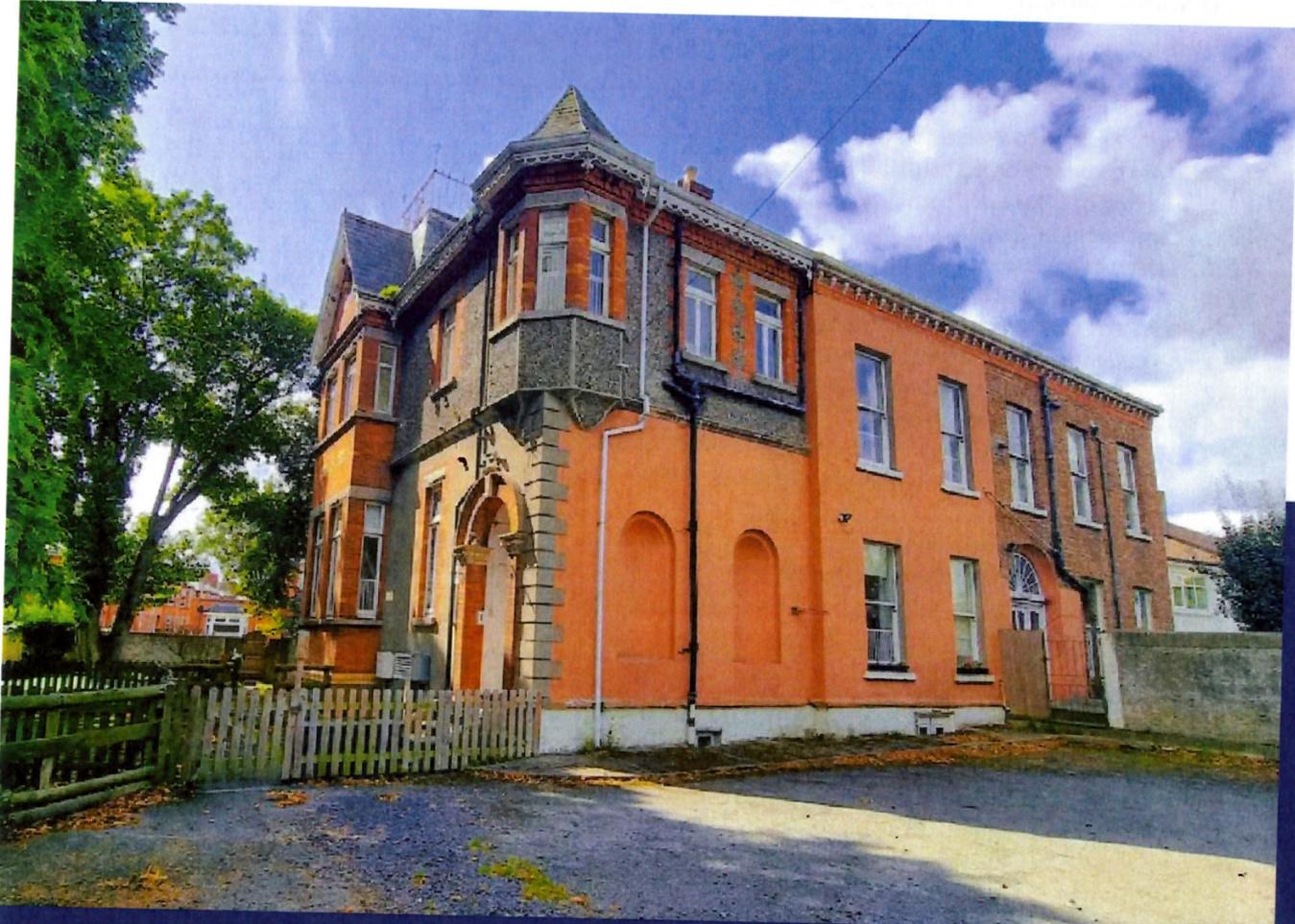


AN BORD PLEANÁLA
 LDG-
 ABP- 079693-25
 29 APR 2025
 Fee: € 70.00 Type: 10
 Title: 1703
PLANNING
REPORT

AN BORD PLEANÁLA
 LDG-
 ABP-
 Fee: €
 Type:
 29 APR 2025
 By:
 Title:



SECTION 5 REFERRAL – DECLARATION OF EXEMPTED DEVELOPMENT

Dublin City Council Reg. Ref. 0447/24

Park House, Ashdale Road,
 Dublin 6W, D6W R270

29th APRIL 2025

SUBMITTED ON BEHALF OF:
 Coolebridge Ltd.,
 157 Emmet Road,
 Inchicore,
 Dublin 8

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



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 Coolebridge Ltd., 157 Emmet Road, Inchicore, Dublin 8, and relates to a Section 5 Declaration made by Dublin City Council on 2nd April 2025 under Reg. Ref. 0447/24, regarding the use of Park House, Ashdale Road, Dublin 6W, D6WR270 to provide much needed accommodation to homeless persons.

We request that An Bord Pleanála review the Section 5 Declaration issued by Dublin City Council and make a determination with regard to the following questions:

“Whether the use of Park House, Ashdale Road, Dublin 6W, D6WR270 as a residential dwelling, constitutes exempt development or does not constitute exempt development?”

“Whether the use of a residential building, where care is not provided, to house homeless persons, constitutes exempt development or does not constitute exempt development?”

In the interest of clarity, we note that this referral relates to two specific issues:

- (i) whether the eastern portion lawfully reverted to residential use following the expiry of a temporary planning permission for a creche / Montessori facility; and,
- (ii) whether the proposed use as homeless accommodation constitutes a material change of use requiring planning permission.

It is respectfully submitted that the continuation of unauthorised creche use after the expiry of the temporary permission does not extinguish the lawful residential use of the property, and that no abandonment has occurred in the absence of clear evidence of an intention not to resume residential use.

The prescribed fee of **€220.00** is enclosed, along with a copy of the declaration issued by Dublin City Council. This report sets out the rationale for the current and proposed use. We request that An Bord Pleanála set aside the decision of Dublin City Council and issue a declaration stating that the use of Park House as a residential dwelling and residential property to accommodate homeless persons does not constitute development.

1.1 Section 5 Declaration of Dublin City Council

On the 2nd of April 2025, Dublin City Council refused a declaration of exemption which firstly, attempted to confirm the current use of Park House as a residential dwelling and further the proposed use of Park House to provide accommodation to homeless persons under Reg. Ref. 0447/24 (See Appendix A).

The Planning Authority determined that the use of the eastern half of the building would require the re-establishment of the use as a residential dwelling via planning permission and therefore a material change of use would occur. In addition, the Planning Authority considered that the proposed use of Park House to provide accommodation to homeless persons would result in an intensification of the use on the site by way of scale and due to the clarity with regard to the definition of a single dwelling unit in this instance, it was considered that this would also result in a material change of use.

It is respectfully 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 applied a standard of assessment more appropriate to a planning application rather than a request for a declaration on whether the proposed use constitutes development.

The Section 5 referral report will assess the proposed use in the context of the Planning and Development Act 2000 (as amended) and relevant case law.



Figure 1.0 Aerial view of the subject site, red star.



Figure 2.0 Street view of the subject site.

3.0 Planning Context

The Dublin City Development Plan 2022-2028 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.

3.1 Zoning

The subject site is zoned Objective 'Z1 – Sustainable Residential Neighbourhoods', under the current Dublin City Development Plan 2022-2028, with the objective 'to protect, provide and improve residential amenities.'

The vision for development under this zoning designation is one where 'a wide range of high quality accommodation is available within sustainable communities, where residents are within easy reach of open space and amenities as well as facilities such as shops, education, leisure and community services.'

It is noted that the subject site is not within an Architectural Conservation Area (ACA), nor is it a protected structure in the Dublin City Record of Protected Structures.

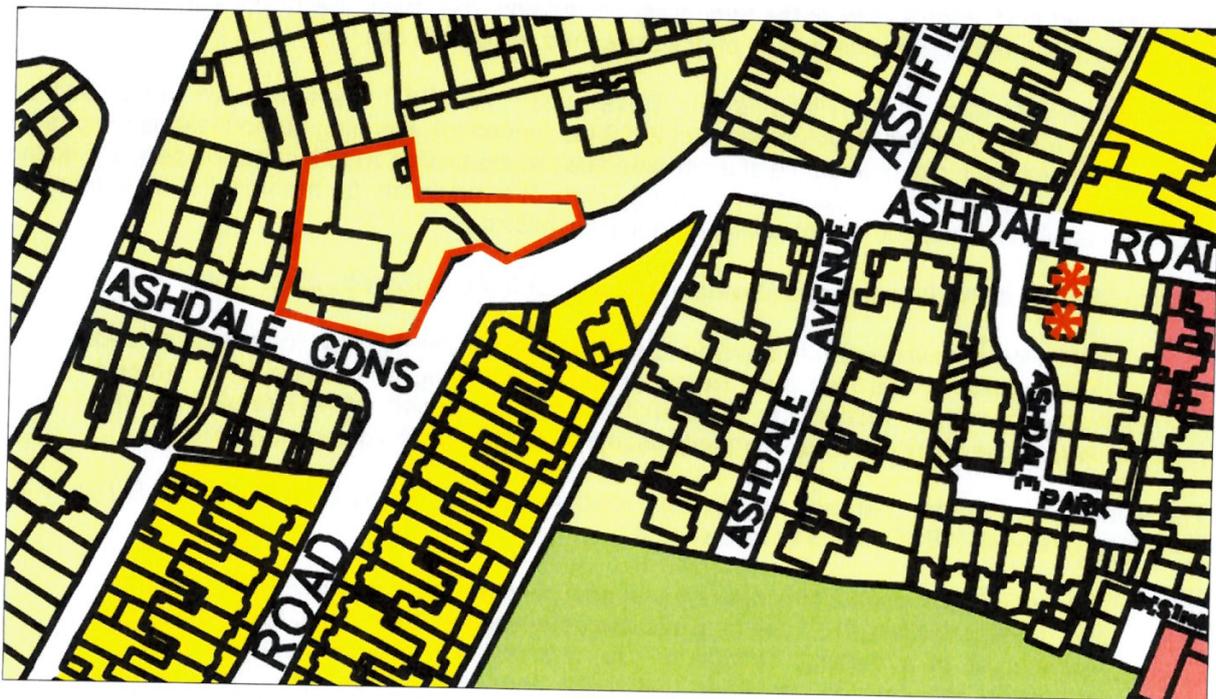


Figure 4.0 Extract from Map Set H of the Dublin City Development Plan 2022-2028 showing the subject site situated within lands subject to the zoning objective 'Z1' outlined in red.

Permitted in Principle

Land uses which are classified as 'Permitted in Principle' will normally be permitted, subject to compliance with relevant policies, standards and requirements contained in the Plan. According to the Development Plan, uses which are 'Permitted in Principle' on land zoned 'Z1' are as follows:

'Assisted living/retirement home, buildings for the health, safety and welfare of the public, childcare facility, community facility, cultural/recreational building and uses, delicatessen, education, embassy residential, enterprise centre, halting site, home-based economic activity, medical and related consultants, open space, place of public worship, public service installation, residential, shop (local), sports facility and recreational uses, training centre.'

It is considered based on the above, that residential development is a permissible use within the subject site.

In my view the Inspector and the Respondent in turn properly interpreted the CDP and correctly identified the 'non-conforming use' as being the 'use....which [had a] valid planning permission...', that being the throughput of 10,000 tonnes of waste per annum as per the only permanent permission addressed to throughput of waste annually. Any other permission authorising use more than this was temporary, had expired and did not enure for the benefit of the land."

In both cases, the High Court confirmed that once a temporary permission expires, the land reverts automatically to its prior lawful use, regardless of any unauthorised activities that may have occurred thereafter. The prior use was considered to have *lain dormant* during the temporary use and to revive automatically upon expiry of the time-limited permission.

In short, an expired temporary grant leaves no lasting rights; the land's legal use defaults back to the last lawful use. Importantly, the legal revival of the prior use occurs regardless of whether the unauthorised crèche operations continued de facto after the expiry date. As confirmed by Phelan J. in *St. Margaret's Recycling*, the legal status of the land is determined not by factual activity but by reference to the lawful planning position.

Accordingly, it is submitted that the expiration of the temporary permission in 1997 resulted in the lawful resumption of the established residential use of the eastern portion of Park House, which endures to this day.

4.2 No Abandonment of Residential Use

It is submitted that there is no evidence to support a finding of abandonment of the lawful residential use of the eastern portion of Park House, as suggested in the Planner's Report (Reg. Ref. 0447/24).

In planning law, abandonment requires both (i) the physical cessation of the lawful use, and (ii) a clear, demonstrable intention not to resume that use. In this case, no such intention is evident.

The eastern portion of the premises retains the physical characteristics of a residential dwelling, including its internal layout. No substantial works were undertaken to remove or prevent residential occupation. The property was marketed and sold as a dwelling in September of 2024, reflecting the continuing recognition of its residential character. Furthermore, planning permission granted under ABP Ref. PL29/5/87595 and DCC Reg. Ref. 2261/91 was expressly temporary in nature, and no permanent change was permitted or sought thereafter.

The Planning and Development Act 2000 (as amended) does not provide a definition for abandonment, so when considering whether a use has been abandoned, it is pertinent to review the relevant case law on the matter as well as previous cases before An Bord Pleanála.

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 that:

"Abandonment is the objective sign of a decision not to continue further with the development."

Case law on the matter suggests 4 no. tests of abandonment as listed in 'Environmental and Planning Law in Ireland' (Yvonne Scannell, 1995) as follows:

- The intention of the owner and/or occupier to abandon or not abandon.
- The period during which the use was discontinued.
- Whether or not there have been any intervening uses.
- The physical condition of the land or structure

Each of these factors is addressed in turn overleaf.

change of use, nor were any substantial works undertaken that would have altered the lawful residential character of the property.

In 2024, the development was purchased by our client with the clear intention of resuming its lawful residential use. During this period, minor refurbishment and fit-out works were carried out, comprising internal rewiring, plumbing upgrades, and the replacement of existing windows with timber windows of similar style and appearance. These works, constituting maintenance and improvement of a structure without material alteration, fall within the scope of exempted development under Section 4(1)(h) of the Planning and Development Act 2000 (as amended).

The leading case on the issue of abandonment in Ireland is the High Court case of *Dublin County Council v. Tallaght Block Company [1982] 1 I.L.R.M. 1* set out the following test for whether the established use of land had been abandoned:

*“Where a previous use of land had been not merely suspended for a temporary and determined period but had ceased for a considerable time with **no evinced intention of resuming it at any particular time**, the Tribunal of fact was entitled to find that the previous use had been abandoned, so that when it was resumed the resumption constituted a material change of use.”*

Again, in the case of *Lord Mayor of Dublin v. Lowe [2000] IEHC 161*, the High Court recognised that a definitive decision to cease a use indefinitely was required for an established use to be abandoned. Morris J. held that:

*“The removal of the original hoarding by David Allen Holdings Limited **without the intention of replacing it** must be regarded as an abandonment of any rights which they may have acquired up to that time.”*

Regarding the subject property, the property was physically maintained as a dwelling, no works or alterations ever took place that were significantly inconsistent with that use, or that would have evidenced an intention to cease that use entirely. There was never any planning application for an alternative use, nor any other sign that the previous and / or current owner did not intend to recommence the residential use of the property as a dwelling in due course.

There is no evidence of a definitive decision to permanently cease the residential use. On the contrary, the current owner has actively sought to resume residential occupation, including by engaging with Dublin City Council for pre-planning advice in good faith.

Accordingly, the objective facts demonstrate a consistent intention to maintain and resume the residential use of the eastern portion of Park House, and there is no basis for a finding of abandonment.

4.2.3 Intervening Uses

In assessing abandonment, it is necessary to consider whether any intervening uses inconsistent with the resumption of the original residential use have arisen.

In the present case, following the expiry of the temporary planning permission in 1997, the eastern portion of Park House continued to operate as a crèche/Montessori facility without planning permission. However, this use was unauthorised and does not constitute a lawful intervening use for the purposes of planning status.

There is no record of any subsequent planning applications or permissions authorising a permanent change of use to a non-residential function. Nor was there any distinct or materially different use established on the site that would legally extinguish the residential use.

A site inspection was carried out on the 30th of April 2024 and further on the 14th of April 2025 to ascertain the current condition of the building and grounds. Upon entry to the building, it is clear from the outset that the property was a residential dwelling and that the continuation of residential use on the site would be a natural conclusion.



Figure 6.0 View of bathrooms previously serving the creche development but maintaining features consistent with residential development including a well-maintained stained-glass door.



Figure 7.0 View of a classroom again showing features consistent with residential development.



Figure 8.0 View of a classroom again showing features consistent with residential development.

This amalgamation ensures a coherent and unified residential facility, rather than a disjointed arrangement of individual units alongside a shared accommodation facility. Such a configuration is necessary to provide suitable communal living arrangements for future residents.

Therefore, following confirmation of the first question of lawful residential use, the proposed development would be properly considered a single residential dwelling for planning purposes.

4.3.3 No Material Change of Use

It is submitted that the continued residential use of Park House, including its proposed use to accommodate homeless persons, where no care is provided, does not constitute a material change of use.

There is no institutional, managed care, or support service provided beyond the ordinary management and administration typically associated with residential accommodation for homeless persons. The operational character remains purely residential.

This conclusion is consistent with recent planning authority determinations in comparable cases, as outlined in Section 4.3.4 below.

Accordingly, the Board is respectfully requested to confirm that the proposed development does not constitute development for the purposes of the Planning and Development Act 2000 (as amended).

4.3.4 Planning Precedents

Recent Section 5 declarations issued by Dublin City Council reinforce the position that the continued use of residential properties to accommodate homeless persons without care provision does not constitute development.

34, North Circular Road, Dublin 7

Reg. Ref. 0267/24 Dublin City Council granted an exemption on 19th September 2024 for *'The continued use of a residential building, where care is not provided, to house homeless persons, is not development'*.

Dublin City Council granted the exemption in this instance and declared the following:

'In conclusion what has been determined under this referral is that the continued use of this multi-unit residential property as accommodation for the homeless persons does not fall under Class 9 of Part 4 of the Second Schedule to the Planning and Development Regulations 2001 on account of the property not providing for both residential accommodation and care, and therefore does not constitute a material change of use.'

46, Cabra Road, Dublin 7

Reg. Ref. 0396/24 Dublin City Council granted an exemption on 16th November 2024 for *"The continued use of a residential building, where care is not provided, to house homeless persons, is not development"*.

The Planner's Report for this declaration of exemption stated:

'The case is made in the planning report submitted with the application that the proposal does not constitute a material change of use of the subject structure on the basis that it is simply a continuation of the established multi-unit, multi-residency use at No. 46 Cabra Road, to now provide accommodation for homeless persons (but not provide care).'

The subject site at Park House is materially similar in scale, configuration, and intended use to both precedent sites. In each case, the absence of care provision was critical to the finding that no development had occurred.

Pressure on Infrastructure

The proposed residential occupancy is consistent with the building's original design and intended function as a dwelling. The demand on local water, drainage, and waste services will be equivalent to ordinary residential use and will not place additional pressure on infrastructure.

Visual Impact

No external alterations to the building are proposed beyond maintenance and minor refurbishment works already carried out and / or works determined exempted under Section 4(1)(h) of the Planning and Development Act 2000 (as amended). The visual appearance of the building will remain consistent with its residential character, and no adverse visual impact will arise.

Impact on Residential Amenity

The nature of the proposed use, involving independent residential living without institutional care services, will maintain the residential character of the area. No increase in noise, anti-social behaviour, or other amenity impacts is anticipated beyond what would reasonably be expected from ordinary residential use.

Having regard to the above, it is submitted that the proposed development will not give rise to any material intensification of use that would amount to development under the Planning and Development Act 2000 (as amended). The operational impacts of the proposal remain within the scope of normal residential use, as envisaged by relevant case law and planning principles.

5.0 Conclusion

As noted, this Section 5 referral relates to two specific issues:

- (i) whether the eastern portion lawfully reverted to residential use following the expiry of a temporary planning permission for a creche / Montessori facility; and,
- (ii) whether the proposed use as homeless accommodation constitutes a material change of use requiring planning permission.

It is respectfully submitted that the lawful residential use of the eastern portion of Park House has not been abandoned. The property reverted automatically to its prior established use upon the expiry of the temporary crèche permission in 1997, consistent with the principles set out in relevant case law and in accordance with Section 39(3) of the Planning and Development Act 2000 (as amended).

There is no evidence of a clear intention to abandon the residential use, no intervening lawful inconsistent use, and the physical condition of the building remains consistent with residential occupation.

The proposed use of Park House to accommodate homeless persons, where no care or support services are provided, constitutes a continuation of the established residential use. The amalgamation of the building into a single residential unit under Class 14(e) of the Planning and Development Regulations 2001 (as amended) constitutes exempted development.

Whilst it is contended that the Planning Authority erred in its approach to formulating a decision, as a Section 5 declaration concerns the nature of the use proposed, not the detailed operational management of the site, it is submitted that the proposed use will not give rise to any material intensification of use having regard to established planning criteria. The operational format remains residential in character and will not result in significant additional impacts in terms of traffic, infrastructure, visual appearance, or residential amenity.

Recent planning precedents issued by Dublin City Council reinforce the position that the continued residential use of properties to accommodate homeless persons without care provision does not constitute development.

Therefore, the questions before the Board are:

Appendix A

Copy of the decision by Dublin City Council to refuse the Section 5 Application

Comhairle Cathrach
Bhaile Átha Cliath
Dublin City Council

An Roinn Pleanála & Forbairt Maoin, Bloc 4, Uiar 3, Oifig 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

02-Apr-2025

change from this established use to a residential use.

b) The use of the residential building, where care is not provided, to house homeless persons, is development as a material change of use has occurred and is not exempted development as the change of use raises planning considerations that are materially different to planning considerations relating to the established use.

Signed on behalf of Dublin City Council


For Administrative Officer

Ceannofig, Oifig na Cathrach, An Ché Adhmaid, Bhaile Átha Cliath 8, Cill
Head Office, Civic Offices, Wood Quay, Dublin 8, Ireland

NOT1section5(Refuse Exemption)

T: 01 222 2222 W: www.dublincity.ie