



An
Bord
Pleanála

Inspector's Report ABP306105-19

Development

Protected Structure, whether the replacement of a rooflight is development and whether or not it is exempted development.

Location

68 Brighton Road, Rathgar, Dublin 6.

Referrer

Mary Carty.

Owner/Occupier

Mary Carty.

Date of Site Inspection

Inspector

Paul Caprani.

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1.0 Introduction

A question has arisen pursuant to Section 5 of the Planning and Development Act as to whether or not the replacement of a rooflight on the roof of a protected structure is or is not development or is or is not exempted development. The referrer sought a declaration from Dublin City Council. The Council determined that the provision of a rooflight constituted development that was not exempted development. Under the provisions of Section 5(3) of the Act the referrer has sought a declaration from An Bord Pleanála in relation to the same matter.

2.0 Site Location and Description

- 2.1. The subject referral is located on the west side of Brighton Road in the inner suburban area of Rathgar c.5 kilometres south of Dublin City Centre. No. 68 forms part of a pair of semi-detached redbrick dwellings located c.100 metres south of the junction between Brighton Road and Garville Avenue. The house is a two-storey redbrick structure with a pitched roof and recessed front door. According to the information contained on file the house dates from the late Victorian period c.1890. A single small rooflight is located on the front pitch of the roof. The rooflight serves a small study in the attic. The houses are listed on Dublin City Council's record of protected structures.

3.0 The Question

- 3.1. A question has arisen as to whether or not the insertion of a small rooflight into the front of the roof slope of a protected structure is or is not development and if it is development whether or not such development constitutes exempted development under planning legislation.

4.0 Planning Authority's Decision

- 4.1. A declaration under the provisions of Section 5 was submitted to Dublin City Council on 14th October, 2019. It was accompanied by a report by Michael J. Reynolds,

Planning and Planning Conservation Consultant. It states that the proposal should be considered under the provisions of Section 4(1)(h) and Section 57(1) of the 2000 Act. The report concludes that the rooflight does not materially affect the character of either the structure or any element of the structure. The applicant also submits that the rooflight is in fact a reinsertion of a feature which previously existed in the front slope. It is concluded that the proposal would not materially affect the character of either the structure or any element of the structure which contributes to its special architectural, historical or other interest. Furthermore, it is contended that the rooflight does not materially alter the appearance of the structure or render it inconsistent with other neighbouring structures. On this basis it is stated that the proposal constitutes development which is exempted development.

- 4.2. The Dublin City Council planner's report prepared on foot of the Section 5 application notes that, while the applicant submits that the inserted rooflight is in fact a reinsertion of a feature which previously existed in the front slope, the applicant has not provided any historical or photographic evidence as to where the rooflight was originally located and when it was covered over etc. It is noted that the rooflight serves part of an attic study room.
- 4.3. Reference is made in the report to the Architectural Heritage Protection Guidelines for Planning Authorities and while it is acknowledged that new rooflights and dormers on minor or concealed slopes may be considered acceptable in some cases, the insertion of the new rooflight into the principle front slope would constitute a material alteration of the character of the protected structure and would therefore be considered development which is not exempted development. On this basis, Dublin City Council concluded that the development would not come within the meaning of Section 4(1)(h) and Section 57 of the Planning and Development Act 2000 (as amended) and the proposed development would materially affect the character of the protected structure and would therefore require planning permission.

5.0 Referral to An Bord Pleanála

- 5.1. The referral was made by Fitzsimon Doyle and Associates and by Conservation Planning Consultant Mr. Michael Reynolds on behalf of the owner / occupier of the building. The referral is summarised below.

- 5.2. The submission provides background information on the subject site. It notes that the site forms part of a pair of semi-detached Victorian houses dating from c.1890. It notes that the site has the benefit of planning permission under Reg. Ref. 3033/14 in respect of a large extension to the rear as well as converting the roofspace and other alterations. On this basis it is argued that the existing structure is significantly modified and when Reg. Ref. 3033/14 was being implemented, it was discovered that there had been a rooflight in the roof of No. 68 that had been slated over at some point and that the original frame had partially been retained within the roof structure. However, this would not have been evident from the external appearance of the building. The original rooflight was lodged where the new rooflight has been inserted in order to provide roof ventilation. It is stated that this rooflight was carefully removed and is available for inspection on site.
- 5.3. It is argued that the applicant considered that the replacing of the former rooflight by a similar sized one would not materially affect the character of the structure either externally or internally. On this basis, it was considered that the applicant was not obliged to seek a declaration either under Section 5 or under Section 57 of the Act in order to replace the rooflight in question.
- 5.4. It is noted that a large number of Victorian structures, including No. 68 Brighton Road, have had their interiors specifically excluded from the Record of Protected Structures. Full details of the complete list of the houses whose interiors are excluded from the 2005 – 2011 Draft Plan are contained in an appendix to the referral.¹ There is plenty of evidence and precedent for stating that modern extensions to protected structures should be excluded from the RPS. On this basis it could be argued that the extension to No. 68 including the roof space extension should be excluded from the RPS. It is the referrer's opinion that No. 68 Brighton Road would be classed as being only of local interest under the classification set out for the National Inventory of Architecture.
- 5.5. It could be reasonably argued in accordance with Departmental Conservation Guidelines that windows which have been blocked up usually with masonry, that such windows should be re-opened with the reinsertion of the window to match the original.

¹ The Board will note that the Plan referred to in the referral is not the current Dublin City Development Plan.

- 5.6. It should also be noted that in the case of the planning authority's decision, the report was prepared by a conservation official and not a planning official. Reference is made to *Illium Properties Limited -v- Dublin City Council* [2002/3740P]. This High Court judgement quashed the decision of Dublin City Council on the basis (amongst other reasons) that the Conservation Officer was considered not to have a planning function or expertise in planning matters. It is argued in the case of the current referral that a Conservation Officer is not the appropriate officer to decide development control issues.
- 5.7. Reference is also made to *Dublin Corporation -v- Bentham*, July 1992 where the High Court held that a listed building was entitled to avail of similar existing features which existed in buildings in the vicinity. Appendix 2 of the referral shows that there are numerous other buildings on Brighton Road which are protected structures and incorporate rooflights in the front slopes of the roof.
- 5.8. While a photograph does not appear to exist of the previous rooflight, the planning authority was informed that the remains of the rooflight could be inspected on site. It is most unfair and incorrect for the planning authority to dismiss this available evidence just because there is no photographic evidence.
- 5.9. By way of conclusion it is stated that the rooflight is relatively insignificant given the expanse of the roof within which it is located. If the building in question was not a protected structure, it is suggested that the subject rooflight would be deemed to be exempted development. It is noted that a number of State-owned structures incorporate rooflights. Finally, it is argued that the Conservation Guidelines are not a legal interpretation of the Planning Acts.

6.0 Response from Dublin City Council

- 6.1. It is stated that the Conservation Unit within Dublin City Council's Planning and Property Development Section is an integrated multi-disciplinary team comprising of Architectural Conservation Officers and Planning Officers. It is this section of Dublin City Council that deals with Section 5 applications relating to protected structures. The merits of current referral were considered by both Conservation Officers and Planners. In the case of No. 65 Brighton Road, it is stated that the entire building is protected.

6.2. The response refers to Section 2(1) of the Act and in particular the definition therein in relation to 'structure'. Reference is also made to Section 57(2) of the Act. It is noted that no request for a declaration under Section 57 of the Act has been submitted by the owner/applicant at any time since the introduction of the 2000 Act. The Section 5 Declaration process is principally aimed at modest works, maintenance and repairs in order to assist owners and occupiers undertake the repair, maintenance and non-material modification of these structures. In this instance the Section 5 Declaration application which involves the installation of a rooflight in the front slope of the roof was not considered to be exempted development having regard to those statutory guidelines and Sections 4(1)(h) and 57 of the Act. Insufficient evidence in the form of old photographs and drawings has been provided to indicate that the rooflight formed part of the original structure. Having regard to the Architectural Heritage Protection Guidelines, together with the statutory provisions referred to above, it is the planning authority's opinion that the insertion of a rooflight into the principle front slope would comprise material alterations to the protected structure and would materially affect the character of the said structure and therefore would not constitute exempted development under the provisions of Section 4(1)(h) or Section 57 of the Act.

7.0 Legislative Provisions

7.1. Planning and Development Act 2000

7.1.1. Section 2 – definitions

"Protected Structure" means

- (a) a structure or
- (b) a specified part of the structure, which is included in the Record of Protected Structures, and where that structure so indicates, includes a specified feature which is in the attendant grounds of the structure and would not be otherwise included in this definition.

"Structure" means any building, structure, excavation or other thing constructed or made on, in or under any land, part of any structure so defined and

- (a) where the context so admits, includes the land on, in or under which the structure is situate and
- (b) in relation to protected structures or proposed protected structures includes
 - (i) the interior of the structure,
 - (ii) the land lying within the curtilage of the structure,
 - (iii) any other structures lying within that curtilage and their interiors, and
 - (iv) all works and features which form part of the interior or exterior of the structure or structures referred to in sub-paragraph (i) or (iii).

“Works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and in relation to a protected structure or proposed protected structure includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or any other material to or from the surfaces of the interior or exterior of the structure.

- 7.1.2. Section 3(1) – In this Act “*Development*” means except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change of use of any structures or other land.
- 7.1.3. Section 4(1) of the Act relates to exempted development. Section 4(1)(h) relates to development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works that affect only the interior of the structure or 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.
- 7.1.4. Section 57 of the Act specifically relates to works affecting the character of a protected structure or proposed protected structures.
- 7.1.5. Section 57(1) states ‘that notwithstanding Sections 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 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.

- 7.1.6. An owner or occupier of a protected structure may make a written request to the planning authority, within whose functional area that structure is situated, to issue a declaration as to what type of works it considers would or would not materially affect the character of the structure or any element, referred to in subsection (1)(b) of that structure.

8.0 Assessment

8.1. Development

- 8.1.1. The first question which the Board must determine is whether or not the current application before it constitutes 'works' as defined in the Act. Works are defined in Section 2 as any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and in relation to a protected structure of proposed protected structure includes any act or operation involving the removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of the structure. It can be reasonably concluded based on the above definition that the insertion of a rooflight into the front slope of a roof pitch constitutes an operation of construction and also constitutes an alteration to the building in question. The insertion of a rooflight into the said roof therefore constitutes 'works' and by extension constitutes 'development' under the provisions of Section 3 of the Act.

8.2. The Case for Exemption

- 8.2.1. The next question which the Board must determine is whether or not the works undertaken would constitute exempted development under the provisions of the Act.
- 8.2.2. Section 57(1) of the Act states that, notwithstanding various sections set out under Section 4 of the Act, the carrying out of works to a protected structure, or a proposed protected structure, shall be exempted development only if the 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.
- 8.2.3. No. 68 Brighton Road dates from the late 19th century and is considered to be of appropriate architectural/historical merit to warrant its inclusion in the Record of

Protected Structures listed in the Dublin City Development Plan. Of particular importance in my opinion is the fact that No. 68 forms part of a pair of identical semi-detached Victorian style residential dwellings. It is acknowledged that there are a variety of building styles along Brighton Road including a single-storey dwelling to the immediate north of the referral site. Nevertheless, the dwellings in question comprise of a uniformed and symmetrical pair of aesthetically pleasing Victorian style residential dwellings. Both buildings incorporate similar entrances, similar fenestration arrangements, roof and chimney profiles and external finishes which includes the incorporation of a string course along the front elevation of the pair of dwellings at ground floor level. This is an important consideration in my view in assessing whether or not the insertion of a rooflight within the front roof pitch would constitute works which would materially affect the character of the building/buildings.

8.2.4. I fully accept the referrer's contention that there are numerous buildings along Brighton Road including buildings directly opposite the site which are also protected structures and incorporate velux windows/rooflights on the front roof pitch. However, having regard to the existing symmetry and architectural uniformity of No. 68 and 69 Brighton Road, I would consider that the insertion of a rooflight within the roof pitch of one of the said dwellings has altered the symmetry balance and uniformity in the architectural character of the pair of semi-detached Victorian dwellings. It is apparent from the information contained on file and the photographs attached to my site inspection that No. 69 does not incorporate any rooflights on the front roof pitch of the dwelling. The incorporation of a rooflight on the subject site on the prominent and highly visible front slope of the roof pitch in my view materially alters the character of the building particularly in the context of the adjoining dwelling to the north. I would therefore agree with Dublin City Council's conclusion that the proposed development would not come within the meaning of either Section 4(1)(h) or Section 57(1) of the Planning and Development Act 2000 and that the proposal would materially affect the character of the protected structure.

8.2.5. In support of this contention I would also refer the Board to the Architectural Heritage Protection Guidelines. Section 4.12.3(b) specifically referred to the fitting or removal of rooflights as works which may alter the character of the exterior of a building (protected structure). Section 17.15.4 of the said Guidelines note that works including the replacement of doors, windows and rooflights should be carefully

assessed for the material and visual impact on the structure. Section 9.3.3 also notes that any proposals that involve the removal, partial removal or alteration of the roof cladding materials of a protected structure will require 'careful scrutiny'. The insertion of large areas of glazing or numbers of openable rooflights in the prominent slopes of roofs is generally not appropriate. It is clear from the above that the guidelines in question that the insertion of rooflights are in general not advisable.

- 8.2.6. The referral suggests that there was an original rooflight on the front slope of the roof of the dwellinghouse and this was discovered during the alteration and extension works undertaken as part of a previous planning permission under 3033/14. The referral suggests that the original casing of the rooflight is available for inspection should the Board deem it appropriate to inspect details of the said original frame.
- 8.2.7. I note that a photograph of the said frame is contained in the submission to Dublin City Council and is also attached as a photograph to the submission to the Board. No information however has been provided which would indicate that the said rooflight was part of the original structure. The rooflight in question could have been inserted at a later date and therefore does not form part of the Victorian structure. I further note that no such rooflight is apparent on the adjoining dwellinghouse which to my mind would suggest that the rooflight may not have formed part of an original feature of the dwellinghouses in question. In the absence of photographic evidence showing the rooflight in situ on the roof profile or indeed architectural drawings relating to the original house I cannot conclude beyond reasonable doubt that the rooflight in question is a reinstatement of an original feature associated with the dwellinghouse.
- 8.2.8. Finally, the referral submission to the Board suggests that the decision of Dublin City Council was made by a Conservation Officer in the absence of any input from a professional planner. It is suggested based on case law that it is inappropriate that a decision under the provisions of the Planning Acts would be made by a non-planner in this case a Conservation Officer. Dublin City Council's response to the referral makes it clear that the decision in respect of the referral in question was made by the Conservation Unit which is an integrated multi-disciplinary team comprising of architectural conservation areas and planners. It is stated that the current Section 5 Declaration application was considered by both an architectural conservation officer and a senior planner. I note that this assertion is supported by the original Dublin

City Council report on the said declaration. I note that Paraic Fallon a senior planner states that he had read the declaration on the above property and agreed with the recommendation made on foot of the report prepared. It is clear therefore that there was a planning input in respect of the decision made. The referral relates to a protected structure and therefore the input of a Conservation Officer is appropriate. In the case of a normal planning application it would not be unusual or indeed inappropriate to seek the input of a Conservation Officer.

9.0 Conclusions and Recommendation

Arising from my assessment above I consider that the insertion of a small rooflight on the front pitch of a roof at No. 68 Brighton Road, which is included on the Record of Protected Structures contained in the Dublin City Development Plan 2017-2023 constitutes 'works' as defined under the Act. I further consider that the works undertaken materially affect the character of the protected structure and therefore the works constitute development which is not exempted development. I would therefore recommend that the Board issue an order as follows:

WHEREAS a question has arisen as to whether or not the reinsertion of a small rooflight on the front slope of No. 68 Brighton Road is or is not development or is or is not exempted development.

AND WHEREAS the said question was referred to Dublin City Council by Mary Carty on the 14th day of October, 2019.

AND WHEREAS Dublin City Council determined that the proposed development is not exempted development from the requirements to obtain planning permission.

AND WHEREAS the said question was referred to An Bord Pleanála by Mary Carty on 5th day of December, 2019.

AND WHEREAS An Bord Pleanála in considering this referral had particular regard to Sections 2, 3, 4 and 57 of the Planning and Development Act 2000, as amended.

AND WHEREAS An Bord Pleanála has concluded that the insertion of a rooflight on the front pitch of No. 68 Brighton Road constitutes development that would materially affect the character of a protected structure and therefore constitutes development that is not exempted development.

Paul Caprani,
Senior Planning Inspector.

25th May, 2020.