



The Secretary,
An Coimisiún Pleanála,
64 Marlborough Street,
Dublin 1

1st October 2025

Re: Response to Section 5 Referral Regarding the Use of a House for Student Accommodation and Associated Alterations at No. 60 Knocknashee, Dublin 14 4

Ref. No. ACP-323510-25

Dear Sir/Madam,

We are writing on behalf of our client, Davy Property Holdings Limited, in response to a letter dated 5th September 2025 inviting an observation or response in response to the referral of Section 5 Declaration made by Dun Laoghaire Rathdown County Council pertaining to the use of and works carried out at No. 60 Knocknashee, Dublin 14.

In response to the Section 5 application, the planning authority made the following declarations:

1. *The use of 60 Knocknashee to accommodate 13 students does not constitute a material change of use from its authorised use as a single dwelling house.*
2. *Therefore, the use does not constitute "development" under Section 3(1).*
3. *The substitution of the garage door with fenestration constitutes development but qualifies as exempted development under Class 1 of Part 1, Schedule 2 of the Planning and Development Regulations 2001 (as amended).*
4. *The installation of fenestration in the side elevation is development that is NOT exempt under Section 4(1)(h).*

In response to the referral made by Armstrong Planning on behalf of their client, the following sections will address each point raised.

1.1 Material Change of Use

As noted, the planning authority declared that the use of the property to provide accommodation to 13 no. students does not constitute development. However, the appellant claims that this constitutes a material change of use.

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."

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.

The proposed use has been assessed in the context of the issues listed in the above case law:

Traffic Volumes:

As noted, the house would accommodate 13 students. Given the status of the residents as students and the location of the property in a highly accessible area, it is reasonable to assume that car ownership and usage at the house would be extremely low. It is noted that the house is located near a bus stop on Drummartin Road, which is served by Dublin Bus Route 11. It is considered that there will not be a noticeable increase in traffic volumes at the site.

Water Services:

Regarding foul water, it is noted that the subject site has access to an adequate public sewage network and treatment plant at Ringsend, which is currently being upgraded to cater for a population of over 2.4 million people; therefore, we do not consider that additional people living in this dwelling will result in issues in the sewer network.

Waste Collection:

With regards to waste collection, no change is proposed to the current waste collection system at the subject site. It is noted that regular-sized wheel bins are used and collected from the adjoining public footpath weekly as per the current arrangements for the house. The number of residents has not resulted in excessive waste at the house that cannot be dealt with by the current waste collection set-up at the house.

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 students. It is anticipated that any increase in noise would be in keeping with any residential development, with the noise of residents coming and going likely to be the greatest source of noise.

Having regard to the above, 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 property as a private rental accommodation for students are, to all intents and purposes, almost indiscernible from its established use.

It is submitted that there would 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 dwelling, the planning authority would not include conditions prohibiting accommodation to people of particular socioeconomic backgrounds, such as students.

The subject site is a residential building which has 7 no. bedrooms, a large living area and a kitchen. A private outdoor amenity area is provided at the rear of the property for use by residents. From the outset, it is contended that this does not constitute development as no change of use has occurred. No planning conditions were attached to the permission, prohibiting certain people from living in the dwelling, and no condition was placed limiting the number of persons living there either.

Given the size of the house and the number of bedrooms, it is considered acceptable that 13 no. persons may live there together. In the event that a family lived in the dwelling, and they chose to have 13 children, this would not constitute a material change of use. Additionally, the Planning and Development Act 2000 (as amended) does not determine how many people can reside in a dwelling house.

The appellant claims that the house was subdivided into 13 no. separate units, but simultaneously notes that there is a communal kitchen. It is clear that this is a house share and not separate units.

The applicant also notes that the development plan contains two separate land use classes: residential and student accommodation. Whilst this is correct, the definition of residential use is as follows:

The use of a building or part thereof, including houses, apartments, flats, bed sitters, etc., designed for human habitation.

It does not prohibit certain people from living in a dwelling; therefore, it has no bearing on whether or not students can live in a dwelling house. Therefore, **the property is being used as intended, i.e. a residential property providing long-term accommodation to people who happen to be students.**

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.

1.2 Works to the House

It is confirmed that refurbishment works have been carried out at the property to convert the garage into a bedroom and storage rooms. The conversion of the garage to accommodation is exempted development in accordance with Class 1 of Schedule 2, Part 1 of the Planning and Development Regulations 2001-2025 (as amended) which states:

The extension of a house, by the construction or erection of an extension (including a conservatory) to the rear of the house or by the conversion for use as part of the house of any garage, store, shed or other similar structure attached to the rear or to the side of the house.

It is noted that several neighbouring houses have also availed of this exemption.

These works also constitute exempted development under Section 4(1)(h) of the Planning and Development Act 2000 (as amended), which states:

4.—(1) The following shall be exempted developments for the purposes of this Act

(h) 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 facades of the dwellings in Knocknashee differ from house to house, and no uniform design exists. Therefore, the property has not altered the character of the street.

Regarding the window to the side elevation of the garage, it is noted that the garage, when built, contained a larger window on that elevation as shown in the appellant's photographs. Following the conversion of the garage to habitable rooms, the window was reduced in size as there is a bathroom behind the window. It is submitted that this also falls within the scope of works carried out under Section 4(1)(h) of the Act. The window is a high-level window and does not overlook any windows on the adjoining property.

We trust the above response addresses the concerns of the Commission; however, should you have any further queries, please contact the undersigned.

Yours sincerely,



Kevin Hughes MIPI RTP1
Director for HPDC Ltd.