



An
Bord
Pleanála

Inspector's Report ABP-301276-18

Question	Whether works comprising an extension 39sq.m to an existing cottage and entrance is or is not development or is or is not exempted development
Location	Cuillagh More, Leenane, County Galway
Declaration	
Planning Authority	Galway County Council
Planning Authority Reg. Ref.	ED18/09
Applicant for Declaration	Keith Hughes.
Planning Authority Decision	Is Development and is not exempted development
Referral	
Referred by Owner/ Occupier	Keith Hughes.
Date of Site Inspection	26 th July 2018.
Inspector	Bríd Maxwell

1.0 Site Location and Description

- 1.1. The appeal site has a stated area of 0.44 hectares is located within a scenic mountainous area at Cuillagh More, Leenane, Co Galway. The appeal site lies approximately 1.6km to the south east of the village on the western side of the R336 linking Leenane to Maam Cross. The site is bordered to the northwest by the Maumturk Mountains SAC which at its nearest point is approximately 30 metres to the northwest of the cottage.
- 1.2. Application details demonstrate that the original dwelling, a modest cottage structure 7.4mx7m with a central porch and two windows on the SE elevation, door and window to NW elevation and lean to shed to SW gable elevation and unrelieved gable to the NE / roadside elevation. The cottage has been extended to its SW elevation by way of removal of lean-to shed and provision of single storey extension of 39sq.m. The extension has a pitched roof with a timber clad finish to walls. The dwelling is elevated over the adjoining regional road and a roadside boundary is defined by sod and stone wall. Roadside boundary includes piers providing a gated pedestrian entrance to the site and to the south east of this a vehicular entrance and gravel track lead to the dwelling.

2.0 The Question

- 2.1. The question as referred is whether works comprising an extension 39sq.m to an existing cottage and improvements to existing entrance at Grace O Malley's cottage, Leenane is or is not development, or is or is not exempted development.

3.0 Planning Authority Declaration

3.1. Declaration

- 3.1.1 By order dated 6th February 2018, Galway County council issued declaration as follows:

“Having regard to the nature of the works carried out to date in conjunction with Sections 2,3 4(1)(h) and 4(4) of the Planning and Development Act 2000 as amended) and Articles 9(1)(a)(vi)(vii)(viiB) and (viiC) of the Planning and

Development Act 2001 (as amended), it is considered that the development does not constitute exempted development within the meaning of the Planning and Development Acts, 2000 (as amended) and Planning and Development Regulations 2001 (SI No 600 of 2001) (as amended).

The Planning Authority, in considering the Section 5 Application, had regard particularly to

- (a) The definition of “works” set out in Section 2 of the Planning and Development Act 2000 (as amended).*
- (b) The definition of development” set out in Section 3 of said Planning and Development Act.*
- (c) Section (3) of said Planning and Development Act.*
- (d) Section 4(1)(h) and (4) of said Planning and Development Acts*
- (e) Article 6(1) of said Planning and Development Regulations.*
- (f) Article 9(1)(a) subsections (i), (vi), (vii), (viiB) & (viiC) of said Planning and Development Regulations*
- (g) Documents submitted from the referrer in this section 5 application.*

The Planning Authority, in exercise of the powers conferred on it by section 5 of the 2000 Planning Act (as amended), hereby decides that:

The 39 sq.m rear extension to existing cottage and improvements to existing entrance at Grace O Malley’s Cottage Leenane, County Galway is development and is not exempted development.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Planner’s report contends that the extension is to the side of the house. A new residential vehicular access has been created where limited sightlines exist onto a regional road in contravention of Article 9(1)(ii) of the Planning Act in that a traffic hazard has been created. Works cannot be considered exempted development by virtue of the fact that the site is located within a Class 4 Landscape area within the Galway County Development Plan 2015-2021. Works in the form of the extension

new entrance and access drive would adversely impact on the receiving landscape. On the basis that the receiving landscape has been designated Class 4 and adjacent to a class 5 landscape designated Special and Unique respectively, the Planning Authority are of the opinion that the development would conflict with Article 9(1)(vi) of the Planning and Development Act 2001 (as amended) in that the development has adversely impacted on the character of the landscape from a busy regional road.

4.0 Planning History

EN16/178 Enforcement file with respect to unauthorised construction of extension and creation of vehicular entrance to public road.

17/485 Incomplete application for extension to rear of existing dwelling and retention of the modified entranceway to the site and all ancillary site works and services.

17/137 Incomplete application for retention of existing dwelling and retention of the modified entranceway to the site and all ancillary siteworks and services.

5.0 Policy Context

5.1. Development Plan

The Galway County Development Plan 2015-2021 refers.

The site is located within a Class 4 (special) designated landscape area.

5.2. Natural Heritage Designations

The site is immediately adjacent to the Maumturk Mountains SAC Site Code 002008.

6.0 The Referral

6.1. Referrer's Case

The referral is submitted by Stephen Dowds Associates on behalf of the owner Mr Keith Hughes.

- The single storey extension of 39 sq.m is to the rear of the house and is exempted development under the provisions of the Planning and Development Regulations 2001 as amended specifically under Second Schedule. Part 1, Class 1.
- Entrance pre-existed therefore there is no issue of traffic hazard. There is no new entrance, no intensification of use of the entrance as the development is an extension of a house it will not of itself generate traffic hazard.
- Extension does not interfere with the character of the landscape or a view or prospect of special amenity value or special interest the preservation of which is an objective of the development plan. Site is within Class 4 landscape. Scale of the extension will ensure no appreciable impact on the landscape.
- Screening report from qualified ecologist Mr Chiris Peppiatt, attached, concludes that the development has not impacted on any protected site and the need for an appropriate assessment can be screened out.
- Note decision of the Council on nearby planning application 14/854 where a more significant development on a site partially within an SAC and the need for an Appropriate Assessment was screened out.
- Regarding question of front and rear of house the extension is at the gable end (SW) but is on the side away from the road which should be regarded as the rear. Notably the NE (roadside) elevation defines the building line and therefore constitutes the front.
- Notably original house had elevations of approximately equal length. Planner may have been influenced by the extension itself which has made the SE elevation longer and more significant.
- Logical interpretation is that the side away from the road is the rear as presumably the intention of this restriction on exemption is to allow only those extensions which are more out of sight and have less impact on public views.

6.2. Planning Authority Response

6.2.1 The Planning Authority did not respond to the grounds of referral.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

- Section 2(1) of the Planning and Development Act. In this act, except where the context otherwise requires – “development” has the meaning assigned to it by Section 3.....
- Section 3(1) of the Planning and Development Act states as follows –
“In this Act, ‘development means, except where the context otherwise requires, the carrying out of 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)(h) of the Act states as follows:
“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 it inconsistent with the character of the structure or of neighbouring structures.”
- Section 4(2) of the Act provides that the Minister may, by regulations, provide for any class of development to be exempted development. The principle regulations made under this section are the Planning and Development Regulations 2001.

7.2. Planning and Development Regulations, 2001

- Article 6(1) of the Regulation states as follows:
“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.”

- Under Class 1 of the 2001 Regulations certain development within the curtilage of a dwellinghouse is exempted development. This includes the extension of a dwelling by the construction of an extension to the rear of the dwellinghouse.

The exemption is subject to certain conditions and limitations including:

1(a) where the house has not been extended previously, the floor area of any such extension shall not exceed 40 sq.m.

2. (a) where the house has been extended previously, the floor area of any such extension taken together with the floor area of the previous extension or extensions constructed on or after 1 October 1964 including those for which planning permission has been obtained shall not exceed 40 sq.m.

4(a) Where the rear wall of the house does not include a gable, the height of the walls of any such extension shall not exceed the height of the rear wall of the house

(c) The height of the highest part of the roof of any such extension shall not exceed, in the case of a flat roofed extension, the height of the eaves or parapet, as may be appropriate, or, in any other case, shall not exceed the height of the highest part of the roof of the dwelling.

5. The construction or erection of any such extension to the rear of the house shall not reduce the area of private open space reserved exclusively for the use of the occupants of the house to the rear of the house to less than 25 sq.m

6. (a) Any window proposed at ground level in any such extension shall not be less than 1 metre from the boundary it faces.

7. The roof of any extension shall not be used as a balcony or roof garden.

- Article 9(1)(a) details development to which article 6 relates shall not be exempted development for the purposes of the Act – if the carrying out of such development would -

(ii) consist of or comprise the formation, laying out or material widening of a means of access to a public road the surface carriageway of which exceeds 4m in width.

(iii) endanger public safety by reason of traffic hazard or obstruction of road users.

(vi) interfere with the character of a landscape or a view or prospect of special amenity value or special interest, the preservation of which is an objective of a development plan for the area in which the development is proposed or, pending the variation of a development plan or the making of a new development plan. In the draft variation of the development plan or the draft development Plan.

(vii) consist of or comprise the excavation, alteration or demolition (other than peat extraction of places, caves, sites, features or other objective of archaeological, geological or historical, scientific or ecological interest, the preservation of which is an objective of a development plan for the area in which the development is proposed or., pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan, save any excavation, pursuant to and in accordance with a licence granted under Section 26 of the National Monuments Act (No 2 of 1930)

7.3. Other

04.RL.2688 On the question of whether a proposed extension to a cottage at Ballinclashet Belgooly Co Cork is or is not exempted development. The Board concluded that the proposed extension was not exempted development, based on a number of considerations including the conclusion that having regard to the layout of the cottage, including the position of the access door and windows, it is not considered that the proposed extension is to the rear of the cottage. Furthermore, it was considered that the layout of the cottage is such that it cannot avail of the particular exempted development provision for the said class 12, not having a rear in the sense referred to in that class.

8.0 Assessment

8.1. Is or is not development

- 8.1.1. It is evident that the works carried out in this case namely a single storey extension to the dwelling and works to the entrance constitute “development” within the meaning of the Act. The question for determination by the Board is whether the development is, or is not, exempted development.

8.2. Is or is not exempted development

- 8.2.1. Having established that the proposal involves development it remains to be determined whether or not such development constitutes exempted development for the purposes of the Act.

The development carried out to the dwelling on the site involve an extension of 39sq.m on the southwestern elevation of the original dwelling. I note that the planning authority formed the opinion that the extension does not qualify for an exemption on the basis that the extension is not located to the rear of the dwelling.

- 8.2.2 The regulations provide no definition of what constitutes the ‘rear of the dwelling’ and there is no reference to the location or orientation of extensions relative to the public road. Thus, I consider that the front of a dwelling does not necessarily front onto a road and can reasonably be at an angle to same. The pragmatic or common sense approach must be adopted to determine what constitutes the ‘front’ and ‘back’ of a house. I consider that it is reasonable that an adjudication is made by reference to the features and layout of the development. The original house is a modest traditional cottage. On its SE elevation is the porch / entrance and two windows – thus in my view is the front elevation. The opposite NW elevation, which I consider to be the rear of the dwelling, contains a single door and window. Gable elevation fronting the road NE and that on the opposite SW are unrelieved. Having regard to the particular circumstances of the appeal site, I consider that the front of the house is not defined in terms of its location / orientation relative to the public road and the

south-eastern elevation constitutes the front of the house and the north-western elevation is the rear of the house. On this basis the extension is constructed to the side of the dwelling and is therefore not exempted development. I therefore consider that Class 1 does not apply as the exemption pertains to an extension to the rear of a dwelling only. Thus, the conditions and limitations as set out in Column 2 relating to height, size and impact on private open space are not relevant. On this basis I conclude that the development constitutes development and is not exempted development. I would refer the Board to case 04.RL2688 on this issue. However, were the Board to concur with the agent for the referrer that the location of the extension is to the rear of the house, I note that the proposal would comply with the conditions and limitations as set out in Column 2.

8.3. Restrictions on exempted development

8.3.1 In relation to the entrance, I note that the pre-existence of a vehicular entrance at this location is contested. In this regard the first party refers to Photo 01 submitted with the grounds of referral which in my view does not provide evidence that an entrance pre-existed. I note the upstanding piers located to the northwest of the vehicular entrance which continue to provide pedestrian access to the dwelling. Having regard to Article 9(1)(ii) and 9 (a)(iii) of the Planning and Development Regulations on the basis that the entrance would “*consist of or comprise the formation, layout out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4m in width*”, and would by virtue of its location and severely restricted sightlines “*endanger public safety by reason of traffic hazard or obstruction of road users,*” I consider that the laying out of the entrance is development and is not exempted development.

8.3.2 On the issue of relevance of 9(1)(a)(a)(vi) I consider that the development carried out would not have an appreciable landscape impact in the context of the designation of the site within a Class 4 (special) landscape.

8.3.3 As regards Appropriate Assessment I have noted the contents of the Screening assessment by Mr Chris Peppiatt, Ecologist which provides detail of the nine Natura 2000 sites within a 15km radius of the site as follows:

Maumturk Mountains SAC 002008 Adjacent to site.
Mweelrea/Sheefry /Erriff Complex SAC 001932 2.5km N
The Twelve Bens / Garraun Complex SAC002031 6.6kmW
Lough Carra / Mask Complex SAC 001774 10.7km ESE
Lough Mask SPA 004062 11.3km ESE
Lough Corrib SAC 000297 12.1km SE
Lough Corrib SPA 004032 12.6km SE
Connemara Bog Complex SAC 002034 13.4km SSW
Connemara Bog Complex SPA 004181 14.1km SSW

8.3.4 The screening assessment excludes the potential for significant impacts resulting from the completed development on all of the Natura 2000 sites within a 15km radius

of the site based on distance from the works, lack of habitat or hydrological connectivity, and the nature of the qualifying interests and/or their occurrence or lack of occurrence within the study area. The completed extension is not expected to lead to production of more waste water or more human disturbance than the original cottage and groundwater and surface water drainage is away from, the SAC. I would tend to concur that having regard to the nature of the development the need for appropriate assessment can be screened out.

- 8.3.5 On the issue of Environmental Impact Assessment screening having regard to the limited nature and scale of the development, nature of the receiving environment and remove from any sensitive locations or features there is no likelihood of significant effects on the environment arising from the development. The need for environmental impact assessment can, therefore, be excluded.

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 works comprising an extension 39sq.m to an existing cottage and laying out of entrance at Grace O Malley's cottage, Leenane is or is not development or is or is not exempted development:

AND WHEREAS Mr Keith Hughes C/O Stephen Dowds Associates requested a declaration on this question from Galway County Council and the Council issued a declaration on the 26th day of February 2018 stating that the matter was development and was not exempted development:

AND WHEREAS Mr Keith Hughes C/O Stephen Dowds Associates referred this declaration for review to An Bord Pleanála on the 26th day of March, 2018:

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)(a) of the Planning and Development Act, 2000, as amended,
- (d) article 6(1) and article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (e) Parts 1 and 3 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The extension to the cottage and laying out of an entrance constitutes works and is therefore, development, by virtue of the provisions of section 3(1) of the act,
- (b) The exemption provided for under class 1 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended is couched in terms that are applicable to a standard house layout, where the main access is directly from the public realm on the front of the house and the rear is on the far private part,
- (c) Having regard to the layout of the cottage, including the position of the access door and windows, it is not considered, for the purpose of the said Regulations, that the extension to the cottage is to the rear of the cottage in the sense provided for under class 1 of part 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended.
- (d) Furthermore, it is considered that the layout of the cottage is such that it cannot avail of the particular exempted development provision

of the said class 1, not having a rear in the sense referred to in that class,

- (e) Therefore, the extension does not come within the scope of the exempted development provisions of the said class 1 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001 as amended:
- (f) It has not been clearly established that an entrance pre-existed at the location of the vehicular entrance,
- (g) the entrance would endanger public safety by reason of traffic hazard having regard to the severely restricted sightline visibility available.

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 works comprising an extension 39sq.m to an existing cottage and laying out of an entrance at Grace O Malley's cottage, Leenane is development and is not exempted development.

Bríd Maxwell
Planning Inspector

18th October 2018