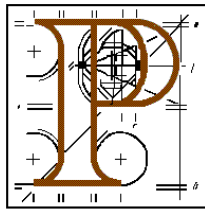


An Bord Pleanála



PLANNING AND DEVELOPMENT ACTS 2000 TO 2015

South Dublin County

Planning Authority Reference Number: ED15/0028

An Bord Pleanála Reference Number: 06S.RL.3420

WHEREAS a question has arisen as to whether:

- (a) the subdivision of Unit 16 into two separate units is or is not development or 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,

all at Unit 16 Cherry Orchard Industrial Estate, Ballyfermot, Dublin:

AND WHEREAS McMahon Builders Providers care of Cunnane Stratton Reynolds of Copley Hall, Cotters Street, Cork requested a declaration on this question from South Dublin County Council 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
- (b) the change of use of the building as detailed in the documentation submitted would constitute a material change of use which is development and 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, the Board has decided to reformulate the question as follows: -

- (a) whether the subdivision of Unit 16 into two separate units is or is not development or 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 or 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 or is or is not exempted development,

at Unit 16 Cherry Orchard Industrial Estate, Ballyfermot, Dublin:

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 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 Planning and Development 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 Planning and Development Regulations, 2001,
- (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 said 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 Planning and Development Act, 2000 constitutes a material change of use, and is, therefore, development. There are no exemptions provided for in the Act or Regulations made thereunder 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 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,

at Unit 16 Cherry Orchard Industrial Estate, Ballyfermot, Dublin.

MATTERS CONSIDERED

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

**Member of An Bord Pleanála
duly authorised to authenticate
the seal of the Board.**

Dated this day of 2016.