

21st July 2023.

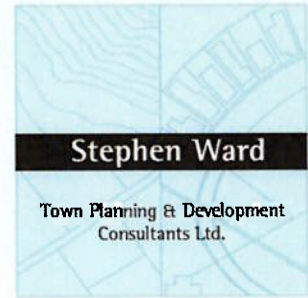
The Administrative Officer.

An Bord Pleanála.

64, Marlborough Street,

Dublin 1.

AN BORD PLEANÁLA	
LDG-	_____
ABP-	317659-23
23 AUG 2023	
Fee: €	_____ Type: _____
Time:	5:05pm By: <i>HW</i>



Jocelyn House
Jocelyn Street
Dundalk A91 A03Y
Co. Louth
Ireland
Tel.: +353 (42) 9329791
Fax.: +353 (42) 9329047
e-mail: planning@wardconsult.com
web: www.wardconsult.com

Dear Sir or Madam,

RE: WHETHER THE (A) DEMOLITION OF A TWO-STOREY EXTENSION MEASURING 92SQ.M TO THE REAR OF DWELLING, (B) CONSTRUCTION OF A NEW TWO STOREY EXTENSION MEASURING 129SQ.M TO THE REAR OF DWELLING, (C) DEMOLITION OF A SINGLE STOREY SUNROOM MEASURING 55SQ.M ON THE WESTERN SIDE ELEVATION, (D) CONSTRUCTION OF A SINGLE STOREY EXTENSION MEASURING 2SQ.M ON THE WESTERN SIDE ELEVATION, (E) CONSTRUCTION OF LEAN-TO ROOF ON THE WESTERN ELEVATION MEASURING APPROX. 6900MM LONG AND 160MM WIDE, (F) CONSTRUCTION OF A WOODEN FENCE MEASURING 2M IN HEIGHT ALONG THE WESTERN BOUNDARY IN THE FRONT GARDEN OF THE HOUSE IS OR IS NOT DEVELOPMENT OR IS OR IS NOT EXEMPTED DEVELOPMENT. 10, BURROW ROAD, SUTTON, DUBLIN 13. ABP REF. ABP-317659-23.

I refer to your correspondence dated the 18th July 2023 addressed to Mr. P. Farrelly, 10, Burrow Road, Sutton, Dublin 13. Mr. Farrelly has instructed Stephen Ward Town Planning and Development Consultants Limited of Jocelyn House, Jocelyn Street, Dundalk, County Louth to respond. Please address all correspondence in the matter to Stephen Ward and Co at the above stated address.

This letter along with the attached Responding Statement with drawings and attachments together form the response of Mr. Farrelly to the Referral.

Please do not hesitate to contact me should you require any further details.

Yours faithfully,

Stephen Ward



Registered in Ireland No. 275223
VAT No. 8275223D



Stephen Ward Town Planning and Development Consultants Limited

Jocelyn House, Jocelyn Street, Dundalk, County Louth

Client	Philip Farrelly
Address	10 Burrow Road, Sutton, Dublin 13
P.A. Ref.	317659-23

Schedule of drawings				
Cad Ref. No.	Dwg Title	Scale	Size	Author
2020-005/A1	Floor plans & elevations existing	1:100	A0	Fran Mc Neary
2020-005/A2	Floor plans & elevations existing, Construction and renovations	1:100	A0	Fran Mc Neary
2020-005/A3	Block plans/Site location map	1:1000 / 1:200	A0	Fran Mc Neary

Schedule of documents	
Document Title	Author
Schedule	Stephen Ward Town Planning and Development Consultants Limited
Cover letter	Stephen Ward Town Planning and Development Consultants Limited
Responding statement	Stephen Ward Town Planning and Development Consultants Limited
Correspondence	Rankin Associates Architectural and Engineering Consultants

AN BORD PLEANÁLA REF. 317659-23

RESPONDING STATEMENT TO

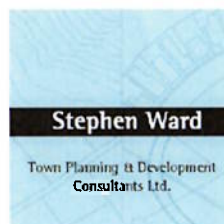
**REFERRAL BY FINGAL COUNTY COUNCIL FOR DECLARATION UNDER
SECTION 5 OF THE PLANNING AND DEVELOPMENT ACT 2000 AS
AMENDED WITH RESPECT TO WHETHER STATED WORKS AT A PRIVATE
RESIDENTIAL DWELLING AT 10 BURROW ROAD, SUTTON, DUBLIN 13 ARE
OR ARE NOT DEVELOPMENT OR ARE OR ARE NOT EXEMPTED
DEVELOPMENT**

PREPARED BY

**STEPHEN WARD TOWN PLANNING AND DEVELOPMENT CONSULTANTS
LIMITED**

ON BEHALF OF

**MR. PHILIP FARRELLY,
10 BURROW ROAD, SUTTON, DUBLIN 13**



August 2023

Contents

1.0	The Declaration Question	2
2.0	Description of Site and Development.....	2
3.0	Statutory Provisions, Declarations and Guidance	3
3.1	Planning and Development Act 2000 (as amended).....	3
3.1.1	Section 2	3
3.1.2	Section 3	4
3.1.3	Section 4	4
3.2	Planning and Development Regulations 2001 (as amended)	4
3.2.1	Part 1, Schedule 2, Class 1	4
3.2.2	Part 1, Schedule 2, Class 5	6
3.2.3	Part 1, Schedule 2, Class 50	6
3.3	OPR Planning Leaflet 8 – A Guide to Doing Work around the House	7
4.0	Previous Section 5 Cases	8
4.1	Class 50(b) Conditions (6 Florence Terrace).....	8
4.2	Definition of “Rear” Extension (Annascannon).....	9
4.3	Pre-1963 Extensions (Rockwell Cottage)	9
5.0	Assessment of fingal County Council’s queries	10
5.1	Question 1.....	10
5.2	Question 2.....	10
5.3	Questions 3 and 4	13
5.5	Question 5.....	13
5.6	Question 6.....	13
6.0	Conclusion	14

1.0 THE DECLARATION QUESTION

The Declaration Request by Fingal County Council poses a number of questions as follows –

“Whether the

- demolition of a two-storey extension measuring 92 square metres to the rear of a dwelling (46 square meters on each floor)
- construction of a new two-storey extension measuring 129 square metres to the rear of dwelling (73 square metres at ground floor and 56 square metres at first floor)
- demolition of a single storey sunroom measuring 5 square metres on the western side elevation
- construction of a single storey extension measuring 2 square metres on the western side elevation
- construction of lean-to roof on the western elevation measuring approximately 6900mm long and 1600mm wide
- construction of a wooden fence measuring 2 metres in height along the western boundary in the front garden of the house

is or is not development and is or is not exempted development”.

2.0 DESCRIPTION OF SITE AND DEVELOPMENT

10 Burrow Road, Sutton, Dublin 13 is a pre-1963 two-story end-of-terrace house. Prior to the 1st October 1964, the house underwent extensions consisting of the addition of a rear two-story extension (92sqm). Given the completion of the development was prior to 1st October 1964, it is considered part of the original home. In or around 2000 a 5sq.m single storey sunroom was added to the western elevation without the benefit of planning permission. Given the demolished area (92sq.m) was part of the original home we refer to it as such in the remainder of this Responding Statement.

Mr. Farrelly has instructed us to state that he disputes the dimensions as shown on the Fingal County Council drawings submitted with the Referral. Mr. Farrelly states that recently, 92sq.m of the rear area of the original home was demolished. It was replaced and Mr. Farrelly advises that the floor areas then added consist of a 31sq.m extension to the rear consisting of 25sq.m at ground floor and 6sq.m at first floor. The total area extends to 123sq.m comprising the reconstruction of the 92sq.m and the addition of 25sq.m at ground floor and 6sq.m at first floor. Even if the dimensions on the Planning Authority drawings are accepted, which they are not, the net extension area is still less than 40sq.m and therefore within the exempted development limits. The sunroom was demolished and replaced by a bay window extending to 2sqm. Mr. Farrelly instructs us that the attached drawings by F. McNeary – 2020-005/A2 and 2020-005/A1 were submitted to Fingal County Council in July 2020 and he has instructed us to submit these drawings as part of our Referral Response Statement.

Mr. Farrelly advises his original intention was to leave the now demolished part of the dwelling in place and simply extend that. The reason the part of the existing dwelling was demolished was that following engineering investigations it became apparent it had become unstable. Otherwise, Mr. Farrelly would simply have left the structure in place and added an extension of 40sq.m. Please find attached correspondence from Rankin and Associates Architectural and Engineering Consultants in this regard. The result in terms of floor area would be the same. In each case, the size of the original home was not increased by more than 40sqm. As such, it is submitted that this constitutes exempted development by reference to Class 1 and Class 50 to Part 1 of Schedule 2 of the Exempted development Regulations 2001 as amended.

3.0 STATUTORY PROVISIONS, DECLARATIONS AND GUIDANCE

The following definitions from the Planning and Development Act 2000 (as amended) (“the Planning Act”) and the Planning and Development Regulations 2001 (as amended) (“the Planning Regulations”) are relevant –

3.1 PLANNING AND DEVELOPMENT ACT 2000 (AS AMENDED)

3.1.1 SECTION 2

The following are relevant definitions given in Section 2 of the Planning Act:

“**Structure**” means any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined, and—

- (a) where the context so admits, includes the land on, in or under which the structure is situate, and
- (b) in relation to a protected structure or proposed protected structure, includes—
 - (i) the interior of the structure,
 - (ii) the land lying within the curtilage of the structure,
 - (iii) any other structures lying within that curtilage and their interiors, and
 - (iv) all fixtures and features which form part of the interior or exterior of any structure or structures referred to in *subparagraph (i) or (iii)*;

“**Unauthorised development**” means, in relation to land, the carrying out of any unauthorised works (including the construction, erection or making of any unauthorised structure) or the making of any unauthorised use;

“**Unauthorised structure**” means a structure other than—

- (a) a structure which was in existence on 1 October 1964, or
- (b) a structure, the construction, erection or making of which was the subject of a permission for development granted under Part IV of the Act of 1963 or deemed to be such under section 92 of that Act or under section 34, 37G or 37N or 293 of this Act, being a permission which has not been revoked, or which exists as a result of the carrying out of exempted development (within the meaning of section 4 of the Act of 1963 or section 4 of this Act).

“Unauthorised works” means any 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)
- (b) development which is the subject of a permission granted under Part IV of the Act of 1963 or under section 34, 37G, 37N or 293 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.

“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.

3.1.2 SECTION 3

1.—(1) In this Act, except where the context otherwise requires, "development" means—

- (a) the carrying out of any works in, on, over or under land, or the making of any material change in the use of any land or structures situated on land, or
- (b) development within the meaning of Part XXI (inserted by section 171 of the Maritime Area Planning Act 2021).

3.1.3 SECTION 4

4. —(1) The following shall be exempted developments for the purposes of this Act—

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

—(3) 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 (1A), or
- (b) development which, having regard to any regulations under subsection (2), is exempted development for the purposes of this Act.

3.2 PLANNING AND DEVELOPMENT REGULATIONS 2001 (AS AMENDED)

3.2.1 PART 1, SCHEDULE 2, CLASS 1

This class encompasses “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”, with the following conditions and limitations:

1. (a) Where the house has not been extended previously, the floor area of any such extension shall not exceed 40 square metres.
(b) Subject to paragraph (a), where the house is terraced or semi-detached, the floor area of any extension above ground level shall not exceed 12 square metres.
(c) Subject to paragraph (a), where the house is detached, the floor area of any extension above ground level shall not exceed 20 square metres.
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.
(b) Subject to paragraph (a), where the house is terraced or semi-detached and has been extended previously, the floor area of any extension above ground level taken together with the floor area of any previous extension or extensions above ground level constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 12 square metres.
(c) Subject to paragraph (a), where the house is detached and has been extended previously, the floor area of any extension above ground level, taken together with the floor area of any previous extension or extensions above ground level constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 20 square metres
3. Any above ground floor extension shall be a distance of not less than 2 metres from any party boundary.
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.
(b) Where the rear wall of the house includes a gable, the height of the walls of any such extension shall not exceed the height of the side walls of the house.
(c) The height of the highest part of the roof of any such extension shall not exceed, in the case of a flat roofed extension, the height of the eaves or parapet, as may be appropriate, or, in any other case, shall 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.
6. (a) Any window proposed at ground level in any such extension shall not be less than 1 metre from the boundary it faces.

- (b) Any window proposed above ground level in any such extension shall not be less than 11 metres from the boundary it faces.
 - (c) Where the house is detached and the floor area of the extension above ground level exceeds 12 square metres, any window proposed at above ground level shall not be less than 11 metres from the boundary it faces.
7. The roof of any extension shall not be used as a balcony or roof garden

3.2.2 PART 1, SCHEDULE 2, CLASS 5

This class encompasses “The construction, erection or alteration, within or bounding the curtilage of a house, of a gate, gateway, railing or wooden fence or a wall of brick, stone, blocks with decorative finish, other concrete blocks or mass concrete”, with the following conditions and limitations:

1. The height of any such structure shall not exceed 2 metres or, in the case of a wall or fence within or bounding any garden or other space in front of a house, 1.2 metres.
2. Every wall other than a dry or natural stone wall bounding any garden or other space shall be capped and the face of any wall of concrete or concrete block (other than blocks with decorative finish) which will be visible from any road, path or public area, including public open space, shall be rendered or plastered.
3. No such structure shall be a metal palisade or other security fence.

3.2.3 PART 1, SCHEDULE 2, CLASS 50

This class encompasses

- (a) “The demolition of a building, or buildings, within the curtilage of—
 - (i) a house,
 - (ii) an industrial building
 - (iii) a business premises, or
 - (iv) a farmyard complex.
- (b) The demolition of part of a habitable house in connection with the provision of an extension or porch in accordance with Class 1 or 7, respectively, of this Part of this Schedule or in accordance with a permission for an extension or porch under the Act”

with the following conditions and limitations:

1. No such building or buildings shall abut on another building in separate ownership.
2. The cumulative floor area of any such building, or buildings, shall not exceed:
 - (a) in the case of a building, or buildings within the curtilage of a house, 40 square metres, and
 - (b) in all other cases, 100 square metres.
3. No such demolition shall be carried out to facilitate development of any class prescribed for the purposes of section 176 of the Act.

3.3 OPR PLANNING LEAFLET 8 – A GUIDE TO DOING WORK AROUND THE HOUSE

The Office of the Planning Regulator’s Planning Leaflet 8 details a list of conditions to be met to ensure a rear extension to a house is considered exempted development. With regards to floor area, the OPR states that it is required that “the original floor area of the house is not increased by more than 40 square metres” (p.4, emphasis added). Additionally, “where the house has been previously extended, the floor area of the extension you are now proposing and the floor area of any previous extension constructed after 1st October 1964, including any extension for which you got planning permission, cannot exceed 40 square metres”.

This clearly establishes that the “floor area of any such extension” that is limited to 40sqm under Cond 1(a) of exempted development Class 1 is the new total floor area of the house, less the original total floor area of the house. In contrast, the “floor area of any such extension, taken together with the floor area of any previous extension or extensions” that is limited to 40sqm under Cond 2(a) of exempted development Class 1 is the total floor area of the newly constructed extension, plus the floor areas of any previously constructed (post-1964) extensions. As such, the loss of floor area through demolition would inherently be considered as part of an assessment of compliance with Cond 1(a), but not of Cond 2(a). The ability for a homeowner to subtract the lost floor area of a demolition from the gained floor area of an extension when determining compliance with Cond 1(a) is clearly laid out in the OPR Guidance Note.

It is also clear from the OPR Note that any “extension” constructed pre-1964 is considered part of the original house.

4.0 PREVIOUS SECTION 5 CASES

To briefly summarise relevant previous Section 5 applications, An Bord Pleanála have taken the following stances:

1. Demolition of a portion of a house, in association with the construction of an extension deemed to be exempted development under Class 1, is itself exempted development under Class 50(b) and is not subject to any conditions (ABP-305802-19).
2. An extension can be considered “to the rear of the house” if the extension in question is entirely located behind the rear building line of the existing house (ABP-RL3491).
3. The floor area of extensions constructed prior to 1 October 1964 should not be considered when considering Condition 2(a) of exempted development Class 1. The floor area from a pre-1964 extension is therefore part of the original floor area (ABP-304129-19).

4.1 CLASS 50(B) CONDITIONS (6 FLORENCE TERRACE)

ABP-305802-19 - 6 Florence Terrace, Leeson Park Avenue, Dublin was a two-storey semi-detached house. The status of the demolition of a portion of a house as exempted development under Class 50(b) was queried where the house (and indeed the extension) abutted a neighbouring property. Exempted demolition falls under Class 50, further subdivided into Class 50(a) (the demolition of a “building, or buildings”), and Class 50(b) (the demolition of “part of a habitable house in connection with the provision of an extension or porch”).

While Cond 1 of exempted development Class 50 states that “[n]o such building or buildings shall abut on another building in separate ownership” (emphasis added), the Inspector concluded that “[t]he word “building” does not appear in the description of development for class 50(b), but in class 50(a)”. As such, it was stated that this condition applies solely to Class 50(a), with the demolition of part of a building (for the purposes of an extension) potentially still considered exempted development under Class 50(b), even if it abuts a neighbouring building.

On 29 October 2019, the Board ruled in line with this interpretation, meaning that Cond 1 should be interpreted as applying to Class 50(a) only. Specifically, the Board stated that the “description of development for Class 50(b) refers to the demolition of part of a habitable house, in contrast to Class 50(a) which refers to the demolition of a building or buildings. As Condition and Limitation number 1 on Class 50 refers only to “such building or buildings” and does not refer to “part of a habitable house”, it therefore restricts the scope of the exemption under Class 50(a) but not that under Class 50(b). Therefore, the abutment or otherwise or the previous rear return to the house with a building in separate ownership does not affect the exempted status of its demolition”.

Following the logic of the Board's ruling in ABP-305802-19, Cond. 2 of Class 50 can be taken to not apply to Class 50(b). Cond. 2 sets out a maximum area of demolition as such: "[t]he cumulative floor area of any such building, or buildings, shall not exceed: (a) in the case of a building, or buildings within the curtilage of a house, 40 square metres, and (b) in all other cases, 100 square metres" (emphasis added). We ask the Board to note the identical use of "building, or buildings", and lack of a referral to "part of a habitable house".

Additionally, Class 50(b) facilitates development of exempted development Class 1 or 7 ("the provision of an extension or porch") by definition. As such, Cond. 3 of Class 50 cannot apply to Class 50(b): "[n]o such demolition shall be carried out to facilitate development of any class prescribed for the purposes of section 176 of the Act" (in this instance, this is referring to development classes requiring an Environmental Impact Assessment).

In line with this, assessments of Section 5 cases which include Class 50(b) under Fingal County Council have found that "[t]here are no conditions and limitations associated with this class". Two such examples include F55W/002/23 (7 Sandpits Cottages, Castieknock, Dublin 15) and F55W/022/22 (14 Stonebridge Avenue, Hartstown, Dublin 15).

4.2 DEFINITION OF "REAR" EXTENSION (ANNASCANNON)

ABP-RL3491 - Annascannon, Thomastown, Killucan, Co. Westmeath. In the inspector's report for this Section 5 declaration, it is stated that "since the extension in question is not solely located behind the rear building line of the existing house, but instead wraps around to it to the side, projecting by 1.94m from the gable wall, the extension cannot be classified to being 'to the rear of the house'. I therefore consider that the exemption under Class 1 cannot apply in this instance. In support of this position, I refer the Board to referral PL61.RL2506, where the Board determined that an extension to the rear of an existing house that projected to the side, beyond the gable, by 1.95m was not exempted development". A Board Order deeming the development not exempted was issued 12 January 2017.

By logical continuation, any extension which is solely located behind the rear building line of the existing house should be classified to being to the rear of the house.

4.3 PRE-1963 EXTENSIONS (ROCKWELL COTTAGE)

ABP-304129-19 - Rockwell Cottage, Spanish Point, Miltown Malbay, County Clare was part of a pair of single-storey semi-detached cottage/dwellings, and had been subject to several alterations and extensions. Notably, the cottage was constructed in the late 19th/early 20th century, a rear extension and front porch (both constructed prior to 1963), and a rear sunroom (15.4sqm, constructed in the 1980). The development in question in this case consisted of the demolition of the existing sunroom, and the construction of a new 39.7sqm extension to the rear of the existing dwelling.

The Inspector concluded that, as the only extension constructed after 1st October 1964 was to be demolished, Cond 1(a) (“where a house has not been extended previously”) of the of exempted development Class 1 would apply: “[t]he sunroom constructed in the 1980’s is to be demolished as part of the proposal and as such can be discounted for the purposes of the calculation”. The floor area being used for this purpose is the increase from the original floor area of the house: “[t]he proposed extension at 39.7 square metres does not exceed the limit of 40 square metres set out under Condition and Limitation 1(a)”.

On 04 April 2019, the Board also ruled that the proposed development would fall within the definition of Class 1 exempted development, including all relevant Conditions and Limitations.

5.0 ASSESSMENT OF FINGAL COUNTY COUNCIL’S QUERIES

This section of our Responding Statement provides an individual response to each of the queries posed by Fingal County Council.

5.1 QUESTION 1

The demolition of a two-storey extension measuring 92 square metres to the rear of a dwelling (46 square meters on each floor).

As discussed at Section 4.1 above and in line with previous similar Section 5 rulings from Fingal County Council, there are no conditions and limitations associated with Class 50(b). As this demolition is in connection with the provision of an extension, this would be considered exempted development under Class 50(b) provided that the extension is also deemed exempted development under Class 1.

5.2 QUESTION 2

The construction of a new two-storey extension measuring 129 square metres to the rear of dwelling (73 square metres at ground floor and 56 square metres at first floor)

This would be considered exempted development under Class 1, provided that the development complies with all associated conditions and limitations.

As discussed in Section 4.3 of this Responding Statement, extensions constructed prior to 1 October 1964 are considered an integral part of the original home; 10 Burrow Road can be considered to not have been extended, in line with the Board’s ruling in Case No. 304129. As such, Cond. 1 applies to this case, while Cond. 2 does not.

1. (a) Where the house has not been extended previously, the floor area of any such extension shall not exceed 40 square metres.
- (b) Subject to paragraph (a), where the house is terraced or semi-detached, the floor area of any extension above ground level shall not exceed 12 square metres.
- (c) Subject to paragraph (a), where the house is detached, the floor area of any extension above ground level shall not exceed 20 square metres.

Response

- (a) *As discussed in Section 3.3 above, the area of an extension for the purposes of Cond. 1(a) should be calculated as the overall increase in area from the original home. While the floor area of the new build area is 123sqm, the overall extension to 10 Burrow Road is 31sqm given the demolition of 92sqm of the original home (the pre-1963 rear extension). As such, this is in compliance.*

- (b) *Number 10 Burrow Road is an end-of-terrace house. The floor area of the first-floor portion of the replacement / extension is 52sqm, and the area demolished was 46sqm, giving an increase of 6sqm – below the 12sqm limit.*

- (c) *N/A*

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.
- (b) Subject to paragraph (a), where the house is terraced or semi-detached and has been extended previously, the floor area of any extension above ground level taken together with the floor area of any previous extension or extensions above ground level constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 12 square metres.

Response - 10 Burrow Road has not previously been extended. The demolished area formed part of the house. The applicant could have retained this and then added 40sq.m for the outcome to be the same in terms of the total floor area of the dwelling.

3. Any above ground floor extension shall be a distance of not less than 2 metres from any party boundary.

Response - Per drawings from Fingal County Council, the extension is over 4.2m from party boundaries.

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.
- (b) Where the rear wall of the house includes a gable, the height of the walls of any such extension shall not exceed the height of the side walls of the house.
- (c) The height of the highest part of the roof of any such extension shall not exceed, in the case of a flat roofed extension, the height of the eaves or parapet, as may be appropriate, or, in any other case, shall not exceed the height of the highest part of the roof of the dwelling.

Response

- (a) *The rear wall of the house includes a gable. Per drawings from Fingal County Council, the development is in compliance with this condition.*
- (b) *N/A*
- (c) *Per drawings from Fingal County Council, the development is in compliance with this condition.*

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.

Response – As instructed to be submitted by Mr. Farrelly F. McNeary Drawing 2020-005/A3 the development is in compliance with this condition.

6. (a) Any window proposed at ground level in any such extension shall not be less than 1 metre from the boundary it faces.
- (b) Any window proposed above ground level in any such extension shall not be less than 11 metres from the boundary it faces.
- (c) Where the house is detached and the floor area of the extension above ground level exceeds 12 square metres, any window proposed at above ground level shall not be less than 11 metres from the boundary it faces.

Response -

- (a) *Per drawings from Fingal County Council, the extension is over 4.2m from the closest boundary fence.*
- (b) *We are informed by Mr. Farrelly that the original part of the house which has been rebuilt contained one window in the eastern wall within 11m of the site boundary. This window has been replaced in the same position. This window is to a shower room and can readily be blocked up and the development will be brought into compliance.*
- (c) *N/A*

7. The roof of any extension shall not be used as a balcony or roof garden.

Response - The development is in compliance with this condition.

Subject to possible compliance works to meet Cond. 6(b), this development is exempted development. If considered appropriate, we ask the Board to assess this query as a query as if the first-floor shower room window was not in place.

5.3 QUESTIONS 3 AND 4

The demolition of a single storey sunroom measuring 5 square metres on the western side elevation.

The construction of a single storey extension measuring 2 square metres on the western side elevation.

Under Section 4(1)(h) of the Planning Act, development which consists of the improvement and alteration of a structure, and 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, is considered exempted development. The demolition of the small 5sqm sunroom and its replacement with a bay window (in line with, and in the style of, the original bay windows of the home and of adjoining dwellings) was specifically done to improve the structures visual consistency, and is therefore exempted development.

5.5 QUESTION 5

The construction of lean-to roof on the western elevation measuring approximately 6900mm long and 1600mm wide.

There is a lack of any precision or information from the Fingal Declaration request relating to this query and as such it is not possible to provide a response, as we cannot be sure to what the query relates. If it is the canopy over the side door then we submit this is development and is exempted development.

5.6 QUESTION 6

The construction of a wooden fence measuring 2 metres in height along the western boundary in the front garden of the house. Given the fence is to the front of the house and is taller than 1.2m this element does not fall within the limitation conditions attached to Class 5. As such this element is development and is not exempted development.

6.0 CONCLUSION

It is submitted that the questions posed in the S5 Declaration request as submitted by Fingal County Council do not accurately reflect the nature and extent of the development. It is also disconcerting that the Planning Authority provides no reasons or background to why it has made this Request to An Bord Pleanála. In particular, the failure of the PA to state that the area of the dwelling that was demolished was not in fact an “extension” at all, rather it was part of the existing dwelling is concerning. Furthermore, that the part of the dwelling that was demolished was demolished because it was structurally unstable.

Taking the above into account, we submit it is not possible for the Board to make a determination in this case as the questions posed do not accurately reflect what is to be determined in this case. It is also evident that the new build element (replacement of existing and the extension) is narrower than the pre-existing structure thus being further set-off from property boundaries on both sides. We submit, given that the PA refers to an Enforcement Notice *within* its Referral Correspondence and that the matter has been the subject of High Court proceedings that in making its Referral it is incumbent on the Referrer to fully set out the reasons and background as to why it decided that the works are development and not exempted development and for the Referral itself to accurately *reflect* what the dispute actually is. For example, we submit it is unreasonable for the PA to state that part of the works constitute demolition of an “extension” extending to 92sq.m and not acknowledge that the property owner has provided the PA with information confirming that floor area was in fact part of the original dwelling and as such does not in fact constitute an extension with reference to the Planning and Development Act 2000 as amended and the associated Regulations and particularly the exempted development provisions attached to those Regulations.

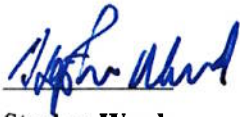
Mr. Farrelly has also instructed us to state that the floor areas set out on the Fingal County Council drawings that accompany the Referral are incorrect and that whilst the area of the original house that was demolished was 92sq.m, after rebuilding the 92sq.m the extension area consists of 31sq.m consisting of 25sq.m to ground floor and 6sq.m to first floor to give the overall total of 123sq.m.

Notwithstanding the above, we submit the following –

1. The demolition of part of the existing dwelling (92sq.m – 46sq.m on each floor) and its replacement and the addition of 25sq.m on ground floor and 6sq.m on first floor is development and is exempted development.
2. The demolition of a single storey sunroom extending to 5sq.m and its replacement with a 2sq.m bay window is development and is exempted development.
3. The construction of a lean-to roof on the western elevation is development and is exempted development.
4. The construction of a wooden fence measuring 2m in height along the western boundary in the front garden of the house is development and is not exempted development.

In summary, we submit it would be illogical, unreasonable, unfair and unjust for a position to arise where the property owner, Mr .Farrelly, could simply have left the demolished part of the building in place (92sq.m) and then added 40sq.m but if the 92sq.m area is deduced from the allowance for 40sq.m extension he would in effect be denied his rights under Class 1 of Part 1 to the Second Schedule of the Regulations to construct a 40sq.m 'exempted development' extension to the rear of his house.

Yours sincerely,



Stephen Ward



RANKIN ASSOCIATES

Architectural and Engineering Consultants

Unit 12, BEat Centre, Stephenstown Industrial Estate, Balbriggan, Co. Dublin
Tel/Fax: 01 8492 348 Mobile: 087 26111 24

Philip Farrelly
10 Burrow Rd,
Sutton,
Dublin 13
11-Sep-19

**Re: Demolition of two storey extension to rear of 10 Burrow Rd, Sutton,
Dublin 13.**

Dear Mr. Farrelly,

I confirm that I attended at the above property on the 5th of March 2019 at your request to carry out an inspection of an existing extension constructed to the rear of your property, to which you were having some renovation works carried out. I further confirm that;

- The renovation works required the removal of a spine wall within the extension which had been partially demolished at the time of my inspection.
- The spine wall and the external walls blockwork structure were found to be friable and unravelling and was easily demolished with hand tools. My conclusion was that the walls had been constructed with very little cement in the blockwork mortar.
- Significant structural cracking was noted in the external walls of the extension and at the junction between the extension and the original house.
- It was decided, for safety reasons, to demolish the entire extension structure.

If I can be of further assistance please do not hesitate to contact me.

Yours Sincerely

Keith Rankin C.Eng. MIEI AMI Struct. E I. Eng.
Rankin Associates
Planning and Engineering Consultants

