



An
Bord
Pleanála

Inspector's Report RL06D.RL3552

Question

Whether the conversion of an existing garage into a study, replacing existing garage door with new window is or is not development or is or is not exempted development.

Location

No. 4 Brookfield Mews, Brookfield
Terrace, Blackrock, Co. Dublin

Declaration

Planning Authority

Dun Laoghaire Rathdown County
Council

Planning Authority Reg. Ref.

148/16.

Applicant for Declaration

Ronnie Delaney

Planning Authority Decision

The proposed works does not
constitute exempted development.

Referral

Referred by

Ronnie Delaney.

Owner/ Occupier

Ronnie Delaney.

Observer(s)

None

Date of Site Inspection

12th May 2017

Inspector

Fiona Fair

1.0 Site Location and Description

The site forms part of a terrace of four new two-storey mews buildings facing onto Brookfield Terrace, constructed to the rear of numbers 11 and 12 Prince Edward Terrace, Blackrock County Dublin. It is located a short distance to the south of Blackrock Village and Blackrock Dart Station and to the west of Monkstown.

Brookfield Terrace hosts a mix of terraced red brick houses along its eastern side, some commercial premises and adjoining buildings on the western side of the street comprise 'mews' buildings which have been constructed at different times throughout the past number of years.

2.0 The Question

'Whether the conversion of an existing garage into a study, replacing existing garage door with new window is or is not development or is or is not exempted development' at No. 4 Brookfield Mews, Brookfield Terrace, Blackrock, Co. Dublin.

3.0 Planning Authority Declaration

3.1. Declaration

The Declaration issued on the 25th January 2017 sets out that the proposed development does not constitute exempted development with regard to Class 1, Part 1, Schedule 2 of the Planning and Development Regulations, 2001 (as amended) and Section 4 (1) (h) of the Planning and Development Act 2000, as amended.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The planners report considers that the works to convert the existing garage into a study will entail replacing the existing garage door with a new window with timber panelling underneath.

- It is considered that Class 1 exemptions do not apply to this garage conversion, as the garage is not to the side or rear of the house (a condition required of qualifying Class 1 development).
- It is also considered that the conversion of this garage part of a residential mews dwelling to use as a study is not exempt by way of Section 4 (1) (h) of the Planning and Development Act 2000, as amended. The adjacent mews dwellings have integrated garages so the proposed change will affect the external appearance of the structure so as to render the appearance inconsistent with the character of neighbouring structures.

4.0 Planning History

4.1 Reg. Ref. D15A/0527 Permission Granted on the 18th November 2015 for permission to modify the house design of four two storey mews houses permitted under parent permission D07A/1752 as extended by way of D07A/1752/E. The modifications included: providing an alternative facade to the eastern or front elevation onto Brookfield Terrace, an alternative façade to the western or rear elevation onto gardens, changing the eastern or front part of roof to a flat roof with two number dome roof lights, changing the western or rear part of roof to two intersecting mono-pitches with photovoltaic solar panels and three number velux roof lights, converting the car ports to garages, converting the former entrance courts to entrance hallways, raising the former internal courtyard up from ground floor to first floor and increasing the area of the houses from 147 sq. m each to 215 sq. m each and adding 5.5 sq. m balcony at first floor onto the western or rear elevation.

4.2 Reg. Ref. D07A/1752 Permission Granted for demolition of garden walls and sheds and provision of four two storey mews houses on the site at rear of numbers 11 and 12 Lower Prince Edward Terrace.

4.3 Reg. Ref. D07A/1752/E Permission Granted for extension of duration of permission until 11/3/2019

5.0 Policy Context

5.1. Development Plan

The operative development plan for the referral site is the Dun Laoghaire Rathdown County Council County Development Plan 2016 – 2022 (CDP). The site is zoned objective 'A' - 'to protect and / or improve residential amenity'.

6.0 The Referral

6.1. Referrer's Case

6.1.1. The referral by Owner Occupier Ronnie Delaney set's out the following;

- The proposed conversion of the garage to a study should be considered exempted development under schedule 2, Part 1 Class 1
 - The garage is to the side of the house below the front bedroom
 - Contrary to logic and common sense to claim that the garage is not to the side of the house
 - No definition of integral garage appears in the relevant legislation and no description of a side garage been separate to a house is defined
 - DLRDCC have acted ultra vires to its authority in interpreting the legislation in a manner that is not consistent with the wording of the Act
- The proposed development qualifies for exemption under Section 4
 - For section 4(i)(h) to apply, the conversion of the garage which is the subject of this review must be classified as 'Development'.
 - The following precedents do not classify the conversion of an integral garage as development.
 - Notification of Declaration on Development and Exempted Development issued by Dublin City council on the 12th November 2013, Application No.0183/13, Decision Order No. P2816. In this instance Dublin City Council issued a Declaration that the conversion of an existing integral garage to a habitable part of the house is Exempt from the requirement to obtain planning permission. One of the considerations was that the conversion of

the integral garage does not constitute a material change of use and is therefore not development within the meaning of Section 3 of the Planning and Development Act 2000.

- PL06S.RL2564 The Board concluded that the conversion of an integral garage, as distinct from an attached one to the side or rear of a dwelling house, to a music room and library, does not entail the extension of the dwelling house's floorspace under Class 1 nor does it involve material change of use under the definition of development.
- PL06S.RL2958 The Board concluded that a previous conversion of an integral garage into additional habitable accommodation is not a material change of use and is therefore, not development within the meaning of Section 3 of the Planning and Development Act, 2000.
- Failure to consider the application correctly
 - DLRDCC failed to give any or any adequate consideration to Schedule 2, Part 1, Class 1, of the Planning and Development Regulations
 - The proposed development is clearly within the grounds identified in Section 4(1) (h) and (j) and that in failing to properly consider whether the proposal is development under the meaning of the Act, the Council have wrongly applied Section 4(1)(h) and have failed to consider Section 4(1) (j) at all
 - Section 4(1) (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;
- There is no increase in footprint of the building and no material alteration to the dwelling
- Virtually every building on this side of the street is different
- All the buildings in the locality are 'mews' buildings and have been built at different times throughout the last 50 years or so.
- Precedent in this case is clear and unambiguous
- The proposed change will not affect the external appearance of the structure, so as to render the appearance inconsistent with the character of neighboring structures

- Proposed new painted timber panel wall reflects the painted timber doors, the aluminium fin detail echoes the aluminium cowls and linings around existing windows

6.2. Planning Authority Response

The planning authority consider that the referral does not raise any new matters which would justify a change of attitude to the proposed development.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

Section 2 (1)

“works” are defined in this section as including 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.

The definition of alteration is provided in Section 2(1) as follows:

“Alteration” including

- (a) Plastering or painting or the removal of plaster or stucco, or
- (b) The replacement of a door, window or roof that materially alters the external appearance of a structure so as to render the appearance inconsistent with the character of the structure or neighbouring structures.’

“use” is defined as in relation to land, does not include the use of the land by the carrying out of any works thereon.

Section 3 (1) 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) - the following shall be exempted development for the purposes of the 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 of 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;

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

Article 6(1) provides 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 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

8.0 Assessment

8.1. Is or is not development

The question before the Board in this instance can be stated as follows:

'Whether the conversion of an existing garage into a study, replacing existing garage door with new window is or is not development or is or is not exempted development'

Having regard to Sections 2 (1) and 3(1) of the Planning and Development Act, 2000, as amended, and as set out above in Section 7.0, statutory provisions, of this report I consider that the change in use of the internal garage to study and the replacement of a door with a window constitutes, respectively, 'a material change in the use' and 'works' and so it would come within the definition of development. Accordingly, the proposal is development.

Regard is had that it has previously been determined by the Board (Referral No. 06S.RL.2564 and 06F.RL.2958 attached to this file) that the conversion of an 'integral garage' into additional habitable accommodation is not a material change of use and is therefore not development. Each case must be assessed on its individual merit and I am of the opinion that, given the circumstances of the subject case, permission granted for a car port and subsequently modified to garage, and now subsequently proposed to be converted to a study would result in the loss of at least one car parking space. The garage has dimension of approx. 6.7 m x 3 m, thereby some 20 sq. m. There is no amendment proposed to the internal layout of the garage, it is accessible internally from within an access hallway and this is not proposed to change. I noted during my site visit that on street paid parking along Brookfield Terrace is limited and constrained. The garage conversion would set a precedent for the adjoining three mews dwellings to also convert their garages resulting in a further loss of car parking on the terrace. I cannot agree that conversion of the subject garage with large retractable door clearly in used for car

parking to a study and habitable accommodation would not comprise a 'material change of use' and thereby not development.

Also I am of the considered opinion that the replacement of the garage door with a window would constitute 'works'. Section 2 (1) of the Act defines 'works' as including 'any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal'.

The definition of 'alteration' is also provided in Section 2(1) as follows: 'Alteration Includes:

(a) Plastering or painting or the removal of plaster or stucco, or

(b) The replacement of a door, window or roof,

that materially alters the external appearance of a structure so as to render the appearance inconsistent with the character of the structure or neighbouring structures.'

Cognisance being had to section 2(1) 'alteration' I consider, in agreement with the planning authority, that the replacement of the garage door with a large new aluminium window with timber panelling underneath would affect the external appearance of the structure so as to render the appearance inconsistent with the character of neighbouring structures most notable the terrace of mews dwellings of which it forms part thereof.

The adjacent mews dwellings all have similar garages. I do not agree with the referrer that that alterations proposed are sensitive to existing character and would not affect the external appearance of the structure, so as to render the appearance inconsistent with the character of the structure or of neighbouring structures.

8.2. Is or is not exempted development

I note that the Board have determined in two cases that the change of use of an 'integral garage' for habitable use, such conversion, not being to the side or rear of a dwelling, is not affected by Class 1 of Part 1 of the 2nd Schedule to the Planning and Development Regulations 2001.

In the case of PL06S.RL2958 The Board concluded that a previous conversion of an integral garage into additional habitable accommodation is not a material change of use and is therefore, not development within the meaning of Section 3 of the Planning and Development Act, 2000.

In the case of PL06S.RL2564 The Board concluded that the conversion of an integral garage, as distinct from an attached one to the side or rear of a dwelling house, to a music room and library, does not entail the extension of the dwelling house's floorspace under Class 1 nor does it involve material change of use under the definition of development.

For exempted development to apply under Section 4(i)(h) of the Act, 2000, the conversion of the garage which is the subject of this review must be classified as 'Development' or 'works'.

It is my opinion, having considered the information before me, that the change of use would be exempt development by way of Section 4 (1) (h) being works which affect only the interior of the structure. No amendment is proposed to the layout or floor area of the house. However, the replacement of the garage door with a large new aluminium window with timber panelling underneath would affect the external appearance of the structure so as to render the appearance inconsistent with the character of neighbouring structures and therefore would not be exempt development by way of Section 4(1) (h) of the 2000 Act.

The referrer also argues that the proposed development is exempted development regard being had to Section 4(1) (j) of the Planning and Development Act, 2000, as amended, '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’;

The garage forms part of the house and therefore I do not consider it within the curtilage of the house. I therefore do not agree that the change of use could arguably be considered under Section 4 (1) (j) to be exempt development.

For Schedule 2, Part 1, Class 1, Exempted Development of the Planning and Development Regulations, 2001, as amended, to apply, the garage must be classified as being attached to the rear or to the side of the house.

The referrer argues that the proposed conversion of the garage to a study should be considered exempted development under schedule 2, Part 1 Class 1 as the garage is located to the side of the house. I agree this argument is valid, in that, the garage is to the side of the house’s access hall, below the front bedroom albeit to the front of the ground floor habitable rooms of the house.

Regard being had to the two precedent cases cited above no definition of integral garage appears in the relevant legislation and no description of a side garage, been separate to a house, is defined.

Should The Board conclude that the extension of the habitable area of the house by the conversion of the integral garage is not affected by Class 1 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, not being attached to the side or rear of the house, then I see no relevant exemption set out under Article 6(1) of the Regulations. I am of the opinion that the ‘material change of use’ would not be exempted development albeit the layout and floor area of the dwelling is not being extended and the garage is integral / internal within the floor space.

Overall, I consider it is arguable that Class 1 exemption applies and that the change of use from garage to study is ‘exempt development’, by way of Class 1, as it comprises an ‘integral garage’ which is located to the side of the house.

As set out above I also conclude that the change of use would be exempt development by way of Section 4 (1) (h) being works which affect only the interior of the structure.

8.3. Restrictions on exempted development

No restrictions are pertinent in the subject referral case.

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 conversion of an existing garage into a study, replacing existing garage door with new window is or is not development or is or is not exempted development' at No. 4 Brookfield Mews, Brookfield Terrace, Blackrock, Co. Dublin.

AND WHEREAS Ronnie Delaney requested a declaration on this question from Dun Laoghaire Rathdown County Council and the Council issued a declaration on the 25th day of January 2017 stating that the matter was development and was not exempted development:

AND WHEREAS Ronnie Delaney referred this declaration for review to An Bord Pleanála on the 21st day of February 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) and 4(1) (j) 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) Parts 1 and 3 of Schedule 2 to 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 conversion of an existing integral / internal garage into a study, is development within the meaning of section 3 of the Planning and Development Act, 2000, which is exempted development by way of Class 1 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, being attached to the side or rear of the house.
- (b) the replacement of the garage door with timber panel wall under new window is development within the meaning of section 3 of the Planning and Development Act 2000 but, being works that materially alters the external appearance of a structure so as to render the appearance inconsistent with the character of the structures or neighbouring structures and is therefore not exempted development within the meaning of section 4(1)(h) of the said Act

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 (i) the conversion of an existing garage into a study is development and is exempted development and (ii) the replacing of the existing garage door with new window at No. 4 Brookfield Mews, Brookfield Terrace, Blackrock,

Co. Dublin is development and is not exempted development.

Fiona Fair
Planning Inspector

16.05.2017