



An  
Bord  
Pleanála

## Inspector's Report ABP-313461-22

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<b>Question</b>	Whether two extensions of 36.88sqm to a house is or is not development and is or is not exempted development.
<b>Location</b>	Ballynalahessery North, Dungarvan, Co. Waterford.
<b>Declaration</b>	
Planning Authority	Waterford City and County Council
Planning Authority Reg. Ref.	D5/2022/4
Applicant for Declaration	Thomas Gibson
Planning Authority Decision	No Declaration made
<b>Referral</b>	
<b>Referred by</b>	Thomas Gibson
<b>Owner/ Occupier</b>	Thomas Gibson
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	8 <sup>th</sup> of June 2023
<b>Inspector</b>	Angela Brereton

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## 1.0 Site Location and Description

- 1.1. The site which is the subject of this Referral is located in the townland of Ballynalahessery North, to the east of the town of Dungarvan and south of Ballinroad. It is to the south of the roundabout on the R675, and to the south of Railway Cottage and the Greenway carpark.
- 1.2. There is a single storey dwelling on site with gated entrance to the Ballyrandle Road. There is a single storey garage alongside. There is another dwelling to the south of the site. Both dwellings are set back from the road and the cycle path.

## 2.0 The Question

- 2.1. I consider that the question to be determined by the Board is as follows:
- 2.2. Whether the construction of two extensions of 36.88sq.m to a house is or is not development and is or is not exempted development at Ballynalahessery North, Dungarvan.

## 3.0 Planning Authority Declaration

### 3.1. Declaration

A declaration was sought by Thomas Gibson (Owner/Occupier) on the 2<sup>nd</sup> of March, 2022 from Waterford City and County Council. The question posed was:

Whether two extensions of 36.88sq.m to a house is or is not development and is or is not exempted development at Ballynalahessery North, Dungarvan.

No declaration was issued by Waterford City and County Council and on the 29<sup>th</sup> of April, 2022, Thomas Gibson referred the matter to An Bord Pleanala.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

None

#### 3.2.2. Other Technical Reports

None

## 4.0 Planning History

Regard is had to the letter from Waterford City and County Council dated 20<sup>th</sup> of May 2022, which provides a list of history of planning permissions relative to the Referral site and the surrounding area. The most recent include the following:

### *Subject site*

- Reg.Ref. 04/1359 – Retention Permission granted subject to conditions to Nicky & Ann Hannigan for an existing domestic garage.

### *Dwelling to the southeast*

- Reg.Ref. 04/1316 – Permission granted subject to conditions by the Council to Mary Gibson Kielty for the erection of a two storey extension to dwelling including all site works and services.

## 5.0 Policy Context

### 5.1. Waterford City and County Development Plan 2022-2028

Volume 1, Chapter 2 refers to the Spatial Vision and Core Strategy

Table 2.2 provides the Settlement Hierarchy and Typology. This includes that Dungarvan including Ballinroad is a Key Town i.e: *Strategically located urban centre with accessibility and significant influence in a sub-regional context.*

Volume 2 provides the Development Management Standards

Section 4.9 relates to House Extensions and provides that they should have regard to the amenities of adjoining properties particularly as regards sunlight, daylight and privacy. That the character, scale and form of the existing building and site should be respected. Objective DM11 refers – to the criteria.

As shown on the Land Use Zoning Map in Volume 4 of the CDP the site is within the Dungarvan & Ballinroad Settlement boundary.

It is zoned High Amenity 'HA' where the objective seeks to: *Protect highly sensitive and scenic location from inappropriate development that would adversely affect the environmental quality of the locations.*

## 5.2. Natural Heritage Designations

Dungarvan Harbour SPA is located c.1.5kms from the site.

Dungarvan Bay p NHA is located c.1.3kms from the site.

## 6.0 The Referral to the Council

### 6.1. Referrer's Case

Thomas Gibson made a request of a formal declaration to the Council under Section 5 of the Planning and Development Act 2000 (as amended) and Exempted Development Regulations 2000 (as amended). This included the following:

- A description of the dimensions of the existing single storey detached dwelling, is provided. This notes that the house has not been extended previously.
- The neighbouring house is sited to the SE and is further forward than his house. This establishes a building line for his house.
- The proposed extensions have a combined floor area of less than 40sq.m. Details are given of the dimensions and accommodation, and it is noted that the proposed extensions are in summary to provide for a front porch (c.9sq.m) and rear sunroom extension (c.27.88sq.m).
- The roofs of the proposed structures are shown less than 4m to ridge height and will not be used as a balcony or roof gardens.
- It is submitted that the proposed structures will not materially affect the external appearance of the house so as to render it inconsistent with the appearance of the house or the neighbouring house or structures.

- The gable elevation to the front will reflect a similar feature in the neighbouring house and bring it more into accord with the appearance of that house.

## 6.2. Planning Authority Response

They acknowledged receipt of the application for a Section 5 Declaration relating to the above mentioned property (letter dated 7<sup>th</sup> of March 2022). They advised that the Referrer fill in an application form for Section 5 applications so that it could be progressed further.

While the application form has been filled in and is on file, it is noted that there is no Section 5 Declaration from the Planning Authority on file.

## 7.0 The Referral to the Board

### 7.1. Referrer's Case

On the 29<sup>th</sup> of April 2022, An Bord Pleanála received a request for a review of the Referral sent to Waterford City and Council. The Referrer noted that a Declaration was not made by the said Council. This Referral is now submitted to An Bord Pleanála and has included the following:

- The grounds of referral are in the main set out in the request letter submitted to Waterford County Council (copy attached) on the 2<sup>nd</sup> of March 2022.
- It is submitted, that his proposal relative to two extensions to his dwelling house complies with Section 4(1)(h) of the Planning and Development Act 2000 (as amended).
- Details are provided of the dimensions of the proposed extensions.
  - A lounge extension of 9sq.m at ground level to the front of the house. The proposed ridge height being 4m, with the gable facing forward.
  - A sunroom extension at ground level to the rear of the house - 27.88sq.m, with monopitched roof with the slope across the narrower dimension.

- They will not be visible in the surrounding area, either from public areas or the open field at the rear.
- The house is a single storey dwelling and even though one proposed extension is to the front, Section 4(1)(h) of the Act clearly allows for an extension to the front.
- The combined floor area of both extensions is within the required 40sq.m, set out in the Planning and Development Regulations 2001 (as amended). Schedule 2, column 2 (clauses 1(a) and 2(a)). Class 1 of column 1 refers to proposals to the rear of the house.
- However, Section 4(1)(h) of the Act clearly also refer to extensions to the front of a structure since it introduces the appearance of neighbouring structures into consideration and is not as restrictive as the specific exemptions set out in the Regulations.
- Details are given of the dimensions of the existing house and it is provided that the bungalow is sited on a plot of approx. 0.2ha.
- The pitched roof to the front and the monopitch roof to the rear complies with the requirement of not exceeding the existing ridge height. In both cases the highest point is below that of the ridge.
- The proposed rear wall and side walls to the front will be the same heights as the existing house front and rear walls. The spandrel areas of both roofs will of necessity exceed those heights.
- The residual private open space to the rear of the house will be well in excess of the minimum requirement of 25sq.m.
- Neither roof will be used as a balcony or roof garden.
- The proposed extensions will be insulated to current standards and will improve the overall insulation quality of the house.
- As the house is situated in the rural area the restrictions of Art. 9 of the Regulations do not apply to the proposed forward extension of the house as the roadway serving the house is not a street and no works are proposed which affect the existing access to the public road.



- In view of the arguments made in their Referral and in the letter and details submitted to the Council, they submit that the proposals comply with the Planning and Development Act and Regulations as being Exempted Development.
- In view of the lack of urgency which the Referrer perceives from the Council he wishes to make a claim under Section 145 for a direction to the Planning Authority to pay him compensation for the added expense in relation to the referral and the additional construction expense occasioned by the delay incurred which arises from that lack of urgency and non delivery of the declaration within the defined time limit.
- He also refers to inflation and increasing construction costs.

## 7.2. Further Responses

There is no response from the Planning Authority to the Referral to the Board on file.

## 8.0 Statutory Provisions

### 8.1. Planning and Development Act, 2000 as amended

Section 2(1) of the 2000 Act states the following:

- ‘development’ has the meaning assigned to it by Section 3;
- ‘works’ includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal ....’

Section 3(1) states that:

- In this Act, ‘ development’ means, except where the context otherwise requires, the carrying out of works on, in, over or under land or the making of any material change in the use of any structures or over land’.

Section 4(1) of the Act sets out various forms and circumstances in which development is exempted development for the purposes of the Act. This includes Section 4(1)(h) i.e:

- Development consisting of the carrying out of works for the maintenance, improvement or alteration of any structure, being works which only affect the interior of the structure or which do not materially affect the external appearance so as to render it inconsistent with the character of the structure or neighbouring structures.

Section 4(2) of the Act provides that the Minister may, by regulations, provide for any class of development to be exempted development for the purposes of the Act...

## 8.2. **Planning and Development Regulations, 2001- as amended**

### **Article 6(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.

### **Article 9** Restrictions on exemption.

(1) Development to which article 6 relates shall not be exempted development for the purposes of the Act. The Restrictions on Exemption are listed and these include:

- (i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act;
- (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.

Schedule 2 of Part 1 to the Regulations set out the classes of exempted development including those pertaining to 'general development within the curtilage of a house':

Column 1 – Description of Development	Column 2 – Conditions and Limitations
<p><i>Development within the curtilage of a house</i></p> <p>CLASS 1 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.</p>	<ol style="list-style-type: none"> <li>1. (a) Where the house has not been extended previously, the floor area of any such extension shall not exceed 40 square metres.</li> <li>(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.</li> <li>(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.</li> </ol> <ol style="list-style-type: none"> <li>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.</li> <li>(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</li> </ol>

	<p>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 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.</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</p>
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	<p>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 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 metres 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>
<p>CLASS 7</p> <p>The construction or erection of a porch outside any external door of a house.</p>	<p>1. Any such structure shall be situated not less than 2 metres from any road.</p> <p>2. The floor area of any such structure shall not exceed 2 square metres.</p>

	<p>3. The height of any such structure shall not exceed, in the case of a structure with a tiled or slated pitched roof, 4 metres or, in any other case, 3 metres.</p>
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Article 3 of the 2001 Regulations defines ‘gross floor space’ as ‘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’.

### 8.3. Other Referral Cases

These include those considered of relevance to the context of the Referral, and while they refer to different circumstances and different locations, in summary they include the following:

ABP-310347-21: A Question arose as to ‘Whether the construction of two number extensions to the rear of a house at no. 2 Gilford Avenue, Sandymount, Dublin is or is not development or is or is not exempted development. The Board concluded in a split decision in summary that the subject extension as constructed, did not comply with the conditions and limitations of 4(a) as set out in Column 2 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001, as amended and is development and is not exempted development. That the construction of a shed to the rear of the dwelling is development and is exempted development.

ABP-308358 - 21: A Question arose as to ‘Whether a garage/store to the side and single storey extension to the rear of house at 39 Kylemore School House Road, Castletroy Limerick, is or is not development and is or is not exempted development. The Board concluded in summary that the garage/store to the side and single storey extension to the rear of the house is unauthorised development and is not exempted development.

ABP-306660 - 20: A Question arose as to ‘Whether the extension of chalet to the rear of structure by 9sq.m, finishes to match existing structure and new entrance

door to eastern elevation at “Mullarkeys”, Cliff Road, Ardmore County Waterford is or is not development or is or is not exempted development. The Board’s conclusion in summary included the following:

(e) the conservatory extension is, therefore, not exempted development under Class 1 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001, as amended, as this extension would be to the front rather than the rear of the dwelling, and

(f) the porch extension is, therefore, not exempted development under Class 7 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001, as amended, as it would not serve an existing external door:

The Board decided that the proposal is development and is not exempted development.

RL17. 3314 – A Question arose as to whether works consisting of maintenance works to original house, extension to front porch and addition of chimney at The Cottage, Ministown, Laytown, Co. Meath as part of the heating system are exempt development. The Board’s conclusion in summary included:

(b) works carried out to the original house, extension to front porch and addition of chimney as part of the heating system does not come within the scope of section (4)(1)(h) of the Planning and Development Act, 2000, and the works are considered to be development which are not exempted development.

That the works constitute development and is not exempted development.

Note copies of these Board decisions are included in the Appendix to this Report.

## 9.0 **Assessment**

### 9.1. **Introduction**

- 9.1.1. It should be stated at the outset, that the purpose of this referral is not to determine the acceptability or otherwise of the subject matter in respect of the proper planning and sustainable development of the area, but rather whether or not the matter in question constitutes development, and if so falls within the scope of exempted

development, within the meaning of the relevant legislation. The onus of proof is on the party seeking to prove the exemption, and the development in question must fall clearly and unambiguously within the terms of the exemption claimed.

9.1.2. Likewise, planning enforcement is a matter for the planning authority, and does not fall within the jurisdiction of the Board.

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

9.2.1. Section 3 (1) of the Planning and Development Act, 2000 (as amended) states that development “means, except where the context otherwise requires, the carrying out of works on, in, over or under land or the making of any material change in the use of any structures or over land”.

9.2.2. It is clear that the construction of extensions to the front and rear of the existing house, would constitute development as defined, and as such is development within the meaning of the Act.

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

9.3.1. Under the Irish planning system, development can lawfully be carried out in either of the following circumstances:

- In accordance with the terms of the planning permission granted for it; or
- In the case of an exempted development, without planning permission but in accordance with the terms of the exemption.

9.3.2. As noted above, there is no planning history noted relevant to the subject dwellinghouse. Therefore, there are no conditions to consider.

9.3.3. It is also of note that the extensions the subject of this Referral have not been constructed, nor have previous extensions have been constructed to the existing dwelling house. Therefore, it does not appear that any unauthorised development has taken place relative to the proposed extensions.



#### 9.4. Restrictions on exempted development

- 9.4.1. In terms of Class 1 of Part 1 of the Second Schedule to the Regulations, there are a number of conditions and limitations that must be met in order to consider the extensions as exempted development. In terms of these conditions and limitations, having regard to the details including the drawings submitted, I am satisfied that the two key issues arising with regard to floor area and height (less than 4m) are met as it has been noted that the combined floor area of the front (9sq.m) and rear (27.88sq.m) are less than the 40sq.m provided by the exemption.
- 9.4.2. As has been noted Class 1 of the said Schedule, provides the exemptions for development within the curtilage of the house. The description of development relevant to these exemptions is of note i.e. *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.*
- 9.4.3. Therefore, in this case, it is clear that the proposed rear extension at 27.88sq.m and shown c.3.6m in height would constitute exempted development. However, the proposed front extension at 9sq.m would not constitute exempted development under this Class, as it would be to the front rather than to the rear or side of the development.
- 9.4.4. It would also not fall into Class 7 of Part 1 of the Second Schedule to the Regulations, which is relevant to porches. This is because it would exceed the stipulated area of 2sq.m.

#### 9.5. Consideration under Section 4(1)(h)

- 9.5.1. The Referrer considers the extensions and in particular the proposed front extension comes within the exemption as per Section 4.(1)(h) of the Planning and Development Act 2000, as amended i.e.: *Development consisting of the carrying out of works for the maintenance, improvement or alteration of any structure, being works which only affect the interior of the structure or which do not materially affect the external appearance so as to render it inconsistent with the character of the structure or neighbouring structures.*

- 9.5.2. They submit that they have taken care to ensure that their proposal complies with this requirement. That the main elevation of the proposed extension to the front, visible from the public road and in the environs will match the existing front elevation in colour and texture in having the walls and fenestration as similar as possible with the existing. That the overall outline to the front includes a gable which is a reflection of the neighbouring house, while the roof angle will be identical with that of the existing house. That the neighbouring house was originally identical, and that two subsequent extensions were subsequently added to that house. These extensions brought the building line of that house forward by approx. 6.5m. This proposal will bring the building line forward by 3.5m i.e. 3.0m less than the neighbouring dwelling. The new building line will still be approx. 54.5m removed from the public road adjoining the Referrer's property. Drawings have been submitted showing the floor area of the front extension to the existing lounge is to be 9.0sq.m. This extension will also serve an external covered patio area in front of the present front door of 7.7sq.m.
- 9.5.3. They consider that Section 4(1)(h) of the Planning and Development Act 2000, as amended, clearly allows for extensions to the front of a structure since it introduces the appearance of neighbouring structures into consideration and is not as restrictive as the specific exemptions set out in the Regulations. They submit that the proposed structure will not materially affect the external appearance of the house so as to render it inconsistent with the appearance of the house or of the neighbouring house and will bring it more into accord with the appearance of that house.

## 9.6. Conclusion

- 9.6.1. However, while the Referrer's comments are noted, I would not consider that the proposed front extension would fall within the scope of the exemption as per Section 4(1)(h) of the Act. It relates to the carrying out of works for the maintenance, improvement or other alteration of any structure. There is no provision made in this Section for an exemption for extensions.
- 9.6.2. Nor, as has been discussed, would the proposed front extension fall within the exemptions offered by Class 1 or Class 7 of Part 1, Schedule 2 of the Regulations.

9.6.3. Therefore, in this case I would recommend that a split decision be made i.e. that the proposed rear extension would be exempt under the said Class 1, but that the front extension would constitute development that would not be exempted development.

## 9.7. Screening for Appropriate Assessment

9.7.1. Having regard to nature and scale of the development and the nature of the receiving environment and the distance and lack of connections to the nearest European sites, no Appropriate Assessment issues arise and it is not considered that the development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

## 10.0 Recommendation

10.1. 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 two extensions to a house of 36.88sq.m at Ballynalahessery North, Dungarvan, Co. Waterford, is or is not development or is or is not exempted development:

**AND WHEREAS** Thomas Gibson requested a declaration on this question from Waterford City and County Council and the Council did not issue a declaration.

**AND WHEREAS** Thomas Gibson, requested a declaration on this question from An Bord Pleanála on the 29th day of April, 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) Section 4(1)(h) 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 and Class 7 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (f) the planning history of the site,
- (g) the submissions on file, and
- (h) the report of the Inspector

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

- (a) The construction of the front and rear extensions would constitute development under Section 3(1) of the Planning and Development Act 2000, as amended.
- (b) The proposed rear extension would fall within the description of development and the conditions and limitations as set out in Columns 1 and 2 of Class 1, of Part 1 of Schedule 2 of the Planning and Development Regulations 2001, as amended, and would constitute exempted development.
- (c) The proposed front extension would not fall within the description of development as provided in the exemption in Column 1 of Class 1 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001, as amended.
- (d) The proposed front extension would not fall within the scope of the exemption as provided by Section 4(1)(h) of the Planning and Development Act , 2000, as amended.

**NOW THEREFORE** An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3)(b) of the 2000 Act, hereby decides that –

- (a) the construction of an extension to the rear of a dwelling at Ballynalahessery North, Dungarvan, Co. Waterford is development and is exempted development, and
- (b) the construction of an extension to the front of a dwelling at Ballynalahessery North, Dungarvan, Co. Waterford is development and is not exempted development.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

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Angela Brereton  
Planning Inspector

18<sup>th</sup> of July 2023