



An
Bord
Pleanála

Inspector's Report RL06D.RL3605

Question

Whether the extension of a house by the conversion for use as part of the house as the garage attached to the side of the house is or is not development or is or is not exempted development.

Location

House #2, Eagle House, Killiney Village, Killiney, Co. Dublin.

Declaration

Planning Authority

Dún Laoghaire Rathdown Co. Council

Planning Authority Reg. Ref.

5617

Applicant for Declaration

Tony McDonnell

Planning Authority Decision

Is not exempted development

Referral

Referred by

Tony McDonnell

Owner/ Occupier

Tony McDonnell

Date of Site Inspection

7/11/2017

Inspector

Siobhan Carroll

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1.0 Site Location and Description

- 1.1. House #2, Eagle House is located in the centre of Killiney village off Killiney Hill Road in south County Dublin. It comprises a three-storey townhouse with a rooftop terrace with an area of 412 square metres. The front of the property addresses a shared forecourt with Druids Chair public house and Killiney Hill Plaza an apartment development to the south of the site.
- 1.2. The dwelling is served by an off-street car parking space located at first floor level and accessed via a garage door to the north facing side elevation. Vehicular access to the property is available from Talbot Road to the north.

2.0 The Question

- 2.1. Whether the extension of a house by the conversion for use as part of the house as the garage attached to the side of the house is or is not development or is or is not exempted development.

3.0 Planning Authority Declaration

3.1. Declaration

Dún Laoghaire-Rathdown County Council issued a declaration under Section 5 of the Planning and Development Act 2000, on the 19th day of June, 2017 stating that the extension of the house by the conversion for use as part of the house of the garage attached to the side of the house does not constitute exempted development in accordance with Class 9 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001, as amended.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The referral relates to the extension of the house by the conversion for use as part of the house of the garage.

- Class 1 of Schedule 2, Part 1 of the Planning and Development Regulations 2001 refers to development within the curtilage of a house.
- The garage has an area of 10.75sq m and the dwelling had not been previously extended.
- The principle of the garage conversion appears to be acceptable and in accordance with the requirements of Schedule 2 Part 1 Class 1 of the Planning and Development Regulations, 2001, as amended.
- In respect of item 9(1)(a)(iii) it is noted that the Transportation Planning Section report of 18/6/17, deem that the conversion of the garage to habitable accommodation would endanger public safety by reason of traffic hazard or obstruction of road users.
- It was concluded that loss of the garage which currently provides off-street parking for House #2 due to its location would endanger public safety by reason of traffic hazard or obstruction of road users and therefore would not be in accordance with Article 9 of the Planning and Development Regulations, 2001, as amended.

3.2.2. Other Technical Reports

Transportation Planning Section report of 18/6/17 (as detailed in the Planner's report) – the conversion of the garage to habitable accommodation would '(iii) endanger public safety by reason of traffic hazard or obstruction of road users.'

4.0 Planning History

There is an extensive planning history relating to the site. The relevant cases are as follows;

Reg. Ref. D04A/1419 – Permission was granted for the demolition of the post office with façade to be retained, and the associated residential unit at Eagle House. The scheme comprised two own door apartments of 3 storeys consisting of 1 no. 2-bedroom unit and 1 no. 3-bedroom unit with integral garage for two cars.

Reg. Ref. D16A/0746 & PL06D.247831 – Permission was refused for a studio apartment on the ground floor with subsequent alterations to the front and side entrances of House #2, Eagle House. The scheme included a proposal to extend into the garage. Permission was refused for two reasons. The second refusal reason referred to the removal of the off-street car parking in the garage.

2. It is considered that proposed development would endanger public safety by reason of traffic hazard or obstruction of road users or otherwise due to the removal of the existing off-street car parking space creating the potential for illegal/inappropriate parking on the existing narrow road network in the area. Furthermore, it is considered that the proposed development, by itself, or by the precedent which a grant of permission would set in respect to the removal of an existing off-street car parking space for this type of development in relation to future development on adjoining sites, would adversely affect the use of the existing road by traffic. In addition, it is considered that the removal of the existing off-street car parking space would be contrary to the car parking standards set out in Table 8.2.3 of the 2016-2022 Dún Laoghaire-Rathdown County Development Plan which requires the provision of one off-street car parking space for a one or two bedroom residential dwelling unit. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

5.0 Policy Context

5.1. Development Plan

Dún Laoghaire – Rathdown County Development Plan 2016-2022

- The subject property is located on lands zoned Objective ‘A’ with a stated objective ‘to protect and/or improve residential amenity’.

6.0 The Referral

6.1. Referrer's Case

- The property House #2 Eagle House is located on Killiney Hill Road. The property has a shared forecourt area with Killiney Hill Plaza and the Druids Chair Public House.
- House #2 is a two-bedroom townhouse at the northern side of a residential development which adjoins a three-bedroom townhouse #1.
- Mr McDonnell is seeking to extend the house by converting the garage to the side of the house for use as part of the house.
- Mr McDonnell experiences difficulty in using the two flights of stairs from the lower ground floor level to the living room accommodation at the second floor level due to ill health. The conversion of the garage would facilitate an alteration of the internal layout and provide for access to the property from the middle level.
- The garage which has a width of 2.4m and a length of 4.8m has never been used for off street parking.
- Therefore, the assertion that the conversion of the garage would endanger public safety by reason of traffic hazard or obstruction to road users is considered disingenuous.
- The Planning Authority in determining the reference case referred to the report from the Transportation Department. The report stated that the provision of no off-street car parking spaces at House #2 "...may create inappropriate/illegal parking which would endanger public safety.."
- It is submitted that the provision of no off-street car parking space at House #2 does not create inappropriate/illegal parking which would endanger public safety because the garage is not being used for off-street car parking.

6.2. Planning Authority Response

- The Planning Authority refer the Board to the previous planner's report.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

Under Section 2, the following is the interpretation of ‘works’:

“...includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal...”

Section 2 (1) defines a ‘structure’ as:

“structure” means any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined, and—

- (a) where the context so admits, includes the land on, in or under which the structure is situate,

Section 3 (1) states as follows:

“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.”

7.2. Planning and Development Regulations, 2001

Article 6 (1) 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.

Schedule 2 Part 1 – Exempted Development – General – Class 1 – Development within the curtilage of a house

Article 9 (1) (a) sets out the instances where 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 — (iii) endanger public safety by reason of traffic hazard or obstruction of road users,

8.0 Assessment

8.1. Is or is not development

- 8.1.1. Development is defined under Section 3(1) of the Planning and Development Act, 2000 as *'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 is defined under Section 2(1) of the Act *"...includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal..."*
- 8.1.2. The conversion of the garage to use as part of the house would involve the alteration of the garage and the extension of the house which would constitute development under the above provisions of the Act.

8.2. Is or is not exempted development

- 8.2.1. The development which is the subject of the referral refers to the conversion of the 10.75sq m garage located at first floor level within the house and accessed via a garage door to the north facing side elevation. Having reviewed the provisions of Class 1 of Part 1 of Schedule 2, of the Planning and Development Regulations, 2001, as amended which refers to development within the curtilage of a house and having considered the various conditions and limitations to Class 1 exemption, I do not consider any of them applicable to the instant case.
- 8.2.2. Accordingly, the conversion of the garage for an extension to the house comes within the scope of the exempted development provided for under Class 1 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended.

8.3. Restrictions on exempted development

- 8.3.1. The original permission relating to the subject property is Reg. Ref. D04A/1419. Under Reg. Ref. D04A/1419 planning permission was granted for the demolition of the post office with facade to be retained, and the associated residential unit at Eagle House. The redevelopment into a scheme of 2 own door apartments of 3 storeys consisting of 1 No. 2 bedroom unit, and 1 No. 3 bedroom unit with integral garage for

2 cars. Therefore, the description of the scheme which was granted permission clearly states integral garage for two cars.

- 8.3.2. Under Reg. Ref. D16A/0746 & PL06D.247831 planning permission was refused for a studio apartment on the ground floor with subsequent alterations to the front and side entrances of House #2. The proposed scheme included the extension of the dwelling with the conversion of the existing garage. Permission was refused by the Board under PL06D.247831 for two reasons. The second refusal reason referred to the removal of the off-street car parking in the garage. It was determined by the Board that *"... the proposed development would endanger public safety by reason of traffic hazard or obstruction of road users or otherwise due to the removal of the existing off-street car parking space creating the potential for illegal/inappropriate parking on the existing narrow road network in the area. ..."*
- 8.3.3. The subject development, the conversion of the garage for an extension to the house would result in the loss of the dedicated off-street car parking space, which was provided within the garage as per the original permission under Reg. Ref. D04A/1419. Having regard to the decision under PL06D.247831 the Board determined that the removal of the off-street car parking space due to the existing narrow road network in the area would create the potential for illegal/inappropriate parking which would endanger public safety by reason of traffic hazard or obstruction of road users.
- 8.3.4. In relation to the issues referred to in the reason for refusal, I note that the circumstances have not change regarding the adjacent road network. Talbot Road the adjacent public road to the north has a narrow road width. The resultant loss of the off-street car parking space would generate roadside parking of an illegal/inappropriate nature which would lead to congestion and give rise to hazardous traffic movements and would endanger public safety by reason of traffic hazard.
- 8.3.5. Notwithstanding the statement in the referral submission that the garage is not used as a car parking space, it is nonetheless the case that the subject house was granted permission with a dedicated off-street car parking space provided within the garage and that there is no on-street parking within the ownership or control of the owner of the subject property house #2.

8.3.6. Accordingly, I consider that the restriction on the exemption provided under Article 9 (1) (a) (iii) in relation to Article 6 applies because the removal of the dedicated car parking space would create the potential for illegal/inappropriate parking on the existing narrow road network in the area which would endanger public safety by reason of traffic hazard or obstruction of road users.

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 the garage to the side of the house for use as part of the house is or is not development or is or is not exempted development:

AND WHEREAS Tony McDonnell requested a declaration on this question from Dún Laoghaire Rathdown County Council and the Council issued a declaration on the 19th day of June, 2017 stating that the matter was not exempted development:

AND WHEREAS referred this declaration for review to An Bord Pleanála on the 17th day of July, 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, as

amended,

- (c) article 6(1) and article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (d) the planning history of the site, specifically Reg. Ref. D04A/1419 and Reg. Ref. D16A/0746 & PL06D.247831.

AND WHEREAS An Bord Pleanála has concluded that:

- (a) the conversion of the garage for an extension to the house comprised works, which constitutes development,
- (b) the conversion of the garage for an extension to the house comes within the scope of the exempted development provided for under Class 1 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (c) the conversion of the garage would result in the removal of the dedicated car parking space which serves the house.
- (d) The removal of the dedicated car parking space would create the potential for illegal/inappropriate parking on the existing narrow road network in the area which would endanger public safety by reason of traffic hazard or obstruction of road users.

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

conversion of the garage to the side of the house and use as part of the house is development and is not exempted development.

Siobhan Carroll
Planning Inspector

16th November 2017