



An  
Bord  
Pleanála

## Inspector's Report ABP-303783-19

### Question

Whether refurbishment of an existing dwelling, construction of single-storey extension and attic conversion is/is not development or is/is not exempted development.

### Location

Tipperkevin, Naas County Kildare

### Declaration

Planning Authority

Kildare County Council

Planning Authority Reg. Ref.

ED694

Applicant for Declaration

Kenneth Woods Architecture

Planning Authority Decision

No declaration

### Referral

Referred by

Kildare County Council

Owner/ Occupier

Aisling Hubbard & Ivan Grace

Observer(s)

None

Date of Site Inspection

14<sup>th</sup> June 2019.

Inspector

Michael Dillon

## **1.0 Site Location and Description**

- 1.1. The site comprises the site of a detached dormer bungalow in rural Co. Kildare. There is a detached single-storey garage to the southwest of the house. The house has plastered walls (painted) and concrete tile roof. There is a small, single-storey extension to the rear of the house. The house would appear to be unoccupied at present, and the gardens are unkempt.

## **2.0 The Question**

Whether the refurbishment of an existing dwelling and the construction of a single-storey extension to the rear, and attic conversion within roofspace, is or is not development and is or is not exempted development.

## **3.0 Planning Authority Declaration**

### **3.1. Declaration**

- 3.1.1. On 12<sup>th</sup> November 2018, Kenneth Woods Architecture, agent on behalf of Aisling Hubbard & Ivan Grace of Tipperkevin, Naas, Co. Kildare, sought a declaration under Section 5 of the Planning and Development Act, 2000, from Kildare County Council in relation to proposed refurbishment of an existing house, the construction of a single-storey extension to the rear (40m<sup>2</sup>) and conversion of existing attic (including provision of rooflights in the rear pitch of the roof). The submission included a complete set of scaled drawings.
- 3.1.2. Kildare County Council did not make any declaration in relation to the development, and referred it to An Bord Pleanála under section 5(4) of the Act.

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

The report of KCC, received by An Bord Pleanála on 12<sup>th</sup> March 2019, contains a planning search of the site – revealing just one planning permission for a bungalow on the site (dating from 1984).

## 4.0 Planning History

**Ref. 84/297:** Permission granted to John Hubbard for erection of a bungalow and septic tank on this site on 28<sup>th</sup> February 1984, subject to 10 no. conditions. This is the house that has been erected on the site: the drawings available for inspection on the website of KCC, confirm this.

## 5.0 Policy Context

### 5.1. Development Plan

The relevant document is the Kildare County Council Development Plan 2017-2023.

### 5.2. Natural Heritage Designations

The site is neither within nor immediately abutting any natural heritage designation.

## 6.0 The Referral

### 6.1. Referrer's Case

On 20<sup>th</sup> February 2018, Kildare County Council referred this case to An Bord Pleanála under the provisions of section 5(4) of the Planning and Development Act, 2000 (as amended).

### 6.2. Owner/ occupier's response

The referral was sent to the owner/occupier for comment. There was no response received within the appropriate period.

## 7.0 Statutory Provisions

### 7.1. Planning and Development Act, 2000

Section 2(1) states-

“development” has the meaning assigned to it by section 3, and “develop” shall be construed accordingly;

Section 3(1) states-

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) states-

The following shall be exempted developments 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;

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

Article 6(1) states-

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.

Article 9(1) states-

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,

### **Part 1 Schedule 2**

*Development within the curtilage of a house*

CLASS 1

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

This class is limited as follows-

1. (a) Where the house has not been extended previously, the floor area of any such extension shall not exceed 40 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.
2. (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.
6. (b) Any window proposed above ground level in any such extension shall not be less than 11 metres from the boundary it faces.

## **8.0 Assessment**

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

- 8.1.1. The construction of a 40m<sup>2</sup> extension to the rear of this house involves the carrying out of works, and is development. The conversion of the attic of this house (including the installation of 2 no. first floor gable elevation windows and 5 no. rooflights in the rear pitch of the roof) is works and is, therefore development.

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

- 8.2.1. Class 1 of Part 1 of Schedule 2 of the Regulations allows for the extension of a house to the rear – provided the extension does not exceed 40m<sup>2</sup>. The ground floor

extension to this house would come within the 40m<sup>2</sup> stipulated under limitation 1(a), and so could be considered to be exempted development.

8.2.2. The attic of this house is to be converted to provide for a bedroom, en-suite bathroom and study. All of the accommodation will be provided within the roof space of the existing house and there will be no change to the roof pitch (apart from the removal of a chimney). For this reason, I consider that the house would not be extended in relation to the attic accommodation. I would be satisfied that installation of a first-floor gable elevation window at either end of the house, and installation of 5 no. rooflights within the rear pitch of the roof, would come within the compass of section 4(1)(h) of the Act – 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”. I note that this is a detached house in a rural area – surrounded by landscaped gardens and hedges. I further note that the Board has previously issued declarations in relation to attic conversions – to the effect that they comprise development and are exempted development.

### 8.3. **Restrictions on exempted development**

There are no restrictions on exempted development by reference to Article 9 of the Regulations. The website of KCC indicates that the 10 conditions attached to the grant of permission of 28<sup>th</sup> February 1984, do not place any restrictions on attic conversions or extensions to the house.

### 8.4. **Appropriate Assessment**

Having regard to limited nature of the development in this referral, and to the fact that it is connected to a septic tank, no Appropriate Assessment issues arise; and it is not considered that the development, the subject of the referral, would be likely to have a significant effect individually, or in combination with other plans or projects, on an European site.

## 9.0 Recommendation

I recommend that the Board should decide this referral in accordance with the following draft order.

**WHEREAS** a question has arisen as to whether the refurbishment of a house, construction of a single-storey extension to the rear of 40m<sup>2</sup> and conversion of an attic for habitable accommodation is or is not development or is or is not exempted development:

**AND WHEREAS** Kenneth Woods Architecture, agent on behalf of Aisling Hubbard and Ivan Grace requested a declaration on this question from Kildare County Council and the Council failed to issue a declaration:

**AND WHEREAS** Kildare County Council referred the original request for a declaration to An Bord Pleanála, under the terms of section 5(4) of the Planning and Development Act, 2000 (as amended), on the 20<sup>th</sup> day of February, 2019:

**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)(h) of the Planning and Development Act, 2000, as amended,
- (d) articles 6(1) and 9(1) of the Planning and Development Regulations, 2001, as amended,

(e) Class 1 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,

(f) the planning history of the site:

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

(a) The 40m<sup>2</sup> single-storey extension to the rear of the house would be located within the curtilage of the dwelling and would comply with the conditions and limitations set down under Schedule 2, Part 1, CLASS 1 of the Planning and Development Regulations, 2001, as amended, and

(b) The attic conversion would comply with Section 4(1)(h) of the Planning and Development Act, 2000, as amended.

**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 refurbishment of an existing dwelling, construction of a single-storey extension of 40m<sup>2</sup> to the rear of the dwelling, and attic conversion, including any internal and external alterations in relation to same and the nature of such use; is development and is exempted development.

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**Michael Dillon,**  
**Planning Inspectorate.**

**17<sup>th</sup> June 2019.**