

An
Bord
Pleanála

Board Order
ABP-314440-22

Planning and Development Acts 2000 to 2022

Planning Authority: South Dublin County Council

Planning Register Reference Number: ED22/0023

WHEREAS a question has arisen as to whether the partial conversion of existing derelict public lounge to contain two apartments at Blue Gardenia, McDonaghs Lane, Brittas, County Dublin is or is not development or is or is not exempted development,

AND WHEREAS Edward Fahy care of Farry Town Planning Limited of Suite 180, 28 South Frederick Street, Dublin requested a declaration on this question from South Dublin County Council and the said Council issued a declaration on the 28th day of July, 2022 stating that the matter is development and is not exempted development,

AND WHEREAS the said question was referred to An Bord Pleanála by the said Edward Fahy on the 22nd day of August, 2022,

AND WHEREAS An Bord Pleanála, in considering this referral, had regard particularly to –

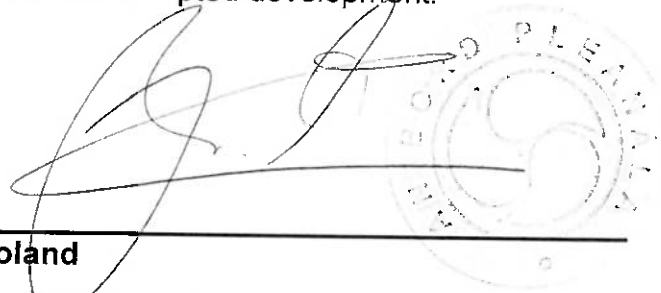
- (a) Sections 2(1) and 3(1)(a) of the Planning and Development Act 2000, as amended,
- (b) Articles 9(1) and 10(6) of the Planning and Development Regulations 2001, as amended,
- (c) Class 12 of Part 4 of Schedule 2 of the Planning and Development Regulations 2001, as amended,
- (d) the planning history of the Public House, and
- (e) relevant precedent referrals and judgments,

AND WHEREAS An Bord Pleanála has concluded that:

- (a) the proposed residential use is a material change in the use of the derelict public lounge at 'Blue Gardenia' Public House being development,
- (b) the proposed works to the derelict public lounge at 'Blue Gardenia' Public House to facilitate the proposed use is development, and
- (c) the proposed development would come within the scope of exempted development under Article 10(6)(c) as it would consist of a change of use of part of a Public House within Class 12 of Part 4 of Schedule 2 of the said regulations to residential use,



NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5(3)(a) of the Planning and Development Act 2000, as amended, hereby decides that the partial conversion of the existing derelict public lounge to contain two apartments at Blue Gardenia, McDonagh's Lane, Brittas, County Dublin is development and is exempted development.

A handwritten signature in black ink is written over a horizontal line. To the right of the signature is a circular official seal of An Bord Pleanála, featuring a stylized 'A' and 'B' in the center and the text 'AN BORD PLEANÁLA' around the perimeter.

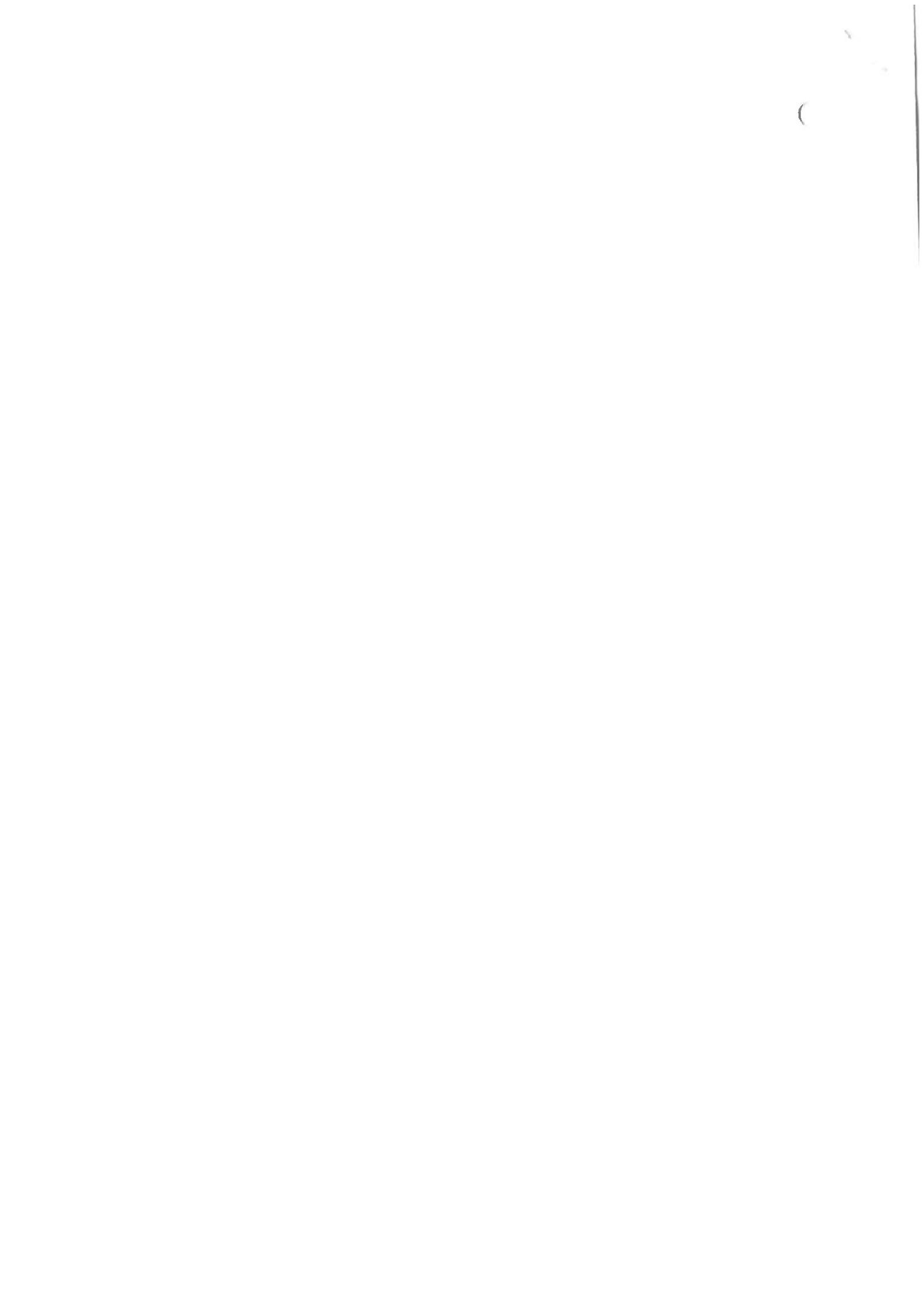
Joe Boland

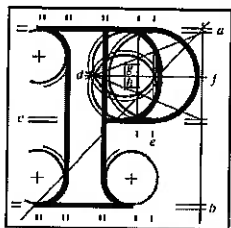
Member of An Bord Pleanála

duly authorised to authenticate

the seal of the Board.

Dated this 12TH day of December 2023.





An
Bord
Pleanála

Inspector's Report ABP-314440-22

Question

Whether the partial conversion of existing derelict public lounge to contain 2 apartments is or is not development or is or is not exempted development

Location

Blue Gardenia, McDonagh's Lane,
Brittas, Co. Dublin

Declaration

Planning Authority

South Dublin County Council

Planning Authority Reg. Ref.

ED22/0023

Applicant for Declaration

Edward Fahy

Planning Authority Decision

Is not exempted development

Referral

Referred by

Applicant

Owner/ Occupier

Edward Fahy

Observer(s)

None

Date of Site Inspection

26th May 2023

Inspector

Philip Maguire

1.0 Site Location and Description

- 1.1. The referral site is located in the rural village of Brittas, County Dublin, in the foothills of the Dublin Mountains and c. 5km south, southeast of Rathcoole. It is situated along and west of the N81 between Blessington and Tallaght, at its junction with L6048 (McDonagh's Lane). The surrounding area is characterised by ribbon development extending north and west along the adjoining roads, and to the southeast along the R114, opposite St Martin's National School. The Brittas River is c. 0.6km to the south.
- 1.2. The referral site is irregular shaped and consists of a two-storey building with double-apex roof and single-storey projections to the front, side and rear. The building lies to the south of the site with a surface car park to the north. Vehicular access is via the N81 where the posted speed limit is 60kph. The roadside boundary is defined by a low wall and railing with public footpath and bollards to the front. The external wall of the building together with an earth bank, trees, wall and fencing define the southern boundary. Remaining boundaries are defined by hedging and thick vegetation. The building previously operated as a public house known as Blue Gardenia, formerly the Brittas Inn. There was no evidence this use was operational during my site inspection.

2.0 The Question

- 2.1. The question relates to the partial conversion of a derelict public lounge to two apartments. The matter has been referred by the applicant for the declaration. The description of the proposed development as set out in Question 4 of the application form to the Planning Authority was:

'Partial conversion of existing derelict public lounge to contain 2 no. apartments – 1 no. one bed and 1 no. two bed.'
- 2.2. The referral documentation includes a cover letter and report prepared by Farry Town Planning and a proposed floor plan drawing prepared by DaCAD Designs. The drawing illustrates the proposed apartments to the southeast corner of the building. The internal layout broadly reflects that submitted to the Planning Authority albeit with marginal changes to the proposed floor areas within the two-bed apartment unit.
- 2.3. Works are mostly internal but include the replacement of existing openings to the front and side with new windows, three in total, and the removal of part of the flat roof above.

3. Planning Authority Declaration

3.1. Declaration

3.1.1. The Planning Authority issued a declaration on 25th July 2022 which stated:

“That the applicant be informed that the proposed development of Partial conversion of existing derelict public lounge to contain 2 no. apartments – 1 no. one bed and 1 no. two bed at Blue Gardena, McDonagh’s Lane, Brittas, Co. Dublin is development and is not considered to be exempted development under the Planning and Development Act 2000 (as amended) and the Planning and Development Regulations 2001, (as amended) and therefore does require planning permission.”

3.1.2. I note the Planning Authority, throughout their documentation refer to the building as ‘Blue Gardena’ as opposed to ‘Blue Gardenia’, as per the application form.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- Planning Report (25/07/22): Basis for the Planning Authority decision. It assessed the proposal against the various criteria, conditions and limitations under Articles 10(6)(c) and 10(6)(d) of the Planning Regulations and considered that further information was required in respect of the vacancy period; proposed commencement and completion; effects on European sites; and wastewater treatment. It also considered that information was required in respect of traffic impacts but it deemed the proposal did not comply with this condition in the absence of same. Finally, it considered the proposal failed to comply with Article 10(6)(d)(vi) in relation to minimum floor areas set out in the Apartment Guidelines and Article 10(6)(d)(vii) in relation to availability of adequate natural lighting. It concluded that the proposal is development and not exempted development by virtue of Article 9(1)(a)(iii) or Article 10(6)(d)(vi), (vii) and (xi) of the Regulations.

3.2.2. Other Technical Reports

None.

4.0 Planning History

4.1. Referral site:

PA ref. SD21A/0061: Permission **refused** in May 2021 for the change of use of partial ground floor area of public house for use as 2 no. apartments (1 no. two-bed and 1 no. one-bed) for 8 no. reasons. The following are relevant to this case:

3. *The proposed vehicular access onto the N81 at a location where the speed limit is 60km/h and where there is a bend in the road approximately 50m to the south of the proposed access, where the sightline envelope has not been satisfactorily determined at this location, would endanger public safety by reason of traffic hazard or obstruction of road users or otherwise and would therefore be contrary to the proper planning and sustainable development of the area.*
7. *Having regard to the absence of an Ecological Assessment, and mitigating proposals, submitted with the planning application, and having regard to the location of the site in proximity to the Brittas pNHA, for which the Local Authority has an obligation to protect, it cannot be determined that there will be no likelihood of significant effects on the environment arising from the proposed development and if granted could result in a detrimental impact on the receiving environment and would therefore be contrary to the proper planning and sustainable development of the area.*
8. *Having regard to the drinking water supply to the proposed units/Blue Gardenia building sourced from an on-site well which is situated immediately adjacent to the wastewater percolation system for the site which would service the proposed change of use and the lack of site suitability assessment submitted with the wastewater treatment system and percolation area the proposed development could be prejudicial to public health and if granted would be contrary to the proper planning and sustainable development of the area.*

PA ref. SD19A/0183: Permission **refused** in July 2019 for retention of a single-storey kiosk to serve tea and coffee to takeaway customers etc. The Planning Authority considered that there was inadequate visibility at the proposed entrance and the proposal would lead to increased traffic movement which would endanger public safety by reason of a traffic hazard.

PA ref. S98A/0542: Permission **granted** in December 1998 for retention of sewage treatment plant. Condition 2 required the installation of adequate percolation pipework to accommodate the effluent generated by the proposed treatment system operating at full capacity i.e. 23,000 litres/day.

PA ref. S97A/0659: Permission **granted** in January 1998 for a new lobby and façade alterations. Condition 6 required surface water to discharge to soakways and not to the septic tank system.

PA ref. S97A/0190: Permission **granted** in July 1997 for alterations to the facade and extension to form new lobby entrance.

PA ref. M/2249: Permission **granted** in December 1977 for a new porch at entrance to existing bar.

PA ref. K/2811: Permission **granted** in March 1977 for the conversion of enclosed yard to covered store.

PA ref. G/1715: Permission **granted** in January 1975 for fascia and signs.

PA ref. G/1714: Permission **granted** in February 1975 for extension to premises.

4.2. Adjacent site(s):

c. 60m west, northwest

PA ref. SD21A/0349: Permission **refused** in February 2022 for retention of a single-storey log cabin dwelling and vehicular access with new DWWTS etc. for 8 no. reasons including rural housing need; residential amenity; ribbon development; traffic safety; public health; and Appropriate Assessment.

5.0 Policy Context

5.1. South Dublin County Development Plan 2022-2028

5.1.1. The current Development Plan came into effect on 3rd August 2023. The Planning Authority decision of 26th July 2022 was made under the previous Plan for the period 2016-2022. This referral shall be determined under the current Plan.

5.1.2. The referral site is zoned 'High Amenity – Dublin Mountains' (HA-DM) with a zoning objective *'to protect and enhance the outstanding natural character of the Dublin*

Mountains Area. Residential uses are 'open for consideration' in accordance with Council policy for residential development in rural areas and not permitted above 350m contour. The referral site lies between the 240m and 250m contour.

5.2. Apartment Guidelines

- 5.2.1. The Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities (DHLGH, July 2023) focus on the locational and planning specific aspects to apartment development generally. Section 1.10 notes that they also provide a "target standard" where existing buildings are to be "wholly or partly redeveloped or refurbished for residential use", including apartments, and acknowledges the exemption under S.I. No. 30 of 2018 (Planning and Development (Amendment) (No. 2) Regulations 2018), since extended under S.I. No. 75 of 2022.
- 5.2.2. Section 6.5 of the Guidelines notes the importance of the provision of acceptable levels of natural light in new apartment development but states that planning authorities must weigh up the overall quality of the design and layout of the scheme and measures proposed to maximise daylight provision with the site location etc.
- 5.2.3. Section 6.6 of the Guidelines notes that planning authorities should have regard to quantitative performance approaches to daylight provision outlined in guides like *A New European Standard for Daylighting in Buildings EN17037* or *UK National Annex BS EN17037* and the associated *BRE Guide 209 2022 Edition* (June 2022).
- 5.2.4. Section 6.7 notes that where an applicant cannot fully meet all of the daylight provision requirements, this must be clearly identified and a rationale for alternative, compensatory design solutions must be set out, which planning authorities should accept at their discretion, taking account of their assessment of specific objectives.
- 5.2.5. Section 6.9 of the Guidelines requests planning authorities to practically and flexibly apply the general requirements of the guidelines in relation to refurbishment schemes, particularly in historic buildings, 'over the shop' or other existing conversion projects, where property owners must work with existing building fabric and dimensions.
- 5.2.6. The Guidelines state that various standards may be relaxed for building refurbishment schemes, on a case-by-case basis, subject to overall design quality. These include storage space, private amenity space and communal amenity space requirements.

5. Natural Heritage Designations

Slade of Saggart and Crooksling Glen pNHA (000211) – east of the N81.

6.0 The Referral

6.1. Referrer's Case

6.1.1. The referrer's case can be summarised as follows:

- In respect of ecological considerations, the referrer submits that the exclusionary provisions set out in Article 9 of the Planning Regulations do not apply to the subject referral as the Slade of Saggart and Crooksling Glen pNHA does fall within the definition of a 'European site' as per section 177R of the Planning Act.
- With regards wastewater treatment and referring to "Article 10(6)(vii)" of the Planning Regulations whilst citing the text under Article 10(6)(d)(xii), the referrer submits that the Planning Authority's approach, whereby the proposal would be deemed as requiring consent on the basis of the inadequacy of the submitted sewage information, is legally incorrect. The referrer states that "Article 10(6)(vii)", presumably Article 10(6)(d)(xii), does not direct the local authority to consider the adequacy or sufficiency of the foul effluent system.
- In relation to the timing of the works, it is stated that the referrer intends to undertake the works for the provision of the new apartments as soon as may be after the issue of any favourable determination by the Board and to complete all operations on or before 31st December 2025.
- With regards to road safety and referencing *Cunningham v An Bord Pleanála*, the referrer notes that at no time did the Council highlight any physical feature, road characteristic or other engineering consideration which would support the conclusion that the carrying out of this development would endanger public safety by reason of a traffic hazard etc. The referrer states that no part of the development would be located in close proximity to the site access, and drivers, cyclists and pedestrians would be unaffected by the proposal.
- In relation to the provision of adequate natural light, the referrer notes that the proposal is identical to that refused under PA ref. SD21A/0061 and none of the 8

no. refusal reasons were based on light penetration or the standard of internal accommodation to be provided. The referrer states that the Council's Planning Report does not refer to any planning standard such as the Development Plan or any design norms in terms of the Building Regulations. The referrer contends that bedrooms are used at night when the need for daylight to undertake domestic tasks would have ceased and the proposal should not be de-exempted on this ground. They conclude that available light to future residents would be acceptable.

- In respect of floorspace, the referrer submits that the Council erred in its interpretation of "Article (6)(d)(vi)" of the Planning Regulations when considering the proposal didn't comply with the storage space requirements, presumably Article 10(6)(d)(vi). The referrer notes that the Regulations make no reference to any maximum storage area but simply seeks to ensure compliance with the minimum storage requirements. In terms of the size of the larger bedroom within the two-bed apartment, the referrer has submitted a modified drawing showing an increase in floor area from 11.52sq.m to 13sq.m. It is stated that this drawing also addresses the Planning Authority's maximum floorspace concerns.

6.2. Planning Authority Response

6.2.1. The Planning Authority's response can be summarised as follows:

- The Planning Authority confirms its decision.
- The issues raised in the appeal have been covered in the planner's report.

7.0 Statutory Provisions

7.1. The relevant provisions are set out in the Planning and Development Act 2000 (as amended) ('PDA 2000 or the Act') and the Planning and Development Regulations 2001 (as amended) ('PDR 2001 or the Regulations').

7.2. Section 2 – PDA 2000

7.2.1. Section 2(1) provides the following interpretations which are relevant:

"structure" means *inter alia* any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined,

and where the context so admits, includes the land on, in or under which the structure is situate etc.;

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

“works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal etc.

7.3. Section 3 – PDA 2000

7.3.1. Section 3(1)(a) defines “development” as:

The carrying out of any works in, on, over or under land, or the making of any material change in the use of any land or structures situated on land.

7.4. Article 9 – PDR 2001

7.4.1. Article 9 in effect de-exempts certain classes of development that would be exempt under normal circumstances. The restrictions under Article 9(1)(a) apply if the carrying out of such development would *inter alia*:

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

(viiB) comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site, and

(viiC) consist of or comprise development which would be likely to have an adverse impact on an area designated as a natural heritage area by order made under section 18 of the Wildlife (Amendment) Act 2000.

7.5. Article 10 – PDR 2001

7.5.1. Article 10(6) is directly relevant:

(a) In this sub-article—

‘habitable room’ means a room used for living or sleeping purposes but does not include a kitchen that has a floor area of less than 6.5 square metres;

‘relevant period’ means the period from 8 February 2018 until 31 December 2025.

(b) *This sub-article relates to a proposed development, during the relevant period, that consists of a change of use to residential use from Class 1, 2, 3, 6 or 12 of Part 4 to Schedule 2.*

(c) *Notwithstanding sub-article (1), where in respect of a proposed development referred to in paragraph (b)—*

(i) *the structure concerned was completed prior to the making of the Planning and Development (Amendment) (No. 2) Regulations 2018,*

(ii) *the structure concerned has at some time been used for the purpose of its current use class, being Class 1, 2, 3, 6 or 12, and*

(iii) *the structure concerned, or so much of it that is the subject of the proposed development, has been vacant for a period of 2 years or more immediately prior to the commencement of the proposed development,*

then the proposed development for residential use, and any related works, shall be exempted development for the purposes of the Act, subject to the conditions and limitations set out in paragraph (d).

(d) (i) *The development is commenced and completed during the relevant period.*

(ii) *Subject to sub-paragraph (iii), any related works, including works as may be required to comply with sub-paragraph (vii), shall –*

(I) *primarily affect the interior of the structure,*

(II) *retain 50 per cent or more of the existing external fabric of the building, and*

(III) *not materially affect the external appearance of the structure so as to render its appearance inconsistent with the character of the structure or of neighbouring structures.*

(iii) *Any related works for the alteration of existing ground floor shop fronts shall be consistent with the fenestration details and architectural and streetscape character of the remainder of the structure or of neighbouring structures.*

(iv) *No development shall consist of or comprise the carrying out of works to the ground floor area of any structure which conflicts with any objective of the relevant local authority development plan or local area plan, pursuant to the*

Part 1 of the First Schedule to the Act, for such to remain in retail use, with the exception of any works the purpose of which is to solely provide on street access to the upper floors of the structure concerned.

- (v) No development shall consist of or comprise the carrying out of works which exceeds the provision of more than 9 residential units in any structure.*
- (vi) Dwelling floor areas and storage spaces shall comply with the minimum floor area requirements and minimum storage space requirements of the "Sustainable Urban Housing: Design Standards for New Apartments – Guidelines for Planning Authorities" issued under section 28 of the Act or any subsequent updated or replacement guidelines.*
- (vii) Rooms for use, or intended for use, as habitable rooms shall have adequate natural lighting.*
- (viii) No development shall consist of or comprise the carrying out of works to a protected structure, as defined in section 2 of the Act, save where the relevant planning authority has issued a declaration under section 57 of the Act to the effect that the proposed works would not materially affect the character of the structure or any element, referred to in section 57(1)(b) of the Act, of the structure.*
- (ix) No development shall contravene a condition attached to a permission under the Act or be inconsistent with any use specified or included in such a permission.*
- (x) No development shall relate to any structure in any of the following areas:
 - (I) an area to which a special amenity area order relates;*
 - (II) an area of special planning control;*
 - (III) within the relevant perimeter distance area, as set out in Table 2 of Schedule 8, of any type of establishment to which the Major Accident Regulations apply.**
- (xi) No development shall relate to matters in respect of which any of the restrictions set out in sub-paragraph (iv), (vii), (viiA), (viiB), (viiC), (viii) or (ix) of article 9(1)(a), or paragraph (c) or (d) of article (9)(1), would apply.*

- (xii) *No development shall consist of or comprise the carrying out of works for the provision of an onsite wastewater treatment and disposal system to which the code of practice made by the Environmental Protection Agency pursuant to section 76 of the Environmental Protection Agency Act 1992 relates and entitled Code of Practice –Wastewater Treatment and Disposal Systems Serving Single Houses together with any amendment to that Code or any replacement for it.*

7.5.2. Part 4 of Schedule 2 sets out the following relevant class of use:

CLASS 12 *Use as a Public House, meaning a premises which has been licensed for the sale and consumption of intoxicating liquor on the premises under the Licensing Acts 1833 to 2018.*

7.6. Precedent Referral Cases

- 7.6.1. In ABP ref. RL2442, the Board considered whether the change of use from a public house to off-licence is or is not development or is or is not exempted development. The main issue was whether a material change of use had taken place. The Board decided that the change of use was development and was not exempted development, concluding *inter alia* that the change of use from use as a public house to use as an off-licence constitutes a material change of use by reason of trading patterns, consumption on the premises versus consumption off the premises, car parking and traffic, likely impacts on neighbouring residential amenity and social behaviour.
- 7.6.2. In ABP ref. RL2398, the Board considered whether the change of use of part of public house to a shop is or is not development or is or is not exempted development. The Board decided that the change of use was development and not exempted development, concluding that Class 14, Part 1, Schedule 2 of the Regulations didn't apply as the use would endanger public safety by reason of a traffic hazard etc. [Article 9(1)(a)(iii)]. The Inspector's comments in respect of material change of use are noted.
- 7.6.3. In ABP ref. RL2727, the Board considered whether the use of a premises as a Public House, having not been used as a Public House between 1991 and December 2009, was or was not development and was or was not exempted development. The Board decided that the property had existed as a Public House since prior to 1991 and had not changed or been abandoned and concluded that it was not development.

7. Precedent Judgements

Change of Use

- 7.7.1. In *Roadstone Provinces Ltd v An Bord Pleanála* [2008] IEHC 2010, the courts approved the decision in *Galway Co Co v Lackagh Rock* (cited below) and concluded that the Board would have to consider that there had been a change in use before looking at planning considerations to determine the materiality of the identified change.

Material Change in Use

- 7.7.2. In *Monaghan County Council v Brogan* [1987] IR 333, the courts confirmed that the term “material” means material in planning terms, that is whether the issues raised by the change of use would raise matters that would normally be considered by a planning authority if it were dealing with an application for planning permission, such as “residential amenity, traffic safety or policy issues in relation to statutory plans”.
- 7.7.3. In *Galway Co Co v Lackagh Rock Ltd* [1985] IR 120, the courts concluded that in determining whether or not a present use was materially different to a previous use, regard must be had to matters of planning concern arising on the previous use when compared with the present use. If these matters were materially different than the nature of the present use, it must be equally materially different.
- 7.7.4. In *Stanley v An Bord Pleanála* [2022] IEHC 177, the courts refused a challenge to the validity of the Board’s determination that a change of use was ‘material’ and affirmed the authorities under *Galway Co Co*, *Monaghan Co Co* and *Roadstone Provinces*.

Factors to Consider Regarding Materiality

- 7.7.5. In *Carrickhall Holdings Ltd v Dublin Corporation* [1983] ILRM 268, the courts had regard to the impact of the new use on the amenities of local residents and in particular the increased traffic, parking and noise when considering whether there had been a material change from a hotel bar to a public bar.

Planning Unit

- 7.7.6. In *Carroll and Colley v Brushfield Ltd* (unreported, 9 October 1992) HC, the courts held that the planning unit was the entire hotel premises when considering whether the change of use of part of the building was a change within the overall use of the building.

8.0 Assessment

8.1. Preliminary Points

- 8.1.1. The referral relates to the partial conversion of an 'existing derelict public lounge' to residential use. The planning history for the premises dates from the 1970's (Section 4.1). I also note that the 'Brittas Inn' is depicted on historical mapping for the area (Historic 25 Inch, 1897-1913), suggesting that it is a pre-1963 structure, hence the first planning application being for an extension to the premises under PA ref. G/1714.
- 8.1.2. The referrer states that the premises has been in his ownership since August 2017, at which time it had been vacant for eight years. He also states that the premises was reopened in August 2018 but closed again in March 2020, and its licence was sold.
- 8.1.3. I am therefore satisfied that the 'public lounge' is part of a 'premises which has been licensed for the sale and consumption of intoxicating liquor on the premises' within Class 12, Part 4, Schedule 2 i.e. a Public House. I am also satisfied that this use has been lawfully established and not abandoned notwithstanding references to dereliction and the sale of the licence, having regard to the commentary under ABP ref. RL2727.

8.2. Development – *Is or is not...*

- 8.2.1. The proposal involves a change of use of part of a Public House to residential use. It is self-evident that this is a change of use, and this change gives rise to material planning considerations in respect of traffic safety and residential amenity, in particular. Indeed, some policy issues also arise given the HA-DM zoning objective. It is also evident that S.I. No. 30 of 2018 (Planning and Development (Amendment) (No. 2) Regulations 2018), since extended under S.I. No. 75 of 2022, was specifically introduced to provide an exemption for this type of residential development.
- 8.2.2. The proposal also involves the blocking up of doors and windows to the front and side of the building and partial removal of the flat roof to create 'external courtyards', albeit within the built footprint. This falls within the definition of 'works' and is also therefore development. The partial conversion of the existing derelict public lounge to contain 2 no. apartments is therefore development. This is not disputed by either party.

8. Exempted Development – *Is or is not...*

8.3.1. A change of use to residential use from *inter alia* Class 12, use as a Public House, and any related works, during the period from 8th February 2018 to 31st December 2025 is exempted development under Article 10(6)(c) of the Regulations, subject to the conditions and limitation under Article 10(6)(d). Before considering these, it is important to address the preliminary criteria under Article 10(6)(c)(i) to (iii), inclusive.

(i) – Status of the Structure Concerned

Having regard to my site inspection, the documentation on file and other relevant documentation including the planning history and historical mapping, I am fully satisfied that the structure was completed prior to the making of the Planning and Development (Amendment) (No. 2) Regulations 2018 i.e. prior to 8th February 2018.

(ii) – Use of the Structure Concerned

Having regard to my site inspection, the documentation on file including the referrers submission that the premises was most recently open between August 2018 and March 2020, and other relevant documentation including the planning history and historical mapping, I am fully satisfied that the structure was at some time used for the purpose of its current use class, being Class 12, use as a Public House.

(iii) – Period of Vacancy of the Structure Concerned

There is no definition of “vacant” in the Planning Regulations, nor in the subsequent S.I. No. 75/2022, however it should be given its natural and ordinary meaning which suggests the premises is empty and not being used. Whilst the Planning Authority noted that the applicant had not provided any evidence to prove the vacancy period, I am satisfied the structure concerned, or so much of it that is the subject of the proposed development, would, on the balance of probabilities, be vacant for a period of more than 2 years immediately prior to the commencement of the proposal.

8.3.2. The proposal would therefore be exempt under Article 10(6)(c), subject to the conditions and limitations under Article 10(6)(d) which are now considered in turn.

(i) – Commencement and Completion

The referrer has submitted that they intend to commence the works for the provision of the new apartments as soon as may be after the issue of a favourable determination

by the Board and complete all operations on or before 31st December 2025. Given the relatively minor nature of the proposed works, I am satisfied that the referrer is likely to have commenced and completed the development during the relevant period.

(ii) – Extent of Works

The works involve the replacement of existing door and window openings to the front and side with new windows, three in total, and the removal of part of the flat roof above to create external courtyards, albeit within the built footprint. The works are to the southeast corner of the building, and primarily affect the interior of the structure and do not materially affect the external appearance of the structure so as to render its appearance inconsistent with the character of the structure or of neighbouring structures. I note more than 50% of the existing external built fabric will be retained.

(iii) – Shopfronts and Streetscape Character

Works to the external fabric of the building include the replacement of existing door and window openings within the flat roof projection which wraps around the front and side of what would have been the original 'Brittas Inn'. This part of the front of the building presents as a shopfront with fascia signage and retractable awning above. It has a set of centrally located half-glazed doors flanked with half-glazed window openings, painted yellow. Other finishes include painted render and brick detailing. The fascia sign is black with 'Blue Gardenia' in raised gold lettering. The adjoining façade, which also forms part of the wraparound projection, has a brick finish with two square window openings. The proposal will effectively replicate this adjoining façade. Having regard to the submitted drawings, I am satisfied that the alteration of existing shopfront will be consistent with the fenestration details and architectural and streetscape character of the remainder of the structure and neighbouring structures.

(iv) – Conflicts with Development Plan / LAP Objectives

As previously noted, the existing building has an established use as a Public House under Class 12, Part 4, Schedule 2 of the Regulations. The condition and limitation under Article 10(6)(d)(iv) does not therefore apply as it relates to the protection of 'retail uses' under a specific objective of a development plan or local area plan with retail uses typically provided for under Class 1, Part 4, Schedule 2 i.e. Use as a shop.

(v) – Maximum Number of Residential Units

The referrer proposes two apartments which is evidently below the Article 10(6)(d)(v) threshold of more than 9 residential units in any structure. The Planning Authority has indicated that “the proposal would comply with this issue”. The Board should note that I did not access the building during the site inspection to ascertain whether any of the remainder of the building had been converted to apartments. I do note that the existing floor plans illustrate what appears to be 7 no. bedrooms with en-suite facilities although this is presumably guest accommodation incidental to the use as a Public House.

(vi) – Compliance with Apartment Guidelines

The Planning Authority did raise concerns however regarding the size of the storage area and the aggregate bedroom floor area for the two-bed apartment. The relevant requirements from Appendix 1 of the Apartment Guidelines are detailed below in addition to the floor space provided, as illustrated on the submitted floor plan.

Apartment Type \ Minimum Criteria	One-bed		Two-bed (3 person)	
	Required	Provided	Required	Provided
Overall floor area (sq.m)	45	*45.53	63	*67.79
Aggregate floor area for living/dining/kitchen (sq.m)	23	23.20	28	28.73
Widths for the main living/dining rooms (m)	3.3	3.76	3.6	~4.10
Bedroom floor areas (sq.m)	7.1	11.40	7.1	8.57
			11.4	14.23
Bedroom widths (m)	2.1	2.8	2.1	2.1
			2.8	2.8
Aggregate bedroom floor areas (sq.m)	11.4	11.4	20.1	22.8
Storage space requirements (sq.m)	3	3.19	5	5.10
Floor areas for private amenity space (sq.m)	5	5.2	6	8.36

~Average width

*Manual calculation (no areas provided for Hallways or Shower Rooms)

Regarding the storage area, the Planning Authority refers to the general rule in section 3.31 of the Guidelines which states that 'no individual storage room should exceed 3.5sq.m'. The referrer submits that Article 10(6)(d)(vi) of the Planning Regulations makes no reference to a maximum storage area, and I agree. Moreover, the Guidelines indicate that these are 'target standards' where existing buildings are to be wholly or partly redeveloped for residential use, applied practically and flexibly in relation to refurbishment schemes and may be relaxed on a case-by-case basis, subject to overall design quality. I also note that the internal layout of the two-bed apartment has been revised to meet the minimum aggregate bedroom floor area and all other requirements are met or exceeded. The proposal complies with the minimum floor area and storage space requirements of the Guidelines and the Planning Authority's rationale for de-exempting the proposal on this basis cannot be sustained.

(vii) – Availability of Adequate Natural Lighting

The Planning Authority also raised concerns regarding the availability of adequate natural lighting to habitable rooms, noting that all 3 bedrooms would be served by windows and doors overlooking the enclosed courtyard amenity areas which would be bound by a 3m wall in close proximity to the openings. They considered that this would result in significant impacts on natural lighting and would not be acceptable. The referrer submits that the proposal is identical to that previously refused permission under PA ref. SA21A/0061 and none of the refusal reasons were based on the standard of internal accommodation or the availability of adequate natural lighting. They note that the Planning Authority does not refer to any planning standard or design norm and contend that the light available to future residents would be acceptable.

Section 6.6 of the Apartment Guidelines states that planning authorities should have regard to quantitative performance approaches to daylight provision outlined in guides like *A New European Standard for Daylighting in Buildings* EN17037 or *UK National Annex BS EN17037* and the associated *BRE Guide 209 2022 Edition* (June 2022). These are the relevant standards, but neither the Guidelines nor the listed guides are explicitly referenced under Article 10(6)(d)(vii). Moreover, section 6.7 notes that where the minimum standards of daylight provision cannot be fulfilled, this should be clearly identified and a rationale for any alternative, compensatory design solution must be set out. This would require the referrer to provide a daylight and sunlight assessment.

Compliance with the condition and limitation under Article 10(6)(d)(vii) therefore hinges on whether it is viewed subjectively, as the Planning Authority did, or objectively in line with a quantitative planning standard, as suggested by the referrer. In the absence of any reference to the Guidelines under Article 10(6)(d)(vii), I am satisfied that it is a subjective test, and a daylight and sunlight analysis is not required. Having regard to the large window and door openings which are on aggregate 70% of the relevant façade, the separation distance to the external wall and the area of the respective courtyards, I am satisfied that the daylight provided would be no different to a recessed balcony in a standard apartment block. On balance, rooms for use, or intended for use, as habitable rooms will have adequate natural lighting and the Planning Authority's rationale for de-exempting the proposal on this basis cannot be sustained.

(viii) – Works to a Protected Structure

Whilst the building is evident on historic mapping for the area, it is not listed in the Record of Protected Structures (Appendix 3a of the Development Plan). The proposed development does not therefore involve works to a protected structure.

(ix) – Contravention of Planning Condition / Inconsistency with Use

The planning history is listed in Section 4.1 above. The proposed development does not appear to contravene a condition attached to a permission nor would be inconsistent with any use specified or included in such a permission having regard to the referrer's submission in respect of the period of vacancy and sale of the licence.

(x) – Specified Areas

The structure is not located within an area to which a special amenity area order relates, an area of special planning control or within the relevant perimeter distance area of any type of establishment to which the Major Accident Regulations apply.

(xi) – Certain Restrictions under Article 9

Article 10(6)(d)(xi) provides that certain restrictions under Article 9 also apply to the exemption under Article 10(6)(c) including sub-paragraphs (iv), (vii), (viiA), (viiB), (viiC), (viii) and (ix) of Article 9(1)(a) and paragraphs (c) and (d) of Article 9(1).

The Planning Authority noted that a similar proposal was previously refused at the referral site due to concerns regarding traffic hazards and public safety. Without further consideration of the likely impact on traffic and road users, they considered the

development could endanger public safety by reason of a traffic hazard and would not comply with Article 9(1)(a)(iii). The referrer has indicated that no part of the development would be located in close proximity to the site access, and drivers, cyclists and pedestrians would be unaffected by the proposal. They also state that the Planning Authority has not highlighted any particular aspect that would support their conclusion. Notwithstanding, sub-paragraph (iii) is evidently not listed as one of the restrictions under Article 10(6)(d)(xi) and is irrelevant to the assessment. The Planning Authority's rationale for de-exempting the proposal on this basis cannot be sustained.

Referencing sub-paragraph (viiB) of Article 9(1)(a) and the 7th refusal reason under PA ref. SD21A/0060, the Planning Authority considered that further information would be required in respect of the impact the proposed works would have on the integrity of the Slade of Saggart and Crooksling Glen pNHA. Sub-paragraph (viiB) refers specifically to the 'integrity of European sites' and the referrer correctly points out that Slade of Saggart and Crooksling pNHA does fall within the definition of a 'European site' as per section 177R of the Planning Act. This is also acknowledged by the Planning Authority. The nearest European site is 4.7km to the southeast (Wicklow Mountains SAC, 002122) and the nearest with any potential hydrological connectivity is 6.5km to the south, southwest (Poulaphouca Reservoir SPA, 004063). I also note that sub-paragraph (viiC) relates to natural heritage areas (NHA's) and therefore there is no restriction pertaining to specifically designated proposed NHA's including the Slade of Saggart and Crooksling Glen and therefore further information is not required.

I am therefore satisfied that the relevant restrictions under Article 9 do not apply.

(xii) – Onsite Wastewater Treatment

The Planning Authority also raised concerns regarding a lack of wastewater treatment information with the section 5 application. The referrer submits that Article 10(6)(d)(xii) does not direct the Planning Authority to consider the adequacy or sufficiency of the foul effluent system and I am inclined to agree. It is simply a restriction on the provision of an onsite wastewater treatment and disposal system as part of the development. The proposal does not involve the provision of a DWWTS and this condition is met.

- 8.3.3. I am satisfied that the proposal complies with the criteria under Article 10(6)(c) and the conditions and limitations under Article 10(6)(d) of the Planning Regulations and is therefore exempted development for the purposes of the Planning Act.

8.1. **Appropriate Assessment**

- 8.4.1. Having regard to the nature and scale of the proposed development, which is for the partial conversion of derelict public lounge to two apartments, and the distance from the nearest European sites, no Appropriate Assessment issues arise. Therefore, it is not considered that the proposed development would be likely to have a significant effect, individually, or in combination with other plans or projects, on a European site.

9.0 **Recommendation**

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

WHEREAS a question has arisen as to whether the partial conversion of the derelict public lounge to two apartments at 'Blue Gardenia', McDonagh's Lane, Brittas, County Dublin is or is not development or is or is not exempted development:

AND WHEREAS Edward Fahy requested a declaration on this question from South Dublin County Council and the Council issued a declaration on the 25th day of July, 2022 stating that the matter was development and was not exempted development:

AND WHEREAS Edward Fahy referred this declaration for review to An Bord Pleanála on the 22nd day of August, 2022:

AND WHEREAS An Bord Pleanála, in considering this referral, had regard particularly to –

- (a) Sections 2(1) and 3(1)(a) of the Planning and Development Act, 2000, as amended,
- (b) Articles 9(1) and 10(6) of the Planning and Development Regulations, 2001, as amended,

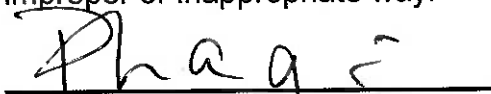
- (c) Class 12 of Part 4 of Schedule 2 of the Planning and Development Regulations, 2001, as amended,
- (d) the planning history of the Public House, and
- (e) relevant precedent referrals and judgments:

AND WHEREAS An Bord Pleanála has concluded that:

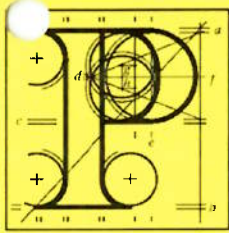
- (a) The proposed residential use is a material change in the use of the derelict public lounge at 'Blue Gardenia' Public House being development; and
- (b) The proposed works to the derelict public lounge at 'Blue Gardenia' Public House to facilitate the proposed use is development; and
- (c) The proposed development would come within the scope of exempted development under Article 10(6)(c) as it would consist of a change of use of part of a Public House within Class 12 of Part 4 of Schedule 2 of the said Regulations to residential use.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5(3)(a) of the 2000 Act, hereby decides that the partial conversion of the derelict public lounge to two apartments at 'Blue Gardenia', McDonagh's Lane, Brittas, County Dublin is development and is exempted development.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.


Philip Maguire
Planning Inspector

4th August 2023



An
Bord
Pleanála

Board Direction
BD-014801-23
ABP-314440-22

The submissions on this file and the Inspector's report were considered at a Board meeting held on 06/12/2023.

The Board decided, as set out in the following Order, that

Board Order as follows:-

WHEREAS a question has arisen as to whether the partial conversion of the derelict public lounge to two apartments at 'Blue Gardenia', McDonagh's Lane, Brittas, County Dublin is or is not development or is or is not exempted development:

AND WHEREAS Edward Fahy requested a declaration on this question from South Dublin County Council and the Council issued a declaration on the 25th day of July, 2022 stating that the matter was development and was not exempted development:

AND WHEREAS Edward Fahy referred this declaration for review to An Bord Pleanála on the 22nd day of August, 2022:

AND WHEREAS An Bord Pleanála, in considering this referral, had regard particularly to –

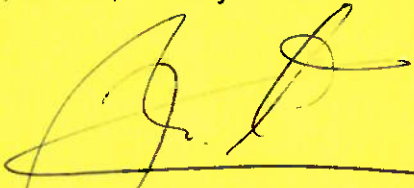
- (a) Sections 2(1) and 3(1)(a) of the Planning and Development Act, 2000, as amended,
- (b) Articles 9(1) and 10(6) of the Planning and Development Regulations, 2001, as amended,
- (c) Class 12 of Part 4 of Schedule 2 of the Planning and Development Regulations, 2001, as amended,
- (d) the planning history of the Public House, and
- (e) relevant precedent referrals and judgments:

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The proposed residential use is a material change in the use of the derelict public lounge at 'Blue Gardenia' Public House being development; and
- (b) The proposed works to the derelict public lounge at 'Blue Gardenia' Public House to facilitate the proposed use is development; and
- (c) The proposed development would come within the scope of exempted development under Article 10(6)(c) as it would consist of a change of use of part of a Public House within Class 12 of Part 4 of Schedule 2 of the said Regulations to residential use.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5(3)(a) of the 2000 Act, hereby decides that the partial conversion of the derelict public lounge to two apartments at 'Blue Gardenia', McDonagh's Lane, Brittas, County Dublin is development and is exempted development.

Board Member:



Joe Boland

Date: 06/12/2023