



An
Bord
Pleanála

Board Direction
06F.RL3558

The submissions on this file and the Inspector's report were considered at a Board meeting held on December 13th 2017.

The Board decided, as set out in the following Order, that the use of room indicated as “study” to use as “bedroom” in four number duplex apartments in the permitted development under planning reference number PL06F.246519 at the former Castle Inn, St. Margaret’s Road, Meakstown, Dublin 11, is development and is not exempted development.

Board Order as follows:-

WHEREAS a question has arisen as to whether the use of room indicated as “study” to use it as “bedroom” in four number duplex apartments in the permitted development under planning reference number PL06F.246519 at the former Castle Inn, St. Margaret’s Road, Meakstown, Dublin 11, is or is not development or is or is not exempted development.

AND WHEREAS AKM Design on behalf of Greenwich Project Holdings Limited requested a declaration on this question from Fingal Council and the Council issued a declaration on the 17th day of February, 2017 stating that the matter was development and was not exempted development:

AND WHEREAS AKM Design on behalf of Greenwich Project Holdings Limited referred this declaration for review to An Bord Pleanála on the 9th day of March, 2017:

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

- (a) Sections 2(1), 3(1) and 4(1)(h) of the Planning and Development Act, 2000, as amended,
- (b) Article 9 (1) of the Planning and Development Regulations, 2001, as amended,
- (c) The development approved under planning reference number PL06F.246519 (F15A/0552)
- (d) The pattern of development in the area.

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The permitted development under planning permission reference number PL06F.246519 in respect of this Block was four number ground floor (one bedroom with study) own door family apartments and four number two storey (two bedroom with study) duplex own door family dwellings.
- (b) The proposal in respect of which the planning authority's declaration was made related to the use of the room in each of the duplex apartments identified in that planning application and permission as "study" to use as a "bedroom", and the drawings submitted with the request for the declaration indicated that it was also proposed to carry out works to extend the sizes of these rooms at second floor level in the permitted Block from their permitted 7.5 sq metres to 11.3 sq metres in each case at the front of the permitted Block.
- (c) The works proposed would constitute development within the meaning of the Planning and Development Act, 2000, as amended.

- (d) The works to extend these rooms at the second floor would not come within the scope of Section 4 (1)(h) of the Planning and Development Act 2000, as amended, as the works are not for the maintenance, improvement or other alteration of a structure, but are works for the extension of the permitted structure, and accordingly are not exempted development.
- (e) The change of use of these rooms from use as a “study” to use as a “bedroom” would be a factual change of use and, without a commensurate increase in the car parking provisions for the development, would constitute a material change of use, having regard to the terms and conditions of the permitted development, due to the greater demand on car parking that would result and the implications for traffic and pedestrian safety in the area, which are material planning issues. The change of use would, therefore, constitute development.
- (f) There are no exemptions, set out in the Planning and Development Act and associated Regulations, which could be availed of by which such change of use would be exempted development.
- (g) Furthermore, any exemption that might apply would be restricted by reason of Article 9 (1)(a)(i) of the Planning and Development Regulations, 2001, as amended, as the development (including the works indicated on the drawings submitted with the request for the declaration) would contravene the terms of condition 1 of planning permission reference number PL06F.246519, and the use of the room as a bedroom in each case would be inconsistent with the permitted use of the room as “study” in this permission.

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 room indicated as “study” to use as “bedroom” in four number

duplex apartments in the permitted development under planning reference number PL06F.246519 at the former Castle Inn, St. Margaret's Road, Meakstown, Dublin 11, is development and is not exempted development.

In not accepting the Inspector's recommendation, the Board was satisfied that the works indicated to the permitted block at second floor level would involve an extension to the front of the building in order to increase the sizes of the four rooms in question. In the light of the Supreme Court judgement in Michael Cronin (Readymix) Ltd - v - An Bord Pleanála (Supreme Court Appeal No. 304/2010, 30th May 2017) an extension is a development that does not come within the exemption afforded by Section 4 (1)(h) of the Planning and Development Act 2000, as amended. Accordingly, the Board did not agree with the Inspector that the works to facilitate the increase in floorspace were within the scope of Section 4 (1)(h).

Furthermore, the Board considered that the question also related to a proposal to change of use from the permitted use of the rooms in question (identified on the drawings as "study" in the case of each of the four duplex units granted under planning permission reference number PL06F.246519, and referred to as such in the public notices for that application) to use as "bedroom". The Board did not agree with the Inspector that this was an issue of intensification of use of the overall residential units, but rather considered that the matter before the Board involved a factual change of use from the permitted use to a new use, and that this factual change of use was material for planning purposes in this instance, having regard to the quantum of car parking spaces allocated to the duplex block in that planning permission, and the Board concurred with the view of the Planning Authority that a shortfall of car parking provision would result, which shortfall would have implications for the proper planning and sustainable development of the area.

Note: In deciding this referral, the Board considered that the question which was the subject matter of the request to the planning authority and which was the subject matter of the planning authority's declaration was as worded above in the Board Order, and did not accept that the question should be reformulated, as proposed by

the Inspector, to align with the revised wording put forward by the referrer in his submission to the Board. The Board had regard to the overall content of the request for the declaration and was of opinion that the issue was, in essence, whether the use of a room, indicated in the planning permission as a “study”, to use as a “bedroom”, was or was not development or was or was not exempted development. In this regard, the Board noted the legislative provision under Section 5 (3)(a), where it is the Planning Authority’s declaration that is referred to it for review.

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

Board Member

Date: 14th December 2017

Philip Jones