

Bord Pleanála  
64 Marlborough Street  
Dublin 1

8 January 2021  
Case Number: ABP -308358-20  
Planning Authority Reference number: EC15-20

AN BORD PLEANÁLA	
LDG-	_____
ABP-	_____
11 JAN 2021	
Fee: €	Type: _____
Time: _____	By: <u>reg post</u>

**Re:** Whether a garage/store to the side and single storey extension to the rear of house is or is not development or is or is not exempted development.  
39 Kylemore, School House Road, Castletroy, Co. Limerick

Dear Sir / Madam,

Further to your letter dated 08 December 2020, in relation to the above, we the owners and residents of house numbers 38, 37, 36, 35, 51, 52 and 53 respond accordingly.

We wish to outline our very real and prolonged concerns regarding the development at 39 Kylemore, Castletroy, Co. Limerick which is ongoing since 2017. We, the residents have lived in its shadow while the applicant has been living and using this unauthorised development to its fullest. This development was appealed to An Bord Pleanála and refused in August 2018. In November 2018, proceedings were issued in the High Court against this ruling by Julie Ann Dowling and in June 2020 a Section 5 application was lodged. All this time has elapsed which only benefits the applicant while they live and use the development contrary to the impact this has had and is having on the amenities of adjoining residents and ruling of An Bord Pleanála.

It is an affront to proper planning and sustainable development as outlined what an exempted development should be in Section 4 of the Planning and Development Act and was built without any consultation or due regard to the impact it has had on the lives of families directly and indirectly associated with it.

We acknowledge both submissions from Limerick City and County Council and the response received from Julie Ann Dowling. The following are our specific observations and concerns in relation to the unauthorised development at 39 Kylemore and the Section 5 application.

**Specific observations and concerns:**

1. The development as proposed is not an "extension to the house" by virtue of the fact that it does not have any direct connection to the dwellinghouse and furthermore, the provision of a garage as proposed would in addition mean that the habitable (Play/Music Room) portion of the dwelling is not even attached to the dwellinghouse. Therefore, the Class 1 definition as described in Schedule 2 Part 1 (Exempted Development-General) of the regulations is not in our opinion applicable in this instance as the habitable room portion of the proposal is effectively a stand-alone habitable structure.

2. Notwithstanding the fact that a privacy shield is mentioned to be provided to the windows. The 'windows' on the boundary wall are still non the less, 'windows' and do not comply with paragraph 6(a) of the above-mentioned schedule of the regulations, i.e. they are windows that are less than 1m from the boundary it faces. The south/rear corner windows of the annex are 0.9m to the boundary wall. The corner returning windows on the south east elevation also are within 1 meter of the boundary wall (refer to applicant's site layout and elevation drawings ref 17-76-002 and 17-76-004 submitted to Limerick City and County Council on the 18-7-2017).
3. The height of the garage/ store portion of the development at 3.62m high far exceeds the 3m maximum height permitted in paragraph 5 Class 3 of the above schedule for non tiled roof of garages/ stores. In this regard, we are strongly of the view that the metal deck roof on this property, although it has a low pitch, is not a "tiled roof or slated roof" as stipulated in this clause. The roof pitch is indicated at 9°. This low pitch would be considered in construction terms as a flat roof and in actual fact, is defined as such in the Harris Dictionary of Architecture, where it is stated that, 'any pitch less than 10° is deemed to be a flat roof'. In addition, it is stated in Class 3 paragraph 4 of the above-mentioned regulation that, *"The external finishes of any garage or other structure constructed, erected or placed to the side of a house, and the roof covering where any such structure has a tiled or slated roof, shall conform with those of the house."* We would be sincerely of the view that this condition has also not been met by virtue of the finishes of the building (See Apendix Pictures 1-4) and the proposed application.

No change to the high level of glazing and incongruous finishes and materials of the whole structure is proposed in the Section 5 application by Julie Ann Dowling. We therefore consider both garage and playroom combined as still not an exempted development due to improper planning and unsustainable development as referenced by An Bord Pleanála's consideration in refusing to grant retention permission for the same structure. Further, there is precedence for materials used and external finishes to extensions in Kylemore estate as ruled previously by Limerick City and County Council with respect to proper and sustainable planning.

➤ **2017, Planning Application number: 17379**

Permission was granted subject to 10 conditions. Point 7 of Schedule 2 notes "The external finishes of the proposed extension (including roof tiles/slates shall be the same as those of the existing dwelling in respect of colour/texture. Reason – in the interest of visual amenity"

➤ **2018, Planning Application number: 181011**

Application for retention of extension to the rear of house. Permission granted where drawings/plans detail plaster finish matches external finish of existing house.

➤ **2019, Planning Application number: 19701**

Permission was granted for a single storey extension subject to 11 conditions. Point 4 of Schedule 2 notes "The extension shall be finished in materials matching the existing dwelling".

➤ **Castletroy Local Area Plan 2019-2025**

In accordance with the provisions of the Planning & Development Act 2000, the application shall have regard to the provisions of this plan especially Chapter 4, Section 4.2 Residential density, design, mix, where it states:

"residential development is required to be of a good quality design, accommodate a mixture of house types and **integrate with the existing development.**"

4. With reference to BDB Consulting letter to An Bord Pleanála (Date November 2<sup>nd</sup>, Ref 17-76) point 4 – "*all possibility of overlooking is entirely eliminated and the rear window omitted*". Section 5 Drawings show no change to glazing except privacy shield to some windows which is a farcical solution. The extent of glazing from floor to roof and the surrounding windows on all walls of the extension clearly overlook adjacent properties and provide no means of any privacy at all which can be seen in Pictures 1-4 (Appendix A).

As can be seen in Picture 4, taken from 1<sup>st</sup> floor bedroom window, first floor level of the houses to the rear/south of the extension, No. 51, 52, and 53 etc are approximately in line with the FFL of the extension. The 1.8m boundary block wall above the precast concrete wall does not allow for privacy as the proximity to the wall, height and scale of the windows of the extension are excessive without regard to adjacent neighbour's privacy of childrens bedrooms and living rights. These windows can also be seen from the side elevation of adjacent neighbour gardens (Picture 2).

5. It should also be clearly noted, and that this has not been referenced in this or the previous planning application, that the attic of the original dwelling house has been converted prior to the unauthorised extension. It would appear also that this development which necessitated a new gable window on the side elevation and velux rooflights to the rear may also be unauthorised and require approval (see Appendix pictures 5-6). We would be strongly of the view that planning regulations would dictate that the floor area of this conversion should also be included/ added to the exemption limits of total floor area as permitted. Given this scenario, although we cannot ascertain the area of this attic conversion from the submitted documents, it would be reasonable to assume that the combined floor area of the play/ music room extension and the attic would far exceed the minimum 40m<sup>2</sup> permitted.
6. We would have to question the legality/ validity of this application in that this application seeks to address/ overcome an established unauthorised development by proposing modifications which would render it an exempted development. The intention of a Section 5 application as described in the Planning and Development Act is to provide clarity "*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*".

It has been clearly established by due planning process that the structure as constructed is not appropriate development in accordance with the proper planning and development of the area. The exemption regulations as set out in Schedule 2 were set in place to permit reasonable development and should not be exploited or cherry picked in a cynical manner to overcome a totally unsuitable unauthorised development as clearly this development is.

7. There are a number of irregularities evident in the drawings as submitted which would call into question the validity of the application namely;
  - We would have concerns about the accuracy of the floor areas as indicated for the extension in that from scaling the submitted floor plan, the overall area of the garage and music room area would appear to exceed 40 m<sup>2</sup>. Whereas the submitted Section 5 drawings indicate this combined area to be 39.8sq.m. Again additional credence is given to this observation by the fact that the area originally indicated on the retention planning drawings of this combined area was indicated by the applicant as being 41.5 m<sup>2</sup> (reference Planning Drawing no. 17-76-002).
  - The distance indicated from the rear wall of the annex to the rear boundary is indicated at 1.03m on the submitted Section 5 site plan. It was however indicated on the retention planning application drawings on both the floor plan and site layout plan as being 900mm (reference Planning Drawing no's 17-76-002 and 17-76-004). We are at a loss to understand how this dimension can change between the two applications in an established structure/ site. Clarification on this ambiguity is clearly required here for the reasons as highlighted above.
  - The finished floor levels indicated on drawings submitted for this application in relation to the existing neighbouring houses are also different from what was shown on the planning retention drawings.
  - It is not indicated on the submitted drawing that there is currently a wide ope which links the existing house and the current proposed garage location. No indication or other reference to this ope has been submitted on the submitted drawings and indeed this was the case with the previous retention application. Currently there is access to this from the main dwelling at the side/corner of the house which is not indicated on any plans.
  - It is not clear from the application whether another extension (in addition to the attic conversion has occurred) in that no drawings of the floor plans of the original dwellinghouse have been submitted as part of this application.
8. With respect to proper planning and sustainable development, there is no mention of how to address the light pollution from the installed artificial lighting in the current development and proposed Section 5 application. We would consider this a very important area in sustainable living due to over 25% of energy used in Ireland is from energy use in domestic homes (SEAI). Pictures 7 and 8 (Appendix A) show the effect of this light pollution and how it reflects directly into adjacent homes.

9. With respect to this Section 5 application, we also feel that it in no way addresses the ideals of proper planning as described in Limerick City and County Development Plan 2010-2016 (as Extended), refer to Section 10.5.1 and 10.5.7 below.

**Limerick City and County Development Plan 2010-2016 (as Extended),**

**Section 10.5.1**

Houses should be designed in such a manner as to minimise overlooking and overshadowing of adjoining residences and facilitate future extensions to do likewise.

**Section 10.5.7**


In assessing an application for a house extension, the Planning Authority will have regard to the following-

- 'Sustainable Residential Development in Urban Areas', 2009 and the accompanying 'Urban Design Manual – A Best Practice Guide' in considering the existing site density and remaining private open space.
- High quality designs for extensions will be required that respect and integrate with existing dwellings in terms of height, scale, materials used, finishes, window proportions etc. Pitched roofs will be required except on some single storey rear extensions. Flat roof extensions visible from public areas will not normally be permitted.
- Impact on amenities of adjacent residents, in terms of light and privacy. Sunlight and daylight assessment may be required.

We believe that the proposed plans submitted and Section 5 application, still, do not take the concerns of the surrounding residents into account. Our original objections to the retention application of this extension are still relevant and An Bord Pleanála's original refusal to grant permission was based on the scale, height, extensive glazing and proximity to site boundaries. Nothing in the design of the extension has changed in the Section 5 application to alleviate these concerns which are real to us, the surrounding residents. The scale stays the same. The height stays the same. The extensive use of glass below and above standard ceiling height remains. The footprint of the building as a whole will not change and therefore imposes itself and continues to injure the residential amenities of the adjoining properties. We would ask the Board to consider our very sincere objections to the Section 5 application by Julie Ann Dowling. We would like to see the applicant engage with the principles of proper planning and sustainable development and have consideration for the adjoining residents.

Yours Sincerely

The owners/ residents of 38, 37, 36, 35, 51, 52, 53 Kylemore

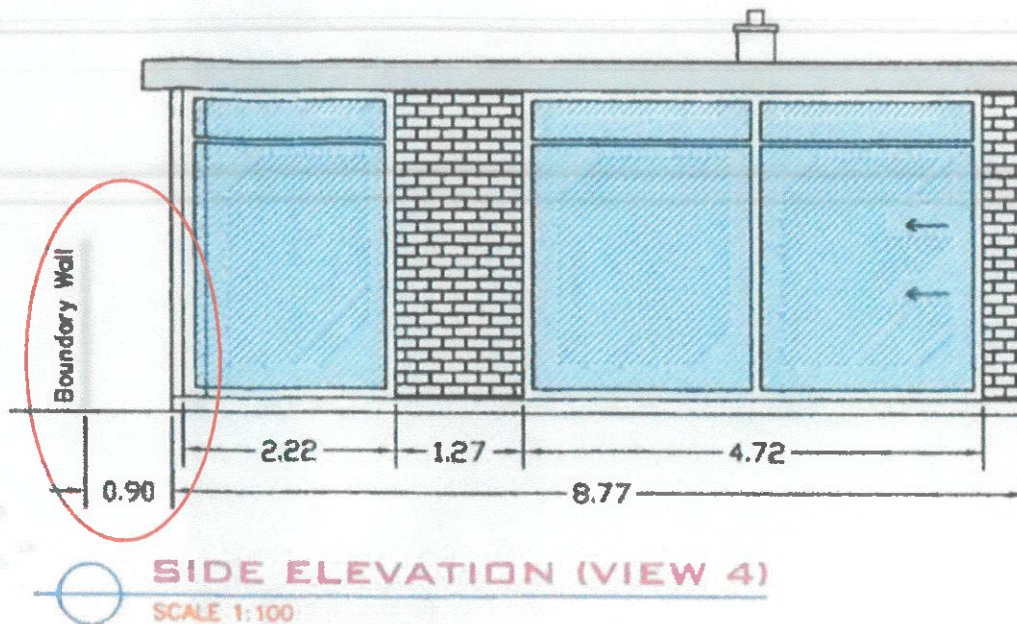
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## Appendix A

Views of drawing ref 17-76-002 and 17-76-004 showing distance between boundary wall and windows to be 900mm



Drawing reference 17-76-002



Drawing reference 17-76-004



**Picture 1:** Taken from public path between house numbers 52 and 53 showing incongruous materials not in keeping with the housing development of Kylemore Estate.



**Picture 2:** Picture taken from public path outside houses no 37, 38. Shows metal/aluminium clad roofing, not slates or tiles.



**Picture 3:** Taken from public path outside house no 51.



**Picture 4:** Materials and finishes of metal/aluminium roof, grey plaster, stone and grey cased windows from floor to ceiling not in keeping with estate of Kylemore.





**Picture 5:** Showing gable window on the side elevation of attic (no planning application on file for this window) and chimney flue of extension.



**Picture 6:** Showing velux rooflights to the rear.



**Picture 7:** Excessive use of light which reflects out and into adjoining homes.



**Picture 8:**