



An
Bord
Pleanála

Inspector's Report ABP-300772-18

Question

Whether the minor increase in parapet height of two-storey dwelling, as constructed, over that permitted under Dublin City Council Ref.No. 2690/16, An Bord Pleanála Ref.No. 29S.246883, is or is not development or is or is not exempted development

Location

16, Cullenswood Park, Ranelagh, D6

Declaration

Planning Authority

Dublin City Council

Planning Authority Reg. Ref.

0446/17

Applicant for Declaration

John McCarthy

Planning Authority Decision

Is not Exempted Development

Referral

Referred by

John McCarthy

Owner/ Occupier

John McCarthy

Observer(s)

None

Date of Site Inspection

21/06/2018

Inspector

Gillian Kane

1.0 Site Location and Description

- 1.1.1. The subject site refers to a two-storey detached dwelling, recently constructed on an in-fill site on the eastern side of Cullenswood Park. A larger development has recently been constructed to the west and south of the subject site (Ref. PL29S.244985 refers).

2.0 The Question

- 2.1. Whether the minor increase in parapet height of a two storey dwelling, as constructed over that permitted under Planning Authority Reg. Ref. 2960/16 is or is not development and is or is not exempted development.
- 2.2. For the sake of clarity, I recommend this question be re-worded as follows:
“Whether the minor increase in parapet height of a two storey dwelling, as constructed over that permitted under An Bord Pleanála Reg. Ref. PL29S.246883 is or is not development and is or is not exempted development.”

3.0 Planning Authority Declaration

3.1. Declaration

- 3.1.1. On the 13th December 2017 Dublin City Council issued a declaration stating that “the proposed development IS NOT EXEMPT from the requirement to obtain planning permission under section 32 of the Planning and Development Act 2000-2013”.
- 3.1.2. The reason and considerations state: “The increase in parapet height is considered not to be exempted development when assessed in accordance with Condition 1 of planning permission 2690/16 ABP”

3.2. Planning Authority Reports

- 3.2.1. **Planning Report:** the change in height is stated as 0.298mm above the approved level. This is not in accordance with condition no. 1 and is not exempted development.

4.0 Planning History

- 4.1.1. **PL29S.246883:** Planning permission was granted for the demolition of a single storey garage and the construction of a two storey one-bedroomed detached

dwelling at 16 Cullenswood Park, Ranelagh, Dublin, subject to 9 no. conditions.
Condition no. 1 of the Boards order stated:

- 1 The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

5.0 The Referral

5.1. Referrer's Case

- 5.1.1. An agent for the owner / developer of the subject dwelling has submitted a request for a review of the City Council's decision of the 13th of December 2017. The request is accompanied by the following:
 - Daylight Availability to adjoining Properties Report
 - Sunlight Availability to adjoining Properties report
 - Letters of confirmation from owners of nearest dwellings
- 5.1.2. Background to Referral: Permission was granted by An Bord Pleanála under PL29S.246883 to construct a two-storey one-bedroomed dwelling. In the course of construction the parapet height was constructed higher than the permitted height. In response to a Warning Letter, the owner indicated that the parapet height increase is 0.298m and submitted that it was not a material increase. A DCC Enforcement Notice considered the height increase to be 600m and to be in breach of condition no. 1. A section 5 referral was lodged on the grounds that the increase in height is de minimus. The Planning Authority declared that the "proposed development is not exempted development".

5.1.3. The grounds of the referral request can be summarised as follows:

- The Planning Authority declaration is invalid as no development is “proposed” and the declaration does not present “the main reasons and considerations on which it is based”.
- The Planning Officers report on the section 5 declaration accepted that the change in height is 0.298m. The Planning Officer considered this to be a breach of condition no. 1. It is submitted that there is a limited tolerance within development management and that in this instance the tolerance of a departure from the approved plans is not material.
- Precedent cases exist where the Board has considered departures from approved plans as de minimus.
- The planning officers report states that “additional concerns” would arise as a result in the alteration of the height but no further information as to the nature of the concerns is given in the report.
- Only two impacts would raise from the deviation in heights: visual and overshadowing. The visual impact is imperceptible. The daylight impact analysis and shadow analysis shows that no material impact would arise. There is no basis for the planning officer’s contention that additional concerns would arise.
- The increase in height arose due to
 - a need to raise the floor level slightly over pavement level to minimise the impact of storm water ingress,
 - an increase in the average height of the upstand to the flat roof of the building to minimise the risk of storm water drainage overflowing into the adjoining gardens
 - increased ceiling joists depths to allow for insulation. There is no increase in ceiling heights – permitted and as constructed are the same.
- It is submitted that these changes could be considered to be in compliance with condition no. 3 of the Boards decision: “Water supply and drainage arrangements, including the disposal and attenuation of surface water, shall

comply with the Planning Authority requirements for such works and surfaces”
There is no requirement that alterations to the building required under condition no. 3 shall be the subject of approval by the Planning Authority.

- The Board is requested to declare the alteration in height to be de minimus and not requiring an assessment by way of a planning application.

5.2. Planning Authority Response

5.2.1. None on file.

6.0 Statutory Provisions

6.1. Planning and Development Act, 2000

6.1.1. The following statutory provisions are relevant in this instance.

6.1.2. Section 2(1): In this Act, except where the context otherwise requires

"**works**" includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal ...;

"**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 this context so admits, includes the land on, in or under which the structure is situated”.

6.1.3. Section 3(1): in this Act, "**development**" means, except where the context otherwise requires, the carrying out of any works on, in, or under land or the making of any material change in the use of any such structures or other land.

6.1.4. Section 4(1): sets out developments that shall be exempted development for the purposes of this Act.

6.1.5. Section 5(1): If any question arises as to what, in any particular case, is or is not development or is or is not exempted development within the meaning of this Act, any person may, on payment of the prescribed fee, request in writing from the relevant planning authority a declaration on that question, and that person shall provide to the planning authority any information necessary to enable the authority to make its decision on the matter.

(4): Notwithstanding subsection (1), a planning authority may, on payment to the Board of such fee as may be prescribed, refer any question as to what, in any

particular case, is or is not development or is or is not exempted development to be decided by the Board.

6.2. Planning and Development Regulations, 2001

- 6.2.1. Article 6(1) of the Planning and Development Regulations, 2001 states that “Subject to Article 9 development of a class specified in Column 1 and Part 1 of Schedule 2 shall be exempted development for the purposes of the Act”.

Those relevant to the subject referral include:

9(1)(a)(i) if the carrying out of such development would contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act.

7.0 Assessment

7.1. Is or is not development

- 7.1.1. The Board has been requested to determine if the increase in height of a permitted parapet wall is or is not development and is or is not exempted development.
- 7.1.2. The first question that must be determined is whether the construction of the parapet wall at a height greater than that permitted is or is not development. I note that the Planning Authority’s determination did not discuss the question of development, instead arriving at the finding that the change in height contravened condition no.1 of the permission and therefore was not exempted development. The referrer, in their section 5 application to the Planning Authority state that “no development has taken place by virtue of the increase in height of the building”.
- 7.1.3. In Section 2 of the Planning and Development Act 2000, as amended, the definition of "works" includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal. It is considered that the increase in height of the permitted parapet wall is “works” as it is clearly an act of construction, extension and indeed alteration of a permitted wall.
- 7.1.4. As per section 3(1) of the Act, "development" is the carrying out of any works on, in, or under land or the making of any material change in the use of any such structures or other land. I am satisfied that the increase in height is works, and that such works

were carried out on land and therefore constitute “development” as per section 3(1) of the Planning and Development Act 2000, as amended.

7.2. Is or is not exempted development

- 7.2.1. As noted above planning permission was granted by the Board for the construction of a dwelling on the subject height (PL29S.246883). Drawing no. 3040/25J of that application shows a proposed front elevation with a height noted on the south side of “5850 approx.”. The Board will note that this measurement is not an overall height, as it extends to the underside of a cap on the parapet wall. My scaled measurement of the overall height (including the parapet cap) is approx. 6m. As a clarification or perhaps a caveat, the drawing states that “Dimensions and layout approximate only, to be verified on site, proposed structural alterations to prior approval of structural engineer”. In attaching condition no. 1 to the permission, the Board required that the dwelling be completed “in accordance with the plans and particulars lodged with the application”, of which drawing no. 3040/25J is one.
- 7.2.2. It is the case of the referrer that the dwelling has been constructed with overall height of 6.495m – a difference of 0.298m from that permitted. The referrer states that when a 5% flexibility and a 100mm parapet cap are taken into account, the difference between the approved (5.850m) height and the constructed (6.495m) height is 290mm. Drawing no. CUL-CA-00-ZZ-DR-A-0511-RevB submitted with the referral request, shows an overall height of 6.495m but at a scale of 1:100 measures as 6.2m.
- 7.2.3. The Board will note there appear to be a number of different heights, none of which exactly match the drawing approved by the Board (3040/25J), which in itself is not definitive – the qualification regarding the stated dimensions, the use of “approx.” in the labelling and that the drawings do not scale exactly as presented. Given the nature of the query before the Board, these discrepancies could not be definitively determined by my site visit. They do however, point to the need for flexibility between what is proposed and what ultimately will be constructed. The case made by the referrer that during construction accommodations need to be made to address a sloping pavement, additional storm water provisions etc, is both understandable and credible. Permission granted the Board is based on the principle of acceptance and is not a definitive or an exact science by which a developer must be bound to a millimetre.

- 7.2.4. In deciding to grant permission for a dwelling with an under-parapet height of “approx. 5.850m” the Board was aware that there was a degree of flexibility, given the qualification regarding the stated dimensions, the use of the word “approximately” when describing the height and the fact that the stated height did not extend to the overall height. The Board was satisfied that the dwelling as proposed was acceptable.
- 7.2.5. I note that under PL24.RL.2606, the Board was asked to consider if an increase in ridge height of 304mm was in accordance with the approved plans and particulars of a permission for a new dwelling. The Board considered that “the increase in the ridge height of a new dwelling house” was “de minimis and would accordingly be in accordance with” that permission. The conclusion of the Board was that the “works undertaken to the ridge height is exempted development”.
- 7.2.6. A similar conclusion was reached by the Board under PL06D.RL2671 that “ the overall increase in height of the replacement dwelling by some 0.5 metres compared to that which was permitted at Mount Alverno (7.25 metres - ground floor level to parapet) is development and is considered exempted development, having regard to the limited increase in height of the development as constructed, which is considered de minimus,”
- 7.2.7. One cannot definitively state the exact deviation from the permitted height, nor is it germane to the question before the Board. The dwelling as permitted appears as per the drawings approved by the Board. Any increase in height would not be visible to a passer-by, nor does it detract from the overall appearance of the constructed dwelling. I note the referrers submission that the dwelling as permitted does not adversely impact the adjoining properties in terms of overshadowing or sunlight and I concur with these findings. I am satisfied that the minor increase in height is not material and is in accordance with the decision of the Board under PL29S.246883, including condition no. 1.

8.0 Recommendation

- 8.1. 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 minor increase in

parapet height of a two storey dwelling, as constructed over that permitted under An Bord Pleanála Reg. Ref. PL29S.246883 is or is not development and is or is not exempted development is or is not development or is or is not exempted development:

AND WHEREAS John McCarthy requested a declaration on this question from Dublin City Council and the Council issued a declaration on the 13th day of December, 201 stating that the matter was not exempted development:

AND WHEREAS referred this declaration for review to An Bord Pleanála on the 18th day of January, 2018:

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) article 6(1) and article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (d) the planning history of the site,

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The minor increase in parapet height of a two storey dwelling, as constructed over that permitted under An Bord Pleanála Reg. Ref. PL29S.246883 is development and is exempted development

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 minor increase in parapet height of a two storey dwelling, as constructed over that permitted under An Bord Pleanála Reg. Ref. PL29S.246883 is development and is exempted development

Gillian Kane
Planning Inspector

25 June 2018