



An
Bord
Pleanála

Inspector's Report 302829-18

Question

Whether the installation of new replacement uPVC windows on front facade is or is not development or is or is not exempted development

Location

No. 27 O'Connell Street,
Limerick

Declaration

Planning Authority

Limerick City & County Council

Planning Authority Reg. Ref.

DC – 029 - 17

Applicant for Declaration

Limofitz Irish Property Co.

Planning Authority Decision

Is not exempted development

Referral

Referred by

Limerick City & County Council

Owner/ Occupier

Limofitz Irish Property Company Ltd.

Observer(s)

None

Date of Site Inspection

2nd February 2019

1.0 Site Location and Description

- 1.1.** The site is located on O'Connell Street in Limerick City Centre. It is situated on the eastern side of the street, between Thomas Street and Shannon Street. The site comprises a four storey terraced building which directly adjoins the Augustinian Church to the north. There are 3 similar terraced buildings immediately to the south with a 3 storey building forming the end of the terrace. The five terraced buildings contain retail units on the ground floor of each structure. The Augustinian Church is an imposing stone building which exceeds the height of the adjoining terraces and is a Protected Structure. The front gable of the church overlaps the front façade of the appeal structure.
- 1.2.** The appeal site and the three adjoining properties have parapets with recessed pitched roofs behind. The property immediately to the south appears to have the original window openings which are fitted with sash windows. The window openings on the appeal site and on the other two properties are slightly larger and contain non-traditional windows with mainly three glazing panels per window. The fenestration at the appeal site differs from the remaining properties in that the windows are uPVC and subdivided with six panes per window.

2.0 The Question

- 2.1.** The question has arisen as to whether the installation of 6 no. replacement windows to the front elevation on the first, second and third floors of No. 27 O'Connell Street is or is not development or is or is not exempted development.

3.0 Planning Authority Position

3.1. Background

- 3.1.1.** The P.A. has not made a declaration but has referred the matter to the Board for its determination. The matter arose following a complaint received by the Conservation Officer. Having inspected the site on the 8th February 2017, the Conservation Officer found that the timber rise and fall sash windows had been replaced with new uPVC windows.

- 3.1.2.** A Warning Letter was issued on the 5th March 2017 which stated that the new replacement windows to the front façade of the building materially affect the external appearance of the structure and are therefore unauthorised. The owners of the property replied to the Warning Letter on 23rd March 2017 stating that the windows were replaced to comply with fire regulations. The P.A. responded to this letter on 8th August 2017 stating that the fire regulations referred to do not apply to multi-storey buildings and that only ground floor windows need to comply with the fire regulations.
- 3.1.3.** An Enforcement Notice was issued on the 9th March 2018. Agents for the owners of the property responded on the 20th August 2018. This claimed that the replacement windows come within the scope of Section 4(1)(h) of the Planning and Development Act 2000 as amended as it was submitted that the changes do not materially alter the external appearance of the structure so as to render the appearance of the structure inconsistent with the character of the structure or of neighbouring structures.

3.2. Planning authority's position

- 3.2.1.** The planning authority is of the opinion that the proposed works do not come within the scope of Section 4(1)(h) of the P & D Act as the works materially alter the external appearance of the structure.

3.3. Declaration

- 3.3.1.** The P.A. therefore seeks a Declaration under Section 5(4) of the Planning and Development Acts 2000 as amended as to whether the replacement of windows to the front façade of the property at 27 O'Connell Street with new uPVC windows is or is not development and is or is not exempted development.

3.4. Planning Authority Reports

Conservation Officer's Report

- 3.4.1.** The Conservation Officer stated that there can be no doubt that the replacement of the windows materially alters the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or neighbouring structure, particularly when the character of No. 28 is taken into

account. It was noted that both buildings date from the late 18th Century when the construction of the Newtown Pery expansion of Limerick began to reshape Limerick. It was considered that the development breaches Policy BHA.11 of the City Development Plan which seeks to facilitate the careful refurbishment of the historic built environment.

- 3.4.2.** The report includes photographs of the building in February 2017 and an image from Google Streetview dated 2014. These show the windows that were present in September 2014 and those which are currently in place. The Conservation Officer is of the opinion that the works have severely impacted on the setting and amenities of the Augustinian Church, which is described as one of the finest set pieces on O'Connell Street, which contains archaeological fragments in its façade, and against which No. 27 O'Connell Street is set.
- 3.4.3.** It is stated that the normal procedure (as set out in the CDP) is that development proposals for a building of significant heritage interest will require an assessment report and a schedule of proposed works, but that this was not carried out in this case. The C.O. also stated that the premises could qualify for tax breaks for appropriate works under the 'Living City Initiative' but considered that the said works would not qualify for such incentives as the necessary criteria would not be met.

4.0 Planning History

- 4.1 There is no recent planning history relating to the site.

5.0 Policy Context

5.1. Development Plan

The lands are zoned City Centre Area in the Limerick City Development Plan 2010-2016 (as extended).

6.0 The Property Owner's Position

6.1. Property Owner's Case

6.1.1. Response to Enforcement Proceedings - The owner's agent made a submission to the P.A. in response to the enforcement proceedings on the 20th August 2018. It was stated that four out of the six windows in the façade in question were aluminium replacements and two of them were 20th century sash windows. It was asserted that since the building is not a Protected Structure or located in an ACA, there was no requirement to consider its pre-existing state. It was further stated that the replacement of the windows is reversible and constitutes no loss of character as defined by the scope of S4(1)(h) of the Planning and Development act 2000 as amended, since no structural alteration has taken place. It was stated that the cost of window replacement with conservation joinery is up to four times the cost of modern replacements. The availability of conservation grants/funding was alluded to and it was stated that should such funding be available, the owners would consider replacing the windows.

6.1.2. Response to Request for Declaration - The owner's agent made a submission in response to the request for a declaration on the 15th November 2018. It was stated that if the property were either a Protected Structure or located within an ACA, the owner would have the benefit of the following:

- The knowledge that the owners of adjacent buildings would also be carrying out conservation works to the facades, including window replacement, in accordance with Conservation Guidelines. Thus the owner would be participating in general improvement works to the whole area adding to the value of the property in the long run.
- The works would be eligible for the Built Heritage Investment Scheme and possibly other grant schemes which are mindful of the abnormal cost implications of conservation work, particularly window replacements and refurbishment.

6.1.3. It is stated that the general precedent in the area was reviewed in order to establish the character and significance of the proposed window development. This was considered to be defined by the state of the terrace at the time of development,

rather than a known pre-existing state determined by research as would be the case for an ACA or a protected structure. A photograph is included in the letter which it is claimed shows the remaining terrace to have slightly more aluminium casement type windows than sash windows.

- 6.1.4.** It is submitted that the replacement of windows do not fall within the definition of works and are not “alteration” as defined in Section 2 of the Act, since the appearance is not inconsistent with the structure and particularly neighbouring structures. It is therefore submitted that the said windows would come within the scope of the exempted development provisions of Section 4(1)(h) of the Planning & Development Act.

6.2. Planning Authority Response

The P.A. has not responded to the referral.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

7.1.1 Section 2 (1)

“Works” are defined in this section as including any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal.

“Alteration” includes –

- (a) Plastering or painting or the removal of plaster or stucco, or
- (b) The replacement of a door, window or roof

that materially alters the external appearance of a structure so as to render the appearance of a structure inconsistent with the character of the structure or neighbouring structures.

“Structure” means any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined, and –

- (a) Where the context so admits, includes the land on, in or under which the structure is situate,”

7.1.2 Section 3 (1) of the Act defines “*Development*” as, ‘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’.

7.1.3 Section 4 of the Act refers to ‘*Exempted Development*’ and Subsection (1) sets out categories of development that shall be exempted development for the purposes of this Act. Subsection (1) (h) states the following:

‘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’.

8.0 Relevant Board Decisions The following Board decisions in relation to Section 5 Reference/Referral cases are considered to be of relevance.

RL2569 – whether replacement of timber framed sash windows with PVC framed windows in the front elevation of 104 Oliver Plunkett Street, Cork is or is not exempted development.

The Board concluded that the said replacement of timber framed sash windows with PVC framed windows materially affects the external appearance of the structure so as to render the appearance inconsistent with the character of the structure and renders the appearance inconsistent with the character of neighbouring structures. It was therefore concluded that the replacement of timber sash windows with PVC windows is not exempted development. The Inspector considered that the replacement of timber sash windows with PVC framed windows is the carrying out of works and constitutes development. It was considered that there were two tests.

The first test was to determine whether the development materially altered the external appearance of the structure so as to render the appearance of that structure inconsistent with the character of the structure itself. The Inspector had

regard to matters such as the glazing pattern, the thickness of the frames, the openings and hinges used in the new windows compared with those that had been replaced. It was noted that although it was not a Protected Structure, it was a historical building of character and that the design of the fenestration and the materials used contributed to that character. It was concluded that the replacement windows materially altered the appearance such that it was inconsistent with the character of the original structure.

The second test was to determine whether the development rendered the character to be inconsistent with the character of neighbouring structures. It was noted that several buildings had had replacement windows, but it was considered that the overall character of the terrace had been retained. In any case, the Inspector noted that there was no evidence before the Board regarding when any of these alterations had taken place.

RL2287 – whether the provision of one number window within the northern gable wall at first floor level of 32 Ballinclea Heights, Killiney Co. Dublin is or is not development or is or is not exempted development.

The Board concluded (2006) that the said provision of a window in the northern gable of the dwellinghouse constitutes development which materially affects the external appearance of the structure and which renders its appearance inconsistent with the character of the structure and of neighbouring structures, and thereby did not come within the scope of Section 4(1)(h) of the 2000 Act. It is noted that concerns raised by observers in this particular case had related to the impact of the window in terms of overlooking and loss of privacy. The Inspector's report had referenced case law - *Cairnduff v. O'Connell* 1986 - in which it had been established by the Supreme Court that the character of a structure relates to its shape, colour, design, ornamental features and layout, and not to its particular use. The Inspector had argued that on this basis, the impact in terms of interference with privacy is not relevant to the interpretation of this section of the Act, and focussed instead on the key elements of the term "character" as set out in the Supreme Court judgement (*Cairnduff* case), and as outlined above.

The Inspector had concluded that whilst the installation of the rear gable window materially affected the external appearance of the bungalow, it did not render this appearance inconsistent with the character of the structure nor of neighbouring structures. Thus it was concluded that it came within the scope of S4(1)(h) of the 2000 Act. However, the Board did not agree and considered that the insertion of a window into the gable of a dwelling constituted a significant departure from the established character of the structure and of neighbouring structures in terms of design and layout. It was, therefore, concluded that the works comprising the insertion of a new window in the gable wall was development and was not exempted development.

RL2769 – Whether development consisting of the change of a window to a door in the front elevation of the Temple Bar Hotel, 13-18 Fleet Street, Dublin is or is not development and is or is not exempted development.

The Board concluded (2010) that the said change from a window to a door in the front elevation of the hotel constituted a significant change in the streetscape, which is inconsistent with the character of the (hotel) structure and, therefore, the development did not come within the scope of the exempted development provisions of Section 4(1)(h) of the Planning and Development Act 2000 as amended. In respect of S 4(1)(h), the Inspector's report had referenced Cairnduff v. O'Connell in terms of what is meant by the character of a structure. However, the Inspector considered that the development materially affected the external appearance and that such an effect would render it inconsistent with the character of the structure and of neighbouring structures. The Board agreed and it was, therefore, concluded that the works were development and were not exempted development.

RL2689 – Whether the insertion of a second rear facing window in the rear elevation of 8 Grattan Road, Claddagh, Galway is or is not development or is or is not exempted development.

The Board (2010) concluded that the installation of the additional northernmost window in the first floor elevation of a rear extension was not consistent with the

character of the structure authorised by the grant of planning permission Ref. 04/215 (ABP Ref. PL61.213367). The Inspector had noted that a previous permission had permitted two windows, one of which was on the northern elevation but that development carried out on site did not accord with this permission, and that a further permission to retain the changes was subsequently granted (213367). The Inspector considered that the latter permission superseded the earlier permission.

The issues of concern raised by the Referring party related to overlooking and loss of privacy, but the Inspector had noted that rear facing windows were a feature of all extensions in the vicinity. It was concluded that the window would materially affect the external appearance, but did not consider that the window in question would render the appearance inconsistent with the character of the structure or of neighbouring structures. On this basis, it was considered that the works were development and exempted development. However, the Board disagreed and concluded that the as the insertion of the window was inconsistent with the character of the structure as authorised by the grant of planning permission, it did not come within the scope of Section 4(1)(h) of the P & D Act, 2000.

9.0 Assessment

The questions arising from this referral fall into three main parts.

1. Whether the works of installation of windows in place of previous windows are development;
2. Whether the replacement of the windows at the first, second and third floor levels on the front elevation affects only the interior of the structure and/or whether there has been a material change in the external appearance of the structure which renders it inconsistent with the character of the structure; and
3. Whether the installation of the replacement windows renders the external appearance of the structure inconsistent with the character of neighbouring structures.

9.1. Do the works of replacement of six windows on the front elevation constitute development?

9.1.1. The owners contend that the replacement of windows do not constitute “works” as they do not constitute “alterations” as defined in Section 2 of the P & D Act, 2000 (as amended), on the basis that the replacement of the windows does not materially alter the external appearance of the building so as to render its appearance inconsistent with the character of the structure or of neighbouring structures. The P.A. holds the opposite view and considers that the replacement of the sash windows with PVC windows has significantly altered the character and external appearance of the 18th century structure and renders it inconsistent with that of its neighbours.

9.1.2. I would agree with the Planning Authority that the replacement of traditional sash window frames on the front elevation of a historic building, which is located within a historically and architecturally important streetscape in Limerick’s City Centre, with PVC window frames with a non-traditional glazing pattern and opening mechanism, would materially alter the external appearance of the building. As such, the window replacement comes within the definitions of “alteration” and “works”, respectively, as set out in Section 2 of the Planning and Development Act 2000, as amended. This view is also consistent with a previous ruling by the Board in respect of 104 Oliver Plunkett Street, Cork (Ref. RL2569) where the Board determined that the replacement of sash windows on a historic building, which was not a Protected Structure, with PVC framed windows, was development.

9.2. Would the replacement of the windows on the upper floors of the front façade of the building materially alter the external appearance of the structure so as to render it inconsistent with the character of the structure?

9.2.1. The building is not a Protected Structure and is not located within an Architectural Conservation Area. However, it is a historic building which forms an important and integral part of the streetscape and is immediately adjacent to and forms part of the setting of a Protected Structure. The existing front elevation of the building comprises a shopfront on the ground floor and a rendered and painted façade above with six window openings, two on each floor level. The openings on the first

and second floors are larger than the two openings on the third floor. This pattern with smaller openings on the top floor is consistent with most traditional buildings of this nature and is also reflected in the remainder of the terrace to the south. The size of the window openings, although larger than those at No. 28, are consistent with those at No.s 29 and 30. The Conservation Officer's report includes an image taken from Google Maps Streetview dated September 2014, which shows that there were two-pane sash windows on the first floor and four-pane sash windows on each of the second and third floors. These images contradict the assertion by the owner that four of the windows were aluminium windows. No evidence to this effect was provided in any case by the owner.

- 9.2.2.** The replacement of these sash windows with PVC frames with six glazing panes, one of which is opening outwards (in the middle) is not a traditional approach to the replacement of windows in a historic building of this type. In terms of whether the works would render the appearance inconsistent with the character of the structure, I would refer to case law (*Cairnduff v. O'Connell*, 1986), in which the matter of the character of the structure was discussed. The key elements of character to which the Supreme Court had regard included shape, colour, design, ornamental features and layout. The Board has previously considered that works consisting of the insertion of a window/windows would significantly alter the character of a structure in terms of design and layout (RL2569).
- 9.2.3.** In this particular case, it is considered that the proposed replacement of 6 window frames with a material that is non-traditional and considerably thicker, together with a totally different pattern/layout of glazing panels would introduce a new feature of considerable note, which would amount to a change to the design and layout of the façade. The new glazing pattern consists of 6 panes on the first and second floor windows and four panes on the top floor. Given that the windows are openable in a completely different and non-traditional manner with one single glazing panel opening outwards, compared with the traditional elegance of a sliding sash window, it is considered that this would further alter the character of this part of the structure. Thus, it is considered that the proposed windows would render the appearance of a substantial part of the structure inconsistent with the existing character of the structure. Whether the works are reversible is irrelevant in this instance.

9.2.4. In conclusion, the works do not solely affect the interior of the structure and would materially affect the external appearance of the structure, so as to render the appearance inconsistent with the character of the structure. I am satisfied that the works do not come within the scope of Section 4(1)(h) of the Planning and Development Act 2000 (as amended) and cannot be considered to be exempted development by virtue of this section.

9.3 Would the replacement of the windows on the upper floors of the front façade of the building materially alter the external appearance of the structure so as to render it inconsistent with the neighbouring structures?

9.2.5. According to the Planning Authority's Conservation Officer, the terrace, of which the property forms a part, was built during the development phase of the City Centre known as Newtown Pery. The City Development Plan describes this (Chapter 10) as being "a planned development dominated by Eighteenth Century (Georgian) buildings". Although the site of the referral is just outside the South City and Newtown Pery Architectural Conservation Area, it is clear that the Georgian development of this part of the city is of historical, cultural and architectural importance. Furthermore, O'Connell Street is the principal street of Limerick City and therefore plays an important role in both the streetscape and in the City Centre.

9.2.6. The building at No. 27 forms part of a terrace which flanks the imposing Augustinian Church, which is a Protected Structure occupying a central and dominant position in the streetscape. The terraced buildings on either side of the church form the context and setting for the PS. The closest property to the PS is the site of the referral, which abuts the church building, with part of the front façade of No. 27 being tucked behind the front elevation of the church. Thus the site of the referral, together with the remainder of the terrace to the south form part of the setting of the Protected Structure.

9.2.7. Although the fenestration patterns of each of the properties in the terrace to the south of the church vary somewhat, and several appear to have been altered with later replacement windows, (which are also of a non-traditional approach), the horizontal element has largely been maintained. There is no evidence before the Board regarding when the fenestration in the neighbouring structures was changed and whether it was permitted development. However, the windows at No. 27

represent a further departure with the introduction of 6-pane windows with vertical and horizontal bars and centrally located opening casements. The fact that the site of the referral is sandwiched between the Augustinian Church and No. 28 O'Connell St. (which has retained its original openings and timber sash windows), means that the replacement of the sash windows here is all the more notable. It is considered that it these works materially alter the external appearance such that it is inconsistent with the neighbouring structures to the north (church) and to the south.

9.4 Conclusion

9.4.1 I would agree that the proposed replacement of 6 no. windows at first, second and third floor levels on the front elevation constitute works, in accordance with Section 2 and which is development in accordance with Section 3 of the Planning and Development Act 2000, as amended. The works do not, however, come within the scope of Section 4(1)(h) of the 2000 Act for the reasons outlined above. Thus, the proposed development is development and is not exempted development.

10 Recommendation

10.1 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 replacement of six windows at first, second and third floor levels on the front elevation of No. 27 O'Connell Street Limerick is development or is exempted development under S4(1)(h) of the Planning & Development Act 2000, (as amended).

AND WHEREAS Limerick City and County Council requested a declaration from An Bord Pleanála on the 19th day of October, 2018:

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

- (a) Sections 2 and 3 of the Planning and Development Act, 2000, as amended,
- (b) Section 4(1)(h) of the Planning and Development Act, 2000, as amended,
- (c) the nature and extent of the works
- (d) the pattern of development in the area:

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The works of replacement of six windows on the front elevation of the building come within the scope of 'development' as set out in Section 3 of the Planning and Development Act 2000 (as amended);
- (b) The replacement of six sash windows on the front elevation with PVC framed windows would materially affect the external appearance of this elevation of the building, so as to render the appearance inconsistent with the character of the structure.
- (c) The replacement of six sash windows on the front elevation with PVC framed windows would materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the neighbouring structures.
- (d) Therefore, the replacement of six windows at first, second and third floor levels on the front elevation of the building does not come within the scope of the exemptions provided by Section 4(1)(h) of the Planning and Development Act 2000 as amended, and is not therefore 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 insertion of the said six replacement windows at first, second and third floor levels of the front elevation of 27 O'Connell Street is development and is not exempted development.

Mary Kennelly
Senior Planning Inspector
24th June 2019