



An
Bord
Pleanála

Inspector's Report ABP-311197-21

Question

Whether the use of Unit 14, M50 Business Park (Fashion City), Ballymount Road Upper, Dublin 24, for light industrial use involving computer programming is or is not development, and is or is not exempted development

Location

Unit 14, Fashion City, Ballymount Road Upper, Dublin 24

Declaration

Planning Authority

South Dublin County Council

Planning Authority Reg. Ref.

ED21/0051

Applicant for Declaration

Surf Accounts Ltd.

Planning Authority Decision

Is not exempted development

Referral

Referred by

Surf Accounts Ltd

Owner/ Occupier

Surf Accounts Ltd

Observer(s)

None.

Date of Site Inspection

1st April 2022.

Inspector

Lucy Roche

1.0 Site Location and Description

- 1.1. The appeal site comprises a unit (Unit 14) within the Fashion City wholesale distribution warehouse outlet. Access to the site is off the Ballymount Road Upper. Units are arranged around the perimeter of a centrally located agents office and café building. The warehouse units are all two-storey in height and comprise of glazing, a controlled own door access and each unit is finished externally in a silver metal clad material.
- 1.2. To the north and west are other enterprise/business parks, to the east is the Greenhills Road (the R819) and to the south is the M50 Motorway.
- 1.3. Unit 14, located to the southeast of Fashion City, is a two-storey terraced unit with a stated gross floor area of 812sqm. The unit was unoccupied on the date of inspection. Communal parking is available to the front of Unit 14 with additional service parking to the rear.

2.0 The Question

- 2.1. The application relates to the question as to 'whether the use of Unit 14, M50 Business Park (Fashion City), Ballymount Road Upper, Dublin 24, for light industrial use involving computer programming is or is not development, and is or is not exempted development

3.0 Planning Authority Declaration

3.1. Declaration

South Dublin County Council made the following declaration:

That the applicant be informed that the proposed development of light Industrial Use at Unit 14, Fashion City, Ballymount Road Upper, Dublin 24 is development and is not considered to be exempted development under the Planning and Development Act 2000 (as amended) and the Planning and Development Regulations 2001 (as amended) and therefore does require planning permission.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The case planner draws attention to the permitted use of Unit 14 as a showroom and considers that the change of use from showroom to light industrial use involving computer programming is a change of use and is also a material change of use and is therefore development.
- The case planner, having regard to the provisions of the Planning and Development Regulations 2001 (as amended) in particular; Article 10; and Classes 4 and 5 of Part 4 of the second Schedule:
 - The proposed use is light industrial
 - The current permitted use of a showroom fits the definition under Class 5 whereas the proposed light industry use fits the definition under Class 4
 - The proposed change of use does not consist of a change of use within any one of the classes of use specified in Part 4 of Schedule 2 of the Planning and Development Regulations 2001 (as amended) and therefore is not exempted development

3.2.2. Other Technical Reports

- None

4.0 Planning History

4.1. Relevant Planning History - Unit 14 Fashion City:

4.1.1. Planning Authority reference number SD20A/0144 / ABP Reference: 309002-20

Application made by Surf Accounts Ltd for:

(1) Change of use of the existing ground floor (411sq.m) and first floor (401sq.m) levels from previously granted Showroom/Warehouse storage under Reg. Ref. S01A/0173 and further extended under Reg. Ref. SD02A/0514 to office use.

(2) Modifications to the front facade comprising the replacement of the main entrance doors at ground floor level with glazing to match the existing, the installation of a new window to match existing at first floor level and new signage (2sq.m).

(3) Modifications to the rear facade comprising the replacement of the existing roller shutter at ground floor level with fixed curtain wall glazing to match existing and the installation of new fixed louvres to match existing at first floor level.

Permission refused by An Bord Pleanála (2021) for the following reason:

Having regard to the scale of the proposed office development, the material intensification of employee activity proposed in the change of use from warehouse to office use, and in the absence of sufficient high-frequency public transport serving the area, it is considered that the consequential increased demand for car parking generated by the proposed change of use would exacerbate demand within the existing restricted circulation and parking space and lead to a reduction in the viability of the fashion warehouse and showroom outlet function by reason of inadequate car parking provision on the site. The proposed development would, therefore, establish an undesirable precedent for future changes of use and would be contrary to the proper planning and sustainable development of the area.

4.1.2. Planning Authority reference number ED21/0003-

Request for Section 5 declaration on the following:

Whether works to Unit 14 Fashion City, Ballymount Road Upper, comprising the following is or is not exempted development:

Internal works comprising the installation of Internal wall finishes to external walls, protected stairways, lobbies, plant rooms & all associated services installations. Installation of louvres to rear elevation. Repairs to roof finishes including replacement of existing rooflights. Installation of additional windows at first floor level to the front elevation.

Declared Exempt by South Dublin County Council

4.1.3. Planning Authority reference number SD02A/0514-

In 2002, planning permission was granted for the *change of use of 64m² of ground floor warehouse to showroom and the extension of first floor mezzanine showroom area by 328m² and addition of a door to ground floor level at front of warehouse at the 'Fashion City', wholesale distribution and light manufacturing centre for the clothing trade. Previous permission was granted under S01A/0173.*

4.2. **Relevant Planning History – Fashion City (Parent Permission)**

4.2.1. Planning Authority reference number S01A/0173-

In 2001, planning permission was granted for a *wholesale distribution centre for the clothing trade on a circa 3.8 ha. site consisting of two buildings around a central courtyard containing a cafe/reception building (280 sq.m.). The buildings will contain single storey wholesale distribution and light manufacturing units (14289 sq.m.) and three storey ancillary agents offices (1918 sq.m.) all with landscaping, parking and circulation. Access will be by signalised junction on re-aligned Ballymount Road Upper.*

5.0 **Policy Context**

5.1. **Development Plan**

South Dublin County Council Development Plan 2016-2022 The site is zoned EE- Enterprise and employment where the objective is: To provide for enterprise and employment related uses.

5.2. **Natural Heritage Designations**

5.3. The site is not located on or adjacent to any designated site. There are a number of sites within the wider geographical area including:

- Dodder Valley NHA (Site Code 000991) c 2km to the southeast
- Grand Canal NHA (Site Code 002104) c2.7km to the north
- Lugmore Glen NHA (site Code001212) c5km to the southwest

- Glenasmole Valley SAC (site Code 001209) and NHA (Site Code 001209) c5.4km to the south
- South Dublin Bay and River Tolka Estuary SPA (Site Code 004024); south Dublin Bay SAC (Site Code 000210) and South Dublin Bay NHA (Site Code 000210), c 9.5km to the northeast

6.0 The Referral

6.1. Referrer's Case

- This appeal seeks to contest the opinion of the planning authority that the existing use of the subject unit is limited solely to showroom use and that a change to light industrial use will require planning permission.
- The referrer draws attention to the wording of the parent grant of permission, Planning Authority reference number SD01A/0173 for the development within which the subject site is located:

“a wholesale distribution centre for the clothing trade on a circa 3.8 ha. site consisting of two buildings around a central courtyard containing a cafe/reception building (280 sq.m.). The buildings will contain single storey wholesale distribution and light manufacturing units (14289 sq.m.) and three storey ancillary agents’ offices (1918 sq.m.) ...”

- The referrer asserts that the specific inclusion of both uses, *wholesale distribution and light manufacturing*, within the development description sought to ensure that both distribution and manufacturing uses could be carried out within the development without the requirement for further planning permission. They note that no conditions were attached to the subsequent grant permission that precluded the ability for either use to be carried out within any of the units within the development and that no conditions were attached to the parent grant restricting the use of units to that associated with the clothing trade

- The referrer seeks to use Unit 14 for the purpose of light industry, specifically software production or digital manufacturing.
- They contend that Unit 14 has the benefit of planning permission for use as a wholesale distribution or light manufacturing unit. With reference to the definition of industrial process as defined in the Planning and Development Regulations 2001 (as amended), they consider that software production or digital manufacturing equates to a form of computer programming and is therefore a light industrial use. As such they consider that no material change of use will occur – the use of the unit will remain class 4 light industrial. It is the opinion of the referrer that no development has occurred in this instance
- With regard to potential intensification, they consider the key issue to be car parking and in this regard, they note the following:
 - Surf Accounts Ltd, currently employ 43 in their existing office in Tallaght which has a total of 6 parking spaces. No parking issues identified.
 - They operate a hybrid working system with 9 staff members working permanently from home. There is generally 13 staff members in the office at any one time (primarily involved in development – software manufacturing), of these staff only 2 drive.
 - Of the remaining 34, 76% live within a 5km radius of Fashion City.
 - Unit 14 was purposely chosen due to its proximity to the Kingswood Luas stop and Bus Routes along the Greenhills Road. It has double the amount of car parking (12 spaces) compared to current offices in Tallaght and is therefore unlikely to generate material planning issues.
 - It is expected that the 12 spaces available at Unit 14 will be allocated as follows: 4 spaces for client services, 3 for sales, 1 for CEO, 2 for tech/Dev and 2 to be used for hybrid workers. There are no visitors to the office in terms of customers.
- There is not expected to be any material intensification of Unit 14 in terms of material planning implications.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

7.1.1. Section 2

In this Act, except where the context otherwise requires—

“*structure*”: means any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined, and—

(a) where the context so admits, includes the land on, in or under which the structure is situate, and

(b) in relation to a protected structure or proposed protected structure, includes—

(i) the interior of the structure,

(ii) the land lying within the curtilage of the structure,

(iii) any other structures lying within that curtilage and their interiors, and

(iv) all fixtures and features which form part of the interior or exterior of any structure or structures referred to in subparagraph (i) or (iii);

“*use*”: in relation to land, does not include the use of the land by the carrying out of any works thereon;

“*works*”: includes 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.

7.1.2. Section 3.

Development:

- (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.
- (2) For the purposes of subsection (1) and without prejudice to the generality of that subsection—
 - (a) where any structure or other land or any tree or other object on land becomes used for the exhibition of advertisements, or
 - (b) where land becomes used for any of the following purposes—
 - (i) the placing or keeping of any vans, tents or other objects, whether or not moveable and whether or not collapsible, for the purpose of caravanning or camping or habitation or the sale of goods,
 - (ii) the storage of caravans or tents, or
 - (iii) the deposit of vehicles whether or not usable for the purpose for which they were constructed or last used, old metal, mining or industrial waste, builders' waste, rubbish or debris, the use of the land shall be taken as having materially changed.
- (3) For the avoidance of doubt, it is hereby declared that, for the purposes of this section, the use as two or more dwellings of any house previously used as a single dwelling involves a material change in the use of the structure and of each part thereof which is so used.

7.2. Planning and Development Regulations, 2001

7.2.1. PART 2 – Exempted Development

7.2.2. Article 5(1): In this Part -

“industrial building” means a structure (not being a shop, or a structure in or adjacent to and belonging to a quarry or mine) used for the carrying on of any industrial process;

“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

“wholesale warehouse”: means a structure where business, principally of a wholesale nature is transacted, and goods are stored or displayed incidentally to the transaction of that business

7.2.3. **Article 6(1) – Exempted Development**

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.

7.2.4. **Article 9(1) - Restrictions on Exemptions**

Development to which article 6 relates shall not be exempted development for the purposes of the Act— (a) if the carrying out of such development would—

- (i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,

- (viiB) comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site,

7.2.5. **Article 10(1): Changes of Use**

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.

7.2.6. **Schedule 2.**

Part 4 *Exempted Development – Classes of Use:*

Class 4 Use as a light industrial building.

Class 5 Use as a wholesale warehouse or as a repository

8.0 Assessment

8.1. Is or is not development

- 8.1.1. As previously indicated the question before the Board is whether the use of Unit 14, M50 Business Park (Fashion City), Ballymount Road Upper, Dublin 24, for light industrial use involving computer programming is or is not development and is or is not exempted development. The first question before the Board relates to whether or not the use of Unit 14 for light industrial use involving computer programming comprises development.
- 8.1.2. In accordance with section 3 of the Planning and Development 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
- 8.1.3. For clarity, the matter at issue is one of use only. It is the contention of the referrer that use of Unit 14, for light industrial use, involving computer programming is not development. In this regard they seek to contest the opinion of the planning authority that the existing use of the subject site (Unit 14) is limited solely to showroom use. They contend that Unit 14 has the benefit of planning permission for use as a wholesale distribution or light manufacturing unit and therefore that no material change of use will occur.

Established / Authorised Use of Unit 14

- 8.1.4. Having reviewed the planning history associated with Fashion City and Unit 14 I consider the following grants of planning permission to be of relevance:
- Planning Authority reference number SD01A/0173 - Planning permission granted in 2001 for a wholesale distribution centre for the clothing trade on a site of 3.8ha, consisting of two buildings around a central courtyard containing a café/reception building. The buildings will contain single storey wholesale distribution and light manufacturing units and ancillary agents’ offices, with

landscaping, circulation, and parking with access off realigned Ballymount Road Upper.

- Planning Authority reference number SD02A/0514 – Permission granted in 2002 for the change of use of 64 sq. m. of ground floor warehouse to showroom and the extension of the first-floor mezzanine showroom by 328 sq. m. and addition of a door onto the front elevation at ground floor level.

I note that no plans / drawings relating to the above application are available.

8.1.5. In light of the planning history associated within this site, I consider that it is reasonable to assume that Planning Authority reference number SD01A/0173 constitutes the parent permission for the wider “Fashion City” development, allowing of the construction of single storey wholesale distribution and light manufacturing units for the clothing industry. While I note that the referrer draws attention to the absence of any condition requiring that the use of the permitted units to be associated with the clothing trade, such a condition would in my opinion have been superfluous having regard to their intended use being clearly specified in the description of the development and so the question of them not being used in this area did not arise.

8.1.6. Planning Authority reference number SD02A/0514 refers specifically to Unit 14 and relates to the use and extension / modification of same. The permission allows for the use of the structure as a warehouse and showroom. I note from the referrer’s submission that SD02A/0514 was implemented, therefore as no further change of use was permitted in respect of Unit 14, I consider it reasonable to assume that both the permitted and established use of Unit 14 is as a warehouse/showroom which would fall under *Class 5 - Use as a wholesale warehouse or as a repository*.

Proposed Use of Unit 14

8.1.7. In accordance with the details submitted the referrers, Surf Accounts Ltd, are a cloud-based accounting software and customer relationship management business aimed at serving small and medium sized businesses. They state that they are software engineers involved in software production or digital manufacturing which

they consider to be a form of computer programming, falling within the definition of an 'industrial process'.

- 8.1.8. In accordance with the Planning and Development Regulations, "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...",

and for the purposes of this paragraph, "article" includes, a sound recording, film, broadcast, cable programme, publication and computer program or other original database [*my emphasis*].

- 8.1.9. Following consideration of the above I accept that software production / digital manufacturing would comprise the making of a computer programme. While it would appear from the details submitted, that the referrers intended use of Unit 14 is likely to include more office-based operations, such as client services and sales etc I consider that it would be reasonable to consider such uses as incidental to the referrers primary business of software production. Therefore, on the basis of the information submitted, I consider that the applicants use of Unit 14 as proposed, would meet the definition of "industrial process" and would fall under Class 4, of Part 4 of the second Schedule of the Planning and Development Regulations, 2001, (as amended).

Change of Use – Material or Not

- 8.1.10. It is apparent that the proposed change of Unit 14 from its authorised / established use as a warehouse/showroom to a light industrial use constitutes a change of use. The question therefore arises as to whether or not this change of use constitutes a material change of use.

- 8.1.11. In this regard I refer back to the planning history of the site and to the parent permission granted under Planning Authority reference number SD01A/0173, under which planning permission was granted for a wholesale distribution centre for the clothing trade and I note from site inspection that the majority of occupied units within the centre are dedicated to the clothing, footwear and styling industry.

8.1.12. I would be my opinion that the introduction of a light industrial unit for the production of software, a use unrelated to the fashion industry, would deviate significantly from the original intended use of units within Fashion City and would alter the character of the use. I therefore consider that the proposal would entail a material change of use, which would constitute development under Section 3 of the Planning and Development Act, 2000 – 2021.

8.2. **Is or is not exempted development**

8.2.1. Article 10 of the Regulations provides that 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, subject to certain criteria. There is however no class of use under Part 4 of Schedule 2 that would allow for a change of use from warehouse /showroom use to light industrial use as exempted development. Thus, as the change of use in question does not fall under any exemption under this Part, it follows that the criteria relating to this part do not apply in this case

8.2.2. I therefore conclude that the proposed change of use 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 use of Unit 14, M50 Business Park (Fashion City), Ballymount road Upper, Dublin 24, for light industrial use involving computer programming is or is not development, and is or is not exempted development

AND WHEREAS Surf Accounts Ltd requested a declaration on this question from South Dublin Council and the Council issued a declaration

on the 28th day of July, 2021 stating that the matter was development and was not exempted development:

AND WHEREAS Surf Accounts Ltd referred this declaration for review to An Bord Pleanála on the 23rd day of August, 2021:

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

- (a) Sections 2 and 3 of the Planning and Development Act, 2000, as amended,
- (b) Articles 5, 6 ,9 and 10 of the Planning and Development Regulations, 2001, as amended,
- (c) Classes 4 and 5 of Part 4 of the second Schedule of the Planning and Development Regulations, 2001, as amended
- (d) the planning history of the site,
- (e) The information submitted with the referral on 23rd August 2021
- (f) the nature / pattern of development in the area:

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The authorised / established use of Unit 14 M50 Business Park (Fashion City), Ballymount road Upper, Dublin 24, is as a warehouse / showroom and as such lies within Class 5 of Part 4 of Schedule 2 of the Planning and Development Regulations, 2001, as amended.
- (b) The proposed use for light industrial use involving computer programming lies within Class 4 of Part 4 of Schedule 2 of the Planning and Development Regulations, 2001, as amended.

(c) The proposed change of use from a Class 5 Warehouse / Showroom to a Class 4 light industrial use would entail a material change of use

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (X) (x) of the 2000 Act, hereby decides that the use of Unit 14, M50 Business Park (Fashion City), Ballymount road Upper, Dublin 24, for light industrial use involving computer programming is development, and is not exempted development

Lucy Roche
Planning Inspector

28th June 2022