



An
Bord
Pleanála

Inspector's Report ABP-304362-19

Question

Construction of extension to rear to dwelling.

Location

Florence House, 199, Strand Road,
Merrion, Dublin 4

Declaration

Planning Authority

Dublin City Council South

Planning Authority Reg. Ref.

0111/19

Applicant for Declaration

Richard Crowe

Planning Authority Decision

Is exempted development

Referral

Referred by

Richard Crowe

Owner/ Occupier

Brian McGettigan

Observer(s)

None

Date of Site Inspection

13th September 2019 & 7th October
2019

Inspector

Irené McCormack

1.0 Site Location and Description

1.1. The site is located on the west side of Strand Road, Sandymount, Dublin 4, opposite Merrion Strand. This section of Strand Road is predominantly residential and there is a range of house styles and heights situated on individual linear plots. Florence House is a substantial two storey over basement detached period residence with private off-street parking and large front and rear gardens. The site is bounded to the rear by the railway dart line, to the south by a single storey dwelling and to the north by a two-storey dormer dwelling.

2.0 The Question

2.1. The question to the Board is:

Whether (i) the construction of a part two-storey, part single storey extension to the rear elevation and (ii) alterations to the rear and side elevation is exempted development.

3.0 Planning Authority Declaration

3.1. Declaration

The Declaration issued by the planning authority concluded:

1. The construction of a rear extension as shown on Drawing no.2008-33-EX-100 constitutes development by virtue of Section 3(1) of the Planning and Development Act 2000 as amended and is exempted development under Class 1 of Schedule 2 of the Planning and Development Regulations 2001 as amended insofar as the conditions and limitations of the relevant Column 2 are satisfied. The proposed development is not considered to be de-exempt under Article 9 of the Planning and Development Regulations 2001 as amended.

2. The alterations to elevations which are the internal works associated with the opening up of the games room, kitchen and hallway window to connect into the proposed rear extension constitutes development by virtue of Section 3(1) of the

Planning and Development Act 2000 as amended and is exempted development under 4(1)(h) of the Planning and Development Act 2000 as amended insofar as the said works constitute works for the maintenance, improvement or other alteration of the structure which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure and of neighbouring structures.

3.2. Planning Authority Reports

3.2.1. Planning Reports

3.2.2. The report of the Planning Officer reflects the decision of the planning authority. The Planning Officer notes the zoning objectives for the area and that the relevant planning history. The proposed rear extension is considered to be development and is assessed against Class 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended). It is noted that the house has not been previously extended (despite the grant of planning permissions for rear extensions on the site). The report concludes that the construction of a two-storey extension to rear (west facing) elevation is development and is exempted development under Class 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended) insofar as the proposed rear extension complies with the conditions and limitations set out in Column 2 of Class 1. It is also noted that the alterations to the elevations of the house are limited to the internal works being the opening up of the games room, kitchen and hallway window to connect into the proposed rear extension. These works are considered to be exempted development under 4(1)(h) of the Planning and Development Act 2000 as amended.

3.2.3. Other Technical Reports

None

4.0 Planning History

4.1.1. Site

DCC Reg. Ref. 0523/18 – Section 5 declaration granted for (i) the construction of a part two storey, part single storey extension to rear (west facing) elevation, including

rooflight (the single storey element is raised above Lower Ground Level); (ii) alterations to rear and side (south, north and west facing) elevations; (iii) landscaping; and (iv) all associated works to facilitate the development as exempted development

DCC Reg. Ref. 0123/17- Section 5 certificate granted for a two-storey extension to the rear of the existing three storey dwelling.

PL29S.247424 (Reg. Ref. 3460/16) -Split decision issued to grant permission for the construction of an extension to the rear at the upper ground floor level and refuse permission for the raised deck at upper ground floor level to the rear of existing dwelling. This planning emersion was not implemented.

29S.232521 (Reg. Ref. 1091/08) Permission granted for a rear extension at Florence House. Condition No 2 required the removal of the first-floor proposal, to prevent overlooking on adjoining properties. This planning emersion was not implemented.

4.1. Relevant Referrals

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

- ABP Ref. ABP-301320-18 – In May 2019 the Board decided the extension to the rear of a house at 26 Estuary Road, Malahide, County Dublin is development and is exempted development.
- ABP Ref. PL04.301363 – in November 2018 the Board decided that the extension to the rear of a house at 80 Woodview, Pinecroft, Grange, Co. Cork is development and is exempted development.
- ABP Ref. PL09.RL3555 – in April 2018 the Board decided that the extension to the rear of an existing single-storey semi-detached house at 8 River Lawns, Kill, Co. Kildare is development and is not exempted development.
- ABP Ref. PL03.RL3506 – in May 2017 the Board decided that the reconstruction and extension of a house at Gurraun, Kilkee, County Clare is development and is not exempted development.

- ABP Ref. PL29S.RL3523 – in April 2017 the Board decided that the first-floor side and rear extension to a house at 5 Church Avenue, Sandymount, Dublin 4 is development and is not exempted development.
- ABP Ref. PL29S.RL3497 – in December 2016 the Board decided that the rear extension to a house at 66 Derravaragh Road, Terenure, Dublin 6W is development and is not exempted development.

5.0 Policy Context

5.1. Development Plan

Dublin City Development Plan 2016-2022

The site is zoned in Z2 "To protect and/or improve the amenities of residential conservation areas".

Extensions to dwellings

16.10.12 Extensions and Alterations to Dwellings: Extension's to dwellings must not have an adverse impact on the scale and character of the dwellings or adversely affect the amenities of the occupants of adjacent buildings in terms of privacy, access to daylight and sunlight.

Appendix 17: Guidelines to extensions to dwellings

5.2. Natural Heritage Designations

- 5.2.1. The site is located 50m from the South Dublin Bay SAC and South Dublin Bay and River Tolka Estuary SPA. Having regard to the nature and scale of the development, which relates to a small scale domestic extension in an established and serviced area outside of and separated from any Natura 2000 sites, I am satisfied that no appropriate assessment issues arise and it is not considered that the development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

6.0 The Referral

6.1. Referrer's Case

6.1.1. The referrer's submission dated the 30th April 2019 outlines the following:

- It is set out that the referrer owns and lives in the adjoining property to the north of the site and that his residential amenity and right to light are likely to be adversely affected if the development as proposed is permitted to proceed.
- It is set out that the Florence house is a substantial two-storey over basement period house and by contrast his home is a two-storey mews dwelling, in which the rooms depend entirely on light from the south and southwest across the enclosed courtyard.
- It is set out that the development by reason of location, mass, scale bulk and design will have a serious adverse impact of overshadowing and loss of light and blue sky and have an overbearing impact. A report commissioned by the referrer indicates that the development would decrease the existing number of hours of sunlight by a further 150 hours annually.
- It is noted that the lower part (games room) of the development is not of concern to the referrer.
- It is the referrers contention that the development would materially contravene planning reference 29S.232521 (Reg. Ref. 1091/08) - permission granted for a rear extension at Florence House where condition No. 2 required the removal of the first-floor proposal, to prevent overlooking on adjoining properties. In accordance with Article 9 *Restrictions on exemption* of the Planning Regulations 2001 it is argued that the proposal is not exempted development.
- Reference is also made of PL29S.247424 (Reg. Ref. 3460/16) whereby the split decision issued refused permission for the raised deck at upper ground floor level to the rear of existing dwelling.

- In conclusion, it is set out that the proposed development falls foul of the Article 9 of the Planning and Development Regulations 2001, as amended, and is therefore not exempted development.

6.2. **Planning Authority Response**

None

6.3. **Owner/ occupier's response**

The owner's submission dated the 9th June 2019 outlines the following:

- The submission notes the Section 5 decisions issued by Dublin City Council for extension works to Florence House under Reg. Ref. 0523/18 to the owner of the property (Brian McGettigan) and a second Section 5 referral issued to Richard Crowe (the Referrer) under Reg. Ref. 0111/19. Both decisions determined the proposed extension to the rear of the subject property to be exempted development.
- The submission notes the relevant provisions of the Planning and Development Act 2000 (as amended) and the Planning and Development Regulations 2001 (as amended) and sets out how the proposed development is in compliance with the specific exemption criteria as set out in the legislation.
- It is set out the dwelling has not been previously extended and that the proposed extension is exempt pursuant to Schedule 2 Part 1 Class 1 of the Planning and Development Regulation 2001 (as amended) as the extension falls within the maximum square meterage permitted for the extension of a house and is wholly situated to the rear building line of the existing house.
- It is set out that the impact of the proposal on the amenity of the adjoining house is not a consideration in determining what exemptions apply do and do not apply to a particular development.
- The referral makes reference to the applicability of Article 9 of the Planning and Development Regulations 2001 (as amended). It is submitted that this is

not relevant on so far as planning permission obtained under 29S.232521 (Reg. Ref. 1091/08) was not implemented and expired on 3rd August 2014.

- In conclusion, it is set out that the development is exempted development under Class 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended) and Section 4(1)(h) of the Planning and Development Act 2000 (as amended).

6.4. Further Responses

A further response was received from the Referrer dated 1st July 2019 outlining the following:

- It is set out that the previous planning decisions determined by An Bord Pleanala (PL29S.247424 (Reg. Ref. 3460/16)) relating to planning application for the extension of Florence House omitted the first floor rear extension and denied access to the flat roof over the single storey extension, in the interest of residential amenity. With this in mind, it is set out that the basic tenet of modern life is to rely on past experience.
- It is argued that Article 9 (1) (a) (i) of the Planning Regulations is applicable as the regulations do not set out that permission has to be a live permission.
- The view taken by the planning authority that the condition is no longer relevant, because the permission has expired, undermines and discredits the determination of the matter by An Bord Pleanala.
- It is the referrer's contention that he should be entitled to rely on the decision of An Bord Pleanala in the case of 29S.232521 (Reg. Ref. 1091/08).

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

7.1.1. Planning and Development Act 2000, as amended

Section 2(1) of the 2000 Act states the following:

- 'development' has the meaning assigned to it by Section 3;

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

Section 3(1) states that:

- In this Act, ‘ 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’.

7.1.2. 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 affect the interior of the structure or which do not materially affect the external appearance so as to render it inconsistent with the character of neighbouring structures.

7.1.3. 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.

7.1.4. Under section 32 of the Act there is a general obligation to obtain permission in respect of any development of land not being exempted development and in the case of development which is unauthorised for the retention of that unauthorised development.

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

7.2.1. Article 6(1) of the Planning and Development Regulations 2001(as amended) (hereinafter ‘the 2001 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’.

7.2.2. 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;

(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.

7.2.3. Schedule 2 of Part 1 to the Regulations set out the classes of exempted development including those pertaining to ‘general development within the curtilage of a house’:

Column 1 - Description of Development	Column 2 - Conditions and Limitations
<p>Class 1 - The extension of a house, by the construction or erection of an extension (including a conservatory) to the rear of the house, or by the conversion for use as part of the house of any garage, store, shed or other similar structure attached to the rear or to the side of the house.</p>	<p>1. (a) Where the house has not been extended previously, the floor area of any such extension shall not exceed 40 square metres.</p> <p>(b) Subject to paragraph (a), where the house is terraced or semi-detached, the floor area of any extension above ground level shall not exceed 12 square metres.</p> <p>(c) Subject to paragraph (a), where the house is detached, the floor area of any extension above ground level shall not exceed 20 square metres.</p> <p>2. (a) Where the house has been extended previously, the floor area of any such extension, taken together with the floor area of any previous extension or extensions constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 40 square metres.</p> <p>(b) Subject to paragraph (a), where the house is terraced or semi-detached and has been extended previously, the floor area of any extension above ground level taken together with the floor area of any previous extension or extensions above ground level constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 12 square metres.</p> <p>(c) Subject to paragraph (a), where the house is detached and has been extended previously, the floor area of any extension above ground level, taken together with the floor area of any previous extension or extensions above ground level constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 20 square metres.</p> <p>3. Any above ground floor extension shall be a distance of not less than 2 metres from any party boundary.</p> <p>4. (a) Where the rear wall of the house does not include a gable, the height of the walls of any such extension shall not exceed the height of the rear wall of the house.</p> <p>(b) Where the rear wall of the house includes a gable, the</p>

	<p>height of the walls of any such extension shall not exceed the height of the side walls of the house.</p> <p>(c) The height of the highest part of the roof of any such extension shall not exceed, in the case of a flat roofed extension, the height of the eaves or parapet, as may be appropriate, or, in any other case, shall not exceed the height of the highest part of the roof of the dwelling.</p> <p>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 25 square metres.</p> <p>6. (a) Any window proposed at ground level in any such extension shall not be less than 1 metre from the boundary it faces.</p> <p>(b) Any window proposed above ground level in any such extension shall not be less than 11 metres from the boundary it faces.</p> <p>(c) Where the house is detached and the floor area of the extension above ground level exceeds 12 square metres, any window proposed at above ground level shall not be less than 11 metres from the boundary it faces.</p> <p>7. The roof of any extension shall not be used as a balcony or roof garden.</p>
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7.2.4. Article 3 of the 2001 Regulations defines 'gross floor space' as 'the area ascertained by the internal measurement of the floor space on each floor of a building (including internal walls and partitions) disregarding any floor space provided for the parking of vehicles by persons occupying or using the building or buildings where such floor space is incidental to the primary purpose of the building'.

8.0 **Assessment**

8.1. **Introduction**

8.1.1. The purpose of this referral is not to determine the acceptability or otherwise of the rear extension 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. Likewise, planning enforcement is a matter for the planning authority and does not fall within the jurisdiction of the Board.

- 8.1.2. The question posed is whether '(i) the construction of a part two-storey, part single storey extension to the rear elevation and (ii) alterations to the rear and side elevation is exempted development'.
- 8.1.3. The Planning Authority assert that extension is exempt from planning permission, as the extension complies with the limitations and conditions set out in Class 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended) insofar as the proposed rear extension complies with the conditions and limitations set out in Column 2 of Class 1. There are 7 criteria set out in column 2 - conditions and limitations.
- 8.1.4. Site inspection indicated that the extension has been completed.

8.2. Is or is not development

- 8.2.1. The initial question that arises is, whether the extension is or is not development. Section 3 of the 2000 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 2000 Act, works include 'any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal'. The act of extending the house therefore constitutes development. This would not appear to be an issue, as the Planning Authority is in agreement with same.
- 8.2.2. In relation to the issue of internal works it should be noted that, on the basis of the information available, I am satisfied that these are likely to have constituted exempted development by reference to section 4(1)(h) of the Act. I also note that there is no dispute in the case in relation to this matter.

8.3. Is or is not exempted development

- 8.3.1. The main issue that arises is whether the development is or is not exempted development. The applicable exempted development class for a domestic extension is Class 1 of Schedule 2 of Part 1 of the Regulations pertaining to 'general development within the curtilage of a house'. In this regard, I note that proposed two-storey extension has a stated internal ground floor area of 16.1sqm and a stated above ground floor area of 19.1sq.m. The total floor area of the extension is

therefore less than 40sqm and the floor area of the extension above ground floor level is less than 20sqm. The floor areas are therefore in compliance with **criteria 1 and 2** (c) of Class 1 of Schedule 2 of Part 1 of the Regulations

- 8.3.2. I further note that the above ground floor extension is 2m from the adjoining site boundary in compliance with **criteria 3** of Class 1 of Schedule 2 of Part 1 of the Regulations. The height of the proposed extension at 7.7m also complies with **criteria 4** (c) of the Planning Regulations 2001 in so far as the maximum ridge height of the extension does not exceed the maximum ridge of the highest part of the roof of the dwelling at 10.772m.
- 8.3.3. I note also that a significant amount of private amenity space would remain in the back garden after the construction of the extension. The size of the remaining garden will exceed 25sq.m and therefore in compliance with **criteria 5** of Class 1 of Schedule 2 of Part 1 of the Planning Regulations 2001, whereby 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 25sq.m.
- 8.3.4. Site inspection confirmed that there are no windows on the side elevation at ground level within 1 metre of the boundary it faces. The works are at lower ground floor and ground floor only. No works are proposed above ground floor level. No roof level access is proposed, and I note that this area is not a useable space as the roof contains a large pitched form roof light. Therefore, I am satisfied that the extension is in compliance with **criteria 6 and criteria 7** of Class 1 of Schedule 2 of Part 1 of the Planning Regulations 2001.
- 8.3.5. The referrer does not contest the above.
- 8.3.6. The referrer contends that the proposed development falls foul of Article 9 of the Planning and Development Regulations 2001, as amended, and is therefore not exempted development. It is the referrers contention that the development would materially contravene planning reference ABP29S.232521 (Reg. Ref. 1091/08), permission granted for a rear extension at Florence House where condition No. 2 of planning permission stipulated the removal of the first-floor proposal, to prevent overlooking of adjoining properties, and in accordance with Article 9 *Restrictions on*

exemption of the Planning Regulations 2001 the development is not exempted development.

8.3.7. Article 9(1)(a) provides that 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.

8.3.8. In this regard, I note ABP29S.232521 (Reg. Ref. 1091/08) was never implemented and the extension never constructed. This planning permission expired on 18th June 2014 and was not extended under Section 42 of the Planning Act. Accordingly, 29S.232521 (Reg. Ref. 1091/08) is no longer a valid planning permission and the conditions attached to the grant of planning permission are null and void and not relevant in this instance.

8.3.9. The most relevant consideration is whether the subject extension would meet the conditions and limitations set for the exemption of extensions under Class 1 of Part 1 of the Second Schedule to the 2001 Regulations. Having regard to the above, it is my opinion that the proposed extension would constitute exempted development in accordance with Class 1 of Part 1 of the Second Schedule to the 2001 Regulations.

8.3.10. I also note that the alterations to the elevations of the house are limited to the internal works being the opening up of the games room, kitchen and hallway window to connect into the proposed rear extension. These works are considered to be exempted development under 4(1)(h) of the Planning and Development Act 2000 as amended.

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 (i) the construction of a part two-storey, part single storey extension to the rear elevation and (ii) alterations to the rear and side elevation is exempted development at

Florence House, 199, Strand Road, Merrion, Dublin 4 is or is not development or is or is not exempted development:

AND WHEREAS Richard Crowe 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) section 2(1), 3(1) and 4(1)(h) 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 1 of Part 1 of Schedule 2 to those Regulations,
- (c) the planning history of the site and the documentation submitted with the referral.

AND WHEREAS An Bord Pleanála has concluded that:

- (a) the development as carried out constitutes development.
- (b) the gross floor area of the extension does not exceed 40 square metres or reduce the area of garden remaining to less than 25 square metres or exceed the height of the rear eaves or parapet to the house.
- (c) the extension, therefore, comes within the scope of Class 1 of Part 1 of the Second Schedule to the Planning and Development Regulations 2001, as amended, and all Conditions and Limitations attached to this Class.
- (d) the alterations to the elevations of the house are limited to the internal works being the opening up of the games room, kitchen and hallway window to connect into the rear extension come within the scope of 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(4) of the Planning and Development Act 2000, as amended, hereby decides that the development as carried out is development and is exempted development.

Irené McCormack
Planning Inspector

7th October 2019