



An
Bord
Pleanála

Inspector's Report ABP-303321-18

Question

Whether 1) the development of the residential extension to the rear of 15 Village View and 2) that the raising of the site levels to the rear of 15 Village View, is or is not development and is or is not exempted development.

Location

15 Village View, Clashmore,
Ballyheeny, Co. Waterford.

Declaration

Planning Authority

Waterford City & County Council

Planning Authority Reg. Ref.

D5/2018 6.

Applicant for Declaration

E. Torsch.

Planning Authority Decision

1) Is development and is exempted development 2) Is development and is not exempted development.

Referral

Referred by

E. Thorsch.

Owner/ Occupier

Richard & Patricia Fitzgerald

Observer(s)

None.

Date of Site Inspection

5th March, 2019

Inspector

A. Considine

1.0 Site Location and Description

- 1.1. The subject site is located within an existing and well established residential estate within the village of Clashmore, in the western area of Co. Waterford. The site is currently occupied by a single storey semi-detached dwelling house and the rear garden of the property backs onto another house which is at a lower level. The Village View estate is a small cul-de-sac estate comprising 25 houses, including a mix of detached and semi-detached. The site levels across the estate range significantly from the west to the east and from south to north.
- 1.2. The owners of the property filled the north facing garden area of the site, which would have been lower than the floor level of the house on the site, and constructed a single storey extension. The works also include the raising of the rear / party boundary of the site to accommodate the filled area.

2.0 The Question

- 2.1. The question arising is whether 1) the development of the residential extension to the rear of 15 Village View and 2) that the raising of the site levels to the rear of 15 Village View, is or is not development and is or is not exempted development, at 15 Village View, Clashmore, Ballyheeny, Co. Waterford.

3.0 Planning Authority Declaration

3.1. Declaration

The Planning Authority considered the construction of the residential extension to the rear of the house is development and is exempted development and that the raising of the site levels to the rear of the site is development and is not exempted development.

E. Thorsch referred the question to An Bord Pleanala on the 21st of December, 2018.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The planning report provides details of the planning history associated with the wider Village View estate and forms the basis of the decision of the Planning Authority to issue the declaration as described above. The report also includes an AA Screening Report and photographs.

3.2.2. Other Technical Reports

None noted.

4.0 Planning History

The following decisions relate to the wider estate and specifically, the adjacent property to the current subject site.

PA ref 99/823: Permission granted for the construction of 26 bungalows.

PA ref 04/417: Permission granted for the retention of the Village View housing estate as constructed, except for house no. 16 subject of separate planning application and permission for new road turning head adjacent to house no. 11, retaining wall to rear of houses 25 to 20 and side of no. 20, limestone boulders as a safety barrier to the front of houses no. 22 to 25 and a steel railing on the front wall.

ABP ref PL24.204625 (PA ref 03/769): Permission refused on appeal for the retention of and alterations to No. 16 Village View (detached house to the west of the subject site). The reason for refusal by the Board was as follows:

“It is considered that the bungalow proposed to be retained would, by reason of its height and location in relation to adjoining dwellings, seriously injure the amenities of property in the vicinity by reason of overlooking and visual obtrusion. The proposed development would therefore, be contrary to the proper planning and sustainable development of the area.”

5.0 Policy Context

5.1. Development Plan

The Waterford County Development Plan, 2011-2017, as extended, is the relevant policy document pertaining to the subject site. The site is located within the development boundaries of Clashmore, to the south east of the village, and is zoned R3 Residential – Medium. It is the stated zoning objective ‘to protect the amenity of existing residential development and to provide for new residential development at low density’.

5.2. Natural Heritage Designations

The site is not located within any designated site and is located within developed lands in the urban environment. The closest sites to the site include the Blackwater River (Cork / Waterford) SAC (Site Code 002170), 700m and Blackwater Estuary SPA (Site Code 004028) 1.65km to the west.

6.0 The Referral

6.1. Referrer’s Case

E. Thorsch submitted a complaint in relation to the raising of the site levels and the construction of an extension to the rear of no. 15 Village View to Waterford City & County Council. The referrer submits that the Council made a conflicting decision on the issue declaring that the constructed development falls within exempted development but the raised soil levels upon which the development rests was not. The applicant disagrees and submits that the Council has erred in its decision.

The referral also notes that further information requested was not provided by the Council. The referrer seeks that the Board decide both the raised site levels and the constructed development require retention. It is also questioned whether it will be necessary for the referrer to lodge an objection and second appeal to the Board, which adds unfair costs.

The objections to the development are summarised as follows:

- The design of the extension, constructed mainly of glass, together with the raising of the site levels, has resulted in significant overlooking, impacting on privacy and residential amenity.
- There has been damage to trees.
- The location of the chimney causing pollution.
- Lack of drainage provided which will impact on the retaining wall.
- The impact of the complete hard surfacing of the rear area and the impacts on ecological sustainability. AA issues arise.
- Visual impact of the development by reason of its disproportionate size.
- Lack of any certification for the extension.
- Health and safety issues due to the height of the fall from the wall to house no 20.
- The determination made by the Council is contradictory and no drawings or measurements were provided. It is submitted that it is clear that the development does not meet the basic conditions of exempted development and the report does not address the issues raised.
- Issues raised relate to a party wall and have not been adequately addressed.
- Issues raised in relation to the PAs assessment.

It is requested that the Board find all elements unauthorised development.

6.2. Planning Authority Response

The Planning Authority has not specifically responded to this referral.

6.3. Owner/ occupier's response

Mr. & Mrs. Fitzgerald responded to the referral advising as follows:

- The property was purchased in 2012 and the extension to the rear was constructed shortly after.

- The extension was exempt from planning because of its floor area and location to the rear of the house.
- The soil excavated for the foundations was re-used within the site in accordance with the County Development Plan to raise the lower part of the site and create a safe area for grandchildren, hanging out washing and putting out wheelie bins.
- The objector has an evergreen tree which grew over the boundary wall, blocking sunlight and shedding into the property. The overhanging branches were trimmed back.
- The photographs submitted by the complainant have no bearing on the enquiry and are an invasion of privacy.

It is submitted that the owners have complied with all planning requirements.

6.4. Further Responses

None.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

7.1.1. Section 2 (1) of the 2000 Planning and Development Act states as follows:-

“In this Act, except where the context otherwise requires – ‘development’ has the meaning assigned to it by Section 3 ...”

In Section 2 (1) of the Act “works” are interpreted as including “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”.

7.1.2. Section 3 (1) of the 2000 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.”

7.1.3. Section 4(1) of the Planning and Development Act identifies what may be considered as exempted development for the purposes of the Act, and Section 4(2) of the Act provides that the Minister, by regulations, provide for any class of development to be exempted development. The principal regulations made under this provision are the Planning and Development Regulations, 2001.

7.2. Planning and Development Regulations, 2001

7.2.1. Article 6(1) of the Planning & Development Regulations, 2001 as amended 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.”

7.2.2. Schedule 2, Part 1 of the Planning & Development Regulations deal with Exempted Development – General and in terms of the subject referral, Class 5 and Class 9 are relevant, and state as follows:

<p style="text-align: center;">Column 1</p> <p style="text-align: center;">Description of Development</p>	<p style="text-align: center;">Column 2</p> <p style="text-align: center;">Conditions and Limitations</p>
<p>CLASS 1</p> <p>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</p>	<p>1. (a) Where the house has not been extended previously, the floor area of any such extension shall not exceed 40 square metres.</p> <p>(b) Subject to paragraph (a), where the house is terraced or semi-detached, the floor area of any</p>

attached to the rear or to the side of the house.

extension above ground level shall not exceed 12 square metres.

(c) Subject to paragraph (a), where the house is detached, the floor area of any extension above ground level shall not exceed 20 square metres.

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.

(b) Subject to paragraph (a), where the house is terraced or semi-detached and has been extended previously, the floor area of any extension above ground level taken together with the floor area of any previous extension or extensions above ground level constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 12 square metres.

(c) Subject to paragraph (a), where the house is detached and has been extended previously, the floor area of

any extension above ground level, taken together with the floor area of any previous extension or extensions above ground level constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 20 square metres.

3. Any above ground floor extension shall be a distance of not less than 2 metres from any party boundary.

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.

(b) Where the rear wall of the house includes a gable, the height of the walls of any such extension shall not exceed the height of the side walls 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.

	<p>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.</p> <p>6. (a) Any window proposed at ground level in any such extension shall not be less than 1 metre from the boundary it faces.</p> <p>(b) Any window proposed above ground level in any such extension shall not be less than 11 metres from the boundary it faces.</p> <p>(c) Where the house is detached and the floor area of the extension above ground level exceeds 12 square metres, any window proposed at above ground level shall not be less than 11 metres from the boundary it faces.</p> <p>7. The roof of any extension shall not be used as a balcony or roof garden.</p>
<p>CLASS 6</p> <p>(a) The construction of any path, drain or pond or the carrying out of any landscaping works within the curtilage of a house.</p>	<p>The level of the ground shall not be altered by more than 1 metre above or below the level of the adjoining ground.</p>

<p>(b) Any works within the curtilage of a house for—</p> <p>(i) the provision to the rear of the house of a hard surface for use for any purpose incidental to the enjoyment of the house as such,</p> <p>or,</p> <p>(ii) the provision of a hard surface in the area of the garden forward of the front.....</p>	<p>Provided that the area of the hard surface is less than 25 square metres</p>
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7.2.3. Article 9 of the Planning & Development Regulations deal with restrictions on exemption for developments to which article 6 relates and sets out a number of restrictions which would render development not exempt for the purposes of the Act. In terms of the planning history of the wider estate, the Board will note the submission by the referrer that the works are unauthorised and in this regard, Article 9(1)(a)(viii), which states,

- (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—
 - (viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use,

may be considered applicable in this instance

7.3. Other

In terms of referrals relating to similar questions, the Board is advised that I could not locate similar referrals. The referrals previously considered by the Board generally relate to importation of fill to sites rather than the use of soil from the site to fill and level the site. The fill used arose from the construction of the extension to the house.

8.0 Assessment

The question posed is as follows:

‘The question arising is whether 1) the development of the residential extension to the rear of 15 Village View and 2) that the raising of the site levels to the rear of 15 Village View, is or is not development and is or is not exempted development, at 15 Village View, Clashmore, Ballyheeny, Co. Waterford.’

8.1. Is or is not development

- 8.1.1. Section 2(1) of the Act defines ‘works’ as including “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”. I am satisfied that, in accordance with the above definition, the subject referral relates to ‘works’.
- 8.1.2. In terms of Section 3(1) of the 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”. I am satisfied that the said ‘works’, including both the construction of the extension and the raising of the site levels comprise ‘development’. This determined, consideration is required as to whether the ‘works’ would constitute ‘exempted development’.

8.2. Is or is not exempted development

- 8.2.1. Having established that the ‘works’ undertaken amount to ‘development’, the issue to be considered is whether the development is exempted development or not. Section 4 of the Act defines certain types of development as being ‘exempted development’. Section 4(2)(a)(i) of the Act provides that:

'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...'

Therefore, the works might be considered to be exempted development under the provisions of Section 4(2) of the Planning & Development Act, 2000-2013.

8.3. Restrictions on exempted development

8.3.1. In terms of the Planning & Development Regulations, Article 6 relates to Classes 1 and 6 of Part 1, Schedule 2. The detail of both classes is provided above at section 7.2.2 of this report.

In relation to the extension, the works come within the scope of Class 1, Schedule 2, Part 1 of the Regulations, being an extension to the rear of the house, and the following conditions are limitations are relevant:

- 1.(a) The floor area of the extension does not exceed 40 square metres.
- (b) N/A – single storey extension only
- (c) N/A
- 2.(a) N/A
- (b) N/A
- (c) N/A
3. N/A – single storey extension only
- 4.(a) The height of the walls of the extension do not exceed the height of the rear wall of the house.
- (b) N/A
- (c) The height of the highest part of the roof of the extension does not exceed the height of the highest part of the roof of the dwelling.

5. The construction of the extension to the rear of the house does 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.
- 6.(a) Windows in the extension are not less than 1 metre from the boundary it faces.
- (b) N/A
- (c) N/A
7. N/A

In light of the above, I am satisfied that the extension constructed to the rear of the semi-detached dwelling adequately complies with the above conditions and limitations.

- 8.3.2. In terms of the raising of the site levels, I note the submission by the owner/occupier of the property, that the soil excavated during the construction of the extension was used across the rear of the site to raise the level before the final concrete finish was completed. It is submitted that this is in line with the requirements of the County Development Plan and reduced the volume of waste arising from the development, being moved from the site. It is indicated that the site levels were increased by approximately 2ft, but it would appear that the levels are greater than 1m. I note that the finished level of the rear of the property is now approximately 2.7m higher than that of the rear garden at no. 20 Village View. Having consulted the original drawings associated with the overall development, I note that the original level difference between site no. 15 and no. 20 was approximately 1.5m, and therefore, the raising of the site levels of no. 15 is estimated at approximately 1.2m.
- 8.3.3. These works come within the scope of Class 6, Schedule 2, Part 1 of the Regulations, being (a) the carrying out of any landscaping works within the curtilage of a house with the following conditions and limitations – The level of the ground shall not be altered by more than 1 metre above or below the level of the adjoining ground, and (b) Any works within the curtilage of a house for (i) the provision to the rear of the house of a hard surface for use for any purpose incidental to the enjoyment of the house as such. No conditions or limitations are cited in relation to Class 6(b)(i).

In terms of Class 6(a), I am satisfied that the ground level has been altered by more than 1m to the rear of the extension constructed to the rear of the semi-detached dwelling, and therefore, does not comply with the above conditions and limitations. I note no conditions or limitations associated with the provision of a hard surface for use for any purpose incidental to the enjoyment of the house.

8.3.4. In relation to Article 9(1)(a)(viii), the Board will note that the referrer considers that the Planning Authority erred in deciding that the extension was exempted development on the basis that the filling of the site was considered not to be exempted development. I am satisfied that the Planning Authority appropriately identified that the extension is a ground floor, single storey extension and that the associated foundations, rising walls and works carried out in the area of the extension to match the finished floor area of the house, comprise part of the extension which adequately complies with the conditions and limitations of Class 1, Part 1 of Schedule 2 of the Planning and Development Regulations, 2001, as amended. As such, I do not consider that the restrictions associated with Article 9(1)(a)(viii) apply in this instance.

8.3.5. In light of the above, I am satisfied that the single storey extension, including the works required to construct same, is development and is exempted development and that the site levels to the rear of the house and extension have been altered by more than 1m and therefore this element of the referral is development and is not exempted development.

8.4. **Other Questions**

8.4.1. In addition to the question posed, the Board will note that the referrer requested clarification on the necessity to lodge an objection to any application for retention the owner / occupiers may make. The issue raises concerns in relation to the costs associated with the lodging of an objection and appeals. In the event of a further planning application relating to the site, the proposals presented will be assessed on their merits at that time. It is a matter for third parties to decide to object to any planning application.

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 1) the development of the residential extension to the rear of 15 Village View and 2) that the raising of the site levels to the rear of 15 Village View, is or is not development and is or is not exempted development, at 15 Village View, Clashmore, Ballyheeny, Co. Waterford, is or is not development or is or is not exempted development:

AND WHEREAS Ms. E. Thorsch requested a declaration on this question from Kildare County Council and the Council issued a declaration on the 4th day of December, 2018 stating that the matter in relation to 1) was development and was exempted development and 2) was development and was not exempted development:

AND WHEREAS Ms. E. Thorsch referred this declaration for review to An Bord Pleanála on the 31st day of December, 2018:

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

- (a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended,
- (b) Article 6(1) and article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (c) Class 1 and Class 6, Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (d) the planning history of the site,

AND WHEREAS An Bord Pleanála has concluded as follows:

- 1) the construction of the extension to the rear of the house:
 - (a) Would constitute the carrying out of works which comes within the meaning of development in Section 3(1) of the Planning and Development Act, 2000
 - (b) Would come within the scope of Class 1, Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, and
 - (c) Would accord with the conditions and limitations of Class 1, Part 1 of Schedule 2 to the Planning and Development Regulations, 2001
- 2) the raising of the site levels:
 - (a) Would constitute the carrying out of works which comes within the meaning of development in Section 3(1) of the Planning and Development Act, 2000
 - (b) That the ground levels were altered by more than 1m and therefore, would not come within the scope of Class 6, Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, and
 - (c) Would not accord with the conditions and limitations of Class 1, Part 1 of Schedule 2 to 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:

- 1) the development of the residential extension to the rear of 15 Village View, Clashmore, Ballyheeny, Co. Waterford, is development and is exempted development, and
- 2) that the raising of the site levels to the rear of 15 Village View, Clashmore, Ballyheeny, Co. Waterford, is development and is not exempted development.

A. Considine
Inspector
22nd March, 2019