

An
Bord
Pleanála

Inspector's Report ABP-318484-23

Question	Whether the construction of a bicycle storage unit in the front garden/driveway is or is not development or is or is not exempted development.
Location	58 Orpen Green, Stillorgan Drive, Blackrock, Co. Dublin A94C2D3
Declaration	
Planning Authority	Dun Laoghaire-Rathdown County Council
Planning Authority Reg. Ref.	REF11323
Planning Authority Decision	Would constitute development and would not constitute exempted development.
Referral	
Referred by	Stewart McKenna
Owner	Peter and Caroline Caslin

Date of Site Inspection

9th April 2024

Inspector

John Duffy

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1.0 Site Location and Description

- 1.1. The subject site at 58 Orpen Green, Stillorgan Drive, Blackrock, Co. Dublin is located at the southern end of the large established Orpen residential estate which comprises two-storey detached, semi-detached and terraced dwellings.
- 1.2. The subject site accommodates a mid-terrace two storey dwelling overlooking an area of public open space to the front. The property is accessed by way of a vehicular entrance from the public road which leads to a cobble-locked parking area and a gravelled area. A bicycle storage unit of mainly timber construction is located on the gravelled area adjoining the boundary wall with No. 59 Orpen Green.

2.0 The Question

- 2.1. A question has arisen pursuant of Section 5 of the Planning and Development Act 2000 as amended as to whether the construction of a bicycle storage unit (2.8m in length, 1.4m in width and 1.2m in height) in the front garden/driveway is or is not development or is or is not exempted development.

3.0 Planning Authority Declaration

3.1. Declaration

Dun Laoghaire Rathdown County Council, in accordance with Section 5 of the Planning and Development Act 2000 as amended, considered that the development as described would constitute development and would not be exempted development.

The order stated:

‘Having regard to the nature of the proposed development, a bike shed, and its proposed location, within the curtilage of a house, the proposed works at 58, Orpen Green, Stillorgan Drive, Blackrock, Co. Dublin are not exempt under Class 3 of Part 1, Schedule 2 (Exempted Development – General) of the Planning and Development Regulations, 2001, as amended with regard to exempted development.

It is considered that the proposed works **constitute ‘development’ but do not constitute ‘exempted development.’**

3.2. Supporting Documentation

- 3.2.1. The referrer's submission to the Planning Authority in respect of the matter includes a site location map, a photograph of the bicycle storage unit and an aerial photograph of the subject site which outlines the storage unit in red.

4.0 Planning History

4.1. ENF 25923

Refers to an enforcement case for the construction of a shed type structure to the front of the subject property which does not have the benefit of planning permission.

4.2. Previous Board References/ Referrals

Nothing of direct relevance to this case was found on the database.

5.0 Policy Context

5.1. Development Plan

- 5.1.1. Under the Dun Laoghaire-Rathdown County Development Plan 2022 – 2028, the subject site is zoned Objective A - Residential , with the objective 'To provide residential development and improve residential amenity while protecting the existing residential amenities.'

5.2. Natural Heritage Designations

None.

6.0 The Referral

6.1. Referrer's Case

The following points are made in the appeal submission:

- The dimensions of the bicycle storage unit are given as 2.8m long, 1.4m wide and 1.2m in height
- The referrer notes the challenges relating to the climate change emergency facing the country and details their own efforts in terms of sustainability which

includes using active modes of transport specifically cycling and therefore the need for the bicycle storage unit.

- The referrer rents the subject terraced property while retrofit and renovation works are undertaken on their family home. As such the bike shed will not be a permanent feature at this location; it is mobile and will be moved to the family home upon completion of the refurbishment works.
- The subject property is a terraced house without side access. The storage unit is custom made to house a cargo bike which cannot be brought through the house to the back garden having regard to factors including the weight of the bike, the height of the front step and the narrowness of the front door.
- The structure is barely noticeable from the public road. It is in keeping with the surrounding area and is in no way detrimental to the environment or its location.
- The shed is smaller than the second car the referrer would need if the unit was not in place.
- The referrer considers the unit is exempt from the requirement to obtain planning permission having regard to Sections 4(1)(h) and / or 4(1)(j) of the Planning and Development Act 2000.

The referral submission includes a site location map, a photograph of the bicycle storage unit and a copy of the Planning Authority's Notification of Declaration on Development and Exempted Development.

6.2. Planning Authority's response

None received.

6.3. Owner's response

None received.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000 as amended

Section 2(1) – Interpretation

The following are relevant to the subject question:

structure means –

‘any building structure excavation or other thing constructed or made on in or under any land, a part of any 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 some paragraphs (i) or (iii)’

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’.

Section 3(1) - Development

In the Act ‘...‘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’.

Section 4 (1) sets out development that is exempt from requiring planning permission; the following provisions under Section 4(1) are relevant.

4(1)(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’

4(1)(j)

'development consisting of the use of any structure or other land within the curtilage of a house for any purpose incidental to the enjoyment of the house as such'

Section 4(4) 'Exempted development'

'Notwithstanding paragraphs (a), (i), (ia) and (l) of subsection (1) and any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required.'

7.2. Planning and Development Regulations, 2001 as amended

Article 6.

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

As provided for in Article 9(1)(a), the following development to which article 6 relates, shall not be exempted development, if the carrying out of such development would, inter alia:

- (i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act;
- (viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use.

Schedule 2

Part 1 – Exempted Development – General

Description of Development

Development within the curtilage of a house

Class 3

'The construction, erection or placing within the curtilage of a house of any tent, awning, shade or other object, greenhouse, garage, store, shed or other similar structure.'

Conditions and Limitations

1. No such structure shall be constructed, erected or placed forward of the front wall of a house.
2. The total area of such structures constructed, erected or placed within the curtilage of a house shall not, taken together with any other such structures previously constructed, erected or placed within the said curtilage, exceed 25 square metres.
3. The construction, erection or placing within the curtilage of a house of any such structure shall not reduce the amount of private open space reserved exclusively for the use of the occupants of the house to the rear or to the side of the house to less than 25 square metres.
4. 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.
5. The height of any such structure shall not exceed, in the case of a building with a tiled or slated pitched roof, 4 metres or, in any other case, 3 metres.
6. The structure shall not be used for human habitation or for the keeping of pigs, poultry, pigeons, ponies or horses, or for any other purpose other than a purpose incidental to the enjoyment of the house as such.

8.0 Assessment

It should be stated at the outset of this assessment that the purpose of the referral is not to determine the acceptability or otherwise of the bicycle storage unit in respect of the proper planning and sustainable development of the area, but rather whether or not the matter in question constitutes development, and if so, falls within the scope of exempted development. Likewise, planning enforcement is a matter for the Planning Authority and does not fall within the jurisdiction of the Board.

8.1. **Is or is not development**

8.1.1. Having regard to Section 2(1) and Section 3(1) of the Planning and Development Act 2000 as amended, it is considered that the bicycle storage unit in the front garden / driveway is development within the meaning of the Act.

8.2. **Is or is not exempted development**

8.2.1. The next issue to be considered is whether the development is exempted development or not. Development can be exempt from the requirement for planning permission by either Section 4 of the Planning and Development Act 2000 as amended, or by Article 6 of the Planning and Development Regulations 2001 as amended.

8.2.2. The referral contends that the bicycle storage unit is exempt from the requirement to obtain planning permission having regard to Sections 4(1)(h) and / or 4(1)(j) of the Planning and Development Act 2000 as amended.

8.2.3. In terms of Section 4(1)(h), the question to be considered is whether the works, (i.e., the construction of the bicycle storage unit) are for 'the maintenance, improvement or other alteration' of the structure (i.e., the house on the subject site).

8.2.4. While it can be argued that the bicycle storage unit would add to or improve the amenity of the property, Section 4(1)(h) relates to physical works to a structure, in this case the house on the site, for the purposes of maintaining, improving, or altering it.

8.2.5. The works do not constitute 'maintenance and improvement' works to the house; nor are the works for the 'alteration' of the house. I therefore consider that the construction of the bicycle storage unit cannot avail of the exemption under Section 4(1)(h).

8.2.6. Notwithstanding the foregoing, I consider that the bicycle storage unit located in the front driveway / gravelled area materially affects the external appearance of the property so as to render the appearance inconsistent with the character of the structure and neighbouring structures. No bicycle storage units were observed at the site inspection in the front driveways or gardens of neighbouring houses.

8.2.7. In terms of Section 4(1)(j) of the Act, this provision / exemption relates to the use of any structure (or other land) within the curtilage of a house, rather than the

construction of the actual structure itself, and as such this provision is not relevant to this referral.

8.2.8. The bicycle storage structure is located to the front of the house in the driveway / gravelled area. As such the structure is not in compliance with Condition and Limitation 1 of Class 3 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 as amended.

8.2.9. Having regard to the above, I therefore consider the works comprising the construction of the bicycle storage unit to the front of the house would not constitute exempted development in accordance with Class 3 of Part 1 of Schedule 2 of the 2001 Regulations as amended.

9.0 Recommendation

9.1. I recommend that the Board should decide this referral in accordance with the following draft order.

WHEREAS a question has arisen as to whether the construction of a bicycle storage unit in the front driveway / garden is or is not development or is or is not exempted development;

AND WHEREAS the said question was referred to An Bord Pleanála by Stewart McKenna on the 17th of November 2023.

AND WHEREAS An Bord Pleanála, in considering this referral, had regard particularly to –

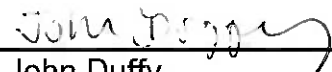
- (a) Sections 2(1) and 3(1) of the Planning and Development Act, 2000, as amended,
- (b) Article 6 and 9 of the Planning and Development Regulations 2001, as amended, and Class 3 of Part 1 of Schedule 2 of those Regulations,
- (c) the planning history of the site, and

(d) the pattern of development in the area:

AND WHEREAS An Bord Pleanála has concluded that the construction of the bicycle storage unit in the front garden / driveway is development and is not exempted development on the grounds that the works are not in compliance with Condition and Limitation 1 of Class 3 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 as amended.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 of the 2000 Planning and Development Act as amended, hereby decides that the works as described is development and is not exempted development.

I confirm that this report represents my professional planning assessment, judgment and opinion on the matter assigned to me and that no person has influenced or tried to influence, directly or indirectly, the exercise of my professional judgment in an improper or inappropriate way.



John Duffy
Planning Inspector

9th April 2024