



An Bord Pleanála,  
64 Marlborough Street,  
Rotunda,  
Dublin 1

<b>AN BORD PLEANÁLA</b>	
LDG-	<u>077965-25</u>
ABP-	
13 FEB 2025	
Fee: €	<u>220</u> Type: <u>cha</u>
Time: <u>17:14</u>	By: <u>Hand</u>

13<sup>th</sup> February 2025

**Re: Referral against the Declaration Under Section 5, attached to Galway City Council's Notification of Declaration Under Section 5 under Reg. Ref. S5.46.24.**

**Galway City Council Reg. Ref: S5.46.24**  
**Date of Planning Authority Decision: 17<sup>th</sup> January 2025**  
**Final Date for Lodgement of First Party Appeal: 14<sup>th</sup> February 2025**

Dear Sir/Madam,

Hughes Planning and Development Consultants, 85 Merrion Square, Dublin 2, have been instructed by our client, Krispy Kreme Ireland Limited, 6<sup>th</sup> Floor, 2 Grand Canal Square, Dublin 2, to submit a referral for the Declaration of Galway City Council for the following development which they deemed to be NOT Exempted Development:

*"Whether the change of use of a retail shop to a patisserie shop, is or is not development and if so, whether the development constitutes exempt development or does not constitute exempt development?"*

*"Whether works to provide for an internal fit-out, as a patisserie shop, is or is not development and if so, whether the development constitutes exempt development or does not constitute exempt development?"*

To support this referral, please find enclosed the following documentation:

- 1 no. cheque for the appropriate fee of €220.00;
- 2 no. copies of the Planning Referral Report prepared by Hughes Planning and Development Consultants.

The enclosed report sets out the grounds of referral in greater detail. As such, we request that An Bord Pleanála deem the proposed development to be Exempted Development. This referral is accompanied by the statutory fee of €220.00 and is being submitted within the appropriate timeframe.

Should you have any questions, please do not hesitate to contact the undersigned.

Yours Sincerely,

Kevin Hughes MIPI MRTPI  
Director for HPDC



**HUGHES**  
**PLANNING**  
& DEVELOPMENT CONSULTANTS

## REFERRAL OF SECTION 5 DECLARATION

GALWAY CITY COUNCIL REF. S5.46.24

CHANGE OF USE FROM RETAIL SHOP TO PATISSERIE SHOP

KRISPY KREME,  
NO. 27 WILLIAM STREET,  
GALWAY,  
H01 RP04

REFERRED ON 13<sup>TH</sup> FEBRUARY 2025 ON BEHALF OF:  
KRISPY KREME IRELAND LIMITED, 6<sup>TH</sup> FLOOR, 2 GRAND CANAL QUAY, DUBLIN 2



85 Merrion Square, Dublin 2, D02 FX60  
+353 (0)1 539 0710  
info@hpdc.ie  
www.hpdc.ie



The grounds for referral against the declaration are outlined in the subsequent sections of this report. As noted from the outset, we consider that the change of use and internal works are exempted development and as such, we respectfully request that An Bord Pleanála deem the proposal to be exempted development.

## 1.2 Summary of Grounds for Referral

The applicant's grounds for referral can be summarised by the following points:

- The unit is not a café, does not have internal seating and does not serve hot food or drinks. The unit is a patisserie shop for the sale of goods – these goods being doughnuts, merchandise and mineral drinks, to be consumed off the premises;
- The use of the subject unit shop does not fall under Section 5(1)(d), but under 5(1)(a) of the Planning and Development Regulations, 2001, as amended;
- The Retail Planning Guidelines Section A 1.2 provides a definition for the Types of Retail Goods. Food is listed as a convenience good. Therefore, the current use of the subject unit fits within Section 5(1)(a) as opposed to 5(1)(d). Donuts are a type of retail good according to the definition for retail goods included in the guidelines;
- There are multiple precedent cases whereby Declarations of Exempted Development have been issued which relate to the change of use from one type of retail shop use to another; and,
- It is contended the proposed development does not constitute a material change of use.

## 2.0 Site Description

The subject site comprises a ground floor unit (No. 27) within a three-storey mixed-use building on the southern side of William Street. A. Hartmann and Son, a watchmakers and jewellers, previously occupied units No. 27 and 29, however, have recently downsized and only occupy unit No. 29 now. The subject site occupies unit No. 27 currently and is in the centre of Galway City, on William Street, a prime location for a retail unit.

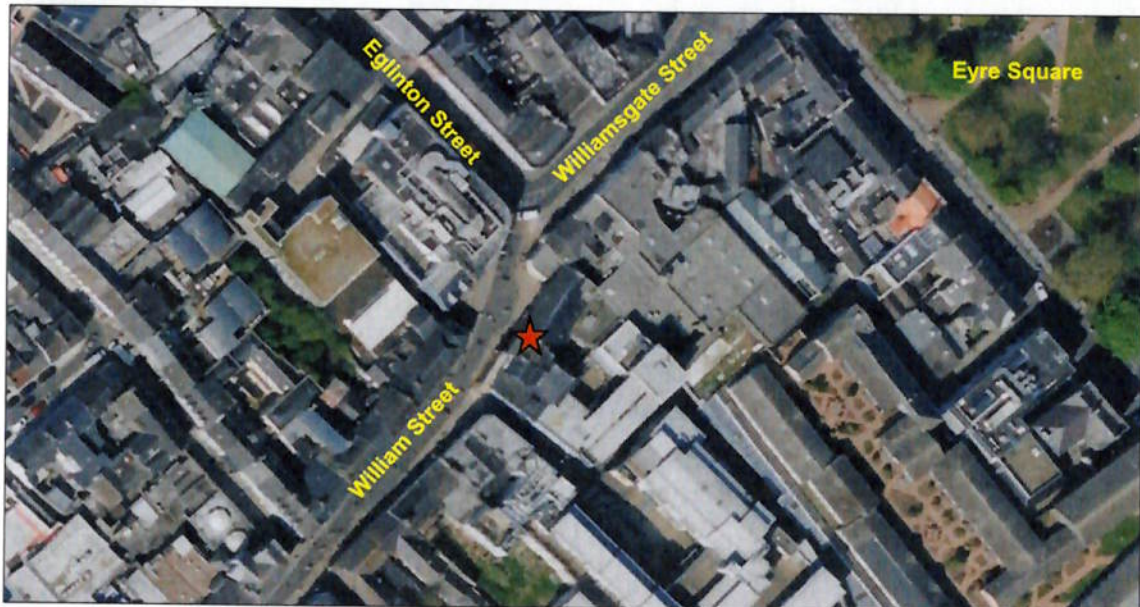


Figure 1.0 Aerial view of the subject site (outlined in red) within its immediate locational context.

### 3.0 Planning History

A review of the Galway City Council planning register revealed the following planning application pertaining to the subject unit.

On 19<sup>th</sup> December 2023, the Council made a decision to refuse permission under Reg. Ref. 23234 for development as follows:

*'to provide internal seating area to existing retail donut shop for sale of food and drinks for consumption within and off the premises in accordance with the lodged plans and documents to include and all associated/ancillary works.'*

The application was refused based on one reason as follows:

*The proposed provision of internal seating area to existing retail donut shop for sale of food and drinks for consumption within and off the premises would represent the conversion of existing retail use to retail service use (café type use) on a designated principal shopping street, William Street. The proposed development would, therefore, be contrary to Section 11.4 City Centre Area, sub-Section 11.4.5 Uses in the City Development Plan 2023-2029 which states the conversion of the ground floors of premises on the principal shopping streets from retail to non-retail uses, including retail services shall not be permitted. For these purposes the principal shopping streets are Williamsgate Street, William Street, Shop Street, Mainguard Street, High Street, Quay Street and Eyre Square (northwestern side). The proposed development would therefore be contrary to the policies of the City Development Plan and the proper planning and sustainable development of the area.*

The above application sought permission for internal seating, and for the sale of food and drinks for consumption on and off the premises. It is submitted that the subject unit does not comprise internal seating and does not sell food or drinks for consumption on the premises. The Section 5 to which this referral relates, has been prepared to clarify whether the change of use from a retail shop to a patisserie shop is or is not exempted development.

It is highlighted that an enforcement notice, Ref. UD 24/100, is open at the subject unit for alleged unauthorised change of use from retail to a café. This Section 5 seeks to regularise this enforcement notice. It is emphasised to the Board that there are no internal seats in the unit, nor does the unit sell hot drinks. The unit sells doughnuts, merchandise and mineral drinks for consumption off the premises. The unit is a patisserie shop, not a café, as stated by the Council.

It is contended that the change of use of an existing retail shop to a patisserie shop, which sells retail merchandise including doughnuts and mineral drinks, is exempted development and any works completed for the fit-out are also exempted development. The proceeding sections of this report will detail this further.

### 4.0 Works Completed

The works completed comprise internal fit-out works and upgrades to provide for a contemporary patisserie retail unit. Figure 4.0, overleaf, compares the previous occupier, 'A. Hartmann', and the existing occupier, Krispy Kreme, in the ground-floor unit. It is considered that the works internally do not affect the character of the building or area, and the unit still maintains a primary retail function.

It is noted the Krispy Kreme store sells various retail items, such as mugs, reusable coffee cups, coffee flasks, tote bags, socks, blankets, branded tee shirts, caps, keychains and hoodies. It is emphasised the sale of doughnuts is a retail use, given the product is bagged/boxed and consumed at home.



Figure 6.0 Imagery showing various products sold in Krispy Kreme stores.



Figure 7.0 Imagery showing various products sold in Krispy Kreme stores.

Krispy Kreme sells a variety of doughnut boxes in a range of sizes, including boxes of 12, 24 and 48 no. doughnuts. It is emphasised that most doughnuts sold by Krispy Kreme would be in bulk boxes. Customers that purchase bulk boxes of doughnuts would typically bring them to the office, event or their home for consumption, away from the premises. There is a clear similarity between a retail unit that sells cakes, for example, and a patisserie retail unit, to which this Section 5 referral relates in that both involve the sale of a retail good.

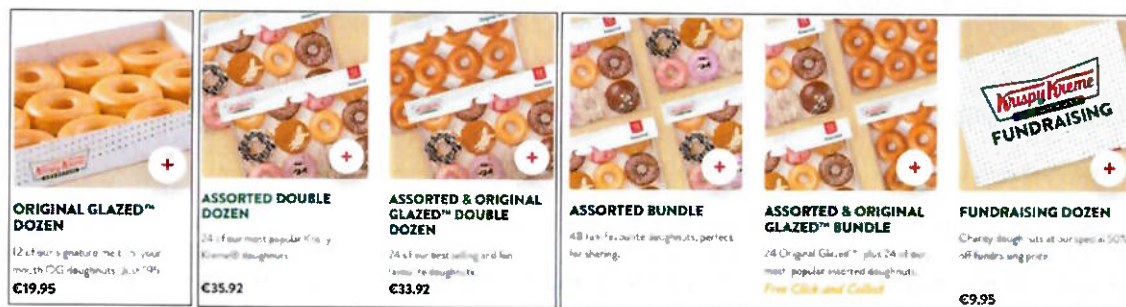


Figure 8.0 Details from the Krispy Kreme website, showing the option of doughnut boxes available for purchase.

It is highlighted that the works completed are minor and a retail unit remains with various items for sale inclusive of doughnuts. The unit does not comprise any internal seating and the purpose of the unit is to allow customers to purchase a product and **bring it home from the premises, similar to any other retail product**. The unit has a large space for customers to queue and pick products but will not allow customers to consume products on-site. It is contended that the works completed are exempted from development which the following section of this report will detail further.

The following planning legislation is justification, for this referral, and with regard to exempted developments and Section 5 applications: Under Part 1 - Section 2(1) of the Planning and Development Act 2000 (as amended), 'development' is assigned the meaning set out under Section 3(1) as follows:-

*"In this Act, 'development' means, except where the context otherwise requires, the carrying out of works on, in, over or under land or the making of any material change in the use of any structures or other land."*

In addition, Section 2(1) of the Act defines works as:

*"In this Act, '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."*

The development comprises the change of use of a retail shop to a patisserie shop and associated internal construction works to facilitate this, both of which are considered to constitute development. Therefore, a question must be asked whether the development constitutes exempted development?

### **Exempted Development**

It is submitted that the change of use from a retail shop to a patisserie shop constitutes exempted development under Article 5(1)(a) of the Planning and Development Regulations, as amended, given there it is not a material change of use. The minor internal works to facilitate the change of use are exempted development under Class 4(1)(h) of the Planning and Development Act 2000, as amended.

The following sections will firstly examine the change of use from retail shop to patisserie shop and justify its exemption. Secondly, the internal works completed will be justified as exempted from development.

## **6.1 Change of Use – Retail Shop to Patisserie Shop**

### **- Article 5**

Article 5 'Interpretation for this Part', sub-section (1), defines 'shop' as follows:

*"In this Act, 'shop' means a structure used for any or all of the following purposes, where the sale display of service is principally to visiting members of the public –*

- (a) for the retail sale of goods,*
- (b) as a post office,*
- (c) for the sale of tickets or as a travel agency,*
- (d) for the sales of sandwiches or other food or of wine for consumption off the premises, where the sale of such food or wine is subsidiary to the main retail use, and "wine" is defined as any intoxicating liquor which may be sold under a wine retailer's off-license (within the meaning of the Finance (1909-1910) Act, 1910), 10 Edw. 7. & 1 Geo. 5, c.8.*
- (e) for hairdressing,*
- (f) for the display of goods for sale,*
- (g) for the hiring of domestic or personal goods or articles,*
- (h) as a launderette or dry cleaners,*
- (i) for the reception of goods to be washed, cleaned or repaired,*

*but does not include any use associated with the provisions of funeral services or as a funeral home, or as a hotel, a restaurant or public house, or for the sale of hot food or intoxicating liquor for consumption off the premises except under paragraph (d), or any use to which Class 2 or 3 of Part 4 of Schedule 2 applies."*



The definition of development provided for in Section 2(1) of the Act involves 'works' and/or 'material change of use'. For development as defined for the purposes of Section 3(1) [development] of the Act to take place 'works' and/or 'material change of use' must occur.

The Inspector's Report noted the following:

8.1.10 'A frequently cited test to assist in determining whether a change of use is material or not, is that proffered by Barron, J in *The County of Galway v Lackagh Rock Ltd* [1984 21 MCA] for the determining of whether or not a material change of use has occurred. In this case, Barron, J considered that 'in determining whether or not a present use was materially different from a use being made on the appointed day one must look at matters which the planning authority would take into consideration if a planning application were made on both dates and if these matters were materially different, then, the present use must be equally materially different.'

8.1.11 'The case cited related to the intensification of use of a quarry.....The factors to be taken into consideration in assessing the intensification of use of a quarry are clearly dramatically different to the factors relevant to the operation of a shop as an artisan bakery. Nonetheless, the principle set out in the 'Lackagh Rock' case is instructive. In short, if the matters considered in assessing a planning application for an artisan bakery are materially different to the matters for consideration in the assessment of a planning application for a 'shop' (as defined under Article 5(1) of the Regulations) then the uses must be materially different and a change of use from one use to the other must be a material change of use.'

8.1.12 'In my opinion, the **use of Unit No.13 as an artisan retail bakery with ancillary café** etc. includes **certain factors that can reasonably be regarded as falling within the definition of a 'shop'** as provided under Article 5(1) of the Regulations viz. the sale of produce is principally to visiting members of the public; **the retail sale of goods is involved**; the sale of sandwiches and other food (subsidiary to the main retail use) for consumption off the premises occurs. Nonetheless, use as an artisan retail bakery also involves the installation and use of a kitchen, the operation of ovens (possibly by trained craftspeople/bakers), the importation of raw materials (ingredients for the baking of bread and other confectionery etc.) into the unit and the working of these raw materials in the baking of a finished product (bread and confectionery) for sale to visiting members of the public. **In my opinion these factors take the use as an artisan bakery outside the statutory definition of a 'shop'**. Use as a 'shop' allows for the operation of a laundrette or dry cleaners – activities that could arguably be regarded as similar in certain respects to the operation of a bakery (operation of machines etc.). However, I consider that the specific reference to laundry and dry cleaners within the definition provided in Article 5 highlights the fact that these are regarded as 'exceptions' to the more general provisions under Article 5. No such exception has been provided in respect of bakeries/artisan bakeries.'

In light of the above commentary, it is emphasised that the subject unit, Krispy Kreme, No. 27 William Street, does not involve, 'the installation and use of a kitchen, the operation of ovens (possibly by trained craftspeople/bakers), the importation of raw materials (ingredients for the baking of bread and other confectionery etc.) into the unit and the working of these raw materials in the baking of a finished product (bread and confectionery) for sale to visiting members of the public' as stated by the Inspector. The subject unit does not have cookers, ovens or kitchen facilities and no doughnuts are produced or cooked on site. **Therefore, in the context of the above commentary by the Inspector under ABP-305094-19, it is considered that the subject change of use would not be material and would be considered exempted development.**

It is emphasised to the Board that the subject unit will maintain the status of a 'shop', as it provides goods for customers to purchase and bring home with them. The previous occupier of the subject unit was 'A. Hartmann', a shop where customers could purchase jewellery, watches and rings. The unit is now occupied by Krispy Kreme and is still considered a shop given customers can purchase boxes of doughnuts and merchandise. There is no baking or food production, the unit Krispy Kreme sells doughnuts and merchandise similar to any other retail shop. It is contended the use of the subject unit for the sale of products maintains the status of a shop and is therefore not a material change of use. We ask the Board to have due regard to this fact and issue a declaration of exempted development.

*the area in which the development is proposed or, pending the variation of a development plan or local area plan, or the making of a new development plan or local area plan, in the draft variation of the development plan or the local area plan or the draft development plan or draft local area plan,*

We note that the proposal does not consist of the excavation, alteration or demolition of places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest.

*(viiA) consist of or comprise the excavation, alteration or demolition of any archaeological monument included in the Record of Monuments and Places, pursuant to section 12 (1) of the National Monuments (Amendment) Act 1994, save that this provision shall not apply to any excavation or any works, pursuant to and in accordance with a consent granted under section 14 or a licence granted under section 26 of the National Monuments Act 1930 (No. 2 of 1930) as amended,*

The proposed development will not comprise the excavation, alteration or demolition of any archaeological monument included in the Record of Monuments and Places.

*(viiB) comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site,*

It is considered that the continued use of the subject unit will not have an effect on the integrity of a European Site, therefore an appropriate assessment is not required.

*(viiC) consist of or comprise development which would be likely to have an adverse impact on an area designated as a natural heritage area by order made under section 18 of the Wildlife (Amendment) Act 2000.*

The proposal will not have an adverse impact on an area designated as a natural heritage area.

*(viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use,*

We note that the proposed development will not comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use.

*(ix) consist of the demolition or such alteration of a building or other structure as would preclude or restrict the continuance of an existing use of a building or other structure where it is an objective of the planning authority to ensure that the building or other structure would remain available for such use and such objective has been specified in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,*

In response to the above, it is submitted that the proposed development will not consist of the demolition of a building or structure that would restrict the continuance of an existing use of a building or other structure where it is an objective of the planning authority to ensure that the building or structure would remain available for use.

*(x) consist of the fencing or enclosure of any land habitually open to or used by the public during the 10 years preceding such fencing or enclosure for recreational purposes or as a means of access to any seashore, mountain, lakeshore, riverbank or other place of natural beauty or recreational utility,*

The fencing or enclosure of any land is not proposed as part of the development to which a Section 5 Declaration is sought.



The proposed works comprise alterations, repair and improvement works to the interior of the existing structure and minor works to the exterior as described above and in the architectural drawings submitted with the Section 5 application. Therefore, it is considered the fit-out works completed are exempted development under Section 4(1)(h) of the Act, given they are minor internal works to provide for the patisserie shop.

Further to the above, we note the following precedent for 'fit-out' works deemed exempted development in accordance with Section 4(1)(h): An Bord Pleanála determined that the 'works' at Newtown, Bruff, Co. Limerick, under ABP Ref. RL91.301092, are exempted development to which the Board concluded the, 'alterations to that were carried out to the exterior of the building are relatively minor and do not result in a material change' and 'As such, it is considered that these works constitute 'development' under Section 3, but also come within the scope of Section 4(1)(h) of the P & D Act 2000, as amended. As such, the said works are development and are exempted development.'

The completed works comprise repair and improvement works to the interior of the existing structure at Krispy Kreme, No. 27 William Street, Galway, H91 RP04. We submit that the proposed interior works, as outlined above, are consistent with Section 4(1)(h) of the Act in that they will not affect the character of the structure or any element of the structure and will result in an enhancement and activated street frontage that contributes to the function and visual amenity of the area. Further to the above, the improvements result in increased economic activity along St. Patrick's Street as appropriate.

Section 4(4) states:

*'Notwithstanding.....any regulations under subsection 2, development shall not be exempted development if an environmental impact assessment or appropriate assessment of the development is required.'*

It is noted the site is not located in an area which requires an environmental impact assessment or appropriate assessment.

## 7.0 Planning Precedents for Exempted Development

### 23, Main Street, Chapelizod, Dublin 20

#### **Reg. Ref. 0332/20**

Dublin City Council granted a Certificate of Exemption on 14<sup>th</sup> October 2020 for the use of a launderette as a bakery/café to serve food to go including sandwiches, soups and salads; inclusive of painting to the shopfront and a new internal partition wall, kitchen and preparation unit.

The Planner's Report made the following commentary:

*'The applicant proposes a bakery/cafe serving only food to go. Part 2, Exempted Development of the Planning and Development Regulations 2001 (as amended) Article 5(1) defines 'shop' as a structure used for any or all of the following purposes, where the sale, display or service is principally to visiting members of the public (d) for the sale of sandwiches or other food or of wine for consumption off the premises, where the sale of such food or wine is subsidiary to the main retail use, and "wine" is defined as any intoxicating liquor which may be sold under a wine retailer's off-licence (within the meaning of the Finance (1909-1910) Act, 1910), 10 Edw. 7. & 1 Geo. 5, c.8. **Having regard to the above, it is considered that use of the building as bakery serving only food to go which is subsidiary to the main retail use is deemed exempted development.***

### Unit 1, 22, Fassauga Avenue, Dublin

#### **Reg. Ref. 0529/05**

Dublin City Council granted a Certificate of Exemption on 31<sup>st</sup> August 2005 for the use of a shop to sell bakery products, delicatessen and take away tea/coffee and food platters for delivery.

**Appendix A** – Declaration issued by Galway City Council dated 17<sup>th</sup> January 2025.



Comhairle Cathrach na Gaillimhe  
Galway City Council

Halla na Cathrach  
Bóthar an Choláiste  
Gaillimh  
H91 X4K8

City Hall  
College Road  
Galway  
H91 X4K8

Our Ref: S5.46.24

Krispy Kreme Ireland Limited,  
c/o Kevin Hughes,  
Hughes Planning and Development Consultants,  
65 Merrion Square South,  
Dublin 2

17/01/2025

**Planning Declaration under Section 5 of the Planning & Development Act, 2000 (as amended) & the Planning & Development Regulations, 2001, (as amended).**

**Re:** "Whether the change of use of a retail shop to a patisserie shop is or is not development and if so, whether the development constitutes exempt development or does not constitute exempt development.

"Whether works to provide for an internal fit-out, as a patisserie shop, is or is not development and if so, whether the development constitutes exempt development or does not constitute exempt development".

**At:** Krispy Kreme Ireland Limited, No.27 William Street, Galway, H01 RP04

A Chara,

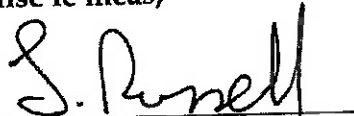
I refer to your recent application for a Declaration of Exemption under the provisions of the above and I wish to inform you that the proposed development is not an Exempted Development for the following reasons:

- The change of use of a retail shop to a patisserie shop (Krispy Kreme) and the associated works to provide for an internal fit-out' is development and does not constitute exempt development, as the sale of food is not subsidiary to the original retail, having regard to Article 5 (d), 6 & 9 of Part 1, Schedule 1 of the Planning and Development Regulations 2001 ( as amended), and Part 4 of Schedule 2, Class 1 of the Planning and Development Regulations 2001 ( as amended).

It must be emphasised that this opinion is given without prejudice to the provisions of Section 5(3) of the Planning & Development Act 2000 (as amended).

If applicants are dissatisfied with the determination of the Council in relation to a declaration of exempted development, then, within 4 weeks of the date that the declaration is issued by the Council, the person issued with the declaration can refer it to An Bord Pleanála for review of the matter.

Mise le meas,

A handwritten signature in dark ink, appearing to read 'S. Russell', written over a horizontal line.

Senior Planner  
Planning Department.





**HUGHES**  
**PLANNING**  
& DEVELOPMENT CONSULTANTS

## REFERRAL OF SECTION 5 DECLARATION

GALWAY CITY COUNCIL REF. S5.46.24

CHANGE OF USE FROM RETAIL SHOP TO PATISSERIE SHOP

KRISPY KREME,  
NO. 27 WILLIAM STREET,  
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REFERRED ON 13<sup>TH</sup> FEBRUARY 2025 ON BEHALF OF:  
KRISPY KREME IRELAND LIMITED, 6<sup>TH</sup> FLOOR, 2 GRAND CANAL QUAY, DUBLIN 2



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## 1.2 Summary of Grounds for Referral

The applicant's grounds for referral can be summarised by the following points:

- The unit is not a café, does not have internal seating and does not serve hot food or drinks. The unit is a patisserie shop for the sale of goods – these goods being doughnuts, merchandise and mineral drinks, to be consumed off the premises;
- The use of the subject unit shop does not fall under Section 5(1)(d), but under 5(1)(a) of the Planning and Development Regulations, 2001, as amended;
- The Retail Planning Guidelines Section A 1.2 provides a definition for the Types of Retail Goods. Food is listed as a convenience good. Therefore, the current use of the subject unit fits within Section 5(1)(a) as opposed to 5(1)(d). Donuts are a type of retail good according to the definition for retail goods included in the guidelines;
- There are multiple precedent cases whereby Declarations of Exempted Development have been issued which relate to the change of use from one type of retail shop use to another; and,
- It is contended the proposed development does not constitute a material change of use.

## 2.0 Site Description

The subject site comprises a ground floor unit (No. 27) within a three-storey mixed-use building on the southern side of William Street. A. Hartmann and Son, a watchmakers and jewellers, previously occupied units No. 27 and 29, however, have recently downsized and only occupy unit No. 29 now. The subject site occupies unit No. 27 currently and is in the centre of Galway City, on William Street, a prime location for a retail unit.

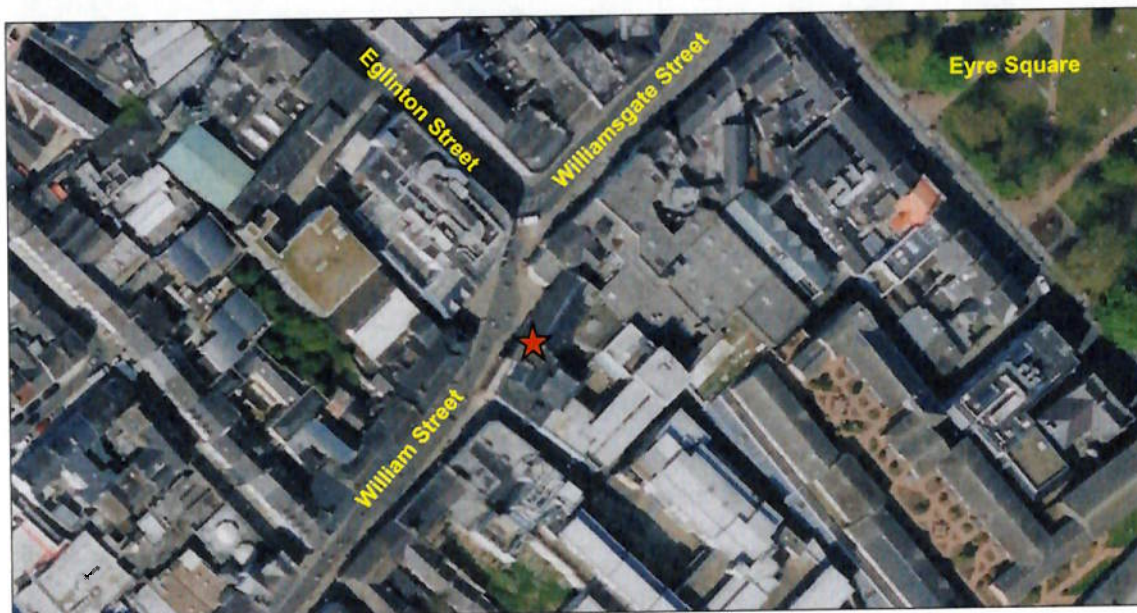


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*'to provide internal seating area to existing retail donut shop for sale of food and drinks for consumption within and off the premises in accordance with the lodged plans and documents to include and all associated/ancillary works.'*

The application was refused based on one reason as follows:

*The proposed provision of internal seating area to existing retail donut shop for sale of food and drinks for consumption within and off the premises would represent the conversion of existing retail use to retail service use (café type use) on a designated principal shopping street, William Street. The proposed development would, therefore, be contrary to Section 11.4 City Centre Area, sub-Section 11.4.5 Uses in the City Development Plan 2023-2029 which states the conversion of the ground floors of premises on the principal shopping streets from retail to non-retail uses, including retail services shall not be permitted. For these purposes the principal shopping streets are Williamsgate Street, William Street, Shop Street, Mainguard Street, High Street, Quay Street and Eyre Square (northwestern side). The proposed development would therefore be contrary to the policies of the City Development Plan and the proper planning and sustainable development of the area.*

The above application sought permission for internal seating, and for the sale of food and drinks for consumption on and off the premises. It is submitted that the subject unit does not comprise internal seating and does not sell food or drinks for consumption on the premises. The Section 5 to which this referral relates, has been prepared to clarify whether the change of use from a retail shop to a patisserie shop is or is not exempted development.

It is highlighted that an enforcement notice, Ref. UD 24/100, is open at the subject unit for alleged unauthorised change of use from retail to a café. This Section 5 seeks to regularise this enforcement notice. It is emphasised to the Board that there are no internal seats in the unit, nor does the unit sell hot drinks. The unit sells doughnuts, merchandise and mineral drinks for consumption off the premises. The unit is a patisserie shop, not a café, as stated by the Council.

It is contended that the change of use of an existing retail shop to a patisserie shop, which sells retail merchandise including doughnuts and mineral drinks, is exempted development and any works completed for the fit-out are also exempted development. The proceeding sections of this report will detail this further.

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Figure 6.0 Imagery showing various products sold in Krispy Kreme stores.



Figure 7.0 Imagery showing various products sold in Krispy Kreme stores.

Krispy Kreme sells a variety of doughnut boxes in a range of sizes, including boxes of 12, 24 and 48 no. doughnuts. It is emphasised that most doughnuts sold by Krispy Kreme would be in bulk boxes. Customers that purchase bulk boxes of doughnuts would typically bring them to the office, event or their home for consumption, away from the premises. There is a clear similarity between a retail unit that sells cakes, for example, and a patisserie retail unit, to which this Section 5 referral relates in that both involve the sale of a retail good.



Figure 8.0 Details from the Krispy Kreme website, showing the option of doughnut boxes available for purchase.

It is highlighted that the works completed are minor and a retail unit remains with various items for sale inclusive of doughnuts. The unit does not comprise any internal seating and the purpose of the unit is to allow customers to purchase a product and **bring it home from the premises, similar to any other retail product**. The unit has a large space for customers to queue and pick products but will not allow customers to consume products on-site. It is contended that the works completed are exempted from development which the following section of this report will detail further.



The following planning legislation is justification, for this referral, and with regard to exempted developments and Section 5 applications: Under Part 1 - Section 2(1) of the Planning and Development Act 2000 (as amended), 'development' is assigned the meaning set out under Section 3(1) as follows:-

*"In this Act, 'development' means, except where the context otherwise requires, the carrying out of works on, in, over or under land or the making of any material change in the use of any structures or other land."*

In addition, Section 2(1) of the Act defines works as:

*"In this Act, '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."*

The development comprises the change of use of a retail shop to a patisserie shop and associated internal construction works to facilitate this, both of which are considered to constitute development. Therefore, a question must be asked whether the development constitutes exempted development?

### **Exempted Development**

It is submitted that the change of use from a retail shop to a patisserie shop constitutes exempted development under Article 5(1)(a) of the Planning and Development Regulations, as amended, given there it is not a material change of use. The minor internal works to facilitate the change of use are exempted development under Class 4(1)(h) of the Planning and Development Act 2000, as amended.

The following sections will firstly examine the change of use from retail shop to patisserie shop and justify its exemption. Secondly, the internal works completed will be justified as exempted from development.

## **6.1 Change of Use – Retail Shop to Patisserie Shop**

### **- Article 5**

Article 5 'Interpretation for this Part', sub-section (1), defines 'shop' as follows:

*"In this Act, 'shop' means a structure used for any or all of the following purposes, where the sale display of service is principally to visiting members of the public –*

- (a) for the retail sale of goods,*
- (b) as a post office,*
- (c) for the sale of tickets or as a travel agency,*
- (d) for the sales of sandwiches or other food or of wine for consumption off the premises, where the sale of such food or wine is subsidiary to the main retail use, and "wine" is defined as any intoxicating liquor which may be sold under a wine retailer's off-license (within the meaning of the Finance (1909-1910) Act, 1910), 10 Edw. 7. & 1 Geo. 5, c.8.*
- (e) for hairdressing,*
- (f) for the display of goods for sale,*
- (g) for the hiring of domestic or personal goods or articles,*
- (h) as a launderette or dry cleaners,*
- (i) for the reception of goods to be washed, cleaned or repaired,*

*but does not include any use associated with the provisions of funeral services or as a funeral home, or as a hotel, a restaurant or public house, or for the sale of hot food or intoxicating liquor for consumption off the premises except under paragraph (d), or any use to which Class 2 or 3 of Part 4 of Schedule 2 applies."*

The definition of development provided for in Section 2(1) of the Act involves 'works' and/or 'material change of use'. For development as defined for the purposes of Section 3(1) [development] of the Act to take place 'works' and/or 'material change of use' must occur.

The Inspector's Report noted the following:

8.1.10 'A frequently cited test to assist in determining whether a change of use is material or not, is that proffered by Barron, J in *The County of Galway v Lackagh Rock Ltd* [1984 21 MCA] for the determining of whether or not a material change of use has occurred. In this case, Barron, J considered that 'in determining whether or not a present use was materially different from a use being made on the appointed day one must look at matters which the planning authority would take into consideration if a planning application were made on both dates and if these matters were materially different, then, the present use must be equally materially different.'

8.1.11 'The case cited related to the intensification of use of a quarry.....The factors to be taken into consideration in assessing the intensification of use of a quarry are clearly dramatically different to the factors relevant to the operation of a shop as an artisan bakery. Nonetheless, the principle set out in the 'Lackagh Rock' case is instructive. In short, if the matters considered in assessing a planning application for an artisan bakery are materially different to the matters for consideration in the assessment of a planning application for a 'shop' (as defined under Article 5(1) of the Regulations) then the uses must be materially different and a change of use from one use to the other must be a material change of use.'

8.1.12 'In my opinion, the **use of Unit No.13 as an artisan retail bakery with ancillary café etc. includes certain factors that can reasonably be regarded as falling within the definition of a 'shop'** as provided under Article 5(1) of the Regulations viz. the sale of produce is principally to visiting members of the public; **the retail sale of goods is involved**; the sale of sandwiches and other food (subsidiary to the main retail use) for consumption off the premises occurs. Nonetheless, use as an artisan retail bakery also involves the installation and use of a kitchen, the operation of ovens (possibly by trained craftspeople/bakers), the importation of raw materials (ingredients for the baking of bread and other confectionery etc.) into the unit and the working of these raw materials in the baking of a finished product (bread and confectionery) for sale to visiting members of the public. **In my opinion these factors take the use as an artisan bakery outside the statutory definition of a 'shop'**. Use as a 'shop' allows for the operation of a launderette or dry cleaners – activities that could arguably be regarded as similar in certain respects to the operation of a bakery (operation of machines etc.). However, I consider that the specific reference to laundry and dry cleaners within the definition provided in Article 5 highlights the fact that these are regarded as 'exceptions' to the more general provisions under under Article 5. No such exception has been provided in respect of bakeries/artisan bakeries.'

In light of the above commentary, it is emphasised that the subject unit, Krispy Kreme, No. 27 William Street, does not involve, 'the installation and use of a kitchen, the operation of ovens (possibly by trained craftspeople/bakers), the importation of raw materials (ingredients for the baking of bread and other confectionery etc.) into the unit and the working of these raw materials in the baking of a finished product (bread and confectionery) for sale to visiting members of the public' as stated by the Inspector. The subject unit does not have cookers, ovens or kitchen facilities and no doughnuts are produced or cooked on site. **Therefore, in the context of the above commentary by the Inspector under ABP-305094-19, it is considered that the subject change of use would not be material and would be considered exempted development.**

It is emphasised to the Board that the subject unit will maintain the status of a 'shop', as it provides goods for customers to purchase and bring home with them. The previous occupier of the subject unit was 'A. Hartmann', a shop where customers could purchase jewellery, watches and rings. The unit is now occupied by Krispy Kreme and is still considered a shop given customers can purchase boxes of doughnuts and merchandise. There is no baking or food production, the unit Krispy Kreme sells doughnuts and merchandise similar to any other retail shop. It is contended the use of the subject unit for the sale of products maintains the status of a shop and is therefore not a material change of use. We ask the Board to have due regard to this fact and issue a declaration of exempted development.

*the area in which the development is proposed or, pending the variation of a development plan or local area plan, or the making of a new development plan or local area plan, in the draft variation of the development plan or the local area plan or the draft development plan or draft local area plan,*

We note that the proposal does not consist of the excavation, alteration or demolition of places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest.

*(viiA) consist of or comprise the excavation, alteration or demolition of any archaeological monument included in the Record of Monuments and Places, pursuant to section 12 (1) of the National Monuments (Amendment) Act 1994, save that this provision shall not apply to any excavation or any works, pursuant to and in accordance with a consent granted under section 14 or a licence granted under section 26 of the National Monuments Act 1930 (No. 2 of 1930) as amended,*

The proposed development will not comprise the excavation, alteration or demolition of any archaeological monument included in the Record of Monuments and Places.

*(viiB) comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site,*

It is considered that the continued use of the subject unit will not have an effect on the integrity of a European Site, therefore an appropriate assessment is not required.

*(viiC) consist of or comprise development which would be likely to have an adverse impact on an area designated as a natural heritage area by order made under section 18 of the Wildlife (Amendment) Act 2000.*

The proposal will not have an adverse impact on an area designated as a natural heritage area.

*(viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use,*

We note that the proposed development will not comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use.

*(ix) consist of the demolition or such alteration of a building or other structure as would preclude or restrict the continuance of an existing use of a building or other structure where it is an objective of the planning authority to ensure that the building or other structure would remain available for such use and such objective has been specified in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,*

In response to the above, it is submitted that the proposed development will not consist of the demolition of a building or structure that would restrict the continuance of an existing use of a building or other structure where it is an objective of the planning authority to ensure that the building or structure would remain available for use.

*(x) consist of the fencing or enclosure of any land habitually open to or used by the public during the 10 years preceding such fencing or enclosure for recreational purposes or as a means of access to any seashore, mountain, lakeshore, riverbank or other place of natural beauty or recreational utility,*

The fencing or enclosure of any land is not proposed as part of the development to which a Section 5 Declaration is sought.

The proposed works comprise alterations, repair and improvement works to the interior of the existing structure and minor works to the exterior as described above and in the architectural drawings submitted with the Section 5 application. Therefore, it is considered the fit-out works completed are exempted development under Section 4(1)(h) of the Act, given they are minor internal works to provide for the patisserie shop.

Further to the above, we note the following precedent for 'fit-out' works deemed exempted development in accordance with Section 4(1)(h): An Bord Pleanála determined that the 'works' at Newtown, Bruff, Co. Limerick, under ABP Ref. RL91.301092, are exempted development to which the Board concluded the, 'alterations to that were carried out to the exterior of the building are relatively minor and do not result in a material change' and 'As such, it is considered that these works constitute 'development' under Section 3, but also come within the scope of Section 4(1)(h) of the P & D Act 2000, as amended. As such, the said works are development and are exempted development.'

The completed works comprise repair and improvement works to the interior of the existing structure at Krispy Kreme, No. 27 William Street, Galway, H91 RP04. We submit that the proposed interior works, as outlined above, are consistent with Section 4(1)(h) of the Act in that they will not affect the character of the structure or any element of the structure and will result in an enhancement and activated street frontage that contributes to the function and visual amenity of the area. Further to the above, the improvements result in increased economic activity along St. Patrick's Street as appropriate.

Section 4(4) states:

*'Notwithstanding.....any regulations under subsection 2, development shall not be exempted development if an environmental impact assessment or appropriate assessment of the development is required.'*

It is noted the site is not located in an area which requires an environmental impact assessment or appropriate assessment.

## 7.0 Planning Precedents for Exempted Development

### 23, Main Street, Chapelizod, Dublin 20

**Reg. Ref. 0332/20** Dublin City Council granted a Certificate of Exemption on 14<sup>th</sup> October 2020 for the use of a launderette as a bakery/café to serve food to go including sandwiches, soups and salads; inclusive of painting to the shopfront and a new internal partition wall, kitchen and preparation unit.

The Planner's Report made the following commentary:

*'The applicant proposes a bakery/cafe serving only food to go. Part 2, Exempted Development of the Planning and Development Regulations 2001 (as amended) Article 5(1) defines 'shop' as a structure used for any or all of the following purposes, where the sale, display or service is principally to visiting members of the public (d) for the sale of sandwiches or other food or of wine for consumption off the premises, where the sale of such food or wine is subsidiary to the main retail use, and "wine" is defined as any intoxicating liquor which may be sold under a wine retailer's off-licence (within the meaning of the Finance (1909-1910) Act, 1910), 10 Edw. 7. & 1 Geo. 5, c.8. **Having regard to the above, it is considered that use of the building as bakery serving only food to go which is subsidiary to the main retail use is deemed exempted development.***

### Unit 1, 22, Fassagh Avenue, Dublin

**Reg. Ref. 0529/05** Dublin City Council granted a Certificate of Exemption on 31<sup>st</sup> August 2005 for the use of a shop to sell bakery products, delicatessen and take away tea/coffee and food platters for delivery.



**Appendix A** – Declaration issued by Galway City Council dated 17<sup>th</sup> January 2025.



# Comhairle Cathrach na Gaillimhe Galway City Council

Halla na Cathrach  
Bóthar an Choláiste  
Gaillimh  
H91 X4K8

City Hall  
College Road  
Galway  
H91 X4K8

Our Ref: S5.46.24

Krispy Kreme Ireland Limited,  
c/o Kevin Hughes,  
Hughes Planning and Development Consultants,  
65 Merrion Square South,  
Dublin 2

17 /01/2025

**Planning Declaration under Section 5 of the Planning & Development Act, 2000 (as amended) & the Planning & Development Regulations, 2001, (as amended).**

**Re:** "Whether the change of use of a retail shop to a patisserie shop is or is not development and if so, whether the development constitutes exempt development or does not constitute exempt development.

"Whether works to provide for an internal fit-out, as a patisserie shop, is or is not development and if so, whether the development constitutes exempt development or does not constitute exempt development".

**At:** Krispy Kreme Ireland Limited, No.27 William Street, Galway, H01 RP04

A Chara,

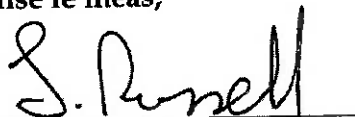
I refer to your recent application for a Declaration of Exemption under the provisions of the above and I wish to inform you that the proposed development is not an Exempted Development for the following reasons:

- **The change of use of a retail shop to a patisserie shop (Krispy Kreme) and the associated works to provide for an internal fit-out' is development and does not constitute exempt development, as the sale of food is not subsidiary to the original retail, having regard to Article 5 (d), 6 & 9 of Part 1, Schedule 1 of the Planning and Development Regulations 2001 ( as amended), and Part 4 of Schedule 2, Class 1 of the Planning and Development Regulations 2001 ( as amended).**

It must be emphasised that this opinion is given without prejudice to the provisions of Section 5(3) of the Planning & Development Act 2000 (as amended).

If applicants are dissatisfied with the determination of the Council in relation to a declaration of exempted development, then, within 4 weeks of the date that the declaration is issued by the Council, the person issued with the declaration can refer it to An Bord Pleanála for review of the matter.

Mise le meas,

A handwritten signature in dark ink, appearing to read 'S. Russell', written over a horizontal line.

Senior Planner  
Planning Department.

**Daniel O'Connor**

---

**From:** Bord  
**Sent:** Tuesday 18 February 2025 08:51  
**To:** Appeals2  
**Subject:** FW: ABP Ref- 321727 Mixed use development at - Innplot, Oranmore, Co Galway  
**Attachments:** ABP Appeal 2461432 Innplot Oranmore .pdf; Acknowledgement.pdf

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**From:** Derrick Hambleton <derrickhambleton59@gmail.com>  
**Sent:** Monday 17 February 2025 21:07  
**To:** Bord <bord@pleanala.ie>  
**Subject:** ABP Ref- 321727 Mixed use development at - Innplot, Oranmore, Co Galway

**Caution:** This is an **External Email** and may have malicious content. Please take care when clicking links or opening attachments. When in doubt, contact the ICT Helpdesk.

Secretary,

Please accept the attached PDF Observation and acknowledgement to an appeal made to the refusal as detailed.

Yours faithfully

Derrick Hambleton  
Sec An Taisce Planning Committee

re 26 Manor Avenue  
Kingston  
Galway  
H91 C98X.

An Taisce  
The National Trust for Ireland

Galway Association – Planning Committee

An Bord Pleanála

64 Marlborough Street,

Dublin 1, D01 V902

17<sup>th</sup> February 2025

Planning reference - Bord Pleanála Case reference: PL07.321727. Case Reference: 2461432

Description: Construction of 16 residential units and 4 retail units, together with all associated site works at Innplot, Oranmore, Co. Galway

A Chara

We refer to Section 10.1 of the appeal submitted against the refusal by Galway County Council of this application which follows

**10.0 REFUSAL REASON 7: WATER SERVICES**

**10.1** The refusal reason states the following: *"In the absence of any details submitted or file from Irish Water relating to consent to connect to the public waste and water infrastructure to serve the proposed*

*Architectural and Urban Design Statement, UrbanARQ, September 2024, p. 6.*

RW Nowlan & Associates

page 13

Project No: 50.03/2024

Oranmore County Galway

*development, it is considered that the development if permitted as proposed, would be contrary to Policy Objective WS4 and DM Standard 36 of the Galway County Development Plan, 2022-2028, and would be contrary to the proper planning and sustainable development of the area."*

**10.2** Please refer to the enclosed Engineer's response by Gerry Hanniffy which sets out a detailed response to the refusal reason.<sup>10</sup> It is clear that the proposed development would not be contrary to the policy objective WS4 or development management standard 36 of the county development plan. DM Standard 36 states the following: *"All new developments will be required to utilise and connect to the public water and wastewater network, where practicable. Applicants who need to get a new or modified connection to public water supply or wastewater collection infrastructure must liaise with Irish Water. In the first instance, the applicant should make a pre-connection enquiry to Irish Water in order to establish the feasibility of a connection in advance of seeking planning permission. Irish Water is not responsible for the management or disposal of storm water or ground waters."* The applicant has made a pre-connection enquiry as required under the Development Management standard.

The proposed development will be connected to public mains for water supply and waste water drainage. A pre-connection enquiry has been lodged with Ulisce Éireann.



27/11/2024

**Comhairle Chontae na Gaillimhe**  
**Galway County Council**

An Taisce  
Planning Committee c/o 26 Manor Avenue  
Kingston  
Galway  
H91 C98X

**TAG:** Uimh. Thag. Pleanála:  
**RE:** Planning ref. no.:

24/61432 - PERMISSION for a mixed-use development of apartments, duplex units and 4 no. retail units on a site of 3090m<sup>2</sup> / 0.30 hectares. The site is generally greenfield with 2 no. vacant/derelict residential dwellings. The proposed development will provide as follows; (A) Demolition of two existing derelict two storey residential dwellings that front on to Oranmore Mainstreet with a total area of 290m<sup>2</sup>. (B) Construction of 4 no. 3 storey blocks denoted A,B,C and D. The blocks contain 16 no. residential units made up of 6 no. apartment units, 10 no. duplex units and 4 no. commercial units, with maximum height of 10.4 metres. The total floor area of apartment and duplex development is 1182.6m<sup>2</sup> and the total floor area of commercial development is 298.9 m<sup>2</sup>.

Block A is made up as follows: 6 no. residential dwellings, including 3 no. two bedroom apartments on the ground floor, 3 no. three bedroom duplex units on the first and second floor. The total floor area of apartment and duplex development is 562.8m<sup>2</sup>.

Block B is made up as follows: 6 no. residential dwellings, including 3 no. two bedroom apartment units on the ground floor, 3 no. three bedroom Duplex units on the first and second floor. The total floor area of apartment and duplex development is 562.8m<sup>2</sup>.

Block C is made up as follows: 2 no. commercial units on the ground floor and 2 no. three bedroom duplex units on the first and second floor. The total floor area of the duplex development is 245.8 m<sup>2</sup> and the total floor area of commercial development is 144.2 m<sup>2</sup>.

Block D is made up as follows: 2 no. commercial units on the ground floor and 2 no. three bedroom duplex units on the first and second floor. The total floor area of the duplex development is 245.8 m<sup>2</sup> and the total floor area of commercial development is 154.7 m<sup>2</sup>. Access to be provided from a revised vehicular site entrance from Main Street Oranmore. New Footpath and Cycleways to be provided at the entrance to the site. 16 no. Car parking spaces, 42 no. bicycle parking spaces for residents and provision for 10 no. visitor bicycle parking spaces.

All ancillary site development works to include; landscaped public open spaces approximately .15 ha or 48.8% of the overall site area. Private 208.4m<sup>2</sup>/ Communal open space approximately 1300m<sup>2</sup> .013ha of the overall site area. Internal roads and footpaths, foul and surface water drainage, site lighting, boundary treatments, and refuse storage located to the south of block D = 17.8sqm

i mbaile fearainn / in the townland of : Innplot

**RIALACHÁIN PLEANÁLA AGUS FORBARTHA,**  
**2001-2002**

**ADMHÁIL ar AIGHNEACHT nó TUAIRIM atá**  
**FAIGHTE**  
**ar IARRATAS PLEANÁLA**

**PLANNING AND DEVELOPMENT REGULATIONS,**  
**2001-2002**

**ACKNOWLEDGEMENT of RECEIPT of**  
**SUBMISSION or OBSERVATION on a PLANNING**  
**APPLICATION**

IS DOICIMÉAD THÁBHACHTACH É SEO!

COINNIGH AN DOICIMÉAD SEO GO SÁBHÁILTE.  
BEIDH ORT AN ADMHÁIL SEO A THAISPEÁINT

THIS IS AN IMPORTANT DOCUMENT!

KEEP THIS DOCUMENT SAFELY. YOU WILL BE  
REQUIRED TO PRODUCE THIS