



An  
Bord  
Pleanála

## Inspector's Report ABP-310374-21

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<b>Question</b>	Whether the change of use of an old shop to a dwellinghouse is or is not development and is or is not exempted development.
<b>Location</b>	Togher's Shop. Granville Park, St Patrick's Road, Co Limerick
<b>Declaration</b>	
Planning Authority	Limerick City and County Council
Planning Authority Reg. Ref.	EC2721
Applicant for Declaration	Derek Le Gear.
Planning Authority Decision	Is development and is exempted development
<b>Referral</b>	
<b>Referred by</b>	Derek Le Gear.
<b>Owner/ Occupier</b>	Merval Development
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	16 <sup>th</sup> September 2021.
<b>Inspector</b>	Bríd Maxwell

## **1.0 Introduction**

1.1 This referral is a request by Derek Le Gear for a review, under Section 5(4) of the Act, in respect of the development comprising the change of use of a property formerly Togher's Shop, Granville Park, St Patrick's Road Limerick from shop to a residence. The background to this case is that a notification of intention to avail of Article 6(a) Exemption was submitted to Limerick City and County Council on 11<sup>th</sup> May 2020. A declaration issued by Limerick City and County Council on 25<sup>th</sup> May 2020. Mr Derek Le Gear referred the question of whether the change of use from shop to a house is exempted development or not. Following investigation of the matter, the Planning Authority issued a declaration on 26<sup>th</sup> May 2021 declaring that the change of use of an old shop to a dwellinghouse at Togher's Shop, Granville Park, St Patrick's Road, Limerick comes within the scope of exempted development under Section 2 & 3 of the Planning and Development Act 2000, (as amended) and Article 10(6) (a) of the Planning and Development Regulations 2001, (as amended). Therefore, the works would constitute development which is exempted development.

## **2.0 Site Location and Description**

2.1. This referral relates to a premises formerly Togher's Shop located at Granville Park, St Patrick's Road in Limerick City. The site is located within a well-established residential area and is occupied by a single storey flat roofed structure 134m<sup>2</sup> which was formerly in retail use (ceased December 2012) and has now been fully converted to residential use. The premises is adjoined to the north and west by residential properties and an open space to the east. I note that the premises was inspected externally. Photographs of referral site are appended.

## **3.0 The Question**

3.1. The question referred is whether the change of use of the property from retail to residential use is or is not development and is or is not exempted development.

## 4.0 Planning Authority Declaration

### 4.1. Declaration

Limerick City and County Council issued declaration on 26<sup>th</sup> May 2021 declaring that the change of use of an old shop to a dwellinghouse at Togher's shop, Granville Park, St Patrick's Road, Limerick is development and is exempted development.

### 4.2. Planning Authority Reports

#### 4.2.1. Planning Reports

Report of development officer considers the work to be exempt development under Article 106(a) of the Planning and Development Regulations 20021 as amended.

## 5.0 Planning History

**00/770266** Refusal of permission issued on 23/3/2001 in respect of a proposal to construct a dormer style extension to shop consisting of toilet, store, yard shop to ground floor and office, toilets cloaks kitchen storage to dormer area.

## 6.0 Policy Context

### 6.1. Development Plan

Limerick City Development Plan 2010-2016 as amended and extended. The site is zoned Residential R2.

### 6.2. Natural Heritage Designations

None

### 6.3 Environmental impact Assessment

6.3.1 The 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

7.1.1 The referral is made by Derek Le Gear, 15 Granville Park who sets out the following case:

- Togher's shop was built as a neighbourhood footsore. Its closure was a great loss to the community. It lay empty, fell into disrepair and became an eyesore in the community.
- Renovation of the structure for residential use not is consistent with proper planning and sustainable development of the area.
- Works to the exterior of the building are not limited. Extensive works carried out and the flat roof with new gutters were installed with no outlet. Water streams across concreted area and pools in the resident's parking area.
- No effort has been made to blend the development into the surrounding area.
- No boundary wall gates or resident parking.
- Concern that rooms within the house have no windows or natural light.
- It would be more appropriate to demolish the building and construct a dwelling in keeping with established adjoining properties or failing that to provide a pitched roof, boundary wall, garden and parking and windows that match the surrounding houses. Similar developments are noted.
- Photographs and drawings are appended to the referral to elucidate the case made.

### 7.2. Planning Authority Response

The Planning Authority did not respond to the referral.

### 7.3. **Owner/ occupier's response**

The owner / occupier did not respond to the referral.

## 8.0 **Statutory Provisions**

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

Section 2, provides 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 of use of any structures or other land."

Section 4(1)(a) – (i) sets 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 purposes of the Act."

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

Part 2 Exempted Development

Article 5 Interpretation for this Part.

'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 use
- (e) For the display of goods for sale
- (f) For the hiring out of domestic or personal goods or articles.
- (g) As a launderette or dry cleaners
- (h) 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 ab 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 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 2 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 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 a change of use consists of the resumption of a use which is not unauthorised and which has not been abandoned.

### **Planning and Development (Amendment) Regulations, 2018**

These regulations amended Article 10 of the 2001 regulations (above) and introduced sub article 6.

(6)(a) In this sub article

‘habitable room’ means a room used for living or sleeping purposes but does not include a kitchen that has a floor area of less than 6.5 square metres;

‘relevant period’ means the period from the making of these Regulations until 31 December 2021.

(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 5

Use as a wholesale warehouse or as a repository.

#### CLASS 6

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

## 9.0 **Assessment**

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

- 9.1.1. The question to be determined in this Section 5 reference is whether the change of use of an old shop to a dwellinghouse is or is not development or is or is not exempted development. Section 3(1) of the Act defines development as “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.
- 9.1.2. It is evident that change of use of a shop to residential use gives rise to different patterns of activity and varied impacts on the pattern of development in the vicinity. It is therefore a material change of use and therefore constitutes “development” within the meaning of the Act. The related works further fall within the definition of development. The question for determination by the Board is whether the said development is, or is not, exempted development.

## 9.2. Is or is not exempted development

- 9.2.1. Having established that the proposal involves development it remains to be determined whether or not such development constitutes exempted development for the purposes of the Act. The referrer contends that extensive works were carried out to the property and that it is visually inappropriate and out of place and that it would be more appropriate to demolish the building and construct a new dwelling in keeping with adjoining properties or failing that to provide a pitched roof, boundary walls and windows to match adjoining properties.
- 9.2.2. The Planning Authority for its part deemed the development to fall within the scope of Article 10 6(a) of the Planning and Development Regulations 2001 as amended and noted that notification of the intention to avail of Article 6(a) exemption was submitted to Limerick City and County Council on 11<sup>th</sup> May 2020 and an exemption certificate issued on 25<sup>th</sup> May 2020.
- 9.2.3 The referrer takes issue with the visual character of the building and expresses a preference with regard to the alternative development potential of the site. Such possibilities are not relevant to the Board's orderly consideration in terms of the determination of this referral.
- 9.2.4 Article 10(6)(b) of the Planning and Development Regulations provides for a change of use to residential use from Class 1, 2, 3 or 6 of Part 4 to Schedule 1. I am satisfied that the development comprises a change of use from Class 1 – “use as a shop”. The change falls within the relevant period being from the period of the making of the regulations 8<sup>th</sup> February 2018 until 31<sup>st</sup> December 2021. I am satisfied that the structure was completed prior to the making of the Planning and Development (Amendment)(No 2) Regulations, 2018, the structure had been used for the purpose of Class 1 shop use, and the structure had been vacant for a period of 2 years or more (trading ceased circa December 2012) therefore the proposed development for residential use and any related works is exempted development for the purposes of the Act. As regards conditions and limitations set out in paragraph (d) I am satisfied that the development complies with said conditions and limitations. Works commenced and were completed during the relevant period (d)(i). Based on the submitted photographic evidence the related works to the structure are minor in nature and largely renovation works and do 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 (d)(ii). The alterations to the shop front are consistent with the fenestration detail and architectural and streetscape character of neighbouring structures (d)(iii). I note that there is no relevant local authority objective for the property to remain in retail use (d)(iv). I note that the building is provided as a single dwelling therefore not exceeding 9 units. (d)(v). As regards limitation (d)(vi) and (d)(vii) internal layout details have not been provided and the property was not inspected internally however as the unit comprises one single dwelling of 134m<sup>2</sup>. Details submitted with notification of intention to avail of Article 6(a) Exemption indicated a storage area of 9.15m<sup>2</sup>. Four bedrooms and living room have natural light. I note that the provision of an exemption does not remove the requirement to comply with the building regulations or any other code. The structure is not a protected structure.(d)(viii) and the proposal would not contravene a condition of a permission under the Act (d)(ix) and does not relate to special amenity area or area of special planning control (d)(x). No restrictions under Article 9(1) apply and limitation (d)(xii) is not relevant to the case.

9.2.5 I am satisfied that the change of use of Togher's Shop, Granville Park complies with the provisions of Article 6(a) of the Planning and Development Regulations 2001-2021 and is development and is exempted development.

### **9.3 Restrictions on Exempted Development**

9.3.1 I do not consider that there are any restrictions on development that are applicable in this case.

## 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 of the premises formerly Togher's Shop, Granville Park, St Patrick's Road, Limerick to a residential dwelling is or is not development or is or is not exempted development:

**AND WHEREAS** Mr Derek Le Gear requested a declaration on this question from Limerick City and County Council and the Council issued a declaration on the 26th day of May, 2021 stating that the matter was development and was exempted development:

**AND WHEREAS Mr Derek Le Gear** referred this declaration for review to An Bord Pleanála on the 28<sup>th</sup> day of May 2021:

**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 to the Second Schedule to the Planning and Development Regulations 2001, as amended,
- (d) The documentation submitted with the file and submissions made by the parties, including the planning authority

(e) the pattern of development in the area:

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

- (a) The established use of the subject premises is as a shop.
- (b) The change of use of the subject structure from shop to residential dwelling 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 therefore constitutes a material change of use which is development,
- (c) The previous use as a shop is within the scope of Class 1 of Part 4 of the Second Schedule to the Planning and Development Regulations
- (d) The change of use from class 1 of Part 4 of the Second Schedule to residential use would 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.

**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 of Togher's shop from retail to residential is development and is exempted development.

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Bríd Maxwell  
Planning Inspector

22 December 2021