



An
Bord
Pleanála

Inspector's Report

ABP 318165.23

Declaration	Whether the installation of French Doors is or is not development or is or is not exempted development.
Location	42 Monastery Crescent, Clondalkin, Dublin 22.
Planning Authority	South Dublin County Council
Planning Authority Reg. Ref.	ED 23/0036
Applicant for Declaration	Paula & Martin Carey.
Owner	Paula & Martin Carey.

Date of Site Inspection	11 th March 2024
Inspector	Aisling Dineen

1.0 Introduction

- 1.1. This referral arises from a request by the applicant to South Dublin County Council regarding whether the proposed development of French doors at first floor level of the rear elevation of a detached house is development or is development that is exempt development. The referrer states that he wants to be compliant with planning in case the house would be offered for sale at a future time. The subject french doors are not presently in situ.

2.0 Site Location and Description

- 2.1. The site is located within a mature residential neighbourhood at No 42 Monastery Crescent, Clondalkin, Dublin 22.
- 2.2. The contains a detached dormer house and is positioned on a triangular, corner site to the west of a row of houses. The rear garden of the subject premises is notably smaller in size than adjacent properties owing to its corner site location. It is noted that there is a mixture of semi-detached and terraced dwellings in the area. It was observed on the date of inspection, that box dormers at first floor rear elevations are a feature of the pattern of development in the area.

3.0 The Question

- 3.1. The question before the Board is: 'Whether the installation of french doors is or is not development or is or is not exempted development'
- 3.2. Information contained within the application indicates that the proposed french doors are at the first-floor level and it appears that there is a small balcony with hand rails proposed on an existing ledge underneath the location of the proposed french doors. The referrer calls into question regulations governing extensions and exempted development provisions.
- 3.3. In view of the information provided, I propose to reword the question as follows: -

‘Whether the installation of french doors and associated small balcony with hand rails, at first floor level of the rear elevation of two storey house, is or is not development and is or is not exempted development’.

4.0 Planning Authority Declaration

- 4.1. By order dated the 8th Of September 2023, South Dublin County Council issued a declaration stating that the proposed development of french doors is development and is not considered to be exempted development under the Planning and Development Act 2000 (as amended) and the Planning and Development Regulations 2001 (as amended) and therefore does require planning permission.

The Chief Executive’s declaration reflects the planner’s report.

5.0 Planning Authority’s Report

- 5.1. The planners report notes that the site differs slightly in form from the adjacent dwellings and notes that there is a pattern of rear dormer window extensions to the rear of these dwellings.

The report states:

The proposed development would include the installation of french doors to the first-floor level of the rear elevation, which is not consistent with the character of the neighbouring dwellings. Given the established character of the neighbouring dwellings it is considered that the proposed development would ‘*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 development is therefore not considered to be exempted development under Section 4(1)(h) of the Planning and Development Act 2000 (as amended).

6.0 Planning History

SD02B.0344 Planning permission for retention of hand rails refused at 42 Monastery Crescent, Clondalkin.

S01B/0336 Planning permission granted for domestic garage at side of house at 42 Monastery Crescent, Clondalkin.

S01B0336 Planning permission granted for first floor dormer extension to side of house at 42 Monastery Crescent, Clondalkin.

7.0 Policy Context

7.1. South Dublin County Council Development Plan 2022 – 2028

7.2. The zoning designation of the site is RES, whereby it is an objective 'To protect and/or improve residential amenity'.

7.3. Natural Heritage Designations

7.4. The site is not within or adjacent to any European site.

7.5. Environmental Impact Assessment

7.6. The subject development constitutes small scale development, within the curtilage of house. This type of development does not constitute an EIA project and so the question as to whether or not it might be sub-threshold does not arise.

8.0 Grounds of Referral

- The referrer's called to SDCC on two occasions and were told that the subject proposal was exempt development as it would be to the rear of the property and also as the referrer's were not building anything.
- A phone call to SDCC also confirmed that the proposal was exempt development.
- The referrers want to apply for an exempt development certificate in case they sell the property.
- The planning officer said it was development and requires planning permission, therefore is not exempt.
- This is confusing as a 40 square metre extension can be erected to the rear with no planning permission.
- 2 No window companies and 1 No builder priced the job and said it is exempt because it is to the rear of the building.
- An architect said it is exempt and would cost a lot for plans and could be turned down.
- The Planning Officer said it would change the external appearance of the structure as it is to the rear of a detached house.
- Neighbours have no objection.
- The doors could have been fitted originally as exempt development as 40 square metres is not exceeded.
- French doors are fitted to the first floor of dormer bungalow at 82 Monastery Walk and also to the rear of 59 Monastery Walk.

9.0 Response of the Planning Authority

No response to the referral.

10.0 Legislative Context

10.1. Planning and Development Act, 2000 (as amended)

10.1.1. Section 2 (1) of the Act defines 'works' as

'Any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal...'

Section 3 (1) of the Act defines 'development' as follows:

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 or any structures or other land'.

Section 4 (1) (h) provides exempted development as follows:

'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'.

10.2. Planning and Development Regulations 2001 (as amended)

10.2.1. Article (6) (1) of the Regulations states 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 2.

Article 9 provides restrictions on exemptions.

The provisions of this article are not applicable in this instance.

10.2.2. Schedule 2 – Exempted Development, Part I – Development within the curtilage of a house, CLASS 1 specifies:

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, any garage, store, shed or other similar structure attached to the rear or side of the house.

This exemption is subject to the following limitations set out in Column 2:

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 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.

11.0 Relevant Referrals

- 11.1. There are no available referral cases, which directly consider french doors at the first-floor rear elevation of a house.
- 11.2. **RL2287 – whether the provision of one number window within the northern gable wall at first floor level of 32 Ballinclea Heights, Killiney Co. Dublin is or is not development or is or is not exempted development.**

The Board concluded (2006) that the said provision of a window in the northern gable of the dwellinghouse constitutes development which materially affects the external appearance of the structure and which renders its appearance inconsistent with the character of the structure and of neighbouring structures, and thereby did not come within the scope of Section 4(1)(h) of the 2000 Act. It is noted that concerns raised by observers in this particular case had related to the impact of the window in terms of overlooking and loss of privacy. The Inspector's report had referenced case law - Cairnduff v. O'Connell 1986 - in which it had been established by the Supreme Court that the character of a structure relates to its shape, colour, design, ornamental features and layout, and not to its particular use. The Inspector had argued that on this basis, the impact in terms of interference with privacy is not relevant to the interpretation of this section of the Act, and focussed instead on the key elements of the term "character" as set out in the Supreme Court judgement (Cairnduff case), and as outlined above. The Inspector concluded that whilst the installation of the rear gable window materially affected the external appearance of the bungalow, it did not render this appearance inconsistent with the character of the structure nor of neighbouring structures. Thus, it was concluded that it came within the scope of S4(1)(h) of the 2000 Act. However, the Board did not agree and considered that the insertion of a window into the gable of a dwelling constituted a significant departure from the established character of the structure and of neighbouring structures in terms of design and layout. It was, therefore, concluded that the works comprising the insertion of a new window in the gable wall was development and was not exempted development'

- 11.3. Under appeal, **ABP 312779-12** the Board decided to issue a split decision and to refuse planning permission for retention of the first-floor decking area to the rear,

raised side screens and double doors to the decking from the rear of the dwelling, for reasons relating to residential amenity and precedent, inter alia.

12.0 Assessment

12.1. This referral generally relates to the question of whether the french doors at first floor level at the rear of the house is or is not development and whether it is or is not exempted development.

The relevant matters may be considered as follows:

- Whether the double doors and small balcony is development.
- Whether or not it is exempted development.

12.2. **Whether the double doors and small balcony is development.**

12.3. Upon inspection of the site, it was apparent that there is a small protrusion of the rear building line at ground - floor level from the rear elevation of the dwelling house, under the location of the proposed french doors. This protrusion extends for approximately 3 feet from what is established as the rear elevation building line at first floor level. The documents submitted do not include a plan/layout form of the subject of the referral. However, the documents submitted include an elevation of the proposal, which includes the '*proposed french doors*' and '*proposed handrail*'.

12.4. I consider that the Oxford Dictionary definition of 'balcony' to be relevant. This states a balcony is: *A platform that is built on the upstairs outside wall of a building, with a wall or rail around it. You can get out onto a balcony from an upstairs room.*

12.5. I consider that it is reasonable to deduce that the subject proposal for french doors also contains a proposal for a balcony, albeit a small balcony. Furthermore, the proposal of french doors at first floor level would by its very nature reasonably imply the presence or insertion of a platform of sorts.

12.6. Section 2 (1) of the Planning and Development Act 2000 (as amended) defines 'works' as follows:

'Any act of operation of construction, excavation, demolition, extension, alteration, repair or renewal....'

Regarding this definition, it is considered that what is being proposed comes within the definition of both 'alteration' and 'extension'.

Section 3 (1) defines 'development' as:

'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 of use of any structure or other land'

12.7. As the subject proposal involves the construction of french doors at first floor and including the provision of a small balcony with handrails, it is considered that this comes within the scope of the definition of 'works' and 'development' as set out above. I therefore conclude that the french doors and associated balcony is 'development'.

12.8. **Whether the development is exempted development**

12.9. Both the Act and the Planning and Development Regulations 2001 (as amended) include provisions that allow for certain developments to be exempted from the need to apply for planning permission. The relevant provisions may be considered separately as follows:

- Section 4(1)(h) of the Act •
- Part 1 of Schedule 2 of the Regulations

12.10. **Section 4 (1) (h)**

Section 4(1)(h) of the Act provides for exempted development as follows:

"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."

The development in question involves the construction of a double doors or french doors to the rear of the house with the inclusion of a small balcony. Having inspected the site, and the adjacent neighbouring structures, it is apparent that first floor box dormer windows are a feature of the rear elevations and are clearly established in precedent on adjacent properties, however I note that the adjacent or neighbouring

structures do not have first floor french doors over balcony features on the rear elevations. This applies to the neighbouring dwellings to the east and to the neighbouring dwellings south, fronting Monastery Walk. Apart from privacy issues, I consider that the proposed feature of french doors and a balcony significantly alters the appearance of the rear of the house. Having inspected the site and adjacent neighbouring properties and with regard to the drawings and photographs on file, I am satisfied that the development does not come within the scope of section 4(1)(h).

12.11. Part 1 of Schedule 2 of the Regulations

12.12. Article (6)(1) of the Regulations states 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 the development complies with the conditions and limitations specified in column 2.

12.13. Part 1, CLASS 1, '*Development Within the Curtilage of a House*', states that the following shall be exempt within same: 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, storey, shed or other similar structure attached to the rear of the house.

12.14. It is considered that the balcony feature comes under the scope of '*or other similar structure attached to the rear of the house*'.

12.15. The following limitations set out in Column 2 are relevant:

6. (b) *Any window proposed above ground level in any such extension 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.*

12.16. The position of the rear elevation, at the point at which the proposed french doors/balcony is to be located, is no more than 5 metres from the shared boundary to the south. The proposed french doors entail two large clear window panes, which I consider fall under the remit of this limitation. Accordingly, this proposal does not comply with the limitation on exemption cited in Column 2, Item 6 (b).

12.17. While the attendant balcony area to the french doors, is unquestionably a small area, it nevertheless provides opportunity to overlook the adjacent property in such close proximity to the party boundary. While the area is small it nevertheless conflicts with limitation on exemption cited in Column 2, Item 7.

13.0 **Appropriate Assessment**

13.1. Having regard to the limited scale of the proposed development, the limited potential for any associated emissions, and the lack of connectivity with Natura 2000 sites due to the separation distance and development buffer, I consider that no Appropriate Assessment issues arise. The development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

14.0 **Conclusion and Recommendation**

14.1. Having considered the contents of the file, and following inspection of the site and surrounding area, I conclude the works as described constitute development and is not exempt development.

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

WHEREAS a question has arisen as to whether the installation the installation of french doors at No 42 Monastery Crescent, Clondalkin, Dublin 22, is or is not development and is or is not exempted development.

AND WHEREAS Paula and Martin Carey of No 42 Monastery Crescent, Clondalkin, Dublin 22, referred the declaration for review to An Bord Pleanála on the 3rd day of October 2024,

AND WHEREAS the Board reformulated the question as follows – Whether the installation of french doors and associated small balcony, at first floor level of the rear elevation of two storey house, at No 42 Monastery Crescent, Clondalkin, Dublin 22, is or is not development and is or is not exempted development.

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

- (a) Section 2(1), 3(1), and 4(1)(h) of the Planning and Development Act, 2000, as amended;
- (b) Article 6 and 9 of Schedule 2 of the Planning and Development Regulations 2001 (as amended);
- (c) Class 1 of Part 1 of Schedule 2 of the said regulations;
- (d) The installation of french doors and a small balcony on the rear elevation;
- (e) The provisions of the South County Dublin Development Plan 2022-2028,
- (f) The character and pattern of development on the adjacent properties.

AND WHEREAS An Bord Pleanála has concluded that –

- (a) The development would constitute works which would come within the scope of Section 3 (1) of the Planning and Development Act, 2000, as amended;
- (b) The development does not come within the scope of exemptions provided in Class 1 of Part 1 of Schedule 2 to the Planning and Development Regulations 2001, as amended;
- (c) The development does not come within the scope of restrictions on exemption provided in Article 9 of the Planning and Development Regulations 2001, as amended.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by Section 5 of the Planning and Development Act 2000 (as amended), hereby decides that the construction of french doors and associated small balcony, at first floor level of the rear elevation of two storey house, at No 42 Monastery Crescent, Clondalkin, Dublin 22, is development and is not 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.

Aisling Dineen
Planning Inspector
13th March 2024

Appendix 1 - Form 1

EIA Pre-Screening

[EIAR not submitted]

An Bord Pleanála Case Reference	318165 - 23		
Proposed Development Summary	Whether the installation of French doors and associated small balcony, at first floor level of the rear elevation of two storey house, at No 42 Monastery Crescent, Clondalkin, Dublin 22, is or is not development and is or is not exempted development.		
Development Address	42 Monastery Crescent, Clondalkin, Dublin 22		
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)	Yes		
	No	No further action required	
2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?			
Yes		Class.....	EIA Mandatory EIAR required
No			Proceed to Q.3
3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?			
		Threshold	Comment (if relevant)
			Conclusion
No		N/A	
			No EIAR or Preliminary Examination required
Yes		Class/Threshold.....	
			Proceed to Q.4

4. Has Schedule 7A information been submitted?

No		Preliminary Examination required
Yes		Screening Determination required

Inspector: Aisling Dineen

Date: 13th March 2024