



An
Bord
Pleanála

Inspector's Report RL61.RL3564

Question	Whether a change of use from Office Class 2 (Estate Agents) to use as a shop is or is not development.
Location	Unit 8, Tuam Road Retail Centre, Tuam Road, Galway'
Declaration	
Planning Authority	Galway City Council
Planning Authority Reg. Ref.	P/DC/3/2/17
Applicant for Declaration	ITC Delta Fund
Planning Authority Decision	Is not exempted development.
Referral	
Referred by	ITC Delta Fund
Owner/ Occupier	ITC Delta Fund
Observer(s)	none.
Date of Site Inspection	14 th June, 2017
Inspector	Stephen Kay

1.0 Site Location and Description

- 1.1. The site which is the subject of this referral is located to the north east of the city centre close to the junction between the Tuam Road and the Moneenageisha Road. The site is located in a development of two storey retail warehouse units located fronting onto the Tuam Road. Car parking is provided to the front and rear of the building.
- 1.2. The site which is the subject of this referral comprises a ground floor unit in the middle of the run of retail units. The unit is currently vacant and has a to let sign on the front elevation.
- 1.3. The floor area of the unit is not stated on file.

2.0 The Question

- 2.1. The question to be addressed is not clearly stated by the Planning Authority or the first party in their appeal. I consider that the question raised in the request for a declaration from the Planning Authority and the referral to the Board to be as follows:

Whether a change of use from office use (class 2) to use as a shop is or is not development and is or is not exempted development.

3.0 Planning Authority Declaration

3.1. Declaration

The Planning Authority issued a declaration dated 24th day of February, 2017 stating that the proposed change of use is not considered to constitute exempted development on the basis that it would contravene and be inconsistent with a use specified in a permission, specifically Condition No.1 attached to Planning Ref. 04/926.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The main issues raised in the planning officer report on the section 5 declaration can be summarised as follows:

- That the contention of the first party that a change of use from Office (Class 2) to retail is exempted development as per Class 14(d) of Part I of the Second Schedule of the Act is subject to the limitations of Article 9 which includes at Art. 9(1)(a) that development to which Article 6 relates shall not be exempted development for the purposes of the Act – if the carrying out of such development – would contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act.
- It is considered that the proposed change of use to from Office (Class 2) to retail would be contrary to Condition No.1 attached to Galway City Council Ref. 04/926 on the basis that the office use permitted under Ref. 04/926 was Office (Class 3) and not Office (Class 2) which relates to services provided principally to visiting members of the public.
- Reference is made to the Planning Report in respect of Ref. 04/926 and in particular the references in that report to parking requirement which it is contended clearly relates specifically to office use only and that the development was not assessed on the basis of '*a higher requirement of retail use or an office which would provide services to visiting members of the public*'.
- Stated that the only compliance documentation presented relates to payment of the financial contribution required under Condition No.2. There was no agreement of compliance issued in respect of the use of the building as an estate agent. Not considered therefore that the estate agency use was a permitted use.
- Recommended that the referrer be informed that proposed change of use not exempted development on the basis that it would contravene a condition attached to a permission, namely Condition No.1 of Ref. 04/926.

4.0 Planning History

The following planning history is of relevance to this referral:

Galway City Council Ref. 10/204 – Permission granted by the Planning Authority for a change of use of Unit No.8 from existing offices to use as warehousing for the storage of foodstuffs with ancillary retail element. It would appear that this permission was never implemented on site.

Galway City Council Ref. 04/926 – Permission granted by the Planning Authority for development advertised as a change of use from existing warehouse / retail unit to office use. The nature of the permitted office use is not explicitly stated in the planning application notices, and was not the subject of any specific condition attached to the Grant of Permission.

Galway City Council Ref. 02/402 – Permission granted for alterations to permitted signage to the front elevation.

Galway City Council Ref. 96/472 – Original permission for the development of a retail warehouse / park development at this location.

5.0 Policy Context

5.1. Development Plan

The site is zoned Enterprise, local industry and commerce under the provisions of the *Galway City Development Plan, 2017-2023*.

6.0 The Referral

6.1. Referrer's Case

The following is a summary of the main issues in the case made by the referrer:

- That the most recent permitted use in this location was an office which was permitted by the Planning Authority under Ref. 04/926. This permission was the basis for the use of the site as an office by Remax Property West estate agency.

- It is contended that this estate agency use falls within falls within the description of Class 2 of Part 4 of the Planning and Development Regulations, i.e. professional services where the services are provided principally to visiting members of the public.
- That change of use from Class 2 office to use as a shop is exempted development as per Class 14(d) of Part 1 of the Second Schedule of the Planning and Development Regulations.
- The statement of the Planning Authority that during the course of the assessment of Ref. 04/962 at no time was indicated that the proposed use was to provide services to visiting members of the public is noted, however it is submitted that the Planning authority must have been aware that there was a high likelihood that this was the form of development proposed.
- It is noted that the Planning Authority accepted payment of the financial contribution required under Condition No.2 of Ref. 04/962 from Remax Property West.
- Regarding the issue raised by the Planning Authority about parking provision and how this indicates that the application was assessed as an office (Class 3) it is noted that the Galway City Development Plan does not distinguish between office types.
- That there is a requirement for an additional 4 spaces (10 against 6) in the case of a retail use over office. There is significant parking provision on site and as per the letter from the management company attached to ref. 04/926, parking spaces are not allocated per unit. It is also noted that the exempted development regulations do not specify requirements in terms of car parking.

6.2. Planning Authority Response

None received.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

s.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.

s.4(2)(a) The Minister may by regulations provide for any class of development to be exempted development for the purposes of this Act where he or she is of the opinion that—

(i) by reason of the size, nature or limited effect on its surroundings, of development belonging to that class, the carrying out of such development would not offend against principles of proper planning and sustainable development, or

(b) Regulations under paragraph (a) may be subject to conditions and be of general application or apply to such area or place as may be specified in the regulations.

7.2. Planning and Development Regulations, 2001

Article 6(1) states that:

'subject to Art.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 of the mention of that class in the said column 1'.

Article 9(1) states that development to which article 6 relates shall not be exempted development for the purposes of the Act-

(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.*

Class 14 of Part 1 of the Second Schedule states that the following will be exempted development:

Development consisting of a change of use-

- (d) from use to which Class 2 of Part 4 of this Schedule applies to use as a shop*

Class 2 of Part 4 of the Second Schedule states as follows:

Use for the provision of –

- (a) Financial services*
- (b) Professional services*
- (c) Any other services (including use as a betting office)*

Where the services are provided principally to visiting members of the public.

Article 5 Exempted Development defines 'Shop' as follows:

'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 as 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 (1909-1910) Act, 1910), 10 Edw. 7. & 1 Geo. 5, c.8,

(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 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;

8.0 Assessment

8.1. Is or is not development

- 8.1.1. The subject of this referral relates to a change of use from office to retail use. The definition of development at s.3(1) of the Act provides that a material change of use of a structure or land would comprise development within the meaning of the Acts. In the case of the proposed change of use from permitted office to shop it is my opinion that, notwithstanding whether the permitted office use is class 2 or class 3, the character of the use would likely alter. In addition, when considered the materiality of the proposed change in the context of the proper planning and sustainable development of the area there are in my opinion potential issues relating to frequency of visits, visitor turnover and traffic issues which arise. Having regard to these considerations, it is my opinion that the proposed change of use from office use to use for retail purposes would constitute a material change in the use of this structure such that it would comprise development.

8.2. Is or is not exempted development

- 8.2.1. The basis for the contention of the referrer that the proposed development would constitute exempted change of use relates to the provisions of Class 14(d) of Part 1 of the Second Schedule which states that development consisting of a change of use from use to which Class 2 of Part 4 of this Schedule applies to use as a shop is exempted development. Against this, the report of the Planning Officer and the decision of the Planning Authority on the s.5 referral deems that the change of use sought is not exempted development on the basis that the office use permitted under Ref. 04/926 was Office Class 3 rather than office Class 2 (for visiting members of the public) and that the proposed change of use would contravene a condition (Condition No.1) attached to Ref. 04/926. Under Art. 9(1)(a)(i) it is therefore submitted that the exemptions provided for under Art.6 and set out in the Second Schedule of the Regulations are not exempted in this case.
- 8.2.2. Under Class 14(d) of Part 1 of the Second Schedule, development consisting of a change of use from use to which Class 2 of Part 4 of this Schedule applies to use as a shop is exempted development. The circumstances of the subject site are that a change of use from office class 2 to use as a shop would be exempted development. In the first instance, the issue at hand is in my opinion whether the permitted use of the site under Ref, 04/926 was for an office Class 2 (financial, professional or other services where the services are provided principally to visiting members of the public).
- 8.2.3. The main basis for the conclusion of the Planning authority that the permitted use of the site relates to Office Class 3 is that the assessment of Ref. 04/926 included consideration of the car parking requirement for the proposed use and that this was the subject of further information. It is contended by the Planning Authority that the Planning Report in respect of Ref. 04/926 and in particular the references in that report to parking requirement which it is contended clearly relates specifically to office use only indicate that the use envisaged and permitted was Office Class 3 and that the development was not assessed on the basis of 'a higher requirement of retail use or an office which would provide services to visiting members of the public'. From an inspection of the Planning Officer report in respect of Ref. 04/926 a copy of which is on file, the issue of car parking was the subject of a request for further

information. This request for FI makes reference to differing parking requirements for office (1 space per 50 sq. metres) as against warehouse / retail showroom (1 space per 75 sq. metres) and requests clarification on the additional parking proposed and parking provision for the development. I note that the plan under which this application was assessed, the Galway City Development Plan, 1999 did not distinguish between office Class 2 and Class 3 in terms of parking provision requirements with a single standard for Office at 1 space per 50 sq. metres. I also note that the response of the applicant to the request for FI indicates that there is communal parking and that adequate parking for all uses exist on the site. In summary therefore, I do not see that there is any basis in the FI request or response to support the contention of the Planning Authority that what was envisaged in the application was office Class 3 use (not to visiting members of the public).

- 8.2.4. Notwithstanding the above, there are a number of other issues of relevance to the consideration of the scope of the permission granted under Ref. 04/926. Firstly, the public notices state that the application for change of use from existing warehouse / retail to office. There is no reference anywhere in the application documentation, including in the planning application form, that I can see that states the exact nature of the proposed office use or whether it is or is not proposed to be for the use of visiting members of the public.
- 8.2.5. Secondly, I would highlight to the Board the proposed layout plan submitted with the application, a copy of which is enclosed with this report. This layout shows that the majority of the floorspace is laid out in the form of a public or at least semi-public office with private conference, office and ancillary areas beyond. In my opinion the layout indicated on the drawing submitted with the application is supportive of a use that is open to visiting members of the public and consistent with the actual stated use of the premises as an estate agency.
- 8.2.6. It is in my opinion also notable that the conditions attached to Ref. 04/926 do not include any which clarify the nature of the permitted use, that restrict the use to a particular type of office or which require the submission of details of the proposed use to the Planning Authority for written agreement. The report of the Planning Officer on the s.5 application states that the only compliance documentation presented relates to payment of the financial contribution required under Condition No.2 and that there was no agreement of compliance issued in respect of the use of

the building as an estate agent. As set out above, however, there were no conditions attached by the Planning Authority relating to the exact nature of the office use.

8.3. Restrictions on exempted development

- 8.3.1. The basis for the decision of the Planning Authority that the proposed change of use does not constitute exempted development is based on the limitation on exemptions set out at Art.9(1)(a)(i), namely that the development would not '*contravene a condition attached to a permission under the Act, or be inconsistent with any use specified in a permission under the Act*'. For the reasons set out above, I do not consider that it can reasonably be held that the proposed change of use from permitted warehouse/ retail to office would be contrary to Condition 1 of Ref. 04/926. This condition requires that the development shall be carried out and completed in accordance with the application details submitted on 2nd December, 2004 and subject to the revised documentation as received 7th February, 2005. As set out above, I do not consider that there is any aspect of the application documentation originally submitted or that submitted in response to the request for further information which indicates that the proposed use was not intended to be for visiting members of the public. For this reason, I do not consider that the restriction on the exemption set out at Art.9(1)(a)(i) is applicable in this instance.
- 8.3.2. I have reviewed the other limitations on exemptions set out at Art.9 of the Planning and Development Regulations as well as the provisions of s.4(4) of the Act and I do not consider that there are any other restrictions on exempted development that are applicable in this case.

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 a change of use of use from office use (class 2) to use as a shop is or is not development and is or is not exempted development.

AND WHEREAS ITC Delta Fund requested a declaration on this question from Galway City Council and the Council issued a declaration on the 24th day of February, 2017 stating that the matter was development and was not exempted development:

AND WHEREAS ITC Delta Fund referred this declaration for review to An Bord Pleanála on the 22nd day of March, 2017:

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(4) of the Planning and Development Act, 2000, as amended,
- (d) article 6(1) and article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (e) Class 14 of Part 1 and Part 4 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (f) the planning history of the site,

AND WHEREAS An Bord Pleanála has concluded that:

- (a) Permission was granted under Galway City Council Ref. 04/926 for a change of use from existing retail warehouse / retail unit to office use.
- (b) Neither the application documentation submitted in relation to ref. 04/926 or the conditions attached to the grant of permission issued specify that the permitted office use is restricted to Office (class 3).

- (c) The proposed change of use would constitute development in accordance with s.3(1) of the Planning and Development Act, 2000 (as amended) as the proposed change of use would be material.
- (d) The proposed change of use would constitute exempted development under Class 14 of Part 1 of the Second Schedule of the Planning and Development Regulations, 2001 (as amended).
- (e) The restriction of exemptions set out in Art. 9(1)(a) are not applicable in this case. Specifically, the Board does not consider that the proposed development would contravene a condition attached to Galway City Council Ref. 04/926 or otherwise be inconsistent with any use specified in any permission granted under the Planning and Development Act, 2000 (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 change of use from office use (class 2) to use as a shop is development and is exempted development.

Stephen Kay
Planning Inspector

4th September, 2017