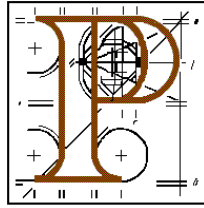


An Bord Pleanála



Inspector's Report

Reference Case: RL27.RL3437

Question: Whether the use of a building as an office is or is not development or is or is not exempted development at 'Dysart' (previously 'Ashfield'), Windgates, Greystones, County Wicklow.

Referred by: Tom de Paor & J. Devlin

Planning Authority: Wicklow County Council

Inspector: Kevin Moore

1.0 BACKGROUND

1.1 Tom de Paor and Judith Devlin submitted a request to Wicklow County Council for a declaration under section 5 of the Planning and Development Act to determine whether the use of “Building B” as an office at Ashfield, Windgates, Greystones is or is not development or is or is not exempted development. The Council determined that the use constituted a material change of use, comes within the meaning of development as defined under section 5 of the Planning and Development Act, and that it is not satisfied that there was any legitimate and authorised commercial use of the premises. It was concluded that the planning authority considered the office use to be development that is not exempted development. Tom de Paor and Judith Devlin refer this declaration to the Board for review.

2.0 THE QUESTION

2.1 The question before the Board is:

Whether the use of a building as an office is or is not development or is or is not exempted development at ‘Dysart’ (previously ‘Ashfield’), Windgates, Greystones, County Wicklow.

3.0 THE REFERRER’S SUBMISSION

3.1 The submission may be summarised as follows:

- A commercial use is confirmed to be established pre-1st October, 1964 by the affidavits of the owner of the premises at the time. The original

commercial use is common local knowledge. The building was the work office. Other commercial uses existed since then, such as a tailor shop and vintage clothes shop, with signage for same existing on site. Reference is made to unauthorised development proceedings in 2007 in support of the submission that the use of the buildings for commercial purposes was legitimate.

- The buildings were renovated, the commercial use continued as a builder's yard and Building B was the firm's office. A declaration and affidavit is attached in support. The Council transacted with the occupier for various civil works contracts from their office at Building B. The Council did not bring any proceedings against the continued commercial use.
- The planning authority has been demonstrated to be negligent in previous declarations, with reference to non-acceptance of any previous office use.
- The premises were sold and purchased as a commercial property in 2004, with commercial service connections and a commercial rate of stamp duty paid at the time.

In conclusion, it is stated that the proposal seeks to remove a builder's yard with associated office and replace it with a small architect's office and ancillary gardens.

Details attached in support of the application for review include the application to the planning authority, statutory declarations, affidavits, section 5 correspondences, a rent invoice, information received under the Freedom of Information Act, and photographs.

4.0 THE POSITION OF THE PLANNING AUTHORITY

4.1 The planning report prior to the declaration by the planning authority included the following:

- On the basis of the information available, the yard in which the structure is located was subdivided from the original planning unit (house and yard/outbuildings) without the benefit of planning permission and subsequently used by two building construction businesses between 1996 and 2006. There is no record of planning permission for the subdivision of the property or commercial use as a builder's yard.
- Noting the declarations made, there is no documentary evidence of any commercial use of the property prior to 1964 and continuing until 1996.
- Following an examination of the valuation records of the lands, it is noted that no commercial rates were applied to the property. Thus, any commercial use of the property was carried out without the benefit of a pre-1964 use right or permission and was therefore unauthorised.
- While the subject structure may have had an ancillary use to that of the adjoining dwelling, the Planner was not satisfied that a legitimate use of the structure as a separate commercial office occurred and therefore the provisions of Schedule 2, Part 4, Class 2(b) of the Planning and Development Act are not applicable.

It was concluded that the proposed use as an architect's office would involve a material change of use and is development that is not exempted development. The planning authority concurred with this recommendation in its decision.

5.0 EVALUATION

A. Statutory Provisions

1. Planning and Development Act 2000 (as amended)

Section 2(1)

In this Act, except where the context otherwise requires—

“use”, in relation to land, does not include the use of the land by the carrying out of works thereon.

Section 3(1)

In this Act, “development” means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land.

2. Planning and Development Regulations 2001 (as amended)

PART 2 - Exempted Development

Article (10)

(1) Development which consists of a change of use within any one of the classes of use specified in Part 4 of Schedule 2, shall be exempted development for the purposes of the Act, provided that the development, if carried out would not –

- (a) involve the carrying out of any works other than works which are exempted development,
 - (b) contravene a condition attached to a permission under the Act,
 - (c) be inconsistent with any use specified or included in such a permission, or
 - (d) be a development where the existing use is an unauthorised use, save where such change of use consists of the resumption of a use which is not unauthorised and which has not been abandoned.
- (2)(a) A use which is ordinarily incidental to any use specified in Part 4 of Schedule 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.

Schedule 2

Part 4 Exempted Development – Classes of Use

Class 2

Use for the provision of –

- (a) financial services,
- (b) professional services (other than health or medical services),
- (c) any other services (including one as a betting office), where the services are provided principally to visiting members of the public.

B. Planning History of the Site

I have no record of any planning applications relating to the structure the subject of the referral.

I note the Certificate of Exemption issued by the planning authority on 23rd October, 2008 for works considered exempt under section 4(1)(h) of the Planning and Development Act, inclusive of works to Building B.

C. Assessment

(i) The Question of 'Development'

I note that the use of the structure the subject of the Board's considerations as an architect's office does not include consideration of any physical modifications or alterations to the structures. Thus, the question of the carrying out of any works on, in, over or under land does not arise.

The issue of whether the use of the structure as an architect's office constitutes a 'change of use' requires consideration in the first instance.

The following observations are made:

- Despite the affidavit of Mr. Thomas D'Arcy dated 27th February, 2008, there is no understanding of what commercial use was made of the overall property prior to 1st October 1964 and if there was a commercial use made of the structure the subject of the referral. There is no confirmation that any commercial use from that time was a use

that related to the use of the property as a builder's yard or a related activity.

- There is no understanding of any commercial activity associated with the subject structure and lands between the 1st October, 1964 and prior to the property's use as a builder's yard in 1996.
- It appears reasonable to conclude from the documentation submitted that the property was used as a builder's yard from 1996 by P.P. O'Sullivan and was leased to Oikos Builders Ltd between 2004 and 2006.
- The declaration by Padraig O'Sullivan dated 29th April, 2004 does not demonstrate that the structure the subject of the referral was used as the office associated with the builder's yard business. The declaration by Padraig O'Sullivan (Jnr.) dated 11th November, 2008 states that the structure the subject of the referral was used as the work office associated with the builder's yard business.
- While there is information provided to indicate that there was use of the land and associated structures at this property as a builder's yard from 1996, there is no record of any planning permissions relating to this use.
- The planning authority has examined the valuation records of the lands and has submitted that no commercial rates were applied to the property. The referrer has not disputed this submission.

Having regard to the above, the following is submitted to the Board:

- It cannot reasonably be concluded that the structure the subject of the referral had the benefit of any pre-1964 office use that would allow for the proposed use of the structure as an architect's office.

- The use of the property as a builder's yard was not subject to the grant of planning permission. It cannot reasonably be concluded from all available documentation that this use was an authorised use.
- The use of the structure the subject of the referral formed an ancillary use to the use of the property as a builder's yard. It was incidental to that use, not an independent office use.

Arising from the above, it may reasonably be determined that the use of the subject structure incidental to the builder's yard was a use that was not subject to the grant of planning permission. Furthermore, the use as an independent architect's office, a separate use and not incidental to a builder's yard (if considered an authorised use of the lands), would constitute a 'change of use'.

It is the determination as to whether that change of use constitutes a 'material' change which will determine the 'development' status and the 'exempted development' status of the proposal. This will now be considered.

(ii) The Question of 'Exempted Development'

The exempted development provisions considered relevant that relate to a change of use in this instance are set out in Article 10 and Part 4 of Schedule 2 of the Planning and Development Regulations and are referenced above. Particular emphasis has been placed by the parties on Class 2 of Part 4. My submission is as follows:

- The use of the structure the subject of the referral as an office was a use that was incidental to the use of the property as a builder's yard. The change of use of a builder's yard or an incidental element of a builder's yard to an independent architect's office is not provided for

under Part 4 of Schedule 2 of the Planning and Development Regulations.

- Notwithstanding this conclusion, it is considered that the use of the structure the subject of the referral as a work office associated with a builder's yard did not fall within the provisions of Class 2 of Part 4 of Schedule 2 of the Planning and Development Regulations as it was not a use for the provision of financial services, it was not a use for the provision of professional services, nor was it a use for the provision of any other services "*where the services are provided principally to visiting members of the public*". The use as a work office incidental to the builder's yard was clearly not of a class of development provided for under Class 2.

As the change of use to an architect's office cannot avail of the provisions set out under Article 10 and Part 4 of Schedule 2 of the Planning and Development Regulations, it is concluded that the change of use constitutes a change of use that is 'material', with clear planning implications arising from the use of the office for the provision of professional services where such services are provided principally to visiting members of the public, that it thus constitutes "development" for the purposes of the Planning and Development Act, and it is not an exempted development.

6.0 CONCLUSION AND RECOMMENDATION

I recommend as follows:

WHEREAS a question has arisen as to 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, County Wicklow;

AND WHEREAS the said question was referred to An Bord Pleanála by Tom de Paor and Judith Devlin on the 1st day of December, 2015:

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

- (a) sections 2(1) and 3(1) of the Planning and Development Act, 2000, as amended;
- (b) article 10 of the Planning and Development Regulations 2001, as amended;
- (c) Part 4 of Schedule 2 *Exempted Development – Classes of Use* of the Regulations;
- (d) the planning history of the site;
- (e) the submissions made by the parties; and
- (f) the report of the planning inspector.

AND WHEREAS An Bord Pleanála has concluded that –

- (a) There is no provision for exemption within any of the Classes as set out in Part 4 of Schedule 2 of the Planning and Development Regulations, 2001 for a change of use from an office use incidental to a builder’s yard to an architect’s office under the exempted development provisions of the Planning and Development Regulations,
- (b) The use of the building as an architect’s office constitutes a material change of use to that associated with an incidental use of a structure relating to a use as a builder’s yard, and

(c) The material change of use thereby constitutes “development” within the meaning of section 3 of the Planning and Development Act:

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 of the 2000 Act (as amended), hereby decides that the use of a building as an office at ‘Dysart’, Windgates, Greystones, County Wicklow constitutes development that is not exempted development.

Kevin Moore
Senior Planning Inspector
February, 2016.