



An
Coimisiún
Pleanála

Inspector's Report ACP-323790-25

Question

PROTECTED STRUCTURE: Whether the continued use of a residential building, where care is not provided, to house homeless persons, is or is not development or is or is not exempt.

Location

97 North Circular Road, Drumcondra, Dublin 9

Declaration

Planning Authority

Dublin City Council North

Planning Authority Reg. Ref.

0359/25

Applicant for Declaration

JMA Ventures Limited.

Planning Authority Decision

Is not exempted development

Referral

Referred by

JMA Ventures Limited.

Owner/ Occupier

JMA Ventures Limited.

Observer(s)

No Observers.

Inspector

Elaine Sullivan

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1.0 Site Location and Description

- 1.1. The site is located along North Circular Road, approximately 1.5 km northwest of the city centre. It is part of a terrace of four similar units and contains a two-storey over raised basement residential property which accommodates a number of separate apartments. All four properties within the terrace are Protected Structures in accordance with the Dublin City Development Plan 2022-2028.

2.0 The Question

- 2.1. Whether the continued use of a residential building, where care is not provided, to house homeless persons, is or is not development.

3.0 Planning Authority Declaration

3.1. Declaration

The planning authority (PA) issued a declaration that the proposal constituted 'development' as it would represent an intensification of use which would be a material change of use. As such the proposal would not be exempt development as per Article 9(1)(a)(i) of the Planning and Development Act 2000 (as amended).

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report of the Planning Officer (PO) considered the following in their assessment,

- Section 3(1) of the Planning Act which defines 'development'.
- Article 5(1) of the Planning Regulations which defines 'care'.
- Article 9(1) of the Planning Regulations which states that, 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.

- Article 10(1) of the Planning Regulations which states that a change of use between classes of use specified in Part 4 of Schedule of the Planning Regulations shall be exempted development if it 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.
- Part 4, Schedule 2 of the Planning Regulations where Class 9 is defined as 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).
- Planning history – **ABP-308189-20**, (**PA Ref. 2926/20**) and Enforcement history – **E0994/24**.
- The ‘use’ of the property was the only consideration as the proposal does not include the carrying out of ‘works’.
- Where a residential property is being occupied and no care is being provided, it does not fall under a Use Class as per Class 9 (a) Part 4, Schedule 2 of the Planning Regulations would not be ‘development’ as defined under Section 3(1) of the Planning Act 2000.
- However, the PO notes that an intensification of a previous lawful use could represent a material change of use and therefore constitute ‘development’ as defined under Section 3(1) of the Planning Act 2000.
- They also refer to Condition No. 2 of **ABP-308189-20** which states that the *‘permission does not authorise a material change of use of the property. No material change of use, including use as emergency homeless accommodation, shall be affected unless otherwise authorised by a prior grant of planning permission’*.
- Based on a recent Enforcement report (**E0994/24**, not available on the public file) which noted the presence of up to 4 ‘bedspaces’ per unit, the PO calculated that the property would have 32 bedspaces. They consider this to

be an intensification of the permitted use and subsequently, a material change of use, which is not exempt from planning permission.

- The PO also considers that a change of use from 'residential' to 'emergency homeless accommodation' would constitute a material change of use which would be 'development'.
- The report concludes that the proposal would not be exempt from planning permission as it would represent an intensification of use that would be a material change of use and, that a change of use from 'residential' to 'emergency homeless accommodation' would contravene Condition No. 2 of **ABP-308189-20**.

4.0 Planning History

- **WEB5965/25** – Planning application lodged on the 15th of December 2024 for permission to remove Condition No. 2 of **ABP308198-20 (PA Ref. 2926/20)**. A decision has not yet been made on this application.
- **ABP-308189-20, (PA Ref. 2926/20)** – Planning permission granted for the retention of removal of non-original stud partition walls, kitchenettes and bathroom ware and for works that comprised the reconfiguration of walls to accommodate kitchenettes and bathrooms in each apartment; A reduction in the number of apartments from 10 to 9; Alterations to existing fire-protection measures; Installation of upgraded services; Repair and restoration of original features; Replacement of all non-original windows with one over one double glazed sash windows; • Associated siteworks and services. The supporting documentation states that the development will be used for the provision of emergency accommodation for homeless people in Dublin.

Condition No. 2 states that:

This permission does not authorise a material change of use of the property. No material change of use, including use as emergency homeless accommodation, shall be effected unless otherwise authorised by a prior grant of permission.

Reason: In the interest of clarity.

- **PA Ref. E0994/24** – The report of the PO states that a Section 154 Enforcement Notice was issued on foot of an allegation that an emergency hostel was in operation without the benefit of planning permission. The Enforcement file and Enforcement Notice are not publicly available.
- **PA Ref. E1111/18** – A Section 154 Enforcement Notice was issued on 19th December 2018 regarding unauthorised works to this Protected Structure.
- **PA Ref. 0090/19** - A section 5 declaration was sought on renovation and refurbishment works similar to those proposed and permitted under **ABP-308189-20**. DCC did not consider the works to be exempted development.
- **PA Ref. 2732/19** - Retention permission and permission refused for a development comprising refurbishment works similar to those proposed and permitted under **ABP-308189-20**, albeit with a different layout involving the retention of all 10 existing units. Permission was refused for the following reason,
 - *The development proposed to be retained and the proposed development would have a significant negative impact on the legibility of the floor plan and on the architectural character of the historic rooms, which retain a significant amount of original material including original joinery and decorative plaster. The en-suites and kitchens, some of which have been relocated in new positions would result in further loss of historic fabric. As the new work does not relate sensitively to the architectural detail and character of the original structure, the proposal would cause serious injury to the historic fabric, integrity and architectural character of the Protected Structure, contravening Section 11.1.5.1 CHC2 (a),(b),(c) of the Dublin City Council Development Plan 2016-2022 and would set an undesirable precedent.*

5.0 Policy Context

5.1. Development Plan

Dublin City Council Development Plan 2022-2028

- No. 97 North Circular Road is listed on the Record of Protected Structures, (Ref. 1613).
- The site is zoned objective Z2 – *Residential Neighbourhoods (Conservation Areas)*, which seeks ‘*To protect and/or improve the amenities of residential conservation areas*’.
- ‘Residential’ use is listed as permissible under the Z2 zoning objective.

Chapter 5 – Quality Housing and Sustainable Neighbourhoods.

- **QHSN27** - Homeless Action Plan 2022-2024, a Framework for Dublin - To support the implementation of the Homeless Action Plan 2022-2024, a Framework for Dublin or any subsequent review and the Housing First National Implementation Plan 2022-2026 and support related initiatives to address homelessness.
- **QHSN28** - Temporary Homeless Accommodation and Support Services - To ensure that all proposals to provide or extend temporary homeless accommodation or support services shall be supported by information demonstrating that the proposal would not result in an undue concentration of such uses nor undermine the existing local economy, resident community or regeneration of an area. All such applications shall include: a map of all homeless services within a 750-metre radius of the application site, a statement on the catchment area identifying whether the proposal is to serve local or regional demand; and a statement regarding management of the service/facility.
- **QHSN29** - Temporary Accommodation Located in the City Centre - To ensure a review of the existing provision of temporary/homeless accommodation in the city centre, with a specific regard to Dublin 1, 7 and 8. The aim of which should be to reduce the overconcentration of services in those locations and to provide more temporary/homeless accommodation in areas not currently providing such services. There will also be a general presumption against the development and expansion of any new temporary/homeless accommodation services within Dublin 1, 7 and 8, including adaptation of tourist hostels and hotels, in acknowledgement of the existing concentration of such uses.

Nothing of this policy will interfere with the Council's humanitarian obligation to provide suitable emergency accommodation to those in need.

- **QHSN33** - Emergency Accommodation - To facilitate and support relevant agencies in the development of emergency accommodation that is socially inclusive, including hostels for homeless individuals of all genders.

Applications for emergency temporary accommodation including applications made by public bodies will be requested to submit evidence to demonstrate that there is not an overconcentration of emergency accommodation within an area, including a map showing all such facilities within a 0.75km radius of the proposed location of the new facility.

- **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.

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

There are no designated sites in proximity to the appeal site.

5.3. Relevant Referrals

5.3.1. The following referrals decided by the Commission are considered relevant to this case:

- **ABP-320031-24** – In November 2024 the Commission decided that 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. This was determined as the change in use raises planning considerations that are materially different to planning considerations relating to the established use. Therefore, the change constitutes a material change in the use of the structure which is development and is not exempted development.
- **ABP-315535-24** – In May 2024 the Commission decided that the change of use from dwelling to homeless hostel accommodation at the Priory, Kiltipper Road, Tallaght, Dublin, was development and constituted a change of use from 'residential' use to 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 Regulations. The change of use was determined to be a material change of use by reason of providing a different service to a different user group. However, the Service Level Agreement in place with the Peter McVerry Trust to manage bedspaces on behalf of South Dublin County Council was consistent with Section 4(1)(f) of the Planning Act and was therefore exempt development.
- **ABP-308540-20** – In April 2021 the Commission decided that the change of use from residential to a hostel for homeless accommodation is development and is not exempted development. In this case, Dublin City Council had

entered a contract (5 years) with the owner to use the property as emergency accommodation for homeless single persons and the owner would continue to manage the property under the supervision of the Dublin Regional Homeless Executive. The Commission considered that the new use for the provision of residential accommodation and 'care' (as defined in Article 5 of the Regulations) was defined under Class 9 (a) of Part 4 of Schedule 2 of the Regulations and was a material change of use by reason of providing a different service to a different user group. It considered that the material change of use would not come within the scope of Article 10(1) of the Regulations as it does not constitute a change of use within any one class.

- **ABP-307064-20** – in September 2020 the Commission decided that the change of use of Westbrook House (Ennis, Co. Clare) from commercial guesthouse to a homeless hostel managed by an approved housing body is development and is not exempted development. It should be noted that Westbrook House at the time of the referral was in the ownership of Clare County Council and operated under the management of Mid-West Simon. Again, the Commission considered that the use as a homeless hostel involved the provision of 'care' and came under Class 9 (a) of Part 4 of Schedule 2 of the Regulations.
- **ABP-305515-19** – In February 2020, the Commission decided that the change of use from a nursing home to use as a homeless accommodation facility is development and is exempted development. The Commission considered that the material change of use would come within the scope of Article 10(1) of the Regulations, being a change of use within Class 9 of Part 4 of Second Schedule, from Class 9(b) to Class 9(a).
- **ABP-303392-19** – in September 2019 the Commission decided that the change of use of a monastery to use as a hub/hostel for homeless families at

the Carmelite Monastery, Firhouse Road, Dublin 24, is development and is exempted development. The Commission considered that the material change of use took place on behalf of South Dublin County Council (a local authority) pursuant to a contract entered into by the local authority (and a service provider) acting in its capacity as a housing authority, which comes within the scope of the exemption provided for under Section 4(1)(f) of the Act.

6.0 The Referral

6.1. Referrer's Case

- The referrer seeks clarification regarding the continued use of No. 97 NCR as a multi-unit residential property that provides accommodation to homeless persons but does not provide care.
- The referrer puts forward that the decision of the PA did not consider the question put before them and instead incorrectly assessed the use of the property. The property is not being used to provide emergency accommodation, and this is stated in the contract agreed between the owner/referrer and the Dublin Region Homeless Executive.
- They submit that the use of the property to provide long-term accommodation to homeless persons where care is not provided does not constitute emergency homeless accommodation and therefore does not contravene Condition No. 2 of **ABP-308189-20**.
- Furthermore, there will be no discernible change to the use of the building other than the socio-economic class of the inhabitants, which is not a consideration.
- The proposed use of the building will not add strain to existing services, or increase traffic volumes, noise or waste at the site. Therefore, it will not represent an intensification of use on the site.

- The referrer notes a previously determined Section 5, (**PA Ref. 0267/24**) where the PA determined that the continued use of No. 34 NCR to provide accommodation to homeless persons, which does not provide care, does not constitute a change of use and did not constitute development. In this case, a house had been subdivided into 11 bedrooms with a shared kitchen, living room and dining area. Works had been carried out pre-1964 to divide the house into 12 rooms and an amalgamation of 2 rooms had been carried out since then. The property was in use as homeless accommodation without the provision of on-site care. The PA determined that the works carried out after 1964 were exempt development under Section 4(1)(h) of the Planning Act and that a change of use had not occurred through intensification of development by virtue of the number of rooms decreasing from 12 to 11. As no care was provided to residents the PA was satisfied that no change of use had occurred from residential to Class 9(a).

6.2. Planning Authority Response

- No response received.

7.0 Statutory Provisions

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

7.1.1. Section 2(1) includes the following definitions,

- “Works “...includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal...”

7.1.2. Section 3 (1), states the following:

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

7.1.3. Section 4 (1)(a)- (i) sets out what is exempted development for the purpose of the Act, and includes **4(1)(a)-(f)** - *development carried out on behalf of, or jointly or in partnership with, a local authority, pursuant to a contract entered into by the local*

authority concerned, whether in its capacity as a planning authority or in any other capacity.

7.1.4. **Section 4(2)(a)** states-

“The Minister may by regulations provide for any class of development to be exempted development for the purpose of the Act”.

7.1.5. **Section 5(1)** states –

If any question arises as to what, in any 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 a 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 57(1)** relates to protected structures and states –

the carrying out of works to a protected structure, or a proposed protected structure, shall be exempted development only if those works would not materially affect the character of—

(a) the structure, or

(b) any element of the structure which contributes to its special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest.

(I note to the Commission that the subject referral relates to the use of the structure only and that no physical works will be carried out).

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

Article 5 relates to Exempted Development,

7.2.1. **Article 5(1)** defines “care” as *‘personal care, including help with physical, intellectual or social needs;*

Article 6 relates to Exempted Development

7.2.2. **Article 6 (1)** states: *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.

Article 9 – Places restrictions on exemptions.

7.2.3. **Article 9(1)** states that, *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,

Article 10 relates to Changes of Use.

7.2.4. **Article 10 (1)** states: 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.

Part 4 of Schedule 2 sets out exempted development class of use to which Article 10(1) refers:

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),*

8.0 Assessment

8.1. Introduction

8.1.1. The purpose of this referral is not to determine the acceptability or otherwise of the matters raised in respect 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 within the meaning of the relevant legislation.

8.1.2. The question asked by the referrer is,

Whether the continued use of a residential building where care is not provided, to house homeless persons, is or is not development?

In answering this question, the primary consideration is whether a change of use has occurred, and if so, whether the change is development and exempted development.

8.2. Is or is not development

8.2.1. The question submitted relates to the use of the building only and does not involve the carrying out of any 'works' as defined in Section 2 of the Planning Act. Therefore, the question relates to whether development has occurred through a material change of use or through an intensification of use which would result in a material change of use.

8.2.2. The argument put forward by the owner / referrer is that the permitted residential use of the building has not changed by virtue of the accommodation on offer to a different socio-economic group. It is also argued that the Supreme Court decision in *Dublin Corporation v Moore [1984] ILRM 339* expressly prohibits the consideration of the socioeconomic backgrounds of the end users in planning considerations. Regarding Condition No. 2 of **ABP-308189-20**, the owner submits that a material change of use has not occurred as the residential use does not include 'care', which is considered a defining element in the categorisation of 'homeless accommodation'. Furthermore, the proposal does not relate to emergency accommodation as there is an agreement in place with DCC for medium to long-term accommodation for persons on the homeless register. Therefore, Condition No. 2 is not contravened.

8.2.3. The facts of the case, as stated in the planning history and the case for the referral are as follows:

- Planning permission was granted under **ABP-308189-20 (PA Ref. 2926/20)** for works to the subject property comprising the reconfiguration of existing residential units and a reduction in the number of units from 10 to 9.
- The report of the Planning Inspector noted that the supporting documentation for the application referred to the provision of homeless accommodation, although this was not stated in the development description or the public notices.
- The Planning Inspector considered the proposed use of the building to be residential and stated that a change of use of the property from multiple bedsit / apartments to 'temporary accommodation for homeless persons' would constitute a material change of use.
- A condition was attached to the planning permission to clarify the permitted use of the building. Condition No. 2 of **ABP-308189-20** states that, *'This permission does not authorise a material change of use of the property. No material change of use, including use as emergency homeless accommodation, shall be affected unless otherwise authorised by a prior grant of planning permission'.*
- The referral states that the owner of the building has entered a contract with the Dublin Region Homeless Executive (DRHE), which states that the property is not being used to provide emergency accommodation.
- The referral also states that the building provides long-term accommodation for persons on the homeless register with residents staying for a minimum of 12 months as per the agreement with Dublin City Council.
- The property would accommodate 32 persons across 9 no. 1-bed units. Each 1-bed unit would have between 3 and 4 people sharing, which the owner considers to be an acceptable level of occupancy.

Change of use

8.2.4. It is an accepted fact that the permitted use of the building is for multi-occupancy residential use. No definition is provided in the Planning Act or Regulations for either

'temporary accommodation for homeless persons' or 'emergency homeless accommodation'. Previously decided Section 5 referrals (**Ref. ABP- 307664-20 & 308540-20**) concluded that 'homeless accommodation' or 'emergency homeless accommodation' can be categorised as a use under Part 2, Schedule 4, Class 9(a) of the Planning Regulations; *for the provision of residential accommodation and care to people in need of care (but not the use of a house for that purpose)*. The reasoning behind this conclusion is that the use would require additional supports or 'care' as defined in Article 5(1) of the Planning Regulations. The referral states that no additional 'care' would be provided to residents of the units and that whilst staff members will visit the site, it will be for cleaning and maintenance only.

8.2.5. Although no legal definition of 'emergency' or 'temporary' homeless accommodation exists, it is generally understood to be short-term accommodation in hostels, B&B's, hotels or family hubs. Policy QHSN33 of the DCCDP specifically relates to 'emergency accommodation' and seeks *'To facilitate and support relevant agencies in the development of emergency accommodation that is socially inclusive, including hostels for homeless individuals of all genders...'*. Section 15.13 of the DCCDP includes development standards for Hostels / Shared Accommodation / Family Hubs. However, no definition of 'temporary' or 'emergency homeless accommodation' is provided in the Development Plan. Having reviewed the policies and objectives of the Development Plan, I am satisfied that the overall planning approach to temporary or emergency housing differs to that of standard residential use, as it is temporary in nature and provides additional supports over and above long-term residential use. Furthermore, I accept that the widespread understanding of emergency accommodation is the provision of shared facilities such as 'hostels' for short-term use.

8.2.6. The referral states that the use of the building is for medium to long-term accommodation for homeless persons and that a contract has been agreed between the owner / referrer and the Dublin Region Homeless Executive (DRHE) for the provision of such accommodation. A copy of this agreement was not provided. However, an extract from an agreement dated the 30th of November 2022, between Dublin City Council and Savareen Limited was submitted as Appendix B of the referral. The extract states that the Provider (Savareen Limited) engaged with the Valuers Office in Dublin City Council on behalf of the Dublin Region Homeless

Executive to **provide accommodation** (my emphasis) for persons experiencing homelessness at No. 97 North Circular Road. The extracted section of the agreement does not provide any further details regarding the exact nature of the accommodation to be provided.

- 8.2.7. Although the details of the service agreement between the owner and the DRHE and DCC have not been provided, I am satisfied that the owner has entered into an agreement to provide accommodation for people who are listed on the homeless register. The applicant has stated that the agreements in place relate to the provision of medium to long-term accommodation and as such, does not relate to emergency accommodation. I have no evidence to discount the assertion of the owner regarding the length of tenure provided for residents and will accept the facts as stated. However, I note that should the Commission wish to seek further information on any aspect of the referral it is within their gift under Section 8(c)(i) of the Planning Act (as amended).
- 8.2.8. The referrer's case has emphasised the fact that no 'care' will be provided as part of the proposed use. The Regulations define 'care' as *'personal care, including help with physical, intellectual or social needs'*, which is an important distinction with regard to the classes of use set out in Part 4, Schedule 2, of the Regulations including Class 9 (a) which includes use *'for the provision of residential accommodation and care to people in need of care (but not the use of a house for that purpose)'*.
- 8.2.9. The Commission will be aware that several similar referral cases, some of which are referenced in section 5 of this report, have hinged on the question of whether 'care' is provided, and, by extension, whether the use comes within Class 9 (a). I consider that referrer's case has been explicit and deliberate in this regard by unequivocally stating that no 'care' will be provided. I am not aware of any evidence to suggest otherwise and, accordingly, I am satisfied that the proposed use would not come under Class 9 (a). As the accommodation does not provide care and is stated to be medium to long-term, I see no difference in the provision of the subject accommodation and the provision of standard rental accommodation. On this basis I consider that the use would remain as 'residential' use and that a change of use from residential to Class 9(a) has not occurred.

Intensification of use

8.2.10. Whilst I accept that a change of use from residential to Class 9(a) has not occurred. Section 3(1) of the Planning Act also allows for 'development' to occur by virtue of a material change of use. The decision of the PA determined that a material change of use had occurred through the intensification of the permitted use. Section 3 of the Planning and Development Act, 2000, requires that, for a change of use to constitute development, it must be a material change of use. There is no statutory definition of 'material change of use'; however, it is linked to the degree of a change and the associated impacts which are determined on the individual merits of a case. I note the test proffered by Barron, J in *The County of Galway v Lackagh Rock Ltd [1984 21 MCA]* in the determining of whether 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'*.

8.2.11. I have reviewed the floor plan layouts for the building as approved under Ref. **ABP-308189-20** and the plans show that 9 separate residential units would be provided with one separate room, (RM 2.01) at 1st floor level. This room is shown with a table and chairs which could indicate a meeting space but has no defined use on the plans. All units are shown with single beds which would indicate single or double occupancy. However, the referral states that the house would accommodate 32 persons across the 9 units, with 3 to 4 persons per unit. Whilst the planning permission did not specifically state what the occupancy of the building would be, it is reasonable to assume that the provision would be two persons per unit, (i.e. up to 18 residents). Given the floor space of each unit, accommodation for 3 to 4 persons per unit would require bunk beds, which would be more akin to hostel accommodation. The referral submits that the number of residents accommodated in the building is not relevant to the referral question asked. The question asked specifically relates to the use of the building and, as per the sections above, it is accepted that, by virtue of the length of tenure and absence of support facilities for residents, that a change of use from 'residential' has not occurred. Based on the test proffered by Barron, J in *The County of Galway v Lackagh Rock Ltd [1984 21 MCA]*,

the relevant considerations are whether the matters taken into consideration when planning permission was granted under **ABP-308189-20** have changed through the increase in persons accommodated in the building.

8.2.12. Planning matters considered in assessing suitability of residential accommodation relate to the impact on the proposal on existing residential amenity and the standard of amenity to be provided for future residents. Regarding existing residential amenity of neighbouring properties, I accept that the increase in the number of residents in the property would not have a material impact over and above that considered in the application. However, in terms of residential amenity for occupants the Inspector noted that the floor area of the units does not meet the minimum standards for studio apartments, (as per the Design Standards for New Apartments (2018)) but acknowledged the long-established use and considered that the proposal represented an improvement to standards. Having reviewed the plans and particulars of the permitted development, I am satisfied that the residential development permitted is for studio apartments, which is defined as, ‘...a small unit with a combined living/sleeping area, generally provided for a single person’, in the *Planning Design Standards for Apartments, Guidelines for Planning Authorities, (2025)*. Whilst I accept that studio units could also accommodate two people, I consider that accommodating 3 or 4 persons per studio unit would alter the nature and purpose of the unit, which is to provide a self-contained, combined living/sleeping area for a single person or couple. It would also fail to provide the living standards required for units of this type and as a result would change the use of the units to a shared accommodation or hostel-type accommodation, which is commercial in nature. For this reason, I consider that, based on the number of residents in the building, that the matters for consideration that relate to the standard of amenity for residents in the studio units are materially different to those considered in the assessment of the planning application. I note the Section 5 decision (**PA Ref. 0267/24**) referenced in the subject proposal, and I am satisfied that the subject proposal differs from this referral by virtue of intensification of use through the number of persons residing in the property which would alter the permitted use and be a material change in the use, which would contravene Condition No. 2 of **ABP-308189-20**.

8.2.13. Therefore, I consider that the proposal would constitute a material change which would result in 'development' as per Section 3(1) of the Planning Act.

8.3. Is or is not exempted development

8.3.1. As noted above, I consider the subject proposal to represent a material change of use by virtue of the number of persons to be accommodated in the permitted 'studio' units as per the *Planning Design Standards for Apartments, Guidelines for Planning Authorities, (2025)*. The number of persons accommodates in each studio unit would result in a hostel-type accommodation, which is different than that permitted under **ABP-308189-20**. Therefore, I consider that the use of the building can be categorised as Class 6 of Part 4, Schedule 2, which is – '*Use as a residential club, a guest house or a hostel (other than a hostel where care is provided)*'.

8.3.2. Article 10 (1) of the Planning Regulations states: 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.

8.3.3. A change of use from self-contained units to shared accommodation would not consist of a change of use within any one of the classes of use specified in Part 4 of Schedule 2 of the Planning Regulations. It is therefore not exempted development and would require planning permission. Furthermore, the proposal would represent a material change in use which would be contrary to Condition No. 2 of **ABP-308189-20** which authorised the development.

8.4. Conclusion

- 8.4.1. The question asked by the referrer is, *Whether the continued use of a residential building where care is not provided, to house homeless persons, is or is not development?*
- 8.4.2. I considered the question under Sections 2(1) and 3(1) of the Planning Act and Articles 5(1), 9(1) and 10(1) of the Planning Regulations as well as Class 6 and Class 9(a) of Part 4, Schedule 2.
- 8.4.3. In my consideration of the referral, I accepted that there was no legal definition of 'emergency homeless accommodation' and that it had been generally understood to include the provision of short-term accommodation that provided additional support services to residents. As the owner stated that the accommodation provided was for medium to long-term periods with no additional 'care' or supports for residents, I concluded that a change of use from residential use to Class 9(a) would not occur. As a change of use would not occur, the continued use of a residential building where care is not provided to house homeless persons is not development.
- 8.4.4. However, whilst the proposal would not result in a change of use under Class 9(a), I considered the proposal to be a material change of use by virtue of the shared nature of the accommodation which changed from the date of the planning application and the date of the referral. The number of residents per unit would alter the nature of the studio units permitted, which would cease to comply with the definition of the unit type, which is contained in the *Planning Design Standards for Apartments, Guidelines for Planning Authorities, (2025)*. For this reason, the proposal represents a material change of use and would contravene Condition No. 2 of **ABP-308189-20**.

9.0 AA Screening

- 9.1. Having regard to the nature of the appeal which relates to a Section 5 referral and which involves no physical works, and the distance from the nearest European site, no Appropriate Assessment issues arise. 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 Commission should decide this referral in accordance with the following draft order.

WHEREAS a question has arisen as to whether the continued use of a residential building where care is not provided, to house homeless persons, is or is not development or is or is not exempted development:

AND WHEREAS JMA Ventures Limited requested a declaration on this question from Dublin City Council and the Council issued a declaration on the 4th day of September 2025 stating that the matter was development and was not exempted development:

AND WHEREAS referred this declaration for review to An Coimisiún Pleanála on the 1st day of October 2025:

AND WHEREAS An Coimisiún 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) Relevant case law,
- (d) the planning history of the site,
- (e) previous referrals to the Board, including referral **ABP-307077-20 & ABP-308540-20**,
- (f) the submissions of the referrer,
- (g) the number of people to be accommodated on the site and the nature of the accommodation, and,

(h) the number of staff and the nature of supports proposed.

AND WHEREAS An Coimisiún Pleanála has concluded that:

- (a) The intensification in the number of residents in the building would alter the nature of the permitted development for studio units and would result in shared accommodation as categorised under Class 6, Part 4, Schedule 2, which would be a material change of use and would be ‘development’ and would not be exempted development.
- (b) The material change of use would be contrary to Condition No. 2 of **ABP-308189-20** which is the relevant permission under the Act.

NOW THEREFORE An Coimisiún Pleanála, in exercise of the powers conferred on it by section 5 (1) of the 2000 Act, hereby decides that the 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.

.Elaine Sullivan
Senior Planning Inspector

12th of January 2026.

Form 1 - EIA Pre-Screening

Case Reference	ACP-323790-25
Proposed Development Summary	Section 5 Referral
Development Address	No. 97 North Circular Road, Dublin 7.
	In all cases check box /or leave blank
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (For the purposes of the Directive, "Project" means: - The execution of construction works or of other installations or schemes, - Other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources)	<input type="checkbox"/> Yes, it is a 'Project'. Proceed to Q2.
	<input checked="" type="checkbox"/> No, No further action required.
2. Is the proposed development of a CLASS specified in Part 1, Schedule 5 of the Planning and Development Regulations 2001 (as amended)?	
<input type="checkbox"/> Yes, it is a Class specified in Part 1. EIA is mandatory. No Screening required. EIAR to be requested. Discuss with ADP.	State the Class here
<input type="checkbox"/> No, it is not a Class specified in Part 1. Proceed to Q3	
3. Is the proposed development of a CLASS specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) OR a prescribed type of proposed road development under Article 8 of Roads Regulations 1994, AND does it meet/exceed the thresholds?	
<input type="checkbox"/> No, the development is not of a Class Specified in Part 2, Schedule 5 or a prescribed type of proposed road	

<p>development under Article 8 of the Roads Regulations, 1994.</p> <p>No Screening required.</p>	
<p><input type="checkbox"/> Yes, the proposed development is of a Class and meets/exceeds the threshold.</p> <p>EIA is Mandatory. No Screening Required</p>	<p>State the Class and state the relevant threshold</p>
<p><input type="checkbox"/> Yes, the proposed development is of a Class but is sub-threshold.</p> <p>Preliminary examination required. (Form 2)</p> <p>OR</p> <p>If Schedule 7A information submitted proceed to Q4. (Form 3 Required)</p>	<p>State the Class and state the relevant threshold</p>

<p>4. Has Schedule 7A information been submitted AND is the development a Class of Development for the purposes of the EIA Directive (as identified in Q3)?</p>	
<p>Yes <input type="checkbox"/></p>	<p>Screening Determination required (Complete Form 3) <i>[Delete if not relevant]</i></p>
<p>No <input type="checkbox"/></p>	<p>Pre-screening determination conclusion remains as above (Q1 to Q3) <i>[Delete if not relevant]</i></p>

Inspector: _____ Date: _____