

To: John Downey  
Acting Planning Enforcement Manager

From: Neil Cameron  
Planning Enforcement  
Officer

**ENF: E0528/19**

Date of inspection: N/A  
Date of report: 17/12/20  
Premises: 1 Brabazon Street, Dublin 8  
Reputed Owner:  
Protected: No  
Contact:



**Complaint:** It is alleged that the roof of the above premises is being used as a roof garden/balcony without the relevant grant of planning permission.





**Assessment:**

As section 5 was 27-Feb-2020 relating to:

**EXPP:**

1. Construction of a smoking/beer garden to rear of pub.
2. Use of upstairs rooms as student/short term letting.
3. Raising of flat roof to rear by c.600mm and construction of a 2m high fence to create an outside amenity area.

A Grant Exemption Certificate was issued by Dublin City Council. This was appealed to An Bord Pleanála under ABP-307112-20.

The appeal of the Section 5 found that the works were not exempt.

The section 5 inspectors report stated;

With regard to the Raising of flat roof to rear by c.600mm and construction of a 2m high fence to create an outside amenity area.

In the Inspectors report it states 'The inspector is not in a position to definitively declare that the roof was raised as access to the site was not possible and nonetheless, the works have already been undertaken so a site visit could not confirm the height of the roof prior to the works'.

Regarding the fence, I note Class 11 of Part 2, Schedule 2 of the Regulations. This provides that in properties other than a house, the construction, erection, lowering, repair or replacement, of a fence is exempted development where it does not exceed 1.2m in height where it is a new structure and 2m where it is a replacement structure. That the fence is not visible from the public realm is not relevant. The subject fence, being a new structure at a height of 2m is not exempted development under Class 11.

None of the multiple flat roofs in the immediate area have been permanently fenced off in such a manner. I am satisfied that the erection of a 2m high fence renders the subject roof area inconsistent with the character of the structure and the neighbouring structures. It is considered that the subject fence is not exempt under section 4(1)(h).

With regard to construction of a smoking/beer garden to rear of pub.

In the Inspectors report it states 'The subject area formerly was an enclosed toilet block. That it is now an open space, with longer, more frequent and likely more intense use will lead to greater noise levels. Given that the subject area is surrounded on all sides by residential properties, such a change creates material planning consequences. It is likely that a Planning Authority would consider the likely effects such as noise, fumes and late night activity on the amenities of the surrounding properties.

Having regard to the material consequences with respect to the proper planning and sustainable development of the area, it is considered that a material change of use has occurred, which amounts to development.

The Planning and Development Act and Regulations provide for circumstances where a material change of use, although amounting to 'development', may be



An Bord Pleanála inspector stated 'The Board will note that access to those upper floors was not possible on the date of my site inspection due to the requirement for all persons on the premises to comply with the An Bord Pleanála Pre-Site Inspection Clearance Forms and public health guidance about the number of people indoors'

An Bord Pleanála inspector also stated 'it is apparent that there is significant disagreement between the two parties to this referral regarding the status of the subject premises. The nature of a section 5 referral to the Board is not to find in favour of one party over another, as may be the case in a legal dispute. There are limitations on the remit of the Board under the Act and a decision of the Board does not grant approval or development consent for any works, use or other development'.

On previous enforcement file E0864/18 the property was set up as a house share with a communal sitting room and kitchen facilities. The previous owner has sent a declaration that the rooms were used for accommodation for the years 1997-2017 when he was in ownership of the building.

The use of the upstairs accommodation for short term letting for a duration of 15 days or more is deemed exempted development as per section 3A of the Planning and Development Act 2000, as amended.

The inspector states 'it is possible that the entire upper floors were rented as a single private residence, in which case the use of the upper floors as rented accommodation has not changed'.

'If as is suggested by both the Referrer and the owner of the public house, that the rooms on the upper floors are rented out individually on an annual basis (see letter to the Board dated June 19th 2020), then this would arguably be considered a material change in use and an intensification of use'.

The section 5 regarding the accommodation above the Lamplighter the inspector stated 'The nature of a section 5 referral to the Board is not to find in favour of one party over another, as may be the case in a legal dispute. There are limitations on the remit of the Board under the Act and a decision of the Board does not grant approval or development consent for any works, use or other development'.

#### **Recommendation:**

A previous enforcement file as closed on the property as the set up was as a house share with a communal sitting room and kitchen facilities. Therefore the residential use is maintained.

Therefore no action further will be taken with regard to the use of upstairs rooms as student/short term letting.

Issue an enforcement notice under Section 154 of the Planning and Development Acts

#### **This notice should read:**

1. The unauthorised use of a roof to the rear roof of Lamplighter Lounge 1 Brabazon Street/ 79 the Coombe, Dublin 8 as a seating area without the benefit of planning permission.
2. The unauthorised increase in height of the rear roof of Lamplighter Lounge 1 Brabazon Street/ 79 the Coombe, Dublin 8 as a seating area without the benefit of planning permission.



4. The unauthorised construction of a smoking area/beer garden with seating and barrels, wooden shelves and paneling recessed spot lighting in a blue fixed canopy with an opening to the centre without the benefit of planning permission.

**Notice Requiring:**

1. The cessation of the use of the roof to the rear of 1 Brabazon Street/ 79 the Coombe as a seating area.
2. The reinstatement of the rear roof to its previous height prior to the works being carried out at the Lamplighter Lounge 1 Brabazon Street/ 79 the Coombe, Dublin 8.
3. The removal of the 2m high fence wooden fence to the rear roof with metal supporting poles of the Lamplighter Lounge 1 Brabazon Street/ 79 the Coombe, Dublin 8
4. The cessation of the use of the beer garden/smoking area with seating and barrels, wooden shelves and paneling recessing spot lighting in a blue fixed canopy with an opening to the centre located were the previous toilets and store area to the rear of the Lamplighter Lounge 1 Brabazon Street/ 79 the Coombe, Dublin 8
5. The removal of beer garden/smoking area with seating and barrels, wooden shelves and paneling recessing spot lighting in a blue fixed canopy with an opening to the centre located were the previous toilets and store area to the rear of the Lamplighter Lounge 1 Brabazon Street/ 79 the Coombe, Dublin 8

Give 3 months for compliance

Issue Enforcement notice to





Neil Cameron  
Planning Enforcement Officer



Noted +  
agreed  
w/ave 5154  
notice as  
requested  
J. Grey  
ALPEM



	record	Grant/Part Grant/Refuse	of Act
1	Planning Enforcement Officers report dated: 17 <sup>th</sup> December 2019	Part/Grant	S37(1) FOI 2014
2	Correspondence letters dated: 2 <sup>nd</sup> January 2020	Part/Grant	S37(1) FOI 2014
3	Correspondence dated 30 <sup>th</sup> December 2019 and acknowledgement email dated 6 <sup>th</sup> January 2020	Grant	
4	Email dated 9 <sup>th</sup> January 2020	Grant	
5	Email dated 28 <sup>th</sup> January 2020 & Correspondence dated 31 <sup>st</sup> January 2020	Part/Grant	S37(1) FOI 2014
6	Emails dated 21 <sup>st</sup> - 30 <sup>th</sup> September 2020	Grant	
7	Enforcement notices and Managers Order dated 8 <sup>th</sup> December 2020	Part/Grant	S37(1) FOI 2014
8	Correspondence dated 27 <sup>th</sup> November 2020	Grant	
9	Correspondence dated 14 <sup>th</sup> December 2020	Grant	
10	Planning Enforcement Officers report dated: 17 <sup>th</sup> December 2020	Part/Grant	S37(1) FOI 2014

#### S37(1) Freedom of Information Act 2014

S37(1) Subject to this section, a head shall refuse to grant an FOI request if, in the opinion of the head, access to the record concerned would involve the disclosure of personal information (including personal information relating to a deceased individual).



I Declan Brady of [REDACTED] previous owner of 79 The Coombe & 1 Brabazon Street Dublin 8 from 1998 to 2017 and as operator of the ground floor pub trading as the Lamplighter during this period, aged 18 years and upwards MAKE OATH and say as follows:

I make this affidavit from facts within my own knowledge save where otherwise appears and where so otherwise appears believe same to be true.

1. I, your deponent, aver that the owner of No 2 Brabazon Street created an opening in our party wall and constructed a staircase on my roof without my consent or any planning permission in 2015.

[REDACTED] your deponent, aver that I never gave permission for this.

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3. I, your deponent, aver that the staircase was constructed without my consent over a weekend period.

4. I, your deponent, aver that when I approached him and asked him to remove it and repair the party wall he declined, and he said it was for fire purposes.




Private Residence during my ownership and I believe the same for the previous owner.

8. I, your deponent, aver that during my ownership I resided at my house in Harold's Cross Dublin 6 which was my Principal Private Residence.
9. I, your deponent, aver that that I was the owner of the above specified property from 1998 to 2017 and the person who was operating the above property during that time.
10. This Affidavit is made for the benefit of CREATIVE REAL ESTATE LTD.

Sworn by the said Declan Brady at 1 Main Street, Blanchardstown, Dublin 15 in the County of Dublin, this 12<sup>th</sup> day of October 2020 before me a Commissioner for Oaths by the deponent, who has been identified to me by the production of Public Services Card Number [REDACTED] issued by the authorities of Ireland.

  
DECLAN BRADY

  
AUDREY HUGHES  
Commissioner for Oaths

Audrey Hughes  
Commissioner for Oaths  
Doyle & Company  
Solicitors  
1 Main Street  
Blanchardstown  
Dublin 15  
Phone 01-8200666





AFFIDAVIT OF GREG CRAWFORD

I Greg Crawford, of [REDACTED] 18  
years and upwards MAKE OATH and say as follows:

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I make this affidavit from facts within my own knowledge save where otherwise appears and where so otherwise appears believe same to be true.

1. I, your deponent, aver that I worked as a barman and caretaker of the upstairs accommodation in the Lamplighter Pub at 79 The Coombe Dublin 8 / 1 Brabazon Street Dublin 8 during the mid-90's, I worked for the owner Brendan Dunne who owned the premises at the time.
2. I, your deponent, aver that I stayed above the lamplighter pub throughout the mid-90's, I would stay there during my college term and occasionally for periods during the summer months.
3. I, your deponent, aver that I shared the accommodation with usually up to 10 other people during my time. The guests and tenants were usually a mix of students, staff, lads up working from the country and tourists. The accommodation was laid out as shared accommodation with shared kitchen, dining, toilet facilities and a general outside roof garden area.
4. This Affidavit is made for the benefit of Creative Real Estate.



Sworn by the said  
Greg Crawford  
in the County of Dublin, this 18 day of

November 2020 before me a

Commissioner for Oaths by the deponent,  
who has been identified to me by the  
production of Passport issued by the  
authorities of Ireland.

Greg Crawford

Greg Crawford

Audrey Hughes

Commissioner for Oaths

Audrey Hughes  
Commissioner for Oaths  
Doyle & Company  
Solicitors  
1 Main Street  
Blanchardstown  
Dublin 15  
Phone 01-8200604



AFFIDAVIT OF BRENDAN TREARS

I Brendan Trears, [REDACTED], aged 18 years and upwards **MAKE OATH** and say as follows:

I make this affidavit from facts within my own knowledge save where otherwise appears and where so otherwise appears believe same to be true.

1. I, your deponent, aver that I am director and shareholder of Creative Real Estate Limited.
2. I, your deponent, aver that from December 2017 to December 2018 I occupied a bedroom during weekdays for convenience purposes on the second floor level of the upstairs accommodation in the Lamplighter Pub at 79 The Coombe Dublin 8 / 1 Brabazon Street Dublin 8 whilst I was refurbishing the accommodation.
3. I, your deponent, aver that upstairs accommodation of 79 The Coombe Dublin 8 / 1 Brabaazon Street Dublin 8 was not my primary residence during the renovations and my primary residence was in Skerries Co Dublin.
4. I, your deponent, aver that I shared the accommodation with up to 9 people during this time.

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- 5. I, your deponent, aver that 79 The Coombe Dublin 8 /1 Brabazon Street Dublin 8 was never used as my primary residence, my primary residence was and is currently 15 The Heights Skerries Rock, Skerries, County Dublin.
- 6. I, your deponent, aver that I appointed Brendan Johnston to prepare and submit the planning application with a reference 2676/18.
- 7. This Affidavit is made for the benefit of Creative Real Estate.

Sworn by the said

In Dublin, this 12 day of December  
 2020 before me a practising Solicitor  
 by the deponent, who has been identified to  
 me by the production of Passport issued by  
 the authorities of Republic of Ireland.

Direct Law Solicitors  
1st Floor, unit 10, Skerries Point,  
Skerries, Co Dublin.

*Brendan Trears*

Brendan Trears

*[Signature]*

