



An
Bord
Pleanála

Inspector's Report RL92.3512.

Question	Whether changes from commercial vehicle repair / garage / workshop to public display area for external window and door samples is or is not development or is or is not exempted development.
Location	Knockgraffon. Cahir, Co Tipperary
Declaration	
Planning Authority	Tipperary County Council
Planning Authority Reg. Ref.	RL91RL3512.
Applicant for Declaration	Andy Hennessy.
Planning Authority Decision	Is development and is not exempted devleopment.
Referral	
Referred by	Andy Hennessy.
Owner/ Occupier	Andy Hennessy.
Observer(s)	None
Date of Site Inspection	22 March 2017.
Inspector	Bríd Maxwell.

1.0 Site Location and Description

- 1.1. The referral site relates to an existing single storey 3 bay pitched roofed building adjacent to a well-established farmhouse and other outbuildings within the townland of Knockgraffon approximately 5.3km to the north of Cahir, County Tipperary. The site is within a rural area approximately 3km to the north east of junction 10 on the M8.
- 1.2. The referral building which has a stated area of 49.6 sq.m is a pitched roofed structure with a slated roof and which has recently been refurbished with new windows and rooflights installed. Internally the structure is divided into office space, comprising two offices (office B 17.641m² and Office Area A 19.378m² which is used as a reception space). The remainder of the building is given over to display / exhibition area for windows and door samples and ancillary services 49.6m².

2.0 The Question

- 2.1. The question referred is whether the change of use of a vehicle repair and maintenance workshop / garage area to permanent public display and information area for external windows and door samples is or is not development and is or is not exempted development.

3.0 Planning Authority Declaration

3.1. Declaration

- 3.1.1 Tipperary County Council issued determination on 18th October 2016. In its determination:

“The change of use of the building located at Knockgraffon, Cahir Co Tipperary (identified on the details submitted with the Declaration application) from commercial vehicle repair garage, workshop to public display for external window and door samples constitutes development within the meaning of the planning and Development Act 2000, as amended and is not exempted development.

The said use is a change of use, is material as the use of the premises has changed from class 4, use as a light industrial building, to class 1, a shop and therefore, constitutes development within the meaning of Section 3 of the Planning and Development Act, 2000 and the said change of use does not come within the

exempted development provisions of the Planning and Development Regulations 2001.”

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planner’s report sets out the reasoning of the case. The previous use of the building as a workshop for repair of vehicles and machinery is considered an industrial use. The current use of the premises as a showroom for the display of *senator* window products falls under the definition of a “shop” as set out under Article 5(1) of the Planning and Development Regulations 2001, as amended. Office and reception space is ancillary to the principal use which is for the display of goods for sale. The change of use from industrial use to use as a shop would constitute a material change of use of the premises and therefore constitutes development as understood by the Planning and Development Act 2000. Works to the building elevations have affected the external appearance of the structure to render it inconsistent with the character of the structure and of neighbouring structures.

4.0 Planning History

13/354 Refusal of Permission 17th January 2014 for retention of minor external changes to existing home/farm office and vehicle repair and maintenance workshop / garage namely original solid timber workshop doors replaced with predominantly glass AluClad units on the north elevation, inclusion of roof windows on the southern pitched roof slope and construction of a large feature window on the eastern roadside elevation /gable in lieu of original small high level unit. Change of use of vehicle repair and maintenance workshop / garage area to permanent public display and information area for external windows and doors and all associated site works. Refused on the following grounds.

1. It is considered that the nature of the proposed development in the absence of any proven reason for its location in the open countryside constitutes a haphazard form of development that would be more appropriately located in a nearby town, village or settlement where the development can be accommodated on zoned lands.

In addition, it is considered that the proposed development, by reason of its nature would set an undesirable precedent for further development of this nature in the

open countryside. The proposed development would therefore materially contravene the policies and objectives of South Tipperary County Development Plan 2009 where they relate to open countryside enterprise and would be contrary to the proper planning and sustainable development of the area.

2. Having regard to the failure to demonstrate adequate sight distances at the proposed entrance it is considered that the proposed development would detract from the safety of existing road users in the area. The proposed development would result in the creation of a traffic hazard and would, therefore be contrary to the proper planning and sustainable development of the area.

5.0 Policy Context

5.1. Development Plan

The South Tipperary Development Plan 2009 (as varied) refers.

5.2. Natural Heritage Designations

The Lower River Suir SAC (Site Code 002137) is approximately 2.5km to the west of the site.

The Galtee Mountains SAC (Site Code 00646) is located approximately 10.5km to the west of the site.

6.0 The Referral

6.1. Referrer's Case

- The determination of the Planning Authority is incorrect. Display area is not a shop. The building is a use under class 4 light industrial and it is difficult to understand how placing and fixing external windows and doors in the space/building for viewing when people are calling to the office can be considered Class 1. Goods are not for sale per se, as they are just samples. Nothing can be purchased there on site.
- Detailed information provided within the application sets out the background to the site which shows that there has been an office in the building for the past 200 years with the remainder being used as workshop and service area.
- Use of the building is light industrial with ancillary office.

- The use of an office on site combined with light industrial permits members of the public to visit the building as appropriate.
- It is not a commercial showroom as most visits are by appointment only and no sales take place on the premises. It is essentially an exhibition space. There are probably no more than one to two visits a day to the premises which would be significantly less than there has been in the past when there may have been 9 or 10 visits per day.
- For the last 7 years the owner occupier has worked for *Senator windows* from the office in the building with visits by appointment.
- Works carried out to the building and structure were predominantly driven by the need to increase insulation levels and make the building more comfortable.
- Recent physical development is minor and would not contravene the current development plan.
- Building has always contained an office and a commercial element and the recent development does not intensify this use. It merely changes a portion of it.
- Request the Board to determine that the use is exempted development.

6.2. Planning Authority Response

- The Board is referred to the photographs contained in the planning report which provide evidence of the existing use of the building as a showroom for the display of *senator* window products. Andy Hennessy is the Senator Dealer Principal in the Tipperary South area as evidenced on <https://www.senatorwindows.ie/dealer-network/tipperary-south/>
- The existing use of the premises falls under the definition of shop as set out under the Planning and Development Regulations 2001 as amended.
- The show room is a display space for *senator* windows goods /products for sale. There is no exemption under the Planning and Development Act 2000 as amended or the Planning and Development Regulations 2001 as amended,
- The declaration request did not extend to the changes to the building elevations. The Planning assessment report examined this matter and concluded that same

constitutes development and was not exempted development. The Planning Authority request An Bord Pleanála to uphold this determination.

6.3. Further Responses

6.3.1 The response of the referrer asserts that

- There is no ambiguity regarding the work being carried out on site. The office area continues to be used as such and the light industrial area is being used as a display and storage area which is directly attached to the office.
- Owner occupier is happy to submit an application in relation to the physical changes to the building once issue of declaration is addressed.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000 (as amended)

Section 2 (1) states: -

‘development’ has the meaning assigned to it by Section 3, and ‘develop’ shall be construed accordingly;

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

Section 3 (1) states:-

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

Section 4 (1) sets out various forms and circumstances in which development is exempted development for the purposes of the Act.

Section 4 (2) of the Act provides that the Minister may, by regulations, provide for any class of development to be exempted development. The main regulations made under this provision are the Planning and Development Regulations, 2001.

7.2. Planning and Development Regulations, 2001 (as amended)

Article 5(1) of the Regulations provides the following definitions;

“Industrial building” means a structure (not being a shop, or a structure in or adjacent to and belonging to quarry or mine) used for the carrying on of any industrial process;

“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 vehicle or part of an article, or
- (b) 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.

Article 6(1) of the Regulations states as follows:- *“(a) Subject to article 9, development consisting 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*

Schedule 2, Part 1, Class 14 sets out changes of use which are exempted development.

Schedule 2, Part 4 sets out the classes of use within any one of the classes of use specified in Part 4 of Schedule 2, shall be exempted development.

Planning and Development Regulations, 2005

These Regulations define a **shop**

Shop means a structure used for any or all of the following purposes, where the sale, display or service is principally to visiting members of the public –

- (a) for the retail sale of goods
- (b) as a post office
- (c) for the sale of tickets or a travel agency
- (d) for the sale of sandwiches or other food or of wine for consumption off the premises, where the sale of such food or wine is subsidiary to the main retail use, and ‘wine’ is defined as any intoxicating liquor which may be sold under a wine retailer’s off-licence (within the meaning of the Finance Act (1909 1910) Act, 1910
- (e) for hairdressing
- (f) for the display of goods for sale
- (g) for the hiring out of domestic or personal goods or articles
- (h) as a launderette or cleaners
- (i) for the reception of goods to be washed, cleaned or repaired, but does not include any use associated with the provision of funeral services or as a funeral home, or as a hotel, a restaurant or a public house, or for the sale of hot food or intoxicating liquor off the premises except under paragraph (d), or any use to which class 2 or 3 of Part 4 of the second Schedule applies.

7.3. **Precedent cases (Board Orders appended to report)**

RL2039 This referral related to a former shop, which was vacant for a period and was then put into use for the display of uPVC products. The referrer, the County Council, argued that the use of the premises was solely for the display for sale of goods, but not for the actual sale of those goods, and was therefore not within the definition of "shop". It was therefore not exempted development. The owner argued that the goods in question were for sale. The Board decided, in the light of the planning history of the site, and the statutory definition of shop in Article 5(1) of the Regulations, that the change of use in this instance was not material, and was therefore not development.

RL2374

This referral related to the change of use of a motorbike repair shop to use as a vegetable store and storage area with additional elements including a refrigerator compressor unit and the use of a concreted yard. The referral was made by the owner / operator, consequent to the Planning Authority's determination that the development was not exempted development. The Board decided that the change of use and works within the curtilage of an industrial building were development and were exempted development as follows:

-The change of use from a motor cycle repair shop to a vegetable cold store and storage area for a vegetable processing industrial undertaking came within the same class, namely: Schedule 2 Part 4 Class 4 of PDR, 2001 and was exempted development. The refrigerator compressor unit fell within the category of works described in Class 21(a) (iii) of Part 1, and was exempt and the concreted area connected with the vegetable processing industrial undertaking fell within the category of works described in Class 21(b) of Part 1; and was exempt

RL2936

The referral related to a light industrial unit that had permission for light industry / warehousing and "no other uses", and part of which was being used for a retail use (of frozen & vacuum packed meat). The owner of the unit claimed that the change of use was not material due to its small scale. The Board decided that the use was development and was not exempted development, as follows:

Part of the premises was used for the sale and display of a finished product, including sales to the public and that this sale use was a continuous use that was retailing.

The level and pattern of traffic generated by the retail use was materially different from that generated by the permitted use and contravened a condition of the extant permission

RL3096

On the question of whether the change of use from garage and showrooms to use as a shop at Fairgreen, Westport, is or is not development or is or is not exempted development the Board concluded, having regard to Article 9 of the Planning and Development Regulations 2001, as amended and Class 14 (a) of Part I of Schedule 2 of the Regulations, that the change of use from garage and showrooms to use for

the sale or leasing, or display for sale or leasing of motor vehicles to use as a shop was development and was exempted development.

8.0 Assessment

8.1. Is or is not development

- 8.1.1. The question before the Board is **“whether changes from commercial vehicle repair / garage/ workshop to public display area for external window and door samples is or is not development or is or is not exempted development.”** I note that in terms of the physical works carried out to the structure subject to the referral, all parties to the referral agree that the works carried out are material and are development and the owner / occupier has indicated an intention to submit an application to regularise these works subject to clarification of the issue of use.
- 8.1.2. The referrer argues that the use of the former vehicle repair /garage / workshop for public display for external window and door samples is ancillary to the main office use on the site which is a well-established use and argues that the use remains light industrial Class 4. The referrer argues that the fact that the goods are for display and not for sale per se means that the use is not as a shop. The Planning Authority asserts that the use as display space equates to shop use, and therefore constitutes a material change of use.
- 8.1.3. The relevant statutory provisions in the case are set out at section 7 above. In addressing the primary question of whether the change of use is development, I note that Article 5(1) of the Planning and Development Regulations distinguishes between use for “the retail sale of goods” and use for “the display of goods for sale” but includes both within the definition of a “shop”. Article 5(1) of the Regulations states that “shop means a structure used for any or all of the following purposes, where the sale, display, or service is principally to visiting members of the public....”. In the case of the referral site the display of goods is directed principally to visiting members of the public and therefore I consider that the use is contained within the definition of a shop and is not a sui generis or unique use. I note that the area defined as Office area A which is used as a reception area falls within this definition and I would concur with the planning authority that the principal use within the building is for product display and reception to visiting members of the public and office use is ancillary to this main use. On the basis of the foregoing I consider that

the use of the premises for the display of windows and doors falls within the definition of shop as set out in Article 5(1) of the Regulations. Development is defined in Section 3 of the Planning and Development Act 2000, as the making of any material change in the use of any structures or other land and the on this basis the change of use does constitute development for planning purposes.

8.2. Is or is not exempted development

- 8.2.1. The proposal involves a change of use from class 4 use as a light industrial building to class 1 a shop and there is no relevant provision for exemption under the Planning and Development Regulations 2001, as amended, therefore the said change of use is not exempted development.

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 whether the change of use of a vehicle repair and maintenance workshop garage area to permanent public display and information area for external windows and door samples is or is not development and is or is not exempted development:

AND WHEREAS Mr Andy Hennessy requested a declaration on this question from Tipperary Council and the Council issued a declaration on the 18th day of October, 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 14th day of November, 2016:

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) of the Planning and Development Act, 2000, as amended,

(d) article 5(1), 6 and article 10(1) of the Planning and Development Regulations, 2001, as amended,

(e) Parts 1 and 4 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,

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 changes from commercial vehicle repair / garage / workshop to public display area for external window and door samples is development and is not exempted development

Bríd Maxwell Planning Inspector

23rd March 2017