

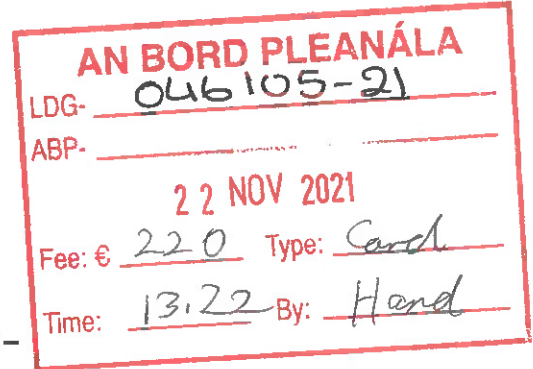


Joe Bonner BA MRUP Dip Env Eng Dip Proj Mgt MIPI

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

22nd November 2021

Re: **Section 5 - Planning and Development Act 2000 –
Request for Review of Declaration of Cavan County Council Reg. Ref. 281**



Dear Secretary,

On behalf of Mr. Donal Watters, owner of Unit 17, Kilmore Business Park, Dublin Road, Cavan (the referrer) we wish to refer to the Board for review, a Section 5 declaration (Ref. 281) issued by Cavan County Council on 1st November 2021. The final date for submission of this review to the Board is 29th November 2021, so it has been submitted with the statutory timeframe. Please also find enclosed a cheque for the appropriate fee in the sum of €220.00 made payable to An Bord Pleanála.

The question asked of Cavan Council is: -

‘Whether the change of use of Unit 17, Kilmore Business Park, Dublin Road, Cavan, from ‘office ancillary’ to motor sales facilities to ‘office use’ to be occupied by HSE administrative services is or is not development and is or is not exempted development’.

For the purposes of this referral we refer the Board to **Appendix 1** which is a copy of the cover letter dated 29th August 2021 which was submitted to Cavan County Council and sets out the basis by why it is considered that the change of use is exempted development. the drawings submitted to Cavan County Council are also enclosed as part of **Appendix 1**.

1.0 Planning Officers Assessment on Section 5 Declaration (and comments thereon)

The Planning Officer’s Assessment of the Section 5 Declaration (**Appendix 2**) sets out the definitions of Classes 2 and 3 and Article 10 of the Planning and Development Regulations 2001 (as amended).

The Planning Officer's assessment is brief and the last three paragraphs are set out in full below with relevant sections underlined: -

I refer to the parent permission on site, approved under Planning Ref. 05/876 for the construction of a new motor sales and service facility which included development of the east building with ancillary office use. It is my opinion that this office use was to provide support to the motor car sales, which was the principal use of the East Building. Therefore, it is considered that the change of use of the first to third floors in the East Building by the HSE for office use would contravene condition 1 of the grant of permission, which requires that the development be carried out in accordance with the plans and particulars submitted with the planning application.

In addition, whilst there is no specific condition expressly limiting the use of the East Building, I consider the use of the first to third floors in the East Building is "specified or included" in the permission, and the use of these floors by the HSE for general office use would be inconsistent with that use.

Therefore, it does comply with Article 10(b) and (c) of the Planning and Development Regulations 2001 and is not considered exempted development.

2.0 Decision on Cavan County Council

The Section 5 decision of Cavan County Council is included as **Appendix 3** and stated: -

Having regard to (1) the Planning and Development Act 2000, as amended, to (2) the Planning and Development Regulations 2001, as amended, and (3) to Class 2 and 3, Part 4, Schedule 2 of the Planning and Development Regulations, and (4) Article 10 of the Planning and Development Regulations 2001, the Planning Authority considers that the change of use of the first to third floors of the East Building from "ancillary office use" to use by the HSE for offices is not exempted development.

3.0 Assessment

While the Planning Officer reached their conclusion in respect of condition 1 that 'It is my opinion that this office use was to provide support to the motor car sales, which was the principal use of the East Building. Therefore, it is considered that the change of use of the first to third floors in the East Building by the HSE for office use would contravene condition 1 of the grant of permission', at no point have they elaborated on how they consider condition no 1 of the parent permission has been contravened.

For clarity the first condition of planning reg. ref. **05/876** stated: -

1. Development shall be carried out in accordance with plans and particulars submitted to and received by the Planning Authority on 08/06/2005 subject to the requirements of the following conditions.

In the interest of proper planning and sustainable development.

The first condition is a typical first condition about 'development', which was referring to the construction of the permitted buildings and not a 'use' condition governing the use or change of use of the building in the future after the permission has been implemented, and as every single act of development after a building is built would potentially result in a contravention of a generic condition no 1 as is set out above, the view taken by the Planning Officer would result in every single potential change of use being de exempted and that is not how planning legislation is constructed.

Therefore, it is considered that the Planning Officer is incorrect in their unsupported opinion that the proposed change of use would contravene condition no 1 of the original grant of permission and we ask the Board to address this matter in significantly more detail than has been done by the Planning Authority and find that the Planning Authority has erred in its conclusion.

The second element of the Planning Officer's opinion rests on the paragraph that states: -

In addition, whilst there is no specific condition expressly limiting the use of the East Building, I consider the use of the first to third floors in the East Building is "specified or included" in the permission, and the use of these floors by the HSE for general office use would be inconsistent with that use.

What they are effectively stating is that even though a change of use is not precluded, it is. Again, no evidence has been provided to support this opinion and if would have been beneficial if the Planning Officer had elaborated on how in their opinion a restriction was imposed on the grant of permission, even though it wasn't. There is not much more that can be said in respect of this element of the assessment in the absence of any evidence to support the opinion.

Part of the application letter that was submitted to Cavan County Council with the 2005 application provided the following information in respect of the upper floor office areas that are now subject to this referral and it was clearly noted that the upper floors were to be used by the then applicant/owners rather than for the car sales taking place at ground floor level.

The extract below also forms part of **Appendix 1**.

7. Building Areas & Uses.

The detached western building will be a Skoda motor sales facility, operated by Mr. Niall Brady. The central motor sales facility is intended for used car sales. The eastern motor sales facility will be an Audi dealership, completed in accordance with the Audi design concept. It is intended that the used car and Audi facility will be operated by Mr. Cathal Brady. There will be a Service Centre for the servicing of motors and supply of parts, with a public service reception area. The mezzanine level of the Skoda and used car facility will be for sales office purposes.

The first floor office level is sub-divided into Office Suite A and B, which will be ancillary to the used car sales and Audi facility respectively. These office suites are linked for fire safety and universal access reasons. They will share a roof terrace at first floor level.

The second and third floors, Office Suite C and D, are intended for use by the Brady family. Both floors are linked vertically by an accommodation stairs and are effectively a double-height volume.

It is considered that sufficient information has been submitted in the initial Review (**Appendix 1**) to demonstrate that the rationale behind the decision of Cavan County Council that the following change of use is not exempted development is incorrect:-

‘Whether the change of use of Unit 17, Kilmore Business Park, Dublin Road, Cavan, from ‘office ancillary’ to motor sales facilities to ‘office use’ to be occupied by HSE administrative services is or is not development and is or is not exempted development’.

It is requested that the Board overturns the determination of Cavan County Council and finds that in this particular case, the proposed change of use is exempted development.

Yours Sincerely



Joe Bonner



Joe Bonner BA MRUP Dip Env Eng Dip Proj Mgt MIPI

Nicholas O’Kane,
Senior Planner,
Planning Department
Farnham Street
Cavan

29th September 2021

Re: Section 5 Declaration – Planning and Development Act 2000 (as amended)
Planning Authority – Cavan County Council
Location – Unit 17, Kilmore Business park, Dublin Road, Cavan

Dear Nicholas,

On behalf of Mr. Donal Watters, owner of Unit 17, Kilmore Business Park, Dublin Road, Cavan, we are submitting a request in writing seeking a declaration from Cavan County Council under section 5 of the Planning and Development Act 2000 [as amended], on the following question: -

‘Whether the change of use of Unit 17, Kilmore Business Park, Dublin Road, Cavan, from ‘office ancillary’ to motor sales facilities to ‘office use’ to be occupied by HSE administrative services is or is not development and is or is not exempted development’.

The specific building to which this question in respect of proposed office use relates, is located at the first, second and third floors of the building above the Renault and Nissan car sales showrooms that operate at the ground and mezzanine floor levels on the western side of the Kilmore Business Park and to assist the Planning Authority in addressing the question posed, we have included a number of drawings prepared by Wynne Gormley Gilsean Architects and Surveyor including: -

- A Site Location Map
- A site layout plan with the outline of the extent of the existing/proposed office area outlined in red

- Existing and proposed floor plans of the basement, ground floor, first floor, second floor and third floor plan showing the existing and proposed layouts, including dimensions and floor areas.

The proposed occupants of the offices would be relocated administrative staff and backroom functions from Cavan General Hospital which is necessary in order to free up the limited quantum of floor space available within the hospital to meet the immediate requirements generated by the Covid-19 pandemic and immediate future space requirements that would enable the hospital operators to carry out necessary and daily functions, which are present there unable to do due to restrictions in space within the hospital in line with its mission statement as an Acute Hospital, which is: -

"To assure patients, the public, HSE and external regulators that the services provided in Cavan Monaghan Hospital are safe, efficient and effective and are designed and delivered to meet the needs of the population we serve."

Our interpretation of the grant of planning permission is set out below and concludes that the proposed occupation of the permitted offices by HSE administrative staff is exempted development and this view is supported by reference to the relevant sections of the Planning and Development legislation.

1.0 Description of Development 05/876

On 8th of June 2005 a planning application was submitted to Cavan County Council for a development of the following description and it is this application alone upon which we are relying and will refer to: -

Construct new motor sales & service facility, comprising **2 no. separate buildings** (1 no. 2-storey to west & 1 no. 5-storey to east) over a single storey basement car storage area –

West building with an overall area of 418m², consists of one motor sales with **mezzanine floor sales office**, toilets & anc accomm with overall height of 7.05m –

East building overall floor area of 2,690m² consists of 2 motor sales facilities (**one with mezzanine floor sales offices**), service workshop, parts dept, **anc. office & toilet accomm on 3 floors** with assoc ext. terraces & roof level plant room. Overall height to roof level plant room 18.125m. Basement car storage (incl ramp, wash & valeting) shall have floor area of 1,784m². Externally-development consists of staff, customer & display surface parking areas, free-standing & attached illumin signage, 9 flag poles, landscaping & treatment of site boundaries, access road & assoc vehicular entrances from ex business park, assoc drainage & anc works, Site 17.

The development was intended to be and is used as three car sales showrooms with mezzanine sales floors in two showrooms, with anc. (ancillary) offices to be located at upper levels. Ancillary¹ would be understood as:-
providing necessary support to the main work or activities of an organisation

The development was permitted for use as three car sales showrooms with mezzanine sales floors in two showrooms, with anc. (ancillary) offices to be located at upper levels.

The applicant's Planning Report submitted with the application stated that: -

The first floor office level is sub-divided into Office Suite A and B, which will be ancillary to the used car sales and Audi facility respectively. These office suites are linked for fire safety and universal access reasons. They will share a roof terrace at first floor level.

The second and third floors, Office Suite C and D, are intended for use by the Brady family. Both floors are linked vertically by an accommodation stairs and are effectively a double-height volume.

In an order dated 27th July 2005, Cavan County Council decided to grant permission for the development subject to the attachment of the 39 conditions.

The grant of permission was for the primary uses being

- motor sales and service facility

as well as two types of offices being: -

- mezzanine sales offices within two of the sales showrooms and
- anc. (ancillary) offices on 3 upper floors

Although the upper floor offices were constructed, the offices were never occupied, while the car sales showrooms and mezzanine level offices have been operating. It is now intended that administrative functions of the HSE, which do not involve face to face interaction with or visits from members of the public, would occupy the permitted but unoccupied office floors.

2.0 Applicant's Planning Report

The planning fee paid as part of the planning application was €19,300, which included a Class 4 floor area of 4,925m². As per Question 19 of the planning application form: -

19. (a) Appropriate fee for this application € 19,300
- (b) Method of assessment of fee (4,925 x €3.6) + (3 x €50) + (71 x €20)

PLEASE MARK ON ATTACHED LIST, CLASS OF DEVELOPMENT TO WHICH THIS APPLICATION RELATES. CLASS 4, 7b) & 9)

¹ [ancillary adjective - Definition, pictures, pronunciation and usage notes | Oxford Advanced Learner's Dictionary at OxfordLearnersDictionaries.com](http://OxfordLearnersDictionaries.com)

The application included a Planning Report, dated 30th May 2005, that set out the nature and extent of the development and several extracts are considered relevant including a breakdown of the proposed floor areas that equate to 4924.6m². The second and third floor offices have stated areas of 228.8m² and 189.4m² respectively, including roof terraces.

Schedule of Areas.

Schedule of Areas (Buildings)

Gross Basement area	1,784 sq.m.	
Gross Ground Floor area	1,785 sq.m	
Gross Mezzanine Floor area	208.4 sq.m	
Gross First Floor area (including terraces)	697 sq.m	
Gross Second Floor area (including terraces)	228.8 sq.m	
Gross Third Floor area (including terraces)	189.4 sq.m	
Roof Level Plant Room	32 sq.m.	
Total Development Area		4,924.6 m²

The first section of the Planning Report identified the applicant as: -

1. Applicant.

The applicant is Mr. Cathal Brady, 1 Roscolgan, Oldtown, Cavan. Mr. Brady, and his immediate family have a long association with the motor sales business, who have several motor facilities in Cavan.

It noted that as well as the proposed buildings that the Brady family had several other motor facilities in Cavan.

Paragraph 3 addressed 'Proposal' and refers to 1,004sq.m of ancillary office accommodation.

motor service centre and 1,004 sq.m. of ancillary office accommodation on three floors above ground floor level, including external terraces to the south at first floor level, to the south and west at second floor level and to the south and east at third floor level, and a roof level plant room.

Paragraph 7 set out the intended occupiers and users of the buildings, which even went as far as naming the car dealerships that will occupy the buildings and the persons who will operate the franchises.

7. Building Areas & Uses.

The detached western building will be a Skoda motor sales facility, operated by Mr. Niall Brady. The central motor sales facility is intended for used car sales. The eastern motor sales facility will be an Audi dealership, completed in accordance with the Audi design concept. It is intended that the used car and Audi facility will be operated by Mr. Cathal Brady. There will be a Service Centre for the servicing of motors and supply of parts, with a public service reception area. The mezzanine level of the Skoda and used car facility will be for sales office purposes.

The first floor office level is sub-divided into Office Suite A and B, which will be ancillary to the used car sales and Audi facility respectively. These office suites are linked for fire safety and universal access reasons. They will share a roof terrace at first floor level.

The second and third floors, Office Suite C and D, are intended for use by the Brady family. Both floors are linked vertically by an accommodation stairs and are effectively a double-height volume.

The basement provides car storage, car wash and valetting.

The floor areas were further broken down as follows: -

The gross floor area of these various elements are as follows;

1. Motor Sales Facilities:

Audi facility	451.7 sq.m.
Used car facility	410 sq.m. (of which 103.3 sq.m. is at mezzanine level)
Skoda facility	418 sq.m. (of which 105.4 sq.m. is at mezzanine level)

TOTAL 1,279.7 sq.m.

2. Service Facility: 641.3 sq.m.

3. Office: (excluding terraces)

Office Suite A; (Used Cars), First Floor	350 sq.m.
Office Suite B; (Audi) First Floor	276.4 sq.m.
Office Suite C; (Brady Family) Second Floor	213.8 sq.m.
Office Suite D; (Brady Family) Third Floor Penthouse	163.7 sq.m.

TOTAL 1,003.9 sq.m.

4. Basement Car Storage: 1,784 sq.m.

Area Summary:

Total development area (excluding basement car park & plant room) **3,108 sq.m.**

Site Area **6,660 sq.m**

3.0 Grant of Permission

In an order dated 27th July 2005, Cavan County Council decided to grant permission for the development subject to the attachment of the 39 conditions included in the Planning Officers report.

The first condition stated: -

1. Development shall be carried out in accordance with plans and particulars submitted to and received by the Planning Authority on 08/06/2005 subject to the requirements of the following conditions.

In the interest of proper planning and sustainable development.

The grant of permission was for the primary uses being: -

- motor sales and service facility

as well as two types of offices being: -

- mezzanine sales offices within two of the sales showrooms and
- anc. (ancillary) offices on 3 upper floors

Condition No. 20 states that: -

20. In the event of sub-letting or disposal by the developer/owner of the proposed complex (multi-development) or any part of the development the Planning Authority shall be so informed in advance and provision shall be made for separate water connection facilities to each portion under separate ownership/control.

In the interest of public health and amenity.

In Condition no 20, in granting permission, the Planning Authority clearly envisaged that there was a prospect in the future that part of the development may be disposed of by way of sale or sub-letting as is now envisaged (or multiple sales or sub lettings) and the only restriction imposed on the permission was that the Planning Authority would be notified in advance and that a separate water connection would be provided for each sub-letting or disposal.

In the event of sub-letting the offices as is now proposed it is necessary to notify the Planning Authority of the proposed sub-letting, but the purpose of notification is to make sure a separate water connection is installed and is not about any restrictions existing in respect of the right to change the use of any part of the permitted buildings by way of exempted development, which will be examined below.

The Planning Authority could have imposed a condition that stipulated that the use of all offices would only be permitted to be ancillary to the ground floor car showroom uses and that any other use other than ancillary car showroom would require a separate grant of permission or an agreement with the Planning Authority. No such condition was imposed.

The Planning Authority could also have restricted the change of use of the car showrooms to those users described in the application documents i.e., Audi and Skoda, but did not and when Blackstone Motors took control of the development it was not deemed necessary to seek planning permission to change the occupants of the buildings as the permission and use enure to the benefit of the land and buildings and not the initial applicants as is the case in respect of all planning applications.

No condition was imposed prohibiting or restricting a change of use of any part of the building including the permitted offices or the car showrooms themselves which are permitted to be changes to shops in certain circumstances as per Class 14 below (although that is not relevant to the mater being considered here).

4.0 Planning and Development Regulations 2001 (as amended)

A development can have more than a single use such as in this instance, car showrooms with integrated offices at the lower levels and separate ancillary offices at upper floor level.

Part 4 of Schedule 2 to the Regulations 'Exempted development – Classes of Use provides for certain changes of use to be exempted development including: -

Class 2

Use for the provision of

- (a) Financial services.
- (b) Professional services (other than health or medical services).
- (c) Any other services (including use as a betting office).
- (d) Where the services are provided principally to visiting members of the public

The permitted upper floor offices that were to be used as offices by the Brady family and are now proposed to be used as offices by the HSE, are not considered to be Class 2 uses, whereas the sales offices at mezzanine level would be a Class 2 use as they are visited by members of the public.

Class 3

The offices which are proposed to be leased by HSE, are permitted as offices with no distinction or restrictions on their use. Such office use comes within the scope of Class 3 of Part 4 of the Second Schedule to the Planning and Development Regulations 2001, as amended, which provides that the following is 'Change of use' is Exempted Development: -

Class 3

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

It is considered that the permitted (Brady family) and proposed (HSE) office uses are both Class 3 uses, so the restrictions on exemption imposed by Article 10 of the Planning and Development Regulations 2001 (as amended) must be considered. Article 10 (1) states: -

Article 10(1)

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 purpose 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.

4.1 Does the proposed use comply with Article 10?

(a) Involve the carrying out of any works other than works which are exempted development,

Response

It has been established that a change of use from one Office user to another Office user is a form of exempted development, by virtue of Class 3 of Part 4 of Schedule 2 to the Planning and Development Regulations 'Exempted development – Classes of Use'.

No restrictions were imposed through the grant of permission (reg. ref. 08/876) on any future change of use of the upper office floor from the originally proposed occupants to any other user.

What we will examine in this section is 'works' and not the proposed use itself.

Works are defined in Section 2 of the Planning and Development Act 2000 (as amended) as: -

"works" includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.

While it is considered that that the proposed change of use described in this referral submission is exempted development, the applicant has taken the precaution of applying for permission under planning reg. ref. 21/557: -

For change of use from 'office ancillary to motor sales facilities' to 'office use', and all associated works.

The approach taken by Mr Watters is consistent with the Supreme Court judgement of Fennelly J, from 29th July 2005¹, in *Fingal County Council -v- William P. Keeling & Sons Ltd.*, which overturned an earlier judgement of the High Court and found that:-

If a proposed development is, in fact and in law, an exempted development, no principle has been identified whereby the owner of land should be estopped from asserting the exemption merely by reason of the fact, and by nothing more, that he or she has made a perfectly proper and lawful application for planning permission. That would be to deprive him of a right at law by reason of his exercise of a different right, which would require cogent justification. There could be many perfectly good and even laudable reasons for taking the course of applying for a planning permission, where there is an arguable case for exemption. It might be done through oversight or mistake or merely

through an abundance of caution or to ensure that the planning situation was very clear on the sale of a property.

We refer the Planning Authority to a series of drawings that has been submitted as part of application 21/557 namely: -

Drawing Title	Drawing Number
Site Layout & Site Location Map	PL 20-027-001
Basement Floor Plan	PL 20-027-002
Ground Floor Plan	PL 20-027-003
Mezzanine Floor Plan	PL 20-027-004
First, Second, & Third Floor Plan	PL 20-027-005
Front & Rear Elevation	PL 20-027-006
Side Elevations	PL 20-027-007
Sections	PL 20-027-008

Having examined the plan elevations and sections, it is considered that the proposed works that are proposed as part of the HSE occupation of the offices would constitute exempted development and would not require planning permission.

Therefore, the proposed development would not *'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.

Response

The grant of permission issued by Cavan County Council under Planning reg. ref. 05/876 does not contain a condition that would be contravened by the proposed occupation of the permitted offices by the HSE provided as the office's would not be use by visiting members of the public.

Therefore, the proposed development would not *'Contravene a condition attached to a permission under the Act'*.

(c) Be inconsistent with any use specified or included in such a permission, or

Response

No use has been specified in the grant of permission under planning reg. ref. 05/876 other than the description of the development itself.

A view may be taken that permitted office use must permanently be ancillary to the car showrooms and cannot be changed, it has nevertheless been permitted for use as office space and to change from one class 3 office user to another is exempted development. If a building owner could not change an occupant/user of an office from one to another without a grant of permission, then the Classes of exempted development set out in Part 4 of Schedule 2 to the Planning and Development Regulations 2001 (as amended) would serve no purpose and would not be included in the Regulations.

A change of occupant/use from office to office is therefore exempted provided it complies with the restrictions imposed by Article 10 (a) to (d).

(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

Response

The permitted use is as office and while it has not been used as an office, the use of the building is office.

The proposed occupation of the offices by HSE administrative staff would not consist of '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'.

4.2 Article 10 (2)

Article 10 (2) (b) provides that: -

(b) Nothing in any class in Part 4 of the Schedule 2 shall include any use—

- (i) as an amusement arcade,**
- (ii) as a motor service station,**
- (iii) for the sale or leasing, or display for sale or leasing, of motor vehicles,**

From the above, it is clear that 'Class 4 office use' is viewed in planning terms to be a different Class of use to 'the sale or leasing, or display for sale or leasing of motor vehicles' which is the permitted use of the lower floors of the building at Kilmore Business Park.

5.0 Concluding Comments

Taking all matters into account, Mr Donal Watters can benefit from the exemption of change of permitted 'ancillary office use' to 'office use occupied by HSE administrative services' in accordance with the exemptions set out in Class 3 of Part 4 of the Second Schedule to the Planning and Development Regulations 2001a Class 26 of the Planning and Development Regulations 2001 (as amended), namely: -

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

The question posed is: -

'Whether the change of use of Unit 17, Kilmore Business Park, Dublin Road, Cavan, from 'office ancillary' to motor sales facilities to 'office use' to be occupied by HSE administrative services is or is not development and is or is not exempted development'.

We consider the following conclusion applies: -

The proposed change of use is exempted development.

Yours faithfully,



Joe Bonner

Appendix 1

Cover letter dated 29th August 2021 which was submitted to Cavan County Council including application form and drawings

REF: 20-027

31st September 2021

Cavan County Council,
Farnham Centre,
Farnham St,
Cavan.
Co. Cavan.

Re: Declaration from Cavan County Council under section 5 of the Planning and Development Act 2000 [as amended], on the following question: -

‘Whether the change of use of Unit 17, Kilmore Business Park, Dublin Road, Cavan, from ‘office ancillary’ to motor sales facilities to ‘office use’ to be occupied by HSE administrative services is or is not development and is or is not exempted development’.

Dear Sir/Madam,

Please find enclosed the following documentation: -

- Completed Section V Declaration Form
- Appropriate fee €80
- Planning Report
- 1 copy of PL 20-027-001 Site Layout & Site Location Map
- 1 copy of PL 20-027-002 Basement Floor Plan
- 1 copy of PL 20-027-003 Proposed Floor Plan
- 1 copy of PL 20-027-004 Mezzanine Floor Plan
- 1 copy of PL 20-027-005 First, Second & Third Floor Plan
- 1 copy of PL 20-027-006 Front & Rear Elevation
- 1 copy of PL 20-027-007 Side Elevations
- 1 copy of PL 20-027-008 Sections
- 1 copy of 20-027-001 Floor Plans - Existing

I trust the above to be in order.

Yours sincerely,



Enda Gilsenan
WGG Architects & Surveyors Ltd.

Directors:

Paruig Wynne MRIAI, RIBA, Registered Architect.

Martin Gormley B.Sc. (Hons) Dip. Surv.

Enda Gilsenan B.Sc. (Hons) Dip. Surv.

VAT No IE9852532Q

**Application for Declaration under Section V of the
Planning and Development Act 2000 (as amended)**



**Comhairle Contae
an Chabháin**
Cavan
County Council

1. Applicant's Name: Donal Watters
2. Applicant's Address: Unit 17,
Kilmore Business Park
Dublin Road, Cavan
3. Contact Telephone No: _____
4. Name and Address of Agent: Enda Gilsenan
Wynne Gormley Gilsenan
Architects & Surveyors Ltd
21 Church View, Cavan
5. Address to where correspondence to be sent: As above

6. Location of proposed development: Unit 17, Kilmore Business Park
Dublin Road, Cavan
7. Is this a Protected Structure or within the cartilage of a Protected
Structure? Yes No

8. Description of Proposed Development: Change of use of Unit 17, Kilmore Business Park, Dublin Road, Cavan, from 'office ancillary' to motor sales facilities to 'office use' to be occupied by HSE administrative services
9. Applicant's interest in site: Owner

Signed: Enda Gleason Date: 29.09.2021

Please submit the following with your application form:

- 1) Site Location Map
- 2) Site Layout Plan
- 3) Details of gross floor space of development (if applicable)
- 4) Dimensions of proposed development
- 5) Details of previous extensions
- 6) Fee €80

Please note that your application cannot be fully processed until the attached form and appropriate documentation have been submitted to the Planning

Department:

Planning Department

Cavan County Council

Johnston Central Library

Farnham Street

Cavan H12C9K1

Tel: (049) 4378300

plan@cavancoco.ie

Appendix 2

Planning Officer's Assessment of the Section 5 Declaration

MEMORANDUM

From	Bronagh Treanor Assistant Planner	To	Nicholas O’Kane Senior Planner
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Date 1st November 2021

RE: Application for Declaration under Section V of the Planning & Development Act 2000

Applicant	Donal Watters
Location	Unit 17, Kilmore Business Park, Dublin Road, Co. Cavan
Description	Whether the change of use from ‘office ancillary to motor sales facilities’ to office use to be occupied by HSE administrative services constitutes Exempted Development.

Site location

The proposed development is located in the townland of Killygarry, Dublin Road, Cavan. The site access is directly from the N3 National Route within the existing Kilmore Business Park. The site is located within the development boundary of Cavan Town & Environs Development Plan (2014-2020) and is zoned as ‘Enterprise/Employment’.

Planning History

05/876: permission granted to Cathal Brady to construct new motor sales & service facility, comprising 2 no. separate buildings (1 no. 2-storey to west & 1 no. 5-storey to east) over a single storey basement car storage area - west building with an overall area of 418m², consists of one motor sales with mezzanine floor sales office, toilets & anc accomm with overall height of 7.05m - east building overall floor area of 2,690m² consists of 2 motor sales facilities (one with mezzanine floor sales offices), service workshop, parts dept, anc. office & toilet accomm on 3 floors with assoc ext. terraces & roof level plant room. Overall height to roof level plant room 18.125m. Basement car storage (incl ramp, wash & valeting) shall have

floor area of 1,784m². Externally-development consists of staff, customer & display surface parking areas, free-standing & attached illumin signage, 9 flag poles, landscaping & treatment of site boundaries, access road & assoc vehicular entrances from ex business park, assoc drainage & anc works, Site 17.

Legislative Context

The development is located within both the Lough Oughter & Associated Loughs SAC buffer zone and the Lough Oughter SPA Buffer Zone, with the nearest SAC and SPA site being 3.8kms away (Lough Oughter SAC and SPA). Given the scale and location of the proposed development, I do not consider that an Appropriate Assessment would be required. This development would not involve works to a Protected Structure or within any other area designated for protection. There are no archaeological, historic or heritage sites in proximity that would be unduly impacted by the proposed development.

The proposal is assessed under Class 2 and Class 3 of Schedule 2, Part 4 of the Planning & Development Regulations, 2001, as amended:

Class 2: Use for the provision of—

- (a) financial services,
- (b) professional services (other than health or medical services),
- (c) any other services (including use as a betting office),

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

Class 3: Use as an office, other than a use to which class 2 of this Part of this Schedule applies.

Article 10 of the Planning & Development Regulations 2001 is also relevant:

Article 10 provides that 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 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 change of use consists of the resumption of a use which is not unauthorised and which has not been abandoned.

Assessment

This proposal relates to the change of use from 'office ancillary to motor sales facilities' to office use to be occupied by HSE administrative services. The specific building to which the proposed office use relates is located at the first, second and third floors of the building above the Renault and Nissan car sales showrooms that operate at the ground and mezzanine floor levels on the western side of the Kilmore Business Park.

This Section V application is accompanied by a Site Location Map, Site Layout Plan, Plans and Elevations and a Planning Report.

It is proposed to change the use of the office space to office use to be occupied by HSE administrative services. The gross floor area of the first, second and third floor offices is 999.5sqm.

I refer to the parent permission on site, approved under Planning Ref. 05/876 for the construction of a new motor sales and service facility which included development of the east building with ancillary office use. It is my opinion that this office use was to provide support to the motor car sales, which was the principal use of the East Building. Therefore, it is considered that the change of use of the first to third floors in the East Building by the HSE for office use would contravene condition 1 of the grant of permission, which requires that the development be carried out in accordance with the plans and particulars submitted with the planning application.

In addition, whilst there is no specific condition expressly limiting the use of the East Building, I consider the use of the first to third floors in the East Building is "specified or included" in the permission, and the use of these floors by the HSE for general office use would be inconsistent with that use.

Therefore, it does comply with Article 10(b) and (c) of the Planning and Development Regulations 2001 and is not considered exempted development.

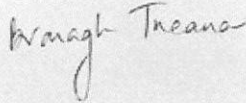
Conclusion

Considering the above, the proposed development would not constitute Exempted Development.

Recommendation

Having regard to (1) the Planning and Development Act 2000, as amended, to (2) the Planning and Development Regulations 2001, as amended, and (3) to Class 2 and 3, Part 4, Schedule 2 of the Planning and Development Regulations, and (4) Article 10 of the Planning and Development Regulations 2001, the Planning Authority considers that the change of use of the first to third floors of the East Building from "ancillary office use" to use by the HSE for offices is not exempted development.

PLANNER SIGNATURE



DATE: 01/11/2021

Appendix 3

Section 5 decision of Cavan County Council



Comhairle Contae an Chabháin
Cavan County Council

Ref: 281

1st November 2021

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Re: Application for Declaration under Section V of the Planning and Development Act 2000-2021 whether the change of use from 'office ancillary to motor sales facilities' to office use to be occupied by HSE administrative services constitutes Exempted Development

A Chara,

Having regard to (1) the Planning and Development Act 2000, as amended, to (2) the Planning and Development Regulations 2001, as amended, and (3) to Class 2 and 3, Part 4, Schedule 2 of the Planning and Development Regulations, and (4) Article 10 of the Planning and Development Regulations 2001, the Planning Authority considers that the change of use of the first to third floors of the East Building from "ancillary office use" to use by the HSE for offices is **not exempted development**.

Should you require any further assistance, please do not hesitate to contact our office.

Le meas,


Senior Staff Officer



