



An
Bord
Pleanála

Inspector's Report 301692-18

Question

Whether external insulation to the front side and back of house is or is not development and is or is not exempted development.

Location

No 134 Cabra Road, Dublin 7

Declaration

Planning Authority

Dublin City Council

Planning Authority Reg. Ref.

0105/18

Applicant for Declaration

Imelda Musgrave

Planning Authority Decision

Is development and is not exempted

Referral

Referred by

Imelda Musgrave

Owner/ Occupier

Imelda Musgrave

Observer(s)

None

Date of Site Inspection

27th September 2018

Inspector

Suzanne Kehely

1.0 Site Location and Description

- 1.1. The referral site is located in a mature and heavily trafficked residential thoroughfare (R147) into the city centre. The road in the vicinity of the site is characterised by a predominance of early 20th century houses on generously proportioned plots and built in an Edwardian architectural style with the more obvious features being the scale and proportions, use of material and styling such as the use of bay windows and decorative timbered gabled front. The original neighbouring houses are faced with orange hued redbrick in English bonding pattern with contrasting exposed rough textured granite lintels and matching cills. The side and rear elevations are rendered.
- 1.2. The subject site is one of a pair of semi-detached houses. The house has been altered externally by resurfacing the entire external wall area up to the soffit.

Elements include

- Entire covering of the original red brick and mortar with synthetic brick scaled tile cladding - (sample enclosed – approx. 3mm in thickness)
- Cladding of original gable render over window bays, loss of original timbers and painting the timber effect over.
- Cladding over the exposed granite lintels with a grey brick effect window head.
- Loss of brick profiling around doorway arch.
- Replacement of original stone cills with PVC type.
- Rendering of entire side and rear elevations.
- The additional material has stepped the elevation forward of the adjoining house by about 120mm. This is done along the black down pipe from the roof gutter to the ground. The return is also faced with brick effect tiles.
- The roof appears to remain unaltered but the soffit depth has been reduced due to the external insulation.
- The windows are brown uPVC top hung and more horizontally proportioned than original arrangements. The window opes have been retained in width and depth although the reveal depths have been increased as a result of the external insulation/cladding.

- 1.3. The house is in use as a bed and breakfast accommodation. The front garden is entirely hard surfaced and used for car parking. The rear garden is extensively hard surfaced.
- 1.4. The site inspection was confined to the external areas around the property.

2.0 The Question

- 2.1. The question posed is: -
Whether dark red external insulation 120mm in depth to the front side and back of a house is or is not development or is or is not exempted development?

3.0 Planning Authority Declaration

3.1. Declaration

- 3.2. Pursuant to an application for a section 5 declaration on development and exempted development, on 4th May 2018 Dublin City Council issued a notification of declaration that the development as described was not exempt from the requirement to obtain planning permission.

3.3. Planning Authority Reports

3.3.1. Planning Reports

- The report notes the dark red finish on the insulation and the context of the predominance of red/orange brick dwellings.
- The sample cladding was submitted.
- It is considering that there is no variation in the tone of colour and that the material is vastly different than the predominant material used on the houses along this section of Cabra road
- Article 9 is generally not thought to be applicable to the development.

- Section 4 (1) (h) is considered relevant.
- The actions required to install external insulation to the house constitute works as defined in section 2 as the works are acts of construction and alteration.
- It is concluded that the finish of the deep red colour does not match nor harmonise with the existing elevations or the dwelling or those neighbouring and will undoubtedly materially affect the external appearance of the structure such that the brick dwelling will no longer appear externally as a brick dwelling and this is inconsistent with the character of the house. It will also not be consistent with the character of neighbouring dwellings.

4.0 Planning History

4.1. Decision on applications

4.1.1. PL28N 125373 refers to grant of permission for retention of widening of vehicular access and refusal to retain off street parking for 7 cars, a double sided illuminated sign and conservatory at rear for reasons based on

- Out of character with established pattern of development and detracting from visual amenities in a residential area

In this case the applicant Imelda Musgrave refuted 3rd party objections about the B and B and stated that planning permission is not needed for the business since only 4 bedrooms are used for guests.

- 4.1.2. PL29N.106300 refers to a refusal for parking and sign
- 4.1.3. PA ref: 2212/02 Refused permission for retention of conservatory
- 4.1.4. PA ref: 2813/03 Permission granted for retention of conservatory.

4.2. Enforcement History

4.2.1. There are six cases listed in the planning authority report dating from 1997 which relate to the B and B use, car parking, signage, conservatory/building works, car sales outlet and the more recent external insulation works.

5.0 Policy Context

5.1. Development Plan

- 5.1.1. The Development Plan objective' to protect, provide and improve residential amenities' applies to the site and its environs which are zoned Z1 Sustainable Residential Neighbourhoods. The structure is not included in the Record of Protected Structures nor are the neighbouring properties.

5.2. Natural Heritage Designations

The site is not located in or adjacent to a designated site.

6.0 The Referral

6.1. Referrer's Case

- 6.1.1. The referrer is the owner of the property and the submission refutes the decision of the planning authority. It is explained that she researched to the best of her ability and that neighbours were consulted and interested in the results.

6.2. The case is made that:

- The dwelling has no preservation on it.
- Picked the nearest colour of red brick facing to match adjoining house and was assured it would fade and match within a short time. (Sample forwarded from Planning is attached at back of file.)

6.3. The insulation is also justified based on:

- Heard about advantage of insulation in the media.
- External work permitted her to continue her bed and breakfast business.
- External work suitable as the rooms are not very big.
- Insulation needed for her own comfort and that of her guests.
- The house is now warmer and good for business.
- Could not put actual bricks as would protrude too much beyond neighbour.

- Never knew planning permission was required.
- Photos can be supplied.

6.4. Planning Authority Response

- 6.4.1. In a later dated 1st June the planning authority forwarded the relevant documents. No further comments on the case were submitted.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

- 7.1.1. **Section 2 (1)** states: -

“alteration’ includes (a) plastering or painting or the removal of plaster or stucco the replacement of a door, window or roof, that materially alters the external appearance of a structure so as to render the appearance inconsistent with the character of the structure or neighbouring structures”.

“works’ includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal...”

- 7.1.2. **Section 3 (1)** defines “development” as ‘except where the context otherwise requires, the carrying out of works on, in, over or under land, or the making of any material change of use of any structures or other land.’

- 7.1.3. **Section 4 (1)** provides for exempted development: -

(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. Interpreting Section 4 - Cairnduff vs O’Connell

This case concerned an addition of a new window to a house coupled with the return of a balcony and stair case leading to the balcony in a terraced house. The Supreme Court (Finlay C. J.) considered that the works did materially affect the external appearance of the structure but did not render such appearance inconsistent with the character of the structure nor of neighbouring structures. Therefore, the development was exempted under Section 4(1)(g) of the 1963 Act. The findings of the judgement are relevant as it considered that the character of a terraced house would be more dominantly affected by its street appearance rather than its rear appearance. Also of importance is that character must relate in general, to the shape, colour, design, layout and ornamental features of the structure concerned.

7.2. Planning and Development Regulations, 2001

7.2.1. Article 6 states:-

“(1) 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) states: -

“Development to which Article 6 relates shall not be exempted development for the purposes of the Act

(a) if the carrying out of such development would

(iv) except in the case of a porch to which class 7 specified in column 1 of Part 1 of Schedule 2 applies and which complies with the conditions and limits specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1, comprise the construction, erection, extension or renewal of a building on any street so as to bring forward the building line of any part of the building beyond the front wall of the building on either side thereof if beyond a line determined as the building line in the development plan for the area pending the variation of a development plan or the making of a new

development plan in the draft variation of the development plan or the development plan,

(viii) consist of or comprise the extension, alteration repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use, Schedule 2 – Part 1 exempted development – General – Classes 1-8 describe classes of exempted development within the curtilage of a house subject to specified conditions.

8.0 Relevant Related Cases

8.1. RL3044: The application of render insulation, removal of chimney and reinstatement of garage doors was development and was exempted development (Greenlea Rd Terenure. In this case a semi-detached rendered house with brick detail and based on detailed specification and drawings was insulated externally and re-render with brick slips of 20mm. Profiling was maintained.

8.2. RL2737: This case was referred to the Board following a declaration by the Galway County Council. The Local Authority determined that a bay window to a rear of the house is development but not exempted development and that an opaque window situated on the side elevation of the house is development but not exempted development.

The reporting inspector in reviewing the case concluded that the bay window situated on the rear elevation would not be visible from the public road and therefore would not be inconsistent with the character of the structure on which it is located and furthermore would not be inconsistent with the character of neighbouring structures. On this basis the reporting inspector concluded that the provision of a bay window in the rear elevation would be exempted development in accordance with Section 4(1)(h) of the Act. In relation to the opaque window located on the side elevation the reporting inspector concluded that this would not be exempted development having regard to its scale relative to the permitted window, which it replaced, and given that the opaque window is visible from the public road. However, in conclusion the planning inspector noted the judgement of *Horne v Freeney* was relevant to this case. This judgement stated that for any development to avail of

exempted development rights in terms of Section 4(1)(h) exemptions, it must first have been completed in full accordance with its permission. Accordingly, any exemptions would only apply to development fully completed in accordance with its permission. The Board agreed with the reporting inspector and concluded that the bay window and the opaque window were development and not exempted development.

9.0 Assessment

9.1. Is or is not development

- 9.1.1. I concur with the planning authority that the works involved in the addition of external insulation constitutes development. Accordingly, the matter to be decided upon is whether or not such development is exempted,

9.2. Is or is not exempted development

- 9.2.1. In the context of Section 4 (1) (h) and by reference to the meaning of character in the case of Cairnduff Vs O'Connell I consider the salient issue is whether or not the structure has been materially altered such that it is inconsistent with the original and neighbouring structures in the streetscape. As noted in my site description the entire façade has been altered to the extent that all original façade features, notably including ornamental features, in the external walls are no longer visible. The entire brick facade has been replaced with what is little more than a red synthetic skin over insulation. While I accept that at a glance it simply looks like the bricks are a variant (and somewhat unusual at that) in terms of colour, on closer examination there are many aspects that cumulatively jar in this pair of semi-detached dwellings. For example, the tile has a uniform deep red colour and lacks variance clearly evident in the natural fired clay bricks. The bonding pattern is also different. The brick effect tiles have been attached in a simple Stretcher Bond pattern rather than the more ornate English Bond pattern. Added to this, the brick profile detailing is lost in the smooth treatment around the arch head at the door entrance. The contrasting granite has also been lost with brick effect window heads which is visually quite jarring. Other details such as the removal and altering of gable timbers and brackets also jar with the original design that substantially remains in the neighbouring houses. In my

judgement, the whole effect of the alterations as viewed from the street would materially affect the external appearance of the structure such as to render the appearance inconsistent with the character of the structure and of neighbouring structures. While I note the decision in the case of Greenlea Road I consider this to be different in a number of ways. In that case the house was substantially rendered with only limited brick details/profiling which were reinstated with the use of matching brick slips. This was accompanied by detailed specification and drawings.

- 9.2.2. If considering the walls separately, I accept, it could be reasonably concluded that external insulation of the rear elevation by itself would not be materially inconsistent as it relates to an existing rendered surface and it is located to the rear of the property. However, in this case the different walls are a collective entity as they are all integrated and not as easily divisible particularly as the side wall incorporates visible brick quoins.
- 9.2.3. On the basis that the alterations do materially affect the external appearance of this dwelling and are visible from the public road and having regard to the nature scale and extent of alterations, I do not consider that the said alterations are exempted development in accordance with Section 4 (1) (h) of the Planning and Development Act, 2000 (as amended).

9.3. **Restrictions on exempted development**

- 9.3.1. Another way of classifying the development would be as an extension to a dwelling in that the works result in the stepping out of the building line by 120mm. If the board was of a mind to interpret the works as an extension then the restrictions in Article 9 (1) (viii) may apply, particularly having regard to the planning and enforcement history - (I do not however consider Article 9 (1) (iv) can apply having regard to the Development Plan). In this context, if the subject development relates to unauthorised development then the exempted status under Article 6 falls. Based on the available planning history to me the applicant would be relying on exempted status for the B and B as there is no evidence of a grant permission for this use on file. In this scenario if there are more than 4 guest rooms then ordinarily exempted development under article 6 would no longer be exempt. The planning status of the existing premises and bed and breakfast is not fully clear based on the submitted details. While there appears to be ground level bedroom space in addition to the first

floor and attic space, further information would be needed to ascertain exact extent of accommodation and planning status. I am however of the view that the works are more appropriately alterations rather than extension works and cannot therefore be of a class that is exempted under Article 6 and therefore restrictions in Article 9 do not apply. I concur with the planning authority in this regard.

10.0 Recommendation

10.1. I recommend that the Board should decide this referral in accordance with the following draft order.

WHEREAS a question has arisen as to whether external insulation to the front, side and rear of a dwelling house at no. 134 Cabra Road, Dublin 7 is or is not development and is or is not exempted development:

AND WHEREAS Imelda Musgrave requested a declaration on the said issue from Dublin City Council and the said Council issued a declaration on the 4th May 2018 stating that the said matter was development and was not exempted development:

AND WHEREAS the said Imelda Musgrave referred the declaration for review to An Bord Pleanála on 24th May 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)(h) of the Planning and Development Act, 2000, as

amended,

(d) The character and pattern of development in the area:

AND WHEREAS An Bord Pleanála has concluded that:

- The character of Cabra Road in the vicinity of the house site is derived principally from the extent of original orange hued redbrick and ornamental features depicted in stone, brick detailing and timber.

- The said works which amount to,

- i. the entire removal of key original materials, finishes and ornamental features in the façade as viewed from the street and

- ii. a red tiled façade,

are visually incongruous with the original and adjoining houses and materially alter the character of house in the context of the streetscape.

The said works are development and are not exempt because the proposed works would materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the house 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) of the 2000 Act, hereby decides that the external insulation is development and is not exempted development.

Suzanne Kehely
Senior Planning Inspector
1st October 2018