



An
Bord
Pleanála

Inspector's Report ABP-303392-19

Question	Whether the change of use of a Monastery to a homeless hub is or is not development and is or is not exempted development.
Location	The Carmelite Monastery, Firhouse Road, Dublin 24
Declaration	
Planning Authority	South Dublin County Council
Planning Authority Reg. Ref.	ED18/0040
Applicant for Declaration	Cllr. Brian Lawlor
Planning Authority Decision	Is exempted development
Referral	
Referred by	Cllr. Brian Lawlor
Occupier	Family Hub (managed by Respond Housing Association on behalf of the Dublin Regional Homelessness Executive)
Date of Site Inspection	14 th , June 2019
Inspector	Paddy Keogh

1.0 Site Location and Description

1.1. The site of the proposed development comprises the site of the former Carmelite Monastery (Carmel of the Assumption Convent) which is accessed via the northern side of the carriageway at the Firhouse Road, Firhouse, Dublin 24. The front boundary of the site is defined by a high wall containing a set back entrance defined by stone pillars. The main structure of the site is the former Carmelite Monastery building which is two-storeys high. This building together with a Cottage at the front of the site, front gate, railings and walls are designated as Protected Structures. There are also a number of incidental outbuildings and sheds associated with the main building. The former Monastery building is located roughly in the centre of the substantial site (the area of the site has not been stated). Aside from the Monastery building and associated outbuildings/yards, the site consists of grassed fields and a driveway leading to a surfaced car parking area in front of the former Monastery building.

The former Monastery building is currently occupied as 'Family Hub' which accommodates 13 families and a small number of (non-resident) support staff.

2.0 The Question

2.1. The question referred by the referrer to the planning authority pursuant to Section 5(1) of the *Planning and Development Act, 2000*, as amended ("the Act") and subsequently referred by the referrer to the Board, for review, pursuant to Section 5(3)(a) of the Act is, as follows:

Whether the change of use from a Monastery at the Carmelite Monastery at Firhouse Road, Dublin 24 to a hub/hostel for homeless families is or is not exempted development.

3.0 Planning Authority Declaration

3.1. Declaration

By Order, dated 4th, December 2018, the use of a monastery as a hub/hostel for homeless families at the Carmelite Monastery, Firhouse Road, Dublin 24 was declared to be exempted development.

3.2. Planning Authority Report

3.2.1. Planning Report

3.2.2. A report from the planning authority Acting Senior Planner dated 4th, December 2018 notes recent planning history on the site. The report also highlights certain provisions of the South County Dublin Development Plan 2016-2022 including the zoning of the site ('To protect and enhance the outstanding character and amenity of the Dodder Valley'); the status of the existing Carmelite Monastery and Cottage, front gates, railings and walls as Protected Structures.

3.2.3. Sections 4, 5 and 57 of the Act together with Articles 5,6,7,8,9,10 and 11 of the *Planning and Development Regulations 2001*, as amended ('the Regulations') are cited together with Class 14, Part 1 of Schedule of the Regulations.

3.2.4. Section 57 of the Act relates to the carrying out of works (otherwise constituting exempted development) to a Protected Structure. This Section provides that such works will only be exempted if those works would not materially affect the character of (a) the structure, or (b) any elements of the structure which contributes to its special interest.

3.2.5. The Planner's Report states that no details have been provided regarding works to the Protected Structure and therefore no opinion can be given in relation to this issue.

3.2.6. Class 14, Part 1, Schedule 2 (h) or (i) of the regulations cannot be availed on in the current instance as provisions under this class in relation to change of use relate to the accommodation of 'protected persons' only. [a 'protected person' is defined under Section 5(1) of the Regulations – essentially persons deemed to be refugees or persons seeking refugee status].

3.2.7. Section 4(1)(f) of the Act states that the following shall be exempted development:

Development carried out on behalf of, or jointly or in partnership with, a local authority, pursuant to a contract entered into by the local authority concerned, whether in its capacity as a planning authority or in any other capacity.

It is the understanding of the planning authority that a contract has been entered into with South Dublin County Council for the purpose of the provision of a hub/hostel for homeless families at the subject application site.

3.2.8. The Planner's report concludes that the change of use of the Carmelite Monastery to a hub/hostel for homeless families is exempted development pursuant to Section 4(1)(f) of the Act.

4.0 Planning History

Appeal No. 06S.246101 (Reg. Ref. SD15A/0336) – Planning permission for a residential development consisting of 72 units, car parking and associated works together with access from Firhouse Road on site adjacent to Carmel of the Assumption Convent, Firhouse Road was refused by the Board per Order dated 2nd June 2016 for a single reason relating to design, scale, layout and impact on residential amenities of the area etc.

5.0 Policy Context

5.1. Development Plan

5.1.1. The subject site is located within an area zoned 'HA-DV' in the South Dublin County Development Plan 2016-2022. The stated objective of this zoning is '*To protect and enhance the outstanding amenity of the Dodder Valley*'.

5.1.2. The following are designated as Protected Structures at the Carmelite Monastery:

- **RPS Ref. 284** – Detached three-bay single storey former school house.
- **RPS Ref. 288** – Cottage, front gates, railings and walls to front (Cottage adjacent to convent).

5.2. Natural Heritage Designations

Glenasmole Valley SAC (Site Code 001209) is c. 5km south-west of the site.

Wicklow Mountain SAC (Site Code 002122) is c.5km south of the site. Wicklow

Mountain SPA (Site Code 004040) is c. 5.4km south of the site.

6.0 The Referral

6.1. Referrer's Case

A submission by the referrer (seeking a review by the Board of the planning authority declaration) per letter dated 7th, January 2019, includes:

- The planning authority and referrer are ad idem that the proposed change of use constitutes a material change of use and is, therefore, development.
- The planning authority consider that the development constitutes exempted development pursuant to Section 4(1)(f) of the Act which allows development carried out on behalf of, jointly or in partnership with a local authority pursuant to a contract.
- The referrer states that the development is being carried out in an area designated in the Development Plan as high amenity where the only use permitted in principle is open space. A hotel/hostel use is open for consideration within this zoning. The hostel (hub) in question is not intended for use as visitor/tourist accommodation (Class 6 of the Regulations) which would enhance the outstanding character of the Dodder Valley amenity and would be open for consideration. Instead the hostel is intended for use by people in need of care (Class 9 of the Regulations) which would not protect or enhance the zoning, but would materially contravene the zoning.
- Section 178(1) of the Act states:

The council of a county shall not effect any development in its functional area which contravenes materially the development plan'

The operation of Section 178(1) imposes a restriction on the exemption that would otherwise be available to the planning authority under Section 4(1)(f) in the current instance.

6.2. Planning Authority Response

6.2.1. A submission from the planning authority per letter dated 29th, January 2019 elaborates on the planning authority's stance in relation to the exempted development status of the change of use from Monastery to Family Hub. The submission includes:

- South Dublin Co. Council have entered into a contract with a third party service provider for the purposes of providing a hub/hostel for homeless families at the subject site. This service is being provided on behalf of the Local Authority as part of the delivery of its housing function. In doing so, Section 4(1)(f) of the Act was applied.
- In applying the aforementioned provision of the Act, it should be noted that Section 3 defines development as '*except where the context otherwise requires, 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***' In this regard, given that development, which encompasses a material change in use of a structure, is being carried out on behalf of South Dublin County Council pursuant to a legal contract, the change of use from a Monastery to a hub/hostel for homeless families would represent exempted development in this instance.
- Any works undertaken within the subject site's structure were minor in nature and primarily pertain to maintenance, thereby ensuring that any works carried out were done so within the limits of Section 57(1) of the Act and did not materially affect the character of (a) the structure, or (b) any element of the structure which contributes to its special interest.

6.3. Owner/Occupier's response

No submission.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

7.1.1. Section 2(1) (Interpretation) states:

'In this Act, except where the context otherwise requires- 'works' includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal.....'

7.1.2. Section 3 (1) states:

'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 states:

(1) The following shall be exempted development for the purposes of this Act-
(f) *'development carried out on behalf of, or jointly in partnership with, a local*

authority that that is a planning authority, pursuant to a contract entered into by the local authority concerned , whether in its capacity as a planning authority or in any other capacity'

7.1.4. Section 4(4) states:

'Notwithstanding.....any regulations, development shall not be exempted development if an environmental impact assessment or appropriate assessment of the development is required'.

7.1.5. Section 57(1) states:

'Notwithstanding section 4(1)(a),(h),(i),(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’.

7.2. **Planning and Development Regulations, 2001** (‘the Regulations’)

7.2.1. Article 10 of the Regulations states that:

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.....

[subject to specified limitations]

CLASS 7 refers to use-

- (a) for public worship or religious instruction,
- (b) for the social; or recreational activities of a religious body,
- (c) as a monastery or convent.

7.2.2. SCHEDULE 2, Part 1 of the Regulations provided for general exemptions (subject to conditions and limitations) including certain categories of ‘Change of Use’ set out under CLASS 14 (h) which refers to:

‘from use as a hotel, motel, hostel, guesthouse, holiday accommodation, convent, monastery, Defence Forces barracks or other premises or residential institutionto use as accommodation for protected persons’

8.0 **Assessment**

8.1. I note at the outset of this assessment that no details have been submitted by the referrer or by the planning authority in respect of floor plans of the Monastery or in respect of floor areas or works, if any, that have been undertaken in order to facilitate the change of use from Monastery to Family hub.

8.1.1. I inspected the site on 14th, June 2019 in the company of Hilary Frances (Manager of the Family Hub). I was advised that after the Monastery was vacated it was sold to a Developer. The premises was subsequently vacant for c. 2 years before being

leased to South Dublin Co. Council and operated by the current facility operator under the auspices of the Dublin City Council Regional Homeless Executive.

- 8.1.2. The premises contains 13 bedrooms (all with own bathrooms). The facility currently accommodates 13 families including young children. Children of school going age attend local schools on a daily basis. With the exception of minor changes including the addition of an extra washing machine to the laundry room and the replacement of floor coverings (carpet to lino etc.) no changes have been made to the physical fabric of the building.
- 8.1.3. The facility is managed by 'Respond' (a registered housing charity). Key workers provide support to residents in their efforts to explore and secure more long-term permanent housing in both the private rented and public housing sectors. However, the facility is not operated as a care centre. An 'after-school' centre for younger children living in the facility is operated from one of the former meeting rooms in the former Monastery. This facility is operated by residents of the Family Hub.
- 8.1.4. There appears to be no definition of what constitutes a 'Homeless Hub' or 'Family Hub'. However, the range of accommodation being provided to tackle the current homelessness crisis includes a number of responses including 'Hostel' and 'Family Hub' accommodation. A hostel is intended for temporary emergency accommodation and is typically occupied on a nightly basis. Beds are typically occupied by a given individual for only a short number of nights. The 'Family Hub' accommodation being provided in the Carmelite Monastery provides accommodation of a much less transient nature. Many of the families have been living in the centre for upwards of one year. Family Hubs provide longer term homes for families while they await access to more suitable permanent homes.
- 8.1.5. In the context outlined the operator of the facility does not regard the facility as being a hostel.
- 8.1.6. Having regard to the foregoing, I consider that the referrer's question should be reformulated, as follows:

Whether the change of use from a Monastery at the Carmelite Monastery, Firhouse Road, Dublin 24 to a Family Hub is or is not development or is or is not exempted development.

8.2. Is or is not development

- 8.2.1. The definition of development provided for in Section 2(1) of the Act includes 'works' and/or a 'material change of use'. For development to take place 'works' and/or a 'material change of use' must occur.
- 8.2.2. The first matter to be addressed is whether or not works have taken place. 'Works' for the purposes of the Act includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal.
- 8.2.3. It is common case between the referrer and the planning authority that no 'works' have taken place at the Carmelite Monastery in order to facilitate the change of use that has been made.
- 8.2.4. From my inspection of the site, it seems clear that only very minor changes have been made to the physical fabric of the Monastery in order to facilitate the change of use that has been made (replacement of limited areas of floor covering from carpet to lino, addition of an extra washing machine in the laundry, removal of benches from the former chapel etc.). I consider that these changes do not constitute 'works' as defined for the purposes of the Act.
- 8.2.5. The second matter to be determined is whether or not a material change of use has been made. The referrer and the planning authority are in agreement that a material change of use has been made.
- 8.2.6. I consider that it is clear that a change of use has taken place i.e. a premises formerly used as a Monastery is now being used as a group family residence. However, for this change of use to classify as 'development' it must be deemed to constitute a 'material' change of use.
- 8.2.7. At first glance, I consider that arguably no 'material' change of use has taken place – a residential premises formerly occupied for community living continues to be used for residential purposes.
- 8.2.8. However, I note the test proffered by Barron, J in *The County of Galway v Lackagh Rock Ltd [1984 21 MCA]* for the determining of whether or not a material change of use has occurred. In this case, Barron, J considered that '*in determining whether or not a present use was materially different from a use being made on the appointed day one must look at matters which the planning authority would take into*

consideration if a planning application were made on both dates and if these matters were materially different then the present use must be equally materially different.'

8.2.9. In short, if the matters that a planning authority in considering an planning application for a Monastery at Firhouse Road are materially different to the matters that a planning authority would take into consideration in considering a planning application for a group or shared living unit then the uses must be materially different and a change from one use to the other must constitute a material change of use. On balance, I consider that the matters that a planning authority would take into consideration are materially different (e.g. intensity of traffic turning movements, nature and quantum of private open space requirement etc.). Thus, I would share the opinion of the referrer and the planning authority that the change of use that has been made constitutes a material change of use.

8.2.10. I consider that the conclusion that a material change of use has been made is bolstered by reference to the fact that use as a Monastery or a Convent falls within a separate Class of use (CLASS 7, Part 4, Schedule of the Regulations) to other types of residential use (viz. hostel, guest house, nursing home etc.) referred to in CLASS 6, CLASS 9 etc. Change between various specified use classes does not categorically mean that a change of use is a material change of use. Nonetheless, I consider that there is an extremely high probability that a change of use involving change between specified use classes will mean that a material change of use is involved.

8.2.11. Thus, I consider that while no 'works' (as defined for the purposes of the Act) have taken place a material change of use has been made. Therefore, the change that has been made constitutes development as defined for the purposes of the Act.

8.3. Is or is not exempted

8.3.1. Planning permission is required for any development other than exempted development. Exemptions are provided for under both the Act and the Regulations.

8.3.2. The referrer argues that the development (material change of use) that has been made does not fall within the scope of any exemptions on development provided for under the Act or the Regulations.

- 8.3.3. The planning authority are of the opinion that the proposed development is exempted under Section 4(1)(f) of the Act by reason of the fact that the operation of the Family Hub constitutes development being carried out on behalf of the Local Authority, pursuant to a contract entered into by South Dublin Co. Council in its capacity as a housing authority. (The planning authority have confirmed to the Board per letter dated 29th, January 2019 that the Family Hub service is being provided by the local authority as part of the delivery of its housing function subject to a contract entered into between the local authority and a third party service provider.).
- 8.3.4. The referrer argues that the provisions of Section 4(1)(f) of the Act cannot be relied on in the current instance as the proposed 'hostel' use would materially contravene the zoning objective for the site (high amenity/open space) as set out in the South Dublin County Council Development Plan 2016-2022. The referrer argues that Section 4(1)(f) is limited by the operation of Section 178 of the Act which stipulates that the council of a county shall not effect any development in its functional area which contravenes materially the Development Plan).
- 8.3.5. I do not share the referrers conclusion that the development (change of use) that has taken place constitutes a material contravention of the Development Plan.
- 8.3.6. On balance, on a strict reading and interpretation of the wording contained in Section 4(1)(f), I agree with the planning authority that the development that has taken place comes within the scope of the section and, therefore, constitutes development which is exempted development by virtue of the operation of this section of the Act.
- 8.3.7. Whether or not the development, having availed of the exemption pursuant to Section 4(1)(f), falls within the remit of Part VIII of the Act is a matter to be determined by the local authority and not a matter for determination in the context of the current referral.
- 8.3.8. In circumstances where the development that has been made is deemed to be exempted development by virtue of the operation of the Act, it is not necessary to consider potential exemptions that might be available under the Regulations (secondary legislation). However, in the interests of completeness, I consider that there are no sources of exemption that can be availed of under the regulations. The planning authority has highlighted the provisions in relation to exemption for a

change of use under Part 1, CLASS 14(h) which allows for a change of use from a Monastery to use as accommodation for protected persons. However, the persons being accommodated in the Family Hub (former Monastery) do not fall within the definition of 'protected person' as defined for the purposes of the Act. CLASS 6 and CLASS 9 of Part 4, Schedule 2 have also been referred to in the documentation on file. CLASS 6 refers to use as a hostel. I am satisfied that the Family Hub does not come within the scope of a hostel (which would typically be occupied by any one occupier on a nightly basis for one or small number of nights only). CLASS 9 refers to the provision of residential accommodation and care to people in need of care. I am satisfied that the Family Hub facility is not engaged in the provision of care. I understand from my site inspection of the property that residents receive support from a key worker in relation to exploring and applying to be considered for more suitable and permanent long-term accommodation in both the private rented and public housing sectors. However, residents do not receive any other care in terms of counselling etc. and residents of the Family Hub are not in the 'care of the state'. In these circumstances, I consider that CLASS 6 and CLASS 9 do not apply in the current instance.

8.4. Restrictions on exempted development

- 8.4.1. The only restrictions on the exemption provided under Section 4(1)(f) of the Act, that may apply in the current instance, are the restriction contained in Sections 4(4) and Section 57(1) of the Act.
- 8.4.2. Section 4(4) provides that certain developments requiring Environmental Impact Assessment and Appropriate Assessment cannot avail of certain exemptions otherwise provided for under the Act. The nature of the development in this instance would not require Environmental Impact Assessment or Appropriate Assessment.
- 8.4.3. Section 57(1) of the Act places restrictions on works (otherwise deemed to be exempted under that Act and Regulations) in the case of a Protected Structure. Notwithstanding the status of the Monastery as a Protected Structure, I consider that this Section does not apply in the current instance in circumstances where no works, as defined for the purposes of Section 2(1) of the Act, are deemed to have been carried out.

8.5. Appropriate Assessment

- 8.5.1. Having regard to the nature and scale of the development which does not involve the carrying out of any works and to the nature of the receiving environment, 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.

8.6. Environmental Impact Assessment

- 8.6.1. Having regard to the nature and scale of the development which does not involve the carrying out of any works and the nature of the receiving environment there is no real likelihood of significant effects on the environment arising from the development. The need for environmental impact assessment can, therefore be excluded at preliminary examination and a screening determination is not required.

9.0 OTHER PRECEDENT REFERRALS

RL 3032 – The Board decided per Order dated 28th, March 2013 that the amalgamation of No. 5 & 6 Kilmantin Hill, Wicklow Town to a single unit as a temporary accommodation for homeless persons was development and was not exempted development.

[In my opinion this decision can be distinguished from the current referral by reason of the fact that the development in this case involved significant works, the accommodation was only occupied on a temporary basis and care and counselling was being provided to residents who were being supported in the 'step up' to independent living].

RL 2685 – The Board decided per Order dated 31st, May 2010 that the change of use of part of an existing hotel to a hostel for the accommodation of refugees at No. 58 & 59 Main Street Longford is development and is not exempted development.

[In my opinion this decision can be distinguished from the current referral by reason of the fact that the accommodation for refugees being provided was a hostel and there was no evidence that service provider was providing the service pursuant to a contract with the planning authority.]

10.0 Recommendation

10.1. 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 change of use of the Monastery at the Carmelite Monastery, Firhouse Road, Dublin 24 to a Family Hub is or is not development or is or is not exempted development:

AND WHEREAS Councillor Brian Lawlor requested a declaration on this question from South Dublin Co. 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 8th day of January, 2019:

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)(f) of the Planning and Development Act, 2000, as amended,

- (d) Section 4(4) of the Planning and Development Act 2000, as amended,
- (e) article 6(1) and article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (f) Parts 1 and 4 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (g) the planning history of the site,
- (h) the pattern of development in the area:

AND WHEREAS An Bord Pleanála has concluded that:

- (a) Changes that have been made to the physical fabric of the Carmelite Monastery building at Firhouse Road, Dublin 24 are of a minor nature and do not come within the scope of the definition of works as set out in Section 2(1) of the Planning and Development Act, 2000, as amended. The change of use from Monastery to Family Hub constitutes a material change of use. Thus, development has taken place in changing the former Monastery to a Family Hub.
- (b) The development that has taken place in changing the former Monastery to a Family Hub was carried out on behalf of South Dublin Co. Council (a local authority) pursuant to a contract entered into by the local authority (and a service provider) acting in its capacity as a housing authority.
- (c) Thus, the development that has taken place constitutes exempted development by virtue of the operation of Section 4(1)(f) of the Planning and Development Act, 2000, as amended.

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 Monastery at the Carmelite Monastery, Firhouse Road, Dublin

24 is development and is exempted development.

Paddy Keogh
Planning Inspector

20th, August 2019