



An
Bord
Pleanála

Inspector's Report RL09.RL3560.

Question

Whether the alterations to side and rear elevations of a detached residential dwelling is or is not development or is or is not exempted development.

Location

17 Woodlands, Maynooth, Co. Kildare.

Declaration

Planning Authority

Kildare County Council

Applicant for Declaration

Christina Gormley.

Planning Authority Decision

None

Referred by

Christina Gormley.

Owner/ Occupier

Christina Gormley.

Date of Site Inspection

14th June 2017

Inspector

Philip Davis.

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1.0 Site Location and Description

The appeal site is a single storey detached bungalow in a cul-de sac estate of identical such dwellings in a suburban area within Maynooth. It is located south-west of the town centre of Maynooth and south of the main campus of Maynooth University, with the main Dublin-Kildare Line and the Royal Canal separating the campus from the suburban area to the south.

2.0 The Question

Whether alterations to the external elevations of a dwelling is or is not development or is not exempted development.

3.0 Planning Authority Declaration

3.1. Declaration

The planning authority has not issued a declaration on this matter.

3.2. Planning Authority Reports

3.2.1. Planning Reports

There is no planning report or other reports on file.

4.0 Planning History

No records on file. The referrer has sent a similar referral to the planning authority.

5.0 Policy Context

5.1. Development Plan

The site is in an 'R2' 'existing residential' zoned area.

5.2. Natural Heritage Designations

There are no Natura 2000 sites in the vicinity of the referral site. I would consider the details subject to this referral to be *de minimis* with regard to Appropriate Assessment issues due to the very small scale of the works and the absence of any pathways.

6.0 The Referral

6.1. Referrer's Case

- The referrers agents outline a series of internal and some external works to the house which were required due to the disabled owners.
- It is noted that the front elevation is not altered.
- Full drawings and photographs are attached of the alterations.

6.2. Planning Authority Response

The planning authority did not respond to the specifics of the referral.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

Section 3 (1) states the following in respect of 'development':

(i) 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 2(1) defines 'works' as including:

'Any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal.'

Section 4(1) (a) to (f) specifies various categories of development which shall be exempted for the purposes of the Act.

Section 4(2) provides for certain classes of development to be designated as exempted development by way of regulation.

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

Article 6 refers to Exempted Development and states 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.

Class 1 of Part 1 of Schedule 2 lists the following Development within the curtilage of a house: -

Column 1 – Description of Development

“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 – Relevant Conditions and Limitations

2(a) Where the house has been extended previously, the floor area of any such extension, taken with the floor area of any previous extension or extensions constructed or erected after 1st October 1964, including those for which planning permission has been obtained, shall not exceed 40 square metres.

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.

(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 the occupants of the house, to the rear of the house to less than 25 sq.m.

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

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

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

7.3. Other

There are a number of similar reference cases on file – RL3093 and RL3115. With regard to the ‘*de minimis*’ rule, there are a number of Board Reference cases of relevance including RL3069, RL2702 and RL2606. While they have some points of similarity in the issues raised, I do not consider that these are directly relevant to the issues raised in this referral.

8.0 Assessment

8.1. Is or is not development

Under the definition of ‘development’ in Section 3.1 of the Act, a key qualifier is that there must be a ‘material’ change in the structure. As the Board will note from the drawings and photographs attached, the works are primarily to the interior of the dwelling, in order to make it suitable for an elderly person to use. The external changes, to the rear and side, are only visible from directly next to the domestic building. The Board will note from the photographs attached that when viewed from the public road there is no obvious alteration. Nor, in my opinion, do they have any impact on neighbouring amenity.

There are relatively few precedents in available reference cases for considering alterations to be *de minimus*. There is little guidance in law although in general cases set a relatively high ‘hurdle’ for alterations to be so assessed. In the case of Dunne Ltd. -v- Dublin County Council, Justice Henchy argued that the *de minimus* rule can be applied only where any deviation from the requirements by the person seeking to have it excused must be “so trivial or so technical or so peripheral or otherwise so insubstantial”. I would note that in a number of Board cases arguments that works were *de minimis* were dismissed primarily on the basis of the structure being subject to specific designations, such as protected status, within an ACA, or a Natura 2000 site.

I would note that the site for this referral is situated within a suburban residential development and is not a protected structure; within an Architectural Conservation Area; or within or close to any specific EU, national, development plan, statutory or non-statutory designated area. The internal alterations do not alter the use of the building as residential, or lead to any impact to its use as a conventional single-unit dwelling.

I would consider in this regard that the alterations are trivial and insubstantial and hence the *de minimis* rule can be applied. I conclude that in this regard the alterations are not development as they are not material.

8.2. Is or is not exempted development

Notwithstanding the above, if the Board considers that the works are development, the question arises as to whether it is or is not exempted development. The relevant exemptions for alterations to domestic dwellings are set out in Classes 1, in addition to Classes 2, 5, 6, 7, 9, 10, 11, 12 of Part 1 of Schedule 2.

None of these Classes apply specifically to the works which have been carried out, specifically the alterations to the doors and window opens. While I would consider them to be very trivial and minor alterations, there are no specific exemptions that appear to apply.

8.3. Restrictions on exempted development

Restrictions on exempted development are set out in Article 9 of the Regulations. I do not consider that any of these restrictions apply, notwithstanding my conclusions above.

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 alterations to side and rear elevations of a detached residential dwelling is or is not development

or is or is not exempted development:

AND WHEREAS referred this declaration for review to An Bord Pleanála on the 15th day of March, 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) Article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (d) the planning history of the site and the absence of any specific restrictive designations,
- (e) the nature of the works, and
- (f) the pattern of development in the area:

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The internal alterations to the dwelling do not alter the nature or purpose of the dwelling house
- (b) The external alterations to the rear and side elevations are trivial and insubstantial.
- (c) The works are considered 'de minimis' and so are not material.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3) (b) of the 2000 Act, hereby decides that the alterations

to side and rear elevations of a detached residential dwelling is not development.

Philip Davis
Planning Inspector

5th October 2017