



An
Bord
Pleanála

Inspector's Report ABP-315247-22

Question

Whether the (i) cleaning and painting of a wall, (ii) replacement of windows, (iii) repair of roof, (iv) erection of internal walls, doors and floors, (v) replacement of stairs, (vi) erection of a boiler house and internal walls and doors, (vii) erection of path, (viii) installation of 12sq.m of solar panels is or is not development and is or is not exempted development.

Location

Main Street, Broadford, Co. Clare

Declaration

Planning Authority

Clare County Council

Planning Authority Reg. Ref.

R22-67

Applicant for Declaration

John Joe Fitzpatrick

Planning Authority Decision

Split Decision

Referral

Referred by

John Joe Fitzpatrick

Owner/ Occupier	John Joe Fitzpatrick
Observer(s)	None
Date of Site Inspection	7 th March 2024
Inspector	Ciara McGuinness

1.0 Site Location and Description

- 1.1. The subject site is located in the centre of the village of Broadford, on the west side of the R465 road. The site is adjoined to the north by residential property and to the south by a café/coffee shop. A large agricultural field adjoins the site to the rear/west. The site comprises a two storey, semi-detached residential building, fronting directly onto the public footpath. There is an entrance gate on the south side of the dwelling, which provides access to the house through a side entrance and access to the rear of the property. The site slopes downward away from the road.

2.0 The Question

2.1. The Questions to the Planning Authority

- 2.2. The refer has sought a determination as to 'Whether the (a.) cleaning and painting the front (east) wall and side (south) wall of the house, (b.) the replacing of the front windows to match the existing and glazing same, (c.) the repair of the roof using stone slates on the front (south-east) elevation, (d.) erections of internal walls and doors and internal floor in the original house area, (e) the fitting of a replacement/relocated internal stairs within the area of the original house, (f.) the erection of a boiler house (g.) the erection of internal walls and doors within the boiler house (in f. above), (h.) the erection of a concrete path to the rear and side of the boiler house, (i.) the installation of 12sqm of solar panels, is or is not development and is or is not exempted development'.

Planning Authority Declaration

2.3. Declaration

- 2.3.1. The Planning Authority made the following declaration on the 9th November 2022.

Having regard to;

- (a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, (as amended),

- (b) Articles 6 and 9 of the Planning and Development Regulations 2001, (as amended),
- (c) Classes 1, 2, 12, 13, 41 (b) of Schedule 2, Part 1 of the Planning and Development Regulations 2001 (as amended),
- (d) The works as indicated in submitted documents from the referrer,
- (e) The inspection of the site and building by the Planning Authority and the nature of the works as carried out to date.

And whereas Clare County Council has concluded:

- (a) Cleaning down and painting the front (east) wall and side (south) wall of the house, replacing of the front windows to match the existing and glazing of same, the repair of the roof using stone slates on the front (southeast) elevation, the erection of internal walls and doors and internal floor in the original house area, the fitting of a replacement / relocated stairs within the area of the original house, the erection of a boiler house, the erection of internal walls and doors within the boiler house, the erection of a concrete path to the rear and side of the boiler house and the installation of 12m² of solar panels constitutes "works" which come within the scope of section 2 (1) of the Planning and Development Act 2000, as amended;
- (b) The said works constitute "development" which comes within the scope of section 3(1) of the Planning and Development Act 2000, as amended;
- (c) The said cleaning down and painting the front (east) wall and side (south) wall of the house is exempted development having regard to Schedule 2, Part 1, Class 12 of the Planning and Development Regulations 2001 (as amended)
- (d) The said (i) replacement of the front windows to match the existing and glazing same, (ii) repair of the roof using stone states on the front (southeast) elevation, (iii) erection of internal walls and doors and internal floor in the original house area and (iv) fitting of a replacement/relocated stairs within the area of the original house is exempted development having regard to Section 4(1)(h) of the Planning and Development Act 2000 (as amended).

- (e) The said erection of a concrete path to the rear and side of the stated boiler house is exempted development having regard to Schedule 2, Part 1, Class 13 of the Planning and Development Regulations 2001 (as amended)
- (f) The said erection of a stated boiler house is not exempted development having regard to Schedule 2, Part 1 Class 2 of the Planning and Development Regulations 2001 (as amended), as based on inspection of the property the Planning Authority does not consider it meets the criteria as set out in Class 2 as it provides for a number of rooms, including some with ensembles, and is not therefore considered to be part of a heating system of a house.
- (g) The said (i) erection of internal walls and doors within the stated boiler house and (ii) installation of 12m² of solar panels is not exempted development having regard to Article 9(viii) of the Planning and Development Regulations 2001 (as amended).

THEREFORE: The Planning Authority in exercise of the powers conferred on it by Section 5 of the Planning and Development Act, 2000 (as amended), hereby decides that:

- Cleaning down and painting the front (east) wall and side (south) wall of the house,
- Replacing the front windows to match the existing and glazing of same,
- The repair of the roof using stone slates on the front (southeast) elevation,
- The erection of internal walls and doors and internal floor in the original house area,
- The fitting of a replacement / relocated stairs within the area of the original house,
- The erection of a concrete path to the rear and side of the stated boiler house.

is development and is exempted development.

- The erection of a structure described as a boiler house,
- The erection of internal walls and doors within said structure, and
- the installation of 12m² of solar panels.

is development which is not exempted development.

2.4. Planning Authority Reports

2.4.1. Planning Reports

The Planner's Report (dated 8/11/2022) notes that the ground floor and upper floor of the newly constructed space have a combined floor area of approximately 69.5m² and the space is divided into a number of distinct rooms. Based on the site inspection it was noted that 3 additional rooms have been added on the ground floor and two additional rooms on the upper floor. The drawings are not accurate in that en-suite facilities in the new first floor space have not been indicated but were present on site. While the submitted drawings refer to this extension as a 'boiler house', there is no indication from the plans and particulars submitted or from the site visit, that the extension has been constructed as part of a heating system of a house. The extension has also been considered in the context of Schedule 2, Part 1, Class 1, however the floorspace of the extension as constructed exceeds the limitations of that exemption. Given the status of the structure itself, the internal walls and solar panels which have been placed on the roof of the extension cannot be considered exempt having regard to Article9(viii).

2.4.2. Other Technical Reports

None

3.0 Planning History

Referral Site

No recent planning applications.

The Planner's Report notes that Warning Letter (UD-22-030) issued in relation to carrying out alterations to an existing dwelling and the construction of a new boundary wall.

Relevant Decisions

ABP-301518-28 – The Board decided that (a) the rewiring of the structures on site, altering of internal dividing walls, re-plastering of internal walls, relocating of internal

doorways, internal works to chimney and painting of internal and external surfaces are development and are exempted development, and (b) the erection of a boiler house and rear extension, replacement of metal roofing, windows and doors, re-plastering of external walls, demolition of gable, improvement to existing driveway and keeping or storing a caravan or campervan on the site are development and are not exempted development, all at Ballagh, Newtownforbes, County Longford.

ABP-304512-19 – The Board decided that the works proposed involving the provision of an extension and a boiler house to an existing derelict cottage at Ballagh, Newtownforbes, County Longford and the keeping or storing of a caravan or campervan within the curtilage of this structure are development and are not exempted development, and that the works proposed for the re-plastering of this structure are development and are exempted development.

4.0 Policy Context

4.1. Development Plan

- 4.1.1. The site is located within the village core of Broadford. The site is zoned 'Mixed Use'. This type of zoning provides for a *'range of uses, making provision, where appropriate, for primary and secondary uses e.g. commercial/retail development as the primary use with residential development as a secondary use. Secondary uses will be considered by the local authority having regard to the particular character of the given area'*. The use of residential single dwelling (for permanent occupation) is permitted in principle on 'Mixed Use' lands.
- 4.1.2. The site is not subject to any specific designations, and it is removed from features of archaeological interest, designated scenic routes, views or and prospects and from sites of nature conservation interest, including European Sites.

4.2. Natural Heritage Designations

Slieve Bernagh Bog SAC (002312) – c.2.4km to the northeast of the site

Danes Hole, Poulnalecka SAC (000030) – c3.5km to the southwest of the site

Doon Lough NHA (000337) – 0.3km to the west of the site

5.0 The Referral

5.1. The Questions to the Board

- 5.1.1. The Council found in the Referrers favour in 6 of the 9 questions posed. The other 3 questions which are referred to the Board for review are outlined below;

Whether the

(f.) the erection of a boiler house,

(g.) the erection of internal walls and doors within the boiler house (in f. above),

(i.) the installation of 12sqm of solar panels

is or is not development and is or is not exempted development.

- 5.1.2. The purpose of this referral is not to determine the acceptability or otherwise of the matter in question 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.

5.2. Referrer's Case

The main points of the referrer's case are summarised below;

- In relation to point f, it is considered that the erection of a boiler house is exempted under Schedule 2 Part 1 Class 2 (a). The work is incomplete and does not fall foul of any provisions of Article 9 of the Planning and Development Regulations, as amended.
- There erection of internal walls and doors within a boiler house are exempted under Section 4(1)(h) of the Act being "works for the maintenance, improvement or other alteration of any structure which affect only the interior of the structure..." The important word is "or". That is, the internal walls and doors do not have to be works for maintenance/improvement. In this case the walls and doors constitute alterations to any structure which affect only the interior of the structure.

- The installation or erection of 12sqm of solar panels is exempt under Schedule 2 Part 1 Class 2(c). There are 7 no. attached Conditions/Limitations. No's 5,6, and 7 refer to free-standing solar arrays and do not apply to this situation. The solar panels comply with Conditions/Limitations 1,2,3,4. This does not fall foul of any of the provisions of Article 9 of the Planning and Development Regulations, as amended. It is noted that a new Statutory Instrument is imminent which will amend Class 2(c) to the effect that there will be no limit on the area of the solar array. The refer intends to avail of the new SI.

5.3. Planning Authority Response

None

6.0 Statutory Provisions

6.1. Planning and Development Act, 2000

- 6.1.1. **Section 2 (1)** of the Act states: - In this Act, except where the context otherwise requires -

“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 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.

- 6.1.2. **Section 3(1)** of the Act 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.

- 6.1.3. **Section 4(1)** of the Act states that: - The following shall be exempted developments for the purposes of this Act –

(h) development consisting of the use 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 (4)(4)** of the Act states –

Notwithstanding paragraphs (a), (i), (ia) and (l) of subsection (1) and any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required.

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

6.2.1. **Article 6 (1)** of the Regulations states:

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.

6.2.2. **Part 1 of Schedule 2** sets out exempted development to which Art 6(1) refers:

Exempted Development – General

Development within the curtilage of a house

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.

As noted above Column 1 provides a Description of Development and Column 2 *Conditions and Limitations*. This includes:

1(a) where the house has not been extended previously, the floor area of any such extension shall not exceed 40sq.m.

CLASS 2 (a)

The provision as part of a heating system of a house, of a chimney or flue, boiler house or fuel storage tank or structure.

Conditions and Limitations include: The capacity of an oil storage tank shall not exceed 3,500 litres.

CLASS 2(c)

The placing or erection on a roof of a house, or within the curtilage of a house, or on a roof of any ancillary buildings within the curtilage of a house (this class does not include apartments) of a solar photo-voltaic and/or a solar thermal collector installation.

Conditions and Limitations include:

1. The distance between the plane of the roof and the solar photo-voltaic or solar thermal collector panels shall not exceed 50cm in the case of a flat roof or 15cm in any other case.
2. The solar photo-voltaic or solar thermal collector panels shall be a minimum of 50cm from the edge of a roof on which it is mounted
3. Any free-standing solar photo-voltaic or solar thermal collector installation shall not be placed or erected forward of the front wall of the house.
4. The total aperture area of any free-standing solar photo-voltaic and solar thermal collector panels taken together with any other such existing free-standing panels shall not exceed 25 square metres.
5. The placing or erection of any free-standing solar photo-voltaic or solar thermal collector installation shall not reduce the remaining area of private open space, reserved exclusively for the use of the occupants of the house, to the rear or to the side of the house to less than 25 square metres.
6. The height of any free-standing solar photo-voltaic or solar thermal collector installation shall not exceed 2.5 metres at its highest point above ground level.
7. The placing or erection of a solar photo-voltaic or solar thermal collector installation on any wall shall not be exempted development.
8. The placing or erection of any free-standing solar photo-voltaic or solar thermal collector installation within an Architectural Conservation Area shall only be

exempted development if those works would not materially affect the character of the area.

9. Development under this Class which causes hazardous glint and/or glare shall not be exempted development and any solar photo-voltaic or solar thermal collector panels which are causing hazardous glint and/or glare shall either be removed or be covered until such time as a mitigation plan to address the hazardous glint and/or glare is agreed and implemented to the satisfaction of the Planning Authority.

6.2.3. 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:

(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,

(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,

7.0 Assessment

7.1. Is or is not development

- 7.1.1. As outlined in Section 7.1 above, development means the '*carrying out of any works on, in, over or under land*' as defined in Section 3(1) of the Act. The referrer lists a number of acts or operations to the structures on the subject site, including erecting a boiler house, erecting internal walls and doors in the boiler house and installation of solar panels. All of the acts listed would fall within the definition of works and I would consider that they, therefore, comprise development.

7.2. Is or is not exempted development

- 7.2.1. The referrer contends that the rear extension of the house constitutes a boiler house and as such falls within Schedule 2, Part 1, Class 2(a) of the Planning and

Development Regulations 2001, as amended, which refers to *'The provision as part of a heating system of a house, of a chimney or flue, boiler house or fuel storage tank or structure.'* The drawings submitted label the ground floor and upper floor of the extension to the dwelling house as a 'boiler house'. This area has a combined floor area of 69.7sqm and has been divided into a number of distinct rooms. No details of the associated heating system have been submitted. Based on my site inspection and as noted in the Planners Report (dated 8/11/2024), it is evident that this area is used as bedrooms, ensuite and circulation area. There is no indication, in either the submitted material or based on my site visit, that the extension has been constructed as part of the heating system of the house. In this regard, the extension as constructed is not exempt under Schedule 2, Part 1, Class 2(a) of the Planning and Development Regulations 2001, as amended.

- 7.2.2. The extension has also been considered in the context of Schedule 2, Part 1 Class 1 which relates to the extension of a house. However, the limitations and conditions for this class require that the floor area of any such extension shall not exceed 40sq.m. As outlined above, the floorspace of the extension (69.7sqm) exceeds the limitations set out in this exemption class.
- 7.2.3. Given the status of the extension, the outstanding matters in relation to the erection of internal walls and doors within the boiler house and the installation of 12sqm of solar panels on the roof of the boiler house are dealt with below in Section 7.3

7.3. Restrictions on exempted development

- 7.3.1. With respect to the restrictions on exempted development set down in the Act and in Article 9 and based on the submissions on file and my site inspection, in my judgement, the following can be reasonably concluded:
Article 9(1)(a)(iv)
- 7.3.2. As outlined above, I consider that the rear extension does not constitute a boiler house and as such does not fall under Schedule 2, Part 1, Class 2(a) of the Planning and Development Regulations 2001, as amended. In this regard, the extension is considered to be development and is not exempt development.
- 7.3.3. I consider, therefore, that the restriction on exemptions under Article 9(1)(a)(viii) of the Planning and Development Regulations 2001, (as amended) is applicable in this

instance as the erection of the internal walls and doors within the boiler house, and the installations of 12m² of solar panels attached to the roof of the boiler house at this location is considered to *“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”*.

Appropriate Assessment

The restriction of exemption due to the requirement for Appropriate Assessment arises in Section (4)(4) of the Act and Article 9(1)(a)(viiB) of the Regulations. The nearest European sites are the Slieve Bernagh Bog SAC, c.2.4km to the northeast of the site and Danes Hole, Poulnalecka SAC, c3.5km to the southwest of the site. 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. The provisions of Section (4)(4) of the Act and Article 9(1)(a)(viiB) of the Regulations do not apply.

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 erection of a boiler house, the erection of internal walls and doors within the boiler house, and the installation of 12sqm of solar panels is or is not development or is or is not exempted development:

AND WHEREAS John Joe Fitzpatrick requested a declaration on this question from Clare County Council and the Council issued a declaration on the 9th day of November, 2022 stating that the matter was development and was not exempted development:

AND WHEREAS referred this declaration for review to An Bord Pleanála on the 2nd day of December, 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) 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) Parts 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,

AND WHEREAS An Bord Pleanála has concluded that:

- (a) Based on inspection of the site and documentation on file, the erection of a stated boiler house provides for a number of rooms and circulation areas and is not therefore considered to be part of a heating system of a house. Therefore, the development is not considered to fall within the provisions of Schedule 2, Part 1, Class 2(a) of the Planning and Development Regulations 2001 (as amended).
- (b) The erection of internal walls and doors within the stated boiler house and the installation of 12m² of solar panels on the roof of the stated boiler house is not exempted development having regard to Article 9(1)(a)(viiB) 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 erection of a boiler house, the erection of internal walls and doors within the boiler house and the installation of 12sqm of solar panels 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.

Ciara McGuinness
Planning Inspector

15th March 2024

Appendix 1 - Form 1

EIA Pre-Screening

[EIAR not submitted]

An Bord Pleanála Case Reference			
Proposed Development Summary	The erection of a boiler house, The erection of internal walls and doors within the boiler house The installation of 12sqm of solar panels		
Development Address	Main Street, Broadford, Co. Clare		
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)		Yes	✓
		No	No further action required
2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?			
Yes		Class.....	EIA Mandatory EIAR required
No	✓		Proceed to Q.3
3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?			
		Threshold	Comment (if relevant)
No	✓	N/A	No EIAR or Preliminary Examination required
Yes			Proceed to Q.4

4. Has Schedule 7A information been submitted?

No		Preliminary Examination required
Yes		Screening Determination required

Inspector: _____ **Date:** _____