

RML PLANNING

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Referral for review of section 5 declaration

Report to accompany section 5 declaration for review to An Bord Pleanála

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1 Introduction

I have been instructed on behalf of Maria Gallen, The Gallery, Violet Hill, Herbert Road, Bray, Co. Wicklow to submit an appeal for the review of a declaration of Wicklow Co. Council dated 21st December 2023 on a section 5 referral, Wicklow Co. Council Ref: EX83/2023.

1.1 Section 5 referral details

Appellant (person seeking review)	Maria Gallen
Address of appellant (person seeking review)	The Gallery, Violet Hill, Herbert Road, Bray, Co. Wicklow
Subject address of section 5 referral	Violet Hill House, Herbert Road, Bray, Co. Wicklow
Agent name	Rosemarie McLaughlin
Agent address	RML Planning, 3 David Road, Drumcondra, Dublin 9 D09H2V6
Wicklow Co. Council Reference	EX83/2023

1.2 The question

The following question was submitted to Wicklow Co. Council.

Whether the removal of paint from part of a protected structure, Violet Hill House, Herbert Road, Bray, Co. Wicklow is or is not development and is or is not exempted development.

The Inspector is requested to visit the subject site and examine in detail the brick and pointing that exists after the paint removal on the protected structure.

1.3 The decision (declaration)

By order dated **21st December 2023**, Wicklow Co. Council as Planning Authority (PA) determined that the removal of paint from part of a protected structure, Violet Hill House, Herbert Road, Bray, Co. Wicklow **is development and is exempted development**.

The reasons provided which ground the decision are as follows:

- "Violet hill is a protected structure B25 in Bray MD LAP 2018
- The removal of paint from the surface of the exterior of Violet hill, a protected structure, would come within the definition of works having regard to the provisions of the planning and development act 2000 as amended and is therefore development
- The original brickwork significantly contributes to the appearance and architectural interest of Violet Hill
- The removal of paint which allows for the exposure of the original brickwork of Violet hill would come within the provisions of section 4(10)(h) and section 57 of the Planning and Development Act 2000 (as amended) as the works would be works of alteration which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures and does not materially affect the special architectural interest of this element of the structure and therefore there is no material impact on the character of the protected structure"

2 Grounds of appeal to review declaration

1. The removal of paint from the protected structure **consists of works and is therefore development** pursuant to definition provided in section 2 and of the Planning and Development Act 2000 as amended (PDA 2000). See section 5 of this report.
2. The removal of paint results in a **patchwork of painted and unpainted facades** on the protected structure with a significant visual impact so as to render the appearance inconsistent with the character of the structure or of neighbouring structures and is **therefore not exempted development** pursuant to section 4(1)(h) of the PDA 2000. Uncoordinated cleaning of a large structure by removing paint from only a portion of the building, creates a patchwork effect, damaging the architectural integrity of the of building. See sections 3-7 of this report.
3. The Planning Authority **erred in not considering the method of removal of the paint from the protected structure, and the resulting impact on the exposed brick** on the character of the structure and neighbouring structures. The Planning Authority were silent on this issue despite having visited the site. The consequence of the PA decision is that any person may remove paint from a protected structure, contrary to good conservation practice, the Couty Development Plan provisions, and the Architectural Heritage Protection Guidelines for Planning Authorities 2011 (AHPGPA). See section 6-9 of this report.
4. Section 58 of the PDA 2000 places an obligation to ensure that a protected structure or any element of it which contributes to its special architectural etc. interest, is protected. A breach of that duty does not occur when permission under section 34 has been granted or works carried out pursuant to a declaration issued under section 57(3) of the PDA 2000. **No declaration has been recorded in the WCC planning report** or files and no permission was sought for the removal of the paint. See section 5 of this report.
5. Wicklow Co. Council **have misinterpreted the application of section 57(1) of the PDA 2000** in their assessment and reasons in the declaration. This section applies to a situation where 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, [.....] interest, **but not to both**. See section 5 of this report
6. A section 5 referral is not a planning application where an assessment of the merits or otherwise of the works is considered. The Planning Authority erred by taking into consideration that the original brickwork significantly contributes to the appearance and architectural interest of Violet Hill. While their view may be correct, **it is inapplicable to the question before the Board**. See sections 3-5 of this report.
7. It is submitted that works to the protected structure must accord with CPO 8.13, 8.14 and 8.15 of the County Wicklow Development Plan 2022-2028 where the removal of paint from a protected structure **is carried out subject to architectural heritage assessment, and by a suitably qualified Conservation Architect / or other relevant expertise**, to ensure that the structure itself and its character will not be adversely affected and that suitable methods will be utilised pursuant to the best heritage practice. See section 8 of this report.
8. A **previous planning application** for an extension to a neighbouring unit in Violet Hill **included the removal of paint** from the protected structure (Amber) demonstrating that such works require planning permission. There are numerous examples of planning permission being sought for works to the façade of a protected structure including cleaning of brick. See section 9 of this report.
9. The removal of paint could **lead to a precedent of unsupervised or inappropriate removal** of paint from the other parts of the protected structure. The removal of paint from a protected structure has the potential to cause irreversible harm to the brickwork if not carried out in the appropriate manner and supervised by a conservation specialist. See sections 6-7 of this report.

The reasons for the grounds of appeal are found in the following sections of this report.

3 The site

3.1 Site context

The details of the site are included in the submission to Wicklow Co. Council and are therefore not repeated as they will be circulated to the Board.

The subject site is included in the Wicklow County Development Plan 2022-2028 record of protected structures, B25 Kilbride, Violet Hill.

The National Inventory of Architectural heritage (NIAH) has deemed the structure Reg No. 16400702 of **inter alia architectural special interest** and **regional importance**. The details and photographs by the NIAH may be found here: <https://www.buildingsofireland.ie/buildings-search/building/16400702/violet-hill-house-herbert-road-kilbride-ra-by-bray-wicklow#gallery-1>

The NIAH appraisal states that the protected structure is a "medium-sized country house, in mildly Tudor style, which is in substantially original condition. ***Although somewhat spoiled with the painting of the brickwork and the sub-division into nine apartments, this is still an important asset to the architectural heritage of the area.***"

The above link to the Inventory of Architectural Heritage clearly illustrates most of the overall property was painted cream. The subject site, Violet Hill House is the largest unit on the site.

The architect of Violet Hill, William Fogarty began architectural practice in Limerick with numerous projects in Limerick and the southwest and then completed projects in Dublin and Belfast¹. The Dictionary of Irish Architects records that he opened an office in Dublin in 1861, and in London in 1869, in Fifth Avenue New York in 1872 and Broadway New York in 1873. Among his American commissions was an Episcopalian Church in New York, described as 'magnificent' in the Irish Times in May 1878. Fogarty had a prolific and distinguished career as an architect. He was a Fellow of both the Royal Institute of the Architects of Ireland (RIAI) and of the Royal Institute of British Architects (RIBA).

Referred to in the Dictionary of Irish Architects as being in the 'in gabled Tudor Gothic style', Violet Hill is a large house originally on an extensive land holding and surrounded by formal gardens. The house has been divided into four units. The largest at the south end retains the title Violet Hill House. The outbuildings have also been converted into residential units.

Covenants apply to all property owners. A management company manages the common areas.

4 Context of section 5 question

The protected structure was built with a brick and stone face which and was subsequently painted cream more than five decades ago across the structure. The referrer discussed the painting of the brick with the previous owner of Mandalay in the 1980s, and was informed that that the brickwork was painted, due to its very poor condition, and that the cost to repair and repoint it was regarded as prohibitive.

The subject site is one of four residential units within the protected structure. Recently the cream paint from a large portion of the protected structure at Violet Hill House was removed, resulting in part of the overall protected structure remaining painted and a section of the building with exposed brick where the paint has been removed.

¹ Dictionary of Irish Architects 1720 - 1940

The Board is requested to have regard to the fact that the protected structure is now partially painted and partially exposed brick resulting in an uncoordinated appearance to the architectural composition on the site.

Please note that when the building was included on the record of protected structures, it was painted cream and therefore the protection was afforded to the building in the condition of that time, i.e. a painted structure.

While the original building was not painted, the merit or otherwise of removing the paint is not a consideration, as the legislative test that applies is, whether the development of removing part of the paint from the protected structure "would materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures"; and **not if it is a positive or negative impact**.

It is reasonable question for the Board to consider, that having regard to the AHGPA, does the resulting patchwork of painted/non-painted elevations affect the appearance of the character of the structure?

The referrer does not in principle object to the removal of paint from the protected structure but subject to planning permission (or a section 57 declaration) in order that the historic façade is not damaged in any way and any such works are carried out by a specialist and under supervision of an appropriate expert. Such a change to the appearance of the building should only be considered appropriate if all owners of the single protected structure are consulted and agree to works under the appropriate supervisions of a conservation architect so that the entire structure is protected. The referrer is concerned that an ad hoc approach to cleaning the brick could cause damage to the overall structure requiring potential repair and repointing.

The home of the referrer, The Gallery, is one of the four residential units in the main house. The exact nature and detail of the method of removal of the paint work is within the knowledge of the person who removed the paint as the work was not commissioned by the referrer. The referrer has a visual recording of the paint being removed which was taken from her property and she observed from her own home the company that removed the paint, **AD'S Mobile Sandblasting Services** <http://mobilesandblastingdublin.com/> removing the paint from the brickwork, but the materials used to remove the paint are not within her knowledge.

The Board are therefore requested to review the referred question having regard to the method of removal of paint that has taken place and the quality of the resulting brick/repointing that is exposed.

5 Relevant legislation and application to question

The PDA 2000 and associated Planning and Development Regulations 2001 as amended (PDR) apply.

Of note in this referral is that the site is a protected structure and therefore the **Architectural Heritage Guidelines for Planning Authorities 2011 (AHGPA)** apply which in accordance with section 28 of PDA the PA shall "have regard".

5.1.1 Relevant definitions

Section 2 of PDA relating to definitions includes:

"alteration" includes— (a) plastering or painting or the removal of plaster or stucco, or (b) the replacement of a door, window or roof, that materially alters the external appearance of a structure so as to render the appearance inconsistent with the character of the structure or neighbouring structures;

The definition of alteration is **not restricted** to the above as it "includes" and therefore the removal of paint from a protected structure is an alteration and this was also the view of the PA. The method of removal of paint is also a material consideration when it is a protected structure.

*"works" includes any act or operation of construction, excavation, demolition, extension, **alteration, repair** or renewal and, in **relation to a protected structure** or proposed protected structure, includes any act or operation involving the application or **removal of plaster, paint, wallpaper, tiles** or other material to **or from the surfaces of the interior or exterior of a structure**.*

The removal of paint clearly comes within the definition of works.

Section 3 of the PDA relates to the definition of development.

*3.—(1) In this Act, "development" means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any **material change** in the use of any structures or other land.*

5.1.2 Relevant exemptions

Exemptions are available for certain works in the PDR. These do not apply.

Section 4 of the PDA provides for exemptions.

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

....

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

The PA consider that the works are exempt under 4(1)(h) and link this section in the reasons to the declaration.

A core element is, does the removal of paint from part of the protected structure materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure. The character has been generally defined by the Supreme Court as *"the character of the structure provided for in the subsection must relate, having regard to the provisions of the Act in general, to the shape, colour, design, ornamental features and layout of the structure concerned...."*²

In *Wicklow County Council -v- Jessup & Anor*³, the Court held that *"each case must depend on its own facts That said, it is apparent from the approach taken in previous cases that for external changes to be regarded as "material" they must, in the words of the statute, "render the appearance inconsistent with the character of the structure or of neighbouring structures". In the previous cases to which I have been referred the Courts have tended to take a robust view of the materiality requirement and they have approached the issue on the basis that the changes must not be minor, but rather must be of real significance. The Cairnduff v. O'Connell decision is helpful to the extent of clarifying that the "character" of the structure must relate to the shape, colour, design, ornamental features and layout of the structure concerned"*.

In the instant case, paint has been removed from a large portion of a protected structure leaving the remaining painted and creating an ad hoc arrangement on the overall building. The entire

² Cairnduff v. O'Connell [1986] IR 73

³ [2011] IEHC 81

structure was painted cream when it was included in the record of protected structures.. Historical reasons for painting houses included the protection of poorer quality bricks and for visual reasons.

It is submitted in this appeal, that the removal of paint results in a distinct lack of visual coordination of the of the painted/unpainted elements of the facades, which materially affect the external appearance of the structure so as to **render the appearance inconsistent with the character of the structure**. Whether the structure is visually improved or not is moot, as the test **only relates to the appearance and character of the structure**. It is submitted the character of the protected structure was that of a building painted cream and now it is partially painted and is partially exposed red brick. The character has been altered in an inconstant manner and no exemption may apply. Berna Grist in **An Introduction to Irish Planning Law**⁴ **reiterates this point** *"Whether the external appearance is affected for better or worse is not at issue here. The central question relates to the character of the structure and whether the works are inconsistent with that character"*.

5.1.3 Questions arising

5.—(1) *If any question arises as to what, in any particular case, is or is not development or is or is not exempted development within the meaning of this Act, any person may, on payment of the prescribed fee, request in writing from the relevant planning authority a declaration on that question, and that person shall provide to the planning authority any information necessary to enable the authority to make its decision on the matter.*

...

(3) (a) *Where a declaration is issued under this section, any person issued with a declaration under subsection (2)(a) may, on payment to the Board of such fee as may be prescribed, **refer a declaration for review by the Board** within 4 weeks of the date of the issuing of the declaration.*

5.1.4 Declarations

Legislation relating to works affecting the character of protected structures, including the right to request a Declaration from the Planning as to the type of works which it considers would or would not materially affect the character of a Protected Structure is provided within Section 57 of the PDA 2000.

57.—(1) *Notwithstanding section 4(1)(a), (h), (i), (ia), (j), (k), or (l) and any regulations made under section 4(2), the carrying out of works to a protected structure, or a proposed protected structure, **shall be exempted development only if those works would not materially affect the character of—***

(a) the structure, or

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

(2) *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.*

(3) *Within 12 weeks after receiving a request under subsection (2), or within such other period as may be prescribed, a planning authority shall issue a declaration under this section to the person who made the request.*

⁴ Institute of Public Administration 2nd edition 2012

Despite exemptions provided for under Section 4 of the PDA 2000, section 57(1) limits exemptions to protected structures. Furthermore, the qualifications that are provided in subsection (a) and (b) are "or" not "and". Accordingly, Wicklow co. council has erred in their interpretation of this section for the stated reasons.

5.1.5 Duty of owners and occupiers to protect structures

"58.—(1) Each owner and each occupier shall, to the extent consistent with the rights and obligations arising out of their respective interests in a protected structure or a proposed protected structure, ensure that the structure, or any element of it which contributes to its special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest, is not endangered.

(2) The duty imposed by subsection (1) in relation to a proposed protected structure arises at the time the owner or occupier is notified, under section 55 or under Part II, of the proposal to add the structure to the record of protected structures.

(3) Neither of the following shall be considered to be a breach of the duty imposed on each owner and each occupier under this section—

*(a) development in **respect of which permission under section 34 has been granted;***

*(b) development consisting only of works of a type which, in a **declaration issued under section 57(3)** to that owner or occupier, a planning authority has declared would not materially affect the character of the protected structure or any element, **referred to in subsection (1) of this section, of that structure.***

(4) Any person who, without lawful authority, causes damage to a protected structure or a proposed protected structure shall be guilty of an offence.

(5) Without prejudice to any other defence that may be available, it shall be a good defence in any proceedings for an offence under subsection (4) to prove that the damage to the structure resulted from works which were—

(a) urgently required in order to secure the preservation of the structure or any part of it,

(b) undertaken in good faith solely for the purpose of temporarily safeguarding the structure, and

(c) unlikely to permanently alter the structure or any element of it referred to in subsection (1).

6 Architectural Heritage Protection Guidelines for Planning Authorities 2011 (AHPGPA)

In summary, there are two options when dealing with a protected structure to determine if development is exempt from planning permission:

1. A referral pursuant to s 5 PDA by "any person" to seek a declaration if works are or are not development and are or are not exempted development i.e. no requirement to seek permission.
2. A declaration pursuant to s 57 PDA by the "the owner or occupier" to determine the works to the structure that would materially affect its character and therefore require planning permission, and those works which may be carried out as exempted development. The details of any such declaration issued by the planning authority or of a decision by the Board must be entered on the planning register.

The most relevant sections of AHPGPA are outlined below.

6.1.1 Works which materially alter the character AHPGPA

Section 4.12.3 *"Works which would materially alter the character of the exterior of a building **may include the following:** a) walls: comprehensive (as opposed to localised) repointing; **repointing in***

a style or material other than the existing; removal of render; refacing in an applied layer of masonry, brick, wood, plaster or paint; mortar repairs of brick or stone; damp-proofing of walls; cleaning of masonry; removal or relocation of decorative plaques; painting of any previously unpainted surface; addition of new masonry to a ruinous structure or removal of existing material;"

6.1.2 Expansion of definition of works to a protected structure AHPGPA

"4.1.2 In relation to protected structures and proposed protected structures, the definition of 'works' in the 2000 Act **is expanded** from 'construction, excavation, demolition, extension, alteration, repair or renewal' to include 'any act or operation involving the application **or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure**'. Any or all of these works have the potential to materially affect the character of a protected structure.

The application, and subsequent removal, of paint from terracotta (and soft stones such as sandstone) can cause damage to the material and jeopardise its future conservation."

6.1.3 Brick cleaning AHPGPA

"Brick cleaning 8.3.37

As with stonework, the **cleaning of brickwork can materially affect the appearance of a protected structure** or the character of an ACA. The potential of brick cleaning to cause irreversible damage means that where the works would materially affect the character of such a structure, these works will require planning permission. **Unco-ordinated cleaning of buildings, which are part of an architectural composition, can create a patchwork effect, damaging the architectural integrity of the group of buildings. In such cases, permission should normally not be granted.** But if the brickwork of the group in general is being damaged by dirt deposits, the planning authority may consider it necessary to encourage the simultaneous cleaning of all the relevant buildings to the same specification.

8.3.38 The method of cleaning a brick building should be considered carefully. In some cases, the cleaning method may in fact accelerate decay in the brickwork. On the other hand, a well-executed programme of cleaning may expose detailing of high quality and reveal a building's true architectural merit. As with stone cleaning above, proposals for the removal of localised stains, such as organic growth, graffiti or paint, will require careful consideration. A variety of methods such as poulticing, steam stripping and abrasion may be used but **expert advice should be a requirement of such proposals.**

8.3.39 Before any works are undertaken, **careful research and a full assessment are needed and the onus should be on the applicant to satisfy the planning authority that cleaning will benefit the protected structure and that the methods used will not damage its fabric or character.**

8.3.40 **The planning authority should approve a sample of each of the proposed cleaning techniques before work commences.** The risk of damage to the fabric should be assessed. Unlike certain types of stonework, brickwork is usually unaffected by dirt deposits except in its appearance. Water-washing, if incorrectly used, may saturate the fabric and cause outbreaks of wet or dry rot within the structure or cause damaging salt migration through the brickwork. Inappropriate abrasive systems such as grit-blasting will damage the outer surface or fireskin of the brick and accelerate the decay process. Specialised pointing methods, such as tuck pointing, will be damaged by inappropriate cleaning processes."

7 Bricks A guide to the repair of historic brickwork 2009

The PA are requested to rely on the *Bricks A Guide to The Repair Of Historic Brickwork* published in 2009 by the Department of Environment, Heritage and Local Government.

"Cleaning Historic Brickwork

The decision on whether or not to clean historic brickwork can be a difficult one and should not be taken lightly. Unlike the cleaning of some types of stonework, the cleaning of brickwork is usually undertaken solely for aesthetic reasons. Before any decision is taken, careful research and a full assessment of the likely outcomes should be carried out."

"Other surface deposits include:

Chemical residues, oil, grease, and resins

Exterior paint, graffiti, bitumen, and rubber

..."

"More brickwork has been damaged by the use of compressed air and abrasives, such as the sand or grit blasting methods, than by any other system. Abrasive materials blasted under pressure can destroy brickwork by removing the weathering surface of the brick. The use of sand blasting is now not permitted because of its health implications. Softer, finer, and rounder abrasives such as chalk or grape seed can be used successfully for cleaning brickwork in certain situations. It is possible, using small air abrasive tools and finer abrasives in the hands of a highly skilled and careful operative, to clean safely, but the hazards are great. In general, abrasive cleaning systems should not be used on historic brickwork. There are other proprietary methods of mildly abrasive cleaning which work by developing a swirling vortex. In the hands of trained and experienced operatives, these systems very gently scour-off unwanted matter, such as carbon and lime based paints, without damaging the soft brick substrate. Such systems may be suitable for use on historic buildings in certain circumstances."

8 Relevant planning policy

8.1 Wicklow Co. Council Development Plan 2022-2028 (CDP)

The protected structure is described in the Wicklow Development plan 2022-2028 as follows.

Plan Ref. No	Building Location	Street / number	Designation
B25	Herbert Road (Kilbride)	Violet Hill	Structure

The National Inventory of Architectural Heritage (NIAH) has deemed the structure Reg No. 16400702 of inter alia **architectural** special interest.

The Architectural Heritage Objectives include:

CPO 8.10 To protect, conserve and manage the built heritage of Wicklow and to encourage sensitive and sustainable development to ensure its preservation for future generations.

CPO 8.11 To support the work of the National Inventory of Architectural Heritage (NIAH)....

*CPO 8.12 To have regard to 'Architectural Heritage Protection: Guidelines for Planning Authorities' (Department of Arts, Heritage and the Gaeltacht, 2011) in the assessment of **proposals affecting architectural heritage**.*

Record of Protected Structures Objectives include:

*CPO 8.13 To ensure the **protection of all structures, items and features contained in the Record of Protected Structures**.*

*CPO 8.14 To positively consider proposals to alter or change the use of protected structures so as to render them viable for modern use, **subject to architectural heritage assessment** and to demonstration by a **suitably qualified Conservation Architect / or other relevant expertise***

that the structure, character, appearance and setting will not be adversely affected and suitable design, materials and construction methods will be utilised.

CPO 8.15 All development works on or at the sites of protected structures, including any site works necessary, shall be carried out using **best heritage practice for the protection and preservation** of those aspects or features of the structures / site that render it worthy of protection.

The WCDP Appendix 1 states *The Planning Authority will consider **proposals for development or alterations to a Protected Structure based on the conservation principles set out in the Architectural Heritage Protection Guidelines for Planning Authorities, DAHG, 2011.** Development proposals for works to a Protected Structure or within the curtilage of a Protected Structure may **require a method statement** that describes the proposed works in appropriate detail.*

It is submitted that works to the protected structure must accord with CPO 8.13, 8.14 and 8.15 as highlighted above where such works as the removal of paint from a protected structure is carried out subject to architectural heritage assessment, and by a suitably qualified Conservation Architect / or other relevant expertise to ensure that the structure itself and character, will not be adversely affected and suitable paint removal methods will be utilised in order to protect pursuant to the best heritage practice.

8.2 Bray Municipal District Local Area Plan 2018 – 2024 (LAP)

The site is zoned RE. The current Bray LAP **expires in 2024.**

Architectural Heritage Objectives are found in objectives AH 1-4.

AH1 To ensure the protection of all structures (or parts of structures) contained in the Record of Protected Structures.

*AH2 To positively consider proposals to improve, alter, extend or change the use of protected structures so as to render them viable for modern use, **subject to consultation with suitably qualified Conservation Architects and / or other relevant experts**, suitable design, materials and **construction methods**. All development works on or at the sites of protected structures, including any site works necessary, shall be carried out using **best heritage practice for the protection and preservation of those aspects or features of the structures / site that render it worthy of protection**. To support the re-introduction of traditional features on protected structures where there is evidence that such features (e.g. window styles, finishes etc) previously existed, while not compromising the need for energy conservation.*

9 Relevant planning history

9.1.1 Violet Hill House

PA Ref.181429: Permission by WCC for a house was refused for reasons relating to impact on the protected structure and on protected trees. The Planners report and submission on that file illustrate the cream brickwork detail. While permission was refused, a conservation report included its methodology, outlined in Sections 4.2 and 4.3 where a description of the proposed extension (new building), the glass link, and removal of paint and restoration works were described.

9.1.2 Relevant application on the overall site

There are multiple other grants and refusals around the overall site. Of relevance is an application that included removal of paint.

PA Ref. 21988: ABP ref:-311675-21. Permission was refused on appeal for an extension to Amber (opposite end to Violet Hill House) ..*extension to the north eastern end of a protected structure (RPS no. B25(Kilbride) Violet Hill) consisting of a single story pitched roof element offset from the existing*

*building and a single story flat roof link.Works to existing building include: removal of existing double door on north east elevation, connection of new glazed link **removal of paint on selected areas of brick and granite on external walls to restore to original condition.** Along with associated site works.*

While permission was refused a conservation report included its methodology, outlined in Sections 4.2 and 4.3 where a description of the proposed extension (new building), the glass link, and removal of paint and restoration works are described in detail.

The inclusion of removal of paint from a protected structure was noted in the public notices and permission sought for such development on a protected structure. The PA imposed conservation related conditions. The Inspectors recommendation was overturned by the Board and the development was refused. The inspector addressed the removal of the paint positively as part of the planning application for development. A conservation report detailed the proposed method of removal.

9.2 Examples of applications/s. 5 referrals to remove or clean brickwork/repointing

The removal of paint or cleaning of brickwork of a protected structure should always in planning terms cause a detailed assessment as how to approach the works in the proper planning process with the proper consents or declarations.

A planning search on such works illustrates that such works are regularly carried out with by section 34 permissions or by section 5 or section 57 declarations. There are numerous section 34 planning applications for cleaning brickwork and for much smaller works such as painting railings, cleaning stonework and repointing protected structures.

Dublin City Council PA Ref. 555/23 Protected Structure: Planning permission sought for works comprising the **cleaning**, repair and repointing of existing brickwork on front elevation of upper two floors of existing two storey over lower ground floor, terraced house. 118, North Circular Road, Dublin 7. Granted permission November 2023. The Dublin City Council Report <https://webapps.dublincity.ie/AnitePublicDocs/01154843.pdf> illustrates the detailed required by a Planning Authority in the consideration of cleaning the façade of a Protected Structure.

Dublin City Council PA Ref. 3786/20 Protected Structure: The proposed works to the front facade consist of the following: **Steam cleaning of facade brickwork** to remove heavy carbon staining, the raking out of cementitious pointing, brickwork repair to badly damaged or spalled bricks, repointing using hydraulic lime and application of a colour wash, cementitious render to be removed from window reveals on third floor and repaired with new lime feathered reveals, and removal of paint from granite cills on 2nd and 3rd floors. The proposed works to the rear facade consist of the following: Steam cleaning of facade brickwork to remove heavy carbon staining, the raking out of cementitious pointing and repointing using hydraulic lime, brickwork repair to badly damaged bricks including stitching of cracking, removal of foam insulation from window reveals on second and third floors and **repointing** using hydraulic lime. The works will include the painting and decoration of all windows. The development was granted permission subject to detailed conditions in January 2021.

Dublin City Council PA Ref EXPP 0166/18 Decision Date 13-Jun-2018 29, Victoria Road, Clontarf, Dublin 3 Protected Structure: A section 5 references was sought on an itemised list of works of restoration, renewal or remedial nature.

In the split decision Item 7 was considered **not exempted development**. *Cleaning of brick to external elevations. The **existing brick elevations shall be cleaned** with a non-abrasive high pressure steam wash by Remmers Facade Cleaning System or similar approved" for the following reason:*

"The proposal for wholesale cleaning of the external brick has not been demonstrated to be necessary for the conservation of the historic fabric. The wholesale cleaning of brickwork has the potential to have a material effect on the appearance and fabric of the protected structure. It is not in line with minimum impact best practice and would not be considered exempted development."

Wicklow County Council PA Ref: 23766: Arklow Coastguard Station, Wicklow Terrace, Arklow, Co. Wicklow. The proposed development by the OPW included a small 39.37 sq.m single storey flat roof extension, reconstruction of the failing existing stone boundary wall and **repair and repointing of brickwork**. Permission was granted in December 2023.

Wicklow County Council Ref: 161398 Protected structure: Reroofing of church to include for **repairs and repointing of stonework** and all ancillary works was granted in 2017. Condition 2 stated the *"proposed development including all site works necessary shall be carried out using best heritage practise. All work shall be supervised by a person with proven experience of the conservation of historic buildings. Reason: In the interest of best heritage practise and to ensure the protection of the existing fabric during construction works."*

The above examples demonstrate that works to a protected or historic building that involve works to the brickwork should come under a planning process.

10 Appropriate Assessment and Environmental Impact Assessment

The Board as the competent authority, will carry out Environmental Impact Assessment (EIA), Appropriate Assessment (AA) Screening on the above review.

11 Conclusion and recommendation

Having regard to the contents of the submission above, and that other residential units are located within the protected structure, the Board is invited to concur with the following:

Having regard to sections 2, 3(1), 4(1)(h), 57 and 58 of the PDA 2000:

(a) the removal of paint from part of a protected structure that was painted when included in the record of protected structures is development, as defined in sections 2 and Section 3 of the Planning and Development Act, 2000, as amended,

(b) the removal of paint is "works for the maintenance, improvement or other alteration of any structure" as defined in Section 4(1)(h) of the said Act,

(c) the removal of paint constitutes works which materially affect the external appearance of the existing building so as to render its appearance inconsistent with its own character by reason of the piecemeal result of a mixture of painted and unpainted facades,

(d) the removal of paint from a protected structure requires specialised methods and supervision in order to protect a protected structure in accordance with the policies of the Wicklow County Development Plan,

(e) the precedent of seeking planning permission to remove paint from this protected structure and the general precedent of seeking permission to carry out cleaning works to protected structures, of section 5 or section 57 declarations.

It is considered that the removal of paint does not come within the scope of Section 4(1)(h) of the Planning and Development Act, 2000, as amended and is not exempted development.



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03/01/2024

Encl:

- WCC decision
- Fee
- This report
- ABP Checklist.

