



An
Bord
Pleanála

Inspector's Report 29S.RL3608.

Question

Whether a three sided flat roof, metal shed at the end of the site of Waterloo garage is or is not development or is or is not exempted development.

Location

85 Waterloo Lane, Ballsbridge, Dublin 4.

Declaration

Planning Authority

Dublin City Council

Planning Authority Reg. Ref.

0233/17.

Applicant for Declaration

Errol Dunne.

Planning Authority Decision

Refuse.

Referral

Referred by

Applicant.

Owner/ Occupier

Errol Dunne.

Observer(s)

None.

Date of Site Inspection

19th of October 2017.

Inspector

Karen Hamilton.

1.0 Site Location and Description

- 1.1. The subject site contains a car mechanics business “Waterloo Garage” accessed from the Waterloo Lane, Ballsbridge, Dublin 4. Waterloo lane is characterised by Mews dwellings and rear garages associated with residential properties which front onto Waterloo Road. The mechanics business is located to the rear of a dwelling (No 85) which fronts onto Waterloo Road and is separated by a 2m high brick wall. The main mechanics workshop fronts directly onto Waterloo Lane, with access into the rear yard which contains an additional open shed.

2.0 The Question

- 2.1. Whether a three sided flat roof, metal shed at the end of the site of Waterloo garage is or is not development or is or is not exempted development.

3.0 Planning Authority Declaration

3.1. Declaration

Under Section 5(1) of the Planning and Development Act 2000 (as amended),

1. The planning authority considered the proposed shed is DEVELOPMNET and is NOT EXEMPT from the requirement to obtain planning permission under Section 32 of the Planning and Development Acts 2000.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report of the area planner reefers to the dwelling adjoining the site, the meaning of the term “works” and the lack of exemptions in relation to commercial development.

3.2.2. Other Technical Reports

None requested.

4.0 Planning History

0206/10

Section 5 declaration granted for new roller doors at the front of the mechanics as there is no material alteration to the appearance.

1850/95

Planning permission granted for a single storey extension to the rear including new office and canteen.

0762/98

Planning permission refused for a 90m² rear extension due to excessive size and adverse effect on adjoining dwellings.

5.0 Policy Context

5.1. Dublin City Development Plan 2016-2022

The site is zoned in Z2 *"To protect and/or improve the amenities of residential conservation areas"*.

The subject site is located within an area zoned Z2, for **residential conservation**, therefore the following policies apply:

CHC4: To protect the special interest and character of all Dublin's Conservation Areas. Development within or affecting a conservation area must contribute positively to its character and distinctiveness, and take opportunities to protect and enhance the character and appearance of the area and its setting, wherever possible.

Enhancement opportunities may include replacement and improvement which is in harmony with the Conservation Area.

Development will not be visually or dominant or have a negative impact on the setting of the conservation area.

5.2. Natural Heritage Designations

None relevant.

6.0 The Referral

6.1. Referrer's Case

Martin Reynolds, an agent on behalf of the owner, has referred a Section 5 Declaration from Dublin City Council which may be summarised as follows:

- Waterloo Garage is an established car repair workshop, in existence for c.70 years.
- It is requested that the flat roofed shed at the end of the yard is reviewed as the Council rejected the claim that it was exempt.

6.2. Planning Authority Response

No response was received from the planning authority.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

Section 2, the following interpretation of "works":

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

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)(a)- (i) set out what is exempted development for the purpose 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.

Section 4 (2) provides for the making of the Regulations, Planning and Development Regulations, 2001.

Section 5 (3) (A) states the following:

“Where a declaration is issued under this section, any person issued with a declaration under subsection (2)(a) may, on payment to the Board of such a fee as may be prescribed, refer a declaration for review by the Board within 4weeks of the date of issuing the declaration.”

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

Article (6) (1) Exempted development, states the following:

“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) Development to which article 6 relates shall not be exempted development for the purposes of the Act-

- a) If the carrying out of the development would-
 - i) Contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,
 - viii) consist of or comprise the extension, alteration, or repair or renewal of an unauthorised structure or structure the use of which is unauthorised.

Schedule 2, Part 1: Exempted Development – General

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.

Conditions and Limitations

1. No such structure shall be constructed, erected or placed forward of the front wall of the house.
2. The total area of such structure constructed, erected or placed within the curtilage of a house shall not, taken together with any other structures previously constructed, erected or placed within the said curtilage, exceed 25m².
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 25m².
4. , 5 and 6 refer to the external materials, roof materials and the keeping of pigeons.

8.0 Assessment

8.1. Is or is not development

- 8.1.1. The proposed development includes the retention of a shed located to the rear of a car mechanics workshop "Waterloo Garage". The shed is 33.6m², 3m high and a 3 sided structure open along the front. The structure is metal framed with metal sheeting on the side. Section 3 of the Act refer to "*development*" as the carrying out of any works on, in, over or under land. I am satisfied that, having regard to the definition of "*works*" under section 2 and "*development*" under section 3(1) of the Act of 2000, the erection of the shed is development.

8.2. Is or is not exempted development

- 8.2.1. The shed is a permanent structure currently occupied by a car and storage of tools, which appear to be related to the mechanics' business. The submission from the agent on behalf of the applicant states that the car mechanics is an established use for over c.70 years and the present structure has replaced two timber sheds (c.10m²) which were in existence on the site until the subject structure was erected. I consider the use of the shed is related to the storage for tools and equipment typically used for a car mechanics.

- 8.2.2. The supporting documentation states that the shed is used by the owner to store his own car. Class 3 of Schedule 2 Part 1: Exempted Development – General, include an allowance for “*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*” with limitation on the size of the shed/garage up to 25m². I note the site is zoned as Z2, residential conservation, but I consider the site has been long separated from the residential use to the east of the site, No 85 Waterloo Road and there is no physical connectivity between the sites. Indeed, both sites are in separate ownership and I consider the shed is within the curtilage of the established mechanics garage. In addition, the structure does not comply with the limitations applying to the Class 3 of Part 1, Schedule 2 of the Regulations of 2001, by reason of the total area of the structure which exceeds the 25m² limitation.
- 8.2.3. For clarity purposes, the Regulations do not include any exempted development provisions for new buildings within the curtilage of commercial developments of this nature and as previously stated no classes of development under Part 1 of Schedule 2, or other exemptions under the Act of Regulations are relevant to the subject development. The erection of the shed is not exempt 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 a three sided flat roof, metal shed at the end of the site of Waterloo garage is or is not development or is or is not exempted development:

AND WHEREAS Mr Errol Dunne requested a declaration on this question from Dublin City Council and the Council issued a declaration on the 03rd day of July, 2017 stating that the matter was development and was not exempted development:

AND WHEREAS referred this declaration for review to An Bord Pleanála

on the 27th day of July, 2017:

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

- (a) Section 2 of the Planning and Development Act, 2000, as amended,
- (b) Section 3(1) of the Planning and Development Act, 2000,
- (c) Section 4(1)(a) 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, Parts 1 and 3 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (e) the referrers submission,
- (f) the planning authority's assessment,
- (g) the report of the inspector,
- (h) the planning history of the site,
- (i) the established use on the site and pattern of development in the area:

AND WHEREAS An Bord Pleanála has concluded that:

The erection of a shed (33m²) within the curtilage of a car mechanics **IS DEVELOPMENT** within the meaning given to it under Section 3(1) of the Planning and Development and is **NOT EXEMPTED DEVELOPMENT** within the context of article 6(1) of the Planning and 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 shed is

development and is not exempted development.

Karen Hamilton
Planning Inspector

27th of October 2017.