



Planning and Development Acts 2000 to 2019

Planning Authority: Cork City Council

Planning Register Reference Number: R496/18

WHEREAS a question has arisen as to whether the retention of parts of the original elevations and floor plan into the overall design (with minor modifications to same) of development granted permission under planning register reference number T.P. 16/37131 at 9/10 Copley Street, Cork is or is not development or is or is not exempted development:

AND WHEREAS Hatch Copley Limited care of Reddy Architecture and Urbanism of Douglas Business Centre, Carrigaline Road, Douglas, Cork requested a declaration on the said question from Cork City Council and the said Council issued a declaration on the 4th day of March, 2019 stating that the said matter is development and is not exempted development:

AND WHEREAS Hatch Copley Limited referred the declaration for review to An Bord Pleanála on the 28th day of March, 2019:

AND WHEREAS An Bord Pleanála, in the light of the documentation on file has reformulated the question as follows:

Whether the as constructed building, incorporating alterations to the elevations and changes in 4th level floor plans to that permitted under Cork City Council planning 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,
- (d) the planning history of the site, and
- (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 under section 3(1) of the Planning and Development Act, 2000,

- (b) the development that has been carried out differs from that for which planning permission was granted under planning 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 granted planning permission under planning 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 (planning register reference number T.P. 16/37131) and were carried out prior to the works authorised by the implemented permission. In such circumstances and in accordance with case law (*Horne vs Freney*), the subject works cannot avail of the exemption provided under section 4(1)(h) of the Planning and Development Act, 2000, and
- (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 constitute 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 as constructed building, incorporating alterations to the elevations and changes in 4th level floor plans to that permitted under Cork City Council planning register reference number T.P. 16/37131 at 9/10 Copley Street, Cork is development and is not exempted development.

Matters Considered

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

Terry Ó Niadh

Member of An Bord Pleanála

**duly authorised to authenticate
the seal of the Board.**

Dated this day of 2019.