



Question	Whether the construction of 18.5sqm single storey extension to the rear of 14 The Drive, Ocean Links, Strandhill, Co. Sligo is or is not development or is or is not exempted development
Location	14 The Drive, Ocean Links, Strandhill, Co. Sligo
Declaration	
Planning Authority	Sligo County Council
Planning Authority Reg. Ref.	ED420
Applicant for Declaration	Dominic and Stephanie Galwey
Planning Authority Decision	Is development and is exempted development
Referral	
Referred by	David Kenny
Owner/ Occupier	Dominic and Stephanie Galwey
Observer(s)	None
Date of Site Inspection	30 th July 2021
Inspector	Máire Daly

1.0 Site Location and Description

- 1.1. The subject site is located within The Drive, Ocean Links housing estate on the southern side of the coastal settlement of Strandhill, in west County Sligo. The dwelling on site is a two-storey detached house with a rear single storey element which forms part of the original permitted design and is reflected on dwellings of the same type throughout the estate.
- 1.2. The house is located in the northern portion of the housing estate, on a cul de sac road which has a slight incline as one travels eastwards. A turning circle is located on the estate roadway to the site's southeast. The adjoining sites to the east and west have two storey semi-detached dwelling houses located on them. No. 13 which is located on the adjoining site to the east is located at a higher ground level (c.950mm) than the subject site. No. 15 which is located to the site's immediate west has a lower ground level than the subject site. The rear garden of the subject site stretches a distance of c. 9.5m from the rear wall of the two-storey element of the dwelling house to the rear garden boundary. The Atlantic View housing estate is located on the adjoining site to the rear.

2.0 The Question

- 2.1. The question as referred is whether the construction of an 18.5sqm single storey extension to the rear of no.14 The Drive, Ocean Links, Strandhill, Co. Sligo is or is not development or is or is not exempted development.

3.0 Planning Authority Declaration

3.1. Declaration

By order dated 30th April 2021, Sligo County Council issued a declaration to the effect that the construction of an 18.5sqm single storey extension to the rear of a an existing detached dwelling at 14 The Drive, Ocean Links, Strandhill, Co. Sligo is development and is exempted development for the following reasons:

- *The proposal would come within the definition of "works" as set out in Section 2 of the Planning and Development Act, 2000 (as amended),*

- *The proposal would come within the definition of “development” as set out in Section 3 of the Planning and Development Act, 2000 (as amended),*
- *The proposal would come within the provisions of “exempted development” as set out in Class 1 of Schedule 2, Part 1 of the Planning and Development Regulations, 2001 (as amended).*

This Declaration has now been referred to the Board, pursuant to Section 5 of the Act, for review.

3.2. **Planning Authority Reports**

3.2.1. **Planning Reports**

The planner’s report (dated January 2021) notes that the single storey extension which is to have an area of 18.5sqm is to be located to the rear of the existing dwelling house at no.14 The Drive and is considered exempted development in accordance with the Planning and Development Act 2001 (as amended). None of the limitations cited in Schedule 2, Part 1 of the Planning and Development regulations 2001, apply to this proposed development. The area planner noted the following:

- The house has not been extended previously.
- The extension is less than the maximum 40sqm.
- No ground floor windows are less than 1 m from the site boundary.
- The proposed development will not reduce the private open space for use by the applicants to less than 25sqm.

3.2.2. **Other Technical Reports**

- None received.

4.0 **Planning History**

4.1. None specific to the dwelling.

4.2. **P.A. Ref. PL01-717** - refers to the larger housing estate which was granted permission in August 2002 for the construction of 54 dwelling houses and all associated site development works.

5.0 Policy Context

5.1. Development Plan

- 5.1.1. The operative development plan for the area is the Sligo County Development Plan (CDP) 2017-2023. The site is zoned for 'residential uses' under the Strandhill Mini Plan which forms part of the CDP.

5.2. Natural Heritage Designations

- 5.2.1. The site is located c. 0.68km east of the Ballysadare Bay SAC (Site Code: 000622) and c. 0.97km west of the Ballysadare Bay SPA (Site Code: 004129).

6.0 The Referral

6.1. Referrer's Case

- 6.1.1. A referral was submitted by Mr. David Kenny of no.13 The Drive, Ocean Links (the dwelling house to the immediate east of the subject site). This can be summarised as follows:
- No site visit occurred.
 - The extension is stepping up 0.45m to a floor level which is 1.5 foot higher than ground floor. This is stepping onto a different floor. Per Government planning guidelines once you go above single storey, which is the case in the current proposal, you need to be 2m (6.6ft) from your neighbouring boundary. The current proposal would only have a distance of 5.6ft from the referrer's boundary.
 - The extension will lead to loss of light and overshadowing of the referrer's garden and will feel oppressive and overbearing.
 - The extension is not in keeping with the design of the estate. Its bulky flat roof design does not fit into the landscape in Strandhill.

6.2. Planning Authority Response

6.2.1. A response from the planning authority was received on 19th July 2021 which can be summarised as follows:

- Pursuant to Section 5 of the Planning and Development Act 2000, as amended, Sligo County Council decided the construction of an 18.5sq m extension to the rear of an existing detached dwelling at no.14 The Drive, Ocean Links, Strandhill, Co. Sligo, located as shown on details submitted to the planning authority on 9th December 2020, is development and is exempted development.
- The Planning Authority respectfully request the Board to uphold its decision with respect to the referral.

6.3. Owner/ occupier's response

6.3.1. A submission in response to the referral was received from Dominic and Stephanie Galwey who are the owners/occupiers of the dwelling house at no. 14 The Drive, Ocean Links, Strandhill, Co. Sligo. This response can be summarised as follows:

- The owners/occupiers applied to Sligo County Council for planning exemption in December 2020. This was granted on 13th January 2021 (ref. ED/411)
- In response to the referral received from neighbours David and Orla Kenny, the owner/occupiers agent has submitted a computer generated sun/shade study which indicates that the proposed development will have no detrimental effect on the Kenny's property in terms of light and shade.
- A single storey extension is proposed with a 450mm level change to facilitate a definition of the living area within the house. The current ground level is approx. 950mm to 1000mm lower than the ground level of the Kenny's property. As a result, the highest floor level of the proposed extension will be 500mm to 550mm lower than the Kenny's existing ground floor level.
- The high strip window is purely for the ingress of light and does not lead to overlooking. Cill level is to be between 1700mm and 1800mm.

- The owner/occupiers property is located at a lower ground level and west north west of the neighbouring property at no.13 and as a result there will be no loss of light or overshadowing.
- The referrers statement that the extension is not “in keeping with the estate” is of no relevance.

6.4. Further Responses

6.4.1. A response was received from the referrer (David Kenny) on 20th July 2021. This can be summarised as follows:

- Numerous other correspondence has occurred between the referrer and SCC prior to March 2021. The correspondence in fact began in July 2020.
- The referrer was not informed by SCC that they could submit their own Section 5 referral to An Bord Pleanála.
- Numerous discussions occurred between the Galwey’s and the referrer in which they highlighted their concerns about the design.
- The issue of change of floor levels and the increase of 0.45m for the extension still remains.
- Issue with side window still remains.
- Due to the proximity of the 3.1m high flat roof from the neighbouring boundary fence (5ft 6) loss of light and overshadowing will occur on the referrer’s garden.
- The submitted computerised sun/shade study is not an accurate reflection of real-life events.
- Reiterate that design does not fit into the landscape at Strandhill or the surrounding area (Knocknarea Mountain).
- The proposed extension will be visible from 7 no. gardens and will block both sea and mountain views. All of the other extension in the estate are of a hip roof nature and compliment the landscape better.

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

“Exempted development” has the meaning specified in section 4; “structure” means any building, structure, excavation or other thing constructed or made on, in or under land, or any part of the structure so defined and (a) where the context so admits, includes the land on, in or under which the structure is situate”; “works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal.

7.1.2. Section 3 Subsection (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 in the use of any structures or other land.

7.1.3. Section 4 Subsection (1)

The following shall be exempted developments for the purposes of this Act –

Subsection (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;

Subsection (2) relates to regulations for any class of development to be exempted development for the purposes of this Act

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.

7.1.5. Section 5

Section 5(1) relates to a question arising 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.

7.1.6. **Section 32**

This section has a general obligation to obtain permission in respect of any development of land not being exempted development and in the case of development not authorised for the retention of unauthorised development.

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

7.2.1. **Article 6(1)** of the said regulations provide 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”.

7.2.2. **Article 9 (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,

(i) Contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act

(ii) consist of or comprise the formation, laying out or material widening of a means of access to a public road the surface carriageway of which exceeds 4m in width.

(iii) endanger public safety by reason of traffic hazard or obstruction of road users.

(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 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.

(vii) consist of or comprise the excavation, alteration or demolition (other than peat extraction) of places, caves, sites, features or other objective of archaeological, geological or 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 (No 2 of 1930)

7.2.3. **Schedule 2 Part 1 Exempted Development — General Development within the curtilage of a house**

Class 1

Sub class 1(a) Where the house has not been extended previously, the floor area of any such extension shall not exceed 40 square metres.

Sub class 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.

Sub class 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

Sub class 4(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.

Sub class 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.

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

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

7.3. **Other**

Similar referrals to the current case are listed as follows:

- **ABP Ref. RL3173** - On the question of whether a particular extension to the rear of a house is exempted development. The referral related to an extension

to the rear of a single storey detached dwelling. The extension was single storey with ancillary, non-habitable attic space overhead and did not include an above ground floor extension. Its eaves and roof ridge height matched those of the main house. The Board decided that the extension was exempted development, as follows:

- the extension did not include above ground habitable floorspace.
 - the side walls did not exceed the height of the side walls of the house.
 - the extension did not include any window at ground floor level less than one metre from the facing boundary.
 - the extension, therefore, came within the scope of Schedule 2 Part 1 Class 1 and, specifically, Conditions and Limitations 3, 4 and 6.
- **ABP Ref. 301276-18** – On the question of Whether works comprising an extension 39sq.m to an existing cottage and entrance is or is not development or is or is not exempted development. The Board concluded that that the proposed extension was development and was not exempted development based on the following:
 - (a) the extension to the cottage and laying out of an entrance constitutes works and is therefore, development, as defined in section 3(1) of the Act,
 - (b) having regard to the layout of the original cottage, including the position of the access door and windows, it is not considered, for the purpose of the Planning and Development Regulations, 2001, as amended, that the extension to the cottage is to the rear of the cottage in the sense provided for under Class 1 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended, and, therefore, does not come within the scope of this class,
 - (c) it has not been clearly established that a vehicular entrance pre-existed at the location of the vehicular entrance now in place, therefore, the entrance in question is a new entrance, and

d) this entrance is onto a public road, the surfaced carriage of which exceeds 4 metres in width and, therefore, is not exempt under Article 9(1)(a)(ii) of the Planning and Development Regulations, 2001.

8.0 Assessment

8.1. Is or is not development

8.1.1. Section 3 defines development 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. Works as defined in section 2 (1) includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal. It is evident that the works proposed in this case namely a single storey extension to the rear of the dwelling house constitute “development” within the meaning of the Act. The question for determination by the Board is whether the development is, or is not, exempted development.

8.2. Is or is not exempted development

8.2.1. The development proposed comprises a single storey rear extension of 18.5sqm, on the north eastern elevation of the existing dwelling house. The single storey extension which is to comprise a new living area is to have a 450mm level change to facilitate steps up from the existing house into the new extension.

8.2.2. The owners/occupiers highlight that the subject site is c. 950mm below the neighbouring site to the east and that the property is orientated in a west north west direction which would ensure minimal loss of light or overshadowing of the adjoining properties garden. A sun/shade study from the existing situation on site and the proposed development has been submitted with the application.

8.2.3. The referrer raises concerns in relation to the level changes proposed on site and states that the extension steps up 450mm to a floor which is then above ground floor level. This in their opinion is a jump up from an existing floor to a ‘new’ floor. In addition, they argue that the proximity of the proposed extension to their side boundary at 5.6ft is contrary to government guidelines.

- 8.2.4. The owner/occupier has submitted drawings of the proposed single storey rear extension which show that it is a distance of 1.4m from the existing eastern boundary of the site. This is the boundary shared with no.13 (Referrer's garden boundary).
- 8.2.5. In the declaration received from Sligo County Council, it was determined that the single storey extension is exempted development having regard to Class 1, Part 1, Schedule 2 of the Planning and Development Regulations, 2001 (as amended).
- 8.2.6. Given the nature of the development proposed which is an extension to a house by construction or erection of an extension to the rear of the house, I would consider it appropriate to assess same proposed development under the six conditions and limitations as outlined under Class 1, Part 1, Schedule 2 of the Planning and Development Regulations, 2001 (as amended). Regarding the question at hand and having inspected the site and the documentation submitted I note the following:
1. The house has not been extended previously and the floor area of the proposed extension is 18.5sq m.
 2. The house has not been extended previously.
 3. The proposal is for a single storey extension.
 4. The height of the flat roofed extension does not exceed the height of the eaves of the existing house. The proposal is for a single storey extension of height 3.18 metres. This proposed height includes a step up in level of 450mm from the existing ground floor of the dwelling house. The submitted rear elevation drawings show the proposed extension's flat roof finishing just below the level of the first-floor window cills.
 5. The proposed extension will not reduce the private open space reserved for the use of the occupants of the house to the rear to less than 25sq m.
 6. No windows proposed at ground floor level are less than 1 metre from the boundary that they face. The east facing side window which the referrer raises as a concern is located c. 1.4m from the shared boundary with no. 13 to the east.
 7. The roof of the proposed extension is not to be used as a balcony or roof garden.

After considering the submissions from the parties and inspecting of the site, I would advise the Board that there is no doubt but that the works in question are development and would be exempted development within Class 1 of Part 1 of Schedule 2 of the planning regulations as they comply with limitations for that class.

8.3. **Restrictions on exempted development**

- 8.3.1. Article 9 de-exempts various development that would otherwise be exempted development under Article 6.

8.4. **Environmental Impact Assessment**

- 8.4.1. Having regard to the limited nature and scale of the development, as referenced in the questions above, and the absence of any connectivity from the referral site to any sensitive location, there is no real likelihood of significant effects on the environment arising from the development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

8.5. **Appropriate Assessment**

- 8.5.1. Having regard to the nature and scale of the development under consideration, the nature of the receiving environment, the availability of public services, it is my opinion that no appropriate assessment issues arise and that the development would not be likely to have a significant effect, either individually or in combination with other plans or projects, on any Natura 2000 site.

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 construction of an 18.5sqm single storey extension to the rear of no.14 The Drive, Ocean Links, Strandhill, Co. Sligo is or is not development or is or is not exempted development:

AND WHEREAS David Kenny requested a declaration on this question from Sligo County Council and the Council issued a declaration on the 30th day of April, 2021 stating that the matter was development and was exempted development:

AND WHEREAS David Kenny referred this declaration for review to An Bord Pleanála on the 26th day of May, 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 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 planning history of the site,
- (g) the pattern of development in the area:

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The proposed single-storey rear extension complies with the conditions and limitations set down under Schedule 2, Part 1, Class 1 of the Planning and Development Regulations, 2001 (as amended)

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 18.5sqm single storey extension to the rear of no.14 The Drive, Ocean Links, Strandhill, Co. Sligo is development and is exempted development.

Máire Daly

Planning Inspector

06th September 2021