

Our Ref: Unit 25 Liffey Valley Shopping Centre



13 October 2021

Land Use, Economic and Transport Planning Department,
South Dublin County Council
County Hall Tallaght,
Dublin 24
D24 A3XC



Dear Sir / Madam,

**RE: Request for a Section 5 Declaration from South Dublin County Council
Unit 25, Liffey Valley Shopping Centre, Fonthill Road, Clondalkin, Dublin 22**

Introduction

We, Avison Young, have been instructed by our client, Liffey Valley Management Limited, 33 Molesworth, Street, Dublin 2, to make a request, pursuant to Section 5(1) of the Planning and Development Act, 2000 (as amended, hereafter 'the 2000 Act'), for a Declaration by South Dublin County Council on whether the following is or is not development and is or is not exempted development. A cheque for €80 made payable to South Dublin County Council, being the appropriate amount for a Section 5 Application, is enclosed with this cover letter.

The question which is being asked by our client relates to Unit No. 25 at the Liffey Valley Shopping Centre and is as follows:

- *Whether the subdivision of Unit No. 25 Liffey Valley Shopping Centre into two separate retail units is exempted development?*

In this regard, the proposed development seeks to subdivide Unit No. 25 into two separate retail units by providing an internal partition wall. No new entrances will be created into the units, as two entrances already exist.

It is our client's view that the proposed development consists of exempted works as the proposed works will not materially affect the external appearance of Unit No. 25 so as to render it inconsistent with the character of the structure or neighbouring structures.

This Request should be read in conjunction with the Section 5 Application Form and the drawings prepared by HJL Architects. The below will form a statement of our grounds for a Declaration from South Dublin County Council on whether these works are or are not development or, are or are not exempted development.

Site Context

Unit 25 is a corner unit located in the centre of Liffey Valley Shopping Centre with two entrances onto the internal mall. The unit has a gross floor area of c. 100 sq. m and is entirely internal to the Liffey Valley Shopping Centre.

The initial permission for the wider Liffey Valley lands, including Unit 25, (Reg. Ref. 93A/1161 / ABP Ref. 093483) dates back to 1994 and comprised proposals for a District Town Centre development that included not only the Liffey Valley Shopping but also *inter alia* industrial/warehouse/office units, a hotel, public house and betting office, drive through take-away restaurant, petrol filling station and motor sales outlet and leisure centre. Early versions of the permitted scheme provided for a shopping centre layout with an east-west orientation and the majority of car parking located to the south of the Centre.

Proposed Development

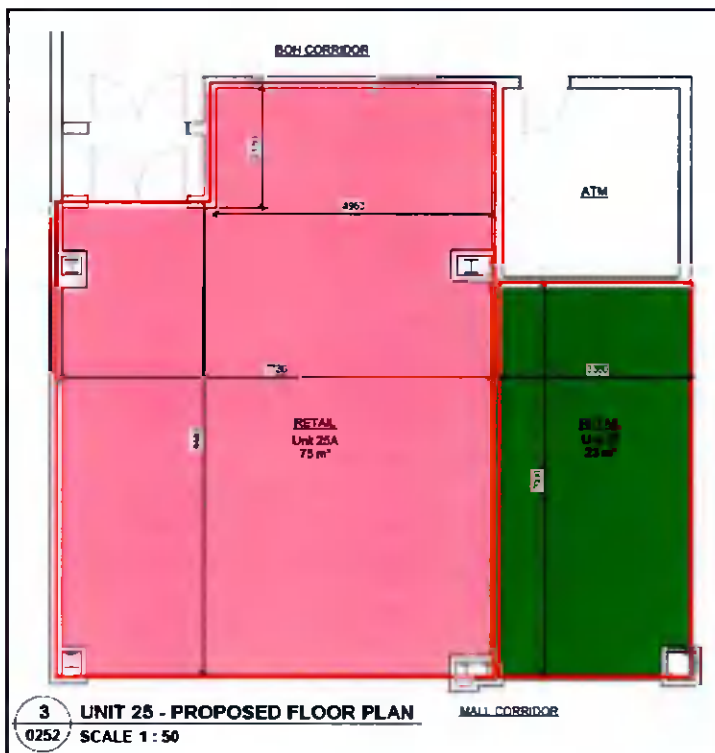
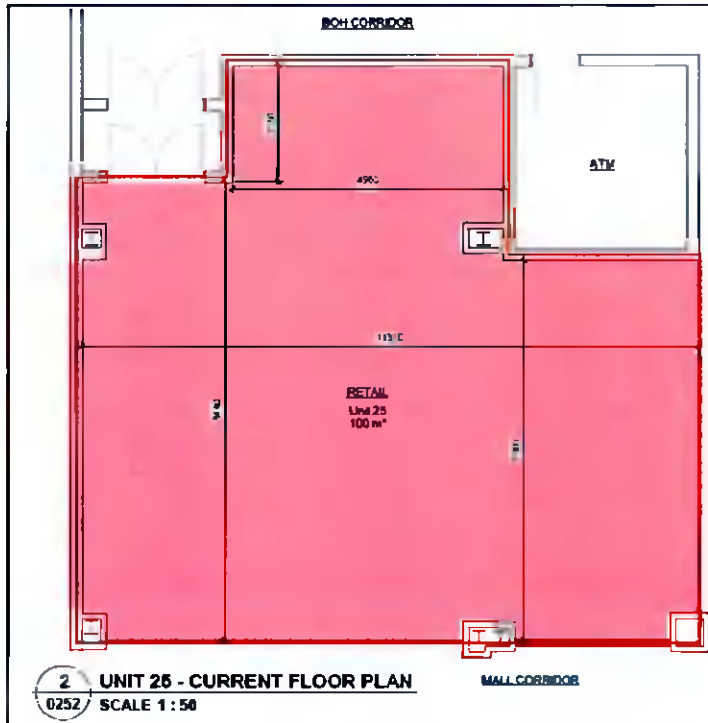
The proposed development comprises the subdivision of Unit No. 25 into two separate retail units, with no new entrances or changes to the external appearance. Please refer to figure 1 below which provides an extract of the existing and proposed floors plans for context.

There will be a minor decrease in floor area (c. 2 sq. m) as a result the subdivision of unit 25 into two separate units and there will be no change of use associated with the works. It is therefore submitted that the proposed works will not lead to any activity that would have material consequences in terms of proper planning and sustainable development of the area, and would, therefore **not** constitute a material change of use of the subject site by reason of intensification.

The proposed use, i.e. retail, will be maintained and there will be no intensification of use that would give right to any impact on the proper planning and sustainable development of the area. In this regard, there will be no greater infrastructural requirements to support the subdivided unit as there was for the single unit, while there will be a minor reduction in floorspace occurring also.

The proposed works, comprising the subdivision of Unit 25, will be consistent with the neighbouring units and the overall shopping centre which includes a wide range of units of similar sizes.

Figure 1: Existing & Proposed Floor Plans (Extract of HJL Plans and Elevations Drawing LVSC-HJL-25-GF-DR-A-0252)



Relevant Legislation

In order to assess whether or not the proposal constitutes development, and if so, whether it constitutes exempted development, the following legislation is relevant to the question posed.

Planning and Development Act, 2000 (as amended)

Section 3(1) of the 2000 Act defines "development" as:

"Except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land."

Section 2(1) of the 2000 Act, defines "works" as:

"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."

Section 4 of the 2000 Act refers to "Exempted Development" with Subsection (1) setting out categories of development that shall be exempted development for the purposes of this Act. Subsection (1)(h) states the following:

"Development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or 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."

In addition to specified exemptions in the Act, Section 4(2) of the Act provides that the Minister may by regulations provide for any class of development being exempted development.

Grounds of Request

The question of whether the subdivision of Unit 25 into two separate retail units, with the provision of an internal party wall, is 'development' or not, needs to be addressed in the first instance. Following this, the subsequent question to be addressed, if it is deemed to be development, is whether or not this development would constitute 'exempted development' as defined in the 2000 Act.

Therefore, the question to which this Section 5 declaration is sought is as follows:

'Whether the subdivision of retail unit no. 25 at Liffey Valley Shopping Centre, into two separate retail units with the provision of an internal party wall, with no new entrances, is or is not development and if found to be development, is or is not exempted development?'

Development

As noted above, Section 3(1) of the 2000 Act (as amended), defines 'development' in the context of the carrying out of works with Section 2(1) of the 2000 Act defining 'works' as including any act or operation of construction.

It is submitted that the works involved in the proposed subdivision (i.e. the construction of an internal party wall dividing the existing Unit 25 into two units) are works of construction and are therefore development.

There will be a minor decrease in floor area (c. 2 sq. m) as a result the subdivision of unit 25 into two separate units and there will be no change of use associated with the works. It is therefore submitted that the proposed works will not lead to any activity that would have material consequences in terms of proper planning and sustainable development of the area, and would, therefore not constitute a material change of use of the subject site be reason of intensification.

Exempted Development

The overall character/design will be retained, and the works proposed, which include only the provision of an internal subdividing wall, could not be said to be inconsistent with the existing unit or the neighbouring units. It is submitted, therefore, that the proposed works affect only the interior of Unit 25 and 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.

It is therefore submitted that the proposed subdivision of Unit 25 comes within the scope of the exempted development provisions of section 4(1)(h) of the 2000 Act.

It is noted that there are no restrictions or limitations on exempted development that relate to the proposed works.

Relevant Precedent Cases

We would like to draw the Planning Authority's attention to similar Section 5 Declarations relating to the subdivision of retail units, which were considered exempted development.

RL.2603 - Subdivision of Retail Unit at Butlerstown Retail Park, Co Waterford

As part of Referral Case RL2603, the Board found that the subdivision of a retail unit at Butlerstown Retail Park, Butlerstown, Co Waterford to be exempted development. The Inspector in that case found that, while the works involved in the subdivision were development,

"the alteration to the appearance is minimal, and would not be inconsistent with the character of the area".

The Inspector went on to conclude that:

Avison Young Planning and Regeneration Limited registered in the Republic of Ireland number 409687. Registered office, 2-4 Merrion Row, Dublin 2, D02 WP23. Directors of the Company: Robert McLoughlin, Jason Sibthorpe (British), Gerard Hughes (British), Simon Miller (British), Stephen Brown (British), Paul Holcombe (British).

"the subdivision of unit 9 is development and is exempted development under Section 4(1)(h) of the Act".¹

ABP-309107-21 – Subdivision of Unit 12, Limerick One, Childers Road, Limerick

In relation to the proposed subdivision of Unit 12, Limerick One, Childers Road, Limerick, the Board found, in July 2021, that

"(a) subdivision of unit number 12 into three units and provision of new doors to northern and southern elevation, and (b) subdivision of unit number 12 into two units, at unit number 12, Limerick One, Childers Road, Limerick is development and is exempted development."

In her assessment of the referral, the Inspector concluded that:

"the works necessary to subdivide an existing retail unit to create 2 or three new retail units does come within the scope of Section 4(1)(h) of the Planning and Development Act 2000, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance with the character of the structure or of neighbouring structures. I consider that in the circumstances of the current case and based on the details submitted the subdivision of one shop into two or three individual shops would not have material consequences in terms of increased commercial activity and would not therefore be an intensification of the use of the land."²

PL 29N.RL2308 – Subdivision of Retail Unit, Block K, Pelletsown

In January 2006, a referral was made to the Bord on *"whether subdivision of existing anchor retail unit, to create 2 new retail units plus internal shared lobby service area, is or is not development or is or is not exempted development."*

The Inspector concluded that:

"the works necessary to subdivide an existing anchor retail unit to create 2 new retail units plus an internal shared lobby service area does come within the scope of Section 4 (1)(h) of the Planning and Development Act 2000, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance with the character of the structure or of neighbouring structures."³

¹ ABP Ref. RL2603, Inspector's Report, page 26

² ABP Ref. ABP-309107-21, Inspector's Report, page 11

³ ABP Ref. PL 29N.RL2308, Inspector's Report pg 8.

The Board ultimately decided that the proposed "subdivision of an existing anchor retail unit, to create two new retail units plus an internal shared lobby service area, is development and is exempted development."

Conclusion

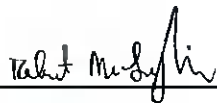
Following an analysis of the available information, including several similar declarations that found similar works to be exempted development, it is submitted that the appropriate response to the question posed as part of this Section 5 Declaration Request is as follows:

The proposed subdivision of Unit 25 into two separate retail units at Liffey Valley Shopping Centre constitutes development under the meaning of Section 3(1) of the Act.

The said works affect only the interior of the structure or 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, and

The proposed subdivision into two retail units comes within the scope of Section 4(1)(h) of the 2000 Act, in that it involves works that affect only the interior of the structure.'

Yours sincerely,



Robert McLoughlin

Principal

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For and on behalf of Avison Young Planning and Regeneration Limited

