



An
Bord
Pleanála

Inspector's Report ABP-304031-19

Question	Whether the current use of part of the Swiss Cottage as a mock up apartment is or is not development or is or is not exempted development
Location	Swiss Cottages, Bar & Restaurant, Swords Road, Santry, Dublin 9.
Declaration	
Planning Authority	Dublin City Council North
Planning Authority Reg. Ref.	0439/18
Applicant for Declaration	Cinamol Ltd.
Planning Authority Decision	Split Decision
Referral	
Referred by	Cinamol Ltd.
Owner/ Occupier	Mr. Carlyle
Observer(s)	None.
Date of Site Inspection	14 th May 2019.
Inspector	Sarah Lynch

1.0 Site Location and Description

1.1. The site is located within a public house known as 'The Swiss Cottage', situated to the east of the swords road at the junction of Swords Road and Schoolhouse Lane. 2-metre high hoardings were in the process of being erected at the time of inspection and the building was under preparation for demolition. Access into the building was prohibited.

2.0 The Question

2.1. Whether the erection of a mock-up, non-functional apartment unit internally within an existing public house is or is not development or is or is not exempted development.

3.0 Planning Authority Declaration

3.1. Declaration

The Declaration issued by the planning authority concluded:

- That the erection of hoarding for site investigation works is exempt development, and
- The erection of a mock up, non-functional apartment unit internally within an existing public house is development and is not exempt development.

3.2. Planning Authority Reports

3.2.1. Planning Reports

3.2.2. The planners report reflects the decision of the planning authority and states that the proposed works do not fall within Section 4(1)(h) of the Planning and Development Act 2000 (as amended) as the works do not constitute an act of maintenance, improvement, or other alteration of the structure in accordance with the Act.

3.2.3. Consideration was also given as to whether the use could be considered incidental. The proposed mock up occupies 33% of the bar area and as such was not considered to be incidental. Furthermore, the confirmed use, 'for the purposes of design development in advance of a planning application being lodged under SHD process

as a build to rent scheme', was not considered incidental to the primary use of the premises.

3.2.4. Other Technical Reports

- None

4.0 Planning History

There are multiple applications for redevelopment of this site, the following is of relevance.

2532/18 Permission was **Refused** for the demolition of the existing building and construction of a new 5 storey mixed use development to include 89 apartments.

4211/15 Permission was **Granted** for the demolition of existing building and construction of a commercial mixed use development.

5.0 Policy Context

5.1. Development Plan

Dublin City Development Plan 2016-2022

The site is located within a building zoned Z3 which seeks 'to provide for and improve neighbourhood facilities'.

5.2. Natural Heritage Designations

- None

6.0 The Referral

6.1. Referrer's Case

- The mock-up apartment should be considered under 4(1)(h) of the Planning and Development Act 2000, as amended.
- The structure has no active use therefore no material change has taken place.

- The mock-up apartment is a temporary structure.
- Purpose of mock-up is to inform design team of layouts in order to create the best layout for the scheme.
- The mock-up is not visible externally to the building.
- It is clearly built as a temporary structure.
- The development should be considered as any other alteration under 4 (1)(h).

6.2. Planning Authority Response

- None

6.3. Owner/ occupier's response

- None

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

- Section 2(1) of the Act states the following in relation to '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;
- Section 2(1) of the Act states the following in relation to “works” -

“...includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal.....”
- Section 3(1) of the Act states the following in respect of ‘development’:

“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)(a)- (i) set out what is exempted development for the purpose of the Act-
 - (h) development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures.
- Section 4 (2) provides for the making of the Regulations, Planning and Development Regulations, 2001.
- Section 5 (3) (A) states the following:

“Where a declaration is issued under this section, any person issued with a declaration under subsection (2)(a) may, on payment to the Board of such a fee as may be prescribed, refer a declaration for review by the Board within 4 weeks of the date of issuing the declaration.”

7.2. Planning and Development Regulations, 2001

7.3. Article 5(1)

In this Part –

“business premises” means-

- (a) any structure or other land (not being an excluded premises) which is normally used for the carrying on of any professional, commercial or industrial undertaking or any structure (not being an excluded premises) which is normally used for the provision therein of services to persons,
- (b) a hotel or public house,
- (c) any structure or other land used for the purposes of, or in connection with, the functions of a State authority.

shop’ means -

a structure used for any or all of the following purposes, where the sale, display or service is principally to visiting members of the public –

- (a) for the retail sale of goods,
- (b) as a post office,
- (c) for the sale of tickets or as a travel agency,
- (d) for the sale of sandwiches or other food or of wine for consumption off the premises, where the sale of such food or wine is subsidiary to the main retail use, and “wine” is defined as any intoxicating liquor which may be sold under a wine retailer's off-licence (within the meaning of the Finance (1909-1910) Act, 1910),
- (e) for hairdressing,
- (f) for the display of goods for sale,
- (g) for the hiring out of domestic or personal goods or articles,
 Comment [i27]: Inserted by article 3 of S.I. No. 582/2015 – Planning and Development (Amendment)(No. 4) Regulations 2015
 Comment [i28]: Inserted by article 3 of S.I. No. 235/2008 – Planning and Development Regulations 2008 24
- (h) as a launderette or dry cleaners,
- (i) for the reception of goods to be washed, cleaned or repaired, but does not include any use associated with the provision of funeral services or as a funeral home, or as a hotel, a restaurant or a public house, or for the sale of hot food or intoxicating liquor for consumption off the premises except under paragraph (d), or any use to which class 2 or 3 of Part 4 of Schedule 2 applies;

- 7.4. Article 9 (1) 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&2)

(1) 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 works other than works which are exempted development,

(b) contravene a condition attached to a permission under the Act,

(c) be inconsistent with any use specified or included in such a permission, or

(d) be a development where the existing use is an unauthorised use, save where such change of use consists of the resumption of a use which is not unauthorised and which has not been abandoned.

(2) A use which is ordinarily incidental to any use specified in Part 4 of Schedule 2 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.

- Schedule 2 Part 1: Exempted Development – General

CLASS 1 Use as a shop

8.0 **Assessment**

8.1. It should be noted that the purpose of this referral is not to determine the acceptability or otherwise of the mock-up apartment and associated works but whether the matter in question constitutes development, and if so falls within the scope of exempted development

8.2. **Is or is not development**

8.3. The works carried out consisted of the construction of a non-functional mock-up apartment of 77sqm within an existing public house premises. It is stated by the referrer that there is no use associated with the mock-up apartments.

- 8.4. Section 2(1) of the Planning and Development Act 2000, (as amended) includes the definition of works as "...includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal....."
- 8.5. Section 3(1) of the Act states the following in respect of 'development', "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."
- 8.5.1. The works carried out in the premises to construct the mock-up apartment, therefore constitute development within the meaning of the Act. The question that is relevant in this instance is whether the works carried out are or are not exempted development
- 8.6. **Is or is not exempted development**
- 8.7. The works carried out by the applicant consist of internal works only and do not affect the external appearance of the building in any way. It is stated by the applicant that the proposed mock up apartment is a temporary structure used for the purposes of design development in advance of a planning application to be lodged under the Strategic Housing Development process. The purpose of the mock up apartment is stated to inform the design team of layouts, floor to ceiling heights, orientation and overall functionality of the apartment layouts. The mock up is merely used for design development.
- 8.8. It is further stated by the applicant that the mock up apartment is not visible from the external elevations of the building and therefore does not affect the external appearance of the building nor does it obstruct the use of the building as a public house. The structure is not in any active use, and as such the applicant does not consider that any material change of use has occurred.
- 8.9. Section 4(1)(h) of the 2000 Act is of relevance, for the works in question to be exempted, they must fall within the range of operations specified within this Section of the Act, which is expressed as follows:
- (h) development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render

the appearance inconsistent with the character of the structure or of neighbouring structures.

8.10. The proposed works as outlined above are contained within the building and do not materially affect the external appearance of the structure in any way. Furthermore, the purpose of the mock up apartment as a sample apartment for the use of designers does not compromise or materially alter the established use of the building as a public house. Given that there is no active use for the mock up apartment a material change of use has not occurred. I therefore consider the temporary mock-up apartment which has no functional use for sales display or otherwise to be exempt development.

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 current use of part of the Swiss Cottage as a mock up apartment is or is not development or is or is not exempted development:

AND WHEREAS Cinamol Ltd. requested a declaration on this question from Dublin City Council and the Council issued a declaration on the 18th day of February, 2019 stating that the matter was development and was not exempted development:

AND WHEREAS referred this declaration for review to An Bord Pleanála on the 21st day of March, 2019:

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, as amended,
- (c) Section 4(1)(a) of the Planning and Development Act, 2000, as amended,
- (d) Section 4(1)(h) of the Planning and Development Act, 2000, as amended,
- (e) Article 6(1) and article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (f) Parts 1 and 3 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (g) the planning history of the site,

AND WHEREAS An Bord Pleanála has concluded that:

- (a) the current use of part of the Swiss Cottages as a mock-up apartment, which has no functional or active use, internally within the existing public house, whereby the works carried out do not material affect the external appearance of the structure fall within the range of works set out in Section 4(1)(h) of the Planning and Development Act 2000, as amended.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3) (a) of the 2000 Act, as amended, hereby decides that the current use of part of the Swiss Cottage as a mock up apartment is development and is exempted development.

Sarah Lynch
Planning Inspector

18th July 2019