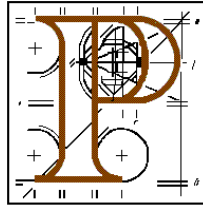


An Bord Pleanála



Inspector's Report

Reference No.	RL06F.RL3438
The Question:	Whether the modifications to the ground floor level extension to accommodate the first floor level extension is or is not development, or is or is not exempted development.
Location of Development:	No. 26 Estuary Road, Malahide, County Dublin.
Referrer:	Estuary Road Residents Group
Owner/Occupier:	Mark Mohun
Planning Authority:	Fingal County Council
Site Inspection Date:	26 th day of February, 2016.
Inspector:	Patricia M. Young

Appendices:	<i>Appendix 1: Site Location Map</i>
	<i>Appendix 2: Photographs</i>
	<i>Appendix 3: Relevant Board Decisions</i>

1.0 INTRODUCTION

- 1.1 This report relates to a request from Estuary Road Residents Group, pursuant to Section 5(3) of the Planning & Development Act, 2000, as amended, whereby Estuary Road Residents Group have sought a determination from the Board as to whether modifications to an existing ground and first floor level extension is or is not development, or is or is not exempted development. These modifications are set out under Section 3 of this report below.

2.0 SITE LOCATION AND DESCRIPTION

- 2.1 Having inspected the site I consider the site location and description given by the Boards Inspector in appeal case ABP Ref. No. PL06F.RL2994 is still applicable. It reads:-

“The site, which is the subject of the referral to An Bord Pleanála, is located at 26 Estuary Road, a residential development of predominantly two storey semi-detached dwellings on the north-western fringes of Malahide. The Sacred Heart Church is located on the western side of the road almost opposite the site.

The site is occupied by a semi-detached dwelling with front and rear gardens and side access. Two extensions have been constructed onto the original house. The first extension was constructed in 2000 and comprised of a ground floor kitchen extension and a first floor bedroom extension. The area below the bedroom extension is open to the garden on one side and enclosed on the other side by a pillar and a patio door which is attached to both the pillar and the existing dwelling. A more recent extension was constructed approximately 1 year ago and provides additional accommodation to the first floor bedroom extension which was constructed in 2000.

This extension also alters the previous ground floor extension by extending the roof area outwards into the garden by approximately 0.9 of a metre the full width of the dwelling. The area below this projecting roof and below the roof of the first floor extension is used as a patio.

The rear garden has a somewhat untidy appearance at present mainly due to lots of old building materials on the site including doors, blocks and tiles.”

I note to the Board that the Inspectors report was signed and dated the 21st day of June, 2012. To this I add that since this inspection the later

first floor addition which consisted of a projecting window type structure has been removed. The ground and first floor level extension as described, photographed and measured by the Boards Inspector in the preparation of her report for referral case ABP Ref. No. RL06F.2994 is otherwise the same as is the remainder of the rear garden space.

3.0 DEVELOPMENT IN QUESTION:

- 3.1 The question referred to the Board is whether an extension consisting of modifications to the ground floor to accommodate a first floor level extension including a projection of the roof at/over the ground floor (of approximately 0.9-meters) for the full length of the dwelling; the erection of an awning at ground floor roof level; the entire first floor extension and additional modifications to same including rear elevational changes i.e. additional floor space, new windows and associated elevational projections; and, the disposal of surface water from this extension into 3rd Party lands without consent, is or is not development or is or is not exempted development.

4.0 PLANNING HISTORY

4.1 Subject Site:

- **ABP Ref. No. RL06F.RL2994 [P.A. Reg. Ref. No. FS5/002/12]:** Whether or not the additional extension above an existing extension to rear is or is not exempted development. The Board determined that the additional extension and existing extension to the rear of the existing dwelling was not exempted development.
- **P.A. Reg. Ref. No. F13B/0061:** Retention permission was **refused** for a bay window extension with mansard roof to the rear of an existing first floor bedroom extension to the rear of the subject dwelling.
- **ABP Ref. No. PL 06F.106222 [P.A. Reg. Ref. No. F97B/0535]:** On appeal to the Board planning permission was **refused** for a two storey extension to the rear of this property.

4.2 Previous Board Referral Decisions

- **RL2737:** Whether rear bay window is or is not development or is not development or is or is not exempted development at No. 7 Carraig Ard, Fort Lorenzo, Galway. The Board determined that the rear bay window was not exempted development.

- **RL2166:** Whether the orientation of a house, the construction of a dormer window to the rear and other works undertaken contrary to conditions imposed are or are not development or are or are not exempted development at Crobally Lower, Tramore, Co. Waterford. The Board determined that the cutting/ removal of the rear boundary hedge is not development and that the orientation of the house, the alterations to the elevations including the construction of a dormer window to the rear and the provision of the vehicular entrance to the house are development and are not exempted development.

5.0 PLANNING AUTHORITY DETERMINATION

- 5.1 The Planning Authority decided not to issue a Section 5 Certificate for the following stated reason:-

“As no current ground and first floor plans or a site layout plan have been submitted in accordance with Section 5 (1) of the Planning and Development Act 2000 (as amended), the Planning Authority is unable to establish if the extension comprises development which is exempt from the requirement to obtain planning permission. As such, the Planning Authority is unable to issue a declaration on the question.”

6.0 REFERRARS CASE

- 6.1 The Estuary Road Residents Group submission, which was prepared and submitted by Downey Planning on their behalf, may be summarised as follows:-
- The question has been put to the Planning Authority; however, the Planning Authority were unable to make a determination based on the lack of current ground and first floor plans as well as the lack of a site layout plan. The Board is requested to note that a site location and existing floor plans were submitted with the referral and given that the

referrer has no legal right to enter the subject property to formally inspect and measure the extension existing drawings and documentation relating to the subject premises have been utilised to formulate the drawings submitted. Notwithstanding, the submitted drawings are considered to be an accurate representation of the situation.

- This application concerns the entire first floor rear extension of No. 26 Estuary Road which is argued to be unauthorised development.
- An overview of the planning history including the enforcement taken by the Council to date on No. 26 Estuary Road is provided. In relation to the enforcement proceedings it is acknowledged that while certain works have been undertaken to remedy the Council's concerns it is noted that parts of the development that were subject of this enforcement have not been removed and that subsequent modifications also have been undertaken. As such the development in question still remains visually obtrusive and results in unacceptable levels of overlooking of residential properties. Moreover, it is argued that it also depreciates the value of properties in its vicinity and by reason of its design, height, scale, projection as well as overall aesthetic appearance is visually incongruous.
- The entire first floor extension materially contravenes the current Development Plan, in particular the 'RS' zoning of the lands and Objective OS35 which sets minimum separation distances between properties.
- The original first floor bedroom extension does not come within the scope of the Planning and Development Regulations as it is less than two metres from the party boundaries and is well in excess of the 12-sq.m. exemption.
- The extension is argued to be of poor construction and has been carried out with complete disregard for neighbours and their properties, particularly No. 25 Estuary Road, as the disposal of the extension's surface water currently runs down the internal side of No. 25's boundary wall.
- The Board concluded in their determination of the previous referral case relating to the extension to the rear of this property that the original first floor extension and the extension to the same, i.e. the bay window and associated works, is not exempted development and was in essence an unauthorised structure.

- The entire first floor level extension in its entirety requires planning permission and an existing first floor plan of the extension has been prepared to assist in the determination of this case. In relation to the plans prepared it is noted that these utilised those prepared by the owners of No. 26 in their 2013 planning application.
- The Board is sought to make a determination on the question posed.

7.0 RESPONSES

7.1 The **Owner and Occupier's** response may be summarised as follows:-

- The extension comes under the 1994 Development Plan.
- The window box in the rear extension has been demolished to the satisfaction of the Council.
- Aesthetics is not applicable to the rear of a property.
- The ground floor level is exempted development.
- The awning to the rear does not require planning permission.
- The lead flashing which is acting as a gutter was installed by the builders during the construction at the rear of No. 25 Estuary Road.
- The ground floor eaves are within the guidelines for roof design.
- The first floor level and its roofline is exempted development.

7.2 The **Planning Authority's** response: No comment.

8.0 STATUTORY PROVISIONS

8.1 The following statutory provisions are relevant in this referral case:

- Section 2 (1) of the Planning and Development Act, 2000, as amended, states as follows:-

"In this Act, except where the context otherwise requires -

"development" has the meaning assigned to it by Section 3"

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

“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 in the use of any structures or other land.”

“unauthorised structure” means a means a structure other than:-

- (a) a structure which was in existence on 1 October 1964, or
- (b) a structure, the construction, erection or making of which was the subject of a permission for development granted under Part IV of the Act of 1963 or deemed to be such under section 34 of this Act, being a permission which has not been revoked, or which exists as a result of the carrying out of exempted development (within the meaning of section 4 of the Act of 1963 or section 4 of this Act).

“unauthorised works” means any works on, in, over or under land commenced on or after 1 October 1964, being development other than:-

- (a) exempted development (within the meaning of section 4 of the Act of 1963 or section 4 of this Act), or
- (b) development which is the subject of a permission granted under Part IV of the Act, being a permission which has not been revoked, and which is carried out in compliance with that permission or any condition to which that permission is subject;

“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.

- Section 3.1 of the Planning and Development Act 2000 (as amended) states:

“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 structures or other land.”

- Exempted development is provided for in Section 4 of the Planning and Development Act 2000 as follows:-

Section 4(1): *“The following shall be exempted development for the purposes of this Act-*

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

- Article 9(1) of the Planning and Development Regulations 2001 states: 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 –

(viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use,

- Article 6 (1) provides circumstances for exemption where it states:-

“Subject to Article 9, development of a class specified in column 1 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 6(1) of Schedule 2 Class 1 states:

Subject to Article 9 development of a class specified in Column 1 and Part 1 of Schedule 2 shall be exempted development for the purposes of the Act subject to the conditions and limitations specified in Column 2. Class 1 of the schedule states:

“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 conservation 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.”

Column 2 contains a list of conditions and limitations, those of relevance include:-

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.

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.

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

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 less than 25 square metres.

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.

9.0 ASSESSMENT

9.1.0 Overview:

9.1.1 The referrer has requested the Board to adjudicate on whether or not the extension to the rear of No. 26 Estuary Road which they have described as consisting of modifications to the ground floor level to accommodate a first floor level extension including a projection of the roof at and over the ground floor level (of approximately 0.9-meters) for the full length of the rear elevation; the erection of an awning at ground floor roof level; the entire first floor level extension and additional modifications to same including rear elevational changes; i.e. additional floor space, new windows and associated elevational projections; together with the disposal of surface water from this extension, is or is not development.

9.1.2 On the matter of disposal of surface from this extension into the adjoining property without the consent of this property owner I consider that this issue is a civil matter and therefore falls outside the remit of this referral.

9.1.3 I consider that the main issues to be addressed in this referral case to be:-

- *Whether the additions and alterations to the ground floor level and first floor level extension of No. 26 Estuary Road Malahide is 'development';*
- *Whether any exemptions apply; &*
- *Whether any restrictions to these exemptions apply.*

9.1.2 I propose to deal with each of these issues separately in the following sections of this assessment from which I will make base my recommendation and conclusion upon.

9.2.0 Is it Development?

9.2.1 The development as set out in the documentation on file that is subject of this referral, is described as consisting of modifications to the ground floor level to accommodate a first floor level extension including a projection of the roof at and over the ground floor level (of approximately 0.9-meters) for the full length of the rear elevation; the erection of an awning at ground floor roof level; the entire first floor level extension and additional modifications to same including rear elevational changes; i.e. additional floor space, new windows and associated elevational projections; together with the disposal of surface water from this rear extension.

9.2.2 "*Works*" are defined under Section 2 of the Planning and Development Act, 2000, as amended, as including: "*any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal...*" and "*development*" are defined under Section 3(1) of the said Act as: "*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 other land.*"

9.2.3 I therefore consider that based on the above definitions the alterations and additions to the rear of No. 26 Estuary Road as set out in this referral case involve 'works' and 'development' within the meaning of the said Act.

9.3.0 Whether any exemptions apply to this development:

9.3.1 The development as set out in Section 9.2.1 above can be broken down into the following components:

- *Modifications to the ground floor level to accommodate a first floor level extension;*
- *The provision of a projection of the roof at and over the ground floor level extension along the full length of the rear elevation;*
- *Erection of an awning at ground floor roof level;*
- *Extension of the first floor level beyond the original rear building line; and,*
- *Associated works.*

Altogether these works when amalgamated make up the extension to the rear of No. 26 Estuary Road.

9.3.2 As set out under Section 8 of this report. Article 6(1) of Schedule 2 Class 1 of the Planning and Development Regulations states that: “*subject to Article 9 development of a class specified in Column 1 and Part 1 of Schedule 2 shall be exempted development for the purposes of the Act subject to the conditions and limitations specified in Column 2*”. I consider that the relevant exempted development class in this referral case is Class 1. This class deals specifically with development within the curtilage of a dwelling house. It states: “*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 conservation 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*”.

9.3.3 I concur with the Board Inspector in their assessment of the previous referral case ABP Ref. No. PL06F.RL2994 that Class 3, i.e. the construction, erection or placing within the curtilage of a house of any tent, awning, shade or other object, greenhouse, garage, store, shed, or other similar structure of the Exempted Development Regulations is not applicable to the projecting roof part of the development, as this component of the development has been constructed as part of the overall extension and the first floor extension is actually constructed on top of it. As such this projecting element should be considered as part of the part single part two storey extension structure to the rear of No. 26.

9.3.4 In relation to whether the development complies with the conditions and limitations specified in Column 2 of said Part 1 of the Regulations I firstly consider that the total area of the ground and first floor level based on the documentation provided, which in my view having inspected the site and its immediate setting, correlates with information provided previously under the previous referral case (ABP Ref. No. PL06F.RL2994) which I note includes measurements taken by the Boards Inspector and the retention application P.A. Reg. Ref. No. F13B/0061. These show that the total area of the extension is less

than 40-sq.m. and on this basis it complies with Article 6 Class 1 Column 2 – 2(a). I consider this is still the case.

9.3.5 Notwithstanding, the first floor level measurements, excluding the recently removed window box structure, has an internal floor area that exceeds the 12-sq.m. maximum allowed under Column 2 – 2(b). The owner and occupier as part of their response to the Board while refuting that this is not the case has not substantiated otherwise. Based on the documentation provided previously by them in relation to the retention application P.A. Reg. Ref. No. F13B/0061 and based on the documentation submitted with this referral case, including the previous referral case relating to this property, in my view it is highly probable that the first floor level does not comply with Article 6 Class 1 Column 2 – 2(b).

9.3.6 Of further concern the ground floor level extension is within 2-meters from the party boundary and rear elevation windows provided above ground floor level in the extension are positioned less than 11-meters from the boundary they face. This being the case the development fails to comply with Article 6 Class 1 Column 2 - 3 and 6(b).

9.3.7 In addition to the above concerns Section 9(1) (a) (viii) of the 2001 Planning and Development Regulations states that: *“development to which article 6 relates shall not be exempted development for the purposes of the Act if the carrying out of such development for the purposes or the act would consist of or comprise the extension, alteration, repair or renewal of an un-authorised structure or a structure the use of which is an un-authorised use.”*

9.3.8 The original first floor extension appears to have been constructed in circa 2000 at a distance of 1.55-metres from the party boundary which is less than the 2-metre requirement stipulated in Column 2(3) of Article 6 (1) of Schedule 2 of the Planning and Development Regulations, 2001, (as amended). On this point I note that the Board in its determination of the previous appeal case relating to the subject extension concluded:

“Having regard to the distance between the original first floor bedroom extension and the party wall, the Board is not satisfied that the original first floor bedroom extension comes within the scope of the said Regulations being less than two metres from the party boundaries and therefore the restrictions on exemption under Article 9 (i) (viii) of the said Regulations would apply to the provision of a further extension at this location”.

Having regard to the alterations to the roof structure over and above the ground floor level extension which include a mansard roof and a projecting awning/canopy, which appears to have been works and development carried out in more recent years these works are both within 2-meters of the party boundary. I therefore consider that Article 9(i)(viii) of the said Regulations would apply to such works.

9.3.9 My final consideration relates to the exempted development provided for under Section 4 of the Planning and Development Act, 2000, in particular Section 4(1) which states that the following shall be exempted development for the purposes of this Act: *“development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which effect only the interior of the structure and which do not materially effect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures”*. Arguably the development carried out consisted of works for maintenance, improvement or any other alteration of any structure with the works in this case effecting both the interior and exterior of the structure. It could be argued that the works carried out in extending the rear of No. 26 Estuary Road have materially impacted the external appearance of the structure due to its lack of harmony with neighbouring and adjoining structures which were designed to match one another and are as a result highly coherent in their visual appearance with this including in terms of their built form, building to space relationship through to palette of materials. I consider in this case the referrers concerns in this regard are of merit.

10.0 CONCLUSIONS

10.1 It is considered that the works carried out on site are development and are not exempted development. Accordingly, I recommend an Order in the following terms:

DRAFT ORDER

WHEREAS a question has arisen as to whether modifications to the ground floor level and first floor level extension to rear of No. 26 Estuary Road, Malahide, Co. Dublin is or is not development or is or is not exempted;

AND WHEREAS Estuary Road Residents Group requested a declaration on the said question from Fingal County Council and the

said Council decided not to issue a declaration on the 6th day of November, 2016, stating that it was unable to issue a declaration as no ground floor plans; first floor plans or site layout plans had been submitted in accordance with Section 5(1)(b) and the Planning Authority was therefore unable to establish whether or not the extension comprised development which is exempt from the requirement to obtain planning permission;

AND WHEREAS the said Estuary Road Residents Group referred the said Councils declaration for review to An Bord Pleanála on the 2nd day of December, 2015;

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

(a) Section 2, 3 and 4(1)(h) of the Planning and Development Act, 2000;

(b) Article 9 (1) (a) (viii) of the Planning and Development Regulations, 2001-2011;

(c) Class 1- 2(b), 3 and 6(b) of Part 1 of Schedule 2 of the said Regulations, and

(d) the planning history of the site; and,

(e) the nature and extent of the works carried out.

AND WHEREAS An Bord Pleanála has concluded that:-

(a) The said extension when taken together with the existing extension on the site does not come within the scope of the conditions and limitations of the exempted development provisions of Class 1 Column 2(b), 3 and 6(b) of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended;

(b) Having regard to the distance between the first floor level extension and the party wall, the Board were not satisfied that the original first floor bedroom extension is an authorised structure and therefore the restrictions on exemption under Article 9 of the said regulations would therefore apply to the provision of a further alterations and additions to the extension at this location.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by Section 5(3)(b) of the 2000 Act, hereby decides that the additional extension above an existing extension at No. 26 Estuary Road, Malahide is not exempted development.

Patricia M. Young
Planning Inspector
3rd day of March, 2016.