



An
Bord
Pleanála

Inspector's Report ABP-305242-19

Question

Whether change of use of Unit 10 from a car sales premises for the sale or leasing or display for the sale or leasing of motor vehicles to use for the sale of furniture is or is not development or is or is not exempted development

Location

Unit 10 North Park, North Road, J5 M50, Finglas, Dublin 11, D11 R761

Declaration

Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	FS5W/13/19
Applicant for Declaration	K and B Coyne.
Planning Authority Decision	Is not exempted development

Referral

Referred by K and B Coyne.

Owner/ Occupier K and B Coyne.

Observer(s) None.

Date of Site Inspection 10th December 2019

Inspector Deirdre MacGabhann

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1.0 Site Location and Description

- 1.1. The subject site, Unit 10 North Park, comprises part of an existing warehouse building (units 9-12), within North Park Business Park, north west of Finglas, County Dublin. The Business Park lies immediately southwest of Junction 5 of the M50 (M50/N2 interchange) and is accessed via North Road, off the N2. The business park has a mix of warehouse units, with generally more substantial buildings to the north of North Road and smaller units to the south.
- 1.2. Unit 10 lies in the north east corner of the high bay building and is visible from the M50 (see photographs). The Unit immediately south of Unit 10 is occupied by Argosy Books (on-line store). To the east of the subject site is an Audi car sales outlet. To the south east is a two-storey office building.

2.0 The Question

- 2.1. The question before the Board is whether or not the change of use of Unit 10 from car sales premises (for the sale or leasing, or display for the sale or leasing, of motor vehicles) to use for the sale of furniture, at the former Joe Duffy, Volkswagen Motors, constitutes development and exempted development (the subject premises extend to 3,528sqm).

3.0 Planning Authority Declaration

3.1. Declaration

- 3.1.1. On the 26th July 2019 the planning authority decided that the change of use did not comprise exempted development for the following reasons:
 - a. The permitted use of the site is for the sale or leasing, or display for sale or leasing, of motor vehicles;
 - b. The change from the permitted uses to use as a shop is a factual change of use and would raise material planning considerations (potential impact on neighbouring property and traffic safety) and is therefore a material change of use under Section 3(1) of the Planning and Development Act, 2000 (as amended), and is therefore development, and

- c. The proposed change of use comes within the scope of the exemption provided in Class 14(a) of Part 1, Schedule 2 of the Planning and Development Regulations 2001 (as amended) but is restricted by the provisions of Article 9(1)(a)(iii) of the Regulations as, having regard to the inadequacy of car parking within the control of the applicant, the development would endanger public safety by reason of traffic hazard or obstruction of road and would not, therefore, be exempted development.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- 26th July 2019 – The Planning Report refers to relevant policies of the County Development Plan, the planning history of the site and relevant statutory provisions, including the following:
 - Retail development of the scale provided is not permitted in the General Employment zoning of the site.
 - Application of the car parking standards in the Development Plan would require provision of 117 car parking spaces (one per every 30sqm of gross floorspace).
 - Ownership map of the proposed 38 car parking spaces is inconsistent with ownership boundary declared in history file PA ref. FW18A/0015.
 - The definition of a shop, set out in the Planning and Development Act 2000 (as amended), does not include the sale of or leasing of motor vehicles and, in consideration of the provisions of the County Development Plan and Retail Planning Guidelines, the proposed change of use would constitute development.
 - Article 6(1) of the Planning and Development Regulations 2001 (as amended) and Class 14(a) Part 1, Schedule 2 of the Regulations (Exempted Development – General), make specific provision for development consisting of the change of use of a premises from the sale or leasing, or display for sale or leasing, of motor vehicles, to a shop to be exempted development. Subject to article 9 the development is exempted development.

- Considers that the reliance on parking spaces outside of the 38 spaces falling within the application boundary, which are outside the control of the applicant and subject to future changes of use outside the control of the applicant and planning authority, would endanger public safety by reason of traffic hazard and obstruction of road users (article 9(1)(iii) restriction). Therefore, the proposed change of use is not exempted development.

3.2.2. Other Technical Reports – None.

4.0 Planning History

4.1. The following applications/appeals have been determined in respect of the subject site:

- PA ref. F99A/1393 – Permission granted for warehousing, light industrial use, offices and car showroom and two temporary advertising signs.
- PA ref. FW09A/0155 – Permission granted for the temporary change of use of Unit 10 from industrial to a motor trade site.
- PA ref. FW13A/0032 and PL06F.242022 – Permission granted for the permanent change of use of Unit 10 from industrial use to a motor trade/sales use.

4.2. Similar cases decided by the Board include the following:

- **ABP-304204-19** - The Board decided (2019) that the change of use from car dealership to retail sales of convenience goods was development and was exempted development, at Pollamore Near, Dublin Road, Cavan.
- **PL06S.RL3539** - The Board decided (2018) that the change of use of a car sales premises for the sale or leasing, or display for sale or leasing, of motor vehicles to use as a shop, at the former Tom Walsh Motors, Grange Road, Baldoye, Dublin 13, was development and was not exempted development.
- **PL09.RL.3486** - The Board decided (2018) that the proposed change of use of a former car sales premises to use as a shop at Gallowshill, Athy, County Kildare was development and was not exempted development.

- **PL84.RL3096** - The Board decided (2013) that the change of use from a garage and showrooms to use as a shop at The Fairgreen, Westport, Co. Mayo was development and was exempted development.
- **PL88.RL2959** - The Board decided (2011) that the use of car showroom for retail/shop use at Nyhan Motors, The Bypass, Cloghmacsimon, Bandon, Co. Cork was development and was not exempted development.
- **PL83.RL.2856** - The Board decided (2011) 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, all at Capital Cars, Church Road, Tullamore was development and was exempted development.
- **PL28S.RL2020** - The Board decided (2003) that the change of use from motor/warehouse showrooms to a shop for the sale of tiles. Units 1 and 1C Concord Industrial Estate, Naas Road, Dublin 12 was development and was exempted development.

5.0 Policy Context

5.1. Development Plan

- 5.1.1. The subject site is zoned 'GE' General Employment, the objective of which is to provide opportunities for general enterprise and employment. Retail development is not permitted in the zone. Table 12.8 sets out a requirement for a maximum of 1 car parking space per 30sqm (gross floor area) for retail comparison goods.

6.0 The Referral

6.1. Referrer's Case

- 6.1.1. The referrer sets out the following arguments:
 - Context – The subject site was occupied by a furniture showroom for c.2.5 years up to the end of 2008. In 2009 a temporary change of use was granted for from industrial use to a motor trade site, including internal alterations, and the site was occupied by Audi North Dublin for car sales and service facilities

for 3 years. The subject unit is currently vacant and traded as Joe Duffy, Volkswagen up to December 2018.

- The proposed change of use is exempted development pursuant to Class 14(a) Part 1 of Schedule 2, Exempted Development – General, Planning and Development Regulations, 2001 (as amended).
- The change of use does not materially contravene conditions attached to previous permissions.
- The location of the unit is ideal to accommodate a significantly sized furniture retail unit and has the benefit of easy access to the M50.
- The development will not endanger public safety by reason of traffic hazard or obstruction of road users. Adequate levels of car parking are provided to serve the development.
- The referrer's Traffic Assessment (Appendix B of referral) estimates the difference in likely extent of daily and peak trips generated by the historic car sales use of the site and the proposed furniture store use. Results are shown in Table 2.0 and indicate a smaller number of peak trips arising from the use of the premises as a furniture store (total trips 10 AM peak and 11 PM peak) than as a car showroom (total trips 42 AM peak and 38 PM peak). It is also stated that (a) the proposed no. of car parking spaces (38) would be adequate to serve the development in the light of predicted flows, and (b) the development plan requirement of 1 space per 30 sqm, 99 in total, would be excessive given the low number of trips predicted.
- Whilst the total gross floor area is 3,510sqm, 15% (563.5sqm) of floorspace will be allocated to office and storage facilities and c.10% to circulation space (298.4sqm), resulting in a total retail footprint of 2,685sqm.
- This would equate to a maximum not minimum requirement for 89.5 car parking spaces (1 per every 30sqm, gross floor area, of retail floorspace).
- The referrer has a 10,000 year lease for the premises which include 9 car parking spaces to the front of the property and 29 to the side i.e. 38 in total (legal evidence provided). Whilst there is a shortfall of the maximum number

of spaces required, the development will not adversely affect the efficiency of the surrounding road network.

- The previous use of the subject unit as a popular and busy car showroom generated significantly more pedestrian and vehicular traffic and there are no recorded incidents during this time in respect of vehicle or pedestrian movements. The car showroom employed c.30 members of staff and the furniture store will employ 8-10.
- Vehicle movements are likely to be greater at weekends, when the majority of the other businesses in North Park Business Park are likely to be closed. Bulky goods are likely to be delivered direct to customers from a central warehouse facility in County Monaghan. Existing access arrangements are sufficient to serve a car showroom and would be sufficient to serve a furniture store.
- The site can be reached by a number of high-quality and frequent public transport services (see page 13 of submission).

6.2. Planning Authority Response

- 6.2.1. The Planning Authority refer the Board to the Planning Report and decision of the authority and remain of the view expressed in these. They also state that a determination that the use of this structure for general retailing is exempted development would have significant potential to impact on neighbouring property.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

- Section 3 – Development.
- Section 4 – Exempted development, in particular sub-section (2).
- Section 5 – Declaration and referral on development and exempted development.

7.2. Planning and Development Regulations, 2001

- Part 2. Exempted development. Article 5(1) – Interpretation for this Part (defines the term ‘shop’).
- Article 6 – Exempted Development, in particular sub-section (1) and Class 14(a) of Schedule 2, Part 1 (Change of use).
- Article 9 – Restrictions on exemption, in particular sub-section (1)(i) and (iii).
- Article 10 – Changes of use, in particular sub-section (1) and (2) and Class 1 of Part 4 of Schedule 2.

8.0 Assessment

8.1. Is or is not development

- 8.1.1. Section 3(1) of the Planning and Development Act 2000 (as amended) defines development as ‘the carrying out of any works on, in or under land or the making of a material change in the use of any structures or other land’.
- 8.1.2. The permitted use of the subject site is for motor trade/sale. Such a use is typically referred to in the Act, the use for ‘the sale or leasing, or display for sale or leasing of motor vehicles’.
- 8.1.3. Section 2(1) of the Planning and Development Regulations 2001 (as amended) defines the term ‘shop’ as use of a structure for the retail sale of goods and for the display of goods, where the sale, display or service is to visiting members of the public. Uses referred to include post office, travel agency, food and wine for consumption off premises, hair dressing, laundrette etc.
- 8.1.4. The sale of motor vehicles is a use which is not specifically mentioned in the definition of the term ‘shop’, and I note that elsewhere in the Regulations (see below) the uses are specifically distinguished between. In addition, a car showroom and a furniture store have different attributes e.g. in terms of vehicle trips generated and patterns of use. I would be of the view, therefore, that the change of use from car showroom to sale of furniture is a material change of use and therefore comprises development under section 3(1) of the Act.

8.2. Is or is not exempted development

Legislation

- 8.2.1. Section 4(2)(a) enables the Minister to make regulations to provide for any class of development to be exempted development for the purposes of the Act where he or she is of the opinion that by reason of its size, nature or limited effect on its surroundings, the carrying out of such development would not offend against the principles of proper planning and sustainable development.
- 8.2.2. Pursuant to the Act, Article 6(1) of the Regulations provides that subject to Article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development provided it complies with the conditions and limitations specified in column 2. Class 14(a) of Part 1, Schedule 2 provides that development consisting of a change in use from the sale or leasing or display for sale or leasing of motor vehicles to use as a shop is exempted development. No conditions or limitations are set out in column 2 of the Class (in respect of this change of use).
- 8.2.3. Having regard to these provisions, I consider that the change of use from car sales premises to use for the sale of furniture falls within Class 14 of Part 1, Schedule 2 and in principle comprises exempted development.

8.3. Restrictions on Exempted Development

- 8.3.1. Article 9 sets out a number of instances under which development in Part 1 is not exempted development. Notably for this referral these include:
- Article 9 (1)(i) Where development would contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,
 - Article 9 (1)(iii) Endanger public safety by reason of traffic hazard or obstruction of road users, and
- 8.3.2. **Conditions.** I have reviewed the conditions associated with the parent permission granted on the subject site and the subsequent permissions granted for temporary and permanent change of use from industrial to motor trade. There is no specific condition attached to any of these that the development would be inconsistent with

and no indication from any party that the existing premises have not been constructed in accordance with the permission granted.

- 8.3.3. **Traffic Hazard.** The subject site lies within an industrial park to the west of the N2. Whilst access is from this national road, the site is visible from the M50 (see photographs), which is elevated as it passes to the north of the site. Access to the site from the N2 is via North Road. There are no issues with regard to visibility or sightlines at the junction of the site road and North Road (see photographs).
- 8.3.4. The proposed use of the site for the sale of furniture is likely to generate both light vehicle and HGV traffic. The referrer's Traffic Assessment predicts a smaller number of vehicle trips from the proposed furniture store than the previous motor sales use. Further, it is argued that the 38 no. of spaces proposed is adequate to serve the predicted level of traffic and would not give rise to any adverse effects on the surrounding road network.
- 8.3.5. Whilst I am mindful of the conclusions of the referrer's Traffic Assessment, including proximity to alternative transport modes, I would have the following concerns:
- The proposed number of car parking spaces are well below the standard set out in the County Development Plan,
 - There is no information on the type or location of furniture stores used to establish the trip rates used in the Traffic Assessment. The subject site is highly visible from the M50 and may generate a greater number of trips than those set out in the assessment.
 - At the time of site inspection, there was a number of cars parked in front of the subject unit and to the east of it, suggesting a demand for parking spaces in the area which is not satisfied within the sites of existing premises and a risk of parking congestion in the area.
 - Once a retail use is established on site (also contrary to the GE zoning), there would be a potential risk of further intensification.
- 8.3.6. Having regard to the above, I would be concerned that the absence of effect on the local road network has not been adequately demonstrated and that the proposed development could give rise to significantly more vehicle movements than those predicted and congestion in the associated and nearby parking areas and, therefore, endanger public safety by reason of traffic hazard or obstruction of road users.

- 8.3.7. In coming to this conclusion, I am mindful that the Exempted Development provisions exist to facilitate classes of development which would not offend against the principles of proper planning and sustainable development. Having regard to the uncertainty of the likely traffic effects of the development and the inconsistency of the proposed use with the zoning of the site, I do not consider that the development is consistent with the Exempted Development provisions of the Act or, for the reasons stated, the restrictions of Article 9(1)(iii) in particular.
- 8.3.8. **Precedents.** I have had regard to the reference cases cited above that the Board has previously determined. A number of the cases referred to are not directly relevant to the current case e.g. the change of use has been deemed to be development but not exempted development as it would contravene a condition attached to a planning permission. Of the similar cases i.e. where the restriction under article 9(1)(iii) has been a determining factor, changes of use have been deemed to be development and exempted development in situations where there was little risk of traffic hazard arising.

9.0 **Environmental Impact Assessment and Appropriate Assessment**

- 9.1. Section 4(4) of the Planning and Development Act, 2000 (as amended) states that development shall not be exempted development if an environmental impact assessment or appropriate assessment is required. Having regard to the scale and nature of the proposed development (change of use) in an established urban area, I do not consider that the proposed development would give rise to any significant environmental effects to warrant environmental impact assessment. Further, I am satisfied that no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

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 the change of use from a

car sales premises to use for the sale of furniture is or is not development or is or is not exempted development:

AND WHEREAS Killian and Bronwen Coyle requested a declaration on this question from Fingal Council and the Council issued a declaration on the 2nd day of July, 2019 stating that the matter was development and was not exempted development:

AND WHEREAS Killian and Bronwen Coyle referred this declaration for review to An Bord Pleanála on the 22nd day of August, 2018:

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

- (a) Section 2, 3 and 4 of the Planning and Development Act, 2000, as amended,
- (b) Article 5, 6 and article 9 of the Planning and Development Regulations, 2001, as amended,
- (c) Parts 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (d) the planning history of the site,
- (e) the pattern of development in the area,
- (f) the location of the site and its proximity to the M50,
- (g) the submissions on file:

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The permitted use of the site is for the sale or leasing, or display for sale or leasing, of motor vehicles,
- (b) 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(1) of the Planning and Development Act, 2000 (as amended),

- (c) The proposed change of use to a shop comes 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), but, in this instance, it is considered that the exemption is restricted by the provisions of Article 9(1)(a)(iii) as, having regard to the inadequacy of car parking currently on site in the context of the proposed use, the development would endanger public safety by reason of traffic hazard and obstruction of road, and the development would therefore not be exempted development.

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 a car sales premises to use for the sale of furniture is development and is not exempted development.

Deirdre MacGabhann

Planning Inspector

8th January 2020