



An
Bord
Pleanála

Inspector's Report ABP-304340-19

Question

Whether widening of a vehicular entrance to a house is or is not development or is or is not exempted development

Location

14a Cremore Villas, Ballygall Road
East, Dublin 11

Declaration

Planning Authority

Dublin City Council

Planning Authority Reg. Ref.

0143/19

Applicant for Declaration

Patrick Martin

Planning Authority Decision

Is not exempted development

Referral

Referred by

Patrick Martin

Owner/ Occupier

Patrick Martin

Observer(s)

None

Date of Site Inspection

24th June 2019

Inspector

Colm McLoughlin

Contents

| | |
|---|----|
| 1.0 Site Location and Description | 3 |
| 2.0 The Question | 3 |
| 3.0 Planning Authority Declaration..... | 3 |
| 4.0 Planning History..... | 5 |
| 5.0 Policy & Context | 6 |
| 6.0 Statutory Provisions | 6 |
| 6.1. Planning and Development Act 2000, as amended | 6 |
| 6.2. Planning and Development Regulations 2001-2019 | 7 |
| 7.0 The Referral..... | 9 |
| 8.0 Assessment..... | 9 |
| 8.1. Introduction | 9 |
| 8.2. Is or is not development | 10 |
| 8.3. Is or is not exempted development | 10 |
| 9.0 Recommendation..... | 12 |

1.0 Site Location and Description

- 1.1.** The referral site is located in Cremore Villas on the Ballygall Road East between Griffith Avenue and the Old Finglas Road, and approximately 3km north of Dublin city centre. It is situated on the western side of Ballygall Road East, at the junction with Cremore Crescent, within a residential area dominated by pairs of semi-detached houses fronting onto a grid network of tree-lined streets.
- 1.2.** Currently on site is a three-bedroom two-storey detached house with a two-storey front-bay projection. The rear garden area is enclosed by a 2m-high wall and accommodates a single-storey shed structure in the northwestern corner. To the front of the house is a hardsurfaced area that provides space to park two cars and this is enclosed by a low block wall with brick piers along the front boundary. Ground levels in the area drop steadily moving south towards the Tolka river.

2.0 The Question

- 2.1.** The following is questioned by the referrer:
 - ‘whether the widening of vehicular access driveway to front garden from 3.6m to 4.2m at 14a Cremore Villas, Dublin 11 is or is not exempted development’;
- 2.2.** In the interest of clarity, it is considered appropriate that the question referred to the Board be reworded as follows:
 - whether the proposed widening of a vehicular entrance from 3.6m to 4.2m, to the front of 14a Cremore Villas, Ballygall Road East, Dublin 11, is or is not development, or is or is not exempted development.
- 2.3.** I intend to proceed with my assessment on the basis of the reworded question.

3.0 Planning Authority Declaration

3.1. Declaration

- 3.1.1.** On 29th day of March 2019, a request for a declaration on the above question was received by Dublin City Council from Mr. Patrick Martin, the stated owner of the property and the referrer in this case. The request was accompanied by a Site

Location Map identifying the referral site and a Site Layout Plan drawing for the referral site.

- 3.1.2. On the 26th day of April 2019, the Planning Authority issued their declaration under application no. 0143/19, setting out that the proposed widening of the vehicular access driveway to the front garden of the referral site would constitute development and that it would not constitute exempted development under Section 5 of the Planning and Development Act 2000, as amended (hereinafter referred to as 'the Act'). The Planning Authority considered that the proposed widening of the access from an existing width of 3.6m to a proposed width of 4.2m would involve materially altering the entrance to the site by widening of a means of access to a public road, the surface carriageway of which exceeds 4m in width.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The assessment contained in the Planning Officer's report (April 2019) reflects the declaration issued by the Planning Authority and can be summarised as follows:

- Dublin City Council (DCC) planning ref. 3407/16 permitted the construction of a house on the referral site to be served by a vehicular entrance of 3.6m width onto Ballygall Road East;
- development shall not be exempted development where it would consist of or comprise the formation, laying out or material widening of a means of access to a public road, the surfaced carriageway of which exceeds 4m in width;
- the proposal would involve an increase of 0.6m in the width of the existing entrance;
- Ballygall Road East roadway is a public road with a surfaced carriageway of over 9m width;
- the proposed widening of the vehicular entrance to 4.2m onto Ballygall Road East would not constitute exempted development, as the development involves materially altering the entrance to the site by widening of a means of access to a public road, the surfaced carriageway of which exceeds 4m in width.

3.2.2. Other Technical Reports

- None received.

4.0 Planning History

4.1. Referral Site

4.1.1. The following planning application relates to the referral site:

- DCC Ref. 3407/16 – permission was granted in October 2016 for the construction of a two-storey three-bedroom detached house and a single-storey rear garden shed, vehicular entrance onto Ballygall Road East and all associated site works.

This permission was subject of ten conditions of a standard nature, including those relating to site boundaries and the entrance. Condition no.3 of the permission stated that a 2m-high boundary wall should be constructed along the side boundary with Cremore Crescent and condition no.8(a) stated that the driveway opening shall be at least 2.5m in width, and shall not have outward opening gates.

4.2. Relevant Referrals

4.2.1. The following recent referrals decided by the Board are considered relevant:

- ABP Ref. PL05E.RL2917 – in July 2012 the Board decided that, inter alia, the alterations to an entrance onto the N14 national road serving a house at Mulnagung, Ballindrait, County Donegal is development and is exempted development. A material widening of the entrance was declared not to have taken place in this case;
- ABP Ref. PL39.RL2861 – in July 2012 the Board decided that the erection of gates, approximately 6m in width, across an adjoining public open space area, onto a public road with a surfaced carriageway exceeding 4m in width at Sidmonton Court, Bray, County Wicklow, is development and is not exempted development;

- ABP Ref. PL06D.RL.2671 – in May 2010 the Board decided, inter alia, that the widening of the opening to the entrance by an additional one metre at Mount Alverno, Nerano Road and Sorrento Road, Dalkey, County Dublin is development and is not exempted development;
- ABP Ref. PL06D.RL.2656 – in January 2010 the Board decided, that the removal of an existing garden gate and adjoining wall to create a double leaf gate onto a private laneway at 52 Ulverton Road, Dalkey, County Dublin is development and is exempted development;
- ABP Ref. PL04.RL2614 – in October 2009 the Board decided, inter alia, that the widening of an access onto the public road at Begley's Cross, Ballygroman Upper, Ovens, Co. Cork, which is greater in width than 4m, is restricted under article 9 of Part 1 of Schedule 2 of the Planning Regulations and, therefore, is development and is not exempted development.

5.0 Policy & Context

5.1. Dublin City Development Plan 2016-2022

- 5.1.1. The appeal site has a zoning objective 'Z1 - Sustainable Residential Neighbourhoods' within the Dublin City Development Plan 2016-2022, with a stated objective 'to protect, provide and improve residential amenities'. Relevant planning policies and objectives for residential development are set out under Section 5 (Quality Housing) and Section 16 (Development Standards) within Volume 1 of the Development Plan. Road standards for various classes of development are provided in Appendix 5 of the Dublin City Development Plan 2016-2022, which also refers to the Planning Authority's guidance booklet 'Parking Cars in Front Gardens'.

6.0 Statutory Provisions

6.1. Planning and Development Act 2000, as amended

- 6.1.1. Section 2(1) of the Act states the following:
- 'development' has the meaning assigned to it by Section 3 of the Act;

- ‘works’ includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal’

6.1.2. Section 3(1) of the Act states that:

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

6.1.3. Section 4(1) of the Act sets out various forms and circumstances in which development is exempted development for the purposes of the Act, including Section 4(1)(h) providing for the carrying out of works for the maintenance, improvement or alteration of any structure that only do not materially affect the external appearance so as to render it inconsistent with the character of neighbouring structures.

6.1.4. Section 4(2) of the Act provides that the Minister may, by regulations, provide for any class of development to be exempted development. The main regulations made under this provision are the Planning and Development Regulations 2001-2019.

6.2. Planning and Development Regulations 2001-2019

6.2.1. Article 6(1) of the Planning and Development Regulations 2001-2019 (hereinafter ‘the Regulations’) provide that ‘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’. Schedule 2 of Part 1 to the Regulations sets out the classes of exempted development, including those pertaining to ‘general development within the curtilage of a house’. Class 5 of Schedule 2 Part 1 is relevant to this referral and this states the following:

| Column 1 - Description of Development | Column 2 - Conditions and Limitations |
|---|--|
| Class 5 - The construction, erection or alteration, within or bounding the curtilage of a house, of a gate, gateway, | 1. The height of any such structure shall not exceed 2 metres or in the case of a wall or fence within or bounding any garden or other space in front of a house, 1.2 metres. |

| | |
|--|--|
| <p>railing or wooden fence or a wall of brick, stone blocks with decorative finish, or other concrete blocks or mass concrete.</p> | <p>2. Every wall other than a dry or natural stone wall bounding any garden or other space shall be capped and in the face of any wall of concrete or concrete block (other than blocks with decorative finish) which would be visible from any road, path or public area, including public open space shall be rendered or plastered.</p> <p>3. No such structure shall be metal, palisade or other security fence.</p> |
|--|--|

6.2.2. As provided for in Article 9(1)(a), the following development to which article 6 relates, shall not be exempted development, if the carrying out of such development would, inter alia:

- (i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act;
- (ii) consist or comprise the formation, laying out or material widening of the means of access to a public road the surface carriageway of which exceeds 4 metres in width,
- (iii) endanger public safety by reason of a traffic hazard or obstruction to road users.

6.3. Environmental Impact Assessment - Preliminary Examination

6.3.1. Having regard to the existing development on site, the limited nature and scale of the proposals and the absence of any connectivity to any sensitive location, there is no real likelihood of significant effects on the environment arising from the proposals. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

7.0 The Referral

7.1. Referrer's Case

7.1.1. The referrer's submission dated the 30th day of April 2019 can be summarised as follows:

- the proposed widening of the vehicular entrance would render it safer, as it would allow quicker egress from and access to the front curtilage and therefore, would not be a hindrance to other road users.

7.2. Planning Authority's Response

7.2.1. The Planning Authority did not respond to the referrer's case.

8.0 Assessment

8.1. Introduction

8.1.1. The purpose of this referral is not to determine the acceptability or otherwise of the proposed widening of a vehicular entrance, in respect of the proper planning and sustainable development of the area, but rather whether or not the matter in question constitutes development, and if so falls within the scope of exempted development within the meaning of the relevant legislation.

8.1.2. Planning permission for a house on the referral site was granted by the Planning Authority in October 2016 (under planning ref. 3407/16), to be served by a vehicular entrance of 3.6m width onto Ballygall Road East. Condition no.8(a) of the permission stated that the driveway opening shall be at least 2.5m in width, and shall not have outward opening gates. This condition did not place a restriction on the maximum width of the entrance opening. The development has been completed and the house is currently occupied and is served by a 3.6m-wide entrance. The referrer is questioning whether the proposed widening of this vehicular entrance by 0.6m to 4.2m is or is not development, or is or is not exempted development. At a minimum this would require the partial removal of a section of the front boundary wall and a brick pier on the south side of the existing entrance.

8.2. Is or is not development

- 8.2.1. The initial question that arises is, whether the proposals would or would not constitute development. Section 3 of the Act defines development as ‘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’. As defined in section 2(1) of the Act, works include ‘any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal’. It would be necessary to remove part of the existing front boundary wall, including a brick pier, in order to widen the vehicular entrance. I am satisfied that this would clearly involve an act of demolition and alteration. Furthermore, I note that the declarations issued by An Bord Pleanála under the relevant referral references listed in Section 4.2 of this concluded that various alterations, including the widening of entrances, comprised works that constituted development. Consequently, I am satisfied that it can be reasonably concluded that the proposed act of widening the vehicular entrance by 0.6m would constitute development. This is not contested by any party to the referral.

8.3. Is or is not exempted development

- 8.3.1. The primary issue that arises is whether the proposed development would or would not constitute exempt development. The Planning Authority assert that the proposed widening of the vehicular entrance onto Ballygall Road East would not constitute exempt development, as the development would involve the widening of a means of access to a public road, the surfaced carriageway of which exceeds 4m in width, and this development would not be exempted development based on the restrictions on exempted development outlined in Article 9(1)(a) of the Regulations.

Exempted Development

- 8.3.2. In the normal course, I am satisfied that the removal of the subject brick pier and adjoining section of capped-block wall on the front boundary, in total 0.6m in width, would be de-minimus development in nature and could potentially fall within the scope of Condition 8(a) if the house was not complete. However, it is evident that the house is complete and occupied and the vehicular entrance measures 3.6m in width. Furthermore, the construction or alteration of the resultant gateway opening would be exempted development under Class 5 of Part 1 of Schedule 2 to the

Regulations, provided that gates of a height exceeding 1.2m would not be installed to the entrance. I am satisfied that the proposed widening of the entrance would not contravene any of the ten conditions attached to the sole permission relating to the referral site (DCC Ref. 3407/16) and the restrictions under Article 9(1)(a)(i) of the Regulations do not apply. However, the key issue to address is whether or not the restrictions on exempted development under Articles 9(1)(a)(ii) and 9(1)(a)(iii) apply to the proposed widening of the subject entrance.

Restrictions on Exempted Development

- 8.3.3. The restrictions on exemptions applied under Article 9(1)(a)(ii) of the Regulations include where the development would involve the material widening of the means of access to a public road, the surface carriageway of which exceeds 4m in width. It is clear from the documentation on file and my site visit, that the adjoining road, Ballygall Road East, is a public road 9m in width and these facts are not contested by parties to the referral. Accordingly, it is necessary to consider whether or not the proposed widening by 0.6m would be of significance to be material in planning terms. In this regard, I note that the existing vehicular opening to the referral site is served by a dropped kerb and the widening of the entrance would not result in the loss of on-street parking, given the existence of a double-yellow line along the immediate stretch of roadside. Appendix 5 of the Dublin City Development Plan 2016-2022 provides guidance with regards to road standards, including standards for residential development, where it is stated that 'where driveways are provided, they shall be at least 2.5m or, at most, 3.6m in width, and shall not have outward opening gates'. This maximum opening distance is replicated in the Planning Authorities guidance booklet 'Parking Cars in Front Gardens', as referenced in the Development Plan. The guidance has clearly steered the development permitted on the referral site, with the entrance proposed and constructed precisely to a width of 3.6m. While the rationale for restricting vehicular openings to a maximum of 3.6m is not specifically outlined within the Development Plan (or in the Planning Authorities guidance booklet 'Parking Cars in Front Gardens'), the distance dimension would have most likely been arrived at based on consideration of standard vehicle sizes and vehicular turning movements. Therefore, I am satisfied that the widening of the entrance by 0.6m in excess of the maximum standard typically applied by the Planning Authority in developments of this nature would be material in planning

terms and would not be exempted development by reason of the restrictions applied under Article 9(1)(a)(ii) of the Regulations.

- 8.3.4. The second potential restriction to the proposed widening of the existing vehicular entrance, is whether the endangerment of public safety by reason of traffic hazard would arise. The referrer asserts that the proposed widening of the vehicular entrance would render it safer, as it would allow quicker egress from and access to the front curtilage and therefore, would not be a hindrance to other road users. The planning history for the development on the referral site (DCC Ref. 3407/16) reveals that the Roads and Traffic Division of the Planning Authority did not have an issue with the existing vehicular entrance on the grounds of traffic hazard. I am satisfied that the modifications involved in the widening of the entrance by 0.6m would have marginal effect on traffic safety, given that the proposed works would not reasonably result in any additional traffic movements. Accordingly, I consider that reliance cannot be placed on the restriction applied under Article 9(1)(a)(iii) in relation to the proposed widening of the vehicular entrance.

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 widening of a vehicular entrance from 3.6m to 4.2m, to the front of 14a Cremore Villas, Dublin 11, is or is not development, or is or is not exempted development:

AND WHEREAS Patrick Martin requested a declaration on this question on the 30th day of April, 2019 from An Bord Pleanála:

AND WHEREAS An Bord Pleanála, in considering this referral, had regard particularly to –

- (a) sections 2(1) and 3(1) of the Planning and Development Act, 2000, as amended,

- (b) article 6(1) and article 9(1) of the Planning and Development Regulations 2001-2019 and Class 5 of Part 1 of Schedule 2 to those Regulations,
- (c) the planning and development history of the site,
- (d) the nature and the width of the adjoining road;
- (e) the report of the Planning Inspector:

AND WHEREAS An Bord Pleanála has concluded that:

- (a) the proposed widening of the vehicular entrance from 3.6m to 4.2m, constitutes development;
- (b) the proposed construction or alterations to widen the front vehicular entrance, bounding the curtilage of the house on site, would come within the scope of Class 5 of Part 1 of Schedule 2 to the said Regulations, subject to meeting conditions and limitations of same;
- (c) the proposed widening of the vehicular entrance onto the Ballygall Road East, which is a public road and the surfaced carriageway of which exceeds 4 metres in width, would be material, and, therefore, is restricted by the provisions of Article 9(1)(a)(ii) of the said Regulations:

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5(4) of the Planning and Development Act 2000, as amended, hereby decides that the development, as proposed, is development and is not exempted development.

Colm McLoughlin
Planning Inspector

9th September 2019