



An
Bord
Pleanála

Inspector's Report ABP-301363-18.

Question

Whether the single storey extension to the rear of an existing dwellinghouse is or is not development and is or is not exempted development.

Location

80 Woodview, Pinecroft, Grange, Co. Cork.

Declaration

Planning Authority

Cork County Council.

Planning Authority Reg. Ref.

D/228/18.

Applicant for declaration

Noel Quinlan

Planning Authority Decision

Is development and is exempted development.

Referral

Referred by

Noel Quinlan.

Owner / Occupier

Stephen and Angela Murray.

Observer

None

Date of Site Inspection

30th July 2018.

Inspector

Mairead Kenny.

1.1. SITE LOCATION AND DEVELOPMENT

The case relates to a semi-detached house which has been extended to the rear. The form of the extension comprises a glazed corridor which connects the original two-storey house with a structure to the rear. The structure to the rear is of block walls and a pitched slated roof. The dwellinghouse has not previously been extended, apart from the structure subject of this referral.

At the time of inspection I measured the glazed link and the structure to the rear which combined have a floor area of approximately 38.5 square metres. I noted that the height of the extension is below the eaves of the house.

Regarding the nature of the side wall of the glass link facing the adjacent house, this is made up of 4 no. panels in all. The panel nearest the rear wall is of obscured glazing. The next two are of clear glass. The panel closest to the structure which forms the main part of the extension is fitted with a door opening. There is also a door onto the rear garden at the opposite side of the glass link. Furthermore there is a direct connection between the main part of the extension and the original house.

Regarding the separation distance between the glass link and the site boundary I report as follows. The panel which is closest to the rear wall of the house facing onto the shared boundary is fixed and is of obscure glazing. I took a measurement of the distance between the closest glass panel (the obscured glass panel) to the site boundary (marked by a black post) and that measurement is in the order of 0.78m. I took a further measurement of the next panel (of clear glass) and the closest part of that panel to the shared boundary is over 1m, as are the other fixed clear panel and the door.

The main module of the extension is a single storey building which is divided internally into two rooms and a bathroom. There are 2 no. velux windows which light one of the main rooms and an attic area. The attic / loft area is presently accessed by a ladder – there is no stairs. There is also a small window in the wall of the building which faces towards the main house and which is over 1m from the shared boundary.

Photographs of the site and surrounding area which were taken by me during the course of my inspection of the site are attached to the rear of this report.

2.0 The Question

2.1. Whether the proposed single storey extension to the rear of an existing dwelling at 80 Woodville, Pinecroft, Grange, Co. Cork is or is not development and is or is not exempted development.

3.0 Planning Authority Declaration

3.1. Declaration

Under D/228/18 the planning authority decided on the basis of the information and plans submitted to the planning authority on 13th February 2018 that provided the works are carried out in strict accordance with such plans, the planning authority declares that the proposed single storey extension to the rear of existing dwellinghouse at 80 Woodville, Pinecroft, Grange, Co. Cork is development and is exempted development.

A note attached as part of the Declaration indicated that any material departure from the external finish as submitted may remove the development from the exempted category.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report of the Area Planner dated 9th March 2018 includes the following points:

- The structure is connected to the main house and will be for residential purposes and should therefore be assessed against the conditions and limitations of Schedule 2, Part 1, Class 1 of the PDR 2001 as amended.
- The house does not appear to have been previously extended and the internal floor area which is stated to be 39m² is under 40m².

- The floor plans submitted indicated only a ground floor level with the rooflights acting as light shafts. During site inspection it was confirmed that there is no upper floor element. Condition 3 therefore does not apply.
- The height of the walls of the extension do not exceed the height of the rear wall of the house and therefore meet conditions 4(a) and (c).
- The open space shown on the site layout drawing is 52.4m² and is well in excess of the limitation under condition 5.
- The glass link corridor is in excess of 1m from the party boundary at the nearest point.
- In conclusion the development comes within the parameters of Class 1 and constitutes exempted development.
- There are no restrictions on exemption having regard to Article 9

3.2.2. Other Technical Reports

A letter from the Enforcement Section to the referrer dated 21st December 2017 noted the proposed construction of a link corridor and the proposed residential use of the as built structure. It was considered that the development would come within the parameters of Schedule 2, Part 1, Class 1 of the Planning and Development Regulations 2001, as amended and can be classed as exempted development. While roof lights have been indicated on the front elevation there is no indication of any planned upper floor residential element with the roof lights indicated on the floor plans providing light to the rooms at ground floor level. If there are any changes to the as-built structure from the drawings and information submitted this may be subject to enforcement action.

4.0 Planning History

An enforcement file refers. Following investigation and by way of letter dated 21st December the following was communicated to the owner / occupier and to the referrer in this case:

- Having regard to the proposed construction of the link corridor and the residential use the as built structure comes within the limits of Class 1 and can be classed as exempted development.
- The decision is based on no upper floor residential element in the as built structure to the rear of the site.
- If there are any changes from the drawings and information submitted this may be subject to enforcement action.

5.0 Policy Context

5.1. Development Plan

There are no conservation or other specific objectives related to the site.

5.2. Natural Heritage Designations

The nearest European Sites are the Great Island Channel SAC (site code 001058) and Cork Harbour SPA (site code 004030).

6.0 The Referral

6.1. Referrer's Case

The referral relates to the stand alone building linked to the main property by a glass room / link corridor and an appeal against the decision under declaration D-228-18 on the following basis:

- The glass window / corridor does not comply with restrictions as it is under 1m from the boundary. An enclosed photograph from the file of the Planning Department appears to show the distance between the glass corridor and our boundary as 1.2m which is incorrect. The boundary is marked by the black post not the fence which is built entirely on my property.
- The building is a stand-alone structure as there is no direct access between the original house and the new building. In order to enter the main house from the new building you have to exit onto a rear yard and then access through

the back door of the main house. Is it correct that the full glass room / corridor would be permissible while a proposed single window to the north of the structure was deemed to be against the regulations?

- The remaining garden area is under 25 m² and the combined floor area of the corridor and new building exceed 40 m².
- There are no drawings on the planning file.
- The development has infringed on our privacy. There is overlooking from the velux windows.
- Photographs and other documentation enclosed.

6.2. Planning Authority Response

The main points of the response of the planning authority are:

- The measurements taken on site were taken from the existing timber panel fence to the nearest window at the nearest point.
- The points made about where the party starts may be a civil matter.
- The Board may also wish to consider if the non-opening glass panes on the link corridor constitute windows as per the interpretation of Class6(a)
- At the time of inspection the Planner was advised that the window would be removed and a break through to the original house would be made.
- The remaining amount of open space measured 37m² with a strip to the rear of the new structure measuring c 10.23m² which was determined to be well in excess of the required 25m².
- The site layout and details submitted as part of the Enforcement file were used as the basis for the Section 5 declaration.

6.3. Owner/ occupier's response

The submission received includes the following comments:

- We have had no desire to upset or offend.

- The purpose of the development is to provide extra space for our daughter when she returns from Australia.
- The construction was phased to allow for a relatively lengthy process with funding from income.
- The first panel of the connecting corridor glass walls is frosted to comply with the one metre regulation.
- The door to connect the corridor to the main house has been installed since January 2018.
- We retained an engineer and relied upon him to ensure compliance with regulations. The structure was twice inspected by engineers from the Council who declared it to be compliant.
- One of the velux windows forms a light box into the study area and the other is a source of light and ventilation into the shed area. There is no upper floor.

In a further submission dated 11th July the following additional points are made:

- The panel closes to the boundary is not a window by reason of it being made from frosted glass.
- There is no boundary dispute.
- The corridor is now fully connected to the main house.

6.4. Further Responses

A further response from the referrer was received by the Board on 2nd August 2018.

This includes the following comments:

- The fact that the planning authority relies on approximate measurements is not acceptable.
- The glass panes are windows even if they don't open. A proposed window on the northern side of the extension was not permitted due to being within 1m and its replacement with glass blocks likewise not permissible.

- When approached by the Murrays we were advised that it was intended to develop a shed, office and bathroom to avoid Mr Murray's clients coming to the house, not for accommodation for their daughter.
- I am at a loss to see how two separate buildings can be linked and then considered to be an extension and classed as exempted development.
- The amount of open space remaining cannot be over half of the total area. The source of any maps used for measuring is queried.
- The possibility of a two-storey development remains due to the windows in the roof.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

Section 3(1) defines development as:-

"The carrying out of works on, in, over or under land or the making of any material change in the use of structures other land".

Section 2(1) defines 'works' as including:-

'Any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal.'

Section 4(1)(a) to (f) specifies various categories of development which shall be exempted for the purposes of the Act.

Section 4(2) provides for certain classes of development to be designated as exempted development by way of regulation.

7.2. Planning and Development Regulations, 2001 (as amended)

Article 6(1) states that certain classes of development which are specified in Schedule 2 shall be exempted development for the purposes of the Act, subject to

compliance with any associated conditions and limitations. In this regard it is noted that none of the restrictions on exemption set out under article 9 of these regulations apply to the development which is the subject of this referral.

Part 1 (Classes 1 – 8) of Schedule 2 describes classes of development situated within the curtilage of a house which are exempted development, provided that such development complies with the conditions and limitations expressed at Column 2 for each class.

Class 1 (which is the relevant class in this case) refers to:-

“The extension of a house, by the construction or erection of an extension (including a conservatory) to the rear of the house...”

The relevant conditions and limitations are:

Condition 1 (a) – Where the house has not been extended previously, the floor area of any such extension shall not exceed 40 square metres.

Condition 4(a) relates to the height of the extension, which shall not exceed the height of the rear wall of the house.

Condition 5 – The construction or erection of any such extension to the rear of the house shall not reduce the area of private open space, reserved exclusively for the use of the occupants of the house, to the rear of the house to less than 25square metres.

Condition 6(a) – Any window proposed at ground level in any such extension shall not be less than 1 metre from the boundary it faces.

7.3. **RELEVANT DECISIONS OF THE BOARD**

I have reviewed the previous decisions of the Board relating to similar questions and consider that the following cases relate to determination of issues, which are relevant in this case.

RL2466

The Board decided that the conservatory development was an extension of a type generally coming within the exempted development provisions of class 1 of Part 1 of

Schedule 2 of the PDR 2001, that the purpose of the minimum separation distance of 1m required under Condition and Limitation 6(a) related to the protection of residential amenity and that this Condition and Limitation should be strictly interpreted. Therefore, the measurement of the separation distance should be taken at its closest point to the boundary and perpendicular to that boundary (rather than perpendicular to the window). However, the panel closest to the rear wall of the house which was closed off with an internally located stud panel was not a window, but the adjoining glazed panel was a window, and it was within 1m of the boundary that it faced, as measured (either from the centreline or from the face of the wall) perpendicular to the boundary wall.

RL3173

The extension was single storey with ancillary, non-habitable attic space overhead and did not include an above ground floor extension. Its eaves and roof ridge height matched those of the main house. The Board decided that the extension was exempted development, as follows:

- the extension did not include above ground habitable floorspace
- the side walls did not exceed the height of the side walls of the house
- the extension did not include any window at ground floor level less than one metre from the facing boundary
- the extension, therefore, came within the scope of Schedule 2 Part 1 Class 1 and, specifically, Conditions and Limitations 3, 4 and 6.

RL2451

The referral related to the extension of a dwelling house with rooflights in the side pitches of the roof. The main issue was whether the roof lights were considered to be at ground floor level or above ground floor level vis-à-vis condition and limitations nos. 6(a) and 6(b) under class 1 of Part 1 of Schedule 2 of the Regulations of 2001.

The Board concluded that the single-storey extension to the rear of the existing house, including rooflights on the side pitches of the roof, came within the scope of exempted development provisions of class 1 of Part 1 of Schedule 2 of the Act of 2001 and complied with conditions and limitations, including limitation 6(a).

8.0 Assessment

8.1. Documentation

- 8.1.1. Regarding the detailed design, nature and scale of the development to which this referral relates I consider that the Board may rely on the description provided in this report and the attached photographs. There is no legal requirement to provide drawings and none have been presented.
- 8.1.2. The Board is advised also that the referrer objected to the determination by the planning authority including by reason of the use of approximate measurements. In the case where the measurement being taken is clearly within or outside of any relevant limit, I consider that approximate measurements are acceptable and I base my report and assessment on measurements which would also be described as approximate.
- 8.1.3. In the event that the Board considers it appropriate to determine this case in the context of the scaled drawings I note that a set of drawings was presented to the Enforcement Section. However, I am satisfied that the referral can be determined based on the information on file and this report.

8.2. Is or is not development

The extension which is the subject of this referral constitutes development by virtue of being 'works' as defined at section 2(1) of the Planning and Development Act, 2000.

8.3. Is or is not exempted development

To determine whether such development is exempted development, however, regard must be had to the relevant provisions of the Planning and Development Regulations, 2001; particularly to Schedule 2, Part 1, Class 1, including the conditions and limitations attached.

- 8.3.1. I consider that the development is properly described as a single storey extension. In this regard I consider that the following are relevant:

- The building to the rear contains two velux windows. Part of that building has an attic / loft level which is lit by a velux window. The Board has previously determined under RL3173 that a non-habitable attic / loft area is not an above ground extension.
- There is no habitable accommodation above ground and no intention to provide such. Any such area would be deemed to be a matter not within the question subject of this referral.
- Any such alteration would bring the extension into consideration as a two-storey extension.

Condition 1(a) – the floor area of the extension does not exceed 40 square metres. I took measurements on site and calculated that the area of the glazed corridor and the rear building is 38.5 square metres, which is in keeping with the determination of the planning authority and under the 40 square metres limit.

Condition 4(a) – the height is well below the height of the rear wall of the house as required under this condition.

There is an area of rear garden remaining which is very comfortably in excess of the minimum requirement of 25 square metres.

Condition 6(a) relates to the proximity of windows to the shared boundary. When taking measurements I took them from the original boundary marked on site by a set of black posts. In any event there is a minimal difference between that line and the more recently erected timber fence. I am satisfied that no part of either of the two windows in dispute (or any other window) is within 1m of the shared boundary. My assessment is based on the following:

- The glass panel nearest the rear wall of the original house does not comply with standard definitions of ‘window’ which refer to both opening to allow admittance of light or air and allow people to see out¹. As the panel closest to the house is obscure and does not allow people to see out I consider it appropriate to determine that it is not a window. That conclusion would be in line with the Board’s decision under RL2466. The materials in the two panels in the two cases differed (one being fitted with a stud partition to the rear of

¹ I rely here on the Tenth edition of the Concise Oxford English Dictionary definition ‘an opening in a wall or roof, fitted with glass in a frame to admit light or air and allow people to see out’.

glass, the other being of obscure glass) but it is the functionality of those structures which is relevant to whether or not they are windows – neither would be described as windows in my opinion as neither ‘allow people to see out’.

- This panel closest to the house is under 1m from the shared boundary. If the Board considers that it is a window then it would not meet condition 6(a) and any exemption would fall.
- The other three panels, which I consider would fall within the definition of windows are comfortably in excess of 1m from the shared boundary.
- The velux window is similarly comfortably in excess of 1m from the shared boundary.
- Overlooking is not a material consideration for the determination of a referral.

In conclusion I have considered all of the conditions and limitations on Class 1 and none apply. The development is exempted development.

8.4. Restrictions on exempted development under A9

8.4.1. None apply.

9.0 Recommendation

9.1. 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 proposed single storey extension to the rear of an existing dwelling at 80 Woodville, Pinecroft, Grange, Co. Cork is or is not development and is or is not exempted development:

AND WHEREAS Noel Quinlan requested a declaration on this question from Cork County Council and the Council issued a declaration on the 9th day of March, 2018 stating that the matter was development and was

exempted development:

AND WHEREAS Noel Quinlan referred this declaration for review to An Bord Pleanála on the 6th day of April, 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) Section 4(1)(a) of the Planning and Development Act, 2000, as amended,
- (d) article 6(1) and article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (e) Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended:

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The development is connected to the house and is an extension.
- (b) The extension does not include above ground habitable space and is a single storey extension.
- (c) The floor area of the extension does not exceed 40 square metres or reduce the area of garden remaining to less than 25 square metres.
- (d) The height of the extension does not exceed the height of the rear wall of the main house.
- (e) The glazed panel closest to the rear wall of the main house is less than 1m from the shared boundary but it is not a window as it does

not allow people to see through.

(f) All other windows are over 1m from the shared boundary.

(g) The extension therefore comes within the scope of Schedule 2 Part 1 Class 1 and all conditions and limitations.

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 said development is exempted development.

Mairead Kenny
Senior Planning Inspector

3rd September 2018