



An
Bord
Pleanála

Inspector's Report ABP-303154-18

Question

Whether the conversion of a commercial structure to a two-bedroom apartment is or is not development or is or is not exempted development.

Location

Rear of 31 Shantalla Road, Galway.

Declaration

Planning Authority

Galway City Council

Planning Authority Reg. Ref.

P/DC/3/22/18

Applicant for Declaration

John Lawless.

Planning Authority Decision

Is not exempted development

Referral

Referred by

John Lawless.

Owner/ Occupier

John Lawless.

Observer(s)

None.

Date of Site Inspection

20th of February 2019.

Inspector

Karen Hamilton

1.0 Site Location and Description

1.1. The subject site includes a single storey detached building, located to the rear of a two storey end of terrace dwelling which faces directly onto Shantalla Road, to the west of Galway City Centre. Vehicular and pedestrian access into the rear of the site is to the side of the main dwelling, restricted by private gates, c.2m in height. The building which is the subject of this declaration, previously used as commercial, is ancillary to the main dwelling.

2.0 The Question

2.1. Whether the change of use from commercial to residential is or is or is not development or is or is not exempted development.

3.0 Planning Authority Declaration

3.1. Declaration

The Planning Authority decided that:

The original permission for a workshop and printing works in 1971 had been abandoned by the use of the building of a doctor's surgery for almost 10 years. The erection of the printing workshop and store (the approved use) did not meet any of the existing criteria under SI 30 of 2018 and therefore an exemption for a change of use could not be permitted for a structure where the use is an unauthorised use.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report of the area planner reflects the decision above and is summarised below:

- The planning history on the site, in particular two recent refusals for a change of use of the subject building for residential development (Reg Ref 17/211 and Reg Ref 18/52).

- The definition of the uses (Class 1, 2, 3 or 6) to be considered for the exempted change of use from commercial to residential as per S.I. No 30 of 2018.
- Article 9 of the Regulations which do not permit exempted development where the use is to an unauthorised structure.

3.2.2. Other Technical Reports

None submitted.

4.0 Planning History

Reg Ref 18/52

Permission refused for a change of use of an existing single storey commercial unit (Surgery) at the rear of an existing dwelling house, to a proposed residential unit with works for the raising of the height of the building for an additional first floor residential space and proposed elevation changes. The reasons for refusal related to the overall design, inadequate separation distance, no planning history for the Doctors Surgery and insufficient amenity space.

Reg Ref 17/211

Permission refused for a change of use of a unit at the rear of 31 Shantalla Road from commercial use to use ancillary to a dwelling house, including the raising of the height of the building by an additional storey and changes to the elevations. The reasons for refusal related to the overall design, inadequate separation distance, insufficient legal interest in the access and no planning history for the Doctors Surgery.

5.0 Policy Context

- 5.1. Sustainable Urban Housing: Design Standards for New Apartments. Guidelines of Planning Authorities. (2018)

5.2. Galway City Development Plan 2017-2023

The site is zoned as residential, R, where it is an objective *“To provide for residential development and for associated support development, which will ensure the protection of existing residential amenity and will contribute to sustainable residential neighbourhoods”*.

5.3. Natural Heritage Designations

None relevant.

5.4. Environmental Impact Assessment

The proposed development 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 and therefore is not subject to EIA requirements.

6.0 The Referral

6.1. Referrer’s Case

The referral is submitted by an agent on behalf of the applicant against the planning authority decision and the issues raised are summarised below:

- The proposed development is exempted development under the change in exemptions set out in S.I. No. 30 of 2018 of the Regulations, 2018.
- The Council determined the proposed works were not exempted development for 3 reasons.
- The planning authority has determined the continued commercial use has been abandoned, therefore the only possible use of the building would be ancillary to the dwelling house and the building will ultimately remain vacant if permission is not approved.
- The building has been finished to an extremely high standard.
- The 2 bedroom dwelling complies with the minimum floor area and storage space standards.

- The structure offers professional services, falling within Class 2 of Part 4 to Schedule 1.
- Sub-article 10 (6) (c) sets out the circumstances which a change of use to residential is considered exempt.
- A printing workshop was permitted in 1971 which offers professional services to the public. The structure was vacant since the owner completed the sale in 2016.

Reason No 1 - The original permission for the printing works has been abandoned as the doctors surgery was used for most of the last 10 years.

- The aim of the S.I. No. 30 of 2018 was to bring vacant premises into residential use without the benefit of planning permission.
- A warning letter was issued in relation to the unauthorised use although since then planning permission has been granted for a commercial structure to the rear of the property.

Reason No 2- The erection of the printing workshop and store (the approved use) would not meet any of the existing use criteria which can now be exempt under S.I. No 30 of 2018.

- The structure falls within Class 2 of Part 4 of Schedule 1, where services are provided principally to visiting members of the public.
- Plans of the printing workshop show an office and waiting room which would have been frequented by the public.
- The services were professional in nature.
- There is no machinery or plant equipment used therefore the structure was not used as "light industrial building".
- Commercial rates have been paid for premises.

Reason No 3- The doctor's surgery never had the benefit of planning permission, therefore the proposal can not avail of any exemptions as per Article 9 (1) (a) (viii).

- The building was vacant since the applicant bought the site in July 2016, therefore the restrictions of Article 9 (1) (a) (viii) can not apply as there is currently no unauthorised use on the site.

Appendix A – Table outlining compliance with the conditions and limitations set out in paragraph (d) of the Planning and Development (Amendment) (No 2) Regulations 2018.

A solicitor's letter accompanied the appeal statement and may be summarised as follows:

- The submission shall be read in conjunction with the appeal submission.
- The report of the area planner refers to the use of the site as a doctor's surgery, which is not the case. In addition, the planner states that the print works have been abandoned.
- Case law *Molloy v Minister for Justice* (2004) 2 IR 493 (attached) states that a valid planning permission for a specific use on land could not be lost or abandoned where the original permission was capable of being implemented, notwithstanding that there had been a material unauthorised change of use in the meantime.
- The planner states that the printing workshop and store would not meet the existing use criteria required under S.I. No. 30 of 2018. The waiting room on the permitted plans clearly indicate the building was intended for visiting members of the public and therefore within Class 2 for visiting members of the public.
- The use of the building as a doctors surgery ceased in 2016 when the applicant purchased the building, therefore Article 9 (1)(a) (viii) does not apply. In addition the building was in a derelict state when the applicant purchased the site.

6.2. Planning Authority Response

A response to the referral appeal was submitted by the planning authority as summarised below:

- A background to the planning history (18/52, 17/211 & 71/250) is included.

- It would appear that the property has been used for a doctor's surgery for a substantial period without the benefit of planning permission.
- The proposal would not be exempted development (Article 10 (change of use) Section 6 of the Regulations, 2018) as the printing works had been abandoned.
- The approved use of a printing workshop and store on the site would not fall within any of the uses (Class 1, 2, 3 or 6) to benefit from the change of use exemptions.
- Article 9 (1) (a) (viii) apply to the site, where the change of use to doctor's surgery did not have the benefit of permission and therefore exemptions cannot be applied on an unauthorised structure.

6.3. **Owner/ occupier's response**

The applicant is the owner.

7.0 **Statutory Provisions**

7.1. **Planning and Development Act, 2000**

Section 2, the following interpretation of "works":

"...includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal....."

Section 3 (1), states the following:

"In this Act "development" means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land."

Section 4 (1) (a)- (i) set out what is exempted development for the purpose of the 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 purpose of the 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) Exempted development, states the following:

“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 1.”

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 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,
 - viii) consist of or comprise the extension, alteration, or repair or renewal of an unauthorised structure or structure the use of which is unauthorised.

Article 10 - Change of Use

(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.

(6) included in the 2018 Regulations, to allow a change of use Classes 1, 2, 3 and 6 of the use classes, to residential, subject to certain conditions and limitations:

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 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 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).

(d)

(i) The development is commenced and completed during the relevant period.

(ii) Subject to sub-paragraph

(iii), any related works, including works as may be required to comply with sub-paragraph

(vii), shall affect only the interior of the structure and shall not materially affect the external appearance of the structure so as to render its appearance inconsistent with the character of the structure or of neighbouring structures.

(iii) Any related works for the alteration of existing ground floor shop fronts shall be consistent with the fenestration details and architectural and streetscape character of the remainder of the structure or of neighbouring structures.

(iv) No development shall consist of or comprise the carrying out of works to the ground floor area of any structure which conflicts with any objective of the relevant local authority development plan or local area plan, pursuant to the Part 1 of the First Schedule to the Act, for such to remain in retail use, with the exception of any works the purpose of which is to solely provide on street access to the upper floors of the structure concerned.

(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.

(viii) No development shall consist of or comprise the carrying out of works to a protected structure, as defined in section 2 of the Act, save where the relevant planning authority has issued a declaration under section 57 of the Act to the effect that the proposed works would not materially affect the

character of the structure or any element, referred to in section 57(1)(b) of the Act, of the structure.

(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.

(x) No development shall relate to any structure in any of the following areas:

(I) an area to which a special amenity area order relates;

(II) an area of special planning control;

(III) within the relevant perimeter distance area, as set out in Table 2 of Schedule 8, of any type of establishment to which the Major Accident Regulations apply.

(xi) No development shall relate to matters in respect of which any of the restrictions set out in subparagraph (iv), (vii), (viiA), (viiB), (viiC), (viii) or (ix) of article 9(1)(a), or paragraph

(c) or (d) of article (9)(1), would apply.

(xii) No development shall consist of or comprise the carrying out of works for the provision of an onsite wastewater treatment and disposal system to which the code of practice made by the Environmental Protection Agency pursuant to section 76 of the Environmental Protection Agency Act 1992 relates and entitled Code of Practice — Wastewater Treatment and Disposal Systems Serving Single Houses together with any amendment to that Code or any replacement for it.

(e) (i) Where a person proposes to undertake development to which subparagraph (b) relates, then he or she shall accordingly notify the planning authority in whose functional area that the change of use concerned will occur in writing at least 2 weeks prior to the commencement of the proposed change of use and any related works.

(ii) Details of each notification under subparagraph (i), which shall include information on—

(I) the location of the structure, and

(II) the number of residential units involved, including the unit sizes and number of bedrooms in each unit, shall be entered in a record by the planning authority maintained for this purpose and the record shall be available for inspection at the offices of the planning authority during office hours and on the planning authority's website.

(iii) During the years 2019, 2020, 2021 and 2022, each planning authority shall provide information to the Minister on the number of notifications received by it under this paragraph during the preceding calendar year, including details of the information so received for the purposes of subparagraph (ii).”.

Part 4 of Schedule 2

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).

8.0 Referrals Database

- 8.1. I have examined the Board's data base of referral and note a similar declaration in relation to the abandonment of an unauthorised use as summarised below:

68. RL.2746

The Board concluded that with the cessation of the said unauthorised use and the expiry of permission Reg Ref 1350, it is considered that the only authorised use of the premises is as per Reg Ref 1137, that is, as a bookmaker's officer.

In concluding this statement the Board had regard to the ability of the premises being used as a bookmakers without undue changes.

- 8.2. I have examined the Boards data base of referral and note a similar declaration relating to a change of use from office to residential as summarised below:

ABP- 302769-18

The Board concluded that the conversion of a ground floor office space to a two-bedroom apartment was development and was not exempted development.

In concluding this statement the Board had regard to the original intended use of the site as a communal facility for an apartment complex.

9.0 Assessment

9.1. Is or is not development

- 9.1.1. The question that arises is if the change of use of a structure from commercial to residential is exempted development. The applicant argues the current use within the building is that of a printing workshop, permitted in 1971, as the only permitted use on the site. The Planning Authority determined the last use on the site was the unauthorised use of the building as a Doctors Surgery as the previous printing workshop had been abandoned, further discussed below.

Section 3 (1) of the development act refers to the meaning of "*development*", except where the context otherwise requires, as 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.

Whilst the applicant does not agree with the Planning Authority determination for the last permitted use on the site, I consider residential is a material change of use from both a printing workshop and a Doctors Surgery.

Having regard to the definition of development in Section 3 (1) of the Act, detailed above, I am satisfied that the proposed development may be deemed DEVELOPMENT.

9.2. Is or is not exempted development

- 9.2.1. The appeal site contains a two storey semi-detached dwelling fronting onto a main road into Galway City and to the rear is a single storey stand-alone building. Planning permission was granted in 1971 (Reg Ref 250/71) on the small rear building for a "Printing Workshop and Store". Condition No 1 required the use of the side lane for access and Condition No. 2 required the provision of 2 no. car parking spaces within the curtilage of the site. Subsequent to this use, a Doctors Surgery occupied the building. The applicant purchased the main dwelling and rear standalone building in 2016 and since this time there has been no commercial activity on the site.
- 9.2.2. The applicant (owner of the site) requested a Section 5 declaration from the Planning Authority to determine that the standalone building at the rear of the dwelling may be used as a dwelling as per the exemptions contained in the Planning and Development (Amendment) (No. 2) Regulations, 2018, which allow for a change of use to residential from uses within Classes 1, 2, 3 and 6 of the use classes Part 4 of Schedule 2- *Exempted development- Classes of Use* of the Regulations.
- 9.2.3. The Planning Authority determined that the use of the site as a "Printing Workshop" had been abandoned as the site has been in use as a Doctors Surgery for over 10 years. Having regard to this unauthorised use, the Planning Authority considered the restrictions listed in Article 10 (1) (b) of the Regulations "*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*" precluded the consideration of any exempted development.
- 9.2.4. In the first instance the current permitted use on the site must be established. The referrer argues that the only permitted use on the site is the "Printing Workshop". A

judgement from *Molloy v Minister for Justice* (2004) 2 IR 493, is attached as legal justification to support this argument. In this regard the judgement states that where a material unauthorised change of use has taken place and carried out for an excessive period of time, where the circumstances of the original planning permission is capable of being implemented and where there has been no material structural alterations to the land or property which would render the original planning permission for use incapable of being implemented, the original valid planning permission cannot be lost or abandoned.

- 9.2.5. I note the size and dimensions of the building remain the same as that permitted in Reg Ref 250/71, internal walls have been altered although I do not consider they may be determined as “*material structural alterations*”.
- 9.2.6. A previous Board decision Ref. 68. RL. 2746, decided that the change of use from a currently vacated premises, which was previously an unauthorised use as a bank to use as a chemist shop, is a material change of use that is development and is exempt development. The Board concluded that the only use on the site could be the last permitted authorised use on the site.
- 9.2.7. Having regard to the above judgement and the Board’s determination of a similar declaration relating to abandonment and unauthorised use, I have determined that the current permitted use on the site is that of the Printing Workshop.
- 9.2.8. In the second instance, a determination of the use class for the printing workshop is required. The plans and particulars in Reg Ref 250/71 include a large works area and three smaller rooms for a dark room, office and waiting room, each of similar size. Two car parking spaces were required. I note the size of the waiting room relative to the overall proposal and I consider it reasonable to conclude the commercial use was intended for visiting members of the public. Whilst I note a printing workshop may also be akin to light industrial, I consider the size of the building would have restricted production to modest scale and therefore I would consider the output has been designed as personal rather than industrial in nature. Having regard to the design and scale of the printing workshop, I consider it reasonable to determine the use of the printing workshop within the confines Part 4 of Schedule 2 of the Regulations as:

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.

- 9.2.9. The exemptions for a change of use to residential under Article 10 (6) (c) is restricted to structures which at some time has been used for the purpose of its current use class being Class 1, 2, 3 or 6. In addition, the structure must have been vacant for a period of two years or more immediately prior to commencement of the proposed development.
- 9.2.10. As stated above, I have determined the Printing Workshop as the only permitted use within the building and for visiting members of the public in Class 2. The referral is accompanied with documentation from the Local Authority indicating that commercial rates have not been paid since 2016, therefore I consider the premises has been vacant.
- 9.2.11. Having regard to the judgement in *Molloy v Minister for Justice* (2004) 2 IR 493, the determination that the only permitted use on the site is the printing workshop and consideration of the use as Class 2 “*where the services are provided principally to visiting members of the public*”, I consider the terms of Article 10 (6) are applicable to the site and determine that the change of use from commercial to residential is EXEMPT DEVELOPMENT.

9.3. Restrictions on exempted development

- 9.3.1. The change of use to residential, and any related works, are subject to the conditions and limitations set out in Article 10 (6) (d). Table 1 in Appendix A of the referral lists each required conditions and limitation and compliance for each. I have assessed these in conjunction with the national guidance “Sustainable Urban Housing: Design Standards for New Apartments. Guidelines of Planning Authorities” and the Galway City Development Plan 2017-2023 and I consider there are no restrictions on exempted development.

10.0 Recommendation

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

WHEREAS a question has arisen as to whether a change of use from commercial to residential is or is not development or is or is not exempted development:

AND WHEREAS John Lawless requested a declaration on this question from Galway City Council and the Council issued a declaration on the day of 07th of November, 2016 stating that the matter was not exempted development:

AND WHEREAS referred this declaration for review to An Bord Pleanála on the 03rd day of December, 2018:

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

- (a) Section 2 of the Planning and Development Act, 2000, as amended,
- (b) Section 3(1) of the Planning and Development Act, 2000,
- (c) Section 4(1) of the Planning and Development Act, 2000, as amended,
- (d) article 6(1) and article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (e) Parts 4 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (f) the planning history of the site,
- (g) the pattern of development in the area:

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The judgement from, *Molloy v Minister for Justice* (2004) 2 IR 493, was applicable in the determination that the Printing Workshop was the only current permitted use on the site,
- (b) The design and layout of the building permitted under Reg Ref 250/71 would allow for visiting members of the public and therefore the Printing Workshop comes within the use Class 2 for visiting members of the public,
- (c) The change of use from Class 2, provision of services where the services are provided principally to visiting members of the public, to Residential IS DEVELOPMENT within the meaning given to it under Section 3(1) of the Planning and Development Act 2000 (as amended) and IS EXEMPTED DEVELOPMENT as it comes within the within scope of Article 10 (6) in the Planning Development Act 2000 (as amended).

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 change of use from commercial to residential is development and is exempted development.

Karen Hamilton
Planning Inspector
21st of March 2019