



An
Bord
Pleanála

Inspector's Report 21. RL3573

Question	Whether the change of use of a unit is development or is exempted development
Location	Unit 1 Cleveragh Retail Park, Sligo
Declaration	
Planning Authority	Sligo County Council
Planning Authority Reg. Ref.	ED286
Applicant for Declaration	Corajio t/a Mr Price Branded Bargains
Planning Authority Decision	Is development and is not exempted development
Referral	
Referred by	Corajio t/a Mr Price Branded Bargains
Occupier	Corajio t/a Mr Price Branded Bargains
Owner	Smyths Toys
Observer	None
Date of Site Inspection	8 th June 2017
Inspector	Stephen J. O'Sullivan

1.0 Site Location and Description

1.1. The site is a unit in a retail warehouse park in a suburban part of Sligo town. At the time of inspection it was occupied by a shop selling various household items most of which could not be reasonably described as bulky. C.10% of the shelf area displayed non-perishable items of food. The layout of the retail park follows a standard model with single use units laid out along the back and one side of the site around a car park. Other units in the retail park are occupied by Mothercare, Argos, a store selling electrical appliances, and a specialist foodstore, with one empty unit.

2.0 The Question

2.1. Whether the use of the unit as a Mr Price Branded Bargain shop, with the food aisle removed, would constitute development or exempted development.

3.0 Planning Authority Declaration

3.1. Declaration

The planning authority declared that the change of use would be material and so constitutes development, and it would not be exempted development because it would contravene condition no. 2 of the grant of permission made under Reg. Ref. PL04/70037 and would be inconsistent with the 'toy sales' specified in that permission and so it would contravene articles 10(1)(b) & (c) of the planning regulations.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The submitted question relates only to use. When considering whether the change of use is material it is important to consider the context provided by policy and by the site and its planning history. The decision to refuse permission under PL14/233 is important as the product range proposed in that application is similar to that observed on site and that to which the current case applies. The products on offer

are not bulky. The non-bulky items are not ancillary to a main offer of bulky goods. So the development contravenes the development plan and the retail planning guidelines. It is noted that the applicant is not claiming that the use is within the classification of 'retail warehousing' but that 'general retailing' was previously established in the unit. However the description of development and condition no. 2 of the permission PD04/70037 specified retail warehousing as the proposed and authorised use. The unit was occupied by Smyths Toys who subsequently moved to another retail warehousing unit. The planning authority were satisfied that the operation in both units was consistent with their status as retail warehouse units. Some toy shops might be general comparison retailing, but the scale and product range of the Smyths Toys outlets rendered them retail warehousing. So a general retail use was not established on the site by the original grant of permission or its subsequent use as a toy shop. Therefore the present use involves a material change of use and so is development. The material change of use is within the class of 'shop' specified in part 4 of schedule 2 of the planning regulations. However it would lose the exemption otherwise available to that development because it would contravene condition 2 of PD04/70037 and would be inconsistent with the use as a toy shop for retail warehousing specified in that permission. So the development would not be exempted development. The omission of the food aisle would not alter this conclusion.

4.0 Planning History

- 4.1. PD04/70037 – The planning authority granted permission in 2004 for a development that included retail warehouse units, one of them with a specific use for the sale of toys. That unit is the one to which this case refers. Its floor area was given as 1,633m². Condition no. 2 of that decision stated –

The retail warehouse development shall be solely for the sale of bulky comparison goods (non-food).

Reason: In the interests of the proper planning and sustainable development of the area.

- 4.2. PL14/233 – the planning authority refused permission to change the unit from toy sales to allow for the sale of branded bargain household, variety and confectionary

goods (bulky, bought in bulk and non bulky) on the grounds that it would contravene retail policy and threaten the vitality and viability of the town centre.

5.0 Policy Context

5.1. Development Plan

The Sligo and Environs Development Plan 2010-2016 applies. The site is zoned under objective C2 for commercial and mixed uses. Shops are permitted in principle under this zoning. Objective O-RP-1 is to assess proposals for retail development in accordance with a sequential test. Objective O-RP-2 is to promote the Centre Block and Quayside Shopping Centre as the priority area for new medium or large shops.

5.2. Retail Planning Guidelines 2012

Annex 1 of the guidelines of the guidelines includes the following within the category of bulky goods –

Goods generally sold from retail warehouses where DIY goods or goods such as flatpack furniture are of such size that they would normally be taken away by car and not be portable by customers travelling by foot, cycle or bus, or that large floorspace would be required to display them e.g. repair and maintenance materials; furniture and furnishings; carpets and other floor coverings; household appliances; tools and equipment for the house and garden; bulky nursery furniture and equipment including perambulators; bulky pet products such as kennels and aquariums; audio-visual, photographic and information processing equipment; catalogue shops and other bulky durables for recreation and leisure

A retail warehouse is defined as a large, single-level store specialising in the sale of bulky household goods such as carpets, furniture and electrical goods, and bulky DIY items, catering mainly for car-borne customers. Section 3.8 states that there is pressure to entertain uses inappropriate to out-of-centre locations in retail warehouses due to the level of vacancy within them. Section 4.11.2 also states that the use of retail warehouses to sell non-bulky durables has the potential to have a detrimental impact on town centres.

5.3. **Natural Heritage Designations**

None

6.0 **The Referral**

6.1. **Referrer's Case**

Toy shops are not retail warehousing as defined in the retail planning guidelines. They predominantly sell small goods rather than bulky goods with a ratio of 80:20. The authorised use of the unit under PD04/70037 is as a toy shop as was stated in the description of development. Condition no. 2 refers to the retail warehouse development and so could not have referred to this unit because its proposed use was a toyshop and toyshops do not sell bulky goods. Therefore the change of use to the Mr Price shop is exempted development. It would have similar opening hours, traffic impacts, parking requirements and a ratio of bulky to non-bulky goods for sale as a toyshop. The change of use would not be material and it would not be development.

6.2. **Planning Authority Response**

The response refers to the previous planner's report.

7.0 **Statutory Provisions**

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

Section 3(1) of the act states -

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.

7.2. **Planning and Development Regulations, 2001, as amended**

Article 10(1) of the regulations states –

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.

8.0 Assessment

8.1. Is or is not development

- 8.1.1. The use of a premises as a retail warehouse to sell bulky goods is a different use than general retail use. The change from one to the other is a material change of use that constitutes development. This issue has been settled by previous declarations by the board, including that under 85. RL2777, and there is no justification to re-open it in this case.
- 8.1.2. The current use of the site is not for the sale of bulky goods. It is not being used as a retail warehouse. It is being used for general retail purposes. This would be so even if the sale of food ceased.
- 8.1.3. The referrer argues that general retail use was established on the site by the grant of permission under PL04/70037 which referred to its use as a toyshop and its subsequent use as such. This argument is not accepted. A toy shop might or might not be a retail warehouse. It depends on whether the toys which it sells are bulky or not. The description of development for PL04/70037 referred to retail warehouse units. Condition no 2 of the permission also restricted the use of the retail warehouse development to the sale of bulky comparison goods. The referrer's argument that condition 2 does not apply to this site because the unit upon it was proposed as a toy shop (and therefore not as a retail warehouse unit) is not

accepted. That argument is not consistent with the terms contained in the description of the development and in condition no. 2 of the permission. Those terms are not inconsistent or absurd because it is possible that a toy shop could sell mainly bulky goods and therefore constitute a retail warehouse operation. The permission granted under PL04/70037 therefore makes it clear that the authorised and established use of the premises on the site is as a retail warehouse unit. Its current use for the sale of mainly non-bulky items involved a material change from that use and was therefore development.

8.2. Is or is not exempted development

- 8.2.1. The change in the use of the site from retail warehousing to general retailing would contravene condition no. 2 of the grant of permission issued under PL04/70037 and would be inconsistent with the description of the development for that permission. The restriction on exemption set out in article 10(1)(b), (c) and possibly (d) of the planning regulations applies. So the development cannot be exempted by virtue of the use classes set out in Part 4 of Schedule 2 to the regulations. No other provision of the act or the regulations would provide an exemption for the development. Therefore it 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 use of Unit 1 of the Cleveragh Retail Park, Sligo is or is not development or is or is not exempted development:

AND WHEREAS Corajio t/a Mr Price Branded Bargains requested a declaration on this question from Sligo Council and the Council issued a declaration on the 22nd day of March, 2017 stating that the matter was development and was not exempted development:

AND WHEREAS referred this declaration for review to An Bord Pleanála on the 18th day of April 2017:

AND WHEREAS An Bord Pleanála, in considering this referral, had regard particularly to –

- (a) Section 3(1) of the Planning and Development Act, 2000, as amended
- (b) article 10(1) of the Planning and Development Regulations, 2001, as amended, and
- (c) the planning history of the site and the grant of permission made under Reg. Reg. No. 04/70037

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The authorised use of the premises on the site is as a retail warehouse unit for the sale of bulky goods
- (b) The current use of the premises is for general retailing involving the sale of mainly non-bulky goods and this would remain the case if the sale of food ceased
- (c) The change in the use of the premises from a retail warehouse unit to general retailing involved a material change of use and was development, and
- (d) The use of the premises on the site for general retailing contravenes condition no. 2 of the grant of permission made under Reg. Ref. No.04/70037 and is also inconsistent with use as a retail warehouse specified in that permission, so the restriction on exemption set out in article 10(1)(b) and (c) of the regulations applies to the development

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 of the 2000 Act, hereby decides that the use of the Unit 1 of the Cleveragh Retail Park, Sligo for general retailing is development and is not exempted development.

Stephen J. O'Sullivan
Planning Inspector

15th June 2017