



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.

11/06/21

The Secretary  
An Bord Pleanála,  
64 Marlborough Street,  
Dublin 1.

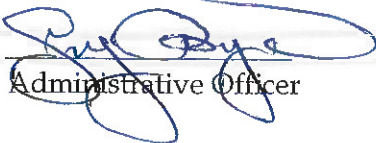
D.C.C. Ref: 0025/21

Location: 16 Hollybrook Park, Clontarf, Dublin 3.

To Whom It May Concern

With reference to the above application, the Planning Department are referring the section 5 application to the Bord as the Planning Department are unable to, make a determination on the application. A current Section 5 application for the same location is currently with the Bord for consideration Application No: 0049/21, An Bord Pleanála Reference 309873/21.

Yours sincerely.

  
Administrative Officer

AN BORD PLEANÁLA	
LDG-	040700-21
ABP-	
11 JUN 2021	
Fee: €	110 Type: Cheque
Time:	13:15 By: hand







Figure 1.0 Photograph taken of the front of the property. Note the AA sign to the right of the entrance

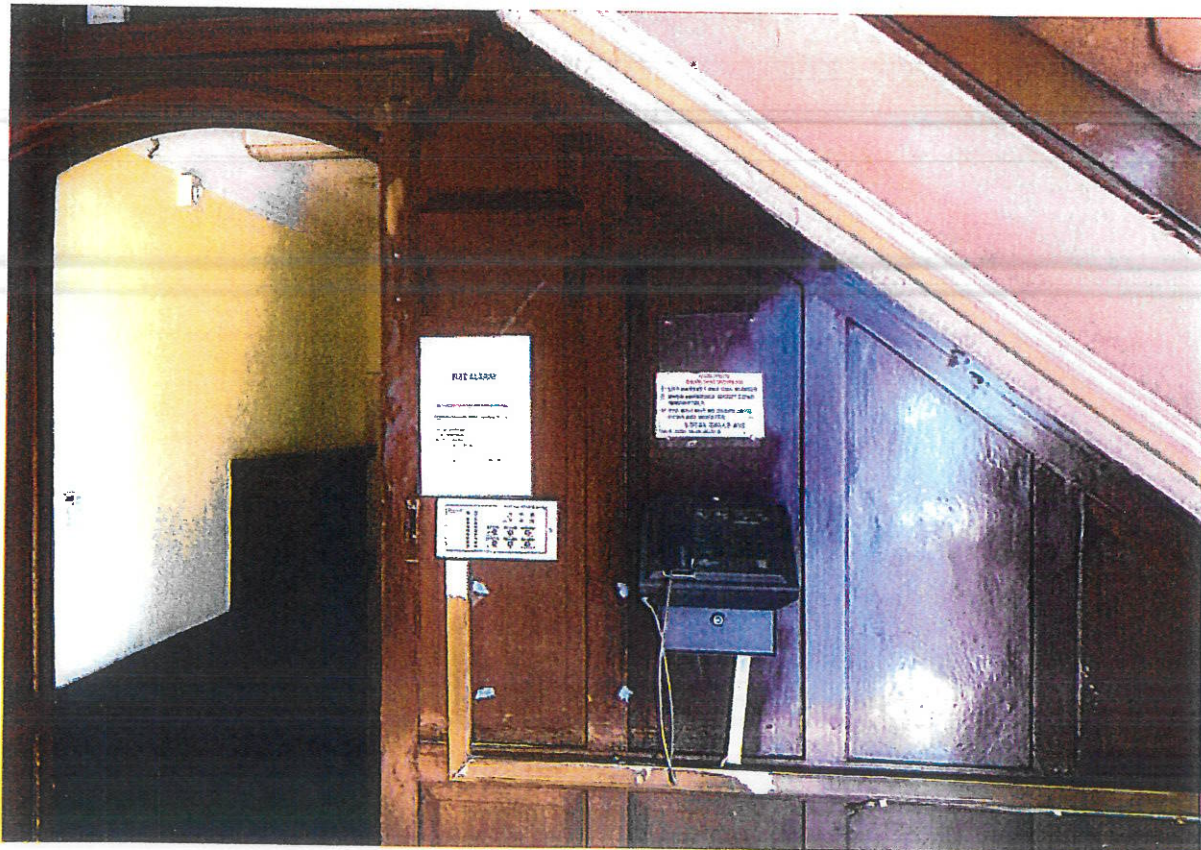


Figure 2.0 Coin operated phone in the lobby of the guesthouse would have been used by guests prior to the wide spread use of mobile phones







Figure 3.0 Photograph of a guest room with bathroom



Figure 4.0 Photograph of a guest room with bathroom







Figure 5.0 Photograph of a wardrobe and guest safe which is a standard feature in most guest accommodation





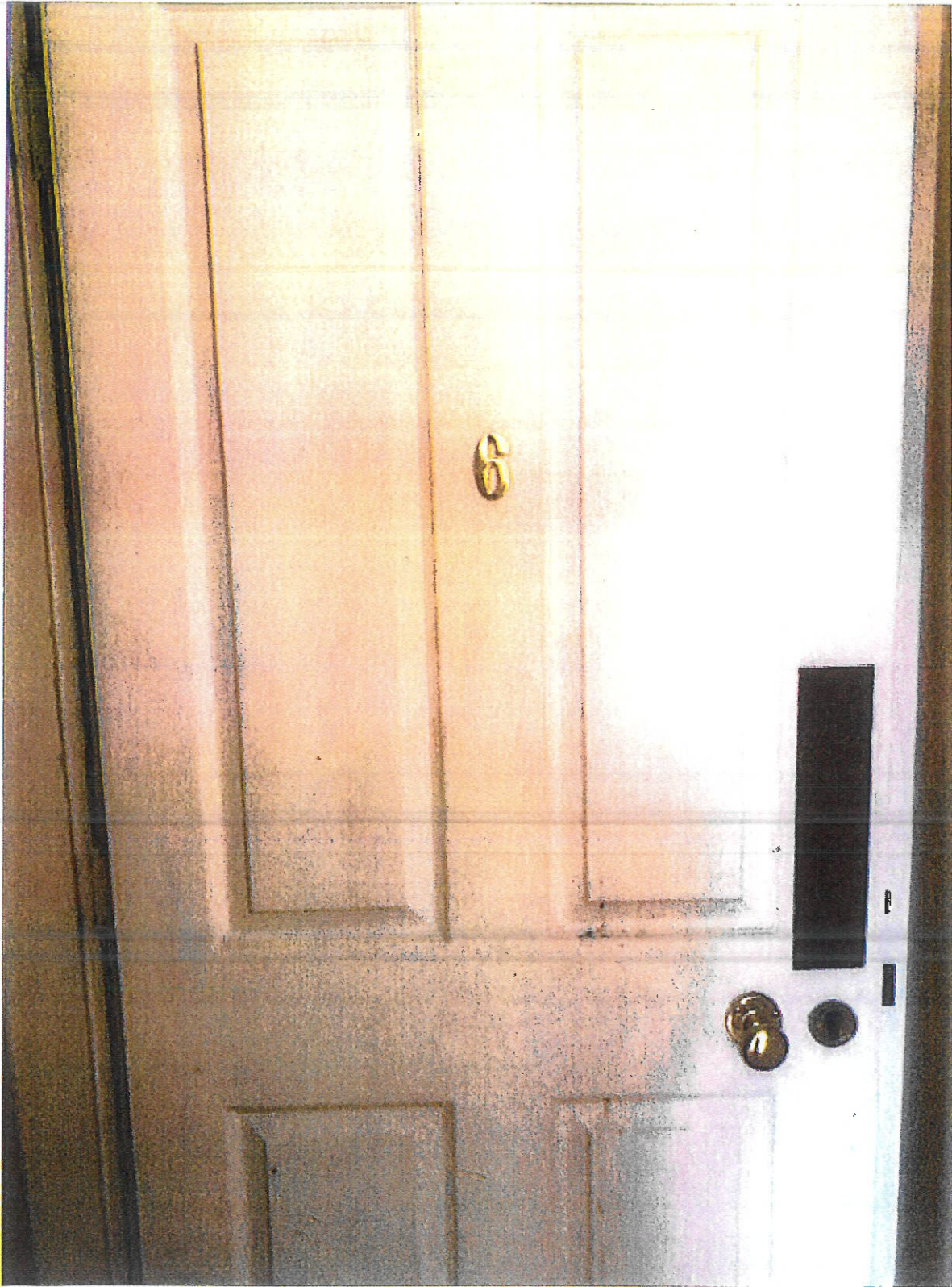


Figure 6.0 Photograph of a guest room door which is numbered







Figure 7.0 Photograph of a wardrobe and guest safe both of which are similar in design to those found in the other rooms



Figure 8.0 Photograph of guest bedroom with own bathroom





# EXPP APPLICATION

EXPP APPLICATION NO: 0025/21

Location Address: 16 Hollybrook Park,  
Clontarf,  
Dublin 3.

Area: [REDACTED]

Date Received: 25/01/21

Date Due: 19/02/21

Applicant's Legal Interest in Site: owner

Protected Structure:  RPS No.: 3882

Planning History: 2428/15

Enforcement History: E 0411/20

Updated in Access:

Updated in Post Book:

Updated in APAS:





DECLARATION ON DEVELOPMENT & EXEMPTED DEVELOPMENT



**SECTION 5 APPLICATION FORM**

Planning Department  
25 JAN 2021  
RECEIVED

NAME OF APPLICANT: Copperwhistle Ltd.

ADDRESS OF APPLICANT: [REDACTED]

EMAIL ADDRESS: n/a

TELEPHONE NO. Day: n/a Mobile: n/a

NAME OF AGENT AND AGENT'S ADDRESS: Hughes Planning & Development Consultants  
70 Pearse Street, Dublin 2

TELEPHONE NO. Day: 015390710 Mobile: \_\_\_\_\_

ADDRESS FOR CORRESPONDENCE (if different from above)  
70 Pearse Street, Dublin 2

LOCATION OF SUBJECT SITE: 16 Hollybrook Park, Clontarf, Dublin 3

Is this a Protected Structure or within the curtilage of a Protected Structure?  Y

If yes, has a Declaration under Section 57 of the Planning & Development Act 2000 been requested or issued for the property by the Planning Authority?  No

**Please provide details of works (where applicable) or proposed development. (Note: only works listed and described under this section will be assessed under this section 5 application. Use additional sheets if required.)**

No works proposed.



List of plans, drawings etc. submitted with this application

n/a

Please state Applicant's interest in this site: Owner

*If applicant is not owner of site, please provide name & address of owner:*

n/a

Are you aware of any enforcement proceedings connected to this site?  
*If so please supply details:*

Enforcement notice issued on 14th July 2020 but has since been closed.

Where there previous planning application/s on this site?

*If so please supply details:*

Reg. Ref. 1586/96 - change of use from dwelling to guesthouse.

Reg. Ref. 2428/15 - conversion of guesthouse to 2 no. two-bed apartments. Not implemented.

Signed 

Date 22/01/2021

**NOTES**

Application shall be accompanied by 2 copies of site location map with site clearly outlined in red and a fee of €80.00. Please submit 2 copies of any additional plans/reports etc. you may wish to include as part of the application.

Application shall be forwarded to: Dublin City Council, Planning Registry  
Section, Block 4, Floor 0, Civic Offices, Wood Quay, Dublin 8.  
Contact Details: Phone: 01 222 2149 Fax: 01 222 2675





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# Planning Report

## Section 5 Application - Declaration of Exempted Development

Use of Guesthouse at No. 16 Hollybrook Park,  
Clontarf, Dublin 3

Copperwhistle Ltd.

January 2021



**Hughes Planning & Development Consultants**

70 Pearse Street, Dublin 2  
+353 (0)1 539 0710 – [info@hpdc.ie](mailto:info@hpdc.ie) – [www.hpdc.ie](http://www.hpdc.ie)

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## 1.0 Introduction

Hughes Planning and Development Consultants, [REDACTED], Dublin 2, have prepared this report to accompany an application for a Declaration of Exempted Development, on behalf of Copperwhistle Ltd., Castleshane, Clontibret, Co. Monaghan, concerning the use of No. 16 Hollybrook Park, Clontarf, Dublin 3.

The subject site was granted planning permission for a change of use from a house to a guest house in 1996 under Reg. Ref. 1586/96. Our client intends to continue using the property as a guest house, which comprises 14 no. bedrooms, but has also agreed on Heads of Terms with the Dublin Region Homeless Executive (DRHE) to use the property to provide emergency to homeless families. Rooms will be leased on a nightly basis and a full guest house service will be provided including the provision of clean linen, breakfast and room cleaning. As with all guest houses, staff will be present 24 hours per day to provide the services listed above and conduct administrative duties required in a guest house. The management of the guest house and the provision of staff will solely be the responsibility of our client, the guest house owner. No element of care be it social, physical or emotional will be provided to guests at this guest house, nor will any non-governmental organisation or approved housing body be involved. See Appendix A for details.

Therefore, the question before the planning authority is:

*"Whether the use of the property as a guest house which provides rooms on a nightly basis offering Bed and Breakfast to Dublin City Council/ Dublin Regional Homeless Executive to accommodate homeless people, is or is not development and whether development constitutes exempted development or does not constitute exempted development?"*

## 2.0 Site Description

The subject site fronts onto Hollybrook Park, which is a cul-de-sac accessed from the west via Howth Road. The site is located in a mature residential area, which consists of a mix of residential units with regards to building type and height.

The site is occupied by a large property laid out over three floors, which entails 14 no. bedrooms, and communal kitchen and laundry facilities. The property has an external red brick finish. The property on-site is currently vacant but was most recently used as a guest house, permitted under Planning Reg. Ref. 1586/96.

The building on site is listed on Dublin City Council's Record of Protected Structures (RPS Ref. 388







Figure 1.0 Aerial view indicating the subject site, No. 16 Hollybrook Park (red outline)

### 3.0 Planning History

#### *Planning Applications*

**Reg. Ref. 1586/96** Planning permission was granted on 22nd October 1996 for the change of use of the existing Grade 2 listed house to guest house.

**Reg. Ref. 2161/15** Planning permission was granted on 7<sup>th</sup> August 2015 for the conversion of 14 bedroom long stay guest house to 4 no. one-bedroom and 2 no. two-bedroom apartments.

The final grant of permission was notified on 7<sup>th</sup> August 2015, however, this application was **not implemented**, and works did not commence for the proposed development. Furthermore, the planning permission for this application expired on 7<sup>th</sup> August 2020. On this basis, the relevant planning application for the development of the subject site is Reg. Ref. 1586/96.

#### *Section 5 Declarations*

**Reg. Ref. 0371/20** A declaration of exempted development was issued by Dublin City Council under Reg. Ref. 0371/20. This exemption relates to minor internal works proposed for the building including the repair of original features; replacement of damaged flooring; replacement of damaged sash windows on like for like basis; replacement of bathroom ware; and other minor works to improve the condition of the building.

**Reg. Ref. 0297/20** A declaration of exempted development was issued by Dublin City Council under Reg. Ref. 0297/20. This exemption relates to minor internal and external





works proposed for the building including the repair of windows and doors; repair of damaged original guttering; refitting the kitchen; painting interior and exterior; removal of overgrown vegetation from chimneys and guttering; repair of original gate; and other minor works needed to improve and preserve the building.

The works declared exempt under Section 5 were considered necessary to improve the condition of the building and allow it to continue being used as a guest house. The proposed works do not in any way affect the use as a guest house and only seek to improve it. Whilst the guest house will provide rooms to the Dublin Housing Region Executive, the established use as a guest house will continue.

The Hollybrook Park Residents Group submitted a section 5 referral to Dublin City Council regarding the use of No. 16 Hollybrook Park under Reg. Ref. 0405/20. This referral asks whether the change of use from a guesthouse to a residential facility for homeless people constitutes development.

It should be noted from the outset, that the established use as a guesthouse will not change.

#### 4.0 Planning Context

##### 4.1 Zoning

The subject site is zoned Z2 – ‘Residential Neighbourhoods (Conservation Areas) in the Dublin City Development Plan 2016-2022. The objective of Z2 zones is to *‘to protect and/or improve the amenities of residential conservation areas.’* The following uses are listed as ‘Permissible Uses’ in ‘Z2’ zoned lands:

*Buildings for the health, safety and welfare of the public, childcare facility, embassy residential, home-based economic activity, medical and related consultants, open space, public service installation, residential.*

The following uses are considered ‘Open for Consideration’ in ‘Z2’ zoned lands:

**Bed and breakfast**, community facility, cultural/recreational building and uses, education, live-work units, place of public worship, restaurant, veterinary surgery.

The approved use of ‘Guest House’ is consistent with the zoning objectives for the subject site and is therefore compliant with the development plan.

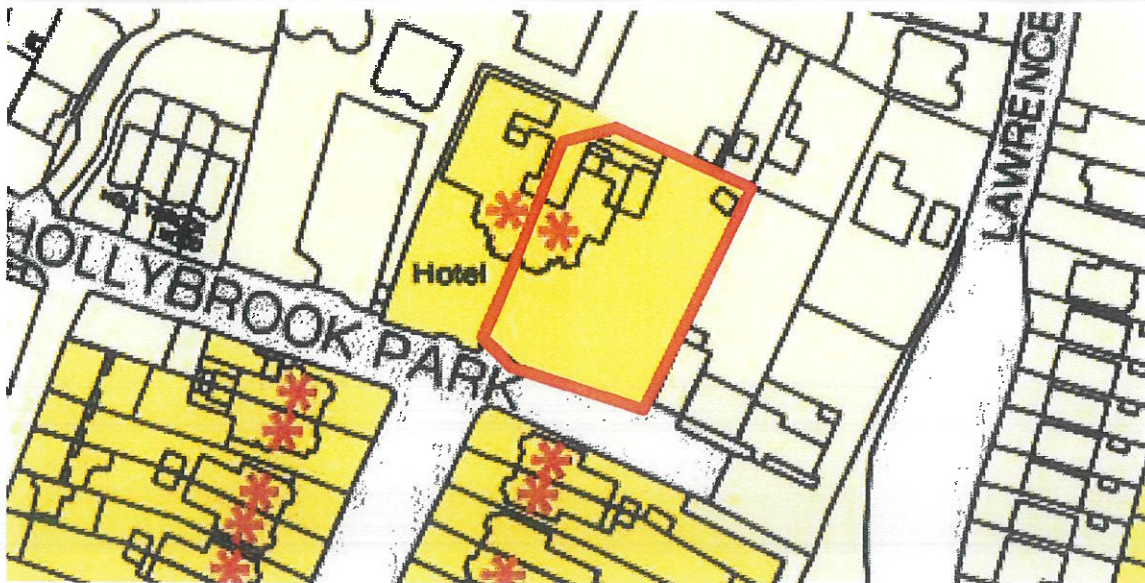


Figure 5.0 Extract from Zoning Map F showing the subject site (outlined in red) zoned Z2 in the Dublin City Development Plan 2016-2022



## 5.0 Basis of Exemption

Under Section 2(1) of the Planning and Development Act 2000 (as amended), 'development' is assigned the meaning set out under Section 3 (1) 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."*

This declaration seeks clarification on the use of No. 16 Hollybrook Park as a guest house. It is noted that legislation does not define the phrase 'material change of use' as used in Section 2(1) of the Act. In order to determine the materiality of the change, the practical impacts and effects of the proposed change of use and whether it would have led to materially different planning considerations by the Planning Authority are considered in this determination.

This is supported by findings in recent court cases which examined the practical and real-life effects caused by the change of use. In *Esat Digifone v South Dublin County Council* [2002] 3 IR 585, the court quoted the following:

*"The consideration to be taken into account in determining materiality must at least be relevant to "proper planning and development and the preservation of amenities" which are the twin objectives of the preamble to the legislation. The question is whether there were sufficient planning considerations raised by the change in activity to justify its submission to development control."*

In a similar vein the court quoted Barron J. in *Galway County Council v. Lackagh Rock* [1985] I.R.120 at 127:

*"To test whether or not the uses are materially different, it seems to me, that what should be looked at are the matters which the planning authority would take into account in the event of a planning application being made either for the use on the appointed day or for the present use."*

A further decision in support of that view is that of Budd J. in *Westmeath County Council v. Quirke & Sons* [Unreported, High Court, 23rd May 1996] where the court noted that:

*"Many alterations in the activities carried out on the land constitute a change of use, however, not all alterations will be material. Whether such changes amount to a material change in use is a question of fact as is explained in *Monaghan County Council v Brogan* [1987] IR 339. Consideration of the materiality of a change in use means assessing not only the use itself but also its effects."*

No. 16 Hollybrook Park is approved to operate as a guest house as per Reg. Ref. 1586/96. It is proposed to continue the established use as a guest house whilst providing temporary accommodation to the DRHE. It is submitted that there will be no discernible change to the use of the building other than the socio-economic class associated with the inhabitants occupying those rooms which should not be taken into consideration when having regard to whether a material change of use has occurred as evidenced by the Supreme Court *Dublin Corporation v Moore* [1984] ILRM 339 in which the judge stated:

*"I can well understand the objection voiced by Mr. Heneghan in his affidavit, to which I have referred - the residents of a quiet suburb naturally resent the presence of what may well be out of keeping with what they conceive to be the standards appropriate to the neighbourhood. There cannot, however, be one law for Cabra and another for Clondalkin - yet others for Finglas and Foxrock. Considerations of this kind are not appropriate to planning law - if they were, they might well offend against rights of equality."*

It is considered that if this were a planning application for a guest house, the planning authority would not include conditions prohibiting accommodation to people of particular socioeconomic background. Nor would they preclude the guest house from accepting block bookings of rooms. It is, therefore, submitted that the guest house will operate like any other guest house in the city and offer rooms to



members of the public for a rate. The rooms will be advertised on the guest house's website where bookings can be made by members of the public. As with any guest house or hotel, a block booking can be made by an individual or group for a specific event or occasion.

The following conditions were attached to the grant of permission for the guest house under Reg. Ref. 1586/96:

*Insofar as the Local Government (Planning & Development) Acts 1963/93 and the Regulations made thereunder are concerned the development shall be carried out in accordance with the plans, particulars and specifications lodged with the application, save as may be required by the conditions attached hereto.*

*REASON: To comply with permission regulations.*

*This permission shall apply only to the use of the existing residence for overnight guest accommodation purposes and provision of additional parking facilities as indicated in the submitted plans.*

*REASON: In the interests of clarity and development control.*

*The proposed development shall be constructed and so operated that there will be no emission of odours, or noise such as would give rise to reasonable cause for complaint by occupants of adjoining or nearby properties.*

*REASON: In the interests of residential amenities.  
No signs or nameplates shall be erected without the prior approval of the planning authority, whether or not such development would constitute exempted development.*

*REASON: In the interests of visual amenities.*

*The existing entrance shall be widened to a width not less than 4.0 metres and shall be relocated so as to align the entrance gates parallel to the centreline of the public road. Full details to be submitted and agreed in writing with the planning authority prior to the commencement of development.*

*REASON: In the interests of traffic safety.*

*Before this development commences a financial contribution in the sum of #6,135.00 shall be paid by the applicant to Dublin Corporation, in accordance with Section 26 of the Local Government (Planning & Development) Act 1963.*

*REASON: Investment by Dublin Corporation in Local Authority works has facilitated and will facilitate the proposed development. It is considered appropriate and reasonable that the developer should contribute to the cost of same.*

It is noted that no conditions were included about the length of stay, class of guest nor the ability to block book rooms. Therefore, the continued use as a guest house, which leases rooms to the DRHE for the provision of homeless accommodation, complies with the conditions as set out above. It is submitted that no material change of use will have occurred and the development is therefore exempted development.

It is considered that the continued use as a guest house offering accommodation to the DRHE will have no material effects on the area with regards to the proper planning and sustainable development of the area. It is considered that the use of the building will not negatively impact on the amenity of local residents in Hollybrook Park. It is therefore apparent that no material change of use will have occurred and that change of use is considered exempted development.

It should be noted that precedence for a guest house being used to accommodate homeless people exists at No. [REDACTED], which adjoins the subject site. In this case, a warning letter was issued to the owners of the property regarding the use of the guest house to accommodate homeless people





under Reg. Ref. E0931/10. In their investigation, the Planning Authority concluded that planning permission for a guest house had been granted on the 20<sup>th</sup> January 1997 under Reg. Ref. 1957/96 subject to a number of conditions including the reduction of bedrooms. It was noted by the Enforcement Inspector that the number of rooms was never reduced, but enforcement proceedings were statute-barred as 10 years had passed since the grant of permission was issued.

Regarding the use for the provision of homeless accommodation, the Inspector confirmed that the building and its use did not materially change and were, therefore, the enforcement file was closed.

The case at No. 16 Hollybrook Park is pertinent to No. 16 Hollybrook Park as the approved use of guest house will continue at the property, as it did at No 14 where no material change of use was found to have occurred.

## 6.0 Conclusion

We note that No. 16 Hollybrook Park was granted permission to operate as a guest house. It is proposed to continue the operation of the property as a guesthouse which will lease rooms to the DRHE. These rooms will be leased on a nightly basis and a full Bed and Breakfast service will be provided to occupants. Our client will maintain the management of the guest house whilst providing staff 24/7 for regular guest house duties. It is submitted that the principal use of the property has not changed and therefore will have no adverse effects on the proper planning and sustainable development of the area.

Accordingly, we request a declaration to this effect from Dublin City Council under Section 5 of the Planning and Development Act 2000 (as amended). Should you have any queries or require any further information including access to the building, please do not hesitate to contact the undersigned.



Kevin Hughes MIPI MRTPI  
Director for HPDC



**Appendix A**

Letter issued by the Dublin Regional Homeless Executive outlining its role in securing rooms at No. 16 Hollybrook Park.





**Feidhmeannacht um Dhaoiné ar Easpa**  
**Dídlne Réigiún Bhaile Átha Cliath**  
**Dublin Region Homeless Executive**

>> Block 1, Floor 2, Civic Offices, Wood Quay, Dublin 8  
>> Bloc 1, Úrlar 2, Oifigí Cathartha, An Ché Adhmaid, Baile Átha Cliath 8

20<sup>th</sup> January 2020

>> Web [www.homelessdublin.ie](http://www.homelessdublin.ie)

To whom it may concern,

**Guesthouse at 16 Hollybrook Park**

Dublin Region Homeless Executive have agreed Heads of Terms for the use of the above guesthouse at 16 Hollybrook Park for the provision of Emergency Accommodation for homeless families. This agreement was reached in June 2020, for a term of 12 months, commencing from the date of first occupation.

The owners, Copperwhistle Ltd., have agreed to provide guest accommodation to our clients on a B&B basis, which includes provision of 24 Hour staffing to ensure that this premises is operated to an acceptable standard.

The owner have engaged their own design team to oversee the refurbishment of this previously vacant property. This includes the engagement of a Grade 1 Conservation Architect, to ensure that all works are carried out in safe and sensitive manor and in line with approved section 5 submissions as grant by the planning authority.

Please note that no care element is attached to this agreement, be it physical, social or emotional care.

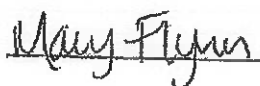
This guesthouse will be managed solely by the owners and their staff. No NGO or Approved Housing body will have any role in the day to day operations of this facility.

The section 5 submission, November 2020, on behalf of the local stakeholders, states the guesthouse is a homeless facility. To reiterate the DRHE has agreed Heads of Terms with the owner of a guesthouse and no Approved Housing Body or a NGO is involved in the running of this operation.

Dublin Regional Homeless Executive is satisfied that this premises will be managed to acceptable standards.

If you require any further information regarding this matter please do not hesitate to contact me,

Yours sincerely,

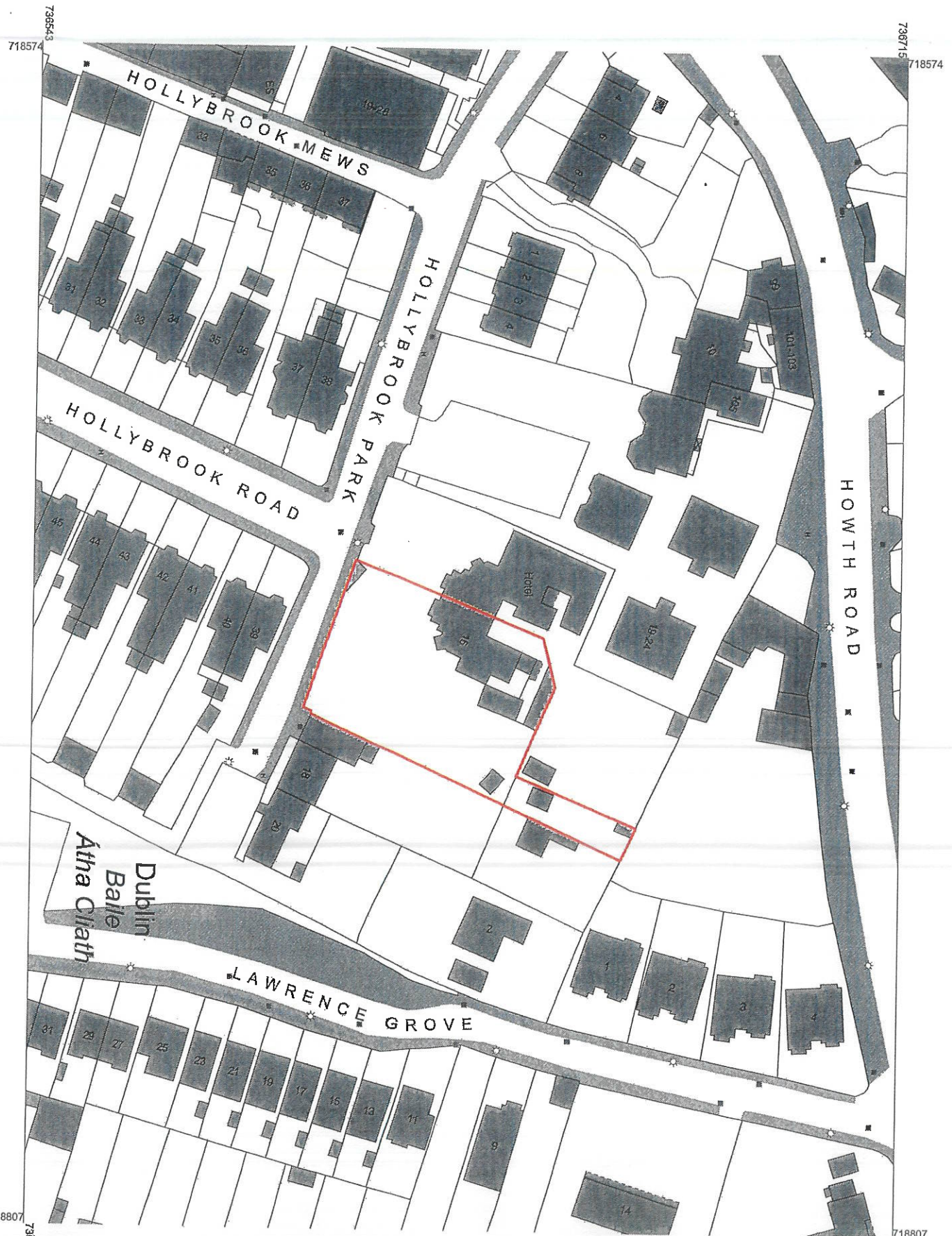


**Authorised Officer**

**Dublin City Council**







Projection: ITM

ITM Centre Point Co-ordinate:  
X,Y = 718691,736629

Extraction Date:  
14-July-2020

**LAWRENCE, LONG**  
ARCHITECTS



NO.16  
ADDRESS HOLLYBROOK  
PARK, CLONTARF,  
DUBLIN 3

SCALE 1:1000 @A4  
DATE 09.10.2020

DWG. **S5.01**

736543 718574 718807 736543 736715 718574 736715 718807





Comhairle Cathrach  
Bhaile Átha Cliath  
Dublin City Council

Planning Registry & Decisions, Planning Department  
Civic Offices, Wood Quay, Dublin 8

Clárlann / Cinntí Pleanála  
An Roinn Pleanála agus Forbartha, Clárlann / Cinntí  
Oifigí na Cathrach, An Ché Adhmaid, Baile Átha Cliath 8  
T: (01) 222 2149 / F: (01) 222 2675

Martin & Grove Solicitors.  
36 Charles Street West,  
Dublin 7.

11<sup>th</sup> February 2021

**Location: 16 Hollybrook Park, Clontarf, Dublin 3.**

**Section 5 Application,  
Reference no. 0025/21**

Dear Sir,

I write with regard to a submission for Section 5 lodged in respect of the above planning application and received on 10<sup>th</sup> February 2021.

I regret to inform you that the Planning Authority is unable to accept your submission as there is no provision in the 2000 Planning Act for 3<sup>rd</sup> party submissions on a Section 5 to the Planning Authority,

I am therefore obliged to return your submission and cheque.

Yours Sincerely,

\_\_\_\_\_  
A M Bourke.  
For Executive Manager





**ADDITIONAL INFORMATION**

**PLAN NO.**

0025/21

**Date of Application**

25/01/21

**Date Registered**

21/04/21

**Additional Information Requested**

19/02/21

**Additional Information Received**

21/04/21

**KEYED IN BY**

af





# Hughes Planning & Development Consultants

70 Pearse Street, Dublin 2  
+353 (0)1 539 0710 – info@hpdc.ie – www.hpdc.ie



Senior Executive Officer,  
Planning and Development,  
Dublin City Council,  
Civic Office,  
Wood Quay,  
Dublin 8.

19<sup>th</sup> April 2021

**Re: Section 5 Application 0025/21 – 16 Hollybrook Park, Clontarf, Dublin 3**

Dear Sir or Madam,

We refer to the above reference to Dublin City Council pursuant to section 5 of the Planning and Development Act, 2000, as amended, submitted by this office on behalf of Copperwhistle Ltd. in respect of the property situate at 16 Hollybrook Park, Clontarf, Dublin 3, on 25 January 2021. Specifically, we refer to the Request for Additional Information in respect of that application, dated 23 February 2021, where Dublin City Council sought the following information:

*"In relation to the existing and proposed/continued use of the building as per Class 6, Part 4, Schedule 2 of the Planning & Development Regulations 2001 (as amended) the applicant is requested to provide evidence that the currently vacant building at No.16 Hollybrook Park was previously used as a guesthouse as per permission granted under Reg. Ref. 1586/96 as amended by Reg. Ref. 2161/96, and if so when was it was last used as a guesthouse prior to its current vacancy."*

Please be advised that the property was purchased by Ms Frances Campbell in 1998 before being sold in 2004 to Mr. Gerry Gannon. From 1998 until 2004 the property was operated as a commercial guesthouse, trading as "Copperbeach Court Guest House", through City Accommodation Bureau (a company owned by Frances Campbell). The property was registered with Bord Fáilte during this time. An affidavit from Ms Frances Campbell and Mr Robin Campbell, a relative of Ms Campbell, accompanies this response and confirms that the property served as a guesthouse. Please see Appendices A and B for further details.

We note from the Report of Diarmuid Murphy, Senior Executive Planner, dated 19 February 2021, that additional information has been sought by Dublin City Council in the context of the question of whether the limitation to change of use pursuant to Article 10(1)(d) of the Planning Regulations has any application to the within Section 5 application. Article 10(1)(d) of the Planning Regulations provides as follows:

*"(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:*

*(d) be a development where the existing use is an unauthorised use, save where such a change of use consists of the resumption of a use which is not unauthorised and which has not been abandoned."*

As noted by Mr. Murphy in his Report, it is the Applicant's position that the provisions of Article 10(1) do not apply in this instance as there is no proposed change of use, and therefore no development. The building's current and authorised use, pursuant to permission granted under Reg. Ref. 1586/96, as amended by Reg. Ref. 2161/96, is that of a guesthouse. The building's use in the future will remain that of a guesthouse and therefore no change of use will occur.

The subject matter of the Applicant's Section 5 Application does not consist of the resumption of a use that has been abandoned. The Supreme Court defined the concept of "abandonment of use" in the decision of *Kildare County Council v. Goode* [1999] 2 I.R. 495, where Barron J. held (at p.506) that:



*"Abandonment is the objective sign of a decision not continue further with the development."*

The High Court in the case of *Dublin County Council v. Tallaght Block Company* [1982] 1 I.L.R.M. 1 set out the following test, which it adopted, for whether the established use of land had been abandoned:

*"Where a previous use of land had been not merely suspended for a temporary and determined period but had ceased for a considerable time with no evinced intention of resuming it at any particular time, the Tribunal of fact was entitled to find that the previous use had been abandoned, so that when it was resumed the resumption constituted a material change of use."*

Again, in the case of *Lord Mayor of Dublin v. Lowe* [2000] IEHC 161, the High Court recognised that a definitive decision to cease a use indefinitely was required in order for an established use to be abandoned. Morris J. held that:

*"The removal of the original hoarding by David Allen Holdings Limited without the intention of replacing it must be regarded as an abandonment of any rights which they may have acquired up to that time."*  
(Emphasis added)

Of absolute key importance, however, is the fact that the law distinguishes between a use which is unauthorised or which pre-existed the modern planning legislation introduced in 1963, and a use which has been specifically the subject of a grant of planning permission. The High Court in *Mason and McCarthy v. KTK Sand and Gravel Ltd.* [2004] IEHC 183 definitively held that a use has been expressly granted by planning permission cannot be abandoned:

*"I accept the Respondent's submission that a planning permission enures for the benefit of the land - such proposition was not disputed by the Applicants, but this means no more or no less than that the planning permission, with all its terms and conditions advantages and disadvantages and limitations, is available to the land and is not personal grant, and unlike a pre-1963 Act user cannot be abandoned. It, in a colloquial sense, becomes "part of the title" hence the necessity of its objective construction."*  
(Emphasis added)

That principle was repeated and applied in the same manner by Gilligan J. in the case of *Molloy v. Minister for Justice* [2004] 2 I.R. 493. The court clearly held that:

*"It accordingly appears to follow that where a use of land is permitted under a valid planning permission, the use of the land cannot be abandoned as the permission enures for the benefit of the land and can presumably only be extinguished if abandoned as per Lord Scarman's exceptions in *Pioneer Aggregates (U.K.) Ltd. v. Secretary of State for the Environment* [1985] 1 A.C. 132, where applicable. A use permitted under a planning permission is more securely protected under the law and this will be reflected in the planning register."* (Emphasis added)

This proposition is obviously inherently logical when one considers that planning permission exists to provide an objectively verifiable legal record for what is and is not permitted, in terms of buildings, works, and use, on land. If a brief hiatus in activity on land could essentially obviate a provision of planning permission, the status of that legal record as an accurate, definitive, reflection of what is permitted on a parcel of land would be fatally undermined.

It is submitted, therefore, that based on the decisions of the High Court in *Mason and McCarthy v. KTK Sand and Gravel Ltd.* and *Molloy v. Minister for Justice* that it would be legally impossible for the Applicant to have abandoned the use of 16 Hollybrook Park as a guesthouse, as this use is the subject of a grant of planning permission bearing Reg. Ref. 1586/96. This is the case notwithstanding the fact that the premises were not used as a guesthouse between the sale of the property in 2004 until today.

Even were it not the case that the abandonment of a use granted by planning permission were legally impossible, it is clear from the Applicant's action in respect of the property that there was never any objective sign of a decision to not continue further with the use of the property as a guesthouse, such as would be required to establish abandonment of use. The property was physically maintained as a guesthouse, no works or alterations ever took place which were inconsistent with that use, or that would have evidenced an intention to cease that use. There was never any planning application for an alternative use, nor any other






sign that the Applicant did not intend to recommence the commercial operation of the property as a guesthouse in due course. Please refer to Appendix C which contains a series of photographs taken inside the property showing a layout and design that is consistent with a guesthouse including the use of similar furniture, numbering on bedroom doors, provision of en suite bathrooms, a guest pay phone and a sign issued by the AA identifying the guesthouse as a 4 star facility.

The Applicant submits that based on the information set out in this response that 16 Hollybrook Park operated as a guesthouse in line with planning permission granted under Reg. Ref. 1586/96 and that it is legally impossible for this duly authorised use to be abandoned for the purposes of Article 10(1)(d) of the Planning Regulations.

Yours Sincerely,



Kevin Hughes MIPI MRTPI  
Director For HPDC



**Appendix A**

Copy of the statutory declaration by Frances Campbell, a previous owner of the property, confirming that the property was used as a guesthouse.

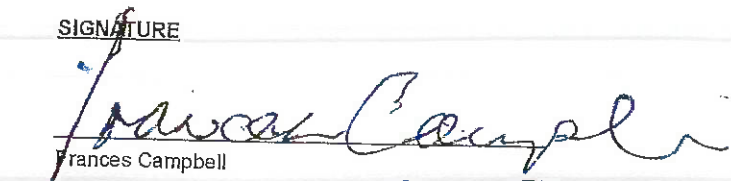



## STATUTORY DECLARATION

I, Frances Campbell, wish to declare under the Statutory Declarations Act, 1938 and in the presence of Vanessa Campbell ACA (Solicitor/Commissioner of Oaths), that the information provided herein is correct and accurate as required in respect of history of No. 16 Hollybrook Park, Clontarf, Dublin 3.

- a. The declaration relates to the property known as No. 16 Hollybrook Park, Clontarf, Dublin 3 (hereinafter called "The Property"). The property is owned by Copperwhistle Limited.
- b. I say that I owned the property from 1998 until 2004 when it was sold to Mr Gerry Gannon. From 1998 until 2004 I operated the property as a commercial guesthouse, trading as "Copperbeach Court Guest House", through City Accommodation Bureau (a company owned by me). The property was registered with Bord Fáilte during this time.
- c. From approximately the year 2000 until the sale of the property in 2004, Dublin City Council leased rooms in Copperbeach Court Guest House on a nightly basis to provide accommodation for homeless persons in the city. The property also continued to operate as a commercial guesthouse during this time.

SIGNATURE

  
Frances Campbell

In the presence of 

(Solicitor/Commissioner of Oaths)

On date:

12/4/21





**Appendix B**

Copy of the statutory declaration by Robin Campbell, a close relative of a previous owner of the property, confirming that the property was used as a guesthouse.



## STATUTORY DECLARATION

I, Robin Campbell, wish to declare under the Statutory Declarations Act, 1938 and in the presence of PAUL MOLLOY (Solicitor/Commissioner of Oaths), that the information provided herein is correct and accurate as required in respect of history of No. 16 Hollybrook Park, Clontarf, Dublin 3.

- a. The declaration relates to the property known as No. 16 Hollybrook Park, Clontarf, Dublin 3 (hereinafter called "The Property"). The property is owned by Copperwhistle Limited.
- b. I say that my family owned the property from 1998 until 2004 when it was sold to Mr Gerry Gannon. From 1998 until 2004 we operated the property as a commercial guesthouse, trading as "Copperbeach Court Guest House", through City Accommodation Bureau (a company owned by my family). The property was registered with Bord Fáilte during this time.
- c. From approximately the year 2000 until the sale of the property in 2004, Dublin City Council leased rooms in Copperbeach Court Guest House on a nightly basis to provide accommodation for homeless persons in the city. The property also continued to operate as a commercial guesthouse during this time.

SIGNATURE

*Robin Campbell*

Robin Campbell

In the presence of

*Paul Molloy*

(Solicitor/Commissioner of Oaths)

On date:

13 April 2021

**Molloy & Evans Solicitors**  
Chamber Buildings, North Street  
Swords, County Dublin, K67 A3H7  
Republic of Ireland

**Molloy & Evans Solicitors**  
Chamber Buildings, North Street  
Swords, County Dublin, K67 A3H7  
Republic of Ireland

**Molloy & Evans Solicitors**  
Chamber Buildings, North Street  
Swords, County Dublin, K67 A3H7  
Republic of Ireland



**Appendix C**

A series of photographs taken inside the property showing a layout and design that is consistent with a guesthouse.



