



An  
Bord  
Pleanála

## Inspector's Report ABP-307712-20

### Question

Whether renovation works to property which include alterations to position of velux window in side roof elevation, additional rooflights to north side elevation, removal of damaged chimney, alterations to ground floor window sill heights to south side elevation and additional windows to ground floor north side elevation is or is not development or is or is not exempted development.

### Location

31 Marian Park, Co. Waterford.

### Declaration

Planning Authority

Waterford City and County Council

Planning Authority Reg. Ref.

D5/220/8

Applicant for Declaration

Mark Scanlon.

Planning Authority Decision

No declaration

### Referral

Referred by

William Giddens.

**Owner/ Occupier**

Click here to enter text.

**Observer(s)**

Click here to enter text.

**Date of Site Inspection**

16<sup>th</sup> of December 2020

**Inspector**

Caryn Coogan

## 1.0 Site Location and Description

- 1.1. This Referral relates to a detached dwelling, 31 Marian Park, in Waterford City that is located within a short cul de sac of dwellings. There were a number of home improvements carried out to the northern (side) elevation of the dwelling, and the neighbour to the north (32A Marian Park) has submitted this referral.

## 2.0 The Question

A question has arisen as to whether the conversion of the attic of the original single storey house at 31 Marian Park, Waterford to provide additional habitable accommodation, and all works associated with the attic conversion including altering, repositioning and additional roof lights is not development constitutes exempted development under planning legislation.

## 3.0 Planning Authority Declaration

### 3.1. Declaration

The Referrer Mr. William Giddens, the neighbouring third party submitted a Section 5 Declaration to Waterford City and County Council on 8<sup>th</sup> of June 2020. To date no declaration has been issued from the planning authority.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

None

#### 3.2.2. Other Technical Reports

None

## 4.0 Planning History

There was a previous Section 5 Declaration relating to the property **D5 2019/29**, and the Referrer, Mr. Giddens did not refer the Declaration to the Board which was

decided in April/ May 2019. The roof light was deemed to be exempt development by the planning authority.

#### **04/00537**

Planning permission granted to Nicolas and Mona Scanlon for an extension to the side and rear of 31 Marian Par, Waterford

## **5.0 Policy Context**

### **5.1. Development Plan**

Waterford City and County development Plan 2011-2017 (as varied and extended)

## **6.0 The Referral**

### **6.1. Referrer's Case**

The Referral to the Board has been made by Peter Thomson Planning Solutions on behalf of their client William Giddens, 32A Marion Park, Waterford. The Referrer made a Section 5 Declaration to the planning authority on the 8<sup>th</sup> of June 2020, and to date no declaration has issued.

In 2019, the owner of the neighbouring house, Mr. Mark Scanlon submitted a Declaration application regarding the repositioning of a rooflight on the southern elevation of the property , reference D5/2019/29, which was deemed to be exempt by the planning authority.

### **6.2 Planning Authority's Response**

As the planning authority has not made a determination on Mr. Giddens current application to date, the Board is requested to do so.

### **6.2. Planning Authority Response**

Waterford City and County Council has questioned the Section 5 Declaration to the Board by the third party without the consent of the relevant landowner. There was

no further comment made except planning history documents were forwarded to the Board.

### 6.3. **Owner/ occupier's response**

The renovation works at Mr. Mark Scanlon's property started in 2016. These included the renovation of two attic rooms, including the removal of old attic stairs, positioning new compliant with the Building regulations, the installation of two new velux lights into the northern elevation, relocation of existing velux light to the southern elevation, , and re-organisation of ground floor rooms with alteration to window cill heights, and insertion of opaque glass, and the removal of a structurally unsound chimney, and a new ground floor window installed in the northern elevation.

The existing attic space was converted in 1985 giving an increased floor area to the dwelling of 38sq.m.. All subsequent extensions or alterations were granted planning permission under reference 04/00537, and the current works do not increase the floor area and are exempt under Section 4(1)(h) as it is development consisting of carrying out of works which affect only the interior of the structure or do not materially affect the external appearance of the structure so as to render it inconsistent with the character of the structure or of neighbouring structures.

## 7.0 **Statutory Provisions**

### 7.1. **Planning and Development Act, 2000**

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

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

"**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 this context so admits, includes the land on, in or under which the structure is situated".

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 of use of any structures or other land.

Section 4(1) (h) of the Act relates to exempted development. Section 4(1)(h) relates to development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works that affect only the interior of the structure or do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or neighbouring structures.

## 8.0 **Assessment**

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

The first question which the Board must determine is whether or not the current application before it constitutes 'works' as defined in the Act. Works are defined in Section 2 as any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and in relation to a structure. It can be reasonably concluded based on the above definition that the insertion of a rooflights onto the north elevation of a roof pitch constitutes an operation of construction and also constitutes an alteration to the building in question. The insertion of rooflights into the said roof therefore constitutes 'works' and by extension constitutes 'development' under the provisions of Section 3 of the Act.

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

The next question which the Board must determine is whether or not the works undertaken would constitute exempted development under the provisions of the Act.

The Board should note the property was previously the subject of a Section 5 Declaration applied for to the planning authority by the home owner, Mr. Mark Scanlon in 2019. The Reference for the previous Declaration relating to the property is **D22019/29**, involved altering existing windows on the ground floor, inserting new windows to the side elevation, removing chimney, and relocating the rooflight to the southern roof elevation was determined as exempted development by Waterford City and County Council. The declaration was not forwarded to the Board by the neighbouring third party at that time.

The Referrer has now by-passed the planning authority and taken this current Declaration directly to the Board because the planning authority did not issue a decision on the application Mr. Giddens submitted to it on the 8<sup>th</sup> of June 2020.

The subject conversion of the attic space occurred back in 2005 according to the applicant following a grant for permission for a side and rear extension to the dwelling house permitted under planning reference 04/537 (details of the permission are on the file). The attic conversion to two habitable rooms has existed on the site since the construction of the extension to the dwelling, and it is only recently the owner decided to carry out renovations works of the attic conversion to bring it in line with the Building Regulations Requirements that the controversy has arose with the neighbour to the north. According to the applicant's submission, the renovation works associated with the attic commenced and have been on-going internally since 2016. From my inspection I noted, the conversion of the attic space has involved internal works that did not materially alter the external appearance of the dwelling when viewed from the street. Essentially the attic conversion does not materially alter the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures.

The current subject repositioning and addition of rooflights into the side (northern) elevation of the roof, are not visible from the front / streetscape either. I am satisfied that the subject rooflights do not materially alter the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures.

It is considered that the subject development is exempted development under section 4(1)(h) of the Planning and Development Act 2000, as amended.

## **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 the conversion of the attic of the original single storey house at 31 Marian Park, Waterford including the altering, repositioning and addition of rooflights to the side of the dwelling is or is not development or is or is not exempted development:

**AND WHEREAS** William Giddens referred this declaration for review to An Bord Pleanála on the 22nd day of July, 2020:

**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) the planning history of the site,
- (e) the pattern of development in the area:

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

- (a) The provision and alteration of roof lights to the side of the dwelling and the internal conversion of the attic space to habitable accommodation constitutes development.
- (b) The development does not materially alter the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures.



**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 the provision of roof lights into the side roof of the dwelling and the conversion of the attic space to habitable rooms is development and is exempted development.

---

Caryn Coogan  
Planning Inspector

4<sup>th</sup> of February 2020