

September '20

Title:

Section 5 Referral on Galway City Council
Pl. Ref. No. P/DC/3/11/20

Development Description:

"Change of use of structure to the rear of 31
Shantalla Road, Galway from commercial
use to residential use."

Location:

Rear of 31 Shantalla Road, Galway

Applicant

John Lawless

James O' Donnell

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AN BORD PLEANÁLA

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ABP- _____

22 SEP 2020

Fee: € 220 Type: Pmo -

Time: _____ By: Post



The Secretary
An Bord Pleanála
64 Marlborough Street
Dublin 1

11th September 2020

Re:

Referral

Name & Address of Appellant:

John Lawless,
31 Shantalla Road,
Galway City

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:

*"Change of use of structure to the rear of 31 Shantalla Road,
Galway from commercial use to residential use."*

Location of the Development:

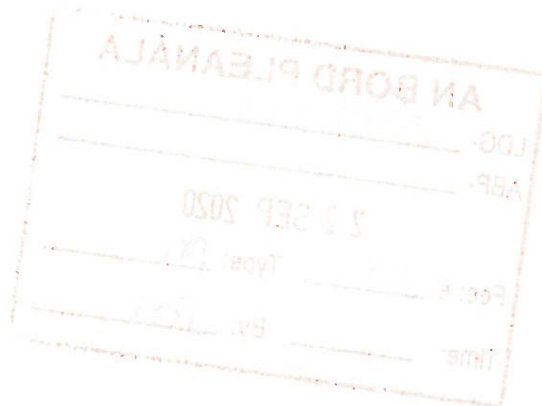
Rear of 31 Shantalla road, Galway City.

Planning Authority:

Galway City Council

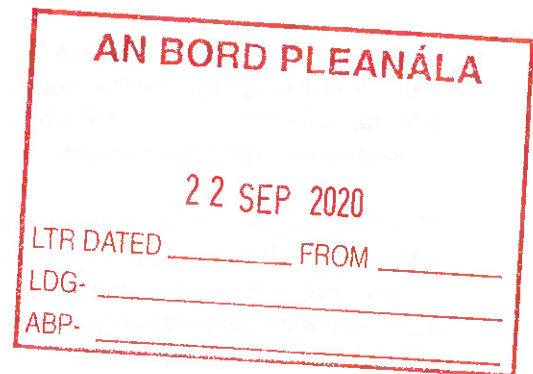
PI. Ref. No.:

P/DC/3/11/20



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1.0 INTRODUCTION

I have been instructed by my client John Lawless to seek a Section 5 Referral to An Bord Pleanála. The relevant fee of €220 is attached. On 4th August 2020 a Section 5 Declaration application for exempted development was made to Galway City Council under the Reference P/DC/3/1/19. This referred to;

“Change of use of structure to the rear of 31 Shantalla Road, Galway from commercial use to residential use.”

On the 26th August 2020 the Planning Authority issued a decision that concluded that *“The conversion of a commercial structure to a two-bedroom apartment at the rear of 31 Shantalla Road, Galway, is development and is not exempted development.”*

In response, my client now seeks a Referral to An Bord Pleanála, to adjudicate the subject case. My client is of the opinion that the Section 5 Declaration application (and supporting documentation) adequately demonstrated that the proposed Change of use of the subject commercial structure can be considered exempted development.

Moreover, my client considers that the Planning Authority's assessment of this Section 5 application has been most dismissive. In particular, this failed to adequately consider the forensic and comprehensive level of evidence, as well as the planning arguments, which accompanied the application which were meticulously researched and sourced in response to the Boards decision on the previous case file ABP-303154-18.

In this context, the need for a fair and comprehensive assessment of the detail provided has prompted this Referral/appeal. Moreover, it is considered that the applicant has now provided compelling evidence that the permitted commercial unit on site, can be categorized as a Class 2/ Class 1 Use, and that this was principally used by visiting members of the public.

We are of the opinion that the Planning Authority's dismissal of exemption merits of the proposed residential unit is contrary to the spirit and intention of the Planning and Development (Amendment) Regulations 2018 and the government's policy on “Rebuilding Ireland”.

2.0 LOCATION & CONTEXT

The subject site is located at 31 Shantalla road, within the established residential suburb of Shantalla. The subject site is occupied by a vacant single storey commercial building (85sqm), situated to the rear of an existing semi-detached house along the northern side of the Shantalla road. The subject unit has the benefit of on site and roadside parking. The subject site is located within an established residential area within a convenient walking distance to local schools, Salthill and the City Centre. The subject site is also located close the expansive open space/amenity area of St. Mary's College grounds across the road to the south-east.

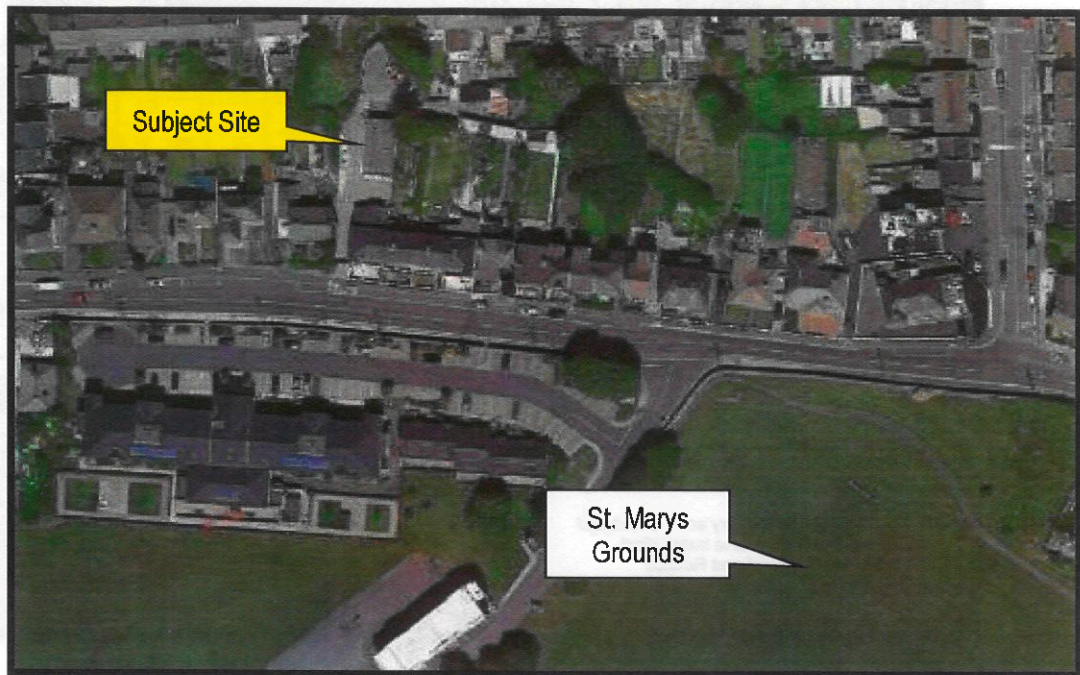


Figure 2: Location of subject premises at 31 Shantalla road (Source: Bing Maps)



Figure 3: Birds eye aerial photo showing location of No. 31 Shantalla Road (Source: Bing maps)



Figure 4: Photo of No. 31 from Shantalla road

The subject premises consists of a rectangular shaped single storey flat roofed building, with a north-south axis. The site is bounded by the rear of an existing semi-detached house (owned by the applicant) and a shared communal car parking area to the north. Access is available via a laneway onto Shantalla road.

In terms of its zoning context, the subject site is zoned 'R- Residential' with an accompanying Objective "To provide for residential development and for associated support development, which will ensure the protection of existing residential amenity and will contribute to sustainable residential neighbourhoods".

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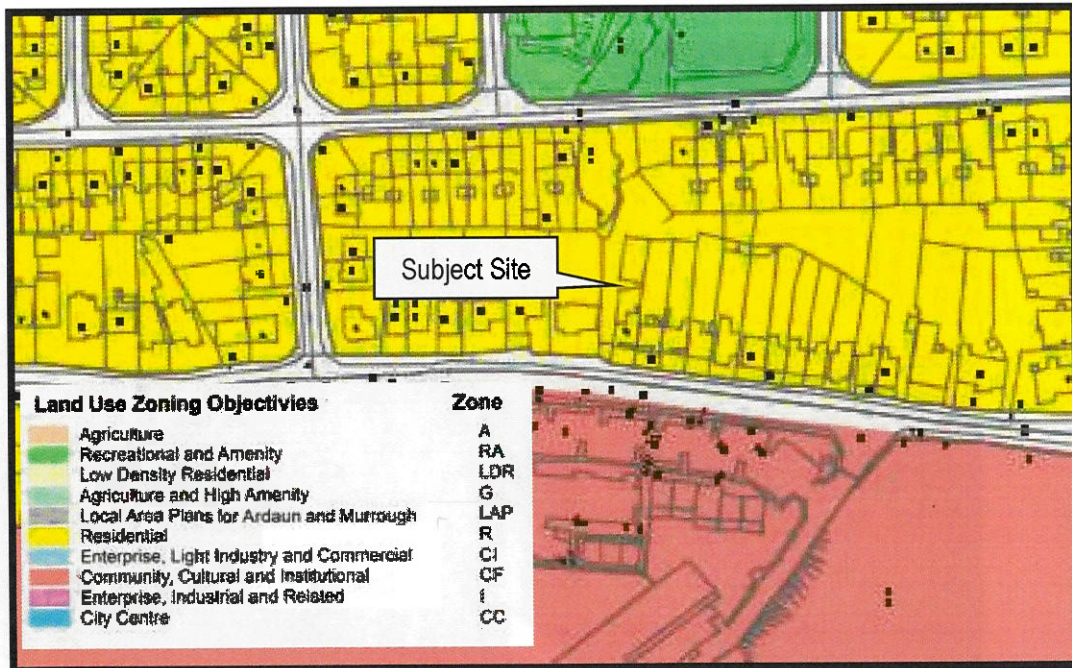


Figure 5: Indicative location of subject premises within the “R-Residential Zone” s per the Galway City Council Development Plan 2017-2023.

Furthermore, as per the “Neighbourhood Areas” identified in the CDP, the subject site is located within the “Inner Residential Area” of Galway City. In this regard, the CDP states that “These areas are under pressure with demand for housing extensions and for limited infill development.” In response, the proposed change of use would facilitate this demand for infill residential development, without changing the existing built form or character of the area.

3.0 GROUNDS OF REFERRAL

Comprehensive evidence to demonstrate how the proposed change of use can be considered exempted development was submitted as part of the Section 5 application to the Council. This Grounds of Referral is structured to Respond to the content of Galway City Councils “Section 5 Exemption Report.”

3.1 Contrary to Article 10; Section (6)(d) (iv) of the Planning & Development Regulations

The Planning Authority state that the proposed change of use would be contrary to the latter provisions of the Regulations which provides that “No development shall consist of or comprise the carrying out of works to the ground floor area of any structure which conflicts with any objective of the relevant local authority development plan or local area plan, pursuant to the Part 1 of the First Schedule to the Act, for such to remain in retail use, with the exception of any works the purpose of which is to solely provide on street access to the upper floors of the structure concerned.” This issue was not raised by either the Planning Authority or An Bord Pleanála in its assessment of P/DC/3/22/18 (ABP-303154-18) on site.

In response, the Galway City Council Development Plan 2017-2023 (CDP) is the statutory plan for the area. The only relevant objective pertaining to the subject site is the “R-Residential” zoning objective which seeks “To provide for residential development and for associated support development, which will ensure the protection of existing residential amenity and will contribute to sustainable

neighbourhoods”. Therefore, the proposed change of use to Residential would be entirely consistent with the relevant objective for the area.

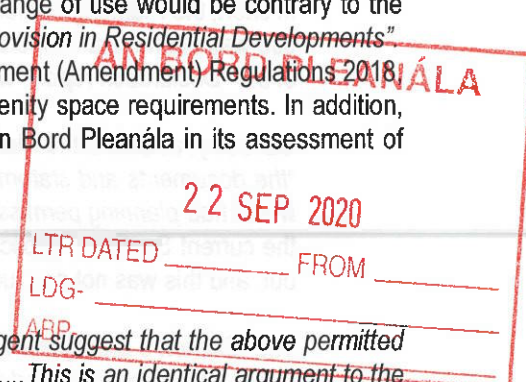
Furthermore, Article 10; Section (6)(d) (iv) of the Regs refers to those Plans which have objectives to ensure “the ground floor area” of a structure “remains in retail Use”. No such objective pertains to this “R-residential” zone. However, if the Planning Authority are of the opinion that the subject structure should remain in retail use, this would acknowledge that the authorised use comes into the category of a Class 1 use. In this regard, the proposed change of use can be considered under the provisions of the Planning and Development (Amendment) Regulations 2018.

3.2 Contrary to Section 11.3.1(k) of the CDP

The Planning Authority are of the opinion that the proposed change of use would be contrary to the “Section 11.3.1(k)” of the CDP entitled “Self-Contained Units”. In response, the latter provisions of the CDP are not a basis for dismissal of the proposed Section 5 change of use. Furthermore, it is not a requirement of the Planning and Development (Amendment) Regulations 2018, for prospective residential units to be capable of re-assimilation into nearby dwellings. In addition, this issue was not raised by either the Planning Authority or An Bord Pleanála in its assessment of P/DC/3/22/18 (ABP-303154-18) on site.

3.2 Contrary to Section 11.3.1(c) of the CDP

The Planning Authority are of the opinion that the proposed change of use would be contrary to the “Section 11.3.1(c)” of the CDP entitled “Amenity Open Space Provision in Residential Developments”. In response, it is not a requirement of the Planning and Development (Amendment) Regulations 2018, for prospective residential units to comply with CDP private amenity space requirements. In addition, this issue was not raised by either the Planning Authority or An Bord Pleanála in its assessment of P/DC/3/22/18 (ABP-303154-18) on site.



3.3 Identical Argument

The “Section 5 Exemption Report” states that “the applicants agent suggest that the above permitted use can be considered within Use “Class 2 or even Class 1”.....This is an identical argument to the previously decided upon Section 5 application , 18/22.” With respect, the latter statement is incorrect. The previous Section 5 application arguments centred around categorising permitted Use of the Structure as “Class 2”. No arguments were made previously in relation to categorizing the permitted use of the structure as “Class 1”. Furthermore, the current application is accompanied by a comprehensive suite of historical evidence to substantiate the intended and actual nature of the permitted use on site. This level of detail was not available to either the Planning Authority or An Bord Pleanála previously.

In addition, it is worth noting that two of three original reasons for refusal as put forward by the City Council (abandonment and subsequent loss of planning permission and alteration of an unauthorised structure) were not upheld by the Board. Therefore, with respect, the Planning Authority’s suggestion that this as an identical application to the last, is inaccurate and misleading.

3.4 Disregard of Evidence

The dismissive tone of the Planning Authority's assessment of the application is very apparent. This states that *"The main difference in the case of this declaration is that the applicant is now attempting to establish that the building /use included "Use as a Professional/Retail Service." In this instance the applicant has submitted a number of pages of documents from different persons/organisations all which either confirm that the building was being used as a printing store and that printing purchased/carried out on the premises for such persons/business."*

My client has spent an enormous amount of time and effort, meticulously researching and collating new evidence to substantiate that the permitted use, was intended and functioned as professional/retail service. This included;

- A Sworn Declaration from the previous owner of the printing outlet
- A Sworn Declaration from the main bookkeeper of the printing outlet
- A Sworn Declaration from the original electrical contractor to the printing outlet
- Letters of support from ex-customers of the printing outlet
- Historical newspaper articles demonstrating the sales emphasis of the business

Owing to the amount of time and effort my client invested in researching and collating evidence on this project, he is offended by the Planning Authority's dismissal of the forensic historic evidence as *"a number of pages of documents"*.

3.5 Failure to assess evidence of "Professional/Retail Service" Use

In short, the Planning Authority fails to acknowledge the proof assembled by my client that the permitted use was intended and operated as a *"Professional/ Retail service"*. This is best summarised in Table 1 of the *"Declaration report"* which accompanied the current application.

Curiously, as part of the Planning Authority's assessment, the *"Section 5 Exemption Report"* states that *"the documents and statements submitted only establish that an activity was carried out on the site, which had planning permission."* In response, we would submit that the evidence submitted as part of the current Section 5 application, established that a *"Professional /Retail Service"* activity was carried out, and this was not precluded under the planning permission.

The *"Section 5 Exemption Report"* goes on to state that *"the details submit only establish that persons either telephone or arrived on the premises to placed their orders, it has to be acknowledged that this is a normal way of conducting business, particularly in an era before the internet."* In response, we would concur with the Planning Authority insofar that the evidence submitted substantiated that orders were placed by telephone or on arrival at the premises. Surely this is evidence that these were professional service orders made by visiting members of the public?

3.6 Visiting Members of the Public & Ancillary Use

The *"Section 5 Exemption Report"* states that *"The question which has to be addressed is if the activity on the site was "provided principally to visiting members of the public", the fact that persons arrived at a premises to place an order or collect an order does not constitute that the primary activity was to visiting members of the public, the primary activity carried out was printing based on orders received, this was not a retail shop or a professional services, such as an accountants office, and such callers would be infrequent and the activity ancillary to the main use of the building."*

The latter paragraph is multifaceted, and is responded to in the paragraphs below.

Firstly, in response to the statement that *“The question which has to be addressed is if the activity on the site was “provided principally to visiting members of the public”, we would contend that the evidence provided substantiates that the activity on site was “provided to visiting members of the public”. In this regard, we refer the Sworn Declaration from Sean Hosty, the previous owner and operator of the former printing service outlet on site, which traded as “Hosty Litho Printers”. This confirms, inter alia, that;*

- The business operated as a local print shop/printing service for visiting members of the public
- Principle turnover for the business was sourced from the sale of printing products on site.
- The Sworn declaration confirms that *“on a daily basis customers frequented the premises...”*
- The nature of printing orders and products consisted of posters, business cards, flyers, letterheads and business documents. This range of products were therefore tailored towards visiting members of the public.

This evidence clearly substantiates that the retail/service activity on site *“was provided to visiting members of the public.”*

In addition, we refer to the Sworn Declaration of Catherine Forde, who was a key employee responsible for the income stream for the business. This confirms, inter alia, that the income stream for the business was *“principally based on customer sales/transactions carried out on the premises”*. This declaration goes on to describe the nature of the local print orders and that *“Customers would call to the premises to place their orders and return at a later date to view proofs before printing”*. As such, this is irrefutable evidence that the retail/service activity on site was provided principally to visiting members of the public.

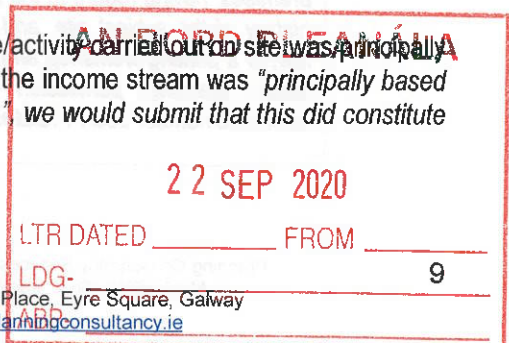
Furthermore, we refer to the Sworn Declaration of Joe Healy, who was the Electrical Contractor for the construction of the structure in the early 1970’s. This confirms, inter alia that *“the purpose of the store was to cater for the printing needs of the local community in what was then a thriving retail business.”* This declaration confirms that customer parking existing on site and there was a waiting room and counter for *“placing orders/various transactions and paying for products”*. This represents further evidence that the retail/service activity on site was provided principally to visiting members of the public.

The letters from ex-customers on file from Donagh O’ Donoghue, OMB Chartered Accountants, Radharc Landscaping, T O Higgins & Co. Ltd., Blake & Kenny Solicitors etc. all confirm that the printing outlet catered for visiting members of the public.

The Board should be aware that the *“Galway Advertiser”* newspaper is a free local marketing paper, which advertises the services of local businesses. We would submit that the articles/adverts (enclosed with this application) which were placed in the Galway Advertiser marketing paper, were geared towards the attraction of visiting members of the public.

Secondly, we wish to respond to Planning Authority’s opinion which states *“the fact that persons arrived at a premises to place an order or collect an order does not constitute that the primary activity was to visiting members of the public”*

In response, the Sworn Declarations confirm that the service/activity carried out on site was principally for *“Visiting members of the public”*. In particular, given that the income stream was *“principally based on customer sales/transactions carried out on the premises.”* we would submit that this did constitute the primary activity on site.



Thirdly, we wish to respond to the Planning Authority's statement that *"this was not a retail shop or a professional services, such as an accountants office."* In response, all the evidence submitted as part of the application clearly demonstrated that activity carried out on site was that of a Professional/retail service. The Planning Authority have not offered any counter evidence to dispute or refute this. How can the Planning Authority be so certain of the original use (almost 50 years ago), when all new and available evidence points to the fact that this was a "Professional/Retail use" frequented by visiting members of the public?

With respect, the example of an *"accountants office"* is entirely irrelevant to this case. The activity which was carried out on site would be more comparable to a modern day printing outlet, which would be categorised as a retail service use. A modern day example of this would be *"Davitt Photo"* located along Upper Salthill, Galway (www.davittphoto.com). Furthermore, it is noted that the original plans submitted as part of Pl. Ref. No. 250/71 on the subject site, included the provision of a "Dark Room" which would have been used to process images for printing.

Fourthly, we wish to respond to the Planning Authority's statement that *"such callers would be infrequent and the activity ancillary to the main use of the building."* With respect, this statement is made without any basis or foundation and directly contradicts the sworn evidence of persons employed in the printing outlet. Again, we note that the Sworn Declaration from Sean Hosty (owner and operator) stated that *"on a daily basis customers frequented the premises..."* Given the visual appreciation and tactile nature of ordering prints in this era, it is inconceivable that this business could have operated were it not for daily customer footfall. We would be of the opinion that there would have been no printing in the first instance were it not for customer orders onsite. Therefore, to categorise the activity as ancillary, is made without foundation.

Furthermore, we refer to the recruitment advertisement in the Galway Advertiser on 8th February 1973 for a *"Clerk/Typist receptionist"*. Why would an operator employ a full time receptionist, if it was not to cater for frequent visiting members of the public?

Finally, we are of the opinion that *"Professional/Retail Use"* was not precluded under the original planning permission. As such the concept of *"ancillary"* use is not relevant to the consideration of this case.

3.7 Response to Decision Reasons

We wish to briefly respond to the Planning Authority's Reasons to support its opinion that the proposed change of use does not constitute exempted development. Whilst it is noted that these are the same as those set out by the Board, (in its assessment of Referral Case Ref. ABP-303154-18), it should be noted that these have been re-issued by the Planning Authority without sufficient assessment of the current case.

Table 1: Response to Decision Reasons

| Reason | Response |
|---|---|
| <i>"The authorised use of the subject premises, having regard to the planning history of the subject site, and to case law, is a printing workshop and store to which planning permission register reference number 250/71 relates"</i> | We would submit that the permitted commercial unit, did not rule out the provision of <i>"Professional services"</i> and/or <i>"Any other services"</i> to be carried out on site. With respect, we have examined the original file (Pl. Ref. No. 71/250), and there is no obvious basis to conclude that the permitted use was dedicated to <i>"Light Industrial"</i> use. |

The point needs to be made that Planning applications in the early 1970's were "of their time" and were far less detailed and prescriptive compared to modern day planning applications. Furthermore, in 1971 there were no Planning Regulations in place, where classes of Use were clearly defined. Therefore, the proposed use/authorised use set out under Pl. Ref. No. 71/250, was limited in detail, somewhat vague and therefore more flexible to interpretation.

Moreover, there is every reason to believe that the permitted development would fall into the modern day Class 2 or Class 1¹ categories of Use. Firstly, the permitted floor plans did not specify any type of Light Industrial use. Moreover, the permitted floor plans specified a "Waiting Room" which would normally be dedicated for the use of "Visiting members of the Public". Furthermore, the permitted floorplans include for an "Office" and a "Dark Room". The permission also provided for on-site parking. The "service" functions of each these prescribed areas is clarified in the "Sworn testimonies/declarations" which accompany the current Section 5 application.

Following a review of Galway City Councils Planning Register we see that the term "Print Workshop" also has a "services" meaning. For example, we refer to Pl. Ref. No. 86/740, where permission was granted "from garage to print workshop" (Copy of Decision attached). Condition No. 2 of the latter permission states that "The development shall be used for craft workshop with associated retail and display purposes." Therefore, the latter "print workshop" was clearly understood to function as a Class 2 (Professional Services/Other Services) Use, if not a Class 1 retail unit. Like the subject premises, it was permitted as a commercial unit.

In addition, we refer to Pl. Ref. No. 89/776 where permission was granted for "change of use of section of warehouse to printing works" at Oran Precast Building, Tuam Road, Galway City (Copy of Decision attached). In this case the record of the planning fee paid was under the category of "Shops, Hotels, Restaurant & Commercial". Therefore, under the latter permission, the "printing works" was permitted on the basis that this was providing a retail service/ commercial service use. Having regard to the provisions of Pl. Ref. No.'s 86/740 & 89/776, there is no reason to suggest that the subject "Printing Workshop" under Pl. Ref. No. 71/250, was not permitted as a "retail service/professional service" and was not within the scope of Class 1 or 2 uses.

Furthermore, the term "Store" in the early 1970's was synonymous with retail use/retail services. The terms "grocery store" or "convenience store" would be good examples of this. A modern day resonance of the historical association between the term store and retail, would be the franchise name of "Dunnes Stores". As such, the term "store" at the time the permission was

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¹ Under Part 4 to Schedule 1 of the Planning & Development Regulations 2001 (As amended), a Class 1 Use is defined as "Use as a Shop".

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| | <p>granted, would have been synonymous with a place where one could buy goods and services.</p> <p>Following a review of Galway City Councils Planning Register, we see the term "Store" continued to be synonymous with retail in the 1990's. For example we refer to Pl. Ref. No. 94/578 where permission was granted "for construction of new store at Roof level" at 33 Shop Street, Galway City (Copy of decision attached). Condition No. 1 of the latter permission acknowledged "the usage of the site for retail store purposes". Therefore, the latter "store" was clearly understood to function as a retail service use. Again the permitted "Store" at the subject site, could well have been permitted under the auspices of a Class 1 use.</p> <p>Moreover, the potential for professional services to operate from the premises was not precluded under the terms of the 1971 planning permission. In fact, the associated planning conditions did not refer to "Light Industrial use" or preclude professional services or any other services for that matter.</p> <p>In the light of the above, the permitted use sufficiently wide to enable it to cater for professional /retail services. As such the permitted use of the unit can easily be categorized as a Class 2 or Class 1 Use.</p> <p>Furthermore, as summarised in Table 1 below, we would submit that the premises previously operated akin to a modern day "Printing Services Outlet".</p> <p>We are of the opinion that the newspaper article dated 21st October 1971 is most compelling. This confirms that Sean F. Hosty (the original applicant) "announced the setting up of a new printing firm, Hosty Litho Printers." This would have been published around the time the "Notification to grant permission" on Pl. Ref. No. 250/71 had been issued by the Council. The timing of this advert in a marketing newspaper indicates the applicants intention to utilise the premises to provide for a Printing Services Outlet.</p> |
| <p><i>'The change of use of the subject structure from printing workshop and store to use as a 2 be-bedroom apartment is a change of use that is material in planning terms, having regard to different patterns of activity, and impacts on the pattern of development in the vicinity, and is therefore a material change of use.'</i></p> | <p>As it is our contention that the permitted use/enacted use on site, constituted a Class 1/ Class 2 Use, the proposed change to Residential Use can be deemed exempted under the provisions of the Planning and Development (Amendment) Regulations 2018.</p> |
| <p><i>"The authorised use (as a printing workshop and store), based on the planning history is not a use within the scope of Classes 1,2,3, and 6 of Part 4 of the Second Schedule to the Planning and Development Regulations, but is within the scope of Class 4 (that is, use as a light industrial building), and in</i></p> | <p>As set out above, we would submit that the evidence now brought to bear, provides sufficient justification that the authorised use/enacted use constituted a Class 1/ Class 2 Use, and that this use involved services provided principally to visiting members of the public.</p> |

| | |
|--|---|
| <p>particular does not represent use for professional or other services under Class 2 or Part 4, and it has not been established that the use authorised under planning permission register reference number 250/71 involved services provided principally to visiting members of the public, as is a requirement of Class 2”</p> | |
| <p>“The development is question, not being a change of use from Classes 1,2,3, and 6 of Part 4 of the Second Schedule to residential use, would not, therefore, come within the scope of Article 10(6) of the Planning and Development Regulations, 2001, as amended by the Planning and Development (Amendment) Regulations 2018”</p> | <p>As it is our contention that the permitted use/enacted use on site, constituted a Class 1/ Class 2 Use, the proposed change to Residential Use can be deemed exempted under the provisions of the Planning and Development (Amendment) Regulations 2018.</p> |
| <p>“There are no other provisions, in the Planning and Development Act 2000, as amended, or in the Planning and Development Regulations, 2001, as amended, whereby such development would be exempted development, and the proposed material change of use in this instance is, therefore, not exempted development”.</p> | <p>Owing to our contention that the permitted use/enacted use on site, constituted a Class 1/ Class 2 Use, the proposed change to Residential Use can be deemed exempted under the provisions of the Planning and Development (Amendment) Regulations 2018. As such, no other part of the planning legislation needs to be relied upon.</p> |

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ABP- _____

4.0 SUMMARY

The proposed change of use from a “non-conforming²” and unviable commercial use to a vibrant residential use within an established residential area, zoned “R-Residential” is entirely appropriate in this case, and is consistent with the spirit of the Planning and Development (Amendment) Regulations 2018 and the National Policy document entitled “Rebuilding Ireland – Action Plan for Housing and Homelessness”. In particular the latter states that “this Action Plan includes a commitment to review the planning legislative framework around conversion and re-use for residential purposes, with a view to allowing change of use of vacant commercial units in urban areas, including vacant or under-utilised areas over ground floor premises, without having to go through the planning process. This should enable such vacant units to be brought into productive use earlier than might otherwise be the case.”

The proposed change of use would be entirely consistent with this national objective.

In summary, we are of the opinion that the evidence and arguments put forward in the subject Section 5 Declaration/Referral application, sufficiently demonstrates that the proposed change of use of this vacant structure from commercial use to residential use can be considered. We consider that the evidence collated by the applicant sufficiently demonstrates that the intended and actual nature of the authorised use came within the scope of modern day Class 1/ Class 2, and that the use involved the provision of services principally to visiting members of the public.

² A “Non-conforming Uses” are defined in section 11.2 of the Galway City Council Development Plan 2017-2023, as follows; “legally established uses...in locations where they do not conform to the designated land use zoning objective set out in the Plan.”

Notwithstanding the case put forward, as part of the Board decision, we request the Board to provide an opinion as to whether it considers that the Residential use of the structure would be appropriate in this case.

If the inspector wishes to inspect the structure, please do not hesitate to contact this office to arrange access.

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 since July 2016 (i.e. over 4 years at the time of writing). It has been refurbished to a high standard and is 'fit for purpose; to cater for residential use. Owing to its location, a commercial use would not be viable at this location and its continued vacancy would be unsustainable, uneconomic and inefficient. In the light of the above, 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 €220
Copy Declaration Decision of Planning Authority
Copy of Section 5 Exemption Report



Comhairle Cathrach na Gaillimhe
Galway City Council

Halla na Cathrach
Bóthar an Choláiste
Gaillimh
H91 X4K8

City Hall
College Road
Galway
H91 X4K8

John Lawless,
C/o James O'Donnell,
Planning Consultancy Services,
Suite 3, Third Floor, Ross House,
Victoria Place, Eyre Square,
Galway.

Our Ref: P/DC/3/11/20

26th August, 2020

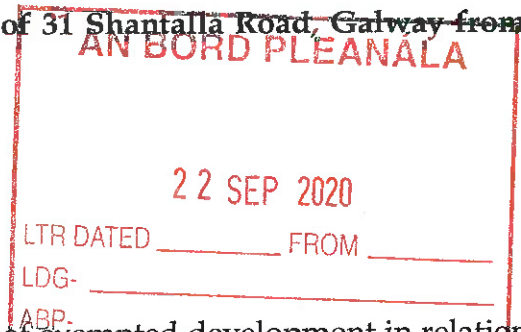
Planning Declaration under Section 5 of the Planning
& Development Act, 2000 (as amended).

Re: Change of use of structure to the rear of 31 Shantalla Road, Galway from
commercial use to residential use.

At: Rear of 31 Shantalla Road, Galway.

A Chara,

I refer to your recent application for a declaration of ~~exempted development in relation~~
to the above and I wish to inform you that a declaration of exempted development is
refused for the following reasons:-



- The authorised use of the subject premises, having regard to the planning history of the subject site, and to case law, is as a printing workshop and store to which planning permission register reference number 250/71 relates;
- The change of use of the subject structure from printing workshop and store to use as a 2-bedroom apartment is a change of use that is material in planning terms, having regard to different patterns of activity, and impacts on the pattern of development in the vicinity, and is therefore a material change of use and is development;
- The authorised use (as a printing workshop and store), based on the planning history, is not a use within the scope of Classes 1, 2, 3 and 6 of Part 4 of the Second Schedule to the Planning and Development Regulations, but is within the scope of Class 4 (that is, use as a light industrial building), and in particular does not represent use for professional or other services under Class 2 of Part 4, and it has not been established that the use authorised under planning permission register reference number 250/71 involved services provided principally to visiting members of the public, as is a requirement of Class 2;

- The development in question, not being a change of use from Classes 1, 2, 3 or 6 of Part 4 of the Second Schedule to residential use, would not, therefore, come within the scope of Article 10 (6) of the Planning and Development Regulations, 2001, as amended by the Planning and Development (Amendment) Regulations 2018.
- There are no other provisions, in the Planning and Development Act 2000, as amended, or in the Planning and Development Regulations, 2001, as amended, whereby such development would be exempted development, and the proposed material change of use in this instance is, therefore, not exempted development.

The conversion of a commercial structure to a two-bedroom apartment at the rear of 31 Shantalla Road, Galway, is development and is not exempted development.

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. "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,



Director of Services,

Transportation, Planning, Physical Development and Human Resources.

| | |
|-------------------------|------------|
| AN BORD PLEANÁLA | |
| 22 SEP 2020 | |
| LTR DATED _____ | FROM _____ |
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| ABP- _____ | |

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LDG- _____

APP- _____

Section 5 Exemption Report 20/11

Applicant: John Lawless
Site Address: 31 Shantalla Road,
Description: Change of use of structure to the rear of 31 Shantalla Road, Galway from commercial use to residential use.

Planning History:

18/52: Refused Permission for 1) A change of use of an existing single storey commercial unit (Surgery) to the rear of the existing dwelling house to a proposed residential unit the works include the raising of the height of the building for additional first floor residential space and proposed changes to the elevations and all associated site works and 2): Permission to retain alterations to the existing side boundary treatments to the front and rear of the existing dwelling house and retain an existing vehicular access gate to the side of the existing dwelling and all associated site works

17/211: Refused permission to change the use of a unit at the rear of 31 Shantalla Road Galway from commercial use to use ancillary with the dwelling house. These works include the raising of the height of the building by an additional storey and changes to the elevations.

Section 5 History:

18/22: Change of use of structure to the rear of 31 Shantalla Road from commercial use to residential

- *The Opinion of the Local authority was that the proposed development was not an exempted development for the following reasons;*

The proposal would be contrary to Article 10; Section (6) (d) (iv) of the Planning and Development Regulations 2001, as amended, which states:

- *"No development shall consist of or comprise the carrying out of works to the ground floor area of any structure which conflicts with any objective of the relevant local authority development plan or local area plan, pursuant to the Part 1 of the First Schedule to the Act, for such to remain in retail use, with the exception of any works the purpose of which is to solely provide on street access to the upper floors of the structure concerned".*

As the unit is a detached building located in the rear garden of an existing residential dwelling and has not direct street access, if permitted, would facilitate the development of a detached self contained unit in the rear garden of an existing dwelling contrary to Section 11.3.1 (k) of the Galway City Council Development Plan 2017-2023, which requires that such self contained units should be "an integral part of the main dwelling capable of re-assimilation into the dwelling, that the unit will generally be located at the side as opposed to the rear garden of the existing house". Therefore the proposed development contravenes the development plan requirements, would not capable of re-assimilation into the existing dwelling, and would be out of character with the established pattern of development in the area.



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In addition the proposal would not meet Galway City Council Development Plan 2017-2023 Section 11.3.1 (c) requirements for the retention/provision of private amenity space as the space provided is insufficient, incidental, fragmented and inadequate. The proposals would therefore materially contravene development plan standards, seriously injure amenities of the property in the vicinity and be contrary to the proper planning and development of the area.

- **The Opinion of the Local Authority was appealed to An Bord Pleanála who concluded the following (Ref.No. 303154):**
 - (a) The authorised use of the subject premises, having regard to the planning history of the subject site, and to case law, is as a printing workshop and store to which planning permission register reference number 250/71 relates;
 - (b) The change of use of the subject structure from printing workshop and store to use as a 2-bedroom apartment is a change of use that is material in planning terms, having regard to different patterns of activity, and impacts on the pattern of development in the vicinity, and is therefore a material change of use and is development;
 - (c) The authorised use (as a printing workshop and store), based on the planning history, is not a use within the scope of Classes 1, 2, 3 and 6 of Part 4 of the Second Schedule to the Planning and Development Regulations, but is within the scope of Class 4 (that is, use as a light industrial building), and in particular does not represent use for professional or other services under Class 2 of Part 4, and it has not been established that the use authorised under planning permission register reference number 250/71 involved services provided principally to visiting members of the public, as is a requirement of Class 2;
 - (d) The development in question, not being a change of use from Classes 1, 2, 3 or 6 of Part 4 of the Second Schedule to residential use, would not, therefore, come within the scope of Article 10 (6) of the Planning and Development Regulations, 2001, as amended by the Planning and Development (Amendment) Regulations 2018, and
 - (e) There are no other provisions, in the Planning and Development Act 2000, as amended, or in the Planning and Development Regulations, 2001, as amended, whereby such development would be exempted development, and the proposed material change of use in this instance is, therefore, not exempted development.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by Section 5 (3)(a) of the Planning and Development Act, 2000, as amended, hereby decides that conversion of a commercial structure to a two-bedroom apartment at the rear of 31 Shantalla Road, Galway, is development and is not exempted development.

In not accepting the recommendation of the Inspector that the subject development would constitute exempted development, the Board was not satisfied that the authorised use, as a printing workshop and store, came within the scope of Class 2, as suggested by the referrer and as recommended by the Inspector, but rather came within the scope of Class 4, that is, use as a light industrial building. Furthermore, the Board was not satisfied that it had been established, by the referrer, that such use involved the provision of services *principally* to visiting members of the public and in that regard noted the drawings upon which planning permission register reference number 250/71 was based. The Board did accept, as recommended by the Inspector, that the Molloy case applied in this instance, and that therefore the planning permission for the use of these premises as a printing workshop and store was capable of being implemented, notwithstanding the intervening use as a doctor's surgery (which it is noted, also does not come within the scope of Classes 1, 2, 3 and 6 of Part 4 of the Second Schedule to the Planning and Development Regulations, 2001, as amended.), but this did not alter its principal conclusion that the authorised use is not within the scope of these Classes.



AN BORD PLEANÁLA

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Planning Appraisal:

The applicant states that permission was granted for the structure under Pl.Ref.No. 71/250, which granted permission for the "Erection of a printing workshop and store".

The applicants agent suggest that the above permitted use can be considered within Use "Class 2 or even Class1". In this instance Class 2 permits – use for the provision of –
(b) professional services (other than health or medical services),

Where the services are provided principally to visiting members of the public.

This is an identical argument to the previously decided upon Section 5 application, 18/22, which the Council and An Bord Pleanala, as highlighted above, stated the development was Not an exempted development.

The main difference in the case of this declaration is that the applicant is now attempting to establish that the building/use included 'Use as a Professional/Retail Service'. In this instance the applicant has submitted a number of pages of documents from different persons/organisations all which either confirm that the building was being used as a printing store and that printing purchased/carried out on the premises for such persons/business.

Having regards to the above, and as highlighted by ABP, "the authorised use as a printing workshop and store, based on the planning history, is not a use within the scope of Classes 1, 2, 3 and 6 of Part 4 of the Second Schedule to the Planning and Development Regulations, but is within the scope of Class 4 (that is, use as a light industrial building), and in particular does not represent use for professional or other services under Class 2 of Part 4, and it has not been established that the use authorised under planning permission register reference number 250/71 involved services provided principally to visiting members of the public, as is a requirement of Class 2".

From examination of the details submitted the above remains to be true, the documents and statements submitted only establish that an activity was carried out on the site, which had planning permission.

The details submit only establish that persons either telephoned or arrived on the premises to placed their orders, it has to be acknowledged that is a normal way of conducting business, particularly in an era before the internet.

The question which has to be addressed is if the activity on the site was "provided principally to visiting members of the public", the fact that persons arrived at a premises to place an order or collect an order does not constitute that the primary activity was to visiting members of the public, the primary activity carried out was printing based upon orders received, this was not a retail shop or a professional service, such as an accountants office, and such callers would be infrequent and the activity ancillary to the main use of the building.

Therefore, it is considered that the original opinion of the Local authority and ABP remains relevant and an opinion should issue in line with the most recent ABP opinion.



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ABP- _____

Opinion:

- The authorised use of the subject premises, having regard to the planning history of the subject site, and to case law, is as a printing workshop and store to which planning permission register reference number 250/71 relates;
- The change of use of the subject structure from printing workshop and store to use as a 2-bedroom apartment is a change of use that is material in planning terms, having regard to different patterns of activity, and impacts on the pattern of development in the vicinity, and is therefore a material change of use and is development;
- The authorised use (as a printing workshop and store), based on the planning history, is not a use within the scope of Classes 1, 2, 3 and 6 of Part 4 of the Second Schedule to the Planning and Development Regulations, but is within the scope of Class 4 (that is, use as a light industrial building), and in particular does not represent use for professional or other services under Class 2 of Part 4, and it has not been established that the use authorised under planning permission register reference number 250/71 involved services provided principally to visiting members of the public, as is a requirement of Class 2;
- The development in question, not being a change of use from Classes 1, 2, 3 or 6 of Part 4 of the Second Schedule to residential use, would not, therefore, come within the scope of Article 10 (6) of the Planning and Development Regulations, 2001, as amended by the Planning and Development (Amendment) Regulations 2018, and
- There are no other provisions, in the Planning and Development Act 2000, as amended, or in the Planning and Development Regulations, 2001, as amended, whereby such development would be exempted development, and the proposed material change of use in this instance is, therefore, not exempted development.

The conversion of a commercial structure to a two-bedroom apartment at the rear of 31 Shantalla Road, Galway, is development and is not exempted development.

Signed: _____

Handwritten signature of John Doody
7/8/20

John Doody
Executive Planner

Signed: _____

Handwritten signature of Liam Blake

Liam Blake
Senior Executive Planner

Handwritten date: 25/8/20

Decision schedule checked with PL Ref. and Home 25/08/20

AN BORD PLEANÁLA

22 SEP 2020

LTR DATED _____ FROM _____

LDG- _____

RP. _____