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Secretary
An Bord Pleanála
64 Marlborough Street,
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14th November 2023

3rd party submission on s.5 referral ABP-318275-23

Submission on behalf of
Lorraine Haugh
5 Woodhaven Drive,
Kilrush Road,
Ennis,
Co. Clare.

Agent: Michael Duffy address as above.

This matter of the commercial use of a residential dwelling in a quiet settled estate has been ongoing since February 2017 when my client made an unauthorised development complaint to Clare County Council the relevant Planning Authority which has statutory duties to enforce breaches of planning permission.

This matter is ongoing since February 2017 but in any event by ignoring its July 2023 decision of intensification and encouraging the developer to enter the s.5 process the PA is neglecting its defined duty.

(7) Where a planning authority establishes, following an investigation under this section that unauthorised development (other than development that is of a trivial or minor nature) has been or is being carried out and the person who has carried out or is carrying out the development has not proceeded to remedy the position, then the authority shall issue an enforcement notice under section 154 or make an application pursuant to section 160, or shall both issue such a notice and make such an application, unless there are compelling reasons for not doing so.

This PA has already decided that unauthorised development in the form of an intensification of use has occurred and it therefore has a statutory duty to issue an Enforcement Notice or initiate s.160 proceedings or both.

(8) Nothing in this section shall operate to prevent or shall be construed as preventing a planning authority, in relation to an unauthorised development which has been or is being carried out, from both issuing an enforcement notice under section 154 and making an application pursuant to section 160.

The PA failed to consider s.5 declarations already made prior to referring this matter to the Board. There is an implied requirement for it to do so by extension of s.5(7) which states;

5. (7) A planning authority, before making a declaration under this section, shall consider the record forwarded to it in accordance with subsection (6)(c).

The Board needs to consider its jurisdiction to consider this referral in circumstances where the PA has already made a s. 153 decision following its investigation. Given that PA decision on intensification my client is seeking legal advice on proceedings to force the PA to do its statutory duty and/or taking s.160 proceedings.

This request for a s.5 declaration is an abomination in the context of this UD file and should not be troubling the Board who have much more pressing matters on its plate. It is disgraceful that this Planning Authority would firstly encourage the Developer to make a s.5 request in these circumstances where it should simply carry out its statutory duty. The legislation states;

5. (1) If any question arises as to what, in any particular case, is or is not development or is or is not exempted development within the meaning of this Act, any person may, on payment of the prescribed fee, request in writing from the relevant planning authority a declaration on that question, and that person shall provide to the planning authority any information necessary to enable the authority to make its decision on the matter.

In the first instance, irrespective of the status of unauthorised development vis s. 154 (4) which has not been properly determined, on the 3rd July 2023 this PA made a decision following its investigation (Copy enclosed) that this development is an unauthorised intensification of use since 2018 and requires regularisation. Therefore there is nothing for the Board to declare. On making its decision the PA's next duty is to considering the issuing of an Enforcement Notice. If the developer has an issue with the decision of the PA on the 3rd July 2023 its remedy is Judicial Review and not a s.5 request.

153.—(1) **As soon as may be after the issue of a warning letter** under section 152, the planning authority **shall make such investigation as it considers necessary** to enable it **to make a decision** on whether to issue an enforcement notice or make an application under section 160.

(2) (a) It shall be the duty of the planning authority to ensure **that decisions on whether to issue an enforcement notice are taken as expeditiously as possible.**

(b) Without prejudice to the generality of paragraph (a), it shall be the objective of the planning authority to ensure that the decision on whether to issue an enforcement notice shall be taken within 12 weeks of the issue of a warning letter.

Michael J Duffy Chartered Civil Engineer

In the event that the Bord decides to proceed with this referral my client wishes to be provided with a copy of the request and a right to reply to its contents.

Finally, in order to make the important points in this document which are not technically observations per se but factual matters pertaining to the jurisdiction of the referral which we feel the Board should have full details of prior to embarking on this process an on-line observation was the only route available to my client who must pay a €50 fee. This is unreasonable given the circumstances and I ask the Board to take this into consideration as it is most likely that in a normal s.5 application my client would be requested to make a submission/observation free of charges.

Yours Sincerely,


Michael Duffy

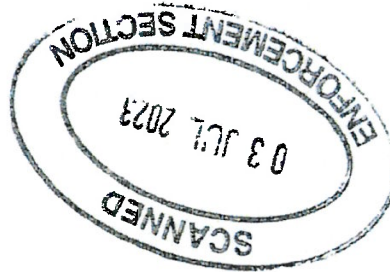
Agent for Lorraine Haugh.

Appendix A – Correspondence PA to developer dated 3rd July 2023.



COMHAIRLE | CLARE
CONTAE AN CHLÁIR | COUNTY COUNCIL

Carmel Doherty
4 Woodhaven Drive
Kilrush Road
Ennis
Co. Clare
V95YFX3



Date: 3rd July 2023

Our Ref: UD17-056

RE: Lands at 4 Woodhaven Drive, Kilrush Road, Ennis, Co. Clare

A Chara,

I wish to acknowledge receipt of your correspondence received on the 20th of June 2023. To date the Planning Authority is yet to receive any supporting and qualifying documentation to regularise the situation.

Please be advised that the Planning Authority has established, with qualifying evidence, that there has been and remains a breach of intensification since 2018.

On the 22nd of November 2018 you emailed the Planning Authority and in this correspondence, you stated *"I teach art twice a week on Wednesday and Saturday in my house, these sessions are two hours long and the parents pick up and drop off their children outside my house"*

Upon review of your website, Ennis Art School, you currently advertise eight art classes/sessions on offer Tuesday to Friday, noting there are three classes/sessions on Saturday alone. This is not accounting for the easter and summer camps you have also advertised for. This therefore clearly demonstrates the intensification of the site since 2018 to which the Planning Authority refers to.

Having regard to the foregoing, the situation remains in need of regularisation by means of the submission of a retention planning application or the cessation of the use of the site.

You are required to advise the Planning Authority within 1 week of the date of this letter how you intend to regularise the situation on site.

An Roinn Pleanála
An Stiúthóireacht Forbairt Gheilleagrach
Áras Contae an Chláir, Bóthar Nua, Inis. Co. an Chláir, V95 DXP2

Planning Department
Economic Development Directorate
Áras Contae an Chláir, New Road, Ennis, Co. Clare, V95 DXP2



Please be reminded that failure to respond may result in further enforcement proceedings being initiated by the Planning Authority.

Mise le meas,



Kieran O'Donnell
Administrative Officer
Planning Department

