



An
Bord
Pleanála

Inspector's Report ABP 307064-20.

Question

Whether Change of use from commercial guesthouse to a homeless persons' hostel managed by an approved housing body is or is not development and is or is not exempted development.

Location

Westbrook House, Gort Road, Ennis.
Co. Clare.

Planning Authority

Clare County Council

P A. Reg. Ref.

P20-9.

Declaration Request

Aughanteeroe Residents' Association

Owner Occupier

Clare County Council

Declaration Referral

Aughanteeroe Residents' Association

Date of Inspection

19th June, 2020.

Inspector

Jane Dennehy

1.0 **Background.**

- 1.1. Westbrook House is a former guesthouse for which permission was granted under P. A. Reg. Ref. 95/128 but is now in the ownership of Clare County Council and operated, under the current management Mid-West Simon as a place of residence for homeless persons. It has fifteen ensuite bedrooms and is staffed fully time by a Head of Operations, Case Manager, support staff and a night support worker to which residence have access on an on-call service. Its purpose is to support residents with the challenges facing them in gaining access to private rental or transition to other permanent housing. Management and is staffed fulltime. Residents have access to the staff including on call service.
- 1.2. The Referrer, Aughanteeroe Residents' Association requested a declaration from Clare County Council on 21st February, 2020 as to whether the 'change of use' of a commercial guesthouse to a 'homeless hotel' run by an 'approved housing body' is or is not development and is or is not exempted development.
- 1.3. According to the request, the current use is a very significant change of use from the guest house which ceased in December 2019 prior to the purchase of the property by the local authority. Attached to the submission are copies of correspondence relating to complaints regarding the current use of Westbrook House between Aughanteeroe Residents Association and Clare County Council and copies of extracts from the website for "The Journal".
- 1.4. The planning authority issued a Declaration by Manager's Order on 16th March, 2020 in which it is stated that it is determined that the current use does not constitute a material change of use and constitutes exempt development because it remains in use as a guesthouse. It is stated that the permitted use as a guesthouse which comes within the scope of Class 6, Part 4, Schedule 2 of the Planning and Development Regulations, 2001 as amended

2.0 The Referral

2.1. Referrer's Case

2.1.1. The Referrer, Aughanteeroe Residents' Association referred the declaration issued by the planning authority to the Board on 3rd April, 2020. Included with the submission are copies of extracts from the website, "www.thejournal.ie" regarding complaints made to the Dublin Regional homeless executive regarding conditions in emergency accommodation facilities and photographs.

2.1.2. The Referrer's case is outlined below:

Westbrook House has been operated as a private commercial guesthouse which is still listed on holiday accommodation booking sites.

Use as a homeless hostel operated by an approved housing body is a very significant change of use and is unauthorised development.

It has very significant impact on the residents of Aughanteeroe.

The condition of the exterior of the building since its purchase by the Council has been very poor due to lack of upkeep.

2.1.3. With regard to the nature of use, the Referrer queries:

- The nature and circumstances of the occupants.
- Whether occupants are required to leave the premises and return in the evening as required by a homeless hostel.
- Whether signage outside the building is proposed and,
- The nature of the arrangements for maintenance and repair of the property and maintenance and lighting, if any for the adjacent public spaces.

2.1.4. Additional issues raised and queried in the documentation included with the Referral submission relate to concerns about risk to the safety of residents of the Westbrook estate, requirements for risk assessments, arrangements for complaints and for management of anti-social behaviour and involvement of the Gardai. The Referrer contends that residents should have been consulted about the change of use prior to purchase of the property by the Council.

2.2. Planning Authority Response

2.2.1. There is no submission from the planning authority on file.

3.0 Statutory Provisions

3.1. The relevant legislative provisions referred to in consideration of the Question are:

Planning and Development Act, 2000, as amended.

Sections 2 (1),

Section 3 (1)

Planning and Development Regulations 2001 – 2019.

Article 5 and

Part 4, Class 6, Schedule 2

Extracts from the relevant sections in the Act and Articles and Schedules are available in the Regulations in Appendix 1 at the end of this report.

4.0 Assessment

4.1. For the purposes of clarity, the Question before the Board can be rephrased as follows:

whether a change of use of Westbrook House from commercial guesthouse to a homeless persons' hostel, in fifteen en-suite bedrooms operated by an approved housing body is or is not development and, is or is not exempted development"

4.2. The first consideration is as to whether a change of use within the meaning of "development" as provided for in Section 3 of The Act has occurred.

- 4.3. According to Section 3 of the Act, “Development” means “except where the context otherwise requires, the carrying out of works on/in/over or under land or the making of any material change or in the use of any structures or other land”.
- 4.4. With regard to the carrying out of “works”, apart from removal of the sign displayed for Westbrook Guesthouse and some signage at the entrance to the building, there is no evidence of works having taken place to facilitate the current use, other than possible routine maintenance works.
- 4.5. The permitted use as a guesthouse, under P. A. Reg. Ref. 95/128 and uses as a residential club and a hostel (other than a hostel where care is provided) comes within the same Class, namely, Class 6, Part 4 Schedule 2 of the Planning and Development Regulations, as amended. It is stated in the internal email issued by the Housing, Culture and Sports/Recreation Department (at the County Council) to the planning officer on 18th March 2020 that there are fifteen single occupancy en-suite rooms at the building which is under current management by Mid-West Simon although the management contract is to be put to Tender. The residents have access to twenty-four support from the Head of Operations, Case Manager, support staff and night support staff on an on-call service and to assistance in accessing private rental accommodation or other permanent accommodation. It is therefore understood that the accommodation provided at Westbrook House is of an interim nature prior to obtaining permanent independent living accommodation.
- 4.6. Having regard to this information it is considered that Westbrook House is in use as independent living accommodation for individuals who have some degree of vulnerability and risk of homelessness and who are transitioning to permanent independent living accommodation with the benefit of support and assistance from housing agency staff. The support services available to residents would not constitute a hostel ‘where care is provided’ which would render the use to fall outside the scope of Class 6. For the nature of use to come within the description of a hostel “where care is provided” and therefore outside the scope of Class 6 it, care within this meaning would involve residents with some degree of dependency to facilitate basic daily living needs, such as provision of personal and social care, board and lodging within the meaning of “care” defined under Article 5, (1) (c) of the Regulations according to which care is, “personal care, including help with physical, intellectual or social needs”.

4.7. Following on from the foregoing it can be concluded that the use of Westbrook House is a distinct use which, would not come within the meaning of a commercial guesthouse as it is operated by a housing agency on a non-commercial basis. However but it would come within the meaning of a hostel, or guesthouse within the descriptions for and scope of Class 6 in that there is no evidence that operation of a guesthouse on a commercial or non-commercial basis *per se* is a relevant consideration in determining if the use is a material change of use. It can be concluded that the change of use is not a material change of use and is not development.

Environmental Impact Assessment Screening.

4.8. Having regard to the nature of the proposed development and its location in a serviced urban area, removed from any sensitive locations or features, there is no real likelihood of significant effects on the environment. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

Appropriate Assessment Screening.

4.9. Having regard to the nature of the proposed development and, to the serviced inner urban location, no Appropriate Assessment issues proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

5.0 Recommendation

In view of the foregoing, it is recommended that the Question be decided as set out in the draft order set out overleaf.

6.0 Draft Order.

WHEREAS a Question has arisen as to whether a change of use of Westbrook House from commercial guesthouse to a homeless persons' hostel in fifteen en-suite bedrooms operated by an approved housing body is or is not development and, is or is not exempted development.

AND WHEREAS Aughanteeroe Residents Association requested a declaration on the Question from Clare County Council and the Council issued a declaration on 18th March, 2020 stating that the matter is not a material change of use and is exempted development:

AND WHEREAS Aughanteeroe Residents Association referred the Declaration for review to An Bord Pleanála 3rd April, 2020.

AND WHEREAS An Bord Pleanála, had regard particularly to:

- a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended,
- b) the definition of "guesthouse" and the definition of "care" as set out in Article 5 of the Planning and Development Regulations 2001, as amended,
- c) Class 6, Part 4, Schedule 2 of the Planning and Development Regulations 2001, as amended,
- d) the planning history of the site, namely the grant of permission under planning register reference number 95/128:
- e) the nature of the current of use.

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The current use as of Westbrook House, which has fifteen en-suite bedrooms is accommodation for homeless individuals who are transitioning to permanent accommodation, and is not a hostel in which residents are provided with “care” involving “personal care, including help with physical, intellectual or social needs” comes within Class 6, Part 4, Schedule 2 of the Planning and Development Regulations, 2001-2019.
- (b) The permitted use as a guesthouse and the current use as a hostel for homeless persons come within Class 6, Part 4, Schedule 2 of the Planning and Development Regulations, 2001-2019

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section of the 2000 Act, hereby decides that the change of use of Westbrook House from commercial guesthouse to a homeless persons hostel managed by an approved housing body is not a material change of use and therefore is not development.

Jane Dennehy
Senior Planning Inspector
25th June, 2020.

Appendix 1. Relevant Statutory Provisions.

Planning and Development Act, 2000- (as amended)

Section 2 (1)

“works” are defined in this section as including 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.

“use” is defined as in relation to land, does not include the use of the land by the carrying out of any works thereon.

“protected structure” means (a) a structure, or (b) a specified part of a structure which is included in a record of protected structures, and where the record so indicates, includes any specified feature which is within the attendant grounds of the structure and which would not otherwise be included in this definition.

Section 3 (1)

“Development” is defined as follows: -

Development means except where the context otherwise requires, the carrying out of any works on, over or under land or the making of any material change in the use of any structures or other land”.

Planning and Development Regulations 2001 – 2019.

Article 5 (1) *Business premises means:-*

a hotel, hostel (other than a hostel where care is provided) or public house, or

“care” means personal care, including help with physical, intellectual or social needs;

any guest house or other premises (not being a hotel or a hostel) providing overnight guest accommodation, block of flats or apartments, club, or boarding house,

Class 6, Part 4, Schedule 2

Use as a residential club, a guest house or a hostel (other than a hostel where care is provided).