



An
Bord
Pleanála

Inspector's Report 06F.RL3557

Question

Whether a room indicated as being a study can be used interchangeably as a study or other habitable room, whether it is or is not development or is or is not exempted development.

Location

The former Castle Inn, St. Margaret's Road, Meakstown, Dublin 11.

Declaration

Planning Authority

Fingal County Council

Planning Authority Reg. Ref.

FS5/006/17

Applicant for Declaration

Greenwich Project Holdings

Planning Authority Decision

Is development and is not exempted development

Referral

Referred by

Greenwich Project Holdings

Owner/Occupier

Greenwich Project Holdings

Observer(s)

None

Date of Site Inspection

23/05/17

Inspector

Pauline Fitzpatrick

1.0 Site Location and Description

The site, which is as yet undeveloped, constitutes the site of the former Castle Inn. The site adjoins the southern side of the R104 (St. Margaret's Road) which runs roughly parallel with the M50 and links the northern environs of Finglas with Ballymun further east. The site is roughly rectangular in shape and has a stated area of 0.46 hectares. A linear strip of green space separates the northern boundary of the site from St. Margaret's Road. Lands to the immediate west of the subject site are fenced off, undeveloped and currently overgrown. Lands to the east, south and south-west accommodate suburban residential development comprising of a mixture of blocks of terraced two-storey dwellings with private gardens. Also in the vicinity of the site there are a number of residential blocks comprising of apartments/duplex type dwellings.

2.0 The Question

- 2.1. Whether a room indicated as a 'study' can be used interchangeably as a study or other habitable room such as a 'bedroom' or 'living space', where it is or is not development or is or is not exempted development.

3.0 Planning Authority Declaration

3.1. Declaration

The planning authority decided that the proposal is not exempted development having regard to:

- Section 3(1) of the Planning and Development Act, 2000, as amended, regarding definition of development
- Section 4(1)(h) of the Planning and Development Act, 2000, as amended, regarding exempted development
- The requirements of the Fingal County Development Plan

- Condition 1 of PL06F.246519
- Article 9(i)(ii) (sic) of the Planning and Development Regulations 2001 as amended.

The proposal would contravene Condition 1 attached to PL06F.246519 and would endanger public safety by reason of traffic hazard or obstruction of road users by reason of increased parking demand (associated with increased bed space development) on adjoining residential roads.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Having regard to Section 3(1) of the Planning and Development Act, 2000, as amended, the works proposed are considered to be development as the change in use from a study to a bedroom is a material alteration. With regard to Section 4 (1)(h) of the Planning and Development Act, 2000, whilst no changes are proposed to the internal floor layout with the floor area complying with the requirements of the Development Plan and Guidelines issued by the Department of the Environment, Community and Local Government in 2015, regard must be had to the resultant increase in parking demand. The change of use from a study to a bedroom would increase the car parking requirement from 4 spaces to 6 spaces for the respective units. The proposal would therefore be deficient in car parking provision and could give rise to encroachment of parking on adjacent roads/residential estates and thus would result in the endangerment of public safety by reason of traffic hazard or obstruction of road users as set out in Article 9(1)(iii) of the Planning and Development Regulations, 2001, as amended. The change of use would not be acceptable without commensurate increase in the provision of on site parking spaces. Furthermore the amendment would result in a material change to the make up of the scheme and would therefore be at variance with condition 1 of PL06F.246519.

3.2.2. Other Technical Reports

None

4.0 Planning History

PL06F.246519 (F15A/0552) – permission granted on appeal for 21 dwelling units in three blocks on the site with access from Lanesborough Gardens to the west.

Block 1 is located in the north-eastern corner of the site and comprises of seven terraced two-storey, 3-bedroom dwellings. Block 2 is located on the western side of the site and comprises of six two-storey three bed family dwellings. Block 3 is located to the south of Block 2 in the south-western corner of the site and comprises of a three-storey building with four ground floor units comprising of one-bedroomed apartments with study. Above the ground floor apartments are four two-storey duplex type units comprising of living accommodation at first floor level and two bedrooms plus study room at second floor level.

Condition 1 requires the development to be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 9th day of March, 2016 and by the further plans and particulars received by An Bord Pleanála with the appeal documentation on the 29th day of April, 2016, except as may otherwise be required in order to comply with the following conditions.

Condition 8 required parking for the proposed development to be provided in accordance with a detailed parking layout which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

5.0 Policy Context

5.1. Fingal County Development Plan 2017

The site is within an area zoned RS the objective for which is to provide for residential development and protect and improve residential amenity.

5.2. Natural Heritage Designations

None in the vicinity.

6.0 The Referral

6.1. Referrer's Case

The submission by AKM Design on behalf of Greenwich Project Holdings can be summarised as follows:

- The question of material change of use was not properly assessed by the planning authority. The proposal does not meet the 2 conditions for a material change of use namely (1) there must be an actual change in use and (2) the change of use must be material. The residential use of the land is totally unchanged and the nature of the works do not have any adverse impact on the character of the area or on the proper planning and sustainable development.
- It is common practice for modern homes to have open plan living/kitchen/dining spaces and other rooms are typically interchangeable between study/living spaces and bedrooms.
- The room was shown as a 'study' at the planning application stage. This fact does not limit the future use of the room.
- It is exempt as defined in section 4(1)(h) of the Planning and Development Act, 2000, as amended, as the proposal would have no impact on the interior

or exterior of the structure so as to render the appearance inconsistent with the character of the structure or neighbouring structures.

- With regard to Article 9(1)(ii) of the Planning and Development Regulations, 2001, as amended, it is not accepted that the proposal will create a traffic hazard or will be an obstruction to road users. The development provides shared car parking spaces for 21 dwellings. Car spaces 1 – 8 and nos. 36 and 37 have been assigned to the duplexes and apartments within the block. There are also 3 no. visitor parking spaces (nos.33-35) for the apartments. This equates to 1.625 spaces per dwelling. Parking is in accordance with the Development Plan requirements as set out in Table T03A.
- The proposed street layout prioritises people rather than vehicular movement with significant traffic calming measures. The layout has been revised to ensure that there are no pedestrian/vehicular conflict. The applicant has also provided two areas where in-curtilage car parking is possible.
- The development is fully compliant with the development plan.
- The planning authority are taking an overly rigid and restrictive view of condition 1 attached to PL06F.246519.
- There are no conditions that specifically preclude or limit the use of the room as a bedroom or habitable living space.
- The agent is not aware of any planning precedent where a person has applied for planning permission to change the use of a study room to living space.

6.2. Planning Authority's Response

The request made to the planning authority, namely use of room indicated as study to use as a bedroom, is different to that posed to the Board, namely whether a room indicated as a study can be used interchangeably as a study or other habitable room

such a bedroom or living space. This amended description has a fundamental bearing on the assessment.

Inherent in the functionality of any residential units is the ability to alter the use of individual rooms to adapt to the changing requirements of the occupants. Where the alteration to the residential unit is one in which there is an increase in bedroom numbers above that assessed as part of the planning application there is potential to give rise to increased demand on supporting services ie. car parking and adequacy of public and private open space.

The works proposed would see a change in the composition of the house scheme providing for 4 no. two bedroom apartments rather than 4 no. one bedroom apartments as permitted. Taken with the concurrent referral under ref. FS5/005/17 which seeks a determination with respect to conversion of a study to bedroom within the four duplex units in the block the planning authority considers that the overall change in composition of the housing scheme has implications for increased car parking demand above that provided for in the development. This in turn would not satisfy the provisions of article 9 of the Planning and Development Regulations 2001, as amended, and would contravene condition 1 of the permission.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

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.

4.(1) The following shall be exempted developments for the purposes of this Act

(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.

7.2. **Planning and Development Regulations, 2001**

Planning and Development Regulations 2001, as amended

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.

9. (1) 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,

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

8.0 **Assessment**

The planning authority in its response to the referral considers that the question posed to the Board differs from that posed to it in the Section 5 declaration application. On an examination of the relevant documentation submitted to the planning authority I would not subscribe to that opinion. The fact that the planning authority placed emphasis on the potential use of the study as a bedroom does not negate the fact that reference was also made to living space. In the interests of clarity I consider that the question posed in this case is as follows:

Whether a room indicated as a study can be used interchangeably as a study or other habitable room such as a bedroom or living space, whether it is or is not development or is or is not exempted development.

The purpose of this referral is not to determine the acceptability of otherwise of the above proposal in terms 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.

8.1. Is or is not development

As per the permission granted under ref. PL06F.246519 the scheme comprises of 21 no units in the following arrangement - 13 no. three bedroom unit, 4 no. 2 bedroom units with study and 4 no. 1 bedroom units with study. The number of units does not alter as a consequence of the question posed to the Board.

With regard to section 3 (1) of the Planning and Development Act, as amended, a proposed change of a room within the dwelling unit from use as a 'study' to use as a 'living space' including use as a 'bedroom' would not entail the carrying out of any works on, in, over or under land. The agent for the applicant confirms that no internal or external works would be required. The room in question has a stated area of 9.2 sq.m. which exceeds the 7.1sq.m. minimum requirement for use as a single bedroom in the Sustainable Urban Housing Design Standards for New Apartments, Guidelines for Planning Authorities, 2015 which is reiterated in Table 12.3 of the new County Development Plan.

Whilst the planning authority asserts that the proposal would constitute a material alteration and, as such, is development, it is not clear as to how it concluded that the proposal would constitute a change of use. I submit that the increase in the potential number of bedrooms from one to two or use of the room for other habitable purposes such as play room or living room, whilst changing the composition of the dwelling unit, does not change the character or use of the dwelling unit. There is no

evidence to suggest that the intended use is not the same as that originally proposed namely standard residential accommodation. Whilst such alterations may occur within a number of dwellings units, bearing in mind the concurrent referral pertaining to the 4 no. duplex units within the same block (file reference 06F.RL3558) this, cumulatively, would also not change the character of the use or the structure or the character of the area. The residential use remains.

It is reasonable to submit that the planning authority's adjudication is premised on the doctrine of material change of use by way of intensification of use. The criteria to carry out a test of the level of intensification and whether the intensification has led to an additional burden in the receiving environment depends on the particular case. In this regard reference is made by the planning authority to car parking provision and open space. The car parking standards as set out in the new Development Plan are comparable to those set out in the previous plan. The approved scheme provides for 38 parking spaces. Were the relevant rooms to be used as bedrooms as a consequence of this referral the parking provision would be increased by 2 spaces. Taken with the concurrent referral under re. 06F.RL3558, the parking provision would be increased by a total of 4 spaces. In terms of open space the provision on site equates to 405 sq.m. which materially exceeds the open space requirements for both the approved development and the requirements of the scheme were the rooms subject of the referral to be used as bedrooms (again due cognisance is had of the concurrent referral).

I would therefore submit that the required alterations in parking provision in line with development plan requirements were the rooms to be used as bedrooms does not constitute an intensification of use that could be considered to be a material change of use.

I submit that the matters of material concern to the planning authority, namely impact on parking and open space provision, whilst reasonable considerations are matters for consideration during the assessment of the application. Such considerations do

not bring about the material change in the use of the structures or other land as to constitute development within the meaning as ascribed to it in the Act. Should the planning authority had required that such interchangeability in use of the rooms be precluded then a condition to that effect would have been appropriate.

I therefore conclude that the room indicated as a study used interchangeably as a study or other habitable room such as a bedroom or other living space is not development.

8.2. Is or is not Exempted Development

Should the Board not concur with the above conclusion that the proposal is not development the following is noted with regard to exempted development:

Section 4(1)(h) of the Planning and Development Act, 2000, as amended, states that 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. In this instance no works, either internal or external are proposed.

In terms of Article 6 of the Planning and Development Regulations, 2001, I submit that there is no Class within Part 1 of the 2nd Schedule which would fit the subject case and therefore I submit that it does not fall within the Regulations, as amended, and therefore the question of limitations on exemptions as detailed therein including the provisions of Article 9 do not apply.

Thus it could be concluded, should the Board decided that the proposal constitutes development that there are no provisions in the Planning and Development Act, 2000, as amended or the Planning and Development Regulations, 2001, as amended, to render such development as exempted development.

Appropriate Assessment - Screening

Having regard to the nature and scale of the development subject of the referral within a larger approved complex no appropriate assessment issues arise and 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 a European site.

9.0 Recommendation

9.1. I recommend that the Board should decide this referral in accordance with the following draft order.

WHEREAS a question has arisen as to whether a room indicated as a study can be used interchangeably as a study or other habitable room such as a bedroom or other living space, whether it is or is not development or is or is not exempted development:

AND WHEREAS AKM Design on behalf of Greenwich Project Holdings requested a declaration on this question from Fingal Council and the Council issued a declaration on the 22nd day of February, 2017 stating that the matter was development and was not exempted development:

AND WHEREAS AKM Design on behalf of Greenwich Project Holdings referred this declaration for review to An Bord Pleanála on the 9th day of March, 2017:

AND WHEREAS An Bord 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) The development approved under planning reference number PL06F.246519 (F15A/0552)

(d) The impact of the development on the receiving environment:

AND WHEREAS An Bord Pleanála has concluded that:

(a) the use of a room indicated as a study on the floor plans granted permission under register reference PL06F.246519 (F15A/0552) on the 5th day of September, 2016, used interchangeably as a study or other habitable room such as a bedroom or other living space does not constitute a change of use within the meaning of Section 3 of the Planning and Development Act, 2000, as amended

(b) would be consistent with the permitted use of the dwelling units.

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 room indicated as a study on the approved floor plans to be used interchangeably as a study or other habitable room such as a bedroom or other living space is not development.

Pauline Fitzpatrick

Senior Planning Inspector

May, 2017