

An Bord Pleanála,  
64 Marlborough Street,  
Dublin 1.  
DO1 V902

<b>AN BORD PLEANÁLA</b>	
LDG- _____	
ABP- _____	
15 JUN 2020	
Fee: € _____	Type: _____
Time: _____	By: _____

The Atrium, Shamrock Plaza, Green Lane, Carlow

T: +353 (0) 59 913 1745  
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E: info@mlaw.ie  
W: www.mlaw.ie  
DX: 18 005 Carlow

12<sup>th</sup> June 2020

**An Bord Pleanála Case Number:** ABP-306870-20  
**Planning Authority Reference Number:** 0042/20  
**Appellant:** Cliona Cleary

Dear Sir / Madam,

In response to the submission made by AKM Design dated the 15<sup>th</sup> of April 2020 on behalf of Mauro Fiorio Pla and Giorgia De Maio, we wish to make the following observations:

### Residential Amenity

- a) In relation to paragraph 1.1.1 of the submission of Mr Kim, the author considers it noteworthy that Condition 14 contains no restriction in relation to what he describes as “future exempted development”. However, the legislation providing for exemption was not in place in 1987 when the relevant permission was granted. This being so, it is misleading for Mr Kim to conclude that no such restrictions were intended. The Condition clearly provides that “*no windows shall be provided, now and in the future, other than where indicated,*” a condition which is explicitly oriented towards the future in its application. As a matter of law, development cannot be considered exempt if it would contravene a condition attached to a planning permission<sup>1</sup> and this applies to permissions granted under the 2000 Act and also includes a permission granted under the Planning and Development Act 1963.<sup>2</sup>

<sup>1</sup> Article 9(1)(a)(i) of the *Planning & Development Regulations 2001* states that:

*“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” ...*

<sup>2</sup> Article 3(4) of the *Planning and Development Regulations 2001* which provides:

*“In these Regulations, any reference to a permission under the Act shall include a reference to a permission under the Act of 1963, and any reference to conditions to which a permission is subject shall be construed accordingly.”*



It is submitted, therefore, that such a restriction on exemption does not have to be specified, nor could it have been given that the exempted development legislation was not commenced until 2000, over a decade later. This being so, the purpose of the Condition is key to its construction/interpretation.

### Purpose of the Condition

- b) In 1.1.2, Mr Kim purports to deal with the purpose of the Condition. He submits that “*planning condition 14 is clear, concise and directional.*” It is submitted that Mr Kim has either deliberately overlooked the reason for the Condition (in the interests of residential amenity) and/or he misunderstands the reason for the Condition. The author writes:

*“The wording states “in the indicated blank facades of the new residential blocks i.e. this is clearly referring only to the development as applied for and permitted by An Bord Pleanála decision 290572471. This is the clear purpose of Condition 14.”*

If Mr Kim’s literal interpretation were to be applied, the reason given for the Condition would have to be completely disregarded. To do so would be contrary to the well established principles of the Superior Courts in relation to the determination of the meaning of all documents affecting legal rights and obligations. The Courts have held that the appropriate method of construction of such documents is to consider the text in context. This was held in the recent decision of the Supreme Court in *Lanigan v Barry*.<sup>3</sup> In that case, the Court stated that the “*text in context*” approach requires the Court to consider the text used in the context of the circumstances in which the document concerned was produced including the nature of the document itself.

Similarly, in the earlier case of *Kenny v Dublin City Council*<sup>4</sup>, Mr Justice Clarke stated that in relation to the construction of a planning permission, the method of construction appropriate to the determination of the meaning of documents affecting legal rights and obligations was to look at the “*text in context*”. In that case, the Supreme Court adopted a purposive approach to a planning condition which on its face, required the omission of a first floor “*in the interests of visual amenity*”. The Supreme Court rejected a literal interpretation of the Condition and held that the purpose of the condition was the reduction in the height of the building and this was achieved by the removal of any floor and not just the first floor. It is submitted that this decision demonstrates the importance of the true meaning of a condition which must be ascertained from its context in the planning process.

The Appellant submits that a purposive approach should be adopted to the construction of the subject permission and the principles established by the Superior Courts applied.

### Absence of Precedent

<sup>3</sup> [2016] IESC 46 (27<sup>th</sup> July 2016) Clarke J stated at para 3.11 that:

<sup>4</sup> [2009] IESC 19 (Judgment of the 5<sup>th</sup> of March 2009)

<b>AN BORD PLEANÁLA</b>	
LDG-	_____
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JUN 2020	
Fee	Type. _____
Time: _____	By: _____





- c) In paragraph 1.2, Mr Kim relies on houses numbers 10, 14 and 23 within Oakley Square as precedent for the subject extension. The author omits to refer to the location of these properties in the square. The properties referred to by Mr Kim are on the North side (No. 23) and the South side of the square (No.s 0 and 14) respectively and are not overlooked by the houses on Charleston Avenue. There are no extensions to any of the properties on the West side of the square. The West side is the only side of the square which runs parallel to Charleston Avenue and is the only side of the square overlooked by Charleston Avenue. It is submitted that Condition 14 is directly concerned with the properties on the West side of the square and the Appellant has not and does not argue that it is relevant to the North or South sides of the square.

Without prejudice to the foregoing, it is submitted that it is a misrepresentation to describe the precedents referred to by Mr Kim as "similar dwellings". The structures to the rear of the said properties are small conservatories which are totally different in character and function to the subject extension. It is submitted that the subject extension is a substantial construction – in relative terms - comprising an open plan kitchen/dining area with floor to ceiling glazing. It is in no way comparable to the small conservatories to the rear of the said properties at 10,14 and 23.

#### **Inconsistency of Appearance and Character**

- d) In relation to paragraph 1.3 of Mr Kim's submission, he fails to address the specifics of the glazing contained in the doors to the rear of the west facing properties in Oakley Square. The doors in question are standard sliding doors ( $2\text{m} \times 2\text{m} = 4\text{m}^2$ ) and there are no windows. The scale of this glazing in the context of the façade means that the doors appear dark and overlooking is effectively non-existent. It is submitted that this fulfils the purpose of Condition 14. The subject extension has glazing of  $4.6\text{m} \times 2.2\text{m} = 10.1\text{m}^2$ . This level of glazing, spanning the entire façade of the extension, completely exposes the kitchen and dining area of number 18 and all movement within it to plain sight, both during the daytime and particularly at night.

#### **Shortcoming of Planners Section 5 Decision**

- e) In paragraph 1.5, Mr Kim submits that none of the cases referred to by the Appellant can be considered comparable to this domestic referral case and he appears to be of the view because the cases referred to involved larger sites, they are not relevant. There is no legal authority relied on by Mr Kim to support his contention that the legal principles established by the Superior Courts should effectively be disregarded due to the nature of the development. It is respectfully submitted that principles of law established by the Superior Courts are binding on the lower courts and quasi judicial bodies. The established principles apply in equal measure to a small scale development as much as a large development and the principle of stare decisis should be respected.

#### **Failure to Provide Reasons**

- f) In relation to paragraph 1.6, the Appellant reiterates the point made previously (in the appeal submission dated 09/03/2020) that the arguments advanced by the Appellant in the Section 5 reference were not addressed by the Planner. The only reason provided by the Planner was a bald statement to the effect that the Planner did not believe that the extension contravened Condition 14.

**AN BORD PLEANÁLA**  
LDG-  
APP-  
15 JUN 2020

Fee: € \_\_\_\_\_ Type: \_\_\_\_\_  
Time: \_\_\_\_\_ By: \_\_\_\_\_




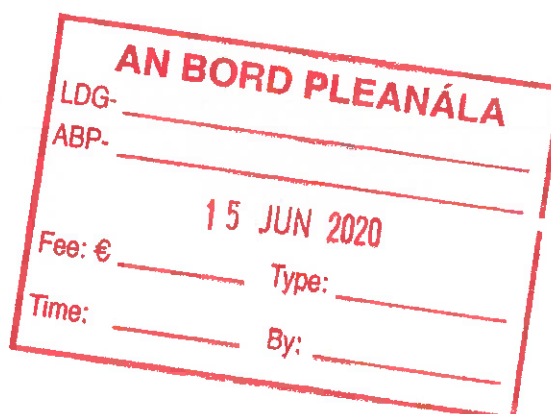
The Planner did not give any reason in his report for his failure to respond to and/or address the submissions made on behalf of the Appellant in her Section 5 application. The only observation made by the Planner was, "*Condition 14 of An Bord Pleanála decision PL29/5/2471 does not relate to the subject extension.*" The Appellant submits that the Planning Authority failed in its duty as a decision making authority to consider the Applicant's submissions and/or to identify the reasons for not accepting those arguments.

### Section 5

- g) In relation to paragraph 2.1, Mr Kim states that the Appellant has requested the Board to set aside the Section 5 decision under 0005/20. This is not correct. The only request made by the Appellant in relation to the previous determination (Ref. 005/20) was that the Board might consider that determination. The context of the invitation to the Board to consider same is temporal. The determination in relation to 18 Oakley Square was made on the 21<sup>st</sup> of January 2020 (005/20) and the determination in relation to the Appellant's Section 5 reference (0042/20) was made on the 14<sup>th</sup> of February 2020.

Yours faithfully

  
Mr Terry Doyle  
Malcomson Law Solicitors,  
The Atrium,  
Shamrock Plaza,  
Carlow.





**Lisa Quinn**

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**From:** Appeals2  
**Sent:** Wednesday 15 April 2020 22:32  
**To:** Lisa Quinn; Lita Clarke  
**Subject:** FW: Appeal ABP - 306870-20  
**Attachments:** ABP Reply - ABP306870-20.pdf

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**From:** Bord <bord@pleanala.ie>  
**Sent:** Wednesday 15 April 2020 18:56  
**To:** Appeals2 <appeals@pleanala.ie>  
**Subject:** FW: Appeal ABP - 306870-20

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**From:** Jong Kim <jong@akmdesign.ie>  
**Sent:** Wednesday 15 April 2020 17:22  
**To:** Bord <bord@pleanala.ie>  
**Subject:** Appeal ABP - 306870-20

Dear Sir / Madam,

I refer to above ABP appeal of Cliona Cleary (An Bord Pleanala case reference is 306870-20).

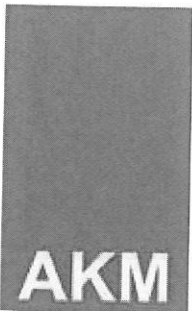
I wish to make this submission to the appeal on behalf of Mauro Fiorio Pla & Giorgia De Maio of 18 Oakley Square, Ranelagh, Dublin 6.

There is no appeal fee in this instance.

Can you please send me an acknowledgement of our submission.

Regards  
Jong

Jong Kim BA MSc TP MIPI  
Town Planner  
Director of Planning



**AKM Design**  
**Architectural Design & Planning**  
Unit 4  
Orchard Business Centre,  
2009 Orchard Avenue,

Citywest, D24  
D24FF86

P: +353 1 4796234  
E: [jong@akmdesign.ie](mailto:jong@akmdesign.ie)  
W: [www.akmdesign.ie](http://www.akmdesign.ie)

**Architectural Design – Town Planning – Chartered Engineers – Development Consultants – Building Surveyors**

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An Bord Pleanála  
64 Marlborough Street  
Dublin 1  
D01V902

15/04/2020

DCC Ref.: EXPP 0042/20  
Address: 18 Oakley Square, Ranelagh, Dublin 6  
ABP Ref.: 306870-20

**AKM**  
AKM Design  
Unit 4  
Orchard Business Centre  
2009 Orchard Avenue  
Citywest Business Campus  
Dublin 24

Dear Secretary,

P: +353 1 479 6234  
E: info@akmdesign.ie  
W: www.akmdesign.ie

I refer to above appeal lodged by Malcolmson Law Solicitors on behalf of Cliona Cleary (hereinafter referred to as 'appellant'). The An Bord Pleanála case reference is 306870-20 and the appeal was lodged on 11/03/2020.

I wish to make this submission to the appeal on behalf of Mauro Fiorio Pla & Giorgia De Maio, who are owners of 18 Oakley Square, Ranelagh, Dublin 6 in accordance with Section 129 of the Planning and Development Act 2000.

I ask the Bord to consider our submission and I ask that you please send back an acknowledgement. There is no fee in this instance.

## 1.0 Grounds of Appeal

The appellants grounds of appeal are stated as follows:

- Contravention of Planning Condition no. 14 in ABP Ref. 29/5/72471,
- Absence of precedent,
- Inconsistency of appearance and character,
- Observations from 18 Oakley Square,
- Shortcoming of Planners Section 5 Decision,
- Failure to provide reasons.

I reply and comment on each of the issues raised by the appellant in separate sections below.

### 1.1 Contravention of Planning Condition no. 14 in ABP Ref. 29/5/72471

It is the argument of the appellant that the rear extension to 18 Oakley Square conflicts with condition 14 of ABP Ref. 29/5/72471 (parent planning permission of the Oakley Square housing scheme). Condition 14 states:

*"No windows shall be provided, now or in the future, in the indicated blank facades of the new residential blocks, save where such are shown on the lodged plans.  
Reason: In the interests of residential amenity."*

I consider there is no conflict with condition 14. I ask the Bord to review my examination of the reason and purpose of condition 14 below.

#### 1.1.1 Residential Amenity

*'In the interest of residential amenity'* is the stated 'reason' for condition no. 14. I ask the Bord to review that dwellings in Oakley Square have very short separation distances between houses. The front elevation of all dwellings (including 18 Oakley Square) have doors / windows

on the ground floor and windows on the first floor overlooking the central square. There is barely a 3-metre separation distance between houses 17 & 18 and 14 & 15. We ask the Bord to review 18 Oakley Square faces the side gable wall (blank facade) of 17 Oakley Square. It is my firm view that the primary function of the condition 14 is to protect the residential amenity of dwellings within Oakley Square from each other, given their very short separation distances.

### **1.1.2 Purpose of the Condition**

Planning condition 14 is clear, concise and directional. It is easily understood, unambiguous and it clearly only refers to the original buildings as set out in the submitted plans under the original planning application and subsequent appeal - An Bord Pleanála Decision 290572471 (planning authority reference 1369/86).

The wording states "*in the indicated blank facades of the new residential blocks*" i.e. this is clearly referring only to the development as applied for and permitted by the An Bord Pleanála Decision 290572471. This is the clear purpose of the condition 14. It is also important to have regard to the clear absence of any restriction, within the conditions attached to the parent planning permission, with regard to future exempted development. The clear interpretation of the planning permission, as per the principles applicable, does not restrict the development of the rear extension.

It is my view that by examining the purpose and stated reason for the condition, it is clear that the rear extension to 18 Oakley does not conflict with condition 14.

I ask the Bord to concur that condition 14 places no restrictions on future 'exempt development rights' of 18 Oakley Square. It is my view that the rear extension to 18 Oakley Square is restricted in any way by condition 14.

### **1.2 Absence of Precedent**

The appellant states that there is no precedent for similar development on the west side of Oakley Square (page 3). There is unequivocal planning precedent in Oakley Square for similar development. I ask the Bord to consider there are 3 similar dwellings in Oakley Square that have extended to the rear garden (10, 14, 23) in a very similar fashion to 18 Oakley Square. The Bord should review the fact that none of properties (10, 14, 23) sought planning permission, as the rear extensions are unambiguously 'exempt development'.

### **1.3 Inconsistency of Appearance and Character**

The appellant states the rear extension to no. 18 Oakley Square is inconsistent with the appearance and character of surrounding structures. The appellant states the rear extension is '*inconsistent with the entire west facing line of Oakley Square whose glazing is strictly restricted by the above mentioned planning permission*' (page 3).

I disagree with the appellants argument that the rear extension to no.18 is inconsistent with the entire west facing line of Oakley Square (houses 15, 16 17). I ask the Bord to review that these 3 dwellings (houses 15, 16 17) that make up the west facing block of houses have large windows / doors at ground floor level that face west to the appellants dwelling. The appellant misunderstands the purpose of condition 14 in this regard.

I ask the Bord to consider that the rear extension to no. 18 is very comparable in shape, size, materials and context to other rear extensions noted at 10, 14 and 23. I therefore consider that the rear extension at 18 Oakley Square is fully consistent in appearance and character with adjoining development in this regard.

#### **1.4 Observations from 18 Oakley Square**

The appellants state that the AKM submission on the appellants Section 5 (0042/20) fails to address arguments set out by the appellant. I disagree with the appellant and I ask the Bord to review our submission.

The appellant also makes reference to a Section 5 (0005/20) submitted by Mauro Fiorio Pla & Giorgia De Maio and claims that the application form was not filled in correctly in relation to 'planning history'. I ask the bord to review the Section 5 application and at the time of the Section 5 application 0005/20 was submitted on the 03/01/2020, there was no planning history on the subject site at '18 Oakley Square'. It is my opinion that the form was correctly filled in by the applicants. I stand over my submission to the planning authority.

#### **1.5 Shortcoming of Planners Section 5 Decision**

The appellants states that their arguments were not adequately addressed or responded to by the planner who determined the Section 5 (0042/20). I consider the planning issues in this case are not complex and are very straight forward. I have reviewed the assessment by the planning authority and I consider that all the relevant planning issues were comprehensively assessed. I do not see any deficiencies in the Section 5 assessment by the planning authority as alleged by the appellant.

The appellants make reference to 7 legal cases. While voluminous, I ask the bord to acknowledge that none of the cases referred to by the appellant can be considered comparable to this domestic referral case. The majority of cases referred to involve much larger sites and more complex planning issues and are not relevant.

#### **1.6 Failure to Provide Reasons**

The appellant states the planners Section 5 assessment (0042/20) fails to provide reasons and fails to respond to the arguments made by the appellant. As stated already I do not see any deficiencies in the Section 5 assessment by the planning authority. The planner makes full reference to the Planning and Development Regulations 2001, *Schedule 2, Part 1 Exempted Development - General - Development within the Curtilage of a House Class 1*. It is simple fact that the planner has reviewed the Section 5 application by the appellant and has made the correct decision to determine that the rear extension to 18 Oakley Square is 'exempt development' with regard to the planning and development regulations.

The planner makes a thorough appraisal of the entirety of the appellants Section 5 application. The planners report (0042/20) confirms he has fully reviewed the application form, cover letter, site plans, photos and all submitted appendices by the appellant.

The planner also clearly makes reference to Article 9 (1) (a) of the Planning and Development Regulations Restrictions on Exemptions where works (i) *Contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act*. I ask the Bord to refer to the planners assessment that states as follows:

*"The above condition (no. 14) does not limit glazing within future extensions nor does it remove exempt development rights for rear extensions. I therefore consider the subject extension would not contravene the above condition".*

The planning authority has properly assessed the Section 5 application and has given clear reasons for its decision. It has fully considered the appellants views and has provided clear

direction on the decision to declare the works 'exempt development'. I concur with the planning authorities decision on the rear extension.

## **2.0 Other Appeal Issues**

The appellant raises a number of other items in this voluminous appeal. I wish to comment on the following matters below.

### **2.1 Section 5 (0005/20)**

The appellant requests that the Bord reconsider and set aside the Section 5 decision under 0005/20 by the planning authority. While it is noteworthy that the planning authority came to the same conclusion in respect of both section 5 applications, the appellant is restricted from making such a request of the Bord.

The proper avenue for the challenging of that decision is by way of the Judicial Review process and certainly not in the indirect fashion in which it has been brought here, on the back of an appeal regarding a separate and distinct decision of the planning authority. The appellant is precluded from reagitating this issue before this forum. Furthermore, this planning matter has therefore been fully determined by the planning authority and procedurally cannot be set aside by An Bord Pleanala.

I ask the Bord to dismiss the appellants request.

### **2.2 Oral Hearing**

I am surprised that an Oral Hearing has been requested by appellant on this referral. This a simple planning matter for determination. I am not aware that an Oral Hearing has ever been granted by An Bord Pleanala for a Referral regarding an exempt extension. I ask the Bord to refuse the appellants request for an oral hearing.

### **2.3 Exempt Development Rights**

The appellant is notably silent on other fundamental planning matters including the exempt development rights of Mauro Fiorio Pla & Giorgia De Maio. The parent planning decision 290572471 did not contain any planning condition that 'de-exempts' future development at 18 Oakley Square. The rear extension is considered to be 'exempt development' and is not restricted by condition no.14.

### **3.0 Conclusions**

I consider the single storey rear extension to 18 Oakley Square to be 'exempt development'. I consider the rear extension meets all of the conditions and limitations of Class1 of Schedule 1, Part 1 of the Planning and Development Regulations.

The planning authority have now made 2 determinations on this planning matter. On both occasions the planning authority has considered that the rear extension to 18 Oakley Square is 'exempt development'. I ask the Bord to concur with our view that is the consistent view of the planning authority.

The planning authority has properly assessed the appellants Section 5 application (0042/20) and has given clear reasons for its planning decision. It has fully considered the appellants views and has provided clear direction on the decision to declare the works 'exempt development'.

The subject site is not a protected structure and there are no planning restrictions or environmental sensitivities regarding this domestic development.

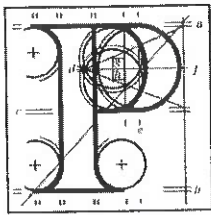
A wide range of legal cases has been raised by the appellant in this Section 5 referral. I consider the majority of the planning cases referred by the appellant are not comparable to this case.

I ask the Bord to dismiss the appellants appeal and determine that the rear extension to 18 Oakley Square is development, and is 'exempt development' within the meaning of the Planning and Development Act 2000, as amended.

**Jong Kim MIPI**  
**AKM Design**







An  
Bord  
Pleanála

## Planning Appeal Form

**AN BORD PLEANÁLA**  
LDG- 025103-20  
ABP- \_\_\_\_\_  
11 MAR 2020  
Fee: € 270 Type: Charge  
Time: 14:35 By: Courier

### Your details

#### 1. Appellant's details (person making the appeal)

Your full details:

(a) Name

Cliona Cleary

(b) Address

26 Charleston Avenue  
Ranelagh  
Dublin 6  
D06HW31

**AN BORD PLEANÁLA**

11 MAR 2020

LTR DATED \_\_\_\_\_ FROM \_\_\_\_\_

LDG- \_\_\_\_\_

ABP- \_\_\_\_\_

### Agent's details

#### 2. Agent's details (if applicable)

If an agent is acting for you, please **also** provide their details below. If you are not using an agent, please write "Not applicable" below.

(a) Agent's name

Terence Doyle



An Bord Pleanála  
Planning Appeals Board

# Planning Appeal Form

## Your details

1. Appellant's details (person making the appeal)

(a) Name  
(b) Address

(c) Address  
(d) Address  
(e) Address

## Agent's details

2. Agent's details (if applicable)

If an agent is acting for you please also provide their details below if you

are not using an agent please write 'Not applicable' below

(a) Agent's name  
(b) Agent's address

AN BORD PLEANÁLA

11 MAR 2020

LTR DATED FROM

LDC

ASP

(b) Agent's address

Malcomson Law Solicitors

The Atrium

Shamrock Plaza

Green Lane

Carlow

**AN BORD PLEANÁLA**

11 MAR 2020

LTR DATED \_\_\_\_\_ FROM \_\_\_\_\_

LDG- \_\_\_\_\_

ABP- \_\_\_\_\_



## Postal address for letters

3. During the appeal we will post information and items to you or to your agent. For this appeal, who should we write to? (Please tick ✓ one box only.)

You (the appellant) at the address in Part 1

☐

The agent at the address in Part 2

☒

## Details about the proposed development

4. Please provide details about the planning authority decision you wish to appeal. If you want, you can include a copy of the planning authority's decision as the appeal details.

(a) **Planning authority**

(for example: Ballytown City Council)

Dublin City Council

(b) **Planning authority register reference number**

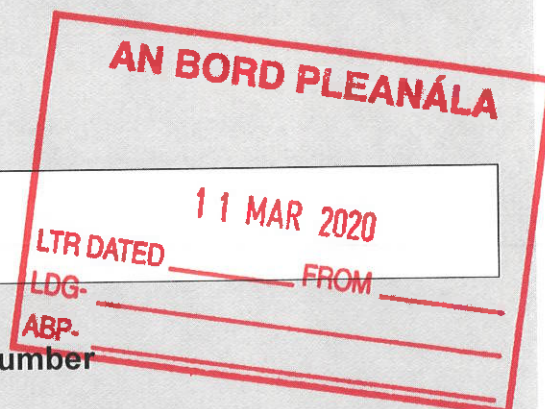
(for example: 18/0123)

0042/20

(c) **Location of proposed development**

(for example: 1 Main Street, Baile Fearainn, Co Ballytown)

18 Oakley Square, Ranelagh, Dublin 6.



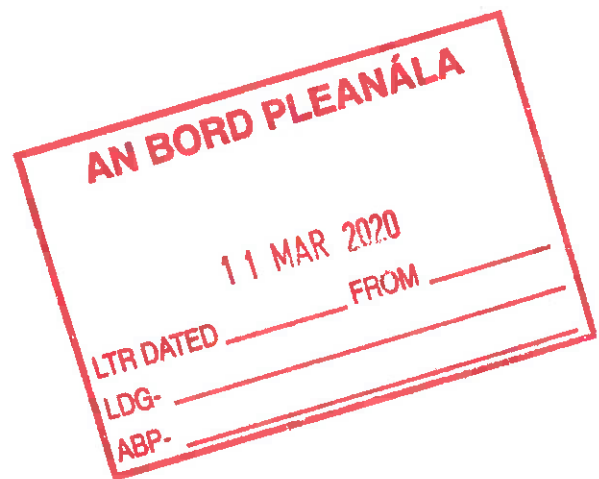




## Appeal details

5. Please describe the grounds of your appeal (planning reasons and arguments). You can type or write them in the space below or you can attach them separately.

Please find the grounds of the appeal in the attached cover letter titled:  
RE: REFERRAL OF SECTION 5 DECLARATION - DUBLIN CITY  
COUNCIL REG REF 0042/20 - 18 OAKLEY SQUARE, RANELAGH,  
DUBLIN 6.





## Supporting material

6. If you wish you can include supporting materials with your appeal.

Supporting materials include:

- photographs,
- plans,
- surveys,
- drawings,
- digital videos or DVDs,
- technical guidance, or
- other supporting materials.

## Acknowledgement from planning authority (third party appeals)

7. If you are making a third party appeal, you **must** include the acknowledgment document that the planning authority gave to you to confirm you made a submission to it.

## Fee

8. You **must** make sure that the correct fee is included with your appeal. You can find out the correct fee to include in our Fees and Charges Guide on our website.

**AN BORD PLEANÁLA**

11 MAR 2020

LTR DATED \_\_\_\_\_ FROM \_\_\_\_\_

LDG- \_\_\_\_\_

ABP- \_\_\_\_\_



## Oral hearing request

9. If you wish to request the Board to hold an oral hearing on your appeal, please tick the "yes, I wish to request an oral hearing" box below.

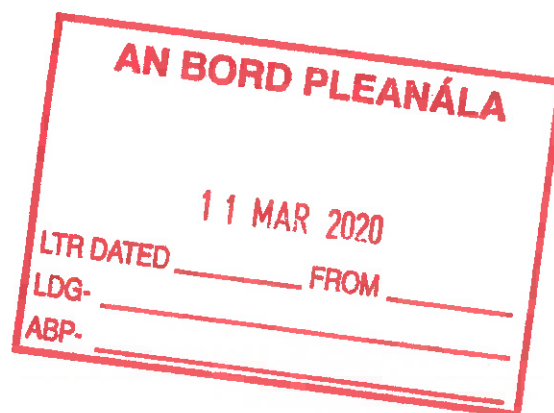
Please note you will have to pay an **additional non-refundable fee** of €50. You can find information on how to make this request on our website or by contacting us.

If you do not wish to request an oral hearing, please tick the "No, I do not wish to request an oral hearing" box.

Yes, I wish to request an oral hearing

☒

No, I do not wish to request an oral hearing

☐

NALA has awarded this document its Plain English Mark

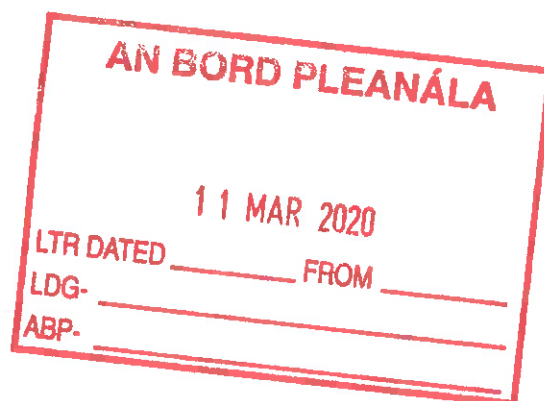
Last updated: April 2019.







The Secretary,  
An Bord Pleanála,  
64 Marlborough Street,  
Rotunda,  
Dublin.  
D01 V902



9<sup>th</sup> March 2020

Our client: Cliona Cleary, 26 Charleston Avenue, Ranelagh, Dublin 6

Dear Sir/Madam,

**RE: REFERRAL OF SECTION 5 DECLARATION – DUBLIN CITY COUNCIL REG REF 0042/20 – 18 OAKLEY SQUARE, RANELAGH, DUBLIN 6**

#### **1.0 INTRODUCTION**

We act on behalf of Ms Cliona Cleary who wishes to appeal against Dublin City Council's Declaration of 14<sup>th</sup> February 2020 deeming that the construction of an extension to 18 Oakley Square, Ranelagh, Dublin 6, is exempted development, a property bounding the Appellant's residence at No. 26 Charleston Avenue, Ranelagh.

The question is whether the recent extension which includes large windows at the western elevation to the western façade of 18 Oakley Square constitutes development and, if so, is it exempted development having regard to condition 14 attached to a previous permission, ABP Ref. 29/5/72471 which is appended herewith (Appendix 2).

Please be advised that the planning status of the development is currently under legal challenge by the Appellant pursuant to Section 160 of the Planning and Development Act, 2000 and an interim injunction has been granted by the Circuit Court. In the circumstances, we request that the Board determine this Referral/Appeal at its earliest convenience. Please also note that an earlier section 5 application was submitted by the owners of the subject property (Dublin City Council Ref. 0005/20). That section 5 differs substantially from the Section 5 application made by the Appellant. The question asked in the previous application was however different from that made in this referral. The question asked in the Section 5 application submitted on behalf of the Appellant (dated 17/01/2020) was as follows:

*Whether the recent extension which includes large windows at the Western elevation to the Western façade of Oakley Square constitutes development having regard to planning Condition 14 attached to a previous planning application Ref ANB 29/05/2471. (Appendix 2)*

The question asked in the Section 5 application submitted by the owners of 18 Oakley Square was as follows:



*Single storey flat roof extension to the rear of the house totalling 26.5 sqm. (Appendix 3)*

The Application Form in relation to the previous referral was signed by one Nicola da Ponte on behalf of the owners of 18 Oakley Square. Mr Da Ponte replied "No" to the specific question asked in relation to whether there were previous applications on the site. That is incorrect, insofar as the existing house at No. 18 Oakley Square was authorised by ABP Ref. 29/5/72471. The Planner's Report on the previous section 5 application (dated 17/01/2020) also states under the heading 'Planning History': "*no relevant planning history*".

The Planner's Report (dated 4<sup>th</sup> February 2020) in relation to the Appellant's referral (Ref. 0042/20) does however acknowledge that there is a previous planning permission on the site namely Ref. PL 29/5/72471.

The grounds for appeal are set out hereunder and the following appendices are enclosed:

- Appendix 1: A copy of Dublin City Council's Declaration dated 14<sup>th</sup> February 2020 issued to the Appellant together with Planner's Report;
- Appendix 2: Section 5 application of the Appellant dated 17/01/2020 together with enclosures: a) Photographs of the development at 18 Oakley Square; b) Planning Permission ABP Ref: 29/05/2471; c) Composite drawing and report prepared by Stephen Tierney Architect; d) Extracts from Dublin City Council Development Plan 1980; e) Site location map.
- Appendix 3: A copy of the Section 5 application of the owners of 18 Oakley Square - Mauro Fiorio and Giorgia de Maio - dated 02/01/2020 together with the Planner's Report.
- Appendix 4: Submission made by Nicola Da Ponte and AKM Design on behalf of the owners of Oakley Square in relation to the application of Cliona Cleary, the Appellant.

## 2.0 GROUNDS OF APPEAL

The Appellant challenges the Planning Authority's Declaration that the development is exempted development the grounds of appeal are summarised hereunder. The Appellant also relies on the arguments including legal submissions made in the Section 5 application and in the within appeal and a booklet of the relevant legal authorities is enclosed herewith.

### 2.1 Contravention of planning condition 14 in ABP Ref. 29/5/72471:

The development conflicts with and/or is contrary to a condition attached to a previously implemented permission relating to development of Oakley Square, which includes 18 Oakley Square (and extends to the garden of 18 Oakley Square upon which the extension has been constructed). The Appellant shares a boundary fence with 18 Oakley Square and the rear of the Appellant's property faces the development the subject of this appeal. The Condition which is germane to the within appeal is Condition 14 of the said permission. Condition 14 provides as follows:

*"No windows shall be provided, now or in the future, in the indicated blank facades of the new residential blocks, save where such are shown on the lodged plans."*

*Reason: In the interests of residential amenity."*



The basis for asserting that the development contravenes this Condition is detailed in the documents attached to the Section 5 application to which the Board is respectfully referred.

In summary, the stated purpose/reason for the inclusion of Condition 14 in the permission was to protect the residential amenity of neighbouring properties, and those same considerations apply now. The glazed façade extension would adversely impact the amenity and privacy of the Appellant's property and depreciate its value. It would give rise to close line-of-sight views from the kitchen and dining area of 18, Oakley Square into two bedrooms, a bathroom and landing at 26 Charleston Avenue. The Appellant resides with her husband and children in the said property. It is submitted that the development would lead to unwanted overlooking from the Appellant's property to a fully exposed kitchen and dining area, typically the area of highest activity in the home. It would also lead to noise exposure via the sliding-glass door, when open.

It is contended that an extension which includes floor to ceiling glazing on the western façade is contrary to the letter and purpose of Condition no. 14 and is therefore not exempted development pursuant to Article 9 of the Planning and Development Regulations, 2001.

## 2.2 Absence of precedent

There is no precedent for similar development on the West facing side of Oakley Square. There are no extensions to the properties adjacent to 18 Oakley Square which run parallel to Charleston Avenue. Along this side of Oakley Square are houses 15, 16, 17 and 18 (the subject of this referral); none have extensions, windows or doors that contravene Condition 14. The house at No. 18, Oakley Square is a corner unit located where two sides of Oakley Square meet.

There is one property on the North side of Oakley Square which has a small conservatory extension but this property does not back onto any other dwellings and is not visible from any neighbouring property. It does not therefore impact the amenity of any neighbouring property and is not an extension of a blank façade. This conservatory/extension does not therefore constitute a precedent upon which the owners of 18 Oakley Square are entitled to rely.

## 2.3 Inconsistency of appearance and character

Section 4 (1) (h) of the Planning and Development Act, 2000 provides that certain types of development do not require planning permission including:

*“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 Appellant's Section 5 reference (Ref 0042/20) outlines that this development involves the installation of large floor to ceiling glazing over the full extent of the extension of the blank western façade where no windows exist at present and is entirely inconsistent with the materiality of the western façade prior to its extension, that being a window-less wall of plain white render. Indeed, it is inconsistent with the entire west-facing line of Oakley Square whose glazing is strictly restricted by the above-mentioned planning permission.

It is also inconsistent with the character of surrounding structures on the terrace and an objective bystander looking at the pre-construction and post construction photographs of the western elevation of no. 18 could not fail to notice the significant differences between the shape, form, materials and construction of the pre-existing and post extension structure.

## 2.4 Observation from the Owners of 18, Oakley Square

**AN BORD PLEANÁLA**  
**11 MAR 2020**  
LTR DATED \_\_\_\_\_ FROM \_\_\_\_\_  
LDG- \_\_\_\_\_  
ABP- \_\_\_\_\_ 3





The owners of No 18 Oakley Square submitted an Observation on the Appellants' Section 5 reference (Ref 0042/20), which includes a report by AKM and a report by Nicola De Ponte (Appendix 4). Neither of those reports address the arguments set out in the Appellants' Section 5 Cover Letter or the supporting case law.

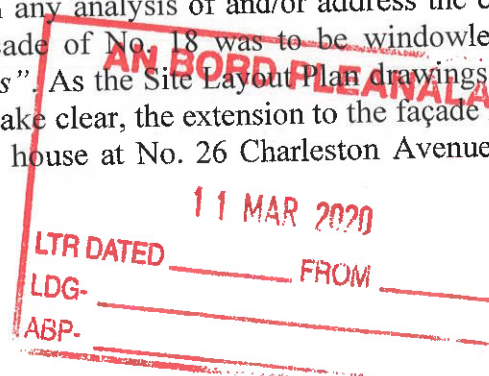
Nicola De Ponte's report also refers to a Section 5 Declaration (EXPP 0005/20) issued on foot of the application made by the owners of 18 Oakley Square. That application was prepared and signed by Nicola Da Ponte. The said Mr Da Ponte replied in the negative to a question asking "*Were there previous planning applications on this site?*". Mr Da Ponte replied 'No'. Further, in the Planners Report in respect of the Declaration issued to the owners, the Planner stated under the heading 'Planning History' "*No relevant planning history*". The owner's reference therefore appears to have been determined without reference to ABP Ref. PL 29/5/72471.

In addition, in the report prepared by AKM', in quoting Condition No. 14, does not refer to the reason for the attachment of the condition which is "*interest of residential amenity*".

## 2.5 Shortcomings of Planner's Section 5 Decision

The Appellant's arguments were not addressed or responded to by the Planner who determined the Appellants' Section 5 reference. The Planner's Report (Appendix 1) gives no indication that they were even considered. It should be noted that:

- Although the Planner agreed that the western side elevation of No. 18 Oakley Square is one of the aforementioned blank facades - "*It would appear the western side elevation of No. 18 Oakley Square is one of the aforementioned blank façade...*" (Planner's Report 04/02/2020 p. 3) - the Planner did not address the Appellant's assertion that the development is an expansion of 18 Oakley Square involving the enlargement of the West-facing façade, and that via this extension of the blank façade it is therefore caught by the scope of the Condition.
- There is no evidence that the Planner considered the purpose of the reason for Condition 14, which was "*in the interest of residential amenity*". In this regard, the Supreme Court judgment in *Kenny v Dublin City Council* [2009] IESC 19 should be noted. In that case, the Supreme Court held that it is appropriate to adopt a purposive approach to interpreting planning conditions.
- The Planner failed to consider or attach due weight to the principles applying to interpretation of a planning permission. In this regard, the Supreme Court case of *Lanigan v Barry* [2016] IESC 46 should be noted. The said decision emphasises a "text in context" approach to interpretation of planning permissions. The Court held that "*...the 'text in context' approach requires the Court to consider the text used in the context of circumstances in which the document concerned was produced including the nature of the document itself*" [para 3.11 of judgment].
- The Planner failed to engage in any analysis of and/or address the context in which the original western façade of No. 18 was to be windowless in the *interests of residential amenities*". As the Site Layout Plan drawings prepared by Tierney Haines Architects make clear, the extension to the façade is located no farther from the rear of the house at No. 26 Charleston Avenue than the original façade.







- The Appellant's assertion, that the development should not be considered exempted development due to its material impact to the character of both the structure itself and that of its neighbouring structures, was not addressed by the Planner.

In the circumstances, it is submitted that the development of windows on the extension to the façade is contrary to the purpose of the planning Condition and it seems clear that at the time of attaching the Condition the Board was satisfied that the inclusion of windows was contrary to local residential amenities.

## 2.6 Failure to provide reasons:

No reasons are given by the Planner in his report (or in the Declaration) for his failure to respond to and/or address the submissions made on behalf of the Appellant in her Section 5 application. The only observation made by the Planner was :  
*"Condition 14 of An Bord Pleanala decision PL 29/5/2471 does not relate to the subject extension."*

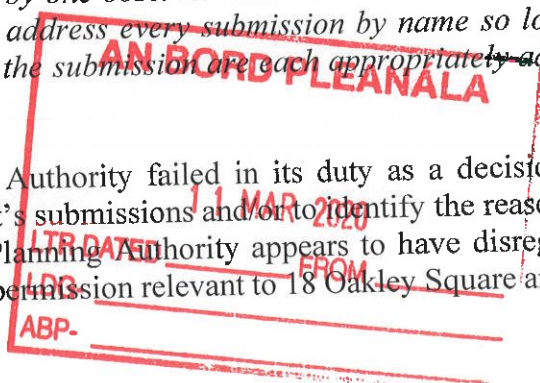
The arguments advanced by the Appellant are not addressed however and no reasons are given for the rejection of those arguments other than a bald statement to the effect that the Planner did not believe that the extension contravened Condition 14. This being so, it is submitted that the decision of the Planning Authority is deficient having regard to decision of the Supreme Court in *Balz v An Bord Pleanala* [2019] IESC 90. That case concerned judicial review proceedings in relation to a decision of An Bord Pleanala allowing the erection of wind turbines in County Cork. The Appellants argued that the Inspector and therefore the Board, had failed to consider material which had been submitted by the Appellants in relation to specific guidelines regarding wind energy. The Supreme Court held that the arguments should have been addressed and Mr Justice O'Donnell stated:

*"It is a basic element of any decision-making affecting the public that relevant submissions should be addressed, and an explanation given why they are not accepted, if indeed that is the case."* (para 57)

The above decision was applied by Mr Justice McDonald in *Sliabh Luachra v ABP* [2019] IEHC 888. That case concerned proceedings challenging the development of a wind farm and in considering the obligation of a decision making authority to consider submissions made by a given party in a planning application, the Court stated:

*"What seems to me to be crucial is that the points made in the submissions should be addressed. In circumstances where there will frequently be an overlap between submissions made by one observer and another it seems to me that it would not be necessary to address every submission by name so long as the substantive points made in the submissions are each appropriately addressed."*  
 [Para 38]

It is submitted that the Planning Authority failed in its duty as a decision-making authority to consider the Applicant's submissions and/or to identify the reasons for not accepting those arguments. The Planning Authority appears to have disregarded the significance of the prior planning permission relevant to 18 Oakley Square and appears





to have disregarded the impact of the development on neighbouring properties notwithstanding the restriction on windows attached to 18 Oakley Square.

### 3.0 CONCLUSION

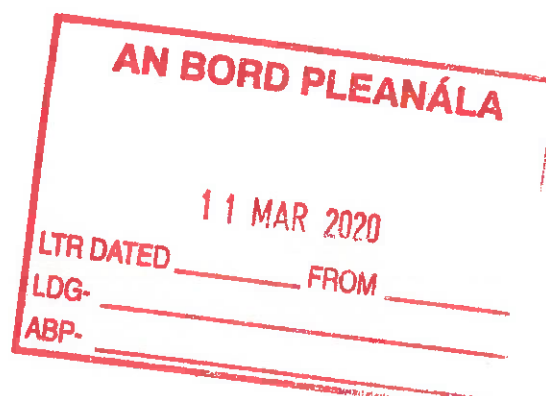
For the reasons outlined above it is submitted that the extension to the western façade of the property at 18 Oakley Square constitutes development and is not exempted development, as it contravenes a condition attaching to ABP REF. PL 29/5/72471. The Appellant submits that the decision of the Planning Authority should be set aside and the Appellant invites the Planning Authority to consider also the prior Section 5 determination (dated 21/01/2020) having regard to inter alia, the temporal proximity of both determinations. It is submitted that purpose of Condition 14 is to regulate development “now or in the future” affecting the western blank façade/elevations on the site. The extension to the property clearly involves an extension to the western façade and it would be illogical to prevent the installation of windows in one part of the Western façade and at the same time to allow the installation of windows in another part of the Western façade.

The Appellant requests an Oral Hearing as part of the process as this might serve to assist the Board in determining the matter. A cheque for €270 representing the fee for processing this Referral and a Request for an Oral Hearing is enclosed.

We will be happy to provide any clarification of further information as may be desired by the Board.

Yours faithfully,

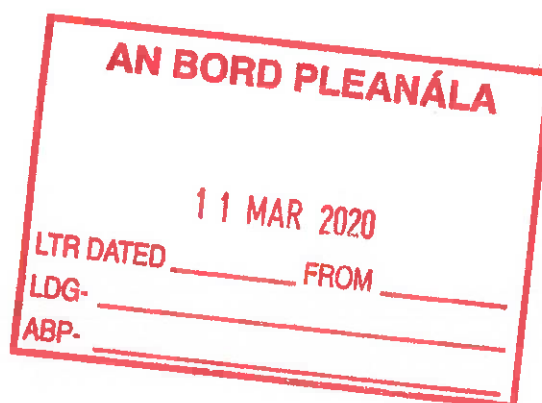
Mr Terry Doyle  
Malcomson Law Solicitors  
The Atrium  
Shamrock Plaza  
Carlow





## APPENDIX 2:

Application for Declaration dated (dated 17/01/2020) with accompanying submission together with enclosures : a) Photographs of the development at 18 Oakley Square; b) Planning Permission dated 10<sup>th</sup> February 1987; c) Composite drawing and report prepared by Stephen Tierney Architect; d) Extracts from Dublin City Council Development Plan 1980; e) Site location map.





# DECLARATION ON DEVELOPMENT & EXEMPTED DEVELOPMENT



## SECTION 5 APPLICATION FORM



NAME OF APPLICANT: CLIONA CLEARY  
 ADDRESS OF APPLICANT: 26 CHARLESTON AVENUE  
RANELAGH DUBLIN 6  
 EMAIL ADDRESS: c.cleary@lawlibrary.ie  
 TELEPHONE NO. Day: 087 9871930 Mobile: 087 9871930

NAME OF AGENT AND AGENT'S ADDRESS: TERRY DAYLE  
MALCOLMSON LAW, THE ATRIUM, LARNEY PLACE, CARLOW  
 TELEPHONE NO. Day: 059 9131745 Mobile: \_\_\_\_\_

ADDRESS FOR CORRESPONDENCE (if different from above)

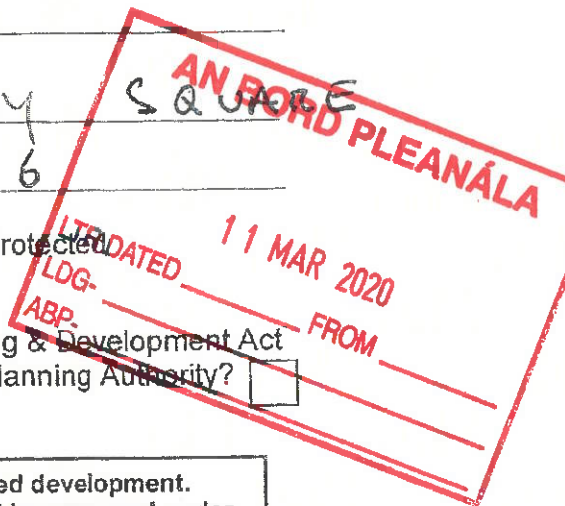
LOCATION OF SUBJECT SITE: 18 OAKLEY  
RANELAGH DUBLIN 6

Is this a Protected Structure or within the curtilage of a Protected Structure? ☒ NO

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.)

Whether the recent extension which includes large windows at the Western elevation to the Western facade of 18 Oakley Square constitutes development having regard to planning condition 16 attached to a 0.1 and 0.2m









NAME OF AGENT AND AGENT'S ADDRESS: TERRY DOYLE

MALCOLMSON LAW, THE ATRIUM, COURT PLACE, CARLOW

TELEPHONE NO. Day: 059 9131745 Mobile: \_\_\_\_\_

ADDRESS FOR CORRESPONDENCE (if different from above)

\_\_\_\_\_

\_\_\_\_\_

42 LOCATION OF SUBJECT SITE: 18 OAKLEY SQUARE  
RANEAHGH DUBLIN 6

Is this a Protected Structure or within the curtilage of a Protected Structure? ☒ NO

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.)

Whether the recent extension which includes large windows at the Western elevation to the Western facade of 18 Oakley Square constitutes development having regard to planning condition 16 attached to a previous planning application Ref ABP 29/05/17

AN BORD PLEANÁLA

11 MAR 2020

LTR DATED \_\_\_\_\_ FROM \_\_\_\_\_

LDG- \_\_\_\_\_

ABP- \_\_\_\_\_

List of plans, drawings etc. submitted with this application

Photographs of the development

Site location map

Composite drawing prepared by Architect

Extract from Dublin City Development

Planning Permission No 18 Oakley Square

Please state Applicant's interest in this site: Owner of property to the

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

MAURO FLORIO & GIORGI ADE MAIO

18 OAKLEY SQUARE

RANDUAGH

18 of Oakley Square

Are you aware of any enforcement proceedings connected to this site?

If so please supply details:

NO

Where there previous planning application/s on this site?

If so please supply details:

☐ YES

Signed

Chris Cleary

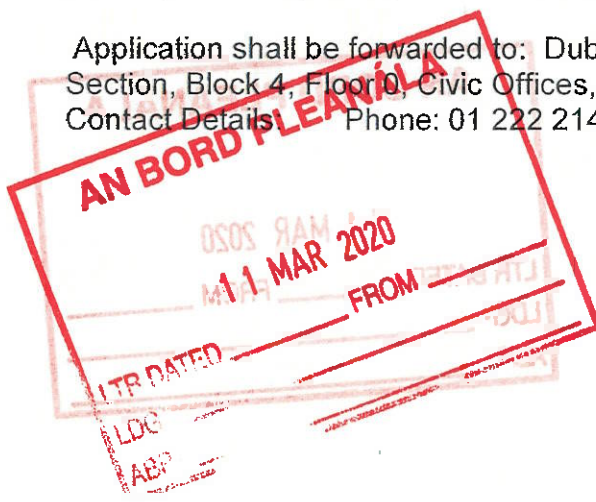
Date

17/01/2020

#### 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 10, Civic Offices, Wood Quay, Dublin 8.  
Contact Details: Phone: 01 222 2149 Fax: 01 222 2675



Senior Executive Officer  
Planning Department  
Dublin City Council  
Civic Offices  
Wood Quay  
Dublin 8

Friday 17<sup>th</sup> January 2020

Dear Sir/Madam,

**Re: Section 5 Reference in respect of an extension to the western façades of No. 18 Oakley Square, Ranelagh, Dublin 6**

## 1.0 INTRODUCTION

### 1.1 Purpose of Application

I<sup>1</sup> act on behalf of Adrian Wrixon and Cliona Cleary the owners of 26 Charleston Avenue, Ranelagh, Dublin 6 whose property is located to the west of No. 18 Oakley Square, Ranelagh, Dublin 6.

The owners of No. 18 Oakley Square, Ranelagh, Dublin 6 are carrying out development at their property at present comprising of an extension to the western façade of their property which includes large floor to ceiling windows facing towards the rear of my client's property and damages the residential amenity of the parties' property at 26 Charleston Avenue. Photographs taken from the said bedroom windows showing the extent of the development are attached at Appendix A.

It is considered that the development does not come within the scope of the planning exemptions in the *Planning and Development Regulations, 2001* on the basis that the development includes windows on an extension off/to the western blank façade of No. 18 Oakley Square and that is contrary to a planning condition attaching to a previous permission regulating development "now or in the future" affecting the western blank façade/elevations on the site.

It is also considered that the development does not come within the scope of section 4 (1) (h) of the *Planning and Development Act, 2000* as it comprises of a substantial (c. 26 sq m) extension that will substantially alter the character of the structure and is inconsistent with the character of the adjoining property at Oakley Square which does not have any extension.

No planning permission has been sought for the development.

Further the owner(s) of 18 Oakley Square submitted an application for a Section 5 Declaration in respect of the same property on or about 3<sup>rd</sup> January 2020. The application form for that Declaration states, in reply to the question:

*"Where there previous planning application/s on this site? 'NO'."*

This is incorrect; there is a previous planning application on the site.

Pursuant to the relevant regulations, my client is not entitled to make any observations on the Section 5 reference submitted by the owners of 18 Oakley Square and in these circumstances, I have been instructed to request a Declaration from Dublin City Council seeking clarity on whether the recent extension (which includes large windows at the western elevation) to the western façade of 18 Oakley Square constitutes development and, if so, is it exempted development having regard to planning condition 14 attached to a previous planning application

<sup>1</sup> Terry Doyle, Malcomson Law Solicitors, The Atrium, Shamrock Plaza, Green Lane, Carlow



relating to the site (granted by the Board by Order dated 10<sup>th</sup> February 1987 Ref. 1369/86 / ABP Ref. 29/5/72471)?

## 2.0 STATUTORY PROVISIONS

The key relevant statutory provisions relating to the proposed development are set out below. Please note that any extracts/references to the *Planning and Development Act, 2000* or the *Planning and Development Regulations, 2001* in this document mean the *Planning and Development Act, 2000* as amended (where it has been amended), and the *Planning and Development Regulations, 2001* as amended (where the regulations have been amended).

### 2.1 Planning and Development Act

Section 2 (1) of the *Planning and Development Act, 2000* states, inter alia, that:

*"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"*

*"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."*

*"use", in relation to land, does not include the use of the land by the carrying out of any works thereof"*

*"exempted development" has the meaning specified in section 4"*

*"unauthorised use" means, in relation to land, use commenced on or after 1 October 1964, being a use which is a material change in use of any structure or other land being development other than – (a) exempted development (within the meaning of section 4 of the Act of 1963 or section 4 of this Act), or b) development which is the subject of a permission granted under Part IV of the Act of 1963 or under section 34, 37G or 37N of this Act, being a permission which has not been revoked, and which is carried out in compliance with that permission or any condition to which that permission is subject"*

*"unauthorised works" means works on, in, over or under land commenced on or after 1 October 1964, being development other than – (a) exempted development (within the meaning of section 4 of the Act of 1963 or section 4 of this Act), or (b) development which is the subject of a permission granted under Part IV of the Act of 1963 or under section 34, 37G or 37N of this Act, being a permission which has not been revoked, and which is carried out in compliance with that permission or any condition to which that permission is subject"*

Section 3(1) of the *Planning and Development Act 2000* provides that 'development' means:

LTR DATED

LDG-

BP-

*"... 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 of use of any structures or other land."*

Section 4 (1) of the *Planning and Development Act 2000* provides that:

*"the following shall be exempted development for the purposes of this Act -..."*

Section 4 (1)(h) of the *Planning and Development Act 2000* provides that:

*"development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures"*

Section 4 (2) of the *Planning and Development Act 2000* provides that:

*"(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, or (ii) the development is authorised, or is required to be authorised, by or under any enactments (whether the authorisation takes the form of the grant of a licence, consent, approval or any other type of authorisation) where the enactment concerned requires there to be consultation (howsoever described) with members of the public in relation to the proposed development prior to the granting of the authorisation (howsoever described).*

*(b) Regulations under paragraph (a) may be subject to conditions and be of general application or apply to such area or place as may be specified in the regulations.*

*(c) Regulations under this subsection may, in particular and without prejudice to the generality of paragraph (a), provide, in the case of structures or other land used for a purpose of any specified class, for the use thereof for any other purpose being exempted development for the purposes of this Act"*

Section 4 (3) of the *Planning and Development Act, 2000* provides that:

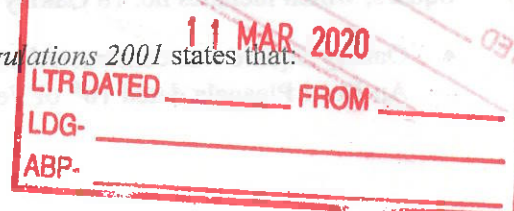
*"A reference in this Act to exempted development shall be construed as a reference to development which is – (a) any of the developments specified in subsection (1), or (b) development which, having regard to any regulations under subsection (2), is exempted development for the purposes of this Act."*

Section 5 (1) of the *Planning and Development Act 2000* provides that:

*"If any question arises as to what, in any particular case, is or is not development or is or is not exempted development within the meaning of this Act, any person may, on payment of the prescribed fee, request in writing from the relevant planning authority a declaration on that question, and that person shall provide to the planning authority any information necessary to enable the authority to make its decision on the matter."*

## **2.2 Planning and Development Regulations, 2001**

Article 3(4) of the *Planning and Development Regulations 2001* states that:





*"In these Regulations, any reference to a permission under the Act shall include a reference to a permission under the Act of 1963, and any reference to conditions to which a permission is subject shall be construed accordingly."*

Article 6(1) of the *Planning and Development Regulations 2001* states that:

*"Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1."*

Article 9(1)(a)(i) of the *Planning & Development Regulations 2001* states that:

*"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" ...*

### 3.0 DISCUSSION

#### **The Extension to the Blank Western Façades/Elevation Constitutes Development**

As outlined above Section 3(1) of the *Planning and Development Act, 2000*, defines 'development', except where the context otherwise requires, 'as the carrying out of any works on, in, over or under land or the making of any material change in use of any structures or other land'.

Section 2(1) of the Act defines "works" as including: '... 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.

The development in this case includes the installation of large floor to ceiling windows on an extension of the blank façade/western elevation of 18 Oakley Square, Ranelagh, Dublin 6, which constitutes an act or operation of construction, extension, alteration, repair or renewal and therefore, constitutes development.

#### **Exempted Development under the Planning and Development Regulations, 2001**

##### ***Development is Contrary to a Previous Condition Attaching to a Permission***

Article 9 of the *Planning and Development Regulations, 2001* states that 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.

In this case, the development contravenes and/or is inconsistent with the use of the property specified in a condition attached to the Board's Decision of 10<sup>th</sup> February 1987 (DCC Ref. 1569/86 ABP Ref. 29/5/72471 (Copy at Appendix B)) in respect of a development at Oakley Square, which includes no. 18 Oakley Square on the following basis:

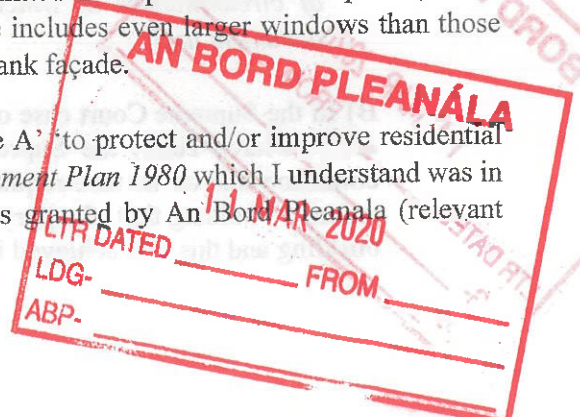
- Oakley Square was constructed pursuant to a planning permission granted by Decision of An Bord Pleanála dated 10<sup>th</sup> of February 1987 whereby the Board granted permission for

development for the erection of a two-storey development comprising twenty six units around landscaped gardens and the demolition of numbers 15, 16, and 17, at 15, 16, 17 and 18 and the rear of 13 and 14, Oakley Road, Ranelagh, Dublin. That document records that the permission was granted *"for the said development in accordance with the said plans and particulars, subject to the conditions specified in the second schedule hereto, the reasons for the imposition of the said conditions being as set out in the said Second Schedule and the said permission is hereby granted subject to the said conditions"*. It was therefore a requirement that the authorized works would be carried out strictly in accordance with the plans submitted with the planning application save where modified by planning conditions.

- Condition 14 of the permission provided that:

*"no windows shall be provided, now or in the future, in the indicated blank facades of the new residential blocks, save where such are shown on the lodged plans. Reason: In the interests of residential amenity"*

- My client's architect, Stephen Tierney, has inspected the planning file relating to that planning application in Dublin City Council's Planning Archives and based on his interpretation of the drawings, the permitted west elevation/facade of what is now known as 18 Oakley Square, Oakley Road, Ranelagh, Dublin 6, is a blank façade containing no windows. He has prepared a drawing and a report in this regard (attached at Appendix C) which shows, inter alia, what was proposed and what was permitted at the western elevation/facade of Block F (which is now known as No. 18 Oakley Square). That drawing also shows that a two storey return to the rear of the same western elevation with windows at the ground floor level at first level was proposed but was omitted in the permitted scheme.
- This seems to be consistent with the *"lodged"* planning drawing number 8415/PP5 titled 'Elevations' dated July 1986 and date stamped 17<sup>th</sup> July 1986 which shows no windows at the western elevations of the façade of Block F save for windows on a two storey return. I understand that that drawing shows the western façade of No. 18 Oakley Square as initially proposed in the planning application to Dublin Corporation.
- It also seems consistent with drawing number 8415/PP1/BBL... titled 'Site Plan' and dated July 1986 and date stamped 14<sup>th</sup> December 1987, which according to a letter from Edmund Burke and Partners to Dublin Corporation (date stamped 14<sup>th</sup> December 1987) appears to have been submitted as part of compliance prior to commencing of development as that drawing indicates that the two storey return was omitted. Therefore, I understand that no windows were permitted on the western elevation/facade of Block F, *"now or in the future"* which faces toward my client's property, *"in the interest of residential amenities"*.
- Insofar as the initially proposed two storey return (which included windows at ground and first floor levels) to the western elevation was omitted in the permitted development, I note that the current extension to the western facade includes even larger windows than those previously rejected along the subject western blank façade.
- My client's property was also zoned 'Objective A' 'to protect and/or improve residential amenities' on Map 9 of the *Dublin City Development Plan 1980* which I understand was in effect at the time the planning application was granted by An Bord Pleanála (relevant extracts at Appendix D).





- In light of this and having regard to the “lodged plans” the phrase “no windows shall be provided, now or in the future, in the indicated blank facades of the new residential blocks, save where such are shown on the lodged plans” objectively and based on a reasonable person’s interpretation means that “the façade is not to have windows except where indicated”.
- The extension is an extension of the western blank façade and is therefore subject to the planning condition.
- Therefore, when read objectively and in its planning context the development of large windows on the extension of the blank façade is contrary to the purpose of Condition No. 14.
- Further, the Condition may arguably be a condition that regulates “now or in the future”, the residential use of No. 18; the impact of the use on the privacy of neighbouring properties to the west is controlled by the planning condition and the development of windows along the western façade or any extension to the façade is inconsistent with the permitted residential use of the building.
- The purpose of the condition was stated to be ‘in the interests of residential amenity’. It seems clear that this relates to the residential amenity of adjacent residences (as removal of windows could not be said to be in the interests of the amenity of the owners/occupants of No. 18 Oakley Square). It will be recalled that the Condition was not time limited and forbade windows ‘in the indicated blank facades’ ‘now or in the future’.
- With regard to this I am advised by Counsel that the following Court Decisions of relevance:

A) In the Supreme Court case of *Lanigan v Barry* [2016] IESC 46 (27<sup>th</sup> July 2016) Clarke J stated at para 3.11 that:

*“The principles applicable to the construction of a planning permission are, of course, well settled and were described by McCarty J. in the oft-quoted passage from In re. XJS Investments Ltd [1986] IR 750 as requiring the Court to construe planning documents not as complex legal documents drafted by lawyers but rather in the way which ordinary and reasonably informed persons might understand them. It might, in passing, be appropriate to note that this was, perhaps, an early example of the move towards what has been described as the “text in context” method of construction appropriate to the determination of the meaning of all documents potentially affecting legal rights and obligations. This approach has now become well established. The “text in context” approach requires the Court to consider the text used in the context of circumstances in which the document concerned including the nature of the document itself.”*

B) In the Supreme Court case of *Kenny v Dublin City Council* [2009] IESC 19 (judgment of 5<sup>th</sup> March 2009) the Supreme Court adopted a purposive approach to a planning condition that on its face required the omission of a first floor “in the interests of visual amenity” holding that the purpose of the condition was the reduction in the height of the building and this was achieved by the removal of any floor (and not the first floor). In this

context in pursuit of the true meaning of a condition, the Supreme Court was prepared not just to look beyond the literal wording of a condition but to allow the doing of something which was entirely contrary to the literal wording of a condition:

35. *The principle does not resolve the problem [then before the Supreme Court] which, as I explain later, arises in respect of Condition No. 2, namely that the condition is, itself, contradictory or, at least, ambiguous. The Gregory case shows that the court does not confine itself to a purely literal interpretation of a condition. It will seek to ascertain its true meaning from its context in the planning process.*

37. *Condition No. 2 required that building No. 3 on the Dartry Road elevation be "reduced in height by the omission of the first floor...". The reason for the condition was the "interest of visual amenity."*

38. *It is common case that Trinity omitted a floor other than the first. The condition was interpreted by the Council as requiring that the overall height of the building be reduced by one floor....*

43. *Condition No. 2 presents a problem of interpretation. It is clear from the terms of the condition itself that the purpose of the removal of the first floor was the reduction of the height of the building....[Yet [t]]he Inspector's report did not recommend the removal of any floor....*

44. *This means that there was a contradiction or ambiguity at the heart of the condition. Condition No. 1 required the development to be carried out in accordance with the plans submitted except as may otherwise be required in order to comply with the following conditions. Compliance with Mr Kenny's proposed literal interpretation of Condition No. 2 would lead to inconsistency with Condition No. 1 by altering the façade. I do not agree with the submission made on behalf of Mr Kenny that it is plain and unambiguous. I am satisfied that the true objective of Condition No. 2 was the reduction in the height of the building..."*

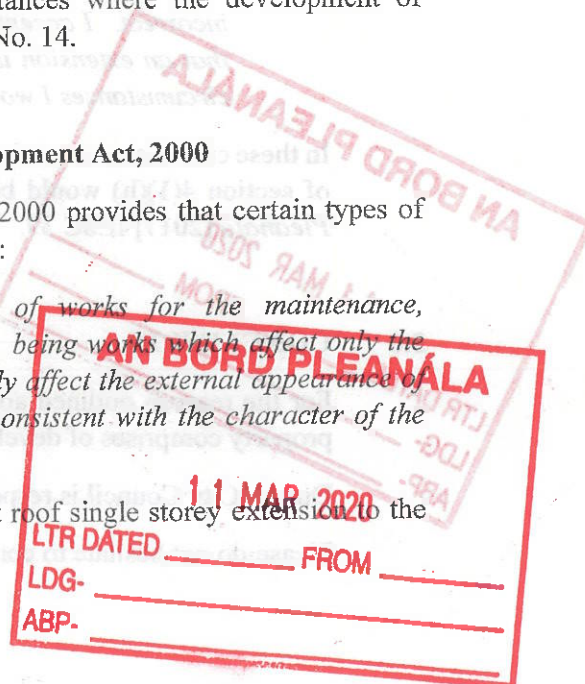
- For the above reasons, it is submitted that the development is contrary to Condition No. 14 and/or is inconsistent with the permitted use of the building and the owner of the site cannot rely on the classes of exempted development, for example, Class 1 of *Part 1 of Schedule 2 of the Planning and Development Regulations, 2001*, which relates allows for extensions to properties, in circumstances where the development of windows on the extension contravenes Condition No. 14.

#### **Exempted Development under the Planning and Development Act, 2000**

Section 4 (1) (h) of the Planning and Development Act, 2000 provides that certain types of development do not require planning permission including:

*"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 development in question comprises of a 26 sq m flat roof single storey extension to the western façade of 18 Oakley Square.





It does not comprise of works for the maintenance etc. of the structure. It is a large extension to the structure.

Number 18 Oakley Square is a two-storey square structure that forms part of a line of terraced houses. The development materially affects the external appearance of the structure and is inconsistent with the character of the structure in that it transforms the structure from a square two storey building (which forms part of a terrace) with a pitched roof to a part two part one storey, part pitched, part flat roofed, part (but not quite) rectangular structure.

The development also involves the installation of large floor to ceiling glazing on the extension of the blank western façade where no windows exist at present and is inconsistent with the material used on the western façade prior to its extension which is constructed of non-transparent material rather than transparent material (large floor to ceiling windows) in the extension of/to the western facade.

Further the development is inconsistent with the character of surrounding structures on the terrace insofar as it is larger than any existing extensions to those properties; an objective bystander looking at the pre-construction and post construction photographs of the western elevation of no. 18 could not fail to notice the significant differences between the shape, form, materials and construction of the prior to and post extension structure.

I am also advised by Counsel that in the High Court case of *McCabe v CIE* [2006] IEHC 356 Mr Justice Herbert noted that the mere fact a development structure and the post-development structure is used for the same purpose does not mean that the character of the structure has not been materially affected.

Further, in *Cronin (Readymix) Ltd v An Bord Pleanala* [2017] IESC 36 the Supreme Court considered the scope of the exemption under s 4(1)(h). O'Malley J held that the extension of the structure in that case was not a development that came within the exemption. In so finding O'Malley J held that:

*"one must bear in mind the overall framework and scheme of the Act" and that "it is manifestly unlikely that the intention was to render exempt all works carried out on any existing structure, including unlimited extensions in size, subject only to considerations of visual appearance (and subsequent considerations arising from any intensification of use)..."*

*In my view the interpretation placed on s.4(1)(h) of the Act by the High Court was incorrect. I accept the arguments of the Board as to its true meaning, and consider that an extension is a development that does not come within the exemption. In the circumstances I would allow the appeal."*

In these circumstances, to hold that a development of this type and scale comes within the scope of section 4(1)(h) would be contrary to the judgment in *Cronin (Readymix) Ltd v An Bord Pleanala* [2017] IESC 37.

3.0

#### CONCLUSION

For the reasons outlined above it is submitted that the extension to the western façade of the property comprises of development and is not exempted development.

Dublin City Council is respectfully invited to agree with this assessment.

Please do not hesitate to contact us if you require any further information.

Yours faithfully,

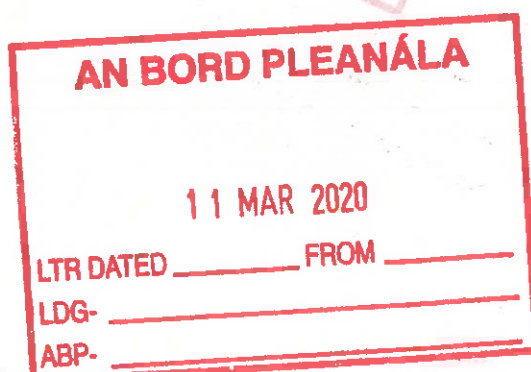
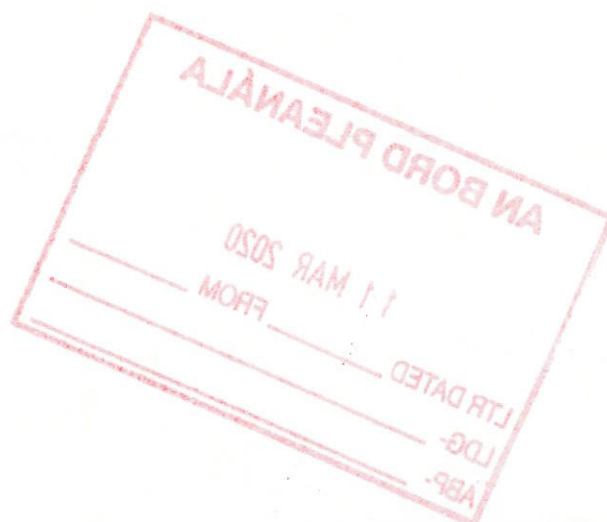
Mr Terry Doyle

Malcomson Law Solicitors

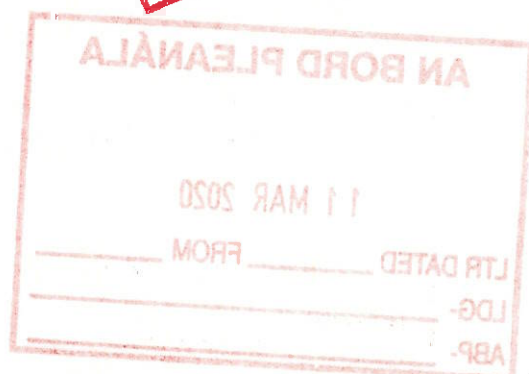
The Atrium

Shamrock Plaza

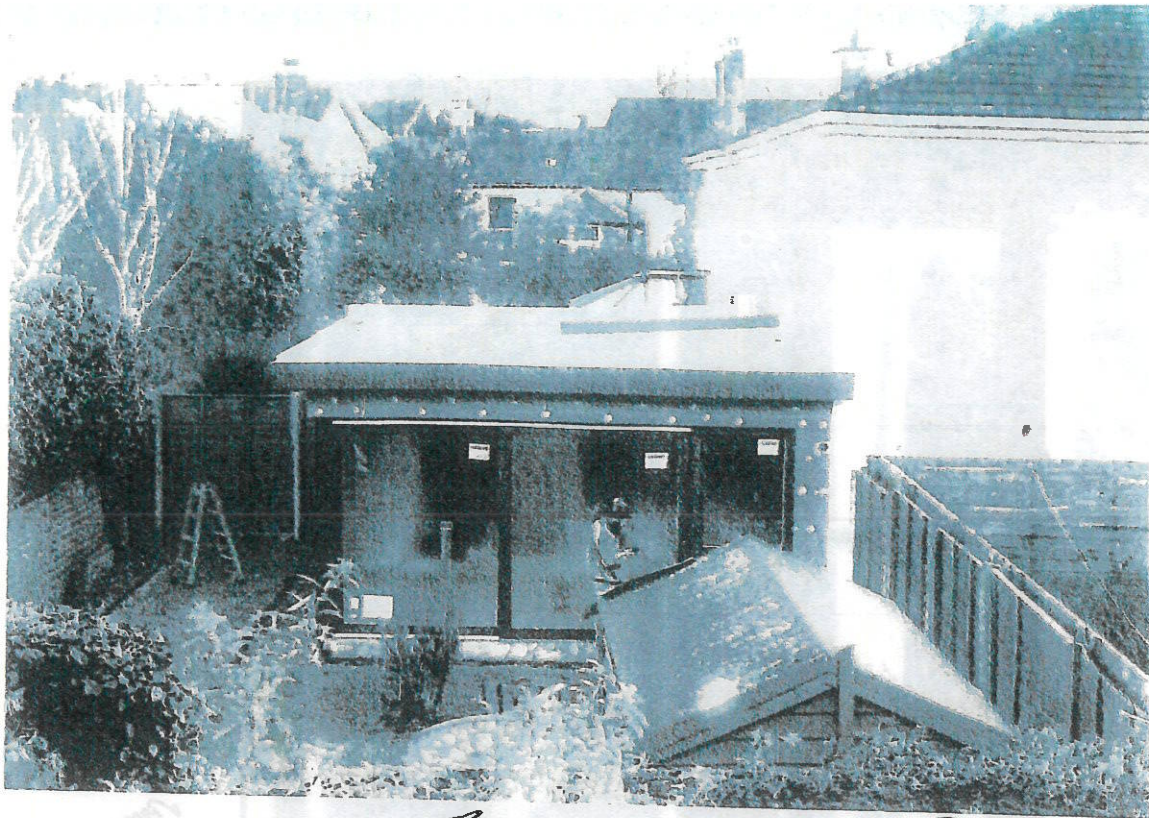
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**APPENDIX A: PHOTOGRAPHS OF DEVELOPMENT AT 18 OAKLEY SQUARE**

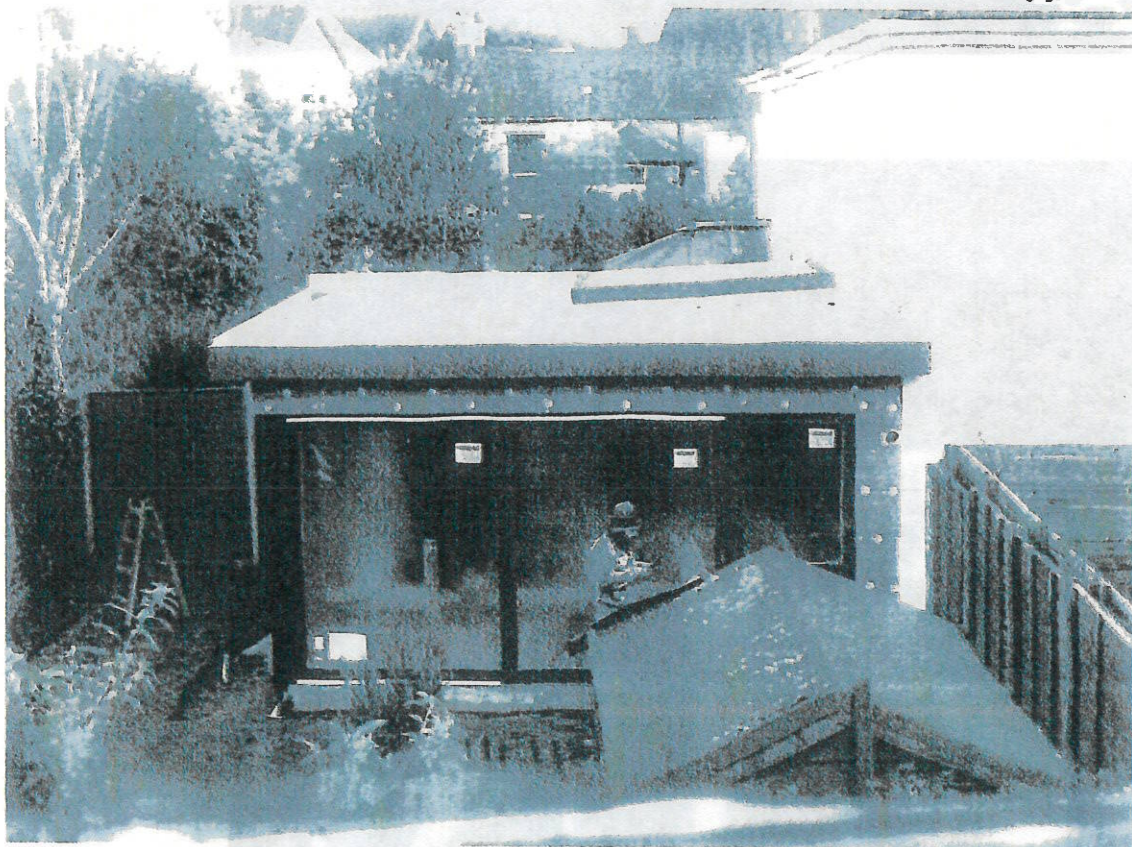






*Bed room*

*Bed room*



*Bed room*

*Bed room*

**AN BORD PLEANÁLA**

11 MAR 2020

LTR DATED \_\_\_\_\_ FROM \_\_\_\_\_

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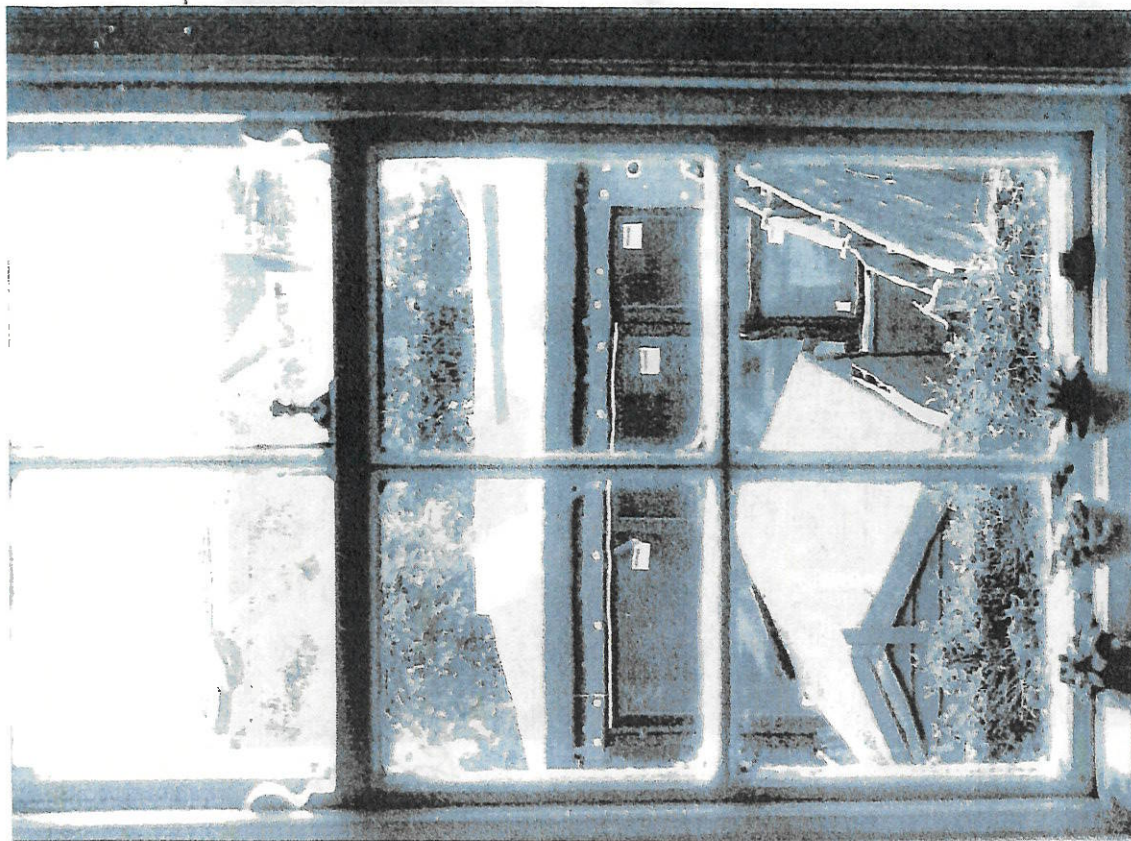
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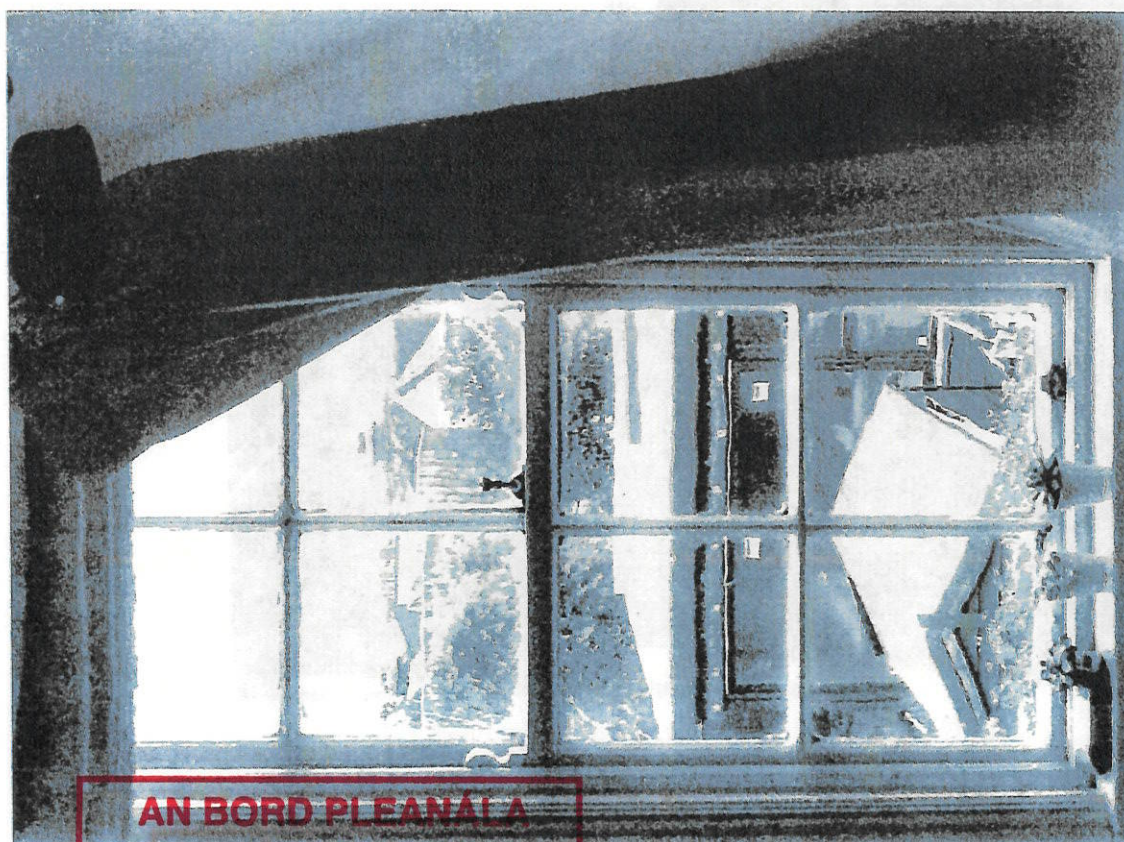
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4.

Bath  
room



3.

Bathroom

AN BORD PLEANALA

11 MAR 2020

LTR DATED FROM

LDG-

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5.

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AN BORD PLEANÁLA

11 MAR 2020

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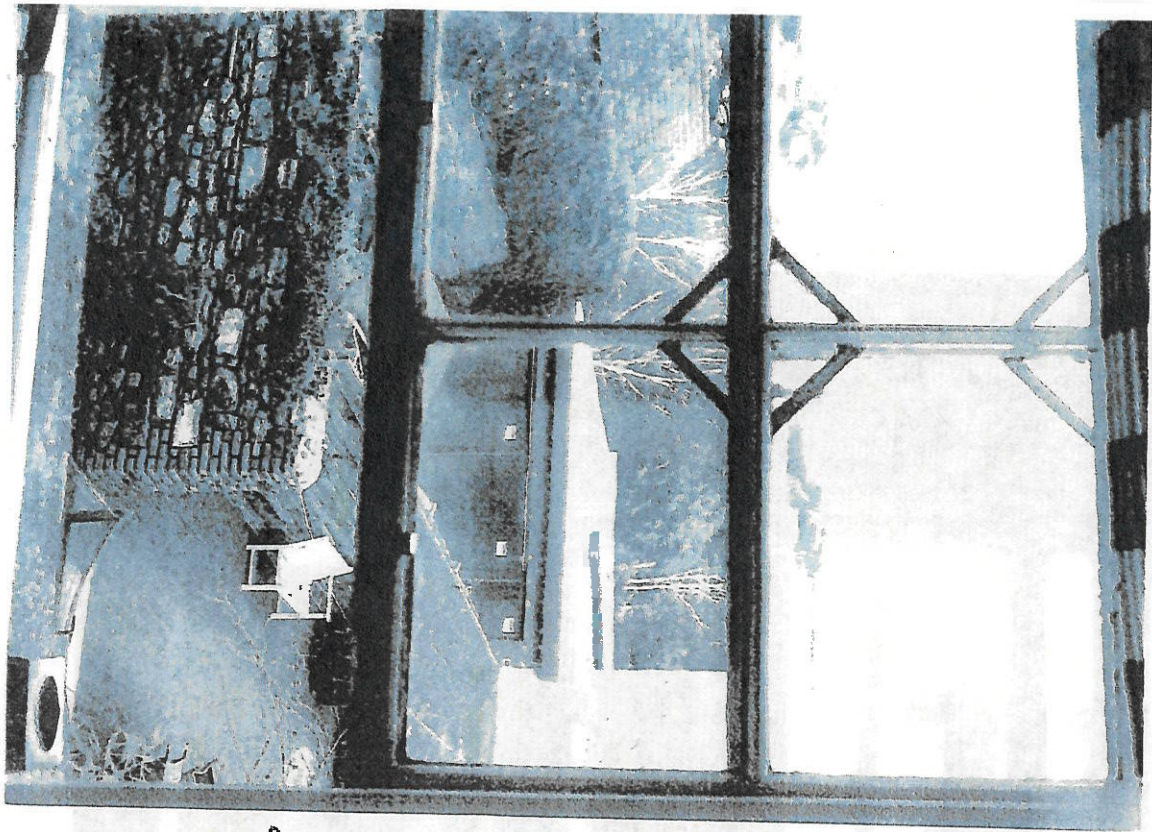
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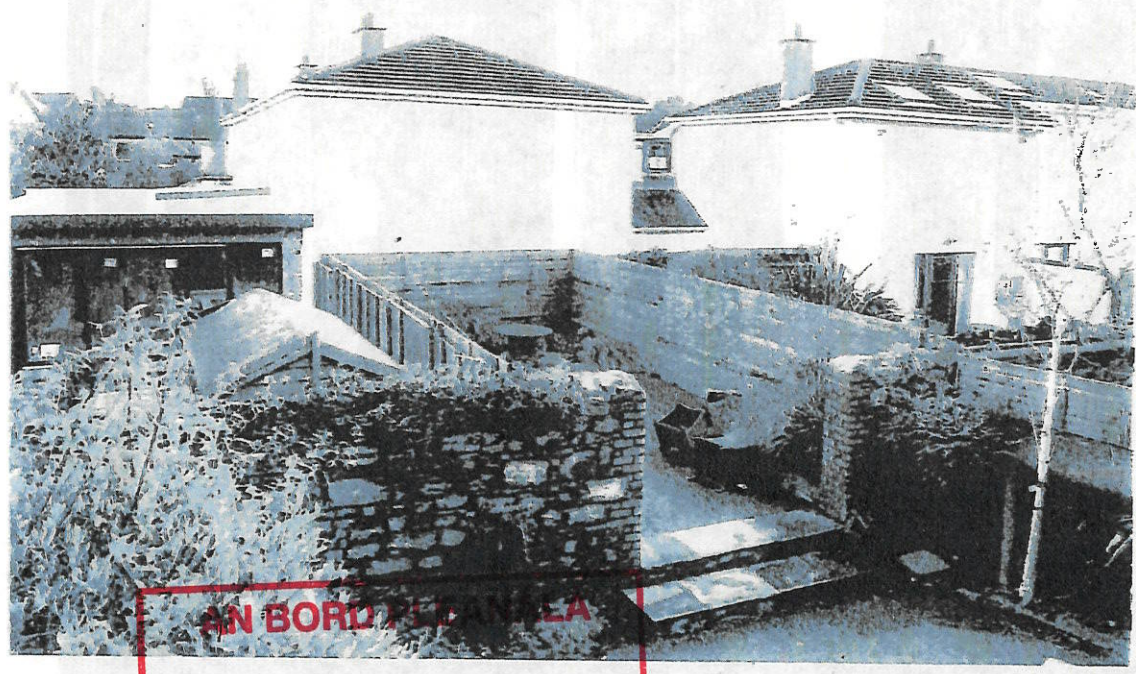
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7



Bedroom #2 Windows

7



AN BORD LEANALA

11 MAR 2020

LTR DATED \_\_\_\_\_ FROM \_\_\_\_\_

LDG- \_\_\_\_\_

ABP- \_\_\_\_\_

FROM \_\_\_\_\_ LTR DATED \_\_\_\_\_

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8.



**AN BORD PLEANÁLA**

11 MAR 2020

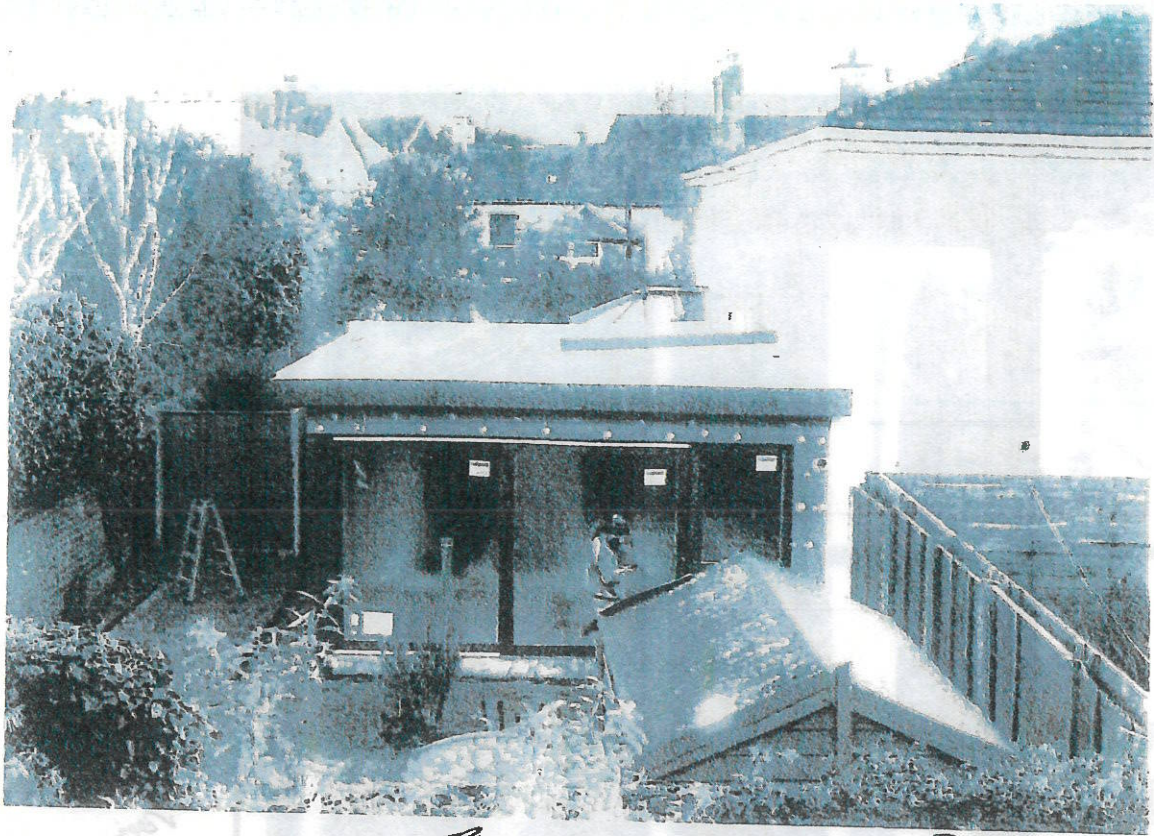
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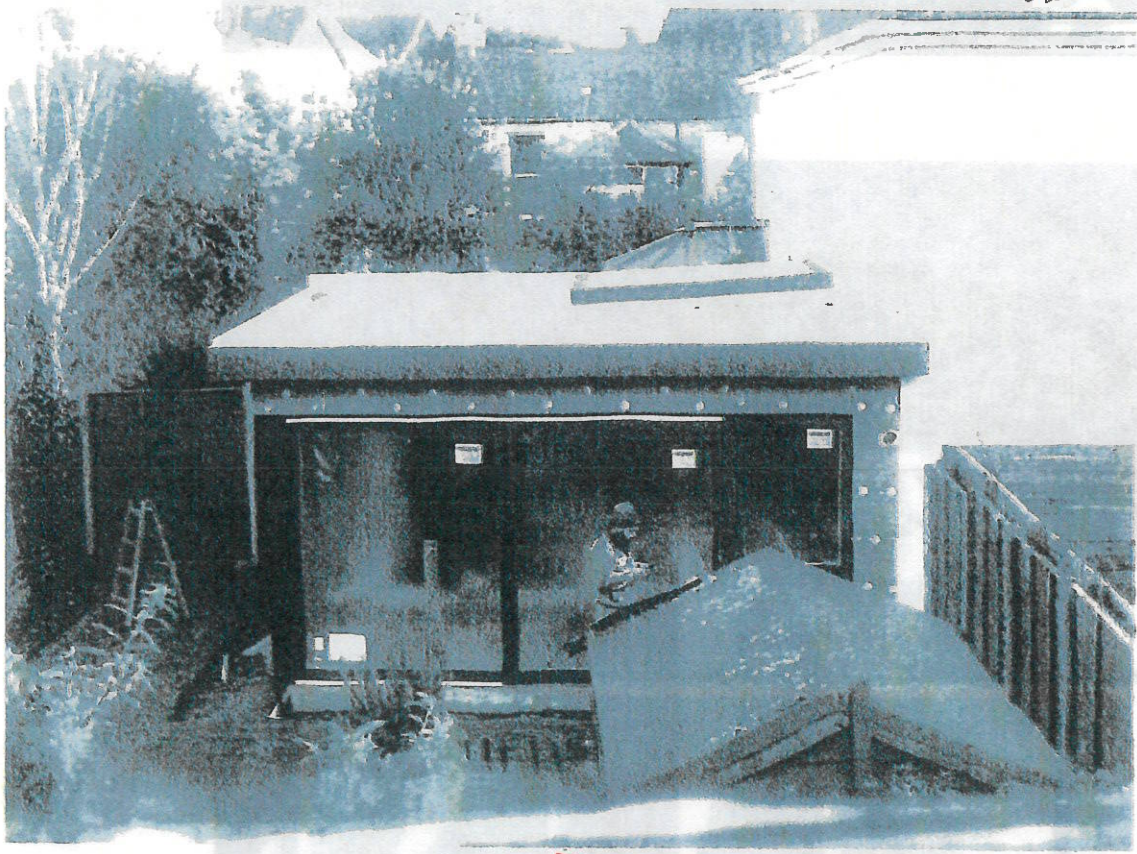






*Bed*

*Bed room*



2.

*ABP*

*Bedroom*

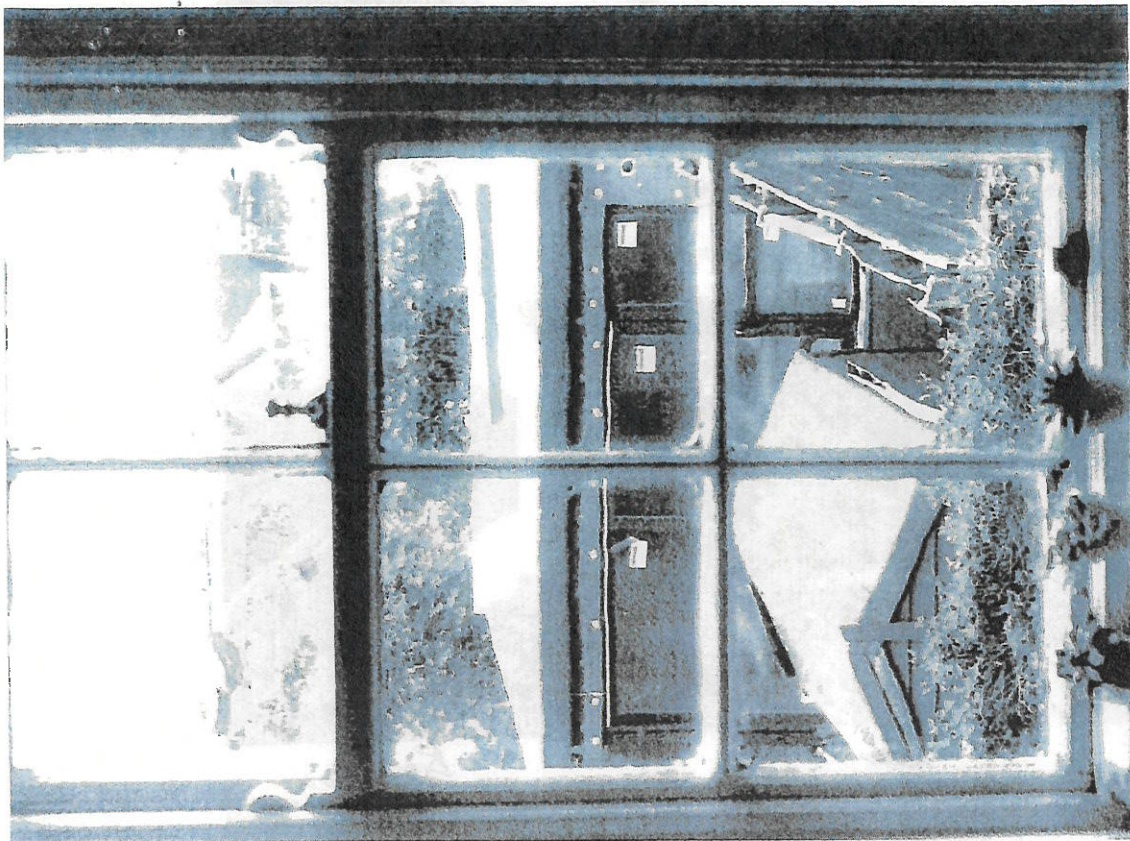
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LDG- FROM

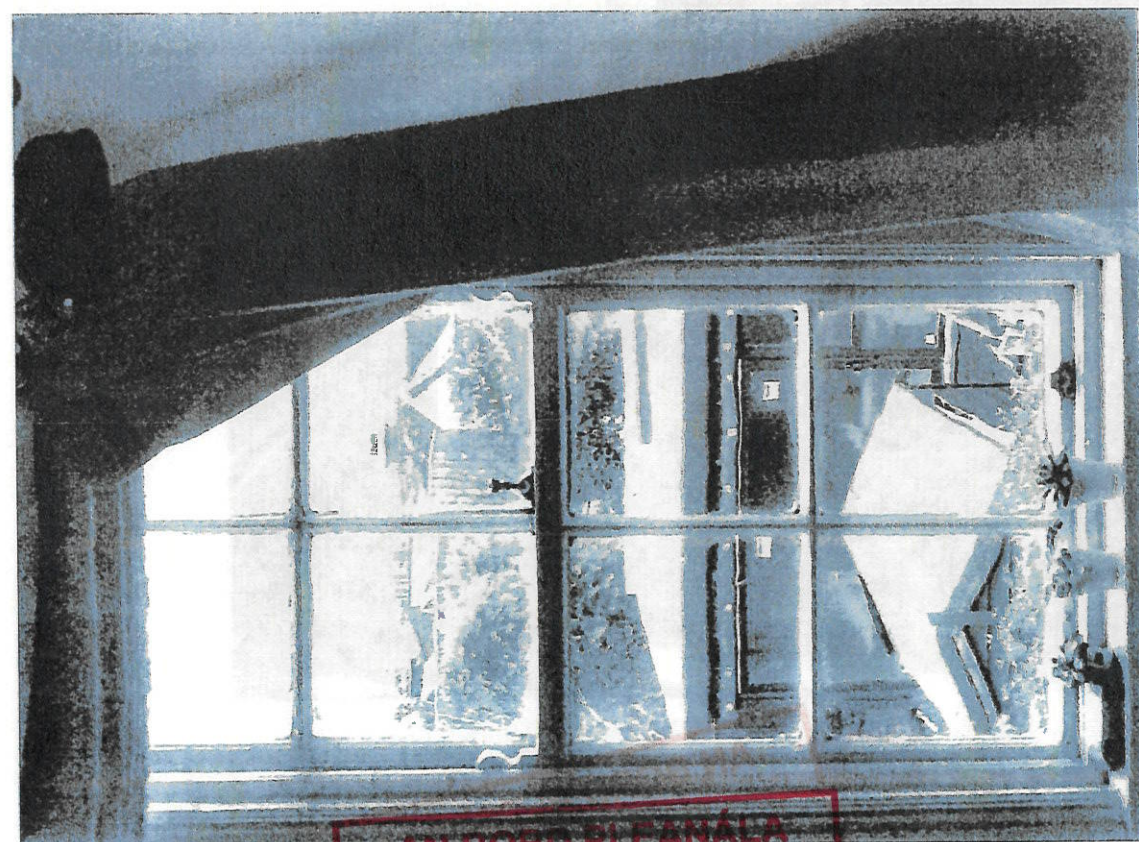
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4.

Bath  
room



3.

Bathroom

AN BORD PLEANÁLA

11 MAR 2020

LTR DATED

FROM

LDG-

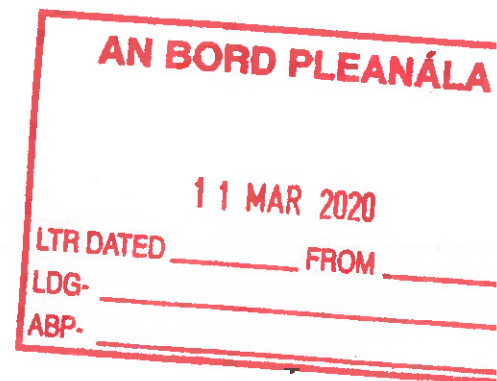
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**Re: Appeal against Section 5 Declaration Ref 0042/20**

**Appellant: Cliona Cleary**

**Appendices**

1. Appendix 1: A copy of Dublin City Council's Declaration dated 14<sup>th</sup> February 2020 issued to the Appellant together with Planner's Report;
2. Appendix 2: Section 5 application of the Appellant dated 17/01/2020 together with enclosures: a) Photographs of the development at 18 Oakley Square; b) Planning Permission ABP Ref: 29/05/2471; c) Composite drawing and report prepared by Stephen Tierney Architect; d) Extracts from Dublin City Council Development Plan 1980; e) Site location map.
3. Appendix 3: A copy of the Section 5 application of the owners of 18 Oakley Square - Mauro Fiorio and Giorgia de Maio - dated 02/01/2020 together with the Planner's Report.
4. Appendix 4: Submission made by Nicola Da Ponte and AKM Design on behalf of the owners of Oakley Square in relation to the application of Cliona Cleary, the Appellant.





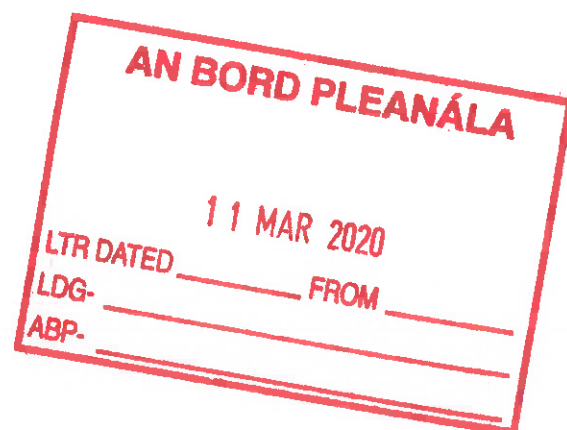
AN BORD PLEANAÍLA

11 MAR 2020

LTR DATED \_\_\_\_\_  
FROM \_\_\_\_\_  
LDG- \_\_\_\_\_  
ABP- \_\_\_\_\_

## APPENDIX 1:

A copy of Dublin City Council's Declaration dated 14<sup>th</sup> February 2020 issued to the Appellant together with Planner's Report







Comhairle Cathrach  
Bhaile Átha Cliath  
**Dublin City Council**

An Roinn Pleanála & Forbairt Maoine, Bloc 4, Uirlár 3, Oifigi na  
Cathrach, An Ché Adhmaid, Baile Átha Cliath 8.

Planning & Property Development Department, Block 4, Floor 3,  
Dublin City Council, Civic Offices, Wood Quay, Dublin 8.

T: (01) 222 2288

E. [planning@dublincity.ie](mailto:planning@dublincity.ie)

14-Feb-2020

Terry Doyle,  
Malcomson Law Solicitors  
The Atrium,  
Shamrock Plaza,  
Green Lane,  
Carlow

Application Number	0042/20
Application Type	Section 5
Registration Date	23-Jan-2020
Decision Date	14-Feb-2020
Decision Order No.	P2399
Location	18, Oakley Square, Ranelagh, Dublin 6
Proposal	EXPP: Whether the recent extension which includes large windows at the western elevation to the western facade of 18 Oakley Square constitutes development having regard to planning condition 14 attached to a previous planning application Ref ABP 290572471.
Applicant	Cliona Cleary

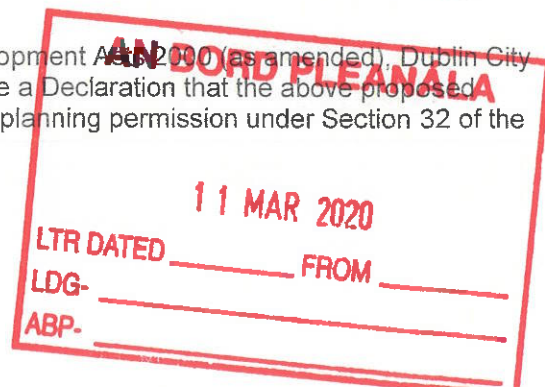
- **If you have any queries regarding this Decision, please contact the number shown above**

**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 A Bord Pleanála within four weeks of the date of the issuing of the declaration.

**NOTIFICATION OF DECLARATION ON DEVELOPMENT AND EXEMPTED DEVELOPMENT**

In pursuance of its functions under the Planning & Development Acts 2000 (as amended), Dublin City Council has by order dated 14-Feb-2020 decided to issue a Declaration that the above proposed development is EXEMPT from the requirement to obtain planning permission under Section 32 of the Planning & Development Acts 2000 (as amended).



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



Comhairle Cathrach  
Bhaile Átha Cliath  
**Dublin City Council**

**Reasons & Considerations:**

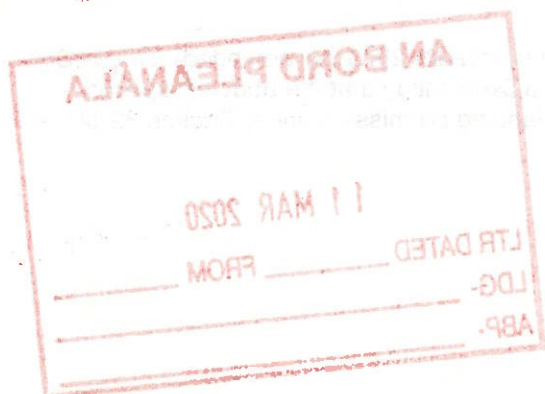
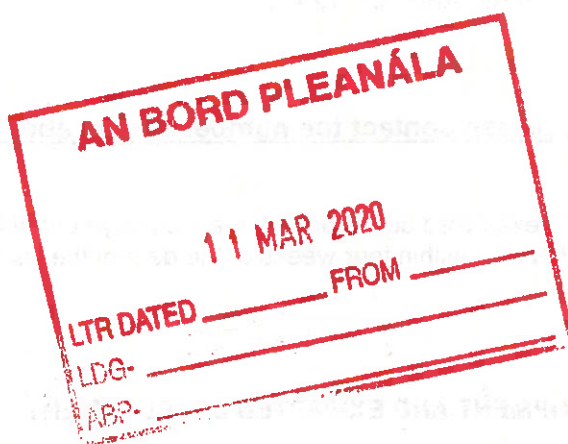
The construction of the proposed extension to the rear of No. 18 Oakley Square, meets the conditions and limitations of Class 1 of Schedule 2, Part 1 and Article 9 (1) (a) of the Planning and Development Regulations 2001, as amended. It is recommended therefore that a declaration be issued to the applicant informing them the development constitutes exempted development.

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.



An Roinn Pleanála & Forbairt Maoine, Bloc 4, Urlár 3, Oifigi na Cathrach, An Ché Adhmaid, Baile Átha Cliath 8.

Planning & Property Development Department, Block 4, Floor 3, Dublin City Council, Civic Offices, Wood Quay, Dublin 8.

T: (01) 222 2288

E. [planning@dublincity.ie](mailto:planning@dublincity.ie)

25-Feb-2020

Terry Doyle,  
Malcomson Law Solicitors  
The Atrium, Shamrock Plaza, Green Lane, Carlow

Application Number	0042/20
Application Type	Section 5
Registration Date	23-Jan-2020
Decision Date	14-Feb-2020
Decision Order No.	P2399
Location	18, Oakley Square, Ranelagh, Dublin 6
Proposal	EXPP: Whether the recent extension which includes large windows at the western elevation to the western facade of 18 Oakley Square constitutes development having regard to planning condition 14 attached to a previous planning application Ref ABP 290572471.
Applicant	Cliona Cleary

- If you have any queries regarding this Decision, please contact the number shown above

Note:

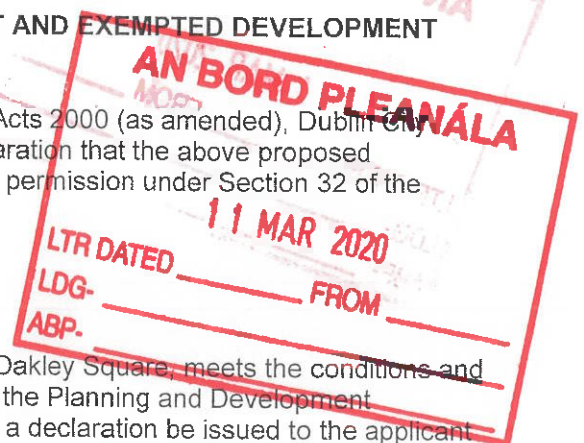
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#### Reasons & Considerations:

The construction of the proposed extension to the rear of No. 18 Oakley Square, meets the conditions and limitations of Class 1 of Schedule 2, Part 1 and Article 9 (1) (a) of the Planning and Development Regulations 2001, as amended. It is recommended therefore that a declaration be issued to the applicant informing them the development constitutes exempted development.



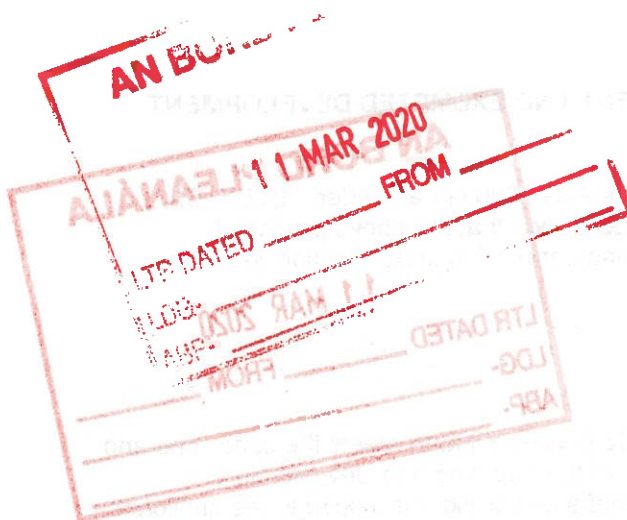


Signed on behalf of Dublin City Council

\_\_\_\_\_  
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

### Declaration on Development and Exempted Development

#### Section 5 of the Planning and Development Act 2000

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EXPP: 0042/20

Location: 18, Oakley Square, Dublin 6

Date Received: 23-Jan-2020

Decision Due Date: 19-Feb-2020

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#### Development

No. 26 Charlestown Road requests a declaration on whether a single storey extension which includes large windows at the western elevation to the rear of No. 18 Oakley Square constitutes development.

#### Site Description

No. 18 Oakley Square is a two storey end-of-terrace property located within an infill development in Rathmines.

The site is zoned Z2 in the 2016-2022 Dublin City Development Plan, with the objective 'To protect and/or improve the amenities of residential conservation areas.' There are no specific objectives in the Development Plan or in any Local Area Plan, designating the site as an area of archaeological, geological, historical, scientific or ecological interest. The site is not a protected structure or national monument.

#### Planning History

Planning Reference 0005/20 granted a Section 5 for a single storey flat roof extension to the rear of the house totalling 26.5 sqm.

The applicant has provided documents relating to Planning Reference 1369/86 (ABP Reg. Ref. PL 29/5/72471). This application permitted subject to conditions 26 No. 2-storey dwellings, one of which is the subject dwelling No. 18 Oakley Square. Condition 14 of this application states:

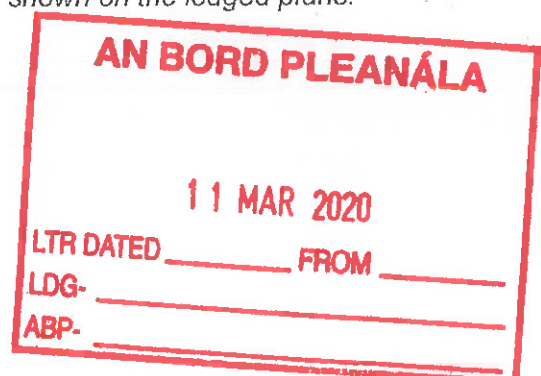
*No windows shall be provided, now or in the future, in the indicated blank facades of the new residential blocks, save where such are shown on the lodged plans.*

*Reason: In the interests of residential amenity.*

#### Enforcement History

None on file.

#### Relevant Legislation



AN BORD PLEANAŁA

0505 MAR 11

FROM \_\_\_\_\_ LTR DATED \_\_\_\_\_

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98A-

This application will be assessed under the Planning and Development Act 2000 (as amended), and under the Planning and Development Regulations 2001 (as amended) to check whether it is exempted development. *Schedule 2 Part 1 Exempted Development- General - Development within the Curtilage of a House - Class 1* is the part that specifically addresses extensions to houses, and whether they require planning permission or not.

I also note Article 9 (1) (a) of the Planning and Development Regulations 2001 (as amended) refer to Restrictions on Exemptions where works 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.*

### Observations/Submissions:

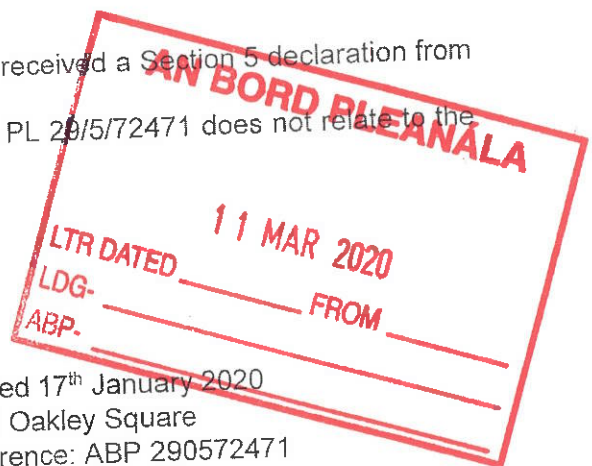
A submission was received from No. 18 Oakley Square which is summarised in the following bullet points.

- The subject rear extension already has already received a Section 5 declaration from Dublin City Council.
- Condition No. 14 of An Bord Pleanála decision PL 29/5/72471 does not relate to the subject extension.

### Appraisal

#### Submitted Documents

- Site Plans
- A cover letter by Malcomson Law Solicitors dated 17<sup>th</sup> January 2020
- Appendix A – Photos of development at No. 18 Oakley Square
- Appendix B – Decision notice of Planning Reference: ABP 290572471
- Appendix C – Composite Drawings and Report by Tierney Haines Architects
- Appendix D – Extracts from Map 9 of the Dublin City Development Plan 1980



#### Assessment against the Regulations

The relevant parts of Schedule 2 Part 1 Exempted Development- General - Development within the Curtilage of a House - Class 1 of the Planning and Development Regulations 2001 (as amended) states:

*The extension of a house, by the construction or erection of an extension (including a conservatory) to the rear of the house or by the conversion for use as part of the house of any garage, store, shed or other similar structure attached to the rear or to the side of the house.*

1. (a) *Where the house has not been extended previously, the floor area of any such extension shall not exceed 40 square metres.*

The proposed extension would be 26.5 sqm in area.

2. (a) *Where the house has been extended previously, the floor area of any such extension, taken together with the floor area of any previous extension or extensions constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 40 square metres.*

The property has not been previously extended.



4. (a) *Where the rear wall of the house does not include a gable, the height of the walls of any such extension shall not exceed the height of the rear wall of the house*

The height of the highest part of the roof of the proposed extension would not exceed the height of the highest part of the roof of the dwelling.

5. *The construction or erection of any such extension to the rear of the house shall not reduce the area of private open space, reserved exclusively for the use of the occupants of the house, to the rear of the house to less than 25 square metres.*

The rear amenity space would not be reduced to less than 25 sqm by the proposed extension.

- (a) *Any window proposed at ground level in any such extension shall not be less than 1 metre from the boundary it faces.*

All proposed windows would be located more than 1 metres away from any neighbouring boundary it would face.

I also note Article 9 (1) (a) of the Planning and Development Regulations 2001 (as amended) requires all exempted development does not contravene a condition attached to a permission or be inconsistent with any use specified in a permission.

The parent permission for the 26 dwellings on Oakley Square including the subject property (ABP Planning Reference: PL 29/5/72471) included condition 14, which states:

*No windows shall be provided, now or in the future, in the indicated blank facades of the new residential blocks, save where such are shown on the lodged plans.*

*Reason: In the interests of residential amenity*

It would appear the western side elevation of No. 18 Oakley Square is one of the aforementioned blank facades. The subject single storey rear extension has glazing in its western elevation. The above condition does not limit glazing within future extensions nor does it remove exempted development rights for rear extensions. I therefore consider the subject extension would not be contravene the above condition.

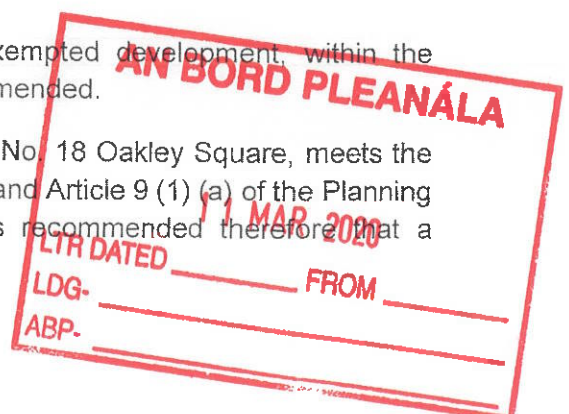
### Conclusion

An extension to the rear of a house can only be exempt from the requirement to seek planning permission if it meets all the relevant conditions and limitations numbered above, copied from the Planning and Development Regulations 2001, as amended. This proposed extension meets all these conditions and limitations. The proposed extension is therefore exempted development, and does not require planning permission.

### Recommendation

The extension as described is development, and is exempted development, within the meaning of the Planning and Development Act 2000, as amended.

The construction of the proposed extension to the rear of No. 18 Oakley Square, meets the conditions and limitations of Class 1 of Schedule 2, Part 1 and Article 9 (1) (a) of the Planning and Development Regulations 2001, as amended. It is recommended therefore that a







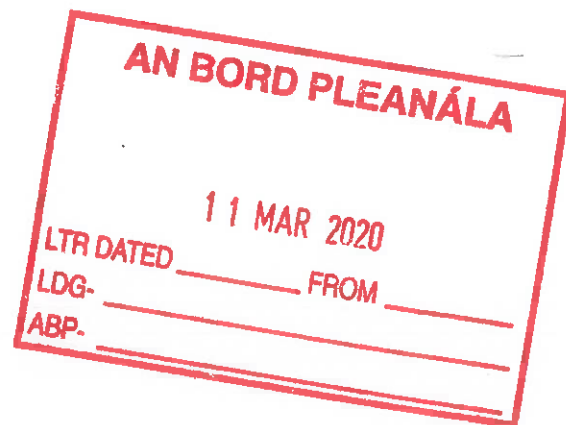
declaration be issued to the applicant informing them the development constitutes exempted development.

Robert Brereton

Robert Brereton  
Assistant Planner  
4<sup>th</sup> February 2020

K. S. 2020-20

S-2-20







5.

Polonnaruwa



AN BORD PLEANÁLA

11 MAR 2020

LTR DATED

FROM

LDG-

ABP.

LTR DATED

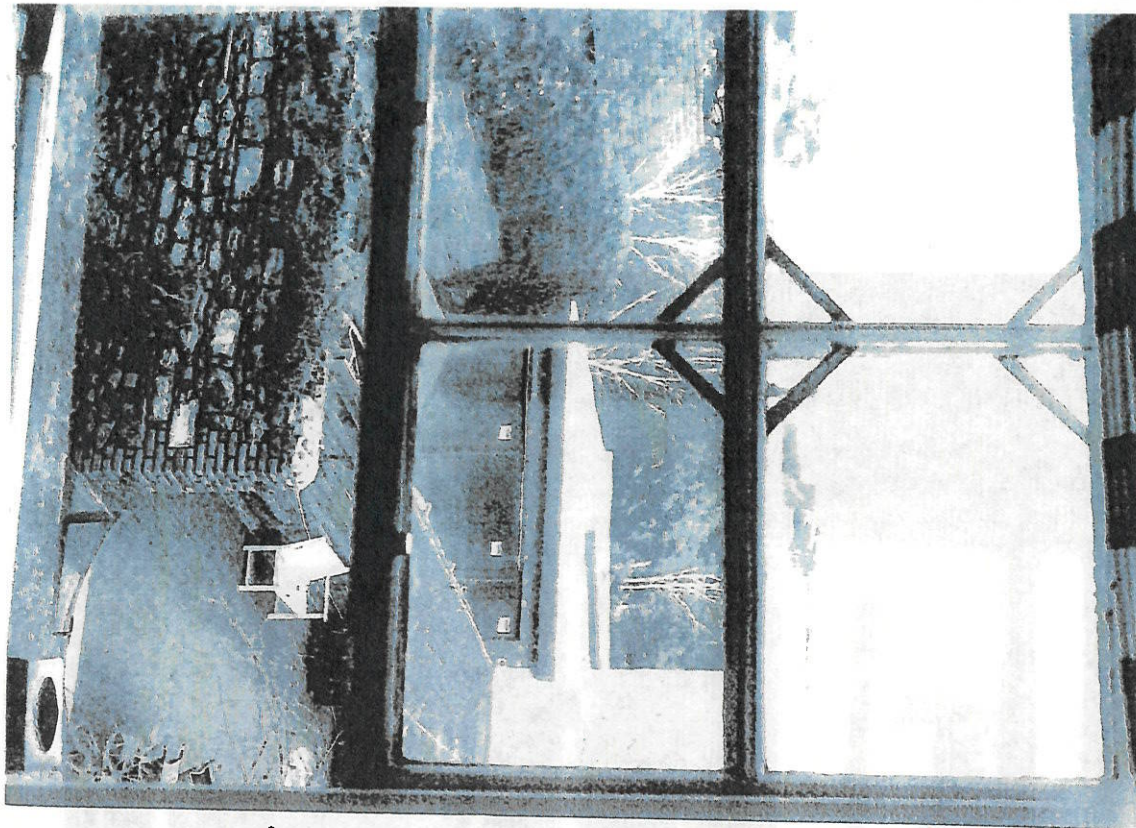
LDG-

ABP.



6.

7



Bedroom #2 Dublin

7.



AN BORD PLEANÁLA

11 MAR 2020

LTR DATED \_\_\_\_\_ FROM \_\_\_\_\_

LDG- \_\_\_\_\_

ABP- \_\_\_\_\_

LTR DATED

LDG-

ABP-



8.



**AN BORD PLEANÁLA**

11 MAR 2020

LTR DATED \_\_\_\_\_ FROM \_\_\_\_\_

LDG- \_\_\_\_\_

ABP- \_\_\_\_\_







*Bar*

*Bed room*



2.

*Bar*

**AN BORD PLEANÁLA**

*Bar*

LTR DATED 11 MAR 2020

LDG- \_\_\_\_\_ FROM \_\_\_\_\_

ABP- \_\_\_\_\_









4.

Bath  
room



3.

Bathroom

AN BORD PLEANÁLA

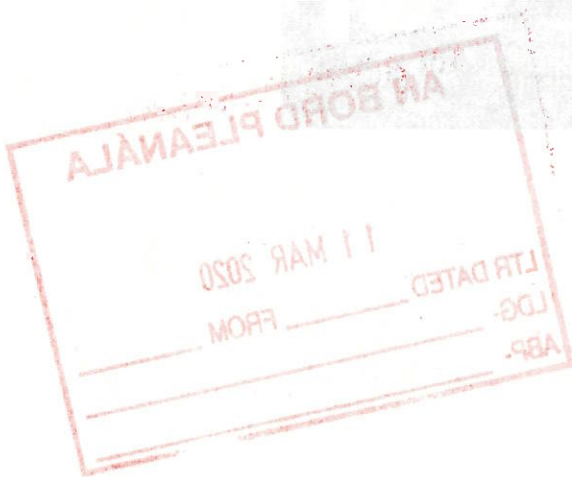
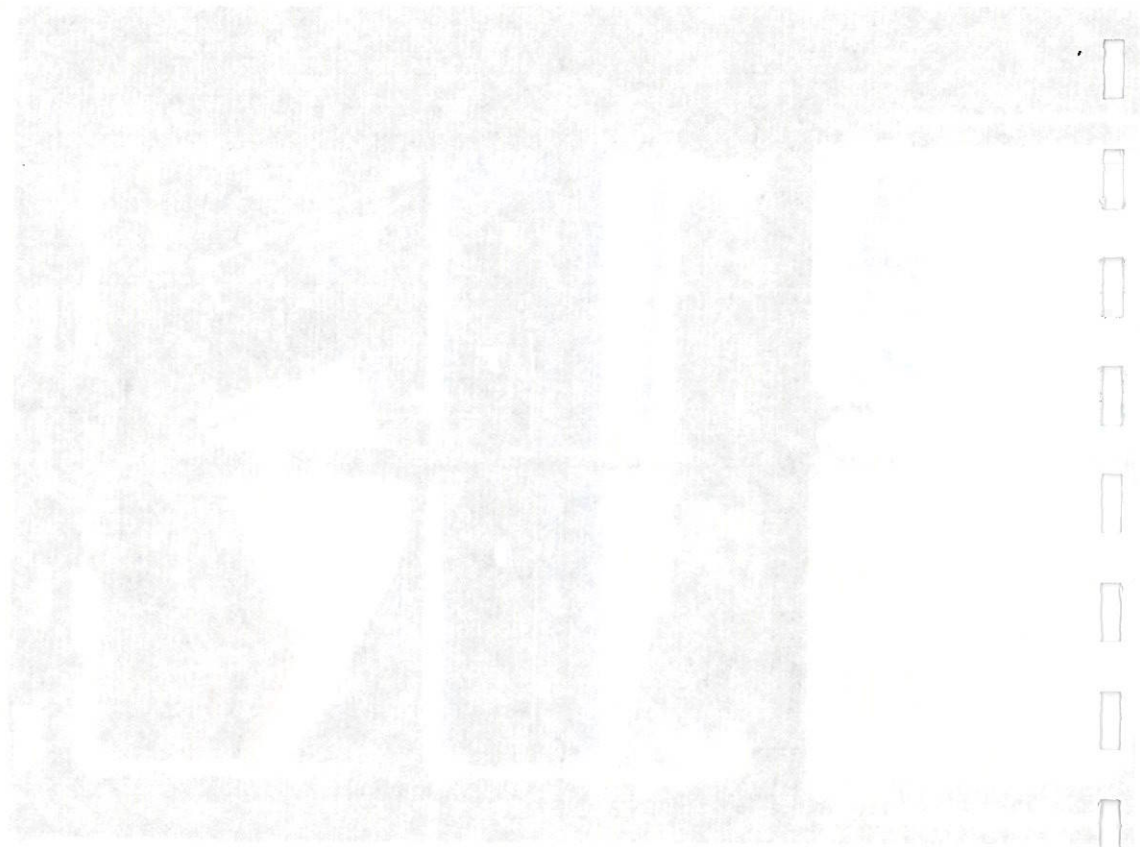
11 MAR 2020

LTR DATED \_\_\_\_\_ FROM \_\_\_\_\_

LDG- \_\_\_\_\_

ABP- \_\_\_\_\_







5.

Pollock



AN BORD PLEANÁLA

11 MAR 2020

LTR DATED \_\_\_\_\_ FROM \_\_\_\_\_

LDG- \_\_\_\_\_

ABP- \_\_\_\_\_





6.

9



Bedroom #2 Chills

2.



**AN BORD PLEANÁLA**

11 MAR 2020

LTR DATED \_\_\_\_\_ FROM \_\_\_\_\_

LDG- \_\_\_\_\_

ABP- \_\_\_\_\_







8.



**AN BORD PLEANÁLA**

11 MAR 2020

LTR DATED \_\_\_\_\_ FROM \_\_\_\_\_

LDG- \_\_\_\_\_

ABP- \_\_\_\_\_



# APPENDIX B:

# PLANNING PERMISSION

PL 29/5/12471

## AN BORD PLEANÁLA

LOCAL GOVERNMENT (PLANNING AND DEVELOPMENT) ACTS, 1963 TO 1983

Dublin County Borough

Planning Register Reference Number: 1369/86

APPEAL by Belgrave Residents Association, of Rathmines and Ranelagh, care of Roy Atkinson, 5 Belgrave Place, Dublin, and by Tom Hefferon, Director, Formite Limited, Glanawen, Colinsthill, County Sligo, against the decision made on the 16th day of September, 1986, by the Right Honourable the Lord Mayor, Aldermen and Burgesses of Dublin, to grant subject to conditions a permission to the said Tom Hefferon, for the erection of a two-storey development comprising twenty six units around landscaped gardens and the demolition of numbers 15, 16, and 17, at 15, 16, 17 and 18 and the rear of 13 and 14, Oakley Road, Ranelagh, Dublin, in accordance with plans and particulars lodged with the said Corporation:

DECISION: Pursuant to the Local Government (Planning and Development) Acts, 1963 to 1983, it is hereby decided, for the reason set out in the first Schedule hereto, to grant permission for the said development in accordance with the said plans and particulars, subject to the conditions specified in the Second Schedule hereto, the reasons for the imposition of the said conditions being as set out in the said Second Schedule and the said permission is hereby granted subject to the said conditions.

### FIRST SCHEDULE

It is considered that, subject to compliance with the conditions set out in the Second Schedule hereunder, the proposed development would be in accordance with the proper planning and development of the area.

### SECOND SCHEDULE

- Unit 11 in block C, 12 in block D, 20 in block F, 21 in block G and 25 in block H, shall be omitted.

Reason: To provide for an adequate standard of residential amenity for both existing and proposed dwellings.

- Blocks C and D, and blocks F and G, shall be joined to form two terraces.

Reason: In the interest of orderly development.

- Block H (unit 24) and block J (unit 26) shall be terraced by omitting the pedestrian route. Alternative pedestrian access arrangements shall be provided to the south of unit 26 to the satisfaction of the planning authority.

Reason: In the interest of orderly development.

AN BORD PLEANÁLA

AN BORD PLEANÁLA

11 MAR 2020

LTR DATED

FROM

LDG-

ABP-



SECOND SCHEDULE (CONTD.)

4. The front blocks A and B shall be sunk 1 metre lower than indicated on submitted drawings. The front elevations of these blocks shall be modified so as to provide two separate and distinct access doorways and fanlights to units 1 and 2 in block A and to units 5 and 6 in block B. Details indicating compliance with these requirements shall be submitted to the planning authority for their agreement.

Reason: In order to integrate the development into the existing streetscape.

5. Off-street car parking space number 10 shall be omitted.

Reason: In the interests of the residential amenity of the adjacent property.

6. All car parking spaces and internal walkways shall be paved in decorative bricks or paviors of contrasting colours. Trees and/or shrubs, of species suitable for an urban environment, shall, where practicable, be planted at the entrance at every other parking space. A protective kerb and grid around the base of each tree and/or shrub shall be provided.

Reason: In the interests of residential and visual amenity.

7. All boundary walls to the rear of the Oakley Road front building line shall be a maximum of two metres in height. A new wall shall be erected along the southern boundary of the development. Details of this wall shall be submitted to the planning authority for compliance with their requirements prior to the commencement of development.

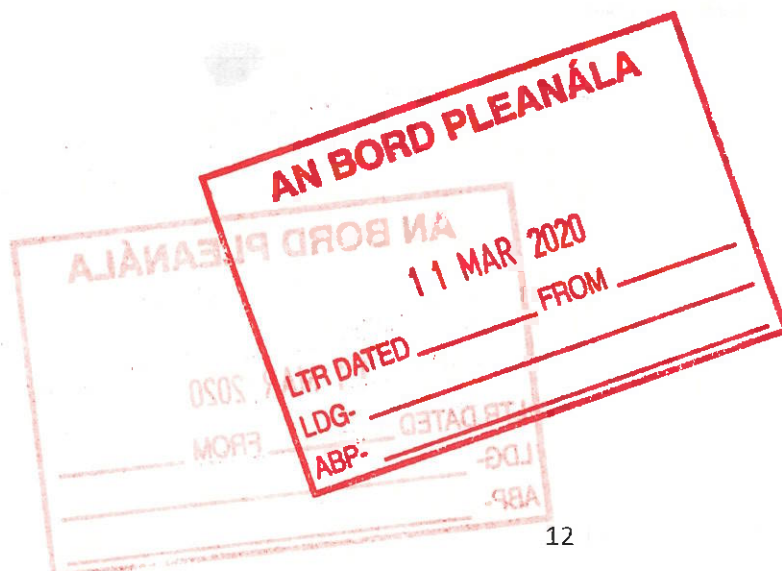
Reason: In the interests of orderly development.

8. The proposed residential accommodation shall be used for residential purposes only. No part of the premises shall be used for medical or related consulting rooms, offices or trade purposes.

Reason: To protect the residential amenities of the area.

9. Details of colour and texture of external wall and roof finishes of the proposed structures shall be submitted to the planning authority for their written agreement prior to the commencement of development. Details of the new front boundary arrangements to the public road, incorporating a low stone wall and railings shall be provided. Railings and gates shall match period railings in the area. The wall/railing treatment shall be returned to the front end of gables along the entrance roadway.

Reason: In the interests of visual amenity.



SECOND SCHEDULE (CONTD.)

17. Prior to the commencement of development, a proposal for dealing with fuel storage and refuse storage and removal shall be indicated on plan and submitted to the planning authority for their written agreement. Collection points for refuse shall be clearly indicated.

Reason: In the interests of orderly development.

18. The ground floor fenestration to unit 9 in block C shall be as indicated on submitted plans and not as in the submitted elevations.

Reason: In the interests of residential amenity.



*[Signature]*  
Member of An Bord Pleanála duly  
authorized to authenticate the  
seal of the Board.

Dated this 18<sup>th</sup> day of February

1987.



3.  
SECOND SCHEDULE (CONTD.)

10. The site shall be landscaped and planted in accordance with a scheme to be submitted to the planning authority for its agreement prior to the commencement of development.

Reason: In the interests of visual amenity.

11. The treatment of the front boundary, gardens and set back, shall be completed to the satisfaction of the planning authority prior to the occupation of any of the proposed units.

Reason: In the interests of orderly development.

12. The development shall comply in full with the requirements of the planning authority in relation to water supply and sewage disposal.

Reason: In the interests of public health.

13. The indicated road widening line at Oakley Road shall be modified to a line parallel with the existing front facade line of house numbers 14 to 20, Oakley Road. The line shall be 4.5 metres forward of the front facade. Front gardens and stoop layout to be altered as necessary. The area between the existing and proposed road boundary lines shall be paved to a contour and in a manner to the satisfaction of the planning authority.

Reason: In the interests of orderly development.

14. No windows shall be provided, now or in the future, in the indicated blank facades of the new residential blocks, save where such are shown on the lodged plans.

Reason: In the interests of residential amenity.

15. The developer shall enter into a management agreement with all future owners and occupiers to carry out works of maintenance and repairs of all lands within the curtilage of the site, west of the rear of the new footpaths along Oakley Road. This agreement shall cover roads, footpaths, car parks and all services both under and overground together with landscaping, hard and soft, which is not the direct responsibility of individual owners/occupiers.

Reason: In the interests of the proper planning and development of the area.

16. The rear garden wall at number 18, Oakley Road shall be provided directly at the rear of car parking spaces 7, 8 and 9. It shall be 2 metres in height and finished to match adjoining screen walling.

Reason: In the interests of residential amenity.



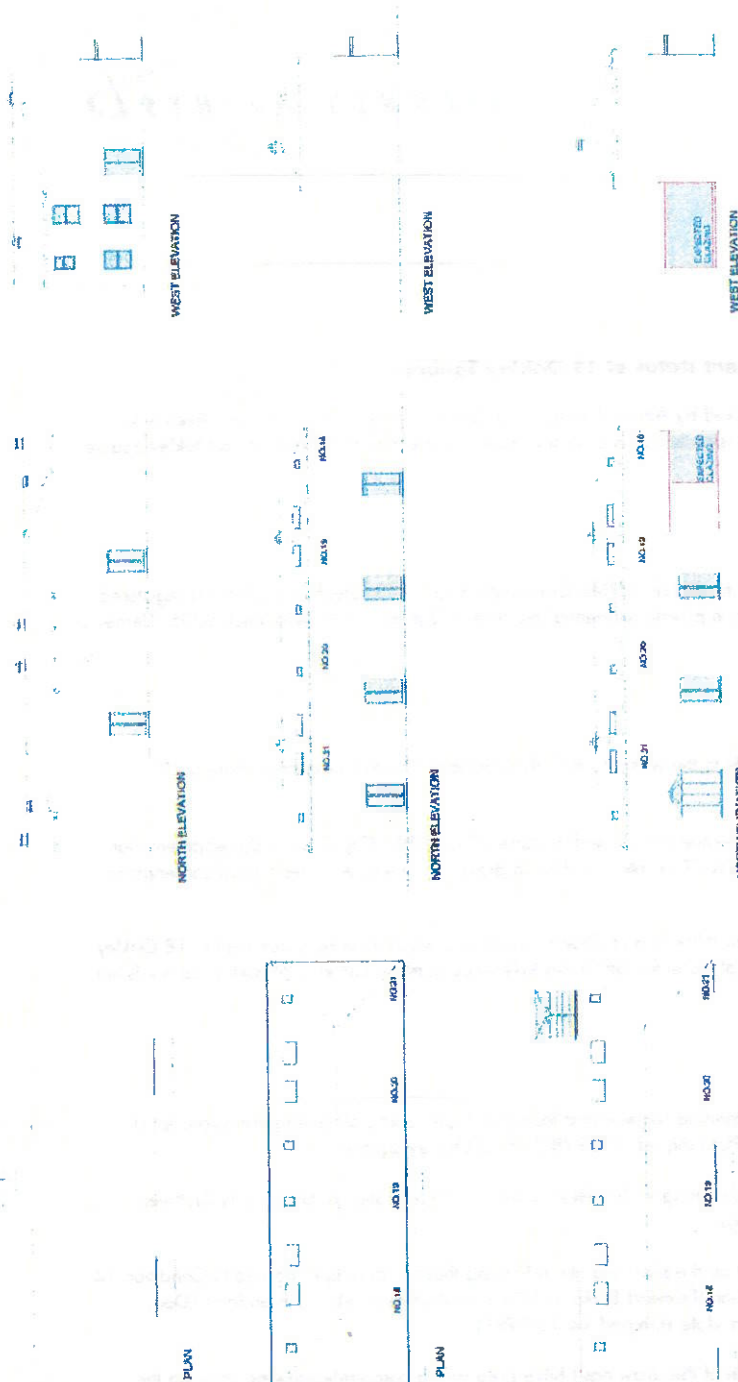


# APPENDIX C: COMPOSITE DRAWING AND REPORT PREPARED BY STEPHEN TIERNEY

DRAWINGS LODGED FOR PLANNING & APPROVED UNDER THE CONDITIONS:

- 'No windows shall be provided, now or in the future, in the indicated blank façades of the new residential blocks, save where shown on the lodged plans.'
- The two blocks were to be joined together.
- The return units were to be omitted.

AS APPROVED AND BUILT C. 1890:



ASSUMED DEVELOPMENT (IN RED)  
(UNDER CONSTRUCTION, DEC. 2019):

AN BORD PLEANÁLA

DEVELOPMENT AT 18 OAKLEY SQUARE  
DIAGRAMATIC SKETCH DRAWING ONLY - NOT TO SCALE

SOS RAM 11 MAR 2020

LTR DATED \_\_\_\_\_ FROM \_\_\_\_\_

LDG- \_\_\_\_\_

ABP- \_\_\_\_\_

Friday 13<sup>th</sup> December 2019

**Opinion on exempted development status at 18 Oakley Square.**

Tierney Haines Architects have been asked by Adrian Wrixon and Cliona Cleary of 26 Charleston Avenue to provide an opinion on whether an extension which is currently under construction to the rear of 18 Oakley Square, Dublin 6 is an exempted development.

**Qualifications**

Stephen Tierney BA, BSc. Arch, Dip.Arch, MArch, MRIAI, Conservation Grade 3. Stephen has been a registered architect since 2003. Stephen has been in private residential practice in Dublin with his wife since 2005, Tierney Haines Architects.

**Situation**

26 Charleston Avenue is situated directly to the west of 18 Oakley Square. The two properties share a 20 metre long boundary.

18 Oakley Square and 26 Charleston Avenue are classed as zone Z2 in Dublin City Council's Development plan 2016-2022. The objective of this zoning is "To protect and/or improve the amenities of residential conservation areas".

26 Charleston Avenue, owned by Adrian Wrixon and Cliona Cleary and which is directly adjacent to 18 Oakley Square is a protected structure. (Record of Protected Structures Reference number 1399). 18 Oakley Square is not a protected structure.

**Documents**

I have inspected Dublin City Council's planning register and found no supervening planning permissions (post dating the one our client is relying on – Planning ref. 1369/B6) at 18 Oakley square.

I have inspected the hard copy drawings relating to the relevant planning application at Dublin City Archives, please find enclosed the relevant drawings.

I have inspected a compliance document on the planning file indicating that the developer agreed to Condition 14 prior to commencement of the development. (Edmund Burke and Partners Architects letter to Brendan O'Dea, Planning Department, Dublin Corporation, date stamped 14.12.1987)

Based on my inspection and interpretation of the drawings I have prepared a composite drawing showing the  
Tierney Haines Architects, 25a Brookville Park, Blackrock, Dublin, T. 00353 85 1504763, [stephen@tierneyhaines.com](mailto:stephen@tierneyhaines.com)



initially proposed and the permitted west and northern elevations together with the currently under construction structure with windows as we understand they may be fitted.

### Opinion

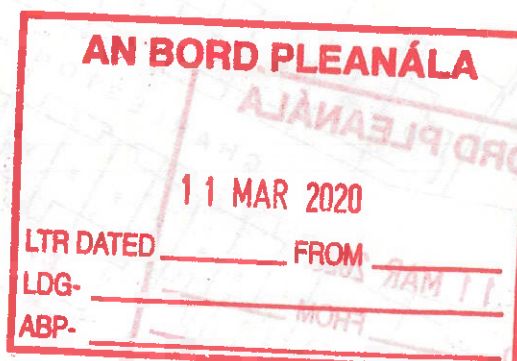
It is my view that the under construction window openings in the new extension at 18 Oakley Square are not exempted, condition 14 reads - "No windows (sic) shall be provided, now or in the future, in the indicated blank facades of the new residential blocks, save where such are shown on the lodged plans. Reason: In the interests of residential amenity."

My understanding of conditions of this type is that they are expressly designed to protect the future privacy of adjoining properties from future development. When there is even a grey area on such an issue it is normal to submit a planning application. The reason for such a condition in these circumstances is clear from an inspection of the site and adjoining buildings, Charleston road properties (protected structures) have a pattern of private gardens.

26 Charleston Avenue enjoys considerable privacy to the rear of the property, both to its rear garden and the rear elevation, the under-construction extension to 18 Oakley Square will have an adverse effect on the amenity of privacy of the rear of 26 Charleston Avenue. There is direct line of sight views into the under-construction extension at 18 Oakley Square from 2 No. bedrooms, the stairs and the family bathroom of 26 Charleston Avenue.

**Stephen Tierney MRIAI**

13.12.2019





# Planning Pack Map



National Mapping Agency

**CENTRE**  
COORDINATES: ITM 716107,731678  
**PUBLISHED:** 24/01/2020  
**ORDER NO.:** 50104056\_1  
**MAP SERIES:** 1:1,000  
**MAP SHEETS:** 3329-01

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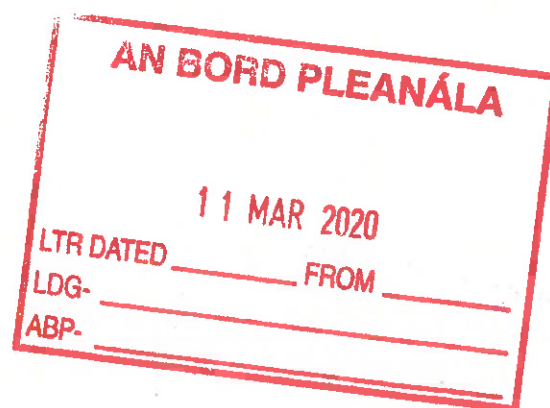
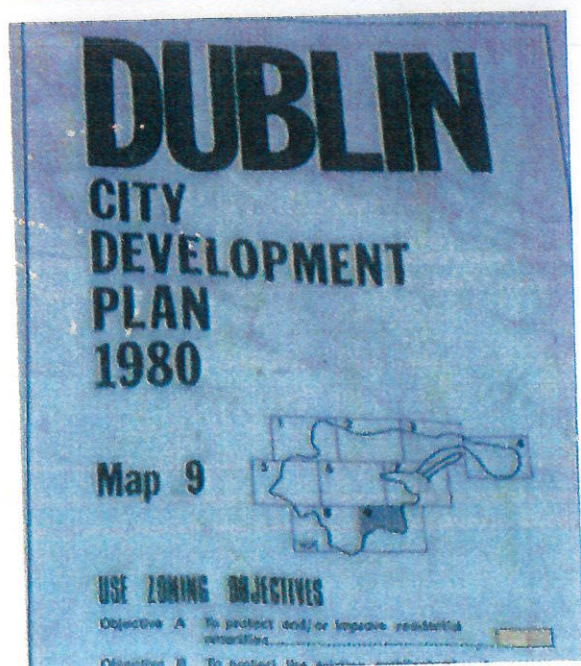


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Further information is available at:  
<http://www.osi.ie>, search 'Capture Resolution'

OUTPUT SCALE: 1:1,000



APPENDIX D: EXTRACTS FROM MAP 9 OF THE DUBLIN CITY DEVELOPMENT PLAN 1980







26 Charleston Ave  
Ranelagh,  
Dublin 6.

27 January 2020

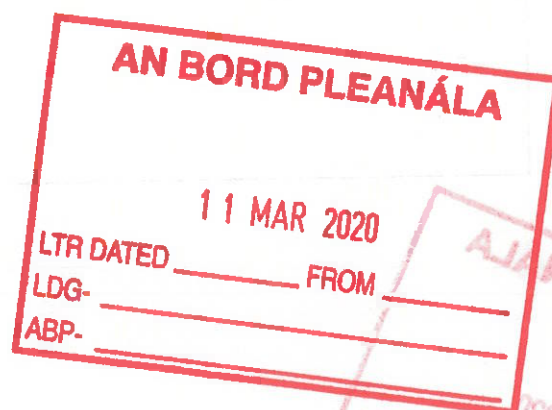
To whom it may concern,

I attach an image from my architect just for clarity (or to hopefully avoid confusion). The Land Registry website shows the wrong address for 18 Oakley Sq.; the address given on the map is 16 but the address given in the top right when the property is highlighted is correctly shown as 18.

Kind regards,

---

Adrian Wrixon.



THIS PLAN IS BASED ON

FROM

ABP

# Planning Pack Map



OUTPUT SCALE: 1:1,000

## CAPTURE RESOLUTION:

The map objects are only accurate to the resolution at which they were captured. Output scale is not indicative of data capture scale. Further information is available at: [http://www.osi.ie/search/Capture Resolution](http://www.osi.ie/search/Capture%20Resolution)

AN BORD PLEANÁLA

Milltown  
Baile an  
Mhuilinn

11 MAR 2020

LTR DATED FROM

LDG-

ABP-



National Mapping Agency

CENTRE  
COORDINATES:  
ITM 716107/731678

PUBLISHED: 24/01/2020  
ORDER NO.: 50104056\_1

MAP SERIES: 1:1,000  
MAP SHEETS: 3329-01

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## LEGEND:

<http://www.osi.ie>,  
search 'Large Scale Legend'

Site Location Map



28/01/2020

Application No.	EXPP 0042/20
Applicant	Cliona Cleary
Registration Date	January 2020
Location	18, Oakley Square, Dublin 6

**Re: Recent extension and large windows to western facade**

Dear Sir/Madam,

Please be advised that an application for a Declaration under Section 5 of the Planning and Development Act 2000 (as amended) was submitted to the planning authority on 23rd January 2020

It is noted that you may have an interest in the subject site to which this application relates. The planning authority would like to provide you as the owner/occupier of the site, the opportunity to submit views or comments on the application.

**Any comments or views you may wish to submit shall be submitted by close of business on 5th February 2020.**

A full copy of the application is available for viewing at the Public Counter, Dublin City Council, Planning Department, Monday to Friday, 9.00a.m. – 4.30p.m.

Should you require any clarity on this matter please do not hesitate to contact me at the above number,

Yours sincerely,

*Mary Heene*  
A M Bourke  
For Executive Manager

Ceanncheif, 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](http://www.dublincity.ie)

AN BORD PLEANÁLA

11 MAR 2020

LTR DATED

LDG-

ABP-

FROM

2.  
SECOND SCHEDULE (CONTD.)

10. The site shall be landscaped and planted in accordance with a scheme to be submitted to the planning authority for its agreement prior to the commencement of development.

Reason: In the interests of visual amenity.

11. The treatment of the front boundary, gardens and set back, shall be completed to the satisfaction of the planning authority prior to the occupation of any of the proposed units.

Reason: In the interests of orderly development.

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Reason: In the interests of public health.

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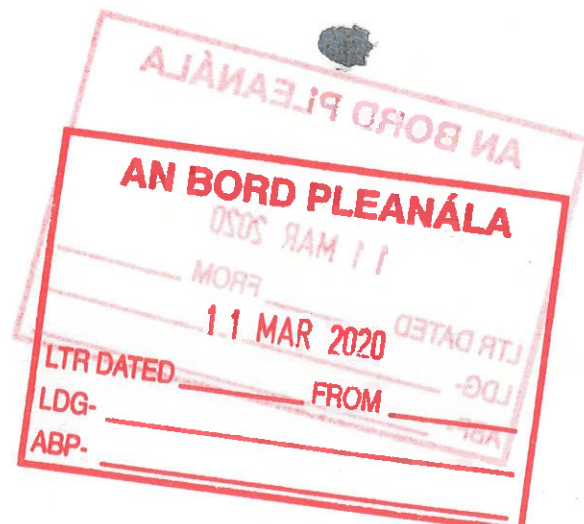
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16. The rear garden wall of number 18, Oakley Road shall be provided directly at the rear of car parking spaces 7, 8 and 9. It shall be 2 metres in height and finished to match adjoining garden walling.

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SECOND SCHEDULE (CONTD.)

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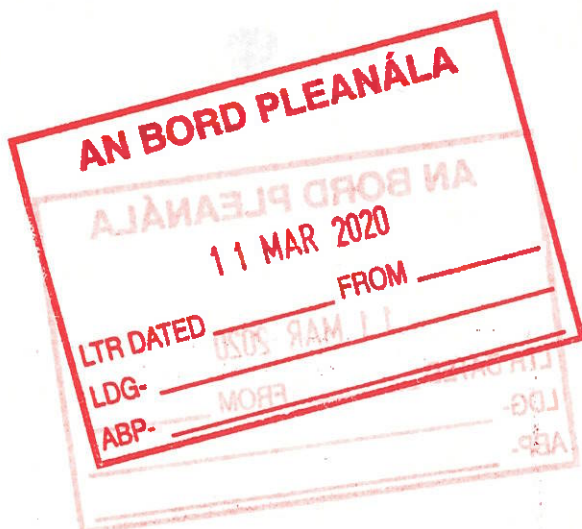
18. The ground floor fenestration to unit 9 in block C shall be as indicated on submitted plans and not as in the submitted elevations.

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*[Signature]*  
Member of An Bord Pleanála duly  
authorized to authenticate the  
seal of the Board.

Dated this 18<sup>th</sup> day of February 1987.







Friday 13<sup>th</sup> December 2019

**Opinion on exempted development status at 18 Oakley Square.**

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Stephen Tierney BA, BSc. Arch, Dip.Arch, MARCH, MRIAI, Conservation Grade 3. Stephen has been a registered architect since 2003. Stephen has been in private residential practice in Dublin with his wife since 2005, Tierney Haines Architects.

**Situation**

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**Documents**

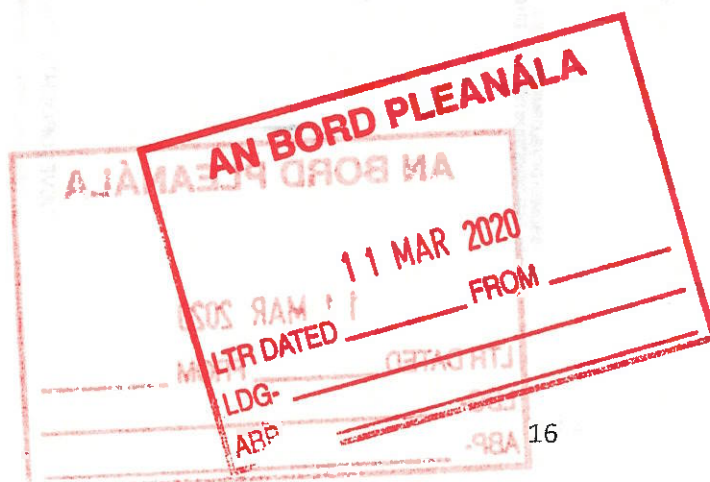
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Based on my inspection and interpretation of the drawings I have prepared a composite drawing showing the

Tierney Haines Architects, 25a Brookville Park, Blackrock, Dublin, T. 00353 85 1564783, stephen@tierneyhaines.com



initially proposed and the permitted west and northern elevations together with the currently under construction structure with windows as we understand they may be fitted.

### Opinion

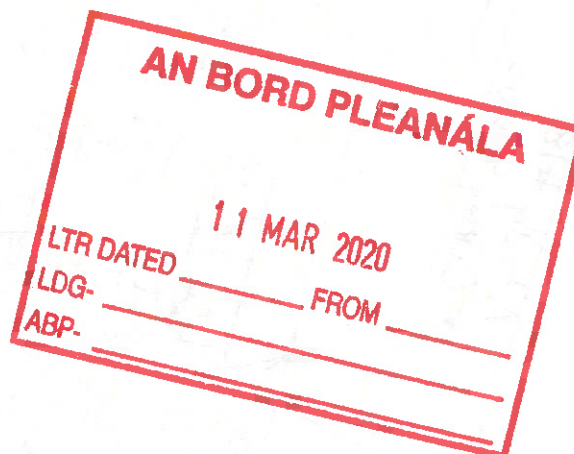
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**Stephen Tierney MRIAI**

13.12.2019



Tierney Haines Architects, 28a Brookville Park, Blackrock, Dublin, T. 00353 85 1504763, [stephen@tierneyhaines.com](mailto:stephen@tierneyhaines.com)





# Planning Pack Map



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Survey

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CENTRE  
COORDINATES:  
ITM 716107,731678

PUBLISHED:  
24/01/2020

MAP SERIES:  
1:1,000

ORDER NO.:  
50104056\_1

MAP SHEETS:  
3329-01

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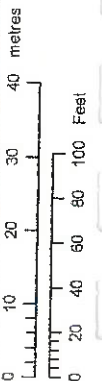
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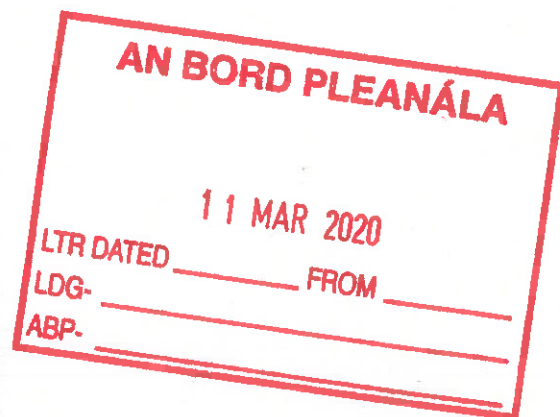
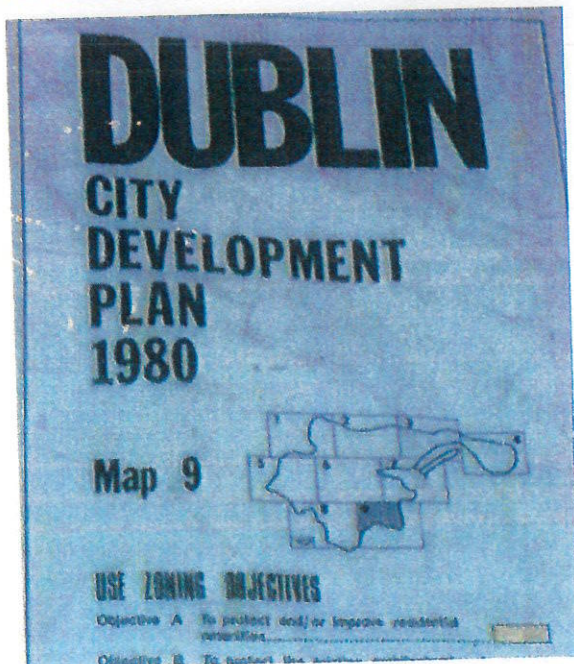
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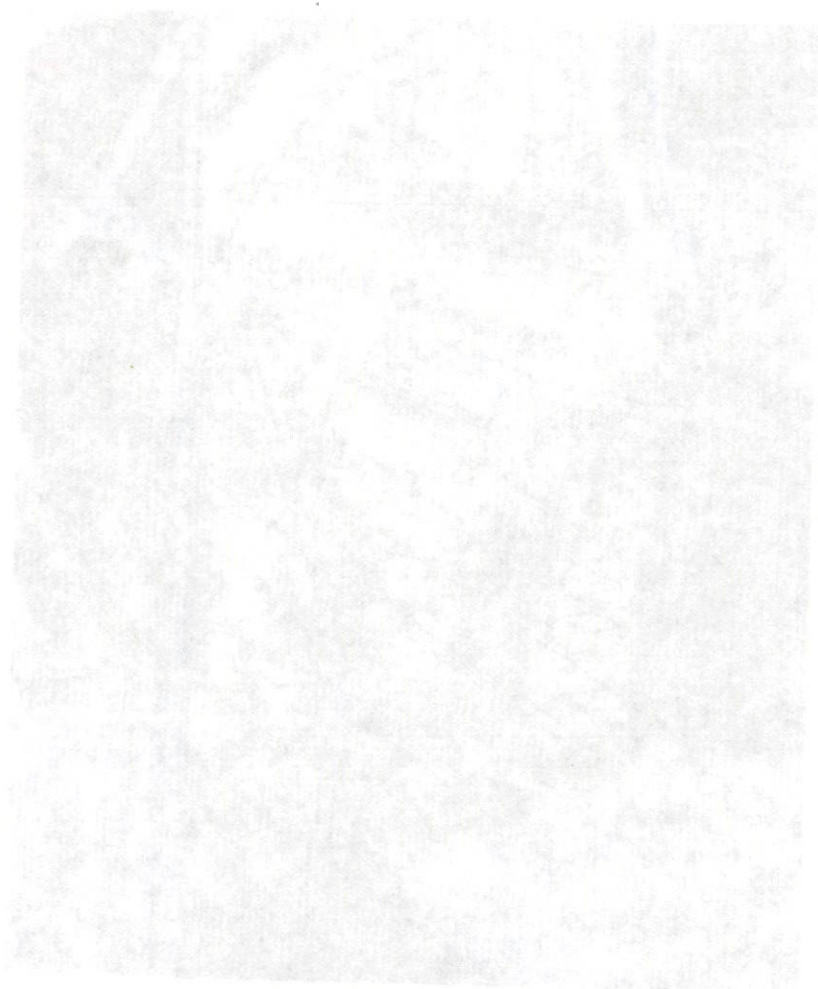




APPENDIX D: EXTRACTS FROM MAP 9 OF THE DUBLIN CITY DEVELOPMENT PLAN 1980



1-10-1942



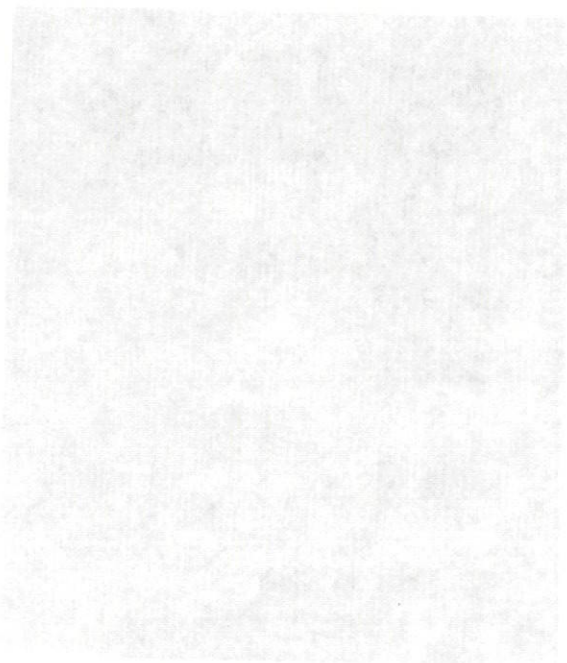
AN BORD PLEANAŁA

11 MAR 2020

LTR DATED \_\_\_\_\_

LGD- \_\_\_\_\_

ABP- \_\_\_\_\_





26 Charleston Ave  
Ranelagh,  
Dublin 6.

27 January 2020

To whom it may concern,

I attach an image from my architect just for clarity (or to hopefully avoid confusion). The Land Registry website shows the wrong address for 18 Oakley Sq,: the address given on the map is 16 but the address given in the top right when the property is highlighted is correctly shown as 18.

Kind regards,

\_\_\_\_\_  
Adrian Wrixon.

**AN BORD PLEANÁLA**

**11 MAR 2020**

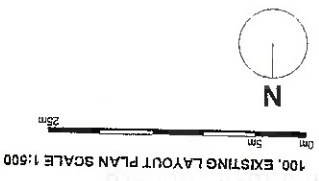
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**11 MAR 2020**

LTR DATED \_\_\_\_\_ FROM \_\_\_\_\_

LDG- \_\_\_\_\_  
ABP- \_\_\_\_\_

LDG-  
ABP-



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DRAWING, USE FIGURED  
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NOTES

DRAWING, USE FIGURED  
EXPLANATIONS ONLY

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**WISSENET**  
 WISSENET

PLAZA  
CHALIS  
28 CHALISTON AVENUE

FOR INFORMATION

EXISTING SITE LAYOUT  
GENERAL NOTE

C. CLEARY & A. WILSON

THE NEW YORK PUBLIC LIBRARY  
ASTOR LENOX TILDEN FOUNDATION  
500 5TH AVENUE  
NEW YORK 17, N.Y.

1. The first step is to identify the problem or question that needs to be answered. This involves understanding the context and the specific requirements of the task.

HERNET HAINES  
ARCHITECTS

298 BROOKVILLE PARK  
DEANSGRANGE  
BLACKROCK  
CO. DUBLIN

1504783 1504783  
1504783 1504783

001	:500@A3
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# Planning Pack Map



National Mapping Agency

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**MAP SERIES:** 1:1,000  
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**AN BORD PLEANÁLA**  
**11 MAR 2020**  
**FROM**  
**LTD DATED**  
**LTDG. Mhuilín**  
**ABP.**

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*Site Location Map*



28/01/2020

Application No.	EXPP 0042/20
Applicant	Cliona Cleary
Registration Date	January 2020
Location	18, Oakley Square, Dublin 6

**Re: Recent extension and large windows to western facade**

Dear Sir/Madam,

Please be advised that an application for a Declaration under Section 5 of the Planning and Development Act 2000 (as amended) was submitted to the planning authority on 23rd January 2020


It is noted that you may have an interest in the subject site to which this application relates. The planning authority would like to provide you as the owner/occupier of the site, the opportunity to submit views or comments on the application.

**Any comments or views you may wish to submit shall be submitted by close of business on 5th February 2020.**

A full copy of the application is available for viewing at the Public Counter, Dublin City Council, Planning Department, Monday to Friday, 9.00a.m. – 4.30p.m.

Should you require any clarity on this matter please do not hesitate to contact me at the above number,

Yours sincerely,

  
A M Bourke.  
For Executive Manager

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

T 01 222 2222 W. [www.dublincity.ie](http://www.dublincity.ie)

**AN BORD PLEANÁLA**

**11 MAR 2020**

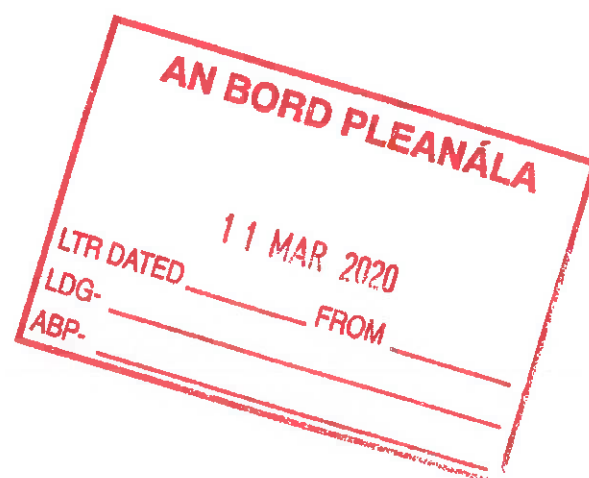
LTR DATED \_\_\_\_\_ FROM \_\_\_\_\_

LDG- \_\_\_\_\_

ABP- \_\_\_\_\_

### APPENDIX 3:

A copy of the application of Mauro Fiorio and Giorgia de Maoi dated 2<sup>nd</sup> January 2020 the owners of 18 Oakley Square together with the Planner's Report







DECLARATION ON DEVELOPMENT & EXEMPTED DEVELOPMENT



SECTION 5 APPLICATION FORM

NAME OF APPLICANT: MAURO FIORIO PLA & GIORGIA DE MAIO

ADDRESS OF APPLICANT: 18 OAKLEY SQUARE, RANELAGH  
D06 PX73

EMAIL ADDRESS: MAURO\_FIORIO@HOTMAIL.COM

TELEPHONE NO. Day: Mobile: 087 7784403

NAME OF AGENT AND AGENT'S ADDRESS: ARCH. NICOLA DA PONTE  
c/o SHOMERA VILLAGE, DUNSHAUGHLIN BUSINESS PARK

TELEPHONE NO. Day: 01 825 8288 Mobile:

ADDRESS FOR CORRESPONDENCE (if different from above)

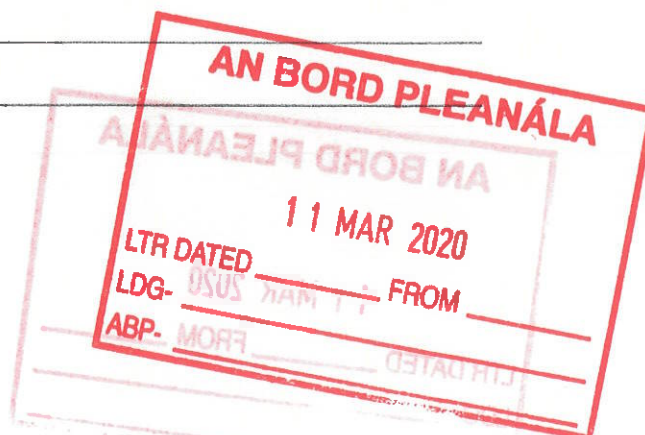
LOCATION OF SUBJECT SITE: 18 OAKLEY SQUARE, D06

Is this a Protected Structure or within the curtilage of a Protected Structure? ☐ NO

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.)

SINGLE STOREY FLAT ROOF EXTENSION TO THE  
REAR OF THE HOUSE TOTALLING 26,5 SQM



List of plans, drawings etc. submitted with this application

2 No. SITE PLANS

GROUND FLOOR PLANS, ELEVATIONS

3D VIEWS OF SITE

€ 80.00 FEE CHECK

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:

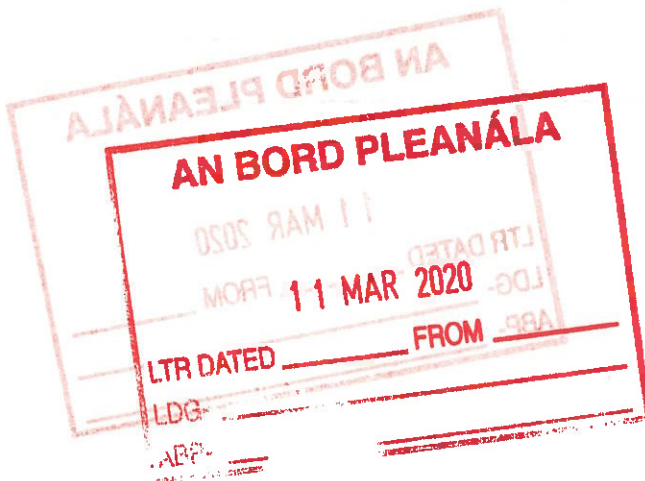
Where there previous planning application/s on this site? ☐ No  
If so please supply details:

Signed Nicola Da Ponte Date 02/01/20

**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





Comhairle Cathrach  
Bhaile Átha Cliath  
**Dublin City Council**

An Roinn Pleanála & Forbairt Maoin, Bloc 4, Urlár 3, Oifigi na  
Cathrach, An Ché Adhmaid, Baile Átha Cliath 8.

Planning & Property Development Department, Block 4, Floor 3,  
Dublin City Council, Civic Offices, Wood Quay, Dublin 8.

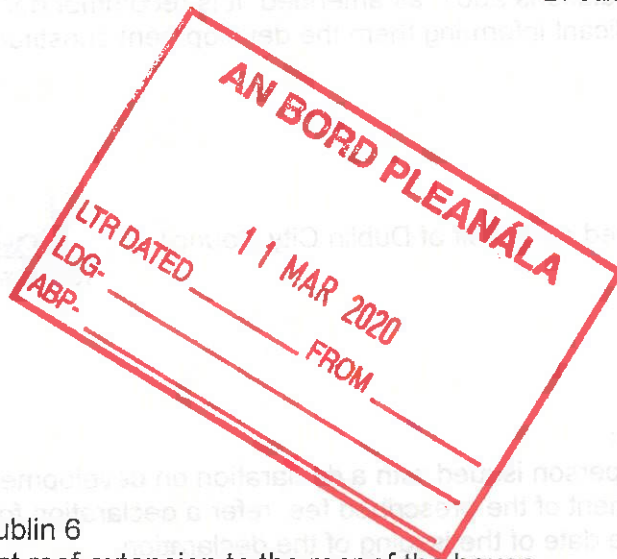
T: (01) 222 2288

E. [planning@dublincity.ie](mailto:planning@dublincity.ie)

21-Jan-2020

Nicola Da Ponte  
18, Oakley Square  
Dublin 6

Application Number	0005/20
Application Type	Section 5
Registration Date	03-Jan-2020
Decision Date	21-Jan-2020
Decision Order No.	P2129
Location	18, Oakley Square, Dublin 6
Proposal	EXPP: single storey flat roof extension to the rear of the house totalling 26.5 sqm.
Applicant	Mauro Fiorio PLA & Diorgia De Maio



- If you have any queries regarding this Decision, please contact the number shown above

**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 A Bord Pleanála within four weeks of the date of the issuing of the declaration.

**NOTIFICATION OF DECLARATION ON DEVELOPMENT AND EXEMPTED DEVELOPMENT**

In pursuance of its functions under the Planning & Development Acts 2000 (as amended), Dublin City Council has by order dated 21-Jan-2020 decided to issue a Declaration that the above proposed development is **EXEMPT** from the requirement to obtain planning permission under Section 32 of the Planning & Development Acts 2000 (as amended).

**Reasons & Considerations:**

The extension as described is development, and is exempted development, within the meaning of the Planning and Development Act 2000, as amended.

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

NOT1section5(Grant Exemption)

T. 01 222 2222 W. [www.dublincity.ie](http://www.dublincity.ie)



The construction of the proposed extension to the rear of No. 18 Oakley Square, meets the conditions and limitations of Class 1 of Schedule 2, Part 1 of the Planning and Development Regulations 2001, as amended. It is recommended therefore that a declaration be issued to the applicant informing them the development constitutes exempted development.

Signed on behalf of Dublin City Council

Karen Harvey  
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

### Declaration on Development and Exempted Development

#### Section 5 of the Planning and Development Act 2000

---

**EXPP:** 0005/20

**Location:** 18, Oakley Square, Dublin 6

**Date Received:** 03-Jan-2020

**Decision Due Date:** 30-Jan-2020

---

#### Development

The applicant requests a declaration on whether a single storey flat roof extension to the rear of the house totalling 26.5 sqm is or is not development, and is or is not exempted development.

#### Site Description

No. 18 Oakley Square is a two storey end-of-terrace property located within an infill development in Rathmines.

The site is zoned Z2 in the 2016-2022 Dublin City Development Plan, with the objective 'To protect and/or improve the amenities of residential conservation areas.' There are no specific objectives in the Development Plan or in any Local Area Plan, designating the site as an area of archaeological, geological, historical, scientific or ecological interest. The site is not a protected structure or national monument.

#### Planning History

No relevant planning history.

#### Enforcement History

None on file.

#### Relevant Legislation

This application will be assessed under the Planning and Development Act 2000 (as amended), and under the Planning and Development Regulations 2001 (as amended) to check whether it is exempted development. *Schedule 2 Part 1 Exempted Development-General - Development within the Curtilage of a House - Class 1* is the part that specifically addresses extensions to houses, and whether they require planning permission or not.

#### Appraisal

##### Submitted Drawings

- Site Plan

**AN BORD PLEANÁLA**

**11 MAR 2020**

LTR DATED \_\_\_\_\_ FROM \_\_\_\_\_

LDG- \_\_\_\_\_

ABP- \_\_\_\_\_

- 3D views
- Demolition Plans
- Scheme Plans
- External 3D, Finishes and Elevations

### Assessment against the Regulations

The relevant parts of Schedule 2 Part 1 Exempted Development- General - Development within the Curtilage of a House - Class 1 of the Planning and Development Regulations 2001 (as amended) states:

*The extension of a house, by the construction or erection of an extension (including a conservatory) to the rear of the house or by the conversion for use as part of the house of any garage, store, shed or other similar structure attached to the rear or to the side of the house.*

1. (a) *Where the house has not been extended previously, the floor area of any such extension shall not exceed 40 square metres.*

The proposed extension would be 26.5 sqm in area.

2. (a) *Where the house has been extended previously, the floor area of any such extension, taken together with the floor area of any previous extension or extensions constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 40 square metres.*

The property has not been previously extended.

4. (a) *Where the rear wall of the house does not include a gable, the height of the walls of any such extension shall not exceed the height of the rear wall of the house*

The height of the highest part of the roof of the proposed extension would not exceed the height of the highest part of the roof of the dwelling.

5. *The construction or erection of any such extension to the rear of the house shall not reduce the area of private open space, reserved exclusively for the use of the occupants of the house, to the rear of the house to less than 25 square metres.*

The rear amenity space would not be reduced to less than 25 sqm by the proposed extension.

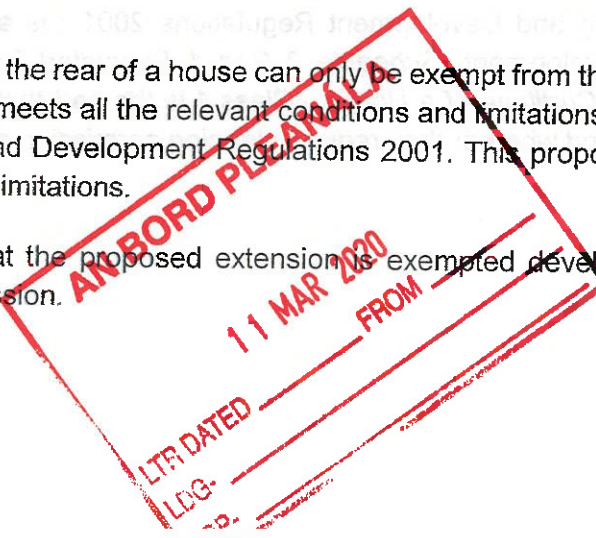
- (a) *Any window proposed at ground level in any such extension shall not be less than 1 metre from the boundary it faces.*

All proposed windows would be located more than 1 metres away from any neighbouring boundary it would face.

### **Conclusion**

An extension to the rear of a house can only be exempt from the requirement to seek planning permission if it meets all the relevant conditions and limitations numbered above, copied from the Planning and Development Regulations 2001. This proposed extension meets all these conditions and limitations.

This means that the proposed extension is exempted development, and does not require planning permission.





## Recommendation

The extension as described is development, and is exempted development, within the meaning of the Planning and Development Act 2000, as amended.

The construction of the proposed extension to the rear of No. 18 Oakley Square, meets the conditions and limitations of Class 1 of Schedule 2, Part 1 of the Planning and Development Regulations 2001, as amended. It is recommended therefore that a declaration be issued to the applicant informing them the development constitutes exempted development.

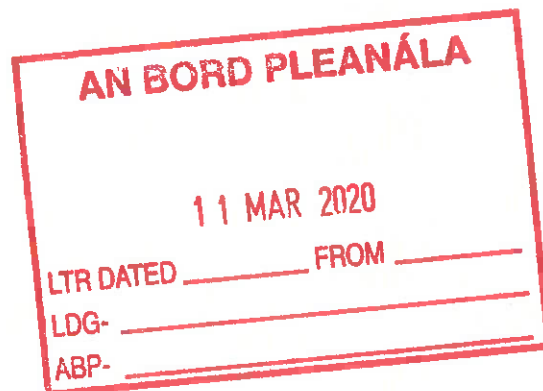
Robert Brereton

Robert Brereton

Assistant Planner

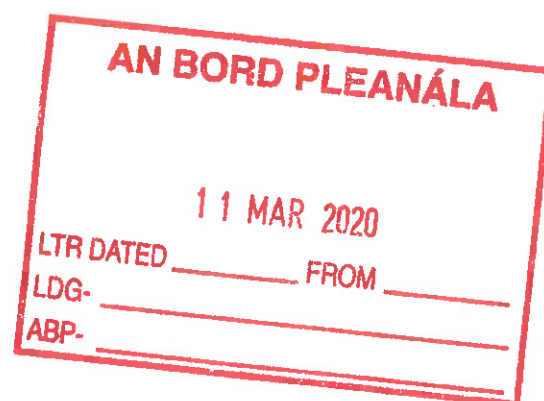
17<sup>th</sup> January 2020

K. Sweeney  
17-1-20.





**APPENDIX 4:** Submission made by Nicola Da Ponte and AKM Design on behalf of the owners of Oakley Square in relation to the Section 5 Application of the Appellant.









Mr Robert Brereton  
Planning Department  
Dublin City Council  
Block 4  
Civic Offices  
Dublin 8  
**By Direct Courier**

Our ref: AMH/DEM1/2

Your ref: **EXPP 0042/20** Date: 4 February 2020

**Our clients:** Mr Mauro Fiorio Pla and Ms Giorgia De Maio of 18 Oakley Square, Dublin 6  
**Re:** Application EXPP 0042/20  
Applicant: Cliona Cleary  
Location: 18 Oakley Square, Dublin 6

Dear Sirs,

We refer to your letter to our clients dated 28 January 2020 (copy attached) in relation to an application for a Declaration under Section 5 of the Planning and Development Act 2000 (as amended) which was submitted by Cliona Cleary on 23 January 2020.

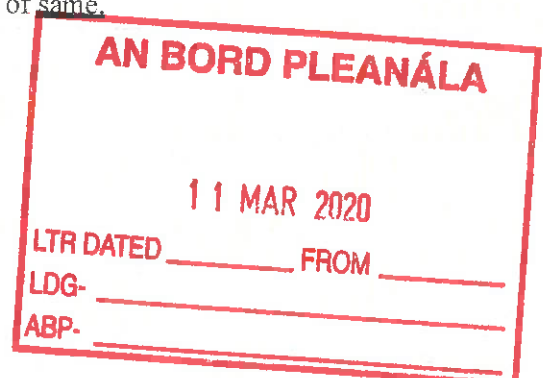
By way of reply to same our clients would like to submit the following:

1. Submission of Nicola Da Ponte, Architect of Shomera Architecure dated 31 January 2020
2. Submission of Jong Kim of AKM Design dated 3 February 2020

We would be grateful if you could please confirm safe receipt of same.

Yours faithfully,

  
Cosgrove Gaynard Solicitors



Address: 39, Waterloo road, Dublin 4

Phone: 01 234 0044 | Fax: 01 234 0047  
Email: [info@cgsolicitors.ie](mailto:info@cgsolicitors.ie) | Web: [www.cgsolicitors.ie](http://www.cgsolicitors.ie)

Susan Cosgrove, LLB, Dip Prop Tax, Dip TEP, Dip Aviation F & L

Aidan Callaghan, LLB, MA (Law), Dip Finance, Dip Management  
Siobhan Carty Dip IT, Dip LS  
Legal Executive: Melissa Cowman





Comhairle Cathrach  
Bhaile Átha Cliath  
Dublin City Council

Planning and Property Development Department,  
Dublin City Council, Block 4, Floor 0, Civic Offices, Wood Quay, Dublin 8

An Roinn Pleanála & Forbairt Maoin, Comhairle Cathrach Bhaile Átha Cliath  
Bloc 4, Urlár 0, Oifigí na Cathrach, An Ché Adhmaid, Baile Átha Cliath 8

T: (01) 222 2149 / F: (01) 222 2675

Mr. Mauro Florio PLA &  
Ms. Diorgia De Maio,  
18, Oakley Square,  
Dublin 6

28/01/2020

Application No.	EXPP 0042/20
Applicant	Cliona Cleary
Registration Date	January 2020
Location	18, Oakley Square, Dublin 6

**Re: Recent extension and large windows to western facade**

Dear Sir/Madam,

Please be advised that an application for a Declaration under Section 5 of the Planning and Development Act 2000 (as amended) was submitted to the planning authority on 23rd January 2020

It is noted that you may have an interest in the subject site to which this application relates. The planning authority would like to provide you as the owner/occupier of the site, the opportunity to submit views or comments on the application.

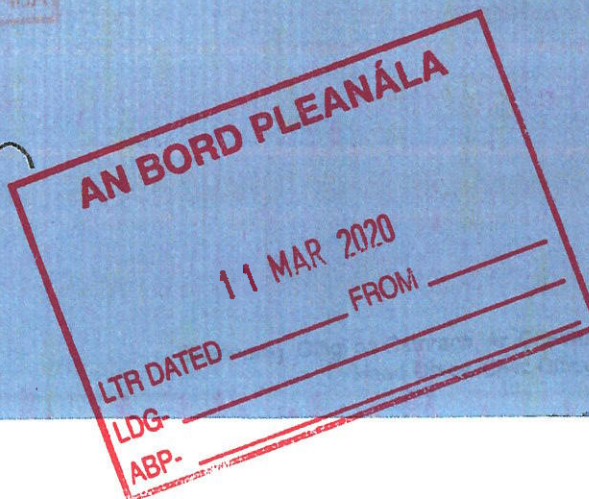
**Any comments or views you may wish to submit shall be submitted by close of business on 5th February 2020.**

A full copy of the application is available for viewing at the Public Counter, Dublin City Council, Planning Department, Monday to Friday, 9.00a.m. – 4.30p.m.

Should you require any clarity on this matter please do not hesitate to contact me at the above number.

Yours sincerely

*Mary Heene*  
A M Bourke  
For Executive Manager





**Re: EXPP 0042/20 and earlier EXPP 0005/20**

**Recent extension to 18 Oakley Square, Ranelagh, Dublin 6, D06 PX73**

I Nicola Da Ponte am an Architect having qualified in as such in the year of 1999 at the Istituto Universitario di Venezia – Italy, being registered as Member of the Albo degli Architetti, Pianificatori, Paesaggisti e Conservatori della Provincia di Venezia with no. 2859 in year 2000 and currently registered Member of the Royal Institute of Architects in Ireland with no. 17112 .

I am a member of staff at Shomera, retained by **Giorgia DeMaio & Mauro Fiorio Pla** of **18 Oakley Square, Ranelagh, Dublin 6, D06 PX73** to provide architectural design & build services to the address above.

#### **Situation**

The Premises is part of a multi-unit development erected in accordance with Planning Permission ref. 1369/86 and subsequent Conditions imposed by An Bord Pleanála decision ref. 29/5/72471. The current development comprises of a single storey 26,50 sqm flat roof single-storey extension to the rear of the Premises, on its northern elevation. The extension is of a timber frame construction with rendered external finish similar to existing house and is fully compliant with current Building Regulations.

I attach copy of EXPP 0005/20 Section 5 Application relating to 18 Oakley Square, Ranelagh, Dublin 6 submitted by me on Jan. 2<sup>nd</sup>, 2020.

#### **Opinion**

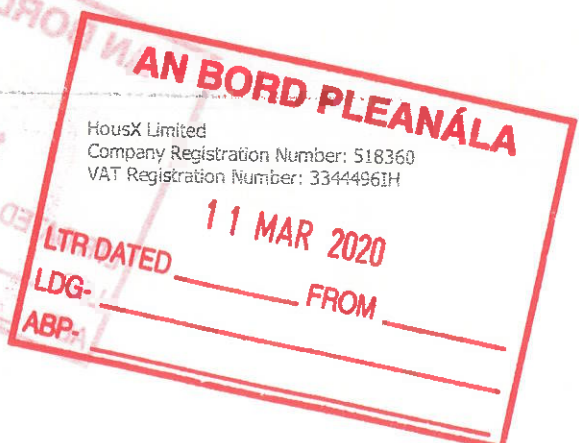
It is my opinion that the proposed extension at 18 Oakley Square, is exempted from planning permission under Schedule 2 Part 1 Class 1 of the Planning & Development Regulations 2001 (S.I. No. 600 of 2001). This opinion was confirmed by Dublin City Council on Jan. 21<sup>st</sup>, 2020.

This is in keeping with precedent as other houses in the development have added glazed extensions within the house owners' Statutory entitlement under exempted development (at least three of the properties).

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Dunshaughlin, Co. Meath

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HousX Limited  
Company Registration Number: 518360  
VAT Registration Number: 33444961H



An objection raised by neighbours suggests that the extension breaches condition 14. of Conditions set by An Bord Pleanála decision ref. 29/5/72471 in the original planning consent for the development. As per the condition, no window(s) have been provided in the indicated blank facades of the house.

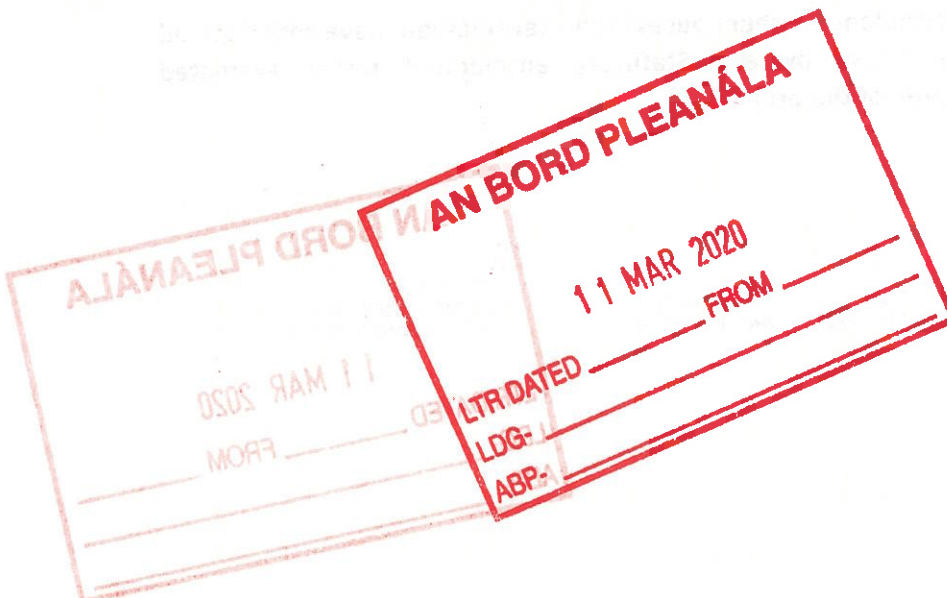
In fact it is my opinion that the condition has no bearing on the exempted entitlement being exercised by our client. I hold this opinion, in particular, because there are no restrictions on exempted development provisions in original conditions of planning for the development. We have come across developments where a condition of planning is included that restricts the normal provision of exempted development from taking place without a formal planning application and subsequent consent being issued by the local authority. This condition did not form part of the planning consent for this development.



Signed:

31 January, 2020

Nicola Da Ponte, MA Arch, PGCert DAER, MRIAI



Robert Brereton  
Planning Department  
Dublin City Council,  
Block 4,  
Civic Offices,  
Dublin 8.

03/02/2020

Re: EXPP 0042/20  
Address: 18 Oakley Square, Dublin 6

Dear Robert,

AKM

AKM Design  
Unit 4  
Orchard Business Centre  
2009 Orchard Avenue  
Citywest Business Campus  
Dublin 24

P: +353 1 479 6234  
E: info@akmdesign.ie  
W: www.akmdesign.ie

I refer to above Section 5 application by Cliona Cleary – reference 0042/20 lodged 23/01/2020.

I wish to make this submission on behalf of Mauro Florio Pla & Giorgia De Maio, who are owners of 18 Oakley Square, Dublin 6. The following question has been asked by the applicant:

*"Whether the recent extension which includes large windows at the western elevation to the western facade of 18 Oakley Square constitutes development having regard to planning condition 14 attached to a previous planning application Ref ABP 290572471".*

## 1.0 Subject Extension

I have reviewed the single storey extension built to the rear of 18 Oakley Square, Dublin 6.

I consider the single storey extension to be 'exempt development'. I consider the rear extension meets all of the conditions and limitations of Class1 of Schedule 1, Part 1 of the Planning and Development Regulations.

The single storey extension was only recently constructed (started in late 2019) and remains unfinished externally. Please refer to enclosed photos.

The applicant specifically makes reference to 'large windows' in the western façade of 18 Oakley Square in the application. The said 'windows' do not exceed or breach any the conditions and limitations of Class1 of Schedule 1, Part 1 of the Planning and Development Regulations.

## 2.0 Decision ABP 290572471

The applicant makes reference to condition no. 14 of An Bord Pleanála Decision 290572471 (reference 1369/86). This decision relates to the original construction of the Oakley Square housing scheme. I ask the Planning Authority to refer to wording of the condition.

Condition no. 14 states:

*No windows shall be provided, now or in the future in the indicated blocks of the new residential blocks, save where such are shown on the lodged plans.*

AN BORD PLEANÁLA

11 MAR 2020

FROM

Architectural Design | Town Planning | Civil & Structural Engineering | Development Consultants | Building Surveying

AKM Consultants Ltd. Trading as AKM Design Registered in Ireland. Company No.: 1547402.  
Registered Office: Unit 4, Orchard Business Centre, 2009 Orchard Avenue, Citywest Business Campus, D24  
Directors: P. Andrews, J. Kim, B. McCormack. AKM Consultants Ltd. VAT No. 3279518FH



This planning condition is clear, concise and directional. It is easily understood, unambiguous and it clearly only refers to the original buildings as set out in the submitted plans under the original planning application and subsequent appeal An Bord Pleanála Decision 290572471 (reference 1369/86).

The wording states "*in the indicated blanks facades of the new residential blocks*" i.e. this is clearly referring only to the development as applied for and permitted by the An Bord Pleanála Decision 290572471.

Planning decision 290572471 does not contain any planning condition that 'de-exempts' future development that is considered 'exempt development'.

### 3.0 Conclusion

The subject site is not a protected structure and there are no planning restrictions or environmental sensitivities regarding this domestic development.

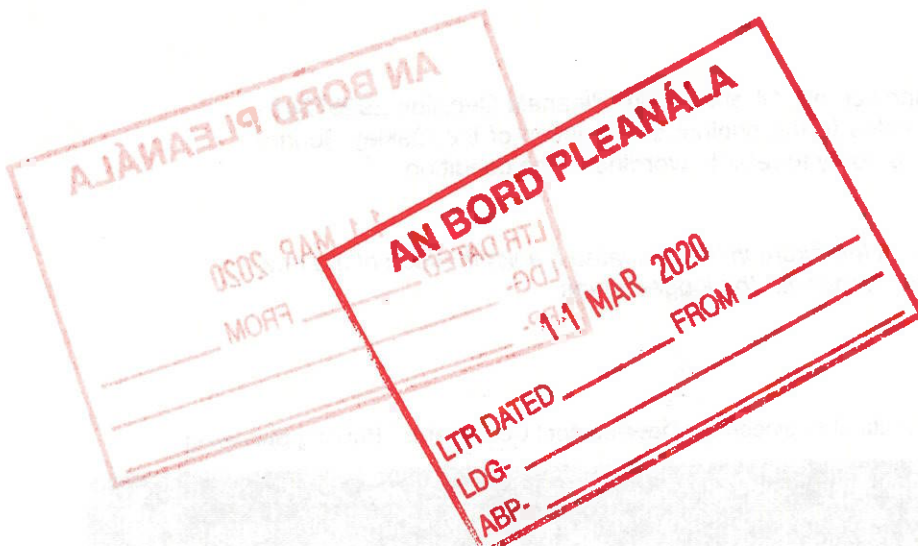
I have reviewed the site and I consider the single storey rear extension is 'exempt development'.

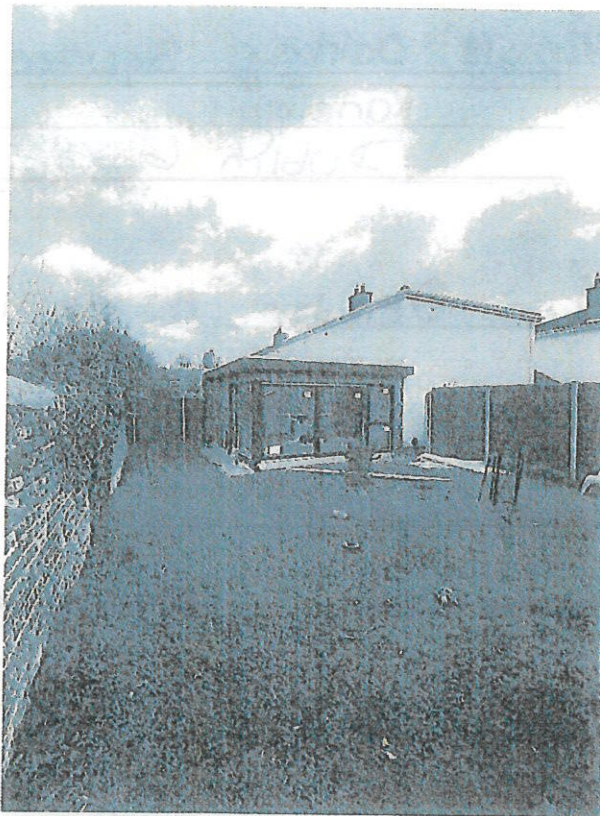
I trust this clearly letter sets out my position in relation to the matter.

Can you please send an official reply to the submission to our citywest office.

Yours sincerely,

  
Jong Kim MIPI





View showing the exterior of the single storey extension.

**AN BORD PLEANÁLA**

11 MAR 2020

LTR DATED \_\_\_\_\_ FROM \_\_\_\_\_

LDG- \_\_\_\_\_

ABP- \_\_\_\_\_

## EXPP APPLICATION

EXPP APPLICATION NO: 0042/20

Location Address: 18, Oakley Square  
Ranelagh  
Dublin 6

Area: ① Deirdre O'Reilly

Date Received: 23.01.2020

Date Due: 19.02.2020

Applicant's Legal Interest in Site: Neighbour

Protected Structure: ☐ no RPS No.: N/A

Planning History: 0005/20 Exp

Enforcement History: none

Updated in Access: ☒

Updated in Post Book: ☐

Updated in APAS: ☐

