



An
Bord
Pleanála

Inspector's Report ABP-302825-18

Question

Whether the use of part of approved building space for exhibition and museum known as Bram Stoker Castle Dracula is or is not development & if it is development, whether it is exempted development.

Location

West Wood Club, Clontarf, Dublin 3

Declaration

Planning Authority

Dublin City Council

Planning Authority Reg. Ref.

0338/18

Applicant for Declaration

Templeville Development Ltd.

Planning Authority Decision

Is development and is not exempted development

Referral

Referred by

Templeville Development Ltd.

Owner/ Occupier

Templeville Development Ltd.

Observer(s)

None

Date of Site Inspection

9th April 2019

Inspector

Una O'Neill

Contents

1.0 Site Location and Description	4
2.0 The Question	4
3.0 Planning Authority Declaration.....	4
3.1. Declaration.....	4
3.2. Planning Authority Reports	5
4.0 Planning History.....	5
5.0 Policy Context.....	6
5.1. Development Plan.....	6
5.2. Natural Heritage Designations	6
6.0 The Referral.....	7
6.1. Referrer's Case	7
6.2. Planning Authority Response.....	7
6.3. Owner/ occupier's response.....	7
6.4. Further Responses.....	7
7.0 Statutory Provisions.....	7
7.1. Planning and Development Act, 2000.....	7
7.2. Planning and Development Regulations, 2001	8
7.3. Other	9
8.0 Assessment.....	9
8.1. Introduction	9
8.2. Is or is not development	10
8.3. Is or is not exempted development	10
8.4. Restrictions on exempted development	11
9.0 Recommendation.....	11

1.0 Site Location and Description

- 1.1. The subject site is located in Clontarf, at the northeastern corner of Fairview park, just north of the DART/Belfast railway line. The museum is located within a building in the West Wood Club complex. This complex, which is approx. 8000sqm in total, includes a gym, 50m swimming pool, indoor tennis courts, climbing wall, indoor running track, juice bar/eating area, childrens play areas and a creche.
- 1.2. The museum is located at first and second floor levels at the southern end of the covered tennis court building. Access to the building is from a separate side entrance to the West Wood Club, with a separate corridor providing access to the first floor level display area and stage. Two spiral staircases provide access from the first floor level to the second floor exhibit level.
- 1.3. The area relating to the museum is stated to be approx. 300 sqm in area on the first floor and approx. 100 sqm in area at the second floor level, with circulation space of a corridor and staircase at ground level.

2.0 The Question

- 2.1. Whether the use of a part of approved building space for exhibition and museum known as Bram Stoker Castle Dracula is or is not development and if it is development, whether it is exempted development.

3.0 Planning Authority Declaration

3.1. Declaration

The Planning Authority decision states that the change of use from the permitted use of indoor tennis courts to the use as exhibition and museum is a material change of use. Accordingly, this change of use constitutes development under Section 3(1) of the Planning Development Act 2000 (as amended) which is not exempted development, either under this Act or the accompanying Planning and Development Regulations 2001 (as amended).

3.2. Planning Authority Reports

3.2.1. Planning Reports

The planning officer's report states the use is considered a material change of use. It is noted that ABP under planning reference PL29.228143 (retention application) permitted a health clinic, climbing wall, offices over the crèche, and a combined heat and power plant with its associated yard and portacabin, but refused permission to retain the other alterations and extensions including that part of the structure which contains the Bram Stoker Museum and the corridor at first floor level to the northeast façade of the tennis courts which is used to access it.

3.2.2. Other Technical Reports

None.

4.0 Planning History

There are a number of applications relating to this site, which are set out in an appendix to the Dublin City Council planner's report. Of particular relevance is the following application:

PL29N.228143 (DCC ref 6466/07) – Split decision for retention of various alterations and extensions to the building and uses. The area proposed for retention included the uppers floors occupied by the Bram Stoker Museum and the first floor corridor to the north-east façade of the tennis courts which is used to access it. Permission was refused for that part of the structure which contains the Bram Stoker Museum and the corridor leading to it:

REFUSE permission for the said retention of (i) south-eastward extension of 605 square metres (facing railway) of leisure centre portion of the clubhouse; plus **corridors extending at ground and first floor** on one side along south-eastern façade towards external "Bar Code" doors, **and on the other side at first floor along north-eastern façade above open storage area to Bram Stoker museum at (ii) below**. Extension includes ground floor coldroom and yard areas; second floor gym extension; and two three-storey lift shafts; (ii) **south-eastward extension of 1,044 square metres at first floor level with mezzanine above to the rear/east of the tennis court enclosure, for Bram**

Stoker museum (“Dracula Experience”) with workshop area below on ground floor. Floor area including first floor offices and toilets; (iii) retractable awning to cover smoking area on south-east façade; (iv) alterations to approved elevations in conjunction with all of the above; (v) single storey flat roofed security hut (32 square metres) east of main entrance off Clontarf Road to supervise access to and egress from the clubhouse, to house CCTV and alarm functions, and to control night-time access to the Bar Code leisure centre so as to restrict occupancy to 1,300 maximum; (vi) illuminated signage; (vii) use as car park for 110 cars of the site area on Clontarf Road side of the building previously approved as tennis courts; (viii) water feature near railway boundary, facing the service yard and smoking area; and (x) a total of 14 Portacabins and metal shipping containers.... based on the reasons and considerations marked (2) under.

REASONS and CONSIDERATIONS:

R2. It is considered that the Bram Stoker Museum/Dracula Experience is an intensification of use on a severely restricted site, would constitute overdevelopment of the site by reason of access arrangements for this element of the development proposed for retention and would, therefore, be contrary to the proper planning and sustainable development of the area.

5.0 Policy Context

5.1. Development Plan

The following zoning applies to the subject site:

- Z9 Zoning Objective: To preserve, provide and improve recreational amenity and open space and green networks.

5.2. Natural Heritage Designations

- 5.2.1. The site is not located within or adjacent to a Natura 2000 site. Having regard to the nature and scale of the development, which relates to a use within an structure in an established and serviced area outside of and separated from any Natura 2000 sites, I am satisfied that no appropriate assessment issues arise and it is not considered

that the development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

6.0 The Referral

6.1. Referrer's Case

The referrer's case is summarised as follows:

- Reference is made to ABP ref PL29N.228142, which included retention for use of 'Bar Code' for sale of intoxicating liquor and associated access arrangements to Bar Code, which included access to the Bram Stoker Museum. Bar Code has since ceased and access to the Bram Stoker Museum is from the rear of the Leisure Club.
- Consideration should be given to the historical importance of the Bram Stoker Historical Experience at a location directly opposite where Bram Stoker lived until he was seven at no. 15 Marino Crescent and where his wife, the former girlfriend of Oscar Wilde, also lived. The park around Marino Crescent is called the Bram Stoker Park.

6.2. Planning Authority Response

None.

6.3. Owner/ occupier's response

Not applicable.

6.4. Further Responses

None.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

Section 2(1) defines works as follows:

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

“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, in, over or under land or the making of any material change in the use of any structures or other land.

Section 4(1)(h): 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 further 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 neighbouring structures’.

7.2. **Planning and Development Regulations, 2001**

Article 6(1) states ‘Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1’.

Article 9(1) states Development to which article 6 relates shall not be exempted development for the purposes of the Act –

(a) If the carrying out of such development would –

- (i) Contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act...

- (viii) Consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use...

Article 10(1) states 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...

Article 10(2)(a) A use which is ordinarily incidental to any use specified in Part 4 of Schedule is not excluded from that use as an incident thereto merely by reason of its being specified in the said Part of the said Schedule as a separate use.

Part 4, Exempted Development – Classes of Use

Class 10 – Includes use as a Museum

Class 11 – Include use as a gymnasium or other indoor sports or recreation

7.3. **Other**

None.

8.0 **Assessment**

8.1. **Introduction**

- 8.1.1. It should be stated at the outset that the purpose of this referral is not to determine the acceptability or otherwise of this museum use at this location in respect to the proper planning and sustainable development of the area, but rather whether or not the matter in question constitutes development, and if so falls within the scope of exempted development. Likewise, planning enforcement is a matter for the planning authority and does not fall within the jurisdiction of the Board.

8.1.2. The question posed is ‘Whether the use of a part of approved building space for exhibition and museum known as Bram Stoker Castle Dracula is or is not development and if it is development, whether it is exempted development’.

8.2. Is or is not development

8.2.1. The question relates to a change of use of part of a building. I note the museum use is currently operational.

8.2.2. I consider the change of use to be material in nature given the difference between the use as a tennis court and use as a museum. Furthermore, planning considerations relevant for an indoor tennis court differ from those for a museum, specifically issues around the management of visitor numbers and potential associated requirements for bus parking. The proposal constitutes in my view development which involves a change of use, which is a material change of use.

8.2.3. Furthermore, I note there is a significant planning history on the site. The most recent and relevant application PL29N.228143 refused permission for the extension of a structure and associated corridor which was in use as the Bram Stoker Museum. I note from the planning history, that the Bram Stoker Museum at first floor and second floors was stated to have been constructed partially upon the approved covered tennis courts and partially upon the landscaped railway embankment. The proposed use is a use which it would appear is taking place within a structure which does not entirely have the benefit of planning permission. I further note the structure was refused permission under PL29N.228143. Based on the information before me I am not satisfied that the structure containing the museum is an entirely approved structure, as per the question.

8.3. Is or is not exempted development

8.3.1. The change of use from tennis courts to museum is not exempted development within the meaning of section 4(1)(h) of the Act as the proposal does not constitute the carrying out of works for the “maintenance, improvement or other alteration” of the existing structure, but rather a change of use, and the other parts of section 4 equally do not apply. The proposal does not, therefore, come within the scope of

exempted development as per the Planning and Development Act 2000 (as amended).

- 8.3.2. The exempted development provisions within the regulations provide for circumstances in which a material change of use, though classified as development, is exempt.
- 8.3.3. Article 6 of the regulations provides that development of a class specified in column 1 of Part 1 of Schedule 2 to the Regulations shall be exempted provided that the conditions and limitations attached to those various classes are met. Having considered Class 14 of Part 1 of Schedule 2, I am of the view that Article 6 does not apply in this instance.

8.4. **Restrictions on exempted development**

- 8.4.1. I note that Article 9 applies if the development is considered to be exempted under Article 6, which is not the case in this instance.
- 8.4.2. I note that Article 10 provides that changes of use within any one of the classes shall be exempted development. In this instance indoor tennis court falls within class 11 and the museum use falls within class 10, therefore the change of use proposed falls within two different classes and is not exempted development. Furthermore, I note that section 10(1)(d) states this section does not apply where development relates to an unauthorised use. In addition, the use cannot be defined as a use which is ordinarily incidental to the use of a gym/tennis court.

9.0 **Recommendation**

- 9.1. I recommend that the Board should decide this referral in accordance with the following draft order.

WHEREAS a question has arisen as to whether the use of part of approved building space for exhibition and museum known as Bram Stoker Castle Dracula is or is not development or is or is not exempted development:

AND WHEREAS Templeville Development Ltd. requested a declaration on

this question from Dublin City Council and the Council issued a declaration on the 24th day of September, 2019 stating that the matter was development and was not exempted development:

AND WHEREAS Templeville Development Ltd. referred this declaration for review to An Bord Pleanála on the 19th day of 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)(a) of the Planning and Development Act, 2000, as amended,
- (d) article 6(1) and article 10 of the Planning and Development Regulations, 2001, as amended,
- (e) Parts 1 and 4 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (f) the planning history of the site:

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The change of use is considered a material change of use having regard to the impact on the proper planning and sustainable development of the area and is therefore development,
- (b) The use of part of the approved tennis court as a museum, known as the Bram Stoker Castle Dracula Museum, would not be ancillary to the established use of the building but would be a separate and substituting use,
- (c) The museum use does not come within Part 1 of Schedule 2 of the

Planning and Development Regulations 2001,

- (d) There are no exemptions provided in the Planning Acts and Regulations by which the development 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 the change of use of the approved tennis court building to a museum use is a material change of use, which is development and is not exempted development at the West Wood Club, Clontarf, Dublin 3.

Una O'Neill
Senior Planning Inspector

10th April 2019