



An  
Bord  
Pleanála

## Inspector's Report ABP 306081 - 19

### Question

Whether the change of use from a dwelling where a dog grooming and boarding is carried on by the occupant of the dwelling where the occupant charges for the same services is or is not exempt from the requirement to obtain planning permission under the development regulations.

### Location

99 Forest Park, Drogheda, Co. Louth

### Declaration

Planning Authority

Louth County Council

Planning Authority Reg. Ref.

S5 2019/54

Applicant for Declaration

Tracey Reilly

Planning Authority Decision

Is Not Exempted Development

### Referral

Referred by

Tracey Reilly

Owner/ Occupier

Tracey Reilly

Observer(s)

None

**Date of Site Inspection**

8<sup>th</sup> May 2020

**Inspector**

Brendan Coyne

## 1.0 Site Location and Description

1.1. The subject site comprises a single storey semi-detached dwelling located on a corner junction within Forest Park residential estate in Drogheda. The rear garden of the dwelling contains 2 no. sheds with floor areas of 20.2 sq.m. and 1.78 sq.m. respectively. A driveway and car parking space are provided to the front of the dwelling. A 1.2m wide passageway to the side of the dwelling provides external access to the rear garden. The character of the surrounding area comprises dwellings similar in form and appearance.

## 2.0 The Question

2.1. The original question put before Louth County Council was as follows;

*Whether the change of use from a dwelling where dog grooming and boarding is carried on as a hobby by the occupant to a dwelling where the occupant charges for the same services (with no intensification) is or is not exempted development.*

2.2. The Declaration of the Planning Authority has been referred to the Board for review by the owner / occupant. Having reviewed the available information, I consider that the question before the Board can be reworded as follows;

*'Whether the change of use of part of a residential dwelling to a dog grooming and boarding business is or is not exempted development.*

## 3.0 Planning Authority Declaration

### 3.1. Declaration

On the 15<sup>th</sup> November 2019, Louth County Council issued a decision declaring that;

- The change of use from use as part of a house to use as a dog grooming and boarding service, 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.

- 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 dog grooming and boarding service is not considered incidental to the enjoyment of the house.

Louth County Council, in exercise of the powers conferred on it by Section 5(2) of the Planning and Development Act 2000 (as amended), decided that the use is development and NOT exempted development.

### **3.2. Planning Authority Reports**

#### **3.2.1. *Planning Reports***

Basis for the Planning Authority's decision. Includes:

- There is an enforcement file on the site which indicates that there are 5 no. sheds in the rear garden of the dwelling, used for the grooming and boarding of dogs.
- The enforcement file arose following complaints from neighbouring dwellings of loss of residential amenity due to the grooming and boarding of dogs on the premises.
- The applicant confirms to the Planning Authority that this is a commercial activity, for which payment is received.
- The applicant states that only 2 no. sheds will remain on the site for the continuation of the grooming and boarding of dogs.
- The change of use from part of the house to a dog grooming and boarding service constitutes a material change of use and is therefore development.
- 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 dog grooming and boarding service is not considered incidental to the enjoyment of the house.
- It is considered that the use of the dwelling and rear garden area for dog grooming and boarding is a material change in the use of the residential property which impacts on the residential amenities of adjoining property.

- It is considered that the change of use constitutes a material change of use and that such use is not exempted development.

### 3.2.2. **Other Technical Reports**

None

## 4.0 **Relevant Planning History**

**P.A. Ref. 02/69** Permission granted in 2002 for a conservatory to the rear and a single storey extension to the side of the dwelling.

## 5.0 **Relevant Enforcement History**

**P.A. Ref. 19U118** A Warning Letter was issued to Tracey Reilly alleging an unauthorised development was taking place at the subject property, involving a pet grooming and pet boarding business.

## 6.0 **Policy Context**

### 6.1. **Development Plan**

Drogheda Borough Council Development Plan 2011 – 2017 is the statutory plan for the area.

The site is zoned 'RE – Residential Existing' with the objective 'to protect and/or improve the amenity of developed residential communities'.

### 6.2. **Natural Heritage Designations**

The site is located c. 1.4 km to the north of the River Boyne And River Blackwater SAC (Site Code: 002299).

## 7.0 The Referral

### 7.1. Referrer's Case

7.1.1. A 1<sup>st</sup> party referral was received from Brady Hughes Consulting representing the owner / occupier of the lands Tracey Reilly, against the decision made by the Planning Authority, that the above works do not constitute exempted development, under the Planning and Development Act 2000 (as amended).

The following is a summary of the issues raised;

- The applicant Tracey Reilly is a keen dog owner and enthusiast who has been grooming her friends and neighbours' dogs for years, both inside her home and in the garden shed. This has always been and continues to be her hobby.
- Tracey Reilly looks after her friends, family and neighbour's dogs while they were away on holidays.
- In recent years Tracey Reilly has accepted payment from some dog owners for this service, to help cover costs e.g. insurance, feed etc.
- No material change of use has occurred at the subject property.
- The only change relates to the acceptance of payment for an activity already being carried out on the site.
- To be a material change of use there must be impacts on neighbouring property.
- The applicant is carrying out a home-based economic activity – dog grooming. There are no effects from this activity.
- In relation to intensification of use, the number of dogs being groomed is limited to 8 no. per week, one at a time and by appointment. Intensification of use is limited in this way.
- The maximum no. of dogs boarded overnight at the premises would be 6 no. dogs. These would be kept inside the house and not outside in the garden sheds or kennels.
- The commercial activity at the subject premises is entirely ancillary to the residential use of the property.

- No development has occurred at the applicant’s house.
- The proposed change of use is not ‘development’ as defined by the Planning Act and therefore does not require planning permission.

Documentation submitted with the referral includes;

- The Cover Letter which accompanied the declaration application setting out the applicant’s views and position.
- A Site Location Map, Site Layout Plan, Floor Plans and Elevation Drawings.
- Signed letters by clients, neighbours and friends.
- Application Form sent to Louth County Council.

## 7.2. Planning Authority Response

The Planning Authority confirms that it has no further comment to make but refers to the Planners Report dated the 14<sup>th</sup> November, 2019.

## 8.0 Statutory Provisions

### 8.1. Planning and Development Act, 2000 (as amended)

**Section 2(1) Interpretation** - defines the terms used within the Act including the following;

“**habitable house**” means a house which—

(a) is used as a dwelling,

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

**Section 3(1)** defines development as follows:

“**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)** of the Act refers to **Exempted Development** and states;

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

(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;

## 8.2. **Planning and Development Regulations, 2001 (as amended)**

### **Part 2 Exempted Development**

**Article 5 Interpretation for this part** – defines the following;

“**business premises**” means—

(a) any structure or other land (not being an excluded premises) which is normally used for the carrying on of any professional, commercial or industrial undertaking or any structure (not being an excluded premises) which is normally used for the provision therein of services to persons,

### **Article 6 Exempted Development**

Article 6(3) states;

Subject to article 9, in areas other than a city, a town or an area specified in section 19(1)(b) of the Act or the excluded areas as defined in section 9 of the Local Government (Reorganisation) Act, 1985 (No. 7 of 1985), development of a class specified in column 1 of Part 3 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 3 opposite the mention of that class in the said column 1.

### **Article 9 Restrictions on Exemption**

### **Article 10 Changes of use**

**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.

**Schedule 2 Part 1 Exempted Development – General**

<b>Class</b>	<b>Conditions and Limitations</b>
<p><b><i>Development within the curtilage of a house</i></b></p> <p><b>Class 3</b></p> <p>The construction, erection or placing within the curtilage of a house of any tent, awning, shade or other object, greenhouse, garage, store, shed or other similar structure.</p>	<ol style="list-style-type: none"> <li>1. No such structure shall be constructed, erected or placed forward of the front wall of a house.</li> <li>2. The total area of such structures constructed, erected or placed within the curtilage of a house shall not, taken together with any other such structures previously constructed, erected or placed within the said curtilage, exceed 25 square metres.</li> <li>3. The construction, erection or placing within the curtilage of a house of any such structure shall not reduce the amount of private open space reserved exclusively for the use of the occupants of the house to the rear or to the side of the house to less than 25 square metres.</li> <li>4. The external finishes of any garage or other structure constructed, erected or placed to the side of a house, and the roof covering where any such structure has a tiled or slated roof, shall conform with those of the house.</li> </ol>

	<p>5. The height of any such structure shall not exceed, in the case of a building with a tiled or slated pitched roof, 4 metres or, in any other case, 3 metres.</p> <p>6. The structure shall not be used for human habitation or for the keeping of pigs, poultry, pigeons, ponies or horses, or for any other purpose other than a purpose incidental to the enjoyment of the house as such.</p>
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## Schedule 2 Part 4 Exempted Development - Classes of Use

### 9.0 Assessment

The question before the Board in this instance can be stated as follows:

*‘Whether the change of use of part of a residential dwelling to a dog grooming and boarding business is or is not exempted development.’*

It should be stated at the outset that the purpose of this referral is not to determine the acceptability or otherwise of the proposed development in respect to 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. In assessing the merits of the case, I have reviewed previous relevant declarations made by the Board.

#### 9.1. Is or is not development?

- 9.1.1. Section 3(1) of the Planning and Development Act 2000 (as amended) defines “development” as “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”.
- 9.1.2. The question put before the Planning Authority was “*Whether the change of use from a dwelling where dog grooming and boarding is carried on as a hobby by the occupant to a dwelling where the occupant charges for the same services (with no intensification) is or is not exempted development*”. The wording of this question

acknowledges that a change of use has occurred at the applicant's premises. The Agent representing the applicant puts forward that no "material change of use" has occurred at the applicant's premises, and therefore "development" has not occurred. The key question, therefore, is to determine if a "material" change of use has occurred at the applicant's premises, and if established, whether such material change of use is or is not exempted development.

9.1.3. Having regard to case law I acknowledge that there are generally two tests to establish whether a material change of use has occurred from the antecedent use to the subsequent use.

9.1.4. The first test to consider, in accordance with case law, is the external effects of the change of use on the amenities of the area. Thus, for example, if the change would result in an increase in noise, traffic or odours, the change is probably material. In *Galway County Council v. Lackagh Rock Ltd.* [1985] I.R. 120 at 127 (H.C.) Barron J. suggested a test in the following terms:

"To test whether the uses are materially different it seems to me that what should be looked at are the matters which the planning authority would consider in the event of a planning application being made either for the use on the appointed day or for the present use. If the matters are materially different, then the nature of the use must be materially different".

9.1.5. The second aspect of the test seems to suggest that even in the absence of external effects arising from the change, there may nevertheless be development. The second test requires a consideration of the character of the antecedent and subsequent uses of the land. Thus, the High Court in *Cusack v Minister for Local Government*, 1980, considered that a change from a dentist's practice to use as a solicitor's office would involve a material change in use. In this regard, the court concentrated on the character of the two uses, stating that the professions were completely different in their training, in their skills and in their general nature, and did not appear to regard the fact that there might be similarities in terms of the external effects to be relevant.

9.1.6. I note from case law therefore, that if changes to a planning unit give rise to new planning considerations this should be considered a material change of use. In the current referral before the Board the antecedent use is solely residential, and the subsequent use is both residential and commercial i.e. a dog grooming and dog

boarding business. The applicant confirms that payment is received for such service. Such commercial undertaking within the applicant's premises falls within the definition of a "business premises", as set out under Article 5 of the Regulations.

- 9.1.7. The applicant confirms that the number of dogs groomed per week would be limited to 8 no. dogs and the maximum no. of dogs that could be accommodated overnight (excluding the applicants own dogs) would be 6 no. dogs. Since the use of part of the house has changed from residential to commercial, it is my view there are matters which a planning authority would consider in the event of a planning application being made for the use on the appointed day or for the present use. Such matters would include (inter alia) the hours of operation of the dog grooming / boarding business, the generation of traffic and car parking, potential noise nuisance, waste generation, impact on the private amenity space of the existing dwelling, customer access, separation of residential / commercial accommodation and design issues. I would consider that such matters are materially different to residential use, and thereby the commercial nature of the dog grooming and boarding service is materially different to residential use. This material change of use would, therefore, be development in accordance with the provisions of Section 3(1) of the Planning and Development Act, 2000 (as amended).

## **9.2. Is the change of use exempted development?**

- 9.2.1. In relation to whether the change of use is exempted development the following must be considered (a) the Planning and Development Act 2000 (as amended), and (b) the Planning and Development Regulations, 2001 (as amended).
- 9.2.2. Section 4 of the Planning and Development Act, 2000 (as amended), sets out exemptions and I would consider that there are no specific exemptions in relation to the subject change of use. The carrying out of dog grooming and boarding as a business within the curtilage of the house would not be incidental to the enjoyment of the house, and therefore does not come within the scope of Section 4(1)(j) of the Act.
- 9.2.3. Condition No. 6 under Class 3 of Schedule 2, Part 1 of the Regulations sets out that the construction of a shed within the curtilage of a house shall be exempted development if the structure is used for a purpose incidental to the enjoyment of the house. The 2 no. sheds in the rear garden of the subject dwelling would be used as

part of a commercial dog grooming and boarding service. Such use would not be incidental to the enjoyment of the house, and thereby, would not be exempted development under Class 3 of Schedule 2, Part 1 of the Regulations.

9.2.4. There are no exempted development provisions under Schedule 2 Part 4 exempted development for a change of use, within a particular class, from residential to a dog grooming and dog boarding business.

9.2.5. I conclude, therefore, that the change of use of part of a residential dwelling to a dog grooming and boarding business at the subject premises is development and is not exempted development.

### 9.3. **Appropriate Assessment**

9.3.1. The site is located c. 1.4 km to the north of the River Boyne And River Blackwater SAC (Site Code: 002299). Having regard to the nature and scale of the development under consideration, the nature of the receiving environment, the availability of public services, it is my opinion that no appropriate assessment issues arise and that the development would not be likely to have a significant effect, either individually or in combination with other plans or projects, on any Natura 2000 site.

### 9.4. **Recommendation**

9.4.1. 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 part of a residential dwelling to a dog grooming and boarding business is or is not exempted development.

**AND WHEREAS** Tracey Reilly requested a declaration on this question from Louth County Council and the Council issued a declaration on the 15<sup>th</sup>

day of November, 2019 stating that the matter was development and was not exempted development:

**AND WHEREAS** Tracey Reilly referred this declaration for review to An Bord Pleanála on the 4<sup>th</sup> day of December, 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) Articles 5, 6, 9 and 10 and Schedule 2 of the Planning and Development Regulations, 2001 (as amended), and
- (c) The planning history of the site.

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

- (a) The change of use of part of a residential dwelling to a dog grooming and boarding business at No. 99 Forrest Park, Drogheda, Co. Louth constitutes a material change of use and is therefore development, as defined in section 3 of the Planning and Development Act 2000 (as amended).
- (b) Neither the Planning and Development Act 2000 (as amended) nor the Planning and Development Regulations 2001 (as amended) recognise the said material change of use as exempted development.

**NOW THEREFORE** An Bord Pleanála, in exercise of the powers conferred on it by Section 5 of the 2000 Act, hereby decides the following;

The change of use of part of a residential dwelling to a dog grooming and boarding business at No. 99 Forrest Park, Drogheda, Co. Louth is development and is not exempted development.

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Brendan Coyne  
Planning Inspector

27<sup>th</sup> May 2020.