

Referral of Section 5 Declaration

Apartment No. 16

Chancery Hall,
Blackhall Place
Dublin 7

Sacreto Ltd.

24th October 2018

AN BORD PLEANÁLA	
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ABP-	_____
24 OCT 2018	
Fee: €	<u>220</u> Type: <u>Cheque</u>
Time:	<u>16.25</u> By: <u>hand.</u>

Submitted on behalf of:

Sacreto Ltd.
No.1,
10b Stadium Business Park,
Ballycoolin,
Dublin 11



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1.0 Introduction

This referral to An Bord Pleanála, pursuant to Section 5(3)(a) of the Planning and Development Act 2000 (as amended), has been prepared by Hughes Planning and Development Consultants, No. 70 Pearse Street, Dublin 2, on behalf of Sacreto Ltd, No. 1, 10b Stadium Business Park, Ballycoolin, Dublin 11 and relates to a Section 5 declaration determined by Dublin City Council on 4th September 2018 under Reg. Ref. 0349/18 relating to the proposed use of an apartment at 'Chancery Hall', Blackhall Place, Dublin 7, (a corner building with Ellis Quay, Dublin 7).

We request that An Bord Pleanála review the decision issued by Dublin City Council and make a determination that the short stay lettings at Apartment No. 5, 'Chancery Hall', Blackhall Place, Dublin 7, constitutes exempted development. In the interest of clarity, we would ask the following question to An Bord Pleanála:

"Whether the proposed use of Apartment No. 16, 'Chancery Hall', Blackhall Place, Dublin 7 (a corner building with Ellis Quay, Dublin 7), for short-stay accommodation lettings is or is not development and whether the development constitutes exempted development or does not constitute exempted development"

The prescribed fee of €220.00 is enclosed, along with a copy of the declaration issued by Dublin City Council. This report sets out the rationale for the apartment use to be deemed exempted development. We request that An Bord Pleanála set aside the decision of Dublin City Council and decide that the subject site use constitutes **exempted development**.

1.1 Section 5 Decision Issued by Dublin City Council

On 4th September 2018 Dublin City Council issued the following notice with regards to the Section 5 declaration sought, Reg. Ref. 0349/18 for the subject works at Apartment No. 16, 'Chancery Hall', Blackhall Place, Dublin 7:

'The use of Apartment No. 16 'Chancery Hall', Blackhall Place, Dublin 7 for short stay accommodation lettings is a material change of use. Accordingly, this change to a commercial use constitutes development under Section 3(1) of the Planning and Development Act, 2000 (as amended), which is not exempted development either under this Act or the accompanying Planning and Development Regulations, 2001 (as amended).'

In light of this decision, we strongly consider that the Planning Authority's assessment has not duly considered a number of key items. These items are presented below:

1.2 Summary of Grounds for Referral

The applicant's grounds for referral can be summarised by the following points:

- The use does not materially contravene conditions attached to the Planning Permission;
- The proposed use does not change or negatively impact the residential amenity of the area. The subject site is zoned 'Z5' the objective of which is to 'to consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity.';
- The Planning Authority have failed to recognise the management of the apartment;
- We consider that the assessment of the Planning Authority has not duly considered the subject site with regards to the use of the apartment; and,
- The apartment accords with the description of a dwelling as "a place of shelter".

The above points will be expanded in Section 6.0 of this referral.

2.0 Site Description

The subject site is located in 'Chancery Hall', a corner building situated at the junction between Blackhall Place and Ellis Quay, adjacent to the James Joyce Bridge River Liffey to the immediate south. The

property is a five-storey building dating from the late nineteenth century and comprises a red brick exterior and granite covering the ground floor and fourth floor. The subject building can be described as mixed-use with a convenience supermarket occupying the ground floor and 32 no. apartments over first to fourth floor levels above. The main entrance to the premises is located on Blackhall Place with a secondary entrance to the rear via John Street North. The area surrounding the subject site at Ellis Quay, which is located within Dublin city centre, contains a variety of land uses such as commercial, office and residential. In the interests of clarity, we note that the subject building is not listed on the Dublin City Council Record of Protected Structures nor is the building located within an Architectural Conservation Area (ACA).



Figure 1.0 Approximate outline of the subject site (outlined in red) within the context of the area.



Figure 2.0 Image of the subject building at 'Chancery Hall' as viewed from Ellis Quay, Dublin 7.

3.0 Planning History

A review of the Dublin City Council Planning Register found the following relevant planning applications on the subject site readily available:

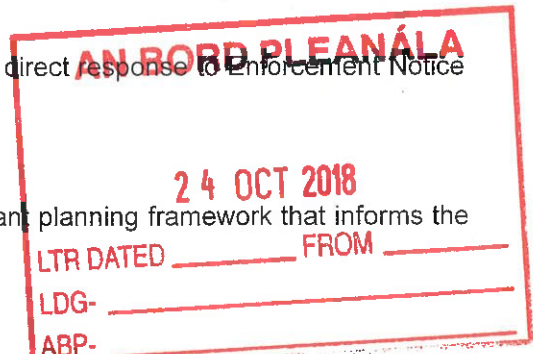
- Reg. Ref. 2434/92 Permission granted on 18th March 1993 to erect a new 5 storey building of mixed development comprising 27 no. 2 bedroom and 6 no. 1 bedroom apartments on 4 floors over ground floor retail unit and car parking

- Reg. Ref. 0957/93 Permission granted on 10th August 1993 for alterations to approved five storey mixed development, consisting of the relocation of one apartment at first floor level and the relocation of the first floor terrace up to the second floor level.

- Reg. Ref. 2349/97 Permission granted on 6th November 1997 for the change of use from previously permitted retail shop to Community Welfare Office.

We note that the decision of Dublin City Council was subsequently appealed to An Bord Pleanála under Ref. PL29N.104882 whereby the decision of the Planning Authority was upheld and permission was granted. It is unlikely that this permission was enacted as shop use remains on the ground floor level of the building.

File Ref. E1358/17. The declaration was initially sought in direct response to Enforcement Notice File Ref. 1358/17.



4.0 Planning Context

Dublin City Council Development Plan 2016-2022 is the relevant planning framework that informs the land use and development of the subject site.

4.1 Zoning

Under the Dublin City Development Plan 2016-2022, the application site is zoned 'Z5' (refer to map extract in Figure 5.0 below), the objective of which is 'To consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity.'



Figure 3.0 Extract from Zoning Map E in the Dublin City Development Plan 2016-2022 showing the site (outlined in yellow) zoned Z5 – 'City Centre'.

Permissible Uses

A permissible use is one which is generally acceptable in principle in the relevant zone, but which is

subject to normal planning consideration, including policies and objectives outlined in the plan. The following uses are 'permissible' in the Z5 zone:

Amusement/leisure complex, bed and breakfast, betting office, buildings for the health, safety and welfare of the public; car park, car trading, childcare facility, civic offices, community facility, conference centre, cultural, creative, artistic, recreational building and uses, delicatessen, education, embassy office, enterprise centre, funeral home, guest house, home-based economic activity, hostel, hotel, industry (light), internet café, live-work units, media-associated uses, medical and related consultants, motor sales showroom, nightclub, office, off-licence, open space, part off-licence, place of public worship, public house, public service installation, residential, restaurant, science, and technology-based industry, shop (district), shop (neighbourhood), shop (major comparison), take-away, training centre, veterinary surgery, warehousing (retail/non-food)/retail park.

Open for Consideration Uses

An open for consideration use is one which may be permitted where the planning authority is satisfied that the proposed development would be compatible with the overall policies and objectives for the zone, would not have undesirable effects on permitted uses, and ~~and would otherwise be consistent with the proper planning and sustainable development of the area.~~ The following uses are 'open for consideration' in the Z5 zone:

Advertisement and advertising structures, Civic and amenity/recycling centre, Financial institution, Household fuel depot, Outdoor poster advertising, Petrol station, Transport depot.

With the above in mind, we note that the primary objective of 'Z5' zone is to sustain life within the centre of the city through intensive mixed-use development. Moreover, the strategy for the zone is 'to provide a dynamic mix of uses which interact with each other, help create a sense of community, and which sustain the vitality of the inner city both by day and night'.

5.0 Grounds of Appeal

The subject apartment is let predominately on variable terms of lettings ranging from a short, medium to long term basis. The accommodation on offer is considered to be high-end and is not to be confused nor misinterpreted with short-term lettings operated by companies such as Airbnb, for example. In this regard, we inform An Bord Pleanála that there is no ambiguity in terms of the accommodation type being offered which is professionally managed short-stay accommodation.

Zoning

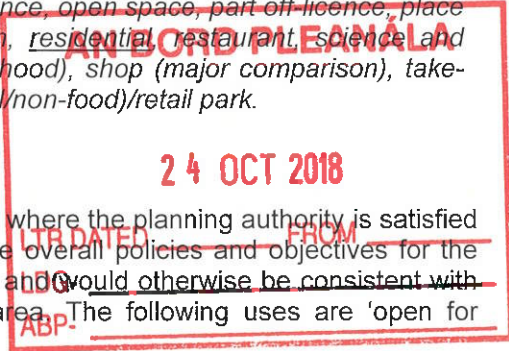
The subject site is zoned 'Z5' the objective of which is to 'To consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity'. It is considered that the use of the apartment as short stay accommodation is acceptable in this land use zone.

Apartment Use

The apartment is being let on a short-term basis and is not considered to be an alteration of use as leased apartments by their nature have a varying lease lifespan. The Case Officer notes that the apartment is not restricted to such conditions defining the set period of leasing arrangements.

"None of the conditions attached to the parent permission restrict either the nature of residents or the duration of their occupation of each unit."

It is considered that the apartment use does not offend conditions attached to the parent permission and given the maintenance procedure outlined below, we consider that the apartment use is acceptable in this instance. Notwithstanding this, the Case Officer also refers to the use of the apartment through the perceived intended design and states that 'the subject apartment was designed as private residential accommodation and was intended for such use'.



The Planning Authority contends that the apartments at 'Chancery Hall' were designed for 'private accommodation use', however we note that there are no specific conditions attached to the parent planning application to state the apartment should only be used for its designed use of private residential use.

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Management

Our client, Sacreto Limited provides variable short-term accommodation lettings to persons employed in predominately large corporations including international banking institutions. Sacreto Limited is a key holder for the subject apartment within the 'Chancery Hall' building and are contactable 24/7. The apartment is also remotely monitored by a full-time professional management team.

We consider that it is in the interest of our client to deliver accommodation of the highest professional standard to ensure the utmost satisfaction by residents and therefore, the remote management of the subject apartment by a professional management team is critically important.

As such, due to the remote management of Apartment No. 16 at 'Chancery Hall', we consider that the residential amenity of adjoining apartments and occupants located in the 'Chancery Hall' building has not been impacted as a result of the use of Apartment No. 16 Chancery Hall as a professionally managed short-stay accommodation unit.

Further to the above, we note that special care and attention is taken with respect to security, maintenance and sanitation of the subject apartment.

We consider that the Planning Authority has not duly assessed the management structure in operation overseeing the use of the apartment. We consider that there is no alteration made to the existing residential amenity as a result of the management procedure that protects the existing residential amenity. We note the Planning Authority's comments made in their assessment with specific regard to 'the potential noise and nuisance' of the apartments,

"There are also planning issues relating to the impact of short stay accommodation lettings on residential amenities in particular the existing dwellings within subject development. Such impacts would arise from potential noise and nuisance, and also from differences in the pattern of usage, and times of usage of the development, as compared to those arising from private residential development".

We do not agree with the above commentary. As noted, the apartment is professionally managed, therefore we do not consider that the apartment falls victim to the perceived planning issues mentioned above as a result of the management imposed. Moreover, as noted in our Section 5 application, the majority of clients availing of the services provided are professionals visiting Dublin on business trips and so there is no impact on the existing residential amenity due to tenants having respect to other tenants. It is on this basis we consider that in impact of noise and nuisances referred to in the Planning Authority's assessment is not relevant and so this argument should be disregarded.

Whilst we would acknowledge that there is potential for disturbance in respect of short-stay accommodation where there is a less intensive management programme in place - this is not comparable to the subject apartment and it is contended that disturbance, if any, would be akin to any apartment complex. We re-iterate that the remote operations of the management team are proactive in ensuring that all residents of 'Chancery Hall' are not unduly impacted by occupants of Apartment No. 4 'Chancery Hall' and that there is an awareness of the existing amenities enjoyed by neighbouring occupants.

Security

With regard to security, Sacreto Limited have an arrangement with a highly reputable registered security services company which provides a full range of security/facilities management services inclusive of mobile security patrols, key holding and alarm response.

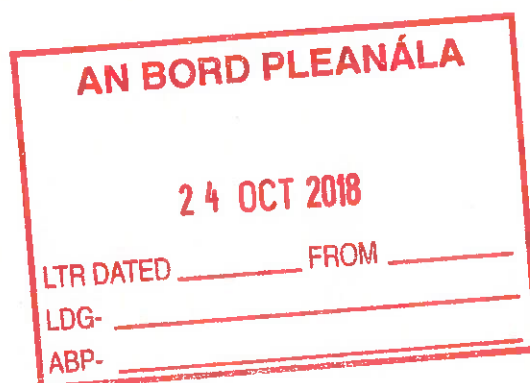
The security services company supply a 24-hour remote cover with a maximum response rate of 30-minutes during rush hours and 6-minute off peak. The security company can therefore respond to any matters from residents or the general public if there are any issues in regard to troublesome guests or 'noisy neighbours'. We also note that the security company offers opening and closing services and retain a key to the subject apartment. In light of the above, we respectfully request that An Bord Pleanála consider the professional security services associated with Apartment No. 16 'Chancery Hall', Blackhall Place, Dublin 7.

Cleaning and Maintenance

Further to the above, we refer to the cleaning and maintenance of Apartment No. 16 Chancery Hall, we note that all rooms/suites receive a full service daily by a professional and fully trained cleaning management team within the designated hours of between Monday-Sunday 8.00am – 4.00pm. The cleaning management team carry out routine services including the changing of bedding such as bed linen, blankets, general room cleaning and the provision of bathroom materials/toiletries such as towels, soaps, toilet rolls.

We do not consider that the servicing of the apartment by a cleaning management team to be any different from a normal residential cleaner whom may be procured by the resident of an apartment. In light of this we contend that there is minimal impact on other occupants of the subject building.

The servicing of the subject apartment is on average, 1 no. service visit per day when the apartment is in use as a short-stay tourist accommodation letting. The service visits are accommodated during off-peak hours – i.e. after morning rush hour thereby minimising disruption to occupants within 'Chancery Hall'.



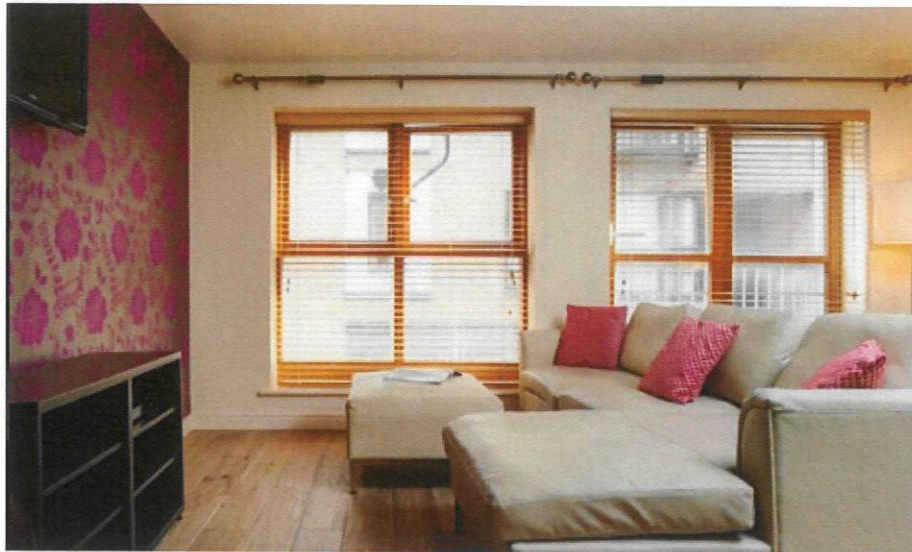


Figure 4.0 Extract of bedroom located in 'Chancery Hall'. The accommodation is attractively decorated, and no internal layout/reconfiguration works have been carried out.

As demonstrated in Figure 4.0 above, the apartment is decorated to an exceptionally high standard through appropriate maintenance which aims to maintain and deliver the quality accommodation on offer at 'Chancery Hall'.

Definition of a Dwelling

The Planning Authority has assessed the Section 5 application on the definition of a dwelling being a home or abode. We note that under Section 2(1) of the Planning and Development Act, 2000 (as amended), the definition of 'house' includes apartment and the definition of a 'habitable house' is a house which is used as a "dwelling". Furthermore, we note that in the absence of accompanying wording in either the Act or Regulations, we refer to the common dictionary definition of define 'dwelling', as 'a building or place of shelter to live in; place of residence; abode; home.'

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The definition of the word "dwelling" is broader than how it was assessed by the Planning Authority which only appears to refer to 'place of residence; abode; home'. The Case Officer has defiantly excluded a reference aligning the word dwelling as a place of shelter.

We consider that a "dwelling" can be reasonably considered as a place of shelter – namely in the case with the apartment provided at 'Chancery Hall' which is used for short stay tenants. However, the Planning Authority has made the point that a change of use has occurred based on the word "dwelling" referring specifically to a place of *place of residence; abode; home*.

"Accordingly, it is considered that by virtue of the fact that the unit would be used for short stay accommodation lettings, nobody staying in the subject apartment would consider the unit their home or abode. Accordingly, the presence of a residential use is considered to have ceased to apply and a change of use has occurred."

We consider that no change of use has occurred due to the fact that the apartment is still used for residential use as a place for shelter, a dwelling. As previously addressed, the existing residential amenity has not been damaged and the current use is typical of any other apartment in 'Chancery Hall'.

Furthermore, we reject the commentary of the Planning Authority which indicates that the subject apartment is an "aparthotel". The subject apartment is not form part of an aparthotel and the use of as described from the outset is for short stay lettings. In light if this, the policy referred to in the assessment from Appendix 16 of the Dublin City Development Plan 2016-2022 is therefore not relevant and we ask the Board to dismiss the assertion of Dublin City Council.

Tenants

As noted, a significant proportion of the personnel who utilise the accommodation of the subject apartment are strictly business related and are visiting Dublin City centre for corporate business matters such as meetings and training purposes. In light of the typical tenants who occupy the subject apartment, the residential amenity of other residents/occupants is not considered to be affected as the tenants will share similar living/day-to-day patterns to that of the average person.

Attention is once again given to the regular upkeep and maintenance of the apartment by the management team which has been acknowledged by tenants and we note the following extracts from a number of persons who have provided reviews based on their experience.

"The apartment was a few blocks from the office and two of the staff took our luggage for us. Apartment was clean and quiet with a modern bathroom. Location was great - and only a block from the bus to the airport." - May 2018

"Great location with very clean accommodating rooms. Would definitely use again for centre location with best price I could find. Everything you need you will find here. Apartment clean and modern which was perfect for business trip" – December 2017

"The location was fantastic, so central and walking distance to a lot of places. The apartment was clean on arrival and the kitchen was well equipped. There were a couple of supermarkets in close proximity to the apartment along with heaps of places to choose from if you wanted to eat out. The entry to the apartment made it feel very safe and secure. There was a lift in the apartment building we were in as well. Staff were lovely and helpful on check in and out too." - November 2017

On account of the above, it is clear that there is a well-defined structure to the management and operation at Apartment No. 16 'Chancery Hall' in effectively achieving an appropriate management of the apartment unit. We also consider that the use of Apartment No. 16 'Chancery Hall' does not negatively impact on the residential amenity of residents in the building on the basis that the apartment is let to corporate organisations.

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Determining Exempted Development

In determining the whether the use of the apartment is or is not exempted development the planning assessment concludes stating,

"Furthermore, neither the Act nor the Regulations state that the use of apartment for short-term holiday lettings accommodation is exempted development."

The statement above is not conclusive as not only does the Planning and Development Act 2000 (As Amended) nor the Planning and Development Regulations 2001 (As Amended) state that the use of an apartment for short stay lettings is exempted development, nor does it state that it is development. On foot of the items listed above, we strongly consider that no change of use has occurred and that the use of the apartment for short stay accommodation is exempted development.

Under Section 3(1) of the Planning and Development Act 2000 (as amended), 'development' is assigned the meaning as follows -

"In this Act, 'development' means, except where the context otherwise requires, the carrying out of works on, in, over or under land or the making of any material change in the use of any structures or other land"

In light of the above, we note that under Section 3(1) of the Act, for a change of use to be considered development, it must be a material change of use. With this in mind, we confirm that no physical alterations or 'works' have been carried out to Apartment No.16, 'Chancery Hall' either internally or externally to facilitate the use of the subject apartment for short-term lettings and so, is not considered to constitute development as defined in planning legislation.

We consider that the commercial interest related to the short-stay accommodation letting does not contravene the residential nature of the subject apartment to such an extent that there has been a change of use. The use of the apartment can be compared to an investment property, whereby it is the intentions of the owner to return a positive yield on that investment by renting the apartment for residential use. Therefore, if an apartment is not owner-occupied but occupied for a defined period of time by way of a short-term lease – does that indicate that the apartment is not residential but in fact commercial? We do not consider this to be the case.

On account of the above, it is not unreasonable to accept that there is an inevitable commercial interest in a property such as an apartment purchased with a view to rent, just as there is an inevitable dwelling interest in an apartment purchased for residential purposes. We contend that identifying differences between short, medium and long-term residential occupancy cannot define the threshold of residential use nor the commercial use of leased apartments.

6.0 An Bord Pleanála Referral: Crown Alley, Temple Bar, Dublin 2

In respect of short term lets, we once again refer to An Bord Pleanála Section 5 Referral Ref. RL3490, which concerns Apartment 1A, 5-5A Crown Alley, Temple Bar, Dublin 2. With specific regard to the case, we note that the Temple Bar Residents sought a Section 5 Declaration from Dublin City Council in respect of an apartment as to whether or not planning permission was required for short term holiday lettings. The declaration of Dublin City Council was subsequently referred to An Bord Pleanála.

We maintain that the use of the subject apartment for various terms of lettings/ leases, does not constitute a material change of use and thus planning permission is not required.

7.0 Conclusion

The application for a Declaration of Exempted Development relates to apartment No. 16, 'Chancery Hall', Blackhall Place, Dublin 7. The question before An Bord Pleanála is as follows:

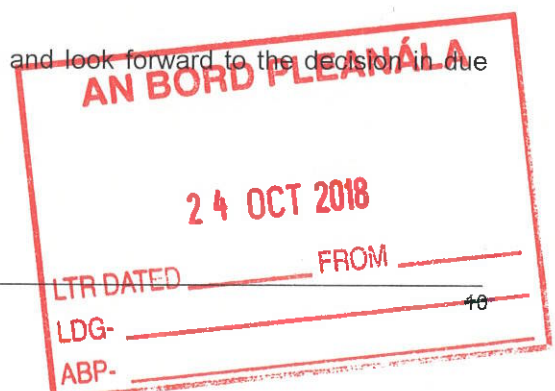
"Whether the proposed use of Apartment No. 16, 'Chancery Hall', Blackhall Place, Dublin 7 (a corner building with Ellis Quay, Dublin 7), for short-stay accommodation lettings is or is not development and whether the development constitutes exempted development or does not constitute exempted development"

The subject apartment is leased and managed to predominately corporate entities on various short-term leases, with a high standard of engagement and management. We consider that the use of the apartment constitutes exempted development. The rationale for this contention is due to the fact that the subject apartment is still in use as approved; there have been no material alterations made either internally or externally to the subject apartment; the apartment corresponds to the 'Z5' zoning of the area; the residential amenity that is currently enjoyed is protected by the remote management operations to ensure that noise, security and maintenance of the apartment block is not undermined; and, the use of Apartment No.5, 'Chancery Hall', Dublin 7 for short-stay accommodation is not an irreversible use.

In addition, we consider that the matters arising from Apartment No. 16 'Chancery Hall' are not materially different as a result of stringent management. We contend that the residential amenity has not been damaged or impacted negatively from the short-stay lettings and we consider that the residents of Apartment No. 16 'Chancery Hall' conform to natural behaviour of residents in any apartment complex. We reiterate to An Bord Pleanála to set aside the decision of Dublin City Council and decide that the subject site is **exempted development**.

We trust that the Board will have regard to this submission and look forward to the decision in due course.

Yours sincerely,





Kevin Hughes MIPI MRTPI
Director
For HPDC Ltd.

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