



An
Bord
Pleanála

Inspector's Report ABP-320071-24

Question

Whether the use of a residential building, where care is not provided, to house homeless families, 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.

0166/24

Applicant for Declaration

Rosado Development Ltd.

Planning Authority Decision

Is not exempted development

Referral

Referred by

Rosado Development Ltd.

Owner/ Occupier

Rosado Development Ltd.

Observer(s)

None

Date of Site Inspection

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

- 2.1.1. 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.

3.0 Planning Authority Declaration

3.1. Declaration

- 3.1.1. On the 5th June 2024, the Planning Authority issued a declaration stating:

"The Planning Authority considers that a material change of use has occurred and therefore the proposal constitutes development in respect of the meaning set out in section 3(1) of the Planning and Development Act 2000, as amended. The proposed change of use is not exempt".

3.2. Planning Authority Reports

- 3.2.1. **Planning Report:** Dwelling is no longer in single occupancy, therefore a material change of use has occurred. This is not exempt.

4.0 Planning History

- 4.1.1. **ABP-320069-24:** Concurrent application for the same site asking "whether the revision of the internal floor plans of the house 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 international protection applicants. 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.
- Any works undertaken accord with the provisions of section 4(1)(h) in that they comprise works for the maintenance, improvement or other alteration of the structure which affect only the interior of the structure.
- The referral seeks clarification on the continued use of the property as a residential building that provides accommodation but not care to homeless families.
- Legislation does not define 'material change of use'. To determine the materiality of change, the practical impacts and effects of the proposed change and whether that would lead to materially different planning considerations.
- The focus of the Planning Authority must be on the practical effects of the examined use. In *Esat Digifone v South Dublin County Council* 2002, the High Court required consideration to be taken into account must be relevant to proper planning and development and the preservation of amenities.
- In *Galway County Council v Lackagh Rock* 1985 and *Westmeath County Council v Quirke & Sons*, the materiality of a change of use must be assessed.
- The proposed use continues a long-established residential use, the only change being an increase in number of residents accommodated.
- As per *Dublin Corporation v Moore* 1984 the socio-economic class of residents cannot be taken into account.
- If planning permission were sought, the Planning Authority would not include a condition pertaining to socio-economic backgrounds.
- The subject property has residential use permitted by reg. ref. 2307/14. Residents have access to shared facilities, outdoor amenity space and are free to enter & exit throughout the day. Families will live there for a minimum of 12 months. The 150sq.m. house can provide accommodation to 18 no. people.

- No material change of use has occurred therefore no development has occurred.
- The increase in residents does not constitute an intensification of use. In *Cork County Council v Slattery Pre-Cast Concrete* 2008, it was held that the assessment of whether an intensification of use amounts to a sufficient intensification to give rise to a material change in use must be assessed by reference to planning criteria.
- In *Molloy v minister for Justice* 2004, it was held that a change to a hostel constituted a material change of use. The subject proposal is less significant as it will not involve an increase in traffic volumes, no change to waste collection and all noise will be in keeping with normal residential use.
- It is submitted that the increase in residents does not amount to an intensification of use, that the lack of practical effects means that no material change of use has occurred.
- The Board is requested to set aside the decision of the City Council and declare that the proposal 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. I note the judgment of Heslin J in *Narconon Trust v An Bord Pleanála and Others* and consider it to have applicability in the instance of the subject referral. The Board will note the previous determination of Dublin City Council in relation to the same question and the same site (Planning Authority reg. ref 0105/24) has been declared

as development which is not exempted development. There have been no changes in the planning facts or circumstances since the previous determination was made that would have reference to the referral case now before the Board. The Board may wish therefore, not to consider the case any further, as provided for in section 138(1)(b)(i) of the Planning and Development Act 2000, as amended.

8.1.2. Should the Board disagree, the following questions are addressed.

8.1.3. 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. 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 a material change in use, one must first determine if a change of use has occurred and if so, if that change is material.

8.2.4. 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.

8.2.5. With regard to the materiality of that change of use, the planning implications of the change must be assessed. The Board will note 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.

- 8.2.6. 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. The extent of facilities provided in terms of kitchen, living and dining space, bathroom space and outdoor amenity space are significantly different for a family occupying two bedrooms that for 18 no. persons occupying five bedrooms. The current referral does not provide a floor plan breakdown, other than noting that up to 18 persons can be accommodated on site. To that end, 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.
- 8.2.7. The referrer notes that as the residents are homeless, they are unlikely to have cars and therefore traffic generation is unlikely to change. The referrer also notes that waste collection will not change., While waste collection may not change, the waste generated by 18 no. people versus a single family will certainly increase. 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 18 no. persons. I am satisfied that this constitutes a material change of use.
- 8.2.8. 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 constitutes a material change of use.

8.3. Is or is not exempted development

- 8.3.1. There are no exemptions provided for 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 submit that no material change of use has occurred.

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 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:

AND WHEREAS Rosado Developments Ltd., 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 Developments Ltd. 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) 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 use of a residential building, where care is not provided, to house homeless families is development and is not exempted development

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3)(a) of the 2000 Act, hereby decides that the use of a residential building, where care is not provided, to house homeless families 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