



Comhairle Cathrach  
Bhaile Átha Cliath  
Dublin City Council

Planning & Property Development Department,  
Dublin City Council, Block 4, Floor 3, Civic Offices, Wood Quay, Dublin 8.

An Roinn Pleanála & Forbairt Maoin  
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6<sup>th</sup> December 2019

The Secretary  
An Bord Pleanála  
64 Marlborough Street  
Dublin 1

**AN BORD PLEANÁLA**

LDG- \_\_\_\_\_  
ABP- \_\_\_\_\_

**06 DEC 2019**

Fee: € \_\_\_\_\_ Type: \_\_\_\_\_  
Time: 15:00 By: hand

Re: **5 Dartmouth Square, Dublin 6.**  
Your Ref: **ABP-305895-19**  
Plan Ref: **0354/19**

Dear Sir/Madam,

Please find attached our response in relation to your request for submission or observation dated 18<sup>th</sup> November 2019 regarding the above referral.

Kind regards,

Oliver O'Leary  
for Executive Manager



S/Flannuvs/TRANSERR/ 0354-19 5 Dartmouth Square APPEAL.



Dublin City Council  
Comhairle Cathrach Bhaile Átha Cliath

**Archaeology, Conservation & Heritage Section**  
Planning & Property Development Department  
Block 4, Floor 3, Civic Offices, Wood Quay, Dublin 8

**Seandálaíocht, Caomhantas & Oidhreacht**  
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06 DEC 2019 JH

LTR DATED \_\_\_\_\_ FROM \_\_\_\_\_  
LDG- \_\_\_\_\_  
ABP- \_\_\_\_\_

Decisions Section  
Planning & Property Development Department  
Dublin City Council  
Block 3, Floor 3

03<sup>rd</sup> December 2019

### APPEAL COMMENTS

**EXPP:** 0354/19 (Section 5 Declaration Application)

**BORD PLEANALA REF:** ABP-305895-19

**LOCATION:** 5, Dartmouth Square, Dublin 6

**PROPOSAL:** EXPP: Protected Structure:

1. The refurbishment of the 4 existing windows to the front of the house at the main entrance (ground floor) level and the first floor level.
2. The refurbishment of the 3 existing windows to the rear of the house at the main entrance (ground floor) level and the first floor and attic levels, including repairs and/or renewal of the patent reveals.
3. The fitting of draught restricting weather seals to the windows described in 1 or 2 above to improve comfort, thermal performance and reduce energy consumption.
4. The fitting of restrictors to the windows described in 1 and 2 above to improve safety.
5. Re-landscaping the front garden, without making any changes or works to the existing railings; to provide a gently sloping path to the lower ground level for baby buggies and bicycles.

#### Appeal Comments

I refer to the appeal submission to An Bord Pleanála by the applicants Conor Power and Loraine Mulligan on the above Section 5 Declaration issued by Dublin City Council. The appeal relates specifically to Item 5 on the original application for a Section 5 Declaration Reg. Ref: 0354/19 and in this regard the Planning Authority refer to the Report on that Section 5 Declaration application (attached). A Declaration for Items 1-4 was issued by the Planning Authority to the effect that those works would not materially affect the architectural

character of the protected structure and would be exempted development within the meaning of Section 4(1)(h) and Section 57 of the Planning and Development Act, 2000 (as amended).

It is noted that the appellant's submission does not refer to the report prepared by the Conservation Unit on the application or the assessment of the works within this report.

The Conservation Unit within the Archaeology, Conservation and Heritage Section of Dublin City Council's Planning & Property Development is an integrated, multi-disciplinary team comprising architectural conservation officers and planners. It is long established practice in the Planning and Property Development Department that Section 5 applications relating to Protected Structures are dealt with by this unit. In accordance with established practice, the subject Section 5 Declaration application was considered by both an Architectural Conservation Officer and Senior Planner, who concurred in their decision as per the report on Reg. Ref: 0354/19.

Section 2(1): Interpretation of Part 1 of the Planning and Development Act 2000 (as amended) states that: "*structure*" means any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined, and—

- (a) where the context so admits, includes the land on, in or under which the structure is situate, and
- (b) in relation to a protected structure or proposed protected structure, includes—
  - (i) the interior of the structure,
  - (ii) the land lying within the curtilage of the structure,
  - (iii) any other structures lying within that curtilage and their interiors, and
  - (iv) all fixtures and features which form part of the interior or exterior of any structure or structures referred to in subparagraph (i) or (iii);

Section 4(1)(h) of the Act provide that the following shall be exempted development:

*'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 neighbouring structures.'*

Section 57(1) of the Act states:

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

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

Section 57(2) of the Act provides that:

*'An owner or occupier of a protected structure may make a written request to the planning authority, within whose functional area that structure is situated, to issue a declaration as to the type of works which it considers would or would not materially affect the character of the structure or of any element, referred to in subsection (1)(b), of that structure.'*

No request for a declaration under Section 57 of the Act has been submitted by the owner/applicant at any time since the introduction of the Planning and Development Act, 2000.

Dublin City Council Planning & Property Development Department provides for the making of an application for a Section 5 Declaration for specified works to a protected structure. The Section 5 declaration process is principally aimed at modest works, maintenance and repairs, in order to assist owners and occupiers undertake the repair, maintenance and non-material modification of these structures, having regard to the provisions of the Act and the statutory Architectural Heritage Protection Guidelines for Planning Authorities (2011). In this instance, the subject Section 5 Declaration application was considered and assessed in order to facilitate the owner commence those works to the protected structure that were considered exempted development having regard to those statutory Guidelines and Sections 4(1)(h) and 57 of the Act.

The proposed re-landscaping of the front garden of No.5 Dartmouth Square, as portrayed on the drawings submitted with the application, indicated works over and above the provision of *'a gently sloping path to the lower ground level for baby buggies and bicycles'*. The drawings indicated the construction of wall against the boundary with the house to the north (No.6, also a protected structure). The application as originally submitted did not include sufficient information on the nature and extent of the proposed works, including the provision of the sloping path, to allow the Planning Authority fully determine the impact on the protected structure and whether these could be granted an exemption. To this end, Additional Information was sought from the applicant to allow the proposal to the front garden be fully scrutinised and the impact on the protected structure determined.

The Additional Information, submitted on the 8<sup>th</sup> October 2019, contained more detailed drawings on the proposals for the front garden which demonstrated that the works would comprise more than originally indicated in the application. The drawings showed the construction of a timber screen 1100mm in height to form a bin store with a screened area for bicycles alongside this. Notwithstanding the impact of this structure within the curtilage of the protected structure and on its boundary with No.6 Dartmouth Square, under Schedule 2, Part 1 of the Planning and Development Regulations, a Class 3 structure cannot be considered exempted development if *'...erected or placed forward of the front wall of the house...'*. A Class 3 structure is considered to be a *'...tent, awning, shade or other object, greenhouse, garage, store, shed or other similar structure'*. The proposed walls and screen to the front of this structure will form a bin store (it is named a *'Bin store'* on the Proposed Section Z-Z & Front Elevation drawing) and, together with the bicycle area to the immediate east, are deemed to be a structure under Class 3 Schedule 2 Part 1 of the Planning and Development Regulations. Its location forward of the front wall of the house infers this proposed work is development and therefore requires planning permission.

Under Section 2(1): Interpretation of Part 1 of the Planning and Development Act 2000 (as amended), the garden of No.5 Dartmouth Square is considered part of the protected structure. The Department of Culture, Heritage and the Gaeltacht's *Architectural Heritage Protection Guidelines for Planning Authorities* states that *'Proposals for new development within the curtilage of a protected structure should be carefully scrutinised by the planning authority, as inappropriate development will be detrimental to the character of the structure.'* (2011, 199) The drawings submitted as Additional Information show the proposed landscaping works to the front garden as being substantial and will result in a significant alteration of the front garden. The amount of hard landscaping to the front garden would be significantly increased and the introduction of the sloped pathway, which would reduce the garden level in part by up to 0.5m. This would introduce a different level within the garden to that of its surrounding neighbours, would make the garden inconsistent with the surrounding properties and be a significant departure from its own historic design.

The in-combination or cumulative effects of the alterations to the front garden, including the provision of the bin store and bicycle area, would materially affect the character of elements of the protected structure that contribute to its special character. Therefore, due to the nature

and extent of the proposed works to the front of the house the Planning Authority could not declare these works exempted development within the meaning of Sections 4(1)(h) and 57 of the Planning and Development Act 2000 (as amended). They require the submission of an application for planning permission.

The gas meter referred to in the applicant's letter was not mentioned in the description of the proposed works on the Section 5 application form. It did not form part of the original proposal for the works to the garden but was identified on the subsequent Additional Information, forming part of the construction which included the bin store and bicycle area. The provision of this gas meter could therefore not be assessed in isolation within the Section 5 application.

Note: For the Board's information, a subsequent Section 5 Declaration application was submitted for the construction of a small free-standing pier in the front garden to accommodate a recessed gas meter in a proprietary meter box. Dublin City Council issued a Declaration granting an exemption for this work (Planning Ref 0532/19).



Mary-Liz McCarthy

Assistant Architectural Conservation Officer



Paraic Fallon

Senior Planner

Archaeology, Conservation & Heritage Section

## DUBLIN CITY COUNCIL

Planning Department, Conservation Section  
Tel. 01 2223926. Fax. 01 2222830

**EXPP:** 0354/19 – Additional Information

**APPLICANT:** Conor Power & Loraine Mulligan

**AGENT:** Stephen Philips, Number 8 Studio, Torytops, Ballinteer Road, Dublin 16

**ADDRESS:** 5 Dartmouth Square, Dublin 6

### PROPOSED DEVELOPMENT:

1. The refurbishment of the 4 existing windows to the front of the house at the main entrance (ground floor) level and the first floor level.
2. The refurbishment of the 3 existing windows to the rear of the house at the main entrance (ground floor) level and the first floor and attic levels, including repairs and/or renewal of the patent reveals.
3. The fitting of draught restricting weather seals to the windows described in 1 or 2 above to improve comfort, thermal performance and reduce energy consumption.
4. The fitting of restrictors to the windows described in 1 and 2 above to improve safety.
5. Re-landscaping the front garden, without making any changes or works to the existing railings; to provide a gently sloping path to the lower ground level for baby buggies and bicycles.

### STATUTORY PROTECTION:

5 Dartmouth Square, Dublin 6 is on the current Record of Protected Structures (Dublin City Development Plan 2016-2022). The reference number is 2151 and the description reads 'House'.

**DATE OF REPORT:** 19/08/2019

**DATE OF RECEIPT OF ADDITIONAL INFORMATION:** 08/10/2019

**DATE OF ADDITIONAL INFORMATION REPORT:** 22/10/2019

### PLANNING HISTORY

Ref No.	Description	Decision
0532/18	EXPP: PROTECTED STRUCTURE: Removal of lightweight stud partition wall, doors & wardrobes dividing front reception room & removal of doors, glazing & lightweight stud partition wall fitted at base of stair, all at upper ground floor (entrance) level.	GRANT EXEMPTION CERTIFICATE 18 Jan 2019

### PLANNING ENFORCEMENT HISTORY

There have been no enforcement notices on the site.

### SECTION 57 DECLARATION

No Declaration under Section 57 of the Act has been requested or issued for the Protected Structure by the Planning Authority.

### INFORMATION SUBMITTED WITH THE APPLICATION

1. Application form
2. Site location map
3. Floor Plans, Elevations, Front Garden – Existing and Proposed

4. Cover letter and description of works dated 29/07/2019
5. Supporting photographs and window sash sections – existing and proposed

#### REPORT/ASSESSMENT

It is proposed to carry out the following works under the application:

1. **The refurbishment of the 4 existing windows to the front of the house at the main entrance (ground floor) level and the first floor level.** The proposed works to the windows to the front elevation of the building involve essential maintenance to the windows. The works are in line with best conservation practice as outlined in the Department of Culture, Heritage and the Gaeltacht's *Windows: A Guide to the Repair of Historic Windows* and will return the windows to full working order. The existing glass will be retained as part of the work. This work is therefore deemed exempted development.
2. **The refurbishment of the 3 existing windows to the rear of the house at the main entrance (ground floor) level and the first floor and attic levels, including repairs and/or renewal of the patent reveals.** The works are in line with best conservation practice as outlined in the Department of Culture, Heritage and the Gaeltacht's *Windows: A Guide to the Repair of Historic Windows* and will return the windows to full working order. The existing glass will be retained as part of the work. The like-for-like repair of the damaged reveals is considered essential maintenance. The proposed work to the rear windows is therefore deemed exempted development.
3. **The fitting of draught restricting weather seals to the windows described in 1 or 2 above to improve comfort, thermal performance and reduce energy consumption.** The application is accompanied by drawings detailing the scope of these works and demonstrating the impact of these on the historic windows. There will be minimal impact on the historic fabric. The work can be considered exempted development.
4. **The fitting of restrictors to the windows described in 1 and 2 above to improve safety.** The installation of sash restrictors is not considered to materially affect the character of the protected structure and is therefore considered exempted development.
5. **Re-landscaping the front garden, without making any changes or works to the existing railings; to provide a gently sloping path to the lower ground level for baby buggies and bicycles.** Insufficient details of the proposed landscaping works has been provided. The proposed work will result in the loss of some soft landscaping to the front site, which will impact on the setting of the protected structure. The boundary railings to the front site and the gate will not be impacted by the works.

The application does not fully detail the proposed work to the front garden to allow full assessment of the impact on the protected structure. A plan of the proposal notes changes in level indicating a drop of c.500mm. A section showing the impact of the sloping path and grass in relation to the protected structure should be provided. The house sits within a terrace of similar houses, all with the same layout of front façade and garden. The introduction of significantly different level to one garden within the terrace will make the garden inconsistent with the surrounding properties. A drawing showing the impact is therefore required to fully assess the proposed work.

The drawing of the proposed front garden notes a wall to be constructed against the boundary with the house to the north. However no further details on this wall are provided including height and materials. The front gardens of the houses along the terrace are divided by metal railings with hedges grown around the railings in some instances, including the boundary in question. Therefore the introduction of a wall abutting the historic railing will not only impact on No.5 Dartmouth Square but also on No.6 Dartmouth Square, which is a protected structure. The construction of the wall will result in the removal of a section of the existing hedge. Details on the height/depth/length of the wall, an elevation drawing showing its height in relation to the front façade of the house and the material to be used in its construction. This information is to include any proposal for a perpendicular wall at its eastern end.



The proposal does not include any details on the material to be used for the new path other than to note that it will be paving. A '*...stepped wall/kerb to contain planter at existing levels...*' is also noted but the material to be used for this is not provided. The applicant is to submit full details on the colour texture and nature of the material to be used for the path in order to assess the impact of this on the protected structure.

- The Additional Information submitted on behalf of the applicant provides details on the wall to be constructed. The plans/sections/elevations presented indicate that the applicants propose to provide a timber screen 1100mm in height and 700mm in front of the proposed concrete wall along the boundary with No.6. In addition, a gas meter enclosure is proposed directly in front of the boundary railing to the garden of No.6. This was not apparent on the original submission and clearly demonstrates that it is effectively proposed to construct a structure within the front garden. Under Schedule 2, Part 1 of the Planning and Development Regulations, a Class 3 structure cannot be considered exempted development if '*...erected or placed forward of the front wall of the house...*'. A Class 3 structure is considered to be a '*...tent, awning, shade or other object, greenhouse, garage, store, shed or other similar structure*'. The proposed walls and screen to the front of this structure will form a bin store (it is named a '*Bin store*' on the Proposed Section Z-Z & Front Elevation drawing) and, together with the bicycle area to the immediate east, are deemed to be a structure under Class 3 Schedule 2 Part 1 of the Planning and Development Regulations. Its location forward of the front wall of the house implies infers this proposed work is development and therefore requires planning permission.

Section 4(1)(h) of the Planning and Development Act 2000 (as amended) states that the following shall be exempted development:

*'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 neighbouring structures.'*

Section 57(1) of the Act states:

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

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

The proposed landscaping works to the front of No.5 Dartmouth Square will materially affect the character of the protected structure and are therefore considered development. The Department of Culture, Heritage and the Gaeltacht's *Architectural Heritage Protection Guidelines for Planning Authorities* states that '*Proposals for new development within the curtilage of a protected structure should be carefully scrutinised by the planning authority, as inappropriate development will be detrimental to the character of the structure.*' (2011, 199) The proposed walls and screen will be adjacent to the front elevation of the house and clearly visible from within the garden. These form part of substantial landscaping works that will significantly alter the front garden. The Additional Information submitted notes the provision of a new gas meter enclosure adjacent to the bin store and '*stepping stones*' set within the lawn along the route of the concrete path to be removed; these had not previously been indicated. The new paved area will be of granite setts and together with the stepping-stones (also granite) and the raised height of planters along the boundary to accommodate the sloped pathway, the collective effect of the proposed works will see a significant loss of soft landscaping within the front garden. The Guidelines note that '*...regardless of its size, a garden can make an important contribution to the character and setting of a protected structure...*' (2011, 197). The introduction of the sloped paved area, which will introduce a different level within this garden to that of its

surrounding neighbours, will make the garden inconsistent with the surrounding properties and be a significant departure from its own historic design.

The cumulative effect of the proposed interventions to the front garden of the protected structure would materially affect its character and cannot be considered exempted development.

#### RECOMMENDATION

A. It is considered that the proposed works as summarised below comprise development which would 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:

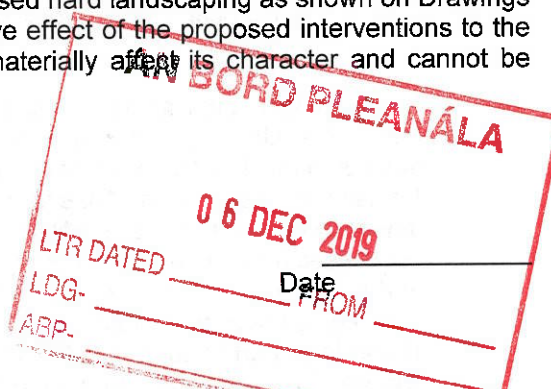
1. The refurbishment of the 4 existing windows to the front of the house at the main entrance (ground floor) level and the first floor level.
2. The refurbishment of the 3 existing windows to the rear of the house at the main entrance (ground floor) level and the first floor and attic levels, including repairs and/or renewal of the patent reveals.
3. The fitting of draught restricting weather seals to the windows described in 1 or 2 above to improve comfort, thermal performance and reduce energy consumption.
4. The fitting of restrictors to the windows described in 1 and 2 above to improve safety.

B. It is considered that the proposed works as summarised below 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) as the proposed development would materially affect the character of the Protected Structure and therefore **would require planning permission**:

5. Re-landscaping the front garden, without making any changes or works to the existing railings; to provide a gently sloping path to the lower ground level for baby buggies and bicycles.

Note: The landscaping works proposed include the provision of a bin store/bicycle storage area, gas meter enclosure, sloping pathway and increased hard landscaping as shown on Drawings 1808-S5-2.1.0 and 1808-S5-2.1.1. The cumulative effect of the proposed interventions to the front garden of the protected structure would materially affect its character and cannot be considered exempted development.

\_\_\_\_\_  
Mary-Liz McCarthy  
Assistant Architectural Conservation Officer



I have read the Declaration on the above property, which is included in Dublin City Council's Record of Protected Structures. I recommend that the Declaration under Section 5 of the Planning and Development Act, 2000 be issued to the owner/occupier in terms set out attached.

\_\_\_\_\_  
Paraic Fallon  
Senior Planner

\_\_\_\_\_  
Date