



An
Coimisiún
Pleanála

Inspector's Report ABP-322308-25

Question

Whether constructed variations to the housing development granted under planning ref. F17A/0357 (ABP-300045-17), i.e. minor alterations to the road alignment and house type elevations is or is not development or is or is not exempted development

Location

Baile Bhuin, Oldtown, Co. Dublin

Declaration

Planning Authority

Fingal County Council

Planning Authority Reg. Ref.

FS5/020/25

Applicant for Declaration

STRUTEC

Planning Authority Decision

Is not exempted development

Referral

Referred by

STRUTEC

Owner/ Occupier

None

Observer(s)

None

Date of Site Inspection

26th November 2025

Inspector

Kenneth Moloney

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1.0 Site Location and Description

- 1.1. The referral site is located on the northern periphery of Oldtown, in north County Dublin.
- 1.2. The referral site is an established suburban housing development, Baile Bhuin, comprising of 14 no. detached houses and consisting of 3 different house types within the development. The house types are described as follows:
 - House Type A – Dormer house
 - House Type B – Two storey house
 - House Type C – Single storey house
- 1.3. The layout of the housing development is defined by a large public green space centrally located and the houses overlooking the open space.

2.0 The Question

- 2.1. The questions for determination are as follows.
 1. Whether the amendments to the internal road and the turning circle is or is not development and is or is not exempted development.
 2. Whether the conversion from garage to habitable room to the side of House Type A is or is not development and is or is not exempted development.
 3. Whether elevational changes to House Types A, B and C is or is not development and is or is not exempted development.

3.0 Planning Authority Declaration

- 3.1.1. On the 14th of March 2025, a request for a Declaration in accordance with Section 5(1) of the Planning and Development Act, 2000, as amended, was received by Fingal County Council from STRUTEC (Architects-Engineers-Project Managers).
- 3.1.2. The Planning Authority issued a declaration on the 8th April 2025, to the effect that minor alterations to the road alignment and house type elevations does not constitute exempted development as they contravene condition(s) attached to a permission and the changes to the permitted house types materially affect the

external appearance of the entire housing development so as to render the appearance inconsistent with the character of the housing development permitted. This Declaration has now been referred to the Commission, pursuant to Section 5 of the Act, for review.

3.2. Planning Authority Reports

3.2.1. Planning Reports

3.2.2. The Planner's Report, dated 7th April 2025, can be summarised as follows:

- There are two closed enforcement cases relevant to the application site, and this includes 22/110A and 22/177A. There is one active enforcement case (23/162A) which relates to the application site.
- The relevant questions for consideration are (1) Whether the amendments to permitted turning areas and roads layout constitute development and/or is exempted development, (2) Whether the amendments to permitted house types A, B and C constitute development and/or is exempted development.

Development

- The amendments to permitted turning areas / road layouts and the amendments to permitted house types A, B and C constitutes development as defined under Section 3(1) of the Act.

Amendments to the turning areas and roads layout

- In considering whether the amendments to permitted turning areas and roads layout is exempted development the applicant submits that the amendments were carried out to comply with condition no. 7 of permitted development LA Ref. 17A/0357(ABP Ref. 300045).
- Notwithstanding condition no. 7, condition no. 1 of the same permission requires that the developer shall agree details with the PA prior to the commencement of development.
- No such agreement was in place with the PA prior to the commencement of development in relation to amendments to the turning areas and roads layout.

- Article 9(1)(a)(i) of the Planning and Development Regulations, 2001, states that development in respect of Article 9 shall not be exempted where the development would contravene a condition attached to permission under the Act.
- The amendments to the turning areas and roads layout were not carried out in accordance with condition no. 1 of permitted development LA Ref. 17A/0357(ABP Ref. 300045). Nor has the development submitted amended drawings to the PA, for the agreement of the PA.
- The amendments to the turning areas and roads layout do not constitute exempted development under Article 6 of the Regulations. No other provisions for exempted development are available.
- No provision under Section 4 of the Act for the amendment of permitted turning areas and roads layout to be classified as exempted development.
- It is submitted that the exemption under section 4(1)(h)(ia) of the Act only applies to a road that serves a forest or woodland, which is not the current case.

Amendment to permitted house types A, B and C

- The relevant conditions in respect of LA Ref. 17A/0357(ABP Ref. 300045) are Condition no. 1 (carried out in accordance with submitted drawings) and Condition no. 2 (details of materials, colours to be agreed with the PA prior to the commencement of development).
- The amendments to permitted house types A, B and C were not agreed with the PA prior to the commencement of development. A compliance submission relating to condition no. 2 was submitted to the PA on 14th April 2022 and deemed to be in compliance on the 9th of June 2022.
- The external finish of that constructed is not in compliance with that agreed.
- Article 9(1)(a)(i) of the Planning and Development Regulations, 2001, states that development in respect of Article 9 shall not be exempted where the development would contravene a condition attached to permission under the Act.

- The development contravenes conditions' no. 1 and no. 2 of planning permission LA Ref. 17A/0357(ABP Ref. 300045) and therefore does not constitute exempted development under any provisions of Article 6.
- The amendments to the permitted house types A, B and C were not carried out in accordance with condition no. 1 of permitted development LA Ref. 17A/0357(ABP Ref. 300045). Nor has the development submitted amended drawings to the PA, for the agreement of the PA.
- In relation to Section 4(1)(h) of the Act the amendments to the development do not affect the interior of the houses in question and the amendments do not relate to the structure (singular) rather it relates to a housing development.
- The amendments have resulted in a change to all 14 no. houses permitted under grant of permission which affects, materially, the external appearances of the entire housing development so that the 'as constructed' housing development is inconsistent with the appearance / character of the 'permitted' housing development.
- Accordingly, the amendments to the permitted house types A, B and C would not constitute exempted development in accordance with section 4 of the Act.

AA / EIA

- Section 4(4) of the Act states development shall not be exempted should AA or EIA be required.
- Having regard to the nature, scale and location of the development AA / EIA is not required.

3.2.3. Other Technical Reports

- None

4.0 Relevant Planning History

4.1.1. The following relates to the referral site.

- PL06F.300045-22 (L.A. Ref. 17A/0357) – The Board **granted** permission, subject to conditions, on the 12th of March 2018, for the construction of 14 dwellings, consisting of

- 6 no. five bedroom dormer dwellings with integrated garage,
- 4 no. 4 bedroom two storey dwellings,
- 4 no. 3 bedroom bungalow.

4.1.2. The relevant conditions of this permission for this referral are as follows:

Condition no. 1

The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 8th day of September 2017, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

Condition no. 2

Details of the materials, colours and textures of all the external finishes to the proposed dwellings shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Roof colour shall be blue-black, black or dark grey in colour only.

Reason: In the interest of visual amenity.

Condition no. 7

The internal road network serving the proposed development including turning bays, junctions, parking areas, footpaths and kerbs shall comply with the detailed standards of the planning authority for such road works.

Reason: In the interest of amenity and of traffic and pedestrian safety.

5.0 Policy Context

5.1. Fingal County Development Plan 2023-2030.

5.1.1. The referral site is located within the settlement boundary of Oldtown.

5.1.2. The referral site is zoned 'RV Rural Village'. The stated objective of such lands is:

'Protect and promote the character of the Rural Village and promote a vibrant community in accordance with an approved land use plan, and the availability of physical and community infrastructure'.

5.1.3. The vision of this land-use objective is to protect and promote established villages within the rural landscape where people can settle and have access to community services, including remote work hubs. The villages are areas within the rural landscape where housing needs can be satisfied with minimal harm to the countryside and surrounding environment. The villages will serve their rural catchment, provide local services and smaller scale rural enterprises. Levels of growth will be managed through approved land use plans to ensure that a critical mass for local services is encouraged without providing for growth beyond local need and unsustainable commuting patterns.

5.2. Natural Heritage Designations

- Rogerstown Estuary SAC (Site Code 000208) 8.9km southeast
- Rogerstown Estuary SPA (Site Code 004015) 8.9km southeast
- Bog Of The Ring pNHA (Site Code 001204) 8.2km northeast

6.0 The Referral

6.1. Referrer's Case

6.1.1. The following is a summary of the referrer's case.

Turning circles

- A submitted drawing illustrates the internal road and turning circles as per planning permission (F17A/0357) and the as built road.
- The internal road and the turning circles were constructed to comply with condition no. 7 of the permission.
- Condition no. 7 of the permission states as follows:

'The internal road network serving the proposed development including turning bays, junctions, parking areas, footpaths and kerbs shall comply with the detailed standards of the planning authority for such road works'.

- The turning heads were constructed to Type (ii) of Figure 2.2 'Residential Turning Bays' in 'Recommendations for Site Development Works for Housing Areas' in order to comply with condition 7 and Fingal Taking in Charge policy and specifications.
- The Board are requested to determine that the as constructed turning bays are in compliance with condition no. 7 of the permission.

Internal road

- Irish Water insisted that the foul manholes be situated in the road rather than the footpath which was a change by IW from the original Irish Water agreement.
- It was necessary to adjust the alignment and length of parts of the road in order to achieve the required falls and clearances.
- The board are requested to determine that these changes are de-minimis and are such a minor nature that do not constitute a breach of planning permission.

House Type A

- The permission provided for a domestic garage to the side of the dwellings.
- The garages were changed to a habitable room / office for working from home.
- The Board are requested to determine that the conversions are exempted development.

Elevations – House Types A, B, C

- The following are the elevational changes to House Type A
 - Two windows to the side of the front door as opposed to three windows at ground floor level.

- Flat dormer roof as opposed to apex roof at ground floor level.
- Larger window in main bedroom at first floor level.
- Flat roof on larger window in main bedroom and skylight in place of second window.
- The following are the elevational changes to House Type B
 - Dormer windows and bay windows have flat roof as opposed to apex roof.
- The following are the elevational changes to House Type C
 - Dormer windows and bay windows have flat roof as opposed to apex roof.
 - The Bay window has a flat roof instead of apex.
 - Two windows to the side of the door as opposed to one window.
 - The apex roof of these two windows has been extended to include the front door.
- The amendments to the elevations of House Types A, B and C make better use of natural light and solar gain.
- The amendments do not materially affect the external appearance of the houses so as to render their appearance inconsistent with the character of the structure or of neighbouring structures.
- These amendments do not constitute standalone type developments in accordance with s. 3(1) of the Act and are de-minimis and do not constitute a breach of the planning permission.
- ABP.301406-18 is a relevant precedent.
- The amendments are an improvement on the granted permission and do not materially affect the external appearance to the extent that they render the appearance inconsistent with the character of the development or the character of neighbouring structures.

6.2. Planning Authority Response

- The PA submitted a response stating that they had no further comments and advised the Commission to refer to the Planner's Report for assessment.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

7.1.1. Section 2(1) of the Act states the following:

- 'development' has the meaning assigned to it by Section 3;
- 'works' includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal'
- 'alteration' includes the replacement of a door, window or roof that materially alters the external appearance of a structure so as to render the appearance inconsistent with the character of the structure or neighbouring structure.

7.1.2. Section 3(1)(a) states that:

- '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 in the use of any structures or over land'.

7.1.3. 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 Section 4 (1)(h) providing for the carrying out of works for the maintenance, improvement or alteration of any structure that only affect the interior of the structure, or which do not materially affect the external appearance so as to render it inconsistent with the character of neighbouring structures.

7.1.4. Section 4(2) of the Act provides that the Minister may, by regulations, provide for any class of development to be exempted development.

7.1.5. Section 4(4) provides that development shall not be exempted development if an Environmental Impact Assessment (EIA) or an Appropriate Assessment (AA) of the development is required.

7.2. Planning and Development Regulations, 2001

- 7.2.1. Article 6(1) of the Planning and Development Regulations 2001, as amended, (hereinafter referred to as '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'.
- 7.2.2. Schedule 2 of Part 1 to the Regulations set out the classes of exempted development, including 'Class 1'.

Exempted Development – Classes of Use

Temporary structures and uses

Column 1 Description of Development	Column 2 Conditions and Limitations
Class 1 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.	 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

	<p>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.</p> <p>(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.</p> <p>(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.</p> <p>3. Any above ground floor extension shall be a distance of not less than 2 metres from any party boundary.</p> <p>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.</p>
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	<p>(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.</p> <p>(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.</p> <p>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.</p> <p>6. (a) Any window proposed at ground level in any such extension shall not be less than 1 metre from the boundary it faces.</p> <p>(b) Any window proposed above ground level in any such extension shall not be less than 11 metres from the boundary it faces.</p> <p>(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</p>
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	7. The roof of any extension shall not be used as a balcony or roof garden.
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- 7.2.3. As provided for in Article 9(1)(a), the development to which article 6 relates, shall not be exempted development, under certain circumstances and the restrictions and limitations are outlined in this Article. Of relevant to the referral before the Commission is Article 9(1)(a)(i) which states as follows:

‘contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act’.

8.0 Relevant Referrals

- 8.1.1. ABP-304075-19: The Board determined on the 18th of July 2019 that the as constructed building, incorporating alterations to the elevations and changes in the 4th level floor plans to that permitted under Cork City Council planning register ref. no. T.P. 16/37131 is development and is not exempted development. The Board accepted the Inspectors recommendation. The Inspectors Report notes, in accordance with the judgement *Horne v Freeney* a development seeking exemption rights under Section 4(1)(h) must first have been completed in accordance with its permission. As such Section 4(1)(h) did not apply in this instance.
- 8.1.2. PL06D.301406: The Board issued a split decision on the 30th of January 2019 determining that an extension at first floor level to rear of House A and House B, the alterations/extensions joining the utility room and living room of House B, and the Office type structure constructed in the rear garden of House A are development and are exempted development.

The Board also concluded that the substitution of a door for the door and window at upper ground floor level in House A and the extent to which the following was constructed other than in accordance with lodged plans,

- the interior of House B
- the interior of House A has

- the courtyard/terrace to the rear of House B
- the courtyard/terrace to the rear of House A

falls outside the meaning of exempted development.

In not accepting the Inspector's recommendation, the Board considered that the various works cited in the referral were de minimis modifications to the structure and of such minor nature as to not constitute a breach of the planning permission, in line with the planning authority's declaration, and which relevant works were able to avail of exempted development provisions.

- 8.1.3. RL2564: The Board determined on the 20th of February 2009 that the conversion and change of use of a garage that is not to the side or rear of the house to a music room and library, is development and is exempted development. The Board considered that modifications to the roof and fenestration of the garage are development within the meaning of section 3 of the Act but, being works of improvement or alteration which do not render the external appearance of the structure inconsistent with the character of the structure or neighbouring structures, are exempted development by virtue of section 4(1)(h) of the said Act.
- 8.1.4. 06D.RL.2287: The Board determined on the 21st of February 2006 that the provision of a window in the northern gable is development and is not exempted development. The Board accepted the Inspector's recommendation, and the Inspector's report concluded that Section 4(1)(h) of the Act is relevant, and also case law *Cairnduff v O'Connell* is relevant.

9.0 **Assessment**

9.1. Introduction

- 9.1.1. Section 5(1) of the Planning and Development Act, 2000, as amended, is specific in respect of referrals and in this regard the Act advises that any person may request in writing from the relevant planning authority a declaration as to what, in any particular case, is or is not development or is or is not exempted development within the meaning of the Act. The Declaration can in turn be referred to the Commission, pursuant to Section 5 of the Act, for review.

9.1.2. The referral submission requests ACP to clarify whether submitted drawings are in compliance with conditions attached to a permission. In the interest of clarification, any issues in respect of compliance with a permission are outside the scope of a Section 5 application to ACP. Compliance drawings in respect of a permission is a matter for the local authority to determine in accordance with the provisions of the Act. The purpose of this referral is to determine whether or not the matter in question constitutes development, and if so, falls within the scope of exempted development.

9.2. **Is or is not development**

9.2.1. Section 3(1)(a) of the Act defines development as 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 and in effect relates to both works and the material change in the use of land or structures.

9.2.2. The act of construction providing for the realignment of the internal road, revised turning circles, the garage conversions to House Type A, and the elevation changes to House Types A, B and C would constitute works on land and as such falls under the definition of development under Section 3(1)(a) of the Act.

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

9.3.1. I will examine each of the questions in turn.

9.3.2. **Question 1**

- *Whether amendments to the internal road layout and the turning circles is or is not exempted development.*

9.3.3. Section 4(1) of the Act sets out provisions in relation to exempted development. The amendments to the internal road and turning circles within an existing housing development would not comply with any of these provisions.

9.3.4. Section 4(2) of the Act provides that the Regulations can make provision in respect of exempted development. This is done by Article 6, which provides that development of a class specified in Schedule 2 of the Regulations shall be exempted

provided that the conditions and limitations attached to those various classes are met.

- 9.3.5. I have reviewed Part 1 (Exempted Development – General) of Schedule 2 of the Regulations, and I would conclude that there is no available exemption for the amendments to the internal road and turning circles within an existing housing development. Accordingly, the development in respect of Question 1 is not exempted development having regard to Part 1, Schedule 2 of the Regulations.
- 9.3.6. The referrer submits that the adjustments to the alignment of the internal road arose as Uisce Eireann (UE) insisted that the foul manholes be situated in the road rather than the footpath, which was a change from the original UE agreement. The referrer argues that overall, these changes to the road layout, including the turning circles, are de-minimis and are such a minor nature that do not constitute a breach of planning permission.
- 9.3.7. The PA in turn argues that the amendments to the turning areas and roads layout were not carried out in accordance with condition no. 1 of permitted development LA Ref. 17A/0357(ABP Ref. 300045). Nor has the development submitted amended drawings to the PA, for the agreement of the PA.
- 9.3.8. I note from the submitted plans that the turning circles, as constructed are situated in a different location to that permitted in accordance with planning reference PL06F.300045-22 (PA Ref. 17A/0357) and the turning circles are interconnected with the road layout as constructed. I would consider that the revised location of the turning circles would give rise to new planning considerations, in terms of traffic safety, and therefore would not be de minimis. The road layout and turning circles would therefore, in my view, not be consistent with condition no. 1 of LA Ref. 17A/0357(ABP Ref. 300045).
- 9.3.9. I am therefore satisfied that these deviations from the permitted development, when taken cumulatively including both the road layout and the turning circles, are significant and material which would give rise to new planning considerations, and are not immaterial or de minimis, and are not, therefore, within the scope of the development granted planning permission under planning register reference number PL06F.300045-22 (PA Ref. 17A/0357).

9.3.10. Restrictions on exempted development

9.3.11. I have noted above that there are no relevant exempted development provisions in respect of Question 1 of this referral before the Commission. Notwithstanding, and should the Commission consider otherwise, I would acknowledge that Article 9 of the Planning and Development Regulations 2001, (as amended), refers to restrictions on exempted development.

9.3.12. In this regard I have assessed the development entailing the amendments to the internal road and the turning circles of the established housing development in relation to the relevant Article 9 restrictions. I would conclude Article 9(1)(a)(i), which states *'contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act'* would apply in this instance.

9.3.13. In para. 4.0 above I have referred to the recent relevant planning permission (PL06F.300045-22) pertaining to the referral site. I have also included, In para. 4.0 above, the full text of Condition no. 1 and Condition no. 7. In the case of condition no. 1 there is a requirement that full details are agreed with the Planning Authority prior to the commencement of development and in the case of Condition no. 7 the internal road network shall be carried out in accordance with the standards of the Planning Authority. The Planning Authority in their declaration confirmed that the requirements of both Condition no. 1 and no. 7 were not complied with, as such the amendments to the internal road and the turning circles of the established housing estate would contravene a condition attached to a permission under the Act.

9.3.14. Accordingly, should any exemption be available for the development then Article 9 would de-exempt these exemptions.

9.3.15. Question 2

- *Whether the conversion from garage to habitable room to the side of House Type A is or is not exempted development.*

9.3.16. The garage conversion relates to House Type A. The as constructed living space/home office is located to the side of House Type A and was permitted as an attached

garage in accordance with PL06F.300045-22 (PA Ref. 17A/0357). The living space / home office structure is slightly recessed from the main front building line of the house. The only visible change from the public road is the replacement of a garage door with a window that now serves a living space/ home office.

9.3.17. Section 4(1) of the Act sets out provisions in relation to exempted development. I would note that Section 4(1)(h) of the Act provides an exemption for the carrying out of works for the maintenance, improvement or alteration of any structure that only affect the interior of the structure, or which do not materially affect the external appearance so as to render it inconsistent with the character of neighbouring structures.

9.3.18. Having visited the site and reviewed the context, I would consider that these works can be reasonably categorised as being for the improvement of the structure. I would accept that the works would materially affect the external appearance of House Type A, since they are visible from the public road.

9.3.19. However, the test as to whether or not the development comes within the scope of Section 4(1)(h) of the Act is not whether the front window materially affects the external appearance of House Type A, but whether this renders its appearance inconsistent with the character of the structure, or of neighbouring structures.

9.3.20. I would consider that relevant case law for this referral is the Supreme Court case of *Cairnduff v O'Connell*, as it relates to the interpretation of Section 4(1)(g) of the Local Government (Planning and Development) Act, 1963, which is the same wording as Section 4(1)(h) of the current Planning and Development Act, 2000 (as amended). The judgement in this court case relates to works which were carried out to a terraced house on including a side window a patio and steps.

9.3.21. The Supreme Court (Finlay C. J.) considered that the works did materially affect the external appearance of the structure, but this did not render the appearance inconsistent with the character of the structure or neighbouring structure. The development was therefore, considered to be exempt. The findings of the Chief Justice concluded that character would be more dominantly affected by its street appearance rather than its rear appearance. Secondly the judgement concluded that character must relate in general, to the shape, colour, design, ornamental features and layout of the structure concerned. Further, although not raised in the

submissions, the judgement concluded that any intensification associated with an additional window, such as invasion of privacy of neighbouring structure, is not a consideration which would render development inconsistent with the character of the structure of that house.

- 9.3.22. I would note a previous referral case determined by the Board, in relation to case reference RL2564, in respect of modifications to the fenestration of the garage, to facilitate a conversion and change of use from garage to a music room and library to a suburban semi-detached property in Dublin 16. The Board determined that the fenestration modifications to the front elevation is development within the meaning of section 3 of the Act but, being works of improvement or alteration which do not render the external appearance of the structure inconsistent with the character of the structure or neighbouring structures, and therefore are exempted development by virtue of section 4(1)(h) of the said Act. The Board decision in this previous referral case would be relevant to the current referral before the Commission, as the Board has previously determined that front elevation modifications to a garage structure are exempt having regard to 4(1)(h) of the said Act.
- 9.3.23. Therefore having regard to previous Board decision in referral case RL2564 and also having regard to the context and location of House Type A, within an existing suburban housing development, and also noting that the existing window finish matches the established windows of the subject dwelling, the modifications do not in my view render the appearance inconsistent with the character of the structure or neighbouring structures. I consider that the replacement of garage door with window would be exempted development in accordance with Section 4(1)(h) of the Act.
- 9.3.24. Notwithstanding the above available exemption in respect of Section 4(1)(h) of the Act, the judgement in case law *Horne v Freeney* is relevant. This judgement concluded that development seeking exemption rights under Section 4(1)(h) must first have been completed in full accordance with its permission.
- 9.3.25. Clearly, the development of the as-constructed windows was not completed in full accordance with Ref: PL06F.300045-22 as it was granted permission as garage and not a living /office space, hence the need for the Planning Authority to initiate enforcement proceedings. The as constructed window to the front of the permitted garage structure and the use of this garage structure as a living room / home office is

not in compliance with Condition no. 1 and Condition no. 2 of planning permission PL06F.300045-22. The position, therefore, is that the applicant/developer cannot avail of the exemption under Section 4(1)(h) of the Planning and Development Act 2000.

9.3.26. In addition to Section 4(1)(h) of the Act, for a garage conversion to be exempted it shall also comply with Class 1, Part 1, Schedule 2 of the Planning and Development Regulations, 2001 (as amended), in terms of aggregate floor area of extensions. However, given that the exemption in respect of Section 4(1)(h) of the Act is not available in this referral case, having regard to case law *Horne v Freeney*, as explained above, then it further follows that the garage conversion would not be solely exempted by Class 1, Part 1, Schedule 2 of the Planning and Development Regulations, which specifically relates to floor area of habitable space.

9.3.27. Restrictions on exempted development

9.3.28. Although I have concluded above that the development is not exempted development, notwithstanding, and should the Commission consider otherwise, I would acknowledge that Article 9 of the Planning and Development Regulations 2001, (as amended), refers to restrictions on exempted development, which would be relevant in the case of Part 1, Schedule 2 of the Planning and Development Regulations, 2001 (as amended).

9.3.29. In this regard I have assessed the development entailing the conversion from garage to habitable room, to the side of House Type A, in relation to the relevant Article 9 restrictions. I would conclude Article 9(1)(a)(i), which states '*contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act*' would apply in this instance.

9.3.30. Similarly to Question 1 above, there is a requirement, in accordance with condition no. 1 (carried out in accordance with the plans and particulars) and condition no. 2 (external finishes to the proposed dwellings shall be submitted to, and agreed in writing with, the planning authority) to agree full details and that details of the materials, colours and textures of all the external finishes to the proposed dwellings with the PA, prior to commencement of development. The Planning Authority in its declaration confirmed that the requirements of both Condition no. 1 and no. 2 were not complied with, as such the conversion from garage to habitable room to the side

of House Type A would contravene a condition attached to a permission under the Act.

9.3.31. Accordingly, should any exemption be available for the development then Article 9 would de-exempt these exemptions.

9.3.32. **Question 3**

- *Whether elevational changes to House Types A, B and C is or is not exempted development.*

In the interest of clarity, the amendments to the house types include the following.

9.3.33. **House Type A**

- Two windows to the side of the front door as opposed to three windows at ground floor level.
- Flat dormer roof on ground floor window as opposed to apex roof.
- Larger window in main bedroom at first floor level.
- Higher front gable roof level.
- Two windows replaced with a window and skylight in place of second window. Flat roof on larger window.

9.3.34. **House Type B**

- Ground floor bay window and dormer windows have flat roof as opposed to apex roof.

9.3.35. **House Type C**

- The Bay window has a flat roof instead of apex.
- Two windows to the side of the door as opposed to one window.
- The apex roof of these two windows has been extended to include the front door.

9.3.36. Section 4(1) of the Act sets out provisions in relation to exempted development. Section 4(1)(h) of the Act provides an exemption for the carrying out of works for the

maintenance, improvement or alteration of any structure that only affect the interior of the structure, or which do not materially affect the external appearance so as to render it inconsistent with the character of neighbouring structures.

- 9.3.37. My interpretation of 4(1)(h) of the Act is that the exemption relates to a structure rather than entire housing development as the test is whether the elevational changes of House Type A, B and C render the appearance of the structure inconsistent with the character of the structure, or of neighbouring structures. The elevational changes to House Type A, B and C relate to all 14 no. houses within the housing development, and the cumulative changes would render the external appearance inconsistent with the character of the structure(s).
- 9.3.38. Notwithstanding, any available exemption in respect of Section 4(1)(h) of the Act in this case would be de-exempted by case law *Horne v Freeney*, as explained above. The judgement concluded that development seeking exemption rights under Section 4(1)(h) must first have been completed in full accordance with its permission. The as constructed front elevations for House Type A, B and C is not in compliance with those permitted under PL06F.300045-22. The position, therefore, is that the applicant/developer cannot avail of the exemption under Section 4(1)(h) of the Planning and Development Act 2000, as amended.
- 9.3.39. Section 4(2) of the Act provides that the Regulations can make provision in respect of exempted development. This is done by Article 6, which provides that development of a class specified in Schedule 2 of the Regulations shall be exempted provided that the conditions and limitations attached to those various classes are met.
- 9.3.40. I have reviewed Part 1 (Exempted Development – General) of Schedule 2 of the Regulations, and I would conclude that there is no available exemption for elevation changes within an existing housing development. As such, I would conclude that the development comprising of elevational changes is not exempted development.
- 9.3.41. Restrictions on exempted development
- 9.3.42. As provided for in Article 9(1)(a), the development to which article 6 relates, shall not be exempted development, under certain circumstances and the restrictions and limitations are outlined in this Article.

- 9.3.43. Although, I have outlined above, having regard to case law *Horne v Freeney*, the as constructed elevation changes to House Type A, B and C would not be exempted development. However, should the Commission consider otherwise in respect of exempted development for elevation changes to House Type A, B and C, I would conclude Article 9(1)(a)(i), which states '*contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act*' would apply in this instance.
- 9.3.44. Similarly to Question 1 and Question 2 above, the elevation changes were not carried out in accordance with conditions, attached to a permission. The Planning Authority in its declaration confirmed that the requirements of both Condition no. 1 and no. 2 were not complied with, as such the elevation changes to House Type A, B and C would contravene a condition attached to a permission under the Act.
- 9.3.45. Accordingly in this instance, should any exemption be available for the development then Article 9 would de-exempt any exemptions.

10.0 EIA Screening

- 10.1. The proposed development has been subject to preliminary examination for environmental impact assessment (refer to Form 1 and Form 2 in Appendices of this report). Having regard to the characteristics and location of the proposed development and the types and characteristics of potential impacts, it is considered that there is no real likelihood of significant effects on the environment. The proposed development, therefore, does not trigger a requirement for environmental impact assessment screening and an EIAR is not required.

11.0 Appropriate Assessment

- 11.1. I have considered case ABP-322308-25 in light of the requirements S177U of the Planning and Development Act 2000 as amended.
- 11.2. The closest European Sites, part of the Natura 2000 Network, are the Rogerstown Estuary SAC and the Rogerstown Estuary SPA, both located approximately 8.9km east of the referral site.

11.3. Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment because it could not have any effect on a European Site.

11.4. The reason for this conclusion is as follows:

- Location-distance from nearest European site.
- The nature and scale of the development and the location of the site on developed serviced lands.
- The absence of any ecological pathway from the development site to the nearest European Site.

11.5. I conclude, on the basis of objective information, that the development would not have a likely significant effect on any European Site either alone or in combination with other plans or projects.

11.6. Likely significant effects are excluded and therefore Appropriate Assessment (under Section 177V of the Planning and Development Act 2000) is not required.

12.0 Water Framework Directive

12.1.1. I have individually assessed the subject development use and have considered the objectives as set out in Article 4 of the Water Framework Directive which seek to protect and, where necessary, restore surface and ground water waterbodies in order to reach good status (meaning both good chemical and good ecological status), and to prevent deterioration. Having considered the nature, scale and location of the subject use, I am satisfied that it can be eliminated from further assessment because there is no conceivable risk to any surface and/or groundwater water bodies either qualitatively or quantitatively.

The reason for this conclusion is as follows.

- The minor nature and scale of development.
- The location of the site on developed serviced lands.
- The absence of any hydrological connections.

12.1.2. I conclude that on the basis of objective information, that the subject development will not result in a risk of deterioration on any water body (rivers, lakes, groundwaters, transitional and coastal) either qualitatively or quantitatively or on a temporary or permanent basis or otherwise jeopardise any water body in reaching its WFD objectives and consequently can be excluded from further assessment.

13.0 Recommendation

13.1. I recommend that the Commission should decide this referral in accordance with the following draft order.

WHEREAS a question has arisen as to whether amendments to the internal road and the turning circle is or is not development and is or is not exempted development, and

Whether the conversion from garage to habitable room to the side of dwelling House Type A is or is not development and is or is not exempted development, and

Whether elevational changes to House Types A, B and C at Baile Bhuin, Oldtown, Co. Dublin, is or is not development and is or is not exempted development.

AND WHEREAS STRUTEC (Architects-Engineers-Project Managers) requested a declaration on this question from Fingal County Council and the Council issued a declaration on the 8th day of April 2025 stating that the matter was development and was not exempted development:

AND WHEREAS STRUTEC referred this declaration for review to An Coimisiún Pleanála on the 16th day of April, 2025:

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

- (a) Section 2(1) of the Planning and Development Act, 2000, as amended,
- (b) Section 3(1) of the Planning and Development Act, 2000,
- (c) Section 4(1)(h) of the Planning and Development Act, 2000, as amended,
- (d) article 6(1) and article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (e) Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (f) Relevant case law,
- (g) Previous referrals to the Commission, including RL2564,
- (h) the planning history of the site (reference number PL06F.300045-22 (PA Ref. 17A/0357)),
- (i) The documentation on the file, including submissions on behalf of the referrer STRUTEC, and Fingal County Council,
- (j) the pattern of development in the area:

AND WHEREAS An Coimisiún Pleanála has concluded that:

- (a) The realignment of the road, revised turning circles, the garage conversions and the elevation changes to House Types A, B and C constitutes development, as it involves the carrying out of ‘works’,
- (b) the development that has been carried out differs from that for which planning permission was granted under planning register reference number PL06F.300045-22 (PA Ref. 17A/0357) and the Commission is satisfied that the deviations from the permitted development area, when taken cumulatively, are significant and material, and are not immaterial or de minimis, and are not, therefore, within the scope of

- the development granted planning permission under planning register reference number PL06F.300045-22 (PA Ref. 17A/0357),
- (c) the development that has taken place, that is the subject of the referral, involves works not those in the permission (planning register reference number PL06F.300045-22 (PA Ref. 17A/0357). In such circumstances and in accordance with case law (Horne vs Freeney), the subject works cannot avail of the exemption provided under section 4(1)(h) of the Planning and Development Act, 2000, and
- (d) In any event, the restriction on exemption provided for in article 9(1) (a)(i) of the Planning and Development Regulations 2001, (as amended), applies as the development contravenes a condition attached to a permission (planning register reference number PL06F.300045-22 (PA Ref. 17A/0357) under the Act.
- (e) there are no other exemptions in the Planning and Development Act, 2000, as amended, or in the Planning and Development Regulations, 2001, as amended, whereby such material deviations would constitute exempted development.

NOW THEREFORE An Coimisiún Pleanála, in exercise of the powers conferred on it by section 5 (4) of the 2000 Act, hereby decides that the amendments to the internal road and the turning circle, conversion from garage to habitable room to the side of dwelling House Type A, and elevational changes to House Types A, B and C 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.

Kenneth Moloney
Senior Planning Inspector

4th December 2025

Form 1 - EIA Pre-Screening

Case Reference	ABP-322308-25
Proposed Development Summary	Whether constructed variations to the housing development granted under planning ref. F17A/0357 (ABP-300045-17), i.e. minor alterations to the road alignment and house type elevations is or is not development or is or is not exempted development.
Development Address	Baile Bhuin, Oldtown, Co. Dublin
	In all cases check box /or leave blank
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (For the purposes of the Directive, "Project" means: - The execution of construction works or of other installations or schemes, - Other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources)	<input checked="" type="checkbox"/> Yes, it is a 'Project'. Proceed to Q2.
	<input type="checkbox"/> No, No further action required.
2. Is the proposed development of a CLASS specified in Part 1, Schedule 5 of the Planning and Development Regulations 2001 (as amended)?	
<input type="checkbox"/> Yes, it is a Class specified in Part 1. EIA is mandatory. No Screening required. EIAR to be requested. Discuss with ADP.	
<input checked="" type="checkbox"/> No, it is not a Class specified in Part 1. Proceed to Q3	
3. Is the proposed development of a CLASS specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) OR a prescribed type of proposed road development under Article 8 of Roads Regulations 1994, AND does it meet/exceed the thresholds?	
<input type="checkbox"/> No, the development is not of a Class Specified in Part 2,	

<p>Schedule 5 or a prescribed type of proposed road development under Article 8 of the Roads Regulations, 1994.</p> <p>No Screening required.</p>	
<p><input type="checkbox"/> Yes, the proposed development is of a Class and meets/exceeds the threshold.</p> <p>EIA is Mandatory. No Screening Required</p>	
<p><input checked="" type="checkbox"/> Yes, the proposed development is of a Class but is sub-threshold.</p> <p>Preliminary examination required. (Form 2)</p> <p>OR</p> <p>If Schedule 7A information submitted proceed to Q4. (Form 3 Required)</p>	<p>Class 10(b)(i) of Part 2: threshold 500 dwelling units.</p> <p>Class 10(b)(iv) of Part 2: threshold 2 ha.</p>

<p>4. Has Schedule 7A information been submitted AND is the development a Class of Development for the purposes of the EIA Directive (as identified in Q3)?</p>	
<p>Yes <input type="checkbox"/></p>	<p>Screening Determination required (Complete Form 3)</p>
<p>No <input checked="" type="checkbox"/></p>	<p>Pre-screening determination conclusion remains as above (Q1 to Q3)</p>

Inspector: _____ **Date:** _____

Form 2 - EIA Preliminary Examination

Case Reference	ABP-322308-25
Proposed Development Summary	Whether constructed variations to the housing development granted under planning ref. F17A/0357 (ABP-300045-17), i.e. minor alterations to the road alignment and house type elevations is or is not development or is or is not exempted development.
Development Address	Baile Bhuin, Oldtown, Co. Dublin
This preliminary examination should be read with, and in the light of, the rest of the Inspector's Report attached herewith.	
Characteristics of proposed development (In particular, the size, design, cumulation with existing/ proposed development, nature of demolition works, use of natural resources, production of waste, pollution and nuisance, risk of accidents/disasters and to human health).	<p>The development involves amendments to the permitted development that includes minor alteration to road alignment and turning circles, amendments to house type elevations and garage conversion.</p> <p>During the construction phase in respect of the modifications the development would generate waste. However, given the moderate size of the development, I do not consider that the level of waste generated would be significant in the local, regional or national context. No significant waste, emissions or pollutants would arise during the construction or operational phase due to the nature of the use. Any potential contamination arising from the existing use would be limited in scale, having regard to modest scale of the existing use would have a localised impact. No demolition works are proposed. The development, by virtue of its residential type, does not pose a risk of major accident and/or disaster, or is vulnerable to climate change.</p>
Location of development (The environmental sensitivity of geographical areas likely to be affected by the development in particular existing and approved land use, abundance/capacity of natural resources, absorption capacity of natural environment e.g. wetland, coastal zones, nature reserves, European sites, densely populated areas, landscapes, sites of historic,	<p>The subject site is not located within or adjoins any environmentally sensitive sites or protected sites of ecological importance, or any sites known for cultural or historical significance.</p> <p>The nearest designated European Sites to the referral site are the Rogerstown Estuary SAC and the Rogerstown Estuary SPA, both located approximately 8.9km east of the referral site.</p> <p>Given that there are no hydrological connections I have concluded in my AA Screening that the development</p>

cultural or archaeological significance).	would not likely have a significant effect on any European site. I consider that there is no real likelihood of significant cumulative impacts having regard to other existing and/or permitted projects in the adjoining area.
Types and characteristics of potential impacts (Likely significant effects on environmental parameters, magnitude and spatial extent, nature of impact, transboundary, intensity and complexity, duration, cumulative effects and opportunities for mitigation).	Having regard to the scale and nature of development in question, its location removed from any sensitive habitats / features, the likely limited magnitude and spatial extent of effects, and the absence of in combination effects, there is no potential for significant effects on the environment.
Conclusion	
Likelihood of Significant Effects	Conclusion in respect of EIA
There is no real likelihood of significant effects on the environment.	EIA is not required.
There is significant and realistic doubt regarding the likelihood of significant effects on the environment.	N/A
There is a real likelihood of significant effects on the environment.	N/A

Inspector: _____ Date: _____

DP/ADP: _____ Date: _____

(only where Schedule 7A information or EIAR required)