



An
Bord
Pleanála

Inspector's Report 319531-24.

Question

- (1) Whether the change from Hotel Bedroom accommodation to ancillary Hotel Restaurant (with bar) use at 3rd floor, is or is not exempted Development.
- (2) Whether an increase in additional floor area at 3rd floor level is or is not exempted development
- (3) Whether an increase in additional floor area at lower ground floor level, is or is not Exempted Development

Location

The Dean Hotel 80, 82, 84, 86
Bohermore Galway City

Declaration

Planning Authority

Galway City Council

Planning Authority Reg. Ref

S5.3.24

Applicant for Declaration

Advanced Vision Ltd

Planning Authority Decision

Is development and is not exempted development

Referral

Referred by

Advanced Vision Ltd

Observer(s)

None

Date of Site Inspection

19th of December 2024

Inspector

Darragh Ryan

1.0 Site Location and Description

1.1. The Dean Hotel is located north east of Eyre Square and on the eastern side of Prospect Hill. The hotel is completed and open for business. The existing structure on site is 3 storeys high with a recessed 4th floor.

1.2. There is two storey terraced dwellings to the north of the site and to the south of the site a two-storey structure with retail at ground floor and residential above. South east of the site is a housing development known as Forster Court. The existing structure on site is 3 storeys high with a recessed 4th floor

2.0 The Question

2.1. (1) Whether the change from Hotel Bedroom accommodation to ancillary Hotel Restaurant (with bar) use at 3rd floor, is or is not exempted Development.

(2) Whether an increase in additional floor area at 3rd floor level is or is not exempted development

(3) Whether an increase in additional floor area at lower ground floor level, is or is not Exempted Development

3.0 Planning Authority Declaration

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

3.1 Planning Authority Reports

Planning Reports

The case planner concluded that the alterations and extensions are “works” and so they constitute “development”. He/she also concluded that Under the provisions of Article 9 (1) the 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.

Condition 1 of Planning reference 17/41 requires works to be carried out in accordance with the permitted plans. The proposal does not contravene this condition and the works in question do not fall into a class exemption as set out under the Planning and Development Regulations, 2001 (as amended). The works in question constitute a material change and would not be exempted development under Article 9 (1) (a) (i) of the Planning and Development Regulations 2001 (as amended).

3.2 Other Technical Reports

- None

4.0 Planning History

- PA reg ref 22/248 Permission granted for development which will consist of retention of revisions to the development permitted under Pl. Ref. No's. 17/41 and 22/19 including (1) retention of relocation of ESB sub-station towards the southern boundary of the of the site (to the rear of the hotel), together with associated revisions to landscaping and boundary treatments along the rear southeast boundary (2) retention of low level hotel restaurant and bar signage to the front elevation (Northwest elevation) and (3) retention of fire escape gate and route at south corner of site (onto access lane exiting onto Prospect Hill), together with all associated site works and services to protected structure (RPS No. 1201)
- PA reg ref 22/19 – Permission Split Decision for retention which will consist of revisions to the development permitted under Pl. Ref. No. 17/41. No.86 Bohermore is a protected structure (RPS No. 1201). The development consists of (1) Retention of relocation of ESB sub-station towards the southern boundary of the site (to the rear of the Hotel) together with associated revisions to landscaping to provide screening (2) Retention of revised surface layout to the rear of the Hotel including revised turning area

arrangements and a reduction in the number of on-site car parking spaces from 13 to 8 (3) Retention of high level Hotel signage to the front and side elevations, together with all associated site works and services
Refused as location of substation unacceptable and use of Bamboo as screening unacceptable.

- PA reg ref 17/41 -Permission granted for development for the construction of a hotel, on an overall site of 0.29 ha (0.73 acres). The development will consist of the: demolition of the existing single-storey commercial building at No. 80 Prospect Hill; demolition of the existing two-storey dwelling at No. 84 Bohermore; demolition of the existing part-single, part two-storey rear extension to No. 86 Bohermore (a Protected Structure, Ref. No. 1201) and associated garden shed; construction of a part-two, part-three, part-four storey hotel over lower ground (with fourth floor level setbacks to the south-east) in 2 No. blocks (the north-western block fronting Prospect Hill/Bohermore) and the south-eastern block (located to the rear of the site) connected at all floor levels comprising 139 No. bedrooms and related hotel facilities (including: reception area; lounge area; dining area; 2 No. bars; storage; associated signage; administration and staff facilities; plant (including substation with associated switch room); waste storage area; and delivery and dispatch area), with a total gross floor area of 5,310 sq m (including lower ground level of 1,269 sq m). The development includes works to protect and conserve the older elements of No. 86 Bohermore and also the existing former railway tunnel (located beneath No. 80 Prospect Hill) that will be integrated into the overall proposal, which includes for a change of use of these areas from residential use and infrastructural use to hotel use, respectively. The development will also include the provision of: vehicular and pedestrian access via Prospect Hill; 11 No. car parking spaces; associated lighting; associated site servicing (foul and surface water drainage and water supply); SUDs measures, including attenuation tank and sedum roofs; and gardens and courtyards. The scheme also

includes: all hard and soft landscaping; boundary treatments; changes in level; and all other associated site excavation and site development works above and below ground

5.0 Policy Context

5.1.1 Galway City Development Plan 2023 - 2029

The site straddles two different zonings:

- “R” Residential - to provide for residential development and associated support development
- “CI” Commercial/Industrial – to provide for enterprise, light industry and commercial uses other than those reserved for the CC (city centre) zone.

5.2 Natural Heritage Designations

Lough Corrib SAC - .35km to the west

Galway Bay Complex SAC – 500m to the south

Galway Bay SPA – 500m to the south

6.0 The Referral

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

(1) Whether the change from Hotel Bedroom accommodation to ancillary Hotel Restaurant (with bar) use at 3rd floor, is or is not exempted Development.

- The applicant has dealt with all matters relating to compliance and engaged with Enforcement Section in order to deal with all historic issues on site. The only outstanding enforcement issues on site relate to the subject works outlined in the Section 5 Referral.
- The “Planning unit” of the Dean Hotel consists of Hotel Bedroom accommodation and ancillary uses. The applicant is of the opinion that the reorganisation of ancillary Hotel Use in lieu of Hotel bedroom accommodation within the existing and permitted hotel unit can be considered exempted development. The applicant has provided supporting case taken with regard

to a similar development – “Carroll v Brushfield Ltd”, the court held the entire hotel was a single planning unit and no change of use has occurred by moving various elements within the hotel to other parts of the overall building.

- There is no impact on residential amenity in terms of noise from the proposed development, its stated the development fronts onto Bohermore Road where there is an existing baseline noise level. Its also stated the original permission 17/41 had permission for 2 bars in any case.
- The Hotel has the benefit of a license to sell alcohol. In order to obtain a licence proof of building control and planning is required. In obtaining a licence the Court accepted the principle of “ancillary Hotel Restaurant with bar use at 3rd floor level”
- The planning authority has not provided sufficient “Reasons and Considerations” in the assessment of the case. To state the works would not be exempt under Article 9 (1)(a) (i) is not correct with regard to not been in accordance with a condition of Planning. The condition of planning referred to under 17/41 is a generic condition and does not prevent the reorganisation of an ancillary Hotel use in lieu of Hotel Bedroom accommodation.

(2) Whether an increase in additional floor area at 3rd floor level is or is not exempted development

- The extension to the third floor of 70 sqm is de Minimus. The minor deviation must be considered trivial as it is within the same footprint of permitted development 17/41. The applicant refers to the case of “Marry v Conaughton” in the development as the plans submitted did not precisely correspond with the actual location of the dwelling houses, however the claim was dismissed on the basis that dwellings were in substantial compliance with those shown on the plans.
- The provisions of Section 4 (1) (h) are also relevant in this instance as development are works which only affect 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 neighbouring structures.

(3) Whether an increase in additional floor area at lower ground floor level, is or is not Exempted Development

- The additional floor area is 101sqm of gross floor area. The additional floor space should be considered “de minimus.” Section 4 (1) (h) also applies.
- The subject ground floor area increases and with the subject third floor area increase equates to a 3.42% increase in the overall GFA of the permitted development. In terms of nett GFA the applicant has carried out a comparison of “as granted” v “as built”. The internal floor area as granted equates to 3613sqm V as built 3614sqm. Its asserted this difference in floor area is absolutely minimal.

6.2 Planning Authority Response

- 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.

Planning and Development Regulations, 2001

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—

(i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,

(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,

7.2 Relevant Case Law

- In *Carroll and Colley v Brushfield Ltd* (unreported, 9 October 1992) HC, the courts held that the planning unit was the entire hotel premises when considering whether the change of use of part of the building was a change within the overall use of the building.
- **Material Change in Use** . In *Monaghan County Council v Brogan* [1987] IR 333, the courts confirmed that the term “material” means material in planning terms, that is whether the issues raised by the change of use would raise matters that would normally be considered by a planning authority if it were dealing with an application for planning permission, such as “residential amenity, traffic safety or policy issues in relation to statutory plans”.

8.0 Assessment

8.1 The question asked by the referrer is

- (i) Whether the change from Hotel Bedroom accommodation to ancillary Hotel Restaurant (with bar) use at 3rd floor, is or is not exempted Development.
- (ii) Whether an increase in additional floor area at 3rd floor level is or is not exempted development

- (iii) Whether an increase in additional floor area at lower ground floor level, is or is not Exempted Development

8.2 Question 1 – “Whether the change from Hotel Bedroom accommodation to ancillary Hotel Restaurant (with bar) use at 3rd floor, is or is not exempted Development”

Background

Having reviewed the site history and parent permission for the hotel under planning reference 17/41, I note that from a comparison from the “as submitted” and “as built” drawings a restaurant has been developed in lieu of 9 no. bedrooms, with consequential changes to a flat roof which is now a screened terrace (rather than a rooftop bar). This has resulted in an increase to the floor area at 3rd floor level, in that the area of the restaurant is bigger than the area of the permitted bedrooms and the area containing the toilets was not included in the original permitted drawings.

The planning authority having considered that the changes as provided by the applicant in this instance were material to the development and not in accordance with Condition 1 of original planning permission 17/41 which states: *“the development shall be carried out and completed in accordance with the application made on the 14/02/2017, as revised and amended by the details submitted on the 04/07/2017, but subject to the conditions hereinafter incorporated.”* In this regard, it was concluded that the works in question constitute a material change and would not be exempted development under Article 9(1) (a) (i) of the Planning and development Regulations, 2001 (as amended) as the works in question contravene Condition No.1 of Ref no 17/41.

8.3 Is or is not development

- 8.3.1 Firstly, the question is whether the works in question constitute development. The definition of works under Section 2 of the Act includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal. The proposal entails extending the third-floor area of the building to accommodate restaurant use with bar, in lieu of 9 hotel bedrooms. 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” or the making of any material change in the

use of any structures or other land. The list of works that are entailed would require a level of construction and I would conclude that this is development constitute works in accordance with Section 3 of the Planning and Development Act, 2000 (as amended).

8.3.2 Is or is not exempted development

The referrer argues that the works in question are exempted development based on two primary factors:

“Single Planning Unit:” The referrer asserts that the Dean Hotel constitutes a single planning unit. The reorganisation of ancillary hotel uses in lieu of hotel bedroom accommodation within this planning unit is claimed to be exempted development. To support this, the referrer cites the case of “Carroll v Brushfield Ltd”, where the court accepted that rearranging hotel elements, including a change from a car parking garage to a public bar, was permissible within a single planning unit. The court found that moving various uses within the hotel did not constitute a change of use.

“De Minimis Impact:” The referrer states that the increased gross floor area at the third floor and lower ground floor levels is de minimis and does not materially affect the structure of the building under Section 4(1)(h) of the Planning and Development Act.

Furthermore, the referrer highlights that there is no impact on residential amenity arising from the proposed changes, as the restaurant and bar are sufficiently distant from residential properties.

8.3.3 Under Parts 1 and 2 of Schedule 2 to Article 6 of the Planning and Development Regulations, no exempted development classes are specified for hotel uses. Consequently, whether the alterations and extensions in question are exempted development must be assessed under Section 4 of the Act and Article 9 of the Regulations. The planning authority concluded that the development is not exempted under Article 9(1)(a)(i), as it contravenes Condition No. 1 of the grant of permission (Ref: 17/41).

8.3.4 The development carried out in this instance was undertaken contemporaneously with the construction of the permitted hotel. Consequently, it constitutes the

construction of a revised hotel layout design rather than alterations to an existing hotel. Article 9(1)(a)(i) specifies that development is not exempted if it contravenes a condition attached to a planning permission. Condition No. 1 of the original permission (Ref: 17/41) states:

“The development shall be carried out and completed in accordance with the application made on 14/02/2017, as revised and amended by the details submitted on 04/07/2017, but subject to the conditions hereinafter incorporated.”

As the development has not been completed in accordance with the application and permission granted, the "reorganisation" referenced by the referrer cannot, in my view, be considered exempted development.

- 8.3.5 The referrer's reliance on the case of *Carroll v Brushfield Ltd* is, in my opinion, misplaced. That case pertained to an existing hotel, whereas the development in this instance was carried out during the construction phase of the hotel. As such, the circumstances are not comparable.

Planning permission must be implemented in compliance with the conditions attached to it. Planning reference 17/41 had several third-party submissions on file, and the location of the restaurant and bar was agreed upon by the planning authority prior to construction.

In my view, the relocation of the restaurant and bar constitutes a material change from the permitted development and is not exempted development. Regarding the materiality of changes, the courts have clarified in *Monaghan County Council v Brogan* [1987] IR 333 that the term "material" in planning terms refers to whether the changes raise issues that would typically be considered by a planning authority in a planning application. These issues include residential amenity, traffic safety, and compliance with statutory plans. While the referrer asserts that there is no material impact on residential amenity due to the revised restaurant and bar location, such considerations are inherently planning matters and require evaluation under a standard Section 34 planning application.

- 8.3.6 In my assessment, the works undertaken represent a material alteration from the permitted development and Contravene Condition No. 1 of the original planning

permission (Ref: 17/41) and therefore cannot be considered exempted development under Article 9(1)(a)(i) of the Planning and Development Regulations.

8.3.7 Question 2 & 3 Whether an increase in additional floor area at 3rd floor level is or is not exempted development & Whether an increase in additional floor area at lower ground floor level, is or is not Exempted Development

At ground floor level the area containing the gent's changing room was not initially in the permitted drawings. The gym has increased into the area permitted as Interior courtyard 1. The total area of increase in floor level as per the drawings is 101sqm. The area of the extensions took over an internal courtyard and rear yard area. The third-floor area (which includes the area of revised location of the bar and restaurant) has an increase in floor area of 70sqm. The restaurant has been developed in lieu of 9 no bedrooms, with consequential changes to a flat roof which is now a screened terrace (rather than a rooftop bar) This includes an additional area for WC. The planning authority concluded that these extensions were material as they contravened Condition 1 of parent permission 17/41.

Is or is not development

Firstly, the question is whether the works in question constitute development. The definition of works under Section 2 of the Act includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal. The proposal entails extending the floor areas of the building at 1st floor and 3rd floor. 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" or the making of any material change in the use of any structures or other land. The list of works that are entailed would require a level of construction and I would conclude that this is development constitute works in accordance with Section 3 of the Planning and Development Act, 2000 (as amended).

8.3.8 Is or is not exempted development

The referrer asserts that the additional floor areas are de minimis and do not materially affect the development. However, I do not accept this position for the following reasons:

- The increase in floor area at third-floor level totals 70 sqm and includes the addition of a WC.
- The increase in floor area at first-floor level totals 101 sqm.
- The referrer claims that the overall increase in floor area between the "as granted" and "as built" development results in only a 1 sqm net floor area difference for the entire hotel.

8.3.9 There is insufficient explanation provided to substantiate how a total increase of 171 sqm in gross floor area translates into a negligible nett difference of 1 sqm. In contrast, the submitted drawings clearly illustrate the locations and extents of the additional floor areas. While there is no statutory definition of *de minimis* in the context of planning, I consider the increases in floor areas to be significant and not minor in relation to the permitted development under the original planning application (Ref: 17/41).

8.3.10 Furthermore, the additional floor areas may also have implications for the calculation of Financial Contributions under the Galway City Development Contribution Scheme.

8.3.11 The referrer contends that the works fall under Section 4(1)(h) of the Planning and Development Act, which allows works that ***"do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure."*** I do not agree that Section 4 (1) (h) is relevant in this instance for the following reasons:

- The additional floor areas represent a substantial internal modification
- These works constitute a significant increase in the overall internal floor area compared to the parent permission. In my opinion the increased floor areas are more accurately described as a revised hotel layout rather than works that could potentially qualify as exempted development.
- It is important to note that all development works, including the additional floor areas, were undertaken during the construction phase of the hotel. This indicates that the hotel, as constructed, deviates from the original development permitted under parent permission (Ref: 17/41).

8.3.12 The works therefore represent a revised layout design, and the development does not comply with the conditions of the original planning permission. As such, the proposal cannot be considered exempted development under Article 9(1)(a)(i) of the Planning and Development Regulations, which precludes exemptions where development contravenes conditions of a planning permission.

9.0 Recommendation

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

- (i) WHEREAS a question has arisen as to whether the change from Hotel Bedroom accommodation to ancillary Hotel Restaurant (with bar) use at 3rd floor, is or is not exempted Development.
- (ii) Whether an increase in additional floor area at 3rd floor level is or is not exempted development
- (iii) Whether an increase in additional floor area at lower ground floor level, is or is not Exempted Development

AND WHEREAS Advanced Vision Ltd requested a declaration on this question from Galway City Council and the Council determined that the development is development and is not exempted development.

AND WHEREAS Advanced vision Ltd referred this request to An Bord Pleanála on the 16th day of April, 2024:

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 5 of the Planning and Development Act, 2000, as amended,
- d) Article 3 of the Planning and Development Regulations, 2001, as amended,

- e) Article 6(1) and Article 9(1) of the Planning and Development Regulations, 2001, as amended,
- f) Parts 1 and 3 of Schedule 2 to the Planning and Development Regulations, 2001, as amended, and
- g) The planning history of the site:

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The change from Hotel Bedroom accommodation to ancillary Hotel Restaurant (with bar) use at 3rd floor, is development and is not exempted development.
- (b) The increase in additional floor area at 3rd floor level is development and is not exempted development
- (c) The increase in floor area at first floor level is development and is not exempted development.

The original hotel was not fully constructed in accordance with the planning application as agreed with the Planning Authority as per planning reference 17/41. The change in location of bar/restaurant and increase in gross floor area at ground floor level and third floor level is a material change from the parent permission. The changes made by the applicant in this instance do not accord with Article 9 (1) (a) (i) of the Planning and Development regulations.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (4) of the 2000 Act, hereby decides that the

- (a) The change from Hotel Bedroom accommodation to ancillary Hotel Restaurant (with bar) use at 3rd floor, is development and is not exempted development.
- (b) The increase in additional floor area at 3rd floor level is development and is not exempted development
- (c) The increase in floor area at first floor level is development and is not exempted development.

Darragh Ryan
Planning Inspector

31st December 2024