



An
Bord
Pleanála

Inspector's Report ABP-309961-21

Question

Whether the change of use of shomera to home office is or is not developmental or is or is not exempted development

Location

6 Hermitage Way, Lucan, Co. Dublin.

Declaration

Planning Authority

South Dublin County Council

Planning Authority Reg. Ref.

ED21/0011

Applicant for Declaration

Patrick Horan.

Planning Authority Decision

Is development and is not exempt development.

Referral

Referred by

Paula Coughlan & Patrick Horan.

Owner/ Occupier

Paula Coughlan & Patrick Horan.

Observer(s)

No Observers.

Date of Site Inspection

14th September 2022.

Inspector

Elaine Sullivan

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1.0 Site Location and Description

- 1.1. The subject site is located at No. 6 Hermitage Way, which is a cul-de-sac within an established housing estate in Lucan. To the north of the site is the N4, national primary road. To the east and west the site is surrounded by suburban style housing. An area of green open space known as Hermitage Park is located to the south.
- 1.2. The site comprises a detached, two-storey house, with off street parking to the front and a garden to the rear. There is a double gate in the rear boundary wall of the site which allows for direct access onto Ballyowen Road, which is a local road that connects Ballyowen Road to the N4 slip road.
- 1.3. On the occasion of the site inspection, I was unable to gain access to the site or to the shed in question.

2.0 The Question

- 2.1. The question referred to the planning authority pursuant to Section 5(1) of the Planning and Development Act, 2000, as amended (“the Act”) and subsequently referred by referrer to the Board, pursuant to Section 5(3)(b) of the Act is, as follows:
‘Whether the change of a garden structure to a home office is or is not development and, is or is not, exempted development at No. 6 Hermitage Way, Lucan, County Dublin’.

3.0 Planning Authority Declaration

3.1. Declaration

- 3.1.1. On the 18th March 2021 South Dublin County Council issued a declaration that the *‘Change of use of Sheomra to allow some home working in the space, (keep existing use), constituted development and is not exempt development’*, for the reasons outlined below,
 - The PA considers that the proposal comprises ‘development’, as defined in Section 3(1) of the Planning and Development Act 2000 as it would result in a change of use from domestic garage to home working space.

- The change of use from a domestic ancillary storage to home work is not included within the exemptions for change of use as set out in Schedule 2, Part 1, 'Exempted Development General', Class 14 of the Planning and Development Regulations 2001, (as amended), and is therefore not considered to be exempt development.
- Notwithstanding, the provisions of Class 14, Condition No. 2 (a) of PA Ref. SD11B/0293 states that, *'The Sheomra/shed shall be used solely for purposes incidental to the enjoyment of the dwelling house as such and shall not be used for the carrying out of any trade or business or for human habitation'*. The proposal would be contrary to this condition and would not be exempt under Article 9 (1) (i).

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report of the Planning Officer dated the 18th March 2021 outlines the legislative context and the planning history of the site, as well as an overview of the background to the question at hand. The assessment conclusion can be summarised as follows:

- Under Section 3(1) of the Planning and Development Act 2000, there would be no 'works' carried out as part of the proposal.
- Planning permission was granted for the 'Sheomra' under SD11B/0923 for use as a 'domestic storage space ancillary to the main house only'.
- It is apparent from the information submitted that the applicant is offering professional services as a counsellor, which would result in a material change of use from domestic storage to home working space.
- Therefore, the PA considers that the proposal constitutes development as defined in Section 3(1) of the Planning and Development Act 2000, (as amended).
- The change of use from a domestic ancillary storage to home work is not included in the exemptions set out in Schedule 2, Part 1, Class 14 of the Planning and Development Regulations 2000, (as amended).

- The proposal does not accord with Section 4 (1) (h) of the Planning and Development Act 2000, (as amended), which relates to works which effect only the interior of the structure.
- Notwithstanding the provisions of Class 14 above, Condition No. 2 of PA Ref. SD11B/0293 restricts the use of the structure to uses which are, *'solely for purposes incidental to the enjoyment of the dwelling house as such and shall not be used for the carrying on of any trade or business, or for human habitation'*.
- It is considered that the proposal would be contrary to this condition and would not be exempt under Article 9 (1) (i).

4.0 Planning History

SD19B/0042 – Planning permission granted by the PA on the 13th February 2019 for a single storey extension to the rear of a two storey house.

SD11B/0293 – Planning permission granted by the PA on the 21st September 2011 for amendments to, and retention of a 'Sheomra' type single storey detached timber structure, to the rear garden of existing dwelling for use as a domestic storage space ancillary to the main house. Conditions attached include,

2. (a) The Sheomra/shed shall be used solely for purposes incidental to the enjoyment of the dwelling house as such and shall not be used for the carrying out of any trade or business or for human habitation.

Reason: In the interest of residential amenity and to prevent unauthorised development.

SD10B/0453 – Planning permission refused by the PA on the 7th day of April 2011 for the retention of a 'Sheomra' type single storey detached timber structure, to the rear garden of existing dwelling.

PL 06S.211071, (PA Ref. SD04A/0898) – Planning permission refused by An Bord Pleanála on the 10th June 2005 for a two-storey detached house to the rear of No. 6 Hermitage Way and facing onto Ballyowen Lane.

Enforcement Notices

S8535 – Enforcement file opened by the PA relating to the erection of a fence to the front of the property, which is in excess of 1.2m.

S6489 – Enforcement file opened by the PA on the 30th day of July 2010 relating to allegation of unauthorised construction and letting of a wooden structure to the rear for human habitation.

Section 5 Referrals

ED20/0054 – Section 5 application to determine if the use of existing ‘Sheomra’, wooden structure in the garden as a home office for Zoom and Phone calls only, is or is not development, and if it constitutes exempt development. The PA determined that the proposal constituted a change of use which was development and was not exempt development. Furthermore, the proposal would contravene Condition 2 of PA Ref. SD11B/0293.

5.0 Policy Context

5.1. Development Plan

- 5.1.1. The site is located within the administrative boundary of South Dublin County Council. The operative Development Plan for the area is the South Dublin County Development Plan, (CDP), 2022-2028, which came into effect on the 3rd day of August 2022.
- 5.1.2. The query was submitted under the South Dublin County Development Plan 2016-2022, which was the operative Development Plan at the time.
- 5.1.3. On review of the contents of both plans I note that there are no material changes between the 2016 County Development Plan and the 2022 County Development Plan as they relate to the subject site and the current proposal.
- 5.1.4. The following sections of the operative CDP are relevant to the proposal:
 - The site is zoned objective ‘Res’, which seeks *‘To protect and/or improve Residential Amenity’*.

- Section 12.9.3 – Home Based Economic Activity - Development proposals for small scale home based economic activities will be considered where the applicant is the resident of the house and can demonstrate that the proposed activity is subordinate to the main residential use of the dwelling. Home based economic activity will generally be permitted on a short-term or temporary basis to enable an ongoing assessment of any impact of the activity on residential amenity.

5.2. Natural Heritage Designations

No designations apply to the subject site.

6.0 The Referral

6.1. Referrer's Case

The issues raised by the referrer can be summarised as follows:

- Planning permission for the Sheomra (shed) was permitted under PA Ref. SD11B/0293.
- The referrer works as a psychotherapist and due to Covid 19 restrictions, they have been mostly unable to see clients face to face and have been using zoom and phone calls to contact clients.
- They wish to use the shed to work from home, which would be incidental to the enjoyment of the home. Due to the nature of the work, there would be minimal disturbance to neighbours.
- The referrer would be working from home which is different to running a business from home.
- Many professionals now work from home in their bedrooms. However due to the nature of the work, which requires privacy, this arrangement is not suitable for the referrer.

- Counselling services are also offered to a community service on a voluntary basis, which also requires privacy. A letter of support was submitted from the Village Counselling Service, Killinarden, confirming this.

6.2. Planning Authority Response

- A submission received from the PA on the 27th day of April 2021 states that the PA has no further comment to make.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

Section 2, the following interpretation of “works”:

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

Section 3 (1), states the following:

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

Section 4 (1) (a)- (i) set out what is exempted development for the purpose of the Act, whereas –

Section 4 (1) (h) relates to – *‘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’*; and,

Section 4 (1) (j) relates to, *‘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’*.

Section 4 (2) (a) states-

“The Minister may by regulations provide for any class of development to be exempted development for the purpose of the Act”.

Section 5 (1) states –

If any question arises as to what, in any case, is or is not development or is or is not exempted development within the meaning of this Act, any person may, on payment of a prescribed fee, request in writing from the relevant planning authority a declaration on that question, and that person shall provide to the planning authority any information necessary to enable the authority to make its decision on the matter.

7.2. Planning and Development Regulations, 2001

Part 2 – Exempted Development –

Article 9 (1) - *Development to which article 6 relates shall not be exempted development for the purposes of the Act—*

(a) if the carrying out of such development would—

(i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,

Part 4 of Schedule 2, sets out the classes of use within which a change of use could be exempt, subject to the conditions and limitations attached and set out in Part 2, Articles 5 and 6 and within Schedule 2, Part 1, Class 14.

Article 10 (1) –

Development which consists of a change of use within any one of the classes of use specified in Part 4 of Schedule 2, shall be exempted development for the purposes of the Act, provided that the development, if carried out would not—

- (a) involve the carrying out of any works other than works which are exempted development,*
- (b) contravene a condition attached to a permission under the Act,*
- (c) be inconsistent with any use specified or included in such a permission, or*
- (d) be a development where the existing use is an unauthorised use, save where such change of use consists of the resumption of a use which is not unauthorised and which has not been abandoned.*

8.0 Assessment

8.1. Is or is not development

- 8.1.1. The question put forward by the referrer relates to whether the use of a 'Sheomra', (a wooden structure permitted under PA Ref. SD11B/0293, for storage space ancillary to the main house only), for home working which includes phone calls and online consultation calls, is or is not development.
- 8.1.2. On the occasion of the site inspection, I was unable to gain access to the site or to the shed in question. Therefore, I will assess the question based on the information at hand.
- 8.1.3. Section 3 (1) of the Act defines 'development' as the *'carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land'*. In terms of determining whether development has occurred, the relevant tests to apply is to establish whether 'works' were carried out and/or whether there was a material change in the use of the structure or land.
- 8.1.4. Within Section 2, (1) of the Planning Act, 'works' are defined as *'any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal...'*. In consideration of the proposal as described in the referral, I am satisfied that the proposal would not involve the carrying out of any 'works', within the scope of this definition.
- 8.1.5. In order to determine whether a material change of use has occurred consideration is given to the existing, permitted use and the proposed use. The use permitted

under PA Ref. SD11B/0293 is for a *'domestic storage space, ancillary to the main house only'*. The subject query relates to the proposal to use the structure as a home office or for home working which involves tele-working, phone calls and video calls. Neither uses are defined in the Act or the Regulations, therefore the key consideration is to determine whether the proposed use would result in additional planning considerations which, in turn, would result in additional impacts.

8.1.6. The permitted use for the shed is for a domestic storage space which is ancillary to the main house only. The proposed use is for home working, which would involve phone calls and video calls only. This use would not result in any additional vehicular or pedestrian traffic to and from the site and would not result in any additional noise or nuisance over and above that of a normal domestic dwelling. The proposed use would not require any additional permanent or specialised adaptation of the existing space and the 'Sheomra' structure would remain ancillary to the main house. I note that the application to the PA stated that the permitted storage use would be retained.

8.1.7. I am satisfied that the proposed use from domestic storage to home office/home working which would involve phone calls and/or video calls only, would not constitute a material change of use as it would not result in any additional planning considerations to those already existing, and would not result in any additional impacts. I am also satisfied that the use of the structure as a home office for home working would also be ancillary to the main house.

8.2. **Is or is not exempted development**

8.2.1. Notwithstanding the information as set out above, in the event that the Board do not agree, and consider that the proposed change of use from storage to home office / home working is development, the following is my assessment of whether the proposal is or is not exempt development.

8.2.2. Section 4 (1) of the Planning and Development Act 2000 states that the following shall be exempted development 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;

- 8.2.3. Should the Board be of the opinion that the proposal constitutes development by virtue of 'works', I am satisfied that it would constitute exempt development under Section 4, (1), (h) of the Planning and Development Act 2000.
- 8.2.4. With regard to the change of use of the structure, neither the permitted or proposed use are listed in the use classes set out in Part 4, Schedule 2 of the Planning and Development Regulations. As such there is no specific exemption for the change of use from domestic storage to home office / home working.
- 8.2.5. The decision of the PA determined that the proposed use constituted a material change of use from the permitted use for domestic storage. Furthermore, the PA considered that the proposed use did not constitute exempt development as it contravened Condition No. 2 of the SD11B/0293, which states that the, *'Shomera/shed shall be used solely for purposes incidental to the enjoyment of the dwelling house as such and shall not be used for the carrying out of any trade or business, or for human habitation'*.
- 8.2.6. Article 9 (1) of the Planning and Development Regulations states the following:
- *Development to which article 6 relates shall not be exempted development for the purposes of the Act—*
 - (a) if the carrying out of such development would—*
 - (i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,*
- 8.2.7. An argument could be made that both domestic storage and a home office are purposes that are incidental to the enjoyment of the house, and as such could be considered to be exempt under Section 4, (1) (j) of the Planning and Development Act, which states the following:
- 4(1) - The following shall be considered to be exempted developments for the purposes of this Act;*
- (j) development consisting of the use of any structure or other land within the curtilage of a house for any purpose incidental to the enjoyment of the house as such.*

However, Condition 2, (a) of PA Ref. SD11B/0293 states that *'The Sheomra/shed shall be used solely for purposes incidental to the enjoyment of the dwelling house as such and shall not be used for the carrying out of any trade or business or for human habitation'*.

- 8.2.8. The Planning Act does not contain a definition of 'trade' or 'business'. The Oxford English Dictionary defines 'trade' as, *'the activity of buying and selling or of exchanging goods or services between people or countries'*, and 'business' as, *'the activity of making, buying, selling or supplying goods or services for money'*. Within this context, I would consider that the home working proposed, which relates to counselling services, would involve the exchange of goods and services, which would be contrary to Condition 2, (a), of SD11B/0293. As such it would not be exempt under Article 9 (1) (i).

8.3. **EIA Screening**

The development is not within the thresholds for EIA.

8.4. **Appropriate Assessment**

No Appropriate Assessment issues arise.

9.0 **Recommendation**

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

WHEREAS a question has arisen as to whether the *'Whether the change of a garden structure, permitted under SD11B/0293 for domestic storage, to a home office at No. 6 Hermitage Way, Lucan, County Dublin'*, is or is not development or is or is not exempted development:

AND WHEREAS Paula Coughlan and Patrick Horan requested a declaration on this question from South Dublin County Council and the Council issued a declaration on the 18th day of March, 2021, stating that the matter was development and was not exempted development:

AND WHEREAS Paula Coughlan and Patrick Horan referred this declaration for review to An Bord Pleanála on the 14th day of April, 2021:

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

- (a) Section 2(1) of the Planning and Development Act, 2000, as amended,
- (b) Section 3(1) of the Planning and Development Act, 2000,
- (c) article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (d) Part 4 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (e) the planning history of the site,

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The proposed change of use of a Shomera / wooden shed, from domestic storage, ancillary to the main house, permitted under PA Ref. SD11B/2093, to use as a home office for home working, is not development as it does not constitute development by virtue of the fact that it would not require the carrying out of ‘works’ as defined under Section 2(1) of the Planning and Development Act, and would not constitute a material change of use by virtue of the fact that it would not result in any additional planning considerations or impacts that would change the nature and character of the structure.
- (b) The proposed change of use from domestic storage, ancillary to the main house, permitted under PA Ref. SD11B/2093, to use as a home office for home working, is not exempt under Article 9, (1), (i)

of the Planning and Development Regulations as the use would be contrary to Condition 2(a) of PA Ref. SD11B/2093.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3) (a) of the 2000 Act, hereby decides that the use of a Shomera for home working is not development and is not exempted development under Article 9, (1) (i), of the Planning and Development Regulations as it is contrary to Condition No. 2(a) of PA Ref. SD11B/2093 which is attached to this permission.

Elaine Sullivan
Planning Inspector

15th September 2022