



An  
Bord  
Pleanála

## Inspector's Report ABP-318242-23

### Question

Whether the development of a single storey domestic extension located and attached to the rear of the mentioned dwelling is or is not exempted development

### Location

4 River Walk, Clonshaugh, Belcamp,  
Dublin 17 D17 7R82

### Declaration

The Proposal in question is not exempted development

Planning Authority

Fingal County Council

Planning Authority Reg. Ref.

FS5/050/23

Applicant for Declaration

Thomas Maneesh

Planning Authority Decision

The Proposal in question is not exempted development

### Referral

Referred by

Thomas Maneesh

Owner/ Occupier

Thomas Maneesh.

Observers

None.

Date of Site Inspection

12<sup>th</sup> February 2024

Inspector

Michael Walsh

## 1.0 Site Location and Description

- 1.1. Belcamp is the name of a recently completed residential development located to the west of the Malahide road near Balgriffin in an outer suburban area. This development has direct access off the Malahide road and extends to the west as far as the former Belcamp College, a protected structure now in course of conversion to private residential use.
- 1.2. River Walk is part of a road which runs alongside the southern boundary of this development and the land on its southern side slopes down to the course of the Mayne River. This sloping area has a profusion of dense vegetation with many trees and rough ground conditions.
- 1.3. No. 4 River Walk (the site of this referral) is a two-storey end-of-terrace house whose front faces the Mayne River valley. It is typical of houses in this estate, though there appear to be some variations in the sizes of houses. The setback of the house from the road allows for two cars to be parked in front. The layout of the ground floor of this house is shown. There is a lounge to the front, then a toilet and a substantial kitchen / dining room.
- 1.4. From this room, double doors open into the extended portion of the house. These doors open initially into a lobby, which has a door in from the garden. The next room is described as “tv / study”. On my inspection this room was vacant but had kitchen fittings, including a sink, washing machine and cooker fixed to the western side wall. This room also has a doorway into the garden area. Beyond that there is a small vacant room described as “bedroom” and an en-suite toilet beyond that again. The extension has a flat roof and all of its windows face into the garden.
- 1.5. A passageway runs alongside the house and a wooden gate leads into this passageway from the front. The passageway leads around to the rear garden area of the house, thereby giving access to the extension. The garden area is bounded by block walls approximately 1.8 metres in height.

## 2.0 The Question

- 2.1. Whether the single storey residential extension attached to the rear of the existing dwelling at 4 River Walk, Belcamp, Dublin 17 is or is not exempted development under the Planning and Development Regulations, 2001, as amended.

## 3.0 Planning Authority Declaration

### 3.1. Declaration

- 3.1.1 The declaration is to the effect that the proposal in question is not exempted development for the following reason:

Under the Planning and Development Act 2000 as amended and the Planning and Development Regulations 2001, as amended there is no specific exemption to provide for the provision of 2 residential units within the one structure and as such planning permission would be required for the conversion of the extension to a separate unit. From the submitted drawing and detail submitted the extension comprises of a self contained unit, with its own kitchen/TV room, en-suite and bedroom.

The rear extension is considered development and considered to be non exempt development with reference to Section 3 (3) of the Planning and Development Act 2000 as amended.

### 3.2. Planning Authority Reports

- 3.2.1. Planning Reports

The development in question is described initially with a note that the floor measures c8m x 3m. it is also noted that no elevation has been given to determine the height. A planning history case (Enf 23,181B) refers to an unauthorised structure on the site. Two questions need to be considered. The first is whether the proposal is considered to be development. Sections 2 and 3 of the Planning and Development Act 2000 are referred to, in particular the definition of *development* in Section 3(1), and it is inferred from that definition that the provision of an extension constitutes development. The second question is whether the proposal is considered to be exempted development. Having regard to Section 3(3) of the Planning and Development Act 2000, which states that “the use as two or more dwellings of any

house previously used as a single dwelling involves a material change in the use of the structure...” It is noted that, from the submitted drawing, the proposed rear extension comprises a self-contained unit. Under the Planning and Development Act 2000 and the Planning and Development Regulations 2001, there is no specific exemption to provide for the provision of two residential units within the one building. It is further considered that the proposed project would not have a significant effect on European sites and that no EIA is required.

### 3.2.2. Other Technical Reports

There are no reports from any other department of the Planning Authority.

## 4.0 Planning History

- 4.1 Reg. Ref. No. F15A/0609 (Appeal Ref.No.PL06F.248057). Permission granted on 28.06.2017 for construction of 263 residential units, shops and childcare facilities on the site on which the referrer’s property is located, and change of use of Belcamp Hall to residential.

## 5.0 Policy Context

### 5.1. Development Plan

The property is located in an area with the zoning objective **RA-Residential Area** (provide for new residential communities subject to the provision of the necessary social and physical infrastructure).

### 5.2. Natural Heritage Designations

This property is not close to any European site. The development which has taken place is on a small scale and based on connections to public sanitary services. It can be inferred that this development is not likely to give rise to significant effects on any European site.

## 6.0 The Referral

### 6.1. Referrer's Case

The referrer wishes to highlight inaccuracies contained in the planner's report which contributed to the decision made. The need for the extension for the use of the referrer's elderly parents was set out in the statement submitted with the application.

Further points made include the following:

- He never sought the subdivision of his home into two units.
- The statement stated that the extension is not and will not be a stand-alone or separate unit.
- He asked that the declaration be based on the ground floor plan for the extension, attached to the family dwelling and accessed from the existing front door entrance.
- The reason for refusal has a reference to a kitchen which was not shown on the floor plan.

Copies of planning authority documents with sections highlighted are attached.

### 6.2. Planning Authority Response

Relevant sections/articles of the legislation are referred to, with particular reference to Section 3(3) of the Planning and Development Act 2000. Further points include the following:

- Images from a site visit re enforcement show a separate kitchen area.
- A cover note stated that this element of the house is to accommodate elderly parents and that the kitchen will be removed and the room used as a tv/sitting room by the family.
- The authority consider that there are two residential units on the site.
- The submitted drawings did not contain any elevations, so the authority would not have been able to assess the physical merits of the application in relation to the Conditions and Limitations of Class 1.

### 6.3. Response by Referrer

- Following construction of the extension an enforcement officer from Fingal County Council called and, on being informed of the situation, said that the kitchen fittings would have to be removed.
- A week later the enforcement officer said that he was satisfied that the unit was exempt and that the kitchen fittings would not have to be removed.
- A further email then said that a letter of exemption would not be issued and that an application for retention was required.
- The main complaint did not relate to the size, height or use of the extension but to the kitchenette fittings.
- The referrer then made the reference application to the Council showing the kitchen fittings removed.
- The extension was inspected and photographed by the enforcement officer and the Council could not have been unaware of the elevations.

## 7.0 Statutory Provisions

### 7.1. Planning and Development Act, 2000

Section 2(1) notes that *development* has the meaning assigned to it by Section 3, that *exempted development* has the meaning specified in Section 4 and that *works* include any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal.

Section 3(1)(a) states that *development* means “the carrying out of any works in, on, over or under land, or the making of any material change in the use of any land or structures situated on land.” Section 3(3) states that “the use as two or more dwellings of any house previously used as a single dwelling involves a material change in the use of the structure and of each part thereof which is so used.”

Section 4(1)(h) states that development consisting of the carrying out of works which affect only the interior of the structure or 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 shall be exempted development.

Section 4(1)(j) states that development consisting of the use of any structure or other land within the curtilage of a house for any purpose incidental to the enjoyment of the house as such shall be exempted development.

Section 4(2) states that the Minister may by regulations provide for any class of development to be exempted development on the basis of an opinion that the carrying out of such development would not offend against principles of proper planning and sustainable development.

Section 5(1), in the case of a question arising as to what is or is not development or what is or is not exempted development, provides for any person requesting from the relevant planning authority a declaration on that question.

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

Article 6(1) provides for certain classes of development to be exempted development for the purposes of the Act, subject to compliance with certain conditions and limitations.

Article 9(1)(a) states that development to which Article 6 relates shall not be exempted if the carrying out of such development would give rise to one or more of a number of specified outcomes. These include the contravention of a condition of a permission under the Act (Subsection i), the bringing forward of a building in front of the building line (Subsection iv) or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure having an unauthorised use (Subsection viii).

Part 1 of Schedule 2 lists classes of development under the heading *Exempted Development – General*. Class 1 is described as *the extension of a house, by the construction or erection of an extension to the rear of the house or by the conversion to residential of any garage, store, shed etc.* There are several conditions and limitations applicable to this class, which include a floor area limit of 40 m<sup>2</sup> (Condition 1(a)).

## 8.0 Assessment

### 8.1. Background

8.1.1 This is a brief review of the circumstances which have given rise to the question currently to be decided by the Board, as noted from documentation on the file. The house at 4 Belcamp Walk was constructed on foot of a permission granted on 28.06.2017 for a substantial housing development (Planning Reg. Ref. No. F15A/0609). The referrer, being the owner of the house, decided to construct a rear extension to the house as provided for in the Exempted Development Regulations and this extension is stated to have been completed about May/June 2023. Its stated purpose was to provide accommodation on the ground floor for the elderly parents of the referrer. The layout of the ground floor as extended is shown on the Ground Floor Plan submitted.

8.1.2 At some stage subsequent to the construction of the extension Fingal County Council became involved and an enforcement file is referred to. The referrer's response notes a visit by an officer of the Council and a record of some discussions. The response further points out that, following consideration by the Council, it was decided that a letter of exemption would not be issued and that an application for retention was required. This then led to the making of the application for the declaration, which is now the matter which has been referred for review by the Board.

### 8.2. Is or is not development

8.2.1. The extension of this house at 4 River Walk, Belcamp, Dublin 17 is the outcome of a process of carrying out of works. The definition of development in Section 3 (1) (a) of the Planning and Development Act 2000, as amended, includes the phrase, "*the carrying out of any works in, on, over or under land*". It can therefore be inferred that the construction of the extension in question comprised development.



### 8.3. Is or is not exempted development

- 8.3.1. The next question which arises is whether this development comprised exempted development. Section 4 of the Planning and Development Act 2000, as amended, provides for certain classes of development to be exempted. Section 4(1)(h), as referred to above, refers to the carrying out of works which only affect the interior of the structure or do not materially affect the external appearance of the structure in a specified way. Section 4(1)(j), also as referred to above, refers to use of any structure or other land within the curtilage for any purpose incidental to the enjoyment of the house. It can be inferred that the extension is not exempted development by reference to Section 4(1) of the Act.
- 8.3.2. Section 4(2) of the Act gives the Minister the power to make regulations providing for any class of development to be exempted development for the purposes of the Act, as referred to in Paragraph 7.1 of this report.
- 8.3.3. Article 6(1) of the Planning and Development Regulations, 2001, as amended, provides that developments of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development, subject to compliance with the conditions and limitations specified in column 2.
- 8.3.4. Class 1, as set out in Part 1 of Schedule 2 of the Regulations and as noted above, includes an extension to the rear of a house, and is the class applicable in this case. Some of the applicable conditions and limitations might be referred to on the basis of possible relevance. Condition 1(a) specifies a floor area limit of 40 m<sup>2</sup> and the floor area of the extension is well below this limit. Condition 5 states that the area of private open space reserved for the use of the occupants shall not be reduced to less than 25 m<sup>2</sup>. The remaining area of private open space is shown to be 53.3 m<sup>2</sup>. Condition 6(a) states that any ground floor level window shall not be less than 1 metre from the facing boundary. All of the windows on the extension face the eastern site boundary and the spacing is shown to be 4 metres.
- 8.3.5. One point raised by an officer of the Council is that no elevations of the extension have been provided, nor any indication of its height. It is clear that the extension is on the ground floor only and has a flat roof. The Conditions and Limitations applicable to Class 1 in Part 1 of Schedule 2 include several relating to above-ground-floor extensions but none of these are applicable in this case.

## **8.4. Restrictions on Exempted Development**

- 8.4.1. Article 9(1)(a) of the Regulations states that development to which Article 6 relates shall not be exempted development for the purposes of the Act if the carrying out of such development would result in any one of a number of specified outcomes. Referring selectively to some of these outcomes, paragraph (i) is that the development would be inconsistent with any use specified in a permission under the Act. The permission granted for the Belcamp estate had a condition stating that the development be carried out in accordance with the lodged plans and particulars. In so far as these plans and particulars identified individual houses, it might be inferred that this condition required that each individual house be used as a single residential unit. Paragraph (viii) is also relevant. The substance of this paragraph is that a development comprising the extension etc. of a structure the use of which is an unauthorised use would not be exempted development.
- 8.4.2. This leads to the core of the question in this case. The position of the Council is that there are two residential units comprised in the house at 4 River Walk. This position is stated in the planning officer's report and in the response on behalf of the planning authority. If that conclusion could be substantiated, then a material change of use would have occurred and this change would have comprised development. Arising from that and taking into account the restrictions on exemption set out in Article 9(1)(a) of the Regulations, the construction of the extension would not then have comprised exempted development. This question needs to be looked at more closely, as dealt with in the next paragraph.

## **8.5 Question of Material Change of Use**

- 8.5.1 This is the outstanding issue. The extension as such complies with Class 1 of Part 1 of Schedule 2 of the Regulations, taking into account the Conditions and Limitations applicable to this class. To review the details of the layout of the extended area, the provision of an additional small bedroom appears reasonable, likewise an en-suite toilet. The stated need for the additional bedroom is to accommodate the referrer's parents, which seems to be a reasonable aim. The use of the room next to the bedroom as a small tv room is scarcely an issue. There is an issue however with the kitchen fittings and it is clear that the existence of kitchen facilities had a bearing on the decision of the planning authority. The kitchen facilities might not yet have been

put into use but, whatever intentions that the referrer might have regarding their retention, their existence is a reality. The current position is that the larger part of the extension could function as a separate dwelling. It has a bedroom, toilet, kitchen, small sitting area and a separate access from River Walk. On this basis it can, in my opinion, reasonably be inferred that the larger part of the extension is in effect a separate dwelling, that it comprises a material change of use and therefore that it consists of development and not 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 proposed single storey residential extension to the rear of the existing dwelling at 4 River Walk, Clonsaugh, Belcamp, Dublin 17 is or is not development or is or is not exempted development:

**AND WHEREAS** Thomas Maneesh requested a declaration on this question from Fingal County Council and the Council issued a declaration on the 26<sup>th</sup> day of September, 2023 stating that the matter was development and was not exempted development:

**AND WHEREAS** Thomas Maneesh referred this declaration for review to An Bord Pleanála on the 13<sup>th</sup> day of October, 2023:

**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) Section 4(2)(a) of the Planning and Development Act, 2000, as amended,
- (d) Article 6(1) and Article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (e) Class 1 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended and
- (f) the planning history of the site:

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

- (a) The development of a single storey domestic extension located and attached to the rear of the mentioned dwelling is development:
- (b) While this extension falls within Class 1 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001, as amended, the larger part of it would in effect comprise a separate dwelling:
- (c) The existence of this additional dwelling would result in a material change in the use of the dwellinghouse in question:
- (d) The development in question would therefore be development and not exempted development.

**NOW THEREFORE** An Bord Pleanála, in exercise of the powers conferred on it by Section 5 (5) of the 2000 Act, hereby decides that the development in question 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.

---

Michael Walsh  
Planning Inspector

15<sup>th</sup> February 2024