



An  
Coimisiún  
Pleanála

## Inspector's Report ABP-322369-25

### Question

Whether the removal and reconfiguration of a ground floor rear conservatory is or is not exempted development.

### Location

Istria, Dalkey Road, Dalkey, Dublin, A96  
TF74

### Declaration

Planning Authority	Dun Laoghaire Rathdown County Council
Planning Authority Reg. Ref.	REF3625
Applicant for Declaration	Kevin Sweeney & Sinead Hassett
Planning Authority Decision	Is not exempted development

### Referral

Referred by	Kevin Sweeney & Sinead Hassett
Owner/ Occupier	Kevin Sweeney & Sinead Hassett
Observer(s)	None
Date of Site Inspection	1 December 2025
Inspector	Natalie de Róiste

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## **1.0 Site Location and Description**

- 1.1. The site, Istria, is a residential one, with a detached two-storey house on the north-west side of Dalkey Avenue, close to the junction with Killiney Road, in Dalkey, County Dublin.
- 1.2. The house has an irregular plan, with a full height two-bay gabled projection to the north-east end of the front elevation, incorporating a garage, and a gabled front porch measuring c. 20 sqm, adjacent to this. To the rear, there is a full-height gabled extension to the south-west end (projecting some 7 metres), with a single-storey flat-roofed extension beside this (with a depth of c. 4 metres), running the remaining width of the house. The house is built hard against the north-east boundary with the neighbouring house (Woodford), and set back from the south-west boundary with the neighbouring property (Kilkerry) by a side passage. A paved terrace with a retaining wall, planted border, and a timber fence to the rear of the house is approached from the garden by a flight of steps. The site falls from front to rear.

## **2.0 The Question**

- 2.1. Whether the removal and reconfiguration of the existing ground floor conservatory to streamline and consolidate the space at the rear of the dwelling, in accordance with the submitted drawings, is or is not exempted development under Section 4(1)(h) of the Planning and Development Act, 2000 (as amended)?

## **3.0 Planning Authority Declaration**

### **3.1. Declaration**

The Planning Authority declared that, having regard to;

- Section 4(1)(h) of the Planning and Development Act, 2000, (as amended), and
- The plans and particulars submitted with the referral request,

The proposed works constituted Development, and did not constitute Exempted Development.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

One report, dated 27/3/25, summarised as follows:

- Following a previous referral (REF1225), the development has been assessed against Section 4(1)(h) at the request of the referrer.
- The house has been extended to front, side, and rear, at ground floor and first floor level, under permissions 60/85 and 131/92.
- The proposed works, comprising briefly the demolition of the 35 sqm conservatory and 2 sqm rear extension, to allow for the construction a new rear extension (39 sqm) comprise works, and go beyond what can be constructed under Section 4(1)(h), as the footprint of the building would be altered. The works constitute the extension of the building, rather than its maintenance or improvement, and would materially affect the external appearance of the structure so as to render it inconsistent with the character of the structure or of neighbouring structures.

#### 3.2.2. Other Technical Reports

None on file.

### 4.0 Planning History

#### 4.1. Planning history on site

- REF1225

*The proposal consists of the removal of a portion of the existing ground floor extensions which were granted permission in 1985 (reg ref 60/85) and 1992 (reg ref 131/92) respectively, amounting to a total of 37 sqm and the addition of a new consolidated high grade extension to the rear of the property only, amounting to a total of 39 sqm.*

This Section 5 application was submitted to the Local Authority by the current referrer on 21 January 2025. The Local Authority found that the works constituted development and did not constitute exempted development, citing limitation 2(a) of

Class 1 of Part 1, Schedule 2 (Exempted Development General) of the Planning and Development Regulations, 2001 (as amended). This is the limitation on cumulative extensions of 40 sqm.

- 131/92 (referred to in planner's report, no history file provided)

Permission was granted for extension and alterations including a two-storey rear extension, an enlarged front porch, alterations to the front windows and a new conservatory to the rear.

- 60/85 (referred to in planner's report, no history file provided)

Permission was granted for alterations including a new first-floor side extension over the existing garage, a two-storey extension to the front, and a new single-storey porch.

#### **4.2. Relevant precedent**

- 4.2.1. The referrer cites Cronin (Readymix) Ltd v An Bord Pleanála & Ors [2017] IESC 36.

### **5.0 Policy Context**

#### **5.1. Dun Laoghaire Rathdown Development Plan 2022-28**

- 5.1.1. The site has no protected structures or archaeological monuments included in the RMP, nor is it in an Architectural Conservation Area or an area to which a Special Amenity Area Order applies. There are no objectives for preservation of views or prospects on the site. There are no objectives for the preservation of any sites or features of archaeological, geological, historical, scientific or ecological interest on the site.

#### **5.2. Natural Heritage Designations**

- pNHA Dalkey Coastal Zone and Kiliney Hill/Rocheshill – 250 metres south
- SAC 003000 Rockabill to Dalkey Island – 1.5 km east
- SPA 004172 Dalkey Islands – 1.7 km east

### 5.3. EIA Screening

- 5.3.1. The proposed development is not a class for the purposes of EIA as per the classes of development set out in Schedule 5 of the Planning and Development Regulations 2001, as amended (or Part V of the 1994 Roads Regulations). No mandatory requirement for EIA therefore arises and there is also no requirement for a screening determination. Refer to Form 1 in Appendix 1 of report.

## 6.0 The Referral

### 6.1. Referrer's Case

The referrer makes the case for exemption as follows:

- The planner's report on the previous referral to Dun Laoghaire Rathdown earlier this year stated that the same works were exempt under Section 4(1)(h) of the Act, as the works did 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.
- If works are exempt under this section of the Act, it is not required to satisfy the provisions of other exemptions (ie, the exemptions in Schedule 2 of Part 1 of the Regulations).
- The contradiction in the two reports and declarations has not been acknowledged.
- These are works for the improvement of the building, with a minimal increase of just 2 sqm (negligible in the context of the overall footprint), which do not materially alter the external appearance of the dwelling or its surrounding context, and preserve the open character of the rear garden. In fact, the reconfiguration more closely aligns with the building line of adjoining properties, improving consistency with the rear elevation, compared with the previous protruding conservatory.
- *Michael Cronin (Readymix) v. An Bord Pleanála [2017] IESC 36* is of relevance; it is reasonable to consider these works an alteration to the building, and therefore exempt under 4(1)(h).

## 6.2. Planning Authority Response

The Planning Authority response of 13 May 2025 refers the Commission to the previous planner's report, stating that the appeal does not raise any matters which would justify a change in their attitude.

## 6.3. Further Responses

None received.

## 7.0 Statutory Provisions

### 7.1. Planning and Development Act, 2000 (as amended)

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

- “development” has the meaning assigned to it by Section 3;
- “exempted development” has the meaning specified in Section 4;
- “works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.

#### 7.1.2. Section 3 (1) 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) specifies a list of developments that are exempt including the following:

*S4(1)(h) development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures.*

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

7.1.5. Section 4(4) of the Act sets out that if a development requires an Environmental Impact Assessment or Appropriate Assessment, it is not exempt.

*Section 4(4) Notwithstanding paragraphs (a), (i), (ia) and (l) of subsection (1) and any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required.*

## **7.2. Planning and Development Regulations, 2001 (as amended)**

7.2.1. Article 6(1) of the Planning & Development Regulations, 2001 as amended states as follows:

*“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. Article 9(1) of the Planning & Development Regulations, 2001 as amended, provides a number of scenarios whereby development to which article 6 relates shall not be exempted development for the purposes of the Act, including if it would: .

7.2.3. 9(1)(a)i *contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act*

7.2.4. Class 1 of Part 1 of Schedule 2 – Exempted Development – General is Development within the curtilage of a house.

7.2.5. Class 50 of Part 1 of Schedule 2 – Exempted Development – General is Demolition

## 8.0 Assessment

### 8.1. Preliminaries

- 8.1.1. The purpose of this referral is not to determine the acceptability or otherwise of the above proposal in terms of the proper planning and sustainable development of the area, but rather whether or not the matter in question constitutes development, and if so, falls within the scope of exempted development. I note also that planning enforcement is a matter for the planning authority, and falls outside the jurisdiction of the Commission.
- 8.1.2. The previous Section 5 referral (REF1225) has been provided as a history file, and drawing *Existing Ground & First Floor Plans Extension Outlines* show the areas of the previous permitted development on the site – a two-storey extension to the rear, with a sunroom and living accommodation at ground floor, and two bedrooms at first floor, the whole coming to 96 sqm, and then a two-storey extension to the side of the house, with a single-storey store and wc to the rear, totalling a stated area of 58.5 sqm. I note the planner's report (and the subsequent referral) refers to the rear extension as being permitted in 1992, and the side extension permitted in 1985, while the drawing is labelled the opposite way. Given the descriptions of development in the planner's report (with the application for the side extension including permission for a new porch, and the application for the rear extension including permission to enlarge an existing porch) it is likely that the error is in the drawings. In any case, no party is disputing the existence of the previous permitted extensions.
- 8.1.3. The description of the proposal is '*removal and reconfiguration of the existing ground floor conservatory to streamline and consolidate the space at the rear of the dwelling*'. Having reviewed the material submitted, and undertaken a site visit, I can confirm that the proposal in question consists of the partial demolition of existing extensions and the construction of a single-storey extension, all to the rear of the house.

## 8.2. Is or is not development

- 8.2.1. Development includes both works and material change of use. No change of use is proposed here. The meaning of works is broad, and includes construction, excavation, demolition, extension, alteration, repair or renewal. The proposal in question involves the demolition of the conservatory and parts of the previous extensions to the house; the construction of a new rear extension; the extension of the house and its alteration. The proposal involves works, and therefore constitutes development. I note there is no dispute between the referrer and the planning authority on this issue, and it is whether the works are exempt is in question.

## 8.3. Is or is not exempted development

- 8.3.1. The referrer states that the extension is exempt under Section 4(1)h, and cites the conclusion of the Supreme Court judgement of *Cronin (Readymix) Ltd v An Bord Pleanála & others 2017* in support, quoting the conclusion. In my view, this is a misinterpretation of this judgment.
- 8.3.2. This case was an appeal by An Bord Pleanála against an earlier judgement of the High Court (*Michael Cronin [Readymix] Ltd -v- An Bord Pleanála [2009] IEHC 553*), which found that an extension of a yard at a quarry was exempt under Section 4(1)h of the Act. The High Court judgement found that S. 4(1)(h) could be interpreted to include the construction of an extension, and justified it thus:
- 8.3.3. *A person might put on a small extension at the back of his house similar to what his neighbours did and it makes complete sense that that should be considered exempted development. If it were not so, planning authorities would be inundated with applications for very small changes in people's houses simply because they amounted to extensions.*
- 8.3.4. The Board appealed to the Supreme Court, and counsel for the Board “submitted that it was an error on the part of the trial judge to consider that the purposive reading adopted by him was required in order to allow for small extensions to private houses, since the power of the Minister, under s.4(2) to exempt specified classes of development, by way of statutory instrument, has already been utilised for that and many other categories.” (Paragraph 28 of the Supreme Court Judgement).

- 8.3.5. The Supreme Court accepted this argument in their conclusion, as noted in paragraph 45.
- 8.3.6. *45. The issue, then, is whether the plain intention of the Oireachtas can be ascertained. In my view it can. I agree with the argument of counsel for the Board, as summarised in paragraphs 28 to 30 above, that the effect of the High Court judgment would be to render exempt a range of developments far in excess of the intention of the Oireachtas. One must bear in mind the overall framework and scheme of the Act, with the many considerations that come into play in the planning process, and look at the context of the provision in question within that framework. I think it is manifestly unlikely that the intention was to render exempt all works carried out on any existing structure, including unlimited extensions in size, subject only to considerations of visual appearance (and subsequent considerations arising from any intensification of use). Nor do I consider that the words used in the section compel the Court to the conclusion that this is the meaning of the section.*
- 8.3.7. Simply put, the Supreme Court set out that Section 4(1)h must be interpreted in the context of the Act as a whole. The Act makes provision for Regulations, which are the appropriate mechanism for exemption for extensions. An interpretation of Section 4(1)h which includes extensions under the umbrella of ‘alteration’ would be unduly broad. The judgement concludes:
- 8.3.8. *49. In my view the interpretation placed on s.4(1)(h) of the Act by the High Court was incorrect. I accept the arguments of the Board as to its true meaning, and consider that an extension is a development that does not come within the exemption. In the circumstances I would allow the appeal.*
- 8.3.9. The Supreme Court considers that an extension is a development which does not come within the exemption afforded by Section 4(1)(h).
- 8.3.10. The development is not exempted development under Section 4(1)h.
- 8.3.11. The appropriate legislation to consider for exemptions for house extensions is *Class 1 of Part 1 of Schedule 2 – Exempted Development – General: Development within the curtilage of a house*. Briefly, this exempts extensions to the rear of a house, subject to a number of conditions and limitations, including the following:

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.*

8.3.12. The house has been extended previously (see planning history above). Part of each of these extensions was demolished to construct the new extension. I have consulted the drawings submitted with this referral, as well as those submitted with the previous referral REF1225 (provided as a history file by the Local Authority, and the planning history in the planner's reports on both referrals, and calculate that the cumulative floor area of all extant extensions is in excess of 142 sqm. I have excluded the garage from this calculation, as the description of development of reg ref 60/85 notes it was pre-existing. I have included the two-storey side and rear extensions marked out in drawing *AA-XX-ZZ-DR-A-P100 Existing Ground & First Floor Plans Extension Outlines* submitted to the Local Authority in REF1225. For simplicity, I have not included the floor area of the porch (permitted under reg ref 60/85 and extended under reg ref 131/92) and the two-storey front extension referred to in reg ref 60/85, as the limits of these are not noted on the plans. Nonetheless, it is clear that the floor area of the extensions combined exceeds 40 sqm, and the works involved (the partial demolition of existing extensions, and the construction of a new extension) are therefore not exempted under Class 1 of Part 1 of Schedule 2.

#### 8.4. **Restrictions on exempted development**

8.4.1. For clarity and completeness, I note that Section 4(4) of the Act sets out that if a development requires an Environmental Impact Assessment or Appropriate Assessment, it is not exempt. This is a very minor development, in a built-up area, and requires neither.

#### 9.0 **Recommendation**

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

**WHEREAS** a question has arisen as to whether the partial demolition of existing extensions and the construction of a single-storey extension to the rear of a house is or is not development or is or is not exempted development:

**AND WHEREAS** Kevin Sweeney and Sinead Hassett requested a declaration on this question from Dun Laoghaire Rathdown County Council and the Council issued a declaration on the 27th day of March, 2025 stating that the matter was development and was not exempted development:

**AND WHEREAS** Kevin Sweeney and Sinead Hassett referred this declaration for review to An Coimisiún Pleanála on the 22nd 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)(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) Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (f) the planning history of the site,
- (g) the judgement of the Supreme Court in *Michael Cronin (Readymix) v. An Bord Pleanála [2017] IESC 36*:

(h) the judgement of the High Court in *Michael Cronin [Readymix] Ltd - v- An Bord Pleanála [2009] IEHC 553*

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

- (a) The partial demolition of existing extensions and the construction of a single-storey extension to the rear of the house (described in the referral as the removal and reconfiguration of the existing ground floor conservatory to streamline and consolidate the space at the rear of the dwelling) constitutes works, which constitutes development;
- (b) The construction of an extension is a development that does not come within the exemption available under Section 4(1)h;
- (c) The cumulative floor area of the extant extensions measures in excess of 142 sqm, which exceeds the 40 sqm limit set out in the exemption available in Class 1 of Part 1 of Schedule 2 of the Planning and Development Regulations, measuring in excess of 142 sqm.

**NOW THEREFORE** An Coimisiún Pleanála, in exercise of the powers conferred on it by section 5 of the 2000 Act (as amended), hereby decides that the partial demolition of existing extensions and the construction of a single-storey extension to the rear of the house 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.

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Natalie de Róiste  
Planning Inspector

9 January 2025

### Form 1 - EIA Pre-Screening

<b>Case Reference</b>	ABP-322369-25
<b>Proposed Development Summary</b>	Demolition of extension, construction of extension
<b>Development Address</b>	Istria, Dalkey Avenue, Dalkey
	<b>In all cases check box /or leave blank</b>
<b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b>  (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.
<b>2. Is the proposed development of a CLASS specified in Part 1, Schedule 5 of the Planning and Development Regulations 2001 (as amended)?</b>	
<input type="checkbox"/> Yes, it is a Class specified in Part 1.  <b>EIA is mandatory. No Screening required. EIAR to be requested. Discuss with ADP.</b>	State the Class here
<input checked="" type="checkbox"/> No, it is not a Class specified in Part 1. Proceed to Q3	
<b>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?</b>	
<input checked="" type="checkbox"/> No, the development is not of a Class Specified in Part 2, Schedule 5 or a prescribed type of proposed road	

<p>development under Article 8 of the Roads Regulations, 1994.</p> <p><b>No Screening required.</b></p>	
<p><input type="checkbox"/> Yes, the proposed development is of a Class and meets/exceeds the threshold.</p> <p><b>EIA is Mandatory. No Screening Required</b></p>	<p><b>State the Class and state the relevant threshold</b></p>
<p><input type="checkbox"/> Yes, the proposed development is of a Class but is sub-threshold.</p> <p><b>Preliminary examination required. (Form 2)</b></p> <p><b>OR</b></p> <p><b>If Schedule 7A information submitted proceed to Q4. (Form 3 Required)</b></p>	<p><b>State the Class and state the relevant threshold</b></p>

<p><b>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)?</b></p>	
<p>Yes <input type="checkbox"/></p>	<p><b>Screening Determination required (Complete Form 3)</b>  <i>[Delete if not relevant]</i></p>
<p>No <input type="checkbox"/></p>	<p><b>Pre-screening determination conclusion remains as above (Q1 to Q3)</b>  <i>[Delete if not relevant]</i></p>

Inspector: \_\_\_\_\_ Date: \_\_\_\_\_