



March '19

AN BORD PLEANÁLA
LDG- 014305-19
ABP- _____
20 MAR 2019
Fee: € 220 Type: Chyona
Time: 9-39 By: Reg Post

Title:

Section 5 Referral on Galway City Council
Pl. Ref. No. P/DC/3/1/19

Development Description:

1. Whether the proposed partial change of use of a shop to use as a coffee shop at ground floor & basement level at No. 12 Cross Street Upper, Galway, a Protected Structure (RPS No. 2812), is or is not development or is or is not exempted development.
2. Whether proposed maintenance & conservation works to the Upper Floor Façade of No. 12 Cross Street & No. 1 High Street, Galway, Protected Structures (RPS Ref. no's 2812 & 4501) is or is not development or is or is or is not exempted development. The latter works include;
 - (i) Patch Repair to external wall fabric
 - (ii) Rendering of upper floor façade in lime render
 - (iii) Repair of Rainwater goods.

Location:

No. 12 Cross Street Upper, and No. 1 High Street,
Galway City

Applicant

Joelee Ward

James O' Donnell

BA, MRUP, Dip APM

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Third Floor,
Ross House,
Victoria Place,
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The Secretary
An Bord Pleanála
64 Marlborough Street
Dublin 1

19th March 2019

Re:

Referral

Name & Address of Appellant:

Joelee Ward,
7 Dalysfort Rd,
Salthill,
Galway.

Name & Address of Person
responsible for the preparation
of this referral:

James O' Donnell,
Planning Consultancy Services,
Suite 3
Third Floor Ross House
Victoria Place,
Eyre Square,
Galway City

Development Description:

1. *Whether the proposed partial change of use of a shop to use as a coffee shop at ground floor & basement level at No. 12 Cross Street Upper, Galway, a Protected Structure (RPS No. 2812), is or is not development or is or is not exempted development.*
2. *Whether proposed maintenance & conservation works to the Upper Floor Façade of No. 12 Cross Street & No. 1 High Street, Galway, Protected Structures (RPS Ref. no's 2812 & 4501) is or is not development or is or is not exempted development. The latter works include;*
 - (i) *Patch Repair to external wall fabric,*
 - (ii) *Painting of upper floor façade,*
 - (iii) *Repair of Rainwater goods.*

Location of the Development:

No. 12 Cross Street Upper and No. 1 High Street, (RPS Ref. no's 2812 & 4501) Galway City.

Planning Authority:

Galway City Council

Pl. Ref. No.:

P/DC/3/1/19

A Chara,

I have been instructed by my client Joelee Ward to seek a Referral to An Bord Pleanála. The relevant fee of €220 is attached. On 21st February 2019 a Section 5 application for exempted development was made to Galway City Council under the Reference P/DC/3/1/19. This application sought clarification as to;

1. *Whether the proposed partial change of use of a shop to use as a coffee shop at ground floor & basement level at No. 12 Cross Street Upper, Galway, a Protected Structure (RPS No. 2812), is or is not development or is or is not exempted development.*
2. *Whether proposed maintenance & conservation works to the Upper Floor Façade of No. 12 Cross Street & No. 1 High Street, Galway, Protected Structures (RPS Ref. no's 2812 & 4501) is or is not development or is or is or is not exempted development. The latter works include;*
 - (iv) *Patch Repair to external wall fabric,*
 - (v) *Painting of upper floor façade,*
 - (vi) *Repair of Rainwater goods.*

On the 21st February 2019 the Planning Authority issued a split decision which deemed that;

1. The *"proposed coffee shop use at ground and basement level"* at No. 12 Cross Street Upper *"would not be subsidiary to the primary retail use"*, and *"is not exempted development"* and
2. The proposed maintenance & conservation works to the Upper Façade at No. 12 Cross Street Upper and No. 1 High Street *"are exempted development and do not require planning permission"* subject to conditions.

In response, my client now **seeks a referral on the first part of the Planning Authority's decision on "Whether the proposed partial change of use of a shop to use as a coffee shop at ground floor & basement level at No. 12 Cross Street Upper, Galway, a Protected Structure (RPS No. 2812), is or is not development or is or is not exempted development."**

My client is of the opinion that the Section 5 Declaration application (and supporting documentation) adequately demonstrated that the proposed partial use of the shop as a coffee shop is not development and can be considered exempted development.

The subject retail unit at No. 12 Cross Street Upper¹, is a small unit which has remained vacant since February 2019. For the last 10 years or more, the unit operated as a Jewellers, trading as *"Diamonds & Gold Ireland"*. The retail use of the unit is long established and planning permission for the retail use of both the ground floor and basement was permitted under Pl. Ref. No. 171/94. As the tenancy for this City Centre unit has recently ceased (February 2019), the owner wishes to secure a vibrant use for this protected structure unit, within the confines of its retail function.

The proposed use of part of the shop, to use as a coffee shop, is in the interest of securing a viable commercial use for the unit. The owner intends that the unit will continue to function as a retail unit, concentrating on the sale of confectionary, nuts, healthy snacks, bottled water etc. together with cold/ packaged ready-made food. My client does not propose the unit to be used for the sale of hot food. However, the owner wishes to accommodate a *"Coffee sales area"* extending 3.5sqm on the ground floor, with a dedicated shelving area of 1.2sqm at basement level. The gross floor area of the proposed *"Coffee retail"* element would amount to 4.7sqm or 16% of the total gross floor area. In addition, no internal seating area is proposed. The extent of the proposed *"partial change of use of the shop"* was clearly outlined in the floor plans which accompanied the application.

Inexplicably, the Planning Authority issued a decision that the partial change of use of the shop would not be subsidiary to the primary retail use, and have offered no explanation as to how this conclusion was arrived at.

¹ The address for the subject retail unit is No. 12 Cross Street Upper as set out in the Section 5 (Declaration) application. Furthermore, Cross Street Upper is not listed as one of the *"principal shopping streets"* as set out in Section 11.4.5 of the Galway City Development Plan 2017-2023.

We acknowledge that each case must be considered on its own individual merits. However the Boards Decision and Inspectors assessment of Section 5 Referral Reference, is comparable to the subject case for a number of reasons;

- Both cases refer to a "partial coffee sales area" within a small ground floor retail unit within the City Centre
- Both cases refer to a Protected Structure, where no works to the original fabric were proposed
- Both cases refer to a Section 5 Declaration as opposed to a Section 57 Declaration
- In both cases, no works were proposed to the exterior of the structures and with no material affects on the character of the Architectural Conservation Area where the structures are situate.
- No internal seats or toilets were proposed
- This office prepared both applications

We are of the opinion that the Inspectors Report on RL 3315, is particularly relevant to the assessment of the subject referral. In this regard, the Inspector found, inter alia that *"The Board has adjudicated on a number of similar cases (RL 3023, RL 2491, RL 2940 and RL 2516), which are relevant in the consideration of the current proposal. Each of these cases involved either the partial use of an existing retail area for use as a coffee shop/coffee sales area (RL 3023 and RL2941) or the change of use of the entire floor area (RL 2940 & RL 2516). In each of these cases the Board concluded that a 'coffee shop' constituted use as a 'shop' as defined in article 5 and did not constitute a material change of use and was no 'development'."*

Furthermore, it should be noted that under Case Reference RL 3315, the Board concurred with the findings of the Inspectors Report. It ultimately decided that *"the existing use of the premises for the retail sale of goods and for the display of goods for sale, is a shop as defined under Article 5(1) of Planning and Development Regulations, 2001 as amended by article 3 of the Planning and Development Regulations, 2005 and the partial use of the premises (2.1 square metres) as a coffee shop comes within the scope of the definition of 'shop' and therefore does not constitute a material change of use from use as a shop."* and *"The partial change of use of a shop to use as a coffee shop at ground floor level is not development."*

In the context of the latter decisions, it would appear routinely obvious that the proposed partial Coffee Shop use is exempted development in this case.

It is important to note that an Architectural Heritage Impact Assessment accompanied this Section 5 application and the Planning Authority were satisfied the proposed internal fit out could be carried out without affecting the special character and setting of this protected structure.

We understand the Board's significant workload. However, my client is anxious to receive clarification on this case at the earliest possible convenience as the premises is now vacant. The Referral decision will have a bearing as to whether the proposed viable use within this Protected Structure is to proceed. As such, we would be most grateful if the Board could make its decision within the 18 week period.

If you have any further queries please do not hesitate to contact this office.

Yours faithfully,

James O'Donnell



Senior Planning Consultant,
BA MRUP Dip APM
Planning Consultancy Services.

Encl;

Fee to An Bord Pleanála
Declaration Decision of Planning Authority



Comhairle Cathrach na Gaillimhe
Galway City Council

Halla na Cathrach
Bóthar an Choláiste
Gaillimh
H91 X4K8

City Hall
College Road
Galway
H91 X4K8

Joelee Ward,
c/o Planning Consultancy Services,
Third Floor, Ross House,
Victoria Place,
Eyre Square,
Galway.

LB/SS

P/DC/3/1/19

21st February 2019

Planning Declaration under Section 5 of the Planning &
Development Act, 2000 (as amended), & Planning and Development Regulations 2001
(as amended).

Re: Partial change of use from shop to coffee shop and maintenance and conservation works to the upper floor façade.
At: No. 12 Cross Street and No. 1 High Street Galway.

A Chara,

I refer to your application for a certificate of exemption under the provisions of (Section 5 of the Planning & Development Act 2000) as amended, and I wish to advise as follows:

- 1) With regards to your application seeking "Whether the partial change of use of a shop to use as a coffee shop at ground floor level and basement level at No 12 Cross Street Galway is or is not development or exempted development", the following is the opinion of the Planning Authority;

The Planning and Development Regulations 2001 -2013 define a "shop" in Part 2 of the Planning and Development Regulations 2001 -2013, Article 5 (1), this states the following:

Article 5 (1), Part 2 provides interpretations for the purposes of exempted development. The following is relevant to this case:

"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,

(d) for the sale of sandwiches or other food for consumption off the premises, where the sale of such food is subsidiary to the main retail use,

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 for consumption off the premises, except under paragraph (d) above, or any use to which class 2 or 3 of Part 4 of Schedule 2 applies;

In view of the above it is considered that the proposed coffee shop use at ground floor and basement level would not be subsidiary to the primary retail use, it is not exempted development and planning permission is required.

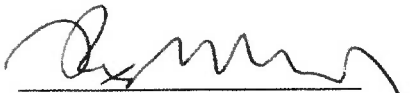
2) With regards to your application seeking "Whether proposed maintenance & conservation works to the Upper Floor Façade of No. 12 Cross Street & No 1 High Street is or is not development or exempted development. The latter works include: (i) patch repair to external wall fabric (ii) painting of upper floor façade (iii) repair of rainwater goods", the following is the opinion of the Planning Authority;

The opinion of the Planning Authority is that the works are exempted development and do not require planning permission subject to the following conditions:

1. The Conservation Architect shall provide details of the mixes used in any mortar repairs, repairs to cracks in plaster etc.
2. The Conservation architect shall monitor the work and provide a report to the City Council on their completion.

However, it must be emphasised that this opinion is given without prejudice to the provisions of Section 5(3) of the Planning & Development Act 2000 as amended. "Where a declaration is issued under this section, any person issued with a declaration may, on payment to the Board of such a fee as may be prescribed, refer a declaration for review by the Board within 4 weeks of the date of the issuing of the declaration".

Mise le meas,



Ruth McNally,
Director of Services,
Planning, Transportation, & Physical Development.