

The Secretary  
An Coimisiún Pleanála  
64 Marlborough Street  
Dublin 1

AN COIMISIÚN PLEANÁLA  
LDG- 086243-26  
ACP- \_\_\_\_\_  
16 JAN 2026  
Fee: € 220 Type: CON  
Time: 5:21 By: Free

Date: 16<sup>th</sup> January 2026

**RE: SECTION 5 REFERRAL UNDER SECTION 5(3)(a) OF THE PLANNING AND DEVELOPMENT ACT 2000 AGAINST THE DECISION BY DUBLIN CITY COUNCIL UNDER REG. REF 0537/25 TO DECLARE THE PROPOSED DEVELOPMENT AT A PROPERTY AT 129 TYRCONNELL ROAD, INCHICORE, DUBLIN 8 WAS NOT CONSIDERED TO BE EXEMPTED DEVELOPMENT.**

Dear Sir/Madam,

## 1.0 INTRODUCTION

1.1 On behalf of the applicant, Pathway Homes Limited, Beldare House, Harmony Hill, Sligo, Co. Sligo, F91 Y22D, we are instructed to prepare this referral in respect of a decision made by Dublin City Council following the submission and refusal of an application for a Section 5 Declaration in respect of a property at 129 Tyrconnell Road, Inchicore, Dublin 8.

1.2 The Declaration submitted sought the following to be determined:

*Whether the provision of 5 no. residential apartments at 129 Tyrconnell Road (comprising of 2 no. existing buildings), Inchicore, Dublin 8 is or is not exempted development.*

1.3 The application for the Section 5 referral was submitted to Dublin City Council on the 4<sup>th</sup> December 2025, supplemented with the necessary forms and drawings. A decision was then issued on the 9<sup>th</sup> January 2026 (copy attached at Appendix 1) in which it was determined by Dublin City Council that the provision of 5 no. residential apartments was a material change of use and constituted development but not exempted development.

1.4 Our client has requested that this determination be referred to An Coimisiún Pleanála for consideration. We enclose the Section 5 Referral Fee of €220.

## 2.0 SITE LOCATION AND DESCRIPTION

2.1 The subject site, which is outlined in red on Figure 1, is located at 129 Tyrconnell Road, Inchicore, Dublin 8. Tyrconnell Road is a welcoming tree lined avenue, ultimately joining the Naas Road to the south-west and to Sarsfield Road and onward to the Islandbridge and Heuston Station area to the north-east.



**Figure 1: Site Location**

**Source: Google Maps**

- 2.2 The site comprises of an approximately two storey height vacant building to the front and a second building to the rear (east) of the site, again derelict. There is a corridor link between the two buildings.
- 2.3 To the north of the site is a terrace of two storey dwellings, the ground level of which is set circa 2.5-3 metres lower than the subject site.
- 2.4 Immediately to the south of the site is a community garden, beyond which is the junction between Tyrconnell Road and a local road providing access to light industrial and storage uses.
- 2.5 To the rear and east of the site is a two-storey building containing a variety of uses, such as hardware, bakery and engineering supplies. A reasonably substantial watercourse separates the rear of the subject site from the unit to the rear.
- 2.6 This watercourse, known as Camac River, is open to the rear of the subject site and the terrace houses to the north, however, is culverted upstream and downstream of those points.
- 2.7 Oblates Church dominates the western side of Tyrconnell Road opposite the subject site.
- 2.8 There is a Dublin Bus stop a short distance to the south on Tyrconnell Road, served by route No's 13, 68 and 69 serving Harristown and Poolbeg Street via the city centre. Blackhorse Luas stop on the red Luas line is approximately a four-minute walk to the south-west

### **3.0 DESCRIPTION OF PROPOSED USE AND WORKS**

- 3.1 The proposed development for which a Section 5 Declaration is sought comprises of the use of the existing 2 no. structures on site to accommodate 5 no. apartments, comprising:

- 2 no. 2 bedroom units in the rear single storey building
- 1 no. 2 bedroom unit at lower ground floor of the front building
- 1 no. 2 bedroom unit at ground floor of the front building

3.2 The proposal will not amend the massing of the buildings in any way.

3.3 It is proposed to insert new opes (windows and doors) to facilitate the residential use and new internal works are proposed to form the 5 no. apartments.

#### **4.0 RELEVANT PLANNING HISTORY**

4.1 Based on an online search, there is limited planning application history on the subject site. It is noted that there was a previous application for a Section 5 Declaration under 0154/25 where Dublin City Council determined that the provision of 4 no. residential apartments is not exempt.

4.2 The only planning application on the site in the recent past as appears on an online search is Reg. Ref: 2622/10 for development comprising of:

*“Demolition of the existing unit and sports hall, (A) 7 storey block with 2 no. basement units (file storage), 1 no. 2nd hand charity shop with 4 no. 2 bed apartments with balconies, (B) 5 storey block with 5 no. 2 bed apartments with balconies and roof terrace, (c) 2 storey 2 bed apartment block with balconies adjoining the existing terrace below the proposed car deck with 2 no. landscaped terraces at sub-basement level. Provision of two car parking spaces, accessed via the Tyrconnell Road and all associated site works”.*

4.3 A notification of decision to grant permission was issued by Dublin City Council however this was overturned on appeal. An Bord Pleanála refused planning permission under PL 29S.238889.

4.4 A full planning history search was also carried out at the offices of the City Council, and a number of files with an address at or close to the subject site were retrieved from archive at Dublin City Archives. These files are listed below however on inspection none of the files relate to the subject site.

- 2041/80
- 2173/80
- 2471/80
- 2472/80
- 2776/81

4.5 Further investigation and research has also been undertaken in relation to the history of the building and the following is noted:

- There is reference in a DCC planners report for Reg. Ref: 2622/10 (see above) to the building dating from the 1930's.
- There is this reference in a Dublin Inquirer article<sup>1</sup> which includes a solicitors letter (see Appendix 1) from 1967. This clearly establishes two things:
  - (i) That the building was in existence in 1961 (When the owner, William Joseph Lacy, died in 1961, his will said Grotto House was to be held in trust for the use of “St Joseph's Boys Club, attached [sic] to the Conference of Mary Immaculate Inchicore, of

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<sup>1</sup> [Vacancy Watch: In Inchicore, a former youth club has sat vacant and derelict for years - Dublin Inquirer](#)

*the Society of St Vincent de Paul”, according to a copy of a solicitor’s letter from 1967 provided by Corcoran”); and*

- (ii) That the use of the building was as a ‘lock up shop together with air raid shelter’ (“*The factual position, with regard to the user of the premises is that under and by virtue of a tenancy agreement dated 18th May 1950 made between the deceased and one Thomas P Keogan, the lock up shop together with the air raid shelter, the four rooms adjoining said shop, the annexe at the rear of the said shop and the toilet on the ground floor of the premises known as ‘The Grotto House’, 129 Tyrconnell . . .*”)

4.6 The term ‘lock up shop’ is an often-used colloquial term. It is defined in the Collins Dictionary as ‘a small shop with no attached quarters for the owner or shopkeeper’. In all likelihood, the air raid shelter being referred to is the single storey building to the rear of the site. They are clearly connected in terms of use and ownership historically.

## **5.0 LOCAL AUTHORITY DECLARATION DECISION**

5.1 The application for the Section 5 referral was submitted to Dublin City Council on the 4<sup>th</sup> December 2025, supplemented with the necessary forms and drawings. A decision was then issued on the 9<sup>th</sup> January 2026 (copy attached at Appendix 1) in which it was determined by Dublin City Council that the provision of 5 no. residential apartments was a material change of use and constituted development but not exempted development.

5.2 The decision of Dublin City Council states that:

*“1. Having regard to Sections 2, 3 and 4 of the Planning and Development Act, 2000 (as amended) and Part 1 of Schedule 2, the Planning and Development Regulations 2001, as amended, the Planning Authority has concluded that:*

*(a) the proposed change of use of 2 no. existing buildings is material and is therefore development within the meaning of Section 3 of the Planning and Development Act, 2000, as amended, and the provision of 5 no. residential apartments at 129 Tyrconnell Road would not constitute exempted development having regard to Article 10(6)(b) and (c) of the Planning and Development Regulations, 2001 (as amended), as the structure concerned does not fall within any of the applicable use classes, being Class 1, 2, 3 6 or 12. The development would there require planning permission”.*

5.3 We address these issues in our assessment under Section 7 of this letter.

## **6.0 RELEVANT LEGISLATIVE CONTEXT**

6.1 The relevant legislative context is as follows, in the order it appears in the Planning and Development Act 2000, as amended, and the Planning and Development Regulations 2001, as amended.

### **Definition of Works**

6.2 ‘Works’ is defined at Section 2 of the Planning and Development Act 2000, as amended, as:

*“works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure”.*

### **Definition of Development**

6.3 Section 3(a) of the Planning and Development Act 2000, as amended, defines ‘development’ as:

*“(a) the carrying out of any works in, on, over or under land, or the making of any material change in the use of any land or structures situated on land, or  
(b) development within the meaning of Part XXI (inserted by section 171 of the Maritime Area Planning Act 2021).”.*

**Exempted Development at Section 4 of the Planning and Development Act 2000, as amended**

6.4 As relevant to the content of this Section 5 application, Section 4(1) of the Planning and Development Act 2000, as amended, provides that:

*“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”.*

6.5 Section 4(2) of the Act gives powers to the Minister to provide in Regulations for any class of development to be exempted development. For completeness, Section 4(2) reads as follows:

*“(2) (a) The Minister may by regulations provide for any class of development to be exempted development for the purposes of this Act where he or she is of the opinion that—  
(i) by reason of the size, nature or limited effect on its surroundings, of development belonging to that class, the carrying out of such development would not offend against principles of proper planning and sustainable development, or  
(ii) the development is authorised, or is required to be authorised, by or under any enactment (whether the authorisation takes the form of the grant of a licence, consent, approval or any other type of authorisation) where the enactment concerned requires there to be consultation (howsoever described) with members of the public in relation to the proposed development prior to the granting of the authorisation (howsoever described).  
(b) Regulations under paragraph (a) may be subject to conditions and be of general application or apply to such area or place as may be specified in the regulations.  
(c) Regulations under this subsection may, in particular and without prejudice to the generality of paragraph (a), provide, in the case of structures or other land used for a purpose of any specified class, for the use thereof for any other purpose being exempted development for the purposes of this Act”.*

**Section 5 of the Planning and Development Act 2000, as amended**

6.6 Section 5(1) of the Act is as follows:

*“5.—(1) If any question arises as to what, in any particular case, is or is not development or is or is not exempted development within the meaning of this Act, any person may, on payment of the prescribed fee, request in writing from the relevant planning authority a declaration on that question, and that person shall provide to the planning authority any information necessary to enable the authority to make its decision on the matter”.*

6.7 This application for a Section 5 Declaration is made pursuant to this Section.

6.8 Subsections 2 through to 7, both inclusive, of Section 5 provide for further process and procedural matters relating to the Section 5 process and are duly noted.

## Exemptions in the Regulations

6.9 Article 10 of the Regulations relates to 'change of use'. Article 10(6) of the Regulations reads as follows, in full:

*"(a) In this sub-article—*

*"habitable room' means a room used for living or sleeping purposes but does not include a kitchen that has a floor area of less than 6.5 square metres;*

*'relevant period' means the period from 8 February 2018 until 31 December 2025.*

*(b) This sub-article relates to a proposed development, during the relevant period, that consists of a change of use to residential use from Class 1, 2, 3, 6 or 12 of Part 4 to Schedule 2*

*(c) Notwithstanding sub-article (1), where in respect of a proposed development referred to in paragraph (b)—*

*(i) the structure concerned was completed prior to the making of the Planning and Development (Amendment) (No. 2) Regulations 2018,*

*(ii) the structure concerned has at some time been used for the purpose of its current use class, being Class 1, 2, 3, 6 or 12, and*

*(iii) the structure concerned, or so much of it that is the subject of the proposed development, has been vacant for a period of 2 years or more immediately prior to the commencement of the proposed development, then the proposed development for residential use, and any related works, shall be exempted development for the purposes of the Act, subject to the conditions and limitations set out in paragraph (d).*

*(d)(i) The development is commenced and completed during the relevant period.*

*(ii) Subject to sub-paragraph (iii), any related works, including works as may be required to comply with sub-paragraph (vii), shall –*

*(I) primarily affect the interior of the structure,*

*(II) retain 50 per cent or more of the existing external fabric of the building, and*

*(III) not materially affect the external appearance of the structure so as to render its appearance inconsistent with the character of the structure or of neighbouring structures.*

*(iii) Any related works for the alteration of existing ground floor shop fronts shall be consistent with the fenestration details and architectural and streetscape character of the remainder of the structure or of neighbouring structures.*

*(iv) No development shall consist of or comprise the carrying out of works to the ground floor area of any structure which conflicts with any objective of the relevant local authority development plan or local area plan, pursuant to the Part 1 of the First Schedule to the Act, for such to remain in retail use, with the exception of any works the purpose of which is to solely provide on street access to the upper floors of the structure concerned.*

*(v) No development shall consist of or comprise the carrying out of works which exceeds the provision of more than 9 residential units in any structure.*

*(vi) Dwelling floor areas and storage spaces shall comply with the minimum floor area requirements and minimum storage space requirements of the "Sustainable Urban Housing: Design Standards for New Apartments – Guidelines for Planning Authorities" issued under section 28 of the Act or any subsequent updated or replacement guidelines.*

*(vii) Rooms for use, or intended for use, as habitable rooms shall have adequate natural lighting.*

*(viii) No development shall consist of or comprise the carrying out of works to a protected structure, as defined in section 2 of the Act, save where the relevant planning authority has issued a declaration under section 57 of the Act to the effect that the proposed works would not materially affect the character of the structure or any element, referred to in section 57(1)(b) of the Act, of the structure.*

*(ix) No development shall contravene a condition attached to a permission under the Act or be inconsistent with any use specified or included in such a permission.*

*(x) No development shall relate to any structure in any of the following areas:*

*(I) an area to which a special amenity area order relates;*

- (II) an area of special planning control;*
- (III) within the relevant perimeter distance area, as set out in Table 2 of Schedule 8, of any type of establishment to which the Major Accident Regulations apply*
- (xi) No development shall relate to matters in respect of which any of the restrictions set out in subparagraph (iv), (vii), (viiA), (viiB), (viiC), (viii) or (ix) of article 9(1)(a), or paragraph (c) or (d) of article (9)(1), would apply.*
- (xii) No development shall consist of or comprise the carrying out of works for the provision of an onsite wastewater treatment and disposal system to which the code of practice made by the Environmental Protection Agency pursuant to section 76 of the Environmental Protection Agency Act 1992 relates and entitled Code of Practice – Wastewater Treatment and Disposal Systems Serving Single Houses together with any amendment to that Code or any replacement for it.*

*(e)(i) Where a person proposes to undertake development to which paragraph (b) relates, then he or she shall in the case of development relating to Class 1, 2, 3, 6 or 12 of Part 4 to Schedule 2, notify in writing the planning authority in whose functional area that the change of use will occur not less than 14 days prior to the commencement of the works related to the proposed change of use and any related works;*

*(ii) Details of each notification under subparagraph (i), which shall include information on—*

*(I) the location of the structure,*

*(II) the number of residential units involved, including the unit sizes and number of bedrooms in each unit, and*

*(III) the Eircode for the relevant property,*

*shall be entered in a record by the planning authority maintained for this purpose and the record shall be available for inspection at the offices of the planning authority during office hours and on the planning authority's website.*

*(iii) During the years 2019, 2020, 2021, 2022, 2023, 2024, 2025 and 2026 each planning authority shall provide information to the Minister on the number of notifications received by it under this paragraph during the preceding calendar year, including details of the information so received for the purposes of subparagraph (ii).*

## **7.0 ASSESSMENT OF DECLARATION DECISION & EXEMPTION REFERRAL GROUNDS**

7.1 The following assessment has considered the Dublin City Council Planners Report determination, in addition to addressing the relevant legislative requirements and parameters that relate to the exempted change of use.

7.2 It is noted in the first instance that the reason for not issuing a Section 5 Declaration relates only to the use of the property. The City Council Planner's Report notes that all other requirements of the legislation have been demonstrated to be complied with, with the exception to some reference in the Planners Report to daylight considerations, which will be addressed below.

7.3 As will be set out below, the 'use' issue arises due to a technicality in interpretation of established pre-64 use, permitted use and unauthorised use. The legislation relating to re-use of structures for residential, such as that subject to this referral, is clearly intended to facilitate such residential uses and it is respectfully submitted that when such technicalities arise, an interpretation which supports the spirit of the legislation should be applied. This is even more so the case given our clients desire to bring this long vacant and much rundown property back in to active use in the short term.

### **Principle of and Determination of Permitted Use**

7.4 Within our initial planning statement that accompanied the Section 5 application to Dublin City Council, it was established that the pre-64 use of the property was that of a shop, which falls within the Class 1 category of uses under Part 4 of Schedule 2 of the Regulations.

7.5 Following an extensive planning history associated with the property, there was no record of the building ever having received nor applied for planning permission that changed the permitted or established use as of the 1<sup>st</sup> of October 1964, from that of a shop.

7.6 It was determined within the Dublin City Council Planners Report that there is evidence to support the claim that the building was used more recently as a sports hall/community space:

*“While the applicant references historic shop use, the Planning Authority considers that this was not the dominant or most recent established use. Evidence from the Dublin City Council Planner’s Report for Reg. Ref. 2622/10 (2010) describes the site as comprising a youth club building and a sports hall, and other sources confirm that the property functioned as St Joseph’s Youth Club for decades prior to vacancy. The previous planning application in 2010 proposed a retail unit as part of redevelopment, indicating that retail use was not present at that time.*

*Crucially, because the applicant proposes to convert all three floors of the building to residential use, Article 10(6) requires that the entire building must have been in use as Class 1. Partial or historic use of a minor portion does not satisfy this requirement. The Authority concludes that the last established use was as a youth club and associated sports hall, which falls under Class 10(f)-a social or community centre or non-residential club-rather than Class 1. This interpretation is supported by the Dublin City Development Plan 2022–2028, which defines community facilities to include youth clubs and similar uses. As Article 10(6)(b) only permits change of use from Classes 1, 2, 3, 6, or 12, the proposed development does not meet the criteria for exemption”.*

7.7 It is contested that an established use does not mean that it is an authorised one through the change of use from the previous shop use. The only permitted use on the property (by virtue of it being a pre-64 use) is that of a shop.

7.8 The nature of the building having limited planning history does not give rise to the assumption that the most recent use was indeed an approved or authorised one and as such it is considered that this was an unauthorised use. In this respect, an unauthorised use should not, it is submitted, be taken as a baseline use for consideration of the exemption claimed. Rather, the permitted use should be the baseline use. It is respectfully submitted that it would set a dangerous precedent if an unauthorised use were to establish a new baseline use in planning terms.

7.9 The legislative wording of Article 10(6)(c)(ii) is also key. The wording is:

*“(ii) the structure concerned has at some time been used for the purpose of its current use class, being Class 1, 2, 3, 6 or 12, and . . .”*

7.10 The legislative requirement is only that the structure concerned has **at some time** been used for the purpose of its current use class. The structure is vacant for a significant period and this has been accepted by the City Council. The City Council has further accepted that the structure was at some time used as a shop, as set out above.

7.11 Having regard to all of the above, it is submitted that:

- The most recent established authorised use of the structure is that of a shop (Class 1 of Part 4 of Schedule 2 of the Regulations). The current authorised use class of the structure is therefore considered to be Class 1.
- An intervening unauthorised use cannot be said to establish a new authorised use for the structure.

- Article 10(6)(c)(ii) is clear in its wording that the requirement is that the structure concerned has “*at some time*” been used for its current use class. As set out above, the current use class is considered to be Class 1. The City Council agrees that the property was at some time in use as a shop.

## 8.0 SUMMARY AND CONCLUSIONS

- 8.1 On behalf of the applicant, Pathway Homes Limited, we are instructed to prepare this referral in respect of a decision made by Dublin City Council following the submission and refusal of a Section 5 Declaration in respect of a property at 129 Tyrconnell Road, Inchicore, Dublin 8.
- 8.2 The application sought a Declaration as to whether the provision of 5 no. residential apartments at 129 Tyrconnell Road, Inchicore, Dublin 8 is or is not exempted development.
- 8.3 The client has clear intentions to bring this building back into active use and it will provide much needed, high-quality accommodation to the area.
- 8.4 A comprehensive assessment against the criteria at Article 10(6) of the Planning and Development Regulations 2001, as amended, was carried out in the Section 5 submission to Dublin City Council and it is respectfully submitted that the proposed 5 no. residential units fully comply with the requirements of Article 10(6) of the Planning and Development Regulations 2001, as amended, and as such are exempted development.
- 8.5 It is considered that the assessment undertaken by the Local Authority has not appropriately considered the difference between established, unauthorised and permitted uses and has not taken into account the unauthorised nature of the last known use, while also not considering the pre-64 nature of the preceding use which was lawfully established.
- 8.6 We respectfully request that the Commission issue a declaration exempting the proposed development from requiring planning permission to allow our client to develop much needed residential accommodation and return an abandoned building into active use.

Yours sincerely,

*Robert Keran*

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**Robert Keran**

*BSc. Spatial Planning, BA (Law), LLB, Dip. Proj.Mngt. MIPI*

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**APPENDIX 1**

**Copy of Dublin City Council Decision**

An Roinn Pleanála & Forbairt Maoine, Bloc 4, Urlár 3, Oifigi 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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13-Jan-2026

Robert Keran,  
Foundation  
6, Upper Mount Street  
Dublin 2.

Application Number	0537/25
Application Type	Section 5
Registration Date	04-Dec-2025
Decision Date	09-Jan-2026
Decision Order Number	P2080
Location	129, Tyrconnell Road, Inchicore, Dublin 8
Proposal	EXPP: Whether the provision of 5 no. residential apartments at 129 Tyrconnell Road, Inchicore, Dublin 8 is or is not exempted development?
Applicant Details	Pathway Homes Ltd

- **If you have any queries regarding this Decision, please contact the email shown above**

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 09-Jan-2026 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:

1. Having regard to Sections 2, 3 and 4 of the Planning and Development Act, 2000 (as amended) and Part 1 of Schedule 2, the Planning and Development Regulations 2001, as amended, the Planning Authority has concluded that:

(a) the proposed change of use of 2 no. existing buildings is material and is therefore development within the meaning of Section 3 of the Planning and Development Act, 2000, as amended, and the provision of 5 no. residential apartments at 129 Tyrconnell Road would not constitute exempted development having regard to Article 10(6)(b) and (c) of the Planning and Development Regulations, 2001 (as amended), as the structure concerned does not fall within any of the applicable use classes, being Class 1, 2, 3 6 or 12. The development would there require planning permission.

NOT1section5(Refuse Exemption)

