

An
Bord
Pleanála

Inspector's Report ABP-321565-25

Question

Whether the conversion of garage into home office with bathroom, replace garage door with window, removal of the rear porch and add the rear porch space to kitchen and add a garden rear entrance with metal garden gate to use the footpath at the back of the site is or is not development or is or is not exempt.

Location

140 Balally Drive, Dundrum, Dublin
16, D16 Y7R7

Declaration

Planning Authority

Dun Laoghaire Rathdown County
Council

Planning Authority Reg. Ref.

REF15424

Applicant for Declaration

Dongfang Qu

Planning Authority Decision

Split Decision

Referral

Referred by

Dongfang Qu

Owner/ Occupier

Dongfang Qu

Observer(s)

None

Date of Site Inspection

14th March 2025

Inspector

Oluwatosin Kehinde

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1.0 Site Location and Description

- 1.1. The 0.047Ha site is located on the eastern side of Balally Drive in the south Dublin residential suburb of Balally. The site comprises a semi-detached two storey dwelling house with a garage to the side.
- 1.2. There is an existing pedestrian laneway to the rear of the houses on Balally Drive that provides access from Cedar Road to the footpath along Drummartin Link Road (R133).

2.0 The Question

- 2.1. Whether the conversion of garage into home office with bathroom, removal of the rear porch and add the rear porch space to kitchen and add a garden rear entrance with metal garden gate (100cm x 200cm) to use the footpath at the back of the site is or is not development and is or is not exempted development.

3.0 Planning Authority Declaration

3.1. Declaration

- 3.1.1. On the 17th of December 2024, the Planning Authority (PA) issued a split declaration in an order stating:

“The conversion of a garage into an office with a bathroom, the replacement of garage door with a window, removal of rear porch and adding the porch space to kitchen area constituted development and would be exempted development

And

The proposal to add a garden rear entrance (with metal garden gate about 100cm x200cm) to use the footpath at the back of the site constituted development and would not be exempted development”.

- 3.1.2. The PA considered the rear garden entrance would not be exempted development for the following reason:

- Having regard to the Class 5, Schedule 2, Part 1 and Article 9(1)(a)(ii) of the Planning and Development Regulations 2001 (as amended), the proposed

rear garden entrance constituted the formation of access to a public road which exceeds the 4 meters width threshold.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The planning report reflects the Planning Authority's decision above and can be summarised as follows:

- There are no previous planning applications for the subject site.
- It considered that subject matter of the Section 5 application is development under Section 3 of the PDA.
- It considered the proposed works to provide a home office with new window and the removal of rear porch area is exempted development and,
- It considered that the development to provide a rear garden entrance would not be exempted development under Article 9(1)(a)(ii) of the Planning and Development Regulations 2001 (as amended).
- It considered that no EIA or AA issues arise.

3.2.2. Other Technical Reports

None

4.0 Planning History

No planning history on the site

5.0 Policy Context

5.1. Development Plan

The subject site is zoned A within the Dun Laoghaire-Rathdown County Development Plan 2022-2028. The zoning objective of site seeks 'to provide residential development and improve residential amenity while protecting the existing

residential amenities. Appendix 11 – Public Rights of Way did not include reference to the site.

5.2. Natural Heritage Designations

5.2.1. None on the subject site

6.0 The Referral

6.1. Referrer's Case

The issues raised by Dongfang Qu can be summarised as follows:

- The denial of a garden rear entrance by the PA was based on the assumption that the access to the rear is a laneway or carriage way.
- The area is a footpath for pedestrians.
- Existing properties in the vicinity have rear garden entrances leading to the footpath.
- The rear garden entrance will allow safer and more convenient access to and from the house.
- The rear garden entrance would enhance access to public transport.
- The entrance is minor and involves the provision of a gate that is 1m wide and 2m high to match the wall height.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

7.1.1. The following statutory provisions are relevant in this instance.

7.1.2. Section 2(1): In this Act, except where the context otherwise requires

"works" includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal ...;

“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 this context so admits, includes the land on, in or under which the structure is situated.

“use” in relation to land, does not include the use of the land by the carrying out of any works thereon;

- 7.1.3. **Section 3(1):** in this Act, **“development”** means, except where the context otherwise requires, the carrying out of any works on, in, or under land or the making of any material change in the use of any such structures or other land.
- 7.1.4. **Section 4(1):** sets out developments that shall be exempted development for the purposes of this Act. The following subsection is of relevance;
- 4(1)(h)** Development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affects 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 neighbouring structures.
- 7.1.5. **Section 5(1):** If any question arises as to what, in any particular case, is or is not development or is or is not exempted development within the meaning of this Act, any person may, on payment of the prescribed fee, request in writing from the relevant planning authority a declaration on that question, and that person shall provide to the planning authority any information necessary to enable the authority to make its decision on the matter.
- 7.1.6. **Section 5(3)(a)** Where a declaration is issued under this section, any person issued with a declaration under subsection (2) (a) may, on payment to the Board of such fee as may be prescribed, refer a declaration for review by the Board within 4 weeks of the date of the issuing of the declaration. (b) Without prejudice to subsection (2), in the event that no declaration is issued by the planning authority, any person who made a request under subsection (1) may, on payment to the Board of such fee as may be prescribed, refer the question for decision to the Board within 4 weeks of the date that a declaration was due to be issued under subsection (2).

7.1.7. **Section 5(4):** Notwithstanding subsection (1), a planning authority may, on payment to the Board of such fee as may be prescribed, refer any question as to what, in any particular case, is or is not development or is or is not exempted development to be decided by the Board.

7.2. **Planning and Development Regulations, 2001**

7.2.1. Part 2 of the Planning and Development Regulations, 2001 refers to Exempted Development. Of relevance to the subject proposal:

7.2.2. **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.

7.2.3. **Article 9(1):** Development to which article 6 relates shall not be exempted development for the purposes of the Act (a) if the carrying out of such development would –

(ii) consist of or comprise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width.

(iii) endanger public safety by reason of traffic hazard or obstruction of road users.

(xi) obstruct any public right of way.

7.2.4. Schedule 2, Part 1 Exempted Development – General.

The relevant sections of the regulations which are referred to herein are Class 1 and Class 5. Their conditions and limitations are as follows:

Column 1 Description of Development	Column 2 Conditions and Limitations
CLASS 1 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	1. (a) Where the house has not been extended previously, the floor area of any such extension shall not exceed 40 square metres.

<p>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.</p>	<p>(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.</p> <p>(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.</p> <p>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.</p> <p>(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.</p> <p>(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.</p> <p>3. Any above ground floor extension shall be a distance of not less than 2 metres from any party boundary.</p>
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<p>CLASS 5</p> <p>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.</p>	<p>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.</p> <p>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.</p> <p>3. No such structure shall be a metal palisade or other security fence.</p>
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7.3. Road Act, 1993 (as amended)

7.3.1. Section 2 provides the following Interpretations-

“Public Road” means a road over which a public right of way exists and the responsibility for the maintenance of which lies with the authority;

“road” includes—

- (a) any street, lane, footpath, square, court, alley or passage,
- (b) any bridge, viaduct, underpass, subway, tunnel, overpass, overbridge, flyover, carriageway (whether single or multiple), pavement or footway,
- (c) any weighbridge or other facility for the weighing or inspection of vehicles, toll plaza or other facility for the collection of tolls, service area, emergency telephone, first aid post, culvert, arch, gully, railing, fence, wall, barrier, guardrail, margin, kerb, lay-by, hard shoulder, island, pedestrian refuge, median, central reserve, channelliser, roundabout, gantry, pole, ramp, bollard, pipe, wire, cable, sign, signal or lighting forming part of the road, and
- (d) any other structure or thing forming part of the road and—

- I. necessary for the safety, convenience or amenity of road users or for the construction, maintenance, operation or management of the road or for the protection of the environment, or
- II. prescribed by the Minister;

8.0 Precedent Referral Cases

- 8.1.1. Following a review of the Board's database of referrals, I note the following declarations to be relevant to this case-
- 8.1.2. RL3552 - The Board decided that the conversion of an existing garage into a study, by the replacement of the garage door with timber panel wall under new window at Number 4 Brookfield Terrace, Blackrock, County Dublin is development and is exempted development.
- 8.1.3. RL3380- In this referral the Board considered an opening in the rear wall of a garden to provide pedestrian entrance from the public road/pavement and to provide 1.95 metres high pedestrian timber gate opening into the rear garden is development and is not exempted development by reason of Article 9 (1)(a)(ii) of the Planning and Development Regulations, 2001, because Maple Drive (the road to which it opened), including its footpath, is a public road within the meaning of the Roads Act, 1993 and its surfaced carriageway exceeds four metres in width.

9.0 Assessment

- 9.1. The purpose of this referral is not to determine the acceptability or otherwise of the above proposal in terms 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.
- 9.2. This referral relates to the conversion of the existing garage attached to the side of the house into a home office, increase the kitchen space area by removing a rear porch partitioning wall and to construct a rear garden pedestrian gate (1m x 2m). The existing garage is a flat roof structure and upon site visit, its use is incidental to the enjoyment of the residential dwelling.

9.3. Is or is not development

- 9.3.1. The question put forward by the referrer relates to whether the following is or is not development.
- (a) Conversion of garage into home office with bathroom, replace garage door with window,
 - (b) Removal of the rear porch and add the rear porch space to kitchen and
 - (c) A garden rear entrance with metal garden gate to use the footpath at the back of the site.
- 9.3.2. As per section 3(1) of the Act, “development” is the carrying out of any works on, in, or under land or the making of any material change in the use of any such structures or other land. I am satisfied that the alterations to the house to provide a home office with bathroom, add to the kitchen space and the construction of a 1m x 2m rear gate are works, and that such works would be carried out on land and therefore constitute “development” as per section 3(1) of the Planning and Development Act 2000, as amended.

9.4. Is or is not exempted development

- 9.4.1. Development can be exempted from the requirement for planning permission by virtue of either Section 4 of the Planning and Development Act, 2000 (as amended) (the Act), or Article 6(1) and 9(1) of the planning and Development Regulations 2001 (as amended) (the Regulations).
- 9.4.2. Section 6(1) of the Planning and Development Regulations, 2001 (as amended), states that subject to article 9, development of a class specified in Column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2.

Garage Conversion

- 9.4.3. From the details submitted with this referral, the garage has a floor area of c.15.3m². I also note that the referrer has stated that there is an existing extension with a stated area of 5.7m² associated with the house. Class 1, Schedule 2, Part 1 of the

PDR applies here, and the conditions and limitation requires that where the house has been extended previously, the overall floor area of such extension shall not exceed 40m². The total area of the proposed garage conversion and the existing extension are under the threshold and as such, I consider that the proposed garage conversion into a home office with bathroom to be exempted development.

In addition, it is proposed to replace the garage door with a window. The proposed window is consistent with neighbouring properties in terms of size and profile. Having regard to section 4(1)(h) of the PDA (as amended), the proposed window will not materially affect the external appearance of the house so as to render the appearance inconsistent with the character of the neighbouring houses. Accordingly, I consider the replacement of the garage door with a window to be exempted development.

Rear Porch and Kitchen area

- 9.4.4. Having reviewed the submitted floor plans, the internal configuration of the existing house to the rear includes a rear porch and kitchen/dining area. The referrer is proposing to increase the kitchen/dining area by removing the internal wall that splits this area with the rear porch. The nature of these works is limited to internal reorganisation of the house and within the existing house footprint. Therefore, having regard to section 4(1)(h) of the PDA, the development will not affect the external appearance of the house and I consider the works to be exempted development.

Garden Rear Entrance

- 9.4.5. It is also proposed to construct a garden entrance gate. The entrance will be pedestrian in nature and located to the rear boundary of the house. Based on the information submitted, the entrance will measure 100cm in width and 200cm in height. The entrance will access onto a laneway/footpath at the back of the house. Class 5, Schedule 2, Part 1 of the PDR applies here and the conditions and limitations that applies to this case are:

- The height of any such structure shall not exceed 2 metres, and
- No such structure shall be a metal palisade or other security fence.

- 9.4.6. I am satisfied that the subject gate does not contravene any of the conditions and limitations of Class 5. However, in considering whether the proposed entrance is

exempted development, I will have regard to the restrictions on exempted development.

9.5. Restrictions on exempted development

- 9.5.1. Article 9 of the Planning and Development Regulations details development to which Article 6 relates and shall not be exempted development for the purposes of the Act.
- 9.5.2. Dun Laoghaire-Rathdown County Council's determination on the matter of pedestrian gate refers to restrictions set out in under Article 9, (1) of the Planning and Development Regulations 2001 (am amended). The Planning Authority considered that the proposed gate is not exempt development and cited Article 9(1)(a)(ii) that states that development to which, Inter alia, Class 5 relates shall not be exempt "*if the carrying out of such development would consist of or comprise the formation, laying out or material widening of means of access to a public road the surfaced carriageway of which exceeds 4 meters in width*". The PA measured the laneway to be c.5.03m in width.
- 9.5.3. The referrer states that the laneway is a pedestrian footpath and similar entrances have been erected by neighbouring properties. While I observed on site inspection, that there are similar entrances erected along this laneway I cannot determine whether they have the benefit of planning permission. This is a matter for Planning Authority and not for the Board to consider.
- 9.5.4. The Roads Act of 1993 (as amended) provides the definition for a public road and I refer the Board to Section 2 of the Act that interprets a public road to mean a road which a public right of way exists and the PA maintains it. The section goes on to provide that a road includes any street, lane, footpath, square, court, alley or passage.
- 9.5.5. There is a public right of way that exist on the laneway/footpath and it also comes under the definition of a road as set out in the Roads Act. During site inspection, I measured the width of the laneway to be c.5.7m. Therefore, I consider that the proposed rear entrance gate is not exempted development for the purposes of the PDA as it exceeds 4m in width.

9.5.6. Notwithstanding this, there are other restrictions to exemptions under Article 9(1)(a) that warrant further consideration, including if the carrying out of such development would –

(iii) endanger public safety by reason of traffic hazard or obstruction of road users.

(xi) obstruct any public right of way.

The laneway to the rear of No. 140 Balally Drive connects to an open space northeast direction of the house and leads onto the footpath along Drummartin Link Road (R133). The laneway is used by pedestrian traffic only. I note the existing rear gate of 142 Balally Drive providing rear access onto the laneway and I consider the proposed rear gate to no. 140 will be the same and I see no reason why it would create a traffic hazard or obstruct any public right of way. I am therefore satisfied that proposed gate does not endanger public safety by reason of traffic hazard or obstruction of road users. I am also satisfied that the subject gate does not interfere with any public right of way. No other restrictions on development set out in Article 9(1)(a) of these Regulations apply in this instance.

9.6. **Conclusion**

Having regard to the foregoing I am of the opinion that the following matter subject to this referral regarding:

(a) Conversion of garage into home office with bathroom, replace garage door with window,

(b) Removal of the rear porch and add the rear porch space to kitchen

Is development and is exempted development

And

(a) A garden rear entrance with metal garden gate to use the footpath at the back of the site.

Is development and is not exempted development in accordance with Article 9(1)(a)(ii) restrictions on Article 6 exemptions, whereby the development comprises of laying out of means of access to a public road the surfaced carriageway of which exceeds 4 meters in width.

10.0 Recommendation

10.1. 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 conversion of garage into home office with bathroom, replace garage door with window, removal of the rear porch and add the rear porch space to kitchen and add a garden rear entrance with metal garden gate to use the footpath at the back of the site is or is not development or is or is not exempted development:

AND WHEREAS Dongfang Qu requested a declaration on this question from Dun Laoghaire-Rathdown County Council and the Council issued a split declaration on the 17th day of December 2024 stating that the matter relating to conversion into home office and removing rear porch and adding the rear porch space to kitchen is development and is exempted development:

And a garden rear entrance to use the footpath is development and is not exempted development:

AND WHEREAS Dongfang Qu referred this declaration for review to An Bord Pleanála on the 23rd day of December 2024:

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

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

- (d) Article 6(1) and article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (e) Class 1 and Class 5, Parts 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (f) The Roads Act, 1993
- (g) The pattern of development in the area:
- (h) The report of the Inspector

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The conversion of a garage to home office with bathroom does constitute the carrying out of works which comes within the meaning of development in Section 3(1) of the Planning and Development Act, 2000 as amended, which is exempted development by way of Class 1 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, being attached to the side of the house and total floor area does not exceed 40m².
- (b) The replacement of the garage door with a window similar to the neighbouring property comes within the meaning of development in Section 3(1) of the Planning and Development Act, 2000 as amended, which is exempted development under section 4(1)(h) of the Planning and Development Act 2000 as amended. The works will not materially alter the external appearance of the house so as to render the appearance inconsistent with the character of the neighbouring houses.
- (c) The removal of rear porch and adding rear porch space to kitchen comes within the meaning of development in Section 3(1) of the Planning and Development Act, 2000 as amended, which is exempted development under Section 4(1)(h) of the Planning and Development Act 2000 as amended. The works proposed are limited

to the internal space layout of the house and will not alter the external appearance of the house.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3) (a) of the 2000 Act, hereby decides that the (a) conversion of garage into home office with bathroom, replacing garage door with window and (b) removal of the rear porch and add the rear porch space to kitchen is development and is exempted development.

And

AND WHEREAS An Bord Pleanála has concluded that:


(a) Adding a garden rear entrance to use the footpath at the back of the site does constitute the carrying out of works which comes within the meaning of development in Section 3(1) of the Planning and Development Act, 2000 as amended,

(b) The pedestrian gate come within the scope of Class 5 Part 1 of Schedule 2 to the Planning and Development Regulations, 2001 as amended, and

(c) The development would not be exempted development, having regard to Article 9(1)(a)(ii). The laneway to the back of 140 Balally Drive is a public road within the meaning of the Roads Act 1993 and its surfaced carriageway exceeds 4 meters in width.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3) (a) of the 2000 Act, hereby decides that the provision of a rear garden entrance is development and is not exempted development.

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

A handwritten signature in black ink, appearing to read 'Oluwatosin Kehinde', written over a horizontal line.

Oluwatosin Kehinde
Senior Planning Inspector

24th March 2025

