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BY HAND ON

22 August 2022

The Secretary
An Bord Pleanála
64 Marlborough Street
Dublin 1

AN BORD PLEANALA	
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ABP-	
22 AUG 2022	
Fee: €	220
Type:	Cheque
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DEVELOPMENT AT BLUE GARDENIA MCDONAGH'S LANE BRITTAS CO. DUBLIN SOUTH DUBLIN COUNTY COUNCIL REGISTER REFERENCE NUMBER ED22/0023

Dear Sir

We refer to the above proposal, as more fully described in the enclosed planning submission and we act for Mr. Edward Fahy whose address is The Blue Gardenia, McDonagh's Lane, Brittas Co. Dublin.

We hereby lodge a request with the Board pursuant to s.5(3)(a) of the Planning and Development Act, 2000 to review the decision by South Dublin County Council to deem that a particular proposal, as more fully described in the attached report, comprises development and is not exempted development.

By letter dated 23 June 2022, Mr Fahy sought a formal determination from the Planning Authority as regards a proposal at the Blue Gardenia McDonagh's Lane Brittas Co Dublin which was described as:

'Partial conversion of existing derelict public lounge to contain 2 no. apartments – 1 no. one bed and 1 no. two bed'.

South Dublin County Council, under its document which is entitled Record of Executive Business and Chief Executive's Order number PR/0941/22 and which is dated 25 July 2022, determined as follows:

'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 & 1 No. two bed at Blue Gardena, McDonaghs 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'.

It is common case between the parties in the present case that the conversion of a public house to residential accommodation falls squarely within the scope of the Planning and Development Act (Exempted Development) Regulations 2022, as summarised below; indeed, South Dublin County Council also accepts that part of the former Blue Gardenia public house can be used for such purposes under the requirements for exempted development status. The Report of the Planning Officer states:

'The Declaration seeks exemption for the change of use of an existing public house to residential, including associated works to facilitate the change of use...SI No. 75/2022 exempts development which consists of a change of use to residential use from a number of classes, one of which is Class 12 (Public House) ...'.

It is apparent that the Planning Authority is satisfied with the age of the structure (*'it is clear that the structure has been in situ since at least 1997'*), with the lawful use of the property as a public house (*'The applicant has stated in their covering letter that the premises was in operation as a bar between August 2018 and March 2020'*), that the external works are acceptable (*'...external alterations are proposed...These works would be consistent with the character of the remaining structure and the proposal would comply with this issue'*) and that over half the existing structure on the land would be kept (*'The area for which exemption is sought relates to less than 50 per cent of the...main building'*).

The first part of the document which is headed Record of Executive Business and Chief Executive's Order no. PR/0941/22 essentially comprises the Council's internal assessment of this case and, in our view the Planning Authority accepts that this proposal satisfies many of the criteria for exempted development status. Indeed two of the main outstanding items could have been addressed in a request for further information, which might have been issued under s.5(2) of the Planning and Development Act, 2000 (as amended) and we take this opportunity to treat the County Council's questions herein.

The first item states that the proposal needs consent because it would affect a European site (the *Slade of Saggart and Crooksling pNHA*) but, as this is not a SAC or an SPA, it falls outside the definition of a 'European Site' in s.177R of Part XB of the Planning and Development Act, 2000 (as amended). Thus, the exclusionary provision in art. 9(viiB) of the Planning and Development Regulations, 2001 (as amended), on which South Dublin County Council relies, simply does not apply to this proposal.

The Planning Authority's view, that that consent is needed because of the inadequacy of the sewage information, is also inconsistent with planning law. These regulatory arrangements simply stipulate that the installation of a wastewater system cannot be undertaken without permission, but the Council's claim, that this proposal requires permission because *'information regarding wastewater treatment has not been provided'* is clearly at variance with the adopted criteria for exemption status.

The first substantive objection to this proposal relates to road safety and stems from the juxtaposition of the referral site with National Secondary Road N81, although no part of the Report of the Planning Officer explains exactly why the proposal requires consent under this heading. We draw attention to *Cunningham-v-An Bord Pleanala* and we suggest that the Council's approach is at variance with this judgment, which indicates that art. 9(1)(a)(iii) of the Planning and Development Regulations 2001 (as amended), is only triggered where the erection of a new development would physically affect public safety, in terms of the particular position of a development on a referral site eg. so as to block visibility.

Whilst the Council also complains that the proposal requires consent because the bedrooms would not have sufficient natural lighting, we disagree within this claim, largely on the basis that such areas are used at night-time, when demand for natural lighting is at a minimum and indeed, when most residents would tend to draw their curtains, thus preventing light from entering in the first place. We also note how the referral drawings are identical to the plans which accompanied application ref. SD21A/0061, when the Planning Authority refused permission and we note how none of its eight reasons for refusal at that time opposed the provision of residential accommodation on the basis of daylight penetration.

It is our view that the determination that this proposal requires permission stems, not from non-compliance with any of the criteria for exempted development status, but instead from this recent decision to deny consent; after all, the Council cannot simply deem that a development does not need permission in circumstances where it has just withheld permission for no fewer than eight reasons.

Yours faithfully


Farry Town Planning Ltd.

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**REFERRAL ON A PROPOSED DEVELOPMENT AT
THE BLUE GARDENIA MCDONAGH'S LANE
BRITTAS COUNTY DUBLIN**

**REPORT PREPARED ON BEHALF OF THE REFERROR
MR. EDWARD FAHY**

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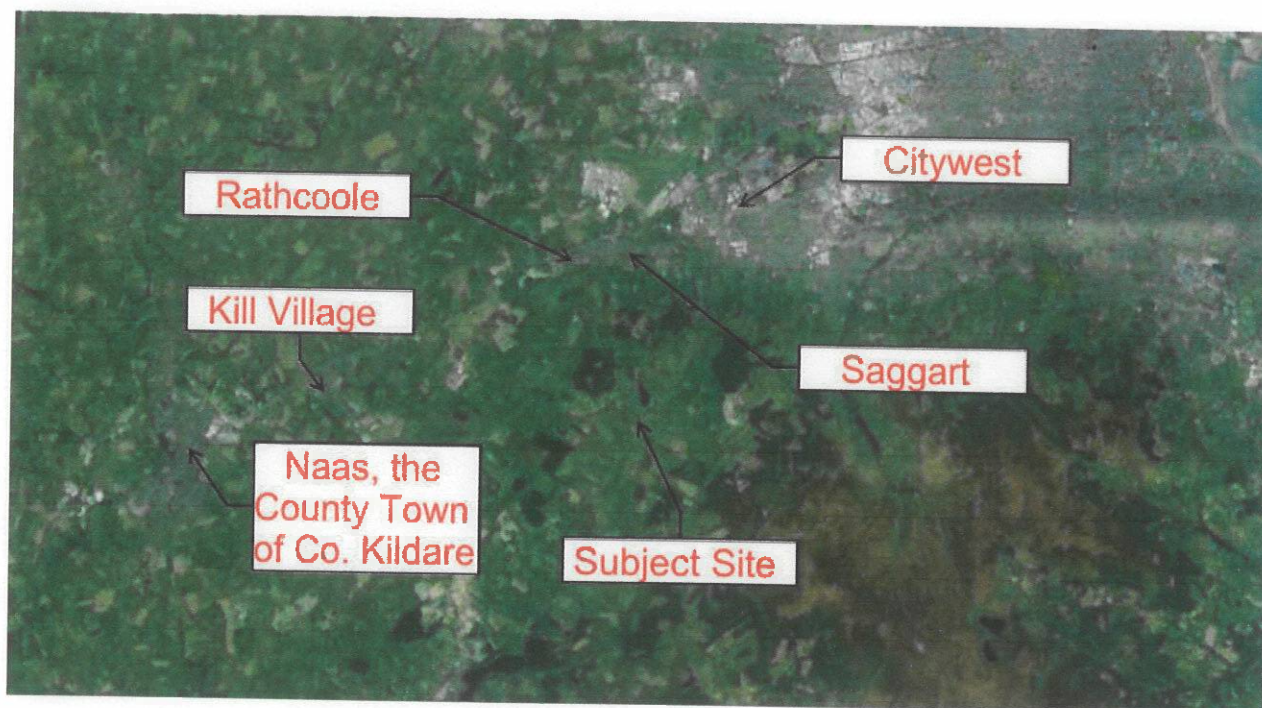
1. Introduction

This submission has been drafted on behalf of the owner of a property at the Blue Gardenia, McDonagh's Lane, Brittas, Co. Dublin and has been prepared for lodgement with An Bord Pleanála in relation to the determination, by South Dublin County Council, of a referral under s. 5(1) of the Planning and Development Act, 2000 (as amended). As discussed in s. 4 below, Mr. Fahy has asked the Council to decide whether the conversion of part of this building into two apartments consent and the Planning Authority has determined that this proposal does not comprise exempted development.

We have perused the file papers, inspected the subject site, examined the planning history of this land and identified the key provisions governing this issue and we have reached the conclusion that this development, in its amended form, does not actually require the permission of the Planning Authority.

2. The Site and its Environs

The referral site is located in the open countryside of Co. Dublin and is positioned approximately 5.80 km (3.61 miles) to the south of Rathcoole and Saggart and 13.80 km (8.57 miles) to the east of Naas.



Aerial Image 1: The site is located in a rural area in Co. Dublin.

The referral site, which is illustrated overleaf, is regularly-shaped and covers an area of 0.307 hectares (0.76 acres)¹. This land contains a detached, part-single, part two-storey, building which provides a floorspace of 676.28 sq. metres and which formerly accommodated the Blue Gardenia public house.

The subject property also accommodates a large area of hardstanding which is used as a car park, with this facility being served by a longstanding vehicular access off National Secondary Road N81 (which links Tallaght, in Co. Dublin with Tullow, in Co. Carlow). The appearance of this existing development is illustrated in photographs 1 and 2 on page 7 of this submission to An Bord Pleanála.

¹ The actual referral form itself does not contain any site area information and this figure has been drawn from the response provided to question no. 12 of the planning application form in reg. SD21a.0061. This is discussed below.



Map 1: The site to which this present referral relates.

The Report of the Planning Officer in the current case describes the site and its environs as follows:

‘The subject site consists of a public house and car park located on the western side of the N81 and McDonagh’s Lane. The site is located proximate to a proposed Natural Heritage Area (pNHA). The site is predominantly soil-sealed with car parking and is located off the busy N81 at a bend’.



Aerial Image 2: The location of the referral site on National Secondary Road N81.



Photographs 1 & 2: The subject site accommodates a detached building and a car park.



3. Select Planning History

Permission was sought under reg. no. SD21A/0061 for a proposal on the subject site which comprised:

'Change of use of partial ground floor area of public house for use as 2 apartments, 1 two bed apartment and 1 one bed apartment'.

This development was denied planning permission for eight reasons, which are reproduced as follows:

1. *The applicant has failed to provide justification which would warrant the setting aside of the objective of Policy H20 of the South Dublin County Development Plan 2016-2022, which seeks to restrict the spread of dwellings in the rural 'RU', Dublin Mountains 'HA-DM'; Liffey Valley 'HA-LV' and Dodder Valley 'HA-DV' zones and to focus such housing into existing settlements.' Therefore, the proposed development would materially contravene the objectives of the Development Plan and would lead to demands for the uneconomic provision of further public services and facilities in this rural area. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.*

2. *The site is located on lands subject to zoning objective HA - DM in the South Dublin County Council Development Plan 2016 – 2022. It is the policy of the Council that within areas designated with Zoning Objective HA - DM (to protect and enhance the outstanding natural character of the Dublin Mountain Area) that new or replacement dwellings will only be considered in exceptional circumstances and subject to the criteria set out in Objective 1 of policy H23. Based on the lack of information submitted, the proposed development does not comply with the criteria for housing in this area and no details of exceptional circumstances have been provided. The proposed development would therefore materially contravene the zoning objective of the area and would be contrary to the proper planning and sustainable development of the area.*

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.*

4. *The proposed site is located in an area zoned Objective DM-HA in the South Dublin County Council Development Plan 2016 -2022 which seeks 'To protect and enhance the outstanding natural character of the Dublin Mountains Area.' It is considered that the site of the proposed development is situated in an area under strong urban influence and therefore, pursuant to the National Policies contained within Project Ireland 2040 National Planning Framework, the Core Strategy and Rural Settlement Strategy outlined in the South Dublin County Council Development Plan, the proposed development would by itself and cumulatively, constitute the proliferation of urban generated housing in a rural area and hinder the achievement of the policies and objective of the National Planning Framework to consolidate existing urban settlements and contribute to compact growth within the Dublin Region. It is therefore considered that the proposed development would be contrary to the provisions of the South Dublin County Council Development Plan 2016 -2022 and would contravene the zoning objective for the area and, as such would be contrary to the proper planning and sustainable development of the area.*

5. *The red line of the site does not include the N81, at a location that is identified in the County Development Plan maps and Table 6.6 of the Written Statement as a medium-to-long term road objective. The function of the objective is the 'improvement of the National Road network between Tallaght and Blessington, Co. Wicklow'. The description of works for this road objective is as follows:*

Upgrade of the existing route including the extension of the dual carriage way from Jobstown to the Embankment and an upgrade from the Embankment to the County border at Lisheen, to a safe, modern, single lane, carriageway with associated works for public transport.

The proposed development, if granted, would be contrary to a strategic objective of the County Development Plan where development proposals are required to take account of the anticipated upgrade of the route to a 'safe, modern, single lane, carriageway' and would be contrary to the proper planning and sustainable development of the area.

6. A layout clearly demonstrating the parking arrangement for 3 number on curtilage car parking spaces and bicycle parking, alongside a swept path analysis showing how parked vehicles can access and egress the site safely has not been submitted and the omission of this detail could 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’.

4. Referral Request

By letter dated 23 June 2022, Mr Fahy sought a formal determination from the Planning Authority as regards a proposal at Blue Gardenia, McDonagh’s Lane, Brittas, Co. Dublin which was described as:

‘Partial conversion of existing derelict public lounge to contain 2 no. apartments – 1 no. one bed and 1 no. two bed’.

This referral submission was accompanied by a number of documents and drawings, one of which comprised a personal testimonial by the referrer to South Dublin County Council which stated that²:

‘I Edward Fahy confirm that I am the owner of the above premises since August 2017, at which time the premises had been vacant for eight years. I reopened the bar on the premises in August 2018 and closed it again in March 2020 and sold its licence’.

The drawings which were included with this submission included drg. no. 18/1359/24 which, entitled ‘Proposed Floor Plans’, showed the internal layout of the dwellings which form part of this referral. A reduced-size extract from this particular illustration is reproduced overleaf, for ease of reference.

In this regard, the applicant’s response to question no. 7 of the referral form (‘List of plans, drawings etc submitted with this application’) identified the documents which formed part of this submission:

‘Site location map. Block plan, existing plans, existing elevations, proposed plans, proposed elevations, typical sections, letter from applicant’.

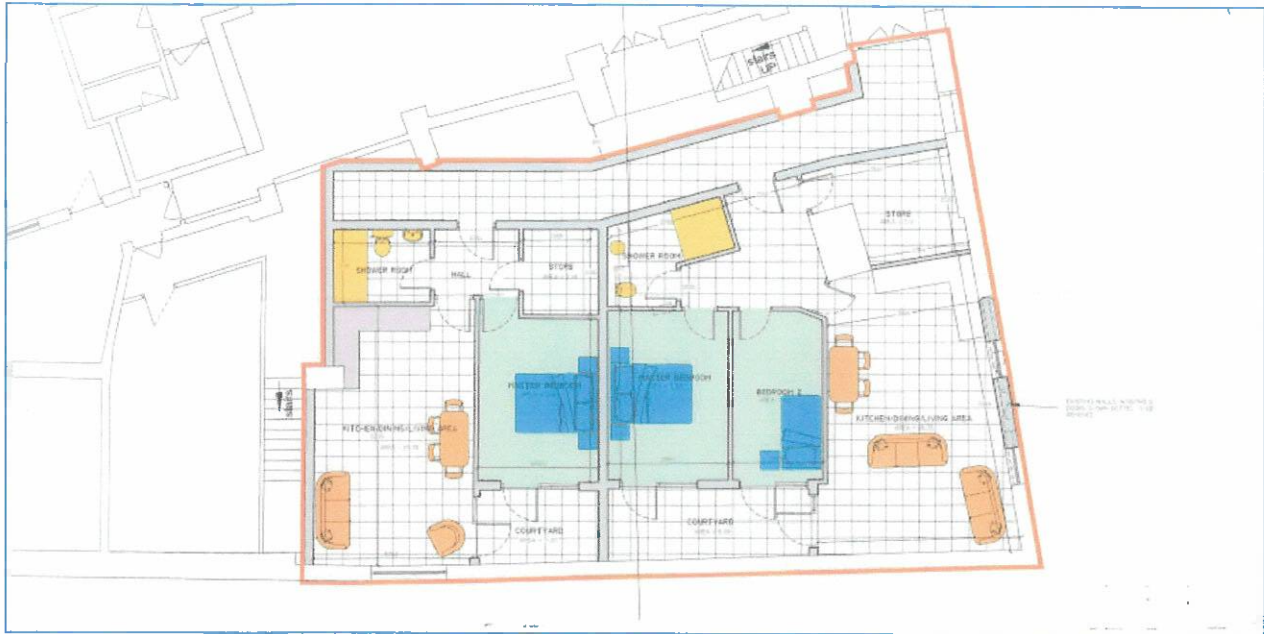
5. Planning Law

The Planning and Development Act (Exempted Development) Regulations 2022 prescribe in art. 3:

‘where in respect of a proposed development referred to in paragraph (b)—

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

² This building has not been used for public house purposes for over two years.



Drawing 1: The proposed internal layout of the two apartments.

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).

The development is commenced and completed during the relevant period. Subject to subparagraph (iii), any related works, including works as may be required to comply with subparagraph (vii), shall primarily affect the interior of the structure, retain 50 per cent or more of the existing external fabric of the building, and 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.

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. 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. Rooms for use, or intended for use, as habitable rooms shall have adequate natural lighting.

No development shall relate to matters in respect of which any of the restrictions set out in subparagraph (iv), (vii), (viiA), (viiB), (viiC), (viii) or (ix) of article 9(1)(a), or paragraph (c) or (d) of article (9)(1), would apply.

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'..



Photographs 3 & 4: The Blue Gardenia Public House in 2009 (source: Google Streetview).



6. Council Decision

South Dublin County Council, under its document which is entitled Record of Executive Business and Chief Executive's Order number PR/0941/22 and which is dated 25 July 2022, determined as follows:

'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 & 1 No. two bed at Blue Gardenia, McDonaghs 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'.

7. Referral Submission

(i) Introduction

It is common case between the parties in the present case that the conversion of a public house to residential accommodation falls squarely within the scope of the Planning and Development Act (Exempted Development) Regulations 2022, as summarised above; indeed, South Dublin County Council also accepts that part of the former Blue Gardenia public house can be used for such purposes under the requirements for exempted development status. The Report of the Planning Officer states:

'The Declaration seeks exemption for the change of use of an existing public house to residential, including associated works to facilitate the change of use...SI No. 75/2022 exempts development which consists of a change of use to residential use from a number of classes, one of which is Class 12 (Public House) ...'

The Council's assessment of this referral, as set out in its Record of Executive Business and Chief Executive's Order number PR/0941/22 and which is dated 25 July 2022, considers the various clauses and stipulations in the Planning and Development Act (Exempted Development) Regulations, 2022.

For example, the Planning Authority is satisfied with the age of the structure (*'it is clear that the structure has been in situ since at least 1997'*), with the lawful use of the property as a public house (*'The applicant has stated in their covering letter that the premises was in operation as a bar between August 2018 and March 2020'*), that the external works are acceptable (*'...external alterations are proposed...These works would be consistent with the character of the remaining structure and the proposal would comply with this issue'*) and that over half the existing structure on the land would be kept (*'The area for which exemption is sought relates to less than 50 per cent of the...main building'*).

We ask the Board to acknowledge, as a preliminary proposition, that the Report of the Planning Officer candidly accepts that this proposal would comply with most of the criteria for treatment as exempted development. The bases on which the Council deemed that this proposal requires permission fall into two categories, viz. those areas in which further information could have been sought³ and those grounds where the Council claims that the development breaches Planning and Development Act (Exempted Development) Regulations 2022. We deal with these items under the following headings.

(ii) Areas Where Further Information is Required

(a) Ecological Considerations

The Report of the Planning Officer identifies the grounds for this objection in the following manner⁴:

'(viiB) comprise development in relation to which a planning authority of An Bord Pleanála is the competent authority in relation to an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site. The site is located proximate to the Slade of Saggart and Crooksling pNHA. While this is not a designated site where appropriate assessment is required, the intention is to designate this site in future...'

The term 'European Site' is defined in s.177R of Part XB of the Planning and Development Act, 2000 (as amended) as follows (as substituted by the Planning and Development (Amendment) Act 2010):

³ Unfortunately, the County Council did not actually provide the referrer with an opportunity to address these issues.

⁴ This concern relates to article 9 (viiB) of the Planning and development Regulations, 2001 (as amended) which is reproduced as follows *'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'*.

'European site' means—

- (a) a candidate site of Community importance,*
- (b) a site of Community importance,*
- (c) a special area of conservation,*
- (d) a candidate special protection area,*
- (e) a special protection area';*

Based on the candid confession in the above extract from the Report of the Planning Officer, the Planning Authority clearly accepts that the Slade of Saggart and Crooksling pNHA does not fall into this particular category and we respectfully submit that the exclusionary provisions set out in art. 9 of the Planning and Development Regulations, 2001 (as amended), simply do not apply to this referral.

We are unaware of any legal principle, in the general body of law or in the planning code itself, which would warrant applying art. 9(viiB) to this proposal, because of a possible future planning designation⁵. Indeed, any final decision on whether to classify any particular site as an SAC or an SPA does not actually lie within the purview of South Dublin County Council but instead the Minister.

(b) Wastewater Treatment

Article 10(6)(vii) of the Planning and Development Regulations, 2001 as amended by article 3 of S.I. No. 75/2022 Planning and Development Act (Exempted Development) Regulations 2022 states that:

'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'.

We submit that the approach, whereby this proposal would be deemed as requiring consent on the basis of the inadequacy of the sewage information submitted as part of the referral, is legally incorrect.

Although the Report of the Planning Officer states *'information regarding wastewater treatment has not been provided and could be ascertained by additional information'*, art. 10(6)(vii) does not direct the Local Authority to consider the adequacy of the sewage treatment arrangements, or the sufficiency of the foul effluent system and we consider that the County Council has misapplied this stipulation.

Instead, this regulatory clause simply bans works, as exempted development, which would involve the physical provision of an *'an onsite wastewater treatment and disposal system'* and, as the proposal to which this referral relates does not include operations of this nature, it was not lawfully open to the Planning Authority to have concluded that this project requires planning permission on this ground.

(c) Timing of Works

In relation to the Council's concern as regards the timing of the proposed works (*'The relevant period is from 8 February 2018 to 31 December 2025. The applicant has not stated if the works have already commenced, or when they would be undertaken'*), we confirm that it is the referrer intends to undertake 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 31 December 2025.

⁵ The provisions in the Planning and Development Regulations, 2001 (as amended) which de-exempts development on the basis of a future designation comprise a draft view or prospect of special amenity value, protection of draft places of conservation and retention of preserved uses in art, 9(1)(a)(vi),(vii), (ix) and(xii) therein.

(iii) Areas Where the Proposal is Noncompliant

(a) Road Safety

The Report of the Planning Officer correctly observes how article 9(1)(a) (iii) of the Planning and Development Regulations, 2001 de-exempts proposals which do not need consent where they would:

'endanger public safety by reason of traffic hazard or obstruction of road users',

The Council believes that this entails a qualitative assessment of *'the likely impact on traffic and road users'* and, as such an analysis has not been submitted, this proposal does not comprise exempted development. This view, in our respectful submission, does not accord with established case law.

In this regard, we draw attention to the ruling in *Cunningham-v-An Bord Pleanala*, and we observed how the case facts in that judgment are somewhat relevant to the present referral, to the degree that this earlier proposal involved a landowner who had erected an agricultural building on his landholding. The Board (consistent with Sligo County Council's previous refusal of permission on safety grounds), held that this particular feature fell outside the exempted development parameters on the basis that:

'While the development would generally come within the scope of Class 9 of Part III of the Regulations. Access to the development is via a gateway onto the N59, a national secondary road, in a location where the 100 km/h speed limit applies. Sightlines at the junction of the access and public road was severely restricted in both directions.

Accordingly, the restriction on exempted works under Article 9(1)(iii) of the Planning and Development Regulations 2001 applies...'

However, the High Court subsequently overturned the Order which had been issued by An Bord Pleanala and we reproduce an extract from this judgement for consideration in this referral request⁶:

'Here, it is important to stress that the Board's decision was simply based on its conclusion that the access point to the development lies on a national secondary road and that this currently presented a traffic hazard...

In this respect, therefore, the Board's assessment and conclusions ... cannot be faulted. Yet the actual result arrived at by the Board regarding the disapplication of the exemption does not directly follow in law from this particular premise....

...the Board's decision really proceeds on the basis that the access point simply presented a traffic hazard. That, however, is in itself insufficient to justify the disapplication of the exemption, since Article 9(1)(iii) requires that not simply the Board identify the presence of a traffic hazard, but rather than the "carrying out of such development would...endanger public safety by reason of traffic hazard"'. This latter test represents an altogether different test from that actually posed by the Board.

It is clear therefore that the Board asked itself the wrong question and applied the wrong test so far as the application of Article 9(1)(iii) is concerned and this fact alone is fatal to the validity of the decision...'. (Emphasis added).

At no point, at no stage and at no time does South Dublin County 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 traffic hazard or obstruction of road users'*. No part of this development would, for example, be located in close proximity to the site access and drivers, cyclists and pedestrians would be unaffected by this proposal.

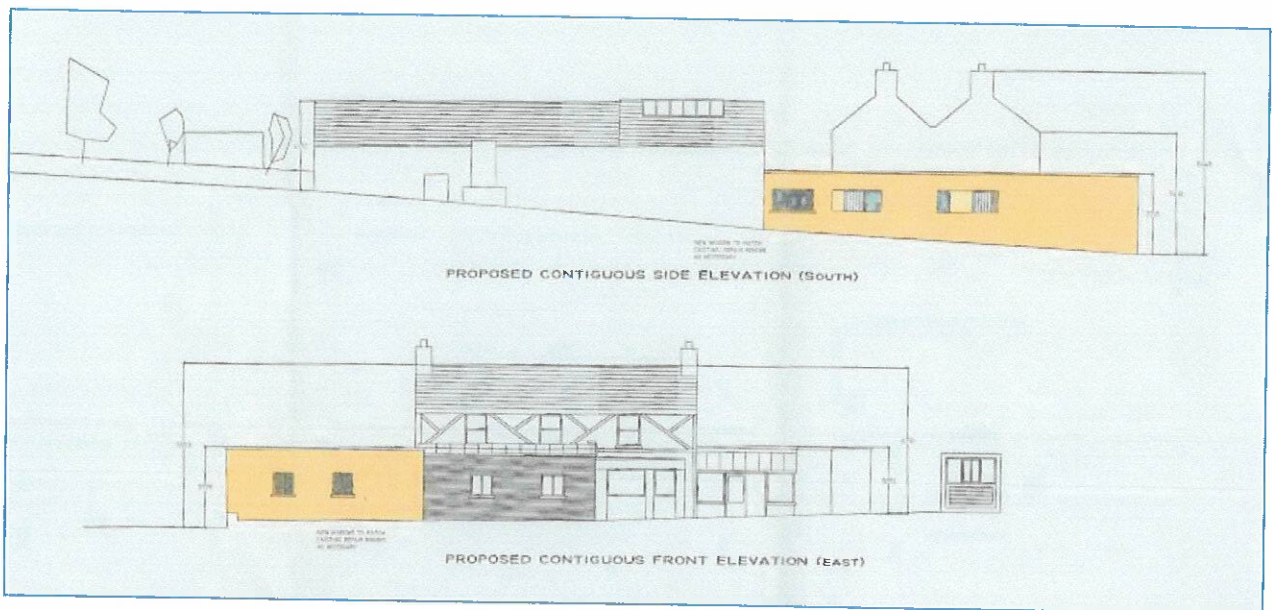
⁶ We invite the Board, however, to peruse the complete judgement in this case.

(b) Adequate Natural Lighting

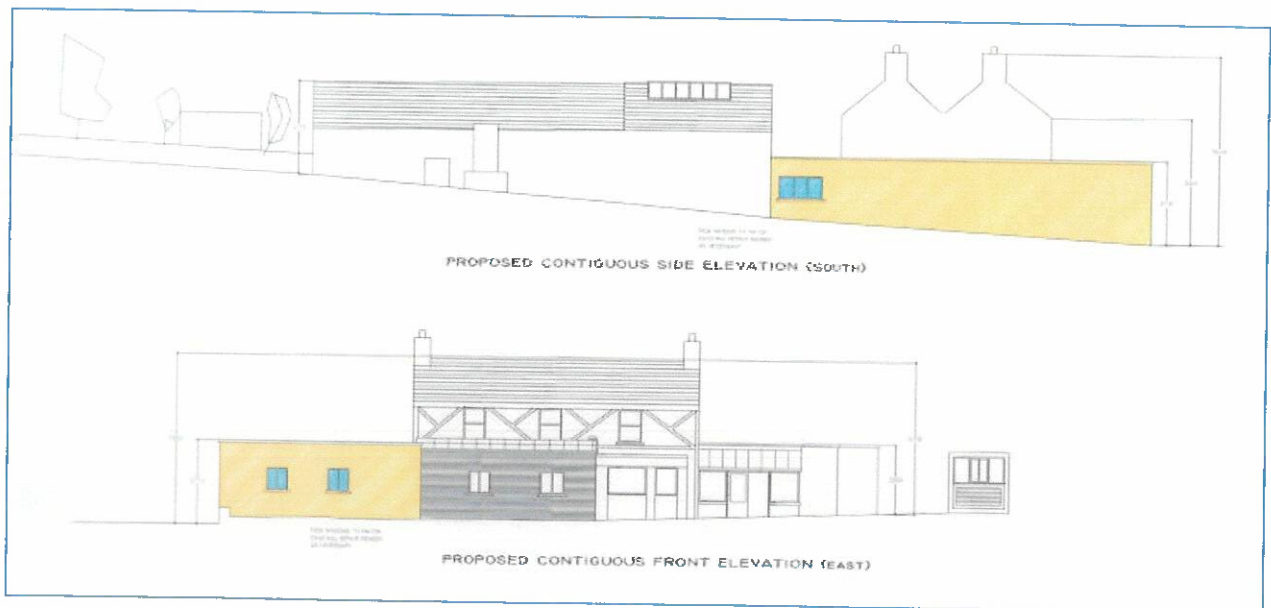
The Report of the Planning Officer opposes the designation of this proposal as exempted development on the basis that it offends the requirement that 'Rooms for use, or intended as habitable tooms, shall have adequate natural lighting'. This internal County Council analysis continues to opine as follows:

'All 3 bedrooms proposed would be served by windows and doors overlooking the enclosed courtyard and amenity areas. These spaces would be bound by a 3m high wall within close proximity to the windows.... this would result in significant impacts to natural lighting...'

We observe firstly, how the proposed referral drawings are identical to the plans which accompanied application ref. SD21A/0061 and we note, somewhat critically, that no part of the eight reasons for refusal in that case opposed the provision of residential accommodation in this building on the basis of light penetration or the standard of internal accommodation to be provided. The absence of any reservations to such effect when this earlier decision was being reached should provide a stringboard for any consideration of the Council's new-found concern relating to the standard of accommodation.



Drawing 2(a) and (b): Elevation drawings which formed part of reg. SD21A/0061 (above) and the present referral plans.



In this regard, no part of the Report of the Planning Officer explains, with reference to any planning standard, such as the provisions of the *County Development Plan 2016* or any design norms, in terms of the Building Regulations 2022, how this proposal would fall short of architectural expectations. It is our view that bedrooms are used at night-time, when the need for daylight to undertake domestic / residential tasks would have ceased and that the proposed development should not be de-exempted and otherwise made subject to the rigours of the statutory development control system on this ground⁷. Given such bedroom usage characteristics, the light available to future residents would be acceptable.

(c) Floorspace

We respectfully submit that the Council has erred in its interpretation of article 6(d)(vi) Planning and Development Act (Exempted Development) Regulations 2022 when stating that this proposal requires permission on the basis that it breaches the requirement that '*no individual storage room should exceed 3.5 sqm*'. This regulatory provision makes no reference, in itself, to any maximum storage area but simply seeks to ensure compliance with the minimum storage requirements in government policy:

'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'.

Article 6(d)(vi) of the Regulations of 2022 merely aims to ensure that an internal storage area is provided for new units in line with the basic level of amenity which is set out in *Sustainable Urban Housing* and no part of its text otherwise stipulates that all of the requirements of this policy document must be satisfied for a development to be exempt from the need to obtain consent, as the Planning Authority currently suggests. Indeed, it was plainly open to the Minister, when adopting the Regulations of 2022, to have required proposals to comply with all aspects of *Sustainable Urban Housing* in order to qualify for exemption status and the fact that he expressly and explicitly refrained from doing so is indicative as to the manner in which An Bord Pleanála should approach this issue.

The Council's second concern under this heading relates, not to the standard of bedroom amenity which the proposed units would provide, but rather to the position of an interior partition within the 2-bedroom apartment (we note how the Report of the Planning Officer endorses the one-bedroom dwelling, concluding that '*The 1-bedroom unit meets the minimum aggregate bedroom floor area...*').

The difficulty which arises in this case relates to the size of the larger bedroom within the two-bedroom dwelling, which covers an area of 11.52 sq. metres, which is 1.48 sq. metres smaller than required in *Sustainable Urban Housing*. In this particular regard, the Report of the Planning Officer explains that whilst these two bedrooms '*individually meet the minimum aggregate floor areas for single and double bedrooms, they do not meet the minimum aggregate floor areas ... for 2-bedroom ... apartments requires...13 sq.m (double) and 7.1 sq.m (single)...*'. Importantly, this is not a case where the size of the apartment is so small that it would result in a cramped form of internal accommodation, but simply where a partition within the dwelling needs to be shifted ever-so-slightly.

We enclose herewith a modified drawing which shows firstly, the swapping of the internal storage space and the bathroom accommodation within this dwelling, so as to satisfy the Planning Authority's maximum floorspace requirement and secondly, which incorporates a slight shifting of the internal partition for the larger bedroom, so that it complies with the minimum space standard of 13 sq. metres.

⁷ We further observe that the Planning Authority has cited no norms or referred to any daylighting standards which would be breached in any material manner, so as to warranting concluding that this proposal does not constitute exempted development.

8. Concluding Comment

The new exempted development arrangements are primarily aimed at facilitating the productive re-use of qualifying vacant commercial buildings as homes, while also facilitating urban renewal and the bringing on stream of increased housing supply. It is somewhat axiomatic that great effort must be made in order to secure the objectives which are envisaged by the legislature in this particular regard.

We close by reproducing an extract from DoHLGH *Circular Letter PL02/2022*, of 24 February 2022:

'The exempted development arrangements outlined in this Circular letter are part of a comprehensive package of measures being progressed by the Government to promote urban regeneration and address dereliction and vacancy with a complementary objective of increasing housing supply...there is significant potential to increase the number of housing units generated under the measure in the period to 2025'.



Farry Town Planning Ltd.