



An
Bord
Pleanála

Inspector's Report ABP-303267-18

Question

Whether the use of a small area, comprising two connected rooms at ground level within dwelling, as a private oratory for religious worship, in a manner which is incidental to the use of this property as a dwelling by the referrer, is development.

Location

Leaca Bán, Tooman, Lusk, Co. Dublin

Declaration

Planning Authority

Fingal County Council

Planning Authority Reg. Ref.

FS5/046/18

Applicant for Declaration

Father George Albreacht

Planning Authority Decision

Is not exempted development

Referral

Referred by

Father George Albreacht

Owner/Occupier

M.J Odermatt, M.A. Sanchez, P. Fox/
Father George Albreacht

Observer(s)

None

Date of Site Inspection

12th of April 2019

Inspector

Angela Brereton

1.0 Site Location and Description

- 1.1. The application site (c.2ha in area) is located in the rural area in the townland of Tooman, to the south east of junction 5 (M1) and is accessed via the local road network. The subject property 'Leaca Bán' is a detached dormer style dwelling set back from the road and located on a large landscaped site within a rural area. There is a gated entrance to the property and it is accessed via a surfaced driveway and there is an ample surfaced area (not marked out) for onsite parking in front.
- 1.2. While on site, I visited the property and noted the 2 interlinking front rooms in use as the chapel/oratory and another smaller room as a sacristy. These rooms are interlinking and are set out with benches and there is an altar in the front room. There was also a separate priest's room used as a sacristy. There is a large kitchen area, and garage used for storage and 5 bedrooms on first floor dormer level. There are several religious pictures, statues and icons in the house. There is also a large detached shed area to the north of the property which I not access but was told on the site visit is used for storage.
- 1.3. There are a number of dwellings in the vicinity of the subject property, including on the sites to the immediate north and south. Sightlines from the access appear adequate in a northerly direction, but are more restricted due to a bend in a southerly direction.

2.0 The Question

- 2.1. Whether the use of a small area, comprising two connected rooms at ground level within an existing dwelling at Leaca Bán Tooman Lusk Co. Dublin as a private oratory for religious worship exclusively the resident priest Father George Albrecht and by individuals who are personally and individually known to Fr. Albrecht, in a manner which is incidental to the use of this property as a dwelling by the referrer, is development.

3.0 Planning Authority Declaration

3.1. Declaration

Fingal County Council declared that the proposal is not Exempted Development under Section 5(1) of the Planning and Development Act 2000 for the following reasons:

1(a) The differing considerations which would arise is assessing a planning application for a dwelling (used solely for such use) versus the proposed use (i.e. the partial use of a dwelling as an oratory for religious worship), in particular amenity considerations, public health considerations, differing development standards (in relation to car parking), and also the intensification of the use of the subject property as result of the partial use of same as an oratory for religious worship which constitutes a change of use which is material and is therefore considered to be development as per Section 3.1 of the Planning and Development Act 2000;

(b) The absence of a specific class of development within the Planning and Development Act 2000 as amended or the Planning and Development Regulations 2001 as amended which is considered to provide an exemption to the development proposed.

3.2. Planning Authority Reports

3.2.1. Planner's Report

The Referral was originally referred to Fingal County Council for Declaration under Section 5 of the Planning and Development Act 2000 (as amended). The Planner's Report had regard to the locational context of the site and noted the uses as per the floor plans submitted. They also had regard to planning history and the relevant statutory provisions and case law. Their Assessment included regard to the following:

Has a change of use occurred?

- The baseline for this assessment is the use of the subject property as a dwelling/residence. Section 2(1) of the Planning and Development Act 2000, as amended provides the definition of a 'habitable house'. They note that

approx. 74sq.m is used for the purposes outlined as a chapel and is no longer solely in use as a private residence. On this basis they consider that a change of use has occurred.

Has a material change of use occurred?

- They have regard to Section 3(1) of the *Planning and Development Act, 2000* as amended, relative to 'material change of use'. In this respect they cite an example of relevant case law i.e. *Monaghan County Council -v-Brogan [1987]* I.R. 333 (as cited in ABP. Ref. RL3490).
- They consider that the proposed use i.e. an oratory for religious worship, would give rise to a number of material planning considerations which differ significantly compared to the planning considerations which would relate to the assessment of a dwellinghouse used wholly as such in the context of determining a planning application and provide details of such.
- They consider that the proposal to use part of the property as an oratory for religious worship results in it being more intensively used than as a dwellinghouse. Also, that the proposal constitutes a change of use which is material and is therefore considered to be development as per Section 3.1 of the Planning and Development Act 2000, as amended.
- Structures used for religious worship are deemed a distinct category as evidenced in the context of the definition of 'business premises' (which under Article 5(1) of the Planning and Development Regulations 2001 as amended does not include 'excluded premises', that being premises used for the purposes of religious character). They also note the distinct Class 7 as provided under Part 4, Schedule 2 of the said regulations. They refer to Section 4(1)(j) of the Act 2000 as amended relative to purposes incidental to the enjoyment of a dwellinghouse, which does not confer an exemption for religious use.
- As there is no specific class of development within the *Planning and Development Regulations 2001*, as amended or the *Planning and Development Regulations 2001*, as amended which is considered to provide an exemption for the proposal it is therefore not considered to be exempted development.

Other issues – limitations on exemptions

- Article 9 and Article 10 of the *Planning and Development Regulations 2001*, as amended sets out the special circumstances where development and changes of use (to which Article 6 relates) are not exempted development. However, as this proposal does not fall under a specific class of development within Column 1 of Part 1, of Schedule 2 of the said Regulations as amended, Article 9 and Article 10 are not applicable in this case.

AA/EIA Screening

- Given the nature of the proposal and the distance to the closest Natura 2000 sites, no negative impacts on Natura 2000 sites are anticipated and a Stage 2 AA Screening is not required.
- An EIA is also not required.

Conclusion

- Their conclusion is as that the use is development and is not exempted development for the reasons as noted in the Declaration Section above.

4.0 Planning History

The Planner's Report includes reference to:

- Reg.Ref. XA0030 - Permission granted for a shed/workshop at Tooman, Lusk, Co. Dublin Applicant -T Broderick.

5.0 Policy Context

5.1. Fingal County Development Plan 2017-2023

Chapter 3 refers to Placemaking. Section 3.6 to Community Infrastructure, Facilities and Services. Objective PM84 seeks to: *Facilitate the development of additional places of worship through the designation and/or zoning of lands for such community requirements and examine locating places of worship within shared community facilities, to be delivered through actively engaging with the community to understand*

diverse religious needs for a place of worship and consulting with faith communities to understand which ones are compatible for shared premises/sites.

The site is located in the rural area, outside of any rural settlement. Chapter 5 refers to and provides the policies and objectives for Rural Fingal. This includes Section 5.2 relevant to Fingal's Rural Settlement Strategy which includes regard to Housing in the Countryside and Section 5.3 to the Rural Economy and Enterprise.

5.2. Natural Heritage Designations

The closest Natura 2000 sites (i.e. Rogerstown Estuary SAC and SPA are c. 7km to the south east of the subject site. Skerries Islands SPA is c.10km to the east and the River Nanny and Shore SPA, c.11km to the north-east of the subject site.

6.0 The Referral

6.1. Referrer's Case to the Council

Vincent JP Farry and Co Ltd Planning and Development Consultants submitted a Referral under Section 5(1) of the Planning and Development Act 2000, as amended, in Relation to an Activity at Leacha Bán, Tooman, Lusk, Co. Dublin on behalf of the Referrer Father George Albreacht. They provide a background to the case and a site description. They provide that this report seeks to show how, contrary to the Council's intimation in its Warning Letter of 8th of August 2018, the existing use of this house is lawful. The Referral includes regard to the following and is summarised under the headings submitted:

- The house which is the home of the Referrer comprises a mature dwelling on a landscaped site, does not comprise a prominent feature in the landscape.
- They have regard to the Warning Letters sent by the Planning Authority to the referral property and note that the PA, on the 10th of September 2018, confirmed that the Warning Letter related to: *the change of use from a dwelling house to a church/place of worship.*

- They contend that contrary to this Warning Letter that this property comprises the home of Fr. Albrecht and that only part of the house has been changed into an oratory and they include photographs.
- A Key Statutory Reference is Section 3 of the Planning and Development Act 2000 as amended – *development*.

Introduction

- They provide that the actual occupation of the house by Fr. Albrecht does not require consent, and is lawful.
- The Warning letter does not concern the continued residential usage of Leaca Bán.
- This referral should be assessed and determined, not on the basis of the legality of this principal activity, but rather on the use of a small area within this home as a private oratory.
- They request the Planning Authority to confirm under section 5 of the Planning and Development Act, 2000 as amended, and in its role as the statutory planning authority for this area, that the use of a portion of this overall building as a private chapel, does not comprise a material change of use of the property and therefore does not constitute '*development*', as defined in the planning legislation.
- Planning law does not seek to unduly restrict the amount or type of development which can take place without permission and envisages a certain degree of flexibility and latitude in its provisions.
- For example in *Dublin Corporation-v-Moore* the Supreme Court rejected a claim that the parking of commercial ice cream vans in the driveway of a private house constituted a material change of use.
- Reference is also made to PL.27.RL2690 where the Board decided that the provision of a metal recycling facility at Conway Port Industrial estate, The Murrough, Wicklow required permission (for comprising *the collection, separation, compaction and de-polluting of vehicles and waste material*).

- They provide that the fact that there is no specific legal provision allowing a change of use does not mean that consent is needed. They quote from Prof. Scannell (in Environmental and Land Use Law) in this respect – relative to consideration of *material change of use*.

Legal Interpretation

- Occasions often arise where changes of use can be undertaken without permission and are minor and do not constitute development - they refer to case law, relative to the concept of 'material change of use'.
- They quote how G. Simmons (Planning and Development Law) states: *A planning unit may be used for several activities: a single primary use and any number of ancillary uses...An ancillary uses is regarded as part of the primary use.*

The Use of the Oratory

- They provide details of the use of the Oratory by Fr. George Albreacht individually and by a small number of his congregation and note it is also used for Sunday Mass for sections of his wider congregation. As the members of the congregation are know personally to him, they suggest that the use of this structure is private rather than public in character. There are no directional signs advertising the use in the area.
- They note how the land-use zoning matrices of most development plans and other policy instruments have traditionally accepted the co-location of residential and religious activities.

Discussion

- They submit that the subject activity does not fall within the scope of planning control and does not need consent.
- The oratory occupies a small area of the overall building which is used for residential purposes, and so is ancillary to the main use.

- The oratory is only occupied by visiting parishioners for short periods, the principal use being residential.
- The religious use of the chapel cannot be divorced from the residential use by Fr. Albrecht. They do not believe that this is an independent or a material change of use.
- They refer to case law and contend that in line with the dictum including reference to *Rehabilitation Institute v An Bord Pleanála and Galway County Council v Laragh Rock Ltd*, they can identify no burden on the Council in its role as the statutorily charged PA for the environs of the referral site as a result of this oratory.

Concluding Comments

- They asked the Council to acknowledge that the use of Leaca Bán, Tooman, Lusk as a permanent dwelling is wholly lawful and that the occupation of the property by Fr. Albrecht as his home, rather than by another individual, does not result in a material change of use of this house.
- They consider that the use of this small area in this building as a place of worship by Fr. Albrecht personally does not need consent. The referrer has simply adapted his house for his own personal preferences and that this change of use does not need permission pursuant to the provisions in section 4(1) of the Planning and Development Act 2000, as amended.
- The fact that Fr. Albrecht allows individuals whom he personally knows into his home does not represent a material change of use, given the minimal floorspace affected, the occasional periods involved and the low-impact nature of the religious activities which are undertaken in this property.

6.2. Referrer's Case to the Board

Vincent JP Farry and Co. Ltd, Planning and Development Consultants lodged a Section 5(3)(a) Referral of the Planning and Development Act 2000, as amended, on behalf of Fr. George Albrecht of *Leacha Bán, Tooman, Lusk, Co. Dublin*, in relation

to a minor change of use on this land. They note that the details of which are set out in their initial report to Fingal County Council. They include the following:

- They disagree with the suggestion, in the first reason for concluding that a material change of use has occurred, in that the issues raised in relation to this use differ substantially from the considerations which would be taken into account when an application for a rural dwelling is being determined.
- While the Council's assessment also raises two particular effects, specifically in terms of the increased usage of the access and the sewage system, this approach overlooks the rather light-weight and environmentally low-impact nature of this activity.
- As services are of a relatively short duration and are generally held on Sunday mornings, the use of two rooms in this priest's dwelling for religious purposes does not result in any increased loading on the treatment system which serves this house, because the attendees will not usually require comfort breaks in the referrer's home.
- They invite the Board to consider the arguments which are set out in their original report to the Planning Authority and to carry this submission forward into its analysis of the Planning Authority's determination on this occasion.

6.3. Planning Authority Response

Fingal County Council's response provides that they have no further comment to make in respect of the issues raised in the appellant's submission. An Bord Pleánala is requested to uphold the decision of the Planning Authority.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

In order to assess whether or not the activity constitutes development that is exempted development, regard must be had to the following items of legislation:

Interpretation

Section 2(1) sets out the interpretation of a "habitable house which - "

- (a) is used as a dwelling,
- (b) is not in use but when last used was used, disregarding any unauthorised use, as a dwelling and is not derelict, or
- (c) was provided for use as a dwelling but has not been occupied;

“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.”

Other Interpretations under this Section include the following:

“unauthorised development” means, in relation to land, the carrying out of any unauthorised works (including the construction, erection or making of any unauthorised structure) or the making of any unauthorised use;

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

“unauthorised use” means, in relation to land, use commenced on or after 1 October 1964, being a use which is a material change in use of any structure or other land and being development other than—

“warning letter” means a notification in writing under *section 152(1)*;

Development

Section 3 (1) states as follows:

“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.”

Exempted development

Section 4 (1) of the Planning and Development Act 2000, as amended, sets out what is exempted development for the purposes of this Act and includes (j) “development consisting of the use of any structure or other land within the curtilage of a house for any purpose incidental to the enjoyment of the house as such”.

Section 4(1)(h) exempts “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 Regulations. The main Regulations are the Planning and Development Regulations, 2001 (as amended).

Section 4 (4) states that “notwithstanding paragraphs (a), (i), (ia) and (l) of subsection (1) and any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required.”

7.2. **Planning and Development Regulations, 2001**

Article 5 of Part 2, Exempted Development sets out interpretations for this part and includes “excluded premises” which inter alia means (a) “any premises used for purposes of a religious, educational, cultural, recreational or medical character”.

Article 6 provides: “Subject to article 9, development 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.”

Restrictions on Exemption

Article 9(1) provides: “Subject to article 9, development 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. This includes the following criteria of note:

- (iii) endanger public safety by reason of traffic hazard or obstruction of road users.
- (viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use.

Changes of use

Under Article 10(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 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.

Article 10(2)(a) provides: “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.” Article 10(2)(b) Provides list of criteria which does not include reference to Religious Use: “ Nothing in any class in Part 4 of the Schedule 2 shall include any use-“

Exempted Development -General – Schedule 2 Part 1

Class 14 has regard to exempted Development consisting of a *Change of Use*. This does not refer specifically to use as an oratory/chapel.

Class 15 has regard to *Temporary structures and uses*. This is as follows:

“Occasional use for social or recreational purposes of any school, hall, club, art gallery, museum, library, reading room, gymnasium or any structure normally used for public worship or religious instruction.”

Exempted Development – Classes of Use – Schedule 2 Part 4

Class 7 provides for distinct religious uses i.e. (a) – “for public worship or religious instruction.”

7.3. Regard to Previous Board decisions

While there are no Board decisions relating to the precise use in question, there have been several that have a bearing on the current case, and note is also had of those referred to in the documentation submitted. These include regard to the following summarised below:

- 27.RL.2690: Whether (a) the metal recycling facility is development and is exempted development, and (b) the construction of a three metre high security precast wall at Conway Port Industrial Estate, The Murrrough, Wicklow Town, Wicklow, is development and is not exempted development. In this case the Board concluded: (a) the land has an established use for industrial purposes, (b) current end-of-life vehicles are being deposited on the land, and (c) the use of the land has therefore materially changed. The Board declared the use is material and is therefore, not exempted development.

- 29S.RL.3490: Whether the use of a residential apartment for short term holiday lettings at Apartment 1A, 5 – 5A Crown Alley, Dublin 2 is or is not development or is or is not exempted development. The Board declared this to be development and not exempted development. Their Conclusions included: “That neither the Planning and Development Act, 2000 – 2015, nor the Planning and Development Regulations, 2001 – 2015, recognise the said material change of use to be exempted development.”

- ABP-302542-18: Whether the use of part of a dwelling house as a solicitors’ office at Beachside, Braade, Kincasslagh, Co. Donegal is or is not development and is or is not exempted development. The Board’s conclusions in this case are of note and included the following:
 - (a) the use of part of the house as a solicitors’ office does not constitute use as a house as defined at Section 2(1) of the Planning and Development Act, 2000, as amended, and therefore such use is a change of use;

 - (b) the change of use from use as part of a house to use as a solicitors’ office, raises issues which are material in relation to the proper planning and sustainable development of the area and this change of use constitutes a material change of use having regard to the considerations outlined above and is therefore development;

 - (c) the development does not come within the scope of Section 4(1)(j) of the Planning and Development Act, 2000, as amended, as the use as a

solicitors' office in this instance is not considered incidental to the enjoyment of the house,

- (d) the development would correspond to use as an office as defined in Class 2(b) of Part 4 of the Second Schedule to the Planning and Development Regulations, 2001, as amended, and
- (e) There are no other provisions in the Act or Regulations whereby such development would be exempted in this instance.

In this case the Board decided that the use of part of a dwelling house as a solicitors' office is development and is not exempted development.

7.4. Regard to Case Law

There is reference to Case Law within the Council's Planner's Report and also the Referral Submission. The following is also of note:

McMahon -v- Dublin Corporation 1997 1 ILRM 227, (as cited in ABP Ref. 3490) 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 (as cited in ABP Ref. 3490) 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. A Declaration by Fingal County Council that the use of part of a dwelling house as a private oratory for religious worship is not exempted development has been referred to the Board for review under Section 5(3)(a) of the Planning and Development Act, 2000 (as amended).
- 8.1.2. From the outset, it should be noted that the purpose of this referral is not to determine the acceptability or otherwise of partial use of the ground floor as an oratory/chapel area within a dwelling in respect of the proper planning and sustainable development of the area, but rather whether or not the matter in question constitutes development, and if so falls within the scope of exempted development. Likewise, this assessment does not assess whether or not the structure and associated shed are authorised; planning enforcement is a matter for the planning authority and does not fall within the jurisdiction of the Board.

8.2. Is it Development

- 8.2.1. The Planning Authority is of the opinion that the said partial use of the dwellinghouse is development within the meaning of the Act and is not exempted development, as it constitutes a change of use which is material and is therefore considered to be development as per Section 3(1) of the Planning and Development Act 2000. They also noted the absence of a specific class of development within the Planning and Development Act 2000 as amended or the Planning and Development Regulations 2001 as amended which is considered to provide an exemption to the development proposal. The Referrer considers that the usage of part of the ground floor as the oratory for private use is a minor change of use and is not material and therefore does not constitute development. Therefore, the issue in this case relevant to consideration under Section 3(1) is whether the change of use constitutes development i.e. Is a material change of use to the use as a dwellinghouse.

8.3. The Question of whether or not a material change of use has occurred

- 8.3.1. The change of use in this case relates to the ground floor of the dwelling containing as shown on the Floor Plans submitted, a Chapel in two interlinking rooms and a third room used as a sacristy (c.74sq.m). I would concur with this having viewed the

building internally on my site visit. I noted that the use of the other rooms at ground and first floor levels were as shown on the Floor Plans submitted, with bedrooms at first floor level. The details submitted with the Referral to the Council provide that in line with its limited floor space the chapel is principally used on a daily basis by Fr. George Albrecht individually and by a small number of his congregation, to whom he provides pastoral care, for low-profile religious worship activities. This also notes that the property is used for Sunday Mass which is attended by larger sections of his congregation and that the nature of activities conducted within this house are equally not offensive. They note how the land-use zoning matrices of most development plans and other policy instruments have traditionally accepted the co-location of residential and religious activities. As the members of his congregation are known personally to Fr. Albrecht they suggest that the use is private rather than public. They highlight the fact that there are no directional signs in the area.

8.3.2. I would be in agreement that the use of internal rooms within a dwelling for personal religious use could be considered exempted development under Section 4(1)(j) of the Act as “*development consisting of the use of any structure or other land within the curtilage of a house for any purpose incidental to the enjoyment of the house as such.*” Furthermore, any alteration of a structure that affect only its interior, 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, is exempted under Section 4(1)(h) of the Act. In this case there are no such external alterations.

8.3.3. The Council consider that the usage would raise a number of material planning considerations which would relate to the assessment of a dwellinghouse used wholly as such in the context of determining a planning application. This would include (i) potential impacts on the amenity of the wider area, (ii) potential impacts on the amenity of adjoining residential property, (iii) access/car parking issues including the additional car parking requirements to serve such a use (i.e. different development standards would apply to a dwelling), access and vehicle manoeuvres within the site, pedestrian/vehicular conflicts and measures to address same and (iv) the addition PE (Population Equivalent) loading which the proposed use would have on the existing treatment system serving the property. They provide that having regard to

these issues the proposal is considered to represent an intensification of development from that of a dwellinghouse and a material change of use.

8.3.4. It is noted that the Referrer disputes the Council's Declaration that the partial usage of the dwelling for oratory/chapel purposes constitutes a material change of use. They consider that the Council's considerations are in their view, the exact type of factors which would form part of a planning assessment for a rural dwelling. They provide that this usage is a rather light-weight considering the low level of the use of the chapel which they have described.

8.3.5. Notwithstanding, I would be of the opinion that the materiality of the change of use in this case should be considered with regards to the extent to which the use of the house is being used for the chapel/private oratory purposes. In this regard, a house is defined within the Planning and Development Act, 2000 (as amended) as '*a building or part of a building which is being or has been occupied as a dwelling...*'. Therefore, the issue is one of whether it is considered that an intensification of the use of the dwelling has occurred or whether the use of the oratory can be considered incidental to the enjoyment of the house as per Section 4(1)(j) of the Planning and Development Act 2000, as amended. A small private oratory solely for personal use within the context of a dwellinghouse might be considered as such. However, I would not consider that the usage as described would be incidental to the enjoyment of or ancillary to the use of the dwellinghouse, rather in view of the additional comings and goings to the house to attend this separate use, as outlined in the Referrer's submission to the Council, I would consider it to constitute a material change of use.

8.4. Restrictions of Exempted Development - Specific Class of Development

8.4.1. The Council's other Consideration in their Declaration referred to the absence of a specific class of development within the Planning and Development Act 2000, as amended or the Planning and Building Regulations 2001, as amended which is considered to provide an exemption to the development proposal.

8.4.2. Article 5 of Part 2 of the Planning and Development Regulations, 2001 (as amended) Exempted Development sets out interpretations for this part and includes "excluded premises" which inter alia means (a) "any premises used for purposes of a religious,

educational, cultural, recreational or medical character". There is no reference to exempted development for partial use of a dwellinghouse as an oratory or a chapel in Schedule 2, Part 1 *Exempted Development -General* of the said Regulations. In this respect regard is had to *Development within the curtilage of a house* and it is noted that an exemption for such a partial use is not included. The aforementioned use does not fit into these Classes. Regard is also had of *Exempted Development – Classes of Use* – Schedule 2 Part 4 - Class 7 provides for distinct religious uses i.e. (a) – *for public worship or religious instruction*. Therefore, this is a separate consideration to the use as dwelling house.

8.5. Screening for Appropriate Assessment

- 8.5.1. Having regard to nature and scale of the development and the nature of the receiving environment and the distance and lack of connections to the nearest European sites, no Appropriate Assessment issues arise and it is not considered that the development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

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 use of a small area, comprising two connected rooms at ground level within an existing dwelling at Leaca Bá. Tooman, Lusk, Co. Dublin as a private oratory for religious worship exclusively for the resident priest Father George Albreacht and by individuals who are personally and individually known to Fr. Albreacht, in a manner which is incidental to the use of the property is or is not development or is or is not exempted development:

AND WHEREAS Father George Albreacht requested a declaration on this question from Fingal Council and the Council issued a declaration on the 4th day of December, 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 18th day of December, 2018:

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

- (a) Section 2(1), 3(1) and 4(1)(j) of the Planning and Development Act, 2000, as amended,
- (b) Part 4 of the Second Schedule of the Planning and Development Regulations, 2001, as amended,
- (c) the planning history of the site,
- (d) the scale, nature and layout of the oratory/chapel, the description of the use carried on therein, including use by visiting members of the congregation and the services carried on therein,
- (e) the pattern of development on un-zoned land in this rural area.

AND WHEREAS An Bord Pleanála has concluded that:

- (a) the use of part of the house as an oratory for religious worship does not constitute use as a house as defined at Section 2(1) of the Planning and Development Act, 2000, as amended, and therefore such use is a change of use;
- (b) the change of use from use as part of a house to use as a private oratory, for use of members of the congregation raises issues which are material in relation to the proper planning and sustainable development of the area and this change of use constitutes a material change of use having regard to the considerations outlined above and is therefore development;

- (c) the development does not come within the scope of Section 4(1)(j) of the Planning and Development Act, 2000, as amended, as the use as a private oratory for religious worship by members of the congregation in this instance is not considered incidental to the enjoyment of the house;
- (d) the development would correspond to use *for public worship or religious instruction* as defined in Class 7(a) of Part 4 of the Second Schedule to the Planning and Development Regulations, 2001, as amended, and
- (e) there are no other provisions in the Act or Regulations whereby such development would be exempted in this instance.

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 use of part of dwelling house for use as a private oratory for use of the visiting members of the congregation at Leaca Bán, Tooman, Lusk, County Dublin is development and is not exempted development.

Angela Brereton
Planning Inspector

18th of April 2019