



An
Bord
Pleanála

Inspector's Report ABP-316325-23

Question

Firstly, whether or not the new gable window has been constructed in accordance with the permitted grant of planning permission, and if not then secondly, if the window as constructed constitutes development and thirdly if development, then can it be considered as exempted development or not.

Location

16 The Park, Saint Wolstan's Abbey,
Celbridge, Co. Kildare

Declaration

Planning Authority	Kildare County Council
Planning Authority Reg. Ref.	ED/1004
Applicant for Declaration	Robert McDonald
Planning Authority Decision	Is exempted development

Referral

Referred by	Robert McDonald
Owner/ Occupier	Dermot & Imelda Gildea

Observer(s)

None

Date of Site Inspection

01st February 2024

Inspector

Clare Clancy

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1.0 Site Location and Description

1.1. The subject site is located within an established suburban estate off the R405, in Celbridge town. The Park, which forms part of the larger residential development of St. Wolstan's Abbey, comprises of 21 detached two-storey dwellings that front onto a cul de sac road. The site itself comprises of a two-storey detached dwelling and it is bounded to the north and south by similar type dwellings and backs on to the Shinekeen road.

2.0 The Question

2.1. The question that has been submitted in the referral is as follows:

Firstly, whether or not the new gable window has been constructed in accordance with the permitted grant of planning permission, and if not then secondly, if the window as constructed constitutes development, and thirdly, if development, then can this be considered as exempted development or not.

3.0 Planning Authority Declaration

3.1. Declaration

On the 15th December 2022, a request for a Declaration in accordance with Section 5 of the Planning and Development Act 2000 (as amended) on the above question was received by Kildare County Council from Robert McDonald (third party).

In accordance with Section 5(2)(a) of the Planning and Development Act 2000 (as amended), Kildare County Council issued a Declaration on the 13th March 2023 stating that a second floor window located on the side gable of an existing residential dwelling at 16 The Park, St. Wolstan's Abbey, Celbridge, Co. Kildare is development and is exempted development pursuant to the provisions of Section 2, 3, 4 and 5, and specifically Section 4(1)(h) of the Planning and Development Act 2000, (as amended).

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report of the planning officer dated 12th January 2023 sets out the planning history of the site, the facts of the case, the relevant planning legislation and recommended that further information was to be sought in relation to the following from the owner:

- To clarify the exact size of the existing second floor window on the south-eastern elevation of the dwelling which was permitted under P.A. Ref. 18/1356.
- To comment on the compliance of the development vis a vis condition no. 3 of 18/1356 in terms of size of the window in accordance with Technical Guidance Document B – Fire Safety Volume 2 Dwelling Houses (2017).

The second planning report dated 23rd February 2023 noted the following:

- The owner did not respond to the request for further information.
- The referrer submitted a response which stated the following:
 - The exact dimension of the window was unclear.
 - Based on visual observations, the window was at least 1200mm wide and 1100mm in height.
 - The window is openable and is not “permanently fixed” as per condition no.3 of 18/1356.

3.2.2. The planning officer concluded that pursuant to Section 4(1)(h) of the Planning and Development Act 2000 (as amended) the works carried out under P.A. Ref. 18/1356 do not materially affect the external appearance of the structure or of neighbouring structures and determining that the development is exempted development.

3.2.3. Other Technical Reports

- No other reports are on file.

4.0 Planning History

4.1. Referral Site

4.1.1. P.A. Ref. 18/1356 – Permission granted for the construction of a single storey extension to the rear of the existing dwelling (52 m²), to carry out alterations to existing elevations, including internal alterations, proposed new bedroom window to southeast facing side elevation (the subject of this referral). Retention permission was granted

for the as constructed attic conversion comprising of 1 no. bedroom, bathroom, landing and stairs, the as constructed widening of entrance driveway to accommodate cars, and all allocated site development works.

Relevant Conditions:

- Condition no. 1

The development shall be carried out and retained in accordance with the site layout plan, plans, elevations and documentation received by the Planning Authority on 12/11/2018 except as amended by the conditions of this permission.

Reason: To ensure that the development shall be in accordance with the permission and that effective control be maintained.

- Condition no. 3

The proposed bedroom window at attic level shall be reduced in size to the minimum acceptable under the building regulations and shall be permanently fixed and maintained with obscured glazing only.

Reason: In the interest of visual and residential amenity.

4.1.2. Enforcement – P.A. Ref. UD 7603

Following on from the issuing of a Warning letter in regard to non-compliance with condition no. 3 of P.A. Ref. 18/1356, the Planning Authority concluded as follows;

“the window in question is now appropriately glazed with opaque glass (or laminate sheet applied internally) and complies with the requirements of P.A. Ref. 18/1356. Accordingly, the Planning Authority will not be taking any further action in respect of UD file 7603 and has closed the case”.

The file was closed 15th February 2021.

4.1.3. ED1004 – This relates to the third party declaration as set out in Section 3.1 above which is now before the Board.

4.2. Relevant Board Decisions

I have undertaken a review of the Board’s referrals database for referrals of a similar nature to that which is the subject of this referral.

4.2.1. RL2689

'Whether the insertion of a second rear facing window in the rear elevation of 8 Grattan Road, Claddagh, Galway is or is not development or is or is not exempted development'.

- The Board concluded that as the insertion of the window was inconsistent with the character of the structure as authorised by the grant of planning permission, it did not come within the scope of Section 4(1)(h) of the Planning and Development Act, 2000 (as amended). The Board determined that the installation of the additional northernmost window in the first floor elevation of a rear extension was not consistent with the character of the structure authorised by the grant of P.A. Ref. 04/215 (ABP Ref. PL61.213367). (April 2010).

4.2.2. RL2284

'Whether the installation of six number velux roof lights within the eastern roof plane and one window within the northern gable wall of 32 Ballinlea Heights, Killiney, Co. Dublin is or is not development, or is or is not exempted development'.

- The Board decided pursuant to the provisions of Sections 2, 3 and 4(1)(h) of the Planning and Development Act 2000, that;
 - 1.) the provision of six roof lights in the eastern roof plane constitutes development which materially affects the external appearance of the structure, but which does not render its appearance inconsistent with the character of the structure and of neighbouring structures and is exempted development.
 - 2.) that provision of a window in the northern gable of the dwelling house constitutes development which materially affects the external appearance of the structure, and which renders its appearance inconsistent with the character of the structure and of neighbouring structures. The said window is not exempted development.

Therefore, the said provision of a window in the northern gable constitutes development and is not exempted development. (February 2006).

4.2.3. RL2287

“Whether the provision of one number window within the northern gable wall at first floor level of 32 Ballinclae Heights, Killiney, County Dublin is or is not development or is or is not exempted development”.

- The Board decided that the provision of a window in the northern gable of the dwelling house constitutes development which materially affects the external appearance of the structure and which renders its appearance inconsistent with the character of the structure and of neighbouring structures. (February 2006).

4.2.4. RL3011

‘Whether the existing first floor windows to the rear, as modified from those permitted, are or are not development or, are or are not exempted development.

- The Board concluded that the said first floor windows are works that were carried out during the construction of the dwelling houses and are development and, therefore, cannot avail of the exemption under Section 4(1)(h) of the Planning and Development Act, 2000 (as amended). (May 2013).

4.2.5. RL2737

‘Whether a bay window to the rear and window to the side of a dwelling house, is or is not development and is or is not exempted development’.

- The referral site was occupied by a detached two storey dwelling, which had been recently extended at first floor level and at ground floor level to the rear. The elements of the development subject of the referral related to the enclosure to ground floor level of an oriel window at first floor level on the rear elevation and secondly to the provision of an opaque window to the northern side elevation. These departed from the detailed design as permitted. The core of the issue was *Horne v Freeney* and the proviso that the benefits of S.4(1)(h) only applied to those developments that had already been completed in full accordance with the pertinent permission.

The Board concluded that;

- the works were development and not exempted development,
- the works as described came within the scope of Section 4(1)(h) of Planning and Development Act, 2000, but could not benefit from this as

the works were carried out when the extant permission was being implemented and were materially different from that permitted. (August 2010).

5.0 Policy Context

5.1. Development Plan

- The Kildare County Development Plan 2023-2029 is the operative Development Plan.
- The site is located within the boundary of the Celbridge Local Area Plan 2017-2023 which is now expired, and the site was zoned B Existing Residential / Infill.

5.2. Natural Heritage Designations

The nearest designated European Site to the referral site is the following:

- SAC Rye Water Valley / Carton SAC (Site Code 001398) situated approx. 4.2 km to the northeast of the site.

6.0 The Referral

6.1. Referrer's Case

6.1.1. The following is a summary of the main issues raised by the referrer in the submission to the Board:

- The referrer (third party) seeks to appeal the declaration of the Planning Authority issued in relation to ED 1004.
- The purpose of this Section 5 reference appeal is to formally obtain confirmation that the window as constructed is development and is not exempted development and requires a grant of planning permission so that the matter can be resolved.

- During the course of construction, the window was reduced in size to some degree, but not to the minimum required by the Building Regulations, is not permanently fixed, or has obscure glazing.
- The intention of condition no. 3 of P.A. Ref. 18/1356 was to mitigate and offset the potential for overlooking by a reduction in the size of the window to the minimum required by the Building Regulations and by the insertion of obscure glazing and by permanently fixing the window so that it could not open.
- The local authority has failed in its duty to ensure compliance with a condition of planning by allowing unauthorised development to occur.
- The status of the development carried out is questioned. The window as constructed and the subject development of the referral is an unauthorised development, non-compliance with condition no. 3 of 18/1356.
- Compliance with condition no. 3 requires three elements, a reduction in size, that the window be permanently fixed, and that it comprises of opaque glazing (not easily removable laminate sheet fixed).
- The window has a material impact on the structure and also on neighbouring structures in particular the referrer's property.
- No precedent of a gable window exists in the immediate area and therefore raises the issue of overlooking as a material impact on the appellants property.
- Reference is made to the planning officer's interpretation of the meaning of condition no. 3 of 18/1356 i.e. that fixed refers to the opaque glazing only which the referrer does not accept and is incorrect. In terms of the wording of this condition, it is submitted that there is a long standing tradition of inclusion of conditions to ensure high level windows overlooking adjoining properties are fixed and closed fitted with obscure glazing as per the condition no. 3.
- An assessment is provided by the referrer in regard to the gable window complying with the relevant sections of the Buildings Regulations in regard to ventilation and means of escape.
- With regard to exempted development within the planning legislation, the referrer notes that minor works to a property can be considered exempted

development under Section 4(1)(h). It is submitted that Article 9(1)(a)(viii) removes exempted development rights, specifically in relation to an unauthorised structure.

- The works cannot be considered exempted development under the legislation, and as they are considered to be 'development works', they must secure a grant of planning permission.
- The works carried out are unauthorised as it was not constructed in accordance with the permitted development, and that under Section 4(1)(h), the works cannot be considered exempted development.

6.2. Planning Authority Response

6.2.1. None received.

6.3. Owner/ occupier's Response

6.3.1. The owners Dermot and Imelda Gildea of No. 16 The Park, Wolstan's Abbey have responded to the referral. The main points raised can be summarised as follows:

- A summary of the planning process is given specifically in regard to compliance with condition no. 3 of 18/1356, in particular that the size of the window was reduced to comply with Part F of the Building Regulations. Supporting documentation is provided to demonstrate which includes the following:
 - Dimensions related to the gable window at planning stage were 1800mm x 1375mm.
 - Dimensions of the gable window whereby the window frame was reduced to comply with the Planning Authority's requirements 1500mm X 1000mm. To confirm this, the landowner has provided a 'window data sheet' provided by Munster Joinery on the 03rd July 2020.
 - Confirmation of the area for bedroom no. 6 at second floor level (29.54m²).

- Details in relation to compliance with Part F of the Building Regulations 2019 of which relates to Ventilation, and specifically Section 1.5.6 of the Technical Guidance document.
- Details in relation to Technical Guidance Document B – Fire Safety – Volume 2 Dwelling Houses, specifically Section 1.5.6 and 1.5.7 which refer to windows for escape or rescue and loft conversions.
- It is submitted that due regard was given to the requirements of the Building Regulations in relation to the construction of the gable window, the reduction of which was a requirement of condition no. 3 of the planning permission.
- In regard to the enforcement proceedings taken by the council, the warning letter issued with respect to non-compliance with condition no. 3 of 18/1356, which stated *‘whilst the as-constructed window ope appears smaller than that originally proposed, the casement window has been installed with clear glass and not obscure / opaque glass, as conditioned.’*
 - The landowner responded to the warning letter, confirming that the gable window serving the attic bedroom is the minimum size allowable under Part F of the Building Regulations, and that the window cannot be permanently fixed as it is required to function as an escape in the event of a fire, as per the Technical Guidance Document B of the Building Regulations.
 - Kildare County Council closed the file noting that *‘the window in question is now appropriately glazed opaque (or laminate sheet applied internally) and complies with the requirements of planning ref. 18/1356. Accordingly the Planning Authority will not be taking any further action in respect of UD7603 and has closed the file’.*
- Details of legal correspondence between the owners of the dwelling and the referrer are provided relating to a civil dispute in relation to the gable window. The following is noted:
 - The landowners submitted that the basis of the internal pane of the window being obscured as per condition no. 3 was accepted by the Planning Authority as compliance with condition no. 3 of 18/1356.

- The landowners in an effort to address the grievances of the referrer, offered to install a factory fitted opaque window to address their privacy concerns, noting that the window is required to remain accessible to comply with the fire regulations for means of escape.
- The referrer did not accept the proposal, as it did not comply with condition no. 3 which requires a '*permanently fixed*' window, that any opening section in the window renders any opaque element null and void when open allowing an invasion of privacy, the basis of condition no. 3, protection of residential amenities.
- Correspondence in relation to professional advice from Whyte Planning Consultants Ltd to the landowners is provided, dated 01st September 2022. It is stated in this advice that:
 - The existing 2 no. velux roof lights serving the bedroom are not compliant with the Part B of the Building Regulations for Fire Escape. If the 2 no. roof lights were removed, then under condition no. 3 of 18/1356, the gable window can be increased and that this might be a course of action to resolve the issues.
 - The existing gable window is 1445 mm x 943 mm. The opening section of the window is 560 mm x 1161 mm.
 - The minimum size of window opening for first escape purposes under Part B is 450mm x 450mm but must be 0.33 m².
 - The minimum opening section of the window must therefore be at least 500mm x 600mm.
 - The existing window is compliant with the building regulations contained in Part B of the Planning and Development Regulations 2017.

6.4. Further Responses

- No further responses.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000 (as amended)

7.1.1. Section 2(1) Definitions:

'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.

7.1.2. Section 3(1) Development:

'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.

7.1.3. Section 4(1) Exempted Development:

Section 4(1)(h) providing for the carrying out of works for the maintenance, improvement or alteration of any structure that 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 neighbouring structures.

7.1.4. Section 4(2) of the Act provides that the Minister may, by regulations, provide for any class of development to be exempted development. The main regulations made under this provision are the Planning and Development Regulations 2001-2020.

7.1.5. Section 4(4) (Environmental Impact Assessment or Appropriate Assessment) 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.

7.1.6. Section 177U (9) (Appropriate Assessment)

In deciding upon a declaration or a referral under Section 5 of this Act a Planning Authority or the Board, as the case may be, shall where appropriate, conduct a

screening for appropriate assessment in accordance with the provisions of this section.

7.2. **Planning and Development Regulations, 2001 (as amended)**

7.2.1. Article 6(1) Exempted Development

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)(a) Restrictions on Exemption

Sets out the circumstances whereby development to which Article 6 relates shall not be exempted development for the purposes of the Act. Those relevant to the subject referral 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.

(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 unauthorized structure or restructure the use of which is an unauthorised use.

7.3. **Other (as appropriate)**

Horne v Freeney [1982] IEHC 20,

This case is centred around internal alterations undertaken during the course of construction of an amusement arcade. It was held that the permission was indivisible, and that the planning permission should have been undertaken in its entirety. Mr. Justice Murphy considered that it was not possible to undertake alterations during construction simply because the variation would have been exempted once the building was completed. This judgement stated that for any development to avail of exempted development rights in terms of Section 4(1)(h) exemptions, it must first have

been completed in full accordance with its permission. Accordingly, any exemptions would only apply to development fully completed in accordance with its permission.

8.0 Assessment

8.1. Introduction

- 8.1.1. This case relates to a referral submitted under Section 5(3)(a) of the Planning and Development Act, 2000 (as amended) where the Planning Authority has issued a declaration on a referral and this determination is now the subject of appeal.
- 8.1.2. I have examined all the documentation on the file, inspected the site, and had regard to the legislative provisions set out in both the Planning and Development Act 2000 (as amended) and the Planning and Development Regulations 2001 (as amended). Having regard to the aforementioned, I consider that the principle basis on which the referrer has sought to establish that the gable window in question does not constitute exempted development derives from his assertion that the existing window as constructed, has not been carried out in accordance with the relevant condition of the grant of planning permission (P.A. Ref. 18/1356), and therefore constitutes unauthorised development.
- 8.1.3. At the time of the referral to the Planning Authority, I note that the works had been completed. I note from the planning history of the site that the issue of non-compliance with condition no. 3 of P.A. Ref. 18/1356 was raised and that enforcement proceedings commenced.
- 8.1.4. Condition no. 3 is not a pre-development condition and the wording of the condition stated that the subject window shall be reduced in size... and shall be permanently fixed and maintained with obscure glazing only. Therefore, the amendments to the subject window were a requirement of this condition and were carried out during the construction phase of the overall development. Based on the documentation submitted with the referral, I note that the response to the warning letter was deemed acceptable and which the Planning Authority was satisfied sufficiently addressed the issues raised in the enforcement case.
- 8.1.5. The referrer submits that the reference to the “permanently fixed” element of the condition relates to the window itself and not in reference to the fixture of opaque

glazing to the window. I note from the Planning Authority's assessment of the referral that this issue was clarified noting that the "permanently fixed" element of the condition referred to the fixture of opaque glazing to the window, rather than referring to the window being permanently shut. While the wording of the condition lacks some clarity, I would concur with this as this is my interpretation of the condition, and also because in accordance with Building Regulations with respect to fire safety, there is a requirement to provide ventilation and a means of access.

8.1.6. The purpose of An Bord Pleanála in relation to Section 5 referrals is to ascertain what is and is not development and if development, whether that development is exempted development or not. It is not the purpose of the Board to review planning permissions or associated conditions granted under Section 34 of the Act, other than through the appeals system, or to review the acceptability or otherwise of the subject development in terms of the proper planning and sustainable development of the area. The Board does not have a role in relation to unauthorised development. Also, the issues raised by the referrer regarding the assessment of the subject referral by the Planning Authority are not within the remit of this referral and are not a matter for assessment by the Board.

8.2. **Is or is not development**

8.2.1. The third party poses 3 Questions within the referral:

- 1) Whether or not the new gable window has been constructed in accordance with the permitted grant of planning permission, and if not, then
- 2) If the window as constructed constitutes development, and
- 3) If development, then can this be considered as exempted development or not.

8.2.2. The first question to be addressed is whether the existing gable window is or is not development. In Section 2(1) of the Planning and Development Act 2000, (as amended) (the Act), the definition of "works" includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal. I consider the subject window to comprise "works" as it entailed construction resulting in the alteration of a façade / gable wall.

8.2.3. As per Section 3(1) of the Act, “development” is the carrying out of any works on, in, or under land or the making of any material change in the use of any structures or other land. I am satisfied that the construction of a window is works and that such works would be carried out on land and therefore constitute “development”.

8.3. Is or is not exempted development

8.3.1. I refer to the planning history of the site and I note that the subject window formed part of an overall development for which planning permission was granted by the Planning Authority. During the course of construction, the gable window was required to be modified pursuant to the terms of condition no. 3 of P.A. Ref. 18/1356.

8.3.2. Condition no. 3 sets out two particular requirements to amend the gable window. In this regard, the window was required to be:

- i. reduced to the minimum size acceptable in accordance with the Building Regulations, and
- ii. shall be permanently fixed and maintained with obscured glazing only.

8.3.3. I note from the details contained in the referral that the owner indicated that the window frame size was reduced to 1500 x 1000 mm and that it is not permanently fixed closed, as it is required to be opened in order to comply with the Building Regulations. In relation to the glazing, I note also from the file details that the window pane is obscured however, it is stated by the landowner that in the course of discussions relating to a civil matter with the referrer of this referral, the landowner offered to replace the existing obscured window panes with a factory fitted opaque window, thus confirming that opaque glazing was not used to obscure the window panes. Reference is also made to the use of laminate material used internally to obscure the window panes by the Planning Authority in its corresponding with the landowner in relation to the enforcement matters. At time of site inspection, I noted that the existing window is obscured with what appeared to be laminate material.

8.3.4. I do not consider that condition no. 3 of P.A. Ref. 18/1356 is definitively clear in specifying what the “minimum” acceptable size requirement should be, in order to comply with the relevant requirements of the Building Regulations. However, the terms of the condition are explicit in relation to the requirements of the revised window

construction with regard to it being “permanently fixed and maintained with obscured glazing only” and not any other method e.g. laminate material.

- 8.3.5. While I acknowledge that the landowner amended the size of the window on foot of a condition as part of an overall development associated with the existing dwelling, and that the revisions that were required to be made to the window construction and finish were done so in relation to compliance with the Building Regulations, it has not been demonstrated by the landowner that condition no. 3 is complied with in regard to the “the minimum” size as stipulated in the condition. It is therefore not for the Board to determine what the minimum dimensions are to be, in terms of compliance with the relevant section of the Building Regulations. Furthermore the window panes are not obscured glazing which is also a specific requirement of the condition. Therefore, having regard to the foregoing it is clear that the condition has not been complied with.
- 8.3.6. Ordinarily, such development if it were to occur outside of a planning permission, could be classified as exempted development pursuant to the provisions of Section 4(1)(h). In this regard I refer the Board to the case of *Horne v Freeney* [1982] IEHC 20 whereby a development seeking exemption rights under Section 4(1)(h) must first have been completed in full accordance with its permission. Having regard to the requirements of condition no. 3 of P.A. Ref. 18/1356, as the existing gable window has not been constructed in accordance with the terms of the planning permission, I do not consider that the subject development can avail of exemption pursuant to Section (4)(1)(h) of the Planning and Development Act 2000 (as amended) and is therefore not exempted development.

8.4. Restrictions on exemption development

- 8.4.1. Reference is made by the referrer to restrictions on exemptions that the subject development cannot avail of and specifically in relation to Section 4(1)(h) of the Act and Article 9(1)(a)(viii) of the Regulations. It is submitted that Article 9(1)(a)(viii) removes exempted development rights in respect of an unauthorised structure and that the subject development does not qualify under Section 4(1)(h) as it was not constructed in accordance with the permitted development.
- 8.4.2. I note that there is no provision in the Planning and Development Act 2000 (as amended) or the Planning and Development Regulations 2000 (as amended) which

specifically exempts development where such development is carried out and incorporates slight deviations or otherwise from that permitted as part of a planning application.

- 8.4.3. The restrictions provided in Article 9 of the Planning and Development Regulations, 2001 (as amended) relate exclusively to Article 6 of the Planning and Development Regulations 2001 (as amended) which refers to classes of development specified in Part 1, Schedule 2 of the Planning and Development Regulations 2001 (as amended). Therefore it is not applicable in this case. Having regard to the foregoing, I conclude that the provisions of Section 4(1)(h) of the Planning and Development Act 2000 (as amended) and Article 6 of the Planning and Development Regulations 2001 (as amended) do not apply in this case.

8.5. Appropriate Assessment

Having regard to the nature and limited scale of the works which are the subject of this referral and which was authorised by planning permission, the location of the site in a developed urban area with adequate services, and the lack of a hydrological or other pathway between the site and European sites, it is considered that no Appropriate Assessment issues arise and that the works which are the subject of this referral would not be likely to have a significant effect either individually or in combination with other plans or projects on any European site.

8.6. EIA

The works which are the subject of this referral do not fall within a class of development set out in Part 1 or Part 2 of Schedule 5 of the Planning and Development Regulations, 2001 (as amended) and therefore is not subject to EIA requirements.

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 or not the new gable window has been constructed in accordance with the permitted grant of planning permission, and if not then secondly, if the window as constructed constitutes development, and thirdly, if development, then can this be considered as exempted development or not at no. 16 The Park, Wolstan's Abbey, Celbridge, Co. Kildare:

AND WHEREAS Robert McDonald of no. 15 The Park, Wolstan's Abbey Celbridge, Co. Kildare requested a declaration on this question from Kildare County Council and the Council issued a declaration on the 13th day of March, 2023 stating that the matter was development and was exempted development:

AND WHEREAS Robert McDonald referred this declaration for review to An Bord Pleanála on the 11th day of April, 2023:

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)(a)(iii) and (viiB) of the Planning and Development Regulations, 2001, as amended,
- (e) Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (f) the planning history of the site,

AND WHEREAS An Bord Pleanála has concluded that:

- (a) the referral relates to changes made to the existing gable window on the second floor of the southeast facing elevation of the existing dwelling during the course of construction, which comprise works, as defined under Section 2(1) of the Planning and Development Act 2000 (as amended) and is therefore development pursuant to Section 3(1) of the Planning and Development Act 2000 (as amended);
- (b) the development carried out to the existing gable window is not constructed pursuant to the provisions of condition no. 3 of P.A. Ref. 18/1356, and the Board is satisfied that the development is not exempted development;
- (c) there are no exemptions in the Planning and Development Act 2000 (as amended) or the Planning and Development Regulations 2000 (as amended) whereby such material deviations from a permitted development would constitute 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 existing gable window on the second floor of the southeast facing elevation of the existing dwelling 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.

Clare Clancy
Planning Inspector

09th May 2023