



An
Bord
Pleanála

Inspector's Report ABP-303269-18

Question

Whether the removal of three original timber slash windows and replacement with uPVC windows is or is not development or is or is not exempted development.

Location

57 Anne Street, Dundalk, Co. Louth.

Declaration

Planning Authority

Louth County Council

Applicant for Declaration

Louth County Council

Planning Authority Decision

None

Referral

Referred by

Louth County Council

Owner/Occupier

Kevin McManus

Observer(s)

None

Date of Site Inspection

12th of April 2019

Inspector

Angela Brereton

1.0 Site Location and Description

- 1.1. The subject site is located on the eastern side of Anne Street in Dundalk town centre. No. 57 is an end of terrace 3 storey red brick property, similar to the adjoining houses to the south west. 'The Jockeys' public house is further to the south west on the corner with Mary St. South. There is a high wall to the rear of the properties with no linkages to the car park for Byrne & Maguire Ford Motors car showrooms and yard area to the rear, which has access via Dublin Street.
- 1.2. The period properties face the road frontage and are within the Architectural Conservation Area. There is more modern 2 storey white render property adjoining to the north east. There are a variety of property types in the area, but the older period red brick terraced 2 and 3 storey properties are the predominant type on this side of the road. It is noted that while the size of the window openings are similar, there are different window types within this similar terrace of 3 storey houses. The new uPVC windows are of a different and more decorative design type to that of the adjoining properties.

2.0 The Question

- 2.1. Whether the removal of three original, decorative, sliding-sash windows in the front elevation of No.57 Anne Street, Dundalk, Co. Louth (located within the Crescent Architectural Conservation Area) and their replacement with u PVC is development or is not exempted development?

3.0 Policy Context

3.1. Louth County Council Development Plan 2015-2021

This Plan provides the strategic planning policies and objectives for the County. Section 2.16.4 notes that the Statutory Plan for Dundalk and the surrounding area is currently the Dundalk and Environs Development Plan 2009-2015 and Policy SS3 seeks: *To review the Dundalk and Environs Development Plan 2009 – 2015 and to prepare a Local Area Plan for Dundalk and Environs which will be consistent with the provisions of the County Plan.*

Section 5.11 of this Plan refers to Architectural Conservation Areas. This includes: *The Local Area Plans for Dundalk and Drogheda will contain details of the ACAs relative to those towns.* Conservation Policies include HER 45 which seeks:

To require that any development within or affecting an ACA preserves or enhances the character and appearance of the architectural conservation area. Any development should respect the character of the historic and traditional architecture in scale, design and materials. Regard should be had to the character appraisal where available/ applicable.

Policy HER 53 seeks: *To require that any development within or affecting an ACA preserves or enhances the character and appearance of the architectural conservation area. Any development should respect the character of the historic and traditional architecture in scale, design and materials. Regard should be had to the character appraisal where available/ applicable....*

In addition to the County Development Plan, I have reviewed the Dundalk Town & Environs Development Plan 2009 – 2015 as this provides the most recent zoning framework for the area.

3.2. Dundalk and Environs Development Plan 2009 -2015 (as extended)

This Plan includes objectives for the protection of structures and preservation of Architectural Conservation Areas.

Chapter 4 refers to the Town Centre and Map 4.1 to Character Areas within the Dundalk Town Core. Area 3 provides the objectives for the Town Core which includes: *Ensure that the design and height of buildings reflect the historic nature of the town particularly in designated Architectural Conservation Areas.*

Chapter 8 refers to Conservation and Heritage.

Section 8.4.2 provides: *Architectural Conservation Areas (ACAs) are areas designated in accordance with section 81 of the Planning and Development Act 2000 (as amended), where the planning authority is of the view that this designation is necessary for the preservation of the character of a place, area, group of structures or townscape of special interest or where the structure contributes to the appreciation of the heritage area.*

This includes: *The 2003-2009 Dundalk and Environs Development Plan identified seven Architectural Conservation Areas. The boundaries of these areas have been modified somewhat and the revised areas are shown in appendix 7 which also includes guidelines for development within ACAs.*

Policy CH10 seeks to: *Protect designated Architectural Conservation Areas within the plan area and require that new development within such areas is sensitively designed so as not to detract from the character of the areas.*

3.3. Natural Heritage Designations

The site is located c.1.5km from Dundalk Bay SPA and SAC.

4.0 The Referral

5.0 Planning Authority Referral

5.1. A declaration has been sought by Louth County Council from An Bord Pleanála pursuant to Section 5(4) of the Planning and Development Act 2000, in respect of the question asked as above.

5.2. They include the following with their referral:

- 2no. photographs taken in October 2016 showing the original windows
- 3no. Photographs taken on the 9th of March 2018 of replacement windows
- Site Layout Drawing
- They note that the property has changed ownership in recent months and the name of the new owner is not known.

The Planning Authority note there is no relevant planning history.

Enforcement file 17U108 pertains to this matter. A warning letter was issued in July 2017, an enforcement notice in November 2017 (required the replacement of the three windows with single glazed timber replicas of the original timber sliding sash windows). The case was subsequently dismissed in the District Court on the 1st of November 2018.

The P.A noted that in Court the Judge asked if the owners of the adjoining properties that had also changed to PVC has been prosecuted by the Council. When it was confirmed to him that no such prosecution took place the Judge was of the opinion that this was discrimination and that he did not need to hear any further evidence and indicated that he was dismissing the case.

The PA includes a copy of correspondence from the Agent dated 17th of August 2017 which considered the development was exempted development. Also, correspondence from the Council dated 6th of October 2017, advising that the development was not exempt. They also provide that they include all information necessary for the PA to conclude that the development or use does not come within the scope of Article 9 of the Planning and Development Regulations 2001, as amended (the Regulations), which removes the exempted status from certain developments.

5.3. Referrer's Case

Louth County Council provides that the Planning Authority is seeking a Section 5 Declaration on whether the removal of timber sash windows and replacement with uPVC windows at this property was or was not exempted development. This is to inform future planning decisions.

They note that this was not adjudicated on at the Hearing referred to in Donal O'Hagan & Co. Solicitors correspondence date the 23rd of January 2019.

They provide that the Council is cognisant that they do not have recourse to an Appeal against the Order made in the District Court on the 1st of November 2018.

5.4. Objector's Case

Donal O'Hagan & Co. Solicitors case on behalf of their Client: Kevin McManus ('Objector') includes the following:

1. They submit that this Referral by Louth County Council (LCC) is a very sensitive matter as being a purported interference with the criminal process and/or administration of justice by an independent Court of Law. This matter has already been determined by the Court and is concluded. They query why

LCC is now asking the Board for an Opinion on a matter already determined by the Court.

2. They have regard to the Enforcement history relevant to this case and query why LCC did not consider it necessary to seek the Board's opinion at this stage.
3. The matter was fully defended in Court and the Scheduled Document (a very comprehensive survey) formed part of that defence. They include a copy of the said document.
4. Having heard the evidence the Judge very strongly dismissed the Summons. They have regard to communications relative to costs etc. They note there was no Appeal by the Prosecutor or any application for judicial review or any question of seeking a determination on any matter from ABP. They consider that the matter is accordingly now res judicata and they submit that nothing further can be raised on this matter in so far as the above property is concerned.
5. They consider that the current application is possibly an abuse of process (in a matter of criminal law) and at the very least to be in extremely bad faith by LCC as an attempt to re-open the Court's decision in this manner. Any attempt to do anything further should first have been an application to the Court but the time for doing this has now long since passed.
6. If this Application is to be pursued by LCC their Client would have to reserve his legal position to what further legal remedy he would pursue which would include an application for all legal costs and outlays incurred.
7. They submit that LCC should have engaged in the current process before commencing Enforcement Proceedings in this case and it is now far too late to do this.

They enclose without prejudice to the res judicata issue a copy Assessment Report of EHP Services dated 17th of October, 2018 which formed part of the Defence and note that this was furnished to LCC prior to the Hearing.

5.5. Summary of Planning Assessment Report – Objector’s Case

Background

This provides details of the background and locational context of the site and notes the need for the replacement windows due to the poor state of repair of the original windows. They have regard to the history of planning enforcement and refer to subsequent Court proceedings.

Legislative Context

They note the Legislative Context having regard to the statutory provisions and the relevant sections of the Planning and Development Act 2000 (as amended) and the Planning and Development Regulations 2001 (as amended).

National Guidelines

They also have regard to National Guidelines including the Department of Arts, Heritage and the Gaeltacht’s 2011 *Architectural Heritage Protection – Guidelines for Planning Authorities* which defines an Architectural Conservation Area. They note that the Guidelines leaves to the discretion of the local planning authority to make policies to protect ACA’s appropriate to each particular circumstance but the Guidelines do not explicitly state that the use of uPVC in an ACA is prohibited only that it be treated with great caution.

Planning Policy Content

It is the function of planning legislation and regulation not the local development plan to determine what constitutes development and/or exempted development. Neither the Dundalk & Environs Development Plan 2009-2015 or the Louth County Development Plan 2017-2021 explicitly states that the installation of replacement windows in an ACA constitutes development. They provide that both documents only come into effect if an application is lodged to the local planning authority for consideration. They consider that it is incorrect to presume that because these development plans have policies stating the use of certain building materials in certain circumstances is unacceptable it is, in effect, also stating that the use of those materials within the same circumstances constitutes development.

They set out the relevant extracts and planning policies from the Louth County and Dundalk & Environs Development Plans.

They also note that a review of other design related national guidance documents revealed no appreciable or relevant advice regarding the use of uPVC windows in ACA's.

What Works have been carried out?

They provide details of the replacement windows and note that their Client's were insistent that they replicated as closely as possible to the original windows (Appendix 2 refers). They note that the new mullioned windows are similar in proportion and vertical emphasis to the previous timber windows. They provide that when they are compared to the more common plain and less sensitive modern windows along Anne Street and ACA No. 3 the difference is obvious and immediate. No. 56 Anne Street being an example of such. They provide that the newer windows are more energy efficient and in their opinion still retain the property's period aesthetic by combining old style with modern materials and technology.

Placing the Works in Proper Context?

They consider that the Council has not provided a detailed explanation as to how they consider that the replacement windows materially affect the external appearance of the building or the ACA. In the absence of a proper context within which to understand the Council's thinking on this matter EHP carried out a Survey on the 25th and 26th of September and the 9th of October 2018 to establish the extent of aluminium and/or timber windows. Appendix 5 includes a Map upon which the survey results have been applied i.e. Window Material Survey Map. The survey applies only to the front street facing ground, first, third floor and/or roof levels of applicable properties, and they provide details of the colour coding – Table 1 refers.

Over half of Anne Street properties, including No. 57 Anne Street, are fitted with uPVC windows. They provide that the reversion of No. 57 to timber windows would have no appreciable impact upon the predominance of uPVC as a material within Anne Street. Of the 299 properties contained within ACA No.3 the survey revealed some interesting ratios between timber uPVC windows as set out in Table 2. This shows uPVC as being the dominant window material in the ACA. Also, they provide, the majority of windows in Anne Street are not sash but casement type windows.

A review was carried out of the planning histories of each property with ACA No.3 observed to have uPVC, aluminium or a combination of materials. They note that

none of the properties surveyed with non-timber windows have sought planning permission for their installation. They have regard to some precedent cases relative to permission sought for extensions that included the use of uPVC windows.

Assessment

They provide that there are a number of important background and contextual considerations relative to the background and context of the Client's enforcement case. They have regard to issues under Section 152 of the Planning and Development Act 2000 (as amended) relative to the Warning Letter and ensuing enforcement proceedings.

They are of the opinion that the new windows do not have sufficient materiality of impact within the context of the property itself, Anne Street or the character and setting of the wider ACA to constitute development under either the Planning and Development Act 2000(as amended) or the Planning and Development Regulations 2001(as amended) and consider that as such the Council's enforcement action is unwarranted.

National Guidance & Planning Policy Context

They note that neither the Dundalk & Environs Development Plan 2009-2015 nor the Louth County Development Plan 2017-2023 explicitly state that the installation of replacement windows in an ACA constitutes development. The Dundalk & Environs DP does state that the replacement of existing timber sash windows with uPVC or aluminium will not be approved in the ACA. They provide that such a policy only applies when an application for permission has been submitted for consideration. They contend that it would be incorrect to assume that because a development plan has policies stating the use of certain building materials circumstances is unacceptable is, in effect, also stating that those same circumstances constitute development. The matter for defining development is the sole purview of the Planning & Development Act 2000(as amended).

What Works have been Carried Out?

The Objector notes the works that have been carried out installing a bespoke non-standard window type and the difference between the original and replacement windows and the prevalence of uPVC windows in Anne Street and the wider ACA.

Placing the Works in Proper Context

They consider that there is a wide inconsistency in dealing with such works and have regard to other cases and note that in some cases the unauthorised installation of uPVC or aluminium windows in protected structures is ignored. They consider the Council has been unreasonable in pursuing this property when there are so many cases of uPVC windows installed in the ACA.

They have regard to a number of cases relative to works to protected structures and the ACAs in both Dundalk and other locations and note the installation of uPVC windows. They also note no mention made of unauthorised development and that the Conservation Officer had no objections to these proposals. Given the lack of planning applications and the prevalence of uPVC windows throughout ACA No. 3 it may be inferred that the Council's approach is inconsistent in relation to their stance to No. 57 Anne Street.

Concluding Remarks

In addition to the change of materials the window type has also been changed. In summary they consider that within the context of other Anne Street or ACA properties, the installation of uPVC windows does not materially affect the appearance of the property or the ACA or come within the scope of the relevant legislation.

6.0 Statutory Provisions

6.1. Legislative Context

In order to assess whether or not the activity constitutes development that is exempted development, regard must be had to the following items of legislation:

6.2. Planning and Development Act, 2000 (as amended)

Under Section 2(1), the following is the interpretations:

“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;

“architectural conservation area” shall be construed in accordance with *section 81(1)*;

“area of special planning control” shall be construed in accordance with *section 85(8)*;

‘works’ “...includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal...”

‘unauthorised development’ includes the “carrying out of unauthorised works (including the construction, erection or making of any unauthorised structure) or the making of any unauthorised use.”

‘unauthorised works’ means any works on, in over or under land commenced on or after the 1st of October 1964, being development other than –

(a) Exempted development (within the meaning of section 4 of the Act of 1963 or section 4 of this Act, or.....

Development - Section 3 (1) states as follows:

“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.”

Exempted Development - Section 4(1) of the Act states that the following shall be exempted developments for the purposes of this Act:

(h) development consisting of the use 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;

Section 4 (2)(a) of the Act enables certain classes of development to be deemed exempted development by way of regulation.

Development in architectural conservation areas

Part IV of the Planning and Development Act 2000 provides for the designation of protected structures and architectural conservation areas. Chapter II refers to ACA's and Area of Special Control.

Section 81 - provides the objective to preserve the character of the place, for the establishment of ACA's in Development Plans.

Section 82 – (1) provides: Notwithstanding *paragraph (a), (h), (i), (ia), (j), (k) or (l) of section 4(1), or any regulations made under section 4(2), the carrying out of works to the exterior of a structure located in an architectural conservation area shall be exempted development only if those works would not materially affect the character of the area.*

(2) In considering an application for permission for development in relation to land situated in an architectural conservation area, a planning authority, or the Board on appeal, shall take into account the material effect (if any) that the proposed development would be likely to have on the character of the architectural conservation area.

6.3. Planning and Development Regulations, 2001

Article 6 (1) Part 2 provides: 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) provides: 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—

(xii) further to the provisions of section 82 of the Act, consist of or comprise the carrying out of works to the exterior of a structure, where the structure concerned is located within an architectural conservation area or an area specified as an architectural conservation area in a development plan for the area or, pending

the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan and the development would materially affect the character of the area,

6.4. **Architectural Heritage Protection Guidelines 2011**

These guidelines are issued under Section 28 and Section 52 of the Planning and Development Act 2000. Under Section 52 (1), the Minister is obliged to issue guidelines to planning authorities concerning development objectives:

- a) for protecting structures, or parts of structures, which are of special architectural, historical, archaeological, artistic, cultural, scientific, social, or technical interest, and
- b) for preserving the character of architectural conservation areas.

Section 1.3 refers to Part IV of the Planning and Development Act 2000 (as amended) and includes regard to the preservation of ACAs.

Chapter 3 includes regard to the following:

Section 3.1.1 defines: *An architectural conservation area (ACA) is a place, area, group of structures or townscape, taking account of building lines and heights, that is of special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest or that contributes to the appreciation of a protected structure, and whose character it is an objective of a development plan to preserve.*

- Section 3.4 – Setting and ACAs
- Section 3.6 ACAs and the Development Plan
- Section 3.7 Development Control in ACAs
- Section 3.8 Features and Structures Detrimental to the Character of the Area
- Section 3.10 Criteria for Assessing Proposals with an ACA
- Section 3.11 Management of ACAs.

Chapter 4 includes regard to Declarations relative to Protected Structures and Section 4.13.3 concerns Restoration of Character and refers to uPVC and replacement windows and doors.

Chapter 10 – Openings *Doors and Windows*

Section 10.7 refers to measures Improving the Thermal Efficiency of Historic Openings. Section 10.7.3 refers to issues with double glazing and secondary glazing. *Additional problems may arise as many old buildings suffer from condensation problems following the installation of airtight windows.*

Section 10.7.5 has regard to issues with Sealing measures generally in older properties and includes: *For this reason, the proposed insertion of sealed units such as uPVC windows and doors into a historic building, even where the original elements have previously been lost, should be treated with great caution.*

Chapter 13 refers to Curtilage and Attendant Grounds

Section 13.8 Other development affecting the setting of a Protected Structure or an ACA. *Proposals should not have an adverse effect on the special interest of the protected structure or the character of an ACA.*

7.0 **Assessment**

7.1. It is noted that this case has already been through enforcement proceedings including a subsequent court case. The letter from Donal O'Hagan & Co. Solicitors on behalf of the Objector notes that this matter has already been determined by the Court and is concluded. They query why LCC is now asking the Board for an Opinion on a matter already determined by the Court. The Planning Authority provide that they are seeking a Section 5 Declaration on this issue to inform future planning decisions. They also state that this was not adjudicated on at the Hearing referred to in Donal O'Hagan & Co. Solicitors correspondence.

7.2. It must be noted that the Board has no role in Enforcement, this is a matter for the Planning Authority and ultimately the Courts. The two issues i.e. enforcement and a referral are dealt with under separate provisions in the planning legislation. The Question before the Board, has been put forward as a Referral under Section 5(4) of the Planning and Development Act 2000 (as amended). Therefore, I would consider it is in order for the Board to consider the Question raised in this Referral and to issue a determination on such.

7.3. **Is or is not development**

7.3.1. The first matter relates to whether or not the works comprise development. Having regard to sections 2 and 3 of the Planning and Development Act 2000, I consider that the removal of three original, decorative, sliding -sash windows in the front elevation of no.57 Anne Street, Dundalk, Co. Louth (located within the Crescent Architectural Conservation Area) and their replacement with uPVC, constitutes an alteration to the property and 'development' within the meaning of the Act, being the carrying on of an act of construction (i.e. 'works') on land.

7.4. **Is or is not exempted development**

7.4.1. Development can be exempted from the requirement for planning permission by either section 4 of the Planning and Development Act, 2000 (the Act), or article 6 of the Planning and Development Regulations 2001 (the Regulations).

- 7.4.2. Firstly, with regard to section 4(1)(h) of the Act, which I consider to be the only subsection of section 4 with any potential relevance to this referral, I note that the provision relates to works for the maintenance, improvement or other alteration of a structure 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.
- 7.4.3. The Objector contends that the works would not materially affect the appearance of the structure and so would comply with the exemption in Article 4(1)(h) of the Planning and Development Act 2000 (as amended). The EHP Report on behalf of the Objector considers that the replacement windows meet the criteria set forth in Section 4(1)(h) of the Planning and Development Act 2000 (as amended) to be considered exempted development. They also consider that the new windows do not materially affect the ACA and are exempted development under Article 9(1)(xii), Part 2 of the Planning and Development Regulations 2001 (as amended). Consequently, they provide that the guidance pertaining to ACA3 as set out in Appendix 7 of the Dundalk & Environs Development Plan 2009-2015 is not applicable.
- 7.4.4. It is of note that Section 82 of the Planning and Development Act 2000 (as amended) stipulates – *Notwithstanding section 4(1)(h), the carrying out of works to the exterior of a structure located in a conservation area shall be exempted development only if those works would not materially affect the character of the area.*
- 7.4.5. It is noted that neither the Planning and Development Act 2000 (as amended) nor the Planning and Development Regulations 2001 (as amended) explicitly state that the installation of replacement windows in an ACA constitutes development. Rather whether there has been a material effect on the character of the ACA or for a purpose not incidental to the enjoyment of the house. Therefore, the issue in this case is whether or not it is deemed that the works carried out would materially affect the character of the ACA.

7.5. **Is it material - Regard to impact on the ACA**

- 7.5.1. The Objector provides that the only obvious difference between the previous and existing windows is the material they were constructed from. Whereas the previous timber windows were sash type the uPVC windows are casement type. They note

that the majority of window types in Anne Street and the wider ACA are casement type not sash and also note the extent of the use of uPVC windows in the area. Additionally, they note the Council's enforcement notification refers only to the use of uPVC the change in window type may be an issue best left unaddressed. They do not consider that a material change of use has resulted from the installation of the replacement windows. The only difference between the previous and existing windows of any significance is the materials each was constructed from and the fact that newer windows are double glazed as opposed to single glazed. They also have regard to the 'Window Materials Survey Map' showing the variation of window materials between timber and u PVC and aluminium used within the ACA.

7.5.2. Regard is also had to the Architectural Heritage Protection Guidelines 2011. Section 4.13.3 concerns: Restoration of Character and this includes regard to inappropriate materials including uPVC. *Replacement of previous inappropriate alterations such as uPVC or aluminium windows with appropriately detailed replacement windows; replacement of fibre-cement roof tiles with natural slate.*

7.5.3. As noted in the Policy Section above, Section 8.4.2 and Policy TC10 of the Dundalk & Environs Development Plan 2009-2015 seeks to protect designated ACAs from unsensitive development that would detract from the character of the area. Appendix 7 of the Plan refers to Architectural Conservation Areas. The property is located in Anne Street which is included in ACA3 – The Crescent. This includes: *The primary purpose in the designation of this ACA is to protect and enhance the character of the urban housing area.* Of note, among the intentions of the Council for this ACA i.e.:

2) *To encourage the preservation and re-instatement of traditional details and materials in the area. The replacement of existing timber sash windows with uPVC or aluminium will not be approved.*

7.5.4. Therefore, there is a specific Objective in the Development Plan to retain the original timber windows. Restoration rather than the use of uPVC is also supported in the Guidelines. The Council's Referral has included photographs of the original and the replacement windows and the differences are noted.

7.5.5. In my view change has occurred in the following way:

1. The thickness of the uPVC frames appears greater than the thickness of timber frames which by reducing the depth of the frame giving a more modern

bulky and two-dimensional (flat look) rather than an in-depth three dimensional outlook that was more in character with the era of the original period dwelling.

2. The front elevation timber sash type windows have been replaced with custom made non-sash type casement windows. It is noted that the biggest difference between sash & casement designs are the way they open and close. Sash windows slide either vertically or horizontally within the frame. Casement windows open outwards by means of hinges on either side, top or bottom of the frame.

7.5.6. While the building is not a protected structure, it is clearly a period property within the ACA with features and materials contributing to its overall visual integrity. In this regard the design of the fenestration on the front elevation contributes significantly to the character of this structure in the streetscape. Material of the window frames play as an important part as the materials of the walls in providing the design integrity. Replacement of the timber sash windows with uPVC casement windows has materially altered the external appearance of this structure considerably, and in my view to a degree so as to render it inconsistent with the character of the original structure.

7.5.7. It is also an issue as to whether or not such alteration/development is inconsistent with the character of neighbouring structures. In this respect this property is the end of the terrace of these period properties. The two adjoining three storey properties with similar type openings have inserted different type windows. The other two and three storey red brick properties in this terrace further south have different fenestration/window openings comprising a mix of uPVC, aluminium, and the original timber windows. This is as shown on the Window Materials Survey Map of the ACA as submitted on behalf of the Objector. There is a more modern white rendered two storey property adjoining to the north. Therefore, it could be said that there is a lack of consistency in the range of fenestration in situ, although in this instance the property can only really be seen in the context of the two adjoining three storey similar type properties. In the context of these properties the removal of the original windows is material in that it along with the assorted of windows now prevalent does detract from the character of these period properties in the streetscape and the ACA.

7.6. Regard to Precedent Cases

7.6.1. The submission on behalf of the Objector refers to a number of planning applications relative to the issue of the installation of uPVC. The most relevant as regards location within the ACA is Reg.Ref.13/107. In this case permission was granted by the Council for Alterations to existing dwelling and construction of first floor extension to rear at no.19 Mary Street (South), Dundalk, Co. Louth. This was upheld and permission subject to conditions was granted by the Board on appeal – Ref. PL55.242723 relates. However, I would consider that a decision as a result of the considerations made as a result of the submission of a planning application is not comparable to a determination relative to a Referral, where the issue is whether it is development and if so whether it is exempt development.

7.6.2. There are a number of unrelated precedent referral cases relative to questions raised regarding replacement windows in an ACA. These include Ref.28.RL2569 where the question was as to whether replacement of timber framed sash windows with PVC framed windows in front elevation of 104 Oliver Plunkett Street, Cork is or is not exempted development. In this case the Board concluded:

- a) the said replacement of timber framed sash windows with PVC framed windows at front elevation of 104 Oliver Plunkett Street does materially effect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure, and
- b) the said replacement of timber framed sash windows with PVC framed windows does render the appearance inconsistent with the character of the neighbouring structures.

The Board decided that the said replacement of timber framed sash windows with PVC framed windows in the front elevation of 104 Oliver Plunkett Street, Cork is not exempted development.

7.6.3. Ref. PL61.RL3454 - where the question was whether the removal of glazing at ground floor level as shown on accompanying drawings is or is not development or is or is not exempted development at 9-11 Prospect Hill Eyre Square, Galway. In summary the Board concluded that the works comprised development and that the works would materially affect the character of the Eyre Square ACA. Therefore, they decided that the removal of glazing along with glazing bars from two ground floor

window openings in the principal elevation of this property comprised development and is not exempted development.

- 7.6.4. Ref.06F.RL2780 – where the question was whether the installation of two ‘velux’ windows on the north facing slope of the roof of a house at 11 The Rise, Malahide, County Dublin is or is not exempted development. In summary the Board concluded that the “velux” windows materially affect the external appearance of the house and in turn, materially affect the character of the Grove Road, The Rise and The Mall ACA, and therefore, is not considered to be exempted development by virtue of the said section 82(1) and decided that the works were not exempted development.
- 7.6.5. Ref.17.RL.2748 – where the question was as to whether the replacement and/or alterations of windows and doors at ‘The Mews’, Ballinlough, Dunshaughlin, County Meath is or is not exempted development. This property was not located in an ACA. The Board concluded in summary, (a) that these works come within the scope of Section 4(1)(h) of the Planning and Development Act, 2000 as amended as the changes 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; (b) the restriction on exemption contained in Article 9 of the Planning and Development Regulations 2001 apply to exemptions allowed under Article 6 of the said Regulations and do not restrict any exempted development under Section 4(1) of the Planning and Development Act 2000. Therefore, they decided that the said works were exempted development.
- 7.6.6. In conclusion it must be noted that the aforementioned referrals, present different scenarios, that do not have any particular bearing on the subject case. (Copies of these decisions are included in the Appendix to this Report). However, it is of note that since the property is within an ACA that the works carried out; i.e the insertion of the replacement windows, must meet the higher of the two standards applied by Section 82(1) of the Planning and Development Act 2000(as amended) as quoted in the Statutory Provisions Section above.

7.7. Screening for Appropriate Assessment

- 7.7.1. Having regard to nature and scale of the development in a fully serviced and zoned residential area and the nature of the receiving environment and the distance and

lack of connections to the nearest European sites: Dundalk Bay SPA (site code: 004026) and SAC (site code: 000455), 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.

8.0 Recommendation

8.1. 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 removal of three original, decorative, sliding-sash timber windows in the front elevation of no. 57 Anne Street, Dundalk, Co. Louth (located within The Crescent Architectural Conservation Area) and their replacement with uPVC is or is not development or is or is not exempted development:

AND WHEREAS Louth County Council requested a declaration on this question from An Bord Pleanála on the 12th day of December 2018 stating that the matter was development and was not exempted development:

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

- (a) Sections 2(1) and 3(1) of the Planning and Development Act, 2000, as amended,
- (b) Section 4(1)(h) and Section 82(1) of the Planning and Development Act, 2000, as amended,
- (c) article 6(1) and article 9(1)(xii) of the Planning and Development Regulations, 2001, as amended,
- (d) the design and external appearance of the existing structure, and the character of the existing neighbouring structures.
- (e) the nature of the works in the designated Architectural Conservation

Area (ACA 3 - The Crescent) and intensions for this area as noted in Appendix 7 of the Dundalk and Environs Development Plan 2009-2015 as extended.

- (f) the Architectural Heritage Protection Guidelines for Planning Authorities (Minister for Arts, Heritage and the Gaeltacht 2011).

AND WHEREAS An Bord Pleanála has concluded that:

- (a) the said replacement of timber framed sash windows with PVC framed windows at the front elevation of No.57 Anne Street, Dundalk, Co. Louth does materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure, and neighbouring structures;
- (b) therefore, the works would materially affect the character of The Crescent Architectural Conservation Area and are not considered to be exempted development by virtue of section 4(1)(h) and section 82(1) of the Planning and Development Act 2000 (as amended) or article 9(1)(xii) of the Planning and Development Regulations 2001 (as amended);

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (4) of the 2000 Act, hereby decides that the said removal of three original, decorative, sliding-sash timber windows in the front elevation of no. 57 Anne Street, Dundalk, Co. Louth (located within The Crescent Architectural Conservation Area) and their replacement with uPVC is development and is not exempted development.

Angela Brereton
Planning Inspector

26th of April 2019

