



An
Bord
Pleanála

Inspector's Report ABP 302792-18

Question

Whether use of the hotel reception area as a cafeteria is or is not development and is or is not exempt development.

Location

Queen's Hotel, Abbey Street, Ennis.
(PROTECTED STRUCTURE).

Declaration Request.

Planning Authority

Clare County Council

P.A. Reg. Ref.

R1841.

Request (Owner Occupier)

Donal Lyne.

Declaration Referral.

Referrer.

Donal Lyne

Owner Occupier:

Donal Lyne

Date of Site Inspection

7th December, 2018

Inspector

Jane Dennehy

1.0 Background.

- 1.1. The Queen's Hotel in Ennis which is included on the Record of Protected Structures, (RPS 739) is located on Abbey Street and the corner of Francis Street at the centre of Ennis close to the Franciscan Friary and graveyard. It is a forty-six-bedroom hotel which also has a nightclub bar and restaurant facilities (Forty-One) at ground floor level. The ground floor area of the hotel lobby and reception area within the building on the corner, (outlined in red on the site location map) is fitted out and is in use as café with a servery and cashier facilities. The former hotel entrance is the entrance from the street to the cafe which is open to the public. The café operates under the name 'Kaffiene' which is displayed over the entrance. The entrance to the hotel has been relocated to a door opening onto a staircase direct off Francis Street.
- 1.2. The hotel reception and check in facilities have been transferred to the first floor to which there is access via the staircase from the relocated hotel entrance off Francis Street. The hotel lift behind the café can be accessed directly off the seating area and there is also an internal door to the area at the bottom of the staircase at the entrance off Francis Street. Toilet facilities located in the adjoining bar and restaurant ("Forty-One") can also be accessed internally from the café.
- 1.3. The planning authority issued a Warning Letter to the owner occupier, (Mr. Lynn) indicating that unauthorised development may have been carried out in relation to the use of the hotel lobby as a coffee shop, erection of signage and internal alterations including removal of plaster, erection of timber cladding. A request for a declaration in respect of the change of use was then lodged with the planning authority. (The planning authority's File No UD 18-039 refers.)

2.0 The Declaration.

- 2.1. Mr. Donal Lyne, through his agent requested a Declaration from the planning authority as to: *Whether use of the hotel reception area as a cafeteria is or is not development and is or is not exempt development.*

By order dated, 21st September, 2018 the planning authority issued a Declaration in which it is stated that:

- The use of the hotel reception area as a cafeteria constitutes “works” within the scope of section 3 (1) and “development” within the meaning of Section 3 (1) of the Planning and Development Act as amended, (The Act) and,
- The use of the use of the hotel reception area as a cafeteria is not exempt development because the change of use is not within the exempt development provisions set out in Class 14, Schedule 2, Part 1 and Part 4 of the Planning and Development Regulations 2001 as amended. (The Regulations)

2.2. The Declaration also includes the following statement:

“Having regard to the nature, scale and layout of the café, the layout and services provided to visiting members of the public (e. g. inclusion of a new counter area) and the extent of seating provided, the change of use from a hotel reception to a café raises issues that are material in relation to the proper planning and sustainable development of the area and this change of use constitutes a material change of use.”

2.3. **Planning Authority Assessment.**

- 2.3.1. The planning officer in his report notes from the planning history for the Queen’s Hotel that the authorised use of the area subject to the Question is use as a hotel reception. He also acknowledges that the hotel reception area had also been used for service of light snacks. He concludes that the café is ‘works’ and ‘development’ and constitutes as change of use based on the reasoning provided in the Declaration which was issued. (See para 2.2. above.)

3.0 **Referral of the Declaration to the Board**

- 3.1. Mr. Donal Lyne, through his agent referred the Declaration issued by the planning authority to the Board on 17th October, 2018 attached to which are a set of drawings

indicating internal layouts and copies of documentation submitted to and issued by the planning authority.

3.2. In the opening sections of the submission it is stated that the referral relates solely to the use at ground floor's hotel reception area at of the Queen's hotel as a café. It is also stated that clarification regarding some works undertaken has been sought from the planning authority through a request for a section 57 Declaration.

3.3. **The Referrer's Case.**

According to the Referral,

- The area in use as a café was originally used as a billiards room but was converted to the reception area for the hotel in the 1980s, when refurbishments were carried out and, that coffee and light snacks were served in this area.
- The concept of large hotel reception areas is now outdated; early in 2018 the reception desk was relocated to the first floor and, the area was fitted out as a café with a food counter and seating.
- Change of Use: The change of use is 'non-material' as hotel uses incorporate a range of activities such as bar, restaurant and serving light refreshments. The café use is a change from one common use within an hotel to another which does not involve greater usage, traffic congestion pedestrian footfall or other planning related issues. There was a seating with tables which were used for coffee and light snacks when the space was used as hotel reception and waiting area close to the lift, stairs and other areas within the hotel. The current (café) use and layout is similar includes a food counter, the reception desk having been removed and there is slight alteration to the staircase. Mr Lyne is happy to apply for planning permission for the works if they are not exempt development under section 4 (1) (h) of the Act.

The café is no more a 'stand-alone' use than the original reception area. People who were not patrons of the hotel used the space for snacks and coffee and could use the hotel toilets. Stand-alone restaurants are also located at hotels where diners would not use the hotel facilities.

A material change of use occurs when issues to be considered in the assessment of planning applications arise such as increase in levels of noise emissions, deliveries and footfall. (*Barron J. Galway County Council v Lackagh Rock Ltd.*) The café use is not a material change of use as there is no difference in these levels and there is no nuisance.

- Exempt Development: The use is the issue of concern and hotel use is a specific use in its own right. It is not clarified as to which Class it is in having regard to exemption for changes of use between Classes provided for in Section 4 of the Act and Article 6 of the Regulations so change of use within a band of uses does not arise. Hotel premises have a variety of uses with are enjoyed by residents and by members of the public and the Queens Hotel which was originally a commercial hotel has never reserved certain uses exclusively for residents. The current “cafeteria” use is entire compatible with the understood use as a “hotel” and in the case of Queen’s Hotel this preceded the introduction of the Planning Acts.

As regards exempt development, the works carried out include the removal of the reception desk, creation of a small internal partition to the staircase, internal lining to surface and walls and columns. It is possible that these works will be de-exempt under section 57 of the Act which has been requested from the planning authority.

- Precedent: In the submission several Referral cases are referred to as relevant precedent.

The current case is analogous to the following two cases because hotel use clearly incorporates café use although hotel use is not defined.

RL 3315: Use of a coffee shop within a shop within a protected structure was determined not to be ‘development’ and within the scope of the ‘shop’.

RL 2941: Partial change of use of shop to coffee shop was determined not to be ‘development’.

RL 3315. A ‘use was determined not to constitute ‘development’ and, ‘works’ were determined to constitute exempt development. A similar

approach could be taken to the current question. It is open to the Board to determine whether the works affect the character of the structure by separate decision.

300787-18: Occasional use of a theatre within a public bar constitutes development because intensification of pedestrians and traffic generation were material planning considerations.

- Observations on Declaration issued by Planning Authority.

Class 14, Part 1 Schedule 2, of the Regulations is not relevant because it relates changes to certain specified uses to use as a shop. It is not suggested that the cafeteria use is a shop. It is a cafeteria for use by patrons of the hotel and members of the public and does not provides for sale of food for consumption off the premises.

Part 4, Schedule 2, of the Regulations: If a change of use had occurred, it would not be a change of use covered in the uses classes covered by the Schedule.

The referral to 'works' is not relevant because the Question is solely related to the change of use which is totally separate from works. Nd are separate in the definition of 'development in Section 3 of the Act (the minor works would be exempt under Section 4 (1) (h) of the Act but as the structure is a protected structure an application for permission for the works will be made.

The seating and the food counter could not be in the definition of works in section of 2 of the Act as they are movable objects.

There is no justification provided for the statement in the Declaration that the nature and scale of change of use including the seating and the fixed counter have material planning impacts. It is difficult to see in the context of a large hotel operation that a significant increase in footfall requires planning assessment. The premises would need to be extended to change the nature of use.

3.4. Planning Authority Response

There is no submission from the planning authority on file.

4.0 **Statutory Provisions**

4.1. The relevant legislative provisions referred to in consideration of the Question are:

Planning and Development Act. (The Act.)

Sections 2 (1), 3 (1)

Section 4 (1) (h)

Section 57 (1), (9)

Planning and Development Regulations 2000-2018 as amended. (The Regulations.)

Articles 5, 9 and 10

Class 14, Part 1 Schedule 2

Schedule 2, Part 4.

Extracts from the relevant sections in the Act and Articles and Schedules in the Regulations are provided in Appendix 1.

5.0 **Assessment.**

5.1. The Referrer has confirmed that the Question requested from the planning authority, and, in turn Referred to the Board for determination is confined to whether the change of use to use as a café is or is not development and is or is not exempt development only. The planning officer has advised that hotel reception is the authorised use for the space outlined in red on the site location map which is subject of the Question. The matters arising are considered under three subsections below, which are:

Exempt Development and Protected Structures.

“Works” and “Development” within the meaning of the Act.

Exempt Development.

5.2. Exempt Development and Protected Structures.

- 5.2.1. The Queen's Hotel is included on the record of protected structures and it is also confirmed by the Referrer's Agent that it is intended to seek resolution as to the planning status of the works carried out, to facilitate the café use through a request for a Section 57 Declaration from the planning authority, although there is also a statement that it is intended to apply for planning permission in relation to the works. The planning officer in his report has also indicated, (in the last paragraph on the ninth page of his report) that the section 5 declaration, "*relates to the principle of the change of use only and not to any associated alterations.*" It would be a matter in the first instance for a request for a section 57 declaration, (or section 5 declaration) to be lodged with the planning authority prior to possible referral to the Board for review. The applicant would have the opportunity to engage the services of an architect or similar person with specialist expertise in historic building conservation and the planning authority would have the opportunity to avail of the services of its Conservation Officer in preparation of the section 57 Declaration or in determining a decision on a section 5 Declaration request.
- 5.2.2. However, According to Article 10 (1) of the Regulations, 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 involve the carrying out of any works other than works which are exempted development.
- 5.2.3. The Queens Hotel is included on the record of protected structures and according to Section 57 (1) of the Act,

"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

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

- 5.2.4. Therefore, it must be borne in mind that a material change of use within the Classes cannot be deemed exempt development if any works involved materially affect the character of a protected or proposed protected structure or any element thereof. For example, where a possible conclusion that a material change of use would be exempt, the change of use could still be de-exempted on grounds that works carried out to facilitate the change of use are determined to materially affect the character of a protected structure.
- 5.2.5. The works carried out to facilitate the use as a café are not clearly specified in the documentation made available in connection with the Referral and are insufficient to facilitate adjudication as to whether the works would or would not materially affect the character of the structure or any element thereof. The works are subject to enforcement investigations by the planning authority and include the erection signage over the entrance.
- 5.2.6. However, in this instance it has been concluded, (See paras 5.5) that the subject Declaration Referred to the Board can be determined, without prejudice to possible future determination by way of a Section 57 or Section 5 Declaration as discussed in para 4.2 above, as to the status of works carried out at the Queens Hotel, including works carried out to facilitate the use as a café within the area authorised for use as hotel reception area, shown outlined in red on the site location map.
- 5.2.7. Finally, with regard to the foregoing, it should also important for it be noted that according to Section 57 (9) of the Act, a Declaration under section 57 of the Act shall not prejudice the application of Section 5 to any question that arises as to what, in a particular case, is or is not exempted development.
- 5.2.8. Based on the foregoing, the Question Referred to the Board for determination of a decision can be formulated as follows:

Whether use of the hotel reception area as a cafeteria is or is not development and is or is not exempt development.

5.3. **“Works” and “Development” within the meaning of the Act.**

- 5.3.1. It is necessary to consider whether the use of the hotel reception area as a cafeteria constitutes, “works” within the scope of section 2 (1) and, “development” within the meaning of Section 3 (1) of the Planning and Development Act as amended, (The Act) and, if it is decided that the use does constitute development within the meaning of the Act:-
- 5.3.2. There is no dispute that the use of the hotel reception area as a cafeteria constitutes, “works” and “development” within the scope of sections 2 (1) and 3 (1) of the Act, given the relocation of the hotel reception facilities, alterations to fabric and the full fit out as a café with a servery. In this instance, the works have been implemented at a protected structure.
- 5.3.3. However, it is the Referrer’s case that the change of use is not development in the first instance, on grounds that the change of use is not material, having regard to the definition for “development” provided for in Section 3 of the Act. Notwithstanding the foregoing, the change of use also constitutes “development” within the meaning of Section 3 (1) of the Act because it is a ‘material’ change of use.
- 5.3.4. It is submitted in the Referral that the change of use is not material because hotels provide for a range of uses which include serving of light refreshments, which, at Queens Hotel, took place at seating within the designated reception area which is now in use as a café. Irrespective of whether the serving of light refreshments within the reception area was or was not a material change use the primary and authorised hotel reception use, function was not abandoned. To this end, the serving of light refreshments at seating in the lobby/reception area may have been subsidiary to the designated use as a hotel reception area.
- 5.3.5. However, the use of the space as a hotel reception area has ceased. The hotel reception and hotel entrance has been relocated upstairs and the entire former reception area, is a stand-alone café, operated under a separate name, (Kaffiene) which is displayed over the entrance. This the entrance was the former main entrance to the hotel opening into the reception area from the street.
- 5.3.6. The space is now a fully dedicated space in use as a fully fitted out café which is operated, promoted and staffed as a separate independent entity with its own entrance notwithstanding the internal connections through it to the lift, relocated side

entrance to the hotel and adjoining restaurant/bar in which toilet facilities are available for patrons of the cafe. The dedicated independent café within the space involving no overlap with the hotel reception function constitutes a material change of use.

5.3.7. While it is acknowledged that there is no survey data to demonstrate intensification of use of the space, intensification of use which is 'material' by way of customer visits, deliveries and collections and staffing would also have occurred.

5.3.8. Based on the foregoing, the change of use of the hotel reception area to use as a café is development within the meaning of the Act.

5.4. **Exempt Development.**

5.4.1. It is necessary to determine, whether the use of hotel reception area as a cafeteria constitutes exempt development or does not constitute exempt development.

5.4.2. As indicated in the Referral submission, 'hotel' is not a use specified within the Use Classes in Schedule 2, Part 4 (Exempted Development – Classes of Use) of the Regulations which provides for exemption for change of uses within classes. The closest use definition would be Class 6, (residential club, guesthouse or hostel, other than a hostel where care is provided) but there is no doubt that a hotel would not come within the scope of this class.

5.4.3. Given that it is concluded that the established and authorised use of the space subject to the question is hotel reception, a function of hotel use, notwithstanding the serving of light refreshments that may have taken place, there is no scope for reliance on the provisions of Class 14, Schedule 2, Part 1 of the Regulations to support the Referrer's case. The provisions for change of use from hotel use are confined to use as a hostel where care is provided (g), use as accommodation for protected persons (h) use as an emergency reception and orientation centre for protected persons (i)

5.4.4. Some previously determined Referral Questions relating to change of use from use as a shop to "café/coffee shop" use mentioned in the Referral submission for the purposes of taking precedent. However, definition of a 'shop' in Article 5 (1) of the Regulations precludes hotel use from the scope of the definition of a 'shop' within the Planning Acts. Therefore, consideration of change of use from a 'shop' for the

purposes of taking precedent in respect of the subject question is not an issue and is irrelevant.

- 5.4.5. It is acknowledged that reference is also made to these prior cases in support that Referrer's case by demonstrating that introduction of partial café use in dedicated space within, for example, a retail unit has been deemed to be relatively minor and/or immaterial from a planning perspective. It is not accepted that the sole dedicated café use within the space subject of the Question could not be regarded as a material change of use given the intensity of use and the entire fit out and operation of the café as a separate entity to the hotel use.
- 5.5. It is concluded, given the foregoing, the change of use from hotel reception to cafeteria is development and is not exempt development. (However, as explained and discussed in section 5.2.1-.2.8 above, in the event that the change of use is regarded as coming within the meaning of exempt development, further consideration would be required, having regard to the provisions of section 4. (1) (h) of the Act in view of the inclusion of the Queen's Hotel on the record of protected structures.)
- 5.6. **Environmental Impact Assessment Screening.**
- 5.6.1. 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.
- 5.7. **Appropriate Assessment Screening.**
- 5.7.1. 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.

6.0 Recommendation

In view of the foregoing, it is recommended that it be decided that the change of use is development and is not exempt development. A draft order follows.

7.0 Draft Order.

WHEREAS a question has arisen as to whether the change of use of the hotel reception area to use as a cafeteria within the Queens Hotel, Abbey Street, Ennis is or is not development or is or is not exempted development:

AND WHEREAS Donal Lyne requested a Declaration on this question from Clare County Council and the said County Council issued a declaration on 21st September, 2018 stating that the change of use of the hotel reception area to use as a cafeteria is development and is not exempted development:

AND WHEREAS Donal Lyne Referred this declaration for review to An Bord Pleanála on 17th October, 2018

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) Articles 5 (1), 9 and 10 of the Planning and Development Regulations, 2001, as amended,
- (e) Class 14, Part 1, Schedule 2 and Classes 1 and 6 Part 4 Schedule 2

- of the Planning and Development Regulations, 2001, as amended,
- (f) the planning history according to which the authorised use of the space within the hotel subject of the Question as hotel reception has been discontinued and has been relocated along with the hotel entrance
 - (g) The fit-out and use of the space within the hotel subject of the Question in entirety as a stand-alone café operated, promoted and staffed as a separate independent entity with its own entrance and name sign.

AND WHEREAS An Bord Pleanála has concluded that:

The change of use of the hotel reception area at the Queen's Hotel, Ennis, to use as a cafeteria is development and is not exempted 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 the change of use of the hotel reception area at the Queen's Hotel, Ennis, to use as a cafeteria is development and is not exempted development:

Jane Dennehy
Senior Planning Inspector
4th February, 2019.

Appendix 1. Relevant Legislative Provisions.

Planning and Development Acts, 2000- (as amended)

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.

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”.

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.

In addition to the specified exemptions in the Act, Section 4(2) provides that the Minister may by regulations provide for any class of development being exempted development. The Planning and Development Regulations 2001 apply.

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 –

(b) the structure, or

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

Section 57 (9)

A declaration under this section shall not prejudice the application of section 5 to any question that arises as to what, in a particular case, is or is not exempted development.

Planning and Development Regulations. 2000 as amended.

Article 5 (1) of the Planning and Development Regulations, 2001 provides interpretations for the purposes of exempted development. The following are relevant in the context of the subject referral.

“Shop” means a structure used for any or all of the following purposes, where the sale, display or service is principally to visiting members of the public-

(a) for the retail sale of goods,

(b) as a post office,

(c) for the sale of tickets or as a travel agency,

(d) for the sale of sandwiches or other food or of wine for consumption off the premises, where the sale of such food or wine is subsidiary to the main retail use, and “wine” is defined as any intoxicating liquor which may be sold under a wine retailer’s off-licence (within the meaning of the Finance Act, 1910),

(e) for hairdressing,

(f) for the display of goods for sale,

(g) for the hiring out of domestic or personal goods or articles,

(h) as a laundrette or dry cleaners,

(i) for the reception of goods to be washed, cleaned or repaired

but does not include any use associated with the provision of funeral services or as a funeral home, or as a hotel, a restaurant or a public house, or for the sale of hot food or intoxicating liquor for consumption off the premises, except under paragraph (d), or any use to which class 2 or 3 of Part 4 of Schedule 2 applies.

Article 10 (1) specifies that 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 :-

Involve the carrying out of any works other than works which are exempted development

Schedule 2, Part 1 Exempted Development.

Class 14 - development consisting of the following changes of use would be exempted development -

- (a) from use for the sale of hot food for consumption off the premises, or for the sale or leasing or display for sale or leasing of motor vehicles, to use as a shop,*
- (b) from use as a public house to use as a shop,*
- (c) from use for the direction of funerals, as a funeral home, as an amusement arcade or as a restaurant, to use as a shop, from use to which class 2 of Part 4 of this Schedule applies to use as a shop.*
- (d) from use as 2 or more dwellings, to use as a single dwelling, of any structure previously used as a single dwelling,*
- (e) 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.

- (f) from use as a hotel, to use as a hostel (other than a hostel where care is provided),*
- (g) 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,*
- (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 (h) of the said premises or institution, or part thereof, to use as an emergency reception and orientation centre for protected persons,*
- (i) from the change of use specified in paragraph (h) or (i) or both, to the permitted use of the premises immediately prior to the change of use specified in the said paragraph (h) or both Class 14(j) shall not apply after a period of 3 years from the date of the commencement of the change of use specified in Class 14(h) or (i) or both, whichever date is the earliest.*

Schedule 2, Part 4

Class 1 – Use as a shop

Class 6 - (residential club, guesthouse or hostel, other than a hostel where care is provided)