to article 9, development consisting 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.

Article 9 (1) of the Regulations sets out circumstances in which development to which Article 6 relates shall not be exempted development.

Schedule 2, Part 1, Class 14 sets out changes of use which are exempted development.

Schedule 2, Part 4 sets out changes of uses, within certain classes, which shall be exempted development.

## Planning and Development Regulations, 2005

These Regulations define a shop

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 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 Act (1909 - 1910) Act, 1910

- (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 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 off the premises except under paragraph (d), or any use to which class 2 or 3 of Part 4 of the second Schedule applies.

### 6.3. Relevant Related Cases

#### Ref 28 RL 2516

This referral related to the question of 'whether the use of a premises as a juice / sandwich bar is or is not development or is or is not exempted development' at no. 55 Patrick's Street, Cork.

The referral arose following a Declaration by the planning authority which determined that the preparation and sale of hot food is the current main use as opposed to subsidiary use and the premises cannot be described as a shop. A referral of the Declaration was submitted to the Board for review.

The reporting Planning Inspector considered that there is a distinction between the sale of pre-packed sandwiches at a shop which do not involve processing and preparation on site on one hand and on the other hand the preparation of sandwiches to customer's orders. It is considered in the first instance that the sale of pre-packed sandwiches would come within the scope of 'sale of retail goods' as defined under Article 5 (1) (a) of the Planning and Development Regulations, 2001, and therefore no change of use would occur. In the second instance it is considered that although the preparation of sandwiches would occur on site that where this use



is subsidiary to a principle use, such as a petrol filling station, newsagent and small grocery stores it is considered that this use would come within the scope of Article 5 (1) (d) of the Planning and Development Regulations, 2001.

The Planning Inspector concluded that the sole use of the subject juice bar was the preparation of fruit drinks to the customer's order, for their consumption off the premises usually with the customer in attendance at the sales counter while the drink is being prepared. As this is a primary use and not a subsidiary use it is contended that this Juice Bar is not consistent with Article 5 (1) (d) of the Planning and Development Regulations, 2001. It is concluded that a material change of use from shop to Juice Bar has occurred.

However the Board determined that the use of the premises as a Juice Bar is not development. The Board considered that the activity, including the type and range of goods, constitutes retail sale of goods to visiting members of the public and comes within the definition of 'Shop' as set out in the Planning and Development Regulations, 2001 (as amended).

#### RL3424

This case related to a referral where the question was asked whether a change of use at a premises at no. 11 Emmet Place, Cork, from retail use to a coffee shop, is or is not development or is or is not exempted development. The Board determined that the use of the subject premises as a coffee shop does not constitute a 'shop' in accordance with the provisions of Article 5 (a) (1) of the Regulations, 2001 (as amended). The Board also concluded that the change of use from coffee shop to shop raises material planning considerations in the context of the proper planning and sustainable development of the area.

#### RL3426

In this referral case the Board determined that the use of a premises as a coffee shop at 39 Princess Street, Cork is development which is not exempted development. The previous use was a retail use at the premises. I would note that the Planning Inspector's assessment reviewed relevant precedent cases and considered that cases RL2887 and RL3072 are most relevant. The Planning Inspector concluded that the overall nature and scale of the operation in the subject unit, with particular regard to the extent of seating provided 'in-house' and the provision of customer toilets are the most relevant consideration in the assessment of this referral. The Inspector concluded that the Coffee Shop is more akin to a café / restaurant. The Inspector also included that the change of use is a material change of use in terms of planning considerations having regard to zoning objectives, emissions, littering and traffic and safety considerations. The Inspector concluded that the change of use is development and not exempted development.

#### 6.4. Assessment

The primary argument presented by the referrer's agent is that the coffee shop is categorised under the definition of a shop in accordance with Article 5 (1) (a) of the Planning and Development Regulations, 2001 (as amended), which defines shop as '*for the retail sales of goods*'. The referrer's submission argues that the critical issue is the nature, scale and layout of the subject unit.

In the previous referral case which relates to the subject unit (RL3425) the Planning Inspector concluded that the indoor seating and tables makes the coffee shop more akin to a restaurant / café. In addition in the previous case the coffee shop included the provision of toilets for customers which were also a factor in the Planning Inspector's consideration. The Planning Inspector also referred to material planning considerations similar to those referred to above in RL3426.

On the basis of the previous referral case on the subject referral site I would consider that the critical issue is the internal seating and tables which accomadates

customers for the consumption of food and drinks on the premises. Therefore the significant issue with the current referral, before the Board, is the coffee shop has been modified and whether these modifications would be sufficient grounds for the Board to alter their determination in RL3425. All internal tables and seating have been removed and in addition there is no provision for customer toilets. The referrer argues that the revised layout has effectively altered the nature of the use.

I noted from my site inspection that these changes are active and I also noted that customers usually enter the premises, purchase their hot/ cold drinks and exit the premises. However there are counter tables on the premises adjoining the front windows which in theory would allow a limited number of customers to consume their beverages and food stuffs on the premises. These counter tables do not include stools for seating. I also noted that there is no customer toilets within the coffee shop and public access to the remainder of the building, including upstairs, is restricted.

Therefore in conclusion the applicant / referrer has removed two of the critical factors, i.e. tables, seating and customer toilets considered by the planning inspector in the previous referral (RL3425) at the unit. The referrer essentially argues that the revised coffee shop layout and the nature and scale of the coffee shop is a shop having regard to Article 5(1) (a) of the Planning and Development Regulations, 2001.

In addition and in support of the referrer's case I would note the Board's determination in relation to RL2516. I have summarised RL2516 above and of relevance to the current case is the Board's conclusion that the activity, including the type and range of goods, constitutes retail sale of goods to visiting members of the public and comes within the definition of 'Shop' as set out in the Planning and Development Regulations, 2001 (as amended). I would consider having inspected no. 11 Patrick Street and reviewed RL2516 that there are strong similarities between the two and it would be reasonable to consider that the coffee shop at no. 11 Patrick

Street is a shop similar to the juice bar determined in RL2516 on the basis that both uses constitutes retail sale of goods to visiting members of the public.

Therefore should the Board conclude that the subject coffee shop falls under the definition of shop in accordance with Article 5(1) (a) of the Planning and Development Regulations, 2001 (as amended) then a change of use has not occurred. Accordingly it would not be necessary to have regard to material planning considerations.

In conclusion therefore I would consider having regard to the layout, nature and scale of the subject unit that the coffee shop at no. 11 Patrick Street is a shop under Article 5(1) (a) of the Planning and Development Regulations, 2001.

#### 6.5. Appropriate Assessment

Having regard to the nature and scale of the development under consideration, the nature of the receiving environment, the availability of public services and the proximity of the lands in question to the nearest European site, it is my opinion that no appropriate assessment issues arise and that the development would not be likely to have a significant effect, either individually or in combination with other plans or projects, on any Natura 2000 site.

### 7.0 **RECOMMENDATION**

#### 7.1. Conclusions and Recommendations

It is considered that a material change of use has not occurred and therefore a change of use from retail to coffee shop at no. 11 Patrick Street is not development

in accordance with the provisions of the Planning and Development Act, 2000 (as amended).

Accordingly, I would recommend an order along the following lines: -

**WHEREAS** a question has arisen as to whether the use of a former retail unit as a coffee shop on the ground floor of 11 Patrick's Street, Cork is or is not development or is or is not exempted development:

**AND WHEREAS** Mestonway Limited care of John Spain and Associates of 39 Fitzwilliam Place, Dublin 2, requested a declaration on the said question from Cork City Council and the said Council issued a declaration on the 17<sup>th</sup> day of October, 2016 stating that the said development was not exempted development:

**AND WHEREAS** the said Mestonway Limited referred the declaration for review to An Bord Pleanála on the 14<sup>th</sup> day of November, 2016:

**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(1), 6(1) and 10(1) of the Planning and Development Regulations, 2001 (as amended),
- (c) the previous use of the premises as a retail unit, and
- (d) the planning history of the referral site
- (e) the layout of the unit and the range of goods sold on the premises, which operates as a coffee shop,

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

The use of the premises as a coffee shop constitutes use as a “shop”, as defined at Article 5 (1) of the Planning and Development Regulations, 2001, as amended, and, therefore, does not constitute a material change of use from retail unit and is not “development”, as defined at section 3(1) of the Planning and Development Act, 2000:

**NOW THEREFORE** An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3) (a) of the 2000 Act, hereby decides that the said use of a former retail unit as a coffee shop on the ground floor of number 11 Patrick Street, Cork is not development.

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Kenneth Moloney  
Planning Inspector

28<sup>th</sup> February 2017