

The Secretary,
An Bord Pleanála.
64 Marlborough Street,
Dublin 1
D01 V902

AN BORD PLEANÁLA
LDG- 039662-21
ABP- _____
11 MAY 2021
Fee: € 220 Type: cheque
Time: _____ By: reg post

DECLARATION ON I

DPMENT



NAME OF APPLICANT: _____

ADDRESS OF APPLICANT: _____

CO. KERRY

EMAIL ADDRESS: _____

TELEPHONE NO. Day: _____

NAME OF AGENT AND / _____

TELEPHONE NO. Day: _____

ADDRESS FOR CORRESPONDENCE (if different from above)

SAME

LOCATION OF SUBJECT SITE: THE LAMPLIGHTER PUBLIC HOUSE, 79 THE COOMBE / A BRABAZON ST, DUBLIN 8

Is this a Protected Structure or within the curtilage of a Protected Structure?

If yes, has a Declaration under Section 57 of the Planning & Development Act 2000 been requested or issued for the property by the Planning Authority?

Please provide details of works (where applicable) or proposed development. (Note: only works listed and described under this section will be assessed under this section 5 application. Use additional sheets if required.)

PLEASE SEE LETTER ATTACHED

List of plans, drawings etc. submitted with this application

MY LETTER

2 COPIES OF SITE LOCATION MAP

CHEQUE OF € 80

Please state Applicant's interest in this site: OWNER OF NEXT DOOR PROPERTY - 2 BRABAZO STREET

If applicant is not owner of site, please provide name & address of owner:

CREATIVE REAL ESTATE LIMITED, COLLEGE HOUSE
71/73 ROCK ROAD, BLACKROCK, CO DUBLIN

Are you aware of any enforcement proceedings connected to this site?
If so please supply details:

E0864/18

E0528/19 ENFORCEMENT NOTICE

Where there previous planning application/s on this site?

If so please supply details:

REF: 2008/18, 2676/18; CD98/20, 0444/20, 2977/20, 2196/2

Signed [Signature]

Date 18.03.2021

NOTES

Application shall be accompanied by 2 copies of site location map with site clearly outlined in red and a fee of €80.00. Please submit 2 copies of any additional plans/reports etc. you may wish to include as part of the application.

Application shall be forwarded to: Dublin City Council, Planning Registry
Section, Block 4, Floor 0, Civic Offices, Wood Quay, Dublin 8.
Contact Details: Phone: 01 222 2149 Fax: 01 222 2675

Andrea
Err

Planning Department
Dublin City Council
Civic Offices
Wood Quay
Dublin 8

RE: Section 5 application, the Lamplighter Public House, 79 The Coombe/ 1 Brabazon Street, Dublin 8

18th March 2021

Dear Sir/ Madam,


I, Andreas Brüggener, of Gortagullane Muckcross, Killarney, Co. Kerry and owner of 2 Brabazon Street, Dublin 8 wish to make a formal application for a declaration under Section 5 of the Planning and Development Act 2000 in respect of the 2 matters below:

- 1. Whether the internal alteration of a 5 bedrooms accommodation for a maximum of 11 guests to a 9 bedrooms accommodation for a maximum of 18 guests, is or is not development and if development, whether it is exempted development or not.**
- 2. Whether the change of use from short term lettings in excess of 15 days duration per letting to a short term letting for any period not exceeding 14 days, is or is not development and if development, whether it is exempted development or not.**

Matter 1:

In his current & pending planning application (2977/20) the agent of the owner of the Lamplighter Public House has now stated, for the first time, that the rooms on the 1st and 2nd floor have only been rented to a maximum of 11 guests previous to its conversion into 9 bedrooms.

Andre
E



This alteration with an aim of accommodating a further 7 guests represents a 64% increase in guest capacity. The current 9 bedrooms (measuring between 7.45 and 8.90 sqm [*source: planning application 2977/20*]) are undoubtedly double bedrooms which have already been rented as such in 2018 & 2019 via Airbnb. This was previously observed by the Planning Enforcement Officer Neil Cameron during his on-site inspection on 22/11/2018 during which Mr. Cameron took photos of one of these (then) new double bedrooms. As Mr Cameron states in his report dated 12/12/2018 (**E0864/18**):

"I could only access one of the bedrooms/flat on the day of my visit....The owner stating all rooms are the same".

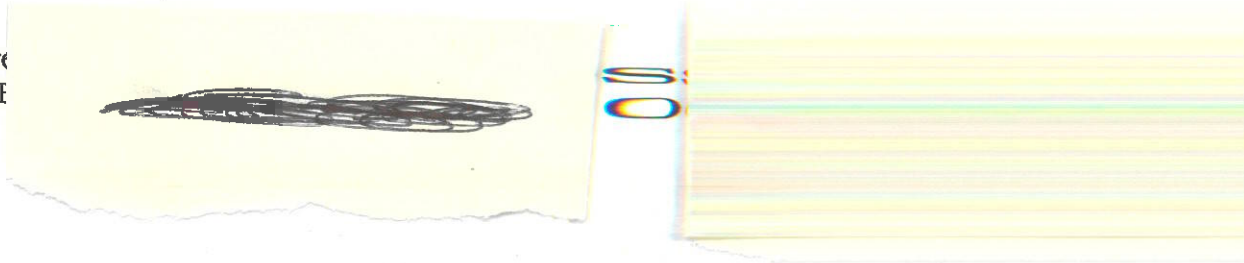
outlines clearly that all rooms are double bedrooms.

Also, in a second report dated 21/08/2019 (**E0528/19**), Mr. Cameron went on to state that:

"A desktop investigation showed that there is three rooms on Airbnb. Reviews had been placed for July and August 2019."

Below a screen shot of the Lamplighters Airbnb advert 2018/2019:

Andre
E



Hi, I'm Brendan

Joined in 2018



★ 85 reviews

✓ Identity verified

About

Easy going and open minded.

🏠 Lives in County Dublin, Ireland

Brendan confirmed

✓ Identity

✓ Email address

✓ Phone number

Brendan's listings



★ 3.94 (17)

Private room - Other

Spacious Double Room, with own privat...



★ 4.25 (4)

Private room - Other

Beautiful Double Bedroom with private ...

As Dublin City Council ("DCC") has all of these reports and photos on file, I have opted not attached them to this application. However, if DCC does not have access to any of the above, please do let me know and I will happily furnish copies.

This matter arises as a result of the agent of the owner of the Lamplighter Public House representation of the 9 bedrooms as guest (short term letting) accommodation in his current planning application 2977/20.

However, the current planning status for the rooms is *private residence* or at most *short term lettings in excess of 15 days duration per letting to a short term letting for any period* - but not short term letting for any period not exceeding 14 days.

However, the lettings in 2018 & 2019 through Airbnb were short term lettings for any period not exceeding 14 days and also the current guesthouse concept will be in fact short term letting for any period not exceeding 14 days.

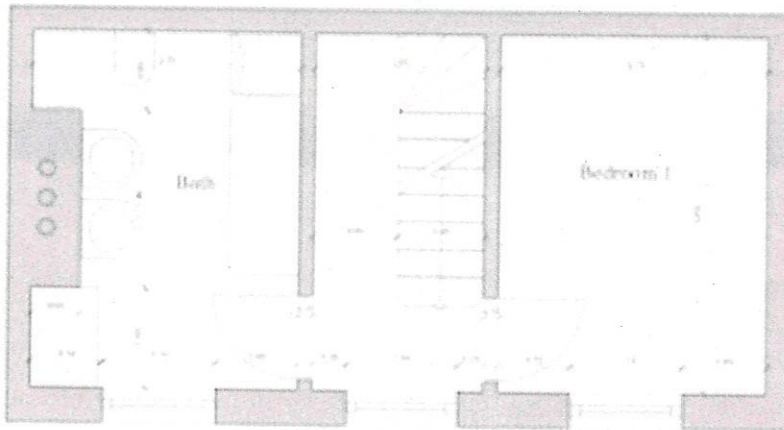


Conclusion:

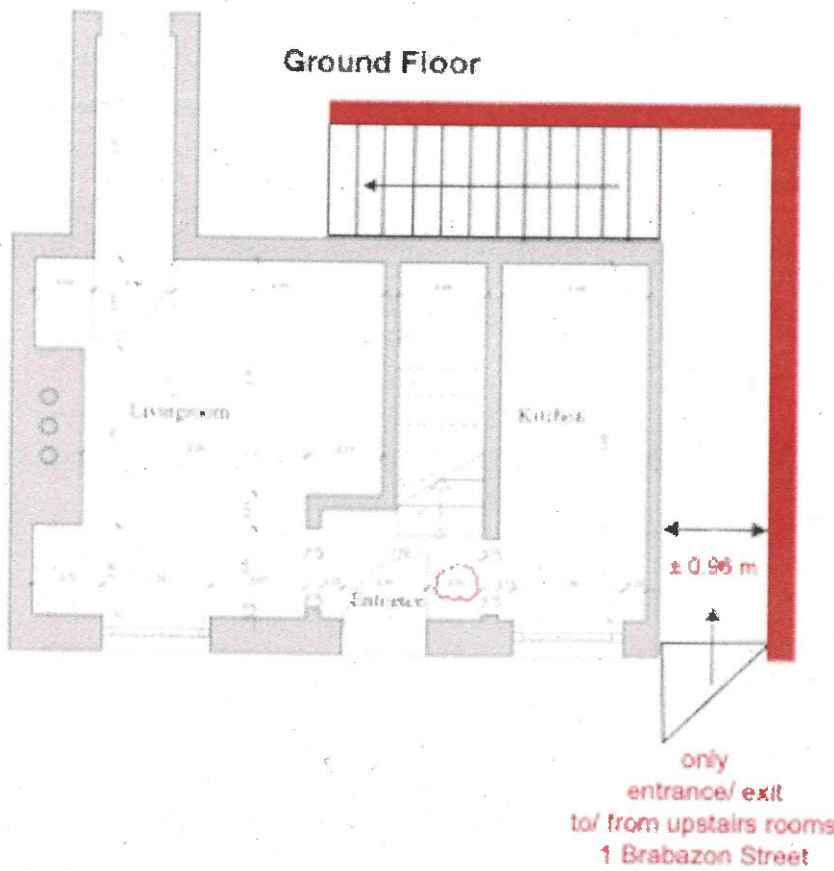
Both, the increase in capacity of guest accommodation and the change of use from short term lettings in excess of 15 days duration per letting to a short term letting for any period not exceeding 14 days will mean an intensification of use of the public house and an intensification of nuisance to my property owing to the fact that the only access to the guest accommodation is through the entrance at 1 Brabazon Street, which is located under my first floor bedroom and the stairwell runs behind this bedroom. See floormap (next page) :

2 Brabazon Street : First floor & ground floor

First Floor



Ground Floor





Kind Regards,

Andreas Brüggener



National Map

CENTRE COORDINATES
ITM 714467 18

PUBLISHED:
2012/01/18

MAP SERIES:
1:1000

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DRAWN BY:
Ordnance Survey
Phoenix Park
Dublin 8
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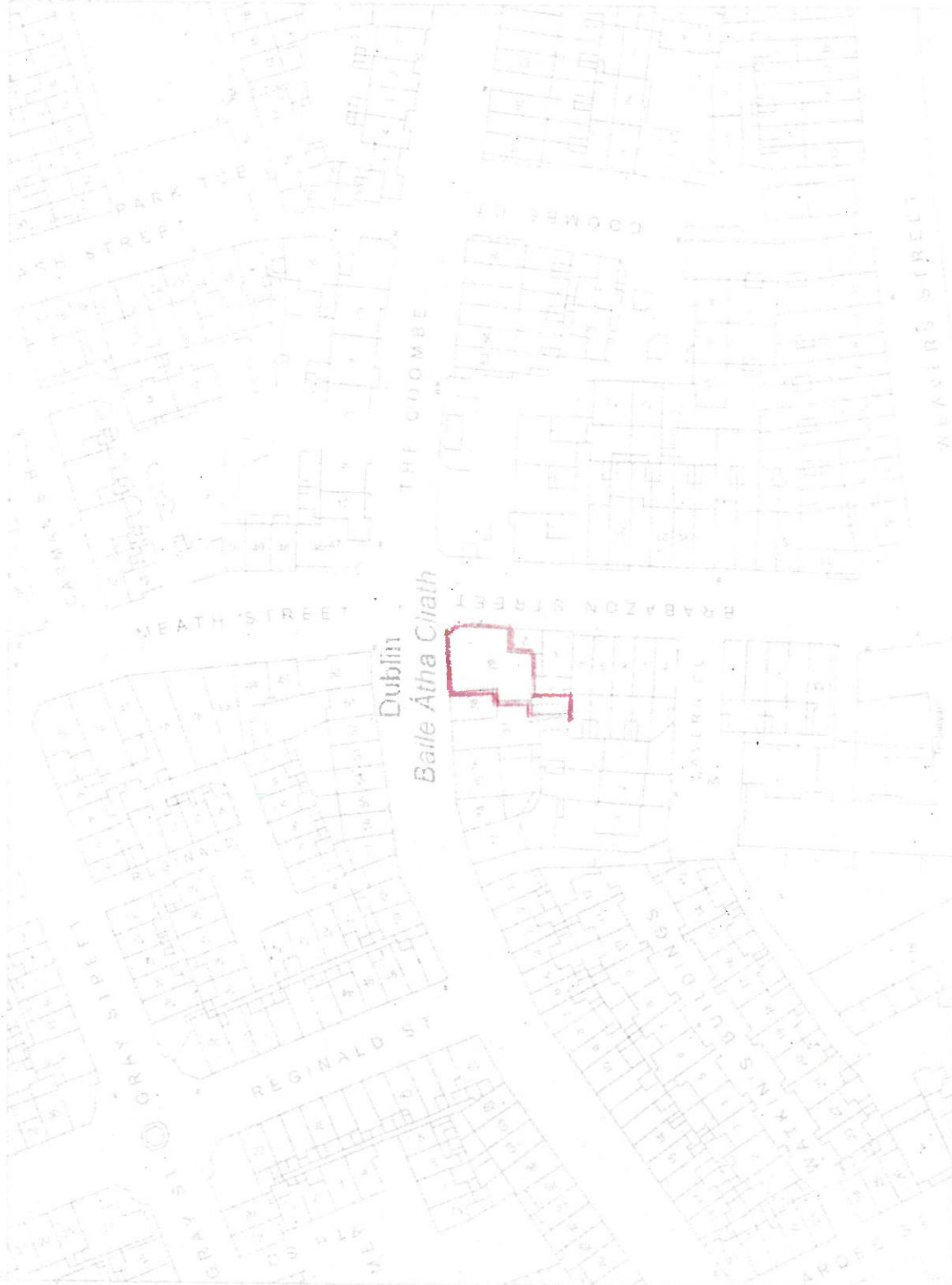
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LEGEND

1:1000

OSi PLACE Map



Dublin
Baile Átha Cliath

CAPTURED BY SOLUTION
The map data is derived from
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OUTPUT SCALE 1:1000

0 5 10 20 40 80 160 Meters



The Secretary,
An Bord Pleanála.
64 Marlborough Street,
Dublin 1
D01 V902

10th May 2021

**Re: First Party Appeal of decision made by Dublin City Council on the
16th April 2021 as to the declaration on development and exempted
development under Application No 0103/21 for the development consisting of:**

EXPP;

1.) Whether the internal alteration of a 5 bed accommodation for a max of 11 guests to a 9 bedrooms accommodation for a maximum of 18 guests, is or is not development and if development, whether it is exempted development or not.

2) Whether the change of use from short term lettings in excess of 15 days duration per letting to short term letting for any period not exceeding 14 days, is or is not development and if development, whether it is exempted development or not.

Location:

Lamplighters Public House, 79 The Coombe/ 1 Brabazon Street, Dublin 8

Owner:

Creative Real Estate Ltd – Director: Mr. Brendan Trears

Company owners: Brendan Trears/ Paul Bermingham

Dear Sir /Madame,

I, Andreas Bruggener of Gortagullane Muckross, Killarney, Co. Kerry and owner of the property 2 Brabazon Street in Dublin 8, wish to appeal part the above split decision as to the declaration on development and exempted development as described in the decision made by Dublin City Council (“DCC” or “the Council”) on the 16th. April 2021.

I enclose the fee of 220 € and a copy of my original Section 5 application

Table of Contents:

1.0 Grounds for Appeal

2.0 History of the planning issue with use of upstairs rooms

3.0 The reason for my Section 5 application 0103/21

4.0 Occurrence of the section 5 decision 0444/20

5.0 Declaration Letter and Sworn Affidavits

in Section 5 Application 0444/20

6.0 Photo timeline upper rooms

7.0 Conclusion

1.0 Grounds for Appeal

My grounds for appeal are as follows:

- I am of the opinion that the the internal alteration of a 5 bed accommodation for a max of 11 guests to a 9 bedrooms accommodation for a maximum of 18 guests is a material intensification of use.
- I am of the opinion that the the internal alteration of a 5 bed accommodation to a 9 bedrooms Guest house accommodation is also a material change of use.

2.0 History of the planning issue with use of upstairs rooms

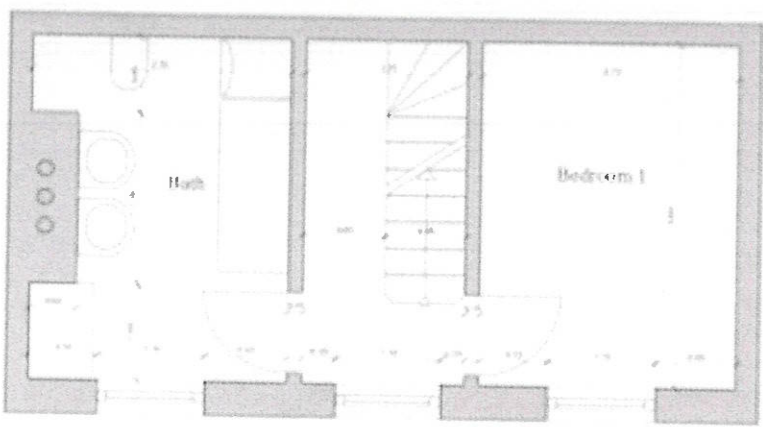
2.1 In 2014, I purchased the property located at 2 Brabazon Street to provide safe accommodation for my two children who are both studying in Dublin. At this time, the rooms above the Lamplighter Pub were not utilised and were in an entirely uninhabitable condition. The owners at that time had conveyed their intention to sell the property which resulted in me being invited to view each of these rooms. As I am a craftsman by trade with over 40 years of experience, I could see that these premises had not been occupied for many years, given the obvious state of disrepair. This was confirmed to me by Declan Brady, one of the owners.

The only access to these rooms is a small entrance in 1 Brabazon Street and through a narrow hallway underneath my 1st floor bedroom and then via a stairway that runs directly behind this bedroom. Below is a photo of this entrance door (in red) which was in place until 2018:

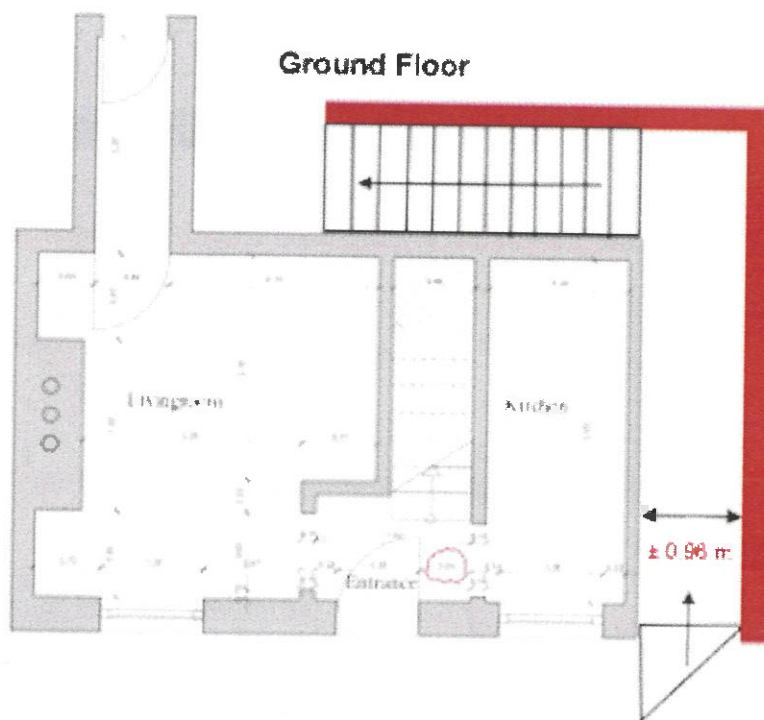


Below: Current photo and floor plan of 2 Brabazon Street including the hallway & staircase of 1 Brabazon Street leading to the guest rooms:





Ground Floor



only
entrance/ exit
to/ from upstairs rooms
1 Brabazon Street

2.2 in 2017 the public house was put on the market with upstairs rooms in uninhabitably condition by the auctioneer John P. Younge. The house was offered on the auctioneer's website with the following description (See Appendix 1) which state:

“The upper floors, with separate side street access, are not utilised other than for storage purpose.”

And on this description, you could also click on a link to a brochure (See Appendix 2) which state:

“The un-utilised upper floors offer excellent potential for refurbishment as a Manager`s Flat.”

This brochure is still available online at:

http://www.ipyounge.ie/the_lamplighter_pub_licensed_premises_brochure/

The property was subsequently sold in this condition to the current owner in the same year.

2.3 Also the purchase price of € 398,000 (See Appendix 3) including stamp duty and legal fees for a 320 sqm property in this location is also a strong indication that these rooms were sold in a non-rentable condition.

2.4 The architectural firm ‘H2B architects’ then prepared plans for the later building applications for a boutique hostel no.: **2545/18** and **2676/18**.

All submitted plans are dated 15/11/2017.

DCC PLAN. : 2676/18
RECEIVED 06 APR 18

H2B 25 MAY VIEW ARCHITECTS COMPANY		Tel: 011 4030922 / 087 1326871	
PROPOSED NEW HOSTEL BRENDAN TRIERS LAMPLIGHTER PUB 79 THE COOMBE DUBLIN 8	2018-13	15/11/2017	
	2018-13-3	1:100	
EXISTING ELEVATION	drawn and by JACKIE GHANIN		A3
	checked by BRENDAN JOHNSTON		

PLANNING DRAWINGS ONLY

2.5 Following this, in early January 2018, work commenced to reconstruct the uninhabitable rooms into the current 9 ensuite bedroom layout

2.6 The first planning application (**2545/18**) for a new hostel was submitted on the 28th of March 2018 to Dublin City Council (DCC) however was declared invalid. A second application (**2676/18**) *“for change of use of the first and second floor over existing ground floor public house from private residence to boutique hostel....”*, was then submitted on 06th of April 2018 to DCC and was refused on the 29th of May 2018 by DCC.

2.7 In June 2018 the current 9-bedroom layout with en-suites including a shared communal living room & kitchen were finished and were subsequently rented out via the Airbnb (See Appendix 4- Airbnb review) short term letting platform.

2.8 On the 27th July 2018 an inspection of the 9 bedrooms, kitchen and common room was carried out by DCC fire officer whereupon DCC issued a fire notice dated 15th August 2018 (See Appendix 5) prohibiting the further use of the premises as a residential accommodation. CERL objected against this fire notice by notice of appeal dated 28th August 2018 (See Appendix 6) and continued to let the premises through Airbnb up to September 2018. (See Appendix 4- Airbnb review) On foot of this DCC filed a notice of Objection to the renewal of their Intoxicating Liquor License (See Appendix 7) on the 29th August 2018.

2.9 In November and December 2018, the work required by the Fire Notice was carried out and on 14th January 2019, the Fire Notice was then annulled (See Appendix 8).

2.10 In September 2018, an enforcement case **E0864/18** was opened for in relation to this unauthorized short term letting. According to the enforcement report dated 12/12/2018 (See Appendix 9), the CREL representative stated during the DCC inspection that the Holiday/Airbnb type lettings had ceased and that a number of permanent tenants were in situ in the premises. My understanding of a permanent

tenant is that of a long-term letting and not a short-term letting less than 15 days duration per letting. On the basis of this statement and the submission of a highly questionable declaration that allegedly came from the previous owner (albeit this was not even signed), the enforcement case was then closed by DCC in January 2019.

2.11. However by July 2019, the rooms were being rented out again via Airbnb (See Appendix 4 - Airbnb review) and the roof above the pub was also converted into a amenity area for the guests. Following this and also due to additional unauthorised development, DCC then launched another enforcement case **E0528/19** and a warning letter was sent to the owner CREL on 30/08/2019 (See Appendix 10).

2.12 After the owner of CREL had his agent Simon Clears respond to the warning letter, DCC had informed me that they then considered the short term letting, roof terrace and beer garden to be exempt developments. In order to seek certainty on this statement, I made an application (**0098/20**) for section 5 exemption with the Council:

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.

An exemption certificate was granted in March 2020 by DCC.

2.13 I thereupon sent an appeal to ABP requesting a review of the decision made by the DCC:

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.

ABP subsequently decided in their order **ABP-307112-20**:

An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3) (a) of the 2000 Act, hereby decides that the construction of a smoking/beer garden to

rear of pub, the use of upstairs rooms as student/short-term letting, the raising of flat roof to rear by circa 600 millimetres and the construction of a two metres high fence to create an outside amenity area is development and is not exempted development.

2.14 I was of course very relieved that after almost 3 years of uncertainty, the planning status of the rooms in question was finally clarified by this decision.

3.0 The reason for my Section 5 application 0103/21

3.1 In his latest planning application (**2977/20**) an agent for the owner of the Lamplighter Public House has now stated, *for the first time*, that the rooms on the 1st and 2nd floor have been rented to a maximum of 11 guests previous to its conversion into 9 bedrooms. Such is claimed through the affidavits submitted by Declan Brady and the architect Johnston. (See Appendix 11+12)

3.2 It is also on record in the DCC enforcement case report dated 12/12/2018 (**E0864/18**) (See Appendix 9) and DCC enforcement case report dated 21/08/2019 (**E0528/19**) (See Appendix 13) that these 9 bedrooms were rented out as double bedrooms through Airbnb during the years 2018 & 2019 and this is clearly shown in the Airbnb reviews (See Appendix 4).

3.3 Additionally, the agent has stated, *also for the first time*, that the rooms on the 1st and 2nd floor are used as guest (short term letting) accommodation, but such only appears in the drawing text panel and in the Planning Application Form under Question 13. (See Appendix 14). As this representation was not entirely clear in his application, further information was requested by DCC relating to this application on the 18/08/2020 (See Appendix 15). Two requirements of information included were:

1. *The applicant is requested to clarify the use of the existing 9 ensuite bedrooms at both first and second floor level and the planning status for same. In this regard,*

it is noted that in the previous application on this site lodged in 2018 under Reg. 2676/18 that planning permission was refused for a change of use of first and second floors over existing ground floor public house from "private residence" to boutique hostel. So this implies that in 2018 the accommodation above the pub was a "private residence". There is no record of any change of use application on record at this property.

and

- 4. The applicant is requested to clarify the intended use of the additional four additional en-suite bedrooms which had not been mentioned in the statutory notices.*

The agent has stated in his response letter of 15/02/2021 (Appendix 16) under paragraph 4 that the existing 9 bedrooms are being used as guest (short term letting) accommodation. It is therefore clearly operating as a guest house business, as advertised on the main entrance of the Public House since 2018 - I therefore question how a guest house can economically operate without allowing for lettings for less than 14 days.

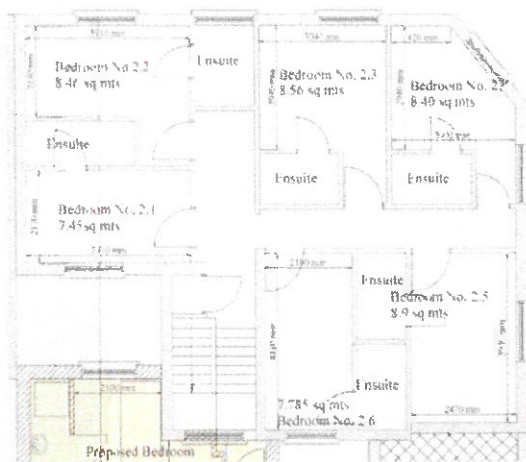


3.4 The planning application was refused on 16th March 2021 (Appendix 17) on the following grounds:

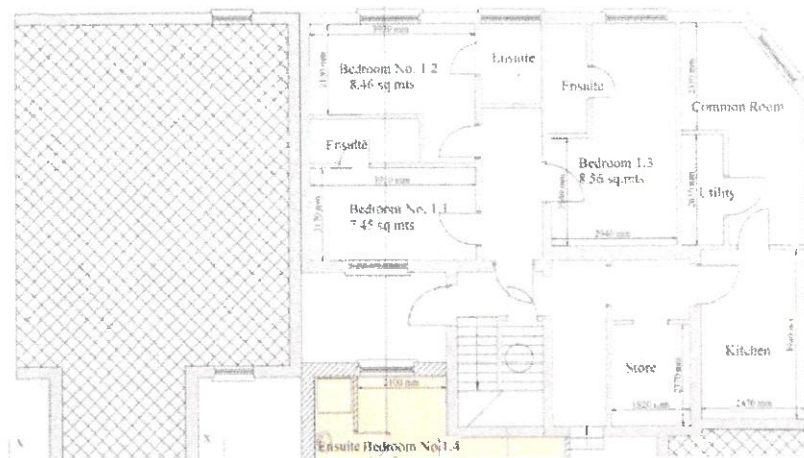
„Having regard to the nature and scale of the existing development which contains a public house and short term letting accommodation, it is considered that the proposed development to accommodate a further 4 ensuite bedrooms for short term lets would lead to overdevelopment of this restricted site due to the lack of private open space for these units, the inadequate nature of the communal facilities for these rooms in terms of common room/kitchen facilities and the lack of any bicycle parking. The proposal would therefore result in a substandard form of development and would seriously injure the residential amenity of the occupants of the proposed units and be contrary to the proper planning and sustainable development of the area“

3.5 I also believe that this development is a form of substandard development and believe that the substandard development begun with the conversion of the four or five bedrooms into nine bedrooms and the associated downsizing of the bedrooms and the communal facilities.

Below is the current room layout with 9 bedrooms between 7.45 and 8.90 sqm , kitchen 9,73 sqm and common room 10 sqm:



2. floor



1. floor

Neither the size of the bedrooms nor the communal facilities and entrance comply with the guidelines for guesthouses as shown below:

Guest House Classification Scheme

★ | ★★ | ★★★ | ★★★★★

Registration & Classification



Classification Matrix for Guest House Classification Scheme

Regulation 5 - Entrance And Exits

		★
5.1	The entrance and exits shall be of sufficient size to cater adequately for the overall resident capacity of the premises.	✓
5.2	The premises shall contain a guest entrance.	✓
5.3	The premises shall contain a service entrance, separate from the guest entrance, and suitably located for the reception of goods necessary for the operation of the premises.	✓
5.4	The entrance hall shall: <ul style="list-style-type: none"> (a) be of sufficient size to cater adequately for the volume of traffic normally using the premises, and (b) be suitably located, laid out and contain furnishings, fittings and equipment of good quality and in good condition. (c) be suitably located, laid out and equipped for the proper reception and control of arriving and departing guests. 	✓ ✓ ✓
5.5	Access for persons with mobility difficulties, including wheelchair users, to the entrance hall, reception, bedrooms and public areas, including bathroom and toilet facilities in accordance with the Building Regulations 2000 Technical Guidance Document M (as the same may subsequently be amended or modified). In the case of premises registered before the Commencement Date and subject to the exemption arrangements below in Regulation 21 the foregoing shall be provided where feasible and reasonable. <i>Note: this Regulation 5.5 is a new structural requirement. An exemption may be available in accordance with Regulation 21 below.</i>	✓

Classification Matrix for Guest House Classification Scheme

Regulation 8 - Lounges

		★
B.1	Lounge space shall be provided in common rooms.	✓
B.2	Lounge space of not less than 20 square metres in a communal area shall be provided. <i>Note: this Regulation B.2 is a new structural requirement. An exemption may be available in accordance with Regulation 21 below.</i>	✓
B.3	Each lounge shall have: <ul style="list-style-type: none"> (a) a floor to ceiling height of not less than 2.4 metres, and (b) at least one window to provide natural light and ventilation. Alternatively, climatic controlled air circulation or mechanical system of ventilation. 	✓ ✓
B.4	Lounge space shall contain furniture, fittings and equipment of good quality and condition. These should be capable of easy and flexible arrangements to cater for individuals and various groups. Such furniture fittings and equipment shall include: <ul style="list-style-type: none"> (a) upholstered chairs, armchairs, sofas or settees; (b) carpet and/or rugs unless floor surface is of special design or treatment, acceptable to the Board or its contractors 	✓ ✓

Guest House Classification Scheme

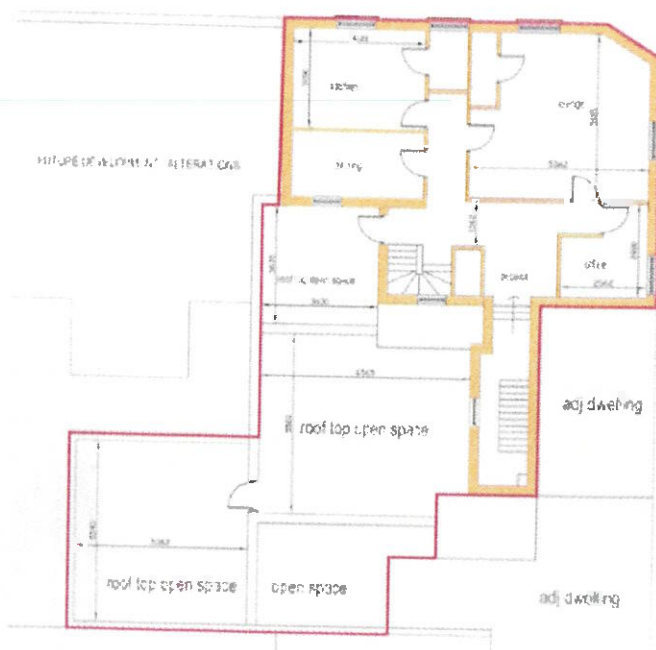
Regulation 10 - Guest Bedrooms

10.1	There shall be a minimum of seven guest bedrooms with private bathrooms ensuite and no more than 30 guest bedrooms with private bathrooms, all of which shall have separate access to the bedroom corridor. <i>Note: This Regulation 10.1 contains a new structural requirement. An exemption may be available in accordance with Regulation 21 below.</i>	✓
10.2	Regulation 10.1 will not apply to any application for Renewal of Registration of a premises which was first registered prior to the Commencement Date of these Regulations and whose registration was not cancelled by the Board under the provisions set out in the Tourist Traffic Acts 1939 - 1998	✓
10.3	Bedrooms, the toilets and bathrooms serving them, and the corridors off which they shall open shall be "out of view" from the public areas and separated from each other by walls or partitions, floors and ceilings and having an acoustic attenuation of 50 dB. <i>Note: Regulation 10.3 contains a new structural requirement. An exemption may be available in accordance with Regulation 21 below.</i>	✓
10.4	Each bedroom shall have: (a) a floor area for single bedrooms of not less than 9.00 square metres, exclusive of private bathroom and lobby area. (b) a floor area for double/twin bedrooms of not less than 15.00 square metres, exclusive of private bathroom and lobby area. (c) a floor area for double and single or triple bedrooms of not less than 20 square metres exclusive of private bathroom and lobby area. (d) a floor to ceiling height of not less than 2.4 metres. An exemption may be granted in the case of historic buildings. (e) at least one external window with clear glass to provide natural light and ventilation. The position of the window should be such that at least one third of the glass area is below a level of 1.6m from the floor. Windows to be fitted with child proof locking system. (f) a double locking device from within and a single locking device from without on the door(s) opening off the bedroom corridor. Room keys should be provided to guests. Proprietor should have master key or duplicate to all rooms in order to service rooms and for emergencies. <i>Note: Regulation 10.4 contains new structural requirements. Exemptions may be available in accordance with Regulation 21 below.</i>	✓ ✓ ✓ ✓ ✓ ✓

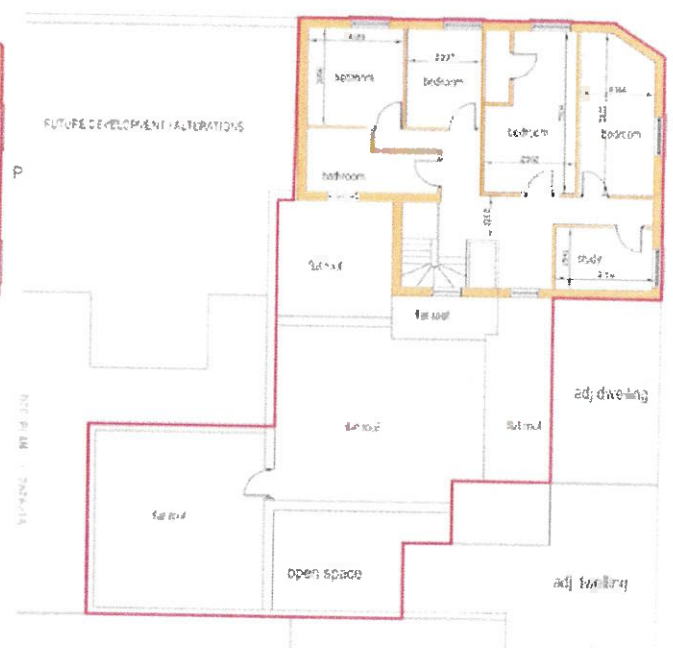
The minimum size for a single bedroom would 9.00 sqm and for a double room 15 sqm.

Below is the room layout before the conversion into 9 bedrooms with 4 bedroom sizes between 5.39 and 12.57 sqm , kitchen 12.57 sqm, dining room 8.05sqm and common room 26.00 sqm:

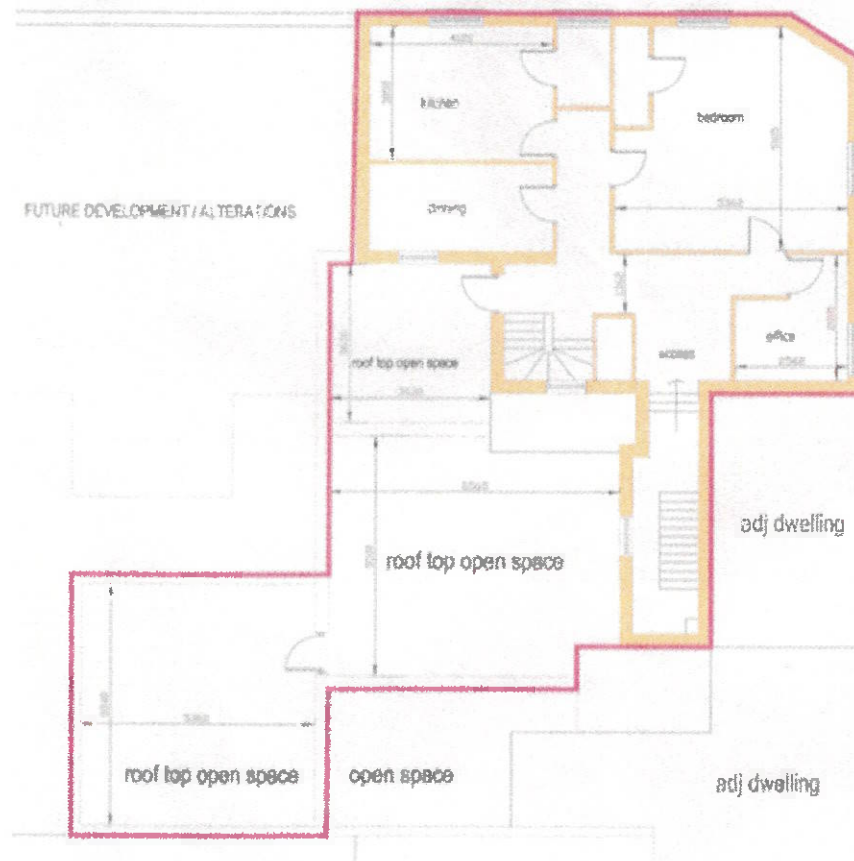
1. floor



2. floor



Upon analysing the below revised drawing of the 1 floor, in which the lounge has now been renamed as a bedroom. Only the kitchen and dining room remain and one must wonder in which common room the 11 guests could had stayed for relaxing. But at least 4 of the 5 bedrooms had a size that met the guest house specifications:



3.5 The fact that all bedrooms are now too small even to meet the requirements as a single bedroom in a guesthouse has likely been noticed by the second agent Mr. Clears, and in response the rooms have incorrectly been represented as apartment rooms - See letter dated 7th April 2021 ([Appendix 18](#)). The rooms would have been an acceptable size as single bedrooms under the Apartment Guidelines but even under these guidelines the communal facilities are far too small.



Sustainable Urban Housing: Design Standards for New Apartments

Guidelines for Planning Authorities issued under
Section 28 of the Planning and Development Act,
2000 (as amended)

Minimum aggregate floor areas for living/dining/kitchen rooms, and minimum widths for the main living/dining rooms

Apartment type ***	Width of living/dining room	Aggregate floor area of living / dining / kitchen area*
Studio	4m**	30 sq m**
One bedroom	3.3 m	23 sq m
Two bedrooms (3 person)	3.6m	28 sq m
Two bedrooms (4 person)	3.6 m	30 sq m
Three bedrooms	3.8 m	34 sq m

* Note: An enclosed (separate) kitchen should have a minimum floor area of 6.5 sq. metres

**Note: Combined living/dining/bedspace, also includes circulation

*** Note: Variation of up to 5% can be applied to room areas and widths subject to overall compliance with required minimum overall apartment floor areas.

Minimum bedroom floor areas/widths***

Type	Minimum width	Minimum floor area
Studio	4m**	30 sq m**
Single bedroom	2.1 m	7.1 sq m
Double bedroom	2.8 m	11.4 sq m
Twin bedroom	2.8 m	13 sq m

* Note: Minimum floor areas exclude built-in storage presses that are contributing to storage space requirements

**Note: Combined living/dining/bedspace

3.6 I would also like to challenge the impression that Mr. Clears seeks to create in his letter, namely that the letting activities via Airbnb have only taken place in 2018 and such no longer occurs.

As previously outlined in great detail, the rooms were also let in 2019 via Airbnb and the fact that it was not relet again in 2020 is owed presumably to the COVID-19 restrictions. The fact that the account still exists on Airbnb suggests that it will be reactivated when the restrictions for guest houses are lifted.

Here is the link to the account: <https://www.airbnb.ie/users/show/197112795>

3.6 It is correct that no increase of the area of the planning unit has taken place but an increase of bedrooms from 4/5 to 9 bedrooms and thus with the decision order No.: P3125 from 16th April 2021 (See Appendix 19) a material intensification of use. When this part of the order

„With reference to the above proposal submitted by you, you are hereby notified that the Planning Authority in pursuance of the powers conferred on it by the Planning & Development Acts 2000 (as amended) has decided to GRANT EXEMPTION for: The internal alteration of a 5 bed accommodation for a max of 11 guests to a 9 bedrooms accommodation for a maximum of 18 guests. “

were to be upheld, it would allow the guest rooms in question, that, according to the building regulations, could not even receive a planning permission as single guest house bedrooms, can now be used as double guest room bedrooms with a Section 5 exemption certificate.

Bypassing the building regulations is not the purpose of a Section 5 procedure.

3.7 As I was unable to use or let my 1st floor room as a bedroom in 2018 and 2019 due to noise nuisance from the Airbnb and other short term guests traffic under need this room, I have made this Section 5 request to ensure this does not happen again when the guest house is allowed to operate again.

As you can see in page 4 & 5 of this letter, the entrance area to the guest rooms is below my room on the 1st floor and the stairs to the guest rooms are directly behind

this room on the 1st floor. Therefore, any intensification of the use of the upstairs Lamplighter rooms leads to a loss of usability of my property and a loss of quality of life for me and my tenants.

4.0 Occurrence of the section 5 decision 0444/20

4.1 As the assessment of my application in the planner's report (See Appendix 20) is based almost exclusively on the section 5 decision **0444/20** and in particular the planning officer report leading to this decision and after I was actively prevented by DCC from submitting my concerns on this application **0444/20**, I would like to comment on the occurrence of the section 5 application

4.2 As the enforcement case **E0529/19** was still open, I asked the DCC Enforcement Officer responsible, Mr. Neil Cameron, to proceed with the enforcement case on the basis of the ABP order **ABP-307112-20**.

4.3 In his email dated 30/09/2020 (See Appendix 21a) Mr. Cameron informed me that he would discuss the matter to proceed with the enforcement case **E0529/19** on the basis of the ABP order with the Enforcement Manager. However, when I still had not heard back from DCC for more than 5 weeks, I sent another email (See Appendix 21b) to Mr Cameron on 09/11/2020. Again, I was put on hold by Mr. Cameron with an email (See Appendix 21c) from him on the same day.

4.4 When nothing happened again for some weeks, I then instructed my solicitor to write a letter (See Appendix 22) to DCC on my behalf. As seen in the past with the previous warning letter dated 30/09/2019, of which was only sent by DCC after my solicitor had written to DCC at that time, I hoped that this letter would encourage DCC to take action once again.

4.5 Following receipt of my solicitor's letter, DCC sent an enforcement notice (See Appendix 23) to the owner of the Lamplighter Pub dated 08/12/2020 and informed me about of such in a letter (See Appendix 24) dated 14/12/2020.

4.6 At first, I was surprised that the enforcement notice did not demand for any cessation of the short term lettings. However, I put this down to the fact that in the time between the warning letter and the enforcement notice being issued, one owner of CREL Mr. Brendan Trears had submitted a new planning application **2977/20** for the extension of the premises on 07/07/2020 and in response further information (See Appendix 15) was requested by DCC relating to this application on the 18/08/2020. Two pieces of information requested included;

3. *The applicant is requested to clarify the use of the existing 9 ensuite bedrooms at both first and second floor level and the planning status for same. In this regard, it is noted that in the previous application on this site lodged in 2018 under Reg. 2676/18 that planning permission was refused for a change of use of first and second floors over existing ground floor public house from "private residence" to boutique hostel. So this implies that in 2018 the accommodation above the pub was a "private residence". There is no record of any change of use application on record at this property.*

and

4. *The applicant is requested to clarify the intended use of the additional four additional en-suite bedrooms which had not been mentioned in the statutory notices.*

I expected that the future use of these first and second floor rooms would finally be put to rest as part of this new planning application process. Four months had passed since this request by DCC and the applicant had not responded. On foot of this I submitted a Freedom of Information ("FOI") request (See Appendix 26) to DCC as a precautionary measure.

4.7 On 12/01/2021 the *weekly planning list* – week 51 of 2020 (between 14/12/2020 - 18/12/2020) was published online on the DCC website - including the section 5

application **0444/20** of CREL. On the same day I sent an email (See Appendix 27) and also a letter to the DCC case officer in charge, Ms. Rhona Naughton, referring to the ABP order **ABP-307112-20** and requested that she provide me the opportunity to make a submission before DCC made any decision related to this new application. When the file was forward to Senior Executive Planner Mr. Kiaran Sweeney the next day, I also forwarded my email to his attention. I got no reaction/ reply from DCC. Only when I later received a copy of the declaration letter from Simon Clears (See Appendix 28) in which he states on page 7 under *Conclusion and Request for Declaration* "In making this request for declaration we are aware that the decision process is not open to submission from public" did I realize why DCC did not want to give me the opportunity for a submission.

4.8 Two days later on 14/01/2021, I received the documents from DCC that I had requested in my FOI request pertaining to the enforcement case **E0529/19**.

When reading the enforcement officers report of 17/12/2020 (See Appendix 29) , I realized that my assumption as to why the enforcement notice did not demand for a cessation of short term/student letting, as I have outlined in paragraph **4.6** above, was wrong. The reason given in this report is as follows:

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

The named 'previous closed enforcement file' is the enforcement case **E0864/18**. I have this case already mentioned above under paragraph **2.10** and this case was known to ABP before they made their decision (**ABP 307112-20**) stating that the short term/student letting is a change of use and not an exempt development.

How DCC can possibly come to the conclusion that the conversion of the rooms, which were also still under construction at the time of the inspection in 2018 (See Appendix 9), to allow for short term/student lettings is entirely incomprehensible to me. Additional information contained within sworn affidavits for example, as is now the case in the planning case **0444/20**, was, according to its schedule of records (See Appendix 30), not available to DCC when the enforcement notice was issued.

4.9 There are a number of discrepancies with the report (See Appendix 29):

- It is dated the 17/12/2020, although the enforcement notice was written 9 days earlier and furthermore,
- the Planning Enforcement Manager has not dated his signature on the report, as he usual does.
- the report was written 3 days after my FOI request was emailed to DCC.
- and 1 day before the Section 5 application **0444/20** was officially documented by DCC.

5.0 Declaration Letter and Sworn Affidavits in Section 5 Application 0444/20

Except for the reference to 5 Sworn Affidavits and 4 photos of wall and fence remains, the 8-page declaration letter from the agent Simon Clear (See Appendix 28) contains no new facts that ABP did not already had to hand for its decision **ABP-307112-20**. The letter appears to me more likely to be a criticism of this the decision of ABP. Otherwise, one cannot explain the 4 photos that clearly do not contribute anything to a decision in the 5 Section application **0444/20**.

5.1 Affidavit of Declan Brady No.1 (See Appendix 31):

Much in the same vein as the photos, is the first affidavit from Mr Brady (opening in wall & staircase) in no way related to the Section 5 application **0444/20**. It is more likely an attempt to discredit me in the eyes of DCC.

5.2 Affidavit of Greg Crawford (See Appendix 32):

I cannot, of course, comment on this affidavit, because it concerns a statement about a time even before Mr. Brady ownership, i.e. before 1987. I simply wonder how Mr. Trears found this witness.

5.3 Affidavit of Brendan Trears (See Appendix 33):

The claim that Mr. Trears has stayed in the accommodation between December 2017 to December 2018 for the reconstruction work is well possible and only confirms my statement that from January 2018 onwards the construction of the 9 ensuite bedrooms took place. That there were other people accommodated during this period can be seen in the Airbnb reviews.

5.4 Affidavit of Declan Brady No.2 (See Appendix 11):

In my view, this statement is not plausible. Why would Mr Brady offer the property for sale in 2017 with upper rooms not utilised (See Appendix 1) and with a potential for refurbishment as a Manager Flat (See Appendix 2) when there were 11 guest beds established for rent? The photos that I will present later also contradict his statements.

His testimony does not explicitly state that the rooms above the Lamplighter were rented in any form for residential purposes in the years 2014 – 2017, but once again a blanket statement that the rooms were rented for residential purposes (sometime) between the years 1997 - 2017. His testimony is also not supported by any conclusive/evidentiary documents, such as the "certified turnover figures" that had be provided to prospective buyers in 2017 (See Appendix 1 + 2), which would outline in great detail and prove the existence of rental income and thus the letting of the rooms.

5.5 Affidavit of Brendan Johnston (See Appendix 12):

Mr Johnston states that during his inspection the bedrooms were occupied in full capacity by 11 guests. It can be assumed that this inspection took place before the

planning application was submitted to DCC in April 2018. However, Mr Trears states in his affidavit that he occupied a room between December 2017 and December 2018 and therefore only 4 rooms with a maximum of 9 guests were let during this period. And Mr. Clear attempts to explain in his declaration letter ([See Appendix 28](#)) why Mr. Johnston's declared the rooms as principal private residences in the planning application wrongly as follows:

“There was also an understandable error in the description of the upstairs as a private residence in the Notice. At the time, during refurbishment, the client, Brendan Trears, lived in the accommodation for the duration of works but he also let rooms on a short term basis at the same time and this is on record in DCC. It was taken by the architect to be a principal private residence when it was not.”

These statements contradict Mr. Johnston's testimony that he encountered 11 guests during his inspection, or if he did, that Mr. Trears was not staying in one of the rooms during the period specified. Either the Architect Mr. Johnston has now encountered 11 guests during (one of) his inspections, in which case he would have to conclude that this property is not the principal private residence of Mr. Trears, or he has encountered Mr. Trears living there with perhaps 9 other guests and has therefore assumed that it is Mr. Brendan's principal private residence, but then cannot testify that the rooms were occupied by 11 guests.

It seems to me that Mr Clear, in finalizing his declaration letter, realized that he had yet to provide a credible explanation as to why the statement that the rooms above the pub were a principal private residence was an error and Mr Brendan then made his affidavit on 10th December 2020 as to provide the grounds for it, not taking into account Mr Johnston's earlier affidavit.

It is also noteworthy that paragraph 3 of his affidavit is identical in wording to paragraphs 2 to 5 of Declan Brady's affidavit No. 2.

Mr Brady's affidavit was made on 12th October 2020 with a solicitor in Dublin 15 and Mr Johnston's affidavit was made on 16th October 2020 with a solicitor in Dublin 1. I wonder how the same wording came to be used and who may have specified this wording.

5.6 Due to these inconsistencies and insubstantiality I believe that the 5 Affidavits and the declaration letter are not sufficient enough to grant a Section 5 Exemption as DCC did.

5.7 The claim that the architect made two errors in the planning application **2676/18**, namely (1) in the description and (2) the drawings and further that the owners of CREL, Mr. Brendan Trears and Mr. Paul Bermingham, had failed to notice this when approving the application, I acknowledge but find entirely unconvincing.

Mr. Brendan Trears and Mr. Paul Bermingham are professional property investors / property developers, both of whom regularly file planning applications, albeit under different applicants' names. Many of these planning applications were made with the very same architecture firm which is now claimed to have made a mistake. Below are a few examples of planning applications made by Mr. Brendan Trears and Mr. Paul Bermingham in recent years:

Planning Application Search Results

Your search returned 4 matches
Pages : [1]

Ref No.	Description	Location
2676/18	The development will consist/consists of: Planning Permission is sought for chan	79, The Coombe, Dublin 8
2545/18	The development will consist/consists of: Planning Permission is sought for chan	79, The Coombe, Dublin 8
2008/18Sub01	Condition 2	The Lamplighter Pub, 79, The Coombe, Dublin 8
2008/18	The development will consist/consists of: Planning Permission is sought for repo	The Lamplighter Pub, 79, The Coombe, Dublin 8

Planning Application Search Results

Your search returned 1 matches
Pages : [1]

Ref No.	Description	Location
0444/20	EXPP: Whether the continued use of accommodation at first and second floor level	The Lamplighter, 79 The Coombe 1 Brabazon Street, Dublin 8

Planning Application Search Results

Your search returned 6 matches
Pages : [1]

Ref No.	Description	Location
4753/19	PROTECTED STRUCTURE: Construction of an 11 bedroom boutique hotel	15, Echlin Street, Dublin 8
3737/18	PROTECTED STRUCTURE: (This site within the curtilage of a Protected Structure).	Site to the Rear of Saint James Roman Catholic Church, Dublin 8
3421/18	Planning Permission is sought for demolition of derelict house	15, Echlin Street, Dublin 8
2977/20	Permission for development at the rear of The Lamplighter. The development consi	The Lamplighter, 79 The Coombe/1 Brabazon Street, Dublin 8
2098/20	PROTECTED STRUCTURE: Planning Permission for development on site to the rear of	Site to the rear of Saint James's Catholic Church, James's Street, Dublin 8
0262/18	SHEC: Construction of 11 one bedroom apartments over 4 floors	15, Echlin Street, Dublin 8

Planning Application Search Results

Your search returned 1 matches
Pages : [1]

Ref No.	Description	Location
3786/10X1	EXT:New 5 storey over basement office building	1-3 Thomas Court , Dublin 8

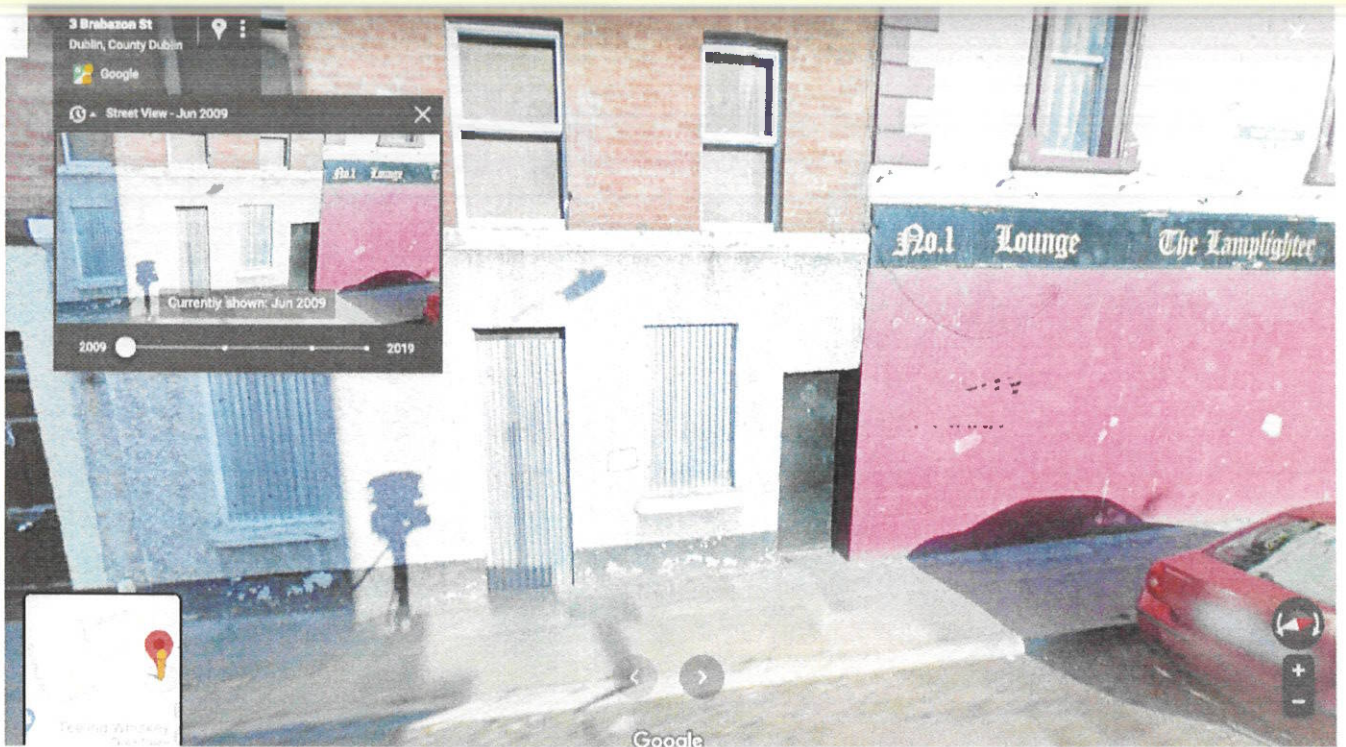
The claim that these experienced property developers and their architect of several projects made two serious errors leading to such serious consequences, I find entirely implausible. I have also to notice, that the architect's testimony was not supported by any documents such as photos of the rooms prior to the preparation of the floor plan

drawings for the planning application. Such photos are nowadays very much the standard in planning matters like this.

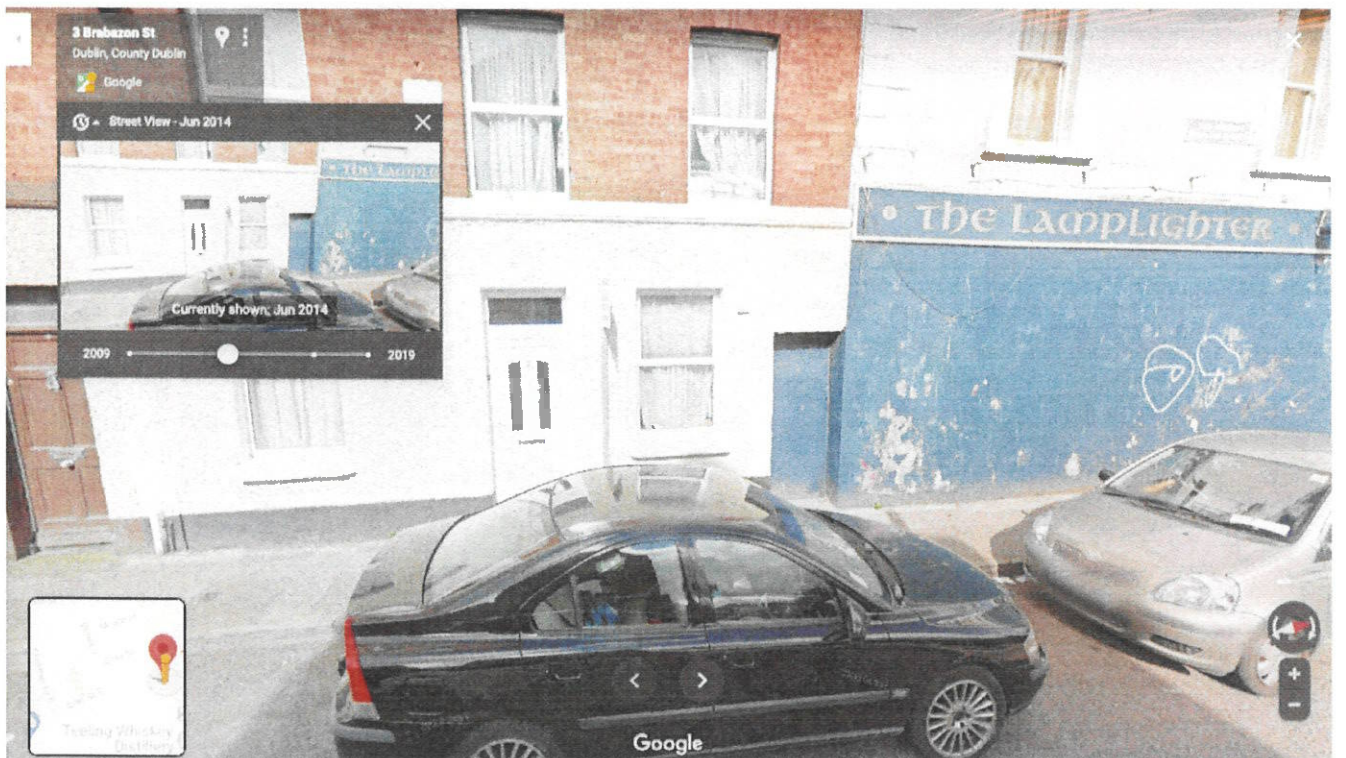
6.0 Photo timeline upper rooms

6.1 A conclusive and manipulation-free references that the rooms were vacant for many years before 2018, can be see on *Google Street view history*. I have taken several screen shots from 1 Brabazon Street and 79 The Coombe of the years between 2009 and 2019 to highlight the following details:

The only access door to the rooms above the pub is under my 1st floor bedroom - called 1 Brabazon Street. Until July 2018 the door was a simple flat steel door without any door handle outside and only with a view peephole as the door was used as the pub's emergency exit door and therefore opened to the outside (also shown on page 4 of this document). The door had emergency exit fitting inside. It is hard to imagine that this door could be an entrance door to any guest accommodation.



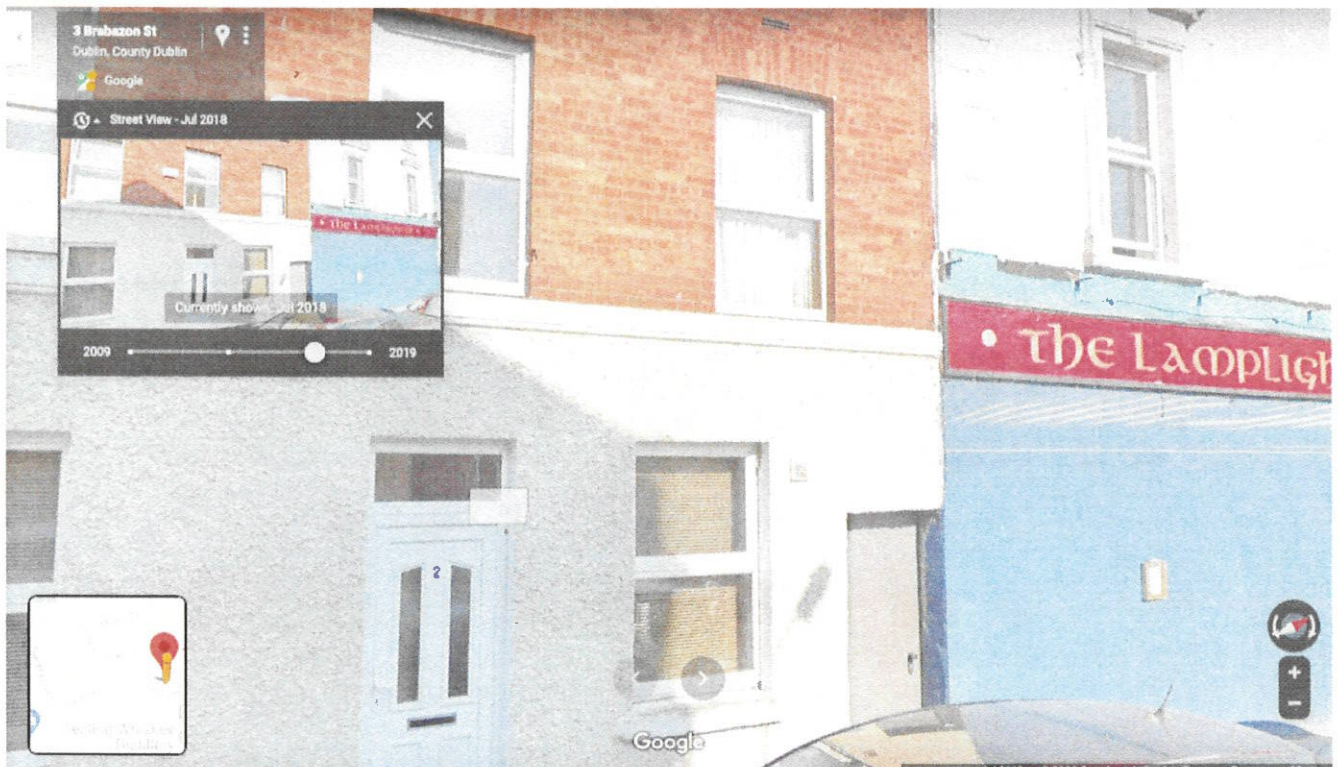
June 2009



June 2014

Also, it can be seen that the curtains in the windows 2009 and 2014 are entirely the same.

In mid 2018, when the 9 bedrooms were built and rented to Airbnb guests, a new steel door with door handle and lock outside was installed so that the door could also be operated from the outside.



July 2018

On the photo above you can also see the newly installed windows in the reconstructed upstairs rooms and the new entrance door with an outside handle.



September 2019

The last photo above shows the new timber door as the “Guest House” entrance.

6.2 Finally, the street view history of 79 The Coombe, one can also see that within all photos between 2009 and 2017 the same curtains hanging in the windows - a typical sign of a vacant dwelling.



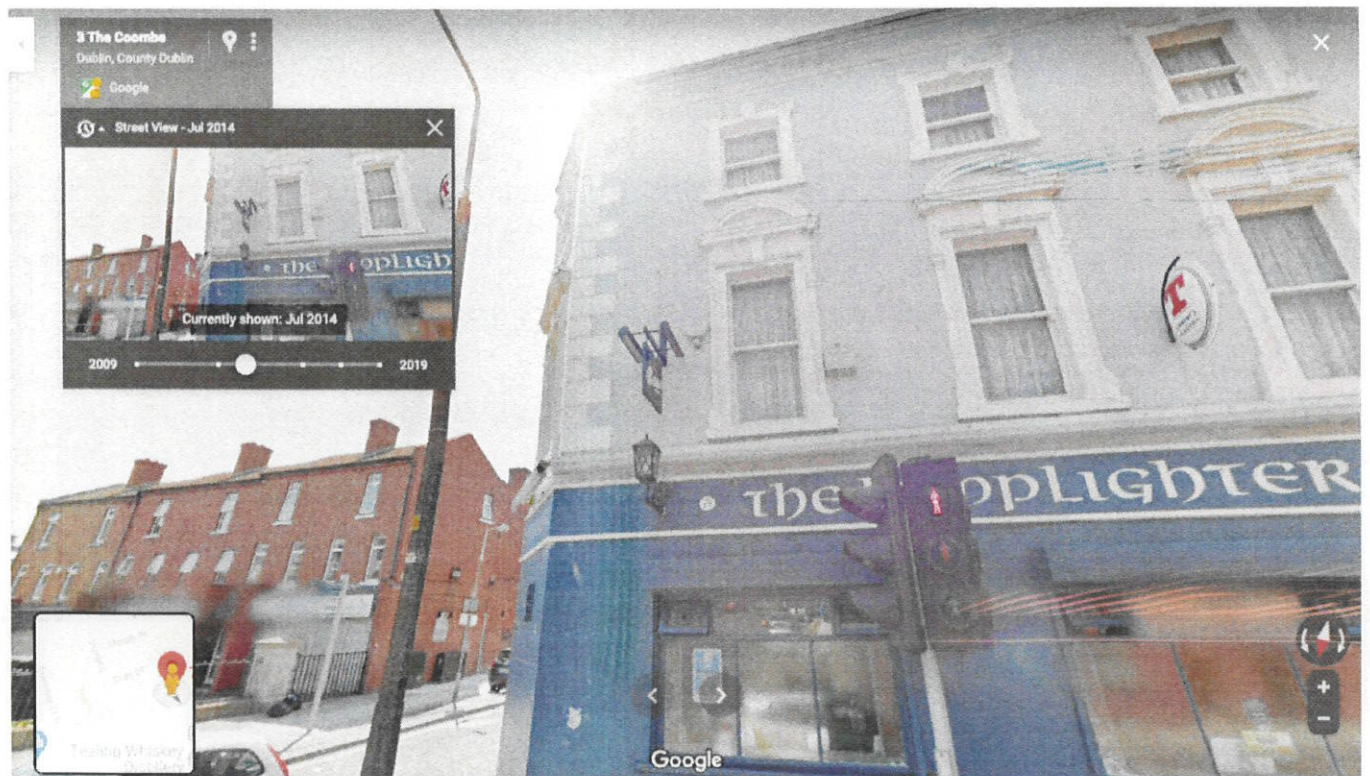
June 2009



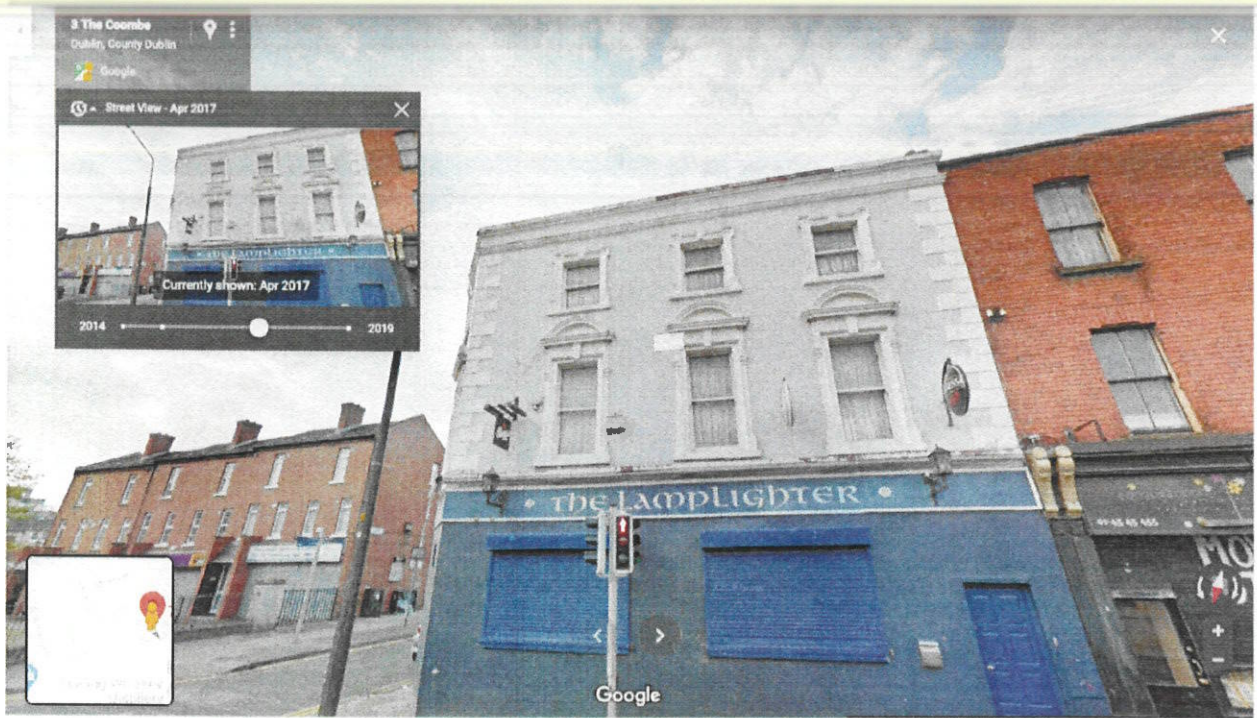
September 2009



May 2014

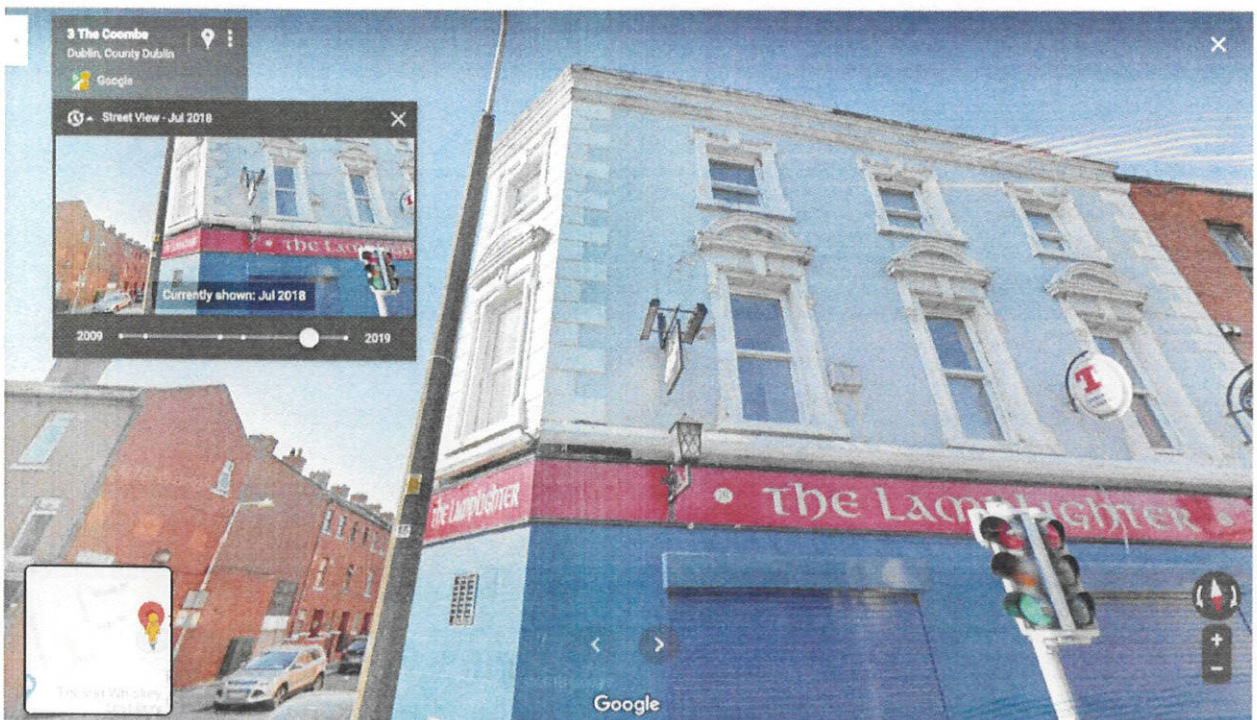


July 2014



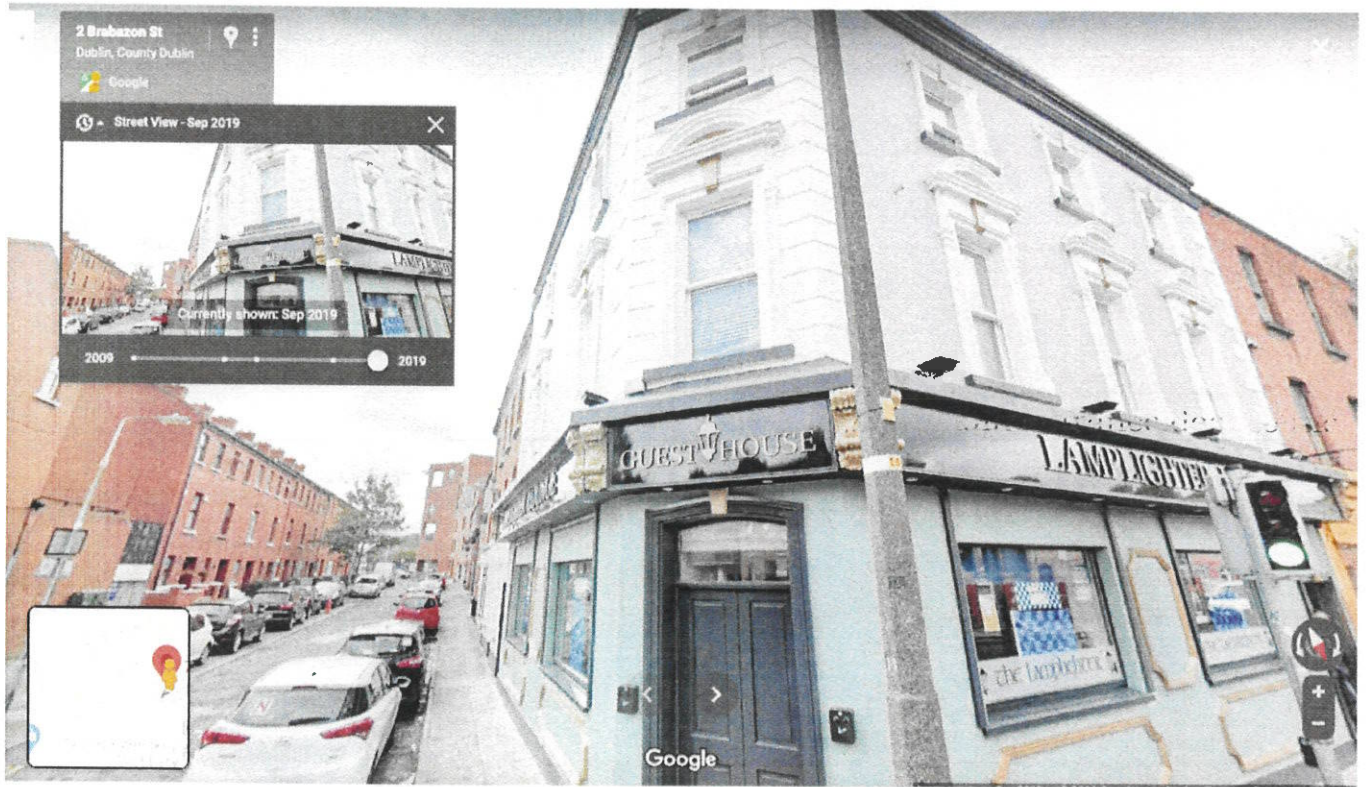
April 2017

On the photo below can you see the new windows in the reconstructed rooms.



July 2018

The last photo shows the current appearance with the new main entrance door to the pub and the new signage stating “Guest House” above it.



September 2019

All these photos can be viewed by ABP on Google street view history - enlarged and viewed from various positions.

6.3 Rear view of the Lamplighter Public House on the day of the dismantling of my spiral staircase in January 2018:



A = Bathroom window:



B = Dining room window & **C** = Timber door to the “roof area for guest’s”



D = Staircase window



E = hallway window



Here, too, you can see in all the above photos that the rooms behind the windows were apparently not occupied at that time, as alleged.

6.3 Rear view of the Lamplighter Public House after the conversion into 9 Bedrooms mid 2018 with removed window grilles and new windows and new steel door to the roof:



7.0 Conclusion:

7.1 In summary, I strongly believe that the internal alteration of a 4/5 bed accommodation for a max of 8/11 guests to a 9 bedrooms accommodation for a maximum of 18 guests, is a development and not an exempted development as it leads to an intensification of use of the facilities and will therefore require planning permission.

7.2 Further, I strongly believe that the internal alteration of a 4/5 bed accommodation to a 9 bedrooms accommodation, is a development and not an exempted development as it leads to an intensification of use of the facilities and by reducing the size of the individual bedrooms and the communal facilities it results also in a substandard form of development and will therefore require planning permission.

7.3 I fully agree that the change of use from short terms lettings in excess of 15 days duration per letting to short term letting for any period not exceeding 14 days would constitute a material change of use as defined in section 3 of the Planning and Development Act, 2000 (as amended). In this regard any proposed change of use from short terms lettings in excess of 15 days duration per letting to short term letting for any period not exceeding 14 days would be considered development and not exempted development.

7.4 I am also of the opinion that the DCC Fire Officer would first have to examine whether the existing access and escape routes are sufficient for an occupancy of the upstairs rooms with up to 18 people, before such an occupancy is permitted. But this has not taken place.

7.5 Even if DCC is of the opinion that a conversion from 4/5 bedrooms to 9 only single bedrooms has taken place and that this would be an exempt development, I do not think that DCC can make the decision that a conversion to 9 bedrooms for up to 18 guests, i.e. to double bedrooms as requested by me in my section 5 application is also an exempt development.

Sincerely,



Andreas Brüggener

