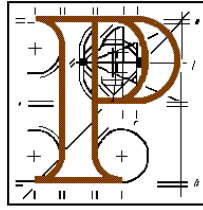


An Bord Pleanála



Inspector's Report

Reference No.:	RL06D.RL3396
Details of Reference:	Whether the 3 no. rooflights in the front roof plane and the 3 no. rooflights in the rear roof plane is or is not development or is or is not exempted development
Referred By:	John & Patricia Fitzpatrick
Owner/ Occupier:	John & Patricia Fitzpatrick
Planning Authority:	Dun Laoghaire Rathdown County Council

Planning Authority Ref: 78/15

Location: 'Beechtrees', Torquay Road, Foxrock,
Dublin 18

Date of Site Inspection: 9/12/15

Inspector: Siobhan Carroll

1.0 SITE LOCATION AND DESCRIPTION

- 1.1 'Beechtrees' is situated on the eastern side of Torquay Road in Foxrock, Dublin 18. Torquay Road is characterised by low-density housing development, predominately detached houses on substantial plots. The subject property is located 180m to the south-east from the junction between Torquay Road and Leopardstown Road. The site covers circa 0.2925 hectares and accommodates a large two-storey house. The dwelling is built in the 'Arts and Crafts' style featuring ground floor exterior walls with granite and redbrick detailing around the windows and a recessed timber porch. The upper floor exterior walls have a painted rendered finish with the gables featuring half-timbering in the 'Tudor Gothic' style. The gable roof has a pitch of roughly 51°. The front roof plane contains two rooflights with the dimensions 1180mm x 790mm and a small rooflight with the dimensions 600mm x 500mm. The rear roof plane contains three rooflights with the dimensions 1180mm x 790mm. These six rooflights are the subject of the referral. There is an additional rooflight to the front which is not subject to the referral.
- 1.2 The north-eastern boundary adjoins the rear gardens of dwellings located with Foxrock Manor. The neighbouring property to the south-east 'Rossmore House' a two-storey detached Victorian dwelling is a Protected Structure and the neighbouring property to the north-west 'Charlotte Grove' is a large detached two-storey dwelling. 'Beechtrees' the subject property is within the Foxrock Architectural Conservation Area which runs along Torquay Road, Brighton Road and Westminster Road in Foxrock.
- 1.3 The dwelling is served by a gated vehicular entrance which is recessed back 10m from the public road. The roadside boundary is formed by a granite stone wall and high mature trees running along extent of this boundary. The north-western boundary is formed by a red brick and stone wall. The south-eastern boundary comprises a fence and mature hedge.

2.0 PLANNING HISTORY & BACKGROUND TO REFERRAL

- 2.1 Dun Laoghaire Rathdown County Council received a request under Section 5 of the Planning and Development Act 2000 from John & Patricia Fitzpatrick as to whether the 3 no. rooflights in the front roof plane and the 3 no. rooflights in the rear roof plane is or is not development and is or is not Exempted Development.
- 2.2 The Declaration was referred to An Bord Pleanála for review on the 26th of August 2015.

3.0 THE QUESTION

3.1 The question arises as to whether or not the 3 no. rooflights in the front roof plane and the 3 no. rooflights in the rear roof plane is or is not development or is or is not exempted development within the meaning of the Planning and Development Act 2000.

4.0 CONTEXT

4.1 Planning History

Reg. Ref. D14B/0157 – Permission was granted for the demolition of the conservatory, refurbishment of existing ground floor including internal modifications and new bay windows to existing with new roof to north-west side of existing two storey dwelling and ground floor infill extension to north-west side of existing two-storey dwelling.

4.2 Development Plan Policy

The relevant development plan is the Dun Laoghaire Rathdown County Development Plan 2010 - 2016.

The subject property 'Beechtrees' is located within the Foxrock Architectural Conservation Area.

5.0 REFERRAL

5.1 Submission by John & Patricia Fitzpatrick

Referring to the documentation enclosed by John & Patricia Fitzpatrick it is requested that An Bord Pleanála determine the question as to whether or not the 3 no. rooflights in the front roof plane and the 3 no. rooflights in the rear roof plane is or is not development or is or is not exempted development.

The documentation attached by the referrers is as follows;

- Document of Referral of Declaration for Review to An Bord Pleanála.
- Copy of the Section 5 Declaration report compiled by the Planning Authority.

- Copy of the Section 5 Declaration issued by the Planning Authority.

The report submitted by David Mulcahy Planning Consultants Ltd sets out the referrers' case as follows;

- The referral refers to the character of the exterior of the dwelling and that of neighbouring dwelling.
- The property is located within an Architectural Conservation Area and therefore the 6 no. rooflights must meet the test whether they would materially affect the character of the area.
- The 3 no. rooflights to the rear roof plane and 3 no. rooflights to the front roof plane are notably small and they align with the slope of the roof and as such do not alter the shape, colour, design or layout of the roof.
- Furthermore the orientation of the dwelling provides that the rooflights are not visible directly in front of the dwelling from the public road. They are only visible when approaching the dwelling from the east or west along Torquay Road.
- It is stated that the rooflights are obscured by the presence of chimneys.
- It is concluded that the impact of the rooflights on the character of the area is negligible.

5.2 Response from Planning Authority

A Notice in accordance with section 128 of the Planning and Development Act 2000 was issued to Dun Laoghaire Rathdown County Council requiring;

- i. details of previous decisions affecting the site;
- ii. any correspondence that has taken place between the person(s) issued with a declaration under subsection (2)(a) of section 5 of the 2000 Act and the planning authority.

- iii. the name and address of the owner of the land in question and the name of the occupier of the said land, if different;
- iv. where no declaration was issued by you, indicate the date that the referral was due to be issued in accordance with subsection (2) of section 5 of the 2000 Act.

Dun Laoghaire Rathdown County Council submitted the following;

- All correspondence relating to Section 5 Declaration 78/15.
- A full copy of history documents referring to Reg. Ref. 78/15.
- Section 5 decision issued on the 30th of July 2015.

6.0 STATUTORY PROVISIONS

In order to assess whether or not the works to be carried out constitute exempted development, regard must be had to the following items of legislation:

Planning and Development Act, 2000 (as amended)

Under Section 2, the following is the interpretation of ‘works’:

“...includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal...”

Section 2 (1) defines a ‘structure’ as:

“structure” means any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined, and—

(a) where the context so admits, includes the land on, in or under which the structure is situate,

Section 2 (1) defines ‘alteration’ as:

“alteration” includes—

(a) plastering or painting or the removal of plaster or stucco, or

(b) 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 structures;

Section 2(1) defines ‘architectural conservation area’

“architectural conservation area” shall be construed in accordance with section 81(1);

Section 3 (1) states as follows:

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

Section 4 (1) (a) – (l) sets out what is exempted development for the purposes of this Act. Section 4 (2) provides for the making of Regulations. The main Regulations are the Planning and Development Regulations, 2001-2013.

Section 4(1) (h) states:

(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;

82.—(1) [Notwithstanding paragraph (a), (h), (i), (ia), (j), (k) or (l) of section 4(1), or any regulations made under section 4(2),] the carrying out of works to the exterior of a structure located in an architectural conservation area shall be exempted development only if those works would not materially affect the character of the area.

Planning and Development Regulations, 2001-2013

Article 6 (1) 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.

Article 9 (1) (a) sets out the instances where development, to which Article 6 relates, shall not be exempted development for the purposes of the Act (a) if the carrying out of such development would—

Schedule 2 – Part 1 Exempted Development – General – Classes 1 – 8 describes classes of development situated within the curtilage of a house which are exempted development, provided that such development complies with the conditions and limitations expressed at Column 2 for each class. Class 1 which is the relevant class in this case refers to:

Class 1 – The extension of a house, by the construction or erection of an extension (including a conservatory) to the rear of a 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.

The conditions and limitations, which apply to the class, include:

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

7.0 Assessment

This referral has arisen from a Dun Laoghaire Rathdown County Council's Declaration, under Section 5 (1) of the Planning and Development Act, 2000, as amended. The Planning Authority having regard to the details submitted and Section 4 & 57 of the Planning and Development Act (as amended) issued a Declaration to John & Patricia Fitzpatrick which stated that the installation of 3 no. rooflights in the front roof plane and the 3 no. rooflights in the rear roof plane is development and is not considered exempt development.

In this case two main questions need to be examined in determination of the said question:

1. Whether the installation of 3 no. rooflights in the front roof plane and the 3 no. rooflights in the rear roof plane is development.
2. Whether the installation of 3 no. rooflights in the front roof plane and the 3 no. rooflights in the rear roof plane is considered Exempt Development.

In relation to the questions asked firstly it is necessary to establish if the said works constitutes development. 'Works' as defined under Section 2 of the Act includes any act of construction, extension, repair or renewal. Clearly 'works' have been carried out on the subject dwelling, involving the installation of the 3 no. rooflights in the front roof plane and the 3 no. rooflights in the rear roof plane.

Section 3 (1) of the Planning and Development Act, 2000, as amended defines 'development' as follows:

"In this Act, 'development' means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land."

Accordingly, the proposed works as set out above therefore constitutes 'development' as defined under Section 3 (1) of the Act.

The remaining question which needs to be examined is;

Whether the installation of 3 no. rooflights in the front roof plane and the 3 no. rooflights in the rear roof plane of 'Beechtrees' is or is not Exempted Development.

Section 4(1) of the Planning and Development Act, 2000, as amended refers to exempted development and Section 4 (1) (a) – (l) sets out what is exempted development for the purposes of the Act. In the case of the subject referral Section 4(1)(h) is of relevance.

Section 4 (1)(h) which states;

(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;

The subject site contains the 'Beechtrees' a two-storey detached dwelling which is designed in the 'Arts and Crafts' style. While it is not a Protected Structure it is located within the designated Foxrock Architectural Conservation Area. There are a mix of residential properties within the ACA they are primarily detached and many feature rooflights, this includes the neighbouring property to the north 'Charlotte Grove'.

'Beechtrees' is located circa 20m to the north-east of the boundary with the public road. The front of the dwelling does not directly address the public road, it faces south-east. The rear elevation faces north-west. Three

rooflights have been installed into the front roof plane. Two of which are located 350mm below the roof ridge and have the dimensions 1180mm x 790mm. The third rooflight to the front is located behind the chimney column 1400mm below the roof ridge and has dimensions of 600mm x 500mm.

The rooflights to the front roof plane are relatively small in scale with the smallest partially obscured behind the chimney column. They do not occupy a significant area of the front roof plane and align with the slope of the roof. Accordingly the 3 no. rooflights to the front do not materially affect the appearance of the dwelling so as to render it inconsistent with the character of the structure or of neighbouring structures.

The 3 no. rooflights in the rear roof plane are located 350mm below the roof ridge and have the dimensions 1180mm x 790mm. Similarly given the relative limited scale of the rooflights and their location and design within the rear roof plane they do not materially affect the appearance of the dwelling so as to render it inconsistent with the character of the structure or of neighbouring structures.

Section 82 of the Act refers to development in architectural conservation areas and could serve to de-exempt development in such areas should the development be deemed to be exempt in the first instance. Section 82 states that notwithstanding the provisions of paragraph (a), (h), (i), (ia), (j), (k) or (l) of section 4(1) of the Act that the carrying out of works to the exterior of a structure located in an architectural conservation area shall be exempted development only if the works would not materially affect the character of the area.

The 6 no. subject rooflights as stated above are relatively limited in scale. Having regard to the orientation of the dwelling on site and its set back from the public road of circa 20m combined with the degree of screen planting along the front boundary provides that the rooflights are not highly visible from the public domain and are only visible from close range views from the south-east and from the north-west on Torquay Road. Furthermore, rooflights are a feature of existing properties within Foxrock Architectural Conservation and therefore the installation of rooflights of this scale and number would be consistent with the particular special character of the area. Accordingly, the six rooflights would not materially affect the character of Foxrock Architectural Conservation Area.

Therefore, in conclusion, I consider that the said installation of 3 no. rooflights in the front roof plane and the 3 no. rooflights in the rear roof plane of 'Beechtrees' constitutes development which is exempted development.

8.0 RECOMMENDATION

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

- (a) sections 2, 3, 4 & 82 of the Planning and Development Act, 2000, as amended
- (b) articles 6, 9 of the Planning and Development Regulations, 2001, as amended

AND WHEREAS An Bord Pleanála has concluded that -

- (a) the installation of 3 no. rooflights in the front roof plane and the 3 no. rooflights in the rear roof plane of 'Beechtrees', is development, in accordance with the provisions of Section 2 and 3 of the Planning and Development Act, 2000, as amended;
- (b) the installation of 3 no. rooflights in the front roof plane and the 3 no. rooflights in the rear roof plane of 'Beechtrees' does not alter the external appearance of the structure so as to render its appearance inconsistent with the character of the structure or of neighbouring structures and is, therefore, in accordance with the provisions of section 4 (1)(h) of the said Act,
- (c) the installation of 3 no. rooflights in the front roof plane and the 3 no. rooflights in the rear roof plane of 'Beechtrees' would not materially affect the character of the Foxrock Architectural Conservation Area.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3) (a) of the 2000 Act, hereby decides that the said 3 no. rooflights in the front roof plane and the 3 no. rooflights in the rear roof plane of 'Beechtrees', Torquay Road, Foxrock, Dublin 18, located within Foxrock Architectural Conservation Area is development and is exempted development.

Siobhan Carroll
Planning Inspector
15th of December 2015