



An  
Bord  
Pleanála

## Inspector's Report ABP-312025-21

### Question

Whether the change of use of Unit 17, Kilmore Business Park, Dublin Road, Cavan, from “office ancillary” to motor sales facilities to “office use” to be occupied by HSE administrative services is or is not development and is or is not exempted development.

### Location

Unit 17, Kilmore Business Park, Dublin Road, Cavan.

### Declaration

Planning Authority	Cavan County Council
Planning Authority Reg. Ref.	281
Applicant for Declaration	Donal Watters
Planning Authority Decision	Not exempted development

### Referral

Referred by	Donal Watters
Owner/ Occupier	Donal Watters
Observer(s)	None

**Date of Site Inspection**

27<sup>th</sup> January 2022

**Inspector**

Hugh D. Morrison

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## 1.0 Site Location and Description

- 1.1. The site is located in the Kilmore Business Park, which lies on the northern side of the N3 and between two roundabouts on this national primary road, which feature on its eastern approach to Cavan Town.
- 1.2. The site has a 150m frontage onto the N3 and it is accessed off this national primary road via the road network, which serves the Kilmore Business Park. Access points to the site are sited in the north-eastern boundary towards the northern corner of the site and in the north-western boundary towards its south-western extremity. This site extends over an area of 0.64 hectares. It accommodates a centrally sited complex, which comprises buildings denoted as East and West. These buildings accommodate 3 car showroom facilities orientated towards the N3 which are surrounded by circulation space and car parking spaces. The rectangular portion of the East Building in the northernmost quadrant of the site has an underground car park, ground floor service workshops and upper floor offices at first floor level and partly at second and third floor levels.
- 1.3. The upper floor offices are essentially the subject of this referral.

## 2.0 The Question

- 2.1. The question asked by the referrer is the following one:

Whether the change of use of Unit 17, Kilmore Business Park, Dublin Road, Cavan, from “office ancillary” to motor sales facilities to “office use” to be occupied by HSE administrative services is or is not development and is or is not exempted development.

## 3.0 Planning Authority Declaration

### 3.1. Declaration

The Planning Authority made the following declaration:

Having regard to:

- (i) The Planning and Development Act 2000, as amended,

- (ii) The Planning and Development Regulations 2001, as amended,
- (iii) Classes 2 and 3 of Part 4 to Schedule 2 of the Regulations, and
- (iv) Article 10 of the Regulations,

The Planning Authority considers that the change of use of the first to third floors of the East Building from “ancillary office use” to use by the HSE for offices is not exempted development.

## 3.2. Planning Authority Reports

### 3.2.1. Planning Reports

The case planner draws attention to the description of the use of the first and third floors of the East Building in application 05/876 and the proposed use of these floors by the HSE. She states that, under Article 10(1)(c) of the Regulations, the proposed use would be inconsistent with the use included in this description.

The case planner also draws attention to Condition No. 1 attached to the permission granted to application 05/876. She states that, under Article 10(1)(b) of the Regulations, this Condition would be contravened, as it requires that the development be carried out in accordance with the plans and particulars submitted with the application, a requirement that the proposed use would be incapable of fulfilling.

### 3.2.2. Other Technical Reports

None

## 4.0 Planning History

The parent permission for the site is application 05/876. The description of development in this application was as follows:

*construct new motor sales & service facility, comprising 2 no. separate buildings (1 no. 2-storey to west & 1 no. 5-storey to east) over a single storey basement car storage area - west building with an overall area of 418m<sup>2</sup>, consists of one motor sales with mezzanine floor sales office, toilets & anc accomm with overall height of 7.05m - east building overall floor area of 2,690m<sup>2</sup> consists of 2 motor sales facilities (one with mezzanine floor sales offices), service workshop, parts dept, anc.*

office & toilet accomm on 3 floors with assoc ext. terraces & roof level plant room. Overall height to roof level plant room 18.125m. Basement car storage (incl ramp, wash & valeting) shall have floor area of 1,784m<sup>2</sup>. Externally-development consists of staff, customer & display surface parking areas, free-standing & attached illum signage, 9 flag poles, landscaping & treatment of site boundaries, access road & assoc vehicular entrances from ex business park, assoc drainage & anc works, Site 17

Permission was granted on 1<sup>st</sup> September 2005 subject to 39 conditions. The following conditions are cited by the referrer:

*1. Development shall be carried out in accordance with plans and particulars submitted to and received by the Planning Authority on 08/06/2005 subject to the requirements of the following conditions.*

*Reason: In the interest of proper planning and sustainable development.*

*20. In the event of sub-letting or disposal by the developer/owner of the proposed complex (multi-development) or any part of the development the Planning Authority shall be so informed in advance and provision shall be made for separate water connection facilities to each portion under separate ownership/control.*

*Reason: In the interest of public health and amenity.*

## 5.0 Policy Context

### 5.1. Development Plan

Under the Cavan County Development Plan 2014 – 2020 (CDP), Cavan Town is identified as the County’s principal town (Tier 1).

Under the Cavan Town and Environs Development Plan 2014 – 2020 (TDP), the site is zoned “enterprise and employment, wherein the objective is “To facilitate opportunities for general employment and enterprise and related activities.” Within this zone, offices are permitted in principle.

### 5.2. Natural Heritage Designations

- Lough Oughter and associated loughs SAC (000007)
- Lough Oughter SPA (004049)

## 6.0 The Referral

### 6.1. Referrer's Case

In making this referral, the referrer resubmits his original case along with a commentary on the Planning Authority's declaration. I will summarise these submissions in chronological order below.

#### **The original submission**

- The proposed occupants of the upper floors would be relocated administrative staff and backroom functions from Cavan General Hospital, i.e. no fact-to-face interaction with visiting members of the public.
- The description of development from application 05/876 is cited. This refers to the use of the upper floors as "ancillary offices", ancillary being understood as "providing necessary support to the main work or activities of an organisation".
- The case planner's report in 05/876 is referred to insofar as it shed more light on the intended use of the upper floors, i.e. "The first floor office level is subdivided into Office Suite A and B, which will be ancillary to the used car sales and Audi facility respectively", and "The second and third floors, Office Suite C and D, are intended for use by the Brady family." Notwithstanding these intentions, the upper floors have remained unoccupied since their construction.
- The permission granted to 05/876 authorised as primary uses a motor sales and service facility and two types of office use, i.e. mezzanine sales within two of the sales showrooms, and ancillary offices on the three upper floors (1004 sqm).
- Condition No. 20 attached to the permission granted to 05/876 envisaged that the complex might be in whole or in part sub-let or disposed of. In such circumstances, the Planning Authority is to be notified to ensure that separate water connections are provided. No condition was attached requiring that all offices remain ancillary to the car showrooms and no condition was attached requiring that changes in the occupants of car showrooms be the subject of planning control.

- The referrer states that “A development can have more than a single use as such as in this instance, car showrooms with integrated offices at lower levels and separate ancillary offices at upper floor level.” He makes a distinction between these two offices, i.e. the former would be frequented by the public and so they would lie within Class 2 and the latter would not be so frequented and so they would lie within Class 3 of Part 4 of Schedule 2 to Article 10 of the Planning and Development Regulations, 2001 – 2021.
- The referrer states that the permitted “Brady family use” and the proposed HSE use would lie within Class 3 and so the introduction of this proposed use would be exempted development provided the restrictions under Article 10(1) of the Regulations do not apply. These restrictions are reviewed in turn as set out below.

(a) Involve the carrying out of works other than works which are exempted development:

The applicant has “out of an abundance of caution” submitted a planning application 21/557 (ABP-312057-21) for the proposed use of the upper floors. The plans showing the works that would be undertaken to facilitate this use are submitted and the view is expressed that they would be exempted development.

(b) Contravene a condition attached to a permission under the Act:

None of the conditions attached to the permission granted to application 05/876 would be contravened by the proposed use.

(c) Be inconsistent with any use specified or included in such a permission:

The only use specified is that set out in the description of the development in application 05/876. If the transfer of office space between an intended occupant and the proposed occupant were to require planning permission, then the exemptions afforded by the Classes of Use would serve no purpose.



(d) Be a development where the existing use is an unauthorised use:

The authorised use of the upper floors is for offices and the proposed use is for offices. While the authorised use has not been taken up to date, it should not be considered to have been abandoned, and so the proposed use would be authorised.

- Under Article 10(2)(b)(iii) of the Regulations, any use for the sale or leasing, or display for sale or leasing, of motor vehicles is a use that does not lie within any of the Classes of Use in Part 4 of Schedule 2. Consequently, Class 3 offices are a separate use from this use.
- In the light of the foregoing considerations, the proposed change of use is exempted development

### **Commentary on Planning Authority's declaration**

- The case planner expresses the view that the principal use of the East Building is that of motor car sales and the office use was to provide support for this principal use. Consequently, the proposed HSE office use would contravene Condition No. 1, which requires that the development be carried out in accordance with the plans and particulars submitted under application 05/876.
- The referrer notes that Condition No. 1 is a standard first condition, which requires that the development be constructed in accordance with the submitted plans and particulars. As interpreted by the case planner, this Condition would de-bar any works or change of use even if exempted development. This is not how planning legislation functions.
- The case planner expresses the view that, while not conditioned, the permission granted to application 05/876 specifies or includes the use of the upper floors and the proposed use would be inconsistent with this use.
- The referrer notes that this view is stated without elaboration. He reiterates the background information to application 05/876 with respect to the use of the upper floors by the then applicant's family, as distinct from the car sales companies.

## 6.2. Planning Authority Response

None

## 7.0 Statutory Provisions

### 7.1. Planning and Development Act, 2000

#### Section 3(1): Development

*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 2(1): Interpretation

*“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.*

#### Section 4(1): Exempted development

*The following shall be exempted developments for the purposes of this Act—*

*(h) development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures;*

### 7.2. Planning and Development Regulations, 2001

#### Article 10: Changes of Use

*(1) Development which consists of a change of use within any one of the classes of use specified in Part 4 of Schedule 2, shall be exempted development for the purposes of the Act, provided that the development, if carried out would not—*

*(a) involve the carrying out of any works other than works which are exempted development,*

*(b) contravene a condition attached to a permission under the Act,*

*(c) be inconsistent with any use specified or included in such a permission, or*

*(d) be a development where the existing use is an unauthorised use, save where such change of use consists of the resumption of a use which is not unauthorised and which has not been abandoned.*

*(2) (a) A use which is ordinarily incidental to any use specified in Part 4 of Schedule 2 is not excluded from that use as an incident thereto merely by reason of its being specified in the said Part of the said Schedule as a separate use.*

*(b) Nothing in any class in Part 4 of the Schedule 2 shall include any use—*

*...(iii) for the sale or leasing, or display for sale or leasing, of motor vehicles,*

#### **Part 4 of Schedule 2 to Article 10: Exempted development – Classes of Use**

##### **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.*

## 8.0 Assessment

### 8.1. Introduction

8.1.1. The question asked by the referrer is the following one:

Whether the change of use of Unit 17, Kilmore Business Park, Dublin Road, Cavan, from “office ancillary” to motor sales facilities to “office use” to be occupied by HSE administrative services is or is not development and is or is not exempted development.

8.1.2. The submitted referral is accompanied by plans that show the works that would be needed to facilitate the proposed change of use. If the Board considers that the proposed change of use is either not development or exempted development, then a subsidiary question would arise concerning the status of these works. This question could be phrased as follows:

Whether the works needed to facilitate the change of use of Unit 17, Kilmore Business Park, Dublin Road, Cavan, from “office ancillary” to motor sales facilities to “office use” to be occupied by HSE administrative services are or are not development and are or are not exempted development.

8.1.3. For the sake of completeness, I will address this question, too, in my assessment below.

### 8.2. Is or is not development

8.2.1. Unit 17 was authorised under the permission granted to application 05/876. The description of the development was essentially “to construct a new motor sales and service facility”. This description proceeded to elaborate upon the different elements of the facility. Thus, the East Building, which is the subject of this referral, is described as follows:

*overall floor area of 2,690m<sup>2</sup> consists of 2 motor sales facilities (one with mezzanine floor sales offices), service workshop, parts dept, anc. office & toilet accomm on 3 floors with assoc ext. terraces & roof level plant room*

From this description of the East Building, the three upper floors are stated as being for ancillary office and toilet accommodation, while a mezzanine floor is stated as being for sales offices.

- 8.2.2. The description of the development makes clear that the authorised use of the site is for a motor sales and service facility. This use encompasses various elements including sales offices on the mezzanine floor and ancillary offices on the three upper floors, which are the subject of this referral.
- 8.2.3. The referrer considers that the above elements can be separated to distinguish the motor sales and service use from the sales office use and the ancillary office use. He then categorises each of these uses under the Planning and Development Regulations, 2001 – 2021, i.e. the first is *sui generis* by virtue of Article 10(2)(b)(iii), the second, as it entails public access, lies within Class 2 and the third, as it does not entail public access, lies within Class 3 of Part 4 of Schedule 2 to Article 10.
- 8.2.4. I consider that the referrer’s approach fails to recognise that the planning unit comprises the site, which was developed under application 05/876, and that the authorised use of this site is a motor sales and service facility. The elements that are comprised in this use are not “stand alone” uses but rather ones, e.g. the sales offices and the ancillary offices, that are integral to the authorised use.
- 8.2.5. The referrer draws upon information submitted as part of application 05/876 to distinguish the upper floor offices. Thus, the first floor was intended to be sub-divided into Office Suite A and B, which would have been ancillary to the used car sales and Audi facility respectively, and the second and third floors were intended to be sub-divided into Office Suite C and D, which would have been used by the Brady family. In the event these uses were not taken up and the upper floor offices have remained unoccupied. The referrer indicates that the Brady family use may not have been entirely ancillary to the motor sales and service use of the site, as this family operated other motor sales and service uses elsewhere.
- 8.2.6. I would comment on the referrer’s position as follows:
- With respect to the first floor, there is no suggestion that the intended ancillary office use would not have related exclusively to the motor sales and service use of the site, and

- With respect to the second and third floor, there is no suggestion that the office use would not have related at least partially to the motor sales and service use of the site and so would have been ancillary to that extent. Beyond such considerations, the more important one is that such background information cannot be used to reconstrue the reference in the description of the development to ancillary offices on the upper floors, i.e. this wording carries the greater legal weight.

8.2.7. The referrer draws attention to Condition No. 20 attached to the permission granted to application 05/876. I note that this Condition refers to scenarios wherein the proposed complex might be sub-let or disposed of either wholly or in part. I note, too, that these scenarios do not address any change in the use of the complex.

8.2.8. The referrer also draws attention to the absence of any condition requiring that the upper floor offices be ancillary to the motor sales and service use. However, such a condition would have been superfluous as these offices were included in the description of the development as being ancillary and so the question of them not being ancillary did not arise.

8.2.9. I, therefore, conclude that the authorised use of the developed site is that of a motor sales and service use facility, which is *sui generis* under Article 10(2)(b)(iii) of the Planning and Development Regulations, 2001 – 2021. The proposed use is an office use that would lie within Class 3 of Part 4 of these Regulations. Consequently, the change of use, which would arise under this referral, would entail a material change of use, which would constitute development under Section 4(1) of the Planning and Development Act, 2000 – 2021.

8.2.10. I have reviewed the Planning Authority's reasons for its declaration and the referrer's commentary upon the same. I concur with this commentary.

8.2.11. Turning to the works that are shown on the submitted plans, which would facilitate the proposed change of use. These works would entail the internal sub-division of the upper floors, the installation of insulation in walls, and minor alterations to meet fire safety requirements. They would also entail minor alterations to external doors and windows.

8.2.12. Under Section 2(1) of the Act, the definition of "works" is "any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal". The

above cited works would come within this definition and so they would constitute development under Section 4(1) of the Planning and Development Act, 2000 – 2021.

8.2.13. I conclude that the proposed change of use would be development, as would the works that would facilitate it.

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

8.3.1. Article 10 of the Regulations sets out changes of use that are deemed to be exempted development.

8.3.2. Under Article 10, the proposed change of use from a use that is *sui generis* to a use lying within Class 3 is not stated as being exempted development.

8.3.3. Section 4(1)(h) of the Act states that “development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures” is exempted development.

8.3.4. I note that the majority of works shown on the submitted plans to facilitate the proposed change of use would be internal. I note, too, that the minority of works that would be external would not “materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures”. Accordingly, if the Board considers that the proposed change of use is either not development or exempted development, then I consider that these works would be exempted development.

8.3.5. I conclude that the proposed change of use would not be exempted development and so any question as to the status of the works that would facilitate it does not arise.

### **8.4. Restrictions on exempted development**

8.4.1. If the Board considers that the proposed change of use is either not development or exempted development, then, in these circumstances, the works needed to facilitate the proposed change of use would be exempted development. None of the

restrictions in the legislation leading to de-exemption would apply to these works and so they would remain 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 change of use of Unit 17, Kilmore Business Park, Dublin Road, Cavan, from “office ancillary” to motor sales facilities to “office use” to be occupied by HSE administrative services is or is not development and is or is not exempted development:

**AND WHEREAS** Donal Watters requested a declaration on this question from Cavan County Council and the Council issued a declaration on the 1<sup>st</sup> day of November 2021 stating that the matter was development and was not exempted development:

**AND WHEREAS** referred this declaration for review to An Bord Pleanála on the 22<sup>nd</sup> day of November 2016:

**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 10(1) & (2) of the Planning and Development Regulations, 2001, as amended,



- (e) Classes 2 and 3 of Part 4 of Schedule 2 to the Planning and Development Regulations, 2001, as amended, and
- (f) The planning history of the site:

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

- (a) The authorised use of the site is a motor sales and service facility and as such *sui generis* under Article 10(2)(b)(iii) of the Planning and Development Regulations, 2001, as amended.
- (b) The proposed use lies within Class 3 of Part 4 of Schedule 2 to Article 10 of the Planning and Development Regulations, 2001, as amended.
- (c) The proposed change of use of the upper floors of the building on the site from a motor sales and service facility to a Class 4 office would entail a material change of use.

**NOW THEREFORE** An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3) (a) of the 2000 Act, hereby decides that the proposed change of use is development and is not exempted development.

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Hugh D. Morrison  
Planning Inspector

22<sup>nd</sup> February 2022