



An  
Bord  
Pleanála

## Inspector's Report ABP-313870-22

### Question

Whether works including an increase in height c. 0.5m on the site of a former domestic garage is or is not development or is or is not exempted development.

### Location

New Row, The Mullans, Donegal Town. Co. Donegal

### Declaration

Planning Authority

Donegal County Council

Planning Authority Reg. Ref.

S5 22/15

Applicant for Declaration

Marian Thomas.

Planning Authority Decision

Is exempted development

### Referral

Referred by

Applicant.

Owner/ Occupier

Noreen Portno.

Date of Site Inspection

25<sup>th</sup> July 2023.

Inspector

Barry O'Donnell

## 1.0 Site Location and Description

- 1.1. The subject site is located at New Row, in a central part of Donegal Town. The site contains a detached bungalow on small plot, with a small, elevated garden to the rear.

## 2.0 The Question

- 2.1. The question before the Board is as follows: -

*'Whether works including an increase in height of c.0.5m on the site of a former domestic garage, located on a site at New Row, Mullans, Donegal Town, Co. Donegal is or is not development and is or is not exempted development.'*

- 2.2. Within the application the applicant refers to works undertaken, including change of use from a garage to a gym, removal and replacement of roof elements, alterations to elevations, removal of parking provision and oversailing the property boundary.

- 2.3. In view of the information provided, I propose to reword the question as follows: -

*'Whether works for the conversion of a domestic garage to a gym, including alterations to existing elevations and raised roof profile is or is not development and is or is not exempted development.'*

## 3.0 Planning Authority Declaration

### 3.1. Declaration

- 3.1.1. The Planning Authority issued a determination on 7<sup>th</sup> July 2022, stating that the proposal is development and is exempted development.

### 3.2. Planning Authority Reports

- 3.2.1. A Planning Report dated 2<sup>nd</sup> June 2022 has been provided, which reflects the Planning Authority's determination on the application. The report refers to the minor nature of works to the roof profile of the building and also references the provisions of Section 4(1)(h) of the Act, in the context of elevational alterations, and Class 1 of Part 1, Schedule 2 of the Regulations, in the context of conversion of the garage.

## 4.0 Planning History

**22/50241:** (ABP Ref. ABP-313444-22) The Board granted permission on 7<sup>th</sup> July 2023 for demolition of a flat roof conservatory and construction of a new conservatory, extensions to rear of house, together with alterations to facades and associated site works.

## 5.0 Policy Context

### 5.1. Seven Strategic Towns Local Area Plan 2018-2024

- 5.1.1. Map 6 of the local area plan is the land-use zoning map for Donegal Town. It identifies that the site is subject to the 'Town Centre' zoning, with an objective '*To sustain and strengthen the defined town centre area as the centre of commercial, retail, cultural and community life.*'

### 5.2. Natural Heritage Designations

- 5.2.1. The site is not within or adjacent to any European site. Lough Eske and Ardnamona Woods SAC (Site Code 000163) encroaches to within c.15m of the site, on the opposite side of New Row.

### 5.3. EIA Screening

- 5.3.1. The subject development constitutes smallscale development, within the curtilage of house. This type of development does not constitute an EIA project and so the question as to whether or not it might be sub-threshold does not arise.

## 6.0 The Referral

### 6.1. Referrer's Case

- 6.1.1. Conversion of the garage to a gym is not at issue for the referrer, but the works undertaken as part of the conversion are at issue. The works in question comprise development and are not exempted development for the following reasons: -

- Exemption under Section 4(1)(h) of the Act does not apply.
  - Works undertaken render the appearance inconsistent with the character of the structure and/or neighbouring structures and the alterations undertaken are of a material nature.
  - The Planning Authority did not consider the material impact on the referrer's property.
  - Works undertaken oversail the property boundary.
  - The structure is opposite Donegal Castle in an area of High Amenity.
  - Change of use does not fall under the exemption provided by S(4)(1)(h).
  - The development materially contravenes policy UB-P-27 of the county development plan.
- Class 1 of Part 1, Schedule 2 of the Regulations
  - The garage building is not attached to the side of the house, so Class 1 does not apply.
  - The height of the walls of the garage also exceed the height of the rear and side walls of the house.
  - The remaining rear garden does not appear to achieve the minimum required 25sqm.
- Other exemptions under Classes 5 and 11 of Part 1, Schedule 2 of the Regulations do not apply.
- No potential exempted development change of use category applies.

## 6.2. **Property Owner's Response**

6.2.1. None received.

## 6.3. **Planning Authority Response**

6.3.1. The Planning Authority made a submission on the referral on 13<sup>th</sup> July 2022, advising that it has no further comment to make.

## 7.0 Statutory Provisions

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

- 7.1.1. Section 3(1) of Planning and Development Act 2000, as amended, states – 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.
- 7.1.2. Section 2(1) of the Act states - “works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.
- 7.1.3. Section 2(1) of the Act states - “alteration” includes— (a) plastering or painting or the removal of plaster or stucco, or (b) the replacement of a door, window or roof, that materially alters the external appearance of a structure so as to render the appearance inconsistent with the character of the structure or neighbouring structures.
- 7.1.4. Section 4(1)(h) of the Act states The following shall be exempted developments for the purposes of this Act— 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.

### 7.2. Planning and Development Regulations 2001 - 2023

#### 7.2.1. Article 6 - Exempted Development

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.

#### 7.2.2. Article 9(1) – Restrictions on Exemption

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 surfaced carriageway of which exceeds 4 metres in width,

(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,

(viiB) comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site,

(xii) further to the provisions of section 82 of the Act, consist of or comprise the carrying out of works to the exterior of a structure, where the structure concerned is located within an architectural conservation area or an area specified as an architectural conservation area in a development plan for the area 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 and the development would materially affect the character of the area,

### 7.2.3. Schedule 2, Part 1 – Exempted Development

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.

#### *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.

- (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.

### 7.3. **Other**

7.3.1. N/A.

## 8.0 **Assessment**

8.1. In the referral grounds, the referrer raises concerns regarding the impact of the subject development on residential amenity. Whilst I note the concerns, Section 5 of the Act has a narrow focus, allowing for a question to be asked as to what, in any particular case, is or is not development or is or is not exempted development, based on the legislation. I address the relevant legislative provisions in detail below.

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

8.2.1. The question is raised as to whether works for the conversion of a domestic garage to a gym, including alterations to existing elevations and raised roof profile is or is not development and is or is not exempted development.

8.2.2. Development is defined, under Section 3(1) of the Planning and Development Act, 2000 – 2014, as “the carrying out of works on, in, over or under land...” Works are defined, under Section 2(1) of this Act, as including “any act or operation of construction, excavation, demolition, extension...”

8.2.3. Conversion of the garage has included acts of construction and alteration, repair or renewal, which fall under the definition of works and therefore constitute



development as defined in Section 3 of the Planning and Development Act 2000, as amended.

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

- 8.3.1. Schedule 2, Part 1 of the Planning and Development Regulations 2001-2020 sets out classes of development which are deemed to constitute exempted development. Of relevance in this instance, Class 1 relates to 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.
- 8.3.2. As the referrer states, the subject structure is not attached to the side of the house. As such, I am satisfied that Class 1 does not apply in this instance.
- 8.3.3. Section 4(1)(h) of the Act states that 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 shall be exempted development.
- 8.3.4. The referrer includes details of specific works that have taken place as part of the conversion, details of which can be summarised as follows: -
- Removal and replacement of existing gable parapet and monopitch roof with new higher roof with an amended profile.
  - Removal of vehicular access and on-site parking.
  - Removal and replacement of garage door with door access and associated steps.
  - Construction of new door on side elevation.
  - Change of use from garage to gym.
  - Provision of vents on side elevation of building.
  - Oversailing the property boundary.

- 8.3.5. The referral documents also include photographs of the subject structure prior to its conversion, from which it can be seen that the structure had a solid, up-and-over type garage door to the front and there was also a vehicular access from the public road.
- 8.3.6. In the absence of scaled drawings, I have given consideration to the structure shown in the referrer's photographs and that which I encountered on the site. The west side of the roof has evidently been raised, in order to create an effective flat roof arrangement. Associated with this is the removal of the parapet arrangement on the front elevation, replaced by a bargeboard immediately under the roof overhang.
- 8.3.7. The overall height of the roof does not appear to have been raised and I do not consider the works, together with other conversion works, render the appearance of the structure inconsistent with its previous character or the character of neighbouring structures. I thus consider the conversion works fall under the provisions of Section 4(1)(h).
- 8.3.8. I am aware that the referrer submits that works undertaken oversail the property boundary. There is a small lip overhang on the east side of the building but I am unclear on the exact location of the property boundary and, thus, I am unable to determine whether the development oversails the property boundary. In any case, it is my opinion that this referral is not the correct forum for determination as to whether the as-constructed roof oversails the property boundary and this a matter for the Courts to determine.
- 8.3.9. Regarding the issue of change of use, I am satisfied that the subject works do not give rise to a material change of use of the structure as its use is incidental to the established residential use of the site.
- 8.3.10. In view of the above, I consider the conversion of a domestic garage to a gym constitutes exempted development, under Section 4(1)(h) of the Act.

#### **8.4. Restrictions on exempted development**

- 8.4.1. There are no restrictions on exempted development attached to Section 4(1) of the Act.

## 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 works for the conversion of a domestic garage to a gym, including alterations to existing elevations and roof profile is or is not development and is or is not exempted development.

**AND WHEREAS** Marian Thomas requested a declaration on this question from Donegal County Council and the Council issued a declaration on the 7<sup>th</sup> day of June, 2022 stating that the matter was development and was exempted development:

**AND WHEREAS** Marian Thomas referred this declaration for review to An Bord Pleanála on the 21<sup>st</sup> day of June, 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, as amended,
- (c) Section 4(1)(h) of the Planning and Development Act, 2000, as amended,
- (d) the planning history of the site, and
- (e) the pattern of development in the area.

**AND WHEREAS** An Bord Pleanála has concluded that the conversion of a domestic garage to a gym, including alterations to existing elevations and roof profile constitutes ‘development’, as defined under Section 3(1) of the Planning and Development Act, 2000 as amended and would come generally within the

scope of the exempted development provision provided at 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)(a) of the 2000 Act, hereby decides that the conversion of a domestic garage to a gym, including alterations to existing elevations and roof profile is development and is 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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Barry O'Donnell  
Planning Inspector

17<sup>th</sup> August 2023.