



An
Bord
Pleanála

Inspector's Report ABP-320098-24.

Question

Whether the rear extension to a dwelling house is or is not development or is or is not exempt development.

Location

Clonghnakeava, Gort, Co. Galway.

Declaration

Planning Authority

Galway County Council

Planning Authority Reg. Ref.

ED 24/65

Applicant for Declaration

Tommy O'Donnell.

Planning Authority Decision

Not Exempt.

Referral

Referred by

Tommy O'Donnell.

Owner/ Occupier

Tommy O'Donnell.

Observer(s)

None.

Date of Site Inspection

1st October 2024.

Inspector

Kathy Tuck

1.0 Site Location and Description

- 1.1. The subject site is located 1.5km to the south-east of Gort Town Centre at Cloghnakeava, Gort, Co. Galway. The site comprises of a derelict two storey dwelling and a single outbuilding.
- 1.2. Vehicular access to the site is provided from the L-8530 known locally as Circular Road. The structure on site, which is subject to this declaration, was once a dwelling. It is noted that the dwelling has been re-roofed recently and the foundations of a rear extension have been out in place.

2.0 The Question

- 2.1. The question referred to the Board by the landowner, Tommy O'Donnell, which was the as asked of the Planning Authority, in accordance with Section 5(4) of the Planning and Development Act 2000 (as amended), is as follows:

“Whether the rear extension to the rear of house is or is not development or is or is not exempted development.”

3.0 Planning Authority Declaration

3.1. Declaration

A declaration of exempted development was refused for the following reasons-

- The work required to bring the original derelict structure back into habitable use do not fall within the scope of 4(1)(h) of the Planning and Development Act 2000 (as amended) and require planning permission.
- There is no provision in the Planning and Development Regulations 2001 (as amended) and the associated Planning and Development Act 2000 (as amended) whereby the extension to the rear of a derelict dwelling which has not been in use as a dwelling for a considerable period of time would constitute exempted development.
- Finally, it is noted that any upgrades or installation of a new wastewater treatment system would not be covered under exempted development.

4.0 Planning Authority Reports

4.1. Planning Reports

The planning report reflects the decision above and can be summarised as follows-

- From a desktop study it is evident that the structure has been uninhabitable since 2009 and has been since. The applicant has not submitted any evidence to the contrary.
- Works on site, which are outside the question of this Section 5, include for the removal of 2 no. chimneys and re-roofing of the structure would not fall within the scope of Section 4(1)(h) of the Planning and Development Acts 2000 as amended.
- Works to renovate the original structure to make it habitable are not exempt. An extension cannot exist on its own but must be attached to and associated with an existing or primary structure.
- Therefore, the extension can only be constructed as an extension to an unauthorised structure, the exemption of which would be precluded by Article 9(1)(a)(viii) of the Planning and Development Regulations 2001 as amended.

4.2. Other Technical Reports

- None on file.

5.0 Planning History

None.

6.0 Policy Context

6.1. Galway County Development Plan 2022-2028

The subject site is located within a Class 1 designated rural landscape which has a landscape rating of 'low'.

6.2. Natural Heritage Designations

The subject site is not located within any designated Natura 2000 sites. The site is located 2km to the north-west of the Lough Cutra SAC and the Lough Cutra SPA.

6.3. Environmental Impact Assessment

The proposed development does not fall within a class of development set out in Part 1 or Part 2 of Schedule 5 of the Planning and Development Regulations and therefore is not subject to EIA requirements.

7.0 The Referral

7.1. Referrer's Case

The issues raised by the referrer, being the owner, can be summarised as follows-

- Legislation does not state a time limit on how long a dwelling house can be derelict after which time renovation and extension requires planning permission.
- Administration errors have been made in that the incorrect address has been referenced on the decision.
- The dwelling was most likely constructed between 1920 and 1940 – pictures of the dwelling indicate that some windows and a roof were intact prior to works commenced. There was a bathroom at first floor and a small rear extension which has now been demolished to allow for the works.
- Removal of chimneys is now a common practice and does not materially effect the overall appearance of the dwelling.
- The refusal goes against legislation which government is working hard to produce in order that such derelict dwellings are renovated and brought back into the housing supply.
- The Planning Authority have not given an adequate reason for refusal.
- The refusal creates an undesirable precedent that will discourage people from doing similar.

- Re-roofing and removal of chimney does not make the development out of character with neighbouring developments.

7.2. Planning Authority Response

None Received.

8.0 Statutory Provisions

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

Section 2(1) - Interpretation In this Act, except where the context otherwise requires –

- “habitable house” means a house which—

(a) is used as a dwelling,

(b) is not in use but when last used was used, disregarding any unauthorised use, as a dwelling and is not derelict, or

(c) was provided for use as a dwelling but has not been occupied;

- “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” as any building, structure, excavation or other thing constructed or made on, in or under any land, or part of a structure so defined, and –
where the context so admits, includes the land on, in or under which the structure is situate
- “use”, in relation to land, does not include the use of the land by the carrying out of any works thereon.
- "works" includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal.

Section 3(1):

In this Act, "development" means, except where the context otherwise requires, the carrying out of any works on, in, or under land or the making of any material change in the use of any such structures or other land.

Section 4(1):

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;

Section 4(2)(a)

The Minister may by regulations provide for any class of development to be exempted development for the purposes of this Act where he or she is of the opinion that—

- (i) by reason of the size, nature or limited effect on its surroundings, of development belonging to that class, the carrying out of such development would not offend against principles of proper planning and sustainable development, or
- (ii) the development is authorised, or is required to be authorised, by or under any enactment (whether the authorisation takes the form of the grant of a licence, consent, approval or any other type of authorisation) where the enactment concerned requires there to be consultation (howsoever described) with members of the public in relation to the proposed development prior to the granting of the authorisation (howsoever described).

8.2. Planning and Development Regulations, 2001(as amended)

8.2.1. Article 6 – Exempted Development

6. (1) Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that

such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.

8.2.2. Article 9 -Restrictions on Exemptions

9(1)(viii) 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— 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.

8.2.3. Schedule 2 Part 1 – Exempted Development

CLASS 1: The extension of a house, by the construction or erection of an extension (including a conservatory) to the rear of the house or by the conversion for use as part of the house of any garage, store, shed or other similar structure attached to the rear or to the side of the house.

Conditions and limitations

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

(b) Subject to paragraph (a), where the house is terraced or semi-detached, the floor area of any extension above ground level shall not exceed 12 square metres.

(c) Subject to paragraph (a), where the house is detached, the floor area of any extension above ground level shall not exceed 20 square metres.
2. (a) Where the house has been extended previously, the floor area of any such extension, taken together with the floor area of any previous extension or extensions constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 40 square metres.

(b) Subject to paragraph (a), where the house is terraced or semi-detached and has been extended previously, the floor area of any extension above ground level taken together with the floor area of any previous extension or extensions above ground level constructed or erected after 1 October 1964,

including those for which planning permission has been obtained, shall not exceed 12 square metres.

(c) Subject to paragraph (a), where the house is detached and has been extended previously, the floor area of any extension above ground level, taken together with the floor area of any previous extension or extensions above ground level constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 20 square metres.

3. Any above ground floor extension shall be a distance of not less than 2 metres from any party boundary.

4. (a) Where the rear wall of the house does not include a gable, the height of the walls of any such extension shall not exceed the height of the rear wall of the house.

(b) Where the rear wall of the house includes a gable, the height of the walls of any such extension shall not exceed the height of the side walls of the house.

(c) The height of the highest part of the roof of any such extension shall not exceed, in the case of a flat roofed extension, the height of the eaves or parapet, as may be appropriate, or, in any other case, shall not exceed the height of the highest part of the roof of the dwelling.

5. The construction or erection of any such extension to the rear of the house shall not reduce the area of private open space, reserved exclusively for the use of the occupants of the house, to the rear of the house to less than 25 square metres.

6. (a) Any window proposed at ground level in any such extension shall not be less than 1 metre from the boundary it faces.

(b) Any window proposed above ground level in any such extension shall not be less than 11 metres from the boundary it faces.

(c) Where the house is detached and the floor area of the extension above ground level exceeds 12 square metres, any window proposed at above ground level shall not be less than 11 metres from the boundary it faces.

7. The roof of any extension shall not be used as a balcony or roof garden.

8.3. Referrals Database

8.3.1. PL06F.308807

This case determined that the restoration of the previously permitted pre 1963 dwelling to its previous condition at Somerton Lane/Lower Lucan Road, Strawberry Beds, Dublin 15 would constitute “works” that are “development” under Section 3(1) of the Planning and Development Act 2000 (as amended); that the structure on the site, in respect of which the restoration works are proposed, is not in residential use and, on the basis of the documentation submitted, there is no evidence on file of any residential use of this structure including in recent times, or for a significant period of time, and the resumption of such residential use of the subject building which is now in a derelict condition, would now constitute a change of use that is material; and that The external works and alterations to reconstruct and restore the former house would not come within the scope of section 4(1)(h) of the Act, being works which would materially affect the external appearance of the structure. It was further found that in view of its location within the Liffey Valley Special Amenity Area Order, the development would fall within the Restrictions on Exemption as provided by Article 9(1)(b)(i) of the Planning and Development Regulations 2001 (as amended).

8.4. Relevant Case Law

8.4.1. Dublin County Council v. Tallaght Block Co. Ltd (1982/766/HC)

This case determined that a use of land can be abandoned and that a change of use will occur when an abandoned use is recommenced. Hederman J in the Supreme Court stated: “Where a previous use of land has been not merely suspended for a temporary period and determined period, but has ceased for a considerable time, with no evidenced intention of resuming it at any particular time, the tribunal of fact was entitled to find that the previous use had been abandoned, so that the resumption constituted a material change of use.”

8.4.2. Cork County Council v. Ardfert Quarries Ltd. (2021/189/JR)

In this case a site had been used as an animal food processing plant from 1953 – 1966, it had been vacant from 1966 to 1970 and it had been used to manufacture and store tyres from 1970 to 1974. The High Court held that the use of the premises as a general industrial building from 1953-1956 had been abandoned by its none use from 1966-1970. Murphy J stated: “Having regard to the elapse of time and the absence of any satisfactory explanation therefore, I must conclude that the use as of the operative date was subsequently abandoned.”

8.4.3. Meath County Council v. Daly (1987 WJSC-HC 1975)

The High Court held that the resumption of the use of premises which had been used for car repairs and petrol sales pre 1964, after that use had been abandoned since 1964 from time to time by the user of the premises for other purposes, and particularly by its user from 1969 for some years by a double glazing company, was a material change of use.

9.0 **Assessment**

9.1. **Introduction**

- 9.1.1. The purpose of this referral is to determine whether or not the matter in question constitutes development, and if so falls within the scope of exempted development. From the onset it is noted that planning enforcement is a matter for the planning authority and does not fall within the jurisdiction of the Board
- 9.1.2. The question posed is whether the rear extension to dwelling house is or is not development or is or is not exempted development.
- 9.1.3. The Planning Authority asserts that the extension is not exempt as the works required to being the structure back into habitable accommodation do not fall within the scope of 4(1)(h) of the Planning and Development Act 2000 (as amended) and that there is no provision within the Planning and Development Regulations 2001 (as amended) and the associated Planning and Development Act 2000 (as amended) whereby the extension to the rear of a derelict dwelling which has not been in use as a dwelling for a considerable period of time would constitute exempted development.
- 9.1.4. It is noted that the decision issued by the Galway County Council on the 6th June 2024 makes reference to the incorrect address within the first paragraph of the

determination. It is considered that this was a clerical error as this address does not appear elsewhere within the determination or within the Planning Report associated with the assessment.

9.2. Is or is not development

- 9.2.1. The initial question that arises is, whether the extension is or is not development. Section 3 of the 2000 Act defines development as ‘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’. As defined in section 2(1) of the 2000 Act, works include ‘any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal’. The act of extending the house therefore constitutes development. The Planning authority accept same.

9.3. Is or is not exempted development

- 9.3.1. The question relates to the provision of a two storey extension to the rear of what the applicant is describing as a dwelling. Plans submitted indicate that the proposed extension would have an area of 20sq.m at ground floor and same at first floor.
- 9.3.2. While the extension to which the question of this referral pertains may be acceptable in terms of the requirements of Class 1 of Schedule 2 Part 1 of the Planning and Development Regulations, 2001 (as amended) including the conditions and limitations, consideration has to be given to Article 9 of the same which sets out restriction on exemptions.
- 9.3.3. The Board should therefore restrict its deliberations to the referral question before it until such consideration is given to Article 9(1) of the Planning and Development Regulations 2001 (as amended). I have considered this within the next section of my report.

9.4. Restrictions on exempted development

- 9.4.1. In this case the argument being put forward by the Planning Authority is whether or not these works to the structure which is not currently in use or has been in use for some period of time are exempted development. Regard is had to the Statutory Provisions Section above and to the Restrictions on Exemption as provided in Article

9(1) of the Planning and Development Regulations 2001, as amended. In particular, Article 9(1)(Viii) of the Regulations states “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— 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”.

9.4.2. The applicant has stated that the dwelling was most likely constructed between 1920 and 1940 but does not provide any evidence to this fact. From undertaking a site visit I accept that some elements of the structure as existing may be original, however it is clearly evident that this structure has not been in use as a habitable dwelling for some time. Google map imagery from 2009, which I accessed on the 9th October 2024, clearly shows the structure to be in a dilapidated state. As such, with the lack of evidence provided by applicant I consider that this structure has not been utilised as a habitable dwelling for a prolonged period of time.

9.4.3. While legislation does not provide us with a definition of a time limit for abandonment of use there has been a number of case laws dealing with same. In the outcome of Dublin City Council v's Tallaght Block Co. Ltd, Mr. Justice Costello stated that “*where a previous use of land has been not merely suspended for a temporary period and determined period, but has ceased for a considerable time, with no evidenced intention of resuming it at any particular time, the tribunal of fact was entitled to find that the previous use had been abandoned, so that the resumption constituted a material change of use.*”

9.4.4. The Planning Authority provides that they are satisfied that the structure was not in use as a house. It appears that the structure is derelict and the use has been abandoned. Therefore, the term ‘habitable house’ would be irrelevant in the context of Schedule 2 Part 1 Exempted Development – General of the Planning and Development Regulations 2001 (as amended).

9.5. Conclusion

9.5.1. Having regard to the assessment set out above, I consider that the works which have so far been undertaken on site and any further works required would be a material change of use to convert this now derelict structure, where it appears the habitable

use has been long abandoned, back to residential use, and in light of Article 9(1)(a)(viii) of the Planning and Development Regulations 2001, as amended, the said extension to the rear is not exempted development and would therefore require planning permission.

9.6. **Screening for Appropriate Assessment**

Having regard to the 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.

10.0 **Recommendation**

10.1. I recommend that the Board should decide this referral in accordance with the following draft order.

WHEREAS a question has arisen as to whether a extension to the rear of the dwelling is or is not development or is or is not exempted development

AND WHEREAS Tommy O'Donnel requested a declaration on this question from Galway County Council and the Council issued a declaration on the 6th day of June, 2024 stating that the matter was development and was not exempted development:

AND WHEREAS Tommy O'Donnell referred this declaration for review to An Bord Pleanála on the 2nd day of July, 2024:

AND WHEREAS An Bord Pleanála, in considering this referral, had regard particularly to –

(a) Section 2(1), Section 3(1) and Section 4(1)(h) of the Planning and Development Act, 2000, as amended,

- (b) article 6(1) and article 9(1)(viii) of the Planning and Development Regulations, 2001, as amended,
- (c) Parts 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (d) The provision of Galway County Development Plan 2022-2028,
- (e) the planning history of the site,
- (f) the pattern of development in the area:

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The works to be carried out to facilitate the rear extension of the now derelict structure would constitute “works” that are “development” under Section 3(1) of the Planning and Development Act 2000 (as amended).
- (b) The existing structure on the site, in respect of which the extension subject to this referral, is not in residential use and, on the basis of the documentation submitted, there is no evidence on file of any residential use of this structure including in recent times, or for a significant period of time, and the resumption of such residential use of the subject building which is now in a derelict condition, would now constitute a change of use that is material, having regard to the potential for consequences in planning terms. It would, therefore, constitute development, which development does not come within the scope of any of the legislative provisions for exempted development.
- (c) The development would fall within the Restrictions on Exemption as provided by Article 9(1)(Viii) 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(4) of the Planning and Development Act 2000, as

amended, hereby decides that the development 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.

Kathy Tuck
Planning Inspector
21st of November 2024