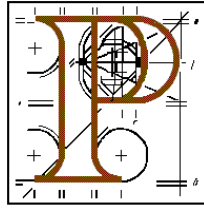


An Bord Pleanála



Inspector's Report

Reference Case: 06D.RL3446

Question: Whether the use of a primary school for grind classes outside of normal school hours is or is not development, or is or is not exempted development.

Referred by: Woodlands Stillorgan Resident's Association

Planning Authority: Dun Laoghaire Rathdown County Council

Site Inspection: 20th April 2016

Inspector: Emer Doyle

1.0 BACKGROUND

1.1 Woodlands Stillorgan Residents Association submitted a request to Dun Laoghaire Rathdown County Council for a declaration under section 5 (3) of the Planning and Development Act to determine three questions in relation to the use of a primary school for the purposes of grinds outside of normal primary school hours. The full text of the three questions is important to get an overview of the background to the case and is set out in the next section. The Council determined that questions 1 and 3 did not fall within the remit of a Section 5 query and considered that the use of Scoil Mhuire-Oaklands Primary School for the provision of grind classes during evening times or weekends does not constitute development.

2.0 THE QUESTION

2.1 The questions posed to the Planning Authority originally are as follows:

1. DLRCC is requested to make a declaration and supply reasons within the meaning of the 2000 Act, as to whether it considers that the Board of Management of Scoil Mhuire has complied with the requirements of Condition 4 of the final grant of planning permission ref. P/0788/13 dated 6th June 2013.

2. DLRCC is requested to make a declaration within the meaning of the 2000 Act and supplying reasons, as to whether it considers the use of the Oatlands Primary School (Scoil Mhuire) facility in the evenings, nights, weekends and at holiday times by the Dublin School of Grinds with the attendant volume, intensity, and duration of vehicular traffic that

it generates, constitutes an authorized or exempted development pursuant to the Planning Acts or in the alternative,

Is Oaklands Primary School in breach of Condition 4 of the grant of permission D13A/0113 for hugely increasing traffic into the school and environs via extending its catchment area and in particular procuring the Dublin School of Grinds, rather than taking measures to reduce reliance on the private motor car?

3. DLRCC is requested to make a declaration within the meaning of the 2000 Act and supplying reasons as to whether or not, that the Board of Management of Scoil Mhuire unilateral change in traffic flow and management, by closing off all access to the internal avenue thereby forcing school traffic up and down Oaklands Avenue, link road and Drive (which are narrow residential cul de-sacs), is considered an authorized development and/or

If it constitutes a 'change of use' of the development in breach of Condition 4 of the grant of planning permission and also a breach of the zoning objective of the area?

I am of the view that questions 1 and 3 are enforcement and traffic management issues which are a matter for the Planning Authority and do not fall within the jurisdiction of the Board.

I note that the Section 5 Appeal to An Bord Pleanála accepts that question 1 does not fall within the remit of a Section 5 referral but considers that questions 2 and 3 are valid questions and asks An Bord Pleanála to adjudicate these questions only.

However, from my examination of the file, I consider that the ‘questions’ are in need of modification in order to omit the matters which are outside the scope of An Bord Pleanála and I propose to modify the question as follows:

Whether the use of a primary school building for grinds classes outside of primary school hours is or is not development and is or is not exempted development.

3.0 THE REFERRER’S SUBMISSION

3.1 A submission was submitted to the Board by Woodlands Stillorgan Resident’s Association (WSRA) which can be summarized as follows:

- It is accepted that Question No. 1 does not fall within the remit of a Section 5 referral.
- Considers that Question No. 3 falls within the remit of a Section 5 referral.
- Concerns regarding intensification of traffic – 4 CD’s attached to referral in this regard (Appendix 6).
- Change in traffic flow constitutes a ‘change in use’ of permission granted in 2013.
- In 2014, school leased to DSG (The Dublin School of Grinds) for tuition classes. These classes run at evening/ night time most days of the week from Monday – Friday with traffic occurring from c. 5.30pm to 10.15pm and also involve classes on Saturdays and at holiday periods.
- There is no on-campus parking for parents and others dropping off children.

- The intensification of traffic after normal school hours is a cause of distress and upset for householders and children are unable to go out on the roads in the evenings.

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 was considered that question 1 related to planning enforcement of planning conditions. The matters raised were under investigation by the Enforcement Section and warning letters were issued.
- It was considered that question 3 did not fall within the remit of a Section 5 referral as planning permission had been granted under Reg. Ref. D13A/0113 and the matter was under investigation by the Enforcement Section.
- It was concluded that the use of Scoil Mhuire, Oaklands Primary School for the provision of grind classes during evening times or weekends does not constitute development, in that it does not constitute a 'change of use' that would require planning permission.

5.0 FURTHER SUBMISSIONS

Planning Authority

Response submitted by Planning Authority has no further comments to add.

Respondent

A response has been submitted on behalf of Scoil Mhuire - Oaklands Primary School which can be summarized as follows:

- The issues raised in question 3 are more properly addressed by enforcement procedures.
- Question 2 does not provide for a clearly framed question and as such may be invalid.
- It may be more appropriate to frame the question as follows: 'Whether the use of an established primary school for grinds classes outside of primary school hours constitutes development and, if so, whether it is exempted development?'
- Grinds classes can be accommodated in a school without giving rise to a material change of use.
- There is no issue of material intensification of use when enrolment figures for the grinds school are well below the total capacity of the school.
- The duration of the grind school activity or the payment of fees are not material planning considerations.
- The issues relating to traffic flow and mobility management are being managed by the school authorities as a priority. DLRCC are also currently and proactively addressing these matters through planning compliance and enforcement procedures. These are the proper forums for these matters and not the Section 5 mechanism.

Referrer

A response submitted by Woodlands Stillorgan Resident's Association can be summarized as follows:

- DSG (The Dublin School of Grinds) runs classes during weekends and at holiday times. ABP is referred to the timetable enclosed with the referral.
- School has not engaged with Woodlands Residents Association in a meaningful way.
- DLRCC have refused to take into consideration the intensification of traffic on Woodlands Avenue and Drive as a result of the schools change in traffic management post grant of planning permission D13/0113.
- The use of a primary school from 5.15pm to c. 10.30pm Monday to Friday, on Saturdays 9.30am to 3.30pm and during holiday periods constitutes a material change of use and represents development.
- Section 2.62 outlines the times and dates the videos attached to the referral were taken.

6.0 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.

Section 4 (1) (a) – (l) sets out what is exempted development for the purposes of this Act. Section 4 (2) provides for the making of the Regulations.

2. Planning and Development Regulations 2001 (as amended)

PART 2 - Exempted Development

With respect to ‘interpretation’ under Article 5(1) ‘school’ has the meaning assigned to it by the Education Act 1998.

Article 6(1)

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(1)(a)

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):

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

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.

I note that the Classes of Use set out in Part 4 of Schedule 2 do not include any use which is covered by the present referral.

B. Planning History of the Site

PA Reg. D13A/0113

Permission granted for the construction of a 2 storey extension to the north western elevation.

PA Reg. 10/1921

Permission granted for 660 sq.m sports hall, changing rooms, 2 classrooms, storage area, canteen, food preparation area and all associated works.

PA Reg. 09A/ 0734

Permission granted to demolish single storey ground floor temporary prefabricated classroom building and to construct a single storey ground floor school extension under the existing first floor building which shall include seven classrooms, store areas and all associated works.

PA Reg. 08A/1129

Permission granted for a single storey temporary prefabricated structure, link corridor and permanent entrance lobby and all associated site works at the rear

of CBS Oaklands College together with the removal of existing prefabricated structure.

PA D96/0054

Permission granted for construction of classrooms at first floor level over existing building and for lift shaft, site works and alterations to existing college.

ENF 1315

Warning letter issued to school in relation to non-compliance with condition No. 4 attached to grant of planning permission D13A/0113.

ENF 1215

Warning letter issued to school in relation to non-compliance with condition No. 5 attached to grant of planning permission D10/0321.

Relevant Precedent Cases

I have checked the Board list of referral files and I can find no previous referral decision relating directly to the use of an existing primary school by a Grind School outside of normal school hours.

RL2775 relates to the use of a playing pitch and tennis courts outside of normal school hours by bodies not associated with the school. To assist the Board, I have provided, in the file pouch, a copy of the Inspector's Report and Board Order in that case.

RL3073 relates to the use of bedrooms of Block No. 1, Trinity Hall Student Residence, Dartry, Dublin as classrooms during summer months and the use of the premises for the purposes of a summer school run by an external operator with Trinity College. 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

The purpose of this referral is not to determine the acceptability or otherwise of the use of a primary school building for grinds classes outside of primary school hours in respect of the proper planning and sustainable development of the area, but rather whether or not the use of same constitutes development, and if so if it falls within the scope of exempted development.

(i) The Question of 'Development'

The first issue to be decided is whether or not a change of use has occurred and if any change of use is material and therefore development.

In terms of background information, I note the following:

- The existing or principal development is Scoil Mhuire - Oaklands Primary School which was constructed in the 1950's.
- The new development was constructed in 2013 and comprised the construction of a 2 storey extension to the north western elevation of the existing school building to provide for 4 No. classrooms, 2 No. wheelchair accessible shower rooms and all associated site development works.
- Prior to 2013, the traffic flow management was via the old Dublin Road through the Oaklands Secondary School gate, up the internal Oaklands

Avenue and out the Scoil Mhuire primary school gate onto Woodlands Avenue. A temporary closure of the existing traffic flow arrangements were made during the construction period, however after construction was completed, the temporary traffic flow arrangements were maintained by the school.

- In 2014, the Dublin School of Grinds started using the facilities of the school for its tuition classes.
- Classes are run at evening/ night time Monday to Friday 5.15pm to 10pm, and at other times including weekends and holiday times.
- The grind school uses 4-6 of the primary school classrooms and the assembly hall areas.

In deciding whether or not there has been a substantial alteration of the character of the existing land use, I would refer to Article 5 of Part 2 of the Planning and Development Regulations, 2001 (as amended) where the interpretation of 'school' has the meaning assigned to it by the Education Act 1988. Under Section 2 of Part 1 of this Act, except where the context otherwise requires, 'school' means an establishment which provides early childhood education, or provides post-primary education to its students and which may also provide courses in adult, continuing or vocational education or vocational training...' Having regard to this interpretation, I am satisfied that the use of the building whether as a primary school or as a grind school, remains substantially the same and therefore the character of the existing land use has not been substantially altered.

When considering whether a change of use has occurred or not, I consider that the grind school serves mainly secondary school students who attend for tutorial sessions only outside of normal school hours and the business is operated by a commercial operator entirely separate from the school. As such, I consider that the use of the primary school by the Dublin Grind School represents a new

business which is not connected to existing education facility and is a change of use.

When examining the effects of the change of use on the adjoining area, the issue of intensification of use arises.

The main issues raised in terms of intensification relate to the intensification of traffic in the area, noise and disturbance from students congregating outside homes, light pollution from cars waiting to collect students at night-time, use of the school at night time, weekends and holiday periods by a commercial entity which is described as 'the largest grind school in the county.'

I am of the view that a grind school such as this would bring significant levels of additional traffic to the area. Parents would be more likely to pick up students late at night that might otherwise use public transport during the day. Students attending classes during holiday periods on a once off basis would be more likely to be dropped and collected from the school than daily students who would be more familiar with the area. It is likely also that students attending for grinds particularly at weekends and holiday periods would travel a greater distance to the school than daily primary school students. Having examined the contents of the CD's attached to the referral and undertaken a site inspection, I am in agreement with the Resident's association that the level and pattern of traffic resulting from the operation of the grind school at this location differs significantly from the traffic that would normally be associated with a primary school.

Details of the timetable of the Dublin School of Grinds are attached to the appeal and demonstrate that this is a significant business which operates every evening Monday to Friday, during weekends, and holiday periods. I have examined the website of The Dublin School of Grinds and the timetable is in line with the details submitted by the referrer. I also note that the school is currently advertising 'crash courses' in preparation for state examinations which are to

take place on a Saturday and Sunday and run for 6 hours. In my view the timetable suggests a more extensive and intensive use than would normally be expected of a primary school is now in place.

I note the contents of a letter attached to the referral addressed to the Resident's Association Secretary. This states that 'moving our schools operation to The Stillorgan Park Hotel: This costs circa. €300,000 per annum...' In my view this, together with the timetable and website information, demonstrates the significant scale of the operations.

Whilst, I consider that question 3 as originally posed to the Planning Authority relates to traffic management in the area and enforcement of same which are not matters for An Bord Pleanála, I do accept that the impacts of the changes to traffic management are clearly exacerbated by the Dublin School of Grinds operating at this location. Prior to 2013, the traffic management system in place involved a circuitous flow from the main Oaklands gate and out the primary school gate and down Woodlands Avenue. This has now changed and all traffic now uses the Woodlands Avenue entrance prior to 9pm. I note that as a concession to residents, this entrance is closed at 9pm.

In terms of numbers attending the school, I note that the grinds school has three sessions between 5.15pm and 10.30pm. The attendance at any one sitting would be 50-150 pupils on average. The maximum attendance at any event is 200. Staff numbers are 8-12. Staff numbers at Scoil Mhuire are 38-40 with a current enrolment of c.450 pupils. Whilst, clearly the student numbers per session are significantly below the enrolment of Scoil Mhuire when this number is multiplied by each session and each day of the week, in my view, this would represent a substantial intensification of use.

Having regard to the above, I would conclude that a material change of use has taken place with respect to the use of the primary school premises by the Dublin School of Grinds.

(ii) The Question of whether or not the material change of use is exempted development.

The exempted development provisions provide for circumstances in which a material change of use, though classified as development is exempt. However, no provision in either the Acts or Regulations provides for the present change of use to be exempt. In the absence of any such provision, the legislation must be interpreted as providing that the development in question is not exempted.

The change of use involved in this case is not covered in any of the classes of use set out in Part 4 of the Second Schedule to the Regulations. As such, the de-exemptions under article 9 and article 10 are not relevant.

It follows, therefore, that the use is development and is not exempted development.

6.0 RECOMMENDATION

I recommend as follows:

WHEREAS a question has arisen as to whether the use of a primary school building for grinds classes outside of primary school hours is or is not

development and is or is not exempted development at Scoil Mhuire - Oaklands Primary School, Mount Merrion, Co. Dublin.

AND WHEREAS the said question was referred to An Bord Pleanála by Woodlands Stillorgan Resident's Association Maria Sweeney on the 5th day of January, 2016:

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

- (a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended;
- (b) Article 5(1) and 10 of the Planning and Development Regulations 2001, as amended;
- (c) the planning history of the site and the documentation submitted with the referral.

AND WHEREAS An Bord Pleanála has concluded that –

- (a) The established use of the structure on site is a school;
- (b) The said use of the school for grinds outside of school hours and during holiday periods by a body not associated with the school would result in an intensification of existing activities at the school;
- (c) The level and pattern of traffic resulting from the use of the school for the purposes of sessional grinds on weekday evenings and during weekends and holiday periods is materially different from the existing school use with materially different impacts on the amenities of property in the vicinity.
- (d) The use of the school for the purposes of grinds constitutes a material change of use having regard to the impact on the proper planning and sustainable development of the area, and constitutes a material change of use to that associated with the existing school building, and

(e) No provision is made, in the said Act or Regulations by which the said change of use would constitute exempted development.

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 primary school building for grinds classes outside of normal school hours at Scoil Mhuire Náisiunta – Oaklands Primary School constitutes development that is not exempted development.

Emer Doyle
Planning Inspector
16th May 2016