



An
Bord
Pleanála

Inspector's Report ABP 301211-18

Question

Whether various works to the buildings and within the curtilage are or are not development and are or are not exempt development

Location

Hampton Hotel, Nos 19-29 (odds only)
Morehampton Road. Dublin 4.
(Protected Structure.)

Declaration

Planning Authority

Dublin City Council

P. A. Reg. Ref.

EXPP 0375/17.

Declaration Request

Genport Ltd.

Decision

Split Decision.

Declaration Referrer

Genport Ltd.,

Owner/ Occupier

Genport Ltd.,

Date of Site Inspection

21st July, 2020.

Inspector

Jane Dennehy

1.0 Introduction.

1.1. Background.

- 1.1.1. The Hampton Hotel is located at Nos 19-29 Morehampton Road (odd numbers) comprising the combined site of six nineteenth century houses east side of Morehampton Road within a terrace between Morehampton Terrace to the south and an access route which there is access off which there is an entrance at the rear of the hotel premises and entrances to apartment developments. There are three, three bay two storey over garden level/semi basement (Nos 19 – 23) and, three, three bay, storey over garden level /semi basement (Nos 25 -29) these latter three having likely to have been intended as the centre piece of the terrace. The sites of the six dwellings and their front and rear gardens have been combined and the gardens and mews structures and replaced with rear surface carparking and rear extensions. No 19 is the end of terrace corner site house with frontage onto Morehampton Road.
- 1.1.2. The houses have been subject to extensive alterations and additions including extensions and full or partial removal of returns. At the front of Nos 19 and 21, behind balustrading there is landscaping, and a screened off outdoor seating area with tables, chairs and parasols surface carparking serving the hotel and adjoining dwellings to the south side of No 29 Morehampton Road, a set down area and vehicular entrances at either end.
- 1.1.3. The six buildings are included on the record of protected structures (Item No 5304) there is an extensive planning history extending back to 1964 inclusive of a prior Section 5 declaration issued by the planning authority under P. A. Reg. Ref. 0759/07 in which a split decision was issued in respect of works which include works similar to those included in the current Section 5 Declaration request.
- 1.1.4. The Referrer, Genport, Ltd through its agent, RMA Associates, requested a declaration from the planning authority on 27th September, 2017 as to whether various works carried out at the premises constituted development and, if so whether the works constituted exempt development. Further to issue of a request for and receipt of additional information, the planning authority issued its decision.

1.2. Planning History.

P. A. Reg. Ref. 3241/10: Permission was granted on 17 October, 2011 Demolition of 1-3 storey function rooms kitchen and service rooms, internal alterations to protected structures and construction of a 5,630 square metres extension and construction of an extension to the hotel. The duration of this grant of permission was extended on 4th February, 2016 until 2nd December, 2021.

P. A. Ref. Ref. 6503/07 Permission was granted for retention of various works and reordering within the existing buildings.

P. A. Reg. Ref.0375/17: A split decision was issued on 9th February, 2018 in respect of a Declaration Request under Section 5 of the Act. A copy of the file is within the current Referral submission lodged by the applicant's agent. The request is similar to the current, subject request before the Board.

P. A. Reg. Ref. 0221/08: A decision was issued by the planning authority in respect of a Declaration Request under Section 5 of the Act in which various works to exterior of the buildings within the curtilage are stated to be exempt development.

P. A. Reg. Ref. 0596/08: A decision was issued by the planning authority in respect of a Declaration Request under Section 5 of the Act in removal and replacement tree planting within the curtilage are stated to be exempt development.

P. A. Reg. Ref. 0759/07: A split decision was issued on by the planning authority in respect of a Declaration Request under Section 5 of the Act in which various works to interior indicating exempt development and various works not exempt development. A number of reasons and considerations and restrictions were included in the manager order.

P. A. Reg. Ref. 0028/07: A decision was issued 2nd February, 2007 in respect of a Declaration Request under Section 5 of the Act in which various works to roofs fenestration glazing and rainwater goods and internal joinery and associated materials indicating exempt development. A number of reasons and considerations and restrictions were included in the manager order. It also contains a statement that an additional section 5 declaration request would be required in respect of major structural works, and further to opening up and reinstatement under supervision by a conservation architect.

There is an extensive prior planning history dating back to 1964, which is based on research of the planning register and the Dublin City Council Archives at Pearce Street library by the Referrer's agent listed amongst the documentation included in the further information submission in connection with the declaration request

1.3. **Planning Authority Decision.**

- 1.3.1. The planning authority decided that the following works, (at basement level), are development and are exempt development:

Insertion of doors and four windows in the rear façade of 20th/21st c single storey structure.

- 1.3.2. The planning officer in his report stated that he considered that the said works have no impact and come with section 4 (1) (h) and Section 57 of the Planning and Development Act, 2000 as amended, (The Act) as they would not materially affect the character of the protected structure.

- 1.3.3. The planning authority decided that the following works, are development and are not exempt development:

At basement level:

- *The reinstatement of rooms in historic structures as three bedrooms*
- *Conversion of single storey 20th/21st C former nightclub and services areas to ten bedrooms.*
- *Reinstatement of windows and insertion of doors in six former opes to the front facades at Numbers 25. 27 and 29 Morehampton Road.*

At ground level.

- *Relocation of existing fire escape, including partial roofing of the route.*
- *Modification to the first flight of escape stairs from the function room,*

- *Reinstatement of the sub-division of No 29 Morehampton Road as two bedrooms.*

At first floor level:

- *Construction of a 1.2 m wide corridor across the rear of No 25 Morehampton Road.*

Curtilage Landscaping:

- *External landscaping of four under-utilised parking spaces providing for an eating area including two umbrellas and transparent wind screens.*

1.3.4. The planning officer states that these works would not come with section 4 (1) (h) and Section 57 of the Planning and Development Act, 2000 as amended, (The Act) as they would materially affect the character of the protected structure.

2.0 The Referral

2.1. The Referrer's Case

The Declaration issued by the planning authority was referred to the Board on behalf of the Genport Ltd and it includes sketches and photographs. It is accompanied by a copy of the documents on the planning authority file, which includes a copy of the prior Declaration issued under section 5 under P. A. Reg. Ref. 0375/17 and, it is stated that the works, (subject of the Question) were carried out since 2009. according to the Referral, the works subject of Declaration fall into three categories as outlined below:

- 2.1.1. Works to late 20th and early 21st century parts of the building comprising:
- *Conversion of the single storey extension at the rear from function room and services space to ten bedrooms.*

- *Insertion of five doors and four windows in rear façade of single storey structure.*
- *Relocation of rear fire escape including partial roofing and modification of first flight of stairs of the existing fire escape stairs from the main function room.*

2.1.2. With regard to these works to late 20th and early 21st century parts of the buildings it is the Referrer's case that:

- The flat roofed extension was constructed in the late 20th century and used as a night club until it is renovated circa 2009/2010. Internal improvements and alterations to the rear façade were recently carried out and are an improvement. No works to historic fabric of special interest has been involved. The bedroom use is more appropriate than nightclub use in the context of the protected structures.
- The City Council has previously 'granted' exemption to the works comprising the insertion of the five doors and four windows in the rear façade. Therefore, they do not form part of the current Referral
- The relocation of the existing fire escape including partial roofing and modification of the first flight of the existing fire escape stairs from the main function room are improvement works of a minor nature at the rear of the premises involving no historic fabric or elements of special interest. These works. do not render the appearance inconsistent with the character of the protected structures or neighbouring structures.

2.1.3. Works to the interiors of the original buildings which have no surviving historic elements of special interest.

- *Works to the former nightclub space in basements of No 27, 28 and 29 providing for three bedrooms.*
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- *Works to the former conference area of ground floor at No 29 providing for two bedrooms.*

2.1.4. With regard to these works it is the Referrer's case that:

- There are no remaining elements of special interest. Only parts of the footprint of the three buildings remain. The area in which the bedrooms are to be inserted was altered in the 20th century and there is no impact on the building.
- The first available record shows No 29 at ground floor level as open plan with a recess, possibly a staircase return. Surviving elements of original fabric are retained and incorporated in the three rooms and en-suites.
- Reinstatement of a two-room layout is an improvement in restoring a domestic character and more appropriate use to the floor. The original historic layout is not known and, it is not possible to replicate an uncertain historic layout. The building layouts overhead are reflected in the more authentic layout.

2.1.5. Works to the exteriors of protected structures:

- *Provision of a corridor at the rear of No 25 to connect bedrooms within Nos 27 and 2 to the first-floor level lift.*
- *Opening up windows at basement level on front facades of Nos 25, 27 and 29.*
- *Landscaping four for under used car spaces to provide for a seating area including two umbrellas and transparent windscreens.*

2.1.6. With regard to the works providing for the corridor the Referrer states that the corridor, is at the rear of a bathroom allows for connection between Nos 27 and 29 and the first-floor lift at No 25. It is contended that no elements of historic interest are in this area and the alterations to the rear façade are imperceptible due to the setback from the rear wall of the 20th century single storey extension to the original back wall at upper levels of the protected structure, that the link obscures the rear façade of No 25, is not visible from the front and barely visible from the rear and that the works are reversible.

2.1.7. With regard to the windows at basement level on the front façade, it is the Referrer's case that there would have been openings at basement level in the locations where the windows have been reinserted and that there is no remaining evidence of the opes. The open areas at basement level are unobtrusive, are below street level and, behind railings on plinths which restore a traditional presentation to the street.

With regard to the landscaping of the four under-used car spaces providing for a seating area, two umbrellas and transparent screens to the front of No 21 Morehampton Road for use as an outdoor seating area it is stated that as a result there improvement to the frontage relative to parking use. The intervention is solely a landscape intervention set behind the balustrading forming the edge of the terrace. This is unobtrusive and there is no impact on the protected structure.

2.2. The Planning Authority Response

2.2.1. There is no submission from the planning authority on file.¹ However, the views in the planning officer report on the request for the Declaration while it was before the planning authority can be outlined as follows.

2.2.2. With regard to the basement level the planning officer considers:

- that the works under (a) and (b), providing for the reinstatement of rooms to three bedrooms and conversion of the former night club space to ten bedrooms are substantial works involving subdivision of plot widths and,
- that the works under (c) providing for reinstatement of the window and insertion of doors in six former opes in the front facades of No 25-29 are significant and has included new openings in the fabric.
- that the conversion of the former nightclub to bedrooms were determined not to be exempt development in a Section 5 Declaration under P. A. Reg. Ref, EXPP 0759/07.

2.2.3. With regard to the ground floor level the planning officer in report states that he considers:

- That the works under (a) and (b) providing for relocation of existing fire escape, including partial roofing of the route and, modification to the first flight of escape stairs from the function room to have a material effect on the appearance and architectural character of the rear of the structures and he

¹ The reports, including the conservation officer report and other documentation on the prior relevant Declaration request under P. A. Reg. Ref. 759/07 are not available.

refers to the above basement level construction shown in the further information submission and,

- that the works under (c) providing for reinstatement of the subdivision at ground floor level as two no en-suite bedrooms (Nos 101 and 102) to have material effect on the, (prior) character of the structure. He acknowledges a spatial restoration but states that these works were determined not exempt development in a Section 5 Declaration under P. A. Reg. Ref EXPP 0759/07.

2.2.4. With regard to the first-floor level the planning officer in report states that he considers:

- That as the new corridor traverses the rear elevation of No 25, including the window in the rear elevation and involved removal of fabric to the stairwall (return) there is material affect to the character of the structure.

2.2.5. With regard to the curtilage landscaping the planning officer in report states that he considers

- That the installation of parasol/umbrellas/screens and seating, in conjunction with the removal of the four car spaces and landscaping has a material impact on the appearance and visual amenity of the architectural character of the protected structure.

3.0 Statutory Provisions

3.1. The relevant statutory provisions of the Planning and Development Act, 2000, as amended which are reproduced below in full are:

Sections 2 (1), 3 (1)

Section 4 (1) (h)

Section 57 (1),

3.1.1. Section 2 (1)

“works” are defined in this section as including 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.

“use” is defined as in relation to land, does not include the use of the land by the carrying out of any works thereon.

“protected structure” means (a) a structure, or (b) a specified part of a structure which is included in a record of protected structures, and where the record so indicates, includes any specified feature which is within the attendant grounds of the structure and which would not otherwise be included in this definition.

3.1.2. Section 3 (1)

“Development” is defined 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”.

3.1.3. Section 4 (1) –

The following shall be exempted development for the purposes of the 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.

3.1.4. Section 57 (1)

Notwithstanding section 4(1)(a),(h), (i),(ia),(j),(k) or (l) and any regulations made under section 4(2), the carrying out of works to a protected structure, or, a proposed protected structure, shall be exempted development only if those works would not materially affect the character of –

(a) the structure, or

(b) any element of the structure, which contributes to its special architectural, historical, archaeological, artistic, cultural, scientific, social, or technical interest.

4.0 Assessment

4.1. Based on the foregoing, the Question Referred to the Board for determination of a decision can be formulated as follows:

Whether the works listed below at The Hampton Hotel, 19, 21, 23, 25, 27 and 29 Morehampton Road, (odd numbers) Dublin 4, which are included on the record of protected structures which are listed below are or are not development and are or are not exempt development:-

At basement level:

- *The reinstatement of rooms in historic structures as three bedrooms.*
- *Conversion of single storey 20th/21st c former nightclub and services areas to ten bedrooms.*
- *Reinstatement of windows and insertion of doors in six former opes to the front facades at Numbers 25. 27 and 29 Morehampton Road.*
- *Insertion of doors and four windows in the rear façade of 20th/21st c single storey structure.*

At ground level.

- *Relocation of existing fire escape, including partial roofing of the route.*
- *Modification to the first flight of escape stairs from the function room*
- *Reinstatement of the sub-division of No 29 Morehampton Road as two bedrooms.*

At first floor level:

- *Construction of a 1.2 m wide corridor across the rear of No 25 Morehampton Road.*

Within the Curtilage

- *External landscaping of four under-utilised parking spaces providing for a seating area including two umbrellas and transparent wind screens.*

- 4.2. There is no dispute that all the works subject of the Question constitute development within the meaning of the provisions of Sections 2 (1) and 3 (1) of the Planning and Development Act, 2000, as amended.
- 4.3. The Question then to be determined is as to whether the specified works subject of the Question is, or are not exempt development:
- 4.4. With regard to the works at basement level, there is no dispute that the works comprising insertion at basement level of doors and four windows in the rear façade of the 20th/21st century single storey structure, (within the site curtilage) which are relatively minor, have no impact on the protected structure and are exempt development. These works do not materially affect the character of the structure having regard to the provisions of section 4 (1) (h) and 57 (1) of the Act as indicated on the manager order issued by the planning authority.
- 4.4.1. The other works at basement level, subject of the Question comprise, the reinstatement of rooms in historic structures at Nos 25, 27 and 29 Morehampton Road as three bedrooms; the conversion of single storey 20th/21st century former nightclub and services areas to ten bedrooms and, the reinstatement of windows and insertion of doors in six former opes to the front facades at Numbers 25. 27 and 29 Morehampton Road.
- 4.4.2. With regard to these works the referrer's agent outlines and comments on extensive desk research and survey work conducted at the buildings in the submissions lodged in connection with the declaration request. He has concluded that it has not been possible to establish authenticity and accuracy regarding historic planforms and

extent and nature of historic fabric and subsequent interventions. As it has not been possible to establish or replicate uncertain historic layouts, and openings and, as there is uncertainty as to whether and to what extent materials are historic fabric it is not possible to confirm that such works can be deemed exempt development.

4.4.3. Furthermore, it is agreed with the planning officer who commented in his report that substantial works were involved in reinstatement of the rooms at basement level, with the insertion of windows and doors in the basement level front facades and, with interconnections within the original buildings and with the extension to the rear. It is therefore agreed that these works materially affect the character of the structure.

4.4.4. It is therefore considered that the reinstatement of rooms in historic structures at Nos 25, 27 and 29 Morehampton Road as three bedrooms, the conversion of single storey 20th/21st century former nightclub and services areas to ten bedrooms and, the reinstatement of windows and insertion of doors in six former openings to the front facades at Numbers 25, 27 and 29 Morehampton Road do not come within the provisions of Sections 4 (1) (h) and 57 (1) (a) and (b) of the Act and that they are not exempt development.

4.5. With regard to the works at ground level subject of the Question namely, the relocated fire escape route in conjunction with partial roofing enclosing the route at the rear of the protected structure and partial roofing overhead and the fire escape stairs from the function room the first flight of which has been modified are substantive works and significant structures. These works dominate and materially alter the appearance of the protected structure and therefore materially alter the character of the protected structure. It is therefore considered that these works do not come within the meaning of the provisions of sections 4 (1) (h) and 57 (1) (a) and (b) of the Act and not exempt development

4.5.1. With regard to the works at ground level comprising the reinstatement of the subdivision of No 29 Morehampton Road into two bedrooms at ground floor level, it is likely there had been a prior subdivision of two principle reception rooms within the original planform and layout of No 29. Prior to the relatively recent subdivision subject of the Question, this space is understood to have been in use as conference/banqueting and bar facilities within the hotel, having regard to the information and plans submitted to the planning authority on behalf of the Referrer.

- 4.5.2. The works involved in providing for the current subdivision, to alter the planform, providing for en-suite bathroom facilities and a lobby and servicing facilitating contemporary requirements are different to the presumed original planform, are significant and materially alter the character of the protected structure. It is therefore considered that these works do not come within the meaning of the provisions of sections 4 (1) (h) and 57 (1) (a) and (b) of the Act and are not exempt development.
- 4.6. With regard to the works at first floor level comprising, the construction of a 1.2 m wide corridor across the rear of No 25 Morehampton Road, it is considered that these works have involved intervention to and removal of fabric in the return of the house to facilitate access and connectivity between the rooms and the first floor lift, and it is noted that a first floor rear elevation window has been obstructed by the insertion of the corridor. It is considered that these works amount to a material alteration to the character of the protected structure which does not come within the meaning of the provisions of sections 4 (1) (h) and 57 (1) (a) and (b) of the Act and they are therefore not exempt development.
- 4.7. With regard to the works within the curtilage comprising landscaping of four under-utilised parking spaces providing for a seating area comprising several tables and chairs including two umbrellas and transparent wind screens it is noted that these works have taken place within the space adjacent to the front boundary balustrading to the front of Nos 21-23. It is an enclosure surrounded by glazed screens in which there are tables and chairs, parasols/umbrellas. The enclosed space is circa 10.2 metres in length along the frontage and 4.5 metres in depth. At the time of inspection, a patron was seated at one of the tables and there was a glass of beer on the table.
- 4.7.1. The replacement of the surface carparking area in front curtilage serving the hotel development with an enclosure the footprint of which is circa forty three square metres furnished with several sets of tables and chairs with parasols and umbrellas is considered to be a material alteration to the character and setting of the protected structure. It is therefore considered that they are not within the meaning of the provisions of sections 4 (1) (h) and 57 (1) (a) and (b) of the Act.

4.8. Additional Observations.

4.9. The remarks on the prior Declaration in respect of similar works by the planning authority in which a split decision was issued under P. A. Reg. Ref. 759/07 and which was not referred to the Board for review have been noted. The works subject of the current Question before the Board has been considered on a *de novo* basis. Finally, the case made in the submissions made on behalf of the Referrer that the works subject of the Question are enhancements to the protected structure is acknowledged. However, it has been borne in mind that this consideration is immaterial to and outside the scope of consideration in determination of a section 5 declaration whereas enhancements are material considerations in determination of a decision on a planning application.

Environmental Impact Assessment Screening.

Having regard to the nature of the proposed development and its location in a serviced urban area, removed from any sensitive locations or features, there is no real likelihood of significant effects on the environment. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

4.10. Appropriate Assessment Screening.

Having regard to the nature of the proposed development and, to the serviced inner urban location, no Appropriate Assessment issues proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

4.11. Recommendation

In view of the foregoing, it is recommended that the Question be decided as set out in the draft order set out overleaf.

5.0 Draft Order

WHEREAS a question has arisen as to whether: the following works at The Hampton Hotel, 19, 21, 23, 25, 27 and 29 Morehampton Road, (odd numbers) Dublin 4, a protected structure are or are not development and are or are not exempt development:-

At basement level:

- The reinstatement of rooms in historic structures Numbers 25, 27 and 29 Morehampton Road as three bedrooms.
- Conversion of single storey 20th/21st c former nightclub and services areas to ten bedrooms.
- Reinstatement of windows and insertion of doors in six former openings to the front facades at Numbers 25, 27 and 29 Morehampton Road.
- Insertion of doors and four windows in the rear façade of 20th/21st century single storey structure.

At ground level.

- Relocation of existing fire escape, including partial roofing of the route.
- Modification to the first flight of escape stairs from the function room
- Reinstatement of the sub-division of No 29 Morehampton Road as two bedrooms.

At first floor level:

- Construction of a 1.2 m wide corridor across the rear of No 25 Morehampton Road.

Within the Curtilage

- External landscaping of four under-utilised parking spaces providing for a seating area including two umbrellas and transparent wind screens.

AND WHEREAS Genport Ltd requested a Declaration on this question from Dublin City Council and the said City Council issued a Declaration on 13th February, 2018 stating that: -

The insertion of doors and four windows in the rear façade of 20th/21st century single storey structure,

Is development and is exempted development

AND THAT: -

At basement level, the reinstatement of rooms in historic structures Numbers 25. 27 and 29 Morehampton Road as three bedrooms; conversion of single storey 20th/21st c former nightclub and services areas to ten bedrooms and, reinstatement of windows and insertion of doors in six former opes to the front facades at Numbers 25. 27 and 29 Morehampton Road.

At ground level, relocation of existing fire escape, including partial roofing of the route; Modification to the first flight of escape stairs from the function room and, reinstatement of the sub-division of No 29 Morehampton Road as two bedrooms.

At first floor level, construction of a 1.2 m wide corridor across the rear of No 25 Morehampton Road and,

Within the curtilage, external landscaping of four under-utilised parking spaces providing for a seating area including two umbrellas and transparent wind screens.

is development and is not exempt development.

AND WHEREAS Genport Ltd Referred the Declaration for Review to An Bord Pleanála on 8th March, 2018,

AND WHEREAS An Bord Pleanála, in considering this referral, had regard particularly to:-

- (a) The status of the buildings as protected structures,
- (b) Sections 2(1), 3(1), 4(1)(h), and 57(1) of the Planning and Development Act, 2000, as amended, and,
- (c) The scale, nature and extent of the works.

AND WHEREAS An Bord Pleanála has concluded that: -

The insertion of doors and four windows in the rear façade of 20th/21st century single storey structure is development which does not materially affect the character of the protected structure and is therefore exempt development.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 of the Planning and Development Act, 2000 as amended, hereby decides that these said works are development and are exempted development.

AND WHEREAS An Bord Pleanála has concluded that the following works are development which would materially affect the character of the structure and are not exempt development: -

- At basement level, the reinstatement of rooms in historic structures Numbers 25. 27 and 29 Morehampton Road as three bedrooms; conversion of single storey 20th/21st c former nightclub and services areas to ten bedrooms and, reinstatement of windows and insertion of doors in six former opes to the front facades at Numbers 25. 27 and 29 Morehampton Road.

- At ground level, relocation of existing fire escape, including partial roofing of the route; Modification to the first flight of escape stairs from the function room and, reinstatement of the sub-division of No 29 Morehampton Road as two bedrooms.

- At first floor level, construction of a 1.2 m wide corridor across the rear of No 25 Morehampton Road and,

- Within the curtilage, external landscaping of four under-utilised parking spaces providing for a seating area including two umbrellas and transparent wind screens.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 of the Planning and Development Act, 2000 as amended, hereby decides that these said works are development and are not exempted development

Jane Dennehy
Senior Planning Inspector
23rd July, 2020.