

downey
PLANNING

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

AN BORD PLEANÁLA

LDG- 014698-19

ABP- _____

02 APR 2019

Fee: € 220 Type: CHQ

Time: 17:09 By: hand

1 Westland Square, Pearse Street, D2
telephone: +353(0) 1 253 02 20
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2nd April 2019

RE: SECTION 5 REFERRAL AGAINST THE DECISION OF DUBLIN CITY COUNCIL UNDER REG. REF. 0001/19 TO ISSUE A DECLARATION THAT THE PROPOSED DEVELOPMENT IS NOT EXEMPT FROM THE REQUIREMENT TO OBTAIN PLANNING PERMISSION UNDER SECTION 32 OF THE PLANNING AND DEVELOPMENT ACT 2000 (AS AMENDED) ON LANDS AT 'CROSSFIT 353', SHAW'S LANE, BATH AVENUE, DUBLIN 4.

DUBLIN CITY COUNCIL REG. REF.: 0001/19
DATE OF PLANNING AUTHORITY DECISION: 06/03/2019
FINAL DATE FOR LODGEMENT OF 1st PARTY APPEAL: 02/04/2019

APPLICANT – PETER BURKE

Dear Sir / Madam,

Downey Planning, Chartered Town Planners, 1 Westland Square, Pearse Street, Dublin 2, on behalf of our client Peter Burke, wish to submit this Section 5 Referral against the decision of Dublin City Council under Reg. Ref. 0001/19 to issue a Declaration that the proposed development is NOT EXEMPT from the requirement to obtain planning permission under Section 32 of the Planning and Development Act 2000 (as amended). That Section 5 application was submitted to Dublin City Council on 2nd January 2019 in light of Enforcement Action being undertaken by the Planning Authority (Ref. E0638/18) relating to the current use of the premises. The Section 5 application sought the following Declaration:

"Whether the current use of the property constitutes a change of use from the use permitted under Reg. Ref. 0900/98 and whether such a change of use constitutes a material change of use or is considered exempted development within the meaning of the Planning and Development Act, 2000 (as amended)."

Please find enclosed the full grounds of referral and the requisite payment for a referral (€220). Downey Planning are the agents for the applicant and respectfully request that all correspondence in relation to this application be sent to Downey Planning, 1 Westland Square, Pearse Street, Dublin 2. The Section 5 Referral sets out the grounds of referral for the Section 5 application and requests An Bord Pleanála to overturn the decision of Dublin City Council for the subject application.

We enclose the following in addition to the above details:

- Requisite payment (€220.00);
- Section 5 Referral Statement (Downey Planning); and,

- Copy of decision from Dublin City Council.

We trust that the enclosed submission is in order and respectfully request that An Bord Pleanála overturn the decision of the Planning Authority for the Section 5 application and grant a Declaration of Exemption. Downey Planning would be grateful for a written acknowledgement of this submission at your convenience and look forward to the Board's decision in due course.

Yours sincerely,



Donal Duffy MIPI
Senior Planner

For and on behalf of Downey Planning

AN BORD PLEANÁLA	
02 APR 2019	
LTR DATED _____	FROM _____
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ABP- _____	



Comhairle Cathrach
Bhaile Átha Cliath
Dublin City Council

Planning & Property Development Department,
Dublin City Council, Block 4, Floor 3, Civic Offices, Wood Quay, Dublin 8.

An Roinn Pleanála & Forbairt Maoine
Bloc 4, Urlár 3, Oifigi na Cathrach, An Ché Adhmaid, Baile Átha Cliath 8.

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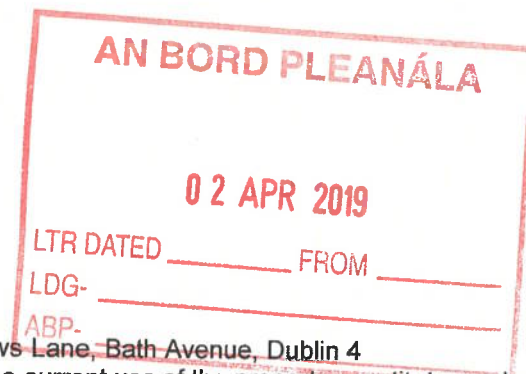
07-Mar-2019

Donal Duffy,
Downey Planning
1, Westland Square
Pearse Street
Dublin 2

Application Number	0001/19
Application Type	Section 5
Registration Date	21-Feb-2019
Decision Date	06-Mar-2019
Decision Order Number	P2785
Location	Crossfit 353, Shaws Lane, Bath Avenue, Dublin 4
Proposal	EXPP: Whether the current use of the property constitutes a change of use from the use permitted under Reg. Ref. 0900/98 and whether such a change of use constitutes a material change of use or is considered exempted development within the meaning of the Planning and Development Act, 200 (as amended).

Applicant Details

Peter Burke



NOTIFICATION OF DECLARATION ON DEVELOPMENT AND EXEMPTED DEVELOPMENT

In pursuance of its functions under the Planning & Development Act 2000 (as amended), Dublin City Council has by order dated 06-Mar-2019 decided to issue a Declaration that the proposed development is NOT EXEMPT from the requirement to obtain planning permission under Section 32 of the Planning & Development Act 2000 (as amended).

Signed on behalf of Dublin City Council

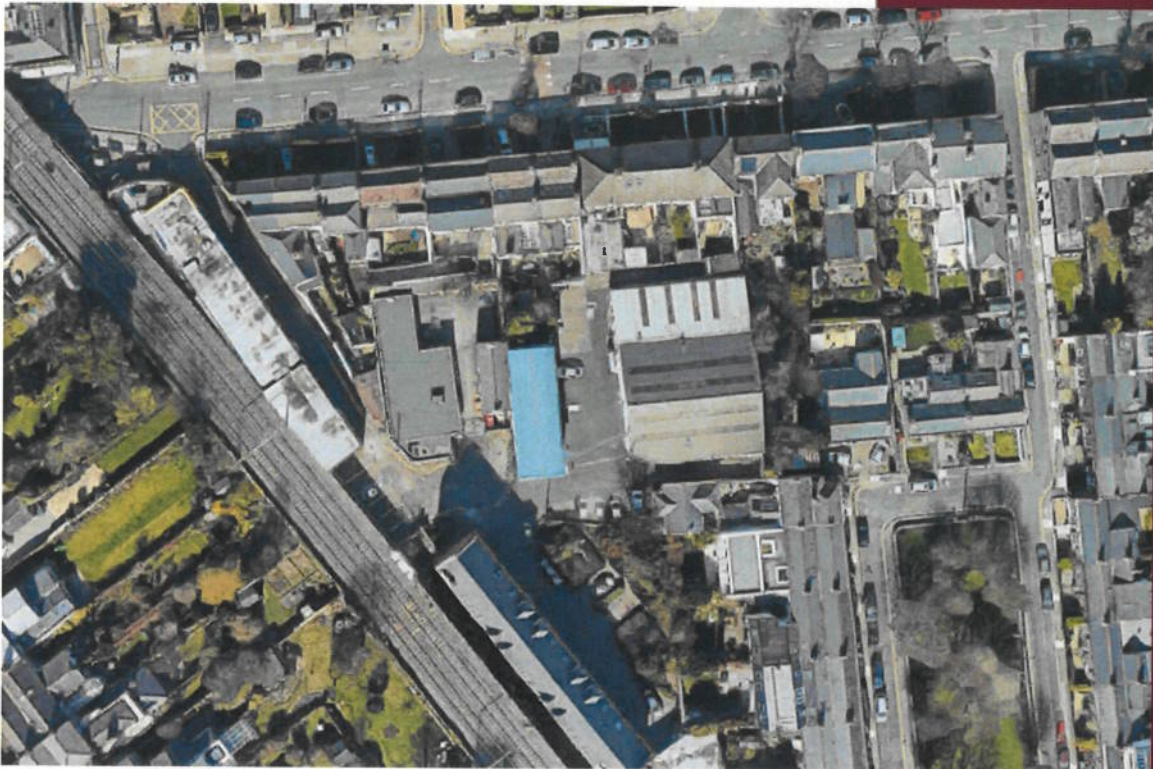

For Assistant Chief Executive

Note:

Any person issued with a declaration on development and exempted development, may on payment of the prescribed fee, refer a declaration for review by An Bord Pleanála within four weeks of the date of the issuing of the declaration.

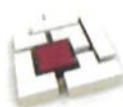
April 2019

SECTION 5 REFERRAL



Dublin City Council
Reg. Ref. 0001/19

'CrossFit 353', Shaw's Lane, Bath Avenue, Dublin 4
On Behalf of Peter Burke



downey
PLANNING

1 Weir Road
Pearse Street
Dublin 2
Telephone: 01 2530222

AN BORD PLEANÁLA

02 APR 2019

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AN BORD PLEANÁLA	
02 APR 2019	
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1.0 Introduction

Downey Planning, Chartered Town Planners, 1 Westland Square, Pearse Street, Dublin 2, wish to lodge this Section 5 Referral, on behalf of our client, Peter Burke, against the decision of Dublin City Council under Reg. Ref. 0001/19 to issue a Declaration that the proposed development is NOT EXEMPT from the requirement to obtain planning permission under Section 32 of the Planning and Development Act 2000 (as amended). That Section 5 application was submitted to Dublin City Council on 2nd January 2019 in light of Enforcement Action being undertaken by the Planning Authority (Ref. E0638/18) relating to the current use of the premises. The Section 5 application sought the following Declaration:

"Whether the current use of the property constitutes a change of use from the use permitted under Reg. Ref. 0900/98 and whether such a change of use constitutes a material change of use or is considered exempted development within the meaning of the Planning and Development Act, 2000 (as amended)."

AN BORD PLEANÁLA

This Section 5 Referral sets out the grounds of referral put forward on behalf of our client, Peter Burke, for the Section 5 application and requests An Bord Pleanála to overturn the decision of Dublin City Council for the subject application. The statutory fee of €220 is enclosed.

First and foremost, CrossFit 353 currently operates as a gym/fitness studio facility that caters for the general public, and as part of the services provided by the gym there is a diverse range of classes run on a weekly basis, these include crossfit, personal training, yoga, olympic weightlifting and gymnastics. Our client is seeking a declaration from the Board as to whether the current use of the subject premises would be in accordance with the planning permission, and if the alleged change of use would be considered exempted development under the PDA 2000 (as amended) and the Planning and Development Regulations 2001 (as amended).

At the time the Section 5 application was submitted to Dublin City Council, an assessment of the planning history for the subject site contemplated that the planning permission granted under Reg. Ref. 0900/98 for a light industrial workshop pertained to the subject premises. However, it was later noted that this application, while belonging to the same address/site, does not relate to the subject building but the one adjacent to the premises.

Within the Planner's Report for the Section 5 application, it is stated that *"the only permission relating to the subject site would appear to be PL 29S.247174 (2388/16) which has not been enacted to date"*. Further review of the planning history for the subject site revealed that there is another planning permission relating to the premises for the retention permission of the existing workshop/offices which was granted under Reg. Ref. 0793/92. This is the oldest known planning permission pertaining to the premises and as such it should be acknowledged for the review of this Section 5 Referral.

This Section 5 Referral will outline the different grounds for the referral in regard to the subject application, and how the subject premises and its use is in accordance with the objectives of the Dublin City Council Development Plan 2017-2023 and the pertaining planning policy. The planning history on the subject site confirms that the current use and status complies with planning policy and indeed that the premises is exempt from the requirement to obtain a planning permission.

Downey Planning respectfully request that An Bord Pleanála consider the grounds of this referral as set out below in their assessment of this application and request a Declaration of Exemption be granted for the subject application.

2.0 Site Location and Description

The CrossFit 353 premises is located at Shaw's Lane, off Bath Avenue, Dublin 4. Shaw's Lane is located on the southern side of Bath Avenue (R111) approximately 100m east of the junction with Shelbourne Road (R815). The southern boundary of the site forms part of a laneway providing access to 7 Shaw's Lane and along the eastern boundary of the site is an office/studio building.



Fig. 1 - Site Location Map (site outlined in red)

The property comprises of 1 no. building of c.371.23 sq.m, and covers most of the subject site with its elevations forming the southern and eastern boundaries of the site. It is a 1.5 storey building and the premises are currently in use as a gym/fitness centre facility for members.

3.0 Planning Status and History

Downey Planning has reviewed the planning history pertaining to the subject site in order to determine the planning status of the facility and prepare for this Section 5 Referral. Further review of the planning permission under Reg. Ref. 0900/98 has indicated that the application relates to the building immediately to the west of the premises and belongs to the same address/site, however it does not relate to the subject building. Downey Planning have conducted further research of relevant planning history on the site but the results were limited due to a lack of available information on the planning register. The relevant planning history found on the site is outlined below:

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- **Reg. Ref. 0793/92** – By order dated 6th January 1992, Dublin City Council (under the name of Dublin Corporation) granted planning permission to Mr. J. Kavanagh for the retention of the workshop extension, toilets and offices at their premises at Shaw Lane, Bath Ave., Dublin 4. This permission was implemented and represents part of the current building on site.
- **Reg. Ref. 2388/16 (ABP Ref. PL29S.247174)** – By order dated 3rd August 2016, An Bord Pleanála granted planning permission to Uniball Bars Ltd for development consisting of 1) the demolition of the commercial building on site (858sqm), and 2) the provision of 4, 3-bed, 3-storey, terraced units ranging from 184-185sqm; permission will include all associated site works including the provision of solar panels, hard and soft landscaping and boundary treatments; associated car-parking provision, including off-street parking; provision of foul & surface water drains and attenuation on site with connections to existing services and provision of a water mains on site with connection to the existing water mains at Shaw's Lane, Off Bath Avenue, Dublin 4. A third-party appeal was lodged on 30th August 2016 and was subsequently granted by An Bord Pleanála on 11th January 2017. This permission has not been implemented to date.

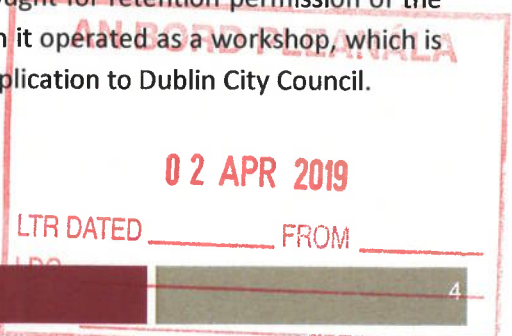
3.1 Planning Enforcement History

- **E0638/18** – A Warning Letter dated 18th July 2018 was issued by Dublin City Council for the allegation that a change of use from warehouse to a gym has occurred at the subject premises (Shaw's Lane, Bath Avenue, Dublin 4) without the benefit of planning permission. A Section 154 Order was issued on 7th November 2018. Subsequently, a Section 5 Referral was lodged on 2nd January 2019 (Reg. Ref. 0001/19) and the Planning Authority's decision dated 6th March 2019 is now subject to this referral.

3.2 Section 5 Application

- **Ref. 0001/19** – A Section 5 Application was lodged to Dublin City Council under Ref. 0001/19 on 2nd January 2019 seeking a declaration as to whether the use of a premises at Shaw's Lane, Bath Avenue, Dublin 4 as a gym/fitness studio facility is or is not development and if it is development if it is or is not exempted development. A Further Information request was issued by Dublin City Council on 29th January 2019, a response to this request was subsequently submitted. On 6th March 2019 Dublin City Council issued a decision that the proposed development is **NOT EXEMPT** from the requirement to obtain planning permission and therefore requires planning permission. This decision is now being referred to An Bord Pleanála.

Downey Planning understand that this represents the full extent of the relevant planning history pertaining to the subject site. As no other applications pertaining to the premises are listed on the Council's register, the building use is considered to be pre-1963 and as such did not require planning permission. However, it is important to note that the oldest known granted permission on site (Reg. Ref. 0793/92), while not stating the full use of the premises, sought for retention permission of the workshop extension—as well as toilets and offices—and as such it operated as a workshop, which is in keeping with the details submitted as part of the Section 5 application to Dublin City Council.



The subject structure was constructed in its current format in accordance with the plans submitted alongside the permission granted under Reg. Ref. 0793/92, which facilitated a workshop and offices.

4.0 Planning Context

4.1 Dublin City Development Plan 2016-2022

4.1.1 Land Use Zoning

Under the Dublin City Development Plan 2016-2022, the subject site is zoned Objective 'Z1' (Sustainable Residential Neighbourhoods). The objective of this zoning objective is *"to protect, provide and improve residential amenities"*. The vision for this zoning objective is one where:

"a wide range of accommodation is available within sustainable communities where residents are within easy reach of services, open space and facilities such as shops, education, leisure, community facilities and amenities, on foot and by public transport and where adequate public transport provides good access to employment, the city centre and the key district centres."

The 'Permissible Uses' related to the zoning objective are as follows:

*"Buildings for the health, safety and welfare of the public, childcare facility, community facility, **cultural/recreational building and uses**, education, embassy residential, enterprise centre, halting site, home-based economic activity, medical and related consultants, open space, park-and-ride facility, place of public worship, public service installation, residential, shop (local), training centre."*



Fig. 2 – Land Use Zoning Map (site outlined in red)

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Under the Land Use Definition contained within Appendix 21 of Volume 2 of the Dublin City Development Plan 2016-2022, a Cultural/Recreational Building is defined as:

*"A building, or part thereof, used for purposes of a concert hall/music hall, theatre, conference centre, cinema, bingo hall, swimming pool, skating rink, **gymnasium**, squash centre, **health studio**, and most indoor sports facilities not involving the use of firearms or motorised vehicles. It also includes:*

An art gallery (but not for the sale or hire of works of art)

A museum

A public library or public reading room

A public hall

An exhibition hall

*A social centre, community centre, or **non-residential club**, but not a dance hall".*

[our emphasis]

The subject site is not subject to environmental or archaeological designations and there are no protected structures within or directly adjoining the site.

In light of the foregoing, Downey Planning are of the considered opinion that the existing use of this building is in accordance with the zoning objective pertaining to the site.

5.0 Grounds of Referral

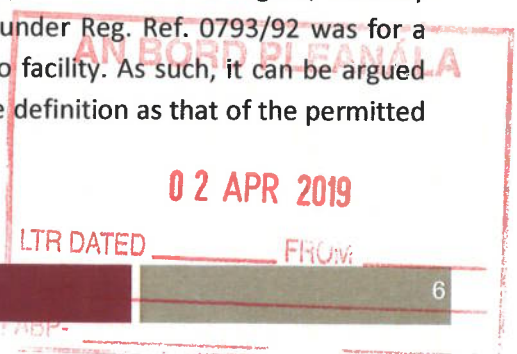
Having described the land use zoning pertaining to the site as well as other important planning considerations, Downey Planning, on behalf of our client, Peter Burke, shall now set out the grounds of the referral.

5.1 Nature of Activity

As part of the Planner's Report on the Section 5 application subject to this referral, it is noted that *"the gym use is a new use in the subject building however there is insufficient information submitted to determine the materiality of the change of use"*. Downey Planning are of the considered opinion that while there is limited information with regard to the oldest known planning permission related to the subject site, there is sufficient information to determine the materiality of the change of use.

The property was constructed in its current format in accordance with planning permission granted under Reg. Ref. 0793/92, which facilitated a workshop use, as described in Section 3.0 (Planning Status and History) above.

As stated within Section 4.1.1 (Land Use Zoning) above, Appendix 21 of Volume 2 of the Dublin City Development Plan 2016-2022 lists some of the uses under the definition of a Cultural/Recreational Building as *"gymnasium, health studio, and most indoor sports facilities"*. In this regard, Downey Planning are of the considered opinion that the permitted use under Reg. Ref. 0793/92 was for a workshop. CrossFit 353 currently operate as a gym/fitness studio facility. As such, it can be argued that the current use of the building falls within the same land use definition as that of the permitted workshop use under Reg. Ref. 0793/92.



Downey planning are of the professional opinion that the development remains consistent with the permitted workshop use, is in accordance with the zoning objective pertaining to the site and would fall under the classes of use for exempted development. Furthermore, the building and its use do not pose any adverse impacts on the surrounding area and are in accordance with the proper planning and sustainable development of the area.

Downey Planning shall now determine if the current use is acceptable in principle in the relevant zone and if the alleged change of use from 'warehouse' to 'gym' constitutes exempted development.

Article 5(1) of the Planning and Development Regulations, 2001 (as amended) states that:

“business premises” means—

- (a) *any structure or other land (not being 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;*

[...]

“excluded premises” means—

- (a) *any premises used for purposes of a religious, educational, cultural, recreational or medical character;*

[...]

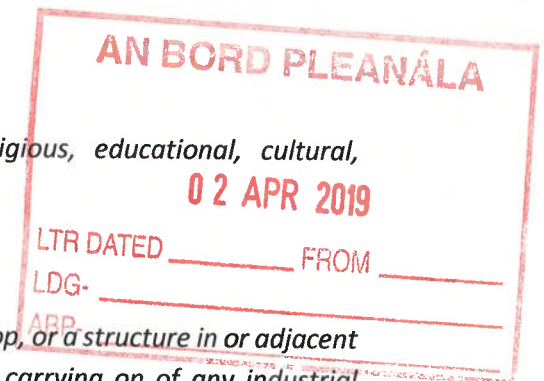
“industrial building” means a structure (not being a shop, or a structure in or adjacent to and belonging to a quarry or mine) used for the carrying on of any industrial process;

“light industrial building” means an industrial building in which the processes carried on or the plant or machinery installed are such as could be carried on or installed in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit;

“industrial process” means any process which is carried on in the course of trade or business, other than agriculture, and which is—

- (a) *for or incidental to the making of any article or part of an article, or*
 (b) *for or incidental to the altering, repairing, ornamenting, finishing, cleaning, washing, packing, canning, adapting for sale, breaking up or demolition of any article, including the getting, dressing or treatment of minerals;”*

It is evident that the activity taking place at the CrossFit 353 premises relate to professional and/or commercial services, which was confirmed by Downey Planning’s site visit, and as such the facility can be considered as ‘business premises’ under the Planning and Development Act, 2000 (PDA 2000) (as amended).



In light of the foregoing, Downey Planning are of the professional opinion that the use of the CrossFit 353 premises is in accordance with its permitted use as per the pertaining development plan for the subject area.

5.2 Development

The Planner's Report states that *"the current use of the property constitutes a change of use from workshop (light industrial) to gym (recreational) and such use is a new and separate class of use and constitutes a material change of use. The proposed change of use is therefore considered to be development within the meaning of section 3(1) of the Planning and Development Act, 2000 as amended."*

Having determined in Section 5.1 above that the use of the premises is in accordance with the pertaining land use zoning, it is important to establish whether or not the alleged change of use would constitute 'development' within the meaning of the PDA 2000 (as amended). In this regard, Section 3(1) of the PDA 2000 (as amended) states:

"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".

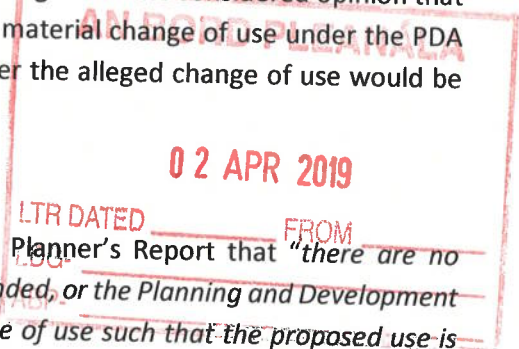
In light of the above definition of 'development', Downey Planning are of the considered opinion that although a change of use took place, this did not constitute a material change of use under the PDA 2000 (as amended). The next question is to determine whether the alleged change of use would be exempt from requiring planning permission.

5.3 Exempted Development

In regard to exempted development, it is stated within the Planner's Report that *"there are no exemptions in the Planning and Development Act 2000, as amended, or the Planning and Development Regulations 2001, as amended, that would apply to the change of use such that the proposed use is not exempted development."*

Downey Planning are of the considered opinion that the alleged change of use of the subject premises from 'workshop use' to 'gymnasium use' would not constitute a material change of use as both uses can be defined as a Cultural/Recreational building within Appendix 21 of the Dublin City Development Plan 2016-2022. Furthermore, any works that may have taken place within the building as part of CrossFit 353's business operation were minor in nature and such that it would not materially affect the external appearance of the structure itself.

Having established within Section 5.1 above that the use of the premises as 'business premises' to provide for a recreational/gym facility would not constitute 'development' under the PDA 2000 (as amended), Downey Planning shall now investigate whether the alleged change of use can or cannot be considered exempted development and therefore would or would not require planning permission.



As stated in Article 10(1) of the Planning and Development Regulations, 2001 (as amended):

*"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 a change of use consists of the resumption of a use which is not unauthorised and which has not been abandoned."*

As outlined in Section 3.0 of this report, the permitted use of the building facilitates a studio under which the current use would also be defined as in accordance with Appendix 21 of the Development Plan. This means that the current use does not contravene a condition pertaining to the permitted development. Any works that may have been carried out within the building are minor in nature and would be considered exempted development under Section 4(1)(h) of the PDA 2000 (as amended).

Section 4(1)(h) of the PDA 2000 states:

"4.—(1) The following shall be exempted developments for the purposes of this Act—

- (h) development consisting 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."*

The use is consistent and is not considered unauthorised. In this regard, the limitations outlined in Article 10(1) of the Act do not apply in this instance.

It is important to mention that as specified in Part 4, Schedule 2, and taking into consideration that CrossFit 353 provides for professional services for the purpose of fitness, health and wellbeing to the general public and athletes, the classes of use for the subject site would qualify as Class 11, *"Use as— (e) a skating rink or gymnasium or for other indoor sports or recreation not involving the use of motor vehicles or firearms,"* and as such would be exempted development.

6.0 Planning Precedent

Downey Planning has reviewed the following similar planning cases in order to determine if planning permission would be required or if it can be considered to be development exempt from requiring planning permission. The following precedent cases have been investigated:

- **Kildare County Council Reg. Ref. ED 00387 (ABP Ref. PL09 .RL2936)** – By order dated 13th July 2012, An Board Pleanála made a decision of declaration for development and exempted

development to James Walsh for the change of use of part of a light industrial unit for use as a shop for the display and sale of goods, at Unit W1E, Toughers Business Park, Ladytown, Naas, Co. Kildare.

- **Roscommon County Council Reg. Ref. UDR 1439 (ABP Ref. PL20. RL2923)** – By order dated 10th September 2012, An Board Pleanála made a declaration for development and exempted development to John Farrell for the change of use of an industrial premise to use as a retail discount store, at Roxboro Discount Store, Roxborough, Co. Roscommon.
- **Wicklow County Council Reg. Ref. EX 51/16 (ABP Ref. PL27.RL3507)** – By order dated 17th February 2017, An Bord Pleanála made a Declaration that this was development and exempted development to Match Fit Fitness Ltd. for the change of use of part of school building for use as a fitness centre/gym, at former De La Salle School, St. Mantan's Road, Wicklow Town, Co. Wicklow.

7.0 Planning Assessment

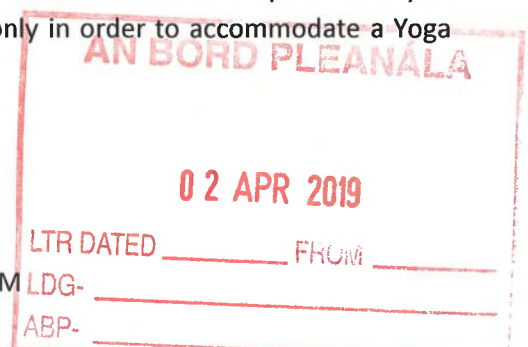
Downey Planning has investigated 1) whether the current use of the subject units would be in accordance with the planning permission, and 2) if the alleged change of use would be considered exempted development under the PDA 2000 (as amended) and the Planning and Development Regulations 2001 (as amended), and after a visit to the subject site can confirm that the current use and status of the building is one related to 'business premises' and that all ancillary uses belong to same.



Fig. 3 – Exterior of building comprising CrossFit 353 (signage shown on the corner of the building)

CrossFit 353 functions as a gym/fitness studio facility that caters for athletes and the general public. As part of the services the gym provides there is an array of classes which include crossfit, personal training, yoga, Olympic weightlifting and gymnastics on a regular basis. CrossFit 353 operate 7 days a week, however on Sundays the premises open for one hour only in order to accommodate a Yoga class. The hours of operation are as follows:

- Monday through Thursday, 05:45AM until 08:45PM;
- Friday, 05:45AM until 08:30PM;
- Saturday, 09:00AM until 12:00PM; and,
- Sunday, open only for Yoga class 10:00AM until 11:00AM



It is submitted that the premises are open during the hours set out above, however the level of activity decreases dramatically between the hours of 09:00AM-12:00PM and 02:00PM-4:30PM, and as such it is a very quiet time for the gym. Our client states they run up to 13 classes per day Monday to Friday with an average attendance number in each of these classes varying between 9 to 10 people. Given that the number of gym-goers would vary by session and day, there is no definitive amount of how many people would attend the facility on a daily/weekly basis.

We have included a weekly schedule of operation provided by our client showing a sample of classes for the week of January 21st-26th. The classes and pertaining hours can be noted on the weekly schedule below (Fig. 4), and it follows the same pattern every week.

Jan 21st-26th		Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
Morning	545	CrossFit NP	CrossFit JT	CrossFit ES	CrossFit JT	CrossFit ES		
	615	CrossFit JT	CrossFit NP	CrossFit GF	CrossFit FB	CrossFit NP		
	645	CrossFit GF	CrossFit FB	CrossFit PB	CrossFit JT	CrossFit GF		
	715	CrossFit NP	CrossFit JT	CrossFit GF	CrossFit PB	CrossFit NP		
	745	CrossFit JT	CrossFit NP	CrossFit ES	CrossFit JT	CrossFit ES		
						CF 9am NP		
						CF 10am PB	Yoga	
						Gymnastics-JT Oly AH Cardio Bro-ES		
Lunch	12:30 - 1:30	CrossFit ES	CrossFit JT	CrossFit ES	CrossFit JT	CrossFit JT		
coaches to seek informal feedback post lunch class								
Evening	16:45	CrossFit ES	CrossFit ES	CrossFit AH	CrossFit ES	CrossFit JT	4:30PM	
	17:15	CrossFit AH	CrossFit GF	CrossFit GF	CrossFit GF	CrossFit PB	5:30PM	
	17:45	CrossFit GF	CrossFit AH	CrossFit NP	CrossFit AH	CrossFit AH	6:30PM	
	18:15	CrossFit AH	CrossFit GF	CrossFit AH	CrossFit GF			
	18:45	CrossFit GF	CrossFit AH	CrossFit GF	CrossFit AH			
	19:15	CrossFit ES	CrossFit ES	CrossFit NP	CrossFit ES			
	19:45	OLY: AH		OLY: AH				

Fig. 4 – Schedule of Classes for week January 21st-January 26th

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In terms of car parking provisions, there are 2 no. car parking spaces designated for staff only. No car parking on site is provided for the customers, as they are not permitted to park in front of the gym/offices. However, it is noted that there is a free public parking facility adjacent to the buildings, and several car parking facilities within the area.

Some of the parking facilities adjacent to the subject site, or located in close proximity to the area, are outlined (by distance) as follows: The Gasworks Car Park, Percy Lane Car Park, 4 Barrow St Parking, 2-22 Grand Canal Quay Garage, and Q-Park Grand Canal Square.

Having regard to the site’s proximity to a large employment area where the majority of users work, the gym users primarily use the facilities before and/or after work. In this regard the majority of customers do not drive to the premises but rather walk/cycle or use public transport.

The subject site is located within Parking Zone 2 of the Development Plan, which occurs alongside transport corridors. As stated in the Dublin City Development Plan 2016-2022, “car parking provision in Zones 1 and 2 is restricted on account of the proximity of these locations to public transport”. The subject premises have a total GFA of 371.23 sq.m, considering the use is one related to recreation the

requirement of 1 no. car parking space per 250 sq.m GFA for Cultural and Recreational Buildings (Zone 2) found on Table 16.1 of the pertaining Development Plan would apply. The development should provide for 1.4 no. spaces, as per Development Plan standards, and the current provision is 2 no. spaces (which are reserved for staff members). As such, the parking provision complies with the requirements set out in the pertaining Development Plan.

In relation to the use of the outdoor areas, our client has stated that the shared outdoor spaces are not being used for business-related activities, and has also stated that the doors remain closed during all classes to keep disruption to a minimum.

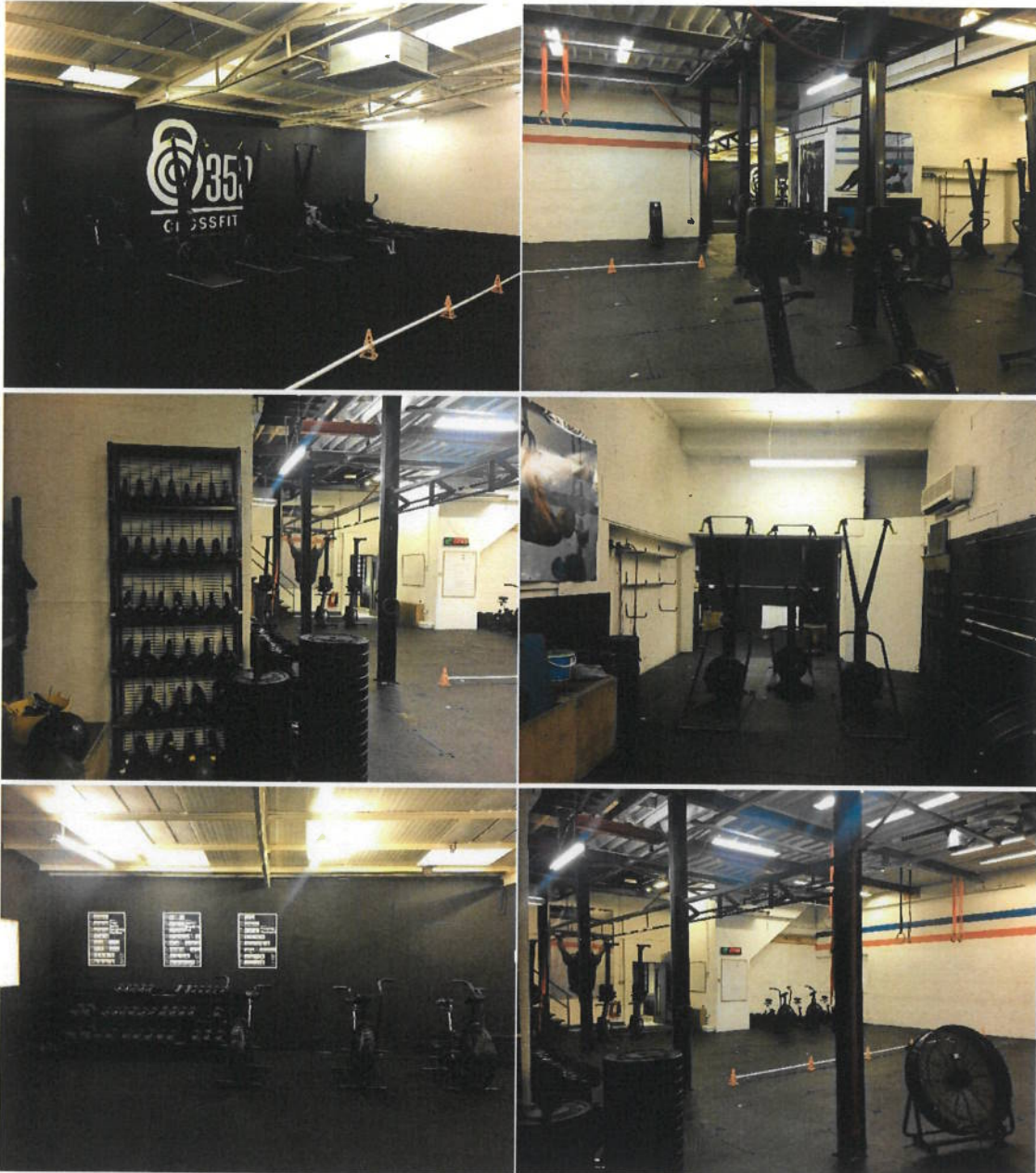


Fig. 5 – Interior images of building corroborating current use and status

The extent of the works that have been carried out in order to facilitate the gym use and general cosmetic and interior design changes. The removal of some internal walls was necessary to open the

floor space, also interior works involving cleaning up the interior with paint and adding carpet and rubber flooring were done to the premises.

As stated, the works carried out to the subject premises are internal minor works only and are of a decorative and aesthetic nature, and as such are exempt under Section 4(1)(h) of the Planning and Development Act, 2000 (as amended).

The rubber flooring assists in and further improves the acoustic privacy required within a residential area, in addition to this our client states that the doors remain closed during all classes to keep disruption to a minimum. An illustrative indication of such works carried out are indicated in Fig. 6.

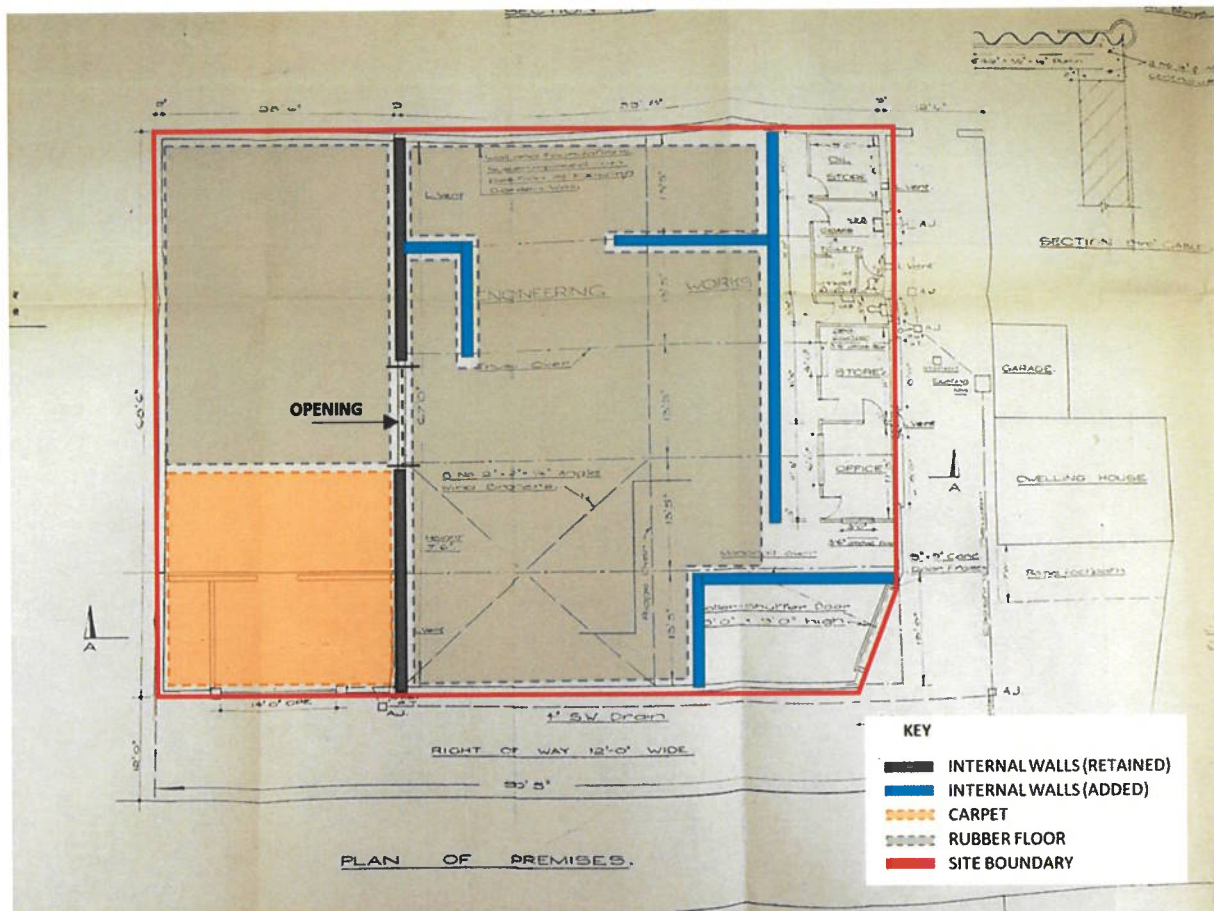
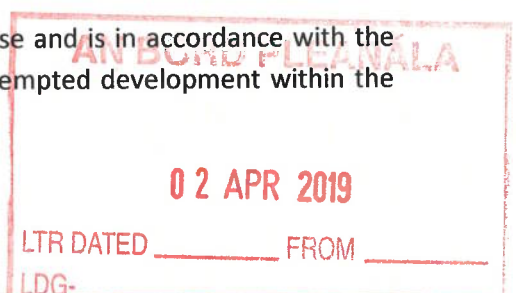


Fig. 6 – Sketch of works carried out to property

The building on site is subject to an extant planning permission, granted by Dublin City Council under Reg. Ref. 2388/16, and as stated in the planning report for the aforementioned planning permission it is due to be demolished during the lifespan of the said permission. As it currently stands, the building and its use do not pose any impacts on the surrounding area and do not constitute a contravention of the proper planning and sustainable development of the area.

In this regard, the development is consistent with the permitted use and is in accordance with the zoning objective pertaining to the site, and therefore would be exempted development within the meaning of the PDA 2000 (as amended).



8.0 Conclusion

Downey Planning, Chartered Town Planners, 1 Westland Square, Pearse Street, Dublin 2, have prepared this Section 5 Referral on behalf of our client Peter Burke. This referral is against the decision of Dublin City Council under Reg. Ref. 0001/19 to refuse a Declaration of Exemption, thus stating that the proposed development is NOT EXEMPT from the requirement to obtain planning permission under Section 32 of the Planning and Development Act 2000 (as amended).

As submitted with the Section 5 application, Downey Planning are of the professional opinion that the current use of the property is permitted in accordance with the planning permission pertaining to the site, and that the alleged change of use of the existing unit would not constitute development and that it is exempted development within the meaning of the Planning and Development Act 2000 (as amended), and as such planning permission would not be required. The subject unit and its current use successfully assimilate into its surrounding context without giving rise to any negative impact on neighbouring properties.

Having regard to the proposed development and the policies of the current Development Plan, it is considered that the proposed development is in accordance with the proper planning and sustainable development of the area.

In light of the foregoing, Downey Planning respectfully request that An Bord Pleanála overturn the decision of Dublin City Council and grant a Declaration of Exemption in this instance.



Appendix 1 – Copy of Dublin City Council Decision (Reg. Ref. 0001/19)

AN BORD PLEANÁLA

02 APR 2019

LTR DATED _____ FROM _____

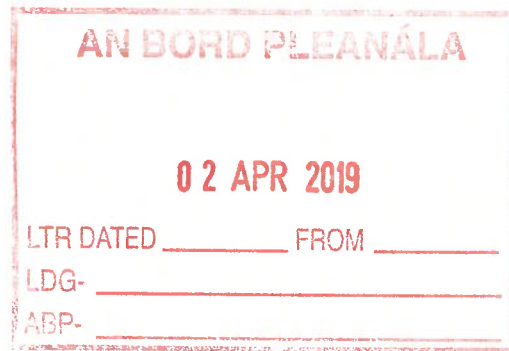
LDG- _____

ABP- _____



07-Mar-2019

Donal Duffy,
Downey Planning
1, Westland Square
Pearse Street
Dublin 2



Application Number	0001/19
Application Type	Section 5
Registration Date	21-Feb-2019
Decision Date	06-Mar-2019
Decision Order Number	P2785
Location	Crossfit 353, Shaws Lane, Bath Avenue, Dublin 4
Proposal	EXPP: Whether the current use of the property constitutes a change of use from the use permitted under Reg. Ref. 0900/98 and whether such a change of use constitutes a material change of use or is considered exempted development within the meaning of the Planning and Development Act, 200 (as amended).
Applicant Details	Peter Burke

NOTIFICATION OF DECLARATION ON DEVELOPMENT AND EXEMPTED DEVELOPMENT

In pursuance of its functions under the Planning & Development Act 2000 (as amended), Dublin City Council has by order dated 06-Mar-2019 decided to issue a Declaration that the proposed development is NOT EXEMPT from the requirement to obtain planning permission under Section 32 of the Planning & Development Act 2000 (as amended).

Signed on behalf of Dublin City Council

For Assistant Chief Executive

Note:

Any person issued with a declaration on development and exempted development, may on payment of the prescribed fee, refer a declaration for review by An Bord Pleanála within four weeks of the date of the issuing of the declaration.