

Kiddal  
Ailce  
Woolly

## **Section 5 Application Referral**

**Ref; 0447/24**

**APB Case Reference R129S**

**Park House, Ashdale Road, Terenure, Dublin 6w. D6W R270.**

**Proposal: Whether the use of Park House, Ashdale Road, Dublin 6w, D6W R270 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?.**

Dear Sir/ Madam.

We the undersigned wish to make an observation in respect of the above.

We have enclosed the fee of €50.

### **OBSERVATION/SUBMISSION**

1. The property, the subject of this section 5 application, is a large period house set right in the centre of mature residential dwellings with the main entrance onto Ashdale Road and a further entrance onto Ashdale Gardens. Ashdale Road is road of terraced redbrick house while Ashdale Gardens is a cul de sac of terraced houses. There are a number of residential roads nearby Ashdale Avenue. Ashdale Park and Ashfield Road. The site is close to Eaton Square, Eaton Road, Terenure Park, Hannaville and Mayfield Road. To the rear of the site (but with no entrance onto) is Mount Tallant Avenue, Corrib Road and Neagh Road.
2. The referral request An Bord Pleanala to review the Section 5 Declaration issued by Dublin City Council.

### **Abandonment of the Change of Use**

3. The residential use of the eastern half of Park House has been clearly abandoned. A crèche (as opposed to residential) has operated there since 1997. The owners sought and were granted planning permission for a crèche with a five year condition. The owners continued as a crèche until 2023. There has been a physical cessation of residential use – nobody has resided there since that time. The owners of the building have not resided there nor has anybody else. This character features and lay out of this part of the building clearly

demonstrate an intention to continue a commercial use. There is not a scintilla of evidence from the physical configuration of the building or otherwise that it was ever intended to revert to residential use. In summary there is no evidence of an intention to revert to residential in fact the evidence is to the contrary and that the residential use has been abandoned. The period is significant – 30 years and there have been no intervening uses. The physical condition of the structure is that of a commercial user and the absence of bedrooms/sleeping accommodation is inconsistent with a residential user.

4. The Applicant has argued that minor works that have been carried out were all that has been required to bring make the building suitable for residential purposes and that this demonstrates an intention to revert to residential use. By any standard the works that have been carried out are substantial and demonstrate the opposite namely that it was never intended to return to building to residential use.

**Unauthorised Development:**

5. Part of the works is to the entrance of Park House which has been extended and a black metal gateway has been erected in the last year, without planning permission. This is unauthorised development which should be the subject of enforcement. This unauthorised development was the subject of a complaint to DCC prior to the within Application. The entrance is a roadway entrance from a corner on Ashdale Road and the proposed development will impact traffic, traffic flow and traffic safety on the road. The roadway is narrow and for the most part along the length of Ashdale Road there is not space for two vehicles to pass. Ashdale Gardens is a narrow cul de sac where parking is limited and vehicular access is often restricted. The Application/Referral is absent of any traffic or safety considerations.
6. In the alternative when the Planning Permission lapsed the crèche was for the period 1997 to 2023 (25 years approx) unauthorised development/user and remains so to this day. In this scenario the planning status of Park House is that of an unauthorised development/user which may or may not be immune to enforcement (as it operated as a crèche as recently as 2023).

**Unauthorised Development not entitled to benefit for range of exempted development in the Planning and Development Legislation:**

7. An unauthorised development is not entitled to benefit from the range of exempted development provisions contained in the Planning and Development Regulations 2001 as amended. (See Planning and Development Law Simons page 80 para 2-102).

Also Article 9 sets out the restrictions to such exemptions. Article 9(i)(a)(viii) provides that '*Development to which Article 6 relates shall not be exempted development for the purpose of the Act – (a) if carrying out such development would (viii) consist or comprise of the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use*'.  
use'.

**Intensification of Use:**

8. The intention is to turn the building into a residential facility for homeless persons is significant intensification of use. The Application does not give any indication of the numbers of persons it is anticipated the site will house but undoubtedly there will be a significant increase in the volume of people residing at the premises. It is expected some will reside there longer term but given the nature of homelessness but it is likely that many will use the facility will be there on a short term basis. There will be significant movement of persons to and from the facility. It will have to include 24 hour security. There will be a significant volume of people visiting the facility. There will be an increased volume of waste energy and noise. The facility will have to include a level of medical and psychological care and treatment as well supports such as meals, laundry, toiletries and transport.

**Does an unauthorised use revert to an authorised use?**

9. The Application to Dublin City Council argues '*The permission ceased to have effect on the 13<sup>th</sup> of July 1997. The effect of the above condition and temporary nature of that condition is that the crèche use is no longer permitted and the property should revert to the original residential use. We invite the local authority to confirm the use of the premises as a residential building*'.

It is submitted an unauthorised use or a temporary use which was carried on and unauthorised for more 20 years does automatically revert to an authorised use nor is it permissible (and it is submitted that it would be ultra vires) to declare that an unauthorised use automatically reverts to residential which thereafter can then be declared exempt development. This would set a precedent by circumventing the clear intention of the legislation that unauthorised development should not have the benefit of the exemption provisions in the Planning Acts.

**Material Change of Use:**

10. A change of use must be material to constitute development for which planning permission is required. If the change of use is not material then that in certain specific circumstances that can constitute exempted development. The legislation does not define change of use.
11. The Courts have taken two approaches to whether the change of use is material or not. It has looked at differences between the character of the existing use and the proposed use see *Cusack .v. Minister for Local Government, McMahan and Dublin Corporation* an unreported judgement of McWilliam J November 4,

1980. There is also for a line of authority where it looks the impact or effects of the existing use compared with the proposed use see Monaghan County Council Brogan 1987 IR 333. In Galway County Council v Lackagh Rock 1985 IR 120 the High Court found that what should be looked at are the matters which a planning authority would take into account in the event of a planning permission being made.

12. In terms of either criteria (the differences of character of the existing use to the proposed use and/or in terms of the impacts or affects of the existing use compared with the propose use) it is clear that this will be a facility/institution as opposed to a four person dwelling. As stated earlier, this will facilitate a significant number of residents both long term and short term, which will be significantly increased current occupation levels. It will be a 24 hour facility; it will have 24 hour staffing. It will bring increased security. It will bring increased visitors and traffic to a residential road within a residential area. The facility will invariably provide meals and will have to provide a level of care including medical care as well as other services. It will bring increased noise, waste, wastewater and ancillary services. It is submitted that the use of the building as a facility for homeless persons is materially different with different impacts than its current use. The four tenants that currently reside in the building have little or no impact. They come and go unnoticed in the manner of any family on the road. They bring no traffic issues and no noise in the manner of any dwelling on this quiet residential road. If one change reflects that the fact that what is proposed is materially different to what it there at present or what will be impactful on the area and community, it is the installation of security cameras. To my knowledge no other dwelling on this road or nearby has security cameras or requires security cameras at present.
13. It follows also that any decision or declaration has to take into account the proper planning development and sustainable development of the area see Galway County Council v Lackagh Rock. This is a residential area within the region of 300 houses made up mainly of families with children and high proportion of older persons in single dwellings. 20 or more dwellings are within 20 metres and overlook Ashdale Park House, which is located on the corner of a narrow roadway which limits access and egress from the building. The nearest green space is Eton Square and the nearest village is Terenure. The proposed change of use will change the special and distinct residential character of the area and the spirit of community. The change is such that whether justified or not (and whether as a result of misinformation about the facility) children and older people will move less freely from house to house and road to road. This materials change will impact on neighbours (which constitute a high proportion of older people) engaging with and socialising/visiting with other neighbours, which is so important where isolation and loneliness is something we all work to minimise. It will impact on children playing locally or moving freely to and in the local park as they do at present.

**HSE residential facility nearby and intensification of services in the area:**

14. Across the road and within 20 metres of Ashdale Park House is a HSE facility and residential unit. The Applicants make no reference to this facility and given

its location and the fact that it is a residential facility for vulnerable adults. The impact this proposed change of use on the residents of that established facility which is situ for at least 20 years is material. It is submitted the the Applicant's omission of this material information in its Application is evidence of male fides in their application or more concerning that they intend to ignore and / or take no account on the impact vulnerable persons resident locally.

15. The location of this HSE facility raises the impact of intensification of services where there is existing service whose residents have become an integral part of the local community.

#### **Security Issues:**

16. The building and the site is an extremely open one, which raises security issues, the primary concern is that this building will become the target of protests or attacks as has happened in other places. Given the location of the building, its intended use, proximity to so many dwellings it is foreseeable (and maybe inevitable) that a situation could arise where the security and safety of local residents would be compromised.

#### **Privacy**

17. As stated previously the site is an extremely open one which is overlooked on two sides by up to 20 houses. The property is different those considered suitable for homeless accommodation. It is at the very centre of a mature residential area. The site is exposed on each side. The raises significant privacy concerns the proposed residents and renders the building totally unsuitable for its intended use. Given its proximity to a number of roads it will impinge on neighbouring resident's privacy and the quiet enjoyment of their property. The installation of security cameras is a further restriction on neighbouring resident's privacy and the quiet enjoyment of their property.
18. The property has been offered to at least one provider of homeless services and has not been accepted for lack of planning.
19. Accordingly, it is submitted that the Application has to fail on the basis that the planning status of Park House, Further and in addition, the proposed use constitutes a material change of use which is contrary to the proper and sustainable development of the area and the neighbouring community. In these circumstances the question should be answered in the negative that the proposed change of use does not constitute exempted development.

Signed

**Michael Mullooly and Aileen Mullooly, 5 Ashdale Road, Terenure, Dublin 6W. D6WHT20.**

