



An
Bord
Pleanála

Inspector's Report ABP-309975-21

Question

Whether the construction of an extension to the rear of existing dwelling house, including minor works and repairs to the existing dwelling house at No 6 Palace Road, Elphin, Co Roscommon, is or is not development and is or is not exempted development.

Location

No 6 Palace Road, Elphin, Co Roscommon.

Declaration

Planning Authority

Roscommon County Council

Planning Authority Reg. Ref.

DED444

Applicant for Declaration

John McRae.

Planning Authority Decision

Is not exempted development

Referral

Referred by

John McRae.

Owner/ Occupier

John McRae.

Observer(s)

None.

Date of Site Inspection

19th April 2022.

Inspector

Bríd Maxwell

1.0 Site Location and Description

- 1.1. This referral relates to No 6 Palace Road in the village of Elphin Co Roscommon. The referral site is occupied by a two storey end of terrace dwelling which appears to be currently unoccupied. A former rear annex 17.5m² has been recently demolished and the foundations for a new extension (subject of the referral) have been put in place. There is a single storey lean to type garage to the northern side of the dwelling. To the north of the site on the adjoining property at the road frontage is the single storey ruin of a historic structure (gatehouse) which is on the site of Protected Structure (RPS 01600158, RMP RO016-126) Former Bishop's Palace. (A palladian style building attributed to Dublin Architect Michael Willis and built 1747-1749). The main palace building was extensively damaged by fire in 1911. The southern wing which was formerly in ruins is now a residential dwelling while the northern wing is in ruin.

2.0 The Question

- 2.1. The question referred is whether the construction of an extension to the rear of the existing dwellinghouse, including minor works and repairs to the existing dwellinghouse at No 6 Palace Road, Elphin, Co Roscommon is or is not development or is or is not exempted development.
- 2.2. The extension as presented involves a single storey rear extension of 57.1m². This includes an extension over part of the footprint of a previous rear annexe of 17.5m² which has now been demolished. The former rear annex extended across the rear of the dwelling and the single storey garage structure. The proposed extension extends behind the dwelling only and has a monopitch roof. It is set back 2.5m and 2m from the northern and southern boundaries respectively. External finishes to include *Sika Trocol* roofing membrane and nap/smooth plaster finish to walls.

3.0 Planning Authority Declaration

3.1. Declaration

By order dated 18th March 2021 Roscommon County Council issued notification of their determination that the construction of an extension to the rear of existing dwellinghouse, including minor works and repair to the existing dwellinghouse at No 6 Palace Road, Elphin Co Roscommon constitutes development that is not exempted development.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planner's report sets out the consideration of the proposal in the context of Class 1 of Part 1 Schedule 2 of the Planning and Development Regulations. Reference is made to the proximity to an historic building. It is concluded that the proposal would not comply with restriction 9(1)(vii) of the Planning and Development Regulations 2001 as amended in reference to Objectives for Archaeological Heritage in the Roscommon County Development Plan 2014-2020 in relation to the preservation of archaeological monuments, protection of character of archaeological sites and setting (Objectives 6.2.1) and conservation and Built Heritage regarding conservation of protected structures. (Objective 6.2 and 6.11)

4.0 Planning History

PD 04 2339 Permission was granted for proposed first floor extension and conversion of an existing garage. – Not implemented.

DED 397 Declaration in respect of extension to the rear of the existing dwellinghouse and renewal of existing garage roof at No 6 Palace Road Elphin. The Planning Authority by order dated 1.7.2020 declared that the works were development and not exempted development.

5.0 Policy Context

5.1. Development Plan

The Roscommon County Development Plan 2022-2028 adopted on 8th March 2022 is the operative development plan and replaced the Plan of 2014-2020. The site is on lands zoned existing residential.

5.2. Natural Heritage Designations

The site is not within a designated area. The nearest such sites include Annaghmore Lough (Roscommon) SAC Site Code 001 626 circa 5.5km southeast, Cloonshanville Bog SCA 000614 12km to the northwest. Ballangare Bog SAC (000592) and Ballingare Bog SPA (004105) 14km to the west.

6.0 The Referral

6.1. Referrer's Case

6.1.1 The referral is submitted by T & R designs on behalf of the owner John McRae. Grounds of referral are summarised as follows:

- The referral notes that the proposal in contrast to the previous referral (DED397) excludes works to the existing garage, adjoining the northern boundary wall, and relates to the proposal for rear extension only.
- Roscommon County Council deemed the proposal not to be exempted development on the basis that works to the existing garage might impact on existing monument in the adjoining property.
- Works relate solely to a single level rear extension.
- No development works are proposed in proximity to the existing monument (gatehouse) in the adjoining property and the proposal will have no impact on the gatehouse.

6.2. Planning Authority Response

6.2.1 The Planning Authority did not respond to the grounds of referral.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

7.1.1 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.

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

7.1.3 Section 4 (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;"

7.1.4 Section 4(2) of the Act provides that the Minister may, by regulations, provide for any class of development to be exempted development. The principal regulations made under this section are the Planning and Development Regulations, 2001.

7.2 Planning and Development Regulations, 2001

7.2.1 Article 6(1) Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempt development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.

7.2.2 Article 9(1) Development to which article 6 relates shall not be exempted development for the purposes of the Act.

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 – consist of or comprise the excavation, alteration or demolition (other than peat extraction) of places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest, the preservation of which is an objective of a development plan for the area in which the development is proposed or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan, save any excavation, pursuant to and in accordance with a licence granted under section 26 of the National Monuments Act, 1930 (No. 2 of 1930),

Schedule 2, Part 1 - Exempted Development — General Classes 1 –8 describes classes of development situated within the curtilage of a house which are exempted development, provided that such development complies with the conditions and limitations expressed at Column 2 for each class.

Class 1 Extension to rear of house

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.

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 1 October 1964, including those for which*

planning permission has been obtained, shall not exceed 40 square metres.

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

(c) Subject to paragraph (a), where the house is detached and has been extended previously, the floor area of any extension above ground level, taken together with the floor area of any previous extension or extensions above ground level constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 20 square metres.

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

4. (a) Where the rear wall of the house does not include a gable, the height of the walls of any such extension shall not exceed the height of the rear wall of the house.

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

(c) The height of the highest part of the roof of any such extension shall not exceed, in the case of a flat roofed extension, the height of the eaves or parapet, as may be appropriate, or, in any other case, shall not exceed the height of the highest part of the roof of the dwelling.

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.

6. (a) Any window proposed at ground level in any such extension shall not be less than 1 metre from the boundary it faces.

(b) Any window proposed above ground 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 level exceeds 12 square metres, any window proposed at above ground level shall not be less than 11 metres from the boundary it faces.

7. The roof of any extension shall not be used as a balcony or roof garden.

8.0 Assessment

8.1. Is or is not development

- 8.1.1. The purpose of this referral is not to determine the acceptability or otherwise of the extension in respect of the proper planning and sustainable development of the area, but rather whether or not the construction of same constitutes development, and if so falls within the scope of exempted development.
- 8.1.2. I note that the external measurements of the subject extension as set out in submitted drawings is 5.64m x 11.91m. The referrer indicates a net floor area of the extension of 571m². The ridge height of the extension is 3.376m. The proposed structure is 2.5m and 2m from the boundaries with the adjoining properties to the north and south respectively. Minor works and repair to the existing dwellinghouse are proposed though specifics of same are not detailed.
- 8.1.3. The first matter relates to whether or not the construction of the extension comprises development. Having regard to sections 2 and 3 of the Planning and Development

Act 2000, the 'works' associated with erection of the extension constitute 'development' for the purposes of the Planning Acts.

8.2 Is or is not exempted development

- 8.2.1 Development can be exempted from the requirement for planning permission by either (a) Section 4 of the Planning and Development Act, 2000 (The Act), or (b) Article 6 of the Planning and Development Regulations 2001 (the Regulations).
- 8.2.2 Section 4(1)(h) of the Act exempts 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. In general terms I would note that minor works and repair to the existing building would fall within the scope of Section 4(1)(h) of the Act.
- 8.2.3 The main question to be addressed is whether the extension complies with the exemptions for extensions to the rear of a house under Class 1 of Part 1, Schedule 2 of the Regulations, and is, therefore, exempt under article 6 of the said Regulations. I am satisfied that the proposed development meets the description of development as set out in column 1 being development within the curtilage of a house and in particular being an extension of a house to the rear of a house. The key consideration is whether or not it falls within the conditions and limitations as set out in column 2.
- 8.2.4 A total of seven “conditions and limitations” are set out in relation to this class, which must be satisfied if the development in question can be considered to be exempted. Prior to review of the proposal in the context of the conditions and limitations I note that it appears that the rear annexe (or at least part thereof) was an integral part of the original building as opposed to a later extension. As the annex has now been

removed there is no definite evidence in relation to this matter however in any event I consider that this is not a central issue to the assessment.

8.2.5 In respect of the conditions and limitations 1 (a) "*Where the house has not been extended previously the floor area of any such extension shall not exceed 40 square metres*" I note that the referrer seeks to omit 17.5m² from the calculation of floor area based on the replacement of the previous rear annex (now demolished). The Planning Authority appears to have accepted this approach. I consider that this is incorrect as the annexe has been demolished in its entirety and the proposal is a new extension of a different design (and covering partial footprint of the demolished annex). The previous annex ceased to exist with its demolition. In this respect I note that this is consistent with the Board's determination in a comparable previous referral case RL2455 decided (Ref: 09.RL2455, Order appended).

8.2.6 It remains to be determined whether the proposed extension in its entirety complies with Class 1, as follows:

As the new extension proposed is 57.1m² this is in excess of the permitted exemption threshold of 40m² therefore is not exempted development.

As regards 1(b) The extension is single storey only.

1(c) N/A

2(a) Regarding cumulative floor area of extensions as outlined above this does not apply

2(b)N/A

2(c)N/A

3 N/A

4(a) The height of the walls of the extension do not exceed the height of the rear wall of the existing house.

4(b) N/A.

4(c) The height of the highest part of the roof of the extension does not exceed the highest part of the roof of the existing dwelling.

5 The extension does not reduce the area of private open space to the rear of the house to less than 25m². (Remaining private open space is 333m².)

6(a) and 6(b) 6(c) N/A.

7 The roof of the extension is pitched and cannot be used as balcony or roof garden.

8.2.6 Notwithstanding the conclusion that the proposed extension is exempted due to its exceedance of the floor area threshold having regard to the determination of the local authority I consider it appropriate to address the matter of whether de-exemption of a hypothetical modified proposal would arise having regard to the limitations set out in article 9 of the Regulations. I note that the site is not located within an area that is subject to any designations in the development plan. I have examined the development in relation to article 9 and I do not consider that any of the limitations apply in this case. I note that the Planning Authority (in Planner's report) cited development plan objectives in respect of built and archaeological heritage implying potential for negative effect on the site of Protected Structure (RPS 01600158, RMP RO016-126) Former Bishop's Palace in the context of restriction 9(1)(vii).

“consist of or comprise the excavation, alteration or demolition (other than peat extraction) of places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest, the preservation of which is an objective of a development plan for the area in which the development is proposed or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan, save any excavation, pursuant to and in accordance with a licence granted under section 26 of the National Monuments Act, 1930 (No. 2 of 1930),”

I consider that given the nature of the proposal and the absence of any remaining direct formal relationship to the adjacent protected structure I find no basis for the application of such restriction.

9 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 construction of an extension to the rear of the existing dwellinghouse, including minor works and repairs to the existing dwellinghouse at No 6 Palace Road, Elphin, Co Roscommon is or is not development or is or is not exempted development:

AND WHEREAS John McRae care of Tony McManus T & R Consulting Engineers of Ballynamony, Carrick On Shannon, Co Leitrim requested a declaration on this question from Roscommon County Council and the Council issued a declaration on the 18th day of March, 2021 stating that the matter was development and was not exempted development:

AND WHEREAS John McRae referred this declaration for review to An Bord Pleanála on the 14th day of April, 2021:

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) article 6(1) and article 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 prior demolition of the previously existing rear annex to the rear of the house

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The activity proposed in this referral comprises “development” as defined in section 3 of the Planning and Development Act 2000,
- (b) The previously existing rear annex now demolished is not relevant to the question, and
- (c) The proposed extension exceeds 40 square metres and does not come within the scope of Class 1 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001:

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3) (a) of the 2000 Act, hereby decides that the construction of an extension to the rear of the existing dwellinghouse, including minor works and repairs to the existing dwellinghouse at No 6 Palace Road, Elphin, Co Roscommon is development and is not exempted development.

Bríd Maxwell
Planning Inspector

29th April 2022