



An
Bord
Pleanála

Inspector's Report ABP 305895-19.

Question

Whether the refurbishment of four windows at the front, 3 windows at the rear, fitting of draft weather seals and restrictors to windows, and whether re-landscaping of front garden is, or is not development and is or is not exempted development.

Location

5 Dartmouth Square, Dublin 6.
(Protected Structure)

Planning Authority

Dublin City Council

P.A. Reg. Ref.

0354/19

Declaration Request

Conor Power and Lorraine Mulligan.

Owner Occupier

Conor Power and Lorraine Mulligan.

Declaration Referral

Conor Power and Lorraine Mulligan

Date of Site Inspection

11th March, 2020

Inspector

Jane Dennehy

1.0 **Background.**

1.1. The site is that of a nineteenth century, terraced, two storey over garden level house on the west side of Dartmouth Square. There is a front garden enclosed by cast iron railings with a pedestrian gate and a footpath leading to a granite staircase at the entrance to the house. There is a rear garden extending as far as a boundary with a service lane extending from Grand Parade to the north to Dartmouth Road to the south which is gated at both ends. The house and gardens are in use as a residential dwelling and occupied by the Referrer party.

1.2. **The Referrer**, through an agent requested a Declaration from the planning authority on 31st July, 2019 in respect of refurbishment works to windows and re-landscaping of the front garden. Further to issue of a request for and receipt of additional information, on 22nd October, 2019 the planning authority issued a decision:

Planning Authority Decision.

1.3. The planning authority decided that the following works are development and are exempt development:

1. The refurbishment of the 4 existing windows to the front of the house at the main entrance (ground floor) level and the first-floor level.
2. The refurbishment of the 3 existing windows to the rear of the house at the main entrance (ground floor) level and the first floor and attic levels, including repairs and/or renewal of the patent reveals
3. The fitting of draught restricting weather seals to the windows described in 1 or 2 above to improve comfort, thermal performance and reduce energy consumption.
4. The fitting of restrictors to the windows described in 1 and 2 above to improve safety.

1.4. The conservation officer in her reports stated that she was satisfied that the works involved essential maintenance in line with best conservation practice as outlined in *Windows: A Guide to the Repair of Historic Windows* issued by the Department of the Culture, Heritage and the Gaeltacht, returning them to full working order along with the retention of the original glass, like for like repair of reveals, and minimal

impact on historic fabric. She considers that the works are exempt development because they will not materially affect the character of the protected structure.

- 1.5. The planning authority decided that the following works are development and are not exempt development:

Re-landscaping the front garden, without making any changes or works to the existing railings; to provide a gently sloping path to the lower ground level for baby buggies and bicycles.

- 1.6. The conservation officer in her reports noted the proposed level drop of 500 mm for the front garden with significant loss of existing landscaping and the inclusion of various structures to be installed in the front curtilage which she states would not come within Class 3, Schedule 2 at 1 of the Planning and Development Regulations, 2001, as amended.
- 1.7. She concludes that the cumulative effect of the interventions would result in a garden level which is inconsistent with the neighbouring gardens, would materially affect the character of the protected structure and cannot be considered to be exempt development.

2.0 The Referral

2.1. Referrer's Case

- 2.1.1. The Owner Occupier's Referred the Declaration issued by the planning authority to An Bord Pleanala for review on 13th November, 2019 and it is accompanied by copies of drawings, photographs and written submissions lodged with the planning authority. The Referral is confined solely to the works to the front garden, stated by the planning authority not to be exempt development.
- 2.1.2. It is the Referrer's case that the proposed works come within the section 4 (1) (h) and Section 4 (1) (j) of the Planning and Development Act, 2000 as amended, (The Act.)
- 2.1.3. With regard to Section 4 (1) (h) it is the Referrer's case that the character of the house would not be materially affected by the proposed works because no works to the house are proposed; the proposed works to the garden are sympathetic to the

house and they will not be visible from the road. Furthermore, the hedgerow is to be retained; no alterations to the railings are proposed and the gas meter installation is essential for a new heating system.

2.1.4. With regard to Section 4 (1) (j) it is the Referrer's case that the works which provide for ease of circulation with (a child's buggy, cycle and refuse storage) are ancillary to the residential use of the house.

2.1.5. It is also stated that it is intended to preserve and improve the house by reverting it to a single dwelling, as their home from three units which are in poor condition and the works to the garden.

2.2. Planning Authority Response

2.2.1. A submission from the planning authority on 6th December, 2020. According to the submission, prepared by the Conservation Officer:

According to the conservation officer:

- The proposed level drop of 500 mm for the front garden, installation of setts and stepping-stones and raised planter heights with loss of existing landscaping are substantial and the substantial level changes to the front garden which will be at a different level to neighbouring gardens and, this along with the introduction of extensive hard landscaping will result in a major departure from the historic design.
- Notwithstanding the restrictions on exemption owing to the protected structure status, the structures proposed for the front curtilage would not come within Class 3, Schedule 2 at 1 of the Planning and Development Regulations, 2001, as amended. In this regard she refers to proposals for construction of a 700 mm high wall on the north side boundary and partial removal of hedgerow, with a 1100 mm high timber screen providing for bin and cycle storage and, a gas metre enclosure on the inner side of the front boundary railings.

2.2.2. She concludes that the cumulative effect of the interventions resulting in a garden level which is inconsistent with the neighbouring gardens and it and the proposed structures in the front garden would materially affect the character of elements of the protected structure that contribute to its special character. She states that these

works cannot be considered to be exempt development having regard in particular to Section 13.4.19 of *Architectural Heritage Protection Guidelines for Planning Authorities* issued by the Department of the Culture Heritage and the Gaeltacht.

3.0 Statutory Provisions

3.1. The relevant legislative provisions referred to in consideration of the Question are:

Planning and Development Act, 2000, as amended.

Sections 2 (1), 3 (1)

Section 4 (1) (h)

Section 57 (1),

Planning and Development Regulations, 2001-2018 as amended. (The Regulations.)

Class 3, Schedule 2, Part 1 Planning and Development Regulations, 2001 as amended.

Extracts from the relevant sections in the Act and Articles and Schedules are available in the Regulations in Appendix 1 at the end of this report.

4.0 Assessment

4.1. Based on the foregoing, the Question Referred to the Board for determination of a decision can be formulated as follows:

Whether

1. The refurbishment of the 4 existing windows to the front of the house at the main entrance (ground floor) level and the first-floor level.
2. The refurbishment of the 3 existing windows to the rear of the house at the main entrance (ground floor) level and the first floor and attic levels, including repairs and/or renewal of the patent reveals

3. The fitting of draught restricting weather seals to the windows described in 1 or 2 above to improve comfort, thermal performance and reduce energy consumption.
4. The fitting of restrictors to the windows described in 1 and 2 above to improve safety.
5. Whether the re-landscaping the front garden, without making any changes or including any works to the existing railings; to provide a gently sloping path to the lower ground level for baby buggies and bicycles and the installation of a timber screen and walling along the northern side boundary of the garden and installation of a gas meter installation inside the front boundary railings.

are or are not development and, are or are not exempt development.

- 4.2. There is no dispute that the works subject of the question constitute development having regard to the provisions of Sections 2 (a) and 3 (1) of the Planning and Development Act, 2000, as amended. There is also no dispute that the works to the windows stated to be exempt development in the planning authority decision would not materially affect the character of the structure having regard to the provisions of section 4 (1) (h) and 57 (1) of the Act as discussed in the assessment and conclusions reached by the conservation officer in this regard in her reports.
- 4.3. The outstanding matter subject of the Question is as to whether the proposed works to the front garden are or are not exempt development (Item 5 of the original Question.).
- 4.4. In general, the curtilage for the purposes of determining the extent of statutory protection for Victorian and Georgian townhouses included on the record of protected structures, such as No 5 Dartmouth Square corresponds to historic plots, including boundary treatment. The layout, landscaping, features and fixtures and, boundary treatment for the front curtilage are integral to the design, character and composition in entirety of the protected structure and, are presumed subject to

statutory protection unless, excluded having regard to the provisions of section 4 (1) (h) and section 57 (1) of the Act.

- 4.5. The proposed works to the front garden subject of the Question, constitute significant alterations to which alter the setting and composition of the protected structure. The interventions to provide for a fall of circa 500 mm to the finished ground level to the front garden space to the front of the house, adjacent to and just forward of the granite staircase are considerable,
- 4.6. These alterations would alter the historic design characteristics for historic townhouse front curtilages. The proposed hard landscaping around the perimeter inside the front railings along the side with the fall toward the front of the house, the planters, timber screen and new walling providing housing for bin and cycle storage individually and cumulatively obliterate typical historic characteristics established by the geometry and proportions of the original front curtilage layout providing the context for the house comprising lawn, some planting and a narrow straight footpath between the pedestrian gate and granite staircase to the entrance. These proposed alterations and interventions within the front curtilage are also incompatible with the context and layouts for the neighbouring property at No 6, given the historic uniformity in plot configuration and layout, features and landscaping for the terraces of houses overlooking Dartmouth Square. The proposed works would affect the setting and character of the protected structure and the neighbouring structures.
- 4.7. Nevertheless, it is agreed that the works would be relatively well concealed from views from the public realm outside the site curtilage and that no alterations are proposed for the cast iron railings and the granite plinth on which they are erected and the pedestrian gate.
- 4.8. The works would not come within the scope of section 57 (1) of the Act in that the alterations to the front would materially affect its special historic and architectural interest as an integral element of the protected structure, thus rendering its appearance inconsistent with the character of the structure and neighbouring structures having regard to the provisions of section 4 (1) (h) of the Act.
- 4.9. Separately and, in addition, there are two further observations, having regard to the submissions made on behalf of the Referrer and the planning authority. Brief observations follow.

- The claim that the proposed development in the front garden subject of the Question would come within the meaning of section (4) (1) (j) of the Act is noted. While it is agreed that the use of the proposed structures within the curtilage of the house is for purposes incidental to the enjoyment of the house there is no presumption in this regard of exempt development entitlement due to the inclusion on the record of protected structures if it has been established that the works are not exempt having regard to sections 4 (1) (h) and 57(1) of the Act.
- While it is noted the 1100 mm high timber screen and 700 mm high wall, providing for a bin store and cycle storage to be constructed within the front garden are structures which constitute exempt development within Class 3, Schedule 2 Part 1 of the Regulations. These structures are to be erected forward of the front building line of the house they do not constitute exempt development having regard to the conditions and limitations for Class 3 development. However, this consideration is not of relevance if it is established that the works are not exempt having regard to sections 4 (1) (h) and 57(1) of the Act.

Environmental Impact Assessment Screening.

- 4.10. Having regard to the nature of the proposed development and its location in a serviced urban area, removed from any sensitive locations or features, there is no real likelihood of significant effects on the environment. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

Appropriate Assessment Screening.

- 4.11. Having regard to the nature of the proposed development and, to the serviced inner urban location, no Appropriate Assessment issues proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

4.12. Recommendation

In view of the foregoing, it is recommended that the Question be decided as set out in the draft order set out below.

5.0 Draft Order.

WHEREAS a question has arisen as to whether:

1. The refurbishment of the 4 existing windows to the front of the house at the main entrance (ground floor) level and the first-floor level,
2. The refurbishment of the 3 existing windows to the rear of the house at the main entrance (ground floor) level and the first floor and attic levels, including repairs and/or renewal of the patent reveals,
3. The fitting of draught restricting weather seals to the windows described in 1 or 2 above to improve comfort, thermal performance and reduce energy consumption,
4. The fitting of restrictors to the windows described in 1 and 2 above to improve safety and,
5. Re-landscaping the front garden, without making any changes or Works to the existing railings, to provide a gently sloping path to the Lower ground level for buggies and bicycles: -

Is or is not development and is or is not exempted development:

AND WHEREAS Conor Power and Lorraine Mulligan requested a Declaration on this question from Dublin City Council and the said City Council issued a declaration on October, 2019 stating that:

3. The refurbishment of the 4 existing windows to the front of the house at the main entrance (ground floor) level and the first-floor level.
4. The refurbishment of the 3 existing windows to the rear of the house at the main entrance (ground floor) level and the first floor and attic levels, including repairs and/or renewal of the patent reveals
3. The fitting of draught restricting weather seals to the windows described in 1 or 2 above to improve comfort, thermal performance and reduce energy consumption.
4. The fitting of restrictors to the windows described in 1 and 2 above to

improve safety.

is development and is exempted development:

and that re-landscaping the front garden, without making any changes or works to the existing railings; to provide a gently sloping path to the lower ground level for baby buggies and bicycles.

is development and is not exempt development.

AND WHEREAS Conor Power and Lorraine Mulligan Referred this Declaration for review to An Bord Pleanála on 13th November, 2019

AND WHEREAS An Bord Pleanála has concluded that:

1. The refurbishment of the 4 existing windows to the front of the house at the main entrance (ground floor) level and the first-floor level.
2. The refurbishment of the 3 existing windows to the rear of the house at the main entrance (ground floor) level and the first floor and attic levels, including repairs and/or renewal of the patent reveals
3. The fitting of draught restricting weather seals to the windows described in 1 or 2 above to improve comfort, thermal performance and reduce energy consumption.
4. The fitting of restrictors to the windows described in 1 and 2 above to improve safety.

at No 5 Dartmouth Square, a protected structure is development and is exempted development:

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 of the Planning and Development Act, 2000 as amended, hereby decides that these said works are development and are exempted development:

AND WHEREAS An Bord Pleanála has concluded that:

Re-landscaping the front garden, without making any changes or works to the existing railings; to provide a gently sloping path to the lower ground level for baby buggies and bicycles at No 5 Dartmouth Square, a protected structure are development and are not exempt development

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 of the Planning and Development Act, 2000 as amended, hereby decides that these said works are development and are not exempted development

Jane Dennehy
Senior Planning Inspector
3rd June, 2020.

Appendix 1. Relevant Legislative Provisions.

Planning and Development Acts, 2000- (as amended)

Section 2 (1)

“works” are defined in this section as including 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.

“use” is defined as in relation to land, does not include the use of the land by the carrying out of any works thereon.

“protected structure” means (a) a structure, or (b) a specified part of a structure which is included in a record of protected structures, and where the record so indicates, includes any specified feature which is within the attendant grounds of the structure and which would not otherwise be included in this definition.

Section 3 (1)

“Development” is defined as follows: -

Development means except where the context otherwise requires, the carrying out of any works on, 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 of neighbouring structures.

(j) development consisting of the use of any structure or other land within the curtilage of a house for any purpose incidental to the enjoyment of the house as such.

Section 57 (1)

Notwithstanding section 4(1)(a),(h), (i),(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 –

the structure, or

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

In addition to the specified exemptions in the Act, Section 4(2) provides that the Minister may by regulations provide for any class of development being exempted development. The Planning and Development Regulations 2001 apply.

Planning and Development Regulations 2001 – 2019.

Class 3. Part 1, Schedule 2.

“The construction, erections or placing within the curtilage of a house of any tent, awning, shade or other object, greenhouse, garage, store, shed or other similar structure.

(Conditions and Limitations 1.)

“No structure shall be constructed, erected or placed forward of the front wall of a house.”