



An
Bord
Pleanála

Inspector's Report ABP-309322-21

Question

Whether the replacement of existing log cabin structure located beyond the front wall of the existing dwelling and alterations to boundary wall is or is not development or is or is not exempted development.

Location

6 Glenalua Road, Killiney, Co. Dublin.

Declaration

Planning Authority

Dun Laoghaire Rathdown County
Council

Planning Authority Reg. Ref.

11520

Applicant for Declaration

Owen and Gina Laverty

Planning Authority Decision

Is development and is not exempted
development

Referral

Referred by

Hughes Planning Consultants on
behalf of owners.

Owner/ Occupier

Owen and Gina Laverty

Observer(s)

None

Date of Site Inspection

11th June 2021

Inspector

Emer Doyle

1.0 Site Location and Description

- 1.1. The site is located on a corner site on Glenalua Road, Killiney, Co. Dublin.
- 1.2. The existing house on the site is an end of terrace, two storey dwelling. Nos. 7- 10 form a terrace around the corner from the site to the north. These houses are of varied styles and designs.
- 1.3. No. 6 has previously been extended to the rear. Recent works which are the subject of the referral, include a replacement log cabin and alterations to the boundary wall.
- 1.4. The site is elevated and the development is very visible from a substantial part of Glenalua Road leading up to the site. A number of trees which were previously located along the boundary at this location have been felled recently due to their poor quality.

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 replacement of an existing log cabin structure located beyond the front boundary of dwelling and alterations to boundary wall 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, having regard to

- Class 3 (Condition/ Limitation 1 and Condition/ Limitation 4), and
- Class 5 (Condition/ Limitation 1)

of Part 1, of Schedule 2, of the Planning and Development Regulations, 2001 (as amended), and having regard to Section 82 (1) of the Planning and Development Act, 2000 (as amended).

3.2. Planning Authority Reports

3.2.1. Planning Reports

- Noted that the drawing sheet did not appear to fully represent the structure on site, in terms of not illustrating the single large window in the larger elevation facing the roadway.
- It appears that the overall structure may be wider than the previous structure.
- The development is a new development as it is a complete replacement of the previous structure and is also significantly different from the previous structure that it is in place of. This is in terms of its height, position and colour; noting that it is significantly taller than the previous structure, sits partly over the boundary wall (which has itself been altered), whereas the previous structure was behind the inside face of (but not abutting) the boundary wall and partly also behind a small tree, and also the subject development is painted (bright) white, whereas the previous shed was a muted, blue, blue/green colour. The subject proposal also includes a large window facing the corner onto the roadway, whereas the previous structure was blank to the road, and the previous small fronting tree and bushes have been removed and adjacent bushes have been cut back.
- The development does not accord with Class 3, Part 1, of Schedule 2 of the Planning and Development Regulations as the structure is forward of the front wall of No. 7 (Condition/ Limitation 1) adjacent and the finishes do not accord with the existing house (Condition/ Limitation 4).
- The development does not accord with Class 5 (Condition/ Limitation 1) in that alterations have been made to a wall exceeding 1.2m in height in front of a house, to No. 7 adjacent, in terms of removing part of the rounded wall coping, and replacement with a flatter coping and of different height, and design and material (including use of cement, and small stone pieces instead of rounded plaster coping). The addition of the wall of the subject structure over the height of the altered boundary wall structure and height was also noted.

- It considered that the changes in the new timber cabin, taken individually, in terms of its height increase, its change in position, change in colour, and change of road facing façade treatment with regard to the insertion of a large window, and the flattening and change of materials to the stone boundary wall, and the erection of a horizontal timber wall/ façade over and above it, and painted white; materially affect the appearance of the structures (from previous) and character of the ACA in this prominent corner location, made more visible due to the removal of screening tree/ bushes, and therefore do not accord with Section 82 (1) of the Planning and Development Act 2000 (as amended).
- It is also considered that the works and differences made in the development, to/from the previous structures, particularly have a material impact on the appearance and character of the ACA in this location, when taken together in combination, and therefore the development is contrary to Section 82 (1) of the Planning and Development Act, 2000 (as amended).

3.2.2. Other Technical Reports

No other reports.

4.0 Planning History

PA Reg. Ref. D19A/0368

Permission granted for a single storey rear extension with associated site development works.

PA Reg. Ref. ENF 331/20

Enforcement case opened on the 11th of September 2020 in relation to an alleged alteration to a boundary wall and the placing of a structure to the side of a property all within a designated Architectural Conservation Area without the benefit of a valid planning permission.

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’.

The site is also located within the designated boundary of the Killiney Architectural Conservation Area (ACA).

5.2. Natural Heritage Designations

- 5.2.1. None relevant.

6.0 The Referral

6.1. Referrer’s Case

- 6.1.1. Owen and Gina Lavery have engaged the services of Hughes Planning and Development Consultants, to appeal the declaration decision of Dun Laoghaire-Rathdown County Council.

The following points are made:

- The log cabin is a replacement of a previously existing log cabin which has been located for over 13 years on the site.
- It is submitted that the proposed replacement cabin located within the private amenity space of an existing house accords with the limitations of Class 3, Part 1 of Schedule 2. Thereby, the replacement log cabin is considered to be exempted development.
- Although the subject property is located within the Killiney Architectural Conservation Area, it is noted that the log cabin has existed at the subject site since 2007. It is prudent to note that the original log cabin was constructed prior to the site’s designation as an architectural conservation area. The Killiney ACA, in its current format was agreed upon and adopted in 2010.

- It is therefore submitted to An Bord Pleanála that the proposed replacement log cabin is also exempted development as it does not materially affect the character of the area, due to the former existence of the log cabin.
- It is further submitted that the works to the boundary wall do not materially affect the character of the area. The wider Killiney ACA area is noted for 'high stone boundary walls' and 'random stone walling'. Works to the existing stone wall, are in accordance with the principles of the Killiney ACA and therefore, have no material effect on the ACA. Due to this, it is considered that the works to the existing boundary wall which comprises of the provision of additional stone capping, are exempted development.
- The quality of trees removed was very poor and they would have been removed regardless of the provision of the replacement log cabin. The removal of these plants should have no bearing as to whether the replacement cabin, or alterations to the boundary wall, are exempted development or not.

6.2. Planning Authority Response

- None submitted.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000, as amended

7.1.1. Under Section 2, the following is the interpretation of 'works':

"...includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal..."

Section 2 (1) defines a 'structure' as:

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

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

Section 2(1) defines “architectural conservation area”

‘architectural conservation area’ shall be construed in accordance with section 81(1);

Section 3 (1) states as follows:

“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 (1) (a) – (l) sets out what is exempted development for the purposes of this Act.

Section 4(1) (h) states:

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;

82. (1) [Notwithstanding paragraph (a), (h), (i), (ia), (j), (k) or (l) of section 4(1), or any regulations made under section 4(2),] the carrying out of works to the exterior of a structure located in an architectural conservation area shall be exempted development only if those works would not materially affect the character of the area.

7.2. Planning and Development Regulations, 2001

7.2.1. Article 6(1)

Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempt 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 provides restriction on exemptions where it states:

9(1) 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

(xii) further to the provisions of section 82 of the Act, consist of or comprise the carrying out of works to the exterior of a structure, where the structure concerned is located within an architectural conservation area or an area specified as an architectural conservation area in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan and the development would materially affect the character of the area.

Schedule 2, Part 1 – Exempted Development

7.2.2. **Class 3** of Part 1 of the Second Schedule (General) refers to development within the curtilage of a house.

Column 1 (description of development):

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.'

Column 2 (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 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 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 cases, 3 metres.

6. The structure shall not be used for human habitation or for 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.

7.2.3. **Class 5**

Column 1 (description of development)

The construction, erection or alteration, within or bounding the curtilage or a house, of a gate, gateway, railing or wooden fence or a wall of brick, stone, blocks with decorative finish, other concrete blocks or mass concrete.

Column 2 (conditions and limitations)

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.

2. Every wall other than a dry or natural stone wall bounding any garden or other space shall be capped and the face of any wall of concrete or concrete block (other than blocks with decorative finish) which will be visible from any road, path or public area, including public open space, shall be rendered or plastered.

3. No such structure shall be a metal palisade or other security fence.

8.0 **Assessment**

8.1. It should be stated at the outset that the purpose of this referral is not to determine the acceptability or otherwise of the log cabin and alterations to the boundary in respect of the proper planning and sustainable development of the area, but rather whether or not the erection of same 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.

8.2. **Is or is not development**

8.2.1. The first matter relates to whether or not the log cabin and alterations to the boundary comprise development. Having regard to sections 2 and 3 of the Planning and Development Act 2000, I consider that the erection of the log cabin and alterations to the boundary constitutes 'development' within the meaning of the Act, being the carrying out of an act of construction on land. The next question is whether the works carried out are or are not development.

8.3. **Is or is not exempted development**

8.3.1. There are two elements to this referral. In the interest of clarity, I will assess each item separately.

1. Replacement of log cabin

8.3.2. The referral states that the applicant is seeking a Section 5 Declaration for works which comprise the replacement of an existing log cabin within the garden of the dwelling. The log cabin has been present on site since 2007 and has provided space incidental to the enjoyment of the dwelling. It is stated that the log cabin was considered to be exempted development falling under Class 3 (c) when it was first constructed, and the replacement log cabin is therefore considered a renewal/ refurbishment of an exempted development. It is noted that the Killiney ACA, in its

current format, was agreed upon and adopted in 2010 and therefore at the time of the construction of the original log cabin, the lands were not located in the ACA.

- 8.3.3. The planner's report considers that the development is a new development as it is a complete replacement of the previous structure and is also significantly different from the previous structure that it is in place of. This is in terms of its height, position and colour; noting that it is significantly taller than the previous structure, sits partly over the boundary wall (which has itself been altered), whereas the previous structure was behind the inside face of (but not abutting) the boundary wall and partly also behind a small tree, and also the subject development is painted (bright) white, whereas the previous shed was a muted, blue, blue/green colour. The subject proposal also includes a large window facing the corner onto the roadway, whereas the previous structure was blank to the road, and the previous small fronting tree and bushes have been removed and adjacent bushes have been cut back.
- 8.3.4. The planner's report concludes that the development does not accord with Class 3, Part 1, of Schedule 2 of the Planning and Development Regulations as the structure is forward of the front wall of No. 7 (Condition/ Limitation 1) adjacent and the finishes do not accord with the existing house (Condition/ Limitation 4).
- 8.3.5. I concur with the planner's report in that this is a new development and I consider that the differences between the two structures are as outlined in the planner's report. I consider that the images from google maps both attached to my report and in the referral would be useful for the Board to compare the previous structure with the new structure and provide useful information in terms of both the external appearance of the structure and its position relative to the boundary wall.
- 8.3.6. Article 6 of the Regulations exempts works specified under different Classes as set out in Schedule 2 of the Regulations. These classes of development can, however, be de-exempt under the restrictions set out in article 9. This assessment will first consider if the works fall within the said classes of exempted development.
- 8.3.7. I consider that Class 3 of Part 1, Schedule 2 of the Planning and Development Regulations is the relevant Class the development falls into. I consider that the development does not come within the scope of Class 3 as (1) due to the corner location of the site and the layout and design of adjacent development, the development is forward of the front wall of a house - i.e. No. 7 Glenaula Road

(Limitation No. 1) and (2) the external finishes of the log cabin do not conform to those of the house (Limitation No. 4).

- 8.3.8. I refer the Board to Figure 4 in the referral which clearly indicates that the development is located forward of a house. This site has a somewhat unusual configuration and whilst the development is located to the side of No. 6, it could also be described as being forward of No. 7.
- 8.3.9. I am satisfied that the development complies with limitations 2, 3, 5 and 6 of Class 3.

2. Works to boundary wall

- 8.3.10. The referral considers that the works to the boundary wall comprises of additional stone capping and is exempted development.
- 8.3.11. I refer the Board to Photo 3 attached to my report which indicates that the new structure has been erected on top of the boundary wall and now forms part of the boundary of the site. Prior to the replacement of the log cabin, the previous structure was located inside the boundary wall.
- 8.3.12. The Planning Report considers that the development does not accord with Class 5 (Condition/ Limitation 1) in that alterations have been made to a wall exceeding 1.2m in height in front of a house, to No. 7 adjacent, in terms of removing part of the rounded wall coping, and replacement with a flatter coping and of different height, and design and material (including use of cement, and small stone pieces instead of rounded plaster coping). The addition of the wall of the subject structure over the height of the altered boundary wall structure and height was also noted.
- 8.3.13. I refer the Board to both the google map image and photo No. 3 attached to my report. Having examined both images closely, together with a site inspection, I concur with the description of works in the planning report.
- 8.3.14. I consider that Class 5 of Part 1, Schedule 2 of the Planning and Development Regulations is the relevant Class the development falls into. I consider that the development does not come within the scope of Class 5 as the overall height of both the existing stone wall and the shed which now forms part of the boundary wall at this location exceeds 2 metres.

8.4. Is it material? - Regard to Impact on the ACA

8.4.1. The referral points out that the Killiney ACA in its current format was agreed upon and adopted in 2010. At the time of the construction of the original log cabin in 2007, the area was not included in the Killiney ACA. It is considered by the referral that neither the works to the boundary or the replacement log cabin materially affect the character of the area.

8.4.2. In terms of the subject Section 5 referral, it is necessary for the Board to determine whether or not the replacement log cabin and the works to the boundary wall would materially alter the structures so as to render the appearance inconsistent with the original structures in the context of Section 4 (1) (h) of the 2000 Act and whether it would materially affect the character of the Killiney Architectural Conservation Area in the context of Section 82(1) of the Planning and Development 2000 Act.

8.4.3. Section 5 of the Killiney ACA refers to Glenalua Road as follows:

The use of the central section of Glenalua Road to provide social housing sets it apart in the area. Whereas there are earlier examples of subsidized housing types such as the Hill Cottages this group has a significantly dominant presence to warrant special mention.

Glenalua Terrace represents one of the earliest investment in social housing by the local authority, built early in the 20th century. The housing at the other side represents a further phase built in the second half of the century. This housing type adds to and reinforces the fine grained character of the village. Set centrally between the areas that establish the historic landscape of the proposed ACA the architecture of this element makes its own historic statement and is an essential ingredient in maintaining the integrity of the whole ACA.

8.4.4. This is a corner site which has both an elevated and exposed location. In my view, any development on this site would be very visible from the approach road and I consider the site to be particularly unforgiving in this regard.

8.4.5. The previous development on the site was a muted dark blue colour behind the stone wall and sheltered by a large tree. It would appear that the height of the previous structure was similar to the height of the shared boundary wall with No. 7 and the current structure considerably exceeds the shared boundary wall.

- 8.4.6. The new development has been built on top of the existing boundary wall, is of a greater height, a brighter colour and has a large window in the side elevation. I consider that the existing structure has a much greater dominance than the previous structure.
- 8.4.7. The referral notes that the trees and bushes that were removed were in poor condition and would have been removed regardless of the provision of the replacement log cabin. It therefore considered that the removal of same should have no bearing as to whether the replacement cabin, or alterations to the boundary wall, are exempted development or not.
- 8.4.8. I am of the view that the works to the boundary wall including the erection of the replacement cabin on top of the boundary wall would materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure and that of neighbouring structures. Furthermore, I would conclude that the alterations to the boundary wall and the replacement of the log cabin would materially affect the character of the Killiney Architectural Conservation Area.

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 replacement of a log cabin and alterations to the boundary wall at No. 6 Glenalua Road, Killiney, Co. Dublin is or is not development or is or is not exempted development:

AND WHEREAS Hughes Planning and Development Consultants, 70 Pearse Street, Dublin 2 requested a declaration on this question from Council and the Council issued a declaration on the 4th day of January, 2021 stating that the matter was development and was not exempted development:

AND WHEREAS Hughes Planning and Development Consultants, 70 Pearse Street, Dublin 2 referred this declaration for review to An Bord Pleanála on the 28th day of January, 2021:

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) Section 4(1)(h) and Section 82(1) of the Planning and Development Act, 2000, as amended,
- (c) article 6(1) and article 9(1) of the Planning and Development Regulations, 2001 as amended,
- (d) Class 3 and Class 5 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001 as amended,
- (e) the character and pattern of development in the area
- (f) the planning history of the site:

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The replacement log cabin does not fall within the scope of Class 3 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001, as amended as it is located forward of the front wall of a house at No.7 Glenalua Road and the finishes do not conform with the existing house.
- (b) The alterations to the side boundary wall do not fall within the scope of Class 5 of Schedule 2 of the Planning and Development Regulations, 2001, as amended as the overall height of both the existing stone wall and the log cabin which now forms part of the boundary wall at this location exceeds 2 metres.

- (c) The alterations to the boundary wall would materially affect the external appearance of the structure so as to render the appearance inconsistent with neighbouring structures as defined under Section 4(1)(h) of the Planning and Development Act 2000, as amended.
- (d) The replacement log cabin directly on top of the stone boundary wall, with a higher structure with a large window in the side elevation, painted a bright colour on this elevated and prominent site, would materially affect the character of the Killiney Architectural Conservation Area.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3) of the 2000 Act, hereby decides that the replacement log cabin and alterations to the boundary is development and is not exempted development.

Emer Doyle
Planning Inspector

12th July 2021