HUGHES
PLANNING
& DEVELOPMENT CONSULTANTS

An Bord Pleanála,
64 Marlborough Street,
Rotunda,
Dublin 1

20th February 2025

Re: Referral against the Declaration Under Section 5, attached to Cork City Council's Notification of Declaration Under Section 5 under Reg. Ref. R906/24, at Krispy Kreme, 42A St. Patrick's Street, Cork.

Cork City Council Reg. Ref:	**R906/24**
Date of Planning Authority Decision:	**24th January 2025**
Final Date for Lodgement of First Party Appeal:	**20th February 2025**

Dear Sir/Madam,

Hughes Planning and Development Consultants, 85 Merrion Square, Dublin 2, have been instructed by our client, Krispy Kreme Ireland Limited, 6th Floor, 2 Grand Canal Square, Dublin 2, to submit a referral for the Declaration of Cork City Council for the following development which they deemed to be NOT Exempted Development:

> *""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?"*
>
> *"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?"*

To support this referral, please find enclosed the following documentation:

- 1 no. cheque for the appropriate fee of €220.00;
- 2 no. copies of the Planning Referral Report prepared by Hughes Planning and Development Consultants.

The enclosed report sets out the grounds of referral in greater detail. As such, we request that An Bord Pleanála deem the proposed development to be Exempted Development. This referral is accompanied by the statutory fee of €220.00 and is being submitted within the appropriate timeframe.

Should you have any questions, please do not hesitate to contact the undersigned.

Yours Sincerely,

Kevin Hughes MIPI MRTPI
Director for HPDC

AN BORD PLEANÁLA
LDG- 078108-25.
ABP-
20 FEB 2025
Fee: € 220.00 Type: Cheque
Time: 17.11 By: hand

HUGHES PLANNING
& DEVELOPMENT CONSULTANTS

REFERRAL OF SECTION 5 DECLARATION

CORK CITY COUNCIL REF. R906/24

CHANGE OF USE FROM RETAIL SHOP TO PATISSERIE SHOP

KRISPY KREME,
42A ST. PATRICK'S STREET,
CORK,
T12 H767

REFERRED ON 20th FEBRUARY 2025 ON BEHALF OF:
KRISPY KREME IRELAND LIMITED, 6TH FLOOR, 2 GRAND CANAL QUAY, DUBLIN 2

Krispy Kreme DOUGHNUTS

85 Merrion Square, Dublin 2, D02 FX60
+353 (0)1 539 0710
info@hpdc.ie
www.hpdc.ie

1.0 Introduction

This referral to An Bord Pleanála, pursuant to Section 5(3)(a) of the Planning and Development Act 2000 (as amended), has been prepared by Hughes Planning and Development Consultants, 85 Merrion Square, Dublin 2, on behalf of Krispy Kreme Ireland Limited, 6th Floor, 2 Grand Canal Square, Dublin 2, and relates to a Section 5 Declaration made by Cork City Council on 24th January 2025 under Ref. R906/24, concerning the current Krispy Kreme premises at No. 42A St. Patrick's Street, Cork

It is considered the use of a retail unit for the sale of doughnuts, merchandise and mineral drinks, does not constitute development under Part 1 - Article 5(a)(a) of the Planning and Development Regulations, 2001 (as amended). The subject unit sells merchandise, doughnuts and mineral drinks for consumption off the premises, which is considered to be a patisserie shop for the sale of goods.

We request that An Bord Pleanála review the Section 5 Declaration issued by Cork City Council and make a determination that the works completed and the use of a retail shop as a patisserie shop, are exempted development. In the interests of clarity, we would ask the following question to An Bord Pleanála:

> *"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?"*
>
> *"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?"*

It is submitted that the patisserie shop will not cause any disamenity to the area and is compliant with the Cork City Development Plan 2022 – 2028. Cork City is a highly populated area and is well served by a variety of amenities and services. The location of the patisserie is on the main street in Cork City Centre, allowing customers easy access to doughnuts, merchandise and mineral drinks.

The prescribed fee of €220.00 is enclosed, along with a copy of the declaration issued by Cork City Council (Appendix A). This report sets out the rationale as to why the development at No. 42A St. Patricks Street is considered to constitute exempted development. We request that An Bord Pleanála set aside the declaration of Cork City Council and issue a revised declaration stating that the use of a retail shop as a patisserie shop, and associated internal works to provide for this, are development and constitute exempted development.

1.1 Section 5 Declaration by Cork City Council

On 24th January 2025, Cork City Council refused a declaration of exemption for the change of use from a retail shop as a patisserie shop and associated works under Ref. R906/24 (Appendix A). The Planning Authority stated that,

> *"The Planning Authority, in view of the above and having regard to:*
>
> - *Sections 2, 3, and 4 of the Planning and Development Act, as amended, and*
> - *Articles 5 and 10 of the Planning and Development Regulations, 2001, as amended.*
>
> *It is considered that –*
>
> *Part I 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."*

We refer this Declaration to the Board, as we are of the opinion that the change of use and internal works are exempted in nature from the requirement to obtain permission.

It is submitted that the planning authority has erred in its assessment of the application. Having considered the decision above, it is quite apparent that the planning authority did not consider the question put before them and instead incorrectly assessed the use of the subject unit in the context of Part 1, Article 5(1)(d) of the Planning and Development Regulations 2001 (as amended), rather than Part 1, Article 5(1)(a) of the Planning and Development Regulations 2001 (as amended).

The grounds for referral against the declaration are outlined in the subsequent sections of this report. As noted from the outset, we consider that the change of use and internal works are exempted development and as such, we respectfully request that An Bord Pleanála deem the proposal to be exempted development.

1.2 Summary of Grounds for Referral

The applicant's grounds for referral can be summarised by the following points:

- The unit is not a café, does not have internal seating and does not serve hot food or drinks. The unit is a patisserie shop for the sale of goods – these goods being doughnuts, merchandise and mineral drinks, to be consumed off the premises;

- The use of the subject unit shop does not fall under Section 5(1)(d), but under 5(1)(a) of the Planning and Development Regulations, 2001, as amended;

- The Retail Planning Guidelines Section A 1.2 provides a definition for the Types of Retail Goods. Food is listed as a convenience good. Therefore, the current use of the subject unit fits within Section 5(1)(a) as opposed to 5(1)(d). Donuts are a type of retail good according to the definition for retail goods included in the guidelines;

- There are multiple precedent cases whereby Declarations of Exempted Development have been issued which relate to the change of use from one type of retail shop use to another; and,

- It is contended the proposed development does not constitute a material change of use.

2.0 Site Description

The subject site is located on St. Patrick's Street in Cork city centre and comprises a four-storey building. The subject unit is the ground floor unit with retail frontage onto St. Patrick's Street and Marlborough Street. The subject unit was previously occupied by 'Porter's Newsagents' retail unit. The subject unit is now occupied by the applicant, Krispy Kreme, and the unit comprises a display area and sales counters internally. There is no internal seating within the unit.

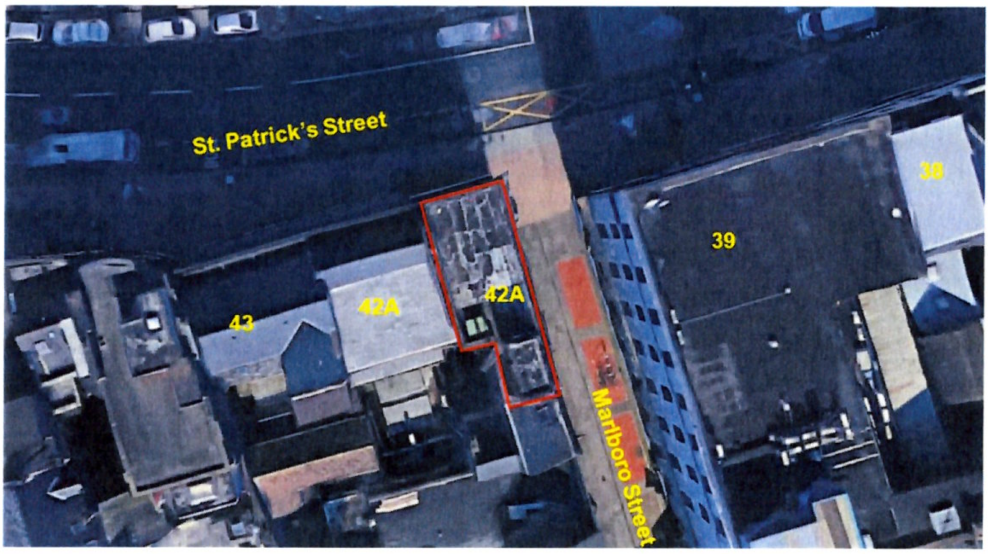

Figure 1.0 Aerial view of the subject site (outlined in red) within its immediate locational context.

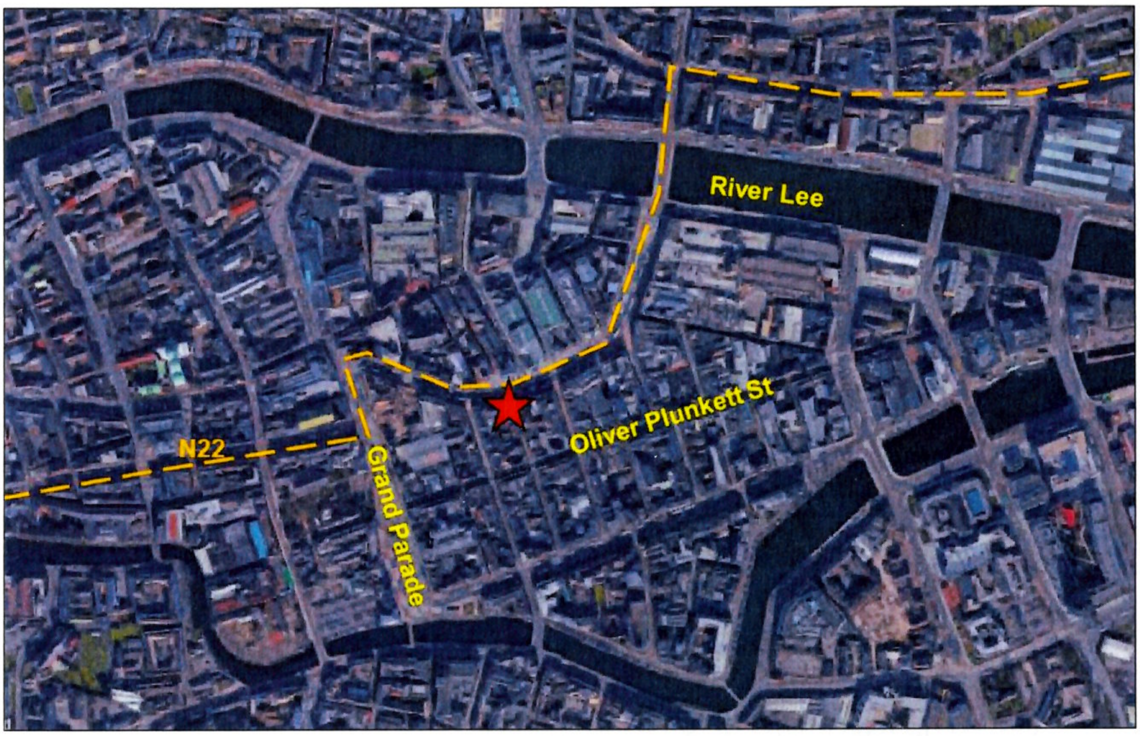

Figure 2.0 Aerial view of the subject site (red star) showing its wider locational context.

Figure 3.0 Street view image of the subject site from the N22/St. Patrick's Street. It is clear there is no internal seating within the store from this image. The unit remains as a retail unit for purchasing goods and taking them home.

3.0 Planning History

A review of the Cork City Council planning register revealed the following relevant planning history for the subject unit.

On 18th January 2024, the Council made a decision to refuse permission under Reg. Ref. 2342457 for:

'(1) 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. (2) Retention of shopfront and signage. The proposed development also includes all associated internal 'ancillary works necessary to facilitate the development.'

The refusal was based on the following 2 no. reasons:

1. Having regard to the location of the site and the specific land use zoning and policy objectives for the Core Retail Area and the specific designation of the Primary Retail Frontage area in the Cork City Development Plan 2022 – 2028, it is considered that the existing café use is contrary to Objective 10.5 and 10.6 of the City Development Plan relating to the prime retail function of the city centre. The existing development is therefore contrary to the proper planning and sustainable development of the area.

2. Having regard to the policies in the Cork City Development Plan 2022 – 2028 relating to new development in Architectural Conservation Areas, it is considered that the shopfront treatment and signage associated with the existing development is contrary to objective 8.23 as set out in the Cork City Development Plan 2022 – 2028. The existing development, by reason of inappropriate design and elevation treatment, results in a visual discordant treatment of the elevations of the building in the context of the existing streetscape and character of the Architectural Conservation Area. The existing development sets an undesirable precedent in the area and would be contrary to the proper planning and sustainable development of the area.

The planning application submitted to Cork City Council on 16th November 2023 sought the retention of the change of use from retail to café with internal seating, the sale of food and drinks for consumption within and off the premises, and the retention of the shopfront and signage. We would like to clarify to the Council that **the subject unit is not a café, does not sell coffee, and does not provide internal seating.** For these reasons, Hughes Planning and Development Consultants decided to withdraw the application from An Bord Pleanála following a first-party appeal.

On 28th October, Hughes Planning and Development Consultants withdrew the application under Reg. Ref. 2342457 from An Bord Pleanála on behalf of the applicant, in accordance with Section 140(1)(a) of the Planning and Development Act 2000 as amended. The application was deemed withdrawn from An Bord Pleanála by letter dated 29th October.

This Section 5 referral has been prepared to clarify whether the change of use from a retail unit to a patisserie unit is exempted development. It is noted that the Planning Report for the subject section 5 details multiple cases referring to café type units, which is not relevant in relation to the subject unit which is retail for the sale of doughnuts and merchandise to be taken home by a consumer.

Notwithstanding the above, there is an open enforcement file in relation to the development at the subject site, 42A St. Patrick's Street Cork, as follows:

E8545 Current planning enforcement file related to unauthorised change of use from retail to café bakery and new signage. A warning letter issued for "*Proposed unauthorised change of use from retail to café bakery and new signage at No. 42 St. Patrick's Street, Cork*".

It is contended that the use of an existing retail unit for the sale of doughnuts, retail merchandise and mineral drinks, is exempted development and any works completed for the fit-out are also exempted development. Cork City Council has referred to the subject unit as a café or bakery which is not the case, given there is no cooking, food preparation on site nor is there hot drinks being sold. The subject unit sells retail items to a consumer to bring home. The proceeding sections of this report will detail this further.

4.0 Works Completed

The works completed comprise internal fit-out works and upgrades to provide for a contemporary patisserie retail unit. Figure 4.0, below, compares the previous occupier, Porters Newsagents, and the existing occupier, Krispy Kreme, in the ground-floor unit. It is considered that the works internally do not affect the character of the building or area, and the unit still maintains a primary retail function. The works which have taken place are minor internal works that are considered to be exempted development, discussed further in Section 5.0 of this report.

It is noted the signage and external works which have been carried out will be subject to a separate planning application.

Figure 4.0 Street view imagery showing the previous occupier's external façade onto St. Patrick's Street (top) and showing Krispy Kreme's external façade facing onto St. Patrick's Street (bottom).

A list of internal works which have been completed include the upgrade and refurbishment of the unit, the addition of partition walls for the staff washroom, the addition of countertops, storage cupboards and sales counter/display area, and paint work to internal walls. External works to the building elevation include signage which will be subject to a separate planning application. It is highlighted there is no internal seating in the unit, and the unit is primarily used for purchasing, displaying baked goods, and displaying retail items.

The existing Krispy Kreme retail unit comprises; a display and sales area where products and doughnuts are displayed for customers to choose from; a back-of-house area for storage and stock; and a staff washroom. The previous occupier, 'Porter's Newsagents' would have comprised a similar floor layout with goods on display and a sales area.

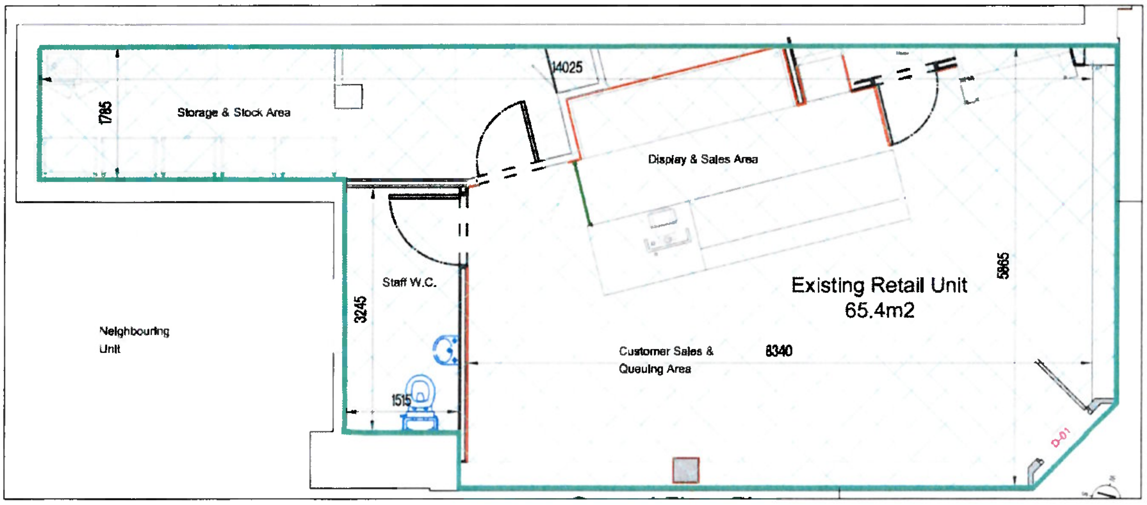

Figure 5.0 Ground floor plan of the Krispy Kreme retail unit.

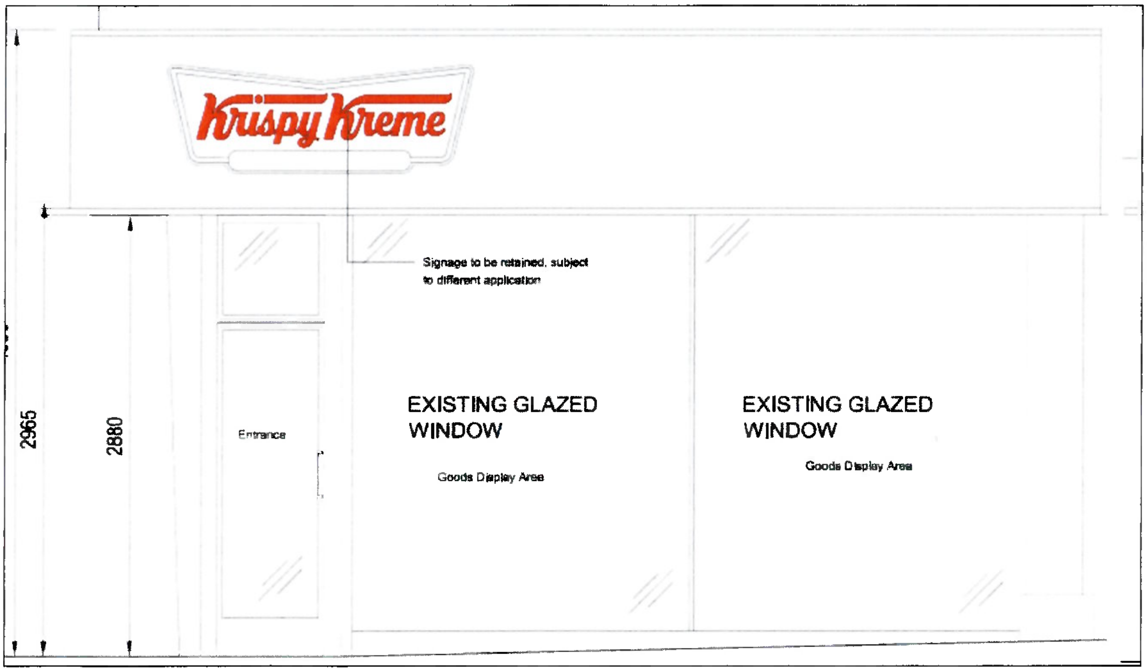

Figure 6.0 Front elevation of the Krispy Kreme retail unit, showing goods and products displayed on the shopfront.

It is contended the works completed replace the previous type of establishment. 'Porter's Newsagents' was a standard retail store. The subject unit, No. 42A St. Patrick's Street, would have previously sold retail items and goods such as milk, bread and newspapers when occupied by Porter's Newsagents. It is considered that a retail shop selling a box of chocolates is not materially different to a retail shop selling a box of doughnuts, t-shirts or coffee flasks. All of these items are purchased by a consumer and brought home.

It is noted the store sells various retail items, such as mugs, reusable coffee cups, coffee flasks, tote bags, socks, blankets, branded tee shirts, caps, keychains and hoodies. It is emphasised the sale of baked goods, to take away from the premises, is a retail use.

Figure 7.0 Imagery showing various products sold in Krispy Kreme stores.

Krispy Kreme sells a variety of doughnut boxes in a range of sizes, including boxes of 12, 24 and 48 no. doughnuts. It is emphasised that most doughnuts sold by Krispy Kreme would be in bulk boxes. Customers that purchase bulk boxes of doughnuts would typically bring them to the office, event or their home for consumption, away from the premises. There is a clear similarity between a retail unit that sells cakes, for example, and a patisserie retail unit, to which this section 5 relates in that both involve the sale of a retail good.

Figure 8.0 Details from the Krispy Kreme website, showing the option of doughnut boxes available for purchase.

It is highlighted that the works completed are minor and a retail unit remains with various items for sale inclusive of doughnuts. The unit does not comprise any internal seating and the purpose of the unit is to allow customers to purchase a product and bring it home from the premises, similar to any other retail product. The unit has a large space for customers to queue and pick products but will not allow customers to consume products on-site. It is contended that the works completed are exempted from development which the following section of this report will detail further.

5.0 Planning Policy

5.1 Cork City Development Plan 2022-2028

The site is zoned '*ZO 05 – City Centre*' in the Cork City Development Plan 2022 – 2028 with an objective to consolidate and facilitate the development of the central area and to promote its role as a dynamic mixed-use centre for community, economic, civic, cultural and residential growth.

The following policies and objectives are of note:

ZO 5.1 *Cork City is the key driver for economic and population growth in the region and the second city in the State. Cork City Centre is the historic, cultural and commercial heart of Cork and the region and its success is fundamental to the delivery of the National Planning Framework and to the well-being of the local and wider Irish economy. It is essential that the City Centre continues to develop its role as the key economic driver of the region and withstands the threat of vacancy, dereliction and the changing nature of retailing. It is the primary retail centre in the region, and the City Centre has seen significant population growth in recent years.*

ZO 5.2 *The primary purpose of this zone is to promote the continued economic, civic, cultural and residential growth of the City Centre, and to create a thriving urban community. Uses that complement the primacy and vibrancy of the City Centre are permitted in this zone, while comparison retail uses will be permitted within the Core Retail Area identified in Chapter 10 Key Growth Areas and Neighbourhood Development Sites and Map 02 of Volume 2 Mapped Objectives. Primary uses in this zone include but are not limited to retail, residential uses, community uses, offices, hotels, cultural and leisure facilities, education and healthcare institutions and facilities, and uses that contribute to the vibrancy and diversity of the City Centre.*

ZO 5.3 *Mixed use developments should achieve a vertical and horizontal mix of uses. Retail and other acceptable active uses will be the predominant use at ground floor level along the primary retail streets.*

ZO 5.4 *Development proposals in this zone must demonstrate how the proposal would respect, reflect or contribute to the character and vibrancy of the City Centre, commensurate with the nature and scale of the development. Developments must deliver a quality urban environment and public realm with a focus on accessibility and permeability.*

ZO 5.5 *Chapter 10 Key Growth Areas and Neighbourhood Development Sites sets out specific development objectives for the City Centre.*

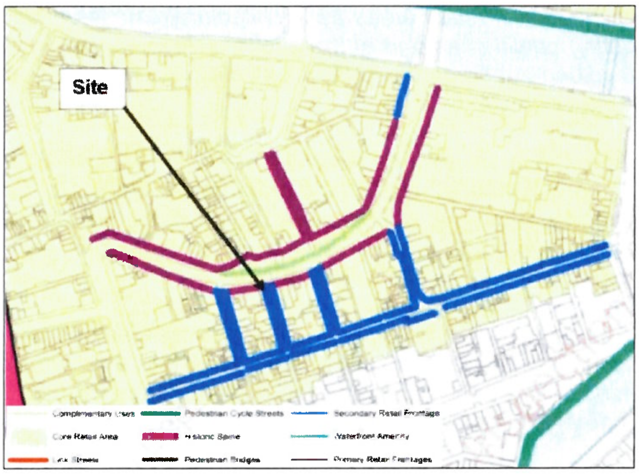

Figure 9.0 Extract from Map 02, Volume 2 "Mapped Objectives" of the Development Plan.

The site is located within a zone known as the 'Core Retail Area', with the following key planning objective of note:

Objective 10.5 *To support the function of the Core Retail Area as the primary location for comparison shopping in the region.*

Primary Retail Frontage

The subject location on St. Patrick's Street is designated as a 'Primary Retail Frontage' and the east elevation onto Marlborough Street has a 'Secondary Retail Frontage.' The following objectives are of note:

Objective 10.6 *To restrict residential, retail offices, general offices, hot food takeaways, general convenience stores, public houses, night clubs, mobile phone shops, bookmakers, betting shops and restaurant uses from locating at ground floor level on Primary Retail Frontages. Cork City Council will consider allowing some complementary restaurant and café uses at certain corner sites along the south-facing section of St. Patrick's Street to allow for a greater mix of use and vibrancy to enhance its primary retail function. Such uses will only be permitted where it can be demonstrated that they would complement the retail function of the street and add to its vibrancy and attraction.*

Objective 10.7 *To restrict residential uses, retail offices, general offices, hot food takeaways and bookmakers/ betting shops at ground floor level on Secondary Retail Frontages.*

Architectural Conservation Area

The site is located within the Oliver Plunkett Street Architectural Conservation Area in the Development Plan.

8.32 *Cork City Council will seek to preserve and enhance the special character of areas by the designation of Architectural Conservation Areas under Section 81 of the Planning and Development Act. Historic urban areas and landscapes can be also designated for protection as Architectural Conservation Areas. The special character of such areas is described in the relevant 'statement of character' in Volume 3 of this Plan. Changes that materially affect the character of an Architectural Conservation Area will require planning permission.*

8.33 *It important to recognise that historic urban areas and designed landscapes will be conserved and enhanced. Alterations and extensions to existing structures, the redevelopment of redundant sites and the intensification of uses will occur responding to economic and social changes as the city evolves.*

8.34 *The designation of such areas as Architectural Conservation Areas seeks to protect the existing qualities as part of the evolving development process and to ensure that new development responds to the historic environment in a way that contributes new values from our own time*

8.35 *The designation of Architectural Conservation Areas is intended to encourage development in historic areas that promotes a high standard of design and detail, enhancing Cork City's existing historic morphology, varied architectural styles and use of materials, but which adds new qualities from our own time, making its own contribution to the city's evolving identity*

8.36 *New development in Architectural Conservation Areas should have regard to existing patterns of development, the city's characteristic architectural forms and distinctive use of materials. However, it is expected that new development should generally reflect contemporary architectural practice, and not aim to mimic historic building styles.*

8.23 *Development in Architectural Conservation Areas should have regard to the following:*
a. Works that impact negatively upon features within the public realm, such as stone setts, cobbles or other historic paving, railings, street furniture, stone kerbing etc. shall not be generally permitted;
b. Design and detailing that responds respectfully to the historic environment in a way that contributes new values from our own time. This can be achieved by considering layout, scale, materials and finishes and patterns such as plot divisions in the surrounding area;
c. Historic materials and methods of construction should be retained and repaired where this is reasonable, e.g. historic windows and doors, original roof coverings, metal rainwater goods should be retained along with original forms and locations of openings etc;
d. Repairs or the addition of new materials should be appropriate and in keeping with the character of the original structures.

As detailed throughout this referral, the subject unit is maintained as a retail unit, therefore in line with the above guidance. The change of use is not considered to be material as the uses fall under the same class and change from retail shop to retail patisserie. The function of the unit will remain one that is a place for goods to be purchased and brought home, similar to any other shop such as newsagents.

It is noted in the Development Plan's 'Glossary of Acronyms', that 'food' is listed as a 'Convenience Good'. A doughnut is a food item, therefore a convenience good, and therefore the site maintains its status as a retail patisserie and supports the statement that the change of use is not material in this instance.

6.0 Response to Cork City Council's Declaration R906/24

"The Planning Authority, in view of the above and having regard to:

- *Sections 2, 3, and 4 of the Planning and Development Act, as amended, and*
- *Articles 5 and 10 of the Planning and Development Regulations, 2001, as amended.*

It is considered that –

Part I 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."

Basis of Exemption

Development

Under Part 1 - Article 5 of the Planning and Development Act, 2000 (as amended), a person can seek a formal declaration from the planning authority to establish if there is a requirement for planning permission for a specific proposal. An application must be made in writing to the planning authority, to determine whether a proposal requires permission or is considered an exempted development.

As mentioned above Section 5(1) of the Planning and Development Act, 2000 (as amended), states the following in regard to exempted developments in which the Section 5 application can be obtained:

"If any question arises as to what, in any particular case, is or is not development or is or is not exempted development within the meaning of this Act, any person may, on payment of the prescribed fee, request in writing from the relevant planning authority a declaration on that question, and that person shall provide to the planning authority any information necessary to enable the authority to make its decision on the matter."

The following planning legislation is justification, for this referral, and with regard to exempted developments and Section 5 applications: Under Part 1 - Section 2(1) of the Planning and Development Act 2000 (as amended), 'development" is assigned the meaning set out under Section 3(1) as follows:-

> *"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 in the use of any structures or other land."*

In addition, Section 2(1) of the Act defines works as:

> *"In this Act, 'works' includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure."*

The development comprises the change of use of a retail shop to a patisserie shop and associated internal construction works to facilitate this, both of which are considered to constitute development. Therefore, a question must be asked whether the development constitutes exempted development?

Exempted Development

It is submitted that the change of use from a retail shop to a patisserie shop constitutes exempted development under Article 5(1)(a) of the Planning and Development Regulations, as amended, given there it is not a material change of use. The minor internal works to facilitate the change of use are exempted development under Class 4(1)(h) of the Planning and Development Act 2000, as amended.

The following sections will firstly examine the change of use from retail shop to patisserie shop and justify its exemption. Secondly, the internal works completed will be justified as exempted from development.

6.1 Change of Use – Retail Shop to Patisserie Shop

- Article 5

Article 5 'Interpretation for this Part', sub-section (1), defines *'shop'* as follows:

> *"In this Act, 'shop' means a structure used for any or all of the following purposes, where the sale display of 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 sales 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-license (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 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 provisions of funeral services or as a funeral home, or as a hotel, a restaurant or 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."*

It is highlighted that the Council declared the development not exempt, having regard to Article 5(d) of the Planning and Development Regulations, which states *'for the sales 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-license (within the meaning of the Finance (1909-1910) Act, 1910), 10 Edw. 7. & 1 Geo. 5, c.8.'*

From the outset, it is argued that the Planning Officer has included us within Article 5(1)(d), which does not relate to nor represent the development directly. The use of the store by Krispy Kreme does not provision the sale of food or wines, but the sale of a retail item for consumption off the premises. The Planner's Report noted a range of "relevant decisions from An Bord Pleanála" detailing,

> *'...examples of proposed change of use and partial change of use from retail to café, coffee shop, juice bar. While the context differs from the question at hand, it nevertheless serves to demonstrate how the term 'shop' should be interpreted with regard food for consumption off the premises and what is determined to be a use which is subsidiary to another retail use.'*

The above examples do not relate to the subject development which is for the change of use of a retail shop to patisserie shop. As outlined within this referral, **the unit is not a café, the unit sells a product which is taken home by the consumer to enjoy – similar to any other retail unit.**

It is considered that Article 5(1)(a) directly relates to the development and is the correct interpretation. For ease of reference, Article 5(1)(a) states:

> *'In this Act, 'shop' means a structure used for any or all of the following purposes, where the sale display of service is principally to visiting members of the public –*
>
> ***(a) for the retail sale of goods,'***

It is emphasised that Article 5(1)(a) of the Planning and Development Regulations does not differentiate between comparison and convenience goods. Comparison goods can be defined as 'goods or products that are of a higher value, purchased infrequently (clothing, cars, bulky goods), whereas convenience goods are of lesser value and purchased frequently (soft drinks, newspapers, bread).

The Retail Planning Guidelines for Local Authorities, 2012, details a 'Glossary of Terms' in Annex 1. In Section A 1.2, 'Types of Retail Goods' are listed. It is highlighted that 'food' falls under 'Convenience Goods'. It is contended that doughnuts are a type of convenience food and should be interpreted under Article 5(1)(a) of the Planning and Development Regulations in this regard. It is emphasised that the sale of a doughnut, in a box, to take away and consume at home is no different to the sale of a chocolate bar from a newsagent, to take away and consume at home.

It is further highlighted to An Bord Pleanála that there is no production of doughnuts on site. It is noted that Krispy Kreme doughnuts are produced in Ireland at two different sites, one in Blanchardstown Co. Dublin, and a second in Naas Co. Kildare. The doughnuts are produced and delivered the to local stores every morning to ensure fresh doughnuts are available for purchase daily. The subject unit has no ovens or cookware in-house. The unit only has a hand-washing sink for cleanliness and a back-of-house area for staff. It is considered that the subject Krispy Kreme unit is identical to the use of a shop as a retail newsagent – selling bread, pastries, milk or soft drinks – and the same level of regard should be given in this instance. A customer entering the Krispy Kreme store can purchase a box of 6 no. doughnuts, for example, take them away to their home for consumption. Similarly, a customer entering a newsagent can purchase a box of chocolates, for example, take it away to their home for consumption.

It is argued that **there is no material change of use at the premises,** and the change in use from retail shop to retail patisserie is exempted from development for the reasons outlined above.

Material Change of Use

We would like to draw the Board's attention to a Section 5 decided under ABP-305094-19, which asked

> *'Whether the use of an existing retail unit for bakery sales including sandwiches, cakes, bread and other bakery related products for consumption on and off the premises and ancillary use of bakery retail unit for consumption of food/tea/coffee on the premises.'*

Although An Bord Pleanála declared the above application Not Exempt on 14th August 2020, we would emphasise the reason for this appears to be largely due to the baked goods being prepared and cooked on site. As stated within this referral, **the subject unit Krispy Kreme, does not bake or cook doughnuts on site.** We would like to detail elements within the Inspector's Report under ABP-305094-19, which are considered extremely relevant in relation to the subject referral.

The definition of development provided for in Section 2(1) of the Act involves 'works' and/or 'material change of use'. For development as defined for the purposes of Section 3(1) [development] of the Act to take place 'works' and/or 'material change of use' must occur.
The Inspector's Report noted the following:

> *8.1.10 'A frequently cited test to assist in determining whether a change of use is material or not, is that proffered by Barron, J in The County of Galway v Lackagh Rock Ltd [1984 21 MCA] for the determining of whether or not a material change of use has occurred. In this case, Barron, J considered that 'in determining whether or not a present use was materially different from a use being made on the appointed day one must look at matters which the planning authority would take into consideration if a planning application were made on both dates and if these matters were materially different, then, the present use must be equally materially different.'*

> *8.1.11 'The case cited related to the intensification of use of a quarry.....The factors to be taken into consideration in assessing the intensification of use of a quarry are clearly dramatically different to the factors relevant to the operation of a shop as an artisan bakery. Nonetheless, the principle set out in the 'Lackagh Rock' case is instructive. In short, if the matters considered in assessing a planning application for an artisan bakery are materially different to the matters for consideration in the assessment of a planning application for a 'shop' (as defined under Article 5(1) of the Regulations) then the uses must be materially different and a change of use from one use to the other must be a material change of use.'*

> *8.1.12 'In my opinion, the* ***use of Unit No.13 as an artisan retail bakery with ancillary café*** *etc. includes* ***certain factors that can reasonably be regarded as falling within the definition of a 'shop'*** *as provided under Article 5(1) of the Regulations viz. the sale of produce is principally to visiting members of the public;* ***the retail sale of goods is involved****; the sale of sandwiches and other food (subsidiary to the main retail use) for consumption off the premises occurs. Nonetheless, use as an artisan retail bakery also involves the installation and use of a kitchen, the operation of ovens (possibly by trained craftspeople/bakers), the importation of raw materials (ingredients for the baking of bread and other confectionery etc.) into the unit and the working of these raw materials in the baking of a finished product (bread and confectionery) for sale to visiting members of the public.* ***In my opinion these factors take the use as an artisan bakery outside the statutory definition of a 'shop'.*** *Use as a 'shop' allows for the operation of a launderette or dry cleaners – activities that could arguably be regarded as similar in certain respects to the operation of a bakery (operation of machines etc.). However, I consider that the specific reference to laundry and dry cleaners within the definition provided in Article 5 highlights the fact that these are regarded as 'exceptions' to the more general provisions under under Article 5. No such exception has been provided in respect of bakeries/artisan bakeries.'*

In light of the above commentary, it is emphasised that the subject unit, Krispy Kreme, No. 42A St. Patrick's Street, does not involve, '*the installation and use of a kitchen, the operation of ovens (possibly by trained craftspeople/bakers), the importation of raw materials (ingredients for the baking of bread and other confectionery etc.) into the unit and the working of these raw materials in the baking of a finished product (bread and confectionery) for sale to visiting members of the public*' as stated by the Inspector. The subject unit does not have cookers, ovens or kitchen facilities and no doughnuts are produced or cooked on site. **Therefore, in the context of the above commentary by the Inspector under ABP-305094-19, it is considered that the subject change of use would not be material and would be considered exempted development.**

It is emphasised to the Board that the subject unit will maintain the status of a 'shop', as it provides goods for customers to purchase and bring home with them. The previous occupier of the subject unit was 'Porter's Newsagents', a shop where customers could purchase a newspaper or chocolate. The unit is now occupied by Krispy Kreme and is still considered a shop given customers can purchase boxes of doughnuts and merchandise. There is no baking or food production, the unit Krispy Kreme sells doughnuts and merchandise similar to any other retail shop. It is contended the use of the subject unit for the sale of products maintains the status of a shop and is therefore not a material change of use. We ask the Board to have due regard to this fact and issue a declaration of exempted development.

Article 9- *'Restrictions on Exemptions'*, lists the circumstances in which development that would be classified as *'exempted'* under Article 6 is found to be *'not exempted'*. Specifically, we note that Article 9 (1)(a) states: -

Article 9 – Restrictions on Exemptions

> *"(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.*

It is noted that the proposed development does not contravene a condition attached to permission under the Act.

> *(ii) consist of or comprise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width,*

No amendments are proposed to the existing access.

> *(iii) endanger public safety by reason of a traffic hazard or obstruction of road users.*

The internal refurbishment does not endanger public safety by reason of a traffic hazard or obstruction.

> *(iv) except in the case of a porch to which class 7 specified in column 1 of Part 1 of Schedule 2 applies and which 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, comprise the construction, erection, extension or renewal of a building on any street so as to bring forward the building, or any part of the building, beyond the front wall of the building on either side thereof or beyond a line determined as the building line in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan.*

We note that the above restriction is not applicable to the proposal to which this application pertains.

> *(v) consist of or comprise the carrying out under a public road of works other than a connection to a wired broadcast relay service, sewer, water main, gas main or electricity supply line or cable, or any works to which class 25, 26 or 31 (a) specified in column 1 of Part 1 of Schedule 2 applies,*

It is submitted that the proposal will not comprise the carrying out of works under a public road.

> *(vi) interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of a development plan for the area in which the development is proposed or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,*

It is not considered that the proposed development will have any impact on the character of a landscape, view or prospect of special amenity value or special interest and is considered sympathetic to its surrounds.

> *(vii) consist of or comprise the excavation, alteration or demolition (other than peat extraction) of places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest, the preservation, conservation or protection of which is an objective of a development plan or local area plan for*

> *the area in which the development is proposed or, pending the variation of a development plan or local area plan, or the making of a new development plan or local area plan, in the draft variation of the development plan or the local area plan or the draft development plan or draft local area plan,*

We note that the proposal does not consist of the excavation, alteration or demolition of places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest.

> *(viiA) consist of or comprise the excavation, alteration or demolition of any archaeological monument included in the Record of Monuments and Places, pursuant to section 12 (1) of the National Monuments (Amendment) Act 1994, save that this provision shall not apply to any excavation or any works, pursuant to and in accordance with a consent granted under section 14 or a licence granted under section 26 of the National Monuments Act 1930 (No. 2 of 1930) as amended,*

The proposed development will not comprise the excavation, alteration or demolition of any archaeological monument included in the Record of Monuments and Places.

> *(viiB) comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site,*

It is considered that the continued use of the subject unit will not have an effect on the integrity of a European Site, therefore an appropriate assessment is not required.

> *(viiC) consist of or comprise development which would be likely to have an adverse impact on an area designated as a natural heritage area by order made under section 18 of the Wildlife (Amendment) Act 2000.*

The proposal will not have an adverse impact on an area designated as a natural heritage area.

> *(viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised ` structure or a structure the use of which is an unauthorised use,*

We note that the proposed development will not comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use.

> *(ix) consist of the demolition or such alteration of a building or other structure as would preclude or restrict the continuance of an existing use of a building or other structure where it is an objective of the planning authority to ensure that the building or other structure would remain available for such use and such objective has been specified in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,*

In response to the above, it is submitted that the proposed development will not consist of the demolition of a building or structure that would restrict the continuance of an existing use of a building or other structure where it is an objective of the planning authority to ensure that the building or structure would remain available for use.

> *(x) consist of the fencing or enclosure of any land habitually open to or used by the public during the 10 years preceding such fencing or enclosure for recreational purposes or as a means of access to any seashore, mountain, lakeshore, riverbank or other place of natural beauty or recreational utility,*

The fencing or enclosure of any land is not proposed as part of the development to which a Section 5 Declaration is sought.

> *(xi) obstruct any public right of way,*

The proposal relates only to internal refurbishment works to 42 St. Patrick's Street, Cork, and is not proposed to obstruct any public right of way.

> *(xii) further to the provisions of section 82 of the Act, consist of or comprise the carrying out of works to the exterior of a structure, where the structure concerned is located within an architectural conservation area or an area specified as an architectural conservation area in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan and the development would materially affect the character of the area,*

The subject development is located within the Oliver Plunkett Architectural Conservation Area. 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.

Accordingly, we consider that subject to Article 9 of the Regulations, the proposed development is exempt from the requirement to obtain planning permission.

6.2 Internal Fitout Works

Section 4

Section 4(1)(h) of the Planning and Development Act 2000 (as amended) outlines the reasoning for which developments can be carried out under exempted development. For the purpose of this report, we must assess whether the fit-out works completed constitute development or exempt development, within the meaning of Section 4 (1)(h) of the Act.

It states:

> *"(h) 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."*

We note that Section 4(2) of the Act states that the 'Minister' may by Regulation provide for any class of development to be exempted development for the purposes of the Act where he or she is of the opinion that—

> *(i) by reason of the size, nature or limited effect on its surroundings, of development belonging to that class, the carrying out of such development would not offend against principles of proper planning and sustainable development, or*
>
> *(ii) the development is authorised, or is required to be authorised, by or under any enactment (whether the authorisation takes the form of the grant of a licence, consent, approval or any other type of authorisation) where the enactment concerned requires there to be consultation (howsoever described) with members of the public in relation to the proposed development*

For clarity, the 'fit-out' works completed are considered to be subject to Section 4(1)(h) above and are detailed as follows:

1) *Internal alterations for the 'fit-out' of the existing unit to provide for –*

    I. *New countertops, storage cupboards and internal reconfiguration,*
    II. *New partition walls,*
    III. *Paintwork to walls.*

The proposed works comprise alterations, repair and improvement works to the interior of the existing structure and minor works to the exterior as described above and in the architectural drawings. Therefore, it is considered the fit-out works completed are exempted development under Section 4(1)(h) of the Act, given they are minor internal works to provide for the patisserie shop.

Further to the above, we note the following precedent for 'fit-out' works deemed exempted development in accordance with Section 4(1)(h): An Bord Pleanála determined that the 'works' at Newtown, Bruff, Co. Limerick, under ABP Ref. RL91.301092, are exempted development to which the Board concluded the, *'alterations to that were carried out to the exterior of the building are relatively minor and do not result in a material change' and 'As such, it is considered that these works constitute 'development' under Section 3, but also come within the scope of Section 4(1)(h) of the P & D Act 2000, as amended. As such, the said works are development and are exempted development.'*

The completed works comprise repair and improvement works to the interior of the existing structure at Krispy Kreme, No. 42A St. Patrick's Street, Cork, T12H767. We submit that the proposed interior works, as outlined above, are consistent with Section 4(1)(h) of the Act in that they will not affect the character of the structure or any element of the structure and will result in an enhancement and activated street frontage that contributes to the function and visual amenity of the area. Further to the above, the improvements result in increased economic activity along St. Patrick's Street as appropriate.

Section 4(4) states:

> *'Notwithstanding...............any regulations under subsection 2, development shall not be exempted development if an environmental impact assessment or appropriate assessment of the development is required.'*

It is noted the site is not located in an area which requires an environmental impact assessment or appropriate assessment.

7.0 Planning Precedents for Exempted Development

23, Main Street, Chapelizod, Dublin 20

Reg. Ref. 0332/20 Dublin City Council granted a Certificate of Exemption on 14th October 2020 for the use of a launderette as a bakery/café to serve food to go including sandwiches, soups and salads; inclusive of painting to the shopfront and a new internal partition wall, kitchen and preparation unit.

The Planner's Report made the following commentary:

> *'The applicant proposes a bakery/cafe serving only food to go. Part 2, Exempted Development of the Planning and Development Regulations 2001 (as amended) Article 5(1) defines 'shop' as 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 (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.* ***Having regard to the above, it is considered that use of the building as bakery serving only food to go which is subsidiary to the main retail use is deemed exempted development.****'*

Unit 1, 22, Fassaugh Avenue, Dublin

Reg. Ref. 0529/05 Dublin City Council granted a Certificate of Exemption on 31st August 2005 for the use of a shop to sell bakery products, delicatessen and take away tea/coffee and food platters for delivery.

The Planner's Report made the following commentary:

'The relevant section of the Planning and Development Regulations 2001 in Part 2 Exempted Development Article 5(1), "shop" means a structure used for any or all of the following purposes, where the sale, display or services is principally to visiting members of the public. – (d) for the sale of sandwiches or other food for consumption off the premises, where the sale of such food is subsidiary to the main retail use.'

4 Landscape Road, Churchtown, Dublin 14

Reg. Ref. REF10511 Dún Laoghaire Rathdown County Council granted a Certificate of Exemption on 6th October 2011 for the change of use from a bakery to a shop.

The above was exempt from planning permission given Class 14(a) of Schedule 2, Part 1 of the Planning and Development Regulations 2001 – 2011 in relation to the definition of a "*shop*".

Unit 1, Supervalu Centre, Church Street, Skerries, Co. Dublin

Ref. Ref. FS5/033/17 Fingal County Council granted a Certificate of Exemption on 5th July 2017 for the change of use of a retail unit to a launderette.

The Planning Officer considered given both retail unit and launderette are under Class 1 of the Planning and Development Act, that the development is exempt. It is considered that the subject Section 5 Declaration also seeks confirmation that the change of use of a retail shop to a patisserie shop is exempted development and should both be considered under Class 1(a) of the Planning and Development Regulations and therefore constitute exempted development.

8.0 Conclusion

The works completed at the subject site comprise a change in use from retail shop to retail patisserie and minor internal alterations to allow for a Krispy Kreme retail unit. It is highlighted throughout this report that the use of the unit remains retail, given the patisserie will sell doughnuts and merchandise to customers to be taken off the premises to enjoy, thus not a material change of use. It is emphasised in this report that the unit is not a café, does not provide internal seating for customers and, the unit does not sell coffee.

It is considered that the completed works are minimal and enhance the character of the structure to the benefit of its immediate area. As such, we would ask An Bord Pleanála to overturn the decision of Cork City Council which stated the works are development and are not exempted development, and make a decision that the works are development and are exempted development at No. 42A St. Patrick's Street, Cork, T12H767. Accordingly, we request a declaration to this effect from An Bord Pleanála under Section 5 of the Planning and Development Act 2000 (as amended).

Should you have any queries or require any further information including access to the building, please do not hesitate to contact the undersigned.

Kevin Hughes MIPI MRTPI
Director for HPDC

Appendix A – Declaration issued by Cork City Council dated 24th January 2025.

Comhairle Cathrach Chorcaí
Cork City Council

Halla na Cathrach, Corcaigh - City Hall, Cork - T12 T997

Krispy Kreme Ireland Limited
c/o Hughes Planning and Development Consultants
85 Merrion Square South
Dublin 2

24/01/2025

RE: **Section 5 Declaration R906/24 Krispy Kreme, 42A Saint Patrick's Street, Cork**

A Chara,

With reference to your request for a Section 5 Declaration at the above-named property, received on 19th December 2024, I wish to advise as follows:

The Planning Authority, in view of the above and having regard to:

- Sections 2, 3, and 4 of the Planning and Development Act, as amended, and
- Articles 5 and 10 of the Planning and Development Regulations, 2001, as amended.

It is considered that -

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.

Under Section 5(3)(a) of the Planning and Development Act, 2000, you may, on payment of the appropriate fee, refer this declaration for review by An Bord Pleanála within 4 weeks of the date it is issued, 24th January 2025.

Is mise le meas,

NFitzgerald

Niamh Fitzgerald
Development Management Section
Planning & Integrated Development

We are Cork.

HUGHES PLANNING
& DEVELOPMENT CONSULTANTS

REFERRAL OF SECTION 5 DECLARATION

CORK CITY COUNCIL REF. R906/24

CHANGE OF USE FROM RETAIL SHOP TO PATISSERIE SHOP

KRISPY KREME,
42A ST. PATRICK'S STREET,
CORK,
T12 H767

REFERRED ON 20th FEBRUARY 2025 ON BEHALF OF:
KRISPY KREME IRELAND LIMITED, 6TH FLOOR, 2 GRAND CANAL QUAY, DUBLIN 2

Krispy Kreme DOUGHNUTS

85 Merrion Square, Dublin 2, D02 FX60
+353 (0)1 539 0710
info@hpdc.ie
www.hpdc.ie

1.0 Introduction

This referral to An Bord Pleanála, pursuant to Section 5(3)(a) of the Planning and Development Act 2000 (as amended), has been prepared by Hughes Planning and Development Consultants, 85 Merrion Square, Dublin 2, on behalf of Krispy Kreme Ireland Limited, 6th Floor, 2 Grand Canal Square, Dublin 2, and relates to a Section 5 Declaration made by Cork City Council on 24th January 2025 under Ref. R906/24, concerning the current Krispy Kreme premises at No. 42A St. Patrick's Street, Cork

It is considered the use of a retail unit for the sale of doughnuts, merchandise and mineral drinks, does not constitute development under Part 1 - Article 5(a)(a) of the Planning and Development Regulations, 2001 (as amended). The subject unit sells merchandise, doughnuts and mineral drinks for consumption off the premises, which is considered to be a patisserie shop for the sale of goods.

We request that An Bord Pleanála review the Section 5 Declaration issued by Cork City Council and make a determination that the works completed and the use of a retail shop as a patisserie shop, are exempted development. In the interests of clarity, we would ask the following question to An Bord Pleanála:

> *"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?"*
>
> *"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?"*

It is submitted that the patisserie shop will not cause any disamenity to the area and is compliant with the Cork City Development Plan 2022 – 2028. Cork City is a highly populated area and is well served by a variety of amenities and services. The location of the patisserie is on the main street in Cork City Centre, allowing customers easy access to doughnuts, merchandise and mineral drinks.

The prescribed fee of €220.00 is enclosed, along with a copy of the declaration issued by Cork City Council (Appendix A). This report sets out the rationale as to why the development at No. 42A St. Patricks Street is considered to constitute exempted development. We request that An Bord Pleanála set aside the declaration of Cork City Council and issue a revised declaration stating that the use of a retail shop as a patisserie shop, and associated internal works to provide for this, are development and constitute exempted development.

1.1 Section 5 Declaration by Cork City Council

On 24th January 2025, Cork City Council refused a declaration of exemption for the change of use from a retail shop as a patisserie shop and associated works under Ref. R906/24 (Appendix A). The Planning Authority stated that,

> *"The Planning Authority, in view of the above and having regard to:*
>
> - *Sections 2, 3, and 4 of the Planning and Development Act, as amended, and*
> - *Articles 5 and 10 of the Planning and Development Regulations, 2001, as amended.*
>
> *It is considered that –*
>
> *Part I 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."*

We refer this Declaration to the Board, as we are of the opinion that the change of use and internal works are exempted in nature from the requirement to obtain permission.

It is submitted that the planning authority has erred in its assessment of the application. Having considered the decision above, it is quite apparent that the planning authority did not consider the question put before them and instead incorrectly assessed the use of the subject unit in the context of Part 1, Article 5(1)(d) of the Planning and Development Regulations 2001 (as amended), rather than Part 1, Article 5(1)(a) of the Planning and Development Regulations 2001 (as amended).

The grounds for referral against the declaration are outlined in the subsequent sections of this report. As noted from the outset, we consider that the change of use and internal works are exempted development and as such, we respectfully request that An Bord Pleanála deem the proposal to be exempted development.

1.2 Summary of Grounds for Referral

The applicant's grounds for referral can be summarised by the following points:

- The unit is not a café, does not have internal seating and does not serve hot food or drinks. The unit is a patisserie shop for the sale of goods – these goods being doughnuts, merchandise and mineral drinks, to be consumed off the premises;
- The use of the subject unit shop does not fall under Section 5(1)(d), but under 5(1)(a) of the Planning and Development Regulations, 2001, as amended;
- The Retail Planning Guidelines Section A 1.2 provides a definition for the Types of Retail Goods. Food is listed as a convenience good. Therefore, the current use of the subject unit fits within Section 5(1)(a) as opposed to 5(1)(d). Donuts are a type of retail good according to the definition for retail goods included in the guidelines;
- There are multiple precedent cases whereby Declarations of Exempted Development have been issued which relate to the change of use from one type of retail shop use to another; and,
- It is contended the proposed development does not constitute a material change of use.

2.0 Site Description

The subject site is located on St. Patrick's Street in Cork city centre and comprises a four-storey building. The subject unit is the ground floor unit with retail frontage onto St. Patrick's Street and Marlborough Street. The subject unit was previously occupied by 'Porter's Newsagents' retail unit. The subject unit is now occupied by the applicant, Krispy Kreme, and the unit comprises a display area and sales counters internally. There is no internal seating within the unit.

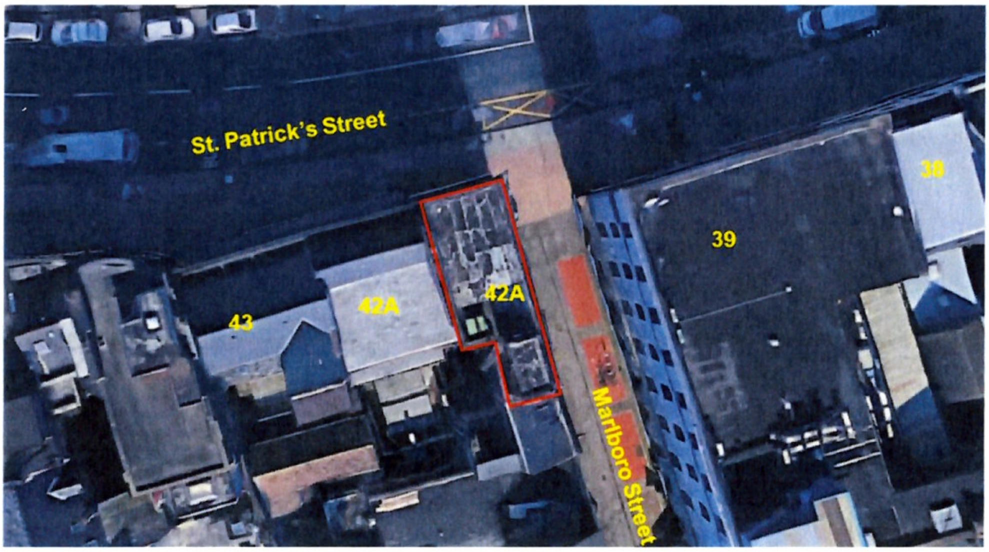

Figure 1.0 Aerial view of the subject site (outlined in red) within its immediate locational context.

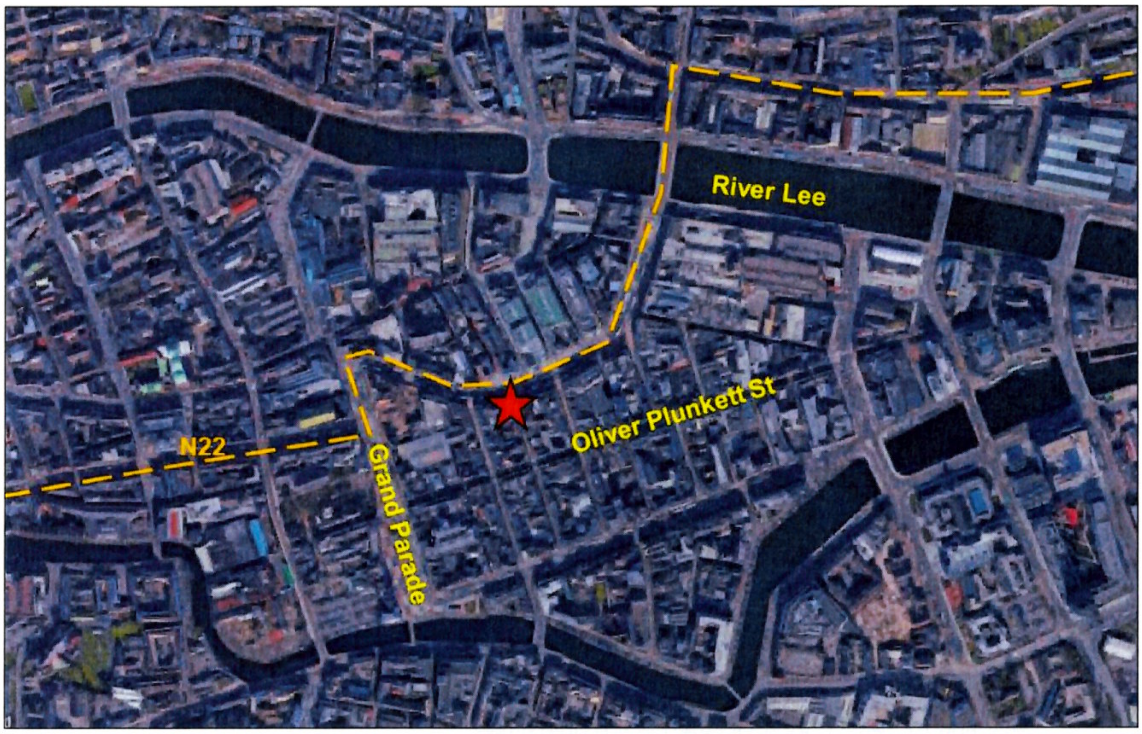

Figure 2.0 Aerial view of the subject site (red star) showing its wider locational context.

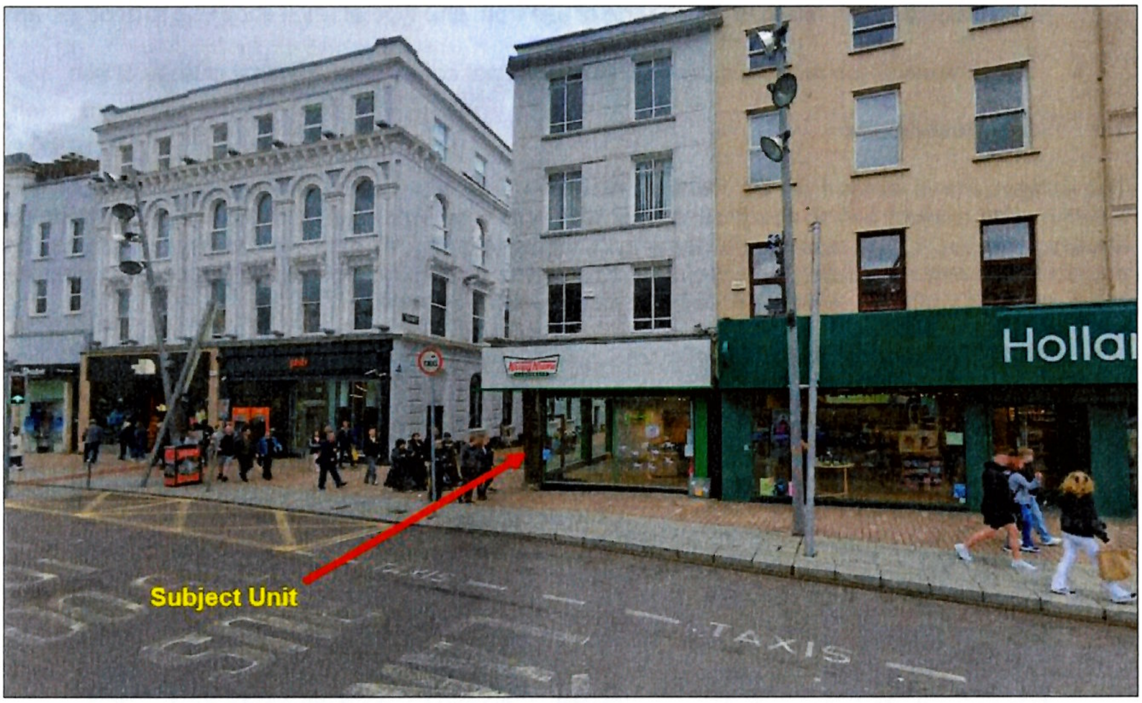

Figure 3.0 Street view image of the subject site from the N22/St. Patrick's Street. It is clear there is no internal seating within the store from this image. The unit remains as a retail unit for purchasing goods and taking them home.

3.0 Planning History

A review of the Cork City Council planning register revealed the following relevant planning history for the subject unit.

On 18th January 2024, the Council made a decision to refuse permission under Reg. Ref. 2342457 for:

> *'(1) 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. (2) Retention of shopfront and signage. The proposed development also includes all associated internal 'ancillary works necessary to facilitate the development.'*

The refusal was based on the following 2 no. reasons:

> *1. Having regard to the location of the site and the specific land use zoning and policy objectives for the Core Retail Area and the specific designation of the Primary Retail Frontage area in the Cork City Development Plan 2022 – 2028, it is considered that the existing café use is contrary to Objective 10.5 and 10.6 of the City Development Plan relating to the prime retail function of the city centre. The existing development is therefore contrary to the proper planning and sustainable development of the area.*
>
> *2. Having regard to the policies in the Cork City Development Plan 2022 – 2028 relating to new development in Architectural Conservation Areas, it is considered that the shopfront treatment and signage associated with the existing development is contrary to objective 8.23 as set out in the Cork City Development Plan 2022 – 2028. The existing development, by reason of inappropriate design and elevation treatment, results in a visual discordant treatment of the elevations of the building in the context of the existing streetscape and character of the Architectural Conservation Area. The existing development sets an undesirable precedent in the area and would be contrary to the proper planning and sustainable development of the area.*

The planning application submitted to Cork City Council on 16th November 2023 sought the retention of the change of use from retail to café with internal seating, the sale of food and drinks for consumption within and off the premises, and the retention of the shopfront and signage. We would like to clarify to the Council that **the subject unit is not a café, does not sell coffee, and does not provide internal seating.** For these reasons, Hughes Planning and Development Consultants decided to withdraw the application from An Bord Pleanála following a first-party appeal.

On 28th October, Hughes Planning and Development Consultants withdrew the application under Reg. Ref. 2342457 from An Bord Pleanála on behalf of the applicant, in accordance with Section 140(1)(a) of the Planning and Development Act 2000 as amended. The application was deemed withdrawn from An Bord Pleanála by letter dated 29th October.

This Section 5 referral has been prepared to clarify whether the change of use from a retail unit to a patisserie unit is exempted development. It is noted that the Planning Report for the subject section 5 details multiple cases referring to café type units, which is not relevant in relation to the subject unit which is retail for the sale of doughnuts and merchandise to be taken home by a consumer.

Notwithstanding the above, there is an open enforcement file in relation to the development at the subject site, 42A St. Patrick's Street Cork, as follows:

E8545 Current planning enforcement file related to unauthorised change of use from retail to café bakery and new signage. A warning letter issued for "*Proposed unauthorised change of use from retail to café bakery and new signage at No. 42 St. Patrick's Street, Cork*".

It is contended that the use of an existing retail unit for the sale of doughnuts, retail merchandise and mineral drinks, is exempted development and any works completed for the fit-out are also exempted development. Cork City Council has referred to the subject unit as a café or bakery which is not the case, given there is no cooking, food preparation on site nor is there hot drinks being sold. The subject unit sells retail items to a consumer to bring home. The proceeding sections of this report will detail this further.

4.0 Works Completed

The works completed comprise internal fit-out works and upgrades to provide for a contemporary patisserie retail unit. Figure 4.0, below, compares the previous occupier, Porters Newsagents, and the existing occupier, Krispy Kreme, in the ground-floor unit. It is considered that the works internally do not affect the character of the building or area, and the unit still maintains a primary retail function. The works which have taken place are minor internal works that are considered to be exempted development, discussed further in Section 5.0 of this report.

It is noted the signage and external works which have been carried out will be subject to a separate planning application.

Figure 4.0 Street view imagery showing the previous occupier's external façade onto St. Patrick's Street (top) and showing Krispy Kreme's external façade facing onto St. Patrick's Street (bottom).

A list of internal works which have been completed include the upgrade and refurbishment of the unit, the addition of partition walls for the staff washroom, the addition of countertops, storage cupboards and sales counter/display area, and paint work to internal walls. External works to the building elevation include signage which will be subject to a separate planning application. It is highlighted there is no internal seating in the unit, and the unit is primarily used for purchasing, displaying baked goods, and displaying retail items.

The existing Krispy Kreme retail unit comprises; a display and sales area where products and doughnuts are displayed for customers to choose from; a back-of-house area for storage and stock; and a staff washroom. The previous occupier, 'Porter's Newsagents' would have comprised a similar floor layout with goods on display and a sales area.

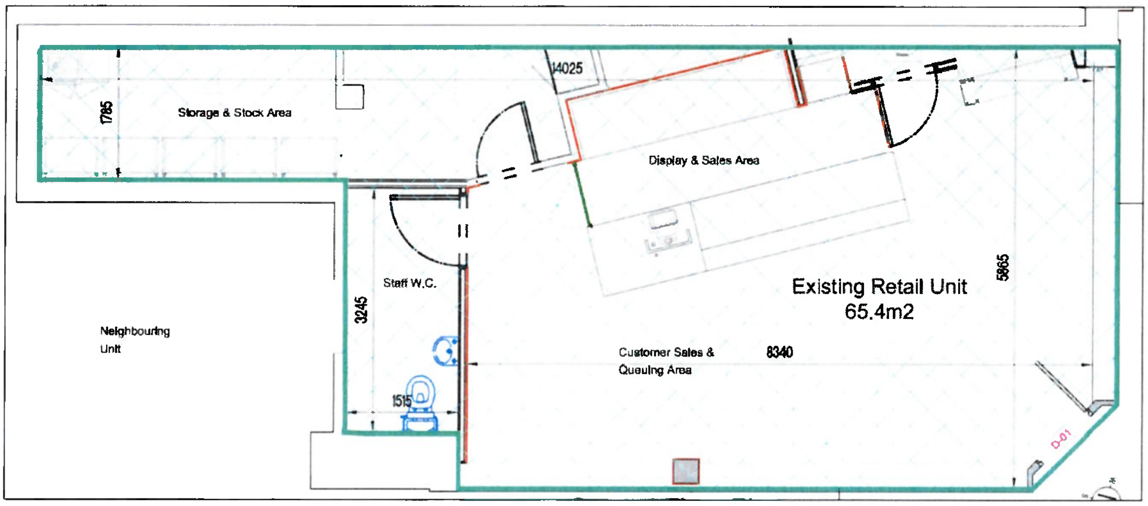

Figure 5.0 Ground floor plan of the Krispy Kreme retail unit.

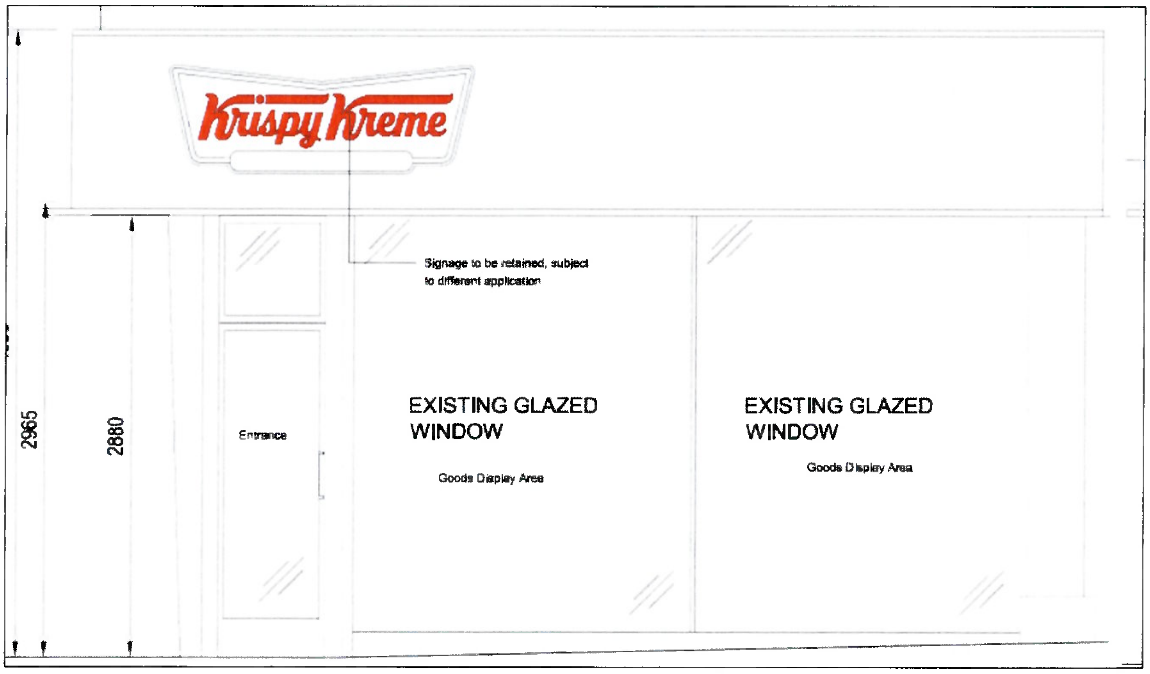

Figure 6.0 Front elevation of the Krispy Kreme retail unit, showing goods and products displayed on the shopfront.

It is contended the works completed replace the previous type of establishment. 'Porter's Newsagents' was a standard retail store. The subject unit, No. 42A St. Patrick's Street, would have previously sold retail items and goods such as milk, bread and newspapers when occupied by Porter's Newsagents. It is considered that a retail shop selling a box of chocolates is not materially different to a retail shop selling a box of doughnuts, t-shirts or coffee flasks. All of these items are purchased by a consumer and brought home.

It is noted the store sells various retail items, such as mugs, reusable coffee cups, coffee flasks, tote bags, socks, blankets, branded tee shirts, caps, keychains and hoodies. It is emphasised the sale of baked goods, to take away from the premises, is a retail use.

Figure 7.0 Imagery showing various products sold in Krispy Kreme stores.

Krispy Kreme sells a variety of doughnut boxes in a range of sizes, including boxes of 12, 24 and 48 no. doughnuts. It is emphasised that most doughnuts sold by Krispy Kreme would be in bulk boxes. Customers that purchase bulk boxes of doughnuts would typically bring them to the office, event or their home for consumption, away from the premises. There is a clear similarity between a retail unit that sells cakes, for example, and a patisserie retail unit, to which this section 5 relates in that both involve the sale of a retail good.

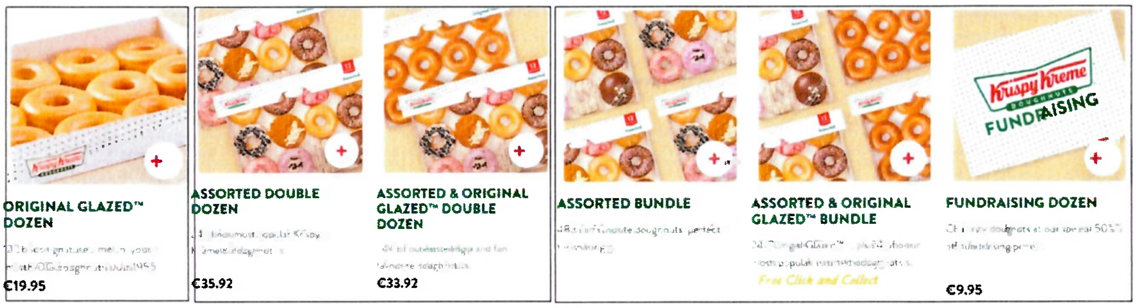

Figure 8.0 Details from the Krispy Kreme website, showing the option of doughnut boxes available for purchase.

It is highlighted that the works completed are minor and a retail unit remains with various items for sale inclusive of doughnuts. The unit does not comprise any internal seating and the purpose of the unit is to allow customers to purchase a product and bring it home from the premises, similar to any other retail product. The unit has a large space for customers to queue and pick products but will not allow customers to consume products on-site. It is contended that the works completed are exempted from development which the following section of this report will detail further.

5.0 Planning Policy

5.1 Cork City Development Plan 2022-2028

The site is zoned '*ZO 05 – City Centre*' in the Cork City Development Plan 2022 – 2028 with an objective to consolidate and facilitate the development of the central area and to promote its role as a dynamic mixed-use centre for community, economic, civic, cultural and residential growth.

The following policies and objectives are of note:

ZO 5.1 *Cork City is the key driver for economic and population growth in the region and the second city in the State. Cork City Centre is the historic, cultural and commercial heart of Cork and the region and its success is fundamental to the delivery of the National Planning Framework and to the well-being of the local and wider Irish economy. It is essential that the City Centre continues to develop its role as the key economic driver of the region and withstands the threat of vacancy, dereliction and the changing nature of retailing. It is the primary retail centre in the region, and the City Centre has seen significant population growth in recent years.*

ZO 5.2 *The primary purpose of this zone is to promote the continued economic, civic, cultural and residential growth of the City Centre, and to create a thriving urban community. Uses that complement the primacy and vibrancy of the City Centre are permitted in this zone, while comparison retail uses will be permitted within the Core Retail Area identified in Chapter 10 Key Growth Areas and Neighbourhood Development Sites and Map 02 of Volume 2 Mapped Objectives. Primary uses in this zone include but are not limited to retail, residential uses, community uses, offices, hotels, cultural and leisure facilities, education and healthcare institutions and facilities, and uses that contribute to the vibrancy and diversity of the City Centre.*

ZO 5.3 *Mixed use developments should achieve a vertical and horizontal mix of uses. Retail and other acceptable active uses will be the predominant use at ground floor level along the primary retail streets.*

ZO 5.4 *Development proposals in this zone must demonstrate how the proposal would respect, reflect or contribute to the character and vibrancy of the City Centre, commensurate with the nature and scale of the development. Developments must deliver a quality urban environment and public realm with a focus on accessibility and permeability.*

ZO 5.5 *Chapter 10 Key Growth Areas and Neighbourhood Development Sites sets out specific development objectives for the City Centre.*

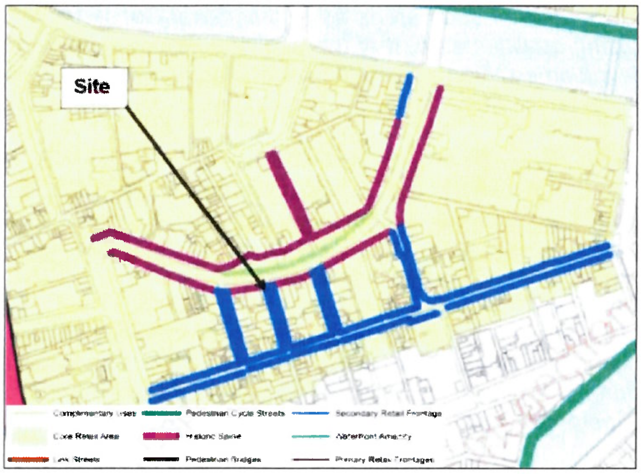

Figure 9.0 Extract from Map 02, Volume 2 "Mapped Objectives" of the Development Plan.

The site is located within a zone known as the 'Core Retail Area', with the following key planning objective of note:

Objective 10.5 *To support the function of the Core Retail Area as the primary location for comparison shopping in the region.*

Primary Retail Frontage

The subject location on St. Patrick's Street is designated as a 'Primary Retail Frontage' and the east elevation onto Marlborough Street has a 'Secondary Retail Frontage.' The following objectives are of note:

Objective 10.6 *To restrict residential, retail offices, general offices, hot food takeaways, general convenience stores, public houses, night clubs, mobile phone shops, bookmakers, betting shops and restaurant uses from locating at ground floor level on Primary Retail Frontages. Cork City Council will consider allowing some complementary restaurant and café uses at certain corner sites along the south-facing section of St. Patrick's Street to allow for a greater mix of use and vibrancy to enhance its primary retail function. Such uses will only be permitted where it can be demonstrated that they would complement the retail function of the street and add to its vibrancy and attraction.*

Objective 10.7 *To restrict residential uses, retail offices, general offices, hot food takeaways and bookmakers/ betting shops at ground floor level on Secondary Retail Frontages.*

Architectural Conservation Area

The site is located within the Oliver Plunkett Street Architectural Conservation Area in the Development Plan.

8.32 *Cork City Council will seek to preserve and enhance the special character of areas by the designation of Architectural Conservation Areas under Section 81 of the Planning and Development Act. Historic urban areas and landscapes can be also designated for protection as Architectural Conservation Areas. The special character of such areas is described in the relevant 'statement of character' in Volume 3 of this Plan. Changes that materially affect the character of an Architectural Conservation Area will require planning permission.*

8.33 *It important to recognise that historic urban areas and designed landscapes will be conserved and enhanced. Alterations and extensions to existing structures, the redevelopment of redundant sites and the intensification of uses will occur responding to economic and social changes as the city evolves.*

8.34 *The designation of such areas as Architectural Conservation Areas seeks to protect the existing qualities as part of the evolving development process and to ensure that new development responds to the historic environment in a way that contributes new values from our own time*

8.35 *The designation of Architectural Conservation Areas is intended to encourage development in historic areas that promotes a high standard of design and detail, enhancing Cork City's existing historic morphology, varied architectural styles and use of materials, but which adds new qualities from our own time, making its own contribution to the city's evolving identity*

8.36 *New development in Architectural Conservation Areas should have regard to existing patterns of development, the city's characteristic architectural forms and distinctive use of materials. However, it is expected that new development should generally reflect contemporary architectural practice, and not aim to mimic historic building styles.*

8.23 *Development in Architectural Conservation Areas should have regard to the following:*
a. Works that impact negatively upon features within the public realm, such as stone setts, cobbles or other historic paving, railings, street furniture, stone kerbing etc. shall not be generally permitted;
b. Design and detailing that responds respectfully to the historic environment in a way that contributes new values from our own time. This can be achieved by considering layout, scale, materials and finishes and patterns such as plot divisions in the surrounding area;
c. Historic materials and methods of construction should be retained and repaired where this is reasonable, e.g. historic windows and doors, original roof coverings, metal rainwater goods should be retained along with original forms and locations of openings etc;
d. Repairs or the addition of new materials should be appropriate and in keeping with the character of the original structures.

As detailed throughout this referral, the subject unit is maintained as a retail unit, therefore in line with the above guidance. The change of use is not considered to be material as the uses fall under the same class and change from retail shop to retail patisserie. The function of the unit will remain one that is a place for goods to be purchased and brought home, similar to any other shop such as newsagents.

It is noted in the Development Plan's 'Glossary of Acronyms', that 'food' is listed as a 'Convenience Good'. A doughnut is a food item, therefore a convenience good, and therefore the site maintains its status as a retail patisserie and supports the statement that the change of use is not material in this instance.

6.0 Response to Cork City Council's Declaration R906/24

"The Planning Authority, in view of the above and having regard to:

- *Sections 2, 3, and 4 of the Planning and Development Act, as amended, and*
- *Articles 5 and 10 of the Planning and Development Regulations, 2001, as amended.*

It is considered that –

Part I 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."

Basis of Exemption

Development

Under Part 1 - Article 5 of the Planning and Development Act, 2000 (as amended), a person can seek a formal declaration from the planning authority to establish if there is a requirement for planning permission for a specific proposal. An application must be made in writing to the planning authority, to determine whether a proposal requires permission or is considered an exempted development.

As mentioned above Section 5(1) of the Planning and Development Act, 2000 (as amended), states the following in regard to exempted developments in which the Section 5 application can be obtained:

"If any question arises as to what, in any particular case, is or is not development or is or is not exempted development within the meaning of this Act, any person may, on payment of the prescribed fee, request in writing from the relevant planning authority a declaration on that question, and that person shall provide to the planning authority any information necessary to enable the authority to make its decision on the matter."

The following planning legislation is justification, for this referral, and with regard to exempted developments and Section 5 applications: Under Part 1 - Section 2(1) of the Planning and Development Act 2000 (as amended), 'development" is assigned the meaning set out under Section 3(1) as follows:-

> *"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 in the use of any structures or other land."*

In addition, Section 2(1) of the Act defines works as:

> *"In this Act, 'works' includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure."*

The development comprises the change of use of a retail shop to a patisserie shop and associated internal construction works to facilitate this, both of which are considered to constitute development. Therefore, a question must be asked whether the development constitutes exempted development?

Exempted Development

It is submitted that the change of use from a retail shop to a patisserie shop constitutes exempted development under Article 5(1)(a) of the Planning and Development Regulations, as amended, given there it is not a material change of use. The minor internal works to facilitate the change of use are exempted development under Class 4(1)(h) of the Planning and Development Act 2000, as amended.

The following sections will firstly examine the change of use from retail shop to patisserie shop and justify its exemption. Secondly, the internal works completed will be justified as exempted from development.

6.1 Change of Use – Retail Shop to Patisserie Shop

- Article 5

Article 5 'Interpretation for this Part', sub-section (1), defines *'shop'* as follows:

> *"In this Act, 'shop' means a structure used for any or all of the following purposes, where the sale display of 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 sales 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-license (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 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 provisions of funeral services or as a funeral home, or as a hotel, a restaurant or 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."*

It is highlighted that the Council declared the development not exempt, having regard to Article 5(d) of the Planning and Development Regulations, which states '*for the sales 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-license (within the meaning of the Finance (1909-1910) Act, 1910), 10 Edw. 7. & 1 Geo. 5, c.8.'*

From the outset, it is argued that the Planning Officer has included us within Article 5(1)(d), which does not relate to nor represent the development directly. The use of the store by Krispy Kreme does not provision the sale of food or wines, but the sale of a retail item for consumption off the premises. The Planner's Report noted a range of "relevant decisions from An Bord Pleanála" detailing,

> *'...examples of proposed change of use and partial change of use from retail to café, coffee shop, juice bar. While the context differs from the question at hand, it nevertheless serves to demonstrate how the term 'shop' should be interpreted with regard food for consumption off the premises and what is determined to be a use which is subsidiary to another retail use.'*

The above examples do not relate to the subject development which is for the change of use of a retail shop to patisserie shop. As outlined within this referral, **the unit is not a café, the unit sells a product which is taken home by the consumer to enjoy – similar to any other retail unit.**

<u>It is considered that Article 5(1)(a) directly relates to the development and is the correct interpretation.</u> For ease of reference, Article 5(1)(a) states:

> *'In this Act, 'shop' means a structure used for any or all of the following purposes, where the sale display of service is principally to visiting members of the public –*
>
> ***(a) for the retail sale of goods,'***

It is emphasised that Article 5(1)(a) of the Planning and Development Regulations does not differentiate between comparison and convenience goods. Comparison goods can be defined as 'goods or products that are of a higher value, purchased infrequently (clothing, cars, bulky goods), whereas convenience goods are of lesser value and purchased frequently (soft drinks, newspapers, bread).

The Retail Planning Guidelines for Local Authorities, 2012, details a 'Glossary of Terms' in Annex 1. In Section A 1.2, 'Types of Retail Goods' are listed. It is highlighted that 'food' falls under 'Convenience Goods'. It is contended that doughnuts are a type of convenience food and should be interpreted under Article 5(1)(a) of the Planning and Development Regulations in this regard. It is emphasised that the sale of a doughnut, in a box, to take away and consume at home is no different to the sale of a chocolate bar from a newsagent, to take away and consume at home.

It is further highlighted to An Bord Pleanála that there is no production of doughnuts on site. It is noted that Krispy Kreme doughnuts are produced in Ireland at two different sites, one in Blanchardstown Co. Dublin, and a second in Naas Co. Kildare. The doughnuts are produced and delivered the to local stores every morning to ensure fresh doughnuts are available for purchase daily. The subject unit has no ovens or cookware in-house. The unit only has a hand-washing sink for cleanliness and a back-of-house area for staff. It is considered that the subject Krispy Kreme unit is identical to the use of a shop as a retail newsagent – selling bread, pastries, milk or soft drinks – and the same level of regard should be given in this instance. A customer entering the Krispy Kreme store can purchase a box of 6 no. doughnuts, for example, take them away to their home for consumption. Similarly, a customer entering a newsagent can purchase a box of chocolates, for example, take it away to their home for consumption.

It is argued that **<u>there is no material change of use at the premises,</u>** and the change in use from retail shop to retail patisserie is exempted from development for the reasons outlined above.

<u>Material Change of Use</u>

We would like to draw the Board's attention to a Section 5 decided under ABP-305094-19, which asked

> *'Whether the use of an existing retail unit for bakery sales including sandwiches, cakes, bread and other bakery related products for consumption on and off the premises and ancillary use of bakery retail unit for consumption of food/tea/coffee on the premises.'*

Although An Bord Pleanála declared the above application Not Exempt on 14th August 2020, we would emphasise the reason for this appears to be largely due to the baked goods being prepared and cooked on site. As stated within this referral, **the subject unit Krispy Kreme, <u>does not</u> bake or cook doughnuts on site.** We would like to detail elements within the Inspector's Report under ABP-305094-19, which are considered extremely relevant in relation to the subject referral.

The definition of development provided for in Section 2(1) of the Act involves 'works' and/or 'material change of use'. For development as defined for the purposes of Section 3(1) [development] of the Act to take place 'works' and/or 'material change of use' must occur.
The Inspector's Report noted the following:

> *8.1.10 'A frequently cited test to assist in determining whether a change of use is material or not, is that proffered by Barron, J in The County of Galway v Lackagh Rock Ltd [1984 21 MCA] for the determining of whether or not a material change of use has occurred. In this case, Barron, J considered that 'in determining whether or not a present use was materially different from a use being made on the appointed day one must look at matters which the planning authority would take into consideration if a planning application were made on both dates and if these matters were materially different, then, the present use must be equally materially different.'*
>
> *8.1.11 'The case cited related to the intensification of use of a quarry.....The factors to be taken into consideration in assessing the intensification of use of a quarry are clearly dramatically different to the factors relevant to the operation of a shop as an artisan bakery. Nonetheless, the principle set out in the 'Lackagh Rock' case is instructive. In short, if the matters considered in assessing a planning application for an artisan bakery are materially different to the matters for consideration in the assessment of a planning application for a 'shop' (as defined under Article 5(1) of the Regulations) then the uses must be materially different and a change of use from one use to the other must be a material change of use.'*
>
> *8.1.12 'In my opinion, the **use of Unit No.13 as an artisan retail bakery with ancillary café** etc. includes **certain factors that can reasonably be regarded as falling within the definition of a 'shop'** as provided under Article 5(1) of the Regulations viz. the sale of produce is principally to visiting members of the public; **<u>the retail sale of goods is involved</u>**; the sale of sandwiches and other food (subsidiary to the main retail use) for consumption off the premises occurs. Nonetheless, use as an artisan retail bakery also involves the installation and use of a kitchen, the operation of ovens (possibly by trained craftspeople/bakers), the importation of raw materials (ingredients for the baking of bread and other confectionery etc.) into the unit and the working of these raw materials in the baking of a finished product (bread and confectionery) for sale to visiting members of the public. **In my opinion these factors take the use as an artisan bakery outside the statutory definition of a 'shop'.** Use as a 'shop' allows for the operation of a launderette or dry cleaners – activities that could arguably be regarded as similar in certain respects to the operation of a bakery (operation of machines etc.). However, I consider that the specific reference to laundry and dry cleaners within the definition provided in Article 5 highlights the fact that these are regarded as 'exceptions' to the more general provisions under under Article 5. No such exception has been provided in respect of bakeries/artisan bakeries.'*

In light of the above commentary, it is emphasised that the subject unit, Krispy Kreme, No. 42A St. Patrick's Street, does not involve, '*the installation and use of a kitchen, the operation of ovens (possibly by trained craftspeople/bakers), the importation of raw materials (ingredients for the baking of bread and other confectionery etc.) into the unit and the working of these raw materials in the baking of a finished product (bread and confectionery) for sale to visiting members of the public*' as stated by the Inspector. The subject unit does not have cookers, ovens or kitchen facilities and no doughnuts are produced or cooked on site. **<u>Therefore, in the context of the above commentary by the Inspector under ABP-305094-19, it is considered that the subject change of use would not be material and would be considered exempted development.</u>**

It is emphasised to the Board that the subject unit will maintain the status of a 'shop', as it provides goods for customers to purchase and bring home with them. The previous occupier of the subject unit was 'Porter's Newsagents', a shop where customers could purchase a newspaper or chocolate. The unit is now occupied by Krispy Kreme and is still considered a shop given customers can purchase boxes of doughnuts and merchandise. There is no baking or food production, the unit Krispy Kreme sells doughnuts and merchandise similar to any other retail shop. It is contended the use of the subject unit for the sale of products maintains the status of a shop and is therefore not a material change of use. We ask the Board to have due regard to this fact and issue a declaration of exempted development.

Article 9- *'Restrictions on Exemptions'*, lists the circumstances in which development that would be classified as *'exempted'* under Article 6 is found to be *'not exempted'*. Specifically, we note that Article 9 (1)(a) states: -

Article 9 – Restrictions on Exemptions

"(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.

It is noted that the proposed development does not contravene a condition attached to permission under the Act.

(ii) consist of or comprise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width,

No amendments are proposed to the existing access.

(iii) endanger public safety by reason of a traffic hazard or obstruction of road users.

The internal refurbishment does not endanger public safety by reason of a traffic hazard or obstruction.

(iv) except in the case of a porch to which class 7 specified in column 1 of Part 1 of Schedule 2 applies and which 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, comprise the construction, erection, extension or renewal of a building on any street so as to bring forward the building, or any part of the building, beyond the front wall of the building on either side thereof or beyond a line determined as the building line in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan.

We note that the above restriction is not applicable to the proposal to which this application pertains.

(v) consist of or comprise the carrying out under a public road of works other than a connection to a wired broadcast relay service, sewer, water main, gas main or electricity supply line or cable, or any works to which class 25, 26 or 31 (a) specified in column 1 of Part 1 of Schedule 2 applies,

It is submitted that the proposal will not comprise the carrying out of works under a public road.

(vi) interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of a development plan for the area in which the development is proposed or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,

It is not considered that the proposed development will have any impact on the character of a landscape, view or prospect of special amenity value or special interest and is considered sympathetic to its surrounds.

(vii) consist of or comprise the excavation, alteration or demolition (other than peat extraction) of places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest, the preservation, conservation or protection of which is an objective of a development plan or local area plan for

the area in which the development is proposed or, pending the variation of a development plan or local area plan, or the making of a new development plan or local area plan, in the draft variation of the development plan or the local area plan or the draft development plan or draft local area plan,

We note that the proposal does not consist of the excavation, alteration or demolition of places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest.

(viiA) consist of or comprise the excavation, alteration or demolition of any archaeological monument included in the Record of Monuments and Places, pursuant to section 12 (1) of the National Monuments (Amendment) Act 1994, save that this provision shall not apply to any excavation or any works, pursuant to and in accordance with a consent granted under section 14 or a licence granted under section 26 of the National Monuments Act 1930 (No. 2 of 1930) as amended,

The proposed development will not comprise the excavation, alteration or demolition of any archaeological monument included in the Record of Monuments and Places.

(viiB) comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site,

It is considered that the continued use of the subject unit will not have an effect on the integrity of a European Site, therefore an appropriate assessment is not required.

(viiC) consist of or comprise development which would be likely to have an adverse impact on an area designated as a natural heritage area by order made under section 18 of the Wildlife (Amendment) Act 2000.

The proposal will not have an adverse impact on an area designated as a natural heritage area.

(viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use,

We note that the proposed development will not comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use.

(ix) consist of the demolition or such alteration of a building or other structure as would preclude or restrict the continuance of an existing use of a building or other structure where it is an objective of the planning authority to ensure that the building or other structure would remain available for such use and such objective has been specified in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,

In response to the above, it is submitted that the proposed development will not consist of the demolition of a building or structure that would restrict the continuance of an existing use of a building or other structure where it is an objective of the planning authority to ensure that the building or structure would remain available for use.

(x) consist of the fencing or enclosure of any land habitually open to or used by the public during the 10 years preceding such fencing or enclosure for recreational purposes or as a means of access to any seashore, mountain, lakeshore, riverbank or other place of natural beauty or recreational utility,

The fencing or enclosure of any land is not proposed as part of the development to which a Section 5 Declaration is sought.

(xi) obstruct any public right of way,

The proposal relates only to internal refurbishment works to 42 St. Patrick's Street, Cork, and is not proposed to obstruct any public right of way.

> *(xii) further to the provisions of section 82 of the Act, consist of or comprise the carrying out of works to the exterior of a structure, where the structure concerned is located within an architectural conservation area or an area specified as an architectural conservation area in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan and the development would materially affect the character of the area,*

The subject development is located within the Oliver Plunkett Architectural Conservation Area. 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.

Accordingly, we consider that subject to Article 9 of the Regulations, the proposed development is exempt from the requirement to obtain planning permission.

6.2 Internal Fitout Works

Section 4

Section 4(1)(h) of the Planning and Development Act 2000 (as amended) outlines the reasoning for which developments can be carried out under exempted development. For the purpose of this report, we must assess whether the fit-out works completed constitute development or exempt development, within the meaning of Section 4 (1)(h) of the Act.

It states:

> *"(h) 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."*

We note that Section 4(2) of the Act states that the 'Minister' may by Regulation provide for any class of development to be exempted development for the purposes of the Act where he or she is of the opinion that—

> *(i) by reason of the size, nature or limited effect on its surroundings, of development belonging to that class, the carrying out of such development would not offend against principles of proper planning and sustainable development, or*
>
> *(ii) the development is authorised, or is required to be authorised, by or under any enactment (whether the authorisation takes the form of the grant of a licence, consent, approval or any other type of authorisation) where the enactment concerned requires there to be consultation (howsoever described) with members of the public in relation to the proposed development*

For clarity, the 'fit-out' works completed are considered to be subject to Section 4(1)(h) above and are detailed as follows:

1) *Internal alterations for the 'fit-out' of the existing unit to provide for –*

    I. *New countertops, storage cupboards and internal reconfiguration,*
    II. *New partition walls,*
    III. *Paintwork to walls.*

The proposed works comprise alterations, repair and improvement works to the interior of the existing structure and minor works to the exterior as described above and in the architectural drawings. Therefore, it is considered the fit-out works completed are exempted development under Section 4(1)(h) of the Act, given they are minor internal works to provide for the patisserie shop.

Further to the above, we note the following precedent for 'fit-out' works deemed exempted development in accordance with Section 4(1)(h): An Bord Pleanála determined that the 'works' at Newtown, Bruff, Co. Limerick, under ABP Ref. RL91.301092, are exempted development to which the Board concluded the, *'alterations to that were carried out to the exterior of the building are relatively minor and do not result in a material change' and 'As such, it is considered that these works constitute 'development' under Section 3, but also come within the scope of Section 4(1)(h) of the P & D Act 2000, as amended. As such, the said works are development and are exempted development.'*

The completed works comprise repair and improvement works to the interior of the existing structure at Krispy Kreme, No. 42A St. Patrick's Street, Cork, T12H767. We submit that the proposed interior works, as outlined above, are consistent with Section 4(1)(h) of the Act in that they will not affect the character of the structure or any element of the structure and will result in an enhancement and activated street frontage that contributes to the function and visual amenity of the area. Further to the above, the improvements result in increased economic activity along St. Patrick's Street as appropriate.

Section 4(4) states:

> *'Notwithstanding..............any regulations under subsection 2, development shall not be exempted development if an environmental impact assessment or appropriate assessment of the development is required.'*

It is noted the site is not located in an area which requires an environmental impact assessment or appropriate assessment.

7.0 Planning Precedents for Exempted Development

23, Main Street, Chapelizod, Dublin 20

Reg. Ref. 0332/20 Dublin City Council granted a Certificate of Exemption on 14th October 2020 for the use of a launderette as a bakery/café to serve food to go including sandwiches, soups and salads; inclusive of painting to the shopfront and a new internal partition wall, kitchen and preparation unit.

The Planner's Report made the following commentary:

> *'The applicant proposes a bakery/cafe serving only food to go. Part 2, Exempted Development of the Planning and Development Regulations 2001 (as amended) Article 5(1) defines 'shop' as 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 (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.* ***Having regard to the above, it is considered that use of the building as bakery serving only food to go which is subsidiary to the main retail use is deemed exempted development.***'

Unit 1, 22, Fassaugh Avenue, Dublin

Reg. Ref. 0529/05 Dublin City Council granted a Certificate of Exemption on 31st August 2005 for the use of a shop to sell bakery products, delicatessen and take away tea/coffee and food platters for delivery.

The Planner's Report made the following commentary:

'The relevant section of the Planning and Development Regulations 2001 in Part 2 Exempted Development Article 5(1), "shop" means a structure used for any or all of the following purposes, where the sale, display or services is principally to visiting members of the public. – (d) for the sale of sandwiches or other food for consumption off the premises, where the sale of such food is subsidiary to the main retail use.'

4 Landscape Road, Churchtown, Dublin 14

Reg. Ref. REF10511 Dún Laoghaire Rathdown County Council granted a Certificate of Exemption on 6th October 2011 for the change of use from a bakery to a shop.

The above was exempt from planning permission given Class 14(a) of Schedule 2, Part 1 of the Planning and Development Regulations 2001 – 2011 in relation to the definition of a "*shop*".

Unit 1, Supervalu Centre, Church Street, Skerries, Co. Dublin

Ref. Ref. FS5/033/17 Fingal County Council granted a Certificate of Exemption on 5th July 2017 for the change of use of a retail unit to a launderette.

The Planning Officer considered given both retail unit and launderette are under Class 1 of the Planning and Development Act, that the development is exempt. It is considered that the subject Section 5 Declaration also seeks confirmation that the change of use of a retail shop to a patisserie shop is exempted development and should both be considered under Class 1(a) of the Planning and Development Regulations and therefore constitute exempted development.

8.0 Conclusion

The works completed at the subject site comprise a change in use from retail shop to retail patisserie and minor internal alterations to allow for a Krispy Kreme retail unit. It is highlighted throughout this report that the use of the unit remains retail, given the patisserie will sell doughnuts and merchandise to customers to be taken off the premises to enjoy, thus not a material change of use. It is emphasised in this report that the unit is not a café, does not provide internal seating for customers and, the unit does not sell coffee.

It is considered that the completed works are minimal and enhance the character of the structure to the benefit of its immediate area. As such, we would ask An Bord Pleanála to overturn the decision of Cork City Council which stated the works are development and are not exempted development, and make a decision that the works are development and are exempted development at No. 42A St. Patrick's Street, Cork, T12H767. Accordingly, we request a declaration to this effect from An Bord Pleanála under Section 5 of the Planning and Development Act 2000 (as amended).

Should you have any queries or require any further information including access to the building, please do not hesitate to contact the undersigned.

Kevin Hughes MIPI MRTPI
Director for HPDC

Appendix A – Declaration issued by Cork City Council dated 24th January 2025.

Comhairle Cathrach Chorcaí
Cork City Council

Halla na Cathrach, Corcaigh - City Hall, Cork - T12 T997

Krispy Kreme Ireland Limited
c/o Hughes Planning and Development Consultants
85 Merrion Square South
Dublin 2

24/01/2025

RE: **Section 5 Declaration R906/24 Krispy Kreme, 42A Saint Patrick's Street, Cork**

A Chara,

With reference to your request for a Section 5 Declaration at the above-named property, received on 19th December 2024, I wish to advise as follows:

The Planning Authority, in view of the above and having regard to:

- Sections 2, 3, and 4 of the Planning and Development Act, as amended, and
- Articles 5 and 10 of the Planning and Development Regulations, 2001, as amended.

It is considered that -

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.

Under Section 5(3)(a) of the Planning and Development Act, 2000, you may, on payment of the appropriate fee, refer this declaration for review by An Bord Pleanála within 4 weeks of the date it is issued, 24th January 2025.

Is mise le meas,

NFitzgerald
Niamh Fitzgerald
Development Management Section
Planning & Integrated Development

We are Cork.