

The Secretary  
An Bord Pleanála  
Marlborough Street  
Dublin 1

3<sup>rd</sup> December 2019

<b>AN BORD PLEANÁLA</b>	
LDG-	<u>022/35-19</u>
ABP-	_____
04 DEC 2019	
Fee: €	<u>220</u> Type: <u>cheque</u>
Time: _____	By: <u>Reg. Post</u>

**RE: Referral of decision by Louth County Council on Section 5 Declaration application in relation to the existing dog grooming and boarding service being carried out at premises owned by Tracey Reilly at no. 99 Forest Park, Drogheda, Co. Louth.**

Dear Sir/Madam,

On behalf of my client Tracey Reilly, I wish to formally refer to you the decision that Louth County Council has made in respect of an Application for a Declaration on Exempted Development Under Part 1, Section 5 of the Planning and Development Act 2000 (as amended).

We Brady Hughes Consulting, are the agent and our address is 26 Magdalene Street, Drogheda, Co. Louth.

In this regard, please find attached a copy of the Section 5 application which was submitted to Louth County Council on October 23<sup>rd</sup>, 2019 and this comprises the following documents:

1. The Application Form sent in to L.C.C.
2. The Cover Letter which accompanied the declaration application setting out our client's views and position
3. Drawing No. 361-01-001 Site Location Map
4. Drawing No. 361-01-002 Existing Site Layout Plan, Floor Plans & Elevations
5. Signed letters by our clients neighbours & friends

Please also find attached: -

6. A copy of the Decision issued by Louth County Council to refuse, i.e. the decision that this referral relates to.
7. Copy of the planner's report.

Please also find attached a cheque in the sum of €220 the prescribed fee in respect of an R1 referral whereby we wish to refer to An Bord Pleanála a declaration made by a planning authority on a question that was put to it.

We trust that you will take the foregoing and the details and information that we supplied to Louth County Council with our application into consideration and when determining this Section 5 declaration decision referral.



In short, we are of the view that no material change of use has occurred at 99 Forest Park. Whilst it is a fact that Tracey is carrying on a home-based economic activity – dog grooming, there are no effects. To be a material change of use, there must be impacts on the neighbouring properties. As such, we disagree with the Planning Authorities evaluation of this case on the basis that if a change of use has occurred at all, it is not ‘material.’ Our rationale is set out in the submission we made with our declaration application attached herewith.

In relation to intensification, our declaration request limits the number of dogs being groomed to 8 per week, one at a time and by appointment. Intensification is limited in this way. I’d refer to the ‘Temple Bar case’ too – it found that a material change of use of a residential unit had occurred with respect to short term lets. No permanent resident and the entirely commercial nature of what was occurring were taken into consideration. These factors won’t apply here – the commercial activity in this case is entirely ancillary to the residential use of the property.

Ultimately, we contend that for a material change of use to exist, such to amount to ‘development’ and require planning permission, it must satisfy 2 conditions:

1. Firstly, an actual change in how the property is being used must have occurred – that didn’t happen here.
2. Secondly, the change must be material. Any analysis of whether or not the character of the existing use of Tracey’s house will be altered by the proposed change in this case will conclude that the quality of the change is not of a material nature because it does not impact on the proper planning and sustainable development of the area.

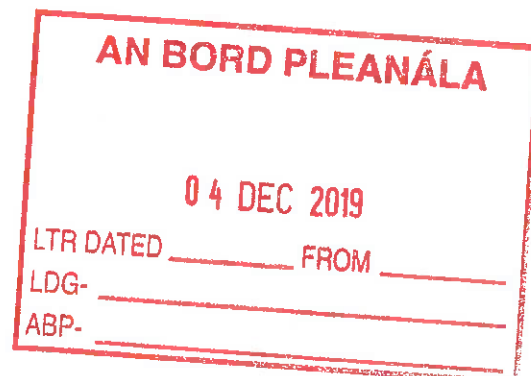
This comes down to fact and degree – in this case, the change relates only to the acceptance of payments for an activity already being carried out on site. The degree of materiality when assessed against the impacts on neighbouring properties of this payment transaction occurring is negligible. Whether or not Traceys neighbours pay her for grooming their pets, has no bearing one way or another on the proper planning and sustainable development of the area.

We respectfully contend that no development has occurred at Tracey’s house. And the proposed change of use is not a ‘development’ as defined by the planning act and does therefore not require planning permission.

Your Faithfully



Brian Hughes  
BA BAI CEng MIEI  
Chartered Engineer

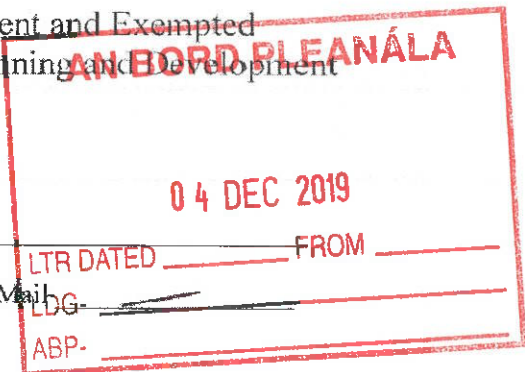




# Louth County Council

Town Hall, Crowe Street, Dundalk, County Louth

Application For Declaration on Development and Exempted Development Under Part 1, Section 5 of the Planning and Development Act 2000 (as amended)



1. Name and address of Applicant:

TRACEY REILLY

Phone Number 0876282628 Fax No: E-Mail

2. Name and address of Agent (if any)

BRADY HUGHES CONSULTING

Phone Number 0419839379 Fax No: E-Mail info@bradyhughes.com

3. Name and address for all correspondence (if not completed, correspondence will be sent to applicant)

26 MAGDALENE STREET, DROGHEDA, CO. LOUTH

4. Applicant's interest in site:

OWNER

(if applicant is not freehold owner of the property in question, please provide name & address of owner)

5. Location of proposed development (specify house no. and street name, where applicable)\*\*

99 FOREST PARK, DROGHEDA, CO. LOUTH

6. Description of proposed development: Whether the change of use from a dwelling where dog grooming and boarding is carried on as a hobby by the occupant to a dwelling where the occupant charges for the same services (with no intensification) is or is not development and/or is or is not exempted development

7. Does the development consist of works to be carried out to an existing or proposed protected structure? Yes  No

If Yes, has a Declaration under Section 57 of the Planning and Development Act 2000 been requested or issued for the property by the Planning Authority?

N/A

8. (a) If the proposed development is an extension to a dwellinghouse, please include the following: N/A

- Floor area of Proposed Extension \_\_\_\_\_ sq.m
- Floor area of Existing Dwelling \_\_\_\_\_ sq.m



- Area of Rear Private Open Space \_\_\_\_\_ sq.m
- Overall Height of Structure \_\_\_\_\_ metres

(b) Have any previous extensions been carried out? Yes  No   
 If Yes, please specify: N/A

9. (a) If the development is for the erection of a garage/shed/store etc. please include the following

- Proposed garage/shed/store N/A sq.m
- Floor area of Existing Structure(s) N/A sq.m
- Area of Rear Private Open Space N/A sq.m
- Overall Height of Structure N/A metres

(b) Has any previous garage/shed/store been constructed? Yes  No   
 If Yes, please specify: N/A

**AN BORD PLEANÁLA**

**04 DEC 2019**

LTR DATED \_\_\_\_\_ FROM \_\_\_\_\_

LDG- \_\_\_\_\_

ABP- \_\_\_\_\_

10. For any building to be retained on site, or for a change of use of the property please indicate:

- Existing Use : A dwelling in which the dog owning resident grooms their own, neighbours and friends' dogs in a garden shed fitted out for the purpose, and on occasion takes care of friends and neighbours' dogs while they are on holidays
- Proposed Use : As above but where the resident charges friends and neighbours for the provision of these services.

11. Please state, where applicable, materials to be used in the construction of any boundary wall or fence:  
N/A

I certify that the aforementioned is correct.

Signature of Applicant: *John Hayes* (Agent) Date 23-10-2019

Please include one copy of the following documents with this application form:

- Site Location Map: (Scale 1:1000)
- Site Layout Map: (Scale 1:200 or 1:500)
- Floor Plans & Elevations: (Scale 1:50, 1:100 or 1:200)
- Application fee: (€80)

**\*\*NOTE: If the property outlined in Question 5 is a Protected Structure please submit two copies of all documentation listed above.**

Completed Application Form & Fee must be submitted to:

Planning Office  
 Louth County Council  
 Town Hall  
 Crowe Street, Dundalk  
 County Louth

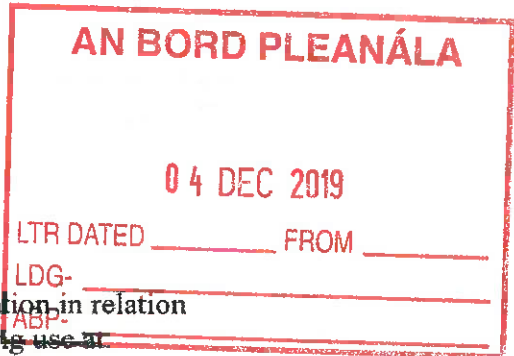






Planning Department  
Louth County Council  
Town Hall  
Crowe Street  
Dundalk  
Co. Louth

22<sup>nd</sup> October 2019



RE: Application for Section 5 Declaration in relation  
to a pet grooming & pet boarding use at  
99 Forest Park, Drogheda, Co. Louth.

Dear Sir/Madam,

With reference to the above, and on behalf of our client Ms Tracey Reilly, please find attached a completed application form for a declaration under Section 5 of the Planning and Development Act 2000 (as amended).

In support of this application, please find attached a cheque in the sum of €80, the prescribed fee and the following documents:

1. Drawing No. 361-01-001 Site Location Map
2. Drawing No. 361-01-002 Existing Site Layout Plan, Floor Plans & Elevations
3. Signed letters by Tracey's neighbours & friends

**The Question**

Current Use: A dwelling in which the dog owning resident grooms their own, neighbours and friends' dogs in a garden shed fitted out for the purpose, and on occasion takes care of friends and neighbour's dogs while they are on holidays.

Proposed Change of Use: As above but where the resident charges friends and neighbours for the provision of these services.

The Question: Whether the change of use from a dwelling where dog grooming and boarding is carried on as a hobby by the occupant to a dwelling where the occupant charges for the same services (with no intensification) is or is not development and/or is or is not exempted development

# MEMORANDUM

AN BORD PLEANÁLA

DATE: 04 DEC 2019

FOR DATED BY FROM

LEO

Planning Department  
Louth County Council  
11th Floor  
11th Floor  
11th Floor  
11th Floor

Reference is made to the report of the Planning Committee dated 11th December 2019 in relation to the proposed development at [Address].

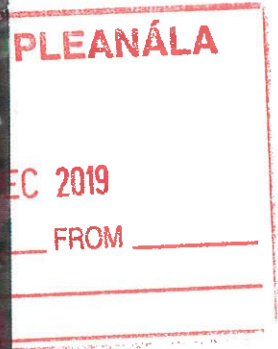
The Planning Committee has considered the report and has resolved to grant planning permission for the proposed development.

The proposed development is in accordance with the provisions of the Planning and Development Act 2000 and the Planning and Development Regulations 2001.

The proposed development is in accordance with the provisions of the Planning and Development Act 2000 and the Planning and Development Regulations 2001.

## Site Location

The subject dwelling is located within the Forest Park housing estate and is a semi-detached dwelling. It has off-street car parking in front and a relatively large rear garden. See extract from Google Maps satellite view below.



## Planning History

County Louth's ePlan system has no detail scanned for the parent permission for Forest Park housing estate. I believe that the relevant planning file refer numbers are 93/35 and 94/98 and these are Drogheda Borough Council references.

I don't believe that there are any conditions on these parent files which would preclude Tracey from using her house for purposes incidental to the residential use and the enjoyment of that use.

Apart from the parent permission for the housing development that the house forms part of, there is only one subsequent grant of planning permission - Planning Reference No. 02510069. Planning permission was granted for the conservatory to the rear & single storey extension to the side of the existing house.

There is a current enforcement file (Ref No.19U118). A warning letter was issued to Tracey Reilly alleging an unauthorised development was taking place at the subject property involving a pet grooming and pet boarding business.

## Background to the application.

Following receipt of the planning enforcement letter, Ms Reilly engaged Brady Hughes Consulting to review the case and prepare a response. This application for a Section 5 declaration is part of the agreed response on foot of the planning departments letter.

Brady Hughes Consulting Engineers Ltd, 26 Magdalene Street, Drogheda, Co. Louth  
041 9839379, info@bradyhughes.com



Following our initial assessment, we advised Ms Reilly that domestic sheds in the rear of her property exceed the cumulative limit on exempt development and these have been removed.

Tracey is a keen dog owner and enthusiast. Keeping, walking, grooming and generally caring for dogs has been a central part of Tracey and her husband's lives since before they were married 20 years ago. In relation to the pet grooming and boarding activity it should be noted that Tracey has been grooming her friends and neighbours' dogs at her home (from inside and from her garden shed) for many years, since shortly after moving into her home in 1998. This has always been and continues to be her hobby and a past-time primarily a recreational pursuit and one which is incidental to the enjoyment of her dwelling house. It should also be noted that in recent years, she began to accept payment from some dog owners for this service.

Equally, for many years, Tracey would look after her friend's family and neighbours' dogs when they were on holiday. In recent years she has accepted payment for this service too, to help cover costs, pay for insurances, feed etc.

#### Current Level of Activity:

Firstly, it should be noted that Tracey owns two dogs of her own and they live with her and her family at 99 Forest Park permanently.

I understand that at certain times in the past 2 years, Tracey's dog grooming activities were busier than presently. Currently Tracey grooms 2 dogs per day at the house, four days a week (Monday - Thursday) between the hours of 10am - 12 am. This means a total of 8 dogs per week are groomed at the house. These dogs are generally delivered on foot and always by appointment. Generally, they are neighbours' dogs. It is this level of activity that Tracey wishes to continue. She expects that of the 8 dogs per week, between 4 and 6 will be owned by paying customers. The remainder will be close friends or family and she doesn't charge these people.

Tracey can provide for a maximum of 4 - 6 dogs (depending on size) staying overnight at her home (along with her own 2 dogs). These dogs stay inside her house, and not in kennels or sheds outside. These dogs are generally delivered on foot and always by appointment and generally they are neighbours' dogs. This activity is seasonal and is generally busier in the summer times or at school holidays and it is very rare that she would have 6 dogs staying.

The question is given that Tracey has been doing this work as a hobby for many years free gratis for friends and neighbours, we now seek to confirm whether charging for this ongoing service at the level outlined constitutes a material change of use and is therefore a 'development', and if so, is it a 'development' that requires planning permission.

#### Definitions

*"unauthorised development" means, in relation to land, the carrying out of any unauthorised works (including the construction, erection or making of any unauthorised structure) or the making of any unauthorised use;*

*"unauthorised use" means, in relation to land, use commenced on or after 1 October 1964, being a use which is a material change in use of any structure or other land and being development other than—*

AN BORD PLEANÁLA

04 DEC 2019

LTR DATED \_\_\_\_\_ FROM \_\_\_\_\_

LDG- \_\_\_\_\_

ABP- \_\_\_\_\_





(a) exempted development (within the meaning of section 4 of the Act of 1963 or section 4 of this Act), or

(b) development which is the subject of a permission granted under Part IV of the Act of 1963 or under section 34 of this Act, being a permission which has not been revoked, and which is carried out in compliance with that permission or any condition to which that permission is subject;

Section 3 (1) of the Planning and Development Act 2000 (as amended) states 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."

Section 4 of the Planning and Development Act 2000 (as amended) indicated that the following are exempted developments: -

(j) development consisting of the use of any structure or other land within the curtilage of a house for any purpose incidental to the enjoyment of the house as such:

#### Discussion / Comment

We believe that no change of use has occurred. Tracey has always had dogs of her own, and along with that, she has always had friends and family's dogs over to stay when they would go on holiday. Grooming, showing and caring for dogs has been Tracey's hobby for many years.

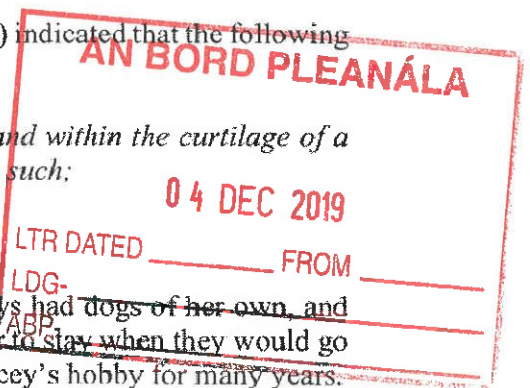
Grooming dogs and caring for dogs whilst their owners are on holidays has been going on for years at Tracey's house, and it is only recently that she has charged friends and neighbours for this service which she was providing for free for many years.

I am certain that owning dogs and grooming them is not a development. I am certain that grooming your neighbours' dog for them in your shed is not a development. I don't believe that minding your friends' dogs whilst they are on holiday is a development either. These are uses consistent with and ancillary to the residential use of the family home.

The question now arises as to whether accepting payment now for something that was previously being done without charge is a development or a change of use and whether or not such a change of use is 'material'

Whether or not a change of use is 'material' depends on the impact that change has had. Case law tells us that when determining whether a material change of use has occurred, one must look at the character of the existing use of the land or property before, and then after the change. This requires looking at the materiality of the external impacts the change brings about on the land i.e. the effect of the change and not just the use itself.

In this case, for a development to occur, a material change of use must occur. Ultimately, for a material change of use to exist, such as to amount to 'development' and require planning permission, it is necessary to satisfy two conditions. First, there must be an actual change in how the property is used. Secondly that change must be material.







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LTR DATED \_\_\_\_\_ FROM \_\_\_\_\_

We contend that no change of use is occurring – the way the building is being used is not affected by whether or not Tracey accepts payment. The way she uses the building will continue as it has been regardless of whether or not the friends and neighbours pay for the service she provides.

To determine whether that change is or is not material I have considered whether or not Tracey accepting payment for grooming her neighbours pets, or keeping them overnight on occasion, has altered the character of the property such that it impacts on the proper planning and development of the area. Taking payment for grooming neighbourhood pets that Tracey was grooming anyway, has no impact on the proper planning and development of the area in our opinion. The change that has occurred has no implications for the residential amenities of adjoining properties because the level of activity proposed is no more that could reasonably be expected to occur in any house where the owner has a number of dog's present. We also contend that since the change of use only relates to the acceptance of a fee, the activity of grooming dogs as a hobby had already been occurring as a hobby. The acceptance of the fee has no impact on the proper planning and development of the area. Indeed, it should be noted that Drogheda's development plan envisages that home based economic activities can occur in areas (like this one) zoned 'Residential Existing'.

Ultimately, the question of whether or not a change of use is 'material' is one of fact and degree, which falls to be determined on the particular facts of a given case.

Owning multiple dogs and keeping them in your house and garden is not a development, pet ownership is a right. Minding your neighbours and friend's dogs in your own home while they are on holiday is not a development – it is a lawful and reasonable use of your own property. Grooming your own and your neighbours' dogs in your garden shed is not a breach of any law or regulation provided that all dogs in the premises at any one time have licenses. These are facts, and not conjecture.

Both Tracey and I would accept that taking payment for performing the services is a 'change', and that it began in or about 2014. However, I would respectfully suggest that this 'change' is not one that constitutes a material change to the use of Tracey's family home. I've drawn this conclusion because the character of the use before she accepted payment and the character of the use after she accepted payment has not changed. There are no external effects (on third parties) as a result of Tracey taking payment.

In this regard, and by way of confirmation, please find attached letters signed by some of Tracey's nearest neighbours confirming that they are not affected by Tracey's hobby/business. I have also attached a series of letters from other neighbours and friends saying that they use Tracey's service and that they walk their dogs to Tracey's house.

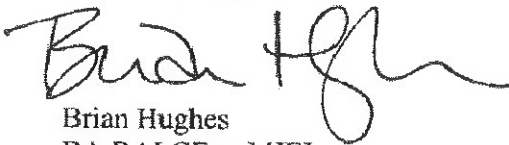
The 'pet grooming and pet boarding' business is incidental and ancillary and has no effects on third parties over and above the normal impacts that careful and considerate pet owners have on a residential area.



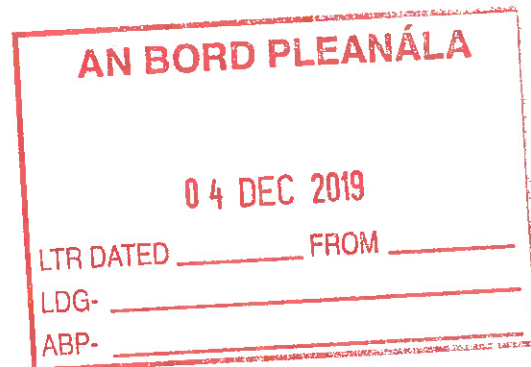
## Conclusion

We respectfully contend that no development has occurred at Tracey's house and we trust that you will take the foregoing into consideration when making this determination. We would ask that you find, in agreement with us that when determining this Section 5 declaration application, that the proposed change of use is not a 'development' as defined by the planning act and does therefore not require planning permission.

Your Faithfully



Brian Hughes  
BA BAI CEng MIEI  
Chartered Engineer





AN BORD PLEANÁLA

04 DEC 2019

LTR DATED \_\_\_\_\_ FROM \_\_\_\_\_

LDG- \_\_\_\_\_

ABP- \_\_\_\_\_

To whom it may concern:

Date

26/9/2019.

I live at 40 front park and please note the following: Holly

- I regularly bring my dog to Tracy Reilly's house for grooming.
- I walk my dog to and from Tracy's house (or she will walk to my house to collect the dog)
- Tracy also minds my dog when I go on holiday.
- Tracy has been doing this for years and she provides a valuable service locally.
- If Tracy wasn't providing this service, I would have to drive to an alternative provider.

Yours Faithfully,

Alice Connors



To whom it may concern:

Date 26/9/2019

AN BORD PLEANÁLA

04 DEC 2019

LTR DATED

LDG-

APP-

FROM

I live at 33 Forest Park and please note the following:

Fudge  
Max

- I regularly bring my dog to Tracy Reilly's house for grooming.
- I walk my dog to and from Tracy's house (or she will walk to my house to collect the dog)
- Tracy also minds my dog when I go on holiday.
- Tracy has been doing this for years and she provides a valuable service locally.
- If Tracy wasn't providing this service, I would have to drive to an alternative provider.

Yours Faithfully,

*Silvian Jordan*

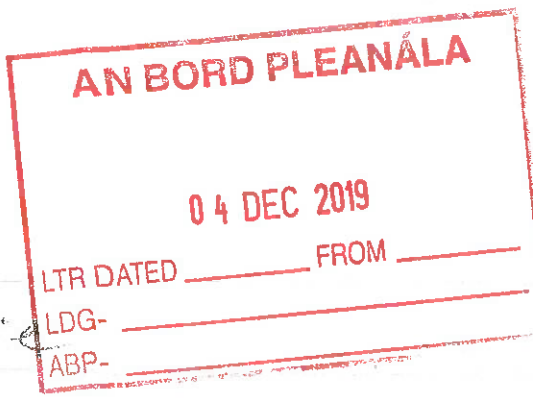




To whom it may concern:

Date 26/4/19

Missie



I live at ...*102 Forest Park*... and please note the following:

- I regularly bring my dog to Tracy Reilly's house for grooming.
- I walk my dog to and from Tracy's house (or she will walk to my house to collect the dog)
- Tracy also minds my dog when I go on holiday.
- Tracy has been doing this for years and she provides a valuable service locally.
- If Tracy wasn't providing this service, I would have to drive to an alternative provider.

Yours Faithfully,

*Joseph Hughes*



To whom it may concern:

Date 26/12/19

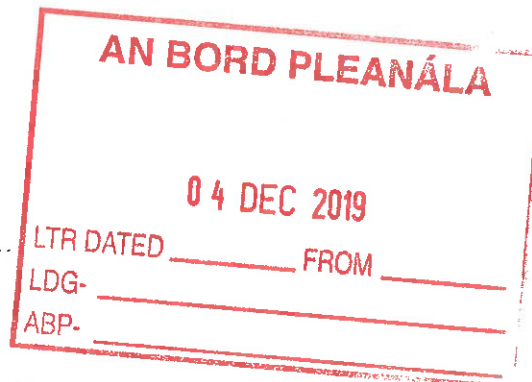
Penny

I live at Seafort Park and please note the following:

- I regularly bring my dog to Tracy Reilly's house for grooming.
- I walk my dog to and from Tracy's house (or she will walk to my house to collect the dog)
- Tracy also minds my dog when I go on holiday.
- Tracy has been doing this for years and she provides a valuable service locally.
- If Tracy wasn't providing this service, I would have to drive to an alternative provider.

Yours Faithfully,

Tracy Reilly





To whom it may concern:

Date

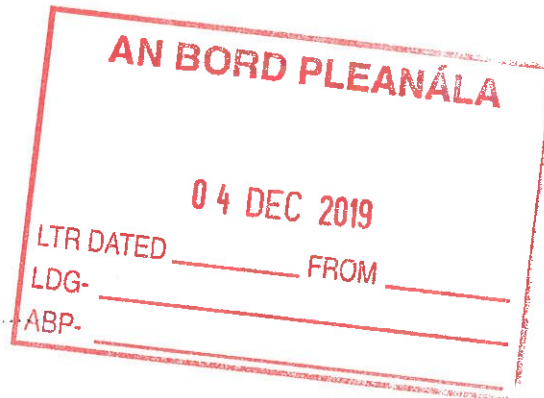
Lucy

I live at 94 Forest Park and please note the following:

- I regularly bring my dog to Tracy Reilly's house for grooming.
- I walk my dog to and from Tracy's house (or she will walk to my house to collect the dog)
- Tracy also minds my dog when I go on holiday.
- Tracy has been doing this for years and she provides a valuable service locally.
- If Tracy wasn't providing this service, I would have to drive to an alternative provider.

Yours Faithfully,

Denise Pinn





To whom it may concern:

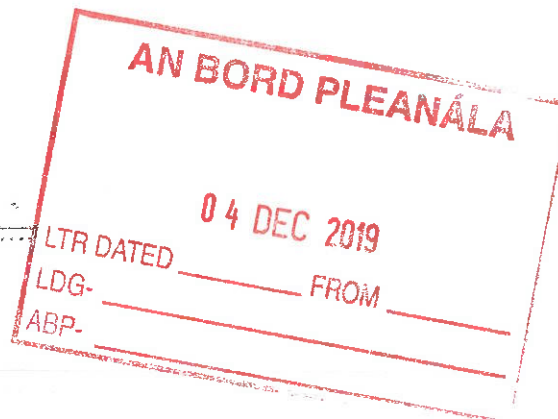
Date

I live at 125 Krest Park and please note the following: Tracy

- I regularly bring my dog to Tracy Reilly's house for grooming.
- I walk my dog to and from Tracy's house (or she will walk to my house to collect the dog)
- Tracy also minds my dog when I go on holiday.
- Tracy has been doing this for years and she provides a valuable service locally.
- If Tracy wasn't providing this service, I would have to drive to an alternative provider.

Yours Faithfully,

*[Handwritten signature]*







To whom it may concern:

Date

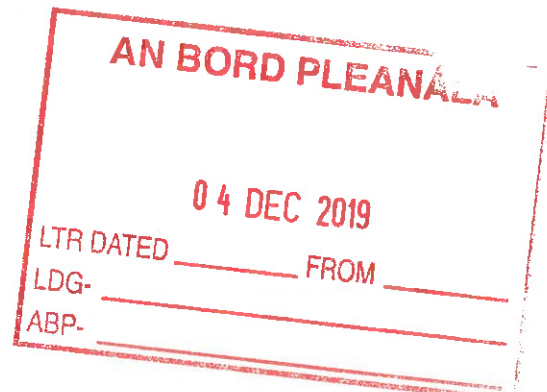
I live at 123 Forest Park and please note the following:

Bonnie +  
Jake

- I regularly bring my dog to Tracy Reilly's house for grooming.
- I walk my dog to and from Tracy's house (or she will walk to my house to collect the dog)
- Tracy also minds my dog when I go on holiday.
- Tracy has been doing this for years and she provides a valuable service locally.
- If Tracy wasn't providing this service, I would have to drive to an alternative provider.

Yours Faithfully,

Amanda Reilly





To whom it may concern:

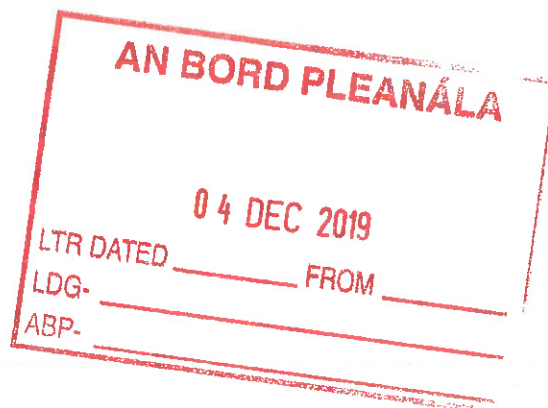
Date

I live at 99 Forest PK (Yona) and please note the following.

- I regularly bring my dog to Tracy Reilly's house for grooming.
- I walk my dog to and from Tracy's house (or she will walk to my house to collect the dog)
- Tracy also minds my dog when I go on holiday.
- Tracy has been doing this for years and she provides a valuable service locally.
- If Tracy wasn't providing this service, I would have to drive to an alternative provider.

Yours Faithfully,

Debra M. Curran





To whom it may concern:

Date 26.09.2019

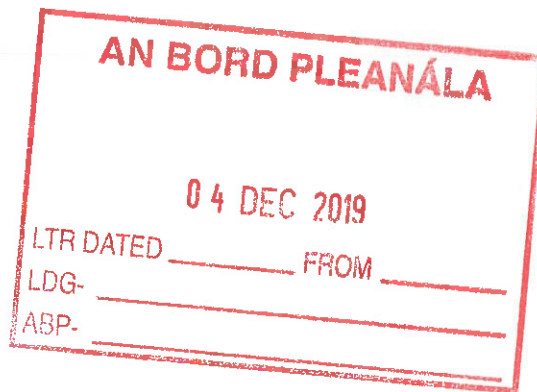
Molby  
COCO

I live at No. 85 Forest Park, and I'm a close neighbour of Liam and Tracy Reilly at 99 Forest Park. Please note the following:

- I am aware that Tracy provides a grooming service.
- I am aware that Tracy cares for people's dogs when they are away.
- I have no objection to what Tracy is currently doing at her house in this regard, because it has no effect on me or my family.

Yours Faithfully,

[Signature] [Signature]





To whom it may concern:

Date *26-9-2019*

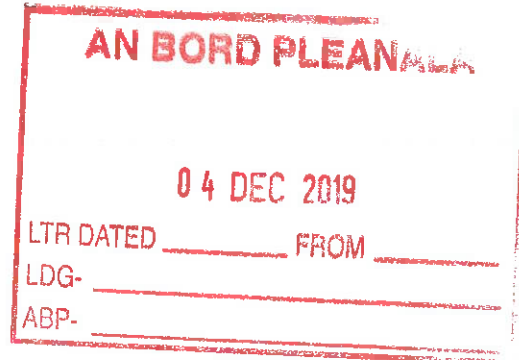
*Rob*

I live at No. *52* Forest Park, and I'm a close neighbour of Liam and Tracy Reilly at 99 Forest Park. Please note the following:

- I am aware that Tracy provides a grooming service.
- I am aware that Tracy cares for people's dogs when they are away.
- I have no objection to what Tracy is currently doing at her house in this regard, because it has no effect on me or my family.

Yours Faithfully,

*Suzanne Boston*







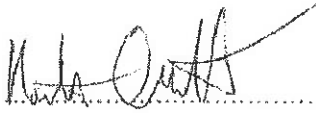
To whom it may concern:

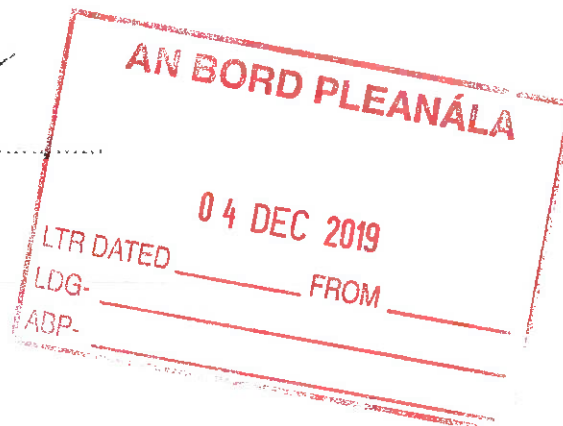
Date

I live at N13 Forest Park and please note the following: Alonso

- I regularly bring my dog to Tracy Reilly's house for grooming.
- I walk my dog to and from Tracy's house (or she will walk to my house to collect the dog)
- Tracy also minds my dog when I go on holiday.
- Tracy has been doing this for years and she provides a valuable service locally.
- If Tracy wasn't providing this service, I would have to drive to an alternative provider.

Yours Faithfully,







To whom it may concern:

Date 26-9-19

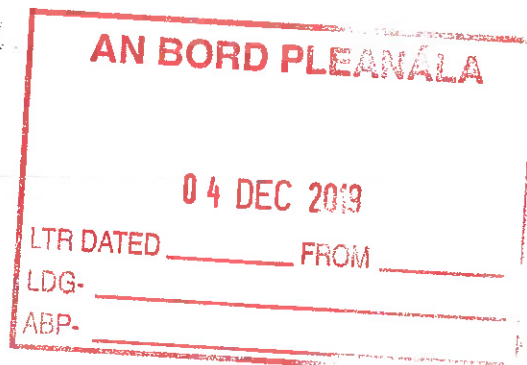
Boonie

I live at 120 Forest Park..... and please note the following:

- I regularly bring my dog to Tracy Reilly's house for grooming.
- I walk my dog to and from Tracy's house (or she will walk to my house to collect the dog)
- Tracy also minds my dog when I go on holiday.
- Tracy has been doing this for years and she provides a valuable service locally.
- If Tracy wasn't providing this service, I would have to drive to an alternative provider.

Yours Faithfully,

Deirdre McArdle





To whom it may concern:

Date 26-9-2019

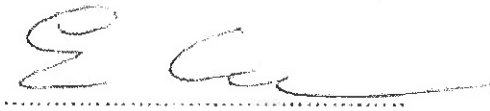
160 Forest Park

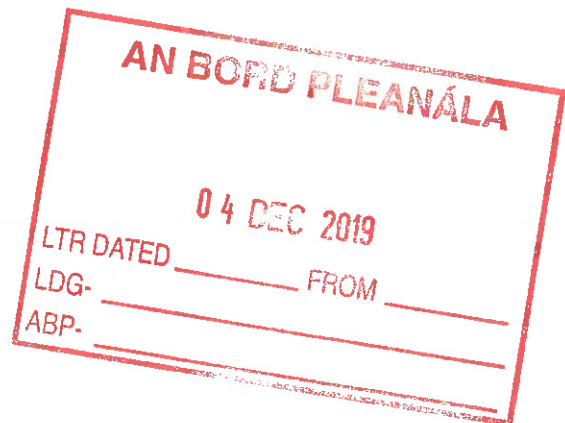
Eve Coole

I live at ..... and please note the following:

- I regularly bring my dog to Tracy Reilly's house for grooming.
- I walk my dog to and from Tracy's house (or she will walk to my house to collect the dog)
- Tracy also minds my dog when I go on holiday.
- Tracy has been doing this for years and she provides a valuable service locally.
- If Tracy wasn't providing this service, I would have to drive to an alternative provider.

Yours Faithfully,







To whom it may concern:

Midge

Date

I live at Mary McKeown 10 Beaulieu View and please note the following:

- I regularly bring my dog to Tracy Reilly's house for grooming.
- I walk my dog to and from Tracy's house (or she will walk to my house to collect the dog)
- Tracy also minds my dog when I go on holiday.
- Tracy has been doing this for years and she provides a valuable service locally.
- If Tracy wasn't providing this service, I would have to drive to an alternative provider.

Yours Faithfully,

Mary McKeown







To whom it may concern:

Date 26/12/19

I live at Aime Healy and please note the following:

- I regularly bring my dog to Tracy Reilly's house for grooming.
- I walk my dog to and from Tracy's house (or she will walk to my house to collect the dog)
- Tracy also minds my dog when I go on holiday.
- Tracy has been doing this for years and she provides a valuable service locally.
- If Tracy wasn't providing this service, I would have to drive to an alternative provider.

Yours Faithfully,

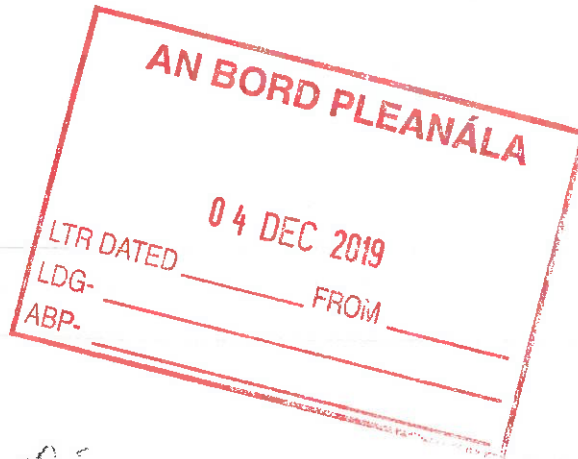
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D. Dine

<b>AN BORD PLEANÁLA</b>	
04 DEC 2019	
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To whom it may concern:

Date 26/9/2019



I live at 13 Mount St Oliver and please note the following:

max  
&  
lilly

- I regularly bring my dog to Tracy Reilly's house for grooming.
- I walk my dog to and from Tracy's house (or she will walk to my house to collect the dog)
- Tracy also minds my dog when I go on holiday.
- Tracy has been doing this for years and she provides a valuable service locally.
- If Tracy wasn't providing this service, I would have to drive to an alternative provider.

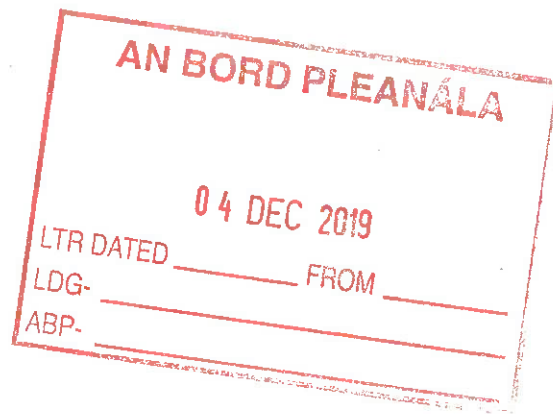
Yours Faithfully,

*Siobhán Forman*





Comhairle Contae Lú  
Louth County Council



6

Ms. Tracey Reilly,  
c/o Brady Hughes Consulting,  
26 Magdalene Street,  
Drogheda,  
Co. Louth.

15<sup>th</sup> November, 2019.

**RE: Ref. S5 2019/54**

**Re: Application for Declaration of "Exempted Development" Part 1, Section 5, Planning & Development Act 2000 (as amended) whether the change of use from a dwelling where dog grooming and boarding is carried out by the occupant of the dwelling where the occupant charges for the same services at 99 Forest Park, Drogheda, Co. Louth. is or is not exempt development within the meaning of the Planning and Development Act, 2000 (as amended)**

Dear Sir/Madam,

I wish to acknowledge receipt of your application received on 23rd October, 2019 in relation to the above. Having assessed all information and enclosures received with the application, the Planning Authority wishes to advise as follows:-

**WHEREAS** a question to whether the change of use from a dwelling where dog grooming and boarding is carried on by the occupant of the dwelling where the occupant charges for the same services is or is not exempt from the requirement to obtain planning permission under the exempted development regulations.

**AND WHEREAS** the said question was referred to Louth County Council by the applicant:-

**AND WHEREAS** Louth County Council, in considering this referral has regard particularly to:-

- (a) Section 2 (1), 3(1) and 4(1)(j) of the Planning and Development Act 2000 (as amended),
- (b) Part 4 of the Second Schedule of the Planning and Development Regulations, 2001 (as amended),
- (c) The planning history of the site,
- (d) The scale, nature and the description of the use carried on therein,

Comhairle Contae Lú  
Halla an Bhaile  
Sráid Crowe  
Dún Dealgan  
Contae Lú  
A91 W20C

Louth County Council  
Town Hall  
Crowe Street  
Dundalk  
County Louth  
A91 W20C

Local 1890 202303  
+ 353 42 9335457  
+ 353 42 9334549  
info@louthcoco.ie  
www.louthcoco.ie

*Cuirfear fáilte roimh chomhfhreagras Gaeilge - Correspondence in Irish is welcome*



- (e) the pattern of development in residential area,

**AND WHEREAS** Louth County Council has concluded that:-

- The change of use from use as part of a house to use as a dog grooming and boarding service, raises issues which are material in relation to the proper planning and sustainable development of the area and this change of use constitutes a material change of use having regard to the considerations outlined above and is therefore development,
- The development does not come within the scope of Section 4(1)(j) of the Planning and Development Act, 2000 as amended, as the use as a dog grooming and boarding service is not considered incidental to the enjoyment of the house,

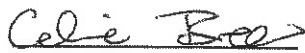
**NOW THEREFORE** Louth County Council in exercise of the powers conferred on it by Section 5 (2) (a) of the Planning and Development Act, 2000, hereby decides that the use is development and not exempted development.

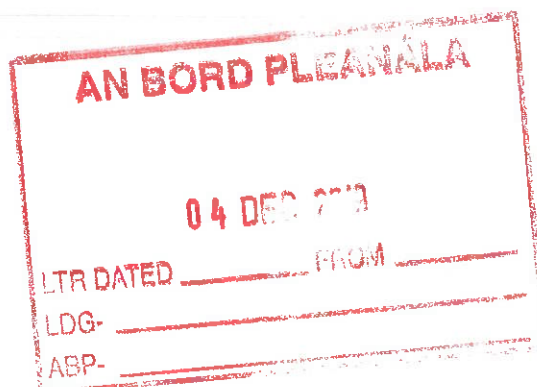
**In Summary**

**A Declaration of Exemption is hereby REFUSED for the proposed** the change of use from a dwelling where dog grooming and boarding at 99 Forest Park, Drogheda, Co. Louth.

**This decision may be referred by you to An Bord Pleanála for review within 4 weeks of the date of this letter subject to the payment of the appropriate fee.**

Yours faithfully,

  
Celine Breen  
Planning Section.







04 DEC 2019

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**PLANNING REPORT****To: Celine Breen****From: Brian Brooks**  
Exe Planner

**Declaration:** Request for a determination under Section 5 of the Planning and Development Act, 2000 (as amended) as to whether the change of use from a dwelling where dog grooming and boarding is carried on by the occupant of the dwelling where the occupant charges for the same services is or is not exempt from the requirement to obtain planning permission under the exempted development regulations.

**Date: 14th November 2019****Introduction**

An determination of exemption has been submitted with a prescribed fee of €80.

**Site location and Description**

The existing dog grooming and boarding service is carried out at no. 99. Forest Park, Drogheda, Co. Louth. The site comprises of the applicants semidetached dwelling with 2no. sheds in the rear garden area.

**Planning History**

Ref no; 93/35 and 94/98 – housing development

02/510069 – conservatory extension to dwelling.

**Enforcement:****UD Case 19/U118.**

Warning letter issued to the applicant regarding the unauthorised dog grooming and board services on site.

**Applicants synopsis:**

- The applicant has been dog grooming and boarding at her home since 1998 as a hobby
- Currently the applicant grooms 2 dogs per day, four days a week between 10am and 12am.
- The applicant can provide for 4- 6 dogs staying overnight in the house with these dogs generally delivered on foot
- The applicant contends that grooming and boarding of neighbours dogs is not development and is ancillary to the residential use of the family home.



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- It is the applicants contention that no material change of use has occurred whether or not payment is received for the services. The charging for the service has no implications for the residential amenities of adjoining properties.
- Letters from dog owners using of the services have been submitted.

### Policy Context

(a)The site is governed by the Drogheda Borough Council Development Plan 2011-2017

The site falls within the "Existing Residential" land use zone. The zoning objective for which is *'to protect and/or improve the amenity of developed residential communities*

### LEGISLATIVE CONTEXT

#### Planning and Development Act, 2000

In order to assess whether or not the activity constitutes development that is exempted development, regard must be had to the following items of legislation:

#### *Interpretation*

Section 2(1) sets out the interpretation of a "habitable house which -"

(a) is used as a dwelling,

(b) is not in use but when last used was used, disregarding any unauthorised use,

as a dwelling and is not derelict, or

(c) was provided for use as a dwelling but has not been occupied;

"house" means a building or part of a building which is being or has been occupied as a dwelling or was provided for use as a dwelling but has not been occupied, and where appropriate, includes a building which was designed for use as 2 or more dwellings or a flat, an apartment or other dwelling within such a building."

Other Interpretations under this Section include the following:

"unauthorised development" means, in relation to land, the carrying out of any unauthorised works (including the construction, erection or making of any unauthorised structure) or the making of any unauthorised use;

"use", in relation to land, does not include the use of the land by the carrying out of any works thereon;

"unauthorised use" means, in relation to land, use commenced on or after 1 October

1964, being a use which is a material change in use of any structure or other land and being development other than—

"warning letter" means a notification in writing under *section 152(1)*;



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### *Development*

Section 3 (1) states as follows:

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

### *Exempted development*

Section 4 (1) of the Planning and Development Act 2000, as amended, sets out what is exempted development for the purposes of this Act and includes (j) "development consisting of the use of any structure or other land within the curtilage of a house for any purpose incidental to the enjoyment of the house as such".

Section 4(1)(h) exempts "development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures"

Section 4 (2) provides for the making of Regulations. The main Regulations are the Planning and Development Regulations, 2001 (as amended).

Section 4 (4) states that "notwithstanding paragraphs (a), (i), (ia) and (l) of subsection (1) and any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required."

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

Article 5 of Part 2, Exempted Development sets out interpretations for this part and includes "excluded premises" which inter alia means (a) "any premises used for purposes of a religious, educational, cultural, recreational or medical character".

Article 6 provides: "Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1."

### *Restrictions on Exemption*

Article 9(1) provides: "Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1. This includes the following criteria of note:

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

(viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use.

### *Changes of use*



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Under Article 10(1), development which consists of a change of use within any one of the classes of use specified in Part 4 of Schedule 2, shall be exempted development for the purposes of the Act, provided that the development, if carried out, would not:

- (a) involve the carrying out of any works other than works which are exempted development,
- (b) contravene a condition attached to a permission under the Act,
- (c) be inconsistent with any use specified or included in such a permission, or
- (d) be a development where the existing use is an unauthorised use, save where such change of use consists of the resumption of a use which is not unauthorised and which has not been abandoned.

Article 10(2)(a) provides: "A use which is ordinarily incidental to any use specified in Part 4 of Schedule 2 is not excluded from that use as an incident thereto merely by reason of its being specified in the said Part of the said Schedule as a separate use."

Article 10(2)(b) Provides list of criteria which does not include reference to Religious Use: "Nothing in any class in Part 4 of the Schedule 2 shall include any use—"

*Exempted Development -General – Schedule 2 Part 1*

Class 14 has regard to exempted Development consisting of a *Change of Use*. This does not refer specifically to use as a dog grooming and boarding business.

Class 15 has regard to *Temporary structures and uses*. This is as follows: "Occasional use for social or recreational purposes of any school, hall, club, art gallery, museum, library, reading room, gymnasium or any structure normally used for public worship or religious instruction."

#### Previous Board Pleanala Decisions:

27.RL.2690: Whether (a) the metal recycling facility is development and is exempted development, and (b) the construction of a three metre high security precast wall at Conway Port Industrial Estate, The Murrough, Wicklow Town, Wicklow, is development and is not exempted development. In this case the Board concluded: (a) the land has an established use for industrial purposes, (b) current end-of-life vehicles are being deposited on the land, and (c) the use of the land has therefore materially changed. The Board declared the use is material and is therefore, not exempted development.

• 29S.RL.3490: Whether the use of a residential apartment for short term holiday lettings at Apartment 1A, 5 – 5A Crown Alley, Dublin 2 is or is not development or is or is not exempted development. The Board declared this to be development and not exempted development. Their Conclusions included: "That neither the Planning and Development Act, 2000 – 2015, nor the Planning and Development Regulations, 2001 – 2015, recognise the said material change of use to be exempted development."

• ABP-302542-18: Whether the use of part of a dwelling house as a solicitors' office at Beachside, Braade, Kincasslagh, Co. Donegal is or is not development and is or is not exempted development. The Board's conclusions in this case are of note and included the following:

(a) the use of part of the house as a solicitors' office does not constitute use as a house as defined at Section 2(1) of the Planning and Development Act, 2000, as amended, and therefore such use is a change of use;

(b) the change of use from use as part of a house to use as a solicitors' office, raises issues which are material in relation to the proper planning and sustainable development of the area





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and this change of use constitutes a material change of use having regard to the considerations outlined above and is therefore development;

(c) the development does not come within the scope of Section 4(1)(j) of the Planning and Development Act, 2000, as amended, as the use as a solicitors' office in this instance is not considered incidental to the enjoyment of the house,

(d) the development would correspond to use as an office as defined in Class 2(b) of Part 4 of the Second Schedule to the Planning and Development Regulations, 2001, as amended, and

(e) There are no other provisions in the Act or Regulations whereby such development would be exempted in this instance.

In this case the Board decided that the use of part of a dwelling house as a solicitors' office is development and is not exempted development

**Regard to Case Law**

McMahon -v- Dublin Corporation 1997 1 ILRM 227, (as cited in ABP Ref. 3490) in which the Board's declaration was upheld. Barron J. held that

*...in the absence of explicit reference in the planning permission to a permitted use, regard must be had to the use for which the structure was designed, i.e. the use which was objectively intended for the structure having regard to the relevant planning documentation. The purpose for which the plaintiffs' homes had been designed was private residential, whereas the use to which they were currently being put was commercial.*

The question as to whether a change of use is a material one was addressed by Keane J. in the case of Monaghan County Council -v- Brogan (as cited in ABP Ref. 3490) He stated that the issues of relevance to this question are:

*...the matters which the planning authority would take into account in the event of a planning application being made for the use. If these matters are materially different (from the original use), then the nature of the use must equally be materially different.*

**Intensification of Use**

OSullivan & Shepherd states:

It is not necessary that the change of the use be in the type of use being made of a structure or land. An intensification of use may also amount to development. Whether an intensification of an existing use amounts to a material change in use depends on the degree of intensification.

*Tullamaine Castle Stud V Michael Barry and Others and Tipperary County Council. Mr Justice Charleton in granting injunctive relief to restrain the use of a racing track, considered the test for intensification of use to be the "effect on the wider neighbourhood" to the degree that fresh planning permission is required.*

**Molunby v Kearns**

The case involved a nuisance action by residents living adjacent to an industrial estate owned by the defendant. One of the plaintiffs main arguments was that there had been an intensification of use of the estate by large commercial vehicles and such intensification



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constituted a material change of use. O Sullivan JJ found that there had been a considerable increase in the number of larger vehicles servicing the estate and that this was consistent with the accountancy analysis of the growth in the defendants business. Furthermore, O Sullivan J accepted that an intensification of use can itself amount to a material change of use, even where there is no change in the use category. One must have regard to assess whether there has been a material change for planning purposes. OSullivan J considered that the impact of an intensification of the heavier commercial vehicles was likely to be more significant in planning terms than the impact of an intensification of smaller private vehicles.

#### Planning Assessment:

- This case came to light following complaints from neighbouring dwellings of loss of residential amenity due to the grooming and boarding of dogs in the dwelling house and in 5 sheds in the rear garden area.
- Definition of a house as defined at Section 2(1) of the Planning and Development Act, 2000, as amended
- Previous An Bord Pleanala decisions relating to change of use/ intensification of use
- The site falls within the "Existing Residential" land use zone. The zoning objective for which is 'to protect and/or improve the amenity of developed residential communities
- The applicant has cleared outlined in the submission to the planning authority that this is a commercial activity for which payment is received.
- The enforcement file indicated the presence of 5 sheds to the rear of the dwelling used for the business. It is stated that 2no. sheds remain on site to be used to continue the service
- There is evidence on the enforcement file that the business is publicly advertised.
- The change of use from use as part of a house to use as a dog grooming and boarding service, raises issues which are material in relation to the proper planning and sustainable development of the area and this change of use constitutes a material change of use having regard to the considerations outlined above and is therefore development;
- The development does not come within the scope of Section 4(1)(j) of the Planning and Development Act, 2000, as amended, as the use as a dog grooming and boarding service is not considered incidental to the enjoyment of the house,
- I consider that the use of the dwelling and rear garden area for dog grooming and boarding is a material change in the use of the residential property which impacts on the residential amenities of adjoining properties.

#### Does the proposal constitute development?

The Planning and Development Act 2000 defines development to mean:

*-except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land.*

Given this definition and the information available to the planning authority, I consider that there is a material change in the use of dwelling which is not exempted development.

#### Does the proposal constitute exempted development?

Based on the plans and information submitted to the Planning Authority, I consider that the use does fall under the scope of the Exempted Development- Classes of use, Part 4 of the Planning and Development Regulations 2001-2012 (as amended)



Accordingly, I consider that the use is not exempted development.

**Conclusion**

**WHEREAS** a question to whether the change of use from a dwelling where dog grooming and boarding is carried on by the occupant of the dwelling where the occupant charges for the same services is or is not exempt from the requirement to obtain planning permission under the exempted development regulations.

**AND WHEREAS** the said question was referred to Louth County Council by the applicant

**AND WHEREAS** Louth County Council, in considering this referral, had regard particularly to –  
(a) Section 2(1), 3(1) and 4(1)(j) of the Planning and Development Act, 2000, as amended,  
(b) Part 4 of the Second Schedule of the Planning and Development Regulations, 2001, as amended,


(c) the planning history of the site,


(d) the scale, nature and the description of the use carried on therein

(e) the pattern of development in residential area **AND WHEREAS** Louth County Council has concluded that:

- The change of use from use as part of a house to use as a dog grooming and boarding service, raises issues which are material in relation to the proper planning and sustainable development of the area and this change of use constitutes a material change of use having regard to the considerations outlined above and is therefore development
- The development does not come within the scope of Section 4(1)(j) of the Planning and Development Act, 2000, as amended, as the use as a dog grooming and boarding service is not considered incidental to the enjoyment of the house,

**NOW THEREFORE** Louth County Council in exercise of the powers conferred on it by Section 5 (2) (a) of the Planning and Development Act, 2000, that the use is development and not exempted development.

  
Brian Brooks  
Exe Planner.  
Date 14/11/19

  
Frank Pentony  
Director of Service  
Date 15/11/19

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<b>04 DEC 2019</b>	
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ITM COORDINATES:

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MAP SHEETS  
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ORDNANCE SURVEY IRELAND  
LICENCE NO. EN 0038619  
ORDNANCE SURVEY IRELAND /  
GOVERNMENT OF IRELAND

SECTION V  
APPLICATION

NOTES:

1. FIGURED DIMENSIONS ONLY TO BE TAKEN FROM THIS DRAWING
2. ALL DRAWINGS TO BE CHECKED BY THE CONTRACTOR ON SITE
3. ENGINEER TO BE INFORMED BY THE CONTRACTOR OF ANY DISCREPANCIES BEFORE ANY WORK COMMENCES

Suffix	Revision	Date	Int

**Brady Hughes**  
CONSULTING

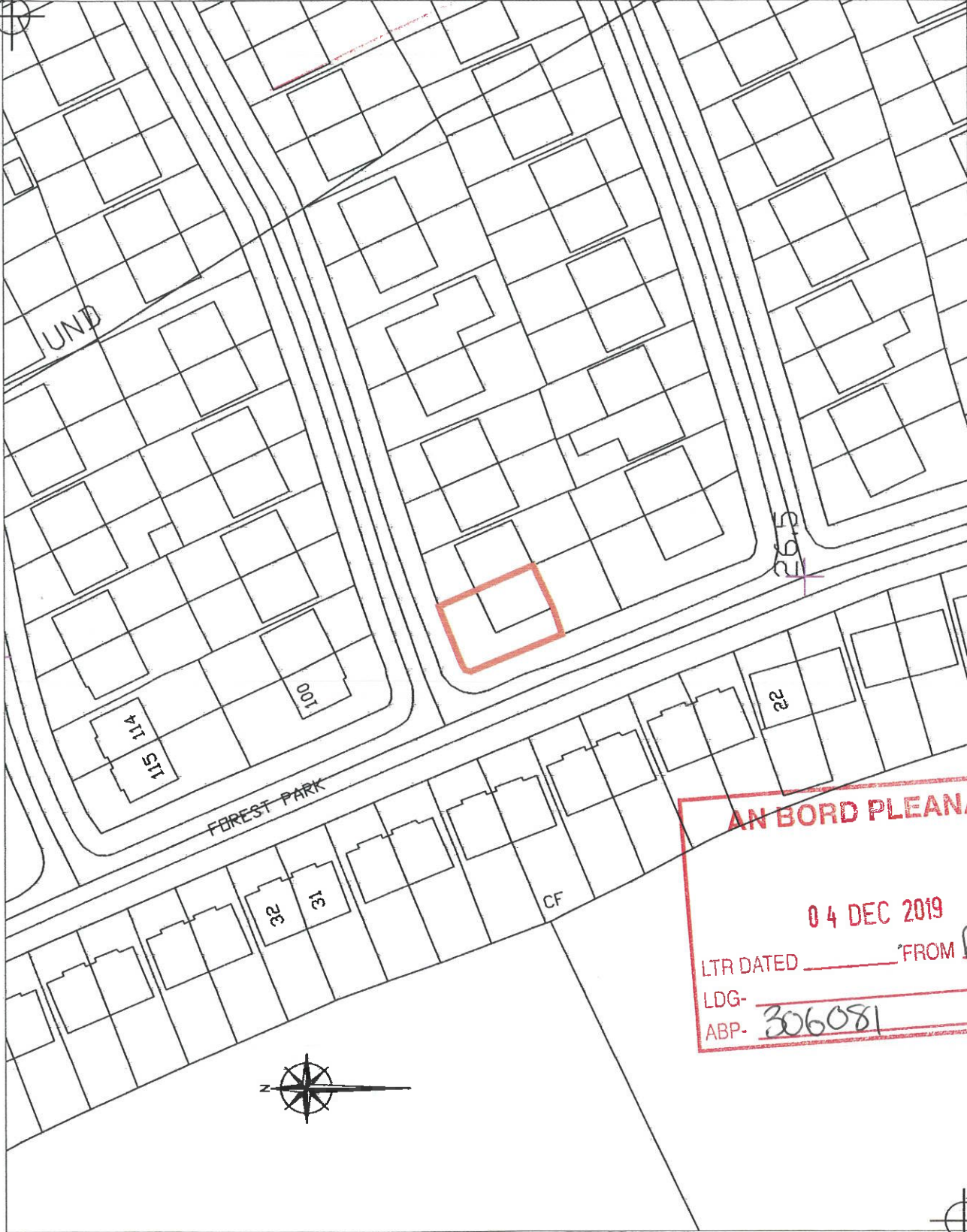
25 Magdalen Street, Drogheda, Co. Louth  
Tel: +353 (0) 41 903 0333 Fax: +353 (0) 41 903 0422  
www.bradyhughesconsulting.com

PROJECT:  
SECTION V DECLARATION APPLICATION AT  
99 FOREST PARK, DROGHEDA, CO. LOUTH

TITLE:  
SITE LOCATION MAP

CLIENT:  
TRACEY REILLY

Drawn by: J.C.  
Scale: 1:1000  
Date: 07/10/2019  
Drawing No.: 361-01-001  
Rev. No.



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**04 DEC 2019**

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