William B Flynn

35 Ashdale Road
Terenure
Dublin 6W

25 May 2025

An Bord Pleanala
64 Marlborough Street
Dublin 1
D01 V902

Dear Sirs,

Your Case Number: ABP-322400-25
Planning Authority Reference Number: 0447/24
Property: Park House, Ashdale Road, Terenure, Dublin 6W

I wish to make the following observations in relation to the above matter.

Usage of Park House

I have been a resident of Ashdale Road, Terenure, for over 20 years. In the last 10-15 years, many of the properties have changed hands resulting in the residential character of the area now being comprised, in my estimation, of at least 50% families with young children. The overwhelming majority of properties are single family dwellings, with a few in multi-units under pre-63 declarations.

When I became resident in Ashdale Road in 2004, Park House was in use as a creche and continued to be in use as such until 2023 to my knowledge. Many local residents had children attending the facility and there was never any indication that the owner/manager was anything other than dedicated to continuing its use as a creche/Montessori. Manor Montessori Limited, which operated the creche/Montessori, is listed as a participating employer by the Revenue Commissioners in the TWSS scheme that operated during the COVID-19 pandemic. The fact that the facility continued to operate throughout the pandemic, taking advantage of State supports to do so, evidences the operator's dedication to the business being conducted at Park House.[1] Manor Montessori Limited was itself established as operator of the facility in 2008, 11 years after the creche/Montessori was first opened by Ms. Reilly. The formalisation of the business into a corporate operation again evidences the continuing and deeply engaged nature of the business on the site.[2]

Manor Montessori was a busy childcare facility, and its closure was a blow to the area. Some evidence of the scale of the operation can be seen from periodic advertisements for new staff. In 2017, an advertisement was published for a permanent new staff member, with the staff complement being described as 12 and with 150 children in care.[3] At this point therefore the creche was a substantial operation and was hiring permanent staff members. The issue of permanent employment contracts is

[1] https://www.revenue.ie/en/employing-people/documents/twss/list-of-employers.pdf. Accessed on 25 May.
[2] https://www.solocheck.ie/Irish-Company/Manor-Montessori-Limited-460862 Accessed on 25th May.
[3] https://educationposts.ie/post/view/81737. Accessed on 25th May.

quite inconsistent with any presumed intention to revert in the future to residential use of tl property.

The available internet records of the sale of Park House (which are now quite restricted) do not support the notion that it was viewed by the sellers as a residential property at the time of sale. One report of the sale describes it as a "*mixed use*" building, comprising a creche and 4 residential units.[4] Another report states that the building has residential potential "subject to the necessary planning permissions being obtained".[5]

Reports record the eventual sale of the property via an Allsops auction, but it appears that the building was originally marketed through Bohan Hyland, who stated that "*Bohan Hyland Commercial are delighted to present Park House, Ashdale Road to the commercial sales market*." [emphasis added].[6] It is surprising therefore that the appellant has stated to the Board in its submissions that the property was marketed to and purchased by them on the understanding that it was a residential property.

From the above, there is ample evidence that the use of Park House as a creche/Montessori facility was intensive, committed and continued for a lengthy period. It was made well known to the market at the time of sale of the property. There is therefore ample evidence to support the planning authority's conclusion that any prior residential use of the eastern portion of Park House had been abandoned in favour of continuing use as a creche/Montessori.

"Reversion" to residential use as a matter of planning law

The appellant submits that, as a matter of planning law, upon expiry in 2002 of the time-limited 5-year planning permission for operation of a creche granted in 1997, the use of Park House reverted automatically to its prior usage, which the appellant states to have been residential. In this regard, it is noteworthy that the appellant adduces no evidence that Park House was actually used, in its entirety, for residential purposes in 1997 prior to commencement of the creche/Montessori use. Similarly, there is no evidence as to whether any presumed residential use was pre-1964 or was pursuant to a subsequent grant of planning permission. The planning authority and the Board are asked to accept that such use must have occurred simply because of the property's current zoning.

To support its proposition that the use of Park House as a creche/Montessori between 1997-2023 should be disregarded by the planning authority, the appellant relies on the *St Audoen's School* case. The statement of Simons J that is reproduced in the appellant's submissions in part 4.1 is unnecessary to Simons J's decision in that case, which relates to whether the grant of a temporary permission by the Board to approve the siting of a medical injection facility in the vicinity of a primary school should be overturned on judicial review. As the Judge himself stated: "*the question for determination in these proceedings is whether it was unreasonable to grant a temporary planning permission which*

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[4] https://www.echo.ie/prominent-investment-building-sells-for-50k-above-reserve-price/. Accessed on 25th May.

[5] https://www.independent.ie/business/commercial-property/allsop-delivers-22m-in-sales-in-first-online-auction-of-2017/35493659.html Accessed on 25th May.

[6] https://www.google.com/search?q=bohan+hyland+park+house+ashdale+road&sca_esv=2e7e4ea7f55c9eed&rlz=1C1ONGR_enIE1106IE1106&ei=AHszaNDBF9HqhbIPhN_-mAg&ved=0ahUKEwjQweq8uL-NAxVRdUEAHYSvH4MQ4dUDCBA&uact=5&oq=bohan+hyland+park+house+ashdale+road&gs_lp=Egxnd3Mtd2l6LXNlcnAiJGJvaGFuIGh5bGFuZCBwYXJrIGhvdXNlIGFzaGRhbGUgcm9hZDIFECEYoAEyBRAhGKABSNAdUNMGWPoZcAF4AZABAJgBbKABnQeqAQQxMi4xuAEDyAEA-AEBmAIOoALSB8ICChAAGLADGNYEGEfCAgUQIRifBcICBBAhGBXCAgcQIRigARgKmAMAiAYBkAYIkgcEMTMuMaAH8ECyBwQxMi4xuAfQBw&sclient=gws-wiz-serp

thorised the use for a three year period." The question at issue in the proceedings was not, therefore, the effect of a temporary permission as a matter of planning law, nor indeed whether the expiry of a temporary permission has the effect of rendering all subsequent contrary usage irrelevant when considering subsequent planning questions.

The appellant further relies on the *St Margaret's Recycling* case. Again, the appellant takes a quotation from Phelan J out of context to support a much broader proposition than that in issue in the case itself. As stated by Phelan J: *"The question which I must determine is whether in construing "non-conforming use" under the CDP one [is] tied to existing permissions or uses for which no permission is required or which are immune from enforcement action, as the Respondent contends or entitled to have regard to the de facto use of the site in reliance (at least in part) on a series of temporary permissions, now expired, on the basis that such temporary permissions should be considered to be, in essence, the same as a permanent permission. This question, in my view, is the one at the very heart of these proceedings."*

The question at issue therefore was whether the County Development Plan, where it referred to a "non-conforming use", should be interpreted to have in mind only a use that did not conform to a valid and current permission on the site, or whether that expression could be properly interpreted by reference to temporary expired permissions or to de-facto usage. It seems clear from the judgement that Phelan J did not intend to lay down a general proposition that in all planning contexts, the term "use" must be construed exclusively by reference to that which is permitted under a valid and subsisting permission. She states as much where she says: *"I am satisfied that the proper interpretation of the CDP as to the meaning of "non-conforming use" is one of law rather than planning judgment, whereas what constitutes intensification of such a use is one of planning judgment."*

I submit therefore that the appellant's argument that the de facto usage of Park House as a creche/Montessori for over 20 years should be completely disregarded from a planning perspective, with the result that Park House should be regarded as having been in continuous residential use since 1997 cannot be supported by the judicial decisions cited by the appellant. As a result, the appellant cannot claim that the eastern portion of Park House has by operation of law reverted to being a residential property after more than 20 years of alternative usage.

What is "residential" use?

I argue that any residential use of the eastern part of Park House and any related planning permission in that regard has been abandoned and that the planning authority was correct in that determination. I further argue that the eastern portion of Park House has not reverted to residential usage by operation of law by virtue of the expiry of its temporary permission in 2002, disregarding over 20 years of alternative use.

If I am wrong in these arguments, the appellant further argues that the use of a residential property for homeless accommodation is not a change of use/development and relies in that regard on two planning precedents, which it cites under part 4.3.4 of its submissions.

It is noteworthy that both precedents relate to existing multi-unit, multi-occupancy, properties – in other words, the question at issue appears to have been whether continuing to use a multi-unit, multi-occupancy property for homeless accommodation without provision of care should be classed as a continuation of residential use in the context of those properties.

The situation at Park House is very different. To the extent that the eastern portion of Park House may, at some point in its past, have been a single residential dwelling house, it would have been occupied by a single family, perhaps with servants. It is unclear whether the western portion, which has a

separate entrance and is now in multiple units, was ever part of a single dwelling house with t eastern portion – the appellant has produced no evidence in that regard. The entirety of Park House was certainly never a multi-unit residential property and the precedents cited by the appellant are therefore unpersuasive.

Further, the Board seems previously to have determined that a change of use from residential accommodation to hostel accommodation for homeless persons constitutes development and is not exempted. See in this regard ABP-308540-20, where the Board determined that:

"In conclusion what has been determined under this referral is that the current use as accommodation for the homeless, which falls under Class 9 of Part 4 of the Second Schedule to the Planning and Development Regulations 2001, constitutes a change of use from the former exclusively residential use, and in my opinion this constitutes a material change of use by reason of providing a different service, to a different user group and this material change of use would not come within the scope of Article 10(1) of the Planning and Development Regulations 2001, as amended, as it does not constitute a change of use within any one class."[7]

The appellant may attempt to distinguish this precedent by arguing that no care will be provided to the homeless persons proposed to be accommodated in Park House and that they will live independently. However, in the Board's decision cited above, the Board referenced the use of the relevant property as follows:

"to use the property as emergency accommodation for homeless single persons with a max. of 40 individuals to be accommodated. In addition, the referrer states that same correspondence stated that as part of the contract agreement the owner will continue to manage the property under the supervision of the DRHE. Further correspondence referred to by the referrer states that the residents of Drumcondra Road Lower also received correspondence on foot of the original complaint made to the enforcement section of DCC in April 2020, and the Council's letter noted that 'the facility is managed onsite 24 hours a day."

The Board appears to have concluded that this still represented the provision of care to the residents, in the form of social care, and was therefore not residential use. It is difficult to see any material difference between the use stated above and the use of Park House that is proposed by the appellant. The appellant itself appears to recognise that its homeless accommodation centres provide "care" to occupants. In a recent newspaper interview, it stated that:

All of our centres are staffed 24/7 by qualified professionals. Our team members are qualified in fields such as social science, family Support, and youth and community studies, ensuring residents receive care in a respectful, professional environment.[8]

Intensification

The appellant, inappropriately in my view, criticises the planning authority for its conclusions in relation to intensification. Intensification of a permitted use can represent a material change of use, which would not be exempted development, and accordingly the planning authority was in my submission correct to consider this issue.

[7] https://www.pleanala.ie/anbordpleanala/media/abp/cases/reports/308/r308540.pdf
[8] https://www.thejournal.ie/dublin-8-ipas-6704443-May2025/

'en if, which I dispute, use of Park House as a homeless hostel would constitute residential use, it is beyond argument that the use as proposed by the appellant would constitute intensification of any former residential use of the property. The appellant's statements to the contrary do not hold water.

As mentioned above, to the extent that the eastern and western portions of Park House constituted a single residential dwelling house, it would have been occupied by one family, perhaps with servants. The appellant has not made its plans for Park House clear to the local community, but it appears to contemplate at least 12 bedrooms with multiple occupancy. Assuming conservatively that each room would house 6 persons, this would mean that Park House could be occupied by 72 people. The demands this would place on infrastructure in terms of water, energy and waste collection would be exponentially greater than any residential use as a single dwelling and greater than was previously the case during its use as a creche/Montessori.

In Simons on Planning Law (3rd ed. para 2.123), it is stated that:

Thirdly, the most common complaint of intensification of use, amounting to an unauthorised development, arises in a comparison of the scale of operations as compared with the prior use. While some reasonable level of variation might be seen as integral to any business, this should not be used as an excuse to circumvent planning controls through gradual accretion. If the baseline is a pre-1964 use, a historical comparison of what was then done, and what was then possible, in terms of technology, labour force and output should be used for comparative purposes to the date of proceedings. If there was a grant of planning permission, after a pre-1964 use or independently, then what might objectively be regarded as authorised is a point of comparison.

It is unclear whether planning permission (post-1964) for residential use was in place for the eastern section of Park House before 1997. Whether the eastern section was used before 1997 pursuant to a permission or under pre-1964 user, it cannot be credibly asserted that occupancy of Park House by 70-80 people, sharing one kitchen and bathroom facilities, with 24 hour security and CCTV cameras on-site to monitor activity, represents anything other than an exponentially greater scale of occupation than any historical former use, and as such, represents a material change of use and therefore development.

Local residents are concerned by the appellant's plans, not merely because of the pressure on local services, but also by possible vehicular traffic increase. Ashdale Road is a residents' parking zone and parking is in very short supply. It is hard to believe that 70-80 new residents would not add to the number of vehicles seeking already scarce parking spaces. Ashdale Road also currently suffers from being a "rat run" from Harold's Cross Road to Terenure Road West, and there is a high volume of traffic also passing through to Presentation Primary and Secondary Schools. Eaton Square Park is heavily used by local children due to the properties having small gardens and parents have concerns about the potential for large numbers of single homeless men to gather in that small park, causing risks and distress to children and making the play area unsafe. All of these are valid planning concerns and appropriate for the planning authority to take into consideration when assessing whether there has been intensification from a material change of use perspective.

Amalgamation under Class 14(e)

The appellant argues that amalgamation of the eastern and western portions of Park House will be exempted development on the basis of Class 14(e) as follows:

"from use as 2 or more dwellings, to use as a single dwelling, of any structure previously used as a single dwelling," [my emphasis added]

The appellant has not however evidenced that the eastern and western portions of Park House we(previously used as a single dwelling, or at what point in time this occurred. The western portion was divided into five units under a pre-1963 declaration and the western portion is different in architectural character from the eastern portion and has separate entrances. It is entirely possible that the two portions were always maintained as separate residences, albeit on one curtilage. I submit that, even if the eastern portion of Park House is in residential use, and if the appellant's proposed user thereof constitutes residential use, the appellant has not shown an entitlement to avail of Class 14(e) exempt development.

Conclusion

The appellant rightly refers to the challenges of providing accommodation for homeless persons in the Dublin area. The appellant has, of course, evicted long-standing tenants from a number of properties it has purchased and seeks to develop as homeless accommodation, including from Park House itself.[9]

A proposal to site homeless accommodation in a mature residential area should properly be dealt with via an application for planning permission. In that context, residents can be fully informed of the proposals and can have an opportunity to voice those concerns. Conditions can be imposed by the planning authority to address them. Seeking to develop such facilities by use of exempted development provisions is not an appropriate use of that procedure. I urge the Board to uphold the decision of the planning authority in this matter.

Yours faithfully,

Sent by email – no signature

William B Flynn

[9] https://www.dublininquirer.com/time-and-again-long-term-tenants-evicted-and-their-homes-turned-into-homeless-accommodation/