



An  
Bord  
Pleanála

## Inspector's Report ABP-300.537-18

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<b>Question</b>	Whether the change of use from residential dwelling to home schooling collective use is or is not development or is or is not exempted development.
<b>Location</b>	'Avila House', Bromley, Kilpedder, Co. Wicklow
<b>Referrer</b>	Wicklow Sudbury Home-schooling Collective
<b>Planning Authority</b>	Wicklow County Council
<b>Planning Authority Reg. Ref.</b>	56/17
<b>Observer</b>	None

**Date of Site Inspection**

15<sup>th</sup> March 2018

**Inspector**

Kenneth Moloney

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## 1.0 Site Location and Description

- 1.1. The referral site is in the centre of Kilpedder, Co. Wicklow and it is nestled amongst several residential properties.
- 1.2. Avila House is gated with a large wooden fence to the front. The property is enclosed by shrubbery, mature trees and walls and is essentially private.
- 1.3. The house on the site is a dormer property with a modern two-storey extension to the rear.
- 1.4. The area to the front of the site is covered in gravel and there is a small play area to the side.
- 1.5. The rear garden is generous in size and is grassed. The rear garden slopes upwards towards its rear boundary.
- 1.6. The inside of the property is used for home-schooling and there were no bedrooms within the house. The rooms within the house are used for music, games, arts and craft, reading room and there is also a kitchen and office within the house.

## 2.0 The Declaration

- 2.1. The Planning Authority issued a declaration on the 24<sup>th</sup> of November 2017, to the effect that the use of the structure as a school constitutes a material change of use and is therefore development within the meaning of the Planning and Development Act, 2000 (as amended). As there are no exemptions for a change of use from residential dwelling to school the development is not exempted development.
- 2.2. This Declaration has now been referred to the Board, pursuant to Section 5 of the Act, for review.
- 2.3. The main points of the Planner's report, upon which the Declaration decision was based, is summarised as follows: -
  - Section 3(1) of the Act defines development and this includes a material change of use.
  - The details of the education use include 15 no. children on site and the cessation of the main residential use in the property.

- The change of use from residential to school would involve additional traffic movements, parking, noise, impacts on residential amenity and wastewater impacts from the already existing use.
- This is considered a material change of use and therefore constitutes development.
- There are no exempted development provisions for the subject change of use as set out in Articles 6 and 10, Part 1 of Schedule 2 and Part 4 of Schedule 2 of the Planning and Development Regulations.
- The change of use is therefore not exempted development.

### 3.0 The Question

*“Whether the change of use from residential to home-schooling collective use at ‘Avila House’, Bromley, Kilpedder, Co. Wicklow, is or is not development and/or is or is not exempted development”.*

### 4.0 Policy Context

#### 4.1. Development Plan

The operational Development Plan is the Wicklow County Development Plan, 2016 – 2022.

‘Avila House’ is not a protected structure.

### 5.0 The Referral

5.1. The following is the summary of the referral submission;

- The Home schoolers club is a collection of parents who have organised as a club renting a residential house to accommodate needs of the home educated children.

- Each child is registered for home school education with Tulsa (as part of Children and Youth Affairs).
- The future is to relocate to a zoned site and register as an independent school under the Dept. of Education guidelines as a 'non-recognised schools'.
- It is acknowledged that the use does not fall under any relevant exemptions.
- It is contended that the use is novel and yet unclassified activity which should be considered an exemption.
- Tusla carried out an inspection of the property in 2017 and approved all relevant aspects of the home-schooling group.
- The use is not registered as a school with the Dept of Education and the home-schooling provides an important service to the children in their care.
- The home-schooling provides a quality service.
- The group consists of 15 no. children.
- The hours of activity are between 8:30am – 10:30am in the morning and 3pm – 5pm in the afternoon.
- There is car parking provision for up to 7 no. cars.
- There is also car parking on the roadside 50 metres away from the building.
- Bus Eireann and Dublin Bus Stops are located directly outside the building.
- The group encourages car sharing.
  - 1/3 of children use public transport.
  - 1/3 of children use car pool.
  - 1/3 of children are dropped / collected at the nearby turn-around point.
- There is therefore no noticeable increase in traffic.
- The use is a non-for-profit association registered as a charity.
- The school is a club and all families are members of the club and pay a membership which covers cost of rent, maintenance, equipment and costs incurred by adults present.
- There are 2 – 3 adults present between the hours 8:30am – 5pm.
- All supervisors have undergone and passed the Garda vetting process.
- An approved child protection policy is in place at the organisation.

- Relevant fire and safety measures have been undertaken.

## 5.2. **Planning Authority Response**

None

## 5.3. **Referrer's Response**

None

## 5.4. **Observations**

None

## 6.0 **Evaluation**

### 6.1. **The Facts of the Case**

The facts of the matter include the following;

- On the **31<sup>st</sup> of October 2017** a Section 5 application was submitted to Wicklow County Council asking the question whether the change of use from residential to home-schooling is or is not development and/or is or is not exempted development.
- On the **24<sup>th</sup> of November 2017** Wicklow County Council issued a declaration that the planning authority considered that the change of use constitutes a material change of use and is development and is not exempted development.
- On the **19<sup>th</sup> December 2017**, a first party referral was received by Ciara Brehony and Sonja Luescher Keogh in accordance with the provisions of Section 5(3)(a) of the 2000 Act.

### 6.2. **Statutory Provisions**

I consider the following statutory provisions relevant to this referral case:

Planning and Development Act, 2000 (as amended)

Section 2 (1) states: - 'development' has the meaning assigned to it by Section 3, and 'develop' shall be construed accordingly;

"use", in relation to land, does not include the use of the land by the carrying out of any works thereon;

Section 3 (1) states: -

"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 of use of any structures or other land."

Section 4 (1) sets out various forms and circumstances in which development is exempted development for the purposes of the Act.

Section 4 (2) of the Act provides that the Minister may, by regulations, provide for any class of development to be exempted development. The main regulations made under this provision are the Planning and Development Regulations, 2001.

Planning and Development Regulations, 2001(as amended)

Article 6(1) of the Regulations states as follows: - "(a) Subject to article 9, development consisting of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.

Article 9 (1) of the Regulations sets out circumstances in which development to which Article 6 relates shall not be exempted development. Article 9 (1) (a) (i) states that development would not be exempt 'if the carrying out of such development would contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act'.

Schedule 2, Part 1, Class 14 sets out changes of use which are exempted development.

Schedule 2, Part 4 sets out changes of uses, within certain classes, which shall be exempted development.

### 6.3. **Assessment**

6.3.1. The previous use on the referral site was a residential and the current use is a home-schooling collective. The referrer submits that the home-schooling collective is a group of parents who have organised the renting of a residential property for home-schooling of approximately 15 no. children. The school hours are Monday to Friday 8:30am – 5pm. There are 2 – 3 adults / parents that supervise the children between these hours. The home-schooling club is a non-for-profit and is a registered charity.

6.3.2. I note from the referral submission that the home-school is registered with Tulsa and is compliant with health and safety and fire prevention practices. However, from a planning perspective the Board will largely have regard to Section 3 (1) of the Planning and Development Act, 2000 (as amended). The Board must consider whether firstly development has occurred and secondly whether any development is or is not exempted development.

#### 6.3.3. Has development taken place

In relation to a change of use I would note that in accordance with the provisions of the Planning and Development Act, 2000, that development will occur when there is a material change of use.



6.3.4. Having regard to case law I would acknowledge that there are generally two tests to establish whether a material change of use has occurred from the antecedent use to the subsequent use.

6.3.5. The first test to consider, in accordance with case law, is the external effects of the change of use on the amenities of the area. Thus, for example, if the change would result in an increase in noise, traffic or odours, the change is probably material. In *Galway County Council v. Lackagh Rock Ltd.*<sup>49</sup> Barron J. suggested a test in the following terms:

*“To test whether the uses are materially different it seems to me that what should be looked at are the matters which the planning authority would consider in the event of a planning application being made either for the use on the appointed day or for the present use. If the matters are materially different, then the nature of the use must be materially different”.*

6.3.6. The second aspect of the test seems to suggest that even in the absence of external effects arising from the change, there may nevertheless be development. The second test requires a consideration of the character of the antecedent and subsequent uses of the land. Thus, the High Court in *Cusack v Minister for Local Government*, 1980, considered that a change from a dentist’s practice to use as a solicitor’s office would involve a material change in use. In this regard, the court concentrated on the character of the two uses, stating that the professions were completely different in their training, in their skills and in their general nature, and did not appear to regard the fact that there might be similarities in terms of the external effects to be relevant.

6.3.7. I note from case law therefore that if changes to a planning unit give rise to fresh planning considerations this should be considered a material change of use. In the current referral before the Board the antecedent use is residential and the subsequent use is home-schooling.

- 6.3.8. I would consider that should home-schooling be a subsidiary use to an established residential use then development would not have occurred however in the current case the sole use at 'Avila House' is home-schooling with no residential use. Therefore, since the primary operation of the property is currently home-schooling of approximately 15 no. children there are, in my view, fresh considerations such as considering the operational hours, the generation of traffic required for the movement of children to and from the property and also the potential noise generation. These fresh considerations are, in my opinion, akin to considerations relevant for an education use.
- 6.3.9. I would consider that that an education use would involve the consideration of different issues including the generation of traffic and access, and the need for car parking, and noise and waste generation. The referrer outlines that there is available car parking for 7 no. cars on site in addition to car parking on the road side some 50m away from the subject site. I would consider that car parking and access would give rise to fresh planning considerations given the intensified nature of the traffic movements associated with home-schooling operation. Separately I would note from the Wicklow County Development Plan, 2016 – 2022, that the town zoning maps have three distinct residential zonings and there is a 'Community and Educational' zoning objective. Therefore, I would acknowledge that the Wicklow County Development Plan, 2016 – 2022, acknowledges that residential and education are distinctly different in land-use zoning objectives.
- 6.3.10. Overall I would conclude that a change of use from residential to education or home-schooling in this instance would be a material change of use and as such would be development in accordance with the provisions of Section 3(1) of the Planning and Development Act, 2000 (as amended).
- 6.3.11. Is the change of use exempted development

6.3.12. In relation to whether the change of use is exempted development the following must be considered (a) the Planning and Development Act, 2000, (as amended), and (b) the Planning and Development Regulations, 2001, (as amended).

6.3.13. Section 4 of the Planning and Development Act, 2000, as amended, sets out exemptions and I would consider that there are no specific exemptions in relation to the subject change of use.

6.3.14. I have examined the Planning and Development Regulations, 2001, (as amended) and I would consider that there are no specific exemptions in relation to a change of use from residential to home-schooling.

#### **6.4. Appropriate Assessment**

The Glen of Downs SAC is located approximately 2km north of the referral site and the Carriggower Bog SAC is located approximately 2.5km south west of the referral site.

Having regard to the nature and scale of the development under consideration, the nature of the receiving environment, the availability of public services, it is my opinion that no appropriate assessment issues arise and that the development would not be likely to have a significant effect, either individually or in combination with other plans or projects, on any Natura 2000 site.

## **7.0 RECOMMENDATION**

### **7.1. Conclusions and Recommendations**

*It is considered that the change of use from a residential unit to a home-schooling unit is a material change of use and would therefore be development and would not be exempted development in accordance with the provisions of the Planning and*

*Development Act, 2000 (as amended) and the Planning and Development Regulations, 2001 (as amended).*

*Accordingly, I would recommend an order along the following lines: -*

**WHEREAS** *a question has arisen as to “Whether the change of use from residential to home-schooling collective use at ‘Avila House’, Bromley, Kilpedder, Co. Wicklow is or is not development and is or is not exempted development”.*

**AND WHEREAS** *the said question was referred to An Bord Pleanála by Ciara Brehony and Sonja Luescher Keogh of Wicklow Sudbury, Home-schooling Collective.*

**AND WHEREAS** *An Bord Pleanála, in considering this referral, had regard particularly to*

- a) section 3 of the Planning and Development Act, 2000 (as amended),*
- b) to articles 6, 9 and 10 of the Planning and Development Regulations, 2001, (as amended),*
- c) Part 4 of Schedule 2 of the Planning and Development Regulations, 2001, as amended, and*
- d) Case Law,*

**AND WHEREAS** *An Bord Pleanála has concluded: -*

- a) The current use of the premises as a home-schooling collective represents a new and separate use*

b) *The level and pattern of traffic resulting from home-schooling use is materially different from the use as a residential unit.*

c) *The impacts that the current home-schooling collective would have on the local area in terms of noise, operational hours and generation of waste would be materially different to the impacts that residential unit would have on the local area.*

**NOW THEREFORE** *an Bord Pleanála, in exercise of the powers conferred on it by section 5 (4) of the 2000 Act, hereby decides that the said change of use from a residential unit to a home-schooling collective is not exempted development.*

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Kenneth Moloney  
Planning Inspector

16<sup>th</sup> March 2018