



An  
Bord  
Pleanála

## Inspector's Report ABP-305698-19

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### Question

Whether to erect a concrete block wall in centre of building to divide into two smaller units is or is not development and or is or is not exempted development.

### Location

47 Coolmine Industrial Estate, Porter's Road, Clonsilla, Dublin 15.

### Declaration

Planning Authority

Fingal County Council

Planning Authority Reg. Ref.

FS5W/11/19

Applicant for Declaration

Noel Hanlon

Planning Authority Decision

Is development and is not exempted development

### Referral

Referred by

Noel Hanlon

Owner/ Occupier

Noel Hanlon

Date of Site Inspection

16/01/2020.

Inspector

Conor McGrath

## **1.0 Site Location and Description**

- 1.1. The referral relates to unit no. 47 Coolmine Industrial Estate, Clonsilla, Dublin 15. No. 47 is part of a commercial / industrial complex comprising two-storey, block fronted, portal frame buildings. There is a wide mix of uses in the surrounding units which reflect the Local Centre zoning of this site.
- 1.2. Unit no. 47 is a double bay unit, currently in single occupancy associated with office supply and computer sales and servicing businesses at ground and first floor levels. Internally, there is one stairs serving the upper floors, however, there are two separate ground floor entrances from the eastern elevation, as well as a goods entrance on the northern elevation.

## **2.0 The Question**

- 2.1. The question put to the planning authority by the referrer relates to whether “to erect a concrete block wall in centre of building to divide into two smaller units” is development or is exempted development.

## **3.0 Planning Authority Declaration**

### **3.1 Declaration**

In considering the application, the planning authority sought further information comprising drawings of the subject building and clarity with regard to the current and future use of the building. On 26<sup>th</sup> September 2019, the planning authority issued a declaration on the question as follows:

The proposal is Not Exempted Development under Section 5(1) of the Planning and Development Act 2000.

Considerations cited in the declaration include:

1(c) The proposed sub-division of unit no. 47 into two units comes with the scope of Section 4(1)(h).

1(d) Notwithstanding the foregoing, the proposed sub-division of the unit into two separate distinct units has the potential to give rise to increased commercial activity and would have material consequences in terms of proper planning and sustainable development of the area.

1(e) Accordingly, and notwithstanding the conclusion contained in paragraph 1(c) above, the character of the existing area, the insufficient level of detail provided in relation to the intended use of the sub-divided structure and the potential to give rise to increased commercial activity, the sub-division would constitute a material change of use being an intensification of use of the land in question.

Therefore the subdivision of the subject unit to create two separate units is development and IS NOT exempted development.

## **3.2. Planning Authority Reports**

### **3.2.1. Planning Reports**

This industrial building was originally authorised as 20 individual units. A number of the units have been subdivided and the building is characterised by a range of uses. There was no condition attaching to the parent permission 92A/1141 preventing the subdivision of units.

Construction of a block wall entails works and is therefore development. All works are internal and are considered exempt under S.4(1)(h).

The unit appears currently vacant. Consideration of this request can only be based on the assumption that the proposed unit will continue to be used for light industrial purposes. The existing use is consistent with the permitted light industrial use of the structure. The exact nature, use, levels of intensification associated parking demand and loading, for the sub-divided unit are unclear. This subdivision would give rise to increased commercial activity and in the absence of detailed information, has the potential to have material consequences, having regard to car parking demand, traffic generation and loading / unloading requirements. It is considered therefore

that the subdivision would constitute a material change of use of the structure being intensification of use of the property in question.

## 4.0 Planning History

**PA ref. 92A/1141:** Permission granted for 20 no. industrial units on this overall site.

**PA ref. F95A/0792:** Permission granted for retention of modifications to approved industrial development comprising, minor modifications to elevations, 1st floor area in unit 46, ground floor lay-out incorporating Unit 39, use of 1st floor areas at units 41, 43 and 45 for light industrial/storage with ancillary offices.

**PA ref. F05A/0956 ABP ref. PL06F.214213**

Permission refused for subdivision of existing unit 46 into 4 no. self-contained units with amendments to elevations on grounds that the Board was not satisfied that the proposed development would not result in the loss of general industrial floor space at this location, contrary to the zoning objective of the site.

**PA ref. 07A/0382:** Permission granted for subdivision of no. 46 into two warehouse units and ancillary first floor office accommodation.

I note the following ABP referral cases which may be considered to be of relevance to this case:

**PL06D.RL3582:** The Board determined that:

- (a) internal works comprising the closure of two internal door openings in the party wall between two units would constitute “works” that are “development”,
- (b) the works necessary to subdivide the units come within the scope of Section 4(1)(h), and are, therefore, exempted development, and
- (c) the subdivision into two office units would not give rise to increased traffic movements or any other activity that would have material consequences and, therefore, would not constitute a material change of use.

**PL06S.RL3420:** The Board determined that:

- (a) the subdivision of Unit 16 into two separate units constitutes development, and this subdivision comes within the scope of section 4(1)(h) and is, therefore, exempted development.

**PL29N.RL2308:** The Board determined that:

- (a) the proposed subdivision of retail unit, to create two new retail units does not constitute a material change in the use of any structure or other land,
- (b) the subdivision involves the carrying out of works and is development,
- (c) the works affect only the interior of the structure and come within the scope of section 4(1)(h)

**PL28A.RL2464:** The Board determined that:

- (a) the erection of a wall separating two retail uses is “development”, and
- (b) the said wall affects only the interior of the structure and comes within the section 4(1)(h).

## 5.0 Fingal County Development Plan 2017-2023

The appeal site is zoned LC: Local Centre, to Protect, provide for and / or improve local centre facilities.

There are no protected structures on the site.

## 6.0 EIA Screening

- 6.1. Having regard to the limited nature and scale of the proposed development and the absence of any significant environmental sensitivity in the vicinity / the absence of

any connectivity to any sensitive location, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

## **7.0 The Referral**

### **7.1. Referrer's Case**

The referrer makes the following points:

- The property was built originally as two units with separate front entrances, which were purchased by the referrer as one unit.
- The referrer ran two businesses from the premises (CASS Computer Ancillary Sales and Services) and Handor Office Supplies.
- There are 13 marked parking spaces available but these are only used by 5 staff members.
- CASS will continue to trade from proposed unit 47A (3 staff) and Handor (2 staff) will trade from proposed 47B as a separate business.
- No external structural alterations are required and the unit will remain consistent with the character of this and neighbouring structures.
- The change involves only an internal wall and is exempt under Section 5(1).
- There is, and will be, no retail use on the site and no increase in vehicular movements or commercial activity.
- No intensification of use will arise and therefore no material change of use.
- Both units will be subject to separate commercial rates etc.
- There has been a decrease in activity and employee numbers on the site since 2008.
- Other units in this development have been subdivided

## 7.2. **Planning Authority Response**

In assessing the proposal, the planning authority determined that the subdivision of the property into two separate units, in the absence of satisfactory detail with regard to the intended use, the character and established pattern of the development in the area, and the resultant material intensification of use on site comprised development which was not exempt from planning permission.

## 8.0 **Statutory Provisions**

### 8.1. **Planning and Development Act, 2000**

Section 2(1)

“works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal

Section 3. - (1) 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) 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;

### 8.2. **Planning and Development Regulations, 2001**

Part 2 Exempted Development.

Article 5, Interpretation:

“light industrial building” means an industrial building in which the processes carried on or the plant or machinery installed are such as could be carried on or installed in

any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit;

Article 6(1)

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.

Article 9 identifies restrictions on the exemptions available under Article 6.

Article 10 Changes 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

## 9.0 **Assessment**

### 9.1. **Is or is not development**

- 9.1.1. The referral before the board relates to the erection of a block wall to subdivide an existing commercial premises into two units. I note that the premises is occupied as one unit currently, where uses comprise office supplies and computer sales and servicing. Reference to the established operation of two businesses from the premises in the referral is supported by signage on the front elevation of the



premises. The two-storey unit is subdivided internally into a number of rooms by partition walls with one stairs serving the overall first floor level.

- 9.1.2. Drawings submitted as further information to the planning authority describe the works required for subdivision of the premises, comprising construction of an internal wall to the underside of the roof and new stairs to proposed unit no. 47B. These clearly comprise works within the meaning of the Act and therefore comprise Development in accordance with Section 3.

## 9.2. **Is or is not exempted development**

- 9.2.1. The works described are clearly internal only and no changes to the external character or appearance of the structure are proposed. There are existing entrances available to each proposed unit. I therefore regard the proposed works as exempted development under the provisions of Section 4(1)(h), which finding is consistent with that of the planning authority.

The question before the board does not include any change of use of the premises. The first party response to the planning authority request for further information stated that sub-divided unit no. 47B would be let to another / new business. The referral before the Board states, however, that the existing uses will continue to trade from the proposed subdivided units such that no change of use will arise.

Notwithstanding this discrepancy, the referral does not include any element of change of use. The question relates to works only and there is no basis to conclude that a material increase in commercial activity arising from such sub-division will arise or that there will be any intensification of use.

I therefore conclude that the proposed development is development and is exempted development.

## 10.0 **Appropriate Assessment Screening**

- 10.1. The site is not designated for any nature conservation purposes and is not located proximate to, and is not connected to, any European site. The question before the

board involves only minor internal works within this industrial property. Having regard to the limited nature and scale of such works and separation from any European site, it is considered that no Appropriate Assessment Issues arise and it is not considered that the works would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

## 11.0 Recommendation

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

**WHEREAS** a question has arisen as to whether to erect a concrete block wall in the centre of a building to divide into two smaller units is or is not development and or is or is not exempted development

**AND WHEREAS** Noel Hanlon requested a declaration on this question from Fingal County Council on 27<sup>th</sup> day of May 2019 and the Council issued a declaration on the 26th day of September 2019, stating that the matter was not exempted development:

**AND WHEREAS** Noel Hanlon referred this declaration for review to An Bord Pleanála on the 18th day of October 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,
- (c) Section 4(1)(h) of the Planning and Development Act, 2000, as amended,

(d) The planning history of the site,

**AND WHEREAS** An Bord Pleanála has concluded that:

- (a) internal works comprising the erection of a concrete block wall in the centre of the building to subdivide the building into two smaller units would constitute “works” that are “development”,
- (b) the works necessary to subdivide the units come within the scope of Section 4(1)(h), and are, therefore, exempted development, and
- (c) the subdivision into two units would not give rise to increased traffic movements or any other activity that would have material consequences and, therefore, would not constitute a material change of use:

**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 erection of a concrete block wall in the centre of the building to subdivide the building into two smaller units is development and is exempted development.

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Conor McGrath  
Senior Planning Inspector

17/01/2020