



An
Bord
Pleanála

Inspector's Report ABP-318321-23

Question

Whether the change of use of the property from a store/lock up to a photography business is or is not development or is or is not exempted development? Whether the works carried out to the facade of the property is or is not development or is or is not exempted development? Whether the signage erected on the property is development which is or is not development or is or is not exempted development?

Location

3A Church Lane, Rathmines, Dublin 6

Declaration

Planning Authority

Dublin City Council

Planning Authority Reg. Ref.

0319/23

Applicant for Declaration

Marcus Hayes

Planning Authority Decision

Is exempted development

Referral

Referred by	Marcus Hayes
Owner	Irene Meagher
Observer(s)	Irene Meagher
Date of Site Inspection	12 th June 2024
Inspector	Conor Crowther

1.0 Site Location and Description

- 1.1.1. The site measures approximately 118 sq.m at 3A Church Lane, Rathmines, Dublin 6. The site is located within the established suburban area of Rathmines with a mixture of residential, commercial and office uses. The site is located approximately 3km south of Dublin City Centre, within the Local Authority area of Dublin City Council.
- 1.1.2. The site currently functions as a photography business within a part 1 storey/part 2 storey stone walled building. The building consists of a part pitched/part flat corrugated roof and a recessed double door glazed entrance with glazed side panels fronting onto Church Lane.
- 1.1.3. The site is bounded to the south by 3 storey townhouses on Church Lane, to the north by Sinnott Solicitor's office, to the west by John Hayes car dealership and to the east by Church Lane. Holy Trinity Church of Ireland lies further to the east and Rathmines village lies further to the north of the site.

2.0 The Question

- 2.1.1. This is a referral under Section 5(3) of the Planning & Development Act 2000, as amended, of a declaration by the Planning Authority on the following questions:
 - Whether the change of use of the property from a store/lock up to a photography business is or is not development or is or is not exempted development?
 - Whether the works carried out to the facade of the property is or is not development or is or is not exempted development?
 - Whether the signage erected on the property is development which is or is not development or is or is not exempted development?
- 2.1.2. The question is posed in light of previous enforcement proceedings triggered by the referrer against the owner of the site based on a change of use from a workshop to a photography business. The Planning Authority determined that planning permission was not required and subsequently closed enforcement proceedings.
- 2.1.3. It should be stated at the outset that the purpose of this referral is not to determine the acceptability or otherwise of the change of use of the property from a store/lock

up to a photography business or the works carried out to the façade of the property or the signage erected on the property in respect of 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.

3.0 Planning Authority Declaration

3.1. Declaration

3.1.1. The Planning Authority made the following declaration on the 26th September 2023:

'In accordance with the above recommendation, I direct the issuing of a declaration, under Section 5 of the Planning & Development Acts 2000 (as amended), that the above proposed development is EXEMPT from the requirement to obtain planning permission under Section 32 of the Planning & Development Acts 2000 (as amended).'

3.1.2. The development was deemed exempted development within the meaning of the Planning and Development Acts 2000 (as amended) and as set out under the Planning and Development Regulations 2001 (as amended) Article 10, Schedule 2 Part 2 Exempted Development and Schedule 2 Part 4 Change of Use.

3.1.3. I note that the Planning Authority did not conclude on whether the subject of the referral constituted development. Rather, the Planning Authority only assessed whether it constituted exempted development.

3.1.4. I note that a response was submitted to the Planning Authority on the 5th September 2023 by Mr James Meagher, the presumed landowner at the time. This is largely reflected in the owner's response submitted to the Board on the 22nd November 2023.

3.2. Planning Authority Reports

3.2.1. Planning Reports

3.2.2. The Planning Officer's report issued on the 22nd September 2023 recommending that the Section 5 referral constitutes exempt development. The report is summarised as follows:

- The referrer has not demonstrated that the premises has been in continuous use as a store since 1967.
- Descriptions of the site from historic planning applications in the immediate vicinity referred to workshop use and Google street view images confirm the light industrial use of the premises.
- The previous use of the premises falls within the definition of Class 4 use as a light industrial building and not Class 5 use as a wholesale warehouse or repository, as stated by the referrer.
- No food is cooked onsite, and the premises is not open to members of the public.
- The current use and previous uses of the building fall within Class 4, Schedule 2, Part 4 of the Planning & Development Regulations 2001 (as amended). A change of use has therefore not occurred.
- The original garage door opening has not been altered as the framed glazed door sits within the original opening to the premises. Like the adjoining accesses, the framed door includes a recess behind the building line.
- The works carried out to the façade are not considered to materially affect the external appearance of the structure, nor are they inconsistent with the character of surrounding structures. Thus, the works to the façade are exempted development under Section 4(1) of the Planning & Development Act, 2000 (as amended).
- The sign on the front of the property measured less than 0.3 sq.m and is therefore within the limits of Class 5, Part 2, Schedule 2 of the Planning & Development Regulations 2001 (as amended) and considered exempted development.

4.0 Relevant Planning History

Referral Site:

- 4.1.1. E0632/18 – Enforcement proceedings taken on the basis of a complaint made by the referrer relating to an alleged change of use from use as a workshop to a

photography business, without the benefit of planning permission in 2022. The case was closed, and no further enforcement proceedings were taken, on the basis that planning permission was not required.

- 4.1.2. PAC0224/20 - Pre-app consultation undertaken in November 2020 for the re-development of the site and the adjoining John Hayes car dealership to the west. The proposal included 5 no. terraced houses and 3 no. apartments. No indication was provided of the interest of the prospective applicant in the land.

Neighbouring Sites of relevance:

- 4.1.3. 2527/21 (ABP Ref. PL29S.311887) – Permission GRANTED in 2022 by the Board for construction of 3 dwellings, all with associated private garden and screened terrace at first floor level to the rear, off-street car parking with access from Church Avenue at 6-8 Church Avenue to the west of the site.
- 4.1.4. 3602/09 (ABP Ref. PL29S.235095) – Permission GRANTED in 2010 by the Board for first and second floor extension at 10 Church Avenue to the north of the site.
- 4.1.5. 2517/08 (ABP Ref. PL29S.230077) – Permission REFUSED in 2009 by the Board for an extension to and alteration of existing office premises at 10 Church Avenue to the north of the site.
- 4.1.6. 1684/05 – Permission GRANTED in 2005 for demolition of existing commercial structures and construction of 2 no. three storey mews houses with off-street parking, first floor terraces to rear and first and second floor balconies to front and to the rear of 60 & 62, Rathmines Road Upper, (Protected Structures) to the southwest of the site.
- 4.1.7. I note that the Planning Authority included another historic neighbouring planning application in their assessment of the planning history which I do not consider to be pertinent to my assessment.

Other Relevant Referrals:

- 4.1.8. The following referrals decided by the Board are considered relevant to this case:

RL61.308258 Whether the change of use of structure to rear of 31 Shantalla Road, Galway from commercial use to residential use is or is not development and is or is not exempted development.

4.1.9. On the 25th January 2021, the Board concluded that the current use of the structure did not come within the meaning of Class 2 (professional services), as visiting customers largely consisted of companies and not individuals. The structure was therefore considered to fall under Class 4 (light industrial). In addition, the Board concluded that a material change of use arises as a result of the different patterns of activity and impacts on the pattern of development in the vicinity.

RL17.305436 Whether or not the subdivision of the unit into two separate units, whether the use of part of the existing building for use for storage of materials and whether the use of the yard Area 3 for the storage of materials is or is not development or is or is not exempted development at Jarretstown, Dunboyne, Co. Meath.

On the matter of the use of the yard, the Board concluded on the 22nd January 2020 that the established use of the yard for storage purposes had not been demonstrated, and the use of the yard for storage purposes would, therefore, constitute a change of use which was regarded as material. Thus, this element of the development was not considered to be exempted development.

RL29N.304098 Whether the change of use from furniture manufacturer and storage facility to a commercial self-storage facility at 132a Richmond Road, Dublin is or is not development or is or is not exempted development

On the 21st January 2020, the Board concluded that the change of use in this instance was not exempted development. This was based on the fact that the commercial self-storage facility was not an authorised use, was not an established use not having commenced prior to the 1st October 1964 and constituted a material change of use between instead of within classes of use.

RL3454 Whether the removal of glazing along with glazing bars from two ground floor window openings in the principal elevation of the building at 9 – 11 Prospect Hill, Eyre Square, Galway is or is not development or is or is not exempted development.

On the 21st June 2016, the Board determined that the removal of glazing bars from two ground floor window openings constituted development and was not exempted development. The determination concluded that the development would introduce new voids in the building structure and would reorientate these openings into

horizontal openings, thereby creating an inconsistency with the character of the frontage and neighbouring frontages.

RL27.RL3437 Whether the use of a building as an office is or is not development or is or is not exempted development at Dysart', Windgates, Greystones, Co. Wicklow

On the 5th April 2016, the Board concluded that the use of the premises for professional services had not been established as no evidence existed to show that the building had ever been in use for this purpose prior to 1st October 1964. Thus, the Board concluded that the use of the premises as a professional office is a change of use. The change of use was considered material on the basis that the use was materially different in planning terms in respect of pattern of use and level of visitation by members of the public, to that of other commercial uses which existed at the premises.

RL2021 Whether the proposed light industrial use/storage use of Unit 5, Clieveragh Commercial Park, Clieveragh, Listowel, Co. Kerry is or is not an exempted development.

On the 26th March 2003 the Board concluded that the proposed light industrial usage of Unit 5 constituted a material change of use from the previous storage use. Thus, the development was not considered to be exempted development.

5.0 Policy Context

5.1. Dublin City Development Plan 2022-2028

- 5.1.1. The site is zoned 'Z1' the objective of which is 'to protect, provide and improve residential amenities'.

5.2. Natural Heritage Designations

- 5.2.1. The closest site of natural heritage interest to the referral site is the Grand Canal proposed Natural Heritage Area (002104) which is approximately 1.1km to the north the referral site. The Royal Canal proposed Natural Heritage Area (002103), Booterstown Marsh proposed Natural Heritage Area (001205), South Dublin Bay

proposed Natural Heritage Area (000210), North Dublin Bay proposed Natural Heritage Area (000206), South Dublin Bay and River Tolka Estuary Special Protection Area (004024) and the South Dublin Bay Special Area of Conservation (000210) lie approximately 2-5km from the referral site.

6.0 The Referral

6.1. Referrer's Case

6.1.1. Mr. Marcus Hayes of Kingsdeen Limited t/a John Hayes Cars, Nos. 6-8 Church Avenue, Rathmines made a Section 5 referral to the Board on the 23rd October 2023 requesting a review of the decision of Dublin City Council on the 26th September 2023 declaring that the Section 5 referral constitutes exempt development. The referrer's case is summarised as follows:

- The Planning Authority's decision is inconsistent with the relevant planning legislation and case law.
- A decision on the referral must be made on the basis of the established use pre-1963 and not the existing recent use.
- The established use is not light industrial. Rather, it is ancillary residential (store). *Roadstone Province Ltd. vs An Bord Pleanála [2008] IEHC 210* is cited as supporting case law.
- The photography business represents a material intensification of use in accordance with the principles laid down in *Galway County Council vs Lackagh Rock Ltd [1985] IR 210* and *Molumby vs Kearns*, unreported High Court, 19th January 1999.
- The Planning Authority have failed to have full regard to the evidence provided by the referrer.
- Commercial rates are not being collected for the property which operates as a commercial use.
- The current use of the property as a photography business falls under the definition of a 'professional service' under Class 2, Part 4 of Schedule 2 of the Planning & Development Regulations.

- A change of use between classes of use specified in Part 4 of Schedule 2 of the Planning & Development Regulations is not exempted development as the change of use must occur within any one of the classes of use to be considered exempted development.
- There are a number of undesirable effects arising from the use of the property as a photography business (waste and parking) that would likely be unacceptable, were planning permission sought.
- The external appearance is inconsistent with the remainder of the laneway and does not fall under Section 4(1) of the Planning & Development Act.
- The works to the façade constitute an 'alteration' as defined in the Planning & Development Act and do not fall under exempted development.

6.2. Planning Authority Response

6.2.1. The Planning Authority have not provided any further observations on this referral.

6.3. Owner's response

6.3.1. A response was submitted to the Board on the 22nd November 2023 by Mrs. Irene Meagher, the owner of the site, in response to the referral to the Board. The response is summarised as follows:

- The use of the site has historically been 'light industrial', in accordance with definitions of the Planning & Development Regulations, 2001 (as amended).
- The Planning Authority considered the use of the premises to be exempted development under Article 10, Schedule 2, Part 2 and Schedule 2, Part 4 of the Planning & Development Regulations (2001).
- No services are provided to the public. Rather, the studio is made available for use by prior appointment only, therefore, the current use of the site does not fall within Class 2 as it does not provide a service to visiting members of the public.

- The current tenant pays commercial rates and has their waste collected in the normal way¹.
- The Planning Authority determined that the premises was not previously in use as a warehouse or repository but as a light industrial use. The previous use of the premises therefore falls within Class 4 'use as a light industrial building' which is reflective of the current use of the premises, therefore no material change of use has occurred.
- The existing framed glazed façade was installed in front of the original timber sliding door in September 2018 (see Plate 1 & 2).
- The Planning Authority considered the works to the front façade to be exempted development under Section 4(1) of the Planning & Development Act, 2001.
- Signage on the façade was considered by the Planning Authority to be exempted development under Class 5, Part 2, Schedule 2 of the Planning & Development Regulations 2001 (as amended).
- Mapping referenced by the referrer does not add to their contention that the use of the premises represents a material change of use.
- Valuation records do not reflect planning uses and do not support the referrer's view that the premises has been in continuous use as a store/lock up since 1967.
- The Development Plan zoning of the site has no bearing on the determination as to whether the works and change of use are development and are or are not exempted development.
- The referrer is incorrect in stating that the existing parking on Church Lane is designated to existing residents as it is pay and display.

¹ I note that the owner referenced attachments in their response as evidence of this but there were no attachments provided as part of the owner's response.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

7.2. Section 2(1)

“Works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal.

“Structure” means any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined, and –

- (a) Where the context so admits, includes the land on, in or under which the structure is situate,”

7.3. Section 3(1)(a)

This Section of the Act defines “Development” as, ‘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’.

7.4. Section 4(1)

This Section of the Act outlines various forms and circumstances in which development is exempted for the purposes of the Act, including Section 4(1)(h) which refers to works that do not materially affect the external appearance of the structure as to render it inconsistent with the character of the structure or of neighbouring structures.

7.5. Section 4(2)

In addition to specified exemptions in the Act, Subsection (2) of the Act provides that the Minister may by regulations provide for any class of development being exempted development.

7.6. Planning and Development Regulations, 2001

- 7.6.1. Article 6(2) of Part 2 of the Regulations provides that, subject to Article 9, development consisting of the use of a structure or other land for the exhibition of advertisements of a class specified in column 1 of Part 2 of Schedule 2 shall be

exempted development, provided that the development complies with the conditions and limitations in column 2 of said Part 2. The class of relevance includes:

Class	Conditions & Limitations
<p>Class 5 - Advertisements, exhibited at the entrance to any premises, relating to any person, partnership or company carrying on a public service or a profession, business or trade at the premises.</p>	<p>1. No such advertisement shall exceed 0.3 square metres in area.</p> <p>2. Not more than one such advertisement, or, in the case of premises with entrances on different road frontages, one such advertisement for each such frontage, shall be exhibited in respect of each such person, partnership or company on the premises.</p>

7.6.2. Article 10 of Part 2 of the Regulations provides that development consisting of a change of use within any one of the classes of use specified in Part 4 of the Second Schedule shall be exempted development for the purposes of the Act, provided that the development does not include non-exempt works, contravene a condition of planning permission, be inconsistent with any specified use included in such a permission or where the existing use is an unauthorised use. The classes of relevance include:

- ‘Class 2 Use for the provision of — (b) professional services (other than health or medical services), where the services are provided principally to visiting members of the public.
- ‘Class 4 Use as a light industrial building.
- ‘Class 5 Use as a wholesale warehouse or as a repository.

7.6.3. Article 5(1) of Part 2 of the Regulations includes the following definitions of relevance:

- “light industrial building” means an industrial building in which the processes carried on or the plant or machinery installed are such as could be carried on

or installed in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit;

- "industrial process" means any process which is carried on in the course of trade or business, other than agriculture, and which is –

(a) for or incidental to the making of any article or part of an article, or for or incidental to the altering, repairing, ornamenting, finishing, cleaning, washing, packing, canning, adapting for sale, breaking up or demolition of any article, including the getting, dressing or treatment of minerals, and for the purposes of this paragraph, "article" includes-

(i) a vehicle, aircraft, ship or vessel, or

(ii) a sound recording, film, broadcast, cable programme, publication and computer program or other original database;

- "repository" means a structure (excluding any land occupied therewith) where storage is the principal use and where no business is transacted other than business incidental to such storage;
- "wholesale warehouse" means a structure where business, principally of a wholesale nature is transacted, and goods are stored or displayed incidentally to the transaction of that business.

8.0 **Assessment**

8.1. **Question 1 – Whether the change of use of the property from a store/lock up to a photography business is or is not development or is or is not exempted development?**

8.1.1. With regard to the exempted development status of the use of the property, I will assess the use as follows:

- Authorised Use
- Established Use
- Change of Use

- 8.1.2. Authorised Use: I note that the site has no relevant planning history attached to it authorising the use of the site for any purpose.
- 8.1.3. Established Use: Given that no planning permission has previously been granted onsite, I am guided by the material on file, precedent referrals and my assessment of the site during my site visit in considering the established use of the site.

Both the owner and the referrer agree that the current use of the site is as a photography business, however, they are not in agreement on the class of use under which this falls. I am of the view that the photography business reflects the Class 4 use of a premises as a 'light industrial building' due to the nature of the use which, in this instance, involves the publishing of photographs. I am not of the view that the use of the site falls under Class 2 as there does not appear to be any professional service provided to visiting members of the public, rather a service is principally provided to clients by appointment only and not to visiting members of the public on a walk-in basis. This is supported by the conclusions of precedent referral cases, namely, RL61.308258.

I note that the owner stated that the property was in use as a motor repair/paint shop when the property was bought in 1997 and that this was on the basis of a 35-year lease enacted in 1981, which was the renewal of a previous lease dating back to 1974. Notwithstanding this, the owner did not submit any evidence to support this claim. The owner additionally stated that the property was let to a series of commercial companies in the intervening period since 1997 and that the recent planning history of the surrounding area appears to refer to the premises as a workshop. This is supported by a Google Maps Street view of the site from 2014 which shows a functioning workshop on the premises, a light industrial use, as stated by the Planning Authority. There is, however, no evidence to support the status of such use of the premises as either an authorised use or an established use. The owner also stated that the current tenants have occupied the premises since 2020 and are operating as a photography business. The owner contends that the established use of the site, is therefore of a 'light industrial' nature and that no professional services are provided to visiting members of the public.

The referrer, however, contends that the established use of the property is as a store/lock-up based on valuation records dating back to 1967, a valuation report

undertaken by the Planning Authority in 2011 and a recent letting description of the site which describes it as a store. On this basis, it is argued that the established use of the property would fall under Class 5, Part 4 of Schedule 2 of the Planning & Development Regulations, which relates to use of the property as a repository.

As stated in Section 7.6.3 of my report, the term 'repository' is defined as a structure where storage is the principle use. Thus, I consider the term 'store', in this instance, to directly correlate with a repository.

With regard to the evidence provided by the referrer, I accept that the valuation records point to the use of the site as a store at a point in time. I note that historical mapping available on the State's GeoHive mapping service suggests that the property may have been in use as an ancillary residential store prior to this. This evidence suggests the previous use of the site as a store.

Notwithstanding the owner's contention that the established use of the property is light industrial, the continuous use of the property for light industrial purposes has not been established by the owner. Conversely, the referrer has provided a valuation report of the property which indicates the use of the premises as a store at a point in time. The owner has not provided evidence to prove that the established use of the site is light industrial or to disprove the referrer's contention. It has not therefore been clearly and unambiguously established that the current use of the premises for light industrial purposes is authorised or otherwise exempted development. Thus, I therefore consider, on the balance of the evidence submitted, that the established use of the site as a Class 4 (Light Industrial) photography business cannot therefore be determined to be exempt.

8.1.4. Change of Use: The change of use of the property from a store/lock up to a photography business has different patterns of activity and impacts on the pattern of development in the vicinity. This in my opinion would raise matters such as residential amenity and traffic concerns which would normally be considered in an application for planning permission. Thus, I consider the change of use to be material. Accordingly, I consider the change of use from a store/lock up to a photography business is development and is not exempt development.

8.2. **Question 2 – Whether the works carried out to the facade of the property is or is not development or is or is not exempted development?**

8.2.1. Having inspected the site the subject of this referral, it is evident to me that the alteration of the facade involved the carrying out of works as defined above, and hence constitutes development within the meaning of the Act. For clarity, I consider that the works involved the modification of the entrance door to include a framed glazed door, in front of the original garage door, recessed behind the building line within the original opening.

8.2.2. Having regard to Section 4(1)(h) of the Planning & Development Act 2000 (as amended), I do not believe that the works to the façade materially alter the appearance of the structure to the effect that it appears inconsistent with the character of neighbouring structures. The retention of the recessed entrance within the original door frame, as shown in Plate 1 & 2 of Mr James Meagher's response to the Planning Authority, conforms with neighbouring entrances fronting onto Church Lane. Thus, having regard to Section 4(1) of the Planning & Development Act 2000 (as amended), I conclude that the works the subject of this referral relating to the façade would constitute exempted development under this section of the Act.

8.3. Question 3 – Whether the signage erected on the property is development which is or is not development or is or is not exempted development?

8.3.1. Having inspected the site the subject of this referral, it is evident to me that the erection of signage on the property involved the carrying out of works as defined above, and hence constitutes development within the meaning of the Act.

8.3.2. Class 5, Part 2 of Schedule 2 of the Planning & Development Regulations relates to advertisements exhibited at the entrance of any premises, and confirms that this constitutes exempt development, subject to conditions and limitations. Given that I have determined that the current use of the site is 'light industrial', I consider that the site represents a premises. Thus, I consider the signage erected on the property to be advertisement signage which is development and is exempt development. I am satisfied that the signage does not breach the limitations relating to Class 5.

8.4. Restrictions on exempted development

8.4.1. There are no restrictions on exemption relevant to the proposed works or change of use.

8.5. Appropriate Assessment Screening

8.5.1. I have considered the works and change of use in light of the requirements of S177U of the Planning and Development Act 2000, as amended.

The subject site is located in a serviced suburban area along Church Lane south of Rathmines Village within 3.8km of the South Dublin Bay and River Tolka Estuary Special Protection Area and the South Dublin Bay Special Area of Conservation.

The works comprise alterations to the façade and the erection of signage on the façade of the property which is not a protected structure, and the change of use relates to a change of use of the building.

No nature conservation concerns were raised at the Planning Authority referral stage or in the referral to the Board.

8.5.2. Having considered the nature, scale and location of the works and change of use, I am satisfied that it can be eliminated from further assessment because there is no conceivable risk to any European Site. The reason for this conclusion is as follows:

- The small-scale nature of the works and change of use.
- The location of the works and change of use in an established suburban area that is suitably serviced and well removed from any European sites with no direct connections to European Sites.

8.5.3. I conclude that on the basis of objective information, that the works and change of use would not have a likely significant effect on any European Site either alone or in combination with other plans or projects.

Likely significant effects are excluded and therefore Appropriate Assessment (stage 2) (under Section 177V of the Planning and Development Act 2000) is not required.

8.6. EIA Screening

8.6.1. The works and change of use do not constitute a class or project set out in Schedule 5, Part 1 or 2 of the Planning & Development Regulations 2001, as amended, therefore no preliminary screening or EIA determination is required (see Appendix 1).

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

- (a) Whether the change of use of the property from a store/lock up to a photography business is or is not development or is or is not exempted development
- (b) Whether the works carried out to the facade of the property is or is not development or is or is not exempted development
- (c) Whether the signage erected on the property is development which is or is not development or is or is not exempted development:

AND WHEREAS Marcus Hayes requested a declaration on these questions from Dublin City Council and the Council issued a declaration on the 26th day of September, 2023 stating that the matter was exempted development:

AND WHEREAS Marcus Hayes referred this declaration for review to An Bord Pleanála on the 23rd day of October, 2023:

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 5(1) of the Planning and Development Regulations, 2001, as amended,
- (e) Article 6(2) and article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (f) Article 10(1) and Parts 2 & 4 of Schedule 2 to the Planning and Development Regulations, 2001, as amended, including in particular Class 2, Class 4 and Class 5 thereof,
- (g) the planning history of the site and pattern of development in the area,
- (h) the documentation submitted with the referral:

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The use of the premises as a photography business is within the scope of Class 4 (that is, use as a light industrial building), and in particular does not represent use for professional or other services under Class 2 of Part 4 of Schedule 2 of the Planning & Development Regulations 2001 (as amended).
- (b) It has not been satisfactorily established that the use of the premises for light industrial purposes is either authorised under a grant of planning permission or that such use ever existed prior to the 1st October, 1964 at the premises.
- (c) The use of the premises as a photography business is within the scope of Class 4, was therefore a change of use, which was materially different from other commercial uses in respect of, e.g. patterns of use and levels of visitation by members of the public, to that of other uses which existed at the premises and the change of use is, therefore, material and constitutes development, as defined under the Planning & Development Acts.
- (d) There are no provisions in the Planning & Development Act, 2000 (as amended) or in the Planning & Development Regulations 2001

(as amended) whereby such development would be exempted development, and the proposed material change of use in this instance is, therefore, not exempted development.

- (e) The works of alteration to the façade, including the erection of signage, of the property come within the meaning of Section 3 of the Planning and Development Act 2000 (as amended) and are, therefore, development,
- (f) The works of alteration to the façade of the property come within the meaning of Section 4(1) of the Planning and Development Act 2000 (as amended) and are, therefore, exempted development,
- (g) The works of erection of signage on the façade of the property come within the meaning of Class 5, Part 2 of Schedule 2 of the Planning & Development Regulations 2001 (as amended) and are, therefore, exempted development;

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

- (a) The change of use of the property from a store/lock up to a photography business is development and is not exempt development.
- (b) The works carried out to the façade of the property is development and is exempted development.
- (c) The signage erected on the property 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.

Conor Crowther
Planning Inspector

22nd August 2024

Appendix 1 - Form 1

EIA Pre-Screening

[EIAR not submitted]

An Bord Pleanála Case Reference	ABP-318321-23		
Proposed Development Summary	Change of use of 3A Church Lane, Rathmines from a store/lock up to a photography business and works to the façade of 3A Church Lane, Rathmines.		
Development Address	3A Church Lane, Rathmines, Dublin 6		
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)		Yes	
		No	✓ No further action required
2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?			
Yes		Class.....	EIA Mandatory EIAR required
No	✓		Proceed to Q.3
3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?			
		Threshold	Comment (if relevant)
			Conclusion
No	✓	N/A	Not a class
			No EIAR or Preliminary Examination required
Yes			Proceed to Q.4

4. Has Schedule 7A information been submitted?

No		Preliminary Examination required
Yes		Screening Determination required

Inspector: Conor Crowther Date: 22nd August 2024