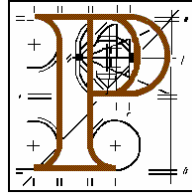


An Bord Pleanála



INSPECTOR'S REPORT

RL 2506

REFERRAL

Whether a single storey, rear extension with a projection of 1.95 metres to the side, beyond the gable of the house is or is not exempted development.

LOCATION

38 Ragoon Road, Shantalla, Galway.

REFERRING PARTY

Sorcha Volnik

OWNER/OCCUPIER

Sorcha Volnik

Inspector:

Jane Dennehy.

BACKGROUND

The site is that of a two storey, four bedroom semi detached house with front and rear gardens. It is within a row of twelve similar dwellings in a residential estate which were constructed during the 1970s. The house has a side passage with a width of 3.45 metres adjoining the west gable.

A single storey, flat roofed extension (with a stated floor area of 24.57 square metres), finished in timber on the rear elevations towards the south and painted render on the side and north as that of the dwelling and a shed have been constructed during 2007 (following removal of a garage according to the Referrer's submission). The shed is a timber structure with double entrance gate located in the south east corner of the site and timber decking is also laid out in the front garden, access to which is from double patio doors in the rear elevation.

PLANNING HISTORY.

According to the details available on file, the site has no record of a planning history. However the planning authority has commenced enforcement proceedings in respect of the development subject of the Referral.

A Declaration was requested from Galway City Council on 13th December, 2007 by William Dixon on behalf of Sorcha Wolnik on 30th January, 2008 in which it is claimed that the extension is exempt development having regard to various provisions within the Planning and Development Act, 2000 and Planning and Development Regulations, 2001.

A Letter was issued by the planning authority to the Referrer's agent on 21st January, 2008 in which it is stated that it is the opinion of the planning authority that the development involves the erection of an extension to the side of the dwelling and is not exempted development, therefore requiring planning permission. The planning officer states that as is no provision within legislation that would confirm that an extensions to the rear that protrude to the side is exempt development the subject extension is not exempt development.

REFERRAL.

A Referral of the Declaration to the Board for Review was made by William Dixon on behalf of Sorcha Wolnik on, 30th January, 2008. The Referral consists of a written submission supplemented by photographs, a set of drawings and copies of the reports and orders for the Reference case and two Referral cases previously referred to in the Declaration request. (RF 1018, RL 2107, and RL 2231 refer). The case made on the basis of the interpretation of the Planning and Development Act, 2000 and the Planning and Development Regulations 2001,

The single storey extension, a description of which is included and which is shown on an attached drawing, is exempt development is fully in accordance with Class 1 (Class of Part 1, Schedule 2 of the Planning and Development Regulations, 2001), does not come within any of the de-exemptions set out in the subsections of Article 9 thereof, and comes within the meaning of Sections 4 (1) (h), 4 (1) (j) and 4 (3) (b) of the Planning and Development Act, 2000 (as amended), all of which are fully quoted and discussed in the submission. It is further noted that the remaining rear garden, exclusive of the shed is in excessive of twenty five metres in area, the height of the extension does not exceed that of the eaves of the rear wall, has no floors above ground floor level, has no roof garden and all openings are in excess of one metre from the boundaries.

In support of the case made in the written request, reference has been made to three previous referral cases in respect of which the Board determined that the subject development is exempted development in two instances, and in third case, contrary to the recommendation of the inspector, determined that an extension “not entirely to the rear”, was not an exempted development. (RF 1018, RL 2107, and RL 2231 refer).

The inspectors in the reports on the two Referral cases referred to the earlier reference case in concluding that the projections to the side constituted exempt development. They considered that it is not the intention of the legislation that side extensions be exempted from a requirement for planning permission. However as the footprint of the subject extensions, which include a projection to the side, is to the rear of the rear building line they could be deemed to come within the description of “rear”. Other aspects such as visibility from the front and separation distances from boundaries are also discussed by the inspectors in these reports.

In concluding remarks in the description reference is made to the requirement for the Board to maintain a record of Referrals with the main reasons and considerations for its decisions, the forwarding of a copy of same to the planning authorities at least once a year and, that the record be considered before making declarations, in accordance with the provisions of Sections 5 (6) (a), 5 (6) (c) and 5 (7) of the Act.

THE PLANNING AUTHORITY’S CASE.

There is no submission from the planning authority on file. The report prepared by the planning officer, prior to the issue of the Declaration by the planning authority is available on file. The planning officer had formed the opinion that by virtue of a projection to the side of the existing building, the extension is not exempt development.

THE QUESTION.

I consider that the question before the Board can be formulated as follows:

Whether a single storey extension a projection of 1.95 metres to the side, beyond the gable of the house, is or is not exempted development.

Previous Board Decisions on Referral Questions

I have reviewed the Board's Decisions on previous Section 5 Referrals and note that although there have been several Referrals relating to extensions to dwellings most are not of direct relevance with regard to the establishment of useful precedent. The following cases are referred to in the submissions made on behalf of the Referrer. RF 1018, RL 2107, and RL 2231: However the following case is the most relevant: Under RL 2231, referred to in the Referral submission, the Board determined, contrary to the planning authority and the recommendation of the inspector, that a single storey extension to the rear but with a 1.1 metre projection beyond the line of the gable wall is exempted development.

EVALUATION.

The parties are not in dispute over whether the development constitutes development according to section 3 (1) of the Planning and Development Act, 2000 in which 'development' means “ the carrying out of 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) (a) – (l) provides for exempted developments for the purposes of the Act.

The parties also appear to be in agreement among the parties that the development is not de-exempted with regard to Section 4.(1) (l) restricting use of any structure within the curtilage of a dwelling house for purposes incidental the enjoyment of the house.

I disagree with the view expressed in the Referral that the development is not de-exempted with regard to Section 4 (1) (h) in consideration of whether the development has a material affect on the external appearance of the structure so as to render it inconsistent with the character of the structure or neighbouring structures. I have noted that when viewed from the public road, the projection forward of the gable wall is visible but that where it is visible it is similar in external finish to that of the dwelling. However, the extension in entirety is of a contemporary design with new, mainly timber, finishes and materials on the side and rear elevations. These contrasting characteristics, irrespective of whether it is or is not acceptable from a planning perspective, render the development as materially different with a consequent affect on the character of the structure and neighbouring structures. In this regard, it can be argued that the development is not exempt development having regard to the provisions of section 4 (1) (h).

I consider it appropriate to consider the development having regard to the provisions of the Planning and Development Regulations 2001-2007 I have noted that the provisions of Article 9 of the Regulations regarding Restrictions of Exemptions are not of direct relevance to the question in this instance. The primary and central to the Question is as to whether the development comes within the meaning of “an extension to the rear of the house” in the description in Class 1, Part 1 of Schedule Two. If the

development satisfies this description in Class One consideration of the relevant Conditions and Limitations in Column 2 and also referred to in the Referral is necessary.

CLASS 1 provides for exemption for development in the curtilage of a house that is in accordance with the following description:

“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.”

As stated in the earlier sections of this report there are multiple previous decisions of the Board on Questions as to whether the development of extensions to the rear of a house is or is not exempted development including the three to which the attention of the Board is drawn in the Referral.

The view can be taken that the “rear of the house” is confined to the area beyond the rear wall of the main house, excluding any additions by way of extensions, or structures ancillary to the residential use of the house that project beyond the side/gable wall. As such, the extension would not fall within the definition of Class One in that an extension must extend from and beyond the rear of the house if it is to be in accordance with the description within Class One. On the basis of the foregoing, it can be concluded that there is no provision for exemptions for development to the side, even if the projection is at the rear of the house such as in the case of the development subject of the Question and therefore that the development is development and is not exempted development.

Clearly in the case of the small projection to the side at Gledswood (under RL 2231) in which the Board, determined, contrary to the planning authority and the view of the inspector according to his report, that the development was exempt development, the spirit of the legislation could have been taken into account. The extension subject of the current question involves a bigger projection.

The Board may wish to bear in mind the spirit in providing for exemptions in the legislative framework is to remove the requirement for planning permission for modest development that is unlikely to have any adverse consequence for proper planning and sustainable development. On the other hand, the view can be taken that the spirit of the provision for exemption should not be taken into consideration in interpreting the legislation.

Taking into account, (with reference to section 4 (1) (h) of the Act), the contemporary design, which is in contrast with that of the house and that of the neighbouring structures, although not in views from the front, and the larger projection to the side involved, compared to that subject of the Question in relation to the development at Gledswood Drive (RL 2331 refers), I would tend to take the view the subject development does not constitute exempt development.

I am satisfied that the development is unaffected by any of the conditions and limitations set out under Column 2 for Class 1 of the Planning and Development Regulations, 2001 – 2007 and in this regard I draw attention to Condition and Limitation Nos 4 (a), (c) 5, 6 (a) and 7 which are directly quoted below:

1. (a) Where the house has not been extended previously, the floor area of any such extension shall not exceed 40 square metres....

4 (a) Where the rear wall of the house does not include a gable, the height of the walls of any such extension shall not exceed the height of the rear wall of the house.

4(c) The height of the highest part of the roof of any such extension shall not exceed, in the case of a flat roofed extension, the height of the eaves or parapet as may be appropriate ... shall not exceed the height of the highest part of the roof or the dwelling.

5. The construction or erection of any such extension shall not reduce the area of private open space, reserved exclusively for the use of the occupants of the house, to the rear of the house to less than 25 square metres.

6 (a) Any window proposed at ground level in any such extension shall not be less than 1 metre from the boundary it faces.

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

It can be concluded therefore that the development is not exempted development having regard to the provisions of section 4 (1) (h) and to Class 1, Part 1 Schedule 2 of the Planning and Development Regulations, 2001-2007. A draft order is set out overleaf.

WHEREAS a question has arisen as to whether a single storey extension with a projection of 1.95 metres to the side, beyond the gable of the house, is or is not exempted development.

AND WHEREAS Sorcha Wolnik, care of, William Doran requested a declaration on the said question from Galway City Council.

AND WHEREAS Galway City Council issued a Declaration in which it is stated that the said development is not exempted development 21st January, 2008.

AND WHEREAS the said Sorcha Wolnick referred the question for decision to An Bord Pleanála on the 30th January, 2008:

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

- (a) 3 and 4 (1) (h) of the Planning and Development Act, 2000,
- (b) Articles 6 and 9 of the Planning and Development Regulations, 2001, and,
- (c) Class 1 of Part 1 of Schedule 2 to the said Regulations and the conditions and limitations to this Class.

AND WHEREAS An Bord Pleanála has concluded that -

- (a) The proposed extension would constitute works which would come within the scope of Section 3(1) of the Planning and Development Act, 2000,
- (b) The proposed extension would materially affect the character of the house or the neighbouring houses, having regard to Section 4 (1) (h) of the said Act by virtue of contrasting contemporary form and design.
- (c) The extension would not come within the scope of the exemption provided in Class 1 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, in that in addition to being positioned to the rear of the dwelling and extending to the rear from it, the development also includes a projection to the side beyond the gable of the house of 1.95 metres.

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 said construction of a single storey extension with a projection of 1.95 metres to the side beyond the gable of the house at 38 Ragoon Road, Shantalla, Galway, is not exempted development.

JANE DENNEHY
Senior Planning Inspector
27th May, 2008.