

The Secretary  
An Bord Pleanála  
64 Marlborough Street  
Dublin 1  
D01 V902



22 November 2023

Dear Sir

**Re: 3A Church Lane, Rathmines, Dublin 6**

**An Bord Pleanála Reference: ABP-318321-23**  
**Dublin City Council Reference: EXPP 0319/23**

**Response to Section 5 Declaration Referral**

**1. Introduction**

This response has been prepared by IMG Planning Limited, 75 Fitzwilliam Lane, Dublin, D02 AK77, on behalf of Mrs. Irene Meagher of 47 Cowper Road, Rathmines, Dublin 6, the owner of the above property, in response to the Board's invitation dated 26 October 2023 to make observations on the referral to the Board by Mr. Marcus Hayes t/a John Hayes Cars of a Declaration issued by Dublin City Council on 26 September 2023 under Section 5 of the Planning and Development Act 2000 in respect of the above property.

**2. Application to Dublin City Council for a Declaration**

On 30 August 2023 the referrer applied to Dublin City Council for a Declaration on:

1. Whether the change of use of the property from a store/lock-up to a photography business is development which is not exempted development.
2. Whether the works carried out to the façade of the property is development which is not exempted development.
3. Whether the signage erected on the property is development which is not exempted development.

The application also raised other matters such as the payment of commercial rates and arrangements for bin collection.

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### **3. Observations**

On 5 September 2023 Dublin City Council invited our client, as the owner of the subject property, to submit views or comments on the application.

By letter dated 15 September 2023, detailed observations were made, which in summary were:

#### **3.1 Use of Premises**

Presently the property is in use as a commercial photographic studio that provides facilities for photographers and agencies to create images mainly of food products for use in marketing campaigns for those products and brands. There is no retail sales, items sold or cash exchanged on the premises. The studio does not provide services to the public and the facilities are provided only by prior appointment/arrangement. The current tenant, Thyme Studios, has been operating in the property since November 2020.

The current use is the latest in a number of commercial uses including for screen printing and the preparation/manufacturing of boards and the printing and the preparation of wall coverings, since the current owner purchased the property in September 1997 when the property was in use by a motor repair/paint shop business in conjunction with two adjoining separate properties on Church Lane occupied by George Dagg Motor Co. on the basis of a 35 year lease entered into in 1981, which was the renewal of a previous lease dating from November 1974. In approximately 2001, the motor repair/paint shop business ceased operating and the two adjoining separate properties were subsequently redeveloped as houses on foot of a planning permission granted in 2005.

The planning position since 1974 if not for many years prior to that, is therefore that the premises have been in 'light industrial' use as defined in the Planning and Development Regulations 2001, as amended, and that all previous users and the current user fall within that definition.

The matter of the use of the property has been the subject of a Planning Enforcement case - Reference: E0632/18 – which was closed on 13 September 2022. A Warning Letter dated 2 February 2022 stated that *"a business use is currently operating from with 3A Church Lane, Rathmines, Dublin 6, without the benefit of planning permission."* Pointedly the Warning Letter made no reference to *"a change of use of lock up to retail"* or *"resultant issues regarding car parking"*.

#### **3.2 Works Carried Out To the Façade**

The front of the premises has been altered. The existing framed glazed façade with double doors was installed in front of the original timber sliding door (that is closed outside of business hours for security) in September 2018 by a previous tenant.

It was submitted that the works carried out come within any objective assessment against the provisions of section 4(1)(h) of the Act - the glazed façade is within the original opening to the premises and the surrounds are in a dark muted colour and is

within the dimensions of the original opening to the premises and like the adjoining accesses; it maintains a recess behind the building line.

Accordingly, as the resulting appearance is consistent with the character of the structure and the appearance of neighbouring structures the works carried out are exempted development under Section 4(1)(h) of the Act.

### **3.3 Building Signage**

There is one sign on the property – on the right hand side of the front façade. The sign measures 10 inches square, or 0.0645 sq. m.

By reason of there being one sign that does not exceed 0.3 square metres in area and there being no restrictions on exemption in Article 9 (a) and (b) of the Planning and Development Regulations 2001-2023, as amended that would apply, the sign is exempted development under Class 5 in Part 2 of Schedule 2 of the Regulations.

### **3.4 Other Matters Raised**

The claim that commercial rates are not being collected for the property is simply not true and confirmation of the latest payment of same is provided.

The current tenant has their waste collected in the normal way by a commercial waste company and evidence of same is provided.

## **4. Decision by Dublin City Council**

On 26 September 2023 Dublin City Council issued a Declaration stating that the development is deemed exempted development within the meaning of the Planning and Development Act 2000 (as amended) and as set out under the Planning and Development Regulations 2001 (as amended) Article 10, Schedule 2 Part 2 Exempted Development and Schedule 2 Part 4 Change of Use.

### **4.1 Use of Premises**

The City Council considered that prior to the current use as a photography studio, the premises was in 'light industrial' use and not in use as a warehouse or as a repository. The previous use therefore falls within Class 4 'Use as a light industrial building' and not Class 5 'Use as a wholesale warehouse or as a repository' as stated by the referrer.

The current photography studio use of the premises is a 'light industrial' use and as the current use and prior previous uses fall within Class 4 Use, Schedule 2, Part 4:Change of Use of the Planning and Development Regulation 2001 (as amended) a material change of use has therefore not occurred.

### **4.2 Works carried out to the façade**

The City Council considered the appearance of glazed door would not materially affect the external appearance of the structure so as to render the appearance inconsistent

with the character of the structure or of neighbouring structures. The works carried out to the façade of the property are therefore considered exempted development under Section 4(1) of the Planning and Development Act, 2000 (as amended).

#### **4.3 Signage**

The sign on the property does not exceed the limitations in Class 5, Part 2 of Schedule 2 of the Planning and Development Regulations 2001 (as amended) and is considered exempted development.

### **5. Response to the Grounds of Referral**

The referrer has confined the grounds of referral to:

1. Whether the change of use of the property from a store/lock-up to a Photography Business is development which is not exempted development.
2. Whether the works carried out to the façade of the property is development which is not exempted development.

#### **5.1 Use of the Premises**

The referrer contends that the City Council's decision does not comply with planning legislation and case law. It is contended that it is not based on the established use (the pre-1963 use) of the property.

The referrer presents what is claimed to be incontrovertible evidence that the established use was a store/lock up (with ancillary residential) and that consequently, the current use represents material change of use for which planning permission is required.

As the issue is what the established use was in October 1964, the only relevance of the historic mapping (1830-1930) is to show that the subject property was originally built as an ancillary building to the main house fronting onto Rathmines Road Upper. The mapping does not add to the contention that on the appointed day the property was in use as a store/lock-up.

Valuation records do not reflect the permitted or established use of a property in planning terms; they are statements of what the valuation authority considers/understands the manner in which properties are used at a point in time and do not necessarily correspond with the manner in which they are actually used.

The valuation records submitted also do not support to the contention that was property was in use as a store/lock-up on the appointed day. The extract from 1935 precedes the appointed day by some number of years and does not demonstrate that the use was not changed between that year and the appointed day. The 1967 extract identifies the wrong property – correctly, the 1935 extract identifies the subject property being to the rear of 58 Rathmines Road Upper, but the property highlighted, stated to be a 'store', is to the rear of 60 Rathmines Road Upper.

We would agree with the City Council that the valuation records do not support the referrer's contention that the premises has been in continuous use as a store/lock-up since 1967.

As set out to the City Council in September 2023, since at least November 1974 the premises has been used by or in connection with a series of light industrial uses (uses that *"could be carried on or installed in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit"*) as defined in the Regulations.

In the assessment of applications for development at 10 Church Avenue, the property immediately to the north of 3A Church Lane, in March 2008 An Bord Pleanála's Inspector noted that *"(t)he adjoining two-storey premises on Church Lane is used as a garage and workshop"*. (Reference 2517/08; ABP PL29S.230077). In respect of a subsequent application, the City Council report of September 2009 noted that the building to the south was "an existing workshop" and An Bord Pleanála's Inspector noted in March 2010 that *"(t)he site is bounded to ..... the south by a workshop that was not open on the day of my inspection. It appears to be for private usage."* (Reference 3602/09; ABP PL29S.235095). Lastly, in respect of the planning application for the now residential development adjacent to the subject site, the description of the site states that the subject property is a 'workshop' and the City Council report notes that *"the existing development (on the western side of the lane) comprises substantially of old coach houses converted for mixed commercial uses"* (Reference 1684/05).

Finally, even in the event that notwithstanding the decision of City Council it is considered that a material change of use occurred subsequent to the cessation of the use connected with the motor repair/paint shop business in 2001, which the known chronology of the types of the uses in the premises since that time does not support, that material change of use to the current light industrial use occurred more than 7 years ago and therefore the provisions of section 157 (4)(a)(i) would apply in this instance.

## **5.2 Provisions of the Dublin City Development Plan**

The referrer includes extracts from the Dublin City Development Plan 2022-2028 where the use is identified as being within the 'media associated use' land use definition and an 'open for consideration' use under the zoning objective.

With respect, there is no relevance in this instance as to what Development Plan land-use definition the current use would fall under and whether it is a permitted in principle or open for consideration use under the applicable land use zoning objective. Whilst a Section 5 Declaration involves the exercise of planning judgment it does not involve a process for the evaluation of what is "proper planning and sustainable development" as set out in the Development Plan; rather it is designed to deal with whether or not something is or is not development or exempted development having regard to the Act and attendant Regulations.

### 5.3 Works Carried Out To the Façade

The referrer maintains that the current appearance of the premises is "*clearly inconsistent with the remainder of the laneway*"; not in keeping with the majority of the streetscape that is characterised as a number of car port doors for access to residential properties and accordingly is not exempted development.

For the following reasons, it is submitted that by any objective assessment of the alterations carried out against the provisions of section 4(1)(h), there are no grounds that support the referrer's contention in this regard.

Section 4(1)(h) of the Act states that development consisting of "*the carrying out of works for the maintenance, improvement or other alteration of any structure, being works ..... which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures*" is exempted development (our emphasis).

Taking each in turn:

*"Materially affects the external appearance of the structure"*

The glazed façade does not materially affect the external appearance of the structure - it is within the original opening to the premises and the surrounds are in a dark muted colour.

*"Renders the appearance inconsistent with the character of the structure or of neighbouring structures"*

The neighbouring structures on the same side of Church Lane consist of a stone wall in which there are 5 no. regularly spaced recessed garage and pedestrian doors of a contemporary timber design that serve the residential properties that front onto the lane. The framed glazed façade is within the dimensions of the original opening to the premises and like the adjoining accesses; it maintains a recess behind the building line. Accordingly, it is not accepted that the resulting appearance is in any way inconsistent with the appearance of neighbouring structures.

### 5.4 Other matters

#### 5.4.1 Parking and Access

The referrer states that "*The existing parking on Church Lane is designated to the existing residents*".

This is factually incorrect. The parking on Church Lane is 'Pay and Display' and 'Permit Parking' from 7.00am to 7.00pm Monday to Saturday. Any of the limited number of people who may have cause to visit the premises, by prior appointment only, are not precluded from parking in the spaces on the lane if a space is available, which in itself has the effect of limiting traffic movements on the lane. It should be noted that there is also 'Pay and Display' and 'Permit Parking' from 7.00am to 7.00pm Monday to Saturday on both sides of Church Avenue between Rathmines Road Lower and the

Church Lane/Church Gardens junction and on the northern side of Church Avenue up to the Castlewood Park junction.

#### **5.4.2 Commercial Rates**

The referrer *"takes great exception to the fact that commercial rates are not being collected for the property which is clearly being operated for commercial use"*. As was clarified to the City Council in the response to the application for a Declaration, this is simply not true. The occupier of the premises pays commercial rates and confirmation of the latest payment of same was provided.

#### **6. Conclusion**

We are obliged to the Board for this opportunity to comment on the Referral received.

We submit that the referrer has not presented grounds for the decision of the City Council in this instance to be overturned. It is therefore respectfully requested that the Board confirms the Declaration issued by the City Council that the current use does not constitute a material change of use for which planning permission is required and that the works carried out to the façade of the property are development and exempted development.

Yours faithfully



**Ian McGrandles MRTPI MIPI**  
**Director**

