



An Bord Pleanála
64 Marlborough Street,
Dublin 1
D01 V902

Date; 26 November 2018
PA Ref; 0280/18
ABP Ref; ABP-302528-18

AN BORD PLEANÁLA	
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ABP-	_____
26 NOV 2018 LC.	
Fee: €	_____ Type: _____
Time: 15.28	By: hand

Dear Sir/Madam,

Thank you for your letter of 08 November in connection with the above referral. I have reviewed the attached submission made to An Bord Pleanála by Treasa and Kenneth Faulkner, and comments as follows.

The subject application to Dublin City Council sought a Section 5 Declaration on Exemption for the following six variation items

1. Revised Roof light
2. Revision to a window in the Laneway elevation
3. Revisions to windows in the Garden elevation; a) A screen and b) A high level window
4. Revised external cladding to extension
5. Revised extent of extension roof overlap of garage roof
6. Revised drainage layout

This reference to An Bord Pleanála relates to Dublin City Council's refusal to grant the declaration sought for those same six items only. I do not propose to revisit the detail responses made to Dublin City Council's refusal to declare any or all of the six above to be Exempted Development. My following comments are therefore limited to addressing, in general, the six variations which An Bord Pleanála has been asked to consider insofar as they are referred to in the Faulkner submission. I will add some detail comments in relation to certain of the six items only where necessary.

I have considered determinations of referrals (124) to An Bord Pleanála of decisions made by Dublin City Council on Section 5 Applications in the period since 27 February 2008. I have been unable to find a determination which deals with matters as trivial as those listed above, however certain similarities could be found in the following three cases.

- a) RL3044, 92 Greenlea Road, Ternure Dublin 6w
- b) RL 2996 1a Ormond Road, Rathmines Dublin 6
- c) RL2671 16 Cullenswood Park, Ranelagh, Dublin 6.

An Bord Pleanála has been entirely consistent in its approach to the determination of such referrals in that it;

- I. Determines, by reference to the Planning Act, and precedent decisions and rulings, whether which, if any, of the items which are the subject of the referral constitute Development.
and
- II. Determines by reference to the Planning Regulations, and precedent decisions and rulings, whether any items, determined as being Development, constitute Exempted Development.



In the context of the above process An Bord Pleanála has also declared that;
(c) the 'restrictions on exemption' under Article 9(1)(a)(viii) of the Planning and Development Regulations 2001, do not apply to exemptions conferred by the primary legislation:

This declaration appears to support my own view, as expressed in my covering letter to this referral, that the subject referral items may be considered, under the terms of 4(1)(h) of Planning act 2000, as failing to constitute Development by virtue of their being so trivial as to 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.*

An Bord Pleanála has also reported that, The Supreme Court, in *Cairnduff v O'Connell* [1986] IR 73, similarly held that works comprising the insertion of a window in a side wall of a 3-storey house, the replacement of a window by a door and the construction of a balcony and a staircase "*had not so materially affected the external appearance of the structure to render it inconsistent with the character of the building itself or of adjoining buildings*" These works are far more substantial than the variations which are the subject of this referral.

However in all three of the above cases, An Bord Pleanála has determined that the subject works/variations, including external render to walls and works to roof and roof lights;

- *are development and are exempted development because the proposed works would not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the house and neighbouring properties as defined under section 4 (1)(h) of the Planning and Development Act, 2000, as amended:*
- *..... come within the scope of the exempted development provisions of sections 4(1) (h) of the Planning and Development Act, 2000 as the works would be for the maintenance, improvement and alteration of the structure, would not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or neighbouring structures,*

and in all three cases An Bord Pleanála has overruled Dublin City Council's decisions to refuse Declarations of Exemption.

Items 1,2,3 and 5 have precedent in the cases mentioned above, and which support my view that, so trivial (*de minimis*) are these variations, that they either, do not constitute Development, or alternatively they do constitute Exempted development.

Item 4; The circumstances giving rise to the partial revision of the external wall cladding have been detailed in previous correspondence. The trivial consequence of the revision may be highlighted by the fact that the planning authority did not consider the external cladding to be so critical as to warrant any requirement that samples of the proposed external finishes be approved by the planning authority prior to construction, as would normally be the case where external finishes are considered by the Planning Authority to be of critical or even material importance to proper planning and development.

Item 6; Subject to the adequate capacity of the existing and public drainage systems, and Provided that drainage is installed correctly and in accordance with the applicable Building Regulations, it has no material effect on the character of the development, or on its appearance. The drainage has been installed in accordance with the applicable legislation.



I submit that no new, or even relevant, issue has been raised in the submission made by the Faulkners and, in view of the foregoing, I respectfully request that an Bord Pleanála declare that the subject variations are not Development, or that they are Exempted Development and do not therefore compromise completion of the development in accordance with the planning permission granted.

Yours Faithfully,


Paul P. Kelly
PAUL KELLY ARCHITECTS



