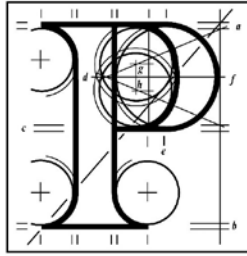


An Bord Pleanála



Inspector's Report

Question: Whether the removal of glazing at ground floor level as shown on accompanying drawings is a development requiring planning permission at 9 – 11 Prospect Hill, Eyre square, Galway.

Referrer: Rocco Stone Ltd

Planning authority: Galway City Council

Referral ref. no. P/DC/3/20/15

Site visit: 29th April 2016

Inspector: Hugh D. Morrison

Site

The site is located at the south western end of Prospect Hill, a street which runs on a north east/south west axis from the northernmost corner of Eyre Square in Galway city centre. This site lies on the north western side of this street in a row of buildings that is book ended by Citypoint, a modern retail and commercial building to the north east that is composed of three, four, and six storey elements, and Hibernian House, a Victorian commercial building to the south west that was originally composed of two storeys but which has had a further two storeys added. Between these book ends lie a row of two, three, and four storey buildings, which are in retail and/or commercial use. These buildings vary in width and they exhibit a variety of traditional designs some of which have been altered with the installation of modern shop fronts and, in one case, an additional storey.

The site itself accommodates a three storey building, which is in use as a public house. The principal elevation is composed of a pub front with six bays of windows above under a parapet.

- The pub front has doorways at either end and a further doorway that is sited in a position that it is not quite central. Window openings are sited on either side of this doorway. Historically the one on the right hand side was fitted with two lights and the one on the left hand side was fitted with three lights. These windows have been removed and so they now present to the street as essentially unglazed window openings. (The bottom third of each of these openings has a glazed screen set within it).
- The six bay windows comprise a row of taller six light windows at first floor level and a row of shorter four light windows at second floor level.

The question

The question posed by the referrer is “Whether the removal of glazing at ground floor level as shown on accompanying drawings is a development requiring planning permission at 9 – 11 Prospect Hill, Eyre square, Galway.” I consider that this question should be modified both to make explicit the two stage exercise that is implicit within it and to identify more precisely the subject features in the submitted drawings.

I note from a historical photograph of the pub front, available from goggle maps, that the former glazing was set within a framework of glazing bars. In the case of the window on the right hand side, a centrally placed glazing bar separated the two lights into equal halves, and, in the case of the window on the left hand side, two glazing bars separated the three lights into equal thirds. I note, too, that the framework of glazing bars was removed from each window opening along with the glazing and so this fact should be included within the question.

I, therefore, propose that the question be framed as follows:

Whether the removal of glazing along with glazing bars from two ground floor window openings in the principal elevation of the building at 9 – 11 Prospect Hill, Eyre Square, Galway, is development and, if so, whether it is exempted development.

Planning history

The site has been the subject of several applications in recent years. Of these the following one is of relevance to this referral:

15/65: Permission refused for alterations to the existing front façade to provide for:

- (a) Recessing the existing ground floor shop front to provide a covered seating area with glazed guarding,
- (b) New black painted toughened glass cladding with hardwood reveals to existing ground floor façade, and
- (c) New signage consisting of internally illuminated single raised lettering.

The reasons for refusal stated that:

- The proposal by reason of its scale, design, materials, internal lighting system and extent would be contrary to Built Heritage Policy 7.2 of the CDP,
- The proposed signage and canopies would be contrary to Section 11.6 of the CDP, which requires that signage respects the scale, character and setting of the host building, and they would be injurious to visual amenity, and
- The proposed pub front would be contrary to the planning authority's Shop Front Guidelines, which require that shop fronts enhance the character of ACAs.

Development Plan

The Galway City Development Plan 2011 – 2017 (CDP) identifies Eyre Square as an ACA and it states that:

Eyre Square is a significant historic civic space within the city, the green dating back to the mid-17th Century. The Square comprises both historic and modern buildings with varying styles ranging from late Georgian to Victorian and modern. While significant intervention has taken place, it still retains the original form with a unified streetscape worthy of ACA status.

Planning authority's declaration

...the retention of the removal of glazing at ground floor level is a development which materially affects the character and appearance of this building (at Nos. 9 – 11 Prospect Hill) and the Eyre Square Architectural Conservation Area and therefore requires planning permission.

Technical report

- Heritage Officer: Attention is drawn to the building's size and prominence within the ACA and its significant contribution to the streetscape. Attention is also drawn to the large shop-like windows and doors in its front elevation and their affect upon the character of the host building and other buildings within the vicinity. The works undertaken to these windows takes insufficient cognisance of the planning authority's shop front guidelines and so they should not be viewed as exempted development.

The referrer's case

- The building at 9 – 11 Prospect Hill is a licensed premises. The glazing from two ground floor window openings in the front elevation of this building has been removed. The openings themselves have been retained intact and they are secured at night by roller shutters.
- The said building is not a protected structure/identified in the NIAH and it is located on the boundary of the Eyre Square ACA. The glazing removed consisted of modern double glazed units with plastic lettering affixed to the inner face and in its absence the openings in question have brought a better balance to the front elevation and they have helped enliven the streetscape. The works thus undertaken are clearly reversible.
- Section 4(1)(h) of the Planning and Development Act, 2000 – 2015, states that works carried out for the maintenance and improvement or other alteration of any structure, which do not materially affect the external appearance of the structure so as to render such appearance inconsistent with the character of the structure itself or of neighbouring structures, are exempted development. The works carried out in this case would come within "other alterations" and they would be exempted development by virtue of this Section.
- Under Section 82 of the aforementioned Act, notwithstanding Section 4(1)(h), the exempted development status of any works to the exterior of a structure in an ACA only stands if such works would not materially affect the character of this Area. In this case the ACA in question is that of Eyre Square, which is composed of buildings that exhibit a wide range of sizes, designs,

and external appearances. Within this context, the said works are of insufficient scale and nature to alter the character of this entire Area.

Response

The planning authority has responded to the referrer's case as follows:

- Attention is drawn to the “cut out areas”, which have a combined length of 8.7m and which represent 51% of the overall shop front. These areas serve a covered dining area and their presence has led to an unacceptable alteration to the character and street scene of the ACA. They puncture the façade and they are problematic from a practical perspective as smoking occurs in the dining area.
- In the light of the foregoing, the planning authority does not accept that Section 82 de-exempts the works undertaken in forming the “cut out areas”. Furthermore the planning authority's Shop Front Guidelines discourage open front developments, such as the one in question.

Legislation

Planning and Development Act 2000 – 2015

Section 2(1) of the Planning and Development Act, 2000 – 2015, states the following:

*In this Act, except where the context otherwise requires –
“planning authority” means a local authority,*

Section 5(1) of the aforementioned Act, states the following:

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.

Section 5(3)(a) of the aforementioned Act, states the following:

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.

Section 127(1) of the aforementioned Act states the following:

An appeal or referral shall –

(d) state in full the grounds of appeal or referral and the reasons, considerations and arguments on which they are based,

Section 3(1) of the aforementioned Act states the following:

In this Act, “development” means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land.

Section 2(1) of the aforementioned Act states the following:

“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;

“land” includes any structure and any land covered with water (whether inland or coastal);

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

“works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal...

Section 4(1) of the aforementioned Act states the following:

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 of neighbouring structures;

Section 82(1) of the aforementioned Act states the following:

Notwithstanding paragraph (a), (h), (i), (ia), (j), (k) or (l) of section 4(1), or any regulations made under section 4(2), the carrying out of works to the exterior of a structure located in an architectural conservation area shall be exempted development only if those works would not materially affect the character of the area.

Assessment

(i) Introduction

1.1 The question for assessment is as follows:

Whether the removal of glazing along with glazing bars from two ground floor window openings in the principal elevation of the building at 9 – 11 Prospect Hill, Eyre Square, Galway, is development and, if so, whether it is exempted development.

1.2 The first part of this question pertains to development. Section 3(1) of the Planning and Development Act, 2000 – 2015, (hereafter referred to simply as the Act) defines “development” as including “the carrying out of any works on, in, over or under land”. Section 2(1) of the Act defines “works” as including “any act or operation of... alteration” and it also defines alteration 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;

1.3 Section 2(1) defines “land” as including any structure and it in turn defines “structure” as including any building.

1.4 The aforementioned definition does not explicitly state that the removal of glazing along with glazing bars from a window opening is an alteration. However, it does include examples of alterations as entailing the removal of items, either explicitly, in the case of plaster or stucco, or implicitly, in the case of the replacement of a door, window or roof. I, therefore, consider that the removal at issue can reasonably be categorised as an alteration, provided that the test built into the aforementioned definition of “alteration” is passed. This test is similar to that set out in Section 4(1)(h) of the Act, which I will discuss below. Thus, I will defer answering the first question until I have answered the second one.

1.5 The second part of the question pertains to exempted development. The referrer cites Sections 4(1)(h) and 82 of the Act in their case for considering that the removal at issue constitutes exempted development. I will discuss each Section in turn.

(ii) Section 4(1)(h): Part (a)

2.1 Section 4(1)(h) addresses a scenario within which an alteration of a structure may be deemed to be exempted development, provided a twofold test is met. Thus, the alteration must not materially affect the external appearance of the structure so as to render such appearance inconsistent with the character of (a) the structure itself or (b) neighbouring structures.

2.2 The referrer explains that the removal of the glazing along with the glazing bars from the ground floor window openings in the subject building entailed the removal of modern double glazed units with plastic lettering affixed to their inner faces. They contend that the unglazed window openings have brought a better balance to the building's principal elevation and that they enliven the street scene, presumably by the greater visibility and connectivity that they facilitate between the inside of the building and the street outside.

2.3 The planning authority has responded by referring to the unglazed window openings as "cut out areas" that "puncture" the shop front. As these areas account for an appreciable proportion of this shop front, they have a significant impact. The authority counters the referrer's enlivening contention by citing the practical problems that arise from the presence of said openings, which serve an area that is sometimes used by smokers. Consequently, these openings admit smoke onto the street.

2.4 Section 4(1)(h) concerns alterations to the external appearance of a building and whether such alterations render the appearance inconsistent with its character. I, therefore, consider that the parties' discussion of the aesthetic impact of the removal at issue is relevant to my assessment, but not their discussion of the knock on effect of this removal upon the street scene either for good or ill.

2.5 The principal elevation of the subject building is 17.2m wide and between 11.2 and 11.4m high to the parapet. The resulting rectangular expanse of this elevation has a horizontal emphasis that is counter balanced to a degree by the upper floor windows, which align vertically and decrease in height between the first and second floors. Thus, each of the first floor windows is composed of three rows of two lights and each of the second floor windows is composed of two rows of two lights. A glazing bar runs from top to bottom through the centre of each of these windows.

- 2.6 At ground floor level, there is a pub front in the principal elevation under a deep fascia board that bears signage. The elongated form of this pub front is counter balanced to a degree by doorways at either end and towards the centre. Between these doorways are the window openings at issue. The one on the left hand side is 3.6m wide and 2.5m high and the one on the right hand side is 2.9m wide and 2.5m high. Historically, the former opening was glazed with three lights separated by two glazing bars that ran from top to bottom and the latter opening was glazed with two lights separated by a single glazing bar that, likewise, ran from top to bottom. The design of these windows thus contributed to the counter balancing vertical emphasis of the doorways and, more widely, of the upper floor windows. With the removal of the glazing along with the glazing bars, this emphasis has been lost and the uninterrupted openings now accentuate the horizontal emphasis of the pub front and, by extension, the wider principal elevation.
- 2.7 The submitted ground floor plan of the subject building shows that the window openings serve a space that is between 5.8 and 6.4m deep. The doorways at either end of the shop front are recessed by, variously, 2.3 and 1.6m. (The central doorway is secured by a roller shutter door and it corresponds with a doorway further into the building). These recesses are not comparable with the aforementioned depth of the space served by the window openings. (The historic photograph of the central doorway from goggle maps suggests that the present correspondence described above may have some precedent).
- 2.8 In the light of the foregoing discussion, I consider that the removal of the two windows at issue represents an innovation with respect to the principal elevation of the subject building that introduces voids where voids did not exist before and which through the removal of glazing bars changes the vertical emphasis of these openings into a horizontal one. Thus, these unglazed window openings do not correspond with any other unglazed window openings and their new horizontal emphasis is at odds with the vertical emphasis of the retained upper floor windows. I, therefore, conclude that the new appearance of the pub front within the context of both this front and the wider principal elevation renders it inconsistent with the character of the pub front and this elevation.

(iii) Section 4(1)(h): Part (b)

- 3.1 Section 4(1)(h) concerns alterations to the external appearance of a building and whether such alterations render the appearance inconsistent with the character of neighbouring structures.
- 3.2 The subject building lies within a row of buildings that are book-ended by Counterpoint to the north east and Hibernian House to the south west. The former building adjoins the subject building on its right hand side. This building is

of contemporary form and design and it ranges between three and six storeys in height. The immediately adjoining element reads as a transition block that maintains the front building line and parapet level of the subject building. The rectangular glazed openings in this block have a strong vertical emphasis. Beyond this block, the alignment of the building changes and expansive rectangular shop front windows with a horizontal emphasis occur along with recessed glazed doors. Apart from the transition block, the remainder of Counterpoint is of such a different appearance from the subject building that comparison is not invited.

- 3.3 On the left hand side of the subject building is a row of six buildings that lead up to Hibernian House, an imposing Victorian building finished in limestone with classical features to its original two storeys. (A further two storeys have been added subsequently). The intervening six buildings are of varied width and they range in height between three and four storeys.
- 3.4 Of these buildings, the ones at Nos. 3, 5, and 7 Prospect Hill are nearest to the subject building. They have narrow frontages and, due to their appreciably lower floor to ceiling heights at ground and first floor levels, they appear modest next to the subject building. Heavy fascia boards above their shop fronts, particularly at Nos. 5 and 7, give these fronts a horizontal emphasis within the overall context of a vertical emphasis across their principal elevations.
- 3.5 The scale of the principal elevations to the remaining three buildings at No. 1 Prospect Hill and Nos. 47 and 49 Eyre Square is more comparable with that of the subject building. In the case of No. 49 and No. 1, the horizontal emphasis of a wide front is counter balanced by the vertical emphasis afforded by shop front glazing patterns and the design and alignment of upper floor windows.
- 3.6 The subject building lies in a row of buildings that clearly differ in appearance and thus character. I consider that it is, therefore, reasonable to compare this building to the ones in the row that, due to their scale and design, invite a comparison, i.e. particularly No. 49 Eyre Square and No. 1 Prospect Hill. Neither of these buildings has unglazed window openings and they both have principal elevations where horizontal and vertical emphases maintain a certain balance. I, therefore, conclude that the new appearance of the pub front to the subject building borne of the unglazed window openings and their horizontal emphasis renders the principal elevation of this building inconsistent with the character of these other neighbouring buildings.

(iv) Section 82(1)

4.1 Under the Galway City Development Plan 2011 – 2017 (CDP), the site lies within the northernmost corner of the Eyre Square Architectural Conservation Area (ACA). The CDP describes this ACA as follows:

Eyre Square is a significant historic civic space within the city, the green dating back to the mid-17th Century. The Square comprises both historic and modern buildings with varying styles ranging from late Georgian to Victorian and modern. While significant intervention has taken place, it still retains the original form with a unified streetscape worthy of ACA status.

4.2 Notwithstanding my assessment under headings (ii) and (iii) above, if the Board considers that the removal of glazing along with glazing bars is exempted development under Section 4(1)(h) and if the Board considers that the alterations in question still constitute development, then the test set out in Section 82(1) of the Act remains to be addressed. Thus, exempted development status would only remain if the works in question would not materially affect the character of the ACA.

4.3 During my site visit, I did not observe any unglazed window openings in shop fronts within the Eyre Square ACA. Beyond this observation, I was aware that the subject building and the neighbouring buildings and their corresponding buildings on the opposite side of Prospect Hill form an area that is in some respects an appendage to the main expanse of Eyre Square. Thus, I consider that it would, in practise, be difficult to substantiate a position whereby inconsistency with the character of neighbouring buildings was not accepted but inconsistency with the character of the ACA was accepted.

Conclusion

In the light of my assessment, I conclude that the removal of the glazing along with the glazing bars from the pub windows in the subject building materially affects, and in so doing alters, the external appearance of this building and renders this appearance inconsistent with both its character and the character of neighbouring buildings. Thus, under Section 2(1) of the Planning and Development Act, 2000 – 2015, the removal at issue is an “alteration” and, as it is an alteration to a building that is a “structure”, this alteration constitutes “works” and so the alteration is “development”, which is not exempted development under Section 4(1)(h) of the Act.

Recommendation

Having regard to the above, I recommend that the Board should decide as follows:

Whether the removal of glazing along with glazing bars from two ground floor window openings in the principal elevation of the building at 9 – 11 Prospect Hill, Eyre Square, Galway, is development and, if so, whether it is exempted development.

In considering this referral, the Board has had regard particularly to:

- (a) Sections 2, 3, 4, 5, 82, and 127 of the Planning and Development Act, 2000 – 2015,
- (b) The following submissions:
 - (i) The referrer's submission, and
 - (ii) The planning authority's response,
- (c) An historic photograph of the subject building from goggle maps, and
- (d) The report of the inspector.

AND WHEREAS An Bord Pleanála has concluded the following:

That the removal of glazing along with glazing bars from two ground floor window openings in the principal elevation of the building at 9 – 11 Prospect Hill, Eyre Square, Galway, is development that is not exempted development under Section 4(1)(h) of the Planning and Development Act, 2000 – 2015.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by Section 5(4) of the Planning and Development Act, 2000 – 2015, hereby declares that the removal of glazing along with glazing bars from two ground floor window openings in the principal elevation of the building at 9 – 11 Prospect Hill, Eyre Square, Galway, is development that is not exempted development under Section 4(1)(h) of the Planning and Development Act, 2000 – 2015.

Hugh D. Morrison

Inspector

19th May 2016