



An
Bord
Pleanála

Inspector's Report ABP-310347-21.

Question

Whether the construction of 2 no. extensions to the rear of a house is or is not development or is or is not exempted development.

Location

3, Gilford Avenue, Sandymount, Dublin 4.

Declaration

Planning Authority

Dublin City Council South

Planning Authority Reg. Ref.

0135/21.

Applicant for Declaration

Michelle Barrett

Planning Authority Decision

Split decision

Referral

Referred by

Michelle Barrett.

Owner/ Occupier

Roisin Curley.

Observer(s)

Michelle Barrett.

Date of Site Inspection

14th September 2021.

Inspector

A. Considine.

1.0 Site Location and Description

- 1.1. The site is located approximately 4km to the south-east of Dublin City Centre in the Sandymount area of Dublin 4. Gilford Avenue is accessed off the R131 Strand Road which runs in a north to south direction along the coastline of Dublin Bay.
- 1.2. No. 3 Gilford Avenue comprises a mid-terraced two storey house which is finished in red brick and all in the terrace of four houses include a flat roofed bay window to the front elevation. The houses include only pedestrian accesses from Gilford Avenue with small front gardens. There is a narrow laneway to the south of No. 1 Gilford Avenue (immediately to the south of the subject site) which provides access to the rear of No. 1 Gilford Avenue, as well as the terrace of houses which front onto Gilford Road to the south.
- 1.3. The house the subject of this referral, including the other houses along this road, appear to provide accommodation over two floors and a number of houses in the vicinity have been extended to the rear. There is an extension currently under construction on the site, extending from the rear wall of the house. There is also a separate building constructed to the rear boundary of the site, detached from the extension and main house.

2.0 The Question

- 2.1. I consider that the question to be determined by the Board is as follows:

‘Whether the construction of 2 no. extensions to the rear of a house is or is not development or is or is not exempted development at 3, Gilford Avenue, Sandymount, Dublin 4.’
- 2.2. The third-party referral to DCC submits that since an inspection of the site in 2020, considerable works have taken place that do not comply with the conditions and limitations for exempted development as set out in S.I. No. 600/2001 – Planning and Development Regulations, 2001, Schedule 2, Part 1, Class 1 and Class 3. The following comments are made:
 - The existing brick shed demolished to accommodate the extension, was constructed by the previous owners in the 1980s. This area is not allowable as an additional area when calculating the allowable exempted area.

- The dimensions of the extension amount to 44.5m², exceeding the 40m² limit.
- The total area of new build extension on the ground floor is 59.5m².
- The height of the extension is approx. 5.79m high which exceeds the height of the adjacent 2 storey extension at No. 1 Gilford Avenue, and therefore, it should be set back 2m from the party wall.
- The rear wall of the house has a height of 4.331m and therefore, the proposed 5.79m high extension does not comply with the conditions and limitations as set out in section 3 of the limitations.
- As the shed complies with the building regulations for a habitable room, including 150mm of wall insulation, the building is designed for use as a habitable room and does not comply with the conditions and limitations as set out in Class 3 section 6.
- The owner of No. 3 Gilford Avenue is a wine maker and may use the separate building for the warehousing of wine which is not a use ancillary to the enjoyment of the two bedroomed house.
- The site is zoned residential 'to protect, provide and improve residential amenity' and does not allow for warehousing as a permitted use.
- There is a national school nearby with substantial pedestrian and vehicular traffic. Constant delivery trucks would cause traffic difficulties and a danger to pedestrians.

3.0 Planning Authority Declaration

3.1. Declaration

Dublin City Council decided that:

- The shed structure was exempted development
- The construction of an extension which the applicant states exceeds 40m² is not exempted development.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The assessment of the planning authority in relation to the subject referral had regard to the zoning objective afforded to the site together with the requirements of the Planning and Development Regulations 2001-2020, Schedule 2 Article 6 as they relate to Class 1 and Class 3 developments. It is noted that there is no relevant planning history associated with the site.

The report notes the third-party submission that in order to build the extension, a brick shed, built by the previous owners in the 1980s, at the rear of the house was demolished. It is submitted that this area is not allowable as an additional area when calculating the allowable exempted area. The report notes the submission that the extension as constructed measures 10.6m x 4.2m = 44.5m², exceeding the exempted development limits. The referrer also submits that shed building has an area of 15m² and therefore the total build area is 59.5m². It is further submitted that the shed building has been constructed to comply with the current building regulations for a habitable room.

The report also notes that the maximum height of the extension is 5.8m, exceeding the height of the adjacent 2 storey extension at No. 1 Guilford Avenue. It is requested that this be considered a two-storey extension which should be set back by 2m at the party wall. The referrer notes the requirements of Class 4(c) as it relates to the height of an extension.

The Planning Officers report concludes that the works, involving the construction of an extension which is stated to exceed 40m² would require planning permission and is therefore not exempted development and that the shed structure is considered to be exempted development. This report formed the basis for Dublin City Councils decision to issue a split decision in relation to the subject referral.

3.2.2. Other Technical Reports

None.

3.2.3. Other Submissions

The owner of the property the subject of the referral made a submission in response to the Section 5 Declaration. It is noted that Ms. Curley advised no knowledge of the Section 5 process. The submission is summarised as follows:

- The works relating to the extending of her home is exempt from planning and the Enforcement department is happy that the works are within the required exemptions.
- Due to covid restrictions, the builders are behind in their work and soon, Ms. Curley will have no place to stay as the apartment she is currently living in is being sold by the owner.
- Due to underlying health conditions, she is not in a position to go into shared accommodation.

4.0 Planning History

4.1. Subject site:

There is no recent planning history pertaining to the site. The parent permission for the construction of the overall estate is 02/5827, with revisions to house designs permitted under 04/6220 which includes the subject site.

4.2. Adjacent site – No. 1 Gilford Avenue:

PA ref: 2948/04: Permission granted to Shelly Barret & Bill Reidy for a first-floor rear extension consisting of a bedroom and bathroom extension.

PA ref: 1021/05: Permission granted to Shelly Barret & Bill Reidy for amendments to previously approved planning permission reg. ref. 2948/04 at No. 1 Gilford Avenue, Sandymount, Dublin 4 to increase the size of the ground floor kitchen area by 6 metres squared with an additional 2 metres squared storage area at first floor level to the South of the previously approved extension Reg Ref 2948/04

5.0 Policy Context

5.1. Dublin City Development Plan 2016-2022

- 5.1.1. The site is located on lands zoned Z1, Sustainable Residential Neighbourhoods, where it is an objective “*To protect, provide and improve residential amenities*”.

5.2. Natural Heritage Designations

The subject site is not located within any designated site. The closest site is the South Dublin Bay and River Tolka Estuary SPA (Site Code: 004024) and South Dublin Bay SAC (Site Code: 000210) which are located approximately 100m to the east of the site.

6.0 The Referral

6.1. Referrer’s Case

The original referrer is a third-party neighbour of the owner/occupier of the house. The owner / occupier of the house, through their agent/architect, has appealed the decision of Dublin City Council to issue a split decision in relation to the extension development at the site. The referral to the Board is summarised as follows:

- The information included in the third-party referral is factually incorrect.
- The applicant incorrectly stated that the extension exceeds 40m².
- The extension measures 36.9m² and is therefore in compliance with Class 1 of the Planning and Development Act. Plan of the extension is enclosed.
- It is requested that the Decision Order to refuse exemption is redacted based on the enclosed information.

6.2. Planning Authority Response

The Planning Authority not responded to the referral.

6.3. Further Responses

The third party, and original referrer to Dublin City Council, has made a submission in relation to this case. This response presents a background as well as providing a summary of the relevant legislation. The response to the referral is summarised as follows:

- The development does not comply with exempted development under the Act.
- The issue of height was not referred to in the DCCs Planners report.
- The height of the southern wall of the extension to No. 3 Gilford Avenue extends to 5.79m and the rear wall of the house is 4.33m – this was not mentioned in the recommendation.
- Issues raised in relation to the need for a number of 20 ton skips. Enforcement section of DCC were contacted – EO551/21 refers.
- Issues raised with regard to the use of the roof of No. 1 to build the external side wall of the extension despite being asked not to.
- Matters were raised with the HAS – ref 179509 refers.
- From their calculations, the third party submits that the floor area exceeds the exempted development requirements.
- The height of the side wall is 5.79m while the rear wall of No. 3 is 4.33m.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

I consider the following to be the statutory provisions relevant to this referral case:

Section 2 (1) of the 2000 Planning and Development Act states as follows:-

“In this Act, except where the context otherwise requires –

“development” has the meaning assigned to it by Section 3....

Section 3 (1) of the 2000 Planning and Development Act states as follows:-

“In this Act, 'development' means, except where the context otherwise requires, the carrying out of 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 (2) of the Act provides that the Minister may, by regulations, provide for any class of development to be exempted development. The principal regulations made under this provision are the Planning and Development Regulations 2001.

7.2. Planning and Development Regulations, 2001

7.2.1. Article 6(1) of the Regulations states as follows:-

“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 sets out circumstances in which development to which Article 6 relates shall not be exempted development. None applies in this case.

7.2.3. Class 1 of Part 1 of the Second Schedule to the Regulations states as follows:-

Column 1 Description of Development	Column 2 Conditions and Limitations
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.	1. (a) Where the house has not been extended previously, the floor area of any such extension shall not exceed 40 sq metre. 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.

	<p>3. Any above ground floor extension shall be a distance of not less than 2 metres from any party boundary.</p> <p>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.</p> <p>(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.</p> <p>(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.</p> <p>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.</p> <p>6(a). Any window proposed at ground level in any such extension shall not be less than 1 metre from the boundary it faces.</p>
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7.2.4. Class 3 of Part 1 of the Second Schedule to the Regulations states as follows:-

Column 1 Description of Development	Column 2 Conditions and Limitations
The construction, erection or placing within the curtilage of a house of any tent, awning, shade or other object,	1. No such structure shall be constructed, erected or placed forward of the front wall of a house.

<p>greenhouse, garage, store, shed or other similar structure.</p>	<p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p>
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7.2.5. Class 50 of Part 1 of the Second Schedule to the Regulations states as follows:-

<p>Column 1</p> <p>Description of Development</p>	<p>Column 2</p> <p>Conditions and Limitations</p>
<p>(a) The demolition of a building, or buildings, within the curtilage of—</p> <p>(i) a house,</p> <p>(ii) an industrial building,</p> <p>(iii) a business premises, or</p>	<p>1. No such building or buildings shall abut on another building in separate ownership.</p> <p>2. The cumulative floor area of any such building, or buildings, shall not exceed:</p>

<p>(iv) a farmyard complex.</p> <p>(b) The demolition of part of a habitable house in connection with the provision of an extension or porch in accordance with Class 1 or 7, respectively, of this Part of this Schedule or in accordance with a permission for an extension or porch under the Act.</p>	<p>(a) in the case of a building, or buildings within the curtilage of a house, 40 square metres, and</p> <p>(b) in all other cases, 100 square metres.</p> <p>3. No such demolition shall be carried out to facilitate development of any class prescribed for the purposes of section 176 of the Act.</p>
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7.3. Legal Precedents

7.3.1. None.

7.4. Referral Precedents

PL04.RL3587: The board made a declaration that the demolition of a part of the house and the construction of the extension where the height of the wall exceeds the height of the rear wall of the house at Ballincollig, Co. Cork, was development and was not exempted development noting that while the extension would come within the description of development in Column 1 of Class 1 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended, but does not comply with the conditions and limitations (4)(b) and (4)(c) as set out in Column 2.

29N.RL3313: The board made a declaration that the demolition of a single storey return and the construction of a new single storey extension to the rear of a house in Clontarf was development and was exempted development. The Inspectors assessment in this case considered that:

‘The requestor’s citation of the board’s declaration under 06D.RL2354 is not apt, as the consideration of that case referred to the meaning of different words which appear in a condition on the class rather than in the description of the class itself. The height of the rear extension currently in question does not exceed the height of the previous rear return on the house, according to the drawings submitted by the referrer and planning authority, and so its exempted status is consistent with the cited declaration. Applying the interpretation advocated by the requester to the description of development

under class 1 would result in many unremarkable rear extensions losing their exempted status under the class, while more imposing developments with convoluted layouts retained theirs. This would strike most lay persons as odd, and most professional planners as perverse. In this case the board is advised that the development at issue is to the rear of the house on the site.’

In this case, the single storey return that was demolished had a mono-pitched roof and the constructed flat roofed extension rose to the height of the ridge, and not just the eaves height.

06D.RL2354: The board made a declaration that the demolition of part of house and replacement with extension to the rear of a house in Blackrock, Co. Dublin was development and not exempted development on the basis that the height of the “rear wall” for the purposes of limitation 4(a) of Class 1 of Part 1 of Schedule 2 of the planning regulations referred to the height of a previous single storey rear return and not the height of the wall at the back of the main, 2-storey element of the house.

The Board will note that the subject referral question does not relate to any demolition of a part of the existing house, and I include these precedents solely in the context of the issue of the height of the extension walls as constructed on the subject site.

8.0 **Assessment**

- 8.1.1. The Board will note that there are a number of elements to the question posed, including the floor area of the extension constructed, together with the garden shed, as well as the overall height of the extension.

8.2. **Is or is not development**

It is clear that the construction of the subject extension, and the demolition / replacement of the existing shed involved works, as defined, and as such is development within the meaning of the Act.

8.3. Is or is not exempted development - Extension

- 8.3.1. In terms of Class 1 of Part 1 of the Second Schedule to the Regulations, there are a number of conditions and limitations that must be met in order to consider the extension as exempted development. In terms of these conditions and limitations, I am satisfied that there are 2 key issues arising with regard to floor area and height.
- 8.3.2. In terms of floor area, the Board will note that both parties do not agree in terms of the floor area of the extension under construction. The owner/occupier indicates that the floor area of the extension is below the 40m² while the third party suggests it exceeds this figure. I also note that the Enforcement Section of Dublin City Council appears to have been involved with the subject site at some stage, but no details of this engagement have been submitted to the Board, or indeed, referred to in the Planning Officers report. The owner/occupier has indicated that the Enforcement Section of DCC are happy that the works are within the required exemptions.
- 8.3.3. I also note that the owners' agent has submitted scaled drawings of the extension which indicate that the floor area of the extension constructed extends to 36.87m², including the small area immediately adjacent to the original rear wall of the house. The referrer submitted drawings which suggest that the floor area extends to 44.5m² which exceeds the 40m² limit for exempted development.
- 8.3.4. On the date of my site inspection, I could not gain access to the site. However, in terms of the requirements of Class 1 of Part 1 of Schedule 2 of the Planning and Development Regulations, and having regard to the information presented to the Board, together with my site inspection and the planning history of the site and adjacent properties, I am satisfied that the following is relevant:
- Part 1(a) - the floor area of the extension as constructed appears to accord with the conditions and limitations.
 - Part 2(a) - I note that there does not appear to be any other extensions to the house which would impact the 40m² limit. I will address the garden shed further below.
 - Part 3 - The extension is a single storey extension.
 - Part 4(a) - The existing house does not include a rear gable and as such, the overall height of the walls of the extension should not exceed the

height of the rear wall of the house.

The Board will note that the referrer has indicated that as the rear wall of the main house is 4.331m in height, with a third rising to 5.8m, the main rear wall of the house is 4.331m. The gable wall of the extension rises to an overall height of 5.79m and therefore, does not comply with the conditions and limitations as set out in the exempted development regulations.

I note the conclusion of An Bord Pleanála in relation to PL06.RL2354, where it was determined that ‘it was not correct of the Planning Authority to seek to add to the workings of the Regulations and to qualify the term ‘rear wall’ with the description ‘main rear wall’’. In this case, the Board agreed with the Inspector that the single storey section was not a separate construction, but physically connected to the main body of the house. In this regard, given the ‘gabled’ nature of the southern wall of the extension as constructed in the subject case, together with the information provided by the third party (and lack of scaled elevational drawings from the owner / occupier), this wall exceeds the height of the rear wall of the existing house.

- Part 4(b) – Not relevant as the rear of the house does not include a gable.
- Part 4(c) – The highest part of the roof does not exceed the height of highest part of the roof of the dwelling.
- Part 5 – The development does not reduce the garden area to less than 25m².
- Part 6(a) – No ground floor window is within 1m of any boundary it faces.

8.3.5. Having regard to the question before the Board and taking into consideration the precedent of similar referral questions in the past, I must conclude that the extension as constructed is development and is not exempted development as it does not comply with condition and limitation (4)(a) as set out in column 2 of Class 1 of Part 1 of Schedule 2. The extension is therefore considered to be development and not exempted development.

8.4. Is or is not exempted development – Garden Shed

8.4.1. In terms of Class 3 of Part 1 of the Second Schedule to the Regulations, there are a number of conditions and limitations that must be met in order to consider the garden shed as exempted development. Class 3 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’. In terms of the conditions and limitations associated with Class 3, the following is relevant:

- The garden shed has not been constructed, erected or placed forward of the front wall of the house.
- The total area of the structures does not exceed 25m².
- The rear open space retained exceeds 25m².
- In terms of finishes, the structure is not constructed to the side of the house.
- The height of the structure does not exceed 3m.
- Although it is suggested by the third party, there is no evidence that the structure is to be used for human habitation. It would also be appropriate to conclude that the shed is not constructed 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. While I note the submission of the third party in relation to the occupation of the owner/occupier, there is nothing to indicate that the shed will be used for warehousing associated with the owners business.

8.4.2. Having regard to the conditions and limitations of Class 3, I am satisfied that the construction of the shed can be considered as development and exempted development.

8.4.3. In the interests of completion, Class 50 of the Planning & Development Regulations is also considered relevant in that the referrer indicates that as part of the construction of the extension, a single storey shed structure was demolished. I also note that a new garden shed has been constructed on the site. I consulted historic maps and the sales brochure for the house - which is available online – but I could not find evidence of a previous shed on the site. Having regard to the conditions and limitations of Class 50, I am satisfied that these works can be considered as development and exempted development.

9.0 Recommendation

9.1. I recommend that the Board should decide this referral in accordance with the following draft order.

WHEREAS a question has arisen as to whether the construction of 2 no. extensions to the rear of a house is or is not development or is or is not exempted development at No. 3 Gilford Avenue, Sandymount, Dublin 4, is or is not development or is or is not exempted development:

AND WHEREAS Michelle Barrett, No. 1 Gilford Avenue, Sandymount, Dublin 4 requested a declaration on this question from Dublin City Council and the Council issued a declaration on the 14th day of May 2021 advising of a split decision and stating that the construction of the shed structure was development and was exempted development, and that the construction of an extension which the applicant states exceeds 40m² was development and was not exempted development:

AND WHEREAS Michael and Roisin Curley care of Colm Moore, Clancy Moore Architects, 66 Meath Street, Dublin 8, referred this declaration for review to An Bord Pleanála on the 25th day of May 2021:

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

- (a) Section 2, 3, 4 of the Planning and Development Act, 2000, as amended,
- (b) Articles 5, 6(1) and article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (c) Class 1, Class 3 and Class 50 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended, and the conditions and limitations attached hereto,

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The construction of the extension to the house and the shed constitutes development.
- (b) The height of the wall of the subject extension exceeds the height of the rear wall of the house.
- (c) The subject extension, as constructed does not comply with the conditions and limitations of (4)(a) as set out in Column 2 of Class 1 of Part 1 of Schedule 2 of the Planning & Development Regulations, 2001, as amended
- (d) The subject shed as constructed complies with the conditions and limitations as set out in Column 2 of Class 3, of Part 1 of Schedule 2 of the Planning & Development Regulations, 2001, 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 the construction of an extension to the rear of dwelling at No. 3 Gilford Avenue, Sandymount, Dublin 4, is development and is not exempted development and that the construction of the shed to the rear of the dwelling at No. 3 Gilford Avenue, Sandymount, Dublin 4, is development and is exempted development.

A. Considine

Planning Inspector

14th September, 2021