



An
Bord
Pleanála

Inspector's Report ABP318601-23

Question	Whether the use of an existing permitted dwelling for use as a private residence for nuns is or is not exempted development.
Location	Billistown, Delvin, County Westmeath.
Declaration	
Planning Authority	Westmeath County Council.
Planning Authority Reference.	S5- 28-23
Applicant for Declaration	Coptic Orthodox Church
Planning Authority Decision	Is not exempted development.
Referral	Third Party
Referred by	Coptic Orthodox Church
Owner Occupier	Coptic Orthodox Church
Observer(s)	None.
Date of Site Inspection	3 rd July 2024.
Inspector	Derek Daly.

1.0 Site Location and Description

- 1.1. The proposed site is located in a rural area approximately two kilometres to the southwest of the village of Delvin in County Westmeath.
- 1.2. The site fronts onto a narrow public road along which there are a number of detached dwellings. On the site is a detached dwelling with a large extension to the rear. There is also a detached garage on the site. There are a number of religious statutes located on the grounds of the site which has defined boundaries comprising a stone wall along the roadside boundary and mature hedgerows on the remaining boundaries.
- 1.3. The structure on the site has the appearance externally as that of a dwelling. Internally the layout exhibits many aspects associated with a residential unit, with a kitchen, living space and bedrooms. There is a large conservatory with provision to be used as a dining area and in the upper floor there is a room which can be used as a place of worship/chapel.

2.0 The Question

- 2.1. The question before the Board relates to whether the use of an existing permitted dwelling for use as a private residence for nuns is or is not exempted development.

3.0 Planning Authority Declaration

3.1. Declaration

- 3.1.1. Westmeath County Council issued a declaration dated 8th November 2023 (Ref: S5-28-23) that the use of an existing permitted dwelling for use as a private residence for nuns constitutes development as defined in Section 3(1) of the Planning and Development Act as amended and Article 9(1)(a) and 10(1)(a) of the Planning and Development Regulations 2001 as amended. The proposal as described is development, and is not exempt development.

3.2. **Planning Authority Reports**

- 3.2.1. Planning Report of the 26th October 2023 refers to the planning history of the site, the internal layout of the building on the site, the legislative provisions considered relevant to the declaration and an assessment of the proposals in the context of these provisions with a recommendation that the proposal is development and not exempted development.
- 3.2.2. Specifically in relation to the attic area it is considered that that this area has been converted from a permitted use to that of a chapel and the use has changed from being incidental to a residential use to being a use as per Class 7 Schedule 2 Part 4 of the Planning and Development Regulations and uses listed in Class 7 are considered to be "*Sui Generis*". It also refers to the absence of comment on the attic space in the initial referral submission and the use of the dwelling as a place of worship and as a convent and that this use contravenes the original permission. The report indicated a view that the structure is used as a convent and the use associated with the site would give rise to a material change of use represents an intensification of use and in particular that the use of the chapel is not a use incidental to the enjoyment of a dwellinghouse.

4.0 **Planning History**

- 4.1. The site has a planning history largely relating to the permission of the dwelling and extensions applied for.

5.0 **Policy Context**

5.1. Local Planning Policy

The relevant statutory plan is the Westmeath County Development Plan 2021-2027 Section 4.6 refers to achieving and maintaining sustainable communities which will contribute to a high quality of life and meet the diverse needs of the people within existing and future communities

5.2. Natural Heritage Designations

None relevant. The site is not within a Natura Site or directly connected with a Natura Site.

6.0 The Referral

6.1. Referrer's Case

6.1.1. In summary the referrer indicates;

- The declaration of the planning authority has failed to comply with the requirements of Section 5(2)(a) of the Planning and Development Act 2000 as amended in so far as no adequate reasons or considerations are given within the declaration.
- Reference is made to section (3)(1) and to the issue of whether the change of use is material and there is no reasoned assessment made of the materiality of the change of use.
- There is no legal basis for the planning authority's conclusion that the use of the existing dwelling as a private dwelling is not exempted development and there is no definition in section 3(1) as to what is or is not exempted development. It is contended that the request for a declaration was based that the use of the existing dwelling as the referrer's private residence is not development and did not need therefore to rely on exemptions which are available under Article 10(1) for certain material changes of use.
- There is no legal basis for the reference to Article 9(1) as Article 9 only applies to development to which Article 6 applies and Article 6 only applies to "development of a class specified in in column 1 of Part 1 of Schedule 2". It does not apply to the exempted development provisions relating to material changes within specified classes of use which are addressed in Article 10 and Part 4 of Schedule 2 of the regulations.
- Class 7 of Part 4 of Schedule 2 is not relevant as it refers to material changes of use within a particular class and no material change of use has occurred.
- Without prejudice to the contention made in relation to Article 10(1) it is not accepted that there are conditions attached to previous permissions which restrict subsequent changes of use.
- The planning authority's assessment of the attic does not take into account the provisions of Section 4(1)(j). The use of the attic as a chapel and the

placing of the pergola and statues in the garden are incidental and ancillary uses to the primary use as a dwelling.

- The planning authority fail to present evidence in relation to materiality in the use currently to that of a private dwelling in relation to traffic or effects on the environment.
- Reference is made to section 4.6 of the county development plan and NPO 28 of the National Planning Framework.

6.2. Planning Authority Response

- 6.2.1. In a response to the Board dated the 12th December 2023 it was indicated that the declaration was issued on the 08/12/2023. No response was received specific to matters raised in the referrer's submission to the Board.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

Section 2(1) – Interpretation

“development” has the meaning assigned to it by section 3 and ‘develop’ shall be construed accordingly.

“exempted development” has the meaning specified in section 4;

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

“structure” means any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined, and—

(a) where the context so admits, includes the land on, in or under which the structure is situate, and

(b) in relation to a protected structure or proposed protected structure, includes—

(i) the interior of the structure,

(ii) the land lying within the curtilage of the structure,

- (iii) any other structures lying within that curtilage and their interiors, and
- (iv) all fixtures and features which form part of the interior or exterior of any structure or structures referred to in subparagraph (i) or (iii);

“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.

Section 3(1) – Development

In this Act, except where the context otherwise requires, "development" means—

- (a) the carrying out of any works in, on, over or under land, or the making of any material change in the use of any land or structures situated on land,

Section 4 – Exempted Development

Section 4 (1)(h)

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

Section 4(1)(j)

development consisting of the use of any structure or other land within the curtilage of a house for any purpose incidental to the enjoyment of the house as such;

7.2. Planning and Development Regulations, 2001

7.2.1. “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.

7.2.2. Article 9 (1) –

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 (relevant excerpts referenced)
 - (i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,
 - (iii) Endanger public safety by reason of a traffic hazard or obstruction to road users.
 - (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.

7.3. Article 10. (1)

Development which consists of a change of use within any one of the classes of use specified in Part 4 of Schedule 2, shall be exempted development for the purposes of the Act, provided that the development, if carried out would not —

- (a) involve the carrying out of any works other than works which are exempted development,
- (b) contravene a condition attached to a permission under the Act,
- (c) be inconsistent with any use specified or included in such a permission, or
- (d) be a development where the existing use is an unauthorised use, save where such change of use consists of the resumption of a use which is not unauthorised, and which has not been abandoned.

Article 10. (2)

(a) A use which is ordinarily incidental to any use specified in Part 4 of Schedule 2 is not excluded from that use as an incident thereto merely by reason of its being specified in the said Part of the said Schedule as a separate use.

Schedule 2, Part 1: Exempted Development Article 6 refers to range of developments considered to be exempted development subject to the conditions and limitations outlined

Schedule 2 Part 4 Exempted development – Classes of Use

Class 7 Use—

- (a) for public worship or religious instruction,
- (b) for the social or recreational activities of a religious body,
- (c) as a monastery or convent.

8.0 **Assessment**

- 8.1. The purpose of this referral is not to determine the acceptability or otherwise of the development referred to in the question but rather whether or not the matter in question constitutes development, and if so, falls within the scope of exempted development.
- 8.2. It is noted that the question specifically refers to whether the use of an existing permitted dwelling for use as a private residence for nuns is or is not exempted development.
- 8.3. The primary issue in relation to the question relates to the issue of change of use and in this regard although the planning authority in their declaration having regard to Article 6 of the Planning Regulations among a number of other statutory provisions it is not specifically stated as a basis for the declaration.
- 8.4. Is or is not development.
 - 8.4.1. The permitted use of the structure as a dwelling is not in dispute based on the planning history of the site. The referrer in the initial submission to the planning authority dated the 13th September 2023 refer to the use of an existing permitted dwelling for use as a private residence for nuns and that no additional works were carried out to facilitate the change of use that has taken place. Any works that have occurred have not materially affected the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures and can be classified as exempted development under section 4(1)(h) of the Planning and Development Act 2000 as amended. It was also contended that while these works are exempted development they are outside of the scope of the Section 5 declaration as they are not incidental to the change of use that has taken place. Specifically, a change of use from one category of use to another change of use of classes specified in Part 4 of the Planning and

Development Regulations 2001 as amended must be a material change of use and the crux of the question referred to in the question relies on whether or whether not a material change has occurred.

- 8.4.2. It is further contended that the essential character of the established use has not changed and no additional effects on the environment arise and the property remains a single household as defined by the Central Statistics Office.
- 8.4.3. The planning authority in their declaration that the use of an existing permitted dwelling for use as a residence for nuns constitutes development and is not exempted development as defined under Section 3(1) of the Planning and Development Act 2000 as amended and Article 9(1)(a) and Article 10(1) and Class 7 of Part 4 of Schedule 2 of the Planning and Development Regulations 2001 as amended. The planning authority have also referenced convent and place of worship in the assessment of the question.
- 8.4.4. The referrer is correct in stating that in section 3(1) of the Act exempted development is not defined and states only what development means stating the carrying out of any works in, on, over or under land, or the making of any material change in the use of any land or structures situated on land. Exempted development has the meaning specified in section 4 of the Act and the provisions as stated in section 4.
- 8.4.5. The contention of the referrer is that no material change in the use of any land or structures situated on land has occurred and the use the attic area as a private chapel does not take into account the provisions of section 4(1)(h).
- 8.4.6. In the documentation there is little dispute that the dwelling is used as a residence by a congregation of nuns. It is referred to in articles on the internet relating to the Coptic Orthodox Church as St. George's Convent, Delvin County, Westmeath.
- 8.4.7. A convent is not defined in the Planning Acts or Regulations but is generally described as a building in which nuns (members of a female religious order) live. A convent can and generally therefore has a residential component and in many cases the dominant component but it also can serve other functions for the religious order including providing for a dedicated space as a place of worship/chapel which distinguishes it from what is normally considered to be a dwellinghouse and uses generally considered ancillary or incidental to a dwellinghouse. This distinction is also recognised in Schedule 2 Part 4 Exempted development – Classes of Use of

the Planning Regulations with specific reference to Class 7 Use (c) as a monastery or convent. I consider that the current building which is use as a private residence for nuns is also what can be considered to be a convent and serves the function of a convent.

8.4.8. Given that a convent is a class of use specified in Class 7 Use (c) distinctive to a dwellinghouse the matter to consider is the building in its current use a change of use constituting development and I consider that it is development.

8.4.9. The matter therefore to further consider given the definition of development in Section 3(1) is whether the change of use represents a making of any material change in the use of any land therefore rendering it as a material change and development. I would interpret that by defining distinct classes of use in Schedule 2 Part 4 Exempted development – Classes of Use a change of use to a convent is a material change of use from a use as a dwelling which was permitted by a grant of planning specifically as a dwellinghouse and therefore constitutes development.

8.5. Is or is not exempted development

8.5.1. In respect to the question of a reliance on exemptions under change of use which are available under Article 10(1) or Article 10. (2) relating to a use which is ordinarily incidental to any use specified in Part 4 of Schedule 2 this refers to exemptions which consist of a change of use within any one of the classes of use specified in Part 4 of Schedule 2 and not between two distinct classes of use. Specific to the issue of change of use the provisions as stated do not therefore provide for exemptions under change of use.

8.5.2. In relation to the works as carried out I would consider that the internal works would comply with the provisions of Section 4 (1)(h) comprising 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 as the works are internal and do not materially affect the external appearance of the structure.

8.5.3. I note in this regard that the planning authority have not referred to the works in question as constituting development and have specifically relied on the declaration to the issue of use.

8.6. Environmental Impact Assessment (EIA) Preliminary Examination

8.6.1. Development in respect of which an environmental impact assessment or appropriate assessment is required cannot be exempted development (Section 4(4) of the Planning and Development Act 2000 (as amended)). Schedule 5, Part 1 and Part 2 of the Planning and Development Regulations, 2001 (amended) sets out specified development for which EIA is mandatory and development which requires screening for EIA.

8.6.2. Having regard to the limited nature and scale of development and the absence of any significant environmental sensitivity in the vicinity of the site, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required

8.7. Appropriate Assessment

8.7.1. 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, it is concluded that no Appropriate Assessment issues arise as the development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

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 the use of an existing permitted dwelling for use as a private residence for nuns is or is not development or is or is not exempted development: AND

WHEREAS the Coptic Orthodox Church requested a declaration on this question from Westmeath County Council and the Council issued a declaration on the 8th day of November 2023 stating that the matter was development and was not exempted

development: AND WHEREAS the Coptic Orthodox Church referred this declaration for review to An Bord Pleanála on the 4th December 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 of the Planning and Development Act, 2000,
- (c) Section 4 of the Planning and Development Act, 2000, as amended,
- (d) articles 6, 9 and 10 of the Planning and Development Regulations, 2001, as amended,
- (e) Part 4 of the Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (f) the planning history of the site,
- (g) the pattern of development in the area:

AND WHEREAS An Bord Pleanála has concluded that:

(a) the use of an existing permitted dwelling for use as a private residence for nuns constitutes development as defined under section 3(1) of the Planning and Development Act 2000 (as amended),

(b) the use of an existing permitted dwelling for use as a private residence for nuns constitutes a material change of use of these lands and is development and is not exempted development,

(c) there are no exemptions provided for in the said Planning and Development Act, 2000 (as amended) and the Planning and Development Regulations, 2001 (as amended), by which the use of an existing permitted dwelling for use as a private residence for nuns would be exempted development, and

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

the use of an existing permitted dwelling for use as a private residence for nuns 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.

Derek Daly
Planning Inspector

22nd July 2024