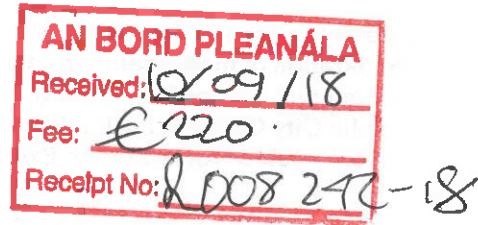




An Bórd Pleanála
64 Marlborough St,
Rotunda,
Dublin 1,
D01 V902



Date; 10 September 2018

Ref;

Re; Section 5 Declaration

5, Royal Canal Terrace, Broadstone, Dublin 7

Proposal EXPP: PROTECTED STRUCTURE: Revisions to approved granny flat as detailed: 1. Revised rooflight. 2. Revision to window in laneway elevation. 3. Revision to windows in garden elevation. 4. Revised external cladding to extension. 5. Revised extent of extension roof overlap. 6. Revision to drainage layout.

Application no.; 0280/18

Order no.; P3520

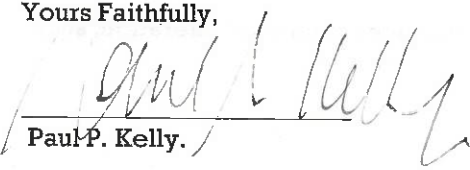
Dear Sir/Madam,

I Paul Kelly of 5 Royal Canal Terrace, Broadstone, Dublin D07 N1K6 wish to refer, for review by An Bórd Pleanála, the above Section 5 Declaration, issued by Dublin City Council on 14 August 2018 relating to certain works carried out in connection with the construction of a granny flat at the rear of my home at 5 Royal Canal terrace, Broadstone Dublin D07 N1K6,. In support of this reference I enclose the following;

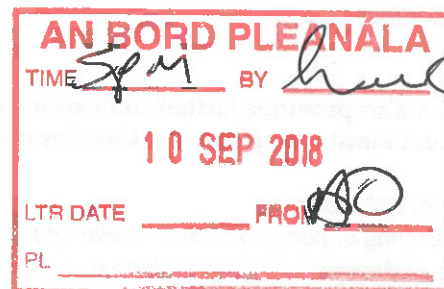
1. Copy of the original Application Form
2. Copy of the Application covering letter and Correspondence
3. Copy of the declaration issued by Dublin City Council
4. Copy of the Dublin City Council Planners report
5. Reference fee in the amount of €220
6. Grounds for Review

I will pleased to provide any further detail, or clarification, required by An Bórd Pleanála to allow the determination of its review. I will also be pleased to facilitate access to the site for any inspection required. As the site is located in a private laneway it will be necessary to arrange access by prior agreement by contacting me on 0877620507 or by email at 5rct@eircom.net.

Yours Faithfully,


Paul P. Kelly.

encls.





GROUNDS for REVIEW

INTRODUCTION

I do not propose to restate the descriptions of the subject works, or the basis on which a declaration of their exemption was sought in the first instance, as these details are adequately covered in the original application (enclosed) and, have not been disputed by Dublin City Council. I will address only the basis of Dublin City Council's Declaration that the scheduled works are not Exempted Development.

REASONS for REFUSAL

Dublin City Council's reasons for refusal of a Declaration of Exemption may be summarised as follows.

The works for which a Declaration of Exemption are sought are;

1. Development as described in the Planning and Development Act 2000
2. not Exempted Development as described in The Planning and Development Regulations 2001
3. are not 'in accordance' with the approved design as required by condition 1 of the planning permission (Reg Ref 2026/11)

GROUNDS for REVIEW

- 1 The works are Development as described in the Planning and Development Act 2000.

The overarching objective of the Planning Act is stated in the title to the Act, as being*TO PROVIDE, IN THE INTERESTS OF THE COMMON GOOD, FOR **PROPER PLANNING AND SUSTAINABLE DEVELOPMENT*** (my emphasis).....

The Act further emphasises this objective at **Section III control of development**

....(2) (a) *When making its decision in relation to an application under this section, the planning authority shall be restricted to considering the proper planning and sustainable development of the area, (my emphasis).....*

The Act refers variously to the obligation to carry out development in 'Compliance' with the planning permission and, to the enforcement provisions where development is not carried out in *Compliance*.

'Compliance' is not defined in the Act. It would therefore appear that, in order to define what is meant by 'Compliance', the purpose of the act must be the primary reference point.

The Act also provides further indication as to what constitutes significant alteration, such as would merit designation as Development at

2.1

.. "alteration" includes—

- (a) plastering or painting or the removal of plaster or stucco, or
- (b) the replacement of a door, window or roof,

that materially alters the external appearance of a structure so as to render the appearance inconsistent with the character of the structure or neighbouring structures; (my emphasis).....



The subject works by virtue of their size, trivial nature, and limited effect on their surroundings have not been carried out such that the appearance of the permitted granny flat is rendered inconsistent with the appearance of the structure or neighbouring structure.

The Act also provides guidance on Development which could be considered exempt from the planning process at

Exempted development.

4.—(1) *The following shall be exempted developments for the purposes of this 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;* (my emphasis)

(j) *development consisting of the use of any structure or other land within the curtilage of a house for any purpose incidental to the enjoyment of the house as such;*

Lastly the Act indicates a basis on which the Minister may make regulations exempting certain development from the planning process at

(2) (a) *The Minister may by regulations provide for any class of development to be exempted development for the purposes of this Act where he or she is of the opinion that—*

(i) *by reason of the size, nature or limited effect on its surroundings, of development belonging to that class, the carrying out of such development would not offend against principles of proper planning and sustainable development,* (my emphasis)

I contend that it is clear from the foregoing that development which warrants control by the planning process, either in terms of the making of an application for planning permission, or the exercise of the enforcement provisions of the Planning Act, is that which will have, or has had, a significant bearing on the proper planning and sustainable Development of the relevant area or environment. I also contend that, notwithstanding the scheduling of Exempted Development on the Planning Regulations, that Planning Act more broadly anticipates certain development *by reason of the size, nature or limited effect on its surroundings*, as being exempt from the planning process.

I also contend that it is not possible to classify the subject 'works' as being development without first defining 'Compliance' by reference to the overarching objective of the Planning Act.

I therefore maintain that the subject works by virtue of their size, trivial nature, and limited effect on their surroundings, *would not offend against principles of proper planning and sustainable development*, and cannot therefore be considered as Development

2 The works are not Exempt Development as described in The Planning and Development Regulations 2001

It is not disputed that the subject works are not specifically included in the schedules of Exempted Development provided in *The Planning and Development Regulations 2001*. However as the Regulations are subservient to the Planning Act I believe that the provisions of the Act, described at 1 above, have adequately addressed the exemption from the planning process of works which, by virtue of their size, trivial nature, and limited effect on their surroundings, *would not offend against principles of proper planning and sustainable development*. I therefore maintain that the subject works are, by reference to the Planning Act, works which by virtue of their size, trivial nature, and limited effect on their





surroundings, do not offend against principles of proper planning and sustainable development and may therefore be considered as Exempted Development.

- 3 The Works are not 'in accordance' with condition 1 of the planning permission (Reg Ref 2026/11)

The phrase in 'accordance with' used in condition 1 is not defined in the Planning Legislation or on the face of the Planning Permission. For the purpose of this reference, 'Accordance' is taken to have the same meaning as 'Compliance', referred to in previous sections. It is not disputed that the subject works represent a variation/alteration to the design for which planning permission was granted and, to which condition 1 refers. However, as stated above, the subject works, as completed, by virtue of their size, trivial nature, and limited effect on their surroundings do not offend against principles of proper planning and sustainable development. It is therefore contended that the works have been carried out in material 'accordance' with the drawings and documents of foot of which planning permission was granted.

- 4 PROTECTED STRUCTURE – viz Exempted Development

Works affecting character of protected structures or proposed protected structures.

57.—(1) F193[*Notwithstanding section 4(1)(a), (h), (i), F194[(ia)] (j), (k), or (l) and any regulations made under section 4(2),*] the carrying out of works to a protected structure, or a proposed protected structure, shall be exempted development only if those works would not materially affect the character of—

- (a) the structure, or
- (b) any element of the structure which contributes to its special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest.

The subject works are not to a Protected Structure, and are in fact entirely remote from the protected structure. No original external features (eg. Boundaries or outbuildings etc) associated with the protected structure are extant on site to the rear of the original building (The Protected Structure). The works do not materially affect the character of the protected structure or any element of the structure.

CONCLUSION

It is not evident from the planners report that the Dublin City Council's decision did consider the record and take account of similar precedent references to An Bórd Pleanála, as may be recorded on the Register referred to in Section 5 (5) of the Act. I am therefore unable to comment on the relevance or otherwise of any such precedent references and their relevance.

The enforcement provisions of the Planning Act provide that representations made under the enforcement provisions may be addressed to include the following

152.—(1) Where—

- (a) a representation in writing is made to a planning authority by any person that unauthorised development may have been, is being or may be carried out,

and it appears to the planning authority that the representation is not vexatious, frivolous or without substance or foundation, or (my emphasis)

- (b) it otherwise appears to the authority that unauthorised development may have been, is being or may be carried out, the authority shall issue a warning letter to the owner, the occupier or any other person carrying out the development and may give a copy, at that time or thereafter, to any other person who in its opinion may be concerned with the matters to which the letter relates.



(2) Notwithstanding *subsection (1)*, where the development in question is of a trivial or minor nature the planning authority may decide not to issue a warning letter. (my emphasis)

In my original application to Dublin City Council I have explained the circumstances which have given rise to this reference. I suggest that, while understandable, Dublin City Council's limited response to my application for a certificate of Exempted Development has not addressed the proper classification of the subject works, nor has it considered the objective of the Planning Legislation. The micro and rigid application of the Planning Legislation to works, which it was never intended to address, can only serve to encourage frivolous and vexatious use of the planning process and the waste of valuable Planning resources.

In view of the foregoing I respectfully request that An Bórd Pleanála review Dublin City Council's decision and grant a Certificate of Exempted Development for the subject works as sought.


Paul P. Kelly
10 September 2018



AN BORD PLEANALA
BY 10 SEP 2018
LTD DATE FROM
TIME

Planning Registry & Decisions, Planning Department
Civic Offices, Wood Quay, Dublin 8

Clárlann / Cinní Pleanála
An Roinn Pleanála agus Forbartha, Clárlann / Cinní
Oifigí na Cathrach, An Ché Adhmaid, Baile Átha Cliath 8
T: (01) 672 2149 / F: (01) 670 7861

16-Aug-2018

Paul Kelly Architects
5, Royal Canal Terrace
Broadstone
Dublin 7



Application Number	0280/18
Application Type	Section 5
Registration Date	19-Jul-2018
Decision Date	14-Aug-2018
Decision Order Number	P3520
Location	5, Royal Canal Terrace, Broadstone, Dublin 7
Proposal	EXPP: PROTECTED STRUCTURE: Revisions to approved granny flat as detailed: 1. Revised rooflight. 2. Revision to window in laneway elevation. 3. Revision to windows in garden elevation. 4. Revised external cladding to extension. 5. Revised extent of extension roof overlap. 6. Revision to drainage layout.
Applicant Details	Paul Kelly

NOTIFICATION OF DECLARATION ON DEVELOPMENT AND EXEMPTED DEVELOPMENT

In pursuance of its functions under the Planning & Development Acts 2000 - 2013, Dublin City Council has by order dated 14-Aug-2018 decided to issue a Declaration that the proposed development is NOT EXEMPT from the requirement to obtain planning permission under Section 32 of the Planning & Development Act 2000-2013.

Signed on behalf of Dublin City Council

For Assistant Chief Executive

Note:

Any person issued with a declaration on development and exempted development, may on payment of the prescribed fee, refer a declaration for review by An Bord Pleanála within four weeks of the date of the issuing of the declaration.



Dublin City Council,
Planning Enforcement,
Planning Registry Section,
Block 4 Floor 0,
Civic Offices,
Wood Quay,
Dublin 8.

Date; 17 July 2018
Ref; E0116/18
Re; Granny Flat at Rear of 5 Royal Canal Terrace, Broadstone, Dublin 7.
Section 5 Declaration Application

Dear Sir/Madam,

I enclose an application for a Section 5 Declaration on Exemption for variations to the design approved by planning permission 2026/11 for the above development. In support of this application I enclose the following;

1. Drawing PKA11-01-20 General development design approved and revised
2. Drawing PKA11-01-21 Drainage Layout approved and revised
3. Drawing PKA11-01-22 View 1 of development approved and revised
4. Drawing PKA11-01-23 View 2 of development approved and revised
5. Location map – including site boundaries
6. Covering Letter
7. Application Fee
8. Enforcement correspondence

On 13 January 2011 an application was made for planning permission for the extension, and conversion, of an existing garage at the rear of my house at 5 Royal canal terrace, for use as a granny flat.

On 4 March 2011 Dublin City Council issued notification of its decision to grant planning permission (2026/11) for the proposed granny flat

On 15 March 2011 the adjoining owners at no 6 lodged an objection to the DCC decision with An Bord Pleanala

On 14 July 2011 An Bord Pleanala (PL29N-238610) upheld the DCC decision and granted planning permission for the granny flat

On 24 March 2014 construction commenced

By early 2016 the external envelope was largely completed and the building weather-tight

By end of 2018 the granny flat is planned to be complete and occupied

The delayed commencement, and protracted completion period, were caused by personal circumstances beyond my control and which, if required, I will be pleased to detail on a confidential basis.

The variations to the approved design, for which declaration of Exempted Development is now sought, are as follows;

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



INTRODUCTION

The development comprises the extension (16.8m²) and conversion of an existing (31.5m²) garage to provide a granny flat (48.3m²) for use as accommodation ancillary to the main house. The form of the building comprises two interlocking elements, the existing curved flat roofed garage, intersecting with the mono-pitch roofed extension. The extension roof overlaps the garage roof. Emphasis is added to the individuality of these elements by the use of contrasting external finishes, render on the existing garage and, cladding on the extension.

Following receipt of the planning permission it was decided to carry out the development with a particular focus on sustainability and with the aim of achieving nZEB standards. It was also decided to self-build. Due to the limited capacity of the existing building to respond to nZEB requirements it was decided to construct the extension to the highest standards in terms of energy efficiency. A Structural Insulated Panel system (SIPs) of construction was adopted due to its energy performance and its particular suitability for the building forms of the extension. The conversion of the existing garage was approached with a view to achieving a reasonable level of energy efficiency while retaining all of the existing structure. This commitment to a sustainable and energy efficient development forced certain limitations on the construction and variations to the design were an inevitable consequence.

VARIATIONS

1 ROOFLIGHT

A large rooflight (1.8mx3.6m) was originally proposed and approved in the North facing pitch of the extension roof. This roof light was to comprise four sections two of which would open to ventilate the internal area(s) below – primarily the kitchen. It was not possible for the SIPs roof panel(s) to accommodate an ope of the size required for the roof light, nor could it be located within 100mm of the panel edge -as illustrated in drawing PKA11-01-20 (1a). As a rooflight of the extent proposed was not required and would diminish the energy efficiency of the extension it was decided to replace it with the largest available proprietary (Velux) triple glazed rooflight available (1.4mx1.34m) In order to be accommodate within the SIPs roof panel this rooflight had to be positioned higher in the roof pitch -as illustrated in drawing PKA11-01-20 (1).

This variation has reduced the extent of the rooflight, located it higher on the roof, and has not altered the roof profile, I therefore suggest that this variation has no material effect on the approved design or on the proper planning and development of the area..

2 REVISION to WINDOW –in laneway elevation.

A terrace double door type screen was proposed to the laneway wall of the dining area - as illustrated in drawing PKA11-01-20 (2). For practical reasons this was replaced with a single tilt and turn window with a side vent -as illustrated in drawing PKA11-01-20 (2a). This variation was adopted because inward opening terrace doors were not practical as they unduly restricted the use of scarce internal floor area. An outward opening door (into the laneway) could have obstructed the laneway. It was therefore decided to replace the original terrace doors with a single inward opening tilt and turn window and hopper vent.

3 REVISION to WINDOWS –in laneway elevation.

a) Glazed Door

A double terrace door, as illustrated in drawing PKA11-01-20 (3), serving the bedroom, has been reduced to a single terrace door as illustrated in drawing PKA11-01-20 (3a). An existing window ope was to be enlarged to accommodate the approved double door. However it was deemed structurally inadvisable to remove the existing window lintel to widen the ope due to the load already imposed on the existing wall panel by the cantilevered SIPs wall panel and roof over. A single door was therefore inserted in the retained and reduced existing window ope.

b) High level window

A three section high level window located in the extension overlap wall above the garage roof was originally proposed - as illustrated in drawing PKA11-01-20 2a. As this cantilevered section of SIP wall panel could not accommodate a single ope of the size proposed, the centre section of the window was omitted resulting in two individual windows as illustrated in drawing PKA11-01-20 2.

4 REVISED EXTERNAL CLADDING – to extension

Profiled zinc cladding to the extension was originally approved as illustrated in drawing PKA11-01-20 (1a,2a and 3a.) This has been replaced with Western Red Cedar shingle cladding as illustrated in



4 -continued

drawing PKA11-01-20 (1,2,and 3). The use of the originally proposed zinc cladding was reviewed, and having viewed a similar local development clad in shingles, it was decided that Western Red Cedar shingles represented a more appropriate cladding, in terms of both scale and material, for a small domestic development. While it is accepted that this represents a more significant variation than those at 1-3 above I am of the view that given the fact that the development is remote from the public realm and from the protected structure, and the modest scale of the extension, it does not represent a significant material variation to the approved design nor does it have any deleterious effect on the proper planning and development of the area.

5 REVISION of EXTENSION ROOF OVERLAP

It was intended that the extension overlap roof gable (Western), above the existing garage roof, would occur directly above the separating wall between the kitchen and dining area and the bedroom and shower room, as would be structurally logical. However, due to a drafting error, the roof was illustrated as extending over the dining area, with no structural support below as illustrated in drawing PKA11-01-20 (1a,2a and 3a.) drawing PKA11-01-22 (View 1a.) and PKA11-01-23 (View 1a.). Extending the roof as illustrated contributed nothing to the accommodation and served only to complicate the structure and roof drainage. This error was belatedly identified when preparing the shop drawings for the SIPs panels. The panels were constructed as intended, but at variance with the approved design, as illustrated in drawing PKA11-01-20 (1,2 and 3.) drawing PKA11-01-22 (View 1.) and PKA11-01-23 (View 1.) As in the case of the cladding variation at 4 above, it is accepted that this represents a more significant variation than those at 1-3 above. However I am again of the view that, given the fact that the development is remote from the public realm and from the protected structure, and the modest scale of the extension, it does not represent a significant material variation to the approved design, nor does it have any deleterious effect on the proper planning and development of the area.

6 REVISED DRAINAGE LAYOUT

Subsequent to the receipt of planning permission for the Granny Flat I became one of the owners of the laneway serving the houses on Royal Canal Terrace. As a result I was in a position to route the drain serving the granny beneath the un-trafficked Northern margin of the Laneway and to make a connection to the existing main house drainage thereby obviating the destruction of the existing garage concrete floor slab, damage to the house garden and the construction of a new connection to the existing clay common drain serving all the houses. The connection of the granny flat to the common drainage system via the existing main house drainage system is consistent with general requirement that granny flats are not serviced other than via the main house services. The drainage installation was carried out in accordance with Dublin City Council planning department requirements as stipulated in Condition 5 of the Planning Permission granted by An Bord Pleanala. The approved and constructed drainage layouts are illustrated in drawing PKA11-01-21.

PROTECTED STRUCTURE

While the development is located within the curtilage of a protected structure, it is remote from the protected structure itself. This has been accepted in both the planning permission and planning appeal processes. The works in general, and in particular those which are the subject of this application, do not impact on the protected structure or on any original historic fabric or elements of the protected structure and its site e.g. boundary walls. For that reason no method statement nor assessment of the impact of the works is provided for the works which are the subject of this application.

CONCLUSION

Both Dublin City Council and An Bord Pleanala have recognised the modest scale of this development and its situation in a private garden and private laneway further minimises its impact on the surrounding environment. The variations to the approved design, as detailed above, were carried out in good faith and, in the belief, based on my professional judgment and experience, that the variations were trivial modifications of a modest development and did not represent a material alteration of the approved design that could be considered so significant as to represent a material contravention of the planning permission granted, nor any threat to the proper planning and development of the area. In view of the foregoing I respectfully request that a declaration of exemption is granted to cover all of the items detailed above.

It is also my belief that, had the variations carried out been incorporated in the original design the decisions of Dublin City Council and An Bord Pleanala to Grant planning Permission for the development, would not have been altered as a result.



I will be pleased to provide any further detail and to facilitate any inspection, of the development that may be required to allow the determination of this application. Given that there is no public access to the site it will be necessary carry out any inspection by prior arrangement and I can be contacted by email (5rct@eircom.net) or by phone (0877620507) to make the appropriate arrangements.

Yours Sincerely,

Paul P. Kelly





Comhairle Cathrach
Bhaile Átha Cliath
Dublin City Council

Feidhmiú Pleanála
An Roinn Pleanála & Forbairt Maoine,
Bloc 4, Ulár 2, Oifigí na Cathrach, An Ché Adhmaid, Baile Átha Cliath 8

Planning Enforcement,
Planning & Property Development Department,
Block 4, Floor 2, Civic Offices
Wood Quay, Dublin 8
T. 01 222 2147 E. planningenforcement@dublincity.ie

The Owner(S),
Rear of 5, Royal Canal Terrace,
Broadstone,
Dublin 7

21st February 2018

Warning Letter under Section 152 of the Planning and Development Acts 2000-2016

Re: Rear of 5, Royal Canal Terrace, Broadstone, Dublin 7

Dear Sir/Madam,

It has come to the attention of Dublin City Council, the Planning Authority, that unauthorised development may have been, is being or may be carried out at the above premises.

It is alleged that the development constructed at Rear of 5 Royal Canal Terrace, Broadstone, Dublin 7 has not been built in accordance with Condition 1 of Planning Register Reference 2026/11 granted by An Bord Pleanála on 14th July 2011.

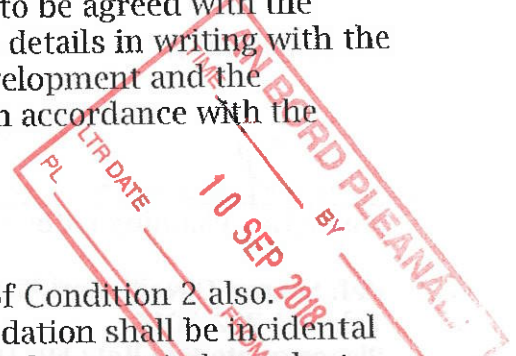
Condition 1 states "1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars."

Reason: In the interest of clarity."

It is further alleged that there has been a breach of Condition 2 also. Condition 2 states "The ancillary family accommodation shall be incidental to the use of the main house. It shall not be sold or let as an independent living unit. Once the accommodation is no longer required for ancillary accommodation purposes, it shall revert back to the being part of the original family house in accordance with the submitted Reversion Floor Plan shown in Drawing Number PKA0111-3 submitted to the planning authority on the 13th January, 2011."

Ceannoifig, Oifigí na Cathrach, An Ché Adhmaid, Bhaile Átha Cliath 8, Éire
Head Office, Civic Offices, Wood Quay, Dublin 8, Ireland

T. 01 222 2222 W. www.dublincity.ie



Please note that this matter is under investigation by the Planning Enforcement Section of Dublin City Council.

You may make submissions or observations in writing to Dublin City Council [Planning Enforcement Section, Planning Department] in this regard not later than four weeks from the date of service of this warning letter.

When a Planning Authority considers that unauthorised development has been, is being or may be carried out, an Enforcement Notice pursuant to Section 154 of the Planning and Development Acts 2000 - 2016 may issue.

Please note that officials of Dublin City Council may at all reasonable times enter on the land described above for the purposes of inspection.

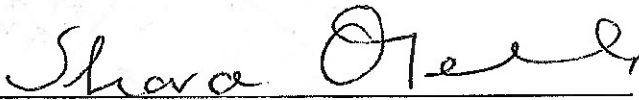
Section 151 of the Planning and Development Acts 2000 - 2016 provides that any person who has carried out or is carrying out unauthorised development shall be guilty of an offence. Section 154 of the Planning and Development Acts 2000 - 2016 provides that any person on whom an enforcement notice is served who fails to comply with the requirements of the notice within the specified period or within such extended time as the planning authority may allow, not exceeding 6 months, shall be guilty of an offence. A person who is guilty of an offence under section 151 and/or 154 shall be liable to a fine or term of imprisonment or both.

Section 156 of the Planning and Development Act detailing the penalty provisions are set out in full in the Schedule to this letter.

Any costs reasonably incurred by Dublin City Council in relation to Enforcement Proceedings may be recovered from a person on whom an Enforcement Notice is served or where court action is taken.

If you require any further information please contact Mr Michael O'Connor, Planning Enforcement Officer at 222 3116.

Yours faithfully,


For Acting Planning Enforcement Manager

Ref: Sharon O'Neill/Karl McGovern
Tel.: 01 222 3010
Please quote File Ref.: E0116/18
Email: planningenforcement@dublincity.ie

SCHEDULE

SECTION 156 PLANNING AND DEVELOPMENT ACTS 2000 - 2016

- 156 (1) A person who is guilty of an offence under sections 58(4), offences. 63, 151, 154, 205, 230(3), 239 and 247 shall be liable—
- (a) on conviction on indictment, to a fine not exceeding €12,697,380, or to imprisonment for a term not exceeding 2 years, or to both, or
- (b) on summary conviction, to a fine not exceeding €5,000 or to imprisonment for a term not exceeding 6 months, or to both.

(2) Where a person is convicted of an offence referred to in subsection (1) and there is a continuation by him or her of the offence after his or her conviction, he or she shall be guilty of a further offence on every day on which the contravention continues and for each such offence shall be liable—

- (a) on conviction on indictment, to a fine not exceeding €12,700 for each day on which the offence is so continued, or to imprisonment for a term not exceeding 2 years, or to both, provided that if a person is convicted in the same proceedings of 2 or more such further offences the aggregate term of imprisonment to which he or she shall be liable shall not exceed 2 years, or
- (b) on summary conviction, to a fine not exceeding €1,500 for each day on which the offence is so continued or to imprisonment for a term not exceeding 6 months, or to both, provided that if a person is convicted in the same proceedings of 2 or more such further offences the aggregate term of imprisonment to which he or she shall be liable shall not exceed 6 months.

(3) Where a person is convicted of an offence referred to in subsection (1) involving the construction of an unauthorised structure, the minimum fine shall be —

- (a) on conviction on indictment, the estimated cost of the construction of the structure or €12,700 whichever is less, or
- (b) on summary conviction, the estimated cost of the construction of the structure or €2,500, whichever is less,

except where the person convicted can show to the court's satisfaction that he or she does not have the necessary financial means to pay the minimum fine.

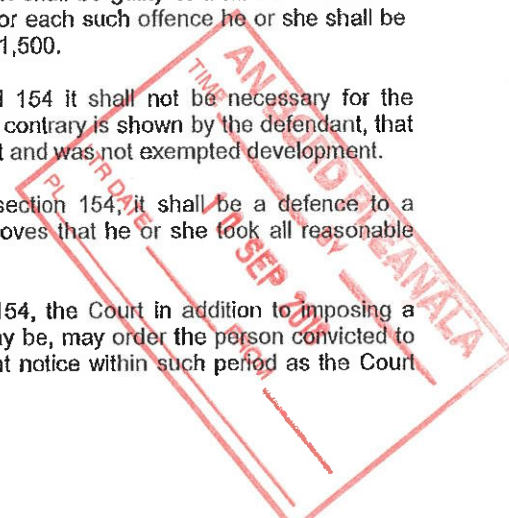
(4) Any person who is guilty of an offence under this Act other than an offence referred to in subsection (1) (or a further offence under subsection (2)) shall be liable, on summary conviction, to a fine not exceeding €5,000 or, at the discretion of the court, to imprisonment for a term not exceeding 6 months or to both.

(5) If the contravention in respect of which a person is convicted under section 46(11), 208(2)(b) or 252(9) is continued after the conviction, that person shall be guilty of a further offence on every day on which the contravention continues and for each such offence he or she shall be liable on summary conviction to a fine not exceeding €1,500.

(6) In a prosecution for an offence under sections 151 and 154 it shall not be necessary for the prosecution to show, and it shall be assumed until the contrary is shown by the defendant, that the subject matter of the prosecution was development and was not exempted development.

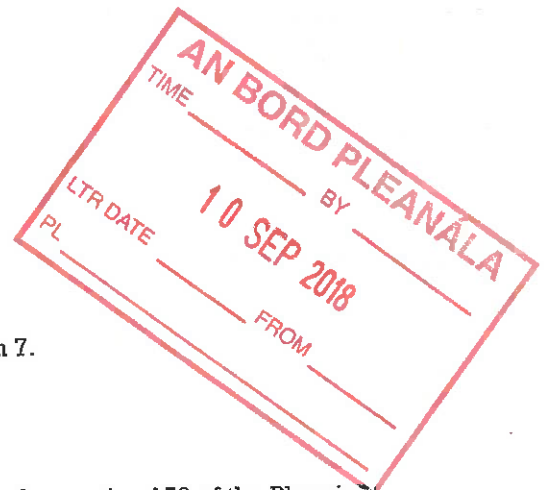
(7) Where an enforcement notice has been served under section 154, it shall be a defence to a prosecution under section 151 or 154 if the defendant proves that he or she took all reasonable steps to secure compliance with the enforcement notice.

(8) Where a person convicted of an offence under section 154, the Court in addition to imposing a penalty referred to in subsection (1) or (2) as the case may be, may order the person convicted to take all or any steps specified in the relevant enforcement notice within such period as the Court considers appropriate.





Mr. Michael O'Connor
Planning Enforcement Officer
Dublin City Council
Planning Enforcement
Planning and Property Development Department,
Block 4 Floor 2. Civic Offices,
Wood Quay,
Dublin 8



Date; 1 March 2018
Ref; E0116/18
Re; Rear of 5 Royal Canal Terrace, Broadstone, Dublin 7.

Dear Mr. O'Connor,

I am in receipt of four copies of a warning letter, issued under section 152 of the Planning and Development Acts 2000-2016, dated 21 February 2018, alleging the unauthorised development of my above property. Given that I am unaware of the details of the allegation(s) made I can only reply in the following general terms. However, on receipt of the full allegation(s) made, I will be pleased to address them in the appropriate detail.

Allegation 1; *That the development at the rear of 5 Royal canal Terrace, Broadstone, Dublin 7 has not been built in accordance with Condition 1 of Planning Register reference 2026/11 granted by An Bórd Pleanála on 14 July 2011.*

I confirm that that the development is substantially complete, has been, and any outstanding development, will be, completed in substantial compliance with the permission granted. If there is any difference between the completed development and that permitted it is not so substantial as to represent either, a material contravention of the planning permission, or the improper planning and development of the area.

Allegation 2;

That there has been a breach of Condition 2 which states that, the ancillary family accommodation shall be incidental to the use of the main house. It shall not be sold or let as an independent living unit. Once the accommodation is no longer required for ancillary accommodation purposes it shall revert back to being part of the original family house in accordance with the submitted reversion floor plan shown in drawing PKA0111-3 submitted to the planning authority on 13 January 2011.

I confirm that;

- a) The ancillary family accommodation is for and is incidental to the use of the main house.
- b) The ancillary family accommodation has not been sold or let independently
- c) The accommodation remains required for ancillary accommodation purposes.



I trust that it is clear from the foregoing that there is no evidence that any unauthorised development has been carried out, nor any evidence of intention to carry out any unauthorised development, at the above property. As there is no evident basis for the allegations reported to Dublin City Council I am of the opinion that the report made to Dublin City Council represents an abuse of the planning process for personal vexatious purposes, and I respectfully request that these baseless allegations are disregarded.

I will be pleased to provide any further details or clarification required by Dublin City Council, and to facilitate any inspection of the Development it may require to carry out. I may be contacted to make the necessary arrangements on 0877620507.

Yours Sincerely,

Paul P. Kelly

**paul kelly
architects**

5 ROYAL CANAL TERRACE
BROADSTONE
DUBLIN 7
IRELAND
Telephone 00 353 (0)877620507
eMail pkarch@eircom.net



Mr Michael O'Connor,
Planning Enforcement Officer,
Dublin City Council,
Planning Enforcement,
Planning and Property Development Department,
Block 4 Floor 2. Civic Offices,
Wood Quay,
Dublin 8.

Date; 30 June 2018
Ref; E0116/18
Re; Rear of 5 Royal Canal Terrace, Broadstone, Dublin 7.

Dear Mr O'Connor,

On 26 February I received a *Warning Letter*, as described at Section 152(1) of the Planning Act 2000 (consolidated), and dated 21 February 2018. This warning letter referred to an allegation that unauthorised development was being carried out at 5 Royal Canal Terrace, Broadstone, Dublin 7. The reported allegation was general in nature and referred only, in unspecific terms, to breaches of conditions 1 and 2 of planning permission ref 2026/11 under the terms of which I am permitted to, and am constructing, a 'granny flat' at the rear of my home.

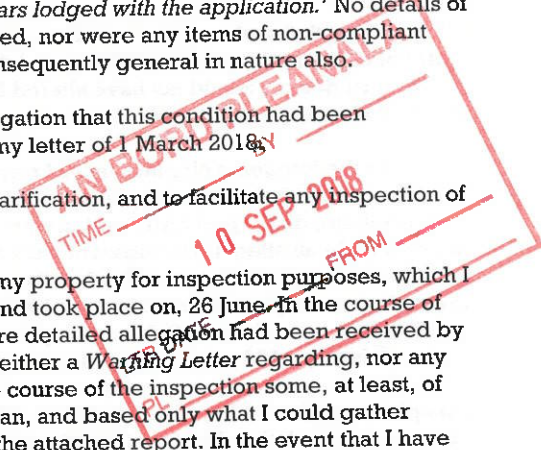
I promptly responded to this *Warning Letter* by letter addressed to Planning Enforcement Dublin City Council dated 1 March 2018, and this was confirmed as received on 5 March. In my letter I comprehensively rebutted the general allegations made.

The requirement of condition 1 is broad, requiring generally that 'construction is to be completed in compliance with the in accordance with the plans and particulars lodged with the application.' No details of the basis of the alleged breach of this condition were provided, nor were any items of non-compliant construction identified. My rebuttal of this allegation was consequently general in nature also.

The requirement of condition 2 is more specific, and the allegation that this condition had been breached was comprehensively, and precisely rebutted in my letter of 1 March 2018.

In my letter I also offered to provide any further details or clarification, and to facilitate any inspection of the works, required by Dublin City Council.

On 18 June I received your telephone request for access to my property for inspection purposes, which I was pleased to facilitate. The inspection was arranged for, and took place on, 26 June. In the course of this inspection it became apparent to me that a new and more detailed allegation had been received by Dublin City Council Enforcement Section. I have received neither a *Warning Letter* regarding, nor any details of, the latest allegation(s) now made. However in the course of the inspection some, at least, of the allegations became evident in more detail. Insofar as I can, and based only what I could gather during your site visit, I now respond to those allegations in the attached report. In the event that I have not adequately addressed any of the allegations now being made I will be pleased to do so on receipt of the necessary details of those allegation(s).





The general requirement of Condition 1 is that the construction be completed in accordance with the plans and particulars lodged. The construction is not complete. Nor is there anything to prevent the construction being carried out so that it will be completed as required by Condition 1. As I have stated in my previous letter, the construction, when completed, will be in accordance with the plans and particulars lodged, notwithstanding the possibility that further plans and documents may be lodged to demonstrate, or confirm, compliance, with the requirements of the Planning Acts.

As will be evident from the attached report, it is my professional view that any perceived variation of the construction from the *plans and particulars lodged* is trivial or minor, and has no material effect whatsoever on the proper planning and development of the immediate area, nor any deleterious impact on the adjoining property(s). I realise that my foregoing view can be challenged as subjective, and I therefore propose to make a Section 5 Application to Dublin City Council seeking confirmation from the planning authority of the accuracy, or otherwise, of my view.

In the event that Dublin City Council Planning Department rejects any part of my application for a declaration of exemption, I will then make a planning application seeking permission for retention of any alteration to the approved plans not deemed to be exempt.

In the event that it is ultimately ruled that any variation, for which I have sought planning permission, is contrary to the proper planning and development of the area, and is therefore refused planning permission, I will then make the necessary alterations to the works, whether complete, or in hand, sufficient to ensure compliance with the requirements of the planning permission.

When converting an existing building, compromise to take account of unforeseeable, or changing, circumstances, such as those necessary to ensure the maintenance of the structural integrity of the existing building, is unavoidable. Where such compromise is so significant as to necessitate substantial redesign, then construction work may have to cease while a new planning permission is sought. In 40 years of practice this has never been necessary on a project of mine. There is no doubt that some minor or trivial variation to the detail design of my granny flat has been necessary, or has been chosen, in its construction. It has always been my intention to establish whether any need arose for formal planning permission, from any such variation, and to apply for it if required, and as is now proposed, following the completion of the construction works.

The requirement of Condition 2 relates to the use of the granny flat. The granny flat is not yet in use. However, when completed, it will be used solely as *ancillary family accommodation* exactly as permitted by the planning permission.

The reality is that such variations to the original design as have been made are so trivial as to have no material effect on the proper planning and development of the area and, had they been incorporated in the original design, would not have altered Dublin City Council's decision to grant, or An Bórd Pleanála grant, of Planning Permission.

In view of the foregoing circumstances I respectfully suggest that any issue of enforcement proceedings in connection with this development, insofar as it is complete now, would, at this stage, be entirely inappropriate, disproportionate and premature, given that I have had no opportunity to consider, or address in detail allegations apparently made, that works are still in hand, that the premises has not yet even been occupied, and given further the minor and trivial nature of any actual variation. In the event that enforcement proceedings do issue I will, very regrettably, be forced into a legal process which I can ill afford, and which I will have to vigorously challenge, and attempt to recover my costs, including those arising should I again be prevented from completing my construction works.

Completion of the works, and occupation of the building, is anticipated to take place before the end of the year by which time I expect that all matters can be resolved as I have proposed.

Yours Sincerely,

Paul P. Kelly



Date: 30 June 2018
Ref: E0116/18
Re: Rear of 8 Royal Canal Terrace, Broadstone, Dublin 7.

PRELIMINARY REPORT on ALLEGED CONTRAVENTION of PLANNING PERMISSION E2026/11

1. Cedar Shingles in lieu of Zinc Cladding

In the original design it was proposed to clad part of the new extension to the existing garage building with zinc sheeting. Having subsequently viewed a similar local development, in which the new extension was clad in Western Red Cedar Shingle, I formed the view that this cladding was more appropriate, being more domestic in nature and scale and 'softer' in appearance. I do not consider that, given the scale of my development, and its location in a private laneway, this change in the cladding material has any material effect on the proper planning and development of the immediate area, or on the adjoining property(s). I therefore believed it to be exempt from any requirement to make a planning application. I did however notify the complainants of what I proposed, and provided them with an accurate photographic image of the proposed cladding by email on 14 June 2016. Until now no objection was raised by them to the revised cladding, which proceeded shortly afterwards.

ACTION PROPOSED: A Section 5 application seeking a declaration that this variation is exempt from any requirement to obtain planning permission will be made immediately. In the event that a declaration of exemption is not forthcoming, planning permission for retention of the variation to the approved design will be sought. Should the variation ultimately be deemed contrary to the proper planning and development of the area, and therefore planning permission refused, then the shingles will be removed and replaced with the appropriate cladding.

2. Development dimensions do not correspond with that permitted

The granny flat has been constructed in accordance with the dimensions of the permitted development
ACTION PROPOSED: None necessary

3. Single 'Velux' roof light in lieu of four section roof light permitted

A four pane roof light located just above the extension roof eave level was permitted in the original design. This roof light was intended to have two opening sections to ventilate the internal kitchen below. The total area of the permitted roof light is 6.48m² (3.6m wide by 1.8m high). The SIPs structure could not accommodate an ope of the size permitted, and the roof light was consequently reduced in size to a single roof light of 1.876m² in area (1.34m wide and 1.4m high). The roof light was repositioned 1m (800mm higher) above the roof eave.

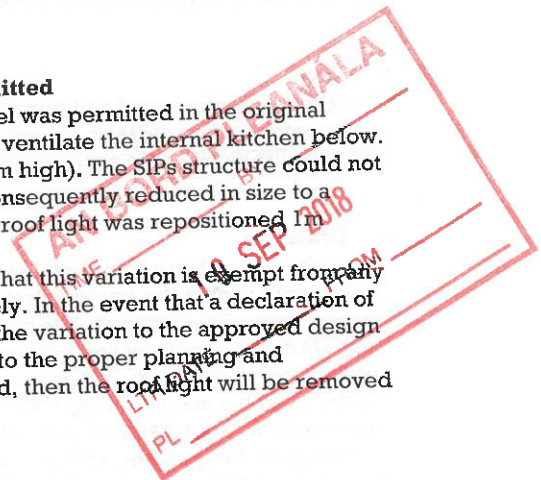
ACTION PROPOSED: A Section 5 application seeking a declaration that this variation is exempt from any requirement to obtain planning permission will be made immediately. In the event that a declaration of exemption is not forthcoming, planning permission for retention of the variation to the approved design will be sought. Should the variation ultimately be deemed contrary to the proper planning and development of the area, and therefore planning permission refused, then the roof light will be removed and replaced with the appropriate alternative.

4. Solid Fuel Stove flue

The flue to the stove used to heat the granny flat is Exempted Development as described in Schedule 2 Part 1

Class 2 (a) the provision as part of a heating system of a house, of a chimney or flue, boiler house or fuel storage tank or structure.

ACTION PROPOSED: None necessary





5. Extra window to lane way

There is no extra window in the laneway.

The permitted screen comprising a pair of glazed doors has been reconfigured to a screen comprising a single window with a high level hopper/vent window beside.

ACTION PROPOSED: A Section 5 application seeking a declaration that this variation is exempt from any requirement to obtain planning permission will be made immediately. In the event that a declaration of exemption is not forthcoming planning permission for retention of the variation to the approved design will be sought. Should the variation ultimately be deemed contrary to the proper planning and development of the area, and therefore planning permission refused, then the shingles will be removed and replaced with the appropriate alternative.

6. Door Opens into lane-way

There is no door located in the laneway.

I can only presume that this complaint refers to the above mentioned window which opens into the building and not into the laneway

ACTION PROPOSED: No action -see 5 above

7. Construction debris

Construction waste is an unavoidable consequence of construction, however in my development every measure has been taken to minimise waste for disposal. All timber waste has been de-nailed, bagged and stored on site for reuse. Excavation spoil has been sorted into topsoil, subsoil, and aggregate. Top soil has either been reused, or retained for use in my garden, some has been provided for garden use to third parties, and the remainder has been disposed of via a licensed waste contractor. Subsoil where suitable has been partially used to backfill excavations with the balance disposed of via a licensed waste contractor. A small amount of large aggregate has been retained on site for possible use in a small soak pit, the remainder has been disposed of via a licensed waste contractor. Original Luke Stone Paving has been salvaged and retained on site for reuse. Glass and metal has been sorted from the waste and deposited at the local recycling centre. Surplus waste is cleared from the site regularly as soon as there is a full skip load. Waste for disposal is stored on the site itself, including my laneway. Care is taken to avoid obstruction of rights of way to pass and re-pass over the laneway. No complaints have been received from my neighbours who, with a single exception, have been very understanding and helpful.

ACTION PROPOSED: No action necessary

8. Use

The proposed use is, and will remain, exactly that permitted by An Bórd Pleanála '*ancillary family accommodation incidental to the use of the house.*'

ACTION PROPOSED: No action necessary

9. Drainage

All drainage has been completed in accordance with the Dublin City Council code of practice. The opportunity to vary the original drainage layout, to achieve a more sustainable design, arose following my purchase of the laneway. The revised layout is essentially as originally proposed, but with drain runs relocated in the un-trafficked edge of my laneway and connecting to the main private drain via the existing house drainage. By this means it was possible to obviate, damage to the existing floor slab and garden, and the need for a separate and new connection to the original clay pipe drain. Rainwater is harvested. All external ground finishes will be fully or semi permeable and no ground water will discharge to the drainage system. Existing discharge of rainwater to the system will be further reduced by rainwater harvesting measures proposed for the main house.

All drains are located within the boundaries of lands owned by me. I will provide a letter from the solicitor responsible for the conveyance of the laneway confirming my ownership if required.

ACTION PROPOSED: No action necessary

10. Radiused arris to party wall

The (approx. 60mm radius) rounded arris to the party wall render will be reinstated when the final rendering of the wall is completed.

ACTION PROPOSED: Reinstatate render arris



11. Metal Wall Cladding

As a direct consequence of the complainant's refusal of access to their property in order for me to complete the cladding of that section of my wall which is visible above the boundary wall, it has had to be clad in profiled metal sheet cladding. As a consequence of being denied working access, the only way to apply cladding to that section of my wall was by working suspended above ground in a safety harness. As a result the type of weathering which could be fixed was very limited. With some assistance provided from my roof, and with considerable difficulty, I was able to weather the section of wall with the profiled metal cladding. I would of course prefer to have clad the wall to match the building but, due to the circumstances created by the complainants, this was not possible and this remains the case.

ACTION PROPOSED: Subject to adequate access being permitted in order to fix it, I will be pleased to replace the metal cladding, with render, as originally proposed, or with cedar shingles, subject to 1. above. In the event that the complainants will not agree access other than on foot of court proceedings then I will not be in a position to replace the cladding as I do not have the resources available to engage in legal proceedings. A Section 5 application seeking a declaration that this variation is exempt from any requirement to obtain planning permission will be made immediately. In the event that a declaration of exemption is not forthcoming planning permission for retention of the variation to the approved design will be sought. Should the variation ultimately be deemed contrary to the proper planning and development of the area, and therefore planning permission refused, then the metal cladding will be removed and replaced with the appropriate alternative.

12. Gutter above boundary wall

It was intended to construct a concealed/integrated gutter at the eave abutting the party wall however this was impossible to construct without adequate access from the adjoining property at no 6 which is refused. I therefore, as an emergency measure, installed a standard pvc gutter and downpipe. In a letter to the complainants' solicitor dated 17 July 2017, regarding their attack on my building, I made the complainants aware of the intended emergency works. As far as I am aware both the gutter and rainwater pipe are located on my side of the boundary, and discharge into my rainwater storage tank. In the event that any part of the gutter over sails the adjoining property it is minimal, and a civil matter which can be readily addressed by repositioning the gutter.

ACTION PROPOSED: Subject to access being permitted in order to fix it, the existing temporary gutter necessitated by the complainants refusal of access, can be repositioned, or replaced.

CONTEXT

I fully appreciate that Dublin City Council must limit its consideration of any allegation, regarding contravention of the planning legislation, by reference to that legislation alone. However, in this case, I think that context has some relevance in deciding whether the allegations made are genuine or vexatious. Since the making of the planning application for this development, the complainants have embarked on a campaign to prevent, or obstruct, the construction of the granny flat. Far from accepting the entirely appropriate, and considered, decision by Dublin City Council to Grant planning permission for this modest and much needed development, they sought to have An Bórd Pleanála overturn that decision, as was admittedly their right. An Bórd Pleanála having comprehensively endorsed Dublin City Council's decision, they then embarked on a campaign to obstruct the construction. To date this has included, physical, verbal and written harassments, refusal of access for construction, removal of temporary support for construction from the party wall and a physical attack on the building itself which resulted in damage to the metal cladding and support substructure referred to above. The complainants do not live at 6 Royal Canal Terrace, the basement of which is tenanted, however one or both visit the property on an average monthly basis. The complainants engaged in a similar campaign against permitted development at no 7 Royal Canal Terrace which I believe culminated in Court proceedings. Mine and my family's experience in attempting to construct our granny flat has been deeply and needlessly upsetting, and at times frightening, as a result of the behaviour of the complainants, such that we have had to consult the Gardaí on the matter. The attack on, and damage to, the wall of our building may yet be the subject of a legal action for the recovery of the cost of repairs. The complainants having, by their actions, thwarted our attempt to provide a home, and care for my late mother, which resulted in her being placed in residential care where she passed away before we could complete the granny flat, are now, it would appear, attempting to override the decisions of Dublin City Council and An Bórd Pleanála to grant planning permission for the construction of the Granny Flat. In my view the complainants are abusing the planning process, and exploiting Dublin City Council for inexplicable personal and vexatious purposes.

Despite my concern regarding the enforcement process, I very much welcome Dublin City Council's intervention, in this matter and hope perhaps that it may succeed in bringing the matter to a close, and to that end, I will be pleased to provide any further cooperation and assistance required.



Mr Michael O'Connor,
Planning Enforcement Officer,
Dublin City Council,
Planning Enforcement,
Planning and Property Development Department,
Block 4 Floor 2. Civic Offices,
Wood Quay,
Dublin 8.

Date; 30 June 2018
Ref; E0116/18
Re; Rear of 5 Royal Canal Terrace, Broadstone, Dublin 7.

Dear Mr O'Connor,

On 26 February I received a *Warning Letter*, as described at Section 152(1) of the Planning Act 2000 (consolidated), and dated 21 February 2018. This warning letter referred to an allegation that unauthorised development was being carried out at 5 Royal Canal Terrace, Broadstone, Dublin 7. The reported allegation was general in nature and referred only, in unspecific terms, to breaches of conditions 1 and 2 of planning permission ref 2026/11 under the terms of which I am permitted to, and am constructing, a 'granny flat' at the rear of my home.

I promptly responded to this *Warning Letter* by letter addressed to Planning Enforcement Dublin City Council dated 1 March 2018, and this was confirmed as received on 5 March. In my letter I comprehensively rebutted the general allegations made.

The requirement of condition 1 is broad, requiring generally that 'construction is to be completed in compliance with the in accordance with the plans and particulars lodged with the application.' No details of the basis of the alleged breach of this condition were provided, nor were any items of non-compliant construction identified. My rebuttal of this allegation was consequently general in nature also.

The requirement of condition 2 is more specific, and the allegation that this condition had been breached was comprehensively, and precisely rebutted in my letter of 1 March 2018.

In my letter I also offered to provide any further details or clarification, and to facilitate any inspection of the works, required by Dublin City Council.

On 18 June I received your telephone request for access to my property for inspection purposes, which I was pleased to facilitate. The inspection was arranged for, and took place on, 26 June. In the course of this inspection it became apparent to me that a new and more detailed allegation had been received by Dublin City Council Enforcement Section. I have received neither a *Warning Letter* regarding, nor any details of, the latest allegation(s) now made. However in the course of the inspection some, at least, of the allegations became evident in more detail. Insofar as I can, and based only what I could gather during your site visit, I now respond to those allegations in the attached report. In the event that I have not adequately addressed any of the allegations now being made I will be pleased to do so on receipt of the necessary details of those allegation(s).



The general requirement of Condition 1 is that the construction be completed in accordance with the plans and particulars lodged. The construction is not complete. Nor is there anything to prevent the construction being carried out so that it will be completed as required by Condition 1. As I have stated in my previous letter, the construction, when completed, will be in accordance with the plans and particulars lodged, notwithstanding the possibility that further plans and documents may be lodged to demonstrate, or confirm, compliance, with the requirements of the Planning Acts.

As will be evident from the attached report, it is my professional view that any perceived variation of the construction from the *plans and particulars lodged* is trivial or minor, and has no material effect whatsoever on the proper planning and development of the immediate area, nor any deleterious impact on the adjoining property(s). I realise that my foregoing view can be challenged as subjective, and I therefore propose to make a Section 5 Application to Dublin City Council seeking confirmation from the planning authority of the accuracy, or otherwise, of my view.

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In the event that it is ultimately ruled that any variation, for which I have sought planning permission, is contrary to the proper planning and development of the area, and is therefore refused planning permission, I will then make the necessary alterations to the works, whether complete, or in hand, sufficient to ensure compliance with the requirements of the planning permission.

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The requirement of Condition 2 relates to the use of the granny flat. The granny flat is not yet in use. However, when completed, it will be used solely as *ancillary family accommodation* exactly as permitted by the planning permission.

The reality is that such variations to the original design as have been made are so trivial as to have no material effect on the proper planning and development of the area and, had they been incorporated in the original design, would not have altered Dublin City Council's decision to grant, or An Bórd Pleanála grant, of Planning Permission

In view of the foregoing circumstances I respectfully suggest that any issue of enforcement proceedings in connection with this development, insofar as it is complete now, would, at this stage, be entirely inappropriate, disproportionate and premature, given that I have had no opportunity to consider, or address in detail allegations apparently made, that works are still in hand, that the premises has not yet even been occupied, and given further the minor and trivial nature of any actual variation. In the event that enforcement proceedings do issue I will, very regrettably, be forced into a legal process which I can ill afford, and which I will have to vigorously challenge, and attempt to recover my costs, including those arising should I again be prevented from completing my construction works.

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Yours Sincerely,

Paul P. Kelly



Date; 30 June 2018
Ref; E0116/18
Re; Rear of 5 Royal Canal Terrace, Broadstone, Dublin 7.

PRELIMINARY REPORT on ALLEGED CONTRAVENTION of PLANNING PERMISSION E2026/11

1. Cedar Shingles in lieu of Zinc Cladding

In the original design it was proposed to clad part of the new extension to the existing garage building with zinc sheeting. Having subsequently viewed a similar local development, in which the new extension was clad in Western Red Cedar Shingle, I formed the view that this cladding was more appropriate, being more domestic in nature and scale and 'softer' in appearance. I do not consider that, given the scale of my development, and its location in a private laneway, this change in the cladding material has any material effect on the proper planning and development of the immediate area, or on the adjoining property(s). I therefore believed it to be exempt from any requirement to make a planning application. I did however notify the complainants of what I proposed, and provided them with an accurate photographic image of the proposed cladding by email on 14 June 2016. Until now no objection was raised by them to the revised cladding, which proceeded shortly afterwards.

ACTION PROPOSED: A Section 5 application seeking a declaration that this variation is exempt from any requirement to obtain planning permission will be made immediately. In the event that a declaration of exemption is not forthcoming, planning permission for retention of the variation to the approved design will be sought. Should the variation ultimately be deemed contrary to the proper planning and development of the area, and therefore planning permission refused, then the shingles will be removed and replaced with the appropriate cladding.

2. Development dimensions do not correspond with that permitted

The granny flat has been constructed in accordance with the dimensions of the permitted development
ACTION PROPOSED: None necessary

3. Single 'Velux' roof light in lieu of four section roof light permitted

A four pane roof light located just above the extension roof eave level was permitted in the original design. This roof light was intended to have two opening sections to ventilate the internal kitchen below. The total area of the permitted roof light is 6.48m² (3.6m wide by 1.8m high). The SIPs structure could not accommodate an ope of the size permitted, and the roof light was consequently reduced in size to a single roof light of 1.876m² in area (1.34m wide and 1.4m high). The roof light was repositioned 1m (800mm higher) above the roof eave.

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Class 2 (a) the provision as part of a heating system of a house, of a chimney or flue, boiler house or fuel storage tank or structure.

ACTION PROPOSED: None necessary



5. Extra window to lane way

There is no extra window in the laneway.

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6. Door Opens into lane-way

There is no door located in the laneway.

I can only presume that this complaint refers to the above mentioned window which opens into the building and not into the laneway

ACTION PROPOSED: No action -see 5 above

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ACTION PROPOSED: No action necessary

8. Use

The proposed use is, and will remain, exactly that permitted by An Bord Pleanála '*ancillary family accommodation incidental to the use of the house.*'

ACTION PROPOSED: No action necessary

9. Drainage

All drainage has been completed in accordance with the Dublin City Council code of practice. The opportunity to vary the original drainage layout, to achieve a more sustainable design, arose following my purchase of the laneway. The revised layout is essentially as originally proposed, but with drain runs relocated in the un-trafficked edge of my laneway and connecting to the main private drain via the existing house drainage. By this means it was possible to obviate, damage to the existing floor slab and garden, and the need for a separate and new connection to the original clay pipe drain. Rainwater is harvested. All external ground finishes will be fully or semi permeable and no ground water will discharge to the drainage system. Existing discharge of rainwater to the system will be further reduced by rainwater harvesting measures proposed for the main house.

All drains are located within the boundaries of lands owned by me. I will provide a letter from the solicitor responsible for the conveyance of the laneway confirming my ownership if required.

ACTION PROPOSED: No action necessary

10. Radiused arris to party wall

The (approx. 60mm radius) rounded arris to the party wall render will be reinstated when the final rendering of the wall is completed.

ACTION PROPOSED: Reinstate render arris



11. Metal Wall Cladding

As a direct consequence of the complainant's refusal of access to their property in order for me to complete the cladding of that section of my wall which is visible above the boundary wall, it has had to be clad in profiled metal sheet cladding. As a consequence of being denied working access, the only way to apply cladding to that section of my wall was by working suspended above ground in a safety harness. As a result the type of weathering which could be fixed was very limited. With some assistance provided from my roof, and with considerable difficulty, I was able to weather the section of wall with the profiled metal cladding. I would of course prefer to have clad the wall to match the building but, due to the circumstances created by the complainants, this was not possible and this remains the case.

ACTION PROPOSED: Subject to adequate access being permitted in order to fix it, I will be pleased to replace the metal cladding, with render, as originally proposed, or with cedar shingles, subject to 1. above. In the event that the complainants will not agree access other than on foot of court proceedings then I will not be in a position to replace the cladding as I do not have the resources available to engage in legal proceedings. A Section 5 application seeking a declaration that this variation is exempt from any requirement to obtain planning permission will be made immediately. In the event that a declaration of exemption is not forthcoming planning permission for retention of the variation to the approved design will be sought. Should the variation ultimately be deemed contrary to the proper planning and development of the area, and therefore planning permission refused, then the metal cladding will be removed and replaced with the appropriate alternative.

12. Gutter above boundary wall

It was intended to construct a concealed/integrated gutter at the eave abutting the party wall however this was impossible to construct without adequate access from the adjoining property at no 6 which is refused. I therefore, as an emergency measure, installed a standard pvc gutter and downpipe. In a letter to the complainants' solicitor dated 17 July 2017, regarding their attack on my building, I made the complainants aware of the intended emergency works. As far as I am aware both the gutter and rainwater pipe are located on my side of the boundary, and discharge into my rainwater storage tank. In the event that any part of the gutter over sails the adjoining property it is minimal, and a civil matter which can be readily addressed by repositioning the gutter.

ACTION PROPOSED: Subject to access being permitted in order to fix it, the existing temporary gutter necessitated by the complainants refusal of access, can be repositioned, or replaced.

CONTEXT

I fully appreciate that Dublin City Council must limit its consideration of any allegation, regarding contravention of the planning legislation, by reference to that legislation alone. However, in this case, I think that context has some relevance in deciding whether the allegations made are genuine or vexatious. Since the making of the planning application for this development, the complainants have embarked on a campaign to prevent, or obstruct, the construction of the granny flat. Far from accepting the entirely appropriate, and considered, decision by Dublin City Council to Grant planning permission for this modest and much needed development, they sought to have An Bórd Pleanála overturn that decision, as was admittedly their right. An Bórd Pleanála having comprehensively endorsed Dublin City Council's decision, they then embarked on a campaign to obstruct the construction. To date this has included, physical, verbal and written harassments, refusal of access for construction, removal of temporary support for construction from the party wall and a physical attack on the building itself which resulted in damage to the metal cladding and support substructure referred to above. The complainants do not live at 6 Royal Canal Terrace, the basement of which is tenanted, however one or both visit the property on an average monthly basis. The complainants engaged in a similar campaign against permitted development at no 7 Royal Canal Terrace which I believe culminated in Court proceedings. Mine and my family's experience in attempting to construct our granny flat has been deeply and needlessly upsetting, and at times frightening, as a result of the behaviour of the complainants, such that we have had to consult the Gardai on the matter. The attack on, and damage to, the wall of our building may yet be the subject of a legal action for the recovery of the cost of repairs. The complainants having, by their actions, thwarted our attempt to provide a home, and care for my late mother, which resulted in her being placed in residential care where she passed away before we could complete the granny flat, are now, it would appear, attempting to override the decisions of Dublin City Council and An Bórd Pleanála to grant planning permission for the construction of the Granny Flat. In my view the complainants are abusing the planning process, and exploiting Dublin City Council for inexplicable personal and vexatious purposes.

Despite my concern regarding the enforcement process, I very much welcome Dublin City Council's intervention, in this matter and hope perhaps that it may succeed in bringing the matter to a close, and to that end, I will be pleased to provide any further cooperation and assistance required.

DECLARATION ON DEVELOPMENT & EXEMPTED DEVELOPMENT



SECTION 5 APPLICATION FORM

NAME OF APPLICANT: Paul Kelly

ADDRESS OF APPLICANT: 5 Royal Canal Terrace, Broadstone, Dublin D07 N1K6

EMAIL ADDRESS: 5rct@eircom.net

TELEPHONE NO. Day: _____ Mobile: 0877620507

NAME OF AGENT AND AGENT'S ADDRESS: Paul Kelly Architects

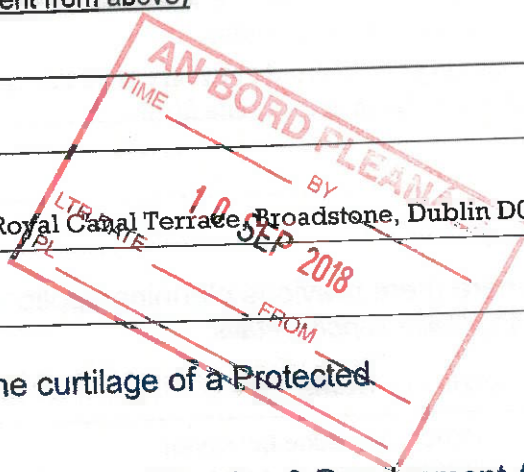
5 Royal Canal Terrace, Broadstone, Dublin D07 N1K6

TELEPHONE NO. Day: _____ Mobile: 0877620507

ADDRESS FOR CORRESPONDENCE (if different from above)

As above

LOCATION OF SUBJECT SITE: Rear of 5 Royal Canal Terrace, Broadstone, Dublin D07 N1K6



Is this a Protected Structure or within the curtilage of a Protected Structure?

If yes, has a Declaration under Section 57 of the Planning & Development Act 2000 been requested or issued for the property by the Planning Authority?

Please provide details of works (where applicable) or proposed development. (Note: only works listed and described under this section will be assessed under this section 5 application. Use additional sheets if required.)

Revisions to approved design of a granny flat as detailed below;

- 1. Revised Roof Light
- 2. Revision to window in laneway elevation
- 3. Revision to windows in garden elevation.
- 4. Revised external cladding to extension
- 5. Revised extent of extension roof overlap
- 6. Revision to drainage layout

List of plans, drawings etc. submitted with this application

Drawing PKA11-01-20 Variations to approved design general	2 copies
Drawing PKA11-01-21 Variations to approved design drainage	2 copies
Drawing PKA11-01-202 View 1 Approved and revised	2 copies
Drawing PKA11-01-202 View 2 Approved and revised	2 copies
Location map – including site boundaries	2 copies
Covering Letter	
Application Fee (cheque)	€80
Enforcement correspondence	2 copies

Please state Applicant's interest in this site: Owner

If applicant is not owner of site, please provide name & address of owner:

Are you aware of any enforcement proceedings connected to this site?
If so please supply details:

A warning letter dated February 2018 has issued a copy is enclosed as are my responses dated 1 March and 30 June 2018

Where there previous planning application/s on this site?
If so please supply details:



2026/11 – Granny Flat

0509/90 Domestic Extension

Signed _____ Date _____

NOTES

Application shall be accompanied by 2 copies of site location map with site clearly outlined in red and a fee of €80.00. Please submit 2 copies of any additional plans/reports etc. you may wish to include as part of the application.

Application shall be forwarded to: Dublin City Council, Planning Registry Section, Block 4, Floor 0, Civic Offices, Wood Quay, Dublin 8.
Contact Details: Phone: 01 222 2149 Fax: 01 222 2675

Section 5 Declaration for Protected Structures

Required Documents

1. *Application form* (The application form should be used to provide a numbered list of all the proposed works. Two copies of all supporting information should be submitted).
2. *Application fee* (€80)
3. 2 copies of the *site location map* (location clearly outlined in red).
4. A photographic record of the historic fabric to be affected/impacted upon by the proposed works and a general photo of the building. (notes can be added to these photos to explain the proposed works)
5. An outline explaining justification for and assessment of the impact of the proposed works on the protected structure.
6. A method statement outlining the proposed works to include a specification of the materials to be used.
7. Elevation, plan and detail drawings where appropriate.

The Department of Arts, Heritage and the Gaeltacht Advice Series documents are recommended reading before submitting a Section 5 application for proposed works to a protected structure. These publications contain the best practice advice for conservation work and knowledge of best conservation practice must be clearly demonstrated in all applications. (See links below)

<http://www.dublincity.ie/Planning/HeritageConservation/Conservation/Pages/DoEHLGArchitecturalHeritagePublicationsandConservationAdviceSeries.aspx>

[A Guide to the Repair of Historic Brickwork:](#)

[The Repair of Wrought and Cast Iron Work :](#)

[A Guide to the Repair of Older Buildings:](#)

[A Guide the Repair of Historic Windows:](#)

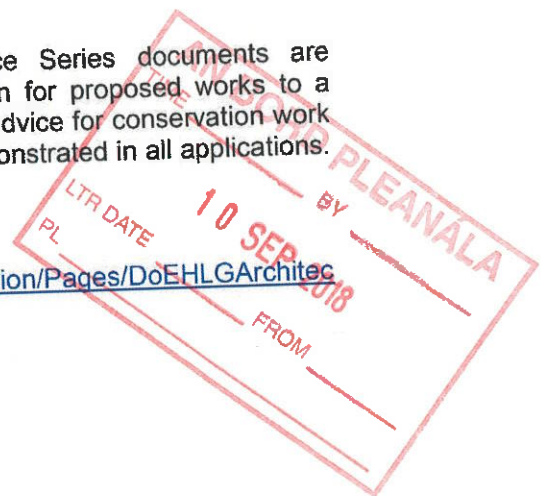
[Roofs - A Guide to the Repair of Historic Roofs.pdf](#)

[Ruins - The Conservation and Repair of Masonry Ruins.pdf](#)

[Energy Efficiency in Traditional Buildings.pdf](#)

[Access - Improving the Accessibility of Historic Buildings & Places.pdf](#)

[Places of Worship - The Conservation of Places of Worship 2011.pdf](#)



DEPUTY PLANNING OFFICER

APPLICATION NO. 0280/18
PROPOSAL EXPP: PROTECTED STRUCTURE: Revisions to approved granny flat as detailed: 1. Revised rooflight. 2. Revision to window in laneway elevation. 3. Revision to windows in garden elevation. 4. Revised external cladding to extension. 5. Revised extent of extension roof overlap. 6. Revision to drainage layout.
LOCATION 5, Royal Canal Terrace, Broadstone, Dublin 7
APPLICANT Paul Kelly 5, Royal Canal Terrace, Broadstone, Dublin 7
DATE LODGED 19-Jul-2018
ZONING
APPLICATION TYPE Section 5

Proposal:

Clarification is sought as to whether modifications are inconsistent with the planning permission granted under Reg Ref 2026/11 (PL29N.238610) are exempted development:

- 1. Revised rooflight.
- 2. Revision to window in laneway elevation.
- 3. Revision to windows in garden elevation.
- 4. Revised external cladding to extension.
- 5. Revised extent of extension roof overlap.
- 6. Revision to drainage layout.

No 5 Royal Canal Terrace is listed as 'Terraced house including stone wall, railings and gates' on the Record of Protected Structures'

Planning History:

Plan No. 3941/10 Application withdrawn for Extension and conversion of an existing garage for use as a detached two storey granny flat at the rear

Plan No. 0509/90 Planning permission granted for Domestic extension at first floor level and conservatory to rear.

Plan No. 2026/11 Planning permission granted on appeal by An Bord Pleanála for the extension and conversion of an existing garage for use as a detached granny flat at the rear.

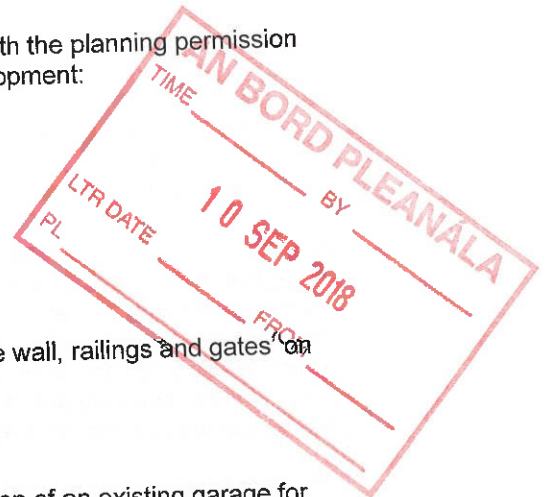
Assessment:

The proposal is not for new works, it is to seek clarification as to whether modifications to the design of a permitted development carried out are exempted development. The works are as described above and in the documentation submitted.

Relevant Legislation

The relevant legislation is the Planning and Development Act 2000 (as amended) and the Planning and Development Regulations 2001 (as amended).

Section 3(1) of the Act defines 'Development' to mean;
'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'



Pr.1 S.2 "works" includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.

Having regard to these definitions it is considered that the modifications described therefore constitute 'development' as defined in section 3 (1)

Section 4 (1) of the Planning and Development Act 2000 (as amended) states that specified development shall be exempted development for the purposes of this Act, and Section 4 (1) (h) exempts:

'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.'

The Planning and Development Regulations 2001 (as amended) - Schedule 2, Part 1 exempt Development within the curtilage of a house under Classes 1 to 8.

Article 9 of the Planning and Development Regulations 2001 (as amended) sets out Restrictions on Exemption:

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 such 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.

Condition No.1 of the permission for the extension and conversion of an existing garage for use as a detached granny flat at the rear (Reg Ref 2026/11) required that the development be carried out and completed in accordance with the plans and particulars lodged with the application except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

If the modifications and extension described in this Section 5 request were carried out at the time of construction of the granny flat (i.e. before completion of the permitted development) then **this would conflict with Condition No.1 of the permission and in accordance with Article 9(1) the modifications would not be exempt.**

The date of construction of the development is stated by the applicant as being 24th March 2014 and by early 2016 it is stated that the external envelope was largely completed and the building weather-tight. It appears to the Planning Authority that the modifications are likely to have been contemporaneous with the construction of the house:

Recommendation

It is considered that the modifications are development under the meaning of the Planning and Development Acts 2000 (as amended). It is considered that the modifications and variations to the design of the granny flat do not constitute exempted development under the Planning Acts and Regulations for the reason that:

Article 9 of the Planning and Development Regulations 2001 (as amended) states that

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 such 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.

It is considered that the granny flat as constructed is in contravention of Condition No. 1 of Reg. Ref. 2026/11 (PL29N.238610) as it has not been constructed in accordance with the plans, particulars and specifications lodged with the application. Therefore the provisions of Article 6 of the Planning and Development Regulations 2001 (as amended) Exempted Development do not apply.



