

Comhairle Chontae Atha Cliath Theas

PR/1609/21

Record of Executive Business and Chief Executive's Order

Register Reference:	ED21/0074
Correspondence Name & Address:	Atif Khan 4, Somerton Avenue, Newcastle Road, Lucan, Co. Dublin
Development:	Motor Trading Business through importing Cars from Japan. I will Import only 1 car at a time and plan to keep it in reserved parking outside house. There will be no impact etc on house or on the road.
Location:	4, Somerton Avenue, Newcastle Road, Lucan, Co. Dublin
Applicant:	Atif Khan

(EW)

Description of Site and Surroundings

The subject site contains a two-storey terraced dwelling near the entrance to the junction Somerton Avenue. There is parallel parking on both sides of the street. The applicant notes in their supplementary documentation that a street-car-parking space has been allocated to them on the street in proximity to their property. The site is located on the western side of the Newcastle/Lock Road Adamstown Drive/Tandy's Lane runs east-west through the northern section of the site. Detached residential dwellings within the cul de sac of Finnstown Fairways and land associated with Finnstown House Hotel run along the southern site boundary. The residential estate of Westbury is located north of subject site. Somerton House, a Protected Structure, is located west of subject site.

Proposal

This is an application requesting a Section 5 Declaration on whether the following is, or is not, development and is, or is not, exempted development:

As stated:

'Motor Trading Business through importing Cars from Japan. I will Import only 1 car at a time and plan to keep it in reserved parking outside house. There will be no impact etc on house or on the road.'

This Section 5 Declaration application includes:

- Application form,
- Site location map,
- Site layout Plans

Zoning:

The subject site is subject to zoning objective 'SDZ' - 'To provide for Strategic Development in accordance with the approved Adamstown Planning Scheme' under the South Dublin County Council Development Plan 2016-2022. The subject site is located within the north-eastern section of the Adamstown SDZ Planning Scheme and

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comprises the eastern and southern section of Development Area No. 2 Somerton. Schedule 2 of the South Dublin County Council Development Plan 2016-2022 details Protected Structure RPS Ref 107 as *Somerton, Finnstown Lucan – Detached Five Bay Single Storey House* which is located west of subject site.

Relevant Planning History

SDZ16A/0005 - Adamstown Drive & Newcastle Road, Lucan, Co. Dublin. SDCC **Granted Permission** for 246 dwellings in a mixture of terraced, semi-detached and detached houses consisting of 141 2 storey 3 bedroom houses - 85 with the option of a single storey rear extension and/or an additional adaptable room at attic level with a dormer window to the front elevation (house type 01) and a further 45 with the option of a single storey rear extension (houses types 03A, 03B and 03C); 76 2 storey 4 bedroom houses, 32 with the option of a single storey rear extension (house type 05); 15 2 storey 5 bedroom houses - each with the option of a single storey extension (house type 06) and 14 2.5 storey 5 bedroom houses - each with the option of a single storey rear extension (house type 08); 244 dwelling have solar panels at roof level; vehicular access to the development is provided off Adamstown Drive and via a new access off Newcastle Road (R120); the provision of c.1ha of public open space; all ancillary and associated site development and landscape works, including 4 ESB substations (with a combined gross floor area of c.32.6sq.m), surface upgrade works to Adamstown Drive; the provision of 534 car parking spaces in a variety of on curtilage and on street conditions; demolition of existing structures on site (c.449sq.m) site development works are also included on lands west of Tandy's Lane, all on a site of approx. 10ha. on lands bounded generally to the north by Westbury housing estate, to the east by Newcastle Road (R120) to the south by houses in Finns town Fairways and the lands of Finnstown Castle Hotel and Golf Course and to the west by Tandy's Lane and Somerton House. This application is being made in accordance with the Adamstown Planning Scheme 2014 and relates to a proposed development within the Adamstown Strategic Development Zone Planning Scheme Area as defined by Statutory Instrument no. 272 of 2001.

Relevant Condition 8

Demarcation of car parking spaces shall be agreed in writing with the Planning Authority. No labelling or numbering shall occur until details of materials and finishes has been agreed with the Planning Authority.

Recent Relevant History

No recent relevant history recorded.

Recent Relevant Enforcement History

No recent relevant enforcement history.

Assessment

Consideration as to whether a development constitutes exempted development or not is governed by Sections 3, 4 and 5 of the Planning and Development Act 2000, as

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amended and Articles 5, 6, 7, 8, 9, 10 and 11 of the Planning and Development Regulations 2001, as amended.

Is the proposal development?

Section 3(1) of the Planning and Development Act 2000, defines 'development' as '*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***'. The term 'works' is defined in Section 2(1) of the 2000 Act as '*any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal*'.

The proposal would not result in *any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal* on the site. However, the proposed use of the assigned car parking space for the use of a **Motor Trading Business** is a **material change in the use** of the land and therefore it is considered that the proposal would constitute 'development', as defined in Section 3(1) of the Planning and Development Act 2000.

Is the proposal exempted development?

The development to which this Section 5 Declaration application relates comprises the following:

- Motor Trading Business through importing cars from Japan and to keep the cars in a reserved parking area outside the house.

In order to assess whether or not a material change of use to be carried out constitute exempted development, regard must be had to the following items of legislation:

1. *Article 10 of the Planning and Development Regulations 2001*

Article 10 of the Planning and Development Regulations 2001 (as amended) relates to change of use and sets out what changes are exempted development by reference to Part 4 of Schedule 2 of Planning and Development Regulations 2001 (as amended). Article 10 (1) states (emphasis added):

*"Development which consists of a change of use **within** any one of the classes of use specified in Part 4 of Schedule 2, shall be exempted development for the purposes of the Act, provided that the development, if carried out would not*

- (a) involve the carrying out of any works other than works which are exempted development,*
- (b) contravene a condition attached to a permission under the Act,*
- (c) be inconsistent with any use specified or included in such a permission, or*
- (d) be a development where the existing use is an unauthorised use, save where such change of use consists of the resumption of a use which is not unauthorised and which has not been abandoned."*

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All 11 classes as outlined in Part 4 of Schedule 2 have been applied to the proposed development and none of which can be deemed to apply to the subject proposal. The proposed development therefore cannot be deemed to be exempted under Article 10.

2. *Part 1 of Schedule 2 of the Planning and Development Regulations, 2001*
Under Part 1 of Schedule 2 of the Planning and Development Regulations, 2001, as amended, there are no exemptions for a change of use from a domestic car parking space to a commercial business operation.
3. Section 4 of the Planning and Development Act, 2000, as amended.
There are no exemptions for a change of use from a domestic car parking space to a commercial business operation under Section 4 of the Planning and Development Act, 2000, as amended.

Furthermore, the proposed material change of use would contravene both Condition 8 of the parent Planning Permission Reg Ref SDZ16A/0005, where Condition 8 clearly indicates that car parking spaces will be numbered and labelled for each dwelling house:

Condition 8:

Demarcation of car parking spaces shall be agreed in writing with the Planning Authority. No labelling or numbering shall occur until details of materials and finishes has been agreed with the Planning Authority.

REASON: in the interests of traffic management and visual amenity.

The land, the subject of this application, has permission for a domestic car parking space. The proposed material change of use of the land to the business operations associated with a Motor Trading business would contravene both Conditions 8 of SDZ16A/0005.

On the basis of the nature of the proposal, it can be concluded that there is no provision for exemptions for the proposed development under either the Planning and Development Regulations 2001 (as amended) or the Planning and Development Act 2000, as amended.

Conclusion:

The proposed development comprising:

“Motor Trading Business through importing Cars from Japan”

on lands that are permitted as reserved street parking area outside the dwelling at No. 4 Somerton Avenue cannot be considered as exempted development by virtue of the following: -

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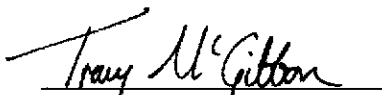
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- (i) The proposed development does not comply with the exempted development provisions of Section 4(1) of the Planning and Development Act, 2000, (as amended) or Part 1 of Schedule 2 of the Planning and Development Regulations, 2001 (as amended).
- (ii) The proposed development does not comply with Condition 8 of the Parent Condition SDZ16A/0005 under Article 9 of the Planning and Development Regulations, 2001.

Recommendation

Changing the use or 'demarcation' of a public street parking space from residential use to a commercial business use would be deemed to be development and would require planning permission.

The applicant should be written to and informed that the proposed development, as indicated on the submitted drawing is development and is not exempt development and therefore does require planning permission.



Tracy McGibbon
A/Senior Executive Planner

ORDER: That the applicant be informed that the proposed development of Motor Trading Business through importing Cars from Japan (import only 1 car at a time and plan to keep it in reserved parking outside house); there will be no impact etc. on house or on the road at 4, Somerton Avenue, Newcastle Road, Lucan, Co. Dublin is development and is not considered to be exempted development under the Planning and Development Act 2000 (as amended) and the Planning and Development Regulations, 2001 (as amended) and therefore **does require** planning permission.

Date: 16/12/21



Eoin Burke, Senior Planner