



An
Bord
Pleanála

Inspector's Report ABP-320031-24

Question

Whether the use of a dwelling house, where care is not provided, as long-term private residential accommodation for protected persons comprising families, women and children, is or is not development or is or is not exempted development

Location

Knockmount, Dublin Road, Drogheda, Co. Louth

Declaration

Planning Authority

Louth County Council

Planning Authority Reg. Ref.

S52024/24

Applicant for Declaration

Knockmount Properties Limited.

Planning Authority Decision

Is not exempted development

Referral

Referred by

Knockmount Properties Limited.

Owner/ Occupier

Knockmount Properties Limited.

Observer(s)

Mount Auburn Residents Association.
Adam McAuley and others

Date of Site Inspection

10 October 2024.

Inspector

Natalie de Róiste

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1.0 Site Location and Description

- 1.1. The site comprises a two-storey gabled red-brick house set in its own grounds, on the west side of the Dublin Road, in Drogheda, Co. Louth. The site measures c. 7,500 sqm, and backs onto the Mount Auburn housing estate to the south and west. It is bordered to the north by the railway line. Access is via a gated driveway to the Dublin Road.
- 1.2. There is a detached converted red brick garage at the north end of the house, with an internal courtyard between this converted garage and the house, formed by red brick boundary walls to either side. There is a single-storey lean-to extension to the north elevation of the house, as well as a single-storey shed with a plant room (apparently a former store) and outdoor toilet, all giving onto the courtyard.
- 1.3. Internally, the house has 6 bedrooms on the first floor (one formed by knocking through two existing bedrooms) and 5 on the ground floor. A kitchen, dining room, laundry, and office are also located on the ground floor. Two additional bedrooms are accessed from the courtyard, one in the lean-to extension, and one in the converted garage. All bedrooms have en-suite bathrooms and are furnished with bunk beds with new bedding.
- 1.4. There are mature trees to all boundaries, with mature planting and lawns to the gardens, with some hard standing to the rear garden, and a gravel forecourt and driveway. There is a timber outbuilding to the north of the grounds in use as storage.

2.0 The Question

- 2.1. Whether the use of a dwelling house, where care is not provided, as long-term private residential accommodation for protected persons comprising families, women and children, is or is not exempted development

3.0 Planning Authority Declaration

3.1. Declaration

Following a request by Knockmount Properties Limited, the Planning Authority issued a declaration 30 May 2024 that the use as described is considered to be development and is not exempted development.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The planner's report of 24 May 2024 outlines the legislative context and planning history of the site. The assessment can be summarised as follows:

- The existing house would de facto be a multi-occupied unit with either self-contained units or a co-living facility, which would be a material change of use.
- A letter enclosed with the application from the Minister for Children, Equality, Disability, Integration and Youth means this Section 5 application was made on behalf of the Minister.
- The Planning and Development Regulations include exemptions for material change of use from various places/structures (hotel, defence force barracks etc) to accommodation for protected persons (Class 14(h)) or to temporary accommodation for displaced persons or persons seeking international protection (Class 20F), but there is no exemption for changing a house.
- There are likely to be significant changes to traffic volumes, usage of services, waste/refuse disposal
- This would be a material change of use for which no exemption exists.

3.2.2. Other Technical Reports

None on file.

4.0 Planning History

4.1. Referral Site

ABP-311050-21 (201022)

Permission granted for the construction of 27 apartments (reduced from 28), and conversion of Knockmount House to four apartments, demolition of ancillary buildings, and associated works, subject to conditions. Permission not implemented.

4.2. Similar previous referrals to the Board

ABP-307077-20: the Board determined that the use of the Rock Centre, Ballinamore, Co. Leitrim, as a Protection Centre for protected persons was not development, as the permitted use of the apartments was not abandoned, and the current use of the premises was as apartments, and therefore no material change of use was involved.

5.0 Policy Context

5.1. Development Plan

The Louth County Development Plan 2021-27 is the relevant plan. The site is zoned Existing Residential (A1), 'to protect and enhance the amenity and character of existing residential communities. The house is not a protected structure, nor is it in an Architectural Conservation Area. There are no objectives for preservation of views, or objectives for the preservation of any sites or features of archaeological, geological, historical, scientific or ecological interest on the site. There are no Tree Preservation Orders on the site.

5.2. Natural Heritage Designations

The site is not located within or adjoining a European Site. The following European sites are located within proximity to the site:

European Site	Site Code	Distance
Boyne Coast and Estuary	SAC 001957	2.2km
River Boyne and River Blackwater	SAC 002299	560m
Boyne Estuary	SPA 004080	1.9 km
River Boyne and River Black Water	SPA 004232	4 km

The Boyne Coast and Estuary is also a proposed Natural Heritage Area, 001957.

6.0 The Referral

6.1. Referrer's Case

The agents for Knockmount Properties Limited, Hughes Planning, have made a case that the provision of medium to long-term accommodation to protected persons comprising families, women and children is not development. The case is summarised below:

- Louth County Council erroneously assessed the use of the property in the context of Class 14 and Class 20F of the Planning and Development Regulations (as amended), and did not address the question posed.
- The use of the dwelling remains a residential one, with the only change being the socio-economic class of the inhabitants, which is not an appropriate consideration in planning law – see *Dublin Corporation v Moore* [1984] ILRM 339 – and as such there is no material change of use. No care will be provided to residents, be it social, physical, or emotional.
- No works are proposed.
- The house would accommodate 56 persons from several family units. There will be no strain on services, no increase in traffic volumes, noise, or waste, and therefore no intensification of use on the site. Public transport is good, and car use is likely to be low. The house's sewerage system has been upgraded in recent years. Waste will be collected from regular wheelie bins weekly, as is the current arrangement. This is a large house, constructed c. 1906. It has 14 bedrooms, as well as kitchen facilities, dining room, living room, prayer room, and laundry room. There is ample outdoor space, and outdoor play facilities will be provided. The site (which enjoys a permission for 31 apartments) has the capacity to accommodate the proposed use without practical effects or adverse impacts on services, and does not constitute an intensification of use.

6.2. Planning Authority Response

Response received dated 23 July 2024, no further comment to make.

6.3. Observations

6.3.1. Two observations were received, one from Adam McAuley, Mount Pleasant, Dublin Road, and others. This is summarised as follows:

- Planning permission is surely required to change a large dwelling house into a hostel accommodating large numbers, and also required for the substantial works required to facilitate this, as per Kildare County Council's decision on Ryevale House Leixlip (ED/01021, now referred to the Board (RL09.317271))
- A commencement notice for the works on 20th July 2023 referred to a change of use and material alteration of the house. Estate agent's floor plans prior to its sale in 2023 show 6 bedrooms, 2 kitchens, 2 toilets, one bathroom and one shower room.
- The appellant suggests that the residents will be self-sufficient, while the government's briefing document (appended) provides a clear picture of an accommodation centre, with full board catering provided, toiletries and essentials replenished weekly, laundry done by a local company, high speed wifi, fire alarms, fire-fighting equipment and security cameras fitted throughout the common areas.
- The only change of use of a dwelling house that is exempted development is use as a residence for a maximum of 6 persons with disabilities or mental illness, and 2 residential carers. A large number of buildings can avail of an exemption to provide temporary accommodation for International Protection Applicants under (SI 605 of 2022 and SI 376 of 2023), but dwelling house is not one of those buildings. The maxim of statutory interpretation *Expressio Unius Est Exclusio Alterius* – To express one thing is to exclude another – applies. As dwelling house is not on the list, an exemption does not exist.
- The proposed use is a commercial one, not a residential one.
- Planning permission should have been sought for the works that increased from 6 bedrooms to 14. A previous grant of permission for apartments on the site (ABP-311050-21) permitted the renovation and conversion of the dwelling house to four apartments. A condition of the permission was compliance with the Architectural Impact Assessment submitted, and compliance with the Ministerial Guidelines on Architectural Heritage Protection. The works undertaken should also comply with those principles.

- The significant increase in the number of people to be accommodated is an intensification of use, due to increased traffic volumes, increased pressure on water services, increased waste, and impacts on road safety. The permission for apartments had conditions regarding setting back the boundary wall, and constructing a new pedestrian crossing. This development would house a similar number of people, with no road safety improvements.
- There is no specific exemption for the change of use proposed, and any decision to allow it would set a significant precedent.

6.3.2. A second observation was received from Mount Auburn Residents Association. This is summarised as follows:

- The change from a 6 bedroom house to essentially a 14-bedroom hostel constitutes a fundamental change of use.
- The term 'where care is not provided' is not accurate, and is contradicted by the briefing note (dated 15 January 2024) sent by the Government of Ireland (appended).
- There will be an intensification of use due to significantly increased car parking and traffic on a dangerous road; a significant increase in the volume of waste; intensification of water and energy use; and an increase in noise and light pollution from the site. The requirement for 24 hour security services or duty managers on site is an indicator of the intensification of the use, as the previous residential use had no such requirement.
- No road safety improvements are proposed, which should be a key consideration in any future development.

6.4. **Further Responses**

None received.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

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

- 'development' has the meaning assigned to it by Section 3;

7.1.2. Section 3(1) 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(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 2001-2020.

7.2. Planning and Development Regulations 2001 (as amended)

7.2.1. Article 5(1) states that 'care' means personal care, including help with physical, intellectual, or social needs;

7.2.2. Article 6(1) of the Planning and Development Regulations 2001 (as amended) ('the Regulations') provide that '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. Part 1 of Schedule 2 of the Regulations set out the classes of exempted development, including 'Class 14' allowing for 'development consisting of a change of use': -

'(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’.

7.2.4. Class 20F of the same Part exempts the following:

Temporary use by or on behalf of the Minister for Children, Equality, Disability, Integration and Youth to accommodate or support persons seeking international protection of any structure or part of a structure used as a school, college, university, training centre, social centre, community centre, non-residential club, art gallery, museum, library, reading room, sports club or stadium, gymnasium, hotel, convention centre, conference centre, shop, office, Defence Forces barracks, light industrial building, airport operational building, wholesale warehouse or repository, local authority administrative office, play centre, medical and other health and social care accommodation, event and exhibition space or any structure or part of structure normally used for public worship or religious instruction.

This is subject to the following conditions and limitations

1. The temporary use shall only be for the purposes of accommodating displaced persons or for the purposes of accommodating persons seeking international protection.
2. Subject to paragraph 4 of this class, the use for the purposes of accommodating displaced persons shall be discontinued when the temporary protection introduced by the Council Implementing Decision (EU) 2022/382 of 4 March 2022¹ comes to an end in accordance with Article 6 of the Council Directive 2001/55/EC of 20 July 2001².
3. The use for the purposes of accommodating persons seeking international protection shall be discontinued not later than 31 December 2028.
4. Where the obligation to provide temporary protection is discontinued in accordance with paragraph 2 of this class, on a date that is earlier than 31 December 2028, the temporary use of any structure which has been used for

the accommodation of displaced persons shall continue for the purposes of accommodating persons seeking international protection in accordance with paragraph 3 of this class.

5. The relevant local authority must be notified of locations where change of use is taking place prior the commencement of development.

6. 'displaced persons', for the purpose of this class, means persons to whom temporary protection applies in accordance with Article 2 of Council Implementing Decision (EU) 2022/382 of 4 March 2022.

7. 'international protection', for the purpose of this class, has the meaning given to it in section 2(1) of the International Protection Act 2015 (No. 66 of 2015). 8. 'temporary protection', for the purpose of this class, has the meaning given to it in Article 2 of Council Directive 2001/55/EC of 20 July 2001.

7.3. Article 2 of Council Implementing Decision (EU) 2022/382 of 4 March 2022

- 7.3.1. This sets out that 'displaced persons' means people displaced from Ukraine as a result of the military invasion by Russia.

7.4. International Protection Act 2015 (No. 66 of 2015)

- 7.4.1. This sets out that 'International Protection' means status as a refugee, or status as a person eligible for subsidiary protection.

7.5. Article 2 of Council Directive 2001/55/EC of 20 July 2001

- 7.5.1. This sets out that 'temporary protection' means a procedure of exceptional character to provide immediate and temporary protection to displaced persons in the event of a mass influx of such persons.

8.0 Assessment

8.1. Is or is not development

- 8.1.1. The applicant requests a decision on whether or not the use of a dwelling house, where care is not provided, as long-term private residential accommodation for

protected persons comprising families, women and children, is or is not development, or is or is not exempted development.

- 8.1.2. The applicant has not raised a question regarding any works to the building (stating 'no works are proposed'). and while the observers have raised the issue of works undertaken, no referral has been received on that question. As such, I am limiting my assessment here to the referral regarding the use of the building.
- 8.1.3. The applicant put forward in the Section 5 referral to the Local Authority that the only change would be to the socio-economic class of the occupants of the building, and it is a continuation of its residential use. The referral to the Board also states that there would be an increase in the number of occupants from an unknown number, to 56 persons comprising several different families and individuals.
- 8.1.4. A change of use must be material to constitute development as set out in Section 3 of the Act. There is no definition of 'material change of use' in the Act, or any other statute. In *Simons on Planning Law*, Browne notes that there are two schools of thought in case law; the first, in which judgments consider the differences between the character of the existing use and the proposed use (*Cusack v. Minister for Local Government*, *McMahon v Dublin Corporation*). He notes that the existence of a class of exempted development in law might be taken as implicitly recognising that changes within a class may well constitute a material change in use. The other approach in case law, considers the impacts or effects of the existing use compared with the proposed use (*Monaghan County Council v. Brogan*), and can be particularly useful in considerations of intensification of use. In *Galway County Council v. Lackagh Rock* the court found that what should be looked at are the matters which the planning authority would take into account in the event of a planning application being made either for the use on the appointed day or for the present use.
- 8.1.5. The established use of the building is that of a dwelling house, and this is accepted by all parties.
- 8.1.6. I undertook a site visit, and found the building unoccupied, but renovated and furnished in preparation for occupation. I have listed the accommodation in the table below.

Location	Use	Notable Contents
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Ground Floor	Bedroom 1	4 beds
Ground Floor	Bedroom 2	8 beds
Ground Floor	Bedroom 3	6 beds
Ground Floor	Bedroom 4	2 beds
Ground Floor	Bedroom 5	2 beds
Ground Floor	Kitchen	3 cooking stations (each with cooker, dishwasher, sink, kettle, toaster)
Ground Floor	Dining room	7 tables, 30 chairs
Ground Floor	Laundry room	Multiple machines
Ground Floor	Office	CCTV monitor
Ground Floor	Hall	Fire extinguishers, notice board
First Floor	Bedroom 7	6 beds
First Floor	Bedroom 8	4 beds
First Floor	Bedroom 9	5 beds
First Floor	Bedroom 10	4 beds
First Floor	Bedroom 11	4 beds
First Floor	Bedroom 12	10 beds
First Floor	Landing and corridor	Fire extinguishers
Courtyard	Bedroom 6	2 beds
Courtyard	Converted garage	8 beds
Courtyard	Plant room	Locked
Courtyard	Staff toilet	

Table 1: Schedule of rooms

All beds (with the exception of one single bed in bedroom 9) are bunk beds. All bedrooms have an ensuite shower room – a universally accessible bathroom is provided in the converted garage. Bedrooms also have cupboards and lockers

(varying in number). Communal areas and grounds are monitored by CCTV. All internal doors are self-closing fire doors.

The applicant states “Residents of the building have en-suite bedrooms and use shared kitchen facilities, dining room, living room, prayer room, and laundry room”. Having examined both floors of the building, I am certain there is no living room or prayer room provided on the premises, and the only habitable room apart from the bedrooms and kitchen is the dining room. There is no access to the attic or basement.

8.1.7. I also note the contents of the letter from the Department of Children, Equality, Disability, Integration and Youth submitted to the Local Authority, which refers to temporary emergency accommodation for International Protection applicants.

8.1.8. I note also the Briefing Document submitted by the observers on the file, which refers to Temporary Emergency Accommodation for International Protection Applicants.

Having undertaken the site visit, and considered the information on the file, I am of the view that the proposed use is not that of a dwelling house, but that of a congregated setting or residential institution. Applicants for International Protection can and do live in standard residential dwellings (ABP-307077-20 refers), but the accommodation in this instance is different in character to that of a dwelling house, with a large number of families and individuals sharing communal facilities, as opposed to each household living in one individual dwelling unit. The model is that of a hostel or other institutional use, with many numbered bedrooms (all with fire doors), one communal kitchen and dining room, a staff toilet, an office, and CCTV cameras in all communal areas, with the monitors in the office. There is a large number of bedrooms (13), relative to other habitable rooms, and a large number of proposed occupants (stated as 56, although 65 beds have been installed). It is proposed to have a duty manager, and security and cleaning staff. The Government Briefing Note supplied by the observers states that there will be full board catering provided, and that washing of clothes and bed linen will be done by a local launderette company; this would correspond with the quantum of cooking and laundry facilities provided.

I note the applicant’s assertion that no care will be provided, and the observer’s disagreement with this; it is not clear whether the level of supports proposed meets

the threshold of 'care' as defined in the planning regulations; however, the level of supports (meals, laundry, and toiletries provided, security and staff on-site) is more typical of residential institutions or tourist accommodation, and atypical of that provided in dwelling houses, where the residents would typically make their own arrangements independently of each other, and independently of the landlord.

- 8.1.9. I note the previous Board decision at ABP-307077-20: however, in that instance, each apartment in question was in use as an apartment. In this instance, one dwelling house is proposed to provide communal living facilities for a large number of people, from different families, in a congregated setting.
- 8.1.10. I note the applicant's reference to *Dublin Corporation v Moore* [1984] ILRM 339, and their assertion that the only change to the use of the building is that of the socio-economic class of the inhabitants, and the building remains in residential use, with no material change of use. The case referred to involved the keeping of commercial vehicles (two large, modern-style, ice-cream vans) in the driveway of the van-owner's dwelling house, and has little relevance to the current question. I take no account of the socio-economic class of the inhabitants in this question; however, a number of uses (boarding schools, nursing homes, hostels, prisons) are clearly residential, but are not dwelling houses. The continuation of the broader residential use does not necessarily mean that a material change of use is not involved.
- 8.1.11. Having regard to the test set out in *Galway County Council v Lackagh Rock*, I note that the Louth County Development Plan lists 'residential' and 'residential institution' as different uses in their lists of permitted and open for consideration uses in various zonings in Chapter 13 of their Development Plan, and it would appear that the planning authority would take different matters into account in the event of a planning application being made for the proposed use, or for the use of a dwelling house. Some zonings are more favourable towards one use or the other.
- 8.1.12. Regarding the impacts or effects of the current use compared with the established use as a dwelling house, the large number of proposed residents, and the 24-hour staffing, will naturally have different impacts than the impacts of a typical dwelling house. The appellant sets out that the site can accommodate the noise, waste, wastewater, and traffic generated by 56 residents plus staff. However, whether the impacts or effects are acceptable is not at issue in this referral; the use of the

building for such a number of residents and staff will naturally have different impacts than its use as a dwelling house.

8.1.13. I find the proposed change of use to be a material change of use, constituting development.

8.2. Is or is not exempted development

8.2.1. There are a small number of exemptions for the change of use of all or part of a house. For example, there is an exemption under the Regulations (Article 10(5)) for the use of a house for child minding, and for the use of not more than 4 bedrooms as overnight guest accommodations (Article 10(4)). Class 14 (f) of Part 1 of Schedule 2 exempts the use of a house to use as a residence for not more than 6 people with a disability or mental illness, and not more than 2 resident carers. There is no exemption, under the Act or the Regulations, for change of use of a house to use as an accommodation centre for protected persons.

8.2.2. As noted above (and by the third parties, and the planning authority) exemptions exist for change of use from various premises to use for accommodation for protected persons (and for displaced persons or persons seeking international protection) under the Regulations under Class 14(h) and Class 14(i) of Part 1 of Schedule 2. It is my view that this exemption does not extend to houses or apartments; the clause 'or other premises' forms part of the larger clause 'or other premises or residential institutions providing overnight accommodation', and must be read in the context of the list as a whole: *'hotel, motel, hostel, guesthouse, holiday accommodation, convent, monastery, Defence Forces barracks or other premises or residential accommodation, or part thereof'*. Notwithstanding the fact that houses provide overnight accommodation, they are not the kind of residential institution envisaged in this exemption. Similarly, in Class 20F, there is a long list of types of building, but house is not listed.

8.2.3. As such, there is no exemption under the Act or under the Regulations that can be availed of. I note that the appellant is not claiming such an exemption exists, as they assert that no material change of use has occurred.

9.0 AA Screening

- 9.1. Having regard to the nature and small scale of the proposed development and the distance from the nearest European site, no Appropriate Assessment issues arise, and it is not considered that the proposed development would be likely to have a significant effect, individually, or in combination with other plans or projects, on any European site.

10.0 Recommendation

- 10.1. I recommend that the Board should decide this referral in accordance with the following draft order.

WHEREAS a question has arisen as to whether the use of a dwelling house, where care is not provided, as long-term private residential accommodation for protected persons comprising families, women and children is or is not development or is or is not exempted development:

AND WHEREAS Knockmount Properties Limited requested a declaration on this question from Louth Council and the Council issued a declaration on the 30th day of May, 2024 stating that the matter was development and was not exempted development:

AND WHEREAS Knockmount Properties Limited referred this declaration for review to An Bord Pleanála on the 26th day of June, 2024:

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

- (a) Sections 2, 3, 4 of the Planning and Development Act, 2000, as amended;
- (b) articles 5, 6, 9, and 10 of the Planning and Development Regulations, 2001, as amended;

- (c) Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended;
- (d) Relevant case law;
- (e) the planning history of the site,
- (f) previous referrals to the Board, including referral ABP-307077-20
- (g) the submissions of the referrer, the observers, and the planning authority;
- (h) the pattern of development in the area;
- (i) the number of people to be accommodated on the site and the nature of the accommodation
- (j) the number of staff and the nature of supports proposed; and
- (k) the ratio of bedrooms to other habitable rooms

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The change of use from the established use as a dwelling house to the proposed use as accommodation for protected persons constitutes a change of use
- (b) The change of use raises planning considerations that are materially different to planning considerations relating to the established use,
- (c) The change of use constitutes a material change in the use of the structure

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 change of use of a dwelling house to accommodation for protected persons 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.

Natalie de Róiste
Planning Inspector

31 October 2024