



An  
Bord  
Pleanála

## Inspector's Report ABP319436-24

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### Question

Whether the change of use at the Paramount Hotel from use as a 'hotel' to use as a 'hostel (non-tourist) where care or short-term homeless accommodation is provided' is or is not development or is or is not exempted development.

### Location

The Paramount Hotel, Numbers 7-8 and 9 & 10 Exchange Street Upper, and Numbers 1, 27-28 and 29-30 Parliament Street, Dublin 2.

### Declaration

Planning Authority

Dublin City Council.

Planning Authority Reference.

0050/24

Applicant for Declaration

Old City Management Limited

### Type of Application

Section 5 referral.

### Planning Authority Decision

Is Exempted Development.

### Referral

Third Party

### Referred by

Old City Management Limited

### Owner

Amprey Limited

|                                |                                      |
|--------------------------------|--------------------------------------|
| <b>Occupier</b>                | Amprey Limited                       |
| <b>Observer(s)</b>             | Amprey Limited, The Paramount Hotel. |
| <b>Date of Site Inspection</b> | 17 <sup>th</sup> September 2024.     |
| <b>Inspector</b>               | Derek Daly.                          |

## **1.0 Site Location and Description**

- 1.1. The proposed site is located in the central area of Dublin and referred to as the Paramount Hotel. The site has frontage onto 3 different streets within the Temple Bar Area at Nos. 7,8,9 and 10 Exchange Street Upper; Nos.1, 27,28,29 and 30 Parliament Street and Essex Gate.
- 1.2. On the site are a group of four storey buildings referred to as the Paramount Hotel. There is a licenced premises and restaurant the Turks Head which occupies the ground floor corner site of Parliament Street and Essex Gate. The general area is characterised by a mix of commercial uses.
- 1.3. A number of the buildings on the site, Nos. 27, 28 and 31 Parliament Street, 2 Essex Gate and Nos. 9 and 10 Exchange Street Upper are protected structures.

## **2.0 The Question**

- 2.1. The question before the Board relates to whether the change of use at the Paramount Hotel from use as a “hotel” to use as a “hostel” (non-tourist) where care or short term homeless accommodation is provided is development and whether it is exempted development.

## **3.0 Planning Authority Declaration**

### **3.1. Declaration**

- 3.1.1. Dublin City Council issued a declaration (Ref: 0050/24) with the following reason;  
  
The Planning Authority considers that no development by reason of works or by reason of a material change of use has taken place at this premises and that the continued use of the premises as hotel use is considered exempt from the requirement to seek planning permission.

The declaration indicated that in the order that the above proposed development is exempt from the requirement to obtain planning permission under Section 32 of the Planning and Development Act 2000 (as amended).

### **3.2. Planning Authority Reports**

- 3.2.1. Planning Report dated 7<sup>th</sup> October 2024 refers to provisions of the city development plan, planning history, relevant legislative provisions, to submissions received and an assessment of the matters raised in the referral and considers that;

*“there are no structural changes associated with the proposal.*

*Thus, the proposal does not constitute “development” by reason of works arising. Schedule 2, Part 1 Exempted Development – General, Class 14 states that a change of use as a hotel, to use as a hostel (other than a hostel where care is provided) is exempted development.*

*Part 2, Article 5 of the Planning and Development Regulations (as amended) defines care as: “care” means personal care, including help with physical, intellectual or social needs.”*

*A complaint was lodged with DCC Enforcement section (E0969/23) in relation to the change of use. This file was closed as it was considered that no deviation from the approved use took place.*

*It would appear, based on the submitted documentation that the building will continue operating as a hotel and the provision of short-term accommodation for homeless people, in which the rooms are leased on a nightly basis is provided to guests, would not constitute a material change of use for the premises. In addition, no works are proposed to the building, the management of the staff will remain constant, regular hotel duties shall be provided, no care will be provided to occupants of the rooms and there is unlikely to be an adverse impact on the proper planning and sustainable development of the area.*

*On this basis the Planning Authority considers that no development by reason of works or by reason of a material change of use has taken place”.*

*The report concludes with a recommendation that “the Planning Authority considers that no development by reason of works or by reason of a material change of use has taken place at this premises and that the continued use of the premises as hotel use is considered exempt from the requirement to seek planning permission”.*

## **4.0 Planning History**

- 4.1. The site has an extensive planning history and is recorded in the planning report.

4.2. ABP Ref. No 319100-24 / P.A. Ref. No.4260/23:

Planning permission refused on lands at Nos. 27-32 Parliament Street (nos. 27, 28 & 31 being protected structures) Dublin 2, 1-2 Essex Gate (both protected structures) Dublin 8, 7-10 Exchange Street Upper (nos. 9 & 10 being protected structures) Dublin 8. The overall development would result in a hotel bedroom count of 108 no. bedrooms (66 existing and 42 proposed) and includes all associated alterations to the existing hotel services. The decision of the planning authority is the subject of a current first part appeal in relation to the planning authority's decision.

4.3. P.A. Ref. No 4597/1:

Split decision. Planning Permission was granted for the following in accordance with the conditions attached:

- Facade alterations at ground level of Nos. 30 & 29 Parliament Street with new proposed door to existing shop front;
- Change of use from first to fourth floor of the existing north facing stairwell to 4 no. hotel bedrooms (one at each of the floor level) and
- Change of use at fifth floor level from linen store to hotel bedroom and small internal reconfigurations of linen and cleaner store around the eastern stairwell

Planning Permission was refused for the addition of a 294.2sqm sixth floor level comprising 8 no. hotel bedrooms access via 2 stairwells, 2 lifts and a service lift.

4.4. P.A. Ref. No.3778/17

Planning permission granted permission for a proposed development subject to conditions which included the demolition of 240 m<sup>2</sup> floor area, the renovation of 4,308 m<sup>2</sup> and the provision of 1,478 m<sup>2</sup> new floor area, resulting in a 127 No. bedroom hotel with a total gross floor area of 5,768 m<sup>2</sup>, with ancillary bar at Basement Level; ancillary bar, restaurant, reception and foyer at Ground Floor Level; 127 No. bedrooms at first to seventh floor level; and ancillary hotel facilities and ancillary space (ancillary space includes areas such as circulation cores (lifts and stairs), from basement to seventh floor level.

4.5. P.A. Ref. No 4598/19:

Planning permission was granted for

- a) façade alterations at ground level Nos. 30 & 29 Parliament Street with new proposed door to existing shop front,
- b) change of use from first to fourth floor of the existing north facing stairwell to 4 no. hotel bedrooms (one at each of the floor level), and
- c) change of use at fifth floor level linen store to hotel bedroom and small internal reconfigurations of linen and cleaner store around the eastern stairwell.

The total amount of change of use floor space equated to 68m<sup>2</sup>. The hotel bedroom count increased from previously approved 117 bedrooms (as permitted with Reg. Ref. 3778/17) to 122 bedrooms over 6 storeys.

4.6. There is also a history of enforcement on the site

P.A. Enforcement Ref. No: E0969/23 in relation to an alleged change of use from hotel to homeless hostel at Paramount Hotel and this case indicated as closed.

4.7. Other planning history referred to in submissions.

4.7.1. ABP Ref. No 308540-20

Whether the change of use from residential to hostel, at 15/17, Lower Drumcondra Road, Dublin, 9 is or is not development or is or is not exempted development.

In this referral An Bord Pleanála concluded that:

- (a) the 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, is a material change of use by reason of providing a different service to a different user group, and is, therefore, development,
- (b) 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,
- (c) the 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,

(d) 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, and

(e) there are no other exemptions available for the material change of use within existing legislation

and An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3) (a) of the 2000 Act, hereby decides that the change of use from residential use to a hostel for homeless accommodation at 15/17 Lower Drumcondra Road, Dublin is development and is not exempted development.

#### 4.7.2. ABP 307064-20

Whether the change of use of Westbrook House from a commercial guesthouse to a homeless hostel run by an approved housing body at Westbrook House, Gort Road, Ennis, Co. Clare is or is not development and is or is not exempted development.

In this referral An Bord Pleanála concluded that:

- (a) the permitted use on site is as a guesthouse and is, therefore, a use coming within the scope of Class 6 of Part 4 of the Second Schedule to the Planning and Development Regulations 2001, as amended, namely use as a guesthouse;
- (b) the current use is as a homeless hostel wherein the approved housing body provides support to the residents. This support is stated to include, 'supporting them to address any presenting challenges that may inhibit accessing private rental accommodation or transitioning to more permanent solutions', as recorded in an email correspondence from Clare County Council dated 18th March, 2020, on file;
- (c) (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';

- (d) the current use does not therefore come within the scope of Class 6 of Part 4 of the Second Schedule to the Planning and Development Regulations 2001, as amended, namely use as a hostel (other than a hostel where care is provided) as the current use includes the provision of care to residents and instead falls within the scope of Class 9 of Part 4 of the Second Schedule to the Planning and Development Regulations 2001, as amended, namely the provision of residential accommodation and care to people in need of care;
- (e) the current use, therefore, constitutes a change of use from the permitted use and which is a material change of use by reason of providing a different service to a different user group;
- (f) 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;
- (g) there are no other exemptions available for this material change of use within existing legislation:

An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3) (a) of the 2000 Act, hereby decides that the change of use of Westbrook House from a commercial guesthouse to a homeless hostel run by an approved housing body at Westbrook House, Gort Road, Ennis, County Clare is development and is not exempted development.

## **5.0 Policy Context**

### **5.1. Local Planning Policy**

- 5.1.1. The relevant plan is the Dublin City Development Plan 2022-2028.
- 5.1.2. The site is located within the zoning Z5 with the objective “To consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity.”
- 5.1.3. The subject site is partially within a Conservation Area with reference to the structures along the Parliament Street elevation. Nos. 27, 28 and 31 Parliament Street; Nos.1 and 2 Essex Gate and Nos. 9 and 10 Exchange Street Upper are listed as protected structures.



5.1.4. Chapter 15 refer to development standards

5.1.5. Section 15.13.9 refer to Hostels / Sheltered Accommodation / Family Hubs and that *“family hubs are emergency accommodation facilities for families who become homeless and who have no alternative other than commercial hotels. Family hubs are not long term facilities and will act only as temporary accommodation until housing can be provided under social housing supports, as supply becomes available an over-concentration of non-tourist hostel accommodation, homeless accommodation, social support institutions and family hubs can potentially undermine the sustainability of a neighbourhood and so there must be an appropriate balance in the further provision of such developments”*.

5.1.6. Section 15.14 refers to Commercial Development/Miscellaneous and section 15.14.1 specifically to Hotels and Aparthotels with a provision *to ensure a balance is achieved between the requirement to provide for adequate levels of visitor accommodation and other uses in the city such as residential, social, cultural and economic uses, ... hotels and aparthotels will be considered on a case by case basis having regard to the location of the site and existing hotel provision in the area.*

Section 15.14.1.1 Hotel Development and that *“hotel developments are encouraged to provide for publically accessible facilities such as café, restaurant and bar uses to generate activity at street level throughout the day and night. Hotels are also encouraged to provide a mix of publically accessible uses vertically throughout the building such as roof terrace restaurant and bars to further generate activity hotel room size and layout should be designed and to ensure a high level of amenity is obtained to accommodate both short and long stay durations”*.

5.1.7. Volume 2 section 1.0 of Appendix 15 refers to definitions.

A Hotel is defined as a *“building, or part thereof, where sleeping accommodation, meals and other refreshments and entertainment, conference facilities, etc., are available to residents and non-residents, and where there is a minimum of twenty rooms en-suite. Function rooms may also be incorporated as part of the use. A hotel includes an aparthotel. An aparthotel is a building, or part thereof, containing a minimum of eight self-serviced short-term accommodation units that share a reception area. The building is professionally managed in the same manner as a hotel, where accommodation is provided in the form of apartments or suites within a*

*fully serviced building, offering the comfort and security of a hotel with the amenity of a fully furnished apartment”.*

A Hostel (Tourist) is defined as a *“building, or part thereof, which would provide meals/ refreshments, sleeping accommodation and entertainment to residents/ tourists only, and is other than a hostel where care or short term homeless accommodation is provided”.*

A non-tourist hostel is not defined. Buildings for the Health, Safety or Welfare of the Public is defined as *“use of a building, or part thereof, as a health centre or clinic or for the provision of any medical or health services (but not the use of a house of a consultant or practitioner; or any building attached to the house or within the curtilage thereof, for that purpose), hospital, nursing home, day centre and any other 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); ♣ The use as a residential school, college or training centre”.*

## 5.2. Natural Heritage Designations

None relevant. The site is not within a Natura Site or directly connected with a Natura Site.

## 6.0 The Referral

### 6.1. Referrer's Case

- 6.1.1. The referrer outlines the question to be addressed in the referral as to whether the change of use at the Paramount Hotel from use as a “hotel” to use as a “hostel” (non-tourist) where care or short term homeless accommodation is provided is development and whether it is exempted development and the question concerned only the use of the site and explicitly did not concern any works.
- 6.1.2. Reference is made to the Planning Authority's rationale and that the reasons and considerations did not set out any reasons for reaching this decision or relevant considerations but paraphrased the planning report.
- 6.1.3. The planning report failed to have any regard to the case law precedent which was referred to in the declaration request and declined with the arguments advanced which referred to

- Use as a hotel, use as a hostel (Tourist) are separate and distinct land use categories for the purpose of planning and development control.
- The exempted development provisions of the Planning and Development Regulations allow for a change of use between hotel and hostel (Tourist) without the need for planning permission because they provide similar services to similar user groups.
- Hotels and non-tourist hostels provide services to different user groups.
- The development plan clearly acknowledges the distinction between these two uses referring specifically to section 15.13.9 and sets out a clear expectation that a planning application would be required for a proposed hostel (non-tourist) use.

6.1.4. Reference is made to the site formerly in use as a hotel and is currently in use as a hostel (non-tourist) where short term homeless accommodation is provided (without the benefit of planning permission).

6.1.5. Reference is made to the site's planning history and that the use of the site as a hotel had been abandoned and the building is not available for booking by members of the public for hotel accommodation. The property has been leased and used for short term homeless accommodation.

6.1.6. Reference is made to the enforcement case and that the findings of the enforcement section was flagrantly wrong in its decision.

The position in the enforcement response is that a material change has not occurred because the premises continues to provide accommodation to guests on a nightly basis who happen to be homeless, hotel duties continue to be provided and care is provided to occupants.

6.1.7. In relation to care being provided the planners report misinterpreted the declaration request which was to determine whether the change of use as a hostel (non-tourist) where care or short term accommodation is provided is development and not where care **for** short term homeless accommodation is provided. (Bold and underlining is that of the referrer). This misinterpretation permitted the Planning Authority to predicate its assessment on the question of whether care is provided and avoid the

question of whether the use of the premises for homeless accommodation amounts to a material change of use.

- 6.1.8. The owners and planning authority have been careful to argue no care is provided and that no material change of use has occurred therefore in light of Class 14 of the Regulations but there is evidence that care is provided or has been provided by social care staff on the premises.

It is also indicated by the referrer that provision of homeless accommodation is a social need and reference is made to Part 5 Article 5 of the Regulations in this regard.

Reliance on Class 14 is therefore absurd as it in effect denies that homeless accommodation is a social care issue and which is identified as an issue in many plans and policies specifically addressing homelessness.

In effect addressing homelessness involves a comprehensive social care approach in contrast to hotels which are meeting a commercial need and not a social need.

- 6.1.9. The referrer in table 1 of the submission outlines distinctions in services provided and user groups between hotels and hostel (non-tourist) and that different services are provided.

The development plan also clearly distinguishes between a hotel and hostel (non-tourist) and reference is made to section 1.0 of Appendix 15, sections. 15.4.1 15.14.1.1 and 6.5.6 as they relate to hotels.

Hostels (non-tourist) are not defined but buildings for the health, safety or welfare of the public are defined which does include the provision of accommodation and care of people in need of care and this definition is relevant to the section 5 request.

Section 15.13.9 and policy objective QHSN28 of the development plan does make specific reference to hostels/sheltered accommodation/family hubs and sets out criteria in relation to location and requirements.

- 6.1.10. In relation to the issue of change of use would impact on the proper planning and development of the area and whether a material change of use has occurred case law has determined that a change of use is material if the character of the first use is substantially different in planning terms.

The contention of the planning authority that giving the hotel over to homeless accommodation is unlikely to result in an adverse impact is disputed and notes changes in the area in relation to anti-social behaviour and impacts on the area.

As already indicated the difference between a hotel and hostel (non-tourist) is significant in relation to services provided, facilities and user groups and considered material.

Hotels can provide accommodation to homeless people but there would be a point where a material change of use is deemed to have occurred.

6.1.11. Reference is made to ABP 308540-20 and 307064-20 in relation to change of use.

6.1.12. It is contended that the scale and intensity of the change of use amounts to a material change of use and is therefore development.

6.1.13. The issue of whether it is exempted development is referred to and that there is no mechanism to argue change of use from a hotel to a hostel is exempt under Article 10 of the Regulations.

6.1.14. It is also contended that the development is not exempted development with reference to Schedule 2 Part 1 Class 14 as it has been demonstrated that homeless accommodation is a social need and meets the definition of care under Part 2 Article 5 of the Regulations and cannot be considered as exempt or within the scope of Schedule 2 Part 1 Class 14.

6.1.15. The submission also includes documentation initially submitted to the Planning Authority.

## **6.2. Owner/Occupier Response**

6.2.1. A response was received from the owner in relation to referral made to the Board. In summary the response refers to;

6.2.2. The owner concurs with the planning authority decision and reiterates no change of use has occurred aside from the socio-economic class associated with the inhabitants occupying the hotel bedrooms. Further if a change of use was considered to have occurred this would constitute exempted development under Part 4 Schedule 2 Class 14 which sets out exempted development consisting of a change of use as specified under Article 10(1).

6.2.3. The issues as raised are submitted to the planning authority and there is no basis for concluding that a material change of use has taken place.

6.2.4. The use of the site as a hotel is established and in use since 1999.

6.2.5. The owner has a contract in place to provide short-term accommodation to homeless individuals dating back initially to April 2020 during the Covid period and currently is in a short term contract since June 2023. This has enabled the continued use of the hotel and supporting the hotel's ongoing operation as the Dublin Regional Homeless Executive (DRHE) sends a list of guests that will be staying at the hotel.

Food is provided from the hotel kitchen for guests and meals are prepared for patrons of the Turk's Head bar.

6.2.6. Reference is made to the site's planning history.

6.2.7. The response addresses the third party referral under a number of headings.

Abandonment of hotel use.

- The assertion of abandonment is incorrect and refuted.
- Reference in this regard is made to the decision of Kildare County Council v Goode 2 I.R. 495 referencing the view of Barron J *that abandonment is the objective sign of a decision not continue further with the development.*
- There must be clear objective evidence to cease the use in question and the continuous and active investments in hotel upgrades unequivocally demonstrate this and a current live application and past investment in this regard.
- There is no objective sign to not continue with the use of the property as a hotel which is physically maintained as a hotel and no planning application has been made for an alternative use of the property.

Provision of care

- The assertion of provision of on-site social care staff 24/7 is unfounded in relation to the organisation stated.
- Contracts have been in place with Dublin City Council and DRHE.

- Absolutely no care element as defined by Article 5 in the referral submission is provided.
- The typical length of stay is approximately 10 nights.

#### Change of use from Hotel to Hostel (Non Tourist)

- A change of use as stated by the referrer is refuted.
- The premises continues to operate as a hotel as rooms are leased on a nightly basis.
- The owner retains responsibility for the management of the hotel and staff and hotel duties are carried out by staff
- No care element is provided.
- No approved housing body is involved.
- There is no change other than the socio-economic class associated with the inhabitants and there is no planning legislation which restricts the use of a hotel to any socio-economic group or who provides funds for stays in the hotel.
- The enforcement officer response the continuity of hotel operations.

#### Planning Legislation

- None of the limitations of Article 10(1) of the Planning Regulations apply as the use remains unchanged and no contravention of a condition of a planning permission has occurred.
- Class 6 of Part 4 of Schedule 2 does not apply as the current and continuing use is a hotel and not a hostel or guesthouse.
- If it is considered that a change of use has occurred the development would be considered exempt under the provisions of Article 6 and Class 14 (g) of Part 1 of Schedule 2.
- The references made to ABP 308540-20 and 307064-20 are not comparable to this case as there is clear distinctions between residential, guest house and hotel uses and in the two cases both had the provision of care and no care is provided.

- Reference is also made to EXPP 0330/21 where the use of a hotel for the provision of short-term homeless accommodation was considered to be a continued use of the premises.
- Reference is made to a legal submission accompanying the response and supporting the contention of the intention and legal framework of Class 14(g) as of particular benefit in clarifying the planning status of hotels that provide accommodation for homeless persons.
- No material change of use has occurred and if it is considered has occurred it is exempted development under Class 14.

6.2.8. The response also includes a Counsel submission on matters raised in the referral which refer in summary to;

- The present use to accommodate homeless persons is within its present use.
- If considered a change of use it would exempted development under Class 14(g) of the Planning Regulations.
- Reference is made to a recent High Court Case *Leitrim CC v Dromaprop Ltd* IEHC 233 which addresses many of the issues raised in the referral.
- There is no abandonment of use and every case of alleged abandonment turns on its own facts and also existing use is not easily displaced and judgements outlined in the submission support this.
- The hotel has never closed there are proposals for further upgrading.
- The accommodation of homeless people is within hotel use and there is no rigid definition of a hotel. The High Court Case *Leitrim CC v Dromaprop Ltd* IEHC 233 would support this.
- The question of whether or not care is irrelevant but care was an issue in the APB cases referred to in the referral but care is not provided on the premises which is the subject of this referral.
- There is no material change of use and therefore no development.
- If deemed to be a change of use it is exempt under class 14(g) by reason of the language of class 14(g); the Ministers statement to the Joint Oireachtas that Class 14(g) will be of particular benefit in clarifying the planning status of



hotels that provide accommodation for homeless persons; the ordinary meaning of “hostel” and that no care is provided within the definition of Article 5.

## **7.0 Statutory Provisions**

### **7.1. Planning and Development Act, 2000**

#### Section 2 – Interpretation

“development” has the meaning assigned to it by section 3 and ‘develop’ shall be construed accordingly.

“exempted development” has the meaning specified in section 4.

“unauthorised use” means, in relation to land, use commenced on or after 1 October 1964, being a use, which is a material change in use of any structure or other land and being development other than-

(a) Exempted development (within the meaning of section 4 of the Act of 1963 or section 4 of this Act), or

(b) Development which is the subject of a permission granted under Part IV of the Act of 1963 or under section 34, 37G, 37N or 293 of this Act being a permission which has not been revoked, and which is carried out in compliance with that permission or any condition to which that permission is subject.

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

(a) where the context so admits, includes the land on, in or under which the structure is situate, and...

Hostel is not defined but referred to in the definition of "student accommodation" means a building or part thereof used, or to be used, for the sole purpose (subject to paragraph (b)) of providing residential accommodation to students during academic term times, whether or not provided by a relevant provider (within the meaning of the Qualifications and Quality Assurance (Education and Training) Act 2012), and that is not used, or to be used—

(a) as permanent residential accommodation, or

(b) as a hotel, hostel, apart-hotel or similar type accommodation other than for the purposes of providing residential accommodation to tourists or visitors outside of academic term times;

### Section 3 – Development

In this Act, except where the context otherwise requires, "development" means—

(1) (a) 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,

### Section 4 – Exempted Development

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

Section 4 (2) (a) The Minister may by regulations provide for any class of development to be exempted development for the purposes of this Act.

Section 5 (1) states: If any question arises as to what, in any particular case, is or is not development or is or is not exempted development within the meaning of this Act, any person may, on payment of the prescribed fee, request in writing from the relevant planning authority a declaration on that question, and that person shall provide to the planning authority any information necessary to enable the authority to make its decision on the matter. In assessing Section 5 applications regard is given to Section 3 (1), which states 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.

## 7.2. Planning and Development Regulations, 2001

### 7.2.1. Part 2 Article 5 – Exempted Development Interpretation for this Part.

"business premises" means—

(b) a hotel, hostel (other than a hostel where care is provided) or public house,

"care" means personal care, including help with physical, intellectual or social needs;

"excluded premises" means—

(b) any guest house or other premises (not being a hotel or a hostel) providing overnight guest accommodation, block of flats or apartments, club, or boarding house,

#### 7.2.2. Article 6 Part 2 – Exempted Development

Article 6 refers to exempted development and Article 6(1) indicates

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 9 refers to restrictions on exemption.

9. (1) Development to which article 6 relates shall not be exempted development for the purposes of the Act— (a) if the carrying out of such development would—

(i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,

#### 7.2.4. Article 10.

Article 10 sets out the conditions in which a change of use does not require planning permission as follows:

10(1) 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.

#### 7.2.5. Part 1 of Schedule 2 refers to change of use and outlines changes of use which are considered to be exempted development.

General Class 14 Development consisting of a change of use—

(g) from use as a hotel, to use as a hostel (other than a hostel where care is provided),

(h) from use as a hotel, motel, hostel, guesthouse, holiday accommodation, convent, monastery, Defence Forces barracks or other premises or residential institution providing overnight accommodation, or part thereof, or from the change of use specified in paragraph (i) of the said premises or institution, or part thereof, to use as accommodation for protected persons,

(i) from use as a hotel, motel, hostel, guesthouse, holiday accommodation, convent, monastery, Defence Forces barracks or other premises or residential institution providing overnight accommodation, or part thereof, or from the change of use specified in paragraph (h) of the said premises or institution, or part thereof, to use as an emergency reception and orientation centre for protected persons.

Conditions and limitations in relation to (h) and (i)

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.

(j) from the change of use specified in paragraph (h) or (i) or both, to the permitted use of the premises immediately prior to the change of use specified in the said paragraph (h) or (i) or both.

Conditions and limitations in relation to (j)

Class 14(j) shall not apply after a period of 3 years from the date of the commencement of the change of use specified in Class 14(h) or (i) or both, whichever date is the earliest.

#### 7.2.6. Part 4 Schedule 2 Article 10 Classes of Use

Part 4 of Schedule 2 of the Regulations Exempted development outlines Classes of Use which and exemptions within each individual specified class.

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. The purpose of this referral is not to determine the acceptability or otherwise of the development referred to in the question but rather whether or not the matter in question constitutes development, and if so, falls within the scope of exempted development.
- 8.2. The question put forward by the referrer relates to whether the change of use at the Paramount Hotel from use as a “hotel” to use as a “hostel” (non-tourist) where care or short term homeless accommodation is provided is development and whether it is exempted development.

It is noted that the referrer has raised the planning authority referring to works in their assessment of the referral and the question concerned only the use of the site and explicitly did not concern any works.

The planning reference to works would appear to relate to the consideration of the definition of development as specified in section 3 of the Planning and Development Act 2000 as amended where "development" means 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 and the Planning Authority considered that no development by reason of works or by reason of a material change of use has taken place.

Having reviewed the submissions and documentation there is no issue in relation to works having occurred on the premises and the primary issue raised in relation to the referral is whether a change of use has occurred to the premises in question.

There is equally no dispute in relation to planning history of the site that the site has an authorised use as a hotel, that planning permission has been granted for this use on the site and the site subsequent to the initial and subsequent planning permissions has operated as a hotel.

8.3. Is or is not development.

8.3.1. Based on the definition of development in Section 3(1) (a) in summary the contention of the referrer is;

- that in its current use has altered in a material change in use from a hotel to use as a “hostel” (non-tourist) where care or short term homeless accommodation is provided.
- In support of this contention the referrer considers that use as a hotel, use as a hostel (Tourist) are separate and distinct land use categories for the purpose of planning and development control as defined in the current City Development Plan.
- The exempted development provisions of the Planning and Development Regulations allow for a change of use between hotel and hostel (Tourist) without the need for planning permission because they provide similar services to similar user groups; that hotels and non-tourist hostels provide services to different user groups.
- The contention is also that the use of the site as a hotel had been abandoned and the building is not available for booking by members of the public for hotel accommodation.
- Reference is also raised to the issue of care is provided and there is evidence that care is provided or has been provided by social care staff on the premises; that homeless accommodation is a social care issue and in effect addressing homelessness involves a comprehensive social care approach in contrast to hotels which are meeting a commercial need and not a social need.
- In relation to the issue of change of use would impact on the proper planning and development of the area and whether a material change of use has occurred the difference between a hotel and hostel (non-tourist) is significant in relation to services provided, facilities and user groups and considered material. Hotels can provide accommodation to homeless people but there would be a point where a material change of use is deemed to have occurred.

- It is also contended that the development is not exempted development with reference to Schedule 2 Part 1 Class 14 as it has been demonstrated that homeless accommodation is a social need and meets the definition of care under Part 2 Article 5 of the Regulations and cannot be considered as exempt or within the scope of Schedule 2 Part 1 Class 14.

8.3.2. The owner of the premises has made a response submission to the matters raised in the referrer submission and in summary has indicated;

- No change of use has occurred aside from the socio-economic class associated with the inhabitants occupying the hotel bedrooms and there is no planning legislation which restricts the use of a hotel to any socio-economic group or who provides funds for stays in the hotel.
- Further if a change of use was considered to have occurred this would constitute exempted development under Part 4 Schedule 2 Class 14 which sets out exempted development consisting of a change of use as specified under Article 10(1).
- There is no basis for concluding that a material change of use has taken place, the use of the site as a hotel is established and in use since 1999; the owner has a contract in place to provide short-term accommodation to homeless individuals dating back initially to April 2020 during the Covid period and currently is in a short term contract since June 2023. Food is provided from the hotel kitchen for guests and meals are prepared for patrons of the Turk's Head bar.
- The assertion of abandonment is incorrect and refuted.
- The assertion of provision of on-site social care staff 24/7 is unfounded and absolutely no care element as defined by Article 5 in the referral submission is provided. No care element is provided and no approved housing body is involved
- The owner retains responsibility for the management of the hotel and staff and hotel duties are carried out by staff
- No material change of use has occurred and therefore no development and if it is considered has occurred it is exempted development under Class 14.

- 8.3.3. In relation to the issue of use I would note as indicated there is an established use of the premises as a hotel and the planning history of the site reflects this. The documentation submitted would indicate that the premises continues in use as a hotel and the assertion of abandonment of the hotel use is therefore incorrect. The premises continues to operate as a hotel as rooms are leased on a nightly basis. There is no change other than the socio-economic class associated with the inhabitants and there is no planning or other legislation which restricts the use of a hotel to any socio-economic group or who provides funds for stays in the hotel. The owner retains responsibility for the management of the hotel and staff and hotel duties are carried out by staff.
- 8.3.4. Specifically in relation to the issue of care the owner has contended that the assertion of provision of on-site social care staff 24/7 is unfounded and no care element is provided and no approved housing body is involved.
- 8.3.5. It is noted that having reviewed the statutory provisions of the Planning Act and Planning Regulations as amended there is a distinction between a hotel, a hostel and a hostel other than a hostel where care is provided as defined by Article 5 of the Planning and Development Regulations 2001 as amended. This distinction is also reflected in Part 1 of Schedule 2 in relation to change of use and outlines changes of use which are considered to be exempted development and specifically stated in Class 14 (g) in relation to development consisting of a change of use from use as a hotel, to use as a hostel (other than a hostel where care is provided). There is also a distinction indicated in Part 4 Article 10 Exempted development – Classes of Use in Class 6 which also CLASS 6 which refers to use as a residential club, a guest house or a hostel (other than a hostel where care is provided). A hostel where care is provided is, I consider, clearly distinct as a use from a hostel and hotel.
- 8.3.6. Based on the documentation submitted there is no evidence to support a contention that care is provided on the premises and this of significance as the statutory provisions in relation to hostels distinguish between hostels and hostels where care is provided and not hostels (tourist) and hostel (non-tourist). The distinction between hostels (tourist) and hostel (non-tourist) is made in the provisions of the current development plan. I would acknowledge that hostel (non-tourist) is not defined but the definition of Buildings for the Health, Safety or Welfare of the Public in the development plan does largely refer to health care related services buildings such as



a health centre or clinic or for the provision of any medical or health services hospital, nursing home, day centre and any other building for the provision of residential accommodation and care to people in need of care rather short term accommodation.

- 8.3.7. I would also note previous referrals to the Board ABP Ref. No 308540-20 and ABP 307064-20 clearly involve change of use from residential use to a hostel for homeless accommodation and a change of use from a commercial guesthouse to a homeless hostel run by an approved housing body where a distinct material change of use is identified and the issue of care being provided is also identified.
- 8.3.8. As there is no care provided to a change of use defined specifically as its own distinct use from the established hotel authorised use a material change of use has not, I consider, occurred which would constitute a material change of use and therefore to constitute development.
- 8.3.9. The issue of abandonment is also raised and there is nothing to suggest that this has occurred. The premises continues to accommodate guests on a short term basis and provide services to guests. At the time of inspection, I noted the presence of a front desk and reception facilities. Reference is made to hotel staff providing meals to guests.
- 8.3.10. In relation to what actually defines a hotel, a hotel is defined in section 1(1) of the Hotel Proprietors Act, 1963, *“as an establishment which provides or holds itself out as providing sleeping accommodation, food and drink for reward for all comers without special contract and includes every establishment registered in the register of hotels kept under Part III of the Tourist Traffic Act, 1939”*. The Tourist Traffic Act, 1939 it is noted provided for the establishment and general powers of the Irish Tourist Board. Section 3 Hotel Proprietors Act, 1963 provides for a duty to receive all comers and *“proprietor of a hotel is under a duty to receive at the hotel as guests all persons who, whether or not under special contract, present themselves and require sleeping accommodation, food or drink and to provide them therewith unless he has reasonable grounds of refusal”*.
- 8.3.11. In non-legal definitions of a hotel there is reference to the term 'hotel' can refer to a specific type of accommodation... a large building filled with small, serviced rooms that are used for short-term stays...or it can be more broadly applied to refer to

almost all types of accommodation, from bed and breakfasts, unserviced apartments, glamping and more...an establishment that provides lodging and usually meals, entertainment, and various personal services for the public... a building where you pay to have a room to sleep in, and where you can sometimes eat meals a hotel is an establishment that provides paid lodging on a short-term basis. Facilities provided inside a hotel room may range from a modest-quality mattress in a small room to large suites....small, lower-priced hotels may offer only the most basic guest services and other hotel a greater range of services.

8.3.12. A hotel therefore has a broad definition, can vary in scale and services provided and can provide accommodation to a range of guests not exclusively tourists/leisure related. There is nothing to suggest that a change in the nature of guest accommodated alters its status as a hotel and as section 1(1) of the Hotel Proprietors Act, 1963 indicates it is an establishment which provides or holds itself out as providing sleeping accommodation, food and drink for reward for all comers.

8.3.13. Based on the documentation submitted the current premises is retained as a hotel, has an authorised use as a hotel and there is nothing to indicate contravention of planning permission relating to the authorised use. There is also nothing to support the contention that a change of use material or otherwise from its authorised use as a "hotel" to use as a "hostel" (non-tourist) where care or short term homeless accommodation is provided has occurred and therefore "development" within the meaning of the Planning and Development Act 2000 as amended has occurred. There is also nothing to suggest that a change of use has occurred to a form of hostel, tourist or non tourist, or any form of hostel as defined by a tourism registration board.

8.3.14. Is or is not exempted development

Having considered that the question as raised in the question is not development by reason that a material change of use has taken place, I do not consider that the matter of exempted development arises as the provisions which would arise to consider the question of exempted development as provided for in the Planning Act 2000 as amended and the Planning and Development Regulations 2001 as amended do not arise and that the continued use of the premises as hotel use is considered exempt from the requirement to seek planning permission.

#### 8.4. Environmental Impact Assessment (EIA) Preliminary Examination

8.4.1. Development in respect of which an environmental impact assessment or appropriate assessment is required cannot be exempted development (Section 4(4) of the Planning and Development Act 2000 (as amended)). Schedule 5, Part 1 and Part 2 of the Planning and Development Regulations, 2001 (amended) sets out specified development for which EIA is mandatory and development which requires screening for EIA.

8.4.2. Having regard to the limited nature and scale of development and the absence of any significant environmental sensitivity in the vicinity of the site, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

#### 8.5. Appropriate Assessment

8.5.1. Having regard to nature and scale of the development and the nature of the receiving environment and the distance and lack of connections to the nearest European sites, it is concluded that no Appropriate Assessment issues arise as the development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

### 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 at the Paramount Hotel from use as a “hotel” to use as a “hostel” (non-tourist) where care or short term homeless accommodation is or is not exempted development: AND

WHEREAS Old City Management Limited requested a declaration on this question from Dublin City Council and the Council issued a declaration on the 13<sup>th</sup> day of March 2024 stating that no development by reason of works or by reason of a material change of use has taken place and that the continued use of the premises as hotel use is considered exempt from the requirement to seek planning

permission: AND WHEREAS Old City Management Limited referred this declaration for review to An Bord Pleanála on the 2<sup>nd</sup> day of April 2024: AND

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

- (a) Section 2(1) of the Planning and Development Act, 2000, as amended:
- (b) Section 3(1) of the Planning and Development Act, 2000:
- (c) Section 4 of the Planning and Development Act, 2000, as amended:
- (d) articles 5, 6, 9 and 10 of the Planning and Development Regulations, 2001, as amended:
- (e) Part 1 of Schedule 2 Class 14 of the Planning and Development Regulations, 2001, as amended:
- (f) Part 4 of Schedule 2 Article 10 Classes of Use Classes 6 and 9 of the Planning and Development Regulations, 2001, as amended:
- (g) the provisions of the Dublin City Development Plan 2022 -2028,
- (h) the submissions on file,
- (i) the planning history of the site,
- (j) the nature of the uses previously and currently on site and
- (k) the pattern of development in the area:

AND WHEREAS An Bord Pleanála has concluded that:

development as defined under section 3(1)(a) of the Planning and Development Act 2000 (as amended) by reason that a material change of use has not taken place from the established and permitted use on the site and that the matter of exempted development does not arise.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3) (a) of the 2000 Act (as amended), hereby decides that the question of the change of use at the Paramount Hotel from use as a 'hotel' to use as a 'hostel' (non-tourist) where care or short-term homeless accommodation that development as defined under section 3(1)(a) of the Planning and Development Act 2000 (as

amended) does not arise by reason that a material change of use has not taken place from the established and permitted use on the site.

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.

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Derek Daly  
Planning Inspector

10<sup>th</sup> October 2024