



An
Bord
Pleanála

Inspector's Report ABP-304954-19

Question

PROTECTED STRUCTURE: Whether the removal of kitchens, stud walls and stairs to facilitate the amalgamation of studio apartments to provide for a number of 1 & 2 bedroom apartments is or is not exempt development

Location

18 Mountjoy Square, Dublin 1

Declaration

Planning Authority

Dublin City Council North

Planning Authority Reg. Ref.

0275/19

Applicant for Declaration

Padraig Geraghty

Planning Authority Decision

Is not exempted development

Referral

Referred by

Padraig Geraghty

Owner/ Occupier

Padraig Geraghty

Observer(s)

None

Date of Site Inspection

18/10/19.

Inspector

Sarah Lynch

1.0 Site Location and Description

- 1.1. The site is an end of terrace corner three bay four storey dwelling and is located within a Georgian conservation area at Mountjoy Square. The dwelling was built in the 1800 as a pair with no. 17 to the north and is now in multiple occupancy.
- 1.2. The building comprises red brick façade and concrete side and rear walls. An external fire exit is attached to the rear of the building from the 3rd floor. The property has been subdivided extensively in previous years and contains a mix of studio, one and two bedroom apartments.

2.0 The Question

- 2.1. Whether the alteration to a Protected Structure in relation to internal layouts including the removal of modern stud walls, kitchens and stairs to amalgamate studio apartments to provide for 1 and 2 bedroom apartments is or is not development or is or is not exempted development.

2.2. Declaration

The Declaration issued by the planning authority concluded:

The proposed works as summarised below comprise development which would not come within the meaning of Section 4(1)(h) and Section 57 of the Planning and Development Act 2000 (as amended) as the proposed development would materially affect the character of the Protected Structure and therefore would require planning permission.

2.3. Planning Authority Reports

2.3.1. Planning Reports

- 2.3.2. 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). It is stated within the planners report that insufficient details have been submitted in relation to repairs of the building fabric. No information has been submitted in relation to the floor coverings and whether these are historic. In

addition, it was noted that the existing ladders to be removed are adjacent to historic walls and no details of impacts have been included within the information submitted.

2.3.3. Notwithstanding the potential for impact to the existing structure, Schedule 2 of the Planning and Development Regulations 2001 clarifies that changes in the number of dwellings within a single structure is only considered exempted development when it consists of a change of use 'from use as 2 or more dwellings, to use as a single dwelling, of any structure previously used as a single dwelling'. The proposed works would reduce the number of dwellings but would not return the dwelling to a single unit. It was considered by the planner that the proposed works represented a change of use which will have a material impact on no.18 Mountjoy Square East and cannot be considered exempt development.

2.3.4. Other Technical Reports

- None

3.0 Planning History

There is no recorded history for this site.

4.0 Policy Context

4.1. Development Plan

Dublin City Development Plan 2016-2022 is the operative plan. Relevant provisions include:

The site is located within an area zoned as Z8 – 'to protect the existing architectural and civic design character, to allow only for limited expansion consistent with the conservation objective'.

The building is a protected structure and is within an Architectural Conservation Area and a Conservation Area.

- **11.1 Built Heritage** - To protect the structures of special interest which are included on the Record of Protected Structures and to continue to review the Record of Protected Structures within the context of future Architectural

Conservation Area designations and having regard to the recommendations of the National Inventory of Architectural Heritage.

It is the Policy of Dublin City Council:

- CHC1: To seek the preservation of the built heritage of the city that makes a positive contribution to the character, appearance and quality of local streetscapes and the sustainable development of the city.
- CHC2: To ensure that the special interest of protected structures is protected. Development will conserve and enhance Protected Structures and their curtilage and will:
 - (a) Protect or, where appropriate, restore form, features and fabric which contribute to the special interest.
 - (b) Incorporate high standards of craftsmanship and relate sensitively to the scale, proportions, design, period and architectural detail of the original building, using traditional materials in most circumstances.
 - (c) Be highly sensitive to the historic fabric and special interest of the interior, including its plan form, hierarchy of spaces, structure and architectural detail, fixtures and fittings and materials.
 - (d) Not cause harm to the curtilage of the structure; therefore, the design, form, scale, height, proportions, siting and materials of new development should relate to and complement the special character of the protected structure.

Changes of use of protected structures, which will have no detrimental impact on the special interest and are compatible with their future long-term conservation, will be promoted.

Appendix 24 – Refers to protected structures and buildings in conservation areas under the headings:

- Barrier Free Access and Protected Structures
- Fire Safety Works and Protected Structures noting that such works require planning permission if they leave a significant impact and alter the character of the protected structure.

- Lighting of Protected Structures and buildings in Conservation Areas
- Residential Parking in the Curtilage of Protected Structures, Architectural Conservation Areas and Conservation Areas.

- **Architectural Heritage Protection – Guidelines for Planning Authorities (DAHRRGA 2011)**

These guidelines, first published in 2004, are a guide to all those interested in protecting the built heritage and include guidance on criteria to be used when selecting structures for protection, and guidance in relation to the assessment of development proposals and declaration requests.

Depending on the individual circumstances and the special interests of the structure, the following works might require planning permission:

Changes to the internal layout (including those required for fire safety purposes or to improve access; alterations that would affect the original or early surviving plan form or section; the insertion of fixed partitions; the breaking out of new openings between rooms or spaces; the insertion of new doors or screens; the alteration of floor levels; the insertion of suspended ceilings; alterations to the layout or form of stairwells). Changes to the internal surfaces, finishes or linings Installation or repair of internal mechanical services.

4.2. **Natural Heritage Designations**

The nearest Natura site is South Dublin Bay and River Tolka SPA site code 004024 which is c1.9km from the subject site.

5.0 **The Referral**

5.1. **Referrer's Case**

- The proposed works are all internal alterations.
- The proposed works will not affect the original structure and will only affect modern partition walls.

- Works will entail removal of kitchen from apartment no. 18, opening between existing apartments.
- Kitchen in no. 17 to be removed.
- Opening wall between apartment no. 1&2 at ground floor.
- First floor ladder to be removed from studios 6, 7 & 8. Amalgamation of these studios and removal of 2 no. kitchen studios.
- Third floor alterations to internal layouts of apartments, amalgamation of no. 14& 15 to 1 no. 1 bed apartment.

5.2. Planning Authority Response

- None

6.0 Statutory Provisions

6.1. 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.”

- Section 57 [Notwithstanding section 4(1)(a), (h), (i), F205[(ia)] (j), (k), or (l) and any regulations made under section 4(2),] the carrying out of works to a protected structure, or a proposed protected structure, shall be exempted development only if those works would not materially affect the character of—

(a) the structure, or

(b) any element of the structure which contributes to its special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest.

6.2. Planning and Development Regulations, 2001

- 6.3. 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—

(vii) consist of or comprise the excavation, alteration or demolition (other than peat extraction) of places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest, the preservation of which is an objective of a development plan for the area in which the development is proposed 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, save any excavation, pursuant to and in accordance with a licence granted under [section 26](#) of the [National Monuments Act, 1930](#) (No. 2 of 1930),

6.4. Schedule 2 Part 1, Class 14 states that the following is exempt:

- Development Consisting of a change of use –
 - (e) from use as 2 or more dwellings, to use as a single dwelling, of any structure previously used as a single dwelling.

7.0 **Assessment**

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

7.2. **Is or is not development**

7.2.1. The works to be carried out will consist of the following:

- Basement – removal of kitchen from apartment no. 18 and installation of replacement kitchen unit in alternative location, removal of existing kitchen in no. 17 and amalgamation of units to form one apartment.
- Ground Floor – Opening of wall between no. 1 & 2 and removal of kitchen and sanitary ware to form one apartment.
- First Floor – The amalgamation of units no. 6, 7 & 8 to form 1 no. 2 bed apartment. The removal of mezzanine ladders and existing kitchens from units 6&7.
- Third Floor – Alterations to internal layouts and amalgamation of unit no. 14&15 to form single residential unit.

7.3. 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.....”

7.4. 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.”

- 7.4.1. The works to be carried out in the premises to amalgamate and alter the internal layout of existing residential units 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

7.5. Is or is not exempted development

- 7.5.1. There are effectively two elements to the question being asked, the first is in relation to the demolition and construction works to be carried out as specified above and the second is in relation to the change in the number and type of units to be provided within the building.
- 7.5.2. With regard to the demolition and construction works to be carried out it is stated within the referral that these works only affect the internal elements of the property and do not affect the external appearance of the building in any way. It is further stated that these works relate solely to the removal of modern stud walls, mezzanine stairs and kitchenettes in order to amalgamate studio apartments into larger 1 or 2 bed apartments.
- 7.5.3. I noted at the time of site inspection that the walls to be removed are indeed modern stud partitioned walls and the kitchenettes are not fixed to the historic structure of the building in anyway. Floor coverings consist of lino flooring which appears to sit on top of plywood which in turn sits on the original floor boards of the building.
- 7.5.4. Whilst I noted some original coving and stucco plaster work within the building, no alterations are proposed which would impact or affect these features in any way.
- 7.5.5. I note Section 4(1)(h) of the 2000 Act provides for the possibility of the works to be exempt, 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.

7.5.6. This Section of the Act is qualified by Section 57 whereby the carrying out of works to a protected structure, or a proposed protected structure, shall be exempted development only if those works would not materially affect the character of—

(a) the structure, or

(b) any element of the structure which contributes to its special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest.

7.5.7. As outlined above the proposed works proposed are to be carried out on the modern additions to this property and will not impact the historical, archaeological, artistic, cultural or social features relevant to the property.

7.5.8. I therefore conclude that the works to be carried out are exempt development by virtue of Section 4(1)(h) and Section 57 of the Planning and Development Act 2000 as amended.

7.5.9. With regard to the change in the type of units proposed Schedule 2 Part 1, Class 14 of the Planning and Development Regulations is of relevance. The change from use as 2 or more dwellings, to use as a single dwelling, of any structure previously used as a single dwelling is permitted as exempt development under this class.

7.5.10. However, there are no provisions within either the Planning and Development Act 2000 (as amended) or the Planning and Development Regulations 2001 (as amended) which refer to exemptions for the amalgamation of apartments and resultant reduction in the number of units within a property. I therefore conclude that the amalgamation of the studio apartments which provide for a different type of apartment i.e. 1 and 2 bedroom units is development and is not exempt development.

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 alteration to a

Protected Structure in relation to internal layouts including the removal of modern stud walls, kitchens and stairs to amalgamate studio apartments into larger 1 and 2 bedroom apartments is or is not development or is or is not exempted development.

AND WHEREAS Pdraig Geraghty requested a declaration on this question from Dublin City Council and the Council issued a declaration on the 9th day of July, 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 19th day of July, 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) Section 57 (a) & (b) Planning and Development Act, 2000, as amended,
- (f) article 6(1) and article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (g) Parts 1 and 3 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,

- (h) the planning history of the site,
- (i) the pattern of development in the area:

AND WHEREAS An Bord Pleanála has concluded that:

(a) The works to facilitate the demolition of modern stud walls, removal of kitchenettes and internal modern mezzanine stairs is within the scope of Sections 4(1)(h) and 57 of the Planning and Development Act 2000 as amended, in that these works consist of the carrying out of works for the improvement and alteration of the structure, being works which affect only the interior of the structure and do not materially affect the character of—

(a) the structure, or

(b) any element of the structure which contributes to its special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest.

(b) The amalgamation of existing studio apartments to larger 1 and 2 bedroom apartments would come within the scope of Class 14 of Part 1 of the Second Schedule of the Planning and Development Regulations, 2001, as amended and as the proposed development does not provide for a change from use as 2 or more dwellings, to use as a single dwelling, the works do not constitute exempt development.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3) (a) of the Planning and Development Act 2000, as amended, hereby decides that the internal demolition works proposed at 18 Mountjoy Square is development and is exempted development and the amalgamation of apartments and change from use as studio apartments to 1 and 2 bedroom apartments is development and is not exempt development.

Sarah Lynch

Planning Inspector

18th October 2019