



An
Bord
Pleanála

Inspector's Report 311946-21

Question	Whether the change of use of part of the residential dwelling house to use as a part-time beautician by appointment only is or is not development and is or is not exempted development.
Location	6 Coolraine Heights, Old Cratloe Road, Limerick.
Declaration	
Planning Authority	Limerick City and County Council
Planning Authority Reg. Ref.	EC60/21
Applicant for Declaration	Carolyn Ryan
Planning Authority Decision	Is Development and is not Exempt Development
Referral	
Referred by	Carolyn Ryan.
Owner/ Occupier	Carolyn Ryan.
Observer(s)	None
Date of Site Inspection	2 nd April 2022.
Inspector	Suzanne Kehely.

1.0 Site Location and Description

- 1.1. The site relates to a detached two storey dwelling fronting a cul de sac which runs parallel to the Old Cratloe Road. It is one of 10 similar detached houses forming part of a larger residential development – ‘Coolraine Heights’ to the south. The house is centrally located and overlooks the Old Cratloe Road across an intervening stretch of green space and at a point where there is a parade of neighbourhood shops/services facing onto the road on the opposite side. This small shopping centre has extensive car parking to the side. The Old Cratloe Road is a busy distributor route characterised by a mix of commercial and residential development and community facilities (sports and educational facilities) .
- 1.2. The cul-de road has on street parking that is marked out and controlled by a paid parking system. The houses also have off-street car-parking.
- 1.3. The subject premises comprises a principal two storey element with a single storey element to the side. The single storey element is two rooms deep and extends along the depth of the main house. Each of these two rooms is integrated with the main house.
- 1.4. The referral relates to the front room to the side. It is accessed solely by the internal hall and has a floor area of 12 sq.m. There was no indication of commercial activity from the external appearance of the dwelling. The inspection was carried out on a Saturday mid-morning and on a day that the stated activity is intended.
- 1.5. Photographs have been submitted showing a reclining therapy chair and portable treatment bed and various beauty salon products on shelves.

2.0 The Question

- 2.1. The question is stated to be ‘Whether the change of use of part of the residential dwelling house to use as a part-time beautician by appointment only is or is not development and is or is not exempted development’. Having read the file I consider the question makes more sense with the replacement of the word ‘as’ to ‘by’ to read: ‘Whether the change of use of part of the residential dwelling house to use by a part-time beautician by appointment only is or is not development and is or is not exempted development.’

3.0 Planning Authority Declaration

3.1. Declaration

- 3.1.1. Limerick City and County Council issued a Declaration on 21st October 2021 that the change of use of part of the residential dwelling house to use as a part-time beautician by appointment only at 6 Coolraine Heights does not come within the scope of exempted development as defined by section 4(i)(j) of the Planning and Development Act 2000 as amended and is development and is not exempt development.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The proposed use of the dwelling is for a commercial use. It clearly states the business use with people to visit the dwelling by appointment. As it is a commercial use and as people are visiting the property for a service, it cannot be deemed incidental to the enjoyment of the dwelling.
- Under schedule 2 Part 1 Exempted development general class 14 change of use there is no exemptions for change of use for residential to commercial.

3.2.2. Other Technical Reports

None

4.0 Planning History

- 4.1. **RL2220** The referral related to a two-storey semi-detached dwelling located in a residential area. Part of the ground floor (c. 25%) of the dwelling was used as an office for a self-employed architect, with desk space for four persons. There was a separate doorbell and signage for the office. A key issue was whether there would be new planning consequences, particularly in terms of parking demand in a residential area. The referral was made by the owner / occupier. The Board decided that the use was development and not exempted development concluding that a material change of use had occurred that was not covered by the exempted development provisions of Section 4 of the Act and the regulations made thereunder.

4.2. **ABP 302542** The Board decided that the use of part of a dwelling house (58.5sq.m. of 207 sqm ground floor) as a solicitors' office at Beachside, Kincasslagh, County Donegal is development and is not exempted development. The Board had regard to *inter alia* the scale, nature and layout of the solicitors' office use, the description of the use carried on therein, including receptionist function (10am-1pm Monday to Friday), the availability of access to the premises by visiting members of the public, and the presence of free-standing signage at the property advertising a solicitors' practice, as observed by the Inspector during his site visit and concluded that

- the use of part of the house as a solicitors' office does not constitute use as a house as defined at Section 2(1) of the Planning and Development Act, 2000, as amended, and therefore such use is a change of use
- the change of use from use as part of a house to use as a solicitors' office, raises issues which are material in relation to the proper planning and sustainable development of the area and this change of use constitutes a material change of use having regard to the considerations outlined above and is therefore development;
- the development does not come within the scope of Section 4(1)(j) of the Planning and Development Act, 2000, as amended, as the use as a solicitors' office in this instance is not considered incidental to the enjoyment of the house
- the development would correspond to use as an office as defined in Class 2(b) of Part 4 of the Second Schedule to the Planning and Development Regulations, 2001, as amended, and
- there are no other provisions in the Act or Regulations whereby such development would be exempted in this instance

5.0 Policy Context

5.1. Development Plan

5.1.1. The Limerick Development Plan 2022-28 is the operative plan since June 2022. The site and hinterland are in an 'existing residential' zone. The green space to the front is in an 'open space /recreation' zone and the shopping centre opposite is in a 'local centre' zone.

5.2. Natural Heritage Designations

Lower River Shannon SAC (Site Code 002165) is 1.3km to the east and there are no direct pathways.

6.0 The Referral

6.1. Referrer's Case

6.1.1. In a letter dated 10th November 2021, the agent for the referring party makes the following points as part of the section 5 application.

- In the agent's opinion, the partial use of the ground floor for part time beautician practice is incidental to the enjoyment of the dwelling and does come within the scope of section 4 (1) (j) of the PDA 2000 as amended.
- Any alteration to the interior does not materially affect the external appearance of the structure or neighbouring structures and is exempt under section 4(1)(h).
- There are no external staff.
- There is only one room of 12sq.m. (7% of floor area) used by the homeowner on a part time basis.
- The business operates by appointment 4 days a week with up to 4-5 appointments per day.
- Negligible increase in traffic with appointments at non-peak times.
- Clients are advised to park outside the house so as not to be a nuisance to neighbours.
- A pay and display system operates.
- The limited scale militates against seeking planning permission for a development attracting development contributions and commercial charges with tax implications for the property in the event of sale.

6.2. Planning Authority Response

No further comments.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000 (as amended)

7.1.1. Section 2(1) sets out the interpretation of a “house” as 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.”

7.1.2. Section 3 (1) states as follows:

“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.”

7.1.3. Section 4 (1) (a) – (l) sets out what is exempted development for the purposes of this Act and includes (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”.

7.1.4. Section 4(1)(h) exempts “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”

7.1.5. Section 4 (2) provides for the making of Regulations. The main Regulations are the Planning and Development Regulations, 2001 (as amended).

7.1.6. Section 4 (4) states that “notwithstanding paragraphs (a), (i), (ia) and (l) of subsection (1) and any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required.”

7.2. Planning and Development Regulations, 2001

7.2.1. Article 5 of Part 2, Exempted Development sets out interpretations for this part and includes “business premises” which inter alia means “any structure or other land (not

being an excluded premises) which is normally used for carrying on any professional, commercial or industrial undertaking or any structure which is normally used for the provision therein of services to persons...”.

- 7.2.2. Under Article 10, 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.

7.3. **Case Law**

- 7.3.1. Galway County Council v Lackagh Rock: In this case Justice Barron suggested that the courts would look to matters which affect the proper planning and development of the area and whether a further burden was being imposed by the present use.
- 7.3.2. Carrickhall Holdings Limited v Dublin Corporation: The Supreme Court held that the change from a hotel bar to a public bar was development which was not exempted. The basis for this decision was that the change resulted in a change in the whole character of the business carried on in the premises and resulted in an increase in traffic, parking and other changes in the amenities for the local residents.
- 7.3.3. Westport UDC v Golden: In deciding that a change of use from a sit-in restaurant to a fast food outlet was a material change of use the implications in terms of traffic, noise and litter were appropriate considerations
- 7.3.4. Cork Corporation v Connell: This case relates to a change of use from retail hardware store to amusement arcade. It was held that this was a material change of use and the court had regard to the fact that large crowds of people, particularly young people, would be attracted into the area.
- 7.3.5. Sage v Secretary of State for Housing, Local Government and Communities [2021] EWHC 2885 (Admin). This case relates to a home-based personal training business

in part of an outbuilding in the garden. The court commented that an inspector properly directed by lawful guidance could not rationally have concluded, as a matter of fact and degree, that the six day a week use, with 30 or so sessions, with the hours envisaged on this property in a tight knit residential area, was incidental or ancillary to the use of a dwelling house as a dwelling house”.

The main consideration was if the use of the outbuilding is incidental or ancillary, it is in law part of the single main use, and not a separate use at all. The “single main use” in reality, incorporates the incidental or ancillary use. The incidental nature was in effect rejected having regard to the scale and degree of the home business. The court made it clear that a material change of use can be made without any adverse environmental impact at all. The crucial test is whether there has been change in the character of the use having regard to a range of factors .

[Note: the definition of development in the Town and Country Planning Act 1990 similarly includes material change of use in the definition of development.]

8.0 Assessment

8.1. Is or is not development

- 8.1.1. In this case, as there are no works involved, in order to ascertain whether or not development has taken place, it must be established whether or not there has been a material change of use in the structure that being a dwelling house. In the preceding cases decided by the Board as referred to in this report, both inspectors cite case law – specifically Galway County Council v Lackagh Rock, Carrickhall Holdings v Dublin Corporation and Westport UDC v Golden. These are similarly relevant and I also consider the more recent decision of the England and Wales High Court [2021] in respect of the materiality of a home business relating to personal training services to be relevant, particularly having regard to the similarity of ‘hands on’ service and definition of ‘development’ in the Town and Country Planning Act.
- 8.1.2. The test as to whether there is a material change of use of the land and, if so, is such use ‘incidental’ to the enjoyment of the dwelling house, is, by reference to these cases, a matter of judgment on the nature, scale and degree of the home

business and to extent that the character of the residential is altered. As a baseline, I note the previously cited reference to Irish Planning Law and Practice in ABP case 302542, “if an architect used one room of his dwelling as a studio, did not invite clients there, employ staff or have a plate outside the door, this would not constitute a material change of use”. I further note the extent and nature of the business in the Sage Case (a 6 day a week operation with 30 sessions) and also that the court clarified that the phrase “incidental to” is not simply a question of the whether the use is not dominant, but whether at all times the house remains used as a residence, not as anything else.

8.1.3. In the subject case I note the following:

- The business operates from a room accessed solely from within the dwelling – it has no independent access or external manifestation of a business and the dwelling house thereby retains its residential character in the streetscape setting.
- The room in which the business operates has no structural alterations, machinery or elaborate/intensive water or electrical based equipment and relies on limited portable furniture that could be used as part of the residential occupancy and would not unduly inhibit the continued use of the room as part of the residence.
- The business relates to a very small area of a detached dwelling, is restricted to 4 days of the week on a part-time basis and with up to 4 or 5 appointment-booked clients per day and therefore a maximum range of 16 - 20 clients a week, is operated by a single occupant of the dwelling house and involves no external staff.
- The dwelling house has off-street parking and controlled on-street parking in addition to shopping centre car parking to the north and so the visiting clients on a one-by-one appointment basis is unlikely to have any discernible impact on traffic or parking to the extent that it would alter the residential character of the area.

8.1.4. I consider this to be a border line case hinging on the volume of visitors. The number of clients is stated to be up to 4 to 5 clients during set days. This suggests that visitors could be any number below. It is further stated that the appointments are managed and staggered and I would therefore describe the business as an intermittent and part-time use over a limited time frame. Furthermore, notwithstanding the business use, the room remains as an ancillary space for

residential use. Accordingly, while the business element constitutes a change of use within the dwelling house, I do not consider it to be material. I say this having regard to the nature, scale and degree of the home business as summarised in the above points and consider that the overall character of the house remains as residential.

- 8.1.5. Following this logic I consider it could be reasonably concluded that the business use in its ancillary purpose, nature and degree is not 'development' as defined in section 2 of the Act. As it is not 'development' the provisions for exempted development do not therefore apply.

8.2. Is or is not exempted development

- 8.2.1. The Board may take a view that the change of use may be interpreted as material. In such circumstances I consider the incidental nature of the use is relevant in the context of section 4(1)(j) of the Act.

- 8.2.2. Having regard to the scale and nature of the use and the absence of a discernible change in residential character, I consider the activities, even though having commercial aspects, amount to an incidental use to the residential use of the dwelling house and not to be of a scale that converts the single residential use into a composite use. Accordingly exempted status can be applied under section 4 of the Act.

8.3. Restrictions on exempted development

- 8.3.1. Appropriate Assessment: Under Section 177U(9) of the Planning and Development Act, 2000 (as amended) it is stated that "in deciding upon a declaration or a referral under section 5 of this Act a planning authority or the Board, as the case may be, shall where appropriate, conduct a screening for appropriate assessment in accordance with the provisions of this section."
- 8.3.2. Section 4 (4) of the Act also states that "notwithstanding paragraphs (a), (i), (ia) and (l) of subsection (1) and any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required."

- 8.3.3. Lower River Shannon SAC (Site Code 002165) is 1.3km to the east and there are no direct pathways. Notwithstanding, there are no works relating to the change of use and traffic is negligible by itself and within the context of the site and surroundings, including a nearby car park. Having regard to the nature and scale of the development and the nature of the receiving environment and/or proximity to the nearest European site, 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. Accordingly there are no restrictions in this regard.
- 8.3.4. There is no information on file to indicate other restrictions on exemption.

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 change of use of part of the residential dwelling house to use by a part-time beautician by appointment only is or is not development and is or is not exempted development:

AND WHEREAS Carolyn Ryan of 6 Coolraine Heights, Old Cratloe Road, Limerick, requested a declaration on the question from Limerick City and County Council and the Council issued a declaration on the 15th day of October, 2021 stating that the matter is development and is not exempted development:

AND WHEREAS Carolyn Ryan referred the declaration for review to An Bord Pleanála on the 11th day of November, 2021:

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

(a) sections 2(1), 3(1), and 4(1)(j) of the Planning and Development Act, 2000, as amended,

(b) Part 4 of the Second Schedule to the Planning and Development Regulations, 2001, as amended,

- (c) the pattern of development in the area,
- (d) the scale, nature and layout of the house and integrated room used for the intermittent and limited provision of beauty treatment, the nature of the use carried on therein, including the sole operation by a single resident, absence of employees, absence of machinery or nuisance, the restricted and controlled access to the premises by visiting clients, and
- (e) the absence signage at the property and any external works as observed by the Inspector during the site visit:

AND WHEREAS An Bord Pleanála has concluded that –

- (a) the use of part of the house for limited and appointment based beauty treatment is incidental to the use of the property as a house as defined at Section 2(1) of the Planning and Development Act, 2000, as amended, and therefore does not constitute a material change of use;
- (b) the change of use of part of a house for intermittent and limited beauty treatment, does not raise issues which are material in relation to the proper planning and sustainable development of the area and this change of use does not constitute a material change of use having regard to the considerations outlined above and is therefore not development;
- (c) the development does come within the scope of Section 4(1)(j) of the Planning and Development Act, 2000, as amended, as the use in this instance is considered incidental to the enjoyment of the house,

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 part of a dwelling house for beauty treatment on a limited basis at 6 Coolrairie Heights, Old Cratloe Road, Limerick is not development.

Suzanne Kehely
Senior Planning Inspector
22nd July 2022