



An Bord Pleanála

Inspector's Report

Details of Reference

Whether renovation/construction and extension to derelict cottage/shed is or is not development or is or is not exempted development at Rinn, Strandhill, Co. Sligo

Referred By:

Sligo County Council

Other Parties to Reference:

Mary Devanney

Adrian Devanney

Planning Authority:

Sligo County Council

Planning Authority Ref:

14/00

Date of Site Inspection:

December 2nd, 2015

Inspector:

L. Dockery

1.0 SITE LOCATION AND DESCRIPTION

1.1 The subject site is located within the townland of Rinn, Strandhill, Co. Sligo. The site fronts onto a local road, accessed from the R292 and is located a considerable distance below the level of the R292. There are panoramic views from the site across the bay.

1.2 The site was very wet underfoot at the time of my site visit and an open drain had a considerable amount of rainwater flowing through it. This site visit followed a period of very heavy rain. At the time of my visit, the subject structure had the resemblances of a dwelling, although all windows to the front were boarded up. Pvc windows were in place to the rear. I did not enter the structure. It had a new roof and new porch to front. Attached to the side was a cow shed and a number of cows were present on site.

1.3 BACKGROUND TO REFERRAL

2.1 An Enforcement Notice was served on Mrs. Mary Devaney, the owner of the property, on June 30th 2014. The Notice required works to cease and porch to be demolished. Work continued on the structure and legal proceedings were subsequently initiated by the Council.

2.2 It is stated that on the steps of the Court on December 2nd, 2014, Mrs Devaney's solicitor stated that she had never received the notice because it was intercepted by her son, Adrian Devaney. The Council agreed that it would take no further action against Mrs Devaney if no further works were carried out to the cottage/shed. At this stage the slated roof was on the building.

2.3 Mr. Devaney then started to reside in the cottage/shed. He claimed that he had always lived there. The Council believe this to be highly unlikely because of the previous state of the structure.

3.0 REFERRAL

3.1 The referral was made by Sligo County Council to the Bord claiming the following.

3.2 The Board's determination is sought as to whether or not the renovation/reconstruction and extension of a derelict cottage/shed at Rinn, Strandhill, Co. Sligo is or is not development or is or is not exempted development.

3.3 The submission can be summarised as follows:

June 2014

- Complaint received, with photographs by Sligo County Council relating to works at this property

June 10 and 11, 2014

- Site visit undertaken by Enforcement Section- existing cottage/shed, measuring 15 x 3 metres approximately, was almost completely removed
- new structure was being built on approximate footprint of old structure at approximately same height
- porch was also being constructed to front measuring approximately 1.8 x 2.5m- size of porch considered to be outside exempted development limits.
- An adjacent agricultural shed formed one gable of cottage/shed; other gable was retained for a period but has since been replaced
- Developer, Adrian Devaney (son of owner) claimed at this time that the intended use was for agricultural purposes- photographs were taken at this time by the Enforcement Officer and are attached to the file

June 30th, 2014

- Enforcement Notice issued to cease work

August 8th, 2014

- Further photographs taken by Enforcement Officer- attached to file- minimal additional works had taken place

August 18th, 2014

- Further complaint received stating that works was progressing on roof. Photographs taken by Enforcement Officer on this date show roof timbers in place, despite Enforcement Notice of June 30th 2014 to cease work

Early September 2014

- Relayed verbally to Mr. Devaney that Council were referring the matter to law agents- subsequently the roof was slated and a window and door installed to the rear- photographs taken May 26th, 2015 show this

September 5th, 2014

- Further roof timbers were fixed by this date

20th September 2014

- Photograph submitted by complainant shows felt fixed. This was confirmed by Enforcement Officer on 22nd September, 2014

3.4 The referral to the Bord is accompanied by the following documents-

- Location Map showing approximate location of subject site
- Photo from Google Streetview 2009
- Photographs taken on 5 separate dates from June 10th, 2014 to May 26th 2015

- Copy of Enforcement Notice dated June 30th 2014
- Folio 15391 for the property

4.0 RESPONSE TO REFERRAL

4.1 A response was received from Mary Devaney (site owner) and may be summarised as follows:

- Contends that there was omission of information in submission made by Count Council
- Outlines personal circumstances
- Contends that she had no knowledge about this matter until November 27th, 2014
- Requests Sligo County Council to withdraw the District Court Notice
- It was openly acknowledged by Adrian Devaney on June 11th, 2014 that he had carried out development on the property
- Logical response would have been to commence enforcement action against her son, Adrian Devaney- instead they recommended enforcement against her, the land owner
- Believes that Sligo County Council accepts her bona fides in this regard and accepts that she did not have any knowledge whatsoever of the works- this was noted in Sligo District Court on December 2nd, 2014- this Court sitting was adjourned for 3 months to allow her son apply for a Section 5 declaration in respect of the property- was disappointed to learn that he did not make any such declaration- may not have funds to pay for it
- Questions why there has been no action against Mr. Adrian Devaney, considering he openly acknowledged that he had

undertaken the said works- he has stated to her that he would consent to being replaced as the proper defendant in this prosecution

- Did not receive Enforcement Notice, allegedly posted by Sligo County Council on July 1st, 2014
- Outlines timeframe of discussions held by her son, Adrian Devaney and the planning authority
- On March 3rd, 2015, a settlement was reached with Sligo County Council but this agreement failed on May 5th 2015 as her son indicated that he was now living in the property
- Feels that she has been wrongly caught up in a dispute between Sligo County Council and Adrian Devaney and has no power to compel either party to do anything

4.2 A response was received from Adrian Devaney (son of site owner) and may be summarised as follows:

- Outlines historical background to the site and family history- states that the after their marriage in 1864 John Boles and Honor Lang set up home in the house in which he resides today in Rinn, Strandhill
- Father began farming the land at this homestead from 1989 and from 2003, he himself began farming here
- Contends that he started renovating house in October 2003
- Explained to Enforcement Officer on June 10th, 2014 that he was replacing the roof on the farmhouse
- Outlines discussions which took place with planning authority regarding reroofing of property
- Due to road upgrading works, two cars can now pass on roadway at certain points

- House cannot be seen from Strandhill Road, which is Scenic Route No. 17
- House is more than 2 metres back from L-75052- outlines distances of specific elements of house
- House is below level of road- there are two homes on the roadway, which are in close proximity
- Told Enforcement Officer on many occasions since October 28th, 2014 that his mother, the site owner had no part or had not given consent to the work he had carried out
- She was not aware of the basic condition in which he lived while renovating the dwelling
- Contends that works come under the definition of 'habitable house' and considers that porch is exempted development as it is 5.4 metres from roadway; internal floor area is 1.9 square metres and height is within limits allowable
- Incorrect of Council to state that the east gable was retained for a period but has now been replaced; the east gable is the original
- Works to front and rear walls were necessary to prevent deterioration of the house- when the new block portions are clad in stone, as is his intention, the appearance will be as it always was
- Reconstruction work is exempted development where it does not materially alter the appearance of the house or neighbouring structures
- Correct that there is no sewerage treatment on site- made it clear that he wishes to apply for effluent treatment system- meanwhile using a chemical toilet

5.0 RELEVANT PLANNING HISTORY

5.1 No recent relevant history.

5.2 Land Registry Folio Map SL15391 is attached. It states that Mary Devanney is the registered owner since November 8th, 1995. It refers to a right for “Honor Boles (widow) to use a room in the dwelling house on the property”. This burden is dated January 24th, 1020.

6.0 RELEVANT BORD DECISIONS

6.1 PL91.RL3352

Referral seeking a determination as to whether works carried out to a single-storey farm house for habitable use is or is not development or is or is not exempted development at Carrigmartin, Co. Limerick

6.2 PL17.RL3314

Referral seeking a determination as to whether maintenance works and extension to a single-storey house is or is not development or is or is not exempted development at Laytown, Co. Meath

7.0 DEVELOPMENT PLAN PROVISIONS

The operative Development Plan is the Sligo County Development Plan 2011-2017.

The site is within the Plan limit for the Strandhill Mini Development Plan, contained in Chapter 44 of the County Development Plan.

Scenic Route No. 17

It is stated that the structure is located within 60 metres of the shoreline. Cumeen Strand is a SPA and SAC and is home to bird life including Bellied Brent Goose, Oystercatcher, Redshank and other water birds.

The site is within 60 metres of a pNHA.

8.0 LEGISLATIVE CONTEXT

In preparing my assessment for this reference, I have had regard to the following:

Planning and Development Act, 2000

Section 2(1)

In this Act, except where the context otherwise requires –

"works" includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal

"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-

(a) 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

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;

(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;

Planning and Development Regulations, 2001

Schedule 2, Part 1 deals with Exempted Development- General

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 2.

Class 7

The construction or erection of a porch outside any external door of a house

Conditions and Limitations

1. Any such structure shall be situated not less than 2 metres from any road
2. The floor area of any such structure shall not exceed 2 square metres
3. The height of any such structure shall not exceed, in the case of a structure with a tiled or slated pitched roof, 4 metres or, in any other case, 3 metres

Class 50

- (a) The demolition of a building or other structure, other than—
 - (i) a habitable house,
 - (ii) a building which forms part of a terrace of buildings, or
 - (iii) a building which abuts on another building in separate ownership.
- (b) The demolition of part of a habitable house in connection with the provision of an extension or porch in accordance with Class 1 or 7, respectively, of this Part of this Schedule or in accordance with a permission for an extension or porch under the Act.

9.0 ASSESSMENT

- 9.1 The referrer has requested the Board to adjudicate on whether or not renovation/ reconstruction and extension of a derelict cottage at Rinn, Strandhill, Co. Sligo is or is not development or, is or is not exempted development. In order to assess what works have been carried out on this site, photographs submitted by Sligo County Council must be relied on.
- 9.2 At the outset, I wish to acknowledge the submission received from Mary Devaney. I acknowledge that she is the owner of the property and accept that it she may not have been aware of the legal situation regarding the said works. It has been confirmed by Adrian Devaney, (her son) that he carried out the works to the property without her consent or knowledge. However, irrespective of the situation that Mrs. Devany now finds herself in, I consider that this issue of ownership and consents is a legal matter outside the remit of this referral. I do note however that Mr. Devaney would appear to have been given ample opportunity to rectify the matter by the planning authority and the courts, but chose not to do so and instead chose to carry on with the

said works. I met Mr. Devaney on site at the time of my visit (not by arrangement), and he informed me that Mrs. Devaney had recently passed away. I have no verification of this.

- 9.3 An administrative issue, I draw the attention of the Bord to the fact that the spelling of 'Devaney' differs slightly within the documentation.
- 9.4 I consider that renovation/reconstruction works to the original house and addition of front porch would involve works within the meaning of Section 3 of the Act. As such it constitutes development.
- 9.5 Therefore the next question in this case is whether or not the subject works represent exempted development. There are two main elements within this referral, namely (i) renovation/construction works to original house and (ii) construction of front porch. Based on the information before me, I am satisfied that the subject structure would appear to have been used as a dwelling historically. However, no historical maps have been submitted with referral to validate this. An examination of the historic 6" maps shows a structure on site.
- 9.6 The first item relates to renovation/construction of original structure and the site developer, Adrian Devaney contends that the works involved were exempted development. The argument put forward in this regard has been outlined above. This Section of the Act, Section 4(i)(h), enables certain works to be deemed exempted development where the carrying out of such works is 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'. In the interest of clarity, I note that the term 'alteration' is defined in Section 2 of the Act to relate to 'the removal of plaster or stucco or the replacement of a door, window or roof'. Neither the demolition of walls, nor the replacement of walls is referred to in this definition. The terms 'maintenance' or 'improvement' are not defined in the statute and have therefore to be given their normal meaning.

9.7 I note there is an enforcement file and details relating to the sequence of development have been clearly set out by the Planning Authority in their report. From the information before me, as observed by the Enforcement Officer on June 10th 2014, it appeared that the original cottage was almost completely removed and that a new structure was being built on the approximate footprint of the old cottage/shed. I have no reason to doubt this evidence provided by the planning authority and photographs have been submitted validating same. The photographs show that the structure was derelict, with two mature trees growing either within the floorplan or immediately adjacent to the structure. It is clear that the works to the cottage included works to the external fabric to include replacing much of the original wall sections, together with an entire new roof. The Enforcement Officer stated that at the time of the first visit in June 2014, the developer stated that he was upgrading the structure to use as an agricultural shed. The developer contends that he stated he was re-roofing his home. I have no reason to doubt the evidence provided by the planning authority. All windows, cills, external door, velux rooflights and guttering are new and the structure has been partially reclad in stone. An extension to the original footprint of the dwelling is evident on site, namely the front porch. It is clear that the subject works did not affect only the interior of the structure.

9.8 I note the provisions of Section 4(1)(h) of the Planning and Development Act 2000 with regards to maintenance and improvement but consider that the extent of works undertaken in this instance is so great as to consider that they do not fall within the spirit of this Section. The works undertaken were substantial in nature, with walls and roof removed which begs the question, what of the original structure remains. Works of demolition and reconstruction are not 'maintenance', since it presupposes that there is something to be maintained and it would appear to me that the works undertaken were part of a major reconstruction of the dwelling. Therefore they cannot be described as 'maintenance'. Neither do I accept that the works

constituted an 'improvement' as it would appear that the structure was actually removed in the main and replaced as opposed to being improved per se. I refer the Board to PL06D.RL2027, which found that for maintenance and improvement to have occurred something has had to be retained. I accept that some small elements of the dwelling as existing may be original, possibly part of the two gable walls. However, while the dwelling as existing currently on site may reflect the original structure in terms of design, proportions, style and height, the appearance is not a material matter in this circumstance. I therefore consider that the extent of the works undertaken to the original cottage on this site are such that they do not fall within the scope of Section 4(1)(h) of the Planning and Development Act 2000, as amended. There would appear to be minimal retention of the original building fabric and essentially the existing structure on site can more accurately be described as a replacement dwelling rather than a renovated cottage. I therefore consider that the said works are not exempted development.

- 9.9 The developer states in his submission that he began renovating this structure in 2003 and has implied that he has been living in it since that time. Having regard to the condition of the dwelling, as evidenced in the google streetview dated 2009, I do not give credence to this assertion. The dwelling today essentially comprises two out of three structures on site, with the remaining third structure used as a shed. In 2009, one half of the dwelling was almost collapsed with no roof. The remaining half, appeared to have a corrugated roof with no windows and no clear access door. Two mature trees were growing either within the structure or immediately adjacent to it. At this time, it is confirmed that there still does not exist sewerage treatment facilities on the site and that a chemical toilet is being used. I am therefore of the opinion that having regard to the length of time that it would appear that the structure has not been in residential use, that it could be said that the residential use was actually abandoned and that the resumption of a habitable use of the subject building would now constitute a change of use that is material, having regard to the potential for consequences in

planning terms, arising from an additional residence on this landholding. This is especially true considering the location of the site so close to the coast and designated areas. There are likely implications in terms of waste water, the provision of services on unzoned, unserviced lands and possible traffic issues. I consider that the proposal constitutes development, which does not come within the scope of any of the legislative provisions for exempted development.

9.10 With regards items No.s (ii) above, namely the construction of a porch, I acknowledge that it would ordinarily fall within Class 7 of the Planning and Development Regulations 2001, as amended. Extracts from the Regulations have been cited above. I also acknowledge Class 50(b) of the Regulations at this juncture, which state that exemptions apply to the demolition of part of a habitable house in connection with the provision of an extension or porch in accordance with Class 1 or 7, respectively, of this Part of this Schedule or in accordance with a permission for an extension or porch under the Act. However if one is of the opinion that the works undertaken above require a grant of planning permission and are considered not to be exempted development, then the structure as existing must be considered to be unauthorised development. An extension cannot exist on its own but must be attached to and associated with an existing or primary structure. Therefore the subject porch could only be construed as extensions to an unauthorised structure, the exemption of which would be precluded by Article 9(1)(a)(viii) of the 2001 Regulations.

9.11 If the Bord does not agree with the above assertion, I draw their attention to Class 7 of the Regulations, which states that the construction or erection of a porch outside any external door of a house is exempted development, subject to the following caveats, namely (i) any such structure shall be situated less than 2 metres from any road; (ii) the floor area shall not exceed 2 square metres and (iii) its height shall not exceed 4 metres when there is a tiled or slated pitched roof. The porch, subject to this referral is not less than two metres from any road and its height is just less than 4 metres. However, I draw the

attention of the Bord to the fact that the overall porch has a floor area of approximately 4.5 square metres (measurements having been provided by the planning authority). However, when taken as a whole as part of the new build, together with my opinion outlined above in relation to extensions to unauthorised developments, I consider that the subject porch forms part of the new build element and cannot be considered exempted development under Class 7 of Schedule 2, Part 1 (Exempted Development) of the Planning and Development Regulations, 2001, as amended.

10.0 RECOMMENDATION

Having regard to the above, I would consider that the proposed works are development and are not exempted development. Accordingly I recommend an Order on the following terms:

WHEREAS the question has arisen as to whether reconstruction/renovation works to the original house and construction of a front porch is or is not development or is or is not exempted development at Rinn, Strandhill, Co. Sligo.

AND WHEREAS Sligo County Council requested a declaration on the said question from An Bord Pleanála on the 13th day of July 2015

AND WHEREAS An Bord Pleanála, in considering this reference, had regard particularly to:

- a) Section 2 (1), 3(1) and 4(1)(h) of the Planning and Development Act, 2000,
- b) Classes 7 and 50 of the Planning and Development Regulations 2001, as amended
- c) the report of the Inspector, the report of the planning authority and the submissions on file:

AND WHEREAS An Bord Pleanála has concluded that

- a) The works the subject of the referral constitute development
- b) The works does not come within the scope of Section (4)(1)(h) of the Planning and Development Act, 2000 as amended and the works are considered not to be exempted development
- c) the original cottage building has been effectively replaced by a new dwelling, with minimal retention of the original building fabric
- d) there is no provision under the Planning and Development Act 2000, as amended and associated Planning and Development Regulations 2001, as amended, whereby the said development, amounting to construction of a replacement dwelling, would constitute exempted development
- e) the subject porch is considered not to come within the scope of Section Class 7 of Schedule 2, Part 1 (Exempted Development) of the Planning and Development Regulations 2001, as amended

NOW THEREFORE An Bord Pleanala, in exercise of the powers conferred on it by section 5(3)(a) of the 2000 Act, hereby decides that works to the original house, and construction of new front porch at Rinn, Strandhill, Co. Sligo is development and is not exempted development

L. Dockery

Inspectorate

7th December 2015