



An  
Bord  
Pleanála

## Inspector's Report ABP-311452-21

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### Question

Whether Change of use as a betting office to use for the provision of a professional fitness service to visiting members of the public is or is not development or is or is not exempted development.

### Location

Unit 7 Tuam Road Retail Centre, Tuam Road, Galway

### Declaration

Planning Authority

Galway City Council

Planning Authority Reg. Ref.

P/DC/3/18/21

Applicant for Declaration

Michael Duffy

Planning Authority Decision

Is not exempted development

### Referral

Referred by

Michael Duffy

Owner/ Occupier

Michael Duffy

Observer(s)

None

Date of Site Inspection

9<sup>th</sup> December 2021

Inspector

Mary Crowley

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## 1.0 Site Location and Description

1.1. The site which is the subject of this referral is located to the north east of the city centre close to the junction between the Tuam Road and the Moneenageisha Road. The site is located in a development of two storey retail warehouse units fronting onto the Tuam Road. Car parking is provided to the front and rear of the building. The site which is the subject of this referral comprises a ground floor unit in the middle of the run of retail units. The floor area of the unit is not stated on file. A set of photographs of the site and its environs taken during the course of my site inspection is attached. These serve to describe the site and location in further detail

## 2.0 The Question

2.1. Whether change of use as a betting office to use for the provision of a professional fitness service to visiting members of the public is or is not development or is or is not exempted development.

## 3.0 Planning Authority Declaration

### 3.1. Declaration

3.1.1. A declaration issued by Galway City Council on the 27<sup>th</sup> August, 2021 stating that it is considered that the proposed development as referenced above is not exempted development for the following reason:

- 1) Change from Class 2 of Part 4 of Schedule 2 of the Planning and Development Regulation 2001 – 2021 that is the use for the provision of;
  - a) Financial Services
  - b) Professional Services (other than health or medical services)
  - c) Any other service (including use as a betting office)

Where the services are provided principally to visiting members of the public.

- 2) As permitted under P1 Ref No 01/248 to use as a professional fitness service to visiting members of the public, Class 11 of Part 4 of Schedule 2 of the Planning and Development Regulations 2001 – 2021 that is;

- a) A theatre
- b) A cinema
- c) A concert hall
- d) A bingo hall
- e) A skating rink or gymnasium or for other indoor sports or recreation not involving the use of motor vehicles or firearms

3.1.2. Concluded that it requires planning permission and is not exempted development.

### 3.2. **Planning Authority Reports**

#### 3.2.1. Planning Reports

- Case Planner – It is clear from the planning history of this building that there is a permitted Class 2 use that is namely a betting office and internet call service. A professional fitness service with visiting members of the public is a Class 11.
  - A change of use from Class 2 to Class 11 requires planning permission and is not exempted development.

#### 3.2.2. Other Technical Reports

- None

## 4.0 **Planning History**

4.1. No planning history was made available with the Referral. Reference is made to the following planning application on the site in the Case Planners report:

- **Reg Ref 01/248** – Permission granted for the change of use from an antique retail unit to a telephone / internet call centre and bookmakers office for ground floor of No 7 and for the erection of two satellite dishes. The front portion of the ground floor was the bookmaker's office element and the rear section was the internet call centre.

4.2. It is noted that there was a previous referral to the Board on the adjoining site that may be summarised as follows:

- **RL3563** – A question of whether a change of use from office (Class 2) to use as a shop is or is not development and is or is not exempted development at Unit 8,

Tuam Road Retail Centre, Tuam Road, Galway was referred to the Board. The Board concluded as follows:

*The change of use from Office (Class 2) to shop is exempted development under Class 14(d) of Part I of the Second Schedule of the P&D Regulations. Contended by the Planning Authority that this exemption did not apply as the proposed change of use would be contrary to the permission for office use which related to office Class 3 and not Office Class 2 (principally for visiting members of the public).*

*The Board determined that neither the application documentation submitted in relation to Ref. 04/926 nor the conditions attached to the grant of permission specify that the permitted office use was restricted to Office Class 3. Also held that the proposed change of use would come within the scope of Class 14(d) and that none of the restrictions on exemptions set out in Article 9(1)(a) of the Regulations are applicable in this case. Specifically it was held that the proposed development would not contravene any conditions attaching to Planning Ref. 04/926 or any other permission.*

*Board held that the proposed change of use was development and that this development was exempted development.*

## **5.0 Policy Context**

### **5.1. Development Plan**

- 5.1.1. The operative plan for the area is the **Galway City Development Plan 2017-2023**. The site is zoned Light Industrial Commercial where the objective is *to provide for light industry and commercial uses other than those reserved in the CC zone*.

### **5.2. Natural Heritage Designations**

- 5.2.1. The site is not located within a designated Natura 2000 site.

## 6.0 The Referral

### 6.1. Referrer's Case

6.1.1. A referral was received from Michael Duffy on the 22<sup>nd</sup> September 2021; summarised as follows:

- The issue turns on whether the professional fitness service provided can be considered professional services (other than health or medical services).
- This service involves remote instruction to customers who exercise in individual pods within the building.
- The Board is asked to determine the following:

*Is the conversion from permitted use as a betting office to use for the provision of a professional fitness service to visiting members of the public development, and if so is it exempt development.*

6.1.2. The Section 5 Request submitted to Galway City Council set out the following.

- There is no proposed change to the floor area
- The existing use was permitted under Reg Ref 01/248
- Non-residential development
- No material alterations proposed to permission Reg Ref 01/248
- Current permitted use in the building is as a telephone / internet call centre and bookmakers office (ground floor)
- Unit 7 is confined to the ground floor

### 6.2. Planning Authority Response

6.2.1. None

### 6.3. Further Responses

6.3.1. None

## 7.0 Statutory Provisions

### 7.1. Planning and Development Act, 2000

7.1.1. Section 3(1) of the Act defines “development” as follows:

*In this Act, “development” means, except where the context otherwise requires, the carrying out any works on, in, over or under land or the making of any material change in the use of any structures or other land.*

7.1.2. Section 4(2) of the Act provides that the Minister may, by regulations, provide for any class of development to be exempted development. The principle regulations made under this section are the Planning and Development Regulations, 2001.

### 7.2. Planning and Development Regulations, 2001

7.2.1. Article (6)(1) states that

*Subject to Article 9 development of a class specified in Column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 2.*

7.2.2. Class 2 of Part 4 of the Second Schedule states as follows:

*Use for the provision of –*

*(a) Financial services*

*(b) Professional services*

*(c) Any other services (including use as a betting office)*

*Where the services are provided principally to visiting members of the public.*

7.2.3. Class 11 of Part 4 of the Second Schedule states as follows

*Use as—*

*(a) a theatre,*

*(b) a cinema,*

*(c) a concert hall,*

*(d) a bingo hall,*

*(e) a skating rink or gymnasium or for other indoor sports or recreation not involving the use of motor vehicles or firearms*

## 8.0 Assessment

### 8.1. Is or is not development

- 8.1.1. The subject of this referral relates to a change of use from betting office to professional fitness service to visiting public. The definition of development at Section 3(1) of the Act provides that a material change of use of a structure or land would comprise development within the meaning of the Acts. In the case of the proposed change of use from permitted betting office to professional fitness service to visiting public it is my view that the character of the use would likely alter. In addition, when considered, the materiality of the proposed change in the context of the proper planning and sustainable development of the area there are in my opinion potential issues relating to frequency of visits, visitor turnover, hours of operation and traffic issues which may arise. Having regard to these considerations, it is my opinion that the proposed change of use from office use to use for professional fitness service to visiting public would constitute a material change in the use of this structure such that it would comprise development.

### 8.2. Is or is not exempted development

- 8.2.1. The contention of the referrer is that the change of use from permitted betting office to a professional fitness service to visiting public would constitute an exempted use as a fitness service use can be considered to be professional services (other than health or medical services). Therefore, as both a betting office use and professional services uses fall within Class 2 of Part 4 of the Second Schedule of the Planning Regulations they change of use is exempt.
- 8.2.2. A professional fitness use for the visiting public is not a professional service for the purposes of a Class 2 use. Such a use falls under Class 11(e) of Part 4 of the Second Schedule as follows:

*a skating rink or **gymnasium or for other indoor sports or recreation** not involving the use of motor vehicles or firearms (emphasis added)*



8.2.3. Development consisting of a change of use within one the classes is exempt development. However the change of use from permitted betting office to a professional fitness service to visiting public is a change of use from Class2 to Class 11 and therefore is not exempt development.

### 8.3. Restrictions on exempted development

8.3.1. I have reviewed the other limitations on exemptions set out at Article 9 (Restrictions on Exemptions) of the Planning and Development Regulations as well as the provisions of Sections 4(4) (Exempted Development) of the Act and I do not consider that there are any other restrictions on exempted development that are applicable in this case.

## 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 change of use as a betting office to use for the provision of a professional fitness service to visiting members of the public is or is not development or is or is not exempted development.

**AND WHEREAS** Michael Duffy requested a declaration on this question from Galway City Council and the Council issued a declaration on the 27<sup>th</sup> day of August 2021, stating that the matter was development and was not exempted development:

**AND WHEREAS** Michael Duffy referred this declaration for review to An Bord Pleanála on the 22<sup>nd</sup> day of February 2021.

**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)(a) of the Planning and Development Act, 2000, as amended,
- (d) Article 6(1) and Article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (e) Class 2 of Part 4 of the Second Schedule of the Planning and Development Regulations, 2001, as amended,
- (f) the planning history of the site,

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

- a) Permission was granted under Galway City Council Reg Ref 01/248 for the change of use from an antique retail unit to a telephone / internet call centre and bookmakers office for ground floor of No 7 and for the erection of two satellite dishes.
- b) The proposed change of use would constitute development in accordance with Section 3(1) of the Planning and Development Act, 2000 (as amended) as the proposed change of use would be material.
- c) The proposed change of use would not constitute exempted development under Class 2 of Part 1 of the Second Schedule of the Planning and Development Regulations, 2001 (as amended).

**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 betting office (Class 2) to Class 11 is development and is not exempted development.

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**Mary Crowley**

**Senior Planning Inspector**

**10<sup>th</sup> December 2021**