



An
Bord
Pleanála

Board Direction
ABP-304696-19

The submissions on this file and the Inspector's report were considered at a Board meeting held on October 3rd, 2019.

The Board decided, as set out in the following Order, that the change of use of an office building to use as an embassy at St Helier's, Stillorgan Park, Blackrock, Co. Dublin, is development and is not exempted development.

Board Order as follows:-

WHEREAS a question has arisen as to whether the change of use of an office building to use as an embassy at St Helier's, Stillorgan Park, Blackrock, Co. Dublin is or is not development or is or is not exempted development.

AND WHEREAS Dorothy Bergin, John O'Malley and Raymond O'Malley c/o Kieran O'Malley and Co. Ltd of St Helier's, Stillorgan Park, Blackrock, Co. Dublin, requested a declaration on this question from Dun Laoghaire Rathdown County Council, and the Council issued a declaration on the 20th day of May 2019 stating that the matter was development and was not exempted development.

AND WHEREAS Dorothy Bergin, John O'Malley and Raymond O'Malley referred this declaration for review to An Bord Pleanála, on the 17th day of June 2019.

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

- (a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended,
- (b) Articles 5, 6, 9 and 10 of the Planning and Development Regulations 2001, as amended
- (c) Part 4 of the Second Schedule to the Planning and Development Regulations 2001, as amended, and in particular Classes 2 and 3 of that Part,
- (d) The planning history of the site, including the existing and permitted use of the site, and the nature of the proposed use as an embassy
- (e) Previous planning decisions of An Bord Pleanála under file reference numbers PL29S.227769 and PL29S.227770, and
- (f) Relevant case law, and in particular the judgement of the High Court in the case of Derek Quinlan - v - An Bord Pleanála & Anor [2009] IEHC 228.

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The permitted use of the subject premises, under planning permission register reference number ZA182 (An Bord Pleanála reference number PL6/5/68454) is as offices, together with a caretaker's flat. Such office use would come within the scope of Class 3 of Part 4 of the Second Schedule to the Planning and Development Regulations, 2001, as amended;

- (b) The change of use of the premises to use as an embassy would be a factual change of use, and this change of use raises material issues relevant to the proper planning and sustainable development of the area, including differing levels of pedestrian and vehicular traffic, and the potential for impacts on the residential amenities of neighbouring properties through altered hours of operation, including evening functions and other activity, and would, therefore, constitute a material change of use, and is development;
- (c) Having regard to case law, and to the nature of uses carried out in an embassy, it is considered that an embassy does not constitute an office and therefore does not come within the scope of Class 3 of Part 4 of the Second Schedule to the Planning and Development Regulations, 2001, as amended, or any other Class of Use set out in Part 4;
- (d) Accordingly, the development in this instance cannot avail of the exemption provided for under Article 10 (1) of the Planning and Development Regulations, 2001, as amended.
- (e) There are no other provisions, in the Act and Regulations, by which the development in this case would constitute 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 the change of use of an office building to use as an embassy at St Helier's, Stillorgan Park, Blackrock, Co. Dublin, is development and is not exempted development.

In not accepting the recommendation of the Inspector that the change of use that is the subject matter of the referral would not constitute development, the Board had regard to the nature of embassy use and concluded that such use would raise material planning issues as compared to the permitted office use, and was therefore

development. In addition, the Board had regard to the fact that it had not previously addressed this issue in the context of a Section 5 referral, but had considered the matter in the context of the planning appeals listed in its order, and noted that its view on the issue of whether or not an embassy was an office, and vice versa, was accepted by the High Court in the context of the case law mentioned above.

Board Member

Date: 3rd October 2019

Philip Jones