



An  
Bord  
Pleanála

## Inspector's Report ABP-305515-19

---

<b>Question</b>	Whether a change of use from a 30-bed nursing home to use as a homeless accommodation facility is development and is exempted development.
<b>Location</b>	30 Haddon Road, Clontarf, Dublin 3.
<b>Declaration</b>	
Planning Authority	Dublin City Council
Planning Authority Reg. Ref.	0365/19
Applicant for Declaration	John Brierty and Turlough Considine
Planning Authority Decision	Is development and is not exempted development
<b>Referral</b>	
<b>Referred by</b>	John Brierty and Turlough Considine
<b>Owner/ Occupier</b>	Osdale Ltd
<b>Observers</b>	None
<b>Site Inspection</b>	10 <sup>th</sup> January 2020
<b>Inspector</b>	Mairead Kenny

## 1.0 Overview

- 1.1. The planning authority determined under reg. ref. 0200/19 that a change of use from nursing home to homeless accommodation at this site is development and is exempted development. That referral was lodged by Osdale Ltd (owners) and the intended occupier was Dublin Simon Community. The specific stated purpose of the premises was 'to use the property to provide inpatient treatment and recovery centre, accessible strictly by referral and appointment only'. The determination was not challenged and the relevant time periods have passed.
- 1.2. This referral comes about on foot of a declaration by local residents and essentially seeks to re-visit the same question. The second declaration by the planning authority draws the same conclusion. In the interim it is understood that the intended occupier is no longer interested in the property.
- 1.3. At the time of writing I have become aware of the judgement under the Narconon Trust case which I refer to below.

## 2.0 Site Location and Description

- 2.1. The site is located in a residential street off the main coast road in Clontarf. Haddon Road is an Architectural Conservation Area.
- 2.2. The subject site no. 30 Haddon Road contains a two-storey semi-detached house which has been extended to the rear and which has an established use as a nursing home. The premises currently appears to be vacant. There is a newly constructed dwellinghouse to the rear of the adjacent house.
- 2.3. Photographs of the site and surrounding area which were taken by me at the time of my inspection are attached.

## 3.0 The Question

- 3.1. As presented in the referral the question is

Whether or not the use of a 30 bedroom nursing home as a homeless accommodation facility is or is not development or is or is not exempted development.

3.2. Having considered the information on file and the planning history particularly the submissions under 0200/19 and the letter dated 12<sup>th</sup> of June 2019 from Dublin Simon Community, I recommend that the question be re-stated as follows.

‘Whether the change of use from nursing home to use as an inpatient treatment and recovery centre, accessible strictly by referral and appointment at 30 Haddon Road, Clontarf, Dublin 3 is development and is or is not exempted development’.

3.3. The above wording reflects the detail of the development which was considered under 0200/19 and which the planning authority relied upon in its assessment of the second declaration now subject of review.

## 4.0 **Planning Authority Declaration**

### 4.1. **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 30 Haddon Road, Clontarf to a supported homeless accommodation facility is development and is exempted development.

### 4.2. **Planning Authority Reports**

#### 4.2.1. Planning Reports

- The applicant for the declaration considers that the owner’s proposal under 0200/19 is not exempted development.
- The owner’s submission includes that the site has been used as a 30 person (16 bedroom) nursing home since 1991, that there is only one homeless facility within 500m of the site (a 13 bedspace facility) and that there is a precedent case under ABP-301688-18.

- The subject proposal appears to be near identical in terms of the description to that considered by the Board under ABP-301688-18 (57, 59, 61 Cabra Road).
- The anticipated occupancy of 50 persons and the provision of social support and care are noted. The owner also states that the occupants would not be likely to generate as much vehicular traffic as the nursing home residents. The comments of the Inspector under ABP-301688-18 in relation to intensification are quoted.
- The intensity of the development proposed in this case (762m<sup>2</sup> 16 bedroom existing nursing home) and the proposed use as a homeless facility (50 persons) does not seem to be significantly different from the cited version (850m<sup>2</sup> 22 bedroom existing nursing home to be converted to a 60 person homeless facility).
- No works are proposed that affect the visual amenity / character of the ACA.
- Policy QH30 requires mapping of homeless services within 500m of the site but does not provide for any specific limitation in terms of quantum or density.
- The subject site is a care facility as a homeless facility defined under A.5 of the PDA (*sic*) as amended.
- The proposed use would come under the definitions of 'Buildings for the health, safety and welfare of the public' which are a permissible use under the current zoning Z1.
- Development management requirements apply to planning applications.
- There are restrictions on a change of use under Part 4, Schedule 2 of the Act under A.10(1) but there is no evidence that the subject change of use triggers any of the restrictions under (a), (b), (c) or (d).
- The assessment of the proposal at Cabra under ABP-301688-18 is the most relevant precedent in terms of the determination.
- Any future operator would have to meet the care requirements under relevant regulations.

#### 4.2.2. Other Technical Reports

None.

4.2.3. Owner / occupier submission.

None.

4.2.4. Third party submission under application for declaration.

The details of this are substantially reiterated in the referral of the declaration by the third party to the Board. It indicates that the use would be by Dublin Simon Community as described in the letter dated 12<sup>th</sup> June 2019 as ‘an inpatient treatment and recovery centre accessible by referral and appointment only’ with 24 hour staff on site. The proposed development represents an intensification of use amounting to a material change of use which is contrary to the Z1 objective. Policies CHC4 and section 11.1.5.4 of the development plan refer. The proposal is materially different as it would provide social, physical and mental care to a broader user group and on a shorter term basis. Further the user group would not be likely to have links with the community in contrast to the nursing home occupants. Haddon Road is described as heavily trafficked. The facility would provide beds on a one night only basis resulting in a sharp increase in pedestrian activity in the morning and evening times.

Reference is made to:

- PL17.301064 (Narconon case) which relates to a change of use of a permitted nursing home to a residential drug rehabilitation facility in Balivor Co. Meath. The Board determined that this would not be exempted development.
- *Carman’s Hall Community Interest Group v Dublin City Council IEHC 544.* The applicant states that it has not been demonstrated that the change of use will not result in an over concentration of such facilities in an area or have undue impacts on the surrounding residential amenity.

## 5.0 Planning History

### 5.1. On site

- 5.2. Under planning reg. ref. 0200/19 the planning authority considered an application for a Section 5 Declaration for the proposed change of use from nursing home to homeless accommodation at this site. Full details of that application are on file.

- 5.3. The planning history includes a number of other concurrent applications for a change of use from nursing home to homeless accommodation and for 'section 5' applications for the change of use from nursing home to homeless accommodation.
- 5.4. Under planning reg. ref. 2638/16 permission was granted for works including internal modification and extensions. The application was accompanied by a Conservation Report.
- 5.5. Under planning reg. ref. 3333/13 permission was granted for the retention of an area to the rear and side of that permitted under an earlier permission planning reg. ref. 4166/09.
- 5.6. There were a number of other applications related to works at the nursing home between 2009 and 1991.
- 5.7. **Other**
- 5.8. **ABP-301688-18 (57, 59, 61 Cabra Road)** – This was a referral in relation to whether the use of the former nursing home as a homeless accommodation facility is development and is exempted development. The intended operator was the Peter McVerry Trust and the residents who were described as a vulnerable group would be in situ for 6 months with 24 hour management and various protocols. The Board decided that 'the conversion of the premises to a supported homeless accommodation facility' is exempted development.
- 5.9. **ABP-301064 (Narconon, Balivor, Co. Meath)** relates to a change of use of a permitted nursing home to a residential drug rehabilitation facility. In determining that the development was not exempted development the Board noted *inter alia* the use is development and falls within Class 9 but would be inconsistent with the use specified in the nursing home by reason of the significant differences in the services provided, the age profile of the likely occupants, the greater geographical areas that would be served by the facility and the limited interaction with the local community within this small village. The proposed development would therefore, pursuant to A 10(c) not be exempted development.

## 6.0 Policy Context

### 6.1. Development Plan

- 6.1.1. The site is zoned Z1 the objective being is ‘to protect and/or improve the amenities of residential areas.’
- 6.1.2. 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.
- 6.1.3. 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.

### 6.2. Natural Heritage Designations

The site is not located within a European site and in the absence of works at the facility there will be no impact on European sites.

## 7.0 The Referral

### 7.1. Referrer’s Case

- The proposal does not constitute exempted development as it would result in the use which is inconsistent with the permitted use as a nursing home, result in an

overconcentration and proliferation of such facilities and have a negative effect on the local economy and community.

- In terms of the site description the applicant notes the designation as an ACA.
- The planning history is reviewed and in particular the applicant notes the request by the council to submit further information under planning reg. ref. 0200/19 and the response of the future operator in a letter dated 12 June 2019. The clarification of the nature and extent of care to be provided is insufficient and lacks specificity and necessary detail. Further the Simon Community is no longer interested in the property and the element of care is no longer adequately addressed.
- A detailed comment is provided on the case at 57-61 Cabra Road. The referral indicates that there are fundamental differences in terms of the properties including scale, nature of road, capacity to accommodate traffic, availability of public infrastructure. The impacts of the proposed use of the property for the provision of a homeless accommodation at Haddon Road would have a much more significant impact on the community than on that of Cabra Road.
- The quantum of amenity space is very limited at the subject site and by contrast 57-61 Cabra Rd was served with a significantly sized garden area.
- For these reasons the change of use in this case is inherently different.
- The zoning objective Z1 and the vision for residential development in the city are referenced. The general objectives are to provide protection from unsuitable new development or certain 'bad neighbour' developments that would be incompatible with the overall residential function of an area. The proposed use of the subject property is completely contrary to this development plan objective.
- Policy QH30 and section 16.12 of the development plan refer the applicant has not successfully demonstrated how the proposal accords with policy QH30 and provides no explanations as to whether the proposal is to serve local or regional demand. The information provided in relation to the number of facilities for homeless persons in the area does not include other facilities which provide residential outreach and after-care (5 no.) and which are within close proximity to the site and which are shown on figure 7 and figure 8. There is a significant



degree of specificity in the development plan in relation to procedures for approval of such developments.

- The proposed use is inconsistent with the nursing home use of the premises which are specified in a previous permission.
- An intensification of use is likely to arise as a result of the change of use which may be considered contrary to the Z1 zoning objective.
- It is unclear whether appropriate residential amenity will be provided for the residents and whether appropriate standards of accommodation will be provided in relation to sufficiently sized bedrooms, storage, open space, which is lacking.
- 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 nursing care is replaced by social support and care. The 40% increase in occupancy is a material intensification and the increase in scale would result in a change in the definable character of the use.
- Homeless accommodation is a *sui generis* use which does not fall within the permissible uses or open for consideration use categories and is therefore not a permissible use within the Z1 zone.
- There is insufficient capacity to facilitate additional car parking at the proposed change of use would exacerbate this problem. In addition the substantial volumes of traffic entering and leaving the site would generate unacceptable negative impacts on residential amenity. There would be a sharp increase in the level of pedestrian activity in the morning and evenings and an increase in potential noise disturbance for residents in the surrounding area.
- The former nursing home was deemed to be non-compliant in relation to standards of safety and suitability of the premises and this is questioned whether it is suitable for an intensification of use.
- We refer to precedent case of PL17.301064 which related to a change of use of a permitted nursing home to a residential drug rehabilitation facility and whether this is or is not exempted development. There are some parallels between this use and the use as homeless accommodation facility including in relation to the

type of care provided and the demographic. Extracts of the Inspector's report are given.

- The proposed change of use of the subject building for the provision of homeless accommodation would be materially different from a nursing home in that it would provide a different service and type of care to a different user group. The nature of the proposed use of the buildings significantly differs from that of a nursing home as it would provide accommodation on a short-term basis including single nights to a varying user group with no specific ties to the local community.
- In relation to case law the case of IEHC 544 refers. The judgement quashed the decision which authorised the change of use and refurbishment of the premises which was formerly a parish centre in order to provide accommodation for persons experiencing homelessness. There was a failure to comply with specific procedures for developments as set out in QH30 and section 16.12 of the development plan. The decision was quashed for reason of failing to comply with specific procedures. In similar manner in the current case due regard has not been given to the location of the proposed homeless accommodation facility and its surrounding context and the owner has not sufficiently supported the proposal with adequate information indicating that it will not result in an overconcentration or have undue impacts on surrounding residential amenity in accordance with the development plan.
- In conclusion we are of the strong opinion that the proposed change of use from a nursing home to the provision of homeless accommodation is development and is not exempted development and consider that the proposed use of the premises would be materially different from that of a nursing home.

## **7.2. Planning Authority Response**

The planning authority has not provided a detailed response.

## **7.3. Owner/ occupier's response**

The owner / occupier has not provided any comment.

## 8.0 Statutory Provisions

### 8.1. Planning and Development Act, 2000

#### 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.

**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.

**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;

## 8.2. **Planning and Development Regulations, 2001**

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

**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.

**Part 4 of Schedule 2** sets out exempted development classes of use.

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.

## 9.0 **Assessment**

### 9.1. **Overview**

- 9.2. Before considering the substantive legal question which is before the Board I refer to the particular circumstances and the fact that the planning authority has previously issued a declaration on this question, which declaration was not challenged.
- 9.3. The Board may wish to consider whether it has jurisdiction to address this question in the circumstances where the 2019 declaration by Dublin City Council on the same question is in force.
- 9.4. Similar circumstances arose under ABP-301064. The argument was put to the Board that the original declaration was conclusive and binding, that the Board does not have jurisdiction to question the validity of the (second) declaration and must dismiss the referral as invalid. The Inspector considered the matter in her report and the Board decided to determine the case. The High Court has just delivered a judgement on quashing the decision (*Narconon V An Bord Pleanala*). The Board may therefore consider that current case cannot be decided.
- 9.5. In the event that the Board decides to proceed with this case I submit my assessment below.

### 9.6. **The Question**

- 9.7. As set out earlier I recommend that the question be re-stated.
- 9.8. It would also be open to the Board to respond to the question as presented, namely to address the broader use of 'homeless accommodation facility' but in that case further information would be required in relation to the nature of the use including its operation, duration of tenancies and the nature of the 'care' to be provided.

**9.9. Is or is not development**

9.10. There are no indications that any works are necessary of proposed. The question concerns the use of the building.

9.11. The making of a material change of use is development.

9.12. I consider that the following are relevant considerations to whether the change is a material change of use:

- The service provided to users would incorporate different medical and social care facilities.
- The likely duration of residency at the premise by users would be of shorter duration. I find no evidence of any intended use as an over-night facility but equally that cannot be discounted.
- There would be a substantially increased occupancy level resulting in an intensification of use.
- The specific profile of the users is such that there is less likelihood of connectivity to the local community.
- The age profile of the future residents would be broader than the existing nursing home use and would be more active and able bodied.

9.13. I am satisfied that the change from use as a nursing home to use as an inpatient treatment and recovery centre, accessible strictly by referral and appointment is therefore a material change of use and is development.

**9.14. Is or is not exempted development**

9.14.1. 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.

9.14.2. I consider that the use as a nursing home use falls under class 9 (b). I disagree that the nature of the use is as a Clinic falling under Class 8.

9.14.3. In relation to the proposed use as an inpatient treatment and recovery centre, accessible strictly by referral and appointment I consider that this use would fall

under Class 9(a) being use for 'the provision of residential accommodation and care to people in need of care'. That class excludes the use of a house for that purpose but the existing use of the premises is as a nursing home.

9.14.4. Accordingly, the change of use in this case falls within the same Class and would be exempted development.

#### 9.15. **Restrictions on exempted development**

Under A.10 of the regulations there are restrictions on development which would otherwise be exempted development by reason of being a change of use within any one of the classes of use specified in Part 4 of Schedule 2.

The exemption for a change of use within Class 9 would fall if any of the following applied in relation to the development —

- (a) involves the carrying out of any works other than works which are exempted development,
- (b) contravenes a condition attached to a permission under the Act,
- (c) is inconsistent with any use specified or included in such a permission, or
- (d) is 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.

The referrer's submission notes in relation to these restrictions that:

- The applicant has not indicated that any works are proposed
- The development does not contravene a condition attached to the permission for the nursing home
- No unauthorised development is involved in the existing use.

I agree with the referrer's comments which effectively rule out restriction on exempted development under A10(a), (b) and (d).

The matter of A10(c) was considered in the case determined by the Board in relation to a drug rehabilitation facility at Balivor Co. Meath. In my opinion this case has the clearest parallels with the current case in terms of the existing and proposed uses. The Board in that case determined that the use would be inconsistent with the use

specified in the planning permission by reason of the significant differences in the services provided, the age profile of the likely occupants, the greater geographical area that would be served by the facility and the limited interaction with the local community.

I am of the opinion that the same reasoning applies in this case and that the same conclusion should be drawn. On that basis I conclude that the development is not exempted development.

I note comments which are made by the referrer in relation to policy QH30 which seeks to prevent a proliferation of certain use types but which in effect requires only that their locations be mapped and judgement brought to bear in the making of planning decisions. There is a requirement ultimately under the development plan that there not be an over-concentration of facilities in any one area. This case does not concern a development management consent and I agree with the planning authority that the purpose of the policy is related to the exercise of development management.

I note the case law which is referenced in the referral and the decision of the High Court relating to Carman's Hall High Court case of 2017 (IEHC 544). The QH30 policy was cited. However, that case that related to works by the Council which brings to the fore different legal provisions and which are not relevant in this case in my opinion including matters relating to the local authority not materially contravening its own development plan.

I conclude that the development which is exempted development is restricted by virtue of A10(c).

#### 9.16. **Conclusion**

9.17. In view of the foregoing, I am the opinion that the change of use constitutes development that is not exempted development.

### 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 change of use from



nursing home to use as an inpatient treatment and recovery centre, accessible strictly by referral and appointment at 30 Haddon Road, Clontarf, Dublin 3 is or is not development or is or is not exempted development:

**AND WHEREAS** John Brierty and Turlough Considine requested a declaration on this question from Dublin City Council and the Council issued a declaration on the 5<sup>th</sup> of September 2019 stating that the matter was development and was exempted development:

**AND WHEREAS** John Brierty and Turlough Considine referred this declaration for review to An Bord Pleanála on the 26<sup>th</sup> of September, 2019:

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

- (a) Sections 2, 3 and 4 of the Planning and Development Act 2000, as amended,
- (b) Article 10 (1) of the Planning and Development Regulations, 2001, as amended,
- (c) Classes 8 and 9 of Part 4 of the Second Schedule to the Planning and Development Regulations, 2001, as amended,
- (d) the nature of the subject development as outlined in the related case reg. reg. 0200/19.

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

- (a) The permitted use on site is as a nursing home and is, therefore, a class of use coming within the scope of Class 9 (b) of Part 4 of Schedule 2 to the Planning and Development Regulations, 2001, as amended;

- (b) The proposed use as an inpatient an inpatient treatment and recovery centre, accessible strictly by referral and appointment be a factual change of use from use as a nursing home, and such change of use would raise material planning considerations, including different patterns of traffic and pedestrian activity/movements, a different service to a different user group, including a population with a broader age profile and who are drug dependent, and with limited interaction with the local community, and is, therefore, a material change of use, and is development;
- (c) This material change of use would generally come within the scope of Article 10 (1) of the Planning and Development Regulations 2001, as amended, being a change of use within Class 9 of Part 4 of Schedule 2 to these Regulations, from Class 9 (b) to Class 9 (a), but would be inconsistent with the use included in the planning permission for the nursing home, by reason of the significant differences in the services provided, the age profile of the likely occupants, the greater geographical areas that would be served by the facility and the limited interaction with the local community, and would, therefore, pursuant to Article 10 (1) (c), not be exempted development

---

. Mairead Kenny

. Senior Planning Inspector

31<sup>st</sup> January 2020