



An
Bord
Pleanála

Inspector's Report ABP-311644-21

Question

Whether to remove hall door and install in side/ gable wall of house, insert window in place of current hall door with sill at same level as current window and dash lower part under window, is or is not development or is or is not exempted development.

Location

1 Mayor Street Upper, North Wall,
Dublin 1

Declaration

Planning Authority

Dublin City Council North

Planning Authority Reg. Ref.

0286/21

Applicant for Declaration

Tony and Hilda McDonnell

Planning Authority Decision

Is development and is not exempted
development

Referral

Referred by

Tony and Hilda McDonnell

Observer(s)

None

Date of Site Inspection

28th June 2022

Inspector

Phillippa Joyce

1.0 Site Location and Description

- 1.1. The referral site is located at 1 Mayor Street Upper, North Wall, Dublin 1. The site is on the northern side of the street, along which runs the Luas line, and directly addresses the public footpath. The area in the vicinity of the site (north, west) has undergone/ is undergoing significant development.
- 1.2. The site is rectangular in configuration, and comprises the subject dwelling (two storey, two bay, end of terrace structure), a rear garden area, and a western side access which has a steel gate controlling access directly from the street.
- 1.3. The subject dwelling is the first property (western end) of a terrace row of six dwellings. The dwellings in the terrace row are of similar in design (one, two and three bay front elevations with double pitched roof profiles) and scale (two storey modest structures), and consistent in fenestration (vertical emphasis, proportions, sill height) and doorway (semi-circular fanlight, positioning in façade) and external finishes (pebbledash render, slate).
- 1.4. The western gable of the subject dwelling, visible from an easterly approach, has two windows openings at first floor level. As noted at my site inspection, the hall door in the front elevation has been closed/ blocked up and a new doorway has been constructed in the western side gable.

2.0 The Question

- 2.1. A question has arisen pursuant of section 5 of the Planning and Development Act 2000, as amended, as to whether to remove hall door and install in side/ gable wall of house, insert window in place of current hall door with sill at same level as current window and dash lower part under window, is or is not development and is or is not exempted development.

3.0 Planning Authority Declaration

3.1. Declaration

- 3.1.1. Dublin City Council, in accordance with section 5 of the Planning and Development Act 2000 as amended, decided to issue a notification of declaration on 13th

September 2021 stating that the development as described would constitute development and would not be exempted development.

3.2. Planning Authority Reports

3.2.1. Planning Report

The planner's report serves as the basis for the declaration decision, the main points of which include:

- Applicant's reason for the proposal is to provide some separation between the entrance to the house and the street, which is heavily trafficked;
- Proposal comprises alterations to the dwelling's façade (front door relocation, changed to a window) and to the dwelling's entrance arrangements;
- Proposal is considered to comprise works and be development;
- Consideration given to the scope of the exempted development provisions for structures in section 4(1)(h) of the Act;
- An image of a door is provided, stated by the applicant as being an example of the proposed new side door, but no drawing or image of the proposed window, or a contextual drawing has been provided;
- Design, size and shape of the front doors and windows in the terrace row creates a uniformity between the different dwellings, although there is some variation in the façade widths;
- Unclear whether the retention of the shape of the existing front door (as an amended window) includes the retention of the arched opening above the door, which could appear out of keeping with the remaining windows;
- Based on the information provided, it is not possible to state whether the proposed works would materially affect the appearance of the existing house so as to render it inconsistent with the character of the structure or of neighbouring structures; and
- Concludes that the works would not be exempted development under section 4(1)(h) of the Act.

3.2.2. There are no Technical Reports from internal departments on the declaration case.

4.0 Planning History

4.1. Referral Site History

PA Ref. 5940/07 (planner's report refers to):

Applicant applied for permission applied for a single storey extension to rear, three storey extension to side, and a second floor extension with flat roof, comprising of the conversion of ground floor to retail use with a two storey residential unit over.

Application deemed withdrawn as FI request, which included demonstration of legal interest in the site, was not responded to.

4.2. Previous Board References/ Referrals

No previous referrals were found to be of direct relevance to this referral case on the Board's database.

5.0 Policy Context

5.1. Local Planning Context

5.1.1. Under the Dublin City Development Plan the site is within Zone Z14, with the objective 'To seek the social, economic and physical development and/ or regeneration of an area with mixed use of which residential and 'Z6' would be the predominant uses'. The site is part of Strategic Development and Regeneration Area (SDRA) 6 – Docklands, and is within the North Lotts and Grand Canal Dock Strategic Development Zone.

5.1.2. The site does not contain, is not located within, nor subject to any other CDP designations (e.g. protected structures, architectural conservation area, sensitive landscape character area), or other map based objectives.

5.2. Natural Heritage Designations

5.2.1. The referral site is not located in or immediately adjacent to a European Site, a Natural Heritage Area (NHA) or a proposed NHA. There are no watercourses at or adjacent to the site. The Royal Canal is located c.277m to the west of the site.

5.2.2. The European Site designations in proximity to the referral site include (measured at closest proximity):

- South Dublin Bay and River Tolka Estuary SPA (site code 004024) is c.1,232m to the north; and
- South Dublin Bay SAC (site code 000210) is c.2,166m to the southeast.

6.0 The Referral

6.1. Referrer's Case

6.1.1. The main points raised in the referrer's case include:

- Area changed and loss of privacy since construction of LUAS line;
- House has direct access onto the street and no defensible space when opening the front door onto the street;
- Suffering anti-social behaviour and safety risk from cyclists on the footpath;
- Want to move the hall door from the front to the side of the dwelling, and replace the door with a window that will cover two-thirds of the 'old' door; and
- Enclosed: aerial photograph of the site, photographs of the front hall door amended into a window, of the western gable of the dwelling with an outline of the inserted new doorway, and of an example of the proposed door.

6.2. Planning Authority Response

6.2.1. No response has been received from the planning authority on the referral.

7.0 Statutory Provisions

7.1. Planning and Development Act 2000, as amended

7.1.1. Section 2(1) – Interpretation

The following definitions are relevant to the subject question:

works 'includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal...' and

structure means –

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

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

7.1.2. Section 3(1) – Development

development means, ‘except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land’.

7.1.3. Section 4 – Exempted Development

Section 4(1) sets out development that is exempt from requiring planning permission. Section 4(1)(h) is relevant:

‘development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures’.

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

7.2.1. There are no articles in the Planning and Development Regulations 2001, as amended, with provisions of relevance for the referral case.

8.0 **Assessment**

8.1. **Is or is not development**

- 8.1.1. The proposal comprises alterations to the front (southern) and side (western) elevations of the existing dwelling. It is proposed to replace the existing front (referred to as hall) door with a new window and create a new doorway in the western gable of the dwelling. The replacement window will have a sill inserted at the same level as that of the other ground floor window, with the lower part of the doorway opening under the window filled in and finished with pebbledash.
- 8.1.2. I highlight to the Board that at my site inspection I noted that the development subject of the referral question has been partially undertaken/ completed. The hall door in the front elevation has been closed/ blocked up and a new doorway has been constructed in the western side gable.

8.1.3. Having regard to section 2(1) and section 3(1) of the Planning and Development Act 2000, as amended, I consider that the proposal involves acts of construction and alteration, and is therefore 'works', and that the proposal is therefore 'development' within the meaning of the Act.

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

8.2.1. The proposal, indicated by the applicant as necessary for privacy and safety reasons, is consistent with the carrying out of works for the 'improvement or other alteration' of the dwelling structure. In this regard, I consider the proposed alterations to the dwelling to be exempted development under section 4(1)(h) of the Act.

8.3. **Restrictions on exempted development**

- 8.3.1. However, restrictions on the exemption arise from within section 4(1)(h) of the Act. These counter that the improvement or other alteration works are exempt if firstly, these affect only the interior of the structure or secondly, 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.
- 8.3.2. As the proposal does not comprise works that affect only the interior of the structure, the key consideration for the referral case is whether the proposed alterations to the front and side elevations materially affect the external appearance of the dwelling to the extent that it becomes inconsistent with the character of the dwelling or that of the neighbouring dwellings.
- 8.3.3. The planning authority considered the scope of section 4(1)(h) of the Act, determining that based on the information submitted (no plans or particulars submitted indicating the works in context, or whether the fanlight over the front door was being retained), section 4(1)(h) did not apply as it was not possible to establish whether the proposed works would materially affect the appearance of the existing house so as to render it inconsistent with the character of the structure or of neighbouring structures.
- 8.3.4. In the referral case, the applicant does not state how or identify under what legislative provision the development is exempted development, referring instead to the reasons why the development is necessary.

- 8.3.5. The applicant's referral case does not include plans of the works (eg. scaled drawings of the subject dwelling and/ or streetscape). Photographic images with handwritten notes provide outlines and details of the works have been submitted. These are of the front hall door altered into a window, of the western gable of the dwelling with an outline of the new doorway, and of an example of the proposed door. Of the former, I note that the fanlight of the front door is included in the extent of the 'new window'. Notwithstanding the absence of scaled plans, I am satisfied that sufficient information has been provided and combined with my site inspection to allow a determination to be made on the question.
- 8.3.6. With regard to the restrictions in section 4(1)(h), I consider that firstly, the works render the appearance of the dwelling inconsistent with the character of the dwelling. This is by reason of the two bay façade elevational design and treatment being altered through the removal of the doorway and insertion of a window, and the dwelling's entrance arrangement being reorientated from the front elevation to a side entrance, which I consider to be a material alteration.
- 8.3.7. Secondly, I consider the works render the appearance of the dwelling inconsistent with the character of the neighbouring dwellings. The terrace row is a contemporaneous and distinctive group of structures. While not exactly alike, they are sufficiently consistent in terms of architectural design, fenestration and doorway positioning and proportions, and external finishes to form a cohesive group of buildings. The proposal, comprising the loss of the doorway and the insertion of a window at a position in the facade where four of the six dwellings have a front door, alters the cohesiveness of the front elevations, and thereby the balance and uniformity of the streetscape. The inserted window is indicated as maintaining the fanlight of the doorway, which is a new architectural feature in the streetscape. The insertion of the doorway into the western gable of the subject dwelling is also a new architectural feature in the terrace row, and one that does not exist in the eastern gable of 6 Mayor Street Upper.

8.4. **Appropriate Assessment Screening**

- 8.4.1. Having regard to the nature and scale of the proposed development, the location of the site within an adequately serviced urban area, the physical separation distances to European Sites, and the absence of ecological and/ or hydrological connections,

the potential of likely significant effects on European Sites arising from the proposed development, alone or in combination effects, can be reasonably excluded.

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 to remove hall door and install in side/ gable wall of house, insert window in place of current hall door with sill at same level as current window and dash lower part under window at 1 Mayor Street Upper, North Wall, Dublin 1, is or is not development or is or is not exempted development:

AND WHEREAS Tony and Hilda McDonnell requested a declaration on this question from Dublin City Council and the Council decided to issue a declaration on the 13th day of September 2021 stating that the matter is development and is not exempted development:

AND WHEREAS Tony and Hilda McDonnell referred this declaration for review to An Bord Pleanála on the 11th day of October 2021:

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

- (a) sections 2(1), 3(1), and 4(1)(h) of the Planning and Development Act, 2000, as amended,
- (b) the planning history of the site, and
- (c) the pattern of development in the area:

AND WHEREAS An Bord Pleanála has concluded that to remove hall door and install in side/ gable wall of house, insert window in place of current

hall door with sill at same level as current window and dash lower part under window is development and is not exempted development.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5(3)(a) of the Planning and Development Act 2000, as amended, hereby decides that the works as described is development and is not exempted development.

Phillippa Joyce
Senior Planning Inspector

28th June 2022