



An
Bord
Pleanála

Inspector's Report ABP-320069-24

Question

Whether the revision of the internal floor plans of the house is or is not development or is or is not exempted development.

Location

27 Hatch Place, Dublin 2

Declaration

Planning Authority

Dublin City Council South

Planning Authority Reg. Ref.

0165/24

Applicant for Declaration

Rosado Developments Ltd.

Planning Authority Decision

Is not exempted development

Referral

Referred by

Rosado Developments Ltd.

Owner/ Occupier

Rosado Developments Ltd

Observer(s)

None.

Inspector

Gillian Kane

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1.0 Site Location and Description

- 1.1.1. The subject site is located on the northern side of Hatch Place, a mixed use 'back-lane' in Dublin City Centre. Currently on site is a three storey property.
- 1.1.2. Due to the nature of the question posed, no site inspection was undertaken.

2.0 The Question

- 2.1. Whether the revision of the internal floor plans of the house is or is not development and is or is not exempted development.

3.0 Planning Authority Declaration

3.1. Declaration

- 3.1.1. On the 5th June 2024, the Planning Authority issued a declaration stating that the development is not exempt.
- 3.1.2. The reasons and considerations stated that the Planning Authority considered that a material change of use had occurred, which rendered the unit not in compliance with the standards of the Quality Housing for Sustainable Communities, in terms of aggregate living area. As a result, the proposed internal alterations to the floor plans are not considered exempt under section 4(1)(h) of the Planning and Development Act 2000, as amended.

3.2. Planning Authority Reports

- 3.2.1. **Planning Report:** Notes that floor plans indicate that dwelling has gone from the permitted two-bedroom unit to a five bedroom /22 bed space unit and that the garage has been incorporated into the dwelling. This is a material change of use. The dwelling is no longer a single-occupancy unit but multiple occupancy. Planning Authority considers a material change of use has occurred. Notes that floor plans do not comply with table 5.1 of Quality Housing for Sustainable Communities, as aggregate living space is 22sq.m. Proposed development is not exempt under 4(1)(h).

4.0 Planning History

- 4.1.1. Concurrent referral case: ABP-320071-24: Whether the use of a residential building, where care is not provided, to house homeless families is or is not development and is or is not exempted development.
- 4.1.2. Planning Authority reg ref. **0105/24**: section 5 referral “whether the use of a residential building where care is not provided to house homeless families, is or is not development and is or is not exempted development. The Planning Authority declared that the development constituted a material change of use which rendered the unit not in compliance with standards of the Quality Housing for Sustainable Communities, in terms of aggregate living area. The development was declared not to be exempted development.
- 4.1.3. Planning Authority reg. ref. **2307/14**: Permission granted for conversion from office to residential use.

5.0 Policy Context

5.1. Dublin City Development Plan 2022-2028

- 5.1.1. **Section 15.13.9** refers to hostels / sheltered accommodation / family hubs. 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. Family hubs can comprise of either purpose built accommodation or conversion of existing residential accommodation for the use as shared living environments. Family hubs shall provide appropriate high quality play spaces for children, cooking and laundry facilities and communal recreational spaces.
- 5.1.2. the section requires that applications for such uses include the following:
 - ♣ A map of all homeless and other social support services within a 750 m radius of application site.
 - ♣ A statement on catchment area, i.e. whether proposal is to serve local or regional demand and estimation of expected daily clients.

- ♣ A statement regarding security and operational management of the service/facility including hours of operation.
- ♣ Assessment of the impact on the public realm and quality environment

5.2. Natural Heritage Designations

5.2.1. None in the immediate vicinity.

6.0 The Referral

6.1. Referrer's Case

- The Planning Authority has erred in its assessment of the application, incorrectly assessing the use of the property as changing from single use to multiple occupancy.
- The dwelling can be used to house individuals or families who may also be homeless. No discernible change in the use of the building other than the socio-economic class of the inhabitants.
- There will be no intensification of use of the site, no additional strain on services or traffic volumes, noise or waste collection. The provision of more bedrooms will not give rise to material planning impacts.
- Works carried out at the property do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures.
- The works that have been carried out are wholly internal and are limited to the revision of the internal layout and the conversion of the garage to provide additional accommodation.
- The development is not de-exempted under Article 9(1)(a) as it does not contravene a condition to a permission, no amendments have been made to the existing access, the development does not endanger public safety by reason of traffic hazard or obstruction, will not involve the carrying out of works under a public road, will have no impact on a landscape, view or prospect of special amenity or value, does not involve excavation alteration or demolition of places of ecological or archaeological interest or recorded monument, will not affect a European Site, does not involve an unauthorised structure or use, does not

restrict the continuance of use of a building, does not enclose land and will not obstruct a public right of way and the property is not within an ACA

- Despite noting that there is no definition of material change of use the Planning Authority stated that a change of use had occurred, erroneously basing this in the fact that the property can now accommodate more people. The use of the structure has not change from that of a house.
- The standards in the Quality Housing for Sustainable Communities are for new-builds and are not intended for review as part of a section 5 application.
- The Board is requested to find that the proposed development does not constitute development.

6.2. Planning Authority Response

6.2.1. None on file.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

7.1.1. The following statutory provisions are relevant in this instance.

7.1.2. Section 2(1): In this Act, except where the context otherwise requires

"**works**" includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal ...;

"**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 this context so admits, includes the land on, in or under which the structure is situated".

7.1.3. **Section 3(1):** in this Act, "**development**" means, except where the context otherwise requires, the carrying out of any works on, in, or under land or the making of any material change in the use of any such structures or other land.

7.1.4. **Section 4(1):** sets out developments that shall be exempted development for the purposes of this Act.

7.1.5. **Section 5(1):** 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.

7.1.6. **Section 5(3)(a)** Where a declaration is issued under this section, any person issued with a declaration under subsection (2) (a) may, on payment to the Board of such fee as may be prescribed, refer a declaration for review by the Board within 4 weeks of the date of the issuing of the declaration. (b) Without prejudice to subsection (2), in the event that no declaration is issued by the planning authority, any person who made a request under subsection (1) may, on payment to the Board of such fee as may be prescribed, refer the question for decision to the Board within 4 weeks of the date that a declaration was due to be issued under subsection (2).

7.1.7. **Section 5(4):** Notwithstanding subsection (1), a planning authority may, on payment to the Board of such fee as may be prescribed, refer any question as to what, in any particular case, is or is not development or is or is not exempted development to be decided by the Board.

7.2. **Planning and Development Regulations, 2001**

7.2.1. Part 2 of the Planning and Development Regulations, 2001 refers to Exempted Development.

8.0 **Assessment**

8.1.1. The purpose of this referral is not to determine the acceptability or otherwise of the above proposal in terms of the proper planning and sustainable development of the area, but rather whether or not the matter in question constitutes development, and if so, falls within the scope of exempted development.

8.2. **Is or is not development**

8.2.1. As per section 3(1) of the Act, "development" is the carrying out of any works on, in, or under land or the making of any material change in the use of any such structures or other land.

8.2.2. Works have been undertaken within the property, namely the increase in bedspaces from that permitted. Further, the property has been changed from a single family home to multiple family occupancy. The Board will note the declaration under ABP-

315535-23 wherein the Board concluded that the change of use from residential accommodation comprising seven bedrooms to use on as accommodation for the homeless comprising of seven bedrooms with 15 bed spaces constituted development. I am satisfied that constitutes “development” as per section 3(1) of the Planning and Development Act 2000, as amended.

- 8.2.3. With regard to the change of use and whether it is material, I draw the Boards attention to the declaration of ABP-320031-24 wherein the Board concluded that the change of use from the established use as a dwelling house to the proposed use as accommodation for protected persons, where care was not provided, constituted a change of use, as the change of use raised planning considerations that are materially different to planning considerations relating to the established use; and the change of use constituted a material change in the use of the structure. The Board concluded that was development and was not exempted development.
- 8.2.4. I note the test advanced by Barron, J in *The County of Galway v Lackagh Rock Ltd* [1984 21 MCA] in the determining of whether or not a material change of use has occurred. In this case, Barron, J considered that ‘in determining whether or not a present use was materially different from a use being made on the appointed day one must look at matters which the planning authority would take into consideration if a planning application were made on both dates and if these matters were materially different than the present use must be equally materially different. Were permission sought for a multi-occupancy unit providing accommodation to up to 18 people, this would certainly be different to the considerations taken for a single family home of two bedrooms.
- 8.2.5. With regard to the floor areas, I note section 15.11.1 of the Dublin City Council development plan which requires that Houses shall comply with the principles and standards outlined in Section 5.3: ‘Internal Layout and Space Provision’ contained in the DEHLG ‘Quality Housing for Sustainable Communities – Best Practice Guidelines for Delivering Homes Sustaining Communities’ (2007). This does not stipulate that it applies to new builds only. It does however, show that the planning considerations for a two bedroom single family home and a five bedroom multi-occupancy home are different, thereby confirming the different planning considerations that would be taken into account. As noted by the Planning Authority

table 5.1 of the document requires an aggregate living area of 40sq.m. for a three-storey 4bed/ 7person house.

- 8.2.6. I note the provisions of section 15.13.9 of the Dublin City Council development plan which requires certain information to be provided when applying for permission for hostels, sheltered or family hubs. The plan notes that family hubs shall provide appropriate high quality play spaces for children, cooking and laundry facilities and communal recreational spaces. This is not required for single family homes. I am satisfied that the planning considerations for a single family home of two bedrooms are materially different to that of a multi-occupancy unit accommodating 22 no. persons. I am satisfied that this constitutes a material change of use.
- 8.2.7. Section 15.13.9 of the development plan, as referred to above also requires that applications for hostels / sheltered accommodation / family hubs provide details of all homeless and other social support services within a 750 m radius of application site, a statement on catchment area, i.e. whether proposal is to serve local or regional demand and estimation of expected daily clients, a statement regarding security and operational management of the service/facility including hours of operation and an assessment of the impact on the public realm and quality environment. Such information is not required for single family homes, highlighting the different planning considerations taken into account. I am satisfied that the works undertaken constitute a material change of use.
- 8.2.8. I am satisfied that the proposed development amounts to a material change of use.

8.3. Is or is not exempted development

- 8.3.1. The referrer submits that as the works undertaken are all internal, then the development can be considered exempted development under section 4(1)(h) of the Act, as amended.
- 8.3.2. The works undertaken within the structure are works affecting only the interior of the structure and do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures. The works can therefore be considered to be exempt under section 4(1)(h) of the Act. However, the material change of use that has occurred is not de-exempted by section 4(1)(h) as that provision of the act applies only to *works*,

not use. I note that the appellant is not claiming such an exemption exists, as they assert that no material change of use has occurred.

- 8.3.3. There are no other exemptions provided for under the Act or under the Regulations that can be availed of.

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 revision of the internal floor plans of the house is or is not development and is or is not exempted development.

AND WHEREAS Rosado Development Ltds requested a declaration on this question from Dublin City Council and the Council issued a declaration on the 5th day of June, 2024 stating that the matter was development and was not exempted development:

AND WHEREAS Rosado Development Ltds referred this declaration for review to An Bord Pleanála on the 2nd day of July, 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(1)(a) of the Planning and Development Act, 2000, as amended,
- (d) the planning history of the site,

AND WHEREAS An Bord Pleanála has concluded that the revision of the internal floor plans of the house is development and is not exempted development

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3) (4) of the 2000 Act, hereby decides that the revision of the internal floor plans of the house 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.

Gillian Kane
Senior Planning Inspector