



An
Bord
Pleanála

Inspector's Report ABP 303117-18.

Question

“Whether the proposed installation of two windows in the rear façade at second floor level and the door / long window which has been installed in the rear façade at second floor level is or is not exempt development?”

Location

No 2 Brabazon Street, The Coombe,
Dublin 8.

Declaration Request

Planning Authority

Dublin City Council

P. A. Reg. Ref.

0410/18

Request (Owner Occupier)

Andreas Bruggener.

Declaration Referral

Referrer

Andreas Bruggener.

Owner/Occupier

Andreas Bruggener.

Date of Inspection

31st May, 2019

Inspector

Jane Dennehy.

1.0 Background

- 1.1. No 2 Brabazon Street is a two-storey terraced dwelling in residential use on the west side of Brabazon Street. This recently refurbished three storey house has a small rear extension and a solar panel has been erected on the roof. The Lamplighter public house is located to the north side at the corner of Brabazon Street and The Coombe and it has also recently been refurbished. It incorporates an entrance for No 1 Brabazon Street adjacent to No 2 Brabazon Street from which there is access to the upper floors which are in residential use.
- 1.2. The owner, Mr. Bruggenner requested a Declaration from Dublin City Council on 9th October, 2018 as to whether (a) a proposal to install two windows which are 1200 mm in width, in the west (rear) elevation at second floor level, to light and ventilate Bedroom Nos 2 and 3 within the dwelling and, (b) whether a door / long window inserted on the west (rear) elevation at second floor level, at the landing constitute exempt development.
- 1.3. A Warning Letter from Dublin City Council was issued Mr. Bruggenner on 29th January, 2018 in relation to a long window/door and steel spiral staircase which had been erected without the benefit of planning permission. The spiral staircase was subsequently removed.

2.0 Declaration

2.1. Decision

By order dated, 2nd November, 2018, the planning authority issued a Declaration in which it is stated that the windows proposed to be installed and the door/long window inserted do not constitute exempt development.

Planning Officer's Report.

The planning officer in his assessment concluded, with reference to section 4 (1) (h) of the Planning and Development Act, 2000 as amended, the external appearance of the structure would be materially affected by the door/long window and the two windows proposed to be installed to "render the appearance inconsistent with the character of the structure".

2.2. Referrer's Case

- 2.2.1. Mr. Bruggener, the Owner of No 2 Brabazon Street referred the Declaration to the Board for review on 28th November, 2018. In the Referral submission Mr Bruggener states that he purchased the property in 2014 that the dwelling had fenestration on the front east facing façade only and that he decided to refurbish it. Mr. Bruggener states that the door/long window was previously accepted as exempt development and that he considers that the two windows would not render the appearance inconsistent with the character of the structure and neighbouring structures.
- 2.2.2. According to the Referral, the proposed installation of the two windows and installed door/long window are essential as he sought to ventilate the interior, provide for fire protection at current standards and to provide natural light to the interior accommodation.
- 2.2.3. Mr. Bruggener states that he understood, further to an inspection by an Enforcement Officer at Dublin City Council that the door/long window is exempt development. He contends that the same conclusion should be reached regarding the proposal to install the two-bedroom windows. Therefore, it is argued, in support of the claim that the windows which he wishes to install and the door/long window are exempt development in that:
- The proposed windows to be installed and door/long window which has been installed/are installed at second floor level in the rear façade:
 - They cannot be seen from public areas.
 - They have no material effect negative impact that would render the external appearance of the structure inconsistent with the character of the structure and the adjacent/neighbouring structures.
 - They are more than eleven metres away from the nearest opposite windows.
 - Owing to noise and disturbance in evening hours generated at the adjoining public house, it is not possible to open the windows on the front east facing façade onto Brabazon Street.
 - The daylight access to the internal accommodation at the dwelling would be significantly increased.
 - Cross ventilation of the internal accommodation would be made possible.

- There would be safe and quick escape from the two bedrooms at second floor level in the event of a fire and,
- Access for maintenance purposes to the solar panel erected on the flat roof would be made possible.

2.2.4. Mr. Bruggener also states in his submission that he does not understand why the Planning Officer decided that the door/long window and proposed windows are not exempt development in that the enforcement officer who inspected the property further to receipt of a complaint by the planning authority arrived at the opposite conclusion.

2.2.5. Mr. Bruggener also provides an account of the background leading up to the request for the Section 5 Declaration from the planning authority. He states that with the consent of the previous owners of the adjoining Lamplighter public house at which renovation works were underway, he erected a temporary spiral staircase to the flat roof below as a means of fire escape and there had been no objections to the installation of the door/long window.

2.2.6. A dispute ensued between the current owner/operator of the Lamplighter Public House ("Creative Real Estate Limited"), (CREL) which it is contended led to the initiation of the enforcement proceeds in relation to the door/long window and the spiral staircase and receipt of a Warning Letter from Dublin City Council and the inspection by the Enforcement Officer.

2.2.7. With regard to separation distance from nearest opposite windows, the enforcement officer, according to the submission, advised Mr Bruggener, that he was satisfied with a photograph emailed to him by Mr Bruggener following an inspection. Mr Bruggener also contends that the Enforcement Officer stated during a phone conversation that the removal of the spiral staircase had been noted, there was no problem with direct overlooking of opposition windows visibility from public spaces or negative impact on the character of structures or neighbouring structures and that the enforcement file had been closed,. He also claims that he has been unable to obtain a copy of the Enforcement Officer's report and requests that the report be obtained directly by the Board from Dublin City Council.

2.3. Planning Authority Response

2.3.1. There is no submission from the planning authority on file.

3.0 Statutory Provisions

3.1. The applicable statutory provisions are Sections 2.1, 3. 1, and 4 (1) (h) of the Planning and Development Act, 2000 as amended. (The Act.) These provisions are reproduced in full in Appendix 1.

4.0 Assessment

4.1. There is no dispute between the parties that the proposed installation of two windows in the rear façade at second floor level and the door / long window which has been installed in the rear façade at second floor level which are subject of the question constitute “ works” and “development” within the meaning of sections 2.1 and and 31 of the Act.

4.2. Therefore, the Question to be considered is:

“Whether the proposed installation of two windows in the rear façade at second floor level and the door / long window which has been installed in the rear façade at second floor level is or is not exempt development?”

4.3. The purpose of determination of a decision which provides for a Declaration on whether or not the development subject of the Question is or is not exempt development within the meaning of the Act. It is therefore confined to establishment as to whether a grant of planning permission is required. Therefore the planning issues raised in the Referral submission are not open to consideration in this instance whereas they would be material to consideration of a planning application, should it be determined that the development is not exempt development, that a grant of permission is therefore required, and a planning application is lodged.

4.4. It needs to be established as to whether the development subject of the Question, having regard to the provisions of section 4 (1) (h) of the Act; *affects only the interior of the structure and does or does 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.'

- 4.5. It is considered that the two windows which are proposed to be inserted and the door/full length window which has been installed involve significant interventions and changes that materially alter the external appearance of the structure in that the established feature and character of the rear façade at the upper level is the blank elevation above a small yard. (The yard in this instance is partly infilled by a small rear extension.) There is no apparent evidence, from visual inspection of the rear façade as to any former openings at second floor level and it can therefore be assumed that No 2 Brabazon Street is a small artisan house, the depth of which, at three metres is shallow was intentionally designed and built as a single aspect dwelling. Without prejudice as to the merits or otherwise to be considered in future planning assessment in the event that a planning application is lodged at a future date, there is no doubt that the external appearance of the structure is and would be materially altered so as to render the appearance inconsistent with the character of the structure.
- 4.6. In view of the foregoing, it is concluded that the development is not exempt development.

5.0 Recommendation

- 5.1. It is recommended that it be determined that the proposed installation of two windows in the rear façade at second floor level and that the door / long window which has been installed in the rear façade at second floor level is development and is not exempt development. A draft order follows:

WHEREAS a Question has arisen as to whether the proposed installation of two windows in the rear façade at second floor level and the door / long window which has been installed in the rear façade at second floor level at NO 2 Brabazon Street, The Coombe, Dublin 8 is or is not development or is or is not exempted development;

AND WHEREAS Andreas Bruggenner requested a Declaration on this question from Dublin City Council on 10th October, 2018 and the Council

issued a Declaration on stating that the matter is development and is not exempt development on, 2nd November, 2018;

AND WHEREAS Andreas Bruggenner referred the Declaration for Review to An Bord Pleanála 28th November, 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) the external appearance and character of the structure and,
- (e) the nature of the two windows proposed to be installed and of the door/full length window which has been installed at second floor level in the rear façade of the structure.

AND WHEREAS An Bord Pleanála has concluded that:

The two windows proposed to be installed and the door/full length window which has been installed at second floor level in the rear façade of the structure involve significant interventions providing for openings that materially alter the external appearance and established character of the structure which is that of a blank rear façade at the upper level with fenestration in the front elevation only.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3) (a) of the Act, hereby decides that the two windows proposed to be installed at second floor level in the rear façade and the door/full length window which has been installed at second floor level in the

rear façade of the dwelling at No 2 Brabazon Street, The Coombe, Dublin 8
is development and is/ is not exempted development.

Jane Dennehy
Senior Planning Inspector
5th June, 2019.

APPENDIX ONE

Planning and Development Act, 2000, as amended.

Relevant Legislative Provisions:

Section 2 (1):

“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 inconsistent with the character of the structure or neighbouring structures...’

“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)

“In this Act, ‘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)

“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 neighbouring structure.”