



An  
Bord  
Pleanála

**Board Direction**  
**ABP-303783-19**

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The submissions on this file and the Inspector's report were considered at a Board meeting held on June 19<sup>th</sup> 2019.

The Board decided, as set out in the following Order, that the refurbishment of an existing dwelling, the construction of a single storey extension and the conversion of existing attic to provide new accommodation incorporating Velux type rooflights, at Tipperkevin, Naas, Co. Kildare is development and is not exempted development.

Board Order as follows:-

**WHEREAS** a question has arisen as to whether the refurbishment of an existing dwelling, the construction of a single storey extension and the conversion of existing attic to provide new accommodation incorporating Velux type rooflights, at Tipperkevin, Naas, Co. Kildare is or is not development or is or is not exempted development.

**AND WHEREAS** Aisling Hubbard and Ivan Grace, c/o Kennedy Woods Architecture, the Old Stables, 4 Dartmouth Place, Ranelagh, Dublin 6, requested a declaration on this question from Kildare County Council.

**AND WHEREAS** Kildare County Council did not make a determination, but referred the question to An Bord Pleanála for determination, on the 21<sup>st</sup> day of February 2019.

**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) Articles 6(1) and 9(1) of the Planning and Development Regulations 2001, as amended,
- (c) Class 1 of Part 1 of the Second Schedule to the Planning and Development Regulations 2001, as amended,
- (d) The planning history of the site, and
- (e) Relevant case law, including the Supreme Court decision in Cronin (Readymix) Ltd - v - An Bord Pleanála and Others [2017] IESC 36.

**AND WHEREAS** An Bord Pleanála has concluded that:

- (a) The refurbishment of the existing dwelling, the construction of an extension and the conversion of the attic to provide accommodation would all involve the carrying out of works, and would therefore constitute development;
- (b) The internal refurbishment of the dwelling, and the provision of the Velux type rooflights would come within the scope of Section 4 (i)(h) of the Planning and Development Act, 2000, as amended, and would therefore be exempted development;

- (c) The conversion of the attic to provide accommodation would not come within the scope of Section 4 (1)(h) of the Planning and Development Act, 2000, as amended, as it would not consist of the carrying out of works for the maintenance, improvement or other alteration of the structure, but would rather involve the extension of the residential floorspace of the existing dwelling;
- (d) The construction of the proposed extension would generally come within the scope of the exemption provided for under class 1 of Part 1 of the Second Schedule to the Planning and Development Regulations, 2001, as amended, but would not be exempted development because it would not comply with condition and limitation number 2 (a) to which this Class is subject, in that the combined areas of the attic conversion and of the proposed extension would exceed the limit of 40 square metres;
- (e) Accordingly, as all of the works are inter-related, the development that is the subject of the question would not be exempted development.

**NOW THEREFORE** An Bord Pleanála, in exercise of the powers conferred on it by Section 5 (4) of the Planning and Development Act, 2000, as amended, hereby decides that the refurbishment of an existing dwelling, the construction of a single storey extension and the conversion of existing attic to provide new accommodation incorporating Velux type rooflights, at Tipperkevin, Naas, Co. Kildare is development and is not exempted development.

In not accepting the recommendation of the Inspector that the development would be exempted development, the Board had regard to case law as to the correct meaning of Section 4 (1)(h) of the Planning and Development Act, 2000, as amended, and did not accept that the attic conversion came within the scope of the exemption afforded by this legislative provision. Furthermore, the Board had regard to previous referral

decisions made by it, which determined that the limit of 40 square metres in Condition and Limitation 2 (a) of Class 1 applied to any floorspace that was not part of the original floor area of the house, including the floor area of an attic that had been converted after the construction of the original house (for example referral 06D.RL2477).

**Board Member**

**Date:** 20<sup>th</sup> June 2019

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Philip Jones