



An
Bord
Pleanála

Inspector's Report ABP-301584-18

Question	Whether the conversion of attic space to living accommodation and the fitting of additional windows to the second floor of dwellings under construction constitutes development and is or is not exempted development
Location	St. Anne's Road, Killarney, County Kerry
Declaration	
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	EX 653
Applicant for Declaration	Padraig Griffin
Planning Authority Decision	Not Exempted Development
Referral	
Referred by	Padraig Griffin
Date of Inspection	11 th July, 2018
Inspector	Kevin Moore

1.1. Site Location / Description

1.1. The existing residential development is located on the north side of St. Anne's Road to the north of Killarney town centre. The site is located to the rear of established housing on this road and is accessed via a laneway. The site also has frontage onto a laneway to the north leading onto Marian Terrace. There is a development of four detached houses nearing completion on the land. The two-storey houses have been constructed with a further floor at attic level and windows are provided at the upper level to serve associated rooms.

2.0 The Question

2.1 The question before the Board is:

Whether the conversion of attic space to living accommodation and the fitting of additional windows to the second floor of dwellings under construction constitutes development and is or is not exempted development.

3.0 Planning Authority Declaration

3.1 On 17th April, 2018, Kerry County Council issued a declaration stating that the works constitute development which is not exempted development, comprising works that would not come within the scope of section 4(1)(h) of the Planning and Development Act.

4.0 Planning Authority's Reports

4.1 Planning Report

The Senior Executive Engineer submitted that the works would constitute development as defined in section 3 of the Planning and Development Act. It was further submitted that it is well established that exempted development provisions may only be taken up after a development has been completed in

accordance with a permission granted. It was noted that the works the subject of the declaration were carried out concurrently with the construction of the houses and, thus, the section 4(1)(h) exemption could not be availed of. It was further stated that the fitting of windows at second floor level would materially affect the external appearance of the structures to render their appearance inconsistent with the character of neighbouring structures. It was concluded that the works would not constitute exempted development.

5.0 The Referrer's Submission

5.1 The following is submitted:

The Attic Conversion

- Planning permission was not required to carry out the attic conversion as the said works are exempted development under section 4(1)(h) of the Planning and Development Act.
- The conversion of the attic does not materially affect the appearance the dwelling, affects only the interior and does not render the appearance inconsistent with the character of the dwellings or neighbouring dwellings.
- The planning authority's Declaration stating that the development of attics can only commence once the dwellings are complete is inconsistent with the principle of the provisions of section 4(1)(h).

Additional Windows

- Planning permission was not required to carry out the fitting of additional windows as the said works are exempted development under section 4(1)(h) of the Planning and Development Act.
- The addition of the windows is an improvement to the dwellings and does not materially affect the appearance of the dwellings so as to render the appearance inconsistent with the character of the dwellings or of neighbouring dwellings.

- The planning authority’s Declaration that the development of the windows materially affects the appearance of the dwellings is inconsistent with the principle of the provisions of section 4(1)(h).

6.0 **Statutory Provisions**

6.1 **Planning and Development Act 2000**

Section 2(1)

In this Act, except where the context otherwise requires—

“structure” means any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined, and –

- (a) Where the context so admits, includes the land on, in or under which the structure is situate, and ...

“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;

7.0 **Assessment**

7.1 **The Question of ‘Development’**

- 7.1.1 Having regard to the works undertaken which has resulted in the provision of additional habitable space at second floor level in the houses, together with the provision of additional windows at this level, it is determined that this constitutes the carrying out of works on, in and over land and thereby constitutes “development” in accordance with section 3 of the Planning and Development Act, 2000 (as amended).

7.2 **The Question of Exempted Development**

- 7.2.1 I note for the Board that Planning Permission Reg. Ref. No. 16/987 was granted by Kerry County Council, which is the planning permission applying to the houses to which the referral relates. The permitted plans provided for two-storey houses. The plans did not include the conversion of the attic spaces or the addition of windows to serve a Bedroom 5, a bathroom and a landing at second floor level. I further note that the houses remain to be completed and that there is no dispute that these changes to the permitted development have been undertaken concurrent with the development of the houses.

7.2.2 Having regard to the above, it must be determined that the conversion of the attic space and construction of the additional windows do not come within the scope of section 4(1)(h) of the Planning and Development Act 2000 (as amended) because the works in question were carried out during the construction of the houses for which planning permission was granted on the basis of drawings and specifications which did not include the conversion and installation of the additional windows in the locations in question.

Note 1: In support of this conclusion I draw the attention of the Board to previous referrals and consequent precedents relating to such development changes. These include ABP Refs. 29S.RF.0989 and RL3324. I submit that consistency in drawing a similar conclusion would be appropriate in this instance.

Note 2: The development the subject of this referral is not of a class of development to which EIA applies.

8.0 CONCLUSION AND RECOMMENDATION

WHEREAS a question has arisen as to whether the conversion of attic space to living accommodation and the fitting of additional windows to the second floor of the dwellings under construction at St. Anne's Road, Killarney, County Kerry constitutes development and is or is not exempted development:

AND WHEREAS the said question was referred to An Bord Pleanála by Padraig Griffin of Griffin Project Management on the 10th day of May, 2018:

AND WHEREAS An Bord Pleanála, in considering this referral, had regard particularly to sections 2, 3 and 4 of the Planning and Development Act, 2000 (as amended):

AND WHEREAS An Bord Pleanála has concluded that the conversion of the attic level to residential accommodation and the addition of windows at this level to the subject dwellings do not come within the scope of section 4(1)(h) of the Local Government (Planning and Development) Act, 1963 because the works in question were carried out during the construction of the dwellings for which planning permission was granted on the basis of drawings and specifications which did not include the conversion of the attic and the addition of the specified windows:

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 of the 2000 Act (as amended), hereby decides that the conversion of attic space to living accommodation and the fitting of additional windows to the second floor of the dwellings under construction is development and is not exempted development.

Kevin Moore
Senior Planning Inspector
20th September, 2018.