



An
Bord
Pleanála

Inspector's Report PL04.RL3587.

Question	Whether the construction of an extension to the rear of dwelling is or is not development or is or is not exempted development.
Location	103 Coopers Grange, Old Quarter, Ballincollig, Co. Cork.
Declaration	
Planning Authority	Cork County Council
Planning Authority Reg. Ref.	D/224/17.
Applicant for Declaration	Michael and Maria Finn
Planning Authority Decision	Is development and is not exempted development
Referral	
Referred by	Michael and Maria Finn.
Owner/ Occupier	Michael and Maria Finn.
Observer(s)	Anne Etienne and Julien Nargeolet.
Date of Site Inspection	7 th September, 2017.
Inspector	A. Considine.

1.0 Site Location and Description

- 1.1. The site is located to the rear of 103 Coopers Grange, Old Quarter, Ballincollig, Co. Cork, approximately 6km to the west of Cork City. This is a developing area in Ballincollig with a variety of mixed uses to the east including commercial and residential, with residential developments to the west and north. The subject site is located within a residential development which fronts onto a large open space and the houses in the immediate vicinity are detached.
- 1.2. The house the subject of this referral, including the other houses along this road, provides accommodation over three floors. To the rear of all of the houses on this street, a family room has been constructed as part of the overall house design. To the rear of the subject house, an extension has been constructed with a flat roof. This extension wraps around the original single storey return to the west and it appears that the original gabled roof of the single storey return has been replaced as part of the overall extension to include a pitched roof as well as a flat roof. The flat roof includes an upstanding parapet with a 'clerestory window'. No part of the extension connects or interferes with boundary walls.

2.0 The Question

- 2.1. I consider that the question to be determined by the Board is as follows:
- 'Whether the construction of an extension to the rear of dwelling is or is not development or is or is not exempted development at 103 Coopers Grange, Old Quarter, Ballincollig, Co. Cork.'

3.0 Planning Authority Declaration

3.1. Declaration

Cork County Council decided that:

- The demolition of part of the house and the construction of the extension in question constitutes development.

- The height of the wall of the subject extension exceeds the height of the rear wall of the house, being the height of the rear wall of the single storey element of the house, as such the subject extension does not meet the conditions and limitations set out in Class 1(4)(b).
- The roof of the subject extension does not meet the conditions and limitations set out in Class 1(4)(c).

3.2. Planning Authority Reports

3.2.1. Planning Reports

The assessment of the planning authority in relation to the subject referral had regard to the planning history of the site as well as precedent referral cases where the Board has made a determination on what constitutes the 'rear wall' of a house, RL2354 and RL3313 refer. The report concludes that as the height of the walls of the proposed extension exceed those of the original existing side walls, the extension does not comply with the exempted development limitations of the regulations in relation to Class 1 exempted developments.

In addition, the report notes the replacement of a door with a window in the eastern elevation of the house and the inclusion of a door and window on the western elevation of the three storey element of the house. It is concluded that these works are not exempted development under Section 4(1)(h) of the Planning & Development Regulations. These elements do not form part of the referred extension but should be taken into consideration in any future planning application or enforcement proceedings.

3.2.2. Other Technical Reports

None

4.0 Planning History

4.1. Subject site:

There is no recent planning history pertaining to the site. The parent permission for the construction of the overall estate is 02/5827, with revisions to house designs permitted under 04/6220 which includes the subject site.

4.2. Precedents cited:

29N.RL3313: The board made a declaration that the demolition of a single storey return and the construction of a new single storey extension to the rear of a house in Clontarf was development and was exempted development. The Inspectors assessment in this case considered that:

‘The requestor’s citation of the board’s declaration under 06D.RL2354 is not apt, as the consideration of that case referred to the meaning of different words which appear in a condition on the class rather than in the description of the class itself. The height of the rear extension currently in question does not exceed the height of the previous rear return on the house, according to the drawings submitted by the referrer and planning authority, and so its exempted status is consistent with the cited declaration. Applying the interpretation advocated by the requester to the description of development under class 1 would result in many unremarkable rear extensions losing their exempted status under the class, while more imposing developments with convoluted layouts retained theirs. This would strike most lay persons as odd, and most professional planners as perverse. In this case the board is advised that the development at issue is to the rear of the house on the site.’

In this case, the single storey return that was demolished had a mono-pitched roof and the constructed flat roofed extension rose to the height of the ridge, and not just the eaves height.

06D.RL2354: The board made a declaration that the demolition of part of house and replacement with extension to the rear of a house in Blackrock, Co. Dublin was development and not exempted development on the basis that the height of the “rear wall” for the purposes of limitation 4(a) of Class 1 of Part 1 of Schedule 2 of the planning regulations referred to the height of a previous single storey rear return and not the height of the wall at the back of the main, 2-storey element of the house.

5.0 Policy Context

5.1. Development Plan

The subject site is located within the development boundaries of Ballincollig and within the built up area of the Strategic Metropolitan Green Belt.

5.2. Natural Heritage Designations

The Lee Valley pNHA, Site Code 000094, is located approximately 0.3km to the north of the subject site. The area between the site and this pNHA is built up.

6.0 The Referral

6.1. Referrer's Case

The referrers in this case are the owner / occupiers of the house. The details of the development are presented and it is advised that the property was purchased with the intention of extending and modifying it to better suit their family needs. The referral is summarised as follows:

- The extension measures 24.98m² and necessitated the partial demolition of the existing single storey block to the rear of the house.
- It is considered that the works are exempted by virtue of being a class of development described in Schedule 2, Part 1, Class 1 of the Planning & Development Regulations, 2001-2015.
- The Councils position is predicated on the interpretation that the rear wall of the single storey block constitutes the rear wall of the house which is considered a perverse mutation of common sense.
- It would give rise to multiple unintended situations including the situation where certain extensions with pitched roofs would be considered exempted but lower flat roofed extensions would not be considered exempted.
- It would encourage the practice of seeking permission to demolish single storey blocks to the rear of dwellings so as to achieve greater freedom

regarding the size of works that would comply with exempted development thresholds.

- This is counter intuitive and contrary to the intentions of the regulations.

6.2. Planning Authority Response

The Planning Authority has advised that it has no further submissions or observations to make.

6.3. Further Responses

The third party, and original referrer to Cork County Council, has made a submission in relation to this case. This response presents a background as well as providing a summary of the relevant legislation. The response to the referral is summarised as follows:

- The works require planning permission as the development does not meet all of the requirements of Class 1 exempted development regulations.
- Class 1(4) is specifically referenced as is the determination of An Bord Pleanála in relation to 06.RL2354¹, which qualified the term 'rear wall'. The single storey projection at the subject house forms an integral part of the existing dwelling house and constitutes the rear wall.
- Reference is also made to RL3313, where the inspector considered that 'the rear of the house does not refer only to the area beyond the ultimate extent of the projecting rear element of that house. It is to be determined in the context of the house and site as a whole.'²
- The height of the flat roofed section of the extension exceeds the eaves of the single storey element of the house and therefore does not comply with the limitations.
- Other alterations were carried out which are not exempted development.

¹ In RL2354, the Board determined that the rear wall of the house was the rear wall of the single storey projection, and not the rear wall of the 'main' house building.

² In RL3313, the Board determined that the extension was development and was exempted development.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

I consider the following to be the statutory provisions relevant to this referral case:

Section 2 (1) of the 2000 Planning and Development Act states as follows:-

“In this Act, except where the context otherwise requires –
“development” has the meaning assigned to it by Section 3....

Section 3 (1) of the 2000 Planning and Development Act states as follows:-

“In this Act, ‘development’ means, except where the context otherwise requires, the carrying out of 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 (2) of the Act provides that the Minister may, by regulations, provide for any class of development to be exempted development. The principal regulations made under this provision are the Planning and Development Regulations 2001.

7.2. Planning and Development Regulations, 2001

Article 5(2) of the Regulations states as follows:-

“In Schedule 2, unless the context otherwise requires, any reference to the height of a structure, plant or machinery shall be construed as a reference to its height when measures from ground level, and for that purpose “ground level” means the level of the ground immediately adjacent to the structure, plant or machinery or, where the level of the ground where it is situated or is to be situated is not uniform, the level of the lowest part of the ground adjacent to it.”

Article 6(1) of the Regulations states as follows:-

“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.”

Article 9 (1) of the Regulations sets out circumstances in which development to which Article 6 relates shall not be exempted development. None applies in this case.

Class 1 of Part 1 of the Second Schedule to the Regulations states as follows:-

Column 1 Description of Development	Column 2 Conditions and Limitations
<p>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.</p>	<p>1. (a) Where the house has not been extended previously, the floor area of any such extension shall not exceed 40 sq metre.</p> <p>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.</p> <p>(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.</p> <p>(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.</p> <p>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</p>

	<p>use of the occupants of the house, to the rear of the house to less than 25 square metres.</p> <p>6(a). Any window proposed at ground level in any such extension shall not be less than 1 metre from the boundary it faces.</p> <p>7. The roof of any extension shall not be used as a balcony or roof garden.</p>
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[Note: I have not itemised the other conditions and limitations in Class 1, as they are not relevant to the proposed extension in this case.]

Class 50 of Part 1 of the Second Schedule to the Regulations states as follows:-

Column 1 Description of Development	Column 2 Conditions and Limitations
<p>(a) The demolition of a building, or buildings, within the curtilage of—</p> <p>(i) a house,</p> <p>(ii) an industrial building,</p> <p>(iii) a business premises, or</p> <p>(iv) a farmyard complex.</p> <p>(b) The demolition of part of a habitable house in connection with the provision of an extension or porch in accordance with Class 1 or 7, respectively, of this Part of this Schedule or in accordance with a permission for an extension or porch under the Act.</p>	<p>1. No such building or buildings shall abut on another building in separate ownership.</p> <p>2. The cumulative floor area of any such building, or buildings, shall not exceed:</p> <p>(a) in the case of a building, or buildings within the curtilage of a house, 40 square metres, and</p> <p>(b) in all other cases, 100 square metres.</p> <p>3. No such demolition shall be carried out to facilitate development of any class prescribed for the purposes of section 176 of the Act.</p>

8.0 Assessment

8.1. Is or is not development

It is clear that the construction of the subject extension, and the partial demolition of the original rear single storey section of the existing house involved works, as defined, and as such is development within the meaning of the Act.

8.2. Is or is not exempted development

- 8.2.1. In terms of Class 1 of Part 1 of the Second Schedule to the Regulations, there are a number of conditions and limitations that must be met in order to consider the extension as exempted development. In terms of these conditions and limitations, I am satisfied that the key issue arises in relation to condition 4. Before I can address the conditions and limitations set out in the Regulations, it is necessary to address the question of what constitutes the rear wall of the house.
- 8.2.2. It is argued by the owners that applying the interpretation of the Council, that the rear wall of the house is the single storey element, would be 'a perverse mutation of common sense and would give rise to multiple unintended situations including where certain extensions with pitched roofs would be considered exempted development, but certain flat roofed extensions with lower overall heights, would not be considered exempted development'. The third party, together with the Planning Authority, noted the conclusion of An Bord Pleanála in relation to PL06.RL2354, where it was determined that 'it was not correct of the Planning Authority to seek to add to the workings of the Regulations and to qualify the term 'rear wall' with the description 'main rear wall''. In this case, the Board agreed with the Inspector that the single storey section was not a separate construction, but physically connected to the main body of the house.
- 8.2.3. In principle, I would agree with the first party, but given the previous determination of the Board, together with the fact that the single storey family area to the rear of the house, the subject of this referral, was constructed as part of the original house design, the single storey projection to the rear of the house constitutes the rear wall of the house for the purposes of the regulations.

8.3. Restrictions on exempted development

- 8.3.1. Class 1(4)(a) requires that 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.

In terms of the subject property, the bulk of the house rises to a height of 9.422m with the eaves level at 5.15m. The single storey projection to the rear, which comprised a 'family area', included a gable with a ridge height of 4m.

- 8.3.2. Class 1(4)(b) states that 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 while Class 1(4)(c), provides that 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.

The existing side walls of the house rise to 2.7m while the extension as constructed rises to a height of 3.4m. In this regard, the Board will note that the walls of the extension rise above the side wall levels of the original rear projection. As such, the development does not comply with this limitation.

- 8.3.3. The extension as constructed, and taking into consideration the precedent of similar referral questions in the past, I must conclude that the extension as constructed is development and is not exempted development as it does not comply with condition and limitation (4)(b) as set out in column 2 of Class 1 of Part 1 of Schedule 2. The extension is therefore considered to be development and not exempted development.

- 8.3.4. Class 50 of the Planning & Development Regulations, is also considered relevant in that the construction of the extension involved the partial demolition of the single storey family area structure in order to provide the newly constructed extension. The conditions and limitations of Class 50 require that the partial demolition is in accordance with a permitted development or an extension under Class 1 of the Regulations. As the extension has been considered as development and not exempted development, it follows that the demolition is also unauthorised 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 the construction of an extension to the rear of dwelling at 103 Coopers Grange, Old Quarter, Ballincollig, Co. Cork, is or is not development or is or is not exempted development:

AND WHEREAS Anne Etienne & Julien Nargeolet, 104 Cooper's Grange, Old Quarter, Ballincollig, Co. Cork requested a declaration on this question from Cork Council and the Council issued a declaration on the 4th day of May, 2017 stating that the matter was development and was not exempted development:

AND WHEREAS Michael and Maria Finn care of Barnes Murray de Bhail, The Old Forge, Innishannon, Co. Cork referred this declaration for review to An Bord Pleanála on the 25th day of May, 2017:

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

- (a) Section 2, 3, 4 of the Planning and Development Act, 2000, as amended,
- (b) Articles 5, 6(1) and article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (c) Class 1 and Class 50 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended, and the conditions and limitations attached hereto,

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The demolition of part of the house and the construction of the extension constitutes development.
- (b) The height of the wall of the subject extension exceeds the height of the rear wall of the house, being the gabled single storey family area projection.
- (c) The subject extension, as constructed does not comply with the conditions and limitations of (4)(b) as set out in Column 2 of Class 1 of Part 1 of Schedule 2 of the Planning & Development Regulations, 2001, as amended

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 the construction of an extension to the rear of dwelling at 103 Coopers Grange, Old Quarter, Ballincollig, Co. Cork, is development and is not exempted development.

A. Considine

Planning Inspector

11th September, 2017