



An
Bord
Pleanála

Inspector's Report ABP-308593-20

Development

Variation of planning condition no. 2 attached to the grant of planning permission by An Bord Pleanála under their Reg. Ref. ABP-303793-19 and Dún Laoghaire Rathdown County Council Reg. Ref. D18A/0894 to facilitate all forms of short term accommodation to be defined in this instance as a maximum of 2 no. months but retaining the exclusion of provision of any accommodation for persons in a care setting, as an institutional hostel or for those in social support, as originally imposed.

Location

Former public house previously known as the Corner House at the corner of Dundrum Road and Farrenboley Park, Windy Arbour, Dublin 14.

Planning Authority

Dún Laoghaire Rathdown County Council

Planning Authority Reg. Ref.

D19A/0937

Applicant(s)

Boley View Limited

Type of Application

Permission

Planning Authority Decision

Refusal

Type of Appeal

First Party v. Decision

Appellant(s)

Boley View Limited

Observer(s)

Vincent Broderick

Date of Site Inspection

10th February, 2021

Inspector

Robert Speer

1.0 Site Location and Description

- 1.1. The proposed development site is located at the corner of Dundrum Road (the R117 Regional Road) and Farrenboley Park, Windy Arbour, Dublin 14, approximately 400m northeast of the Windy Arbour Luas Stop and 1.8km north of the Dundrum Shopping Centre. It comprises a vacant public house which previously traded as the 'Corner House' and consists of a three-storey / two-storey-over-basement, split-level building. The uppermost floor levels front onto Dundrum Road while the lower ground floor is situated to the rear of the property due to the fall through the site on traveling westwards. The site itself has a stated site area of 0.0286 hectares and is bounded by a residential property to the immediate south and an area of parkland (through which a small tributary of the River Dodder flows) to the west. Although the wider area is generally residential in character, the site surrounds also include a small neighbourhood centre (comprising 2 No. take-away restaurants and a tyre centre) located on the opposite side of the Dundrum Road as well as the Dundrum Business Park and a good mix of other uses, including residential, neighbourhood shop units, car sales and offices, further south along Dundrum Road.

2.0 Proposed Development

- 2.1. The subject application, as initially lodged, sought permission to vary Condition No. 2 of the grant of permission issued in respect of PA Ref. No. D18A/0894 / ABP Ref. No. ABP-303793-19 with a view to broadening the range of short-term accommodation permissible as part of the approved hostel (thereby allowing its use as emergency accommodation) by omitting the provision limiting the use to tourism purposes only, increasing the maximum stay to 2 No. months, and retaining the prohibition on short-term accommodation for persons in a care setting, as an institutional hostel or in social support of persons, and for students.
- 2.2. However, due to certain inconsistencies / discrepancies in the information provided as regards the nature / intent of the revisions sought, the applicant was subsequently required by way of a request for further information to clarify the full nature and extent of the development / variation proposed:
- 2.3. In response to the request for further information, the following revised wording of the condition was proposed:

'The hostel use hereby permitted shall be used for ~~tourist purposes only~~ and on a short term basis, that is, maximum length of stay shall be no longer than 4 2 months and shall not be used for the provision of homes or accommodation for persons in a care setting, as an institutional hostel or in social support of persons, ~~or for students~~ without a prior grant of planning permission'.

2.4. By way of summation, the proposed variation of Condition No. 2 of ABP Ref. No. ABP-303793-19 aims to provide for the following:

- The removal of the limitation to tourism accommodation only.
- The extension of the maximum stay to a period of 2 No. months.
- An allowance for use by students (provided the duration of their stay does not exceed the 2 No. month limit).
- An allowance for use by persons on social support whilst preventing the premises being the source of social benefits or the care setting expressly prohibited in the remainder of the condition.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. Following the receipt of additional information, on 9th October, 2020 the Planning Authority issued a notification of a decision to refuse permission for the proposed development for the following single reason:

- The proposed change in the wording of Condition 2 of D18A/0894 (ABP-303793-19) would permit an extended variety of uses that are not considered appropriate for the site given the lack of amenities on site and would lead to a substandard level of accommodation for longer-term user's contrary to zoning objective 'A' which seeks 'To protect and or improve residential amenity'. The proposed development is therefore not considered to be consistent with the proper planning and sustainable development of the area and the provisions of the County Development Plan 2016-2022.

3.2. **Planning Authority Reports**

3.2.1. *Planning Reports:*

An initial report details the site context, planning history, and the applicable policy considerations before recommending that clarity be sought as regards the nature and intent of the variation as well as how compliance with the proposed maximum stay of 2 No. months will be achieved.

Following the receipt of a response to a request for further information, a subsequent report was prepared which stated that the condition as originally imposed in ABP Ref. No. ABP-303793-19 was clearer and more robust than the revised wording proposed in the subject application. Concerns were raised that the revised wording would result in uncertainty and lead to difficulties as regards enforcement. It was also considered that the revision would allow for a broader range of uses not appropriate to the site given the lack of amenities and the unsuitability of the accommodation for longer-term stays / occupancy. The report thus concludes by recommending a refusal of permission for the reason stated.

3.2.2. *Other Technical Reports:*

Municipal Services Dept., Drainage Planning: No objection.

3.3. **Prescribed Bodies**

None.

3.4. **Third Party Observations**

3.4.1. A total of 5 No. submissions were received from interested third parties and the principle grounds of objection / areas of concern raised therein can be summarised as follows:

- The need for clarity as regards the purpose / intent of the application.
- The potential detrimental impact on the residential amenity of neighbouring properties by reason of excessive / increased noise levels, anti-social behaviour, and general disturbance.
- The lack of car parking & set-down / pick-up areas for the development and the associated traffic implications.

- Overdevelopment of the site (with particular reference to the lack of outdoor amenity space).
- The inadequacy of the existing drainage infrastructure on site.
- The unsuitability of the standard of accommodation proposed for longer-term occupancy / residency e.g. deficiencies in open space, cooking facilities, amenity areas etc.
- Concerns with respect to the future management / operation of the proposed hostel.
- Non-compliance with the Building Regulations, including Parts B, F, L & M.

4.0 Planning History

4.1. On Site:

PA Ref. No. D18A/0894 / ABP Ref. No. ABP-303793-19. Was granted on appeal on 18th July, 2019 permitting Boley View Limited permission for a change of use from office and public house to office and hostel at lower ground floor level, a change of use from public house to hostel at ground floor level and a change of use from residential to hostel at first floor level. The proposed development will include internal alterations to facilitate the provision of a communal kitchen and a communal sitting room, bicycle storage and laundry room, reception room and an office at lower ground floor level, provision of 11 No. single bedrooms with own bathroom, 2 No. two bedroom suites consisting of one single bedroom, 1 No. double bedroom and a bathroom, caretaker's accommodation with kitchenette and bathroom at first floor level, elevational changes to accommodate the change of use, additional windows and revised window arrangements, together with associated site works.

Condition No. 2:

'The hostel use hereby approved shall be used for tourist purposes only and on a short term basis, that is, maximum length of stay shall be no longer than 1 month and shall not be used for the provision of homes or accommodation for persons in a care setting, as an institutional hostel or in social support of persons, or for students without a prior grant of planning permission.'

Reason: In the interest of clarifying the scope of the permission’.

PA Ref. No. D07A/1568 / ABP Ref. No. PL06D.227644. On 2nd October, 2008 the Planning Authority issued a split decision to Redgrey Ltd. granting permission for a new external access staircase and door to the rear of the existing first floor residential unit with new windows to the side and rear elevations at first floor level, and permission for the retention of the 3 No. new windows in the rear elevation at basement level to replace glass block windows, complete with external roller shutters. Permission was refused for the retention of an access gate to the rear onto public open space. The decision was the subject of a first party appeal against the imposition of Condition No. 3 which required the basement offices to be used only for purposes incidental to the use of the building as a public house and not as a separate trade or business. On 25th August, 2008 the Board directed the Planning Authority to attach Condition No. 3.

PA Ref. No. D07A/1012. Was refused on 12th September, 2007 refusing Redgrey Ltd. permission for 1) the conversion of existing first floor single residential units comprising 1 No. two-bedroom apartment and 1 No. one-bedroom apartment with new external access staircase and door to first floor at rear 2) Permission for retention of 3 No. new windows in rear elevation at basement level to replace existing glass block windows and retention of new access gate in rear service yard wall.

5.0 Policy and Context

5.1. Development Plan

5.1.1. *Dún Laoghaire Rathdown County Development Plan, 2016-2022:*

Land Use Zoning:

The proposed development site is zoned as ‘A’ with the stated land use zoning objective ‘*To protect and-or improve residential amenity*’.

Other Relevant Sections / Policies:

Chapter 2: Sustainable Communities Strategy:

Policy RES10: Homeless Accommodation:

It is Council policy to support the provision of homeless accommodation or support services throughout the County.

Section 2.1.3.10:

In this regard, proposals for such facilities should not result in an over-concentration in one area and should not unduly impact upon existing amenities. As a partner with the other Dublin Local Authorities in the shared services provided by the Dublin Region Homelessness Executive (DRHE) it is an objective to implement the actions of the Homeless Strategy National Implementation Plan and the Dublin Homeless Action Plan Framework 2014- 2016. Proposals for homeless accommodation or support services within Dún Laoghaire-Rathdown shall have regard to the requirements of the Dublin Region Homeless Executive.

Policy RES12: Provision of Student Accommodation:

It is Council policy to facilitate student accommodation on student campuses or in locations which have convenient access to Third Level colleges (particularly by foot, bicycle and high quality and convenient public transport) in a manner compatible with surrounding residential amenities. In considering planning applications for student accommodation the Council will have regard to the 'Guidelines on Residential Developments for Third Level Students' and its July 2005 Review (particularly in relation to location and design).

Section 2.1.3.12:

The largest Third Level institution in the Country – University College Dublin – is located within Dún Laoghaire-Rathdown. It has a full-time equivalent population of over 30,000. Combined with the student populations for IADT and the various Colleges of Further Education and privately-run colleges – these figures mean that demand for student accommodation in the County is significant and has to be addressed.

Chapter 8: Principles of Development:

Section 8.2.3.4: Additional Accommodation in Existing Built-up Areas: (xii) Student Accommodation

Section 8.3.12: Definition of Use Classes: Residential Institution:

- A building or part thereof or land used as a residential institution and includes a monastery, convent, hostel, home for older persons/nursing home.

5.2. Natural Heritage Designations

5.2.1. The following natural heritage designations are in the general vicinity of the proposed development site:

- The South Dublin Bay and River Tolka Estuary Special Protection Area (Site Code: 004024), approximately 3.1km northeast of the site.
- The Booterstown Marsh Proposed Natural Heritage Area (Site Code: 001205), approximately 3.1km northeast of the site.
- The South Dublin Bay Proposed Natural Heritage Area (Site Code: 000210), approximately 3.1km northeast of the site.
- The South Dublin Bay Special Area of Conservation (Site Code: 000210), approximately 3.1km northeast of the site.

5.3. EIA Screening

5.3.1. Having regard to the minor nature and scale of the development proposed, the site location outside of any protected site, the nature of the receiving environment in an existing built-up area, the intervening pattern of development, the limited ecological value of the lands in question, the availability of public services, and the separation distance from the nearest sensitive location, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

- The response to the request for further information clearly sets out the subject matter of the application. There are three essential elements to Condition No. 2 as attached to the grant of permission issued for ABP Ref. No. ABP-303793-19 i.e. (1) the hostel is to be used for tourist purposes only; (2) the maximum stay is to be no longer than 1 month; and (3) the premises is not to be used for the provision of homes or accommodation for persons in a care setting, as an institutional hostel or in social support of persons. The revised wording of the condition sought is as follows:

'The hostel use hereby approved shall be used ~~for tourist purposes only and~~ on a short term basis, that is, maximum length of stay shall be no longer than ~~4 2 months~~ and shall not be used for the provision of homes or accommodation for persons in a care setting, as an institutional hostel or in social support of persons, ~~or for students without a prior grant of planning permission~~'.

The principal amendments are:

- The omission of the discriminatory provision against students (which limits the accommodation to use by tourists only to the exclusion of other users in need of short-term accommodation).
- A relatively modest extension in the maximum duration of stay to 2 No. months.
- The retention in its entirety of the requirement to prevent accommodation being provided in a care setting.

In this regard, it is submitted that the amendments sought will not alter the purpose or spirit of the condition by maintaining short-term letting only for all citizens and visitors with the exception of those that require care support on site.

Should the Board be of the view that a maximum stay of one month is justified (and the applicant is amenable to accepting such a limitation should it prove

necessary), then this appeal relates solely to the issue of whether the limitation to tourist accommodation is justified.

- In attaching Condition No. 2 to the grant of permission issued for ABP Ref. No. ABP-303793-19, the Board upheld the imposition of the same condition by the Planning Authority in order to clarify the scope of the permission. In this regard, it would appear from the inspector's report that some level of restriction was considered necessary and that two key determinations were made in the context of what was required by the condition.

Firstly, in response to the unwillingness to grant permission for stays longer than one month on the basis that these would be medium or long-term, it is submitted that a proposed maximum duration of 2 No. months would not amount to a medium or long term stay e.g. any such stay would not even equate to a full academic term. Nevertheless, the applicant is amenable to the maximum one-month duration and it is noted that the inspector did not indicate any concerns as regards students or families staying in the development provided the length of their stay was limited to the one month.

Secondly, the rationale for limiting the length of stay is clearly set out in Para. 9.4.2 of the inspector's report wherein it is stated that although there would be *'... no issue with students of families within the proposed hostel site the issue that would arise is the proposed amenities, in terms of private open space provision and general amenities, would not be a suitable standard to serve a medium to long term resident'*. In response, the applicant accepts that the proposed hostel is only suitable for use as short-term accommodation, however, if the one-month maximum stay is to be maintained then it is submitted that a wider range of residential occupation can be justified i.e. by removing the limitation of use referring to the tourist category.

- In response to concerns raised by the Planning Authority, it was clarified by way of further information that a drafting error in the suggested rewording of the condition meant that the phrase 'in a social setting' was erroneously left out. Whilst this was unfortunate, it has been confirmed that social assistance will only be prohibited in the context of the care setting of the appeal premises

meaning that those availing of childcare benefit or unemployment benefit etc. will be able to stay for the prescribed period.

- The response to the request for further information indicated that bookings will be made electronically or 'online' in advance and that a key card / code will be charged for the length of the stay. At the end of this period the code / card will expire, at which stage the resident would have to leave the property if they had not already done so.
- In terms of management, the proposal includes for overnight accommodation to facilitate a 24-hour permanent staff presence on site (with a manager ever present on site and responsible for bookings and the monitoring of the duration of stays). The permitted facility will benefit from a permanent presence on site and a booking & access arrangement which is commonplace in hotels, hostels and places of multiple occupancy. The applicant has every confidence that the proposed arrangements will work satisfactorily.
- The reworded condition is just as clear and robust as the original form based on the planning merits of what is now proposed. Furthermore, the applicant is willing to accept the prohibition on the provision of accommodation in a care setting and is also amenable to the one-month limitation should the Board be of the opinion that one month is 'short' term and two months is either 'medium' or 'long' term. The only other changes sought concern the removal of the requirement that the hostel be for tourist purposes only and the exclusion on occupancy by students.
- The condition as proposed to be reworded satisfies the '*tests of appropriateness*' set out in the '*Development Management, Guidelines for Planning Authorities, 2007*' as follows:
 - The revised wording is **necessary** as there is an acceptance that the proposed accommodation is best suited to short term stays for the reasons given by the reporting inspector in their assessment of ABP Ref. No. ABP-303793-19.
 - The revised wording is as **relevant to planning** as the original condition and is not substantially different in its intent.

- The revisions are as **relevant to the development permitted** as the wording of the original condition.
 - The reworded condition is every bit as **enforceable** as the original. The applicant has also identified how the facility will be managed and how the term of occupancy can be effectively limited.
 - The reworded condition is just as **precise** and even clearer than the original.
 - The revised condition is **reasonable** and it is generally accepted by both planning precedent for this development and the applicant that there is good reason to limit the duration of occupation.
- In assessing the further information submitted, the case planner noted that the condition as originally worded did not prevent those in receipt of social support from using the hostel for tourism purposes although it did prevent use of the hostel as accommodation for the homeless.

With respect to the foregoing, given that the principle of short-stay accommodation is acceptable at this location, it is submitted that there is no valid planning reason why those in receipt of social support and the homeless should not be able to use the facility for short-term accommodation purposes. There is a homelessness crisis throughout the State, and within Dublin in particular, and the proposed development will help to address this issue.

- The case planner noted that the condition as originally worded prohibited use of the hostel as student accommodation but that it would not prevent students from using it for tourism purposes. It is submitted that this assessment indicates the convoluted and unclear nature of the condition as presently imposed and thus serves to support the revised wording proposed.
- The Planning Authority has accepted that there is a demand for emergency accommodation, including accommodation for the homeless. In addition, the principle of short-term accommodation / hostel living has already been permitted on site by the Board. It is also recognised that the standards for permanent living do not apply to short-term accommodation. Furthermore, there is no indication in the inspector's assessment of ABP Ref. No. ABP-

303793-19 that the permitted hostel would be in any way substandard as short-term accommodation. Therefore, there is no justification in the subject instance, through the rewording of Condition No. 2, to say that the same units / rooms are not suitable for homeless living.

- With respect to the development permitted under ABP Ref. No. ABP-303793-19, the Parks & Landscape Dept. of the Local Authority did not object to the change of use from a public and private open space perspective nor were any concerns raised by the Roads Section regarding a lack of parking or cycling provision. It is not considered that communal areas, other than shared eating / dining areas, are required.
- An extended variety of uses can be catered for on site provided the term of residency is short (i.e. up to one month) and as long as no care is afforded by way of a social care setting. There is no planning justification for limitations in use (such as discriminating against students or those in need of emergency accommodation) when other more than adequate restrictions are kept in place. It is accepted that the proposed hostel is not suitable as long-term accommodation, but that is not what is being proposed should the Board accept that one or two month stays are not 'long-term'.
- The issue of whether a hostel is compatible with the applicable zoning objective ('A: *To protect and-or improve residential amenity*') was already assessed as part of ABP Ref. No. ABP-303793-19 with the reporting inspector determining that use as a hostel and short-term living was compatible with the land use zoning albeit for a more restrictive clientele. A wider range of people availing of this accommodation type would not result in any diminution in either existing or prospective residential amenity as it would entail a compatible land use sited alongside longer-term, full-time accommodation types such as apartments and housing.
- The impact on surrounding residential amenity was considered under ABP Ref. No. ABP-303793-19 with the Board choosing to prevent institutional care and other forms of care in a social care setting from being realised on site. If this requirement is to be retained (and the applicant is amenable to this), then there will be no negative impact on surrounding residential amenities.

- It is not possible to provide private open space and it was for this reason that the Board previously saw fit to limit the term of occupancy (which will continue to be the case). Similarly, the applicant is unable to provide any public open space, however, this was acknowledged by the Parks & Landscape Dept. which did not object to either the previous or current applications. Accordingly, the subject proposal should be granted permission.
- In response to the third party submissions received by the Planning Authority:
 - No concerns were raised by the Environmental Health Officer with respect to the potential noise impact of the proposed development.
 - The Roads Dept. did not raise any concerns as regards the absence of parking in its assessment of the proposed development. Furthermore, it is unlikely that residents will have a car and thus parking is not required.
 - Concerns with regard to the standard of accommodation are immaterial to the proposal with the key issue being the appropriateness of expanding the range of accommodation to be provided.
 - The Board has already assessed the standard of accommodation and saw fit to limit future occupation to one month and the applicant is amenable to this restriction.
 - It is considered that the prohibition on institutional care and care in a social setting derives from the protection of adjacent residential amenities and is unrelated to the standard of accommodation proposed.
 - Building control matters are beyond the remit of the planning process.
 - The subject application would have been circulated for comment internally within the Local Authority, however, certain sections will not have seen fit to respond as the proposal relates to the rewording of a condition and as the principle of a hostel on site has already been established.
 - Prior experience in managing a hostel is not a requirement for granting planning permission. Indeed, it is highly likely that the applicant will

appoint an experienced person to live on site and to manage the facility (notwithstanding that this is not a planning consideration).

- The lack of outdoor space is a reason why the duration of stay is limited.
 - The site is well serviced by public transport, including the Luas and Dublin Bus.
 - The Drainage Planning Division of the Local Authority has not objected to the proposal.
 - The adequacy of cooking facilities is not a planning issue.
 - Suggestions that the premises will become a 'party house' are rejected and it should be noted that the property was previously in use as a public house which would have hosted social events, live / recorded music, and discos etc. as well as having late-night opening hours.
 - Both the facility and its immediate environs will be well managed and inspected.
 - The previous reporting inspector did not raise any concerns as regards the potential for anti-social behaviour when considering the appropriateness of a hostel at this location.
 - There has been no indication from the Planning Authority (or the previous reporting inspector) that the number of people to be accommodated on site is in any way excessive.
- It is universally accepted that there is a chronic shortage of emergency accommodation in the Dublin area and, therefore, the applicant wishes to have the flexibility to be able to offer such services (including accommodation for the homeless) as part of the extant grant of permission on site. In this regard, it is believed that the Emergency Housing Unit of the Local Authority is supportive of a more openly worded version of Condition No. 2 whilst the Dublin Regional Homeless Executive is also thought to be supportive of a fully flexible change of use in this instance (other than for those requiring institutional accommodation or where care with a degree of medical or dependency supervision is required).

- There are not thought to be any homeless shelters or comparable accommodation services in the vicinity of the site.
- The following facts support the provision of emergency accommodation in this instance where there is no obvious or material reason why permission should be given for a fully flexible range of accommodation types in what is an ideal location for such a development:
 - There were 9,987 No. people homeless in the last week of January, 2019 (including adults and children);
 - The number of homeless families has increased by 83% since January, 2016;
 - Some 92 No. families became homeless in Dublin in January, 2019;
 - More than one in three people in emergency accommodation is a child;
 - There were 893 No. young people (adults under 25 years of age) living in emergency homeless accommodation with two thirds of those living in Dublin;
 - There is a hidden homeless factor where people are living in squats or 'sofa surfing';
 - There is an additional element of people sleeping rough excluded from the foregoing figures; and
 - There are 156 No. people sleeping rough in Dublin as of November, 2018.
- It is acknowledged that the Local Authority homeless services responsible for assessing the needs of families and placing them into emergency accommodation are managing an unprecedented demand for its services in the Dublin region. This demand is in part fuelled by the fact that whilst demand for social housing stands at c. 72,000 No. homes, only 10,000 No. are planned for delivery in 2019. There is also a shortage of properties to rent due to landlords leaving the market or being repossessed, a scarcity of properties accepting rent supplements, and high rents etc.

The proposed accommodation would be ideal for emergency use with a large proportion of the rooms including en-suite facilities which would cater for families.

- Short term and emergency accommodation is in short supply, particularly in Dublin, and the Government's aim is to ensure that such accommodation is made available where it is needed. The Department of Housing has produced an initiative for 'Bringing Back Homes' that follows on from S.I. No. 30 of 2018 which amended Article 10 of the Planning and Development Regulations and provides an exemption for the change of use, and any related works, of certain vacant commercial premises to residential use without the need to obtain planning permission. Although the proposed hostel would not have been able to avail of these exempted development provisions, the revised wording of Condition No. 2 is very much in keeping with the spirit and intent of the amended Regulations.
- In lieu of private open space being provided within a change of use, it should be noted that the Council's own 'Green' and 'Blue' infrastructure mapping identifies a variety of different open spaces which could be used by residents of the proposal over a short period. These include Boley Park to the immediate rear of the site which would be readily available to any residents accommodated by the proposed rewording.

6.2. Planning Authority Response

- States that the grounds of appeal do not raise any new matter which, in the opinion of the Planning Authority, would justify a change of attitude to the proposed development.

6.3. Observations

6.3.1. Vincent Broderick:

- Contrary to the applicant's assertions, there are considerable differences between the needs of tourists staying in the proposed hostel and those of homeless persons resident on site. For example, tourists will only be availing of the accommodation by choice and will leave on a set date after a limited /

temporary visit whereas homeless persons are more likely to be resident for a prolonged period with their particular social and financial circumstances potentially creating difficulties in having to vacate the premises after a stay of only one month.

- The appeal includes contradictory claims that on the one hand the accommodation will help to alleviate the homelessness crisis but on the other that the proposal will not comprise social housing for the homeless. Both of the aforementioned scenarios cannot be correct and this was a basis for the previous rejection of the variation with the Planning Authority stating that *'although not all those that are homeless are in receipt of social support, it is considered that a significant number would be'*.
- No insight has been offered as to how a one month stay in the proposed hostel will in any way serve to alleviate the levels of homelessness in Dublin. More specifically, it is unclear where homeless persons would be expected to go upon vacating the hostel at the end of their one month stay. Moreover, no information has been provided on how clientele will be prevented from checking out and immediately checking back into the hostel after one month thereby utilising the property as 'de facto' long-term accommodation (noting that the site is not designed for long-term living).
- There are outstanding concerns as regards the potential for anti-social behaviour and whether any homeless persons resident in the hostel will be permitted to stay on site all day.
- The appeal includes the following contradictory claims:
 - Notwithstanding the lack of recreational space on site, it has been submitted that the applicants will ensure that the surrounding fields are not used as 'de facto' amenities (thereby potentially resulting in anti-social behaviour and the distress of local residents). However, a map has also been included which identifies all of the fields in the locale which could be used by residents of the hostel as recreational space.

Local residents are entitled to protection from a poorly operated business, particularly one that deals with the complex needs of the homeless, and

concerns arise as regards the stated plans in the appeal not to provide any support or amenities to homeless residents.

- While the applicant has submitted that the provision of recreational space and other amenities is not a requirement for tourist hostels (i.e. *'it is not considered that communal areas . . . are required'*), the proposal will also be used to provide accommodation for the homeless and, therefore, the standards that would apply in respect of any other residential property should also be applied in the subject instance – including the provision of adequate storage, cooking, and recreational space. Accordingly, given that the development in question cannot provide for the necessary amenities, the appeal should be rejected.
- Concerns arise as regards the lack of parking on site, particularly as patrons / residents of the hostel, such as students and those only made recently homeless, may own cars.
- Clarity is required as regards the maximum occupancy / capacity of the hostel and whether children will be accommodated.
- It has been suggested that the proposed hostel could be used to accommodate homeless families, however, it is queried whether is feasible / appropriate given the limited room sizes, the lack of play space, and as several of the rooms do not have en-suite bathrooms.
- It has previously been submitted that the design proposed does not comply with disabled access and fire safety standards.
- The proposal provides for a low quality, high density residential use which is lacking in amenities and does not include any plans to offer support to its homeless residents.
- The development will be detrimental to both the local area and its occupants by reference to the substandard living accommodation proposed.

6.4. Further Responses

None.

7.0 Assessment

7.1. From my reading of the file, inspection of the site and assessment of the relevant policy provisions, I conclude that the key issues relevant to the appeal are:

- The proposed variation of Condition No. 2
- Appropriate assessment

These are assessed as follows:

7.2. The Proposed Variation of Condition No. 2:

- 7.2.1. From a review of the available information, it is apparent that the subject application has been lodged with a view to broadening the range of short-term accommodation permissible as part of the development of a hostel on site as previously approved under ABP Ref. No. ABP-303793-19. More specifically, the proposal seeks to revise the wording of Condition No. 2 of that grant of permission in order to omit the provision which restricts the use of the hostel to tourists only (thereby allowing for its occupation as short-term accommodation by all types of person, including students, and its use as emergency accommodation for the homeless) and to increase the maximum length of any stay on site from one to two months (whilst retaining the prohibition on use for the provision of homes or accommodation for persons in a care setting, as an institutional hostel, or in social support of persons).
- 7.2.2. In support of the foregoing, the case has been put forward that a maximum stay of 2 No. months (as proposed) would continue to qualify as a 'short' stay in line with the intended use of the hostel as short-term accommodation and would not amount to a 'medium' or 'long' term occupancy / stay, however, should the Board determine that a stay of up to 2 No. months would not accord with a 'short' stay or the intended use of the permitted hostel as 'short'-term accommodation, the applicant has indicated that it is amenable to retaining the one-month limitation as already imposed under Condition No. 2. By extension, it has also been submitted that if a maximum stay of one or two months is deemed to be 'short'-term, then there is no valid justification in planning terms for the exclusionary provisions contained within the condition whereby occupation of the hostel is to be restricted to tourists only. In this regard, reference has been made to the previous assessment of ABP Ref. No. ABP-303793-19 wherein the reporting inspector indicated that they had *'no issue with students or*

families within the proposed hostel site', although this was subject to the caveat that certain deficiencies in the provision of amenities, in terms of private open space and general amenities, would not ensure a suitable standard to serve medium to long term occupancy / residency. It has been further submitted that there is no valid planning reason as to why those in receipt of social support (as distinct from persons receiving support in a care setting) and the homeless should not be able to avail of the hostel for short-term accommodation purposes.

7.2.3. Having considered the available information, in the first instance, I would share the position adopted by the Board in its original determination of ABP Ref. No. ABP-303793-19 that the maximum duration of any stay at the permitted hostel should not exceed one month. In this regard, I would suggest that the pertinent consideration is the overall suitability and practicality of the accommodation for longer term occupancy and thus I would concur with the assessment of the previous reporting inspector that the (unchanged) level of amenities proposed as part of the hostel development, both in terms of private open space provision and general amenities (noting the limitations in terms of kitchen / cooking / dining facilities, laundry services & storage space etc. and that Bedroom No. 8 is not served by an ensuite bathroom) would not provide a suitable standard to serve a medium to longer term residency. In effect, it is my opinion that the permitted hostel and its ancillary services is more suited to short stays (such as by temporary visitors to the area or those requiring transitional accommodation arrangements) and would not be conducive to or desirable for longer term occupancy. Accordingly, I would recommend that the maximum length of stay should remain at no longer than one month.

7.2.4. With respect to the limitation which serves to restrict the use of the hostel to tourists to the exclusion of all other short-term accommodation needs, I am inclined to concur with the applicant that the rationale for such a restriction is less well-founded, particularly if the accommodation is expressly limited to short stays of no more than one month. For example, although the hostel is not designed or intended to function as dedicated / full-time student accommodation, in my opinion, this should not preclude its occupation by a student (such as those visiting or on placement) or any other person by way of individual choice (subject to the one month maximum length of stay). It has also been suggested that the current wording of Condition No. 2 of ABP Ref. No. ABP-303793-19 could potentially give rise to certain anomalies in that

while the hostel cannot be used as 'student accommodation' or by persons in receipt of 'social support', those groupings would be entitled to avail of the short-term accommodation offering in a 'tourist' capacity. On balance, it is my opinion that as the hostel accommodation has already been approved on the basis that it is suitable for short stays, there is no overt reason why there should be any differentiation between a visiting tourist and any other prospective occupant provided they adhere to the one month maximum length of stay. Therefore, I would be amenable to the omission of the limitation to use by tourists only.

- 7.2.5. A further aspect of Condition No. 2 which has given rise to concern is the provision whereby the hostel use is not to be used *'for the provision of homes or accommodation for persons in a care setting, as an institutional hostel or in social support of persons'*. The wording of this part of the condition derives from a comparable condition originally imposed by the Planning Authority in its determination of PA Ref. No. D18A/0894 (ABP Ref. No. ABP-303793-19) which would seem to have been in response to concerns that the accommodation proposed would not satisfy the necessary standards as regards the provision of housing for the homeless (or as student accommodation). In my opinion, the wording of this section of the condition is somewhat clumsy and open to interpretation in that whilst it does not expressly exclude use of the hostel as emergency accommodation for the homeless, this may have been the intent. In this regard, I would suggest that the intermittent use of commercially operated guesthouses, 'Bed & Breakfasts' & hostels as emergency accommodation is not uncommon and is readily distinguishable from the full-time use of premises such as homeless shelters which are operated by charitable / voluntary organisations etc. for that express purpose. More specifically, I would refer the Board to the differentiation between use as a hostel as per Class 6 of Part 4 of Schedule 2 of the Planning and Development Regulations, 2001, as amended (i.e. use as a residential club, a guest house or a hostel, other than a hostel where care is provided) and the provision of residential accommodation (such as that for the homeless) pursuant to Class 9(a) of the Regulations (i.e. use for the provision of residential accommodation and care to people in need of care, but not the use of a house for that purpose). Therefore, it may be that the proper intention of Condition No. 2 is to exclude occupancy of the hostel by persons in a care setting with 'care' meaning *'personal care, including help*

with physical, intellectual or social needs' (which may include supporting residents to address any challenges that may inhibit their access to private rental accommodation or transition to more permanent solutions such as may be provided by an approved housing body) in accordance with the definition provided in Article 5(1) of Part 2 of the Regulations which would seem reasonable given the limitations of the accommodation proposed (By way of clarity, I am of the opinion that the presence of a full-time staff member on site to manage the day-to-day running of the hostel (in reference to the caretaker's living unit) would not involve the provision of care / support services typically associated with a 'care setting'). Notwithstanding the foregoing, the applicant has indicated that it is amenable to retaining this aspect of Condition No. 2 and thus I would recommend that its imposition remain unchanged.

7.3. Appropriate Assessment:

- 7.3.1. Having regard to the minor nature and scale of the development under consideration, the site location within an existing built-up area outside of any protected site, the nature of the receiving environment, the availability of public services, and the proximity of the lands in question to the nearest European site, 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.

8.0 Recommendation

- 8.1. Having regard to the foregoing, I recommend that the decision of the Planning Authority be overturned in this instance and that be granted for the proposed development for the reasons and considerations, and subject to the conditions, set out below:

9.0 Reasons and Considerations

- 9.1. Having regard to 'Objective A' zoning of the subject site, the pattern of development in the area, the established use on the site, the planning history of the site, and the nature, scale and design of the development permitted under appeal reference number ABP Ref. No. ABP-303793-19, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area or of the property in the vicinity. The proposed

development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted on the 15th day of September, 2020, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. Apart from any departures specifically authorised by this permission, the development shall be carried out and completed in accordance with the terms and conditions of the permission granted on the 18th day of July, 2019 under appeal reference number ABP Ref. No. ABP-303793-19, planning register reference number D18A/0894, and any agreements entered into thereunder.

Reason: In the interest of clarity and to ensure that the overall development is carried out in accordance with the previous permission.

3. The hostel use hereby approved shall be used on a short term basis, that is, the maximum length of stay shall be no longer than 1 month, and shall not be used for the provision of homes or accommodation for persons in a care setting, as an institutional hostel or in social support of persons, without a prior grant of planning permission.

Reason: In the interest of clarifying the scope of the permission.

Robert Speer
Planning Inspector

5th March, 2021