



An
Bord
Pleanála

Inspector's Report ABP-313815-22 (formerly ABP-305471- 19)

Question	Whether the change-of-use of the fifth-floor from 'office' to 'embassy office' is or is not development or is or is not exempted development.
Location	23, Shelbourne Road, Ballsbridge, Dublin 4.
Declaration	
Planning Authority	Dublin City Council South
Planning Authority Reg. Ref.	0346/19
Applicant for Declaration	Finance Ireland Ltd.
Planning Authority Decision	Is exempted development.
Referral	
Referred by	Finance Ireland Ltd.
Owner/Occupier	U & I PLC.
Observer(s)	None
Date of Site Inspection	6 th July 2023.
Inspector	Michael Dillon

1.0 Site Location and Description

- 1.1. The site comprises the fifth (top) floor of a six-storey office building, on the west side of Shelbourne Road in Ballsbridge, Dublin 4. There is car-parking at ground level. There is a Garda security hut (metal) just inside the gated vehicular entrance.

2.0 The Question

- 2.1. Whether the change-of-use from 'office' to 'embassy office' is or is not development and is or is not exempted development.

3.0 Planning Authority Declaration

3.1. Declaration

By Order dated 21st August 2019, Dublin City Council declared that the change-of-use from 'office' to 'embassy office' was exempt from the requirement to obtain planning permission (ref. 0346/19).

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report, dated 20th August 2019, decided that the change-of-use was exempted development, based on the existing office use at this building and precedent decisions of DCC in relation to change-of-use from 'office' to 'embassy office'.

3.2.2. Other Technical Reports

None received.

4.0 Planning History

Ref. 3148/20: Permission granted on 12th November 2020, for change-of-use of fifth floor (562sq.m) of this building from 'office' to 'embassy office'. The permission contains no conditions restricting the use.

Ref. 2163/20: Permission granted on 19th October 2020, to erect a 6m high flagpole in the forecourt of this office building.

Ref. 4748/19: Permission granted on 13th February 2020, for Garda security hut within forecourt of this office building.

Ref. 0382/19: Transaction Network Services (Ireland) Ltd. sought a section 5 declaration relating to change-of-use from 'office' to 'embassy office' for fifth floor of this office building. On 18th September 2019, DCC issued an Exemption Certificate.

Ref. 0346/19: Finance Ireland Ltd. sought a section 5 declaration relating to change-of-use from 'office' to 'embassy office' for fifth floor of this office building. On 21st August 2019, DCC issued an Exemption Certificate.

Ref. 0300/19: Spectre (Shelbourne) Ltd. sought a section 5 declaration relating to change-of-use from 'office' to 'embassy office', for fifth floor of this office building. On 23rd July 2019, DCC issued an Exemption Certificate.

Ref. 3136/16: Permission granted on 26th January 2015, for minor alterations to existing six-storey office building.

Ref. 3581/14: Permission granted on 26th January 2015, for extension to office building, new boundary wall, signage and elevation treatment.

5.0 Policy Context

5.1. Development Plan

- 5.1.1. The relevant document is the Dublin City Development Plan 2022-2028. I note that the referral had originally been made during the currency of the old Development Plan. The site is zoned 'Z1' – Sustainable Residential Neighbourhoods – 'To protect, provide and improve residential amenities'. Under the heading 'Permissible Uses', is 'embassy residential'. Under the heading 'Open For Consideration Uses' is 'office'. The use 'embassy office' does not appear under either heading – although it does appear within other zonings.
- 5.1.2. Appendix 15 of the Plan contains Land Use Definitions – of which the following are of note-

Embassy

A building, or part thereof, or land used by a foreign government for diplomatic purposes or conduct of relations between nations. The use may include a residential content for the staff of the embassy which is ancillary to the embassy activities. The use does not include a foreign trade delegation or trade office.

(i) Embassy: Residential

A building, or part thereof, or land used by a foreign government for diplomatic purposes, primarily being a residence for embassy staff or consular officials where non-residential use is subordinate and ancillary to the use of that building as a residence. The use does not include a foreign trade delegation or trade office.

(ii) Embassy: Office

A building, or part thereof, or land used by a foreign government for diplomatic purposes, where the use of the building is primarily commercial and where the residential content is minimal, which may include a foreign trade delegation, trade office or public embassy offices.

Office

A building in which the sole or principal use is the handling and processing of information and research, or the undertaking of professional, administrative, financial, marketing or clerical work. Can also include civic offices including community based initiatives and remote working/co-working hubs – community and commercial types. The definition of office also includes office-based activities that are concerned with the output of a specified product or service, including: data processing, software development, information technology, technical and consulting, commercial laboratories/healthcare, research and development, media recording and general media associated uses, publishing, telemarketing.

5.2. Natural Heritage Designations

The question before the Board involves change-of-use of existing office space. Having regard to the nature and scale of the development and the proximity to the nearest European site, no Appropriate Assessment issues arise; and it is not considered that the proposed development would be likely to have a significant

effect, individually, or in combination with other plans or projects, on any European site.

5.3. EIA Screening

Having regard to the change-of-use nature of the referral, within an existing office block, in an established urban area, where infrastructural services are available; there is no real likelihood of significant effects on the environment arising from the change-of-use. The need for environmental impact assessment can, therefore, be excluded at preliminary examination; and a screening determination is not required.

6.0 The Referral

6.1. Referrer's Case

The case was referred to the Board on 17th September 2019, by Hughes Planning & Development Consultants, agent on behalf of Finance Ireland Ltd, 85 Pembroke Road, Ballsbridge, Dublin 4, seeking review of the declaration by DCC.

- The change-of-use is development and is not exempted development.
- Embassy use is not permitted or open for consideration within this residential 'Z1' zoning.
- The development plan has clear definitions for both 'office' and 'embassy office'. The services provided at an embassy include members of the public visiting the office for documentation. Due to the public nature of an embassy, it may fall into Class 2, Part 4, Schedule 2 of the Planning and Development Regulations (as amended).
- The fact that there will be visiting members of the public, raise concerns in relation to parking, access and safety. The public usage of the site clearly differentiates the current use from the proposed embassy use.
- The Planning and Development Regulations do not provide for a change-of-use from 'office' to 'embassy office' to be specifically exempted – particularly at Class 14 of Part 1 of Schedule 2.

- The existing office use falls into Class 3. Class 2 provides for financial services, professional services or other services (including a betting office), where the services are provided principally to visiting members of the public. It is contended that embassy use does not fall into either class, and, therefore, does not constitute exempted development.
- The change-of-use involves a change from Class 2 to Class 3. The planning authority considered that embassy use came within Class 3.
- There are precedent cases in relation to change-of-use to embassy.
 - Dún Laoghaire-Rathdown County Council (under referral 3419, declared that the use of 'St. Heliers', Stillorgan Park, Blackrock as an embassy was not exempted development. This site is located on residentially-zoned lands.
 - Dublin City Council (under application ref. 3188/13) granted permission for change-of-use of three-storey property from 'mixed commercial' to 'embassy at 69 Merrion Road, Dublin 4.
 - Dublin City Council issued a Section 5 declaration that change-of-use from 'office' to 'embassy office' at 8 Raglan Road, Ballsbridge, Dublin 4, was exempted development (Ref. 0023/12). This case does not set a precedent – as the change-of-use was for the entire building; and not just one floor, as in the present case.
 - Dublin City Council issued a Section 5 declaration that change-of-use from 'office' to 'embassy office' at 45-47 Pembroke Road, Ballsbridge, Dublin 4, was exempted development (ref. 0098/12). This case does not set a precedent – as the change-of-use was for the entire buildings; and not just one floor, as in the present case.
 - Dublin City Council issued a Section 5 declaration that change-of-use from 'office' to 'embassy office' at 65 Fitzwilliam Square, Dublin 2, was exempted development (ref. 0174/13). This case does not set a precedent – as the change-of-use was for the entire building; and not just one floor, as in the present case.

6.2. Planning Authority Response

None received.

6.3. Owner's/Occupier's response

None received.

6.4. Further Developments in relation to this Reference Case

- 6.4.1. A report was prepared by an Inspector, and submitted to the Board for its consideration. The Board made a decision on 6th February 2020, that the change-of-use from 'office' to 'embassy office' was development and was not exempted development. Spectre (Shelbourne) Ltd, the owner of the building, sought judicial review of this decision, from the High Court (2020 No. 196 JR). On 23rd November 2021, the Judgement of Mr. Justice Quinn was delivered. On 11th April 2022, the High Court perfected an Order of *Certiorari*, quashing the decision of An Bord Pleanála, on grounds that it erred in law, took into account irrelevant considerations and acted irrationally and unreasonably. An Order was made remitting the referral to An Bord Pleanála, to be determined in accordance with law.
- 6.4.2. **The Board should note that the copy of Mr. Justice Quinn's Judgement on this referral file contains a numbering error. At page 19, the paragraph numbering jumps from 63 to 107. This is a typographical error. The correct paragraph numbering is contained within the Judgement on the website of the High Court – running from Paragraphs 1-149, and not 1-192 as is the case with the copy on this referral file. For the purposes of avoiding confusion, where I reference a paragraph of Justice Quinn's Judgement – the reference is to the copy on the website of the High Court. [I have placed a copy of this correctly numbered Judgement on the referral file].**
- 6.4.3. When remitted back to the Board, the referral file was assigned a new number (ABP-313815-22). On 27th June 2022, the Board decided that the following steps be taken in relation to the referral:
1. Participants in the referral be notified of the High Court order.

2. Under section 131 of the Planning and Development Act, 2000 (as amended), all participants to be invited to make further submissions to the Board.
3. File to be referred back to the Board, with any responses received.

6.4.4. In accordance with the wishes of the Board, the file was referred to the following for comment-

- U & I PLC, 4 Pembroke Street Upper, Dublin 4. (Documents were returned to the offices of An Bord Pleanála). Documents were re-sent to U & I PLC at a new London address.
- Hughes Planning & Development Consultants, agent on behalf of the original referrer – Finance Ireland Ltd.
- Dublin City Council.

No responses were received from any of those circulated.

6.4.5. On 21st September 2022, the Board decided to defer this case for consideration at a further Board meeting, and to direct that the Inspector's Report of the 21st day of January, 2020, be removed from the file and that a new inspector carry out a *de novo* assessment of the referral case, for consideration by the Board at a subsequent meeting. This was duly done. The Inspector's Report and any Board decision relating to referral ABP-305471-19, were removed from the file and a new number was assigned to the referral case (ABP-313815-22).

6.4.6. DCC made a declaration on 23rd July 2019, that a change-of-use from 'office' to 'embassy office' at this site constituted exempted development (the referral had been made by the owner of the office building, on being approached by a diplomatic mission, which wished to occupy the fifth floor the building, for use as 'embassy office'). On 25th July 2019, Finance Ireland Ltd. (the tenant of the fourth floor of this office building), made a request for a declaration from DCC, that the change-of-use from 'office' to 'embassy office' was development, and required planning permission. On 21st August 2019, DCC again issued a declaration to the effect that the proposed change-of-use is exempted development. On 22nd August 2019, another tenant of the building, Transaction Network Services Ltd, made a third section 5 request to DCC, in relation to the same change-of-use. On 18th September 2019, DCC issued a third declaration that the proposed change-of-use was exempted development.

- 6.4.7. The Judgement of Mr. Justice Quinn at Paragraph 148, concluded the following-
- (1) The applicant had *locus standi* to bring these proceedings notwithstanding its failure to make submissions to the respondent on the Finance Ireland Ltd. referral.
 - (2) The request made by Finance Ireland Ltd. to the first notice party for a declaration pursuant to section 5(1) of the Act was not an impermissible collateral challenge to the section 5 First Declaration made on 23rd July, 2019;
 - (3) The referral to the respondent, pursuant to section 5(3) of the Act, made on 17th September, 2019, was a valid exercise of the rights of Finance Ireland Ltd. under section 5, to request a review of the Second Declaration made on 21st August, 2019; which itself had arisen from a valid and permissible original request by Finance Ireland Ltd;
 - (4) The respondent acted within its power and authority in considering and deciding the referral made by Finance Ireland Ltd;
 - (5) The respondent erred in taking into account irrelevant considerations, namely precedent decisions which concerned the distinction between embassy use and office use in circumstances where the referral concerned a change of use from office to embassy office.
 - (6) The respondent acted irrationally and unreasonably in its determination that having regard to the nature of uses carried out in an embassy, which use was not the subject of the referral, the intended change of use to an embassy office did not constitute exempted development. In making this determination the respondent failed to have regard to the existence of different definitions of land use contained in the first notice party's Development Plan 2016 – 2022.
 - (7) The respondent failed to consider the exercise of its discretion pursuant to section 138 of the Act, having regard to the planning history of the subject property and, in particular, the existence of three declarations made by the authority pursuant to section 5(1);
 - (8) The respondent erred in law in its failure to take into account the case law of this Court and, in particular, the judgment in *Narconon v. An Bord Pleanála & Others*.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000 (as amended)

7.1.1. Section 2(1) states-

In this Act, except where the context otherwise requires-

“development” has the meaning assigned to it by section 3, and “develop” shall be construed accordingly;

7.1.2. Section 3 states-

(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.

7.1.3. Section 4(1) identifies categories of development which are “exempted developments for the purposes of this Act”. Section 4(2) empowers the Minister to make Regulations providing for any class of development to be exempted development for the purposes of the Act.

7.1.4. Section 5 of the Act governs referrals to planning authorities and to the Board.

7.1.5. Section 50(2) of the Act provides that no person shall question the validity of any decision made or act done by a planning authority or the Board under the Act otherwise than by way of an application for judicial review under O.84 of the Rules of the Superior Courts. A section 5 declaration or decision is such a decision or act.

7.1.6. Section 138(1) & 138(2) provide as follows:

(1) The Board shall have an absolute discretion to dismiss an appeal or referral—

(a) where, having considered the grounds of appeal or referral, or any other matter to which, by virtue of this Act, the Board may have regard in dealing with or determining the appeal or referral, the Board is of the opinion that the appeal or referral —

(i) is vexatious, frivolous or without substance or foundation, or

(ii) is made with the sole intention of delaying the development or the intention of securing the payment of money, gifts, consideration or other inducement by any person, or

(b) where, the Board is satisfied that, in the particular circumstances, the appeal or referral should not be further considered by it having regard to—

(i) the nature of the appeal (including any question which in the Board's opinion is raised by the appeal or referral), or

(ii) any previous permission which in its opinion is relevant.

(2) A decision made under this section shall state the main reasons and considerations on which the decision is based.

7.2. Planning and Development Regulations, 2001 (as amended)

7.2.1. Article 10 governs change-of-use for the purposes of considering exempted development, and provides as follows:

(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.

7.2.2. Part 4 of Schedule 2 identifies eleven classes of use within which any change-of-use is exempt by reason of Article 10(1). Relevant to the submissions in this case are the following:

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. Is or is not Development

8.1.1. The referral relates to a change-of-use from 'office' to 'embassy office'. Definitions of these two classes of use are contained within Appendix 15 of the current Dublin City Development Plan. In the case of use of buildings by foreign governments for diplomatic purposes – the use is split into three sub-classes, viz. 'Embassy', 'Embassy: Residential' and 'Embassy: Office'. The current referral relates to the last of these three; and is defined as being-

“A building, or part thereof, or land used by a foreign government for diplomatic purposes, where the use of the building is primarily commercial and where the residential content is minimal, which may include a foreign trade delegation, trade office or public embassy offices”.

8.1.2. I would be satisfied that the change-of-use from 'office' to 'embassy office' is development.

8.2. Is or is not Exempted Development

8.2.1. Article 10 of the Regulations provides that certain categories of change-of-use can be considered exempted development – referencing development which consists 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). Of note within Part 4 are Class 2 and Class 3. The former deals with office use where the services

are provided principally to visiting members of the public. Class 3 relates to office uses other than those compassed within Class 2. Having regard to the description of 'embassy office' contained within current Development Plan for the area, I would be satisfied that the use falls within Class 3, and not Class 2 of Part 4. Whilst members of the public may visit embassy offices, services are not provided principally to visiting members of the public. The prior use of the fifth floor of this building as 'office' results in a change-of-use within the same Class 3, and is, therefore, exempted development.

8.3. Restrictions on Exempted Development

8.3.1. Article 10 (1) places a number of restrictions on change-of-use within any of the classes of Part 4, where the change-of-use would-

(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.

8.3.2. From the documentation on file, there would not appear to be any works carried out, other than works which are exempted development. Planning permission has been obtained for a Garda security hut at the vehicular entrance gate to the site (ref. 4748/19). Permission was granted on 12th November 2020, for change-of-use of fifth floor of this building from 'office' to 'embassy office'. There were no conditions attached to that permission which would be contravened by the change-of-use, the subject of this referral (the exact same proposal). The change-of-use would not be inconsistent with any use specified in the permission. The change-of-use does not relate to an unauthorised use.

8.4. Precedent Decisions of Dublin City Council

- 8.4.1. The referrer lists a number of declarations of Dublin City Council under section 5, in relation to change-of-use from 'office' to 'embassy office' at 8 Raglan Road, Ballsbridge, Dublin 4 (ref. 0023/12); at 45-47 Pembroke Road, Ballsbridge, Dublin 4 (ref. 0098/12); and at 65 Fitzwilliam Square, Dublin 2 (ref. 0174/13): to the effect that the change-of-use was exempted development. The referrer argues that these cases did not set a precedent – as the change-of-use was for the entire building(s); and not just one floor, as in the present case. Dublin City Council was not of the same opinion. On the facts presented, I would consider that the current referral case, whilst it relates to one floor of an office building, is not substantially different to the three cases mentioned; which could be taken as precedents – notwithstanding that each case has to be dealt with on its merits.

8.5. Precedent Case Law

- 8.5.1. The Judgement of Mr. Justice Quinn referred to the failure of the Board to take into account precedent case law – and in particular, the *Narconon Trust v. An Bord Pleanála & Others* case. The Judgement of Heslin J was delivered on 24th January, 2020, shortly before the Board made its original decision in relation to this current referral, on 6th February, 2020 (ABP-305471-19).
- 8.5.2. The details of the case are as follows. On 31st August, 2016, Narconon made a request to Meath Co. Council for a declaration, pursuant to section 5 of the Act, to the effect that a change-of-use from 'nursing home' to 'residential drug rehabilitation facility' was exempted development. On 29th September, 2016, Meath Co. Council issued a declaration that the proposed change-of-use was exempt. Narconon Trust proceeded with the purchase of the subject property, and carried out significant construction works. On 16th February, 2018, two separate applications were made by third parties to Meath Co. Council, pursuant to section 5, requesting a determination as to whether the change-of-use from nursing home to residential drug rehabilitation facility was exempted development. In February 2018, Meath Co. Council referred the matter to An Bord Pleanála, pursuant to section 5(4) of the Act. It noted that it had already issued a determination on the matter; that two subsequent requests for a declaration had been received and; therefore, it was referring this

matter to the Board for determination. On 19th November 2018, the Board issued an Order deciding that the change-of-use was development and was not exempted development.

8.5.3. Heslin J. reviewed the existing case law on section 5. He found that the applicant had made the first section 5 application in 2016, in order to have the planning status of the proposed development determined, and to obtain an authoritative ruling on the question posed by it. He noted that that declaration could have been challenged by way of judicial review proceedings, pursuant to section 50, which were not brought within the time limited. He was satisfied that the 2016 declaration constituted an authoritative ruling on the question which had been put, and decided, as a fact, that the question asked in the 2018 requests was the same question which the applicant had referred in 2016, and that the effect of the 2018 referrals was that the referrers wanted the same question answered in a different way to that which it had been answered in 2016. He concluded that the effect of the 2018 requests was to question the validity of the decision made by the Meath Co. Council on 29th September 2016, by means of a section 5 application dated 16th February 2018, and that this would circumvent the exclusivity of the remedy of judicial review expressly provided for in section 50 of the Act. He continued: "*The intention of the Oireachtas, as expressed in section 50, is unambiguous. By enacting Section 50, the Oireachtas made it clear that only one route was available to those who wished to question the validity of any decision made by a local authority in the performance of a function under the 2000 Act. In my view, this necessarily means that, when performing its functions in accordance with section 5, the Board lacks the power to decide a question if that question is in fact an attempt to question the validity of a prior decision by a local authority made by same in the performance of a function under the 2000 Act, other than in accordance with the mandatory requirements of s. 50 of the Act, including s. 50 (2)*". He concluded that the parties making the section 5 requests in 2018 were, in fact, by that method, making a collateral challenge to the Council declaration of September 2016 and the court could not permit such a collateral attack.

8.5.4. Heslin J. was found that the Board was not automatically precluded in all circumstances from entertaining a section 5 reference by the existence of a prior, unappealed declaration. He cited a change of planning facts or circumstances as an

“example” of a case where a subsequent referral could be entertained. Quinn J, in his judicial review of the Board’s decision in the current referral case, decided that that did not arise in this instance, but it could not be treated as an exhaustive description of such circumstances. Heslin J. made the point that it would be impermissible for a party to raise the same question “at some later point”. Quinn J decided that in this case, Finance Ireland Ltd. did not wait until “some later point” of their choosing or allow any time whatsoever to pass. When they made the initial request to Dublin City Council for a declaration under section 5, they were not aware of the result of the first section 5 referral by Spectre (Shelbourne) Ltd. Rather than awaiting its results, when its remedy would have been limited to judicial review, it took the initiative of commencing the section 5 process, at a time when there was no bar, either statutory or otherwise, to doing so.

- 8.5.5. In paragraph 99 of his Judgement, Quinn J states- “Nonetheless, having found that the s. 5(1) request was permissible, I cannot be persuaded that invoking the ordinary route of s.5(3) within the architecture of s.5 was not open to Finance Ireland, or that the power of the respondent to determine the referral was ousted by the existence in this case of the First Declaration”. This would appear to clearly indicate that the judge did not consider that the precedent of the Narconon Trust case applied in this instance. The conclusion at paragraph 148 (8) – “The respondent erred in law in its failure to take into account the case law of this Court and, in particular, the judgment in Narconon” would seem to indicate that the Board should have considered the Narconon judgement, and then dismissed it, as not being of relevance in this instance. It should be noted by the Board, that since the determination of DCC was referred for review, planning permission has been granted for precisely the change-of-use from ‘office’ to ‘embassy office’ to which this referral relates (ref. 3148/20).

8.6. Power of the Board to Dismiss Referrals

- 8.6.1. Paragraph 148 (9) of Mr. Justice Quinn’s Judgement states that the Board failed to consider the exercise of its discretion, pursuant to section 138 of the Act, having regard to the planning history of the subject property and, in particular, the existence of three declarations made by the authority (DCC) pursuant to section 5(1). The Judgement nowhere refers to the granting of planning permission for change-of-use from ‘office’ to ‘embassy office’, granted by DCC for the fifth floor of this office

building (ref. 3148/20), on 12th November 2020 – some time before the Judgement in this case issued, on 23rd November 2021. The premises are now occupied as ‘embassy office’, and it may be that the question before the Board is now moot.

8.6.2. Section 138 (1) provides that the Board shall have an absolute discretion to dismiss an appeal or referral-

(b) where, the Board is satisfied that, in the particular circumstances, the appeal or referral should not be further considered by it having regard to—

(i) the nature of the appeal (including any question which in the Board's opinion is raised by the appeal or referral), or

(ii) any previous permission which in its opinion is relevant.

8.6.3. In this instance I would consider the relevance of subsection (1)(b)(i), where the question raised in the referral has been addressed three times by Dublin City Council in three separate declarations of 23rd July, 21st August and 18th September 2019, and to the time which has passed since those declarations were made. Also of relevance is subsection (1)(b)(ii), where a previous permission is now of relevance (ref. 3148/20), rendering the question before the Board moot. In these circumstances, I consider that the referral could be dismissed by reference to section 138 of the Planning & Development Act, 2000 (as amended).

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 a change-of-use from ‘office’ to ‘embassy office’ is or is not development or is or is not exempted development:

AND WHEREAS Finance Ireland Ltd. requested a declaration on this question from Dublin City Council; and the Council issued a declaration on the 21st day of August, 2019; stating that the matter was development and was exempted development:

AND WHEREAS Hughes Planning & Development Consultants, agent on behalf of Finance Ireland Ltd, referred this declaration for review to An Bord Pleanála, on the 17th day of September 2019:

AND WHEREAS the original determination of An Bord Pleanála on this referral was judicially reviewed to the High Court; wherein the determination of the Board was quashed, and the case remitted to the Board to be determined in accordance with law:

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, (as amended)
- (c) Section 4 of the Planning and Development Act, 2000 (as amended),
- (d) Section 138 of the Planning and Development Act, 2000 (as amended),
- (e) Article 10 of the Planning and Development Regulations, 2001 (as amended),
- (f) Part 4 of Schedule 2 to the Planning and Development Regulations, 2001 (as amended) – and in particular, Class 2 & Class 3,
- (g) Relevant case law, and in particular the Judgment of Heslin J in *Narconon Trust v. An Bord Pleanála & Others*,
- (h) The Judgement of the High Court in relation to Judicial Review [2020 176 JR],
- (i) the planning history of the site, and in particular, permission ref. 3148/20 of Dublin City Council,

- (j) the precedent section 5 declarations on change-of-use from 'office' to 'embassy office', issued by Dublin City Council in relation to this property;
- (k) the precedent section 5 declarations on change-of-use from 'office' to 'embassy office', issued by Dublin City Council in relation to other properties within its functional area:

AND WHEREAS An Bord Pleanála has concluded that:

- (a) change-of-use from 'office' to 'embassy office' at this site is development and is exempted development;
- (b) the Judgement of Heslin J in *Narconon Trust v An Bord Pleanála & Others*, does not have applicability in the instance of this referral – where Finance Ireland Ltd. had not improperly invoked the section 5 architecture;
- (c) Dublin City Council, based on the use class definitions contained within its Development Plan, has determined a number of similar section 5 referral cases in relation to change-of-use from 'office' to 'embassy office' within its functional area;
- (d) previous determinations of Dublin City Council in relation to the change-of-use from 'office' to 'embassy office' at this site, being declared exempted development, are of relevance;
- (e) the decision of Dublin City Council to grant permission for change-of-use from 'office' to 'embassy office' at this site (Ref. 3148/20), renders the question before the Board moot;
- (f) the Board is satisfied that, in the particular circumstances, the referral should not be further considered by it.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 138 of the Planning and Development Act, 2000 (as amended), hereby dismisses this referral.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

**Michael Dillon,
Planning Inspectorate**

7th July 2023.