



An
Bord
Pleanála

Inspector's Report ABP-312682-22

Question

Whether the use of sea containers on site (for exempted development for maintenance, repair and renewal works to Lodges on Johnstown Estate) is or is not development or is or is not exempted development.

Location

Johnstown House Estate, Enfield, County Meath.

Declaration

Planning Authority

Meath County Council

Planning Authority Reg. Ref.

TAS52161.

Applicant for Declaration

Lefgem Limited.

Planning Authority Decision

Is not exempted development.

Referral

Referred by

Lefgem Limited.

Owner/ Occupier

Lefgem Limited.

Observer(s)

1. Martin Kennedy.
2. Kieran O'Connell.

3. Seán O'Connell.
4. Dave Godwin.
5. Gerry O'Gorman.
6. Peter Wilson.

Date of Site Inspection

6th day of September, 2022, and the
29th day of June, 2023.

Inspector

Patricia-Marie Young.

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1.0 Site Location and Description

- 1.1. The subject site relates to the grounds of the Johnstown Estate Hotel, a hotel centred around a 18th Century Georgian period country house (Note: Johnstown House, a designated Protected Structure), that has been much extended and altered to accommodate this use. The Johnstown Estate House Hotel sits in 120ha of mature landscaped park lands, that are situated to the southeast of Junction 9 of the M4 Motorway with part of the northern boundary bounding the M4 corridor, in Enfield, County Meath.
- 1.2. Immediately to the rear of the hotel there are 40 lodges that are arranged in ten blocks. These ten blocks are situated to the rear of the main period building in an open landscaped area. At the time of both inspections most of these lodges appeared to be in active use as part of the hotel's accommodation offer. The exception being the lodges enclosed by sea shipping containers, hoarding, advertising and ancillary structures.
- 1.3. Despite this sites proximity to the M4 corridor and being situated c1.8km by road from the centre of the settlement of Enfield the surrounding landscape has a rural character. There is a dense landscaped strip of planting along the northern boundary of the site in proximity to the lodges. This strip provides visual screening and a buffer to the M4 corridor.

2.0 The Question

- 2.1. A question has arisen pursuant of Section 5 of the Planning and Development Act, 2000, as amended as to whether the use of sea containers on site (for contended exempted development for maintenance, repair and renewal works to lodges in the Referrer's ownership at the Johnstown Estate House Hotel) is or is not development and is or is not exempted development.

3.0 Planning Authority Declaration

3.1. Declaration

- 3.1.1. On the 13th day of January, 2022, Meath County Council, in accordance with Section 5 of the Planning and Development Act 2000, as amended, decided to issue a notification of declaration stating that the development subject to this referral case would constitute development and is or is not exempted development.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The planner's report serves as the basis for the declaration decision. The main points can be summarised as follows:

- The use of sea containers on the site is considered to constitute development as described under Section 3(1) of the PDA, 2000, as amended.
- The use of sea containers through the overall site is not considered to constitute exempted development as described in Schedule 2, Part 1, Class 16 of the PDA, 2000, as amended.
- They materially affect the character of the Protected Structure setting and therefore do not represent exempted development under the provisions of Section 57(1) of the Planning and Development Act, 2000, as amended.
- Is development and is not exempted development.

4.0 Planning History

4.1. Site

4.1.1. Concurrent Referral Cases with the Board

- **ABP-312681-22:** This referral case also relates to the lodges at the Johnstown Estate Hotel and the question asked is whether hoarding and advertising of Johnstown House Estate is or is not development or is or is not exempted development.

- **ABP-312684-22:** This referral case also relates to the lodges at the Johnstown Estate Hotel and the question asked is whether the devaluation and vandalism of Properties at Lodge No.s 435, 432, 416, 426, 427 & 424 at The Johnstown House Estate is or is not development or is or is not exempted development.

4.2. Other

- **P.A. Ref. No. TA/40538:** Permission was **granted** for a development described as executive stay hotel suites comprising of 40 units in 10 blocks containing 24-bedroom suites and 16 one-bedroom suites together with 91 additional surface car parking, landscaping, connection to private treatment works within the curtilage of Johnstown House, subject to conditions. (Decision date: 08/07/2005).
- **P.A. Ref. No. TA/60082:** Retention permission was **granted** for amendments to external treatments P.A. Ref. No. TA/40538. (Decision date: 20/07/2006).
- **P.A. Ref. No. TA/70146:** Permission for a sign on the lands of the Johnstown Estate Hotel and within the curtilage of Johnstown House was **refused** on the basis it was considered that it would be distraction to motorists and would endanger public safety by reason of a traffic hazard for motorway users. Decision date: 29/06/2007).

- 4.2.1. The hotel use and the associated alterations as well as additions to Johnstown House was permitted under P.A. Ref. No. 99/833. (Decision date: 16/12/1999).

5.0 Policy Context

5.1. Development Plan

- 5.1.1. The site is located on land zoned '*Rural Area*' - '*RA*' under the Meath County Development Plan, 2021- 2027. The land use objective for such land is: "*to protect and promote in a balanced way, the development of agriculture, forestry and rural-related enterprise, biodiversity, the rural landscape, and the built and cultural heritage*".
- 5.1.2. The Record for Protected Structures includes Johnstown House (RPS Ref. No. MH048-103) and describes it as: "*an 18th century house of 5 bays, 3 storeys with parapet and cornice rendered with pedimented door case and four chimneystacks. The house dates from c1750.*"

- 5.1.3. Policy HER POL 14 of the Development Plan sets out that the Council shall seek to: “*protect and conserve the architectural heritage of County*”. In addition, Policy HER POL 16 of the Development Plan sets out that the Council shall seek to: “*protect the setting of Protected Structures and to refuse permission for development within the curtilage or adjacent to a protected structure which would adversely impact on the character and special interest of the structure, where appropriate*”.

5.2. **Natural Heritage Designations**

- 5.2.1. None within the zone of influence.
- 5.2.2. The subject referral site is not located in or immediately adjacent to a European Site, a Natural Heritage Area (NHA) or a proposed NHA (pNHA). The nearest European Sites, i.e., the River Boyne and River Blackwater SPA (Site Code: 004232) and the River Boyne and River Blackwater SAC (Site Code: 002299) are situated c9.8km to the northwest as the bird would fly.
- 5.2.3. The nearest watercourse is the Blackwater River which is located c160m to the south of the site.

5.3. **EIAR**

- 5.3.1. See completed Form 2 on file. Having regard to the nature, size, and location of the proposed development and to the criteria set out in Schedule 7 of the Regulations I have concluded at preliminary examination that there is no real likelihood significant effects on the environment arising from the proposed development. EIA, therefore, is not required.

6.0 **The Referral**

6.1. **Referrer’s Case**

- 6.1.1. The referrer sets out the following arguments:
- The temporary use of 26 sea shipping containers constitutes exempted development as they are being used in support of, and ancillary to refurbishment works to 32 out of the 40 guest lodges on the Estate. In this regard they are

exempted development under the provisions of Section 4(1)(h) of the PDA, 2000, as amended.

- These containers are being used to store furniture and appliances for the lodges which cannot be kept in the lodges during refurbishment works, solely for the period during which that development is being carried out.
- Class 16 provides for the temporary use of containers as exempted development.
- The temporary nature of the sea containers cannot materially affect the character of the Protected Structure given that they would be removed upon completion of refurbishment works.
- The Johnstown House Estate is a hotel containing 40 guest houses with 32 in the control of the referrer.
- The Board is requested to set aside the decision of the Planning Authority and find that the sea shipping containers are exempted development.

6.2. Planning Authority Response

6.2.1. The Planning Authority's response can be summarised as follows:

- Their Section 5 Declaration confirms that the use of hoarding and advertising at Johnstown House Estate constitutes development and is not exempted development within the meaning of the Planning & Development Act, 2000-2021.
- They have had regard to all relevant planning considerations.
- Reference is made to their Planning Officer's report.
- The Board is requested to uphold their decision.

6.3. Observers

6.3.1. An observation was received from **Dave Godwin** on the 13th day of May, 2022, which can be summarised as follows:

- They are the owner of No. 432.
- They objected to the Council on the placement of shipping containers around their property and this resulted in enforcement notice being issued for their removal.

- They seek that the Board keep them informed of this case.

Their observation received by the Board on the 13th day of June, 2022, can be summarised as follows:

- Their property is surrounded by four sea shipping containers. These containers are 20ft in length and have a height of 8.5ft stacked two high.
- The containers were put in place on the 24th day of June, 2021 and on the same day containers were also placed at properties 435 and 416. On this day the containers were welded shut by an employee of the referrer.
- The referrers planning consultants' submission contains many anomalies in what they are claiming is true. It is claimed that 32 suites are being refurbished and renovated. This is not the case, and it is an attempt by the referrer to obscure the truth of the actual on-going situation.
- Prior to the sea shipping containers being provided hoarding was erected around properties 416 and 435. The hoarding was referred to the Council to investigate and was removed by the owners of these properties. Ten days after sea shipping containers were put in place at properties 416, 432 and 435. Therefore, the hoarding predated the sea shipping containers.
- The actions of the referrer to date are to intimidate them into selling their property. In addition, it has resulted in their property being unfit to live in or enjoy.
- They visit their property weekly and sometimes more than this. During these visits they have observed no maintenance and/or refurbishment works being carried out on the lodges in the referrer's ownership.
- Given the number of containers it is questioned why the referrer has no actual proof of any works having been or in the process of being carried out. There are also no tenders relating to such works.
- The containers have not been accessed during the time that they have been in place but rather have been welded securely shut and together.
- These containers, the associated structures as well as materials attached to them give rise to serious health as well as safety concerns for them. Including emergency service access to their property in the event of fire.

- Should the Board determine the containers to be exempted development such a determination would give rise to a dangerous precedent.
- The Board is sought to uphold the Planning Authority's determination.

6.3.2. An observation was received from **Peter Wilson** on the 18th day of May, 2022, which can be summarised as follows:

- They are the owner of No. 416 which is uninhabitable as a result of the shipping containers and hoarding erected around it in an act of harassment by the referrer who wishes to purchase their property for 30,000 euros.
- They seek that the Board keep them informed of this case.

6.3.3. An observation was received from **Seán O Connell** on the 23rd day of May, 2022, which can be summarised as follows:

- They are the owner of No. 427.
- They seek that the Board keep them informed of this case.

Their observation received on the 20th day of June, 2022, can be summarised as follows:

- The sea shipping containers have been placed under the guise of maintenance and refurbishment. Yet, to date no such works have been carried out.
- Advertisement tarpaulin is placed onto the containers to hide unsightly vistas of them and to provide misleading claims of refurbishment/maintenance of properties behind them which the referrer does not control.
- The tarpaulin does not displace either a CE or BS stamp to indicate that it is a material it is fire resistant.
- Suite 427, the property that they own, was purchased in 2007. Up to 2015 they enjoyed the services attached to this property. After this time the situation changed. Since the referrer purchased the hotel estate, he has used his property without his consent and has not paid rent for using it. In 2021 they took back possession of their suite and thereafter a representative of the referrer sought to buy the property at a substantially reduced cost to what it was purchased for.

- They have sought to pay the referrer for the cost of services and general maintenance of the property.
- The referrer after refusing the offer to buy services dug up the water pipes serving their property without their consent. This area was then backfilled with reinforced concrete. Further to this electricity and gas supply to their property was disconnected by the referrer. The gas regulator was also stolen.
- The situation they are in because of the referrers actions have resulted in undue distress and anxiety.
- As a result of the vandalism that has been carried out to their property and the continued intimidation in exasperation, they painted slogans on the exterior of their property. The observer has given an undertaken to the Council to remove these on the condition that no other barriers, hoardings, and the like be placed at their property.

6.3.4. An observation was received from **Martin Kennedy** on the 23rd day of May, 2022, which can be summarised as follows:

- They are the owner of No. 435.
- The shipping containers block daylight and natural access to their property.
- They seek that the Board keep them informed of this case.

6.3.5. An observation was received from **Kieran O'Connell** on the 24th day of May, 2022, which can be summarised as follows:

- They are the owner of No. 426.
- They seek that the Board keep them informed of this case.

This observer's submission dated the 21st day of June, 2022, can be summarised as follows:

- The sea shipping containers have been placed outside of properties which the referrer does not own or control under the guise of maintenance and refurbishment. Yet to date no such refurbishment or maintenance works have taken place around his property (Suite 426) or any other suite to which these shipping containers have been placed at.

- The containers are a fixed and permanent structure with one being placed upon another. They are also fastened together by welded metal plates.
- The containers have had their door locking mechanism welded together. They are therefore not readily accessible or openable.

6.3.6. An observation was received from **Peter Wilson** on the 7th day of June, 2022, which can be summarised as follows:

- The referrer is providing false statements and attempts to mislead the Board in the assertions in their submission.
- The sea shipping containers placed around his property, No. 416, and five other private homes total 26 containers with 6 of them being containers that are 40 foot long and 20 being 20 foot long. These are stacked two high and welded together with their overall heights being 4.8m. The capacity of the 6, 40-foot containers is equivalent to 216 pallets of storage and the 20, 20-foot container have the capacity to store 316 pallets.
- Only one of the 26 containers is accessible with the others welded shut or constructed in a manner that they are not accessible.
- The 40-foot containers have surface areas when stacked two high of 57.6m².
- The containers have been placed between 40cm to 3m from windows and doors of six private properties.
- If the Board determined that the development was not exempt, then this could establish a dangerous precedent.
- The placement of the containers around lodges 416, 435, 432 and other private lodges is a breach of human as well as constitutional rights in relation to peacefully enjoyment of their properties.
- Blocking the pathways and natural light to their property, a property that they have enjoyed since 2006, is without merit and seriously diminishes its residential amenity.
- The contention that the containers are used to store furniture is not supported by the facts. With all lodges in the referrers control having furniture, soft furnishings and the like.

- The height, size, and proximity of the container structures as well as the hoarding associated with them are objected to.
- This development has been carried out to harass and cause distress to the private lodge owners.
- This development has fire and safety risks for the properties impacted.

6.3.7. An observation was received from **Gerry O’Gorman** on the 13th day of June, 2022, and it can be summarised as follows:

- The sea shipping containers have placed outside of property the referrer does not control under the guise of maintenance/refurbishment. Yet, to date no refurbishment or maintenance has taken place around their Suite 424.
- The containers are fixed permanent structures with one container placed upon another and welded with metal plates together. In addition, the lower-level doors of the sea shipping containers are welded permanently closed.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000, as amended.

- Section 2: Definitions

Section 2 (1) of the Act states as follows- ‘In this Act, except where the context otherwise requires –

“*advertisement*” means any word, letter, model, balloon, inflatable structure, kite, poster, notice, device, or representation employed for the purpose of advertisement, announcement, or direction.

“*advertisement structure*” means any structure which is a hoarding, scaffold, framework, pole, standard, device or sign (whether illuminated or not) and which is used or intended for use for exhibiting advertisements or any attachment to a building or structure used for advertising purposes.

“*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.

“*structure*” means ‘any building, structure, excavation, or other thing constructed or made on, in or under any land, or any 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 land ‘includes any structure ...’

“*unauthorised development*” means, in relation to land, the carrying out of any unauthorised works (including the construction, erection or making of any unauthorised structure) or the making of any unauthorised use.

“*unauthorised use*” means, in relation to land, use commenced on or after 1 October 1964, being a use which is a material change in use of any structure or other land and being development other than (a) exempted development (within the meaning of section 4 of the Act of 1963 or section 4 of this Act), or (b) development which is the subject of a permission granted under Part IV of the Act of 1963, being a permission which has not been revoked, and which is carried out in compliance with that permission or any condition to which that permission is subject.

- Section 3(1): Development.

“*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.

(2) For the purposes of subsection (1) and without prejudice to the generality of that subsection-

(a) where any structure or other land or any tree or other object on land becomes used for the exhibition of advertisements, the use of the land shall be taken as having materially changed.

- Section 4: Exempted development

Section 4(1) of the Act states that the following shall be exempted development for the purposes of this Act...

“(h) development consisting of the use 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”.

Section 4 (2) of the Act provides for the making of Regulations. The main Regulations are the Planning and Development Regulations, 2001 (as amended).

Section 4(2)(a) of the Act enables certain classes of development to be deemed exempted development by way of regulation.

Section 4(4) of the Act sets out that notwithstanding paragraphs (a), (i), (ia) and (l) of subsection (1) and any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required.’

- Section 5: Declaration & referral on development & exempted development.

- Section 57(1): Notwithstanding section 4(1)(a), (h), (i), (ia), (j), (k), or (l) and any regulations made under section 4(2), the carrying out of works to a protected structure, or a proposed protected structure, shall be exempted development only if those works would not materially affect the character of-

(a) the structure, or

(b) any element of the structure which contributes to its special architectural, historical, archaeological, artistic, cultural, scientific, social, or technical interest.

7.2. **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 1.

Article 9(1)(a): Development to which Article 6 relates shall not be exempted development for the purposes of the Act– (a) if the carrying out of such development would– (i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act.

Schedule 1 – Part 1 – Exempted Development

Class 16: ‘The erection, construction or placing on land on, in, over or under which, or land adjoining which, development consisting of works (other than mining) is being or is about to be, carried out pursuant to a permission under the Act or as exempted development, of structures, works, plant or machinery needed temporarily in connection with that development during the period in which it is being carried out’.

Subject to the following conditions and limitations:

1. Such structures, works, plant or machinery shall be removed at the expiration of the period and the land shall be reinstated save to such extent as may be authorised or required by a permission under the Act.

8.0 Assessment

8.1. Preliminary Comments:

8.1.1. For clarity I note that the purpose of the referral is not to determine the acceptability or otherwise of the works to which this referral case relates 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, does it fall within the scope of exempted development.

8.2. Is or is Not Development?

8.2.1. This referral case relates to the question of whether the use of 26 sea shipping containers in the vicinity of lodges which the referrer asserts are for exempted development works described as maintenance, repair, and renewal of 32 lodges out of the 40 lodges at the Johnstown Estate Hotel, Enfield, County Meath.

8.2.2. These containers on site are of two variable lengths, i.e., 20 foot (Note: 20 in number) to 40 foot (Note: 6 in Number). These containers are stacked in two's, i.e., one on top of another, in close proximity to lodges located in five of the out of the ten blocks of lodges permitted on the grounds of Johnstown House, a Protected Structure, under P.A. Ref. No. TA/40538, with these lodge blocks located to the rear of the main hotel building.

8.2.3. The first issue the referrer seeks that the Board to decide is whether or not the use of the sea containers is or is not development.

8.2.4. They assert that the physical structure of the sea shipping containers in themselves are exempted development pursuant to Section 4(1)(h) of the Planning and Development Act, 2000, as amended and Class 16 of the Planning and Development Regulations, 2001, as amended.

8.2.5. In the context of the definition of development Section 3(1) of the Planning and Development Act, 2000, as amended, it defines development as: *'the carrying out of any works on, in or under land or the making of a material change in the use of any structures or other land'*.

8.2.6. Of relevance to this definition is Section 2(1) of the Planning and Development Act, 2000, as amended. It defines 'works' as 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, and the consequent definition of works as *'any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal'*.

- 8.2.7. I therefore submit that the placement of the subject containers would have entailed an act or operation in terms of the overall physical logistics of manoeuvring these structures into position, stacking them one on top of the other so that they were two high and ensuring that they were secured at the locations they are now sited. The works carried out also included the attachment and welding plates to secure the stacked two high containers together through to ensuring that the ground they were sited was sufficiently even to accommodate them. It also included the attachment of battens for the attachment of fixtures and structures to them, including hoarding and advertising tarpaulin.
- 8.2.8. I therefore consider that works occurred and so development has occurred in the provision of the sea shipping containers in the immediate vicinity of lodges at the Johnstown Estate House Hotel, which is the subject matter of this referral case.
- 8.2.9. In reaching this conclusion I do not concur with the referrer in this case that Section 4(1)(h) of the Planning and Development Act, 2000, as amended, and Class 16 of the Planning and Development Regulations, 2001, as amended, is applicable. This is on the basis that the referrer has not provided any robust substantiated evidence to support without doubt the tangible link between the use and need of the containers for the carrying out of refurbishment and/or maintenance to the 32 lodges in their legal interest at any point in time either in the past since through to at any future point in time in the future. There was also no visible evidence to support that at time of my site inspections that there was any on-going refurbishment and/or maintenance works at any of the lodges or that there had been any such works carried out prior. The only visible works to the interior spaces of the referrers lodges was general cleaning associated with their use as part of the referrer's hotel accommodation offer.
- 8.2.10. Further, having regard to the placement of the sea shipping containers I consider that they are more remote from the 32 lodges in the referrers legal interest in comparison to the lodges that are in separate legal ownership, i.e., the observer's properties. On this point I note that they are also not positioned or provided on site in a manner that could be described as easily and/or readily accessible for the carrying out of interior

works to the referrers 32 lodges. With the sea containers positioned in a manner that physically encloses space around the lodges they are proximate to with the containers open side's also accessible only from these enclosures as opposed to facing out towards any of the referrer's lodges. The access points to them are also highly restricted in their dimensions to a modest pedestrian access size opening to these enclosures and no access provided for the upper containers.

- 8.2.11. Section 4.0 of the referrer's submission indicates a wide range of items stored within the containers. The list provided includes but is not limited to paints, ladders, sandpaper, rollers, painters drop cloths, plumbing materials, grout and the like. The points of access to most of the containers as said have been welded shut and the containers are arranged in thirteen stacks of two with no provision for access to the top containers. As such the manner of their provision on site could not be considered as one that would be flexible and adaptable in terms of access to their contents as well as securing their contents during refurbishment and/or maintenance works to the interior spaces of the referrer's lodges. There is also no indication which sea containers specifically these items are being stored in and there is no evidence to support that any of the containers do contain the items listed as stored therein, i.e., dated photographs or other form of supporting evidence.
- 8.2.12. Further, in relation to these types of items the duration of time and the inability to control the internal environment of the shipping containers, means that temperature and moisture levels are variable. This environment is not ideal for the storage of many of the items listed including paints, grout and the like. These types of items would likely perish in the time that the sea shipping containers have been *in situ* to date, i.e., early 2021, and in the interim time have been welded shut with very variable winter to summer weather conditions in the passing time.
- 8.2.13. It is also unclear as to why the referrer would place any high value item of furniture, carpets through to electrical appliances in a sea shipping container for this duration of time or to place such items in containers that are then stacked resulting in thirteen of the containers requiring special arrangements for the movement of items from them without damage. On this point the documentation provided does not provide any details to for example confirm that these items are stored solely at ground level shipping containers for ease of access and as a precaution to safeguard them from damage. In addition to the fluctuation in temperatures that arise throughout the year

Ireland has a high humidity generally throughout the year and as said the internal environment of the containers is not one that can be regulated.

- 8.2.14. It is also questionable the temporary nature of these structures given that they appear to now be *in situ* on site since the middle of 2021. In this time the referrers lodges appear to have continued function as part of the hotel accommodation offer. On this point I note that during both of my site inspections views that were available into the referrers lodges shows that their interiors were intact and that they were either in use or immediately available for use as part of the hotel's accommodation offer. This was apparent from customers and cleaning staff entering as well as exiting them.
- 8.2.15. Of further concern the storage capacity of the containers if it were it to be accepted that refurbishment works have been undertaken or are being undertaken through to the scenario if no such works have occurred to date but are in the pipeline does not appear to correlate with one another or the facts on the ground. It would also appear to be a long time to have the quantum of containers in situ in such highly visible locations within the hotel complex as well as very highly visible to hotel customers staying in the lodges through to highly visible and giving rise to significant nuisance for private lodge owners to have them in situ for this duration of time that has passed.
- 8.2.16. That is to say the need for the storage capacity of the six in number forty-foot containers and twenty in number twenty-foot containers is quite substantial. Yet it would appear that all of the lodges in the referrer's ownership as said appeared to be furnished and available as part of the hotel accommodation offer. If not indeed need to furnish part and/or all furniture through to electrical appliances of the lodges, it would appear to be a substantial space just for the storage of perishable and valuable furniture through to electrical items. items like paint, grouts and the like.
- 8.2.17. I also observed that the area around the sea shipping containers is very evidently overgrown and unkempt. It shows no signs of any access being made to the containers. Nor were there any ladders and/or scaffolding to provide access to the top stacked containers. I am therefore not convinced in the time that has passed since that they have been regularly or irregularly accessed.
- 8.2.18. I am not convinced by the documentation provided by the referrer provides any reasonable justification for the quantum of shipping containers on site and the way they have been provided as well as sited.

- 8.2.19. There is also an issue with regards to the fact that prior to the placement of the sea shipping containers at their locations, that these areas formed part of the formally designed and landscaped open space amenity areas around the 40 lodges that were presented and permitted under planning application P.A. Ref. No. TA/40538 within the curtilage of Johnstown House, a Protected Structure, which comprises of a collection of buildings set in a hierarchy of spaces within its 120ha park land setting. The built heritage sensitivity of the site was in my view one of the primary considerations for the Planning Authority as part of their determination of this application. As such the plans and particulars of this aforementioned planning application and as permitted show that the areas now occupied by the containers formed part of an open landscaped area in which the lodges would be sited. With this open space forming a buffer between the north and south of the lodges as well as with the access road and pathways serving the ten lodge blocks that were positioned in a linear set of two.
- 8.2.20. The notification to grant of permission P.A. Ref. No. TA/40538 required the development to be carried out as per the plans and particulars submitted with this application. It would appear that the lodges were completed circa 2006 on foot of the grant of permission P.A. Ref. No. TA/40538 with one of the observers to this referral case indicating that they purchased their serviced lodge in 2006 and another indicating they enjoyed the use of their serviced lodge from 2006 with no issue arising up until the referrers purchase of the hotel and to date 32 out of the 40 permitted lodges.
- 8.2.21. Publicly available historical photographs and aerial views of the lodges up to recent years show that the open space amenity areas around was completed in mainly soft landscaping as well as containing patios in the vicinity of the lodges for use of its occupants. It also shows access to the lodges in the form of pedestrian pathways which provided links to the access road that loops around the lodges to the north, east and south with this also providing car parking spaces for occupants of the lodges.
- 8.2.22. As such the sea shipping containers are sited in permitted and established mainly soft landscaped open space around the 40 permitted lodges in a manner that is inconsistent with the development permitted under P.A. Ref. No. TA/40538.
- 8.2.23. Having regard to the planning history of the site and the pattern of development that has occurred since 1999 at Johnstown House and its associated curtilage I consider that this adds further weight to the fact that a material change of use has occurred to

the area where the containers have been located given the length of time, they have been *in situ* coupled with no end point for their removal.

- 8.2.24. Of additional concern the placement of these structures at highly visible locations in close proximity to the lodges have undoubtedly had a detrimental impact on the legibility as well as appreciation of the designed character of the lodges and the spaces around them. With the containers and their associated structures due to their positioning, their visual incongruity and overbearing built form through to appearance detracting from the setting of the lodges particularly the lodges in their immediate vicinity, those neighbouring them as well as their setting within the parkland of Johnstown House, a Protected Structure.
- 8.2.25. In this context, their close proximity to the lodges when taken together with their orientation relative to the lodges, their height, mass, and volume together with their associated structures have also resulted in additional overshadowing of the open amenity of the lodges and facades of the lodges in their vicinity therefore effectively diminish daylight and sunlight penetration to their interior spaces as well as their associated external amenity spaces. In addition, their built form, their minimal through to in some cases negligible separation distance from lodges in private ownership has also diminished natural ventilation of these properties.
- 8.2.26. The outcome is that this purposefully placement of buildings and spaces that were permitted in the curtilage of a Protected Structure has had its amenity, prevailing character, and intrinsic qualities materially adversely diminished and eroded by the containers.
- 8.2.27. In terms of case law in this regard, I refer the Board to Galway County Council versus Lackagh Rock Limited [1985] I.R.120, where Barron J. held that in order: *“to test whether or not the uses are materially different, it seems to me that what should be looked at are the matters which the planning authority would take into account in the event of a planning application being made, either for the use on the appointed day or for the present use. If the matters are materially different, then the nature of the use must be materially different”*.
- 8.2.28. In this case, I consider that Section 4(1)(h) of the Planning and Development Act, 2000, as amended, relates to works being carried out to structures and does not relate to works being carried out on lands. As such I do not consider Schedule 2, Part 1,

Class 16 of the Planning and Development Regulations, 2001, as amended, applies. In addition, Section 3(2)(a) of the Planning and Development Act makes it clear that the use of land for the containers is a material change of use of the land. This is irrespective of them also being used as structures upon which advertising signage is affixed to.

8.2.29. In tandem, I consider that Section 57(1)(a)(b) of the Planning and Development Act, 2000, as amended, is also a relevant consideration. It sets out that development shall only be exempted development in this type of context where works would not materially affect the character of the structure or any element of the structure which contributes to its special interest. For the reasons set out above, I consider that the containers do materially affect the special character and intrinsic attributes of Johnstown House by way of their visual, material, and functional incongruity with the evolution of designed buildings and spaces in its curtilage which is a parkland setting.

8.2.30. Arising from the above considerations, I consider that 'works' have occurred to the land in which the sea shipping containers have been provided as well as the use of that land has materially changed and therefore the containers subject of this referral case constitutes 'development'.

8.3. Are the sea shipping containers exempt under the Planning & Development Regulations, 2001, as amended?

8.3.1. Class 16(a) of Part 1, Schedule 2 provides that the erection, construction or placing on land on, in, over or under which, or on land adjoining which, development consisting of works is being or is about to be carried out pursuant to a permission under the Act or as exempted development, of structures, works, plant or machinery needed temporarily in connection with that development during the period in which it is being carried out.

8.3.2. This is subject to such structures, works, plant, or machinery shall be removed at the expiration of the period and the land shall be reinstated save to such extent as may be authorised or required by a permission under the Act.

8.3.3. For reasons set out above and further added to below this exempted development provision under Class 16 is not applicable given that the works are not exempted development and given that the sea shipping containers do not relate to any development being carried out pursuant to a permission under the Act.

- 8.3.4. The lodges are buildings that were permitted under P.A. Ref. No. TA/40538 in 2005 and were implemented as well as completed soon thereafter. A considerable time has gone by between when it would appear they were completed in circa 2006 and to when the sea containers were placed on the site in circa early 2021.
- 8.3.5. In the intervening time the area where the containers are now located formed part of the open landscaping with soft and hard surfaced elements around the lodges. As part of an overall design concept that sought to balance the provision of these lodged within the parkland setting of Johnstown House, a Protected Structure.
- 8.3.6. On this point I note that the parent permission for the Johnstown Estate Hotel is P.A. Ref. No. 99/833 under which the hotel use and associated alterations as well as additions were permitted. In addition to this the grant of permission, P.A. Ref. No. TA/40538, permitted the 40 lodge structures which were described under this application as comprising of 40 units in 10 blocks containing 24-bedroom suites and 16 one-bedroom suites. This application also included as part of the description their associated landscaping and services within the curtilage of Johnstown House. Condition No. 1 of the grant of permission required this development to be carried out as per the plans and particulars submitted with this application. The containers are therefore inconsistent with the grant of permission for the lodges and the overall pattern of development that has been permitted within the parkland setting of Johnstown House, a Protected Structure.
- 8.3.7. It is also a fact that the tarpaulin advertising the hotel wraps around the container structures addressing the open space and the service road. I submit that the containers could in this situation come within the definition of advertisement structure in that they are framework/device that are being used for exhibiting advertisements.
- 8.3.8. Against this context it is therefore relevant in my view that Condition No. 17 of P.A. Ref. No. 99/833 stated: "*no advertising signs, symbols, flags, emblems or logos shall be erected externally on the buildings or anywhere on the site without a prior grant of permission*" and Condition 5(b) of P.A. Ref. No. TA/40538 also required any signage to be submitted for the written agreement of the Planning Authority in the interest of visual amenities.
- 8.3.9. In relation to Article 9(1) of the Planning and Development Regulations, 2001, as amended, it sets out a number of restrictions on exempted development with it

including instances under which development in Part 1 is not exempted development. It sets out that development to which Article 6 relates shall not be exempted development where it would contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act.

8.3.10. Based on the above review of the conditions associated with the parent permission and subsequent permissions granted supports that the development subject of this referral case would contravene conditions attached to permissions granted under the Act.

8.3.11. Further, in the case of the uses permitted under P.A. Ref. No. TA/40538 the sea shipping containers, including its use as an advertising support structure, would be a use that would materially conflict with the open soft landscaped setting permitted around the lodges and the restrictions placed on advertising at this location under this grant of permission.

8.4. Conclusion

8.4.1. In conclusion, in considering this referral case I have had regard to the Planning and Development Act, 2000, as amended, and the Planning and Development Regulations, 2001, as amended. I have also examined referral cases determined by the Board to determine whether or not the existence of any similar precedents. I consider that in this case the development and the site context is in my view unique. Arising from this, I conclude that the shipping containers at the subject site is 'development' and is 'not exempted development'. This conclusion aligns with the decision of the Planning Authority in their determination of this question.

8.5. Other Matters Arising

8.5.1. **Enforcement of Unauthorised Development, Civil and Anti-social Behaviour:** The observers in this appeal case raise issues that fall outside of the jurisdiction of the Board to deal with in this case. It is clear that as property owners they have had the peaceful enjoyment of their properties interfered with. This in my view is very visible during inspection of the site with their established residential amenities seriously injured by the manner sea shipping containers, the hoarding and advertising given the duration of time that has passed together with no timeframe or assurance of end date for their removal.

The matter of enforcement of unauthorised development is one for the Planning Authority, which in this case is Meath County Council, to deal with as they see fit and all unauthorised development of concern to the observers should be referred to them to expediate a resolution to this situation.

Alongside this there are also clear civil matters that arise in this referral case that can only be resolved by agreement between the parties or in the civil courts.

On this point I note that the Development Management Guidelines make this clear. In this regard, I note the provisions of Section 5.13 of the Guidelines which state '*...the planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution by the courts*'.

Further, matters such as anti-social behaviour, activities and other forms of harassment should also be directed to the Gardai to resolve as they see fit.

8.5.2. **Depreciation of Property Values:** Given the nature of the development, the duration of time the sea shipping containers have been *in situ*, the impact they have had on the residential amenities and visual amenities of the observers properties despite the lack of expert advice on property value it is clear from the evidence available on property values having regard to the depreciation of property values that occurred during the crash through to the current times where property values have by and large stabilised that there is merit in the observers contentions that a devaluation of their property values has arisen. With this added to by the disconnection of utilities upon which these properties are dependent upon for human occupation. Though I consider this concern is with merit this issue however falls outside of the jurisdiction of the Board to deal with in this case.

8.5.3. **Safety Concerns:** A few safety concerns are raised by the observers in relation to the sea shipping containers to which this referral case relates. Given the way the construction has been carried out through to the materials used on structures affixed to it I do not consider these concerns are unreasonable given that in an adverse event such as fire the structures have been provided in close proximity to their properties and in cases obstructing window openings as well as limiting possible safe evacuation of their premises.

There would also be a concern that the long-term disconnection of utilities including water and the way this has been carried out. This is evident on site. This would also impact on the owners of properties impacted to protect their property should they need access to water in an emergency situation.

In addition, it is the case that where this has occurred property owners are dependent upon sourcing water in containers for use when they are in occupation of their properties. With water details for the forty lodges permitted under the grant of permission P.A. Ref. No. TA/40538.

I therefore raise a precautionary concern to the Board that it could be argued that the development subject of this referral case and the overall works that have been carried out on what was permitted open space through which water supply was obtained to the individual lodge properties that there is also a conflict arising with this development and the water supply requirements set out under Condition No. 8 of P.A. Ref. No. TA/40538.

This therefore adds to the concerns already raised in the assessment above, in particular, Article 9(1)(i) of the Planning and Development Regulations, 2001, as amended. I reiterate this article sets out that development to which Article 6 relates shall not be exempted development where it would contravene a condition attached to a permission under the Act.

9.0 Appropriate Assessment Screening

- 9.1. The proposal consists of twenty-six sea shipping containers in the setting of Johnstown House, a Protected Structure. I highlight to the Board that the referrer has not provided any detailed plans and particulars in relation to the same. They have also not provided any clarity on the way surface water runoff would be collected from the structures associated with the hoarding and the advertisement tarpaulin.
- 9.2. In addition, the sea shipping container structures used appear to have been used prior to their placement on the subject site and it is also apparent that been other works carried out as part of the overall development. This includes but not limited to excavation to erect the hoarding that is in places attached to the shipping containers.

- 9.3. Moreover, Third Party Observers assert that excavation works carried out in the area of the sea shipping containers impacted water supply, gas routes and other essential services. It is unclear whether the containers have been placed on or in proximity of these works and whether or not these works also impacted on the foul drainage servicing of the impacted lodges.
- 9.4. There is no drainage report on the case file, or any details provided on drainage matters.
- 9.5. I note that the development at its nearest point is located c.160m to the north and it would appear uphill of the Blackwater River. The site at its nearest point is located c948m to the south of Proposed Natural Heritage Areas: Royal Canal (Site Code: 002103). The settlement of Enfield and its hinterland lies together the M6 corridor lies in between.
- 9.6. In the absence of information indicating otherwise and despite the minor nature of the development there is potential for surface water runoff to drain downhill towards the aforementioned watercourse due to the overall footprint and area of the works.
- 9.7. The nearest European Sites with a potential connection to the referral site (based on the principle of source-pathway-receptor) are the River Boyne and River Blackwater SPA (Site Code: 004232) and the River Boyne and River Blackwater SAC (Site Code: 002299). These are situated c9.8km to the northwest as the bird would fly. These European sites also geographically overlap one another.
- 9.8. The qualifying interests of the aforementioned SAC are:
- Alkaline fens [7230]
 - Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (Alno-Padion, Alnion incanae, Salicion albae) [91E0]
 - *Lampetra fluviatilis* (River Lamprey) [1099]
 - *Salmo salar* (Salmon) [1106]
 - *Lutra lutra* (Otter) [1355]
- 9.9. In relation to the SPA the qualifying interests is the Kingfisher (*Alcedo atthis*) [A229].
- 9.10. The site-specific conservation objective for the SPA and SAC seeks the maintenance of the habitats and species at favourable conservation status at a national level.

9.11. Given the nature of the development, the significant lateral separation distance together with the nature of landscape in between despite the absence of an appropriate assessment screening report and/ or a natura impact statement, I consider that the Board can be satisfied that the subject development individually or in combination with other plans or projects would not result in an adverse effect on the integrity of either of these European Sites.

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 use of sea shipping containers (for maintenance, repair and renewal works to lodges at Johnstown House Estate) is or is not development or is or is not exempted development:

AND WHEREAS Lefgem Limited requested a declaration on this question from Meath County Council and the said Council issued a declaration on the 13th day of January, 2022, stating that the matter was development and was not exempted development:

AND WHEREAS Lefgem Limited referred this declaration for review to An Bord Pleanála on the 9th day of February, 2022:

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

- (a) Section 2(1) of the Planning and Development Act, 2000, as amended,
- (b) Section 3(1) of the Planning and Development Act, 2000, as amended.
- (c) Section 4(1)(h) of the Planning and Development Act, 2000, as amended,

- (d) Section 57(1) of the Planning and Development Act, 2000, as amended.
- (e) Article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (f) Class 16 Schedule 2 of the Planning and Development Regulations, 2001, as amended,
- (g) the planning history of the site,
- (h) the pattern of development and character of Johnstown House, a Protected Structure, in a parkland setting,
- (i) the report of the Inspector.

AND WHEREAS An Bord Pleanála has concluded that the sea shipping containers (for maintenance, repair and renewal works to lodges at Johnstown House Estate) is ‘development’ and is ‘not 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 sea shipping containers the site of Johnstown House Estate **is development and is not exempted development**

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Patricia-Marie Young
Planning Inspector – 6th day of October, 2023.