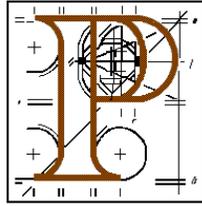


An Bord Pleanála



Inspector's Report

Reference Case: 06D.RL3443

Question: Whether the use of a previous school/montessori facility (existing) at the Apres School Club at the corner of Adelaide and Lower Eden Road, Glasthule, Co. Dublin is or not development or is exempted development.

Referred by: Maria Sweeney

Planning Authority: Dun Laoghaire Rathdown County Council

Site Inspection: 20th April 2016

Inspector: Emer Doyle

1.0 BACKGROUND

1.1 Maria Sweeney submitted a request to Dun Laoghaire Rathdown County Council for a declaration under section 5 of the Planning and Development Act to determine whether the use of a previous school building as an after-school/ montessori facility is or is not exempted development. The Council determined that the use constitutes development and is not exempted development.

2.0 THE QUESTION

2.1 The question before the Board is:

Whether the use of a previous school building as an afterschool/ montessori facility (existing) is or is not development or is or is not exempted development at the Apres School Club, Adelaide and Lr. Eden Road, Glasthule, Co. Dublin.

3.0 THE REFERRER'S SUBMISSION

3.1 The submission may be summarised as follows:

- An afterschool facility was set up in this building in late August of 2009 with the knowledge and permission of Dun Loaghair Rathdown County Council.
- The following year, the business was added to by starting a montessori school in the mornings.

- There has been no structural work undertaken on the site. The building is fully intact and exactly as it was apart from new internal fire doors and a small fire partition in order to comply with fire regulations.
- The building is now for sale and proof of planning permission for use of the building as a child care facility is needed.

4.0 THE POSITION OF THE PLANNING AUTHORITY

4.1 The planning report prior to the declaration by the planning authority included the following:

- It is noted that the subject building was historically used as a school building. However, reference to Reg. Ref. D06A/0759, indicates that permission was sought for the demolition of a 'disused' school building, which at the time of the application was in use as a youth club. It is therefore clear that the use of the building as a school had ceased.
- Notwithstanding this, it is also noted that development which consists of a change of use within any of the classes of use specified in Part 4 of Schedule 2, of the Planning and Development Regulations 2001 and as amended, shall be exempted development for the purposes of the Act. However, the development use classes as set out in Part 4 do not make any provision for a change of use from a school to use as a montessori/ after school facility.
- It was concluded that having regard to Sections 2, 3 and 4 of the Planning and Development Act 2000 and as amended and Part 4 of Schedule 2 of the Planning and Development Regulations 2001 and as amended, the development which involves the use of a building (previously used as a school) as an after school/montessori facility

constitutes development and is not exempted development. The planning authority concurred with this recommendation in its decision.

- A response to the referral by the planning authority repeated the case made in the planning report and stated that the development constituted development and not exempted development.

5.0 EVALUATION

A. Statutory Provisions

1. Planning and Development Act 2000 (as amended)

Section 2(1)

In this Act, except where the context otherwise requires—

“use”, in relation to land, does not include the use of the land by the carrying out of works thereon.

“structure” means any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined, and-

(a) Where the context so admits, includes the land on, in or under which the structure is situate....

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

Section 3(1)

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.

2. Planning and Development Regulations 2001 (as amended)

PART 2 - Exempted Development

Article (10)

- (1) 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.
- (2)(a) A use which is ordinarily incidental to any use specified in Part 4 of Schedule is not excluded from that use as an incident thereto

merely by reason of its being specified in the said Part of the said Schedule as a separate use.

Schedule 2

Part 4 Exempted Development – Classes of Use

Class 8

Use –

- (a) as a health centre or clinic or for the provision of any medical or health services (but not the use of the house of a consultant or practitioner, or any building attached to the house or within the curtilage thereof, for that purpose),
- (b) as a crèche,
- (c) as a day nursery,
- (d) as a day centre.

Class 10

Use as-

- (a) an art gallery (but not for the sale or hire of works of art),
- (b) a museum,
- (c) a public hall,
- (d) as an exhibition hall,
- (e) a social centre, community centre or non-residential club, but not as a dance hall or concert hall.

B. Planning History of the Site

PA Reg. D06A/0759

Permission refused for demolition of disused school building for the construction of new residential building comprising 3 storeys over ground floor plus upper mezzanine level and containing 16 No. apartments, car parking spaces and all ancillary works.

Relevant Precedent Cases

I have checked the Board list of referral files and I can find no previous referral decision relating directly to either after school facilities or montessori schools.

RL2552 relates to the change of use from a dwelling to a childcare facility. I consider that the type of childcare facility is very different to the current referral in that a small number of children, c.3, with special needs were provided with accommodation and care in a former dwelling. To assist the Board, I have provided, in the file pouch, a copy of the Inspector's Report and Board Order in that case.

C. Assessment

(i) The Question of 'Development'

The first issue to be decided is whether the use of the structure as an after school and montessori constitutes development or not.

I note from the history application on the site that the building is described as a 'disused school building.' Between the time the building was used as a school

and the existing use, the building had been used for some time as a youth club. There is no record of permission for the use as a youth club.

Arising from the above, it may reasonably be determined that the use of the premises as a school had ceased and the use of the premises as a youth club was a use that was not subject to a grant of permission. I am of the view that the use as a montessori and after school facility would constitute a 'change of use'.

It is stated in the letter from the owner dated the 20th of October 2015 that 'any work that has been done to this building in the past 7 years has been purely cosmetic other than Fire Safety Measures that were undertaken in April 2013.'

It is stated in the letter submitted with the appeal dated the 14th of December 2015 that there has been no structural work undertaken on the site. The building is fully intact apart from new internal fire doors and a small fire partition which needed to be done in order to comply with fire regulations. Having regard to the definitions in the Act, I am satisfied that the cosmetic measures and fire safety measures referred to involve 'works' as defined and is therefore development.

(ii) The Question of 'Exempted Development'

The exempted development provisions considered relevant that relate to a change of use in this instance are set out in Article 10 and Part 4 Class 8 of Schedule 2 of the Planning and Development Regulations and are referenced above. My submission is as follows:

- The change of use from a previous school building (whether this use had ceased or otherwise) to a afterschool and montessori facility is not

provided for under Part 4 of Schedule 2 of the Planning and Development Regulations.

- As the change of use to a montessori and afterschool cannot avail of the provisions set out under Article 10 and Part 4 of Schedule 2 of the Planning and Development Regulations, it is concluded that the change of use constitutes a change of use that is 'material', and that it thus constitutes 'development' for the purposes of the Planning and Development Act, and it is not an exempted development.

6.0 CONCLUSION AND RECOMMENDATION

I recommend as follows:

WHEREAS a question has arisen as to whether the use of a previous school building as an afterschool/ montessori facility is or is not development or is or is not exempted development at the Apres School Club at the corner of Adelaide and Lower Eden Road, Glasthule, Co. Dublin.

AND WHEREAS the said question was referred to An Bord Pleanála by Maria Sweeney on the 14th day of December, 2015:

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

- (a) Sections 2(1) and 3(1) of the Planning and Development Act, 2000, as amended;
- (b) Article 10 of the Planning and Development Regulations 2001, as amended;
- (c) Class 8 of Part 4 of Schedule 2 of the Planning and Development Regulations 2001, as amended.

(d) the planning history of the site and the documentation submitted with the referral.

AND WHEREAS An Bord Pleanála has concluded that –

- (a) There is no provision for exemption within any of the Classes as set out in Part 4 of Schedule 2 of the Planning and Development Regulations, 2001 for a change of use from a previous school building to an after school and montessori facility under the exempted development provisions of the Planning and Development Regulations,
- (b) The use of the building as an after school and montessori facility constitutes a material change of use to that associated with the previous school building, and
- (c) The material change of use thereby constitutes ‘development’ within the meaning of section 3 of the Planning and Development Act:

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 of the 2000 Act (as amended), hereby decides that the use of a previous school building as an after school and montessori facility at Adelaide and Lower Eden Road, Glasthule, Co. Dublin constitutes development that is not exempted development.

Emer Doyle
Planning Inspector
4th May 2016