



An
Bord
Pleanála

Inspector's Report ABP-310281-21.

Question

1. Whether the internal alteration of a 5 bedroom accommodation for a maximum of 11 guests to a 9 bedroom accommodation for a maximum of 18 guests is or is not development or is or is not exempted development. AND
2. Whether the change of use from short term lettings in excess of 15 days duration per letting to a short-term letting for any period not exceeding 14 days, is or is not development and if development, whether it is exempted development or not.

Location

Lamplighters Pub, 79 The Coombe / 1
Brabazon Street, Dublin 8.

Declaration

Planning Authority

Dublin City Council South

Planning Authority Reg. Ref.

0103/21.

Applicant for Declaration

Andreas Bruggener.

Planning Authority Decision

Split decision with question 1 deemed exempted development and question 2 is not exempted development.

Referral

Referred by

Andreas Bruggener.

Owner/ Occupier

Creative Real Estate Ltd.

Observer(s)

None.

Date of Site Inspection

14/09/2021.

Inspector

A. Considine.

1.0 Site Location and Description

- 1.1. The subject site comprises a corner building which has frontage onto the western side of Brabazon Street, which runs in a north – south direction, and southern side of The Coombe, which runs in an east – west direction, in the southern area of Dublin City Centre. The site is occupied by a licenced premises which occupies the ground floor area of the building. The Victorian building rises to three storeys and I note that while it is not a protected structure, it is included in the NIAH, reg no. 50080647.
- 1.2. The main entrance to the bar area is located on the Coombe, and the adjacent properties rise to the three storeys in height, with commercial uses on the ground floor and residential in the upper floors. The houses and building to the north of The Coombe comprise generally two storey terraced houses. The buildings on Brabazon Street generally rise to three storeys in height, increasing to four, five and six storeys to the south at The Timber Yard.
- 1.3. Immediately adjacent to the subject building, and fronting onto Brabazon Street, is the referrers property. The subject referral site runs to the rear of the referrers property. The Board will note that there is extensive history associated with this site.

2.0 The Question

- 2.1.1. The application relates to two questions with regard to the use of the subject building as follows:-
 1. Whether the internal alteration of a 5-bedroom accommodation for a maximum of 11 guests to a 9-bedroom accommodation for a maximum of 18 guests is or is not development or is or is not exempted development. AND
 2. Whether the change of use from short term lettings in excess of 15 days duration per letting to a short-term letting for any period not exceeding 14 days, is or is not development and if development, whether it is exempted development or not.

3.0 Planning Authority Declaration

3.1 Declaration

On the 14th of April 2021, Dublin City Council issued a declaration with regard to the questions posed and declared that:

1. The internal alteration of a 5-bedroom accommodation for a maximum of 11 guests to a 9 bedroom accommodation for a maximum of 18 guests is exempted development. AND
2. The change of use from short term lettings in excess of 15 days duration per letting to a short-term letting for any period not exceeding 14 days, is development and is not exempted development.

3.2 Planning Authority Reports

3.2.1 Planning Report

The Planning Report, prepared to address the questions posed, sets out the planning history for the site as well as the statutory provisions applicable to the site. The report also includes a background to the Section 5 request from the third party, summarised as follows:

- The alteration with the aim of accommodating a further 7 guest represents a 64% increase in guest capacity.
- The referrer indicates that the planning status of the rooms is private residence or at most short-term lettings in excess of 15 days duration.
- A change to short-term letting for any period not exceeding 14 days will mean an intensification of use of the public house and an intensification of nuisance to their property.
- The only access to the accommodation is through the entrance to 1 Brabazon Street which is located under their first-floor bedroom window and stairwell runs behind this bedroom.

Comments from the owner are summarised as follows:

- The applicant indicates single rooms to be used as double incorrectly.

- Section 4(1)(h) of the Planning and Development Act (as amended) entitles the owner to improve and alter the structure to provide modern day accommodation.
- The time period referred to – format AirB&B is no longer used.
- While legislation provides that anyone can ask a question under Section 5, the point of this query is moot and a waste of time for the authority and owner.
- With regard to the question of lettings for less than 14 days, the applicant refers to information from 2018. Further up to date information should be provided, otherwise the question is moot.
- The premises has an established use and occupies the same planning unit as it did on the introduction of the planning legislation in 1964 and has not been altered.
- The premises has been refurbished and modernised in recent years with no increase in areas or material intensification.
- Provision of short term rented accommodation in rooms is an established use and is not subject to any temporal restriction on the duration of letting.

Planning Officers Assessment:

- The report notes the recent Section 5 Declaration with regard to the continued use of accommodation at first and second floor level above the public house for short term lettings in excess of 15 days duration.
- DCC considered such lettings to be exempted development under Section 3A of the Act.
- In noting a previous Board decision in this regard, the Planning Officer noted the additional information submitted by the applicant which indicated that the above floors of the public house were occupied as a private residence (ABP-307112-20 (PA ref 0098/20) refers) was incorrect. The PA accepted that the upper floors were in use as short term lettings (PA ref: 2676/20 refers).

The report concludes that the proposed internal alterations would be unlikely to have a material impact in regard to traffic and would not constitute an intensification of use with any material planning impacts. As such, part 1 of the question posed is

considered to be constitute exempted development. With regard to the proposal to change the use of the rooms from short term lettings in excess of 15 days duration to short-term letting for any period not exceeding 14 days, the Planning Officers report concludes that planning considerations that are materially different to the planning considerations relating to the current use arise. The proposal would result in an intensification of use of the property and increase the extent of the frequency of comings and goings to and from the property by short term renters. As such, part 2 of the question posed is deemed to constitute a material change of use which does not come within the scope of the exemption provided for in Article 6(5)(a) of the Planning and Development Regulations 2001 as amended and by Article 3 of the Planning and Development Act 2000, Exempted Development (No. 2) Regulations 2019.

3.2.2. Other Technical Reports

None.

4.0 Planning History

4.1. There is a significant planning history relating to this site, including enforcements.

ABP ref: ABP-301303-18 (PA ref: 2008/18): Planning permission was granted, following a third-party appeal, for the re-positioning of front door to corner, modification and upgrading to front fascia, new signage, two new windows to side facing onto Brabazon Place and increasing windows by 200mm facing onto Coombe Road for additional light and all associated site works at The Lamplighter Pub, 79 The Coombe, Dublin.

PA ref. 2676/18: Planning permission refused for change of use of first and second floors over existing ground floor public house from private residence to boutique hostel. Also, extensions to existing first and second floors to rear over public house allowing for additional 4 new bedrooms with en-suite, also removal of existing roof to allow for new third floor penthouse which will consist of 4 new bedrooms, new lounge and kitchen. With reception area on first floor and all associated site works. The two reasons for refusal were:

1. Having regard to the nature and scale of the proposed development to accommodate a proposed 'boutique hostel', the lack of adequate information submitted regarding the nature of this hostel, the proximity of the first , second and third floor extensions to adjoining residential properties along Brabazon Street, it is considered that the proposed development would be seriously injurious to the residential amenities of properties in the vicinity, could lead to overshadowing, loss of daylight , excessive noise and general disturbance and would therefore be contrary to the proper planning and sustainable development of the area.
2. Having regard to the architectural significance of this building, and having regard to the removal of the roof and inappropriate addition at third floor level , it is considered that the proposed development would be an incongruous form of development at this important street corner, would be visually obtrusive and would seriously injure the residential and visual amenities of properties in the vicinity and would be contrary to the proper planning and sustainable development of the area.

ABP ref: ABP-307112-20 (PA ref: EXPP0098/20): Section 5 Declaration sought for:

1. Construction of a smoking/beer garden to rear of pub.
2. Use of upstairs rooms as student/short-term letting.
3. Raising of flat roof to rear by c.600mm and construction of a 2m high fence to create an outside amenity area.

DCC considered the above to be exempted development. The Board determined that the above was development and not exempted development.

PA ref: EXPP0444/20: Section 5 Declaration sought by the owner/occupier following the previous declaration of the Board, for 'whether the continued use of accommodation at first and second floor level above the Lamplighters Public House, for short term lettings in excess of 15 days duration per letting, is or is not development and if it is development, whether it is exempted development.

DCC decided, following the submission of information including sworn affidavits, that the continued use of the of accommodation at first and second floor level above the Lamplighters Public House, for short term lettings in excess of 15 days duration per letting, is exempted development as set out under Section 3A of the Planning and Development Act 2000 (as amended).

PA ref: 2977/20: Permission refused for the erection of an extension to the rear of the Lamplighters, at first and second floor level comprising 4 en-suite bedrooms. The reason for refusal was as follows:

- 1) Having regard to the nature and scale of the existing development which contains a public house and short term letting accommodation, it is considered that the proposed development to accommodate a further 4 ensuite bedrooms for short term lets would lead to overdevelopment of this restricted site due to the lack of private open space for these units, the inadequate nature of the communal facilities for these rooms in terms of common room/kitchen facilities and the lack of any bicycle parking. The proposal would therefore result in a substandard form of development and would seriously injure the residential amenity of the occupants of the proposed units and be contrary to the proper planning and sustainable development of the area.

5.0 Policy Context

5.1. Dublin City Development Plan 2016-2022

- 5.1.1. The site is located on lands zoned primarily for Z4: District Centres, where it is the stated object *“To provide for and improve mixed-services facilities”*. The site also includes a small area of land zoned for Z1, Sustainable Residential Neighbourhoods, where it is an objective *“To protect, provide and improve residential amenities”*. This zoning objective extends to the south of the site. The land to the north of the Coombe, is zoned for Z2, Residential Neighbourhoods (Conservation areas), where it is an objective *“To protect and/or improve the amenities of residential conservation areas”*.

- 5.1.2. The Liberties Local Area Plan 2009, and adopted again in April 2014, extended to May 2020, identifies that the site lies within a Strategic Development and Regeneration Area, SDRA 16 Liberties and Newmarket Square.

5.2. **Natural Heritage Designations**

The subject site is not located within any designated site. The closest site is the South Dublin Bay and River Tolka Estuary SPA (Site Code: 004024) and South Dublin Bay SAC (Site Code: 000210) which are located approximately 3.9km and 4.3km to the east of the site.

6.0 **The Referral**

6.1. **Referrer's Case**

- 6.1.1. Mr. Bruggener applied to Dublin City Council for a Section 5 Declaration in respect of 2 questions relating to the internal alteration to the building which he considers will increase accommodation capacity, as well as the use of the upper floors of the Lamplighters Public House, 79 The Coomb / 1 Brabazon Street, Dublin 8 for short-term lettings under 14 days duration. The referrer is appealing the split decision made by Dublin City Council which considered that the internal alterations to the building was exempted development and that the change of duration of short-term lettings was not exempted development. The referrer considers that the internal alterations of a 5-bed accommodation for a max of 11 guests to a 9-bedroom accommodation for a maximum of 18 guests is a material intensification of use. It is further submitted that the internal alteration of a 5-bed accommodation to a 9 bed Guest House accommodation is a material change of use.
- 6.1.2. The Board will note that that referrers submission sets out the history of the planning issue with the use of the upstairs rooms and includes a suite of documentation and details relating to the property. The submission also notes the previous Board decision with regard to ABP-307112-20, which included a question relating to the use of the upper floor rooms, where it was determined that the works is development and is not exempted development.

- 6.1.3. The submission also notes the ongoing disputes, including legal and planning disputes, between the parties. The most recent refusal of planning permission relating to the site, which sought the erection of an extension to accommodate an additional 4 ensuite bedrooms at the property. The proposal was refused on the grounds of overdevelopment of the restricted site, resulting in a substandard form of development which would seriously injure the residential amenity of the occupants of the proposed units and be contrary to the proper planning and sustainable development of the area. The referrer submits that the intensification of use of the upstairs rooms leads to a loss of usability of his property and a loss of quality of life for the referrer and his tenants.
- 6.1.4. The referral also notes the Section 5 request by the property owner, PA ref: EXPP0444/20 refers, which again sought a declaration in relation to the use of the accommodation at first and second floor level of the building for short term lettings in excess of 15 days duration per letting. This declaration request included additional information in the form of sworn affidavits relating to the previous use of the upper floors of the building which were not available to the Board in the making of their previous Section 5 Declaration. DCC declared that the continued use of the of accommodation at first and second floor level above the Lamplighters Public House, for short term lettings in excess of 15 days duration per letting, is exempted development as set out under Section 3A of the Planning and Development Act 2000 (as amended). It is noted that the current referrer indicates that he was not provided an opportunity to comment on this Section 5 request. The submission to the Board also includes a commentary on each of the affidavits included in the previous S5 request.
- 6.1.5. This declaration is challenged on the grounds that:
- The internal alterations from a 4/5 bed accommodation for a max of 8/11 guests to a 9-bed accommodation for 18 guests is development and is not exempted development as it leads to an intensification of use.
 - The internal alterations also lead to an intensification of use by reducing the size of the individual bedrooms and communal facilities to a substandard form of development.

- The referrer agrees that the change of use from short term lettings in excess of 15 days duration to short term lettings not exceeding 14 days constitutes a material change of use as defined in the Planning and Development Act (as amended).
- It is submitted that the Fire Officer would first have to examine whether the existing access and escape routes are sufficient for the occupancy proposed.

6.2. Planning Authority Response

None

6.3. Owner/ occupier's response

The owners of the property, through their agent, submitted a response to the third-party referral noting their concerns in terms of the content of the submission. The submission is summarised as follows:

- The photographs submitted show the dismantling of an unauthorised spiral staircase erected by the third party over the subject property.
- The photographs submitted show an improvement of the historic building as recommended and supported by DCC under the Liberties Improvement Scheme.
- Since the previous determination by the Board in respect of the use of the accommodation on the first and second floor, the owners sought, and received, a specific use declaration from DCC. This declaration has not and cannot be challenged through this referral and grounds in that regard should be dismissed.
- The owners of the building have included a response in terms of the operation of the premises as opposed to the speculation of the referrer. Nobody other than the referrer has mentioned 18 guests, which is his own estimation.
- The referrers beliefs and opinions on several issues are not borne out by any reasonable measure in the context of actual operation of the accommodation.

- The referrer has attempted to insinuate an additional issue suggesting a 'proposed change of use' from 15 days to shorter periods, when that use is already established in historic terms.
- It is requested that the referral be dismissed based on the unfounded nature of allegations in the grounds of referral.
- It is considered that the referral is vexatious, without substance or probative foundation and should be dismissed under the provisions of section 138(1)(a)(i) and (ii) and possibly 138(1)(b)(i) and (ii).

The response includes a number of enclosures including a submission from the property owner refuting the factually incorrect information being repeated.

The property owners' submission response to each element of the referrers submission and ultimately concludes as follows:

- The property provides single occupancy rooms and have not and will not have 18 guests staying.
- The subdivision of the existing rooms was to provide private bathroom facilities for guests with the resulting reduction in bed spaces being reduced from 11 to 9.
- The owners are not currently using the premises for short term stays of less than 15 days. It is submitted however, that the owner feels it would be their right to under the Planning and Development Act given the established use of the premises. There should be no restrictions on the duration of stay.
- The premises was the subject of a Fire Safety Notice as part of the annual Licencing Renewal process. The Fire Officer has confirmed that the building is in compliance with the fire safety regulations.
- The internal works carried out come within the scope of Section 4(1)(h) of the Planning and Development Act, 2000 as amended and would not constitute a material change of use under Article 10(1) of the Act and is therefore exempted development.

6.4. Referrers Response to Owner/Occupier Response

- 6.4.1. The Referrer has sought to respond to the owner/occupiers response and refers to previous letters written by the owners agent. It is submitted that the only question in this referral is whether the internal alteration of a 5-bed accommodation for a max of 11 guests to 9 beds to accommodate a maximum of 18 guests needs the benefit of planning permission or not. The intention of this submission is to rebut the unfair impression created by the affidavits included with the owner/occupiers submission.
- 6.4.2. The response includes details of meetings and previous legal matters as well as ongoing legal disputes which are before the courts. Matters relating to a JR, filed by the owner/occupiers with regard to a previous Section 5 declaration of ABP (303117-18 refers) relating to the insertion of windows to the rear of the Referrers property are also noted.

6.5. Observers

None.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

- 7.1.1. Section 2 (1) of the 2000 Planning and Development Act states as follows:-

“In this Act, except where the context otherwise requires – ‘development’ has the meaning assigned to it by Section 3 ...”

- 7.1.2. In Section 2 (1) of the Act “works” are interpreted 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”.

- 7.1.3. Section 3 (1) of the 2000 Planning and Development Act states as follows:-

“In this Act, ‘development’ means, except where the context otherwise requires, the carrying out of works on, in, over or under land or the making of any material change in the use of any structures or other land.”

7.1.4. Section 3A of the P&D Act deals with short term lettings and states as follows:

3A(1) The use of a house or part of a house situated in a rent pressure zone for short term letting purposes is a material change in use of the house or part thereof, as the case may be.

‘short term letting’ means the letting of a house or part of a house for any period not exceeding 14 days, and includes a licence that permits the licensee to enter and reside in the house or part thereof for any such period in consideration of the making by any person (whether or not the licensee) of a payment or payments to the licensor.

7.1.5. Section 4(1) of the Planning and Development Act identifies what may be considered as exempted development for the purposes of the Act, and Section 4(1)(h) includes:

“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;”

7.1.6. Section 4(2)(a) of the Act states:

“The Minister may by regulations provide for any class of development to be exempted development for the purposes of this Act where he or she is of the opinion that –

- (i) By reason of the size, nature or limited effect on its surroundings, of development belonging to that class, the carrying out of such development would not offend against the principles of proper planning and sustainable development....

7.1.7. Section 4(2)(c) states:

“Regulations under this subsection may, in particular and without prejudice to the generality of paragraph (a), provide, in the case of structures or other land

used for a purpose of any specified class, for the use thereof for any other purpose being exempted development for the purposes of this Act.”

7.1.8. Section 5(1) of the Act states as follows:

“If any question arises as to what, in any particular case, is or is not development or is or is not exempted development within the meaning of this Act, any person may, on payment of the prescribed fee, request in writing from the relevant planning authority a declaration on that question, and that person shall provide to the planning authority any information necessary to enable the authority to make its decision on the matter”.

7.1.9. Section 5(3)(a) states:

“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 fee as may be prescribed, refer a declaration for review by the Board within 4 weeks of the date of the issuing of the declaration”.

7.1.10. Section 5(4) of the Act states as follows:

“Notwithstanding subsection (1), a planning authority may, on payment to the Board of such fee as may be prescribed, refer any question as to what, in any particular case, is or is not development or is or is not exempted development to be decided by the Board”.

7.1.11. Section 4(2) of the Act provides that the Minister, by regulations, provide for any class of development to be exempted development. The principal regulations made under this provision are the Planning and Development Regulations, 2001.

7.2. Planning and Development Regulations, 2001

7.2.1. Article 6(1) of the Planning & Development Regulations, 2001 as amended states as follows:-

“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.”

7.2.2. Article 6(5)(a) states:

- (a) Each of the following shall be exempted development:
 - (i) development consisting of the short term letting in a rent pressure zone of not more than 4 bedrooms in a house that is the principal private residence of the landlord or licensor concerned provided that –
 - (I) it is a condition of the short term letting that each bedroom that is the subject of the letting shall not be occupied by more than 4 persons,
and
 - (II) the development –
 - (A) does not contravene a condition attached to a permission granted in respect of the house under the Act, and
 - (B) is consistent with any use specified in any such permission;
 - (ii) development consisting of the short term letting in a rent pressure zone of a house that is the principal private residence of the landlord or licensor concerned provided that –
 - (I) the aggregate number of days during a year in which the house is the subject of short term lettings does not exceed 90 days,
and
 - (II) the development –
 - (A) does not contravene a condition attached to a permission granted in respect of the house under the Act, and
 - (B) is consistent with any use specified in any such permission;

7.2.3. Schedule 2, Part 1 of the Planning & Development Regulations deal with Exempted Development – General, while Schedule 2, Part 4 deals with Classes of Use and Class 6 is relevant in this instance. - Use as a residential club, a guest house or a hostel (other than a hostel where care is provided).

7.2.4. Article 9 of the Planning & Development Regulations deal with restrictions on exemption for developments to which article 6 relates and sets out a number of restrictions which would render development not exempt for the purposes of the Act.

7.2.5. Article 10 of the Regulations deals with changes of use and states as follows:

- (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 work 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 a 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 being specified in the said part of the said Schedule as a separate use,

7.2.6. Article 10(4) of the regulations relates to changes of use and states that:

Development consisting of the use of not more than 4 bedrooms in a house, where each bedroom is used for the accommodation of not more than 4 persons as overnight guest accommodation, shall be exempted development for the purposes of the Act, provided that such development would not contravene a condition attached to a permission under the Act or be inconsistent with any use specified or included in such a permission.

7.2.7. SI 235 of 2019 of the Planning and Development Act 2000 (Exempted development) (No 2) Regulations 2019 –

(5)(a) Each of the following shall be exempted development:

(i) development consisting of the short term letting in a rent pressure zone of not more than 4 bedrooms in a house that is the principal private residence of the landlord or licensor concerned provided that –

(i) It is a condition of the short term letting that each bedroom that is subject of the letting shall not be occupied by more than 4 persons,

And

(ii) The development –

(a) Does not contravene a condition attached to a permission granted in respect of the house under the Act, and

(b) Is consistent with any use specified in any such permission.

(ii) Development consisting of the short term letting in a rent pressure zone of a house that is the principal private residence of the landlord or licensor concerned provided that –

(i) The aggregate number of days during a year in which the house is the subject of short-term lettings does not exceed 90 days, and

(ii) The development –

(A) Does not contravene a condition attached to a permission granted in respect of the house under the Act, and

(B) Is consistent with any use specified in any such permission.

5(b) where a person proposes to undertake development to which paragraph (a) applies, he or she shall, not later than 2 weeks before the commencement of the development, notify the planning authority in whose functional area the proposed development will occur of the proposed development, or cause the planning authority to be so notified, in writing

“Principle private residence” means, in relation to a house that is the subject of a short term letting, a house in which the landlord or licensor concerned ordinarily resides;

‘rent pressure zone’ and ‘short term letting’ have the meanings assigned to them by section 3A (inserted by section 38 of the Residential Tenancies (amendment) Act 2019 of the Planning and Development Act 2000.

7.3. **Legal Challenges:**

- 7.3.1. The question of whether a change of use is a material one was addressed by Keane J in the case of **Monaghan County Council v Brogan [1987] I. R. 333**. He stated that the issues of relevance to the question are ...the matters which the planning authority would take into account in the event of a planning application being made for its use. If these matters are materially different (from the original use), then the nature of the use must equally have been materially different.’

7.4. **Precedent Referral Decisions**

Having regard to the information presented by all parties, it would appear that the rooms in the upper floors of the subject building are occupied for periods in excess of 15 days (the Board will note that the owner/occupier has indicated that they are let on an annual basis and not for periods of less than 15 days duration). The question posed relates to the use of these rooms for short-term lets between 1 - 14 days duration. As such, and having regard to the question posed, I consider the following referral decisions to be relevant:

- 7.4.1. **ABP Ref: RL3490:** Question as to whether the use of a residential apartment 1A, 505A Crown Alley Dublin, for short term holiday lettings is or is not development or is or is not exempted development. The Board determined that
- (a) The use of a residential apartment for short term holiday lettings, as described at Apartment 1A, 5-5A Crown Alley, Dublin Constitutes a change of use,
 - (b) The change of use to an apartment for short term holiday lettings, as described above, raises planning considerations that are materially

different to the planning considerations relating to the permitted use as a residential apartment. In particular,

- (i) the extent and frequency of coming and going to and from the apartment by short term renters and servicing staff,
 - (ii) associated concerns for other resident is in respect of security and general disturbance, and
 - (iii) the fully commercial nature of the activity.
- (c) The change of use constitutes; therefore, a material change of use and is development as defined in section 3 of the Planning and Development Act, 2000, and
- (d) Neither the Planning and Development Act 2000, as amended, or the planning and Development Regulations, 2001, as amended, provide any exemption in respect of such a material change of use.

7.4.2. **ABP Ref: RL3502:** Question as to whether the use of residential apartments as serviced apartments at Metro Apartment, Santry Cross, Ballymun Road is development or is not exempted development. The Board concluded that –

- (a) the use of residential apartments for use as serviced apartments including for short-term lettings constitutes a change of use,
- (b) the change of use to serviced apartments, as described above, raises planning considerations that are materially different to the planning considerations relating to permitted use as residential apartments. In particular,
 - (i) the extent and frequency of coming and going to and from the apartments from short-term renters and servicing staff, and
 - (ii) the fully commercial nature of the activity,
- (c) the change of use, therefore, constitutes a material change of use and is development as defined in section 3 of the Planning and Development Act, 2000, and

- (d) neither the Planning and Development Act, 2000, as amended, nor the Planning and Development Regulations, 2001, as amended, provide any exemption in respect of such a change of use.

The Board decided that the use of residential apartments as serviced apartments at Metro Apartments, Santry Cross, Ballymun Road, Dublin is development and is not exempted development.

7.4.3. Other relevant referrals include **ABP302856, ABP302859, ABP302862, ABP302865, ABP302861, ABP302858, ABP302866, ABP302857** which relate to the proposed use of Apartments No 26, No 22, No 7 and No 4, No 16, No 24, No 5 and No 30 Chancery Hall, Blackhall Place, Dublin 7 for short-term letting is or is not development and whether the development constitutes exempted development. The Board determined in all cases that the use of the apartments as set out for short stay accommodation is development and is not exempted development.

7.4.4. **ABP-300996-18:** The question was as follows: “whether the use of the property at number 28 Leinster Square, Rathmines as short-term lettings based on internet bookings is a change of use from the established use of short-term lettings as bedsits and, if it is, whether it is a material change of use and or is not development or is or is not exempted development.” The Board decided that

- (a) the use of the building for a short-term holiday letting based on internet bookings is a change of use from the current established use for lettings for bedsits, in the light of the different matters that it raises for planning assessment compared to those which would have arisen for original use as residential accommodation, including intensification of use and associated disturbance at neighbourhood level and as the building is exclusively used for commercial short term letting purposes on a year round basis, is a material change of use and is, therefore, development, and
- (b) that neither the Planning and Development Act, 2000, as amended, nor the Planning and Development Regulations, 2001, as amended, provide any exemption in respect of such material change of use.

The Board decided that the change of use of the property from the established use of short-term lettings as bedsits to short term lettings based on internet bookings is development and is not exempted development

7.4.5. **ABP-304692-19:** The question posed was ‘whether the use of student accommodation at Amnis House, Western Road, Cork, for year-round short-term letting is or is not development or is or is not exempted development. While I acknowledge the difference between the two questions, this referral related to a development which was granted as a permitted student accommodation development, which included conditions relating to the use of the building as such. The Board decided:

‘that the use of student accommodation for year-round short term letting at Amnis House, Western Road, Cork is development and is not exempted development.’

The Order did note however,

for clarity, it is considered that the use of the subject premises for short-term letting as tourist or visitor accommodation, where such use takes place solely outside of academic term times, would be consistent with the authorised use of these premises and within the scope of the definition of “student accommodation” as defined in Section 13 (d) of the Planning and Development (Housing) and Residential Tenancies Act 2016, as amended, and, therefore, would not represent a change of use from the authorised use, and would not be development.

8.0 Assessment

8.1.1. The application relates to two questions with regard to the use of the subject building as follows:-

1. Whether the internal alteration of a 5-bedroom accommodation for a maximum of 11 guests to a 9-bedroom accommodation for a maximum of 18 guests is or is not development or is or is not exempted development. AND
2. Whether the change of use from short term lettings in excess of 15 days duration per letting to a short-term letting for any period not exceeding 14 days, is or is not development and if development, whether it is exempted development or not.

8.1.2. The Board will note the extensive documentation submitted by both the referrer and the owner / occupier which relate to a number of disputes between the parties, none of which are a matter for the Board in terms of this referral. I also note the disagreement between the parties as to the nature of the internal alterations which were undertaken as well as the use of the upper floors. In terms of the Section 5 declaration before the Board, I would note that such a declaration can only say:

- a) whether something is development or not, and if it is
- b) whether it is exempted development or not.

8.1.3. It is not appropriate to determine if something is permitted development or whether it is unauthorised development, which it appears to be at the root of the question posed in this case. Neither is it appropriate to determine the acceptability or otherwise of the detail of the question posed in terms of the proper planning and sustainable development of the area.

8.1.4. The Board will note that the owner /occupier has stated that the internal alterations to the building, which originally had capacity for 11 occupants, has resulted in the inclusion of en-suites and that the 9 bedrooms are for single occupancy so the occupancy of the upper floors of the Lamplighters Pub has been reduced. The indication that the premises can accommodate 18 guests is only suggested by the referrer and is not the reality. In addition, it is submitted that the owners are not currently using the premises for short term stays of less than 15 days. It is submitted

however, that the owner feels it would be their right to under the Planning and Development Act given the established use of the premises. There should be no restrictions on the duration of stay.

- 8.1.5. I also note the request of the owner / occupier to dismiss the referral. Section 5 of the Planning and Development Act provides for the determination of “any question” that has arisen in a particular case and accordingly, I consider it reasonable to consider the hypothetical question.

Question of Internal Alterations:

8.2. Is or is not development

- 8.2.1. Section 2(1) of the Act defines ‘works’ 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”. In this regard, I am satisfied that, with regard to the first part of the question posed, the subject internal alterations to which the referral relates are ‘works’. I am satisfied that the said ‘works’, including the internal alterations of the building comprise ‘development’. This determined, consideration is required as to whether the ‘works’ would constitute ‘exempted development’.

8.3. Is or is not exempted development

- 8.3.1. Having established that the ‘works’ undertaken amount to ‘development’, the issue to be considered is whether the development is exempted development or not. The Board will note that the owner/occupier has indicated that the internal works undertaken at the property after it was purchased, comprised upgrading and maintenance works which included the installation of en-suites to the bedrooms. I accept that this is the case.
- 8.3.2. Section 4(1) of the Planning and Development Act identifies what may be considered as exempted development for the purposes of the Act, and Section 4(1)(h) includes:

“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”

Having regard to the nature of the works undertaken, I am satisfied that they have been carried out for the maintenance and improvement of the structure and are works 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 structure.

8.3.3. Further to the above, I note the requirements of Section 4(2)(a) of the Act which states:

“The Minister may by regulations provide for any class of development to be exempted development for the purposes of this Act where he or she is of the opinion that –

- (i) By reason of the size, nature or limited effect on its surroundings, of development belonging to that class, the carrying out of such development would not offend against the principles of proper planning and sustainable development

8.3.4. In this regard, the Board will note that the 9 bedrooms within the building are offered as single occupancy and as such, the internal alterations to the building would appear to have reduce the overall capacity of the space by 2 bed spaces in terms of historical use. In this regard, I am satisfied that the works might reasonably be considered to be exempted development under the provisions of Section 4(2) of the Planning and Development Act, as amended.

Question of Use:

8.4. Is or is not development

8.4.1. The Board will note that the question of use of the upper floors of the building was raised under a S5 request from the owner / occupier, PA. Ref: EXPP0444/20 refers. The question posed was ‘whether the continued use of accommodation at first and

second floor level above the Lamplighters Public House, for short term lettings in excess of 15 days duration per letting, is or is not development and if it is development, whether it is exempted development'. DCC decided, following the submission of information including sworn affidavits, that the continued use of the of accommodation at first and second floor level above the Lamplighters Public House, for short term lettings in excess of 15 days duration per letting, is exempted development as set out under Section 3A of the Planning and Development Act 2000 (as amended).

- 8.4.2. Section 3(1) of the 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". The key question arising in this instance is would a material change of use occur in the event of the use of the accommodation at first and second floor level above the Lamplighters Public House, for short term lettings of under 14 days duration per letting, and if so, is this exempted development?
- 8.4.3. Having regard to all of the information available to me, together with the planning history of the site and that the building is a pre-1963 structure, I am generally satisfied that the rooms above the public house have been established as having been used for residential purposes for periods in excess of 15 days duration. The owner / occupier has indicated that the rooms have been let on an annual basis to both students and workers in the past. Section 2(1) of the Planning and Development Act, 2000 includes the definition of "house" as a building or part of a building which is being used or has been occupied as a dwelling or was provided for use as a dwelling but not occupied and where appropriate includes building which was designed for use as 2 or more dwellings or a flat, an apartment or other dwelling within such a building.
- 8.4.4. In this regard, and while I would accept that the building does not appear to be occupied on a permanent basis by any resident, it may be construed that there is a level of occupancy which is not fleeting or short-term 'tourist' based and that the use of the upper floor rooms provides some continuity of residents / guests, who used the property as a 'house'.
- 8.4.5. Section 3A of the P&D Act deals with short term lettings and states as follows:

3A(1) The use of a house or part of a house situated in a rent pressure zone for short term letting purposes is a material change in use of the house or part thereof, as the case may be.

'short term letting' means the letting of a house or part of a house for any period not exceeding 14 days, and includes a licence that permits the licensee to enter and reside in the house or part thereof for any such period in consideration of the making by any person (whether or not the licensee) of a payment or payments to the licensor.

8.4.6. The Board will note that the subject site is located within a Rent Pressure Zone. In this regard, the provision of an adequate supply of housing is a material consideration. I am therefore satisfied that the change of use from short term lettings in excess of 15 days duration per letting to a short-term letting for any period not exceeding 14 days, constitutes development. This determined, consideration is required as to whether the 'works', would constitute 'exempted development'.

8.5. Is or is not exempted development

8.5.1. In accordance with Section 3(1) of the Act, the Board will note that for a change of use to be considered development it must be a material change of use. In terms of case law, the McMahon judgement determined that the permanent occupation of a house or apartment as a home is different from the short-term occupation of the same structure. It was further found that the difference is material in planning terms and that the change of use from one to the other is considered development. I would note that the Board has upheld this distinction in a number of referral precedent cases as referenced above. I would also acknowledge that the impacts which may arise from short term accommodation use as opposed to residential use, including noise, traffic, security risk etc, would be a material consideration in the context of potential residential amenity impacts.

8.6. Restrictions on exempted development

8.6.1. There is no category of exemption within the Planning and Development Act or associated Regulations which would appear to apply in this case in terms of the change of the use of the upper floors of the building. The change of use does not

come within the scope of the exemption provided for within Article 6(5)(a) of the Planning and Development Regulations 2001, as amended by Article 3 of the planning and Development Act 2000, Exempted Development (No. 2) Regulations 2019.

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, in relation to The Lamplighter Public House, 79 The Coombe / 1 Brabazon Street, Dublin 8 as to:-

1. Whether the internal alteration of a 5-bedroom accommodation for a maximum of 11 guests to a 9-bedroom accommodation for a maximum of 18 guests is or is not development or is or is not exempted development. AND
2. Whether the change of use from short term lettings in excess of 15 days duration per letting to a short-term letting for any period not exceeding 14 days, is or is not development and if development, whether it is exempted development or not.

AND WHEREAS Andreas Brueggener requested a declaration on these questions from Dublin City Council and the Council issued a declaration on the 19th day of April 2021 stating that the matter relating to internal alterations was development and was exempted development and that the matter relating to the change of use was development and was not exempted development:

AND WHEREAS referred this declaration for review to An Bord Pleanála on the 11th day of May 2021:

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

- (a) Sections 2, 3, 4 and 5 of the Planning and Development Act, 2000, as amended,
- (b) Articles 5, 6 and 10 of the Planning and Development Regulations, 2001, as amended, including by Article 3 of the Planning and Development Act 2000 (Exempted Development) (No. 2) Regulations 2019,
- (c) Parts 1 and 4 of the Second Schedule to the Planning and Development Regulations, 2001, as amended,
- (d) relevant case law, and in particular the High Court decision of Barron, J in *Thomas McMahon and Others - v - Right Honourable The Lord Mayor, Alderman and Burgesses of Dublin* (High Court 1989 No. 9870P),
- (e) relevant referral cases previously decided by An Bord Pleanála,
- (f) the material planning considerations involved with short-term letting use
- (g) the planning history of the site,
- (h) the pattern of development in the area,
- (i) the documentation on file, including submissions from the referrer and from the owner/occupier
- (j) the report of the Inspector:

AND WHEREAS An Bord Pleanála has concluded in relation to the question ‘Whether the internal alteration of a 5-bedroom accommodation for a maximum of 11 guests to a 9-bedroom accommodation for a maximum of 18 guests is or is not development or is or is not exempted development’ that:

- (a) The scope of the internal works carried out in the building, which include the installation of en-suites to the existing rooms to provide for 9 single occupancy rooms falls within the provisions of Section 4(2) of the Planning and Development Act, 2000 as amended, is development and is exempted development,

AND WHEREAS An Bord Pleanála has concluded in relation to the question ‘Whether the change of use from short term lettings in excess of 15 days duration per letting to a short-term letting for any period not exceeding 14 days, is or is not development and if development, whether it is exempted development or not’ that:

- (a) the use of the rooms for use as short-term lettings for a period not exceeding 14 days duration, as outlined in the submission, constitutes a change of use from the established use as short term lettings in excess of 15 days duration,
- (b) the change of use from the established use to use for short-term letting accommodation, as described above, raises planning considerations that are materially different to the planning considerations relating to longer term lettings, having regard to case law. In particular, (i) the extent and frequency of coming and going to and from the building by short term renters and servicing staff and (ii) associated concerns for other residents in respect of security and general disturbance.
- (c) the change of use constitutes, therefore, a material change of use and is development as defined in section 3 of the Planning and Development Act, 2000,
- (d) The change of use in this case does not come within the scope of the exemption provided for in Article 6(5)(a) of the Planning and Development Regulations, 2001, as amended by Article 3 of the Planning and Development Act 2000 (Exempted Development) (No. 2) Regulations 2019, having regard to the definitions of “principal private residence” and “short term letting”, as set out in this Article,

and the location of the subject premises within a rent pressure zone,
and

(e) there are no other exemptions provided for in the Planning and Development Act 2000, as amended, and in the Planning and Development Regulations, 2001, as amended, whereby such development would be exempted development.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3)(a) of the 2000 Act, hereby decides that the internal alterations carried out in the upper floors of the building is development and is exempted development and that the use of the rooms for use as short-term lettings for a period not exceeding 14 days duration, is development and is not exempted development.

A. Considine

Planning Inspector

14th September 2021