



An
Bord
Pleanála

Inspector's Report ABP321042-24

Question

Whether the alterations of side windows to comply with fire officer's requirement for means of escape from inner bedrooms is or is not development and or is or is not exempted development.

Location

Shanks Mare, Collegelands and Arodstown, Summerhill, County Meath.

Declaration

Planning Authority

Meath County Council.

Planning Authority Reference.

RA552465

Applicant for Declaration

Meath County Council

Planning Authority Decision

No declaration.

Referral

Second Party

Referred by

Meath County Council

Owner Occupier

Collegelands Forge Ltd

Observer(s)

None.

Date of Site Inspection

20th January 2025

Inspector

Derek Daly.

1.0 Site Location and Description

- 1.1. The proposed site is located in a rural area approximately three kilometres to the northeast of the village of Summerhill in County Meath.
- 1.2. The site fronts onto two public roads which define the site's southwestern and southeastern boundaries with access to the site via the southwestern boundary. On the site is a two storied premises located in the western area of the site. To the rear of the premises in the eastern section of the site is a timber clad single storied structure and four other single storied structures. In the vicinity there are a number of detached dwellings.

2.0 The Question

- 2.1. The question before the Board relates to whether the alterations of side windows to comply with fire officer's requirement for means of escape from inner bedrooms is or is not development and or is or is not exempted development. The question arises from an application to the planning authority for a request for a declaration from the owner submitted to the planning authority on the 13th September 2024.
- 2.2. In the submission made to the planning authority reference is made to the planning history.

3.0 Planning Authority Declaration

3.1. Declaration

- 3.1.1. Meath County Council has not issued a declaration and in a letter to the Board dated 10th October considers it appropriate to refer the application made to it for a declaration from the Board under section 5(4) of the Planning and Development Act 2000-2022.

4.0 Planning History

- 4.1. P.A Ref. No. 22629.

4.1.1. Planning permission was granted subject to 7 conditions on the 17th November 2022 for the development consisting of;

- the erection of four 51.5m² detached pods, each of which would be 3m in height and which would provide two bedrooms and a combined kitchen/dining area as well as a bathroom along with the use of these four structures for tourism accommodation purposes.
- the retention of an existing timber log cabin 54m² whose removal was required under condition no. 4 permission ref no RA/191557 and its use for short-term residential accommodation.
- The decommissioning of a septic tank permitted under ref no RA/191557.
- The provision of new soakaways and new WWTP.
- Upgrading of access and internal road serving the development and other site development works.

4.1.2. Condition no 1 of the grant of permission required the development to be carried out in accordance with plans and particulars lodged with the planning authority.

4.2. P.A Ref. No RA191557

Permission granted for a development subject to 22 conditions which included alterations to the two storied public house on the site, the conversion to residential accommodation and associated works and alterations to waste water treatment on the site. Condition no.4 required the removal of an unauthorised log cabin on the site.

5.0 Policy Context

5.1. Local Planning Policy

The relevant statutory plan is the Meath County Development Plan 2021-2027.

There are no specific provisions relevant to this referral.

5.2. Natural Heritage Designations

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

5.3. Environmental Impact Assessment (EIA) Preliminary Examination

- 5.3.1. 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.
- 5.3.2. 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.

6.0 The Referral Response

6.1. Owner/Occupier's response

- 6.1.1. In summary the response indicates;
- Reference is made to the planning history of the site.
 - Reference is made to the case of Drumaprop Limited v Leitrim County Council.
 - Reference is made to Section 4(1)(h) of the Planning and Development Act 2000 as amended, Articles 6(1) and 9 of the Planning and Development Regulations 2001 as amended and that the current development satisfies the criteria set out.
 - The current authorised use of the log cabin is a holiday home within the hotel complex.
 - The log cabin requires to be wheelchair accessible and have a fire safety certificate under the Building Control Act 1990 as amended.
 - The application was referred to the fire authority under planning reference no 22629 and although no response was received the planning authority should have been aware that escape doors/windows would have been required for

the inner rooms or that achieving compliance with building control on these matters would be a material alteration to the planning permitted development.

- The planning authority did not place any appropriate condition other than advice note to satisfy compliance with other codes.
- The party obtaining permission may not have been familiar with fires safety requirements for inner rooms and the requirements of the Building Control Act 1990 and Fire Services Act 1981.
- To satisfy criteria it was necessary to alter the permitted development to provide a safe means of escape from each inner bedroom directly to the outside.
- Reference is made in this regard to Section 4(1)(h) which provides for improvement or alteration.
- The log cabin is not readily visible and the alterations do not materially affect the external appearance as to render the appearance inconsistent with the character of the structure or neighbouring structures.
- Reference is also made to the specific provision of Article 6(1) and Schedule 2 Part 1 Class 41(e) and that the development does not include the construction or erection of an external fire escape or water tank.
- It was necessary to show compliance with the Building Regulations.
- The works carried out in relation to the provisions of windows suitable for escape from inner rooms which are bedrooms constitute exempted development as set out in Class 41(e) and had a fire safety certificate been made prior to the alteration would have been subject to a condition or conditions of a fire safety certificate. However, the referrer was fearful that a fire officer could reasonably refuse to grant the fire safety certificate regularisation application because without the alteration the subject of this application it would not have complied.
- The works as carried comply with judgements of the Supreme Court and High Court judgement which are cited and attached to the response.

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;

“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;

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.

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 1 Class 41(e)

the carrying out of development in compliance with a condition or conditions attached to a fire safety certificate granted in accordance with Part III of the Building Control Regulations, 1997 other than the construction or erection of an external fire escape or water tank

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. Is or is not development.
 - 8.2.1. Section 3 of the Planning and Development Act, 2000, as amended, 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. Having regard to Section 2 of the Act where “works” are defined as including ‘any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal. Based on the definition of works, the alterations of side windows on the external elevation of a building involves the carrying out of ‘works’ through an act of construction or alteration and therefore I consider constitutes development. Accordingly, having established that the works in question constitute development within the meaning of the Act it is now necessary to ascertain whether or not they can be considered to be exempted development.
- 8.3. Is or is not exempted development
 - 8.3.1. The permitted authorised use of the structure is not in dispute based on the planning history of the site.
 - 8.3.2. Planning permission was granted subject to 7 conditions on the 17th November 2022 for the development which included the retention of an existing timber log cabin 54m² whose removal was required under condition no. 4 permission ref no RA/191557 and its use for short-term residential accommodation. Condition no 1 of the grant of permission required the development to be carried out in accordance with plans and particulars lodged with the planning authority.
 - 8.3.3. Documentation submitted with the application retaining an existing timber log cabin would appear to indicate the presence of a window on the side elevation of this structure. The door was therefore constructed subsequent to the grant of permission.
 - 8.3.4. The owner/occupier in a submission on this referral refers to the planning history of the site; that the current authorised use of the log cabin is a holiday and the log cabin

requires to be wheelchair accessible and have a fire safety certificate under the Building Control Act 1990 as amended. The application was referred to the fire authority under planning reference no 22629 and although no response was received the planning authority should have been aware that escape doors/windows would have been required for the inner rooms or that achieving compliance with building control on these matters would be a material alteration to the planning permitted development and the planning authority did not place any appropriate condition other than advice note to satisfy compliance with other codes.

8.3.5. The party obtaining permission may not have been familiar with fire safety requirements for inner rooms and the requirements of the Building Control Act 1990 and Fire Services Act 1981 and that to satisfy criteria it was necessary to alter the permitted development to provide a safe means of escape from each inner bedroom directly to the outside.

8.3.6. It is contended that the works carried out in relation to the provisions of windows suitable for escape from inner rooms which are bedrooms constitute exempted development as set out in Class 41(e) and had a fire safety certificate been made prior to the alteration would have been subject to a condition or conditions of a fire safety certificate. However, the referrer was fearful that a fire officer could reasonably refuse to grant the fire safety certificate regularisation application because without the alteration the subject of this application it would not have complied.

8.3.7. Reference is made to Schedule 2, Part 1: Exempted Development Class 41(e) *the carrying out of development in compliance with a condition or conditions attached to a fire safety certificate granted in accordance with Part III of the Building Control Regulations, 1997 other than the construction or erection of an external fire escape or water tank*, and it contended that the development does not include the construction or erection of an external fire escape or water tank and it was necessary to show compliance with the Building Regulations.

8.3.8. There is no evidence submitted that the development in question has received a grant of a fire safety certificate and therefore it cannot be contended that the works were carried out to comply with a fire safety certificate and therefore the

exemption as provided for under Schedule 2, Part 1: Exempted Development Class 41(e) does not apply.

- 8.3.9. Reference is also made by the owner/occupier in the submission on this reference to Section 4(1)(h) of the Planning and Development Act 2000 as amended which provides for improvement or alteration.
- 8.3.10. In relation to this, I am satisfied that given the nature and limited scale of the alteration of the window to a door in question, this alteration is of minor significance and in the context of the overall development as approved under PA Ref. No. 22629 which provided for the retention of the log cabin with a window and is not a material alteration. Accordingly, I am satisfied that the alteration from a window to a doorway is not inconsistent with the character of the structure and that it would not be inconsistent with the character of neighbouring structures.
- 8.3.11. However, notwithstanding the foregoing conclusion, I note that in accordance with the judgement given in the case of *Horne v Freeney* for any development to avail of the exempted development rights conferred by Section 4(1)(h) of the Act, it must first have been completed in full accordance with its grant of permission.
- 8.3.12. I would also note in this regard the reference in the owner/occupier response to the judgement of the Supreme Court Appeal No.006/2005 to *Kenny v Dublin City Council* on deviations to permitted development and the issue of whether such deviations are material departures from the terms of the permission.
- 8.3.13. It appears evident that the alteration was subsequent to a permitted development which was a retention permission. The alteration was not works specifically built to comply with the permitted plans and particulars of conditions of the retention permission and was subsequently constructed to comply with other statutory codes.
- 8.3.14. I therefore consider, the subsequent alteration of the window to a door carried to comply with fire safety requirements complies with the exempted development provisions of Section 4(1)(h) and therefore is exempted development being works 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.

9.0 **Appropriate Assessment Screening**

9.1. I have considered the proposal which is for the alterations of side windows of an existing log cabin and no extension in floor area is proposed in light of the requirements S177U of the Planning and Development Act 2000 as amended. The subject site is not located within nor within close proximity to a designated European site. The proposed development comprises the alterations of side windows a change of use as outlined in section 2 in the Inspectors report. Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment because there is no conceivable risk to any European Site. The reason for this conclusion is as follows; the small scale and nature of the development and the absence of a pathway to the European site

9.1.1. I conclude that on the basis of objective information, that the proposed development would not have a likely significant effect on any European Site either alone or in combination with other plans or projects and likely significant effects are excluded and therefore, Appropriate Assessment (stage 2) (under Section 177V of the Planning and Development Act 2000) is not required.

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 the alterations of side windows to comply with fire officer's requirement for means of escape from inner bedrooms is or is not development and or is or is not exempted development: AND

WHEREAS the Meath County Council requested a declaration on this question from on the 10th day of October 2024 from An Bord Pleanála: 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 and 9 of the Planning and Development Regulations, 2001, as amended,
- (e) Schedule 2, Part 1: Class 41(e)
- (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 alterations of side windows to comply with fire officer's requirement for means of escape from inner bedrooms is development
- (b) the alterations of side windows to comply with fire officer's requirement for means of escape from inner bedrooms is exempted development having regard to the provisions of Section 4(1)(h) of the Planning and Development Act as amended, 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 alterations of side windows to comply with fire officer's requirement for means of escape from inner bedrooms is development and is 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

30th January 2025

Appendix 1 - Form 1
EIA Pre-Screening
[EIAR not submitted]

An Bord Pleanála	ABP 321042-24		
Case Reference			
Proposed Development Summary	Section 5 referral whether alterations of side windows to comply with fire officer's requirement for means of escape from inner bedrooms		
Development Address	Shanks Mare, Collegelands and Arodstown, Summerhill, County Meath.		
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)	Yes	Tick if relevant and proceed to Q2.	
	No X	Tick if relevant. No further action required	
2. Is the proposed development of a CLASS specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended)?			
Yes		State the Class here.	Proceed to Q3.

No	X		Tick if relevant. No further action required
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3. Does the proposed development equal or exceed any relevant THRESHOLD set out in the relevant Class?

Yes		State the relevant threshold here for the Class of development.	EIA Mandatory EIAR required
No			Proceed to Q4

4. Is the proposed development below the relevant threshold for the Class of development [sub-threshold development]?

Yes		State the relevant threshold here for the Class of development and indicate the size of the development relative to the threshold.	Preliminary examination required (Form 2)
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5. Has Schedule 7A information been submitted?

No		Screening determination remains as above (Q1 to Q4)
Yes		Screening Determination required

Inspector: Derek Daly Date: 30th January 2015