

An Bord Pleanala,  
64 Marlborough Street,  
Dublin 1,  
D01 V902

<b>AN BORD PLEANÁLA</b>	
LDG-	_____
ABP-	_____
<b>14 NOV 2023</b>	
Fee: €	_____ Type: _____
Time: _____	By: <u>REGPOST</u>

4 Woodhaven Drive,  
Woodhaven,  
Kilrush Road,  
Ennis, Co. Clare.  
V95 YFX3.  
13<sup>th</sup> November 2023.

**Re: Case Number: ABP-318275-23**  
**Clare County Council Reference Number: R23-76**

**Re: Whether the partial / incidental use of a room within my dwelling house on the ground floor for part time art school incidental to the enjoyment of dwelling house and as such does not come within the scope of Section 4 (1) (j) of the PDA 2000 as amended and the character of my residence has not altered from the intensification of the use is development, and if so it exempted development ?. Q2. Whether the current warning letter dated 24<sup>th</sup> February 2023 is a completely new issue that should not be linked to file UD17-056 ?.**

A Chara,

I refer to your letter dated 20<sup>th</sup> October last inviting me to make a submission or observation in writing to the Board in relation to the above referral. While I am grateful to the Board for giving me an opportunity to comment on Clare County Council submission, I feel disappointed that the Council failed to review my submission in line with the Planning and Development Act, 2000, as amended.

The documents submitted to me are substantially my submission to Clare County Council as regards seeking clarification / a decision as regarding above. The Council decided to review the referral purely on the grounds that Clare County Council have opened a file as regards an existing unauthorised development on the property.

I previously pointed out to Clare County Council that:

“It is also clear that the provisions of section 5 are not intended for the purpose of determining allegations or otherwise of Unauthorised Development or if enforcement proceedings should or should not be taken. Such provisions are to be considered under Part VIII of the Act- Enforcement. In this regard the matter of enforcement falls wholly under the jurisdiction of the Local Authority and offences may be trialled in the Courts if deemed necessary. Resulting from undue pressure being put on officials of Clare County Council from a complainant who wishes to remain anonymous but who’s identity is clearly identified on the file I am being continually threatened with Court action while progressing with procedure under the law”.

The Bord have previously re-iterated this on a number of rereviews of referrals under Section 5.

The reply to my referral is based on a report from the reporting officer dated 21<sup>st</sup> February 2023 on an inspection carried out on the 13<sup>th</sup> February 2023. The Officer is relying on the UD17-056 file to support their enforcement notice. Surely the current section 5 declaration should be reviewed based on the information and a site visit current at the time of the lodging of my referral dated 26<sup>th</sup> September 2023. For example while I accept the traffic situation was an issue in February 2023 alternative arrangement have been made to eliminate the issues highlighted. The Planning Office encouraged me to lodge a referral and at the same time ignored its contents.

I feel the current situation is unreasonable as regards the review of my submission and I am now left with a review of my own submission. The planning authority review involved no evaluation or consideration of my submission or the proper planning and sustainable development of the area.

In reality Clare County Council are requesting the Board to carry out their role without regard to natural justice allowing me to submit a reply to their concerns. "I have been literally asked to correct my own homework". This Section 5 referral has been submitted by a person who is not the owner of the site and has not carried out the any development nor do they propose development at the site. In this regard, they have submitted very little information to the file to facilitate the Board or the applicant in carrying out any assessment.

With respect I feel the Board should consider the return of this referral to Clare County Council and ask for a review, and then allow me the opportunity to accept or appeal the outcome to the Board. Alternatively the Board may wish to consider if this referral should be dismissed under section 138 (b) of the Act having regard to the nature of the referral, reply by the Council and the questions asked within.

**However:**

If the Board feel they are in a position to review I wish to submit the following:

**Background:**

By letter dated the 24<sup>th</sup> February 2023 Clare County Council issued a Warning Letter, pursuant to the provisions of Section 152(1) of the Planning and Development Act, 2000, as amended, is hereby issued to Carmel Doherty, the owner of the lands.

The issue associated with this letter was: The intensification of the use of part of the existing dwelling house as an art school without the benefit of planning permission, on lands at 4 Woodhaven Drive, Kilrush Road, Ennis, Co. Clare.

**Site Location and Description.**

The site relates to a detached Dormer dwelling fronting a cul-de sac within the Housing Development of Woodhaven Drive, Kilrush Road, Ennis, Co. Clare. It is one of 6 similar detached dwellings contained with cul-de-sac of 13 dwelling which in turn is within the 130 housing development forming part of a larger residential development Woodhaven Estate.

The cul-de sac road has on and off street parking. The houses also has off-street car-parking. The estate has commercial units to the south of the dwelling with associate parking and over flow parking for the estate.

The subject premises comprises a principal dormer dwelling with a front and side door entry point.

The referral relates to the front room accessed from the hall of the dwelling house and a side entry to the room. There was no indication of commercial activity from the external appearance of the dwelling.

### **The Question**

Whether the change of use of part of the residential dwelling house to use by the owner of the house for part-time art classes by appointment only is or is not development and is or is not exempted development:

We refer you to An Bord Pleanala Decisions as regards:

### **ABP 302542**

The Board decided that the use of part of a dwelling house (58.5sq.m. of 207 sqm ground floor) as a solicitors' office at Beachside, Kincasslagh, County Donegal is development and is not exempted development. The Board had regard to *inter alia* the scale, nature and layout of the solicitors' office use, the description of the use carried on therein, including receptionist function (10am-1pm Monday to Friday), the availability of access to the premises by visiting members of the public, and the presence of free-standing signage at the property advertising a solicitors' practice, as observed by the Inspector during his site visit and concluded that

- the use of part of the house as a solicitors' office does not constitute use as a house as defined at Section 2(1) of the Planning and Development Act, 2000, as amended, and therefore such use is a change of use
- the change of use from use as part of a house to use as a solicitors' office, raises issues which are material in relation to the proper planning and sustainable development of the area and this change of use constitutes a material change of use having regard to the considerations outlined above and is therefore development;
- the development does not come within the scope of Section 4(1)(j) of the Planning and Development Act, 2000, as amended, as the use as a solicitors' office in this instance is not considered incidental to the enjoyment of the house
- the development would correspond to use as an office as defined in Class 2(b) of Part 4 of the Second Schedule to the Planning and Development Regulations, 2001, as amended, and

- there are no other provisions in the Act or Regulations whereby such development would be exempted in this instance

## **ABP 302542**

B.P. 311946-21 Limerick City and County Council EC60/21,

Whether the change of use of part of the residential dwelling house to use as a part-time beautician by appointment only is or is not development and is or is not exempted development. 6 Coolraine Heights, Old Cratloe Road, Limerick. Limerick City and County Council.

### **Submission:**

The test as to whether there is a material change of use of the land and, if so, is such use 'incidental' to the enjoyment of the dwelling house, is, a matter of judgment on the nature, scale and degree of the home business and to extent that the character of the residential is altered. The phrase "incidental to" is not simply a question of the whether the use is not dominant, but whether at all times the house remains used as a residence, not as anything else.

The Art classes operates from a room accessed solely from within the dwelling – it has a front and side entrance with no external manifestation of a business and the dwelling house thereby retains its residential character in the streetscape setting.

The room in which the Art School operates has no structural alterations, machinery or elaborate/intensive water or electrical based equipment and relies on limited portable furniture that could be used as part of the residential occupancy and would not unduly inhibit the continued use of the room as part of the residence.

The Art School relates to a very small area of a detached dwelling, is restricted to 5 days with two hour sessions after School hours Monday to Friday, Saturday 9.00 a.m. to 6.00 p.m. and Wednesday Morning two hours for senior ladies. I am the only one operating this Art School within the dwelling house, no external staff are involved.

The dwelling house has off-street parking and additional parking in the commercial development within the estate within walking distance so the visiting students are unlikely to have any discernible impact on traffic or parking to the extent that it would alter the residential character of the area.

The student attendance are managed and staggered and the business can be described as an intermittent and part-time use over a limited time frame. Furthermore, notwithstanding the Art School use, the room remains as an ancillary space for residential use and for the owners own craft and art work. Accordingly, while the business element constitutes a change of use within the dwelling house, I do not consider it to be material. I say this having regard to the nature, scale and degree of the home business as summarised in the above points and consider that the overall character of the house remains as residential.

Appropriate Assessment: Under Section 177U(9) of the Planning and Development Act, 2000 (as amended) it is stated that "in deciding upon a declaration or a referral under section 5 of this Act a planning authority or the Board, as the case may be, shall where appropriate, conduct a screening for appropriate assessment in accordance with the provisions of this section." no Appropriate Assessment issues arise. It is not considered that the development would be likely to have a significant effect individually or in combination with other plans or projects on a European site. Accordingly there are no restrictions in this regard.

#### **CONCLUSION:**

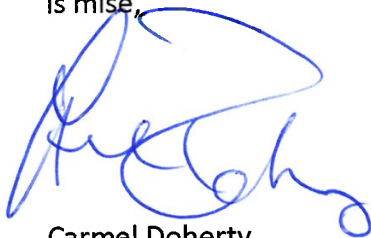
It is my submission that part of the house for limited and appointment-based art classes is incidental to the use of the property as a house as defined at Section 2(1) of the Planning and Development Act 2000, as amended, and, therefore, does not constitute a material change of use.

The change of a room in the house for intermittent and limited art classes does not raise issues which are material in relation to the proper planning and sustainable development of the area and this additional use does not constitute a material change of use having regard to the considerations outlined, therefore, not development.

The development does come within the scope of Section 4(1)(j) of the Planning and Development Act, 2000, as amended, as the use is incidental to the enjoyment of the house,

- (a) Section 2(1), 3(1), and 4 (1)(j) of the Planning and Development Act 2000, amended.
- (b) Part 4 of the Second Schedule to the Planning and Development Regulations 2001, as amended,
- (c) The pattern of development in the area,
- (d) The scale, nature and layout of the house and integrated room used for the intermittent and limited provision of art lessons, the nature of the use carried on therein, including the sole operation by a single resident, the absence of machinery or nuisance, and the restricted and controlled access to the premises by visiting students,
- (e) The absence of signage at the property and the external works.

Is mise,



Carmel Doherty.