



An  
Bord  
Pleanála

## Inspector's Report ABP-302769-18

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### Question

Whether the conversion of ground floor office space to a two-bedroom apartment is or is not development or is or is not exempted development

### Location

Tí Choinn, Gleann na Rí, Murrough, Co. Galway.

### Declaration

Planning Authority

Galway City Council

Planning Authority Reg. Ref.

P-DC/3/14/18

Applicant for Declaration

K King Construction Claregalway

Planning Authority Decision

Is not exempted development

### Referral

Referred by

K King Construction Claregalway

Owner/ Occupier

K King Construction Claregalway

Observer

Gleann na Rí Management Company

Date of Site Inspection

11<sup>th</sup> January 2019

Inspector

Dolores McCague

## **1.0 Site Location and Description**

- 1.1.1. The site is located at Tí Choinn, Gleann na Rí, Murrough, Co. Galway which is east of Galway city centre. The site is located south of the Old Dublin Road, south west of Merlin Park Hospital and south east of GMIT. The Dublin Galway railway line to the south and separates the site from Galway Bay a short distance away. The site is part of medium rise residential development, comprising 3 to 4 storey detached blocks mainly residential in use. The subject block comprises service uses at ground floor and residential above.
- 1.1.2. The Board has before it a referral, ABP-302770-18, in relation to the conversion of vacant office space and seminar room to a one-bedroom studio apartment at Tí Choinn, Gleann na Rí, Murrough, Co. Galway.

## **2.0 The Question**

- 2.1. Whether the conversion of ground floor office space for use a two-bedroom apartment is or is not development or is or is not exempted development.

## **3.0 Planning Authority Declaration**

### **3.1. Declaration**

- 3.1.1. The planning authority decided that:
- 3.1.2. The offices in question were granted as ancillary to the main student accommodation originally granted under PI. Ref. 99/918, as amended by PI. Ref. 02/346. In this regard the proposed change of use would contravene the conditions attached to PI. Ref. 99/918 and PI. Ref. 02/346 and therefore requires the benefit of planning permission. The proposed change of use is therefore not considered to be exempt from planning permission.

### 3.2. Planning Authority Reports

### 3.3. Planning Report

- The applicant seeks a declaration under the Planning and Development (Amendment) (No. 2) Regulations 2018 (S.I. No 30 of 2018), in relation to the conversion of ground floor offices at Tí Choinn, Gleann na Rí, to a two-bedroom apartment.
- Article 2. of the latter instrument states as follows – Amendment of Article 10 of the Principal Regulations 2, Article 10 of the “Planning and Development Regulations 2001 (S.I. No. 600 of 2001) is amended by inserting the following sub-article after sub-article (5):

“(6) (a) In this sub-article—

‘habitable room’ means a room used for living or sleeping purposes but does not include a kitchen that has a floor area of less than 6.5 square metres;

‘relevant period’ means the period from the making of these Regulations until 31 December 2021.

(b) This sub-article relates to a proposed development, during the relevant period, that consists of a change of use to residential use from Class 1, 2, 3 or 6 of Part 4 to Schedule 1.

(c) Notwithstanding sub-article (1), where in respect of a proposed development referred to in paragraph (b)—

(i) the structure concerned was completed prior to the making of the Planning and Development (Amendment) (No. 2) Regulations

(ii) the structure concerned has at some time been used for the purpose of its current use class, being Class 1, 2, 3 or 6, and

(iii) the structure concerned, or so much of it that is the subject of the proposed development, has been vacant for a period of 2 years or more immediately prior to the commencement of the proposed development,

then the proposed development for residential use, and any related works, shall be exempted development for the purposes of the Act, subject to the conditions and limitations set out in paragraph (d).

#### CLASS 1

Use as a shop.

#### CLASS 2

Use for the provision of—

(a) financial services,

(b) professional services (other than health or medical services),

(c) any other services (including use as a betting office),

where the services are provided principally to visiting members of the public.

#### CLASS 3

Use as an office, other than a use to which class 2 of this Part of this Schedule applies.

#### CLASS 6

Use as a residential club, a guest house or a hostel (other than a hostel where care is provided).

- Planning permission was originally granted under PI. Ref. 99/918 for a private residential or student accommodation comprising a total of 140 no. apartments, along with ancillary facilities consisting of 3 storey local shops including launderette, bank, restaurant, caretaker's apartment and a conference room. In this context the change of use of any of the ancillary facilities, such as a retail unit, seminar room, to residential units, is not considered to be exempt under the aforementioned legislation as these facilities were granted as an integral part of the original student accommodation.
- The offices in question are located in Block D as originally granted. The internal layout of this block was subsequently revised under a number of permissions, with the most recent being PI. Ref. 02/346. In this case the internal layout was revised to include for a creche and administrative offices.

- The current application relates to administrative offices which were noted in 02/346 to be ancillary offices.
- Given that the offices in question were ancillary to the student accommodation as originally granted, it is considered that the exemption referred to under Article 6 (10) (6) does not apply in this case.

## 4.0 Planning History

14/324 permission granted for a development at block 14 (Tí Choinn), namely the change of use of 2 No. vacant retail units (previously a restaurant and a shop) to 3 No. 2 bed ground floor apartments. This application to include alterations to North-East and North-West elevations as well as all ancillary site works.

04/225 permission granted for retention of revisions to previously granted development (PI Ref 90/01 including provision of refuse compactor, revised car park layout, bin storage areas, bicycle racks and entrance gates/fencing.

02/346 permission granted for revisions to Block Type D (block 14 Tí Choinn), previously granted development (Ref. No. 918/99 and PI Ref 90/01) to include creche and administrative offices.

Condition 1 states:

The development shall be carried out and completed in accordance with the application made on 27<sup>th</sup> May 2002, but subject, however to the requirements of the further conditions hereafter incorporated.

Reason: To ensure that the development is carried out in accordance with the permission and that effective control is maintained.

01/9 permission granted for revisions to Block Type D, block 14 (Tí Choinn) amendment to Ref. No. 918/99 private residential / student accommodation 275 apartments, shops, launderette, bank, restaurant, conference room and auxillary works) to include revised internal layout and elevational treatment (retail units & apartment numbers unchanged) and reduction in eaves height.

PL61.119288, PA Reg Ref. 99/918 permission granted by the Board on foot of a planning authority's decision to grant, for private residential / student accommodation comprising 5 no. 3 storey blocks Type A (total 60 apts), 3 no. 4 storey blocks type B (total 72 apts), 5 no 4 storey Type C (total 140 apts), and ancillary facilities consisting of 3 storey local shops including laundrette, bank, restaurant, caretaker's apt, conference room, with 14 apts over this block, together with widening the access road.

Condition no 1 states:

The development shall be carried out in accordance with the plans and particulars lodged with the application as amended by the drawings received by the planning authority on the 26th day of January, 2000, and the 10<sup>th</sup> day of March, 2000, except as may otherwise be required in order to comply with the following conditions.

**Reason:** In the interest of clarity.

## 5.0 Policy Context

### 5.1. Development Plan

5.1.1. The Galway City Council Development Plan 2017-2023 is the operative plan. Relevant provisions include:

- The site is zoned low density residential.

### 5.2. Natural Heritage Designations

Galway Bay Complex SAC, Site Code 000268 and Inner Galway Bay SPA, Site Code 004031 are the nearest Natura sites, located c 200m away.

## 6.0 The Referral

### 6.1. Referrer's Case

6.1.1. McCarthy Kelville O'Sullivan have made the referral on behalf of K King Construction Claregalway.

- It is proposed to convert ground floor offices to a 2 bedroom apartment and connect to existing services. It is intended to provide private open space via the existing communal open space serving Tí Choinn. There are similar arrangements in place for the other ground floor apartments in the building, as accepted by the planning authority under PI Ref 15/359.
- They request the Board to determine whether the conversion of ground floor offices to a two-bedroom apartment is or is not exempted development under the change of use exemptions set out in the provisions of S.I no 30 of 2018, Planning and Development (Amendment) (No. 2) Regulations 2018.
- Sub article 10 (6) (b) states:
  - (b) This sub-article relates to a proposed development, during the relevant period, that consists of a change of use to residential use from Class 1, 2, 3 or 6 of Part 4 to Schedule 1.
- In sub article 10 (6) (c) the criteria for compliance with the regulations are set out as follows:
  - (c) Notwithstanding sub-article (1), where in respect of a proposed development referred to in paragraph (b)—
    - (i) the structure concerned was completed prior to the making of the Planning and Development (Amendment) (No. 2) Regulations 2018,
    - (ii) the structure concerned has at some time been used for the purpose of its current use class, being Class 1, 2, 3 or 6, and
    - (iii) the structure concerned, or so much of it that is the subject of the proposed development, has been vacant for a period of 2 years or more immediately prior to the commencement of the proposed development, then the proposed development for residential use, and any related works, shall be

exempted development for the purposes of the Act, subject to the conditions and limitations set out in paragraph (d).

- Sub article 10 (6) (c) sets out the circumstances in which a change of use to residential use shall be exempted development. Sub article (d) enumerates the relevant conditions and limitations or provides de-exempting criteria, including at paragraph (d) (ix)

(ix) No development shall contravene a condition attached to a permission under the Act or be inconsistent with any use specified or included in such a permission.

- The proposed development accords with the provisions of S.I no 30 of 2018 and is not de-exempted by any of the criteria.
- The decision or planner's report did not specifically state what conditions of PI Ref 99/918 and PI Reg 02/346 are being contravened by the proposed development.

They have undertaken a detailed review of the conditions attached to the relevant planning permission and are of the opinion that, on the basis of the wording of the refusal reason, the planning authority are referring to Condition No 1 of PI Ref 99/918 being allegedly contravened.

- Condition no 1 states:

The development shall be carried out and completed in accordance with the application made on 22/12/1999, as revised and amended by documentation submitted on 28/1/2000 and 10/3/2000 but subject, however, to the requirements of the further conditions hereafter incorporated.

Reason: To ensure that the development is carried out in accordance with the permission and that effective control is maintained.

- It is considered that the rationale being adopted by the planning authority is that the extant permitted ground floor uses at Tí Choinn are ancillary to the student accommodation overhead and to permit their change of use would be contrary to condition no 1 of PI Ref 99/918 and PI 02/346 thereby de-exempting the change of use in the context of S.I no 30 of 2018.



- It should be noted that the overhead accommodation at Tí Choinn was permitted as both student accommodation and/or private residential accommodation. The requirement to provide the ancillary uses was originally a requirement of the Section 50 student accommodation provisions. The Student accommodation scheme was introduced in Section 50 of the Finance Act 1999. As part of this scheme communal facilities such as a seminar room and office space were required. The use of the accommodation overhead the ground floor at Tí Choinn, as student accommodation, ceased in 2012 and is now predominantly made up of private residential accommodation. It is their opinion that the ground floor uses are no longer ancillary to any other use. It is not considered reasonable to conclude that the proposed change of use would contravene condition no 1 of PI Ref 99/918 and PI ref 02/346. The refusal reason is considered to be invalid.
- The existing seminar room and office space have been vacant for over two years.
- They consider the change to residential to be exempted development.

## 6.2. Planning Authority Response

6.2.1. The planning authority has not responded to the referral.

## 6.3. Observation

6.3.1. An observation on the grounds of appeal has been received from James O'Donnell, Planning Consultancy Services on behalf of Gleann na Rí Management Company. The observation includes:

- Re 6(c)(ii) The parent permission ref 99/918 PL 61.119288 allowed for the upper floors of the building to be used for Student Accommodation or apartments. The entirety of the ground floor was to accommodate retail units as well as communal facilities for the benefit of the wider complex. These facilities included a Comms room (Communications room), tea room, communal toilets and common room. In the course of the planning history, although the internal layout evolved slightly, the subject unit was consistently dedicated to the use/accommodation of communal

facilities to serve the wider residential complex. E.g. – in PI Ref No 01/9 the subject unit was dedicated to the latter uses; in PL Ref No 02/346 the subject unit was dedicated to communal uses: common room, luggage room, communal toilets, waiting room/reception and office. Under PI Ref No's 14/324 & 15/359 the existing floor plans for the subject unit accompanied the application. The use indicated at the subject unit was consistent with that shown under PL Ref No 02/346.

The unit was permitted and used as a dedicated area to accommodate communal facilities for the residential complex, its use does not fall into any of the relevant classes: class 1, 2, 3 or 6. The proposal cannot be considered exempted development.

- Re 6(c)(iii) - they dispute that the comms room was vacant for 2 years prior to the commencement of development as it continued to have a services use to serve the entirety of the residential complex since the inception of the development. The proposal seeks to supplant the existing comms room (identified by them on a drawing attached), with a private utility area. A letter from Ocean Property Management is attached confirming the presence of vital infrastructural services within the comms room, which perform important communal functions to operate the estate. The comms room acts as a nerve centre: as a telecommunications infrastructure and cable node it cannot be readily relocated.
- Re 6(d)(ii) – they note that the works have commenced and they consider that the external changes, now complete, involve significant reduction in glazing, materially affecting the external appearance of the structure, and are inconsistent with the adjoining creche.
- Re 6(d)(iii) – the alteration to the existing shopfront are inconsistent with the remainder of the unit.
- Re 6(d)(v) – they state that there are 17 units within the structure and the proposal cannot be considered exempted development.
- Re 6(d)(vi) – the drawings appear to comply, however due to the presence of the comms room, the kitchen utility cannot be provided, and the proposal cannot be considered exempted development.

- Re 6(d)(ix) – they reiterate the uses tied to the various permissions.
- Attached to the submission is a letter from Ocean Property Management which refers to the use of the comms room – that the 14 apartment complex’s entire CCTV cables, gate communication cables and all of the fire alarms cabling and connections are located in this area. It is not possible for the management company to operate without having access to these essential services.

## 7.0 Statutory Provisions

### 7.1. Planning and Development Act, 2000

Section 2(1) ‘exempted development’ has the meaning specified in section 4.

Section 3(1)

In this Act, ‘development’ means, except where the context otherwise requires, 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.

Section 4 – exempted development.

Section 4(1) The following shall be exempted developments for the purposes of this Act—

h) 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;

Section 4(2)(a) states ‘The Minister may by regulations provide for any class of development to be exempted development for the purposes of this Act where he or she is of the opinion that:-

(i) By reason of the size, nature or limited effect on its surroundings, of development belonging to that class, the carrying out of such development would not offend against principles of proper planning and sustainable development.

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

Article 6 (1) Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted 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.

Article 9 (1) 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

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.

### SCHEDULE 2 Part 4

#### Exempted development- Classes of Use

##### CLASS 1

Use as a shop.

##### CLASS 2

Use for the provision of—

- (a) financial services,
- (b) professional services (other than health or medical services),
- (c) any other services (including use as a betting office),

where the services are provided principally to visiting members of the public.

#### CLASS 3

Use as an office, other than a use to which class 2 of this Part of this Schedule applies.

#### CLASS 6

Use as a residential club, a guest house or a hostel (other than a hostel where care is provided).

### 7.3. **Planning and Development Amendment (No. 2) Regulations, 2018**

This amends Article 10 of the Principal Regulations to allow for change of use from Classes 1, 2, 3 and 6 of the use classes, to residential use, subject to certain conditions and limitations; by inserting sub-article 6 after sub-article (5)

Sub-article 6 includes:

6 a) In this sub-article—

“habitable room” means a room used for living or sleeping purposes but does not include a kitchen that has floor area of less than 6.5 square metres

(b) This sub-article relates to a proposed development, during the relevant period, that consists of a change of use to residential use from Class 1, 2, 3 or 6 of Part 4 to Schedule 1.

(c) Notwithstanding sub-article (1), where in respect of a proposed development referred to in paragraph (b)—

(i) the structure concerned was completed prior to the making of the Planning and Development (Amendment) (No. 2) Regulations 2018,

(ii) the structure concerned has at some time been used for the purpose of its current use class, being Class 1, 2, 3 or 6, and

(iii) the structure concerned, or so much of it that is the subject of the proposed development, has been vacant for a period of 2 years or more immediately prior to the commencement of the proposed development,

then the proposed development for residential use, and any related works, shall be exempted development for the purposes of the Act, subject to the conditions and limitations set out in paragraph (d).

Paragraph (d) includes:

(v) No development shall consist of or comprise the carrying out of works which exceeds the provision of more than 9 residential units in any structure.

(vi) Dwelling floor areas and storage spaces shall comply with the minimum floor area requirements and minimum storage space requirements of the “Sustainable Urban Housing: Design Standards for New Apartments — Guidelines for Planning Authorities” issued under section 28 of the Act or any subsequent updated or replacement guidelines.

(vii) Rooms for use, or intended for use, as habitable rooms shall have adequate natural lighting.

(ix) No development shall contravene a condition attached to a permission under the Act or be inconsistent with any use specified or included in such a permission.

**7.4. Sustainable Urban Housing: Design Standards for New Apartments  
Guidelines for Planning Authorities, Department of Housing, Planning and Local  
Government, March 2018**

6.6 Planning authorities should have regard to quantitative performance approaches to daylight provision outlined in guides like the BRE guide ‘Site Layout Planning for Daylight and Sunlight’ (2nd edition) or BS 8206-2: 2008 – ‘Lighting for Buildings – Part 2: Code of Practice for Daylighting’ when undertaken by development proposers which offer the capability to satisfy minimum standards of daylight provision.

6.7 Where an applicant cannot fully meet all of the requirements of the daylight provisions above, this must be clearly identified and a rationale for any alternative, compensatory design solutions must be set out, which planning authorities should

apply their discretion in accepting ... This may arise due to a design constraint(s) associated with the site or location and the balancing of that assessment against the desirability of achieving wider planning objectives. Such objectives might include securing comprehensive urban regeneration and or an effective urban design and streetscape solution.

## **7.5. Referrals Database**

- 7.5.1. I have examined the Board's database of references/referrals. There are no cases directly relevant in the context of the issues raised in the current referral.

## **8.0 Assessment**

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

- 8.1.1. The fact that the proposal includes works which would 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, is disputed by the observers but accepted by the planning authority. I am satisfied that the alterations would not render the appearance inconsistent with the character of the structure or of neighbouring structures.
- 8.1.2. The fact that there would be a change of use involving development is not in dispute.

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

- 8.2.1. The amendments contained in the Planning and Development Amendment (No. 2) Regulations, 2018, which allow for change of use to residential use from within use classes 1, 2, 3 and 6 of the use classes Schedule 2, Part 4 of the Planning and Development Regulations, 2001 (as amended), have given rise to the request to the planning authority.
- 8.2.2. The planning authority determined the question on the basis that the current uses were granted as ancillary to the main student accommodation, originally granted under PI. Ref. 99/918, as amended by PI. Ref. 02/346. They regarded the proposed

change of use as contravening the conditions attached to PI. Ref. 99/918 and PI. Ref. 02/346 and therefore requiring the benefit of planning permission. The proposed change of use was therefore not considered to be exempt from planning permission.

- 8.2.3. The referrer considers that the rationale being adopted by the planning authority is that the extant permitted ground floor uses at Tí Choinn are ancillary to the student accommodation overhead and to permit their change of use would be contrary to condition no 1 of PI Ref 99/918 and PI 02/346 thereby de-exempting the change of use in the context of S.I no 30 of 2018.
- 8.2.4. They note that the overhead accommodation at Tí Choinn was permitted as both student accommodation and/or private residential accommodation. The requirement to provide the ancillary uses was originally a requirement of the Section 50 Student accommodation provisions, (Section 50 of the Finance Act 1999) which required communal facilities such as a seminar room and office space. The use of the accommodation overhead the ground floor at Tí Choinn as student accommodation ceased in 2012 and is now predominantly made up of private residential accommodation. The ground floor uses are no longer ancillary to any other use and the proposed change of use would not contravene condition no 1 of PI Ref 99/918 and PI ref 02/346.
- 8.2.5. They consider, from an examination of the permissions, that it is condition No 1 of PI Ref 99/918 that is being allegedly contravened.
- 8.2.6. The planning authority has not responded to the referral.
- 8.2.7. The relevant provision is:
- 6 (d) (ix) No development shall contravene a condition attached to a permission under the Act or be inconsistent with any use specified or included in such a permission.
- 8.2.8. The planner's report states that planning permission was originally granted under PI. Ref. 99/918 for a private residential or student accommodation comprising a total of 140 no. apartments, along with ancillary facilities consisting of 3 storey local shops including launderette, bank, restaurant, caretaker's apartment and a conference room. In this context the change of use of any of the ancillary facilities, such as a retail unit, seminar room or offices, to residential units, is not considered to be exempt as these facilities were granted as an integral part of the original student



accommodation and the exemption referred to under Article 6 (10) (6) does not apply.

- 8.2.9. Condition 1 of PL61.119288 / 918/99 requires that the development be carried out and completed in accordance with the documents submitted as amended by documents submitted 26/1/2000 and 10/3/200, subject to the further conditions. Condition 1 of 346/02 requires that the development be carried out and completed in accordance with the application made on 27<sup>th</sup> May 2002, subject to the further conditions.
- 8.2.10. These conditions required the development to be carried out and completed in accordance with the documents and the more specific requirements listed. There is no suggestion that the development was not carried out and completed in accordance with these permissions. The conditions do not de-exempt development arising following the completion of the development and, for example, in this regard, it was accepted in the planner's report that alterations to the windows would be exempt, i.e. enjoy the exemptions laid out in the regulations.
- 8.2.11. The relevant provision also includes the phrase 'or be inconsistent with any use specified or included in such a permission'.
- 8.2.12. I am not convinced that a change of use from communal uses such as tea room, communal toilets or common room to residential use, in circumstances where most of the apartments are used as private apartments rather than student accommodation, would, per se, be inconsistent with the use included in the permission. However the observation states that the communications room for the 14 apartment blocks is located within the area covered by the referral: that the complex's entire CCTV cables, gate communication cables and all of the fire alarms cabling and connections are located in the area indicated as the kitchen / utility room of the proposed apartment, and that it is not possible for the management company to operate without having access to these essential service. In that context it can be stated that the change of use would be inconsistent with the communal use of part of this area as included in the permission; such that it would not comply with 6 (d) (ix).
- 8.2.13. The fact that the change of use would come from within use classes 1, 2, 3 or 6, per 6(b) and 6(c)(ii)), is in dispute. The observation states that the stated use 'office' is not the actual use but that the use has always been the provision of communal

services to the apartment complex and points out that this use is reflected in planning documents including those submitted in 2014/2015. Class 3 refers to office use, the use claimed and which is disputed by the observers. Class 2 refers to various services. In the present circumstances class 2 would not appear to apply since it requires that 'the services are provided principally to visiting members of the public'; in the subject case users of services are the 14 apartment block residents.

- 8.2.14. In my opinion the proposed development would not comply with 6(b) or 6(c)(ii).
- 8.2.15. The fact that the units have been vacant for a period of 2 years, (6(c)(iii)), is in dispute. The observation states that part of the area covered in the referral is currently in use as a comms room. This has been its continuous use since the development was carried out. In my opinion the referrer, on whom the burden of proof falls, has not demonstrated that the units have been vacant and therefore (6(c)(iii)) is not complied with.
- 8.2.16. That the development does not consist of or comprise the carrying out of works which exceeds the provision of more than 9 residential units in any structure is disputed by the observers who cite the number of existing apartments in the building. The proposal is the provision of one residential unit and complies with paragraph 6(d)(v).
- 8.2.17. Per 6(d)(vi) - Per 6(d)(vi) - that the proposed dwelling floor areas and storage spaces would comply with the minimum floor area requirements and minimum storage space requirements of the Sustainable Urban Housing: Design Standards for New Apartments — Guidelines for Planning Authorities, a requirement under paragraph (d) (vi) of the regulations, is not in dispute. It is noted that there is no outdoor private amenity space available for the proposed two-bedroom apartment but this is not a requirement of the exemption.
- 8.2.18. The requirement under paragraph (d) (vii) that rooms for use, or intended for use, as habitable rooms shall have adequate natural lighting, is not addressed in the submission. The Sustainable Urban Housing: Design Standards for New Apartments — Guidelines for Planning Authorities, is referred to under paragraph (vi) of the 2018 Regulations, and it would be reasonable to consider its provisions would apply also to paragraph (vii).

- 8.2.19. The Sustainable Urban Housing: Design Standards for New Apartments — Guidelines for Planning Authorities refers to daylight provision outlined in guides like the BRE guide ‘Site Layout Planning for Daylight and Sunlight’ (2nd edition) or BS 8206-2: 2008 – ‘Lighting for Buildings – Part 2: Code of Practice for Daylighting.
- 8.2.20. From the plans provided, it appears that the single kitchen/dining/living room proposed, (a habitable room being a room used for living or sleeping purposes but does not include a kitchen that has floor area of less than 6.5 square metres) would not have adequate natural lighting.
- 8.2.21. The proposed utility room is an internal room, of 8.53 sq m, which would have no natural light and no window, being of greater area than 6.5 square metres this would also de-exempt the change of use.
- 8.3. In my opinion the proposal to convert existing ‘office’ space to a two bedroom apartment would not comply with paragraphs 6(b), 6(c)(ii), 6(c)(iii), 6(d)(vii) or 6(d)(ix) of the planning and development regulations and would not therefore be 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 conversion of ground floor office space for use as a two-bedroom apartment is or is not development or is or is not exempted development:

**AND WHEREAS** K King Construction Claregalway requested a declaration on this question from Galway City Council and the Council issued a declaration on the 17<sup>th</sup> day of September, 2018 stating that the matter was development and was not exempted development:

**AND WHEREAS** K King Construction Claregalway referred this declaration

for review to An Bord Pleanála on the 15<sup>th</sup> day of October, 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) and 4(2) of the Planning and Development Act, 2000, as amended,
- (d) article 10(1) and 10(6) of the Planning and Development Regulations, 2001, as amended,
- (e) article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (f) Parts 1 and 3 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (g) the planning history of the site, and
- (h) the pattern of development in the area:

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

- (a) The proposed works would be development and exempted development,
- (b) The change of use would be development and would not be exempted development.

**NOW THEREFORE** An Bord Pleanála, in exercise of the powers conferred on it by section 5 (1) of the 2000 Act, hereby decides that the conversion of ground floor ‘office’ space to a two-bedroom apartment is development and

is not exempted development.

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Planning Inspector

25 January 2019

#### Appendices

Appendix 1 Photographs

Appendix 2 Galway City Council Development Plan 2017-2023 extract.

Appendix 3 Copy of SI No 30 of 2018