



An
Bord
Pleanála

Inspector's Report ABP-315535-23

Question

Whether change of use from dwelling to homeless hostel accommodation is or is not development or is or is not exempted development.

Location

The Priory, Kiltipper Road, Tallaght, Dublin 24

Declaration

Planning Authority

South Dublin County Council

Planning Authority Reg. Ref.

ED22/0038

Applicant for Declaration

Peter McVerry Trust

Planning Authority Decision

Is exempted development

Referral

Referred by

Kiltipper Kiltalown Residents Assoc.

Owner/ Occupier

Peter McVerry Trust.

Observer(s)

None.

Date of Site Inspection

7th March 2024.

Inspector

Susan McHugh

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1.0 Site Location and Description

- 1.1. The referral site is situated on Kiltipper Road, in the area of Old Bawn, c3.7km west of the M50 at Junction 12 (Firhouse) and c45m east of its junction with Ballymana Lane. Kiltipper Road connects the R113 Old Bawn Road to the east with the N81 (via Kiltalown Lane) to the west.
- 1.2. Existing development in the vicinity of the site comprises medium density residential to the north and east while lands to the south and west are more rural in character.
- 1.3. The site (as outlined in red in the referral application) comprises a detached house with rear outbuilding known as 'The Priory'. 'The Priory' contains a single storey house and associated outbuildings which are served by a septic tank. It is set back (c20m) from the road and benefits from a large mature garden to the front and rear. 'The Priory' and associated outbuilding currently operates as a homeless hostel for men run by the Peter McVerry Trust.
- 1.4. 'The Priory' and the adjoining detached house to the east known as 'Leabeg' (currently vacant) have been subject to a recent planning application and appeal to the Board under PA Reg.Ref.SD21A/0290 ABP 314192-22.

2.0 The Question

- 2.1. The question referred by the referrer to the planning authority pursuant to Section 5(1) of the Planning and Development Act, 2000, as amended ("the Act") and subsequently referred by the referrer to the Board, for review, pursuant to Section 5(3)(a) of the Act is, as follows '*Whether the change of use which has occurred is development and if it is whether it can be considered exempted development*'.

3.0 Planning Authority Declaration

3.1. Declaration

By order dated 6th December 2022 the Planning Authority declared that the change of use from dwelling to homeless hostel accommodation is exempted development under the Planning and Development Act 2000 (as amended) and the Planning and

Development Regulations, 2001 (as amended) and therefore does not require planning permission.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The recommendation within the report of the Senior Executive Planner (December 2022), reflects the declaration issued by the planning authority and can be summarised as follows;

- The planning officer expands on the description of the question at hand, stating that the applicant seeks a declaration as to ‘whether the change of use which has occurred is development and, if it is, whether it can be considered exempted development’.
- The declaration request was split into two queries and was addressed as follows:
 - a) Is the proposal development.
- Planning and Development Act 2000
 - The planning officer outlines the definition of ‘*development*’ under Section 3(1) of the Planning and Development Act 2000 as:

“The carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land”.
 - The definition of ‘*structure*’ under Section 2(1) of the Planning and Development Act 2000 is outlined as:

“Any building, structure, excavation, or other thing constructed or made on, in or under any land, or part of a structure so defined, and –

(a) Where the context so admits, includes the land on, in or under which the structure is situated.
 - The definition of ‘*use*’ in relation to land, does not include the use of the land for the carrying out of any works thereon.
- Based on the information provided the planning officer was satisfied that the development is a change of use from dwelling to homeless hostel

accommodation, and that this change of use is material, as the character of the use has changed from a dwelling house to use as a homeless hostel, thus the change of use is 'development'.

b) Is the proposal exempted development.

- Planning and Development Regulations 2001 (as amended)
 - The planning officer examined Article 10(1) and of the Planning and Development Regulations 2001 (as amended) and stated that the planning authority was satisfied that the change of use was not exempted development.
 - Notes that 'house' and 'hostel' are not defined anywhere within the Regulations, and 'house' is not included within the classes of use, per Part 4 of Schedule 2.
 - The planning officer examined Article 10(4) and of the Planning and Development Regulations 2001 (as amended) and considered that there was insufficient information to determine whether the development is exempt.
 - The planning officer examined exemptions Under Part 1 of Schedule 2, Class 14 (f) of the Regulations. The occupancy of the unit (confirmed as 15 people) is noted and, development is not considered to be exempt.
- Planning and Development Act 2000 (as amended)
 - The planning officer considered Section 4(1)(f) of the Planning and Development Act 2000 (as amended).
 - The planning officer determined that the development is consistent with Section 4(1)(f) of the Act and is exempt development as the development has taken place on behalf of SDCC pursuant to a contract entered into by the local authority (and a service provider) acting in its capacity as a housing authority.
- Referral case ABP-308540-20
 - Notes applicants Planning Statement and reference to a Referral case decision ABP-308540-20, where the change of use from a multi-unit residential accommodation to accommodation for the homeless

constituted a material change of use and could not be considered exempt. Refer also to Section 178(2) of the Planning and Development Act 2000 (as amended) which relates to Development by Local and State Authorities.

- Agree that the change of use is considered material, this has been established by similar declarations '*by reason of providing a different service to a different user group*'.
- Notes differences between the current declaration application and ABP-308540-20, where it was determined that the change of use from residential accommodation to homeless accommodation constituted a material contravention of the Dublin City Development Plan 2016 – 2022.
- Notes that specific policies requiring certain information to be provided with applications for homeless accommodation. No such provisions are contained within the South Dublin Council Development Plan 2022 – 2028 and there is no material contravention of the Development Plan.
- South Dublin County (SDC) Development Plan 2022-2028
 - Relevant housing policies and objectives of the SDC Development Plan 2022-2028 are listed.
 - Notes policies and objectives support the delivery of homeless accommodation, but do not require information to be provided in a prescriptive manner.
 - Notes under SD21A/0290, SDCC granted permission for 10 no. one bedroom units with the intention of use for social housing by the Peter McVerry Trust. The assessment of this application noted the existing use of The Priory. It is considered, by default, the suitability of the site has been established for the current use.
- *Concludes* - Works proposed are considered to constitute development and are exempted development having regard to Section 4(1)(f) of the Planning and Development Act 2000 (as amended).

3.2.2. Other Technical Reports

- None received.

4.0 Planning History

4.1. Referral Site

PA Reg.Ref.SD15B/0202: Permission **granted** 05/08/2015 for Retention of projecting gables to front elevation, side gable exit door, ramp and handrails, rear boiler house at The Priory, to North and East Housing Association.

4.2. Referral Site – Combined with site to the east Leabeg

PA Reg.Ref.SD21A/0290 ABP 314192-22: Permission **granted** 06/12/2023 for Demolition of Leabeg, house, extensions, shed, boiler house shelter and removal of septic tank, existing Priory building not affected, demolition of buildings on the Priory site, construction of 10 houses, demolition of boundary fence and entrance walls along Kiltipper Road to both properties, new site entrance, boundary fences, automatic gates, pedestrian entrance, carparking spaces, and associated site works to Peter McVerry Trust.

4.3. Other Relevant Referrals

4.3.1. The following referrals decided by the Board are considered relevant to this case:

- **ABP Ref. 310505 & 309873** – in March 2022 the Board decided that the use of the property as a guest house which provides rooms on a nightly basis offering Bed and Breakfast to Dublin City Council/Dublin Regional Homeless Executive to accommodate homeless people at 16 Hollybrook Park (Protected Structure), Clontarf, Dublin, is not development and therefore the question of exempted development does not arise.
 - It considered that the use of the property as a guesthouse benefited from an extant and valid permission, that it was proposed to continue this use without the provision of any different services, and that the

accommodation of homeless people within the guesthouse would not result in effects which would materially change the use of the property.

- **ABP Ref. 308540** – in April 2021 the Board decided that the change of use from residential to hostel, 15/17, Lower Drumcondra Road, Dublin 9, is development and is not exempted development.
 - It should be noted that the case involved a situation whereby Dublin City Council had entered into a contract (5 years) with the owner to use the property as emergency accommodation for homeless single persons and that the owner would continue to manage the property under the supervision of the Dublin Regional Homeless Executive. The Board considered that the new use for the provision of residential accommodation and ‘care’ (as defined in Article 5 of the Regulations) was defined under Class 9 (a) of Part 4 of Schedule 2 of the Regulations and was a material change of use by reason of providing a different service to a different user group.
 - It considered that the material change of use would not come within the scope of Article 10(1) of the Regulations as it does not constitute a change of use within any one class. Furthermore, the Board considered that, in the absence of evidence of the application of Policy QH30 and section 16.12 of the Dublin City Development Plan 2016-2022 in considering the proposal to develop and change the use of the premises, the Council in entering into the contract, effected development in the city which contravenes materially the development plan contrary to the provisions of section 178(2), by failing to comply with the specific procedures for such developments, and, therefore, any exemption which might have been available under the provisions of section 4(1)(f) cannot be availed of.
- **ABP Ref. 307064** – in September 2020 the Board decided that the change of use of Westbrook House (Ennis, Co. Clare) from commercial guesthouse to a homeless person’s hostel managed by an approved housing body is development and is not exempted development.

- It should be noted that Westbrook House at the time of the referral was in the ownership of Clare County Council and operated under the management of Mid-West Simon. Again, the Board considered that the use as a homeless hostel involved the provision of 'care' and came under Class 9 (a) of Part 4 of Schedule 2 of the Regulations.
- **ABP Ref. 305515** – in February 2020 the Board decided that the change of use from a 30-bed nursing home to use as a homeless accommodation facility at 30 Haddon Road, Clontarf, Dublin 3, is development and is exempted development.
 - The Board considered that the proposed use as an inpatient treatment and recovery centre would not be inconsistent with the broad uses within Class 9 and as the nursing home, and that any differences in the types of care services provided, the age profile of the likely occupants and the greater geographical areas that would be served by the facility would not be sufficient to de-exempt this proposed change of use, pursuant to Article 10(1)(c) of the Planning and Development Regulations 2001, as amended.
- **ABP Ref. 303392** – in September 2019 the Board decided that the change of use of a monastery to use as a hub/hostel for homeless families at the Carmelite Monastery, Firhouse Road, Dublin 24, is development and is not exempted development.
 - The Board considered that the material change of use took place on behalf of South Dublin County Council (a local authority) pursuant to a contract entered into by the local authority (and a service provider) acting in its capacity as a housing authority, which comes within the scope of the exemption provided for under Section 4(1)(f) of the Act.
- **ABP Ref. 301688** – in February 2019 the Board decided that the conversion of the premises at Nos.57, 59 & 61 Cabra Road (Protected Structure) which was in use as a nursing home, to a supported homeless accommodation facility is development and is exempted development.
 - The Board considered that the material change of use would come within the scope of Article 10(1) of the Regulations, being a change of

use within Class 9 of Part 4 of Second Schedule, from Class 9(b) to Class 9(a).

- **ABP Ref. PL86.RL3032** – in March 2013 the Board decided that the amalgamation of Nos.5 & 6 Kilmantin Hill, Wicklow Town, into one unit and their change of use to a temporary accommodation centre for homeless persons is development and is not exempted development.
- **ABP Ref. PL68.RL2685** – in May 2010 the Board decided that the change of use of the first and second floors of a hotel at Nos.58 & 59 Main Street, Longford, to a hostel to accommodate refugees is development and is not exempted development.
- **ABP Ref. PL79.RL2503** – in August 2008 the Board decided that the refurbishment and change of use of a residential unit at 56 Mitchel Street, Thurles, County Tipperary, for use as emergency accommodation for not more than six persons deemed to be homeless is development and is exempted development.

5.0 Policy Context

5.1. Development Plan

- 5.1.1. The site is zoned 'RES' with a stated objective – '*To protect and/or improve residential amenity*'.
- 5.1.2. '*Residential*' and '*Residential Institution*' are permitted in principle, while '*Hotel/Hostel*' is open for consideration under this zoning objective.
- 5.1.3. Relevant policies and objectives of the South Dublin County Development Plan 2022 – 2028 are listed below:
 - **H1 Objective 3:** states '*To ensure that adequate and appropriate housing is available to meet the needs of people of all incomes and needs including traveller households, older persons, people with disabilities, and the homeless, through an appropriate mix of unit types and tenures provided in appropriate locations and in a manner appropriate to their specific needs*'.

- **H1 Objective 16:** states *'To support the provision of homeless accommodation and / or support services which is inclusive and treats all persons with dignity and respect in a balanced way located throughout the County and not concentrated in any particular areas and to incorporate consultation with other homeless support services in supporting this service.'*
- **H3 Objective 7:** states *'To ensure that those with specific housing needs, such as older persons, persons with disabilities, homeless persons, Travellers and people leaving Direct Provision, are accommodated in a manner appropriate to their specific needs and in a timely fashion.'*
- **Policy H5:** states *'Other Housing Provision Support and facilitate relevant agencies in the provision of specific emergency or other forms of housing need as such demand arises.'*
- **H5 Objective 1:** states *'To facilitate and support relevant agencies in the development of emergency accommodation that is socially inclusive, including hostels for homeless individuals of all genders and families, in a balanced way located throughout the County so as to avoid an over-concentration in any particular area.'*

5.2. Natural Heritage Designations

None relevant.

6.0 The Referral

6.1. Referrer's Case

6.1.1. A submission was made by the referrer (seeking a review by the Board of the planning authority declaration) dated 11th January 2023, and can be summarised as follows:

- *Planning Status* - Planning permission has never been granted for the change of use from dwelling house to homeless hostel accommodation which occurred c.2019.
- Concur with PA that the change of use is a 'material change of use'.

- Request referral is limited to consideration as to whether or not the development is 'exempt development'.
- Submit *Class 14(f) of the Regulations* does not apply.
- *Section 4(1)(f) of the Act* – Notes PA report on Section 5 request which concludes development is exempt under this provision.
- *Contract Agreement* - No details of the contractual agreement in place between SDC Homeless Services and the McVerry Trust provided.
 - Submit the current contract in place with the Trust is with the 'International Protection Accommodation Services' (IPAS), Department of Justice.
 - A review of the McVerry Trust's published accounts indicates that the 'Sponsoring Department' which funds the operation of The Priory is the Department of Justice, under 'Southern Region Resettlement Service'.
 - Contend that it is unclear whether Section 4(1)(f) of the Planning and Development Act 2000 (as amended) applies as it specifies 'a contract entered into by the local authority concerned'.
- Submit Section 4(1)(f) cannot be cited to exempt all development undertaken on behalf of a local authority.
- Submit that limitations which apply to local authority development under Section 4(1)(f) do not apply in this case.
- Permission granted by PA under SD21A/0290 has been appealed to the Board by the Referrer. Unauthorised use of a separate building to the rear of 'the Priory' has been raised as a concern previously by the PA with no apparent resolution.
- *Part 8 of the Regulations* –
 - Note provisions of Part 8 of the Regulations, Article 80(1)(k), and contend that the costs of the 'use', which is the 'development' far exceed €126,000, and therefore the change of use is not exempt development and should have been subject to local authority consenting procedures under Part 8.

- *Contrary to CDP* - The use at this location is in contravention of Development Plan policies H1(Objective 3) and H5(Objective 1) and the residential zoning objective.
- Submit that the subject site is not an 'appropriate location' for this type of development/use, particularly in the context of the additional accommodation proposed under SD21A/0290, represents an inappropriate 'overconcentration' of homeless accommodation in this peripheral and poorly serviced area.
- *Foul Drainage* - Reliance of the facility on an ageing domestic-scale septic tank raises serious concerns regarding the significant increase in load, which also serves the accommodation to the rear of the Priory its compliance with the Development Plan's wastewater objectives. Capacity & loading on / question whether WWTS complies with Policy IE2 Objective 10 of the CDP. Concern re health risks which may arise.
- *PA Assessment* - Contend that a full and robust assessment of the developments compliance with the CDP has not been carried out by the PA.
- Submit the application of Section 4(1)(f) is limited by Section 178 of the Act.

6.2. **Planning Authority Response**

- The planning authority did not respond to the referrer's submission.

6.3. **Owner/ occupier's response**

- No response received.

6.4. **Further Responses**

- None.

7.0 **Statutory Provisions**

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

7.1.1. **Section 2(1)** of the Act states the following:

- ‘*development*’ has the meaning assigned to it by Section 3;
- ‘*structure*’ means any building, structure, excavation, or other thing constructed or made on, in or under land, or any part of a structure so defined;
- ‘*works*’ includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal’

7.1.2. **Section 3(1)** of the Act states that:

- ‘*development*’ means, except where the context otherwise requires, the carrying out of works on, in, over or under land or the making of any material change in the use of any structures or over land’.

7.1.3. **Section 4(1)** of the Act sets out various forms and circumstances in which development is exempted development for the purposes of the Act, including:

- **Section 4(1)(f)** states that ‘*development carried out on behalf of, or jointly or in partnership with, a local authority, pursuant to a contract entered into by the local authority concerned, whether in its capacity as a planning authority or in any other capacity*’.

7.1.4. **Section 4(2)** of the Act provides that ‘*the Minister may, by regulations, provide for any class of development to be exempted development.*’ The main regulations made under this provision are the Planning and Development Regulations 2001, as amended.

7.1.5. **Section 178(2)** of the Act 2000 (as amended) relates to Development by Local and State Authorities. This section states:

- ‘*The corporation of a county or other borough shall not effect any development in the borough which contravenes materially the development plan.*’

7.2. **Planning and Development Regulations, 2001 (as amended)**

7.2.1. **Article 5(1)** states:

“*care*” means ‘*personal care, including help with physical, intellectual, or social needs*’

7.2.2. **Article 6(1)** states:

Subject to Article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.

7.2.3. **Article 10(1)** states:

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.

7.2.4. **Article 10(4)** states:

'Development consisting of the use of not more than 4 bedrooms in a house, where each bedroom is used for the accommodation of not more than 4 persons as overnight guest accommodation, shall be exempted development for the purposes of the Act, provided that such development would not contravene a condition attached to a permission under the Act or be inconsistent with any use specified or included in such a permission.'

7.2.5. **Part 1 of Schedule 2** sets out Exempted Development classes for exempted development general to which Article 6(1) refers:

Change of use

CLASS 14

(f) exempts a change of use *'from use as a house, to use as a residence for persons with an intellectual or physical disability or mental illness and persons providing care for such persons.'*

To benefit from this exemption, *'The number of persons with an intellectual or physical disability or a mental illness living in any such residence shall not exceed 6 and the number of resident carers shall not exceed 2.'*

- 7.2.6. **Part 4 of Schedule 2** sets out Exempted Development - Classes of Use to which Article 10(1) refers:

CLASS 6

Use as a residential club, a guest house or a hostel (other than a hostel where care is provided)

CLASS 9 Use -

(a) for the provision of residential accommodation and care to people in need of care (but not the use of a house for that purpose),

(b) as a hospital or nursing home,

(c) as a residential school, residential college or residential training centre.

8.0 Assessment

8.1. Introduction

- 8.1.1. The purpose of this referral is not to determine the acceptability or otherwise of the matters raised in respect of the proper planning and sustainable development of the area, but rather whether or not the matter in question constitutes development, and if so, falls within the scope of exempted development within the meaning of the relevant legislation.

- 8.1.2. The question to be determined by the Board relates only to the 'use' of the property and does not include the carrying out of any 'works'. I note that certain works to 'The Priory' were subject of a retention application under PA Reg.Ref.SD15B/0202 granted permission in 2015, but I am satisfied that these works do not form part of the current question.

8.2. Is or is not development

- 8.2.1. The initial matter to consider is the nature of the former use of the premises, based on the information and submissions on the file. The referrer asserts that the subject

change of use from dwelling house to homeless hostel accommodation which occurred c.2019 has never been granted planning permission.

- 8.2.2. As mentioned above the retention application under PA Reg.Ref.SD15B/0202 granted permission in 2015 related to works to the existing dwellinghouse only. The planners report refers to the 'detached single storey dwelling' and 'detached building to its rear used as a guesthouse accommodation'. The application was made in the name of the North and East Housing Association.
- 8.2.3. Condition no. 3 of PA Reg.Ref.SD15B/0202 refers specifically to permission for retention relating to the projecting gabled porch to the front of the dwelling house, the side gable exit door, ramp and handrails, and rear boiler house. I can confirm from my site inspection that these works have been implemented on site.
- 8.2.4. As this is a referral sought by a Third Party the current owner/occupier/operator Peter McVerry Trust has not been party to the Referral, nor have they made any submissions to the Board. Consequently, there appears to be limited information on file as to the former use of the property apart from publicly available planning documents relating to the previous planning applications on the PA website.
- 8.2.5. The PA notes in their assessment on the current Section 5 referral that the Dublin Region Homeless Executive was previously issued with a Freedom of Information request to determine the number of people that can be facilitated at the unit. It was established that 15 people can be accommodated at the property. This information was provided by the Dublin Region Homeless Executive in the form of a letter, and this was confirmed by South Dublin County Council (SDCC) Homeless Services.
- 8.2.6. The PA considered that the accommodation of up to 16 people could be considered exempt under Article 10(4) of the of the Planning and Development Regulations depending on the arrangement of accommodation and number of bedrooms in the house. The PA concluded that there was insufficient information to determine whether the development is exempt under of Article 10(4) of the Regulations.
- 8.2.7. I note the planning application made by the Peter McVerry Trust under PA Reg.Ref.SD21A/0290 and third-party appeal to the Board under ABP 314192-22 by the referrer in this case. The proposed development as described in the public notices (as it relates to the site of the referral) states that the existing Priory building is not affected. The report of the planning inspector in this case makes reference to

the concurrent Section 5 Referral by the third-party appellant. The report of the planning inspector also refers to the use of 'The Priory' as a hostel and acknowledges that some doubt exists as to the planning status of same.

- 8.2.8. Condition no. 3 of the recent decision of the Board under ABP 314192-22 dated 6th December 2023 states that the units shall be managed by a registered Approved Housing Body or another housing authority, as otherwise agreed in writing with the planning authority.
- 8.2.9. I can confirm from my site visit that the existing house 'The Priory' comprises 6 no. bedrooms. Each bedroom (no. 2-6) includes two no. single bunk beds apart from bedroom no. 1 which is a single room with a single bed. The house can, therefore, accommodate 11 no. persons in mainly ensuite bedrooms. The house comprises, front office and reception area, communal living area, kitchen, laundry room, first aid room, and communal bathroom. On the day of my site visit there were two staff members on duty, on behalf of the Peter McVerry Trust.
- 8.2.10. The outbuilding to the rear comprises one large bedroom with four no. single bunk beds. This bedroom is accessed via a communal living/dining/kitchen area. Condition no. 3 of planning permission granted under Reg.Ref.SD15B/0202 states, 'this permission does not include the detached structure in the rear garden of the subject dwelling used as guest accommodation'. It would appeal therefore that the use of this structure was already established but excluded from the permission granted.
- 8.2.11. While it is unclear when the use of the residential property commenced as a multiple residential building it is currently being used for the purposes of providing emergency accommodation for single homeless adult men. The total no. of beds available is 15no. (11 no. in 'The Priory' and 4 no. in the outbuilding).
- 8.2.12. Section 3(1) of the Planning and Development Act, 2000 (as amended) states that 'development' means, except where the context otherwise requires, the carrying out of works on, in, over or under land or the making of any material change in the use of any structures or over land".
- 8.2.13. Based on my own examination of floor plan drawings submitted under PA Reg Ref SD15B/0202, and my own site inspection it is clear that works have occurred internally within the main house 'The Priory'. However, it is also clear that there is no

increase in the number of bedrooms (which remains as 6) and this includes for an associated increase in the number of shower rooms for the facility. Similarly, there appears to be no increase in the number of bedrooms (which remains as 1) in the outbuilding. It is also clear that no major works have been carried out to the external elevations of the building.

8.2.14. Section 3 of the Planning and Development Act, 2000, requires that in order for a change of use to constitute development, it must be a material change of use. There is no statutory definition of 'material change of use'; however, it is linked to the degree of a change and the associated impacts which are determined on the individual merits of a case.

8.2.15. I note the test proffered by Barron, J in *The County of Galway v Lackagh Rock Ltd* [1984 21 MCA] in the determining of whether or not a material change of use has occurred. In this case, Barron, J considered that 'in determining whether or not a present use was materially different from a use being made on the appointed day one must look at matters which the planning authority would take into consideration if a planning application were made on both dates and if these matters were materially different than the present use must be equally materially different.

8.2.16. In this case it is clear that a material change of use has occurred on site i.e., from use as a residential development to use for the accommodation of single homeless adults. In my opinion this use is determined under Class 9 of Schedule 2 Part 4 of the Planning and Development Regulations 2001 (as amended) - 'for the provision of residential accommodation and care to people in need of care (but not the use of a house for that purpose)'.

8.2.17. Accordingly, I consider the change of use from 'residential' to a use 'for the provision of residential accommodation and care to people in need of care' a material change of use and that this together with the associated works to the outbuilding at The Priory, Kiltipper Road, Old Bawn, Dublin would constitute development as defined for the purposes of the Act. This is not disputed by the Referrer or the PA.

8.3. Is or is not exempted development

8.3.1. The subject site is currently used as a homeless hostel for men run by the Peter McVerry Trust. The former use of the property was as a single residential unit.

- 8.3.2. Article 10(1) of the Regulations states that development, which consists of a change of use within one of the classes of use specified in Part 4 of Schedule 2, shall be exempted development for the purposes of the Act. Therefore, the change from one use to another within the same use class does not require planning permission.
- 8.3.3. The development constitutes a change of use between two classes, from the former use (residential) to its current use for the provision of residential accommodation and care to people in need of care (Class 9 of Part 4 of the 2nd Schedule), which in my opinion is a material change of use by reason of providing a different service (homeless accommodation) to a different user group (homeless persons). In my view this material change of use would not come within the scope of Article 10(1) of the Planning and Development Regulations 2001, as amended, as it does not constitute a change of use within any one class and therefore would not be considered exempt development.
- 8.3.4. In terms of the exemption claimed (by the PA), I have examined the use in terms of the provisions set out under of Article 10 the Regulations, including Parts 1 and 4 of Schedule 2 to the Regulations.
- 8.3.5. Article 10(4) states ‘Development consisting of the use of not more than 4 bedrooms in a house, where each bedroom is used for the accommodation of not more than 4 persons as overnight guest accommodation, shall be exempted development for the purposes of the Act, provided that such development would not contravene a condition attached to a permission under the Act or be inconsistent with any use specified or included in such a permission.’
- 8.3.6. The PA note that while the accommodation of up to 16 people could be considered exempt under Article 10(4) depending on the arrangement of accommodation and number of bedrooms in the house. It was determined by the PA that insufficient information was available.
- 8.3.7. Having examined this exemption in light of the current case this is not considered relevant, as the current residence / accommodation for the homeless is not limited to 4 bedrooms (7 bedrooms from my site visit) and therefore the development is not exempt.

- 8.3.8. The Regulations define ‘care’ as ‘personal care, including help with physical, intellectual or social needs’, which is an important distinction with regard to the classes of use set out in Part 4, Schedule 2, of the Regulations.
- 8.3.9. Class 6 includes ‘*Use as a residential club, a guesthouse or a hostel (other than a hostel where care is provided)*’, while Class 9 (a) includes use ‘*for the provision of residential accommodation and care to people in need of care (but not the use of a house for that purpose)*’.
- 8.3.10. Several similar referral cases, some of which are referenced in section 4 of this report, have relied on the question of whether or not ‘care’ is provided, and by extension, whether or not the use comes within Class 9 (a).
- 8.3.11. In this case, I consider the current use of the property (for homeless accommodation) outlined in the referrer’s submission and emergency accommodation for single homeless adults, includes for the provision of care to residents, which would not fall within the scope of Class 6 or Class 9 of Part 4 of the Second Schedule to the Planning and Development Regulations 2001, as amended.

8.4. Local Authority Development

- 8.4.1. Given the previous involvement of the Dublin Region Homeless Executive, and issues raised by the Referrer in this case, I propose to address the question of Local Authority development. The DRHE is provided by Dublin City Council as the lead statutory local authority in the response to homelessness in Dublin and adopts a shared service approach across South Dublin County Council, Fingal County Council and Dún Laoghaire-Rathdown County Council.
- 8.4.2. The PA notes Section 4(1)(f) of the Planning and Development Act 2000 (as amended), which states that ‘development carried out on behalf of, or jointly or in partnership with, a local authority that is a planning authority, pursuant to a contract entered into by the local authority concerned, whether in its capacity as a planning authority or in any other capacity’ shall be exempted development for the purposes of the Act.
- 8.4.3. The PA note that it has been confirmed with South Dublin County Council Homeless Services that a Service Level Agreement (SLA) has been in place since 2019 with the Peter McVerry Trust to manage 15 bedspaces in Kiltipper on behalf of SDCC.

- 8.4.4. On this basis, the PA considered that the development is consistent with Section 4(1)(f) of the regulations and is exempt as the development has taken place on behalf of SDCC pursuant to a contract entered into by the local authority (as a service provider) acting in its capacity as a housing authority.
- 8.4.5. It is submitted by the Referrer that limitations which apply to local authority development under Section 4(1)(f) of the Planning and Development Act do not apply in this case, and that Section 4(1)(f) cannot be cited to exempt all development undertaken on behalf of a local authority.
- 8.4.6. The Referrer contends that Section 4(1)(f) may not apply in this instance as it specifies 'a contract entered into by a local authority concerned'. The Referrer notes that no details of the contractual agreement in place between SDC Homeless Services and the McVerry Trust are provided by the Housing section of the PA.
- 8.4.7. Following an examination of the information submitted by the agent acting on behalf of the Referrer (received by the Board on 11th January 2023) I note that a contract in place was agreed between the Trust and the 'International Protection Accommodation Services' (IPAS), Department of Justice.
- 8.4.8. The Referrer also notes that provisions of Part 8 of the Planning and Development Regulations and Article 80(1)(k). It is submitted that the costs of the 'use', which is the 'development' far exceed €126,000, and therefore the change of use is not exempt development and should have been subject to local authority consenting procedures under Part 8.
- 8.4.9. I have had regard to the Referrers case and details submitted in respect of the annual running costs and would submit to the Board that this argument is tenuous. In my opinion PA's routinely engage the services of various agencies and Departments to undertake and manage various services on their behalf. While I note the PA have not made further submissions to the Board in response to the Referrers case nor do I think it appropriate to consider the costs of managing the homeless accommodation service without input from the PA.
- 8.4.10. I consider that the proposal is being carried out on behalf of, or jointly or in partnership with the local authority pursuant to a contract and that the legislative provisions relating to local authority development do apply in this case.

8.5. Restrictions on exempted development

- 8.5.1. In the event that the Board considers that the proposal constitutes development on behalf of, or jointly or in partnership with, a local authority in accordance with the terms of Section 4(1)(f) of the Act, it will have to consider the provisions of Section 178 (2) of the Act, whereby the council of a city shall not effect any development in the city which contravenes materially the development plan.
- 8.5.2. The Referrer submits that the use of the property at this location is in contravention of Development Plan Housing policies H1(Objective 3) and H5(Objective 1), the residential zoning objective for the site, and Policy IE2 Objective 10 in respect of health risks which may arise.
- 8.5.3. The site is zoned 'RES' with a stated objective 'to protect and/or improve residential amenity', within which 'residential' and 'residential institution' are permitted in principle and 'hotel/hostel' is open for consideration under the current SDC Development Plan. I am satisfied that the existing residential use is consistent with the zoning objective for the site.
- 8.5.4. In terms of compliance with County Development Plan Housing policies H1 (Objective 3) and H5 (Objective 1) referred to by the referrer, I concur with the PA and am also satisfied that the existing use which provides accommodation for the homeless is entirely consistent with the relevant housing policies.
- 8.5.5. While issues raised by the referrer as to the appropriateness of the location for such a use and contention that it represents an overconcentration of homeless accommodation at this location, along with issues raised in relation to foul drainage are noted, these are outside the remit of assessment in relation to a Section 5 Referral. I am satisfied that the PA carried out a comprehensive assessment of the referral case and had due regard to the County Development Plan policies.
- 8.5.6. I am therefore satisfied that the subject referral is not in contravention of the County Development Plan and therefore Section 178 (2) of the Act does not apply.

8.6. Environmental Impact Assessment

- 8.6.1. Having regard to the limited nature and scale of the development, as referenced in the questions above, and the absence of any connectivity from the referral 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.

8.7. Appropriate Assessment

- 8.7.1. Having regard to the existing development on site, the minor nature of the development referenced in the questions above, the location of the referral site in a serviced area and the separation distance 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.

8.8. Conclusion

- 8.8.1. In conclusion what has been determined under this referral is that the current use as accommodation for the homeless, which falls under Class 9 of Part 4 of the Second Schedule to the Planning and Development Regulations 2001, as amended, constitutes a change of use from the former exclusively residential use, and in my opinion this constitutes a material change of use by reason of providing a different service, to a different user group and this material change of use would not come within the scope of Article 10(1) of the Planning and Development Regulations 2001, as amended, as it does not constitute a change of use within any one class. In view of the foregoing, I am of the opinion that the works carried out constitute development, that is not exempted development and no restrictions can be reasonably applied.

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 from dwelling to homeless hostel accommodation is or is not development or is or is not exempted development.

AND WHEREAS Kiltipper Kiltalown Residents Association requested a declaration on this question from South Dublin County Council and the Council issued a declaration on the 6th day of December 2022 stating that the matter was development and was exempted development:

AND WHEREAS Kiltipper Kiltalown Residents Association referred this declaration for review to An Bord Pleanála on the 11th day of January, 2023:

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

- (a) Section 2(1), 3(1), 4(1)(f), and 178(2) of the Planning and Development Act, 2000, as amended,
- (b) Article 5(1), and Article 6(1) of the Planning and Development Regulations, 2001, as amended,
- (c) Parts 1 and 4 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (d) The provisions of the South Dublin County Development Plan 2022 – 2028,
- (e) the planning history of the site,
- (f) the pattern of development in the area:

AND WHEREAS An Bord Pleanála has concluded that:

- (a) the change of use from residential accommodation use on site comprising 7 bedrooms to the current use on site as accommodation

for the homeless comprising of 7 bedrooms with 15 bed spaces constitutes development;

- (b) the current use constitutes a change of use from residential use to a use for 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, which is a material change of use by reason of providing a different service to a different user group;
- (c) the provision of the support described above falls within the scope of 'care' as defined at Article 5 of the Planning and Development Regulations 2001, as amended, namely personal care including help with social needs;

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3) (a) of the Planning and Development Act 2000, as amended, hereby decides that the change of use from dwelling to homeless hostel accommodation 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.

Susan McHugh
Senior Planning Inspector

25th March 2024