



An
Bord
Pleanála

Inspector's Report ABP-307417-20

Question

Whether amendments to an existing hotel at basement and ground floor levels resulting in 10 no. additional hotel bedrooms with ancillary uses is or is not development or is or is not exempted development.

Location

Hilton Dublin Kilmainham Hotel, South Circular Road, Dublin D08 XAK3.

Declaration

Planning Authority	Dublin City Council South
Planning Authority Reg. Ref.	0122/20
Applicant for Declaration	Thornmont Ltd
Planning Authority Decision	Split Decision

Referral

Referred by	Thornmont Ltd
Owner/ Occupier	Thornmont Ltd

Date of Site Inspection

No inspection

Inspector

Colin McBride

1.0 Site Location and Description

- 1.1. The appeal site is located in Kilmainham to the west of the city centre. The appeal site is located at the junction of the Inchicore Road (R839) and the South Circular Road. The appeal site is occupied by a six-storey structure in use as hotel (Hilton Hotel).

2.0 The Question

- 2.1. Whether amendments to an existing hotel at basement and ground floor levels resulting in 10 no. additional bedrooms with ancillary uses is or is not development or is or is not exempted development.

3.0 Planning Authority Declaration

3.1. Declaration

- 3.2. On the 26th of May 2020 Dublin County Council determined that amendments to an existing hotel at basement and ground floor levels resulting in 10 no. additional bedrooms with ancillary uses is development and is not exempted development. It was also determined that the alterations to the eastern (rearrangement of spandrel panels) and western elevation (two new windows) is development and is exempted development.

3.3. Planning Authority Reports

3.3.1. Planning Reports

Planning report (25/05/20): It was determined that the increase in 10 bedrooms constitute an intensification of use of the hotel and would constitute an intensification of use and is a material change of use from office to residential under Part 4 Article 10 of the use Classes under the Planning and Development Regulations. The works in question are not exempt. The external alterations were considered to come under Section 4(1)(h) of the Planning Act.

4.0 Planning History

4.1 No planning history.

5.0 Policy Context

5.1. Development Plan

The relevant Development Plan is the Dublin City Development Plan 2016-2022. The appeal site is zoned Z6 with a stated 'to provide for the creation and protection of enterprise and facilitate opportunities for employment creation'.

5.2. Natural Heritage Designations

5.2.1 None in the vicinity.

6.0 The Referral

6.1. Referrer's Case

A referral has been submitted by Tom Phillips & Associates on behalf of Thornmont Limited.

- The referrer refutes the assessment of the referral and the 6 no. issues raised in such.
- It is noted that the increase in bedroom numbers (an 8% increase over permitted levels) does not itself indicate any form of intensification of use in planning terms.
- It is noted that any decrease in the level of ancillary uses such as office and meeting rooms especially at ground floor level would have no new planning impact.

- The Council argument about increased capacity in restaurants and bars is not relevant as the reduced level of conference and meeting room facilities would result in a reduction in demand in such facilities.
- In regards to parking impact it is noted that the 10 no, additional rooms will mainly generate taxi trips that are distributed during the day with it noted there is sufficient capacity within the hotel for parking.
- The unanimated street frontage is not a consideration unless deemed not to consistent with section 4(1)(h) of the Planning and Development Act, 2000.
- All uses remain part of the existing hotel and there is no change of use proposed. The referrer notes that the proposal is neither an intensification of use or a material change of use.
- The referrer notes case law and the requirement to demonstrate that the intensification of activity amounted to a change of use that was material.
- The referrer has submitted information to demonstrate that there will be no material impacts (Transport Statement).

6.2. Planning Authority Response

No response.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

Section 2(1)

“Works” includes any act or operation of construction, excavation, demolition, extension, alterations, repair or renewal and

Section 3 provides definition of Development.

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 in the use of any structures or other land.

Section 4 provides for Exempted Development

4(1) The following shall be exempted developments for the purposes of this 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.

4(2) (a) The minister may by regulations provide for any class of development to be exempted development for the purposes of this Act

7.2. **Planning and Development Regulations, 2001**

Article 6(1) states-

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) states-

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,

Article 10(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 any 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.

7.3. **Case Law**

Galway County Council v Lackragh, a case relating to intensification of use with a determination that the Planning Authority had to prove that the intensification of activity amounted to a material change of use.

8.0 **Assessment**

8.1. **Is or is not development**

8.1.1 Firstly the question is whether the works in question constitute development. The definition of works under Section 2 of the Act includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal. The definition of 'development' under Section 3 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. The proposal entails alteration of meeting rooms to provide for two new office spaces at basement level and the provision 10 no. bedrooms in lieu of meeting rooms and offices and a revised reception layout. There is also a rearrangement of spandrel panels on the ground floor eastern elevation to reflect new internal partition walls and the provision of two new windows on the western elevation. The list of works that are entailed would require a level of construction on land and I would conclude that this is development in accordance with Section 3 of the Planning and Development Act, 2000 (as amended).

8.1.2 On the issue of whether the works in question is material change of use, which the Planning Authority considered to be case, the alteration of the internal layout is to provide 10 no. additional bedrooms at ground floor level in lieu of the permitted layout which provides for a number of meeting rooms and office spaces. The alterations include an amended reception layout. At basement level works entail a reduction in the size of two meeting rooms to facilitate the provision of two no. office spaces. I would note that works do not entail a change of use as the structure will still be in use as a hotel, which is the permitted use (note planning history). The 10 no. bedrooms and office space proposed in the works are ancillary to the existing and permitted use and there is no change of use occurring at this location.

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

8.2.1. The Council determined that amendments to an existing hotel at basement and ground floor levels resulting in 10 no. additional bedrooms with ancillary uses is development and is not exempted development. It was also determined that the alterations to the eastern (rearrangement of spandrel panels) and western elevation (two new windows) is development and is exempted development (Under the provisions of Section 4(1)(h) of the Planning and Development Act). The provision of additional bedrooms at ground floor level and office space at basement level was determined to be a material change of use in that the change is from office to bedrooms and the alterations are an intensification of use with material planning impact as a result of the provision of 10 additional bedrooms. The referrer has argued to the contrary in this regard as outlined above.

8.2.2. As noted above the works in question are not a change of use the with the permitted use of the structure being a hotel and no alteration to this use, the works in question are a reconfiguration of the existing floor space for use as different type of guest accommodation (meeting rooms to bedrooms). Under Article 10(1) of the Planning and Development Regulations, 2001 (as amended) 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 unless provided that the

development, if carried out would meet four criteria (outlined above). In this case the works in question would be exempted development under the provisions of Article 10(1) as none of the criteria apply in this case.

8.2.3. The issue of intensification of use and whether such is a material change use is relevant. The Council in their assessment have argued that the provision of 10 no. additional bedrooms would be an intensity of use whereas the referrer notes that it is not including providing a traffic statement to demonstrate that there will be no additional traffic generation. The referrer notes that the meeting rooms generate traffic in their own right (conferences/events) and that the change of such to bedrooms will not entail an increases in traffic or a material planning impact.

8.2.4 As noted above the alterations to provide 10 additional bedrooms is not a change of use as the permitted use of the structure is not changing. The question arises whether the works in question are a material change in use in terms of intensity of activity. I would be off the view that the alterations would be unlikely to have a material impact in regards to traffic and would not constitute an intensification of use with any material planning impact. I would consider that the nature of the alteration are minor and unlikely to have any discernible planning impact over and above the existing operation of the hotel. I would also note that the alterations to the eastern (rearrangement of spandrel panels) and western elevation (two new windows) is development and is exempted development under the provisions of Section 4(1)(h) of the Planning and Development Act) as the changes are minor in nature and do change the external appearance significantly so as to render it inconsistent with itself.

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 amendments to an existing hotel at basement and ground floor levels resulting in 10 no. additional bedrooms with ancillary uses and alterations to the eastern and western elevations is or is not development or is or is not exempted development:

AND WHEREAS Thornmont Ltd requested a declaration on this question from Dublin City Council and the Council issued a declaration on the 26th day of May, 2016 stating that the alterations to the internal layout to provide 10 additional bedrooms was development and was not exempted development and that the external alterations was development and was exempted development under the provisions of Section 4(1)(h) of the Planning and Development Act, 2001 (as amended):

AND WHEREAS referred this declaration for review to An Bord Pleanála on the 19th day of June, 2020:

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

- a) Sections 2, 3 and 4 of the Planning and Development Act, 2000 (as amended)
- b) articles 5, 6, 9, and 10 of the Planning and Development Regulations, 2001 (as amended), and
- c) the submissions of the parties to the reference in relation to the uses described in the referral.

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The amendments to an existing hotel at basement and ground floor levels resulting in 10 no. additional bedrooms with ancillary uses is

development as defined under Section 3 of the Planning and Development Act, 2000 (as amended).

- (b) The amendments do not constitute a material change of use and would be exempted development under Article 10(1) of the Planning and Development regulations, 2001 (as amended).
- (c) The alterations to the external elevations would come under the provision of Section 4(1)(h) of the Planning and Development Act, 2001 (as amended).
- (d) The amendments would not constitute an intensification of use or have any material planning impacts over and above the existing operation of the permitted use.

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 amendments to an existing hotel at basement and ground floor levels resulting in 10 no. additional bedrooms with ancillary uses and alteration to the eastern and western elevations is development and is exempted development.

Colin McBride
Planning Inspector

12th October 2020