



**Question**

Whether the demolition of existing rear kitchen extension and construction of a new rear kitchen extension is or is not development or is or is not exempted development.

**Location**

No. 80 Saint Mobhi Road, Glasnevin, Dublin 9.

**Declaration**

Planning Authority

Dublin City Council.

Planning Authority Reg. Ref.

0176/22.

Applicant for Declaration

Declan Gaffney.

Planning Authority Decision

Is not exempted development.

**Referral**

**Referred by**

Declan Gaffney.

**Owner/ Occupier**

Declan Gaffney.

**Observer(s)**

None.

**Date of Site Inspection**

29<sup>th</sup> day of June, 2023.

**Inspector**

Patricia-Marie Young

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## 1.0 Site Location and Description

- 1.1. No. 80 Mobhi Road, is an end-of-terrace two storey property with a site area of 213m<sup>2</sup>. It is located on the eastern side of Mobhi Road(R108) c35m to the north of its junction with Botanic Avenue and circa 42m to the south of the Tolka River, in the city suburb of Glasnevin, Dublin 9. To the rear and side of the subject property has been extended by way of single storey extensions. Running alongside the southern boundary of the site is a service lane that runs from Mobhi Road in an easterly direction to where it terminates at St. Ita's Road c30m from the south easternmost corner of the site. In addition, there is a gated service lane running in a northerly direction that intersects with the aforementioned service lane that commences at the rear boundary of the subject property and to the rear of No. 1 Saint Ita's Road. This service lane provides access to the rear of No. s 66 to 80 Mobhi Road and No. s 1 to 9 Saint Ita's Road. The surrounding area has an established residential character.

## 2.0 The Question

- 2.1. Whether the demolition of existing rear kitchen extension and construction of a new rear kitchen extension at No. 80 Mobhi Road is or is not development and is or is not exempted development.

## 3.0 Planning Authority Declaration

### 3.1. Declaration

- 3.1.1. By order dated 10<sup>th</sup> June, 2022, Dublin City Council issued notification of their determination that the proposed development, i.e., the demolition of existing rear kitchen extension and the construction of new rear kitchen extension, is **not exempt** from the requirement to obtain planning permission under Section 32 of the Planning and Development Act, 2000, as amended.

### 3.2. Planning Authority Reports

- 3.2.1. **Planning Reports:** The Planning Officer's report sets out the consideration of the proposal in the context of Section 2, 3, 4 of the Planning and Development Act, 2000,

as amended, and Class 1 of Part 1 Schedule 2 of the Planning and Development Regulations, 2001, as amended. It notes that unlike the proposed development sought under P.A. Ref. No. 2394/21 this proposal does not demolish the entire rear extension but involves the retention of a single wall which abuts the neighbouring extension. The Planning Officer considered that the conditions and limitations of Class 50(b) apply in this instance, i.e., '*no such building or buildings shall abut on another building in separate ownership*' and as such concludes that the proposed development did not constitute exempted development.

## 4.0 Planning History

### 4.1. Site

- **P.A. Ref. No. 2394/21:** Planning permission was **granted** subject to conditions for a development consisting of the renovation and extension of an existing two storey end of terrace house with a rear single storey extension & side single storey adjoining storeroom. Works to include part demolition of existing single storey rear extension and adjoining side storeroom to accommodate new design. Extension to include the existing kitchen extended on ground floor with the addition of a first-floor bathroom over existing kitchen with roof light over. Upgrading of existing roof in adjoining storeroom with new roof with roof light and minor alterations to rear wall & front wall with new doors and windows for storeroom. Maintain connection to City Council drainage and all ancillary site works.

Of note, according to the Planning Application Form the existing dwelling had a floor area of 92m<sup>2</sup> and the proposed new floor area was given as 6.5m<sup>2</sup>. It also does not indicate any floor area for demolition and the additional floor area primarily related to a modest two storey extension that abutted the boundary with No. 78 Mobhi Road, the adjoining property to the north.

Decision date: 7<sup>th</sup> day of May, 2021.

## 5.0 Relevant Referral Cases

- 5.1. The following recent referral case decided by the Board is of relevance:

- **ABP Ref. No. 305802:** In May 2020 the Board decided that the demolition and construction at 6 Florence Terrace, Leeson Park Avenue, Dublin, are development and are exempted development. The Board had regards to the Inspectors Report and considered that the extension, therefore, comes within the scope of Class 1 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001, as amended, and all Conditions and Limitations attached to this Class, and that the demolition of the previous rear return to the house on the site occurred in connection with development in accordance with Class 1, and so was in accordance with Class 50(b) of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001, as amended. Having regards to the description of development for Class 50(b) refers to the demolition of part of a habitable house, in contrast to Class 50(a) which refers to the demolition of a building or buildings. As Condition and Limitation number 1 on Class 50 refers only to “such building or buildings” and does not refer to “part of a habitable house”, it therefore restricts the scope of the exemption under Class 50(a) but not that under Class 50(b). Therefore, the abutment or otherwise or the previous rear return to the house with a building in separate ownership does not affect the exempted status of its demolition.

## 6.0 Policy Context

### 6.1. Development Plan

- 6.1.1. The site is zoned ‘Z1 – Sustainable Residential Neighbourhoods’ under the Dublin City Development Plan, 2022-2028. The land use objective for such lands is: “to protect, provide and improve residential amenities”.
- 6.1.2. Chapter 15 of the Development Plan sets out the development management standards.

### 6.2. Natural Heritage Designations

None within the zone of influence.

### 6.3. EIA Screening

- 6.3.1. Having regard to the limited nature and scale of the proposed development and the absence of any significant environmental sensitivity in the vicinity, there is no real

likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required. Impact of the development on sensitive locations, which are substantially removed from the site, are addressed in the Appropriate Assessment section of this report and it is concluded that no significant effects are likely to arise in respect of European sites.

## **7.0 The Referral**

### **7.1. Referrer's Case**

7.1.1. The referrals submission can be summarised as follows:

- The Planning Authority's Planning Officer's report states that the extensions meet the conditions and limitations of Class 1 of the Planning & Development Regulations.
- The construction depends on the part demolition of the habitable house (the roof and southern and western walls of the kitchen as shown on the drawings submitted). The wall to the north remains and will form part of the rebuilt extension in accordance with Class 50(b).
- No. 78 and 80 Mobhi Road's rear extensions were built separately and are not shared returns.
- There would be no impact on the adjoining property.
- Reference is made to appeal case RL29S.305802.

### **7.2. Planning Authority Response**

7.2.1. None.

## **8.0 Statutory Provisions**

### **8.1. Planning and Development Act, 2000, as amended.**

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

“structure” means any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined, and – (a) Where the context so admits, includes the land on, in or under which the structure is situate, and ...

“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.

Section 3(1) In this Act, “development” means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land.

Section 4(1) of the Act sets out various forms and circumstances in which development is exempted development for the purposes of the Act, including the following which shall be exempted development for the purposes of this Act.

Section 4(2) of the Act provides that the Minister may, by regulations, provide for any class of development to be exempted development. The main regulations made under this provision are the Planning and Development Regulations, 2001, as amended.

Under Section 32 of the Act there is a general obligation to obtain permission in respect of any development of land not being exempted development and in the case of development which is unauthorised for the retention of that unauthorised development.

## 8.2. **Planning and Development Regulations, 2001, as amended**

Article 6(1) of the Regulations provide that ‘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’.

As provided for in Article 9(1)(a), the following development to which article 6 relates, shall not be exempted development, if the carrying out of such development would, *inter alia*:

(viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use.

Class 1 of Part 1 of Schedule 2 of the Planning and Development Regulations reads as follows:

#### Column 1 Description of Development

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.

#### Column 2 Conditions and Limitations

1. (a) Where the house has not been extended previously, the floor area of any such extension shall not exceed 40 square metres.

(b) Subject to paragraph (a), where the house is terraced or semi-detached, the floor area of any extension above ground level shall not exceed 12 square metres.

(c) Subject to paragraph (a), where the house is detached, the floor area of any extension above ground level shall not exceed 20 square metres.

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<sup>st</sup> October 1964, including those for which planning permission has been obtained, shall not exceed 40 square metres.

(b) Subject to paragraph (a), where the house is terraced or semi-detached and has been extended previously, the floor area of any extension above ground level taken together with the floor area of any previous extension or extensions above ground level constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 12 square metres.

(c) Subject to paragraph (a), where the house is detached and has been extended previously, the floor area of any extension above ground level, taken together with the floor area of any previous extension or extensions above ground level constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 20 square metres.



3. Any above ground floor extension shall be a distance of not less than 2 metres from any party boundary.

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.

(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.

(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.

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.

6. (a) Any window proposed at ground level in any such extension shall not be less than 1 metre from the boundary it faces.

(b) Any window proposed above ground level in any such extension shall not be less than 11 metres from the boundary it faces.

(c) Where the house is detached and the floor area of the extension above ground level exceeds 12 square metres, any window proposed at above ground level shall not be less than 11 metres from the boundary it faces.

7. The roof of any extension shall not be used as a balcony or roof garden.

#### Class 50 Column 1 Description of Development

(a) The demolition of a building, or buildings, within the curtilage of— (i) a house, (ii) an industrial building, (iii) a business premises, or (iv) a farmyard complex.

(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.  
Conditions and Limitations

1. No such building or buildings shall abut on another building in separate ownership.

2. The cumulative floor area of any such building, or buildings, shall not exceed: (a) in

the case of a building, or buildings within the curtilage of a house, 40 square metres, and (b) in all other cases, 100 square metres.

3. No such demolition shall be carried out to facilitate development of any class prescribed for the purposes of section 176 of the Act.

## 9.0 Assessment

### 9.1. Preliminary Comment

9.1.1. It should be stated at the outset of this assessment that the purpose of this referral is not to determine the acceptability or otherwise of the demolition and construction works of rear kitchen extension at No. 80 Mobhi Road, but rather whether or not the matter in question constitutes development, and if so, does it fall within the scope of exempted development. Similarly, planning enforcement is a matter for the planning authority and does not fall within the jurisdiction of the Board.

9.1.2. Therefore, the question posed under this referral case is whether 'works consisting of demolition and construction is or is not development or is or is not exempted development'.

9.1.3. As set out under Section 3 of this report above the Planning Authority assert that the extension is not exempt from planning permission. Their basis for this determination is given in the reasons and considerations in their notification order which reads:

*"The proposed works which include the demolition of an existing extension and the construction of a new single storey rear extension Do Not Constitute Exempted Development under the meaning of the Planning and Development Act 2000 (as amended) when assessed in accordance with the Planning and Development Regulations, 2001 (as amended) Schedule 2, Article 6, (Part 1), Class 1 and Class 50 as the proposal involves the demolition of an existing structure (i.e. an existing rear extension at no. 80 Mobhi Road) which abuts on another building in separate ownership (i.e. the existing rear extension at 78 Saint Mobhi Road) and therefore does not meet the exempted development conditions of Class 50 of the Planning and Development Regulations 2001 (as amended)."*

9.1.4. The referrer asserts that as the northern elevation of the existing rear kitchen extension would remain the demolition and construction work associated with the

proposed development would give rise to no meaningful impact on the adjoining property of No. 78 Mobhi Road which like the subject premises has been extended to the rear. Further they assert that the Board should reach a similar conclusion in relation to this subject development as they did in the case of ABP. Ref. No. 305802 and therefore conclude that the proposed development is exempted development.

## 9.2. Is or is not development

- 9.2.1. The first question that arises in this referral case is whether the demolition of the rear kitchen extension, except for its northern wall, is or is not development. The second question that arises is whether the construction of a rear extension, which would retain the northern wall of the original rear kitchen extension, is or is not development. In this regard, I note that Section 3 of the Planning & Development Act, 2000, (PDA) 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 addition, Section 2(1) of the PDA, defines 'works' as including: '*any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal*'. The act of demolition and construction of a rear kitchen extension, including the extension eastwards of the northern wall to be retained as part of the construction proposed, therefore constitutes development by virtue of the definitions of the PDA for 'works'. This would not appear to be an issue to the Referrer and the Planning Authority who are both in agreement with this.

## 9.3. Is or is not exempted development

- 9.3.1. To determine whether such development is exempted development regard must be had to the relevant provisions of the Planning and Development Regulations, 2001.
- 9.3.2. In this regard I firstly note to the Board that the subject proposal as set out in the accompanying drawings shows the demolition of a rear mono-pitched roof extension with an internal floor area of circa 4.8m and a maximum height of circa 3.85m at its rear wall that abuts No. 78 Mobhi Road, the adjoining 2-storey terrace property to the north, and with its roof structure over sloping down to circa 2.65m on its southern side. This rear extension does not form part of the original floor area of this end of terrace property as it is a later built insertion like that of the single storey side extension that

also projects beyond the original rear elevation of the subject property and abuts the southern boundary.

- 9.3.3. In addition, the proposal also includes the construction of a replacement rear kitchen extension with a floor area of circa 9.6m<sup>2</sup> with the additional floor area extending eastwards beyond the footprint of the extension to be demolished, with the roof structure over maintaining a mono-pitch roof shape over and extending the aforementioned northern wall also in an easterly direction at the same maximum height of 3.85m height of 3.6m relative to the raised patio and 4m relative to the rear garden, and the slightly smaller area of the extension to be demolished. The mono-pitched roof shape would however be amended in its height, volume and pitch including no overhang and two rooflight insertions providing light into the kitchen area below.
- 9.3.4. At the time of inspection, no access was available to the rear of the property, and it would appear from glimpses over the side and rear boundary wall that it is highly probable that the demolition and construction works have been carried out with a new roof structure present to the rear single storey extension. This conclusion is supported by publicly available aerial photography of the site which shows the rear kitchen extension which is referred to in the accompanying documentation as 'existing' demolished except for its northern wall.
- 9.3.5. Having read the referrers submission I consider that the dispute arising in relation to this referral case relates solely to the interpretation of whether the demolition except for the northern wall and the construction of a larger rear kitchen extension which includes the northern wall of the previous extension and extending it eastwards. This accords with the conditions and limitations of Class 50 of the Planning & Development Regulations, 2001, as amended, given that it is accepted by the referrer and the Planning Authority that all other conditions and limitations have been complied with.
- 9.3.6. I first of all note to the Board in relation to the northern wall its retention and its extension as part of the subject development, I consider that it would not be appropriate to separate this wall out as an individual element separate from the demolition of an extension of the rear of elevation of the original built form of the subject property and the construction of a rear extension to this property given that in both situations it forms a critical part of the extension as opposed to having a primary

function as a party wall or wall bounding the subject site. The subject matter of this declaration is the existing and proposed extension to the rear of the subject house and therefore I do not consider it appropriate to adjudicate the northern wall as existing and as proposed separately under Class 5 of the said Regulations.

- 9.3.7. In relation to the partial demolition of the rear kitchen extension component of this referral question before the Board in my opinion as presented in the referrers accompanying drawings they do not reduce, amend, or modify the original floor area of the house. They consisted of the removal of the external shell of this extension with as said the exception of the northern wall that abuts and is appears to form part of the party boundary between the subject site and No. 78 Mobhi Road, which is the adjoining property to the north. Of note this property has also been extended to the rear for the width of its original rear elevation and terminating alongside the subject northern wall to be retained.
- 9.3.8. I note that demolition works are referred to in Class 50(a) of Part 1 of Schedule 2 of the Regulations. In this regard they are described as relating to '*buildings, or buildings within the curtilage of – (i) a house ...*'. The demolition works as described do not relate to a building or buildings with the curtilage of No. 80 Mobhi Road but rather part thereof. Section 50(a) of the Regulations should therefore be interpreted as restricting the exemption for the demolition of buildings or buildings. As such I do not consider that the demolition works in this case fall under Section 50(a) of the Regulations.
- 9.3.9. Whereas Class 50(b) of the Regulations refers to: '*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*'. Section 50(b) like Section 50(a) of the Regulations are subject to the same three stated conditions and limitations set out in Column 2.
- 9.3.10. In relation to Class 1 of Part 1 of Schedule 2 of the Regulations it provides for a domestic extension of 40 square metres where the house has not been extended previously subject to conditions and limitations. The floor area of the rear extension demolished when taken together with other extensions at this subject house do not exceed 40 square metres. Notwithstanding, I note that the terms of this provision states that: '*where the house has not been extended previously*'. This is not the case

in this situation given as said that the subject house has been subject to previous extensions to the side and rear. With the chronology of these side and rear extensions unclear and no planning history pertaining to any permitted alterations as well as additions that have been carried out to date at this house.

9.3.11. In relation to Class 7 this is not applicable given the nature of the development as set out in the documentation provided by the referrer.

9.3.12. In relation to the planning history of the site there is permission for the grant of planning permission for alterations which included a part single and part two storey extension to the rear of No. 80 Mobhi Road (Note: P.A. Ref. No. 2394/21). Both the demolition and construction of the rear extension element permitted under this recent grant of permission which appears to not have been implemented does not accord with the details set out in this referral case in relation to the scope of demolition and construction works. It is of note in my view that P.A. Ref. No. 2394/21 included the raising of the single storey rear additions height (Note: 4.025m) as well as its extension eastwards. I therefore do not consider that the proposed development correlates with the development permitted under P.A. Ref. No. 2394/21 given these significant differences and given that Condition No. 1 of the notification to grant permission required the development to be carried out in accordance with the plans, particulars and specifications lodged with the application.

9.3.13. In relation to the conditions and limitations of Class 50(b) of the regulations, I note that the first states that: "*no such building or buildings shall abut on another building in separate ownership*". There is no separate provision under these conditions and limitations for Class 50(b), i.e., '*part of a habitable house*'. Therefore, the abutment or otherwise or the previous rear return to the house with a building in separate ownership does not affect the exempted status of the scope of demolition sought. Further the demolition of the previous rear return kitchen extension occurred in connection with development in accordance with Class 1 of the Regulations and within the scope of its conditions and limitations which I note as follows:

- 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<sup>st</sup> October 1964, including those for which planning permission has been obtained, shall not exceed 40 square metres.*

The floor area of extensions to No. 80 Mobhi Road do not exceed 40 square metres.

- 2. (b) *Subject to paragraph (a), where the house is terraced or semi-detached and has been extended previously, the floor area of any extension above ground level taken together with the floor area of any previous extension or extensions above ground level constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 12 square metres.*

There are no above ground extensions present at No. 80 Mobhi Road.

- 3. *Any above ground floor extension shall be a distance of not less than 2 metres from any party boundary.*

- There are no above ground extensions present at No. 80 Mobhi Road.

- 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.*

*(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.*

*(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.*

I consider that 4(a), (b) and (c) are not applicable given that the height of the extension does not exceed the height of the rear wall of the house; the height of the extension does not exceed the height of the side walls of the house; and, the height of the extension does not exceed the height of the eaves or parapet. In this regard, house is generally taken to relate to what was originally constructed which in this case was an end-of-terrace two storey dwelling.

- 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.*

The private open space remaining exceeds 25 square metres.

- 6. (a) *Any window proposed at ground level in any such extension shall not be less than 1 metre from the boundary it faces.*

There are no windows proposed within 1 meter from the boundary it faces.

- *6. (b) Any window proposed above ground level in any such extension shall not be less than 11 metres from the boundary it faces.*

The extension is single storey in its built form and therefore does not include any windows above ground level.

- *6. (c) Where the house is detached and the floor area of the extension above ground level exceeds 12 square metres, any window proposed at above ground level shall not be less than 11 metres from the boundary it faces.*

No. 80 Mobhi Road is not detached.

- *7. The roof of any extension shall not be used as a balcony or roof garden.*

The mono-pitched roof structure is not of a design that would accommodate its use as balcony or roof garden.

9.3.14. In relation to the above I note the fact that the demolition of the rear kitchen extension has already occurred. This is clear from available aerial photography publicly available which show the main structure of the extension removed except for its northern boundary wall. They also appear to show that this northern has been extended eastwards as it does not correspond with its extent as shown in the photographs included in the Planning Authority's Planning Officer's report. These photographs show the rear kitchen extension. The demolition works carried out result in the Declaration question and the details submitted by the referrer not reflecting the reality of the situation. In that regard, the documentation relates to the partial demolition of an existing extension and proposes the construction of a new rear kitchen extension of a clearly different built form, mass, scale, and design. It would also appear from views into the site that it is likely that recently construction of the rear extension has occurred with views of the roof structure over visible from the public domain.

9.3.15. I therefore consider that the existing extension ceased to exist with its demolition and removal from the site.

9.3.16. This is a different circumstance to the situation when the Planning Authority determined this referral case. The Board may consider this changed circumstance a **new issue**.



9.3.17. In this situation I consider it reasonable to conclude as said that what was described as an existing rear kitchen extension ‘perished’ with its almost entire demolition and the construction of the new extension. Thus, the development subject to this Declaration based on the facts on the ground could come within the scope of Conditions and Limitations 1(a) identified under Column 2 of Schedule 2 of Class 1 of the 2001 Regulations as opposed to Conditions and Limitations 2 of the said Regulations. The terms of this provision states that ‘where the house has not been extended previously’. I note that in the case of No. 80 Mobhi Road what is presented as an existing rear extension is not the sole extension that extends beyond the rear elevation of this house or indeed to this house given the presence of an extension to the side. With this extension extending into the rear garden and whilst the fully details of this extension are not clear from the documentation submitted by the referrer nor accurately presented as a built form in the context of the site and its setting, I do not consider the demolition works in this case constituted a ‘fresh start’ in terms of Class 1 of Schedule 2 Part 1 extension developments to a house. This therefore does not change the conclusion set out above that the construction of the new kitchen extension would not exceed 40 square metres floor area of Conditions and Limitations identified under Class 1 of Part 1 of Schedule 2. With this also being the situation if it is the case that the construction of the extension of the kitchen structure to the rear of the subject property has also already occurred which also appears to be the case. Notwithstanding, it is unclear whether what is construction correlates with what is presented with this referral case and the Board are confined to the question as posed by the Referrer.

9.3.18. In relation to previous similar recent referral cases determined by the Board, I consider that the ABP Ref. No. 305802 is relevant. With this relating to demolition of an existing extension and construction of a new extension at Florence Terrace, Leeson Park Avenue, in Dublin 6. This I have set out under Section 5.1 of this report above and I have had regard to the Boards determination in this case.

9.3.19. In conclusion: Having regard to the above considerations I consider that the works to which this case refers are exempted development under Class 1 and Class 50(b) of Part 1 of Schedule 2 of the Regulations, as they comply with the descriptions of development for those classes set out in Column 1 of the Schedule and with the Conditions and Limitations set out for the exemption of extensions under Class 1 of

Part 1 of the Second Schedule of the Regulations. I therefore recommend that the Board make a declaration to that effect in the manner set out below.

## 10.0 Appropriate Assessment

10.1. This appeal site is located in an established serviced residential area, and it is not located adjacent to nor in close proximity to any European sites, as defined in Section 177R of the Habitats Directive. Having regard to the nature and scale of the proposed development and/or the nature of the receiving environment and/or proximity to the nearest European site, no appropriate assessment issues arise and therefore it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

## 11.0 Recommendation

11.1. 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 demolition of an existing rear kitchen extension and the construction of a new rear kitchen extension at No. 80 Mobhi Road, Glasnevin, Dublin 9, is or is not development or is or is not exempted development:

**AND WHEREAS** Declan Gaffney of No. 80 Mobhi Road requested a declaration on this question from Dublin City Council and the Council issued a declaration on the 4<sup>th</sup> day of July, 2022, stating that the matter was development and was not exempted development:

**AND WHEREAS** Declan Gaffney of No. 80 Mobhi Road referred this declaration for review to An Bord Pleanála on the 2<sup>nd</sup> day of August, 2022:

**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, as amended,
- (c) Class 1 and Class 50 of Part 1 of Schedule 2 to the said Regulations and the conditions and limitations attached thereto,
- (d) the planning history of the site and the documentation submitted with the referral,
- (e) the Inspectors report.

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

- (a) the works as carried out constitute development,
- (b) the gross floor area of the extension does not exceed 40 square metres,
- (c) the extension, therefore, comes within the scope of Class 1 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001, as amended, and all Conditions and Limitations attached to this Class, and
- (d) the demolition of the previous rear return to the house on the site occurred in connection with development in accordance with Class 1, and so was in accordance with Class 50(b) of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001, as amended. The description of development for Class 50(b) refers to the demolition of part of a habitable house, in contrast to Class 50(a) which refers to the demolition of a building or buildings. As Condition and Limitation number 1 on Class 50 refers only to “such building or buildings” and does not refer to “part of a habitable house”, it therefore restricts the scope of the exemption under Class 50(a) but not that under Class 50(b). Therefore, the abutment or otherwise or the previous rear return to the house with a building in separate ownership does not affect the exempted status of its demolition.

**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 works consisting of demolition of existing rear kitchen extension and construction of a new rear kitchen extension at 80 Mobhi Road, Glasnevin, Dublin 9, **is development and is exempted development.**

*I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.*

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Patricia-Marie Young  
Planning Inspector  
6<sup>th</sup> day of October, 2023.