



An
Bord
Pleanála

Inspector's Report RL3598

Question	Whether physical works to interior of No 41 Belvedere Place as illustrated on Maughan & Associates drawing 762(S5)-06 to 09 are development or are exempted development.
Location	No. 41 Belvedere Place, Dublin 1
Declaration	
Planning Authority	Dublin City Council
Planning Authority Reg. Ref.	0449/16
Applicant for Declaration	Mike Horgan
Planning Authority Decision	Split decision. some work is development and is exempted development; some work is development and is not exempted development
Referral	
Referred by	Mike Horgan
Date of Site Inspection	29 th August 2017
Inspector	Dolores McCague

1.0 Site Location and Description

1.1. The site is located at No.41 Belvedere Place, Dublin 1 which is on the west side of Belvedere Place a street which runs north from Mountjoy Square to the North Circular Road. The site is occupied by a terraced two-bay four-storey house over raised basement. It is described as follows in the National Inventory of Architectural Heritage:

M-profile slate roof, hipped to north, hidden behind parapet wall with granite coping. Stepped rendered chimneystacks to south party wall with clay pots. Red brick walls laid in Flemish bond, rebuilt in machine-made brick to top floor. Painted granite plinth course above rendered basement wall. Cement rendered walls to rear elevation. Gauged brick flat-arched window openings with flush rendered reveals, painted granite sills and replacement timber sliding sash windows, three-over-three pane to top floor and six-over-six pane to lower floors, with early eight-over-eight pane window to basement. Six-over-six pane windows to first and second floors of rear elevation and replacement uPVC elsewhere. Gauged brick round-headed door opening with moulded masonry surround and painted masonry Ionic doorcase, having replacement Victorian timber door with two arched flat panels and brass furniture flanked by engaged Ionic columns on plinth blocks supporting fluted lintel cornice and plain fanlight. Door opens onto granite platform and five granite steps bridging basement area. Platform and basement enclosed by original wrought-iron railings and cast-iron corner posts set on moulded granite plinth wall to street. Two cast-iron coal hole covers set in granite flags to front pavement.

1.2. This area of Georgian, north inner city Dublin, where collectively the buildings is an architectural conservation area and many buildings, including that on the subject site, are protected structures.

1.3. The house is currently un-occupied and appears to have been used as a dwelling in multiple occupancy. On the date of inspection the electricity was not connected and there was no artificial lighting. Some of the rooms such as the basement and the

rooms at the back of the house at ground level were dark. It was possible to gain access to all rooms except the rear return at ground level.

1.4. The basic structure, roof and walls, is intact. A steel beam, installed in the past vertically on the rear (western) elevation is connected to a similar beam on the eastern side of an inner wall with steel beams and rods supporting the structure.

1.5. Other features noted were:

- The plan layout is intact.
- The stairs throughout are intact and in reasonable condition.
- There has been no alteration to the windows in the recent past.
- Floor boards are largely intact throughout the building although a few are loose.
- Toilet facilities comprise two units, one in the return at first floor level and one at second floor.
- Basic kitchen facilities are in evidence, including sink units inside the rear wall and inside the front wall.
- The removal of lime plaster at upper floor levels and in the lower entrance hall and stairwell.
- Some ceilings have been removed.
- Skirting boards and some doors have been removed.
- Some fireplaces are in-situ some have been removed.
- Notable features are a flag floor in the main basement room, call bells, although parts are missing, a wine cellar off the central hallway and a separate storeroom under the staircase.
- It appears that there has been limited intervention in the original building, notwithstanding its subdivision into multiple occupancies, until the recent works commenced.

2.0 The Question

- 2.1. The question which has been referred to the Board is whether physical works to the interior of No. 41 Belvedere Place as set out in Appendix A to the request and also illustrated on Maughan & Associates drawing 762(S5)-06 to 09, are development or are exempted development.
- 2.2. The question addressed to the planning authority by Vincent JP Farry and Co Ltd, Planning and Development Consultants, on behalf of the First Party, was broader referring to more extensive works. The referral includes only to those works which were not considered exempt by the planning authority.
- 2.3. The declaration application was accompanied by drawings scale 1:100 with notation identifying works to be carried out: drg no 762 (S5)-06 to 09 all Rev A (Relocated SVP & Ensuite layouts), which were received by the planning authority on 14/12/16.
- 2.4. Following a further information request a further set of drawings scale 1:100 was submitted, with notation identifying works to be carried out, although amended these drawings are also numbered: drg no 762 (S5)-06 to 09 Rev A (Relocated SVP & Ensuite layouts), which were received on 23/3/17.

2.5. Planning Authority Declaration

2.6. Declaration

The planning authority issued a split decision declaring some of the works to be development and exempted development; and declaring some of the works to be development and not exempted development

The planning authority's decision was set out in two schedules:

Schedule 1

The works in respect of which the planning authority decided to grant exemption; itemised under a numbering system following that of the question:

1 - unit 1 basement (itemised works are listed under each heading)

2 - unit 2 & common areas ground floor

- 3 - unit 3 & common areas ground floor
- 4 - unit 4 first floor
- 5 - unit 5 & common areas first floor
- 6 - unit 6 second floor
- 7 - unit 7 & common areas second floor
- 8 - unit 8 third floor
- 9 - unit 9 third floor
- 10 - General Works – to walls ceilings, joinery, painting and decorating and stairs for any part of the building.

The reason for the decision is that the works as summarised comprise development which would not come within the meaning of Section 4(1)(h) and Section 57 of the Planning and Development Act 2000 (as amended) and would not materially affect the character of the protected structure and therefore would not require planning permission when carried out in accordance with the Guidelines for Planning Authorities on Architectural Heritage Protection (2011) and in line with best conservation practice, under the supervision of the appointed conservation architect.

Schedule 2

The works in respect of which the planning authority decided to refuse exemption; itemised under a numbering system following that of the question:

Itemised under the headings as set out above.

The reason for the decision is that the works as summarised comprise development which would not come within the meaning of Section 5(1)(h) and Section 57 of the Planning and Development Act 2000 (as amended) as the proposed development would materially affect the character of the protected structure and therefore would require planning permission.

A note attached to the decision states that Section 57 of the Planning and Development Act 2000 (as amended) provides an appropriate instrument for the request of a declaration from the planning authority as to the type of works which it considers would or would not materially affect the character of the protected structure or any element of that structure.

The decision was based on the planning recommendation.

2.7. Planning Authority Reports

2.7.1. Planning Reports

There are two planning reports on the file.

The first dated 9th January 2017 refers to the documentation provided with the request:

- A letter (20/12/16) from Vincent JP Farry and Co Ltd, Planning and Development Consultants.
- Opinion (21/11/16) by David Browne, BL.
- Drawings (Nov 2016) by Maughan & Associates (not date stamped).

and recommended a further information request on two points:

1 – A fully completed section 5 declaration application form, in particular to address the section ‘to provide details of works (where applicable) or proposed development.

In accordance with the requirements of the planning authority as provided on the Section 5 Declaration Application Form (in relation to protected structures) the application shall submit the following:

2 - Two copies of the site location map, site outlined in red;

A photographic record of the historic fabric to be affected/ impacted upon by the proposed works and a general photo of the building (notes can be added to these photos to explain the proposed works).

An outline explaining justification for and assessment of the impact of the proposed works on the protected structure.

A method statement outlining the proposed works to include a specification of the materials to be used.

Further Information

An eleven page ‘specification of works’ prepared by Maughan & Associates.

A Section 5 application report prepared by Chris Ryan Architect, which includes drawings and photographs of the front and rear of the building with notes added; a

door schedule (annotated drawings, date stamped 23/3/17); a window schedule (annotated drawings); and a photographic record (floor by floor).

The second planning report dated 11th April 2017, followed receipt of further information comprising:

The planning report assesses the 'specification of works' item by item and comes to a conclusion in relation to each item as to whether or not that item of work is considered to materially affect the character of the protected structure.

e.g. items 1.1.8 and 1.1.9

1.1.8 *'floor to be sealed and polished with minimum 3 coats of a suitable floor wax'*; the use of wax is suitable for stone floors, would not be considered to materially affect the character of the protected structure, and this would be exempt.

1.1.9 *'new timber floor (20mm) to be laid on 50x 50mm tandalised timber framework of battens @ 400mm c/s and bridging @1200c/s. Floor structure to be levelled and with timber fillets. 150mm DPC strips under all studs without mechanical fixing to existing floor'*; the laying of a new floor over an existing historic stone floor is considered to materially affect the character of the protected structure and thus is not considered exempt. The guidelines for Planning Authorities on Architectural Heritage Protection, (2011) states that efforts should be made to retain these floor types and any others of interest, (DAHRRGA 2011, 173).

3.0 Planning History

3433/16 the refurbishment of 9 no. existing residential units at 41 Belvedere Place (a protected structure) to include the following: provision of 9 no. ensuite shower rooms, internal alterations and upgrade works associated with fire containment, removal and replacement of damaged internal finishes to all floors, structural repairs and upgrading of existing floor structures, connection to existing foul drainage system, replacement of existing electrical services, installation of new fire detection system and emergency lighting, complete redecoration of interiors, cleaning, repointing and repair of front elevation.

Refused for two reasons:

- 1 The proposal provides for the reinstatement and consolidation of the subdivision of the original house into nine dwelling units, the majority of which are seriously substandard in regard to internal floor area, room sizes and storage space and would fail to provide for an acceptable standard of residential amenity. The proposal would therefore be seriously injurious to the residential amenities of future occupiers, thus being contrary to the provisions of the current Dublin City Development Plan (2011-2017), the DOECLG document 'Sustainable Urban Housing: Design Standards for New Apartments' (2015) and the proper planning and sustainable development of the area.
- 2 The proposed alterations, including the insertion of nine shower rooms and kitchen areas into this Georgian townhouse, would result in an unacceptable level of intervention into the historic fabric of the building, a protected structure located in the architectural conservation area of Mountjoy Square, which would be detrimental to the character and proportions of the building and the legibility of the hierarchy of spaces. The proposal would not provide the optimum use for the building in order to ensure its long term survival in accordance with best conservation practice, and would therefore be contrary to the provisions of the Architectural Heritage Protection Guidelines, to the provisions of the current Dublin City Development Plan (2011-2017) and the proper planning and sustainable development of the area.

Observations on the file are referred to in the planner's report:

The following issues were raised: positive development and investment in the historic building stock of the North Georgian core are welcomed; concerns regarding illegal gutting of protected structure and failure to comply with enforcement notice; application should be for retention where works have already been carried out; building has already been gutted by the applicant; original eighteenth century doors should have been stored in main dwelling but this has not been done; rear boundary wall should be closed in brickwork; joinery stripped out of dwelling should be returned; no inventory details of lost items or retained items or description of their current location; no record or

photographic survey of lost or retained items; no description of works to reinstate original features including ceilings and plasterwork; no intention to reuse original fabric or reinstate original joinery and doors as required by enforcement notice; there are no residential standards for bedsits and units would therefore need to be assessed as one-bedroomed apartments; installation of corridors, lobbies and shower rooms would result in a significant increase in the density of development and would result in a reduction in the habitable space provided by the units; proposed division of rooms with multiple partitions is contrary to the Architectural Heritage Protection Guidelines and the current development plan; proposals would damage the legible two-room Georgian floor plan of the building, be contrary to best practice and degrade the historic fabric of the building; no information regarding treatment of eighteenth century historic fabric; carving up of rooms is invasive and at odds with protected structure designation; sufficient cognisance has not been taken of building regulations and fire safety requirements; impact on building of proposed intensification of use; building is unsuitable for this level of intensification; no details of internal storage for residential units; all proposed apartments are single aspect; no details relating to rooms in return; impact of fire safety requirements on building; information submitted is inadequate; adaptation of building must be sustainable and must respect the existing built context.

The planner's report also states that the existing house consists of nine residential units, stated as being pre '63. At present the house has two main rooms and a number of ancillary rooms at basement level, two bedsit units at ground floor level with ancillary rooms in the rear return, two units at first floor level with a bathroom in the rear return, two units at second floor level with wc in the rear return, and two units at third floor level. It is proposed to carry out improvement and alteration works in order to meet the requirements of the Housing (Standards for Rented Houses) (Amendment) regulations 2009, and to improve the fire safety of the individual units and of the building as a whole, thus helping to prolong its life and integrity. It also states that unauthorised works were carried out at second and third floor levels and it is proposed to reinstate the finishes at these levels with like-for-like materials.

An architectural appraisal and conservation impact assessment accompanying the application is referred to. This states that the existing house was constructed between 1770 and 1800 on part of the Gardiner estate. The house is late Georgian in origin and is more modest in scale and style than the earlier houses on nearby Mountjoy Square, Gardiner Street and North Great Georges Street, but was still a relatively grand and elegant house, probably accommodating an owner from the merchant class. The house is substantially intact but was altered in the twentieth century to provide nine residential units, with minimal alteration to the historic fabric. The interior of the house contains original brickwork, door and window openings, stone steps and door surround, while the timber roof structure also appears to be original and chimney stacks may be original. Internally, a number of original features have been removed, in some cases recently. These include original lath and plaster ceilings, fireplaces and grates, skirting boards and architraves, some partition walls, which may be original, have also been removed while original lime plaster has been removed from the walls of the staircase. The main staircase is in fair condition and substantially intact. The plan layout for the ground and first floors are described as original and intact. It is stated that the return is for the most part intact and in its original plan form. The basement floor plan is mostly original. Surviving features include call bells at ground floor level, a wine cellar off the central hallway and a separate storeroom under the staircase.

E0365/16 – enforcement, no details given.

4.0 Policy Context

4.1. Development Plan

Dublin City Development Plan 2016-2022 is the operative plan. Relevant provisions include:

The site is located within an area zoned as Z8 – ‘to protect the existing architectural and civic design character, to allow only for limited expansion consistent with the conservation objective’.

The building is a protected structure and is within an Architectural Conservation Area and a Conservation Area.

11.1 Built Heritage

To protect the structures of special interest which are included on the Record of Protected Structures and to continue to review the Record of Protected Structures within the context of future Architectural Conservation Area designations and having regard to the recommendations of the National Inventory of Architectural Heritage.

It is the Policy of Dublin City Council:

CHC1: To seek the preservation of the built heritage of the city that makes a positive contribution to the character, appearance and quality of local streetscapes and the sustainable development of the city.

CHC2: To ensure that the special interest of protected structures is protected. Development will conserve and enhance Protected Structures and their curtilage and will:

- (a) Protect or, where appropriate, restore form, features and fabric which contribute to the special interest
- (b) Incorporate high standards of craftsmanship and relate sensitively to the scale, proportions, design, period and architectural detail of the original building, using traditional materials in most circumstances
- (c) Be highly sensitive to the historic fabric and special interest of the interior, including its plan form, hierarchy of spaces, structure and architectural detail, fixtures and fittings and materials
- (d) Not cause harm to the curtilage of the structure; therefore, the design, form, scale, height, proportions, siting and materials of new development should relate to and complement the special character of the protected structure

(e) Protect architectural items of interest from damage or theft while buildings are empty or during course of works

(f) Have regard to ecological considerations for example, protection of species such as bats.

Changes of use of protected structures, which will have no detrimental impact on the special interest and are compatible with their future long-term conservation, will be promoted.

Appendix 24 – Refers to protected structures and buildings in conservation areas under the headings:

- Barrier Free Access and Protected Structures
- Fire Safety Works and Protected Structures noting that such works require planning permission if they leave a significant impact and alter the character of the protected structure.
- Lighting of Protected Structures and buildings in Conservation Areas
- Residential Parking in the Curtilage of Protected Structures, Architectural Conservation Areas and Conservation Areas

4.2. **National Inventory of Architectural Heritage**

Item 50010803, 41 Belvidere Place, Dublin, Dublin City, of regional importance for architectural and artistic interest.

The description in the NIAH has been referred to earlier in this report.

The Appraisal states - This townhouse is located on the west side of Belvidere Place and forms part of a terrace of five houses. The house retains a good doorcase, its later door adding to its interest. The retention of timber sash windows contributes to the building's historic character. An appropriate setting is provided by the railings and plinth to the basement area, and by the flight of stone steps and the paved landing to

the entrance. Laid out in 1795 and named after the Earl of Belvedere, the street was one of eight planned streets connecting Mountjoy Square with major thoroughfares on a gentle gradient falling from the elevated square.

The building is considered to be of regional importance.

4.3. Architectural Heritage Protection – Guidelines for Planning Authorities (DAHRRGA 2011)

- 4.4. These guidelines, first published in 2004, are a guide to all those interested in protecting the built heritage and include guidance on criteria to be used when selecting structures for protection, and guidance in relation to the assessment of development proposals and declaration requests.

Depending on the individual circumstances and the special interests of the structure, the following works might require planning permission:

Changes to the internal layout (including those required for fire safety purposes or to improve access; alterations that would affect the original or early surviving plan form or section; the insertion of fixed partitions; the breaking out of new openings between rooms or spaces; the insertion of new doors or screens; the alteration of floor levels; the insertion of suspended ceilings; alterations to the layout or form of stairwells).

Changes to the internal surfaces, finishes or linings

Installation or repair of internal mechanical services

4.5. Natural Heritage Designations.

The nearest Natura site is South Dublin Bay and River Tolka SPA site code 004024 which is c2km from the subject site.

5.0 The Referral

5.1. Referrer's Case

- 5.2. Chris Ryan Architects and Designers, have submitted the referral, on behalf of the Referrer

Enclosing the following as appendices:

Appendix A Schedule of matters being appealed

Appendix B Planning refusal on application no. 3433/16

Appendix C Opinion on Planning by David Browne BL

Appendix D Architectural appraisal and Conservation Impact Assessment prepared by John O'Connell Architects (Grade 1)

- 5.3. The building is not on the NIAH list, this is not to say that certain elements of the building might reach the threshold of artistic or architectural interest.
- 5.4. No justification or assessment is made by the Council on the importance of the interior. In both 3433/16 and the S 5 submission justifications and assessments are made by two separate suitably qualified practitioners and included extensive photographic record. As, to their knowledge, no site visit was made either in connection with the planning application of S5 application, it is difficult to understand how they could have made an informed decision. A visit from the Conservation Department a month prior to the making of the planning application is noted.
- 5.5. The building is typical of late 18th century Georgian houses in the area, contains some elements of architectural and artistic interest, which is addressed in the submission and is worthy of its protected status, however they are of the opinion that the level of control and invigilation required by DCC is disproportionate.
- 5.6. The timeline of events in relation to the property is set out: Environmental Officer warning letter to the previous owner on 17 Dec 2013; purchase by the first party early 2016; commencement of some works; following intervention by local residents, warning letter issued 30 May 2016; planning application lodged 28 July 2016 refused for reasons relating to non-compliance with DCC design standards for apartments and unacceptable level of intervention in a protected structure; legal opinion; application for exemption under S5 December 2016; further information requested; submitted 13 January 2017. Split decision 12 April 2017 identifying works they considered exempt and those they considered needed planning permission. The latter are the subject of this referral, and are set out in appendix A.
- 5.7. This is a typical late 18th c early 19c, mid terrace Georgian two-bay four-storey over basement house. Its plan form is typical with the stairs accessed, from raised steps externally, through a front hall allowing for interconnection of the front and back rooms.

- 5.8. There is an external connection from street to basement, no longer extant. A full description is given in the Conservation Report prepared by Colm McCabe of John J O'Connell Architects, attached as appendix D, which includes an architectural appraisal of the building. His conclusion was that the works proposed in the planning application would have a neutral or positive impact on the structure and fabric of the building. The full photographic inventory, submitted with the additional information, more than adequately describes the features and condition of the building. The works necessary to stabilise the building, in structure and fabric, were set out in the document prepared by Stephen Maughan & Associates lodged with the S5 application. Chris Ryan (Architects and Designers) prepared an assessment and justification for the proposed works which was submitted with the additional information.
- 5.9. The Architectural Heritage Protection – Guidelines for Local Authorities, is quoted extensively by Dublin City Council. The City Council is required merely to have regard to these Guidelines. Errors and lack of rigour in the City Council's quoting of the guidelines is referred to.
- 5.10. The issue of whether or not the works would materially affect the character has not been adequately addressed. No potential loss of heritage value has been identified.
- 5.11. Affordable housing need has not been addressed. The approach taken will mean that owners will shy away from a system which purports to protect the buildings. The client's intention is to bring the building and its accommodation forward to a high level of finish. The designation of the works as not exempt is not based on reasonable planning and development arguments.
- 5.12. They look to the Board to grant exemption.
- 5.13. Appendix A: Schedule of matters being appealed, follows the order of the planning authority's assessment and includes a response to each item.
- 5.14. For example regarding the items 1.1.8 and 1.1.9 previously referred to: 1.1.8 is not included in the referral as it was part of the list of items which the planning authority deemed exempt. Item 1.1.9, is included and has been responded to as follows:

This is a basement room in poor condition. Laying a timber floating floor over the existing is easily reversible and will have no long-term adverse affect on the structure. This should be exempt.

5.15. The referrer states that Dublin City Council have not established that an important interior exists and states that the alterations will bring the building and its accommodation forward to a high level of finish.

5.16. **Planning Authority Response**

5.17. The planning authority has responded to the referral, which includes:

- No. 41 is a protected structure ref 704 of the record of protected structures of the Dublin City Development Plan 2016-2022. The interior and exterior of the structure are protected. Regional rating (Reg No 50010803) is assigned to the structure in the draft National Inventory of Architectural Heritage survey of the area. Ministerial recommendations have not yet been issued for this area.
- Under Sec. 57 of the Planning and Development Act, 2000 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 special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest.
- No declaration under S 57 has either been requested or issued. In practice however the S57 process can be more hypothetical in nature as it is often difficult to anticipate all eventualities. In this instance, the subject S5 application was considered and assessed in order to facilitate the owner to commence those works to the protected structure that would be exempted development having regard to S4(1)(h) and 57 of the Act.
- It is their understanding of good practice in Dublin City, that neither a S57 nor a S5 will allow a general exemption for the wholesale replacement/upgrading of services unless it can be clearly demonstrated that this work will not impact upon the architectural character of the protected structure. The original submitted S5 application documentation did not include a completed application form as required nor did it specify or provide adequate details of the works or proposed development to be addressed by the planning authority and further information was requested.

- As an assessment of the proposed works can only be made on the basis of the information provided. The Senior Planner with the assistance of two qualified and very experienced Conservation Research Officers, had particular regard to the provisions of Guidelines for Local Authorities on Architectural Heritage Protection, including the assessment and conclusion that, having regard to the details and documentation provided, certain of the proposed works as detailed in the recommendation (and decision) were considered to have the potential to materially affect the character of the protected structure and were therefore not exempted development under s4(1)(h).

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.

Section 4(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.

Section 57.—(1) Notwithstanding section 4(1)(a), (h), (i), (ia) (j), (k), or (l) and any regulations made under section 4(2),] 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 special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest.

6.2. Referrals - Previous Board Decisions

6.3. I have consulted the Board's database and note for the Board's consideration the following:

RL 2638 (decided 13th May 2011)

On a question as to whether the works to the main doors and screen doors (including metalwork and ironmongery) and to mosaics, which have been carried out at Saint Colman's Cathedral (a protected structure), Cobh, County Cork are or are not exempted development:

An Bord Pleanála concluded that -

the main doors and screen doors (including metalwork and ironmongery) and the mosaics are elements of the protected structure which contribute to its special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest,

the works to the structure (Cathedral) subject of the question are in the nature of maintenance or repairs,

the works to the main doors 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,

the works to other doors and to the mosaics only affect the interior of the structure,

the works do not materially affect the character of the protected structure (Cathedral) or of any element of the structure, which contributes to its special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest, and

therefore, the works come within the scope of the exempted development provisions of Section 4(1)(h) of the Planning and Development Act, 2000, and the application of such exempted development provisions in relation to the said works is not affected by the provisions of Section 57(1) of the Planning and Development Act, 2000, as amended.

RL 2851 (decided 29th July 2011)

On a question as to whether the change of use from a domestic dwelling to residential with support living, proposed modifications/alterations to a Protected Structure at The Millhouse, Whitechurch Road, Rathfarnham, Dublin is or is not development and is or not exempted development:

An Bord Pleanála has concluded that -

the change of use would come within the scope of Class 14(f) of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, and

the alterations/modifications to the protected structure would materially affect the character of elements of the structure which contribute to its special architectural interest:

and decided that

the said change of use from a domestic dwelling to residential with support living, at The Millhouse (a protected structure), Whitechurch Road, Rathfarnham, Dublin is development and is exempted development,

the said modifications/alterations to the protected structure constitute works which are development and are not exempted development, and

the said works, having regard to Section 57(1) of the Planning and Development Act, 2000, include the subdivision of original rooms and the insertion of sanitary facilities and associated plumbing which would materially affect the character of elements of the protected structure which contribute to its character and special

interest and, therefore, do not come within the scope of Section 4 (1)(h) of the said Act.

RL 3019 (decided 20th March 2013)

On a question as to whether modifications/alterations (reduced modifications to those proposed under RL2851) at The Millhouse (a protected structure), Whitechurch Road, Rathfarnham, Dublin is or is not development or is or is not exempted development:

An Bord Pleanála has concluded that -

the alterations/modifications to the protected structure, having regard to Section 57(1) of the Planning and Development Act, 2000, as amended, includes alterations to the internal floor plans and historic fabric and the insertion of sanitary facilities and associated plumbing works which would materially affect the character of elements of the protected structure which contribute to its character and special architectural interest, and, therefore, do not come within the scope of Section 4(1)(h) of the Planning and Development Act, 2000 and constitute development:

and decided that the said modifications/alterations to the protected structure constitute works which are development and are not exempted development.

7.0 Assessment

7.1. Is or is not development

7.2. The first matter relates to whether or not the works listed in Appendix A to the request comprises development.

7.3. Having regard to sections 2 and 3 of the Planning and Development Act 2000, I consider that the various items listed in the referral: Appendix A thereto, are works, being the carrying on of acts 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) provide 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.

7.5. This is qualified by Section 57 - 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 special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest.

7.6. The question at issue is whether or not the development materially affects the character of (a) the structure, or (b) any element of the structure which contributes to its special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest.

7.7. The proposed works include significant interventions in the building such as: provision of cabling and pipework throughout the building; the provision of a soil vent pipe from below ground to above the central roof valley in the middle of the building, and a second from below ground to above the parapet wall at the rear of the building, with service connections to each residential unit; the installation of toilet / shower units in each unit; the creation of compartments; the installation of kitchen facilities, provided with water and wastewater services, in each residential unit, some at central locations within the building; work to walls, floors and joinery throughout the house; and electrical work and the provision of fire detection units. In my opinion these works would materially affect the character of the structure, and elements of the structure which contribute to its special architectural interest.

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 the listed work in Appendix A attached to the referral request is or is not development or is or is not exempted development:

AND WHEREAS Mike Horgan requested a declaration on this question from Dublin City Council and the Council issued a declaration on the 12 day of April, 2017 stating that the matter was development and was not exempted development:

AND WHEREAS Mike Horgan referred this declaration for review to An Bord Pleanála on the 9 day of May, 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) Section 57 (1) of the Planning and Development Act, 2000, as amended,
- (f) the planning history of the site,

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 alterations/modifications to the protected structure would materially affect the structure, and elements of the structure which contribute to its special architectural interest.
- (c) and therefore are not exempted development.

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

- (a) the said modifications/alterations to the protected structure constitute works which are development and are not exempted development, and
- (b) the said works, having regard to Section 57(1) of the Planning and Development Act, 2000 would materially affect the character of the structure and of elements of the protected structure which contribute to its character and special interest and, therefore, do not come within the scope of Section 4 (1)(h) of the said Act.

Planning Inspector

8th September 2017

Appendices

- 1 Photographs
- 2 Extracts from the Dublin City Development Plan 2016-2022
- 3 Extracts from the NIAH website
- 4 Architectural Heritage Protection – Guidelines for Planning Authorities