



An
Bord
Pleanála

Inspector's Report ABP 314952-22

Question

Whether the proposed change of use from a premises for the sale and display of motor vehicles to use as a shop is or is not development or is or is not exempted development.

Location

Lee Garage, Model Farm Road, Cork

Declaration

Planning Authority

Cork County Council

Planning Authority Reg. Ref.

R74022

Applicant for Declaration

Lee Garage Cork Ltd.

Referral

Referred by

Cork City Council

Owner/Occupier

Lee Garage Cork Ltd.

Observer(s)

None

Date of Site Inspection

01/11/22

Inspector

Pauline Fitzpatrick

1.0 Introduction

Cork City Council made a submission to the Board under section 5 of the Planning and Development Act, 2000, as amended, seeking a declaration as to whether a proposed change of use from an existing car sales showroom to a shop at Lees Garage Model Farm Road is or is not development and is or is not exempted development. The submission was received on the 27th October, 2022.

The Board is advised that there is a concurrent appeal before it for demolition of existing shop and change of use of part of the existing showroom to a new shop. File ref. ABP 313906-22. It entails a 1st party against condition 2 attached to the planning authority's notification of decision to grant permission.

2.0 Site Location and Description

The site subject of the referral is to the south of Model Farm Road (R608) in the south-western Cork City suburb of Bishopstown. It comprises an existing filling station with small ancillary shop with the forecourt covered by a canopy. The large building to the rear of the forecourt area has a car sales showroom with a stated floor area of 502 sq.m. with the southern part of the building used as a garage/car service area. There is parking to the side and rear. The site is served by two accesses.

The immediate vicinity is characterised by residential uses.

3.0 The Question

The question referred to the Board is:-

Whether the proposed change of use from a premises for the sale and display of motor vehicles to use as a shop at Lee Garage, Model Farm Road is or is not development or is or is not exempted development.

4.0 The Referrer's Submission

The referral pertains to the northern part of the larger building to the rear of the filling station forecourt which is used for the sale and display of motor cars and has a floor area of 502 sq.m. It does not include the service garage to the rear.

Details submitted with the referral include a summary of the planning history on the site, including copies of the relevant permissions, and a copy of the submission forming an application to Cork City Council from John Spain and Associates on behalf of the referrer Lee Garage Cork Ltd.

The submission from John Spain and Associates can be summarised as follows:

- The subject area comprises a car sales showroom and has been/is used for the display and sale of motor vehicles for in excess of 40 years.
- It is considered that the change of use is exempted development under class 14 (a) of the Planning and Development Regulations 2001, as amended, which allows for change of use from sale or leasing or display for sale or leasing of motor vehicles to use as a shop. Section 4(3) of the Planning and Development Act, 2000, as amended, is also applicable. No works are proposed at present.
- The provisions of article 9 of the Regulations which precludes exempted development under article 6 are not applicable to the proposed change of use in that:
 - It does not contravene any condition attached to a permission for a shop.
 - It will not give rise to any issues in respect of traffic safety when compared with the long established use.
 - There is sufficient parking on site which has served and will continue to serve the commercial premises.
- With respect to the application for change of use under ref. 21/40518 the Council's Transportation Department Traffic: Regulation and Safety Report had no objection.
- No grant of permission has been issued with respect to application ref. 21/40518 as it is currently the subject of an appeal.
- Article 10 of the Regulations which relates to exemptions for change of use within any of the classes specified in Part 4 of Schedule 2 does not apply as the exemption seeking to be availed of is under Part 1 of Schedule 2.

- Precedent has been set. File reference ABP 304204-19 cited.

4.1. **Response by Lee Garage Cork Ltd.**

The submission from John Spain and Associates refers. In addition to reiterating points made in its original referral to the City Council summarised above I note the following:

The established car showroom use was permitted under reg ref. 79/8278.

5.0 **Planning History**

ABP 313906-22 – current 1st party appeal against condition 2 attached to the planning authority's decision to grant permission for demolition of existing shop and change of use of part of the existing showroom to shop.

Condition 2(a) requires that the net retail sales space including any retail, delicatessen, seating area and off licence not exceed 100 sq.m.

6.0 **Previous Referral Decisions**

ABP 304204-18: The Board decided that the change of use from car dealership to retail sale of convenience goods at Pollamore Near, Dublin Road, Cavan is development and is exempted development

09.RL.3486: The Board decided that the proposed change of use of a former car sales premises to use as a shop at Gallowshill, Athy, County Kildare is development and is not exempted development. In its decision the Board noted that the existing premises on site was not carried out in the first instance in accordance with the drawings and documentation submitted to the planning authority and therefore contravened a condition attached to the permission and the exemption that would generally be available under Class 14 (a) could not be considered exempt by reference to Article 9(1) of the Regulations.

06F.RL.3539: The Board decided that the change of use from a garage and showrooms to use as a shop at The Fairgreen, Westport, Co. Mayo is development and is exempted development.

88.RL.2959: The Board decided that the use of car showroom for retail/shop use at Nyhan Motors, The Bypass, Cloghmacsimon, Bandon, Co. Cork is development and is not exempted development. In its decision the Board considered that the change of use would contravene a specific condition (Condition No.4) attached to the applicable grant of permission, requiring that no change of use would occur in respect of the permitted development without a grant of permission.

83.RL.2856: The Board decided that the proposed change of use of the premises from use for the sale or leasing, or display for sale or leasing of motor vehicles to use as a shop, Capital Cars, Church Road, Tullamore is development and is exempted development.

28S.RL.2020: The Board decided that the change of use from motor/warehouse showrooms to a shop for the sale of tiles. Units 1 and 1C Concord Industrial Estate, Naas Road, Dublin 12 is development and is exempted development.

7.0 **Policy Context**

7.1. **Development Plan**

Cork City Development Plan, 2022

The site is within an area zoned ZO 01 – Sustainable Residential Neighbourhoods, the objective for which is to protect and provide for residential uses and amenities, local serviced and community, institutional, educational and civic uses.

7.2. **Natural Heritage Designations**

None in the vicinity.

8.0 **Statutory Provisions**

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

Planning and Development Act, 2000, as amended

- Section 3 – Development.
- Section 4 – Exempted development, in particular sub-section (2).

- Section 5 – Declaration and referral on development and exempted development, in particular sub-section (4).

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

- Part 2. Exempted development. Article 5(1)
‘Shop’ is defined as a structure used for any or all of the following purposes, where the sale, display or service is principally to visiting members of the public ‘(a) for the retail sale of goods..(f) for the display of goods for sale’.
- Article 6 – Exempted Development, in particular sub-section (1) and Class 14(a) of Schedule 2, Part 1 (Change of use).
- Article 9 – Restrictions on exemption, in particular sub-section (1)(i), (iii) and (viii).

9.0 **Assessment**

- 9.1.1. It is noted at the outset that the purpose of this referral is not to determine the acceptability or otherwise of the change of use of part of the car salesroom to use a as a shop but rather whether or not the matter in question constitutes development, and if so whether it falls within the scope of exempted development.
- 9.1.2. The Board is advised that there is a current 1st Party appeal before it under ref. ABP 313906-22 against condition 2 attached to the planning authority’s decision to grant permission for demolition of existing shop and change of use of part of the existing showroom to shop. Condition 2(a) requires that the net retail sales space including any retail, delicatessen, seating area and off licence not exceed 100 sq.m.

9.2. **Is or is not development**

- 9.2.1. The site as currently configured provides for a fuel filling station to the front served by a small ancillary retail unit with the large unit behind same used as a car sales showroom and garage. As per the details provided by the referrer the site has been used for such purposes for over 40 years with permission secured for the car sales showroom under PA ref. 79/8278 details of which are provided in support.

9.2.2. Article 5(1) of the Planning and Development Regulations, 2001, (as amended), defines the term 'shop' as use of a structure for the retail sale of goods and for the display of goods, where the sale, display or service is to visiting members of the public. Uses referred to include post office, travel agency, food and wine for consumption off premises, hair dressing, laundrette etc. No reference is made to the use for sale or display of motor vehicles. In addition a car showroom and a shop as so defined have different attributes e.g. in terms of vehicle trips generated and patterns of use. I submit that the change of use from car showroom to retail convenience store is a material change of use and therefore comprises development under section 3(1) of the Act.

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

9.3.1. Article 6(1) provides that subject to Article 9 development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development provided it complies with the conditions and limitations specified in column 2. Class 14 of Part 1, Schedule 2 provides that development consisting of a change in use from the display or sale of motor vehicles to use as a shop is exempted development. No conditions or limitations are set out in column 2 of the Class (in respect of this change of use). I consider that the proposal subject of this referral falls within this class.

9.4. **Restrictions on exempted development**

9.4.1. Article 9 sets out a number of instances under which development in Part 1 is not exempted development. In terms of the subject referral I note the following:

1. The proposal would not contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act. As noted previously there is a current appeal against a condition attached to a permission to change the use of part of the showroom to a shop but, as yet, no decision has been made.
2. The site is served by two accesses from Model Farm Road with good sightlines from both. The 50kph speed limit applies. Off street parking for over 25 vehicles is available within the curtilage of the site. Whilst a shop would have different traffic movements to the car sales showroom I consider

that the change of use would not give rise to material concerns in terms of conflicting vehicular movements or congestion as to constitute a traffic hazard. The referrer, in support of its case, makes reference to the report from Traffic: Regulation and Safety on the concurrent appeal under ref. ABP 313906-22 for the change of use of part of the showroom to a shop in which no objection was raised.

3. As noted previously the section of the building to which the referral pertains is currently used as a car sales showroom for which permission was secured. Therefore the proposal would not consist of or comprise the extension, alteration, repair, renewal of an unauthorised structure or a structure the use of which is unauthorised.

9.4.2. On this basis I consider that the proposed change of use is exempted development.

9.5. Environmental Impact Assessment and Appropriate Assessment

- 9.5.1. Section 4(4) of the Act sets out that development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required. Having regard to the nature and scale of the works, I am satisfied that the development would not give rise to any significant environmental effects and would not therefore require Environmental Impact Assessment. I am equally satisfied that 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 a European site.

10.0 Recommendation

10.1. I recommend that the Board should decide this referral in accordance with the following draft order.

WHEREAS a question has arisen as to whether the proposed change of use from a premises for the sale and display of motor vehicles to use as a shop at Lee Garage, Model Farm Road is or is not development or is or is not exempted development.

AND WHEREAS the said question was referred to An Bord Pleanála by Cork City Council on the 27th day of October, 2022

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

- (a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended,
- (b) Articles 5, 6 and 9 of the Planning and Development Regulations, 2001, as amended,
- (c) Part 1 of Schedule 2 of the Planning and Development Regulations, 2001, as amended,
- (d) The planning history of the site,
- (e) The pattern of development in the area,
- (f) Access arrangements to and within the site,
- (g) The submissions on file, and
- (h) The Inspector's report:

AND WHEREAS An Bord Pleanála has concluded that:

- (a) the proposed change of use pertaining to the car sales showroom would generally come within the scope of the exemption provided in Class 14 (a) of Part 1 of Schedule 2 of the Planning and Development Regulations, as amended, and
- (b) the change of use to a shop is not subject to any of the restrictions on exemption set out in Article 9 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 (4) of the Planning and Development 2000 Act, as amended, hereby decides that the proposed change of use from a premises for the sale and display of motor vehicles to use as a shop at Lee Garage, Model Farm Road is development and is exempted development.

Pauline Fitzpatrick
Senior Planning Inspector

February, 2023