



An
Bord
Pleanála

Board Direction
29N.RL3533

The submissions on this file and the Inspector's report were considered at a Board meeting held on May 4th 2017.

The Board decided, as set out in the following Order, that the use of 21 number car parking spaces at basement level for commercial use, having regard to specific conditions attached to planning register reference number 1409/05, at Castleforbes Square, Dublin 1, is development and is not exempted development.

Board Order as follows:-

WHEREAS a question has arisen as to whether the use of 21 number car parking spaces at basement level for commercial use, having regard to specific conditions attached to planning register reference number 1409/05, at Castleforbes Square, Dublin 1, is or is not development or is or is not exempted development.

AND WHEREAS Castleforbes Square Management Ltd requested a declaration on this question from Dublin City Council and the Council issued a declaration on the 7th day of December 2016 stating that the matter is development and is not exempted development.

AND WHEREAS David Carson, Statutory Receiver for Danninger Ltd referred this declaration for review to An Bord Pleanála, on the 10th day of January 2017.

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) article 6(1) and article 9 (1)(a)(i) of the Planning and Development Regulations 2001, as amended, and
- (c) the planning history of the site, and in particular planning permission register reference number 1409/05, and condition number 3 of that permission, which required that at least one car parking space shall be assigned permanently to each residential unit and solely reserved for this purpose and which required that a parking management plan, indicating how spaces within the basement car park were to be assigned and segregated by use, was to be prepared for the site and submitted for the written agreement of Dublin City Council (which plan does not appear, based on the documentation submitted with the referral, to have been submitted to, and agreed with, the Council).

AND WHEREAS An Bord Pleanála has concluded that:

- (a) the change of use of car spaces within this basement area from use for the residential apartments in the subject development, as authorised by planning permission register reference number 1405/09, to use for commercial purposes, is a change of use which raises external planning issues, including patterns of parking on surrounding streets and the intensification of commuter traffic into the area in the light of the provisions of the Dublin City Development Plan, which seeks to limit such traffic in the city centre. Such change of use is therefore material, and constitutes development;
- (b) Having regard to the terms and conditions of planning permission register reference number 1405/09, and in particular condition 3 of that permission,

any exemption that would otherwise apply to such development is restricted, pursuant to article 9 (1)(a)(i) of the Planning and Development Regulations, as it would contravene condition 3, and be inconsistent with the use specified, and is therefore not 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 use of 21 number car parking spaces at basement level for commercial use, having regard to specific conditions attached to planning register reference number 1409/05, at Castleforbes Square, Dublin 1, is development and is not exempted development.

Note: The Board concurred with the Inspector's opinion that the referral related to a valid request for a Declaration under Section 5 of the Act, and was not a request to the planning authority for a query as to whether or not the subject development was in compliance with the terms and conditions of a planning permission, nor was a request to the Board to determine whether or not the subject matter was, or was not, unauthorised development. The Board therefore did not consider that the matter was outside its jurisdiction.

[Please issue a copy of this direction with the Board Order]

Board Member:

Philip Jones

Date: 8th May 2017