



An  
Bord  
Pleanála

## Inspector's Report ABP-302774-18

### Question

Application for a declaration of Exempted Development under Section 5 - 'Whether (a) an existing attic conversion including any external alterations in relation to same and the nature of such use; and (b) extension to rear and (c) domestic shed to rear at 18 Riverside Grove, Newbridge County Kildare is or is not development or is or is not exempted development'

### Location

18 Riverside Grove, Newbridge,  
County Kildare

### Declaration

Planning Authority

Kildare County Council

Planning Authority Reg. Ref.

ED/00624

Applicant for Declaration

Kildare County Council

Planning Authority Decision

No declaration

### Referral

<b>Referred by</b>	Kildare County Council
<b>Owner/ Occupier</b>	Brian & Natasha Murphy
<b>Observer(s)</b>	Aine Mangan
<b>Date of Site Inspection</b>	24 <sup>th</sup> and 29 <sup>th</sup> January 2019
<b>Inspector</b>	Colin McBride

## **Contents**

### **1.0 Site Location and Description**

- 1.1. The appeal site is located at no. 18 Riverside Grove, which is occupied by a two-storey semi-detached dwelling. The dwelling has been extended with a single-storey extension to the rear and a detached garage is located to the rear of the dwelling.

### **2.0 The Question**

- 2.1. Whether (a) an existing attic conversion including any external alterations in relation to same and the nature of such use; and (b) extension to rear and (c) domestic shed to rear at 18 Riverside Grove is or is not development or is or is not exempted development.

### **3.0 Planning Authority Declaration**

#### **3.1. Declaration**

No declaration was made by the Planning Authority with the referral passed on to the Board.

#### **3.2. Planning Authority Reports**

##### **3.2.1. Planning Reports**

Planning report 29/05/18: Further information sought including photos of works in question and a timeline of when construction took place.

### **4.0 Planning History**

No Planning History

## 5.0 Policy Context

### 5.1. Development Plan

The relevant plan is the Newbridge Local Area Plan 2013-2019. The site is zoned Existing Residential/Infill.

## 6.0 The Referral

### 6.1. Referrer's Case

A referral was submitted by Derek Whyte Urban and Rural Design & Planning Consultancy on behalf of Aine Mangan, 17 Riverside Grove, Newbridge, Co. Kildare.

- It is noted that construction works have been ongoing over a protracted period of time at the neighbouring property, no. 18 Riverside Grove and has had a negative impact on the referrer's residential amenity.
- The referrer has submitted photographs showing the extent of works on the common boundary wall between the two properties.
- It is submitted that the development carried out does not constitute exempted development within Schedule 2, Part 1, Class 1 of the Planning and Development Regulations as the development in question is not within the curtilage of a house and is located on a common boundary wall.

### 6.2. Planning Authority Response

Response from Kildare County Council

- The Local Authority have no further observations to make.

### 6.3. Owner/ occupier's response

Submission by the owner/occupiers of no. 18 Riverside Grove, Newbridge, Co. Kildare.

- The owner/occupiers has noted that the declaration documents does not reflect the correspondence that has been ongoing regarding the development carried out on site.
- It is noted that subsequent to an enforcement complaint the site was inspected by Planning and Engineering staff of the Council and a report written on the 11<sup>th</sup> of September 2017. This report indicates that the extension to the rear, the block work shed are exempted development.
- It is noted that the attic space is storage/non-habitable space.
- Subsequently the owner/occupiers received a warning letter regarding two aspects which include erection of timber fence and raising of the rear boundary wall.
- It is noted that Council Planner re-inspected the site on the 16<sup>th</sup> of November 2017 based on new information that the extension had been constructed on the pat/boundary wall and therefore constitutes unauthorised development. The owner/occupier notes that the nothing physically changed between the two inspections and the Council Planner has changed his mind based on the referrer's submission.
- The owner/occupier have submitted correspondence from their solicitor which include photos showing the construction of the extension and the fact that it is constructed on its own rising walls inside the existing common boundary. It is noted that a strip of lead does project onto the top of the party wall but does not project beyond the centre line of such.
- The owner/occupier has included an Engineers report from Declan Kearns & Associates that concludes the development subject to the referral is exempt under Class 1, Part 1, Schedule 2 of the Planning & Development Regulations 2001 (as amended). It is noted that the lead flashing on the party wall does not impact the exemption.
- It is noted that the report by the Council Planner and the owner/occupiers' engineer demonstrate that the works in question are exempted development.

## 6.4. Further Responses

Response by the referrer Aine Mangan, 18 Riverside Grove.

- It is noted that the owners of no. 18 have carried out works at their property that caused disruption and noise pollution.
- The referrer requests that that the works undertaken at no. 18 are undertaken with no encumbrance on her property and that action is taken on foot of the enforcement letter issues by Kildare County Council on the 24<sup>th</sup> January.

## 7.0 Statutory Provisions

### 7.1. Planning and Development Act, 2000

#### 7.1.1. **Section 2(1)** In this Act, except where the context otherwise requires

“Exempted development” has the meaning specified in *section 4*; “structure” means any building, structure, excavation or other thing constructed or made on, in or under land, or any part of the structure so defined and (a) where the context so admits, includes the land on, in or under which the structure is situate”;

"works" includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal.

#### 7.1.2. **Section 3**

Subsection (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.

#### 7.1.3. **Section 4 Subsection (1)**

The following shall be exempted developments for the purposes of this Act –

**Subsection (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;

Subsection (2) relates to regulations for any class of development to be exempted development for the purposes of this Act.

7.1.4. **Section 5.**

Section 5(1) relates to a question arising as to what, in any particular case, is or is not development or is or is not exempted development within the meaning of this Act.

7.1.5. **Section 32**

This section has a general obligation to obtain permission in respect of any development of land not being exempted development and in the case of development not authorised for the retention of unauthorised development.

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

7.2.1. **Article 6(1)** of the said regulations provide that “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”.

7.2.2. **Article 9. (1)** Development to which article 6 relates shall not be exempted development for the purposes of the Act—

(a) if the carrying out of such development would,

(i) Contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act

(ii) further to the provisions of section 82 of the Act, consist of or comprise the carrying out of works to the exterior of a structure, where the structure concerned is located within an architectural conservation area or an area specified as an architectural conservation area in a development plan for the area 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 and the development would materially affect the character of the area,

### 7.2.3. **Schedule 2 Part 1 Exempted Development — General Development**

*within the curtilage of a house*

#### Class 1

Sub class 1(a) Where the house has not been extended previously, the floor area of any such extension shall not exceed 40 square metres.

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

Sub class 4(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.

Sub class 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 square metres.

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

## 8.0 **Assessment**

### 8.1. **Is or is not development**

- 8.1.1. The initial question arises in relation to whether the construction as carried out is or is not development. The construction subject to the referral includes an attic, conversion, an extension to the rear with a pitched roof and a detached garage with a pitched roof. Section 3 defines development 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. Works as defined in section 2 (1) includes any act or operation of construction, excavation, demolition,



extension, alteration, repair or renewal. The three elements subject to the referral therefore constitutes development. This issue would not appear to be disputed by any party.

## **8.2. Is or is not exempted development**

8.2.1. The main issue arises as to whether the development is or is not exempted development. There are three aspects, an attic conversion, an extension to the rear and a detached garage.

In relation to the attic conversion the works in question include access stairs to the attic, which is still in use as storage and two roof lights on the roof profile. I would consider that these works would come under the scope of Section 4(i)(h) being 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. In this regards the works in question are exempted development.

8.2.2. The referrer is of the view that the development does not come under the scope of Schedule 2, Part 1, Class 1 of the Planning and Development Regulations as the extension is on the party wall between no. 18 and no 19 and is not within the curtilage of a dwelling.

8.2.3. The extension is 34.87sqm with a ridge height of 3.98m and is to the rear of the existing dwelling. There is a window on the northern elevation 1.6m from the boundary it faces. The detached garage has a floor area of 14.26sqm and a ridge height below 4m. In addition I would note that the rear garden area is not reduced below 25sqm.

8.2.4. The size and scale of extension and detached garage comes under the scope of Schedule 2, Part 1, Class 1 of the Planning and Development Regulations.

Notwithstanding such it is questioned whether Schedule 2, Part 1, Class 1 applies as such relates to 'Development within the curtilage of a house'. A question has been raised whether the works in question are within the curtilage of a house with it is noted that part of the extension is on the common boundary wall between no. 18 Riverside Give and no. 17 Riverside Grove.

8.2.5. Having inspected the site and the documentation submitted, it is notable that the extension is built wholly on its own supporting walls within the boundaries of the site. The owner/occupier of no. 18 has provided construction photos, which illustrate this fact. The only part of the extension that is located on the common boundary wall is a piece of lead flashing clearly in place to prevent water ingress. It is notable that this lead flashing does not encroach over the centre line of the common boundary. Reference is made to a previous case, 09.RL2250 under which it was determined that the replacement of an existing flat roof with a tiled and pitched roof was development and was not exempted development by virtue of the fact that the structure underneath the roof incorporated a store not built within the curtilage of the house and therefore not coming within Class 3 of Part 1 of Schedule 2 of the Planning and Development regulations, 2001.

8.2.6. I would consider that the extension is constructed within the curtilage of a dwelling and that the ref no. 09.RL2250 is not comparable situation. As noted above the dimensions, design and scale of the extension and detached garage are compliant with the requirements under Schedule 2, Part 1, Class 1 of the Planning and Development Regulations. I would therefore note that the works in question constitute development and is exempted development under the provision of the Planning and Development Regulations.

## 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 an existing attic conversion including any external alterations in relation to same and the nature of such use; an extension to rear and a domestic shed to rear at 18 Riverside Grove, Newbridge County Kildare is or is not development or is or is not exempted development:

**AND WHEREAS** Kildare County Council requested a declaration on this question on the 22<sup>nd</sup> day of November 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,
- (f) the planning history of the site,
- (g) the pattern of development in the area:

**AND WHEREAS** An Bord Pleanála has concluded that:

- (i) The attic conversion is development but is exempted development by virtue of Section 4(i)(h) of the Planning and development Act, 2000 (as amended).

(ii) The single-storey extension and detached shed/garage to the rear are both located within the curtilage of a dwelling and both comply with the conditions and limitations set down under Schedule 2, Part 1, Class 1 of the Planning and Development Regulations, 2001.

**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 (a) an existing attic conversion including any external alterations in relation to same and the nature of such use; and (b) extension to rear and (c) domestic shed to rear at 18 Riverside Grove is development and is exempted development.

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Colin McBride  
Planning Inspector

18<sup>th</sup> February 2019