

PLANNING REPORT

AN BORD PLEANÁLA
LDG- _____
ABP- _____
26 JUN 2024
Fee: € 220 Type: cla
Time: 16:32 By: Hand

AN BORD PLEANÁLA
LDG- 072399-24
ABP- _____
26 JUN 2024
Fee: € 220 Type: cla
Time: 16:39 By: Hand

SECTION 5 REFERRAL – DECLARATION OF EXEMPTED DEVELOPMENT

Louth County Council Reg. Ref. S52024/24

Knockmount, Dublin Road, Drogheda, Co. Louth

JUNE 2024

SUBMITTED ON BEHALF OF:
Knockmount Properties Limited,
37 Dollymount Avenue,
Clontarf, Dublin 3

85 Merrion Square, Dublin 2, D02 FX60

HUGHES
PLANNING
& DEVELOPMENT CONSULTANTS

1.0 Introduction

This referral to An Bord Pleanála, pursuant to Section 5(3)(a) of the Planning and Development Act 2000 (as amended), has been prepared by Hughes Planning and Development Consultants, 85 Merrion Square, Dublin 2, on behalf of Knockmount Properties Limited, 37 Dollymount Avenue, Clontarf, Dublin 3, and relates to a Section 5 Declaration made by Louth County Council on 30th May 2024 under Reg. Ref. S52024/24, regarding the use of Knockmount, Dublin Road, Drogheda, Co. Louth to provide medium to long-term accommodation to protected persons comprising families, women and children.

The property management and staff provision will solely be the responsibility of our client, the property owner. Staff will visit the site to carry out maintenance and cleaning works only. No element of care be it social, physical or emotional will be provided to residents at this property, nor will any non-governmental organisation or approved housing body be involved.

We request that An Bord Pleanála review the Section 5 Declaration issued by Louth County Council and make a determination that providing medium to long-term accommodation to protected persons comprising families, women and children on Knockmount, Dublin Road, Drogheda, Co. Louth, is deemed not development. In the interests of clarity, we would ask the following question to An Bord Pleanála:

"Whether the use of a dwelling house, where care is not provided, as long-term private residential accommodation for protected persons comprising families, women and children, is or is not development?"

The prescribed fee of **€220.00** is enclosed, along with a copy of the declaration issued by Louth County Council. This report sets out the rationale for hoarding to be used as exempted development during the carrying out of renovation works. We request that An Bord Pleanála set aside the decision of Louth County Council and issue a declaration stating that the continued use of a residential property to accommodate protected persons does not constitute development.

1.1 Section 5 Declaration of Louth County Council

On the 30th May 2024, Louth County Council refused a declaration of exemption for the use of Knockmount to provide accommodation to protected persons comprising families, women and children under Reg. Ref. S52024/24 (See Appendix A). The Planning Authority determined that a material change of use would occur as the proposed use would result in an intensification of the use on the site by way of increased traffic, waste collections, and use of services.

It is submitted that the planning authority has erred in its assessment of the application. Having reviewed the report of the planning officer, it is quite apparent that the planning authority did not consider the question put before them and instead incorrectly assessed the use of the property in the context of Class 14 and Class 20F of the Planning and Development Regulations 2001 (as amended).

This report will assess the proposed use in the context of the Planning and Development Act 2000 (as amended) and relevant case law.

1.2 Summary of Grounds for Referral

The applicant's grounds for referral can be summarised by the following points:

- The planning authority has erred in its assessment of the application. Having reviewed the report of the planning officer, it is quite apparent that the planning authority did not consider the question put before them and instead incorrectly assessed the use of the property in the context of Class 14 and Class 20F of the Planning and Development Regulations 2001 (as amended).
- It is submitted that a dwelling can be used to house individuals or families who may also be international protection applicants. There will be no discernible change to the

use of the building other than the socio-economic class associated with the inhabitants occupying the building which should never be taken into consideration when having regard to whether a change of use has occurred

- The proposed use of a large dwelling will not add strain to existing services nor will it increase traffic volumes, noise or waste at the site. Therefore, there will not be an intensification of use on the site.
- Planning permission was granted on this site for 31 no. apartments under Reg. Ref. 201022/ ABP. Ref. 311050-21. It is considered that Louth County Council and An Bord Pleanála in their assessment of that planning application, determined that an increase in density at this location would not adversely affect services in the area.

2.0 Site Description

The subject site comprises a two-storey Edwardian period set on large grounds on the Dublin Road, southeast of Drogheda town centre. The house is served by 14 no. bedrooms as well as kitchen facilities, dining room, living room, prayer room, and laundry room. The subject site is located adjacent to Drogheda Train Station which provides frequent services to Dublin, Dundalk and Belfast. The nearest bus stop is serviced by bus routes 101, D4 and D5 which provide access to the town centre.

The subject site is not listed on the Record of Protected Structures, nor is it located in an Architectural Conservation Area.



Figure 1.0 Aerial image of the subject site (red line).



Figure 2.0 Streetview image of the subject site (red outline).

3.0 Planning History

A review of Louth County Council's online planning registry revealed the following any planning applications associated with the site.

Reg. Ref. 201022 Planning permission granted by Louth County Council for Construction of 28 no. apartments within 2 no. new apartment blocks - 1 no. 5 storey/4 storey block (consisting of 9 no. one bed apartments, 9 no. two bed apartments and 4 no. three bed apartments) and 1 no. 3 storey block (consisting of 3 no. one bed apartments and 3 no. two bed apartments). 2. Renovation and conversion of existing dwelling house to 4 no. apartments (consisting of 2 no. one bed apartments and 2 no. two bed apartments). 3. Demolition of existing garage and outbuildings on the north east side of existing dwelling. 4. Partial section of existing front boundary wall to be set back for new vehicular, pedestrian and cycle entrance to the site from Dublin Road (R132) to provide vehicular sightlines. 5. Preservation of existing vehicular entrance for use as pedestrian entrance. 6. New internal circulation road, pedestrian footpaths, steps, carparking, bicycle parking, bin store, ESB substation/kiosk, public open space, boundary treatment and landscaping. 7. All associated site development and infrastructure works.

This planning application has not been acted upon.

4.0 Planning Context

The Louth County Development Plan 2021-2027 is the relevant statutory development plan for the subject site. The following section is a brief zoning review and land use objective for the site.

4.1 Zoning

As per Map 1.1 in the development plan, the subject site is zoned objective 'A1 – Existing Residential'. The zoning matrix included in the Louth County Development Plan 2021-2027 indicates permissible and open-for-consideration uses for each zoning objective. 'Permitted in Principle' uses are generally acceptable subject to the normal planning process and compliance with the relevant policies and objectives, standards and requirements set out in the Plan. 'Open for Consideration' uses may be permitted where the Planning Authority is satisfied that the proposed development is compatible with the policies and objectives for the respective zone and would not be in conflict with the permitted, existing or adjoining land uses whilst conforming with the proper planning and sustainable development of the area.

Residential uses are permitted in the zoning objective for the subject site.



Figure 3.0 Extract from Map 1.1 in the Louth County Development Plan 2021-2027 showing the site (outlined in red) zoned objective 'Z1 – Sustainable Residential Neighbourhoods' (red outline).

5.0 Grounds for Referral

Under Section 2(1) of the Planning and Development Act 2000 (as amended), 'development' is assigned the meaning set out under Section 3(1) as follows: -

*"In this Act, 'development' means, except where the context otherwise requires, the **carrying out of works** on, in, over or under land or the making of any **material change in the use** of any structures or other land."*

The Applicant does not intend to carry out works to the property, therefore, this declaration seeks clarification on the continued use of Knockmount as a residential building that provides accommodation to protected persons comprising families, women and children but does not provide care. From the outset, it is contended that this does not constitute development as no change of use has occurred.

It is noted that legislation does not define the phrase 'material change of use' as used in Section 2(1) of the Act. To determine the materiality of the change, the practical impacts and effects of the proposed change of use and whether it would have led to materially different planning considerations by the Planning Authority are considered in this determination.

The jurisprudence on this topic illustrates that the focus of the planning authority must be on the practical effects of the examined use, when determining whether it is materially different from the prior use. In *Esat Digifone v South Dublin County Council* [2002] 3 I.R. 585, the High Court made the following remarks:

"The consideration to be taken into account in determining materiality must at least be relevant to "proper planning and development and the preservation of amenities" which are the twin objectives of the preamble to the legislation. The question is whether there were sufficient planning considerations raised by the change in activity to justify its submission to development control."

In a similar vein the court quoted Barron J. in *Galway County Council v. Lackagh Rock* [1985] I.R.120 at 127:

"To test whether or not the uses are materially different, it seems to me, that what should be looked at are the matters which the planning authority would take into account in the event of a planning application being made either for the use on the appointed day or for the present use."

A further decision in support of that view is that of Budd J. in *Westmeath County Council v. Quirke & Sons* [Unreported, High Court, 23rd May 1996] where the court noted that:

"Many alterations in the activities carried out on the land constitute a change of use, however, not all alterations will be material. Whether such changes amount to a material change in use is a question of fact as is explained in Monaghan County Council v Brogan [1987] IR 339. Consideration of the materiality of a change in use means assessing not only the use itself but also its effects."

Knockmount was constructed pre-1 October 1964 and has always been in use as private residential accommodation. The proposed use of the property continues the long-established private residential use, with the only alteration to have occurred being an increase in the number of residents accommodated upon the site.

It is submitted that there will be no discernible change to the use of the building other than the socio-economic class associated with the inhabitants occupying the building which should not be taken into consideration when having regard to whether a material change of use has occurred as evidenced by the Supreme Court *Dublin Corporation v Moore* [1984] ILRM 339 in which the judge stated:

"I can well understand the objection voiced by Mr Heneghan in his affidavit, to which I have referred - the residents of a quiet suburb naturally resent the presence of what may well be out of keeping with what they conceive to be the standards appropriate to the neighbourhood. There cannot, however, be one law for Cabra and another for Clondalkin - yet others for Finglas and Foxrock. Considerations of this kind are not appropriate to planning law - if they were, they might well offend against rights of equality."

It is considered that if this were a planning application for a residential building, the planning authority would not include conditions prohibiting accommodation to people of particular socioeconomic backgrounds.

The subject site is a large house constructed in c. 1906 and has been in continuous use as a residential property. Residents of the building have en-suite bedrooms and use shared kitchen facilities, dining room, living room, prayer room, and laundry room. Ample outdoor amenity space is provided for use by residents as the house is set on large mature grounds. Play facilities including swings and a tennis court/football pitch will be provided to the rear. Residents are free to enter and exit the house throughout the day like any tenant renting from a private landlord. Staff employed by our client will be present in the property, with their duties comprising cleaning and maintenance of the property. A duty manager will oversee the running of the house and ensure residents are being catered for and that the property is secure and well-maintained. This building will provide long-term accommodation with residents living there for a minimum of 12 months.

It is submitted that the continued use of the property to provide residential accommodation is not development as no material change of use has occurred. This is a large house that can provide accommodation to 56 no. people.

In considering the above, it is submitted that the use of Knockmount as a long-term residential building to house protected persons, which does not provide care, does not constitute a change of use and therefore, does not constitute development in accordance with the Planning and Development Act 2000 (as amended).

With regards to the intensification of the use, it is submitted that the increase in residents at the large property does not constitute an intensification of the use. The remarks of Clarke J. in *Cork County Council v. Slattery Pre-Cast Concrete* [2008] IEHC 291 are relevant in assisting the planning authority in determining whether an intensification of an established use is material:

"The assessment of whether an intensification of use amounts to a sufficient intensification to give rise to a material change in use must be assessed by reference to planning criteria. Are the changes such that they have an effect on the sort of matters which would properly be considered from a planning or environmental perspective? Significant changes in vehicle use (and in particular heavy vehicle use that might not otherwise be expected in the area) are one such example, changes in the visual amenity or noise are others.

The judgment of Gilligan J. in *Molloy v. Minister for Justice* [2004] IEHC 74 is also relevant due to its parallels with Knockmount. In that case, the High Court assessed whether the change of use of a property from a residential religious novitiate to accommodation for asylum seekers was material intensification. The case has a number of parallels with the facts at issue at ~~Ryevale House~~. The applicants' arguments as they related to intensification were as follows: **KNOCKMOUNT.**

"The proposed use would involve an intensification of use by reason of the dramatic increase in the number of persons accommodated at the said premises and in the numbers of staff and persons providing ancillary services which are necessary to support such a reception centre. The proposed use would have significant planning implications in terms of generating traffic and parking demand, with consequent off-site parking requirements. The proposed use is likely to give rise to traffic congestion, traffic hazard and as a consequence be injurious to the amenities of residents and businesses in the vicinity of the subject premises."

In *Molloy*, the Court held that the question of whether or the developer's proposals would lead to intensification of use was premature in circumstances where the novitiate had not yet been converted to use as a hostel for asylum seekers:

"It is accepted by the respondent that an intensification of use can constitute a material change of use in circumstances which would amount to development under the Planning Acts and would accordingly require planning permission. In my view, the respondent can use Broc House as a residential hostel and any significant intensification may lead to a material change of use but that situation at the moment is hypothetical and is a matter for another day as appropriate."

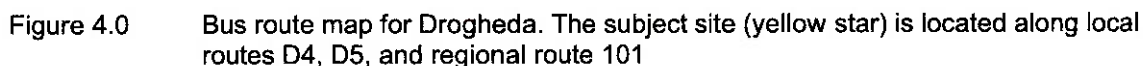
One differentiating factor between the proposals for Knockmount and the Molloy case is that it is not proposed to convert Knockmount into a "hostel" with a reception centre and providing ancillary services. Our client submits that any proposed intensification of the use of Knockmount is less significant as the proposed residents in Knockmount will be accommodated in a large house, with some shared bathroom and kitchen facilities

The question as to whether an intensification of an existing use at a property constitutes a material change of use is one to be assessed in light of the practical effects of that intensification on relevant planning considerations. These considerations include but are not limited to, increased vehicular traffic, noise, pressure on infrastructure, visual impact, and impact on the amenity of surrounding residents.

The proposed use has been assessed in the context of the issues listed by Luth County Council and the above case law:

Traffic Volumes:

As noted, the house would accommodate 56 persons from several family units. Given the status of the residents as asylum seekers and the fact that multiple children will reside at the house, it is reasonable to assume that car ownership and usage at the house would be low. It is noted that the house is located near a bus stop which is served by Bus Éireann's local and regional routes, as well as Drogheda Train Station. The number of staff will be minimal and mostly comprise cleaning and security staff. It is considered that there will not be a noticeable increase in traffic volumes at the site.



Regarding foul water, it is noted that upgrade works to the house's sewage system have been carried out in recent years. Further to this, Drogheda has an adequate public sewage network and treatment plant which has the capacity for a population of over 100,000, therefore we do not consider that additional people living in this dwelling will result in issues in the sewer network. In addition, Irish Water has recently carried out upgrade works to Staleen Water Treatment Plant which will ensure the delivery of a safe and secure drinking water supply to a population of over 70,000 people.

With regards to waste collection, no change is proposed to the current waste collection system at Knockmount House. It is noted that regular-sized wheel bins will be used and will be collected from the adjoining public footpath weekly as per the current arrangements for the house. It is also noted that the entrance to the house comprises a splayed opening where bins can be stored prior to collection. This will not affect the adjoining footpath or roadway and even allow space for the bin lorry to pull in off the road. It is not anticipated that the increase in residents will result in excessive waste at the house that cannot be dealt with by the current waste collection set-up at the house.

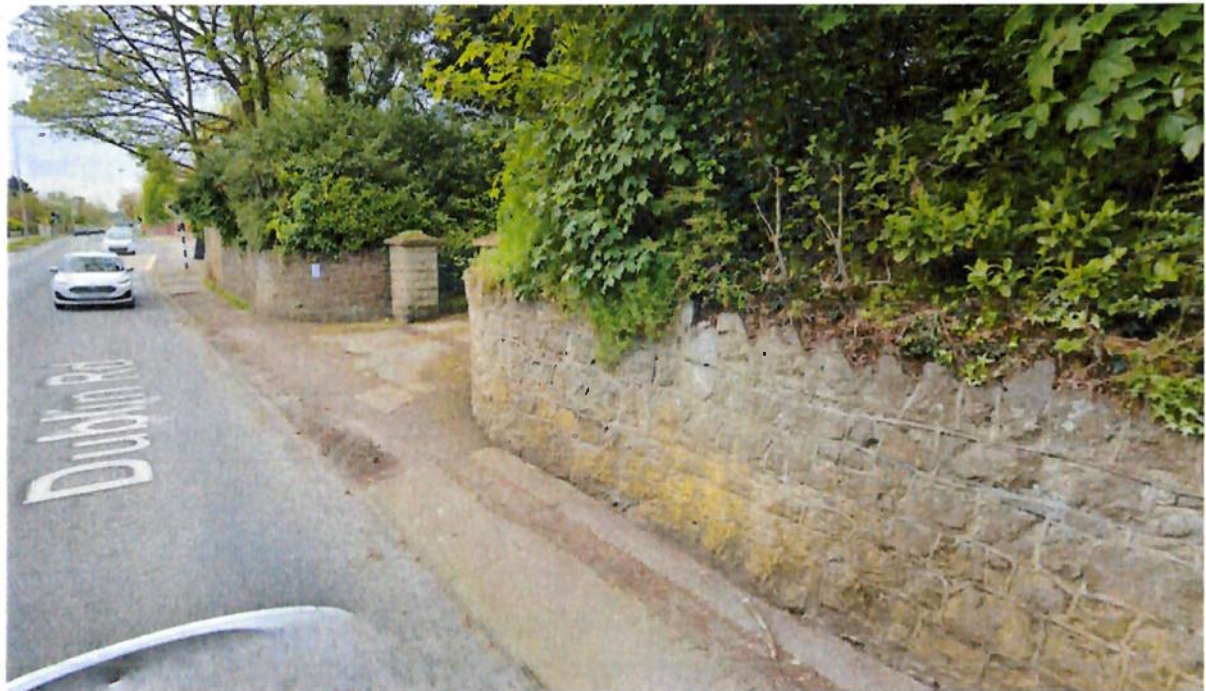


Figure 5.0 Image showing the front entrance to the site

Noise:

The proposed use will not affect noise levels in the area that may be detrimental to the amenity of adjoining dwellings. As noted, the house will be used to provide accommodation to families. It is anticipated that any increase in noise would be in keeping with any residential development, with the noise of children playing in the garden likely to be the greatest source of noise.

Having regard to the above, it is our opinion that the increase in residents at this property does not constitute an intensification of the use. It is our client's submission that the practical differences in the current use of the entirety of Knockmount as a private accommodation for persons seeking international protection are, to all intents and purposes, almost indiscernible from its established use.

It is also important to note that planning permission was granted on this site for 31 no. apartments under Reg. Ref. 201022/ ABP. Ref. 311050-21. It is considered that Louth County Council and An Bord Pleanála in their assessment of that planning application, determined that an increase in density at this location would not adversely affect services in the area. The proposed use of the existing house would have far less impact on services due to having fewer people and traffic.

Whilst it is clearly a matter for the Board to determine, in accordance with the law set out above, it is our submission that the lack of practical effects of the new use, in line with the judgments of the High Court in *Slattery Pre-Cast Concrete* and *Molloy*, means that no material change of use will occur at Knockmount. Given the lack of any material change in use, no development requiring planning permission pursuant to the terms of the Planning and Development Act, 2000, has taken place or is proposed to take place in this regard.

6.0 Conclusion

It is intended to use the subject site at Knockmount, which is a large residential building, to provide accommodation to c. 56 no. protected persons in multiple family groups comprising women and children. This property will not provide care to residents. The building has been in use as a residential building since its construction in 1906 and the continued use of the building to provide residential accommodation does not constitute development as no change of use has occurred, nor have any works been carried out to the property. As shown above, the proposed use will not result in an intensification of use at the

site and we submit that Louth County Council has erred in its assessment of the application for a declaration under Section 5 of the Act.

Therefore, the question before the Board is:

"Whether the use of a dwelling house, where care is not provided, as long-term private residential accommodation for protected persons comprising families, women and children, is or is not development?"

Accordingly, we request An Bord Pleanála to set aside the decision of Louth County Council and decide that the proposed development does not constitute development.

We trust that the Board will have regard to this submission and look forward to the decision in due course.



Kevin Hughes MIPI MRTPI
Director for HPDC

Appendix A

Copy of the decision by Louth County Council to refuse a section 5 declaration.



Comhairle Contae Lú
Louth County Council

REGISTERED POST

Knockmount Properties Ltd
c/o Christopher Browne
Hughes Planning & Development
Consultants
85 Merrion Square
Dublin 2

30th May 2024

Re: Ref. S5 2024/24

Application for Declaration of "Exempted Development" Part 1, Section Planning & Development Act 2000 (as amended) as to whether Whether the use of a dwelling house, where care is not provided, as long-term private residential accommodation for protected persons comprising families, women and children is or is not development and whether it is or is not exempt development within the meaning of the Planning and Development Act, 2000 (as amended)

Dear Sir/Madam,

I wish to acknowledge receipt of your application received on 9th May 2024 in relation to the above. Having assessed all information and enclosures received with the application, the Planning Authority wishes to advise as follows: -

WHEREAS a question has arisen pursuant to Section 5 of the Planning and Development Act 2000 (as amended) as to *Whether the use of a dwelling house, where care is not provided, as long-term private residential accommodation for protected persons comprising families, women and children* at Knockmount, Dublin Road, Drogheda, County Louth is or is not development and is or is not exempt development

AND WHEREAS Louth County Council in consideration of this question has had regard particularly to

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- (a) The definition of "development" in **Section 3(1)** of the Planning & Development Act 2000 (as amended),
- (b) Specifically, the provisions under **Class 14(h) of Part 1, Schedule 2** of the Planning and Development Regulations, 2001 (as amended),
- (c) Specifically, the provisions under **Class 20F of Part 1, Schedule 2** of the Planning and Development Regulations, 2001 (as amended),
- (d) Articles 6 and 9 of the Planning & Development Regulations 2001 (as amended),
- (e) Planning history and last authorised use of the property in question

AND WHEREAS *Louth County Council has concluded* -

- (a) The "use of a dwelling house, where care is not provided, as long-term private residential accommodation for protected persons comprising families, women and children" constitutes development under Section 3(1) of the Planning & Development Act, 2000 (as amended) and,
- (b) The definition of "house" under section 2 of the Planning and Development Act, 2000 which refers to *inter alia* a building or part of building which is being or has been occupied as a dwelling or was provided for use as a dwelling but has not been occupied,
- (c) The occupation of the dwelling house by multiple families would give rise to material considerations in this instance and therefore consists of the making of a material change of use,
- (d) The type of premises (house) located at Knockmount, Dublin Road, Drogheda, Co. Louth is not included in the **Description of Development (Column 1)** as set out in either **Class 14(h)** or **Class 20F** of Part 1, Schedule 2 of the Planning and Development Regulations, 2001 (as amended) and consequently the proposed 'use of a dwelling house, where care is not provided, as long-term private residential accommodation for protected persons comprising families, women and children' is not exempted development

NOW THEREFORE Louth County Council in exercise of the powers conferred on it by Section 5(2)(a) of the Planning and Development Act 2000 (as amended), hereby decides that the proposed 'use of a dwelling house, where care is not provided, as long-term private residential accommodation for protected persons comprising families, women and children' at Knockmount, Dublin Road, Drogheda, County Louth is **development** and is not exempted development

In Summary

A Declaration of Exemption is hereby REFUSED for the proposed works as detailed on the plans and particulars submitted on 9th May 2024.

Yours faithfully,



Amy Duffy
Planning Section