

PLANNING REPORT

AN BORD PLEANÁLA	
I.D.G.-	<u>072993-24</u>
ABP-	
02 JUL 2024	
Fee: €	<u>220</u>
Type:	<u>Class</u>
Time:	<u>17.15</u>
By:	<u>hond</u>

SECTION 5 APPLICATION DECLARATION OF EXEMPTED DEVELOPMENT

DUBLIN CITY COUNCIL REG. REF. 0165/24

27 HATCH PLACE, DUBLIN 2

SUBMITTED ON BEHALF OF:
Rosado Developments Ltd.
Unit 9 Ardavan Business Park, Wexford

85 Merrion Square, Dublin 2, D02 FX60
+353 (0)1 539 0710 info@hpdc.ie www.hpdc.ie

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 Rosado Developments Ltd., Unit 9 Ardcavan Business Park, Wexford, and relates to a Section 5 Declaration made by Dublin City Council on 5th June 2024 under Reg. Ref. 0166/24, regarding works carried out at 27 Hatch Place, Dublin 2

We request that An Bord Pleanála review the Section 5 Declaration issued by Dublin City Council and make a determination that the works which have been carried out at No. 27 Hatch Place, Dublin 2, is not development. In the interests of clarity, we would ask the following question to An Bord Pleanála:

"Whether the revision of the internal floor plans of the house is or is not development?"

The prescribed fee of **€220.00** is enclosed, along with a copy of the declaration issued by Dublin City Council.

1.1 Section 5 Declaration of Dublin City Council

On 5th June 2024, Dublin City Council refused a declaration of exemption for the works which have been carried out at No. 27 Hatch Place under Reg. Ref. 016/24 (See Appendix A). Whilst the Planning Authority determined that a material change of use has occurred, it is contended that the Planning Authority has erred in its assessment of the application.

Upon review of the Planner's Report prepared in respect of this application, 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 by not considering the question put before them. The Planning Authority has incorrectly considered increased occupancy within the subject dwelling as a basis for the use of the building changing from single residential unit to a dwelling of multiple occupancy. The Planning Authority has also erroneously applied development management standards in its assessment with such standards reserved for assessment of planning applications.
- It is submitted that a dwelling can be used to house individuals or families who may also be homeless. 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 comprise waste collection at the site. The provision of more bedrooms within the dwelling will not give rise to material planning impacts.

2.0 Site Description

The subject property is situated in the centre of Dublin City and fronts onto Hatch Place. The site is occupied by a three-storey five-bedroom building most recently in use as a residential dwelling. The building is representative of a mews type structure and, whilst being located within a Conservation Area, is notably not a protected structure. The subject site is located within the centre of a mature residential area which is punctuated by a significant quantum of commercial units, office buildings and embassies. The site is also well serviced by Dublin Bus, LUAS and Commuter Rail with all services available within 550m of the site thus making it highly accessible.



Figure 1.0 Aerial image showing the immediate locational context of the subject site (red outline).

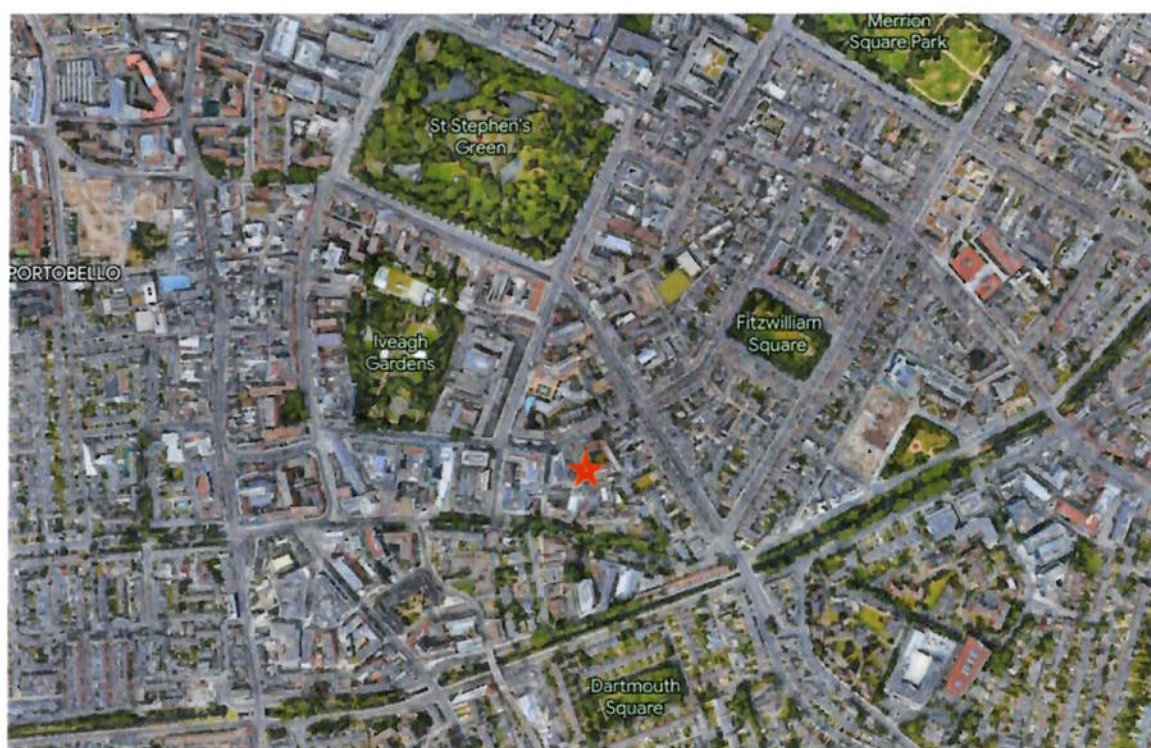


Figure 2.0 Aerial image showing the wider locational context of the subject site (red star).

3.0 Planning History

It is noted, upon review of the Dublin City Council Planning Register, that there is only 1 no. historic planning application on record in relation to the subject site, the details of which are as follows:

Reg. Ref. 2307/14 Planning permission granted by Dublin City Council on 9th June 2014 to convert the use of the house back to domestic use with minor modifications; the house first floor had been used as offices.

Based on the application wording and having regard for the provisions of the Planner's Report prepared by Dublin City Council in respect of Reg. Ref. 2307/14, it is understood that the subject building on site was formerly in office use before being approved permission for conversion to residential use.

4.0 Planning Context

The Dublin City Development Plan 2022-2028 is the relevant statutory development plan for the site.

4.1 Zoning

The subject site is subject to the land use designations identified in the Dublin City Development Plan 2022-2028 being zoned Z8 'Georgian Conservation Areas', the objective of such lands being:

'To protect the existing architectural and civic design character, and to allow only for limited expansion consistent with the conservation objective.'

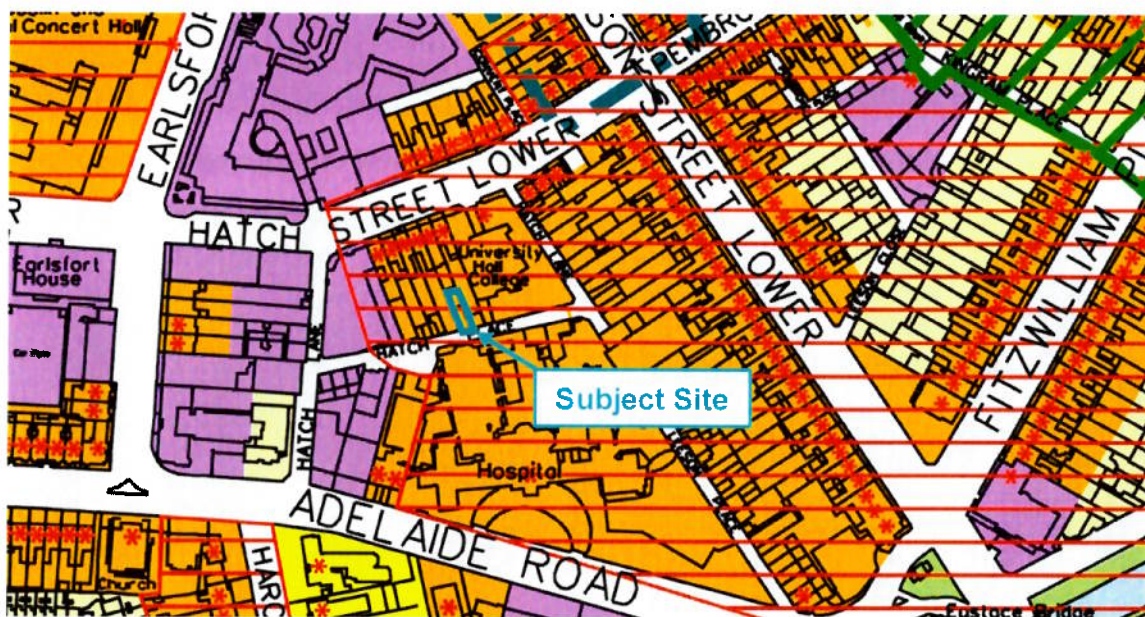


Figure 4.0 Extract from the Dublin City Development Plan 2022-2028 showing the subject site (blue outline) situated within lands subject to the Z8 'Georgian Conservation Areas' zoning objective.

The zoning matrix included in the Development Plan indicates 'permissible' uses in the 'Z8' zone. Permissible 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. The land uses which are 'permissible' use classes related to the 'Z8' zoning category are as follows:

*Assisted living/retirement home, bed and breakfast, café/tearoom, childcare facility, cultural/recreational building and uses, education, embassy residential, embassy office, home-based economic activity, hostel (tourist), hotel, live-work units, medical and related consultants, office, open space, **residential**, restaurant.*

It is noted that 'residential' is a use that is permissible on lands subject to the Z8 zoning objective. Moreover, it is noted per the provisions of the Planning and Development Act 2000 (as amended), that existing residential properties can be used to provide accommodation for homeless persons.

The subject development is therefore considered to be compliant with the zoning object of the subject site.

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."*

At this juncture, it is considered prudent to inform the Board of a Section 5 application which was lodged to Dublin City Council, concurrently with the subject Section 5 application, under Reg. Ref. 0166/24. This concurrent Section 5 application asked the following question:

'Whether the use of a residential building, where care is not provided, to house homeless families, is or is not development?'

The concurrently lodged Section 5 application was also issued with a negative declaration by the Planning Authority. We would herein confirm, as is of relevance in the context of this referral, that any works which have been undertaken upon the subject site accord with the provisions of Section 4(1)(h) of the Planning and Development Act 2000 (as amended) in that they comprise development consisting of the:

'Carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures.'

The current Section 5 referral seeks clarification on works which have been undertaken within the subject property. The application for the declaration relies on the provisions of Article 6(1) and Section 4(1)(h) of the Planning and Development Regulations 2001 (as amended). Article 6(1) reads as follows:

'Subject to article 9, development 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 of the said Part 1 opposite the mention of that class in the said column 1'

Section 4(1)(h) of the Act reads as follows:

*'The following shall be exempted developments for the purposes of this Act...
...development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures.'*

The Applicant has carried out works upon the property which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures. In this regard we note a comparison of the existing floor plans, relative to the floor plans previously approved under Reg. Ref. 2307/14 as presented in Figure 5.0 overleaf. We note that the subject property is representative of a habitable house and has most recently been in use as a residential dwelling.

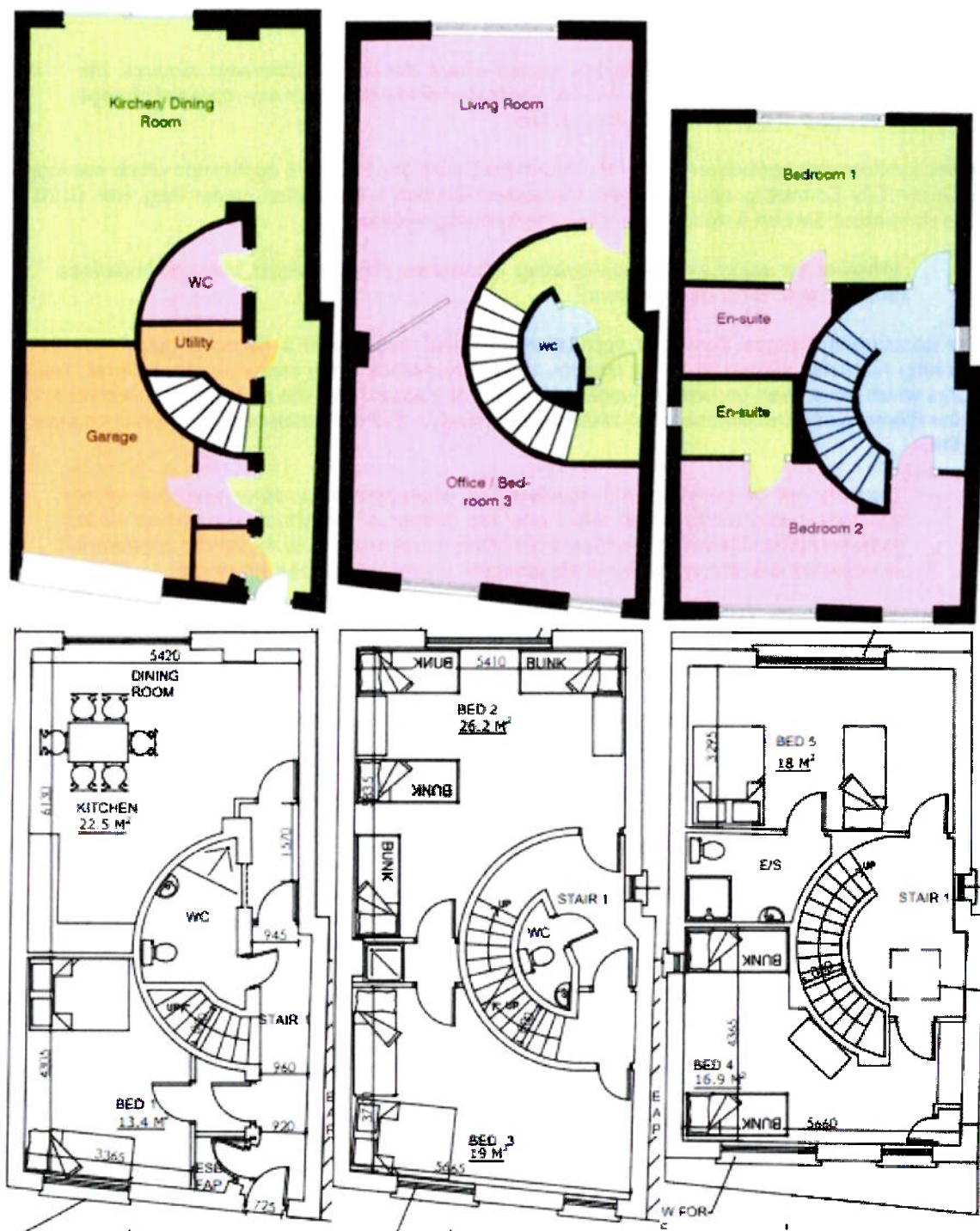


Figure 5.0 Ground (l), first (centre) and second (r) floor plans of 27 Hatch Place as approved under Reg. Ref. 2307/14 (top) and as existing (bottom).

Development

With regards to current planning legislation, we note the following:

Under Section 2(1) 'Interpretation' of the Planning and Development Act 2000 (as amended) states:

'In this Act, except where the context otherwise requires'-

'Development' has the meaning assigned to it by Section 3 ...

'Works are interpreted as including "any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure'.

Section 3(1) of the Planning and Development Act 2000 (as amended) states:

'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 works which have been carried out on the subject property are wholly internal and are limited to the revision of the internal layout and the conversion of the garage to provide additional accommodation.

Article 9

Article 9 lists the circumstances in which development that would be classified as exempted under Article 6 is not exempted. Specifically, we note that Article 9 (1)(a) states: -

"(a) if the carrying out of such development would—

- (i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act.*

It is noted that the proposed development does not contravene a condition attached to a permission under the Act.

- (ii) consist of or comprise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width,*

No amendments have been made to the existing access.

- (iii) endanger public safety by reason of a traffic hazard or obstruction of road users.*

The internal repair and refurbishment do not endanger public safety by reason of a traffic hazard or obstruction.

- (iv) except in the case of a porch to which class 7 specified in column 1 of Part 1 of Schedule 2 applies and which complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1, comprise the construction, erection, extension or renewal of a building on any street so as to bring forward the building, or any part of the building, beyond the front wall of the building on either side thereof or beyond a line determined as the building line in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan.*

We note that the above restriction is not applicable to the proposal to which this application pertains.

- (v) consist of or comprise the carrying out under a public road of works other than a connection to a wired broadcast relay service, sewer, water main, gas main or electricity supply line or cable, or any works to which class 25, 26 or 31 (a) specified in column 1 of Part 1 of Schedule 2 applies,*

It is submitted that the proposal will not comprise the carrying out of works under a public road.

- (vi) *interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of a development plan for the area in which the development is proposed or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,*

The works carried out on site have no impact on the character of a landscape, view or prospect of special amenity value or special interest.

- (vii) *consist of or comprise the excavation, alteration or demolition (other than peat extraction) of places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest, the preservation, conservation or protection of which is an objective of a development plan or local area plan for the area in which the development is proposed or, pending the variation of a development plan or local area plan, or the making of a new development plan or local area plan, in the draft variation of the development plan or the local area plan or the draft development plan or draft local area plan,*

No excavation, alteration or demolition of places, caves, sites, features, or other objects of archaeological, geological, historical, scientific or ecological interest has been carried out on site.

- (viiA) *consist of or comprise the excavation, alteration or demolition of any archaeological monument included in the Record of Monuments and Places, pursuant to section 12 (1) of the National Monuments (Amendment) Act 1994, save that this provision shall not apply to any excavation or any works, pursuant to and in accordance with a consent granted under section 14 or a licence granted under section 26 of the National Monuments Act 1930 (No. 2 of 1930) as amended,*

The undertaken works do not comprise the excavation, alteration or demolition of any archaeological monument included in the Record of Monuments and Places.

- (viiB) *comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site,*

The existing use of the subject unit will not have an effect on the integrity of a European Site, therefore an appropriate assessment is not required.

- (viiC) *consist of or comprise development which would be likely to have an adverse impact on an area designated as a natural heritage area by order made under section 18 of the Wildlife (Amendment) Act 2000.*

The undertaken works have had no adverse impact on an area designated as a natural heritage area.

- (viii) *consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use,*

The undertaken works do not comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use.

- (ix) *consist of the demolition or such alteration of a building or other structure as would preclude or restrict the continuance of an existing use of a building or other structure where it is an objective of the planning authority to ensure that the building or other structure would remain available for such use and such objective has been specified in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,*

The undertaken works do not consist of the demolition of a building or structure that would restrict the continuance of an existing use of a building or other structure where it is an objective of the planning authority to ensure that the building or structure would remain available for use.

- (x) *consist of the fencing or enclosure of any land habitually open to or used by the public during the 10 years preceding such fencing or enclosure for recreational purposes or as a means of access to any seashore, mountain, lakeshore, riverbank or other place of natural beauty or recreational utility*

The undertaken works do not comprise the fencing or enclosure of any land.

- (xi) *obstruct any public right of way,*

The undertaken works are wholly comprised of internal repair and refurbishment works of a residential property and, as such, will not obstruct any public right of way.

- (xii) *further to the provisions of section 82 of the Act, consist of or comprise the carrying out of works to the exterior of a structure, where the structure concerned is located within an architectural conservation area or an area specified as an architectural conservation area in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan and the development would materially affect the character of the area,*

The subject property is not located within an architectural conservation area or an area specified as an architectural conservation area in the Dublin City Development Plan 2022-2028. Accordingly, we consider that subject to Article 9 of the Regulations, that the proposed development is exempt from the requirement to obtain planning permission.

Upon review of the Planner's Report prepared in respect of the subject Section 5, we would note and respond to the following commentary:

*'This change to the floors plans show a material change of use in terms of the residential unit provided. Planning permission was granted for a two bed unit with adequate living space provided. The proposal which forms part of this section 5 application provides for a five bedroom dwelling with approximately 22 bed spaces. There is no statutory definition of 'material change of use'; however, it is linked to the degree of a change and the associated impacts which are determined on the individual merits of a case. The five bedrooms provide up to 22 bed spaces with some rooms having four sets of bunk beds in them. **The proposed layout and the number of bed spaces provided indicates that the dwelling is no longer a single occupancy unit but is in multiple occupancy with multiple bunk beds in each room.** The Planning Authority therefore considers that a material change of use has occurred and therefore the proposal constitutes development in respect of the meaning set out in Section 3 (1) of the Planning and Development Act, 2000 (as amended). The Planning Authority also considers that works have occurred at the property which constitute development within the meaning of the Act.'*

As underlined above, the Planning Authority states that there is no statutory definition of 'material change of use'. Notwithstanding this position, the Planning Authority states that a material change of use has occurred and as emboldened above, has erroneously based this statement on the fact that the subject property now can accommodate more people.

The fact that the subject house now accommodates more people does not change its use from being that of a house. The Planning Authority has incorrectly considered increased occupancy within the subject dwelling as a basis for the use of the building changing from single residential unit to a dwelling of multiple occupancy, this is not the case.

'In order to satisfy itself that works undertaken to the property are exempted development in accordance with Section 4(1)(h) of the Planning and Development Act 2000 (as amended), the Planning Authority considers it necessary to ensure that relevant development standards in relation to the development are met in relation to floor areas, widths of bedrooms/living areas etc.'

Further to the above commentary, the Planning Authority continues to assess the existing dwelling against the provisions of Section 15.11 'House Developments' of the 2022-2028 Dublin City Development Plan which, in turn, makes reference to the DEHLG 'Quality Housing for Sustainable Communities – Best Practice Guidelines for Delivering Homes Sustaining Communities' (2007). The Planning Authority makes token reference to the aggregate living area of the property as a means of assessing whether the subject works, which accord with the provisions of Section 4(1)(h) of the Planning and Development Regulations 2001 (as amended), are representative of exempted development. It is again submitted that this method of assessment is erroneous in that the subject standards are for assessment only in the context of a standard planning application for new-build residential development and is not intended for review as part of Section 5 application.

6.0 Conclusion

The subject site at No. 27 Hatch Place, is a residential building which has been subjected to works comprising the revision of the internal layout of the property.

As detailed above, the proposed use will not result in a material change of use to the extant residential use of the subject property and we submit that Dublin City Council has erred in its assessment of the application for a declaration under Section 5 of the Act. The Planning Authority has incorrectly considered increased occupancy within the subject dwelling as a basis for the use of the building changing from single residential unit to a dwelling of multiple occupancy and has inappropriately applied standards used for the assessment of planning applications for new-build developments. The works undertaken at the subject property accord with the provisions of Section 4(1)(h) of the Planning and Development Regulations 2001 (as amended) and should be considered representative of exempted development.

Therefore, the question before the Board is:

'Whether the revision of the internal floor plans of the house is or is not development'

Accordingly, we request An Bord Pleanála to set aside the decision of Dublin City 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 a decision in due course.



Kevin Hughes MIPI MRTPI
Director for HPDC

Appendix A Dublin City Council Declaration on Reg. Ref. 0165/24



Comhairle Cathrach
Bhaile Átha Cliath
Dublin City Council

An Roinn Pleanála & Forbairt Maoine, Bloc 4, Urlár 3, Oifigi na Cathrach, An Ché Adhmaid, Baile Átha Cliath 8.

Planning & Property Development Department, Block 4, Floor 3,
Dublin City Council, Civic Offices, Wood Quay, Dublin 8.

T: (01) 222 2288

E planning@dublincity.ie

07-Jun-2024

Hughes Planning
85 Merrion Square South
Dublin 2, D02 FX60

Application Number	0165/24
Application Type	Section 5
Registration Date	09-May-2024
Decision Date	05-Jun-2024
Decision Order Number	P3439
Location	27, Hatch Place, Dublin 2
Proposal	EXPP: Whether the revision of the internal floor plans of the house is or is not development?
Applicant Details	Rodado Developments Ltd

- If you have any queries regarding this Decision, please contact the email shown above

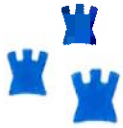
Note:

Any person issued with a declaration on development and exempted development, may, on payment of the prescribed fee, refer a declaration for review by An Bord Pleanála within four weeks of the date of the issuing of the declaration.

NOTIFICATION OF DECLARATION ON DEVELOPMENT AND EXEMPTED DEVELOPMENT

In pursuance of its functions under the Planning & Development Act 2000 (as amended), Dublin City Council has by order dated 05-Jun-2024 decided to issue a Declaration that the proposed development is NOT EXEMPT from the requirement to obtain planning permission under Section 32 of the Planning & Development Act 2000 (as amended) for the following reason:

The Planning Authority considers that development by reason of works and by reason of a material change of use has taken place at this premises, which renders this unit not in compliance with the standards of the Quality Housing for Sustainable Communities, in terms of aggregate living area. The Planning Authority therefore considers that a material change of use has occurred and therefore the proposal constitutes development in respect of the meaning set out in Section 3 (1) of the Planning and Development Act, 2000 (as amended). As a result, the proposed internal alterations to the floor plans are not considered exempt under 4(1)(h) of the



Comhairle Cathrach
Bhaile Átha Cliath
Dublin City Council

An Roinn Pleanála & Forbairt Maoine, Bloc 4, Urlár 3, Oifigi na
Cathrach, An Ché Adhmaid, Baile Átha Cliath 8.

Planning & Property Development Department, Block 4, Floor 3,
Dublin City Council, Civic Offices, Wood Quay, Dublin 8.


T: (01) 222 2288

E. planning@dublincity.ie

07-Jun-2024

Planning and Development Act 2000 (as amended).

Signed on behalf of Dublin City Council


For Administrative Officer