



An
Bord
Pleanála

Inspector's Report ABP-311482-21

Question

Whether internal and external works to an apartment building constitutes development and if so whether that development can be considered exempted development.

Location

Apartment Q, Coliemore Apartments,
Dalkey, Co. Dublin.

Declaration

Planning Authority

Dun Laoghaire-Rathdown County
Council

Planning Authority Reg. Ref.

Ref11021

Applicant for Declaration

Ms. Bridget Regina Walsh

Planning Authority Decision

Split Decision

Referral

Referred by

Ms. Bridget Regina Walsh

Owner

Ms. Bridget Regina Walsh

Observers

None

Site Inspection

15th June 2022

Inspector

Stephen Ward

1.0 Site Location and Description

- 1.1. The subject site is located on the east coast overlooking Dalkey Sound and Dalkey Island, at a distance of c. 600m southeast of Dalkey village centre. It is bounded to the west by Coliemore Road and to the south by Coliemore Harbour. To the north of the site is a separate dwelling (former restaurant). The wider area is mainly comprised of a mix of low-density residential development.
- 1.2. The site is occupied by a 4-storey apartment block above basement parking levels. The building contains approximately 18 no. apartments of considerable scale. There are 2 no. vehicular access/exits on the adjoining Coliemore Road.

2.0 The Question

The question referred by the owner to the planning authority pursuant to Section 5(1) of the Planning and Development Act, 2000, as amended (“the Act”) and subsequently referred by the applicant to the Board, pursuant to Section 5(3) of the Act is, as follows:

‘Whether the following constitutes development and if so whether that development can be considered exempt development’.

Works Item No. 1 – Infill of Floor Void

Internal alterations to consist of infill of the circular floor void at upper (3rd floor level) and removal of internal staircase to provide an additional 16 sq.m. of internal floor area.

Works Item No. 2 – Internal Layout Alterations

Internal layout alterations to consist of removal / addition of walls / partitions and doors (on 2nd and 3rd floor level); relocating of Bedroom No. 3 from 2nd to 3rd floor to create open plan living / dining / kitchen area at 2nd floor.

Works Item No. 3 – Lowering of Rotunda Sill

Alterations to the external elevation of the rotunda at 3rd floor to consist of lowering of the curved window sill by 0.5m. This faces north to south-west on the rear (seaward) and side elevations.

Works Item No. 4 – Fenestration Changes

Alterations to the external elevation of the rotunda at 3rd floor to consist of changing of 7 no. groups of 3 no. windows to 7 no. curved fixed windows and replacement of 3rd floor aluclad windows to rotunda / north east (rear) elevation to aluminium windows with a dark grey powder coated finish (RAL 7043 / Traffic Grey). This faces north to south-west on the rear (seaward) and side elevations.

Works Item No. 5 – Rotunda fenestration changes and lowering of sill

A combination of Works Item Nos. 3 and 4 above to consist of lowering of rotunda sill and changing 7 no. groups of 3 no. windows to 7 no. curved fixed windows.

Works Item No. 6 – Lowering of sill with fenestration colour change

Lowering of rotunda sill as per Works Item No. 3 but retaining the same fenestration division with replacement of 3rd floor aluclad windows to rotunda / north east (rear) elevation to aluminium windows with a dark grey powder coated finish (RAL 7043 / Traffic Grey).

Works Item No. 7

Changing of window on north-east elevation at 2nd floor to double doors to access existing rear facing roof terrace.

Works Item No. 8

Changing of fenestration division of 4 no. windows on north-east elevation at 2nd floor.

3.0 Planning Authority Declaration

3.1. Declaration

By order dated 10th September 2021, Dun Laoghaire-Rathdown County Council issued a declaration stating that Items 1 & 2 constitute development and constitute exempted development, and that Items 3 to 8 (inclusive) constitute development and do not constitute exempted development in accordance with Article 5(1) of the Planning and Development Regulations 2001 (as amended).

3.2. Planning Authority Reports

3.2.1. The planner's report outlines the legislative context and the planning history of the site. The assessment conclusion can be summarised as follows:

- Having regard to the legislative definitions of 'alteration', 'works', and 'house', it is considered that the proposal would constitute the carrying out of 'works' and 'development' as defined in sections 2 and 3(1) of the Act.
- It is considered that the subject apartment block does not comply with the definition of 'house' as per Article 5(1) of the Planning and Development Regulations 2001 (as amended), and accordingly, the exemptions as set out in Classes 1, 2, 3, 4, 6(b)(ii), 7 or 8 specified in column 1 of Part 1 of Schedule 2, or development to which articles 10(4) or 10(5) refer, are not applicable in this instance.
- Items 1 & 2 are internal alterations which are not visible from the public realm. They comply with s. 4(1) of the Act and constitute development and exempted development.
- Items 3 to 8 are assessed individually but identically. In all cases it is stated that they are external works to the apartment building which come within the scope of 'alteration' as cited in the s. 2 of the Act. The works would materially alter the appearance of the structure so as to render the appearance inconsistent with the character of the structure, and in accordance with Article 5(1) of the Regulations are considered to constitute development and do not constitute exempted development.
- The proposed development has been screened for Appropriate Assessment and it has been determined that the proposed development will not significantly impact on a European Site.
- There are no restrictions contained in Article 9(1) of the Regulations that would prevent the works from being exempt development.
- A split decision is recommended outlining that Items 1 & 2 are exempt development and Items 3 to 8 are not exempt development. This forms the basis for the planning authority declaration.

4.0 Planning History

The appeal file contains a range of planning history documentation. Following my more recent inspection of the planning register, it is important to note that there were recent applications concerning similar works to the current question. The history cases relevant to the current case can be summarised as follows:

P.A. Reg. Ref: D12A/1134: Permission granted (26th May 2022) at Apartment Q for Internal door/ partition/ layout changes at second and third floors including relocation of bedroom from second to third floor to create an enlarged open plan living/ dining/ kitchen area at second floor; Removal of curved stairs / landing at second/ third floors and infill of third floor rotunda void; Alterations to the window configuration of the rotunda (north to south west facing to rear and side of building) and to rear (north-east) facing windows all of which are at third floor level; Changing of window on North-east elevation at second floor to double doors to access existing rear facing roof terrace. Changing of fenestration division of 4 no. windows on North-east elevation at second floor. Installation of air to water external heat pump unit on rear third floor terrace. Change of external window/ door colours at second / third floors (rear and side elevations) from anodized (silver) to dark grey to match existing colour of third floor rotunda/ rear facing windows; All associated internal alterations, drainage and ancillary works.

P.A. Reg. Ref: D21A/1131: Permission granted (31st March 2022) at Apartment Q for Alterations to the external elevation of the rotunda at third floor to consist of lowering of the curved window sill by 0.5m. (north to south west facing to rear and side of building); Changing of windows of the rotunda at third floor from 7 no. groups of 3no. windows to 7no. curved fixed windows; All associated ancillary works.

P.A. Reg. Ref: D03A/0508: Permission granted (August 2003) for conversion of apartments I and J at first floor level into single apartment including interior alterations and insertion of single window to Southeast elevation.

P.A. Reg. Ref: D00A/0791: Permission granted (November 2000) for retention of kitchen extension to apartment 'P' onto balcony and omitting one number window in apartment 'Q'.

P.A. Reg. Ref: D99A/0721: Permission granted (December 1999) for minor alterations to previously approved apartment development.

P.A. Reg. Ref: D98A/0254: Permission granted (July 1998) for revised car-parking proposals, Alterations to floor layouts and elevations showing revised building line to the north east, Revised site layout omitting restaurant, showing other alterations to proposed site works and including two vehicular access points instead of three, all in compliance with conditions 2 and 3 of the Grant of Permission of An Bord Pleanala (PLO6D.104258) in respect of proposed development.

ABP Ref. PL 06D.104258: Permission granted (February 1998) for demolition of hotel, erect four storey apartment building, erect restaurant, associated site works and car parking.

5.0 Policy Context

5.1. Development Plan

- 5.1.1. The Dun Laoghaire-Rathdown County Development Plan 2022-2028 came into effect on 21st April 2022 and is now the operational plan for the purposes of the Board decision.
- 5.1.2. The site is zoned as 'Objective A', which is '*To provide residential development and improve residential amenity while protecting the existing residential amenities*'. Other relevant aspects of the Plan include the following:
- **SLO 130:** To ensure that development within this objective area does not (i) have a significant negative impact on the environmental sensitivities in the

area including those identified in the SEA Environmental Report, and/or (ii) does not significantly detract from the character of the area either visually or by generating traffic volumes which would necessitate road widening or other significant improvements.

- At the northern end of the site there is an objective to preserve views in the direction of the coast.
- Chapters 4 and 12 set out guidance in relation to the design and alteration of residential developments.

5.2. Natural Heritage Designations

The northeast and southeast site boundaries adjoin the Dalkey Coastal Zone and Killiney Hill Proposed Natural Heritage Area. The Dalkey Islands SPA and the Rockabill to Dalkey Island SAC are offshore to the east, at distances from the site of c. 70 metres and c. 200 metres respectively.

6.0 The Referral

6.1. Referrer's Case

6.1.1. The applicant's case can be summarized as follows:

- All works should be considered exempt under section 4(1)(h) of the Act.
- All proposed changes are complimentary to the overall style and finishes of the apartment block.
- By its original concept, the rotunda / penthouse is atypical and presents a counterpoint to the rest of the block both in terms of geometry and fenestration.
- The proposed changes are slight and would not materially affect the external appearance to an extent that would leave it inconsistent with the character of the rest of the building.

- The proposed lowering of the rotunda sill levels would actually be in line with adjacent sills.
- Item Nos. 7 & 8 are only visible from the sea and the dropped sill of the former is obscured by the terrace parapet wall.
- Item Nos. 1 & 2 should be considered exempt development as the works do not materially affect the external appearance of the building under s. 4(1)(h) of the Act.
- The fenestration changes would improve the visual appearance of the top floor and tie in with the colours used elsewhere on the building for larger / continuous areas of glazing. There will be no perceptible change to the frame thickness or style.

6.2. **Planning Authority case**

The Planning Authority has confirmed that it has no further comments to make.

6.3. **3rd Party submissions**

None.

7.0 **Statutory Provisions**

7.1. **Planning and Development Act, 2000 (as amended)**

7.1.1. **Section 2(1)** of the Act states the following:

- 'alteration' includes –
 - (a) plastering or painting or the removal of plaster or stucco, or
 - (b) the replacement of a door, window or roof,
 that materially alters the external appearance of a structure so as to render the appearance inconsistent with the character of the structure or neighbouring structures;
- 'development' has the meaning assigned to it by Section 3;

- ‘exempted development’ has the meaning specified in section 4;
- ‘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’ 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.

7.1.2. **Section 3(1)** of the Act states that:

- *‘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 over land’.*

7.1.3. **Section 4(1)** of the Act sets out various forms and circumstances in which development is exempted development for the purposes of the Act, including:

- **Section 4(1)(h)** providing for *‘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’.*

7.1.4. **Section 4(2)** of the Act provides that *‘the Minister may, by regulations, provide for any class of development to be exempted development’.* The main regulations made under this provision are the Planning and Development Regulations 2001, as amended.

7.1.5. **Section 4(4)** outlines that development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required, unless otherwise outlined in regulations under section 4A.

7.2. **Planning and Development Regulations, 2001 (as amended)**

7.2.1. **Article 5 states**

“house” does not, as regards development of classes 1, 2, 3, 4, 6(b)(ii), 7 or 8 specified in column 1 of Part 1 of Schedule 2, or development to which articles 10(4) or 10(5) refer, include a building designed for use or used as 2 or more dwellings or a flat, an apartment or other dwelling within such a building;

7.2.2. **Article 6 (1) states:**

Subject to Article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.

7.2.3. **Article 9** outlines that development to which article 6 relates shall not be exempted development if the carrying out of the works would contravene / consist of a range of specified circumstances.

8.0 **Assessment**

8.1. **Preliminary Matters**

- 8.1.1. At the outset, the Board should note that the full extent of the subject works were effectively included in some form or another (albeit with minor alterations) in the recent applications to DLRCC under P.A. Reg. Refs. D21A/1131 (lowering of rotunda sill & replacement of rotunda windows) & D21A/1134 (the remaining works). These works were divided to allow for flexibility of options and both applications have now been permitted by DLRCC. The Board may, therefore, wish to consider dismissing the referral in accordance with the provisions of section 138 (1)(b) of the Act.
- 8.1.2. However, the section 5 referral remains with the Board for decision, and it does not precisely reflect the works outlined in the planning application drawings. And unlike the aforementioned planning applications, the purpose of this referral is not to determine the acceptability or otherwise of the matters raised in respect of the proper

planning and sustainable development of the area, but rather whether or not the matter in question constitutes development, and if so, falls within the scope of exempted development within the meaning of the relevant legislation.

- 8.1.3. Given the range of separate works involved in this referral, I propose to assess each item individually on the questions of whether it constitutes 'development' and 'exempted development'.

8.2. **Item 1 – Infill of Floor Void**

- 8.2.1. This item involves internal alterations to consist of infill of the circular floor void at upper (3rd floor level) and removal of internal staircase to provide an additional 16 sq.m. of internal floor area.
- 8.2.2. I am satisfied that this constitutes 'works' as per the definition outlined in s. 2(1) of the Act, and accordingly, that it also constitutes 'development' as per the definition outlined in s. 3(1) of the Act. However, I consider that the development consists of the carrying out of works for the maintenance, improvement or other alteration of the structure, being works which affect only the interior of the structure. Accordingly, I am satisfied that the development is exempted development in accordance with the provisions of s. 4(1)(h) of the Act.

8.3. **Item 2 – Internal Layout Alterations**

- 8.3.1. This Item involves internal layout alterations to consist of removal / addition of walls / partitions and doors (on 2nd and 3rd floor level); relocating of Bedroom No. 3 from 2nd to 3rd floor to create open plan living / dining / kitchen area at 2nd floor.
- 8.3.2. Consistent with Item 1, I am satisfied that this constitutes 'works' as per the definition outlined in s. 2(1) of the Act, and accordingly, that it also constitutes 'development' as per the definition outlined in s. 3(1) of the Act. Similarly, I consider that the development consists of the carrying out of works for the maintenance, improvement or other alteration of the structure, being works which affect only the interior of the structure. Accordingly, I am satisfied that the development is exempted development in accordance with the provisions of s. 4(1)(h) of the Act.

8.4. Works Item No. 3 – Lowering of Rotunda Sill

- 8.4.1. This involves alterations to the external elevation of the rotunda at 3rd floor to consist of lowering of the curved window sill by 0.5m.
- 8.4.2. I am satisfied that these external alterations constitute 'works' as per the definition outlined in s. 2(1) of the Act, and accordingly, that it also constitutes 'development' as per the definition outlined in s. 3(1) of the Act. Regarding such external works, section 4 (1)(h) outlines that exempted development shall include the carrying out of works for the maintenance, improvement or other alteration of the 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.
- 8.4.3. I am satisfied that the development constitutes works for the 'improvement or other alterations of the structure'. On the question of the external appearance of the structure, I would accept that the rotunda is a unique and distinct feature of the building, which appears to have been designed with the effective purpose of being 'inconsistent' with the rest of the structure. I acknowledge that there is a similar, smaller feature at the opposite (northwest) side of the building, but there is no intervisibility between the two elements. The existing sill level is more than 10 metres above ground level and would be reduced by 0.5m, which equates to a height reduction of less than 5%. The lowered sill would also become consistent with the adjoining sill levels.
- 8.4.4. In considering the external appearance, it is also important to note that the rotunda has limited visibility, it being largely screened by the remainder of the building to the north and west and being subject to only sea views to the east. Therefore, only the southeast (side) elevation is prominently viewed from the public realm (Coliemore Road / Harbour etc.) and the proposed alterations would generally be viewed at a significant height and distance.
- 8.4.5. Having regard to the above, I consider that the lowered sill would constitute a relatively minor and imperceptible alteration in the larger scale of the overall rotunda feature, which itself is already inconsistent with the rest of the building. I do not consider that it would materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure.

Furthermore, the structure is unique at this location, and I do not consider that there would be any material impacts on the character of neighbouring structures.

- 8.4.6. Accordingly, I am satisfied that Item 3 would be exempted development in accordance with the provisions of s. 4(1)(h) of the Act.

8.5. Item 4 – Fenestration Changes

- 8.5.1. This involves alterations to the external elevation of the rotunda at 3rd floor to consist of changing of 7 no. groups of 3 no. windows to 7 no. curved fixed windows and replacement of 3rd floor aluclad windows to rotunda / north east (rear) elevation to aluminium windows with a dark grey powder coated finish (RAL 7043 / Traffic Grey).
- 8.5.2. I am satisfied that these external alterations constitute ‘works’ as per the definition outlined in s. 2(1) of the Act, and accordingly, that it also constitutes ‘development’ as per the definition outlined in s. 3(1) of the Act. Regarding such external works, section 4 (1)(h) outlines that exempted development shall include the carrying out of works for the maintenance, improvement or other alteration of the 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.
- 8.5.3. I am satisfied that the development constitutes works for the ‘improvement or other alterations of the structure’. On the question of the external appearance of the structure, I would again highlight that the rotunda is a unique and distinct feature of the building. The 3rd floor level of the rotunda is almost completely enclosed by glazing, which continues further along the rear (northeast) elevation serving the existing 3rd floor ‘living room’. This continuous glazing forms a distinct penthouse feature which differs significantly to the glazing arrangements on the lower levels. Again, I would highlight that this element of the building has limited visibility, particularly the rear (northeast) facing glazing.
- 8.5.4. It is proposed to replace this top floor glazing with revised fenestration, involving larger, simpler sheets of glass and a reduced extent of dividing mullions and transoms. It is also proposed that the windows would be changed to a dark grey colour, which I consider to be largely consistent with the existing window colours at 3rd floor level.

8.5.5. Having regard to the above, I conclude that the existing glazing at this location is already distinct from the remainder of the visible structure. The proposed window colour would be consistent with the existing colours at 3rd floor level, and I also consider that the dark colour of the windows and significant shading overhangs above would largely mitigate the visual impact of the proposed changes to the fenestration pattern. Accordingly, I do not consider that these alterations would materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure. Furthermore, the structure is unique at this location, and I do not consider that there would be any material impacts on the character of neighbouring structures.

8.5.6. Accordingly, I am satisfied that Item 4 would be exempted development in accordance with the provisions of s. 4(1)(h) of the Act.

8.6. Item 5 - Rotunda fenestration changes and lowering of sill

8.6.1. This involves a combination of Works Item Nos. 3 and 4 (above) to consist of the lowering of rotunda sill and changing 7 no. groups of 3 no. windows to 7 no. curved fixed windows.

8.6.2. I have already outlined my opinion that Items 3 & 4 constitute 'works' and 'development', and that the impact of such external works must be assessed in the context of section 4(1)(h) of the Act. Similarly, I have outlined that Items 3 & 4 constitute 'improvement or other alterations of the structure'.

8.6.3. I have concluded that the individual elements of Items 3 & 4 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. Item 5 involves a combination of Items 3 & 4 and therefore effectively requires an assessment of the cumulative impact of the works.

8.6.4. I have considered the cumulative impact of the lowering of the rotunda sill level and fenestration changes at 3rd floor level. Again, having regard to the existing distinctive character of these features, their limited visibility, and the limited extent of the proposed alterations, I do not consider that these cumulative alterations would materially affect the external appearance of the structure so as to render the

appearance inconsistent with the character of the structure or any neighbouring structures.

8.6.5. Accordingly, I am satisfied that Item 5 would be exempted development in accordance with the provisions of s. 4(1)(h) of the Act.

8.7. Item 6 – Lowering of sill with fenestration colour change

8.7.1. This involves the lowering of rotunda sill as per Works Item No. 3, but retaining the same fenestration division with replacement of 3rd floor aluclad windows to rotunda / north east (rear) elevation to aluminium windows with a dark grey powder coated finish (RAL 7043 / Traffic Grey).

8.7.2. I have already outlined my opinion that the lowering of the sill level (Item 3) and the replacement of the 3rd floor windows would constitute 'works' and 'development', and that the impact of such external works must be assessed in the context of section 4(1)(h) of the Act. Similarly, I have outlined that such works constitute 'improvement or other alterations of the structure'.

8.7.3. I have concluded (as per Item 5 above) that the cumulative impact of Item 3 and the replacement of adjoining windows would 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. Item 6 involves a variation of Item 5, whereby the fenestration division within the rotunda would be retained and the revised fenestration pattern for the remainder of windows at 3rd floor level would be more consistent with the existing windows.

8.7.4. Accordingly, the extent of alterations in Item 6 would be less than those outlined in Item 5. And for the same reasons as those outlined regarding Item 5, I do not consider that these cumulative alterations would materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or any neighbouring structures.

8.7.5. Accordingly, I am satisfied that Item 6 would be exempted development in accordance with the provisions of s. 4(1)(h) of the Act.

8.8. **Item 7**

- 8.8.1. This involves the changing of a window on the north-east elevation at 2nd floor to double doors to access existing rear facing roof terrace.
- 8.8.2. Consistent with the other Items, I am satisfied that this would constitute 'works' and 'development', and that the impact of such external works must be assessed in the context of section 4(1)(h) of the Act. Similarly, I consider that the works constitute 'improvement or other alterations of the structure'.
- 8.8.3. The drawings/images submitted showing the existing and proposed elevations/photomontages indicate that there would be no change to the size or colour of the existing opening. It would simply be changed from a window to a door. It should be noted that there is another existing door access to this terrace and, therefore, the proposed works would not create a new external amenity space. The fenestration division would simply be altered to accommodate the double doors.
- 8.8.4. I consider this to be a minor alteration given the limited extent of the works and the wide variety of window sizes/styles that exist on the rear elevation. The proposed door would largely be screened by the terrace parapet wall and would only be marginally perceptible from sea views. I do not consider that this alteration would materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or any neighbouring structures.
- 8.8.5. Accordingly, I am satisfied that Item 7 would be exempted development in accordance with the provisions of s. 4(1)(h) of the Act.

8.9. **Item 8**

- 8.9.1. This involves the changing of fenestration division of 4 no. windows on the north-east elevation at 2nd floor level.
- 8.9.2. Consistent with the other Items, I am satisfied that this would constitute 'works' and 'development', and that the impact of such external works must be assessed in the context of section 4(1)(h) of the Act. Similarly, I consider that the works constitute 'improvement or other alterations of the structure'.

- 8.9.3. The drawings/images submitted showing the existing and proposed elevations/photomontages indicate that there would be no change to the size or colour of the existing openings. It would simply involve changes to the fenestration division by the omission of some mullions and a low-level transom.
- 8.9.4. I consider these to be minor alterations given the limited extent of the works and the wide variety of window sizes/styles that exist on the rear elevation. Again, the alterations would only be marginally perceptible from sea views. I do not consider that these alterations would materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or any neighbouring structures.
- 8.9.5. Accordingly, I am satisfied that Item 8 would be exempted development in accordance with the provisions of s. 4(1)(h) of the Act.

8.10. Cumulative Impact

- 8.10.1. While I have considered each of the elements individually and some of the elements in-combination, I consider that the cumulative impact of all the alterations must be considered prior to the issuing of a declaration on the matter.
- 8.10.2. I am satisfied that Items 1 & 2 involve internal alterations only and would not have any cumulative impact with the external alterations proposed. I consider that the external alterations can largely be separated into Items 3 - 6 (i.e. the alterations to the rotunda and adjoining glazing at 3rd floor level) and Items 7 – 8 (i.e. alterations to openings at 2nd floor level).
- 8.10.3. As previously outlined, I consider that the rotunda and the penthouse level are already distinctive elements of the overall building. For that reason, I consider the proposed alterations would result in only a limited cumulative impact with the proposed alterations at 2nd floor level. I would accept that the cumulative impact of the alterations would be perceptible, but I do not consider that it would be to the extent as to render the appearance inconsistent with the character of the structure or any neighbouring structures.
- 8.10.4. In conclusion, I am satisfied that the cumulative alterations involved in Items 1 – 8 would be exempted development in accordance with the provisions of s. 4(1)(h) of the Act.

8.11. Restrictions on exempted development

- 8.11.1. It would appear that the planning authority placed a restriction on exempted development on the basis of the interpretation of a 'house' as outlined in Article 5 (1) of the Regulations. This outlines that, as regards development of classes 1, 2, 3, 4, 6(b)(ii), 7 or 8 specified in column 1 of Part 1 of Schedule 2, or development to which articles 10(4) or 10(5) refer, a 'house' does not include a building designed for use or used as 2 or more dwellings or a flat, an apartment or other dwelling within such a building. However, I do not consider that the current case refers to development of classes 1, 2, 3, 4, 6(b)(ii), 7 or 8 specified in column 1 of Part 1 of Schedule 2, or development to which articles 10(4) or 10(5) refer. Accordingly, this interpretation of a 'house' is irrelevant to the current case and should not result in any restrictions on exemption.
- 8.11.2. Article 9 of the Regulations outlines that development to which article 6 relates shall not be exempted development if the carrying out of the works would contravene / consist of a range of specified circumstances. Again however, I do not consider that the current case involves development to which article 6 relates and the restrictions outlined in article 9 do not, therefore, apply.
- 8.11.3. I also acknowledge that section 2 of the Act outlines that '*except where the context otherwise requires*' the term 'alteration' implies a material alteration of the external appearance of a structure so as to render the appearance inconsistent with the character of the structure or neighbouring structures. However, in the context of considering exempted development, this would imply that all 'alterations' are not exempted development as per section 4(1)(h) of the Act. Accordingly, I consider that this context requires a wider assessment under the terms of section 4(1)(h), which itself includes 'alteration' as works which may or may not be exempted development.

8.12. Environmental Impact Assessment - Screening

Having regard to the developed nature of the site and its location within a serviced area, together with the limited extent of the proposed works, there is no real likelihood of significant effects on the environment arising from the development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

8.13. Appropriate Assessment - Screening

- 8.13.1. This involves an existing developed site which is located within a serviced urban area. The proposed works are of minor scale and complexity and do not involve ground works of any kind. The nearest Natura 2000 sites are the Dalkey Islands SPA and the Rockabill to Dalkey Island SAC, which are located offshore to the east at distances of c. 70 metres and c. 200 metres respectively. The Natura 2000 sites are obviously separated from the referral site by part of a substantial water body (i.e. The Irish Sea).
- 8.13.2. Having regard to the limited scale of the proposed development, the limited potential for any associated emissions, and the lack of connectivity with Natura 2000 sites due to the separation distance and hydrological buffer, I consider that no Appropriate Assessment issues arise. The development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.14. Conclusion

As previously outlined, the Board may wish to dismiss the referral in accordance with the provisions of section 138 (1)(b) of the Act. Otherwise, I have determined that the proposed works (Items 1 to 8) would all constitute 'development' and that they would involve the improvement or alteration of the structure. However, I consider that the works, either individually or cumulatively, are works which would 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. Accordingly, I am of the opinion that the works constitute 'exempted development' in accordance with section 4 (1)(h) of the Act.

9.0 Recommendation

In the event that the referral is not dismissed in accordance with section 138 (1)(b) of the Act, 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 following works at Apartment Q, Coliemoire Apartments, Dalkey, Co. Dublin, constitutes development and if so whether that development can be considered exempt development':

Works Item No. 1 – Infill of Floor Void

Internal alterations to consist of infill of the circular floor void at upper (3rd floor level) and removal of internal staircase to provide an additional 16 sq.m. of internal floor area.

Works Item No. 2 – Internal Layout Alterations

Internal layout alterations to consist of removal / addition of walls / partitions and doors (on 2nd and 3rd floor level); relocating of Bedroom No. 3 from 2nd to 3rd floor to create open plan living / dining / kitchen area at 2nd floor.

Works Item No. 3 – Lowering of Rotunda Sill

Alterations to the external elevation of the rotunda at 3rd floor to consist of lowering of the curved window sill by 0.5m. This faces north to south-west on the rear (seaward) and side elevations.

Works Item No. 4 – Fenestration Changes

Alterations to the external elevation of the rotunda at 3rd floor to consist of changing of 7 no. groups of 3 no. windows to 7 no. curved fixed windows and replacement of 3rd floor aluclad windows to rotunda / north east (rear) elevation to aluminium windows with a dark grey powder coated finish (RAL

7043 / Traffic Grey). This faces north to south-west on the rear (seaward) and side elevations.

Works Item No. 5 – Rotunda fenestration changes and lowering of sill

A combination of Works Item Nos. 3 and 4 above to consist of lowering of rotunda sill and changing 7 no. groups of 3 no. windows to 7 no. curved fixed windows.

Works Item No. 6 – Lowering of sill with fenestration colour change

Lowering of rotunda sill as per Works Item No. 3 but retaining the same fenestration division with replacement of 3rd floor aluclad windows to rotunda / north east (rear) elevation to aluminium windows with a dark grey powder coated finish (RAL 7043 / Traffic Grey).

Works Item No. 7

Changing of window on north-east elevation at 2nd floor to double doors to access existing rear facing roof terrace.

Works Item No. 8

Changing of fenestration division of 4 no. windows on north-east elevation at 2nd floor.

AND WHEREAS Ms. Bridget Regina Walsh, care of Bright Design Architects, 4 Seafield Park, Booterstown, Co. Dublin, requested a declaration on this question from Dun Laoghaire-Rathdown County Council and the Council issued a declaration on the 10th day of September 2021 stating that Works Items 1 and 2 constitute development and exempted development, and that Works Items 3, 4, 5, 6, 7, and 8 constitute development and do not constitute exempted development:

AND WHEREAS the said question was referred to An Bord Pleanála by Ms. Bridget Regina Walsh on the 22nd day of September, 2021:

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

- (a) Section 2(1), 3(1), and 4(1)(h) of the Planning and Development Act, 2000, as amended,
- (b) Articles 5, 6, and 9 of the Planning and Development Regulations 2001, as amended
- (c) the provisions of the Dun Laoghaire-Rathdown County Development Plan 2022-2028,
- (d) the planning history of the site and the pattern of development in the area, and
- (e) the report of the Planning Inspector:

AND WHEREAS An Bord Pleanála has concluded that Works Items 1 to 8 are works involving the improvement or alteration of the structure which would 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:

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by Section 5 (3)(a) of the Planning and Development Act 2000, as amended, hereby decides that the works outlined in Works Items 1 to 8 is development and is exempted development.

Stephen Ward
Senior Planning Inspector

15th June 2022