



An
Bord
Pleanála

Inspector's Report

RL.06D.3582

Question

Whether the vertical sub-division of units 3 and 4 by the closure of two internal door openings in the party wall between the units at ground and first floor level is or is not development and is, or is not, exempted development.

Location

Unit 4, Burton Hall Avenue, Sandyford Industrial Estate, Sandyford, Co. Dublin.

Declaration

Planning Authority

Dun Laoghaire Rathdown County Council

Planning Authority Reg. Ref.

Reference No. 2517

Applicant for Declaration

PhoneWatch

Planning Authority Decision

Proposed works does not constitute exempted development.

Referral

Referred by

PhoneWatch

Occupier

PhoneWatch

Owner	Pierce Meagher
Observer(s)	No observers
Date of Site Inspection	18/09/2017
Inspector	Erika Casey

1.0 Site Location and Description

- 1.1. The subject site is located within the Sandyford Industrial Estate. The existing unit forms part of a terrace of two storey units and was previously in office/warehouse use. Surface car parking is provided to serve the development.
- 1.2. Internally the unit accommodates an open plan office area with some modular offices. To the rear there is a warehouse/plant area. Unit 3 and 4 are interconnected by way of a door located at ground and first floor level. The combined area of the two units is 1,720.86 sq. metres. The units are currently vacant.

2.0 The Question

- 2.1. The question that has arisen is whether *“whether the vertical sub-division of units 3 and 4 by the closure of two internal door openings in the party wall between the units at ground and first floor level is or is not development and is, or is not, exempted development.”*
- 2.2. It should be noted that the wording of the question has been amended for clarity from that originally submitted to Dun Laoghaire Rathdown County Council – see section 8.1.1 below for further explanation.

3.0 Planning Authority Declaration

3.1. Declaration

- 3.1.1 That the proposed internal works comprising of the full closure of a single-door connection within the party wall separating the wall structure at both ground and first floor levels to the adjoining building at Unit 4, Burton Hall, Sandyford Industrial Estate, Sandyford, County Dublin, does not constitute exempted development in accordance with the Planning and Development Act 2000, as amended and the Planning and Development Regulations 2001, as amended.

3.2. Planning Authority Reports

3.2.1. Planning Report (19/04/2017)

- The description of the proposed works does not relate to the extent and nature of the proposed development.

- Permission was granted in 2008 to amalgamate units 3 and 4 into one unit. It considers that the proposed works whilst minor in nature, will result in the subdivision of an office space into two commercial offices. This amounts to a material change of use and this material change of use is not exempt.
- Suggests that an alternative description of the proposal might read *“To reverse the amalgamation of two office spaces, by way of a vertical sub-division, in particular through the closure of 2 internal door openings at ground and first floor level between units 3 and 4 Burton Hall.”*

3.2.2. Other Technical Reports

- No other reports received.

4.0 Planning History

4.1 There have been three previous applications of relevance on the subject site.

Planning Authority Reference D02A/0168

Planning permission was granted in June 2002 for material alterations and change of use of the warehouse area to the rear to office space at Unit 4.

Planning Authority Reference D08A/0445

Planning permission was granted in September 2008 for minor alterations to the rear service yard elevation of Unit 3, to include the substitution of an existing roller shutter door with a glazed element and a new smaller first floor window adjacent. Internal alterations to same including a 23.25 sq. metre extension of an existing first floor office area together with openings at ground and first floor level to combine the two units into a single unit.

Planning Authority Reference D14A/0160

Permission for alterations and extension of the existing building, including: the construction of a two storey, corner infill extension (total 17 sq. metres) with associated signage at the south western corner (reception area) of the building, a new window to replace an existing roller shutter service door on the rear/north eastern elevation, internal modifications, including a change of use of 93 sq. m. of ground floor and 103 sq. m. of first floor warehouse stores to office use (total 196

sq. m.), all at Unit 4, together with enlargement of the existing window openings at first floor level on the rear/south eastern elevation of Unit 3.

5.0 Policy Context

5.1. Development Plan

5.1.1 The operative Development Plan is the Dun Laoghaire Rathdown County Development Plan 2016-2022. The site is zoned OE with the objective *'To provide for office and enterprise development.'* Section 8.2.5.1 sets out the criteria to be used in the assessment of enterprise and employment development proposals.

5.2. Natural Heritage Designations

5.2.1 None applicable.

6.0 The Referral

6.1. Referrer's Case

IMG Planning on behalf of PhoneWatch, Floor 3-5, Block 1, Irish Life Centre, Lower Abbey Street, Dublin 1.

- The question to be considered by the Board should be *"whether the vertical sub-division of units 3 and 4 by the closure of two internal door openings in the party wall between the units at ground and first floor level is a material change of use requiring planning permission, and thereby constitutes development and is, or is not, exempted development, and whether the internal alterations to these units are or are not exempted development."*
- The core issue to be considered is whether the creation of two units created by the closure of the two doorways constitutes a material change of use from the currently amalgamated unit.
- The existing and proposed use for units 3 and 4 is office. No change of use is proposed in this instance.
- Case law has determined that a change of use is material if the character of the proposed use is substantially different, in planning terms, from the existing authorised use, and also whether the change of use would impact on the proper planning and sustainable development of the area.

- It is submitted that the character of the current use of the amalgamated unit as office accommodation is no different, in planning terms, to the proposed use of each unit.
- There is no extension of existing floor space proposed and thus there will be no intensification of use of the premises.
- The use of the premises as two separate units would not have the potential to have impacts on the vicinity in terms of the proper planning and sustainable development of the area. Issues such as potential noise and nuisance, a requirement for additional car parking, additional traffic movements in the pattern and times of usage would be no different compared to those at present.
- It notes that having regard to the planning history of the site, there is no condition stating that the approved units can only be amalgamated or subdivided on foot of a separate grant of permission. In this regard, the proposed development does not contravene the planning permission for the development.
- It is acknowledged that the closing off of the doors between Units 3 and 4 constitute “works” as defined under the Act. However, it is considered that as these works are to the interior of the structure, they are considered exempt under Section 4 (1) (h).

6.2. Planning Authority Response (02/06/2017)

- No further comment.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

Section 3(1) of the Act states the following in respect of ‘development’:

“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 2 (1) of the Act provides the following definitions:

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

“alteration” includes –

(a) plastering or painting or the removal of plaster or stucco, or

(b) the replacement of a door, window or roof,

That materially alters the external appearance of a structure so as to render the appearance inconsistent with the character of the structure or neighbouring structures;

Section 4(1) of the Act states that the following shall be exempted development for the purposes of this Act:

“(h) development consisting of the use of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures;

Section 4 (2)(a) of the Act enables certain classes of development to be deemed exempted development by way of regulation.

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

Under **Article 5(1)**, the definition of ‘business premises’ is as follows:

(a) any structure or other land (not being an excluded premises) which is normally used for the carrying on of any professional, commercial or industrial undertaking or any structure (not being an excluded premises) which is normally used for the provision therein of services to persons.

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 certain conditions and limitations.

Article 9 (1) of PDR sets out various restrictions on works that would otherwise be exempted development under Article 6. These restrictions include, *inter alia*, if the carrying out of any development that would contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act.

With specific regard to change of use, Article 10(1) provides that any change of use within any one of the classes of use specified in Part 4 of Schedule 2, shall be exempted development provided that they do 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;

Part 4 of the Second Schedule to the Regulations states as follows:-

Exempted Development – Classes of Use

CLASS 3

Use as an office, other than a use to which class 2 of this Part of this Schedule applies.

8.0 Assessment

8.1 Preliminary Matters

8.1.1 It is noted that the wording suggested by the referrer in their submission differs from that originally submitted to the Planning Authority. It is considered that this is a more accurate description of the proposed development as the core issue to consider is whether the two office units created by the closure of the internal doorways constitutes a material change of use. In this regard, it is recommended that the question referred is phrased as follows:

“whether the vertical sub-division of units 3 and 4 by the closure of two internal door openings in the party wall between the units at ground and first floor level is or is not development and is, or is not, exempted development.

8.1.2 It should be noted however, that the purpose of this referral is not to determine the acceptability or otherwise of the vertical subdivision of units 3 and 4 by closure of 2 internal party wall door openings in respect of the proper planning and sustainable

development of the area, but rather whether or not the matter in question constitutes development, and of so falls within the scope of exempted development.

8.1.3 In carrying out this assessment, the planning referrals data base was consulted.

Whilst there have been a number of precedent decisions relating to the sub division of retail units (RL3418 and RL3102), no relevant precedents relating to the subdivision of office accommodation were found.

8.2 **Is or is not development**

Works

8.2.1 The proposed internal works will comprise solid concrete blockwork infill to the two door openings/connections within the party wall/separating wall between Unit 4 and Unit 3.

8.2.2 Having regard to the definition of 'works' set out in Section 2 of the Act, it is considered that due to the nature of the proposed construction works, that these would fall within the definition and thus are considered to constitute development.

Material Change of Use

8.2.3 The definition of development also refers to the making of any material change in the use of any structure or other land. The proposed development provides for the subdivision of an existing office unit into two separate units. The existing and proposed use will be office accommodation and thus it is considered that there is no change of use.

8.2.4 The Planning Authority are however, of the view that the subdivision of an office space amounts to a material change of use. It must be considered therefore, whether the proposed works constitute a material change of use by reason of intensification. Case law recognises that an otherwise non-material change may be considered material if it produces effects that are material for planning purposes (e.g. Monaghan County Council –v-Brogan 1987 IR 333).

8.2.5 It is noted that the subject development previously operated as two separate office units. However, permission was granted in 2008 under application reference D08A/0445 for the amalgamation of units 3 and 4 into one larger office. It is not considered having regard to the planning history of the site, that the vertical subdivision of the accommodation into 2 no. office units would materially alter the

character or function of the development from its current form. It would not be substantially different. No increase in floor area is proposed and the same quantum of overall office floorspace will remain albeit within 2 units as opposed to 1 unit. In this context it is not considered that there will be any material intensification of use.

8.2.6 Furthermore, having regard to the established office function at this location, it is not considered that the development would give rise to any significant impacts in terms of the proper planning and sustainable development of the area. There will be no increase in car parking provision and thus no consequent increase in traffic movements to the site. It is likely, given the limited floor area of the development, that there will be no material increase in the number of employees utilising the space. In this regard, it is not considered that the proposed works would result in a material change of use.

8.3 Is or is not exempted development

8.3.1 It is noted that all of the works proposed are internal to the structure. There will be no external elevational amendments arising from closure of the existing door connections within the party wall separating the units. In this regard, it is considered that the works are considered exempt under section 4 (1) (h) of the Act being works which affect only the interior of the structure.

8.4 Restrictions on exempted development

8.4.1 Article 9 of the regulations sets out a number of restrictions on exempted development including where such works would contravene a condition of a permission. A further restriction is whether an Appropriate Assessment is required.

8.4.2 Having regard to the planning history of the site, it is noted that there is no previous condition attached to any of the permissions that would restrict the sub division of the subject units. Having regard to the fact that the proposal is to carry out internal works to an existing building within an established urban area, and that the distance of the site to nearest European site, 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 vertical sub-division of units 3 and 4 by the closure of two internal door openings in the party wall between the units at ground and first floor level is or is not development and is, or is not, exempted development.***

AND WHEREAS PhoneWatch requested a declaration on this question from Dun Laoghaire Rathdown Council and the Council issued a declaration on the 19th day of April, 2017 stating that the matter was development and was not exempted development:

AND WHEREAS PhoneWatch referred this declaration for review to An Bord Pleanála on the 16th day of May, 2017:

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

- (a) Section 2(1), (3(1) and 4(1)(h) of the Planning and Development Act, 2000, as amended,
- (b) Article 6(1) and Article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (c) Parts 1 and 4 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (d) the planning history of the site.

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The proposed internal works comprising the closure of two internal door openings in the party wall between units 3 and 4 would constitute

“works” that are “development” under section 3 of the Planning and Development Act 2000 (as amended).

- (b) The works necessary to subdivide the unit into two office units come within the scope of section 4(1)(h) of the Act, being works which affect only the interior of the structure and are thus exempted development.
- (c) The subdivision into two office units would not give rise to increased traffic movements or any other activity that would have material consequences in terms of the proper planning and sustainable development of the area, and therefore would not constitute a material change of use.

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 vertical subdivision Units 3 and 4 by the closure of two internal door openings in the party wall between the units at ground and first floor level is development and is exempted development.

Erika Casey

Senior Planning Inspector

19th September 2017