



An  
Bord  
Pleanála

**Board Direction**  
**ABP-303200-18**

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The submissions on this file and the Inspector's report were considered at a Board meeting held on June 12<sup>th</sup> 2019.

The Board decided, as set out in the following Order, that the “as-constructed” structure at 16 Cullenswood, Dublin 6, incorporating an increase in height and an increase in length over that permitted under Dublin City Council register reference number 2690/16 (An Bord Pleanála reference Number 29S.246883) is development and is not exempted development.

Board Order as follows:-

**WHEREAS** a question has arisen as to whether the “as-constructed” structure at 16 Cullenswood, Dublin 6 (Plan Ref: 2690/16) is or is not development and is or is not exempted development.

**AND WHEREAS** Highgate Properties Ltd, c/o DTA Architects of 12 – 14 College Green, Dublin 2, requested a declaration on this question from Dublin City Council, and the Council issued a declaration on the 14<sup>th</sup> day of November 2018 stating that the matter was development and was exempted development.

**AND WHEREAS** Highgate Properties Ltd, c/o DTA Architects of 12 – 14 College Green, Dublin 2 referred this declaration for review to An Bord Pleanála, on the 11<sup>th</sup> day of December 2018.

**AND WHEREAS** An Bord Pleanála decided, in the light of the submissions made in connection with this referral, to reformulate the question as follows:-

“Whether the “as-constructed” structure at 16 Cullenswood, Dublin 6, incorporating an increase in height and an increase in length over that permitted under Dublin City Council register reference number 2690/16 (An Bord Pleanála reference Number 29S.246883) is or is not development and is or is not exempted development

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

- (a) Sections 2 (1) and 3 (1) of the Planning and Development Act, 2000,
- (b) Articles 6 (1) and 9 (1) of the Planning and Development Regulations, 2001, as amended,
- (c) The planning history of the subject site, and in particular the plans and particulars submitted as part of planning application register reference number 2690/16 (An Bord Pleanála reference Number 29S.246883),
- (d) The submissions made as part of this referral, including site surveys, photographs and drawings, and visual and sunlight/daylight analyses, and
- (e) The report of the Inspector.

**AND WHEREAS** An Bord Pleanála has concluded that:

- (a) The construction of the dwelling, being the structure referred to in this case, involved the carrying out of works, and is therefore development, as defined;

- (b) The development that has been carried out differs from that for which planning permission was granted under register reference number 2690/16 (An Bord Pleanála reference Number 29S.246883), notwithstanding the fact that the dimensions shown on the drawings as submitted with that application for permission were denoted to be approximate, and the Board is satisfied that these differences from that approved have material impacts on the residential amenities of adjacent properties, and the deviations from the permitted development are, when taken cumulatively, significant and material, and are not immaterial or *de minimis*, and are not, therefore, within the scope of the development that was approved under planning permission 2690/16 (An Bord Pleanála reference Number 29S.246883)
- (c) There are no exemptions, in the Planning and Development Act 2000, as amended, or in the Planning and Development Regulations, 2001, as amended, whereby such material deviations would be exempted development.

**NOW THEREFORE** An Bord Pleanála, in exercise of the powers conferred on it by Section 5 (3)(a) of the Planning and Development Act, 2000, as amended, hereby decides that the “as-constructed” structure at 16 Cullenswood, Dublin 6, incorporating an increase in height and an increase in length over that permitted under Dublin City Council register reference number 2690/16 (An Bord Pleanála reference Number 29S.246883), is development and is not exempted development.

**Note:** In reaching its decision, which differs from that under previous referral case under An Bord Pleanála Reference Number 300772-18, the Board took into account the more detailed site survey drawings submitted with this referral (which both the referrer’s agents and the agents for the owner/occupier accept as accurate). The Board also noted that its previous referral decision was based solely on the particulars submitted on behalf of one party (that of the owner/occupier), whereas full and detailed particulars were included in the submissions that have been made by

both parties in the current referral. Furthermore, the Board noted that its previous referral decision related solely to the increase in height of the “as-constructed” structure and did not deal with the increase in length over the permitted development, whereas the current case relates to the cumulative impact of both deviations from the permitted development.

*[Please issue a copy of this Direction with the Board Order to the parties.]*

**Board Member**

**Date:** 12<sup>th</sup> June 2019

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Philip Jones