

## **Dublin City Council**

### **Declaration on Development and Exempted Development**

#### **Section 5 of the Planning and Development Act 2000 (as amended)**

**EXPP:** 0214/25  
**Location:** 66 Kincora Grove, Dublin 3.  
**Applicant:** Yeria Unlimited  
**Date Received:** 21/05/2025  
**Decision Due Date:** 17/06/2025

#### **Development**

The application seeks a section 5 declaration to confirm whether the following is or is not exempted development:

EXPP: 'Whether the use of the dwelling currently in use as social care accommodation under Class 14(f) at 66 Kincora Grove, Dublin 3, D03 E9E8, currently providing accommodation to persons under age 18, to provide accommodation for persons under age 18 and seeking international protection under Class 14(h), is or is not development and whether development constitutes exempted development or does not constitute exempted development?'

#### **1.0 Site Description**

The subject site is a detached two-storey house located at 66 Kincora Grove, Dublin 3, comprising six bedrooms, three bathrooms, a kitchen, and living/dining areas, with a private amenity space to the rear. It has been used for the past year as social care accommodation for individuals with intellectual or physical disabilities or mental illness. The property lies at the corner of Kincora Grove and Castle Avenue, adjacent to the Old St John the Baptist Church and Cemetery, approximately 80 metres from the nearest bus stop (served by routes 130 and 104) and 1.4 kilometres from Clontarf Road train station, which is served by DART and Irish Rail.

#### **Site Zoning**

The subject site at 66 Kincora Grove, Dublin 3, is zoned under the Dublin City Development Plan 2022–2028 as both Z1 – Sustainable Residential Neighbourhoods and Z9 – Amenity/Open Space Lands/Green Network. The Z1 zoning applies to the main portion of the site and carries the objective 'to protect, provide and improve residential amenities,' supporting residential and related uses. A smaller portion of the site to the rear falls within the Z9 zone, which aims 'to preserve, provide and improve recreational amenity, open space and ecosystem services.' However, no development or habitable use is proposed within the Z9 area, and the proposed use remains consistent with the residential character supported by the Z1 zoning.

#### **2.0 Relevant Planning History**

0194/24: Exemption Cert granted for change of use from use as a house to use as a residence for max 6. no persons with intellectual or physical disability or mental illness an max 2no. persons providing care for such person.

Plan Ref no WEB1313/20: Grant of permission for the demolition of the existing side two storey extension and associated annexes to No.66 Kincora Grove and modifications to the internal layout of the existing house to create a 4no. bedroom dwelling. The construction of a new two-storey, 3no. bedroom, semi-detached house together with a new vehicular access onto Castle Avenue with electric gates and all associated landscaping, boundary & site works.

Plan ref no 1229/20 refers to an application declared invalid on the subject site.

Plan ref no 0205/20 Exemption cert for 1 dwelling granted

Plan ref no. 4979/08 refers to the decision to grant permission for the following: a. To demolish a single storey extension to rear and construct b. A single storey extension with mono pitched roof and 3 rooflights to front. c. An attic conversion with 3 rooflights to rear. d. A single storey extension with mono pitched roof and 6 rooflights to rear at no 64 Kincora Grove.

#### **Similar type case**

0133/25 Section 5 declaration granted, Whether the use of the dwelling currently in use as social care accommodation under Class 14(f) at 11 Glenarm Avenue, Drumcondra, D09 X8F1, currently providing accommodation to persons under age 18, to provide accommodation for persons under

age 18 and seeking international protection under Class 14(h), is or is not development and whether development constitutes exempted development or does not constitute exempted development?

### **3.0 Enforcement**

No enforcement history on site

### **4.0 Legislation**

The relevant legislation is as follows:

Planning and Development Acts, 2000 (as amended)

Section 2 (1) – defines in this Act, except where the context otherwise requires:

‘structure’ means any building, structure, excavation, or other thing constructed or made on, in or under land, or any part of a structure so defined, and –

- (a) where the context so admits, includes the land on, in or under which the structure is situate, and
- (b) in relation to a protected structure or proposed protected structure, includes –
  - (i) the interior of the structure
  - (ii) the land lying within the curtilage of the structure
  - (iii) any other structures lying within that curtilage and their interiors, and
  - (iv) all fixtures and features which form part of the interior or exterior of any structure or structures referred to in subparagraph (i) or (iii)

Works - is defined in Section 2 of the same Act as follows:

‘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’.

Section 3 (1) defines ‘Development’ as follows:

‘Development means except where the context otherwise requires, the carrying out of any works on, over or under land or the making of any material change in the use of any structures or other land’.

Section 4 of the Planning and Development Act, 2000 as amended provides for exempted development:

Section 4(1)(h) of the Act indicates that the following is exempted development:- ‘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 Planning and Development Regulations 2001 as amended.

Article 10(1) of the Planning & Development Regulations 2001 (as amended), states as follows:

Development which consists of a change of use within any one of the classes of use specified in Part 4 of Schedule 2, shall be exempted development for the purposes of the Act, provided that the development, if carried out would not—

- (a) involve the carrying out of any works other than works which are exempted development,
- (b) contravene a condition attached to a permission under the Act,
- (c) be inconsistent with any use specified or included in such a permission, or
- (d) be a development where the existing use is an unauthorised use, save where such change of use consists of the resumption of a use which is not unauthorised and which has not been abandoned.

Change of use

## CLASS 14

Development consisting of a change of use

(f) from use as a house, to use as a residence for persons with an intellectual or physical disability or mental illness and persons providing care for such persons.

Conditions

The number of persons with an intellectual or physical disability or a mental illness living in any such residence shall not exceed 6 and the number of resident carers shall not exceed 2

(h) from use as a hotel, motel, hostel, guesthouse, holiday accommodation, convent, monastery, Defence Forces barracks or other premises or residential institution providing overnight accommodation, or part thereof, or from the change of use specified in paragraph (i) of the said premises or institution, or part thereof, to use as accommodation for protected persons.

Class 14(h): Change of use of various forms of premises providing residential or overnight accommodation to specific use as accommodation for refugees and asylum seekers, as defined in legislation. This class of exempted development will assist in implementing the Government's Irish Refugee Protection Programme (IRPP), which was established on 10 September 2015 in response to the migration crisis in central and southern Europe;

### 5.0 Assessment

The applicant has submitted a detailed planning report and it provides a justification for the proposed change of use, it proposes that it involves no physical alterations and maintains the same residential and care-based character as the existing use under Class 14(f). The applicant asserts that the property will continue to operate as managed social care accommodation, simply transitioning from housing minors with disabilities to unaccompanied minors seeking international protection. According to the applicant this continuity in function, staffing, and intensity of use means the change does not constitute a material change of use. The Applicant proposes that under Class 14(h) of the Planning and Development Regulations 2001 (as amended), such a change is considered exempted development, as confirmed by precedent at 11 Glenarm Avenue, Drumcondra.

The Applicant has also stated that the facility operates under the authority of Tusla and has been in use under Class 14(f) for 1 year in accordance with 0194/24.

Under the current Section 5 application, the Applicant is seeking an exemption under Class 14 (h). The existing and established social care accommodation would fall under '*or other premises or residential institution providing overnight accommodation*' in accordance with Class 14 (h). In terms of internationally protected youth, the Planning Authority acknowledge the relevant provisions under the International Protection Act 2015 and the Child Care Act 1991, in particular, '*an unaccompanied child seeking asylum and taken into care is afforded the same standard and quality of care as would be provided to any other child in the care system.*'

### Declaration on Development and Exempted Development

In response to the query on whether the following elements are or are not, development and/or whether such work is or is not exempt development;

- Based on the information before it and the declaration made under EXPP0194/24, it is presented that the dwelling is currently in use as social care accommodation under Class 14 (f) providing accommodation to persons under age 18 with a physical or mental disability etc, and to provide accommodation for persons under age 18 and seeking international protection under Class 14 (h) **constitutes exempted development.**
- The established social accommodation use for minors to include international protected youth does not constitute a material change of use and, therefore, does not constitute development for the purpose of the Act.

### Screening for Appropriate Assessment

Having regard to nature and scale of the development and the nature of the receiving environment and the distance and lack of connections to the nearest European sites, it is concluded that no Appropriate Assessment issues arise as the development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

### **Environmental Impact Assessment**

This EIA screening is carried out on a precautionary basis, without accepting that the works falls within the notion of a project under the EIA Directive nor within a specified type of project for which an EIA may be required,

Having regard to the nature and scale of the proposal which is not of a class or exceeds any relevant threshold, the Planning and Development Act 2000 (as amended) and Planning and Development Regulations 2001 (as amended), it is considered that there are no likely significant direct, indirect, and/or cumulative effects likely to arise, therefore, there is no real likelihood of significant effects on the environment and that the proposed project does not require an Environmental Impact Assessment.

### **Recommendation**

Having regard to the foregoing I recommend that the following Section 5 Declaration be issued to the applicant:

### **Declaration on Development and Exempted Development**

*Whether the use of the dwelling currently in use as social care accommodation under Class 14(f) at 66 Kincora Grove, Dublin 3, D03 E9E8, currently providing accommodation to persons under age 18, to provide accommodation for persons under age 18 and seeking international protection under Class 14(h), is or is not development and whether development constitutes exempted development or does not constitute exempted development?’*

The use of the subject dwelling which is currently in use as social care accommodation for minors under Class 14 (f), Part 1, Schedule 2, of the Planning and Development Regulations 2001, as amended, and to provide accommodation for persons under age 18 and seeking international protection **constitutes exempted development** under Class 14 (h), Part 1, Schedule 2 of the Planning and Development Regulations 2001, as amended. The established social accommodation use for minors to include international protected youth does not constitute a material change of use and, therefore, does not constitute development for the purpose of the Act.

I recommend that the Applicant be notified accordingly.