



An
Bord
Pleanála

Board Direction
ABP-301406-18

The submissions on this file and the Inspector's report were considered at a Board meeting held on 26/04/2019.

The Board decided, as set out in the following Order, that:

WHEREAS questions have arisen as to whether the works undertaken to two dwellings located at 25 Dalkey Avenue, Dalkey, Co. Dublin relating to the following:

1. The extension at first floor level currently under construction to the rear of House A,
2. The extension at first floor level currently under construction to the rear of House B,
3. The alterations/ extension joining the utility room and living room of House B,
4. The substitution of a door for the door and window at upper ground floor level in House A,
5. The extent to which the interior of House B has been constructed other than in accordance with the lodged plans,
6. The extent to which the interior of House A has been constructed other than in accordance with the lodged plans,
7. The extent to which the courtyard/ terrace to the rear of House B has been constructed other than in accordance with the lodged plans,
8. The extent to which the courtyard/ terrace to the rear of House A has been constructed other than in accordance with the lodged plans, and
9. The office type structure constructed within the rear garden of House A

is or is not development and is or is not exempted development.

AND WHEREAS Patrick and Charia Cleary requested a declaration on these questions from Dún Laoghaire Rathdown County Council and the Council issued a declaration on the 20th day of March 2018, stating that items 1, 2, 3, and 9 were development and were exempted development and items 4, 5, 6, 7, and 8 related to variations to a development in its construction from that indicated within planning drawings and were considered to fall outside the scope and meaning of exempted development.

AND WHEREAS Patrick and Charia Cleary referred this declaration for review to An Bord Pleanála on the 11th day of April 2018:

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

- (a) Sections 2, 3, and 4 of the Planning and Development Act 2000, as amended,
- (b) Articles 6 and 9 of the Planning and Development Regulations 2001, as amended,
- (c) Classes 1 and 3 of the Second Schedule to the Planning and Development Regulations 2001, as amended,
- (d) the planning history of the site, including An Bord Pleanála Reference PL06D.243484, and the terms and conditions of that permission,
- (e) the nature and extent of the works that have been carried out and the date when such works were carried out,
- (f) the documentation on file, including submissions from the referrer, the developer and the planning authority, and
- (g) relevant case law:

AND WHEREAS An Bord Pleanála has concluded that:

- (a) the extensions at first floor level to the rear of House A and House B, as listed under items 1 and 2 of the referral questions, constitutes development that is

exempted development, in accordance with Class 1 of Part 1, Schedule 2, of the Planning and Development Regulations 2001, as amended, as they are considered to have commenced after the completion of the house for the purpose of the Act and the affording of the planning exemption under Class 1 of the Regulations is not considered to be restricted under Article 9(1)(a)(i) or (viii);

- (b) the alterations to the ground floor in House B which joins the utility room and living room constitute development that is exempted development, in accordance with Section 4(1)(h) of the Planning and Development Act 2000, as amended, as these works are considered to constitute an improvement or alteration that does 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;
- (c) the structure under construction to the rear of House A constitutes development that is exempted development, in accordance with Class 3 of Part 1, Schedule 2, of the Planning and Development Regulations 2001, as amended, as the flat-roof structure is positioned to the rear of the house, is approximately 21 metres square in size and complies with all six conditions and limitations as attached to Class 3 exempted developments; and
- (d) in relation to questions 4, 5, 6, 7, and 8, these relate to variations to the development during its construction phase from those planning drawings upon which a grant of planning permission was granted. As it is not considered that these works constitute stand-alone type developments in accordance with section 3(1) of the Planning and Development Act 2000, as amended, they should be considered in the context of compliance or non-compliance with the planning permission as granted. In this context, the works listed in questions 4, 5, 6, 7, and 8 are considered to be of such minor nature as to not constitute a breach of the planning permission. Consequently, these matters fall outside the scope and meaning of exempted development provisions;

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:

1. the undertaken works listed under items 1, 2, 3 and 9 are development and are exempted development, and
2. the undertaken works listed under items 4, 5, 6, 7 and 8 relate to variations to a development in its construction from that indicated within planning drawings upon which a grant of planning permission was issued and are considered to fall outside the scope and meaning of exempted development.

In not accepting the Inspector's recommendation, the Board considered that the various works cited in the referral were *de minimis* modifications to the structure and of such minor nature as to not constitute a breach of the planning permission, in line with the Planning Authority's declaration, and which relevant works were able to avail of the relevant exempted development provisions.

Board Member:

Date: 26/04/2019

Dave Walsh