

An Bord Pleanála



Inspector's Report

RL 3435

QUESTION: Whether an extension at the rear of the house is or is not development and is or is not exempted development.

LOCATION: 29 Ros Caoin, Roscam, Galway City.

Referrers: Ray Waters and Paul Glynn

Owner Occupier Niamh and Tony Butler,

Observers None

Planning Authority Galway City Council.

P. A. Reg. Ref: P/DC/3/13/15

Inspector: Jane Dennehy.

Date of Inspection: 12th February, 2016.

Appendix 1: Relevant Statutory Provisions.

1 BACKGROUND.

- 1.1 No 29 Ros Caoin is a two storey semi-detached house with front and rear gardens within a mature residential estate. There is a single storey, flat roofed extension to the rear of this property which is subject of the Question. A shared access passage serving No 27 Ros Caoin and No 28 Ros Caoin is located adjacent to the side boundary the side boundary of No 29 Ros Caoin.
- 1.2 While the extension was under construction of the extension Mr Waters, occupant of No 30 Ros Caoin and Mr Glynn, occupants of No. 28 Ros Caoin requested a Declaration from the planning authority.
- 1.3 The extension subject of the Declaration Request as shown on the drawings provided by the applicant is directly behind the original rear of the house. The original rear wall was broken out into the extension which has been constructed at a similar floor level to that of the existing dwelling. There is a narrow space between the footprint of the extension and the party boundary with the adjoining property at No 30 Ros Caoin.
- 1.4 A gas flue (serving a condenser boiler is located on the rear wall of the existing house on the south east side adjacent to the party boundary with No 30. A flue serving a stove below is located through the roof at the south west corner of the extension. There is a high level side elevation window in the north-west side elevation of the extension. A motion sensor light is also located on this wall.
- 1.5 The original kitchen is subdivided to provide for a utility room with the remaining space reordered and combined with new space within the extension as an open lounge. The existing sitting room to the front is unaltered.
- 1.6 Further to an examination of drawings provided to the planning authority by the owner occupiers, a site inspection and an assessment a Declaration in which it is stated that the extension is an exempt development under Classes 1 and 2 of Schedule 2, Part 1 of the *Planning and Development Regulations, 2001* as amended. Mr Waters and Mr Glynn, referred the Declaration to An Bord Pleanala on 23rd November, 2015.

2. THE REFERRER'S CASE.

- 2.1 According to the Referral submission:
 - The height is above the eaves or parapet on the ground floor extension 'as it was'. This is in conflict with the requirement that the height of the highest part of the roof does not exceed the height of the eaves or parapet.
 - The extension has been built within a foot of the boundary with No 30 Ros Caoin. No development can take place within a metre of a boundary wall/fence.

- A window overlooks No 28 Ros Caoin at ground floor and first floor level. This is in conflict with the requirement that windows proposed at ground floor level should not be less than one metre from the boundary they face.
- A boiler house or chimney for a central heating system or an oil storage tank (up to 3,500 litres capacity is exempted development. A chimney has been installed on the extension. The estate is supplied with oil and gas heating systems and the two storey properties have chimneys. The newly installed chimney causes smoke pollution.
- An outlet for gas protrudes from the extension above the kitchen window at No 20. It emits gas fumes and smoke.
- An automated light is installed above the boundary wall on the extension and it is intrusive to adjoining property.

3. OWNER OCCUPIER'S CASE.

3.1 A submission was received from the owner/occupiers on 16th December, 2015 in which it is explained that a design for a modest sized extension that would fall under the thresholds for exempt development was commissioned and the planning authority has confirmed that the extension is exempt development.

3.2 According to the submission:

- There is a small non-opening window, (9" x 40") which is more than one metre in distance from the boundary. Between the boundary and the boundary of No 28 Ros Caoin there is an access laneway for No 27 Ros Caoin.
- A wood burning stove was installed in the extension. There is no chimney but there is a flue system which is a high efficiency unit with low emissions. It is a single wall and twin walled system installed to the correct height above the building and it complies with all current solid fuel burning regulations.
- A standard light with a motion sensor has been installed in a position that is more than one metre from the boundary wall adjoining the access lane between No 29 and No 28. When triggered the light come on for ten seconds and it is a similar light and at a similar position to lights at other houses including terraced house attached to No 28.
- The old boiler was replaced with a high efficiency condenser boiler which does not emit smoke but there is some low carbon in the steam. The flue is compliant with regulations.

4. **FURTHER SUBMISSION OF THE REFERRER:**

4.1 A submission was received from Mr Waters and Mr Glynn on 4th February, 2016.

4.2 Mr Waters outlines and comments on discussions between himself and Mr Butler prior to and during construction of the extension. He also comments that:

- The distance between the window in the side elevation of the extension and the boundary has not been measured.
- The access lane serves adjoining the boundary with No 29 Ros Caoin serves his property (No 28) and an adjoining property. (No 27.)
- The side elevation window is above the boundary and overlooks his property. The level was raised in the back garden of No 29 so the floor level in the existing could match that if the existing dwelling.
- The chimney flue, its height and the emissions are totally unacceptable and seriously affect amenities at neighbouring properties.
- The light has a motion sensor that is activated by movement in adjoining properties and is a disturbance disturbs adjoining properties.

4.3 Mr Glynn outlines and comments on discussions he had with Mr. Butler prior to commencement of construction and observations he made during construction of the extension. He refers to a visit by an official of Galway City Council who advised that the development *“was with planning regulations even though he couldn’t give the exact dimension of the extension...”*

4.4 Mr Glynn reiterates his view that his property is affected by light, air pollution from the chimney, discharge of gases from the gas flue outside his kitchen window and also claims that the unfinished wall facing onto his garden is an eyesore.

5. **THE PLANNING AUTHORITY’S CASE.**

5.1 According to a letter received on 28th January, 2016 from the planning authority, it can be confirmed that the planning authority considers that the extension is exempt development having regard to Classes 1 and 2 of Schedule 2, Part 1 of the Planning and Development Regulations 2001, as amended.

6. **EVALUATION.**

6.1 There is no dispute that the extension subject of the question comes within the description of “works” provided for in section 2 (1) of the Act and

“development” within the description in section 3 (1) of the Act the text of which is provided in Appendix 1.

The Question to be determined is therefore as to:

“Whether the proposed extension inclusive of the side elevation window, the flue from stove through the roof, the flue from the gas condenser boiler flue, and the motion sensor light is “exempt development”

6.2 The Extension:

The question as to whether the extension comes within Class 1, Part 1, Schedule 2 of the Planning and Development Regulations. (The Regulations) is considered as follows.

- 6.3 The extension does not exceed the maximum floor area of 40 square metres provided for in Condition and Limitation (a) In the course of the inspection, external measurements were taken of the width and depth of the extension with use of a metal measuring tape. According to these measurements the width is 5.33 metres and the depth is 6.45 metres. There is a marginal variation between these measurements and those shown on the drawings provided by the owner occupier. This results in a total footprint of 34.38 square metres. The internal floor area would therefore be slightly lower.
- 6.4 However, Ms Butler who was present during the course of the inspection advised that the attic within the house is in use as a bedroom. A rooflight has been fitted to the rear slope of the roof. As a result there is an additional floor space in use for habitation within the dwelling but there is no additional floor area of volumetric space. It would appear that the use of the attic space for habitation may not satisfy the minimum standards of the Building Regulations. (This matter has not been investigated at the attic was not inspected.)
- 6.5 As the use of the attic for habitation purposes does not involve an addition to the footprint, floor area or volumetric space within the dwelling it is considered that does not come within the description “extension”. It has therefore not been taken into consideration in calculating the total floor area of extension to the house having regard to limit of forty square metres provided for in Condition No 1 (a) in Column 2 of Class 1, Part 1 of the Planning and Development Regulations.
- 6.6 The height Limitations provided for in Condition and Limitation Nos. 4 (a) (b) and (c) refer to the heights of the walls, eaves and roof of the house and not the heights of the extension. The extension is a single storey extension at ground level and there is no first floor extension. The height does not exceed the heights of the rear wall or side wall or the height of the eaves or highest part of the roof of the dwelling.
- 6.7 The remaining private open space private open space beyond the rear building line of the extension exceeds the minimum provided for under Condition and Limitation No 5. It is estimated to be approximately forty

square metres. Measurements were not taken during the course of the inspection.

6.8 Given the foregoing, it is concluded that the extension subject of the Question comes within Class 1 of Part 1, Schedule 2 of the Regulations.

6.9 The Window:

The window in the side elevation of the extension facing toward the boundary with No 28 exceeds the minimum separation distance of one metre from the boundary faces provided for in Condition and Limitation No 6. According to these measurements the separation distance is 1080 mm and this measurement also exceeds the measurement of 1050 shown on the drawings provided by the owner occupier. The conditions and limitations for Class 1 do not include any provisions or minimum standards relating to heights above floor levels or boundary walls and fences or ope size and fenestration detail.

6.10 The questions as to whether the flue from the stove, the flue from the condenser boiler come within Class 2, Part 1, Schedule 2 of The Regulations are considered as follows.

6.11 The Flues (Stove and Condenser Boiler):

The flue from the stove and the flue from the condenser boiler are part of a heating system for the house and heating oil is not used or stored on site. Both flues come within Class 2 and do exceed any Conditions and Limitations which solely relate to oil storage capacity.

6.12 It is noted that the flue from the stove is positioned is through and above the roof towards the south western corner of the extension. It is noted that the flue from the condenser is on the back wall of the existing house on the inner side party boundary with the adjoining property at No 30. The issue as to whether there is encroachment on the adjoining property would be a matter to be resolved through the legal system. Matters relating to the composition of emissions from the flues are subject to separate legislative codes.

6.13 Motion Sensor Light:

Similarly issues relating to the operation and light spillage from the motion sensor light which has been installed at the side of the house onto the adjoining property at No 28 would be a matter to be resolved through the legal system.

7. APPROPRIATE ASSESSMENT SCREENING.

7.1 Having regard to the nature and scale of the proposed development and the likely emissions from it, the nature of the receiving environment and proximity to 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 European sites.

8. CONCLUSION AND RECOMMENDATION.

- 8.1 In view of the foregoing it can be concluded that extension including the window in the side elevation, the flues serving the stove and the condenser boiler and the motion sensor light, is development and is exempt development.
- 8.2 A draft order to this effect is set out overleaf.

WHEREAS a question has arisen as to whether the extension constructed to the rear of the house, side elevation window, two flues and a motion sensor light at 29 Ros Caoin, Roscam, Galway is or is not development and is or is not exempt development;

AND WHEREAS a Declaration was Requested from Galway City Council by Ray Waters and Paul Glynn on the 2nd November, 2015;

AND WHEREAS Galway City Council issued a Declaration on 29th October, 2015 in which it is stated that the said extension constructed to the rear of the house, side elevation window, two flues and a motion sensor light at No 29 Ros Caoin, Roscam, Galway is development and is exempt development;

AND WHEREAS by Ray Waters and Paul Glynn referred the Declaration to An Bord Pleanála on 23rd November, 2015;

AND WHEREAS An Bord Pleanála, in considering the Question, had regard particular to –

- (a) Sections 2, and 3, of the Planning and Development Acts, 2000-2015;
- (b) Article 6 and Classes 1 and 2 of Part 1, Schedule 2 of the Planning and Development Regulations, 2001-2015.
- (c) The footprint and the scale and height of the existing house and the extension nature and the area of the site.

AND WHEREAS An Bord Pleanála has concluded that the said extension constructed to the rear of the house, side elevation window, two flues and a motion sensor light extension constructed to the rear of the house at No 29 Ros Caoin, Roscam, Galway is development and is exempt development;

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (4) of the 2000 Act, hereby declares that the side elevation window, two flues and a motion sensor light extension constructed to the rear of the house at 29 Ros Caoin, Roscam, Galway is development and is exempt development.

JANE DENNEHY
Senior Planning Inspector
25th February, 2016.

APPENDIX 1

RELEVANT STATUTORY PROVISIONS.

The most relevant provisions in the **Planning and Development Act, 2000 – 2015** are reproduced below:

2.—(1) *In this Act, except where the context otherwise requires—*
“statutory undertaker” means a person, for the time being, authorised by or under any enactment or instrument under an enactment to—
(b) provide, or carry out works for the provision of, gas, electricity or telecommunications services,

“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,

“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.

3.— (1) *In this Act, “development” means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land.*

Section 4 (2) of the Act provides that the Minister may, by regulations, provide for any class of development to be exempted development.

The most relevant provisions in the **Planning and Development Regulations, 2001-2015**, are reproduced below:

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.”

The relevant **Classes and Conditions and Limitations in Part 1, Schedule 2 of the Regulations** are reproduced below:

Class 1, Part 1, Schedule 2:

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.

Condition and Limitation No 1:

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

Condition and Limitation No 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.

Condition and Limitation No 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.

Condition and Limitation No 6:

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

Class 2 (a) Part 1 Schedule 2

The provision as part of a heating system of a house, of a chimney or flue, boiler house or fuel storage tank or structure.

Condition and Limitation:

The capacity of an oil storage tank shall not exceed 3,500 litres.