

# Referral of Section 5 Declaration

Change of Use

No. 30 Haddon Road, Clontarf, Dublin 3, D03 FN20

Dublin City Council Reg. Ref. 0365/19

September 2019



Submitted on behalf of:

John Brierty  
11 Haddon Road,  
Clontarf,  
Dublin 3

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12 Haddon Road,  
Clontarf,  
Dublin 3

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## 1.0 Introduction

This Referral to An Bord Pleanála, pursuant to Section 5(3) of the Planning and Development Act 2000 (as amended), has been prepared by Hughes Planning and Development Consultants, 70 Pearse Street, Dublin 2, on behalf of our clients John Brierty and Turlough Considine, who are acting in the interests of the Haddon Road Residents Committee and relates to a Section 5 declaration made by Dublin City Council on 5<sup>th</sup> September 2019 under Reg. Ref. 0365/19, regarding a change of use from a nursing home to use as a homeless accommodation facility at the former La Verna Nursing Home, No. 30 Haddon Road, Clontarf, Dublin 3, D03 FN20.

We request that An Bord Pleanála review the Section 5 declaration issued by Dublin City Council and make a determination that the change of use of the former La Verna Nursing Home, No. 30 Haddon Road, Dublin 3, from use as a 30-bed nursing home to use as a homeless accommodation facility does **not** constitute exempted development. In the interests of clarity, we would ask the following question to An Bord Pleanála:

*"Whether the change of use of No. 30 Haddon Road, Clontarf, Dublin 3, D03 FN20, from a 30-bed nursing home to use as a homeless accommodation facility constitutes development and whether this change of use constitutes exempted development or not?"*

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 proposed homeless accommodation facility not to be deemed exempted development. We request that An Bord Pleanála set aside the decision of Dublin City Council and issue a declaration stating that the proposed use of No. 30 Haddon Road, Clontarf, Dublin 3, as a homeless accommodation facility does **not** constitute exempted development.

We would submit, from the outset, that pursuant to Part 4 of Schedule 2 'Exempted Development - General' within the Planning and Development Regulations 2001-2019 (as amended), that the proposed change of use of No. 30 Haddon Road does not constitute exempted development as it is considered that the proposal would result in a use which is inconsistent with the permitted use of the property as a nursing home and an over concentration and proliferation of such facilities in the area, in turn having a negative effect on the local economy and community. Similarly, we consider that the proposed intensification of use of the existing premises would amount to a material change of use.

## 1.1 Section 5 Declaration Issued by Dublin City Council

On 5<sup>th</sup> September 2019, Dublin City Council issued the following notice with regards to the Section 5 declaration sought for the change of use of No. 30 Haddon Road, Clontarf, Dublin 3 (D03 FN20):

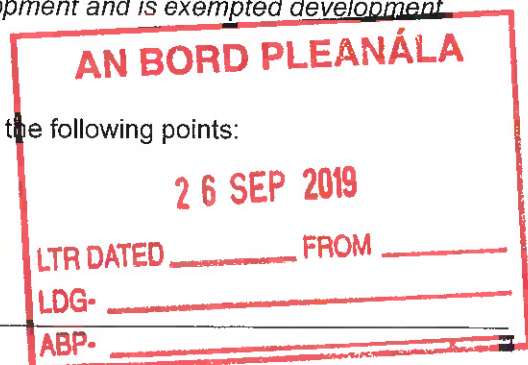
*In pursuance of its functions under the Planning & Development Acts 2000 (as amended), Dublin City Council has by order dated 05-Sep-2019 decided to issue a Declaration that the above proposed development is Exempt from the requirement to obtain planning permission under Section 32 of the Planning & Development Acts 2000 (as amended).*

The following reasons and considerations for their decision was also included:

*The Planning Authority is therefore of the opinion that the subject development would be exempted development in accordance with Section 4(2) (a) to (c) of the Planning and Development Act 2000 (as amended) and the provisions of Article 10(1) and Class 9 of Part 4, Schedule 2 'Exempted Development – Classes of Use', of the Planning and development Regulations as amended and therefore, would not require planning permission. Accordingly, it is the opinion of the Planning Authority that the change of use of the Premises at 30 Haddon Road Clontarf to a homeless accommodation facility is development and is exempted development.*

## 1.2 Summary of Grounds for Referral

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







- The proposed change of use is not considered to constitute exempted development pursuant to Part 4 of Schedule 2 'Exempted Development – Classes of Use' within the Planning and Development Regulations 2001-2019(as amended);
- The owner of the site Osdale Limited has not successfully demonstrated how the proposed change of use accords with policy QH30 as included within Section 5.5.11 of the Dublin City Development Plan 2016-2022;
- It is considered that the proposed use of the subject building, for the provision of homeless accommodation is inherently different from its use as a nursing home in that the service provided, and the user profile of the proposed facility is substantially different;
- We thus consider that the proposed use is inconsistent with the nursing home use of the premises which is specified in a previous permission;
- We would argue that an intensification of use is likely to arise as a result of the proposed change of use, which may be considered to be contrary to the Z1 zoning objective of the subject site, the objective of which is *'to protect, provide and improve residential amenities'*;

## 2.0 Site Description

The subject site is situated on the eastern side of Haddon Road and comprises an area of approximately 1097sq.m. The site consists of a two-storey red-brick semi-detached dwelling, onto which a series of two-storey and single-storey additions to the side and rear have been developed and accommodates a nursing home. It is noted that the surrounding area is primarily characterised by two-storey brick faced bay window residential properties which were built c. 1900.



Figure 1.0 Aerial view, indicating the subject site at No. 30 Haddon Road, Clontarf, Dublin 3 (outlined in red)

We note that the subject site was formerly listed as a protected structure on the Dublin City Council Record of Protected Structures but was subsequently delisted with the Haddon Road area now an Architectural Conservation Area (ACA) under the Dublin City Development Plan 2016-2022.





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Figure 2.0 Aerial image showing the locational context of the subject site, outlined in red



Figure 3.0 Existing front elevation of No. 30 Haddon Road, Clontarf, Dublin 3

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### 3.0 Planning History

Upon reviewing the Dublin City Council Planning Register the following planning applications relevant to the subject site at No. 30 Haddon Road, Dublin 3.

- Reg. Ref. 0551/92** Planning permission granted on 14<sup>th</sup> May 1992 for a dining room/dayroom extension and ancillary accommodation to the side and rear of La Verna Nursing Home.
- Reg Ref. 0723/97** Planning permission granted by Dublin City Council on 21<sup>st</sup> August 1997 for development at a Verna Nursing Home, 30 Haddon Road, Clontarf, Dublin 3. The proposed development consisted of internal alterations and single storey extension to rear and side, to include 7 no. bedrooms, sluice room, bathroom, nurses' station, office stores and extension to dining room and kitchen.
- Reg. Ref. 0195/01** Planning permission granted by Dublin City Council on 27<sup>th</sup> March 2001 for development at Laverna Nursing Home, 30 Haddon Road, Clontarf, Dublin 3 consisting of the erection of external brick cladding to front facing extension wall, re-pointing as required to existing original building, and construction of a conservatory extension to the rear of the nursing home.
- Reg. Ref. 4166/09** Planning permission granted on 16<sup>th</sup> December 2009 for development at La Verna Nursing Home, 30 Haddon Road, Clontarf, Dublin 3 consisting of the demolition of the existing rear conservatory (45sq.m) and the construction of a new single storey rear extension to the existing nursing home. The proposed extension will comprise 4 no. bedrooms, a sluice room, a communal sun room and a smoking area, (new area 138sq.m) including all associated site works.
- Reg. Ref. 3333/13** Retention permission granted by Dublin City Council on 14<sup>th</sup> November 2013 for the retention of a built area to the rear and side of that granted permission under 4166/09 (circa 14sq.m) including all associated site works at La Verna Nursing Home, Haddon Road, Clontarf, Dublin 3.
- Reg. Ref. 2638/16** Planning permission granted on 26<sup>th</sup> May 2016 for development consisting of internal alterations and modifications (79sq.n), the construction of a new single storey extension to the rear (5sq.m) and a new single storey extension to the side (37sq.m) including all associated site works.
- Reg. Ref. 0200/19** Exemption Certificate granted by Dublin City Council on 11<sup>th</sup> July 2019. In this case a Section 5 Declaration was sought for the proposed change of use from nursing home to homeless accommodation at La Verna Nursing Home, No. 30 Haddon Road, Clontarf, Dublin 3, D03 FN20.

It is noted that the applicant was requested by the council to submit the following further information as part of Reg. Ref:0200/19:

*'The applicant is requested to: clarify the nature and extent of the 'care' to be provided; identify the operator or give more information on the type of care providers who may run this facility; and provide details of the monitoring regime envisaged to regulate the facility including potential noise and disturbance.'*

In response to the above request, the applicant provided a covering letter dated 12<sup>th</sup> June 2019 from Ms Catherine Kenny on behalf of the Dublin Simon Community in which clarified that it was intended to use the above property to provide inpatient treatment and recovery centre, accessible by referral and appointment only and that these services will be provided by the Dublin Simon Community. Furthermore, it is intended that the service will be fitted with a CCTV system, with 24hour staff on site at all times in order to monitor and prevent potential noise and disturbance. We note that no further



clarification was provided by the applicant in this case, albeit that the use of the facility would be for the accommodation of 50 homeless persons. In considering the above, we would be of the view that the further information provided on behalf of the Simon Community, especially the clarification of the nature and extent of care to provided is insufficient and lacks specificity and the necessary detail required.

However, notwithstanding the above, we note that the Simon Community have since confirmed that they are no longer interested in the use of the property at No. 30 Haddon Road and therefore the element of care which related to one of the questions raised in relation to the application 0200/19 no longer remains adequately addressed.

**Reg. Ref. 0365/19**

Exemption Certificate granted by Dublin City Council on 5<sup>th</sup> September 2019. The question before the council was whether a change of use from a 30-bed nursing home at No. 30 Haddon Road, Clontarf, Dublin 3 (DO03 FN20) to use as a homeless accommodation facility constitutes development and whether this change of use constitutes exempted development or not.

57-61 Cabra Road

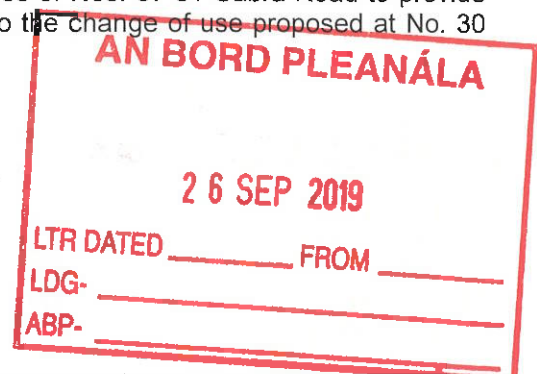
In their assessment of the above Section 5 application, Dublin City Council cite a particular precedent which relates to the change of use of Nos. 57-61 Cabra Road, Phibsborough, Dublin 7 to a supported homeless accommodation facility. In this case, under Reg. Ref. 0110/18, Dublin City Council deemed that a change of use from a nursing home to a c. 60-person homeless facility was exempted development, pursuant to Class 9, Part 4, Schedule 2 of the Planning and Development Regulations 2001-2018(as amended). An Bord Pleanála (ABP-301688-18), similarly concluded that the change of use proposal constituted exempted development.

However, in considering the above, whilst both applications similarly relate to the change of use from use a nursing home to use as a homeless accommodation facility, we would strongly argue that there are a number of fundamental differences between the proposed change of use of Nos. 57-61 Cabra Road (0110/18)(ABP-301688-18) and the change of use to which this referral relates at No. 30 Haddon Road.

Firstly, we note that the Cabra Road change of use from a nursing home to a homeless accommodation facility related to three large properties on a significantly busy stretch of road which is well-served by public transport. In contrast, Haddon Road is a small narrow residential thoroughfare whereby local roads immediately surrounding the site were designed to serve residential properties and are simply not of sufficient capacity to accommodate the large volumes of traffic that are anticipated for the proposed development. Additionally, Haddon Road does not benefit from the same level of public infrastructure and public transport services as the Carbra Road. Thus, in this regard, we strongly consider that the impacts of the proposed use of the property at No. 30 Haddon Road for the provision of a homeless accommodation facility would have a much more significant impact in the community of Haddon Road than on that of Cabra Road.

Secondly, the quantum of amenity space to be provided to the proposed homeless accommodation facility is unclear, we note that there is very little amenity space available to the front or rear of the property at No, 30 Haddon Road. The majority of the communal outdoor space previously afforded to No. 30 Haddon Road has been heavily developed to provide additional accommodation. Contrastingly, the site at Nos. 57-61 Cabra Road comprises a significantly sized garden area to the rear of the properties to serve prospective residents.

On the basis of the above, we maintain that the change of use of Nos. 57-61 Cabra Road to provide supported homeless accommodation is inherently different to the change of use proposed at No. 30 Haddon Road.







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Figure 4.0 Aerial image indicating the subject site at No. 30 Haddon Road, we note that there is very little outdoor open space available to serve any future occupants.



Figure 5.0 Aerial image outlining the approximate outline of the Cabra Road site (Nos. 57-61 Cabra Road), a significantly sized area of open space is provided to the rear of the properties.

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#### 4.0 Planning Context

The Dublin City Development Plan 2016-2022 is the relevant statutory development plan for the subject site.

#### 4.1 Zoning

The subject site is zoned Objective 'Z1' – Sustainable Residential Neighbourhoods, the objective of which is **'To protect, provide and improve residential amenities.'** The vision for 'Z1' zoning is:

*'One where a wide range of accommodation is available within sustainable communities where residents are within easy reach of services, open space and facilities such as shops, education, leisure, community facilities and amenities, on foot and by public transport and where adequate public transport provides good access to employment, the city centre and the key district centres.'*



Figure 6.0 Extract from Map F of the Dublin City Development Plan 2016-2022 with the subject site outlined in red. The subject unit is zoned Objective 'Z1' – Sustainable Residential Neighbourhoods.

The zoning matrix included in the development plan indicates permissible and open for consideration uses in 'Objective Z1'. As a general rule, 'Permitted Uses' are usually acceptable subject to the normal planning process and compliance with the relevant policies and objectives, standards and requirements set out in the Plan. These permissible uses include the following:

*Buildings for health, safety and welfare of the public, Childcare facility, Community facility, Cultural/recreational building and uses, Education, Embassy, Residential, Enterprise centre, Halting site, Home-based economic activity, Medical and related consultants, Open space, park-and-ride facility, Place of public worship, Public service installation, Residential, Shop (local), Training centre.*

Those uses which are open for consideration include the following:

*Bed and breakfast, betting office, car park, civic and amenity/recycling centre, garden centre, golf course and clubhouse, hostel, hotel, industry (light), live/work units, media-associated uses, petrol station, pigeon lofts, public house, restaurant, veterinary surgery*





The vision for residential development in the city is one where a wide range of accommodation is available and set within sustainable communities where residents are within easy reach of services, open space and facilities such as shops, education, leisure, community facilities and amenities, on foot and by public transport and where adequate public transport provides good access to employment, the city centre and the key district centres.

In both new and established residential areas, there will be a range of uses that have the potential to foster the development of new residential communities. These are uses that benefit from a close relationship with the immediate community and have high standards of amenity, such as convenience shopping, crèches, schools, nursing homes, open space, recreation and amenity uses. The general objectives set out in the development plan for residential areas are to provide a measure of protection from unsuitable new development or certain 'bad neighbour' developments that would be incompatible with the overall residential function of the area. It is considered that the proposed use of the subject property is completely contrary to this development plan objective.

#### 4.2 Other Planning Considerations

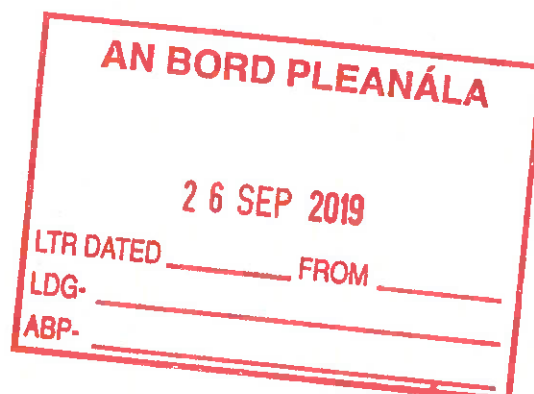
Given the nature of the proposed change of use of No, 30 Haddon Road, from use as a nursing home to use as a homeless accommodation facility, the following development plan policies and objectives are considered to be relevant:

**QH30:** *To ensure that all proposals to provide or extend temporary homeless accommodation or support services shall be supported by information demonstrating that the proposal would not result in an undue concentration of such uses nor undermine the existing local economy, resident community or regeneration of an area. All such applications shall include: a map of all homeless services within a 500 metre radius of the application site, a statement on the catchment area identifying whether the proposal is to serve local or regional demand; and a statement regarding management of the service/facility*

Section 16.12 of the development plan also states that an over-concentration of institutional hostel accommodation, homeless accommodation and social support institutions have the potential to undermine the sustainability of a neighbourhood and so there must be an appropriate balance in the further provision of new developments and/or expansion of such existing uses in electoral wards which already accommodate a disproportionate quantum. From the outset, we note that the applicant, Osdale Limited has not successfully demonstrated how the proposal accords with policy QH30, providing no explanations as to whether the proposal is to serve local or regional demand.

The owner/developer of the site Osdale, in their Section 5 declaration submitted under Reg. Ref. 0200/19 for the change of use of the existing nursing home facility to homeless accommodation, submitted a map which indicated that there are currently three facilities for homeless persons located within the area. In contrast to this, we note that there are in fact **five** alternative facilities which provide residential outreach and aftercare and are located within close proximity to the proposed accommodation facility at No. 30 Haddon Road. These facilities include:

- Don Bosco Care – Clontarf Road ●
- Hedigans B and B – Hollybrook Park ●
- 19-20 St. Lawrence's Road – Homeless Trust ●
- Ferryview House – Clontarf Road ●
- Bram Stoker Hotel – Clontarf Road ●







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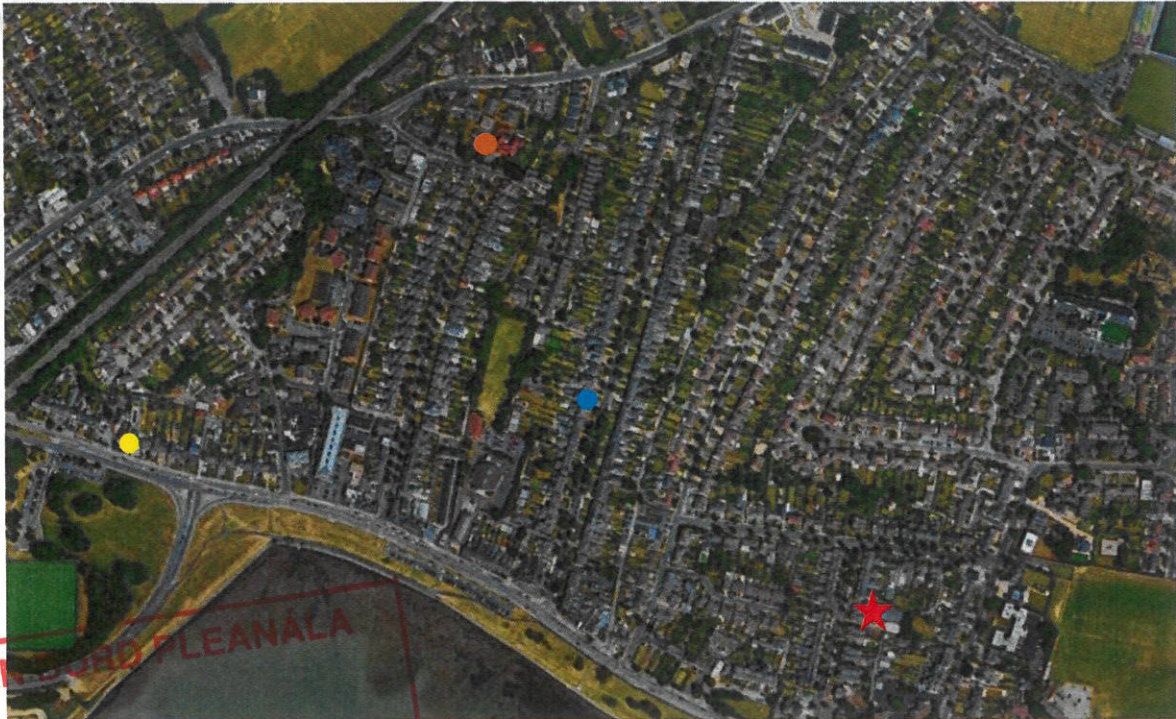


Figure 7.0 Aerial image showing the location of existing homeless accommodation facilities in proximity to the subject site (indicated with a red star)

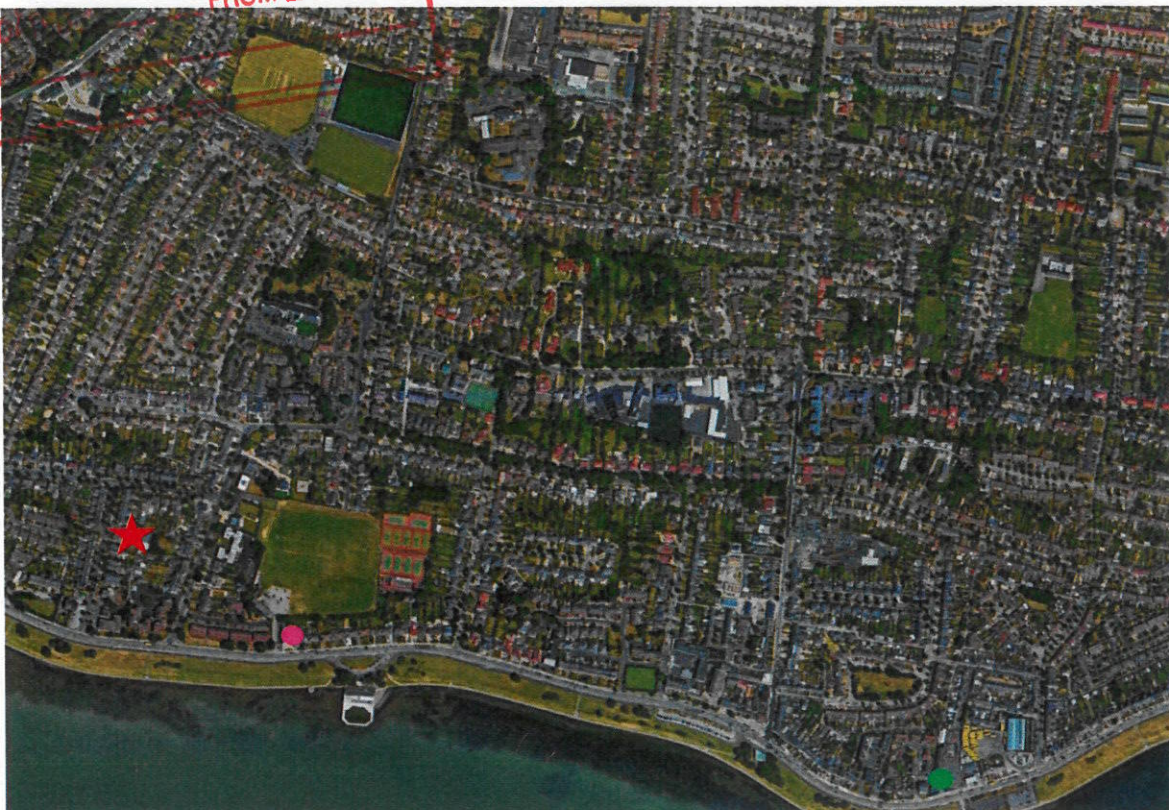


Figure 8.0 Aerial image displaying the location of existing homeless accommodation facilities within proximity to the subject site (indicated with a red star)

Other support facilities in the area include Mental Health Facilities, one which is close proximity to No. 30 Haddon Road is the HSE mental health patient's accommodation which is located at No, 12 Stiles Road, approximately 1 km north-east of the subject property.





It is clear that there is a significant degree of specificity prescribed in the Dublin City Development Plan 2016-2022 in relation to the procedures for approval of such developments. However, in considering the above, we note that proper consideration of the location of the proposed homeless accommodation facility and the resultant over concentration of such facilities in the one area has not been taken into account. Furthermore, it is submitted that the owners/developers of the site, Osdale limited have failed to support its proposal for the development of the premises with information demonstrating that it will not result in any undue over-concentration of temporary homeless accommodation facilities or support services relating thereto.

We note that the subject site was formerly listed as a protected structure on the Dublin City Council Record of Protected Structures but was subsequently delisted with the Haddon Road area now an Architectural Conservation Area (ACA) under the Dublin City Development Plan 2016-2022.

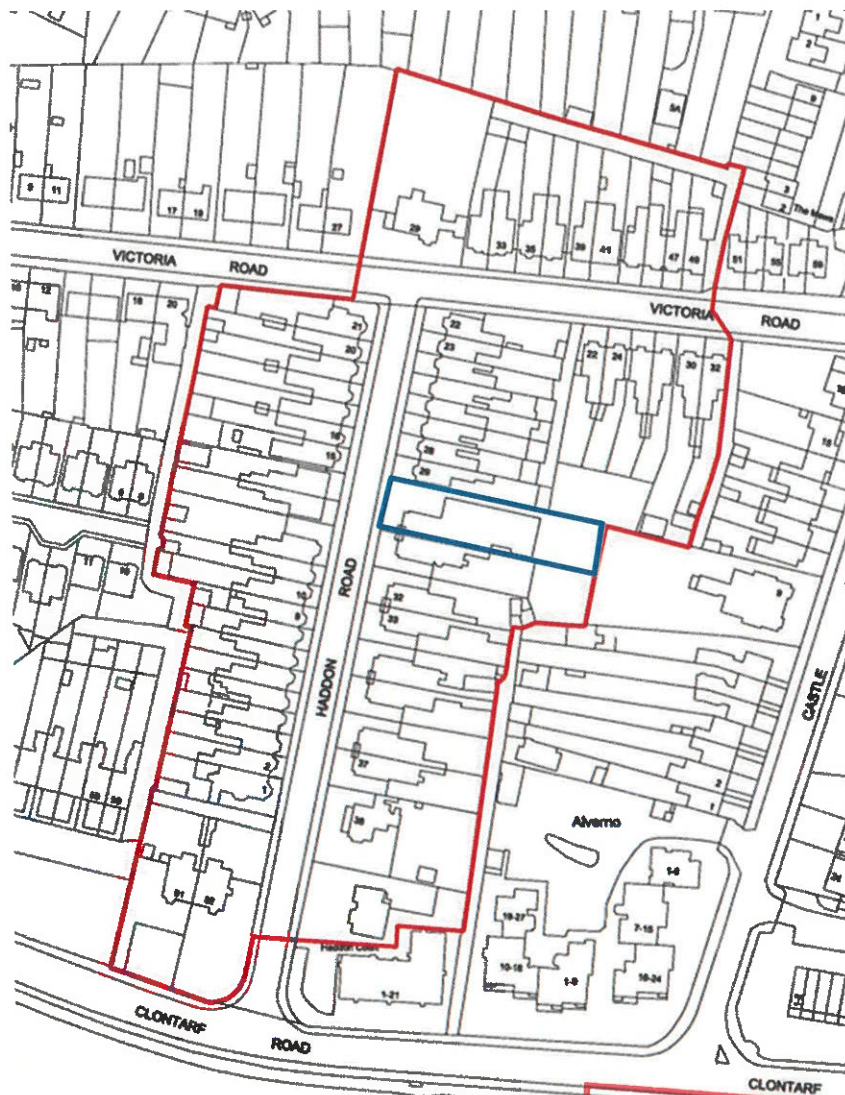


Figure 9.0 Site location map showing Architectural Conservation Area boundary in red, and No. 30 Haddon Road outlined in blue

Architectural Conservation Areas (ACA) focus on the preservation of unique places, areas, groups of structures and, with regards to Haddon Road, streetscapes which are, among other reasons, of special architectural, historical or cultural interests. The following considerations are to be considered when determining planning applications within conservation areas:

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**CHC4** To Protect the special interest and character of all Dublin's Conservation Areas. Development within or affecting a conservation area must contribute positively to its character and distinctiveness, and take opportunities to protect and enhance the character and appearance of the area and its setting, wherever possible.

It is also the policy of Dublin City Council to ensure that development will not:

1. Harm buildings, spaces, original street patterns or other features which contribute positively to the special interest of the Conservation Area
2. Involve the loss of traditional, historic or important building forms, features, and detailing including roof-scapes, shop-fronts, doors, windows and other decorative detail
3. Introduce design details and materials, such as uPVC, aluminium and inappropriately designed or dimensioned timber windows and doors
4. Harm the setting of a Conservation Area
5. Constitute a visually obtrusive or dominant form.

Furthermore, Section 11.1.5.4 of the development plan states the following in relation to change of use within designated Conservation Areas:

*'Changes of use will be acceptable where, in compliance with the zoning objective, they make a positive contribution to the character, function and appearance of Conservation Areas and their settings. The Council will consider the contribution of existing uses to the special interest of an area when assessing change of use applications and will promote compatible uses which ensure future long-term viability.'*

It is contended that the proposed development represents an intensification of use, amounting to a material change of use which is considered to be contrary to the Z1 zoning objective of the subject site.

## 5.0 Proposed Development

The proposed development relates to a change of use of No. 30 Haddon Road, Dublin 3, D03 FN20, from use as a nursing home to use for the provision of Homeless Accommodation comprising of 50 no. bedspaces.

## 6.0 Grounds for Referral

This section of the report will seek to expand further on the grounds of referral to An Bord Pleanála. The question before the Board relates to the change of use of No. 30 Haddon Road, Clontarf, Dublin 3, (D03 FN20), from use as a nursing home to use for the provision of a homeless accommodation facility. With this in mind we have regard to Class 9, Part 4 of Schedule 2 and Article 10 – Change of Use of the Planning and Development Regulations 2001-2019(as amended).

## 7.0 Planning and Development Act 2000 (as amended)

With regards to current planning legislation, we note the following:

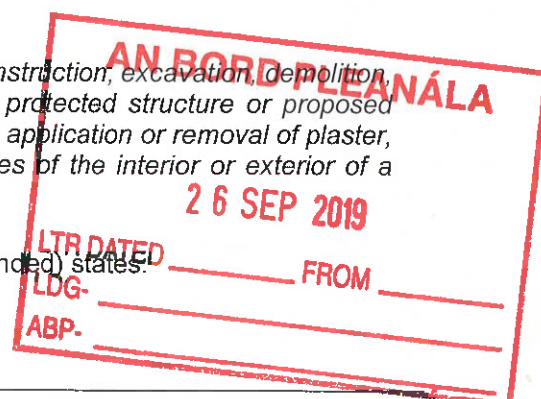
Under Section 2(1) 'Interpretation' of the Planning and Development Act 2000 (as amended) states:

'In this Act, except where the context otherwise requires'-

'Development' has the meaning assigned to it by Section 3 ...

*'Works' are interpreted as including "any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure'.*

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 works on, in, over or under land or the making of any material change in the use of any structures or other land'.*

The proposed change of use is considered to constitute development.

Section 32(1)(a) of the Act states that planning permission shall be required in respect of any development of land, not being exempted development.

Section 4 (1) sets out various forms and circumstances in which development is exempted development for the purposes of the Act.

## 8.0 Planning and Development Regulations 2001(as amended)

It is submitted that the proposed change of use constitutes development that is not exempted development. This submission is based on the provisions of the classes of use specified in Part 4 of Schedule 2 of the Planning and Development Regulations 2001-2019 (as amended).

Article 10 of the Regulations states the circumstances whereby development is exempt from the requirement to obtain planning permission:

*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 authorised and which has not been abandoned.*

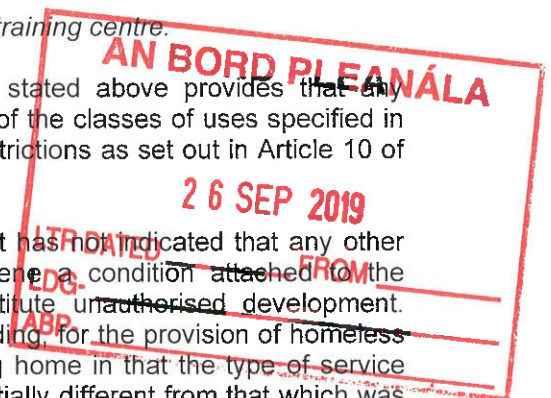
Part 4 (Article 10) – Class 9 sets out that a change of use from one of the following uses to another use within the same class is exempted development and will not require planning permission:

- (a) *For the provision of residential accommodation and care to people in need of care (but not the use of a house for that purpose)*
- (b) *As a hospital or nursing home*
- (c) *As a residential school, residential college or residential training centre.*

Article 10 of the Planning and Development Regulations as stated above provides that any development which consists of a change of use within any one of the classes of uses specified in Class 9(Part 4, Schedule 2) is exempted development if the restrictions as set out in Article 10 of the Regulations do not apply to the proposal.

In the case of the above restrictions, we note that the applicant has not indicated that any other works are proposed and the development does not contravene a condition attached to the permission granted for the nursing home, nor does it constitute unauthorised development. However, we consider that the proposed use of the subject building, for the provision of homeless accommodation is inherently different from its use as a nursing home in that the type of service provided, and the user profile of the proposed facility is substantially different from that which was initially approved and therefore may have a significant impact on the proper planning and sustainable development of the area, particularly in terms of compliance with the development plan context detailed above. We consider that the proposed use is inconsistent with the nursing home use of the premises which is specified in a previous permission.

Having regard to the above, we are of the opinion that the proposed change of use of No. 30 Haddon Road for the provision of homeless accommodation does not constitute exempted development.





## 9.0 Intensification of Use

It is considered that an intensification of use is likely to arise as a result of the proposed change of use, which may be considered to be contrary to the Z1 zoning objective of the subject site, the objective of which is 'to protect, provide and improve residential amenities'. It is unclear as to whether appropriate residential amenity will be provided for the proposed residents and whether appropriate standards of accommodation will be provided in relation to sufficiently-sized bedrooms, storage facilities, communal open space, private open space. We submit that there is limited outdoor space available at the subject site with limited services being within the reach of the potential occupants. We note that the proposed use of No. 30 Haddon Road remains as a form of institutional care, however the key changes relate to the capacity for residential occupancy which has been increased by the proposed use of bunk beds and the type of care whereby the nursing care previously provided is replaced by social support and care. It is our opinion that the substantial increase in the number of bed-spaces from 30 no. to 50 no. bedspaces, representing a 40% increase in occupancy, is a material development by way of intensification. The proposed increase in scale would result in a change in the definable character of the use.

It is submitted that whilst the general character of the use of the premises may be residential in nature, 'Homeless Accommodation' is a *sui generis* use, which does not fall within either the 'permissible use' of 'open for consideration use' categories and are therefore not a permissible use within Z1 zones having regard to Section 14.4 of the Dublin City Development Plan 2016-2022.

## 10.0 Material Change of Use

We refer to Section 178 of the Planning and Development Act 2000 (as amended) which restricts development by local authorities and states the following:

- 178- (1) *The council of a county shall not effect any development in its functional area which contravenes materially the development plan*
- (2) *The council of a city shall not effect any development in the city which contravenes materially the development plan.*
- (3) *The council of a city and county shall not effect any development in the city and county which contravenes materially the development plan*

We are of the firm belief that the care of 30 no. elderly people in a nursing home facility is materially different to that of the care of 50 no. homeless persons.

A review of Irish Case Law demonstrates that a change of use is material if the character of the initial use is substantially different in planning terms from the second use and if the change of use impacts on the proper planning and sustainable development of the area. In this case, the change of use is material having regard to the nature and operation of both facilities. The previous nursing home facility provided personal physical and social care and accommodation on a long-term basis to individuals with specific health issues and needs. The proposed use, to provide homeless accommodation would provide social, physical and mental care to a broad ranging user-profile, with accommodation being offered on a more short-term basis.

Further to the above, we note that nursing homes are generally typified as being small private institutions providing residential accommodation with healthcare, for elderly people who would generally have links to the local community. In light of this, we would strongly argue that the proposed change of use would be materially different from a nursing home given that it would provide a vastly different service to a contrasting user-group with a broad -ranging age profile.

Overall, we consider that the nature of the development substantially differs from that of the permitted nursing home. We contend that the nature of the proposed development may have potential consequences for the proper planning and sustainable development of the area, particularly in the context of consistency with the states objectives of the Dublin City Development Plan 2016-2022 and the overall zoning objective for the subject site which seeks 'to protect, provide for and improve residential amenities'.





## 11.0 Traffic and Noise

Since the occupation of this site by La Verna Nursing Home, the volume of traffic significantly increased as a result of the services being provided to residents of the facility either in the form of care workers, emergency vehicles, delivery trucks, rubbish collection or visitors to the facility. It is considered that the local roads immediately surrounding the site were designed to serve residential properties and are simply not of sufficient capacity to accommodate the large volumes of traffic that are anticipated for the proposed development. As it stands, Haddon Road is a heavily trafficked thoroughfare whereby the majority of residents rely on on-street car parking. Thus, we would argue that the Haddon Road does not have the capacity to facilitate additional car parking and that the proposed change of use would exacerbate an already significant issue.

It is noted that, most roads surrounding the subject site are quiet residential areas, home to many families, young children and elderly. The noise that would be generated by the substantial volumes of traffic entering and leaving the site late is unacceptable, contributing to further negative impacts on the amenity currently enjoyed by residents living in the immediate vicinity of the site. Moreover, the proposed homeless accommodation facility provides beds on a one night only basis meaning that there will be a sharp increase in the level of pedestrian activity on Haddon Road, particularly in the morning and evening times, and therefore an increase in potential noise disturbance for residents in the surrounding area. We also highlight that that a narrow laneway exists on the northern side of the subject property, this presents another safety concern as rear access to neighbouring homes can be gained from this laneway.

## 12.0 Health and Safety

La Verna Nursing Home at No. 30 Haddon Road is no longer in operation, with the structure being vacant since 2018. An inspection report prepared by the Health Information and Quality Authority (2017) affirms that the nursing home facility was non-compliant – moderate under the standards 'Safety and Suitability of the Premises'. Thus, the safety and suitability of the premises for a 50 inpatient homeless accommodation facility, with complex medical and social requirements, is questioned. In considering the above-mentioned, we refer to the '*National Standards Framework for Homeless Services in Ireland*' published in 2019 by the Dublin Regional Homeless Executive (DRHE), the purpose of which to assist in ensuring that homelessness services provided are of a high standard.

The main objectives of this particular document are too:

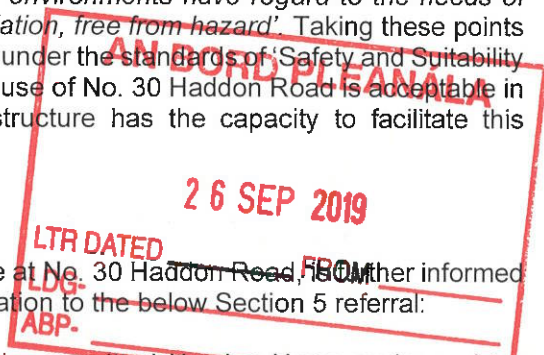
- Promote safe and effective service provision to persons experiencing homelessness;
- Support the objectives of National Homelessness Policy, i.e. enabling people to move into and sustain housing with appropriate levels of support;
- Establish consistency in how persons experiencing homelessness are responded to across different regions and models of service delivery;

We also highlight that *Theme 3*, as included within the above document has regard to the theme of safe services which is primarily concerned with balancing a diverse range of service use needs whilst maintaining a safe environment and states that '*physical environments have regard to the needs of service users and provide adequate and clean accommodation, free from hazard*'. Taking these points into account, and given the non-compliance of the property under the standards of 'Safety and Suitability of the premises' we would question whether the proposed use of No. 30 Haddon Road is acceptable in terms of health and safety and whether the existing structure has the capacity to facilitate this intensification of use given its current condition.

## 13.0 Planning Precedent

Our opinion as to the status of the proposed change of use at No. 30 Haddon Road, is further informed by the following decision made by An Bord Pleanála in relation to the below Section 5 referral:

Ref No. PL17.301064 Whether The change of use of the permitted Nursing Home under register reference number TA/140621 to a residential drug rehabilitation facility is or is not exempted development.







An order on the above question was delivered on 19<sup>th</sup> November 2018 which states that:

*'the change of use of the permitted nursing home under planning permission register reference TA/140621 to a residential drug rehabilitation facility, at the old National School, Ballivor Village, County Meath, is development and is **not** exempted development.'*

Despite the fact that the nature of the above change of use, from a nursing home to use as a drug rehabilitation centre is relatively different to that of a homeless accommodation facility, we note that there are some parallels between both uses in relation to the type of care provided and the demographic that this care is provided to. In light of this, we note the following commentary from the Inspectors Report:

*'The application referred to the Board is the change of use of this nursing home to a residential drug rehabilitation facility. The question for the Board is therefore **whether or not this change of use is material.**'*

*'I would accept the referrer's argument that a nursing home would typically refer to the care of the elderly and would have links to the local community and oversight by the HSE.'*

*'I would consider that the development **would be materially different from a nursing home**, notably it would provide a different service to a different user group, i.e. a population with a broader age profile and who are drug dependent. It is very likely that it would provide a service to a wider geographical area and have fewer links to the local community. In addition, from the information on file it would appear that the development would not be subject to oversight by the HSE (although this is not strictly a planning matter). The change of use would, therefore, comprise development.'*

***'In this instance, the nature of the development substantially differs from the permitted nursing home. This potentially has consequences for the proper planning and sustainable development of the area, in particular, consistency with its development plan context (role of settlement) and zoning objectives for the site, which seek to protect, provide for and/or improve town and village facilities and to provide for necessary community, educational and social facilities.'***

***'Having regard to this wider, overarching context, I would consider that the proposed development, which provides a specific programme to a defined group, with limited interaction with the local community, would be inconsistent with the use specified in the permission granted for the nursing home on site, and, therefore, would not constitute exempted development.'***

From a review of the above assessment, it is submitted that the proposed change of use of the building at No. 30 Haddon Road for the provision of homeless accommodation would be materially different from a nursing home, in that it would provide a different service and type of care to a different user group. We are of the strong opinion that the nature of the proposed use of the building significantly differs from that of a nursing home, given that it would provide accommodation on a short-term basis, to a varying user-group, with no specific ties to the local community.

#### 14.0 Irish Case Law

*Carman's Hall Community Interest Group & ors -v- Dublin City Council* [2017] IEHC 544

In the above High Court Case, the applicant's, Carman's Hall Community Interest Group & ors sought an Order of *certiorari* by way of an application for judicial review quashing a decision and Order of the Deputy Chief Executive of the respondent dated 28<sup>th</sup> October, 2016, which authorised a change of use and the refurbishment of inter alia, a premises formerly used as a Parish Centre and known as St. Nicholas of Myra and situated at Carman's Hall, Dublin 8, in order to provide accommodation for persons experiencing homelessness.

In his assessment of the above case Mr. Justice Binchy was of the opinion that the respondent, Dublin City Council had effected development in material contravention of the development plan, in



that the proposal fails to comply with the specific procedures for developments as such, set out in policy QH30 and Section 16.12 of the Development Plan.

We note that following commentary contained within the judgement of Mr. Justice Binchy delivered on 11<sup>th</sup> October 2017.

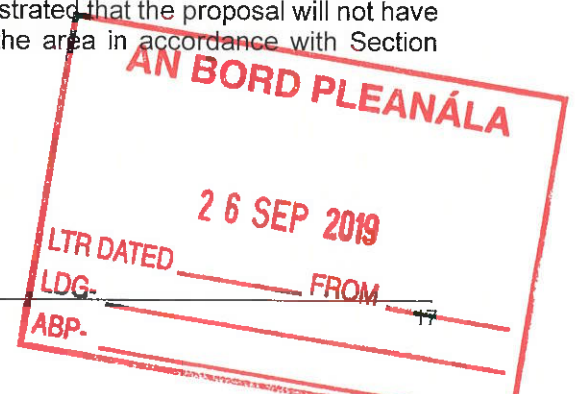
*'Having considered these arguments, **I have come to the conclusion that the failure to apply policy QH30 and s. 16.12 of the Development Plan in considering the proposal to develop and change the use of the Premises is a material contravention of the Development Plan.** I have come to this conclusion for several reasons. Firstly, as the applicants argue, it is clear that there is a high degree of specificity prescribed in the Development Plan in relation to the procedures for approval of such developments. It is clear that no effort at all was made to comply with these procedures, and that the entire focus of the respondent, perhaps understandably, was upon addressing the emergency it faced.'*

*'Secondly, there cannot be any doubt that the purpose lying behind this high degree of specificity was to ensure that the respondent would have available to it sufficient information to decide whether or not the proposed development would give rise to an undue concentration of such facilities in the area, to the detriment of the area. The possibility of such detriment is expressly acknowledged by the Development Plan. The argument that the respondent has no obligation to have regard to the provisions of the Development Plan in making a decision for the purpose of s. 179(6)(b) of the Act of 2000 cannot possibly be correct in light of the very express requirements of policy QH30 and s. 16.12 of the Development Plan and the underlying purpose of that policy and section, and also having regard to the obligation in s. 178(2) of the Act of 2000 not to effect development in material contravention of the Development Plan.'*

*'The procedural elements of policy QH30 and s. 16.12 do no more than prescribe how the respondent should comply with this obligation. Even if these requirements were not set out in the Development Plan, there would in my view be an obligation on the respondent to consider whether or not the proposed development contravenes the Development Plan, in view of s.178(2) of the Act of 2000. **The question as to whether or not the change of use of the Premises might contribute to or give rise to an undue concentration of such facilities in the area, with the attendant detrimental consequences surmised by the Development Plan, is clearly an important one, and one that is likely to be of significant interest and concern to the residents in the area.** As a matter of fact, the development of the Premises has attracted local opposition, which the Chief Executive of the respondent has described as understandable. In any case in my view, the people of the locality have real and substantial grounds for such concerns.'*

*'It follows from the above that the Order must be quashed, not because the development and change of use of the Premises is in material contravention of the Development Plan (about which I make no finding), but because in failing to comply with the specific procedures for such developments set out in policy QH30 and s. 16.12 of the Development Plan, and in particular in failing to consider and make any decision upon the question as to whether or not the development and change of use of the Premises will contribute to or give rise to an undue concentration of such facilities in the area, or have the detrimental consequences described in policy QH30 and s. 16.12, the respondent, in making the Order, has effected development in material contravention of the development plan.'*

In a similar manner to the above, we do not consider that due regard has been given to the location of the proposed homeless accommodation facility and its surrounding context. We are of the opinion that the applicant, Osdale Limited have not sufficiently supported their proposal for the change of use of the premises with adequate information indicating that it will not result in an over concentration of such types of facilities within one area or have not satisfactorily demonstrated that the proposal will not have any undue impacts on the surrounding residential amenity of the area in accordance with Section 11.1.5.4 of the Dublin City Development Plan 2016-2022.







## 15.0 Conclusion

The question before An Bord Pleanála is as follows:

*"Whether the change of use of No. 30 Haddon Road, Clontarf, Dublin 3, D03 FN20, from a 30-bed nursing home to use as a homeless accommodation facility constitutes development and whether this change of use constitutes exempted development or not?"*

We are of the strong opinion that the proposed change of use from a nursing home to the provision of homeless accommodation is development and is not exempted development and consider that the proposed use of the premises would be materially different from that of a nursing home. Accordingly, we request a declaration to this effect from An Bord Pleanála under Section 5 of the Planning and Development Act 2000 (as amended).

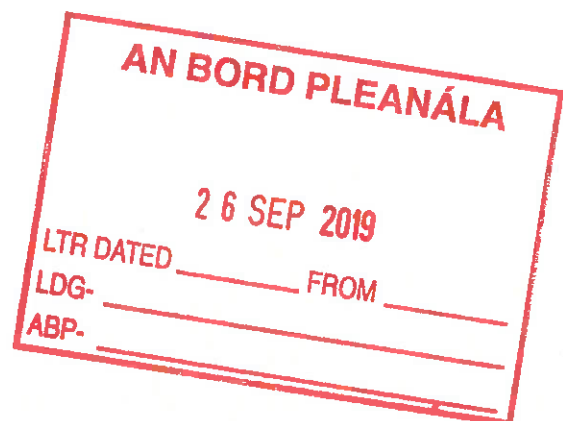
We trust that the Board will have regard to this submission, and look forward to a decision in due course.

Should you have any queries or require any further information, please do not hesitate to contact the under signed.

Yours sincerely,



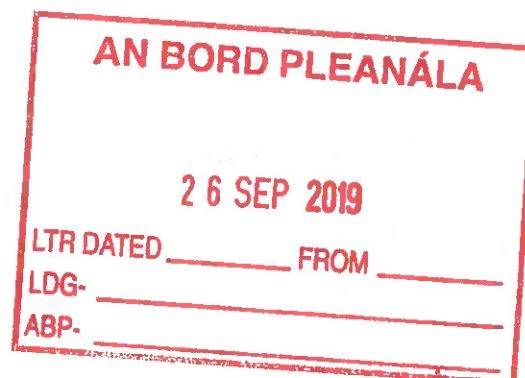
Kevin Hughes MIPI MRTPI  
For HPDC Ltd.





**Appendix A**

Declaration issued Dublin City Council on 5<sup>th</sup> September 2019.









Comhairle Cathrach  
Bhaile Átha Cliath  
Dublin City Council

An Roinn Pleanála & Forbairt Maoine, Bloc 4, Urlár 3, Oifigi na  
Cathrach, An Ché Adhmaid, Baile Átha Cliath 8.

Planning & Property Development Department, Block 4, Floor 3,  
Dublin City Council, Civic Offices, Wood Quay, Dublin 8.

T: (01) 222 2288

E. [planning@dublincity.ie](mailto:planning@dublincity.ie)

SCANNED

06-Sep-2019



Hughes Planning & Development Consultants  
70, Pearse Street  
Dublin 2

Application Number 0365/19  
Application Type Section 5  
Registration Date 09-Aug-2019  
Decision Date 05-Sep-2019  
Decision Order No. P4870  
Location 30, Haddon Road, Clontarf, Dublin 3  
Proposal EXPP: Whether a change of use from a 30-bed nursing home to use as a homeless accommodation facility constitutes development and whether this change of use constitutes exempted development or not.  
Applicant John Brierty & Turlough Considine

- If you have any queries regarding this Decision, please contact the number shown above

Note:

Any person issued with a declaration on development and exempted development, may, on payment of the prescribed fee, refer a declaration for review by A Bord Pleanála within four weeks of the date of the issuing of the declaration.



NOTIFICATION OF DECLARATION ON DEVELOPMENT AND EXEMPTED DEVELOPMENT

In pursuance of its functions under the Planning & Development Acts 2000 (as amended), Dublin City Council has by order dated 05-Sep-2019 decided to issue a Declaration that the above proposed development is EXEMPT from the requirement to obtain planning permission under Section 32 of the Planning & Development Acts 2000 (as amended).



**Reasons & Considerations:**

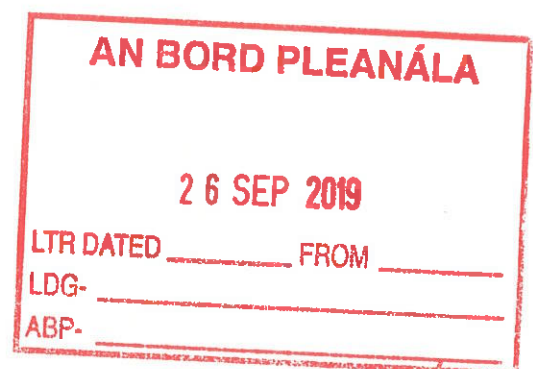
The Planning Authority is therefore of the opinion that the subject development would be exempted development in accordance with Section 4(2) (a) to (c) of the Planning and Development Act 2000 (as amended) and the provisions of Article 10(1) and Class 9 of Part 4, Schedule 2 'Exempted Development – Classes of Use', of the Planning and development Regulations as amended and therefore, would not require planning permission. Accordingly, it is the opinion of the Planning Authority that the change of use of the Premises at 30 Haddon Road Clontarf to a homeless accommodation facility is development and is exempted development.

Signed on behalf of Dublin City Council

  
for Assistant Chief Executive

**Note:**

Any person issued with a declaration on development and exempted development, may, on payment of the prescribed fee, refer a declaration for review by an Bord Pleanála within four weeks of the date of the issuing of the declaration.

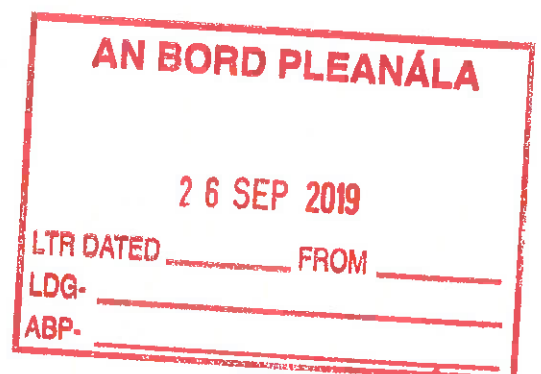






**Appendix B**

Extract from report prepared by The Health and Quality Authority (2017)





**Health Information and Quality Authority  
Regulation Directorate**

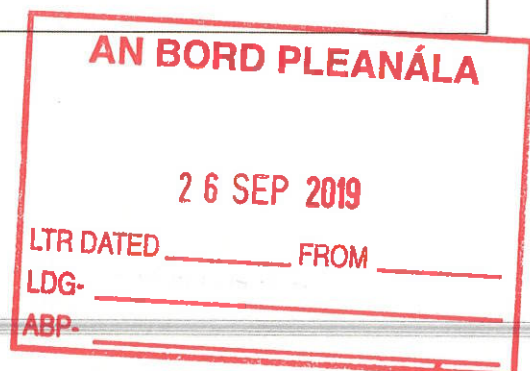
**Compliance Monitoring Inspection report  
Designated Centres under Health Act 2007,  
as amended**



**Health  
Information  
and Quality  
Authority**

An tÚdarás Um Fhaisnéis  
agus Cáilíocht Sláinte

<b>Centre name:</b>	La Verna Nursing Home
<b>Centre ID:</b>	OSV-0000146
<b>Centre address:</b>	30 Haddon Road, Clontarf, Dublin 3.
<b>Telephone number:</b>	01 833 9879
<b>Email address:</b>	info@laverna.ie
<b>Type of centre:</b>	A Nursing Home as per Health (Nursing Homes) Act 1990
<b>Registered provider:</b>	M.V. Nursing Limited
<b>Provider Nominee:</b>	Shane Kelly
<b>Lead inspector:</b>	Sheila McKeivitt
<b>Support inspector(s):</b>	None
<b>Type of inspection</b>	Announced
<b>Number of residents on the date of inspection:</b>	30
<b>Number of vacancies on the date of inspection:</b>	1







## About monitoring of compliance

The purpose of regulation in relation to designated centres is to safeguard vulnerable people of any age who are receiving residential care services. Regulation provides assurance to the public that people living in a designated centre are receiving a service that meets the requirements of quality standards which are underpinned by regulations. This process also seeks to ensure that the health, wellbeing and quality of life of people in residential care is promoted and protected. Regulation also has an important role in driving continuous improvement so that residents have better, safer lives.

The Health Information and Quality Authority has, among its functions under law, responsibility to regulate the quality of service provided in designated centres for children, dependent people and people with disabilities.

Regulation has two aspects:

- **Registration:** under Section 46(1) of the Health Act 2007 any person carrying on the business of a designated centre can only do so if the centre is registered under this Act and the person is its registered provider.
- **Monitoring of compliance:** the purpose of monitoring is to gather evidence on which to make judgments about the ongoing fitness of the registered provider and the provider's compliance with the requirements and conditions of his/her registration.

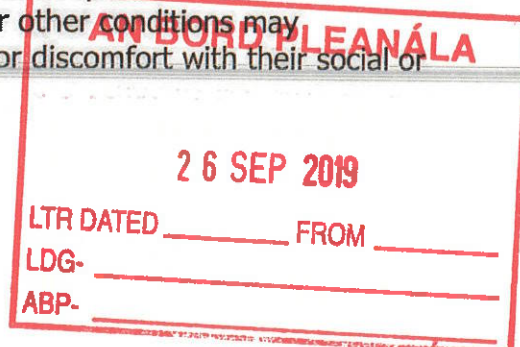
Monitoring inspections take place to assess continuing compliance with the regulations and standards. They can be announced or unannounced, at any time of day or night, and take place:

- to monitor compliance with regulations and standards
- to carry out thematic inspections in respect of specific outcomes
- following a change in circumstances; for example, following a notification to the Health Information and Quality Authority's Regulation Directorate that a provider has appointed a new person in charge
- arising from a number of events including information affecting the safety or wellbeing of residents.

The findings of all monitoring inspections are set out under a maximum of 18 outcome statements. The outcomes inspected against are dependent on the purpose of the inspection. In contrast, thematic inspections focus in detail on one or more outcomes. This focused approach facilitates services to continuously improve and achieve improved outcomes for residents of designated centres.

Please note the definition of the following term used in reports:

responsive behaviour (how people with dementia or other conditions may communicate or express their physical discomfort, or discomfort with their social or physical environment).



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**Compliance with the Health Act 2007 (Care and Welfare of Residents in Designated Centres for Older People) Regulations 2013, Health Act 2007 (Registration of Designated Centres for Older People) Regulations 2015 and the National Standards for Residential Care Settings for Older People in Ireland.**

This inspection report sets out the findings of a monitoring inspection, the purpose of which was to inform a registration renewal decision. This monitoring inspection was announced and took place over 2 day(s).

**The inspection took place over the following dates and times**

From: 09 January 2017 09:30 To: 09 January 2017 18:00

The table below sets out the outcomes that were inspected against on this inspection.

Outcome	Our Judgment
Outcome 01: Statement of Purpose	Compliant
Outcome 02: Governance and Management	Compliant
Outcome 03: Information for residents	Compliant
Outcome 04: Suitable Person in Charge	Compliant
Outcome 05: Documentation to be kept at a designated centre	Substantially Compliant
Outcome 06: Absence of the Person in charge	Compliant
Outcome 07: Safeguarding and Safety	Compliant
Outcome 08: Health and Safety and Risk Management	Substantially Compliant
Outcome 09: Medication Management	Compliant
Outcome 10: Notification of Incidents	Compliant
Outcome 11: Health and Social Care Needs	Compliant
Outcome 12: Safe and Suitable Premises	Non Compliant - Moderate
Outcome 13: Complaints procedures	Substantially Compliant
Outcome 14: End of Life Care	Compliant
Outcome 15: Food and Nutrition	Compliant
Outcome 16: Residents' Rights, Dignity and Consultation	Compliant
Outcome 17: Residents' clothing and personal property and possessions	Compliant
Outcome 18: Suitable Staffing	Compliant

**Summary of findings from this inspection**

This inspection was announced following an application by the provider to renew the registration of the centre. As part of the inspection, the inspector met with residents and staff. The inspector observed practices and reviewed documentation such as care plans, medical records, accident logs, policies and procedures and staff files.

**AN BORD PLEANÁLA**  
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Prior to the inspection, the inspector reviewed written evidence from a suitably qualified person confirming the building meets all the statutory requirements of the





fire authority in relation to the use of the building as residential centre for older people. All documents submitted by the nominated person on behalf of the provider, for the purposes of application to register were found to be satisfactory.

The centre is registered to accommodate 32 residents' and there were 30 residents on the day of inspection with one on holiday, leaving one vacant bed.

The provider and the person in charge were found to be operating in compliance with the conditions of registration and in compliance with 14 of the 18 outcomes, in substantial compliance with three outcomes and one in moderate non compliance with one outcome. The inspector confirmed that the nominated person on behalf of the provider had fully addressed the five of the six non compliant outcomes from the last monitoring inspection which took place in June 2016. The moderate non compliance in relation to premises remains.

The inspector found that the governance structure remained robust. The residents' spoken with expressed satisfaction with the standard of care they received in the centre. There was evidence of improvements made since the last inspection. The management team had addressed non compliances from the last inspection relating to safe and safeguarding, health and safety and risk management, medication management, end-of-life care and documentation.

The action plans at the end of this report reflect these non-compliances.

<b>AN BORD PLEANÁLA</b>	
<b>26 SEP 2019</b>	
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within three days. Quarterly reports had been provided to the authority to notify the Chief Inspector of any incident which did not involve personal injury to a resident.

**Judgment:**

Compliant

**Outcome 11: Health and Social Care Needs**

*Each resident's wellbeing and welfare is maintained by a high standard of evidence-based nursing care and appropriate medical and allied health care. The arrangements to meet each resident's assessed needs are set out in an individual care plan, that reflect his/her needs, interests and capacities, are drawn up with the involvement of the resident and reflect his/her changing needs and circumstances.*

**Theme:**

Effective care and support

**Outstanding requirement(s) from previous inspection(s):**

No actions were required from the previous inspection.

**Findings:**

Residents' were assisted to access allied health care professionals. A review of a number of residents' files showed that they had been referred to allied health professionals as required without delay. Residents' spoken confirmed were reviewed by their general practitioner on a regular basis and a review of a sample of residents' files confirmed this.

Nursing documentation reviewed for a number of residents was good. Care plans reflected all resident needs identified on assessment and were person-centred. They were updated when the needs of the resident changed and reviewed within a four monthly basis by staff.

**Judgment:**

Compliant

**Outcome 12: Safe and Suitable Premises**

*The location, design and layout of the centre is suitable for its stated purpose and meets residents' individual and collective needs in a comfortable and homely way. The premises, having regard to the needs of the residents, conform to the matters set out in Schedule 6 of the Health Act 2007 (Care and Welfare of Residents in Designated Centres for Older People) Regulations 2013.*

**Theme:**

Effective care and support

**Outstanding requirement(s) from previous inspection(s):**

Some action(s) required from the previous inspection were not satisfactorily

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26 SEP 2019

LTR DATED FROM

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plemented.

**Findings:**

The inspector found the centre to be clean and tidy.

There was adequate communal space to meet the needs of residents'.

The inspector used the visitors' room during the inspection process.

There was inadequate storage space provided for equipment. Hoists and sit on scales were stored in the residents' bedroom or in the downstairs assisted bathroom. A provision for additional storage space was not viewed in the proposed new extension, for which planning permission had been granted. However the inspector was informed that these plans were under review to include storage space.

The three, three bedded rooms had not been reviewed to meet the criteria of the standards. There was a lack of personal space for the resident occupying the bed by the door in two of these three bedrooms, room 10 on the ground floor and room 7 on the second floor. On the ground floor two of the three beds were positioned up against the wall making them unsuitable for use of hoist dependent residents'. However, the inspector was informed that there was one hoist dependent resident in one of these bedrooms and two hoist dependent residents' in the other. In addition, there was only one room for one bedside chair in both these rooms. The three bedded on the second floor was suitable to meet the needs of the three independently mobile residents occupying the room. The inspector was informed that the planned extension included additional bedrooms which would enable the reduction of bed capacity in the at least one of the three, three bedded rooms.

The residents' bedrooms were spread across the ground, first, second and third floor of the centre. There was no lift in the centre. There were three chair lifts available to take residents' with impaired mobility from one floor to the other. The inspector was informed that all residents' currently residing on the upper floors of the centre were independently mobile. The planned extension was under review to include a lift.

There was no garden. There was a small paved area the width of the building which ran along the rear of the building and both sides. Residents could independently access the small paved area via the activities room. This area contained garden benches, chairs, tables, bedding pots and plants. It was secure to the rear by a newly constructed boundary wall. The side of the building contained a smoking hut and was frequently used by a number of residents'. The inspector raised concerns as part of this small rear outdoor space appeared to be planned as ground for the planned extension.

Residents occupying multiple occupancy bedrooms did not have access to a single room at the time of death. A single room for use at the time of death was not identified in the current new extension plans. The inspector was informed that these were under review.

**Judgment:**

Non Compliant - Moderate

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