



An
Bord
Pleanála

Inspector's Report ABP-318428-23

Question

Whether alterations and extensions to the former Lakehouse Hotel is development and is exempted development.

Location

Lakehouse Hotel, Portnoo, Co.
Donegal

Declaration

Planning Authority

Donegal County Council

Planning Authority Reg. Ref.

S5/49

Applicant for Declaration

Midge Hotel Holdings LLC

Planning Authority Decision

Is development and is not exempted development

Referral

Referred by

Midge Hotel Holdings LLC

Owner/ Occupier

Midge Hotel Holdings LLC

Observer(s)

None

Date of Site Inspection

20th March 2024

Inspector

Hugh D. Morrison

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1.0 Site Location and Description

- 1.1. The site is located to the east of the settlement of Portnoo/Naran and to the north of the regional road (R261), which runs west from the N56. This site is accessed off a local road (L7543), which runs north from the R261 towards Clooney Lough. It lies within gently undulating countryside, which is punctuated by one-off dwelling houses and farmsteads.
- 1.2. The site itself is of regular shape, and it coincides with the hotel grounds, which accommodate the complex of hotel buildings, outbuildings, and a car park. The adjoining site to the east, which is accessed via the hotel car park is composed of a cluster of holiday homes.

2.0 The Question

- 2.1. The question asked by the referrer is whether alterations and extensions to the former Lakehouse Hotel is development and is exempted development.

3.0 Planning Authority Declaration

3.1. Declaration

The PA declared that the subject matter of the question is development and is not exempted development.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The case planner concluded that the alterations and extensions are “works” and so they constitute “development”. He/she also concluded that these works “materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure” and so they are not exempted development under Section 4(1)(h) of the Act.

3.2.2. Other Technical Reports

None

4.0 Planning History

- 99/505: The extension and refurbishment of Lakehouse Hotel, including bar, restaurant, 20 no. bedrooms, and ancillary services: Permitted.
- 03/3035: Retention of extension to Lakehouse Hotel and construction of staff quarters: Permitted.
- 15/50608: Construction of a detached roofed terrace structure and separate roofed smoking area: Permitted.
- 15/50559: Replacement of WWTS with a new one and intermittent sand polishing filter and underlying soil polishing filter: Permitted.
- UD22272: Enforcement notice served against, amongst other things, the alterations and extensions to the former Lakehouse Hotel, which are the subject of the current Section 5 application.
- S5 23/49: Whether alterations and an extension to an ancillary building to the rear of the Lakehouse Hotel is or is not development and is or is not exempted development: The PA declared that these matters are development that is not exempted development. The case is currently under referral to the Board (ABP-318429-23).

5.0 Policy Context

5.1. Development Plan

Under the County Donegal development Plan 2018 – 2024, the site is shown as lying within an area of high scenic amenity.

5.2. Natural Heritage Designations

West of Ardara/Maas Road SAC (000197)

6.0 The Referral

6.1. Referrer's Case

The referrer's planning consultant sets out the following points:

- The Section 5 application was prompted by enforcement notice (UD22272), which was served against the subject alterations and extensions to the former Lakehouse Hotel.
- The former Lakehouse Hotel was traditionally a wedding venue with a high occupancy level during events and with a bar and restaurant open to the public. The referrer plans to reopen the premises as new lodge type accommodation for tourists visiting the area. As such it would not be open to the public, and so its new use would be less intensive than its former one.
- The referrer expresses the view that the works to the former Lakehouse Hotel are exempted development under Section 4(1)(h) of the Act. This view is based on the following considerations:
 - The works are for “the maintenance, improvement or other alteration” of the former Lakehouse Hotel. The alterations are not “material”, and legal opinions indicate that the extent of “alterations” is greater than commonly practised.
 - Internal works would facilitate the less intensive use of the former Lakehouse Hotel.
 - External works would not “materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures.”
- The referrer draws attention to the PA's Stage 1 screening exercise for appropriate assessment, which concluded that, as the site is a brownfield one and out with the West of Ardara/Maas Road SAC, the need for AA does not arise.

The referrer's architect augments the above points with his own statement in support of the Section 5 application. He describes the state and condition of the former

Lakehouse Hotel when purchased by the referrer in 2020 and the range of measures proposed to bring the original building and its extensions up to a modern standard of accommodation. He summarises his case for considering the works undertaken to be exempted development as follows:

- The works have improved the aesthetic of the overall building, and so they are appropriate,
- While a marginal increase in floorspace (c. 1%) has occurred, in the context of the long-established use of the overall building and in the absence of any intensification of use, this increase was regarded as negligible, and
- The works bring the overall building up to a modern standard under all of the relevant headings under the Building Regulations.

The architect concludes by stating that the works are *de minimis*.

6.2. Planning Authority Response

The PA stands by its declaration.

6.3. Further Responses

None

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

Under Section 3(1) of the Act, “development” means “(a) the carrying out of any works in, on, over or under land, or the making of any material change in the use of any land or structures situated on land...”

Under Section 2(1) of the Act,

“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.

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

“structure” means any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined, and - (a) where the context so admits, includes the land on, in or under which the structure is situate,

“alteration” includes—

(a) plastering or painting or the removal of plaster or stucco, or

(b) the replacement of a door, window or roof,

that materially alters the external appearance of a structure so as to render the appearance inconsistent with the character of the structure or neighbouring structures;

Under Section 4(1) of the Act:

The following shall be exempted developments for the purposes of this Act –

(h) 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;

Under Section 5 of the Act:

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

(3) (a) Where a declaration is issued under this section, any person issued with a declaration under subsection (2)(a) may, on payment to the Board of such fee as may be prescribed, refer a declaration for review by the Board within 4 weeks of the date of the issuing of the declaration.

7.2. Planning and Development Regulations, 2001

Under Article 6(4) of the Regulations:

(a) Subject to paragraph (b), the carrying out of such works as are necessary to secure compliance with the Building Regulations, 1997 (S.I. No. 497 of 1997) shall, in the case of

development consisting of the construction of a dwelling or dwellings in respect of which permission under Part IV of the Act of 1963 was granted before 1 June 1992, be exempted development.

(b) Paragraph (a) shall not apply in the case of development consisting of the construction of a building designed for use as 2 or more separate dwellings.

Under Article 9(1) of the Regulations:

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—

(viiB) comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site,

7.3. Other

None

8.0 Assessment

8.1. Is or is not development

8.1.1. The question asked by the referrer is whether alterations and extensions to the former Lakehouse Hotel is development and is exempted development.

8.1.2. The submitted plans show the original building and its rear extensions prior to and after the alterations and extensions in question. They show the following:

- On the roadside (western) elevation a former two-storey flat roofed extension and a one-and-half storey extension with a gabled feature and three dormer windows have been reworked as a consistent two-storey extension under a revised roof profile.
- On the rear (eastern) elevation a former two-storey flat roofed extension and a one-and-half storey extension with six dormer windows have been reworked as a consistent two-storey extension under a revised roof profile.

Accompanying single storey flat roofed and lean-to roofed returns have been reworked as a consistent single storey lean-to return, which spans the entire rear elevation, thereby adding to the floorspace.

- On the northern exposed side elevation two bay windows have been modernised. A former external escape route at first floor level has “on the ground” been removed and its proposed replacement with a more extensive projecting balcony has yet to be constructed.

8.1.3. The submitted plans highlight where additional floorspace would arise and where additional built form would arise, i.e., principally above the former flat roofed extension, but also as a result of the revised roof profile. They also show the revisions to the internal layout of the rear extensions to the original building that have been/would be undertaken to facilitate the lodge type of accommodation now proposed for the hotel.

8.1.4. Under Section 3(1) of the Act, “development” means “(a) the carrying out of any works in, on, over or under land”, and “works includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal”. The remodelling of the rear extensions to the original building has involved extensive alterations to these extensions both internally and externally and extensions in their floorspace and volume. Accordingly, “works” have occurred and so “development” has occurred. I, therefore, conclude that the subject alterations and extensions is development.

8.2. Is or is not exempted development

8.2.1. The authorised use of the site is that of a hotel. The referrer outlines how the use of the original building and its rear extensions would, under the proposed lodge type accommodation, be less intensive than heretofore. However, the question asked by the referrer has to do with alterations and extensions to the former Lakehouse Hotel rather than the use of the site.

8.2.2. Under Parts 1 and 2 of Schedule 2 to Article 6 of the Regulations, no exempted development classes accompany a hotel use. Accordingly, whether the subject alterations and extensions are exempted development falls to be assessed under Section 4 of the Act and Article 6 of the Regulations.

8.2.3. Under Section 4(1) of the Act, the referrer has identified Item (h) as conferring the exempted development status that it contends is applicable to the alterations and extensions to the former Lakehouse Hotel. This Item states the following:

development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures;

8.2.4. Item (h) does not refer to extensions, and so the extensions by way of additional floorspace and volume are not exempted development under it. While the referrer states that these extensions are very small relative to the size of the former Lakehouse Hotel, the absence of any reference to extensions under Item (h) means that the question of their size does not come into play.

8.2.5. Item (h) does refer to alterations. “Alterations” are defined under Section 2(1) of the Act, as follows:

“alteration” includes—

(a) plastering or painting or the removal of plaster or stucco, or

(b) the replacement of a door, window or roof,

that materially alters the external appearance of a structure so as to render the appearance inconsistent with the character of the structure or neighbouring structures;

Item (h) uses the term “other alterations”, which indicates that the categories coming before it can also be viewed as “alterations”, i.e., “maintenance and improvement.

8.2.6. The above cited description of the works indicates that extensive alterations have occurred internally and externally to the rear extensions to the original building of the former Lakehouse Hotel. These alterations have resulted in a major reworking of the eastern and western elevations to the distinctive consecutive rear extensions to the original building so that they are now combined under a new design idiom. The previous character of these elevations has thus been superseded by the new character exhibited by the contemporary design of their combined elevations.

8.2.7. The referrer draws attention to the aesthetic improvement that the aforementioned elevational changes has secured. It also draws attention to the multiple

improvements to amenities and utilities that have been secured, too. While I do not challenge these contentions, Item (h) focuses on whether the alterations to the exterior of a building are consistent with its character, not whether they constitute an improvement under the headings citing by the referrer. As a new character has ensued, an inconsistency is evident, and so Item (h) is not applicable.

8.2.8. The remaining northern elevation is also envisaged as being reworked by the replacement of a first-floor fire escape, which runs between the first-floor corridor and the secondary staircase, by a large balcony, which would presumably be utilised as a viewing terrace for Clooney Lough to the north. While this balcony would also be a fire escape, its size would ensure that its primary use would be that of a viewing terrace. Its presence would thus be inconsistent with the existing character of the northern elevation, and so Item (h) would not be applicable.

8.2.9. The referrer concludes that the subject alterations and extensions should be considered to be *de minimis*. In the light of my assessment above, I do not consider that they can command this description, and, even if I thought otherwise, I do not consider that I have the discretion to apply this term in view of the provisions set out in Section 4 of the Act and Article 6 of the Regulations.

8.2.10. I, therefore, conclude that the development is not exempted development under Section 4(1)(h) of the Act. I have considered whether it is exempted development under the other Items under Section 4(1) of the Act and under Article 6 of the Regulations, and I conclude that the development is not exempted development under these provisions.

8.3. Restrictions on exempted development

8.3.1. As I have concluded that the subject ancillary building is development that is not exempted development, the question of any possible restriction on exempted development does not arise.

9.0 Recommendation

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

WHEREAS a question has arisen as to whether alterations and extensions to the former Lakehouse Hotel is or is not development or is or is not exempted development:

AND WHEREAS Midge Hotel Holdings LLC requested a declaration on this question from Donegal County Council and the Council issued a declaration on the 12th day of October, 2023 stating that the matter was development and was not exempted development:

AND WHEREAS Midge Hotel Holdings LLC referred this declaration for review to An Bord Pleanála on the 8th day of November, 2023:

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,
- (c) Section 4(1)(h) of the Planning and Development Act, 2000, as amended,
- (d) Article 6(1) and Article 9 of the Planning and Development Regulations, 2001, as amended,
- (e) the planning history of the site,
- (f) the pattern of development in the area:

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The alterations and extensions to the former Lakehouse Hotel constitute “works” under Section 2(1) of the Act and so they are development under Section 3(1) of the Act.

- (b) No exempted development for extensions to buildings in hotel use exists under either the Act or the Regulations.
- (c) The “alterations” to the former Lakehouse Hotel have materially altered the external appearance of the rear extensions to the original building so as to render their appearance inconsistent with their original character. Accordingly, they are not exempted development under Section 4(1)(h) of the Act or any other provision within either the Act or the Regulations.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3) (3) of the 2000 Act, hereby decides that the alterations and extensions to the former Lakehouse Hotel 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.

Hugh D. Morrison
Planning Inspector

18th April 2024