



An
Bord
Pleanála

**Board Direction
29S.RL3511**

The submissions on this file and the Planning Inspector's report were considered at a Board meeting held on March 16th 2017.

The Board decided, as set out in the following Order, and generally in accordance with the recommendation of the Planning Inspector, that the installation of a glazed door and window in an opening in an existing party wall at the rear of a commercial premises at 98A Rathgar Road, Rathgar, Dublin 6, is development and is not exempted development.

Board Order to be worded as follows:-

WHEREAS a question has arisen as to whether the replacement of an opaque fixed inaccessible party wall between separate, private properties with a fully glazed openable and accessible window and door set to the rear of a retail showroom at ground floor level of a 1980's extension to a two storey 19th century Victorian semi-detached residence at 98A Rathgar Road, Rathgar, Dublin 6, is or is not development and is or is not exempted development.

AND WHEREAS Brian Fallon and Tara Kelly care of George Boyle Designs of Fumbally Exchange, 5 Dame Lane, Dublin 2, requested a declaration on this question from Dublin City Council, and the Council issued a declaration on the 10th day of October 2016 stating that the matter is development and is exempted development.

AND WHEREAS Brian Fallon and Tara Kelly referred this declaration for review to An Bord Pleanála on the 3rd day of November 2017.

AND WHEREAS An Bord Pleanála, in the light of the documentation submitted with the referral, decided to reformulate the question as follows:-

Whether the installation of a glazed door and window in an opening in an existing party wall at the rear of a commercial premises at 98A Rathgar Road, Rathgar, Dublin 6, 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), 3(1) and 4(1)(h) of the Planning and Development Act 2000, as amended
- (b) The planning history of the subject site, including the historic use of the site and the lack of evidence of any planning permission for the extension of the original commercial premises into the former rear yard of that premises, the party wall and opening in which wall is the subject matter of this referral,
- (c) The pattern of development in the area, including the residential character of the communal open space to the rear of the subject site, and
- (d) The report of the Planning Inspector.

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The installation of a glazed door and window in an opening in an existing party wall comprises the carrying out of works of construction and therefore constitutes development under section 3(1) of the Planning and Development Act 2000, as amended;

- (b) The installation of this glazed door and window in an opening in an existing party wall, facing onto a private communal open space serving a number of residential properties, materially affects the external appearance of the structure so as to render the appearance inconsistent with the character of the structure and the character of the neighbouring structures, and therefore, the works do not come within the scope of the exempted development provisions of Section 4(1)(h) of the Planning and Development Act 2000, as amended;
- (c) There are no exemptions provided for in the Planning and Development Act, 2000, as amended, and in the Planning and Development Regulations 2001, as amended, by which such works 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 installation of a glazed door and window in an opening in an existing party wall at the rear of a commercial premises at 98A Rathgar Road, Rathgar, Dublin 6, is development and is not exempted development.

Board Member:

Date: 16th March 2017

Philip Jones