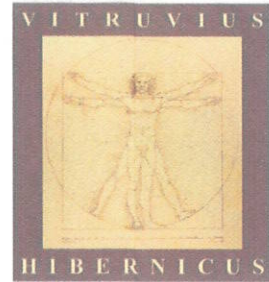


LIAM MADDEN
EU REGISTERED ARCHITECT NETHERLANDS REG. NO. 1.180615.001
U.K. REGISTERED ARCHITECT REG. NO. 046170I
ENVIRONMENTAL SCIENTIST



An Bord Pleanála,
64 Marlborough Street,
DUBLIN 1

24 October 2019

Longford County Council

AN BORD PLEANÁLA
LDG- 2036 1-19
ABP- _____
29 OCT 2019
Fee: € 220.00 Type: Cheque
Time: 10:10 ref: DC-1978 Post

Dear Sir/Madam,

this is a Section 5 Referral by my client, Philip King, who is the owner of No. 72 Main St. Longford.

Attached are maps and An Bord's Referral fee €220-00.

Also attached is the Section 5 Request made to Longford County Council dated 24 Sept. 2019.

HISTORY

The only relevant planning history file is 03/65 (also 03-7000-65) by applicant Brendan Lynn. Planning Permission issued, subject to Conditions for a proposed material change of use of the ground floor to a retail shop with 3 no. overhead apartments. The Permission was availed of only in respect of the conversion of the ground floor to a retail shop used by XtraVision from then till recently.

This Section 5 Request was lodged by me on 24 Sept. 2019.

The P.A. stamped it received on 25 Sept. 2019.

However, no receipt was furnished by the Council though the cheque was paid by my bank. No acknowledgment of the Request was furnished to me.

A declaration was due within 28 days, that is, by 23 October 2019

Today 24 October I called to the Council offices only to be, at first, denied access to the Public Register where I wanted to check whether the file actually existed or not and to query the absent Acknowledgement, receipt and decision etc.

I was furnished with an unsigned copy letter dated 9 October 2019 which had not been sent to me by registered or ordinary post.

Making matters worse, the declaration of 9 October is not in the required format, that is to say, there is no reasoning or conclusion contained and no references to the Sections in the Act, or the Articles/definitions or otherwise in the Regulations.

I formed the opinion that this was a lazy and flawed service provided by the Council.

The attached declaration dated 9 October 2019, not having been communicated to me may be regarded as not having been made within the statutory period. Alternatively, the decision is being contested by me in this referral.

The above are all procedural errors.

More important is that there were fundamental errors in the misunderstanding and misinterpretation of the Act, the Regulations and and the definitions therein.

The fundamental errors were :

- (i) the use of the premises for the sale of sandwiches etc. for consumption off the premises provided always that the use is subsidiary to the main retail use was deemed to constitute 'development' as defined, and
- (ii) the above use, having been deemed to be 'development' was deemed notto be exempted development.

SUPPORTING ARGUMENTS in this Referral.

I say that the ground floor of the premises at No. 72 Main St., Longford is a retail shop. Its conversion to a shop was on foot of permission 03/65 and the permission was availed of. The shop was used since 2003 till recently by XtraVision which dealt in CDs, Videos, gameboy machines and the sale of sweets, crisps, popcorn, mineral drinks and other confections.

There is currently before the Council a planning application ref. 19/155 to carry out a material change of use by conversion to a restaurant. The premises, it is intended, would also be used for the subsidiary use of the sale for consumption off the premises of sandwiches and such like. The purpose of this Referral is to establish that that this intended subsidiary use is not 'development' as defined or, in the alternative if it is development, it is exempted development.

I argue that the use of the ground floor is a retail shop and that permits the sale display or service principally to visiting members of the public.

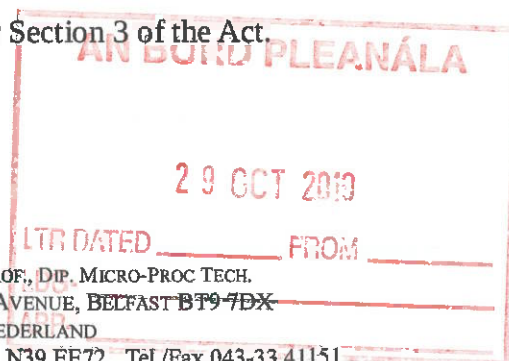
I refer to Article 5 Part 2 Exempted Development, Planning and Development Regulations 2001, as amended. I say the definition therein at (d) expressly provides for the sale of sandwiches or other food for consumption off the premises, where the sale of such food is subsidiary to the main retail use.

This is precisely the situation which prevailed when operated by XtraVision.

The sale of foodstuffs, sweets etc. by XtraVision is part and parcel of the definition of 'shop'. Therefore it is not a change of use. Even if it were a change of use – which is denied - it would not be a *material* change of use.

A change of use per se is not 'development' as defined under Section 3 of the Act.

Only a *material* change of use is 'development'.



L. MADDEN B. ARCH. NUI, M.APPL.ENVIR. SC., CERT. ARCH. PROF., DIP. MICRO-PROC TECH.
2 THE GATE LODGE, WINDSOR CLOSE, 81 LOWER WINDSOR AVENUE, BELFAST BT9 7DX
POSTBUS 41882, 1009 DB AMSTERDAM, NEDERLAND
RESIDENCE : VITRUVIUS HIBERNICUS, CONVENT ROAD, LONGFORD N39 EE72 Tél./Fax 043-33 41151

I submit in the first instance that, if the sale of sandwiches etc. for consumption off the premises is considered to be a change of use, then the change of use is not material as that use is expressly provided for under the definition of 'shop' in Article 5 of Regulations.

Therefore, I say, the proposed use does not constitute 'development'.

In addition, or in the alternative, I submit that the proposed use for the (subsidiary) sale of sandwiches etc., if it is determined to be a material change of use, the development is exempted development.

I ground this argument on Class 1, Part 4 of Schedule of the 2001 Regulations, as amended.

(Solely for the purposes of clarity and for the avoidance of doubt, I add that I am not asserting that the use of the premises as a restaurant does not constitute 'development'.

Neither am I claiming that the use of the premises as a restaurant is exempted development.)

WHEREAS A QUESTION HAS ARISEN as to whether the use of the ground floor of the existing shop at no. 72 Main Street for the sale of sandwiches, buns, coffee and other such small confections for consumption off the premises provided always that the use is subsidiary to the main retail use, I seek a declaration that the use is not 'development' as defined or, in the alternative, is exempted development.

I look forward to your declaration as soon as possible.

Yours faithfully,

Liam Madden,
Convent Road,
LONGFORD.



9th October, 2019

Philip King
c/o Liam Madden
Convent Road,
Longford

**Re: Register Reference DC 19/8
Philip King, c/o Liam Madden, Convent Road, Longford – Development at 72
Main Street, Longford.**

**Declaration and Referral on Development and Exempted Development Under
Section 5 of the Planning and Development Act (as amended)**

Dear Sir,

The planning authority wishes to acknowledge receipt of your request for a declaration of works considered to be development or exempted development under Section 5 of the Planning and Development Act 2000 (as amended) on the 25th September, 2019.

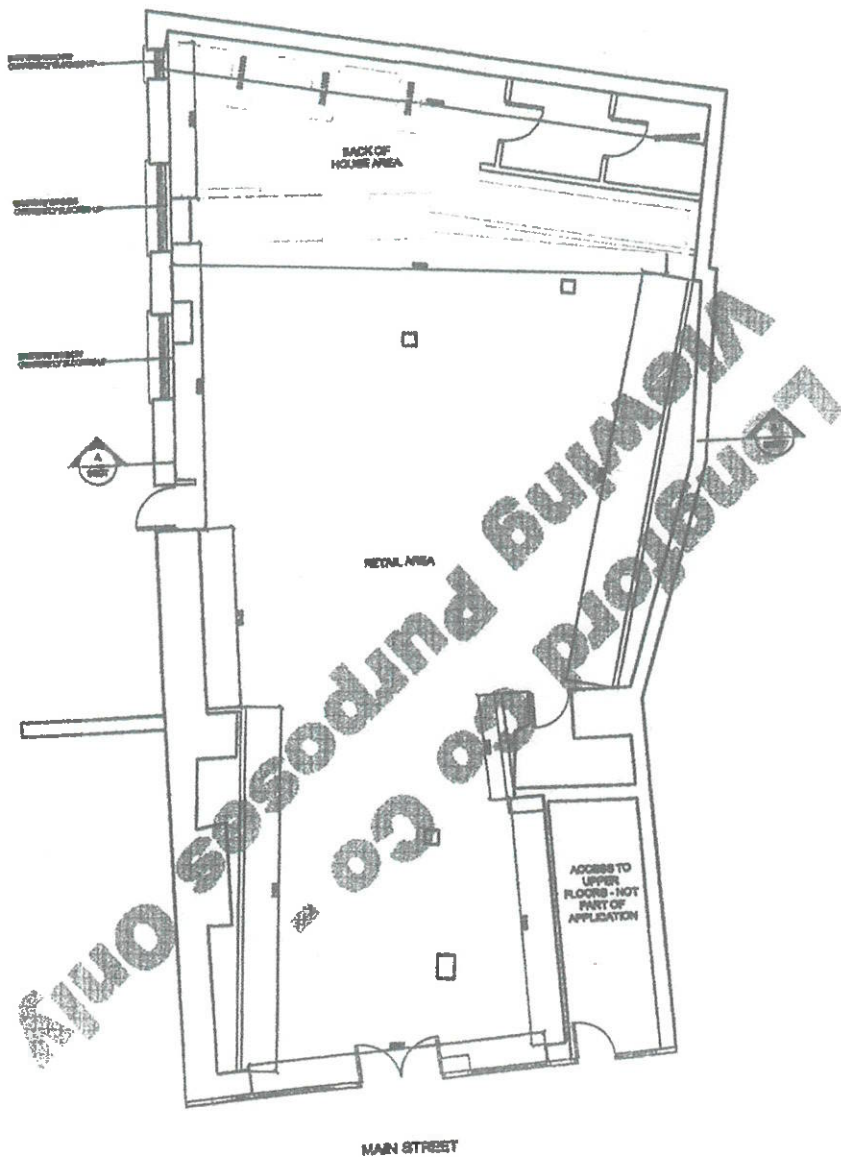
It is the opinion of the Planning Authority that the change of use of the existing retail shop for the sale of sandwiches or other food for consumption off the premises, where the sale is subsidiary to the main use constitutes a change of use which is development as defined by Section 3 (1) of the Planning and Development Act 2000 (as amended)

Therefore it is the opinion of the Planning Authority that the change of use, as defined, is considered to be development as defined in the Planning and Development Act and is development that is **not exempted development**.

Yours Sincerely,

A/Administrative Officer





PLANNING SECTION
RECEIVED
11 JUN 2010
LONGFORD COUNTY COUNCIL

AN BORD PLEANÁLA
29 OCT 2010
LTR DATED _____ FROM _____
LDG- _____
ABP- _____



THE BUILDING CONSULTANCY		Dung Hill, PO01		Rev -
Client: SIBOMNA COPPER COMPANY		Status: PLANNING		
Project: 72 MAIN STREET, LONGFORD		Scale: 1:100 @ A3		Date: 08 JUNE 2010
Title: EXISTING GROUND FLOOR PLAN		Drawn: FF		Checked: ---
Project Number: 1011200		<small>All dimensions are in millimetres unless otherwise stated. Dimensions to be verified on site. Drawn under Copyright of The Building Consultancy Ltd. All rights reserved. Designation for electronic reproduction.</small>		
Rev -	Date -			

Longford Branch
Main Street Longford Co Longford

Date 24/9/19
euro euro euro



Pay LONGFORD COUNTY COUNCIL or order

EIGHTY EURO

€80.00

MR LIAM MADDEN



130619

#MEPXHXXP

Cheque No.

Branch Sort Code

Account No.

Liam Madden

Pla

000673 98 6030

[Redacted]

AN BORD PLEANNÁLA
29 OCT 2019
LDG-
FROM

**Section 5 Declaration – Exempted Development
Planning & Developments Acts 2001 as amended**

- 1. Applicant Name:** PHILIP KING

Address: C/O L. MADDEN, CONVENT RD. LONGFORD

Phone No: _____ **E-mail:** _____
- 2. Name of Agent (if any):** LIAM MADDEN

Address: CONVENT ROAD LONGFORD

PI: [Redacted] **E-Mail:** [Redacted]
- 3. Address for correspondence (if different from above):**

Address: CONVENT RD. LONGFORD
- 4. Location of Proposed Development:** 72 MAIN ST. LONGFORD
(SEE MAP)
- 5. Description of Development:** USE OF EXISTING RETAIL SHOP FOR THE
SALE OF SANDWICHES OR OTHER FOOD FOR CONSUMPTION
OFF THE PREMISES, WHERE THE SALE IS SUBSIDIARY TO
TO THE MAIN USE.
- 6. Under what section of the Planning and Development Act, 2000 and Planning and
Development Regulations, 2001 is exemption sought (Specific details required)**

CLASS 1, PART A, SCHEDULE 2 OF P&D REGS.
2001, AS AMENDED & INTERPRETATIONS IN PART 2
ARTICLE 5 OF 2001 REGS., IN PARTICULAR DEF. OF
"SHOP" IN (d).

7. Will the development take place within the curtilage of a dwelling house?

Please tick as appropriate: YES _____ NO

8. Will / does development take place in / on a Protected Structure or within the curtilage of a Protected Structure?

Please tick as appropriate: YES _____ NO

8(a) If "YES", has a Declaration under Section 57 of the Planning & Development Act 2000, as amended, been requested or issued for the property by the Planning Authority?

Please tick as appropriate: YES _____ NO _____ N/A

9. Please state applicants interest in this site OWNER

If applicant is not the owner of site, please provide name & address of owner:

N/A

10. Are you aware of any enforcement proceedings connected to this site?

Please tick as appropriate: YES _____ NO

10(a) If "YES" please supply details:

11. Are you aware of any previous planning application/s on this site?

Please tick as appropriate: YES NO _____

11(a) If "YES" please supply details: 03700065 AND CURRENT APPLICATION 19/155

12. List of Items to accompany this application:-

- a) A fee of €80
- b) 1 x An appropriately scaled site location map (not less than 1:2,500 rural and 1:1000 urban), clearly indicating the site of the proposed development outlined in red
- c) 1 x An appropriately scaled site layout plan (not less than 1:500) indicating the location of the proposed works and access to same from the public road.
- d) 1 x Plans and particulars of the proposed development, including sections and dimensions to differentiate between the existing works and proposed works.
- e) 1 x Approximate finished floor levels of the proposed development should be provided in relation to the existing ground level at the site of the proposed development.

SIGNED: Lean Moran

DATE: 24/9/19

LEASING BOARD LEANÁLA
29 OCT 2019
LTA DATED _____ FROM _____
LDG- _____
ABP- _____

7. Will the development take place within the curtilage of a dwelling house?

Please tick as appropriate: YES NO

8. Will / does development take place in / on a Protected Structure or within the curtilage of a Protected Structure?

Please tick as appropriate: YES NO

8(a) If "YES", has a Declaration under Section 57 of the Planning & Development Act 2000, as amended, been requested or issued for the property by the Planning Authority?

Please tick as appropriate: YES NO N/A

9. Please state applicants interest in this site OWNER

If applicant is not the owner of site, please provide name & address of owner:

N/A

10. Are you aware of any enforcement proceedings connected to this site?

Please tick as appropriate: YES NO

10(a) If "YES" please supply details:

11. Are you aware of any previous planning application/s on this site?

Please tick as appropriate: YES NO

11(a) If "YES" please supply details: 03700065 AND CURRENT APPLICATION 19/155

12. List of Items to accompany this application:-

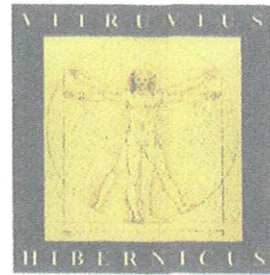
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- d) 1 x Plans and particulars of the proposed development, including sections and dimensions to differentiate between the existing works and proposed works.
- e) 1 x Approximate finished floor levels of the proposed development should be provided in relation to the existing ground level at the site of the proposed development.

SIGNED: Leann Nauman

DATE: 24/9/19

RECEIVED PLEANÁLA
29 OCT 2019
LTR DATED _____ FROM _____
LDG- _____
ABP- _____

LIAM MADDEN
EU REGISTERED ARCHITECT NETHERLANDS REG. NO. 1.180615.001
U.K. REGISTERED ARCHITECT REG. NO. 0461701
ENVIRONMENTAL SCIENTIST



24.09.19

Planning Office,
Longford County Council,
Great Water Street,
LONGFORD.



Dear Sir/Madam,

this is request by my client, Philip King, for a Section 5 Declaration of Exemption in relation to an existing shop at Main Street, Longford.

The premises is the subject matter of a current planning application no. 19/155.

In effect this Section 5-request is being lodged in parallel with application 19/155.

Attached are :

- (i) €80-00 request fee,
- (ii) Land Registry OS Map printout showing the site edged in red,
- (iii) ground floor plan.

BACKGROUND

This premises has the benefit of a previous permission 03/65 (also 03-7000-65) permitting the conversion of the premises to a retail shop et alia. The applicant in 2003 was Brendan Lynn.

It is intended to change the use of the ground floor of the premises to (1) a sit-down restaurant and also to use the shop as (2) a takeaway for sandwiches, coffee, buns and other small confections.

The second proposed use (2) is, I submit, exempted development provided the use is subsidiary to the main use.

SUPPORTING ARGUMENTS

I say the use of the premises as a shop is permitted under Permission 03/65.

I say "shop" is listed in Class 1, Part 4 of Schedule 2 of the 2001 Regulations, as amended.

I say "shop" is defined in Article 5 of the 2001 Regulations Part 2 Exempted Development Interpretations for this Part (copies attached).

I say that there is at least one other such establishment in Main Street FABIANI where confections are sold to visiting members of the public for consumption both on and off the premises where that use is subsidiary to the main use.

L. MADDEN B. ARCH. NUI, M.APPL.ENVIR. SC., CERT. ARCH. PROF., DIP. MICRO-PROC TECH.
2 THE GATE LODGE, WINDSOR CLOSE, 81 LOWER WINDSOR AVENUE, BELFAST BT9 7DX
POSTBUS 41882, 1009 DB AMSTERDAM, NEDERLAND
RESIDENCE : VITRUVIUS HIBERNICUS, CONVENT ROAD, LONGFORD N39 EE72 Tel./Fax 043-33 41151

The dictionary definition of "retail" is the sale of goods to the public in relatively small quantities for use or consumption rather than for resale.

The dictionary definition of "shop" is a business establishment where goods are sold to individual customers.

Article 5 definition of "shop" is a structure where the sale, display or service is principally to visiting members of the public.

There is no definition of "restaurant" in the Planning Act or the Regulations.

The dictionary definition of "restaurant" is a business establishment where meals are served to visiting members of the public. It is therefore also retail.

I submit that it follows logically that the ground floor of the Philip King premises is a shop i.e. a place of business retail establishment, where goods are sold to visiting members of the public.

It doesn't matter whether the goods are sandwiches or shoes.

Sandwiches and shoes are both take-away goods.

Both are goods to be sold in relatively small quantities for use and/or consumption off the premises.

QUESTION

72 Whereas a question has arisen as to whether the use of the ground floor of the Philip King premises at No72 Main Street, Longford as a takeaway for sandwiches, coffee, buns and other such small confections provided always that the use is subsidiary to the main use, I request your declaration that the said use is exempted development.

Yours faithfully,

Liam Madden,

P.S. Please reply to my residence at Convent Road, Longford.

AN BORD PLEANALA	
29 OCT 2009	
LTR DATED _____	FROM _____
LDG- _____	
ABP- _____	

L. MADDEN B. ARCH. NUI, M. APPL. ENVIR. SC., CERT. ARCH. PROF., DIP. MICRO-PROC TECH.
2 THE GATE LODGE, WINDSOR CLOSE, 81 LOWER WINDSOR AVENUE, BELFAST BT9 7DX
POSTBUS 41882, 1009 DB AMSTERDAM, NEDERLAND
RESIDENCE : VITRUVIUS HIBERNICUS, CONVENT ROAD, LONGFORD N39 EE72 Tel./Fax 043-33 41151

cf. ARTICLE 10

“painting” includes any application of color

“repository” means a structure (excluding any land occupied therewith) where storage is the principal use and where no business is transacted other than business incidental to such storage;

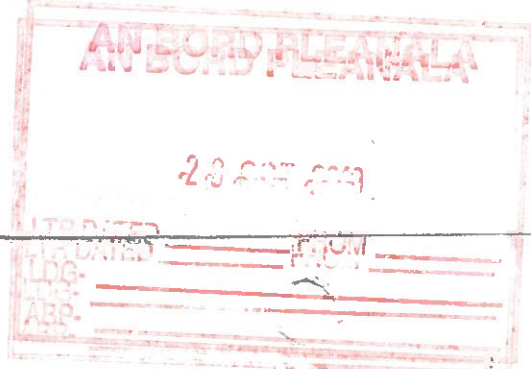
“shop” means a structure used for any or all of the following purposes, where the sale, display or service is principally to visiting members of the public—

- (a) for the retail sale of goods,
- (b) as a post office,
- (c) for the sale of tickets or as a travel agency,
- (d) for the sale of sandwiches or other food for consumption off the premises, where the sale of such food is subsidiary to the main retail use,
- (e) for hairdressing,
- (f) for the display of goods for sale,
- (g) for the hiring out of domestic or personal goods or articles,
- (h) as a laundrette or dry cleaners,
- (i) for the reception of goods to be washed, cleaned or repaired,

but does not include any use associated with the provision of funeral services or as a funeral home, or as a hotel, a restaurant or a public house, or for the sale of hot food for consumption off the premises, except under paragraph (d) above, or any use to which class 2 or 3 of Part 4 of Schedule 2 applies;

“supermarket” means a self-service shop selling mainly food;

“telecommunications network” means the whole of the telecommunications infrastructure and any associated physical infrastructure of any network operator;



CLASS 1
Use as a shop.

CLASS 2
Use for the provision of—

- (a) financial services,
- (b) professional services (other than health or medical services),
- (c) any other services (including use as a betting office), where the services are provided principally to visiting members of the public.

CLASS 3
Use as an office, other than a use to which class 2 of this Part of this Schedule applies.

CLASS 4
Use as a light industrial building.

CLASS 5
Use as a wholesale warehouse or as a repository.

CLASS 6
Use as a residential club, a guest house or a hostel (other than a hostel where care is provided).

CLASS 7
Use—

- (a) for public worship or religious instruction,
- (b) for the social or recreational activities of a religious body,
- (c) as a monastery or convent.

CLASS 8
Use—

- (a) as a health centre or clinic or for the provision of any medical or health services (but not the use of the house of a consultant or practitioner, or any building attached to the house or within the curtilage thereof, for that purpose),
- (b) as a crèche,
- (c) as a day nursery,
- (d) as a day centre.

Cf. ARTICLE 10

“painting” includes any application of color

“repository” means a structure (excluding any land occupied therewith) where storage is the principal use and where no business is transacted other than business incidental to such storage;

“shop” means a structure used for any or all of the following purposes, where the sale, display or service is principally to visiting members of the public—

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- (c) for the sale of tickets or as a travel agency,
- (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,
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- (f) for the display of goods for sale,
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 - (b) professional services (other than health or medical services),
 - (c) any other services (including use as a betting office),
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