



An
Bord
Pleanála

Inspector's Report ABP-301688-18

Question	EXPP: PROTECTED STRUCTURE: Conversion of the premises at 57,59 and 61 Cabra Road, Dublin 7 to a supported homeless accommodation facility.
Location	57, 59 and 61 Cabra Road, Dublin 7 (Protected Structures)
Declaration	
Planning Authority	Dublin City Council North
Planning Authority Reg. Ref.	0110/18
Applicant for Declaration	Kevin O'Sullivan c/o Cabra Road Residents Association
Planning Authority Decision	Is development and is not exempted development
Referral	
Referred by	Kevin O'Sullivan c/o Cabra Road Resident Association
Owner/ Occupier	Peter McVerry Trust
Observer(s)	None
Site Inspection	11 th January 2019
Inspector	Suzanne Kehely

1.0 Site Location and Description

- 1.1. The site relates to three mid terraced properties on the north site of Cabra Road which have an established nursing home use and have been adapted to such use by way of modifications to the original premises and extension to the rear.
- 1.2. The premises are currently in use as a residential facility for the homeless. During a site inspection the premises appear to retain the institutional layout; the basement level provides reception areas and communal facilities with access to the rear garden area into which the premises have been extended. At ground level there are common areas such as dining and sitting room areas in the principal rooms and kitchen facilities in the return. The remaining rooms appear to be bedrooms with bunk beds and en-suite facilities.
- 1.3. Main interventions with original features include suspended ceilings, replaced windows, fire doors, ramping of some stairs, blocking up of chimneys/removal of fireplace mantelpiece, and insertion of en-suite facilities. These works appear to have been in situ as part of the nursing home facility.

2.0 The Question

- 2.1. Whether or not the conversion of the premises at 57, 59 and 61 Cabra Road Dublin 7 to a supported homeless accommodation facility is or is not development or is or is not exempted development.

3.0 Planning Authority Declaration

3.1. Declaration

The subject development would be exempted development in accordance with Section 4(2) (a) to (c) of the Planning and Development Act 2000 (as amended) and the provisions of Article 10(1) and Class 9 of Part 4, Schedule 2 'Exempted Development – Classes of Use', of the Planning and development Regulations as amended and therefore, would not require planning permission. Accordingly, it is the opinion of the Planning Authority that the change of use of the Premises at 57, 59

and 61 Cabra Road, Dublin 7 to a supported homeless accommodation facility is development and is exempted development.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- There has been no 57 Declaration issued in respect of the Protected Structures on site.
- Permission granted for a nursing home use in no. 61 (1044/80) and 59 (1619/83) and in no 57 (0704/80) (Details attached in file where available.)
- 0032/18 section 5 Declaration on subject matter already issued and undisputed.
- The following statutory provisions were noted:
 - Section 2(1), 3, 4, 57 of the Act
 - Article 10 and Part 4 schedule 2 of the Regulations

3.2.2. Referrers case – Third Party

- No evidence of permission for a nursing home in premises.
- Even if nursing home is the last lawful use, accommodation for 60 homeless is material change of use from such a use. This is submitted by reference to the nature of the nursing use and to High Court decision in relation to the conversion of residential accommodation to short term commercial accommodation.
- The character of the premises – protected structures has been altered by the internal renovation and refurbishment works.
- Under section 5(4) it is requested that the matter be referred to An Bord Pleanála due to potential bias by Dublin City Council and the support of the facility by DHRE.

3.2.3. Comments of owner

- The planning authority invited Peter McVerry Trust to comment on the referral. On the basis that the matter was understood to have been dealt with, no detailed comment was provided in the response other than an offer of information if required.

4.0 Planning History

PA ref 704/88 refers to a refusal of permission for additional nursing home use and retention of extension at 57 Cabra Road on grounds of traffic. This was overturned on appeal.

PA 901/87 refers to refusal of permission to retain extension to rear of 59-61 on grounds of over development and loss of car parking. Upheld on appeal.

PA1619/83 refers to a grant of permission for change of use from flats to a home for the elderly.

PA 262/86 refers to refusal of permission for retention of converted garages to living accommodator elderly at 59-61 Cabra Rd.

PA 535/75 refers to refusal of permission for retention of bedsits.

5.0 Policy Context

5.1. Development Plan

- 5.1.1. The site is zoned Z2 Residential neighbourhoods (conservation area) here the objective is 'to protect and/or improve the amenities of residential conservation areas.'
- 5.1.2. The premises are included in the Record of Protected Structures -. Record nos. 50060196, 50060197 and 50060198 (Details attached with referrer's submission.)
- 5.1.3. Section 5.5.11 sets out policy for Homeless Services: The City Council and other statutory agencies provide appropriate accommodation and work together to improve the range and quality of services available for homeless persons. An over-concentration of institutional accommodation can have an undue impact on residential communities and on the inner city in particular. A co-ordinated approach to the provision and management of these facilities as well as their spread across the city is important.

5.1.4. Policy QH30: To ensure that all proposals to provide or extend temporary homeless accommodation or support services shall be supported by information demonstrating that the proposal would not result in an undue concentration of such uses nor undermine the existing local economy, resident community or regeneration of an area. All such applications shall include: a map of all homeless services within a 500 metre radius of the application site, a statement on the catchment area identifying whether the proposal is to serve local or regional demand; and a statement regarding management of the service/facility.

5.2. Natural Heritage Designations

The site is not located within a European Site and impact on such is not relevant in the consideration of this case.

6.0 The Referral

6.1. Referrer's Case

- The planning authority is in error.
- No evidence of permission for change from private residence.
- The premises have undergone a conversion from private nursing home to supported temporary accommodation.
- Change of use is measured from the lawful use.
- Even if superficially similar uses, the nature of the change is material.
- The concentration of such uses in a locality is a material consideration as evidenced by policy QH30 which seeks to prevent an undue concentration.
- Intensification of use by way of change from a small number of elderly and in some cases bed bound individuals to 60 active persons with a consequent increase in coming and going as in the case of Air B and B and concerns of security and disturbance.

- No relevant exemption, furthermore, the development has been carried out by the owner of the premises and not the City Council so section 4(1) (aa) cannot apply.
- The character of building has been altered.
- It is pointed out that notwithstanding the applicant's concerns of impartiality with the involvement of Dublin Regional Homeless Executive. Furthermore, the Board was not consulted despite the referrer's request.

6.2. **Planning Authority Response**

- Comments were submitted on 12th June 2018
- Matters raised in the appeal were already considered in assessment for the Section 5 Declaration.
- There is planning permission for nursing home use at nos. 57, 59 and 61 adjoining premises

6.3. **Owner/ occupier's response**

6.3.1. In a letter received on 7th August 2018 the agent for the owner responded in detail to the matters raised. The background is also clarified and the following salient points are made:

- The nursing home use commenced over 35 years pursuant to PA refs. 1619/83 and 1044/60 and then extended into no.57 in the late 1980s pursuant to a later permission PL29/5/78149.
- It is acknowledged that the three building are in the RPS.
- Homeless accommodation facility is permissible in the zoning. And does not conflict with the Development plan objective for the area.
- McVerry Trust is a housing led response to addressing homelessness and acquired the property in 2017 in order to continue to provide care to homeless persons.
- The property did not require material alteration for it to continue to be used to provide residential care services.

- The premises were professionally cleaned, painted and appropriately furnished.
- People who use the facility are a vulnerable group in need of and have access to a range of health and welfare supports.
- Substantial protocols, procedures and operations are in place to ensure the effective operations and protection of residential amenity from noise or any other disturbance. (Operational Statement)
- Accommodation is for 6 months not single night stays
- 24-hour management by professional staff who ensure needs of participant group are met.
- The use of the premises as a nursing home is exempted development under Article 10 Part 4. of PDR
- In response to the points made regarding a material change of use it is submitted that:
 - A change of use has occurred
 - The examples of material change of use provided by referrer relate to classes of use not provided for in part 4
 - Works involved fall within section 4(1) (h) and with rega5d to section 57 of the Act do not in any way materially affect the structure nor any element of the structure which contributes to its special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest. As such the minor works are considered exempted development. removal of safety handrails, new floor coverings over existing non-original hospital/medical grade floor coverings, removal and replacement of non-original skirting boards
- Works involve painting and decorating, removal of handrail and non-original skirting, and provision of new floor covering and soft furnishing
- It is confirmed that there have been no changes to internal walls, no construction works or demolitions and no changes to the bedrooms
- Totality of work cannot in any way materially affect the structure or any element of significance.

- While not considered directly relevant it is pointed out how the use does not conflict with development plan policy with respect to intensification of institutional uses and management of use in a residential area.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

7.1.1. Section 2

- “development” has the meaning assigned to it by *section 3*, and “develop” shall be construed accordingly;
- “exempted development” has the meaning specified in *section 4*;
- “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;
- “structure” means any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined, and—
 - (a) where the context so admits, includes the land on, in or under which the structure is situate, and
 - (b) in relation to a protected structure or proposed protected structure, includes—
 - (i) the interior of the structure,
 - (ii) the land lying within the curtilage of the structure,
 - (iii) any other structures lying within that curtilage and their interiors, and
 - (iv) all fixtures and features which form part of the interior or exterior of any structure or structures referred to in *subparagraph (i)* or *(iii)*;
- “use”, in relation to land, does not include the use of the land by the carrying out of any works thereon;

- “works” includes 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.

7.1.2. **Section 3.** — (1) 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.

7.1.3. **Section 4 (1)** states that

The following shall be exempted developments for the purposes of this Act—

(h) 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;

7.1.4. **Section 57** refers to works affecting character and states:

(1) F368[Notwithstanding *section 4(1)(a), (h), (i), F369[(ia)] (j), (k), or (l)* and any regulations made under *section 4(2),*] the carrying out of works to a protected structure, or a proposed protected structure, shall be exempted development only if those works would not materially affect the character of—

(a) the structure, or

(b) any element of the structure which contributes to its special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest.

(2) An owner or occupier of a protected structure may make a written request to the planning authority, within whose functional area that structure is situated, to issue a declaration as to the type of works which it considers would or would not materially affect the character of the structure or of any element, referred to in

subsection (1)(b), of that structure.

7.2. Planning and Development Regulations, 2001

7.2.1. **Article 5** states “care” means personal care, including help with physical, intellectual or social needs;

7.2.2. **Article 10 (1)** states:

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.

7.2.3. **Part 4 of Schedule 2** sets out exempted development class of use to which Art 10(1) refers.

CLASS 9

Use—

(a) for the provision of residential accommodation and care to people in need of care (but not the use of a house for that purpose),

(b) as a hospital or nursing home,

(c) as a residential school, residential college or residential training centre.

8.0 Assessment

8.1. Is or is not development

- 8.1.1. In this case the site has been subject of change of occupancy and ownership in its transition from a commercial nursing home to a charity based housing facility for homeless people in need of care. The works involved in the premises have amounted substantially to painting and decoration and furnishings. As the site comprises 3 protected structures the works can be deemed to be development by reference to the definition of works in section 2.
- 8.1.2. The change of use can constitute development where there has been a material change of use. There is no statutory definition of 'material change of use'; however, it is linked to the degree of a change and the associated impacts which are determined on the individual merits of a case.
- 8.1.3. While on the one hand the use remains as a form of institutionalised care within the same layout and facilities, the accommodation is a stepping stone to enable residents to move on to more independent living. The key changes relate to the capacity for residential occupancy which has been increased by the use of bunk beds and the type of care whereby the nursing care is replaced by social support and care. While the residents are I accept at a different life stage and encouraged to come and go they are not likely generate the same amount of visitor traffic as less mobile and more permanent nursing home residents who are also more likely to be in their older years, more sedentary and reliant on nursing care.
- 8.1.4. The development plan policy notably section 16.12, seeks to control an over concentration of institutional use in the inner city, but is not entirely relevant as the established use is as a nursing home and, as the new use is a form of institutional use, no additional institutional use arises. I accept that the operation may be somewhat different in terms of the mobility of the individual and also that the client base is different which may have a bearing on the local economy, residential community or regeneration of the area. A nursing home for example is also more likely to serve a more local neighbourhood/catchment as compared to a homeless shelter. It is also more likely to generate visitors during sociable hours and

contributors to the local economy. In view of the vulnerability and social needs of the clients in some cases there may be anti-social issues.

- 8.1.5. To address potential incompatibility, policy QH30 seeks to require; mapping of all homeless services within a 500 metre radius of the application site, a statement on the catchment area identifying whether the proposal is to serve local or regional demand; and a statement regarding management of the service/facility. In this regard the owner clarifies that the nearest homes accommodation is 1.4km away and the of the two nearest bed and breakfast premises one is 600m away (and was the subject of a referral and was small scale) and one is about 450m to the south and does not amount to intensification of institutional use. This compatibility of use is further supported by details of active 2- hour service and monitoring such as staff walking around an agreed route in the area.
- 8.1.6. Having regard to the detailed modus operandi of the housing accommodation I am of the opinion that a change of use in this case by itself barely constitutes development although I do accept there are some differences between the former and latter uses.
- 8.1.7. I do however also note that residential accommodation and care is a class of use distinguished from a nursing home use and that by implication of the provision for class 9 the change of use from one to the other in this class could be classed as development.
- 8.1.8. Accordingly, I consider the change of use by itself and together with the associated works in terrace of protected structures can be described as development.

8.2. Is or is not exempted development

- 8.2.1. The Act by regulation provides for Classes of development to be exempted and change from one use to another within the same use class does not require planning permission. In this case class 9 of Part 4 of Schedule 2 of the Regulations applies.
- 8.2.2. I consider the use for homeless persons who are described as a vulnerable group in need of care that is essentially a form of social rehabilitation, falls within the class of use in Class 9 (a) described as 'for the provision of residential accommodation and care to people in need of care (but not the use of a house for that purpose). While I note the protected structures are former houses, the planning permissions and subsequent occupancy render the lawful use on which to base the nature of the

change of use, as a nursing home use class 9 (b). Accordingly, the change of use in this case is exempted development.

- 8.2.3. With respect to works I note that the premises have been painted, decorated and furnished. The medical grade hospital flooring/modern skirting and rail aids which were, it can be reasonably assumed to be later nursing home additions have been removed and/or replaced with new floor covering and has not resulted in any apparent loss or impact on original fabric. While I note the owner/occupier has not sought, nor is required to seek a section 57 Declaration from the planning authority, for the purposes of this referral, I do not consider the works to be of material nature in terms of impact on the character of the protected structures. I say this having regard to the limited amount and nature of works, the appraisal in the RPS which refers to most significant architectural features as being the doorcase and fanlight and streetscape value, my observations during inspection and the Architectural Heritage Protection Guidelines for Planning Authorities issued by the Department of Environment, Heritage and Local Government.

8.3. Restrictions on exempted development

- 8.3.1. The exemption for above mentioned change of use within Cass 9 is restricted, 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.
- 8.3.2. As the works in my judgment and by reference to the Ministerial Guidelines for architectural heritage protection, fall within the exemption category of section 4(1) (h), the restriction of Article 10 (1) (a) does not apply.

There is no evidence of the development contravening a condition of permission. Notwithstanding the inspections by the planning authority and planning history, I would point out that the purpose of this referral does serve as evidence of

compliance with all conditions of permission. The purpose of section 5 is not to determine whether something is unauthorised development. The salient consideration in this case under section 5 is the material contravention of a condition such as for example a condition specifically excluding the change of use or a particular use without a prior grant of planning permission. I say this with reference to the judgement made by Finlay Geoghegan J. in the case of *Roadstone Provinces Limited v An Bord Pleanála* [2008] IEHC 210 which states that “The respondent [The Bord] has no jurisdiction on a reference under s.5 (4) of the Act to determine what is or is not “unauthorised development”. It may only determine what is or is not “development”.” Accordingly, the Board’s single function under s.5 (4) is to determine whether in any given case there has or has not been development or, as the case may be, exempted development. It may be further observed that the Board has no enforcement role at all. This view is further supported in *Heatons Limited v Offaly County Council* (2013).

- 8.3.3. As the use and works do not in themselves contravene a condition of permission the restriction of Article 10 (1) (b) does not apply.
- 8.3.4. Similarly, as the uses are within the same class in Part 3 of schedule 2 to which Article relates, the change of use cannot be reasonably construed to constitute development inconsistent with any use specified or included in such a permission. Accordingly, the restriction of Article 10 (1) c) does not apply.
- 8.3.5. Finally, as the nursing home use is an authorised use and not an abandoned use prior to the residential accommodation use, the restriction of Article 10 (1) (d) does not apply.

8.4. **Conclusion on conversion**

- 8.5. In view of the foregoing, I am of the opinion that the change of use and works constitute development that is exempted development and no restrictions can be reasonably applied.

8.6. **Intensification**

- 8.6.1. While the conversion is in my opinion exempted development, this does not exclude the subsequent intensification of use being appraised as constituting an additional

level of development. While the question is not framed in such a way, the referring party raises this matter by reference to the increase in capacity for homeless. From my examination of the changes and operation there is no material manifestation of intensification taking place in my opinion. The persons are able boded which permits the use of bunk beds and increase in sleeping capacity. There is no issue of traffic of parking given the unlikelihood of car ownership among the clientele, limited visitors and the strategic siting on well serviced road. The highly monitored regime regulates noise and disturbance. I do not consider there is evidence of intensification of a use that is 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 conversion of the premises (Protected Structures) at 57,59 and 61 Cabra Road, Dublin 7 to a supported homeless accommodation facility is or is not development or is or is not exempted development:

AND WHEREAS Kevin O'Sullivan, 27 Cabra Road, Dublin 7 requested a declaration on this question from Dublin City Council and the Council issued a declaration on the 2nd day of May, 2018 stating that the matter was development and was exempted development:

AND WHEREAS Kevin O'Sullivan, 27 Cabra Road, Dublin 7 referred this declaration for review to An Bord Pleanála on the 22nd day of May, 2018:

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

- (a) Section 2(1) of the Planning and Development Act, 2000, as amended,

- (b) Section 3(1) of the Planning and Development Act, 2000,
- (c) Section 4(1)(h) of the Planning and Development Act, 2000, as amended,
- (d) Section 57 (1) of the Planning and Development Act, 2000, as amended,
- (e) Article 5 of the Planning and Development Regulations, 2001, as amended,
- (f) Article 10 of the Planning and Development Regulations, 2001, as amended,
- (g) Part 4 (Class 9) of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (h) the planning history of the site,
- (i) the nature of the uses previously and currently on site,
- (j) the nature of the works,
- (k) the provisions of the Dublin City Development Plan 2016-2022, and
- (l) the pattern of development in the area:

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The said change of use and associated works each constitute development
- (b) Nursing home use and homeless accommodation in the manner described by the owner both falls within the classes of use as described in Class 9
- (c) The works associated with the change of use do not materially affect the character of the protected structure or any element of the structures which contributes to their special architectural historical, archaeological, artistic, cultural, scientific, social or technical interest not material

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 conversion of the premises (Protected Structures) at 57,59 and 61 Cabra Road, Dublin 7 to a supported homeless accommodation facility is development and is exempted development.

Suzanne Kehely

Senior Planning Inspector

22nd January 2019