



An  
Bord  
Pleanála

## Inspector's Report 06S.RL3537.

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### Question

Whether an extension to rear and side is or is not development or is or is not exempted development.

### Location

601 Woodview Cottages, Dublin 14.

### Declaration

Planning Authority

South Dublin County Council

Planning Authority Reg. Ref.

ED16/0066.

Applicant for Declaration

Noeleen Cahill.

Planning Authority Decision

Is not exempted development.

### Referral

Referred by

Noeleen Cahill.

Owner/ Occupier

Noeleen Cahill.

Observer(s)

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Date of Site Inspection

14<sup>th</sup> February 2018.

Inspector

Derek Daly

## **1.0 Site Location and Description**

- 1.1. The site is located at the end of a terrace of two storied cottages which is part is an established residential area to the west of and close proximity to the centre of Rathfarnham Main Street. The terrace in question form one of three similar terraces.
- 1.2. The site is bound on three sides by public roads and on the fourth side by an adjoining terraced dwelling. The dwellings in the terrace are distinctive with a granite finish on the ground floor and brick on the upper floor.
- 1.3. There is an extension to the original dwelling constructed to the rear and south of the dwelling which has a flat roof. The extension projects forward of the side (southern) elevation.

## **2.0 The Question**

- 2.1. Whether an extension to rear and side is or is not development or is or is not exempted development.

## **3.0 Planning Authority Declaration**

### **3.1. Declaration**

The declaration of the planning authority was that the extension to the side and back of 601 Woodview Cottages, is not considered to be exempted development and requires planning permission.

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

The planning report dated the 13<sup>th</sup> of December 2016 refers to

- The planning history.
- Reference is made to sections 2(1) and 3(1) of the Planning and Development Act 2000 as amended.

- The construction of an extension was considered to be works as per section 3(1).
- In relation to whether the works were considered exempted development reference is made in the report to a number of provisions in the Planning and Development Regulations 2001 as amended including Class 1 of Part 1 of Schedule 2 sub classes 1(a); 2(a); 4(c) 5 and 6(a); and also article 9. Reference is also made to condition nos 1 and 6 of SD13B/0088.
- The development it was considered complied with Class 1 of Part 1 of Schedule 2 sub classes 1(a); 2(a); 4(c) 5 and 6(a).
- Article 9(1)(xii) is referred to and to the location of the site within an Architectural Conservation Area and that the development would materially affect the character of the area.
- Article 9(1)(i) is referred to indicating that the development does not comply with condition nos 1 and 6 of SD13B/0088.
- In this regard the report refers to the planning history and that a commencement notice was received by the planning authority on the 25<sup>th</sup> of February 2014 and was acknowledged and the report indicates that the applicant commenced development based on the development granted permission under SD13B/0088.
- The development is not exempted development as it does not comply with Article 9(1)(i) and article 9(1)(xii))

#### 4.0 Planning History

SD13B/0088

Permission granted for the construction of a single storey extension to the side and rear with a floor area of 33m<sup>2</sup>. The extension was single storied with a gable roof and it was proposed that the extension would be connected by a partially glazed corridor connecting the extension to the dwelling. Permission was also sought for a car parking space.

Condition no1 required the development to be carried out in accordance with the submitted drawings.

Condition no 6 was a condition de-exempting additional development within the curtilage of the house including sheds, conservatories and out buildings unless authorised by a further grant of planning permission.

## **5.0 Policy Context**

### **5.1. Development Plan**

The site is located within an area zoned residential. The site is also within the Rathfarnham Architectural Conservation Area.

## **6.0 The Referral**

### **6.1. Referrer's Case**

The referrer submission c/o Vitruvius Hibernicus dated the 17<sup>th</sup> of January 2017 indicates

- The declaration of the planning authority is flawed and in error.
- The extension constitutes works but the Council's assessment is grounded on section 4(2) and Class 1 of Part 1 of Schedule 2 of the regulations which is a flawed assessment
- The extension is exempted under section 4(1)(h) which includes the carrying out of works 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 and works also include extension.
- The works are an extension and it is submitted do not materially affect the external appearance of 601 Woodview Cottages so as to render the appearance inconsistent with the character of the structure or of neighbouring structures.

- Reference is made to Ian and *Maureen Cairnduff v Peter O’Connell* 1984 No 212 SC in this regard and that the order in this case is more than persuasive it is definitive.

## 6.2. Planning Authority Response

The planning authority in a response confirms its decision and the issues raised by the referrer are addressed in the planning report.

## 7.0 Statutory Provisions

### 7.1. Planning and Development Act, 2000

#### 7.1.1. Section 2(1) In this Act, except where the context otherwise requires

“Exempted development” has the meaning specified in *section 4*; “structure” means any building, structure, excavation or other thing constructed or made on, in or under land, or any part of the structure so defined and (a) where the context so admits, includes the land on, in or under which the structure is situate”;

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

#### 7.1.2. Section 3

Subsection (1) 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.

#### 7.1.3. Section 4 Subsection (1)

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

**Subsection (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;

Subsection (2) relates to regulations for any class of development to be exempted development for the purposes of this Act.

7.1.4. **Section 5.**

Section 5(1) relates to a question arising 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.

7.1.5. **Section 32**

This section has a general obligation to obtain permission in respect of any development of land not being exempted development and in the case of development not authorised for the retention of unauthorised development.

7.2. **Planning and Development Regulations, 2001**

7.2.1. **Article 6(1)** of the said regulations provide that “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”.

7.2.2. **Article 9. (1)** 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,

(i) Contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act

(xii) further to the provisions of section 82 of the Act, consist of or comprise the carrying out of works to the exterior of a structure, where the structure concerned is located within an architectural conservation area or an area specified as an architectural conservation area in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan and the development would materially affect the character of the area,

7.2.3. **Schedule 2 Part 1 Exempted Development — General Development**

*within the curtilage of a house*

#### Class 1

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

Sub class 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.

Sub class 4(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.

Sub class 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.

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

## 8.0 **Assessment**

### 8.1. **Is or is not development**

- 8.1.1. The initial question arises in relation to whether the construction as carried out is or is not development.
- 8.1.2. The extension as constructed to the rear and side of the dwelling comprising of a flat roofed extension to the original dwelling. Section 3 defines development 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. Works as defined in section 2 (1) includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal. The extension to the

dwelling therefore constitutes development. This issue would not appear to be at issue.

## 8.2. Is or is not exempted development

- 8.2.1. The main issue arises as to whether the development is or is not exempted development.
- 8.2.2. The owner contends that the Council's assessment is grounded on section 4(2) and Class 1 of Part 1 of Schedule 2 of the regulations which is a flawed assessment and that the extension is exempted under section 4(1)(h) which includes the carrying out of works 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 and works also include extension and it is submitted do not materially affect the external appearance of 601 Woodview Cottages so as to render the appearance inconsistent with the character of the structure or of neighbouring structures.
- 8.2.3. In effect the owner contends that the works came within the scope of Section 4(1)(h) and are therefore exempted development and the matter is not reliant on Section 4(2).

## 8.3. Section 4(1)(h)

- 8.3.1. I wish to consider Section 4(1)(h) prior any consideration of exempted development and restriction on exempted development. Section 4(1)(h) indicates the following shall be exempted developments 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 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”*

- 8.3.2. The development as constructed is an extension to the floor area which has works which are internal and external to the structure and the owner of the property considers that the works in question do not materially affect the external appearance of the structure as to render the appearance inconsistent with the character of the



structure or of neighbouring structures. The submission also relies on the Supreme Court judgement in *Ian and Maureen Cairnduff v Peter O'Connell* 1984 No 212 SC in this regard.

- 8.3.3. In *Ian and Maureen Cairnduff v Peter O'Connell* the judgement held that although the work materially affected the external appearance of the structure it was not inconsistent with the character of the house itself or adjoining houses. In reaching this judgement a number of matters were referred to.

Firstly; street appearance rather than rear appearance was referred to and the works in *Ian and Maureen Cairnduff v Peter O'Connell* were to the rear of the house and not visible from the street. In relation to the extension in this referral the structure is at the rear and side but given the nature of the site which has frontage onto three public roads the extension is visible and therefore street appearance arises.

Secondly the judgement also refers to matters such as shape, colour, design and layout. In the *Ian and Maureen Cairnduff v Peter O'Connell* property some of the works were replacing previous works albeit in a different form to what previously existed. There was also a new window and works were largely internal. In the current case an extension was constructed to the structure.

- 8.3.4. In relation to the development as carried out the works, I consider, materially affect the external appearance of the structure by reason of being an extension and also the appearance is altered by the nature and design of the extension. I would also consider that it is also inconsistent with the character of the house and the adjoining houses which form a uniform terrace. In the context of the overall terrace it is therefore inconsistent with the character of the neighbouring structures.

- 8.3.5. This does not necessarily infer a permission should not be granted for the development but I consider it is not exempted within the provisions of section 4(1)(h).

#### 8.4. **Exempted development Planning Regulations**

- 8.4.1. The basis of the planning authority is that the development is not exempted development in the context of the provisions of the planning regulations as provided for in section 4(2) where the Minister may by regulations provide for any class of development to be exempted development.

8.4.2. In determining that the development was not exempted development the planning authority assessed the development in relation to a number of provisions in the Planning and Development Regulations 2001 as amended including Class 1 of Part 1 of Schedule 2 sub classes 1(a); 2(a); 4(c) 5 and 6(a) which relate specifically to exempted development within the curtilage of a house referring to limitations on floor area, height, retention of sufficient private open space and distances of windows from boundaries and concluded that the development as constructed complied with Class 1 of Part 1 of Schedule 2 sub classes 1(a); 2(a); 4(c) 5 and 6(a).

8.4.3. I would agree with the assessment of the planning authority in relation to the consideration of Class 1 of Part 1 of Schedule 2 sub classes 1(a); 2(a); 4(c) 5 and 6(a).

#### 8.5. **Restrictions on exempted development**

8.5.1. The regulations notwithstanding the provision of exempted development in Article 6(1) and Class 1 of Part 1 of Schedule 2 has specific restrictions on exempted development as provided for in Article 9.

Article 9 (1) outlines development to which article 6 relates which shall not be exempted development for the purposes of the Act. The planning authority in their assessment have in this regard referred to subsections (a) (i) and (xii).

8.5.2. The planning authority's declaration is based on its conclusion that, the development notwithstanding compliance with Part 1 Class 1 of the regulations, is at variance with Article 9 of the regulations and in particular article 9 (a)(i) and(a)(xii).

Article 9(a)(i) refers to non-exemption if the carrying out of such development would, contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act.

Article 9(a)(xii) refers to further to the provisions of section 82 of the Act, consist of or comprise the carrying out of works to the exterior of a structure, where the structure concerned is located within an architectural conservation area or an area specified as an architectural conservation area in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan and the development would materially affect the character of the area.

- 8.5.3. In relation to Article 9(a)(i) planning permission was granted under SD13B/0088 for the construction of a single storey extension to the side and rear with a floor area of 33m<sup>2</sup> subject to 8 conditions on the 8<sup>th</sup> July 2013. The extension was single storied with a gable roof and it was proposed that the extension would be connected by a partially glazed corridor connecting the extension to the dwelling.
- 8.5.4. Conditions 1 and 6 of SD13B/0088 are referred to in the planning authority report. Condition no.1 is a standard condition requiring the development to be carried out in accordance with drawings and particulars submitted. Condition no 6 removed the exempted provisions of the planning and development regulations and specifically stated "*no additional development shall take place within the curtilage of the house, including the erection of sheds, conservatories or any other outbuilding unless authorised by a further grant of planning permission*".

The order also refers to Building Control Regulations and a requirement of a Commencement Notice which was subsequently lodged.

It would appear that the owner proceeded with and constructed a development which varies from what was applied for and permitted by a grant of planning permission by building an extension to the rear and partially projecting out at the side rather than a standalone extension to the site connected by a glazed connection. A flat roof was also erected rather than a pitch roof. The extension as constructed has similarities to what was granted permission but is different in many respects.

Where it not for the lodgement of the Commencement Notice indicating commencement of works based on what was permitted in the grant of permission the development as constructed would comply with the requirements of Schedule 2 Part 1 Exempted Development in relation to classes which are exempted development. The lodgement of this Notice would have been necessary to carry out the permitted development which received planning permission as such a Notice cannot be addressed retrospectively.

It could also be stated that the owner proceeded to construct a development which did not require planning permission and that a Commencement Notice under the Building Control Acts was not therefore required.

There is nothing to limit an owner to solely carry out a single permitted form of development on a site. An applicant can apply for a variation of the original or in this

case proceed with a development which is a smaller scale than what was granted planning permission and complies with the limitations set out in Schedule 2 Part 1. I do consider that the submission of the commencement notice in itself is a material contravention of condition no.1 but the applicant having submitted the notice does not appear to have informed the planning authority of an intention to construct a development which differed from that permitted.

In relation to condition no 6 it would be my view that that the limitations apply if the development as permitted was subsequently constructed. In relation to this the permitted development did not occur and no additional development has occurred.

I do not consider that in this situation that Article 9(a)(i) can be applied as the development was applied for and granted planning permission was not proceeded with.

- 8.5.5. In relation to Article 9(a)(xii) this refers to *“further to the provisions of section 82 of the Act, consist of or comprise the carrying out of works to the exterior of a structure, where the structure concerned is located within an architectural conservation area or an area specified as an architectural conservation area in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan”*.

The site is located within the Rathfarnham Architectural Conservation Area. I consider that Article 9(a)(xii) refers to the carrying out of works to the exterior of a structure and in relation to the works carried out in relation to the current site under this referral the works involve works that are to the exterior of the dwelling. The works in question are to a structure located within an architectural conservation area. Based on the provisions as stated I consider the development is not exempted development.

## 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 an extension to rear and

side is or is not development or is or is not exempted development:

**AND WHEREAS** Noeleen Cahill requested a declaration on this question from South Dublin County Council and the Council issued a declaration on the 13<sup>th</sup> day of December, 2016 stating that the matter was not exempted development:

**AND WHEREAS** referred this declaration for review to An Bord Pleanála on the 17<sup>th</sup> day of January, 2017:

**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,
- (c) Section 4(1)(h) of the Planning and Development Act, 2000, as amended,
- (d) article 6(1) and article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (e) Class 1 of Part 1 of Schedule 2 sub classes 1(a); 2(a); 4(c); 5 and 6(a) of the Planning and Development Regulations, 2001, as amended,
- (f) the planning history of the site,
- (g) the pattern of development in the area:

**AND WHEREAS** An Bord Pleanála has concluded that:

- (a) The development as carried out constitutes development
- (b) The development as carried out is not exempted development

**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 development as carried is development and not exempted development.

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Derek Daly  
Planning Inspector

20<sup>th</sup> February 2018