



Question

Whether the devaluation and vandalism of properties at Lodges No.s 416, 424, 426, 427, 432 and 435 at the Johnstown House 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.

TAS52162.

Applicant for Declaration

Lefgem Limited.

Planning Authority Decision

Is exempted development.

Referral

Referred by

Lefgem Limited.

Owner/ Occupier

Lefgem Limited.

Observer(s)

1. Sean O'Connell.
2. Peter Wilson.

3. Martin Kennedy.
4. Kieran O'Connell.
5. Gerry O'Gorman.
6. Dave Godwin.

Date of Site Inspection

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

Inspector

Patricia-Marie Young.

Contents

1.0 Site Location and Description	4
2.0 The Question	4
3.0 Planning Authority Declaration.....	5
3.1. Declaration.....	5
3.2. Planning Authority Reports	5
4.0 Planning History.....	5
5.0 Policy Context.....	6
5.1. Development Plan.....	6
5.2. Natural Heritage Designations	7
6.0 The Referral.....	8
6.1. Referrer's Case	8
6.2. Planning Authority Response	9
6.3. Observers.....	9
7.0 Statutory Provisions.....	12
7.1. Planning and Development Act, 2000, as amended.	12
8.0 Previous Board References/Referrals	13
9.0 Assessment.....	14
9.2. Is or is not development?	18
10.0 Appropriate Assessment Screening	24
11.0 Recommendation	25

1.0 Site Location and Description

- 1.1. The subject site relates to the lodge blocks located on the grounds of the Johnstown Estate Hotel, a hotel centred around a 18th Century Georgian country house (Johnstown House - a designated Protected Structure), which sits in a 120ha parkland setting. The site is located to the southeast of Junction 9 of the M4 Motorway, in Enfield, County Meath.
- 1.2. The subject lodge buildings are situated to the rear of the main hotel building. There are a total of forty lodge units which are contained in ten two-storey blocks set in an open manicured landscaped setting. The lodge units to which this referral question relate are specified as No.s 416, 424, 426, 427, 432 and 435. Views of these lodges are restricted due to them being enclosed by a mixture of sea shipping containers, hoarding, advertising structures and fixtures. At the time of inspection these lodges did not appear to be in functional use with their exteriors painted in contrasting colour to the muted coherent colours that characterise the ten lodge blocks and with this contrasting colour also containing spray painted slogans/writing.
- 1.3. The immediate open space areas inside the enclosures are unkempt and overgrown with vermin issues also evident. There was also evidence of ground excavation and disconnection of essential services to the subject lodges.
- 1.4. 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 devaluation and vandalism of properties at Lodges No.s 435, 432, 416, 424, 426 and 427 at the Johnstown House Estate is or is not development or is or is not exempted development.
- 2.2. I also note that the referrers submission poses the question differently to that of the question posed and referred to in the Planning Authority's declaration for P.A. Ref. No.

TAS52162. In this regard they pose the question whether the graffiti and garish paint works at the aforementioned lodge units at the Johnstown House Estate is or is not development or 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 in relation to the question posed under Section 2.1 that the devaluation and vandalism at Lodges No.s 416, 424, 426, 427, 432 and 435 at the Johnstown House Estate Hotel is development and that it is not exempted development.

3.2. Planning Authority Reports

3.2.1. **Planning Reports:** The planner's report includes the following points:

- The questioned posed by the referrer appears to be whether or not the devaluation and vandalism of properties at Lodges No.s 435, 432, 416, 426, 427 and 424 is or is not development, or is or is not exempted development.
- The devaluation and vandalism of the Lodges No.s 435, 432, 416, 426, 427 and 424 is not considered to constitute development as described under Section 3(1) of the Planning and Development Act, 2000 to 2021.
- Regard was had to the provisions of Section 2, 3, 4 and 57(1) of the Planning and Development Act, 2000-2021.
- Regard was had to Article 6, Article 9 and Class 12 of Schedule 2 of Part 1 of the Planning and Development Regulations, 2001 to 2021.

4.0 Planning History

4.1. Site

4.1.1. **Concurrent Referral Cases with the Board**

- **ABP-312682-22:** This referral case also relates to the lodges at the Johnstown Estate Hotel and the question asked is whether the use of Sea Shipping 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.
- **ABP-312681-22:** This referral case also relates to the lodges at the Johnstown Estate Hotel and the question asked is whether the use of hoarding and advertising 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:** On the 8th day of July, 2005, planning 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. Of note are the requirements of the following conditions:

Condition No. 1: Development shall be carried out in accordance with plans and particulars submitted.

Condition No. 5(a): Requires all external materials including but not limited to colours and finishes to be subject to the written agreement.

- **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).

- 4.2.1. The hotel uses 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. Section 8.7.1 of the Development Plan deals with Protected Structures. 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: *“protect and conserve the architectural heritage of County”*. In addition, Policy HER POL 16 of the Development Plan sets out that the Council shall: *“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. 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. 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 submission can be summarised as follows:

- The Board is requested to overturn a Section 5 Declaration made by Meath County Council under P.A. Ref. No. TAS52162.
- The subject lodges are owned by Third Parties currently in a legal dispute with them. These lodges were privately purchased by the Third Parties and are separate from their 32 lodges, hotel, and spa.
- These works having been carried out to disrupt the operation of their hotel. It is further contended that they have had a negative impact on the commercial operation of their hotel.
- The paint works carried out on these lodges cannot constitute exempted development under Section 2 and Section 3(1) of the Planning and Development Act, 2000, as amended.
- The paint works are deliberately garish and obnoxious in nature.
- External murals and graffiti are excluded from the provisions of Section 4(1)(h) of the Planning and Development Act, 2000, as amended.
- They are also inconsistent with the character of neighbouring structures and Johnstown House.
- The Planning Authority's decision does not reflect their Planning Officer's findings.
- In making their decision the Planning Authority have set an undesirable precedent by deeming bright pink paint and offensive graffiti to be exempted development.
- Condition No. 5(a) of the grant of permission for P.A. Ref. No. TA40538 sets out that the colours and finishes of the lodges require written agreement.
- The agreed finishing and materials of the lodges comprise of a pale coloured plastered render.
- Reference is made to what are similar referral cases.
- The subject development is not exempted development.

6.2. Planning Authority Response

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

- The devaluation and vandalism of properties at Lodges No.s 416, 424, 426, 427, 432 and 435 at the Johnstown House Estate development and is exempted development under the Planning and Development Act, 2000, as amended.
- Reference is made to their Planning Officers report.
- It is requested that the Board uphold its decision.

6.3. Observers

6.3.1. The observation received by the Board from **Dave Godwin** on the 13th day of May, 2022, requests that the Board keep them informed of the outcome of this case. It also sets out that he is the owner of Lodge No. 432, that he objects to the shipping containers around his property to Meath County Council and on foot of this enforcement notice was issued for their removal.

A further observation was received by the Board from Dave Godwin on the 13th day of June, 2022, and it includes the following points:

- This observation considers that the painting or wording on their property is not vandalism as they have consented to it.
- Any devaluation that has arisen to his property is the direct result of the referrers actions around his property including the cutting of essential services and placing shipping containers in its immediate vicinity under the pretence of carrying out of works to lodges.
- Permission was granted for the lodges with supplies of all services.
- His property is not a Protected Structure and there are no murals as well as no slanderous or defamatory comments used on its exterior.
- Attempts have been made to resolve these matters with the referrer, but they have received no response.
- The Board is sought to uphold the Planning Authority's decision.

6.3.2. The observation submission received by the Board from **Gerry O’Gorman** on the 13th day of June, 2022, includes the following points:

- As a result of the shipping containers and hoarding being erected around his property by the Referrer, he has been unable to reside in his property. These structures were erected as an act of harassment by the Referrer who seeks to purchase his property at a considerably reduced sum.
- It is contended that they purchased their lodge in 2007 for 485,000 euros and enjoyed all services attached to the property until the referrer purchased the hotel in 2015. Since that time, it is alleged by the observer that the referrer illegally used his property without permission or paying rent and on foot of this he took back full control of his property in 2021 upon which the referred offered to purchase this property for 40,000 euros. This offer was declined.
- Since refusing to sell the referrer has dug up and cut of his water supply backfilling it with reinforced concrete and steel. It is also contended that the referrer cut off his electricity and his gas regulator was stolen.
- It was out of exasperation and stress from all the actions carried out by the Referrer that they painted slogans on their property.
- They have given an undertaken to the Council to remove these slogans upon removal of barriers, hoarding and the like from around his property.
- The Board is sought to help to resolve this situation.

6.3.3. The observation received by the Board from **Sean O’Connell** on the 23rd day of May, 2022, and the 20th day of June, 2022, can be summarised collectively as follows:

- They are the owner of No. 427 which they purchased in 2007 for 485,000 euros.
- Concerns are raised in relation to the shipping containers, hoarding and advertising that were provided around his lodge as a form of harassment.
- They have observed no maintenance or repairs since these were provided despite numerous visits to his property.
- Concerns are raised that the referrer has used his property without consent and has not paid rent for the same.

- After refusing to sell the property to the referrer it is contended that the referrer cut off essential services as well as dug up and filled in the water pipes which he is a legal owner of.
- They have given an undertaking to remove the slogans on the exterior walls on the condition the barriers, hoarding etc being removed.

6.3.4. The observation received by the Board from **Martin Kennedy** on the 23rd day of May, 2022, requests that the Board keep them informed of the outcome of this case, in particular in relation to the shipping containers placed around his home Lodge No. 435, which he contends blocks daylight and natural access to this home.

6.3.5. The observation submission received by the Board on the 24th day of May, 2022, and the 21st day of June, 2022, from **Kieran O'Connell** requests that the Board keep them informed of the outcome of this case. It also indicates that he is the owner of Lodge No. 426 and that he purchased it in 2007 for the sum of 485,000 euros. It sets out that he enjoyed the services that were attached to it until the hotel was purchased by the referrer in 2015 after which the referrer used his property without paying rent and his consent. It is stated that he took back possession of his property in 2021 and that after refusing to sell essential services to the property were cut off. With this including the cutting of pipes that were solely related to his property. The actions of the referrer have caused great anguish and stress. As a result, he painted slogans on the wall setting out what has transpired. It is contended that he has given an undertaking to the Council to remove these upon removal of the shipping containers, hoarding and advertising alongside assurance that no similar structures are provided by the referrer at their property.

6.3.6. The observation submission from **Peter Wilson** received by the Board on the 18th day of May, 2022, requests that the Board keep him informed of the outcome of this case. It sets out that he is unable to reside at his home, Lodge No. 416, because of shipping containers and hoarding being erected around it. The provision of these structures is an act of harassment by the referrer after refusing to sell the lodge to him for the sum of 30,000 euros.

7.0 Statutory Provisions

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

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

“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.

- Part 1 – Preliminary and General defines “alteration” as including: - *‘(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’.*

- Section 3(1) of the Act defines “development” as meaning, *‘except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land’.*

- Section 4(1) 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 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, as amended.**

- 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...

8.0 **Previous Board References/Referrals**

- 8.1. I have had regard to the reference cases cited by the referred previously determined by the Board.
- 8.2. In relation to case **ABP-303471-19** part of the question that was asked related to the painted advertising letting on the roof slope of a commercial premises at Scilly, Kinsale, Co. Cork (Man Fridays) on whether it is or is not development and whether it is or is not exempted development. It was determined by the Board that the painted advertising lettering comprising 'Man Friday' on the roof slope does not fall within the scope of Class 1 of Part 2 of Schedule 2 of the Planning and Development Regulations, 2001, as amended, as it does not comply with Conditions and Limitations numbers 2 and 8 of Column 2 of Class 1 with regard to the overall area and height of the advertising and height of the individual lettering in the advertising and is, therefore, not exempted development.
- 8.3. In relation to case **ABP-304774-19** a question was asked as to whether decorative works to the front elevation, specifically the painting of all walls within the entrance portico a blue-grey colour, at the Royal Irish Yacht Club, Harbour Road, Dún Laoghaire, County Dublin (a Protected Structure) is or is not development or is or is

not exempted development. It was determined by the Board that the works of painting of all walls within the entrance portico of the building a blue-grey colour constitute development which comes within the meaning of section 2(1) and section 3(1) of the Planning and Development Act, 2000, as amended, (b) these works might have come within the scope of Section 4(1)(h) of the Planning and Development Act, 2000, as amended, however these works cannot avail of the exemption having regard to Section 57 of the Planning and Development Act, 2000, as amended

- 8.4. In relation to this case the circumstances are different given that the painting on the lodges of concern are not advertising in nature and the lodges are a new building layer with the space around them materially changed to function as open amenity space as well as to provide various forms of access to the lodges themselves within the curtilage of Johnstown House, a Protected Structure, that were implemented on foot of the grant of permission P.A. Ref. No. TA/40538. Further the alterations carried out to the impacted lodges are also not visible given that views to them within their private domain are blocked by sea shipping containers, hoarding, and advertising as well as views into the site and the curtilage of the Protected Structure itself is limited due to the presence of dense screening.
- 8.5. As such I consider the development and the contexts are not the same and I consider having checked the Board's referral database and can find no previous Board decision which relates to the type of hoarding and advertising in relation to a similar site context.

9.0 **Assessment**

9.1. **Preliminary Comments:**

- 9.1.1. For clarity I note that the purpose of a 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.
- 9.1.2. The Planning Authority in their consideration of this referral case examined the question of whether the devaluation and vandalism of the Lodge No.s 416, 424, 426, 427, 432 and 435, is or is not development or is or is not exempted development. They concluded that this development is exempted development having had regard to

the provisions of Sections 2, 3, 4 and 57(1) of the Planning and Development Act, 2000, as amended, alongside Articles 6, 9 and Class 12 of Schedule 2 of Part 1 of the Planning and Development Regulations, 2001-2021.

- 9.1.3. The Referrer in this case seeks that the Board overturn this decision and seek that the Board define the question differently as follows: 'whether the graffiti and garish paint works at Lodges No.s 435, 432, 416, 427 & 424 is or is not development and is or is not exempted development'. They contend that in the development is not exempted development under the provisions of Section 4(1) of the PDA as they are a type of development that renders their appearance inconsistent with the character of the other lodges and on the basis that they conflict with the conditions attached to the grant of permission for the lodges.
- 9.1.4. Irrespective of the different phraseology used to pose the referral question in this case it is my view that this case essentially relates to what could be summarised as the painting of the exteriors in contrasting colour and the painting of slogans and words on the exterior of Lodges No.s 416, 424, 426, 427, 432 and 435 at the Johnstown House Estate Hotel, in Enfield, Co. Meath.
- 9.1.5. In this regard it appears that the ground and first floor levels of the exteriors of the aforementioned lodges were painted with various slogans and words in a random manner mainly in black paint. The slogans for example included but are not limited to: 'Water is a Basic Human Right', 'Stop Harassment Now Turn Services on to Our Family Home Now Let Us Live in Peace', 'Water Pipes Cut Harassment', 'Water Pipes Cut Stress', through to 'Water, Gas, Electric Cut'.
- 9.1.6. The lettering associated with these painted letters are also of variable heights and sizes. They are not in any definable font style but rather reflect random writing with spray cans.
- 9.1.7. In addition, in many places where the slogans and wording have been placed, they are on top of larger exterior ground and first floor level areas painted in a bright fuchsia/magenta pink colour. These larger painted areas are also random and do not fully cover the ground to first floor level exteriors of the painted lodges and ancillary wall structures where this type of painting alteration has taken place. The large painted areas of the external elevations of the subject lodges whilst contrasting with the muted colours that characterise the ten blocks of lodges located to the rear of Johnstown

House, a designated Protected Structure, that is also characterised by its external muted palette of external colours, finishes and treatments, essentially acts as a highlight for the slogans and words that have been painted on the structures in question.

- 9.1.8. It is abundantly clear that the painting that has been carried out to the aforementioned lodges has been carried out by the owners of the individual lodges. These owners have participated in the Boards determination of this case, and they clearly set out the reasons for why they have decided to alter the external elevations of their lodges in the way they have been painted. With each of the subject lodges being different to one another but following the same overall approach.
- 9.1.9. Whilst these observers in my view clearly demonstrate that there has been a devaluation of their properties, and this is a legitimate planning concern on the other hand I do not accept that this painting could be considered as vandalism carried out by them nor would I consider it the primary reason as to why these lodge structures are devalued. With the Referrer clearly offering substantially less than their original value alongside carrying out development works that in their totality have resulted in a situation whereby the impacted lodges are effectively unsuitable for modern habitable living through to their associated amenity space accessed from the living spaces are now enclosed by two storey agglomeration of sea shipping containers stacked two high, with hoarding and advertising tarpaulin. These enclosure structures essentially limit the useability of these spaces and the lodges first floor level balconies by way of overshadowing and visual overbearance. Through to when combined with the totality of these *ad hoc* provision of enclosures, the disconnection of essential services such as water, gas and electricity alongside limiting access points to the front and rear doors of these lodges from what was a hierarchy of open spaces has all cumulatively impacted adversely on any value of the subject lodge units were they to be placed on the open market in their current significantly diminished state.
- 9.1.10. I also consider that regard should be had to the definition given for vandalism by the courts and as is generally accepted is a word used to describe destruction or criminal damage to property belonging to another individual. Based on the information relating to this case and the concurrent cases with the Board, it would be more applicable to describe the observable adverse functional and visual setting diminishment of the lodges from the development works carried out around them, i.e., the sea shipping

containers, hoarding, and advertising which are subject to concurrent referral cases with the Board as giving rise to vandalism of the subject lodges. Whereas the painting of the subject lodges appears to be a form of the subject lodge owners trying in their own way to protect their property rights which includes their value as well as their right to the peaceful enjoyment of these properties for their permitted and established function.

- 9.1.11. In terms of the word 'graffiti' it is generally accepted that this word means a form of unauthorised visual communication that is carried out by an individual or group on public land and often uses spray paint to create stylistic symbols or like in this case words and phrases. As set out above the painting of the aforementioned lodges, including the slogans and words painted on them and their associated structures were consciously carried out either by or with the affected lodge owner's consent. Whilst undoubtedly visually communicating these lodge owners' frustrations with the Referrer in this appeal case. With the neighbouring lodges and the hotel complex all being in the private ownership of the Referrer. As such the term 'graffiti' in my view also does not reflect the reality of the situation in this case.
- 9.1.12. In terms of the use of the adjective 'garish' this is often used to describe something that is overly vivid, bright, showy and in bad taste. This however I consider to be a subjective conclusion for the Referrer to derive at whereas as set out in their submission they more aptly set out that the paint works are in themselves inconsistent with the overall design coherence of the lodges which was reflected in the muted colour palette agreed with the Planning Authority in compliance with the grant of permission P.A. Ref. No. TA/40538.
- 9.1.13. In light of the above, I consider that the question that arises in this case relates to whether the painting of the exterior facades of Lodges No.s 416, 424, 426, 427, 432 and 435 as carried out, with this painting including slogans and words, is or is not development and is or is not exempted development, at the Johnstown House Estate Hotel, Enfield, County Meath.

9.2. Is or is not development?

- 9.2.1. The first issue for the Board to decide is whether the painting of Lodges No.s 416, 424, 426, 427, 432 and 435 as carried out, with this painting including exterior painting, slogans, and words, constitutes development.
- 9.2.2. As set out in Section 7 of this report above 'development' is defined under Section 3(1) of the Planning and Development Act, 2000, as amended, as meaning: *'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'*.
- 9.2.3. In addition, 'works' is defined under Section 2(1) of the said Act as comprising: *'any 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'*.
- 9.2.4. Clearly the painting of the exterior of the aforementioned lodges and their associated structures, including the painting of slogans and words thereon, does involve the carrying out of works on the subject lodge structures.
- 9.2.5. Further, I do not consider that these works relate to any material change in use of the structures in question given that the painting that has occurred on them when considered either individually or in totality does not comprise of any advertisement. But rather as contended by the observers, arise out frustration, stress, and anxiety with the circumstances that they find themselves in as owners of the subject lodges and in this context, they are a form of visual verbal communication to the Referrer who appears to not have engaged meaningfully or neighbourly with them. The slogans and words painted onto the structures in question reflecting the reality of a situation where it is their contention and experience that their use and right to peaceful enjoyment of their properties have been materially adversely impacted upon by a variety of actions of the referrer setting out this from their point of view. They do not include profanity.

9.2.6. Therefore, having regard to Sections 2(1) and 3(1) of the Planning and Development Act, 2000, as amended, I consider that the painting of exterior walls on the structures in question, constitutes development under the above provisions of the Act.

9.2.7. The next question is whether the development is exempted development.

9.3. Is or is not exempted development?

9.3.1. For the painting of the exterior of the Lodges No.s 416, 424, 426, 427, 432 and 435 as carried out, with this painting including slogans and words, to be exempted development, there must be a specific statutory provision providing for such an exemption.

9.3.2. For this painting to be exempted development, I firstly propose to examine it under the provisions of Section 4(1)(h) of the Planning and Development Act, 2000, as amended. As previously set out in Section 7 of this report above it states that: "*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*".

9.3.3. In this situation I consider that the painting of the exterior of the lodges in the manner carried out which as set out above includes large sections of the exterior of these lodges at ground, first floor and in certain cases adjoining boundary walls in bright fuchsia/magenta pink with spray painted slogans and words of varying sizes over effectively render their appearance inconsistent with the character of these structures as formally designed, uniform and highly coherent in visual appearance group of lodges set in ten blocks to the rear of Johnstown House which were permitted and implemented as per the grant of permission P.A. Ref. No. TA/40538. This visual coherence and uniformity of the ten blocks the lodges form part of was strengthened by the agreement in compliance with Condition No. 5(a) of the said grant of permission of a muted palette of external materials, finishes and treatments. This included the light muted cream colour of the lodges as well as their adjoining boundary walls which was the uniform colour given to all ten lodge blocks in the round thus creating ten highly coherent in visual appearance built insertions set in a manicured landscaped

setting. With this setting also including Johnstown House with this Protected Structure and extensions to it also marrying in with the lodge buildings given that they are also characterised by their overall muted palette of materials, finishes and treatments. In addition, the external elevations of the ten lodge blocks and Johnstown House as extended do not include ad hoc words and slogan painted on them.

- 9.3.4. In this situation I am of the opinion that the uniform colour of buildings and manmade structures in the Johnstown House Estate is one of its characteristic and unifying features that visually ties the individual lodges cohesively and harmoniously together with earlier building insertions including those of architectural merit for which protection is afforded to by way of their Protected Structure designation. In addition, the muted palette of materials of more contemporary and modern built insertions also is one of the design measures to ensure their visual subservience in such a sensitive to change setting.
- 9.3.5. For the reasons set out above I therefore consider that the development conflicts with the exempted development provisions set out under Section 4(1)(h) of the Planning and Development Act, 2000, as amended, which requires such works to not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures.
- 9.3.6. This gives rise to the second issue which is Section 57(1) of the Planning and Development Act, 2000, as amended, provides for an exemption from the requirement to obtain planning permission for works which normally qualify for a planning exemption under section 4(1)(h) of the Act where those works would not materially affect the Protected Structure and/or character of any element of the structure which contributes to its special architectural, historical, archaeological, artistic, cultural, scientific, social, or technical interest.
- 9.3.7. In this situation whilst the lodges are located to the rear of Johnstown House and forms part of its surviving 120ha parkland setting they are not highly visible in the context of appreciating the surviving exterior of this Georgian country house due to the extent of alterations and additions that have occurred, particularly to the rear of it, and their remoteness as well as setback nature from its principal façade which survives as one of the most legible elements of this Protected Structure that survives largely intact. Notwithstanding, as said they form part of this Protected Structures curtilage where

there is a very evident evolution of buildings, structures, and spaces with these including the buildings evolution in the last three decades as a hotel.

- 9.3.8. As previously discussed, over these three decades the muted colour palette of materials, finishes, treatments, and colours present in this Georgian country house have been respected and/or carried through to in later building layers that have been permitted since this change of use has occurred. So, too has the open nature of the landscape around buildings within the curtilage of this Protected Structure. This open character was carried through to the landscaping scheme around the lodges and their associated spaces.
- 9.3.9. It is therefore a concern that the painting that has been carried out to the structures in question including the spray painting of slogans and words does not carry through this coherent treatment of exterior finishes, in particular the muted cream colour palette of external walls which is cohesively applied to the lodge blocks and is respectful of the colour palette of the Protected Structure as well as its later building layers.
- 9.3.10. Whilst I am cognisant that views of the exterior of these lodges have been blocked by the referrer using stacked shipping containers, hoarding structures through to advertising devices. Notwithstanding, the manner in which the structures in question have been painted even if these structures were not present materially affects the character of this Protected Structures parkland setting including it visually diminishes and dilutes in an adverse manner the uniformity, coherence and harmony present in structures that have been permitted and implemented in its curtilage. Particularly when viewed from the northwest of the principal façade of Johnstown House where the structures are visible and incongruous in this view.
- 9.3.11. With the development to the rear of Johnstown House having the ability to contribute to this Protected Structures special architectural interest positively or negatively. The Board could therefore consider that the painting of the structures in question as carried out conflicts with Section 57(1) of the Planning and Development Act, as amended.
- 9.3.12. The above concerns bring up the issue of whether the development subject of this referral case constitutes exempted development under the Planning and Development Regulations, 2001, as amended.
- 9.3.13. Of concern Article 9(1)(a)(i) of the said Regulations provides that a development that would otherwise be exempt is not exempt where “*the carrying out of the development*

would contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act”.

- 9.3.14. As already noted as a concern the lodges relate to a grant of permission P.A. Ref. No. TA/40538.
- 9.3.15. This grant of permission permitted subject to conditions executive stay hotel suites which comprised in total of 40 units provided in ten blocks and comprising 24 two-bedroom suites and 16 on-bedroom suites. This grant of permission also permitted car parking, access roads, landscaping through to services. The conditions included but were not limited to the requirements of Condition No. 1 and No. 5. Condition No. 1 was a standard condition which required the development to be carried out in accordance with the plans, particulars as revised by way of further information with this application. In addition, Condition No. 5(a) required all external materials including but not limited to colours and finishes to be subject to the written agreement and Condition No. 5(b) restricted the provision of any signage to the development permitted. It would appear that a cohesive muted light external palette of materials was agreed upon, subsequently implemented, and was maintained in the intervening years up to circa 2021 on the subject lodges.
- 9.3.16. It would appear that in 2021 the various painting works subject of this referral case are likely to have commenced and it is unclear what date they were completed. Photographic evidence shows that they have been added to over this time.
- 9.3.17. I also note that outside of the amendment made to Condition No. 5 under P.A. Ref. No. TA/60082 under which permission was granted to allow for metal faced timber windows in place of timber windows there was no other amendment permitted to the requirements of Condition No. 5 of P.A. Ref. No. TA/40538.
- 9.3.18. There are no drawings provided with this referral case and the painting of the exterior of the structures in question including the slogans and words spray painted thereon are variable in their overall implementation by those who carried out these alteration works to the subject lodges.
- 9.3.19. Further there is no evidence provided that demonstrates that the owners of the structures where this painting has occurred received written agreement for painting alteration works prior to or after these works were carried out. Nor could I find any evidence of the same upon searching the planning history of the site.

9.4. Conclusion

- 9.4.1. In the light of the above, I conclude that the painting of the exterior facades of Lodges No.s 416, 424, 426, 427, 432 and 435 as carried out, with this painting including slogans and words, at the Johnstown House Estate Hotel, Enfield, County Meath is development and is not exempted development.

9.5. Other Matters Arising

9.5.1. Enforcement of Unauthorised Development, Civil and Anti-social Behaviour:

The Referrer and Observers in this referral case raise issues that fall outside of the jurisdiction of the Board to deal with in this case. It is abundantly clear in my view that owners of the lodges subject of this referral case have had the function of their lodges compromised and their overall peaceful enjoyment of their properties significantly adversely interfered with. In turn their painting of their properties in the manner in which they have done has not only visually diminished the lodges subject of this referral but also these works have visually diminished the Referrers neighbouring property and the overall setting of the lodges.

Notwithstanding, 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 case that can only be resolved by agreement between the parties and 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 incidents when they arise should also be directed to the Gardai to deal with as they see fit.

10.0 Appropriate Assessment Screening

- 10.1.1. The proposal consists of the painting of lodge structures at the Johnstown House Estate Hotel, Enfield, County Meath in the setting of Johnstown House, a Protected Structure. These works are *in situ*. I highlight to the Board that the referrer has not provided any detailed plans and particulars in relation to the same. In addition, the observers indicate that the original painting scheme would be provided subject to the shipping container structures, hoarding and advertising being removed from the immediate vicinity of Lodges No.s 416, 424, 426, 427, 432 and 435. I also note that the observers suggest excavation works carried out impacted upon the water supply and gas piping to their property.
- 10.1.2. There is no drainage report on the case file or details in relation to this matter.
- 10.1.3. I note that the development at its nearest point is located c160m 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.
- 10.1.4. 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) are situated c9.8km to the northwest as the bird would fly. These European sites geographically overlap on another.
- 10.1.5. 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]
- 10.1.6. In relation to the SPA the qualifying interests is the Kingfisher (*Alcedo atthis*) [A229].

- 10.1.7. 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.
- 10.1.8. Given the modest nature of the development, which essentially consists of painting of the exterior of Lodges No.s 416, 424, 426, 427, 432 and 435 which in themselves are modest in size structures forming part of ten lodge blocks at the Johnstown House Estate, 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 proposal 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.

11.0 Recommendation

- 11.1.1. Having regard to the above, I recommend that the Board should decide this referral in accordance with the following draft order.
- 11.1.2. In this regard, the Board may wish to reword the question asked given the difference between the question determined by the Planning Authority and that posed by the referrer in this case but both effectively relating to the painting of the exterior facades of Lodges No.s 416, 424, 426, 427, 432 and 435 as carried out, with this painting including slogans and words, at the Johnstown House Estate Hotel, Enfield, County Meath. I consider that this amended wording is clearer in terms of describing the nature of the works and I therefore refer to this wording in the draft order below.

WHEREAS a question has arisen as to whether the painting of the exterior facades of Lodges No.s 416, 424, 426, 427, 432 and 435 as carried out, with this painting including slogans and words, at the 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 Council issued a declaration on the 13th day of

January, 2022, stating that the matter was development and was 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)(i) of the Planning and Development Regulations, 2001, as amended.
- (f) The planning history of the site, in particular P.A. Ref. No. TA/40538 Condition No. 5(a).
- (g) The character of the subject lodge development and its setting as part of the curtilage of Johnstown House, a Protected Structure,
- (h) The report of the Inspector.

AND WHEREAS An Bord Pleanála has concluded that the painting of the exterior facades of Lodges No.s 416, 424, 426, 427, 432 and 435 as carried out, with this painting including slogans and words at the 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 hoarding and

advertising 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.