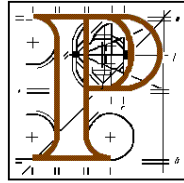


An Bord Pleanála



Inspector's Report

Reference Case: 06D.RL.3407

Question: Whether the parking of cars in the school grounds at the Harold School is or is not development or is or is not exempted development.

Location: The Harold School, Eden Road Lr, Glasthule, Dun Laoghaire, County Dublin.

Referrer/Landowner: Staff of Harold School

Planning Authority: Dun Laoghaire Rathdown County Council

Date of Site Inspection: 21st April 2016.

Inspector: Una Crosse

1. INTRODUCTION

This is a referral to the Board under Section 5 of the Planning and Development Acts 2000 - 2015 by the Staff of the Harold School in relation to whether the parking of cars in the school grounds at the Harold School is or is not development or is or is not exempted development at the Harold School, Eden Road Lr, Glasthule, Dun Laoghaire, County Dublin.

2. SITE AND SURROUNDINGS

The site in question comprises the grounds of the Harold School in Glasthule. The site accommodates a number of buildings including a large red bricked two-storey building which addresses Eden Road Lower and which comprises the original Harold School. This building is a protected structure (Harold's National School- RPS Ref. 1288). This building has been extended with a rendered structure attached to the side with a yard area enclosed by the buildings with an access way to the rear and access between the buildings. To the rear of this building there are additional more modern school buildings which are two storeys in height with one linear structure along the western boundary and an 'L' shaped building towards the centre of the site. Along the northern boundary of the site there is a greenhouse and two handball alley structures. The yard area within the middle of the site is the area which is used for parking. A number of bollards have been placed in the vicinity of buildings to create walkways. Access to the site is via an electronic gateway along the northern boundary adjacent the handball structure. It provides access via a laneway to Glasthule Road. The lane also provides access to the rear of the shops No.s 1-4 within Glasthule village and the large red bricked two storey building formerly part of the Presentation Brothers School complex which is a protected structure (Presentation College – RPS Ref. 1162).

3. THE QUESTION

The referrer states that they are seeking a declaration that the use of part of the lands within the Harold School, Glasthule for purposes incidental to the primary educational use of the site (namely staff car parking area within the school grounds) is not development. Therefore the question posed in this referral is whether the parking of cars in the school grounds at the Harold School is or is not development or is or is not exempted development.

4. DECISION OF PLANNING AUTHORITY

The Planning Authority decided on 8th September 2015 that the proposed does not constitute exempted development in accordance with Sections 2, 3 & 4 of the Planning and Development Act 2000, as amended.

It is noted in the Planners Report that a warning letter ENF: 104/15 issued with respect to the use of the internal yard area as staff car park. The report notes the request and refers to Section 3(1) of the Act. It is stated that the existing development does not fall within the provisions of any of the Classes of development deemed to be exempt under Part 1 to Schedule 2 of the Regulations. It continues that therefore the main assessment of the proposal is whether parking cars within school grounds constitutes development and/or a material change of use of any structure or other land. Further information was considered necessary in respect of clarifying the specific location of the parking. In response the referrer has shown a shaded area where staff parking takes place but clarifies that the entirety of the land within the red line constitutes the school grounds. In the assessment it is stated that there are no exemptions included specifically for the development of car parking within the Regulations. It is further noted that having regard to the nature and extent of the works that the Planner is not satisfied that the works can be assessed under Section 4(1)(h) of the Planning and Development Act 2000 as amended.

5. REFERRER'S CASE

The referrer's case may be summarised as follows.

- Planning unit consists of the current grounds of the Harold School which includes lands and buildings formerly used as the Presentation Brothers Primary and Secondary School which was transferred in 2008 to the Department of Education for continued use for school purposes by the adjoining Harold School;
- Buildings within the planning unit in use by the Harold School as classrooms and for ancillary uses;
- Both schools were operating prior to the enactment of 1963 Planning Act;
- Grounds formerly used by Presentation Brothers and transferred in 2008 continue to be used for educational purposes as well as incidental uses;
- Letter attached from former Principal of Presentation Brothers confirming use of the school grounds for the purpose of providing car parking for staff of the Brothers prior to its closure in 2007;
- Parking of staff cars only takes place during school hours and grounds are not available or accessible to the general public with no charge for parking;
- PA declaration does not answer the questions raised in the Section 5 request as to whether the parking of staff cars in the subject site is development within the meaning of the Planning Acts;

- PA did not have any regard to the matter that by virtue of the Pre-64 use of the site that no permission is required for the continuation of any uses in existence prior to the enactment of the 1963 Planning Act;
- PA have decided that use of school grounds for staff car parking is not exempted development but this was not question arising. The question was whether the parking of staff cars was or was not development within the meaning of the Planning Acts with PA concluding that since the use does not come within the definition of exempted development it is therefore development;
- Case made to PA made no reference to exempted development but approached matter on basis of definitions and works;
- Contention of referrer is that parking of staff cars within the school grounds is incidental and ancillary to the primary use of the site for education purposes and as such is not development;
- Parking of cars is neither works nor material change of use and therefore not development;
- In respect of the exact land use, it is stated that the entirety of school grounds represents the planning unit and while parking takes place in a specific area the Section 5 request must consider the entire planning unit as was stressed to PA who sought exact location of parking within the grounds;
- Reference to rulings of Blaney J. (High Court) and Griffen J. (Supreme Court) in respect of ancillary uses – close association with the premises, their owner and activities carried on;
- Reference to UK principles relating to planning unit;
- Reference to Material Change of use as set out at Section 3.5 of Irish Planning Law Factbook;
- The site has had a single main purpose namely education and staff car parking is not distinct or separate either physically or functionally from the school use;

6. PLANNING AUTHORITY'S SUBMISSION

The PA refer to the report on file and state that notwithstanding the comments made by the applicant (referrer) it is noted that there is no indication that the lands subject to this Section 5 were allocated as a car park staff. There is no permission to this effect and the lands have not been lined/delineated as parking bays. It is stated that it appears that the lands formed part of the external yard associated with the school and possibly was a playground associated with the former Presentation School. The PA considers that the use of the lands within the school ground, the former Presentation School land, in particular as works. Having regard to the current use of the land for parking of cars in the school

grounds without the benefit of permission constitutes a material change in use and is not considered incidental to the educational use and therefore required permission.

7. PLANNING HISTORY

Reference is made in the Planners Report to the following, both of which were at the Harold School (and prior to amalgamation of schools):

D99A/0037 – permission granted for a new emergency exit door and ramp from the general purpose room to front and to erect signs to front and gable wall;

D94A/0715 – Permission granted for classroom extension at second floor level;

ENF:104/15 – Warning letter issued with respect to use of internal year area as staff car park.

8. BOARD REFERRALS OF RELEVANCE

The following referrals provide some elements of relevance.

Ref. RL3139 -

The site was located at the fringe of a business park within the vicinity of an airfield. It was an irregularly shaped open yard compound finished in compacted hardcore. There was an historic permission for a camping and caravan site with a recreational area on the lands. Such use ceased around 1998 and was considered to be abandoned. The Board decided the development was not exempted development, and noted that - The use of the subject site as a car park constituted a change in the use of the lands, which was a material change of use having regard to the nature of the operation, the volume of associated traffic movements, and potential impacts arising. The development was therefore considered to be development per Section 3 of PDA, 2000 and did not come within any exemption provided by Section 4 of PDA, 2000.

Ref. RL3386 -

The referral site was a communal green amenity area opposite a two storey over basement mid terrace property that was a Protected Structure and located within an ACA. It was proposed to provide off street car parking on a grassed area directly opposite the structure. The Board determined that the provision of car parking as described was development and was not exempted development and noted that the provision of an off-street car parking space on the shared grass amenity area would constitute a change of use of the land that was material given the planning implications and external effects. There were no provisions in the Acts or the Regulations by which such a change of use could constitute exempted development.

9. LEGISLATIVE CONTEXT

The Planning and Development Act, 2000 (as amended) Section 3(1) of the Act states the following in respect of 'development':

"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."

Section 4(1) sets out a number criterion which shall be exempted development for the purpose of this Act- including...

(h) development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures.

Section 4 (2)(a) of the Act enables certain classes of development to be deemed exempted development by way of regulation.

Section 57(1) of the Act states Notwithstanding section 4(1)(a), (h), (i), (j), (k), or (l) and any regulations made under section 4(2), 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.

Article 6 (1) of Planning and Development Regulations 2001, as amended sets out classes of development which shall be exempted development.

Article 9 (1) of Planning and Development Regulations 2001, as amended, sets out various restrictions on works that would otherwise be exempted development under Article 6.

10. ASSESSMENT

9.1 Introduction

Prior to addressing the matter of whether the parking of cars within the school grounds is or is not development I would note that a number of points made by the referrer require some consideration. Firstly, the matter of the planning unit. The referrer is at pains to stress the need to consider the planning unit in respect of the consideration of the question. This appears to be of particular relevance in their consideration when the matter of the pre-64 use of the school grounds is

considered and also the matter of parking as an incidental use to the primary use on site. However, there are effectively two historical planning units which have been amalgamated, for the most part. I would note that the Presentation College building fronting Glasthule Road is not within the red line boundary nor arguably within the current planning unit referred to. This building, which is a protected structure would, in my opinion, have been part of the pre-2008 planning unit of the Presentation School site. Therefore, a new planning unit was created with the amalgamation of the schools in 2008. The pre-64 use of the site for educational purposes is noted. However, this does not provide the site with an exemption from the need to obtain permission for development. This is particularly of note given the existence of a protected structure on the site (Harold's National School) within this new post-2008 planning unit and a protected structure (Presentation College) adjacent to the new post 2008 planning unit.

Whether or not the Planning Authority answered the question posed by the referrer is negated by the appeal of same to the Board and in this regard I propose to address the question by firstly examining whether or not the parking of cars by staff within the school grounds is or is not development. If it is considered that it is development then the matter of whether or not it is exempted development shall be addressed.

9.2 Is or is not Development

Section 3(1) of the Planning and Development Act 2000 as amended states "*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.*" Therefore the test in this instance is whether or not works or a material change of use have occurred in respect of the staff car parking. While the referrer is averse to specifying the area of the grounds upon which parking occurs it is clear from visiting the site that given the extent and layout of buildings that parking of cars can only occur within the area of ground directly to the south of the vehicular entrance to the site. Therefore, the referrers continued reference to the planning unit rather than the area of open ground used for parking is not, in my opinion, a paramount consideration. This open area of ground appears to be have been laid out as a recreational yard for the use of students of the Presentation schools with buildings and two handball alleys directly accessing same. The works carried out to create this yard are most likely to be, as the referrer suggests, pre-64. I note there is no evidence provided by the referrer by way of historical maps however, both schools are included in the Cassini 6 inch map which dates from the late

19th century. I would note that the area of ground within which the current parking occurs is clearly within the rear of the Presentation College building at this time.

The referrer includes a letter from the former Principal of the Presentation Brothers School stating that parking took place on the school grounds between 1999 and 2007, the years of his tenure. I would note that it is not stated when this area of ground first became used as car parking. Notwithstanding, the area of ground currently used for parking was, in my opinion, laid out and intended as a recreational yard area for the use of students of the school.

The test in respect of development therefore is whether works or a material change of use has occurred. While the Planning Authority refer to works having taken place I do not consider that using this area of ground as a parking area has constituted works as the area of ground has not been delineated for car parking spaces and could if the cars were removed provide a recreational yard space. The only apparent changes appear to be the introduction of bollards within the yard area. However, the main consideration, in my opinion, is that at some point the use of this area of ground has changed from a recreational space to use as a car parking area. The key consideration is therefore whether the change of use of this yard area from an area for recreational space to car parking is material. The referrer argues that staff parking is ancillary and incidental to the primary use of the site. The argument being made is in effect that it is an ancillary use anywhere within the planning unit. While the location of buildings on site effectively limits the extent of this argument, as outlined above, the question remains as to whether the use of this area for staff parking associated with the school comprised a material change of use.

It is my opinion that changing the use of the recreational yard area to use as a parking area would constitute a material change of use of the land given the planning implications and external effects arising. The use of the area for parking cars creates materially different planning considerations to those arising in the use of the area for recreational purposes. These include the generation of traffic movements and the volume of same, noise impacts and the generation of other environmental effects. Therefore, the uses are materially different and therefore a material change of use has, in my opinion occurred. This therefore provides that the parking of staff cars within the school grounds is development as defined in Section 3(1) of the Planning and Development Act 2001.

9.3 Is or is not exempted development

Therefore, as it is my opinion that the parking of cars in the school grounds at the Harold School is development, the next test is whether the development is or is

not exempted development. I would note at the outset that Section 57(1) of the Planning Act as amended states that “notwithstanding section 4(1)(a), (h), (i), (j), (k), or (l) and any regulations made under section 4(2), 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”. Having regard to the extent of development within the grounds/curtilage of both the protected Harold’s National School and the Presentation College structures I do not consider it would be reasonable to argue that the parking of cars would materially affect either of these structures. Therefore I consider that Section 57(1) is not applicable in this instance.

Section 4(1) of the Act sets out some types of development which is exempt for the purposes of the Act. It is my opinion that none of the sections would apply to the development herein.

Article 6 (1) of the Planning and Development Regulations 2001, as amended (the Regulations) makes provision for classes of development set out in Schedule 2 Part 1 of the Regulations to be exempted development subject to any provisions of Article 9. Class 40 provides that the following is exempt: “*Works incidental to the use or maintenance of any burial ground, churchyard, monument, fairgreen, market, schoolgrounds (my emphasis) or showground except— (a) the erection or construction of any wall, fence or gate bounding or abutting on a public road, (b) the erection or construction of any building, other than a stall or store which is wholly enclosed within a market building, or (c) the reconstruction or alteration of any building, other than a stall or store which is wholly enclosed within a market building*”. However, this exemption relates to works rather than use and therefore is not applicable in this instance.

Article 9 of the Regulations sets out a number of restrictions on development which would, otherwise, be exempted development. These have been substantially amended since the original article 9 in the Regulations. However, as the development is not a development included in the classes of development set out in Part 3 of the Regulations it is not necessary in my opinion to address the restrictions.

Article 10(1) of the Regulations as amended provides 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 involve the contravention of a condition of a permission and 3 other considerations. However the change of use of lands for use as parking is not included in Part 4 to Schedule 2 and therefore this does not apply.

RECOMMENDATION

Having regard to the foregoing I recommend that the Board find that the parking of cars in the school grounds at the Harold School is development and is not exempted development in accordance with the draft order set out below.

WHEREAS a question has arisen as to whether the the parking of cars in the school grounds at the Harold School, Eden Road Lower, Glasthule, Dun Laoghaire, Co. Dublin is or is not development and is or is not exempted development:

AND WHEREAS the question was referred to An Bord Pleanála by the Staff of the Harold School, Eden Road Lower, Glasthule, Dun Laoghaire, Co. Dublin on the 25th day of September, 2015:

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

- a) Sections 2, 3, 4 and 57(1) of the Planning and Development Act, 2000, as amended,
- b) Articles 6, 9 and 10 of the Planning and Development Regulations 2001, as amended,
- c) Class 40 of Part 1 of Schedule 2 to the said Regulations,
- d) the information submitted on behalf of the referrer,

AND WHEREAS An Bord Pleanála has concluded that –

- a) the use proposed comprises development within the meaning of Section 3 of the Planning and Development Act, 2000, as amended,
- b) the use is not one included in Section 4 of the Planning and Development Act, 2000, as amended,
- c) the use is not one included in Article 6, Part 1, 2 or 3 of Schedule 2 or Article 10 of the Planning and Development Regulations 2001 as amended.

NOW THEREFORE An Bord Pleanála in exercise of the powers conferred on it by Section 5 of the 2000 Act, hereby decides that the parking of cars in the school grounds at at the Harold School, Eden Road Lower, Glasthule, Dun Laoghaire, County Dublin is development and is not exempted development.

Una Crosse
Senior Planning Inspector
April 2016.