



An  
Bord  
Pleanála

## Inspector's Report ABP-300397-17

### Question

Whether the use of existing carpark used by the public as a public 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 38

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**

8<sup>th</sup> 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 replacement of the original barrier at the entrance to the car park and the addition of a pay and display ticket machine are the subject of a separate and concurrent Section 5 referral to the Board (ABP Ref. ABP-300396-17). 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. 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 however 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 use of existing car park used by the public as a public car park is development which is exempted development.'*

- 2.2. As set out below, the report of the Planning Officer on the case states that a more accurate description of the question is *'the use of an existing car park associated with a business premises as a commercial (paid) car park'*.

- 2.3. The following is considered the appropriate wording for the question before the Board:

*'Whether the use of an area previously used for parking associated with a commercial premises as a public pay car park is or is not development and is or is not exempted development.'*

## 3.0 Planning Authority Declaration

### 3.1. Declaration

That the proposed use of the existing car park associated with a former business premises by the public as a commercial car park is development and is not exempted development.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

The report of the Planning Officer notes the question posed by the referrer which is '*whether the use of existing car park used by the public as a public car park is or is not exempted development*' and contends that a more appropriate wording of the question is the use of an existing car park associated with a business premises as a commercial (i.e. paid) car park.

The report states that it is considered that the change of use from a car park associated with a business premises to a commercial car park is material on the basis that the parking area would previously have been ancillary to the commercial use on site.

Also stated that the reference in the referrer's submission to pre planning discussions is not relevant to the determination of the referral case.

Considered that having regard to the works undertaken at the Applemarket, that the proposed car park at this location has the potential to create a traffic hazard if cars are waiting to enter the site.

Reference made to the definition of development in s.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 use of the existing car park by the public as a commercial car park comprises development and that a material change of use of the land has occurred. Stated that the proposed use would endanger public safety by reason of traffic hazard or obstruction of road users and that the proposed use is development and is not exempted development.

## 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:

RL3394 – Board determined that the change of use of a commercial car park used in connection with car repairs to use as a park and ride commercial car park facility connected with Shannon Airport was development and was not exempted development as a change of use had occurred and that this change of use was material by reason of the different function served and the change in the pattern of activity at the site.

RL2253 – Board determined that the change in the use of a permitted car park at the Elysian development in Cork City from use solely connected with the residential /

commercial activity on the site to use as a public car park was development and was not exempted development as a material change of use had occurred arising from the implications for parking availability and external effects on parking in nearby streets.

RL3071 – Board determined that the use of a car compound / parking area previously associated with a car hire business as a public car park was development and was not exempted development on the basis that a material change of use of the site had occurred such that there would be a change in activity and vehicular patterns on the site.

RL2692 – Board determined that the charging for parking after a specific two hour period within an existing basement car park serving a mixed use residential / commercial development in Cork City was development and was not exempted development. Decision based on fact that parking provision in development based on an assessment of the requirements to serve the uses on site and that charging for parking reduced the parking availability for intended users, and encouraged use by members of the public including for car borne commuting. The change in the nature and pattern of use of the car park was such that a material change of use had occurred.

RL2883 – Board determined that the use of a premises (warehouse) previously used as a car dealership as a public car park was development and was not exempted development on the basis that a material change of use had occurred.

RL2758 – Board determined that the use of land to the rear of two protected structures in South Terrace Cork, one of which had permission to be used for parking ancillary to an educational use, as a commercial car park was development and was not exempted development for reasons that included that the change to a commercial (charge) use would likely generate an increased intensity of use and that the use as a commercial car park constituted a new and separate business with no connection to the primary use of the site and would have materially different traffic and parking patterns from the use as parking area incidental to the primary use. A material change in the use of the site was therefore considered to have occurred.

## **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 car park has no or a limited effect on its surroundings as it has always been a car park used by the public.
- No alterations have been made to the entrance.
- No additional car parking spaces have been provided.
- That a barrier system was already in place on the site.



- Commercial rates have been in effect and are still being charged on the car park.

## 6.2. Planning Authority Response

No response received.

## 7.0 Statutory Provisions

### 7.1. Planning and Development Act, 2000

**Section 2** In this Act, “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.

### 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.

**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 – .....

(i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,

(ii) consist of or comprise the formation, laying out or material widening of a means = of access to a public road the surfaced carriageway of which exceeds 4 metres in width,

(iii) endanger public safety by reason of traffic hazard or obstruction of road users,

### **Article 10(1)**

Development which consists of a change of use within any one of the classes of use specified in Part 4 of Schedule 2, shall be exempted development for the purposes of the Act, provided that the development, if carried out would not—

(a) involve the carrying out of any works other than works which are exempted development,

(b) contravene a condition attached to a permission under the Act,

(c) be inconsistent with any use specified or included in such a permission, or

(d) be a development where the existing use is an unauthorised use, save where such change of use consists of the resumption of a use which is not unauthorised and which has not been abandoned.

## **8.0 Assessment**

### **8.1. Is or is not development**

8.1.1. Section 3(1) of the Act states that development means “*the carrying out of any works on, in, or under land or the making of any material change in the use of any such structures or other land*”. The key issue in this case is therefore whether or not the use of land as a public car park firstly constitutes a change in the use of the land, and if so, whether or not that change of use is material.

8.1.2. In the case of the subject site, the premises which fronts onto Parnell Street was most recently used as a Bank of Ireland bank branch with the area to the rear used for car parking. On the basis of the information available it would appear that the

access to the car parking area at the rear of the site was via the same access as the existing and that there was some form of a barrier to the entrance to control access. It is not clear from the information available how the parking area was utilised in so far as was it solely for staff use or for both staff and customers of the bank. I do, however note that an image of the site access sourced from Google street view indicates a notice attached to the gate stating 'staff only'. In either case, the car park was clearly in use for the purposes of serving the main use of the site as a bank.

8.1.3. The available planning history on the site relates to an application for signage. I have not been able to source details of any application for the use of the building for banking use and no such details are available on file. On the basis of the information available, it is my opinion that at the time that the site was in use as a bank the car parking area was incidental to the main use of the building as a bank.

8.1.4. I consider that the current use of the land as a public car park represents a new and separate business which has no connection to the primary use of the site as a commercial building, most recently in use as a bank. The nature of the use of the parking spaces at the rear of the site which are the subject of this referral has therefore changed from being ancillary to a commercial / office use to a standalone use where parking is charged for on a commercial basis. This new use is reflected in the signage erected at the entrance to the site. On this basis it is my opinion that a change of use has occurred on the site. This interpretation is consistent with the approach taken by the Board in previous referral cases, notably RL2692 and RL2758.

8.1.5. On the issue of whether or not a change of use is material, the findings of Barron J. in the case of Galway CC v Lackagh Rock Ltd. state:

*“To test whether or not the uses are materially different it seems to me that what should be looked at are the matters which the planning authority would take into account in the event of a planning application being made either for the use on the appointed day or for the present use. If these matters are materially different, then the nature of the use must be materially different.”*

8.1.6. I am in agreement with the planning authority that the level and pattern of traffic resulting from the use as a public car park differs significantly from the use as parking incidental to the commercial use of the site. Specifically, the use of the site for parking connected with the former bank use would entail a lower turnover of spaces and less traffic movements to and from the site than the current commercial pay parking. In addition, the hours of operation of the site are now 24 hours a day seven days a week whereas previously the use of the car park would have reflected the office hours of the bank. The overall intensity of use of the site has therefore in my opinion increased significantly from that which was previously the case with implications for traffic generation in the area and for the amenity of surrounding properties including residential properties located to the south and north west of the site. I am of the view, therefore, that this change of use is material under the test outlined by Barron J. It is therefore my opinion that the use of the land to the rear of the site as a public car park represents a material change of use and does, therefore, constitute development within the meaning of the Act.

## **8.2. Is or is not exempted development**

8.2.1. There is no provision in the legislation to exempt a material change of use from car parking which is incidental to the primary purpose of a building to a public car park. In particular, I note that use as a car park does not fall within Article 6 (exempt development) of the Planning and Development Regulations 2001, and is not included in any of the classes of use specified in Part 4 of Schedule 2 of the 2001 Regulations. As such, the exemptions under article 9 and article 10 of the 2001 regulations are not in my opinion relevant.

## **8.3. Restrictions on exempted development**

8.3.1. As stated above, as there are in my opinion no provisions in the regulations under which the change of use could be considered to fall there are therefore no exemptions contained in the regulations that are applicable to the subject case.

8.3.2. It is noted that the Planning Authority report and the determination issued make reference to the fact that the use of the site as a commercial car park would endanger public safety by reason of a traffic hazard or obstruction of road users. A restriction on exemption on this basis applies to exemptions under Article 6, however as there are no provisions under Article 6 of the regulations under which the change of use could be considered to fall the issue as to whether the development does or does not give rise to a traffic hazard is not in my opinion relevant to the assessment of the exempted development status of the site.

#### 8.4. **Appropriate Assessment**

8.4.1. 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 proposed development would be likely to have a significant effect either individually or in combination with other plans or projects on a European site.

#### 8.5. **Conclusion**

8.5.1. In view of the above, it follows, therefore, that the use is development and is not exempted development.

### 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 use of an area previously used for parking associated with a commercial premises as a public pay car park is or is or is not development or is or is not exempted development:

**AND WHEREAS** requested a declaration on this question from Council and the Council issued a declaration on the 9th day of November, 2017 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 6<sup>th</sup> day of December, 2017:

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

- (a) Section 3(1) of the Planning and Development Act, 2000,
- (b) article 6(1) and article 10(1) of the Planning and Development Regulations, 2001, as amended,
- (c) Parts 1 and 4 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (d) the planning history of the site,
- (e) the nature of the previous use as parking connected with the primary use of the site as a commercial / office premises,
- (f) the nature of the current use of the site as a public car park offering daily and hourly rates,
- (g) the pattern of development in the area:

**AND WHEREAS** An Bord Pleanála has concluded that:

- (a) the current use of the land as a public car park represents a new and separate business which has no connection to the primary use of the site as a commercial building, most recently in use as a bank and that a change of use has therefore occurred.
- (b) the change of use of the land to car parking, with a daily or hourly basis for charging, is likely to generate an increased intensity of use, due to alterations to the level and pattern of traffic and hours of operation, and is therefore a material change of use, which is

development,

- (c) in addition, the current use of the site as a public car park represents a new and separate business which has no connection to the primary commercial / office use of the site and is, therefore, a material change of use,
- (d) the level and pattern of traffic resulting from the use as a public car park is materially different from the use as parking incidental to the primary use, and
- (e) the said material change of use is development which does not come within the exempted development provisions of the Planning and Development Acts, 2000-2010 or of the regulations made there under.

**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 use of an area previously used for parking associated with a commercial premises as a public pay car park is development and is not exempted development.

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Stephen Kay  
Planning Inspector

26th April, 2018