



An
Bord
Pleanála

Inspector's Report ABP-305423-19

Question

Whether the uplift of Dunnes Store convenience sales floor area from 2,574 sqm to 3,000 sqm net by extending into the shops ground floor textile stockroom, including associated internal shop works, is or is not development or is or is not exempted development.

Location

Dunnes Stores Douglas Court
Shopping Centre, Douglas, Co. Cork

Declaration

Planning Authority

Cork City Council

Planning Authority Reg. Ref.

R529/19

Applicant for Declaration

Better Value Unlimited Company

Planning Authority Decision

Is not exempted development

Referral

Referred by

Better Value Unlimited Company

Owner/ Occupier

Better Value Unlimited Company

Observer(s)

None

Date of Site Inspection

29th November 2019

Inspector

Elaine Power

1.0 Site Location and Description

- 1.1. The subject site 'Dunnes Stores' is located within the northern portion of the Douglas Court Shopping Centre. The shopping centre is located within Douglas Village approx. 3.5km south east of Cork city centre. The shopping centre has over 50 no. retail units and a large surface car park with approx. 890 no. spaces.
- 1.2. The existing Dunnes Stores retail unit has a gross floor area of 7,558sqm. It comprises, 2,753sqm of textile retail area, 2,574sqm of grocery retail area, 576sqm of textile storage area and 620sqm of grocery storage area at ground floor level and 468 sqm of textile storage area and sqm of 567sqm grocery storage area at first floor level. This referral relates to an existing ground floor textile store room (576sqm) which is located to the east of the existing frozen food aisle within the convenience retail area of the supermarket.

2.0 The Question

Whether the uplift of Dunnes Stores convenience sales floor area from 2,574sqm to 3,000 sqm net by extending into the shops ground floor textile stockroom, including associated internal shop works, is or is not development and is or is not exempted development.

3.0 Planning Authority Declaration

3.1. Declaration

The Planning Authority issued a declaration that the uplift of Dunnes Stores convenience sales floor area from 2,574sqm to 3,000 sqm net by extending into the shops ground floor textile stockroom, including associated internal shop works, is considered to be development and is not exempted development having regard to: -

- Sections 2, 3 and 4 of the Planning and Development Act, 2000 (as amended); and
- Articles 5, 6, and 10 and Class 14 of Part 1 of the Planning and Development Regulations, 2001.

3.2. Planning Authority Reports

3.2.1. *Planning Reports*

The Planning Officers report is summarised below: -

- The net convenience sales area has increased by 70sqm, from the layout approved under PL04.237415 (reg. ref. 10/4256), as a corridor has been incorporated into the sales area.
- The internal works could be carried out within the scope of Section 4(1)(h) of the Planning and Development Act 2000, (as amended), as the works would not render it inconsistent with the existing character of the structure of neighbouring structures. However, as the works would result in a 17% increase in sales area the works may constitute a material change and would fall outside the scope of Section 4(1)(h) of the Act.
- The scale of the development, 3,000sqm respects the maximum floor area for supermarkets outside of the city, as per the Retail Planning Guidelines.
- Having regard to the substantial increase in floor area and the potential impacts on traffic, car parking and retail implications in the wider area the development is considered to be a material change of use. Therefore, the development is not considered to be exempted development.

3.2.2. *Other Technical Reports*

None

4.0 Planning History

4.1. *Referral Site*

PL.04.237415, Reg. Ref. 10/4256: Permission was granted in 2011 for a 3,971sqm extension to Dunnes Stores over two floors. The works also included modification and extension to car park, additional slip road, cycle route, road and pedestrian improvements and associated signage and landscaping at Douglas Court Shopping

Centre. Condition no. 4 limited the net convenience retail floor area for the anchor unit to 3,000 sqm and net comparison area to 4,333sqm.

4.2. **Relevant Board Decisions**

06F.RL3578: Whether the amalgamation of 2 no. retail units is or is not exempted development.

The Board concluded that the works were development and were not exempted development as the works would not come within the scope of Section 4(1)(h) of the Planning and Development Act, 2000 (as amended) in that they would not involve works for the maintenance, improvement or other alteration of a structure, but rather of two individual permitted units.

PL28.RL3344: Whether the internal re-arrangement of space at ground floor is development or is exempted development.

The Board concluded that the internal rearrangement resulted in a material change of use that would not come within the scope of Section 4(1)(h) of the Planning and Development Act, 2000 (as amended). Therefore, the works were development and were not exempted development.

5.0 **Policy Context**

5.1. **Ballincollig Carrigaline Municipal District Local Area Plan, 2017**

The Plan notes that Douglas is at the heart of the South Environs and is a very important employment and retail district, with two large shopping centres, Douglas Court and Douglas Village Shopping Centre. It is an aim of the plan to continue to develop Douglas as a mixed-use urban centre, progressively extending its range of comparison shopping so that it can rival new suburban centres

The site is zoned SE-T-05 which relates to a larger area of approx. 9.25 ha within Douglas village. The objective for the site is as follows: -

It is recommended that an Overall Planning or Development Scheme is prepared for the entire site... This shall include the provision of a comprehensive mixed-use

development with an additional 7,500sqm of non-residential floor space...the new development shall cater for a variety of town centre type uses which will add life and vibrancy to the area outside the opening hours of the existing shopping centre. Appropriate uses could include offices, retail, retail services (restaurants, public houses etc), leisure / recreational facility, community buildings and cultural uses. An improvement in the urban environment of the area with the removal of some surface car parking and the provision of a civic space would encourage such uses to locate in this area... car parking for new development should follow the revised car parking standards of the County Development Plan...

5.2. **Cork County Development Plan, 2014**

Douglas is identified as a Sub-Regional / Metropolitan Cork District Centre with the associated land use objective TCR 4-5 to *'support the vitality and viability of District Centres to ensure that such centres provide an appropriate range of retail and non-retail functions to serve the needs of the community and respective catchment areas, in order to protect the primacy of Cork City Centre.'*

Relevant policies within the plan include the following: -

TCR 2-1: Town Centre

TCR 4-1: Retail Hierarchy

TCR 8-1: Convenience Approach – Non-Metropolitan

TCR 8-2: Comparison Approach – Non-Metropolitan

5.3. **National Guidance**

Retail Planning Guidelines for Planning Authorities, 2005

5.4. **Natural Heritage Designations**

- 5.4.1. The subject site is located approx. 90m south of Cork Harbour SPA (004030) and is separated by the south link road. Having regard to the nature and scale of the development located within a serviced area, I am satisfied that no appropriate assessment issues arise and it is not considered that the development would be

likely to have a significant effect individually or in combination with other plans or projects on a European site.

6.0 The Referral

6.1. Referrer's Case

The Referrers case is summarised below: -

- Having regard to the shops extant permission and having regard to the planning definition of a 'shop' provided under Article 5(1), the shop unit comprising of sales and ancillary shop stockrooms constitutes a single planning unit, with a permitted and unrestricted shop use. Given the textile stockroom functionally relates to the shops primary use, it is our contention that no change of use takes place and, therefore, no development takes place.
- For a change of use to be material, it must significantly alter the character of the property and the change must impact on the proper planning and sustainable development of the area in a way that differs from the previously established use. Convenience and comparison goods have been sold from the shop for over 28 years. The use of the ground floor textile stockroom for convenience sales would not materially impact on the shops character or its primary use.
- The use is compatible with the sites 'Town Centre' landuse zoning objective. Douglas is designated as a District Centre in the retail hierarchy.
- The shopping centre has a large surface car park with approx. 890 no. spaces. Car Parking standards, as set out in the development plan are maximum standards and are based on gross floor area. As the gross floor area of the shop unit would not be altered there is no requirement for additional car parking spaces. It is also considered that the proposal would not give rise to any additional vehicular movements, which would constitute a material impact.

- The uplift of the shops convenience sales area from 2,574sqm to 3,000sqm would not trigger the need to take account of planning considerations that differ from those pertaining to the consideration of the planning applications under which the unit was originally permitted.
- The proposed works include the laying of a new floor covering, painting, new lighting and provision of shop fixtures and fittings. These works are minor in nature and do not come within the scope of ‘works’ as defined in the Act. The internal modifications to the physical fabric of the shop constitute exempted development by reason of Section 4(1)(h) of the Act.

6.2. Planning Authority Response

The planning authority have stated that having regard to Sections 2, 3 and 4 of the Planning and Development Act, 2000 (as amended) and to Articles 5, 6 and 10 and Class 14 of Part 1 of the Planning and Development Regulations, 2001 (as amended) the proposed development is considered to be development and is not exempted development.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

In **Section 2 (1)** of the Act “works” are interpreted as including “any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure”.

Part 1 – Preliminary and General defines **‘alteration’** as including: -

- (a) plastering or painting or the removal of plaster or stucco, or
- (b) the replacement of a door, window or roof,

that materially alters the external appearance of a structure so as to render the appearance inconsistent with the character of the structure or neighbouring structures.

Section 3(1) of the Act states the following in respect of ‘development’: “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) of the Act states that ‘the following shall be exempted developments for the purposes of this 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’;

7.2. **Planning and Development Regulations, 2001**

Article 5(1) - ‘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 for consumption off the premises, where the sale of such food is subsidiary to the main retail use,
- e) for hairdressing,
- f) for the display of goods for sale,
- g) for the hiring out of domestic or personal goods or articles,
- h) as a launderette 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 funeral services or as a funeral home, or as a hotel, a restaurant or a public house, or for the sale of hot food for consumption off the premises, except under paragraph (d) above, or any use to which class 2 or 3 of Part 4 of Schedule 2 applies;

Article 6(1) of the regulations states that '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. 7.2.2. Article 9(1).

Article 9 (a)(i) - Development to which Article 6 relates shall not be exempted development for the purposes of the Act - if the carrying out of such 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.

Schedule 2, Part 1 – Exempted Development – General

Change of Use

Class 14 - Development consisting of a change of use from use -

- a) from use for the sale of hot food for consumption off the premises, or for the sale or leasing or display for sale or leasing of motor vehicles, to use as a shop,
- b) from use as a public house, to use as a shop,
- c) from use for the direction of funerals, as a funeral home, as an amusement arcade or a restaurant, to use as a shop,
- d) from use to which class 2 of Part 4 of this Schedule applies, to use as a shop

Schedule 2, Part 4 – Exempted Development – Classes of Use

Class 1 – Use as a shop

8.0 Assessment

8.1. It should be noted that the purpose of a referral is not to determine the acceptability or otherwise of the proposed works in respect of the proper planning and sustainable development of the area, but rather to determine whether or not the matter in question constitutes development and if so falls within the scope of exempted development.

8.2. Is or is not development

- 8.2.1. The first matter relates to whether the extension of the shops existing convenience sales area into the existing textile storeroom, which would increase the existing convenience gross floor area from 2,574sqm to 3,000sqm, constitutes development. Section 3(1) of the Planning and Development Act, 2000 (as amended) states that development means the carrying out of any works on, in, over or under land or the making of any material change in the use of the structures or other land.
- 8.2.2. The referrer contends that having regard to the shops extant permission and to the planning definition of a 'shop' provided under Article 5(1), the shop unit comprising of sales and ancillary shop stockrooms constitutes a single planning unit, with a permitted and unrestricted shop use and that the textile stockroom functionally relates to the shops primary use. It is therefore considered that no change of use takes place and, therefore, no development takes place.
- 8.2.3. The works proposed include the laying of a new floor covering, painting, new lighting and provision of shop fixtures and fittings. The proposed ground floor plan submitted to the planning authority does not provide an internal layout for the proposed new convenience area. However, from the location of the existing stockroom behind an existing aisle within the supermarket, it is my view that, a section of the existing wall would have to be removed to provide access to this new area. Having regard to Section 2(1) and Section 3(1) of the Planning and Development Act, 2000 (as amended) these items constitute works, and, therefore, constitute development. The next question is whether the works carried out are or are not exempted development.

8.2.4. With regard to the issue of use, it is necessary to establish if the proposed change of use from a stockroom to a convenience sales area is a material change of use. This is discussed further below.

8.3. Is or is not exempted development

8.3.1. Having established that the proposed works are 'development' as defined by the Planning and Development Act, 2000 (as amended) it must be determined whether or not such development constitutes exempted development.

8.3.2. The ground floor textile stockroom has a gross floor area of 578sqm it is proposed to change the use of 426sqm of the existing stockroom to a new convenience sales area. The ground floor textile stockroom with a gross floor area of 182sqm would be retained and the overall convenience sales area would be 3,000sqm. It is noted that the proposed convenience sales area is in accordance with the Condition no. 4 of PL.04.237415, which limited the net convenience retail floor area for the anchor unit to 3,000 sqm.

8.3.3. The referrer contends that the internal works to the shop unit comprise exempted development under section 4(1)(h) of the Planning and Development Act. This section states that the 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 inconsistent with the character of the structure or of neighbouring structures comprises exempted development. In my view the internal works could be carried out in a manner to render it consistent with the existing character of the structure and the neighbouring units. The question therefore arises whether the works would result in a use that is materially different.

8.3.4. To assess if the use is materially different, matters which the planning authority would take into account in the event of a planning application being made should be assessed. The proposed expansion of the convenience sales area would result in a 17% (426sqm) increase of the net sales area. While it is acknowledged that there is a large surface car park with approx. 890 no. spaces associated with the Douglas Court Shopping Centre it is my view that the implications for traffic generation and

car parking requires further assessment. In addition, due to the overall size of the convenience sales area, approx. 3,000 sqm, it is also my opinion that the impacts on retailing within the metropolitan area of cork require further assessment. It is, therefore, considered that the extension of the convenience shopping area into the existing textile storeroom would be a material change of use and would not be exempted development.

8.3.5. Article 6 of the Regulations makes provisions in respect of exempted development, which provides that development of a class specified in Schedule 2 shall be exempted provided that the conditions and limitations attached to those various classes are reached. There is no class of development outlined in Schedule 2 which would de-exempted the proposed works.

8.3.6. In conclusion, notwithstanding that the exiting textile storeroom may be a subsidiary use of the existing 'shop' use, I consider that the proposed works would result in a considerable expansion and intensification of the existing use. There is no exemption for this change of use under the Planning and Development Act, 2000 (as amended) or under the Planning and Development Regulations, 2001 (as amended). It is my opinion that the works would constitute a material change of use and, therefore, would not be exempted development.

9.0 Recommendation

9.1. 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 uplift of Dunnes Stores convenience sales floor area from 2,574sqm to 3,000 sqm net by extending into the shops ground floor textile stockroom, including associated internal shop works at Douglas Court Shopping Centre, Douglas, Co. Cork is or is not development or is or is not exempted development:

AND WHEREAS Better Value Unlimited Company requested a declaration on this question from Cork County Council and the Council issued a

declaration on the 20th day of August 2019 stating that the matter was development and was not exempted development:

AND WHEREAS Better Value Unlimited Company referred this declaration for review to An Bord Pleanála on the 12th day of September 2019:

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

- (a) Section 2(1) of the Planning and Development Act, 2000 (as amended),
- (b) Section 3(1) of the Planning and Development Act, 2000 (as amended),
- (c) Section 4(1)(h) 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) Schedule 2 to the Planning and Development Regulations, 2001 (as amended), and
- (f) the planning history of the site.

AND WHEREAS An Bord Pleanála has concluded that, the uplift of Dunnes Stores convenience sales floor area from 2,574sqm to 3,000 sqm net by extending into the shop's ground floor textile stockroom, including associated internal shop works at Douglas Court Shopping Centre, Douglas, Co. Cork would constitute development, as it involves works. The change of use is considered a material change of use that does not come within the scope of Section 4(1)(h) of the Planning and Development Act, 2000 (as amended), being of a material change in the use of land within the meaning of Section 3 of the said Act, and there are no other provisions of

exempted development that would apply to the 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 uplift of Dunnes Stores convenience sales floor area from 2,574sqm to 3,000 sqm net by extending into the shops ground floor textile stockroom, including associated internal shop works at Douglas Court Shopping Centre, Douglas, Co. Cork is development and is not exempted development.

Elaine Power

Planning Inspector

13th January 2020