



An
Bord
Pleanála

Inspector's Report ABP-315056-22

Question

Whether the proposed change of use from shop to apartments is or is not development or is or is not exempted development.

Location

Bridge Street, Gort, Co. Galway.

Declaration

Planning Authority

Galway County Council

Planning Authority Reg. Ref.

ED22/49

Applicant for Declaration

Dean Raftery.

Planning Authority Decision

Is not exempted development

Referral

Referred by

Dean Raftery.

Owner/ Occupier

Applicant.

Observer(s)

None.

Date of Site Inspection

27th June 2023.

Inspector

Barry O'Donnell

4.0 Planning History

4.1. I encountered the following historic planning records pertaining to the site: -

10/1712: Permission granted on 7th March 2011 for retention of extension to rear of existing commercial premises and revised layout to existing premises, to that granted under Reg. Ref. 05/853.

06/4369: Permission granted on 15th January 2007 for change of use of existing retail unit 1 to use as a restaurant.

05/853: Permission granted on 29th August 2010 for construction of an extension to existing supermarket, extension to rear of 2 No. shop units adjacent to supermarket, conversion of first and second floors over supermarket and shop units to 4 No. apartments, new shopfront to front of supermarket and shop units and alterations to rear site access and associated site works.

04/1989: Permission granted on 6th September 2004 for extension to existing supermarket, new shopfront to supermarket and adjacent premises to south, conversion of ground floor shed to shop and alterations to rear site access and associated site works.

5.0 Policy Context

5.1. Galway County Development Plan 2022 - 2028

5.1.1. The site is located within the urban footprint of Gort, in south County Galway.

5.2. Gort Local Area Plan 2013 – 2023

5.2.1. The local area plan was extended for a further 5-year period, from 25th June 2018.

5.2.2. The site is subject to the 'C1 – Town Centre/Commercial' zoning. The site is also located within an Architectural Conservation Area, which encompasses the town centre area.

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.

7.2. Planning and Development Regulations 2001-2023

7.2.1. Article 10(6)(a) – Changes of Use

(a) In this sub-article— ‘habitable room’ means a room used for living or sleeping purposes but does not include a kitchen that has a floor area of less than 6.5 square metres;

‘relevant period’ means the period from 8 February 2018 until 31 December 2025.

(b) This sub-article relates to a proposed development, during the relevant period, that consists of a change of use to residential use from Class 1, 2, 3, 6 or 12 of Part 4 to Schedule 2.

(c) Notwithstanding sub-article (1), where in respect of a proposed development referred to in paragraph (b)—

(i) the structure concerned was completed prior to the making of the Planning and Development (Amendment) (No. 2) Regulations 2018,

(ii) the structure concerned has at some time been used for the purpose of its current use class, being Class 1, 2, 3, 6 or 12, and

(iii) the structure concerned, or so much of it that is the subject of the proposed development, has been vacant for a period of 2 years or more immediately prior to the commencement of the proposed development,

then the proposed development for residential use, and any related works, shall be exempted development for the purposes of the Act, subject to the conditions and limitations set out in paragraph (d).

(d)(i) The development is commenced and completed during the relevant period.

(ii) Subject to sub-paragraph (iii), any related works, including works as may be required to comply with sub-paragraph (vii), shall –

(I) primarily affect the interior of the structure,

(II) retain 50 per cent or more of the existing external fabric of the building, and

(III) within the relevant perimeter distance area, as set out in Table 2 of Schedule 8, of any type of establishment to which the Major Accident Regulations apply.

(xi) No development shall relate to matters in respect of which any of the restrictions set out in sub-paragraph (iv), (vii), (viiA), (viiB), (viiC), (viii) or (ix) of article 9(1)(a), or paragraph (c) or (d) of article (9)(1), would apply.

(xii) No development shall consist of or comprise the carrying out of works for the provision of an onsite wastewater treatment and disposal system to which the code of practice made by the Environmental Protection Agency pursuant to section 76 of the Environmental Protection Agency Act 1992 relates and entitled Code of Practice – Wastewater Treatment and Disposal Systems Serving Single Houses together with any amendment to that Code or any replacement for it.

(e)(i) Where a person proposes to undertake development to which paragraph (b) relates, then he or she shall in the case of development relating to Class 1, 2, 3, 6 or 12 of Part 4 to Schedule 2, notify in writing the planning authority in whose functional area that the change of use will occur not less than 14 days prior to the commencement of the works related to the proposed change of use and any related works;

(ii) Details of each notification under subparagraph (i), which shall include information on—

(I) the location of the structure,

(II) the number of residential units involved, including the unit sizes and number of bedrooms in each unit, and

(III) the Eircode for the relevant property,

shall be entered in a record by the planning authority maintained for this purpose and the record shall be available for inspection at the offices of the planning authority during office hours and on the planning authority's website.

(iii) During the years 2019, 2020, 2021, 2022, 2023, 2024, 2025 and 2026 each planning authority shall provide information to the Minister on the number of notifications received by it under this paragraph during the preceding calendar year, including details of the information so received for the purposes of subparagraph (ii).

7.2.2. Part 4, Schedule 2 – Exempted Development, Classes of Use

of any works in, on, over or under land, or the making of any material change in the use of any land or structures situated on land.

8.3. Is or is not exempted development

- 8.3.1. Article 10(6)(a) of the Planning and Development Regulations 2001 – 2023 provides an exempted development provision for '*a change of use to residential use from Class 1, 2, 3, 6 or 12 of Part 4 to Schedule 2.*' Of relevance to this referral, Class 1 of Part, Schedule relates to use as a shop.
- 8.3.2. The subject site has been the subject of a number of previous applications and, with particular reference to Reg. Refs. 10/1712 and 05/853, the applications indicate that the ground floor of each unit was in use as a shop and the first-floor areas were in use for storage/living accommodation. The floor plan drawings provided with Reg. Ref. 05/853 indicate that the area of the first floor closest to Bridge Street contained 2 No. apartments and the rear area was used for storage.
- 8.3.3. The following statements by the applicant are also noted to the claim of exemption under Article 10(6)(a): -
- The structure concerned contains what was previously a shop and associated first floor storage and this use was in place prior to the making of the Planning and Development (Amendment) (No. 2) Regulations 2018,
 - The affected area of the shop units have been vacant for more than 2 years.
- 8.3.4. In view of the above, I consider the subject units accord with Article 10(6)(a), subject to compliance with conditions and limitations contained within the Article.

8.4. Restrictions on exempted development

- 8.4.1. Article 10(6)(d)(i-xii) contains conditions and limitations pertaining to the exemption and are set out in Section 7.2.1 of my report. The following statements by the applicant regarding these conditions and limitations are noted: -

Criterion (i): The applicant states that the development will be commenced and completed within the relevant period.

- 8.4.5. Regarding access to natural light, each unit is provided with windows to all habitable rooms, on the south-east elevation. Units will therefore be well-lit in the mornings.
- 8.4.6. In my view, the proposed elevational changes to the building are minor in nature and accord with the conditions and limitations attached to Article 10(6)(d). No changes are proposed to the front (Bridge Street) elevation and I consider there will be no adverse effect on the character of the structure or the character of the streetscape.
- 8.4.7. As the applicant states, the development is not located within a special amenity area or an area of special planning control and is not affected by the Major Accidents Directive. I am also satisfied that the development does not conflict with restrictions set out in sub-paragraph (iv), (vii), (viiA), (viiB), (viiC), (viii) or (ix) of article 9(1)(a), or paragraph (c) or (d) of article (9)(1).
- 8.4.8. In view of my assessment, I conclude that the development accords with the conditions and limitations attached to Article 10(6) of the Regulations.

8.5. Appropriate Assessment

- 8.5.1. The subject site is not located within or adjacent to any designated European site, the closest such site being Coole-Garryland Complex SAC (Sie Code 000252), which is c.1.45km west. Coole-Garryland SPA (Site Code 004107) lies slightly further west.
- 8.5.2. The proposed development comprises a change of use, including conversion works, from a shop to apartments. The site is located in the town centre of Gort.
- 8.5.3. The development involves works which are minor in nature and, taken together with its locational context, I am satisfied that no issues arise in respect of Appropriate Assessment.

9.0 Recommendation

- 9.1. I recommend that the Board should decide this referral in accordance with the following draft order.

WHEREAS a question has arisen as to whether the change of use from shop to apartments is or is not development and is or is not exempted development.

to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.



Barry O'Donnell
Planning Inspector

17th July 2023.