



An
Bord
Pleanála

Inspector's Report ABP-319371-24

Question

Whether the construction of an extension to the rear of existing dwelling is or is not development or is or is not exempted development.

Location

Portroyal, Partry, Co. Mayo, F12 TH59

Declaration

Planning Authority

Mayo County Council

Planning Authority Reg. Ref.

23669

Planning Authority Decision

Is not exempted development

Referral

Referred by

Sean Bourke.

Owner/ Occupier

Sean Bourke.

Observer(s)

None.

Date of Site Inspection

30th of October 2024.

Inspector

Darragh Ryan

1.0 Site Location and Description

- 1.1. The proposed site lies in the townland of Portroyal, Partry Co. Mayo. The proposed development is located off National Road N84. There is an existing cottage structure on site which predates 1963. There is an existing established access onto the National Road at this location.

2.0 The Question

- 2.1. Whether the construction of an extension to the rear of existing dwelling is or is not development or is or is not exempted development

3.0 Planning Authority Declaration

3.1. Declaration

The construction of a new extension comprises “works” and “development” having regard to the definitions set out in Section 3 of the Planning and Development Act, as amended.

The development would not come within the scope of the restrictions on exempted development as defined in Article 9 (1) (iii) of the Planning and Development Regulations, as amended due to a traffic hazard, and is therefore not exempted development.

3.2. Planning Authority Reports

- 3.2.1. There are two Planning Reports on file. The 1st Planning report sought further information as follows:
1. The site is located adjacent to Lough Carra/ Mask Complex SAC (#001774). The applicant is therefore requested to carry out and submit an assessment under Article 6 of the EU Habitats Directive.
 2. The applicant is requested to submit accurately scaled elevation drawings of the proposed extension.

The 2nd Planning Report can be summarised as follows:

The construction of a new extension comprises “works” and “development” having regard to the definitions set out in Section 3 of the Planning and Development Act, as amended. Class 1 Part 1: Schedule 2 is the relevant exemption with respect to the provision of extensions

A site layout plan has not been submitted and therefore access to the dwelling cannot be assessed. It is considered that established movements onto the national road N84 has been provided and accordingly the proposal will endanger public safety by reason of a traffic hazard. The development would not come within the scope of the restrictions on exempted development as defined in Article 9 (1) (iii) of the Planning and Development Regulations, as amended due to a traffic hazard

3.2.2. Other Technical Reports

- None

4.0 Planning History

None – Site History predates 1963

5.0 Policy Context

5.1. Mayo County Development Plan 2022 - 2028

- RHP 7 To consider replacement dwellings or development of other structures to habitable homes in all rural areas, subject to normal planning considerations.
- RHO 10 To require that any proposal to extend/refurbish an existing rural dwelling house, occupied or otherwise, takes account of the siting and size of the existing building and endeavours to ensure that the design, scale and materials used in the refurbishment and/or extension are in keeping and sympathetic with the existing structure and that mature landscape features are retained and enhanced, as appropriate.

5.2. Natural Heritage Designations

Lough Carra/ Lough Mask SAC (Site Code: 001774) – immediately adjacent.

6.0 The Referral

6.1. Referrer's Case

Sean Bourke is the owner of the site and dwelling in question and is also the referrer.

- 6.1.1. There existing dwelling on site is in situ pre 1963. The existing dwelling and access onto the N84 are established.
- 6.1.2. The proposal does not constitute a traffic hazard and does not endanger public safety by reason of a traffic hazard. The extension is entirely at the rear of an existing house and will not be visible from the public road. The existing dwelling is set back from the public road. The proposed development of an extension coming within Schedule 2, Part 1, class 1 of the regulation at the rear of the existing house does not involve any change of use or intensification of use of the existing entrance.
- 6.1.3. The proposed development does not come within the guidelines set out in the Spatial Planning and National Roads Guidelines published by the Department of Environment, Community and Local Government in January 2012 regarding the policy of Planning Authorities to avoid the creation of additional accesses onto National Roads or intensify existing accesses. The use of access to the single dwelling would be the same before and after the proposed development. There would not be any additional traffic generated by the proposed development

6.2. Planning Authority Response

- None

6.3. Further Responses

- None

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

Section 2(1) – Interpretation

The following are relevant to the subject question:

structure means –

‘any building structure excavation or other thing constructed or made on in or under any land, a part of any 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 some paragraphs (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 the 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.’

Section 4 (1) sets out development that is exempt from requiring planning permission.

Section 4(4) 'Exempted development'

'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.'

7.2. Planning and Development Regulations, 2001 as amended

- Article 6.

(1) Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.

- As provided for in Article 9(1)(a), the following development to which article 6 relates, shall not be exempted development, if the carrying out of such development would, inter alia:

(iii) endanger public safety by reason of a traffic hazard or obstruction to road users

7.2.1. 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.	1. (a) Where the house has not been extended previously, the floor area of any such extension shall not exceed 40 square meters.
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8.0 Assessment

8.1. Is or is not development

8.1.1. Having regard to Section 2(1) and Section 3(1) of the Planning and Development Act 2000 as amended, it is considered that the following elements constitute 'works' and 'development' within the meaning of the Act;

- Construction of an extension to the rear of existing dwelling

8.1.2. Having established that the proposed 'works' amount to 'development,' the next issue to be considered is whether the development is exempted development or not. Development can be exempt from the requirement for planning permission by either Section 4 of the Planning and Development Act 2000 as amended, or by Article 6 of the Planning and Development Regulations 2001 as amended.

8.2. Is or is not exempted development

The construction of a single storey rear extension of 35.68sqm can be interpreted as exempted development under Schedule 2, Part 1, Class 1 of the Planning and Development Regulations. The proposal is a flat roof structure situated entirely to the rear of the existing dwelling house. There has been a minor rear extension constructed in the past. The date of this extension cannot be ascertained; however, I consider the likelihood is this extension predates 1963 also. The proposed new extension will incorporate this existing rear extension into the 35.68sqm, therefore, I consider the proposal fulfils the conditions and limitations as set out under Column 2 of Class 1.

8.3. Restrictions on exempted development

8.3.1. Article 9(1)(a)iii provides that following development to which article 6 relates, shall not be exempted development, if the carrying out of such development would, inter alia:

- (iii) endanger public safety by reason of a traffic hazard or obstruction to road users

It was on these grounds that Mayo County Council determined that the development was not exempted development. It was considered that the existing access onto the National Road is considered a traffic hazard and therefore the proposed development is not exempted development as per Article 9 (1) (a) iii.

- 8.3.2. Having regard to the above, it is my opinion that as the existing access is existing, the proposed extension of 35.68sqm will not have an impact on traffic safety at this location. There is no subdivision associated with the development and therefore no intensification of use on existing access. The extent to which a traffic hazard exists or does not exist will not change as a result of the proposed development. There is no requirement for consent to reside in the dwelling at present and therefore the existing access may be fully utilised in the absence of the proposed extension. Having regard to the above, it is my opinion that Article 9 (1) (a) is not valid to this particular case and the proposal is considered exempted development under Schedule 2, Part 1, Class 1 of the Planning and Development Regulations.

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 construction of a single storey rear extension of 35.68sqm is or is not development or is or is not exempted development:

AND WHEREAS Sean Bourke requested a declaration on this question from Mayo County Council and the Council issued a declaration on the day of 23rd of February, 2024 stating that the matter was development and was not exempted development:

AND WHEREAS Sean Bourke referred this declaration for review to An Bord Pleanála on the 22nd of March 2024:

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)(a) 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 and 3 of 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 construction of a single storey extension to the rear of a property constitutes development
- (b) The proposed development is considered exempted development under Schedule 2, Part 1, Class 1 meeting the conditions and limitations of Column 2

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.

Darragh Ryan
Planning Inspector

6th of November 2024