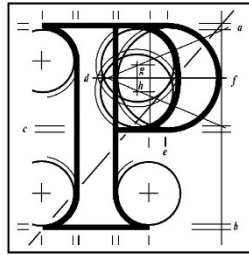


An Bord Pleanála



Inspector's Report

Question: Whether or not the structure, which has been constructed to the rear of the dwelling house at 66 Derravaragh Road, Terenure, Dublin 6, is or is not development and is or is not exempted development.

Original referrer: Julian Judge

Planning authority: Dublin City Council

Owner: Brian & Serena Dolan

Referral ref. no. 0201/16

Site visit: 12th October 2016

Inspector: Hugh D. Morrison

Site

The subject structure is attached to the rear elevation of a mid-terrace two storey dwelling house, which is sited on the western side of Derravaragh Road, a residential street within a more extensive residential area to the north of Terenure Road West.

The subject structure is of single storey form and contemporary design. This structure spans the width of the rear garden for the greater portion of its depth. (The exception is the initial portion of this structure, which is accompanied on its northern side by a gravelled area that abuts the shared passageway between the dwelling houses at Nos. 64 and 66). Internally, the structure provides a continuous space with the kitchen in the rear portion of the original dwelling house. This space is laid out as dining and sitting areas and it is accompanied on its northern side by a storage area/side passage, which connects the aforementioned gravelled area a covered barbeque area, which adjoins the retained rear garden.

The original question

The original question posed by the referrer was whether or not the structure, which has been constructed to the rear of the dwelling house at 66 Derravaragh Road, Terenure, Dublin 6, is or is not development and is or is not exempted development.

The planning authority's declaration

The single storey structure which has been constructed to the rear of 66 Derravaragh Road is considered to constitute "development" as defined in Section 3(1) of the Planning and Development Act 2000 (as amended).

The storage/side passage/roofed barbeque area to the rear and along the northern side of the single storey structure is not considered to be exempted development when assessed in accordance with Schedule 2 (Part 1) Class 3 of the Planning and Development Regulations (as amended) as its height is in excess of 3.0 metres.

The enclosed habitable area of the single storey structure is considered to be exempted development when assessed in accordance with Schedule 2 (Part 1) Class 1 of the Planning and Development Regulations (as amended).

The subsequent question

In the light of the planning authority's declaration, the referrer continues to ask their original question, but in addition the following question is asked:

Whether the overall structure, which was built as one extension to the rear of the dwelling house and which is in use as ancillary accommodation, can

be classified as two separate structures under Classes 1 and 3 of the Planning and Development Regulations 2001 (as amended).

Additionally, the referrer requests that the Board rules that the storage area/side passage/roofed barbeque area was built as part of the extension and that it is in use as part of the dwelling house. This extension exceeds 40 sq m and so it is not exempted development.

The referrer's case

- The subject structure has a floorspace of c. 50 sq m (dining and sitting areas 38 sq m + storage area/side passage 6 sq m + roofed barbeque area 6 sq m). This structure projects 12m from the rear elevation of the original dwelling house and its flat roof is 3.48m above the ground level of the existing shared passage between Nos. 64 and 66.
- The subject structure was built as one and so its sub-division under Classes 1 and 3 is incorrect.
- If the entire structure is reviewed under Class 3, its height, which is in excess of 3m, infringes this limitation, and its habitable use infringes the condition that forbids such use. Thus, the structure is not exempted development under this Class.
- If the entire structure is reviewed under Class 1, its floorspace, which is in excess of 40 sq m, infringes this limitation and so it is not exempted development under this Class.

The planning authority's response

The planning authority has not responded to the referrer's case.

At the initial referral stage, the case planner took the view that "the storage/side passage/roofed barbeque area...cannot be considered as part of the habitable floor area of the dwelling and may be considered as a store and awning."

The owner's response

- The single storey habitable extension to the rear of the dwelling house has a floorspace of 38 sq m and so it is exempted development under Class 1.
- The storage area/side passage is non-habitable space, i.e. the definition of a habitable room, under Technical Guidance Document Part F, is "A room in a dwelling used for living or sleeping purposes but does not include a kitchen having a floor area of less than 6.5 sq m." In this case, the space in question is neither insulated nor heated and it receives no natural light. It is used by the family dog and for drying clothes and as a passageway for bicycles and lawnmowers. Thus, this

space would be exempted development under Class 3, but for its height.

- The height of the storage area/side passage is non-habitable space, at 3.28m, is only marginally above 3m. Elsewhere on Derravaragh Road there are examples of similar rear extensions to that of the subject structure. In these circumstances, under Section 4(1)(h), this structure could be said to be exempted development.
- While the referrer draws attention to the fact that the elements of the subject structure assessed above under Classes 1 and 3 adjoin one another and they were built concurrently, none of the limitations in the said Classes states that these factors negated exempted development.

The referrer's response to the owner's response

- The subject structure is one entity as is evidenced by its continuous roof, single drainage system, and common external finishes. To sub-divide it for the assessment of exempted development is thus unwarranted.
- The side passage is no different in function from that of a corridor within a dwelling house. The absence of insulation has no bearing on the question of planning, as is evident from the fact that uninsulated conservatories are considered to be domestic extensions. (In any event, insulation could be added in the future).
- If the extensions to the rear of the dwelling houses at Nos. 64, 66, and 68 are compared, then a number of differences become apparent, e.g. that at No. 64 is of modest size with a double pitched tiled roof and that at No. 68, which has a floorspace of 40 sq m, is appreciably smaller than that at No. 66.
- The height of the subject structure is 3.48m, when measure from the referrer's rear garden, and not 3.28m.

Legislation

Planning and Development Act 2000 – 2016

Section 2(1) of the Planning and Development Act, 2000 – 2016, states the following:

*In this Act, except where the context otherwise requires –
“planning authority” means a local authority,*

Section 5(1) of the aforementioned Act, states the following:

If any question arises as to what, in any particular case, is or is not development or is or is not exempted development within the meaning of this Act, any person may, on payment of the prescribed

fee, request in writing from the relevant planning authority a declaration on that question, and that person shall provide to the planning authority any information necessary to enable the authority to make its decision on the matter.

Section 5(3)(a) of the aforementioned Act, states the following:

Where a declaration is issued under this section, any person issued with a declaration under subsection (2)(a) may, on payment to the Board of such fee as may be prescribed, refer a declaration for review by the Board within 4 weeks of the date of the issuing of the declaration.

Section 127(1) of the aforementioned Act states the following:

An appeal or referral shall –

(d) state in full the grounds of appeal or referral and the reasons, considerations and arguments on which they are based,

Section 2(1) of the aforementioned Act states the following:

“habitable house” means a house which –

- (a) is used as a dwelling,*
- (b) is not in use but when last used was used, disregarded any unauthorised use, as a dwelling and is not derelict, or*
- (c) was provided for use as a dwelling but has not been occupied;*

“house” means a building or part of a building which is being or has been occupied as a dwelling or was provided for use as a dwelling but has not been occupied, and where appropriate, includes a building which was designed for use as 2 or more dwellings or a flat, an apartment or other dwelling within such a building;

“land” includes any structure and any land covered with water (whether inland or coastal);

“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, and –

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

“use”, in relation to land, does not include the use of land by the carrying out of any works thereon;

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

Section 3(1) of the aforementioned Act states the following:

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

Section 4(1) of the aforementioned Act states the following:

The following shall be exempted developments 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 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 neighbouring structures;*
- (j) 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;*

Section 4(2)(a) of the aforementioned Act states the following:

The Minister may by regulations provide for any class of development to be exempted development for the purposes of this Act where he or she is of the opinion that –

- (i) by reason of the size, nature or limited effect on its surroundings, of development belonging to that class, the carrying out of such development would not offend against the principles of proper planning and sustainable development...*

Planning and Development Regulations 2001 – 2015

Article 3 of the Planning and Development Regulations, 2001 – 2015, states the following:

- (3) In these Regulations, except where the context otherwise requires –*

“gross floor space” means the area ascertained by the internal measurement of the floor space on each floor of a building (including internal walls and partitions)...

Article 6(1) of the aforementioned Regulations states the following:

Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the

purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.

Column 1 of Class 1 of Part 1 of Schedule 2 to Article 6 of the aforementioned Regulations, states the following:

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.

Column 2 of the aforementioned Class states the following:

1. (a) Where the house has been extended previously, the floor area of any such extension shall not exceed 40 sqm.

(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 sqm.

(c) Subject to paragraph (a), where the house is detached, the floor area of any extension above ground level shall not exceed 20 sqm.

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 sqm.

(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 sqm.

(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 sqm.

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

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 of 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.

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 occupants of the house, to the rear of the house to less than 25 sqm.

6. (a) Any window proposed at ground level in any such extension shall not be less than 1m from the boundary it faces.

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

(c) Where the house is detached and the floor area of the extension above ground level exceeds 12 sqm any window proposed at above ground level shall not be less than 11m from the boundary it faces.

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

Column 1 of Class 3 of Part 1 of Schedule 2 to Article 6 of the aforementioned Regulations, states the following:

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.

Column 2 of the aforementioned Class states the following:

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 roof 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 the enjoyment of the house as such.

Assessment

1. I have reviewed the referrer's original and subsequent questions. The latter question has only arisen, due to the referrer's dissatisfaction with the planning authority's split decision on the subject structure. I consider that, if the former question is answered in a manner that addresses this latter question, then it still remains the overarching question to be answered. Accordingly, the question that I will address is as follows:

Whether or not the structure, which has been constructed to the rear of the dwelling house at 66 Derravaragh Road, Terenure, Dublin 6, is or is not development and is or is not exempted development.

2. The subject structure is an extension to the dwelling house at No. 66 Derravaragh Road. The provision of this extension has entailed the carrying out of works on land comprised within the residential curtilage of this dwelling house. The works concerned entailed works of "extension" and so the subject structure comes within the definition of development set out in Section 2(1) of the Planning and Development Act, 2000 – 2016.
3. Given that the subject structure constitutes development, the question arises as to whether or not it constitutes exempted development. The planning authority's declaration in this respect concludes that the habitable portion of this structure is exempted development, under Class 1 of Part 1 of Schedule 2 to Article 6 of the Planning and Development Regulations, 2001 – 2015, and the non-habitable portion would be exempted development under Class 3, but for its height, which exceeds the limit of 3m.
4. During my site visit, I measured the height of the subject structure to be 3.29m above the adjacent lowest ground level and so it is 0.29m in excess of the aforementioned limitation. The owners contend that, given the marginal nature of this figure and the context of the site, which comprises other single storey rear extensions, some of which are of similar design to their one, Section 4(1)(h) of the Planning and Development Act, 2000 – 2016, is of relevance. This Section refers to works for the maintenance, improvement or other alteration of any structure. They seek to aggregate

the exemption afforded by this Section with the planning authority's reliance upon Class 3 to achieve exempted development status for the non-habitable portion of the subject structure.

5. The referrer disputes the basis of the planning authority's split decision, on the basis that the subject structure is one entity that was built as a single project. The owner has countered this case by contending that there is nothing within Classes 1 and 3 that prevents their application to the two portions of the subject structure.

6. During my site visit, I observed that the subject structure is a single entity that exhibits an integrated design. None of the parties contest the assertion that it was built as one project.

7. The key question is thus, whether there is indeed scope to apply Classes 1 and 3 to the habitable and non-habitable portions of the subject structure. In this respect:

- I note that Class 1 addresses the extension of a house by means of either a physical extension or the conversion of an existing attached structure. In this case, the dwelling house at No. 66 Derravaragh Road has been physically extended. Class 1 does not state that the physical extension is for the purpose of providing exclusively habitable room accommodation, i.e. living and sleeping rooms, even if the proposed conversion of attached structures may typically be for the purpose of providing such accommodation. Thus, the Class is silent on the specific content of the accommodation, although as an extension to a house no material change in use from residential use is contemplated.
- I note, too, that Class 3 addresses structures within the curtilage of a house. In doing so no mention is made of extensions or attached structures. If it is assumed that Classes 1 and 3 are self-contained in their ambit and consistent with one another, then I considered that it is reasonable to deduce that, while Class 1 refers exclusively to extensions, Class 3 refers exclusively to freestanding structures.

8. In the light of my interpretation of Classes 1 and 3, I consider that the referrer is correct in contesting the planning authority's approach to the assessment of the subject structure, wherein it has sub-divided the same between habitable and non-habitable space. I consider that, as an extension to the dwelling house at no. 66, the subject structure falls to be assessed in its entirety under Class 1 and so Class 3 is not of relevance. Furthermore, the owners reference to Section 4(1)(h) is misplaced, as this Section clearly refers to works that occur to an existing structure rather than the provision of such a structure.

9. The owners have submitted a floor plan of the subject structure, which indicates that the dining and sitting room areas of the structure have a gross floorspace of 38 sq m, the storage area/side passage has a gross floorspace of 6 sq m, and the covered barbeque area has an area of 6 sq m. I consider that, as the covered barbeque area is not a wholly enclosed

space, i.e. its western side is open to the retained rear garden, its area does not constitute floorspace. Thus, for the purpose of aggregating floorspace the first and the second of the aforementioned figures are of relevance, i.e. $38 + 6 = 44$ sq m. As Article 3(3) of the Planning and Development Regulations, 2001 – 2015, defines gross floorspace to include internal walls and partitions, the footprint of the internal wall between the dining and sitting areas and the storage area/side passage should be included, too. I estimate that this would contribute a further 2 sq m. Thus, the gross floorspace is 46 sq m and so in excess of the floorspace cap of 40 sq m posed by item 1(a) in Column 2 of Class 1. Accordingly, the subject structure is not exempted development.

Conclusion

In the light of my assessment, I conclude that the subject structure constitutes development and that, under Class 1 of Part 1 of Schedule 2 to article 6 of the Planning and Development Regulations, 2001 – 2015, this development is not exempted development.

Recommendation

Having regard to the above, I recommend that the Board should decide as follows:

Whether or not the structure, which has been constructed to the rear of the dwelling house at 66 Derravaragh Road, Terenure, Dublin 6, is or is not development and is or is not exempted development.

In considering this referral, the Board has had particular regard to:

- (a) Sections 2, 3, 4, 5, and 127 of the Planning and Development Act, 2000 – 2016,
- (b) Articles 6 and Classes 1 and 3 of Part 1 of Schedule 2 to this Article of the Planning and Development Regulations, 2001 – 2015,
- (c) The following submissions:
 - (i) The referrer's submissions,
 - (ii) The owner's submission, and
 - (ii) The planning authority's assessment and declaration, and
- (d) The report of the inspector.

AND WHEREAS An Bord Pleanála has concluded the following:

- That the structure which has been constructed to the rear of the dwelling house at 66 Derravaragh Road, Terenure, Dublin 6 is development, and

- That under Class 1 of Part 1 of Schedule 2 to Article 6 of the Planning and Development Regulations, 2001 – 2015, this structure is not exempted development.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by Section 5(4) of the Planning and Development Act, 2000 – 2016, hereby declares that the structure which has been constructed to the rear of the dwelling house at 66 Derravaragh Road, Terenure, Dublin 6 is development that is not exempted development.

Hugh D. Morrison

Inspector

11th November 2016