



An  
Bord  
Pleanála

## Inspector's Report ABP-300996-18

### Question

Whether the current use of the property as short term lettings based on internet bookings is a change of use from the established use of short term lettings as bedsits and, if it is, whether it is a material change of use.

### Location

28, Leinster Square, Rathmines,  
Dublin 6

### Declaration

Planning Authority

Dublin City Council South

Planning Authority Reg. Ref.

0501/17

Applicant for Declaration

Dolores O' Donoghue

Planning Authority Decision

Refuse permission

### Referral

Referred by

Dolores O' Donoghue.

Owner/ Occupier

Dolores O' Donoghue.

Observer(s)

None

**Date of Site Inspection**

13<sup>th</sup> of July 2018.

**Inspector**

Karen Hamilton

## **1.0 Site Location and Description**

- 1.1. The subject site contains a detached single storey over basement dwelling, located along the south of Leinster Square, a residential street which radiate west from the Rathmines Road Lower, Dublin 6. The site is currently in use for tourist accommodation as “East Park Lodge”. The front of the site is hard surfaced and used as a private carpark and there is communal laundry facility and open space at the side and rear.
- 1.2. The surrounding area is predominantly residential although there is a similar designed property on the opposite side of the road currently in use as a crèche. The Rathmines Road contains a range of commercial and retail uses.

## **2.0 The Question**

- 2.1. Whether the current use of the property as short term lettings based on internet bookings is a change of use from the established use of short term lettings as bedsits and, if it is, whether it is a material change of use.

## **3.0 Planning Authority Declaration**

### **3.1. Declaration**

The change of use of the bedsits at No 28 Leinster Square, Rathmines, Dublin 6 from lettings as bedsits to short term holiday lettings based on internet bookings is a material change of use. Accordingly, this change of use constitutes development under Section 3 (1) of the Planning and Development Act, 2000 (as amended), which is not exempted development either under this Act or the accompanying Planning and Development Regulations, 2001 (as amended).

The proposed development is NOT EXEMPT.

## 3.2. Planning Authority Reports

### 3.2.1. Planning Reports

The report of the area planner reflects the declaration that a material change of use has occurred and the use of the bedsits for short-term lettings is not exempt as summarised below:

- Relevant legislation referencing the meaning of the term “house” and those relevant change of uses permitted to a “house”.
- Evidence of the use as bedsits “pre 63” has been submitted.
- The use for short term lettings would remove the potential for the use of the bedsit as residential use and the current use is more akin to an aparthotel.
- The users of the bedsits will no longer be defined as residents, only visitors.
- Reference to the Board Decision on a similar referral, in Temple Bar (RL3490) is included.
- Reference is provided for the Government Circular PL 10/2017 for guidance on planning applications for short term lettings.

### 3.2.2. Other Technical Reports

None requested.

## 4.0 Planning History

### DO597/ 06

Section 57 declaration for works to the property.

## 5.0 Policy Context

### 5.1. Dublin City Development Plan 2016-2022

The site is located on Z2, residential lands, where it is an objective *“To protect and/or improve the amenities of residential conservation areas”*.

- Permissible uses- Residential.

- Open for consideration- Bed & Breakfast

Section 16.10 - Standards for Residential Accommodation

Appendix 16 - Guidance for Aparthotels.

## 5.2. Other Relevant Policy/Guidance

### 5.2.1. Action Plan for Housing and Homelessness – Rebuilding Ireland

Pillar 4- Improve Rental Sector.

Amongst other initiatives, the document refers to the need to maximise existing levels of supply in the rental market.

### 5.2.2. Circular Letter PL10/2017 and Circular Letter PL12/2016

These guidance documents issued by the Department of Housing, Planning and Local Government provide guidance to Planning Authorities in relation to short term lettings. Key points from this guidance includes:

#### **PL10/2017:**

The guidance notes that in certain instances short term letting can involve residential properties being lost to the residential housing system, meaning that less long term and secure accommodation will be available to the growing number of families who need it. It also notes that there can be further adverse impacts on local communities due to the transient nature of short term letting.

With regard the rental sector, it is recognised that a significant number of properties are being withdrawn from the long term market for short term lettings which has a negative impact on the availability of residential rental accommodation.

#### **PL12/2016:**

This circular refers specifically to the grounds which the Board reached its decision with respect to Referral RL3490. It notes that key considerations were:

- The exclusive use of the apartment on a year round basis for short term commercial lettings.
- The absence of any permanent resident from any portion of the apartment and

- Submissions made by the letting company and those made by other residents of the area.

It is further stated:

*“In light of this determination, the continued operation of an apartment or residential unit without planning permission for such a material change of use should be considered unauthorised development and subject to enforcement proceedings by the relevant Planning Authority. However, it is also important in this connection to distinguish between properties which are*

- (a) only made available for short term letting purposes on an occasional basis or for particular periods of the year*
- (b) partially occupied by the residential owners on an ongoing basis and*
- (c) exclusively used for commercial short term letting purposes on a year round basis.*

*It should be particularly noted that any planning enforcement action in this area should be focussed on properties coming within scenario (c) above i.e. those being exclusively used for commercial short term letting purposed on a year round basis.”*

### **5.3. Natural Heritage Designations**

The site is located 3.7km to the east of South Dublin Bay and River Tolka Estuary SPA and South Dublin Bay and River Tolka Estuary SPA. There is no identified pathway to source between the subject site and any Natura 2000 site.

## **6.0 The Referral**

### **6.1. Referrer’s Case**

A submission has been made from an agent on behalf of the owner/ applicant in relation to a Section 5 declaration by the Planning Authority, which included the initial referral to the Planning Authority, as summarised below:

- The declaration issued by the City Council is unsatisfactory, contrary to the requirement of Section 5 (2) of the Act as no reasons were given for the decision.
- The council did not give due consideration to the weight of evidence that accompanied the original referral.
- The applicant has owned the property for 21 years and the current use of the site is a continuation of an existing use.
- The property was bought as an investment property in 1996 and the property was subdivided into 18 no. units and has continuously operated as a short-term bedsit type accommodation.
- An enforcement letter from the Council refers to the “use as a guesthouse for the provision of short term accommodation”.
- This declaration is different to the Boards previous decision (RL3490) in Temple Bar as the house has already been subdivided “pre 63” and was never intended for long term residential use.
- The historic use fits closely to an aparthotel and the guidance in Appendix 16 of the Dublin City Development Plan 2016-2022 and the current building would require extensive structural modifications to be used for residential accommodation.
- The house, in its present condition, could not be used as residential accommodation, because of the standards, and the only option for the site would be the demolition and rebuild of three terrace dwellings on the site (proposed illustration submitted).
- The use of the site supports the policies in the plan for tourism accommodation in Dublin City.
- Invoice from Panda Waste (2012) and UPC (2012) for the payment of multi-use television and radio.

## 6.2. Planning Authority Response

None received.

## 7.0 Statutory Provisions

### 7.1. Planning and Development Act, 2000

**Section 2 (1)** of the Act provides the following definitions of relevance:

*“habitable house” means a house which –*

*(a) is used as a dwelling,*

*(b) is not in use but when last used was used, disregarded any unauthorised use, as a dwelling and is not derelict, or*

*(c) was provided for use as a dwelling but has not been occupied; Planning and Development Regulations, 2001.”*

*“house” means a building or part of a building which is being or has been occupied as a dwelling or was provided for use as a dwelling but has not been occupied, and where appropriate, includes a building which was designed for use as 2 or more dwellings or a flat, an apartment or other dwelling within such a building;*

**Section 3(1)** of the Act states the following in respect of ‘development’:

*“In this Act, ‘development’ means, 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 3(3)** of the Act states that:

*For the avoidance of doubt, it is hereby declared that, for the purposes of this section, the use as two or more dwellings of any house previously used as a single dwelling involves a material change in the use of the structure and of each part thereof which is so used.*

**Section 4 (2)(a)** of the Act enables certain classes of development to be deemed exempted development by way of regulation.

### 7.2. Planning and Development Regulations, 2001

**Article 5 (1)** set out that



*“house” does not, as regards development of classes 1, 2, 3, 4, 6(b)(ii), 7 or 8 specified in column 1 of Part 1 of Schedule 2, or development to which articles 10(4) or 10(5) refer, include a building designed for use or used as 2 or more dwellings or a flat, an apartment or other dwelling within such a building;*

**Article 10 (4)** of the Regulations relates to changes of use and states that:

*“Development consisting of the use of not more than 4 bedrooms in a house, where each bedroom is used for the accommodation of not more than 4 persons as overnight guest accommodation shall be exempted development for the purposes of the Act provided that such development would not contravene a condition attached to a permission under the Act or be inconsistent with any use specified or included in such a permission.”*

### **7.3 Relevant Precedents and Case Law**

7.3.1 Two previous planning determinations and a number of referrals of some relevance to the subject case are summarised below.

#### **PL61.212518**

The construction of a one-storey extension to the rear of an existing two storey dwelling together with the refurbishment of the existing dwelling, all to be used as a Section 50 student dwelling at 23 St Enda’s Road, Shantalla, Galway: Permission was refused for the following reason:

*Having regard to the location of the site in an established residential area and to the pattern of development in the vicinity, it is considered that the proposed change of use of a mid- terrace, single family dwelling to use as a multiple dwelling unit, in itself and by precedent it would set, would seriously injure the amenities of the area and would depreciate the value of properties in the vicinity by reason of intensification of use, general disturbance, noise and additional parking demands. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.*

#### **PL29S.249430**

The conversion of a 7 no of apartments for short term commercial leasing was refused as it would remove the provision of residential accommodation in Dublin City Centre and would contravene the policies of the development plan.

## **Referrals**

### **RL.3490**

Whether the use of a residential apartment for short term holiday letting at apartment 1A, 5-5A Crown Alley, Dublin is or is not development or is or is not exempted development. The Board concluded as follows:

- (a) the use of a residential apartment for short term holiday lettings, as described above, at Apartment 1A, 5-5A Crown Alley, Dublin constitutes a change of use.
- (b) The change of use to an apartment for short term holiday lettings, as described above, raises planning considerations that are materially different to the planning considerations relating to the permitted use as a residential apartment. In particular, (i) the extent and frequency of coming and going to and from the apartment by short term renters and servicing staff (ii) associated concerns for other residents in respect of security and general disturbance and (iii) the fully commercial nature of the activity.
- (c) the change of use constitutes, therefore, a material change of use and is development as defined in section 3 of the Planning and Development Act, 2000 and
- (d) Neither the Planning and Development Act, 2000, as amended nor the Planning and Development Regulations, 2001, as amended provide any exemption in respect of such a change of use.

### **PL29/8/479**

Whether the change of use of town houses at Lansdowne Village, Sandymount Village, Dublin, to holiday homes is a material change of use. The Board declared that this is development that is not exempted development.

### **RL2317**

Whether the change of use of six of the eight apartments within an apartment block situated at the Merrion Grove apartment complex, Stillorgan Road, Stillorgan, Co. Dublin to student accommodation is a material change of use. The Board declared that this is development and is not exempted development. This case is of relevance as it addresses the issue of material change of use in detail.

This referral also addresses Article 10 (1) (b) and (c) of the Regulations which states any exemption that might otherwise apply does not constitute exempted development where it would be inconsistent with any use specified or included in a permission.

## **RL2192**

Whether the change of use of permitted holiday apartments to permanent residential accommodation at the Dolmen Hotel, Kilkenny Road, Carlow is a material change of use. The Board declared that this is development that is not exempted development.

### **Case Law**

7.3.2 The following case law is of relevance:

7.3.3 Referral reference PL29/8/279 was the subject of a High Court challenge, McMahon -v- Dublin Corporation 1997 1 ILRM 227, in which the Board's declaration was upheld. Barron J. held that:

*"...in the absence of explicit reference in the planning permission to a permitted use, regard must be had to the use for which the structure was designed, i.e. the use which was objectively intended for the structure having regard to the relevant planning documentation. The purpose for which the plaintiffs' homes had been designed was private residential, whereas the use to which they were currently being put was commercial."*

7.3.4 The question as to whether a change of use is a material one was addressed by Keane J. in the case of Monaghan County Council -v- Brogan. He stated that the issues of relevance to this question are:

*"...the matters which the planning authority would take into account in the event of a planning application being made for the use. If these matters are materially different (from the original use), then the nature of the use must equally be materially different."*

## 8.0 Assessment

8.1.1 It should be noted that the purpose of this referral is not to determine the acceptability or otherwise of the guest accommodation but whether the matter in question constitutes development, and if so falls within the scope of exempted development.

8.1.2 As noted above, the subject house has previously been divided into 18 no. bedsits. It is currently actively marketed as a self-catering property with all self-catering rooms for short term, commercial lettings. I have reviewed a number of commercial letting/holiday websites and note that on the 10<sup>th</sup> of July 2018, the subject property was advertised as “East Park Lodge” with 18 no. units available to rent as short term rental self- catering accommodation on a number of sites. These include, to name a few:

[www.booking.com](http://www.booking.com)

[www.hotelscombined.ie](http://www.hotelscombined.ie)

[www.visitdublin.ie](http://www.visitdublin.ie).

8.1.3 Notwithstanding this, the specific question before the Board is whether the use of No 28 Leinster Square for short term lettings based on internet bookings is a change of use from the previous use of the property as short term lettings as bedsits and, if it is, whether it is a material change of use.

### 8.1. Is or is not development

8.1.1. The definition of ‘development’ involves 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. Section 2 (1) of the Planning and Development Act, 2000 (hereafter referred to as the Act) includes the definition of “house” as a building or part of a building which is being used or has been occupied as a dwelling or was provided for use as a dwelling but not been occupied, and where appropriate, includes a building which was designed for use as 2 or more dwellings or a flat, an apartment or other dwelling within such a building.

8.1.2. The applicant submits there was an established bedsit use “pre 63” on the site when purchased some 21 years ago, and following a ban on bedsits in 2013 a different

business model was sought and the use of internet based lettings was utilised. The applicant notes the current use is akin to an aparthotel. Evidence submitted, to support the previous use for multiple lettings, includes invoices from 2012/13 indicating payment for multiple television and gas and an Engineering Report dated 2008 stating the building contained low rental income flats/ bedsits, although it is of note that the total number of units referred to within the text has been redacted and the report refers to flats and apartments. The applicant has not submitted any evidence relating to the length of time these bedsits/flats were leased and therefore I consider it may reasonably be assumed that these units were available for a range of leasing terms including long term leasing until 2013 when the standards for rental accommodation exceeded those provided within No. 28 Leinster Park.

8.1.3. Having regard to the definition of “house” in the Act, the design of the building and the previous intended use of the units for private rented accommodation, I consider the building may be defined as a “house” and provided accommodation for a person or persons to reside, which is in keeping with that determination by Barron J. in the case *Mc Mahon-v- Dublin Corporation (1997)*. The question that is relevant in this instance is whether the use of the house, which the applicant states has always been in use for short term residential accommodation, for short term lettings based on internet bookings is development and if so is the change material.

8.1.4. The applicant presents case law, *Monaghan County Council-v- Brogan (1987)*, in support of issues relevant to this referral .....*matters which the planning authority would take into account in the event of a planning application being made for the use. If these matters are materially different (from the original use), then the nature of the use must be materially different.* The applicant argues there is no material difference in the use as bedsits and use for short term lettings via the internet as both are based on internet use involving a large turnover of short term occupants, therefore no change of use has occurred. The Brogan case is also quoted by the Inspector in the Temple Bar Residents case (RL3490) as a test to support the decision that the change of use of the apartment for short-term lettings accommodation constitutes development.

8.1.5. Having regard to the assumption that the bedsits/ flats were available for long term accommodation and part of the housing stock for the rental market, I consider the nature of internet based lettings substantially amends the duration of stay of

occupants, as short as one-night occupation, on a continuous basis and therefore there is a change in demographic profile of occupants from resident to visitor. In association with activity associated with short stay visitors such as traffic, there is a requirement for additional services such as cleaning and maintenance, therefore an intensification of activity on the subject site. I note the report of the planner accepted evidence of the established use on the site for bedsits although considers the historical operation of the private rental market is not for such short periods associated with hotels, hostels or apart-hotels, which I consider reasonable.

8.1.6. As stated above, the scale and frequency of visiting members of the public would certainly lead to the intensification of use of the house, resultant noise and disturbance would be assessed in a different manner and different planning criteria used for example Appendix 16 of the development plan provides specific guidance for aparthotels. Therefore, in light of the Brogan case, under a planning application scenario, I consider the standards and considerations of the planning authority would be substantially different when assessing an apartment development and an aparthotel.

8.1.7. I conclude that the use of the subject building as short-term holiday lettings accommodation raised matters different from those that would arise under any assessment for private rented apartments/ bedsits and the change of use leads to an intensification of the use of a house which is materially different and constitutes DEVELOPMENT.

## **8.2. Is or is not exempted development**

8.2.1. The Act in defining “house” and “habitable house” effectively defines residential use. However, neither the Act nor the accompanying Regulations define short-term holiday lettings accommodation or refer to this use. As previously stated, the building is defined as a “house”.

8.2.2. Under Article 5(1) of the Planning and Development Regulations, 2001 – 2015, the definition of “business premises” leads on to the definition of “excluded premises”, which refers to the provision of “overnight guest accommodation”. A common dictionary definition of “guest” is “a person who is invited to visit someone’s home” or “a person staying at a hotel or guest house”. It does not include for the self-catering visitor that characterises the short-term holiday lettings use in question.

- 8.2.3. Neither the Act nor the Regulations state that the use of an apartment or bedsit as short-term holiday lettings accommodation or an aparthotel is exempted development. If the view is taken that this use is analogous to that of a hostel, then it could be said to be encompassed by Class 6 of Part 4 of Schedule 2 to Article 10 of the Regulations. However, as the residential use of a bedsit or apartment is not included within this Class or any other Class of the said Part 4, the possibility that the material change of use of the subject house from residential use to short-term holiday lettings is exempted development does not arise.
- 8.2.4. Accordingly, I conclude that the material change of use of the subject house from residential use, whether short-term or long term, to short-term holiday lettings use is development and IS NOT EXEMPTED DEVELOPMENT.

## 9.0 Recommendation

- 9.1. I recommend that the Board should decide this referral in accordance with the following draft order.

**WHEREAS** a question has arisen as to whether the current use of the property as short term lettings based on internet bookings is a change of use from the established use of short term lettings as bedsits and, if it is, whether it is a material change of use:

**AND WHEREAS** Dolores O'Donoghue requested a declaration on this question from Dublin City Council and the Council issued a declaration on the 25<sup>th</sup> day of January, 2018 stating that the matter was development and was not exempted development:

**AND WHEREAS** referred this declaration for review to An Bord Pleanála on the 21<sup>st</sup> day of February , 2018:

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

particularly to –

- (a) Section 2, 3 and 4 of the Planning and Development Act, 2000, as amended,
- (b) Article 5 and 10 of the Planning and Development Regulations, 2001, as amended,
- (c) The following submissions:
  - (i) The referrers submission,
  - (ii) The planning authority's assessment and declaration,
- (d) The report if the Inspector,
- (e) The pattern of development in the area:

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

- (a) The use of the building for a short-term holiday letting based on internet bookings is a change of use from the current established use for short term lettings for bedsits, which in the light of the different matters that it raises for assessment compared to those which would have arisen for original use as residential accommodation, is a material change of use and thus development, and
- (b) The neither the Planning and Development Act, 2000, as amended, nor the Planning and Development Regulations, 2001, as amended, recognise the said material change of use to be exempted development.

**NOW THEREFORE** An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3) (a) of the 2000 Act, hereby decides that the change of use of the property from the established use of short term lettings as bedsits to short term lettings based on internet bookings is development



and is not exempted development.

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Karen Hamilton  
Planning Inspector

16<sup>th</sup> of July 2018