



An
Bord
Pleanála

Inspector's Report ABP-315060-22

Question

Whether the change of use/conversion of a domestic garage to commercial gym, is or is not development and is or is not exempted development.

Location

Knockatavey, Knockbridge, Dundalk, Co. Louth

Declaration

Planning Authority

Louth County Council

Planning Authority Reg. Ref.

S5 2022/22

Applicant for Declaration

Kevin Kirk

Planning Authority Decision

Is not exempted development

Referral

Referred by

Kevin Kirk

Owner/ Occupier

Kevin Kirk

Observer(s)

Colm Kirk

Date of Site Inspection

30th November 2023.

Inspector

Emma Nevin

1.0 Site Location and Description

1.1. The site is located in the townland of Ballincare, just outside the village of Knockbridge. The existing structure subject to the referral fronts the R171. The converted building is a former detached domestic garage and is situated to the rear of the site. The building has been converted to a gym and contains a WC, store with a floor area of 42 sq. m.

2.0 The Question

2.1. The question referred to the planning authority pursuant to Section 5(1) of the Planning and Development Act, 2000, as amended (“the Act”) and subsequently referred by referrer to the Board, pursuant to Section 5(3)(b) of the Act is, as follows: “Whether the change of use/conversion of a domestic garage to commercial gym, is or is not development and is or is not exempted development”.

3.0 Planning Authority Declaration

3.1. Declaration

On the 13th March 2022 Louth County Council issued a decision concluding that on the basis of the information submitted advised that,

- (i) The subject change of use and alterations to the existing structure constitute development as it represents a material change of use;
- (ii) The subject change of use of domestic garage to commercial use is not exempt development within the meaning of the Planning and Development Act, 2000 as amended or any class of exemption provided for under the Planning and Development Regulations, 2001 as amended;
- (iii) The use of the domestic garage for commercial purposes were access to same is onto a protected regional route gives rise to traffic hazard;
- (iv) The installation of a toilet and connection to an existing wastewater treatment plant are considered to constitute “work” as per the definition of

the Planning and Development Act, 2000 as amended and are not exempt development.

The change of use of a domestic garage to a commercial gym is development and is not exempted development.

3.2. Planning Authority Reports

3.2.1. The basis for the Planning Authority's decision includes:

- The building now converted to a gym was a domestic garage ancillary to the dwelling on site.
- The gym is used on a one-to-one basis with a fee being charged.
- The building has a toilet which is connected to the septic tank for the dwelling on site.
- The applicant's website advertising the gym is on the enforcement file.
- The use of a domestic garage for purposes of a commercial garage is a material change of use and as such constitutes development.
- The structure lies within the curtilage of a dwelling house.
- Article 9 (a) (iii) does not allow exempted development if it endangers public safety by reason of a traffic hazard. The development is located on the R171 Protected Regional Route and would create an intensification of the use of the existing vehicular entrance at this location which could constitute a traffic hazard.

3.2.2. Other Technical Reports

None

4.0 Planning History

4.1. Referral Site:

22/U016 – Warning letter issued regarding alleged use of a domestic garage to the rear of the dwelling converted to a commercial gym known as KK Fitness Studio without the benefit of planning permission.

68/110 – Planning permission was granted by the local authority on 10th June 1968, for a dwelling house.

5.0 Policy Context

5.1. Development Plan

- 5.1.1. The relevant Development Plan is the Louth County Development Plan 2021-2027.
- 5.1.2. Knockbridge is classified as a small town/village in the Development Plan and has a zoning 'A1' Existing Residential, "To protect and enhance the amenity and character of existing residential communities".

5.2. Natural Heritage Designations

- 5.2.1. The site is located c.7km from the Dundalk Bay SPA (Site Code: IE0004026) and the Dundalk Bay SPA (Site Code: IE0000455).

6.0 The Referral

6.1. Referrer's Case

- 6.1.1. A first party referral was received from the occupier of the garage Kevin Kirk (brother of Colm Kirk, owner of the property), against the decision made by the Planning Authority, that the above works do not constitute exempted development, under the relevant provisions of the Planning and Development Act 2000 (as amended). The case submitted by the referrer can be summarised as follows:

- The garage was converted into a gym for private use in 2020 for the appellant, neighbours, and friends.
- In 2021 the appellant began to provide a personal training service including on a one-to-one basis.
- The conversion of the detached domestic garage cost the appellant a lot of money.
- There are no other gym facilities available in the Knockbridge area.

- The gym facility has provided an opportunity for people to exercise during difficult times dramatically improving their mental wellbeing and physical fitness.
- The development has not changed in height, width or external finishes and does not need planning permission.
- The gym was in use since 2020 for non-payment and since 2021 a fee was charged for the upkeep of the premises.
- Irrespective of whether a fee is charged or not the building was and always will be used on a one-to-one basis.
- There has not been an increase in the volume of visitors to the property since the garage was renovated into a gym.

6.2. Planning Authority Response

- 6.2.1. The Planning Authority had no further comment and referred all parties to the planning report on file.

6.3. Owner/ occupier's response (*where not the referrer*)

- 6.3.1. The owner of the property, Colm Kirk, issued a response which can be summarised as follows:
- My brother (Kevin Kirk) developed the disused detached domestic garage into a gym for private use.
 - Friends, relatives, and neighbours use the gym on a one-to-one basis from time to time.
 - These people visit the owner irrespective of the gym.
 - There is no intensification of use of the existing entrance and there is no increase in car parking in the private driveway.
 - No additional or changed loading has occurred to the existing storm water disposal or the wastewater treatment system.

- The gym has not increased the area, size, shape, or height of the building, and there are no elevational changes.
- The use of the garage initially or now as a gym is ancillary to the enjoyment of the dwelling and is exempted development.
- There is a precedent regarding this as shed was converted to a bar in Tullinlough, Frosses, Co. Donegal and The Courts ruled in favour of the owner as the use is ancillary to the enjoyment of the dwelling and is exempted development.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000, as amended

7.1.1. Section 2(1) of the Act states the following:

- ‘development’ has the meaning assigned to it by Section 3.
- ‘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.

7.1.2. Section 3 (1) states as follows: “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) (a) – (l) sets out what is exempted development for the purposes of this Act and includes: (f) providing for ‘*development carried out on behalf of, or jointly or in partnership with, a local authority, pursuant to a contract entered into by the local authority concerned, whether in its capacity as a planning authority or in any other capacity*’, and (j) “*development consisting of the use of any structure or other land within the curtilage of a house for any purpose incidental to the enjoyment of the house as such*”.

7.1.4. Section 4(1)(h) exempts “*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”.

7.1.5. Section 4(2) of the Act provides that ‘the Minister may, by regulations, provide for any class of development to be exempted development’. The main regulations made under this provision are the Planning and Development Regulations 2001, as amended.

7.1.6. Section 4 (4) states that “notwithstanding paragraphs (a), (i), (ia) and (l) of subsection (1) and any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required”.

7.2. Planning and Development Regulations, 2001

7.2.1. Under Article 10, 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. Article 10(2)(a) notes that 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.

7.3. Precedent Judgements

Material Change in Use

7.4. In *Monaghan County Council v Brogan* [1987] IR 333, the courts confirmed that the term “material” means material in planning terms, that is whether the issues raised by the change of use would raise matters that would normally be considered by a planning authority if it were dealing with an application for planning permission, such

as “residential amenity, traffic safety or policy issues in relation to statutory plans”.

This decision was confirmed in *Westmeath County Council v Quirke & Sons* (unreported, 23 May 1996) HC, where the courts also noted that consideration of the materiality of a change in use means not only the use itself but also its effects.

- 7.5. In *McMahon v Dublin Corporation* [1996] 3 IR 509, the courts approached the materiality of a change of use by examining the impact which the change had on the immediate neighbourhood and surrounding area.
- 7.5.1. The observer refers to a precedent for similar development where a shed was converted to a bar in Tullinlough, Frossess, Co. Donegal and the observer alleges that the Court concluded that the use was ancillary to the enjoyment of the dwelling and was therefore exempted development. Having reviewed the case details, I cannot locate a record on the planning register of any exempted development on the site referred to by the observer, therefore, this example cannot be considered relevant case law.

8.0 Assessment

8.1. The Question

- 8.1.1. The question before the Board in this instance can be stated as follows:

“Whether the change of use/conversion of a domestic garage to commercial gym, is or is not development and is or is not exempted development”.

- 8.1.2. It should be stated at the outset that the purpose of this referral is not to determine the acceptability or otherwise of the proposed development in respect to the proper planning and sustainable development of the area, but rather whether or not the matter in question constitutes development, and if so, falls within the scope of exempted development. In assessing the merits of the case, I have reviewed all documentation on file, and any previous relevant declarations made by the Board, if applicable.

8.2. Is or is not development

- 8.2.1. The first matter relates to whether or not the proposal comprises development.
- 8.2.2. In this case, as there are no works involved, in order to ascertain whether or not development has taken place, it must be established whether or not there has been a material change of use in the structure that being a domestic garage.
- 8.2.3. The test as to whether there is a material change of use of the land and, if so, is such use 'incidental' to the enjoyment of the dwelling house, is, a matter of judgment on the nature, scale, and degree of the business and to extent that the character of the residential use is altered.
- 8.2.4. From the details including drawings submitted with the referral and from an inspection of the site, no physical works have been undertaken to the domestic garage. The use of the garage has, however, changed from use as a domestic garage to use as commercial gym, serving visiting members of the public, which the applicant describes as family and friends, however, attendance is subject to a fee.
- 8.2.5. The subject site fronts the R171 and is served by a single residential vehicular access onto the main Regional Road, which is a heavily trafficked regional road. While the applicant states that the gym is used on a one-to-one basis, there may however be occasions where more than one client is attending the gym, and or where clients are attending sessions back-to-back, which could in turn result in a traffic hazard at this location. As such, the nature and scale of this use would generate traffic issues, which are a matter of planning concern. This has the potential to impact not only on traffic safety but also on the residential amenity of the occupants of adjoining houses. Therefore, the nature of this change of use and the associated implications for the site in terms of traffic generation and associated residential disturbance are in my opinion such that a material change of use has occurred.
- 8.2.6. The submitted floor plans indicate that the garage has been subject to a number of internal alterations, including the installation of internal partitions. The original floor plans indicate the installation of the toilet; however, I could not locate a planning history associated with the former garage, and as such when the toilet was installed

was not clear. Notwithstanding this, I conclude that the nature of these works, including the provision of a toilet are such that development has occurred.

- 8.2.7. For the above reasons, I consider that the subject of this referral question comprises works and a material change in the use of the ancillary domestic garage on site such that development has occurred.

8.3. Is or is not exempted development

- 8.3.1. In considering the question as to whether the development which has occurred on the site is or is not exempted development, the following general facts are of relevance.

- 8.3.2. Article 10(1) of the Planning Regulations provides that a change of use within any one of the classes of use specified in Schedule 2, Part 4 shall be exempted development for the purposes of the Act. There are no exempted development provisions under Schedule 2 Part 4 exempted development for a change of use, within a particular class, from domestic garage to commercial gym.

- 8.3.3. I conclude, therefore, that the change of use of domestic garage to commercial gym at the subject premises is development and is not exempted development.

8.4. Restrictions on exempted development

- 8.4.1. Appropriate Assessment: Under Section 177U(9) of the Planning and Development Act, 2000 (as amended) it is stated that “in deciding upon a declaration or a referral under section 5 of this Act a planning authority or the Board, as the case may be, shall where appropriate, conduct a screening for appropriate assessment in accordance with the provisions of this section.”

- 8.4.2. Section 4 (4) of the Act also states that “notwithstanding paragraphs (a), (i), (ia) and (l) of subsection (1) and any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required”.

- 8.4.3. The Dundalk Bay SPA (Site Code: IE0004026) and the Dundalk Bay SPA (Site Code: IE0000455) are some 7km from the site and there are no direct pathways. Notwithstanding, there are no works relating to the change of use by itself and within

the context of the site and surroundings. Having regard to the nature and scale of the development and the nature of the receiving environment and/or proximity to the nearest European site, no Appropriate Assessment issues arise, and it is not considered that the development would be likely to have a significant effect individually or in combination with other plans or projects on a European site. Accordingly, there are no restrictions in this regard.

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/conversion of a domestic garage to commercial gym, is or is not development or is or is not exempted development:

AND WHEREAS Kevin Kirk requested a declaration on this question from Council and the Council issued a declaration on the 13th day of October, 2022 stating that the matter was development and was not exempted development:

AND WHEREAS Kevin Kirk referred this declaration for review to An Bord Pleanála on the 9th day of November, 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) Article 10 of the Planning and Development Regulations, 2001, as amended,
- (c) the pattern of development in the area:

AND WHEREAS An Bord Pleanála has concluded that –

- (a) The proposed use is a material change of use from domestic garage to commercial gym represents a material change of use and as such constitutes development that would give rise to significant impacts in planning terms; and,
- (b) The proposed material change in the use of the domestic garage would not come within the scope of exempted development under Article 10(1) as it would not consist of a change of use within Class 10 of Part 4 of Schedule 2 of the said Regulations.
- (c) The subject change of use from domestic garage to commercial gym is therefore, development and is not exempted development within the meaning of the Planning and Development Act, 2000 as amended, or the Planning and Development Regulations, 2001, as amended.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by Section 5 of the 2000 Act, hereby decides that the change of use/conversion of a domestic garage to commercial gym is development and is not 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.

Emma Nevin
Planning Inspector

19th December 2023