dlr
Comhairle Contae County Council

Comhairle Contae Dhún Laoghaire-Ráth an Dúin, Halla an Chontae, Dún Laoghaire, Co Átha Cliath, Éire A96 K6C9
Dún Laoghaire Rathdown County Council, County Hall, Dun Laoghaire, Co. Dublin, Ireland A96 K6C9
T 01 205 4700 F 01 280 6969 www.dlrcoco.ie

Planning and HR Department
An Rannóg um Pleanáil agus Acmhainní Daonna
Registry Section
Direct Tel: 01 2054700

Our Ref: 11618

Your Ref: ABP-303124-18

Date: 8th January 2019

An Bord Pleanala
64 Marlborough Street
Dublin 1

Re: Declaration pursuant to Section 5 of the Planning & Development Act 2000 (as amended), Whether Roof lights at Site adjacent to, 24, Ardbrugh Road, Dalkey, Co. Dublin is or is not development and is or is not exempted development at:

Site Location: Site adjacent to, 24, Ardbrugh Road, Dalkey, Co. Dublin

Dear Sir or Madam,

I refer to your correspondence received in our office 4th December, 2018. I reply as follows:

The Planning Authority have no further comments to make in relation to the Section 5 deliberations, however, please see attached response to personalised comments made regarding a Council employee ('A').

Yours sincerely

Catherine O'Mahony

For Senior Executive Officer
Economic Development and Planning Department

H:\DevelopmentControl\Data\REGISTRY\SECTION 5\Section 5 2018\11618\Bord Pleanala Reply.doc

Comhairle Contae Dhún Laoghaire-Ráth an Dúin, Halla an Chontae, Dún Laoghaire, Co. Átha Cliath, Éire. A96 K6C9
Dún Laoghaire-Rathdown County Council, County Hall, Dún Laoghaire, Co. Dublin, Ireland. A96 K6C9
T: 01 205 4700 F: 01 280 6969 www.dlrcoco.ie

Planning and HR Department
An Rannóg um Pleanáil agus Acmhainní Daonna
Registry Section
Direct Tel: 01 2054700

Our Ref: 11618

Your Ref: ABP-303124-18

Date: 8th January 2019

An Bord Pleanala
64 Marlborough Street
Dublin 1

Re: Declaration pursuant to Section 5 of the Planning & Development Act 2000 (as amended), Whether Roof lights at Site adjacent to, 24, Ardbrugh Road, Dalkey, Co. Dublin is or is not development and is or is not exempted development at:

Site Location: Site adjacent to, 24, Ardbrugh Road, Dalkey, Co. Dublin

Dear Sir or Madam,

I refer to your correspondence received in our office 4th December, 2018. I reply as follows:

The Planning Authority have no further comments to make in relation to the Section 5 deliberations, however, please see attached response to personalised comments made regarding a Council employee ('A').

AN BORD PLEANÁLA
LDG- 03
ABP-
09 JAN 2019
Fee: € — Type: N/A
Time: 12:00 By: Post

Yours sincerely

Catherine O'Mahony

For Senior Executive Officer
Economic Development and Planning Department

'A'

Contextual response to items contained within Point 9 of the Section 5 Referral documentation as received from An Bord Pleanala on the 4th December 2018.

Section 5 Ref 11618 Site adjacent to 24 Ardbrugh Road, Dalkey.

1 to 5 relates to the marked 1 to 5 on the attached copy of point 9 from the referral documentation.

1. It is incorrect to state that the development permitted under the D15A/0750 planning application was to be adjoined to another dwelling. The proposal was not a form of semi-detached development. The planning drawings depict the shaded outline of buildings adjoining the development site to the east (The Ardbrugh), the west (Woodbine Cottage) and the south west (Shamrock Cottage). The planning drawings do not differentiate or account the roof overhang of adjoining dwellings and are without clarity on true on-site boundary types and locations.

2. The reason for refusal on the D15A/0363 planning application related to the fact that the enlarged ground floor area east of the living room area (north west corner) was located in front of part of the Shamrock Cottage window and would give rise to overlooking issues from the balcony it proposed and would be visually obtrusive when viewed from the window of the dwelling to the south (Shamrock Cottage). The permitted ground floor extended area under D15A/0750 and as constructed on site, is not a representation of the refused D15A/0363 proposal as there is no balcony, no consequential overlooking and not considered to be visually obtrusive at that north east area.

3. The high level window on the west elevation as permitted under D15A/0750 is not constructed 500mm lower than permitted and it is clearly apparent from the planning drawing and visualisation drawing that the adjoining properties to the east, west and south are not a true and accurate reflection of design, fenestration and measurement, resulting in inconsistencies between planning depictions and as constructed realities.

4. The obscure glazing as proposed within the first floor west facing living room window and conditioned to be fitted under condition no.3 of D15A/0750 was fitted as clear glazing in error by the window supply company. Its replacement with obscure glazing is due to be completed in the short term prior to the full completion of the development. This error in fitting had been known to the Planning Authority and applicant. Compliance with condition 3 was agreed to be implemented in reasonable due course without any necessity to issue enforcement proceedings.

5. As stated at point 1 above, The planning drawings depict the shaded outline of buildings adjoining the development site to the east (The Ardbrugh), the west (Woodbine Cottage) and the south west (Shamrock Cottage). The planning drawings do not differentiate or account the roof overhang of adjoining dwellings and are without clarity on true on site boundary types and locations. Very often planning drawings do not 100% accurately depict the on-site reality of boundary positions and / or adjoining properties. In certain instances on-site discoveries will result / necessitate adjustments to a development that could be positional or dimensional. If such adjustments are minor in nature it is reasonable to consider that the development remains within the conformity of its planning permission as granted and not requiring a new planning permission. Acceptable

tolerances must be accepted as a factual occurrence when transitioning from planning drawings to on site construction.

Further to the above

It must be noted that all Planning Inspector assessments, views and recommendations on all planning related cases are merely that, and do not constitute Planning Inspector decisions. Such assessments, views and recommendations are subject to further adjudication prior to The Planning Authority position and decision being made and issued. While it is considered that the majority of content within this referral documentation bears no relevance to the actual question upon which the declaration was sought, issued and now referred to An Bord Pleanala for assessment and decision, the personalised content and reference to the Planning Inspector by name, as contained within point 9 of the referral documentation is not considered acceptable, should not have been accepted by An Bord Pleanala and should not form part of a Section 5 planning file that is a public document. It is therefore requested that reference to the Planning Inspector "Mr Cassidy" be fully redacted.

Martin Cassidy
Planning Inspector

9. The Officer in their Section 5 response deliberated on the unauthorised aspect of the flat roof where the roof lights sit but decided to stop at the enforcement file ruling (ENF 13516). As the officer in their section 5 response has referred to it, I wish to bring to the attention to the Bord, how enforcements ruled most unsatisfactory on this site. It brings me no satisfaction to state that information retrieved under the freedom of Information act show internal emails from the enforcement inspector where the facts are few and the mendacities many. The enforcement inspector who presided over the site (ENF13516) was a Mr Martin Cassidy.

Without wishing to cause offence to Mr Cassidy it is difficult to understand his position on this matter. Had Mr Cassidy applied the most basic of planning principles, he still should have spotted many significant and material deviations from the grant of permissions.

I beg to refer to Exhibit 9. These are the deviations that Mr Cassidy overlooked despite my original and subsequent submissions to Mr Cassidy's department detailing such deviations requesting for enforcement's assistance.

1 o Mr Cassidy failed to observe from the D15A/0750 that the development was to be adjoined to another dwelling on this sensitive site. The development today as it stands is detached. One would have to consider an adjoined dwelling ending up as detached that seriously injures a neighbouring home as very substantial, material and serious breach of planning conditions. I beg to refer to Exhibit 10.

2 o Mr Cassidy failed to observe the D15A/0353 planning application that was refused by his own Local Authority Planning department. *"The proposed enlarged ground floor is located in front of part of the easternmost window of the dwelling to the south, Shamrock Cottage. It is considered that the proposed enlarged ground floor will be visually obtrusive from this window and will seriously detract from the residential amenity of this dwelling"*. By not enforcing Mr Cassidy is endorsing not just unauthorised development but also encouraging developers to build in defiance of a planning refusal. Again a very significant oversight undermining his own planning departments Planning Officers and the planning system as a whole.

3 o 2 windows not shown in any planning application exist today in the development. Another window that was supposed to be a 'high level' window, ended up 500mm lower directly looking into our Living room less than a metre away. A very distressing situation. There would be less overlooking in a Ghetto with not planning system in place. I beg to refer to Exhibit 11a and 11b.

4 o Mr Cassidy failed to enforce the developers to comply with condition 3 in D15A/0750. This stated that the glazing within the west facing first

floor living area window had to be opaque or frosted and that even the application of film was not acceptable. Today the window is a clear window with no such frosted glazing. Yet again Mr Cassidy failed to enforce another condition.

5 o The development was granted permission for it to be tucked behind our home and to the east of our building line. It was built instead in front and overlaps our building line. I beg to refer to Exhibit 12. Not one of the four corners of this development are where they should be. This has made the development incredibly obtrusive and has destroyed our homes amenity in a site zoned to protect and improve amenity. A significant breach of the development plan. Seven times planning inspectors stated it was or should be in line with our homes building line. Again ignored by Mr Cassidy to the benefit of the developers.

I am advised a major objective of the revision of the planning code that culminated in the 2000 Planning Act was to ensure increased compliance with planning law, in response to complaints about failures in the planning enforcement system from both individuals and I suspect the Bord. This is one of those cases. A catastrophic failure by enforcement. As the Bord only knows too well any development that requires permission and does not have that permission is unauthorised development, as is a development which is proceeding in breach of conditions laid down in the planning permission. The list of flouting the conditions of the grant of permission by the offending developers on this site is as compelling as it is long, making it more inexplicable why no enforcement was forthcoming by Mr Cassidy

I. Ignoring a planning refusal in D15A/0363
II. Breach of Condition 1 of D15A/0750
III. Breach of Condition 2 of D15A/0750
IV. Breach of Condition 3 of D15A/0750
V. Breach of Condition 10, (Note 2) of D15A/0750
VI. Breach of Condition 10, (Note 3) of D15A/0750
VII. Breach of Condition 1 of D07A/0507
VIII. Breach of Condition 12 Note A in DLRCC D07A/0507
IX. Breach of Condition 12 Note B in DLRCC D07A/0507
X. Breach of Condition 5 Bord Pleanala PL 06D.224147 D07A/0507
XI. Breach of Condition 5 Bord Pleanala PL 06D.224147
XII. Ignoring Section 34 (13) of the Planning and Development Act 2000, as amended
XIII. Breach of Condition 4 Bord Pleanala PL 06D.224147 D07A/0507

The enforcement inspector is governed by Section 153 (3) of the planning act and he failed to adhere to this section of the planning act. Mr Cassidy was duty bound by law to take into consideration all material submissions relating to this