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

27 HATCH PLACE, DUBLIN 2

DUBLIN CITY COUNCIL REG. REF. 0166/24

SECTION 5 APPLICATION
DECLARATION OF EXEMPTED DEVELOPMENT

AN BORD PLEANÁLA
LDG-022994-24
ABP-
02 JUL 2024
Type: *City*
Fee: € *720*
By: *Kevin*
Time: *17:15*

PLANNING REPORT



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 Ardavan 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 the use of No. 27 Hatch Place, Dublin 2 to provide long-term accommodation to homeless families.

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 Dublin City Council and make a determination that providing accommodation to homeless families 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 use of a residential building, where care is not provided, to house homeless families, 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. We request that An Bord Pleanála set aside the decision of Dublin City 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 Dublin City Council

On 5th June 2024, Dublin City Council refused a declaration of exemption for the use of No. 27 Hatch Place to provide accommodation to homeless families under Reg. Ref: 0166/24 (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. Having reviewed the Planner's Report prepared for 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 as changing from single occupancy to multiple occupancy.
- 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 comprise waste collection at the site. Therefore, there will not be an intensification of use on the site.

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).

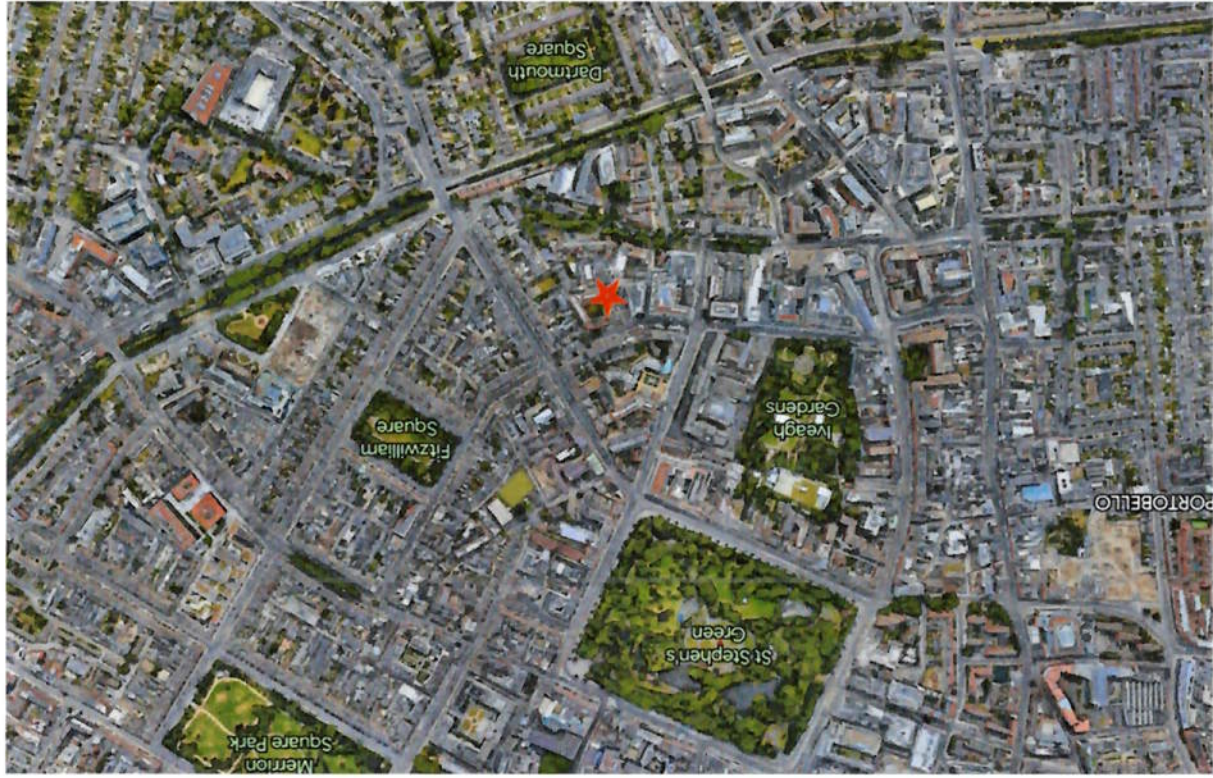


Figure 2.0 Aerial image showing the wider locational context of the subject site (red star).

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.'

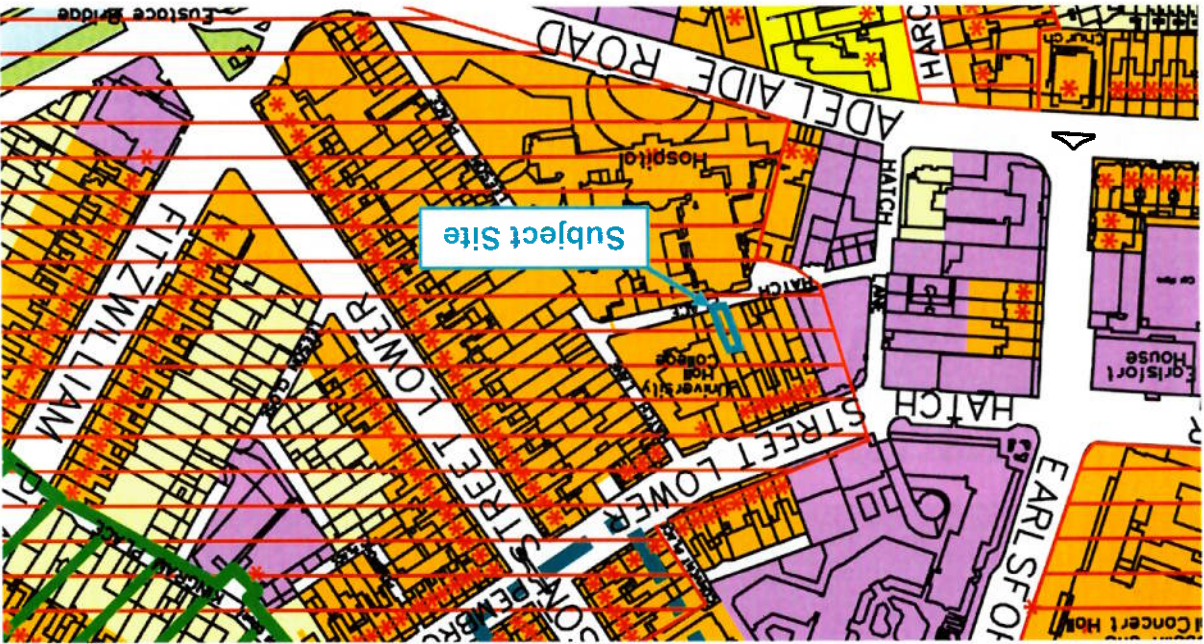


Figure 4.0 Extract from the Dublin City Development Plan 2022-2028 showing the subject site (blue outline) situated within lands subject to the Z8 'Georgian Conservation Areas' zoning objective.

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.

5.0 Grounds for Referral

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 objective of the subject site.

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. 0165/24. This Section 5 application asked the following question:

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

The concurrently lodged Section 5 application was also issued with a negative declaration by the Planning Authority and both the initial submission and subsequent referral are included in Appendix B of this referral. 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 the continued use of the subject property as a residential building that provides accommodation to homeless families but does not provide care. From the outset, it is contended that this does not constitute a material change of use. 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. Quinke & 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."

The subject property was previously in use as a part-office/part-residential building before being approved for conversion into wholly residential use under Reg. Ref. 2307/14. The proposed use of the property continues the long-established 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 property is a large house which, following the approval of Reg. Ref. 2307/14 in June 2014, has been in extended use as a residential property. Residents of the building have access to shared facilities including kitchen/dining room and bathrooms. Ample outdoor amenity space is provided for use by residents as the house is served by a large rear garden. Residents are free to enter and exit the house throughout the day like any tenant renting from a private landlord. This building will provide long-term accommodation with families 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 of over 150sq.m that can provide accommodation to 18 no. people.

In considering the above, it is submitted that the use of the subject property 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 the subject property. 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 the subject property. The applicants' arguments as they related to intensification were as follows:

"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 with increased residential capacity:

"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 the subject property and the Molloy case is that it is not proposed to convert the subject property into a "hostel" with a reception centre and providing ancillary services. Our client submits that any proposed intensification of the use of subject property is less significant as the intended residents in will be accommodated in a large house with shared bathrooms, kitchen/dining room and outdoor amenity space.

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 increased vehicular traffic, waste collection and noise.

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

Traffic Volumes:

As noted, the house would accommodate 18 persons from several family units. Given the status of the residents as homeless, it is reasonable to assume that car ownership and usage at the house would be low. It is noted that the house is centrally located within Dublin City within easy walking distance of multiple Dublin Bus routes and both DART, LUAS and inter-city rail services. Furthermore, we note that no staff will service the property and/or contribute to pedestrian/vehicular traffic within the immediate area.

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.

Waste Collection:

With regards to waste collection, no change is proposed to the current waste collection system at the subject property. 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 rear garden of the house can accommodate bin storage prior to collection.

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.

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Having regard to the foregoing, 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 subject property as a accommodation for homeless families is, to all intents and purposes, almost entirely indiscernible from its established use.

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 No. 27 Hatch Place, which is a large residential house, to provide accommodation to homeless families. This property will not provide care to residents. The building has been in continuous use as a residential property since 2014, having been in partial residential use prior to this date, 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 requiring the benefit of planning permission 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 Dublin City 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 residential building, where care is not provided, to house homeless families, 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 the decision in due course.



Kevin Hughes MIP, MRTPI
Director for HPDC Ltd.

An Roinn Pleanála & Forbairt Maoinne, Bloc 4, Ullar 3, Oifigí 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.

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07-Jun-2024

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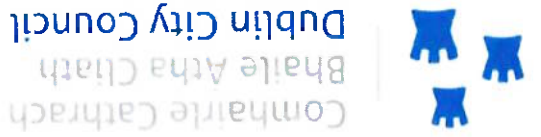
Application Number	0166/24
Application Type	Section 5
Registration Date	09-May-2024
Decision Date	05-Jun-2024
Decision Order	P3440
Number	
Location	27, Hatch Place, Dublin 2
Proposal	EXPP: Whether the use of a residential building, where are is not provided, to the house homeless families, is or is not development?
Applicant Details	Rosado Developments Ltd

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 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 proposed change of use is not exempt.



Comhairle Cathrach
Bhaile Atha Cliath
Dublin City Council

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07-Jun-2024

[Handwritten Signature]
For Administrative Officer

Signed on behalf of Dublin City Council

NOT section 5 (Refuse Exemption)

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