

An
Bord
Pleanála

Board Direction
ABP-317272-23

The submissions on this file and the Inspector's report were considered at a Board meeting held on 26/02/2024.

The Board decided, as set out in the following Order, that

WHEREAS a question has arisen as to whether the introduction of pay car parking and associated pay parking machines and signage at the Stillorgan Village Centre and overflow car park is or is not development or is or is not exempted development.

AND WHEREAS KW Investment Funds ICAV requested a declaration on this question from Dun Laoghaire Rathdown County Council and the Council issued a **Split Decision** on the declaration on the 9th day of May 2023 stating that:

- The introduction of pay car parking at Stillorgan Village Centre, (including overflow car park), Lower Kilmacud Road, Stillorgan, Co. Dublin would constitute 'development' and would not constitute 'exempted development' pursuant to the provisions of Sections 2 and 3 of the Planning & Development Act 2000 (as amended).
- It is also considered that the provision of pay parking machines and associated identification signage would constitute 'development' and would constitute 'exempted development', pursuant to the provisions of Section 4 (1) (h) of the Planning and Development Act 2000, as amended; and Class 13, Schedule 2, Part 2 of the Planning and Development Regulations, 2001 (as amended).

AND WHEREAS KW Investment Funds ICAV referred this declaration for review to An Bord Pleanála on the 6th day of June 2023:

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

- a) Section 2(1) of the Planning and Development Act, 2000 to 2023,
- b) Section 3(1) of the Planning and Development Act, 2000 to 2023,
- c) Section 4 of the Planning and Development Act, 2000 to 2023,
- d) Articles 6(1), 9(1) and 10(1) of the Planning and Development Regulations, 2001 to 2023,
- e) Class 13 of Part 2 of Schedule 2 of the Planning and Development Regulations 2001 to 2023,
- f) The planning history of the site,
- g) The nature of the current use as car parking for customers of the primary use of the site as a commercial Shopping Centre,
- h) The pattern of development in the area,
- i) The report of the Inspector.

AND WHEREAS An Bord Pleanála has concluded that:


- a) the introduction of pay parking and pay parking machines and signage is 'development' within the meaning of the Planning and Development Act 2000 to 2023;
- b) the subject car parks are ancillary to the main commercial Shopping Centre use, the car parks are in use, free of charge, by customers of the Shopping Centre, the introduction of pay parking represents a new revenue stream that didn't exist previously, this new revenue stream would become a commercial enterprise on its own merit, which is distinct from the primary function of the site as a Shopping Centre, is not an ancillary function and is a separate business which has no connection to the primary use and that a change of use will therefore occur;
- c) the existing customer car parks operate on a 2-hour time limit, there is nothing which confirms that a similar time restriction will be applied or that the same parking enforcement will be employed in respect of a 2-hour time limit, that

members of the public, particularly commuters, who are not customers of the Shopping Centre, will be entirely precluded from availing of the car park, that on payment of the required fee, a member of the public cannot park for an extended period beyond a 2-hour time limit or indeed beyond the opening hours of the Shopping Centre, and is therefore a material change of use, which is development,

- d) the Planning Authority, as part of its assessment of planning reg. ref. no. D23A/0424, has had regard to materially different considerations as opposed to a proposal for free car parking ancillary to a primary Shopping Centre use, and that the introduction of pay parking represents a material change of use and therefore constitutes development within the meaning of the Act, and
- e) the said material change of use is development which does not come within the exempted development provisions of the Planning and Development Acts, 2000 to 2023 or the regulations made thereunder and is therefore not exempted development;
- f) the introduction of pay parking machines is exempted development under Section 4 1 h) of the Planning and Development Act, 2000 to 2023;
- g) the replacement signage, as proposed, is exempted development under Class 13 of Schedule 2, Part 2 of the Planning and Development Regulations, 2001 to 2023.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5(3)(a) of the Planning & Development Act, 2000 to 2023, hereby decides that the introduction of pay parking and associated pay parking machines and signage is 'development', that the introduction of pay parking is not exempted development and that the introduction of pay parking machines and signage is exempted development.

Board Member:


Martina Hennessy

Date: 27/02/2024