

An
Bord
Pleanála

Inspector's Report ABP-321591-25

Question

Whether the change of use of a public house to three residential units at 12 Thomas Street Drogheda, is or is not development and is or is not exempted development.

Location

12 Thomas Street, Drogheda, Co.
Louth

Declaration

Planning Authority

Louth County Council

Planning Authority Reg. Ref.

S5 2024/64

Applicant for Declaration

Robbie Gogan

Planning Authority Decision

Is development and is not exempted
development

Referral

Referred by

Robbie Gogan

Owner/ Occupier

Robbie Gogan

Observer(s)

None

Date of Site Inspection

3rd April 2025

Inspector

Emma Gosnell

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1.0 Site Location and Description

- 1.1. The site comprises a property situated at the junction of Thomas Street and Prospect Avenue in Drogheda, Co. Louth.
- 1.2. The corner property, which fronts directly onto the public footpaths adjoining the abovenamed streets, is adjoined to the north by an end-of-terrace residential property at No. 10 Thomas Street, to the east by a small area of incidental greenspace and, to the south by the Chord Cemetery and by a terrace of single storey dwellings fronting the avenue. The wider area is predominantly residential in character.
- 1.3. The property comprises of a 2-storey c. 19th century building which fronts Thomas Street together with a single storey rear return with attic-level accommodation with a pitched roof and dormer windows, and a separate 2-storey flat roofed rear extension. The rectangular rear yard, which opens onto and is accessed from Prospect Avenue, functions as a car park for the property's residents.
- 1.4. The property is subdivided into 3 no. own-door residential units split over 2 no. floors. Two of the units are accessed directly from Thomas Street with the third unit being accessed directly off the roadway on Prospect Avenue which does not have a footpath on its north side. The units to the rear of the property are served by ungated external patio areas delineated from the car parking area by rendered walls.

2.0 The Question

- 2.1. Whether the change of use of a public house to 3 residential units, is or is not exempted development?

3.0 Planning Authority Declaration

3.1. Declaration

Following a request by Robbie Gogan, the Planning Authority (PA) issued a declaration on the 02/12/2024 that the use as described is considered to be development and is not exempted development.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The planner's report of 2nd December 2024 outlines the legislative context and planning history of the site. The assessment can be summarised as follows:

- Proposal was assessed against the various criteria, conditions and limitations under Articles 6 and 9 and Part 4, Schedule 2 of the Planning and Development Regulations, 2001 (as amended) and also under SI No. 75/2022 (Planning and Development Act (Exempted Development) Regulations, 2022).
- The report states that the change of use of the entire building to 3 no. residential units, together with renovations and construction work to the rear roof to create 2 no. dormer windows and a low wall within the rear yard, constituted development.
- The report finds that the scope of development undertaken is non-compliant with the following provisions of SI No. 75/2022:
 - Item (III) of Section 3, paragraph (d)(ii) on the basis of the nature and extent of works undertaken to the exterior of the property (incl. 2 no. dormer windows, new slate roof on rear return, provision of new doors/ opes and, alterations to existing windows onto Thomas Street and Prospect Avenue).
 - Paragraph (d)(iv) on the basis of minimum quantitative standards in respect to bedroom sizes and a kitchen/ living/ dining room areas not being met. Issues are also raised in respect to quantum of private amenity space provided to units.
 - Paragraph (d)(xi), sub items (ii) and (iii), on the basis of the creation of an unauthorised widened access and new car parking area off Prospect Avenue which gives rise to traffic/ pedestrian hazard and, the provision of a new door opening directly onto the road on Prospect Avenue which gives rise to a public safety risk.

The report concluded that the development does not meet with each of the conditions and limitations set out under SI No. 75/2022 and, as such, would be development that is not exempted development.

3.2.2. Other Technical Reports

None on file.

4.0 Planning History

4.1. Referral Site

P.A. Ref. 23/60132 – Permission refused on 09/02/2024 for the retention of 2 no. dormers windows on front elevation at Prospect Avenue, Drogheda, Co Louth for 3 no. reasons: 1. Facilitation of unauthorised works; 2. Provision of substandard residential accommodation; and 3. Endangerment of pedestrian/ traffic safety.

P.A. Ref. UD/23/011 – Enforcement file opened on 27/01/2023 into alleged unauthorised development works taking place.

P.A. Ref. 10/510118 – Retention permission granted on 20/01/2011 for barb wire fencing on top of existing boundary wall, subject to conditions.

P.A. Ref. 04/510080 - Permission granted on 13/05/2004 for extension of existing public house to rear, replacing ground floor extension. Alterations to existing 1st floor living unit, comprising new ground floor entrance from Thomas St. and replacing existing kitchen & bathroom extension with new. Ancillary works including car parking in rear yard and new shop front to replace existing, subject to conditions including:

“4. The proposed development shall be used as a public house and ancillary facilities e.g. storage, toilets, as indicated on submitted plans. No other uses shall be permitted and no additional development/extension works will take place within the subject site without a prior grant of planning permission. Reason: To ensure effective control is maintained and to protect the amenities of the area.” This permission does not appear to have been implemented.

P.A. Ref. 93/10171 – Permission granted on 14/12/1993 for alterations to front facade of public house, subject to conditions.

4.2. Other Relevant Referrals

ABP-314440-22 - The Board determined that the partial conversion of an existing derelict public lounge to contain two apartments at Blue Gardenia, McDonaghs Lane, Brittas, County Dublin, is development and is exempted development.

5.0 Policy Context

5.1. Development Plan

The Louth County Development Plan 2022-2027 (as varied) (LCDP) applies.

The site is zoned Existing Residential (A1), with the objective 'to protect and enhance the amenity and character of existing residential communities'.

The property is not a protected structure, nor is it in an Architectural Conservation Area. There are no objectives for preservation of views, or objectives for the preservation of any sites or features of archaeological, geological, historical, scientific or ecological interest on the site. There are also no Tree Preservation Orders on the site, and it is not located within Flood Zones A or B.

Drogheda is subject to a Joint Local Area Plan - most recently at the pre-Draft Stage.

5.2. Natural Heritage Designations

The site is not located within or adjoining a European Site.

The following European sites are located within proximity to the site:

European Site	Site Code	Distance
Boyne Coast and Estuary SAC	001957	c. 2.3km
River Boyne and River Blackwater SAC	002299	c. 280m
Boyne Estuary SPA	004080	c. 1.1km
River Boyne and River Black Water SPA	004232	c. 3.6km

The following proposed Natural Heritage Areas are also located in proximity to site:

- The Boyne Coast and Estuary (Site Code 001957)
- Boyne River Islands (Site Code 001862)

5.3. EIA Screening

Having regard to the criteria set out in Schedule 7 of the Planning and Development Regulations (2001) as amended, there is no real likelihood of significant effects on the

environment based on the characteristics and location of the subject development and types and characteristics of potential impacts. No EIAR is required. Refer to Form 1 (EIA Pre-Screening) and Form 2 (EIA Preliminary Examination) in the Appendices.

6.0 The Referral

6.1. Referrer's Case

The referrer contends that the change of use of a vacant public house to 3 no. residential units is exempted development.

Background

- The works to convert the public house to residential units were carried out in 2022 as exempted development in line with SI No. 75/2022 (Planning and Development Act (Exempted Development) Regulations, 2022).
- Louth County Council (LCC) were issued a valid notification in respect to the works and confirmation was received by return correspondence on 3rd May 2022 that the their notification register has been updated accordingly.
- The works were completed in 2022, and the residential units are now occupied.
- LCC issued a planning enforcement Warning Letter on 11th March 2024 stating that there had been an alleged unauthorised change of use. The warning letter did not detail why the development was no longer exempt.
- The receipt of the Warning Letter prompted the application for a Section 5 Declaration from LCC.

Referrer's Case

- Development undertaken is fully compliant with the Regulations on the basis that:
 - The building was built before 2018.
 - It was a public house (Class 12) and vacant for at least 2 years prior to works.
 - The development was completed within the relevant period.
 - The works did not relate to matters subject to restrictions under SI No. 75/2022.

- Works did not materially affect external appearance of the structure or render its appearance inconsistent with that of the structure/ neighbouring structures.
- The works retained in excess of 50% of the pre-existing external structure building fabric.
- The works were confined to the existing building/ primarily affected its interior and they did not involve the extension of the building or provision of an on-site waste-water treatment unit.
- SI No. 75/2022 requires adequate daylighting to habitable rooms which justifies the provision of new windows incl. dormer windows.
- The door to unit no. 3 existed prior to the works being undertaken.
- The 3 no. residential units are below the 9 no. unit threshold.
- The works don't contravene a planning condition or conflict with the LCDP.
- The structure is not protected and is not located in an area subject to special designation or control.
- Units meet accommodation standards specified in 2022 Apartment Guidelines and assessing them against more contemporary guidance is unreasonable given that these were published after the development was completed.
- SI No. 75/2022 does not specify the requirement to provide amenity space.
- The modification of a gate/ gateway is exempted development.

6.2. Planning Authority Response

Response received dated 28th January 2025, no further comment to make.

6.3. Further Responses

None received.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000 (as amended)

7.1.1. Section 2(1) of the Act provides the following definitions of relevance:

“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.

7.1.2. Section 3(1) of the Act provides the following definitions of relevance:

“development” means, except where the context otherwise requires, the carrying out of works on, in, over or under land or the making of any material change in the use of any structures or over land’.

7.1.3. Section 4(1) sets out various forms and circumstances in which development is exempted development for the purposes of the Act. Section 4 (1) (a) – (l) sets out what is exempted development for the purposes of this Act and includes:

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

7.1.4. Section 4(2) of the Act provides that the Minister may, by regulations, provide for any class of development to be exempted development. The main regulations made under this provision are the Planning and Development Regulations, 2001 (as amended).

7.1.5. Section 4 (4) states that “notwithstanding paragraphs (a), (i), (ia) and (l) of subsection (1) and any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required”.

7.2. Planning and Development Regulations, 2001 (as amended)

7.2.1. Article 10(6)(a) of the Planning and Development Regulations 2001 (as amended) provides an exempted development provision for ‘a change of use to residential use

from Class 1, 2, 3, 6 or 12 of Part 4 to Schedule 2.' Of relevance to this referral is Class 12 of which relates to use as a 'public house'.

7.2.2. Part 4, Schedule 2 – Exempted Development, Classes of Use provides the following definition for Class 12:

"Use as a Public House, meaning a premises which has been licensed for the sale and consumption of intoxicating liquor on the premises under the Licensing Acts 1833 to 2018".

7.2.3. The Planning and Development Act (Exempted Development) Regulations, 2022 (SI 75/2022) amended Article 10, sub-article (6) of the principal Planning and Development Regulations, 2001 (as amended) as follows:

7.2.4. 10(6)(a)

In this sub-article—

'habitable room' means a room used for living or sleeping purposes but does not include a kitchen that has a floor area of less than 6.5 square metres.

'relevant period' means the period from 8 February 2018 until 31 December 2025.

7.2.5. 10(6)(b)

This sub-article relates to a proposed development, during the relevant period, that consists of a change of use to residential use from Class 1, 2, 3, 6 or 12 of Part 4 to Schedule 2.

7.2.6. 10(6)(c)

Notwithstanding sub-article (1), where in respect of a proposed development referred to in paragraph (b)—

- (i) the structure concerned was completed prior to the making of the Planning and Development (Amendment) (No. 2) Regulations 2018,
- (ii) the structure concerned has at some time been used for the purpose of its current use class, being Class 1, 2, 3, 6 or 12, and
- (iii) the structure concerned, or so much of it that is the subject of the proposed development, has been vacant for a period of 2 years or more immediately prior to the commencement of the proposed development,

then the proposed development for residential use, and any related works, shall be exempted development for the purposes of the Act, subject to the conditions and limitations set out in paragraph (d).

7.2.7. 10(6)(d) sets out the conditions and limitations pertaining to the exemption:

- (i) The development is commenced and completed during the relevant period.
- (ii) Subject to sub-paragraph (iii), any related works, including works as may be required to comply with sub-paragraph (vii), shall –
 - (I) primarily affect the interior of the structure,
 - (II) (II) retain 50 per cent or more of the existing external fabric of the building, and
 - (III) not materially affect the external appearance of the structure so as to render its appearance inconsistent with the character of the structure or of neighbouring structures.
- (iii) Any related works for the alteration of existing ground floor shop fronts shall be consistent with the fenestration details and architectural and streetscape character of the remainder of the structure or of neighbouring structures.
- (iv) No development shall consist of or comprise the carrying out of works to the ground floor area of any structure which conflicts with any objective of the relevant local authority development plan or local area plan, pursuant to the Part 1 of the First Schedule to the Act, for such to remain in retail use, with the exception of any works the purpose of which is to solely provide on street access to the upper floors of the structure concerned.
- (v) No development shall consist of or comprise the carrying out of works which exceeds the provision of more than 9 residential units in any structure.
- (vi) Dwelling floor areas and storage spaces shall comply with the minimum floor area requirements and minimum storage space requirements of the “Sustainable Urban Housing: Design Standards for New Apartments – Guidelines for Planning Authorities” issued under section 28 of the Act or any subsequent updated or replacement guidelines.

(vii) Rooms for use, or intended for use, as habitable rooms shall have adequate natural lighting.

(viii) No development shall consist of or comprise the carrying out of works to a protected structure, as defined in section 2 of the Act, save where the relevant planning authority has issued a declaration under section 57 of the Act to the effect that the proposed works would not materially affect the character of the structure or any element, referred to in section 57(1)(b) of the Act, of the structure.

(ix) No development shall contravene a condition attached to a permission under the Act or be inconsistent with any use specified or included in such a permission.

(x) No development shall relate to any structure in any of the following areas:

(I) an area to which a special amenity area order relates;

(II) an area of special planning control;

(III) within the relevant perimeter distance area, as set out in Table 2 of Schedule 8, of any type of establishment to which the Major Accident Regulations apply.

(xi) No development shall relate to matters in respect of which any of the restrictions set out in sub-paragraph (iv), (vii), (viiA), (viiB), (viiC), (viii) or (ix) of article 9(1)(a), or paragraph (c) or (d) of article (9)(1), would apply.

(xii) No development shall consist of or comprise the carrying out of works for the provision of an onsite wastewater treatment and disposal system to which the code of practice made by the Environmental Protection Agency pursuant to section 76 of the Environmental Protection Agency Act 1992 relates and entitled Code of Practice – Wastewater Treatment and Disposal Systems Serving Single Houses together with any amendment to that Code or any replacement for it.

8.0 Assessment

8.1. Background

8.1.1. The question before the Board relates to ‘whether the change of use of a public house to three residential units at 12 Thomas Street Drogheda, is or is not development and is or is not exempted development’.

- 8.1.2. The PA determined that the proposal did constitute development and is not exempted development. This decision was grounded in the planning report which found the extent of exterior works (such as the installation of 2 no. dormer windows on the rear return and the provision of new doors fronting the adjoining public roads) to be important factors.
- 8.1.3. In referring to the PA's determination, that it constitutes development that is not exempted, the applicant submits that it does accord with exemption provided under SI No. 75/2022 (Planning and Development Act (Exempted Development) Regulations, 2022 (i.e. under the Planning and Development Regulations, 2001 (as amended)).
- 8.1.4. It should be stated at the outset that the purpose of this referral is not to determine the acceptability or otherwise of the change of use of a public house to three residential units in respect to the proper planning and sustainable development of the area, but rather whether or not the matter in question constitutes development, and if so, falls within the scope of exempted development.

8.2. Is or is not development

- 8.2.1. The definition of 'development' involves the carrying out of works on, in, over or under land or the making of any material change in the use of any structures or other land, as per Section 3(1) of the Planning and Development Act, 2000, as amended.
- 8.2.2. The referrer has undertaken various internal and external works to convert a previous public house to use as 3 no. independently accessed residential units. I consider the nature and extent of works undertaken, which are detailed in Sections 3.2.1 and 6.1 of this report, to constitute development. Furthermore, I am of the view that the change of use from a public house to residential use gives rise to material planning considerations in respect to, inter alia, residential amenity and pedestrian/ traffic safety as per the test established under *Stanley v An Bord Pleanála* [2022] IEHC 177 and, on this basis, would constitute a material change of use i.e. also development.

8.3. Is or is not exempted development

- 8.3.1. A change of use to residential from Class 12 (use as a Public House) and any related works undertaken during the period from 8th February 2018 to 31st December 2025 constitutes exempted development under Article 10(6)(b) of the Regulations where

such development complies with the conditions and limitations set out under Article 10(6)(d).

8.3.2. Before considering these, I shall address the proposal's compliance with the preliminary criteria under Article 10(6)(c)(i) to (iii), inclusive.

(i) – Age & Built Status of the Subject Structure

Having regard to my site inspection undertaken on 03/04/2025 and to the information on file, I am fully satisfied that the structure subject to this S.5 referral dates from prior to the making of the Planning and Development (Amendment) (No. 2) Regulations 2018 i.e. prior to 8th February 2018.

(ii) – Use of the Subject Structure

Having regard to my site inspection undertaken on 03/04/2025, to the documentation on file and to other relevant documentation including the site's planning history and publicly available mapping, I am fully satisfied that the structure was at some time used for the purpose of use Class 12 i.e., use as a Public House.

(iii) – Period of Vacancy of Subject Structure

Whilst no definition of the term "vacancy" is provided under the Planning and Development Regulations, 2001 (as amended), its natural and ordinary meaning is that the premises was empty and not being used. The referrer states that the structure was vacant for at least 2 years prior to the works being carried out and provides photos which show that the premises was vacant and for sale in August 2021.

However, given that the works were stated to have been carried out in May 2022, the relevant date is May 2020 or prior to same. Notwithstanding, I note that the PA were satisfied that the structure was vacant for at least 2 years prior to the works and that this period coincided with the Covid-19 pandemic which saw widespread closure of commercial premises.

8.3.3. Whilst I consider that the information provided by the referrer does not fully illustrate compliance with subparagraph, on the balance of probabilities the premises was likely vacant for 2 years prior. Therefore, I have proceeded to assess it against the conditions and limitations under Article 10(6)(d) these are considered in turn below:

(i) Commencement and Completion

The referrer has submitted that the works were carried out in 2022, during the relevant period and that LCC were notified of the works and issued confirmation of same in May 2022. I note that a warning letter was issued by the PA in March 2024 in respect to an alleged unauthorised change in the use of the public house to residential use. Therefore, having regard to the information on file, I am satisfied that the referrer commenced and completed the development during the relevant period of 8th February 2018 until 31st December 2025.

(ii) Extent of Works

The works undertaken comprise of, inter alia:

- replacement of the roof on the rear return and the installation of 2 no. new dormer windows on same.
- a reduction in the scale of/ revised positioning of ground floor windows and doors onto Thomas Street and removal of shopfront/ fascia and related signage/ lighting etc.
- repositioning of existing door fronting Thomas Street and provision of 2 no. new doors (a new door to side bike/ bin store and a new door to access unit no. 2).
- a reduction in the scale of ground floor windows onto/ removal of a ground floor window onto/ the installation of a new access door and window onto Prospect Avenue.
- amendments to rear glazing arrangements/ addition of fenestration overlooking yard.
- removal of blockwork boundary wall and opening up of rear yard to avenue and conversion to use as a car park with widened vehicular access.
- creation of new boundary walls to delineate units' amenity space from parking area.
- various internal alterations to facilitate conversion to residential units.

In respect to compliance with sub-paragraph (I – primarily affects interior of structure), I note that the drawings on file only provide details on the building post its conversion to residential use with no details provided on its internal layout prior to this. Notwithstanding, I consider that there is sufficient information on file to allow a determination to be made that the nature and extent of the aforementioned works are such that they primarily affect the exterior of the structure.

Sub-paragraph (II) requires that 50% or more of the existing external fabric of the building is retained. Having regard to the changes made to the external elevations of the building as per the documentation on file, I consider that this requirement to be satisfied.

Sub-paragraph (III) states that works should not materially affect the external appearance of the structure so as to render its appearance inconsistent with the character of the structure or of neighbouring structures. I consider that the works to the external appearance of the structure (i.e. simple rendered materiality and changes made to the size/ positioning of the ground floor opes on its elevation fronting Thomas Street) do provide for a greater degree of harmonisation with neighbouring structures. However, I am also of the view that the nature and extent of the changes to the fenestration pattern of the front, side and rear elevations (and specifically the addition of 3 no. new access doors along Thomas Street/ Prospect Avenue and the resizing/ repositioning of the original main door and windows on the ground floor of the front elevation); the removal of the pilasters, fascia and stone detailing on the corners of the front elevation; the addition 2 no. of dormer windows on the roof of the rear return; the creation of delineated residential patios; and, opening up of the rear yard for residential car parking, all render the external appearance of the structure inconsistent with the vernacular character of the structure as it was when it functioned as a public house.

(iii) Shopfronts and Streetscape Character

The original ground floor shopfront of the public house (incl. the fascia etc.) is no longer in-situ on account of the changes made to its fenestration and to the materiality of the front elevation in order to facilitate the change of use of the structure to residential. I have commented previously on the works undertaken which are detailed in response to sub-paragraph (ii) Extent of Works.

(iv) Conflicts with Local Planning Policy

As previously noted, the existing building has an established use as a Public House under Class 12, Part 4, Schedule 2 of the Regulations. The condition and limitation under Article 10(6)(d)(iv) therefore does not apply as it relates to the protection of 'retail uses' under a specific objective of a development plan or local area plan with retail uses typically provided for under Class 1, Part 4, Schedule 2 (i.e. use as a shop).

(v) Maximum Number of Residential Units

3 no. residential units have been created which is below the Article 10(6)(d)(v) threshold of more than 9 residential units in any structure.

(vi) – Compliance with Apartment Guidelines

The referrer makes the case that contemporary planning policy guidance on apartments should not be retrospectively applied to the 3 no. residential units which pre-date same as they were constructed in 2022.

The PA raise a number of concerns in respect the units' compliance with the minimum quantitative standard set for apartments under the Section 28 Guidelines for Planning Authorities - Design Standards for New Apartments (2023), specifically:

- Unit No. 1 (3-bed) – double bedroom No. 2 falls short of min. 11.4sq.m standard. Private amenity area is only 7sq.m. Bulk of unit's storage is provided in the attic.
- Unit No. 2 (1-bed + study) – No private amenity space provided. All storage in attic. Study appears to be habitable room which does not meet 6.5sq.m minimum.
- Unit No. 3 (1-bed) – kitchen/living/dining space falls short of c. 23sq.m minimum.
- Size and location of shared bin & bike storage area.

The relevant requirements from Appendix 1 of the Apartment Guidelines (2023) are detailed below in addition to the floor space provided (based on an approximate manual calculation from the submitted plans) as illustrated on the submitted floor plans. I note that paragraph 1.10 of the Guidelines indicate that these are 'target standards' in the case of buildings being wholly redeveloped for residential use and are to be applied practically and flexibly in relation to refurbishment schemes where compliance with standards may be relaxed on a case-by-case basis, subject to overall design quality. The Guidelines also specifically allow for such relaxations in the case of dwelling mix, aspect, private amenity space, floor-to-ceiling heights and storage.

Unit No. 1 Assessment

Unit No. 1 – 3 bedrooms (3 single beds shown on plan)		
Minimum Criteria	Required	Provided
Apartment Floor Area	90sq.m	c. 104sq.m

Width of living/dining room	3.8m	c. 3.8m
Aggregate floor area of living / dining / kitchen area	34sq.m	c. 36sq.m
Bedroom floor area	7.1sq.m (single) / 11.4sq.m (double)	B1 – c. 8sq.m* B2 – c. 10sq.m* B3 – c. 7sq.m*
Bedroom width	2.1 sq.m (single) / 2.8 sq.m (double)	B1 – c. 3.35m B2 – c. 2.2-3.1m B3 – 2.7m
Aggregate bedroom floor area	31.5sq.m	c. 25sq.m*
Storage space	9sq.m	c. 9.5sq.m (incl. 5sq.m in attic)
Private amenity space	9sq.m	c. 35sq.m (patio)

*Incl. wardrobes/ storage.

Bedroom Accommodation

I wish to draw the Board's attention to a discrepancy in the occupancy level of Bedroom 02 in Unit 1 between the submitted plans – which show it as a single room – and what I observed on my internal site inspection (03/04/2025) – i.e. a double bed. The PA also observed Bedroom 02 in use as a double bedroom during their inspection.

On the basis of the inspections, I note that Bedroom 02 in Unit No. 1 falls c. 1.4sq.m short of the floor area requirement for a double-bedroom and therefore, c. 6.5sq.m short of the total aggregate bedroom floor area requirement of 31.5sq.m for a 3-bed apartment. Notwithstanding, this standard does appear to relate to a 5 person occupancy apartment rather than to a 4 person occupancy apartment as per Unit 01. On the basis of this lower occupancy level, I deem what has been provided to be acceptable in this instance - particularly having regard to the stated 14sq.m overprovision in terms of the apartment's overall floor area.

Storage

The PA also raise an issue with Unit No. 1's storage arrangements as 5sq.m of the c. 9.5sq.m is provided for in the attic. Whilst not ideal, I do note that the Guidelines allow for a relaxation in storage requirement, subject to overall design quality.

Private Amenity Space

In respect to the 35sq.m private amenity space shown on the plans, I note that the PA's report states that the unit is provided with just 7.06sq.m which is below the stated requirement. In carrying out my site inspection on the 03/04/2025, I noted that the patio area serving Unit 01 was approx. 14 sq.m which exceeds the stated requirement.

Unit No. 2 Assessment

Unit No. 2 – 1 single bedroom + study as shown on plan		
Minimum Criteria	Required	Provided
Apartment Floor Area	45sq.m	c. 50sq.m
Width of living/dining room	3.3m	c. 2.85-4.65sq.m
Aggregate floor area of living / dining / kitchen area	23sq.m	c. 22sq.m
Bedroom floor area	7.1sq.m (single) / 11.4sq.m (double)	c. 10sq.m*
Bedroom width	2.1 sq.m (single) / 2.8 sq.m (double)	c. 3-4.1m
Aggregate bedroom floor area	11.4sq.m	c. 10sq.m*
Storage space	3sq.m	3 sq.m in attic + c. 5.5sq.m study
Private amenity space	5sq.m	None

*Incl. wardrobes/ storage.

Bedroom Accommodation

I wish to draw the Board's attention to a discrepancy in the occupancy level of Bedroom 01 in Unit 2 between the submitted plans – which show it as a single room

– and what I observed on my internal site inspection (03/04/2025) – i.e. a double bed. The room is therefore undersized by c. 12% on the basis of its current occupancy.

Private Amenity Space/ Storage

The PA take issue with the non-provision of private amenity space for Unit No. 2 together with the location of some of its storage space at attic level. As per Unit 01, I note that the Guidelines provide for a relaxation on storage (para 3.34) and amenity space (para 3.39) provision in the case of refurbishment schemes and I also observed the study being used for storage purposes during my site inspection. I consider the proposed attic storage and to be acceptable given the cumulative overprovision of storage in this single occupancy apartment.

Living Space

I draw the Bord's attention to the unit's minor (c. 4%) quantitative under provision in terms of aggregate living space.

Unit No. 3 Assessment

Unit No. 3 – 1 double bedroom as shown on plan		
Minimum Criteria	Required	Provided
Apartment Floor Area	45sq.m	c. 50sq.m
Width of living/dining room	3.3m	c. 4.5sq.m
Aggregate floor area of living / dining / kitchen area	23sq.m	c. 18.7sq.m
Bedroom floor area	11.4sq.m	c. 16.9sq.m* (11sq.m useable)
Bedroom width	2.8sq.m	c. 4.3m
Aggregate bedroom floor area	11.4sq.m	c. 16.9sq.m*
Storage space	3sq.m	0.8sq.m
Private amenity space	5sq.m	c. 31sq.m

*Incl. wardrobes/ storage.

Private Amenity Space

In respect to the 31sq.m private amenity space shown on the submitted plans as serving Unit 03, I note that the PA's report states that the unit is provided with 12sq.m which I note still exceeds the stated requirement. In carrying out my site inspection on the 03/04/2025, I noted that the patio area serving Unit 03 was approx. 14 sq.m which exceeds the stated requirement.

Living Space/ Bedroom Accommodation/ Storage

As per the assessment of Unit No's 1-2, having regard to the flexibility on the requirements of many aspects of the Guidelines allowed for in respect to building refurbishment schemes, I consider that the unit's quantitative under provision in terms of aggregate living space, useable bedroom floorspace and storage space is also generally acceptable as is its storage provision.

Conclusion

Overall, having regard to the policy guidance provided in paragraph 1.10 of the 2023 Apartment Guidelines, which allows for flexibility and practicality in their application in the case of buildings being wholly refurbished/ redeveloped for residential use and, to the constraints posed by the existing building fabric and dimensions, I consider the 3 no. residential units to be generally compliant with aforementioned guidance.

(vii) Availability of Adequate Natural Lighting

Having regard to the plans and particulars on file and, having inspected the site and observed the aspect and extent of glazing provided to each unit, I consider that this requirement is met.

(viii) Works to a Protected Structure

The subject building is not listed in the Record of Protected Structures (Volume 4 of the LCDP). On this basis I am satisfied that the development does not involve works to a protected structure.

(ix) Contravention of Planning Condition/ Inconsistency with Permitted Use

The planning history is listed in Section 4.1 of this report. Condition No. 4 attached to P.A. Ref. 04/510080 provided that the permitted development (i.e. which included a new bar/lounge area extension to the rear of the main building) be used as a public

house with no other uses permitted and no additional development/extension works to take place within the site without a prior grant of planning permission. Considering that this permission was never implemented and has now lapsed, I am satisfied that the development subject of this referral does not contravene a condition attached to a permission nor would be inconsistent with any use specified or included in such a permission having regard to the referrer's submission and to the report of the planning authority.

(x) Specified Areas

The structure is not located within an area to which a special amenity area order relates; in an area of special planning control; or, within the relevant perimeter distance area of any type of establishment to which the Major Accident Regulations apply.

(xi) Restrictions under Article 9

Article 10(6)(d)(xi) provides that certain restrictions under Article 9 also apply to the exemption under Article 10(6)(c) including sub-paragraphs (iv), (vii), (viiA), (viiB), (viiC), (viii) and (ix) of Article 9(1)(a) and paragraphs (c) and (d) of Article 9(1).

Having regard to the planning history of the site, and specifically the refusal recently issued under P.A. 23/60132 which related to *inter alia* the facilitation of unauthorised works and endangerment of pedestrian/ traffic safety, the PA considered that the proposal would conflict with:

- Article 9(1)(a)(ii) on the basis of the creation of a widened access and car parking area off Prospect Avenue which is in excess of 4m in width.
- Article 9(1)(a)(iii) on the basis of the creation of a new door access to unit No.3 directly off Prospect Avenue where no adjoining footpath exists – thereby endangering public safety by reason of traffic hazard/ obstruction to road users.

The referrer states that the door to Unit No. 3 was existing prior to the development and is not a new door as stated by the PA. They also contend that the modification to the gate/ gateway to the rear of the building is exempted development.

Having reviewed the wording of Article 10(6)(d)(xi), I note that sub-paragraphs (ii) and (iii) of Article 9(1)(1) are not stated to apply and therefore, are irrelevant to the assessment of whether or not the proposal constitutes exempted development. Therefore, I consider that the PA's rationale for de-exempting the proposal on the

basis of non-compliance with these specific sub-paragraphs cannot be sustained. Furthermore, having reviewed the relevant restrictions under Article 9, I am satisfied that none apply in this instance.

(xii) Onsite Wastewater Treatment

I am satisfied that this condition is met as the proposal does not involve the provision of an on-site waste-water treatment unit and is served by existing public infrastructure.

- 8.3.6. In view of my above assessment, I am not satisfied that the proposal is in compliance with the conditions and limitations under Article 10(6)(d)(ii) of the Planning Regulations and is therefore not considered to constitute exempted development for the purposes of the Planning Act.

9.0 AA Screening

- 9.1.1. I have considered the proposal for the change of use of a public house to three residential units at 12 Thomas Street, Drogheda in light of the requirements S177U of the Planning and Development Act 2000 (as amended).
- 9.1.2. The proposed development is located in an urban area within the town of Drogheda. The proposal comprises of the change of use of a public house to three residential units together with internal and external works to facilitate same.
- 9.1.3. The subject land is not directly adjacent to a European site. It is located c. 280m from the River Boyne and River Blackwater SAC (002299), c. 1.1km from the Boyne Estuary SPA (004080), c. 2.3km from the Boyne Coast and Estuary SAC (001957), and c. 3.6km from the River Boyne and River Black Water SPA (004232).
- 9.1.4. Having regard to the nature and scale of the development, the separation distance to the nearest European site and the intervening urban land uses and lack of pathways evident to same, it is my opinion that no Appropriate Assessment issues arise, Therefore, the development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.
- 9.1.5. No nature conservation concerns were raised in the referral.

9.1.6. Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment because there is no conceivable risk to any European site. The reason for this conclusion is as follows:

- The minor/ de minimus nature of the proposed development.
- The location-distance from the nearest European site and lack of connections.
- Taking into account the findings of the AA screening assessment by the PA.

9.1.7. I conclude that, on the basis of objective information, the proposed development would not have a likely significant effect on any European site either alone or in combination with other plans or projects.

9.1.8. Likely significant effects are excluded and therefore Appropriate Assessment (stage 2) (under Section 177V of the Planning and Development Act 2000) is not required.

10.0 Recommendation

10.1. I recommend that the Board should decide this referral in accordance with the following draft order.

WHEREAS a question has arisen as to whether the change of use of a public house to three residential units at No. 12 Thomas Street, Drogheda, is or is not development or is or is not exempted development:

AND WHEREAS Robbie Gogan requested a declaration on this question from Louth County Council and the Council issued a declaration on the 2nd day of December, 2024 stating that the matter was development and was not exempted development:

AND WHEREAS Robbie Gogan referred this declaration for review to An Bord Pleanála on the 6th day of January, 2025:

AND WHEREAS An Bord Pleanála, in considering this referral, had regard particularly to –

- (a) Section 2(1) of the Planning and Development Act, 2000, as amended,
- (b) Section 3(1) of the Planning and Development Act, 2000, as amended,
- (c) Article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (d) Article 10(6) of the Planning and Development Regulations, 2001, as amended,
- (e) Class 12 of Part 4 of Schedule 2 of the Planning and Development Regulations, 2001, as amended,
- (f) the planning history of the site,
- (g) the nature and extent of work carried out,
- (h) relevant precedent referrals and judgments, and
- (i) the pattern of development in the area:

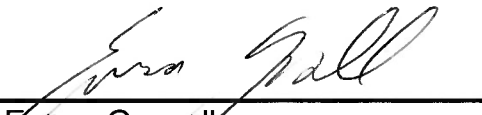
AND WHEREAS An Bord Pleanála has concluded that:

- (a) The residential use is a material change in the use of the public house at No.12 Thomas Street, being development; and
- (b) The proposed works to the public house at No. 12 Thomas Street to facilitate the residential use is development; and
- (c) The development would not come within the scope of exempted development under Article 10(6)(a)
- (d) The subject change of use from a public house to 3 no. residential units is therefore, development and is not exempted development within the meaning of the Planning and Development Act, 2000 as

amended, or the Planning and Development Regulations, 2001, as amended.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3) (a) of the 2000 Act, hereby decides that the change of use of a public house to three residential units at No. 12 Thomas Street, Drogheda is development and is not exempted development.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.



Emma Gosnell

Planning Inspector

14th April 2025


Form 1

EIA Pre-Screening

An Bord Pleanála Case Reference	ABP-321591-25		
Proposed Development Summary	Whether the change of use of a public house to three residential units at 12 Thomas Street Drogheda, is or is not development and is or is not exempted development.		
Development Address	No. 12 Thomas Street, Drogheda, Co. Louth		
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)		Yes	✓
		No	
2. Is the proposed development of a CLASS specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended)?			
Yes	✓	Part 2, Class 10(b)(i) Infrastructure – dwelling units Part 2, Class 10(b)(i) Infrastructure – urban development	Proceed to Q3.
No			
3. Does the proposed development equal or exceed any relevant THRESHOLD set out in the relevant Class?			
Yes			EIA Mandatory EIAR required
No	✓		Proceed to Q4

4. Is the proposed development below the relevant threshold for the Class of development [sub-threshold development]?			
Yes	✓	500 units – proposal is for 3 no. units 100 hectares – site is less than 0.25 ha	Preliminary examination required (Form 2)

5. Has Schedule 7A information been submitted?		
No	✓	Pre-screening determination conclusion remains as above (Q1 to Q4)
Yes		Screening Determination required

Inspector: 

Date: 14/04/2025

Form 2

EIA Preliminary Examination

An Bord Pleanála Case Reference	ABP-321591-25
Proposed Development Summary	Whether the change of use of a public house to three residential units at 12 Thomas Street Drogheda, is or is not development and is or is not exempted development.
Development Address	No. 12 Thomas Street, Drogheda, Co. Louth
<p>The Board carried out a preliminary examination [ref. Art. 109(2)(a), Planning and Development regulations 2001, as amended] of at least the nature, size or location of the proposed development, having regard to the criteria set out in Schedule 7 of the Regulations.</p> <p>This preliminary examination should be read with, and in the light of, the rest of the Inspector's Report attached herewith.</p>	
Characteristics of proposed development (In particular, the size, design, cumulation with existing/proposed development, nature of demolition works, use of natural resources, production of waste, pollution and nuisance, risk of accidents/disasters and to human health).	<p>The development comprises of the change of use of a public house into 3 no. residential units and works to facilitate same.</p> <p>The development does not require significant demolition works or the use of substantial natural resources, or give rise to significant risk of pollution or nuisance. The development, by virtue of its type, does not pose a risk of major accident and/or disaster, or is vulnerable to climate</p>

	change. It presents no risks to human health.		
Location of development (The environmental sensitivity of geographical areas likely to be affected by the development in particular existing and approved land use, abundance/capacity of natural resources, absorption capacity of natural environment e.g. wetland, coastal zones, nature reserves, European sites, densely populated areas, landscapes, sites of historic, cultural or archaeological significance).	The development is situated on urban land in a low rise residential area in Drogheda town. The development is removed from sensitive natural habitats, dense centres of population and designated sites and landscapes of identified significance in the County Development Plan.		
Types and characteristics of potential impacts (Likely significant effects on environmental parameters, magnitude and spatial extent, nature of impact, transboundary, intensity and complexity, duration, cumulative effects and opportunities for mitigation).	Having regard to the nature of the proposed development, its location removed from sensitive habitats/features, likely limited magnitude and spatial extent of effects, and absence of in combination effects, there is no potential for significant effects on the environmental factors listed in section 171A of the Act.		
Conclusion			
Likelihood of Significant Effects	Conclusion in respect of EIA	Yes	No
There is no real likelihood of significant effects on the environment.	EIA is not required.	✓	

There is significant and realistic doubt regarding the likelihood of significant effects on the environment.	Schedule 7A Information required to enable a Screening Determination to be carried out.		✓
There is a real likelihood of significant effects on the environment.	EIAR required.		✓

Inspector: *John J. Bell*

Date: *14/04/2025*

DP/ADP: _____

Date: _____

(only where Schedule 7A information or EIAR required)