



An  
Bord  
Pleanála

## Inspector's Report ABP-310984-21

### Question

Whether the insertion of two new window opens measuring 1.52m in height by 0.7m in width within the rear elevation of no. 2 Vesey Mews is or is not development and is or is not exempted development.

### Location

2, Vesey Mews, Monkstown, Co. Dublin

### Declaration

Planning Authority	Dun Laoghaire Rathdown County Council
Planning Authority Reg. Ref.	Ref7721
Applicant for Declaration	Kathy Prendergast
Planning Authority Decision	Is not exempted development

### Referral

Referred by	Kathy Prendergast
Owner/ Occupier	Kathy Prendergast
Observer(s)	None

**Date of Site Inspection**

02/03/2022

**Inspector**

Gillian Kane

## Contents

1.0 Site Location and Description .....	4
2.0 The Question .....	4
3.0 Planning Authority Declaration.....	4
3.1. Declaration.....	4
3.2. Planning Authority Reports .....	5
4.0 Planning History.....	5
5.0 Policy Context.....	7
5.1. Development Plan.....	7
6.0 The Referral.....	8
6.1. Referrer's Case .....	8
6.2. Planning Authority Response .....	10
7.0 Statutory Provisions.....	10
7.1. Planning and Development Act, 2000 .....	10
7.2. Planning and Development Regulations, 2001 .....	11
8.0 Assessment .....	12
8.2. Is or is not development .....	12
8.3. Is or is not exempted development .....	12
8.4. Restrictions on exempted development .....	14
9.0 Recommendation.....	14

## 1.0 Site Location and Description

- 1.1. Number 2 Vesey Mews is located to the western end of Vesey Mews, Monkstown, Co. Dublin. Vesey Mews is located to the western side of York Road, south-west of Dun Laoghaire and south east of Monkstown. Vesey Mews is located off Vesey Place to the north which connects directly to York Road. Vesey Place continues to the west onto 'The Slope's and a turn to the east almost parallel to Vesey Place provides access to Knapton Lawn, a short cul-de-sac of detached houses. Vesey Mews runs parallel to Knapton Lawn and a high stone wall separates these two residential streets.
- 1.2. Number 2 is a two-storey gable ended unit which has been extended at ground level to the side.

## 2.0 The Question

- 2.1. Whether the insertion of two new window opes measuring 1.52m in height by 0.7m in width within the rear elevation of no. 2 Vesey Mews is or is not development and is or is not exempted development.

## 3.0 Planning Authority Declaration

### 3.1. Declaration

- 3.1.1. On the 6th July 2021 Dun Laoghaire Rathdown issued a declaration that:

Having regard to a) Sections 2 and 3 of the Planning and Development Act 2000, as amended, and b) Section 4(1)(h) of the Planning and Development Act 2000, as amended, it is considered that the insertion of two new window opes measuring 1.52m in height by 0.7m in width within the rear elevation of no. 2 Vesey Mews, Monkstown, Co. Dublin

- Comes within the meaning of 'works' as set out under section (2) of the Planning and Development Act 2000, as amended and therefore constitutes development within the meaning of section (3) and

The Planning Authority determines that:

- The insertion of two new window opes measuring 1.52m in height by 0.7m in width within the rear elevation of no. 2 Vesey Mews, Monkstown, Co. Dublin constitutes development and does not constitute exempted development.

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

- 3.2.1. **Conservation Division:** The rear (north) elevation of no. 2 Vesey Mews is of architectural interest and therefore any proposal which would impact on the character or appearance of this elevation should not be permitted. The proposed works, being the insertion of two window openings, would render it inconsistent with the external form and character of the existing mews building and the neighbouring mews dwellings and therefore would not be considered exempted development.
- 3.2.2. **Planning Report:** Subject windows constitute development under section 3. Conservation Officer states that the rear (north) elevation is of architectural interest and therefore any proposal which would impact on the character or appearance of this elevation should not be permitted. Planning officer notes that the Conservation Officer considers that the proposed works would render it inconsistent with the external form and character of the existing mews building and the neighbouring mews dwellings and therefore would not be considered to be exempted development. Planning report states that the proposed windows will materially affect the external appearance of the mews so as to render it inconsistent with the character of the structure and therefore would not be considered to be exempted development. No restrictions under article 9(1) of the Regulations that would prevent the works subject of this section 5 from being exempted development. Recommendation to declare that the subject work is development and is not exempted development, having regard to section 4(1)(h) of the Planning and Development Act 2000, as amended.

### 4.0 **Planning History**

- 4.1.1. **ABP-308463-20:** Permission to retain a pedestrian gate to the site from Knapton Lawn was REFUSED for the following reasons:
1. The retention of this pedestrian entrance onto Knapton Lawn, results in pedestrians directly accessing the carriageway in a location where there is no footpath adjacent and no prospect of providing such a footpath due to the narrow width of the carriageway. Pedestrians accessing the carriageway would give rise to obstruction of road users and would be at risk of injury due to their presence on this carriageway and due to the proximity of the site to the junction of Knapton Lawn and Knapton Road to the west. It is considered

that the retention of the development would endanger public safety by reason of traffic hazard because of pedestrians accessing the road where no footpath exists and where sightlines may be restricted due to parked cars, the location of the site adjacent to a road junction and due to the layout of the development where sightlines are restricted in a westerly direction.

2. The proposed development, by itself or by the precedent which the grant of permission for it would set for other similar development, would adversely affect the use of this cul-de-sac by traffic and would result in the loss of character of this street through piecemeal interventions into the northern boundary wall, resulting in a negative impact on the visual and residential amenity of Knapton Lawn.

- 4.1.2. **PL06D.301374** refers to an October 2018 decision to grant permission for the demolition of the existing front entrance porch and side bay window, construction of new single storey above basement level extension to the side of existing dwelling with light wells to the front and rear of the basement level and roof lights above ground side extension, alteration to existing dwelling and associated site works. The development also included new selected metal vehicular and pedestrian gates.
- 4.1.3. **P.A. Ref. ENF 20620** refers to an enforcement file opened in June 2020. This refers to the opening of a means of access onto a public road with a surfaced carriageway of which exceeds 4 m.
- 4.1.4. **PL06D.248378**: A split decision which GRANTED permission for the said internal alterations, demolition of the existing front entrance porch and side bay window, provision of the western element of the single storey extension (containing the kitchen/living/dining area), alterations to two number existing dormer windows at first floor level to include new flat roofs and window surrounds instead of the existing pitched roofs, two number new roof lights to the existing roof side elevations and new front entrance gates with pedestrian access and side piers in accordance with the said plans and particulars based on the reasons and considerations marked (1) under and subject to the conditions set out below. REFUSE permission for the said extension to the side fronting the rear elevation of number 2 Vesey Place (containing bedrooms 1 and 2), and removal of the external plaster finish to the existing house

and repointing of the stone walls based on the reasons and considerations marked (2) under.

The reason for refusing the extension to the side was:

“Having regard to the design and architectural expression of the formal relationship between the subject Mews dwelling and the main house number 2 Vesey Place a Protected Structure, which is provided by the decorative pedimented and plastered façade to the Mews dwelling which address the rear of number 2 Vesey Place, which is considered to be an exemplar of the Victorian architectural style and which contributes to the character and setting of the Protected Structure, it is considered that the proposed extension to the ‘side’ fronting the rear elevation of number 2 Vesey Place would break the established building line, negatively impact upon the existing built form and character which exists between the Mews dwelling and the main house and interfere with the views of original ornate gable wall. Accordingly, it is considered that the proposed development would seriously injure the visual amenities of the area, would adversely impact on the character and setting of the protected structure and would, therefore, be contrary to the proper planning and sustainable development of the area”.

## **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, ‘To protect and/ or improve residential amenity’. Residential development is listed within the ‘Permitted in Principle’ category of this zoning objective.
- 5.1.2. The site is located within the designated area for a proposed Dun Laoghaire Local Area Plan. The houses on Vesey Place to the north of the subject site are located within the Vesey Place and Gardens candidate Architectural Conservation Area (ACA). 2 Vesey Place, the house to the north of 2 Vesey Mews is listed on the record of protected structures.

## 6.0 The Referral

### 6.1. Referrer's Case

6.1.1. An agent for the applicant submits the following for consideration:

- The report and subsequent decision of the Planning Authority did not consider the existing context of the existing and adjoining mews, which have been much altered.
- The subject dwelling, no. 2 Vesey Mews is not a protected structure.
- A number of the properties on Vesey Mews have been extended and / or altered.
- The subject property has incorporated the mews laneway to the front and includes a rear garden of 10m.
- Permission was recently granted for a side extension. (ABP-301374-18).
- The rear elevation of no. 2 Vesey Mews includes a hipped roof element hidden behind a pedimented façade, a plaster band and arched recessed feature.
- The property has been divided from no. 2 Vesey Place for 40 no. years. The subject dwelling was granted permission in 1977 (Planning Authority reg. ref. 8376/77).
- That the subject dwelling is separate from no. 2 Vesey Place is corroborated by the Vesey Place ACA boundary excluding the subject site in the 2016-2022 Development Plan.
- The subject site is included in the ACA in the draft development plan 2022-2028 but this will come into effect after the determination of this appeal.
- The owner of the dwelling has always taken a high quality approach to the design and setting of the windows.
- The Inspector under PL06D.248378 found that the subject dwelling was in the attendant grounds of no. 2 Vesey Place but not within the curtilage of a protected structure. There is no functional relationship between the two sites.
- Condition no. 5 of the Boards decision under ABP-301374-18 prohibited any class 1 or 3 development within the curtilage of the site. This restriction does not relate to the provision of a window in the rear elevation.



- It is submitted that the Planning Authority decision overly relies on the report of the Conservation Officer and does not carry out an independent assessment against section 4(1)(h) of the Planning and Development Act 2000, as amended.
- The Board is requested to find that Vesey Mews is not an intact group of mews buildings that has retained a relationship with the dwellings on Vesey Place.
- 1 Vesey Mews has created a separate vehicular access. 2 Vesey Mews has been altered at ground level. 3 Vesey Mews has been altered at ground level with a large floor to ceiling window and a large single storey extension to the side and rear. 5 Vesey Mews high level horizontal window at first floor rear elevation. 7 Vesey Mews has a rear garden structure. 8 Vesey Mews 1<sup>st</sup> floor window to rear. 9 Vesey Mews large single storey extension. 10 Vesey Mews two storey tower to rear.
- It is clear that the character of the structures is changing. The built environment is capable of absorbing this change. None of the mews have maintained their original relationship to the dwellings on Vesey Place.
- Any intervention in the rear of the subject property could not be considered to 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 rear of the subject property is not visible from any building or the adjoining road.
- The two windows are lower than the arched feature to be clearly read as a modern intervention and not to compete with the arch. The windows are 1.52m x 0.7m and have a narrow frame.
- The 2m high wall between the subject property and no. 2 Vesey Place results in no visual connection between the two. The rear elevation of no. 2 Vesey is 28m from the subject site and contains a false window at first floor.
- Any views from no. 2 Vesey Place are not significant, do not provide for overlooking. The subject windows provide a necessary form of light and are not inconsistent with the dwelling.

- The Board decided under ABP-303117 that three windows to the rear of 2 Brabazon Street did not materially affect the external appearance of the structure.
- It is submitted that the two windows in 2 Vesey Mews are exempted development under section 4(1)(h) of the Planning and Development Act 2000, as amended as they do not materially affect the external appearance of the structure so as to render it inconsistent with the character of the structure or neighbouring structures.
- The Boards attention is drawn to the judgement in Cairnduff v O’Connell which finds that character must relate to shape, colour, design, ornamental features and layout.
- The form, scale, location colour and design of the subjects windows read as an integral part of the elevation and maintain the visual interest of the rear elevation.
- The Board is requested to find that the subject windows are development and are exempted development.

## 6.2. Planning Authority Response

6.2.1. The Planning Authority have no further comments to add.

## 7.0 Statutory Provisions

### 7.1. Planning and Development Act, 2000

7.1.1. The following statutory provisions are relevant in this instance.

7.1.2. Section 2(1): In this Act, except where the context otherwise requires

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

"**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 this context so admits, includes the land on, in or under which the structure is situated".

7.1.3. **Section 3(1):** in this Act, "**development**" means, except where the context otherwise requires, the carrying out of any works on, in, or under land or the making of any material change in the use of any such structures or other land.

- 7.1.4. **Section 4(1):** sets out developments that shall be exempted development for the purposes of this Act.
- 7.1.5. **Section 4(1)(h):** The following shall be exempted developments for the purposes of this 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;
- 7.1.6. **Section 5(1):** If any question arises as to what, in any particular case, is or is not development or is or is not exempted development within the meaning of this Act, any person may, on payment of the prescribed fee, request in writing from the relevant planning authority a declaration on that question, and that person shall provide to the planning authority any information necessary to enable the authority to make its decision on the matter.
- 7.1.7. **Section 5(3)(a)** Where a declaration is issued under this section, any person issued with a declaration under subsection (2)(a) may, on payment to the Board of such fee as may be prescribed, refer a declaration for review by the Board within 4 weeks of the date of the issuing of the declaration. (b) Without prejudice to subsection (2), in the event that no declaration is issued by the planning authority, any person who made a request under subsection (1) may, on payment to the Board of such fee as may be prescribed, refer the question for decision to the Board within 4 weeks of the date that a declaration was due to be issued under subsection (2).
- 7.1.8. **Section 5(4):** Notwithstanding subsection (1), a planning authority may, on payment to the Board of such fee as may be prescribed, refer any question as to what, in any particular case, is or is not development or is or is not exempted development to be decided by the Board.

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

- 7.2.1. Article 6(1) of the Planning and Development Regulations, 2001 states that “Subject to Article 9 development of a class specified in Column 1 and Part 1 of Schedule 2 shall be exempted development for the purposes of the Act”.

## **8.0 Assessment**

- 8.1.1. The purpose of this referral is not to determine the acceptability or otherwise of the above proposal in terms of the proper planning and sustainable development of the area, but rather whether or not the matter in question constitutes development, and if so, falls within the scope of exempted development.

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

- 8.2.1. The subject window opes have been created in a formerly blank rear elevation. This has not been disputed by any of the parties to the referral however, in the interests of clarity, the following refers. In Section 2 of the Planning and Development Act 2000, as amended, the definition of "works" includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal. It is considered that the creation of two new window opes is "works" as it is clearly an act of construction.
- 8.2.2. As per section 3(1) of the Act, "development" is the carrying out of any works on, in, or under land or the making of any material change in the use of any such structures or other land. I am satisfied that the creation of the two new window opes is works, and that such works would be carried out on land and therefore constitute "development" as per section 3(1) of the Planning and Development Act 2000, as amended.

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

- 8.3.1. The second question to be addressed is whether that development constitutes exempted development.
- 8.3.2. The referrer has submitted that the subject windows can be considered exempted development under section 4(1)(h) of the Planning and Development Act 2000, as amended, as they 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. The Planning Authority disagrees, noting that the Conservation Officer considers the rear elevation to be of architectural interest and therefore the subject works render it inconsistent with the external character and form of the existing mews.

- 8.3.3. The Conservation Officers report for the current referral quotes the Inspectors report for PL06D.248378 regarding the “the ornate gable wall exemplifies the formal relationship between the subject Mews dwelling and the main house at no. 2 Vesey Place. The Inspector for PL06D.248378 notes “*The rear north facing elevation which addresses the main house No. 2 Vesey Place (Protected Structure) comprises a plastered and pedimented façade. The wall features a recessed arch at ground floor level with a narrow linear band to define the upper floor which has a rectangular recessed feature. The ornate gable wall hides the hipped roof of the mews dwelling and it was designed to provide visual interest when viewed from the main house. This architectural feature is replicated in the adjoining mews dwelling and the other pairs of mews dwellings to the east*”. She notes that this design has been incorporated into the neighbouring mews dwellings and therefore provides a coherent design motif along Vesey Mews which also contributes to the character, form and setting of the Victorian terrace dwellings along Vesey Place which are all designated Protected Structures.
- 8.3.4. In the period since the decision of the Board under PL06D.248378 (2017), the mews along Vesey Mews have undergone much alteration. The ornate features on the gable of the mews have been removed from the adjoining dwelling at no. 3. As such, I am satisfied that there is not a uniform or coherent design approach either along the mews row or from the mews to the main dwellings on Vesey Place.
- 8.3.5. The subject dwelling is not a protected structure. Notwithstanding its proximity to the protected structure at no. 2 Vesey Place, it is clearly and demonstrably a separate structure. I concur with the assessment of the Inspector in ABP-301374-18 that the subject mews is not functionally or physically linked to the protected structure.
- 8.3.6. The subject windows are not visible from anywhere other than the rear garden of the subject mews at no. 2 Vesey Mews – not from the mews lane, not from the adjoining mews dwelling and not from the rear elevations of the dwellings on Vesey Place. The architectural interest of the rear elevation that arose from a replicated design, no longer exists. The subject windows to be retained sit comfortably on the rear elevation and are in keeping with the pattern of development of the existing mews. Given that the windows are not visible from any point, I am satisfied that they do not

materially alter the appearance of the structure so as to render it inconsistent with the existing mews or the adjoining structures.

#### 8.4. **Restrictions on exempted development**

- 8.4.1. There are no restrictions on exemption that are applicable to the proposed development. I am satisfied that the subject windows are development and are 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 insertion of two new window opes measuring 1.52m in height by 0.7m in width within the rear elevation of no. 2 Vesey Mews is or is not development or is or is not exempted development:

**AND WHEREAS** Kathy Prendergast requested a declaration on this question from Dun Laoghaire Rathdown County Council and the Council issued a declaration on the 6<sup>th</sup> day of July, 2021 stating that the matter was development and was not exempted development:

**AND WHEREAS** referred this declaration for review to An Bord Pleanála on the 28th day of July, 2021:

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

- (a) Section 2(1) of the Planning and Development Act, 2000, as amended,
- (b) Section 3(1) of the Planning and Development Act, 2000,

- (c) Section 4(1)(h) of the Planning and Development Act, 2000, as amended,
- (d) the planning history of the site,
- (e) the pattern of development in the area:

**AND WHEREAS** An Bord Pleanála has concluded that the insertion of two new window opes measuring 1.52m in height by 0.7m in width within the rear elevation of no. 2 Vesey Mews is and is exempted development.

**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 insertion of two new window opes measuring 1.52m in height by 0.7m in width within the rear elevation of no. 2 Vesey Mews is development and is exempted development.

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Gillian Kane  
Senior Planning Inspector

07 March 2022