



An
Bord
Pleanála

Inspector's Addendum Report RL09.3486

Question

Whether the proposed change of use of a former car sales premises to use as a shop, is or is not development and is or is not exempted development

Declaration

Planning Authority

Kildare County Council

Planning Authority Reg. Ref.

ED/00582

Applicant for Declaration

Emma Pillion

Planning Authority Decision

Kildare County Council

Referral

Referred by

Emma Pillion

Owner/ Occupier

Emma Pillion

Date of Site Inspection

20 July 2017

Inspector

Joanna Kelly

1.0 Introduction

This addendum report is prepared on foot of the Board direction signed 30 January 2017 where it was considered appropriate to seek the views of the Planning Authority and the Referrer on matter that the building, as constructed, might not conform to the permission granted having regard to the following:-

- (i) the asymmetrical shape of the building permitted under Planning Authority register reference number P03/300074 and the more symmetrical shape of the building as constructed, and
- (ii) the size of the permitted building, stated to be 588m² in gross internal floor area, and the size of the building as constructed, stated to be 609m² in gross retail floor area,
- (iii) photographs on file, and publically available aerial photography.

It was also considered that a further site visit would be appropriate to take measurements.

This report should be read in conjunction with the previous Inspector's report 5 December 2016.

2.0 Site Location and Description

The site is located off a roundabout on the N78, on the Dublin Road located approximately 1km north-east of Athy town centre. There is a current structure which has the appearance of a former motor sales showroom on the site which is the subject of the question in this referral.

Internal access was gained to the structure so as to undertake a measured survey to confirm the floor area. The gross floor area of the ground floor is approximately 631sq.m. (internal wall to wall measurement). The building's width appears to be slightly narrower (approx. 500m) to the rear than the front (former sales area).

There is also a mezzanine floor located over the staff welfare area at ground floor which was not indicated on the plans pertaining to the parent permission. The following table represents the measurements recorded on site by this Inspector.

Table 1: Floor area measurements

| Location of Area | Approx. Floor area |
|---|---|
| Former car sales floor area (includes glass projection to front) | 253sq.m. |
| Former car repair/garage area | 239sq.m. |
| Staff welfare area/storage | 139sq.m. |
| Mezzanine Area | 77sq.m. |
| Total Ground Floor Area | 631sq.m. excluding mezzanine area |

3.0 Responses

3.1 Planning Authority

Kildare County Council submitted a response on 7 February 2017 where it sets out:-

- that the Planning Authority is in agreement with the Board in relation to floor area and shape of the building, as constructed.
- It would not appear that there has been any subsequent amending planning permission granted at this site.

3.2 Referrer

The Referrer responded by setting out that

- The structure was constructed substantially in compliance with the planning permission. The slight changes to the shape are minimal.
- The size of the structure is marginally bigger than the structure permitted i.e. 3% increase only.
- The matter of the size and symmetry of the building is not disputed, however on balance it is considered that the subject structure is substantially compliant with the parent permission.

4.0 Statutory Provisions

The Athy Development Plan is the statutory plan for the area. The appeal site has a land use zoning Industrial/Commercial use. There is also a road reservation located immediately east of the appeal site.

4.1 Planning and Development Act, 2000, as amended

Section 3(1)

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

Section 4 (h)

In this Act, exempted development includes

“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.”

“works” is defined in section 2 of the Act as including

“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 of or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure”.

4.2 Planning and Development Regulations 2001 as amended

Article 6(1)

Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempt development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.

5.0 Assessment

Pursuant to further site inspection, there are a number of further considerations that have arisen and it is considered appropriate to re-examine the question put by the Referrer to the Board *de novo*.

“whether the proposed change of use of a former car sales premises to use as a shop, is or is not development and is or is not exempted development?”

5.1 Is or is not development?

The first consideration is whether or not the change of use from car sales premises to a retail shop comprises development.

Section 3 (1) of the Planning and Development Act defines ‘development’, except where the context otherwise requires, as

“the carrying out of any works on, in or under land or the making of any material change in the use of any structures or other land”.

A ‘shop’ is defined in Article 5 (1) of the Planning and Development Regulations 2001 (as amended) as being, amongst other things,

“for the retail sale of goods, post office, ticket sales, travel agency, hot food, hairdressing, launderette and the hiring out of domestic or personal goods.”

The definition of shop does not include the sale of or leasing of motor vehicles, I consider therefore, that the proposed change of use is material in nature and is development. The matter that has now to be determined is whether or not the proposed change of use is exempted development.

5.2 Is or is not exempted development?

Development can be exempted from the requirement for planning permission by either (a) section 4 of the Planning and Development Act, 2000 as amended or (b) article 6 of the Planning and Development Regulations 2001 as amended.

In this instance, as the proposal involves a material change of use, it is article 6 of the Regulations that is of relevance and provides that subject to article 9, development of a class specified in Schedule 2 of the Regulations shall be exempted provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.

Category 14 (a) of Part 1 of Schedule 2 states that

“development consisting of a change of use from use for the sale of hot food for consumption off the premises, or for the sale or leasing or display for sale of leasing of motor vehicles, to use as a shop” (my emphasis)

is an exempted change of use. There are no limitations or conditions in Column 2 opposite this category and the only limitations are the general limitations set out in Article 9. A “shop” is defined in Article 5 of the Planning and Development Regulations as amended, as already outlined in this report. There is no limitation as to the floor area associated with such a “shop”.

5.3 Restrictions on exempted development

Article 9 (a) of the Regulations sets out fifteen instances under which development in Parts 1, 2, & 3 of the Schedule 2 are not exempted development. These include (of relevance to this assessment) where the development would:

- (i) Contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,
- (iii) Endanger public safety by reason of traffic hazard or obstruction of road users,
- (viii) Consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use

With regard to article 9 subsection (i), condition 1 of the permission File Ref. No. 03/300074 pertaining to the structure sets out that

“the proposed development shall be retained, carried out and completed in accordance with drawings and documentation submitted to the Planning Authority on 10/12/2003, 10/03/2004 and 19/05/2004, except where altered or amended by conditions in this permission.

Reason: To enable the Planning Authority to check the proposed development when completed, by reference to approved particulars”

Pursuant to a further site inspection on foot of the Board direction 30 January 2017 it is noted that the building as constructed is larger than that permitted under File Ref. No. 03/300074. This fact is accepted by both the Referrer and the Planning Authority.

Table 1: Calculation of floor areas

| | |
|---|----------|
| Permitted Gross Floor Area File Ref. No. 03/300074 (as stated on the application form of parent permission) | 588sq.m. |
| Actual Gross Floor Area (ground including glass projection as measured by this Inspector) | 631sq.m. |
| Mezzanine Area | 77sq.m. |

The gross ground floor area as constructed is approx. 43sq.m. larger in footprint than that permitted in the parent permission. The building is more symmetrical than that permitted. The question arises as to whether this increase in floor area and change in the footprint of the structure which constitutes “development” was exempted development. Whilst it is not possible to determine when these works would have been carried out i.e. after the construction of the building or as the entire structure was being constructed, this matter is considered irrelevant. Having regard to the wording of the Condition 1 of the parent permission requiring the structure to be carried out and completed in accordance with the drawings and documentation submitted to the Planning Authority, the proposed increased in floor area and amendment to the footprint of the commercial structure would have required planning permission. The extension to the original structure has altered the appearance of the permitted structure and also resulted in an increase in the permitted floor area for which there is no exemption.

It is also noted that a mezzanine level exists within the building and is located over the reception and canteen/storage area. This area is approx. 77sq.m. gross floor

area as measured on the day by this Inspector. This area is accessed via an open stairwell within the building i.e. from the former car sales floor area. This area is subdivided into offices/storerooms. On examination of the parent permission pertaining to the site, it is noted that there was no mezzanine indicated on those plans. Given that the structure as constructed does not comply with condition 1 of the parent permission, it is not considered appropriate or necessary to consider whether this area constitutes development and if so whether this area could be considered exempted development.

6.0 Conclusion

Having regard to the increase in the ground floor area of the existing structure over and beyond that permitted in the parent permission File Ref. No. 03/300074, the existence of a mezzanine area which was not permitted in the parent permission, the alteration to the configuration of the originally permitted structure i.e. asymmetrical to more symmetrical configuration, the proposed structure is not considered to be in accordance with the plans and particulars pertaining to the parent permission. The increase in the ground floor area is not considered to be exempt by virtue of any provision in the Planning and Development Acts or the Planning and Development Regulations as amended. The existing structure therefore cannot avail of the benefit of exempted development for the proposed change of use.

7.0 Recommendation

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

WHEREAS a question has arisen as to whether the proposed change of use of a former car sales premise to use as a retail shop is or is not development or is or is not exempted development:

AND WHEREAS Emma Pillion of Fardrum, Athlone, Co. Westmeath requested a declaration on this question from Kildare County Council and the Council issued a declaration on the 24 day of May 2016 stating that the matter was development and was not exempted development:

AND WHEREAS referred this declaration for review to An Bord Pleanála on the 31 day of May, 2016:

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

- (a) sections 2, 3 and 4 of the Planning and Development Act 2000, as amended,
- (b) Articles 5, 6 and 9 of the Planning and Development Regulations 2001, as amended, and Part 1 of Schedule 2 to those Regulations,
- (c) Class 14 (a) of Part 1 of Schedule 2 of said Regulations,
- (d) the planning history of the site and in particular condition 1 of File Ref. No. 03/300074,
- (e) the existing as built structure on the site in question,
- (f) the submissions on file,
- (g) the Inspector's report of 5 December 2016 and in particular 10 August 2017,

AND WHEREAS An Bord Pleanála has concluded that-

- (a) the proposed change of use of a former car sales premise to shop is a material change of use and constitutes development within the meaning of section 3 (1) of the Planning and Development Act, 2000 as amended;
- (b) the proposed change of use pertaining to the former car sales premise comes within the scope of the exemption provided in Class 14 (a) of Part 1 of Schedule 2 of the Planning and Development Regulations as amended;
- (c) the provisions of Article 9 of the Planning and Development Regulations 2001 as amended and in particular subsection (1)(a)(i) in this instance,
- (d) the existing larger footprint and more symmetrical configuration of the structure on site which is considered to constitute development and would not have been exempted development, and
- (e) condition 1 of permission File Ref. No. 03/300074 requiring the development to be carried out and completed in accordance with the drawings and documentation submitted to the Planning Authority,

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 of the former car sales premises to use as a retail shop is development and is not exempted development.

Joanna Kelly
Senior Planning Inspector
10 August 2017