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AN BORD PLEANÁLA
LDG- _____
ABP- _____
24 JAN 2019
Fee: € _____ Type: N/A
Time: 10:00 By: P 201

Our Ref. 7 – 1593B/DPO'H/AH
Your Ref: ABP-303269-18 23rd January, 2019

Dear Sirs,

Re: ABP-303269-18 Section 5 Declaration Referral from Louth County Council for 57 Anne Street, Dundalk, Co. Louth, A91 EOF4 ('the Property') Planning Referral by Louth County Council ('LCC' – 'Prosecutor') Louth County Council –v- Kevin McManus Dundalk District Court – 1 Nov 2018 – Judge John Coughlan. Our Client : Kevin McManus ('Objector')

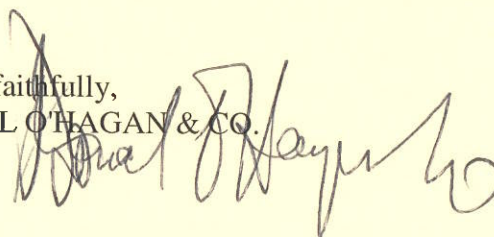
Yours of 2nd inst., addressed to our Client Objector has been passed to us and we wish to submit and observe as follows – we also attach the Scheduled item:

1. This Referral by Louth County Council (LCC), we would submit, is a very sensitive matter as being a purported interference with the criminal process and/or the administration of justice by an independent Court of Law. This matter has already been determined by the Court and is concluded. Why is LCC now asking the Bord for an Opinion on a matter already determined by the Court?
2. Arising from the very issue now being raised by LCC, LCC decided to issue an Enforcement Notice against Kevin McManus stating that failure to comply with the Notice constituted 'a serious offence'. LCC then issued a Summons dated 10th April, 2018 for failing to comply with the Enforcement Notice dated 17th November, 2017. Upon conviction for a criminal offence the Defendant would have been liable for the penalties set out in the legislation. Eventhough advised that the matter would be fully defended LCC did not consider it necessary to seek the Bord's Opinion at that stage.
3. Represented by Counsel and ourselves, the matter was fully defended in Court and the Scheduled Document (a very comprehensive survey) formed part of the Defence. While objecting to the current referral nevertheless we would have expected that if LCC were going to do so that they would in the interests of fairness and transparency at least have submitted the document with their referral to you.
4. Having heard evidence, the Judge very strongly dismissed the Summons. The Defendant, being satisfied with the outcome, consciously made no Application for

Costs against LCC and was prepared to leave matters at that. This was communicated to the Prosecutors Solicitors but on the basis that if there were any Appeal (if such were possible) that all Costs would be applied for. There was no Appeal by the Prosecutor or any application for a judicial review or any question of seeking a determination on any matter from An Bord Pleanala. The matter is accordingly now res judicata and we would respectfully submit that nothing further can be raised on this matter insofar the above property is concerned.

5. Our Client considers the current Application to possibly be an abuse of process (in a matter of criminal law) and at very least, to be in extremely bad faith by LCC as an attempt to re-open the Court's decision in another manner. Any attempt to do anything further in this matter should first have been an application to the Court but the time for doing this has now long since passed.
6. If this Application is to be pursued by LCC our Client would have to reserve his legal position in relation to what further legal remedy he would pursue which would include an application for all legal costs and outlays incurred.
7. It is respectfully submitted that LCC should perhaps have engaged in the current process before commencing the Enforcement Proceedings in this case and that it is now far too late to do so.

Yours faithfully,
DONAL O'HAGAN & CO.



An Bord Pleanala,
64, Marlboro Street,
DUBLIN 1.
D01 V902

SCHEDULE – enclosure

- 1) Without prejudice to the res judicata issue – copy Assessment Report of EHP Services dated 17 October, 2018 which formed part of the Defence (this was furnished to LCC prior to Hearing).

Planning Assessment Report

57 Anne Street, Dundalk, Co. Louth

1.0 Background.

- 1.1 The subject property is located in Anne Street and within what the Dundalk & Environs Development Plan 2009-2015 to be Dundalk Town Centre. The property and Anne Street are consequently zoned Town Centre Retail even though the property as well as others is clearly residential in use and character. The property is also located within an Architectural Conservation Area (ACA) designated No.3 - The Crescent. The ACA encompasses Anne Street in the north, Dublin Street in the east, Central Avenue in the south and West Terrace and The Crescent in the west. A map and description of ACA No.3 from the Development Plan is included in Appendix 1.
- 1.2 I understand that in renovating and refurbishing No.57 a decision was made to replace the previous front elevation timber sash type windows at ground, first floor and attic levels as each window had deteriorated to the point where they were allowing the cold and damp affecting the habitability of the property. Each window frame was warped and rotten and each window had numerous cracked glazing panes thereby negating the viability of their repair. A decision was subsequently made to replace them with non-sash type uPVC (unplasticised polyvinyl chloride) windows that were of similar appearance and glazing pane size as the originals.
- 1.3 Louth County Council issued Warning Letters under ref. 17 U108 and dated 28th July 2017 to the owner/occupier of No.57 Anne Street and to Kevin McManus, Canal Road, Mooretown, Dromiskin, Co. Louth stating that the removal of three timber sash windows and replacement with uPVC windows in the front elevation of the dwellinghouse constituted, in their opinion, an unauthorised form of development. The Warning Letter requested a submission or observation be made in writing to the County Council no later than 24th August 2017.
- 1.4 EHP Services was subsequently commissioned by Mr Kevin McManus and Mr Niall Hughes (hereafter referred to as the Clients) to respond to the Warning Letter. A reply, dated 17th August 2017 was submitted to the Council's Compliance or Enforcement Team stating the Client's position that the works referenced in the Warning Letter did not constitute development and therefore was not subject to further enforcement action. A copy of this letter is attached as Appendix 2.
- 1.5 The County Council subsequently issued an Enforcement Notice on 17th November 2017 requiring the three uPVC windows be removed and replaced with single glazed timber replicas of the original timber sliding sash windows to be completed to the Council's satisfaction within three months of the date of the Notice i.e. 17th February 2018. Upon consultation with the Clients EHP Services reverted with a response reiterating the Client's position that said works did not constitute development and were not unauthorised and that the progression of this matter through to legal proceedings would be met with a robust and successful defense. A copy of this letter is attached as Appendix 3.
- 1.6 I understand the Council's Enforcement Team remained of the same opinion and the County Council's solicitor was subsequently instructed to bring the matter before the District Court.

2.0 Legislative Context.

2.1 The following section sets out articles of the Planning & Development Act 2000 (as amended), the Planning & Development Regulations 2001 (as amended) and the Planning & Development Regulations 2001-2015 (Unofficial Consolidation). Sections of particular relevance to the Clients' case are underlined for reference.

2.2 Article 3(1), Part 1 of the Planning & Development Act 2000 (as amended) defines development as:

3.-(1) 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 an structures or other land.

2.3 Article 4(1) of the 2000 Act states:

4.- (1) The following shall be exempted developments for the purposes of this Act –

(h) development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures.

(j) development consisting of the use of any structure or other lands within the curtilage of a house for any purpose incidental to the enjoyment of the house as such.

2.4 Article 82(1) of the 2000 Act states:

82.- (1) Notwithstanding section 4(1)(h), 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.

2.5 Part 2 – *Exempted Development* of the Planning & Development Regulations 2001 (as amended) places restrictions on the application of exemption development rights. Article 9(1)(xii) states:

9. (1) Development to which article 6 relates shall not be exempted development for the purposes of the Act—

(xii) further to the provisions of section 82 of the Act, consist of or comprise the carrying out of works to the exterior of a structure, where the structure concerned is located within an architectural conservation area or an area specified as an architectural conservation area in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan and the development would materially affect the character of the area.

2.6 In relation to what may constitute exempted development works within an Architectural Conservation Area the emphasis of the legislation and regulations is dependent upon whether or not such works do or do not materially affect the character of the ACA.

3.0 National Guidance.

- 3.1 The Department of Arts, Heritage and the Gaeltacht's 2011 *Architectural Heritage Protection – Guidelines for Planning Authorities* defines an Architectural Conservation Area (ACA) as:

'... a place, area, group of structures or townscape, taking account of building lines and heights, that is of special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest or that contributes to the appreciation of a protected structure, and whose character it is an objective of a development plan to preserve'.

- 3.2 Where the interior or curtilages of properties of special interest do not merit the level of protection afforded through inclusion on the record of protected structures a more appropriate form of protection is through an ACA which usually only applies to the building's front street facing elevational and how it contributes to the collective visual, historic, architectural or aesthetic character. The Guidelines do not expressly state that the use of uPVC as a material for constructing windows or its use within an Architectural Conservation Area is unacceptable. Instead Section 8.2.6 states:

'... the proposed insertion of sealed units such as uPVC widows and door into a historic building, even where the original elements have previously been lost, should be treated with great caution'.

- 3.3 The Guidelines leaves to the discretion of the local planning authority to make policies to protect ACAs appropriate to each particular circumstance but the Guidelines do not explicitly state that the use of uPVC in an ACA is prohibited only that it be treated with great caution.
- 3.4 The 2011 Guidelines replaced earlier advice in the form of the Department of Environment, Heritage and Local Government's 2004 *Architectural Heritage Protection Guidelines for Planning Authorities* 2004. The 2004 Guidelines set out many comparable objectives as its updated version.

4.0 Planning Policy Context.

- 4.1 It is the function of planning legislation and regulation not the local development plan to determine what constitutes development and/or exempted development. Therefore neither the Dundalk & Environs Development Plan 2009-2015 or the Louth County Development Plan 2017-2021 explicitly states that the installation of replacement windows in an Architectural Conservation Area constitutes development. Both planning documents only come into effect if an application is lodged to the local planning authority for consideration. It is incorrect to presume that because these development plans have policies stating the use of certain building materials in certain circumstances is unacceptable it is, in effect, also stating that use of those materials within the same circumstances constitute development.

- 4.2 Relevant extracts and planning policies from the Louth County and Dundalk & Environs Development Plans are set out below for reference.

Louth County Development Plan 2017-2021

- 4.3 Section 5.11 of the County Plan refers to ACA's and states that *'... any works which would materially affect the character of an ACA requires planning permission'*. The following policies relate to development proposals within ACAs.
- 4.4 Policy HER 45 - *To require that any development within or affecting an ACA preserves or enhances the character and appearance of the architectural conservation area. Any development should respect the character of the intrinsic and traditional architecture in scale, design and materials. Regard should be had to the character appraisal where available/applicable.*

- 4.5 Policy HER48 - *To require that any development proposal takes account of the Council's specific ACA objectives contained in Appendix 5, Volume 2 (b) and the objectives as set out in the ACA character appraisal, where applicable.*
- 4.6 Policy HER 53 - *To ensure that the external finish and painted finish of buildings in the ACA are appropriate to the character of the ACA Changes which affect the special character of the ACA will not be acceptable Any proposal for the alteration of the external finish requires planning permission. Muted colours will be preferable and garish colours or painting of shopfront or facades for brand identity shall not be permitted.*

Dundalk & Environs Development Plan 2009-2015

- 4.7 The Development Plan identifies eight ACA's within Dundalk Town and sets out general development management guidelines for ACAs relating to plot widths, building lines, building heights, preserving skyline, roof extensions, advertising structures, demolition/alteration and shopfronts & shutters. With regards to ACA No.3 the Development Plan states '*...the replacement of existing timber sash windows with uPVC or aluminum will not be approved*'. The Development Plan contains one specific planning policy pertaining to ACAs.
- 4.8 Policy CH10 - *Protect designated Architectural Conservation Areas within the plan area and require that new development within such areas is sensitively designed so as not to detract from the character of the areas.*
- 4.9 A review of the following other design related national guidance documents revealed no appreciable or relevant advice regarding the use of uPVC windows in ACAs.
- Department of the Environment Heritage and Local Government's *Quality Housing for Sustainable Communities* (2007).
 - Department of the Environment, Heritage and Local Government's *Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas* (2009).
 - Department of the Environment, Heritage and Local Government's *Urban Design Manual – A Best Practice Guide* (2009).
 - Department of the Environment, Community and Local Government's *Sustainable Urban Housing - Design Standards for New Apartments Guidelines for Planning Authorities* (2015).
 - Department of Housing, Planning and Local Government's *Design Standards for New Apartments: Guidelines for Planning Authorities* (2018).

5.0 *What Works Have Been Carried Out?*

- 5.1 The original single pane timber windows at ground, first and attic levels were replaced with a custom made system constructed and installed by McKeivitt Windows Ltd. Having spoken to Mr D. McKeivitt on 17th October 2018 I understand that the Clients were in were insistent that the replacement windows replicate as closely as was possible to the original windows. When one compares the photos attached to Appendix 2 one can clearly see the replacement windows overall design, window pane size and shape and general appearance (see photo 2) very closely replicates the previous windows (see photo 1).
- 5.2 The new windows incorporate the same bipartite mullions or vertical dividers (mullions) in the upper half of each window and the same Georgian style glazing panes as the previous windows. The new ground floor window also incorporates arched gazing panes aligning with the gauged brick arch above in the same way as the previous window did. The proportions and vertical emphasis of each of the new mullioned windows is similar to the previous timber windows. When the new windows are compared to the more common place less sensitive modern windows along Anne Street and ACA No.3 the difference is obvious and immediate. No. 56 Anne Street is an excellent example (see photo

2 in Appendix 2) of a modern window system that has filled in the arched window opening and installed a large single glazing paned window that is incongruous to the architectural style of the property.

- 5.3 The newer windows are more energy efficient but still, in my opinion, maintain the property's period aesthetic by combining old style with modern materials and technology. The only difference between the previous and existing windows of any significance in my opinion is the materials each was constructed from and the fact the newer windows are double glazed as opposed to single glazed.

6.0 Placing the Works In Proper Context.

6.1 In a letter addressed to EHP Services dated 6th October 2017 (see Appendix 4) the County Council stated it was their opinion that '*...the removal and replacement of the original sash wooden windows within this Conservation Area do materially affect the external appearance of this dwelling and hence these works are not exempted development*'. The Council however has not provided, in my opinion, more detailed or credible explanation of how they reached this opinion i.e. how they consider the new windows materially affect this ACA.

6.2 Therefore in the absence of a proper context within which to understand the County Council's thinking of this matter a survey was carried out on 25th and 28th September and 9th October 2018 of Anne Street and all other properties within the ACA to establish the extent of properties with uPVC, aluminum and/or timber windows. Appendix 5 includes a map upon which the survey results have been applied. The survey applies only to the front street facing ground, first, third floor and/or roof levels of applicable properties as follows:

- Timber windows – yellow.
- uPVC windows – blue.
- Aluminum windows – purple
- Combined window materials – brown
- Unknown - grey.

6.3 Properties identified as Combined had windows of timber, uPVC and/or aluminum at ground, first or third floor/attic levels. Properties identified with black dots are protected structures. A number of properties are identified as unknown as a result of ground floor windows being boarded up or hidden behind roller shutters negating positive identification. Those properties identified with timber window do not infer that they are the structure's original historic windows merely what material was observed during the survey.

6.4 In relation to the window types in properties with an Anne Street addresses the following table can be produced from an analysis of the survey data.

Table 1: Anne Street Window Survey Results

Materials	No. of Properties	% of Total
uPVC	20	52.63
Timber	12	31.58
Aluminum	4	10.53
Combined	1	2.63
Unknown	1	2.63
	38	100

6.5 Over half of Anne Street properties, including No.57 Anne Street, are fitted with uPVC windows. The reversion of No.57 to timber windows would have no appreciable impact upon the predominance of uPVC as a material within Anne Street. Of the 299 properties contained within ACA No.3 the survey revealed some interesting ratios between timber to uPVC windows as set out in Table 2 overleaf.

Table 2: ACA No.3 Window Survey Results

Materials	No. of Properties	% of Total
uPVC	190	63.54
Timber	79	26.1
Combined	16	5.69
Aluminum	8	2.67
Unknown	6	2.0
	299	100

- 6.6 The survey map illustrates the predominance of uPVC windows throughout Anne Street and the ACA as a whole. Tables 1 and 2 also clearly establish that uPVC windows are the dominant form in the ACA. In Anne Street there is nearly twice as many properties with uPVC windows than timber windows. Within the whole ACA that proportion increases to nearly 2½ times. The majority of windows in Anne Street and the ACA are not sash but casement type windows.
- 6.7 There are 40no. protected structures within ACA No.3. One relates to a set of gate piers (Lhs D002) and the other to a derelict warehouse (Lhs D005) both of are not relevant to the following point. Of the remaining 38no. protected structures within ACA No.3 the survey map (See Appendix 5) illustrates that 16no. or 42.11% of total have uPVC windows compared to 19no. or 50% of total with timber and 2no. or 7.89% of total which have windows of differing materials.
- 6.8 A review was carried of the planning histories of each property within ACA No.3 observed to have uPVC, aluminum or a combination of materials. None of the properties surveyed with non-timber windows had sought planning permission for their installation. Whilst it is difficult to estimate at what time they were installed the review of planning files from 2003 to 2009; when the previous 2003-2008 Development Plan and 2004 Architectural Heritage Guidelines were applicable; did establish a history where the County Council did not tackle the presence of uPVC in protected and/or non-protected properties when assessing each proposal. A number of recent cases however, approved under the current 2009-2015 Development Plan and 2011 Architectural Heritage Guidelines, stood out in contrast to the County Council's stance regarding the Clients' property.
- 6.9 Planning Reg. Ref. 13520107 at 19 Mary Street South sought permission for alterations to the existing dwelling and the construction of a first floor rear extension. The property is located in the centre of ACA No.3. Submitted drawings showed the replacement of the then existing uPVC windows with an aluminum framed large paned window facing onto the street. The County Council's recommendation to approve was appealed but dismissed by An Bord Pleanala who granted permission on 31.02.14.
- 6.10 Planning Reg. Ref. 15748 at Wilton House, Stapleton Place sought consent for a change of use from office to training/educational use, including ancillary office, alterations to internal layout, changes to rear elevation, modification of railing and boundary wall, development of car park, external lighting, erection of external store and associated site works. Wilton House is a regionally important Edwardian villa c.1880 (Lhs-D351, NIAH ref. 13707014).
- 6.11 Planning Reg. Ref. 18235 at No.4 The Crescent related to a rear extension and alterations. The property is another regionally important protected structure (Lhs-D163, NIAH ref. 13707038). Permission was granted on 18.06.18.
- 6.12 The following section will elaborate upon how each of these sample cases demonstrates the County Council's lack of consistency when determining what window materials they consider appropriate and inappropriate within ACA No.3.

7.0 Assessment.

7.1 Based on the above information there are a number of obvious issues that are important to understanding and therefore arguing the background and context of the Clients' enforcement case. The following section provides an appraisal of each of the preceding subject headings.

i) Legislation & Regulation.

7.2 There are several issues that may be relevant to arguing the matter before the Court. Article 153 of the Planning & Development Act 2000 (as amended) states in relation to the decision to proceed with enforcement:

153. - (1) As soon as may be after the issue of a warning letter under section 152, the planning authority shall make such investigation as it considers necessary to enable it to make a decision on whether to issue an enforcement notice.

(2)(a) It shall be the duty of the planning authority to ensure that decisions on whether to issue an enforcement notice are taken as expeditiously as possible.

(b) Without prejudice to the generality of paragraph (a), it shall be the objective of the planning authority to ensure that the decision on whether to issue an enforcement notice shall be taken within 12 weeks of the issue of a warning letter.

7.3 The Council's first Warning Letters, addressed to the Owner/Occupier at No.57 Anne Street was dated 17th July 2017. It would have been delivered to a vacant property. The Council's second Warning Letter, addressed to Kevin McManus, Canal Road, Mooretown, Dromiskin, Co. Louth was dated 28th July 2017. The 12 week period within which Article 153(2)(b) states an Enforcement Notice should have been issued would have expired on either 17th October or 28th October 2017 depending on what Warning Letter you use. The County Council's Enforcement Notice, addressed to Kevin McManus was dated 17th November 2017.

7.4 I would consult your legal representative to determine if this be enough to successfully argue that the enforcement was expeditious or valid.

7.5 Neither the Planning & Development Act 2000 (as amended) or the Planning & Development Regulations 2001 (as amended) explicitly state that the installation of replacement windows in an Architectural Conservation Area constitutes development. All of the articles of the Planning Act and Planning Regulations cited in Section 2 above set out that development is considered to have occurred if there is a material effect on external appearance of the structure, materially affect the character of an ACA or for a purpose not incidental to the enjoyment of the house.

7.6 I am of the opinion that the new windows do not have sufficient materiality of impact within context of the property itself, Anne Street or the character and setting of the wider ACA to constitute development under the either the Planning & Development Act 2000 (as amended) or the Planning & Development Regulations 2001 (as amended) and as such the Council's enforcement action is unwarranted. I would in fact argue that as the new windows do not materially affect the ACA they are considered exempted development under Article 9(1)(xii), Part 2 of the Planning & Development Regulations 2001 (as amended).

ii) National Guidance & Planning Policy Context.

7.7 As it is the function of planning legislation and regulation to establish what constitutes development and/or exempted development neither the Dundalk & Environs Development Plan 2009-2015 or the Louth County Development Plan 2017-2021 explicitly state that the installation of replacement windows in an Architectural Conservation Area constitutes development. The Dundalk & Environs Development Plan does states that the replacement of existing timber sash windows with uPVC or

aluminum will not be approved in ACA No.3. Such a policy position only applies when an application for permission has been submitted for consideration. It would be incorrect to assume or argue that because a development plan has policies stating the use of certain building materials in certain circumstances is unacceptable is, in effect, also stating that those same circumstances constitute development. The matter of defining development is the sole purview of the Planning & Development Act 2000 (as amended).

iii) *What Works Have Been Carried Out?*

7.8 The only obvious difference between the previous and existing windows is the material they are constructed from. Whereas the previous timber windows were sash type the uPVC windows are casement type. These two factors may be used to argument that the difference between existing and previous was material. However the majority of window types in Anne Street and the wider ACA are casement types not sash. Additionally the Council's enforcement notification refers only to the use of uPVC the change in window type may be an issue best left unaddressed.

7.9 As noted above particular care was given to installing a bespoke non-standard window type, particularly at ground level, that matched the previous windows as closely as was possible. Given the extent of uPVC used throughout Anne Street and the wider ACA I would not consider it unreasonable for the Clients to have concluded that uPVC windows were not out of context and therefore acceptable with the predominant character of Anne Street.

7.10 The question of materiality is the critical issue to be determined by the judge in this case. We cannot argue that there hasn't been a change but a reasonable and common sense argument can be made that the new windows do not material affect the property, Anne Street or ACA No.3 given the common prevalence of uPVC windows throughout and the special care taken to install windows of similar design and appearance as the previous timber ones. If the judge can be convinced on this point we could successfully argue that the replacement windows do not constitute development and the County Council's enforcement action is

iv) *Placing the Works in Proper Context.*

7.11 These more recent planning applications cited above reveal the County Council's widely inconsistent application of relevant national guidance and planning policies and in some cases ignoring the unauthorised installation of uPVC or aluminum windows in protected and non-protected structures. It also highlights a double standard and lack of balanced and reasonable assessment where the County Council take enforcement action against the Clients' property whilst historically allowing so many other protected and non-protected properties within ACA No.3 to change to uPVC, aluminum etc. windows without planning permission and follow up enforcement action.

7.12 In my opinion Planning Reg. Ref. 13520107 clearly sets an excellent precedent from both Louth County Council and An Bord Pleanala for the use of (in this case) aluminum in street facing window. Planning Reg. Refs. 15748 at Wilton House and 18235 at No.4 The Crescent; two regionally important protected structures; also clearly demonstrates a degree of apathy towards the use of uPVC windows in protected structures and ACA No.3 which is at complete odds with their approach and attitude towards the Clients' non-protected dwelling. In both cases there is no permission on file for the installation of uPVC windows which, because of their protected status, would clearly constitute development under the Planning & Development Act 2000 (as amended). In both cases the Planner's report made no mention of this element of unauthorised development and the Conservation Officer had no objections to either proposal.

7.13 The review of the planning files indicated that many of the other properties within the ACA with uPVC or aluminum windows received permission. It is however not possible to determine when each case occurred. Furthermore without access to Council enforcement records it is impossible to tell if the Council took any action similar to that being taken against the Clients. However given the lack of planning applications and the prevalence of uPVC windows throughout ACA No.3 it may be inferred

that the Council's attitude in years past is inconsistent with their stance in relation to No.57 Anne Street.

8.0 Concluding Remarks.

- 8.1 The Clients' position is not totally without potential issues that could be exploited during the case hearing. For example in addition to the change of materials the window type has also been changed. The County Council may refer to similar Court cases and rulings or to precedents set by the County Council and An Bord Pleanala. However as noted above the issue of materiality is a matter pertinent to the definition of development under the Planning & Development Act 2000 (as amended) not the national guidance or Development Plan policies.
- 8.2 On balance however I am of the opinion the County Council's lack of even the most basic of explanations as to why, within context of other Anne Street or ACA properties, they consider the installation of uPVC windows to materially affect the ACA is a fundamental weakness in their position.
- 8.3 I would also be of the opinion that if we set out before the judge a simple, reasonable and common sense argument that within this application circumstances installing uPVC windows into a non-protected structure does not constitute development then we may succeed in squashing the Council's enforcement action.
- 8.4 The quality and thoroughness of the Council's assessment of this case's particulars is questionable. Their decision to issue and progress with enforcement action would appear to be made exclusive of important mitigating factors such as the historic presence and predominance of uPVC windows throughout ACA No.3; the fact that uPVC windows make a substantial contribution to the visual, historical, architectural character and aesthetical setting of ACA No.3.; or in their lack of objection in planning applications where the use or retention of uPVC windows in protected and non-protected structures were proposed and approved. None of the letters furnished to EHP Services directly or any of the internal reports and memos supplied through the County Solicitor indicates a lack of any detailed background research or consideration within context of other Anne Street properties or the wider ACA which in my opinion makes their decision to issue and prosecute enforcement action against the Clients a poorly informed, blinkered, unreasonable and therefore entirely arbitrary one.
- 8.5 The case, in my opinion, would appear to hinge on the ability to successfully convince the sitting Judge that the new windows do not materially affect the ACA and therefore do not constitute development under the Planning & Development Act 2000 (as amended) and in fact constitutes exempted development under Article 9(1)(xii) of the Planning & Development Regulations 2001 (as amended).
- 8.6 I appreciate that the enclosed report is detailed and lengthy. I am more than happy to sit down with you or your legal representative at a time and date of your convenience to go through any aspect of the background research or contents of this report and to prepare for the Court hearing on 1st November 2018.

Appendix 1

Environmental **H**eritage **P**lanning

154 Riverside Drive, Red Barns Road, Dundalk

Tel.: 086 826 8390
Email: ehpservices1@gmail.com
Web: <http://www.ehpservices.ie>

ACA 3 - The Crescent

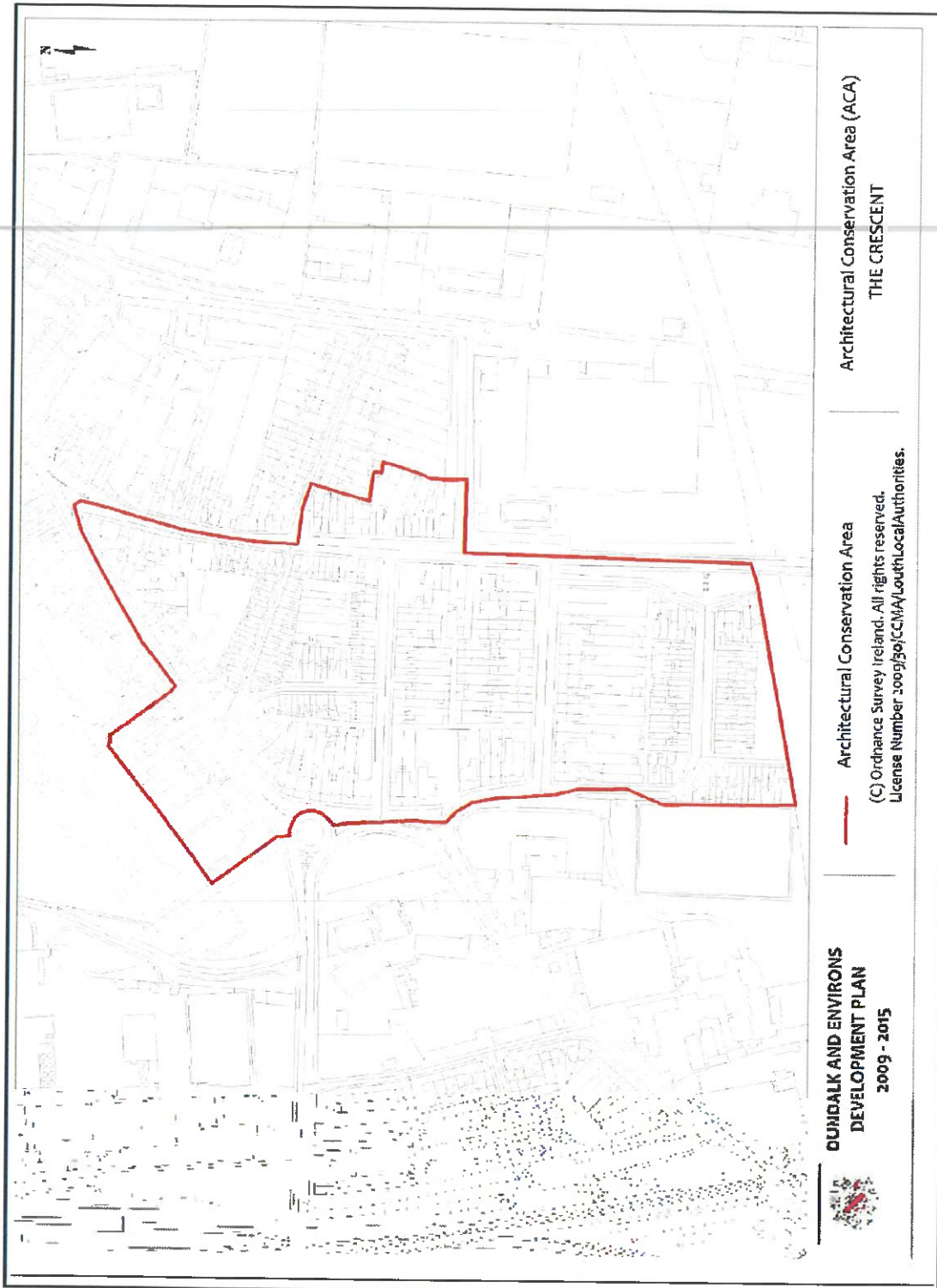


The Crescent, Anne St., Dublin Street, Mary St South, Vincent Ave, Stapleton Place, Wynne's Terrace, Parnell Park Ave.

The primary purpose in the designation of this ACA is to protect and enhance the character of the urban housing area.

It is the intention of the Council by the designation of this Architectural Conservation Area:

1. To protect and enhance the character of the area and the setting of the protected structures within the area by giving consideration to the suitability of scale, style, construction materials, colour and decoration to be used in any proposals for new development, including alterations and extensions, taking place within this area.
2. To encourage the preservation and re-instatement of traditional details and materials in the area. The replacement of existing timber sash windows with uPVC or aluminum will not be approved.
3. To encourage the preservation of traditional shopfronts and the replacement of shopfronts which are inappropriate to the style and period of the building as a whole.
4. To protect and enhance the relationship between buildings and open space, and to retain and protect decorative elements and features in the area such as railings and boundary walls.



Environmental Heritage Planning

154 Riverside Drive, Red Barns Road, Dundalk

Tel: 086 826 8390
 Email: ehpservices1@gmail.com
 Web: <http://www.ehpservices.ie>

Appendix 2

Environmental **H**eritage **P**lanning

154 Riverside Drive, Red Barns Road, Dundalk

Tel.: 086 826 8390
Email: ehpservices1@gmail.com
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154 Riverside Drive
Red Barns Road
Dundalk
County Louth

17th August 2017

Compliance (Planning)
Louth County Council
Town Hall
Crowe Street
Dundalk
Co. Louth

Dear Sir or Madam

RE: ENFORCEMENT FILE 17-U108 –NO. 57 ANNE STREET, DUNDALK, CO. LOUTH.

EHP Services has been appointed by Mr Kevin McManus, Canal Road, Mooretown, Dromiskin, Dundalk, Co. Louth to respond to your Warning Letter dated 28th July 2017.

It is our considered opinion that the works recently carried out to No.57 Anne Street constitutes exempted development under the definition provided under Article 4(1)(h) – Exempted Development of the Planning & Development Act 2000 (as amended) which states:

4. – (1) The following shall be exempted development for the purpose of this Act –

(h) development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures;

The property's front windows were in a very bad state of disrepair having deteriorated to the point where they were allowing the cold and damp to affect the interior of the dwelling. It was not possible to refurbish the warped and rotted window frames and cracked window panes so the decision was made to replace them in order to maintain the property and restore it to a higher level of habitability.

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Unlike numerous neighbouring properties, special care was taken in selecting the replacement windows which duplicated the original window's overall appearance, style, mullions & pane size (see enclosed photographs).

The only difference between the original and existing windows is that the replacement windows are not timber or sash. This difference is negligible and not of sufficient substance to reasonably consider the new windows to be unauthorised development particularly when one considers the lack of material impact upon the visual character of the surrounding Architectural Conservation Area (ACA) No.3.

The use of uPVC windows is so prevalent amongst Anne Street properties that it materially defines the physical and visual character of the streetscape and therefore, in turn, to the character and setting of the ACA. Properties either side of No.57 have uPVC windows. Unlike the replacement windows of No.57 the majority of uPVC windows along Anne Street are not of a style that is respectful or reflective of that structures' age or architectural character. The careful selection of replacement windows does not materially affect the external appearance and existing character of No.57 so as to render its current appearance materially different from its previous appearance; make it inconsistent with the commonplace use of uPVC in the majority of neighboring structures or the visual quality, architectural integrity or character of ACA.

The replacement windows meet the criteria set forth in Section 4(1)(h) of the Planning Act to be considered exempted development. Consequently the guidance pertaining to ACA 3 as set out in Appendix 7 of the Dundalk & Environs Development Plan 2009-2015 is not applicable.

We remain confident that this matter does not warrant consideration of any further action and would request written confirmation that enforcement file 17 U118 has now been closed.

If you have any queries regarding the above please do not hesitate to contact me. I look forward to your receiving your reply at your earliest convenience.

Regards

Tony Eubanks.



Photo 1 – Original windows

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No. 57 Anne Street

Photo 2 – Replacement windows and neighbours properties

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Appendix 3

Environmental **H**eritage **P**lanning

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154 Riverside Drive
Red Barns Road
Dundalk
County Louth

27th October 2017

Compliance (Planning)
Louth County Council
Town Hall
Crowe Street
Dundalk
Co. Louth

Dear Sir or Madam

RE: ENFORCEMENT FILE 17-U108 –NO. 57 ANNE STREET, DUNDALK, CO. LOUTH.

Further to your letter dated 6th October 2017 in respect of the above enforcement file and planning matter I have been instructed by my Client to reiterate the position as set out in our letter of 17th August 2017 specifying that the extent of works carried out to No.57 Anne Street did not materially affect the character of ACA No.5 and as such does not constitute unauthorised development.

With respect to your query as to how the Client proposes to rectify the matter I would point that having received the Client's reply to your initial Warning Letter the potential progression of this matter lies within the Council's remit. The Client is confident that should matters progress a robust and successful defense of this position will be made in any formal legal proceedings.

If you have any queries regarding the above please do not hesitate to contact me.

Regards

Tony Eubanks.

Appendix 4

Environmental **H**eritage **P**lanning

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Comhairle Contae Lú
Louth County Council

6th October 2017

Tony Ewbanks
EHP Services
154 Riverside Drive
Red Barns Road
Dundalk
Co. Louth

Ref. 17 U108

Re: Unauthorised removal of three sash windows and their replacement with Upvc windows in the front elevation of 57 Anne Street, Dundalk, Co Louth

Dear Sir,

I refer to your submission dated 17th August 2017 in respect of the above development. Number 57 Anne Street, is located within The Crescent Architectural Conservation Area.

Section 82 of the Planning and Development Act stipulates that – 'Notwithstanding section 4 (1) (h), the carrying of works to the exterior of a structure located in a conservation area shall be exempted development only if those works would not materially affect the character of the area'.

It is the opinion of the Planning Authority that the removal and replacement of the original sash wooden windows within this Conservation area do materially affect the external appearance of this dwelling and hence these works are not exempted development. Hence, I can confirm that enforcement file 17 U108 has not been closed.

Would you please confirm your client's intentions on how he proposes to rectify the above unauthorised works within two weeks of this correspondence. After this period, this case shall be reviewed and further enforcement proceedings may be instigated.

Yours faithfully,

Cathriona Kieran
Acting Staff Officer
Compliance (Planning Enforcement) Section

Direct Line – 042 9324118
Email – planningenforcement@louthcoco.ie

Correspondence in this matter should be addressed to;
Compliance (Planning), Louth County Council, Town Hall, Dundalk, Co. Louth.

Comhairle Contae Lú
Halla an Bhaile
Sráid Crowe
Dún Dealgan
Contae Lú
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Cuir fear fáilte roimh chomhfhuaireas Gaeilge - Correspondence in Irish is welcome

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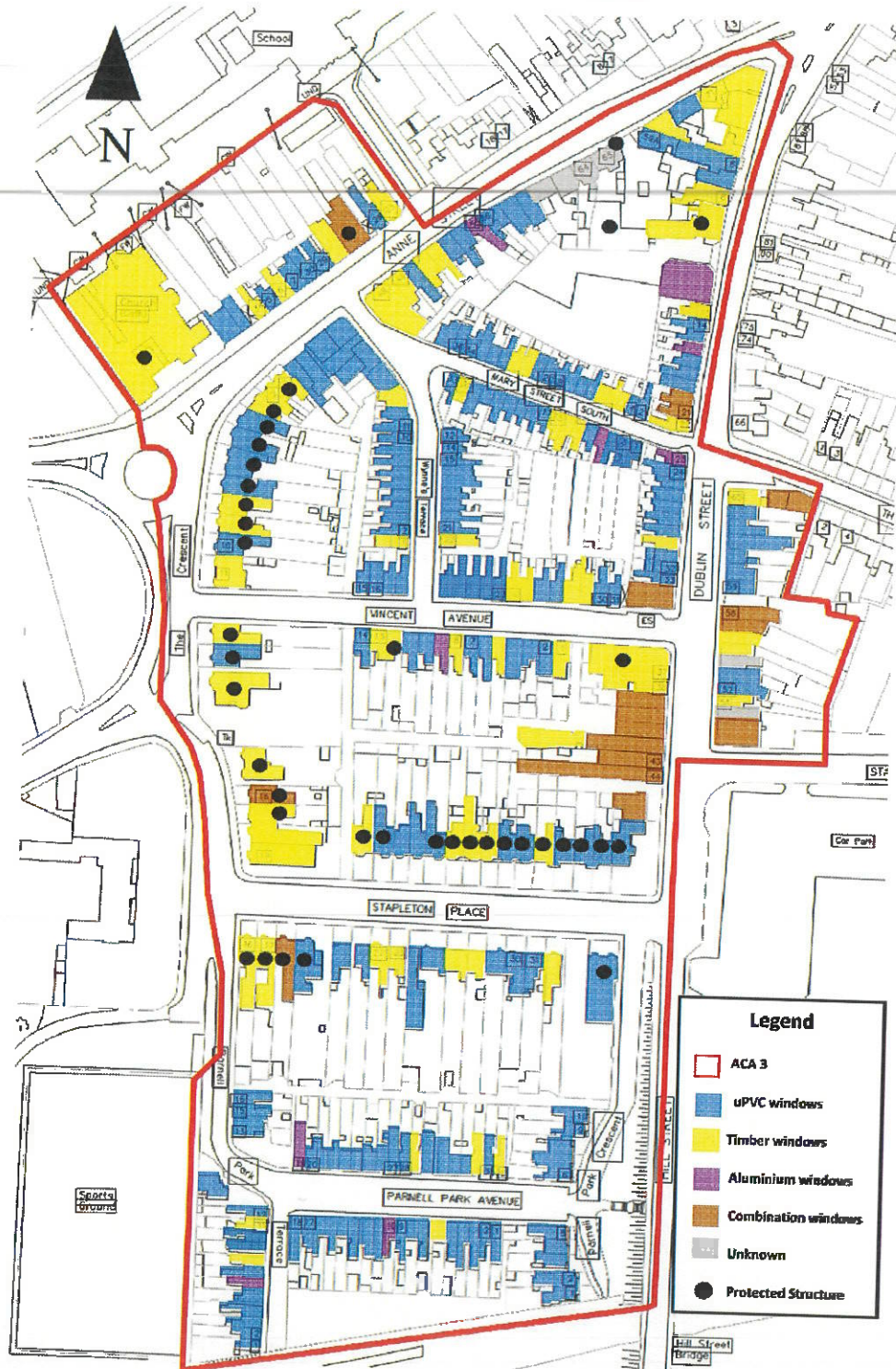
Appendix 5

Environmental **H**eritage **P**lanning

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Window Materials Survey Map



Environmental Heritage Planning

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