



An
Bord
Pleanála

Inspector's Report RL29N.RL3485

Question

Whether a timber constructed, pvc clad, pitched roof, single storey shed of approximate area 16.50 sq.m. at 2A 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.	0112/16
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. RL3484, 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. RL3484, 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 B is the subject of this Referral case and shed C is the subject of associated file RL3484. Both shed B and shed C 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 B, in the appendix attached to this report. I would recommend that the Board consider the two referrals in tandem i.e this referral and that subject of RL 3484.

2.0 The Question

Whether a timber constructed, pvc clad, pitched roof, single storey shed of approximate area 16.50 sq.m. at 2A 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:

‘The total area of structures constructed, erected or placed within the curtilage of No. 2A Spire View exceeds 25 sq.m. Therefore, the development does not satisfy Condition and Limitation number 2 under Column 2 of Class 3 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001, as amended, as is hence 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.
- States that it is understood that shed B is not 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.

- Concludes that the total area of structures constructed, erected or placed within the curtilage of No. 2A Spire View exceeds 25 sq.m. and therefore does not satisfy Condition and Limitation number 2 of Class 3 of Part 1 of Schedule 2 of the Regulations, the development is thus not exempted.

4.0 **Planning History**

2602/16 The referrer was granted retention permission for a garden shed on this site. That shed is identified as 'Shed A' in the drawings submitted with this Referral Application. 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 current file.)

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 file.

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 current file.)

2709/13 The referrer was granted retention permission for attic conversion incorporating dormer extension to rear and 1 no. roof light to front of the dwelling on the site. (Notification of grant, plans and particulars on current file.)

1401/03 The referrer was granted permission for dwelling on the site.

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:

- This shed was in the past used to house pigeons but that use has ceased and written confirmation and several site visits have confirmed it has ceased.
- The referrer has made a detailed representation to the p.a. to have the alleged unauthorised works declared exempted development.
- On the initial visits the Local Authority representative clearly indicated that the use 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 would like the Board to consider the timber constructed, pvc clad pitched roof single storey shed of approximate area 16.5 sq.m. as exempted development.
- 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 to seek a declaration of exemption on the larger shed and to seek retention permission for the smaller shed.

- The reason being that the larger shed is completely to the rear of the property and although it straddles the party divide with No. 2 Spire View, precedents of allowing the shed to straddle a boundary were accepted by the p.a. as exempted.
- The unauthorised use has ceased and it is simply a shed.
- The smaller shed is partly to the side of the existing house and would not meet the requirements of the exempted development Regulations so a retention permission has been sought and it is running its course.
- The combined size of the two structures is approximately 25.5 sq.m. and the remaining open space is approximately 27 sq.m.
- The referrer believes that the regulations do not have to be absolute but can be a little flexible and that they allow for one shed to be exempted development and one to have a permission to accommodate the 0.5 sq.m. the referrer is over the 25 sq.m.
- The p.a. is mistaken in ruling that the shed exceeds the maximum allowed being 25 sq.m.
- That allowance is for sheds or structures seeking to avail of the exempted development status.
- The referrer has only sought one shed 16.5 sq.m. as exempted and has sought permission for the other 9 sq.m. shed.
- Despite the cessation of the use the p.a. has continued to seek the removal of the shed that is something that the referrer would not like to happen.
- There is no sound planning reason for its removal.
- The shed could be an exempted development and it would be a very simple matter for the referrer to insulate the un-insulated shed and that would easily take up 0.5 sq.m. of the internal floor space bringing the subject shed to 16.0 sq.m. and leaving the shed for which permission is being sought at 9.0 sq.m.

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)(j)

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
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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 but that use has ceased. There is a significant planning history, including the current associated RL 3484, pertaining to this site and the adjoining No. 2 Spire View, concerning the use of structures for the keeping of pigeons.

The referrer in the submission to the Board states that the keeping of racing pigeons in the subject shed B has ceased. I note that in the Planner's Report on file it was accepted that shed B, unlike its decision regarding shed C at No. 2 Spire View, is not 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. Nevertheless, the p.a. went on to determine that the subject shed B was not exempted development, albeit for a different reason than that given for its decision regarding shed C.

The referrer states that the unauthorised use of shed B has ceased and "it is simply a shed". Notwithstanding the referrer's reference to the unauthorised use being ceased and the p.a. acceptance in that regard, I consider that there is a lack of clarity around the use of this shed.

The Board cannot make a determination on the question without knowing the use of the shed. Nowhere does it state clearly what the actual use is. It isn't stated in the original submission to the p.a. and it isn't stated in the referrer's submission to the Board. It is stated that the use of keeping pigeons in it has ceased but this, in my opinion, is not enough. The structure has the same interior construct as shed C which is currently used for keeping pigeons. I accept that there were no pigeons in shed B on the day of the site inspection and it would appear to be used for storage purposes, but that is not stated anywhere in the submitted documentation or drawing. The referrer needs to state clearly what the use is before the Board can make a determination on the matter. The use must form part of the Board's determination and its Order.

In the interests of fairness and clarity, I would therefore recommend that the Board seek further information from the referrer in which the use of the structure is clarified. The undersigned is willing to make a further recommendation to the Board on the question after the referrer has been given an opportunity to respond. If there is no clarity forthcoming on the use of the shed, it may not be unreasonable for the Board to determine the question put to it on the basis that the shed is intended to be used for the keeping of pigeons, that is what it was constructed for and that was its last stated use.

At this stage I would draw the Board's attention to a recent decision in relation to shed A on the site under 2602/16. That decision was made after the p.a. issued its declaration on the current question.

9.0 Recommendation

I recommend that the Board seek further information from the referrer pursuant to s.132 of the Planning & Development Act 2000 (as amended) as follows:

'Notwithstanding reference in your submission to the Board received on the 26/05/2016 to the past use of the subject shed (indicated as 'shed B' on the drawing titled 'Existing/Proposed Plans & Elevations', drg. No. 2586-02-01), you are requested to clearly state what the existing use of the subject shed is. Nowhere in your submission to the Board, or in your original submission to the

planning authority of the 04/04/2016, is the existing use clearly stated. It should be noted that in the absence of a response to this request, the Board may continue to determine the question put to it on the basis that the use is for the keeping of pigeons.'

Tom Rabbette
Senior Planning Inspector
2nd November 2016