



An  
Bord  
Pleanála

**Board Direction**  
**ABP-304075-19**

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The submissions on this file and the Inspector's report were considered at a Board meeting held on 15th July, 2019.

The Board decided, as set out in the following Order, that:-

**WHEREAS** the original question posed was:

*whether the retention of parts of the original elevations and floor plan into the overall design (with minor modifications to same) is considered exempted development under the Planning Act and are in substantial accordance with the Planning Permission granted under Planning Reg. Ref. No.16/37131*

**AND WHEREAS** Reddy Architecture and Urbanism on behalf of Hatch Copley Ltd. requested a declaration from Cork City Council and the Council issued a declaration on the 4<sup>th</sup> day of March, 2019 stating that the matter was development and was not exempted development:

**AND WHEREAS** Reddy Architecture and Urbanism on behalf of Hatch Copley Ltd. referred this declaration for review to An Bord Pleanála on the 28<sup>th</sup> day of March, 2019:

**AND WHEREAS** An Bord Pleanála, in the light of the documentation in the Referral has decided to reword the question as follows:

*Whether the as constructed building, incorporating alterations to the elevations and changes in 4<sup>th</sup> level floor plans to that permitted under Cork City Council register reference number T.P. 16/37131 at 9/10 Copley Street, Cork is or is not development and is or is not exempted development.*

**AND WHEREAS** An Bord Pleanála, in considering this referral, had regard particularly to –

- (a) Section 2(1) of the Planning and Development Act, 2000, as amended,
- (b) Section 3(1) of the Planning and Development Act, 2000,
- (c) Section 4(1)(h) of the Planning and Development Act, 2000, as amended,
- (d) the planning history of the site,
- (e) case law and in particular *Horne vs Freeney* (Unreported, Murphy J, HC 1982)

**AND WHEREAS** An Bord Pleanála has concluded that:

- (a) The elevational changes and floor plans arise from a change of use of the building from office use to student accommodation which involved the carrying out of works, and is, therefore development as defined.
- (b) The development that has been carried out differs from that for which planning permission was granted under register reference number T.P. 16/37131 and the Board is satisfied that the deviations from the permitted development area, when taken cumulatively, are significant and material, and are not immaterial or de minimis, and

are not, therefore, within the scope of the development that was approved under planning permission register reference number T.P. 16/37131.

- (c) The development that has taken place, that is the subject of the referral, involves works included in a previous permission and not those in the implemented permission and were carried out prior to the works authorised by the implemented permission. In such circumstances and in accordance with case law (Horne vs Freeney), the subject works cannot avail of the exemption afforded by Section 4(1)(h) of the Planning and Development Regulations, 2000, as amended.
- (d) There are no other exemptions in the Planning and Development Act, 2000, as amended, or in the Planning and Development Regulations, 2001, as amended, whereby such material deviations would be exempted development.

**NOW THEREFORE** An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3) (a) of the 2000 Act, hereby decides that the as constructed structure, incorporating alterations to the elevations and change in 4<sup>th</sup> level floor plans to that permitted under Cork City Council register reference number T.P. 16/37131 at 9/10 Copley Street, Cork is development and is not exempted development.

**Board Member:**

**Date:** 15/07/2019

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Terry Ó Niadh