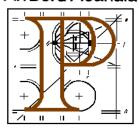# Board Direction

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Ref: 06S.RL3420

The submissions on this file and the Inspector's report were considered at a Board meeting held on February 8th 2016.

The Board generally concurred with the Inspector's analysis and recommendation, as set out in the following Order.

The Board, having reformulated the question, decided that the subdivision of the unit into two units was development and was exempted development but that the change of use of part of the unit was development and was not exempted development and that the use of the adjacent yard for sale was development and was not exempted development.

Board Order as follows:-

WHEREAS a question has arisen as to whether (a) the subdivision of Unit 16, Cherry Orchard Industrial Estate, Ballyfermot, Dublin 10, into two separate units is or is not development and is or is not exempted development and (b) whether a material change of use of part of Unit 16 has occurred where it is used by McMahon Builders Providers;

AND WHEREAS McMahon Builders Providers requested a declaration of this question from South Dublin County Council on the 14th day of April 2015, and the Council issued a declaration on the 14th day of September 2015 stating that (a) insufficient details had been submitted in relation to the works carried out to subdivide the unit and therefore a determination could not be made on the matter and that (b) the change of use of the building as detailed in the documentation would constitute a material change of use which is development and which is not exempted development;

AND WHEREAS McMahon Builders Providers referred this declaration for review to An Bord Pleanála on the 12th day of October 2015.

AND WHEREAS, in the light of the documentation submitted with the request and referral, together with the planning authority's documentation, has decided to reformulate the question as follows:-

(a) Whether the subdivision of Unit 16, Cherry Orchard Industrial Estate, Ballyfermot, Dublin 10, into two separate units is or is not development and is or is not exempted development;

(b) Whether the change of use by McMahon Builders Providers of part of Unit 16 that has taken place is or is not development and is or is not exempted development, and

(c) Whether the use of the yard adjacent to Unit 16 for the display of goods for sale is or is not development and is or is not exempted development.

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 and 10 of the Planning and Development Regulations 2001 (as amended);

(c) The Classes of Use set out in Part 4 of the Second Schedule to the Planning and Development Regulations, 2001 (as amended);

(d) The "Retail Planning – Guidelines for Planning Authorities", issued by the Department of the Environment, Community and Local Government in April 2012;

(e) Relevant case law, including *Monaghan County Council – v – Brogan [1987] IR 333, Treacy – v – An Bord Pleanála [2010] IEHC 13, and Ogalas Ltd – v – An Bord Pleanála [2014] IEHC 487;*

(f) The planning history of the site, and

(g) The report of the Board's Planning Inspector.

AND WHEREAS An Bord Pleanála has concluded that:-

a) The subdivision of Unit 16 into two separate units constitutes development, having regard to the works as outlined in the referral, and this subdivision comes within the scope of Section 4 (1)(h) of the Act, and is therefore exempted development;

b) The established use of Unit 16 was as a warehouse, which use would be within the scope of Class 5 of Part 4 of the Second Schedule to the Regulations.

c) The use of part of Unit 16 that is being carried out by McMahon Builders Providers includes use for the retail sale of goods. Such use is not, on the basis of the documentation submitted and the inspection carried out by the Board's Inspector, ancillary to the established use of the subdivided unit as a warehouse, and would come within the scope of Class 1 of Part 4 of the Second Schedule to the Regulations. This use for the retail sale of goods would, therefore, constitute a change of use. Furthermore, having regard to its material external impacts, including traffic generation and

flows on the road network, and parking within the industrial estate, which impacts would be relevant from the point of view of proper planning and sustainable development, this change of use is materially different from the established use. Consequently, the change of use of part of Unit 16 from its established use to the use now being carried out by McMahon Builders Providers is a material change of use and is therefore development.

d) The material change of use that has taken place in the subdivided part of Unit 16, involves a change between two of the Classes of Use set out in Part 4 of the Second Schedule to the Regulations and is not exempted development.

e) The established use of the open yard adjacent to Unit 16 is for the parking and manoeuvring of vehicles. The use of this yard for the display of goods for sale is a separate use, which use, by virtue of the definition in Section 3(2)(b) of the Act, constitutes a material change of use, and is therefore development. There are no exemptions provided for in the Act or Regulations by which such material change of use would be 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 (a) the subdivision of Unit 16, Cherry Orchard industrial Estate, Ballyfermot, Dublin 10, is development and is exempted development, (b) the change of use by McMahon Builders Providers of part of Unit 16 that has taken place is development and is not exempted development, and (c) the use of the yard adjacent to Unit 16 for the display of goods for sale is development and is not exempted development.

Board Member: _____ Date: 17th February 2016
                   Philip Jones