

A Guide to Planning for the Business Person



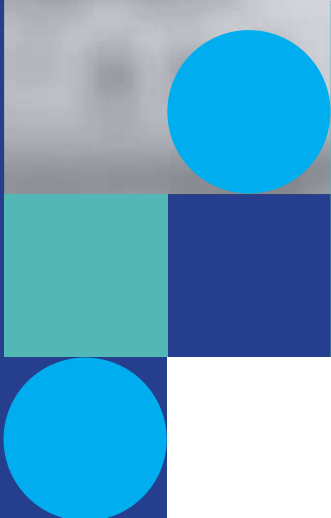
Planning Leaflet **10**



Offig an
Rialaitheora Pleanála
Office of the
Planning Regulator



An Roinn Tithíochta,
Rialtais Áitiúil agus Oidhreachta
Department of Housing,
Local Government and Heritage



A Guide to Planning for the Business Person

Introduction

It is important that business owners understand and are aware of the planning process.

This leaflet sets out some key planning issues for business owners. You may also find these other leaflets helpful:

- Planning Leaflet 2 – “A Guide to the Development Plan”,
- Planning Leaflet 3 – “A Guide to Planning Permission”,
- Planning Leaflet 4 – “A Guide to Making a Planning Application”,
- Planning Leaflet 5 – “A Guide to Making a Planning Appeal”,
- Planning Leaflet 6 – “A Guide to Planning Enforcement in Ireland” *and*
- Planning Leaflet 14 – “Strategic Infrastructure Development”.

This leaflet is intended as a practical guide. It is not a definitive legal interpretation of planning law.

⋮ *For more information, you should consult your local planning authority (city or county council).*

1. Do I need planning permission?

You will generally need planning permission if you construct a building for business purposes or if you materially change the use (see Question 8 below for definition) of an existing building for business purposes.

Planning permission is required for any development of land or property, unless the development is specifically exempted.

The term development includes the carrying out of works (i.e. building, demolition or alteration) on, in, over or under any land or buildings, and making a material (i.e. significant) change of use of land or buildings.

2. Are there different types of planning permission?

Yes. There are two types of planning permission. You can apply for:

- permission, *or*
- outline permission.

The most common type of application is for permission, sometimes referred to as full permission. An application for full permission requires detailed plans and particulars of the proposed development.

There can be circumstances when you may want to apply for outline permission. For example, you may wish to see if the planning authority agrees with your proposed development in principle but you may not want to incur the expense of preparing detailed plans.

If outline permission is granted, you must obtain full permission before starting work. In most cases, an application for full planning permission must be made within three years from when the outline permission is granted.

Outline permission cannot be sought for:

- the retention of a structure;
- works to a protected structure or a proposed protected structure; or
- development which requires an Environmental Impact Assessment (EIA), an Appropriate Assessment (AA), Integrated Pollution Control (IPC) licence, a waste licence or an establishment to which the Major Accident Regulations apply.

3. Where do I get planning permission?

You lodge your application for planning permission with the planning authority for your area, which will be one of the 31 local authorities (city or county councils). Applications for planning permission for

certain types of major developments, known as strategic infrastructure, are made directly to An Bord Pleanála. See Planning Leaflet 14 – “Strategic Infrastructure Development”.

4. How do I make a planning application?

For details on making a planning application see Planning Leaflet 4 – “A Guide to Making a Planning Application” in this series, or contact your planning authority.

5. What is exempted development?

Exempted development is development for which planning permission is not required. Categories of exempted development are set out in planning law. Exemptions for the business sector are outlined in this leaflet.



There are usually conditions relating to exempted development. For example use, size or height. Where these are exceeded, the exemptions no longer apply. Exemptions enable you to undertake minor developments without planning permission, such as changing certain types of use of a business premises, some interior alterations and small business advertisements.

6. What are the 'classes' of use?

There are 11 classes of use identified in Part 4 of Schedule 2 of the Planning and Development Regulations 2001, as amended. These use classes allow planning authorities to manage the long-term planning of urban areas and to achieve the right mix of uses in different parts of cities and towns.

In addition, the relevant development plan may include objectives regarding what uses or mix of uses will be permitted in deciding planning applications in a given part of a city or town. This may include a key retail area.

Under the 2001 regulations, as amended, class 1 includes use of a shop. This includes structures used for the sale, display or delivery of a service principally to the public and for the retail sale of goods. The definition of a shop also includes:

- post offices,
- ticket outlets and travel agencies,
- units that sell sandwiches or other food for consumption off the premises (subject to certain conditions),
- hairdressers,

- units for hiring out domestic or personal goods,
- launderettes or drycleaners, *and*
- units which receive goods for cleaning or repair.

The definition of a shop does not include funeral homes, hotels, restaurants, public houses or for the sale of hot food or intoxicating liquor off the premises (subject to certain conditions).

Class 2 incorporates uses for providing financial services, professional services (other than health or medical services and other services including use as a betting office). Other categories in the 11 use classes cover a range of other office, storage, light industrial, accommodation, religious, health, childcare, community and cultural uses.

7. How do I know if a change of use is exempted development?

A change of use in one of the 11 use classes will generally not be considered a material change and will be regarded as exempted development.

For example, within class 1, changing the use of a grocery shop to a hairdresser will not normally require planning permission, but converting a shop to a public house or to a betting office will require planning permission due to the differences in impacts. A planning application allows the planning authority to decide if the change of use is appropriate in the context of the development plan. It also lets the public comment on the proposed use.

The Planning and Development Regulations 2001, as amended, outline the changes of use which are exempted development. These include changing the use of takeaways, motor garages, public houses, funeral homes, amusement arcades, financial, professional services and betting offices to use as a shop.

Changes of use without planning permission must ensure that:

- there are no physical works requiring planning permission;
- that no conditions attached to any existing planning permission are contravened; *and*
- a range of conditions relating to all exempted development.

In addition, changing use from an unauthorised use will require planning permission unless the change is to an authorised use which is still being carried out. Planning permission is not required where a change of use is not 'material'. Consult with your planning authority if in doubt (see also Question 14).

8. What is a 'material' change of use?

A 'material' change of use is any change that substantially affects neighbours or the environment. What constitutes a material change of use depends on individual circumstances. A material change of use always needs planning permission.

For example, using part of a domestic residence as a car repair business will generally represent a material change of use. Another example would be using a building that was approved for warehousing or storage purposes, as a manufacturing premises.

It is very important for business owners considering changing the use of their premises to familiarise themselves with the relevant planning requirements. They should also consult with the planning authority who will advise on whether it considers a particular change of use to be significant or 'material'.

Question 14 below explains how your planning authority can determine whether a development is exempt.

9. Are there other exemptions that apply to businesses?

The 2001 regulations, as amended, provide several categories of development regarded as exempted development for business and industrial activities, including:

- storing raw materials, products, packing materials, fuel or waste within the boundaries of an industrial building, provided that the stored material relates to the premises and is not visible from any adjacent public road;
- providing a hard surface at an industrial premises to be used for a purpose related to the premises and providing, re-arranging or maintaining sewers, mains, pipes or cables;



- carrying out work specified by a local authority to prevent water or air pollution or in a derelict site notice;
- drilling or excavation to survey land or examining the depth and nature of the subsoil;
- placing or maintaining movable appliances, apparatus or structures on a public road (e.g. a freestanding menu board outside a restaurant) as long as they are licensed by the planning authority; *and*
- scaffolding, plant or machinery put on the land itself or on adjoining land where permitted development is taking place. This land must be re-instated when the development is completed.

10. What about advertisements for businesses, when do these need planning permission?

Certain smaller advertisements and signs are exempted development. Careful consultation of the 2001 regulations,

as amended, is strongly advised. Some of the most common categories of advertisements that are exempted developments for businesses under these regulations include:

- Advertisements displayed on business premises referring to the business, goods or services provided on those premises as long as they comply with the following conditions:
 - the total area of advertisements affixed to the front of a building must not exceed 0.3 square metres per metre of frontage, less the area of freestanding advertisements and subject to a maximum of five square metres;
 - advertisements affixed to the face of a building other than the front must not exceed 1.2 square metres or 0.3 square metres if internally lit;

- any freestanding advertisements must not exceed 2.5 metres in height or three square metres in total area, and not more than 1.5 square metres of the overall total area of the advertisement may be internally lit;
 - advertisements attached to buildings must not exceed four metres in height;
 - where any advertisement projects out over a public road by more than five centimetres, it must be at least two metres above ground level and cannot project out more than one metre over such road;
 - where any advertisement consists of a circular sign and projects more than five centimetres over a public road, the diameter of the sign must not exceed one metre;
 - other projecting and swinging signs cannot exceed 0.4 square metres individually and their total area must not exceed 1.2 square metres;
 - no advertisements can contain a symbol or logo exceeding 0.6 metres in height or a letter 0.3 metres in height; *and*
 - no advertisements can cover any part of a window.
 - Illuminated advertisements exhibited as part of a shop display and other advertisements affixed to the inside of shop windows, where they are no larger than one quarter of the window area.
 - Advertisements within a structure that are not visible from outside the structure provided that not more than one advertisement (up to 0.3 square metres) is placed at an entrance to a premises relating to a business, trade, profession or public service carried on there. The size limit increases to 0.6 square metres for public houses, a blocks of flats, clubs, boarding houses and hostels, so long as the advertisement is not illuminated or 2.5 metres above ground level. One advertisement per entrance is allowed, if there are entrances from different points.
- If you wish to erect signs that are not covered by the regulations and their conditions, you will need planning permission.
- Constructing, lowering, repairing or replacing fences (not hoarding or sheet metal palisade/security type) and walls of brick, stone, blocks with decorative finish other than concrete blocks or mass concrete is exempted development subject to the following:
- the height of any new structure must not exceed 1.2 metres or the height of a structure being replaced, whichever is the greater and must not exceed two metres in height;

- any wall, other than a dry or natural stone wall, bounding a road must be capped and the face of any wall of concrete or concrete blocks (other than blocks of a decorative finish) which is visible from a public place must be rendered or plastered.

Gates and gateways may be built or replaced providing they do not exceed two metres in height.

You will need planning permission if you wish to make a new or wider access to the public road.

12. I want to reduce my business' carbon footprint, are there exemptions for renewable energy?

Yes. Constructing, erecting or placing one wind turbine within the curtilage (this means any land or outbuildings which are currently or were used for the purposes of the structure) of an industrial or light industrial building is exempted development. On the condition it is not erected on or attached to the premises, or building or any other structure within the curtilage of the building.

In addition, the total height of the turbine must not exceed 20 metres, the rotor diameter must not exceed eight metres and the minimum clearance between the lower tip of the rotor and ground level must be at least three metres. The 2001 regulations, as amended, also specify other conditions relating to distances from certain

boundaries, structures and uses, noise levels and finishes. Please consult your planning authority.

Placing solar panels on or within the curtilage of an industrial building/light industrial building and its ancillary buildings and on business premises is also exempt, subject to conditions and limitations. In addition, where such a development is located within a Solar Safeguarding Zone (SSZ) there is a rooftop limit of 300 square metres.

SSZs are areas where rooftop limitations on solar panel installations apply, to avoid the creation of reflections known as '*glint and glare*' that can affect the operation of airports, aerodromes and other sites with helipads like hospitals. There are 43 designated SSZs, these are outlined on maps, and by reference to townlands (in county councils) and local electoral divisions (in city councils). The SSZs maps are available for viewing on myplan.ie.

Freestanding solar installations are also exempt provided the height of the freestanding solar installation does not exceed two and a half metres at the highest point above ground level, the total area does not exceed 75 square metres (when taken together with any other such existing freestanding panels) and that the installation is not placed or erected forward of the front wall of the business, light industrial building or industrial building.

Solar panels on a wall of an industrial building or ancillary buildings within the curtilage of an industrial building do not require planning permission. The total area of any wall mounted solar panels must not exceed 75 square metres (when taken together with any other such existing wall mounted panels). The distance between the surface of the wall and the panel must not exceed 15cm and the panel must be set back 50cm from the edge of the wall on which it is mounted.

The solar panels or solar installations must be used primarily for the provision of electricity or heating for use within the curtilage of the industrial, light industrial building or business premises. Primarily is defined to mean greater than 50%. The intention behind this limitation is to ensure that the buildings remain in use and do not

change to a commercial energy generating use with the building falling vacant or derelict.

If the development is located within a designated SSZ the planning authority for the area must be notified in writing, of the location and scale of the development, within four weeks after the commencement of development. If the planning authority considers that there is a risk of '*glint and glare*' they can seek to have the offending panels removed or covered until the issue is resolved to the satisfaction of the planning authority.

Please note that other limitations apply, including where the building is a protected structure or within an Architectural Conservation Area, and you are advised to contact your planning authority for advice



before installation. There are also detailed exemptions for combined heat and power and heat pump facilities which your planning authority can advise on.

13. Are there any limitations to exempted development?

Exempted development requires planning permission where any such development:

- contravenes a condition of a planning permission (you should always check the planning permission your premises was built under or the change of use permitted);
- endangers public safety by causing a traffic hazard or obstructing the view of road users;
- endangers public safety by reason of hazardous glint and/or glare for the operation of airports, aerodromes or aircraft;
- modifies a building such as to present major accident hazards;
- is built forward of the building line (as specified in the development plan or draft development plan);
- involves a new or wider access to a public road;
- affects a building, feature, site, etc., listed for preservation in the development plan or draft development plan (check your local development plan);
- relates to a protected structure or a structure in an architectural heritage area;
- interferes with the character of a landscape;
- obstructs a public right of way; *or*

- includes any works to, or changes to, an unauthorised structure or one where there is an unauthorised use.

(‘Unauthorised’ means without the benefit of planning permission or exempted development status).

14. Where can I get more information on exemptions?

The full list of exempted developments is contained in the Planning Acts and Regulations (details at the end of this leaflet).

Your local planning authority will advise in writing whether they consider planning permission is necessary in a particular case. You can ask your local planning authority to provide a written declaration stating if a particular development is exempted. You will need to pay for this. The planning authority can advise on the cost. You may need to give the planning authority details including maps and drawings to help them make their decision.

If you disagree with the planning authority’s declaration you can obtain a formal ruling by referring the decision to An Bord Pleanála and paying a fee. Further information is available directly from the Board at 64 Marlborough Street, Dublin 1, telephone (01) 8588100 or on their website on www.pleanala.ie.

15. What happens if exemption limits are exceeded?

Where a condition relating to exempted development has been exceeded, then a breach of planning legislation has occurred and the business has undertaken unauthorised development. That is why it is important to check first, then carry out the development or change use, rather than find yourself in breach of planning law and open to complaints and/or prosecution with negative consequences for the business.

The planning authority has powers to prevent or stop unauthorised development and to restore the site to its original condition through planning enforcement and prosecution powers in the courts. The first steps in this process is to serve statutory notices.

If, due to an oversight an error was made, you should apply to the planning authority for permission to retain the work. This is generally known as ‘retention’ permission. It does not automatically mean that the works done will be granted permission.

As unauthorised development has occurred, the planning application fee for a retention application is three times more than the standard fee. You may have to take down, alter or rectify work done, which can be costly.

Prosecution for breaches of planning law can result in heavy fines and in some cases imprisonment. You may also find it difficult to sell property which does not comply with planning requirements. If buying property, check that the building and any extensions or alterations comply with planning requirements or you, as the new owner, may be liable to enforcement action.

16. Should I consult any other bodies?

You should contact your local ESB office if your proposed works are near existing electricity lines or if the construction work will bring anyone within reach of the electricity supply to your premises.

You must contact the ESB where any overhead lines come within six metres of the construction works. You must give two months’ notice to ESB Networks if you intend to carry out any construction activity within six metres of overhead lines. Underground service providers (e.g. gas, electricity, water, sewerage) should be consulted to avoid damage to pipes or ducting etc. before commencing work. Information videos, particularly “Lifelines” and “Power 2 Shock” and an information poster on the “avoidance of electrical hazards when working near overhead lines” are available from ESB Networks.

For details on planning enforcement please see Planning Leaflet 6 – “A Guide to Planning Enforcement in Ireland”, in this series, or contact your local planning authority.

17. Do building regulations apply?

Generally, commercial development requires, in addition to planning permission, a fire safety certificate and a disability access certificate, and must be built in compliance with building regulations. These regulations set out the basic design and construction requirements and apply to all new buildings and generally to extensions, alterations and changes of use of existing buildings. Further information can be obtained from your local authority.

18. Do other controls apply?

Particularly in the case of industrial undertakings, or if you are producing non-domestic type waste (e.g. a drycleaners), you may need to obtain a licence to discharge waste to water or to a sewer under the Local Government (Water Pollution) Act 1997, as amended, or to the atmosphere under the Air Pollution Act 1987, as amended.

Before carrying out certain activities, it may be necessary to obtain an integrated pollution control licence from the Environment Protection Agency, instead of individual licences from the local authority under the Water Pollution and Air Pollution Acts.

This will apply, in particular, to larger scale industrial activities. Most businesses involved in food preparation will also have to be registered with their local HSE office and comply with the requirements of the Food Hygiene Regulations 2000, as amended. The environmental health officer of your local HSE office will be able to give you details. Leaflets are available from the Food Safety Authority of Ireland, The Exchange, George's Dock, IFSC, Dublin 1 (01) 8171300 or at www.fsai.ie.

You can obtain further information from your planning authority. The law governing the planning system is set out in the Planning and Development Act 2000, as amended and the Planning and Development Regulations 2001, as amended. You can purchase these from the Government Publications Office by phoning the call centre on (046) 9423100 or at publications@opw.ie or download them for free from the Department of Housing, Local Government and Heritage's website www.gov.ie/housing. Legislation is also available to view and download from: www.irishstatutebook.ie.

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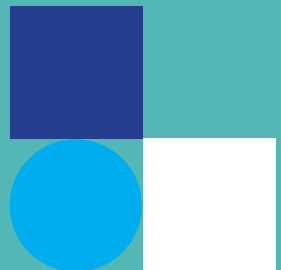
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