



An
Bord
Pleanála

Board Direction
ABP-316325-23

The submissions on this file and the Inspector's report were considered at a Board meeting held on 16/05/2024.

The Board decided, as set out in the following Order, that

Board Order as follows:-

WHEREAS a question has arisen as to whether or not the new gable window has been constructed in accordance with the permitted grant of planning permission, and if not then secondly, if the window as constructed constitutes development, and thirdly, if development, then can this be considered as exempted development or not at no. 16 The Park, Wolstan's Abbey, Celbridge, Co. Kildare:

AND WHEREAS Robert McDonald of no. 15 The Park, Wolstan's Abbey Celbridge, Co. Kildare requested a declaration on this question from Kildare County Council and the Council issued a declaration on the 13th day of March, 2023 stating that the matter was development and was exempted development:

AND WHEREAS Robert McDonald referred this declaration for review to An Bord Pleanála on the 11th day of April, 2023:

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

- (a) Section 2(1) of the Planning and Development Act, 2000, as amended,
- (b) Section 3(1) of the Planning and Development Act, 2000,
- (c) Section 4(1)(h) of the Planning and Development Act, 2000, as amended,
- (d) Article 6(1) and Article 9(1)(a)(iii) and (viiB) of the Planning and Development Regulations, 2001, as amended,
- (e) Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (f) the planning history of the site,

AND WHEREAS An Bord Pleanála has concluded that:

- (a) the referral relates to changes made to the existing gable window on the second floor of the southeast facing elevation of the existing dwelling during the course of construction, which comprise works, as defined under Section 2(1) of the Planning and Development Act 2000 (as amended) and is therefore development pursuant to Section 3(1) of the Planning and Development Act 2000 (as amended);
- (b) the development carried out to the existing gable window is constructed pursuant to the provisions of condition no. 3 of P.A. Ref. 18/1356.

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 existing gable window on the second floor of the southeast facing elevation of the existing dwelling is development and is permitted development.

Note: In coming to this conclusion the Board had regard to the wording of condition #3 or P.A. Ref. 18/1356, and did not agree with the referrer's position that the words 'permanently fixed' require that the window be unopenable. Rather the Board considered that this clause relates to the means of rendering the window opaque. The Board did not agree with the inspector's position that the window was not 'obscured glazing' and noted photographic evidence on file that demonstrates that glazing to be obscured. The Board considered that a film fixed to the window by means of permanent adhesive would satisfy this aspect of the condition as written. In relation to the size of the window, the Board had regard to the report on file dated 22nd September 2020 from Whyte Planning Consultants and was satisfied that the window was of the minimum acceptable size.

Board Member:  **Date:** 16/05/2024
Stephen Brophy