



An
Bord
Pleanála

Inspector's Report ABP-315056-22

Question

Whether the proposed change of use from shop to apartments is or is not development or is or is not exempted development.

Location

Bridge Street, Gort, Co. Galway.

Declaration

Planning Authority

Galway County Council

Planning Authority Reg. Ref.

ED22/49

Applicant for Declaration

Dean Rafferty.

Planning Authority Decision

Is not exempted development

Referral

Referred by

Dean Rafferty.

Owner/ Occupier

Applicant.

Observer(s)

None.

Date of Site Inspection

27th June 2023.

Inspector

Barry O'Donnell

1.0 Site Location and Description

- 1.1. The subject site is located on the south side of Bridge Street, Gort, in south County Galway. It comprises a 3-storey terraced, commercial block that contains 3 No. shop units at ground floor and storage/living accommodation on upper floors.
- 1.2. The block addresses Bridge Street and incorporates a stone-clad finish on its front elevation. There are 3 No. separate shopfronts at ground floor level, addressing Bridge Street.

2.0 The Question

- 2.1. The question the subject of the referral before the Board is: -
'Whether the change of use from shop to apartments is or is not development and is or is not exempted development.'

3.0 Planning Authority Declaration

3.1. Declaration

- 3.1.1. The Planning Authority issued a declaration dated 13th October 2022, which states that the proposed development is development and is not exempted development.

3.2. Planning Authority Reports

- 3.2.1. An undated Planning Report has been provided, which reflects the Planning Authority's determination. The report states that the proposed works are beyond the scope of S.I. No. 75/2022, paying particular regard to the extensive exterior works such as conversion of a roof area to a patio and the addition of a significant amount of window openings.
- 3.2.2. Other Technical Reports
None.

4.0 Planning History

4.1. I encountered the following historic planning records pertaining to the site: -

10/1712: Permission granted on 7th March 2011 for retention of extension to rear of existing commercial premises and revised layout to existing premises, to that granted under Reg. Ref. 05/853.

06/4369: Permission granted on 15th January 2007 for change of use of existing retail unit 1 to use as a restaurant.

05/853: Permission granted on 29th August 2010 for construction of an extension to existing supermarket, extension to rear of 2 No. shop units adjacent to supermarket, conversion of first and second floors over supermarket and shop units to 4 No. apartments, new shopfront to front of supermarket and shop units and alterations to rear site access and associated site works.

04/1989: Permission granted on 6th September 2004 for extension to existing supermarket, new shopfront to supermarket and adjacent premises to south, conversion of ground floor shed to shop and alterations to rear site access and associated site works.

5.0 Policy Context

5.1. Galway County Development Plan 2022 - 2028

5.1.1. The site is located within the urban footprint of Gort, in south County Galway.

5.2. Gort Local Area Plan 2013 – 2023

5.2.1. The local area plan was extended for a further 5-year period, from 25th June 2018.

5.2.2. The site is subject to the 'C1 – Town Centre/Commercial' zoning. The site is also located within an Architectural Conservation Area, which encompasses the town centre area.

5.3. Natural Heritage Designations

- 5.3.1. The subject site is not located within or adjacent to any designated European site, the closest such site being Coole-Garryland Complex SAC (Site Code 000252), which is c.1.45km west. Coole-Garryland SPA (Site Code 004107) lies slightly further west.

6.0 The Referral

6.1. Referrer's Case

- The legislation does not state that partial conversion of a shop unit is not exempt. The Planning Authority has not assessed the application properly.
- The development provides 1-bed accommodation, which is needed in the town of Gort. It makes the best possible use of the building.

6.2. Planning Authority Response

- 6.2.1. None received.

6.3. Further Responses

- 6.3.1. None.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000, as amended

- 7.1.1. **Section 3(1)** of Planning and Development Act 2000, as amended, states – 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.
- 7.1.2. **Section 2(1)** of the act states - “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.

7.2. Planning and Development Regulations 2001-2023

7.2.1. Article 10(6)(a) – Changes of Use

(a) In this sub-article— ‘habitable room’ means a room used for living or sleeping purposes but does not include a kitchen that has a floor area of less than 6.5 square metres;

‘relevant period’ means the period from 8 February 2018 until 31 December 2025.

(b) This sub-article relates to a proposed development, during the relevant period, that consists of a change of use to residential use from Class 1, 2, 3, 6 or 12 of Part 4 to Schedule 2.

(c) Notwithstanding sub-article (1), where in respect of a proposed development referred to in paragraph (b)—

(i) the structure concerned was completed prior to the making of the Planning and Development (Amendment) (No. 2) Regulations 2018,

(ii) the structure concerned has at some time been used for the purpose of its current use class, being Class 1, 2, 3, 6 or 12, and

(iii) the structure concerned, or so much of it that is the subject of the proposed development, has been vacant for a period of 2 years or more immediately prior to the commencement of the proposed development,

then the proposed development for residential use, and any related works, shall be exempted development for the purposes of the Act, subject to the conditions and limitations set out in paragraph (d).

(d)(i) The development is commenced and completed during the relevant period.

(ii) Subject to sub-paragraph (iii), any related works, including works as may be required to comply with sub-paragraph (vii), shall –

(I) primarily affect the interior of the structure,

(II) retain 50 per cent or more of the existing external fabric of the building, and

(III) not materially affect the external appearance of the structure so as to render its appearance inconsistent with the character of the structure or of neighbouring structures.

(iii) Any related works for the alteration of existing ground floor shop fronts shall be consistent with the fenestration details and architectural and streetscape character of the remainder of the structure or of neighbouring structures.

(iv) No development shall consist of or comprise the carrying out of works to the ground floor area of any structure which conflicts with any objective of the relevant local authority development plan or local area plan, pursuant to the Part 1 of the First Schedule to the Act, for such to remain in retail use, with the exception of any works the purpose of which is to solely provide on street access to the upper floors of the structure concerned.

(v) No development shall consist of or comprise the carrying out of works which exceeds the provision of more than 9 residential units in any structure.

(vi) Dwelling floor areas and storage spaces shall comply with the minimum floor area requirements and minimum storage space requirements of the “Sustainable Urban Housing: Design Standards for New Apartments – Guidelines for Planning Authorities” issued under section 28 of the Act or any subsequent updated or replacement guidelines.

(vii) Rooms for use, or intended for use, as habitable rooms shall have adequate natural lighting.

(viii) No development shall consist of or comprise the carrying out of works to a protected structure, as defined in section 2 of the Act, save where the relevant planning authority has issued a declaration under section 57 of the Act to the effect that the proposed works would not materially affect the character of the structure or any element, referred to in section 57(1)(b) of the Act, of the structure.

(ix) No development shall contravene a condition attached to a permission under the Act or be inconsistent with any use specified or included in such a permission.

(x) No development shall relate to any structure in any of the following areas:

(I) an area to which a special amenity area order relates;

(II) an area of special planning control;

(III) within the relevant perimeter distance area, as set out in Table 2 of Schedule 8, of any type of establishment to which the Major Accident Regulations apply.

(xi) No development shall relate to matters in respect of which any of the restrictions set out in sub-paragraph (iv), (vii), (viiA), (viiB), (viiC), (viii) or (ix) of article 9(1)(a), or paragraph (c) or (d) of article (9)(1), would apply.

(xii) No development shall consist of or comprise the carrying out of works for the provision of an onsite wastewater treatment and disposal system to which the code of practice made by the Environmental Protection Agency pursuant to section 76 of the Environmental Protection Agency Act 1992 relates and entitled Code of Practice – Wastewater Treatment and Disposal Systems Serving Single Houses together with any amendment to that Code or any replacement for it.

(e)(i) Where a person proposes to undertake development to which paragraph (b) relates, then he or she shall in the case of development relating to Class 1, 2, 3, 6 or 12 of Part 4 to Schedule 2, notify in writing the planning authority in whose functional area that the change of use will occur not less than 14 days prior to the commencement of the works related to the proposed change of use and any related works;

(ii) Details of each notification under subparagraph (i), which shall include information on—

(I) the location of the structure,

(II) the number of residential units involved, including the unit sizes and number of bedrooms in each unit, and

(III) the Eircode for the relevant property,

shall be entered in a record by the planning authority maintained for this purpose and the record shall be available for inspection at the offices of the planning authority during office hours and on the planning authority's website.

(iii) During the years 2019, 2020, 2021, 2022, 2023, 2024, 2025 and 2026 each planning authority shall provide information to the Minister on the number of notifications received by it under this paragraph during the preceding calendar year, including details of the information so received for the purposes of subparagraph (ii).

7.2.2. **Part 4, Schedule 2 – Exempted Development, Classes of Use**

Class 1: Use as a shop.

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.

Class 6: Use as a residential club, a guest house or a hostel (other than a hostel where care is provided).

Class 12: Use as a Public House, meaning a premises which has been licensed for the sale and consumption of intoxicating liquor on the premises under the Licensing Acts 1833 to 2018.

8.0 Assessment

8.1. Background

- 8.1.1. The question before the Board relates to ‘Whether the change of use from shop to apartments is or is not development and is or is not exempted development.’
- 8.1.2. The Planning Authority determined that the proposed development is development and is not exempted development and this decision was grounded in the Planning Officer’s report, which referred to the extent of exterior works such as conversion of a roof area to a patio and the addition of a significant amount of window openings as important factors.
- 8.1.3. In referring the Planning Authority’s determination, the applicant submits that the determination does not accord with the legislation.

8.2. Is or is not development

- 8.2.1. The applicant proposes the conversion of the shop floor area and associated storage space, to use as 4 No. 1-bedroom apartments. This constitutes a material change of use in the land and thus constitutes ‘development’, which is defined under Section 3(1) of the Planning and Development Act, 2000 as amended (the Act), as the carrying out

of any works in, on, over or under land, or the making of any material change in the use of any land or structures situated on land.

8.3. Is or is not exempted development

8.3.1. Article 10(6)(a) of the Planning and Development Regulations 2001 – 2023 provides an exempted development provision for ‘*a change of use to residential use from Class 1, 2, 3, 6 or 12 of Part 4 to Schedule 2.*’ Of relevance to this referral, Class 1 of Part, Schedule relates to use as a shop.

8.3.2. The subject site has been the subject of a number of previous applications and, with particular reference to Reg. Refs. 10/1712 and 05/853, the applications indicate that the ground floor of each unit was in use as a shop and the first-floor areas were in use for storage/living accommodation. The floor plan drawings provided with Reg. Ref. 05/853 indicate that the area of the first floor closest to Bridge Street contained 2 No. apartments and the rear area was used for storage.

8.3.3. The following statements by the applicant are also noted to the claim of exemption under Article 10(6)(a): -

- The structure concerned contains what was previously a shop and associated first floor storage and this use was in place prior to the making of the Planning and Development (Amendment) (No. 2) Regulations 2018,
- The affected area of the shop units have been vacant for more than 2 years.

8.3.4. In view of the above, I consider the subject units accord with Article 10(6)(a), subject to compliance with conditions and limitations contained within the Article.

8.4. Restrictions on exempted development

8.4.1. Article 10(6)(d)(i-xii) contains conditions and limitations pertaining to the exemption and are set out in Section 7.2.1 of my report. The following statements by the applicant regarding these conditions and limitations are noted: -

Criterion (i): The applicant states that the development will be commenced and completed within the relevant period.

Criterion (ii): The development primarily affects the interior of the structure, more than 50% of the external fabric is retained and proposed changes are to the rear so there will be no adverse effect on the character of the structure or neighbouring structures.

Criterion (iii): There is no change to the shopfront or streetscape.

Criterion (iv): There is no conflict between the proposal and the Gort development plan.

Criterion (v): There will be a total number of 7 apartments in the building.

Criterion (vi): The development complies with the minimum requirements of the Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities.

Criterion (vii): All rooms have adequate natural lighting.

Criterion (viii): The structure is not a protected structure.

Criterion (ix): The development does not contravene a condition attached to a grant of permission.

Criterion (x): The development is not located within a special amenity area or an area of special planning control and is not affected by the Major Accidents Directive.

8.4.2. I have considered the proposed elevation and floor plan drawings provided with the application and note that the front elevation of the building is unaffected by the proposal, with elevational changes confined to the rear part of the building.

8.4.3. With reference to the elevational changes proposed, these relate to the provision of window and door openings for the proposed units. Works are also proposed to a roof profile, for the provision of a patio/circulation area that would allow access to each of the units from a proposed stairwell.

8.4.4. With reference to the requirement to comply with specified standards within the Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities, I note that the floor area of each unit exceeds the minimum required size for a 1-bed apartment. Whilst the dedicated storage area for units does not appear to itself to achieve the minimum required 3sqm, there is adequate space within living and bedroom areas to provide additional storage. This approach to storage space is provided for by the Guidelines and is thus acceptable.

- 8.4.5. Regarding access to natural light, each unit is provided with windows to all habitable rooms, on the south-east elevation. Units will therefore be well-lit in the mornings.
- 8.4.6. In my view, the proposed elevational changes to the building are minor in nature and accord with the conditions and limitations attached to Article 10(6)(d). No changes are proposed to the front (Bridge Street) elevation and I consider there will be no adverse effect on the character of the structure or the character of the streetscape.
- 8.4.7. As the applicant states, the development is not located within a special amenity area or an area of special planning control and is not affected by the Major Accidents Directive. I am also satisfied that the development does not conflict with restrictions set out in sub-paragraph (iv), (vii), (viiA), (viiB), (viiC), (viii) or (ix) of article 9(1)(a), or paragraph (c) or (d) of article (9)(1).
- 8.4.8. In view of my assessment, I conclude that the development accords with the conditions and limitations attached to Article 10(6) of the Regulations.

8.5. **Appropriate Assessment**

- 8.5.1. The subject site is not located within or adjacent to any designated European site, the closest such site being Coole-Garryland Complex SAC (Sie Code 000252), which is c.1.45km west. Coole-Garryland SPA (Site Code 004107) lies slightly further west.
- 8.5.2. The proposed development comprises a change of use, including conversion works, from a shop to apartments. The site is located in the town centre of Gort.
- 8.5.3. The development involves works which are minor in nature and, taken together with its locational context, I am satisfied that no issues arise in respect of Appropriate Assessment.

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 from shop to apartments is or is not development and is or is not exempted development.

AND WHEREAS Dean Raftery requested a declaration on this question from Galway County Council and the Council issued a declaration on the 13th October 2022, stating that the proposed development is development and is not exempted development.

AND WHEREAS Dean Raferty referred this declaration for review to An Bord Pleanála on the 7th day of November 2022:

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) Article 9(1) of the Planning and Development Regulations, 2001 – 2023,
- (d) Article 10(6) of the Planning and Development Regulations, 2001 – 2023,
- (e) the planning history of the site,
- (f) The pattern of development in the area:

AND WHEREAS An Bord Pleanála has concluded that the change of use from shop to apartments constitutes ‘development’, as defined under Section 3(1) of the Planning and Development Act, 2000 as amended and would come generally within the scope of the exempted development provision provided at Article 10(6) of the Planning and Development Regulations 2001 – 2023.

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 shop to apartments is development and is exempted development.

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.

Barry O'Donnell
Planning Inspector

17th July 2023.