



An
Bord
Pleanála

Inspector's Report

ABP-312803-22

Question

Whether the repair and renewal of a vacant house and all associated works within the curtilage of the house necessary to ensure its effective reuse is or is not development and is or is not exempted development.

Location

Derrymore, Dunmore, Co. Galway.

Planning Authority

Galway County Council

Planning Authority Reg. Ref.

ED21/102

Applicant for Declaration

Michael and Sharon Hanley

Planning Authority Decision

Is development and is not exempted development.

Referred by

Michael and Sharon Hanley

Owner

Michael and Sharon Hanley

Observer(s)

None.

Inspector

Fergal Ó Bric

1.0 Site Location and Description

- 1.1. The development is located in the rural townland of Derrymore, approximately 1.3 kilometres north of the settlement of Dunmore in north County Galway. The site is directly accessed off the N83, a national secondary route, a route linking Dunmore with Ballyhaunis in south Mayo. There is a continuous white line on the road at this point where the 80 kilometre per hour speed control zone applies.
- 1.2. There is a post and rail fence and an ivy covered wall along the roadside (western) boundary, mature trees along the northern and southern boundaries and a solid wooden fence along the eastern (rear boundary). The site slopes gradually from north to south on the site. The curtilage of the dwelling is hard cored with some trailers, a van and a mini digger parked around the curtilage of the dwelling.
- 1.3. The site is largely rectangular in shape, though narrowing to the rear (east) of the site. There is a dormer dwelling (residence of the referrers) located immediately south of the site.
- 1.4. There is an existing single storey cottage dwelling on site which is in a poor state of repair. The roof tiles are largely intact as are the internal and external walls. Part of the northern gable of the dwelling has collapsed. The front elevation of the dwelling on site faces in a westerly direction towards the public road.

2.0 The Question

- 2.1. The question posed by the referrer in the documentation submitted to the Planning Authority on the 23rd day of December 2021 is as follows:

Whether the repair and renewal of a vacant house and all associated works within the curtilage of the house, necessary to ensure its effective reuse is or is not development, and, is or is not, exempted development.

The referrer submitted the following details: It is the referrers intention to return the vacant dwelling to its original use. The dwelling would be used to satisfy the housing needs of referrers family. The referrers reside in the adjoining residential property and with the growth of their family, the immediate family housing need would be satisfied by the renewal of the vacant dwelling. It is stated that the proposed works

would largely affect only the interior of the structure. No alterations to the footprint of the dwelling is proposed. No external works, which would materially affect the external appearance of the dwelling with the exception of the removal of a chimney are proposed. An effluent treatment system is to be installed on site to allow for the disposal of wastewater from the development.

It is proposed to maintain the access to the dwelling and no material widening of the access is proposed. The referrers state that they are unsure as to the exact date of construction of the dwelling on site but understand the dwelling predates the Planning and Development Act of 1963.

3.0 Planning Authority Declaration

3.1. Declaration

An application for a declaration was submitted by the first party's (Michael and Sharon Hanley) to Galway County Council on the 23d day of December 2021). The Planning Authority issued a declaration on the 4th day of February 2022 stating that it considered that the repair and renewal of a vacant house and all associated works within the curtilage of the house necessary to ensure its effective reuse, is development, as firstly, there is no provision for the installation and maintenance of a domestic wastewater treatment system under the provisions of the Planning and Development Regulations 2001, and secondly, that the nature of the works described, beside a national road would trigger the restrictions for planning exemptions set out under Article 9 (1) (a) (iii) of the Regulations, as they would endanger public safety by reason of a traffic hazard and obstruction of road users. The Planning Authority determined the works would constitute development, that is not exempted development. The question was referred to the Board for determination on the 18th day of February 2022.

3.2. Planning Authority Reports

Planning Reports

The Planning Authority report references a number of provisions set out within the Planning and Development legislation, specifically Sections 2, 3 and 4 of the

Planning and Development Act and Articles 6 and 9 (1) 2 of the Planning and Development Regulations 2001 (as amended). Schedule 2, Part 1 sets out a range of development which is considered exempt from planning, while column 2 within this table sets out the conditions and limitations associated with the exemptions.

The Planning Authority Report concluded that the repair and renewal of a vacant house and all associated works within the curtilage of the house necessary to ensure its effective reuse, is development and, is not exempted development for the reasons set out within Section 3.1 above.

Planning History

The following is the relevant planning history pertaining to the site:

Planning Authority reference 07/4278-In 2007, Galway County Council refused planning permission to demolish the existing house and to construct a new serviced dwelling house and domestic garage. The reasons for refusal related to non-compliance with the Rural Housing Policy, inappropriate design, that the wastewater treatment proposals were non site specific and that the proposals would result in the creation of a traffic hazard.

4.0 Policy Context

4.1. Development Plan

The site is located within a Class 1 designated rural landscape, which has a landscape sensitivity rating of low, under the provisions of the Galway County Development Plan 2022-2028.

4.2. Natural Heritage Designations

The site is not located within the bounds of any European site. The closest European site to the subject site is the Lough Corrib SAC (site code 000297) which is located approximately 0.6 kilometres south-west of the site at its closest point. There is no surface water hydrological connectivity between the appeal site and the European site.

The Slieve Bog pNHA is located approximately 4.4 kilometres south-east of the referral site. There is no surface water hydrological connectivity between the appeal site and the pNHA.

5.0 The Referral

5.1. Referrer's Case

History and Background to the dwelling

- The exact date of the construction of the dwelling is unknown, it is understood to predate 1963.
- The Ordnance Survey historical 6 inch mapping indicates that a structure existed at the location of the vacant dwelling on site pre 1963.
- All repair/renewal works would be carried out under the supervision of a suitably qualified competent person, in accordance with an engineers' specification.
- Certification of compliance with Building Regulations will be provided upon completion of works.
- The dwelling on site pre-dates the national secondary route designation of the N83, on the adjoining public road.
- The access to the dwelling is to be maintained at its original location.
- No material widening or intensification of use of the access will arise.

5.1.1. The appeal submission presents reasons and arguments, as follows.

Repair and Renewal of Dwelling

The referrers contend that Galway County Council did not undertake a comprehensive assessment of the proposals to repair and renew the vacant dwelling on site. The referrers set out that the works to the dwelling will largely affect only the interior of the dwelling and that the footprint of the dwelling will remain unchanged.

The referrers state that one chimney would be removed in order to achieve compliance with Part L of the Building Regulations. The referrers are of the opinion that the works to the dwelling demonstrate compliance with Article 6 of the Planning and Development Regulations, 2001 and with Section 5 of the Planning and

Development Act, 2000 in relation to exempted development. The Board is asked to determine if the works proposed are in compliance with the planning and development legislation and, therefore, are exempted development under Schedule 2, Part 1, Class 2(a) and/or Article 6 of the Regulations.

Wastewater Treatment System

The Planning Authority stated that: There is no provision for the installation and maintenance of an appropriate domestic wastewater treatment system in the Planning and Development Regulations 2001 (as amended). The referrers are proposing to install a new wastewater treatment system to the rear of the dwelling. In relation to the installation of the effluent treatment system and percolation area, the referrers specifically reference Part H of the Building Regulations 2010.

The referrers set out the exempted development provisions for part of a heating system of a house, including a chimney, is exempt from planning under Schedule 2, Part 1, Class 2(a) of the Planning and Development Regulations 2001, (as amended).

The referrers also reference Article 6 (4) (a) of the Regulations, relating to the carrying out of such works as are necessary to secure compliance with the Building Regulations. In this regard the referrers specifically reference Part L of the Building Regulations, relating to the conservation of fuel and energy.

The submission made to the Board by the referrers essentially comprises the drawings and correspondence as submitted to the Planning Authority.

5.2. Planning Authority Response

The Planning Authority made no comment to the Board in relation to this Section 5 referral case.

6.0 Statutory Provisions

6.1. Planning and Development Act, 2000

6.1.1. Section 2(1) of the Act sets out the following definitions which are of relevance:

“habitable house” means a house which –

(a) is used as a dwelling,

(b) is not in use but when last used was used, disregarded any unauthorised use, as a dwelling and is not derelict, or

(c) was provided for use as a dwelling but has not been occupied;

“house” means - a building or part of a building which is being or has been occupied as a dwelling or was provided for use as a dwelling but has not been occupied, and where appropriate, includes a building which was designed for use as 2 or more dwellings or a flat, an apartment or other dwelling within such a building;

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

6.1.2. Section 3(1) of the Act states that, “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.

required.’

6.1.3. Section 4(1) sets out what is exempted development for the purpose of the 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.

6.1.4. Section 5(3)(A) states the following: 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 a fee as may be prescribed, refer a declaration for review by the Board within 4 weeks of the date of issuing the declaration.

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

6.2.1. Article 6(4) (a): The carrying out of such works as are necessary to secure compliance with the Building Regulations, shall in the case of development consisting of the construction of a dwelling or dwellings in respect of which permission under Part iv of the Act of 1963 was granted before 1st June 1992, be exempted development.

6.2.2. Article 9(1) states that:

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—

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

(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 4 metres in width.

(iii) Endanger public safety by reason of traffic hazard or obstruction of road users,

Schedule 2, Part 1 Class 2(a)-The provision as part of a heating system of a house, of a chimney or flue, boiler house of fuel storage tank or structure.

7.0 **Assessment**

7.1. **Is or is not development.**

7.1.1. The proposals relate to the repair and renewal of a vacant dwelling and the installation of an effluent treatment system and percolation area. The referrers set out that the vacant dwelling would be modernised in terms of being insulated, installing a modern heating system, new windows and doors.

7.1.2. As per the definition of a house within the Act, I consider that the structure on site would fall within the definition as provided for under Section 2 (1) (c) which provides for a structure that was provided for use as a dwelling but has not been occupied.

7.1.3. As per Section 6.1.1 above, the definition of works as set out within the planning legislation includes the repair and renewal of a dwelling. Therefore, from the description of the proposals as provided by the referrers, I am satisfied the proposals would constitute works. The referrers set out that most of the works would occur internally and the external works will be by way of: Maintenance, repair, and renewal/reinstatement to match existing, or where deemed necessary by a suitably qualified engineer, replacement to match existing. I consider that the works would involve acts of construction and demolition in the form of the reconstruction of the northern gable wall and the removal of one of the chimney features and, therefore, the development proposed would constitute works as per the definition set out within Section 2(1) of the Planning Act. These works would constitute development, given these would be taking place on and/or over land.

7.1.4. The proposals would also involve the installation of an effluent treatment system and percolation area. The installation of the wastewater system would require the carrying out of excavation works under land. It is, therefore, my opinion that the proposal would constitute development, as defined under Section 3(1) of the Planning and Development Act, 2000 (as amended).

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

7.2.1. As to whether the development is, or is not exempt development, the referrer and the Planning Authority have identified the relevant provisions of the Regulations, the exemptions provided for under Article 6 (1) and Class 2(a), of the Second Schedule and the restrictions and limitations on planning exemptions provided for under Article 9.

7.2.2. The Referrers submit that the dwelling is understood to pre-date the 1963 Planning Act. They state that the works: Would not materially alter the external appearance of the structure or indeed alter the footprint of the dwelling. They also state that the works would require the removal of one of the chimneys in order to be compliant with Part L of the Building Regulations, in relation to the installation of heating systems.

- 7.2.3. Further, I note the photographs submitted by the referrers to the Planning Authority showing images of the dwelling in 1996. From these images, it is clear that very little has changed in terms of the height, scale, width or depth of the dwelling, there has been no significant work carried out, to the extent that the dwelling currently on site is consistent with that which existed on the site in 1996. The existing footprint and external finishes bear a strong resemblance to the dwelling in the photographs.
- 7.2.4. I am satisfied from the documentation and information submitted on file by the referrer and the Planning Authority, that the dwelling on site occupies the same footprint and has the same floor area as the original dwelling. Therefore, I consider that the specific repair and renewal works proposed to the dwelling would come within the scope of Section 4 (1)(h) of the Planning and Development Act, 2000, as amended, being works for the maintenance, improvement or other alteration of the original structure, and 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.
- 7.2.5. I note that Schedule 2, Part 1, Class 2(a) of the Regulations provide exemptions in terms of: the provision of part of a heating system of a house, including a chimney. The referrers state that the heating system would be designed in accordance with the conditions and limitations as set out for Class 2 (a), they being the capacity of an oil tank shall not exceed 3,500 litres. I, therefore, consider that based on the information submitted, that the repair and renewal works to the dwelling including the installation of a heating system and removal of a chimney feature would constitute development, and would be classified as exempted development, under the provisions of the Regulations outlined in the paragraphs above.
- 7.2.6. Regarding the works to be carried out to install a wastewater treatment system (WWTS) and percolation area, the referrer sets out that the installation would be exempt under the provisions of Section 6 (4) (a) of the Regulations. Section 6(4) refers specifically: To securing compliance with the Building Regulations and also

refers to the construction of a dwelling(s), which received planning permission under Part IV of the Act of 1963, prior to June 1992.

- 7.2.7. The referrers set out that they understand the dwelling was constructed prior to 1963. The Ordnance Survey mapping would support this assertion. However, the second element of Article 6(4) relates to the construction of dwelling(s) which received planning permission under the provisions of the 1963 Planning Act. If the dwelling pre-dates the 1963 Planning Act, as stated by the referrers, planning permission would not have been sought, as it was not a requirement at that time. Therefore, I consider that the referrer cannot avail of this particular exemption, as the dwelling predates the cut-off date for this particular element of the exemption, which clearly relates to dwellings which received planning permission prior to June 1992. Given that there is no record of planning permission being sought/received for the dwelling on site, as per the Planning Authority records, I am satisfied that the referrers cannot avail of this particular exemption.
- 7.2.8. I also refer to Section 22 of the Regulations which unambiguously and clearly stipulates the information required to be submitted with planning applications. Section 22 (2) (c) sets out that information regarding the disposal of wastewater and evidence as to the suitability of the site for the system proposed, should be submitted with a planning application requiring wastewater treatment. This section of the Regulations demonstrates that wastewater treatment details are an integral part of the information required to be submitted to Planning Authorities when assessing proposals pertaining to development which require wastewater treatment facilities, including dwellings. I also note that there is no specific exemption set out within the Act or the Regulations which exempts the installation of wastewater treatment systems from planning.
- 7.2.9. There are limited circumstances where an exemption for the upgrade of an effluent treatment system can be considered exempt from planning permission. Under Section 70 (5) of the Water Services Act 2007, where an advisory notice is issued by a Water Services Authority (WSA), setting out that an effluent system is malfunctioning and is posing a risk to public safety or health, in consultation with the

WSA, remediation works/measures to remedy the situation, can be permitted. I note that the Site Plan submitted makes no reference to an existing septic tank or wastewater treatment system on site. Therefore, it is reasonable to conclude that there was/is no effluent treatment system on site, or that it may have been covered over with the importation of hardcore onto the site or indeed removed from the site. The referrers have not referenced receipt of an advisory notice from the WSA. I consider that no exemption from planning permission for the installation of an effluent treatment system can issue under this specific provision of the Water Services Act, in this instance. This specific provision under the Water Services Act relates to existing treatment systems which are malfunctioning, and not relating to the installation of a new treatment system on a site, as is proposed in this instance. Therefore, for these reasons, I consider that the installation of a wastewater treatment system and percolation area is development, and is not exempted development.

7.3. Restrictions on Exempted development

7.3.1. *Consideration of/ Restrictions Under Art. 9*

Article 9(1) of the Regulations sets out a number of general limitations on exemptions provided for under Article 6 and which are set out in the Second Schedule. In the case of the subject site and proposal, the most relevant provisions are Article 9(1) are 9(1) (a) (ii) relating to the formation, laying out or material widening of a means of access to a public road which exceeds 4 metres in width (iii) endanger public safety by reason of a traffic hazard or obstruction of road users.

The referrers state that they are willing to provide a parking space immediately adjoining the public road. The referrers clarify that these specific works do not form part of this referral and that any compliances with same would be subject to a separate further planning application, not a referral at a later date. The wording adopted by the referrers in their cover letter in this instance, particularly the word application, would indicate that the referrers are of the opinion that such a proposal would require planning permission. I would concur with the referrers on this matter that these entrance/parking works would require planning permission. I consider that

they would potentially endanger public safety by reason of a traffic hazard and, therefore, de-exempt these works under Article 9 (1) (a) (iii) of the Regulations.

The referrers state that the original access to the dwelling is to be maintained in its original location and that no material widening of the access is proposed. I note that the front boundary of the property along the N83 is located tight to the roadside carriageway and there is only a very narrow hard shoulder along the road edge at this point. There is a continuous white line on the N83 alongside the site frontage. Visibility in a northerly direction is restricted due to the absence of a wide hard shoulder and the vertical alignment of the N83 is also sub-standard in this direction. The entrance gate onto the N83 does not benefit from a splay and, therefore, vehicles egressing the site have to breach the carriageway in order to achieve the required visibility. Therefore, I would concur with the PA that the site access would endanger public safety by reason of a traffic hazard.

However, from the content of their cover letter, the referrers clarify that these specific works do not form part of this referral and that any compliances with same would be subject to a separate further planning application. Therefore, as this element does not form part of this particular referral, no further assessment will be conducted on this particular matter.

7.4. Appropriate Assessment Screening

The site is not located within any European site. The closest such European site to the subject site is the Lough Corrib Special Area of Conservation (SAC) which is located approximately 0.6 kilometres to the south-west of the site at the closest point.

The proposal would comprise the repair and renewal of a vacant house and the installation of a wastewater treatment system.

The Conservation Objective for the Lough Corrib SAC (000297) is to maintain and restore the favourable status of habitats and species within the lake.

The proposals would generate foul effluent; however, the referrer states the foul effluent would be treated in accordance with best practice EPA, Code of Practice standards. There are no surface water pathways that would impact on the

conservation objectives of the Lough Corrib SAC. Given the relatively minor nature of the works which would not require deep excavations and the degree of separation between the subject site and the European site, I do not consider that there is a clear pathway for emissions from the site arising from construction activities to reach the SAC and, therefore, I do not consider that there are any likely significant negative impacts arising in this regard.

Having regard to the above, the proposed development is not likely to have significant adverse effects on the Lough Corrib SAC or any other European sites, in the light of the conservation objectives of these sites.

8.0 Recommendation

- 8.1. 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 repair and renewal of a vacant dwelling and the installation of an effluent treatment system and percolation area is or is not development and is or is not exempted development:

AND WHEREAS Michael and Sharon Hanley requested a declaration on this question from Galway County Council who issued a declaration stating that the proposal constitutes development and is not exempted development:

AND WHEREAS referred this declaration for review to An Bord Pleanála on the 18th day of February 2022:

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) Article 4(1) (h) of the Planning and Development Regulations, 2001, as amended.
- (d) Article 6 (4) of the Planning and Development Regulations, 2001, as amended.
- (e) Article 6(1) and Article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (f) Schedule 2, Part 1, Class 2(a) of the Planning and Development Regulations, 2001, as amended,
- (g) The nature of the development existing on the site and the planning and development history of the site,
- (h) The layout of development on the site and the pattern of development in the area:

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The repair and renewal of the dwelling including the installation of a heating system and removal of a chimney feature is, therefore, development, and exempted development under Article 4(1) (h) of the Planning and Development Act, 2000 (as amended) and Schedule 2, Part 1, Class 2(a) of the Planning and Development Regulations, 2001 (as amended)
- (b) The installation of a new wastewater treatment system and percolation area, would constitute excavation works underground and is therefore, development, that is not exempted development as set out Under Sections 2 (1) and 3 (1) of the Planning and

Development Act 2000, (as amended) and under the provisions of Article 6 (4) 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 repair and renewal of the domestic dwelling, including the installation of a heating system and removal of a chimney feature is development and, is exempted development.

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 installation of a wastewater treatment system and percolation area is development and, is not exempted development.

Fergal Ó Bric

Planning Inspectorate

30th day of March, 2023