



An
Bord
Pleanála

Inspector's Report ABP-306122-19

Question

Whether the construction of a hard surface area of c.406 sq.m. of the garden to the side of the side building line of Ardoyne House for the provision of permitted parking spaces is or is not development or is or is not exempted development

Location

Ardoyne House, Pembroke Park,
Dublin 4

Declaration

Planning Authority

Dublin City Council South

Planning Authority Reg. Ref.

0489/19

Applicant for Declaration

Ardoyne House Management Ltd

Planning Authority Decision

Is not exempted development

Referral

Referred by

Ardoyne House Management Ltd.

Owner/ Occupier

Ardoyne House Management Ltd..

Inspector

Gillian Kane

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1.0 Site Location and Description

- 1.1.1. The subject site comprises an established residential development situated to the rear of Clyde Lane and Pembroke road in Ballsbridge, the south Dublin suburb. It is located immediately adjacent to Herbert Park with vehicular access from Pembroke Park and a smaller, vehicular entrance from Clyde Lane. The irregularly shaped site has a 12-storey apartment development in the centre and single storey flat roofed garages along a section of the northern boundary to Clyde Lane and the southern boundary. A row of eight two-storey mews dwellings (Ardoyne Mews) forms the other section of the Clyde Lane boundary.
- 1.1.2. The area surrounding the apartment block and the entrance is laid out as a green and for car parking. To the northeast and southeast the grounds bound Herbert Park.

2.0 The Question

- 2.1.1. According to the submission of the Referrer, the Board is requested to determine “Whether the construction of a hard surface area of c.406 sq.m. of the garden to the side of the side building line of Ardoyne House for the provision of permitted parking spaces is or is not development or is or is not exempted development.”
- 2.1.2. The referrer’s question refers to “permitted car parking spaces”. Section 4 of the referrers submission refers to the planning history PL29S.119212 wherein the Board granted permission for 8 no. duplex units on Clyde Lane. The referrer states that the Board inspector’s report on PL29S.119212 makes reference to 87 no. car parking spaces “*The parking provision of 87 spaces for 57 units is to an acceptable standard*”. The submission states that, thus it is reasonable to assume that 87 no. spaces were proposed on the entire Ardoyne House site. The referrers submission acknowledges that the drawings submitted with the application are not available and the assumption is made from examination of the Boards report only.
- 2.1.3. The subject site currently provides 49 no. surface spaces, for an existing 54 no. dwellings (46 no. apartments in the 12-storey block and the 8 no. mews dwellings).
- 2.1.4. The Board will note that when the Inspector referred to 87 no. spaces he clearly indicated that he was counting the garages: “*The surface car parking area would be redesigned so that in total (including garages) there would be provision for 87 car spaces catering for a total development of 57 apartment*”.

2.1.5. The applicants contention that a number of spaces were permitted but never developed does not stand up to scrutiny. Further, if permission was granted for the additional spaces but not provided, that leads one to the question whether the development under PL29S.119212 was built in compliance with its permission. The submission that the subject site is a single planning unit within which permitted uses can be relocated, is not germane.

2.1.6. As pointed out by the referrer and the Planning Authority, the documents pertaining to the permission are not available. The submission cannot therefore be substantiated.

2.1.7. I am satisfied that the question to be answered by the Board should therefore be re-worded as follows:

“Whether the construction of a hard surface area of c.406 sq.m. of the garden to the side of the side building line of Ardoyne House for the provision of parking spaces is or is not development or is or is not exempted development.”

3.0 Planning Authority Declaration

3.1. Declaration

3.1.1. On the 11th November 2019, the Planning Authority issued a declaration stating the following:

The proposed development is not exempt from the requirement to obtain planning permission under section 32 of the Planning and Development Act 2000, as amended, for the following reason:

I am satisfied, having examined the proposed that the proposed works do not constitute exempt development under the Planning and Development Act 2000, and subsequent amendments as it would result in a material change of use in the land, which is not covered by the exemptions listed in Schedule 2 of the Planning and Development Regulations.

3.2. Planning Authority Reports

3.2.1. **Planning Report:** Not possible to definitively determine the quantum of parking permitted in the original application. Reference in an Bord report to “87 no. spaces

for 57 no. units” is taken to refer to the 46 no. apartments in Ardoyne House and the 11 no. mews dwellings for which permission was being sought. Setting out of land to provide parking is development under section 3(1) of the Act as it would involve the carrying out of works, under section 2(1). There are no specific exemptions which relate to apartment developments. The scale of Ardoyne House – a 12 storey building with 46 no. separate apartments, built as a large-scale residential development is such that it does not fall within the definition of a house. Therefore, the provisions of Class 6 cannot be applied in this instance. The proposed development represents a material change of use as it would change from green space to hard standing for the purposes of providing additional car parking. The proposed development is not exempt and would require planning permission.

4.0 Planning History

- 4.1.1. **PL29S.119212:** Planning permission granted for the construction of 8 no. duplex apartments.

5.0 Policy Context

5.1. Dublin City Development Plan 2016-2022

- 5.1.1. The subject site is zoned Z1 Residential, with the stated objective: to protect, provide and improve residential amenities.

6.0 The Referral

6.1. Referrer’s Case

- 6.1.1. An agent on behalf of Ardoyne House Management Limited requests the Board, in accordance with section 5(3)(a) of the Planning and Development Act 2000, as amended, to determine if the proposed area of hardstanding for the provision of car parking is exempted development. The case of the referrer can be summarised as follows:

- The referrer disagrees with the declaration of the City Council as the proposed development constitutes exempted development under class 6(b)(ii) of Schedule 2, Part 1 of the Planning and Development Regulations 2001, as amended.
- The site comprises Ardoyne House, a 12-storey residential block of 46 no. units, Ardoyne Mews, 8 no. two storey dwellings and 49 no. surface car parking spaces.

- The under provision of car parking causes constraints, which necessitates the provision of new car parking.
- Ardoyne House was built between 1964 and 1965.
- The site is zoned Residential Z1 and development plan standards permit up to 54 no. car parking spaces.
- Planning history shows that the original application permitted the subject area as hardstanding to access the garages along the eastern boundary.
- A Board Inspectors report (PL29S.119212) refers to “The parking provision of 87 spaces for 57 units is to an acceptable standard”. It is submitted therefore that 87 no. spaces are permitted on the site of Ardoyne House and Ardoyne Mews.
- It is proposed to provide 19 no. car spaces in the new hardstanding area which will bring the current parking provision to 68 no. spaces.
- DCC appeared to have conflates works and use.
- Ardoyne House constitutes a house under class 6(b)(ii) as it is “a building which was designed for use as 2 or more dwellings”. Class 6 does not make a distinction on the basis of scale, as suggested by the City Council.
- The planning fee applicable for the construction of an apartment building is Class 1 the provision of a house, not class 4 (buildings other than class 1,2 or 3).
- The proposed works should be considered exempted development under Class 6(b)(ii) as they are “works within the curtilage of a house for....the provision of a hard surface in the area of the garden forward of the front building line of the house, or in the area of the garden to the side of the side building line of the house, for purposes incidental to the enjoyment of the house as such”.
- The proposed hard surface are of 406sq.m. is greater than 25sq.m. (condition of Class 6) and therefore a surface water drainage system is proposed which will discharge water to a gulley in the parking area.
- The Carroll v Brush field Ltd legal case found that the relocation of uses within the same planning unit does not constitute a material change of use and therefore does not require planning permission. It is submitted that the Ardoyne House site

comprises a planning unit and therefore the relocation of permitted parking spaces in part of the open space does not comprise a material change of use.

- The proposed development is not de-exempted by virtue of needing an AA or an EIS.
- The Board is requested to declare that the proposed development is exempted development under Class 6(b)(ii) of the Planning and Development Regulations 2001, as amended.

6.2. Planning Authority Response

6.2.1. None on file

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

7.1.1. The following statutory provisions are relevant in this instance.

7.1.2. Section 2(1): In this Act, except where the context otherwise requires

"**works**" includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal ...;

"**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 this context so admits, includes the land on, in or under which the structure is situated".

7.1.3. Section 3(1): in this Act, "**development**" means, except where the context otherwise requires, the carrying out of any works on, in, or under land or the making of any material change in the use of any such structures or other land.

7.1.4. Section 4(1): sets out developments that shall be exempted development for the purposes of this Act.

7.1.5. Section 5(1): If any question arises as to what, in any particular case, is or is not development or is or is not exempted development within the meaning of this Act, any person may, on payment of the prescribed fee, request in writing from the relevant planning authority a declaration on that question, and that person shall

provide to the planning authority any information necessary to enable the authority to make its decision on the matter.

(4): Notwithstanding subsection (1), a planning authority may, on payment to the Board of such fee as may be prescribed, refer any question as to what, in any particular case, is or is not development or is or is not exempted development to be decided by the Board.

7.2. Planning and Development Regulations, 2001

7.2.1. Article 6(1) of the Planning and Development Regulations, 2001 states that “Subject to Article 9 development of a class specified in Column 1 and Part 1 of Schedule 2 shall be exempted development for the purposes of the Act”.

7.2.2. Relevant to the subject referral is:

Class 6

(a) The construction of any path, drain or pond or the carrying out of any landscaping works within the curtilage of a house.

(b) Any works within the curtilage of a house for:

(i) the provision to the rear of the house of a hard surface for use for any purpose incidental to the enjoyment of the house as such, or,

(ii) the provision of a hard surface in the area of the garden forward of the front building line of the house, or in the area of the garden to the side of the side building line of the house, for purposes incidental to the enjoyment of the house as such.

8.0 Assessment

8.1. Is or is not development

8.1.1. The Board has been requested to determine if the construction of an area of hard standing for car parking is or is not development and is or is not exempted development.

8.1.2. The first question that must be determined is whether the construction of an area of hard standing is or is not development. In Section 2 of the Planning and Development Act 2000, as amended, the definition of "works" includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal. It is considered that the construction of an area of hardstanding is “works” as it is clearly an act of construction.

8.1.3. As per section 3(1) of the Act, "development" is the carrying out of any works on, in, or under land or the making of any material change in the use of any such structures or other land. I am satisfied that the provision of an area of hardstanding is works, and that such works would be carried out on land and therefore constitute "development" as per section 3(1) of the Planning and Development Act 2000, as amended.

8.2. Is or is not exempted development

8.2.1. In their submission, the referrer states that Ardoyne House qualifies as a 'house' under Section 2(1) of the Planning and Development Act 2000, as amended and therefore is exempted development under Class 6(b)(ii). Section 2(1) states that "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". Class 6(b)(ii) provides that the provision of a hard surface in the area of the garden forward of the front building line of the house, or in the area of the garden to the side of the building line of the house, for purposes incidental to the enjoyment of the house as such".

8.2.2. The applicant submits that Ardoyne House is a house, as it is a building that was designed for use as 2 or more dwellings. The key context of the above section 2 however, is the second part of the definition; "*or a flat, an apartment or other dwelling within such a building*". A 12-storey building of 46 no. apartments cannot be a house, whilst also accommodating within it other units which qualify as a house – namely, the apartments within it. The commonly accepted interpretation of a house would not, by any reasonable understanding, be stretched to include a 12-storey building of 46 no. units. The Board will note that section 2 also includes the proviso of "where appropriate". It is considered that the classification of Ardoyne House as a house, is not an appropriate interpretation.

8.2.3. The Referrer makes the submission that the subject apartment building qualifies as a house as the planning fee for an apartment is Class 1 (house), rather than Class 4 (buildings other than class 1, 2 or 3). The Board is not involved in the fee structure payable to a Planning Authority and cannot definitively declare whether the Referrers

submission that a fee of €65 for a 12 storey, 46-unit apartment block would be accepted by Dublin City Council as the correct fee for such an application. It is my understanding that the correct calculation for such a development would be €65 multiplied by the number of proposed units. However, as noted above, this cannot be definitely be declared to be the case. Without evidence to substantiate the Referrers suggestion and given the substantive reason for not accepting the subject building as a 'house' outlined above, I am satisfied that the submission regarding planning fee it is not germane.

- 8.2.4. If the Board accepts that the building does not qualify as a house, then the exemption provided by Class 6, namely works within the curtilage of a house, do not apply to the proposed development.
- 8.2.5. There are no restrictions on exemption that are applicable to the proposed development.
- 8.2.6. It is considered that the construction of an area of hardstanding of c.406sq.m. of the garden to the side of the building line of Ardoyne House for the provision of car parking is development and is not exempted development.

9.0 Recommendation

- 9.1. I recommend that the Board should decide this referral in accordance with the following draft order.

WHEREAS a question has arisen as to whether the construction of an area of hardstanding of c.406sq.m. of the garden to the side of the building line of Ardoyne House for the provision of permitted car parking is or is not development or is or is not exempted development:

AND WHEREAS the Board re-worded the question to: whether the construction of an area of hardstanding of c.406sq.m. of the garden to the side of the building line of Ardoyne House for the provision of car parking is or is not development or is or is not exempted development:

AND WHEREAS Ardoyne House Management Limited requested a declaration on this question from Dublin City Council and the Council issued a declaration on the 11th day of November, 2019 stating that the matter was development and was not exempted development:

AND WHEREAS Ardoyne House Management Limited referred this declaration for review to An Bord Pleanála on the 9th day of December, 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) article 6(1) and article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (d) Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (e) the planning history of the site,

AND WHEREAS An Bord Pleanála has concluded that the construction of an area of hardstanding of c.406sq.m. of the garden to the side of the building line of Ardoyne House for the provision of car parking is development and is not exempted development:

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 construction of an area of hardstanding of 406sq.m. of the garden to the

side of the building line of Ardoyne House for the provision of car parking is development and is not exempted development.

Gillian Kane
Senior Planning Inspector

01 April 2020