



An
Bord
Pleanála

Inspector's Report ABP-300176-17

Question

Whether the alteration of a roof space for habitable accommodation is or not for development or is or not exempt development.

Location

Knackadeen, Clifden, Co. Kilkenny

Declaration

Planning Authority

Kilkenny County Council

Planning Authority Reg. Ref.

DEC458

Applicant for Declaration

Douglas Hamilton.

Planning Authority Decision

Is Development and is not Exempted development

Referral

Referred by

Douglas Hamilton

Owner/ Occupier

Douglas Hamilton

Observer(s)

None.

Date of Site Inspection

7th March, 2018

Inspector

Stephen Kay

1.0 Site Location and Description

- 1.1. The site which is the subject of this referral is located in a rural area c. 10km to the east of Kilkenny City. The site is currently occupied by a single storey detached dwelling that has 4 no. small rooflights to the rear elevation and circular windows to both gable ends at attic level.
- 1.2. The site is located such that there is a significant fall from south to north across the site. The change in site levels means that there is a significant extent of blank frontage below the floor level. To the rear of the dwelling a large split level decking area has been constructed.
- 1.3. The site is served by an on site septic tank and percolation area that is located at the north east corner of the site. Based on the original plans for the dwelling, water supply is via a bored well located to the west of the dwelling.
- 1.4. The site is located such that there are no properties located in close proximity to the site boundaries and there are no other dwellings located on the sites immediately adjoining the site the subject of this referral.

2.0 The Question

- 2.1. The question posed by the referrer is as follows:

'does the alteration of roof space of a domestic dwelling, the structure of which allows for future habitable accommodation of that space, without changes to any external elevation(s) of the original permitted structure, constitute a development and if so, is it exempted development?'

It is proposed that the question would be reworded as follows for clarity:

'Is the conversion of the attic of a completed domestic dwelling to habitable accommodation development and, if so, is it exempted development?'

3.0 Planning Authority Declaration

3.1. Declaration

The declaration issued by the Planning Authority dated 18th October, 2017 states that the alteration of a roof space of a domestic dwelling, the structure of which allows for habitable accommodation of that space, without changes to any external elevation(s) of the original permitted structure is development and is not exempted development.

3.2. Planning Authority Reports

3.2.1. Planning Report

The report of the Planning Officer notes the case made by the referrer and the planning history of the site. The report quotes sections 2(1) and 3(1) of the Act relating to '*works*' and '*development*' and states that it is considered that the change of the attic from an attic to residential use is a material change of use of the first floor of the dwelling and that development has therefore taken place.

The report considered that s.4(1)(h) of the Act applies to the works undertaken as there is no impact or change on the external appearance of the dwelling. On the basis that a material change of use has occurred, however, it is considered that the provisions of s.4(1)(h) are not applicable.

Reference is made to Class 1 of Part 1 of the Second Schedule of the Act regarding extensions to a house, however it is not considered that the works undertaken do not fall within this class.

The basis for the recommendation of the Planning Officer and the subsequent declaration of the Planning Authority that the development is not exempt is that a material change of use has occurred.

4.0 Planning History

The following relates to the site which is the subject of the referral:

- Kilkenny County Council Ref. P00/427 – Permission granted by the Planning Authority for the construction of a single storey three bedroom dwelling on the site. The plans submitted with this application indicated the roof space as an attic, (see Section A-A on Drg. Layout Plans and Section). Permission was granted subject to 8 no. conditions none of which make specific reference to the attic space or prohibit the future change of use of the attic space to habitable accommodation.

The following An Bord Pleanála Reference cases have been identified:

- RL3324 – Question as to whether the conversion of an attic and the addition of 4 no. roof lights is or is not development and is or is not exempted development. Held by the Board that the works were development and were not exempted development on the basis that attic conversion and roof lights were undertaken at the time of the construction of the house, were not indicated on the permitted plans and that the works did not therefore come within the scope of s.4(1)(h) of the Act.
- RL2520 – whether the installation of 4 no. rooflights to the rear of an overlooking a house is or is not exempted development. Held by the Board that the installation of the rooflights constituted development but that this did not materially affect the external appearance of the structure and so was exempted development. Also held that the development did not contravene a condition attached to the permission which required that the house be single storey.
- RL2075 – Whether the conversion of an attic in a house is or is not exempted development. Held by the Board that the attic conversion was not exempted development as it was constructed concurrently with the house and that exempted development provisions can only apply following completion of a development.

I have not been able to source a precedent case that addresses the specific issue raised in this referral namely the conversion of an attic space and whether this constitutes a change of use.

5.0 Policy Context

5.1. Development Plan

The site is located in a rural area outside of any identified settlement.

5.2. Natural Heritage Designations

The closest European sites to the subject site is the Barrow and River Nore SAC which is located approximately 10 km to the east and to the west of the subject site.

6.0 The Referral

6.1. Referrer's Case

The following is a summary of the main points raised in the referral submitted to the Board for determination:

- That the dwelling permitted on the site was substantially completed in April, 2004. The works completed in 2004 included a living / dining room, three bedrooms, bathroom and shower room. The completed development also included 4 no. roof lights in the rear roof slope and two circular windows, in in each gable end at first floor level.
- The original plans and construction of the dwelling allowed for the future change of the attic area to habitable accommodation. The ceiling height was constructed at 2.413 metres as indicated on the plans and the attic space was left unfinished by the builders.
- That the works to the attic areas to construct the additional two bedrooms and shower room were undertaken in circa 2009. One of the bedrooms on the ground floor was re designed as a study (6 sq. metres net floor area).

- No changes to the external elevations were undertaken when the works to the first floor were undertaken.
- Noted that none of the 8 no. conditions attached to the planning permission prevent the attic from being converted to habitable accommodation.
- There are no residential properties in close proximity to the site on either side.
- To ensure compliance with the building regulations, one of the existing roof lights in each attic bedroom will have to be changed to be top hung and the size increased by c.25 percent.
- Submitted that the development is exempt under s.4(1)(h) of the Planning and development act as there have been no external works undertaken.
- The attic space was an integral part of the original structure permitted and constructed in 2004.
- The attic does not come within the meaning of extension set out in Class 1 of Part 1 of the Second Schedule of the Regulations.
- That the contention that a material change of use has occurred as stated by the Planning Authority is not convincing since the attic space would come into residential use and be ancillary to the main use of the dwelling and would have little or no impact on residential amenity.

6.2. **Planning Authority Response**

The Planning Authority have responded to state that they do not have any further comment to make on the case.

7.0 **Statutory Provisions**

7.1. **Planning and Development Act, 2000**

Section 2(1) of the Act

“development” has the meaning assigned to it by section 3, and “develop” shall be construed accordingly;

“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.

3.—(1) *In this Act, “development” means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land.*

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 of neighbouring structures;

7.2. **Planning and Development Regulations, 2001**

Art. 10(1) Development which consists of a change of use within any one of the classes of use specified in Part 4 of Schedule 2, shall be exempted development for the purposes of the Act, provided that the development, if carried out would not—

(a) involve the carrying out of any works other than works which are exempted development,

(b) contravene a condition attached to a permission under the Act,

(c) be inconsistent with any use specified or included in such a permission, or

(d) be a development where the existing use is an unauthorised use, save where such change of use consists of the resumption of a use which is not unauthorised and which has not been abandoned.

(2)(a) A use which is ordinarily incidental to any use specified in Part 4 of Schedule 2 is not excluded from that use as an incident thereto merely by reason of its being specified in the said Part of the said Schedule as a separate use.

Class 1 of Part 1 of the Second Schedule states that (subject to a number of conditions and limitations) the following shall be exempted development:

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.

8.0 Assessment

8.1. Is or is not development

- 8.1.1. The changes undertaken to the dwelling the subject of this referral comprise the addition of a staircase to the attic level and the addition of two bedrooms and an en suite bathroom at this level. At the time of inspection I gained access to the house and can confirm that the interior layout is as indicated on the plans submitted with the referral.
- 8.1.2. The changes undertaken comprise alteration and construction activities and so in my opinion comprise works. It is therefore my opinion that development has occurred.

8.2. Is or is not exempted development

Planning and Development Act, 2000 (as amended)

- 8.2.1. The basis for the decision of the Planning Authority is that a material change of use of the attic level has occurred with the conversion to two bedrooms. The report of the planning officer considered that s.4(1)(h) of the Planning and Development Act 2000 as amended applies to the works undertaken as there is no impact or change on the external appearance of the dwelling. On the basis that a material change of

use has occurred, however, it was considered that the provisions of s.4(1)(h) are not applicable.

- 8.2.2. Firstly, with regard to s.4(1)(h), the scope of the works undertaken are such that they are all internal. No alterations to the external appearance of the dwelling has been undertaken and from an inspection of the site I consider that the dwelling has been completed such that the external appearance is consistent with the permitted plans as per Ref. P00/427. The submission of the referrer makes reference to the fact that the 4 no. rooflights were installed at the time that the house was first constructed and, on the basis of the inspection of the site, the size and location of these rooflights is in my opinion consistent with the permitted locations. I note that the referrer states that compliance with the building regulations will likely require that two of these rooflights would be enlarged however these works are not the subject of this referral.
- 8.2.3. On the basis of the information presented and my inspection of the site I consider that the works undertaken come within the scope of s.4(1)(h) of the Planning and Development Act, 2000 as amended, being works which affect only the interior of the structure and 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 of neighbouring structures.
- 8.2.4. With regard to the issue as to whether a change of use has occurred, I note that the report of the Planning Officer on which the determination of the Planning Authority was based contends that a change of use from 'attic' to residential has occurred and that this is such that a material change of use has occurred. I do not agree with the case made by the Planning Authority on this issue. The original plans under which the house was permitted indicate in Section A-A that the first floor would be 'attic'. This space was clearly ancillary to the residential accommodation proposed at ground floor level. Article 10(1) of the Planning and Development Regulations 2001 as amended provides that changes of use within any one of the classes of use specified in Part 4 of the Second Schedule shall be exempted development. None of the use classes specified in Part 4 relate to a private residence or residential property.

- 8.2.5. I do not consider that the undertaking of works that results in what was formerly attic accommodation being used as habitable accommodation constitutes a change of use of the space. Similarly, even if it was determined that a change of use had occurred, I do not consider that the works undertaken which result in what was permitted as a three bedroom dwelling being increased to a four bedroom dwelling are such that it could reasonably be considered to be material in a planning sense.
- 8.2.6. Precedent Board decisions as set out at section 4.0 of this report above relate to circumstances where alterations were sought to be determined to constitute exempted development while undertaken in tandem with the construction of the building, (see RL3324). In the case of this referral, the available information indicates that the original planning permission was granted in 2000 and that works on foot of the permitted layout were completed in 2004. It was not until 2009 that the attic level was converted to bedrooms and the stairs added.
- 8.2.7. It is noted that the permission for the dwelling (Kilkenny County Council Ref. P00/427) was granted subject to 8 no. conditions none of which specifically restrict the future conversion of the attic accommodation to habitable accommodation.
- 8.2.8. On the basis of the information available therefore I do not consider that any material change of use of the structure has occurred and consider that the works undertaken are exempted development under s.4(1)(h) of the Planning and Development Act, 2000 as amended.

Planning and Development Regulations, 2001 (as amended)

- 8.2.9. The report of the Planning Officer makes reference to Class 1 of Part 1 of the Second Schedule which relates to 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. The report of the Planning Officer concludes that this class is not applicable to the circumstances of the subject referral as the house has not been extended and no garage, store, shed or other such structure to the rear has been converted for use as part of the house.
- 8.2.10. As set out above, I do not consider that Part 4 of the Second Schedule of the Regulations relating to change of use is applicable to the circumstances of the subject referral.

8.2.11. There are not in my opinion any other exempted development provisions of the Planning and Development Regulations 2001 as amended that are applicable to the subject referral.

8.3. **Restrictions on exempted development**

8.3.1. The exemption under s.4(1)(h) of the Planning and Development Act, 2000 as amended is not subject to any specific restriction.

8.4. **Appropriate Assessment**

8.4.1. Having regard to the nature and scale of the works undertaken, the separation distance to the closest Natura 2000 site which is approximately 10km, no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect either individually or in combination with other plans or projects on a European site.

8.5. **Environmental Impact Assessment**

8.5.1. The works undertaken which are the subject of this referral comprising the conversion of an attic of an existing dwelling are not of a class listed in Schedule 5 of the Planning and Development Regulations, 2001 (as amended). There is not therefore a requirement for EIA or screening for EIA.

9.0 **Recommendation**

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

WHEREAS a question has arisen as to whether the conversion of the attic of a completed domestic dwelling to habitable accommodation is or is not development and is or is not exempted development:

AND WHEREAS Douglas Hamilton requested a declaration on this question from Kilkenny Council and the Council issued a declaration on the 18th day of October, 2017 stating that the matter was development and was not exempted development:

AND WHEREAS referred this declaration for review to An Bord Pleanála on the 8th day of November, 2017:

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) The fact that the conversion was undertaken subsequent to the construction of the dwelling,
- (e) the planning history of the site,

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The conversion of the attic of the completed dwelling involved the carrying out of works, as defined, and is therefore development;
- (b) The development undertaken comes within the scope of Section 4(1)(h) of the Planning and Development Act, 2000, as amended, as it comprises works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure;
- (c) That the development undertaken has not resulted in a material change in the use of the structure;

(d) That development that has been undertaken does not come within the scope of Class 1 of Part 1 of the Second Schedule to the Planning and Development Regulations, 2001, as amended, having regard to the fact that the development does not involve the extension of the structure or conversion of any existing structure to the rear for use as part of the house

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 conversion of the attic of a completed domestic dwelling to habitable accommodation is development and is exempted development.

Stephen Kay
Planning Inspector

23rd April, 2018