



An
Bord
Pleanála

Inspector's Report ABP303989-19

Referral Reference Number	ABP303989-19
Question Referred	Whether the proposed partial change of use from shop to coffee shop at No. 12 Cross Street Upper, (Protected Structure) is or is development or is or is not exempted development.
Planning Authority	Galway City Council.
Address	12 Cross Street Upper, Galway City.
Owner	Joelee Ward.
Referrer	Joelee Ward.
Date of Site Inspection	11 th June, 2019.
Inspector	Paul Caprani.

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1.0 Introduction

- 1.1. A question has arisen pursuant to Section 5 of the Planning and Development Act 2000 (as amended) as to whether or not the proposed partial change of use from a shop to a coffee shop at No. 12 Cross Street Upper, Galway City is or is not development and if it is determined as development, whether or not such development constitutes exempted development.
- 1.2. A declaration was originally sought from Galway County Council in relation to two questions. The Council decided that (a) the partial change of use from shop to a coffee shop at ground floor and basement level constitutes development which is exempted development. In relation to another question put before it, with regard to the maintenance and conservation works to the external façade of No. 12 Cross Street and No. 1 High Street (both of which are protected structures) Galway Co Council determined that those works constituted development which is exempted development.

2.0 Site Location and Description

- 2.1. The site which is the subject of the referral is located on the northern side of Cross Street Upper between Bridge Street and High Street/Quay Street in Galway City Centre. The proposed change of use relates to the ground floor and a small area in the basement level of the building. The building comprises of a four-storey over basement structure which from visual appearance appears to date from the early to mid-19th century. The building is on the Record of Protected Structures. The ground floor of No. 12 has a floor area of 15.9 square metres, the basement level has a slightly smaller area of 13.3 square metres. Information submitted with the declaration to Galway City Council stated that the premises was trading as a jewellery shop. However, at the time of site inspection the premises accommodated a small coffee dock area where coffee was sold for consumption off the premises. Other confectionary and sandwiches were also for sale.

3.0 Declaration Sought from Galway City Council

- 3.1. On 25th January, 2019 a declaration of Exempted Development Application Form under Section 5 of the Planning Act was lodged with Galway City Council. The application was also accompanied by a planning statement prepared by Planning Consultancy Services and an Architectural Heritage Impact Assessment. The planning statement notes that the existing tenancy of the jewellers is due to cease in the near future and the owner intends that the unit will continue to function as a retail unit concentrating on the sale of confectionary and nuts etc. together with cold/packaged readymade food. It is not intended that the unit be used for the sale of hot food. The referrer does intend to accommodate a coffee sales area extending to 3.5 square metres. It is stated that the gross floor area of the coffee retail element would amount to 4.7 square metres (with an additional 1.2 sq.m at basement level). It is noted that no internal seating is proposed. It is argued therefore that the coffee sales area would be subsidiary to the primary retail use of the unit. It is suggested that a precedent decision by the Board under 61.RL3315 concluded that the partial use of a premises as a coffee shop does not constitute a material change of use under relevant planning legislation. It is suggested that a similar conclusion be reached in the case of the current referral before the Council.
- 3.2. Also submitted was an Architectural Heritage Impact Assessment which sets out details of the proposed works to be carried out on the external façade of No. 12 Cross Street Upper and No. 1 High Street. It is noted that both of these buildings are protected structures.
- 3.3. A planning statement was also submitted and should be read in conjunction with the Architectural Heritage Impact Assessment. It concludes that the maintenance and conservation works to the upper floor façade would not materially affect the external appearance of the structure so as to render it inconsistent with the character of the structure of neighbouring structures. It is suggested therefore that the works to be undertaken constitute development which is exempted development.
- 3.4. **Galway City Council's Assessment**
- 3.4.1. In relation to the second question put to the Council a report from the Heritage Officer notes that the proposed maintenance and conservation works to the upper floor façade must be documented before, during and after the works are carried out

to ensure that there is a full record of any changes made. The conservation architect must be present at all times during the duration of the works. The conservation architect will provide details of all mixes used in any mortar repairs, and repairs to cracks in the plaster etc. During the internal works, all works on the fitout will also be supervised and recorded and reported upon to Galway City Council.

3.4.2. The planner's report notes the information contained in the Planning Statement and the Architectural Heritage Impact Assessment.

3.4.3. In relation to the partial change of use, the planner's report notes that the applicant has provided a number of appeal decisions which he considers support the case for exemption. However, the planner's report suggests these are not directly comparable to the current proposal. Having regard to the applicant's description of development and in particular given that the coffee sales element occupies a retail floor area at ground and basement level, it is considered that the coffee shop element would not be subsidiary to the primary retail use and therefore planning permission would be required.

Galway City Council also concluded that the proposed maintenance and conservation works on the external wall fabric of No. 12 Cross Street Upper and No. 1 High Street constitutes development which is exempted development subject to the requirements of the recommendations of the heritage officer that a conservation architect shall provide details of the mixes used in any mortar repairs, repairs to cracks and plaster etc. and that the conservation architect shall monitor the work and provide a report to the City Council on their completion.

4.0 The Question

4.1. Planning Consultancy Services on behalf of the referrer seeks a declaration from the Board on the first part of the Planning Authority's decision namely "*whether the proposed partial change of use of a shop as a coffee shop at ground floor and basement level at No. 12 Cross Street Upper, Galway, a protected structure is or is not development or is or is not exempted development*". It is argued that the information submitted with the referral application to Galway City Council adequately demonstrated that the proposed partial use of the shop as a coffee shop is not development and therefore can be considered exempted development. It is stated

that the retail use is long established and planning permission for the retail use at both ground floor and basement level was permitted under Reg. Ref. 171/94. The owner wishes to secure a vibrant use for this protected structure within the confines of its retail function. The owner intends that the unit will continue to function as a retail unit concentrating on the sale of confectionary, nuts, healthy snacks, bottled water together with cold packaged readymade food. It does not propose to sell hot food on the premises. The coffee sales area extends to 3.5 square metres at ground floor level with a dedicated storage/shelving area of 1.2 square metres are basement level. This amounts to 16% of the total gross floor area. No internal seating area is proposed.

- 4.2. It was on this basis the Planning Authority inexplicably concluded that the partial change of use would not be subsidiary to the primary retail use however, has offered no explanation how this conclusion was arrived at.
- 4.3. The referral states that the inspector's report in relation to RL61.3315 is particularly relevant to the assessment of the subject referral. It is also noted that the Board adjudicated in a number of similar cases which involved either the partial use of an existing retail area or the change of use for the entire floor area. In each of these cases the Board concluded that a coffee shop constituted use as a shop as defined in Article 5 and did not constitute a material change of use and therefore was not development. On the basis of the determinations already made by the Board, it would appear routinely obvious that the proposed partial coffee shop use within an existing retail unit is exempted development.
- 4.4. It is important to note that an Architectural Heritage Impact Assessment accompanied the application and the Planning Authority was satisfied that the proposed internal fitout could be carried out without affecting the special character and setting of the protected structure.

5.0 Planning Authority's Response

- 5.1. A response was received from Galway City Council on the 25th April, 2019. The response sets out the main arguments set out in the referral to An Bord Pleanála and also cites the provisions of Article 5(1) Part 2 which sets out a definition of a 'shop' in the legislation. The Planning Authority response states that, having regard to the

applicant's description of development, and in particular that the coffee sales element occupies a retail floor area at ground floor and basement level it is considered that the proposed use as a coffee shop would not be subsidiary to the primary retail use within the building and for this reason it is not considered to be exempted development.

6.0 Relevant Referral Decisions

6.1. 54.RL2940

This referral related to a change of use of the basement at ground floor levels of an unoccupied former building society for use as a coffee shop. The building was a protected structure. A referral was made to the Planning Authority whether or not the change of use of a bank to use as a coffee shop is or is not development or is or is not exempted development. The Board decided that the use was development and was exempted development on the basis of the following:

The use of the site as a bank fell under financial services within Schedule 2, Part 4, Class 2 and that the existing use of a coffee shop fell within the scope of (a shop) for within Schedule 2, Part 4, Class 1. Development consisting of a change of use within any one of the classes in Part 4 was exempted development under the Act and that the change of use did not materially affect the character of the protected structure and therefore fell within the scope of exemption provisions of the Regulations and also Section 57 of the 2000 Act.

RL61.RL3315

The Board determined that a partial change of use of a shop to use as a coffee shop at ground floor level constitutes development that is exempted development.

Other relevant decisions referred to but not attached to the current case before the Board including the following:

RL3023 which related to the use of part of an existing retail unit at a garden centre as a coffee sales area. Where the coffee sales area represented approximately 21.5% of the gross floor area of the retail unit no seating was proposed. The reporting inspector considered that the coffee sales area would be subsidiary to the main retail use as a garden centre and as such would come within the definition of

shop. The Board upheld this conclusion and determined that the coffee sales area comes within the scope of the definition of a shop and does not constitute a material change of use and therefore was not development.

Under **RL2516** the Board determined that the use of the ground floor of a premises as a juice bar with a sandwich counter which was formerly used as a camera shop at 55 Patrick Street, Cork did not constitute development. The Board concluded that the activity including the type and range of goods to be sold constituted a retail use and therefore came within the definition of a shop.

7.0 Legislation

7.1. Planning and Development Act 2000 (as amended)

Section 2(1) – definitions

“*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 a proposed protected structure includes any Act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or the exterior of the structure.

“*protected structure*” means

- (a) A structure or
- (b) A specified part of a structure

Which is included in a record of protected structures, and where that record so indicates, includes any specified feature which is within the attendant grounds of the structure and which would not otherwise be included in the definition.

Section 3(1) “*development*” is defined as follows:

Development means except where the context otherwise requires, the carrying out of any works on, over or under land or the making of any material change in the use of any structure or other land.

Section 4(1) Exempted Development

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 neighbouring structures.

Section 57(1) Notwithstanding Section 4(1)(a), (h)(i)(ia), (j), (k) or (l) and any regulations made hereunder, Section 4(2) the carrying out of works to a protected structure, or a proposed protected structure shall be exempted development only if those works do not materially affect the character of (a) the structure or (b) any element of the structure which contributes to its special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest.

8.0 Planning and Development Regulations 2001 (as amended)

8.1. Part 2 of the Regulations relate to exempted development. Article 5 defines a shop as follows: “a 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 retail sale of goods.
- (b) As a post office.
- (c) For the sale of tickets or as a travel agency.
- (d) For the sale of sandwiches or other food or of wine for consumption off the premises, where the sale of such food or wine is subsidiary to the main retail use and the wine is defined as any intoxicating liquor which may be sold under a wine retailers off-licence.
- (e) For hairdressing.
- (f) For the display of goods for sales.
- (g) For the hiring out of domestic or personal goods or articles.
- (h) As a laundrette or dry cleaners.
- (i) For the reception of goods to be washed, cleaned or repaired.

But does not include any use associated with the provision of a funeral service or as a funeral home or as a hotel, restaurant or public house or for the sale of hot food or intoxicating liquor for consumption off the premises except under paragraph (d) or any use to which Class 2, 3 or Part 4 of Schedule 2 applies.

- 8.2. Article 10(1) specifies 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 the 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 a change of use consists of the resumption of a use which was not unauthorised and which has not been abandoned.

9.0 **Assessment**

- 9.1. The first question is whether or not the activities undertaken on site constitute 'works' in accordance with the definition of the Act. There could be no doubt that the conversion of a shop from a jewellers and goldsmiths to an outlet involving the sale of coffee, confectionary and bottled water involved the refitting and renovation of the existing unit in order to cater for the new use. The fitout and alterations would in my view fall within the definition of "works" within the meaning of Section 2 of the Act as it involved the "construction", "alteration", "repair" and "renewal" of the internal décor of the shop. As the fitout involved works it therefore constitutes 'development' within the meaning of Section 3 of the Act. The question now which the Board must determine is whether or not the works which constitute development falls within the category of exempted development under the Act.
- 9.2. The works in this instance only affect the interior of the structure and therefore would normally be exempt under the provisions of Section 4(1)(h) of the Act. However, the Board will also note that the building is listed as a protected structure and therefore requirements under the provisions of Section 57(1) (as amended) would also apply to the structure. 57(1) states that the carrying out of works to a protected structure or a proposed protected structure shall only be exempted where the works would not materially affect the character of (a) the structure or (b) any element of the structure

which contributes to its special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest. I note that an Architectural Heritage Impact Assessment was submitted with the original declaration sought from the Planning Authority. The works had already been undertaken at the time of my site inspection. However, I refer the Board to the Architectural Heritage Impact Assessment which include a number of pictures of the internal layout of the ground floor when it was in use as a jewellery shop. It is clear in my opinion from the pictures attached and the pictures attached to this report that there has been no significant or material alteration to the original features of the building in the course of the revised internal layout of the ground floor in converting the premises from a jewellery to a shop/coffee shop. There has been no material stripping of internal walls or removal of architectural features which contribute to the special architectural, historical or cultural interest of the building in question. It appears that the works undertaken merely relate to the removal of the internal counter and various shelving associated with the jewellery shop and replacing it with the new coffee, counter, and washing facilities and the provision of new doors into the premises. The Architectural Heritage Assessment also notes that there will be minimal intervention on the internal layout of the structure and no features of note will be affected. The existing shopfront will be retained albeit with new signage and a new painted exterior finish. I note that Galway City Council did not raise any concerns in this regard. I can only conclude therefore that the carrying out of works to the protected structure would constitute exempted development on the basis that the works have not materially affected the character of the structure or its special architectural or historic interest. I would therefore accept that the works in question constitute development which is exempted development under the provisions of Section 57(1) of the Act.

- 9.3. It appears that the Planning Authority's primary concern relates to whether or not the coffee shop element of the change of use is ancillary or subsidiary to the overall retail use within the overall retail use.
- 9.4. In the case of RL61.3315 the Board concluded that where it was proposed to provide a new coffee sales area of 2.1 square metres within an existing ground floor of 18.3 square metres did not constitute development.

- 9.5. It is noted that the Board also adjudicated on a number of similar cases (RL3023, RL2940 and RL2516). In each of these cases the Board concluded that the coffee shop constituted use as a shop under Article 5 of the 2001 Regulations and therefore did not constitute a material change of use and as such was not development.
- 9.6. In this instance I consider the Board could reach a similar conclusion. While the circumstances are not identical in terms of floor area, the overall reasoning for exemption as set out in the previous Board's decisions would be applicable in this instance.
- 9.7. Article 5 of the 2001 Regulations defines a shop as a structure used for any or all of the following purposes including inter alia,
- (d) for the sale of sandwiches or other food or wine for the consumption off the premises where the sale of such food or wine is subsidiary to the main retail use.
- 9.8. Having inspected the site in question it is clear that, notwithstanding the coffee facilities offered, the use remains is retail in nature. The photographs attached clearly indicate that confectionary goods including scones, buns, bottled water, juices, sweet drinks and pre-prepared sandwiches are available from shelves from the shop and shelving under the counter. The coffee preparation area is modest in the context of the overall ground floor and is located in one corner area behind the counter. It comprises of one large and two smaller coffee machines. There are no toilet and no seating associated with the premises. The drawings submitted indicate that the coffee dock area amounts to approximately 3.5 square metres while an additional 1.2 square metres is given over to a coffee dock storage area at basement level. Thus, c.20% of the ground floor is occupied by the coffee preparation area. I further note that there is no separate sales area for the coffee. All proceeds for both the coffee and the confectionary and bakery goods within the shop are accounted for at the same cash-till centrally located on the counter as the coffee dock element of the proposal comprises less than a quarter of the floor area of the ground floor of the shop. It is reasonable to conclude in my opinion that the coffee dock element is subsidiary to the main retail use and therefore would fall within the definition of Article 5(d) of the Planning and Development Regulations 2001 (as amended).

9.9. There is no scope for the provisions of tables/chairs or seating which would facilitate its use as a restaurant or for the consumption of food and beverages on the premises. It is reasonable to conclude therefore that the partial use of the ground floor of the shop for use as a coffee shop which is subsidiary in nature to the main retail use is a change of use that is not material under the Planning Acts and therefore does not constitute development.

10.0 **Conclusions and Recommendation**

10.1. It is therefore concluded that the works proposed to the interior of the protected structure while constituting development are minor in nature and will not materially affect the character of the structure and therefore would constitute exempted development under the provisions of Section 57(1) of the Act, as amended.

10.2. Furthermore, it is considered that the proposed partial change of use of a shop to use as a coffee shop would be subsidiary to the main retail use of the premises and would therefore come within the scope of the definition of 'shop' as defined in Article 5(1) and therefore does not constitute development and as such no material change of use has occurred.

10.3. I therefore recommend that the Board issue a determination on the said question as follows:

WHERE a question has arisen as to whether or not the partial change of use of a shop to use as a coffee shop at ground floor level at No. 12 Cross Street Upper, Galway, a protected structure, is or is not development or is or is not exempted development,

AND WHEREAS Joelee Ward care of Planning Consultancy Services requested a declaration on the said question from Galway City Council and the said Council issued a declaration on the 21st day of February, 2019 stating that the said matter is development and is not exempted development:

AND WHEREAS Planning Consultancy Services on behalf of Joelee Ward referred the declaration for review to An Bord Pleanála on the 20th day of March, 2019:

AND WHEREAS An Bord Pleanála in considering this referral had regard to:

- (a) Sections 2, 3 and 4 of the Planning Acts 2000, as amended,
- (b) Section 57 of the Planning and Development Act 2000, as amended,
- (c) The definition of a 'shop' as defined in Article 5 of the Planning and Development Regulations 2001, as amended,
- (d) The status of the building as a protected structure,
- (e) The use of the site as a retail unit, and
- (f) The nature of the proposed coffee shop,

AND WHEREAS An Bord Pleanála concluded that:

- (a) The proposal involves works to the interior of a protected structure which is development within the meaning of Section 3 of the Planning and Development Act, 2000,
- (b) The said works would not materially affect the character of the structure or elements of the structure which contributes to its special architectural or historical interest, and are therefore considered to be exempted development within the meaning of Section 57 of the Planning and Development Act 2000, as amended,
- (c) The existing use of the premises for retail sale of goods and for the display of goods for sale is a shop as defined under Article 5(1) of the Planning and Development Regulations 2001, as amended, the partial use of the premises (c.3.5 square metres) as coffee shop is deemed to be a subsidiary use within the definition of shop and therefore does not constitute a material change of use from use as a shop.

NOW THEREFORE An Bord Pleanála in exercise of power conferred on it by Section 5(3)(a) of the 2000 Act hereby decides that –

- (a) The internal works to a protected structure is development and is exempted development, and
- (b) The partial change of use of a shop to use as a coffee shop at ground floor level is not development at No. 12 Cross Street Upper, Galway City.

MATTERS CONSIDERED

In making its decision the Board had regard to those matters to which by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters including any submissions and observations received by it in accordance with statutory provisions.

Paul Caprani,
Senior Planning Inspector.

23rd July, 2019.