



An
Bord
Pleanála

Inspector's Report ABP-310767-21/RL

Question

Whether the weatherproofing of a structure which fronts the Lower Lucan Road at Strawberry Beds, Castleknock, Dublin 15, is or is not development or is or is not exempted development.

Location

Lower Lucan Road at Strawberry Beds, Castleknock, Dublin 15.

Declaration

Planning Authority

Fingal County Council.

Planning Authority Reg. Ref.

F35W/010/21.

Applicant for Declaration

Peter Rafter.

Planning Authority Decision

Is not exempted development.

Referral

Referred by

Peter Rafter.

Owner/ Occupier

Peter Rafter.

Observer(s)

None.

Date of Site Inspection

10th day of December, 2021.

Inspector

Patricia-Marie Young

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1.0 Preliminary Comment

- 1.1.1. The referrer sought that the Board hold an Oral Hearing on this referral case as part of its determination. On the 23rd day of August, 2021, the Board decided that there was sufficient written evidence on file to enable them to carry out an assessment of the relevant issues raised in this referral case. It was therefore concluded that an Oral Hearing is not required.

2.0 Site Location and Description

- 2.1. Having carried out an inspection of the site and its setting I consider that the site description provided by the Boards Inspector in the recently decided referral case ABP-308807-20 is still applicable:

“The subject site relates to a broadly triangular shaped area of land at the southern boundary of Fingal. It is bounded by the Lower Road (Local Primary Road L-3103-3) to the south and the Somerton Road/Lane (Local secondary road L-7040-0) to the west. It is located to the west of the M50 viaduct across the Strawberry Beds.

The overall land holding to which this Section 5 relates as outlined in red in this Referral contains 2 derelict structures fronting onto the Lower Road to which works have recently been undertaken. These structures are in poor repair and do not appear habitable in their current state. There was scaffolding erected around one of them. The structures are sited close to the Lower Road, and there is a stone wall along this part of the site frontage and a gated entrance to this road. There is a traffic calming ramp located to the west of the entrance on this road.

There are two entrances from Somerton Lane and one from Lower Road into the landholding which is the subject of this Section 5 application. This includes a recently constructed entrance of red brick and mixed salvage stone and salvaged iron gates which provides access from Somerton Lane. The other recently constructed entrance to the site is immediately adjacent to the residential entrance which was subject of planning permission to the east of the most easterly part of the application site to Somerton Lane.

The site contains a range of architectural salvage and building materials, large walls in the form of retaining structures constructed from what appear to be salvage

materials are located along the north east section of the site. There is also a partially constructed timber framed structure. There are views to the architecturally constructed house on adjoining lands and a gated entrance to this house on lands to the north east of the site.

The subject referral site, is adjacent to the Liffey Valley proposed Natural Heritage Area and within the boundary of the Liffey Valley Special Amenity Area Order. The site is classified to Fossit habitat classifications on WD1 Mixed Broadleaved woodland and WS1 Scrub on the mapping provided by Biodiversity Ireland. A significant portion of the scrub area particularly in the north eastern part of the site has been recently removed as identified in the OSI Aerial Photography. There are views to the Liffey and towards the motorway viaduct to the east.”

- 2.2. To this I note that one of two of the derelict structures referred to in this description above includes the building subject of this referral case. This building is significantly delapidated and has the appearance of being long abandoned with no apparent functional use. In its existing state its main envelope structure is in extreme poor structural state, it contains no roof structure, its former openings are mainly blocked up and what is present is supported by scaffolding. This building has a modest set back from the roadside boundary with the Lower Lucan Road and in close proximity to it there is a vehicle and pedestrian that formerly provided access onto the aforementioned road. The pedestrian gate has what appears to be a recently attached post box. There is no Eircode for this property. To the immediate west of this building is a derelict outbuilding.
- 2.3. The site at its nearest point is located c0.1km to the east of Lower Lucan Road's junction with Somerton Lane and the easternmost boundary of the site at its nearest point is located c0.4km to the west of the M50 viaduct crossing. The site also situated c9km to the west of Dublin's city centre.

3.0 **The Question**

- 3.1. The question referred to the Board is whether or not the weatherproofing of a structure which fronts onto the Lower Lucan Road at Strawberry Beds, Castleknock, Dublin 15, constitutes development and is or is not exempted development under planning legislation.

4.0 Planning Authority Declaration

4.1. Declaration

4.1.1. On the 14th day of June, 2021, the Planning Authority decided under Section 5 that the question referred to in Section 2.1 above did not constitute exempted development for the following stated reason:

“1. *The proposed works would materially alter the external appearance of the structure such that they would render the appearance inconsistent with the character of the structure. The works would not therefore come within the scope of Section 4(1)(h) of the Planning and Development Act, 2000, as amended, and would constitute development which is not exempted development.*”

4.2. Planning Authority Reports

4.2.1. Planning Reports

The Planning Officer’s report is dated the 10th day of June, 2021, is the basis of the Planning Authority’s decision. It can be summarised as follows:

- It sets out that a declaration is sought under Section 5(1) of the Planning and Development Act, 2000, as amended, in respect of: “*Whether the weatherproofing of a structure which fronts the Lower Lucan Road at Strawberry Beds, Castleknock, Dublin 15 is Development and is or is not Exempted Development*”.
- It provides a description of the site and the subject building.
- It indicates that the site is located in an area zoned ‘HA – High Amenity’ and within the boundary of the Liffey Valley Special Amenity Area Order under the Development Plan.
- It sets out the planning history of the site including but not limited to a recently determined referral case determined by the Board under ABP- RL06F.308807.
- It sets out the enforcement history relating to the site.
- It notes that no drawings have been submitted to illustrate the existing structure or the proposed works.

- It outlines the works as involving putting a roof on the structure, the installation of windows and doors through to the addition of rainwater goods to the front and rear.
- It describes the structure as “*currently derelict; without a roof, windows or doors. The character of the building can be said to be of a derelict uninhabited structure*”.
- It considers that works would represent a material change in the appearance of the structure which would render its appearance inconsistent with the character of the structure as it would give it the appearance of a dwelling and potentially a habitable dwelling.
- The works are described as for the purposes of weatherproofing; however, it is considered that they would facilitate the habitation of the structure.
- It notes that this structure which has been deemed to be derelict in a number of previous Section 5 referral cases.
- The introduction of a habitable use into the structure would represent a material change of use which would constitute development. Notwithstanding, this question in this declaration relates to works alone and does not propose any future use.
- It is concluded that a Stage II Appropriate Assessment is not required.
- It is concluded that no EIA is required.
- Having had regard to the following factors:
 - Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended.
 - The character of the existing building.
 - The planning history of the site.
 - The nature and extent of works proposed.

it concludes that the proposed development is not considered to be exempted development.

4.2.2. Other Technical Reports

None.

5.0 Planning History

5.1. Recent & Relevant Board Decision relating to the site.

ABP-308807-20 (P.A. Ref. No. FS5W/20/20): On the 9th day of April, 2021, the Board determined that the restoration of the previously permitted pre 1963 dwelling to its previous condition at Somerton Lane/Lower Lucan Road, Strawberry Beds, Dublin 15, is development or is not exempted development.

5.2. Recent & Relevant Referrals relating to the site.

P.A. Ref. FS5W/02/19: Under this referral case the following was deemed to be Development and not to be Exempted Development:

1. The transfer of soil from the lower part of the site to the upperpart of the site.
2. The construction of a substantial retaining wall in excess of 3 meters high and 2 feet wide.
3. The construction/storage of two sheds on the upper levels of the site; the use of the sheds to store materials and the storage of materials for the construction of a log cabin under tarpaulin behind metal fencing to the right of entrance to the adjacent property.
4. The construction of a log cabin on the site.
5. The erection of fencing associated with the storage of materials in place for approximately 4 years.

P.A. Ref. No. FS5W/07/19: Under this referral case the following was deemed to be Development and not to be Exempted Development:

1. The use of the subject site for residential purposes.
2. and/or any works ancillary to and/or relying on an exemption derived from residential use.

It is of note that the owner of the site, relative to these Section 5 Declarations from the Council is for referrer Mr. Peter Rafter, with an address in Dundrum, Dublin 16. These Declarations were not the subject of an appeal to the Board.

P.A. Ref. No. FS5W/07/19: Under this referral case the following was deemed to be Development and not to be Exempted Development:

1. The use of a site at Somerton Lane/Lower Road, Castleknock.

5.3. Planning Enforcement

The Planning Authorities Planning Officer's report sets out the enforcement history of the site.

- Ref. ENF 14/34B
- Ref. ENF 16/196B

5.4. Planning History of Adjacent Sites

To western end of site:

P.A. Ref. No. F98B/0393: Planning permission was granted subject to conditions for alterations and additions to 'Woody Cottage', Somerton Road, Strawberry Beds, Dublin 20.

To east of site:

P.A. Ref. FW10A/0128: Planning permission granted subject to conditions for the demolition of an existing extension and detached out-buildings and the construction of a single-storey extension to the rear (east) of the existing cottage, refurbishment, and alteration of the existing cottage, works to the main entrance and associated site developments including a new wastewater treatment plant to current EPA standards.

P.A. Ref. 13A/0106: Planning permission granted subject to conditions for the development of a revised two storey extension to existing cottage now providing four bedrooms; revised refurbishment and alteration of the existing cottage, additional terraces at ground level and new parking area to rear of the cottage. This previously approved extension proposal Reg. Ref. FW10A/0128 as granted.

6.0 Policy Context

6.1. Development Plan

- 6.1.1. Fingal County Development Plan, 2017-2023, is applicable. Under this Development Plan the site is located on land zoned 'HA' High Amenity Area where the land use zoning objective is to: "*protect and enhance high amenity areas*". In addition, the vision for such lands is to protect these highly sensitive and scenic locations from inappropriate development and reinforce their character, distinctiveness, and sense of

place. In recognition of the amenity potential of these areas opportunities to increase public access will be explored.

- 6.1.2. The site is also located within the Liffey Valley SAAC (Special Amenity Area Order). This designation includes specific controls over development. The River Liffey is also a proposed Natural Heritage Area (pNHA).
- 6.1.3. Somerton Lane and the Lower Lucan Road are also within an area of Preserved Views along a highly sensitive landscape designation.
- 6.1.4. Appendix 6 – Map Based Local Objectives - 163 is located to the north of the site and seeks to prepare a traffic management plan which shall provide for safe pedestrian and cycle access across a network of routes along with any necessary traffic calming and road safety measures.
- 6.1.5. There are a large number of policies and objectives contained within the Development Plan relating to the landscape and environmental importance of the area.

6.2. Natural Heritage Designations

- 6.2.1. There are no nature designations either within or immediately abutting the appeal site. The closest such are those within Dublin Bay.

7.0 The Referral

7.1. Referrer's Case

- 7.1.1. The referrals submission to the Board refers and seeks a review of the declaration made by Fingal County Council.
- 7.1.2. The Boards determination is sought as to whether the weatherproofing of a structure which fronts onto the Lower Lucan Road at Strawberry Beds, Castleknock, Dublin 15, is or is not development or is exempted development.
- 7.1.3. It is submitted by the referrer Peter Rafter, who is the owner, that the works sought under this referral question are exempted development under Section 4(1)(h) of the Planning & Development Act, 2000, as amended.
- 7.1.4. The referrers submission makes the following points:

- The basis for the Planning Authority's declaration was that the proposed works to be undertaken on the subject structure would facilitate its un-authorized use.
- The Planning Authority in deciding on a Section 5 declaration are obliged to act judicially and it is contended that in this case the Planning Authority mis-interpreted Irish Planning Law.
- The possibility of a future unauthorised use does not provide a basis to de-exempt works to an authorised structure under Section 4(1)(h) of the 2000 Planning and Development Act, 2000, as amended.
- The Planning Authority have the power to initiate enforcement action when and if an unauthorised use occurs.
- It is inappropriate of the Planning Authority to speculate that an unauthorised use which has not commenced will commence at some point in the future to justify the de-exemption applied for.
- It is not questioned by the Planning Authority that this structure existed pre the 1963 Planning Act.
- No enforcement action has been taken by the Planning Authority in relation to the subject structure.
- They have a statutory right to weatherproof the subject structure.
- The previous permitted use of this structure was as a dwelling. However, its former use is not a relevant consideration under Section 4(1)(h) of the Planning and Development Act, 2000.
- It is difficult to see how the returning of a front elevation to its original appearance by the installation of windows, doors and roof which matched that of the original dwelling would materially affect its character such that it would render its appearance inconsistent with the character of the structure as set out under Section 4(1)(h) of the Planning and Development Act, 2000.
- Would the Planning Authority prefer to have the building in its existing state rather than an improved structure identical to that which has been in place since the 1800s.

- The original door and windows remain *in situ* and in good condition on the ground floor. It is proposed to renew these.
- The original roof slates and ridge caps were removed in order to make structural repairs and remain on site and will be reinstated. Any not in a satisfactory condition will be replaced by identical in character and form materials.
- A number of similar buildings in the locality have had their roofs refurbished in their original style.
- Under RL2592 the Board decided that the total renewal of a structure could be carried out under Section 4(1)(h) of the Planning and Development Act, 2000. Nothing as extensive as these works are proposed in this case.
- Reference is made to High Court Case, McCabe - v - Coras Iompar Eireann & Anor (2006 IEHC 356), where it was decided that the total renewal of a railway bridge could be carried out as exempted development under Section 4(1)(h) of the Planning and Development Act, 2000.
- The subject structure is of no merit and its improvement would benefit the streetscape.
- This development falls within the scope of Section 4(1)(h) of the Planning and Development Act, 2000, and is therefore exempted development.

7.2. Planning Authority Response

7.2.1. The Planning Authority's response to the Board is dated the 29th day of July, 2021, and it can be summarised as follows:

- The Board is requested to refer to the Chief Executive's Order for this Section 5 application which details the considerations in this case. This order clearly states that the question in this declaration relates to works alone and does not propose any future use. This referral was assessed on this basis.
- The Order states that the works were deemed to not be exempted development because the works would render the appearance inconsistent with the character of the structure. Therefore, the works would not come within the

scope of Section 4(1)(1) of the Planning and Development Act 2000, as amended, and would, constitute exempted development.

- The Board is requested to uphold its decision.

8.0 Statutory Provisions

8.1. Overview

- 8.1.1. The appropriate legal context for the referral is the Planning and Development Act, 2000 (as amended) and the Planning and Development Regulations, 2001 (as amended). The following specific provisions are relevant to this case:

8.2. Planning and Development Act, 2000

- **Section 2(1)** - Interpretation

In this Act, except where the context otherwise requires –

“**structure**” means –

‘any building structure excavation or other thing constructed or made on in or under any land, a 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 a protected structure or proposed protected structure 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 fixtures and features which form part of the interior or exterior of any structure or structures referred to. In some paragraphs (i) or (iii)’

“**habitable house**” means a ‘house’ which—

(a) is used as a dwelling,

(b) is not in use but when last used was used, disregarding any unauthorised use, as a dwelling and is not derelict, or

(c) was provided for use as a dwelling but has not been occupied'

“house” means a building or part of a building which is being or has been occupied as a dwelling or was provided for use as a dwelling but has not been occupied, and where appropriate, includes a building which was designed for use as 2 or more dwellings or a flat, an apartment or other dwelling within such a building.

“works” means -

“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 other material to or from the surfaces of the interior or exterior of a structure”.

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

Section 3(1) - Development

In 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’.

Section 4 (1) sets out development that is exempt from requiring planning permission.

4(1)(h) is relevant:

“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”.

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

- **Article 6(1)**

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 2.

- **Article 9(1)**

This provides Restrictions on Exemption to which article 6 relates.

In particular, of note this includes:

9(1)(b)(i) in an area to which a special amenity area order relates, if such development would be development:-

8.4. **Other**

8.4.1. **Relevant Case Law**

- **Dublin County Council v. Tallaght Block Co. Ltd.**

This case determined that a use of land can be abandoned and that a change of use will occur when an abandoned use is recommenced. Hederman J in the Supreme Court stated: *“where a previous use of land has been not merely suspended for a temporary period and determined period, but has ceased for a considerable time, with no evidenced intention of resuming it at any particular time, the tribunal of fact was entitled to find that the previous use had been abandoned, so that the resumption constituted a material change of use.”*

- **Cork County Council v. Ardfert Quarries Ltd.**

In this case a site had been used as an animal food processing plant from 1953 – 1966, it had been vacant from 1966 to 1970 and it had been used to manufacture and store tyres from 1970 to 1974. The High Court held that the use of the premises as a general industrial building from 1953-1956 had been abandoned by its none use from 1966-1970. Murphy J stated: *“having regard to the elapse of time and the absence of*

any satisfactory explanation therefore, I must conclude that the use as of the operative date was subsequently abandoned.”

- **Meath County Council v. Daly**

The High Court held that the resumption of the use of premises which had been used for car repairs and petrol sales pre-1964, after that use had been abandoned since 1964 from time to time by the user of the premises for other purposes, and particularly by its user from 1969 for some years by a double-glazing company, was a material change of use.

9.0 **Assessment**

9.1. **Preliminary Comment**

- 9.1.1. It should be stated at the outset of this assessment, that the purpose of the referral is for the Board to decide upon whether or not the matter in question constitutes development, and if so, falls within the scope of exempted development. Therefore, the procedural concerns raised by the referrer in relation to the manner in which the Planning Authority made their determination on this question which he has now referred to the Board are outside of the Board remit as they do not have an ombudsman role on matters. Likewise, planning enforcement and planning enforcement concerns falls outside of the Boards remit. They are for the Planning Authority to deal with as they see fit. In my report below I therefore do not propose to deal with these two matters that are raised by the referrer in their appeal, nor do I intend to provide an assessment or comment on the referrer’s interpretation of planning law.

9.2. **Is or is not development**

- 9.2.1. Having regard to the question put forward by the referrer in this referral case the works are described as *“weatherproofing of a structure which fronts the Lower Lucan Road at Strawberry Beds”*. The subject structure is in the referrer’s ownership.
- 9.2.2. Further expansion on the scope of the weatherproofing works set out in their main submission dated the 14th day of June, 2021. Where in this submission these works are described as: *“returning the front elevation (street elevation) to its original*

appearance by the installation of windows and doors and a roof which matched that of the original dwelling"; that they would involve in part original windows, doors, original slates and ridge caps that remain in situ and where possible and in relation to the roof it is stated that its reconstruction would be *"identical in style and character"*.

- 9.2.3. In other documents accompanying this referral case the works are indicated to also include the provision of rainwater goods and downpipes; the provision of soffits and fascia at eaves level for the subject structure; and, the water harvesting infrastructure.
- 9.2.4. Beyond this there is little clarity provided by the referrer. In particular, there are no accompanying drawings detailing the scope of the works relative to the existing and proposed situation. Further, no visual evidence is provided by the referrer in terms of the appearance of the subject dwelling to some point in time before it's now current derelict state of repair and structurally poor condition and of the existing.
- 9.2.5. Having regard to Section 3(1) and Section 2(1) of the Planning and Development Act 2000, as amended, it is my considered opinion that the works as set out by the referrer constitutes 'development' and works within the meaning of the said Act. Under which development is given the meaning of: *"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"* (Note Section 3(1)); and, works is given the meaning of 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"* (Note: Section 2(1)).
- 9.2.6. Based on the information provided, despite the lack of detailed drawings and the like to set out the full nature, extent, and scope of the works. Including clarity that the structure which is currently supported by scaffolding and on inspection is in a poor structural state is able to support what are essentially described as weather proofing works. It is nonetheless reasonable for the Board to conclude that the proposed weatherproofing of the subject structure falls within the definition of 'works' and therefore constitutes development.

9.3. Is or is not exempted development

9.3.1. 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.

9.3.2. I first of all reiterate Section 7.2.1 of the Inspectors Report for referral case ABP-308807-20, as given the similarity of arguments put forward by the referrer in their submission to the Board it is my considered opinion, is relevant. It reads:

“The planning merits as to whether or not the development should take place is not the basis on which to determine the referral. The sole purpose of a Section 5 Referral is to determine, when a question arises in any particular case, what is or is not development or what is or is not exempted development within the meaning of the Act. The purpose of a Section 5 Referral is therefore not to adjudicate on the particular planning merits associated with a case, or whether or not a proposal is in accordance with the proper planning and sustainable development of the area, but rather a referral under Section 5 of the Act is confined to a legal interpretation as to whether or not planning permission is required in accordance with the provisions of the Act and associated Regulations. The Board should therefore restrict its deliberations to the referral question before it and not the planning merits of the case.”

9.3.3. Development can be considered as exempt from the requirement for planning permission by either Section 4 of the Planning and Development Act 2000 as amended, or by Article 6 of the Planning and Development Regulations 2001 as amended. There are also provisions for buildings of special architectural, historical, archaeological, artistic, cultural, scientific, social, or technical interest. But the subject structure which is contended by the referrer to date to the 1800s is not afforded any specific designation as a Protected Structure or otherwise. Therefore, Section 57 of the Planning and Development Act, 2000 as amended, is not a relevant consideration.

9.3.4. Having regard to ABP-308807-20, similar to the Board inspector in this recent referral case before the Board, on my site inspection I found the subject structure to be in a ruinous condition with no roof structure, blocked or missing openings through to the building itself being supported by scaffolding.

9.3.5. There is no evidence that support that the subject structures ruinous appearance together with missing key building features such as the presence of windows, doors, roof structure and the like are a recent situation.

- 9.3.6. I also do not accept the referrers contentions that the roof structure lost its tiles in 2011 as part of structural works carried out. Indeed, available information including photographic evidence of this building available in the public domain upon research show that the loss of roof slates and the main roof structure predates this. Similarly, it shows that the openings such as doors and windows are lost as well as shows the building in serious decay before this point in time. In addition, it shows the subject building to be a ruin with no apparent functional use and appears to show that this has been the case for a significant time previous to this. In the intervening years the structure has continued to decay. Whereas it would appear that significant works have been carried out to the outbuilding to its immediate west which around 2009 appeared to be also a ruin. This referral case does not include this structure as part of the question posed.
- 9.3.7. The provision of 'weatherproofing' of the nature, extent and scope set out by the referrer in the documentation provided by them suggests that the works go significantly beyond simply weather proofing what remains of this structure which is a ruin from further decay.
- 9.3.8. The addition of a roof structure over, the provision of window, doors, rainwater good through to the provision of a rainwater harvesting infrastructure would essentially materially and significantly alter its appearance by providing key built features. Moreover, it would result in a ruin having a materially different appearance when viewed from the public domain of the Lower Lucan Road and within its setting.
- 9.3.9. The Board accepted the inspectors' considerations under ABP-308807-20 that given the derelict and ruinous appearance of this pre-1963 dwelling that the restoration works which were subject of this particular referral question did not come within the scope of Section 4(1)(h) of the Planning and Development Act 2000, as amended, as they would materially affect the external appearance of the structure.
- 9.3.10. The Board in setting out its conclusions in referral case ABP-308807-20 make a clear distinction from 'use' and 'works'.
- 9.3.11. The restoration of the building envelope which formed part of the works clearly implied and set out by the same referrer to this case in ABP-308807-20 would have given arise to the same substantive outcome for this ruinous pre-1963 building in terms of

the material effect on its external appearance that would render its appearance inconsistent with the character of the structure.

- 9.3.12. Section 4(1)(h) of the Planning & Development Act, 2000, as amended, clearly sets out that the carrying out of works for the maintenance, improvement, or other alteration of any structure, being 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 structures.
- 9.3.13. It is not sufficient in terms of meeting the requirements of this exemption that the outcome of the works is that it would not render it inconsistent with the character of neighbouring structures. With the examples shown by the referrer in the locality appear not to relate to a similar situation to the building in this situation.
- 9.3.14. I note that the question as posed only refers to a structure and under referral case ABP-308807-20, the Board concluded that it did not meet the definition of 'habitable house'. There has been no planning application or otherwise that would necessitate the re-assessment of this matter and therefore, Schedule 2 Part 1 Exempted Development - General of the Planning and Development Regulations, 2001 as amended, is not a relevant consideration.
- 9.3.15. In respect of the Planning and Development Regulations, 2001, as amended, I consider none of its exempted development provisions are applicable to this referral case and the specifics of the question to be determined.
- 9.3.16. I therefore consider the works that are set out in this referral case to weatherproof the subject structure would materially affect its external appearance so as to render the appearance inconsistent with its character in that this structure is a ruin for a significant period of time. With this ruinous state concluded upon in its planning history by both the Planning Authority and by the Board. I also consider that the works required to carry the weatherproofing out goes beyond what is indicated by the referrer given that they have provided no structural report on this structure to provide assurance otherwise. Therefore, it cannot be considered exempted development in accordance with the Planning and Development Act, 2000, as amended. Including under Section 4(1)(h) of the said Act for this given reason.
- 9.3.17. *Conclusion:* I consider that the question of this referral constitutes development which does not come within the scope of any of the legislative provisions for exempted

development. In particular, it is not exempted development under section 4(1)(h) of the Planning and Development Act 2000, as amended, as contended by the referrer in this referral case.

9.4. Other Referral Cases

- 9.4.1. The referrer in this appeal case has referred to a number of referral cases relative to the issues raised in this current referral case before the Board. I have noted these and also referred to by the Boards inspector in ABP-308807-20. I have also examined the Boards referrals data base as part of carrying out my assessment. Whilst I consider that there are some similar issues raised in them, I consider that they relate to different scenarios and have different specifics when compared to this case. In addition, many of these are historical as well as relating to completely different site contexts. It is in accordance with planning law that each case, whether it be a planning application through to a Section 5 referral, should be dealt with it on its merits and in the interests of proper planning as well as sustainable development of the area.

10.0 Recommendation

- 10.1. I recommend that the Board should decide this referral in accordance with the following draft order.

WHEREAS a question has arisen as to whether the weatherproofing of a structure which fronts the Lower Lucan Road at Strawberry Beds, Castleknock, Dublin 15, is or is not development or is or is not exempted development.

AND WHEREAS Peter Rafter requested a declaration on this question from Fingal County Council on the 19th day of May, 2021, and the Council issued a declaration on the 14th day of June, 2021, stating that the matter **was development** and **was not exempted development**:

AND WHEREAS referred this declaration for review to An Bord Pleanála on the 5th day of July, 2021:

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

- (a) The nature, scale, extent, and scope of works proposed.
- (b) The existing and past site context.
- (c) Sections 2 (1), 3(1) and 4(1)(h) of the Planning and Development Act 2000, as amended,
- (d) Article 6(1) and article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (e) Class 1 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001, as amended,
- (f) The planning history of the site,
- (g) The provisions of the Fingal County Development Plan, 2017-2023,
- (h) The pattern of development in the area.

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The works and alterations to be carried out to facilitate the weatherproofing of the now derelict structure would constitute “works” that are “development” under Section 3(1) of the Planning and Development Act 2000 (as amended).
- (b) The nature, scope and extent of external works associated with the weatherproofing of a structure, a structure that is in a ruinous as well as derelict state, with such a state previously concluded upon by the Board in its determination of ABP-308807-20, would not come within the scope of section 4(1)(h) of Planning and Development Act, 2000, as amended, as these works would compromise of the alteration of this structure in a manner that would materially affect the external

appearance of the structure so as to render the appearance inconsistent with its character.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by Section 5 of the 2000 Act, as amended, hereby decides that the works as described is development and is not exempted development.

Patricia-Marie Young
Planning Inspector

15th day of December, 2021.