



An
Bord
Pleanála

Inspector's Report ABP-300396-17

Question

Whether the replacement of existing barrier and addition of pay/ticket machine to existing car park is or is not development or is or is not exempted development.

Location

Former Bank of Ireland Premises,
Parnell Street/The Applemarket,
Waterford

Declaration

Planning Authority

Waterford City and County Council

Planning Authority Reg. Ref.

D52017 37

Applicant for Declaration

Sean Johnston

Planning Authority Decision

Is development and is not exempted
development

Referral

Referred by

Sean Johnston

Owner/ Occupier

Sean Johnston

Observer(s)

None

Date of Site Inspection

8th March, 2018

Inspector

Stephen Kay

1.0 Site Location and Description

- 1.1. The site is located to the rear of a two storey commercial / office building on Parnell Street in Waterford City. The area which is the subject of this referral was previously in use as a car park to serve the Bank of Ireland premises that fronted onto Parnell Street to the east of the site. The bank use on the site has now ceased and the car park is now being operated as a private commercial pay and display car park operated by i Pairc. .
- 1.2. Access to the car parking area is from Spring Gardens to the west of the site. There is a barrier located at the entrance to the site. It should be noted that the use of the site as a commercial car park open to the public is the subject of a separate and concurrent Section 5 referral to the Board (ABP Ref. ABP-300397-17). It is recommended that this referral should be considered in conjunction with the concurrent case relating to the barrier and pay machine.
- 1.3. The area at the western side of the site has been the subject of recent redevelopment with the triangular shaped open space area known as the Applemarket redeveloped with new paving and the addition of a canopy that covers the majority of the space. The project was developed as part of Waterford City Council's Urban Renewal Scheme. The Applemarket space is a pedestrian area however vehicular access is available along the western side of the site via Spring Gardens Alley.
- 1.4. The site is bounded to the south by residential properties that front onto John's Avenue with commercial premises at the south west and north west corners. To the north, the site adjoins residential properties fronting onto Spring Garden Alley at the north east corner of the site and school lands further to the south east.
- 1.5. The area of the site is not given in the documentation on file however the parking area which is the subject of this referral measures approximately 55 metres by 16 metres in width or approximately 880 sq. metres. The site is currently laid out as a car park and accommodates a total of 32 no. spaces. Access to the site is controlled via a barrier and there is a ticket machine close to the site entrance for the payment

of parking charges and a machine located at the barrier for the operation of the barrier. The car park is unmanned and is accessible 24/7.

- 1.6. On the basis of the available information it would appear that no material works to the access to the site from Spring Gardens has been undertaken since the previous use of the site as a bank premises. There has been new signage erected at the site entrance onto Spring Gardens, however this is not the subject of a request for a declaration. The layout and number of the parking spaces on the site is stated not to have changed since the former use of the site connected with the occupation of the site by Bank of Ireland.

2.0 The Question

- 2.1. The question as determined by the Planning Authority is as follows:

'Whether the replacement of existing barrier and additional pay / ticket machine to existing car park is or is not exempted development'.

3.0 Planning Authority Declaration

- 3.1. Declaration

That the replacement of the existing barrier and the addition of pay / ticket machine to existing car park is development and is not exempted development.

- 3.2. Planning Authority Reports

- 3.2.1. Planning Reports

Stated that it is considered that, in principle, the replacement of the existing barrier would be considered to exempt development. However as the barrier serves what is considered by the planning authority to be an unauthorised car park, it is considered that the barrier cannot be separated from the overall use of the site.

Given the works that have been undertaken at the Applemarket, it is considered that the barrier would have the potential to create a traffic hazard if cars are waiting to enter the site.

Reference made to the definition of development in s.2(1) and 3(1) of the Act and Art 9(1)(iii) of the Regulations which states that development to which article 6 relates (the exempted development classes in the Second Schedule to the Regulations) shall not be exempted development if it '*endanger public safety by reason of traffic hazard or obstruction of road users*'.

Concluded that the replacement of the barrier and addition of pay / ticket machine constitutes works and that the said works constitute development. The development relates to the use of an existing car park as a commercial car park which in the opinion of the Planning Authority constitutes a material change in the use of the land which is not authorised.

Note added stating that regarding the quoted ABP case RL2695, that the barrier in that case was considered exempt as it did not have a negative impact on traffic safety. In the subject case the replacement barrier serves an unauthorised use and would impact negatively on traffic safety.

4.0 Planning History

4.1. Planning Authority History

There is no reference to planning history on the file.

The following applications were sourced from the Waterford City and County Council website:

Ref. 17559 – Incomplete application for new signage on the Bank of Ireland Premises. There is no record of a decision being made on this application.

Ref. 14600082 – Permission granted by the Planning Authority for alterations to the elevations of the Bank of Ireland premises with the addition of new signage.

4.2. An Bord Pleanala Referral Cases

The following An Bord Pleanala referral cases and associated determinations are considered relevant to the subject case:

Cases referred to by the Referrer:

RL2695 – Board determined that the installation of a lifting barrier to the car park at a mixed use commercial development in Leopardstown County Dublin was development and was exempted development on the basis that the installation of the lifting barrier constituted works that was a gate within the scope of Class 9 of Part 1 of the Second Schedule of the Regulations and would not endanger public safety by reason of a traffic hazard or obstruction of road users.

RF0860 – Board determined that the addition of traffic control arrangements to Quinsworth supermarket car park in Clondalkin, Co. Dublin comprising kerbing, ticket machines and barriers was development and was exempted development having regard to section 4 of the Act and Classes 8 (sundry minor works including the erection of a gate or gateway), 10 (fences and walls up to a height of 1.2 metres) and 12 (repair and improvement of a private street road or way) of the 1994 Regulations. Noted that the inspectors report considered that the ticket dispensing machine was an integral part of the barrier and was therefore exempt as the barrier was exempt under Class 8.

Other Relevant Cases

RL2914 – Determined by the Board that the installation of a traffic light in association with a lifting barrier at the access to a car park at the Leopardstown Inn was development and was not exempted development on the basis that it was a development independent of the barrier and not coming within Class 9 and that it was exempted development under Class 13 being ‘*a device for the purposes of direction or warning (to drivers) with respect to the land on which it is exhibited*’.

RL2895 – Referral case relating to traffic light warning at barrier to the same site as 2914 above. Board determined that warning light was development and was exempted development for the same reasons as set out under RL2914 above.

5.0 Policy Context

5.1. Development Plan

The site is zoned City Centre Commercial.

The site is located in an area identified as a general conservation area.

The eastern side of the site is located within an identified area of flood risk. The extent of this area does not extend into the car parking area which is the subject of this referral.

5.2. Natural Heritage Designations

The site is not located within or in close proximity to any European site.

6.0 The Referral

6.1. Referrer's Case

The following is a summary of the main points raised in the submission received from the referrer:

- That the installation of the ticket / pay machine and associated barrier are not considered to constitute development as defined in s.3 of the Act. Reference is made to two precedent referral cases in support of this position: RL2695 and RF0860.

6.2. Planning Authority Response

No response received.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

Section 2(1) In this Act, except where the context otherwise requires, 'works' includes any act or operation of construction, excavation, demolition, extension,

alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.

Section 3(1) In this Act, “development” means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land.

Section 4(1)(h) in this act states that the following shall be exempted development for the purposes of the Acts:

‘development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures’

‘structure’ is defined in Section 2(1) of the Act as follows:

“structure” means any building, structure, excavation or other thing constructed or made on, in or under any land, or any part of the structure so defined, and

(a) Where the context so admits , includes the land on, in or under which the structure is situate ‘

7.2. **Planning and Development Regulations, 2001**

Article 6(1) states that

Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempt development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.

Class 9 of Part 1 of the Second Schedule states that the following shall be exempted development:

Description of Development

The construction, erection, renewal or replacement, other than within or bounding the curtilage of a house of any gate or gateway.

Conditions and Limitations

The height of any such structure shall not exceed 2 metres.

Article 9(1) states that:

Development to which article 6 relates shall not be exempted development for the purposes of the Act –

- (a) if the carrying out of such development would –
- (iii) endanger public safety by reason of traffic hazard or obstruction of road users,
- (viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use.

8.0 **Assessment**

8.1. **Is or is not development**

- 8.1.1. The case made by the referrer is that the installation of the ticket / pay machine and associated barrier are not considered to constitute development as defined in s.3 of the Act. Reference is made to two precedent referral cases in support of this position: RL2695 and RF0860. I note however that in both of these cases, RL2695 relating to the installation of a lifting barrier and RF0860 relating to works at the entrance to a supermarket car park including the installation of a barrier and a ticket machine that the Board determined that development had taken place.
- 8.1.2. I note that there was previously a lifting barrier at the entrance to the car park when it was in use as a car park serving the Bank of Ireland premises. It is not possible from the information presented to make a direct comparison between the original and

current positions of the barrier however, based on a comparison of the existing situation and the image of the site from Google maps when it was occupied by Bank of Ireland it would appear that the locations are very close. Notwithstanding this, it is my opinion that the replacement of the barrier with a new barrier structure of the same type is clearly an operation of renewal or repair that constitutes works and is therefore development. Similarly in the case of the installation of the pay / ticket machine in the vicinity of the barrier, no such structure existed previously. The installation of this machine is therefore in my opinion an act of construction that constitutes works and therefore it is my opinion that the installation of this machine constitutes development.

8.2. Is or is not exempted development

- 8.2.1. With regard to whether the barrier and the ticket machine constitutes exempted development the first issue to note is that as per ABP reference case Ref. 300397-17, it is considered that the use of the site as a public car park constitutes a material change in the use of the site which is not exempted development. Given this, the act of replacement of the barrier at the site entrance and installation of the ticket machine constitute development to an unauthorised use and it is not therefore appropriate that the works would be deemed to be exempted development as they would constitute works to an unauthorised use.
- 8.2.2. In the case of exemptions under s.4(1) of the Planning and Development Act, 2000 as amended, there are no specific limitations on exemptions that apply however, for the reasons set out above it is not considered appropriate that works to an unauthorised use would be deemed to be exempted development. In the case of exemptions under the Planning and Development Regulations, 2001, Art. 9(1)(viii) states that development to which article 6 relates shall not be exempted development for the purposes of the Act if it would consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use. I do not therefore consider that there are any exemptions under the Planning and Development Regulations that are applicable to the subject site. Notwithstanding the above, in the event that the Board do not consider that the use of the site as a commercial car park open to the public in an

unauthorised use, the following is an assessment of the exempted development status of the development undertaken.

- 8.2.3. With regard to the barrier, as noted above it would appear from the information available that the new barrier is located in approximately the same location as the previous structure. Similarly it would appear from the available information that the barrier currently on site is of a similar scale as that which it replaced. On this basis it is my opinion that, were it not for the fact that the commercial car park operating on the site is an unauthorised use, the replacement barrier would be exempted development under section 4(1)(h) of the Planning and Development Act, 2000 as amended, being development for the maintenance or improvement of any structure that is not inconsistent with the character of the structure.
- 8.2.4. In addition, having regard to the Boards decision in the case of Ref. RL2695, were the use of the site authorised, the erection of a barrier to the car park could be considered to constitute exempted development under Class 9 of Part 1 of the Second Schedule of the Planning and Development Regulations, 2001, as amended, comprising the construction, erection, renewal or replacement, other than within or bounding the curtilage of a house of any gate or gateway.
- 8.2.5. With regard to the erection of the ticket machine, were it not for the fact that the commercial car park operating on the site is an unauthorised use, the replacement barrier would be exempted development under section 4(1)(h) of the Planning and Development Act, 2000 as amended, being development for the maintenance or improvement of any structure that is not inconsistent with the character of the structure. 'Structure' is defined in section 2(1) of the Act as *'any building, structure, excavation or other thing constructed or made on, in or under any land, or any part of the structure so defined'*. In this case the 'structure' is the car park being a thing constructed or made on, in or under any land.
- 8.2.6. There are no exemptions under Part 1 of the Second Schedule of the Act which in my opinion relate to the installation of a ticket / pay machine.

8.3. Restrictions on exempted development

- 8.3.1. Art. 9(1)(viii) states that development to which article 6 relates shall not be exempted development for the purposes of the Act if it would consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use. As set out above, as per ABP Ref. 300397-17 it is considered that the use of the site as a commercial pay car park accessible to the public constitutes a material change of use of the site for which planning permission has not been obtained. It is therefore not considered that any development to which Article 6 of the Regulations relates is exempted development.
- 8.3.2. Article 9(1)(a)(iii) states that development to which article 6 relates shall not be exempted development for the purposes of the Act if the carrying out of such development would endanger public safety by reason of traffic hazard or obstruction of road users. It is contended by the Planning Authority that the changed nature of the traffic using the site and the changes to the surrounding area following the redevelopment of the Applemarket mean that the use of the site would endanger public safety by reason of a traffic hazard or obstruction of road users. In my opinion any consideration of impact on traffic safety and obstruction of road users relates to the use of the site which is addressed in the concurrent referral to the Board Ref. ABP-300397-17.
- 8.3.3. In the case of Class 9 of Part 1 of the Second Schedule, the height of any such structure (in this case the barrier) shall not exceed 2 metres. This limitation is met in the case of the barrier installed on the referral site.

8.4. Appropriate Assessment

Having regard to the nature and scale of the development and its location relative to Natura 2000 sites, no appropriate assessment issues arise and it is not considered that the development would be likely to have a significant effect either individually or in combination with other plans or projects on a European site.

9.0 Recommendation

9.1. I recommend that the Board should decide this referral in accordance with the following draft order.

WHEREAS a question has arisen as to whether the replacement of an existing barrier and addition of a pay / ticket machine is or is not development or is or is not exempted development:

AND WHEREAS Sean Johnston requested a declaration on this question from Waterford City and County Council and the Council issued a declaration on the 9th day of November, 2018 stating that the matter was development and was not exempted development:

AND WHEREAS Sean Johnston referred this declaration for review to An Bord Pleanála on the 6th day of December, 2018:

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

- (a) Section 2(1) of the Planning and Development Act, 2000, as amended,
- (b) Section 3(1) of the Planning and Development Act, 2000,
- (c) Section 4(1)(h) of the Planning and Development Act, 2000, as amended,
- (d) article 6(1) and article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (e) Parts 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (f) the nature of the previous and current use of the site and the change in the use from parking connected primarily with the commercial / office use of the site to use as a public car park offering daily and

hourly rates,

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The replacement of the barrier constitutes works being an operation of renewal or repair and therefore constitute development,
- (b) the installation of the pay / ticket machine constitute works being an operation of construction and therefore constitute development,
- (c) That the development undertaken and subject of this referral relate to a change in the site from use as a parking area connected primarily with the commercial / office use of the site to use as a public car park offering daily and hourly rates and that as per the Boards decision in referral case Ref. ABP-300397-17, this change of use is material and such that it constitutes development that is not exempted development. The current use of the site therefore constitutes an unauthorised use of the site for which no planning permission has been obtained.
- (d) The replacement of the existing barrier would be exempted development under s.4(1)(h) of the Planning and Development Act, 2000 as amended and Class 9 of Part 1 of the Second Schedule of the Planning and Development Regulations, as amended, were it not for the fact that the use of the site as a public car park offering daily and hourly rates is unauthorised and,
- (e) The installation of the pay / ticket machine would be exempted development under s.4(1)(h) of the Planning and Development Act, 2000 as amended were it not for the fact that the use of the site as a public car park offering daily and hourly rates is unauthorised.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5(3)(a) of the 2000 Act, hereby decides that the

replacement of an existing barrier and addition of a pay / ticket machine to an existing car park is development and is not exempted development.

Stephen Kay
Planning Inspector

30th April, 2018