



An
Bord
Pleanála

Inspector's Report ABP-300101-17

Question

Whether the installation of 100mm-150mm external insulation and render and alterations to external finishes is or is not development or is or is not exempted development.

Location

Lough Na Glack Estate, Drummond Otra, Carrickmacross, Co. Monaghan.

Declaration

Planning Authority

Monaghan County Council

Planning Authority Reg. Ref.

EX 17/29

Applicant for Declaration

Lough Na Glack Management Company Ltd.

Planning Authority Decision

Issued Declaration

Referral

Referred by

Lough Na Glack Management Company Ltd.

Owner/ Occupier

Brendan O'Donoghue.

Observer(s)

None.

Date of Site Inspection

25th January 2018

Inspector

Patricia Calleary

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1.0 Site Location and Description

- 1.1. The referral site comprises a residential development known as Lough Na Glack Estate located in Drummond Otra, Carrickmacross, Co. Monaghan, situated south of the urban area of Carrickmacross town. The development comprises approximately 100 houses, laid out predominately in rows of two and three storey terraced houses and there are also two apartment buildings at the entrance to the site. In total, there are approximately 20 rows of houses, each which comprise between five and seven houses per row. Access to the site is off the R179 regional road positioned to the north of the site connecting onwards with the N2 national road, c.500m to the east.
- 1.2. Lough Naglack, a shallow lake, which covers c.12 hectares, lies to the south of the referral site and there is a cemetery to the east and a boxing club and running track to the west.
- 1.3. It appears from a review of relevant planning history and from evidence gathered during my site inspection, that certain houses in the development had been unfinished/vacant for a period and on the day of my site visit, a large number of the houses were undergoing remedial and improvement works.

2.0 The Question

- 2.1. The question that has arisen in the referral is as follows:
 - ‘Whether the modifications to the exterior of the buildings/dwellings consisting of provision of external insulation and associated render works can be regarded as exempt development under section 4(1)(h) of the Planning and Development Act 2000 (hereafter referred to as The Act).
- 2.2. For reasons of clarity, I recommend that the question is reworded as follows:
 - ‘Whether the modifications to the exterior of the dwellings consisting of provision of external insulation and associated render on the façade of 39 houses at Lough Na Glack Estate, Drummond Otra, Carrickmacross, Co. Monaghan, are or are not development and are or are not exempted development’.

3.0 Planning Authority Declaration

3.1. Declaration (EX 17/29)

3.1.1. Monaghan County Council received a request for a declaration on 11th September 2017 from Lough Na Glack Management Company regarding the question that has arisen. The points made are broadly similar to those put forward in the referral to the Board as detailed under Section 6 below and also include the following:

- The works would result in a loss of the architectural detail around the doors and windows of the houses and the loss of these elements would be contrary to planning conditions attached to the permission under Reg. ref 04/1089.
- Works result in an increase in density because of an enlarged footprint without a corresponding increase in open space.
- Works must be deemed a material alteration (under Building Control Legislation) and therefore require a formal planning permission which has not been followed.
- Works raise fire safety / performance issues.

3.1.2. Letters from three residents of the Lough na Glack residential development were attached to the Declaration.

3.1.3. On the 8th November 2017, The Planning Authority issued a Declaration which set out that based on the information submitted, the proposed development is exempted development under the provisions of section 4(1)(h) of the Act.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planning Officer considers the works constitute exempted development under section 4(1)(h) of the Act. The report sets out the following:

- An Bord Pleanála previously determined that these types of works would not materially affect the external appearance of the structure, so as to render the appearance inconsistent with the character of the structure or of the neighbouring structures (Refers to Boards file ref: PL29S.RL3044);
- Site inspection has revealed that the external appearance of the works as complete consists of a render finish;

- Consider the works which are complete and ongoing are consistent with the character / external finishes of dwellings within Lough Na Glack estate;
- Considers Section 4(1)(h) of the Act applies and works are therefore exempted development and recommends an order accordingly.

3.2.2. Other Technical Reports

- None

4.0 Planning and Referral History

4.1. Planning

4.1.1. Reference is made in the referral to planning permission ref: 04/1089. Under this planning reference, permission was granted to Pat and Noel Martin for the original residential development on 28th April 2005.

4.1.2. A search of the Planning Authority's planning register has revealed more recent applications which were also granted by the Planning Authority in respect of amendments to the parent permission. These include Planning register reference numbers 15/475 and 17/564, under which permission was granted respectively in 2015 and 2017 for various alterations and remedial works to certain houses. On the public notice for both recent applications, Mr. Brendan O'Donoghue is stated as being the statutory receiver of certain assets on the site.

4.2. Referrals

4.3. There is no evidence of any previous referral(s) to An Bord Pleanála on the specific site. Referral file Refs. RL.3545, RL3036 and RL3044, which relate to decisions on similar questions to that raised in the current referral, are recorded on the Board's database on referrals and these are attached to the file. A summary of each is provided as set out below and discussed in my assessment under Section 8 below.

- **PL29S.RL3044** (92 Greenlea Road, Terranure, Dublin 6W): This referral relates to the question as to 'Whether the application of external insulation and render, demolition of chimney and reinstatement of garage doors is or is not development or is or is not exempted development'. On 24th May 2013, the Board decided that the works were development and were exempted development.

- **PL06D. RL3036** (4 Landscape Road, Churchtown, Dublin 14). – This referral relates to the question as to whether modifications to the existing front elevation of a house are or are not exempted development. On 21st March 2013, the Board decided that the works were development and were not exempted development.
- **PL05E. RL3545** (Aileach Road, Buncrana, Co. Donegal) – This referral relates to the question as to whether works comprising external insulation and render finish to an existing dwelling the above address is or is not development or is or is not exempted development. On the 15th December 2017, the Board decided that the works were development and were not exempted development.

4.4. **Declarations**

- The referrer also references a request for a Declaration on a similar question which was submitted to Dublin City Council under **Reg Ref: 0241/10** which related to a property at 93 Walsh road, Drumcondra, Dublin 9. No Declaration issued on the question raised in that Declaration and the question was not referred to the Board.
- The receiver also references the current Declaration (Reg Ref: EX17/37) issued by Monaghan County Council to the referrer and a previous declaration issued by the Planning Authority to the receiver under Reg ref: EX/17/29.

5.0 **Policy Context**

5.1. **Development Plan**

- 5.1.1. Monaghan County Development Plan 2013-2019 is the statutory plan for the area. The site is within an area with a zoning Objective B – ‘Existing Residential Lands’ with a stated objective ‘To protect and improve existing residential amenity’.
- 5.1.2. The houses are not protected structures and are not listed under the National Inventory of Architectural Heritage (NIAH). The site is not located in any Architectural Conservation Area (ACA).

5.2. Natural Heritage Designations

5.2.1. There are no Natura 2000 sites within a 15km radius of the referral site. Lough naglack (Site code 000561) bordering the site to the south is a proposed natural heritage area (pNHA). There are other sites with pNHA status proximate to the site, including Spring and Corcrin Loughs (Site Code 001671), Monalty Lough (Site Code 001608) and Lough Fea demesne (Site Code 000560).

6.0 The Referral

6.1. Introduction

6.1.1. The Declaration which issued from the Planning Authority was referred for review by the Board by Lough Na Glack Management Company Ltd. with an address at Unit 9, Steadfast Industrial Estate, Carrickmacross, Co. Monaghan.

6.2. Referrer's Case

6.2.1. Lough Na Glack Management Company Ltd. state their disagreement with the view of the Planning Authority that the works would constitute exempted development. Their written report is accompanied by letters from three residents expressing their concerns regarding the works. The following points are put forward:

- Works to 39 units in an existing residential estate constitute 'works' as defined in Part 1, Section 2 of the Act and, therefore, constitutes development as defined in section 3(1).
- Works are not isolated to one or two properties and are carried out in a random, adhoc manner.
- The application of rendered insulation to a thickness of between 100 and 150mm has a significant implication on the appearance of the elevations by changing the profile of the depth of openings and by altering the relationship of the external wall to the eaves, gutters and other features (photographs included are referenced).
- The works have resulted in a building line which is proud of the adjacent structures.

- Other differences include the loss of the moulded detail around the doors and decorative plaster around the windows, change to the profile of depth of openings and altering the relationship of the external wall to the eaves, gutters and other finishes and colours. These have resulted in the loss of the original character of the houses.
- There are significant differences in the appearance of the structures which are inconsistent, random and unnatural. This renders the appearance inconsistent, random and unnatural and is inconsistent with the character of the neighbouring structures.
- Residents are concerned about the impacts that have resulted including depreciation in value by 20%.
- Refers to a Declaration which issued by Dublin City Council under Ref. reference no. 0241/10 and which related to external insulation, in support of their case. States that this related to a single property and that the current works, by virtue of the scale alone, should be deemed as constituting development.

6.3. Planning Authority Response

- 6.3.1. The Planning Authority did not furnish any response to the referral, however, a copy of their Declaration and the Planning Officer's report were furnished and are on the Board's file.

6.4. Owner/ occupier's response

- 6.4.1. Brendan O'Donoghue who is stated by the referrer as the developer who carried out the works, was afforded an opportunity to make a submission or an observation on the referral in accordance with Section 129 of the Act. The following is a summary of the response which was received from Brady Shipman on his behalf.

- Brendan O Donoghue was appointed as the statutory receiver by the National Asset Management Agency (NAMA) to the stock of 82 of a total of 125 unsold houses of the development in April 2015. External insulation is being applied to 72 houses in total as part of an overall site remediation plan.

- Lough Na Glack management company have no remit with regard to the development or the common areas. The directors of the management company include Mr. Henry Stagg, Patrick Martin and Noel Martin.
- Works currently in progress are part of a remediation / completion programme and the external insulation of 110mm was applied to address damp and thermal issues in the properties.
- Issue regarding a requirement for an increase in open space is erroneous.
- A similar question submitted by the receiver under Section 5 was considered to be exempted development by the Planning Authority.
- Works do not materially affect the external appearance of the structures so as to render the appearance inconsistent with the character of the structures or of neighbouring structures any more than if a fresh coat of paint had been applied to the units (houses).

6.4.2. The response was accompanied by a compliance report and a copy of the Declaration application submitted to Monaghan County Council including a site location map with the properties which would be externally insulated highlighted. The Declaration received from the Council is also attached.

7.0 Statutory Provisions

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

7.1.1. Section 2(1)

- “structure” means any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined, and—
 - (a) where the context so admits, includes the land on, in or under which the structure is situate...
- “use”, in relation to land, does not include the use of the land by the carrying out of any works thereon;
- “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)

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

7.1.3. Section 4(1)

- ‘The following shall be exempted developments for the purposes of this Act—
(h) development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do 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’;

7.1.4. Section 4(2)(a)

- ‘The Minister may by regulations provide for any class of development to be exempted development for the purposes of this Act where he or she is of the opinion that: - By reason of the size, nature or limited effect on its surroundings, of development belonging to that class, the carrying out of such development would not offend against principles of proper planning and sustainable development.

7.1.5. Section 4(2)(b)

- ‘Regulations under paragraph (a) may be subject to conditions and be of general application or apply to such area or place as may be specified in the regulations’.

7.1.6. Section 4(4A)

- 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 2001-2018**

7.2.1. Article 6(1)

- Within the Planning and Development Regulations 2001-2018 (hereafter referred to as the Regulations), subject to Article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in Column 2 of the said Part 1 opposite the mention of that class in the said Column 1.

7.2.2. Article 9(1)

- Article 9(1) of the Regulations provides that exempted development under Article 6 of Regulations shall not be exempted development in certain specified circumstances.

8.0 **Assessment**

8.1. **Is or is not development**

8.1.1. This referral has been submitted under Section 5 of the Act, and has arisen from a request to the Board from Lough Na Glack Management Company Ltd. to review the Planning Authority's Declaration that modifications to the exterior of the dwellings consisting of provision of external insulation and associated render on the façade of 39 houses at Lough Na Glack Estate, Drummond Otra, Carrickmacross, Co. Monaghan are works which are development and are exempted development having regard to the provisions of Section 4(1)(h) of the Planning Act.

8.1.2. Having regard to the legislative provisions, the specific elements referred to in the referral question consist of '**works**' as defined in Section 2(1) of the Act and which in turn is '**development**' within the meaning of Section 3(1) of the Act.

8.2. Is or is not exempted development

- 8.2.1. Development can be exempted from the requirement for planning permission by either Section 4 of the Acts, or Article 6 of the Regulations.
- 8.2.2. Section 4(1)(h) of the Act provides that development consisting of the carrying out of works for the **maintenance, improvement or other alteration** of any structure, being works which affect only the interior of the structure or which do 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;**
- 8.2.3. The works which broadly include external insulation, addition of a coloured render finish and associated works described above, which are evidently works for the improvement of the houses (structures), being carried out as part of a remedial programme of works on certain houses. The specific purpose of the external insulation is stated as being to address thermal and damp issues which have arisen in the properties.
- 8.2.4. In addition to the modifications comprising adding a layer of external insulation and a coloured render finish, there are other associated modifications referenced in the referral and evident on site. The decorative mould feature around the door and above the window heads on the front elevation have not been reinstated to the finished render in houses where the works are complete and the referrer notes this change, which the referrer considers is a significant deviation and loss to the original design and character of the houses. It is also contended that the addition of the layer of external insulation causes a noticeable step in the façade and the difference in depth of the window reveals is also noted. It is put forward that collectively these changes render the new **appearance inconsistent with the character of the structure or of neighbouring structures** and therefore the works do not benefit from exempted development status.
- 8.2.5. On the day of my inspection, I noted that improvement works to the properties were under progress with some individual houses appeared to be complete. It appeared that these works were being carried out on vacant unoccupied houses. Insofar as some houses have the insulation and render completed, these houses look broadly similar to those houses which have not had the works carried out with no substantive changes to the overall house design.

- 8.2.6. In relation to the issue raised about the stepped appearance and the result that the finished render would stand proud of the adjoining (un-insulated) houses, this must be considered in its context. In the first instance, stepped elevations, where these occurred, were at the junction with an adjoining house. Steps in house elevations are not an uncommon feature in rows of houses and at such a scale where the works were carried out or in progress on multiple houses, the stepped façade was not a noticeable feature. It is of relevance to also note that the houses in the row were laid out in a stepped vertical arrangement to account for the sloped terrain. I also noted the presence of rainwater downpipes at the dividing line between houses, which is a normal and necessary feature where houses have varying roof levels. The original rainwater downpipes were evidently removed to facilitate the insulation works and those that are not yet refitted would be required to be fitted at the same locations. The inherent vertical stepped feature and the position of the downpipes along the line of the stepped façade would assist in minimising the perceived transition of façade depths between properties where the insulation has been added to one or more houses and not another. In a large number of properties completed and in progress, no step occurs along the façade where in such rows, all of the properties are externally insulated. The proposed stepped façade is a minor change and is not so significant that it would not render the houses (which have been externally insulated) out of character with neighbouring structures.
- 8.2.7. In relation to the loss of the plaster mould feature to the doors and windows, and the increased depths as a result of the 110mm external insulation and the applied render, which it was stated by the referrer as affecting the character of the houses, these alterations are very minor and would not result in any loss of architectural merit to the overall appearance of the front façades in my opinion. In relation to the concern that the loss of the decorative mould would be contrary to planning conditions attached to the permission under Reg ref: 04/1089, there is no specific reference to these features on the schedule of conditions. I have attached a copy of the schedule to the file for ease of reference for the Board.
- 8.2.8. I note the reference made to the Building Control legislation and also to fire safety issues and I am satisfied that these are matters for consideration under the Building Control Act 1990-2014, together with Regulations made thereunder and are not

material considerations for adjudication in this referral under the Planning and Development Act 2000, as amended.

- 8.2.9. In considering the point made that the collective increase in overall building footprint is of such a scale that it would result in a requirement for additional public open space, I am satisfied that the nature of the works is so minor in the context of the size and scale of the development floor area that this argument cannot be sustained.
- 8.2.10. What requires consideration in addressing the question referred, is whether or not the changes would materially affect the external appearance of the structures so as to render the appearance inconsistent with the character of the structures or of neighbouring structures. I am satisfied that the changes are so minor that they would not conceivably render the appearance of the houses which have or will be insulated, inconsistent with the character of the structures or of neighbouring structures. This is particularly so when taken in context of the layout and arrangement of the houses within a housing development and the collective number of houses which have had or will have these improvement/insulation and associated works carried out. Furthermore, the proposed works would not injure the amenity of property in the vicinity. Accordingly, I conclude that the proposed works to be development which are exempt development under Section 4(1)(h) of the Act.
- 8.2.11. While I have concluded that the works are exempt under the Act, for completeness I have also considered Article 6 of the Regulations. I am satisfied that no exempted development provisions for the works are afforded under Article 6 of the Regulations. By association, Article 9 of the Regulations which deals with restrictions on exempted development requires no further consideration in this case.

8.3. Previous / precedent cases

- 8.3.1. In my assessment of the question which arises, I also consider the previous referrals referenced above and the Declarations referenced by the referrer, set out as follows:
- **PL29S.RL3044** (92 Greenlea Road, Terranure, Dublin 6W): This referral relates to the question as to 'Whether the application of external insulation and render, demolition of chimney and reinstatement of garage doors is or is not development or is or is not exempted development'. On 24th May 2013, the Board decided that the works were development and exempted development.

The property in this case relates to one house in a pair of semi-detached houses on a mature row of semi-detached houses and while not altogether comparable in relation to the subject referral, raises broadly similar issues.

- **PL06D. RL3036**) 4 Landscape Road, Churchtown, Dublin 14). – This referral relates to the question as to whether modifications to the existing front elevation of a house are or are not exempted development. On 21st March 2013, the Board decided that the works were development and were not exempted development. The works which were proposed in the referral are not comparable to the current referral in that the modifications while including external insulation, also included other ‘works’ including the erection of a shutter and its housing element.
- **PL05E. RL3545** (Aileach Road, Buncrana, Co. Donegal) – This referral relates to the question as to whether works comprising external insulation and render finish to an existing dwelling the above address is or is not development or is or is not exempted development. On the 15th December 2017, the Board decided that the works comprising is development and is not exempted development. In doing so, the Board considered that the works would materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure. This referral cannot be considered a precedent in that it related to a structure that is included on the National Inventory of Architectural Heritage, being ‘of being of regional importance’.
- The referrer also references a Declaration submitted to **Dublin City Council** under **Reg Ref: 0241/10** which related to a property at 93 Walsh road, Drumcondra, Dublin 9, stating that it provides a precedent case. Having reviewed the documents on the Council’s file in that declaration case, I note that that no declaration issued from Dublin City Council and the Board had no role in this Declaration.

While none of the cases referred are comparable to the current referral, which relates to a number of houses in a housing estate, the referral closest in nature to the current referral is **PL29S.RL3044** (92 Greenlea Road, Terranure, Dublin 6W), in

which the Board decided that the works were development and exempted development.

8.4. **Environmental Impact Assessment and Appropriate Assessment**

- 8.4.1. Section 4(4) of the Act sets out that development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required. The development type is not a class of development for which Environmental Impact Assessment is required under Part 1 or 2 of Schedule 5 of the Regulations and neither does not come within the terms of a sub-threshold development for the purposes of EIA as set out under Article 92 of the Regulations.
- 8.4.2. Having regard to the nature and scale of the works, I am satisfied that no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

9.0 **Recommendation**

- 9.2. 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 modifications to the exterior of the dwellings consisting of provision of external insulation and associated render on the façade of 39 houses at Lough Na Glack Estate, Drummond Otra, Carrickmacross, Co. Monaghan, are or are not development and are or are not exempted development,

AND WHEREAS Lough Na Glack Management Company Ltd. of Unit 9, Steadfast Industrial Estate, Carrickmacross, Co. Monaghan requested a declaration on this question from Monaghan County Council and the Council issued a declaration on the 18th day of October 2017 stating that the works are development and exempted development,

AND WHEREAS Lough Na Glack Management Company Ltd. referred this declaration for review to An Bord Pleanála on the 31st day of October, 2017,

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,
- (c) Section 4(1)(h) of the Planning and Development Act, 2000, as amended,
- (d) Section 4(4) of the Planning and Development Act, 2000, as amended,
- (e) article 6(1) and article 9(1) of the Planning and Development Regulations, 2001-2018,
- (f) the planning history of the site,
- (g) the pattern of development in the area,
- (h) The submissions on file and the report of the inspector,

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The modifications to the exterior of the dwellings consisting of provision of external insulation and associated render on the façade of 39 houses at Lough Na Glack Estate, Drummond Otra, Carrickmacross, Co. Monaghan constitute ‘works’ which in turn constitutes ‘development’ as defined in section 2 of the Act, as amended and
- (b) The works are exempted development because they would not materially affect the external appearance of the structures (houses) so as to render the appearance inconsistent with the character of the

structures and neighbouring properties as defined under section 4(1)(h) of the Planning and Development Act, 2000, 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 modifications to the exterior of the dwellings consisting of provision of external insulation and associated render on the façade of 39 houses at Lough Na Glack Estate, Drummond Otra, Carrickmacross, Co. Monaghan are development and are exempted development.

Patricia Calleary
Senior Planning Inspector

13th February 2018