

# MARSTON

## PLANNING CONSULTANCY

An Bord Pleanála  
64 Marlborough Street  
Dublin 1

28<sup>th</sup> July 2021

<b>AN BORD PLEANÁLA</b>	
LDG-	<u>042126-21</u>
ABP-	_____
29 JUL 2021	
Fee: €	<u>220</u> Type: <u>Cheque</u>
Time:	<u>14:00</u> By: <u>hand</u>

Our Ref: 21051

**Re: Referral to An Bord Pleanala relation to the decision by Dun Laoghaire Rathdown County Council relating to an Application for declaration under Section 5 of the Planning and Development Act 2000 (as amended) in relation to whether the insertion of 2 no. windows in the rear elevation of no. 2 Vesey Mews, Monkstown, Co. Dublin is or is not exempted development.**

**Dun Laoghaire Rathdown County Council Ref. 7721**

**Date of Notification of Declaration on Development & Exempted Development 06<sup>th</sup> July 2021**

**Final date for the making of a referral relating to the Declaration – within 4 weeks of the decision: on or before 3<sup>rd</sup> August 2021**

Dear Sir / Madam

We, Marston Planning Consultancy, 23 Grange Park, Foxrock, Dublin 18 have been instructed by Mrs. Kathy Prendergast, 2 Vesey Mews, Monkstown, Co. Dublin to appeal this referral to An Bord Pleanala in relation to the decision of the declaration issued by Dun Laoghaire Rathdown County Council under Section 5 of the Planning and Development Act 2000 (as amended) dated 6<sup>th</sup> July 2021 relating to No. 2 Vesey Mews.

In compliance with the statutory regulations, we enclose herewith payment to An Bord Pleanala for the sum of €220.00 as the appropriate fee for the referral of a decision relating to a declaration under section 5 of the 2000 Act (as amended) in this instance. We can confirm that the enclosed referral has been submitted within 4 weeks of the decision by the Planning Authority.

We can confirm that our client is the owner of the property at No. 2 Vesey Mews. Details of the owner were outlined in the Section 5 Application Form that accompanies this section 5 declaration application to Dun Laoghaire Rathdown County Council.

The question arising in this case is whether the insertion of 2 no. windows within the rear elevation of no. 2 Vesey Mews, which is not a protected structure; is or is not development or is or is not exempted development.

We refer An Bord Pleanála to Dun Laoghaire-Rathdown County Council's determination dated 6<sup>th</sup> July 2021 which concluded as follows:

*"the insertion of two new window opes measuring 1.52m in height by 0.7m in width within the rear area of no. 2 Vesey Mews, Monkstown, Co. Dublin constitutes development and does not constitute exempted development".*

In advance of making this referral to An Bord Pleanala, we confirm that we have undertaken research concerning the planning history of the subject property. We have also considered the relevant legal provisions of the Planning and Development Act 2000 (as amended), and the Planning and Development Regulations 2001 (SI No. 600 of 2001) (as amended). We confirm that we have visited and are familiar with the property and its local and wider surrounds; and have also examined the recent planning history including the recent decision made by An Bord Pleanála under ABP Ref. ABP-01374-18 (Dun Laoghaire-Rathdown County Council Ref. D18A/0044). In addition we have reviewed the content of the Notification of Declaration on Development & Exempted Development issued by the Planning Authority.

Having considered this decision, and the reasons and considerations that led to it, it is clear that the planning officer did not undertake a highly considered and objective assessment of the section 5 referral. Their assessment is actually completely lacking in a planning assessment with only the Conservation Division's notes and comments referred to. Their assessment is not considered having regard to section 4(1)(h) of the Planning and Development Act 2000 (as amended).

Having examined the notification, based on the contents provided therein and in particular the wording of the Conservation officer we consider that the Planning Authority has not fully considered the existing context of the mews and the adjoining mews buildings which have been much altered.

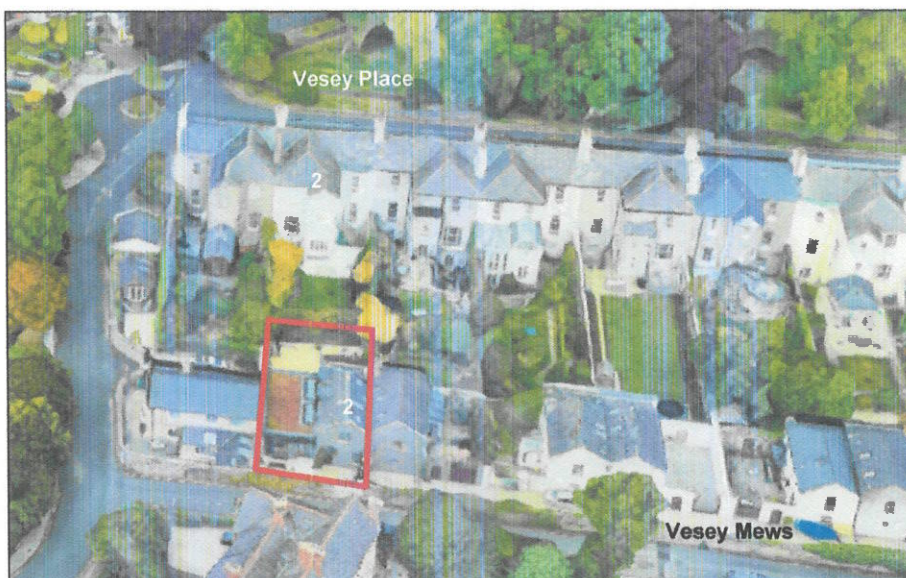
Our arguments for the determination that insertion of 2 no. windows into the rear elevation of No. 2 Vesey Mews is development and is exempt development, and the reasons and considerations upon which these are based are set out below for the benefit of An Bord Pleanála. Prior to stating the case for the conclusions outlined above, it is important that the Planning Authority are fully aware of all the relevant planning and development facts in relation to this site.

Having reviewed the matters in this particular case we are of the considered opinion that the insertion of 2 no. windows within the rear elevation of no. 2 Vesey Mews is development (in terms of the definition of "works" to a structure) and is exempted development and that there is no requirement for our client to obtain planning permission under Section 32 of the Planning and Development Act 2000 (as amended).

It is our considered opinion having examined the Declaration issued by Dun Laoghaire Rathdown County Council that the Planning Authority in this case has not fully considered the context of the existing built environment (in particular the much altered nature of the rear elevations of the existing mews building at Vesey Mews) and have in our view not fully and accurately assessed the existing as built context in the context of the provisions of section 4(1)(h) of the Planning & Development Act 2000 (as amended) and have as a result arrived at an inaccurate conclusion in this case.

#### **Facts presented to An Bord Pleanála**

The property that is the subject of this section 5 referral to An Bord Pleanála is no. 2 Vesey Mews. It is situated to the west of Dun Laoghaire within Monkstown. The property comprises a one storey plus dormer level semi-detached mews building that has been extended to the side that sits to the rear of no. 2 Vesey Place (a protected structure) and its accompanying terrace and forms part of a group of mews buildings off the mews laneway known as Vesey Mews.



*Aerial View of No. 2 Vesey Mews showing relationship with No. 2 Vesey Place*

We refer An Bord Pleanála to the fact that No. 2 Vesey Mews (our client's property and the subject of this referral) is not a Protected Structure. This matter is not in question and nor is the fact there is no provision within planning law to differentiate under section 4(1)(h) between whether a property is protected or not. There is a need to take into consideration both the external appearance and character of the existing

structure, and the pattern of development and character of neighbouring structures; as well as the nature and appearance of the subject windows.

We refer the Board to the fact that a number of the Vesey Mews properties have been extended or altered to their rear, and almost all are physically separated and in different ownership from the properties along Vesey Place.

Our client's property has incorporated the mews laneway to the front and includes a rear garden of some 10m to the rear. The property was the subject of a recent successful planning application that permitted a side extension and all associated elements ABP Ref. 301 374 18 (Dun Laoghaire Rathdown County Council Ref. D18A/0044).

The rear elevation of no. 2 Vesey Mews (facing no. 2 Vesey Place) which is the subject of this appeal contains some interesting architectural detail. This includes a hipped roof element that is hidden behind a pedimented façade. A plaster band signifies the break between floors and an arched recessed feature exists at ground floor with a rectangular element at first floor. Prior to these works being implemented the rear elevation of the mews was in poor condition as is evident below.



*Rear elevation at No. 2 Vesey Mews prior to new works and undertaking of 2018 permission which comprised of an ornate gable facing an enclosed rear garden area*

#### ***Development Plan context***

No. 2 Vesey Mews is located to the rear of a property in separate ownership at no. 2 Vesey Place (a Protected Structure). Vesey Place is a Victorian terrace built in the 1860s, fronting onto Vesey Gardens. Vesey Place and Gardens are designated a Candidate Architectural Conservation Area in the current Dun Laoghaire Rathdown County Development Plan 2016-2022.

It is notable that no. 2 Vesey Place is identified as a protected structure under the Development Plan (RPS no. 851). We note that the OS map base used by Dun Laoghaire Rathdown County Council 2016-2022 is not up to date in terms of the boundaries of the site. This property has been divided from and had no associations with the mews building for some 40 years. In this regard we note that the mews dwelling is not identified as a Protected Structure under the Development Plan and that there are no policies or objectives that state that it should be considered as such.

This cessation of a direct relationship between the terraces along Vesey Place and the mews buildings to the rear and laneway is fully corroborated by the failure of the boundary of the candidate Vesey Place Architectural Conservation Area to expand beyond the immediate rear of these properties in the current Development Plan.



While we note that Vesey Mews is identified as part of a proposed Architectural Conservation Area in the Draft Dun Laoghaire Rathdown Development Plan 2022-2028 this Plan will not be adopted until late 2022 and significantly after the determination of this appeal.

The site is not currently located within an Architectural Conservation Area (ACA) or Candidate ACA. It is important to note in the context of this section 5 referral that No. 2 Vesey Mews (the subject of this section 5 appeal) is not a proposed or existing protected structure. This distinction between the properties at Vesey Place and those at Vesey Mews has been clearly made by An Bord Pleanála in their consideration of the recent planning history at no. 2 Vesey Mews, and is clearly evident in the current Development Plan excerpt below.



*Current Development Plan excerpt – red line indicating property boundary that sits outside the Candidate ACA and indicates the mews building as not being a protected structure*

The Development Plan states that all proposals for new development should preserve or enhance the established character of the buildings and streetscape within the cACA. It should be noted that whilst no. 2 Vesey Mews is not within an cACA in the current Plan and is identified as within a proposed Architectural Conservation Area within a Draft Plan our client has at all times taken a high quality approach to the design and setting of the windows has been adopted given its proximity to Vesey Place. This is also evident in the recent planning history relation to No. 2 Vesey Mews and An Bord Pleanála's granting of permission for a side extension.

#### **Planning history**

Whilst No. 2 Vesey Mews would have originally formed the mews to no. 2 Vesey Place, which is a protected structure, it has been sub-divided to create a separate planning unit following the granting of permission for the conversion of the mews into a dwelling c.1977 (Planning Reg. Ref. 8376/77). In essence the property in terms of its function, access and planning perspective have been separate from no. 2 Vesey Place for some 44 years.

The property at no. 2 Vesey Mews was the subject of a recent grant of permission in 2018, for the provision of a side extension over ground and basement level as well as all associated elements. The application was granted with conditions by An Bord Pleanála under ABP Ref. ABP-301374-18 (Dun Laoghaire Rathdown County Council Ref. D18A/0044) on the 10<sup>th</sup> October 2018. Our client can confirm that they had completed the works permitted fully in accordance with that permission prior to undertaking the new windows.

The Inspector on the previous and most recent application states that under ABP Ref. PL.06D.248378 (D17A/0080) both the Planning Authority Conservation Officer and An Bord Pleanála's Inspector formed the view that No. 2 Vesey Mews was within the attendant grounds of No. 2 Vesey Place and not within the curtilage of a Protected Structure. This in our considered opinion, is an important distinction, as it clearly illustrates that whilst historically related to the property, it no longer is.

The appeal site is physically separated from No. 2 Vesey Place by a wall erected in the 1970s, mature boundaries and is in different ownership. There are no functional links between the two properties. The structure (No. 2 Vesey Mews) which is the subject of this appeal is not included in the Record of Protected Structures in the current Development Plan. The Record of Protected Structures does not define the curtilage for the protected structures at Vesey Place. The proposed development does not include works to the boundary wall with No.2 Vesey Place, a later addition dating from the 1970s.

In granting permission under ABP Ref. ABP-301374-18 the Board attached a condition restricting development to the rear. This condition stated:

5. *Notwithstanding the exempted development provisions of the Planning and Development Regulations, 2001, and any statutory provision replacing or amending them, no development falling within Class 1 or Class 3 of Schedule 2, Part 1 of those Regulations shall take place within the curtilage of the house, without a prior grant of planning permission.*

These restrictions on exemptions relate to the further extension of the mews or the placing of a shed within the rear garden of the mews. They do not relate to the provision of a window in the rear elevation of no. 2 Vesey Mews.

***Consideration of Dun Laoghaire Rathdown County Council Declaration – Lack of detailed planning assessment and reference to neighbouring mews dwellings***

We note that in the consideration of the Section 5 application to Dun Laoghaire Rathdown County Council the case officer does not set out a detailed assessment from a planning perspective under 4(1) (h) of the Planning and Development Act 2000 (as amended), instead the case office is over reliant, in our considered opinion on the Conservation Officers report which sets out that the:

*“proposed works, being the insertion of two window openings, would render it inconsistent the external form and character of the existing mews building and the neighbouring mews dwellings and therefore would not be considered exempted development.”*

This determination by the Conservation officer which it appears was completely relied upon by the Planning Officer without any evidence of their own investigation or a site visit has in our view not taken account of the fact that the existing properties at Vesey Mews as well as Vesey Place have been the subject of much alteration, modification and upgrading and the character of the structures are not stagnant in nature. We respectfully submit that the assessment of the Planning Case Officer is deficient in this regard.

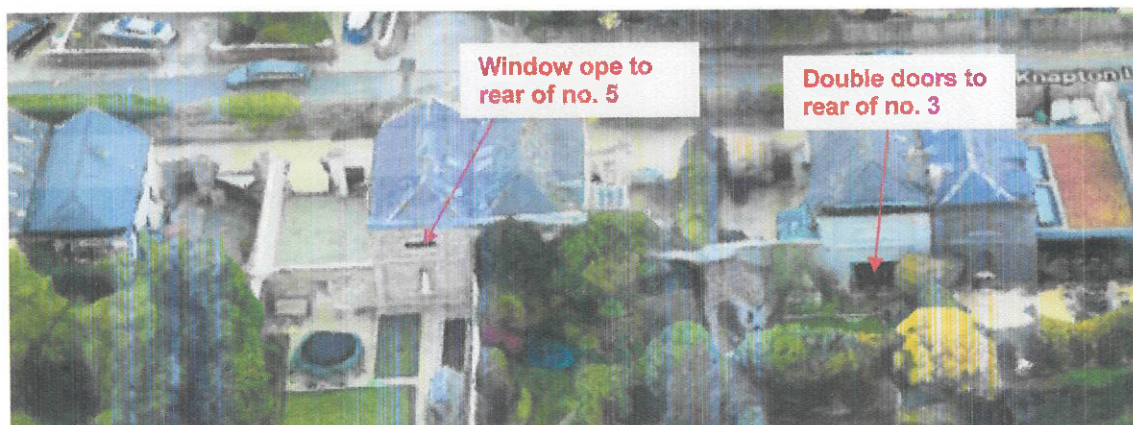
The majority of mews properties along the mews laneway have been converted into residential use. We respectfully refer An Bord Pleanala to take into account that this is not an intact group of mews buildings that has retained its relationship with the properties along Vesey Place, in this regard we draw An Bord Pleanala's attention to the following changes to the mews which includes alteration to the rear of the buildings in the vicinity of our clients property including:

No. 1 Vesey Place has been separated and new vehicular access arrangements created between it and to serve 1 Vesey Mews;



Rear of No. 1 Vesey Mews – noting fenestration at ground floor level and first floor

- No. 2 Vesey Place has been altered at ground floor with extensions to its side and sub-divided from 2 Vesey Place since 1977, and now the works that are subject of this appeal;
- No. 3 Vesey Mews has been sub-divided from no. 3 Vesey Place and altered its rear elevation by the opening up of a large floor to ceiling window within its ground floor rear elevation. It was also granted permission for a large single storey extension to the side and rear of the mews under D05B/0763. The rear extension was primarily to the side but extended some 2m across the rear elevation of the mews;
- No. 4 Vesey Mews – rear elevation not visible
- No. 5 Vesey Mews – high level horizontal slit window at first floor level to rear elevation.



Rear of No. 3 and No 5 Vesey Mews – noting windows at upper floor of No. 5

- No. 6 Vesey Place – rear elevation not visible
- No. 7 Vesey Place – rear garden structure.





Rear of No. 7 Vesey Mews – noting garden structure

- No. 8 Vesey Mews remains linked to Vesey Place but contains a 1<sup>st</sup> floor window inserted to the rear
- No. 9 Vesey Mews contains a large single storey extension to its rear and has been sub-divided from 9 Vesey Place;



View of rear of nos. 8, 9 and 10 Vesey Mews which includes fenestration at 1<sup>st</sup> levels and with a ground floor extension to the rear of no. 9 and a very significant extension to the rear of no. 10

- No. 10 Vesey Mews has been extended via a two storey tower to its rear and facing no. 10 Vesey Place (Reg. Ref. D02B/0379) that extends almost entirely across the pedimented facade; and
- Considerable alteration of mews buildings and relationship to rear of all protected structures between no. 11 - 19 Vesey Place.

It is abundantly clear that the character of the structures and built environment in the vicinity of No. 2 Vesey Mews including those of the elevations of the Mews (addressing the rear gardens of adjoining mews buildings) is every changing and interestingly in planning terms the structures/built form is capable of absorbing this change including modern interventions within the existing building facades whilst maintaining the character of the individual structure so as to render its appearance inconsistent with the character of the structure itself or of neighbouring structures, as well as the character of the protected structures along Vesey Place. It is clear that none of the mews buildings have maintained the original relationship between the main house on Vesey Place and the mews building with only no. 5 having not been separated.

Overall, it is clear that the rear elevations of adjoining mews buildings have been much altered, therefore any interventions within the rear of our client's property at No. 2 Vesey Mews could not in our considered opinion be considered to 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.



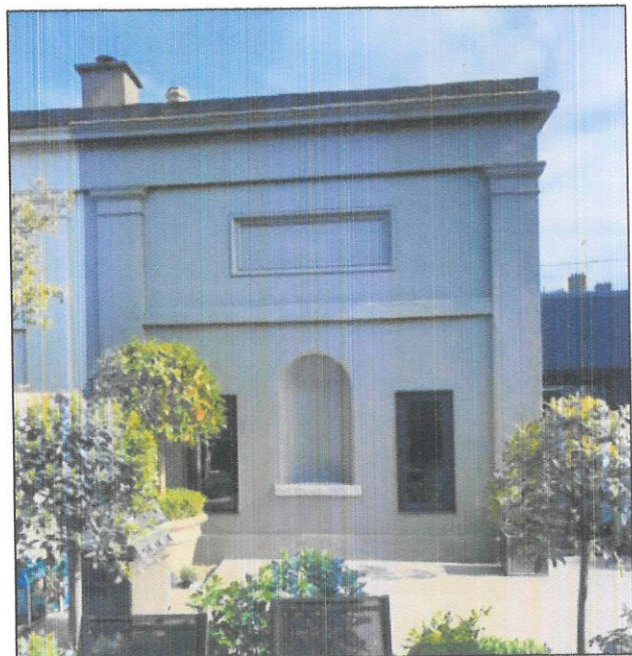
In addition we refer An Bord Pleanála to the fact that the rear of our client's property is not visible from adjoining mews buildings and nor is it visible from any public road or footpath. Nor are the rear elevations of adjoining mews buildings visible from our client's property. In addition due to the distance of the mews building from Vesey Place which is a protected structure, as well as the presences of an existing boundary wall and high well established screening between our clients property and Vesey Place that the rear of our clients property may only be visible from the upper floors of Vesey Place in glimpses via the existing vegetation screening. This is discussed further below for the benefit of An Bord Pleanála but its lack of visibility must be a key consideration in terms of the Boards declaration .

#### **Definition of curtilage**

The Architectural Heritage Protection Guidelines 2011 sets out the guidance and definition of curtilage of a Protected Structure. Section 13.1.1 of these Guidelines refers to guidance and definitions for determining the curtilage of a Protected Structure. The notion of curtilage is not defined in law, but for the purposes of the Guidelines curtilage is taken as meaning the parcel of land immediately associated with that structure and which is (or was) in use for the purpose of the structure. We note that Section 13.1.2 of the Guidelines notes that the curtilage of a Protected Structure may coincide with the land owned together with it but this is not necessary and the Planning Authority should ensure in such cases that the relevant landowners are aware of the status of their structure.

#### **The works that are subject of the appeal of this section 5 referral to An Bord Pleanala**

We can confirm that our client has inserted 2 no. windows within the rear elevation (these are discussed in the assessment section below) on either side of the arched recessed feature at ground floor level within the rear elevation of no. 2 Vesey Mews. These elements did not form part of the application permitted by An Bord Pleanala and were the subject of the section 5 application to Dun Laoghaire-Rathdown County Council. The decision of the Planning Authorities declaration to consider them as not being exempted development is now the subject of this appeal referral to An Bord Pleanala. Each new window is set at a lower level than the arched feature so as to not visually compete and be clearly read as a modern intervention. Both windows measure 1.52m in length by 0.7m in width and are inserted in a simple window ope with a narrow frame.



*Existing rear elevation of No. 2 Vesey Mews – including the 2 new windows on either side of the arch within the rear elevation*

In terms of boundaries between the two properties, there is a long established wall that is c. 2m in height, as well as well-maintained tall screening planting (within the rear garden of no. 2 Vesey Mews) at the boundary wall between no. 2 Vesey Mews and no. 2 Vesey Place. There is as result a complete lack of visual connection between the two properties as is clearly evident in the photograph below.





*Boundary between no. 2 Vesey Mews and 2 Vesey Place*

The nature and extent of the development which is the subject of this Section 5 referral relates to the insertion of 2 no. windows into the rear elevation of No. 2 Vesey Mews. These windows face towards Vesey Place and measure 1.52m in length by 0.7m in width and are inserted in a simple window ope with a narrow frame. The rear elevation of No. 2 Vesey Mews is not visible to adjoining mews dwellings at Vesey Mews.

The two storey return of no. 2 Vesey Place is located c. 28m from the rear elevation of no. 2 Vesey Mews, and contains a false window at first floor level. There is therefore no visual link between the return and the new windows of the mews. The rear elevation of no. 2 Vesey Place is two storey over a lower basement level, of which the windows at first floor either side of the return have the only line of sight (ignoring the trees) between Vesey Place and the new windows. These windows are c. 34m away from the new windows. There is no line of sight between any of the lower and upper ground floor level windows of no. 2 Vesey Place and the new windows.

Due to the distance between the rear elevation of the Protected Structure at no. 2 Vesey Place and the rear elevation of no. 2 Vesey Mews as well as the presence of a boundary wall and tall screening it is clear that the new windows to the rear of no. 2 Vesey Mews are not visible from the ground floor/1<sup>st</sup> floor of the Protected Structure.

We submit that any views at the upper floor levels are at a significant distance and can only be glimpsed through the screening planting. In addition to the screening at the boundary there is also screening in the form of container planting within the garden of No. 2 Vesey Mews which further screens the windows. The windows within the rear elevation are not visible nor do they provide the potential for overlooking into any adjoining property. The windows provide the sole and only window opes to this rear sitting room that was previously poorly lit and was reliant on light from the new extension to its side.

In this regard, we consider that the windows which are the subject of this referral are not inconsistent with the external form and character of the existing mews building itself nor the significantly altered neighbouring mews dwellings (which the rear elevations of our clients property are not visible from).

## ASSESSMENT

There are a number of relevant important statutory definitions contained in the Planning and Development Regulations 2001 and Planning and Development Act 2000, (as amended), that are important in the consideration of the nature of the proposed development and works in this case. The principle nature of exempted development are provided for under section 4 of the 2000 Act and under the Planning and Development Regulations 2001 (as amended). The primacy of exemption is to remove certain minor or insignificant development from the requirement to obtain planning permission. There is significant precedent on this matter and *Cairnduff – v – O’Connell* (1986) is often referred to in citing reasons for conclusions that works to the rear of a property amounts to exempted development. In that case the insertion of a window in a side wall, the replacement of a window by a door and the construction of a balcony and staircase had not so materially affected the external appearance of the structure as to render it inconsistent with the character of the house itself or of adjoining houses.

Indeed a recent referral case before the Board (Ref. ABP-303117) concluded that two additional windows and one long window in the rear façade at second floor level of no. 2 Brabazon Street, The Coombe, Dublin 8 would not materially affect the external appearance of the structure so as to render that appearance inconsistent with the character of the structure or of neighbouring structures.

No. 2 Vesey Mews is a dwelling and is in residential use. No change of use has occurred. For the avoidance of doubt the “use” of the property in this case is residential and is not called into question or the subject of particular assessment in this section 5 application. This was all clearly set out and permitted under ABP Ref. ABP-301374-18.

It is our contention that in this instance the nature of the development i.e the inclusion of 2 no. windows to the rear and at ground floor level of No. 2 Vesey Mews it is such that while it constitutes “works” to the exterior of no. 2 Vesey Mews, it also constitutes exempted development and does not require permission to be sought.

The Regulations and Act define what, and what is not development. Exempted development can be defined as the ability to undertake development works without requiring the need to seek a grant of planning permission. Two main categories of exempted development are recognised by the 2000 Act. Those that which by their nature/limitations have no significant impact on the planning system; and those which, by virtue of their identity of the body carrying the development out, are presumed to be in the interests of the common good. Where development occurs where no grant of permission exists, and where it does not amount to exempted development, then this amounts to unauthorised works.

Development is defined at Section 3 of the 2000 Act as follows:-

*“Development means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land”.*

Works are defined as any act or operation of construction, excavation, extension, alteration, repair or renewal of a structure. Exempted development is defined under section 4(1)(h) of the 2000 Act as :

*“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;” (our emphasis)*

Having regard to the above we contend the inclusion of 2 no. windows within the rear elevation of no. 2 Vesey Mews at ground floor is an alteration to the structure. In terms of the definition of development as per the Planning and Development Act 2000 this amounts to “works”. The question arises in this instance is whether the works can be deemed to be “exempted development” under the provisions of the Planning and Development Act 2000.

We submit that the matter for the consideration of An Bord Pleanála in this instance are as follows:

- ***Do the works to the rear of No. 2 Vesey Mews (i.e the inclusion of 2 no. windows in the rear elevation) 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 that would require permission to be sought?***

In order to respond to the matter set out above, we refer An Bord Pleanála to *Cairnduff v O'Connell*<sup>1</sup>, a judgment which coincidentally related to the provision of fenestration, in that case a window and a balcony (among other elements). While the specific details of the case referenced are slightly different to the existing situation at the rear elevation of no. 2 Vesey Mews, it remains relevant in terms of the principle of the nature of the interventions and the Courts consideration of the status of the works in planning terms. The Supreme Court held that while the works did affect the external appearance of the structure in that particular case, it was considered that they did not render the external appearance of the structure inconsistent with either its character or the character of neighbouring structures and was therefore exempt.

*Cairnduff v O'Connell* is of further assistance in this section 5 referral in that it clarifies the term "character" as expressed within section 4(1)(h) of the 2000 Act. It considers that the character of a structure must relate to the shape, colour, design, ornamental features and layout of the structure. This will be of assistance in the consideration of the works to the rear of no. 2 Vesey Mews.

***Status of No. 2 Vesey Mews***

In the first instance it is important to note that no. 2 Vesey Mews is not a Protected Structure and it is not located within the curtilage or attendant grounds of a Protected Structure. The property which is the subject of this section 5 referral to An Bord Pleanála has recently been before An Bord Pleanála and secured planning permission for an extension and all associated works. An Bord Pleanála are respectfully referred to the fact that much of the focus of the appeal to An Bord Pleanála related to the relationship and impact (or the perceived impact) of the proposals at no. 2 Vesey Mews on the property at no. 2 Vesey Place (a Protected Structure).

***Location, form and detail of the two new windows***

We have included a series of existing photographs of the rear elevation of No. 2 Vesey Mews for the benefit of An Bord Pleanála to assist with the consideration of this Section 5 referral. In addition we have included an image of the elevation prior to the undertaking of the works. The 2 no. windows which have been inserted on either side of the recessed arched feature within the rear elevation are a considered intervention which have been carefully selected (in terms of their particular attributes including their colour, shape, proportions and design) and positioned in order to read as subordinate to the specific features of the rear elevation (in particular the arched recessed feature).

The specific form, scale, location, colour and design of the windows at ground floor level read as an integral part of the elevation and maintain the visual interest of the rear elevation. It could reasonably be stated that the introduction of the simple window forms within the rear elevation are a positive intervention at this location. The form and finishes of the windows are understated in nature and have been selected in order that the specific features of the rear elevation remain the focus of the elevation.

The 2 no. windows are located at a low level to the rear of the residential property, they are not visible from the main road nor any of the directly adjoining residents at Vesey Mews (which it is evident have been the subject of much alteration to the rear addressing their private amenity spaces). As a result of the existing 2m high wall and tall screening at the boundary between No. 2 Vesey Mews and No. 2 Vesey Place (a Protected Structure) it is our considered opinion that the rear elevation as it currently stands does not detract from the visual interest when viewed from the property at No. 2 Vesey Place nor does it detract from the character and setting of the Protected Structure itself. The existing screening generated by the boundary between the properties; the additional planting on the boundary; the lack of visibility of the new windows from 2 Vesey Place; and the significant distances between the rear elevations of both properties means that there are only minor glimpses of the new windows within the rear elevation from the two windows at the upper level of no. 2 Vesey Place only.

The alterations of other mews between 1 and 10 Vesey Mews are clearly set out in this appeal. It is without question that windows, double doors and extensions have been inserted both with but mainly without permission. This has altered the collective appearance of the mews buildings. They are not a consistent appearance, and certainly are not of a collective character that warrants the Board to conclude that the said

---

<sup>1</sup> [1986] IR 73

works in this instance do not amount to exempted development. This note is of significance given it was this issue that formed a key part of the Council's declaration that the works were not exempted development. We would request the Board to consider this fully and reach the correct conclusion in that the works are fully consistent with the provisions and aims of section 4 (1)(h) of the 2000 Act.

Having regard to all of the above while the two windows are an intervention within the rear elevation of no. 2 Vesey Mews and that they do alter the external appearance of the rear elevation it is our considered opinion that they do not render the external appearance of the structure inconsistent with either its character or the character of neighbouring structures and based on this it is reasonable to conclude that they constitute exempt development within the meaning of 4(1)(h) of the 2000 Act and that no requirement to seek planning permission arises as a result of the works at no. 2 Vesey Mews, Monkstown. We respectfully refer An Bord Pleanala to fully consider the context of No. 2 Vesey Mews and the adjoining Mews buildings in their consideration of this referral.

### **CONCLUSION**

We respectfully request the An Bord Pleanala in exercise of its powers under section 5(2) of the Planning and Development Act 2000 (as amended), to conclude that having regard to the above, the existing 2 no. windows to the rear of no. 2 Vesey Mews would constitute development and would constitute exempted development in regard to section 4(1)(h) of the Planning and Development Act 2000 (as amended), and would not require the owner to obtain planning permission under Section 32 of the Planning and Development Act 2000.

The interventions to the rear of No. 2 Vesey Mews would 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 that would require permission to be sought.

We trust that the Board will give due consideration to the observations set out in this appeal, and will notify us of its decision on this application in due course.

Yours sincerely,



**Anthony Marston (MIPI, MRTPI)**  
**Marston Planning Consultancy**



**Planning Department**  
An Rannóg Pleanála  
Registry Section  
**Clarán Carolan**  
Asst. Staff Officer  
Direct Tel: 01 2054700  
Fax: 01 2803122

Anthony Marston,  
Marston Planning Consultancy  
23, Grange Park  
Foxrock  
Dublin 18  
D18 T3Y4

<b>AN BORD PLEANÁLA</b>	
29 JUL 2021	
LTR DATED _____	FROM _____
LDG- _____	
ABP- _____	

**Reference No:** Ref7721

**Application Type:** Declaration on Development and Exempted Development Act  
- Section 5, Planning & Development Act (as amended)

**Registration Date:** 15-Jun-2021

**Decision Date:** 06-Jul-2021

**Location:** 2, Vesey Mews, Monkstown, Co. Dublin

**Development Works:** Two new window opes measuring 1.52m in height by 0.7m in width within the rear elevation of no. 2 Vesey Mews

### NOTIFICATION OF DECLARATION ON DEVELOPMENT AND EXEMPTED DEVELOPMENT

In pursuance of its functions under the planning & Development Act, 2000 (as amended), Dún Laoghaire-Rathdown County Council has, by Order No. Ref.REF87/21 dated 06-Jul-2021 decided to issue a Declaration that:  
Having regard to:

- a. Sections 2 and 3 of the Planning and Development Act 2000, as amended, and
- b. Section 4 (1) (h) of the Planning and Development Act, 2000, as amended

It is considered that the insertion of two new window opes measuring 1.52m in height by 0.7m in width within the rear elevation of no. 2 Vesey Mews, Monkstown, Co Dublin,  
- comes within the meaning of 'works' as set out under section (2) of the Planning and Development Act, 2000 (as amended) and therefore constitutes development within the meaning of section (3), and

The Planning Authority determines that:

- the insertion of two new window opes measuring 1.52m in height by 0.7m in width within the rear elevation of no. 2 Vesey Mews, Monkstown, Co Dublin constitutes development and does not constitute exempted development.

Date of issue: 06-Jul-2021

Signed: Clarán Carolan  
For Senior Executive Officer

**NOTE:** Where a Declaration is issued under Section 5, any Person issued with such a Declaration, may, on payment to An Bord Pleanála, 64 Marlborough Street, Dublin 1, of a fee of €220, refer the Declaration for review, **within 4 weeks** of the date of issue of the Declaration.