Inspector's Report
ACP-324040-26

Question	Whether the conversion of two residential units (ground floor level bungalow and basement level apartment to the rear) to one residential unit is or is not development and is or is not exempted development.
Location	1 Church Place, Rathmore, Co. Kerry

Declaration	
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	EX1480
Applicant for Declaration	Anthony O'Donoghue
Planning Authority Decision	Is not exempted development

Referral	
Referred by	Anthony O'Donoghue
Owner/ Occupier	Anthony O'Donoghue
Observer(s)	None
Date of Site Inspection	18 March 2026
Inspector	Natalie de Róiste

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1.0 Site Location and Description

1.1. The site is a house in Rathmore, Co. Kerry. To the front, it presents as a bungalow. The site slopes steeply to the rear, and the rear elevation is two storeys, with a gabled single-storey projecting block at the lower level. A staircase connects the two floors, leading from the upper floor living room to a hall on the lower level, which in turn provides access to the kitchen (in the rear extension) as well as further living accommodation on the lower level.

1.2. There is evidence of a blocked window and door to the external wall to the lower level of the stairwell.

2.0 The Question

2.1. Whether the conversion of two residential units (ground floor level bungalow and basement level apartment to the rear) to one residential unit is or is not development and is or is not exempted development.

3.0 Planning Authority Declaration

3.1. Declaration

The works the subject of the referral DOES NOT constitute exempted development:

a) The conversion of two residential units (ground floor level bungalow and basement level apartment to the rear) to one residential unit would constitute development that comes within the scope of Section 3(1) of the Planning and Development Act, 2000 (as amended),

b) The proposed development would not constitute exempted development as the basement level accommodation is unauthorised.

3.2. Planning Authority Reports

3.2.1. Planning Reports

One report, dated 07/01/2026, noting location of property, and planning history (grant for bungalow 73/1934). No basement was authorised, and as such the conversion of the house and the apartment into one residential unit is not exempted development.

3.2.2. Other Technical Reports

None on file.

4.0 Planning History

- Planning register no 73/1934

Permission was granted for the erection of a bungalow by order no PL/74/18 on the 8th day of January, 1974. The application form (dated 1 November 1973) described the development as ‘proposed bungalow & garage’.

4.1.1. The plans submitted show a single-storey three-bedroom bungalow with living room, dining room, kitchen, and bathroom, with a pitched roof. The bungalow measures 920.52 sq. ft (c. 85 sqm), and is rectangular in plan, with a central flat-roofed projection to the rear accommodating part of the kitchen. The garage (11’x16’) is attached to the east gable.

4.1.2. The conditions are summarised as follows:

1. The house shall be set back by 80 foot from the front boundary.

2. Colour and material of the roof covering.

3. The septic tank shall be at least 60 foot from the nearest house and from the public road.

4. The site entrance shall be set back by at least 16 foot from the front boundary.

5. Screening trees and shrubs shall be planted.

6. Development contributions of £40.

5.0 Policy Context

5.1. Kerry County Development Plan 2022-28

5.1.1. The site is located within the settlement boundary of Rathmore West, and is zoned Existing Residential in the draft map in Proposed Variation no 2 of the Kerry County Development Plan 2022-2028. It has no protected structures or archaeological monuments included in the RMP, nor is it in an Architectural Conservation Area or a Special Amenity Area Order. There are no objectives for preservation of views or prospects on the site. There are no objectives for the preservation of any sites or features of archaeological, geological, historical, scientific or ecological interest on the site.

5.2. Natural Heritage Designations

- Blackwater River (Cork/Waterford) SAC 002170 – 700 metres northeast

5.3. EIA Screening

5.3.1. The proposed development is not a class for the purposes of EIA as per the classes of development set out in Schedule 5 of the Planning and Development Regulations 2001, as amended (or Part V of the 1994 Roads Regulations). No mandatory requirement for EIA therefore arises and there is also no requirement for a screening determination. Refer to Form 1 in Appendix 1 of report.

6.0 The Referral

6.1. Referrer's Case

6.1.1. The referrer's case is summarised as follows:

- The referral to the council notes that on purchasing the property in November 2023, it had two separate eircodes, one for a small apartment at basement level to rear, one for the house itself (which presents as single-storey to the road). Works were carried out to remove a bathroom and install a staircase, creating one single dwelling.
- The referral to the Commission notes that the works are wholly internal, with no structural, external, fire safety, or stability impacts.
- The building now functions as a four-bedroom detached house, with no other material change of use.
- No site visit was undertaken by the council planning officer.

6.1.2. Photos have been provided showing the interior staircase, and the front and rear elevations of the house.

6.2. Planning Authority Response

No response was received from the Planning Authority.

6.3. Further Responses

None received.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

7.1.1. Section 2 (1) of the Act states the following:

- "development" has the meaning assigned to it by Section 3;
- "exempted development" has the meaning specified in Section 4;
- "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;

- "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) states that:

'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'.

Section 3 (3) states that:

(3) For the avoidance of doubt, it is hereby declared that, for the purposes of this section, the use as two or more dwellings of any house previously used as a single

dwelling involves a material change in the use of the structure and of each part thereof which is so used.

7.1.3. Section 4(1) specifies a list of developments that are exempt including the following:

S4(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.

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

7.1.5. Section 4(4) of the Act sets out that if a development requires an Environmental Impact Assessment or Appropriate Assessment, it is not exempt.

Section 4(4) 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

7.2.1. Article 6(1) of the Planning & Development Regulations, 2001 as amended states as follows:

"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) of the Planning & Development Regulations, 2001 as amended, provides a number of scenarios whereby development to which article 6 relates shall not be exempted development for the purposes of the Act, including if it would: .

7.2.3. 9(1)(a)i *contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act* *(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*

Part 1 of Schedule 2 *Exempted Development – General* contains the following:

Column 1 Description of Development	Column 2 Conditions and Limitations
Class 14 Development consisting of a change of use- (e) from use as 2 or more dwellings, to use as a single dwelling, of any structure previously used as a single dwelling.	

8.0 Assessment

8.1. Preliminaries

8.1.1. The purpose of this referral is not to determine the acceptability or otherwise of the above intervention in terms of the proper planning and sustainable development of the area, but rather whether or not the matter in question constitutes development, and if so, falls within the scope of exempted development. I note also that planning enforcement is a matter for the planning authority, and falls outside the jurisdiction of the Commission.

8.2. Is or is not development

8.2.1. Development includes both works and material change of use. The intervention involved the demolition of the bathroom to create the stairwell, and the construction of the staircase, both of which constitute works. There is new render to the rear elevation, indicating a window and door have been blocked to facilitate the creation of the stairwell.

8.2.2. Regarding material change of use, the Act specifies (Section 3(3)) that using a single dwelling as two or more dwellings involves a material change of use. It does not specify that the reverse is necessarily a material change of use (the combining of two dwellings to create one single one) – however, given that an exemption is provided within the regulations (Class 14), it is a reasonable inference that this could be the case; if the change were not material, no exemption would be required.

8.2.3. The referrer (the homeowner) notes that the property had two eircodes when they purchased it, with one for the house, and one for the small apartment on the lower level. No plans have been provided showing the property/properties prior to the works; but from the information submitted I can infer that there was no internal connection (ie staircase) between the lower level accommodation and the upper level accommodation, and that access to the lower level was via the now blocked external door. It is reasonable to assume that they functioned as two separate dwelling units, albeit, sharing a driveway and gardens. It is reasonable to consider the change from two smaller dwellings, capable of accommodating two smaller households, to one larger dwelling with greater capacity, as a material change of use.

8.2.4. In my view, the intervention constitutes development, as both works and a material change of use are involved.

8.3. Is or is not exempted development

8.3.1. Regarding the works undertaken, a broad exemption is provided under Section 4(1)(h) of the Act, which provides that works carried out for the maintenance, improvement, or other alteration of any structure are exempt, if they affect only the interior, or if they do not materially affect the external appearance so as to render it inconsistent with its own character, or that of its neighbours. The works here are largely internal; the blocking of the door and window opening is evident to the exterior, but is not inconsistent with the character of the building or its neighbours.

8.3.2. I note recent case law in the Supreme Court judgement of *Cronin (Readymix) Ltd v An Bord Pleanála & others 2017*. This judgment noted that the word 'alteration' in Section 4(1)(h) must be considered in the context of the Act as a whole, and that the intention of the legislators must be taken into account. As such, while an extension to a building is an alteration, it is not the kind of alteration anticipated in Section 4(1)(h), as extensions are covered in other parts of the legislation (the regulations made under Section 4(2)). In my view, the removal of a bathroom, a window, and a door, and the insertion of a stairwell and staircase, is the kind of development referred to by Section 4(1)(h), and I consider this Section to provide a relevant exemption for the works undertaken.

8.3.3. The exemption at Class 14 is for the change of use from 2 or more dwellings to the use as a single dwelling, of any structure which was previously used as a single dwelling.

8.3.4. Having undertaken a site visit, examined the property, and taken into consideration the account of the home owner as set out in the referral submitted to the Local Authority and subsequently to the Commission, there is no indication that the original building was ever used as a single dwelling. This is an inherent requirement of the Class 14 exemption, and in the absence of same, it cannot be availed of.

8.4. Restrictions on exempted development

8.4.1. I note the planning authority's comments that the basement is unauthorised. Permission was granted for a single-storey dwelling, a bungalow of 920 square feet. The application documentation refers repeatedly to a 'bungalow', with 'two-storey house' crossed out on several forms. The Manager's order grants permission for 'erection of a bungalow as outlined on plans received on 12/11/73'.

8.4.2. Enforcement is the remit of the planning authority, and is not a matter for the Commission; the above is of relevance, however, insofar as Article 9(1)(a)(viii) restricts exemptions that would be available under Article 6 (ie, exemptions under the Planning and Development Regulations, as opposed to the Act) if the structure is an unauthorised structure, or a structure the use of which is an unauthorised use. As I do not consider the exemption under Class 14 to be applicable in this instance, I do not intend to consider this further.

8.4.3. For clarity and completeness, I note that Section 4(4) of the Act sets out that if a development requires an Environmental Impact Assessment or Appropriate Assessment, it is not exempt. This is a very minor development, and requires neither.

8.4.4. To conclude, I consider that the conversion of two residential units (ground floor level bungalow and basement level apartment to the rear) to one residential unit constitutes a material change of use, and therefore constitutes development. No information has been submitted to indicate that the original building was ever used as a single dwelling, a necessary prerequisite for exemptions under Class 14 of Part 1 of Schedule 2 to the Planning and Development Regulations 2001 (as amended). Therefore, I consider the development is not exempt.

9.0 AA Screening

9.1.1. Having regard to the nature and small scale of the proposed development and the distance from the nearest European site, no Appropriate Assessment issues arise, and it is not considered that the proposed development would be likely to have a significant effect, individually, or in combination with other plans or projects, on any European site.

10.0 Recommendation

10.1. A question has arisen as to whether the conversion of two residential units (ground floor level bungalow and basement level apartment to the rear) to one residential unit is or is not development and is or is not exempted development.

AND Anthony O’Donoghue requested a declaration on this question from Kerry County Council and the Council issued a declaration on the 12th day of January, 2026, stating that the matter was development and was not exempted development:

AND Anthony O’Donoghue referred this declaration for review to An Coimisiún Pleanála on the 23rd day of January, 2026;

AND An Coimisiún Pleanála, in considering this referral, had regard particularly to – [amend/ delete as appropriate]

(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 3(3) of the Planning and Development Act, 2000,

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

(e) article 6(1) and article 9(1) of the Planning and Development Regulations, 2001, as amended,

(e) Class 14 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,

(f) the planning history of the site,

AND An Coimisiún Pleanála has concluded that

(a) The combination of two smaller dwellings to one larger dwelling is a material change of use, and constitutes development, and

(b) No evidence has been put forward that the structure was previously used as a single dwelling, and therefore the development does not come within the scope of Class 14 of Part 1 of Schedule 2.

NOW THEREFORE An Coimisiún Pleanála, in exercise of the powers conferred on it by section 5 (3) (a) of the 2000 Act (as amended), hereby decides that the conversion of two residential units (ground floor level bungalow and basement level apartment to the rear) to one residential unit 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 me, directly or indirectly, following my professional assessment and recommendation set out in my report in an improper or inappropriate way.

Natalie de Róiste
Planning Inspector

2 July 2026

Form 1 - EIA Pre-Screening

Case Reference	324040-26
Proposed Development Summary	Amalgamation of two units
Development Address	1 Church Place, Rathmore, Co. Kerry.
	In all cases check box /or leave blank
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (For the purposes of the Directive, "Project" means: - The execution of construction works or of other installations or schemes, - Other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources)	☒ Yes, it is a 'Project'. Proceed to Q2. ☐ No, No further action required.
2. Is the proposed development of a CLASS specified in Part 1, Schedule 5 of the Planning and Development Regulations 2001 (as amended)?	
☐ Yes, it is a Class specified in Part 1. **EIA is mandatory. No Screening required. EIAR to be requested. Discuss with ADP.**	State the Class here
☐ No, it is not a Class specified in Part 1. Proceed to Q3	
3. Is the proposed development of a CLASS specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) OR a prescribed type of proposed road development under Article 8 of Roads Regulations 1994, AND does it meet/exceed the thresholds?	
☒ No, the development is not of a Class Specified in Part 2, Schedule 5 or a prescribed type of proposed road	

development under Article 8 of the Roads Regulations, 1994. **No Screening required.**	
☐ Yes, the proposed development is of a Class and meets/exceeds the threshold. **EIA is Mandatory. No Screening Required**	**State the Class and state the relevant threshold**
☐ Yes, the proposed development is of a Class but is sub-threshold. **Preliminary examination required. (Form 2)** **OR** **If Schedule 7A information submitted proceed to Q4. (Form 3 Required)**	**State the Class and state the relevant threshold**

4. Has Schedule 7A information been submitted AND is the development a Class of Development for the purposes of the EIA Directive (as identified in Q3)?	
Yes ☐	**Screening Determination required (Complete Form 3)**
No ☒	**Pre-screening determination conclusion remains as above (Q1 to Q3)**

Inspector: ____________________________ Date: ________________