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Sent: Thursday 13 June 2024 10:46
To: Appeals2
Cc: Suzanne McClure
Subject: Case Ref. ABP-319436-24 - Submission
Attachments: 319436-24 - Submission - MF.pdf; 319436-24 - Response Report - BMC.pdf

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Dear Sir / Madam,

We, Brock McClure Planning & Development Consultants, 63 York Road, Dun Laoghaire, Co. Dublin, have been instructed by our client, Ambpay Limited, The Paramount Hotel, 27-30 Parliament Street, Dublin 2, to submit this Response to a Referral made by third party, Armstrong Planning on behalf of Old City Management Limited registered under DCC Reg. EXPP 0050/24 / ABP Reg. 319436-24 under the provision of Section 5 (2) (a) of the *Planning & Development Act, 2000 (as amended)*.

The attached response report prepared by Brock McClure Planning & Development Consultants in conjunction with the owner, Ambpay Limited, and accompanying Submission document prepared by Michael Furminger, Planning and Environmental Law Barrister responds to the Referral made by third party, Armstrong Planning on behalf of Old City Management in relation to the Declaration on Development and Exempted Development issued by the Planning Authority of Dublin City Council on the question of:

“Whether the change of use at the Parliament Hotel from use as a ‘hotel’ to use as a ‘hostel (non- tourist)’ where care or short-term homeless accommodation is provided’ is development, and whether it is exempted development.”

As per An Bord Pleanála’s correspondence letter issued on the 22nd May 2024 (appended to the attached Response Report by Brock McClure Consultants), this response is submitted within a period of 4 weeks by 18th June 2024. The correspondence confirms that this response can be submitted via email to appeals@pleanala.ie.

We ask that all correspondence regarding this case is forwarded to our offices at 63 York Road, Dun Laoghaire, Co. Dublin.

Please confirm receipt of email by return.

Kind Regards,

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**Brock
McClure**
PLANNING, DEVELOPMENT CONSULTANTS



Section 5 Referral Response

Ref. EXPP 0050/24

ABP 319436-24

**Lands at
Paramount Hotel,
Dublin 2**

On behalf of

Ampbay Limited

June 2024



63 York Road,
Dún Laoghaire
Co. Dublin
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1 Introduction

We, Brock McClure Planning and Development Consultants, 63 York Road, Dún Laoghaire, Co. Dublin have been instructed by our client, **Ampbay Limited, The Paramount Hotel, 27-30 Parliament Street, Dublin 2**, owner of The Paramount Hotel, No. 7-10 Exchange Street Upper, No. 27-30 Parliament Street, Dublin 2 to lodge this submission Response to a Referral made by third party, Armstrong Planning on behalf of Old City Management Limited registered under DCC Ref. EXPP 0050/24 / ABP Ref. 319436-24 under the provision of Section 5 (2) (a) of the *Planning & Development Act, 2000 (as amended)*.

An Bord Pleanála issued correspondence to our client on 22nd May 2024, inviting a submission or observation as a party to the appeal under Section 129 of the *Planning and Development Act, 2000, (as amended)* within a period of 4 weeks by 18th June 2024. This response is submitted within this statutory timeframe.

1.1 The Question

Old City Management Limited have issued a request to the Planning Authority of Dublin City Council under Section 5 of the Planning and Development Act, 2000 (as amended) on the question of:

“Whether the change of use at the Parliament Hotel from use as a ‘hotel’ to use as a ‘hostel (non-tourist) where care or short-term homeless accommodation is provided’ is development, and whether it is exempted development.”

1.2 Declaration

By letter dated 13th March 2024, Dublin City Council issued a Notification of Declaration on Development and Exempted Development which decided by Order dated 12th March 2024 to “issue a Declaration that the above proposed development is EXEMPT from the requirement to obtain planning permission under Section 32 of the *Planning & Development Act, 2000, (as amended)*.”

In arriving to this decision, the “Planning Authority considered that no development by reason of works or by reason of a material change of use has taken place at this premises and that the continued use of the premises as hotel use is considered exempt from the requirement to seek planning permission.”

From the outset, we highlight to the Board that we concur with Dublin City Council’s decision and reiterate that no change of use has occurred at the Paramount Hotel aside from the socio-economic class associated with the inhabitants occupying the hotel bedrooms. Further, in any case, even if a change of use was considered to have occurred, this would constitute exempted development under Part 4 Schedule 2 Class 14 which sets out exempted development consisting of a change of use as specified by Article 10 (1).

1.3 Referral

We confirm that this response concisely outlines some of the main arguments that the Board should consider in reviewing the key issues raised in the third party referral lodged by Armstrong Planning on behalf of Old City Management. We would like to emphasise to the Board that the third party has not presented any new information in their current Referral compared to their original Submission. The arguments and assertions made by the third party remain unchanged and do not offer any new or compelling evidence to support their claims.

It is our respectful submission that the issues raised by the third-party in this case are unsubstantiated. We are of the view that there are no planning grounds on which the third party Referral can be considered and should be rejected without further consideration. As such, there is no basis for concluding that a material change of use has taken place at the Hotel.

We ask the Inspector and the Board to have regard to the findings contained in this brief report and the accompanying Submission prepared by Michael Furminger, Planning and Environmental Law Barrister.





2 Paramount Hotel Context

The Paramount Hotel sits at 27-30 Parliament Street, Dublin 2, 1-2 Essex Gate, Dublin 8, 7-10 Exchange Street Upper, Dublin 8 on the western edge of Temple Bar on the corner of Exchange Street Lower and Essex Gate and Parliament Street, Dublin 2. This site accommodates a 66 no. bedroom hotel with ancillary services such as the Turk's Head Bar and it is noted that the hotel use on the subject site has been established and in use since September 1999.



Figure 1 – Aerial View of Subject Site outlined in Red

Our client currently has a contract in place with Dublin City Council (DCC) and the Dublin Regional Homeless Executive (DRHE) to provide short-term accommodation for homeless individuals, which commenced on 19th June 2023. Before this formal contract, our client had arrangements on a monthly basis with DCC and DRHE for short-term homeless accommodation from July 2022 to June 2023. During the COVID-19 lockdowns, from April 2020 to June 2022, the hotel was engaged in a similar arrangement with DCC, providing accommodation for individuals requiring isolation due to COVID-19.

These arrangements have ensured the continued use of the Hotel, whereby rooms are let on a nightly basis. Each day, the DRHE sends a list of guests that will be staying at the Hotel, maintaining a steady flow of occupants and supporting the hotel's ongoing operations.

Food is provided from the hotel's kitchen for guests, encompassing breakfast, lunch, and dinner. Additionally, meals are prepared for patrons of the Turk's Head Bar, an integral part of the hotel's amenities.

2.1 Site Planning History

As with the original Section 5 submission made to Dublin City Council, the third party has stated only 2 no. planning applications as part of a review of the planning history and noted that 'no other files available on the electronic register,' however, the full extent and most recent planning application has





not been detailed in due diligence. We set out the full planning history pertaining to the subject site below for the Inspector's convenience.

Reg. Ref. 4260/23 This application is subject to a First Party Appeal made by the Applicant to the Board following a refusal from Dublin City Council. A decision is expected to be made by 25th June 2024.

The proposed development comprises the following: (a) Change of use from office to hotel at 31 Parliament Street (a Protected Structure) and from vacant restaurant and residential use to hotel at 32 Parliament Street. The Hotel use will integrate nos. 31 and 32 into the existing Paramount Hotel and will comprise a new hotel entrance on Parliament Street, a foyer and reception at Ground Floor Level, administration areas at Basement Level and the collective amalgamation of both properties with Paramount Hotel at all existing floor levels to provide 28 no. new bedrooms from First to Fourth Floor Levels and the addition of 5 no. bedrooms in a new setback floor behind existing roof hips at Fifth Floor Level; (b) The proposal involves the reconfiguration of the internal layout of 29-30 Parliament Street to incorporate a new opening in the existing wall with 31 Parliament Street resulting in a change from a double bedroom to a single bedroom and reconfiguration of the store room with the addition of hallway doors from First to Fourth Floor Level. (c) Demolition of the single storey rear extensions of nos. 31 and 32 Parliament Street and addition of a new courtyard with fully glazed roof extending across the rear of nos. 31 and 32; (d) Reconstruction of the existing front façade of nos. 31 and 32 Parliament Street from First to Fourth Floor Level (no changes proposed to existing protected bay window and ground floor shop front of no. 31); (e) Internal alterations at Basement and Ground Floor Levels in all properties except for nos. 27-30 Parliament Street where no changes are proposed; (f) Extension of existing setback of 7-8 Exchange Street Upper at Fourth Floor Level to the street front to match the existing frontage to include the reconfiguration of the internal layout to provide 4 no. bedrooms and lobby; (g) Addition of a setback Fifth Floor Level with the provision of a terrace enclosed by a glass balustrade at 7-8 Exchange Street Upper to include the addition of 3 no. bedrooms, lobby, lift and new staircase. New flat roof over Fifth Floor with setback louvred plant area in centre of roof to be provided; (h) Provision of 10 no. signage zones on frontages of Parliament Street, Essex Gate and Exchange Street Upper. The overall development will result in a hotel bedroom count of 108 no. bedrooms (66 existing and 42 proposed) and includes all associated alterations to the existing hotel services and all associated site development works above and below ground.

Reg. Ref. 4597/19 A split decision was issued by the Planning Authority on 4th February 2020 which was subject to a First Party Appeal by the Applicant to An Bord Pleanála who upheld the Planning Authority's decision and issued a split decision on 9th December 2020. Permission was **GRANTED** for a) facade alterations at ground level of Nos. 30 & 29 Parliament Street with new proposed door to existing shop front; b) change of use from first to fourth floor of the existing north facing stairwell to 4 no. hotel bedrooms (one at each of the floor level) and c) change of use at fifth floor level from linen store to hotel bedroom and small internal reconfigurations of linen and cleaner store around the eastern stairwell.

Permission was **REFUSED** for d) the addition of a 294.2 sqm sixth floor level comprising 8 no. hotel bedrooms access via 2 stairwells, 2 lifts and a service lift. The hotel bedroom count will increase from previously approved 117 bedroom (as permitted with Reg. Ref. 3778/17) to 130 bedrooms over 7 storeys.

Reg. Ref. 4598/19 Permission was **GRANTED** on 20th March 2020 for: a) façade alterations at ground level Nos. 30 & 29 Parliament Street with new proposed door to existing shop front, b) change of use from first to fourth floor of the existing north facing stairwell to 4 no. hotel bedrooms (one at each of the floor level), and c) change of use at fifth floor level linen store to hotel bedroom and small internal





reconfigurations of linen and cleaner store around the eastern stairwell. The total amount of change of use floor space equates to 68 sqm. The hotel bedroom count will increase from previously approved 117 bedrooms (as permitted with Reg. Ref. 3778/17) to 122 bedrooms over 6 storeys.

Reg. Ref. 3778/17 Permission was **GRANTED** on 18th June 2018 following a Further Information Request for:

- Alterations to the front façade of Nos. 29-30 Parliament Street, internal alterations at Nos. 27-28 Parliament Street/No. 2 Essex Gate and Nos. 9 and 10 Exchange Street Upper/No. 1 Essex Gate,
- Removal of the roofs and chimney stacks and the provision of a new setback Fourth Floor Level and a further setback Fifth Floor Level at Nos. 27-28 Parliament Street/No. 2 Essex Gate and Nos. 9 and 10 Exchange Street Upper/No. 1 Essex Gate collectively facilitating 15 No. new bedrooms and ancillary hotel facilities; and remodelling of the existing façade, internal alterations and the provision of an extension to the rear and the provision of a new Fifth Floor Level, a setback Sixth Floor Level and a further setback Seventh Floor Level The development will also consist of the change-of-use to hotel of both No. 32 Parliament Street.
- Development will also comprise external alterations to Nos. 31 and 32 Parliament Street including the demolition of the single storey rear extensions to both properties (64 sq m);
- Reconstruction of the existing front façade and restoration and repair of the existing rear façade of No. 32 Parliament Street;
- Construction of a new rear façade to No. 31 Parliament Street; and the partial removal of the roof and chimney stacks on both properties to facilitate the provision a new setback floor behind the existing roof hips at Fifth Floor Level and a further new setback floor at Sixth Floor Level to collectively accommodate eight new bedrooms including the provision of terraces all along the eastern elevation.
- Development will also consist of: demolition of an existing flat roof
- enlargement of an existing layby set down area on Parliament Street
- Internal alterations at Basement Level and Ground Floor Levels in all properties;
- Provision of 10 No. signage zones
- The proposed development includes the demolition of 240 sq m floor area, the renovation of 4,308 sq m and the provision of 1,478 sq m new floor area, resulting in a 127 No. bedroom hotel with a total gross floor area of 5,768 sq m, with ancillary bar at Basement Level;

The above are the most recent permissions pertaining to the site. There is a number of more historic permissions pertaining to the subject site dating from before 2000, the most relevant of which is:

Reg. Ref. 2014/95 Permission was **GRANTED** for change of use of part of the ground floor of No. 30 Parliament Street and 1st, 2nd and 3rd floors of Nos. 27, 28, 29 and 30 Parliament Street, and No. 2 Essex Gate and the 4th and 5th floors of 29 and 30 Parliament Street from commercial to hotel use, including the remodelling of the existing 5th floor mansard roof of No. 29 and 30 and the alterations to associated plant room on roof; the change of use of the 1st, 2nd and 3rd floors of No. 1 Essex Gate and No. 10 Upper Exchange Street from commercial to aparthotel use; the change of use of the ground floor and basement of No. 10 Upper Exchange Street from commercial to restaurant use, including the demolition of existing 2-storey section to rear and extension of basement and ground floor and extension of basement and ground floor of No. 1 Essex Gate and new shopfronts to No. Essex Gate and No. 10 Upper Exchange St.





3 Dublin City Council S5 Decision

By letter dated 13th March 2024, Dublin City Council issued a Notification of Declaration on Development and Exempted Development which decided by order dated 12th March 2024 to “issue a Declaration that the above proposed development is EXEMPT from the requirement to obtain planning permission under Section 32 of the Planning & Development Act, 2000, (as amended).”

In arriving to this decision, the reasons and considerations were as follows:

“The Planning Authority considered that no development by reason of works or by reason of a material change of use has taken place at this premises and that the continued use of the premises as hotel use is considered exempt from the requirement to seek planning permission.”

The Planning Officer in the associated Planner’s Report concluded their assessment as follows:

“It would appear, based on the submitted documentation that the building will continue operating as a hotel and the provision of short-term accommodation for homeless people, in which the rooms are leased on a nightly basis is provided to guests, would not constitute a material change of use for the premises. In addition, no works are proposed to the building, the management of the staff will remain constant, regular hotel duties shall be provided, no care will be provided to occupants of the rooms and there is unlikely to be an adverse impact on the proper planning and sustainable development of the area. On this basis the Planning Authority considers that no development by reason of works or by reason of a material change of use has taken place.”

The above assessment is referenced where appropriate in our response to the third-party issues raised in this case.





4 Third Party Referral and Response

The third party Referral has been submitted by Armstrong Planning on behalf of Old City Management Ltd. The main points of the Referral are summarised in brief below followed by a response from the applicant on each of the issues raised.

The purpose of our response is not to determine the acceptability or otherwise of the matters raised by the third party in respect of the proper planning and sustainable development of the area, but rather whether or not the matter in question constitutes development, and if so, falls within the scope of exempted development within the meaning of the relevant legislation.

Having regard to the rebuttals contained in this response and the accompanying Submission prepared by Michael Furringer, Planning and Environmental Law Barrister, it is our professional planning opinion that the issues and claims raised by the third party should be dismissed as they are largely subjective and do not stand up to closer scrutiny and the provision of factual planning evidence. We therefore ask the Board to uphold the decision of Dublin City Council to issue a Declaration that the above proposed development is EXEMPT from the requirement to obtain planning permission under Section 32 of the *Planning & Development Act, 2000, (as amended)*.

4.1 Third Party Referral Issues Raised & Response

On review of the third-party Referral, it is apparent that there are a number of matters raised that are not planning related and should not be considered by the Board. All planning matters raised are grouped into key points with a direct response to each point thereafter set out by the owner of the Hotel. For clarity, this office has determined that the key planning points raised are as follows:

1. **Abandonment of Hotel Use**
2. **The Provision of Care**
3. **Change of Use from 'Hotel to Hostel (non-tourist)'**
4. **Planning Legislation**

4.1.1 Abandonment of Hotel Use

The third party alleges in Section 2.2 of their Referral that the “*commercial hotel use had been abandoned.*”

Response:

This assertion is patently incorrect, and our client, as the owner of the hotel wholly refutes this claim which is not based on reason or fact. The Supreme Court defined the concept of ‘abandonment of use’ in the decision of *Kildare County Council v. Goode (1999) 2 I.R. 495*, where Barron J. held (at p.506) that:

“Abandonment is the objective sign of a decision not continue further with the development.”

Therefore, to establish abandonment, there must be clear, objective evidence of an intention to cease the use in question. Our client’s actions and continuous investments in the Hotel unequivocally demonstrate that there has never been any intention to abandon the Hotel use.

First and foremost, our client is actively investing in hotel upgrades. This commitment is evident from the most recent planning application lodged on 3rd August 2023. This application is currently live under review by An Bord Pleanála registered under Ref. ABP-319100-24 for which a decision expected on the 25th June 2024. This application alone is substantial evidence of our client’s dedication to continuing and enhancing the Hotel’s operations.

Additionally, we would like to highlight that the hotel and leisure industry, like many others, faced unprecedented challenges due to the COVID-19 pandemic. During this period, numerous restrictions were imposed on leisure and hospitality businesses, significantly affecting their operations. Despite these challenges, our client has demonstrated resilience and a forward-looking approach by initiating a comprehensive refurbishment project for the Turk’s Head Bar, a vital part of the hotel’s facilities





which has successfully reopened to the public on 16th March 2024, further highlighting our client's commitment to maintaining and improving the hotel's amenities.

It is clear from our client's actions in respect of the Hotel that there was never any objective sign to not continue further with the use of the property as a hotel, such as would be required to establish abandonment of use. The property is physically maintained as a hotel and no works or alterations ever took place which were inconsistent with that use, or that would have evidenced an intention to cease that use.

Moreover, there has never been a planning application for an alternative use of the property, nor any other sign that our client did not intend to continue the commercial operation of the property as a hotel. All actions taken by our client have been consistent with maintaining and enhancing the Hotel use.

4.1.2 Provision of Care

In Section 3.1 of the Referral, the third party claims that *"our investigation back in Q3 of 2023 revealing that the Peter McVerry Trust operated a medium threshold service from the premises (at that time) providing temporary emergency accommodation for recovering drug addicts for periods of up to 6 months individually and that social care staff were on-site 24/7, providing care to residents dealing with addiction."*

Response:

We assert that the above claim is unfounded and unsupported by any meaningful evidence. We would like to clarify to the Inspector and the Board that there is no lease in place with the Peter McVerry Trust and there never has been a lease with the Peter McVerry Trust at the Paramount Hotel.

We reiterate that our client has a contract in place with Dublin City Council / Dublin Regional Homeless Executive for the provision of short-term accommodation for homeless persons which commenced on 19th June 2023. Prior to this, between July 2022 and June 2023, our client entered into a monthly arrangement with DCC / DRHE for short-term homeless accommodation. During Covid lockdowns, from April 2020 to June 2022, the hotel had an arrangement with DCC for the provision of accommodation for Covid isolation.

The element of 'care' as referred to by the third-party is defined by Article 5 of the *Planning and Development Regulations, 2001 (as amended)*, as *"personal care, including help with physical, intellectual or social needs."* Our case is explicit and deliberate in this regard by stating that absolutely no 'care' element is provided, be it social, physical or intellectual at the Paramount Hotel.

Further, we would like to point out that the typical length of stay at the Paramount Hotel is approximately ten nights contradicting the third party's assertion of stays lasting *"periods of up to 6 months"*.

In summary, the claims made by the third party regarding the operation of the Paramount Hotel are unfounded and lack credible evidence. We urge the Board to consider the comprehensive and accurate information provided herein when reviewing this matter. Further, we refer to the accompanying submission prepared by Michael Furninger, Planning and Environmental Law Barrister which explores this matter in further detail.

4.1.3 Change of Use from Hotel to Hostel (Non-Tourist)

Section 3.2 of the Referral alleges that a change of use from 'Hotel to Hostel (Non-Tourist)' has occurred at the Paramount Hotel.

Response:

We strongly refute the third-party's statement that a change of use has occurred and in response highlight that the Paramount Hotel continues to operate as a hotel as evidenced by the following:

- Rooms are leased on a nightly basis aligning with typical hotel operations;





- Our client retains responsibility for the management of the hotel and its staff, ensuring ongoing operational standards;
- Standard hotel duties are diligently fulfilled by staff;
- The hotel kitchen remains operational, catering to the needs of room occupants and visitors alike;
- No care element is provided to occupants of the rooms as is the case with any hotel;
- No approved housing body is involved further affirming the hotel's distinct operational model.

Notably, there is no discernible change to the use of the Paramount Hotel other than the socio-economic class associated with the inhabitants occupying the rooms. There are no provisions within planning legislation that restricts the use of a hotel by any socio-economic group, or for that matter, who provides funds for stays in the hotel.

Further, we would like to draw the attention of the Inspector that following an enforcement query made by the third party, Dublin City Council's enforcement officer responded on 18th December 2023 as follows:

"Recent investigation & inspections carried out by the area enforcement officer revealed that the above premises, a hotel, is currently in use providing accommodation to persons. There has been no deviation from the approved use and consequently it is intended to close this file with no further action." [Our emphasis]

The enforcement officer's response acknowledges the continuity of the hotel's operations and highlights that the Paramount Hotel is providing accommodation within the scope of its permitted operations and no change of use has occurred.

We refer the Board to the accompanying Submission prepared by Michael Furminger, Planning and Environmental Law Barrister, which examines the legal framework governing this matter.

4.1.4 Planning Legislation

Section 5 of the Referral, the third-party quotes sections of the *Planning and Development Regulations, 2001 (as amended)* and specifically Article 10 and Part 4 Class 6 to argue their case that development has occurred and that the case cannot be considered exempted development.

Response:

It is our professional planning opinion that the third party refers to sections of the Regulations which do not apply in this case.

The third party quoted Article 10 (1) of the Planning and Development Regulations, 2001 (as amended) which states the following:

"Development which consists of a change of use within any one of the classes of use specified in Part 4 of Schedule 2, shall be exempted development for the purposes of the Act, provided that the development, if carried out would not—

- (a) involve the carrying out of any works other than works which are exempted development,*
- (b) contravene a condition attached to a permission under the Act,*
- (c) be inconsistent with any use specified or included in such a permission, or*
- (d) be a development where the existing use is an unauthorised use, save where such change of use consists of the resumption of a use which is not unauthorised and which has not been abandoned."*

We assert that none of the limitations under Article 10 (1) of the Planning Regulations apply as the use remains unchanged:

- a) The hotel premises have been physically and diligently maintained and no works or alterations have taken place that would be inconsistent with the permitted use. Our client has not carried out any works to the hotel premises other than works which are exempted development.



- b) Our client has not contravened any condition attached to a permission under the Act and we further would like to clarify that the limiting conditions attached to the parent permission do not limit the length of stay for guests;
- c) The hotel use is established and continues to operate and is not inconsistent with any use specified or included in any such a permission and there is no evidence of any intention to cease the use;
- d) As noted above, the hotel use is in use and there is no sign that our client did not intend to continue the commercial operation of the property as a hotel.

Further, the third party refers to Part 4 of Schedule 2 of the *Planning and Development Regulations, 2001 (as amended)* and states that under Class 6, “a change of use from a guest house to a hostel where care is provided is not exempted development. There is no class that provides for a hotel use and as such there is no mechanism by which one could argue that the change of use from a hotel to a hostel is exempted development.”

In response to the above statement, we argue that Class 6 of the Regulations does not apply, the current and established use of the premises is hotel and not guesthouse or hostel. The statement that “there is no class that provides for a hotel use and as such there is no mechanism by which one could argue that the change of use from a hotel to a hostel is exempted development” is strenuously refuted.

The *Planning and Development Regulations, 2001 (as amended)* sets out the use classes in which change from one use type within the class to another would be exempt development and where change from one use class to another use class would not be exempt development. While it is our considered view that no change of use has occurred at the Paramount Hotel, in any case, if the Inspector considers that a change of use has occurred, it is thereby considered exempt development under the provisions of Section 4(2)(a) of the *Planning and Development Act, 2000 (as amended)*, and Article 6 and Class 14(g) of Part 1 of Schedule 2 to the *Planning and Development Regulations, 2001 (as amended)*.

Further, we would like to highlight that the third party in their Referral and original submission have stated a few planning cases, namely, ABP-308540-20 and ABP-307064-20 which refer to a change of use from residential use and guesthouse use, respectively, to a hostel for homeless accommodation. We submit that these cases are not comparable to this case which relates to a hotel not residential or guesthouse use. Hotel use is not the same as guesthouse use or residential use for that matter, and there are clear distinctions between these uses, and so the aforementioned An Bord Pleanála decisions cannot be compared to the current case or used as precedent examples.

It is further noted that both of these cases had the provision of ‘care’ associated and as a result were not considered exempted development, a point which the third-party failed to disclose within the Referral. We would like to reiterate to the Inspector and the Board that unequivocally there is no provision of ‘care’ at the Paramount Hotel, with no evidence to suggest otherwise and, the use remains of that as a hotel providing accommodation to persons which is an important distinction with regard to the classes of uses set out in Part 4, Schedule 2 of the Regulations. We refer the Inspector to a similar and indeed, applicable precedent case under Ref. EXPP 0333/21 wherein the Planning Authority of Dublin City Council considered that the use of the hotel located in Baggot Street for the provision of short-term accommodation for homeless people is considered a continued use of the premises as a hotel and exempt from the requirement to seek planning permission.

Section 3.1 of the Referral, the third-party argues that the provision of homeless accommodation is considered ‘social care’ in itself and therefore, cannot be considered exempt development under Class 14 of the Regulations. We refer the Inspector to the accompanying Submission prepared by Michael Fuminger, Planning and Environmental Law Barrister, which examines the legal framework governing this matter which states that “This submission is misconceived. If the provision of accommodation to homeless persons falls within the definition of “care” within Article 5 PDR 2001, Class 14(g) could not apply to use for the accommodation of homeless persons. This cannot be what the Oireachtas intended given that the Minister at the Joint Committee specifically said that Class 14(g) “will be of particular benefit in clarifying the planning status of hotels that provide accommodation for homeless persons” (see above, emphasis added). The argument of the Referral in this respect is directly contrary to the officially stated purpose of Class 14(g).”





Further, it is noted to the Board that the competent authority of Dublin City Council had determined that *“no change of use has taken place at this premises and that the continued use of the premises as a hotel use is considered exempt from the requirement to seek planning permission.”*

It is our professional planning opinion that no material change of use has occurred at the Paramount Hotel and in any case, would constitute exempted development under Part 4 of Schedule 2 Class 14 which sets out exempted development consisting of a change of use to which Article 10(1) applies as follows:

Class 14 states:

“Development consisting of a change of use—

(g) from use as a hotel, to use as a hostel (other than a hostel where care is provided),

(h) from use as a hotel, motel, hostel, guesthouse, holiday accommodation, convent, monastery, Defence Forces barracks or other premises or residential institution providing overnight accommodation, or part thereof, or from the change of use specified in paragraph (i) of the said premises or institution, or part thereof, to use as accommodation for protected persons,

(i) from use as a hotel, motel, hostel, guesthouse, holiday accommodation, convent, monastery, Defence Forces barracks or other premises or residential institution providing overnight accommodation, or part thereof, or from the change of use specified in paragraph (h) of the said premises or institution, or part thereof, to use as an emergency reception and orientation centre for protected persons.”

Note: The above Class 14 (g) – (i) have been inserted into the Planning and Development Regulations, 2001 (as amended) by article S.I. No. 582 / 2015 Planning and Development (Amendment) (No. 4) Regulations 2015.

We assert to the Inspector that no material change of use has occurred and equally, it can be considered exempt under Class 14 of the *Planning and Development Regulations, 2001 (as amended)*.





5 Conclusion

Having regard to all the above, we conclude that no change of use has occurred at the Paramount Hotel aside from the socio-economic class associated with the inhabitants occupying the hotel bedrooms. Further, in any case, even if a change of use was considered to have occurred, this would constitute exempted development under Part 4 Schedule 2 Class 14.

We therefore ask the Board to uphold the decision of Dublin City Council to issue a Declaration that the above proposed development is EXEMPT from the requirement to obtain planning permission under Section 32 of the *Planning & Development Act, 2000, (as amended)*.

It is our respectful submission that the issues raised by the third-party in this case are largely subjective and do not stand up to closer scrutiny and the provision of factual planning evidence. We note that the claims and allegations raised by the third-party in this case have already been considered by Dublin City Council in issuing the Declaration of Exempt Development.

We therefore ask the Board to have regard to the key points and concise arguments contained in the response and dismiss the third-party referral.

In summary, we ask the Board to concur with the following points:

- The Paramount Hotel remains in hotel use. There is no discernible change to the activities of the Paramount Hotel other than the socio-economic class associated with the inhabitants occupying the rooms. There are no provisions within planning legislation that restricts the use of a hotel by any socio-economic group, or for that matter, who provides funds for stays in the hotel.
- All actions taken by our client have been consistent with maintaining and enhancing the Hotel use and there was never any objective sign to not continue further with the use of the premises as a Hotel, such as would require to establish abandonment of use.
- Absolutely no 'care' element is provided, be it social, physical or intellectual at the Paramount Hotel and no approved housing body or non-governmental organisation is involved. The Paramount Hotel continues to provide accommodation to persons as per its permitted use with a contract in place with DCC and DRHE to provide short-term accommodation for homeless individuals, which commenced on 19th June 2023 whereby rooms are let on a nightly basis aligning with typical hotel operations.
- Our client retains responsibility for the management of the hotel and its staff, ensuring ongoing operational standards and standard hotel duties are diligently fulfilled by staff.
- The hotel kitchen remains operational, catering to the needs of room occupants and visitors of the Turk's Head Bar alike;
- It is our professional planning opinion that no change of use has occurred at the Paramount Hotel and in any case, if it is considered that a change of use has occurred, it is thereby considered exempt development under the provisions of Section 4(2)(a) of the *Planning and Development Act, 2000 (as amended)*, and Article 6 and Class 14(g) of Part 1 of Schedule 2 to the *Planning and Development Regulations, 2001 (as amended)*.

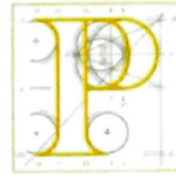
We confirm that we act on behalf of Ampbay Limited, request that all future correspondence in relation to this matter be directed to this office. In this regard, we look forward to receiving written acknowledgement of this submission in due course.





Appendix I – An Bord Pleanála Correspondence

Our Case Number: ABP-319436-24
Planning Authority Reference Number: 0050/24
Your Reference: Ampbay Limited



An
Bord
Pleanála

Brock Mc Clure
63 York road
Dun Laoghaire

Date: 22 May 2024

Re: Whether the change of use at the Paramount Hotel from use as a 'hotel' to use as a 'hostel (non-tourist) where care or short-term homeless accommodation is provided' is or is not development or is or is not exempted development.
The Paramount Hotel, Numbers 7-8 and 9 & 10 Exchange Street Upper, and Numbers 1, 27-28 and 29-30 Parliament Street, Dublin 2.

Dear Sir / Madam,

Enclosed is a copy of an appeal under the Planning and Development Act, 2000, (as amended).

As a party to the appeal under section 129 of the Planning and Development Act, 2000, (as amended), you may make submissions or observations in writing to the Board within a **period of 4 weeks** beginning on the date of this letter.

Any submissions or observations received by the Board outside of that period shall not be considered and where none have been validly received, the Board may determine the appeal without further notice to you.

Please note when making a response/submission only to the appeal it may be emailed to appeals@pleanala.ie and there is no fee required.

Please quote the above appeal reference number in any further correspondence.

Yours faithfully,

Fadimie Khatipova
Fadimie Khatipova
Administrative Assistant
Direct Line: 01-804-9312

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**In the Matter of a Referral Under s5(3)(a) of the Planning and
Development Act 2000**

**And In the Matter of the Paramount Hotel, 27-30 Parliament Street,
Dublin 2**

SUBMISSION

On Behalf of Ampbay Ltd

Brock McLure Planning and Development Consultants, 63 York Road, Dun Laoghaire, Co Dublin are instructed by Ampbay Limited of The Paramount Hotel, 27-30 Parliament Street Dublin 2 ("Ampbay"), owner of the Paramount Hotel 7-10 Exchange Street and 27-30 Parliament Street, Dublin 2 ("the Hotel") to make this Submission in the Referral to An Bord Pleanála ("the Board") under s5(3)(a) of the Planning and Development Act 2000 ("the Act") by Armstrong Planning of 12 Clarinda Park North, Dun Laoghaire, Co Dublin on behalf of Old City Management Ltd of c/o Erin Property Management, 49 Clontarf Road, Clontarf, Dublin 3 ("Old City") of a Declaration of 12 March 2024 made by Dublin City Council ("the Declaration" "the Council") under s5(2)(a) of the Act in response to a Request under s5(1) of the Act made by Armstrong Planning on 15 February 2024 on behalf of Old City ("the Request").

Specifically, this Submission is made in response to the letter from Armstrong Planning to the Board dated 2 April ("the Referral").

OVERVIEW

It is submitted that the present use of the Paramount Hotel – to accommodate homeless persons - is within its existing use. In these circumstances there is no development and the question of exemption does not arise.

If, which is denied, the present use of the Paramount Hotel is a material change of use, and therefore development, it is submitted that such development is exempt development under Class 14(g) of Part 1 of Schedule 2 to the PDR 2001.

SUMMARY

The existing use of the Hotel is as a hotel.

There has been no abandonment or extinguishment of that use.

The present accommodation of homeless persons at the Hotel is within the existing use of the Hotel.

In these circumstances, there is no material change of use and, therefore, no development.

The above is sufficient basis upon which the Board is able to determine this matter and the question of whether or not care is provided at the Hotel is irrelevant.

If, which is denied, and contrary to *Leitrim CC v Drompaprop Ltd* [2024] IEHC 233, the accommodation of homeless persons;

- takes the Hotel outside of its existing use
- constitutes a material change of use, and development

any such development is exempt development by s4(2)(a) of the Act and Art 6 and Class 14(g) of Part 1 of Schedule 2 to the Planning and Development Regulations 2001 ("Class 14(g)" and "PDR 2001"), there being no care within the definition of Art 5 PDR 2001 provided at the Hotel.

THE REQUEST, DECLARATION AND REASONS

The Request asked;

"Whether the change of use at the Paramount Hotel from use as a 'hotel' to use as a 'hostel (non-tourist) where care or short-term homeless accommodation is provided' is development, and whether it is exempted development."

The Declaration stated that;

the change of use alleged in the Request "is EXEMPT from the requirement to obtain planning permission under Section 32 of the Planning & Development Acts 2000 (as amended)."

The Reasons and Considerations of the Council stated that;

"The Planning Authority considers that no development by reason of works or by reason of a material change of use has taken place at this premises and that the continued use of the premises as a hotel use is considered exempt from the requirement to seek planning permission."

Ampbay respectfully agrees with the Declaration made by the Council and with its Reasons and Considerations that no development has occurred at the Hotel, whether by works or by change of use, and that its continued use as a hotel is exempt from any requirement for Planning Permission.

NO MATERIAL CHANGE OF USE AND, THEREFORE, NO DEVELOPMENT

The Request referred only to change of use. There is no reference in this matter to works.

The Existing Use of the Hotel

The existing use of the Hotel is as a hotel.

The Referral acknowledges that the Hotel has Planning Permission for use as a hotel (p3).

Hotel Use Not Abandoned or Extinguished

The Referral alleges that "the 'commercial hotel' use [has] been abandoned" (p3).

Hotel use at the Hotel continues. It is denied that hotel use has been abandoned, as alleged, or at all.

The Facts

The Hotel has had active hotel use since September 1999.

Ampbay presently has a contract with the Council/Dublin Regional Homeless Executive for the provision of short term accommodation for homeless persons which commenced on 19 June 2023. The Hotel provided accommodation for COVID isolation between April 2020 and June 2022. Between July 2022 and June 2023 the Hotel accommodated homeless persons under a monthly contract with the Council.

There is no lease to the Peter McVerry Trust and never has been (contrary to the Referral, p4 and p13).

Rooms are let on a nightly basis to a list of clients notified to Ampbay daily. A typical stay is approximately ten nights.

Food is provided from the Hotel's kitchen for residents (breakfast, lunch and dinner) and for the Turks Head Bar, part of the Hotel.

The Law on Abandonment

It is submitted that the recent High Court case of *Leitrim CC v Dromaprop Ltd* [2024] IEHC 233 is relevant in this matter. There is extensive 'crossover' in the judgment between whether hotel use had been abandoned (it had not been) and the wide scope of hotel use. We have referred to the issues of 'abandonment' and 'hotel use' separately but given the crossover, some repetition is inevitable.

Every case of alleged abandonment turns upon its own facts and the burden of proof lies upon the party asserting abandonment (*Wicklow CC v Jessup and Smith* [2011] IEHC 81 and *Dromaprop*, para 32).

Further, as a matter of law, existing use is not easily displaced;

- “an existing user is a hardy beast” (Budd J, *Westmeath CC v Quirke & Sons*, Unreported, High Court, 23 May 1996, p125)
- “Abandonment is the *objective* sign of a *decision not to continue further with the development...*” (Barron J, *Kildare CC v Goode* [2000] 1 ILRM 346, 357 (SC), emphasis added)
- “The old use remains until something *unequivocal* happens by way of *definitive* abandonment...” (*Dromaprop*, para 30, emphasis added)
- “Abandonment is a *definitive legal act* with huge consequences in planning terms, it *cannot be automatically inferred merely from non-user or disrepair.*” (*Dromaprop*, para 32, emphasis added)
- “The concept of “use” is not so delicate as to crumble with any mild change of tack or emphasis...Microscopic fragility of shades of emphasis would create incredible uncertainty and inflexibility...*A given use is an envelope, not a strait-jacket.*” (*Dromaprop*, para 33, emphasis added)

Dromaprop Ltd owned a hotel established in 1860. It closed in the 2009 'crash' “and fell into some disrepair” (para 2). In July 2022, the owners sought permission for works, necessary to facilitate a change of emphasis in the service offered by the hotel to one which focussed on accommodation without food. Permission was granted (22/138, 5 December 2022) but after work commenced Dromaprop Ltd decided to change the intended use to temporary accommodation for what can be briefly described as 'refugees'. Some of the work undertaken to facilitate the refugee use was outside the Permission (paras 8/9).

Leitrim CC sought an Order under s160 of the Act restraining Dromaprop Ltd from carrying out what was described as unauthorised development, specifically the change of use from hotel to temporary refugee accommodation (para 19).

The first issue considered by the Court was whether there was an existing hotel use or whether such use had been abandoned (para 21). The Council alleged that hotel use had been abandoned on the basis of the;

- change in *modus operandi* of the facility evidenced by the application of July 2022
- 2009 closure
- “derelict/ruinous condition for over a decade” of the hotel (para 26)

Humphreys J held that the hotel use had not been abandoned (paras 32 – 36). Not one of;

- the application for Planning Permission for works to facilitate “commercial tourists”
- the proposed accommodation of 'refugees' (para 33) (see below)
- disrepair
- closure in 2009
- the absence of food service (or even a kitchen) (paras 3 and 27)
- 'long term' residence (para 33)

extinguished or implied an abandonment of the existing hotel use.

No point is made in the Referral regarding the condition of the Hotel and in all other respects it is submitted that *Dromaprop* is 'on all fours' with the case with which we are concerned.

Applying the Law to the Facts of this Case

In respect of the Paramount Hotel;

- no disrepair is alleged
- unlike *Dromaprop*, the Hotel has not closed and the parties agree that it is presently accommodating homeless persons
- unlike *Dromaprop*, the Hotel has a kitchen which provides three meals a day to its residents
- residents typically stay for approximately ten days. Unlike *Dromaprop*, there is no 'long term' residence question
- just as the accommodation of 'refugees' did not extinguish hotel use in *Dromaprop*, so the accommodation of homeless persons will not extinguish hotel use at the Paramount (see below)
- an application to the Council to expand hotel use (4260/23) (detailed in Brock McLure's Response to the Council to Old City's Request) was refused by the Council on 26 January 2024. This refusal is now the subject of a First Party Appeal to the Board. The development proposed in this pending application shows that there has not been and is not any intention to abandon hotel use.

In *Dromaprop* the hotel had closed, had fallen into disrepair and the *modus operandi* proposed prior to the temporary refugee accommodation involved no food service, not even a kitchen. It is submitted that if as a matter of law, hotel use had not been abandoned in *Dromaprop* then it has certainly not been abandoned in this case.

Accommodation of Homeless Persons Is Within Hotel Use

It is denied that there is any material change of use at the Paramount Hotel as alleged by the Referral (p11/12), or at all.

The Facts

The facts set out above are repeated.

The Law

"There is no rigid definition of a "hotel"....It's accommodation, not anything else, that defines a hotel...Certainly a kitchen is not indispensable. Many hotels don't have kitchens." (*Dromaprop*, para 27)

"Some hotels cater for special categories of the market...A hotel providing temporary accommodation for commercial tourists, not involving meals, is still a hotel. (*Dromaprop*, para 33)

"Even the use to accommodate protection seekers and displaced persons might have been situated within the outer contours of the concept of a hotel. After all, some people live in hotels on an ongoing basis..." (*Dromaprop*, para 33).

There was no suggestion in the judgment in *Dromaprop* that the mere accommodation of 'refugees' would extinguish hotel use in that case.

Applying the Law to the Facts

Following a reference by Old City, the Council's Enforcement Officer concluded in a letter dated 18 December 2023 (Referral, Appendix 2) that;

"Recent investigation and inspection carried out by the enforcement officer revealed that the above premises, a hotel, is *currently in use providing accommodation to persons*. *There has been no deviation from the approved use* and consequently it is intended to close this file with no further action." (emphasis added)

The Council's Enforcement Officer considered that the accommodation of homeless persons at the Hotel was within its approved use. Ampbay respectfully agrees with the conclusion of the Enforcement Officer.

The Referral is critical of the conclusion of the Enforcement Officer on the basis that it "was predicated on [an] understanding that a 'hotel' is merely a premises 'providing accommodation to persons'" (p4/5). In fact, the conclusion of the Enforcement Officer was consistent with the judgment in *Dromaprop* which stated that "it's accommodation, not anything else, that defines a hotel..." (para 27).

Reference is also made to case EXPP0333/21 in which the Council decided that the use of a hotel in Baggot Street for the provision of short-term accommodation for homeless was within the existing hotel use of the premises and was exempt from the requirement for Planning Permission.

The intention to accommodate displaced persons and persons seeking international protection was held to be within hotel use in *Dromaprop*. In the same way, it is submitted that the accommodation of 'domestic' homeless persons at the Paramount is within hotel use.

The remarks of Humphreys J in *Dromaprop* cited above directly contradict the Referral's suggestion that;

- the present use of the Hotel is inconsistent with hotel use (p7/8)
- the accommodation of homeless persons is inconsistent with hotel use (p8/10)

Board Cases Cited in the Referral

Westbrook House, Ennis, Case No 307064

Concerned whether a change of use of a commercial guesthouse to a homeless hostel run by an approved housing body was development and, if so, whether it was exempt development. The Board noted Class 6 of Part 4 of Schedule 2 to PDR 2001 which allows as exempt change of use between the uses of "residential club, a guest house or a *hostel (other than a hostel where care is provided)*" (emphasis added).

The Board concluded that the support offered to those accommodated fell within the scope of the definition of "care" in Article 5 PDR 2001 and that the hostel use did not therefore fall

within the exemption created by Article 10 and Class 6. The Board concluded that there were no other exemptions available for the material change of use that had occurred.

The Board's decision in the Westbrook case turned upon the fact that care within the definition of Article 5 was provided. Care is not provided at the Paramount Hotel. The circumstances which the Board is asked to consider in this case do not involve a change of use, and certainly not a change of use from a guest house within Class 6 or otherwise.

Most significantly perhaps, it is noted that the Referral quotes from the Inspector's Report in Case No 307064, not the Board Order (p12). *It is clear from the terms of the Board Order that the case turned upon the provision of care. The Referral does not mention this fact at all.* It is respectfully suggested that the Board treats with caution the assertions and submissions advanced on behalf of Old City. The Board clearly cannot be sure that the full circumstances are being described.

15/17 Lower Drumcondra Road, Dublin 9, Case No 308540

Concerned whether a change of use of a residential property to a hostel for homeless accommodation was development and, if so, whether it was exempt development. The Board concluded that there was a change of use to a use that involved the provision of care within the definition of Article 5 and that the change of use was not within any of the Classes of Part 4 of Schedule 2. In these circumstances there was development (the change of use) and it was not exempt development. The Board went on to conclude that s4(1)(f) of the Act could not render the development exempt (as development in partnership with the Council) because the development was in material contravention of the relevant Development Plan. The Board concluded that there were no other exemptions available for the material change of use that had occurred.

The Lower Drumcondra Road case is distinguishable from this case because in the present case there is no change of use. The accommodation of homeless persons is within the existing hotel use of the Paramount Hotel (see above). Further, there is no care provided to those accommodated at the Paramount Hotel, within the definition of Article 5 PDR 2001, or at all. The question of whether or not there is a change of use that falls within any Class referred to in Part 4 of Schedule 2 PDR 2001 does not arise because there is no change of use. The question of whether or not there is an exemption under s4(1)(f) of the Act similarly does not arise because there is no development because there is no change of use.

Conclusion

The existing use of the Hotel is as a hotel.

The hotel use of the Hotel has not been abandoned or extinguished.

The accommodation of homeless persons at the Hotel is within the existing hotel use.

In these circumstances there is no material change of use and, therefore, no development. In these circumstances neither the question of exemption nor that of the provision of care arises.

It is submitted that the position established above is sufficient basis upon which the Board is able to determine this Referral.

CLASS 14

If, which is denied, and contrary to *Leitrim CC v Drompaprop Ltd* [2024] IEHC 233, the accommodation of homeless persons;

- takes the Hotel outside of its existing use
- constitutes a material change of use and development

any such development is exempt development by s4(2)(a) of the Act and Art 6 and Class 14(g) of Part 1 of Schedule 2 to the Planning and Development Regulations 2001 ("Class 14(g)" and "PDR 2001"), there being no care within the definition of Art 5 PDR 2001 provided at the Hotel.

As in *Dromaprop* (paras 27 – 36), the existing hotel use has not been abandoned or extinguished and the Class 14 exemption is in principle available.

Class 14(g)

Section 4 of the Act establishes various categories of development exempt from the requirement of planning permission (see also s32(1)(a)). Section 4(2)(a) provides that the Minister may by regulations provide for any class of development to be exempted development for the purposes of the Act.

Art 6(1) PDR 2001 provides that;

"subject to article 9, developments of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2..."

There is nothing in Article 9 which would prevent a change of use in this case exempted by Article 6 being so.

By the Planning and Development (Amendment) (No 4) Regulations 2015 ("the Regulations") made under s4(2) of the Act, Class 14 of Part 1 ("Exempted Development") of Schedule 2 to the PDR 2001 was amended by the insertion of four new categories of exempted development, (g) – (j).

Class 14(g) establishes as exempted development;

"Development consisting of a change of use... (g) from use as a hotel, to use as a hostel (other than a hostel where care is provided)".

"Hostel" is not defined either in the Act, the Regulations or the PDR 2001.

Circular PL12/2015 (18 December 2015) introduced the new Classes but did not define "hostel".

In introducing the Regulations into the Oireachtas, the Minister said the following of Class 14(g) to the Joint Committee on Environment, Culture and the Gaeltacht on 15 December 2015 ("the Joint Committee");

"Under this amendment, a premises previously operated as a hotel may be used to accommodate persons in hostel-type accommodation. While the change of use is not confined to any particular class of persons, *this amendment will be of particular benefit in clarifying the planning status of hotels that provide accommodation for homeless persons, asylum seekers and refugees.*" (emphasis added)

Dictionary definitions of "hostel" commonly include reference to short-term, basic, inexpensive accommodation often for a particular group (eg travellers, young people, workers etc). The present accommodation of homeless persons at the Paramount Hotel meets these terms.

The Provision of Care

The exemption provided by Class 14(g) does not extend to hostels "where care is provided".

Article 5 of the Principal Regulations defines "care" as;

"personal care, including help with physical, intellectual or social needs"

It is denied that any personal care as defined in Art 5 PDR 2001 is provided at the Paramount Hotel as part of the accommodation offered to homeless persons, as alleged in the Referral or at all.

The Referral alleges that care was provided to homeless persons at the Hotel in 2023 and perhaps into early 2024 (p4/5). It is important to note that save in one respect (dealt with below) the Referral does *not* allege that the homeless persons accommodated at the Hotel are presently in receipt of personal care as defined in Art 5 PDR 2001.

Indeed, the Referral states that "the question of whether drug rehabilitation, psychological, intellectual, physical or medical care is provided is irrelevant." (p6). Instead, the Referral states that the provision of accommodation for homeless persons is *of itself* "care" (p6 and p13) "meaning that the change of use cannot be considered exempt under Class 14[g]" (p7).

This submission is misconceived. If the provision of accommodation to homeless persons falls within the definition of "care" within Article 5 PDR 2001, Class 14(g) could not apply to use for the accommodation of homeless persons. This cannot be what the Oireachtas intended given that the Minister at the Joint Committee specifically said that Class 14(g) "will be of particular benefit in clarifying the planning status of *hotels that provide accommodation for homeless persons*" (see above, emphasis added). The argument of the Referral in this respect is directly contrary to the officially stated purpose of Class 14(g).

Conclusion

If, contrary to the submission above and the High Court's judgment in *Dromaprop*, the Board decides that;

- provision of accommodation for homeless persons is not within the existing hotel use of the Paramount, and

- there is a material change of use, and development at the Hotel

such development is exempt under Class 14(g) by reason of;

- the language of Class 14(g)
- the Minister's statement to the Joint Committee
- the ordinary meaning of "hostel"
- the fact that no care is provided to residents within the def of Art 5 Part 2 PDR 2001

CONCLUSION

It is submitted that the present use of the Paramount Hotel – to accommodate homeless persons - is within its existing use. In these circumstances the question of exemption does not arise.

If, which is denied, the present use of the Paramount Hotel is a material change of use, and therefore development, it is submitted that such development is exempt development under Class 14(g) of Part 1 of Schedule 2 to the PDR 2001.

MICHAEL FURMINGER BL

12 June 2024