



An  
Bord  
Pleanála

## Inspector's Report RL06F.RL3539

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Question	Whether the change of use from use as a car sales premises to use as a shop unit is or is not development or is or is not exempted development.
Location	Former Tom Walsh Motors, Grange Road, Baldoyle, Dublin 13.
<b>Declaration</b>	
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	FS5/042/16
Applicant for Declaration	Emma Pillion Planning
Planning Authority Decision	Is not exempted development
<b>Referral</b>	
Referred by	Emma Pillion Planning
Owner/ Occupier	Tom Walsh Motors (in receivership)
Observer(s)	None.
Date of Site Inspection	21 <sup>st</sup> May 2018
Inspector	Patricia Calleary

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## 1.0 Site Location and Description

- 1.1. The referral site comprises a car showroom and garage premises located on the northern side of Grange Road in Baldoyle, Dublin 13. Baldoyle Industrial Estate is located to the south across Grange Road and the area to the east and north is characterised by residential development. An area of open space and the entrance road (Longfield Road) to Myrtle Estate is situated to the west. There are two vehicular access points to the site, both off Grange Road and there is a four-way intersection c.50m to the west of the most western access point. Clongriffin Dart station lies c.750m to the north west and there is a bus route and bus stop to the front (south) of the site.
- 1.2. The main building / showroom on site is closed, however, part of the site to the east is occupied by Grange Road Motors.

## 2.0 The Question

- 2.1. The question that has arisen in the referral is as follows:
  - Whether the change of use from use as a car sales dealership to use as a shop unit is or is not development or is or is not exempted development.
- 2.2. For reasons of clarity and for consistency with the legislative provisions, I recommend that the question is reworded as follows:
  - Whether the change of use of a car sales premises for the sale or leasing, or display for sale or leasing of motor vehicles to use as a shop at the former Tom Walsh Motors, Grange Road, Baldoyle, Dublin 13 is or is not development or is or is not exempted development.

## 3.0 Planning Authority Declaration

### 3.1. Declaration

- 3.1.1. On 18<sup>th</sup> November 2016, a request for a declaration on the above question was received by Fingal County Council from Emma Pillion Planning. It was accompanied by a map identifying the site location. It is stated that no changes to the elevations or the site layout are required.

3.1.2. On 15<sup>th</sup> December 2016, the Planning Authority issued a declaration under Order No. PF/1719/16 that the proposed development is NOT exempted development under the Section 5(1) of the Planning and Development Act 2000, as amended, for a single reason as follows:

1. The change of use would result in the potential endangerment of public safety by reason of the creation of a traffic hazard and by the potential to obstruct road users.

### 3.2. **Planning Authority Reports**

3.2.1. A summary of the Planning Report is set out below.

- Refers to planning history including Ref. F02A/1525 where permission was granted for a two-storey building including two car showrooms, repair workshop, car store and offices with a stated gross floor area (GFA) of 2,756 sq.m;
- In the absence of detail regarding the nature of the retail unit, the Planning Authority has had regard to a change of use occurring within the entire premises.
- Car parking demand for 137 spaces would arise based on a rate of one space per 20 sq.m, as per the Fingal Development Plan 2011-2017, which is considerably greater than the available parking leading to congestion and potential for conflicts between vehicular and pedestrian movements.
- Proposal would result in significant intensification of development on site.
- Site is located outside of the village, as per the Baldoyle Stapolin Local Area Plan (May 2013).
- In the absence of satisfactory details concerning appropriate levels of car parking, delivery and access arrangements, segregation of delivery and access arrangements, vehicular and pedestrian movements, the change of use would result in endangerment of public safety by reason of the creation of a traffic hazard and the potential to obstruct road users.
- Recommends that a declaration would issue setting out that the works do not constitute exempted development.

## 4.0 Referral and Planning History

### 4.1. Planning History

4.1.1. The planning history is detailed in the Planning Officer's report on file and is summarised under.

- **F02A/1525:** Permission granted for the relocation and redevelopment of the established commercial business.
- **F01A/0102:** Permission granted for a two storey extension to a previously approved two storey car showroom on a site area of 1,980 sq.m and a floor area of 700 sq.m. Extension proposed measures 112 sq.m in area.
- **F99A/1364:** Permission granted for alteration to approved single storey car showroom comprising revised two-storey car showroom.
- **F99A/0264:** Permission granted for the demolition of existing showroom and petrol pump canopy and construction of new extension to front and sides of new showroom and car storage. Site area is 1,980 sq.m, floor area is 560 sq.m. and additional floor area proposed is 700 sq.m.
- **F89/0654:** Permission granted for extension to Tom Walsh Motors.

### 4.2. Previous Referrals

4.2.1. There is no evidence of any previous referral(s) made to An Bord Pleanála on the specific site. Referrals which the Board have previously decided and which have similar considerations include the following:

- **09.RL.3486:** The Board decided (2018) that the proposed change of use of a former car sales premises to use as a shop at Gallowshill, Athy, County Kildare is development and is not exempted development. Central to this decision was the fact that the existing premises on site was not carried out in the first instance in accordance with the drawings and documentation submitted to the planning authority and therefore contravened a condition attached to the permission and the exemption that would generally be available under Class 14 (a) could not be considered exempt by reference to Article 9(1) of the Regulations.

- **PL84.RL3096:** The Board decided (2013) that the change of use from a garage and showrooms to use as a shop at The Fairgreen, Westport, Co. Mayo is development and is exempted development.
- **PL88.RL2959:** The Board decided (2011) that the use of car showroom for retail/shop use at Nyhan Motors, The Bypass, Cloghmacsimon, Bandon, Co. Cork is development and is not exempted development. In deciding on this referral, the Board considered that the change of use would contravene a specific condition (Condition No.4) attached to the applicable grant of permission, requiring that no change of use would occur in respect of the permitted development without a grant of permission.
- **PL83.RL.2856:** The Board decided (2011) that the proposed change of use of the premises from use for the sale or leasing, or display for sale or leasing of motor vehicles to use as a shop, all at Capital Cars, Church Road, Tullamore is development and is exempted development. As part of the referral question, it was also decided that a change of signage would not constitute exempted development.
- **PL28S.RL2020:** The Board decided (2003) that the change of use from motor/warehouse showrooms to a shop for the sale of tiles. Units 1 and 1C Concord Industrial Estate, Naas Road, Dublin 12 is development and is exempted development.

## 5.0 Policy Context

### 5.1. Development Plan

- 5.1.1. Fingal Development Plan 2017-2023 is the statutory development plan for the area. The site is within an area with a zoning Objective 'RA - Provide for new residential communities subject to the provision of the necessary social and physical infrastructure'.

## 6.0 The Referral

### 6.1. Referrer's Case

6.1.1. The declaration was referred to the Board for review by Emma Pillion Planning. The referrer states their disagreement with the view of the Planning Authority that the proposal would result in potential endangerment of public safety on traffic grounds. The following points are put forward:

- Grange Road is a distributor road / dual carriageway and the referral site is located within a 50 km/hr speed limit with adequate sightlines.
- Proposed traffic movements does not give rise to undue delays for traffic onto Grange road, nor result in the endangerment of traffic users.
- The site is served by a high standard road network (including footpaths and cycle lanes) and public transport.
- Site is served by a separate goods in compound to the rear of the site and has separate customer parking from goods parking.
- Site is facilitated by sufficient car parking and has safe access and egress for all vehicular movements, including HGVs.

### 6.2. Planning Authority Response

6.2.1. The Planning Authority responded and stated that they have no further comment.

## 7.0 Statutory Provisions

### 7.1. Planning and Development Act 2000, as amended.

#### 7.1.1. Section 2(1)

- “use”, in relation to land, does not include the use of the land by the carrying out of any works thereon.
- “works” includes 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 or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.

7.1.2. Section 3(1)

- “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.

7.1.3. Section 4(2)(a)

- ‘The Minister may by regulations provide for any class of development to be exempted development for the purposes of this Act’ (summarised).

7.1.4. Section 4(4)

- Notwithstanding paragraphs (a), (i), (ia) and (l) of subsection (1) and any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required.

7.2. **Planning and Development Regulations 2001-2018**

7.2.1. Article 5(1) includes a definition for a shop as follows:

- (a) for the retail sale of goods
- (b) as a post office
- (c) for the sale of tickets or as a travel agency
- (d) for the retail sale of goods
- (e) for hairdressing
- (f) for the display of goods for sale
- (g) for the hiring of domestic or person
- (h) as a laundrette or dry 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 for consumption off the premises except under paragraph (d), or any use to which class 2 or 3 of Part 4 of Schedule 2 applies.

#### 7.2.2. Article 6 – Exempted Development

- Article 6(1) of the Regulations provides that 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.

#### 7.2.3. Article 9 – Restriction on Exemption

- Article 9(1) of the Regulations provides that exempted development under article 6 of Regulations shall not be exempted development in certain specified circumstances including the following:
  - (a) if the carrying out of such 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 a traffic hazard or obstruction of road users.

#### 7.2.4. Part 1 of Schedule 2 of the Regulations (General)

- Class 14 relates to 'change of use' and includes the following:
  - (a) from use for the sale of hot food for consumption off the premises, or for the sale or leasing or display for sale or leasing of motor vehicles, to use as a shop.

## 8.0 **Assessment**

### 8.1. **Is or is not development**

- 8.1.1. This referral has been submitted under Section 5 of the Planning and Development Act, 2000, as amended and has arisen from a request to the Board from Emma Pillion Planning to review the Planning Authority's Declaration in relation to the matter. The Planning Authority issued a Declaration that the change of use of a car

sales premises to use as a retail shop is development and is not exempted development. It is submitted by the referrer that there would be no changes to the elevations or site layout. The Planning Authority considered it would NOT constitute exempted development on the basis that it would result in potential endangerment of public safety by reasons of the creation of a traffic hazard and by the potential to obstruct road users. In their assessment, the Planning Officer considered the change of use would result in an intensification of traffic movements and would generate a car parking demand of 137 car spaces, which is well above the parking provision on the site.

8.1.2. Section 3(1) of the Act defines 'development' as, 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. A 'shop' is defined under Article 5(1) of the Regulations as being, amongst others, 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. There is no limitation as to the floor area associated with such a 'shop'.

8.1.3. The definition of a shop does not include the sale of or leasing of motor vehicles. Therefore, I am satisfied that the proposed change of use would be material in planning terms and would constitute 'development' within the meaning of Section 3(1) of the Act.

## 8.2. **Is or is not exempted development**

8.2.1. Having established that the proposed change of use constitutes development within the meaning of the Act, it is necessary to ascertain whether or not it can be considered to constitute exempted development. In this respect, I would refer the Board to Article 6(1) of the Regulations and, in particular, to Class 14(a) of Part 1 of Schedule 2: 'Exempted Development – General' of the Regulations, which states that development consisting of the change of use of a premises from the sale or leasing, or display for sale or leasing of motor vehicles, to use as a shop shall be exempted development for the purposes of the Act. Accordingly, I am satisfied that, subject to Article 9, the development is exempted development.

8.2.2. Article 9(1) of the Regulations provides that exempted development under Article 6 of Regulations cannot be considered exempted development in certain specified circumstances including the following:

(a) if the carrying out of such 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 a traffic hazard or obstruction of road users.

8.2.3. Neither the Planning Authority nor the referrer have referenced that the proposed change of use would contravene any condition attached to a permission under the Act or that the use would be inconsistent with any use specified in the permission under the Act. Therefore, in continuing my assessment I am assuming that part (a)(i) of Article 9 does not apply and can be discounted. Should the Board disagree with this approach it is open to the Board to request information from the referrer and / or the Planning Authority in this regard.

8.2.4. In relation to part (a)(iii), the site is located within a 50 km/hr speed limit. Access is provided from a distributor and single carriage road, Grange road, which contains cycle lanes and footpaths. On the day of my site inspection, I noted steady flows of passing traffic. The Planning Authority consider that the new use would result in intensification. While this may be so and consequently an increase in traffic entering and exiting the site may arise, it is not considered that such would give rise to a traffic hazard. There are adequate sightlines available and access is available from the road network with ghost islands and road markings.

8.2.5. Regarding parking requirements, the Planning Authority refer to a requirement for 137 parking spaces based on 1 space per 20 sq.m. Based on my site visit, this would likely be double that which currently exists on site. I note that by reference to Table 12.8 of the current Fingal Development Plan (2017-2023), the standard of 1 car space per 20 sq.m is a maximum requirement. I also note that Objective DM114 requires paid parking for new retail development with more than 50 car spaces. In addition, the site is located close to Clongriffin Dart station and is served by a bus route. The availability of public transport would serve to balance the demand of parking requirements. Therefore, on the basis of the foregoing, I am not satisfied that

it has been demonstrated that the proposed change of use would give rise to a deficit of car parking, thereby resulting in a traffic hazard or the creation of an obstruction to road users. In relation to the existing access and delivery arrangements, these were evidently considered sufficient to serve a car showroom and I see no reason to suggest that they would not be sufficient to serve a retail / shop use.

- 8.2.6. Having regard to the above, I find no basis that the provisions of Article 9 apply in this referral case such as would de-exempt the development.

### 8.3. **Environmental Impact Assessment and Appropriate Assessment**

- 8.3.1. Section 4(4) of the Act sets out that development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required. Having regard to the nature and scale of the works, I am satisfied that the development would not give rise to any significant environmental effects and would not therefore require Environmental Impact Assessment. I am equally satisfied that no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

## 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 from the sale and display for sale of motor vehicles to use as a shop at the former Tom Walsh Motors, Grange Road, Baldoyle, Dublin 13 is or is not development or is or is not exempted development.

**AND WHEREAS** Emma Pillion Planning of Fardrum, Athlone requested a declaration on this question from Fingal County Council and the Council issued a declaration on the 15<sup>th</sup> day of December 2016 stating that the

proposal was development and was not exempted development.

**AND WHEREAS** Emma Pillion referred this declaration for review to An Bord Pleanála on the 20<sup>th</sup> day of January 2017:

**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, including the provisions of Section 4(4), as amended, in respect of environmental impact assessment and appropriate assessment,
- (b) Articles 5, 6 and 9 of the Planning and Development Regulations 2001-2018,
- (c) Class 14(a) of Part 1 of Schedule 2 of the Planning and Development Regulations 2001-2018,
- (d) The planning history and permitted uses on the site.

**AND WHEREAS** An Bord Pleanála has concluded that:

- (a) the principal and permitted use on the site is for the sale or leasing, or display for sale or leasing of motor vehicles;
- (b) the change of use to use as a 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.
- (c) the change of use to use as a shop is not affected by any of the restrictions on exemption set out in Article 9 of the Planning and Development Regulations 2001-2018, and in particular would not endanger public safety by reason of a traffic hazard;
- (d) the proposed change of use to use as a shop comes within the scope of the exemption provided in Class 14 (a) of Part 1 of

Schedule 2 of the Planning and Development Regulations 2001-2018,

(e) The development is not affected by the provisions of Section 4(4) of the Planning and Development Act 2000, as amended, in respect of environmental impact assessment or appropriate assessment.

**NOW THEREFORE** An Bord Pleanála, in exercise of the powers conferred on it by section 5(3)(a) of the 2000 Act, as amended, hereby decides that the change of use of the premises from use for the sale or leasing, or display for sale or leasing of motor vehicles, to use as a shop is development and is exempted development.

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Patricia Calleary  
Senior Planning Inspector

31<sup>st</sup> May 2018