



An
Bord
Pleanála

Inspector's Report RL29N.RL3484

Question

Whether a timber constructed, pvc clad, pitched roof, single storey shed of approximate area 20.30 sq.m. at 2 Spire View, Riverstown Abbey, Ashington, Dublin 7 is or is not development or is or is not exempted development.

Declaration

Planning Authority	Dublin City Council
Planning Authority Reg. Ref.	0111/16
Applicant for Declaration	Daniel Boylan
Planning Authority Decision	Is not exempt

Referral

Referred by	Daniel Boylan
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Date of Site Inspection	26 th October 2016
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Inspector	Tom Rabbette
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1.0 Background, Site Location and Description

There is a structure located to the rear of No. 2 and No. 2A Spire View, Riverstown Abbey, Ashington in Dublin 7. This structure is of c. 13.5 m length. There is a two-storey semi-detached dwelling located at No. 2 Spire View and a two-storey detached dwelling located at No. 2A Spire View. The above mentioned c.13.5 m long structure spans both sites. The drawing on this Referral file and the associated Referral file ref. RL3485, indicates two separate sites for the purposes of the referrals, however, both No. 2 and 2A are accessed via the same vehicular gate and same pedestrian gate. There is no side boundary wall to the front of the dwellings between the two sites and there is no boundary wall to the rear of the dwellings between the two sites. The rear yard area is contiguous and open to both dwellings. This rear area is paved.

The c. 13.5 m structure is located along the back wall of the two sites. Externally it reads as the one building. Internally however, there is a sliding door that appears to be sealed shut which subdivides this structure. In the drawing on this Referral file and associated Referral file ref. RL3485, this structure is subdivided along the line of the sealed sliding door, with the eastern portion referred to as shed C and the western portion referred to as shed B.

Shed C is the subject of this Referral case and shed B is the subject of associated file RL3485. Both shed C and shed B have their own entrances. Shed C has a door in its front elevation while shed B has its own door in its side gable elevation. On the day of the site inspection by the undersigned, shed C accommodated a number of pigeons. Shed B, which is of the same type of internal construct as shed C, did not contain any pigeons. While there was evidence (i.e. pigeon waste) that this shed B did accommodate birds in the past, given its condition on day of the inspection, it is reasonable to conclude that it has not accommodated pigeons for some time. A number of items were located in this shed B such as storage boxes, black bags and chairs, which would suggest it is being used for storage purposes, but it was largely empty on the day of the inspection. Shed C has a stated area of 20.3 sq.m. and shed B has a stated area of 16.5 sq.m.

There is another shed of similar construction but of much shorter length located along the rear side boundary of No. 2A Spire View. This is referred to as shed A in the drawings on both referral cases.

I refer the Board to photographs, including photographs of the interior of shed C, in the appendix attached to this report. I would recommend that the Board consider the two referrals in tandem i.e. this referral and the referral subject of RL 3485.

2.0 The Question

Whether a timber constructed, pvc clad, pitched roof, single storey shed of approximate area 20.30 sq.m. at 2 Spire View, Riverstown Abbey, Ashington, Dublin 7 is or is not development or is or is not exempted development.

3.0 Planning Authority Declaration

3.1. Planning Authority Decision

By Order dated 29/04/2016 the Planning Authority declared that the proposed development was not exempt from the requirement to obtain planning permission. The reason and consideration for that declaration stated the following:

‘As indicated on submitted drawings, the structure is used for the keeping of pigeons, and therefore, the development does satisfy Condition and Limitation number 6 Column 2 of Class 3 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001, as amended. The development is therefore not exempted development.’

3.2. Planning Reports

The contents of the Planner’s Report dated 29/04/2016 can be summarised as follows:

- Refers to planning and enforcement history.
- Refers to statutory provisions.
- Concludes that as indicated on submitted drawings, the structure is used for the keeping of pigeons and therefore the development is not exempted

development with reference to Condition and Limitation No. 6 under Column 2 of Class 3 of Part 1 of Schedule 2 of the Planning & Development Regulations.

4.0 Planning History

2602/16 The referrer was granted retention permission for a garden shed. That shed is identified as 'Shed A' in the drawings submitted with this Referral Application. The retention permission for the shed relates to the adjoining site to the west, No. 2A Spire View, of the site subject of this referral. It should be noted that the decision on 2602/16 was made after the p.a. decisions on both RL 3484 and RL3485. (Notification of grant, plans and particulars on associated Referral File RL3485.)

3427/13 (PL 29N.242899) The referrer was refused permission for a change of use from domestic shed to aviary. That shed is the same structure that was subject of 2602/16 above. History file attached to current related Referral Applications.

2808/13 (PL 29N.242442 invalid appeal) The referrer was refused permission for a change of use from domestic shed to aviary. That shed is the same structure that was subject of 2602/16 and 3427/13 above. (Plans and particulars on associated Referral File RL3485.)

2709/13 The referrer was granted retention permission for attic conversion incorporating dormer extension to rear and 1 no. roof light to front. This retention permission relates to the dwelling on the adjoining site to the west (No. 2A Spire View) of the site subject of this referral. (Notification of grant, plans and particulars on associated Referral File RL3485.)

1401/03 The referrer was granted permission for dwelling adjacent No. 2 Spire View.

E0149/13 Reference is made in the Planner's Report on file to Enforcement relating to a new building to rear of 2 and 2A Spire View, Riverstown Abbey, Ashington. Section 152 Warning Letter and S154 Enforcement Notice and S252 Notice issued.

5.0 The Referral

5.1. Referrer's Case

The case submitted by the referrer can be summarised as follows:

- The shed was in the past used to house racing pigeons but that use is not what was before the Local Authority.
- The referrer's question to the Local Authority was setting aside the disputed use.
- The referrer is requesting the Board to issue a declaration that the shed is exempted development setting aside the disputed status on the use.
- On the initial visits the Local Authority representative clearly indicated that the use the referrer was putting the sheds to was an unauthorised use but that if he ceased that use the sheds would be exempted development and he would not have to remove them.
- It is possible to have a structure that is itself an exempted development but a use that is unauthorised.
- The referrer's agent visited the site, took measurements and photographs, and has prepared accurate drawings for the Section 5 application.
- The referrer has ceased the unauthorised use in all of the sheds with the exception of the use he claims and has evidence to support is statute barred in the subject shed.
- This Section 5 application has arisen as a result of an Enforcement Notice from the LA which stated that the shed along with a list of other works were considered unauthorised development.
- The referrer built his home at the adjoining no. 2A Spire View and as a consequence of his, and his son's hobby and lifelong interest, he built the subject shed to house some of his racing pigeons.

- The racing pigeons use has ceased and there have been a number of site visits from the Planning Department to inspect.
- There has been no reoccurrence of the keeping of the birds in the subject shed and soon thereafter another smaller shed was built.
- The referrer was advised by his agent to seek a declaration of exemption on the structure of the shed itself and not the use disputed.
- If there is no declared use it is simply a shed.
- The use is not a part of the question the referrer is asking simply the physical structure.
- The physical structure can be an exempted development that is then put to an unauthorised use and enforcement action will result. Once the use ceases the enforcement stops.
- In this case the LA is seeking the demolition of the shed regardless of whether the use ceases or is granted statute barred status.
- A shed has existed on the subject site in various guises for a considerable time.
- There is no let up from the LA and the referrer regularly receives warning letters and unannounced visits where access is often gained by climbing over locked gates or fences.
- There is no sound planning reason for the shed's removal and but for the presently disputed use the shed would be an exempted development.

6.0 Planning Authority's Response

There is no response to the referral from the planning authority on file at time of writing.

7.0 Statutory Provisions

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

Section 2(1)

“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, and

(b) in relation to a protected structure or proposed protected structure, includes—

(i) the interior of the structure,

(ii) the land lying within the curtilage of the structure,

(iii) any other structures lying within that curtilage and their interiors, and

(iv) all fixtures and features which form part of the interior or exterior of any structure or structures referred to in subparagraph (i) or (iii).

“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)

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

Section 4(1)(i)

The following shall be exempted developments for the purpose of this Act –

Development consisting of the use of any structure or other land within the curtilage of a house for any purpose incidental to the enjoyment of the house as such.

7.2. Planning and Development Regulations 2001 (as amended)

Article 6(1)

Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempt 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.

Schedule 2, Part 1 - Exempted Development — General

Column 1
Description of Development

Column 2
Conditions and Limitations

CLASS 3

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.

1. No such structure shall be constructed, erected or placed forward of the front wall of a house.
2. The total area of such structures constructed, erected or placed within the curtilage of a house shall not, taken together with any other such structures previously constructed, erected or placed within the said curtilage, exceed 25 square metres.
3. The construction, erection or placing within the curtilage of a house of any such structure shall not reduce the amount of private open space reserved exclusively for the use of the occupants of the house to the rear or to the side of the house to less than 25 square metres.
4. The external finishes of any garage or other structure constructed, erected or placed to the side of a house, and the roof covering where any such structure has a tiled or slated roof, shall conform with those of the house.
5. The height of any such structure shall not exceed, in the case of a building with a tiled or slated pitched roof, 4 metres or, in any other case, 3 metres.
6. The structure shall not be used for human habitation or for the keeping of pigs, poultry, pigeons, ponies or horses, or for any other purpose other than a purpose incidental to the enjoyment of the house as such.

8.0 **Assessment**

8.1. **Is or is not development**

8.2. The first matter relates to whether or not the subject shed comprises development.

Having regard to the definition of 'works' and 'structure' in the Act as referred to above, I am satisfied that the construction of the subject shed does constitute 'development'.

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

8.4. Development can be exempted from the requirement for planning permission by either (a) section 4 of the Planning and Development Act, 2000, or (b) article 6 of the Planning and Development Regulations 2001.

It is indicated in the referrer's submission to the Board that the subject shed was originally constructed to house pigeons. In that submission to the Board, the referrer appears to suggest that the use of the structure for the housing of racing pigeons has ceased. It is stated in the submission to the Board and in the documentation submitted to the p.a. that the question being put refers to the structure only, and not the use. It is stated that the referrer is claiming a 'statute barred' use of the structure and that this will be dealt with separately (as stated in the 'Declaration on Development & Exempted Development' form submitted to the p.a. on the 04/04/16). The referrer's submission lacks clarity around the use, it states that the use of the shed for housing pigeons has ceased but then also appears to suggest that the 'statute barred' use is the keeping of pigeons.

Notwithstanding the statements from the referrer that the use is not part of the question, neither the Board nor the planning authority can cherry-pick what elements of the relevant legislation it can apply and what parts it can set aside in determining the question. The use of the structure must be a consideration in determining the question (whether such use is 'statute barred' or not). While the referrer's submission lacks clarity on the use, it does indicate on drg. No. 2586-01-01 submitted with the application to the p.a. that the shed is an 'existing pigeon loft' and that, as stated by the referrer in the submission to the Board, was the intended use

of the structure when built. The Planner's Report relied on this drawing to go on and recommend that the development is not exempted. The referrer did not specifically rebut this reference to this use in the submission to the Board, reference is only made to a 'statute barred' use.

On the 26th October 2016 the undersigned carried out a site inspection and gained access to interior of the subject shed. The shed is purpose built for the housing of pigeons. There was a number of pigeons in the shed on the day of the site inspection.

Having regard to the forgoing, this assessment and recommendation to the Board will be based on the use of the shed as being for the keeping of pigeons.

Section 4 of the Planning and Development 2000

The first test regarding exemption relates to section 4. In this instance consideration is given to section 4(1)(j). The structure is purpose built for the housing of pigeons and is currently being used for the housing of pigeons. I do not consider that the housing of pigeons constitutes a use incidental to the enjoyment of the house on the site. I therefore would not recommend that the Board rely of the said section 4(1)(j) to determine that the development is exempted development.

Article 6 of the Planning and Development Regulations 2001 (as amended)

The next test to be applied is article 6 and the associated Schedule 2 of the Regulations. In this instance Schedule 2, Part 1, Class 3 *may* be relied upon for a determination of exempted development. However, exemption under Schedule 2, Part 1, Class 3 is subject to the Conditions and Limitations in Column 2. There are 6 such Conditions and Limitations.

I concur with the planning authority's assessment of Conditions and Limitations 1-5 inclusive i.e. the subject structure meets the conditions and limitations to qualify for exemption. I further agree with the planning authority's assessment relating to Condition and Limitation No. 6. The Conditions and Limitations cited in No. 6 on exempted development includes prohibiting the keeping of pigeons. Applying the use as being the keeping of pigeons, the proposed development is, therefore, not exempted development.

I note that one of the sheds at No. 2A Spire View, marked as 'shed A' on the submitted drawing, was the subject of 3 applications. Two of those applications related to a proposed change of use from domestic shed to aviary, the change of use on both occasions was refused.

9.0 Recommendation

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

WHEREAS a question has arisen as to whether a timber constructed, pvc clad, pitched roof, single storey shed of approximate area 20.30 sq.m. at 2 Spire View, Riverstown Abbey, Ashington, Dublin 7 is or is not development or is or is not exempted development:

AND WHEREAS Daniel Boylan requested a declaration on this question from Council and the Council issued a declaration on the 29th day of April, 2016 stating that the matter was development and was not exempted development:

AND WHEREAS Daniel Boylan referred this declaration for review to An Bord Pleanála on the 26th day of May, 2016:

AND WHEREAS An Bord 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 (as amended),
- (c) Section 4(1)(j) of the Planning and Development Act 2000 (as amended),
- (d) Articles 6 and 9 of the Planning and Development Regulations 2001 (as amended) and Part 1 of Schedule 2 to those Regulations, including Class 3,
- (e) the stated use of the shed on drawing titled 'Existing/Proposed Plans & Elevations' (drg. No. 2586-01-01) submitted with the question to the planning authority, that use being a pigeon loft,
- (f) the observations of the Inspector on the day of the site inspection carried out on the 26th day of October 2016 regarding the use of the shed, that being the keeping of pigeons:

AND WHEREAS An Bord Pleanála has concluded that-

- (a) the shed is development having regard to the provisions of section 2(1) and section 3(1) of the Planning and Development Act 2000 (as amended);
- (b) the shed is being used for the keeping of pigeons;
- (c) the development does not come within the scope of section 4(1)(j) of the Planning and Development Act 2000 (as amended) as the keeping of pigeons is not a use which is incidental to the enjoyment of the house on the site;
- (d) the development does not come within the scope of Class 3, Part 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended) as the development does not comply with the Conditions and Limitations specified in column 2 of the said Part 1, specifically Condition and Limitation No. 6 as the shed is being used for the keeping of pigeons.

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 timber constructed, pvc clad, pitched roof, single storey shed of approximate area 20.30 sq.m. at 2 Spire View, Riverstown Abbey, Ashington, Dublin 7 is development and is not exempted development.

Tom Rabbette
Senior Planning Inspector
2nd November 2016