



An  
Bord  
Pleanála

## Inspector's Report

### RL91.RL3543

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#### Question

Whether the construction of a tree house in rear garden is or is not development or is nor is not exempted development

#### Location

Rosbrien Road, Limerick

#### Declaration

Planning Authority

Limerick City and County Council

Planning Authority Reg. Ref.

None

Applicant for Declaration

Limerick City and County Council

Planning Authority Decision

No decision, referred, under Section 5(4) of the Planning and Development Act 2000, as amended.

#### Referral

Referred by

Limerick City and County Council.

Owner/ Occupier

Fergal O'Brien.

Observer(s)

Aishling Martin.

Date of Site Inspection

29<sup>th</sup> March 2017

Inspector

Fiona Fair

## 1.0 Site Location and Description

- 1.1. The site is located at Dun Aongus, Punchs Cross, Rosbrien Road, south of Limerick City Centre. The existing dwelling on the site is a mature two storey end of terrace dwelling.
- 1.2. The dwelling and the terrace present in a good condition. The dwelling has a front garden and a generous, deep, back garden, defined, for the most part, by a wooden panel fence, boundary wall, mature hedging and planting. Towards the end of the garden there is a large mature tree. The structure that is the subject of this referral, timber tree house, is located within this tree, located towards the north eastern boundary.
- 1.3. The structure is of timber construction and is supported by the tree in which it is located. A timber ladder structure rises from ground level to give access to the tree house, the entrance to which faces south east. On my site inspection I noted that the roof is mono-pitch and only partially covers the top of the tree house. There are no windows in the tree house facing north west and there are no views from the entrance platform into the covered area of the tree house from a child's height - 1.52m or under in a south western or north western direction.
- 1.4. The rear gardens of a row of five two storey red brick houses back onto the side / northern boundary of the property the subject to the referral. The rear gardens serving the adjoining dwellings to the north / north west are also generous in length. The structure the subject of the referral abuts the rear boundary of number 1 Weston Villas, the owner of which has made a complaint to Limerick City and County Council regarding a tree house erected in a site to the rear of her dwelling.

## 2.0 The Question

- 2.1. Whether the construction of a tree house in rear garden is or is not development or is nor is not exempted development

## **3.0 Planning Authority Declaration**

### **3.1. Declaration**

The owner/occupiers of Dun Aongus, Punchs Cross, Rosbrien Road, Limerick constructed a structure in a tree located in their back garden. A complaint was made to the planning authority by neighbours in relation to this structure. The planning authority issued a Warning Letter in relation to the structure. A Planning Inspector from the authority subsequently carried out an inspection of the site. It was found that the height of the roof of the tree house varied due to the sloping nature of the ground level. The height at Ms Martin's side of the boundary was 3.77m and the height at Fergal O'Brien's side of the fence was 4.90m. The authority could not immediately determine whether the development constituted exempted development or not, and decided to refer the matter to the Board for determination.

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

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

Warning Letter dated 15<sup>th</sup> August 2016 re: 'namely construction of a shed type structure in the rear garden for which there is no record of a planning permission being granted and is subsequently unauthorised.'

#### **3.2.2. Other Technical Reports**

None

## **4.0 Planning History**

None

## **5.0 Policy Context**

### **5.1. Development Plan**

Limerick City Development Plan 2010-2016 – site is subject to zoning objective 2A Residential - To provide for residential development and associated uses.

## 5.2. Natural Heritage Designations

None

## 6.0 The Referral

### 6.1. Referrer's Case

- The matter is in relation to a complaint received from Ms Aisling Martin, 1 Weston Villas, Rosbrien Road, Limerick.
- The tree house is constructed on a tree which is located immediately behind Ms Martin's boundary fence
- A site inspection was carried out on the 25<sup>th</sup> July 2016
- It was found that the height of the roof of the tree house varied due to the sloping nature of the ground level.
- The height at Ms Martin's side of the boundary was 3.77m and the height at Fergal O'Brien's side of the fence was 4.90m
- The development Inspector was of the opinion that the development was not an exempt development as the height of the structures was in excess of the height allowed under Schedule 2 of Part 1 Class 3 Condition 5 of the Planning and Development Act 2000
- A warning letter was issued to Mr. O'Brien
- Mr. O'Brien relied to the warning letter, copy attached.
- The planning authority took into consideration a ruling from the Board reference number 06D.RL.2581
- Referral accompanied with:
  - Copy photograph 'A' showing the view of the tree house from Ms Martin's site.
  - Copy photograph 'B' showing the view of the tree house from Mr O'Brien's back garden.

## 6.2. Planning Authority Response

- Response received no further pertinent information submitted.

## 6.3. Owner/ occupier's response

- The tree house was constructed on a tree on the property solely as an amenity for the owner's children who were 4, 5, and 7 years of age at the time.
- The tree house is not a habitable structure, it is temporary in nature bolted to a tree and will be taken down when children have outgrown it.
- Following consultation with neighbour a window was blocked up and the tree house has no windows overlooking neighbouring property.
- Following consultation with neighbour a wooden barrier erected at the top of the steps to the tree house to ensure that there is no visibility into their garden.
- The tree house is at least 10m from the nearest neighbours house
- The floor area of the tree house is modest at approximately 1.5m square
- The roof of the tree house has been lowered to ensure that the maximum height of the apex of the roof is 4m or less from ground level and more importantly the height of the constructed platform to the highest point of the roof is less than 2m and therefore complies with the conditions and limitations specified in Column 2 of Class 3 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001.
- Precedent case for a much larger tree house in Blackrock Co. Dublin 06D.RL.2581 who in agreeing with the Inspectors Report decided it was exempted development.
- The use of the tree house is for a purpose incidental to the enjoyment of our house.
- The height of the tree house measured from the constructed platform at its highest point is less than 2m.

- Question the precedent which would be set, should tree houses be considered to be non-exempt development.
- This is a temporary tree house designed solely for small children.

**6.4. Response received from the complainant Aisling Martin 1 Weston Villas, Rosbrien Road.**

- The council's letter indicates that in its inspector's opinion, the structure was not exempt, and that this opinion relied upon the height of the structure not being within the exemption limits.
- The structure in this case has a flat roof, to be exempt, the structures height cannot exceed 3 meters.
- The Councils referral letter confirms that the height of the structure is either 3.77m or 4.9m, depending on ground levels. Both measurements exceed the maximum allowed for exemption status.
- 06D.RL2581 should not be followed in this referral and the height of the tree house structure should be measured from the ground upwards.
  - Firstly, the treehouse structure in 06D.RL2581 was not accessed by a permanent fixed structure. In the subject case the tree house is accessed by a permanent fixed stair which reaches the ground and which has handrails on both sides and a stabilising post driven into the ground to support it. The stairs are part of the structure which must then be measured from ground level and not from floor base level.
  - Secondly, even if there was no permanent ground level access in place, the height of this tree house and all tree houses should be measured from ground level.
- The tree house adversely impacts upon the objectors rear garden by way of noise, overlooking and by way of negative visual impact – visually imposing.
- The definition of height given for shops etc. in the planning regulations states: 'unless the context otherwise requires, any reference to the height of the structure, plant or machinery shall be construed as a reference to its height when measured from ground level.'
- The floor area size does not override the height limitation requirement.

- The intention that the structure is temporary, ignores the fact that it could be in place for ten or more years given the ages of the children.
- Concern with regard to the impact / damage of the tree house, it being bolted onto a healthy mature tree.

## 7.0 **Statutory Provisions**

### 7.1. **Planning & Development Act 2000, Part I, Section 2(1):**

“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.

### 7.2. **Planning & Development Act 2000, Part I, Section 3(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 of use of any structures or other land.

### 7.3. **Planning & Development Act 2000, Part I, Section 4(1)(j):**

The following shall be exempted development for the purpose of this Act – (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.

### 7.4. **Planning & Development Regulations 2001, Article 6(1)**

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.

**7.5. Part 1 of Schedule 2 of Planning and Development Regulations 2001:**

Column 1 Description of Development:

**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.

Column 2 Conditions and Limitations:

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**

With reference to the provision of the Planning & Development Act 2000, Part I, Section 2 (1) as outlined above, I am satisfied that the tree house constitutes 'works'.

With reference to the definition as contained in Section 3(1) of the Planning & Development Act 2000, I am satisfied that the works constitute 'development'.

### **8.2. Is or is not exempted development**

I am also satisfied that, as a tree house, the use of this structure is incidental to the enjoyment of the family dwelling on the site and, as such, complies with Planning & Development Act 2000, Part I, Section 4(1)(j).

### **8.3. Restrictions on exempted development**

The question now arises as to whether the development is exempted or not. In that regard I consider that the provisions of Class 3 Conditions 1-6 Part 1 of Schedule 2 of Planning and Development Regulations 2001 have to be considered.

With reference to Condition No. 1 of Class 3 the structure is not forward of the building line. Development complies with said condition.

With reference to Condition No. 2 of Class 3 the following is noted. There is only one other structure in the rear garden / curtilage of the dwelling. It comprises a small wooden garden shed (see photographs attached to this report). The garden shed has a floor area of approx. 6 sq. m

The floor area of the tree house is stated at approximately 1.5m square, this is not contested. Albeit floor plans have not been submitted I can confirm this area by way of observations made during my site visit. The two structures combined have an estimated floor area of under 10 sq. m. This is well within the 25 sq. m. limit of Condition No. 2. Thereby the development complies with said condition.

With reference to Condition No. 3 I note that the private open space serving the dwelling is not reduced to under 25 sq. m. and thereby development complies with said condition.

With reference to Condition No. 4 the subject structure is not located to the side of the house. Development complies with said condition.

With reference to Condition / Limitation No. 5

I highlight that the planning authority enforcement officer found that the height of the roof of the tree house, measured from ground level, varied due to the sloping nature of the ground level. It is stated that the height at Ms Martin's side of the boundary was 3.77m and the height at Fergal O'Brien's side of the fence was 4.90m

The height of the tree house measured from the constructed platform at its highest point is less than 2m. This I can confirm from observations made during my site visit. It should be noted that the owner/occupiers have altered the roof, removing the section over the constructed platform (Fergal O'Brien's side) subsequent to the planning authority inspection. A portion of the tree house is covered (Ms Martin's side), by way of a mono pitched roof, which leans from the north west. There are no windows / openings facing north west, there are no windows / openings within the covered portion of the tree house. One picture frame window / opening from the unroofed constructed platform faces south east over the owner's garden (Mr O'Brien's) and the tree house and platform is accessed by way of a timber ladder positioned to the south east. Having visited the site and stood in the tree house I can confirm there are no views from within the tree house or the platform into the neighbouring gardens / the complainants garden to the north west.

Given the roof of the tree house has been lowered to ensure that the maximum height of the apex of the mono-pitch roof is 3.77m, thereby, less than 4m from ground level and that the height from the constructed platform to the highest point of the roof is less than 2m I am of the opinion that the development complies with the conditions and limitations specified in condition 5.

This being said I am also cognisant of the ABP decision in the referral case of 06D.RL.2581. I tend to agree with the Inspector in his interpretation that Condition No. 5 refers to the height of the structure itself and not the height it is above the ground. The height of the structure should be measured from the constructed platform to the highest point of the roof, which is well below the permitted 4 metres limit (from the undercroft of the platform to the highest point of roof structure measures c. 1.5 metres).

The complainant argues that the treehouse structure in the case of 06D.RL2581 was not accessed by a permanent fixed structure. It is contended that in the subject case the tree house is accessed by a permanent fixed stair which are part of the structure and therefore the structure must then be measured from ground level and not from floor base level. And even if there was no permanent ground level access in place, the height of this tree house and all tree houses should be measured from ground level. I cannot agree.

The timber stair access is akin to a ladder, it does not give structural support to the tree house and it is not enclosed, it could easily be replaced by a standard removable ladder / rope. It merely gives access to the tree house which is supported within the tree branches. The tree house and its access stair is clearly a temporary structure, incidental to the enjoyment of the family dwelling on the site and not a habitable structure.

I note and agree with the considerations of the Inspector in the case of 06D.RL.2581 in that it may be reasonable to assume that tree houses were not an immediate consideration when Class 3 Condition 5 was being drafted, it would also be reasonable to assume that the structures specifically mentioned in Class 3 i.e. tent, awning, shade, greenhouse, garage, store and shed, would be placed at ground level and hence the height measured from the ground [assuming the awning and shade would have some form of support structure starting at ground level]. However, the meaning of 'height' in assessing a tree house differs from those other structures, arguably, as it is not constructed at ground level. Condition 5 specifically refers to the '*height of any such structure*', the '*structure*' in this case is the tree house, the area underneath it does not form part of the '*structure*' in my opinion, there is no structure beneath the tree house.

However, as per in the previous case, I highlight that should the Board disagree and determine that the height is that, as measured from the ground level to the top of the tree house, regard being had in the subject instance to the stair access, which while not a support could be considered part of the tree house structure. As stated above, it is my opinion, Condition No. 5 is still complied with.

With reference to Condition No. 6, it is noted that the structure is open to the elements. Based on a site inspection it can be confirmed that it is not connected to any services such as electricity, water mains or sewers. I am satisfied that it is not intended for human habitation. There is no evidence to suggest that it is used for keeping of animals or for any other purpose other than a purpose incidental to the enjoyment of the house located on the site. The tree house location is of equidistance (in excess of 10m) from the owner's / occupiers house as the complainants dwelling. Cognisance is had to the alterations carried out to the tree house with respect to the neighbour's concerns. I am of the opinion noise emanating from children playing in a tree house would be no different to, and possibly less than, children playing on a trampoline, bouncy castle or just playing ball within a domestic rear garden in an urban environment. Condition / Limitation No. 6 is thereby complied with.

Cognisance to the foregoing I am satisfied that the structure complies with the provisions of Schedule 2 Part 1 Class 3 Conditions / Limitations 1-6.

## 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 the construction of a tree house in the rear garden is or is not development or is nor is not exempted development:

**AND WHEREAS** Limerick City and County Council requested a declaration on this question from An Bord Pleanála on the 25<sup>th</sup> January 2017:

**AND WHEREAS** An Bord Pleanála, in considering this referral, had regard particularly to –

- (a) Section 2(1) Planning & Development Act 2000, as amended.
- (b) Section 3(1) of the Planning and Development Act, 2000,
- (c) Section 4(1)(j) of the Planning and Development Act, 2000, as amended,
- (d) Article 6(1) of the Planning and Development Regulations, 2001, as amended,
- (e) Parts 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,

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

- (a) the said timber structure comes within the scope of section 4(1)(j) of the Planning and Development Act, 2000, being a structure whose use is for a purpose incidental to the enjoyment of the house at the said address,
- (b) the said timber structure complies with the conditions and limitations

specified in Column 2 of Class 3 of Part 1 of Schedule 2 to the Planning and Development Regulations 2001, in particular, the height of the mono pitched roof does not exceed generally four metres.

**NOW THEREFORE** An Bord Pleanála, in exercise of the powers conferred on it by section 5 (4) of the 2000 Act, hereby decides that the construction of a tree house in the rear garden is development and is exempted development.

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Fiona Fair

Planning Inspector

30.03. 2017