



**An
Bord
Pleanála**

**Board Direction
BD-014638-23
ABP-313815-22**

The submissions on this file were considered at a Board meeting held on 20/11/2023.

The Board decided to dismiss this referral under Section 138 of the Planning and Development Act, 2000 (as amended) based on the following reasons and considerations:

WHEREAS a question has arisen as to whether a change-of-use from 'office' to 'embassy office' is or is not development or is or is not exempted development:

AND WHEREAS Finance Ireland Ltd. requested a declaration on this question from Dublin City Council; and the Council issued a declaration on the 21st day of August, 2019; stating that the matter was development and was exempted development:

AND WHEREAS Hughes Planning & Development Consultants, agent on behalf of Finance Ireland Ltd, referred this declaration for review to An Bord Pleanála, on the 17th day of September 2019:

AND WHEREAS the original determination of An Bord Pleanála on this referral was judicially reviewed to the High Court; wherein the determination of the Board was quashed, and the case remitted to the Board to be determined in accordance with law:

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

- a) Section 2(1) of the Planning and Development Act, 2000, (as amended),
- b) Section 3(1) of the Planning and Development Act, 2000, (as amended)
- c) Section 4 of the Planning and Development Act, 2000 (as amended),
- d) Section 138 of the Planning and Development Act, 2000 (as amended),
- e) Article 10 of the Planning and Development Regulations, 2001 (as amended),
- f) Part 4 of Schedule 2 to the Planning and Development Regulations, 2001 (as amended) – and in particular, Class 2 & Class 3,
- g) relevant case law, and in particular the Judgment of Heslin J in *Narconon Trust v. An Bord Pleanála & Others*,
- h) the Judgement of the High Court in relation to Judicial Review [2020 176 JR],
- i) the planning history of the site, and in particular, permission ref. 3148/20 of Dublin City Council,
- j) the precedent section 5 declarations on change-of-use from 'office' to 'embassy office', issued by Dublin City Council in relation to this property;
- k) the precedent section 5 declarations on change-of-use from 'office' to 'embassy office', issued by Dublin City Council in relation to other properties within its functional area:

AND WHEREAS An Bord Pleanála has concluded that:

- a) change-of-use from 'office' to 'embassy office' at this site is development and is exempted development;
- b) the Judgement of Heslin J in *Narconon Trust v An Bord Pleanála & Others*, does not have applicability in the instance of this referral – where Finance Ireland Ltd. had not improperly invoked the provisions of Section 5;
- c) Dublin City Council, based on the use class definitions contained within its Development Plan, has determined a number of similar Section 5 referral cases in relation to change-of-use from 'office' to 'embassy office' within its functional area;
- d) previous determinations of Dublin City Council in relation to the change-of-use from 'office' to 'embassy office' at this site, being declared exempted development, are of relevance;

- e) the decision of Dublin City Council to grant permission for change-of-use from 'office' to 'embassy office' at this site (Ref. 3148/20), renders the question before the Board moot;

the Board is satisfied that, in the particular circumstances, the referral should not be further considered by it.

Board Member: Eamonn James Kelly **Date:** 21/11/2023
Eamonn James Kelly