



An
Bord
Pleanála

Inspector's Report RL25M.RL3491

Question

Whether an extension to the rear of an existing house is or is not development or is or is not exempted development

Location

Annascannon, Thomastown, Killucan, Co. Westmeath

Declaration

Planning Authority

Westmeath County Council

Planning Authority Reg. Ref.

S5-2-16

Applicant for Declaration

Tom Keys

Planning Authority Decision

Is development and is not exempted development

Referral

Referred by

Tom Keys

Owner/ Occupier

Tom Keys

Date of Site Inspection

26th October 2016

Inspector

Niall Haverty

1.0 Site Location and Description

- 1.1. The subject house is located c. 3km southeast of Killucan, Co. Westmeath. The stated address is Annascannon, Thomastown, but it appears to be located in the townland of Derryboy. The house is part of a rural cluster, with houses located to the north and west, and the Dublin – Sligo railway line is located immediately to the south of the site, with a level crossing on the road to the southwest. A quarry is located to the east of the site.
- 1.2. The house comprises a detached single storey cottage style structure with a pitched roof and projecting porch-type area to the front elevation, which features a window rather than a door. The house has been extended and the entrance is located in a projecting element on the northern side elevation. The front elevation and part of the northern elevation are brick-clad, while the remainder of the structure has a render finish.

2.0 The Question

- 2.1. The request to the Planning Authority was not stated in the form of a question. The description of the proposed development was as follows:

“Extension to existing dwelling. Extension to rear of existing dwelling. Total floor area = 38.4 sq m.”

- 2.2. The referrer made the following points in relation to the provisions of Class 1 of Schedule 2, Part 1 of the Planning and Development Regulations 2001 as amended:
 - Extension does not exceed 40 sq m.
 - Dwelling is single storey.
 - Area 1A and 2A together are less than 40 sq m.
 - Height of walls to the extension have been kept the same as the height of the existing dwelling.
 - Rear wall does not include a gable.

- There is no flat roof.
- Extension has not reduced the private open space to the rear of the extension to less than 25 sq m.
- Ground level windows are not less than 1m from boundary.
- Roof of extension cannot be used as a balcony or roof garden.

3.0 Planning Authority Declaration

3.1. Planning Authority Decision

- 3.1.1. The Planning Authority's declaration states that the extension to the rear of the existing dwelling constitutes development which is not exempted development
- 3.1.2. The associated Schedule attached to the decision states that construction of an extension to the rear of the existing dwelling falls outside the scope of the Class 1, Schedule 2, Part 1 of the Planning and Development Regulations 2001, as amended, and constitutes development.

3.2. Planning Reports

- 3.2.1. The Planning Officer's Report can be summarised as follows:
- Dwelling has been extensively rebuilt, extended, reroofed and constructed in red brick. (The report included comparison photographs and Google Street View images).
 - Proposal would not give rise to significant adverse direct, indirect or secondary impacts on the integrity of any nearby Natura 2000 sites.
 - Extension extends to both the rear and side of the dwelling and falls outside the scope of Class 1 of Schedule 2, Part 1 of the Regulations.

- Pitched roof has been constructed over the front projection which represents material change to external appearance of roofscape which is not consistent with section 4(1)(h) of the Planning and Development Act 2000 as amended.
- Change from plaster to red brick would also constitute a material change to the external appearance and would require planning permission.
- Works constitute development which is not exempted development.

4.0 Planning History

- 4.1. **448/87:** Planning permission granted to Irish Rail in 1987 for extension to house to provide bathroom facilities and septic tank. This permission does not appear to have been implemented and has expired.
- 4.2. **Enforcement File Ref. 15058:** Warning letter issued in respect of unspecified unauthorised development that is being or may be carried out.

5.0 The Referral

5.1. Referrer's Case

5.1.1. The case submitted by the referrer can be summarised as follows:

- Renovating internally is exempted development.
- Extension to rear is less than 40 sq m and is classified as exempted development.

5.1.2. Having reviewed the facts of the case, I consider that the question can be formulated as follows:

- Whether an extension to the rear of an existing house is or is not development or is or is not exempted development?

5.2. Planning Authority's Response

5.2.1. No response to the grounds of the referral was received from the Planning Authority.

6.0 Statutory Provisions

6.1. Planning and Development Act 2000, as amended

6.1.1. Section 2(1)

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

(a) where the context so admits, includes the land on, in or under which the structure is situate...
- “use”, in relation to land, does not include the use of land by the carrying out of any works thereon;
- “works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.

6.1.2. Section 3(1)

"Development" means, except where the context otherwise requires, the carrying out of any works on, in, or under land or the making of any material change in the use of any such structures or other land.

6.1.3. Section 4(1)

The following shall be exempted developments for the purposes of this Act –

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

6.2. **Planning and Development Regulations 2001, as amended**

6.2.1. Article 6(1)

Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempt 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.

6.2.2. Schedule 2, Part 1 - Exempted Development — General

Description of Development	Conditions & Limitations
CLASS 1 The extension of a house, by the construction or erection of an extension (including a conservatory) to the rear of the house or by the 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.	1. (a) Where the house has been extended previously, the floor area of any such extension shall not exceed 40 sq m. (b) Subject to paragraph (a), where the house is terraced or semi-detached, the floor area of any extension above ground level shall not exceed 12 sq m. (c) Subject to paragraph (a), where the

house is detached, the floor area of any extension above ground level shall not exceed 20 sq m.

2. (a) Where the house has been extended previously, the floor area of any such extension, taken together with the floor area of any previous extension or extensions constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 40 sq m.
- (b) Subject to paragraph (a), where the house is terraced or semi-detached and has been extended previously, the floor area of any extension above ground level taken together with the floor area of any previous extension or extensions above ground level constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 12 sq m.
- (c) Subject to paragraph (a), where the house is detached and has been extended previously, the floor area of any extension above ground level, taken together with the floor area of any previous extension or extensions above ground level constructed or erected after 1 October 1964, including those for which planning permission has been obtained,

shall not exceed 20 sq m.

3. Any above ground floor extension shall be a distance of not less than 2m from any party boundary.
 - (a) Where the rear wall of the house does not
4. include a gable, the height of the walls of any such extension shall not exceed the height of the rear wall of the house.
 - (b) Where the rear wall of the house includes a gable, the height of the walls of any such extension shall not exceed the height of the side walls of the house.
 - (c) The height of the highest part of the roof of any such extension shall not exceed, in the case of a flat roofed extension, the height of the eaves or parapet, as may be appropriate, or, in any other case, shall not exceed the height of the highest part of the roof of the dwelling.

The construction or erection of any such
5. extension to the rear of the house shall not reduce the area of private open space, reserved exclusively for the use of occupants of the house, to the rear of the house to less than 25 sq m.
 - (a) Any window proposed at ground level in
6. any such extension shall not be less than 1m from the boundary it faces.
 - (b) Any window proposed above ground level in any such extension shall not be less

	<p>than 11m from the boundary it faces.</p> <p>(c) Where the house is detached and the floor area of the extension above ground level exceeds 12 sqm any window proposed at above ground level shall not be less than 11m from the boundary it faces.</p> <p>The roof of any extension shall not be used as a balcony or roof garden.</p> <p>7.</p>
--	---

7.0 Assessment

7.1. Is or is not development

- 7.1.1. The first matter relates to whether or not the extension comprises development. Having regard to sections 2 and 3 of the Planning and Development Act 2000, I consider that the construction of an extension to a dwelling constitutes 'development' within the meaning of the Act, being the carrying on of an act of construction (i.e. 'works') on land. I note that this is not disputed by the parties.

7.2. Is or is not exempted development

- 7.2.1. Development can be exempted from the requirement for planning permission by either section 4 of the Planning and Development Act, 2000 (the Act), or article 6 of the Planning and Development Regulations 2001 (the Regulations).
- 7.2.2. Firstly, with regard to section 4(1)(h) of the Act, which I consider to be the only subsection of section 4 with any potential relevance to this referral, I note that the provision relates to works for the maintenance, improvement or other alteration of a structure 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 neighbouring structures.

- 7.2.3. The development in this instance relates to the construction of a new extension (i.e. a new structure) rather than to the maintenance, improvement or alteration of the existing structure. The extension is substantial in size relative to the scale of what was a modestly sized railway cottage, has almost doubled its floor area and has significantly changed its depth and roof profile. I consider that the changes materially affect the external appearance of the structure so as to render its appearance inconsistent with its character and on that basis I am satisfied that the development does not come within the scope of section 4(1)(h).
- 7.2.4. Secondly, with regard to article 6 of the Regulations, it states that development of a class specified in Part 1 of Schedule 2 of the Regulations shall be exempt development if such development complies with the applicable conditions and limitations for that class and does not fall within any of the restrictions on exempted development set out in article 9 of the Regulations.
- 7.2.5. The relevant class in this instance is Class 1, which relates to the extension of a house by “*the construction or erection of an extension 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*” [Emphasis added]. Of particular importance to this referral is that the exemption can only relate to the construction of a new extension where said extension is located to the rear of the house. Only the conversion of an existing structure to the side of the house can be exempted development.
- 7.2.6. The Regulations do not provide a definition of what constitutes the ‘rear of the house’ or any reference to the location or orientation of extensions relative to the public road. In this instance, having conducted a site inspection and having had regard to

the drawings submitted and the Google Street View image contained in the Planning Officer's Report which pre-dates the construction of the extension, it is clear that the house addresses the public road, with its front (west) elevation parallel to the road. The house has been extended to the side (north) and rear (east), and the entrance door has been moved from the protruding porch on the front elevation to the side extension, where it still faces the road (i.e. west). On that basis I am satisfied that the road-facing (west) elevation is the front elevation of the house.

- 7.2.7. The submitted drawings outline part of the hatched extension area as '1A' and part of it as '2A'. I note that 1A forms the part of the extension to the rear of what is stated to be the existing structure, and 2A forms the area to the side, where the entrance is located. The purpose of these designations is not clarified in the referral but it appears that there is no functional or spatial separation between these two areas and there is no evidence that they were constructed at different times. Having regard to the Google Street View image contained in the Planner's Report, it is clear that both areas are of relatively recent construction.
- 7.2.8. Since the extension in question is not solely located behind the rear building line of the existing house, but instead wraps around to it to the side, projecting by 1.94m from the gable wall, the extension cannot be classified to being 'to the rear of the house'. I therefore consider that the exemption under Class 1 cannot apply in this instance. In support of this position, I refer the Board to referral PL61.RL2506, where the Board determined that an extension to the rear of an existing house that projected to the side, beyond the gable, by 1.95m was not exempted development.
- 7.2.9. Since the Class 1 exemption cannot be availed of in this instance, the various conditions and limitations set out for that class are not relevant.
- 7.2.10. In conclusion, therefore, I consider that the extension to the existing house constitutes development and is not exempted development.

7.3. **Appropriate Assessment**

- 7.3.1. Notwithstanding the conclusion that the development in question is not exempted development and as such the restriction in respect of Appropriate Assessment is not relevant, I have considered the potential for significant effects on European sites in the interests of completeness.
- 7.3.2. Having regard to the nature and scale of the proposed development which relates to an extension to an existing house which is not within or in close proximity to any European sites, no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 **Recommendation**

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

WHEREAS a question has arisen as to whether an extension to the rear of an existing house is or is not development or is or is not exempted development:

AND WHEREAS Tom Keys of Annascannon, Thomastown, Killucan, Co. Westmeath requested a declaration on this question from Westmeath County Council and the Council issued a declaration on the 10th day of June, 2016 stating that the matter was development and was not exempted development:

AND WHEREAS Tom Keys referred this declaration for review to An Bord Pleanála on the 22nd day of June, 2016:

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

- (a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended,

(b) Article 6(1) and article 9(1) of the Planning and Development Regulations, 2001, as amended,

(c) Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,

(d) The planning history of the site:

AND WHEREAS An Bord Pleanála has concluded that-

(a) the construction of an extension to an existing dwelling involves the carrying out of works, as defined under section 3(1) of the Planning and Development Act, 2000, and is, therefore, development;

(b) the development that has taken place does not come within the scope of section 4(1)(h) of the Planning and Development Act 2000, as it does not comprise works for the maintenance, improvement or other alteration of a structure; and

(c) the development that has taken place does not come within the scope of Class 1 of Part 1 of Schedule 2 to the Planning and Development Regulations 2001, as it is positioned partly to the side, projecting beyond the side wall of the house by a distance of 1.94 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 extension to the existing house at Annascannon, Thomastown, Killucan, Co. Westmeath is development and is not exempted development.

Niall Haverty

Planning Inspector

7th December 2016