



An  
Bord  
Pleanála

## Inspector's Report ABP-318429-23

### Question

Whether alterations and an extension to an ancillary building to the rear of 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 23/50

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**

20<sup>th</sup> 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 an extension to an ancillary building to the rear of 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 extension 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 extension to the ancillary building.
- S5 23/49: Whether alterations and extensions to 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-318428-23).

## 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 Section 5 application was prompted by enforcement notice (UD22272), which was served against the subject ancillary building.
- 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 subject ancillary building 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 subject ancillary building. 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 site cited above.
  - 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 extension would provide a disabled suite, which would facilitate compliance with the requirement that 5% of guest accommodation should be accessible to the disabled. As improvement works to an existing building for this purpose, the extension is exempted development.
- 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.

## 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 an extension to an ancillary building to the rear of the former Lakehouse Hotel is development and is exempted development.

8.1.2. The submitted plans show the original ancillary building and the building as altered and extended.

- The former plans show a building of rectangular form under a double pitched roof ( $10.505 \times 6.671 = 70.08$  sqm gross floorspace).

Two versions of drawing no. 0202 revision P01 dated March 2022) have been submitted. The first was received by the PA on 15<sup>th</sup> September 2023. It shows the internal layout of the original building as comprising two bedrooms, each with bathrooms, and a store and a laundry. The second plan was received by the Board on 8<sup>th</sup> November 2023. It shows the internal layout as subdivided between greater and lesser spaces, with the greater space denoted as “existing apartment”. Externally, the only difference between the two plans is the omission of a door from the eastern elevation in the second one.

- The latter plans show the original building with an entirely different array of door and window openings, and an extension attached to its rear (eastern) elevation ( $6.363 \times 6.188 = 39.37$  sqm gross floorspace). Internally, a single two-bed/two-person unit would comprise bedrooms, en-suites, and a lounge. The night-time accommodation in the extension would be designed to facilitate use by the disabled.

8.1.3. At the level of detail, the submitted plans do not wholly correspond with the as altered and extended building “on the ground”, e.g., the siting of the chimney. They are, however, sufficiently accurate for the purpose of assessing the current referral.

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 original building has involved extensive alterations to it internally and externally and its significant extension to the rear. Accordingly, “works” have occurred and so “development” has occurred. I, therefore, conclude that the subject ancillary building 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 subject ancillary building would form part of the wider use of the site on a less intensive basis than heretofore. However, the question asked by the referrer has to do with alterations and an extension to the subject ancillary building rather than the use of the site. Furthermore, this building is depicted variously as having provided 2 no. bedroom en-suite accommodation or an apartment, whereas it would provide 2 no. bedroom en-suite accommodation and a lounge. Thus, looked at in isolation, its use would not be any less intensive than heretofore.

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 ancillary building is 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 subject ancillary building. 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 rear extension to the original building is not exempted development under it.

8.2.5. Item (h) does refer to alterations. Under Section 2(1) of the Act, an alteration includes the following:

*(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;*

8.2.6. The referrer's submitted plans show the original building and the revised building. These plans indicate that the 3 no. doors and 2 no. windows in the front (western) elevation have been blocked up. Likewise, on the rear (eastern) elevation, 2 no. windows were removed in conjunction with the construction of the rear extension, and 2 no. new, tall, narrow windows have been inserted in this elevation, where it would remain exposed externally. The northern gabled elevation has 2 no. larger windows in place of 1 no. smaller one, and the southern gabled elevation has 1 no. new, small window inserted within it.

8.2.7. In the light of the foregoing paragraph, the removal of existing openings in the original building and the insertion of new window openings exhibiting a variety of shapes and sizes represent significant departures from the character of this building. Thus, the front elevation has changed from one with multiple openings to "on the ground" a blank elevation, and elsewhere windows exhibiting traditional shapes and sizes have been removed and windows exhibiting modern shapes and sizes inserted. These changes go beyond the definition of "alteration", which suggest either the replacement of a window within its existing opening or the replacement of a window with one that does not materially alter the external appearance of the building so as to render its appearance inconsistent with its character. In effect, the changes in question have "switched" the front elevation of the building from the western elevation to the extended northern one and modernised the appearance of the remaining elevations.

8.2.8. Under the Section 5 application, the alterations and an extension to the subject ancillary building were said to be exempted development, as they were designed to facilitate disabled access. The referrer has not reiterated this point under the current referral. Nevertheless, I consider that the alterations and an extension go beyond that which would have been required to simply achieve disability access to the

original building. Additionally, Article 6(4) of the Regulations is mis-placed, as it refers to residential, as distinct from commercial development.

- 8.2.9. 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**

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 an extension to an ancillary building to the rear of 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 12<sup>th</sup> 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 8<sup>th</sup> 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, as amended
- (c) Section 4(1)(h) of the Planning and Development Act, 2000, as amended,
- (d) Article 6 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 extension to the ancillary building 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 ancillary building have materially altered the external appearance of the building so as to render its appearance inconsistent with its 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) (a) of the 2000 Act, hereby decides that the alterations and an extension to an ancillary building to the rear of 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.*

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Hugh D. Morrison  
Planning Inspector

17<sup>th</sup> April 2024