



An
Bord
Pleanála

Inspector's Report

RL29S.RL3524

Question	Whether the provision of a partial roof structure to replace an existing canopy and metal clad roof structure on an external beer garden is, or is not, development or is or is not exempted development.
Location	47 Temple Bar, Dublin 2
Declaration	Is development and is not exempt.
Planning Authority	Dublin City Council
Planning Authority Reg. Ref.	0387/16
Applicant for Declaration	Temple Inns Ltd
Planning Authority Decision	Is development and is not exempt.
Referral	Temple Inns Ltd
Referred by	Temple Inns Ltd
Owner/ Occupier	Temple Inns Ltd
Observer(s)	None
Date of Site Inspection	21 st March 2017
Inspector	Karla Mc Bride

1.0 Site Location and Description

1.1. The referral site is located in Temple Bar on the south side of Dublin city and the surrounding area is mixed use in character. The referral site comprises the rear yard of a 4-storey building which has a public house use at ground floor level with residential use above. The Temple Bar Pub, which is located on the corner of Temple Bar and Temple Lane, extends across nos.45 to 48 Temple Bar and across nos.14 to16 Temple Lane. No.48 Temple Bar is a designated Protected Structure. The referral site relates to a rectangular shaped area located to the rear of nos. 45/46 and no.47 Temple Bar, and no.14 Temple Lane. The area comprises an external courtyard which is partially covered and used as a beer garden.

2.0 The Question

2.1. Whether the provision of a partial roof structure to replace an existing canopy and metal clad roof structure in an external beer garden is or is not development and is or is not exempted development.

3.0 Planning Authority Declaration

3.1. Declaration

In pursuance of its functions under the Planning and Development Act 2000 (as amended), Dublin City Council has, by order dated 18-Nov-1016, decided to issue a Declaration that the proposed development is NOT EXEMPT from the requirement to obtain planning permission under Section 32 of the Planning and Development Act 2000 (as amended).

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planning Officer's report concluded that the proposed works do not satisfy Section 4 (1) (h) of the Planning and Development Act 2000 (as amended) and would require planning permission.

4.0 Planning History

There is an extensive planning history for the site occupied by nos. 45-48 Temple Bar and nos.14-16 Temple Lane, and the most relevant are summarised below.

Reg. Ref. 0325/94: Permission granted for the change of use of no.47 from retail to licensed premises at ground floor level with internal alterations at no.47 and 48.

Reg. Ref. 1955/95: Permission granted for the conversion of the upper floors to apartments at no. 45-48 Temple Bar and 14-16 Temple Lane, and the construction of a 4-storey over basement building, the proposal incorporated a winter garden and a group of courtyards linked to the public house at ground level. Permission granted subject to 6 conditions.

Condition no.3 stated that:

The proposed unenclosed 'entrance yard', 'public house yard' and 'summer garden' shall remain open areas as submitted in the planning application and shall not be amalgamated into the adjoining public house usage by glazing over of these courtyard areas.

Reg. Ref. 2399/01: Permission refused by ABP under PL29S.127310 to add a winter garden structure (37sq.m.) to the back of nos.47/48 on part of the current referral site. Permission refused for two reasons which stated:

1. The proposed development involving the glazing over of a courtyard area, would contravene materially a condition attached to a previous grant of planning permission, namely condition no.3 of the decision to grant planning permission, under Reg. Ref.1955/95.
2. The proposed development involving the expansion of the internal area of "The Temple Bar" would be contrary to the policies and objectives of the current development plan for the area, where there is a presumption against the granting of planning permission for additional uses of this nature.

Reg. Ref. 2972/13: Permission granted for a change of use from retail to Oyster Bar/Retail Unit, internal and external amendments including the provision of 2m opening at ground floor level between nos.46-47 to facilitate access from the adjoining public house at nos. 45-48 Temple Bar.

Reg. Ref. 3493/14: Permission granted by ABP under PL29S.244188 to remove an existing apartment at first floor level of no.47 to facilitate the provision of a double height space at the public house.

RL29S.RL3306: The removal of a first floor apartment and amendments to second apartment at first floor level to allow for double height bar, is development and is not exempted development at nos. 45-47 Temple Bar, Dublin 2.

5.0 Policy Context

5.1. Development Plan

The referral site is located within an area covered by the Z5 zoning objective in the Dublin City Development Plan, 2016 to 2022 which seeks “To consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity.” The site is also located within a Conservation Area and no.48 is a Protected Structure.

5.2. Natural Heritage Designations

The following NPWS designated areas are located within a 5km radius of the site:

- South Dublin Bay SAC (Site code: 000210)
- South Dublin Bay & River Tolka Estuary SPA (Site code: 004024)
- South Dublin Bay pNHA (Site code: 000210)

6.0 The Referral

6.1. Referrer's Case

- The works are development and are exempted development in accordance with S.4(1)(h) of the P&D Act, 2000, as amended.
- The Temple Bar Pub extends across nos. 47 and 48; no.48 is a protected structure and no works are proposed to or near it; No.47 is not a protected structure.
- The existing beer garden is located to the rear of no.47 and it runs along the rear of nos.45 & 46; it is fully enclosed within the building with no access to the street; and it is covered by a retractable canopy and metal clad roof.
- The proposed works include the:
 - Removal of the pitched canopy structure over part of the existing beer garden and the removal of the existing metal clad roof covering.
 - Installation of a new slate roof with a glazed apex roof light.
 - Retention of a small external area as a smoking area.
- The works seek to attenuate noise and provide a composite roof structure.
- The replacement roof structure constitutes “works” and thus constitutes “development” in accordance with s.2 and s.3(1) of the P&D Act 2000.
- The works relate to the “improvement” and “alteration” of an existing building which are exempt in accordance with s.4(1)(h) of the P&D Act 2000 for the following reasons:
 - It relates to the alteration and improvement of the structure.
 - It does not materially affect the exterior of the structure so as to render it inconsistent with the character of the structure as the proposed roof structure would replace two existing roof structures with no increase in height.

- It does not materially affect the exterior of the structure so as to render it inconsistent with neighbouring structures as it cannot be seen from the street, and internal views will be improved.
- There will be no material intensification of use of this area of the beer garden and thus there will be no material planning impacts. The canopy and heaters allow this space to be used in all weathers.

6.2. Planning Authority Response

The response stated that the Planning Officer's report adequately deals with the proposal and the main points of this report are summarised below.

The Planning Officer's report stated that:

- The referral site is located in a Z5 zone.
- The building a protected structure.
- Sections 2(1), 3(1), 4(1) (h), and Part IV Section 57 (1) of the Planning and Development Act 2000 apply.
- Article 6 and Article 9(1) (a) of Part 2 of the Planning and Development Regulations, 2001 apply.

The Planning Officer's report concluded that:

Notwithstanding section 4(1) (h), the carrying out of works to a protected structure, or a proposed protected structure, shall be exempted development only if those works would not materially affect the character of –

(a) the structure or

(b) any element of the structure which contributes to its social architectural, historical, archaeological, artistic, cultural, scientific, social or technical interests.

The proposed new works involve the construction of solid walls and a permanent roof structure which would constitute a material change that would affect the character of this protected structure. The proposed works do not satisfy Section 4 (1) (h) of the Planning and Development Act 2000 (as amended) and would require planning permission.

7.0 Statutory Provisions

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

Section 2 (1) of the Act states: -

“In this Act, except where the context otherwise requires –

“development” has the meaning assigned to it by Section 3.

"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.

Section 3 (1) of the Act states: -

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

Section 4 (1) sets out various forms and circumstances in which development is exempted development for the purposes of the Act and this includes:

- (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.

Section 57(1) states that notwithstanding section 4 (1) (a)...the carrying out of works to a protected structure shall be exempted development only if those works would not materially affect the character of:-

(a) the structure

(b) any element of the structure which contributes to its special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest.

7.2. **Planning and Development Regulations, 2001**

Article 6(1) of the Regulations states:

Subject to Article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.

Article 9(1) (a) of the Regulations states:

Development to which Article 6 relates shall not be exempted development for the purposes of the Act 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.
- (viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure for the use of which is an unauthorised use.

7.3. Other referral cases

RL28.RL2188: The Board determined that the provision of a beer garden on purpose-built decking and the provision of three number gazebos thereon at Turners Cross Tavern, 1 Evergreen Road, Cork City is development and is not exempted development.

The Board had regard to:

- (a) sections 2, 3 and 4 of the Planning and Development Act, 2000,
- (b) articles 6 and 9 of the Planning and Development Regulations, 2001, and
- (c) Schedule 2 to the Planning and Development Regulations, 2001:

The Board concluded that –

- (a) the said timber decking and gazebos constitute development, being works within the meaning of section 3 of the P&D Act, 2000,
- (b) the said timber decking and gazebos are not exempted development, as they do not come within the scope of Schedule 2 to the P&D Regulations, 2001,
- (c) the use of part of the yard of the licensed premises as a beer garden has material consequences in terms of the proper planning and sustainable development of the area, and
- (d) the said use as a beer garden constitutes a material change of use, being an extension of the net floorspace of the commercial activity and, consequently, an intensification of use of the land.

RL09.RL2792: The Board determined that works involving the creation of an external smoking area and storage area to the rear of Eleson Public House, Kilmeague, County Kildare are development and are not exempted development.

The Board had regard to:

- (a) Sections 2, 3 and 4 of the P&D, 2000, and
- (b) the planning history of the site.

The Board concluded that –

- (a) the creation of external smoking structure and storage area would constitute development, as it involves works,
- (b) the use of the said area is a change of use from the open, communal yard;
- (c) this change of use is considered a material change in use, as the area has been opened to use by patrons of the bar and is used for the storage of bar materials;
- (d) this material change in use does not come within the scope of Section 4 (1) (h) of the P&D Act, 2000, being of a material change in the use of land within the meaning of Section 3 of the said Act, and
- (e) there are no other provisions of exempted development that would apply.

RL29S.RL3127: The Board determined that the replacement of an existing glazed rooflight with a retractable awning at 15-16 Crown Alley, Temple Bar, Dublin is development and is not exempted development.

The Board had regard to:

- (a) Sections 2, 3 and 4 of the P & D Act, 2000,
- (b) Class 14 of Part 1 & Part 4 of Schedule 2 of the P&D Regulations, 2001,
- (c) Articles 6, 9 & 10 of the P&D Regulations, 2001, as amended, and
- (d) the planning history of the site and in particular, the last permitted use of the second floor of the premises under Reg. Ref.6022/04:

The Board concluded that –

- (a) the permitted use of the area in question is as a café/bar within an enclosed space on the second floor of the premises,
- (b) the replacement of an existing glazed rooflight with a retractable awning constitutes works,
- (c) having regard to the materials and design of the replaced rooflight and to those of the replacement awning, it is considered that the works undertaken constitute an alteration that materially affects the external appearance of the structure so as to render the appearance

inconsistent with the character of the structure and of neighbouring structures, notwithstanding that the development cannot readily be viewed from the public realm,

(d) the works undertaken therefore do not come within the scope of section 4(1)(h) of the P&D Act 2000, as amended,

(e) the works undertaken have facilitated the use of the second floor of the premises as a partially enclosed smoking area,

(f) the nature of the use of the second floor as a smoking area constitutes an intensification of use relative to the permitted use as an enclosed café/bar, which intensification has material consequences in terms of the proper planning and sustainable development of the area,

(g) the use of the second floor as a partially enclosed smoking area therefore, constitutes a material change of use, and constitutes development, and

(h) the said development does not come within the scope of the provisions of exempted development legislation.

8.0 Assessment

8.1. Is or is not development

In the case of the items that are the subject of this referral, it is evident that they involve the carrying out of works, as defined, and hence constitute development within the meaning of the Act.

8.2. Is or is not exempted development

The Referrer submits that the works, which would comprise the provision of a partial roof structure to replace an existing canopy and metal clad roof structure in an internal beer garden, at no.47 Temple Bar, Dublin 2, constitute exempted development.

Exempted development:

The question as to whether or not works, which would comprise the provision of a partial roof structure to replace an existing canopy and metal clad roof structure in an internal beer garden, at no.47 Temple Bar is exempted development will be assessed below.

Context:

The Temple Bar public house (including the Oyster Bar and Whiskey Bar) occupies the existing buildings at nos. 45, 46, 47 and 48 Temple Bar. The corner building at no.48 Temple Bar is identified as a protected structure in Map E of the current Dublin City Development Plan. It is noted that this protected structure designation covers the entire building which includes the S section of this building along Temple Lane which is identified as no.14 Temple Lane in the Site Location Map. The adjoining structures at nos.45, 46 and 47 Temple Bar are not protected structures. The existing external beer garden is located to the rear S of nos. 45, 46 and 47 Temple Bar, and to the rear E of the S section of no. 48 Temple Bar.

It is noted that the application refers to the address of the referral site as no.47 Temple Bar, and the Site Location Map indicates that the site is located to the rear of nos. 45 and 46 Temple Bar, whilst all of the other drawings locate the site to the rear of nos. 45, 46 & 47 Temple Bar and the S section of no.48 Temple Bar. On the basis of my site inspection I am satisfied that the referral site is located to the rear of nos.45, 46 and 47 Temple Bar and the S section of no.48 Temple Bar. I also observed that the square shaped section of the referral site located to the rear of no.47 Temple Bar and the S section of No. 48 Temple Bar is covered by a metal clad roof structure, whilst the rectangular section to the rear of nos. 45 and 46 Temple Bar is covered by a canopy structure.

According to Drawing nos. 201 and 202, the proposed internal seating area to the rear of nos.45, 46 and 47 Temple Bar and the S section of no.48 Temple Bar would be 66.43sq.m., and the two existing roof structures would be replaced by a new slate roof with a glazed apex roof light. This rectangular shaped permanent structure would abut the rear elevation of the S section of no.48 Temple Bar to the W (which is a protected structure) and the side elevation of no.44 Temple Bar to the E.

8.3. Restrictions on exempted development

The proposed works, which would be located to the rear of the existing buildings, would not materially affect the external appearance of the structures so as to render their appearance inconsistent with the character of the structures or of neighbouring structures, which would accord with the exemption granted under Section 4 (1) (h) of the Planning and Development Act 2000, as amended.

No. 48 Temple Bar is a designated protected structure. The planning authority incorrectly stated that no.47 Temple Bar is a protected structure and the Referrer incorrectly identified only the front section of no.48 Temple Bar as a protected structure. However, it is quite clear from Map E of the current Development Plan that the protected structure designation covers the entire building at no.48 Temple Bar, including the S section which is identified on the Site Location Map as no.14 Temple Lane. The W section of the new roof structure would abut the side elevation of the S section of No.48 Temple Bar which has the potential to materially affect the

character of this protected structure. Therefore, the exemption granted under Section 57(1) (a) of the aforementioned Act does not apply.

Article 6(1) of the Planning and Development Regulations 2001, as amended, states that subject to Article 9, development of a class specified in Column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in Column 2 of the said Part 1 opposite the mention of that class in the said column 1. The referral works do not come within the scope of Schedule 2 of the Regulations.

The referral site is also the subject of several previous planning decisions by Dublin City Council and An Bord Pleanála, two of which are relevant to this case.

Under Reg. Ref. 1955/95, Condition no.3 of the planning permission granted by the City Council required that the proposed unenclosed 'entrance yard', 'public house yard' and 'summer garden' remain open areas and that they should not be amalgamated into the adjoining public house by glazing over of the courtyard areas.

Under PL29S.127310 (Reg. Ref. 2399/01), the Board refused planning permission for the addition of a winter garden structure (37sq.m.) to the back of nos.47 and 48 Temple Bar (on the E section of the referral site) for two reasons. The reasons stated that the proposed glazing over of a courtyard area would contravene materially Condition no.3 of Reg. Ref.1955/95, and that the proposed expansion of the internal area of "The Temple Bar" would be contrary to the policies and objectives of the development plan.

Therefore, the referral works would not be in accordance with Article 9(1) (a) (i) of the Planning and Development Regulations 2001, as amended, which states that development shall not be exempted development if it would contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act, with respect to Condition no.3 of Reg. Ref. 1955/95.

Furthermore, the referral works would not accord with Article 9(1) (a) (viii) of the aforementioned Regulations, which states that development shall not be exempted development if it would consist of, or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure for the use of which is an unauthorised use, with respect to the existing canopy structure at the beer garden.

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 the provision of a partial roof structure to replace an existing canopy and metal clad roof structure in an external beer garden at no.47 Temple Bar, Dublin 2 is or is not development or is or is not exempted development:

AND WHEREAS Temple Inns Limited requested a declaration on this question from Dublin City Council and the Council issued a declaration on the 18th day of November, 2016 stating that the matter was development and was not exempted development.

AND WHEREAS referred this declaration for review to An Bord Pleanála on the 1st day of December, 2016:

AND WHEREAS An Bord Pleanála, in considering this referral, had regard particularly to –

- (a) Section 2(1) of the Planning and Development Act, 2000, as amended,
- (b) Section 3(1) of the Planning and Development Act, 2000, as amended,
- (c) Section 4(1)(h) of the Planning and Development Act, 2000, as amended,
- (d) Section 57(1) (a) of the Planning and Development Act, 2000, as amended,
- (e) Schedule 2 to the Planning and Development Regulations, 2001, as

amended,

(f) Article 6(1) and article 9(1) of the Planning and Development Regulations, 2001, as amended,

(g) the planning history of the site,

(h) the pattern of development in the area:

AND WHEREAS An Bord Pleanála has concluded that:

(a) the said provision of a partial roof structure to replace an existing canopy and metal clad roof structure constitutes development, being works within the meaning of section 3 of the Planning and Development Act, 2000, as amended,

(b) the said provision of a partial roof structure to replace an existing canopy and metal clad roof structure is not exempted development, as the works do not come within the scope of Schedule 2 to the Planning and Development Regulations, 2001, as amended,

(c) the said provision of a partial roof structure to replace an existing canopy and metal clad roof structure could materially affect the character of this protected structure, with regard to section 57() (1) (a) of the Planning and Development Act, 2000, as amended,

(d) the said provision of a partial roof structure to replace an existing canopy and metal clad roof structure would materially contravene a condition attached to a previous grant of planning permission, with regard to Article 9(1) (a) (i) of the Planning and Development Act, 2000, as amended,

(e) the said provision of a partial roof structure to replace an existing

canopy and metal clad roof structure would consist of, or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure for the use of which is an unauthorized use, within regard to Article 9(1) (a) (viii) of the Planning and Development Act, 2000, as amended.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 of the 2000 Act, hereby decides that the provision of a partial roof structure to replace an existing canopy and metal clad roof structure at no. 47 Temple Bar, Dublin 2 is development and is not exempted development.

Karla Mc Bride
Planning Inspector

10th May 2017