



An  
Bord  
Pleanála

## Inspector's Report ABP-308258-20

### Question

Whether the change of use of a structure from commercial use to residential use is or is not development and is or is not exempted development.

### Location

Rear of 31 Shantalla Road, Galway.

### Declaration

Planning Authority

Galway City Council

Planning Authority Reg. Ref.

P/DC/3/11/20

Applicant for Declaration

John Lawless.

Planning Authority Decision

Is not exempted development

### Referral

Referred by

John Lawless.

Owner/ Occupier

John Lawless.

Observer(s)

None.

Date of Site Inspection

04/12/2020

Inspector

Adrian Ormsby

## **1.0 Site Location and Description**

- 1.1. The subject site is c. 1.2km to the west of Galway City centre at No. 31 Shantalla Road. The site a shed like structure located to the rear and within the curtilage of an end of terrace, two storey house facing directly onto Shantalla Road.
- 1.2. Vehicular and pedestrian access to the subject building is to the side and rear of the main house with private gates, c.2m in height. The building, which is the subject of this declaration, once used as a commercial unit, appears to now be used ancillary to the main dwelling. It is flat roofed, rendered and painted with windows and doors facing the rear elevation of the house.

## **2.0 The Question**

- 2.1. Whether the change of use from commercial use to residential use is or is or is not development or is or is not exempted development.

## **3.0 Planning Authority Declaration**

### **3.1. Declaration**

A declaration of exempted development was refused for the following reasons-

- The authorised use of the premises, having regard to the planning history of the subject site, and to case law, is as a printing workshop and store to which planning permission register reference number 250/71 relates;
- The change of use of the subject structure from printing workshop and store to use as a 2-bedroom apartment is a change of use that is material in planning terms, having regard to different patterns of activity, and impacts on the pattern of development in the vicinity, and it is therefore a material change of use and is development.
- The authorised use (as a printing workshop and store), based on the planning history is not a use within the scope of Classes 1, 2, 3 and 6 of Part 4 of the Second Schedule to the Planning and Development Regulations, but is within the scope of Class 4 (that is, use as a light industrial building), and in

particular does not represent use for professional or other services under Class 2 of Part 4, and it has not been established that the use authorised under planning permission register reference number 250/71 involved services provided principally to visiting members of the public, as is a requirement of Class 2;

- The development in question, not being a change of use from Classes 1, 2, 3 or 6 of Part 4 of the Second Schedule to residential use, would not therefore, come within the scope of Article 10 (6) of the Planning and Development Regulations, 2001, as amended by the Planning and Development (Amendment) Regulations 2018.
- There are no other provisions, in the Planning and Development Act 2000, as amended, or in the Planning and Development Regulations, 2001, as amended, whereby such development would be exempted development, and the proposed material change of use in this instance is therefore, not exempted development.
- The conversion of a commercial structure to a two-bedroom apartment at the rear of 31 Shantalla Road, Galway, is development and is not exempted development.

## 4.0 Planning Authority Reports

### 4.1. Planning Reports

The planning report reflects the decision above and can be summarised as follows-

- The applicant suggests that the permitted use (printing workshop and store) can be considered within use Class 2 or even Class 1. In this instance Class 2 permits- *use for the provision of (b) professional services (other than health or medical services), where the services are provided principally to visiting members of the public.*
- This is an identical argument to that previously decided upon by the planning Authority and ABP.
- The main difference in this case is the applicant is now attempting to establish that the building/use included '*Use as a Professional/Retail Service*'. The

applicant has submitted documentation confirming the use as a printing store and that printing was purchased/carried out at the premises.

- The determination by ABP remains to be true and the documentation submitted only establishes an activity was carried out on the site which had planning permission, and people arrived at the premises to place orders. This is a normal way to conduct business prior to the internet.
- The fact persons arrived at the premises to place or collect an order does not constitute the primary activity was to visiting members of the public. The primary activity carried out was printing based upon orders received. This was not a retail shop or a professional service, such as an accountants office. Such callers would be infrequent and the activity ancillary to the main use of the building.
- The decision should issue in line with the most recent ABP opinion.

#### 4.2. Other Technical Reports

- None on file

#### 5.0 Planning History

- ABP-303154, P/DC/3/22/18, conversion of a commercial structure to a two-bedroom apartment is development and is not exempted development- 08/04/2019-

An Bord Pleanála concluded that-

- a) the authorised use of the subject premises, having regard to the planning history of the subject site, and to case law, is as a printing workshop and store to which planning permission register reference number 250/71 relates,
- b) the change of use of the subject structure from printing workshop and store to use as a two-bedroom apartment is a change of use that is material in planning terms, having regard to different patterns of

activity, and impacts on the pattern of development in the vicinity, and is, therefore, a material change of use and is development,

- c) the authorised use (as a printing workshop and store), based on the planning history, is not a use within the scope of Classes 1, 2, 3 and 6 of Part 4 of the Second Schedule to the Planning and Development Regulations, but is within the scope of Class 4 (that is, use as a light industrial building), and in particular does not represent use for professional or other services under Class 2 of Part 4, and it has not been established that the use authorised under planning permission register reference number 250/71 involved services provided principally to visiting members of the public, as is a requirement of Class 2,
  - d) the development in question, not being a change of use from Classes 1, 2, 3 or 6 of Part 4 of the Second Schedule to residential use, would not, therefore, come within the scope of Article 10 (6) of the Planning and Development Regulations, 2001, as amended by the Planning and Development (Amendment) Regulations 2018, and
  - e) there are no other provisions, in the Planning and Development Act 2000, as amended, or in the Planning and Development Regulations, 2001, as amended, whereby such development would be exempted development, and the proposed material change of use in this instance is, therefore, not exempted development.
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- Reg Ref 18/52, Change of use of an existing single storey commercial unit (Surgery) to residential unit, Refused on 18/04/2018 for design, inadequate separation distance, no planning history for the Doctors Surgery and insufficient amenity space.
  - Reg Ref 17/211, Change of use of a unit from commercial use to use ancillary to a dwelling house, Refused 10/09/2017 for design, inadequate separation distance, insufficient legal interest in the access and no planning history for the Doctors Surgery.
  - 250/71, Erection of Printing Workshop and Store, grant, 23/11/1971

## 6.0 Policy Context

### 6.1. Section 28 Guidelines

- 6.1.1. Sustainable Urban Housing: Design Standards for New Apartments. Guidelines of Planning Authorities. (2018)

### 6.2. Galway City Development Plan 2017-2023

- 6.2.1. The site is zoned as residential, R, where it is an objective-

*“To provide for residential development and for associated support development, which will ensure the protection of existing residential amenity and will contribute to sustainable residential neighbourhoods”.*

### 6.3. Natural Heritage Designations

- None relevant.

### 6.4. Environmental Impact Assessment

- 6.4.1. The proposed development does not fall within a class of development set out in Part 1 or Part 2 of Schedule 5 of the Planning and Development Regulations and therefore is not subject to EIA requirements.

## 7.0 The Referral

### 7.1. Referrer’s Case

The issues raised by the referrer can be summarised as follows-

- The section 5 declaration application and supporting documentation adequately demonstrate that the proposed change of use of the subject commercial structure can be considered exempted development.

- The Planning Authority's assessment has been dismissive and fails to adequately consider the forensic and comprehensive level of evidence, as well as planning arguments which accompanied the application. The application was meticulously researched and source in response to the Board's decision on ABP-303154-18.
- The Planning Authority's decision is contrary to the spirit and intention of the Planning and Development (Amendment) Regulations 2018 and the Government's policy on "Rebuilding Ireland".
- The Planning Authority considers the proposal would be contrary to Article 10; Section (6) (d) (iv) of the Planning & Development Regulations. The site is zoned R- Residential and as such the proposed development is entirely consistent with the relevant objective for the area. Furthermore, the regs state '*the ground floor area*' of a structure '*remains in retail use*'. This would appear to acknowledge that the authorised use of the structure is a Class 1 use.
- The provisions of the City Development Plan (CDP) are not a basis for dismissal of the proposed Section 5 change of use. It is not a requirement of the 2018 regs for prospective residential units to be capable of re-assimilation into nearby dwellings. Nor is at a requirement for prospective residential units to comply with CDP private amenity space standards.
- It is incorrect to state this section 5 referral is identical to the previous application. This application centres around categorising the permitted use under Class 1 and 2. Historical evidence accompanies this application which would not have been available to the Planning Authority or ABP previously.
- Two of the three original reasons for refusal by the City Council were not upheld by ABP.
- New evidence has been submitted to substantiate that the permitted use was intended and functioned as professional/retail service. The Planning Authority has failed to acknowledge this proof.
- A 'Professional/Retail Service' activity was carried out, and this was not precluded under the planning permission. The referrer concurs with the Planning Authority that orders were placed by telephone or on arrival at the

premises. This is evidence that professional service orders were made by visiting members of the public.

- The referrer refers to the accompanying evidence and details how they clearly shows the retail/service activity on site “*was provided to visiting members of the public.*”
- The income stream was “*principally based on customers sales/transactions carried out on the premises*” and “*did constitute the primary activity on the site.*”
- The Planning Authority have not offered any counter evidence to dispute or refute the professional/retail service.
- The example provided in the planning report of an ‘accountants office’ is entirely irrelevant to this case. The activity carried out on site would be more comparable to a modern day printing outlet which would be categorised as a retail service use. The plans submitted as part of 250/71 include the provision of a “Dark Room”. Which would have been used to process images for printing.
- The Planning Authority’s assertion that ‘*such callers would be infrequent and the activity ancillary to the main use of the building*’ is without basis or foundation and contradicts the sworn evidence submitted. It is inconceivable that this business could have operated were it not for daily customer footfall.
- The Planning Authority’s decision reasons are the same as those set out by ABP under ABP-303154-18. These reasons are addressed in Table 1 of the appeal document.
  - There is no obvious basis to conclude the permitted use was dedicated to ‘*Light Industrial*’ use. In 1971 there were no planning regulations in place where classes of use were clearly defined. The permitted floor plans in 250/71 did not specify light industrial use. The floor plans show a waiting room which would normally be dedicated to ‘*Visiting member of the public*’. A dark room, office and on site parking are also provided for.

Reference is made to planning application 86/740 were Galway City Council permitted a print workshop with a condition that the development



be used for craft workshop with associated retail and display purposes. This example was understood to function as a Class 2 use if not a Class 1 Use. It was permitted as a commercial unit, like the subject premises.

Reference is made to planning application 89/776 (Printing Works) where a planning fee was paid under the category of '*Shops, hotels, restaurant & commercial*' and permitted on the basis it was providing a retail service/commercial use.

The word 'store' in the early 70's was synonymous with retail use/retail services e.g. grocery store, convenience store and Dunnes stores. An examples of the use of the word 'store' is provided for retail service purposes and can be permitted under Class 1.

- In light of the above the permitted use is sufficiently wide to enable it to cater for professional/retail services and can be categorised as Class 1 or 2.
- The proposed change of use can be deemed exempt under the Planning and Development (Amendment) Regulations 2018.

## 7.2. Planning Authority Response

The Planning Authority's response (09/11/2020) can be summarised as follows-

- The Planning Officer's report clearly refers to the additional information including the affidavits supplied by the referrer in support of his case.
- The Planning Authority's position remains to be true and the documents and statements submitted only establish that an activity was carried out on the site, which had planning permission.
- Notwithstanding the submissions, it is not considered that the 1971 permitted uses as print workshop falls with the definition of class 1, 2, 3 and 6 of Part 4 of the Second Schedule of the Planning and Development Regulations but is with Class 4 (light industrial building).
- It has not been established that the authorised use involved services principally to visiting members of the public as required in class 2.

- The development in question does not therefore come within the scope of Article 10 (6) of the Regulations as amended by the 2018 Regulations.
- It is not considered that the additional documentation submitted by the appellant demonstrate the operation of the original print workshop was *provided principally to visiting member of the public.*

### 7.3. Owner/ occupier's response

7.3.1. The referrer is the owner.

## 8.0 Statutory Provisions

### 8.1. Planning and Development Act, 2000

Section 2, the following interpretation of "works":

*"...includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal....."*

Section 3 (1), states the following:

*"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) (a)- (i) set out what is exempted development for the purpose of the Act

Section 4 (2) (a) states-

*"The Minister may by regulations provide for any class of development to be exempted development for the purpose of the Act"*

### 8.2. Planning and Development Regulations, 2001

#### Part 2 EXEMPTED DEVELOPMENT

#### Article 5 Interpretation for this Part

*"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*

*"industrial process" means any process which is carried on in the course of trade or business, other than agriculture, and which is-*

*(a) for or incidental to the making of any article or part of an article, or*  
*(b) for or incidental to the altering, repairing, ornamenting, finishing, cleaning, washing, packing, canning, adapting for sale, breaking up or demolition of any article, including the getting, dressing or treatment of minerals, and for the purposes of this paragraph, "article" includes-*

*(i) a vehicle, aircraft, ship or vessel, or*

*(ii) a sound recording, film, broadcast, cable programme, publication and computer program or other original database;*

*'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 "wine" is defined as any intoxicating liquor which may be sold under a wine retailer's off-licence (within the meaning of the Finance (1909-1910) Act, 1910), 10 Edw. 7. & 1 Geo. 5, c.8,*

*(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 or intoxicating liquor for consumption off the premises except under paragraph (d), or any use to which class 2 or 3 of Part 4 of Schedule 2 applies;*

Article (6) Exempted development Sub Article (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 of the said Part 1 opposite the mention of that class in the said column 1.”*

Article 10 - Change 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.*

**8.3. Planning and Development (Amendment) Regulations, 2018**

These regulations amended Article 10 of the 2001 regulations (above) and introduced sub-article 6. Of particular relevance in the subject case are the following-

*“(6) (b) This sub-article relates to a proposed development, during the relevant period, that consists of a change of use to residential use from Class 1, 2, 3 or 6 of Part 4 to Schedule 1.*

*(c) Notwithstanding sub-article (1), where in respect of a proposed development referred to in paragraph (b)—*

*(i) the structure concerned was completed prior to the making of the Planning and Development (Amendment) (No. 2) Regulations 2018,*

*(ii) the structure concerned has at some time been used for the purpose of its current use class, being Class 1, 2, 3 or 6, and*

*(iii) the structure concerned, or so much of it that is the subject of the proposed development, has been vacant for a period of 2 years or more immediately prior to the commencement of the proposed development, then the proposed development for residential use, and any related works, shall be exempted development for the purposes of the Act, subject to the conditions and limitations set out in paragraph (d).*

*(d) (i) The development is commenced and completed during the relevant period.*

*(ii) Subject to sub-paragraph (iii), any related works, including works as may be required to comply with sub-paragraph (vii), shall affect only the interior of the structure and shall not materially affect the external appearance of the structure so as to render its appearance inconsistent with the character of the structure or of neighbouring structures.*

*(iii) Any related works for the alteration of existing ground floor shop fronts shall be consistent with the fenestration details and architectural and streetscape character of the remainder of the structure or of neighbouring structures.*

*(iv) No development shall consist of or comprise the carrying out of works to the ground floor area of any structure which conflicts with any objective of the relevant local authority development plan or local area plan, pursuant to the Part 1 of the First Schedule to the Act, for such to*

*remain in retail use, with the exception of any works the purpose of which is to solely provide on street access to the upper floors of the structure concerned.*

*(v) No development shall consist of or comprise the carrying out of works which exceeds the provision of more than 9 residential units in any structure.*

*(vi) Dwelling floor areas and storage spaces shall comply with the minimum floor area requirements and minimum storage space requirements of the “Sustainable Urban Housing: Design Standards for New Apartments — Guidelines for Planning Authorities” issued under section 28 of the Act or any subsequent updated or replacement guidelines.*

*(vii) Rooms for use, or intended for use, as habitable rooms shall have adequate natural lighting.*

*(viii) No development shall consist of or comprise the carrying out of works to a protected structure, as defined in section 2 of the Act, save where the relevant planning authority has issued a declaration under section 57 of the Act to the effect that the proposed works would not materially affect the character of the structure or any element, referred to in section 57(1)(b) of the Act, of the structure.*

*(ix) No development shall contravene a condition attached to a permission under the Act or be inconsistent with any use specified or included in such a permission.*

*(x) No development shall relate to any structure in any of the following areas:*

*(I) an area to which a special amenity area order relates;*

*(II) an area of special planning control;*

*(III) within the relevant perimeter distance area, as set out in Table 2 of Schedule 8, of any type of establishment to which the Major Accident Regulations apply.*

*(xi) No development shall relate to matters in respect of which any of the restrictions set out in subparagraph (iv), (vii), (viiA), (viiB), (viiC), (viii) or (ix) of article 9(1)(a), or paragraph*

*(c) or (d) of article (9)(1), would apply.*

*(xii) No development shall consist of or comprise the carrying out of works for the provision of an onsite wastewater treatment and disposal system to which the code of practice made by the Environmental Protection Agency pursuant to section 76 of the Environmental Protection Agency Act 1992 relates and entitled Code of Practice — Wastewater Treatment and Disposal Systems Serving Single Houses together with any amendment to that Code or any replacement for it.*

#### Part 4 of Schedule 2- Exempted development- Classes of Use

##### CLASS 1

*Use as a shop.*

##### 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),*

*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 this Schedule applies*

##### CLASS 4

*Use as a light industrial building.*

##### CLASS 6

*Use as a residential club, a guest house or a hostel (other than a hostel where care is provided).*

## **8.4. Referrals Database**

- 8.4.1. I have searched and examined the Board's database of referrals and note the only declaration which I have discovered to be of specific relevance to this case is the decision of the Board under ABP-303154-18 (see planning history in section 5). In this referral the Board have considered the permitted use on site to be a 'light industrial use' and as such the change of use of the structure to residential use is development and is not exempted development.

## **9.0 Assessment**

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

- 9.1.1. In 1971 planning permission was granted for the subject building with its use as a printing workshop and store. This is clearly a commercial use. Accordingly, the question that arises in the subject case can be summarised as follows- Is the change of use of the subject structure permitted as a printing workshop and store to a residential use exempted development?
- 9.1.2. Section 3 (1) of the Act refers to the meaning of "development", except where the context otherwise requires, as 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.
- 9.1.3. The change of use of a printing workshop and store to that of a residential use clearly has different patterns of activity, and impacts on the pattern of development in the vicinity. This in my opinion is a material change of use. Accordingly, I am satisfied that the proposal is 'development' within the meaning of the Act.

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

- 9.2.1. The referrer has sought this referral because it is his view that the permitted development on this site should be considered as Class 1 or Class 2 use as set out in Part 4 Exempted Development Classes of Use of the Planning and Development Regulations (PDR) 2001 (as amended). On this basis they believe a change of use to residential use would be exempted development under Article 6 (c) (ii) of the PDR 2018 (subject to other restrictions).



- 9.2.2. Class 1 provides for *'Use as a shop'*. Shop is defined in the PDR 2001 and set out in section 8.2 above. I note the referrer's contention of the use of the word 'Store' in the grant of permission under 250/71. I do not accept that the use of this word implies there was a 'retail' use on the site. I have reviewed the plan drawing for 250/71 and given the likely space requirements for a printing workshop and associated machinery at that time, there is nothing to suggest there was a reasonable floor area for a customer to browse products for sale, as a reasonable person would expect to do in a retail unit or 'store' as suggested by the referrer. I am satisfied that based on the likely nature of operations on the site that the Printer Workshop does not fall within Class 1.
- 9.2.3. Class 2 (with some exceptions) facilitates use for the provision of financial services, professional services, or any other services where the services are provided principally to visiting members of the public. Based on the information submitted it appears the referrer's case is based mainly around *'other service'* where the *'services are provided principally to visiting members of the public'*.
- 9.2.4. The Planning Authority have determined the permitted use of a Printing Workshop and store to fall within Class 4- Use as a light industrial building. One of the main factors in this regard, was the Board's determination under ABP-303154-18 where the Board declared the permitted use on the site to fall under Class 4- Use as a light Industrial Building.
- 9.2.5. An interpretation of 'light industrial building' is provided in the PDR 2001 as set out in section 8.2 above. Having regard to the location of the structure behind existing residential properties I am satisfied the 250/71 planning application permitted a light industrial building and its use on this site (in the context of the 2001 legislation).
- 9.2.6. This interpretation of Light Industrial Building, refers to the processes carried out in the course of trade or business. An interpretation for *'industrial process'* is subsequently provided (Section 8.2 above) and includes *'for or incidental to the making of any article or part of an article'*. 'Article' is then defined and clearly includes *'publication'* amongst other listed things.
- 9.2.7. A reasonable understanding of 'publication', and in particular at the time the business operated, would in my opinion include for such items as leaflets, booklets, newsletters, pamphlets, business cards and other card types etc. Many of these

things appear to be in keeping with the products produced by the printing workshop and store as indicated in the documentation submitted in support of the referrers case (discussed further below). I am, therefore satisfied that the development permitted under planning application 250/71 falls within the interpretation of Light Industrial Building and Industrial Processes as per the PDR 2001 (as amended).

9.2.8. Accordingly, I am satisfied the permitted use does not fall within Class 1 or Class 2 as set out in Part 4 Exempted Development Classes of Use of the Planning and Development Regulations (PDR) 2001 (as amended).

9.2.9. In effect, it appears that the referrer's contention is that the Board under ABP-303154-18 and subsequently the Planning Authority in the current referral are incorrect in their original determination of Light Industrial Building. The referrer has submitted significant documentation to demonstrate that the proposal can in fact be considered a Class 1 or Class 2 use in accordance with the PDR 2001 (as amended).

9.2.10. The referrer has submitted the following-

- Sworn declarations from
  - Sean Hosty, the owner and operator of the original printing service outlet which traded as Hosty Lithos Printers and the person who received planning permission for the use under 250/71.
  - Catherine Forde, a key employee of the printing business detailing the nature and operations of the business including production of wedding albums, invitation and thank you cards, In Memoriam and acknowledgment cards etc. A long list of customers is supplied.
  - Margaret Brennan, operator of a guest house and customer of the business.
  - Joe Healy, carried out electrical work for the development and used the printers for his own business.
- Pages from the Galway Advertiser dated 21/10/71, 08/02/73, 25/08/77, 07/09/78, 10/11/83 and the 24/09/87 detailing the establishment of the printing firm, recruitment notices for the business and congratulation and well wishes notices from the business.

- Letters of support from previous customers of the business including a Landscaping company, an Accountants and a Heating Company.
- Other Letters of support.

9.2.11. In the original application to the Planning Authority the referrer acknowledges that the business operated in a pre-internet/home printing age. The referrer also states that *'it is difficult to envisage how the printing business could have survived without relying principally on a regular footfall from visiting members of the public'*.

9.2.12. I have reviewed the documentation submitted in support of the application. In particular I note that the list of customers of the business and the letters submitted in support of the subject proposal. Based on this information it is clear to me that the majority of this custom would appear to be to other commercial uses/businesses that required printing supplies etc. Such purchases were likely to have been in large quantities or in bulk and for the nature of their own businesses. There is very little, if any, evidence on file to suggest a member of the public (in an ordinary sense of the word) would visit the site and complete a transaction of individual or small quantities for their own personal use, as one would reasonably expect for a Class 1 or 2 use as set out in the PDR 2001 (as amended).

9.2.13. I accept the documentation, including the sworn declarations that have been submitted in support of this application and that they have been made in good faith. However, I do not accept, based on the information submitted, that the referrer has established that the majority of the original customers to the Printer Workshop business were availing of services *'provided principally to visiting members of the public'* in the spirit of the Planning and Development legislation and ordinary meaning and sense of the word 'public'. Notwithstanding the type of customers of the business it would appear to me that the primary source of income derived from the business was from private businesses rather than the public (in the ordinary sense of the word). In this regard, one must have substantial regard to the time period when the application was made and the nature of such businesses at that time which is clearly very different from the nature of such businesses today.

9.2.14. The referrer draws reference to grants of permission 86/740 and 89/776 by the Planning Authority for similar type printing developments. While I have considered the case put forward in this regards, I fail to see how they are relevant for the

purposes of this section 5 referral which is site specific assessment based on the planning and development legislation.

- 9.2.15. The referrer has not submitted any information or evidence to show that the permitted structure/use on this site would not fall within the interpretation of 'Light Industrial Building', carrying out an 'Industrial Process' and making of any Article including 'publication'. In the absence of same it is clear to me that this is the appropriate class use for the permitted development at this site.
- 9.2.16. As such and in accordance with the Board's declaration under ABP-303154-18, I consider the permitted structure and use on site to be Class 4- Use as a light industrial building under Part 4 Exempted development- Classes of Use as set out in the PDR 2001 (as amended).
- 9.2.17. Article 10, Sub-article 1 of the PDR 2001 (as amended by the 2018 regulations), provides for *'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'* under certain circumstances. Sub-article 6 details that notwithstanding sub-article 1 *'the structure concerned has at some time been used for the purpose of its current use class, being Class 1, 2, 3 or 6.* It is my opinion that, the subject structure on site cannot therefore avail of this exemption.
- 9.2.18. There is no provision of the PDR 2001, or provision of the amendments to the PDR in 2018 (Article 10 (6) (b)) or any other provision of any other amendment to the regulations provides a planning exemption for the class 4 use specified in Part 4 of Schedule 2 to residential use. The proposal is therefore not exempted development.

### 9.3. **Restrictions on exempted development**

- 9.3.1. As I have determined that the proposal is development and is not exempted development, it is considered that the restrictions on exempted development are not relevant in this context.

## 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 commercial use to a residential use is or is or is not development, or is or is not exempted development:

**AND WHEREAS** John Lawless requested a declaration on this question from Galway City Council and the Council issued a declaration on the 26<sup>th</sup> day of August 2020 stating that the matter was development and was not exempted development:

**AND WHEREAS** John Lawless referred this declaration for review to An Bord Pleanála on the 22<sup>nd</sup> day of September 2020:

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

- (a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended,
- (b) Articles 5, 6, and 10 of the Planning and Development Regulations, 2001, as amended by the Planning and Development (Amendment) Regulations 2018,
- (c) Classes 1, 2, 3, 4 and 6 of Part 4 of the Second Schedule to the Planning and Development Regulations 2001, as amended,
- (d) the planning history of the subject site- planning permission register reference number 250/71, which was the for the erection of a printing workshop and store on the subject premises and in particular ABP-303154-18 whereby it was determined the authorised use on the site is within Class 4 (that is light Industrial use) of the 2001 Regulations.

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

- (a) the authorised use of the subject premises, having regard to the planning history of the subject site, is as a printing workshop and store to which planning permission register reference number 250/71 relates,
- (b) the change of use of the subject structure from printing workshop and store to residential use is a change of use that is material in planning terms, having regard to different patterns of activity, and impacts on the pattern of development in the vicinity, and is, therefore, a material change of use and is development,
- (c) the authorised use (as a printing workshop and store), based on the planning history, is not a use within the scope of Classes 1, 2, 3 and 6 of Part 4 of the Second Schedule to the Planning and Development Regulations, but is within the scope of Class 4 (that is, use as a light industrial building), and in particular does not represent use for professional or other services under Class 2 of Part 4, and it has not been established that the use authorised under planning permission register reference number 250/71 involved services provided principally to visiting members of the public, as is a requirement of Class 2,
- (d) the development in question, not being a change of use from Classes 1, 2, 3 or 6 of Part 4 of the Second Schedule to residential use, would not, therefore, come within the scope of Article 10 (6) of the Planning and Development Regulations, 2001, as amended by the Planning and Development (Amendment) Regulations 2018, and
- (e) there are no other provisions, in the Planning and Development Act 2000, as amended, or in the Planning and Development Regulations, 2001, as amended, whereby such development would be exempted development, and the proposed material change of use in this instance is, therefore, not 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 commercial use to residential use is development and is not exempted development.

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Adrian Ormsby  
Planning Inspector

23<sup>rd</sup> of December 2020