



An
Bord
Pleanála

Inspector's Report ABP-314334-22

Question	Whether the use of an upstairs room for a sessional Montessori class is or is not development and is or is not exempted development
Location	Perrystown Community Centre, Limekiln Lane, Perrystown, Dublin 12
Declaration	
Planning Authority	South Dublin County Council
Planning Authority Reg. Ref.	ED22/0026
Applicant for Declaration	Linda Kiernan
Planning Authority Decision	Is not exempted development
Referral	
Referred by	Applicant
Owner/ Occupier	South Dublin County Council
Observer(s)	None
Date of Site Inspection	26 th May 2023
Inspector	Philip Maguire

1.0 Site Location and Description

- 1.1. The referral site is located along and south of Limekiln Lane (L8292), between the R112 and Whitehall Road West, in Perrystown, Dublin 12. Some houses and commercial units are located on the opposite side of Limekiln Lane. Playing fields associated with Robert Emmets GAA Club and Manortown United FC lie immediately south of the referral site. The wider area is characterised by residential development.
- 1.2. The referral site consists of Perrystown and Manor Estate Community Centre, a large two-storey building which appears to have a mix of uses and occupants including the aforementioned sports clubs. There is an outdoor children's play area to the east and a surface car park to the west. The car park includes a bring bank site and c. 64 parking spaces. It has separate vehicular access points along Limekiln Lane. The community centre also has pedestrian and vehicular access points to the front.

2.0 The Question

- 2.1. The question relates to the use of a room within the community centre building as a sessional Montessori class. The matter has been referred by the applicant for the declaration. The description of the proposed development as set out in Question 4 of the application form to the Planning Authority was:

'Use of an upstairs room for a sessional Montessori class. No development of property is needed.'

- 2.2. The referral documentation includes a cover letter from Clever Clogs Montessori School, signed by the applicant, with a number of enclosures including an outline of the grounds of appeal; a service profile of the Montessori school; a Tusla Inspection Report due to a proposed change in circumstances i.e. relocation; a Tusla Guide to Fire and Planning Requirements for Early Years Services; and building floor plans.

3.0 Planning Authority Declaration

3.1. Declaration

- 3.1.1. The Planning Authority issued a declaration on 26th July 2022 which stated:

“That the applicant be informed that the proposed development of Use of an upstairs room for a sessional Montessori class [...] at Perrystown Community Centre, Limekiln Road, Perrystown, Dublin 12, D12 A26Y is development and is not considered to be exempted development under the Planning and Development Act 2000 (as amended) and the Planning and Development Regulations 2001, (as amended) and therefore does require planning permission.”

3.2. Planning Authority Reports

3.2.1. Planning Reports

- Planning Report (26/07/22): Basis for the Planning Authority decision. It considered that the change of use of part of a community centre to a sessional Montessori is a material change of use and is therefore development. It notes that the proposed change of use is not provided for under Schedule 2, Part 1, Class 14 of the Regulations. It also notes other changes of use within the same class as set out in Schedule 2, Part 4 would be exempt under Article 10 of the Regulations. It considered sessional Montessori use falls under Classes 8(b) and 8(c) ‘as a crèche’ and ‘as a day nursery’, whereas a community centre falls under Class 10(f) and therefore not exempt as it is not a change of use within any one of the classes. It concluded that the proposal is development and not exempted development.

4.0 Planning History

4.1. Referral site:

PA ref. SD06A/0705: Permission **granted** in November 2006 for a two-storey extension to the northeast elevation of the existing building etc. comprising ground floor changing rooms, toilets, storage rooms and first floor offices, gym/meeting rooms, toilets, kitchen, storage rooms (390sq.m floor area) subject to standard conditions. This permission was not implemented.

PA ref. S95A/0592: Permission **granted** in March 1996 for an extension to the western end of the existing community hall subject to standard conditions.

PA ref. ZA/0042: Permission **granted** in April 1984 for a new community hall subject to standard conditions.

4.2. Other relevant history in the area:

St. Paul's Secondary School, Limekiln Lane, Perrystown (c. 0.75km southwest)

PA ref. ED21/0075: Montessori Pre-School Sessional Service (9.30am – 12.30pm) declared **not exempt** in December 2021.

Faughs GAA Club, Wellington Lane, Templeogue (c. 1.7km south)

PA ref. ED20/0019: Use of the permitted first floor club hall as a Montessori pre-school facility (9am – 1pm) declared **not exempt** in July 2020.

5.0 Policy Context

5.1. South Dublin County Development Plan 2022-2028

5.1.1. The current Development Plan came into effect on 3rd August 2023. The Planning Authority decision of 26th July 2022 was made under the previous Plan for the period 2016-2022. This referral shall be determined under the current Plan.

5.1.2. The referral site is zoned 'Open Space' (OS) with a zoning objective '*to preserve and provide for open space and recreational amenities*'. Community centres are 'permitted in principle within this zoning'. Childcare facilities are 'open for consideration'.

5.2. Childcare Facilities Guidelines

5.2.1. The Childcare Facilities Guidelines for Planning Authorities (June, 2001) provides the following relevant definitions:

“childcare” is taken to mean full day-care and sessional facilities and services for pre-school children and school-going children out of school hours. It includes services involving care, education and socialisation opportunities for children. Thus, services such as pre-schools, naíonraí (Irish language playgroups), day-care services, crèches, playgroups, and after-school groups are encompassed by these Guidelines. Conversely childminding, schools, (primary, secondary and special) and residential centres for children are not covered by these Guidelines; and

“sessional service” is the provision of a service which offers a planned programme to pre-school children of up to 3.5 hours per session by trained personnel. Sessional services include playgroups and Montessori groups and similar services.

5.3. **Natural Heritage Designations**

5.3.1. None relevant.

6.0 **The Referral**

6.1. **Referrer’s Case**

6.1.1. The referrer’s case can be summarised as follows:

- It is stated that Perrystown Community Centre currently has planning permission to operate as a multi-purpose community centre catering for all age groups, including young adolescents with educational and occupational activity, and no development or material alterations to the existing premises is needed.
- It is submitted that the change of use for the room cannot be applied for as it is used by Clever Clogs on a part time basis and is required by the community centre for different functions in the afternoons and evenings. Changing the use of the room would render it unusable for other uses by the centre.
- It is suggested that there is ample free, off-road parking available.
- Finally, the referrer states that they are registered with Tusla and provides a background to their operation and the requirement for new premises in Perrystown Community Centre where they have operated since September 2021. As part of their re-registration with Tusla, it is stated that they require South Dublin County Council to declare that Perrystown Community Centre has planning permission to operate as a multi-functional centre including a sessional childcare service.

6.2. **Planning Authority Response**

6.2.1. The Planning Authority’s response can be summarised as follows:

- The Planning Authority confirms its decision.

- The issues raised in the appeal have been covered in the planner's report.

7.0 Statutory Provisions

7.1. The relevant provisions are set out in the Planning and Development Act 2000 (as amended) ('PDA 2000 or the Act') and the Planning and Development Regulations 2001 (as amended) ('PDR 2001 or the Regulations').

7.2. Section 2 – PDA 2000

7.2.1. Section 2(1) provides the following interpretations which are relevant:

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

“**works**” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.

7.3. Section 3 – PDA 2000

7.3.1. Section 3(1)(a) defines “development” as:

The carrying out of any works in, on, over or under land, or the making of any material change in the use of any land or structures situated on land.

7.4. Article 10 – PDR 2001

7.4.1. Article 10(1) provides that 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.

7.4.2. Article 10(2)(a) notes that a use which is ordinarily incidental to any use specified in Part 4 of Schedule 2 is not excluded from that use as an incident thereto merely by reason of its being specified in the said Part of the said Schedule as a separate use.

7.4.3. Part 4 of Schedule 2 sets out the following relevant classes of use:

CLASS 8

Use—

(a) as a health centre or clinic or for the provision of any medical or health services (but not the use of the house of a consultant or practitioner, or any building attached to the house or within the curtilage thereof, for that purpose),

(b) as a crèche,

(c) as a day nursery,

(d) as a day centre.

CLASS 10

Use as—

(a) an art gallery (but not for the sale or hire of works of art),

(b) a museum,

(c) a public library or public reading room,

(d) a public hall,

(e) an exhibition hall,

(f) a social centre, community centre or non-residential club, but not as a dance hall or concert hall.

7.5. Precedent Referral Cases

7.5.1. In ABP ref. 06D.RL.3443, the Board considered whether the use of a previous school building as an after-school/Montessori facility was or was not development and was or was not exempted development. The previous school use had ceased, and it

appeared that the building had been in use as a youth club in the interim. The Board concluded that there was a 'change of use', but this change was not 'material' in this particular case having regard to the characteristics of the site and site layout and to the character of development in the vicinity of the site, and therefore not development.

- 7.5.2. In ABP ref. 18.RL.2430 the Board considered whether the use of a house for the care of children was or was not development or was or was not exempted development. In ABP ref. 18.RL.2552 the Board considered whether the change of use of a house to a childcare facility was or was not development or was or was not exempted development. In both cases, the Board concluded that the change of use was not material having regard to *inter alia* the 'nature and scale of the use of the house'.

7.6. Precedent Judgements

Change of Use

- 7.6.1. In *Earl of Mountcharles v Meath County Council* [1996] 3 IR 417, the courts held that the staging of a music concert on the site had not become part of the normal use of that site because the activity was not sufficiently recurrent, nor did it account for a sufficiently substantial part of the total amount of the activity taking place on the land.
- 7.6.2. In *Roadstone Provinces Ltd v An Bord Pleanála* [2008] IEHC 2010, the courts approved the decision in *Galway Co Co v Lackagh Rock* (cited below) and concluded that the Board would have to consider that there had been a change in use before looking at planning considerations to determine the materiality of the identified change.

Material Change in Use

- 7.6.3. In *Monaghan County Council v Brogan* [1987] IR 333, the courts confirmed that the term "material" means material in planning terms, that is whether the issues raised by the change of use would raise matters that would normally be considered by a planning authority if it were dealing with an application for planning permission, such as "residential amenity, traffic safety or policy issues in relation to statutory plans". This decision was confirmed in *Westmeath County Council v Quirke & Sons* (unreported, 23 May 1996) HC, where the courts also noted that consideration of the materiality of a change in use means not only the use itself but also its effects.
- 7.6.4. In *Galway Co Co v Lackagh Rock Ltd* [1985] IR 120, the courts concluded that in determining whether or not a present use was materially different to a previous use,

regard must be had to matters of planning concern arising on the previous use when compared with the present use. If these matters were materially different than the nature of the present use, it must be equally materially different.

7.6.5. In *McMahon v Dublin Corporation* [1996] 3 IR 509, the courts approached the materiality of a change of use by examining the impact which the change had on the immediate neighbourhood and surrounding area.

7.6.6. In *Stanley v An Bord Pleanála* [2022] IEHC 177, the courts refused a challenge to the validity of the Board's determination that a change of use was 'material' and affirmed the authorities under *Galway Co Co*, *Monaghan Co Co* and *Roadstone Provinces*.

Factors to Consider Regarding Materiality

7.6.7. In *Cork Corporation v O'Connell* [1978] ILRM 85, the courts had regard to the large crowds of people, particularly young people, that would be attracted to the area when finding that an amusement arcade within a premises previously used as a retail hardware store was a material change in use.

7.6.8. In *Carrickhall Holdings Ltd v Dublin Corporation* [1983] ILRM 268, the courts had regard to the impact of the new use on the amenities of local residents and in particular the increased traffic, parking and noise when considering whether there had been a material change from a hotel bar to a public bar.

7.6.9. In *Westport UDC v Golden* [2002] 1 ILRM 439, the courts took into consideration the implications on traffic, noise and litter in the vicinity in deciding that a change of use from a sit-in restaurant to a fast-food outlet was a material change of use.

Planning Unit

7.6.10. In *Carroll and Colley v Brushfield Ltd* (unreported, 9 October 1992) HC, the courts held that the planning unit was the entire hotel premises when considering whether the change of use of part of the building was a change within the overall use of the building.

8.0 Assessment

8.1. Preliminary Points

8.1.1. It is evident that the submitted floor plans illustrate the community centre prior to the construction of the extension permitted under PA ref. S95A/0592. An accurate

reflection of the building footprint is illustrated on the proposed drawings under PA ref. S95A/0592 and the existing drawings under PA ref. SD06A/0705. I did not access the building to verify the internal layout and I note that the respective floor plans differ.

8.1.2. The submitted Tusla report states the following in respect of the premises:

“The service proposes to operate from one room on the first floor of the premises. Sanitary accommodation is provided in the hallway adjacent to the care room. The service will have use of a second room on the first floor and a large hall on the ground floor. A public playground is available at the side the premises.”

8.1.3. The ‘proposed drawings’ under PA ref. S95A/0592 illustrate a main stairwell to the front (western end) of the building with 3 no. activity rooms, committee, projector and store rooms, and a toilet block at first floor level. A second stairwell to the rear (eastern end) of the building provides access to a further 2 no. activity rooms and a toilet block.

8.1.4. The ‘existing drawings’ under PA ref. SD06A/0705 illustrate a main stairwell and lift in a broadly similar position, to the front of the building. This provides access to a large corridor, 2 no. meeting rooms and 2 no. storerooms. A further office/meeting room and toilet block are illustrated to the rear and accessed via the secondary stairwell.

8.1.5. Given the discrepancies in both sets of the floor plans, I do not have sufficient information before me to accurately identify the ‘upstairs room’ that is the subject of this referral. This is not critical to the assessment however, and it is equally important to note that the rooms identified on both sets of drawings are typical of community use.

8.1.6. The parent permission, granted in April 1984 under PA ref. ZA/0042, was for a new community hall to replace a previously permitted hall which was purportedly destroyed by fire. There were no restrictive conditions on the use under the parent permission other than by virtue of the development description and it is stated that the permitted community centre is currently used by a number of organisations for various uses.

8.2. **Development – Is or is not...**

8.2.1. The proposal does not involve any physical alterations to the building and no ‘works’ are proposed. This appears to be common ground between the parties. The question therefore centres on whether the proposal is a change of use and if that change would be material in planning terms. The question of materiality is one of fact and degree.

- 8.2.2. There is no statutory definition of community centre, although I note that the Oxford English Dictionary (3rd ed.) defines it as “a place providing educational or recreational activities for a neighbourhood”. Therefore, it does not typically include childcare facilities, sessional or otherwise, nor would such a use be ordinarily incidental or ancillary, notwithstanding the mix of occupants. However, in order for a particular activity to be considered as part of the normal use of land, it must be recurrent and account for a substantial part of the activity taking place¹. With stated operational hours of 0930 to 1230 Monday to Friday, 38 weeks of the year, I am satisfied that the use is sufficiently recurrent and would account for a substantial part of the activity taking place in the community centre. The proposal, therefore, is a change of use.
- 8.2.3. In determining whether this change would be material, the whole of the planning unit must be considered and not just the proposed ‘upstairs room’². Similarly, regard must be had not only to the use but also to its effects³ and whether the character of the existing use will be affected by a change which is proposed in part of the building. Equally, regard must be given to the impacts on the immediate neighbourhood and surrounding area⁴ and these impacts must be material in planning terms such as residential amenity, traffic safety or policy issues in relation to statutory plan⁵.
- 8.2.4. The referrer states that the facility would cater for 22 no. pre-school children. The submitted documentation also acknowledges that the proposed use could extend to a second room on the first floor, the ground floor hall and the outdoor play area to the side and it would not, therefore, be confined to the proposed ‘upstairs room’. It is evident from the documentation submitted that the proposal is a commercial activity.
- 8.2.5. The nature and scale of such use would generate traffic issues that are quite distinct from that of a community centre, with its normal intermittent usage. Such concentrated traffic movements are clearly a matter of planning concern⁶ notwithstanding the adjacent car park with separate access points. This has the potential to impact not only on traffic safety but also on the residential amenity of the occupants of the adjacent houses with additional noise during drop-off (before 0930) and collection

¹ *Earl of Mountcharles v Meath County Council* [1996] 3 IR 417

² *Carroll and Colley v Brushfield Ltd* (unreported, 9 October 1992) HC

³ *Westmeath County Council v Quirke & Sons* (unreported, 23 May 1996) HC

⁴ *McMahon v Dublin Corporation* [1996] 3 IR 509

⁵ *Monaghan County Council v Brogan* [1987] IR 333

⁶ *Galway Co Co v Lackagh Rock Ltd* [1985] IR 120

(after 1230) times. Added noise from the adjacent play area may also adversely impact on residential amenity if sufficiently concentrated over a given period of time.

- 8.2.6. Additional planning concerns relate to the potential for the activities of other occupants of the community centre occurring at the same time as the proposed use. This would give rise to significant traffic safety and residential amenity impacts above the current use and can therefore be distinguished from ABP ref. 06D.RL.3443, as cited above. These impacts are additional, rather than incidental or ancillary, to the community centre, are material in planning terms and therefore determinative. On balance, I consider the proposal represents a 'material change in use' and is 'development'.

8.3. Exempted Development – *Is or is not...*

- 8.3.1. Article 10(1) of the Planning Regulations provides that a change of use within any one of the classes of use specified in Schedule 2, Part 4 shall be exempted development for the purposes of the Act. Class 8(b), Part 4, Schedule 2 of the Planning Regulations relates to 'use as a crèche' and Class 8(c) relates to 'use as a day nursery', whereas a community centre falls under Class 10(f), as noted by the Planning Authority.
- 8.3.2. A "sessional Montessori class" is not expressly listed under Class 8 but it is of a type of use encompassed within the broad spectrum of childcare services as defined in the Childcare Facilities Guidelines, including sessional pre-schools and playgroups etc. It is certainly not of a type of use that is listed under Class 10, Part 4, Schedule 2. Whilst I do not agree with the Planning Authority that the proposal falls under Classes 8(b) and 8(c), I do accept that the referrer cannot avail of the exemption under Article 10(1).
- 8.3.3. I conclude, therefore, that the proposal does not constitute exempted development.

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 use of an upstairs room for a sessional Montessori class at Perrystown Community Centre, Limekiln Lane, Perrystown, Dublin 12 is or is not development or is or is not exempted development:

AND WHEREAS Linda Kiernan requested a declaration on this question from South Dublin County Council and the Council issued a declaration on the 26th day of July, 2022 stating that the matter was development and was not exempted development:

AND WHEREAS Linda Kiernan referred this declaration for review to An Bord Pleanála on the 9th day of August, 2022:

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

- (a) Sections 2(1) and 3(1)(a) of the Planning and Development Act, 2000, as amended,
- (b) Articles 10(1) and 10(2) of the Planning and Development Regulations, 2001, as amended,
- (c) Classes 8(b), 8(c) and 10(f) of Part 4 of Schedule 2 of the Planning and Development Regulations, 2001, as amended,
- (d) the planning history of the Community Centre;
- (e) the nature and scale of the use of the Community Centre; and
- (f) relevant precedent referrals and judgements.

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The proposed use is a material change in the use of the Community Centre being development that would give rise to significant additional impacts in planning terms; and
- (b) The proposed material change in the use of the Community Centre would not come within the scope of exempted development under

Article 10(1) as it would not consist of a change of use within Class 10 of Part 4 of Schedule 2 of the said Regulations.

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 an upstairs room for a sessional Montessori class at Perrystown Community Centre, Limekiln Lane, Perrystown, Dublin 12 is development and is not exempted development.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Philip Maguire

Planning Inspector

28th July 2023