



An
Bord
Pleanála

Inspector's Report ABP-302866-18

Question

Whether the proposed use of an apartment for short stay accommodation lettings is or is not development or is or is not exempted development at Apartment No. 5 Chancery Hall, Blackhall Place, Dublin 7

Location

Apartment No. 5 Chancery Hall,
Blackhall Place, Dublin 7

Declaration

Planning Authority

Dublin City Council North

Planning Authority Reg. Ref.

0347/18

Applicant for Declaration

Sacreto limited

Planning Authority Decision

Is not exempted development

Referral

Referred by

Sacreto Limited

Owner/ Occupier

Sacreto Limited

Observer(s)

None.

Date of Site Inspection

28/01/19

Inspector

Sarah Lynch

1.0 Site Location and Description

- 1.1. The site is located within a block of apartments known as Chancery Hall which is a corner block located at the junction of Blackhall Place and Ellis Quay. The apartment block is five storeys in height and has a red brick and granite finish. A convenience supermarket occupies the ground floor of the building and 32 apartments occupy the upper floors.
- 1.2. The building can be accessed from both Blackhall Place and John Street North. The surrounding area comprises largely residential properties with a limited level of retail and commercial at ground floor within some of the adjacent apartment blocks.

2.0 The Question

- 2.1. Whether the proposed use of Apartment No.5 Chancery Hall, Blackhall Place, Dublin 7 for short stay accommodation lettings is or is not development and whether the development constitutes exempted development or does not constitute exempted development.

3.0 Planning Authority Declaration

3.1. Declaration

The Declaration issued by the planning authority concluded

The use of Apartment no.5 Chancery Hall, Blackhall Place, Dublin 7 for short stay accommodation lettings is a material change of use. Accordingly, this change to a commercial use constitutes development under Section 3(1) of the Planning and Development Act, 2000 (as amended), which is not exempt development either under this Act or the accompanying Planning and Development Regulations 2001 (as amended).

3.2. Planning Authority Reports

- 3.2.1. Planning Reports

The report of the area planner reflects the declaration that the proposed use of Apartment No. 5 Chancery Hall, Blackhall Place, Dublin 7 for short stay accommodation lettings would constitute a material change of use and is not exempted development. The following issues have been considered within the planners report and are summarised as follows:

- A change of use has occurred from residential dwelling to a commercial use.
- A material change of use has occurred as the character of the first use is substantially different to that of the proposed. Visitor accommodation standards within the development plan differ from those that are relevant to the assessment of a residential unit.
- Planning issues relating to impact of short stay accommodation lettings on residential amenities of existing dwellings such as noise and nuisance, and differences in patterns of usage compared to that arising from private residential development.
- The change of use to a commercial use would have potential to impact on the wider environment in terms of the proper planning and sustainable development of the area.
- Government Circular PL 10/2017 was considered in the assessment as was An Bord Pleanala decision RL 3490.

3.2.2. Other Technical Reports

None

4.0 Planning History

The following is of relevance

2434/92 Permission was granted for 5 storey mixed use building comprising 27 no. 2 bedroom apartments and 6 no. 1 bedroom apartments

0957/93 Permission was granted for internal alterations to the above development.

E1362/17 – Alleged use of no. 5 for short stay accommodation.

5.0 Policy Context

5.1. Development Plan

Dublin City Development Plan 2016-2022

The site is located on lands subject to Z5 zoning objective which seeks to consolidate and facilitate the development of the central area and to identify reinforce, strengthen and protect its civic design character and dignity.

5.2. Natural Heritage Designations

6.0 The Referral

6.1. Referrer's Case

- Accommodation offered is professionally managed short stay accommodation.
- Use of apartment for short stay is acceptable under zoning objective for site.
- Not considered to be an alteration of use as lease apartments have various lifespans.
- None of the conditions imposed on the parent permission restrict either the nature of residents or the duration of their occupation.
- Due to remote management of the apartments the residential amenity of the neighbouring apartments has not been impacted.
- A security firm is employed by the owners and can respond to disturbances by guests quickly.
- The use of a cleaning management team on a daily basis is not considered to be any different to a cleaner procured by a resident. Servicing occurs at off peak.
- No change of use has occurred due to the fact that the apartment is still used for residential use, as a place for shelter, a dwelling.
- The use is not an aparthotel

- The apartments are used by business personnel
- Neither the Planning and Development Act 2000 (as amended) or the Planning and Development Regulations 2001 (as amended) state that the use of an apartment for short stay lettings is exempted development nor does it state that it is development.
- No works have been carried out no development has taken place, there is no material change.
- If an apartment is not owner occupied, then it is deemed commercial.

6.2. Planning Authority Response

- None

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000 (as amended)

- 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 2(1), the following interpretation of works:
 - “...includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal.....”
- Section 2(1), the following interpretation of use:

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

- 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 (1)(a)- (i) set out what is exempted development for the purpose of the 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.
- Section 4 (2) provides for the making of the Regulations, Planning and Development Regulations, 2001.
- Section 5 (3) (A) states the following:
"Where a declaration is issued under this section, any person issued with a declaration under subsection (2)(a) may, on payment to the Board of such a fee as may be prescribed, refer a declaration for review by the Board within 4weeks of the date of issuing the declaration."

7.2. Planning and Development Regulations, 2001

- Article 5(1)
In this Part –
"business premises" means-

- (a) any structure or other land (not being an excluded premises) which is normally used for the carrying on of any professional, commercial or industrial undertaking or any structure (not being an excluded premises) which is normally used for the provision therein of services to persons,
- (b) a hotel or public house,
- (c) any structure or other land used for the purposes of, or in connection with, the functions of a State authority.

“excluded premises” means-

- (a) any premises used for purposes of a religious, educational, cultural, recreational or medical character,
- (b) any guest house or other premises (not being a hotel) providing overnight guest accommodation, block of flats or apartments, club, boarding house or hostel,
- (c) any structure which was designed for use as one or more dwellings, except such a structure which was used as business premises immediately before 1 October, 1964 or is so used with permission under the Act.

“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 (1&2)

- (1) 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 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.

(2) A use which is ordinarily incidental to any use specified in Part 4 of Schedule 2 is not excluded from that use as an incident thereto merely by reason of its being specified in the said Part of the said Schedule as a separate use.

(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.

- Schedule 2 Part 1: Exempted Development – General

CLASS 6 Use as a residential club, a guest house or a hostel (other than a hostel where care is provided).

7.3. Relevant Precedents and Case Law

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.

7.4. Referrals

- RL.300996 - 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, is a material change of use and thus **development**.
- RL.3490 - The use of a residential apartment for short term holiday letting at apartment 1A, 5-5A Crown Alley, Dublin is **development**.

7.5. Case Law

The following case law is of relevance:

- 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.”
- 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. 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.

8.2. It is of note that there are 8 referrals in total currently submitted for appeal which are located within Chancery Hall, namely no's 4, 5, 7, 16, 22, 24, 26, 30. All of these apartments are currently owned by the referrer, Sacreto Limited.

8.3. **Is or is not development**

8.4. In the interest of clarity, it is important to note at the outset that there is no question of 'works' being undertaken associated with the proposal. There are no structural changes associated with the proposal. Thus, the proposal does not constitute 'development' by reason of works arising.

8.5. 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.

8.6. As mentioned above no works have been carried out within the apartment and the units remains as permitted, having regard to the definition of 'house' in the Act, I consider that the building may be defined as a house which provides accommodation for a person or persons to reside, which is in keeping with the 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, for short term lettings is a change of use and if so is the change material and therefore deemed to be development by reason of this.

- 8.7. The applicant argues that there is no material difference in the use of the apartment as a permanent residence and the use for short term lettings. It is contended by the applicant that the use of a daily cleaning service is no different to a resident procuring a cleaning service and that the use of a 24hr security service ensures that there are no adverse impacts upon the amenity of the neighbouring residential units in terms of noise or nuisance.
- 8.8. Having regard to the assumption that the apartments were available for long term accommodation and part of the housing stock for the rental market, I consider the nature of short-term 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 the demographic profile of occupants from resident to visitor. Short term lettings and the associated activity such as traffic, cleaning and maintenance, creates an intensification of activity on the referral site.
- 8.9. 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 under normal circumstances for such a use 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.
- 8.10. 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 and the change of use leads to an intensification of the use of a house which is materially different and constitutes a material change of use which falls under the definition of development as set out in Section 3 of the Planning and Development Act 2000 (as amended).
- 8.11. **Is or is not exempted development**
- 8.12. 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”.

- 8.13. 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.
- 8.14. Neither the Act nor the Regulations state that the use of an apartment 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 of the Regulations. However, as the residential use of an 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.
- 8.15. 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 exempt 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 proposed use of Apartment No. 5 Chancery Hall, Blackhall Place, Dublin 7 for short stay accommodation lettings is or is not development and whether the development constitutes exempted development or does not constitute exempted development is or is not development or is or is not exempted development:

AND WHEREAS Sacreto Limited requested a declaration on this question

from Dublin City Council and the Council issued a declaration on the 27th day of September, 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 24th day of October, 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)(a), (2) of the Planning and Development Act, 2000, as amended,
- (d) Section 5 (3) (a) of the Planning and Development Act, 2000, as amended,
- (e) Article 5 (1) and 10 (1), (2) & (4) of the Planning and Development Regulations, 2001, as amended,
- (f) Part 1 of Schedule 2 of the Planning and Development Regulations, 2001, as amended,
- (g) Part 4 of Schedule 2 of the Planning and Development Regulations, 2001, as amended,
- (h) the planning history of the site,
- (i) the pattern of development in the area:

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The use of the apartment for a short-term holiday letting is a change of use from the current established use for the apartment as a residential

unit, 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) 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) the 2000 Act, hereby decides that the proposed use of Apartment No.5 Chancery Hall, Blackhall Place, Dublin 7 for short stay accommodation lettings is development and is not exempted development.

Sarah Lynch
Planning Inspector

01st February 2019