



An
Bord
Pleanála

Inspector's Report RL05E.RL3545

Question

Whether the external insulation and render finish to existing dwelling is or is not development or is or is not exempted development

Location

Aileach Road, Buncrana, County Donegal

Declaration

Planning Authority

Donegal County Council

Planning Authority Reg. Ref.

S5 16/44

Applicant for Declaration

Carl & Eileen Fullerton

Planning Authority Decision

Is development and is not exempted development

Referral

Referred by

Carl & Eileen Fullerton

Date of Site Inspection

6th July 2017

Inspector

Dolores McCague

1.0 Site Location and Description

- 1.1. The site is located at Aileach Road, Buncrana, County Donegal. The site is occupied by a two storey dwelling with a tower feature. This is a detached house, set back from the road within its own grounds.
- 1.2. Based on the planning authority's description of the property on site, the description in the referral and the description in the National Inventory of Architectural Heritage, Buildings of Ireland survey, the property was formerly finished at lower storey with a roughcast / wet dash finish painted yellow and at upper storey with red brick over-painted with a red/ochre coloured paint finish; and with a white painted smooth render finish band separating the upper and lower floors. According to the Buildings of Ireland survey the building was formerly a pair of semi-detached dwellings, which have been amalgamated to form a single property.
- 1.3. The NIAH record gives a detailed account of the building which it considers to be of regional interest and states that it is a substantial and complex two-storey house, of late nineteenth-century date, which retains its original form and character. Its visual appeal is enhanced by the variety of forms to the main elevations, the variety of decorative treatment to the facade and particularly by the distinctive high tower, which all help to create an impressive composition.
- 1.4. The property is now entirely finished in render.

2.0 The Question

- 2.1. The question which has been referred to the Board is whether the external insulation and render finish to existing dwelling is or is not development or is or is not exempted development.
- 2.2. Planning Authority Declaration

2.3. Declaration

The planning authority declared that the work is development and is not exempted development.

2.4. Planning Authority Reports

2.4.1. Planning Reports

The site is occupied by a large 2 storey detached house which is listed on the National Inventory of Architectural Heritage – ref. No. 40815012. The lower storey is finished with a roughcast / wet dash finish painted yellow and the upper storey consists of the original red brick over-painted with a red/ochre coloured paint finish. There is a white painted smooth render finish band separating the upper and lower floors.

No planning history is recorded.

The referrer proposes the provision of a 100mm thick external insulation to full exterior of the building and finishing of same with a fine self-coloured render and dry dash finish in a light, neutral colour.

The evaluation cites

S2(1) and the definition of works; and

S3(1) the definition of development;

S4(1) (h) development consisting of the carrying out of works for the maintenance, improvement or other alteration 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; and

S 177U(9) that in deciding S5 requests AA screening must be carried out.

The site is in Buncrana & Environs Development Plan 2014-2020 within the area of Special townland Character. Map 2 Built & Natural Heritage. It is the policy to ensure the repair, sustainable and appropriate refurbishment of vernacular historic buildings structures, which make a positive contribution to the built heritage of the area including those referred to on any National Inventory of Architectural Heritage. The

guiding principles of this policy require use of best conservation practice, appreciation of the historical evolution of the building and its characteristics etc.

It is also a policy to protect the character and integrity of the area of special townscape character and again refurbishment and re-use respecting original fabric is underlined in the guiding principles.

The development consists of works and constitutes development.

The planning authority is also of the opinion that the proposed development constitutes development consisting of the carrying out of works for the maintenance and improvement of the structure, being works which materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure.

The existing premises is not included on the Council's Record of Protected Structures however it is included on the National Inventory of Architectural Heritage as being of regional importance. The appraisal provided in relation to the premises makes reference to the variety of forms to the main elevation and the variety of decorative treatments to the facade and notes the addition of the house to the built heritage of Buncrana and as a landmark structure to the southwest of the town centre.

The Planning Authority is not satisfied on the basis of the information submitted that the external works proposed, most particularly the addition of the 100mm thick layer of external insulation, will not compromise the architectural merits of the existing structure. The Planning Authority is not satisfied that said works constitute best conservation practice, but irrespective of same and without prejudice to any decision on a planning application for permission for such works, it is the clear opinion of the Planning Authority that the deletion of the red brick finish from the structure as a result of the retro fitting of insulation panels, subsequently rendered and painted is a material change in the appearance, fabric and finish of the period structure and therefore cannot be considered to be exempted development within the scope of A4(1)(h) of the Act.

The planning authority is satisfied that the proposed development does not require screening for AA or AA.

3.0 Planning History

None given.

4.0 Policy Context

4.1. Development Plan

Buncrana & Environs Development Plan 2014-2020 is the operative plan. The site is located within an area zoned as established development and designated in map 2 – built and natural heritage, as an area of special townland character.

The architectural fabric in Buncrana and its environs currently comprises of three Protected Structures (Table 9) and there are a number of other structures that could be considered for addition to the Record of Protected Structures (RPS) as, within the last two years, the Department of Environment, Community and Local Government has undertaken extensive survey work on the architectural heritage of the town. This survey has resulted in the identification of 101 buildings/structures on the register entitled, National Inventory of Architectural Heritage (NIAH). These structures are all worthy of protection and continued use. The Council intends to bring these buildings forward for consideration for formal protection, by proposing these structures, as Protected Structures. The process of protecting these structures will be considered separate from the Development Plan process and will involve extensive public consultation. The purpose of the designation of protected structure status is to ensure that any changes or alterations to the building and or its setting are carried out in such a way that the existing special character is retained and enhanced. Therefore works which would, in the opinion of the planning authority have a material effect on the character of the structure will require planning permission.

In addition, the Council recognise the merit of identifying an ‘Area of Special Townscape Character’ (ASTC) around the town. This area has been informed by the concentration of valuable and unique architectural heritage evident throughout the plan area that can positively contribute to Buncrana’s sense of place.

BH-P-8: It is the policy of the Council to continue to seek funding to carry out and publish a detailed research project within the 'Area of Special Townscape Character', which shall;

- (a) Record the architectural history of the area.
- (b) Identify the elements of the area that inform the character of the area, such as railings, boundary condition, architectural detail, landscape, key views and prospects, landmark buildings.
- (c) Identify design guidance and policies in relation to appropriate forms of new development.
- (d) Raise awareness and understanding of the special aspects of the townscape using consultation and information exchange as a key element of the project.
- (e) Promote the area as an attractive place to live and invest in identifying the area as a key asset in encouraging tourism potential.

BH-P-9: It is the policy of the Council to protect the character and integrity of the 'Area of Special Townscape Character', including the promotion of a higher quality built environment and to carefully consider all elements, which make this up including lighting, benches, paving, bins, signage, parking, wirescape etc. The following principles shall be considered.

- (a) Buildings identified within the ASTC shall be reused/refurbished as a preference to demolition.
- (b) Traditional railings, stone kerbing, steps, gates and boundary condition shall be retained.
- (c) Use of appropriate heritage range colours will be encouraged. Bright neon colours shall not be permitted.
- (d) New proposals respect the context and setting of key existing buildings that contribute to the character of the area. Key existing buildings are those referred to on the Record of Protected Structures and on any survey/data on the National Inventory of Architectural Heritage.
- (e) Existing building lines shall be retained.
- (f) Buildings included on any National Inventory of Architectural Heritage listing are to be reused/refurbished as a preference over demolition.
- (g) New proposals reflect the proportion, scale and massing of the existing streetscape.

- (h) The protection of amenity and open space associated with buildings and groups of buildings.

4.2. Natural Heritage Designations

The nearest Natura site is Lough Swilly SAC site code 002287 which is c50m from the subject site.

5.0 The Referral

5.1. Referrer's Case

- 5.2. John McCay Architect on behalf of the Referrer states that the development does 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 property is a large detached generally 2 storey property with a three storey tower.

It was constructed in the period 1870-1890 and is listed on the National Inventory of Architectural Heritage – ref. No. 40815012. The property has a two gabled frontage (it was formerly a semi-detached property), a gable to the side and has several feature bay windows. It is of red brick construction generally, with a smooth render banded plinth painted white.

The lower storey is finished with a roughcast/ wet dash painted yellow and the upper storey consists of the original red brick over-painted with a red/ochre coloured paint finish. There is a white painted smooth render finish band separating the upper and lower floors. There is further painted smooth render finish banding at the separation point between the ground floor and first floor, with the upper storey consisting of the original brick overpainted with a red/ochre coloured paint finish.

The proposed enclosure of the structure with external insulation with a self-coloured render is being undertaken with intention of preserving the building's fabric and protecting it from future damage and deterioration. In undertaking the works, the appellants and their contractor have taken numerous steps to preserve and replicate

the original key features of the building, i.e. render, banding, render keystones and render banding/corbellings to the tower. In making the S 5 application, the appellants made it clear that the shape, form and features of the building were not to be changed. In addition, the appellant made numerous proposals as to the actual finishes that they would be willing to apply to the render in order to ensure that the new appearance would be consistent in character with the existing structure and indeed that of neighbouring structures. In what the appellants believe is a missed opportunity, none of these proposals were acknowledged by the County Council. It is also the contention of the appellants that when assessing the S5 application, the Council failed to understand how the finished product would actually appear and were perhaps unduly swayed by the structure's appearance halfway through the works, ie. an existing building clad in black polystyrene insulation. The structure had to have a base coat of render applied in order to prevent the ingress of rainwater, however since the S5 declaration, works to the structure have ceased and are now postponed pending the appeal. Photographs are supplied to show that the application of the render will not be inconsistent with the building's current form nor that of neighbouring structures and that the key features such as the banding, corbelling and keystone features are/have been replicated. The final coat of self-coloured render has not yet been applied.

They look to the Board to overturn the planning authority's decision.

5.3. Planning Authority Response

5.4. The planning authority has not responded to the referral.

6.0 Statutory Provisions

6.1. Planning and Development Act, 2000

Section 2 interpretation includes 'works'

'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)

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

S4(1) the following shall be exempted development

(h) development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which materially affect only the interior of the structure and 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.

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

Article 6(1)

Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempt 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)

Restrictions on exemption.

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 –

(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,

Schedule 2, Part 1 - Exempted Development — General

Description of Development	Conditions & Limitations
<p><i>Sundry Works</i></p> <p>Class 12</p>	
<p>The painting of any external part of any building or other structure.</p>	<p>Such painting may not, except in the case of a hoarding or other temporary structure bounding land on which development consisting of works is being or will be carried out in pursuance of a permission granted under Part III of the Act or as exempted development, be for the purposes of creating a mural.</p>

6.3. **Referrals - Previous Board Decisions**

6.4. I have consulted the Board’s database and note for the Board’s consideration the following:

RL.3036 –

Whether

- (i) the erection of a roller shutter, and its housing, and
 - (ii) the erection of a roller shutter, and its housing, if modified by external insulation on the façade of the building and the roller shutter and its housing and/or by painting of the shutter,
- are or are not development and are or are not exempted development

The Board determined that the external modifications, comprising the provision of external insulation to the façade of the building and the roller shutter and its housing, and the painting of the roller shutter would, of themselves, come within the scope of

section 4(1)(h) of the Planning and Development Act, 2000, and Class 12 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001 respectively, but in the case of the external insulation would render the external appearance of the structure inconsistent with the character of the structure and of neighbouring structures, and in the case of the painting would consist of or comprise the alteration, renewal or repair of an unauthorised structure.

RL.3044 –

Whether the following is or is not development / exempted development

(a) the upgrading of the building fabric to include the application of external insulation with a rendered finish,

(b) Demolition of a redundant flue stack to the area/side of the property and

The Board decided that the upgrading and renovation works were development and were exempt development, concluding that they would not materially impact the external appearance of the structure.

The insulation included a render finish, replacing render and a finish of brick slips, replacing brickwork.

7.0 Assessment

7.1. Is or is not development?

7.2. The first matter relates to whether or not the application of external insulation and render finish to an existing dwelling comprises development.

7.3. Having regard to sections 2 and 3 of the Planning and Development Act 2000, I consider the application of external insulation and render finish, described as a 100mm thick external insulation to full exterior of the building and finishing of same with a fine self-coloured render and dry dash finish in a light, neutral colour, is development, being the carrying on of an act of construction on land. I note that this is not disputed by the parties.

7.4. Is or is not exempted development?

7.4.1. S4(1)(h) is cited in the planning report since it provides for the possibility of exemption for the works.

development consisting of the carrying out of works for the maintenance, improvement or other alteration 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.

7.4.2. The question at issue is whether or not the development materially affects the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures.

7.4.3. The referral refers to the need for the works and the efforts the developer went to in relation to arriving at the choice of necessary remedial measures to safeguard the building. It refers also to the detail of the design of the works which seek to replicate significant building features.

7.4.4. A Section 5 assessment, unlike the assessment of a planning application/appeal, is not an assessment of the merits of the development per se. It is an assessment of whether it falls within the narrow confines of the definitions / descriptions governing exemption as set out relevant provisions within the Acts and Regulations.

7.4.5. In this regard the relevant provision is with regard to whether or not the development materially affects the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures.

7.5. Is the external appearance of the structure materially affected by the works? It clearly is.

7.6. Does the material effect on the external appearance of the structure render the appearance inconsistent with the character of the structure? The character of the structure prior to the works was that the first floor elevation (i.e upper half) had a brick finish, the ground floor elevation (i.e. lower half) had a roughcast finish. The finish arising from the works is a render finish. In my opinion the works are inconsistent with the character of the structure.

7.7. Does the material effect on the external appearance of the structure render the appearance inconsistent with the character of the neighbouring structures? The dwelling is set within its own grounds and is remote from other structures. The structure is not viewed in the context of neighbouring structures and the effect of the altered external appearance is not such as to affect the character of neighbouring structures.

7.8. **Restrictions on exempted development**

7.8.1. I note that the requirement for appropriate assessment would de-exempt an otherwise exempted development. Having regard to the nature and scale of the proposed development and nature of the receiving environment no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect, individually or in combination with other plans or projects, on a European site. This is in agreement with the planning authority's assessment that appropriate assessment is not required.

8.0 **Recommendation**

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

WHEREAS a question has arisen as to whether works comprising external insulation and render finish to existing dwelling is or is not development or is or is not exempted development:

AND WHEREAS Carl & Eileen Fullerton requested a declaration on this question from Donegal County Council and the Council issued a declaration on the 11 day of January, 2017 stating that the matter was development and was not exempted development:

AND WHEREAS Carl & Eileen Fullerton referred this declaration for review to An Bord Pleanála on the 7 day of February, 2017:

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

- (a) Section 2(1) of the Planning and Development Act, 2000, as amended,
- (b) Section 3(1) of the Planning and Development Act, 2000,
- (c) Section 4(1)(h) of the Planning and Development Act, 2000, as amended,
- (d) Section 5(1)(a) of the Planning and Development Act, 2000, 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 works constitute development within the meaning of Section 3 of the Planning and Development Act 2000
- (b) The development does not come within the scope of Section 4(1)(h) as it materially effects the external appearance of the structure to render the appearance inconsistent with the character of the structure.

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 application of external insulation and render finish to the existing dwelling is development and is not exempted development.

Planning Inspector

1st August 2017

Appendices

- 1 Photographs
- 2 Extracts from Donegal County Development Plan 2013-2018
- 3 Extract from the National Inventory of Architectural Heritage