



An  
Bord  
Pleanála

## Inspector's Report ABP-308995-20 RL

### Question

Whether the alteration of the roof form and wall construction to a sunroom built in the late 20<sup>th</sup> Century is or is not development or is or is not exempted development (works to a Protected Structure).

### Location

Clarinda Lodge, 30 Clarinda Park West, Dun Laoghaire, Co. Dublin, A96 E7F8.

### Declaration

Planning Authority

Dun Laoghaire-Rathdown County Council

Planning Authority Reg. Ref.

10220

Planning Authority Decision

Would constitute development and would not be exempted development.

### Referral

Referred by

Dominic Little & Robert McCullagh

Owner/ Occupier

Dominic Little & Robert McCullagh

**Date of Site Inspection**

21<sup>st</sup> April 2021

**Inspector**

Paul O'Brien

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## **1.0 Site Location and Description**

- 1.1. The site is located to the rear/ western side of 'Clarinda Lodge', No. 30 Clarinda Park West, Dun Laoghaire, Co. Dublin. Clarinda Lodge is a two-storey over basement, end of terrace house (five house terrace), located on the western side of this residential street. Clarinda Park West is a street located between Corrig Road to the south west and George's Street to the north east, to the southern side of Dun Laoghaire town centre. Other than Clarinda Park, the majority of the street is residential with a mix of house types.
- 1.2. A garden room/ lounge, which forms the subject of this referral, is located to the rear/ western side of the house. This garden room is accessed by an internal set of steps from the original house, i.e., there is direct, internal, access between the house and the garden room. A small yard is located to the south of the sunroom and a set of steps provides access to the basement level of the house.
- 1.3. The garden room/ lounge is primarily of a block construction, plastered/ rendered, with windows and a door on the southern side with a large rooflight over and which is described as a lantern type conservatory.

## **2.0 The Question**

- 2.1. A question has arisen pursuant of Section 5 of the Planning and Development Act 2000 as amended as to whether the alteration of a roof form and wall construction to a previously built late 20<sup>th</sup> century sunroom, is or is not development or is or is not exempted development.

## **3.0 Planning Authority Declaration**

### **3.1. Declaration**

Dun Laoghaire Rathdown County Council, in accordance with Section 5 of the Planning and Development Act 2000 as amended, considered that the development as described would constitute development and would not be exempted development.

The order stated:

'Having regard to the provisions of Section 4(1)(h) and Section 57(1) of the Planning and Development Act 2000 (as amended), it is considered that development comprising Alteration of roof form and wall construction to a previously built late 20<sup>th</sup> century sun room at Clarinda Park West, Dun Laoghaire, Co. Dublin as detailed in the documentation submitted, **would constitute development and would not be exempted development** is hereby approved.

### 3.2. Supporting Documentation

- 3.2.1. A report, prepared by Cathal Crimmins Architect, was submitted to the Planning Authority in support of the Section 5 referral. This report provided a detailed history of the development of this site and a historical context to no. 30 Clarinda Park West. The house was bought by the parents of one of the applicants in the 1980s and a conservatory was added to the rear. The deeds of the house included a certificate of exemption from planning requirements in relation to the conservatory.
- 3.2.2. The applicants purchased the house in 2019 and replaced the conservatory with subject structure. Photographs are included in the report prepared by Cathal Crimmins Architect and give some indication as to the design/ scale of the original conservatory. Page 4 of the report provides an indication as to the difference in height/ scale between the original and current rooms.

## 4.0 Planning History

### 4.1. Site History

**P.A. Ref. D03A/0747** refers to a May 2004 decision to grant permission for the restoration of the basement access via steps from the street pavement and to separate the basement as a flat from the house above. 30 Clarinda Park was described as a Protected Structure.

**P.A. Ref. ENF 33520** refers to an open enforcement file – unauthorised development relating to the alteration of a pitched single storey rear roof profile of a structure listed on the RPS to accommodate a lantern style conservatory and which does not have the benefit of a valid planning permission.

#### **4.2. Previous Board References/ Referrals**

Nothing of direct relevance to this case was found on the database.

### **5.0 Policy Context**

#### **5.1. Development Plan**

- 5.1.1. Under the Dun Laoghaire-Rathdown County Development Plan 2016 – 2022, the subject site is zoned A – Residential, with the objective ‘To protect and/ or improve residential amenity’.
- 5.1.2. The site is located within the proposed designated area for the Dun Laoghaire Local Area Plan (LAP). This has not been prepared to date.
- 5.1.3. Clarinda Lodge/ 30 Clarinda Park West is listed in the Record of Protected Structures – RPS Ref. 1157 refers. The site is also located within the designated boundary of the Clarinda Park Architectural Conservation Area (ACA).

#### **5.2. Natural Heritage Designations**

None.

### **6.0 The Referral**

#### **6.1. Referrer’s Case**

Dominic Little and Robert McCullagh have engaged the services of Cathal Crimmins Architect, to appeal the declaration decision of Dun Laoghaire-Rathdown County Council.

The following points are made:

- An existing late twentieth century sunroom has been replaced with a more solidly built structure which has better wall and roof insulation. This has a flat roof with a lantern form rooflight.
- The applicants believed that the works were exempted development as the works consisted of the reinstatement of an existing structure with a more modern building. The footprint is smaller than the previous structure and has a floor area

of approximately 15 sq m. The improved structure will ensure the continued use of the protected structure.

- A detailed history of the house and use is provided in the Appeal Report.
- The previous garden room is indicated in the application under PA Ref. D03A/0747 in plan form only, no section or elevations of the garden room were provided.
- The applicants bought the house in 2019 and following professional advice, the garden room was removed and replaced with the subject structure.
- The impact from the new structure is less than was the case with the previous garden room. The footprint is less than the previous structure and the height is slightly greater in sections and lower in others, that was in-situ previously. An increase in wall height onto number 29 Clarinda Park West is offset by improved privacy.
- Many of the other houses in the immediate area have been extended to the rear in a similar fashion to the subject development.

## 6.2. Planning Authority response

No further comments have been made. A copy of the Conservation Officer report was submitted and concludes that 'Having regard to Section 4(1)(h) and Section 57(1) of the Planning and Development Act 2000 (as amended) the works which are the subject of the Section 5 are not considered exempted development'.

## 7.0 Statutory Provisions

### 7.1. Planning and Development Act, 2000 as amended

#### Section 2(1) – Interpretation

The following are relevant to the subject question:

**protected structure** means -

- '(a) a structure, or
- (b) a specified part of a structure,

which is including the record of protected structures, and where that structure so indicates, includes any specified feature which is within the attendant grounds of the structure and which would not otherwise be included in this definition’.

**structure** means –

‘any building structure excavation or other thing constructed or made on in or under any land, a part of any structure so defined and

(a) where the context so admits, includes the land on, in or under which the structure is situate and

(b) in relation to a protected structure or proposed protected structure includes

(i) the interior of the structure

(ii) the land lying within the curtilage of the structure

(iii) any other structures lying within that curtilage and their interiors and

(iv) all fixtures and features which form part of the interior or exterior of any structure or structures referred to. In some paragraphs (i) or (iii)’

**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’.

### **Section 3(1) - Development**

In the 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 (1)** sets out development that is exempt from requiring planning permission.

**4(1)(h)** is relevant:



'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'.

#### **Part IV – Architectural Heritage**

The following are relevant:

##### **Section 51(1) –**

'For the purposes of protecting structures, or parts of structures, which form part of the architectural heritage and which are of special architectural, historical archaeological, artistic, cultural, scientific, social or technical interest, every Development Plan shall include a record of protected structures and shall include in that record every structure which is, in the opinion of the Planning Authority of such interest within its functional area'.

##### **Section 57(1) -**

'Notwithstanding section 4(1)(a), (h), (i), (ia), (j), (k), or (l) and any regulations made under section 4(2), the carrying out of works to a protected structure, or a proposed protected structure, shall be exempted development only if those works would not materially affect the character of

(a) the structure or

(b) any element of the structure which contributes to its special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest'.

#### **7.2. Planning and Development Regulations, 2001 as amended**

Article 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.

#### **Schedule 2**

## **Part 1 – Exempted Development – General**

### **CLASS 1**

Description of Development

#### **Development within the curtilage of a house**

##### **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.

## 8.0 **Assessment**

It should be stated at the outset of this assessment, that the purpose of the referral is not to determine the acceptability or otherwise of the replacement 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. Is or is not development**

- 8.1.1. Having regard to Section 2(1) and Section 3(1) of the Planning and Development Act 2000 as amended, it is considered that the construction of a sunroom, as described, is development within the meaning of the act. The development is described as the improvement of an existing similar structure and from the available information, demolition and construction took place. These works fall within the definition of development.

### **8.2. Is or is not exempted development**

- 8.2.1. Development can be exempt from the requirement for planning permission by either Section 4 of the Planning and Development Act 2000 as amended, or by Article 6 of the Planning and Development Regulations 2001 as amended. However, under Section 57 of the Planning and Development Act 2000 as amended, the carrying out of works to a Protected Structure are only exempt if the works would not materially affect the character of the structure or any element of the structure which contributes to its special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest.
- 8.2.2. Clarinda Lodge/ 30 Clarinda Park West is listed on the Record of Protected Structures, RPS Ref. 1157 refers. The site is also located within the Clarinda Park Architectural Conservation Area. The development, as described, results in works to a protected structure.
- 8.2.3. P.A. Ref. D03A/0747 refers to works to Clarinda Lodge to provide for a separate residential flat in the basement level, and for the restoration of the basement access via stairs from the street. While the garden room is indicated on the submitted plans for the development under D03A/0747, no elevations or cross sections were included, and the garden room was not included within the scope of the planning application.
- 8.2.4. From the submitted information, it is stated that the footprint of the new garden room is less than that of the previous structure and is now stated to be 15 sq m. The submitted report by the applicants' states 'The roof profile has been altered from the previous structure to provide a flat ceiling with a lantern rather than a pitched roof. The flat roof with the lantern is at approximately the same height as the previous ridge, but due to the shape the side walls are taller than the previous walls'. The

new structure is clearly different in size, height and finish to what was previously on site.

- 8.2.5. The development as constructed/ described would materially affect Clarinda Lodge, a protected structure, through providing an extension to the rear of the house using materials/ a design that is clearly not in accordance with the original house design. The garden room provides an addition to the house and which would not be exempt from requiring planning permission under Section 57 of the Planning and Development Act 2000 as amended. Although this garden room replaces an earlier such structure, no permission was ever sought for the provision of such a garden room. The new garden room may be a visual improvement and provide for improved residential amenity for the occupants of this house, but the works undertaken have materially altered the character of the house through the extension of a protected structure using a design and materials that are not in accordance with the existing house.
- 8.2.6. Section 57 removes the normal exempted development rights that apply under the Planning and Development Regulations 2001 as amended, for alterations to a protected structure where such works would materially impact on the character of the structure. I would not be certain that the extended unit allows for the minimum provision of 25 sq m of private amenity space as a significant proportion of the rear yard is in the form of steps to the basement and cannot be considered as open space/ private amenity area.
- 8.2.7. I therefore consider the works which have been carried out to Clarinda Lodge have materially affected the character of the protected structure and therefore cannot be considered exempted development in accordance with the Planning and Development 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 the alteration of a roof form and wall construction is or is not development or is or is not exempted development within the Planning Authority's area:

**AND WHEREAS** the said question was referred to An Bord Pleanála by Cathal Crimmins Architect on behalf of Dominic Little and Robert McCullagh on the 8<sup>th</sup> of January 2021.

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

- (a) Sections 2(1), 3(1), 4(1)(h) and 57 of the Planning and Development Act, 2000, as amended,
- (b) the status of no. 30/ Clarinda Lodge, Clarinda Park West as a Protected Structure listed in the Record of Protected Structures and located within an Architectural Conservation Area (ACA),
- (c) the planning history of the site,
- (d) the pattern of development in the area:

**AND WHEREAS** An Bord Pleanála has concluded that the nature of the alterations undertaken is development and is not an exempted development on the grounds that the works undertaken would materially affect the character of the building which is a protected structure, through the use of materials and design that found in the original house.

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

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Paul O'Brien  
Planning Inspector

17<sup>th</sup> May 2021

**Encl.**

1. Copy of Plans and Drawings submitted under P.A. Ref. D03A/0747
2. Site Photographs.