



An
Bord
Pleanála

Inspector's Report ABP-300652-18

Question	Whether the provision of a photovoltaic solar panel array is or is not development and is or is not exempted development
Location	Fernhill House Hotel, Tawnies Lower, Clonakilty, County Cork
Declaration	
Planning Authority	Cork County Council
Planning Authority Reg. Ref.	D/40/17
Applicant for Declaration	Future Generation Solar
Planning Authority Decision	Not Exempted Development
Referral	
Referred by	Future Generation Solar
Inspector	Kevin Moore

1.1. Site Location / Description

- 1.1. Fernhill House Hotel is located at the north-western end of the town of Clonakilty in County Cork. The PV solar panels the subject of the referral are proposed to be located on the roof over the ground floor function room and behind an existing parapet wall on the east side of the hotel building. A number of solar panels have been erected at the proposed location. Two existing thermal collector solar arrays, comprising a total of 20 panels and with an overall area of 30 square metres, are sited behind the location for the proposed PV solar panels.

2.0 The Question

- 2.1 The question before the Board is:

Whether the provision of a photovoltaic solar panel array behind the existing slate clad roof parapet of the Fernhill House Hotel is development and, if it is, whether it is or is not exempted development.

- 2.2 It is estimated that approximately 84 panels would be installed, covering an area of approximately 168 square metres.

3.0 Planning Authority Declaration

- 3.1 On 8th December 2017, Cork County Council issued a declaration to the applicant's agent stating:

"On the basis of the information and plans submitted by you on 14th November, 2017 on behalf Future Generation Solar, the Planning Authority declares that the provision of a photovoltaic solar panel array to the roof of Fernhill House Hotel, Tawnies Lower, Clonakilty, Co. Cork, **is considered development and is not exempted development** under Section 4(1)(h) of the Planning and Development Act, 2000.

Section 4(1)(h) generally allows for non material alterations on a small scale and exemption for larger industrial scale renewable are covered specifically in the

Planning & Development Regulations. The current proposal far exceeds the allowable limits.”

4.0 Planning Authority Reports

4.1 Area Planner’s Report

The Area Planner submitted that the classification to which the proposed solar panels fall under is Class 56(e), Schedule 2, Part 1 of the Planning and Development Regulations 2001-2017. It was noted that the hotel had a number of existing solar panels installed on the roof in compliance with Class 56(e). It was further submitted that 84 panels in addition to the existing panels are not considered to be exempt. It was stated that the planning authority was not convinced that the proposed works were exempt under section 4(1)(h). Reference was made to cases referred to by the applicant and it was submitted that these related to smaller proposals of a domestic nature. It was recommended that, having regard to the volume and amount and commercial nature of the development proposed, that the photovoltaic solar panel array was considered to be development that was not considered to be exempted development.

4.2 The A/Senior Executive Planner’s Report

The Acting Senior Executive Planner submitted that the provision of solar panels to the roof constituted development. It was further submitted that the proposal would exceed the exempted development limits allowable under the Regulations. While he considered they would not have a significant visual impact, concerns were raised about the overall scale of the proposal. Reference was made to previous Board decisions cited by the applicant as being at a much smaller domestic scale that related to domestic dwellings. It was stated that the current proposal was a larger commercial scale development, where consequences may not be apparent at this stage. The Planner also referred to an undesirable

precedent that may result and erosion of third party rights. The conclusions of the Area Planner were accepted.

5.0 The Referrer's Submission

5.1 It is submitted:

- * With regard to section 4(1)(h) of the Planning and Development Act, any development is exempt which does not materially affect the external appearance of a structure so as to render the appearance inconsistent with the character of the structure or any neighbouring structures.
- * The test for whether section 4(1)(h) applies in this instance is not the size, extent and number of panels or its 'commercial nature'. The test is simply whether or not the development materially affects the external appearance of the structure, noting that the array is ancillary to the use of the hotel and is focused on reducing the operational costs of the business in an environmentally sustainable manner.

6.0 Planning Authority's Response to Referral

6.1 The planning authority submitted that it had no further comments.

7.0 STATUTORY PROVISIONS - SEE RL2337 & RL2364 & RL2120

7.1 Planning and Development Act 2000

Section 2(1)

In this Act, except where the context otherwise requires—

“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.

Section 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.

Section 4(1)

The following shall be exempted development 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;

Section 4(2)(a)

The Minister may by regulations provide for any class of development to be exempted development for the purposes of this Act where he or she is of the opinion that—

- i) by reason of the size, nature or limited effect on its surroundings, of development belonging to that class, the carrying out of such development would not offend against principles of proper planning and sustainable development, or ...

7.2 **Planning and Development Regulations, 2001 (as amended)**

PART 2 - Exempted Development

Article 6(1)

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

Schedule 2

Part 1 Exempted Development – General

Column 1 Description of Development	Column 2 Conditions and Limitations
<p><i>Miscellaneous</i></p> <p>CLASS 56</p> <p>(f) The installation or erection on a business premises or light industrial building, or any ancillary buildings within the curtilage of such premises or building, of photo-voltaic solar panels.</p>	<ol style="list-style-type: none">1. The total aperture area of any such panels, taken together with any other such panel previously placed on or within the said curtilage, shall not exceed 50 square metres or 50% of the total roof area, whichever is the lesser.2. The distance between the plane of the wall and the panel shall not exceed 15cm.3. The distance between the plane of a pitched roof and the panel shall not exceed:<ol style="list-style-type: none">(a) 50cm in the case of a light industrial building.(b) 15cm in the case of a business premises.4. The distance between the plane of a flat roof and the panel shall not exceed:<ol style="list-style-type: none">(a) 2 metres in the case of a light industrial building.(b) 1 metre in the case of a business premises.

	<p>5. The solar panel shall be a minimum of 50cm from the edge of the wall or pitched roof on which it is mounted, or 2 metres in the case of a flat roof.</p> <p>6. The total aperture area of any wall mounted panel, or free-standing solar array shall not exceed 25 square metres.</p> <p>7. Any equipment associated with the panels, including water tanks, shall be located within the roof space of the building.</p> <p>8. The height of a free-standing solar array shall not exceed 2 metres, at its highest point, above ground level.</p> <p>9. A free-standing solar array shall not be located forward of the front wall of the building or premises.</p> <p>10. No sign, advertisement or object, not required for the functioning or safety of the turbine shall be attached to or exhibited on the panels.</p>
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8.0 Assessment

8.1. The Question of Development

8.1.1 The installation of photo-voltaic (PV) solar panels on the roof of the function room of the Fernhill House Hotel would include the installation of support frames, laying of ducting/cabling on the roof, the mounting of the solar panels, and installation of ancillary plant within the building. Having regard to these provisions, it is apparent that the installation of the PV solar panels would involve the carrying out of “works” by way of construction and alteration which would be carried out on and over land. The subject matter would, thereby, constitute

“development” in accordance with the provisions of sections 2(1) and 3 of the Planning and Development Act.

8.2 The Question of Exempted Development

- 8.2.1 The Referrer seeks a declaration that the works in question are exempted development under Section 4(1)(h) of the Planning and Development Act 2000. Section 4(1)(h) relates to 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. The Referrer submits that the proposed development is intended to enhance the sustainability of the hotel, comprises an improvement or other alteration of the structure, and would not materially alter the appearance of the function room or the hotel complex which would render it inconsistent with the existing character and appearance of the building or of the surrounding area.
- 8.2.2 Having regard to the nature and extent of the proposed development, I accept that the installation of the PV solar panels would constitute an improvement and/or alteration of the existing Fernhill House Hotel structure in terms of its purpose and functionality. I also acknowledge that it would be a development which would not affect the interior of the structure.
- 8.2.3 The proposed PV solar panels are intended to be installed on the flat roof of the existing ballroom. The highest point of the panels would equate with the highest point of an existing slate-clad roof parapet. I note, and accept, that the proposed panels would not be visible from the public areas in and around the hotel, from the driveway approach or from the public footpath along Regional Road R588 onto which the hotel has vehicular access. Having regard to the enclosure and

shielding of the proposed PV solar panels from view by the existing parapet, it is accepted that the installation of the proposed PV solar panels at this location would not materially affect the external appearance of the Fernhill House Hotel structure so as to render the appearance inconsistent with the character of that structure nor would it materially affect the external appearance of any neighbouring structures. I, therefore, accept that the proposed development would come within the scope of section 4(1)(h) of the Act.

8.2.4 Notwithstanding these conclusions, I note the provisions of section 4(2)(a) of the Planning and Development Act, whereby the Minister may, by regulations, provide for any class of development to be exempted development for the purposes of the Act. Under S.I 235/2008, the Minister made planning and development regulations which inserted Class 56 into Part 1 of Schedule 2 of the Planning and Development Regulations. Class 56(f) provides for the installation or erection on a business premises of photo-voltaic solar panels subject to a schedule of conditions and limitations. An installation that fails to comply with the conditions and limitations does not constitute exempted development.

8.2.5 I observe that the existing panels erected, comprising a total of 20 panels and with an overall area of 30 square metres, are described by the Referrer as thermal collector solar arrays, which benefit from the exemption which is extended to such installations under Class 56(e) of Schedule 2, Part 1 of the Planning and Development Regulations and are consistent with the conditions and limitations that apply to that class. While accepting the applicability of Class 56(e) in that instance, it is not understood as to why the Referrer would consider that the proposed development of PV solar panels would not be required to be subject to the conditions and limitations of Class 56(f).

8.2.6 The Referrer states in the submission to the Board that approximately 84 panels would be installed which would cover an area of approximately 168 square

metres. Having regard to the conditions and limitations of Class 56(f), my considerations are as follows:

- The proposed development would fail to comply with Condition 1 of Class 56(f), where the total aperture area of any such panels are not to exceed 50 square metres.
- The proposed layout shows that solar panels would be installed less than 2 metres from the edge of the flat roof on which the panels would be mounted and would, thus, fail to comply with Condition 5 of Class 56(f).

8.2.7 Having regard to the above, the proposed installation of PV solar panels would fail to comply with the conditions and limitations of Class 56(f) of Part 1, Schedule 2 of the Planning and Development Regulations and would, therefore, not constitute exempted development.

9.0 Recommendation

9.1 I recommend as follows:

WHEREAS a question has arisen as to whether the provision of a photovoltaic solar panel array behind the existing slate-clad roof parapet of the Fernhill House Hotel is development and, if it is, whether it is or is not exempted development:

AND WHEREAS the said question was referred to An Bord Pleanála by Future Generation Solar on the 4th day of January, 2018:

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

- (a) sections 2(1), 3(1), and 4 of the Planning and Development Act, 2000, as amended,
- (b) Articles 6 and Class 56(f), Part 1, Schedule 2 of the Planning and Development Regulations, 2001, as amended, and
- (c) the documentation on file and the report of the Planning Inspector:

AND WHEREAS An Bord Pleanála has concluded that -

- (a) the said installation would come within the scope of sections 2(1) and 3(1) of the Planning and Development Act, 2000, as amended, and would constitute development,
- (b) the said installation would not come within the scope of Class 56(f), Part 1, Schedule 2 of the Planning and Development Regulations, 2001, where the total aperture area of the proposed panels would exceed 50 square metres and where solar panels would be installed less than 2 metres from the edge of the flat roof on which the panels would be mounted:

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 said provision of a photovoltaic solar panel array behind the existing slate clad roof parapet of the Fernhill House Hotel is development and is not exempted development.

Kevin Moore

Senior Planning Inspector

11th June, 2018.