



**AN BORD PLEANÁLA**  
LDG- CO 126 -18  
AGP- \_\_\_\_\_  
**20 NOV 2018**  
Fee: € 220 Type: Pmo  
Time: — By: Reg Post.



No.1 Airton Road, Tallaght,  
Dublin 24, Ireland

The Secretary,  
An Bord Pleanála,  
64 Marlborough Street,  
Dublin 1.

17/11/2018

**RE APPLICATION FOR SECTION 5: DECLARATION ON DEVELOPMENT AND EXEMPTED DEVELOPMENT ON THE SITE OF MR PRICE, GALLOWSHILL, ATHY, COUNTY KILDARE. ED: 682**

Dear Sir/Madam,

Pursuant to Section 5 of the Planning and Development Act 2000, as amended I would like to request a Section 5 Declaration on "Development and Exempted Development" in relation to the site outlined in red on the attached map.

Postal Address of the Subject Site: Mr Price, Gallowshill, Athy, Co. Kildare  
Applicant's legal interest in the land/structure: Leasee  
Name & address of owner of land/structure: Supermacs Ireland Limited, Ballybrit, Galway  
Are you aware of any enforcement proceedings connected to this site? If so please supply details: Yes, WL issued.

#### DECLARATION BEING SOUGHT

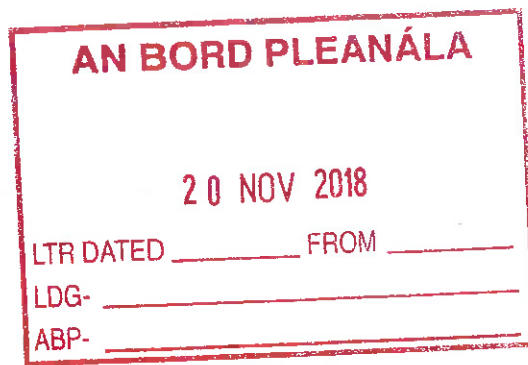
1. Whether the change of use of the premises from use for the sale or leasing or display for sale or leasing of motor vehicles (Class 14(a)) to use as a shop is/is not development and is/is not exempted development, and
2. Whether the internal works are/are not exempted development.

For your information we attach a map outlining the subject site. I now wish to refer this matter to *An Bord Pleanála* for their consideration and I have enclosed fee of €220 in respect of same.

#### ASSESSMENT OF SECTION 5

Initially it is important to note changes in the subject premises since the previous Section 5 application was made;





No.1 Airton Road, Tallaght,  
Dublin 24, Ireland

1. The internal mezzanine which did not have the benefit of planning permission has been removed.
2. No change of use with regard to the car parking is being sought. The parking on site, provided under P03/300074 is in existence and as such no change of use is required.
3. If a landscaping scheme as per the P03/300074 was agreed with the Planning Authority, a bond lodged for the satisfactory planting of the scheme and the agreed scheme planted.
4. And the company undertook to remove all unauthorised signage.

Mr Price acknowledge that the change of use from use for the sale or leasing of motor vehicles to use as a shop is development. However, it is contended that the change of use is exempted development in accordance with Articles 6 & 9 of the Planning and Development Regulations, 2001 and Class 14 (a) of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001.

The change of use of the ancillary area used for the repair/servicing of motor vehicles is contended to be exempted development also.

PL 83 RL 2856 by An Bord Pleanála relates to the repair/servicing areas ancillary to a motor sales showroom and in this case the Inspector stated;

*"The rear section of the building accommodates a service area (Photograph 6) and spray room (Photograph 7) with a 'parts' area to the east. The majority of the building is used for servicing of vehicles. The display/sales area (Photograph 3) occupies a small section of the building and is ancillary to the main use as of the building as a garage for the servicing of vehicles. The exempted development provisions of the Regulations do not extent to the change of use of a service garage to a shop and accordingly it is my opinion that the proposed change of use is not exempted development under Class 14(a)."*

However, upon assessment 'At the same meeting, the Board decided, by a vote of 5:1, that:

1. The change of use of the premises from use for the sale or leasing or display for sale or leasing of motor vehicles is development and is exempted development.
2. The internal works are exempted development.
3. The proposed change of signage at the premises to reflect the change of use is not exempted development.

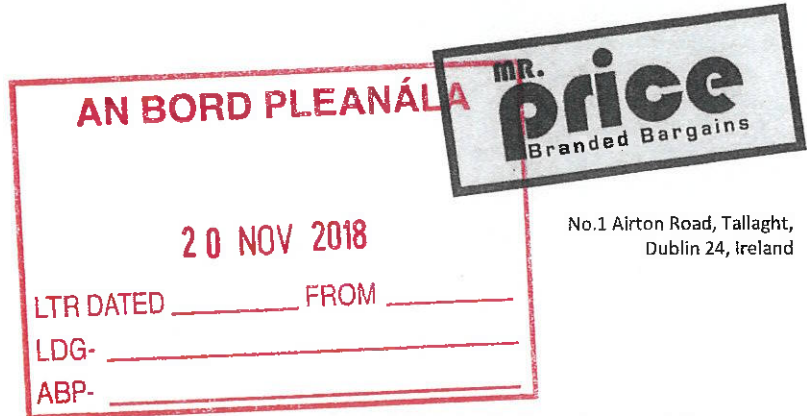
*In deciding not to accept the Inspector's recommendation in respect of the first question (i.e. the exempted development status of the proposed change of use), the Board took account both of the existing use of the premises and of the planning history of the site. The Board concluded that the principal and permitted use of the premises is for the sale or leasing, or display for sale or leasing of motor vehicles.'*

And the change of use of the entire motor sales premises (including ancillary areas for servicing, spraying etc.) to a shop was deemed to be exempted development.

The subject site was in use for the sale or leasing of motor vehicles for over 10 years, wherein the use of the car park for the number of spaces provided and associated traffic movements was accepted. There was a long-established use of the site in the motor sales industry, as permitted by the parent grant of planning. The public road at the location of the subject site displays greater than minimum sight distances and a wide dual carriage.



Therefore, having regard to:



- Sections 3 and 4 of the Planning and Development Act, 2000 -2011, including the provisions of Section 4(4), as amended, in respect of environmental impact assessment and appropriate assessment;
- Articles 6 & 9 of the Planning and Development Regulations, 2001;
- Class 14 (a) of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001;
- Class 1 of Part 2 of Schedule 2 of the Planning and Development Regulations, 2001;
- The established use for motor related business, the associated pattern of traffic movements and the characteristics of the public road serving the site and
- The planning history of the site.

It is considered that;

(a) that the principal and permitted use of the premises is for the sale or leasing, or display for sale or leasing of motor vehicles,

(b) that the proposed change of use to use as a shop is a material change of use and constitutes development within the meaning of section 3 of the Act;

(c) that the said proposed change of use to use as a shop is not affected by any of the restrictions on development set out at Article 9 of the Planning and Development Regulations, 2001, as amended, and in particular would not endanger public safety by reason of a traffic hazard;

(d) that the said proposed change of use to use as a shop comes within the exempted development provisions of Class 14(a) of Schedule 2, Part 1 of the Planning and Development Regulations, 2001;

(e) that the internal works proposed come within the exempted development provisions of section 4 (1) (h) of the Planning and Development Act, 2000;

(f) that the existing sign has not been constructed in accordance with the provisions of Condition No 1 of Register Reference P03/300074 and is therefore unauthorised and will be removed;

(h) that the development is not affected by the provisions of Section 4(4) of the Act, as amended.

And 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 is development and is exempted development,

And that the use of the existing car parking for car parking associated with the use of the premises as a shop is not development,

And that the internal works that are required to effect the change of use are exempted development.

**If the Board still consider that the 'squaring off' of the building carried out by the original developer at the time is not substantial compliance, Mr Price now seek to request whether the rectification of the building back to that which was originally permitted, and the subsequent use of same for use as a Mr Price would be exempted development?**



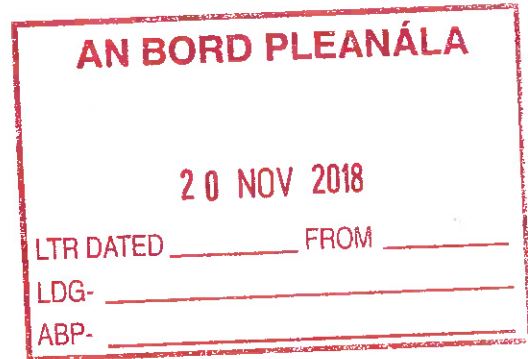


No.1 Airton Road, Tallaght,  
Dublin 24, Ireland

We look forward to your response in relation to this matter.

Yours sincerely,

Declan Crinion



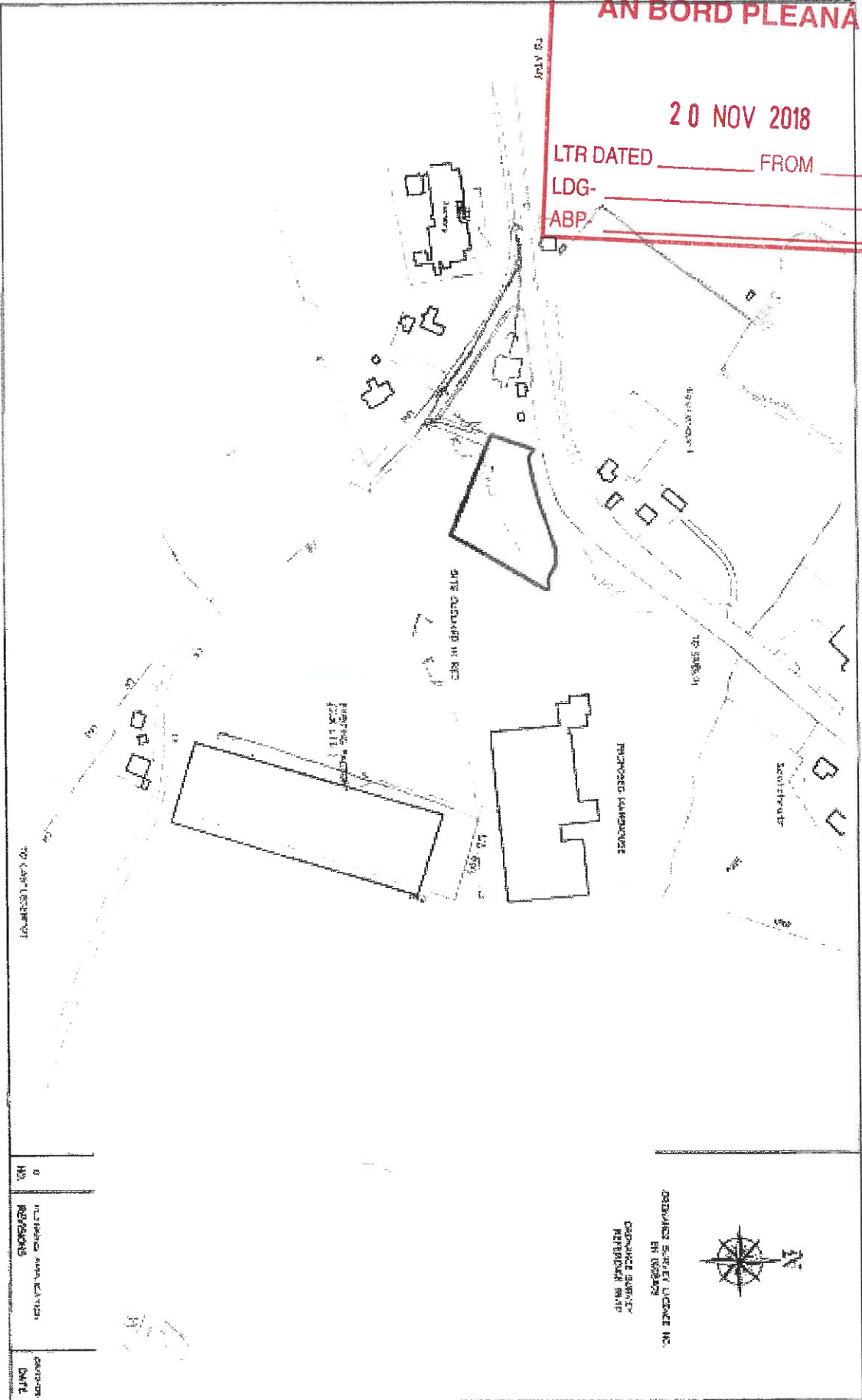




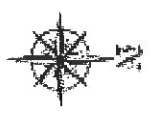
**AN BORD PLEANALA**

**20 NOV 2018**

LTR DATED \_\_\_\_\_ FROM \_\_\_\_\_  
 LDG- \_\_\_\_\_  
 ABP- \_\_\_\_\_



DEVELOPER'S NAME  
 PROJECT NO.  
 DATE



NO.	REVISIONS	DATE
0	INITIALS	DATE

<p><b>MCD CIVIL ENGINEERING CONSULTANTS LTD</b>                  28 WALKER STREET, ATHY, CO. KILDARE                  PH: 045 360 2000</p>	<p>PROPOSED CAR SALES SHOWROOM                  AT GALLONSHILL, ATHY, CO. KILDARE</p>	<p>MR. ALBERT DINNIE                  GALLONSHILL, ATHY, CO. KILDARE</p>	<p>SCALE 1:2500                  DATE 20/11/2018</p>	<p>DATE PREPARED</p>
	<p>THIS SITE LOCATION PLAN</p>	<p>DATE PREPARED</p>	<p>DATE PREPARED</p>	<p>DATE PREPARED</p>



Comhairle Contae Chill Dara  
Kildare County Council

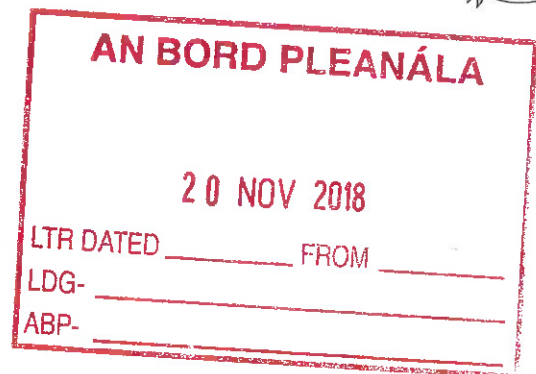


25/10/2018

Our Ref: ED/00682

**REGISTERED POST**

Declan Crinion  
Mr Price  
Gallowshill  
Athy  
Co Kildare



**RE: Application for a Declaration of Exempted Development under Section 5.**

**Address: Mr Price, Gallowshill, Athy, Co Kildare**

Dear Sir

I refer to your correspondence received 31 August 2018 in connection with the above.

Please find attached declaration made under Section 5 of Planning and Development Acts 2000 as amended in this regard.

Yours faithfully

pp Joanne Farrell  
Senior Executive Officer  
Planning Department



Comhairle Contae Chill Dara  
Kildare County Council



Declaration of Development & Exempted Development under  
Section 5 of the **AN BORD PLEANÁLA**  
Planning and Development Act 2000 (as amended) ED 682

20 NOV 2018

WHEREAS a question has arisen as to:

- LTR DATED \_\_\_\_\_ FROM \_\_\_\_\_  
LDG: \_\_\_\_\_  
APP: \_\_\_\_\_
- (a) Whether the change of use of the premises from use for the sale or leasing or display for sale or leasing motor vehicles (Class 14(a)) to use as a shop is/is not development and is/is not exempted development, and
  - (b) Whether the internal works are/are not exempted development.

AS INDICATED on the documentation relation to the subject premises at Gallowshill, Athy, Co. Kildare, received by the Planning Authority on 31/08/2018.

AND WHEREAS requested a declaration on the said question from Kildare County Council

AND WHEREAS Kildare County Council, as the Planning Authority, in considering this application for a declaration under Section 5 of the Planning and Development Act 2000 (as amended), had regard to;

- i. Planning and Development Act 2000 (as amended) and
- ii. Planning and Development Regulations 2001-2018;

AND WHEREAS Kildare County Council has concluded that the proposed change of use would comprises a development to which the provisions of the following applies:

- o Sections 3 and 5 of the Planning and Development Act 2000 (as amended);
- o Articles 6 and 9 of the Planning and Development Regulations 2001 (as amended) and;
- o Class 14(a) of Part 1 of Schedule 2 of the Planning and Development Regulations 2001-2018;

NOW THEREFORE Kildare County Council, in exercise of the powers conferred on it by Section 5(2)(a) of the Planning and Development Act 2000 (as amended), hereby decides that -

- (a) change of use of the premises from use for the sale or leasing or display for sale or leasing motor vehicles (Class 14(a)) and use as a car repairs and car servicing workshop (as permitted by planning permission ref: 03/300074) to use as a shop is development and is not exempted development, and
- (b) internal works to facilitate such a proposed change of use is development and is not exempted development, by virtue of the fact that the subject premises has not been developed in accordance with the plans and particular submitted with planning application ref: 03/300074.





Please note that any person issued with a declaration under subsection 2(a) of the Planning and Development Act 2000 (as amended) may on payment to the Board of the prescribed fee, refer a declaration to An Bord Pleanála within 4 weeks of the issuing of the decision.

Signed: \_\_\_\_\_  
DIRECTOR OF SERVICES

J.F.

Date: 26 October 2018

