



An
Bord
Pleanála

Inspector's Report

ABP-307503-20

Development	Whether replacing ground floor rear elevation window with single patio door to provide access to designated open space of 10 no. 2 bed ground floor units is or is not development or is or is not exempted development
Location	Riverwalk Court, Ratoath, Co. Meath
Planning Authority	Meath County Council
Planning Authority Reg. Ref.	RA/S52032
Applicant(s)	Denis Finn
Type of Application	Referral
Planning Authority Decision	Is development and is not exempted development
Date of Site Inspection	20 th August 2020
Inspector	Colin McBride

1.0 Site Location and Description

1.1. The referral concerns an existing residential development, Riverwalk Court, which is located to the south west of Rathoath town centre. The development is an apartment development consisting of three block around a courtyard area. The blocks are three-storey blocks. Block 1 which fronts onto the Fairyhouse Road (R155) and has a ground floor retail unit. Block 2 has an open space area located to the rear of its northern elevation and Block 3 has a number of fenced off areas of private open space along its western elevation.

2.0 The Question

2.1. Whether replacing of ground floor rear elevation window with single patio door to provide access to designated private open space of 10 no. 2 bed ground floor units. Block 2 and 3 ref no. 01/851 and DA20413. Material to match existing i.e. white pvc double glazed units at Riverwalk Court, Rathoath, Co. Meath.

3.0 Planning Authority Declaration

3.1. Declaration

On the 26th of June 2020 Meath County Council determined that the replacing of ground floor rear elevation window with single patio door to provide access to designated private open space of 10 no. 2 bed ground floor units in Block 2 and 3 is development and is not exempted development.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Planning report (26th June 2020): It was determined that the works in question constitute development and that there is no provisions under Classes 1 to 13 of Schedule 2 of the Planning and Development regulations that render the works in question exempted development. It is also noted that the works in question would materially impact the appearance of the existing structure and the works in question

do not come under the provisions of Section 4(1)h of the Planning and Development Act. It was determined the works in question is development and is not exempted development.

4.0 **Planning History**

PL17 .307038 (RA200045): Proposal for erection of two internal boundary fences to the east and west of communal and private open space to the rear of Block 2.

Pending decision.

DA20413: Permission granted for demolition of a house and construction of a ground floor retail unit and 26 no. apartments.

01/851: Permission granted for demolition of house and construction 26 no. apartments.

5.0 **Policy Context**

5.1. **Development Plan**

The relevant Development Plan is the Meath County Development Plan 2013-2019.

5.2. **Natural Heritage Designations**

None in the vicinity.

6.0 **The Referral**

6.1. **Referrer's Case**

A referral has been submitted by Denis Finn

- The referrer notes that the works in question would facilitate access for the ground floor units to private open space with developer failing to make such

access. The referrer notes that the current situation is detrimental to amenities of the residents.

- It is noted that the alteration will match the external finishes and would not constitute a material change to the elevations.
- The referrer notes a number of issues that the developer left unresolved and incomplete including screening of private and communal open space, car parking markings, bin/cycle storage, drainage and paving. The referrer outlines that there has been a breach of conditions. The referrer notes that the Board should consider the hardships of residents of the ground floor units who have had no access to their portion of private open space.

6.2. Planning Authority Response

No response.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

Section 2(1)

“Works” includes any act or operation of construction, excavation, demolition, extension, alterations, repair or renewal and

Section 3 provides definition of Development.

3(1) In this Act “development” means, except where the context otherwise requires, 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.

Section 4 provides for Exempted Development

4(1) The following shall be exempted developments for the purposes of this act

(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.

4(2) (a) The minister may by regulations provide for any class of development to be exempted development for the purposes of this Act

7.2 **Planning and Development Regulations, 2001**

Article 6(1) states-

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.

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—

(i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,

8.0 **Assessment**

8.1. The question arises as to whether replacing of ground floor rear elevation windows with single patio door (each apartment to have its own access door) to provide access to designated private open space of 10 no. 2 bed ground floor units in Block no. 2 and 3 is development and whether such is exempted development.

8.2. **Is or is not development**

8.2.1 Firstly the question is whether the works in question constitute development. The definition of works under Section 2 of the Act includes any act or operation of

construction, excavation, demolition, extension, alteration, repair or renewal. The definition of 'development' under Section 3 of the Act includes the carrying out of any works on, in, or under land. In this case the works in question do fall under the definition of development.

8.3. Is or is not exempted development

8.3.1 The second part of the assessment is whether the works in question are exempted development or not. The referrer has noted that the works in question would be exempted under the provision of Section 4(1)(h) of the Planning and Development Act, 2000 (as amended). Under section 4(1)(h) it is noted "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". The works in question are the insertion of multiple door openings in lieu of windows. I would note despite the fact they will respect the character and design of the elevations, I would consider such a material alteration as well the nature of works is providing access which is significant material alteration over the existing arrangement. I do not consider that section 4(1)(h) applies in this case.

8.3.2 In relation to exempted development I would note that there are no provisions under Schedule 2 of the Planning and Development Regulations, 2001 (as amended) that would render the works in question as exempted development. I would note that the works in question constitute development and is not exempted development.

8.4 Conclusion

8.4.1 It is notable that the referral indicates that there has been a number of deficiencies regarding implementation of the permission for the original development. The referral indicates that existing arrangement for ground floor residents is inappropriate with a failure to provide direct access to existing private amenity space (rear of Block 3). This assessment is purely an assessment of whether the works in question constitute development and if such is the case whether such is exempted

development. It is not an assessment of manner in which the development on site has been implemented or whether the works in question are in accordance with the proper planning and sustainable development of the area. In this case I am of the view that the works in question constitute development and is not exempted development.

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 replacing of ground floor rear elevation window with single patio door to provide access to designated private open space of 10 no. 2 bed ground floor units in Block no. 2 and 3 at Riverwalk Court, Rathoath, Co. Meath is development and whether such is exempted development.

AND WHEREAS the said question was referred to An Bord Pleanála by Denis Finn on the 06th day of July 2020:

AND WHEREAS An Bord Pleanála, in considering this reference, had particular regard to:

- a) Sections 2, 3 and 4 of the Planning and Development Act, 2000 (as amended)
- b) articles 5, 6 9, and 10 of the Planning and Development Regulations, 2001 (as amended), and
- c) the submissions of the parties to the reference in relation to the uses described in the referral

AND WHEREAS An Bord Pleanála has concluded

- (a) that the replacing of ground floor rear elevation window with single patio door to provide access to designated private open space of 10 no. 2

bed ground floor units in Block no. 2 and 3 at Riverwalk Court, Rathoath, Co. Meath is development:

(b) the works constitute development pursuant to section 3 of the Planning and Development Act, 2000;

(c) the development does not come under the scope of Section 4(1)(h) of the Planning and Development Act, 2000 (as amended) and is a material alteration of the existing structure;

(d) the development does not come within the scope of any Class of Schedule 2 to the Planning and Development Regulations 2001;

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 replacing of ground floor rear elevation window with single patio door to provide access to designated private open space of 10 no. 2 bed ground floor units in Block no. 2 and 3 at Riverwalk Court is development which is not exempted development.

Colin McBride
Planning Inspector

09th September 2020