



An
Bord
Pleanála

Inspector's Report ABP-308358-20

Question

Whether a garage/store to the side of the dwelling house and a single storey extension to the rear of the dwelling house is or is not development or is or is not exempted development.

Location

39 Kylemore, School House Road,
Castletroy, Co. Limerick

Declaration

Planning Authority

Limerick City & County Council

Planning Authority Reg. Ref.

EC15-20/MOB/CL

Applicant for Declaration

Julie Ann Dowling

Planning Authority Decision

n/a

Referral

Referred by

Limerick City & County Council

Owner/ Occupier

Julie Ann Dowling

Observer(s)

James Brown & Brian Jackman &
Others

Date of Site Inspection

30th April 2021

Inspector

Hugh D. Morrison

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1.0 Site Location and Description

- 1.1. The site is located within the Kylemore Housing Estate in a position c. 0.9km north north-east of Junction 29 of the M7. This Estate comprises two-storey detached and semi-detached dwelling houses and it is accessed from the north-west off School House Road.
- 1.2. The site itself accommodates a detached two-storey dwelling house which has been extended to the side/rear by means of a single storey extension. This dwelling house is served by off-street car parking spaces to the front and a rear garden. Its attic has been converted to provide a habitable room lit by a window in the north-western gable and rooflights in the rear roof plane and an ancillary room.
- 1.3. The above cited extension is the subject of the current referral. The applicant requested a declaration from Limerick City and County Council (LCCC) on its proposed alterations to and revised usage of this extension. LCCC declined to do this, but it has referred this matter on to the Board.

2.0 The Question

- 2.1. The question posed by the applicant is as follows:

Whether a garage/store to the side of the dwelling house and a single storey extension to the rear of the dwelling house is or is not development or is or is not exempted development.

- 2.2. I will discuss the adequacy of this question under my assessment.

3.0 Planning Authority Declaration

3.1. Declaration

n/a

3.2. Planning Authority Reports

3.2.1. Planning Reports

None

3.2.2. Other Technical Reports

None

4.0 Planning History

17/684: Retention of single storey rear extension and all ancillary site works:
Refused at appeal ABP-301501-18 for the following reason:

Having regard to the pattern of development in the area and the scale of development proposed, it is considered that the proposed extension, by reason of its scale, height, extensive glazing and proximity to site boundaries, would seriously injure the residential amenities of adjoining properties by reason of visual obtrusion, overlooking and overbearing. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

This decision is the subject of a Judicial Review, which has been adjourned.

5.0 Policy Context

5.1. Development Plan

The site comes within the area covered by the Limerick County Development Plan 2010 – 2016 (extended) and the Castletroy Local Area Plan 2019 – 2025.

5.2. Natural Heritage Designations

Lower Shannon SAC (002165)

6.0 The Referral

6.1. Owner/occupier's case

- Application 17/684 for the retention of a single storey rear extension and all ancillary site works was the subject of an appeal ABP-301501-18. While the inspector recommended a grant, subject to conditions, the Board refused retention permission.

- The extension with a revised layout is the subject of a Section 5 application. The portion of this extension to the side of the dwelling house is garage/storage (10.3 sqm) and so it is exempted development under Class 1 of Part 1 of Schedule 2 to Article 6 of the Planning and Development Regulations, 2001 – 2021, and the remaining portion is to the rear of the dwelling house and, as it is 29.5 sqm it is less than 40 sqm in area, it is exempted development under the same Class.
- Under the revised layout, the habitable floor area is reduced, overlooking is eliminated, and the rear window is omitted. The concerns of the Board have thereby been addressed.

6.2. Planning Authority's case

- The referral site is located in Kylemore, a housing estate between Schoolhouse Road and the M7.
- The parent permission for the housing estate was granted to application 04/612 and it was subsequently modified by a further permission that was granted to application 05/1237.
- The subject extension was the subject of an application 17/684 for retention permission, which was refused by the Board under appeal ABP-301501-18. This refusal is the subject of Judicial Review proceedings which have been “adjourned generally”. This extension is the subject of warning and enforcement notices, which were served on 30th June 2017 and 17th September 2018.
- The extension is the subject of a Section 5 application, which was lodged by Julie Ann Dowling on 30th June 2020. While the footprint of this extension remains as before, internally the portion to the side of the dwelling house is a garage/storage and the portion to the rear is play/music room. The former has an external door to the front and the latter has no direct access to the original dwelling house.
- The Planning Authority is not in a position to make a declaration to the Section 5 application and so it has referred this application to the Board.

6.3. Observer

The observation received is signed by James Browne of No. 53 Kylemore and Brian Jackson of No. 52 Kylemore. They state that it is also from the owners/residents of Nos. 35, 36, 37, 38 & 51 Kylemore.

The unauthorised development, which is the subject of a Section 5 application, has been in-situ since 2017. This development continues to adversely affect the amenities of adjoining residential properties, while the applicant enjoys the use of it.

The following specific points are made:

- The building in question is not an extension as it does not have any direct connection to the dwelling house. Furthermore, the siting of the garage/storage area within this building is such, that the play/music room is not even attached to the dwelling house and so it is a stand-alone habitable structure. For these reasons, the building does not come within the ambit of Class 1 of Part 1 of Schedule 2 to Article 6 of the Planning and Development Regulations, 2001 – 2021.
- Notwithstanding the privacy shields specified for windows in the south western and north western elevations of the building, these openings would continue to be windows and as such they would be variously 0.9m and within 1m of adjacent boundary walls and so this building would not be exempt under Condition 6(a) of the aforementioned Class.
- The height of the garage/storage portion of the building is 3.62m and so greater than the maximum of 3m cited in Condition 5 attached to Class 3 of Part 1 of Schedule 2 to Article 6 of the Planning and Development Regulations, 2001 – 2021. In this respect, the roof pitch is 9 degrees and so within the commonly accepted threshold of 10 degrees for the categorisation of a roof as flat. Furthermore, its roof would be clad in metal decking and so it would not be “tiled or slated”. Accordingly, Condition 4 attached to Class 3 would not be met.

Under the Section 5 application, no changes to the extensive glazing and finishing materials of the building are proposed. Elsewhere in the Kylemore housing estate domestic extensions have been granted permission on

condition that their finishing materials match those of the host dwelling house, e.g. 17/379, 18/1011, and 19/701. Furthermore, under Section 4.2 of the Castletroy Local Area Plan 2019 – 2025, the need for new residential development to integrate with existing development is cited.

- The proposed privacy shields would fail to mitigate the overall loss of privacy emanating from the building, e.g. the glazed south eastern elevation/southernmost corner is at a similar level to the first floor bedroom windows in dwelling houses at Nos. 51, 52 & 53 to the south with a line of sight that runs over the intervening boundary wall.
- Attention is drawn to the presence of a window in the gable of the host dwelling house and rooflights on the rear roof plane. These openings suggest that the attic may have been converted for habitable room use. They may represent unauthorised development in their own right. The floor area of the converted attic, when aggregated with the floor area of the play/music room would be likely to exceed the maximum of 40 sqm.
- The legality/validity of the current Section 5 application is questioned, i.e. such an application is not supposed to be a vehicle for reconfiguring unauthorised development that has failed to receive retention permission so that it can be declared to be exempted development.
- The following irregularities in the submitted drawings are highlighted:
 - Under application 17/684, the floor area of the building was stated as being 41.5 sqm, while under the current Section 5 application it is stated as being 39.8 sqm. The observer scales it to be in excess of 40 sqm;
 - Under application 17/684, the separation distance between the rear elevation of the building and the adjacent boundary wall was stated as being 0.9m, while under the current Section 5 application it is stated as being 1.03 sqm;
 - Finished floor levels also differ between the two applications;
 - Plans submitted under either application omitted to show an ope between the kitchen in the host dwelling house and the new building; and

- The submitted plans do not include comprehensive floor plans of the host dwelling house and so it is not possible to conclude that no other extensions have occurred.
- The Section 5 application does not address the issue of light pollution and, in the context of sustainability, the related issue of excessive energy consumption.
- Likewise, the Section 5 application fails to reflect Sections 10.5.1 & 7 of the Limerick County Development Plan 2010 – 2016 with respect to domestic extensions and amenity considerations.
- Essentially, the amenity concerns of local residents and the reason for refusal given by the Board are not addressed/overcome by the Section 5 application.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

Section 3(1): Development

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 2(1): Interpretation

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

“alteration” includes—

(a) plastering or painting or the removal of plaster or stucco, or

(b) the replacement of a door, window or roof,

that materially alters the external appearance of a structure so as to render the appearance inconsistent with the character of the structure or neighbouring structures;

“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 the context so admits, includes the land on, in or under which the structure is situate...

“unauthorised development” means, in relation to land, the carrying out of any unauthorised works (including the construction, erection or making of any unauthorised structure) or the making of any unauthorised use;

“unauthorised structure” means a structure other than—

(a) a structure which was in existence on 1 October 1964, or

(b) a structure, the construction, erection or making of which was the subject of a permission for development granted under Part IV of the Act of 1963 or deemed to be such under section 92 of that Act (or under section 34 , 37G or 37N 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);

“unauthorised works” means any works on, in, over or under land commenced on or after 1 October 1964, being development other than—

(a) exempted development (within the meaning of section 4 of the Act of 1963 or section 4 of this Act), or

(b) development which is the subject of a permission granted under Part IV of the Act of 1963 F21 (or under section 34 , 37G or 37N of this Act), being a permission which has not been revoked, and which is carried out in compliance with that permission or any condition to which that permission is subject;

Section 4: Exempted development

(1) 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;

(j) development consisting of the use of any structure or other land within the curtilage of a house for any purpose incidental to the enjoyment of the house as such;

(2) (a) 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...

(3) A reference in this Act to exempted development shall be construed as a reference to development which is—

(a) any of the developments specified in subsection (1), or

(b) development which, having regard to any regulations under subsection (2), is exempted development for the purposes of this Act.

Section 5: Declaration and referral on development and exempted development

(1) If any question arises 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, any person may, on payment of the prescribed fee, request in writing from the relevant planning authority a declaration on that question, and that person shall provide to the planning authority any information necessary to enable the authority to make its decision on the matter.

(2) (a) Subject paragraphs (b) and (ba), a planning authority shall issue the declaration on the question that has arisen and the main reasons and considerations on which its decision is based to the person who made the request under subsection (1), and, where appropriate, the owner and occupier of the land in question, within 4 weeks of the receipt of the request.

(b) A planning authority may require any person who made a request under subsection (1) to submit further information with regard to the request in order to enable the authority to issue the declaration on the question and, where further information is received under this paragraph, the planning authority

shall issue the declaration within 3 weeks of the date of the receipt of the further information.

(ba)(i) Subject to subparagraph (ii), a planning authority shall not be required to comply with paragraph (a) within the period referred to in that paragraph where it appears to the planning authority that it would not be possible or appropriate, because of the exceptional circumstances of the development or proposed development (including in relation to the nature, complexity, location or size of such development) identified in the request under subsection (1) to do so.

(ii) Where subparagraph (i) applies, the planning authority shall, by notice in writing served on —

(I) the person who made the request under subsection (1), and

(II) each person to whom a request has been made under paragraph (c), before the expiration of the period referred to in paragraph (a), inform him or her of the reasons why it would not be possible or appropriate to comply with that paragraph within that period and shall specify the date before which the authority intends that the declaration concerned shall be made.

(c) A planning authority may also request persons in addition to those referred to in paragraph (b) to submit information in order to enable the authority to issue the declaration on the question.

(3) (a) Where a declaration is issued under this section, any person issued with a declaration under subsection (2)(a) may, on payment to the Board of such fee as may be prescribed, refer a declaration for review by the Board within 4 weeks of the date of the issuing of the declaration.

(b) Without prejudice to subsection (2), in the event that no declaration is issued by the planning authority, any person who made a request under subsection (1) may, on payment to the Board of such fee as may be prescribed, refer the question for decision to the Board within 4 weeks of the date that a declaration was due to be issued under subsection (2).

7.2. Planning and Development Regulations, 2001

Article 3: Interpretation

“gross floor space” means the area ascertained by the internal measurement of the floor space on each floor of a building (including internal walls and partitions), disregarding any floor space provided for the parking of vehicles by persons occupying or using the building or buildings where such floor space is incidental to the primary purpose of the building;

Article 6: Exempted Development

(1) 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.

Column 1 Description of Development	Column 2 Conditions and Limitations
<p><i>Development within the curtilage of a house</i></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 similar structure attached to the rear or to the side of the house.</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 extension above ground floor shall not exceed 12 square metres.</p> <p>(c) Subject to paragraph (a), where the house is detached, the floor area of any</p>

	<p>extension above ground level shall not exceed 20 square metres.</p> <p>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.</p> <p>(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 level constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 12 square metres.</p> <p>(c) Subject to paragraph (a), where the 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 extension or extensions above ground level constructed or erected after 1 October 1964, including those for which planning permission has been</p>
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	<p>obtained, shall not exceed 20 square metres.</p> <p>3. Any above ground floor extension shall be a distance of not less than 2 metres from any party boundary.</p> <p>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.</p> <p>(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.</p> <p>(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> <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</p>
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	<p>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 metre 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>
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Column 1 Description of Development	Column 2 Conditions and Limitations
<p><i>Development within the curtilage of a house</i></p> <p>Class 3</p> <p>The construction, erection or placing within the curtilage of a house of any tent, awning, shade or other object, greenhouse, garage, store, shed or other similar structure.</p>	<p>1. No such structure shall be constructed, erected or placed forward of the front wall of a house.</p> <p>2. The total area of such structures constructed, erected or placed within the curtilage of a house shall not, taken together with any other such structures previously constructed, erected or placed within the said curtilage, exceed 25 square metres.</p>

	<p>3. The construction, erection or placing within the curtilage of a house of any such structure shall not reduce the amount of private open space reserved exclusively for the use of the occupants of the house to the rear or to the side of the house to less than 25 square metres.</p> <p>4. The external finishes of any garage or other structure constructed, erected or placed to the side of a house, and the roof covering where any such structure has a tiled or salted roof, shall conform with those of the house.</p> <p>5. The height of any such structure shall not exceed, in the case of a building with a tiled or slated pitched roof, 4 metres or, in any other case, 3 metres.</p> <p>6. The structure shall not be used for human habitation or for the keeping of pigs, poultry, pigeons, ponies or horses, or for any other purpose other than a purpose incidental to the enjoyment of the house as such.</p>
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Article 9 Restrictions on exemption

(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,

8.0 Assessment

8.1. The question

8.1.1. The question posed by the applicant is as follows:

Whether a garage/store to the side of the dwelling house and a single storey extension to the rear of the dwelling house is or is not development or is or is not exempted development.

8.1.2. The submitted plans show the sub-division of the existing side/rear extension to the applicant's dwelling house. A new partition is shown on an alignment which would be a continuation of the rear building line of this dwelling house. The space forward of this partition would be used as a garage/store and a "garage door" is shown as being inserted in the front elevation of the extension. The middle space and the rear space would continue to be separated by an existing partition and these spaces would be used as play/music rooms.

8.1.3. During my site visit, I observed that an opening exists between the side of the kitchen/dining room in the original dwelling house and the extension. The implication of the proposed garage/store is that this opening would be closed.

8.1.4. The new works envisaged by the question would thus entail the installation of two internal partitions within the dwelling house and extension and the insertion of a "garage door" in the front elevation of this extension.

8.1.5. The question seeks to conflate the existing side/rear extension with the above cited new works. In effect, it invites consideration of this existing extension as if it was already as envisaged by the question, i.e. a garage/store and play/music rooms.

8.1.6. The existing side/rear extension was the subject of planning application 17/684, which was granted retention permission by the Planning Authority. This decision was the subject of a third-party appeal, ABP-301501-18, and the Board refused retention permission.

8.1.7. The planning history of the site to date concludes that the existing side/rear extension is an unauthorised structure. The applicant's question does not address whether this structure may be development, which is exempted development.

Instead, based on the works identified above, she asks if the extension would thus be development, which is exempted development.

- 8.1.8. Article 9(1)(a)(viii) of the Planning and Development Regulations, 2001 – 2021, addresses situations where even if development is exempted development, it is de-exempted if it involves an unauthorised structure. This Article 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...

In the light of this Article, I consider that the conversion works envisaged by the applicant would only be potentially exempted development if the existing side/rear extension is exempted development. Accordingly, this question must be asked first and only after that the question relating to these works.

- 8.1.9. I therefore consider that the question should be rephrased to reflect the above considerations, as follows:

(i) Whether the existing side/rear single storey extension to the dwelling house at 39 Kylemore is or is not development and is or is not exempted development.

(ii) Whether the proposed alterations to the existing side/rear single storey extension to the dwelling house at 39 Kylemore to convert the front portion of this extension to a garage/store is or is not development and is or is not exempted development.

- 8.1.10. I will thus proceed to answer the first question and, once this is done, I will address the second question.

8.2. Is or is not development

- 8.2.1. Under Section 3(1) of the Planning and Development Act, 2000 – 2021, development is defined as being “the carrying out of any works on, in, over or under land” and, under Section 2(1) of this Act, works are defined as being “any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal”.

8.2.2. The provision of the single storey side/rear extension to the dwelling house at 39 Kylemore would have entailed several of the above cited acts/operations that are delineated in the definition of works and so it constitutes development

8.3. **Is or is not exempted development**

8.3.1. The single storey side/rear extension to the dwelling house at 39 Kylemore is sited partly to the side of this dwelling house and partly to the rear of its rear building line. This extension is a single entity, i.e. the side and rear parts are not distinguished in its construction and they form a largely open-plan internal space. It would not, therefore, be appropriate to sub-divide the extension for the purposes of assessing whether as development it is exempted development.

8.3.2. Article 6(1) of the Planning and Development Regulations, 2001 – 2021, 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.

8.3.3. Class 1 of Part 1 of Schedule 2 to Article 6 of the Planning and Development Regulations, 2001 – 2021, addresses rear extensions to houses. Insofar as the subject extension is not wholly a rear extension, it does not come within this Class. No other Class addresses extensions to houses and so I conclude that this extension is not exempted development.

8.3.4. I have read the wider ranging submissions of the applicant, the Planning Authority, and the observer. I do not consider that they affect the above cited conclusion.

8.4. **Is or is not development**

8.4.1. Under Section 3(1) of the Planning and Development Act, 2000 – 2021, development is defined as being “the carrying out of any works on, in, over or under land” and, under Section 2(1) of this Act, works are defined as being “any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal”.

- 8.4.2. The works envisaged in the submitted plans would entail the introduction of a partition within the existing extension on an alignment which would be a continuation of the rear building line of the dwelling house. These works would presumably entail the introduction of a partition to the opening between the kitchen/dining room and the extension, too. They would also entail the insertion of a “garage door” in the front elevation of this extension.
- 8.4.3. Under Section 3(1) of the Planning and Development Act, 2000 – 2021, development is also defined as being “the making of any material change in the use of any structures or other land.”
- 8.4.4. The works cited above would create a space which would be used as a garage/store. The former description of garage is problematic insofar as the size would be insufficient to accommodate a motor vehicle, the “garage door” would be a pedestrian door, and the access space available to this door would be too narrow to permit a motor vehicle. The latter description of store would, however, be tenable.
- 8.4.5. If the store is assumed to be one that would be used on an ancillary basis to that of the dwelling house, then no material change of use of the applicant’s residential property at 39 Kylemore would occur, and so development in the sense of a new use would not arise.
- 8.4.6. I, therefore, conclude that the works cited above would be either an act/operation of construction or alteration and so they would constitute development.

8.5. Is or is not exempted development

- 8.5.1. Article 6(1) of the Planning and Development Regulations, 2001 – 2021, 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.*
- 8.5.2. Class 1 of Part 1 of Schedule 2 to Article 6 of the Planning and Development Regulations, 2001 – 2021, addresses “The extension of a house...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.”

- 8.5.3. Unusually, the applicant envisages not the conversion of the front space within the existing physical extension for use as an extension to the house but the conversion of this space, which already functions as an extension to the dwelling house, to use as a store. Class 1 does not envisage conversion in this latter direction, as distinct from the former one.
- 8.5.4. Whereas the observer cites Class 3 of Part 1 of Schedule 2 to Article 6 of the Regulations, I understand the Classes to be discreet and self-contained and so there is no overlap between the developments that they address. Given this understanding, Class 3 refers only to freestanding structures and so, as the subject structure is an extension, it is not of relevance.
- 8.5.5. I, therefore, conclude that the conversion of the front space within the existing physical extension for use as a store would not be exempted development under either Class 1 or 3 of the Planning and Development Regulations, 2001 – 2021.
- 8.5.6. Beyond the Regulations, exempted development is addressed under Section 4(1) of the Planning and Development Act, 2000 – 2021. I will, therefore, consider the aforementioned conversion under Items (h) and (j) of this Section. The former Item addresses works and the latter Item addresses use.
- 8.5.7. Under Section 4(1)(h) of the Act, exempted development is:
- 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;*
- 8.5.8. I consider that the internal partitions would be alterations “which affect only the interior of the structure” and the pedestrian door in the front elevation would, as an isolated insertion in the front elevation, be an alteration that would 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”.
- 8.5.9. Under Section 4(1)(j) of the Act, exempted development is:

Development consisting of the use of any structure or other land within the curtilage of a house for any purpose incidental to the enjoyment of the house as such;

- 8.5.10. As discussed in Paragraph 8.4.5 above, if the store is used for storage by the household resident in the dwelling house at 39 Kylemore, then this storage use would be a purpose incidental to the enjoyment of this house as such.
- 8.5.11. Nevertheless, I conclude that the development in question would not be exempted development under either of these two Items, as they refer to “any structure” and the existing extension is not a structure *per se* but an unauthorised structure.
- 8.5.12. I have read the wider ranging submissions of the applicant, the Planning Authority, and the observer. I do not consider that they affect the above cited conclusion.

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 (i) Whether the existing side/rear single storey extension to the dwelling house at 39 Kylemore is or is not development and is or is not exempted development, and (ii) Whether the proposed alterations to the existing side/rear single storey extension to the dwelling house at 39 Kylemore to convert the front portion of this extension to a garage/store is or is not development and is or is not exempted development:

AND WHEREAS Julie Ann Dowling requested a declaration on this question from Limerick City & County Council and the Council declined to issue a declaration:

AND WHEREAS Limerick City & County Council referred this request to An Bord Pleanála on the 6th day of October, 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)(h) & (j) of the Planning and Development Act, 2000, as amended,
- (d) Section 5 of the Planning and Development Act, 2000, as amended,
- (e) Article 3 of the Planning and Development Regulations, 2001, as amended,
- (f) Article 6(1) and Article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (g) Parts 1 and 3 of Schedule 2 to the Planning and Development Regulations, 2001, as amended, and
- (h) The planning history of the site:

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The existing side/rear single storey extension to the dwelling house at 39 Kylemore is development and is not exempted development.
- (b) The existing side/rear single storey extension to the dwelling house at 39 Kylemore, which was the subject of planning application 17/684 and appeal ABP-301501-18, failed to receive retention permission and so is unauthorised development.
- (c) The proposed alterations to the existing side/rear single storey extension to the dwelling house at 39 Kylemore to convert the front portion of this extension to a garage/store is development and is not exempted development under the Planning and Development Regulations, 2001 – 2021.

(d) The proposed alterations to the existing side/rear single storey extension to the dwelling house at 39 Kylemore to convert the front portion of this extension to a garage/store is development and is not exempted development under Section 4(1) Items (h) & (j) of the Planning and Development Act, 2000 – 2021, as they would be to an unauthorised structure.

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 alterations to the existing side/rear single storey extension to the dwelling house at 39 Kylemore to convert the front portion of this extension to a garage/store is development and is not exempted development.

Hugh D. Morrison
Planning Inspector

7th May 2021