Inspector's Report ACP-324210-26

Question	Whether the internal reinstatement of the property to the previously granted/permitted layout of two self contained residential units, as granted under Ministerial Permission Ref: 529/74. Works consist only of reinstating former internal partitions, kitchens, bathrooms and reconnecting existing internal services. No external works, no changes to the external appearance and no extensions are proposed is or is not development or is or is not exempted development.
Location	93 Church Avenue, Drumcondra, Dublin 9

Declaration

Planning Authority	Dublin City Council North
Planning Authority Reg. Ref.	0046/26
Applicant for Declaration	Deirdre McMahon
Planning Authority Decision	Is development and is not exempted development

Referral	
Referred by	Deirdre McMahon
Owner/ Occupier	Deirdre McMahon
Observer(s)	None
Date of Site Inspection	23rd October 2026
Inspector	Frank O'Donnell

1.0 Introduction

1.1.1. The subject referral case relates to a residential property at 93 Church Avenue, Drumcondra, Dublin 9. Retention was granted on Appeal in 1974 for the Extension and Conversion of the property into 2 no. Flats, as planning reg. ref. no. 529/74 refers. At some undetermined date, likely to be after 1974, the property was subdivided to form in excess of 2 no. flats and stated by the Applicant to comprise multiple occupancy. The property is understood to have remained in this multi unit format up to its purchase by the Applicant in May 2021. Following said purchase, some internal fittings and partitions which were associated with the previous subdivision were removed to facilitate occupation as a single family dwelling. Occupation of the property as a single family dwelling is understood to have commenced in January 2022.

1.1.2. Under planning reg. ref. no. WEB1902/26, planning permission was granted to the Applicant for the construction of a single-storey flat roof extension to the rear of the existing dwelling. Condition no. 3 of same stipulates that the dwelling unit and the extension hereby permitted shall be occupied as a single dwelling unit.

1.1.3. At the time of my site inspection, the property appeared to be in single family occupancy. Part of the ground floor, excluding the main living room and dining room, was the subject of internal construction works and an extension consistent with the plans and details approved under planning reg. ref. no. WEB1902/26.

2.0 Site Location and Description

2.1. The subject referral site is located at no. 93 Church Avenue, Drumcondra, Dublin 9. The site comprises an existing 2 Storey red bricked end of terrace dwelling with a single storey side annex and a single storey rear extension. The site is estimated to measure c. 0.034 hectares in area and the floor area of the existing dwelling is estimated to measure c. 202 sqm.

3.0 The Question

3.1. The Question the subject of the referral before the Commission is: -

- *Whether the internal reinstatement of the property to the previously granted/permitted layout of two self-contained residential units, as granted under Ministerial Permission Ref: 529/74. Works consist only of reinstating former internal partitions, kitchens, bathrooms and reconnecting existing internal services. No external works, no changes to the external appearance and no extensions are proposed is or is not development or is or is not exempted development.*

4.0 Planning Authority Declaration

4.1. Declaration

4.1.1. On 11th February 2026, a Request for a Declaration in accordance with the provisions of Section 5 of the Planning and Development Act, 2000, as amended, on the above question, was received by Dublin City Council. The Request was made by Deirdre McMahon.

4.1.2. The Question posed to the Local Authority in the Section 5 Declaration Application, read as follows:

- *'Internal reinstatement of the property to the previously granted/ permitted layout to two self-contained residential units, as granted under Ministerial Permission Ref: 529/74. Works consist only of reinstating former internal partitions, kitchens, bathrooms and reconnecting existing internal partitions, kitchens, bathrooms and reconnecting existing internal services. No External works, no changes to the external appearance and no extensions are proposed.'*

4.1.3. The Local Authority issued a Declaration on 31st March 2026, as follows:

- *Reasons and Considerations*

  1. It is considered that the use of the property for two self-contained residential units, as granted under Ministerial Permission Ref: 529/74 has

been abandoned and the resumption of a residential use of the property for two self-contained residential units constitutes a material change of use. As such the proposed resumption of the use of the property for two self-contained residential units is development and would not constitute 'Exempted Development' and would require planning permission.'

4.2. **Planning Authority Reports**

4.2.1. Planning Reports

- The **Local Authority Planner** noted the content of the Section 5 Declaration Application. The application documentation was noted to not indicate when the dwelling was converted into 2 no. self-contained residential units nor when it was returned to use as a single dwelling. The issue of potential abandonment is raised in the initial assessment. In order to determine whether the use of the property for 2 no. residential units has been abandoned, the Local Authority Planner considered further information was required as requested.
- Following receipt of the Response to the Request for Further Information, the Local Authority Planner considered, in response to item 1 a) - *the date/ timeline for when the single dwelling was converted into 2 no. self-contained units following approval of permission 529/74* that as no evidence of permission for the further subdivision of the premises from that granted under planning reg. ref. no. 529/74 has not been provided, it likely does not exist.
- In Response to item 1 b) of the Request for Further Information – *the date/ timeline for when the 2 no. self-contained units approved under permission 529/74 were converted back into a single dwelling,* the Local Authority Planner considered
    - The Applicant had technically abandoned the use of the 2 no. units in 2022 when the property was intentionally converted to a single family dwelling following the removal of internal partitions (under Part 1 to Schedule 2, Class 14 of the Planning and Development Regulations, 2001 (as amended) which permits a change of use from use as 2 or more dwellings

to use as a single dwelling of any structure previously used as a single dwelling).

- The Local Authority Planner noted however that the use was only abandoned for c. 4 years as opposed to the c. 48 years within which the dwelling was in multiple occupation. Notwithstanding this, intervening issues include the further subdivision of the property into what appears to have been an unauthorised development of more than 2 units which appears to have continued up until the Applicant purchased the property in May 2021.
- As the dwelling was in use for more than the permitted 2 no. units granted under planning reg. ref. no. 529/74, it is therefore considered by the Local Authority Planner that the use was in fact abandoned after this conversion into multiple occupation rather than in 2022 when reverted to single family dwelling.
- The Local Authority Planner concludes based on the planning history of the subject property and the works undertaken to the property in the intervening years since planning reg. ref. no. 529/74 was granted, that the re-establishment of the residential use of the property for 2 units constitutes a material change of use, for which reliance cannot be placed on planning reg. ref. no. 529/74, as the use it authorised is assumed to be abandoned, which constitutes development.
- The Local Authority Planner therefore concluded that
    - The use of the property for two self-contained residential units constitutes a material change of use. As such the proposed resumption of the use of the property for two self-contained residential units is development and would not constitute ‘Exempted Development’ and would require planning permission.

4.2.2. Other Technical Reports

- None

5.0 **Planning History**

5.1. The following planning history is of relevance to the subject referral case:

- **WEB1902/26:** Applicant: Deirdre McMahon. Construction of a single-storey flat roof extension to the rear of the existing dwelling.

  The submitted floor plan drawing (Titled: Existing/ Proposed Layouts) included the following note:

  - *'The property remains under single ownership, although the dwelling is subdivided into two independent units.'*

  A Request for Further Information was issued on 15th June 2026, as follows:

  1. *The planning authority notes that the drawings submitted with the application indicate the property as divided into two independent dwellings. The applicant is advised that the planning authority considers the sub-division as unauthorised (Dublin City Council Reference Plan no. 0044/26 and An Coimisiún Pleanála – Case Reference: RL29N.324210 refer). The applicant is, therefore, requested to submit updated plans indicating the status of the property as a single dwelling.*

  In Response to the above Request, the Applicant submitted Revised Floor Plans and a Cover Letter. The Revised Floor Plan Drawing removed the above quoted note. The Applicant's Cover Letter/ Written Response states, inter alia, that

  - *'The note and labelling on the original floor plans indicating a subdivision of the dwelling have been removed.*

    The reference to subdivision was included in error as a result of a versioning issue during the preparation of the AutoCAD drawings. It does not reflect the existing or proposed status of the property.

    For the avoidance of doubt, the dwelling comprises a single residential unit under single ownership and occupation. No subdivision of the property is proposed as part of this application, nor is any subdivision sought through this planning application.

The revised drawings now correctly identify the property as a single dwelling house.'

Permission was GRANTED on 13th August 2026 subject to 7 no. conditions. Condition no. 3 reads as follows:

3. The dwelling unit and the extension hereby permitted shall be occupied as a single dwelling unit.

Reason: To clarify the plans and particulars for which permission is granted.

- **529/74 (Appeal Ref. No. NOT FULLY LEGIBLE): Permission for Retention** of Extension and Conversion to 2 Flats. Permission was REFUSED by the Local Authority in May 1974 for 4 no. reasons relating to the inappropriate subdivision of the dwelling, density, lack of car parking/ traffic congestion and overdevelopment. This decision was subsequently Appealed to An Bord Pleanála wherein an UNCONDITIONAL permission was GRANTED in October 1974.

6.0 Policy Context

6.1. Dublin City Development Plan, 2022 to 2028

6.1.1. The subject appeal site is zoned Z1 (Sustainable Residential Neighbourhoods) in the Dublin City Development Plan, 2022 to 2028.

6.2. Natural Heritage Designations

6.2.1. The referral site does not form part of, it does not adjoin, nor is it located within close proximity to any designated Natura 2000 site.

7.0 The Referral

7.1. Referrer's Case

- **Abandoned Use:** It is respectfully submitted that the authorised use, as per planning reg. ref. no. 529/74, has not been abandoned. The evidence

demonstrates a relatively recent change in occupation as opposed to a permanent discontinuation of the authorised residential subdivision.

- **Planning History and Nature of Original Layout:** Planning reg. ref. no. 529/74. Permission for the subdivision of the dwelling into 2 no. residential units granted on appeal. The original configuration had no internal separation between the levels and the property was maisonette-style rather than fully independent units in a modern sense. The building remained structurally unified and internally connected, capable of accommodating different residential arrangements without substantial structural alteration. The property was further subdivided over time to bedsit style accommodation. This demonstrates the multi occupancy configuration of the building as opposed to single house use.
- **Physical Condition of the Property Prior to Purchase:**
    - The property contained clear physical infrastructure associated with residential subdivision and multiple occupancy prior to the purchase of same by the Applicant in May 2021. This included multiple electrical distribution boards serving different areas, 3 Phase electricity supply, evidence of separate service provision to different rooms, upgraded water supply infrastructure sized to support multiple occupants, internal layouts consistent with residential subdivision and external waste and service pipework serving different areas of the building.
    - The Pre-Purchase Survey which was prepared in advance of the acquisition of the subject property noted the presence of *'misc fuse boards/ supplies throughout which is not ideal if returning the property to single owner use'.* This Survey also described *'misc rooms to mid building such as kitchen, bedroom, passage to side and converted garage'.* These professional observations confirm that the property remained configured for multiple occupancy immediately prior to purchase and had not been fully converted to a conventional single family dwelling.
- **Timeline of Use:** Planning permission was granted in 1974 for subdivision into residential units. In the subsequent years the property operated in subdivided residential form and was later further subdivided internally. The

property was purchased in May 2021 in a physically subdivided condition. The occupation of the property in single family use commenced in January 2022. At present, infrastructure associated with the historic subdivision remains in place.

- **Nature of Works Undertaken:** Once the property was purchased in May 2021 some internal fittings and partitions which were associated with the previous subdivision were removed to facilitate occupation as a single family dwelling. The works were all internal, were limited to maintenance improvements and did not involve any structural changes to the building or the permanent removal of infrastructure associated with the historic subdivision. All internal works were reversable and did not permanently alter the structural configuration of the building or remove the capability of accommodating separate residential units. The previous owners constructed an unauthorised rear extension which was voluntarily removed following purchase, in order to regularise and improve the condition of the building.
- **Intention to Abandon:** There was no intention to abandon on a permanent basis the authorised residential subdivision. The Applicants occupied the property as a single family home following its purchase in May 2021. This occurred during the COVID-19 period which influenced the manner in which the house was used following its purchase. This arrangement was temporary and practical at the time and did not represent a deliberate or a permanent decision to discontinue the authorised residential use of the property. The physical infrastructure associated with the historic subdivision remained largely intact and capable of supporting residential subdivision.
- **Application of the Abandonment Test:**
- The Planning Authority referred to the principles established in Kildare County Council v. Goode in assessing abandonment. When those principles are applied to the present case
  - the period of single dwelling occupation has been relatively short
  - the physical configuration of the building remained consistent with subdivision

- the change in occupation was practical rather than permanent
- the building retained the capability to accommodate multiple residential units
- the original maisonette-style layout remained structurally unified and adaptable

Accordingly, the evidence does not support a conclusion that the authorised use has been permanently discontinued.

- **Planning Context:** The reinstatement of residential units within an existing dwelling aligns with current planning policy objectives which seek to support the efficient use of existing housing stock and to provide additional residential accommodation within established built up urban areas.
- **Conclusion:**
- Having regard to:
  - the physical condition of the property immediately prior to purchase
  - the recent configuration of the building for multi-occupancy use
  - the relatively short period of single dwelling occupation
  - the absence of any intention to permanently abandon the authorised use
  - the continued presence of infrastructure capable of supporting subdivision
  - the historically unified maisonette-style structure of the building
- it is respectfully submitted that the authorised use of the property for two residential units has not been abandoned.
- It is therefore requested that An Bord Pleanála determine that the reinstatement of the internal layout of the property to provide two residential units, as previously permitted under Permission Ref. 529/74, does not constitute a material change of use.

7.2. Planning Authority Response

- The Commission received no Response from the Local Planning Authority within the statutory timeframe.

7.3. Further Responses

- None

8.0 Statutory Provisions

8.1. Planning and Development Act, 2000, as amended

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

- 'development' has the meaning assigned to it by Section 3;
- 'house' means a building or part of a building which is being or has been occupied as a dwelling or was provided for use as a dwelling but has not been occupied, and where appropriate, includes a building which was designed for use as 2 or more dwellings or a flat, an apartment or other dwelling within such a building;
- 'works' includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal ….'

8.1.2. **Section 3 (1)** states that:

- 'development' means, except where the context otherwise requires, the carrying out of any works in, on, over or under land, or the making of any material change in the use of any land or structures situated on land, or development within the meaning of Part XXI (inserted by section 171 of the Maritime Area Planning Act 2021).

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

8.2. **Planning and Development Regulations, 2001 to 2026**

8.2.1. ***Article 6 1)*** provides 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'.

8.2.2. **Article 9 1) a)** states that development to which article 6 relates shall not be exempted development for the purposes of the Act if the carrying out of such development would, inter alia:

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

(ii) consist of or comprise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width,

(iii) endanger public safety by reason of traffic hazard or obstruction of road users,

(iv) endanger public safety by reason of hazardous glint and/or glare for the operation of airports, aerodromes or aircraft,

….

8.2.3. **Article 10 (1)** states that 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.

8.2.4. Part 1 of Schedule 2 of the Regulations sets out the Exempted Development – Classes of Use and includes **Class 1A Use** and **Class 14 e) Use**

- **Class 1A** – *the subdivision of a house and the restoration of a house to its original form if subdivided under this Class.*

  Conditions and Limitations

  1. For the purposes of this exemption, the relevant period begins on the date that this Regulation is signed and ends on 31 December 2030.
  2. This exemption shall apply only to development that is commenced and completed during the relevant period.
  3. For the avoidance of doubt, the relevant building control legislation shall apply, such as Building Regulations (including Fire Safety) and Building Control Regulations.
  4. Subdivision of a house shall not create more than two units in total.
  5. Each unit shall be no less than 32 square metres in floorspace.
  6. Each unit shall be self-contained and not reliant on the use of shared internal space, other than for access.
  7. This exemption shall not be used in cases where there has been a construction, erection or placing of a detached house in the rear garden of a principal house.
  8. Subject to paragraph 9, a notification shall be submitted to the relevant planning authority not less than 14 days prior to the commencement of the works informing them of the intention to use this Class of exemption, confirming that the site meets the requirements under these Regulations and stating the reason for the intended use.
  9. A notification under paragraph 8 shall include the location of the proposed use of this class of exemption and the Eircode of the relevant property.
  10. The planning authority shall maintain a record of all notifications under this exemption and report annually to the Minister on the number of notifications received under this Class.

- **Class 14 e)** – *Change of use - from use as 2 or more dwellings, to use as a single dwelling, of any structure previously used as a single dwelling.*

9.0 **Assessment**

9.1. The Question before the Commission is

- *Whether the internal reinstatement of the property to the previously granted/permitted layout of two self-contained residential units, as granted under Ministerial Permission Ref: 529/74. Works consist only of reinstating former internal partitions, kitchens, bathrooms and reconnecting existing internal services. No external works, no changes to the external appearance and no extensions are proposed is or is not development or is or is not exempted development.*

9.2. I propose to rephrase the Question as follows:

- *Whether the reinstatement of the property to the previously granted/permitted layout of two self-contained residential units, as granted under Ministerial Permission Ref: 529/74, is or is not development and is or is not exempted development.*

9.3. **Is or is not development**

9.3.1. Section 3 of the Act defines development as *'the carrying out of any works in, on, over or under land, or the making of any material change in the use of any structures situated on land, or development within the meaning of Part XXI (inserted by Section 171 of the Maritime Area Planning Act 2021)'.*

9.3.2. Based on the Section 5 Declaration Application, the Applicants referral case, the relevant planning history of the subject site, including planning reg. ref. no. 529/74 and the more recent decision, planning reg. ref. no. WEB1902/26, I am satisfied that the subject property is currently in single occupancy use. I note Condition no. 3 of planning reg. ref. no. WEB1902/26 stipulates that '*the dwelling unit and the extension hereby permitted shall be occupied as a single dwelling unit.'*

9.3.3. The proposed reinstatement of the property to the previously granted/ permission layout of two self-contained residential units, as granted under Ministerial Permission Ref: 529/74, would represent a material change to the permitted use of the property as a single dwelling unit and therefore represents development.

9.4. **Is or is not exempted development**

- *Condition no. 3 of planning reg. ref. no. WEB1902/26*

9.4.1. As noted, the subject property is currently in single occupancy use. Condition no. 3 of planning reg. ref. no. WEB1902/26 stipulates that '*the dwelling unit and the extension hereby permitted shall be occupied as a single dwelling unit.'* The reinstatement of the property to the previously granted/ permitted layout of two self-contained residential units, as granted under planning reg. ref. no. 529/74, conflicts with the terms of said Condition no. 3 of planning reg. ref. no. WEB1902/26.

- *Class 1A of Part 1 of Schedule 2 of the Regulations*

9.4.2. I note Class 1A of Part 1 of Schedule 2 of the Regulations relates to an exemption in the case of the subdivision of a house and the restoration of a house to its original form if subdivided under this Class. Class 1A is quoted in full above in Section 8.2 of this Report and is subject to a total of 10 no. Conditions and Limitations which include a time limit imposed under paragraph no. 1, a restriction to 2 no. units only under paragraph no. 4, a minimum floorspace requirement under paragraph no. 5, access arrangements under paragraph no. 6, and subject to paragraph no. 9, the submission of a notification to the relevant planning authority not less than 14 days prior to the commencement of the works informing them of the intention to use this Class of exemption, confirming that the site meets the requirements under these Regulations and stating the reason for the intended use under paragraph no. 8.

9.4.3. I am satisfied that the reinstatement of the property to the previously granted/permitted layout of two self-contained residential units, as granted under Ministerial Permission Ref: 529/74, does not represent exempted development under Class 1A of Part 1 of Schedule 2 of the Regulations as i) the Applicant has not suitably demonstrated compliance with the various 10 no. conditions and limitations and ii) such a proposal conflicts with the terms of Condition no. 3 of planning reg. ref. no. WEB1902/26.

9.5. **Restrictions on exempted development**

9.5.1. Article 9 of the Regulations relates to Restrictions on Exemptions. Article 9 (1) (a) (i) reads as follows:

> *'9 (1) Development to which article 6 relates shall not be exempted development for the purposes of the Act ----*
>
> *(a) If 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..'*

9.5.2. I am satisfied that the reinstatement of the property to the previously granted/permitted layout of two self-contained residential units, as granted under Ministerial Permission Ref: 529/74, conflicts with the terms of Condition no. 3 of planning reg. ref. no. WEB1902/26 and does not therefore represent exempted development.

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 reinstatement of the property to the previously granted/permitted layout of two self-contained residential units, as granted under Ministerial Permission Ref: 529/74, is or is not development and is or is not exempted development.
>
> **AND WHEREAS** Deirdre McMahon requested a declaration on this question from Dublin City Council and the Council issued a declaration on the 31st day of March, 2026 stating that the matter was development and was not exempted development:
>
> **AND WHEREAS** Deirdre McMahon referred this declaration for review to An Coimisiún Pleanála on the 14th day of April, 2026:

AND WHEREAS An Coimisiún 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, as amended,

(c) Section 4(1)(a) of the Planning and Development Act, 2000, as amended,

(d) Article 6(1) and Article 9(1) of the Planning and Development Regulations, 2001, as amended,

(e) Parts 1 and 3 of Schedule 2 of the Planning and Development Regulations, 2001, as amended,

(f) the planning history of the site,

(g) the pattern of development in the area:

AND WHEREAS An Coimisiún Pleanála has concluded that:

(a) The proposal is development within the meaning of the Planning and Development Act 2000 (as amended) as it represents a material change to the permitted use of the property as a single dwelling unit,

(b) The exemption under Class 1A applies to the subdivision of a house and the restoration of a house to its original form if subdivided under said Class,

(c) The Applicant has not suitably demonstrated compliance with the provisions of Class 1A and the associated 10 no. conditions and limitations,

(d) The proposal to reinstate the property to the previously granted/ permitted layout of two self-constated residential units, as granted under Ministerial Permission Ref: 529/74, conflicts with the terms of Condition no. 3 of planning reg. ref. no. WEB1902/26.

NOW THEREFORE An Coimisiún Pleanála, in exercise of the powers conferred on it by section 5 (3) (a) of the Planning and Development Act, 2000 Act, as amended, hereby decides that the reinstatement of the property to the previously granted/permitted layout of two self-contained residential units, as granted under Ministerial Permission Ref: 529/74, 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 me, directly or indirectly, following my professional assessment and recommendation set out in my report in an improper or inappropriate way.

Frank O'Donnell
Planning Inspector

30th October 2026