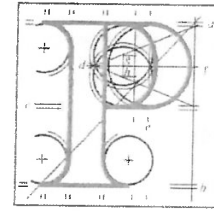


Our Case Number: ABP-322369-25

Planning Authority Reference Number: REF3625



An
Bord
Pleanála

Dun Laoghaire Rathdown County Council
County Hall
Marine Road
Dun Laoghaire
Co. Dublin

Date: 28 April 2025

Re: Whether the removal and reconfiguration of the existing ground floor conservatory to streamline and consolidate the space at the rear of the dwelling, in accordance with the submitted drawings, is or is not exempted development.
Istria, Dalkey Road, Dalkey, Dublin, A96 TF74

Dear Sir / Madam,

Enclosed is a copy of a referral under the Planning and Development Act, 2000, (as amended).

In order to comply with section 128 of the Planning and Development Act, 2000, (as amended), please forward, within a period of 2 weeks beginning on the day on which a copy of the referral is sent to you, copies of any information in your possession which is relevant to the referral, including

- (i) details of previous decisions affecting the site;
- (ii) any correspondence that has taken place between the person(s) issued with a declaration under subsection (2)(a) of section 5 of the 2000 Act, (as amended), and the planning authority.
- (iii) the name and address of the owner of the land in question and the name of the occupier of the said land, if different;
- (iv) where no declaration was issued by you, indicate the date that the referral was due to be issued in accordance with subsection (2) of section 5 of the 2000 Act, (as amended)

In accordance with section 129 of the 2000 Act, (as amended), you may make submissions or observations in writing to the Board in relation to the referral within a period of 4 weeks beginning on the date of this letter.

Any submissions or observations received by the Board outside of that period shall not be considered and where none have been validly received, the Board may determine the referral without further notice to you.

Please note when making a response/submission only to the referral it may be emailed to appeals@pleanala.ie and there is no fee required.

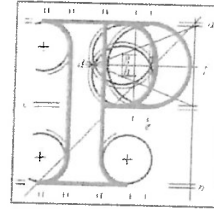
Teil	Tel	(01) 858 8100
Glao Áitiúil	LoCall	1800 275 175
Facs	Fax	(01) 872 2684
Láithreán Gréasáin	Website	www.pleanala.ie
Ríomhphost	Email	bord@pleanala.ie

64 Sráid Maoilbhríde	64 Marlborough Street
Baile Átha Cliath 1	Dublin 1
D01 V902	D01 V902

Our Case Number: ABP-322369-25

Planning Authority Reference Number: REF3625

Your Reference: Kevin Sweeney & Sinead Hassett



An
Bord
Pleanála

John Spain Associates
39 Fitzwilliam Place
Dublin 2
D02 ND61

Date: 28 April 2025

Re: Whether the removal and reconfiguration of the existing ground floor conservatory to streamline and consolidate the space at the rear of the dwelling, in accordance with the submitted drawings, is or is not exempted development.
Istria, Dalkey Road, Dalkey, Dublin, A96 TF74

Dear Sir / Madam,

An Bord Pleanála has received your referral and will consider it under the Planning and Development Act, 2000, (as amended). A receipt for the fee lodged is enclosed.

Please note that under section 127(3) of the Planning and Development Act, 2000, (as amended), the person by whom the referral is made shall not be entitled to elaborate in writing upon or make further submissions in writing in relation to the grounds of the referral unless requested to do so by An Bord Pleanála.

Yours faithfully,

PP Lauren Murphy
Faolán Bashford
Administrative Assistant
Direct Line: 01-873-7296

BPRL01

Teil
Glao Áitiúil
Facs
Láithreán Gréasáin
Ríomhphost

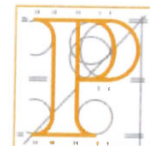
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bord@pleanala.ie

64 Sráid Maoilbhríde
Baile Átha Cliath 1
D01 V902

64 Marlborough Street
Dublin 1
D01 V902

Validation Checklist

Lodgement Number : **LDG-079533-25**
Case Number: **ABP-322369-25**
Customer: **Kevin Sweeney & Sinead Hassett**
Lodgement Date: **22/04/2025 14:05:00**
Validation Officer: **Daragh Cassells**
PA Name: **Dun Laoghaire Rathdown County Council**
PA Reg Ref: **REF3625**
Case Type: **Section 5 Referrals**
Lodgement Type: **Referral**



An
Bord
Pleanála

Validation Checklist	Value
Confirm Classification	Confirmed - Correct
Confirm PA Case Link	Confirmed-Correct
Confirm ABP Case Link	Confirmed-Correct
Fee/Payment	Valid – Correct
Name and Address available	Yes
Agent Name and Address available (if engaged)	Yes
Subject Matter available	Yes
Question	Yes
Sufficient Fee Received	Yes
Received On time	Yes
Eligible to make lodgement	Yes
Completeness Check of Documentation	Yes
Valid Lodgement Channel	Yes

S.5 REFERRAL

BPRL01 to referrer with receipt

BPRL07 to PA with copy appeal.

(PA emailed 25/04) dc ✓

Run at: 25/04/2025 16:48

Run by: Daragh Cassells

Daragh Cassells

From: Daragh Cassells
Sent: Friday 25 April 2025 16:45
To: Appeals
Subject: Referral DLR Ref; REF3625 - ABP 322369-25

A Chara,

The Board has received a section 5 referral under DLRCoCo REF: REF3625.
In order for the Board to validate the referral, could you please provide the following information.

1. The date the question/request for declaration under Section 5 was submitted to the planning authority.
2. The question put to the planning authority.
3. The date the declaration was due to be issued by the planning authority.
4. The names and addresses of the owners of the land and occupier, if different, and any other parties involved in the case.

Please note our reference is ABP 322369-25

Kind regards,
Daragh

Lodgement Cover Sheet - LDG-079533-25

JD: 021232.-25.1

Details

Lodgement Date	22/04/2025
Customer	Kevin Sweeney & Sinead Hassett
Lodgement Channel	In Person
Lodgement by Agent	Yes
Agent Name	John Spain Associates
Correspondence Primarily Sent to	Agent
Registered Post Reference	

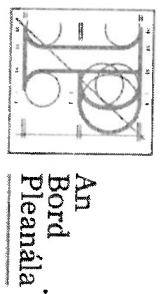
Categorisation

Lodgement Type	Referral
Section	Processing

Fee and Payments

Specified Body	No
Oral Hearing	No
Fee Calculation Method	System
Currency	Euro
Fee Paid	220.00 ✓
Refund Amount	

ABF: 322369-25



Lodgement ID	LDG-079533-25
Map ID	
Created By	Shirley Connolly
Physical Items included	No
Generate Acknowledgement Letter	
Customer Ref. No.	
PA Reg Ref	REF3625

DATE DECISION : 27-03-25
LAST DAY APPEALS : 23-04-25 ✓

PA Name	Dun Laoghaire Rathdown County Council
Case Type (3rd Level Category)	

Observation/Objection Allowed?	
Payment	PMT-062219-25
Related Payment Details Record	PD-062066-25

REFL01 to applicant + receipt.

REFL07 to PA with copy appeal.

PA emailed 25/04/25

The Secretary
An Bord Pleanála
64 Marlborough Street
Dublin 1

AN BORD PLEANÁLA
LDG- 079533-25
ABP- _____
22 APR 2025
Fee: € 220.00 Type: CA
Time: B-58 By: HAWD

Date: 22nd April 2025

JSA Ref: JN BC/ES 25060

Dear Sir/Madam,

RE: REFERRAL OF A DECLARATION UNDER SECTION 5 OF THE PLANNING & DEVELOPMENT ACT 2000, AS AMENDED, TO WHETHER THE REMOVAL & RECONFIGURATION OF THE EXISTING GROUND FLOOR CONSERVATORY TO THE REAR OF THE DWELLING AT THE ISTRIA, DALKEY ROAD, DALKEY, A96 TF74 IS OR IS NOT EXEMPTED DEVELOPMENT.

Dún Laoghaire-Rathdown County Council Ref.: REF3625

1.0 INTRODUCTION

John Spain Associates, 39 Fitzwilliam Place, D02 ND61, on behalf of our clients, Kevin Sweeney and Sinead Hassett, Istria, Dalkey Road, Dalkey, A96 TF74, hereby wish to submit to An Bord Pleanála a referral of a Section 5 Declaration issued by Dún Laoghaire-Rathdown County Council (DLRCC) on 27th March 2025, for review under Section 5 of the Planning and Development Act 2000, as amended (The Act).

At the outset, it is critical to note that the Section 5 Declaration under REF3625 was submitted following the declaration by DLRCC under REF1225 that proposal consisted of development which was not exempted development. In their assessment, DLRCC stated that the proposed works were exempt development under Section 4(1)(h) of The Act. However, the declaration was determined as not exempt on the grounds that the works did not satisfy the requirements set out in Schedule 2, Part 1 of the Planning and Development Regulations, 2001-2024, as amended (The Regulations). Since the works were considered exempt under Section 4(1)(h), it was not considered a requirement to satisfy the provisions on a separate exemption, i.e. a proposal needs only satisfy one exempted development provision in order to be considered exempt.

A revised Section 5 submission under REF3625 was made to DLRCC, specifically requesting a declaration against Section 4(1)(h). This provided a description of the proposed works, outlining compliance with Section 4(1)(h), ensuring that the details were clearly conveyed and the planning context properly understood.

The decision made in the second assessment determined that the works are not exempt under Section 4(1)(h), which directly contradicts the conclusion reached in the earlier determination

under REF1225. No rationale or acknowledgement of this difference in assessment was provided in the DLRCC determination.

With respect to the above, this referral seeks An Bord Pleanála to make a declaration (consistent with that requested of DLRCC) on:

Whether the removal and reconfiguration of the existing ground floor conservatory to streamline and consolidate the space at the rear of the dwelling, in accordance with the submitted drawings, is or is not exempted development under Section 4(1)(h) of the Planning and Development Act, 2000 (as amended).

The following is enclosed with this Section 5 referral in support of this application:

- The statutory referral fee of €220;
- A copy of the decision by DLRCC under REF3625, dated 27th March 2025, attached as Appendix 1;
- A copy of the DLRCC Planner's Report, associated with the Section 5 determination under REF3625, attached as Appendix 2;
- A copy of the original Section 5 Declaration Request, as submitted (including drawings), attached as Appendix 3;
- A copy of the initial decision by DLRCC under REF1225, dated 10th February 2025, attached as Appendix 4;
- A copy of the DLRCC Planner's Report, associated with the initial Section 5 determination under REF1225, attached as Appendix 5.

2.0 SITE LOCATION & DESCRIPTION

The site subject to this Section 5 application is located on the western side of Dalkey Avenue, a mature residential area predominantly consisting of two-storey detached dwellings, each exhibiting a range of architectural styles.

Figure 2-1. Aerial View of the Subject Site (approximate boundaries of the site outlined in red; please refer to the enclosed drawings prepared by Archityper Architects)



Source: Google Maps

The property in question is a two-storey semi-detached dwelling, featuring both hipped and gable roof profiles. It has been extended previously to the side and rear at both ground and first-floor levels. The dwelling is set back from the public roadway and benefits from off-street parking within the front curtilage.

Figure 2-2. Bird View of the Subject Site (approximate boundaries of the site outlined in red)



Source: Google Maps

With a stated site area of 0.1052ha, the site also offers a large private rear amenity space. This site is located within the administrative boundaries of DLRCC.

3.0 SECTION 5 DECLARATION FROM DÚN LAOGHAIRE-RATHDOWN COUNTY COUNCIL

The Section 5 application under REF3625 requested a declaration on the following from DLRCC:

Whether the removal and reconfiguration of the existing ground floor conservatory to streamline and consolidate the space at the rear of the dwelling, in accordance with the submitted drawings, is or is not exempted development under Section 4(1)(h) of the Planning and Development Act, 2000 (as amended).

On 27th March 2025, DLRCC issued a refusal decision, stating,

"It is considered that the proposed works constitute DEVELOPMENT and do NOT constitute EXEMPTED DEVELOPMENT, is hereby approved."

As outlined in Section 5.0 below, this submission respectfully seeks this determination to be overturned.

4.0 LEGISLATIVE FRAMEWORK & EXEMPTED DEVELOPMENT

The Planning and Development Act 2000, as amended, at Section 3(1) provides a definition of development for the purposes of The Act. Section 3(1) reads as follows:

"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 M.)"*

Section 2 of The Act describes, *inter alia*, that:

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

In this regard, Section 4(1)(h) of The Act states that the following works shall be exempted development for the purposes of The 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." [Emphasis Added]

The works carried out, which involve the removal of the existing rear conservatory and its re-configuration into a single-storey rear extension, are considered to have no material impact on the external appearance of the structure. As such, these works are consistent with the exemptions outlined in Section 4(1)(h) of The Act. This is further supported by the previous assessment under REF1225, as discussed below.

5.0 RELEVANT CASE LAW & LEGAL PRECEDENT

While the case of *Michael Cronin (Readymix) v. An Bord Pleanála* [2017] IESC 36 differs in scale and nature, its key relevance lies in its interpretation of Section 4(1)(h). The judgment provides critical insight into the provisions and indeed limitations of Section 4(1)(h). It highlights that the exemption is not based solely on the visual appearance of the works, but rather on a discretionary evaluation of the effect. In particular, the judgment clarifies that 'improvement' refers to changes that do not materially alter the character of the structure or its surroundings, requiring a careful examination of both internal and external impacts.

In paragraphs 45-49 (the conclusion), the judgement states that,

"45. The issue, then, is whether the plain intention of the Oireachtas can be ascertained. In my view it can. I agree with the argument of counsel for the Board, as summarised in paragraphs 28 to 30 above, that the effect of the High Court judgment would be to render exempt a range of developments far in excess of the intention of the Oireachtas. One must bear in mind the overall framework and scheme of the Act, with the many considerations that come into play in the planning process, and look at the context of the provision in question within that framework. I think it is manifestly unlikely that the intention was to render exempt all works carried out on any existing structure, including unlimited extensions in size, subject only to considerations of visual appearance (and subsequent considerations arising from any intensification of use). Nor do I consider that the words used in the section compel the Court to the conclusion that this is the meaning of the section." [emphasis added]

It is clear therefore that the judgement recognises a discretionary assessment with respect to the scale of the proposal relative to the context.

The conclusion continues:

*“46. In the first place, it seems necessary to stress that **there is no single definition of the word “alteration”** for the purposes of the Act. Thus, for at least some purposes of the Act an “alteration” may involve something that changes the external appearance in a way that is inconsistent with the character of the structure in question, or with the character of neighbouring structures. However, for the purposes of the exemption an “alteration” must not have that effect.”*

*47. Given the different ways in which the word is used, **it is best taken as simply bearing its ordinary meaning of “change”**. Obviously, an extension is an alteration but that does not really advance the argument in any direction.*

It is therefore reasonable to consider the proposal an alteration.

*48. It is true that, in principle, an extension could be considered to be an improvement. However, that is a concept that requires further examination. Almost by definition, any proposed development will be an improvement from the point of view of the developer. In my view the trial judge fell into error in ascribing such significance to the word “for” in the phrase “works for the maintenance etc” as to make the purpose for which the works were carried out of paramount importance. In the context of the overall framework, policies and purposes of the Act, that is to ascribe a weight which I do not believe the word can bear. I do not consider that it was the intention of the legislature to make the necessity to apply for planning permission dependent on the motive and purpose of the developer. **It seems to me that an “improvement”, for the purposes of an exemption, must be something that relates to the internal use and function of the structure, resulting in either no externally noticeable difference or an insignificant difference.***

49. In my view the interpretation placed on s.4(1)(h) of the Act by the High Court was incorrect. I accept the arguments of the Board as to its true meaning, and consider that an extension is a development that does not come within the exemption. In the circumstances I would allow the appeal.” [emphasis added]

The proposal replaces the existing extension in a consolidated form with an immaterial change in floor area and visual appearance in the context of the scale and appearance of the house. It is therefore, in our view, an alteration and improvement of past extensions rather than a new extension. The referenced judgement proposed yard extensions and a concrete batching plant (new buildings) in a quarry and therefore in that context, the proposal is materially different in scale in absolute and relative terms. The proposal consolidates prior extensions to a house, with the house comprising the overall structure rather than the proposed rear element in isolation. The proposal results in an “*insignificant difference*” externally with the extension being to the rear of the property which aligns with the guidance of the judgement.

As stated in the DLRCC Planner’s Report, “As the proposed new extension element is not shown to follow the same footprint as the conservatory to be demolished, the Planning Authority consider that the footprint of the extension is materially altered. The proposed extension is also shown to be constructed using different building materials to the existing conservatory. Having regard to the proposed materials, the Planning Authority note that the proposed development will materially affect the external appearance of the structure.

The scope of works proposed go beyond what can be constructed under Section 4(1)(h) as exempted development in that the works will constitute the extension of a dwelling as opposed to the maintenance or improvement of the structure, being works which affect only the interior of the structure.”

With respect to the above, the Planner's Report focuses primarily on the physical alterations and materials used, while not fully considering the purpose of the 'improvement' or the overall effect of the works. As detailed in Section 6.0 of this report, the re-configuration of the rear extension at Istria, aimed at streamlining its functionality, resulted in a modest 2sqm increase in floor area—negligible in relation to the overall size of the dwelling and its extensive rear garden. Moreover, when assessing the works in the broader context—considering factors such as height and alignment with the building line of adjacent properties—it is evident that the external alterations are minimal, with no adverse impact on the surrounding context or the property's character, satisfying Section 4 (1)(h) and indeed DLRCC stated this in their original decision.

In light of the Supreme Court judgment in *Michael Cronin (Readymix) v. An Bord Pleanála* [2017] IESC 36, given the modest scale of the works, their minimal impact on the surrounding context, and their clear purpose of improvement, it is our opinion that they fall within the scope of exempted development under Section 4(1)(h).

6.0 GROUNDS OF REFERRAL

The Section 5 application under REF3625 requested a declaration on the following from DRLCC:

Whether the removal and reconfiguration of the existing ground floor conservatory to streamline and consolidate the space at the rear of the dwelling, in accordance with the submitted drawings, is or is not exempted development under Section 4(1)(h) of the Planning and Development Act, 2000 (as amended).

These works involve the demolition of the existing conservatory and the construction of a new, streamlined single-storey rear extension. This results in a minimal increase of just 2sqm in floor area, which is negligible in relation to the overall size of the dwelling and the extensive rear garden space. The height of the proposed extension is 3.36m, which is below the height of the eaves of the existing dwelling, ensuring no adverse impact on the character of the structure or its surroundings.

Furthermore, the works preserve the open character of the rear garden, maintaining the ample private open space available on the site. The modest scale and location of the extension ensure there is no intrusion on neighbouring properties or disruption to the existing building line. In fact, the re-configuration aligns the extension more closely with the building line of the adjoining properties, improving consistency with the rear elevation. This contrasts with the previous conservatory, which was an irregularly protruding structure.

In its refusal, and as detailed in the Planner's Report, DLRCC stated that:

"As the proposed new extension element is not shown to follow the same footprint as the conservatory to be demolished, the Planning Authority consider that the footprint of the extension is materially altered. The proposed extension is also shown to be constructed using different building materials to the existing conservatory. Having regard to the proposed materials, the Planning Authority note that the proposed development will materially affect the external appearance of the structure.

The scope of works proposed go beyond what can be constructed under Section 4(1)(h) as exempted development in that works will constitute the extension of a dwelling as opposed to the maintenance or improvement of the structure, being works which affect only the interior of the structure. Having regard to the content of the information submitted, the proposed works which pertain to the demolition of existing conservatory elements and the construction of a new single-storey rear extension, all to the rear of the main dwelling, are considered not to

be exempted development under Section 4(1)(h) as the works do '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.'" [emphasis added]

We would like to respectfully bring to the Board's attention the prior decision by DLRCC under REF1225, which also assessed the same proposed works. In that instance, the Planner's Report concluded:

"Having regard to the content of the information submitted, the proposed works which pertain to the demolition of existing extension elements and the construction of a new single-storey rear extension, all to the rear of the main dwelling, are considered exempted development under Section 4(1)(h) as works 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.'" [emphasis added]

We respectfully note that the two assessments have led to differing conclusions, with the most recent determination that the works are not exempt, placing emphasis on the potential material impact of the proposed works. However, we would like to highlight that the scale of the proposed changes—namely, a minimal 2sqm increase in floor area, the non-habitable nature of the extension, and its careful alignment with the existing building line—does not materially alter the external appearance of the dwelling or its surrounding context.

Given the limited nature of the works, we respectfully seek clarification from An Bord Pleanála as to whether, in light of these factors, the development could reasonably be considered exempt development under Section 4(1)(h) of the Planning and Development Act, 2000 (as amended).

7.0 CONCLUSION

This Section 5 Referral is made on behalf of the applicants, Kevin Sweeney and Sinead Hassett, and seeks a declaration in respect of the following:

Whether the removal and reconfiguration of the existing ground floor conservatory to streamline and consolidate the space at the rear of the dwelling, in accordance with the submitted drawings, is or is not exempted development under Section 4(1)(h) of the Planning and Development Act, 2000 (as amended).

As set out in the above cover letter, determined in the Planner's Report associated with the decision under REF1225, it is respectfully submitted that the proposed improvement works would constitute exempt development under Section 4(1)(h) of The Act.

Please do not hesitate to contact us should you require any further information in relation to the application for a Section 5 Declaration.

Yours sincerely,



John Spain Associates

APPENDIX 1 – DLRCC DECISION UNDER REF3625

Planning Department
An Rannóg Pleanála
Registry Section
Direct Tel: 01 2054700

John Spain Associates
39 Fitzwilliam Place
Dublin 2
D02 ND61



Reference No:	REF3625
Application Type:	Declaration on Development and Exempted Development Act – Section 5, Planning & Development Act (as amended)
Registration Date:	07-Mar-2025
Decision Date:	27-Mar-2025
Location:	Istria, Dalkey Road, Dalkey, Dublin, A96 TF74
Development Works:	Whether the removal and reconfiguration of the existing ground floor conservatory to streamline and consolidate the space at the rear of the dwelling, in accordance with the submitted drawings, is or is not exempted development under Section 4(1)(h) of the Planning & Development Act, 2000 (as amended).

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.P/0540/25 dated 27-Mar-2025 decided to issue a Declaration that, having regard to;

- Section 4(1)(h) of the Planning and Development Act, 2000 (as amended),
- The plans and particulars submitted with the referral request,

It is considered that the proposed works constitute **DEVELOPMENT** and do **NOT** constitute **EXEMPTED DEVELOPMENT**, is hereby approved.

Date of issue: 27-Mar-2025

Signed: Najia Nusrat Malik
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.

APPENDIX 2 – DLRCC PLANNER'S REPORT, REF3625

Dún Laoghaire-Rathdown County Council

LOCAL GOVERNMENT ACTS 1925 - 2014

RECORD OF EXECUTIVE BUSINESS CHIEF EXECUTIVE'S ORDERS

PLANNING & DEVELOPMENT ACT, 2000 (as amended)

SECTION 5 PLANNING & DEVELOPMENT ACT 2000 (as amended)

Reference No: REF3625

Applicant: Kevin Sweeney and Sinead Hassett Istria, Dalkey Road, Dalkey, Dublin, A96 TF74

Agent: John Spain Associates 39 Fitzwilliam Place, Dublin 2, D02 ND61

Registration Date: 07-Mar-2025

Location: Istria, Dalkey Road, Dalkey, Dublin, A96 TF74

Agent: John Spain Associates 39 Fitzwilliam Place, Dublin 2, D02 ND61

Description of Works: Whether the removal and reconfiguration of the existing ground floor conservatory to streamline and consolidate the space at the rear of the dwelling, in accordance with the submitted drawings, is or is not exempted development under Section 4(1)(h) of the Planning & Development Act, 2000 (as amended).

Report:
Aisling Cleary

PLANNING AND DEVELOPMENT ACT 2000, AS AMENDED SECTION 5

S.5 REF: 3625

Query

A section 5 referral has been submitted in relation to the works at Istria, Dalkey Road, Dalkey, Dublin, A96 TF74.

Proposal

The submitted declaration as stated in the submitted documentation, seeks determination as to whether or not the proposed works are development and if so, are they exempted development. The following works are proposed:

Dún Laoghaire-Rathdown County Council

LOCAL GOVERNMENT ACTS 1925 - 2014

RECORD OF EXECUTIVE BUSINESS CHIEF EXECUTIVE'S ORDERS

'Whether the removal and reconfiguration of the existing ground floor conservatory to streamline and consolidate the space at the rear of the dwelling, in accordance with the submitted drawings, is or is not exempted development under Section 4(1)(h) of the Planning & Development Act, 2000 (as amended).'

Submission

This Section 5 Declaration application includes:

- A completed application form,
- Site location map.
- Cover Letter
- Existing and proposed site Plans and Elevations,

Matter for Determination

Declaration pursuant to Section 5 of the Planning & Development Act 2000, as amended in respect of Istria, Dalkey Road, Dalkey.

Site Description

The subject site is located on the western side of Dalkey Avenue which is an established residential area typically characterised by two-storey detached dwellings of varying architectural style. On site is a two-storey semi-detached dwelling with both a hipped and gable roof profile. The dwelling has been previously extended to the side and rear both at ground and first-floor level. The site is setback from the public roadway and served by off street parking in the front curtilage area.

Zoning of Site

Under the Dún Laoghaire-Rathdown County Development Plan 2022-2028, the site is subject to zoning objective A, which seeks 'to provide residential development and improve residential amenity while protecting the existing residential amenities'.

Planning History

- 131/92: Permission GRANTED by the Planning Authority for Extension and Alterations which included a two-storey rear extension, an enlarged front porch, alterations to the front windows and a new conservatory to the rear.
- 60/85: Permission GRANTED by the Planning Authority for Alterations which included a new first-floor side extension over the existing garage, a two-extension to the front at both first and ground floor level, and a new single storey porch.

Previous Declarations

Dún Laoghaire-Rathdown County Council

LOCAL GOVERNMENT ACTS 1925 - 2014

RECORD OF EXECUTIVE BUSINESS CHIEF EXECUTIVE'S ORDERS

REF1225: *The removal of a portion of the existing ground floor extensions which were granted permission in 1985 (reg. ref. 60/85) and 1992 (reg ref. 131/92) respectively, amounting to a total of 37sq.m and the addition of a new consolidated high-grade extension to the rear of the property only, amounting to a total of 39sq.m.*

Enforcement History

No current enforcement files found.

Departmental Reports

No Reports Requested

Proposed works

The application form received states the following:

'Whether the removal and reconfiguration of the existing ground floor conservatory to streamline and consolidate the space at the rear of the dwelling, in accordance with the submitted drawings, is or is not exempted development under Section 4(1)(h) of the Planning & Development Act, 2000 (as amended).'

In consideration of the submitted plans, the proposed works will comprise:

The demolition of the existing 35 sq.m conservatory and 2 sq.m rear extension element currently in situ to allow for the construction of a new rear extension that will provide a stated internal floor area of 39 sq.m (not including external walls) and will comprise of a dining area, a shower room, 3 no. of roof lights, 2 no. windows on the northwestern elevation, 1 no. access door and 1 no. sliding patio doors leading to the rear amenity space. The overall height of the structure will be a stated 3.3m and will have a flat roof.

Planning Comment

The Council is requested to determine, in accordance with Section 5 of the Planning and Development Act 2000 (as amended) whether or not the proposed works constitute development or not, and if so, whether said works are exempted development.

Legislative Context

Planning and Development Act 2000 (as amended)

Consideration as to whether a development constitutes exempted development or not is governed by Sections 2, 3 and 4 of the Planning and Development Act 2000 (as amended).

Under Section 2(1), the following is the interpretation of 'works':

Dún Laoghaire-Rathdown County Council

LOCAL GOVERNMENT ACTS 1925 - 2014

RECORD OF EXECUTIVE BUSINESS CHIEF EXECUTIVE'S ORDERS

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

Section 3 (1) states as follows:

"In this 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) of the Act states that the following shall be exempted developments for the purposes of this Act:

"(h) development consisting of the use 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."

Assessment

Having regard to the submitted details it is considered the proposed works consisting of a rear extension that will provide an internal floor area of 39sq.m (not including external walls) will be specifically be assessed under Section 4(1)(h) of the Planning and Development Act 2000 (as amended) as the applicant is specifically seeking whether or not the proposed development is exempt or not under same.

Is the proposal development?

The first matter for determination is whether the proposal would or would not constitute development.

Having regard to the description of the development on the application form, it is considered that the proposed development as detailed in the Section 5 Declaration submission would be considered to comprise 'works' as defined in Sections 2(1) of the Act.

The subject development(s) involves the carrying out of 'works':

- and are therefore considered to be - 'Development'.

Having regard to the above, it is considered that the proposed development detailed in the documentation submitted - would comprise 'works' and 'development' as defined in the Planning and Development Act, 2000 (as amended).

Is the proposal exempted development?

Dún Laoghaire-Rathdown County Council

LOCAL GOVERNMENT ACTS 1925 - 2014

RECORD OF EXECUTIVE BUSINESS CHIEF EXECUTIVE'S ORDERS

The second matter to determine is whether the proposal would constitute exempted development or not.

As this application has specifically requested clarification on whether the proposed development is exempt under Section 4(1)(h) of the Planning & Development Act, 2000 (as amended) it will be assessed under same.

Section 4(1) of the Planning and Development Act, 2000 (as amended) sets out a list of development that is exempt, under which Section 4(1)(h) outlines;

(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;

As per the documentation received, the applicant has proposed to demolish the existing 35 sq.m single-storey conservatory extension element to the rear of the main dwelling granted under reg. ref. 131/92. A further 2 sq.m rear extension element currently in situ is proposed to be demolished resulting in a total of 37sq.m to be demolished. The demolished conservatory and extension elements will facilitate the construction of a new rear extension that will provide a stated internal floor area of 39 sq.m.

As the proposed new extension element is not shown to follow the same footprint as the conservatory to be demolished, the Planning Authority consider that the footprint of the extension is materially altered. The proposed extension is also shown to be constructed using different building materials to the existing conservatory. Having regard to the proposed materials, the Planning Authority note that the proposed development will materially affect the external appearance of the structure.

The scope of the works proposed go beyond what can be constructed under Section 4(1)(h) as exempted development in that the works will constitute the extension of a dwelling as opposed to the maintenance or improvement of the structure, being works which affect only the interior of the structure. Having regard to the content of the information submitted, the proposed works which pertain to the demolition of existing conservatory elements and the construction of a new single-storey rear extension, all to the rear of the main dwelling, are considered not to be exempted development under Section 4(1)(h) as the works do "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."

Conclusion

Dún Laoghaire-Rathdown County Council

LOCAL GOVERNMENT ACTS 1925 - 2014

RECORD OF EXECUTIVE BUSINESS CHIEF EXECUTIVE'S ORDERS

Having regard to the documentation submitted in support of the application, and to the above assessment, it is considered that the proposed rear extension subject of this Section 5 Declaration constitutes development and does not constitute exempt development. The applicant shall be advised accordingly.

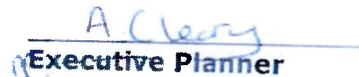
RECOMMENDATION

I recommend that the applicants agent, John Spain Associates 39 Fitzwilliam Place, Dublin 2, D02 ND61, be informed that having regard to;

- Section 4(1)(h) of the Planning and Development Act, 2000 (as amended),
- The plans and particulars submitted with the referral request,

It is considered that the proposed works constitute **DEVELOPMENT** and do **NOT** constitute **EXEMPTED DEVELOPMENT**.


Administrative Officer


Executive Planner

ORDER

The issuing of a Declaration pursuant to Section 5 of the Planning & Development Act 2000, (as amended) to John Spain Associates 39 Fitzwilliam Place, Dublin 2, D02 ND61, that having regard to;

- Section 4(1)(h) of the Planning and Development Act, 2000 (as amended),
- The plans and particulars submitted with the referral request,

It is considered that the proposed works constitute **DEVELOPMENT** and do **NOT** constitute **EXEMPTED DEVELOPMENT**., is hereby approved.

Signed: 
Approved Officer

Dated: 27/3/25

Thereunto empowered by order of Príomhfheidhmeannach, Comhairle Contae Dhún Laoghaire-Ráth An Dúin, Order No. 2513, dated 23/9/23, delegating to me all his powers, functions and duties in relation to the County Council of Dún Laoghaire-Rathdown in respect of this matter.

APPENDIX 3 – ORIGINAL SECTION 5 DECLARATION REQUEST

Dún Laoghaire-Rathdown County Council
County Hall
Marine Road
Dún Laoghaire
A96 K6C9

Date: 7th March 2025
JSA Ref: JN BC/ES 25060

Dear Sir/Madam,

RE: SECTION 5 DECLARATION REQUEST IN RESPECT OF THE WORKS AT ISTRIA, DALKEY ROAD, DALKEY, A96 TF74

1.0 INTRODUCTION

John Spain Associates, Chartered Town Planners, 39 Fitzwilliam Place, D02 ND61, on behalf of our clients and the applicants, Kevin Sweeney and Sinead Hassett, hereby wish to request a Section 5 Declaration from Dun Laoghaire-Rathdown County Council in respect of the following proposed works at the Istria, Dalkey Road, Dalkey, A96 TF74:

Whether the removal and reconfiguration of the existing ground floor conservatory to streamline and consolidate the space at the rear of the dwelling, in accordance with the submitted drawings, is or is not exempted development under Section 4(1)(h) of the Planning and Development Act, 2000 (as amended).

We enclose the following information with the Section 5 application:

- Statutory fee of €80;
- Completed Section 5 Declaration Application Form;
- 2 copies of Cover Letter prepared by John Spain Associates;
- 2 copies of the following drawings prepared by Archityper Architects;
 - Existing and Proposed elevation drawings; and,
 - Site Location Map.

This Section 5 application seeks confirmation on whether the removal and reconfiguration of the existing ground floor extension, to create a more unified and efficient use of space at the rear of the property, constitutes exempt development. This cover letter outlines the proposed improvements, which focus on enhancing the functionality and cohesion of the current structure, demonstrating compliance with the criteria for exempt development.

Please refer to the accompanying drawings prepared by Archityper Architects for further details.

Managing Director: P. Turlay. Executive Directors: R. Kunz | S. Blair | B. Cregan | L. Wymer | K. Kerrigan
Senior Associate Directors: M. Nolan | B. Coughlan | I. Livingstone. Associate Director: T. Devlin
John Spain Associates Ltd. trading as John Spain Associates

Registered Address: 39 Fitzwilliam Place, Dublin 2 | Directors: A. Murphy | J. Brennan
CRO No. 396306 | VAT No. IE 6416306U

2.0 SITE LOCATION & DESCRIPTION

The site subject to this Section 5 application is located on the western side of Dalkey Avenue, a mature residential area predominantly consisting of two-storey detached dwellings, each exhibiting a range of architectural styles.

Figure 2-1. Aerial View of the Subject Site (approximate boundaries of the site outlined in red; please refer to the enclosed drawings prepared by Archityper Architects)



Source: Google Maps

The property in question is a two-storey semi-detached dwelling, featuring both hipped and gable roof profiles. It has been extended previously to the side and rear at both ground and first-floor levels. The dwelling is set back from the public roadway and benefits from off-street parking within the front curtilage.

Figure 2-2. Bird View of the Subject Site (approximate boundaries of the site outlined in red)



Source: Google Maps

With a stated site area of 0.1052ha, the site also offers a large private rear amenity space. This site is located within the administrative boundaries of Dún Laoghaire-Rathdown County Council (DLRCC).

3.0 PLANNING HISTORY

The relevant planning history for the site shows that under Reg. Ref. 60/85, DLRCC granted planning permission for alterations to the dwelling, including a new first-floor side extension over the existing garage, a two-storey extension to the front at both first and ground floor levels, and a new single-storey porch. Additionally, under Reg. Ref. 131/92, DLRCC granted planning permission for further extensions and alterations, including a two-storey rear extension.

On 21st January 2025 and under planning reference REF1225, the applicant submitted a Section 5 application to the Council, based on the proposed scope of works outlined in the following section of this cover letter. On 10th February 2025, DLRCC issued a determination stating that the proposed works constitute development and do not constitute exempted development.

As it is stated in the Planner's Report, *"the proposed works which pertain to the **demolition of existing extension elements and the construction of a new single-storey rear extension, all to the rear of the main dwelling, are considered exempted development under Section 4(1)(h)** as the works 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.'*" [emphasis added]

However, the proposed works are then assessed against Class 1, Schedule 2, Part 1 of The Regulations and the associated Article 9 restrictions. As detailed in Section 4.0 below, the proposed works primarily involve the reconfiguration of the rear space into a more consolidated form, rather than an extension in the conventional sense. As such, when works are deemed exempt under Section 4(1)(h), there is no necessity to evaluate them further under The Regulations for extensions. In summary, if a proposal is exempted under one exemption, it does not have to be assessed against another exempted development provision, as per the assessment under REF1225.

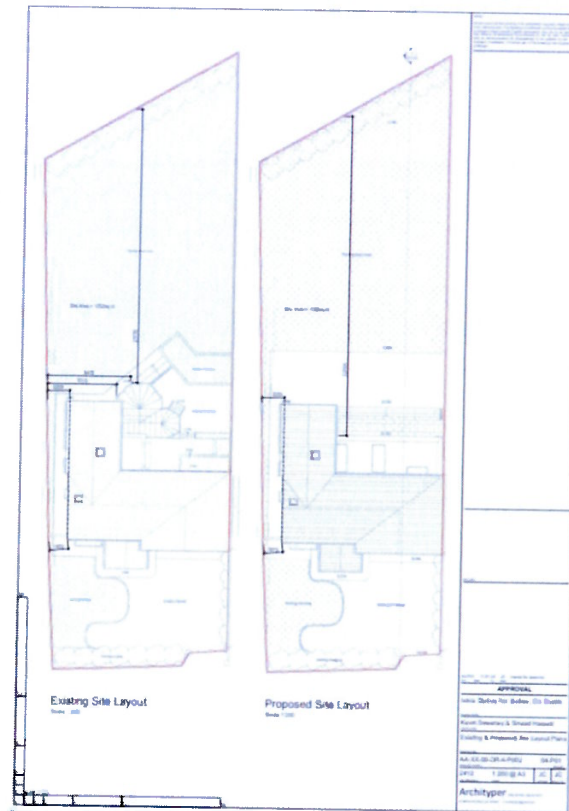
Additionally, restrictions under Article 9 of The Regulations are not applicable to works that are classified as exempted development under Section 4(1)(h), as this section clearly exempts certain improvements that do not materially alter the external appearance of the structure.

4.0 PROPOSED WORKS

The proposed works involve the removal and reconfiguration of the conservatory at the rear of the dwelling to streamline the flow of space and enhance functionality. The existing conservatory will be replaced with a more cohesive and integrated structure that better aligns with the overall design of the house.

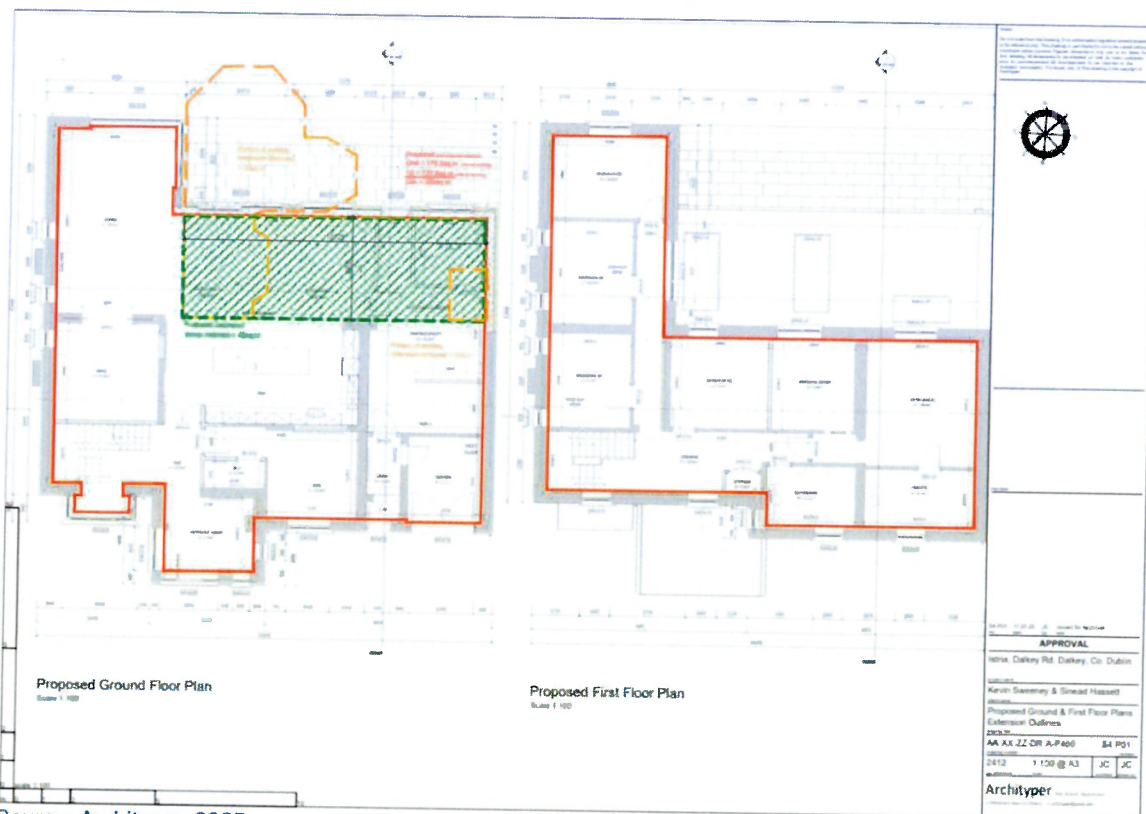
The reconfiguration of this area simplifies the space, integrating it more seamlessly with the overall design of the property. The proposed changes result in only a slight increase in floor area—approximately 2sqm—which remains a negligible adjustment and does not result in a meaningful change to the overall footprint of the dwelling. The overall open space remains largely intact, preserving the property's generous outdoor environment.

Figure 4-1. Existing and Proposed Site Layout Plan



Source: Archityper, 2025

Figure 4-2. Proposed Floor Plans



Source: Archityper, 2025

Overall, the proposed works consist of improvements and alterations to the rear area of the dwelling, with no expected impact on the external appearance or the surrounding townscape. The placement, scale, and design are intended to ensure that the works are consistent with the character of the building and its immediate environment.

5.0 LEGISLATIVE FRAMEWORK & EXEMPTED DEVELOPMENT

The Planning and Development Act 2000, as amended, ('The Act' hereinafter) at Section 3(1) provides a definition of development for the purposes of The Act. Section 3(1) reads as follows:

"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 M.)"*

Section 2 of The Act describes, *inter alia*, that:

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

In this regard, Section 4(1)(h) of The Act states that the following works shall be exempted development for the purposes of the 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." [Emphasis Added]

As detailed in Section 4.0 above, the proposed works involves removal of the existing conservatory and reconfiguration of this space into a consolidated single storey rear extension with no material impact to the external appearance of the structure, and therefore it is considered that the proposed works fall within the scope of exempt development under Section 4(1)(h) of The Act. It is respectfully submitted that DLRCC made such a determination under REF1225 and a declaration to this effect is requested.

6.0 CONCLUSION

This application for a Section 5 Declaration is made on behalf of the applicants, Kevin Sweeney and Sinead Hassett, and seeks a declaration in respect of the following:

Whether the removal and reconfiguration of the existing ground floor conservatory to streamline and consolidate the space at the rear of the dwelling, in accordance with the submitted drawings, is or is not exempted development under Section 4(1)(h) of the Planning and Development Act, 2000 (as amended).

As set out in the above cover letter and determined in the Planner's Report associated with the decision under REF1225, it is respectfully submitted that the proposed improvement works would constitute exempt development under Section 4(1)(h) of The Act.

For further information, we respectfully invite the Planning Authority to refer to the enclosed drawings prepared by Archityper Architects.

Please do not hesitate to contact us should you require any further information in relation to the application for a Section 5 Declaration.

Yours sincerely,

A handwritten signature in black ink, appearing to read "John Spain".

John Spain Associates



Dún Laoghaire-Rathdown County Council

APPLICATION FOR SECTION 5

Planning and Development Act 2000, (as amended)

The purpose of a Section 5 of the Planning and Development Act 2000, (as amended), is to establish if a particular development is or is not an exempted development within the meaning of the Act.

If detailed information/drawings are not provided, we may not be in a position to make a decision.

NOTES:

- (a) Application **must** be accompanied by fee of €80.00
- (b) Application **must** be accompanied by 2 Copies of the following, unless subject site is a protected structure or in the curtilage of a protected structure or an Area of Architectural Conservation, in which case 3 copies are required
 - (1) site location map with site clearly outlined in red,
 - (2) site layout plan including all existing structures on site (this is required as conditions and limitations of exempted development include location of development and distances from site boundaries),
 - (3) scale floor plans and elevations (this is required as conditions and limitations of exempted development include height of structure and distances of windows from boundaries).
 - (4) Any other additional information so as to inform the decision.

Forward your application to: Dun Laoghaire-Rathdown County Council,
Registry and Decisions Section, Planning Department
Marine Road, Dun Laoghaire, County Dublin.

Telephone: 01 205 4859

1. Applicant Details:

NAME OF APPLICANT: Kevin Sweeney and Sinead Hassett

ADDRESS OF APPLICANT: Istria, Dalkey Road, Dalkey, A96 TF74

TELEPHONE NO.: N/A MOBILE: 089 979 6058

EMAIL ADDRESS: N/A

NAME OF AGENT: John Spain Associates

NAME OF AGENT: John Spain Associates

AGENT'S ADDRESS: 39 Fitzwilliam Place, D02 ND61

TELEPHONE NO.: **+353 1 6625803** MOBILE: **+353 87 068 3700**

EMAIL ADDRESS: esaki@johnspainassociates.com

3. Site Details:

LOCATION OF SUBJECT SITE:

Istria, Dalkey Road, Dalkey, A96 TF74

(a) Area of site:	<u>1,052</u>	sqm.
(b) Floor area of existing extension(s) (if any):	<u>37</u>	sqm.
(c) Floor area of proposed development:	<u>39</u>	sqm.
(d) Area of rear garden remaining:	<u>752</u>	sqm.

Please state applicant's interest in this site:

Owner

If applicant is not the owner of site, please provide name & address of owner: N/A

Is the above site location within the curtilage of a Protected Structure or within a Candidate Architectural Conservation Area of Architectural Conservation Area?

Yes ☐ No ☒

If yes, has a Declaration under Section 57 of the Planning and Development Act 2000, (as amended) been requested or issued for the property by the Planning Authority?

Yes ☐ No ☐

4. Details of works (where applicable) or proposed development.

(Note: Only works listed and described under this section will be assessed under this Section 5 application. Use additional sheets if required.)

Please refer to the enclosed cover letter prepared by John Spain Associates.

5. List of plans, drawings, etc. submitted with this application.

Please refer to the enclosed document register prepared by Archityper Architects.

6. Are you aware of any enforcement proceedings connected to this site? If so please supply details:

N/A

7. Were there previous planning application(s) on this site? If so please supply details:

Reg. Ref. 60/85

Reg. Ref. 131/92

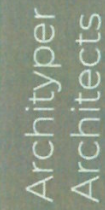
Reg. Ref. REF1225

Signed: _____ **Date:** _____

EFT Payment Detail

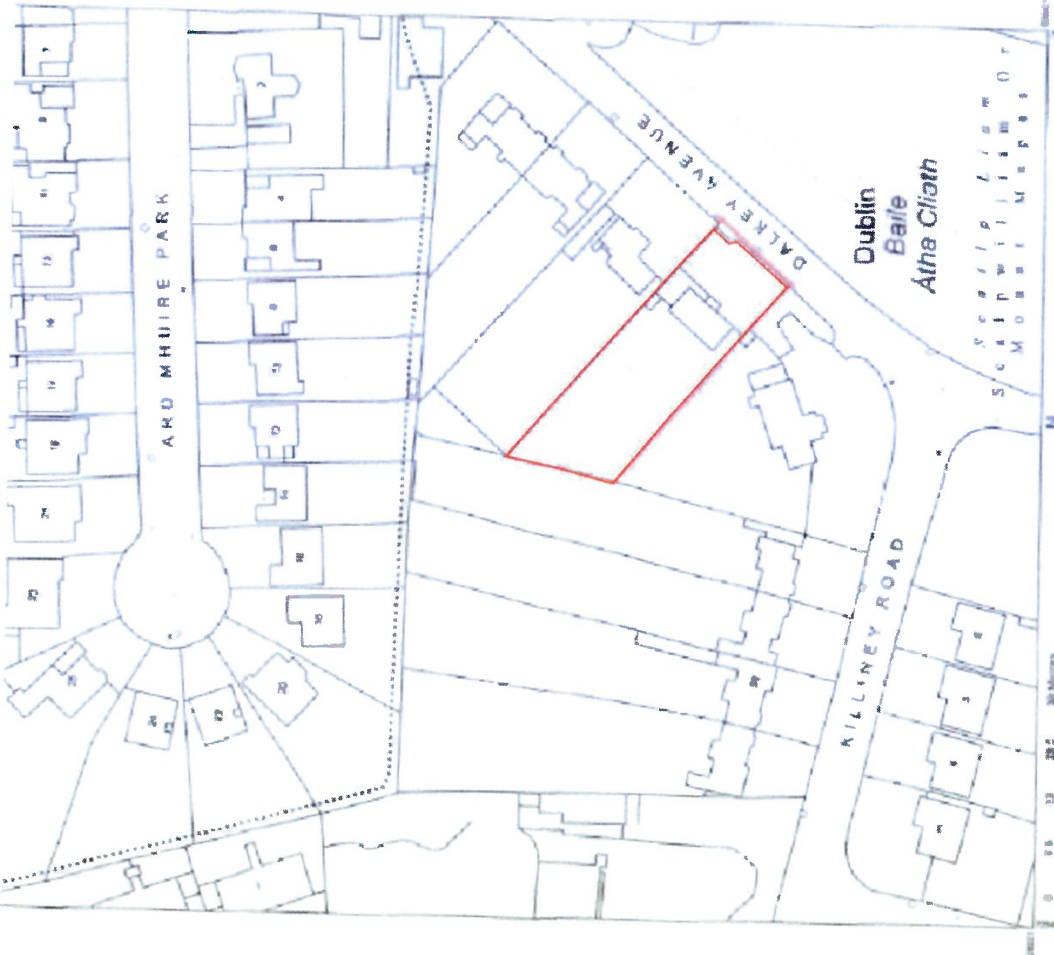
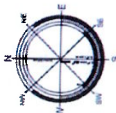
If the planning fee is not attached to the application, please use the bank details below to lodge using reference number 'PLN17' and the location of the subject site.

Account Name: *Supplementary Credit Account*
Pay: *Dun Laoghaire-Rathdown County Council*
Bank Name: *Bank of Ireland, 101 Upper George's Street, Dun Laoghaire*
Bank Account No. *10170150*
Bank Sort Code: *90-11-16*
IBAN: *IE56 BOFI 9011 1610 1701 50*
BIC/SWIFT: *BOFIIE2D*



Project No.: 2412		Document Register									
Project Name: Istria, Dalkey Road, Dalkey		Issue Date									
Sheet No.: 1		Day		17							
Stage: Approval		Month		01							
		Year									
Dwg. No.	Drawing Title	Scale	Size	Suit-Revision (e.g. S0-P01)							
2412-AA-XX-00-DR-A-P001	Site Location Map	1:1000	A3	S4-P01							
2412-AA-XX-00-DR-A-P002	Proposed & Existing Site Layout Plan	1:200	A3	S4-P01							
2412-AA-XX-ZZ-DR-A-P100	Existing Ground & First floor	1:100	A3	S4-P01							
2412-AA-XX-ZZ-DR-A-P200	Existing Elevations	1:100	A3	S4-P01							
2412-AA-XX-ZZ-DR-A-P400	Proposed Ground & First floor	1:100	A3	S4-P01							
2412-AA-XX-ZZ-DR-A-P500	Proposed Elevations	1:100	A3	S4-P01							
	Documents										
Issue To :				No. of Copies Issued/Issue Method (Hardcopy = H, Disc = D, E-mail = E)							
Client				E							
Planning Authority DLRCC				Hx2							
Issue Reason (Info = I, Approval = A, Tender = T, Const = C)				A							
Issuers Initials				JC							

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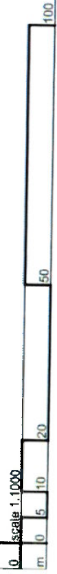
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CAPTURE RESOLUTION
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Site Location Map

Scale 1:1000



S4-P01 17.01.25 JC Issued for Approval

APPROVAL

Istria, Dalkey Rd. Dalkey, Co. Dublin

Kevin Sweeney & Sinead Hassett

Site Location Map

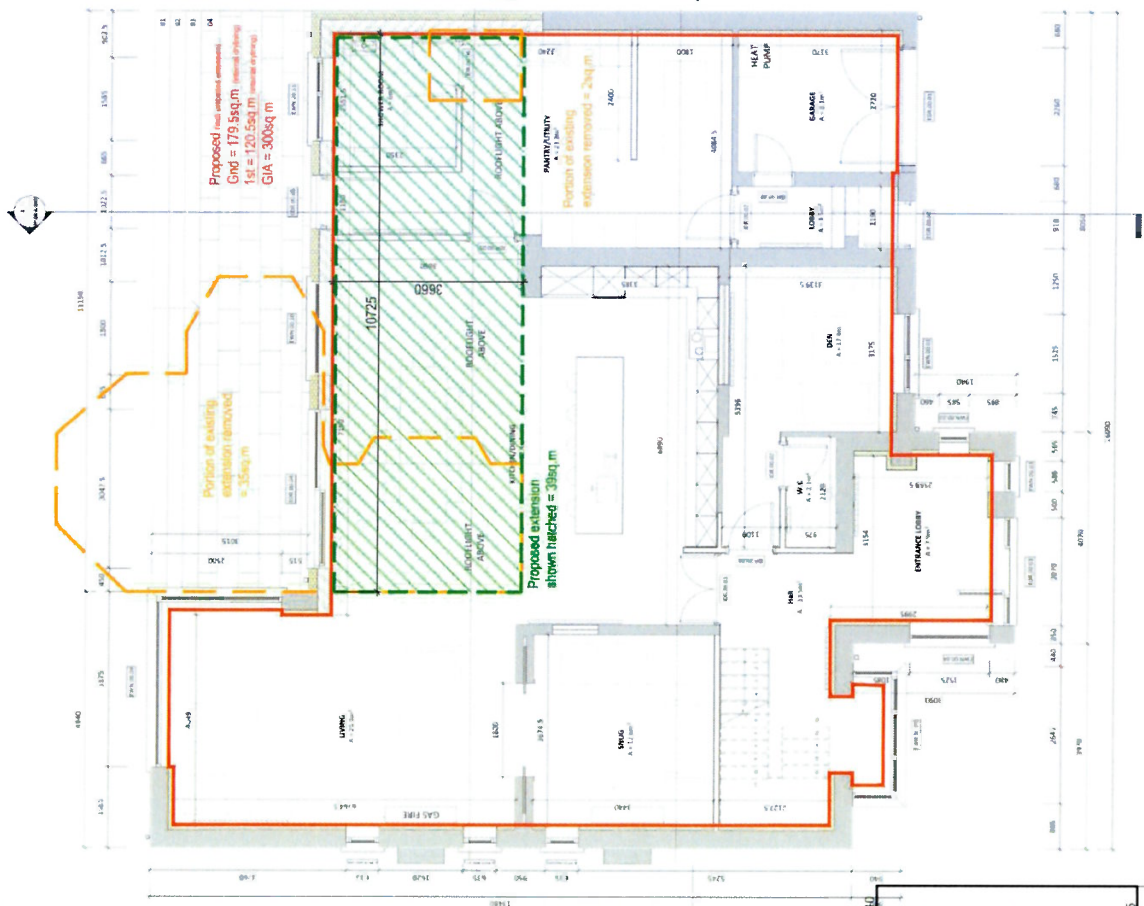
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4. Approved Map Co. Ltd. 4. archityper@outlook.com

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Proposed Ground Floor Plan

Proposed First Floor Plan
Scale 1:100

64-P01	17.01.25	JC	Issued for Approval
by	date		NOTE

APPROVAL

APPROVAL

istria, Dalkey Rd. Dalkey, Co. Dublin

Return to Table of Contents

Kevin Sweeney & Sinead Hassett

Word name

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Proposed Ground & First Floor Plans Extension Outlines

AA XY 77 DB A B400 S4 B01

34-F01	revision
00-XX-ZZ-DIR-AT-400	Drawing Number

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Architect's reference	Scale	Architect	Drawn by

Archityper

Abstract: P841, Cui, Kazdai B. © 2012 Wiley Periodicals, Inc.

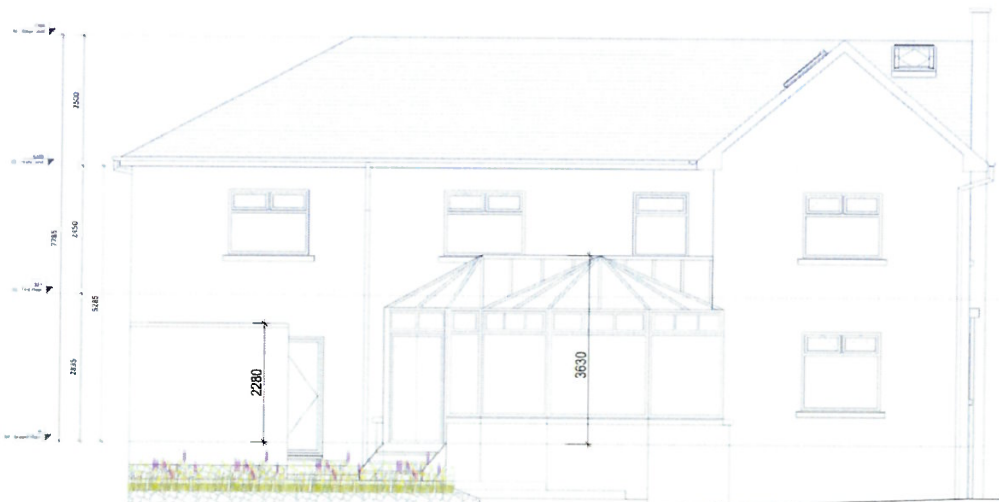
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Existing Front Elevation
Scale 1:100



Existing Side Elevation
Scale 1:100



Existing Rear Elevation
Scale 1:100

S4-P01 17.01.25 JC Issued for Approval
rev date by note

APPROVAL

Istria, Dalkey Rd. Dalkey, Co. Dublin

project name
Kevin Sweeney & Sinead Hassett
client name

Existing Elevations

drawing title
AA-XX-ZZ-DR-A-P200 S4-P01
drawing number revision

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Archityper
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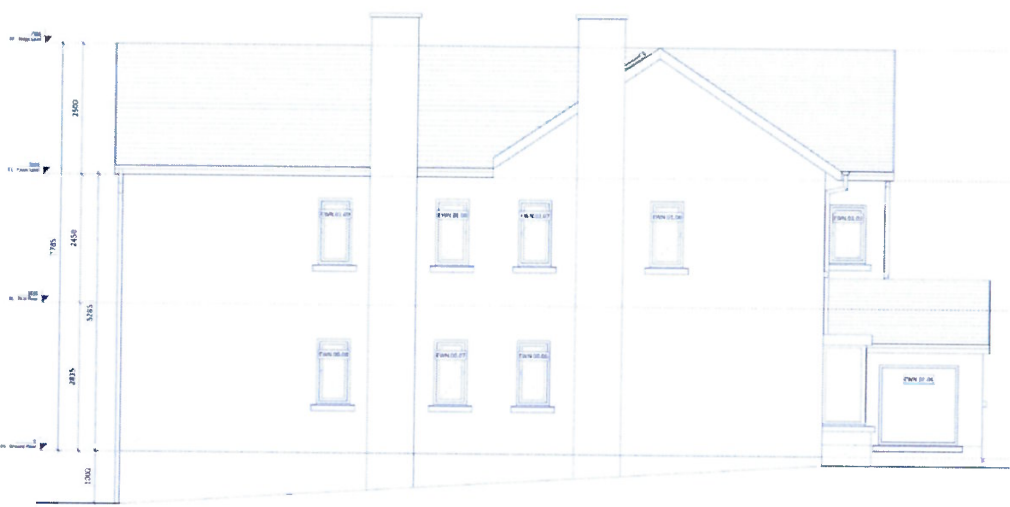
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Proposed Front Elevation
Scale 1:100



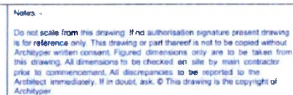
Proposed Side Elevation
Scale 1:100



Proposed Rear Elevation
Scale 1:100

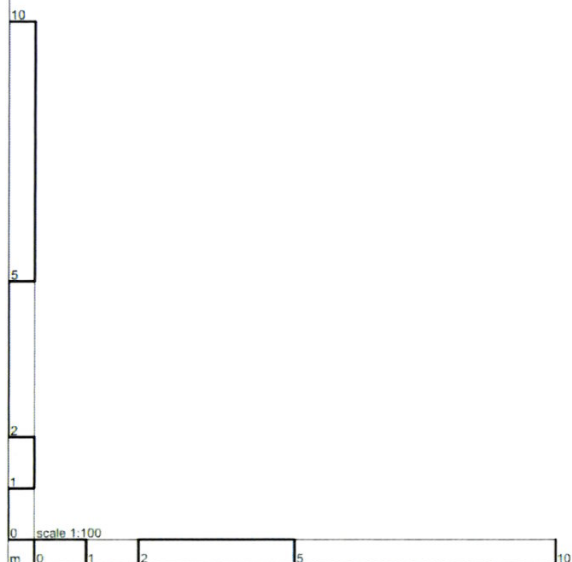
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project name			
Kevin Sweeney & Sinead Hassett			
client name			
Proposed Elevations			
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drawing number		revision	
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job reference	scale	architect	drawn by
Archityper			
Rial M. Arch. Dip. Architect			
4 Allwood Road, Co. Wick. E: archityper@gmail.com			



Scale 1:100

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APPROVAL

Istria, Dalkey Rd. Dalkey, Co. Dublin

project name

Kevin Sweeney & Sinead Hassett

Proposed Sections

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drawing number		revision	
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job reference	scale		

Archityper RM: M Arch, Dip Arch Tech
 A Allwood, 2455 Co Kildare + archityper@gmail.com

APPENDIX 4 – DLRCC DECISION UDNER REF1225

Planning Department
An Rannóg Pleanála
Registry Section
Direct Tel: 01 2054700

John Carrol
Archityper Architects
12 An Crois
Allenwood
Kildare
W91 X0Y5

Reference No:	REF1225
Application Type:	Declaration on Development and Exempted Development Act – Section 5, Planning & Development Act (as amended)
Registration Date:	21-Jan-2025
Decision Date:	10-Feb-2025
Location:	Istria, Dalkey Road, Dalkey, Dublin, A96 TF74
Development Works:	The proposal consists of the removal of a portion of the existing ground floor extensions which were granted permission in 1985 (reg. ref. 60/85) and 1992 (reg ref. 131/92) respectively, amounting to a total of 37sq.m and the addition of a new consolidated high grade extension to the rear of the property only, amounting to a total of 39sq.m.

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.P/0221/25 dated 10-Feb-2025 decided to issue a Declaration that having regard to;

- Limitation 2(a) of Class 1 of Part 1, Schedule 2 (Exempted Development - General) of the Planning and Development Regulations, 2001 (as amended).
- The plans and particulars submitted with the referral request,

It is considered that the proposed works constitute **DEVELOPMENT** and do **NOT** constitute **EXEMPTED DEVELOPMENT**.

Date of issue: 10-Feb-2025

Signed: Majia Nurat Malik
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.

APPENDIX 5 – DLRCC PLANNER'S REPORT, REF1225

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PLANNING & DEVELOPMENT ACT, 2000 (as amended)

SECTION 5 PLANNING & DEVELOPMENT ACT 2000 (as amended)

Reference No: REF1225

Applicant: Sweeney & Sinead Hassett Istria, Dalkey Road, Dalkey, Dublin, A96 TF74

Agent: John Carrol Archityper Architects, 12 An Crois, Allenwood, Kildare, W91 X0Y5

Registration Date: 21-Jan-2025

Location: Istria, Dalkey Road, Dalkey, Dublin, A96 TF74

Agent: John Carrol Archityper Architects, 12 An Crois, Allenwood, Kildare, W91 X0Y5

Description of Works: The proposal consists of the removal of a portion of the existing ground floor extensions which were granted permission in 1985 (reg. ref. 60/85) and 1992 (reg ref. 131/92) respectively, amounting to a total of 37sq.m and the addition of a new consolidated high grade extension to the rear of the property only, amounting to a total of 39sq.m.

Report:

Ewan Redmond

**PLANNING AND DEVELOPMENT ACT 2000, AS AMENDED
SECTION 5**

REF: 1225

Query

A section 5 referral has been submitted in relation to the works at Istria, Dalkey Avenue, Dalkey, Dublin, A96 TF74.

PROPOSED DEVELOPMENT

The submitted declaration as stated in the submitted documentation, seeks determination as to whether or not the proposed works are development, and if so, are they exempted development. The following works are proposed:

'The removal of a portion of the existing ground floor extensions which were granted permission in 1985 (reg. ref. 60/85) and 1992 (reg ref. 131/92) respectively, amounting to a total of 37sq.m and the addition of a new

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consolidated high-grade extension to the rear of the property only, amounting to a total of 39sq.m.'

Submission

This Section 5 Declaration application includes:

- Completed application form,
- Site location map,
- Cover letter,
- Plans, elevations and sections of existing & proposed.

MATTER FOR DETERMINATION

Declaration pursuant to Section 5 of the Planning & Development Act 2000, as amended in respect of Istria, Dalkey Avenue, Dalkey.

SITE

The subject site is located on the western side of Dalkey Avenue which is an established residential area typically characterised by two-storey detached dwellings of varying architectural style. On site is a two-storey semi-detached dwelling with both hipped and gable roof profile. The dwelling has been previously extended to side and rear at both ground and first-floor level. The site is setback from the public roadway and served by off street parking in the front curtilage area.

ZONING AND OTHER OBJECTIVES

Under the Dun Laoghaire-Rathdown County Development Plan 2022-2028, the site is subject to zoning objective A, which seeks to *'To provide residential development and improve residential amenity while protecting the existing residential amenities.'*

Relevant Planning History

131/92 – Permission GRANTED by the Planning Authority for Extension & Alterations which included a two-storey rear extension, an enlarged front porch, alterations to the front windows and a new conservatory to the rear.

60/85 – Permission GRANTED by the Planning Authority for Alterations which included a new first-floor side extension over the existing garage, a two-extension to the front at both first and ground floor level, and a new single-storey porch.

Previous Declarations

None found.

Enforcement History

No current enforcement files found.

Departmental Reports

No referrals made.

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Legislative Context

Planning and Development Act 2000 (as amended)

Consideration as to whether a development constitutes exempted development or not is governed by Sections 2, 3, and 4 of the Planning and Development Act 2000 (as amended).

Under Section 2(1), the following is the interpretation of 'works':

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

Section 3 (1) states as follows:

"In this 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) of the Act states that the following shall be exempted developments for the purposes of this Act:

"(h) development consisting of the use 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."

Planning and Development Regulations 2001 (as amended)

Article 6 (1) of the Planning and Development Regulations 2001, (as amended), states,

'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'

Under Class 1, Schedule 2, Part 1 of the Planning and Development Regulations 2001 (as amended), 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 is considered to comprise exempted development subject to 7 no. limitations.

Under Class 50, Schedule 2, Part 1 of the Planning and Development Regulations 2001 (as amended), (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 is considered to comprise exempted development subject to 3 no. limitations.

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Is the proposal development?

The first matter for determination is whether the proposal would or would not constitute development.

Having regard to the description of the development on the application form, it is considered that the proposed development as detailed in the Section 5 Declaration submission would be considered to comprise 'works' as defined in Sections 2(1) of the Act.

The subject development(s) involves the carrying out of 'works':

- and are therefore considered to be - 'Development'.

Having regard to the above, it is considered that the proposed development detailed in the documentation submitted - would comprise 'works' and 'development' as defined in the Planning and Development Act, 2000 (as amended).

ASSESSMENT

The second matter to determine is whether the proposal would constitute exempted development or not.

The following legislation is considered to be relevant in this regard.

Section 4(1) of the Planning and Development Act, 2000 (as amended) sets out a list of development that is exempt, under which Section 4(1)(h) outlines;

(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;

Section 4(2)(a) of the Planning and Development Act provides that the Minister may by regulations provide for any class of development to be exempted development for the purposes of the Act.

Having regard to the content of the information submitted, the proposed works which pertain to the demolition of existing extension elements and the construction of a new single-storey rear extension, all to the rear of the main dwelling, are considered exempted development under Section 4(1)(h) as the works 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."

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Planning and Development Regulations, 2001, as amended;

As per the documentation received, the applicant has proposed to demolish the existing single-storey extension elements to the rear of the main dwelling granted under reg. ref. 131/92. As such the proposed development falls under Class 50 of Part 1, Schedule 2 (Exempted Development – General) of the Planning and Development Regulations, 2001, as amended.

- As per the documentation submitted, the subject dwelling is detached, and the single-storey extension elements do not abut on another building in separate ownership. Therefore, the proposed demolition accords with Limitation 1 of Class 50 – *'No such building or buildings shall abut on another building in separate ownership'*.
- As per the documentation submitted, the applicant has proposed demolish the existing single-storey extension elements to the rear of the main dwelling granted under reg. ref. 131/92. It is stated that 37sq.m. of floor area is to be demolished. As such, the proposed demolition accords with Limitation 2 of Class 50 – *'The cumulative floor area of any such building, or buildings, shall not exceed: (a) in the case of a building, buildings or within the curtilage of a house, 40 square metres...'*

Having regard to the above, it is considered the proposed demolition works are exempt pursuant to Class 50, Part 1, Schedule 2 (Exempted Development – General) of the Planning and Development Regulations, 2001, as amended.

Furthermore,

As the proposed works comprise of the construction of a single-storey extension to the rear of the existing dwelling the proposed development falls under Class 1 of Part 1, Schedule 2 (Exempted Development – General) of the Planning and Development Regulations, 2001, as amended.

As per the documentation submitted, the proposed extension provides for a stated 39sq.m. of internal floor space, however, the extension has been previously extended under reg. ref. 60/85 which provided approximately 35sq.m. of new habitable floor space. Furthermore, the extension was once again extended under reg. ref. 131/85 which provided 96sq.m. of additional habitable floor space.

- As such, the proposed extension, in addition to existing extension constructed under reg. ref. 60/85 and 131/85 exceed 40sq.m and therefore is contrary to Limitation 2(a) of Class 1 – *'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*

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planning permission has been obtained, shall not exceed 40 square metres.

-
- As per the documentation submitted the proposed rear extension is shown to be 3.36m in height and does not exceed the height of the eaves. Therefore, the proposed rear extension accords with Limitation 4(a) of Class 1 - *'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.'*
- As submitted on the drawings the proposed rear extension will not exceed the of the height the of the roof and is therefore in accordance with Limitation 4(c) of Class 1 - *'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'.*
- As per the documentation submitted, there will be well in excess of 25sq.m. remaining garden area to the rear of the house in accordance with Limitation 5 of Class 1 - *'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'.*
- The proposed windows at ground level are more than 1 metre from the boundary they face in accordance with Limitation 6(a) of Class 1 - *'Any window proposed at ground level in any such extension shall not be less than 1 metre from the boundary it faces'.*
- It is not proposed to use the roof of the proposed extension as a balcony or roof garden in accordance with Limitation 7 of Class 1 - *'The roof of any extension shall not be used as a balcony or roof garden'.*

Having regard to the above, it is considered that the proposed works described within the development description, do not satisfy Limitation 2(a) of Class 1, Part 1, Schedule 2 of the (Exempted Development - General) of the Planning and Development Regulations, 2001, as amended. Therefore, the proposed works described within the development description do NOT constitute exempted development

(Other) Restrictions to Exempted Development

Article 9 'Restriction to Exempted Development' of the Planning and Development Regulations 2001 (as amended) states: '9. (1) Development to which article 6 relates shall not be exempted development for the purposes of the Act' - and sets out a number of criteria thereafter that would restrict a development from being exempt development.

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Article 9 (1) (a) (viiB) of the Planning and Development Regulations, 2001 (as amended) states that the following would restrict exempted development: *'(viiB) comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site'*.

The proposed development has been screened for Appropriate Assessment (report on file) and it has been determined that the proposed development will not significantly impact upon a European Site. The proposed development has been assessed against all the restrictions to exempted development as set out within Article 9 (1) and that there are no restrictions that would prevent the works subject of this Section 5 from being exempt development, under that Article of the regulations.


RECOMMENDATION

I recommend that the applicants agent, John Carrol Archityper Architects, 12 An Crois, Allenwood, Kildare, W91 X0Y5, be informed that having regard to;

- Limitation 2(a) of Class 1 of Part 1, Schedule 2 (Exempted Development - General) of the Planning and Development Regulations, 2001 (as amended).
- The plans and particulars submitted with the referral request,

It is considered that the proposed works constitute **DEVELOPMENT** and do **NOT** constitute **EXEMPTED DEVELOPMENT**.


Administrative Officer


Executive Planner

Dún Laoghaire-Rathdown County Council

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ORDER

The issuing of a Declaration pursuant to Section 5 of the Planning & Development Act 2000, (as amended) to John Carrol Archityper Architects, 12 An Crois, Allenwood, Kildare, W91 X0Y5, that having regard to;

- Limitation 2(a) of Class 1 of Part 1, Schedule 2 (Exempted Development - General) of the Planning and Development Regulations, 2001 (as amended).
- The plans and particulars submitted with the referral request,

It is considered that the proposed works constitute **DEVELOPMENT** and do **NOT** constitute **EXEMPTED DEVELOPMENT**, is hereby approved.

Signed:


Approved Officer

Dated:

10/2/25

Thereunto empowered by order of Príomhfheidhmeannach, Comhairle Contae Dhún Laoghaire-Ráth An Dúin, Order No. 2513, dated 24/7/23, delegating to me all his powers, functions and duties in relation to the County Council of Dún Laoghaire-Rathdown in respect of this matter.