



An
Bord
Pleanála

Inspector's Report ABP-308807-20

Question	Whether the restoration of the previously permitted pre 1963 dwelling to its previous condition at Somerton Lane/ Lower Lucan Road, Strawberry Beds, Dublin 15 is or is not development or is or is not exempted development
Location	Lower road/Somerton Lane, Strawberry Beds, Castleknock, Dublin 15
Declaration	
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	FS5W/20/20
Applicant for Declaration	Fingal County Council
Planning Authority Decision	No declaration
Referral	
Referred by	Fingal County Council
Owner/ Occupier	Peter Rafter
Observer(s)	None
Date of Site Inspection	8 th of March 2021
Inspector	Angela Brereton

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1.0 Site Location and Description

- 1.1. The subject site relates to a broadly triangular shaped area of land at the southern boundary of Fingal. It is bounded by the Lower Road (Local Primary Road L-3103-3) to the south and the Somerton Road/Lane (Local secondary road L-7040-0) to the west. It is located to the west of the M50 viaduct across the Strawberry Beds.
- 1.2. The overall land holding to which this Section 5 relates as outlined in red in this Referral contains 2 derelict structures fronting onto the Lower Road to which works have recently been undertaken. These structures are in poor repair and do not appear habitable in their current state. There was scaffolding erected around one of them. The structures are sited close to the Lower Road, and there is a stone wall along this part of the site frontage and a gated entrance to this road. There is a traffic calming ramp located to the west of the entrance on this road.
- 1.3. There are two entrances from Somerton Lane and one from Lower Road into the landholding which is the subject of this Section 5 application. This includes a recently constructed entrance of red brick and mixed salvage stone and salvaged iron gates which provides access from Somerton Lane. The other recently constructed entrance to the site is immediately adjacent to the residential entrance which was subject of planning permission to the east of the most easterly part of the application site to Somerton Lane.
- 1.4. The site contains a range of architectural salvage and building materials, large walls in the form of retaining structures constructed from what appear to be salvage materials are located along the north east section of the site. There is also a partially constructed timber framed structure. There are views to the architecturally constructed house on adjoining lands and a gated entrance to this house on lands to the north east of the site.
- 1.5. The subject referral site, is adjacent to the Liffey Valley proposed Natural Heritage Area and within the boundary of the Liffey Valley Special Amenity Area Order. The site is classified to Fossit habitat classifications on WD1 Mixed Broadleaved woodland and WS1 Scrub on the mapping provided by Biodiversity Ireland. A significant portion of the scrub area particularly in the north eastern part of the site has been recently removed as identified in the OSI Aerial Photography. There are views to the Liffey and towards the motorway viaduct to the east.

2.0 The Question

2.1. The Question referred to the Board, by Fingal County Council in accordance with Section 5(4) of the Planning and Development Act 2000, as amended is as follows:

“Whether or not the restoration of the previously permitted pre 1963 dwelling to its previous condition at Somerton Lane/Lower Lucan Road, Strawberry Beds, Dublin 15, is development or is exempted development.”

3.0 Background to Referral

3.1. Planning History

Fingal County Council has considered two previous Section 5 applications on this site which declared that a series of works on the subject site are development and are not exempted development. These are as follows:

Ref. FS5W/02/19

1. The transfer of soil from the lower part of the site to the upperpart of the site.
2. The construction of a substantial retaining wall in excess of 3 meters high and 2 feet wide.
3. The construction/storage of two sheds on the upper levels of the site; the use of the sheds to store materials and the storage of materials for the construction of a log cabin under tarpaulin behind metal fencing to the right of entrance to the adjacent property.
4. The construction of a log cabin on the site.
5. The erection of fencing associated with the storage of materials in place for approximately 4 years.

FS5W/07/19

1. The use of the subject site for residential purposes.
2. and/or any works ancillary to and/or relying on an exemption derived from residential use.

It is of note that the owner of the site, relative to these Section 5 Declarations from the Council is Mr. Peter Rafter, with an address in Dundrum, Dublin 16. These Declarations were not the subject of an appeal to the Board.

Planning Enforcement History

- Ref. ENF 14/34B
- Ref. ENF 16/196B

Planning History of Adjacent Sites

To western end of site:

- Ref. F98B/0393 – Permission granted to R.Omeila extension to side also various site and frontal modifications Woody Cottage, Somerton Road, Strawberry Beds, Dublin 20.

To east of site:

- Ref. FW10A/0128 – Permission granted to Fiona Burns & Daragh O’Murchu for the demolition of an existing extension and detached out-buildings and the construction of a single-storey extension to the rear (east) of the existing cottage, refurbishment and alteration of the existing cottage, works to the main entrance and associated site developments including a new wastewater treatment plant to current EPA standards.
- Ref. 13A/0106 – Permission granted to Orla & Declan Ferguson for the development of a revised two storey extension (140sq.m) to existing cottage now providing four bedrooms; revised refurbishment and alteration of the existing cottage, additional terraces at ground level and new parking area to rear (east) of the cottage. This previously approved extension proposal Reg. Ref. FW10A/0128 as granted.

3.2. Planning Authority Reports

They had regard to the locational context and previous planning history of the site. This included their two previous Section 5 Declarations as noted above, where the issues concerned were considered to be development and not exempted development. They noted that the assessment of application Reg.Ref. FS5W/07/19

was interpreted as seeking a declaration on the residential nature of the site and it was considered that the use of the former dwelling house on the site as a residential building had been abandoned.

They recommended that taking into consideration the planning and enforcement history on the site that the application should be referred to the Board in accordance with Section 5(4) of the Planning and Development Act 2000, as amended.

4.0 The Referral

4.1. Referrer's Case

Fingal County Council had regard to the locational context of the site and to the Planning History and quoted the Questions asked relative to the two previous Section 5 Referrals to the Council Reg.Refs. FS5W/02/19 and FS5W/07/19.

They provided that the assessment of Referral Reg.Ref. FS5W/07/19 was interpreted as seeking a declaration on the residential nature of the site and it was considered that the use of the former dwelling house on the site as a residential building had been abandoned. They noted that details of these decisions can be found on the Council's website. In addition, copies are included in the History Appendix of this Report. They also noted that the development site has subject to investigation by the Enforcement Section of the Council.

4.2. Response to Referral

Peter Rafter's, the owner of the subject site, response to the Council's decision relevant to their referral of the Section 5 to the Board includes the following:

- In the Council's decision (Ref. FS5W/07/19) they decided that the residential use of the site of this pre 1963 dwelling was abandoned. In making their decision they introduced the concept of the view of "a reasonable person" as being a relevant consideration in their determination.
- Having read all the current legislation he can find no reference to the term 'a reasonable person' anywhere.

- He has studied all the Section 5 Declarations dealing with the abandonment of use and resumption of use, issued by the Board since it was founded in 1977. Nowhere is there any reference to 'a reasonable person'. Neither is there a definition of 'a reasonable person' anywhere in the Planning Code.
- He submits that the Planning Authority misinterpreted the Planning Law in making such a determination.
- The fourth test for establishing, whether or not a use has been abandoned is the "intention of the owner". He has made clear to the Planning Authority from the time he purchased this property that it is his intention to restore the pre 1963 dwelling fronting the Lower Lucan Road to its original condition, rather than demolishing it and re-building a new dwelling.
- In RF0875 a Section 5 Declaration of the Board issued on the 5th of May 1999, the issue of the intention of the owner was looked at and it was accepted that the owner's intentions can only be inferred from factual indicators. He submits that there was no such factual indicators showing an intention to abandon the pre 1963 use on his part. A copy of this Referral Decision Order is included with his report.
- Given the fact that the Planning Authority referred the current Section 5 Application directly to the Board rather than issuing a fresh determination would suggest that the current Planning Officer agrees with the flawed Section 5 decision (FS5W/07/19).
- He notes that the Board in a Section 5 Declaration (RL2592) permitted the renewal of a pre-1963 dwelling in its entirety, as exempted development under section 4(1)h of the 2000 Planning and Development Act. A copy of this Decision Order is included with his report.
- It was never his intention to demolish the structure which formed part of the Lower Lucan Road streetscape for over a century but rather to restore it to its original condition.
- It appears that the Planning Authority in making its decision in the Section 5 Application (FS5W/07/19) ignored this test completely and instead opted for

the view of “a reasonable person” to decide the matter. This was a fundamental error by the Planning Authority.

- The third legal test for abandonment, “the nature and character of the intervening use” does not require too much consideration as there has been no unauthorised use or material change of use which would indicate an intention on his part to abandon the pre 1963 use.
- The previous owner was a ward of court and was unable to maintain the house to a satisfactory standard. The property was never declared derelict. He has been working on the property and its restoration for 10 years now.
- He includes documentation and a historical map in support of the above.

5.0 Policy Context

5.1. Fingal County Development Plan 2017-2023

Sheet 13 ‘Blanchardstown of this Plan shows that the site is within the ‘HA’ High Amenity Area where the Objective is to: *Protect and enhance high amenity areas.*

Vision: Protect these highly sensitive and scenic locations from inappropriate development and reinforce their character, distinctiveness and sense of place. In recognition of the amenity potential of these areas opportunities to increase public access will be explored.

It is also located within the Liffey Valley SAAC (Special Amenity Area Order). This designation includes specific controls over development. The River Liffey is also a proposed Natural Heritage Area (pNHA).

As shown on Sheet 13 Somerton Lane and the Lower Lucan Road are also within an area of Preserved Views along a highly sensitive landscape designation.

As noted in Appendix 6 – Map Based Local Objectives - 163 is to the north of the site and seeks to prepare a traffic management plan which shall provide for safe pedestrian and cycle access across a network of routes along with any necessary traffic calming and road safety measures.

There are a large number of policies and objectives contained within the Fingal DP relating to the landscape and environmental importance of the area.

5.2. Natural Heritage Designations

There are no nature designations either within or immediately abutting the appeal site. The closest such are those within Dublin Bay.

6.0 Statutory Provisions

The appropriate legal context for the referral is the Planning and Development Act, 2000 (as amended) and the Planning and Development Regulations, 2001 (as amended). The following specific provisions are relevant to this case:

6.1. Planning and Development Act, 2000

Section 2(1) - Interpretation

In this Act, except where the context otherwise requires –

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

- (a) is used as a dwelling,

- (b) is not in use but when last used was used, disregarding any unauthorised use, as a dwelling and is not derelict, or

- (c) was provided for use as a dwelling but has not been occupied;

- “*house*” means a building or part of a building which is being or has been occupied as a dwelling or was provided for use as a dwelling but has not been occupied, and where appropriate, includes a building which was designed for use as 2 or more dwellings or a flat, an apartment or other dwelling within such a building;

- “*structure*” as any building, structure, excavation or other thing constructed or made on, in or under any land, or part of a structure so defined, and-

where the context so admits, includes the land on, in or under which the structure is situate

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

- “*works*” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal.

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.

Section 4(1)

The following shall be exempted developments for the purposes of this Act -

(h) development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures;

(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;

4(2)(a) The Minister may by regulations provide for any class of development to be exempted development for the purposes of this Act where he or she is of the opinion that—

6.2. Planning and Development Regulations, 2001

Article 6(1)

Subject to Article 9, development of a class specified in column 1 of Part 1 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 1 opposite the mention of that class in the said column 2.

Article 9(1)

This provides *Restrictions on Exemption* to which article 6 relates.

In particular, of note this includes:

9(1)(b)(i) in an area to which a special amenity area order relates, if such development would be development:-

- (i) of class 1, 3, 11, 16, 21, 22, 27, 28, 29, 31, (other than paragraph (a) thereof), 33 (c) (including the laying out and use of land for golf or pitch and putt or sports involving the use of motor vehicles, aircraft or firearms), 39, 44 or 50(a) specified in column 1 of Part 1 of Schedule 2, or
- (iv) of any class of Parts 1, 2 or 3 of Schedule 2 not referred to in subparagraphs (i), (ii) and (iii) where it is stated in the order made under section 202 of the Act that such development shall be prevented or limited.

Other

Part XIII of the Planning and Development Act 2001 (as amended) refers to 'Amenities'.

Section 202 — (1) Where, in the opinion of the planning authority, by reason of—

- (a) its outstanding natural beauty, or
- (b) its special recreational value,

and having regard to any benefits for nature conservation, an area should be declared under this section to be an area of special amenity, it may, by resolution, make an order to do so and the order may state the objective of the planning authority in relation to the preservation or enhancement of the character or special features of the area, including objectives for the prevention or limitation of development in the area.

6.3. Relevant Case Law

Dublin County Council v. Tallaght Block Co. Ltd.

This case determined that a use of land can be abandoned and that a change of use will occur when an abandoned use is recommenced. Hederman J in the Supreme Court stated: "Where a previous use of land has been not merely suspended for a temporary period and determined period, but has ceased for a considerable time, with no evidenced intention of resuming it at any particular time, the tribunal of fact

was entitled to find that the previous use had been abandoned, so that the resumption constituted a material change of use.”

Cork County Council v. Ardfert Quarries Ltd.

In this case a site had been used as an animal food processing plant from 1953 – 1966, it had been vacant from 1966 to 1970 and it had been used to manufacture and store tyres from 1970 to 1974. The High Court held that the use of the premises as a general industrial building from 1953-1956 had been abandoned by its none use from 1966-1970. Murphy J stated: “Having regard to the elapse of time and the absence of any satisfactory explanation therefore, I must conclude that the use as of the operative date was subsequently abandoned.”

Meath County Council v. Daly

The High Court held that the resumption of the use of premises which had been used for car repairs and petrol sales pre 1964, after that use had been abandoned since 1964 from time to time by the user of the premises for other purposes, and particularly by its user from 1969 for some years by a double glazing company, was a material change of use.

7.0 Assessment

7.1. Is or is not development

- 7.1.1. The question before the Board to determine, is whether or not the restoration of the previously permitted pre 1963 dwelling constitutes ‘development’. Development is defined in the Act as the carrying out of any ‘works’ on, in, under or over land or the making of any material change of use in any of the structures or other land. ‘Works’ include the act or operation of construction, excavation, demolition, extension, alteration, repair or renewal. It is noted that on the day of the site visit there was scaffolding on site (as shown on the attached photographs) and works appeared to have taken place relative to the restoration of the dwelling house. This is currently in a derelict state, with roof, windows missing etc. There can be no doubt that the proposed restoration of the dwelling house involves elements of construction, repair and renewal, and alteration to the existing structure and as such undoubtedly falls within the definition of ‘works’. It is reasonable therefore for the Board to conclude

that the proposed restoration of the house falls within the definition of 'works' and therefore constitutes development.

7.2. Is or is not exempted development

- 7.2.1. The planning merits as to whether or not the development should take place is not the basis on which to determine the referral. The sole purpose of a Section 5 Referral is to determine, when a question arises in any particular case, what is or is not development or what is or is not exempted development within the meaning of the Act. The purpose of a Section 5 Referral is therefore not to adjudicate on the particular planning merits associated with a case, or whether or not a proposal is in accordance with the proper planning and sustainable development of the area, but rather a referral under Section 5 of the Act is confined to a legal interpretation as to whether or not planning permission is required in accordance with the provisions of the Act and associated Regulations. The Board should therefore restrict its deliberations to the referral question before it and not the planning merits of the case.

7.3. Regard to the issue of 'Habitable House'

- 7.3.1. The Owner puts forward that the restoration of the dwelling previously permitted pre 1963, constitutes a residential use, which is a continuation of the original and intended residential use. He puts forward that there has been no unauthorised use or material change of use. Details have not been given as to the history of when the structure was last used as a dwelling, or how long it has been in derelict condition. Documents or drawings of the development showing when the structure when last used as a dwelling are not on file. On my site visit (as can be seen on the photos), I noted that the structure which faces the Lower Lucan Road, is in ruinous condition and without its roof, windows or internal walls. Therefore, the structure could not be seen as a habitable dwelling. The history of enforcement on the site is noted and it could not be said that the property or the site is currently in residential use or is a habitable house.

7.4. Abandonment of Use

7.4.1. As noted in his response to the Council's Referral to the Board, the Owner of the site refers to and queries the concept of a 'reasonable person' and to 'intention of the owner'. These are concepts referred to in the Planning Authority Reports relevant to the subject site and to their previous Section 5 Declarations as noted in the History Section above (copies of their Reports are included). Based on case law some suggested tests of abandonment relevant to this issue are referred to in 'Environmental and Planning Law in Ireland' (Yvonne Scannell, 1995) i.e:

- The intention of the owner and/or occupier to abandon or not abandon.
- The period during which the use was discontinued. The longer the period the more likely the use is to be abandoned.
- Whether or not there have been any intervening issues.
- The physical condition of the land or structure.

7.4.2. In this case it has been put forward that it is not the intention of the owner to abandon the residential use of the site. He considers that the residential use of the property has not been abandoned and provides that it is his intention to restore the property. Also, that the property was never declared derelict and he provides that he has been working on its restoration for 10 years. However, I would consider that it is necessary to have regard to the factual issues; relevant to the length of time it has not been in residential use and the physical condition of the structure. It is not sufficient for the owner to have an intention not to abandon when the structure has not been in use for some time as a dwelling house and is now physically not habitable and in derelict condition.

7.4.3. The Planning Authority provides that they are satisfied that the structure was not in use as a house. It appears that the structure is derelict and the use has been abandoned. Therefore, the term 'habitable house' would be irrelevant in the context of Schedule 2 Part 1 Exempted Development – General of the Planning and Development Regulations 2001 (as amended). It is of note that this refers to Development within the curtilage of a house and does not specifically refer to a habitable house. As noted in Column 2 Conditions and Limitations regard is had to the floor area of an extension to the house. Having regard to the Conditions and

Limitations of this Class 1, subsection 4(c) is of note in that it includes the word 'dwelling' and subsection 5 which refers to rear extensions includes the wording reserved exclusively for the use of the occupants of the house. Also, of note is Class 50 Miscellaneous of the said Schedule which includes regard to the demolition of a habitable house.

- 7.4.4. Therefore, it is not stated that there is a distinction or that a house/structure which is not habitable can avail of the exemptions offered by Class 1 of the Schedule. Rather it could be considered as a material change of use to convert this now derelict structure where it appears the habitable use has been long abandoned back to residential use. In addition, to the implications in planning terms relative to the use of this property located in the High Amenity Area and the Liffey Valley SAAO and relative to issues such as impact on visual amenity in this sensitive location, access and servicing. I consider that the proposal constitutes development which does not come within the scope of any of the legislative provisions for exempted development.

7.5. **Restrictions on exempted development**

- 7.5.1. In this case the argument being put forward is that whether or not these works relevant to the restoration of the dwelling are exempted development. Regard is had to the Statutory Provisions Section above and to the Restrictions on Exemption as provided in Article 9(1) of the Planning and Development Regulations 2001, as amended. In particular, Article 9(1)(b)(i). Therefore, as noted in this section works in a Special Amenity Area Order area are subject to further restrictions on exemption than what would be normally considered exempted development in Schedule 2 (Article 6) of the said Regulations. This is particularly the case relative to Class 1 of Part 1 Schedule 2 of the Regulations which refers to *Development within the curtilage of a house*. It is of note however that while 'restoration' is referred to in the Referral, there is no reference to 'extension'.
- 7.5.2. I accept that some elements of the structure as existing may be original, possibly part of the two gable walls and the adjoining stone structure. However, while the structure to be restored which now appears derelict, it has not been clarified as to the extent the restoration will reflect the original external appearance of the pre 1963 structure. I consider that the extent of the works to be undertaken to enable the

restoration of the original pre 1963 dwelling on this site are such that they do not come within the scope of Section 4(1)(h) of the Planning and Development Act 2000, as amended as they would materially affect the external appearance of the structure. There would appear to be minimal retention of the original building fabric and essentially the restoration of the existing structure on site, which is not habitable, can more accurately be described as works/renovations that would constitute a replacement dwelling rather than a restored pre 1963 dwelling. I therefore consider that the said works are not exempted development and would require planning permission.

7.6. Regard to Precedent Cases

- 7.6.1. The Board has dealt with a number of Referral cases relative to the issues raised in the current Referral. While dealing with different scenarios and not of specific relevance to the subject case, the following are of note relative to similar type issues being raised. These are referred to further below.

Ref. 23.RF.0875

- 7.6.2. The Owner of the site refers to two Referrals, which were decided by the Board some time ago which he considers are relevant to his case. He includes copies of the Board's decisions. The first is Ref. RF.0875 where the Question arose which included whether the use of a structure as a dwelling house at Kedra, Cahir, County Tipperary is or is not development or exempted development. At that time, the Board concluded that the said structure was not occupied for residential purposes during a period from 1973 until 1997, but that it had not been established that there was an intention in the intervening period of abandoning the use of the structure for residential purposes. Also, that the use of the structure for residential purposes would not involve a material change of use which would constitute development within the meaning of section 3(1) of the 1963 Act. In that case the Board decided (1999) that the said use of the structure as a dwelling house is not development. Also, that the said works involved in the restoration of the structure, the drilling of a borehole and the said construction of a new entrance are developments and are exempted developments, and the said installation of a septic tank is development and is not exempted development.

7.6.3. It must be noted that this decision was made prior to the current Planning and Development Acts 2000 and Regulations 2001 (both are now as amended). Therefore, the current case is considered having regard to the current legislation. The current case must also be considered in the context of its location within the Liffey Valley SAAO, where as noted above there are restrictions on exemption.

Ref.RL2592

7.6.4. A Question arose as to whether (a) a domestic extension and (b) works of repair and renewal to a dwelling known as 'Rose Cottage' at Brockagh, Glendalough, County Wicklow are or are not exempted development. The Board concluded in summary that the works of repair and renewal to this cottage are of a nature and scale consistent with the purposes of maintenance, improvement or other alteration to a structure and which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure, and that they come within the exempted development provisions of section 4(1)(h) of the Planning and Development Act 2000-2007. Also, that the extension to the rear comes within the provisions Class 1 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001, as amended.

7.6.5. Regard is had to the Inspector's Report and in that case, which provides a description of the works involved. I would consider that these two Referrals which are not recent relate to different scenarios, in different locations, and, while of note are not of particular relevance to the current case.

Other Cases

Ref 91. RL.3352

7.6.6. The Question arose as to whether works carried to a derelict single storey farmhouse for habitable use at Carrigmartin, Ballyneety, County Limerick are or are not development or are or are not exempted development. The Board noted the scale and nature of the works to be carried out and concluded that they did not come within the scope of section 4(1)(h) of the Planning and Development Act, 2000, as amended and are not otherwise within the exempted development legislation. Also, that there is no evidence on file of any residential use of this derelict building in over 20 years, or any evidence of an intent to resume such use over that time, the Board was satisfied that the residential use was abandoned, and that resumption of a

habitable use of the subject building would now constitute a change of use that is material, having regard to the potential consequences in planning terms.. The Board decided that the works carried out on a derelict single storey farmhouse for habitable use are development and are not exempted development.

Ref.21.RL.3395

- 7.6.7. A Question arose as to whether the reconstruction/renovation and extension of a derelict cottage/shed at Rinn, Strandhill, County Sligo is or is not development or is or is not exempted development. The Board's conclusion included that the works would not come within the scope of Section 4(1)(h) of the Act, as they were not works for the maintenance, improvement or other alteration of the original structure, but rather for the effective replacement of that structure. In addition, that there was no evidence on file of any residential use of this derelict building in over 30years, and that the Board was satisfied that the use had been abandoned, and the resumption of a habitable use of the subject building would now constitute a change of use that is material having regard to the potential for consequences in planning terms... The Board decided that the reconstruction/renovation and extension of a derelict cottage/shed on the subject site is development and is not exempted development.

ABP-306083-19

- 7.6.8. A Question arose as to whether the erection of an extension to the existing vernacular stone cottage at Townleyhall, Drogheda, County Louth is or is not exempted development. The Board's conclusion included that the existing cottage structure on the site, in respect of which the works are proposed, is not in residential use and, on the basis of the documentation submitted, there is no evidence on file of any residential use of this cottage in recent times, or for a significant period of time and the resumption of such residential use of the subject building would now constitute a change of use that is material, having regard to the potential for consequences in planning terms.... Therefore, the Board concluded that an extension to the existing vernacular stone cottage is development and is not exempted development.

ABP-301388 -18

- 7.6.9. A Question arise as to whether the use of the first floor unit as residential and internal alterations at unit above Spar, Main Street, Shankhill Co.Dublin is, or is not

exempted development. While a different subject matter to the current Referral, it is of interest relative to the discussion on the issue of abandonment of use. The Board decided that the internal alterations above Spar are development and are exempted development and the use of the first floor as a residential dwelling is development and is not exempted development.

Copies of these Board decisions are included in the Appendix to this Report.

7.7. Screening for Appropriate Assessment

- 7.7.1. Having regard to nature and scale of the development and the nature of the receiving environment and the distance and lack of connections to the nearest European sites, no Appropriate Assessment issues arise and it is not considered that the development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

- 8.1. 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 restoration of the previously permitted pre 1963 dwelling to its previous condition at Somerton Lane/Lower Lucan Road, Strawberry Beds, Dublin 15 is or is not development or is or is not exempted development:

AND WHEREAS Fingal County Council referred this case to An Bord Pleanála on the 25th day of November 2020:

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

- (a) Sections 2 (1), 3(1) and 4(1)(h) of the Planning and Development Act 2000, as amended,

- (b) article 6(1) and article 9(1)(b)(i) of the Planning and Development Regulations, 2001, as amended,
- (c) Class 1 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001, as amended,
- (d) The provisions of the Fingal County Development Plan 2017-2023,
- (e) the planning history of the site,
- (f) the pattern of development in the area:

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The works and alterations to be carried out to facilitate the residential use of the now derelict structure would constitute “works” that are “development” under Section 3(1) of the Planning and Development Act 2000 (as amended).
- (b) The existing structure on the site, in respect of which the restoration works are proposed, is not in residential use and, on the basis of the documentation submitted, there is no evidence on file of any residential use of this structure including in recent times, or for a significant period of time, and the resumption of such residential use of the subject building which is now in a derelict condition, would now constitute a change of use that is material, having regard to the potential for consequences in planning terms, including its location with the High Amenity Area and within the Liffey Valley Special Amenity Area Order and having regard to the potential for implications in terms of traffic safety relative to the access, servicing the site and the impact on visual amenity in this sensitive area. It would, therefore, constitute development, which development does not come within the scope of any of the legislative provisions for exempted development,
- (c) The external works and alterations to reconstruct and restore the former house would not come within the scope of section 4(1)(h) of

the Act, being works which would materially affect the external appearance of the structure.

(d) In view of its location within the Liffey Valley Special Amenity Area Order, the development would fall within the Restrictions on Exemption as provided by Article 9(1)(b)(i) of the Planning and Development Regulations 2001 (as amended).

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (4) of the 2000 Act, hereby decides that the restoration of the previously permitted pre 1963 dwelling to its previous condition at Somerton Lane/Lower Lucan Road, Strawberry Beds, Dublin 15 is development and is not exempted development.

Angela Brereton,
Planning Inspector

10th of March 2021