



An
Bord
Pleanála

Board Direction
ABP-303154-18

The submissions on this file and the Inspector's report were considered at a Board meeting held on April 2nd 2019.

The Board decided, as set out in the following Order, that the conversion of a commercial structure to a two-bedroom apartment at the rear of 31 Shantalla Road, Galway, is development and is not exempted development.

Board Order as follows:-

WHEREAS a question has arisen as to whether the conversion of a commercial structure to a two-bedroom apartment at the rear of 31 Shantalla Road, Galway is or is not development or is or is not exempted development.

AND WHEREAS John Lawless c/o McCarthy Keville O'Sullivan Ltd of Block 1, G.F.S.C., Moneenageisha Road, Galway, requested a declaration on this question from Galway City Council, and the Council issued a declaration on the 7th day of November 2018 stating that the matter is development and is not exempted development.

AND WHEREAS John Lawless referred this declaration for review to An Bord Pleanála, on the 4th day of December 2018.

AND WHEREAS An Bord Pleanála, in considering this referral, had regard particularly to:

- (a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended,
- (b) Articles 6, 9 and 10 of the Planning and Development Regulations, 2001, as amended by the Planning and Development (Amendment) Regulations 2018,
- (c) Classes 1, 2, 3 and 6 of Part 4 of the Second Schedule to the Planning and Development Regulations 2001, as amended,
- (d) The planning history of the subject site and in particular planning permission register reference number 250/71, which was for the erection of a printing workshop and store on the subject premises,
- (e) Case law, and in particular *Molloy - v - Minister for Justice* [2004].

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The authorised use of the subject premises, having regard to the planning history of the subject site, and to case law, is as a printing workshop and store to which planning permission register reference number 250/71 relates;
- (b) The change of use of the subject structure from printing workshop and store to use as a 2-bedroom apartment is a change of use that is material in planning terms, having regard to different patterns of activity, and impacts on the pattern of development in the vicinity, and is therefore a material change of use and is development;

- (c) The authorised use (as a printing workshop and store), based on the planning history, is not a use within the scope of Classes 1, 2, 3 and 6 of Part 4 of the Second Schedule to the Planning and Development Regulations, but is within the scope of Class 4 (that is, use as a light industrial building), and in particular does not represent use for professional or other services under Class 2 of Part 4, and it has not been established that the use authorised under planning permission register reference number 250/71 involved services provided principally to visiting members of the public, as is a requirement of Class 2;
- (d) The development in question, not being a change of use from Classes 1, 2, 3 or 6 of Part 4 of the Second Schedule to residential use, would not, therefore, come within the scope of Article 10 (6) of the Planning and Development Regulations, 2001, as amended by the Planning and Development (Amendment) Regulations 2018, and
- (e) There are no other provisions, in the Planning and Development Act 2000, as amended, or in the Planning and Development Regulations, 2001, as amended, whereby such development would be exempted development, and the proposed material change of use in this instance is, therefore, not exempted development.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by Section 5 (3)(a) of the Planning and Development Act, 2000, as amended, hereby decides that conversion of a commercial structure to a two-bedroom apartment at the rear of 31 Shantalla Road, Galway, is development and is not exempted development.

In not accepting the recommendation of the Inspector that the subject development would constitute exempted development, the Board was not satisfied that the authorised use, as a printing workshop and store, came within the scope of Class 2, as suggested by the referrer and as recommended by the Inspector, but rather came within the scope of Class 4, that is, use as a light industrial building. Furthermore, the Board was not satisfied that it had been established, by the referrer, that such use involved the provision of services *principally* to visiting members of the public and in that regard noted the drawings upon which planning permission register reference number 250/71 was based. The Board did accept, as recommended by the Inspector, that the Molloy case applied in this instance, and that therefore the planning permission for the use of these premises as a printing workshop and store was capable of being implemented, notwithstanding the intervening use as a doctor's surgery (which it is noted, also does not come within the scope of Classes 1, 2,3 and 6 of Part 4 of the Second Schedule to the Planning and Development Regulations, 2001, as amended.), but this did not alter its principal conclusion that the authorised use is not within the scope of these Classes.

Board Member

Date: 2nd April 2019

Philip Jones