



An
Bord
Pleanála

Inspector's 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 19 October 2016

Inspector Joanna Kelly

1.0 Site Location and Description

- 1.1. The site subject to this referral is located on the Dublin Road along the national secondary route N78 to the east of the settlement of Athy. The access point from the appeal site onto the N-78 is approx. 53m west of the roundabout linking the N78 with the R418.
- 1.2. The current structure has the appearance of a former motor sales structure and is currently vacant. There is parking provided within the site.

2.0 The Question

- 2.1. The request to the planning authority was stated as follows:

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

3.0 Planning Authority Declaration

- 3.1. Planning Authority Decision

The Planning Authority issued a notice under Section 5 of the planning and development acts that the proposed change of use of a former car sales premises to use as a shop is not exempted development.

- 3.2. Planning Reports

The report makes reference to a previous planning application which permitted the car showroom on the site. The report cites extracts from the Planning and Development Acts and concludes that the proposed change of use is not exempted development. The report sets out that the matters considered in coming to this conclusion included

- No evidence of compliance for condition no. 2 in respect of external finishes.

- Adhesive window signs are present on the front elevation of the building contrary to condition 4 of the parent permission.
- Condition 32 required a landscaping plan to be submitted which was not complied with.
- It was considered that the existing development on the site is unauthorised development by reason of non-compliance.

4.0 **Planning History**

File Ref. No. P03/300074 Permission granted for a car sales showroom including car repairs, parts store, staff canteen, toilets and admin area and all ancillary site development works subject to 34 conditions.

5.0 **The Referral**

5.1. **Referrer's Case**

The case submitted by the referrer can be summarised as follows:

- Reference is made to the planning permission on the site
- The premise was used by Suzuki until 2008 as a car sales showroom. The conditions of permission were of a general nature and did not remove the right to make future exempted development.
- The proposed use is a convenience goods shop with low order comparison goods.

- Reference is made to relevant legislation.
- Reference is made to Class 14 of Part 1 of Schedule 2 of The Regulations, the change of use of the premises for the sale or display for sale of motor vehicles to use as a shop for retail sale of goods and the display of goods for sale is considered exempt. Providing the use does not fall on the terms of the restrictions on exemptions as provided in Article 9 (1) (a) of the Regulations.
- It is set out that there are no restrictions to the parent permission for future uses and the shop would not contravene any of the conditions of the permission which authorised the car sales.
- The access to the public road would remain unaltered.
- The car sales showroom has a floor area of 609sq.m. and with over 50 car parking spaces on site, there was sufficient car parking to satisfy development plan standards.
- There are no enforcement proceedings pending against the structure.
- Proposed works to the unit would consist of internal works only which would affect the interior of the structure only.
- With regard to conditions 2,4 and 32 it is set out that the applicant did issue a letter to the planning authority setting out compliance with pre-development engineering however no response issued.
- The existing cladding and material finish is comparable to other car garages around the county and does not impact on the proper planning and sustainable development of the area.
- There is no signage associated with the structure at present. A shutter was installed to the rear and whilst condition 4 (a) precludes the installation of any shutter without first obtaining planning permission, 4 (b) allows for the installation of shutters. The condition is confusing and misleading.

- The site has been landscaped in accordance with the plan submitted to the planning authority.
- It is set out that non-compliance with 3 no. pre-development conditions which do not affect the proper planning and sustainable development of the area cannot render the entire development unauthorised.
- It is requested that the Board consider the proposed change of use from car sales showroom to a shop to be development and to be considered exempted development in accordance with the provisions of Class 14 (a) Part 1 of Schedule 2 of the Planning and Development Regulations as amended.

5.2. **Planning Authority's Response**

A response is noted from the planning authority dated 14 June 2016 which re-submitted the declaration of exempted development where it is stated the proposed change of use is not considered exempted development

6.0 **Statutory Provisions**

6.1. 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.

6.2. **Planning and Development Act, 2000**

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.

6.3. 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.

7.0 Assessment

7.1. Is or is not development

7.1.1. The first matter relates to whether or not the change of use from car sales premises to a retail shop comprises development. The proposal relates to the making of a change of use and as such consideration needs to be given as to whether the proposal is or is not development.

7.1.2. Section 3 (1) of the 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.

7.2. Is or is not exempted development

7.2.1. 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.

7.2.2. In this instance it is Article 6 that is of relevance and provides that development of a class specified in Schedule 2 of the Regulations shall be exempted provided that the conditions attached to those various classes are met.

7.2.3. 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”.

7.2.4. Article 9 (a) 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 (i);
- (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

7.2.5. The Planning Authority has determined that the development carried out on foot of Plan. Ref. No. 03/300074 is not in compliance with condition numbers 2, 4 and 32 and is therefore unauthorised development and as such the change of use is not exempted development.

For clarity, the three conditions are set out hereunder as follows:

Condition 2

“Prior to commencement of development, the applicant shall submit brochures of the proposed finishes and colours of cladding materials to be used on the roof and walls of the proposed development, and details of all boundary treatment of the site, for the written approval of the Planning Authority. Please note, actual material samples shall not be accepted.

Reason: In the interests of visual amenity

Condition 4

- a) No roller shutters or their housing, awnings, canopies, grilles, flags and illumination, (including adhesive window signs) shall be erected or located externally within the property as a whole without the prior planning permission of the planning authority.

- b) Any roller shutter erected on the premises shall be installed internally and located behind the glass, or behind the display. Any shutter shall be of slotted design and shall be finished in colour to accurately match the proposed façade of the premises.
- c) No storage of goods or display of goods shall take place on the footpath, or elsewhere outside the development.
- d) Details of all signage throughout the development, as indicated on the elevation drawings received by the planning authority 10/12/2003 shall be submitted for the written agreement of the planning authority prior to commencement of development.

Reason: In the interest of visual amenity and proper planning and sustainable development.

Condition 32

Prior to the commencement of development, please submit a detailed landscaping and planting plan and specification, prepared by a professionally qualified landscape architect or horticulturist, for the overall site, providing for the following:

- a) The planting of site boundaries with trees and hedging of native deciduous species, in a planting bed to be located inside the proposed perimeter fence, including boundary treatment proposals for the roadside boundary.
- b) Hard and soft landscaping throughout the site
- c) A programme for implementation of the scheme

Reason: To ensure that this development will be adequately landscaped in the interests of visual amenity.

I propose to examine each of these provisions (which are of relevance in this case) under each of the headings.

7.2.6. **(i) Contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act**

The planning authority do not appear to have taken enforcement action regarding the alleged non-compliance with conditions. The structure has been built for some time. The purpose of the referral in this instance is to determine whether the proposed change of use is development and would be exempted development. The conditions that the planning authority refer to as being non-compliant were “prior to commencement” conditions which relate to the structural appearance of the premise with the exception of the landscaping condition and as such cannot not now be complied with. The issues raised by the planning authority are considered *de minimis*, and whilst the conditions may not have been agreed prior to commencement of development, they do not result in a “contravention” of any said conditions. The conditions can subsequently be complied with to the satisfaction of the planning authority and do not impact upon the use permitted by the planning authority.

7.2.7. **(ii) Endanger public safety by reason of traffic hazard or obstruction of road users**

With regard to “endangering public safety by reason of traffic hazard” I consider that this provision should be given careful consideration. The site is within the 50kmph speed limit with the entrance serving the site located approx. 50m west of the roundabout. I noted steady flows of passing traffic at the time of inspection. The site is accessed directly from the N78 a national secondary road. Whilst I would have concerns that the proposed development will result in an increase in traffic entering and exiting the site it is not considered that such would give rise to a traffic hazard. The planning authority permitted the structure at this location in 2003 and as such

would have assessed the traffic implications of a motor show room in such close proximity to a roundabout. There are adequate sightlines notwithstanding the proximity of the roundabout to the entrance. There is also considered to be adequate parking within the curtilage of the site. Therefore, it is concluded that the proposal would not give rise to a traffic hazard.

7.2.8. **(iii) 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**

As set out heretofore, the existing use of the structure is as a permitted car sales premises and therefore the use as such is authorised. Whilst certain conditions may not have been complied with in full, I do not consider that this gives rise to an “unauthorised structure”. The structure itself is generally consistent with the plans and particulars approved by the planning authority. No enforcement action was ever taken by the planning authority in respect of the three conditions which the developer was deemed not to comply with. The referral in this instance pertains to a change of use and does not involve any extension/alteration or renewal as stated by the referrer herself. It is set out that any works to be carried out will be internal works. Section 4 (1) (h) of the Planning and Development Act as amended provides for the *“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”*.

7.2.9. In conclusion, there is no basis for determining that the provisions of Article 9 apply in this instance thereby de-exempting the proposed change of use.

8.0 Recommendation

8.1. 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 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) and Class 14 (a) of Part 1 of Schedule 2 of said Regulations
- (d) the planning history of the site

AND WHEREAS An Bord Pleanála has concluded that-

- (a) the proposed change of use of car sales premises 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 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;

- (d) the provisions of Article 9 of the Planning and Development Regulations 2001 as amended do not apply in this instance

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 motor sales to use as a retail shop is development and is exempted development.

Joanna Kelly
Planning Inspector
5th December 2016