



An  
Bord  
Pleanála

## Board Direction ABP-318832-24

The submissions on this file and the Inspector's report were considered at a Board meeting held on 08/04/2025.

The Board decided, as set out in the following draft Order, that what is currently referred to as Unit Number 3 Fonthill Retail Park does not constitute a permitted planning unit and consideration of uses therein is not possible at this time.

### Draft Board Order as follows:-

**WHEREAS** a question has arisen as to whether a material change of use at retail Unit Number 3, Fonthill Retail Park, Fonthill Road, Dublin 22 arises by reason of the type of goods being sold and consequently whether it is or is not development or is or is not exempted development.

**AND WHEREAS** PKB Partnership requested a declaration on this question from South Dublin County Council Council, and the Council issued a declaration on 2 day of November, 2016 stating that the matter was development and was not exempted development.

**AND WHEREAS** PKB Partnership referred this declaration for review to An Bord Pleanála, on the 28 day of November 2016.

**AND WHEREAS** the judgement by the courts in [2022] IEHC 542 decided the parent permission does not entail a restriction on retail warehouse use equivalent to that now found in the various iterations of the retail planning guidelines that confine the use for the retail sale of bulky goods.

**AND WHEREAS**, upon remittal from the courts to An Bord Pleanála, the Board considered the reformulated question as to whether the use of a permitted retail warehouse unit to use as a discount store for the sale of small-scale convenience goods at Unit Number 3, Fonthill Retail Park, Fonthill Road, Dublin is or is not development or is or is not exempted development.

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

- (a) Section 3(1) of the Planning and Development Act, 2000, as amended,
- (b) Articles 5 (1) and 9(1) of the Planning and Development Regulations, 2001, as amended,
- (c) Part 4 of Schedule 2 of the Planning and Development Regulations, 2001, as amended,
- (d) the planning history of the site, and
- (e) the judgement by the courts.

**AND WHEREAS** An Bord Pleanála has concluded that:

- (a) the parent permission, planning register reference S97A/0791 for retail warehousing at Unit Number 3, Fonthill Retail Park encompassed a single planning unit.
- (b) planning permission register reference SD15A/0152 was not executed and planning permission register reference SD17A/0094 PL 06S.248674 for retention permission, comprising inter alia internal alteration consisting of the erection of internal walls and all associated works, was refused.
- (c) the works undertaken to the permitted planning unit, i.e., Unit Number 3 permitted under planning register reference S97A/0791, comprising inter alia the construction of internal walls and the provision of new entrance/exit doors on elevations would (i) constitute “works” that are “development” under Section 3 of the Planning and Development Act, as amended, and (ii) come within the scope of Section 4(1)(h) of the Planning and Development Act, 2000, as amended, being works for the maintenance, improvement or other alteration of the structure that are internal or, where external, are such as not to be inconsistent with the character of the structure or neighbouring structures, and would therefore be exempted development.
- (d) it is not possible, on the basis of the totality of information on the file, to determine whether the works undertaken to subdivide the permitted planning unit, i.e., Unit Number 3, into two retail units, i.e., Unit Number 3 and Unit Number 3A, would not give rise to increased traffic movements or any other activity that would have material consequences in terms of the endangerment of public safety by reason of traffic hazard or obstruction of road users as set out in Article 9(1)(a)(iii) of the Planning and Development Regulations, 2001, as amended.
- (e) the subdivision of the permitted retail warehouse unit, i.e., Unit Number 3 permitted under planning register reference S97A/079, into two operationally separate retail units (what is currently referred to as Unit Number 3 and Unit Number 3A) is development and is not exempted development.

- (f) the consideration of uses therein would be premature pending resolution of the planning status of what is currently referred to as Unit Number 3 and Unit Number 3A.

**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 what is currently referred to as Unit Number 3 Fonthill Retail Park does not constitute a permitted planning unit and consideration of uses therein would therefore be premature at this time.

In disagreeing with the Inspector, the Board noted that the question before it is solely about the range of goods sold within the unit. However, the Board was of the view that this question could only be considered in the context of planning conditions applicable to the relevant planning unit.

Having sought further information concerning the planning history and associated changes to the site layout from the Applicant, the Board first needed to consider what constituted the permitted retail warehouse unit and whether this appropriately corresponded to what is currently referred to as Unit Number 3, Fonthill Retail Park as a function of exempted development as asserted by the Applicant.

The Board considered that the Applicant presented no information that would allow the Board to consider the tests on restrictions of exemptions set out in Article 9 of the Planning and Development Regulations, as amended, in particular in relation to whether a subdivision would give rise to increased traffic movements or any other activity that would have material consequences in terms of the endangerment of public safety by reason of traffic hazard or obstruction of road users (Article

9(1)(a)(iii)). In such circumstances, the Board considered it would not be possible to proceed to consider the matter of classes of use for units whose planning status and permitted nature is unresolved.

**Board Member:**

Eamonn James Kelly  
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**Date:** 10/04/2025