



An
Bord
Pleanála

Inspector's Report ABP-304696-19

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| Question | Whether the change of use of the existing office building to embassy is or is not development or is or is not exempted development |
| Location | St. Heliers, Stillorgan Park, Blackrock, County Dublin. |
| Declaration | |
| Planning Authority | DLRCC |
| Applicant for Declaration | Christina Dorothy Bergin & John & Raymond O'Malley. |
| Planning Authority Decision | Is development and is not exempted development |
| Referred by | As above. |
| Owner/ Occupier | As above. |
| Date of Site Inspection | 30 th September 2019 |
| Inspector | Philip Davis. |

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1.0 Site Location and Description

The appeal site is a large detached Edwardian structure, formerly a house, now used as offices (with a caretakers flat), located off Stillorgan Park in Blackrock on approximately 0.16 hectares on the corner of St. Heliers Close, a residential cul-de-sac estate. The building predates St. Heliers Close (it previously accessed Stillorgan Park directly), but now has a side access to this road, with carparking to the front and rear of a building which seems otherwise not to have been substantially altered over the years. The building is in a neo-gothic style, with a large attic space over two storeys. There are fine mature scots pine, beech and palm trees in the grounds and it is bounded by older stone walls and a more recent brick boundary wall. To the east is a large detached dwelling with a pair of modern semi-detached dwellings to the north.

2.0 The Question

Whether the change of use of the existing office building to embassy is or is not development or is not exempted development.

3.0 Planning Authority Declaration

3.1. Declaration

'Having regard to Section 14 of Part 1 of Schedule 2 Exempted Development General of the Planning and Development Regulations, 2001 (as amended), it is considered that the use of the existing office building as an embassy works at St. Helier Stillorgan Park, Blackrock, constitute development and are not development.'

3.2. Planning Authority Reports

3.2.1. Planning Reports

The planning report states that *'having regard to the nature of the proposed use, which is described as land used by a foreign government for diplomatic purposes which may include residential convent for the staff of the embassy which is ancillary*

to the embassy activities, it is considered that the proposal represents a material change of use and is therefore development.'

With regard to exempted development, it is noted that an embassy is not a use defined in Part 4 of Schedule 2 of the Planning and development Regulations, 2001 and there are no provisions within Class 14 of Part 1 of Schedule 2 which provide for an exemption for a change of use to 'office' to 'embassy' use.

4.0 Planning History

There is no recent planning history on file and no known enforcement history. It was granted permission on appeal (**PL6/5/68454**) on appeal for a change of use from residential use to offices and a caretaker's flat in September 1985.

5.0 Policy Context

5.1. Development Plan

The site is in an area zoned 'A' with a stated objective '*to protect and/or improve residential amenity*' in the DLRCC Development Plan 2016-2022. It is not a protected structure and there are no other specific designations applying to the site.

5.2. Natural Heritage Designations

There are no Natura 2000 sites in the vicinity of the referral site. I would consider the details subject to this referral to be *de minimis* with regard to Appropriate Assessment issues due to the very small scale of the works and the absence of any pathways for pollution.

6.0 The Referral

6.1. Referrer's Case

It is stated that the reason for the declaration is that the owners have received enquiries about the potential use of St. Heliers as an embassy.

- The building has been used as an office by a Consulting Engineer and Town Planning Consultants since 1987. There are no conditions on the original planning permission on use.
- It is argued that its use as an embassy (including some residential use) is consistent with the existing office use and is therefore not a material change of use under S.3(1) of the Act. It is submitted that the planning authority did not justify its statement that the change of use is 'material'. Some details regarding the opening hours of existing embassies in Dublin are enclosed in support of the argument that there is no substantive or material difference between an embassy and permitted office use.
- Notwithstanding this, it is argued that it would constitute exempted development under Class 3 of Part 4, i.e. '*Use as an office, other than that to which class 2 of this Part of the Schedule applies*'.
- With regard to the above, it is argued that the four relevant 'tests' under 10(1) are justified, in that (10.1) it is not a class 2 use because It is not a service provided principally to visiting members of the public, no other works other than works which are exempted development would be required to facilitate the embassy use, it would not contravene a condition attached to a permission under the Act, and it would not be inconsistent with any use specified or included in such a permission, and the existing use is not unauthorised. It therefore follows that the proposed change of use complies with A.10(1) of the Regulations.
- In support of the above arguments, two examples from Dublin City Council (0023/12) for the Turkish Embassy and 0098/12 for the UAE Embassy – in both cases it was decided that the change of use from 'office' to 'embassy office' constitutes exempted development under Class 3.

6.2. Planning Authority Response

The planning authority did not respond to the specifics of the referral – the Board is referred to the original planner's report.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

Section 3 (1) states the following in respect of 'development':

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

7.2. Planning and Development Regulations, 2001

Part 4 of Schedule 2 of the Regulations 'Exempted development – Classes of Use:

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).
- (d) 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 the Schedule applies.

Article 10(1)

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

- (a) involve the carrying out of any works other than works which are exempted development,*
- (b) contravene a condition attached to a permission under the Act,*
- (c) be inconsistent with any use specified or included in such a permission, or*
- (d) be a development where the existing use is an unauthorised use,*

save where such change of use consists of the resumption of a use which is not unauthorised and which has not been abandoned.

7.3. Other

There are no other Referral cases on the database for similar applications – the Referrers have noted in their submission two decisions by Dublin City Council that such changes of use (office to embassy office) are exempted development under Class 3.

8.0 Assessment

8.1. Is or is not development

Under the definition of ‘development’ in Section 3.1 of the Act, a key qualifier is that there must be a ‘material’ change of use. The building is a former residential development that was permitted a change of use (with caretaker’s apartment) in 1985 and has apparently been in consistent use as an office since the late 1980’s. The site is within an area of Zoning Objective ‘A’, in which embassies are ‘open for consideration’ in the current development plan. The development Plan (section 8.4) defines an embassy as:

‘A building, or part thereof, or land used by a foreign government for diplomatic purposes. The use may include a residential content for the staff of the embassy which is ancillary to the embassy activities. The use does not include a foreign trade delegation or trade office’.

‘Office’ is defined as:

‘A building in which the sole or principle use is the undertaking of professional administrative financial marketing or clerical work including services provided principally to visiting members of the public’.

The Act and Regulations do not make specific references to embassy use. The regulations set out two distinct classes – Class 2 for financial or professional services, and Class 3 as an ‘office’.

The question arises as to whether the change of use of an embassy – which would likely include some element of residential use – would be a material change from the existing office. As the referrer sets out, the typical opening hours of an embassy would not be substantially different from a typical office, as defined by either the development plan or the regulations. It could be argued that an embassy is closer to Class 2 than Class 3, in that it provides distinct services to the public (for example, visas). I am aware that some embassies use different premises for such purposes (for example, the Chinese embassy in Dublin has a separate visa/passport office from its main embassy). But it would also be accepted use of the terminology for an ‘office’ that it could provide services to the public, so I would consider that it falls within ‘Class 3’.

I would consider that as a general principle, there is sufficient ambiguity between whether an embassy falls between Class 2 and 3 to state that an Embassy can be a material change of use from an office. But having regard to the specifics of this site – which is not a purpose built office but a large free standing structure in use for several decades as an engineering and town planning consultants offices, I do not see that there would be a material change in use (although of course a specific future user may require changes – such as more accommodation, or a specific visa office that would be a material change).

I would conclude that having regard to the permitted existing use of St. Heliers, the change of use to an embassy in principle would not be a material change in use and therefore would not be development.

8.2. Is or is not exempted development

Notwithstanding my conclusion above, the question arises as to whether the change of use is exempted development. As the referrer has noted, Dublin City Council has issued referrals to state that the change of use from ‘office’ to ‘embassy office’ falls within Class 3 and is therefore exempted development. I would concur with this view – unless the embassy was to be used specifically for services to the public only, I would consider it to be substantially an office under Class 3, and so it would be exempted development.

8.3. Restrictions on exempted development

Article 10(1) of the Regulations (as amended) sets out restrictions on exempted development. These are:

10.1(a) – involve the carrying out of any works other than works which are not exempted development.

As the proposal does not include specific works I do not consider that this applies.

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

There do not appear to be any specific conditions on the original 1985 permission precluding such a change of use.

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

I am not aware of any uses specified in the original permission that would preclude the change of use to embassy.

10.1(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 is not unauthorised and which has not been abandoned.

There are no indications on file that any uses on the site are unauthorised.

9.0 Recommendation

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 an office to embassy is or is not development or is or is not exempted development:

AND WHEREAS referred this declaration for review to An Bord Pleanála on the 17th Day of June 2019

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

- (a) Section 3(1) of the Planning and Development Act, 2000,
- (b) the planning history of the site, the existing and permitted use of the site, and the absence of any specific restrictive designations,
- (c) the nature of the proposed change of use, and
- (d) the pattern of development in the area:

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The change of use from the existing office (including caretakers apartment) to an embassy use would not be considered material.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3)(b) of the 2000 Act, hereby decides that the change of use of St. Heliers from office use to embassy use is not development.

Philip Davis
Planning Inspector

1st October 2019