



An
Bord
Pleanála

Board Order
ABP-303783-19

Planning and Development Acts 2000 to 2018

Planning Authority: Kildare County Council.

Planning Register Reference Number: ED/00694.

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, County Kildare is or is not development or is or is not exempted development:

AND WHEREAS this question was referred to An Bord Pleanála by Kildare County Council on the 21st 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 Schedule 2 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 (1)(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 Schedule 2 of 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, and
- (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 2000 Act, 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, County 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 register reference number 06D.RL.2477).

Matters Considered

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

Philip Jones
Member of An Bord Pleanála
duly authorised to authenticate
the seal of the Board.

Dated this day of 2019.