



An  
Bord  
Pleanála

## Inspector's Report ABP-303034-18

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<b>Question</b>	Change of use from a vehicle leasing display showroom to a shop.
<b>Location</b>	Gallowshill, Athy, County Kildare.
<b>Declaration</b>	
Planning Authority	Kildare County Council
Planning Authority Reg. Ref.	ED/00682
Applicant for Declaration	Mr. Price Branded Bargains.
Planning Authority Decision	Change of use is development and is not exempted development
<b>Referral</b>	
<b>Referred by</b>	Mr. Price Branded Bargains.
<b>Owner/ Occupier</b>	Supermacs/Mr. Price.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	18 <sup>th</sup> February and 21 <sup>st</sup> June 2019.
<b>Inspector</b>	Susan McHugh

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## 1.0 Site Location and Description

- 1.1. The subject site is located approx. 1km east of Athy town centre, County Kildare. It is located to the south of the national secondary road N78 Dublin Road and south east of the N78/R418 roundabout.
- 1.2. There is a standalone double height unit with surface car park, which is accessed from the N78 Dublin Road. The vehicular entrance is located is approx. 50m west of the roundabout.
- 1.3. The unit which is roughly square in shape, is currently in use as a shop, with Mr. Price as the operator. The entrance to the unit is on the south eastern side elevation, with the north eastern/front elevation addressing the roundabout. The north-western side/elevation addresses the N78 while the south western rear elevation provides access for deliveries. The unit includes signage on all elevations as illustrated on photos attached.
- 1.4. The site layout plan submitted with the application predates the construction of the roundabout.

## 2.0 The Question

- 2.1. The question has arisen as to;
  1. *'Whether the change of use of the premises from use for the sale or leasing or display for sale or leasing of motor vehicles (Class14(a)) to use as a shop is/is not development and is/is not exempted development, and*
  2. *Whether the internal works are/are not exempted development.'*

## 3.0 Planning Authority Declaration

### 3.1. Declaration

- 3.1.1. The planning authority made the following declaration on 26<sup>th</sup> October 2018;
  - (a) *'change of use of the premises from use for the sale or leasing or display for sale or leasing motor vehicles (Class 14(a)) and use as a car repairs and car*

*servicing workshop (as permitted by the planning permission ref: 03/300074) to use as a shop is development and is **not** exempted development, and*

*(b) internal works to facilitate such a proposed change of use is development and is **not** exempted development, by virtue of the fact that the subject premises has not been developed in accordance with the plans and particulars submitted with planning application ref: 03/300074.'*

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Report

None on file.

#### 3.2.2. Other Technical Reports

None.

## 4.0 Planning History

### *Parent Permission*

**P.A. Reg. Ref. 03/300074** Permission **granted** 27/09/2004 for car sales showroom including car repairs, parts store, staff canteen, toilets and admin area and all ancillary site development works to Albert Dunne c/o MCD Civil Engineering Consultants. This permission was subject to 34 conditions. Of relevance to this referral are the following conditions;

Condition No.1.

*'The proposed development shall be retained carried out and completed in accordance with drawings and documentation submitted to the Planning Authority on 10/12/2003. 10/03/2004 and 19/05/2004, except where altered or amended by conditions in this permission.*

**Reason:** *To enable the Planning Authority to check the proposed development when completed, by reference to approved particulars.'*

Condition No. 4.

- a) *No roller shutters or their housing, awnings, canopies, grilles, flags and illumination, (including adhesive window signs) shall be erected or located externally within the property as a whole without the prior planning permission of the Planning Authority.*
- b) *Any roller shutter erected on the premises shall be installed internally and located behind the glass, or behind the display. Any shutter shall be slotted design, and shall be finished in colour to accurately match the proposed façade of the premises.*
- c) *No storage of goods or display of goods shall take place on the footpath, or elsewhere outside the development.*
- d) *Details of all signage throughout the development, as indicated on the elevation drawings received by the Planning Authority on 10/12/2003, shall be submitted for the written agreement of the Planning Authority prior to the commencement of development.'*

**Reason:** *In the interest of visual amenity and proper planning and sustainable development.'*

*Enforcement*

**P.A. Ref. UD7074** Warning Letter **issued** 15/5/2018 to Supermac's Ireland Limited, and Directors of Corajio Unlimited Company, advising that the change of use from the permitted development to a Mr. Price Discount retail store supplying household product, toiletries, stationery, toys, etc. is **not** exempt development. The additional requirements to facilitate the change of use, e.g. signage, car parking etc. is also **not** deemed exempt. The planning authority determined that the development would therefore appear unauthorised. (see copy attached).

*Section 5 Referral*

**RL.09.RL3486** The Board determined 16/01/2018 that the proposed change of use of a former car sales premises to use as a shop at Gallowshill, Athy, Co. Kildare **is development and is not exempted development.** (see file attached).

In considering the referral, the Board had regard to -

- '(a) Sections 2, 3 and 4 of the Planning and Development Act 2000, as amended,*
- (b) Articles 5, 6 and 9 of the Planning and Development Regulations 2001, as amended, and Class 14 (a) of Part 1 of Schedule 2 to those Regulations,*
- (c) the planning history of the site and in particular condition 1 of planning permission register reference number 03/300074,*
- (d) the existing as built structure on the site in question,*
- (e) the submissions on file,*
- (f) the Inspector's reports on file, including the details of her inspection of the premises in July 2017, included in her Addendum report dated 10th August 2017.'*

The Board concluded that –

- (a) the proposed change of use of a former car sales premises to use as a shop is a factual change of use and such change of use would raise material planning issues, including impacts on the town centre of Athy and implications in terms of traffic and pedestrian safety, and would, therefore, constitute development within the meaning of section 3 (1) of the Planning and Development Act, 2000, as amended;*
- (b) the proposed change of use pertaining to the former car sales premises would generally come within the scope of the exemption provided in Class 14 (a) of Part 1 of Schedule 2 to the Planning and Development Regulations, as amended;*
- (c) however, the existing premises on the site has a larger footprint and a more symmetrical configuration compared to that permitted under planning permission register reference number 03/300074 and the changes from the permitted development are material in nature and would constitute development and would not have been exempted development,*
- (d) condition number 1 of permission file reference number 03/300074 required the development to be carried out and completed in accordance with the drawings and documentation submitted to the planning authority, and*
- (e) the exemption that would generally be available under Class 14 (a) is, therefore, restricted under the provisions of Article 9 (1)(a)(i).'*

The Board decided that the proposed change of use of a former car sales premises to use as a shop is development and is not exempted development.

## 5.0 Policy Context

### 5.1. Development Plan

Kildare County Development Plan 2017-2023 is the operative development plan.

### 5.2. Athy Town Development Plan 2012-2018

The lands which are located within the Athy Town Council Boundary are zoned H1 Industrial and Warehousing. An indicative road reservation is also located immediately east of the subject site.

### 5.3. Natural Heritage Designations

None of relevance.

### 5.4. Environmental Impact Assessment – Screening

The proposed development is of a type that does not fall within a class of development set out in Part 1 or Part 2 of Schedule 5 of the Planning and Development Regulations, 2001 (as amended). The need for screening for environmental impact assessment is therefore not required.

## 6.0 The Referral

### 6.1. Referrer's Case

- 6.1.1. **Background** – The applicant for referral, Declan Crinion, Mr. Price, has sought a request for a Declaration under Section 5 on 20<sup>th</sup> November 2018. The request was accompanied by a site location plan which accompanied the original planning application.

6.1.2. It is noted that a number of changes to the premises have occurred since the previous Section 5 application was made. These include the following;

1. The internal mezzanine which did not have the benefit of planning permission has been removed.
2. No change of use with regard to the car parking is being sought. The parking on site, provided under P03/300074 is in existence and as such no change is required.
3. A landscaping scheme as per the P03/300074 was agreed with the Planning Authority, a bond lodged for the satisfactory planting of the scheme and the agreed scheme planted.
4. The company undertook to remove all unauthorised signage.

6.1.3. **Grounds of Reference**

**Change of use** – The Referring Party acknowledges that the change of use from use for the sale or leasing of motor vehicles to use as a shop is development. However, it is contended that the change of use is exempted development in accordance with Articles 6 and 9 of the Planning and Development Regulations, 2001 and Class 14(a) of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001.

**Ancillary area** - It is contended that the change of use of the ancillary area used for repair/servicing of motor vehicles is exempted development also. In support of this view the following points are noted;

- Board Determination under PL.83.RL2856 where the change of use of a motor sales premises to a shop was deemed to be exempted development.
- The subject site was in use for the sale or leasing of motor vehicles for over 10 years, wherein the use of the car park for the number of spaces provided and associated traffic movements was accepted. There was a long-established use of the site in the motor sales industry, as permitted by the parent grant of planning.
- The public road at the location of the subject site displays greater than minimum sight distances and a wide dual carriageway.



It is asserted having regard to the following;

- Sections 3 and 4 of the Planning and Development Act, 2000-2011, including the provisions of Section 4(4), as amended, in respect of environmental impact assessment and appropriate assessment;
- Articles 6 and 9 of the Planning and Development Regulations, 2001;
- Class 14(a) of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001;
- Class 1 of Part 2 of Schedule 2 of the Planning and Development Regulations, 2001;
- The established use for motor related business, the associated pattern of traffic movements and the characteristics of the public road serving the site, and
- The planning history of the site.

6.1.4. It is submitted that;

- (a) That the principal and permitted use of the premises is for the sale or leasing, or display for sale or leasing of motor vehicles,
- (b) That the proposed change of use to use as a shop is a material change of use and constitutes development within the meaning of section 3 of the Act,
- (c) That the said proposed change of use to use as a shop is not affected by any of the restrictions on development set out at Article 9 of the Planning and Development Regulations, 2001, as amended, and in particular would not endanger public safety by reason of a traffic hazard,
- (d) That the said proposed change of use to use as a shop comes within the exempted development provisions of Class 14(a) of Schedule 2, Part 1 of the Planning and Development Regulations, 2001,
- (e) That the internal works proposed come within the exempted development provisions of section 4(1)(h) of the Planning and Development Act, 2000,
- (f) That the existing sign has not been constructed in accordance with the provisions of Condition No. 1 of Register Reference P03/300074 and is therefore unauthorised and will be removed,

(g) That the development is not affected by the provisions of Section 4(4) of the Act, as amended.

6.1.5. In conclusion, it is asserted that;

- the proposed change of use of the premises from use for the sale or leasing, or display for sale or leasing of motor vehicles, to use as a shop is development and is exempted development.
- the use of the existing car parking for car parking associated with the use of the premises as a shop is not development, and
- the internal works that are required to effect the change of use are exempted development.

6.1.6. The referrer also asks if the Board still consider that the 'squaring off' of the building carried out by the original developer at the time, is not in compliance, Mr Price now seek to request whether the rectification of the building back to that which was originally permitted, and the subsequent use of same for use as a Mr Price would be exempted development?

## 6.2. **Planning Authority Response**

The planning authority have not made any observations in response to the referral.

## 7.0 **Statutory Provisions**

### 7.1. **Planning and Development Act, 2000 as amended**

#### 7.1.1. **Section 2 (1)**

"Works" are defined in this section as including

*'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 of or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure'.*

### 7.1.2. **Section 3 (1)**

“Development” is defined as, *‘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’.*

7.1.3. **Section 4** of the Act refers to *‘Exempted Development’* and Subsection (1) sets out categories of development that shall be exempted development for the purposes of this Act. Subsection (1) (h) states the following:

*‘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’.*

In addition to specified exemptions in the Act, Subsection (2) of the Act provides that the Minister may by regulations provide for any class of development being exempted development.

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

7.2.1. **Article 5(1)** sets out various definitions including the definition of a ‘shop’ as follows:

‘Shop’ means a structure used for any or all of the following purposes where the sale, display or service is principally to visiting members of the public.

(a) for the sale of retail goods.

7.2.2. **Article 6** of Part 2 of the Regulations provides that subject to Article 9 (1) (a), development specified in Column 1 of Part 1 of the Second Schedule shall be exempted development for the purposes of the Act subject to the conditions and limitations specified in Column 2.

7.2.3. The only class of relevance is Class 14 which refers to development consisting of a change of use including a change of various uses to use a shop. These uses

include sale of hot food (take-away), sale/leasing/display of motor vehicles for sale/lease, public house, funeral home/amusement arcade/restaurant and use to which class 2 of Part 4 of the Schedule applies. Class 2 is as follows:

- 7.2.4. There are no conditions and limitations of Class 14.
- 7.2.5. **Article 9 (1) (a)** lists the exceptions where development would not be exempted development (by virtue of Article 6). These included subsection (i) where the development would contravene a condition attached to a planning permission under the Act or be inconsistent with any use specified in a permission under the Act; subsection (iii) where the development would endanger public safety by reason of traffic hazard or obstruction of road users and subsection (viii) where the development consists of or comprises the extension, alteration, repair or renewal of an unauthorised structure or a structure, the use of which is unauthorised.
- 7.2.6. **Article 10(1)** provides that 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;
  - (d) Be a development which where the existing use is an unauthorised use, save where such change of use consists of resumption of a use which is not unauthorised and which has not been abandoned.
- 7.2.7. **Article 11** provides that development which commenced prior to the coming into operation of this Part and which was exempted development for the purposes of the Act of 1963 or the 1994 Regulations, shall notwithstanding the repeal of that Act and the revocation of those Regulations, continue to be exempted development for the purposes of the Act.
- 7.2.8. **Part 4 Schedule 2** sets out exempted development in relation to Classes of Use.

Class 1 – Use as a shop.

Class 2 - (a) Use for provision of financial services,

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

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

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

## **8.0 Relevant Board Decisions**

### **8.1.1. PL.84.RL.3096 (November 2013)**

The question here referred to whether the change of use from a garage and showrooms to use as a shop at Hastings Garage, The Fairgreen, Westport, County Mayo is or is not development or is not exempted development.

The Board decided that due to its permitted use for the sale or leasing, or display for sale or leasing of motor vehicles, it constituted a material change of use to use as a shop and that works constituted development, and as it came within the exempted development provisions of Class 14(a) of Part 1 of Schedule 2 of the Regulations was exempted development.

### **8.1.2. PL.88.RL.2959 (April 2013)**

The question here referred to whether the proposed change of use of an existing car showroom to use as a shop/retail use at Nyhan Motors, The Bypass, Cloghmacsimon, Bandon, County Cork is or is not development or is or is not exempted development.

The Board decided the proposed change of use was a material change of use and constituted development, that it came within the scope of the exemption provided in Class 14(a) of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended) and did not constitute exempted development by reason of Article 9(1)(a)(i) of the Regulations.

**8.1.3. PL.83.RL.2856 (December 2011)**

The question here referred to whether

- (1) the proposed change of use of the premises from use for the sale or leasing, or display for sale or leasing of motor vehicles, to use as a shop is or is not development, or is or is not exempted development.
- (2) certain internal works that are required to effect the change of use are or are not exempted development and
- (3) a proposed change of signage to reflect the change of use is or is not exempted development,

all at Capital Cars, Church Road, Tullamore, County Offaly.

The Board decided that the proposed change of use was material and constituted development and was exempted development, that it came within the scope of the exemption provided in Class 14(a) of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended), that the internal works required to effect the change of use came within the scope of the provisions of 4(1)(h) are exempted development, and the proposed signage was not exempted development.

**8.1.4. PL.29S.RL.2020 (April 2003)**

The question here referred to whether or not a change of use of Unit 1 and Unit 1C at the Concord Industrial Estate, Naas Road, Dublin from motor/warehouse showrooms to shop for the sale of tiles is or is not exempted development:

The Board decided that the change of use came within the provisions of Class 14(a) of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001, and that the proposed change of use does not contravene condition no. 1 of planning register reference number 3760/98 as this condition only relates to the implementation of the permission granted and does not restrict any future uses which would otherwise be exempt. It concluded that the change of use was development and was exempted development.

## 9.0 Assessment

9.1. It should be stated at the outset that the purpose of this referral is not to determine the acceptability or otherwise of the development in respect of the proper planning and sustainable development of the area, but rather whether or not the matter in question constitutes development, and if so, falls within the scope of exempted development.

9.1.1. I draw the Boards attention to the fact that this is the second Section 5 Referral before the Board on the same site. In my opinion the substance of the current Referral before the Board is unchanged.

9.2. The difference between the previous Section 5 Referral and the current Referral include the following;

- The unit was previously vacant and is now occupied and is in use as a shop.
- The internal mezzanine area has been removed.
- The planning authority have taken enforcement action regarding noncompliance with conditions.

9.3. It is considered in this case given the planning history on the site, the Boards previous Section 5 Determination ostensibly on the same question and on the same site, the current planning enforcement, and sequencing, that the question subject of the referral should be restated as follows:

- (1) Is the change of use from a car sales premises to a retail shop 'development'?
- (2) Would the rectification of the building back to that originally permitted, and the subsequent use of same as a shop be 'exempted development'?

### 9.4. Is or is not development?

9.4.1. The first question before the Board relates to whether or not the change of use from car sales premises to a retail shop comprises development.

9.4.2. Section 3(1) of the Planning and Development Act defines 'development' as;

*"the carrying out of any works on, in or under land or the making of any material change in the use of any structures or other land".*

9.4.3. A 'shop' is defined in Article 5(1) of the Planning and Development Regulations 2001 (as amended) as being, amongst other things;

*“for the retail sale of goods, post office, ticket sales, travel agency, hot food, hairdressing, launderette and the hiring out of domestic or personal goods.”*

9.4.4. The definition of shop clearly does not include the sale of or leasing of motor vehicles. I consider therefore that the proposed change of use is material in nature and is development. I note that the Referring party also acknowledges this fact in the grounds of reference.

9.4.5. I also consider that the works required to return the structure to that permitted under the P.A.Reg.Ref.03/300074 would constitute development.

9.4.6. The matter that has now to be determined is whether or not the change of use and or works is exempted development.

## **9.5. Is the change of use exempted development?**

9.5.1. Development can be exempted from the requirement for planning permission by either Section 4 of the Planning and Development Act, 2000 (as amended), (the Act), or Article 6 and 9 of the Planning and Development Regulations 2001 (as amended), (the Regulations).

9.5.2. As the proposal involves a material change of use, it is Article 6 of the Regulations which applies and provides that subject to Article 9, development of a class specified in Schedule 2 of the Regulations shall be exempted 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.

9.5.3. Class 14(a) of Part 1 of Schedule 2 states that

*“development consisting of a change of use from use ..... or for the sale or leasing or display for sale or leasing of motor vehicles, to use as a shop”*

is an exempted change of use. There are no limitations or conditions in Column 2 opposite this category and the only limitations are the general limitations set out in Article 9.



9.5.4. A “shop” is defined in Article 5 of the Planning and Development Regulations as amended, is already outlined above. There is no limitation as to the floor area associated with such a “shop”.

## 9.6. Restrictions on exempted development

9.6.1. Article 9(a) of the Regulations sets out a number of instances under which development in Parts 1, 2, & 3 of the Schedule 2 are not exempted development. These include where the 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,*

*(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.*

*(i) Contravene a Condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act.*

9.6.2. With regard to Article 9 subsection (i), Condition 1 of the planning permission Reg. Ref. No. 03/300074 pertaining to the structure sets out that:

*“the proposed development shall be retained, carried out and completed in accordance with drawings and documentation submitted to the Planning Authority on 10/12/2003, 10/03/2004 and 19/05/2004, except where altered or amended by conditions in this permission.*

**Reason:** *To enable the Planning Authority to check the proposed development when completed, by reference to approved particulars”.*

9.6.3. It was determined by the Board in January 2018 under RL.09.RL3486 that ‘the existing premises on the site has a larger footprint and a more symmetrical configuration compared to that permitted under planning permission register reference number 03/300074, and the changes from the permitted development are

material in nature and would constitute development and would not have been exempted development.'

- 9.6.4. The planning authority took enforcement action regarding noncompliance with conditions in May 2018. They note that the change of use and the additional requirements to facilitate the change of use, e.g. signage, car parking etc. is also not deemed exempt. The planning authority determined that the development would, therefore, appear unauthorised.
- 9.6.5. I note issues raised relating to carparking landscaping and signage by the referring party and in the enforcement by the P.A. but these matters in my opinion are not central to the substance of the Section 5 Referral.
- 9.6.6. I note the publicly available aerial photography which indicates that the building on site is roughly square/symmetrical. This was also evident from my site inspections (see photographs attached). I have had regard to the footprint to the development as indicated on revised site layout plan dated May 2004 permitted under Reg.Ref.03/300074. (see attached)
- 9.6.7. I have also had regard to the inspectors report and photographs on the previous Section 5 Referral RL.09.RL3486 and calculation of floor areas.
- 9.6.8. The Referrer acknowledges in the grounds of reference that the 'squaring off' of the building was carried out by the original developer and is not in compliance with the permission granted.
- 9.6.9. I am satisfied that the increase in floor area of the commercial structure, would have required planning permission. The extension to the original structure is material in nature, has altered the appearance of the permitted structure and resulted in an increase in the permitted floor area for which there is no exemption.
- 9.6.10. Similarly the works required to return the structure to that permitted under the P.A.Reg.Ref.03/300074 are considered material for which there is no exemption.
- 9.6.11. It would, therefore, be reasonable to conclude that the provisions of Article 9(1)(a)(i) would not apply in this instance.

*(iii) Endanger public safety by reason of traffic hazard or obstruction to road users.*

- 9.6.12. The entrance serving the site is located approx. 50m west of the roundabout site and is within the 50kmph speed limit. It is accessed directly from the N78 a national secondary road. At the time of my inspections mid-morning, and again mid-afternoon, mid-week I noted steady flows of traffic in both directions. There are adequate sight lines and adequate parking within the curtilage of the site.
- 9.6.13. In the previous referral the Board considered the impacts of the proposed change of use on the town centre of Athy and implications in terms of traffic and pedestrian safety and determined that it would give rise to a traffic hazard.
- 9.6.14. On the day of my inspections there was a steady stream of visitors to the shop unit, who arrived by car. Considering the nature of the use of the shop and the location of the premises on the outskirts of the town, I would concur that the shop unit would generate a significant increase in traffic when compared with the permitted use. I also noted that there are no pedestrian crossings in the vicinity of the site.
- 9.6.15. I have considered the implications of returning the building back to that originally permitted, and the subsequent use of same as a shop. I accept that this would result in a reduction in floor area, and consequently a less intensive use. However, I am of the opinion that this reduction in floor area would not be of a scale to satisfactorily address the substantive issue which relates to the nature of the use of the structure as a shop and the traffic implications associated with that use.
- 9.6.16. In my opinion, the reasons outlined in the previous Board determination with respect implications in terms of traffic and pedestrian safety, still apply.
- 9.6.17. It would, therefore, be reasonable to conclude that the provisions of Article 9(1)(a)(iii) would not apply in this instance.

*(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.*

- 9.6.18. As already outlined above the existing structure on site has been extended and altered and is currently in use as a shop which is materially different from the permitted use, and is therefore unauthorised.

- 9.6.19. Given that the structure as constructed does not comply with condition 1 of the parent permission, it is considered that the rectification of the building back to that originally permitted, would also be unauthorised development.
- 9.6.20. It would, therefore, be reasonable to conclude that the provisions of Article 9(1)(a)(viii) would not apply in this instance.

## 10.0 Recommendation

- 10.1. Arising from my assessment above I consider that the change of use of the premises from use for the sale or leasing or display for sale or leasing of motor vehicles to use as a shop constitutes development that is not exempted development.
- 10.2. 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 change of use of the premises from use for the sale or leasing or display for sale or leasing of motor vehicles (Class14(a)) to use as a shop at Gallowshill, Athy, Co. Kildare is or is not development or is or is not exempted development:

**AND WHEREAS** Mr. Price Branded Bargains, No.1 Airton Road, Tallaght, Dublin 24 requested a declaration on this question from Kildare County Council and the Council issued a declaration on the 26<sup>th</sup> day of October, 2018 stating that the matter was development and was not exempted development:

**AND WHEREAS** Mr. Price Branded Bargains No.1 Airton Road, Tallaght, Dublin 24 referred this declaration for review to An Bord Pleanála on the 20<sup>th</sup> day of November, 2018:

**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, 6 article 9 of the Planning and Development Regulations, 2001, as amended, and Class 14 (a) of Part 1 of Schedule 2 to those Regulations
- (c) the planning history of the site and in particular condition 1 of planning permission Reg.Ref.03/300074,
- (d) the existing as built structure on the site,
- (e) the submissions on file,
- (f) the previous Section 5 Referral determination by the Board under 09.RL3486.
- (g) the Inspectors report of 28<sup>th</sup> February 2020.

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

- (a) the change of use of a former car sales premises to use as a shop is a factual change of use and such change of use would raise material planning issues, including implications in terms of traffic and pedestrian safety, and would constitute development within the meaning of section 3 (1) of the Planning and Development Act, 2000 as amended;
- (b) the change of use pertaining to the former car sales premises would generally come within the scope of the exemption provided in Class 14 (a) of Part 1 of Schedule 2 to the Planning and Development Regulations as amended.
- (c) however, the existing premises on the site has a larger footprint and a more symmetrical configuration compared to that permitted under planning permission register reference number 03/300074 and the changes from the permitted development are material in nature and

would constitute development and would not have been exempted development.

(d) condition 1 of permission File Ref. No. 03/300074 required the development to be carried out and completed in accordance with the drawings and documentation submitted to the Planning Authority, and

(e) the exemption that would generally be available under Class 14 (a) is therefore restricted under the provisions of Article 9 (1)(a)(i)..

**NOW THEREFORE** An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3) (a) of the Planning and Development 2000 Act, as amended, hereby decides that the change of use of the premises for the sale or leasing or display for sale or leasing of motor vehicles to a shop at Gallowshill, Athy, Co. Kildare is development and is not exempted development.

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Susan McHugh  
Senior Planning Inspector

28<sup>th</sup> February 2020