



An
Bord
Pleanála

Inspector's Report ABP304129-19

Question	Whether the Proposed Extension to the rear of a Cottage is development or is or is not exempted development.
Address	Rockwell Cottage, Spanish Point, Miltown Malbay, County Clare.
Planning Authority	Clare County Council.
Referrer	Mary Irving.
Owner/Occupier	Mary Irving.
Date of Site Inspection	12 th June, 2019.
Inspector	Paul Caprani

Contents

1.0 Introduction.....	3
2.0 Site Location and Description	3
3.0 Proposed Works	4
3.1. Clare County Council's Decision on Referral	5
4.0 Planning History.....	5
5.0 Referral to An Bord Pleanála	7
6.0 Referral Responses.....	8
7.0 Provisions of the County Development Plan.....	8
8.0 Relevant Legislation	9
9.0 Assessment.....	12
9.1. Introduction	12
9.2. Pre –'63 Status.....	13
9.3. Compliance with Class 1, Schedule 2, Part 1 of the Planning and Development Regulations, 2001 (as amended).....	13
9.4. Compliance with Article 9 of the Regulations	15
10.0 Conclusions and Recommendation.....	16

1.0 Introduction

A question has arisen pursuant to Section 5 of the Planning and Development Act, 2000 (as amended) as to whether or not a proposed extension to the rear of a cottage is or is not development and is or is not exempted development. The cottage is located on a coastal road near Spanish Point in West Clare. Clare County Council determined that the proposed extension, while falling within the limitations of Class 1, Part 1 of Schedule 2 of the Planning and Development Regulations, 2001 (as amended) it would nevertheless come within the restriction of Article 9(1)(a)(vi) as the said extension would interfere with the character of a designated coastal heritage landscape.

2.0 Site Location and Description

- 2.1. The cottage which is the subject of the current referral is known as Rockwell Cottage and is located along the west coast of Clare on the R482, a coastal regional route which extends southwards from the N67 serving the small village of Spanish Point. The site is located in the townland of Breaffy South, c.2.5 kilometres west of Miltown Malbay and 1.5 kilometres north of the village of Spanish Point. The existing dwelling forms part of a pair of single-storey semi-detached cottage/dwellings which front directly onto the R482. The dwellings incorporate long rear gardens in excess of 60 metres in length which back onto the rocky coastal Atlantic shoreline. The area within the immediate vicinity of the subject site is characterised by ribbon development on both sides of the road. Many of the houses in the vicinity of the site have been constructed more recently than the cottages and comprise of larger detached dwellings - many of which are dormer bungalows. The coastal route on which the site is located forms part of the Wild Atlantic Way.
- 2.2. The existing cottage on site has been the subject of significant alterations and extensions over the years. These are summarised in accordance with the information submitted.

- The original cottage comprised of a rectangular building possibly dating from the late 19th/early 20th century (coloured magenta) in the drawings submitted with the referral.
- A rear extension along the entire length of the cottage was constructed subsequent to the original structure. This extension is between 1.7 and 2.9 metres in depth and coloured green on the drawings submitted. According to the referral submission list original rear extension was constructed prior to 1963 (possibly late 1940's).
- A small porch was constructed to the front of the dwelling. It comprises of a small rectangular flat roofed structure (c.5 square metres in size) projecting from the front elevation. The porch is shaded yellow in the drawings submitted. According to the information submitted by the applicant this porch was constructed in the 1950s and therefore, as in the case to the extension to the rear, it has pre-1963 status.
- To the very rear of the structure, a new sunroom was constructed c.15.4 square metres in size (shaded blue in the drawings submitted). This structure was constructed in the 1980's and will be removed as part of the works proposed for the cottage.
- On the south-western side of the cottage a rectangular garage was constructed adjoining the house. However, this garage has recently been demolished.

3.0 Proposed Works

The proposed works to be carried out include the following:

- The demolition of the existing sunroom to the rear and the construction of a new kitchen/living/dining area to the rear of the existing dwelling 39.7 metres in size. The extension to the rear will accommodate a pitched roof and chimney which is to match the height of the pitch and chimney on the existing dwelling. A flat roof area incorporating the pre-1963 extension to the rear and the new extension is to link the existing and proposed structures.

3.1. Clare County Council's Decision on Referral

- 3.1.1. An application under Section 5 of the Planning and Development Act, 2000 (as amended) was lodged with the Planning Authority on the 28th February, 2019. A covering letter (dated 22nd February) sets out details of the existing alterations and extension carried out at the existing cottage (see previous section above for details). It is stated that it is proposed to build an extension to the rear of the cottage covering a gross floor area of less than 40 square metres.
- 3.1.2. The planner's report sets out details of the background to the current referral case, including details of a previous referral application under Section 5 (made to the County Council as to whether or not the existing extensions to the cottage were carried out prior to 1963 – See planning history below.). The Planning Authority concluded that the question posed did not fall within the scope of a Section 5 Referral which specifically relates to whether or not works carried out constitute development and whether such works fall under the provisions of exempted development.
- 3.1.3. In respect of the current referral before it, Clare County Council concluded the following:
- That the proposed extension would fall within the scope and comply with all the conditions and limitations set out in Schedule 2, Part 1, Class 1 of the Exempted Development Regulations, 2001 (as amended).
 - The Council however concluded that the proposed extension would contravene Article 9(6) of the said Regulations as the site is located within a designated heritage landscape in the County Development Plan and views of the extension would be available from the public road and would obscure views and potentially interfere with the character of this coastal landscape. For this reason, Clare County Council determined that the proposed extension is development that is not exempted development.

4.0 Planning History

- 4.1. One history file is attached. It relates to a regular planning application and appeal under the provisions S34 – Reg Ref ABP302234-18. This application related to a

third-party appeal against the decision of Clare County Council to alter and extend the existing dwelling to the rear, together with a new wastewater treatment plant. The works include the demolition and replacement of the existing front porch, demolition of the existing rear extension and replacing it with a flat roofed single-storey extension c.10 metres in length and c.3.6 metres in height. Clare County Council issued notification to grant planning permission subject to six conditions. This decision was the subject of a third-party appeal and An Bord Pleanála overturned the decision of the Planning Authority for a single reason which is set out in full below.

“The site is located between the road and the sea along a scenic touring route, which is a section of the Wild Atlantic Way, where the shoreline is visible from the public road. The proposed extension would significantly increase the scale and visibility of the existing semi-detached cottage, would not be subservient to the host dwelling, would diminish the character of this vernacular dwelling, and would seriously detract from the quality of the landscape in this sensitive area. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area”.

- 4.2. Two referral cases were made to Clare County Council relating to the subject site. These are briefly outlined below.

Under **R16-005** Clare County Council made a declaration on 17th February, 2016 as follows:

- (a) The construction of a front porch rear extension sunroom and garage to the original cottage identified as Rockwell Cottage constitutes works as defined in Section 2 of the Act.
- (b) The said works constitute development which came within the scope of Section 3(1) of the Act.
- (c) The construction of an extension and a sunroom to the rear of the cottage constitutes development which is not exempted development by virtue of the provisions of Class 1 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001 (as amended) and the conditions and limitations therein whereby the floor area exceeds 40 square metres.
- (d) The construction of a garage constitutes development which is not exempted development by virtue of the provisions of Class 3, Part 1 of Schedule 2 of the

Planning and Development Regulations, 2001 (as amended) and the conditions and limitations therein, whereby the structure is located forward of the front wall of the house.

- (e) The construction of a porch constitutes development which is not exempted development by virtue of the provisions of Class 7 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001 (as amended) and the conditions and limitations therein, whereby the floor area exceeds 2 square metres.

Under **R19-4** Clare County Council were requested to adjudicate on whether the extension to the rear and porch to the front of the house were constructed prior to 1963. Clare County Council determined that the said question did not come within the scope of a Section 5 Referral.

5.0 Referral to An Bord Pleanála

The referral was submitted by the owner of Rockwell Cottage and states the following. The owner of the cottage has close connections with the area and acquired the cottage three years ago. The cottage is not listed for protection but is in very poor condition and is not currently fit for habitation. The objective is to restore the cottage to its original condition and make it suitable for human habitation.

- 5.1. It is noted that Clare County Council granted planning permission for the renovation and extension of the dwelling only to be overturned on appeal by An Bord Pleanála. On the basis of the An Bord Pleanála decision, it was decided to reduce the overall size and scale of the extension in order to allay the concerns expressed in the Board's decision. The aim of the revised proposal was to create an extension which is more subservient to the main cottage.
- 5.2. It is clear that the revised proposal was rejected by Clare County Council as being development which was not exempted development. It is stated however that the proposal under the current referral has been substantially varied as follows:
- The size of the extension has been reduced from 72 square metres to 39.7 square metres a reduction of 55% in the proposed new build.

- The length of the extension has been substantially reduced by 4 metres while the width has been reduced by 3 metres.
- The reduction in size and scale makes the extension invisible from vantage points along the public roadway.
- What is proposed in this instance is a modest sized extension.
- The proposal is a proportionate extension to the existing dwelling and does not constitute a 'large industrial factory'.
- Clare County Council should have sought additional information rather than issuing a blank refusal.
- The current property constitutes a blight on the landscape and is too small and in too bad of a condition to be lived in at present.

5.3. In concluding that the proposed development will interfere with the landscape, Clare County Council are stating that the proposed extension is “not wanted” or “not helpful” in the context of the coastal heritage landscape. The property is currently an eyesore and detracts from the local landscape. The existing property, particularly to the rear interferes and detracts from the landscape.

5.4. Also attached is a statutory declaration from Mary Curtin stating that both the rear extension (excluding the sunroom) and the porch were constructed prior to 1963.

6.0 Referral Responses

6.1. Clare County Council have not submitted a response to the referral.

7.0 Provisions of the County Development Plan

7.1. The subject site is located within a 'designated heritage landscape' in the development plan. It is not located on a designated scenic route.

7.2. Objective 13.5 of the development plan states as follows:

It is an objective of the development plan to require that all proposed development in heritage landscapes, demonstrate that every effort has been made to reduce visual impact. This must be demonstrated for all aspects of the proposal from site selection

through to details of siting and design. All other relevant provisions of the development plan must be complied within. All proposed developments in these areas will be required to demonstrate:

1. That sites have been selected to avoid visually prominent locations.
2. That site layouts avail of existing topography and vegetation to minimise visibility of scenic routes, walking trails, public amenities and roads.
3. That design for buildings and structures minimise the height and visual contrast through careful choice of forms, finishes and colour and that any site works seek to reduce the visual impact of the development.

8.0 Relevant Legislation

8.1. Planning and Development Act 2000 (as amended)

8.1.1. Section 2 Definitions

“unauthorised structure” means a structure other than

- (a) a structure which was in existence on 1st October, 29164 or
- (b) a structure the construction, erection and making of which was the subject of a permission for development granted under Part 4 of the Act of 1963 or deemed to be such under Section 92 of that Act or under Section 34 or 37G of this Act, being a permission which has not been revoked, or which exists as a result of the carrying out of exempted development (within the meaning of Section 4 of the Act of 1963 or Section 4 of this Act).

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

Section 3(1) in this Act “development” means, except where the context otherwise requires, the carrying out of any works or, in, under or over land or the making of any material change of use in any of the structures or other land.

8.2. Planning and Development Regulations 2001 (as amended)

Article 6(1) States 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.

Schedule 2, Part 1, 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 any 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 a house.

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

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 a house includes a gable the height of the wall 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 nearest part of the roof of the dwelling.*
5. *The construction or erection of any extension to the rear of the house shall not reduce the rear of private open space reserved exclusively for the use of occupants of the house, to the rear of the house to less than 25 square metres.*
6.
 - (a) *Any window proposed at ground floor level in any such extension shall not be less than 1 metre from the boundary it faces.*
 - (b) *Any window proposed above ground floor level in any such extension shall not be less than 11 metres from the boundary it faces.*
 - (c) *Where the house is detached and the floor area of the extension above ground floor level exceeds 12 square metres any window proposed above ground floor level shall not be less than 11 metres from the boundary it faces.*
7. *The roof of any such extension shall not be used as a balcony or a roof garden.*

8.3. Article 9 Restrictions on Exemption

Development for which Article 6 relates shall not be exempted development for the purposes of the Act where:

- (a) *If the carrying out of such works would: (inter alia)*
 - (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 a variation of the development plan or the making of a new development plan, in draft variation of the development plan or draft development plan.*

9.0 Assessment

9.1. Introduction

The first question that the Board is required to determine is whether or not the proposed extension to the dwelling constitutes 'development'. Development is defined in the Act as the carrying out of any 'works' on, in, under or over land or the making of any material change of use in any of the structures or other land. 'Works' includes the act or operation of construction, excavation, demolition, extension, alteration, repair or renewal. There can be no doubt that the proposed extension to the dwellinghouse involves construction, demolition, extension and alteration to the existing structure and as such undoubtedly falls within the definition of 'works'. It is reasonable therefore for the Board to conclude that the proposed extension to the house falls within the definition of 'works' and therefore constitutes development.

I note the arguments set out in the grounds of the referral, they set out planning reasons as to why the development's consent should be granted for the revised smaller extension proposed to be built under the current referral. The planning merits as to whether or not the development should take place is not the basis on which to determine the referral. The sole purpose of a Section 5 Referral is to determine, when a question arises in any particular case, what is or is not development or what is or is not exempted development within the meaning of the Act. The purpose of a Section 5 Referral is therefore not to adjudicate on the particular planning merits

associated with a case, or whether or not a proposal is in accordance with the proper planning and sustainable development of the area, but rather a referral under Section 5 of the Act is confined to a legal interpretation as to whether or not planning permission is required in accordance with the provisions of the Act and associated Regulations. The Board should therefore restrict its deliberations to the referral question before it and not the planning merits of the case.

9.2. **Pre –'63 Status**

A separate issue arises in respect of the pre-1963 status of the existing extensions of the houses namely the rear extension (excluding the sunroom) and the porch area to the front of the house. Although I could not gain access to the dwelling as it is currently vacant, from an examination of the exterior of the building it would not be unreasonable to conclude that the rear extension (shaded green on the drawings submitted) and the porch (shaded yellow) were constructed prior to 1963.

Furthermore, a statutory declaration was submitted with the referral by an elderly resident of the area stating that the rear extension and porch were constructed sometime in the 1940s and 1950s. As such, and with the exception of the sunroom which is to be demolished, the existing cottage would constitute an authorised structure being in existence prior to the 1st October, 1964 in accordance with the definition set out in the Act.

9.3. **Compliance with Class 1, Schedule 2, Part 1 of the Planning and Development Regulations, 2001 (as amended).**

The proposal constitutes an extension to an existing house and therefore falls within the above class. The question which the Board must adjudicate is whether or not the proposed extension in question complies with the conditions and limitations set out under the said Class.

In relation to Condition and Limitation 1(a) it is noted that the house has been extended previously however the previous extensions were erected prior to the 1st October, 1964 and therefore would not be accounted for in the calculation of the area of the proposed extension. The sunroom constructed in the 1980's is to be demolished as part of the proposal and as such can be discounted for the purposes

of the calculation. The proposed extension at 39.7 square metres does not exceed the limit of 40 square metres set out under Condition and Limitation 1(a).

In relation to Condition and Limitation 1(b) it is not proposed to incorporate any extension above ground floor level and therefore Condition and Limitation 1(b) is not applicable.

In relation to Condition and Limitation 1(c), the house in question is not detached and it is not proposed to construct above ground floor level therefore, Condition and Limitation 1(c) is not applicable.

In relation to Condition and Limitation 2(a), while the house has been extended previously as mentioned above, both the porch and the rear extension apart from the sunroom all predate 1st October, 1964. In the case of the sunroom it is proposed to demolish this structure. The new extension at 39.7 square metres would therefore comply with the Condition and Limitation set out under 2(a).

As it is not proposed to extend above ground floor level therefore limitation 2(b) would not apply.

In relation to 2(c) the subject house is not a detached house and it is not proposed to extend the house above ground floor level and as such Condition and Limitation 2(c) does not apply.

In relation to Condition and Limitation 3, again it is not proposed to construct above ground floor level and therefore Condition and Limitation No. 3 does not apply.

In relation to Condition and Limitation 4(a) the height of the walls of the extension does not exceed the height of the rear wall of the house. The proposal therefore falls within the provisions of this Condition and Limitation.

Condition No. 4(b) is not applicable to the development before the Board.

In relation to Condition and Limitation 4(c) the height of the highest part of the roof does not exceed the height of the eaves or parapet of the highest part of the roof of the dwelling.

In relation to Condition and Limitation 5, the residual open space behind the dwellinghouse exceeds 25 square metres and therefore this condition and limitation is complied with.

In relation to Condition and Limitation 6(a) the windows at ground floor level are in excess of 1 metre from the common boundaries.

Conditions and Limitations 6(b) and 6(c) do not apply and it is not proposed to build above ground floor level.

Finally, Condition and Limitation 7 is complied with as it does to propose to use the roof of the proposed extension as either a balcony or a roof garden.

Arising from my assessment therefore I consider that the proposed extension complies with all the conditions and limitations associated with Class 1 of Schedule 2, Part 1 of the Planning and Development Regulations.

9.4. **Compliance with Article 9 of the Regulations**

Article 9 sets out a list of restrictions on exempted development. Having consulted the various restrictions set out under Article 9, the provisions of Article 9(1)(a)(vi) is a material consideration in the Board's deliberation of the above referral, and in my view the only material consideration under the provisions of Article 9. Article 9(1)(a)(vi) states that if the carrying out of such development would "*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 the development plan for the area in which the development is proposed or, pending the variation of the development plan, or the making of a new development plan in the draft variation of the development plan or draft development plan*".

As already pointed out, the cottage which is the subject of the referral is located within a designated heritage landscape in the current Clare Development Plan. The lands are therefore located within a landscape of special amenity value or special interest, the preservation of which is an objective of the development plan and therefore in my opinion would fall under the restriction set out under Article (9)(a)(vi). Specifically, the development plan required that all proposed developments in heritage landscapes demonstrate that every effort has been made to reduce the visual impact. The fact that the subject site falls within a designated heritage landscape as set out in the development plan would in my view invoke the provisions of Article 9(1)(a)(vi) of the Regulations. I would agree with the Planning Authority's assessment that there is potential for any proposed extension to the rear of the

cottage to interfere with the character of the coastal landscape. The fact that the proposal could interfere with the character of the landscape is in my view justification to trigger the restriction on the exemption as set out under Article 9(1)(a)(vi).

It is clear that the Board's previous decision under ABP302239-18 that it was concluded that the proposed extension "would seriously detract from the quality of the landscape in this sensitive area". I fully acknowledge that the proposed works to be carried out may be more subservient and appropriate in terms of design which in turn may result in a lesser or acceptable interference in the landscape. However, the planning permits of the proposed extension is not the issue to be determined under the current referral. The issue of the acceptability of the proposed development in accordance with the proper planning and sustainable development of the area should be the subject of a separate planning application and assessment. And any such application would be determined on its merits. The Board in this instance is required to merely adjudicate as to whether or not the proposed development constitutes development which is or is not exempted development for the purposes of the Planning and Development Act, 2000. I consider that the site's location in a designated heritage landscape restricts the exemption status set out under Class 1 of Schedule 2, Part 1 on the basis of the provisions of Article 9(1)(a)(vi) and therefore constitutes development that is not exempted development.

10.0 **Conclusions and Recommendation**

Arising from my assessment above I would recommend that the Board issue a declaration as follows:

WHEREAS a question has arisen as to whether the proposed extension to the rear of Rockwell Cottage is or is not development and is or is not exempted development.

AND WHEREAS Clare County Council concluded that the said development consisting of an extension to the rear of an existing dwellinghouse constitutes development which is not exempted development as defined within the Planning Acts.

AND WHEREAS Mary Irving of 35 Butterfield Drive, Rathfarmham, Dublin 14 requested a declaration on this question under the provisions of Section 5(4) of the Planning and Development Act, 2000 (as amended) from An Bord Pleanála on the 4th April, 2019.

AND WHEREAS An Bord Pleanála in considering this referral had particular regard to

- (a) Sections 2 and 3 of the Planning and Development Act, 2000 (as amended)
- (b) Class 1 of Schedule 2, Part 1 of the Exempted Development Regulations including the conditions and limitations associated with Class 1
- (c) Article 9(1)(a)(vi) of the Planning and Development Regulations, 2001 (as amended).

AND WHEREAS An Bord Pleanála concluded that the construction of an extension to the existing cottage falls within the definition of Class 1 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001 and also falls with the conditions and limitations associated with the said Class. However, it is considered that the extension would interfere with the character of a designated heritage landscape as defined in the Clare County Development Plan 2017-2023 the preservation of which is an objective of the said plan and as such the proposal would come within the restrictions on exemption as set out in Article 9(1)(a)(vi) of the said Regulations.

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 proposed extension constitutes development which is not exempted development.

Paul Caprani,
Senior Planning Inspector.

29th July, 2019.

