

# Comhairle Chontae Atha Cliath Theas

PR/0941/22

## Record of Executive Business and Chief Executive's Order

**Register Reference:** ED22/0023  
**Correspondence Name & Address:** David Corbally 55, Ludford Drive,  
Ballinteer, Dublin 16  
**Development:** Partial conversion of existing derelict  
public lounge to contain 2 No apartments  
– 1 No one bed & 1 No. two bed.  
**Location:** Blue Gardena, McDonaghs Lane, Brittas,  
Co. Dublin  
**Applicant:** Edward Fahy

(AOCM)

### Description of Site and Surroundings

The subject site consists of a public house and car park located on the western side of the N81 and McDonagh's Lane. The site is located proximate to a proposed Natural Heritage Area (pNHA). The site is predominately soil-sealed with car parking and is located off the busy N81 at a bend.

### Proposal

This is an application requesting a Section 5 Declaration on whether the proposed development is or is not exempted development. The development consists of the partial conversion of existing derelict public lounge to contain 2 no. apartments – 1 no. one bedroom apartment and 1 no. two-bedroom apartment.

The Section 5 Declaration application includes:

- Cover Letter
- Application form
- Site location map
- Existing floor plans
- Existing elevations
- Proposed floor plans
- Proposed elevations
- Proposed section

### Recent Relevant Planning History

**SD21A/0061:** Change of use of partial ground floor area of public house for use as 2 apartments, 1 two bed apartment and 1 one bed apartment. **Refused** for the following reasons:

1. The applicant has failed to provide justification which would warrant the setting aside of the objective of Policy H20 of the South Dublin County Development Plan 2016-2022, which seeks to restrict the spread of dwellings in the rural 'RU', Dublin Mountains 'HA-DM'; Liffey Valley 'HA-LV' and Dodder Valley

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'HA-DV' zones and to focus such housing into existing settlements.' Therefore, the proposed development would materially contravene the objectives of the Development Plan and would lead to demands for the uneconomic provision of further public services and facilities in this rural area. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

2. The site is located on lands subject to zoning objective HA - DM in the South Dublin County Council Development Plan 2016 – 2022. It is the policy of the Council that within areas designated with Zoning Objective HA - DM (to protect and enhance the outstanding natural character of the Dublin Mountain Area) that new or replacement dwellings will only be considered in exceptional circumstances and subject to the criteria set out in Objective 1 of policy H23. Based on the lack of information submitted, the proposed development does not comply with the criteria for housing in this area and no details of exceptional circumstances have been provided. The proposed development would therefore materially contravene the zoning objective of the area and would be contrary to the proper planning and sustainable development of the area.
3. The proposed vehicular access onto the N81 at a location where the speed limit is 60km/h and where there is a bend in the road approximately 50m to the south of the proposed access, where the sightline envelope has not been satisfactorily determined at this location, would endanger public safety by reason of traffic hazard or obstruction of road users or otherwise and would therefore be contrary to the proper planning and sustainable development of the area.
4. The proposed site is located in an area zoned Objective DM-HA in the South Dublin County Council Development Plan 2016 -2022 which seeks 'To protect and enhance the outstanding natural character of the Dublin Mountains Area.'. It is considered that the site of the proposed development is situated in an area under strong urban influence and therefore, pursuant to the National Policies contained within Project Ireland 2040 National Planning Framework, the Core Strategy and Rural Settlement Strategy outlined in the South Dublin County Council Development Plan, the proposed development would by itself and cumulatively, constitute the proliferation of urban generated housing in a rural area and hinder the achievement of the policies and objective of the National Planning Framework to consolidate existing urban settlements and contribute to compact growth within the Dublin Region. It is therefore considered that the proposed development would be contrary to the provisions of the South Dublin County Council Development Plan 2016 -2022 and would contravene the zoning objective for the area and, as such would be contrary to the proper planning and sustainable development of the area.
5. The red line of the site does not include the N81, at a location that is identified in the County Development Plan maps and Table 6.6 of the Written Statement as a medium-to-long term road objective. The function of the objective is the 'improvement of the National Road network between Tallaght and Blessington, Co. Wicklow'. The description of works for this road objective is as follows:
  - Upgrade of the existing route including the extension of the dual carriage way from Jobstown to the Embankment and an upgrade from

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the Embankment to the County border at Lisheen, to a safe, modern, single lane, carriageway with associated works for public transport. The proposed development, if granted, would be contrary to a strategic objective of the County Development Plan where development proposals are required to take account of the anticipated upgrade of the route to a 'safe, modern, single lane, carriageway' and would be contrary to the proper planning and sustainable development of the area.

6. A layout clearly demonstrating the parking arrangement for 3 number on curtilage car parking spaces and bicycle parking, alongside a swept path analysis showing how parked vehicles can access and egress the site safely has not been submitted and the omission of this detail could endanger public safety by reason of traffic hazard or obstruction of road users or otherwise and would therefore be contrary to the proper planning and sustainable development of the area.
7. Having regard to the absence of an Ecological Assessment, and mitigating proposals, submitted with the planning application, and having regard to the location of the site in proximity to the Brittas pNHA, for which the Local Authority has an obligation to protect, it cannot be determined that there will be no likelihood of significant effects on the environment arising from the proposed development and if granted could result in a detrimental impact on the receiving environment and would therefore be contrary to the proper planning and sustainable development of the area.
8. Having regard to the drinking water supply to the proposed units/Blue Gardenia building sourced from an on-site well which is situated immediately adjacent to the wastewater percolation system for the site which would service the proposed change of use and the lack of site suitability assessment submitted with the wastewater treatment system and percolation area the proposed development could be prejudicial to public health and if granted would be contrary to the proper planning and sustainable development of the area.

**SD20A/0074:** Change of use of partial ground floor area of public house for use as 5 en-suite guest rooms. **Withdrawn following request for additional information**

**SD19A/0183:** Retention for single storey flat roof metal framed kiosk with external cladding to serve mainly tea and coffee to takeaway customers and located within the car park. **Refused.**

### Recent Relevant Enforcement History

**S8122:** Potential coffee Shop operating from a container in the car park. File closed due to compliance with notice.

### Zoning and Council Policies

The site is subject to zoning objective 'HA-DM' – *'To protect and enhance the outstanding natural character of the Dublin Mountains Area.'*

There are protected views from the site to the south-west. There is a long-term road proposal for the N81. The site is located approximately 30m to the west of the Slade of

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Saggart and Crooksling proposed Natural Heritage Area (pNHA) and is within a Site of Geological Interest 2016.

### Assessment

Consideration as to whether a development constitutes exempted development or not is governed by Sections 3, 4 and 5 of the Planning and Development Act 2000 (as amended) and Article 10 of the Planning and Development Regulations 2001 (as amended) and Schedule 2 of the Planning and Development Regulations 2001 (as amended).

### Is the proposal development?

Planning and Development Act 2000 as amended (emphasis added):

Section 3(1) defines '*development*' as '*the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land*'.

Section 2(1) in this Act, except where otherwise requires –

'*structure*' as any building, structure, excavation, or other thing constructed or made on, in or under any land, or part of a structure so defined, and –

- (a) Where the context so admits, includes the land on, in or under which the structure is situated.

'*use*' in relation to land, does not include the use of the land by the carrying out of any works thereon.

It is considered that the change of use and associated development works do constitute development as they represent the carrying out of work and material change in the use of the existing structure.

### Assessment - Is the proposal exempted development?

The Declaration seeks exemption for the change of use of an existing public house to residential, including associated works to facilitate the change of use.

The applicant is seeking an exemption on foot of S.I. No. 75/2022 – Planning and Development Act (Exempted Development) Regulations 2022, which updates **Article 10**. Under this Statutory Instrument, Class 12 '*use as a Public House, meaning a premises which has been licensed for the sale and consumption of intoxicating liquor on the premises under the Licensing Acts 1833 to 2018*' has been inserted into Part 4 of Schedule 2 of the Planning and Development Regulations 2001.

So, is a change of use from a Public House (Class 12 of Part 4 of Schedule 2 of the 2001 Regulations) to residential use exempted development?

S.I No. 75/2022 exempts development which consists of a change of use to residential use from a number of classes one of which is Class 12 (Public House), subject to the following:

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Article 10 (6)(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).*

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

From a planning history search it is clear that the structure has been in situ since at least 1997.

- 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*

The applicant has stated in their covering letter that the premises was in operation as a bar between August 2018 and March 2020 at which time its licence was sold.

- 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,~~*

The applicant has not provided any further evidence to prove the operation, and vacancy period. This could be sought as **additional information**.

Relevant criteria set out in paragraph (d) are as follows:

*(i) The development is commenced and completed during the relevant period. – The relevant period is from 8 February 2018 to 31 December 2025. The applicant has not stated if the works have already commenced, or when they would be undertaken. This could be clarified by **additional information**.*

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

*(I) primarily affect the interior of the structure – external alterations are proposed as part of the works. Alterations on the southern side elevation are not considered material. Alterations on the eastern, front, elevation would amend the materials and fenestration pattern of a prominent corner location of the development. These works would be consistent with the character of the remaining structure and are the proposal would comply with this issue.*

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*(II) retain 50 per cent or more of the existing external fabric of the building, –*  
The area for which exemption is sought relates to less than 50 per cent of the external fabric of the main building. The proposal would comply with this issue.

*(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. –* As stated above, the external works are not considered to materially affect the external appearance of the structure. The proposal would comply with this issue.

*(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. –* Not relevant

*(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. –* Not relevant

*(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 –* The works would involve the provision of two residential units. The proposal would comply with this issue.

*(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. –* The Guidelines state that, as a rule, no individual storage room should exceed 3.5 sq.m. The 2-bedroom unit would have a single storage room of 7.12 sq.m, which would meet the minimum storage space requirement, but not the rule that individual storage rooms should not exceed 3.5 sq.m. The 1-bedroom unit would have a storage room of 3.19 sq.m, meeting the minimum requirements of the Guidelines.

With regard to dwelling floor areas, both apartments meet the minimum requirements for aggregate living areas. The 1-bedroom unit meets the minimum aggregate bedroom floor area however, the 2-bedroom unit does not. The 2-bedroom unit provides a double bedroom of 11.52 sq.m and a single bedroom of 8.57 sq.m. While these individually meet the minimum floor areas for double and single bedrooms, they do not meet the minimum aggregate floor areas for bedrooms which, for 2-bedroom (3 person) apartments requires 20.1 sq.m, provided as 13 sq.m (double) and 7.1 sq.m (single) as a minimum. In this regard, the double bedroom is not sufficient in size.

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The proposal **does not comply with this issue.**

(vii) *Rooms for use, or intended for use, as habitable rooms shall have adequate natural lighting.* – All 3 bedrooms proposed would be served by windows and doors overlooking the enclosed courtyard amenity areas. These spaces would be bound by a 3m high wall within close proximity to the windows. It is considered that this would result in significant impacts to natural lighting and would **not be acceptable.** The proposal **does not comply with this issue.**

(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.* – Not relevant

(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.* – Not relevant

(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;* – Not relevant

(II) *an area of special planning control;* – Not relevant

(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* – Not relevant

(xi) *No development shall relate to matters in respect of which any of the restrictions set out in sub-paragraph (iv), (vii), (viiA), (viiB), (viiC), (viii) or (ix) of article 9(1)(a), or paragraph (c) or (d) of article (9)(1), would apply* – Relevant restrictions under Article 9(1)(a) include:

(iii) *endanger public safety by reason of traffic hazard or obstruction of road user* – detail to assess the likely impact on traffic and road users has not been supplied. It is noted that similar development was previously refused at the site due to concerns regarding traffic hazards and public safety. **Additional information** could be sought to address this matter. Without further consideration, the development could endanger public safety by reason of traffic hazard. The **proposal does not comply with this issue.**

(viiB) *comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site* – the site is located proximate to the Slade of Saggart and Crooksling Glen pNHA. While this is not a designated site where appropriate assessment is required, the intention is to designate this site in future and the Planning Authority has an obligation to ensure its protection. Reason 7 of the refusal under SD21A/0060 stated it could not be determined that there would be no likelihood of significant

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effects on the environment arising from the development and this has not been overcome in the information provided. **Additional information** could be sought in this regard to satisfy the Planning Authority that the integrity of the pNHA would not be affected by the proposed works.

*(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. – information regarding wastewater treatment has not been provided and could be ascertained by **additional information**.*

Based on the above, the works and change of use **are not considered to be exempt** due to not meeting the restrictions and requirements of Article 9(1)(a)(iii) or Article 10(6)(d)(vi), (vii) and (xi).

### **Conclusion**

The works proposed are considered to constitute development. It is not considered that the works proposed would be exempted development having regard to the Planning and Development Act 2000 (as amended) and the Planning and Development Regulations 2001 (as amended), having regard to Article 9(1)(a)(iii) or Article 10(6)(d)(vi), (vii) and (xi).



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
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Reg. Ref. ED22/0023

**Recommendation**

The applicant should be written to and informed that the proposed development constitutes (i) **development** and (ii) would **not constitute Exempted Development** and would therefore require planning permission under the Planning and Development Act 2000 (as amended) and Planning and Development Regulations 2001 (as amended).

  
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Colm Maguire,  
Executive Planner

**ORDER:** That the applicant be informed that the proposed development of Partial conversion of existing derelict public lounge to contain 2 No apartments – 1 No one bed & 1 No. two bed. at Blue Gardena, McDonaghs Lane, Brittas, Co. Dublin is development and is not considered to be exempted development under the Planning and Development Act 2000 (as amended) and the Planning and Development Regulations, 2001 (as amended) and therefore **does require** planning permission.

Date: 25/7/22

  
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Eoin Burke, Senior Planner