



An
Bord
Pleanála

Inspector's Report ABP-315729-23

Question

Whether or not the use of the gallery room at the first-floor at Northover Hall, St. Patrick's National School, Harbour Road Dalkey, Co. Dublin, as a Montessori School providing early childhood education, is/or is not development and or is/or is not exempted development.

Location

St. Patrick's National School, Harbour Road Dalkey, Co. Dublin.

Declaration

Planning Authority

Dun Laoghaire Rathdown County Council

Planning Authority Reg. Ref.

13922

Applicant for Declaration

Smart Cookies Montessori.

Planning Authority Decision

Is not exempted development.

Referral

Referred by

Smart Cookies Montessori.

Owner/ Occupier

St Patrick's National School.

Observer(s)

None.

Date of Site Inspection

24th January 2024

Inspector

Terence McLellan

1.0 Site Location and Description

- 1.1. The subject site refers to Northover Hall, St Patrick's National School, Harbour Road, Dalkey. The existing building is part single/part 1.5 storey and accommodates the Northover Hall, a Parish Centre, and St Patrick's National School. Part of the subject building is listed on the Register of Protected Structures as Dalkey National School (Ref. 1426). The school building has been extended previously to the south west but retains its linear layout. Other buildings on the site include St Patrick's Church of Ireland Church and The Rectory, both of which are protected structures (ref. 1425 and ref. 1429 respectively).
- 1.2. St Patricks Church sits in an elevated position relative to the school and benefits from a linking building to the school, which bridges the path and provides covered, level access between the church and the school. Although a single contiguous building, the buildings constituent parts appear to include The Lodge, Northover Hall, and the remainder of the school building south of the enclosed link to the church.
- 1.3. From my site inspection it is clear that the building has a degree of shared functionality, with the Parish Centre and Northover Hall being located to the north east of the bridge link to St Patrick's Church, and the National School located on the south west of the link.

2.0 The Question

- 2.1. The question has been referred to the Board as to whether or not the use of the Gallery Room at the first floor at Northover Hall, St. Patrick's National School, as a Montessori School providing early childhood education, is or is not development and/or, is or is not exempted development.

3.0 Planning Authority Declaration

3.1. Declaration

- 3.1.1. Dun Laoghaire-Rathdown County Council issued a Notification of Declaration on the 13th January 2023 that the use of the gallery room as a Montessori School constitutes development and is not exempted development.

3.2. Planning Authority Reports

3.2.1. The Planner's Report was issued on the 13th January 2023. The relevant points of note are as follows:

- The use of the gallery room as a Montessori School would constitute a material change of use and is therefore considered to be development as defined in Section 3(1) of the Act.
- The report acknowledges that Northover Hall forms part of the grounds of St Patrick's National School, which has been on site since 1870 and is therefore an established use.
- The report notes the submission's reference to the fact that both Montessori and primary schools conform to the definition of a school in terms of the Planning and Development Regulations, but states that no planning history is available demonstrating use of any part of the site as a Montessori School.
- While the established use may be as a primary school, the subject development, comprising the use of the gallery room at the first floor of the Northover Hall of the existing primary school, is considered to constitute a material change of use for which there are no exemptions in the legislative criteria.
- Notes that no details of the number of children accommodated by the Montessori have been provided, and that this information would be required in the event that the development was subject to any further consideration as exempted development.

3.2.2. **Other Technical Reports**

3.2.3. None.

4.0 Planning History

Subject Site

4.1.1. **Planning Authority Reference - D96A/0493:** Permission was granted by Dun Laoghaire-Rathdown County Council in November 1996 for the demolition of the existing two storey extension to Parish Hall/school and construction of a new two

storey school and Parish Centre with enclosed link to Church. This development has been completed.

Previous Declarations

- 4.1.2. **Planning Authority Reference – 13022:** A declaration was issued by Dun Laoghaire-Rathdown County Council in December 2022 that use of the gallery room at the first floor of the Northover Hall as a Montessori School, providing early childhood education, would constitute development and would not be exempted development.

Relevant Precedent Cases

- 4.1.3. **ABP Ref - RL3443:** This related to the use of a previous school building as an afterschool/ Montessori facility. The Board decided that the use as described was not development, as follows:

- There was no provision for exemption within any of the classes as set out in Part 4 of Schedule 2 of PDR 2001 for a change of use from a previous school building to an after school and Montessori facility under the exempted development provisions, and therefore the use of the building as a Montessori school constituted a change of use, but in this particular case it was not a material change of use and as such was not development.

5.0 Policy Context

5.1. Development Plan

Dun Laoghaire-Rathdown County Development Plan 2022-2028

- 5.1.1. The subject site is zoned SNI (Sustainable Neighbourhood Infrastructure), where the stated objective is to protect, improve and encourage the provision of sustainable neighbourhood infrastructure.
- 5.1.2. Part of the school building is listed on the Register of Protected Structures as Dalkey National School (ref. 1426). Other Protected Structures on the site include St Patrick's Church of Ireland Church (ref.1425), and The Rectory (ref. 1429).

5.2. Natural Heritage Designations

5.2.1. None of relevance.

6.0 The Referral

6.1. Referrer's Case

6.1.1. The referrer requests the Board to review the Declaration of the Planning Authority in a submission by Armstrong Planning of 12 Clarinda Park North, Dun Laoghaire, Co Dublin, received by the Board on the 7th February 2023. The grounds for review are summarised as follows:

- The Gallery Room and Northover Hall form part of the grounds of St Patrick's National School and the entire school site has been in use as a school since 1870. The use predates the 1964 Planning Act and is therefore the established use.
- The decision of the Council has provided no explanation or analysis explaining why the use amounts to a material change of use.
- Under Section 2 of Part 1 of the Education Act, the term 'school' is defined as follows:

“an establishment which:

- (a) Provides primary education to its students and which may also provide early childhood education, or
 - (b) Provides post primary education to its students and which may also provide courses in adult, continuing, or vocational education or vocational training.
- A Montessori School is not a creche or a day care centre, it is a school. A change of use from a Primary School to a Montessori School does not amount to a material change of use and is therefore not development and does not require an exemption.
 - Even if the use was considered development, the use of the Gallery Room as a Montessori School would be ancillary to the overall planning unit as a school.

- The gallery room is used as a Montessori classroom between 8:30 and 13:00 Monday to Friday term time. Outside of these hours it is used for a variety of school purposes.
- There is no reasonable basis to assert that a new planning unit has been created within an existing school by using part of the school to provide early childhood education for four and a half hours per day.
- A planning unit may be used for several activities, a single primary use and any number of ancillary uses.
- The use of part of the existing school as a Montessori School conforms with the established use, does not amount to a material change of use, and is therefore not development.

6.2. Planning Authority Response

6.2.1. No response on file.

6.3. Owner/ occupier's response

6.3.1. A response has been received from Henry Rooke of the Management Committee of St Patricks Parish Dalkey. The response is summarised as follows:

- The Montessori provides early childhood education from the Gallery Room in the multi-purpose building which is shared by St Patrick's Church Parish and St Patrick's National School.
- Much of the parish premises within the building are made available and used regularly by the school. This arrangement has been in place for many years and works well.
- Fully supportive of the request for a Section 5 Declaration.

6.4. Further Responses

6.4.1. None.

7.0 Statutory Provisions

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

7.1.1. In order to assess whether or not the activity constitutes development that is exempted development, regard must be had to the following items of legislation:

7.1.2. Section 2 (1) of Part I provides the following interpretations:

“development” has the meaning assigned to it by Section 3, and “develop” shall be construed accordingly.

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

7.1.3. Section 3 (1) states as follows:

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

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

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

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

7.2.1. Article 5 (1) confirms that ‘school’ has the meaning assigned to it by the Education Act 1998.

7.2.2. Article 6 (1) of the Planning and Development Regulations states as follows:

(1) 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.

7.2.3. Article 10 (1) states 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.

7.2.4. Article (2)(a) states that a use which is ordinarily incidental to any use specified in Part 4 of Schedule 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.

7.2.5. Schedule 2, Part 4 – Exempted Development – Classes of Use

Class 7

Use –

(a) for public worship or religious instruction,

(b) for the social or recreational activities of a religious body,

(c) as a monastery or convent.

7.2.6. The Classes of use set out in Schedule 2; Part 4, do not include any use (school) which is covered by the present referral.

8.0 Assessment

8.1. Is or is not development

8.1.1. At the outset I would acknowledge the apparent shared function of parts of the building, and the co-location of the Parish Hall/Parish Centre and St Patrick's National School. However, in my opinion there is a clear distinction between these functions,

despite the multipurpose use of some of the spaces. Key to this is the 1996 planning permission for the new school building/Parish Centre. On this permission I note that two separate entrances are provided, with the north east entrance being designated as the Parish Centre entrance, and the south west entrance being designated as the main school entrance. The Montessori School is accessed via the Parish Centre entrance.

8.1.2. Although there is no physical separation within the building itself, the elevational drawings approved on the 1996 permission do show a clear distinction between the spaces, with the multipurpose hall shown to the north east, the new Parish Centre shown centrally to the north of the bridge link to St Patrick's Church, and the National School shown to the south west.

8.1.3. I acknowledge that some sharing of facilities takes place between the Parish Centre and the school, including some office accommodation and toilet facilities. However, this appears to be on an ad hoc basis and in my opinion, it is clear that the Gallery Room and meeting room in question are located within the part of the building that primarily functions as the Parish Centre, as opposed to the National School, with the bridge link clearly separating the two functions. This is also evident from the on-site signage, with the subject Montessori School being located within the Parish Centre part of the building. I am therefore satisfied that a change of use has occurred from the primary function of this space as part of the Parish Centre and that this change of use would be material. As such, I am of the opinion that the proposal does constitute development.

8.2. Is or is not exempted development

8.2.1. The exempted development provisions considered relevant that relate to a change of use in this instance are set out in Article 10 and Part 4, Class 7 of Schedule 2 of the Planning and Development Regulations and are referenced above.

8.2.2. The change of use from a use for the social or recreational activities of a religious body, Class 7 (b), to a Montessori School, is not provided for under Part 4 of Schedule 2 of the Planning and Development Regulations.

8.2.3. Given that a change of use to a Montessori School does not benefit from the provisions set out under Article 10 and Part 4 of Schedule 2 of the Planning and Development

Regulations, it is concluded that the change of use constitutes a change of use that is 'material', and that it constitutes 'development' for the purposes of the Planning and Development Act, and that it is not 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 or not the use of the Gallery Room at the first floor at Northover Hall, St. Patrick's National School, as a Montessori School providing early childhood education, is or is not development and/or, is or is not exempted development.

AND WHEREAS Smart Cookies Montessori requested a declaration on this question from Dun Laoghaire-Rathdown County Council and the Council issued a declaration on the 13th day of January 2023 stating that the matter was development and was not exempted development:

AND WHEREAS Smart Cookies Montessori referred this declaration for review to An Bord Pleanála on the 7th day of February, 2023:

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

- (a) Sections 2(1) and 3(1) of the Planning and Development Act, 2000, as amended;
- (b) Article 10 of the Planning and Development Regulations 2001, as amended;
- (c) Class 7 of Part 4 of Schedule 2 of the Planning and Development Regulations 2001, as amended.

(d) the planning history of the site and the documentation submitted with the referral.

AND WHEREAS An Bord Pleanála has concluded that:

- (a) There is no provision for exemption within any of the Classes as set out in Part 4 of Schedule 2 of the Planning and Development Regulations, 2001 for a change of use to a Montessori School under the exempted development provisions of the Planning and Development Regulations,
- (b) The use of the building as a Montessori School constitutes a material change of use to that associated with the Parish Centre, and
- (c) The material change of use thereby constitutes 'development' within the meaning of section 3 of the Planning and Development Act.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 of the 2000 Act (as amended), hereby decides that the use of the Gallery Room and Meeting Room at Northover Hall as a Montessori School constitutes development that 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.

Terence McLellan
Senior Planning Inspector

21st February 2024