



An  
Bord  
Pleanála

## Inspector's Report ABP-309407-21

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### Question

Whether the application of cladding / insulation to the exterior of an existing dwelling is or is not development or is or is not exempted development.

### Location

16 Beech Park Avenue, Foxrock, Dublin 18.

### Declaration

Planning Authority

Dún Laoghaire Rathdown County Council

Planning Authority Reg. Ref.

12320

Applicant for Declaration

Thomas Clarke

Planning Authority Decision

Is development and is exempted development

### Referral

Referred by

Thomas Clarke

Owner / Occupier

Michael O'Malley

Observer(s)

None.

Date of Site Inspection

27<sup>th</sup> April, 2021

Inspector

Robert Speer

## 1.0 Site Location and Description

- 1.1. The site in question is located within an established residential area characterised by conventional suburban housing development where it occupies a position along the northern side of a small cul-de-sac of housing known as Beech Park Avenue. Within the cul-de-sac itself, there are two distinct housing types with the predominant pattern of development comprising two-storey semi-detached dwellings dating from the 1960s whereas the turning circle is bounded by a series of 7 No. two-storey detached properties of later construction. While individual property owners have chosen to extend or modify their properties in a variety of manners, such as through the construction of extensions, garage conversions, the addition of front porches & new doorway details, or the alteration of fenestration, a defining characteristic of the semi-detached housing (and formerly that of the referral site) is the consistency in the external finishes to the front elevations i.e. the combination of decorative stone cladding / bricking and red brickwork at ground floor level which is separated from a rough dash / pebbledash render at first floor by concrete banding. The detached housing at the end of the cul-de-sac is readily distinguishable from the remainder of Beech Park Avenue by reference to its overall form and the use of a smooth plaster render (painted in some instances) to the front of the dwellings with feature irregular stone cladding at ground level.
- 1.2. The referral site comprises the westernmost semi-detached dwelling along the northern side of the estate road and adjoins No. 17 Beech Park Avenue to the east with the detached property of No. 15 occupying the adjacent lands to the west. The front and side elevations of the existing dwelling house visible from the public road have been clad in external insulation and are finished in their entirety in a light-coloured dash render (obscuring the original house features such as the decorative bricking, the red brickwork and the concrete banding).

## 2.0 The Question

- 2.1. On 16<sup>th</sup> December, 2020 Mr. John P. Shaw, Michael Houlihan & Partners, Solicitors, 9/10/11 Bindon Street, Ennis, Co. Clare, on behalf of Mr. Thomas Clarke, No. 17 Beech Park Avenue, Foxrock, Dublin 18, submitted a request to Dún Laoghaire Rathdown County Council for a declaration in accordance with Section 5 of the

Planning and Development Act, 2000, as amended, to determine whether the installation of insulation cladding to the front of No. 16 Beech Park Avenue, Foxrock, Dublin 18, was or was not development and was or was not exempted development.

- 2.2. Having conducted a site inspection, and following a review of the submitted information, in my opinion, the question before the Board can be formulated as follows:

*‘Whether the installation of external insulation to the front of the dwelling house at No. 16 Beech Park Avenue, Foxrock, Dublin 18, is or is not development and is or is not exempted development’.*

### **3.0 Planning Authority Declaration**

#### **3.1. Declaration**

- 3.1.1. On 15<sup>th</sup> January, 2021 the Planning Authority issued a declaration which determined that *‘the application of cladding / insulation to the exterior of an existing dwelling’* at No. 16 Beech Park Avenue constituted development which was exempted development.
- 3.1.2. Accordingly, pursuant to Section 5(3)(a) of the Planning and Development Act, 2000, as amended, the applicant (Mr. Thomas Clarke), c/o Farry Town Planning Ltd., Suite 180, 28 South Frederick Street, Dublin 2, has now referred the matter to the Board for determination.

#### **3.2. Planning Authority Reports**

##### **3.2.1. Planning Reports:**

States that the application of cladding / insulation to the exterior of the dwelling in question involves the carrying out of ‘works’ and, therefore, constitutes development within the meaning of Section 3(1) of the Planning and Development Act, 2000, as amended.

In assessing whether or not the works amount to exempted development by reference to the provisions of Section 4(1)(h) of the Act, it is stated that Beech Park Avenue is typically characterised by two-storey semi-detached housing of a similar

architectural style with the palette of materials and finishes of those dwellings to the south and east being generally consistent and comprising a combination of dash render and brickwork to their principal facades. It is also noted that there are a number of dwellings to the west and southwest which display a variety of finishes to their exteriors.

The report proceeds to state that following a review of the submitted information, and in light of the pattern of development in the area, the subject works are not considered to 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. Furthermore, although the insulation has been applied to the exterior of the building, it is the Planning Authority's understanding that the floor area of the dwelling has not been extended / increased.

The report concludes by stating that the works in question constitute exempted development by reference to Section 4(1)(h) of the Act.

#### 3.2.2. *Other Technical Reports:*

None.

## 4.0 **Planning History**

### 4.1. **On Site:**

None.

### 4.2. **Relevant Case Histories:**

- 4.2.1. ABP Ref. No. ABP-307701-20. Was determined on 11<sup>th</sup> November, 2020 wherein it was held that the fitting of external insulation to a gable wall with brick facing at 7 Shanganagh Terrace, Killiney, Co. Dublin, was development and was not exempted development as the works would materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the house and neighbouring properties as defined under section 4(1)(h) of the Planning and Development Act, 2000, as amended, and as the works would also materially affect the character of the Killiney Architectural Conservation Area.
- 4.2.2. ABP Ref. No. ABP-301692-18. Was determined on 23<sup>rd</sup> November, 2018 wherein it was held that the installation of external insulation to front, side and back of the

house at 134 Cabra Road, Dublin, was development and was not exempt because the works would materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the house and neighbouring properties as defined under section 4(1)(h) of the Planning and Development Act 2000, as amended.

4.2.3. ABP Ref. No. RL05E.RL3545. Was determined on 15<sup>th</sup> December, 2017 wherein it was held that works comprising the application of external insulation and a render finish to a detached dwelling at Aileach Road, Buncrana, Co. Donegal, was development that did not come within the scope of section 4(1)(h) of the Planning and Development Act, 2000, as amended, as it would materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure and thus was not exempted development.

4.2.4. ABP Ref. No. RL29S.RL3044. Was determined on 24<sup>th</sup> May, 2013 wherein it was held that the upgrading of the building fabric of a two-storey, semi-detached dwelling at No. 92 Greenlea Road, Terenure, Dublin, to include the application of external insulation with a rendered finish, was development and was exempted development because the proposed works would not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the house and neighbouring properties as defined under section 4(1)(h) of the Planning and Development Act, 2000, as amended.

## 5.0 Policy Context

### 5.1. Development Plan

#### 5.1.1. ***Dún Laoghaire Rathdown County Development Plan, 2016-2022:***

##### *Land Use Zoning:*

The proposed development site is zoned as 'A' with the stated land use zoning objective '*To protect and / or improve residential amenity*'.

##### *Other Relevant Sections / Policies:*

##### *Chapter 5: Physical Infrastructure Strategy:*

##### *Section 5.2: Climate Change, Energy Efficiency and Flooding:*

Section 5.2.2: *Energy Efficiency*

Section 5.2.3: *Energy Efficient Design:*

*Policy CC6: Energy Performance in Existing Buildings:*

It is Council policy to promote innovative building design that demonstrates a high level of energy conservation, energy efficiency and use of renewable energy sources in existing buildings

*Chapter 8: Principles of Development*

Section 8.2.3.5: *Residential Development - General Requirements*

Section 8.2.10: *Climate Change Adaptation and Energy*

5.1.2. ***Deansgrange Local Area Plan, 2010-2020:***

*Chapter 7: Residential*

## **5.2. Natural Heritage Designations**

5.2.1. The following natural heritage designations are located in the general vicinity of the proposed development site:

- The South Dublin Bay Special Area of Conservation (Site Code: 000210), approximately 2.4km north of the site.
- The South Dublin Bay Proposed Natural Heritage Area (Site Code: 000210), approximately 2.4km north of the site.
- The South Dublin Bay and River Tolka Estuary Special Protection Area (Site Code: 004024), approximately 2.4km north of the site.
- The Dalkey Coastal Zone and Killiney Hill Proposed Natural Heritage Area (Site Code: 001206), approximately 3.0km southeast of the site.

## 6.0 The Referral

### 6.1. Referrer's Case

- There is no statutory or regulatory provision by which the works in question can be undertaken without consent and, therefore, the alterations to No. 16 Beech Park Avenue require planning permission.
- The works materially alter the appearance of the referral property as to render it inconsistent with No. 17 Beech Park Avenue and all other neighbouring properties.
- The subject property comprises a two-storey, semi-detached dwelling house which was constructed in the 1960s and, prior to the completion of the works in question, it shared a high degree of homogeneity with the other semi-detached housing in the immediate area.

This residential street is characterised by semi-detached dwellings which exhibit a strong degree of commonality as regards their overall massing, height, roof profiles, and building lines etc. However, the houses are also closely coordinated in terms of their architectural design & detailing, including the use of the same colour pebbledash on the first floor of the facade, the use of identical red brickwork at ground level, and the separation of these external finishes by means of a concrete band which gives the buildings a horizontal emphasis. Unusually, in the context that these houses are of a type found in other suburban locations, the use of a feature brickwork surround to the principal ground level window serves to distinguish the dwellings within Beech Park Avenue from similar housing elsewhere.

While Beech Park Avenue also accommodates a cluster of detached houses at the end of the cul-de-sac (to the west of the referral site), these were constructed in the 1980s after the original dwellings were completed and differ from the referral property in terms of their overall appearance and architecture. Accordingly, given that the design / detailing of these later structures differs from the predominant house type along Beech Park Avenue, they are of no real relevance to the subject case.

- The Board is requested to accept that the property in question was virtually identical to other housing along Beech Park Avenue prior to the carrying out of the works (as evidenced by accompanying imagery available from 'Google Streetview' dated 2009).
- The works require planning permission by reference to the following:
  - 1) The size of the house has been increased.
  - 2) The alterations materially affect the external appearance of the structure so as to render it inconsistent with the character of the structure or of neighbouring structures.

- **The Increased House Size:**

- a) *Statutory Interpretation:*

A building cannot be increased in size by reference to s.4(1)(h) of the Planning and Development Act, 2000, as amended, as has been the traditional interpretation of this provision since 1964 (with s.4(1)(g) of the Local Government Planning and Development Act, 1963 being the predecessor of this clause). This is supported by the judgement of the Supreme Court in the case of *Michael Cronin (Readymix) Limited v. An Bord Pleanala*.

- b) *Measurement Methodology:*

The manner in which the size of a building is measured is set out in Article 3(1) of the Planning and Development Regulations, 2001, as amended, which defines 'gross floor space' as follows:

*'means 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'.*

The works in question involve the addition of an outer feature to the external wall of the original house with the result that said wall projects beyond the building line of the adjoining dwelling at No. 17 Beech Park Avenue (i.e. the referrer's property). There is no provision in the



Regulations which would confer exempted development status to such works and, therefore, the sole issue remaining is whether the alterations could reasonably fall within s.4(1)(h) of the Act, although that provision is considered to concern works to existing structures, or features located thereon, and does not extend to include works which would increase the size / floorspace or the three-dimensional volume of a building.

c) *Increased Building Size:*

Prior to the works being carried out, the size of the referral property was gauged by measuring the space between the inner face of its outer walls, including the area occupied by internal walls.

Measurement of the building size following the referral works will differ from the original structure as the material which has been affixed to the outer wall of the house has since become the key reference point i.e. the size of the dwelling is based on measurement from the inner leaf of the new cladding and not that of the original wall (the area occupied by the original outer wall would now comprise an internal wall and thus should be included as 'gross floor space').

The judgment of the Supreme Court in *Michael Cronin (Readymix) Limited v. An Bord Pleanala* did not overrule the decision of the High Court on the basis of size or quantity, but on the matter of overall principle. The effect of this decision has been to revert to the previous approach to s.4(1)(h) of the Planning and Development Act, 2000, as amended, namely, that this provision only enables works which do not entail a change in the size of the structure in question. Should the Board draw a different conclusion, any such approach would raise profound questions as to whether the Supreme Court determination is not to be shunned.

- **External Appearance:**

- a) *Introduction:*

The works materially affect the external appearance of the structure and have the effect of rendering its appearance inconsistent with the character of the structure or of neighbouring structures. The alterations are wholly inconsistent with the pattern of built development in Beech Park Avenue as a matter of generality and disrupt the relationship between the subject house and the referrer's adjoining property.

- b) *Design Changes:*

When compared to other housing in the area, the works have resulted in a different form of facade being presented onto the streetscape as well as the omission of certain architectural features which are characteristic of the immediate locale. Such a position would accord with the assessment of the Planning Authority:

*'Beech Park Avenue is typically characterised by double storey semi-detached dwellings of similar architectural style. The palette of materials and finishes of dwellings to the south and east of the site are generally consistent and comprise a combination of dash render and brick for the principal facades . . .'*

The addition of cladding to the building exterior and the removal of other features from the original external wall serves to significantly (and materially) affect the external appearance of the house.

(While the report of the case planner has noted that the detached housing in Beech Park Avenue differs from the remaining dwellings along the street (i.e. *'there are a number of dwellings to the west and southwest . . . which display a variety of finishes'*), it is reiterated that the referral property is not located within the enclave of slightly newer houses and thus the Planning Authority may have asked itself the wrong question in this case).

The new pebbledash added to the referral property is clearly off-white in colour and fairly uniform in texture whereas the pebbledash to the

remainder of the housing in the area is notably darker with a grey-brown appearance. Moreover, the cladding to the subject property extends the full height of the house, unlike other dwellings nearby, and obscures certain features & finishes which are characteristic of the built development locally (e.g. the use of red-brick at ground level and the provision of a concrete band which separates the ground and first floors).

These design changes are material and affect the relationship between the subject dwelling and the referrer's property to a significant degree.

c) *Character of Neighbouring Structures:*

The referral property (as altered) is out of character with the street-scene as a matter of generality, however, this inconsistency is particularly apparent as regards the adjoining semi-detached dwelling for reasons of proximity.

- **Precedent Effect:**

The prevailing architectural treatment of Beech Park Avenue is of a type relatively commonplace in areas that developed during the 1960s, including Rathfarnham, Glasnevin, Malahide and Coolock. Any decision to the effect that the works in question comprise exempted development will be of universal application to similar houses elsewhere in the county.

- Householders are allowed to undertake internal works to their homes, even where statutorily protected, and Garrett Simons SC, citing *Cairnduff v. O'Connell* ('Planning and Development Law', 2<sup>nd</sup> Edition), advises that '*The character of a structure relates to its shape, colour, design, ornamental features and layout and not to its particular use*'.

It is considered that the alterations in question are inconsistent with the character of the subject property and its relationship with the adjoining semi-detached dwelling (No. 17 Beech Park Avenue). Therefore, the alterations do not constitute exempted development.

## 6.2. Owner / Occupier's Response (Mr. Michael O'Malley)

- The Board is invited to confirm the decision of the Local Authority that the works in question constitute exempted development in accordance with Section 4(1)(h) of the Planning and Development Act, 2000, as amended.
- The external insulation applied to the referral property does not alter the external appearance of the structure so as to render the appearance inconsistent with the character of No. 16 Beech Park Avenue or of neighbouring properties.
- The character of the subject property remains wholly consistent with that of a two-storey semi-detached dwelling. The application of external insulation has not altered its size, scale, nature or extent, and the windows, front door & garage door all remain unchanged.
- If the entirety of the front elevation of the dwelling had been painted, while these works would have altered the appearance of the house, they would not have materially changed its character. The appearance and character of the subject property remains unmistakably that of a semi-detached dwelling albeit with an updated elevation that will significantly improve its thermal qualities.
- Prior to the works in question, there were several differences between the design & appearance of the subject property and the (referrer's) adjacent dwelling house, including differing window styles, a garage conversion (at No. 17 Beech Park Avenue), and a sliding patio door versus a recessed doorway. These, and other differences, are repeated along Beech Park Avenue without materially affecting the character of the houses or the road.
- With respect to the wider character of Beech Park Avenue, there is a variety of materials, finishes, extensions & fenestration etc. within the cul-de-sac (as evidenced by the accompanying photographs). Notwithstanding this variety, the 30 No. houses within Beech Park Avenue are compatible in terms of their overall character and appearance, being two-storey detached or semi-detached dwellings with pitched roofs, front gardens, off-street parking, consistent building lines, and generally consistent building height, mass & scale etc. While the variation in external finishes serves to distinguish one dwelling from another, this is not to the extent that it would render the

appearance of any dwelling, including the subject site, inconsistent with the character of the structure or of neighbouring structures.

- In addition to the variety of external finishes, the referral site is located adjacent to the turning circle in the cul-de-sac at the transition between the semi-detached housing and a group of 7 No. detached dwellings. This transition broadens the variety of finishes within the street and the Board is invited to agree that the external insulation does not affect the appearance of the subject property such that it would be inconsistent with its character or the character of neighbouring properties, including the adjacent detached dwelling at No. 15 Beech Park Avenue.
- The references to housing in Coolock and Rathfarnham are of no relevance to the question before the Board.
- The alleged increasing of the floor area of the house can be discounted as it can be confirmed that this has not occurred. Furthermore, this has not been a consideration in other comparable referral cases considered by the Board.

### 6.3. Planning Authority Response

None.

### 6.4. Further Responses

None.

## 7.0 Statutory Provisions

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

#### 7.1.1. Section 2(1) of the Act defines the following:

*“alteration’ includes (a) plastering or painting or the removal of plaster or stucco the replacement of a door, window or roof, that materially alters the external appearance of a structure so as to render the appearance inconsistent with the character of the structure or neighbouring structures”.*

*“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.*

7.1.2. Section 3(1) of the Planning and Development Act, 2000, as amended, states the following:

*“Development” in this Act 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 use of any structures or other land.*

7.1.3. Section 4(1)(h) states that the following shall be exempted development for the purposes of the Act:

*‘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’.*

7.1.4. Section 4(2) of the Act states that the ‘Minister’ may by Regulation provide for any class of development to be exempted development for the purposes of the Act.

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

7.2.1. Article 6(1) of the Regulations states the following:

*‘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 (1) of the Regulations states as follows:

*‘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—

(iv) *except in the case of a porch to which class 7 specified in column 1 of Part 1 of Schedule 2 applies and which 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, comprise the construction, erection, extension or renewal of a building on any street so as to bring forward the building, or any part of the building, beyond the front wall of the building on either side thereof or beyond a line determined as the building line 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’.*

### 7.3. Other

#### 7.3.1. *Cairnduff v. O’Connell* [1986] 1 I.R. 73:

This case concerned the addition of a new window to a house coupled with the return of a balcony and staircase leading to the balcony in a terraced house. The Supreme Court considered that the works did materially affect the external appearance of the structure but did not render such appearance inconsistent with the character of the structure nor of neighbouring structures. Therefore, the development was exempted under Section 4(1)(g) of the 1963 Act. The findings of this judgement are relevant as it considered that the character of a terraced house would be more dominantly affected by its street appearance rather than its rear appearance. Also of importance is that character must relate in general to the shape, colour, design, layout and ornamental features of the structure concerned.

## 8.0 Assessment

### 8.1. Is or is not development

8.1.1. Section 3 of the Planning and Development Act, 2000, as amended, 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. In my

opinion, the installation of external insulation to the front of the existing dwelling house clearly involves an act of development having regard to Section 2 of the Act where “works” are defined as:

*“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 to exterior of a structure.*

8.1.2. Accordingly, having established that the installation of the external insulation in question to the front of the existing dwelling constitutes development, the question arises as to whether these works constitute exempted development.

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

8.2.1. From a review of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001, as amended, it is clear that there is no express provision which would specifically allow for the works in question to constitute exempted development and, therefore, it remains to be determined if said works would qualify for an exemption pursuant to Section 4(1)(h) of the Act which refers to *‘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’*. In this respect, it is of relevance in the first instance to consider if the attachment of external insulation amounts to the *‘maintenance’*, *‘improvement’* or *‘other alteration’* of the existing dwelling house.

8.2.2. In its determination of the Section 5 application, the Planning Authority did not expressly address the purpose of the works in question and instead simply assessed whether the application of cladding / insulation to the exterior of the dwelling would or would not materially affect the external appearance of that structure so as to render its appearance inconsistent with the character of the structure or of neighbouring structures. While this omission is regrettable, it is not fatal, and I note that the submission received from the property owner in response to the referral provides



some degree of clarity as to the purpose of the works by referencing the improved thermal qualities at the existing dwelling attributable to the new external cladding / insulation.

- 8.2.3. Given that external wall insulation is a method of insulating the outside walls of either a new or existing house, and involves directly applying insulation panels to the walls of the building before finishing with a rendering system to provide protection from impact and weather, and as the application of this insulation provides for greater energy efficiency / reduced energy usage not only by increasing thermal performance but also by improving the overall airtightness of the home by eliminating air leakage through external walls, it is clear that such works could reasonably be construed as amounting to the '*improvement*' (or '*other alteration*') of the existing dwelling house.
- 8.2.4. Having established that the works in question satisfy the initial qualifying criterion of Section 4(1)(h) of the Act in that they involve the '*improvement*' or '*other alteration*' of the existing dwelling, the question remains whether they would '*materially affect the external appearance of the structure so as to render it inconsistent with the character of the structure or of neighbouring structures*'.
- 8.2.5. In the context of Section 4(1)(h), and by reference to the meaning of character in the case of *Cairnduff v. O'Connell* [1986] 1 I.R. 73, in my opinion, the salient issue is whether or not the structure (i.e. the dwelling house) has been materially altered such that it is inconsistent with the original and neighbouring structures in the streetscape. In this regard, I would advise the Board while the external insulation in question is now in place with the works having been completed since the lodgement of the initial Section 5 application, for the purposes of this assessment, it is necessary to revert to the external appearance of the dwelling house immediately prior to the works being carried out in order to allow for an analysis of the impact of same on the character of the structure and that of neighbouring structures.
- 8.2.6. The subject property at No. 16 Beech Park Avenue comprises the westernmost semi-detached dwelling along the northern side of the street and forms a pair with the adjoining dwelling house (i.e. the referrer's property) to the immediate east. In this respect, I would refer the Board to my earlier description of the site surrounds and to the presence of two distinct housing types within the cul-de-sac. More

specifically, I would draw the Board's attention to the fact that the referral site contributes to the predominant pattern of development in the area i.e. two-storey semi-detached housing.

- 8.2.7. Prior to the carrying out of the subject works, the existing dwelling house would have shared many of the defining characteristics of the remainder of the semi-detached housing along Beech Park Avenue (as evidenced from the available information, including the imagery provided by the referrer), with particular reference to the external finishes to the front elevations i.e. the combination of decorative stone cladding / bricking and red brickwork at ground floor level with a rough dash / pebbledash render at first floor separated by concrete banding. Notwithstanding that several property owners have chosen to extend or modify their individual dwelling houses in a variety of ways (with or without planning permission), such as through the construction of extensions, garage conversions, the addition of front porches, new doorway details, or the alteration of fenestration, there remains a consistency within the broader elevational treatment which forms part of the defining character of the semi-detached properties and the original housing construction. The full extent of the front and side elevations of the existing dwelling house have been clad in external insulation and finished in a light-coloured dash render with the result that the original exterior finishes / features, such as the decorative coloured bricking to the window surround, the red brickwork, and the concrete banding, are entirely obscured from view.
- 8.2.8. At this point, it should be emphasised that a determination under Section 5 of the Planning and Development Act, 2000, as amended, unlike a normal planning application / appeal, is not an assessment of the merits of the development *per se* but is rather an assessment of whether that development falls within the narrow confines of the definitions / descriptions governing exemption as set out in the relevant provisions of the Act and Regulations.
- 8.2.9. Clearly, the addition of external insulation and the associated render finish to the subject property has altered the appearance of the dwelling house / structure. Moreover, I am satisfied that the original combination of external finishes to the front elevation of the dwelling house formed a key aspect of the character of that structure. Therefore, given that the works in question have covered over certain features that served to define the character of the original house construction, it is

my opinion that the front elevational treatment of the dwelling house has been altered to such an extent as to materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure. In effect, the external appearance of the existing dwelling house at present no longer shares the combination of exterior finishes intrinsic to the character of the original semi-detached property.

- 8.2.10. Notwithstanding my view that the subject works materially affect the external appearance of the structure so as to render it inconsistent with the character of the structure and thus are not exempted development for the purposes of Section 4(1)(h) of the Act, it is nevertheless prudent to assess their impact on the character of 'neighbouring structures'. In this regard, I would suggest that the visible loss of the exterior details which form a defining characteristic of the semi-detached housing along Beech Park Avenue would similarly materially affect the external appearance of the dwelling house so as to render it inconsistent with the character of that housing, with particular reference to the adjoining semi-detached property (i.e. No. 17 Beech Park Avenue).
- 8.2.11. In relation to those 'neighbouring structures' which comprise the detached dwelling houses at the end of the cul-de-sac, including No. 15 Beech Park Avenue to the immediate west of the referral site, I would reiterate my earlier view that these properties are readily distinguishable from the remainder of Beech Park Avenue in terms of their overall design, size, form, construction and finish etc. Although some broader parallels may be drawn between the referral property and those detached houses, such as the hipped roof construction and the extent of the front elevation finished in a single render, in my opinion, it is clear that there are fundamental differences between the two housing types.
- 8.2.12. Accordingly, I am inclined to suggest that in considering the character of neighbouring housing, it is reasonable to place a greater onus on that of the semi-detached housing along Beech Park Avenue given that the subject dwelling is in itself a semi-detached property (noting its relationship with No. 17 Beech Park Avenue) which shares the characteristics of that housing.
- 8.2.13. Therefore, it is my opinion that the installation of external insulation to the front of the dwelling house at No. 16 Beech Park Avenue does not constitute exempted

development by reference to Section 4(1)(h) of the Act as it amounts to development that comprises the carrying out of works for the *'improvement or other alteration'* of the dwelling house which materially affects the external appearance of the house so as to render *'the appearance inconsistent with the character of the structure and of neighbouring structures'*.

### 8.3. **Restrictions on exempted development**

- 8.3.1. A further component of the referrer's case is the assertion that the works have resulted in an increase in the overall floor area / gross floor space of the dwelling house on the basis that the inner leaf of the new cladding / insulation (as opposed to that of the original wall) represents a new reference point from which the internal floor area of the property should be measured i.e. that area occupied by the original outer wall would now comprise an internal wall and thus should be included in the measurement of 'gross floor space'. Given that the external insulation is simply affixed to the outer face of the exterior of the property and forms an integrated part of external wall construction (as opposed to a 'wall' in and of itself), I am unconvinced by the argument that the reference point for measurement of the internal floor area has changed in this instance. Therefore, there has been no increase in gross floor space.
- 8.3.2. Another way of classifying the development would be as an 'extension' to a dwelling in that the works result in the stepping forward of the building line. If the Board was of a mind to interpret the works as an 'extension' then the restrictions set out in Article 9(1)(a)(iv) of the Regulations may apply, however, I am of the view that the works in question are more appropriately classified as 'alteration' rather than extension works and thus are not of a class exempted under Article 6 of the Regulations with the result that the restrictions under Article 9 do not apply.

### 8.4. **Appropriate Assessment:**

- 8.4.1. Having regard to the minor nature and scale of the development under consideration, the site location within an existing built-up area outside of any protected site, the nature of the receiving environment, the availability of public services, and the proximity of the lands in question to the nearest European site, it is my opinion that no appropriate assessment issues arise and that the development

would not be likely to have a significant effect, either individually or in combination with other plans or projects, on any Natura 2000 site.

## 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 installation of external insulation to the front of the dwelling house at No. 16 Beech Park Avenue, Foxrock, Dublin 18, is or is not development and is or is not exempted development:

**AND WHEREAS** Thomas Clarke requested a declaration on this question from Dún Laoghaire Rathdown County Council and the Council issued a declaration on the 15<sup>th</sup> day of January, 2021 stating that the matter was development and was exempted development:

**AND WHEREAS** the said Thomas Clarke referred this declaration for review to An Bord Pleanála on the 8<sup>th</sup> day of February, 2021:

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

- (a) Sections 2, 3 and 4(1)(h) of the Planning and Development Act, 2000, as amended, and
- (b) the character and pattern of development in the area:

**AND WHEREAS** An Bord Pleanála has concluded that:

- (a) the installation of external insulation to the front of the dwelling house constitutes works which are development, as defined in Section 3 of the Planning and Development Act, 2000, as amended,

- (b) the installation of external insulation to the front of the dwelling house constitutes “works for the maintenance, improvement or other alteration of any structure” as defined in Section 4(1)(h) of the said Act,
- (c) the installation of external insulation to the front of the dwelling house constitutes works which materially affect the external appearance of the existing dwelling so as to render its appearance inconsistent with its own character and that of neighbouring structures, and
- (d) the installation of external insulation to the front of the dwelling house accordingly does not 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 (3) (a) of the 2000 Act, hereby decides that the installation of external insulation to the front of the dwelling house at No. 16 Beech Park Avenue, Foxrock, Dublin 18, is development and is not exempted development.

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Robert Speer  
Planning Inspector

13<sup>th</sup> May, 2021