



## Board Direction

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**Ref: 06F.RL3438**

The submissions on this file, the Inspector's report, and the submissions made to the Board in response to notices issued on 9<sup>th</sup> May 2016 under Section 137 of the Planning and Development Act, 2000, were considered at a further Board meeting held on 14<sup>th</sup> June 2016.

The Board decided that the ground and first floor extension works to the rear of the house at 26 Estuary Road, Malahide, County Dublin, are not exempted development.

**WHEREAS** a question has arisen as to whether the ground and first floor extension works to the rear of the house at 26 Estuary Road, Malahide, County Dublin, are or are not exempted development:

**AND WHEREAS** the Estuary Road Residents Group requested a declaration on the said question from Fingal County Council, and the Council decided on 6<sup>th</sup> November 2015 not to issue a declaration on this matter:

**AND WHEREAS** the Estuary Road Residents Group referred the question for decision to An Bord Pleanála on 2<sup>nd</sup> December 2015:

**AND WHEREAS** the Board, in considering this referral, had regard particularly to –

- (a) Sections 2(1) and 3(1) of the Local Government (Planning and Development) Act, 1963, as amended,
- (b) Sections 2(1), 3(1) and 4(1)(h) of the Planning and Development Act, 2000, as amended,
- (c) Articles 9 and 10 of the Local Government (Planning and Development) Regulations, 1994, as amended, and Classes 1 and 7 of Part 1 of the Second Schedule to those Regulations,
- (d) Articles 6 and 9 of the Planning and Development Regulations, 2001, as amended, and Classes 1 and 7 of Part 1 of Schedule 2 to those Regulations,
- (e) the planning and development history of the site, including the measurements undertaken by the Inspector under An Bord Pleanála referral reference number 06F.RL2994, the drawings submitted in support of planning authority register reference number F13B/0061, the photographic evidence on file, and the report of the Inspector:

**AND WHEREAS** An Bord Pleanála concluded that –

- (i) the construction of the original extension to the rear of the house comprised works, which constituted development,
- (ii) the extension as originally constructed, which is stated by the owner/occupier and by the planning authority to have been constructed in 1999/2000, does not come within the scope of the conditions and limitations set out under Class 1 of Part 1 of the Second Schedule to the Local Government (Planning and Development) Regulations, 1994, as it exceeds 23 m<sup>2</sup> in floor area; neither did the rear porch come within the scope of Class 7 of Part 2 of the Second Schedule to those Regulations, as it exceeds 2 m<sup>2</sup> in area,
- (iii) subsequently, in or around 2011, this extension was amended by the extension of the rear porch and the alteration of the roof over the extended porch and the existing ground floor extension (which resulted from the previous construction of an additional first floor extension and its subsequent part removal); this involved construction, which comprises works, and therefore constitutes development,
- (iv) these subsequent works are not of a nature or character that come within the scope of Section 4(1)(h) of the Planning and Development Act, 2000; neither can these works avail of any exemptions set out under the Planning and Development Regulations, 2001, as amended, arising from the restriction on exemptions set out under Article 9(1)(a)(viii) of those Regulations, in the circumstances of the case:

**NOW THEREFORE** An Bord Pleanála, in exercise of the powers conferred on it by Section 5(3)(b) of the 2000 Act, hereby decides that the ground and first floor extension works to the rear of the house at 26 Estuary Road, Malahide, County Dublin, are not exempted development.

*Note:*

The Board notes that although its rationale differs from that set out under 06F.RL2994, arising from consideration of the dates of construction of the extensions and the legislation pertaining at those times, the conclusion has a similar effect.

Board Member: \_\_\_\_\_ Date: 28<sup>th</sup> June 2016  
Fionna O' Regan