



An
Bord
Pleanála

Inspector's Report ABP-308543-20

Question	Large wooden structure of the rear of 79 Castlefield Woods. Is or is not development or is or is not exempted development.
Location	Rear of 79, Castlefield Woods, Clonsilla, Dublin 15.
Declaration	
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	FS5W/18/20
Applicant for Declaration	Iain and Judith Cameron.
Planning Authority Decision	No declaration
Referral	
Referred by	Fingal County Council.
Owner/ Occupier	Maura O'Riordan.
Date of Site Inspection	1 st February 2021.
Inspector	Barry O'Donnell

1.0 Site Location and Description

- 1.1. The subject site is located at 79 Castlefield Woods, Clonsilla. Castlefield Woods is a low-density development of primarily two-storey, semi-detached housing, located between Clonsilla Road and the Ongar Distributor Road.
- 1.2. The site contains a two-storey semi-detached house and two structures within the rear garden. The larger structure, which is the subject of this referral, occupies a large portion of the rear garden.

2.0 The Question

- 2.1. The question before the Board relates to a large wooden structure within the rear garden of the subject site. The matter has been referred by Fingal County Council. The original question as set out in the application form to the Planning Authority was:
'Large wooden structure to the rear of 79 Castlefields Woods, Clonsilla.'
- 2.1.1. Having reviewed the referral documentation, I consider the question to be addressed is:
'whether the construction of a wooden structure within the rear garden of 79 Castlefields Woods, Clonsilla, which is occupied as habitable accommodation, is or is not development or is or is not exempted development.'
- 2.1.2. I intend to proceed with my assessment on the basis of the reworded question.
- 2.1.3. The following documentation has been submitted in conjunction with the referral:
 - Completed application form;
 - Cover letter prepared by the Planning Authority;
 - Cover letter submitted with the Section 5 declaration application, prepared on behalf of the referrers by Molloy Murphy Solicitors.
 - Copy of submissions document, prepared on behalf of the referrers by Molloy Murphy Solicitors.
 - Copy of the Planning Authority's planning enforcement records relating to the matter, including photograph records.

3.0 Planning Authority Request

3.1. Referral

- 3.1.1. The matter was referred to the Board by Fingal County Council in accordance with Section 5 (4) of the Planning and Development Act 2000, as amended, on 27th October 2020.

3.2. Planning Authority Reports

- 3.2.1. Planning Report dated 23rd October 2020, which reflects the decision to refer the matter to the Board, for determination. The Report summarised the planning enforcement history of the case, outlining that an Enforcement Notice was issued in relation to a large unauthorised to the rear of the subject site and required that its use as habitable accommodation should cease and it should be removed from the rear garden. The Report further outlined that works were carried out to construct a link from the structure to the dwelling and following inspection of the site, the structure was deemed to accord with Class 1 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 and the enforcement notice was subsequently withdrawn.

- 3.2.2. Other Technical Reports

None.

4.0 Planning History

- 4.1. I am not aware of any previous planning records relating to the site.

5.0 Policy Context

5.1. Development Plan

The site is zoned 'RS' Residential under the Fingal County Development Plan 2017-2023, with an Objective to '*Provide for residential development and protect and improve residential amenity.*'

5.2. Natural Heritage Designations

5.2.1. The site is not located within or adjacent to any Natura 2000 sites.

6.0 The Referral

6.1. The Referrers' Original Submission

6.1.1. The referrers' original submission to the Planning Authority comprised a submissions document, prepared on behalf of the referrers by Molloy Murphy Solicitors. The issues raised can be summarised as follows:

- The development is not exempted development, in light of Article 9(1)(viii) of the Planning and Development Regulations 2001-2021 as the structure itself was further extended following the issuing of an Enforcement Notice, which required cessation of the use and its removal from the site. The further extension was an attempt to link the structure to the main house and are relied upon by the owner to claim exempted development status.
 - The construction of the development began in Summer 2017, with a warning letter issued on 5th March 2018 and an Enforcement Notice was issued in or around 15th October 2018.
 - The issuing of an Enforcement Notice means that the structure was unauthorised development.
 - In the period following the Enforcement Notice, the development was continued and an attempt was made to link the structure to the original house. A plastic or similar material was used to cover the area between the house and the structure. These works are relied on by the planning authority to establish exempted development status and the Enforcement Notice was withdrawn in or around 16th January 2019.
 - Where the original structure was unauthorised, further development to it was itself unauthorised and cannot now be relied on in light of Article 9(1)(viii). Reference is made to *Harrington v An Bord Pleanala* (2010) IEHC 428 and *Fynes v An Bord Pleanala* (2005) IEHC 213.

- The development is, by its nature, use and lack of integration to the main house, not an extension
 - The main house and subject structure are separate structures
 - The connection to the main house was an afterthought, having been constructed after the original structure was deemed unauthorised
 - The development is more properly classified as a Class 3 structure, which has a maximum allowable floorspace of 25sm.
 - The structures measures more than 40sqm.
 - The remaining rear garden area does not meeting the required 25sqm in order to claim exempted status.
- There is a velux window within 1m of the nearest boundary wall
- The development has impacted on the referrers' property, with reference to noise, odour, overlooking and loss of privacy.

6.2. Planning Authority's Referral

- 6.2.1. The referral was directed to An Bord Pleanala by Fingal County Council in accordance with Section 5 (4) of the Planning and Development Act 2000, as amended.

6.3. Owner's response

- 6.3.1. A submission was received from Maura O'Riordan on 8th March 2021, the contents of which can be summarised as follows:
- At the time of construction of the structure, it was agreed with the neighbour at 78 Castlefield Woods and it was agreed that the roof would be lowered by 1 foot.
 - There are a number of untruths in the correspondence provided as part of this referral.
 - The structure was built with the privacy of others in mind and has no side facing windows and instead has 2 skylights.
 - The structure falls below the 40sqm threshold for a rear extension and has been inspected by the Planning Authority.

- Following inspection by the Planning Authority, it was advised that a link corridor should be provided to the main house. This link was constructed and, following further inspection by the Planning Authority, it was considered that the matter had been resolved.
- This matter has been ongoing for 3 years and has impacted the homeowner's health and wellbeing.

6.4. Observations

- 6.4.1. A submission was received on behalf of the referrers on 12th November 2020, which advised that they wish to rely on the submissions, materials and documentation provided to the Planning Authority.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

- 7.1.1. Section 3(1) of Planning and Development Act 2000, as amended, states – 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.
- 7.1.2. Section 2 (1) of the act states - “works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.

7.2. Planning and Development Regulations, 2001

7.2.1. Article 6 - Exempted Development

6. (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 – Restrictions on Exemption

9(1)(viii) 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— 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, Part 1 – Exempted Development

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.

Conditions and limitations

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

(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.

(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.
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.

(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.

(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.

3. Any above ground floor extension shall be a distance of not less than 2 metres from any party boundary.
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.
(b) Where the rear wall of the house includes a gable, the height of the walls of any such extension shall not exceed the height of the side walls of the house.
(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.
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.
6. (a) Any window proposed at ground level in any such extension shall not be less than 1 metre from the boundary it faces.
(b) Any window proposed above ground level in any such extension shall not be less than 11 metres from the boundary it faces.
(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.
7. The roof of any extension shall not be used as a balcony or roof garden.

CLASS 3: The construction, erection or placing within the curtilage of a house of any tent, awning, shade or other object, greenhouse, garage, store, shed or other similar structure.

Conditions and limitations

1. No such structure shall be constructed, erected or placed forward of the front wall of a house.
2. The total area of such structures constructed, erected or placed within the curtilage of a house shall not, taken together with any other such structures previously constructed, erected or placed within the said curtilage, exceed 25 square metres.

3. The construction, erection or placing within the curtilage of a house of any such structure shall not reduce the amount of private open space reserved exclusively for the use of the occupants of the house to the rear or to the side of the house to less than 25 square metres.
4. The external finishes of any garage or other structure constructed, erected or placed to the side of a house, and the roof covering where any such structure has a tiled or slated roof, shall conform with those of the house.
5. The height of any such structure shall not exceed, in the case of a building with a tiled or slated pitched roof, 4 metres or, in any other case, 3 metres.
6. The structure shall not be used for human habitation or for the keeping of pigs, poultry, pigeons, ponies or horses, or for any other purpose other than a purpose incidental to the enjoyment of the house as such.

8.0 Assessment

8.1. Is or is not development

- 8.1.1. The question is raised as to whether the construction of a wooden structure within the rear garden of 79 Castlefields Woods, Clonsilla, which is used as habitable accommodation, is or is not development or is or is not exempted development.
- 8.1.2. Development is defined, under Section 3(1) of the Planning and Development Act, 2000 – 2014, as “the carrying out of works on, in, over or under land...” Works are defined, under Section 2(1) of this Act, as including “any act or operation of construction, excavation, demolition, extension...”
- 8.1.3. The construction of a wooden structure, used as habitable accommodation, consists of the carrying out of works and therefore constitutes development as defined in Section 3 of the Planning and Development Act 2000, as amended.

8.2. Is or is not exempted development

- 8.2.1. Schedule 2, Part 1 of the Planning and Development Regulations 2001-2020 sets out classes of development which are deemed to constitute exempted development. Of

relevance in this instance, Class 1 relates to the extension of a house by the construction or erection of an extension to the rear.

- 8.2.2. Detailed drawings were not provided as part of the referral, however; it was evident on my inspection of the site that the structure is detached, it is separately accessed and it is linked to the rear door of the main dwelling by a covered walkway. The property owner confirmed to me that it is used for human habitation and I note that the Planning Authority's Enforcement Notice dated 16th October 2018 also identified that it was in habitable use, at that time.
- 8.2.3. Given the detached and separately accessible nature of the structure, and also the fact that it is functionally separate from the main house, I do not consider it constitutes an extension of the existing dwelling and, therefore, the provisions of Class 1 do not apply in this instance.
- 8.2.4. Regarding the applicability of Class 3, this relates to the construction, erection or placing within the curtilage of a house of any tent, awning, shade or other object, greenhouse, garage, store, shed or other similar structure but, item 6 of the limitations and conditions requires that such structures shall not be used for human habitation. Class 3 is therefore not applicable in this instance.

8.3. Restrictions on exempted development

- 8.3.1. Article 9(1)(viii) of the Planning and Development Regulations 2001-2021 outlines that development to which article 6 relates shall not be exempted development for the purposes of the Act if the carrying out of such development would 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.
- 8.3.2. The referrers' submission document to the Planning Authority, prepared by Molloy Murphy Solicitors, outlined the chronology of development on the site, outlining that the structure has itself been extended, following the issuing of an enforcement notice in October 2018, to provide an external covered walkway from the rear door of the main house to the point of entry to the structure. The submission document also contained a number of photographs of the structure, taken over time, which demonstrate its detached nature. I note that the property owner's submission also

outlines that additional work was undertaken, to construct a link corridor from the structure to the main house.

- 8.3.3. On the basis of the information before me, I am satisfied that the originally built detached structure did not contain a link corridor to the main house. Therefore, were consideration to be given to the structure in its current state constituting a rear extension in accordance with Class 1, I am satisfied that, in accordance with the provisions of Article 9(1)(viii) of the Regulations, the development would equally not be exempted development, as it comprises an unauthorised structure which was itself extended.

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 construction of a wooden structure within the rear garden of 79 Castlefields Woods, Clonsilla, which is occupied as habitable accommodation, is or is not development or is or is not exempted development.

AND WHEREAS Fingal County Council referred this declaration for review to An Bord Pleanála on the 27th day of October, 2020:

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) article 6(1) and article 9(1) of the Planning and Development Regulations, 2001-2021,
- (d) Class 1, Part 1 of Schedule 2 to the Planning and Development Regulations, 2001-2021, which relates to 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.

AND WHEREAS An Bord Pleanála has concluded that the construction of a wooden structure within the rear garden of 79 Castlefields Woods, Clonsilla, which is occupied as habitable accommodation, does not constitute a rear extension in accordance with Class 1, Part 1 of Schedule of the Planning and Development Regulations 2001-2021, as the subject structure is detached from the main house and is separately accessible and is also functionally separate from the main house.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5(4) of the 2000 Act, hereby decides that the construction of a wooden structure within the rear garden of 79 Castlefields Woods, Clonsilla, which is occupied as habitable accommodation is development and is not exempted development.

Barry O'Donnell
Planning Inspector

24th March 2021.