



An
Bord
Pleanála

Inspector's Report

ABP-312477-22

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| Development | Retention of change of use from residential dwelling to residential accommodation for homeless persons. |
| Location | 15/17 Drumcondra Road Lower, Dublin 9. |
| Planning Authority | Dublin City Council |
| Planning Authority Reg. Ref. | 3256/21 |
| Applicant(s) | Brimwood Limited |
| Type of Application | Retention Permission |
| Planning Authority Decision | Grant Permission |
| Type of Appeal | Third Party vs. Grant |
| Appellant(s) | Rob & Leah Lanigan |
| Observer(s) | <ol style="list-style-type: none">1. Carmel Sherry & Celine Byrne2. Antoinette Coll3. J. Linnane4. Anthony Reynolds |
| Date of Site Inspection | 2nd August 2022 |
| Inspector | Stephen Ward |

1.0 Site Location and Description

- 1.1. The site is located on the eastern side of Drumcondra Road Lower, close to the road's crossing of the Royal Canal (c.90 metres to the south). It is distanced c. 1km north of O'Connell Street and is located within a terrace of 2 to 3-storey properties, some of which include basements. The terrace would appear to be predominantly in residential use, while the uses on the opposite side of the road are mainly commercial. The adjoining Drumcondra Road Lower functions as an important artery between the city centre and the M1/M50 motorway network. Drumcondra Rail Station is located c. 100m to the north of the site.
- 1.2. The site is comprised of two adjoining mid-terrace two-bay 3-storey over basement properties (no.15 and no.17), which are connected internally and accessed externally by one door to no. 15. It is stated that the property is used to provide long-term accommodation for homeless persons.
- 1.3. A large rear garden extends to the east of the building where a gated vehicular access is provided onto a narrow cul-de-sac alleyway leading northward to Fitzroy Avenue. The front of the site faces directly onto the Lower Drumcondra Road and the boundary to the front of the property is comprised of iron railings on a granite plinth. There is a bus stop and shelter on the footpath directly in front of the property.

2.0 Proposed Development

- 2.1. Planning permission is sought for the retention of the change of use from residential dwelling to residential accommodation for homeless persons. In summary, it is stated that the development will comprise the following:
 - 13 no. bedrooms (some of which are subdivided to form a total of 17 no. bedrooms)
 - Kitchen, dining room, shower room, WC's, office, and utility room
 - Outdoor amenity space to the rear
 - The accommodation of up to 33 persons.
- 2.2. It is stated that no internal or external works are proposed. The application also outlines that the building was previously in use as 17 no. flats and that any

renovation works carried out to improve living/safety standards were exempted development.

- 2.3. The application highlights that the property is not being used as a 'Class 9' homeless hostel where care is provided. Resident stays are long-term with most residents living there over 6 months. Residents are provided with a bedroom and have access to a kitchen, dining room, bathroom, laundry room, and outdoor amenity space. The application states that residents are free to enter and exit the property throughout the day like any tenant renting from a private landlord. It is stated that there is a full-time staff presence, with their duties mainly comprising cleaning and maintenance.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. By Order dated 9th December 2021, Dublin City Council (DCC) issued notification of a decision to grant retention permission subject to 5 conditions. Notable conditions include the following:

2. Within one month of the date of the grant of this permission, the applicant is required to submit revised plans clearly showing the bedroom layouts to accommodate the hereby approved 33 bedspaces and bedroom numbering is to be indicated in accurate, ascending order.

Reason: In the interest of proper planning.

3. This permission is granted for a limited period of five years from the date of this grant, at which date the permission and use shall cease unless a further permission is granted on or before that date.

Reason: In the interests of the proper planning and sustainable development of the area, and in order that the impact of the use may be reviewed having regard to the circumstances then prevailing.

3.2. Planning Authority Reports

3.2.1. Further Information

Following the initial examination of the application, DCC issued a further information request. The issues raised can be summarised as follows:

1. Submit an Operational Management Plan, to include details of the management of anti-social behaviour and noise.
2. Clarification of the number of bedrooms and maximum capacity.
3. Details for cycle parking proposals.

3.2.2. Planner's Report

The assessment outlined in the DCC planner's reports can be summarised as follows:

- The planning history of the property is outlined. Under the most recent section 5 declaration (P.A. Reg. Ref. 0185/21), the planning authority has declared that the works undertaken to the property are exempted development, that no material change of use has occurred and, therefore, the use (long-term homeless accommodation) does not constitute development. Notwithstanding this, the applicant has sought retention permission for the change of use.
- The further information response outlines that 17 no. bedrooms are proposed within 13 rooms, with a capacity of 33 no. persons. A condition should be applied requiring plans which clarify the bedroom layout and numbering.
- The residential use is permissible in the Z2 Zone. An Operational Management Plan has satisfactorily addressed antisocial behaviour and noise concerns.
- External improvement works, including painting, have enhance the appearance of the building, which is welcomed in this residential conservation area.
- In response to CDP policies QH30 and QH29, the application outlines that:

- There are three other homeless facilities within 500m of the site, which provide Supported Temporary Accommodation (STA). The facilities accommodate 178 persons or 0.009% of the population of the area.
 - The property will provide accommodation to the Dublin Regional Homeless Executive (DRHE), which adopts a shared service approach across South Dublin County Council, Fingal County Council, and Dun Laoghaire-Rathdown County Council.
 - The property is managed by Brimwood under a 5-year contract on behalf of DRHE. Staff are present at all times for maintenance, cleaning, to prepare and serve food, and to ensure the proper running of the facility. CCTV has been installed for security purposes.
 - The proposal is broadly in accordance with Policy QH29 of the CDP as it supports Strategic Goal Theme 2 aimed at protecting people experiencing homelessness.
- Although the CDP does not contain standards for buildings in multiple occupation, the Planning Authority considers the proposal is acceptable and generally in accordance with the standards of section 16.10 of the CDP. The kitchen facilities are acceptable given that they are managed by the operator and the external amenity space is sufficient.
 - Proposals for the provision of 6 cycle spaces to the rear of the property are acceptable given the central and accessible location of the site.
 - It is concluded that the use to be retained is in accordance with the CDP and the proper planning and sustainable development of the area. It is recommended to grant permission, and this forms the basis of the DCC decision.

3.2.3. Other Technical Reports

Drainage Division: No objections subject to conditions.

3.3. Prescribed Bodies

TII: Advises that a Section 49 Development Contribution shall apply for Light Rail, unless the proposed development is exempt from the scheme.

3.4. Third Party Observations

I note that several submissions were received in objection to the proposed development, including submissions from the appellant and the observers to this appeal. The main issues raised are covered in the grounds of appeal and the observations on the appeal, as outlined in section 6 of this report.

4.0 Planning History

P.A. Reg. Ref. 0185/21: Under this section 5 referral case, DCC declared (23rd July 2021) that the use of residential building to provide long-term homeless accommodation is EXEMPT from the requirement to obtain planning permission under Section 32 of the Planning & Development Acts 2000 (as amended). The reasons and considerations were stated as follows:

The Planning Authority is satisfied that the works undertaken to the property are development and are exempted development in accordance with Section 4(1)(h) of the Planning and Development Act 2000 (as amended).

The Planning Authority is satisfied that no material change of use has occurred and therefore the use does not constitute development in respect of the meaning set out in Section 3 (1) of the Planning and Development Act,2000 (as amended).

ABP Ref 308540 (P.A. Reg. Ref. 0313/20): This section 5 case concerned ‘*Whether the change of use from residential use to a hostel for homeless accommodation is or is not development or is or is not exempted development*’. It was referred to the Board after DCC declared (29th September 2020) that the works undertaken to the property are exempted development in accordance with Section 4(1)(h) of the Planning and Development Act 2000 (as amended) and that the Planning Authority

is satisfied based on Section 4(1)(f) of the Planning and Development Act 2000 (as amended) the change of use is exempted development.

On the 19th of April, 2021, the Board decided that the change of use is development and is not exempted development. In summary, the Board concluded that:

- (a) the use involves the provision of residential accommodation and care to people in need of care as defined under Class 9 (a) of Part 4 of Schedule 2 of the Planning and Development Regulations, 2001, as amended, is a material change of use by reason of providing a different service to a different user group, and is, therefore, development,
- (b) the support falls within the scope of 'care' as defined at Article 5 of the Regulations, namely personal care including help with social needs,
- (c) the material change of use would not come within the scope of Article 10(1) of the Regulations,
- (d) in the absence of evidence of the application of Policy QH30 and section 16.12 of the Development Plan, the Council effected development which contravenes materially the development plan contrary to the provisions of section 178(2) of the Act, and, therefore, any exemption which might have been available under section 4(1)(f) cannot be availed of, and
- (e) there are no other exemptions available for the material change of use.

P.A. Reg. Ref. E0270/20: Enforcement case relating to building works taking place/converted to hostel type building.

5.0 Policy Context

5.1. National Policy & Guidance

5.1.1 **'Housing for All'**, the government's housing plan to 2030, recognises the particular challenges of homelessness, for families and for individuals. It focuses on reducing the number of homeless families and individuals and is committed to eradicating homelessness by 2030. It works with local authorities, Non-Government Organisations, Approved Housing Bodies and the HSE, and recognises that inter-

agency supports are critical to alleviating homelessness and addressing the housing, social, health and economic needs of both the homeless and those in the private rented sector at risk of becoming homeless. 'Housing for All' commits to a range of comprehensive measures to support people experiencing homelessness, including the following relevant provisions (as summarised) under Objective 3:

3.6 Provide capital funding to develop further supported emergency accommodation for families and individuals experiencing homelessness.

3.7 Prepare and publish guidelines with standards for the development and refurbishment of emergency accommodation.

3.10 Maintain Covid-19 public health measures for people who are homeless and consolidate improvements in health care delivery.

3.11 Continue to increase access to health supports and protections for homeless individuals, with an individual health care plan to be provided for all homeless individuals that need one and improved access to mental health services.

3.12 Finalise a model of health care for people experiencing homelessness.

3.13 Strengthen integrated care pathways for people who are homeless with chronic health needs.

3.14 Expand the case management approach for homeless people living with drug or alcohol addiction and enhance treatment options.

5.1.2. **Housing First** is the government's housing-led approach that enables people with a history of rough sleeping or long-term use of emergency accommodation, and with complex needs, to obtain permanent secure accommodation. It is one of the key measures for ending long-term homelessness. The programme provides intensive supports to help them to maintain their tenancies. It provides the most vulnerable of our homeless population with a home for life as well as with key wraparound health and social supports. Under the plan, the Government will provide an additional 1,319 supported tenancies over the next five years.

5.2. Dublin City Development Plan 2016-2022

- 5.2.1. The operative Development Plan for the area is the Dublin City Development Plan 2016-2022. The site is zoned as 'Z2', the objective for which is '*To protect and/or improve the amenities of residential conservation areas*'.
- 5.2.2. Chapter 5 outlines the Council's approach to the provision of quality housing and encourages a good mix of house types and sizes with a satisfactory level of residential amenity for the existing and proposed residential properties.
- 5.2.3. Section 5.5.11 sets out policy for Homeless Services stating: *The City Council and other statutory agencies provide appropriate accommodation and work together to improve the range and quality of services available for homeless persons. An over-concentration of institutional accommodation can have an undue impact on residential communities and on the inner city in particular. A co-ordinated approach to the provision and management of these facilities as well as their spread across the city is important.*

QH29 supports the implementation of the Homeless Action Plan Framework for Dublin and related initiatives to address homelessness.

QH30 ensures that all proposals to provide or extend temporary homeless accommodation or support services shall be supported by information demonstrating that the proposal would not result in an undue concentration of such uses nor undermine the existing local economy, resident community or regeneration of an area. All such applications shall include: a map of all homeless services within a 500-metre radius of the application site, a statement on the catchment area identifying whether the proposal is to serve local or regional demand; and a statement regarding management of the service/facility.

- 5.2.4. Chapter 11 of the Plan deals with Built Heritage and Culture and section 11.1.4 outlines a strategic approach to protecting and enhancing built heritage based on the existing and ongoing review of Protected Structures, ACA's, Conservation Areas and Conservation Zoning Objective Areas. The site is located within a Z2 Conservation Area. In summary, relevant policies include:

CHC1 Seek the preservation of the built heritage of the city.

CHC4 To protect the special interest and character of all Conservation Areas.

- 5.2.5. Chapter 16 outlines Development Standards for various types of development. Section 16.10 outlines Standards for Residential Accommodation, including quantitative and qualitative measures. Section 16.12 deals with Institutions/Hostels and Support Services and includes similar requirements to those outlined in Policy QH30.

5.3. Natural Heritage Designations

The Grand Canal Proposed Natural Heritage Area is located c. 90m south of the site. The nearest Natura 2000 site is the South Dublin Bay and River Tolka Estuary SPA, located approximately 2km to the east. There are several other Natura 2000 sites in the wider Dublin Bay area to the east.

5.4. Preliminary Examination Screening for Environmental Impact Assessment

Having regard to the developed nature of the site and its location within a serviced area, together with the limited scope of the application to the use of the property only, and the absence of any connectivity from the appeal site to any sensitive location, there is no real likelihood of significant effects on the environment arising from the 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 DCC decision has been appealed by Drumcondra Residents, c/o Rob and Leah Lanigan of 13 Drumcondra Road Lower, Dublin 9. The appeal is stated to be on behalf of residents, businesses, and neighbours who have been adversely affected by the operation of the development. It included a request for an Oral Hearing, which was subsequently refused by the Board. The grounds of appeal can be summarised under the following headings:

Material contradiction/contravention of ABP Ref. 308540

- The appeal outlines the conclusions of the Board (a) to (e) under this case. It should be noted that the appeal adds an additional conclusion (point (f))

which was not included in the Board order. Point (f) states that '*The operation of this unauthorised use is causing severe loss of amenity and deterioration of the quality of life for existing residents who live in adjoining premises and the surrounding areas*'.

- The Board's declaration completely rejected the DCC position and was a damning indictment of DCC's failure to uphold proper planning and development.
- Representatives of DCC subsequently alleged that the referral question had simply been framed in the wrong manner and could be rectified by another section 5 application.

The operation is development and does not have the required planning consent

- The applicant's agent has sought to misconstrue the definitions of 'residential' and 'hostel'. The development is described as 'residential' because a 'hostel' is 'not permissible' under the zoning objective for the site.
- The class of use was carefully considered by the Board under ABP Ref. 308540 and the Inspector's report concluded that a material change of use had occurred from 'residential' to 'class 9 of Part 4 of the 2nd schedule'. In this case the applicant has sought to create a new class of use which does not exist, i.e. 'residential accommodation for homeless persons'. The Board has already adjudicated on the matter and interpreted 'homeless accommodation' as falling under the remit of Class 9, which is not in the same class as 'residential'.

Inadequate description of use and material contravention of the zoning objective

- A 'hostel' use is neither 'permissible' nor 'open for consideration' in the Z2 zone. The Development Plan states that uses not listed as such will be deemed not to be permissible in zone Z2.
- The Inspector's report under ABP Ref. 308540 outlines that, having regard to section 178(2) of the Act of 2000 and the recent case of *Carman's Hall Community Interest Group & Ors v Dublin City Council (2017) IEHC 544*, the local authority cannot undertake development in contravention of its development plan, even if it is an emergency situation under section

179(6)(b) of the Act. The DCC decision is therefore *ultra vires* in the absence of completing the 'material contravention' process in accordance with the Act.

- The DCC assessment is plagued by contradictions, including issues relating to:
 - The presence of staff on site
 - Accepting that it is not a hostel while considering the concentration of hostels in the area
 - Confirmation that it is a DHRE facility
 - Confirmation of the presence of staff and the extent and nature of duties/services provided, including the responsibilities of a facility manager and general manager.
 - Security measures and rules/guidelines for residents.
- It belies credibility to claim that homeless accommodation with full-time staff does not provide a 'care' function and is anything other than a hostel under Class 9.

Conflict of Interest

- There is a conflict of interest between DCC's roles as both a housing authority (DRHE) and planning authority.
- Rather than comply with the Board's previous section 5 declaration, they decided to submit their own section 5 referral to themselves (P.A. Reg. Ref. 0185/21). The decision on this referral contradicts the Board's previous decision.
- The Board is referred to the court's decisions in the cases of *Killross Properties Limited v. ESB & Anor* [2016] 1 IR 541, *Grianan an Aileach Centre v. Donegal County Council* [2004] IESC 43, [2004] 2 I.R. 625, and most recently *Narconon Trust v. An Bord Pleanala* [2020] IEHC 25.
- DCC and Brimwood Ltd clearly have no confidence in the validity of the latest declaration and the current application is an attempt to regularise the development.

Misleading development description

- The layout of the rooms, including multiple occupation and internal partitions, clearly reflects a hostel use.
- A newspaper article (December 2021) reported that the applicant secured the highest pay out of any single company by the Irish Government as a commercial operator of hostels for homeless people and asylum seekers.
- The appellants experience excessive noise coming from within and outside the property; aggravated begging; unauthorised access attempts; fear of burglary and the behaviour of the residents; and disruption caused by delivery and collection vehicles.

6.2. Applicant's Response

The applicant's response to the grounds of appeal can be summarised under the following headings.

Contradiction of Section 5 Declaration

- The original section 5 question under P.A. Reg. Ref. 0313/20 & ABP Ref 308540 was irrelevant as no care is provided.
- The subsequent section 5 question under P.A. Reg. Ref. 0185/21 emphasised that the property is not being used as a Class 9 homeless hostel where care is provided. The planning authority accepted that the use of the property for homeless accommodation without the need for care should reasonably be considered as a residential building, which is acceptable in the Z2 area and is exempted development.
- A subsequent grant of permission does not contradict a section 5 declaration made by any planning authority.

Operation of the development

- The applicant and its advisers deny that it is attempting to create a use class to suit its needs.
- The use is not a Class 9 hostel where care is provided, as previously outlined and highlighted in several suggested precedent cases.

- The property provides private accommodation and no more, which does not constitute 'personal care'.
- Having regard to Dr Abraham Maslow's paper 'A theory of Human Motivation' and its definition of 'social needs', the provision of room and board on a long-term basis does not provide those true social needs certainly does not provide 'personal care'.

Proposal is inadequately and inaccurately described

- The property is one of several different types of homeless facilities (other than solely Class 9 Hostels) and the applicant has shown the concentration of such facilities in accordance with Policy QH30.
- The application does not attempt to disguise the use of the property as long-term homeless residences.
- Under P.A. Reg. Ref. 0185/21, the planning authority accepted that the use of the property for homeless accommodation without the need for care should reasonably be considered as a residential building, which is acceptable in the Z2 area.
- The presence of staff does not constitute the provision of 'care'. The practice would be consistent with the operation of up-scale apartments, hotels, B&B's, guest houses, etc.

Conflict of Interest

- No conflict arises between the planning and housing functions of DCC, as reflected in the allocation of these functions by the legislature.
- The structures and functions of the local authority are not matters which are pertinent to the current application.

Description of development

- The applicant's response to the DCC further information request has clarified that there are 17 bedrooms in the property. There is no change to the accommodation capacity of 33 persons.

6.3. Planning Authority Response

The DCC response to the grounds of appeal can be summarised as follows:

- DCC notes the Board's declaration under Ref. 308540, which was submitted on behalf of an external third party. The current application was submitted by the operators, did not refer to use as a 'hostel', and was assessed on its own merits. Therefore, the current DCC decision is not a re-determination of the previous section 5 referral declaration.
- Retention permission was sought for the use of the property as the use was already operating.
- 'Residential' is a permissible use within the Z2 zone and the planning authority determined the appropriateness of the use having regard to the provisions of the Development Plan and information on file.
- No conflict of interest exists as the DCC departments involved operate independently and decisions are made on the merits of the case, not the applicant.
- The decision was made having regard to the description of the development and the supporting documentation on file. The applicant's further information response clarified the number of bedrooms involved.

6.4. Observations

Four observations on the third-party appeal were received in objection to the proposed development. In addition to those matters already raised in the grounds of appeal, the issues raised in each submission can be summarised as follows:

Antoinette Coll

- The democratic nature of the planning process was removed.
- Not one of the residents would have their own room or living quarters and the property is in fact a hostel.
- There is no evidence that the property was used for homeless accommodation in the past. It was a pre-'63 property in 5 flats for c. 15 people.
- The application contains conflicting information about rooms and capacity.

- The stated 'utility room' is in fact an office for management, which is more akin to a Class 9 hostel rather than residential accommodation.
- The accommodation is not reasonable to cater for the proposed capacity.
- DCC/DRHE should aspire to the model put in place by the nearby Fr. Peter McVerry Trust property.
- The provision of meals and management services amounts to a 'hostel'.
- Excerpts from the Joint Oireachtas Interim Report on Homelessness (April 2021) are highlighted.
- There are over 27 homeless accommodations within 3km of the site.

J. Linnane

- This short terrace of 11 Victorian / Edwardian houses on a main thoroughfare is an unsuitable location for the development.
- The change of use has led to incidents of antisocial behaviour not previously experienced, leading to fear for the local population.
- The facility was established without consultation with local residents.
- It is not a good plan for the homeless or residents to have too many of these facilities in one area.

Carmel Sherry & Celine Byrne

- The Quality Standards Framework which applies to NGO facilities does not apply to private providers.
- There has been no indication that the private operator has any derogation from the DRHE Private Emergency Accommodation (PEA) Operator Guidelines, which require a space for visiting staff. The applicant's description of the facility is in direct contravention of the guidelines. Meals and laundry services are provided, and any use of the on-site office to comply with the Guidelines would be an additional caring option.
- A DRHE report of November 2021 detailed the range of supports provided to PEA facilities. It is unthinkable that residents would be abandoned to their own devices, which appears to occur given the length of stays beyond 3-6 months.

- A Department (DHLGH) report of November 2021 shows the increased use of PEA, which is the least monitored and does involve visiting support services.
- There is an excessive concentration of homeless facilities in the north inner city, including 347 units of family accommodation across 9 locations. A list and map of hostels is also included, based on a Garda source.
- The application is an attempt to circumvent the Board's previous declaration.
- The building appears to have been previously in use as 5 flats.
- There are inaccuracies in relation to the number of rooms / capacity.
- The statement regarding the absence of internal works appears to be inaccurate.
- The additional capacity exacerbates foul drainage problems in the area.
- There is no ventilation for some WC / shower facilities and the basement toilet block ventilates directly to the outdoor amenity area.
- No drawings or dimensions are provided for the outdoor amenity area.
- DCC were somewhat compromised by the existing contract with the owners and DRHE.

Anthony Reynolds

- The documents provided are misleading and/or inaccurate.
- No valid Fire Certificate has been provided.
- No drainage plans or authorisation has been provided by Irish Water.
- The Site Notice was inaccurate, as per the observer's original submission.
- No ownership documents were submitted.
- There are differences between the sale brochure for the building and the plans submitted with the application.
- Local property values would be devalued as a result of the decision.
- The ability of DCC to enforce the conditions of any permission is questioned given its involvement in the case.

7.0 Assessment

7.1. Introduction & Preliminary Matters

- 7.1.1. This appeal case follows on from several Section 5 declarations made by both DCC and the Board. These cases have raised challenging questions, including those relating to the nature of the facility, use classes, and exempted development provisions. At the outset, there are a number of preliminary matters raised in this case that I wish to clarify.
- 7.1.2. The previous Section 5 declarations did not determine the suitability of the proposed development in the context of the proper planning and sustainable development of the area. The section 5 process deals exclusively with the questions of 'development' and 'exempted development', based on the nature and scale of particular works and/or uses. The current appeal case relates to an application to retain the current use and such an application, in principle, could be permitted notwithstanding any previous section 5 declaration regarding 'development' or 'exempted development. That being said, I will have regard to the planning history of the site and any relevant information arising from the previous cases.
- 7.1.3. Concerns have been raised by third parties about the commencement of operation of this facility without the appropriate planning consent or public consultation procedures. In principle, I am satisfied that the current application and appeal process has provided the opportunity to address these issues.
- 7.1.4. Some third-party submissions also contend that the development involves 'works' including internal alterations and external works such as the outdoor amenity facilities. In this regard, the application is clear in that it relates to the retention of the use of the property only. Accordingly, I will limit my assessment to the question of 'use' only.
- 7.1.5. One of the observers (Anthony Reynolds) has questioned the validity of the application given the absence of a yellow site notice. I acknowledge that the Regulations require the use of a yellow notice for any application made within 6 months of a previous application. However, this relates to planning applications only and does not relate to section 5 applications (which do not require the erection of a site notice). I also note that the application was assessed by DCC and was deemed

valid in accordance with the requirements of the Regulations. I am satisfied that there are adequate drawings and details on file for the purposes of the appeal assessment and decision.

7.1.6. Concerns have been raised about the absence of a Fire Safety Certificate or an Irish Water connection agreement, particularly in light of concerns about the capacity of the sewerage system. I am satisfied that these matters will be regulated by the relevant authorities under a separate code and need not be assessed in the current appeal case.

7.1.7. I note that concerns have been raised about the planning authority's conflict of interest in the context of its role as a housing authority. This matter is not relevant to the determination of the current appeal, which will now be determined independently by the Board on the basis of a *de novo* assessment.

7.1.8. Having regard to the forgoing, and having inspected the site and examined the application details and all other documentation on file, including all of the submissions received in relation to the appeal, and having regard to relevant local/national policies and guidance, I consider that the main issues in this appeal are as follows:

- The nature and extent of the facility
- Zoning and Policy
- The standard of accommodation proposed
- Impacts on surrounding properties

7.2. The nature and extent of the facility

7.2.1. This case contains conflicting views regarding the nature and extent of the facility, and this is a key consideration in the assessment of the appeal.

7.2.2. In this context, the pertinent aspects of the applicant's case can be summarised as follows:

- The facility provides long-term residential accommodation, with 22% of the residents living there for at least 12 months and 32% for 6 months or longer. An accompanying DRHE letter (10th April 2020) states that the facility

commenced as 'emergency accommodation' and the average stay is envisaged to be 3 to 6 months.

- It comprises 17 bedrooms and accommodates 33 persons.
- It is not being used as a homeless hostel where 'care' is provided.
- Residents are free to enter and exit throughout the day like any other private tenant. The property is more a typical house rather than a homeless hostel.
- Staff are ever present, with main duties relating to cleaning, maintenance, and security.
- Residents must comply with rules/guidelines, including an 11pm curfew, minimised noise levels, and no loitering.
- An accompanying DRHE letter of 13th of May 2021, confirms that staff prepare and serve 3 meals a day, as well as providing laundry services.
- The applicant's appeal response contends that residents are provided with private rooms and no bunk beds are used.

7.2.3. The appellants and observers have challenged the applicant's interpretation of the nature and extent of the facility. Their grounds can be summarised as follows:

- The Board has already determined that this is a 'Class 9' use, which is different to 'residential'.
- The presence of staff on site and the nature of duties/services provided, including meals and management services.
- Confirmation that it is a DRHE facility.
- The application of security measures and rules/guidelines for residents.
- Lack of credibility that 'care' is not provided.
- The layout of the facility is consistent with hostel use.
- The applicant's history as a commercial operator of hostels for homeless people and asylum seekers.
- Conflicting information about the capacity of the facility.
- Potential use of the 'utility room' as an office or 'care' facilities.

- The need to accommodate visiting staff in accordance with the DRHE PEA Operator Guidelines and the reported range of supports provided to PEA facilities.

7.2.4. Having inspected the premises and had regard to the views of the various parties to this appeal, I would have outstanding questions in relation to the applicant's interpretation of the nature and extent of the facility. In particular, I would state that:

- The majority of residents (68%) have stayed for less than 6 months and the DRHE has confirmed that the facility provides 'emergency accommodation' for an average envisaged length of 3 – 6 months, which I would classify as 'short-term'. Conversely, the applicant contends that it constitutes typical 'long-term' residential accommodation.
- During my site inspection I noted that several rooms had additional bedspaces compared to that shown on the plans. Furthermore, while the plan drawings for 'room 17' indicate its use as a 'storage room', it was in use as a bedroom accommodating several bed spaces.
- The vast majority of rooms are shared, including the use of bunk beds, which is inconsistent with the applicant's appeal response.
- Given the layout and operation of the facility, including the provision of shared rooms, meals and laundry services, and the application of rules and guidelines for residents, including an 11pm curfew, I do not concur that the use is consistent with typical residential uses or a 'typical house' as suggested by the applicant.

7.2.5. Having regard to the above, I conclude that the precise nature and extent of the development is difficult to define. While the applicant contends that it is akin to long-term residential use, I consider that it is more closely related to short-term homeless accommodation use. And given the applicant's insistence that 'care' is not provided, I consider that it would be best classified as a 'hostel' under Class 6 of the 2001 Regulations, which is defined as '*Use as a residential club, a guest house or a hostel (other than a hostel where care is provided)*'. In the interest of completeness, I will review all contended uses in my assessment.

7.3 Zoning and Policy

- 7.3.1. The site is located within the 'Z2' zone, the objective for which is '*To protect and/or improve the amenities of residential conservation areas*'. Section 14.8.2 outlines that residential conservation areas have extensive groupings of buildings and associated open spaces with an attractive quality of architectural design and scale. The overall quality of the area in design and layout terms is such that it requires special care in dealing with development proposals which affect structures in such areas, both protected and non-protected. The general objective for such areas is to protect them from unsuitable new developments or works that would have a negative impact on the amenity or architectural quality of the area. The principal land-use in residential conservation areas is housing but can include a limited range of other uses. In considering other uses, the guiding principle is to enhance the architectural quality of the streetscape and the area, and to protect the residential character of the area.
- 7.3.2. The current application does not involve any works and, accordingly, does not impact on the architectural quality of the area. In terms of uses, I have already outlined my interpretation of the nature of the facility. The applicant contends that it is a 'residential' use which is a 'permissible use' within the Z2 area. The applicant also goes to lengths to highlight that 'care' is not provided within the facility and that it is not a 'class 9' homeless hostel, a view which is at odds with the Board's previous determination (ABP Ref. 308540) and the views of the third parties in this case.
- 7.3.3. The Board should note that 'Buildings for the health, safety and welfare of the public' is a 'permissible use' in the Z2 zone. Section 21.1 of Appendix 21 of the Development Plan defines this as including the use of a building for '*The provision of residential accommodation and care to people in need of care (but not the use of a dwelling house for that purpose)*', which replicates the definition of a Class 9 (a) use as per the 2001 Regulations. Therefore, despite the applicant's insistence that the facility is not a 'Class 9' use, such a use would actually be permissible in the Z2 zone.
- 7.3.4. Notwithstanding the above, the applicant has insisted that 'care' is not provided and on that basis, I have concluded that the facility can be best described as a 'Class 6' hostel. A hostel use is not specified in as 'permissible' or 'open for consideration' in

the Z2 zone and, accordingly, it would be deemed 'not to be permissible' in the Z2 area under the provisions of section 14.4 of the Development Plan.

- 7.3.5. In conclusion regarding the question of zoning, I consider that the development can be best defined as a 'Class 6' hostel, which is not permissible within the Z2 zone. Notwithstanding this, it is open to the Board to consider permitting a use which materially contravenes the Development Plan. However, given my stated concerns regarding the interpreted use of the facility as set out in the application, I consider that the Board would be granting permission for a use that would be inconsistent with actual nature and operation of the facility i.e. as a 'class 6' hostel. If the Board otherwise decides to consider the facility as a 'residential' or 'Class 9' use, then such uses would be 'permissible' within the Z2 zone.
- 7.3.6. Irrespective of the interpretation of its class of use, the development is a homeless service and Development Plan policies QH29 and QH30 apply.
- 7.3.7. Policy QH29 supports the implementation of the Homeless Action Plan Framework (HAPF) for Dublin and related initiatives to address homelessness. The latest HAPF (2019-2021) includes four main themes. The 'protection' theme aims to protect people experiencing homelessness through emergency accommodation provision and targeted support. It has two main objectives - the provision of adequate numbers of safe secure emergency accommodation beds to prevent people having to sleep rough and a targeted approach and provision of such accommodation and support services to the identified vulnerable groups. Specific actions are outlined, which includes the provisions of a range of services and supports relating to healthcare, person centred tools, housing, addiction, mental health, and probation. In conclusion, I would acknowledge that the development supports the first objective of this theme, i.e. the provision of additional beds. However, given the stated absence of 'personal care' to residents, I do not consider that the proposal is consistent with the second objective relating to the provision of support services.
- 7.3.8. Regarding Policy QH30 (and section 16.12 of the Plan), I note that the applicant has provided a map of all homeless services within a 500m radius, as well as clarifying the catchment area and management of the facility. The applicant has stated that there are three other homeless facilities within 500m of the site, which provide Supported Temporary Accommodation (STA) and accommodate 178 persons or

0.009% of the population of the area (albeit a wider area outside the 500m radius). I note that the applicant's map of facilities is generally consistent with details submitted by one of the observer parties (Carmel Sherry & Celine Byrne), which is stated to have been sourced from the Gardai.

- 7.3.9. In the wider context, I also note that the DRHE Annual Report for 2020 (published January 2022) outlines the distribution of emergency accommodation facilities throughout the city at the end of October 2020. It shows that the Dublin 9 area accounted for just 6% of the total single beds, which was much lower than the figures for D1 (35%), D2 (20.5%), D7 (19%), and D8 (16%). The D9 area also accounts for just 6% of the total family units, compared to D1 (31%), D3 (13%), D6 (16%), D8 (13%), and D12 (9%).
- 7.3.10. Having regard to the above, I do not consider that there is an over-concentration of homeless services in this area. I am satisfied that the applicant has submitted adequate details in relation to the catchment and management of the facility, and I do not consider that the proposal would conflict with Policy QH30 or section 16.12 of the Development Plan.

7.4. The standard of accommodation proposed

- 7.4.1. Again, I would state that the unusual nature and operation of the facility raises questions about how the standard of accommodation should be assessed.
- 7.4.2. The applicant contends that the use is typical of long-term residential use and describes the facility as 'a single house' or 'akin to a typical multi-unit residence'. I have previously outlined that I do not concur with this interpretation.
- 7.4.3. Notwithstanding this, section 16.10 of the Development Plan sets out the standards for residential accommodation. Given the nature and layout of the building and the applicants description of it as a 'single house', I consider that the standards for houses (section 16.10.2) would apply to any such interpretation. In terms of floor areas, the Plan refers to compliance with the principle and standards as outlined in section 5.3 of the DEHLG publication 'Quality Housing for Sustainable Communities – Best Practice Guidelines for Delivering Homes Sustaining Communities' (2007).
- 7.4.4. The space provision and room sizes for typical dwellings are outlined in Table 5.1 of the Guidelines. Understandably, it does not cater for houses of this size or capacity.

However, in light of the other standards outlined in section 5.3 of the Guidelines, I would highlight the following concerns:

- No internal living or relaxation areas are provided
- The vast majority of bedrooms have multiple occupation and inadequate privacy
- The triple-bed rooms in rooms 5, 7, & 8 have an area of just c. 14m², compared to a minimum requirement of 11.4m² for double rooms.
- The twin bed rooms in rooms 9 (c. 10m²) & 13 (c. 9.5m²) do not meet the minimum 11.4m² for double rooms
- The width of triple-bed rooms 5 and 7 (3m) barely exceeds the minimum requirement for double rooms (2.8m)
- The width of the twin rooms in rooms 9 and 11 does not meet the minimum requirement of 2.8m for double rooms
- My inspection of the premises found that some rooms have additional beds compared to those shown on the floor plans.

7.4.5. Having regard to the above, I do not consider that the proposal complies with the principles and standards outlined in the Guidelines. The lack of living room space and the extent of shared bedroom accommodation are particular concerns in this regard.

7.4.6. The Development Plan also outlines that, in relation to natural light and ventilation, glazing to all habitable rooms should be at least 20% of the room floor area and that development shall be guided by the principles of Site Layout Planning for Daylight and Sunlight, A guide to good practice (Building Research Establishment Report, 2011). The application does not include an assessment of sunlight or daylight to rooms in accordance with BRE standards. However, I do note that there are a significant proportion of rooms which do not have glazing at a rate of 20% of the room floor area.

7.4.7. In relation to private open space, the Plan states that 10m² per bedspace is normally required, resulting in a requirement for 330m². The facility includes a large rear open space which is generally in accordance with this requirement. It is also just outside the inner-city boundary, within which a lower standard of 5-8m² of space per bedspace will normally be required. Accordingly, I have no objections in this regard.

7.4.8. In conclusion, and notwithstanding that the provision that standards may be relaxed for refurbishment schemes, I consider that the development does not provide an adequate standard of accommodation for long-term residential use having regard to the deficiencies highlighted in this section.

7.4.9. In relation to the standard of accommodation for homeless services, I note that the Development Plan does not set out or refer to any particular standards. However, I have previously outlined concerns regarding the absence of supporting services for residents, which is an objective of the Homeless Action Plan Framework referenced in policy QH29 of the Development Plan. In terms of national policy, I also note that 'Housing for All' highlights the importance of an inter-agency approach to address the housing, social, and health needs of the homeless. Objective 3 of 'Housing for All' outlines a range of measures relating to the provision of care and support services, as previously outlined in section 5.1.1 of this report.

7.4.10. Regarding other homeless accommodation standards, I understand that the DRHE have adapted the National Quality Standards Framework (NQSf) in order to apply their provisions to private emergency accommodation (PEA). The DRHE's Quality Standards for Private Emergency Accommodation adopts the overarching themes of the NQSf. Theme 2 relates to 'Effective Services' being built around the individual user's needs and responding to good practice in relation to service access; referral procedures; and facilitating user's assessment, support planning and integrated working with DRHE and external support agencies. The expected outcomes include:

- Delivery of assistance in accordance with national legislation and policy
- Person-centred policies, procedures and processes
- Users are referred to the appropriate service
- Users experience continuity of service
- Services are proportionate to the needs of users
- Agencies providing integrated care and support are facilitated by the service provider.

7.4.11. Theme 4 relates to 'Health, well-being and personal development' and the expected outcomes include the following:

- Initiatives to actively promote positive health outcomes for residents

- Make arrangements with agencies to refer residents to primary and specialist health services
- Raise awareness of training, education, and employment opportunities.

7.4.12. Having regard to the foregoing, I consider that the policies and standards for private homeless accommodation, at both national and DRHE level, is strongly based on a person-centred approach towards the personal care and support of individual service users. Therefore, given the stated lack of 'care' and support services at this facility, I would have concerns that the development does not comply with the applicable policy and standards which require person-centred wraparound supports. Accordingly, I am not satisfied that the development provides an acceptable standard of accommodation and services for this homeless accommodation facility.

7.5. Impacts on surrounding properties

- 7.5.1. The appellants and observers have raised concerns about the negative impact of the facility on the residential amenities of the surrounding properties. The concerns largely relate to security, anti-social behaviour, noise, and general disturbance.
- 7.5.2. At the time of my site inspection, there was no evidence of any anti-social behaviour or disturbance in or around the property. The inspection occurred during the morning for a period of less than an hour, and I accept that it is difficult to get a full picture of conditions during such visits. However, the application is accompanied by an Operational Management Plan which outlines measures for on-site management, security, and the prevention of anti-social behaviour. A house curfew of 11pm applies, noise levels are to be kept to a minimum, no loitering is permitted, and residents who do not comply with house rules will be moved on. My inspection found that the property is well staffed, including security personnel, and there is extensive CCTV monitoring of internal and external areas. Therefore, it would appear that the behaviour of residents is appropriately monitored and managed.
- 7.5.3. Ultimately, I would accept that the homeless user group can be associated with particular vulnerabilities and needs. However, I do not believe that it can reasonably follow that homeless persons would cause unacceptable adverse impacts on the amenities of the area by reason of disturbance, behaviour or otherwise. Based on my site inspection and the information submitted by the applicant, I am satisfied that

appropriate measures are in place to manage the operation of the property and I have no objection in this regard.

7.5.4. I note that concerns have also been raised in relation to traffic disruption associated with deliveries and collections from the property. However, I consider that the traffic volumes associated with the property would be quite limited and any difficulties could be resolved through revised traffic management arrangements. Accordingly, I do not consider that refusal of permission would be warranted on this basis.

7.5.5. I also note the concerns raised about the devaluation of property in the area. However, no clear evidence has been submitted on which to base such a finding. Having regard to the assessment and conclusions outlined in this section, I am satisfied that the development would not seriously injure the amenities of the area to such an extent that would adversely affect the value of property in the vicinity of the site.

7.6. Assessment Conclusion

7.6.1. In conclusion, I would highlight fundamental concerns about the applicant's interpretation of the nature of the development. In a literal sense, I would accept that it is 'residential accommodation for homeless persons' as described in the public notices. However, a full reading of the application presents a development which is effectively a 'single house' for long-term residential use. In my opinion, the development would be best described as a 'Class 6' hostel. Therefore, I consider that a grant of permission in this case would simply retain a use which does not accurately reflect the actual use of the property. Furthermore, the extent of the use is not accurately shown in the plans submitted, particularly given the bedroom use of the attic floor level.

7.6.2. The use of the property in my opinion (i.e. a hostel) is deemed not to be permissible in the Z2 zone. And even if the property was accepted as being of typical long-term residential use, I consider that it would not provide an acceptable standard of residential accommodation, particularly having regard to the inadequate provision of bedroom accommodation, the absence of living areas, and the inadequate provision of natural light and ventilation.

- 7.6.3. Furthermore, in terms of the standard of accommodation as a homeless facility, I consider that the apparent absence of 'care' and other support services would be contrary to the local/national policy approach towards a wraparound person-centred support system for those in homeless accommodation.

8.0. Appropriate Assessment

- 8.1. The nearest Natura 2000 site is the South Dublin Bay and River Tolka Estuary SPA, located approximately 2km to the east. There are several other Natura 2000 sites in the inner Dublin Bay area including South Dublin Bay SAC, North Bull Island SPA and North Dublin Bay SAC. The site is not, therefore, located within or adjoining any Natura 2000 Sites, and there are no direct pathways between the site and the Natura 2000 network.
- 8.2. Having regard to the developed nature of the site and its location within a serviced area, together with the limited scope of the application to the use of the property only, and the separation distance to the nearest European site, I am satisfied that there is no potential for significant effects to occur on any Natura 2000 sites.
- 8.3. Having regard to the above preliminary examination, I am satisfied that no Appropriate Assessment issues arise, and I do not consider that the proposed development, either individually or in combination with other plans or projects, would be likely to have a significant effect on a European site. Accordingly, a Stage 2 Appropriate Assessment or the submission of a Natura Impact Statement is not required.

9.0 Recommendation

Having regard to the foregoing, it is recommended that permission should be refused based on the following reasons and considerations.

10.0 Reasons and Considerations

1. Having regard to the nature, layout, and operation of the property, the Board is not satisfied that the development involves a typical long-term residential use, or that it would provide an acceptable standard of long-term residential accommodation

given the inadequate bedroom accommodation provided, the absence of living room areas, and the inadequate provision of natural light and ventilation. It is considered that the use of the property can be best described as a hostel, a use which is not permissible in the Z2 Zone in accordance with the provisions of section 14.4 of the Dublin City Development Plan 2016-2022. The development would contravene materially the zoning provisions of the Development Plan and would, therefore, be contrary to the proper planning and sustainable development of the area.

2. Under Housing Policy Objective 3 of 'Housing for All – a New Housing Plan for Ireland', published by the Department of Housing, Local Government and Heritage in September 2021, a range of measures are aimed at supporting the health and care needs of those in homeless accommodation. Furthermore, Policy QH29 of the Dublin City Development Plan 2016-2022 supports the implementation of the Homeless Action Plan Framework, including its 'protection' theme and its objective to provide a range of supports and services in tandem with an increased supply of homeless accommodation. Given the apparent absence of care and support services in this facility, it is considered that the proposed development would result in a substandard form of homeless accommodation, which would be contrary to local and national housing policy and the proper planning and sustainable development of the area.

Stephen Ward
Senior Planning Inspector

16th September 2022