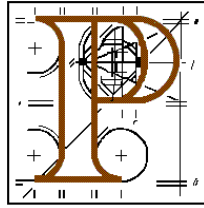


An Bord Pleanála



Inspector's Report

Reference Case: 27.RL3507

Question: Whether change of use of part of school building for use as a Fitness centre/gym is or is not development or is or is not exempted development.

Referred by: Match Fit Fitness Ltd.

Planning Authority: Wicklow County Council

Site Inspection: 9th January 2017

Inspector: Emer Doyle

1.0 BACKGROUND

1.1 Match Fit Fitness Ltd. submitted a request to Wicklow County Council for a declaration under section 5 of the Planning and Development Act to determine whether or not the change of use of a former school building to a gym constitutes a material change of use or is not development or is or is not exempted development. The Council determined that the use constitutes development and is a material change of use.

2.0 THE QUESTION

2.1 The question before the Board is:

Whether the use of part of school building for use as a Fitness centre/gym is a material change of use or is or is not development or is or is not exempted development at former De La Salle School, St. Mantan's Road, Wicklow, Co. Wicklow.

3.0 THE REFERRER'S SUBMISSION

3.1 A submission was submitted to the Board on behalf of Match Fit Fitness Ltd. which can be summarized as follows:

- It is considered normal that school facilities are used outside of school hours.
- The property is zoned 'Community, Educational and Institutional' in the Wicklow Town and Rathnew Development Plan 2013-2019.
- The gym and fitness activities take place in the former school Sports Hall which is clearly designed for that purpose.

- The smaller scale activities take place in the former class and group rooms.
- The activities taking place provide a service to the community and many public community buildings are currently in use for these purposes.
- Neighbouring owners have been consulted and generally there is support for the operation.

4.0 THE POSITION OF THE PLANNING AUTHORITY

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

- The land use zoning is irrelevant to the assessment of whether or not the change of use of part of a school building for use as a fitness centre gym is or is not a material change.
- A previous referral was noted 22.RL2657 – whether the change of use from a school to a dwelling is or is not development.
- It was considered that a gym operating throughout the year outside of regular school hours has the potential to have impacts beyond a school use.
- There is no provision in the Planning and Development Regulations, 2001 as amended for the change of use of a school to a gym.
- It was concluded that the change of use from a school to a gym is a material change of use and is development and that the Planning and Development Regulations, 2001 (as amended) do not provide any exemption for such a change of use.

5.0 FURTHER SUBMISSIONS

Planning Authority

None.

6.0 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.

“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....

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

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.

Section 4 (1) (a) – (l) sets out what is exempted development for the purposes of this Act. Section 4 (2) provides for the making of the Regulations.

2. Planning and Development Regulations 2001 (as amended)

PART 2 - Exempted Development

With respect to ‘interpretation’ under Article 5(1) ‘school’ has the meaning assigned to it by the Education Act 1998.

Article 6(1)

Subject to Article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted 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.

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 11

Use as:

- (a) a theatre
- (b) a cinema
- (c) a concert hall
- (d) a bingo hall
- (e) a skating rink or gymnasium or recreation not involving the use of motor vehicles or firearms.

Schedule 2, Part 1

Temporary structures and uses

CLASS 15

Occasional use for social or recreational purposes of any school, hall, club, art gallery, museum, library, reading room, gymnasium or any structure normally used for public worship or religious instruction.

CLASS 20C

Temporary use as a school of any structure formerly used as a school, hall, club, art gallery, museum, library, reading room, gymnasium or any structure normally used for religious instruction.

1. The use shall be discontinued after a period not exceeding 2 years.
2. Such structure shall comply with the Department of Education and Science Primary and Post Primary Technical Guidance Documents for the time being in force.

B. Planning History of the Site

The planning history is set out in the planner's report dated the 8th of September 2016 and relates mainly to extensions to the school.

Of particular relevance is the following application:

PA12/623464

Permission granted for (a) conversion of part of De La Salle school for use as parish offices (b) removal of an existing temporary building and (c) provision of

new access road from church parish grounds to access new car park at De La Salle school site adjoining St. Patricks.

Warning Letter UD4573 in relation to the use of part of the premises as a gym.

Relevant Precedent Cases

I have checked the Board database of referral files and I can find no previous referral decision relating directly to the use of former secondary school to a gym.

RL2657 is referred to in the planner's report and relates to whether the change of use from school house to a dwelling is or is not development. A copy of the file has been attached to this file.

RL2775 relates to the use of a playing pitch and tennis courts outside of normal school hours by bodies not associated with the school. To assist the Board, I have provided, in the file pouch, a copy of the Inspector's Report and Board Order in that case.

RL3443 relates to the use of the use of a previous school building as an afterschool/ Montessori facility. To assist the Board, I have provided, in the file pouch, a copy of the Inspector's Report and Board Order in that case.

RL3446 relates to the use of an existing primary school in the evenings, nights, and weekends as a grind school. To assist the Board, I have provided, in the file pouch, a copy of the Inspector's Report and Board Order in that case.

C. Assessment

The purpose of this referral is not to determine the acceptability or otherwise of the use as a Fitness Centre/gym, but rather whether or not the use of same constitutes development, and if so if it falls within the scope of exempted development. I note that the appeal places emphasis on the zoning in the Development Plan however, this is not a matter for the Board in the determination of this referral.

(i) The Question of ‘Development’

The first issue to be decided is whether or not a change of use has occurred and if any change of use is material and therefore development.

In terms of background information, I note the following:

- The building has not been used as a school for a number of years and is currently split into two areas.
- The assembly hall and rooms 1-14 are used by Match Fit Fitness Ltd.
- The area outlined in the dotted line in the layout plan is planned as future parish offices for the adjacent church but this building is currently vacant.
- The former school and assembly hall are used for a number of different types of classes including TRX, Spinning, Body Blast and Pilates. Classes have been run for all ages in the community including special classes for the elderly and designated kid’s fitness classes.
- The business has been running for a number of years but on the day of inspection was very quiet with no classes in progress. Some decorating works were being carried out at the site. Some of the rooms have been left totally unaltered such as an old science lab, whilst other rooms have

been altered internally such as a designated room for spinning classes with 'disco' type lighting.

In deciding whether or not there has been a substantial alteration of the character of the existing land use, I would refer to Article 5 of Part 2 of the Planning and Development Regulations, 2001 (as amended) where the interpretation of 'school' has the meaning assigned to it by the Education Act 1988. Under Section 2 of Part 1 of this Act, except where the context otherwise requires, 'school' means an establishment which provides early childhood education, or provides post-primary education to its students and which may also provide courses in adult, continuing or vocational education or vocational training...' Having regard to this interpretation, I am satisfied that neither parts of the building are currently in use as a school and therefore the use of the premises as a school has ceased. I note that planning permission has been granted to change the use of part of the school to parish offices.

When considering whether a change of use has occurred or not, I consider that the gym is a commercial enterprise which runs classes for mainly adults and outside of normal school hours and in my view is a change of use. This is not a occasional use and it is hoped by the owner that the business will develop over the coming years into a much bigger operation. The change of use is therefore not included in Class 15 of Schedule 2 Part 1 of the Planning and Development Regulations 2001(as amended).

The Planning Authority considered 'that school use in general revolves around school hours and takes place during term time. The use as a commercial gym is an activity not limited to particular hours or times of the year and is therefore materially different from that of a school with materially different impacts to the amenities of property in the vicinity.'

I would share the opinion of the Planning Authority. When examining the effects of the change of use on the adjoining area, the issue of intensification of use arises. The use of the premises as a school was generally limited to school hours and term time. As pointed out in the appeal, school buildings throughout the country are used for other activities such as sporting activities and weight management classes outside of normal school hours. I consider that such activities would be ancillary to the main use which would be a school.

I note that the former school had very limited car parking, however construction work is currently ongoing by the parish centre for a large car park on a former basketball court to the rear of the school which will also be available to the clients of the gym. I consider that the impacts of the use of a former school for sports and classes at night time and weekends is materially different in planning terms than the full time use of a school. The level of and pattern of traffic resulting from a commercial gym operating at different hours from a secondary school would differ significantly from the traffic that would normally be associated with a secondary school.

Having regard to the above, I would conclude that a material change of use has taken place with respect to the use of the former secondary school premises by Match Fit Fitness.

(ii) The Question of whether or not the material change of use is exempted development.

The exempted development provisions provide for circumstances in which a material change of use, though classified as development is exempt. However, no provision in either the Acts or Regulations provides for the present change of

use to be exempt. In the absence of any such provision, the legislation must be interpreted as providing that the development in question is not exempted.

The change of use involved in this case is not covered in any of the classes of use set out in Part 4 of the Second Schedule to the Regulations. As such, the de-exemptions under article 9 and article 10 are not relevant.

It follows, therefore, that the use is development and is not exempted development.

6.0 RECOMMENDATION

I recommend as follows:

WHEREAS a question has arisen as to whether or not the change of use of part of a school building for use as a fitness centre/gym is or is not a material change of use or is or is not development and is or is not exempted development at former De La Salle School, St. Mantan's Road, Wicklow town, Co. Wicklow.

AND WHEREAS the said question was referred to An Bord Pleanála by Match Fit Fitness on the 6th day of October, 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) Article 5(1) and 10 of the Planning and Development Regulations 2001, as amended;

(c) the planning history of the site and the documentation submitted with the referral.

AND WHEREAS An Bord Pleanála has concluded that –

- (a) The level and pattern of traffic resulting from the change of use of the former school to a commercial gym would be materially different from school use with materially different impacts on the amenities of property in the vicinity. School use, in general, revolves around school hours and takes place during term time. The use as a commercial gym, however, is an activity that is not limited to typical school hours.
- (b) The change of use of the school to a commercial gym constitutes a material change of use having regard to the impact on the proper planning and sustainable development of the area, and constitutes a material change of use to that associated with the former school building, and
- (c) There are no exemptions provided in the Planning Acts and Regulations, by which such a material change of use would constitute exempted development.

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 former school building to gym constitutes a material change of use and constitutes development that is not exempted development.

Emer Doyle
Planning Inspector
27th January 2017