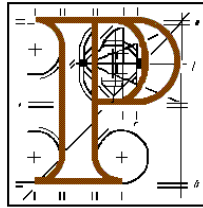


# An Bord Pleanála



## Inspector's Report

|                                 |   |
|---------------------------------|---|
| <b>Referral Reference No.:</b>  | RL3399  |
| <b>Question:</b>                | Whether the development outlined on attached sketch (contained in R394/15) is or is not development or is or is not exempted development. |
| <b>Location:</b>                | No. 3 Inniscarrig Terrace, Western Road, Cork.  |
| <b>Referrer:</b>                | Cork City Council   |
| <b>Owner / Occupier:</b>        | Vincent McCarthy  |
| <b>Date of Site Inspection:</b> | 11/11/15 & 10/12/15   |
| <b>Inspector:</b>               | <b>Kenneth Moloney</b>  |

## **1.1. SITE DESCRIPTION**

The subject site is a red-brick mid-terrace period property situated on Western Road in Cork City. There is a sizable single storey extension to the rear of the property. The single storey extension to the rear has an apex roof and a single gable window on its rear (southern) elevation.

The rear garden area is situated beyond the single storey extension. The garden area is not landscaped and is generally used for the storage of materials. The rear boundary of the rear garden adjoins the River Lee.

## **1.2. BACKGROUND**

Patrick O'Toole, a third party, sought a Section 5 Declaration, in accordance with Section 5 (1) of the Planning and Development Act, 2000 – 2010, from the planning authority asking the question whether the development outlined in red on the attached sketch (contained in R394/15) is development and if it is, is it or is it not exempted development. Cork City Council referred to the question to the Board.

## **1.3. THE DECLARATION**

The Planning Authority on the 28<sup>th</sup> August 2015, in accordance with Section 5(4) of the Planning and Development Acts, 2000 (as amended), referred to the Board a referral for determination.

The referral submission makes the following points: -

- A Section 5 (1) Declaration request was submitted by Mr. Patrick O'Toole of no. 2 Inniscarrig Terrace and it relates to the neighbouring property no. 3 Inniscarrig Terrace.
- The question is as follows 'is the development outlined in red on the attached sketch (contained in R394/15) development and if it is, is it or is it not exempted development within the meaning of the Act.
- Mr. O'Toole has submitted three other related questions and these include;
  - R393/15 – Is the proposed side window 1,000mm or greater from the party wall.
  - R395/15 – Is the development outlined in red under 40sq. m. when including the section of the existing wall to be demolished.
  - R399/15 – Is the provision of two no. roof lights on a proposed extension within one metre of the boundary wall exempted development.
- It is submitted that the above issues can all be addressed within the overall consideration as to whether the development outlined in red is exempted development.
- The Board are advised that the Planning Authority has issued a declaration (R380/15) to the owner of no. 3 Inniscarrig Terrace. This declaration states that a single storey extension to the rear is development that is exempted development.

- Works have commenced on the site and an enforcement complaint has been received.

## **1.4. THE QUESTIONS**

There are currently four questions before the Board is: -

1. "Whether the development outlined in red on the attached sketch (contained in R394/15) is or is not development and whether it is or is not exempted development".
2. "Whether the window on the eastern elevation of the existing single storey extension is less than 1m from the boundary wall".
3. "Is the development outlined in red on the attached sketch (contained in R394/15) under 40 sq. metres when including the section of the existing wall to be demolished".
4. "Whether the provision of two no. roof windows on the existing single storey extension within one metre of the boundary is exempted development".

## **2.0 THE RESPONDANT'S CASE**

Vincent McCarthy, owner of no. 3 Inniscarrig Terrace has submitted a submission and the following is a summary of the submission; -

- The current owners purchased no. 4 and no. 3 Inniscarrig Terrace in July / August 1993.
- At that time refurbishments were carried out to both properties and no extension was added to either property.
- It is submitted that a Section 5 Declaration was sought and approved for the extension to the rear of no. 3 Inniscarrig Terrace. The extension is now completed.
- The complainants case that an extension was added to no. 3 Inniscarrig Terrace after its purchase in 1993 is an fabricated untruth.
- The complainant who resides in No. 2 Inniscarrig Terrace only came to live in no. 2 in 2007.
- Photographs and documentation is submitted illustrating that there was an existing rear ground floor kitchen to both properties in 1993.
- The photographs show the ground floor kitchens to the property before and after the refurbishment and the roofing work.
- It is submitted that both properties were completely re-slatted and the solid outer wall of both kitchens was demolished and replaced with a cavity insulated wall and a pebble dash finish. There was no increase in the footprint of either property.
- A copy of the sales brochure for no. 4 is submitted and this clearly shows the existence of a rear ground floor kitchen.

- The properties are attached and no. 3 had a similar ground floor kitchen, at the time of purchase and this is shown by submitted photographs.
- The complainants claim that the ground floor window is less than 1 metre from the boundary is also untrue.
- The distance of the window to the boundary wall is 1.05m and this is supported by a photograph.

### **3.0 THE RESPONDENT'S CASE**

Patrick O'Toole, owner of no. 2 Inniscarrig Terrace has submitted a submission and the following is a summary; -

- It is submitted that the owner of no. 3 Inniscarrig Terrace has changed the boundaries of both no. 3 and no. 4 Inniscarrig Terrace and this is unauthorised development.
- As such a Section 5 application cannot be considered on a site of unauthorised development.

#### Exempted Development Threshold of 40 Sq. metres

- The subject building has been the subject of numerous extensions post 1964.
- It is submitted that there were works undertaken at no. 3 Inniscarrig Terrace in 1998. This is supported by a submitted letter by former neighbours in Appendix B.
- A letter from the Enforcement Section of Cork City Council states that the single storey extension to the rear of no. 3 Inniscarrig Terrace has a floor area of circa. 54 sq. metres.
- It is submitted that municipal rates records demonstrate the pattern and extent of development post 1<sup>st</sup> October.
- It is therefore evident that the works on the site exceed 40 sq. metres.
- It is submitted that there is no actual proof that extensions were not built post 1964.

#### Proximity of development to Boundary

- It is submitted that the window in the eastern façade of the extension is closer than 1 metre to the legal boundary between the properties. This is detailed in the enclosed Appendix G.

#### Inadequate Private Open Space Provision

- The private open space provision for no. 3 Inniscarrig Terrace is less than 25 sq. metres. This is supported by correspondence contained in Appendix H.

#### Unauthorised Roof Windows

- There are velux roof windows on the eastern roof pitch.
- A velux roof light to the side a property is not exempted development.

### Provision of unauthorised stand-alone structure

- It is contended that the single storey extension is an independent structure with no physical thoroughfare connection to the parent property. It therefore requires planning permission.

### Conclusions

- The site plan mis-represents and over states the legal boundary of 3 Inniscarrig Terrace and as such east facing window is unauthorised.
- The velux roof lights to the side of the property are not classed as exempted development.
- The unit is a single storey self-contained unit and cannot be considered an extension.
- The available private open space does not meet the required amount.

## **4.0 EVALUATION**

### **4.1 The Facts Of The Case**

The facts of this matter include the following:

- On the 19<sup>th</sup> February 2015 Vincent McCarthy, owner of no. 3 Inniscarrig Terrace, sought a Section 5 Declaration from Cork City Council asking the question whether a single storey extension to the rear of no. 3 Inniscarrig Terrace is or is not development and whether it is or is not exempted development.
- On the 1<sup>st</sup> May 2015 Cork City Council determined that the single storey extension to the rear of no. 3 Inniscarrig Terrace is development and is exempted development.
- On the 9<sup>th</sup> of April 2015 Mr. Patrick O'Toole, of no. 2 Inniscarrig Terrace, sought four Section 5 Declarations from the City Council in relation to no. 3 Inniscarrig Terrace.
- The four Section 5 Declarations are as follows;
  1. Is the single storey extension to the rear, including the post 1964 extensions, less than 40 sq. metres?
  2. Is the ground floor window on the eastern elevation of the single storey extension less than 1 metre from the boundary wall?
  3. Is the single storey extension to the rear under 40 sq. metres when including the section of existing wall to be demolished?
  4. Is the provision of 2 no. roof-lights on the single storey extension within 1 metre of the boundary wall?
- On the **31<sup>st</sup> August 2015** An Bord Pleanala received a referral from Cork City Council, in accordance with the provisions of Section 5(4) of the 2000 Act.

### **4.2 Statutory Provisions**

I consider the following statutory provisions relevant to this referral case:

## Planning and Development Act, 2000

**Section 2 (1)** states: -

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

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

**Section 3 (1)** states:-

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

Section 4 (1) sets out various forms and circumstances in which development is exempted development for the purposes of the Act and this includes 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;*

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

## Planning and Development Regulations, 2001

Article 6(1) of the Regulations states as follows:- *“(a) Subject to article 9, development consisting 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) of the Regulations sets out circumstances in which development to which Article 6 relates shall not be exempted development.

Class 1 of Part 1 of the Second Schedule to the Regulations states as follows:-

| <i>Column 1<br/>Description of Development</i> | <i>Column 2<br/>Conditions and Limitations</i> |
|--|--|
|  | <i>1. (a) Where the house has not been</i>     |

|  |  |
|--|--|
| <p><i>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.</i></p> | <p><i>extended previously, the floor area of any such extension shall not exceed 40 sq metres...</i></p> <p><i>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.</i></p> <p><i>6. (a) Any window proposed at ground level in any such extension shall not be less than 1 metre from the boundary it faces.</i></p> |
|--|--|

### **4.3 Assessment**

The referral before the Board has four questions in relation to a single storey extension to the rear of no. 3 Inniscarrig Terrace. The principle question before the Board is whether the single storey extension to the rear is or is not development and whether the single storey extension is or is not exempted development. The Board are advised, as I will outline below, the dimensions of the extension completed on the referral site is slightly larger than that illustrated on the submitted drawings of the Local Authority Section 5 application R380/15.

The other three questions relate to specific components of the single storey extension and more specifically to the conditions and limitations of the exemption for a domestic extension as set out in Class 1, Part 1 of the Second Schedule of the Planning and Development Regulations, 2001. For the purpose of clarity I intend to address the principle question first and then in turn address the individual questions as outlined in Section 1.4 above.

#### *Is the proposal development*

In relation to whether the single storey extension is development the proposal involved the act of construction, and hence involved “works” within the meaning of Section 3 of the Planning and Development Act, 2000 (as amended). Such works constitute “development” within the meaning of the Act.

#### *Is the proposal exempted development*

Firstly in relation to the Planning Act, Section 4(1) sets out exempted development for the purpose of the Act and I would consider that a single storey extension would not come within the scope of Section 4(1).

I would consider the most relevant consideration is whether the subject extension would be considered exempt under Schedule 2, Part 1, Class 1 of the Planning & Development Regulations, 2001 (as amended).

Class 1, of Part 1 of the Second Schedule of the Planning and Development Regulations, 2001, sets out the exempted development provisions for a domestic extensions, and these would apply to the single storey extension to the rear of no. 3 Inniscarrig Terrace.

Column 2 sets out the limitations and conditions for exemptions in relation to the domestic extensions and I have outlined these in italics below;

1. *(a) Where the house has not been extended previously, the floor area of any such extension shall not exceed 40 sq 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 sq. metres.*
- (c) Subject to paragraph (a), where the house is detached, the floor area of any extension above ground level shall not exceed 20 sq. metres.*

I have reviewed the submitted plans on the file to determine the floor area of the single storey extension to the rear of no. 3 Inniscarrig Terrace. In accordance with the scaled drawings on the file I have estimated that the total floor area of the single storey extension is 39.83 sq. metres. The main single storey extension has a floor area of approximately 37.77 sq. metres and the small link corridor, which connects the single storey extension to the main house, has a floor area of 2.06 sq. metres thus arriving at a total of 39.83 sq. m. However I noted on the day of my site inspection that the single storey extension is actually complete and the finished extension is slightly inconsistent with the submitted plans of R380/15. On the day of my site inspection I measured the external envelope of the single storey extension and I estimated that the length of the extension is approximately 10.31 metres and that the width of the extension is approximately 4.64 metres. This therefore would amount to an external dimension, as distinct from an internal dimension, of approximately 47.83 sq. metres. In order to obtain an internal floor area I would assume that the external walls of the extension, based on the submitted drawings in R380/15, are no greater than 0.4 metres in width. Therefore I would estimate that the internal floor area of the single storey extension is approximately 42 sq. metres (9.91m x 4.24m). The single storey extension and the link corridor would give a total of approximately 44 sq. metres. Therefore I have estimated that the subject single storey extension is greater than 40 sq. m and as such the scale of the extension would not be exempted development having regard to Class 1, of Part 1 of the Second Schedule of the Planning and Development Regulations, 2001.

Essentially this conclusion would mean that the other three questions are redundant however for the purpose of the Boards decision I have assessed these other three questions.



The Local Authority were asked the question (i.e. Question no. 3) whether the development outlined in red on the attached sketch (contained in R394/15) is under 40 sq. metres when including the section of the existing wall to be demolished. In order to connect the single storey extension to the main house it would involve partially removing the rear external wall of the existing house. The removal of an existing wall would create an additional 0.4 sq. metres of floor space. However I would consider that this additional floor space is not an extension to the existing house and the removal of the external wall would not as such add additional floor space to the single storey extension.

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 sq. metres.*
- (b) *Subject to paragraph (a), where the house is terraced or semi-detached and has been extended previously, the floor area of any extension above ground level taken together with a 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 sq. metres.*
- (c) *Subject to paragraph (a), where the house is detached and has been extended previously, the floor area of any extension above ground level, taken together with the floor area of any previous extension or extensions above ground level constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 20 sq. metres.*

The resident of no. 2 Inniscarrig Terrace claims that there is a post 1964 extension to the rear of no. 3 Inniscarrig Terrace and this would therefore amount to an overall floor area in excess for 40 sq. metres. While the neighbour claims that there is a post 1964 extension the owner of no. 3 Inniscarrig Terrace makes a counter claim. The neighbour's submission argues that the finishes to the extension are post 1964 however the owner argues he has only carried out refurbishment works since acquiring the property in 1993. I noted from my site inspection that there was a kitchen annex to the rear of both no. 3 and no. 4 Inniscarrig Terrace. These structures are matching in scale and based on a visual observation of the site I would conclude there is no evidence to dispute that these are original structures. I would consider that the onus is on the referrer to demonstrate that these structures were constructed post 1964 and I would conclude, on the basis of the information on the file, that a convincing case has not been made in this regard.

3. *Any above ground floor extension shall be a distance of not less than 2 metres from any party boundary.*

This is not applicable to the subject single storey extension.

4. (a) *Where the rear wall of the house does not include a gable, the height of the walls of any such extension shall not exceed the height of the rear wall of the house.*
- (b) *Where the rear wall of the house includes a gable, the height of the walls of any such extension shall not exceed the height of the side walls of the house.*
- (c) *The height of the highest part of the roof 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.*

The single storey extension is attached to the rear of a 3-storey building and therefore the subject single storey extension would comply with the limitations and conditions of paragraph 4.

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.*

At the time of my site inspection I measured the rear garden area to the rear of the single storey extension. I estimated that the rear garden would measure approximately 70 – 77 sq. metres and therefore comfortably exceeds 25 sq. metres. Therefore the subject single storey extension would comply with the limitations and conditions of paragraph 5.

6. (a) *Any window proposed at ground level in any such extension shall not be less than 1 metre from the boundary it faces.*
- (b) *Any window proposed above ground level in any such extension shall not be less than 11 metres from the boundary it faces.*
- (c) *Where the house is detached and the floor area of the extension above ground level exceeds 12 sq. metres, any window proposed at above ground level shall not be less than 11 metres from the boundary it faces.*

There is a single ground floor side window on the eastern elevation of the single storey extension and this existing eastern elevation differs from the submitted drawings in relation to R380/15. At the time of my site inspection I measured the distance from the window plain to the edge of the eastern boundary wall and this distance is approximately 1.15 metres in width. This distance would satisfy paragraph 6 and therefore the side window would comply with the conditions and limitations of paragraph 6 above.

The question also arises whether the roof lights on the roof plain of the single storey extension would satisfy the conditions and limitations of paragraph 6. The single storey extension has four roof lights, two on the eastern roof plain and a further two on the western roof plain. The submitted drawings in relation R380/15 indicate a total of 6 roof windows. The question before the Board relates to specifically the two roof lights on the on the eastern side of the extension.

The Board will be aware that they have previously issued referral determinations in relation to the planning status of velux roof windows. In one particular case, i.e. RL.2451, the referral asked the question of *'whether the construction of an extension which has five roof lights installed on both side elevations is or is not development or is or is not exempted development'*. The subject extension is single storey in height and has a floor area of 32 sq. metres and there are velux roof windows on either side of the roof plane. The subject property, to which the single storey extension is situated to the rear, is a two-storey semi-detached dwelling.

The Planning Authority declared, having regard to Class 1 of Schedule 2 of the Planning Regulations, 2001, which states that *"any window proposed above ground level in any such extension shall not be less than 11 metres from the boundary it faces"*. The planning authority stated that given the windows are approximately 1 metre from the common boundary it is considered that the windows constitute an unauthorised development.

The reporting Planning Inspector on the case, summarised *"while I concur with the Planning Authority's observation that the roof lights are above the eaves level I fundamentally disagree with the notion that for this reason they are above ground floor level"*. The planning inspector concluded that it was evident that the single storey extension has a vaulted ceiling and the roof lights are part of the ceiling. The inspector outlined that similar to the side and rear windows the purpose of the roof windows is solely to allow light to the ground floor extension and on this basis the Inspector was satisfied that there is no development above ground level and therefore the conditions and limitations of Schedule 2, Part 1, Class 1 6(b) do not apply and the extension is exempt from planning. Furthermore the Inspector concluded that *"the addition of the five roof lights, would not, in my view, render the appearance of the structure inconsistent with the character of the structure or of neighbouring structures, as the roof lights would be entirely unobtrusive"* and therefore the proposed extension would be exempted development. The Board subsequently concluded that the single storey extension to the rear of the existing house, including the roof lights installed on both side facing pitches of the roof of the extension, comes within the scope of the exempted development provisions of class 1 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001.

I inspected the internal space of the single storey extension and I noted that the extension has a vaulted ceiling and the sole purpose of the roof windows is to allow daylight penetrate and also for ventilation purposes. I would consider that these roof windows purely serve a ground floor space and that they would be consistent with Paragraph 6 above.

*7. The roof of any extension shall not be used as a balcony or roof garden.*

This is not the case and therefore paragraph 7 is not applicable to the subject single storey extension.

Therefore based on the information on the file and a visual inspection of the site I would conclude that the single storey extension to the rear of the house would not be exempted development in accordance with Class 1, Schedule 2, Part 1 of the Planning and Development Regulations, 2001.

## **5.0 RECOMMENDATION**

### **Conclusions and Recommendations**

It is considered that the single storey extension to the rear of no. 3 Inniscarrig Terrace is not exempted development having regard to Class 1, Schedule 2, Part 1 of the Planning and Development Regulations, 2001.

## **DRAFT ORDER**

**WHEREAS** a question has arisen as to whether a single storey extension to the rear of no. 3 Inniscarrig Terrace, Western Road, Cork, is or is not development and is or is not exempted development. The Board were also asked to examine in their the assessment of the referral question the following questions;

- a. Whether the window on the eastern elevation of the existing single storey extension is less than 1m from the boundary wall.
- b. Whether the single storey extension is under 40 sq. metres when including the section of the existing wall to be demolished.
- c. Whether the provision of two roof windows on the existing single storey extension within one metre of the boundary is exempted development.

**AND WHEREAS** the said question was referred to An Bord Pleanála by Cork City Council.

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

- (a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended,
- (b) Articles 6 and 9 of the Planning and Development Regulations, 2001, as amended,
- (c) Class 1 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001,

**AND WHEREAS** the Board has concluded that the single storey extension;

- (a) would constitute the carrying out of works which comes within the meaning of development in section 3(1) of the Planning and Development Act 2000, (as amended),
- (b) is not within the scope of Class ,1 Part 1, Schedule 2 of the Planning and Development Regulations, 2001 (as amended),

**NOW THEREFORE** An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3) (a) of the 2000 Act, hereby decides that a single storey extension to the rear of no. 3 Inniscarrig Terrace is not exempted development.

---

Kenneth Moloney  
Planning Inspector  
22<sup>nd</sup> December 2015