



An
Bord
Pleanála

Inspector's Report 09.RL3508.

Development	Whether existing alterations to pre 1963 dwelling is or is not development or is or is not exempted development.
Location	Ballygoran, Maynooth, Co. Kildare.
Planning Authority	Kildare County Council
Planning Authority Reg. Ref.	ED603
Referrer	Darren and Elaine Duignan
Type of Case	Section 5(3)(b) Referral
Planning Authority Decision	No decision.
Observer(s)	None
Date of Site Inspection	20 th January 2017
Inspector	Ciara Kellett.

1.0 Site Location and Description

- 1.1. The site is located in the rural area of Ballygoran, approximately 100m north of the M4 Motorway, located almost equidistant between the Maynooth junction and Leixlip West junction and approximately 1.5km south of the Royal Canal. It is on the south side of a local road serving a number of one-off dwellings. Land in the immediate vicinity is used for mainly agricultural purposes.
- 1.2. The site itself comprises a house which is stated as being a pre - 1963 dwelling which has been added to over the years. Prior to works, the subject of the proposed referral, the house consisted of 6 bedrooms, a kitchen, dining and living room and a sunroom at ground floor, as well as 2 further bedrooms at first floor and restricted headroom attic space. The house comprises a number of sections - the original house, a sunroom to one side of the house, an extension to the other side which was used as a bedroom and a rear extension of two storeys. The north-east elevation facing the road had windows at ground floor level only and an attic above. Dimensions are not provided but it would appear that the original house was single storey with pitched roof and attic-loft space and the rear extension had a raised roof where the two bedrooms existed. This rear roofline appears to have formed the reference line for the raising of the roof to the front.
- 1.3. Appendix A includes maps and photographs.

2.0 Background to the reference

- 2.1. In September 2016, a Section 5 declaration application was submitted to Kildare County Council on behalf of the referrer by Liam Madden, Vitruvius Hibernicus, requesting whether certain matters are or are not exempted development. The Council failed to issue its declaration within the appropriate period set out in Section 5 of the Act, hence the referral has been made to the Board.
- 2.2. The referrer purchased the house about 5 years previous and various activities were carried out on site. A Planning Application (KCC Reg. Ref. 12/491) was submitted to the Council and was granted permission in October 2012, subject to 21 conditions. The application was for the increase in overall floor area by 70sq.m which involved raising the roof in line with a previous extension to the rear, the installation of a

sewage treatment plant and the demolition of a commercial shed. A Commencement Notice was issued to the Council in May 2013.

3.0 Referral

- 3.1. Drawings are included with the referral depicting the before and after situations in the dwelling house. Certain internal walls were removed and rebuilt in different locations. The staircase was moved and a new centrally located stairwell was built. The roof was raised in the front section of the house facing the road, and new windows were installed at first floor for the two new bedrooms (north-east façade). Patio doors and a new window were added at ground floor level to the rear façade (south-west) and modifications to windows and doors on the other facades were made. Following the works, according to the submitted drawings, the ground floor now comprises an open plan kitchen/living room, playroom, sitting-room, sunroom, bathroom, study, utility room and one bedroom. The first floor comprises 4 bedrooms, including two new bedrooms in the raised roofspace.
- 3.2. The referrer states that the internal attic-loft area was represented as additional floor area in the 2012 planning application but that this was inaccurate as the loft already existed, albeit with restricted headroom. It is stated that there is no increase in floor area as a result of the changes.
- 3.3. The questions asked by the referrer are, whether:
- a) Works which affect only the interior of the structure,
 - b) Works which are for the conversion of a structure attached to the rear or side of a house for use as part of a house,
 - c) Works involving the raising of part of the roofline, not involving an extension as such, and which do not materially affect the external appearance of the house so as to render the appearance consistent¹ with the character of the house and/or neighbouring structures,
- are, or are not, exempted development.
- 3.4. The referral includes the original declaration request sent to Kildare County Council, completed application form, acknowledgement of receipt of application from the

¹ The word “consistent” is used in the Referrers submission.

Council, conditions from the 2012 planning application, aerial photographs, site location map, plans and elevations of the before and after development, and copies of judgements from Fingal County Council v William P. Keeling & Sons Ltd., and Ian Cairnduff and Maureen Cairnduff v Peter O'Connell.

3.5. In support of the argument that the works are exempt development, the referrer states the following:

A) Works to the interior

The referrer considers the entire internal alterations are Exempted Development under Section 4(1)(h) of the Planning and Development Act, as amended.

Section 4(1)(h):

*The following shall be exempted development for the purposes of this Act –
(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 any structure or which do not materially affect the external appearance of the structure so as to render it inconsistent with the character of the structure or of neighbouring structures.*

The referrer submits that the internal alterations are clearly “development” as defined in the Act, but as they only affect the interior of the structure they are exempted development.

B) Sunroom extension

The referrer submits that the works to what is now the new sunroom fall within Section 4(2) of the Act and the Regulations made thereunder, and in particular Schedule 2 Part 1, Class 1 Exempted Development – General, of the Planning and Development Regulations.

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.

The referrer states that the sunroom is not an extension as such and occupies the same footprint as the previous structure. It is considered that only the second half of the Class 1 definition applies. A structure to the side of the dwelling existed and the structure has been converted for use as part of the house. It is submitted that the works comply with all 7 conditions and limitations in Class 1 and do not fall foul of Article 9 of the Regulations.

C) Roof line over Attic-Loft

The referrer submits that the roofline over the restricted headroom in the pre-existing attic-loft is exempted development under Section 4(1)(h) of the Act. The referrer notes that Section 4(1)(h) is not subject to conditions and limitations. It is stated that the works are considered 'development' and constitute 'works', but that the works do not materially affect the external appearance of the structure so as to render it inconsistent with the structure or of neighbouring structures.

The referrer considers that the raised roofline is consistent with the character of the structure itself, and there are no neighbouring structures the character of which is inconsistent with the new roofline.

Extracts from the Planning Report of KCC Reg. Ref. 12/491 are appended which, the referrer states, directly address the character of the (then) existing structure and the character of neighbouring structures. A copy of a High Court ruling in such a matter is also appended and the referrer submits that the same principles and circumstances apply.

4.0 Planning Authority Response to Referral

The Planning Authority responded as follows:

- A Planning Application was submitted in 1991 by a previous owner seeking to retain a conservatory to the front, a two storey extension to the side and a single storey extension to the rear of the existing dwelling.
- Further Information was sought – but this was never responded to. The unauthorised extensions were thereby not regularised.
- In 2012, the referrers sought permission for the extension as noted above.

- Outstanding financial contributions have not been received to date as per Condition no.21 which requires a Development Contribution of €14,760.00.
- Under Article 6(1), Article 9(1) and Schedule 2, Part 1, Class 1 of the Regulations, it is stated that development, subject to Article 9, shall be exempted development provided that such development complies with the conditions and limitations specified in Column 2 opposite the mention of the Class in Column 1.
- Article 9(1) states that development to which Article 6 relates shall not be exempt development if the carrying out of such development would consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or the use of which is an unauthorised use.
- Condition no.21 has not been discharged because the contribution remains outstanding. Accordingly, the extensions and installation of a wastewater treatment plant which have been carried out remain unauthorised.
- The works which are the subject of this Section 5 referral are considered to be development and not exempted development.

5.0 Referrer's response to Planning Authority

The referrer responded as follows:

- The 1991 planning history is irrelevant to the three questions before the Board. The works could have been exempted development assessed by way of the then Act or Regulations. There is no record of a Warning Letter or Enforcement Notice. The 1991 Application is still a live planning application because the 6-month limitation period on responding to Further Information did not exist in 1991. If in fact the request for Further Information was not successfully served upon the applicant a decision to grant permission by default has issued by ordinary application of the law and/or by Court Order.
- There is no mystery about the application lodged by the referrers – there is a grant of permission but they have not availed of it and consequently the payment of development contribution is not outstanding as claimed. The referrers built something different to that which was granted permission.

- All contribution conditions start with the words “Before development commences, the developer shall pay to the local authority a sum of money etc”. However, in this instance no such words were attached and even if the referrer was to avail of the permission, the payment of the contribution is not payable before the expiry of the 6-year statute of limitation for the recovery of contract debt.
- The Council’s interpretation of Section 4 of the Act is misguided. It is noted that there are 5 sub-sections to Section 4. The Council confuses sub-sections (1) and (2). Arguments put forward by the referrer with respect to questions A and C are not governed by Articles 6 and 9. Only the question B (the sunroom) relies on sub-section 4(2) and there is manifest compliance with the limitations and conditions.

6.0 Relevant Legislation

Planning and Development Act, 2000, as amended.

Section 2

Works are defined in Section 2 of the Act to include any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal.

“Alteration” is defined in the Act and includes: -

(a) Plastering or painting or the removal of plaster or stucco, or

(b) The replacement of a door, window or roof,

that materially alters the external appearance of a structure so as to render the appearance inconsistent with the character of the structure or neighbouring structures.

Section 3(1)

In this Act “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 other land.

Section 4

Section 4 of the Act sets out the exempted development provisions and includes 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 do not materially affect the external appearance so as to render the appearance inconsistent with the character of the structures or of neighbouring structures.

Planning and Development Regulations, 2001, as amended.

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 section of the Regulations which is referred to herein is Class 1. Class 1 and its conditions and limitations are as follows:

Column 1 Description of Development	Column 2 Conditions and Limitations
<p>Development within the curtilage of a house</p> <p>CLASS 1</p> <p>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.</p>	<p>1. (a) Where the house has not been extended previously, the floor area of any such extension shall not exceed 40 square metres.</p> <p>(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.</p> <p>(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.</p> <p>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.</p> <p>(b) Subject to paragraph (a), where the house is terraced or semi-detached and has been extended previously, the floor area of any</p>

	<p>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.</p> <p>(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.</p> <p>3. Any above ground floor extension shall be a distance of not less than 2 metres from any party boundary.</p> <p>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.</p> <p>(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.</p> <p>(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.</p> <p>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.</p> <p>6. (a) Any window proposed at ground level in any such extension shall not be less than 1 metre from the boundary it faces.</p> <p>(b) Any window proposed above ground level in any such extension shall not be less than 11 metres from the boundary it faces.</p> <p>(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</p>
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	<p>than 11 metres from the boundary it faces.</p> <p>7. The roof of any extension shall not be used as a balcony or roof garden.</p>
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Article 9(1)

Article 9(1) states that 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:*
- (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.*

6.1. Natural Heritage Designations

The site is approximately 1.8km south of the Rye Water Valley/Carlton SAC (Site Code 001398).

7.0 Precedent Cases

7.1. PL91.RL3352 (July 2015)

This file relates to the reuse of a derelict farmhouse after 20 years, which included (in summary) works carried out that involved increasing the height of the walls, raising the ridge height, and the re-roofing of the building including the removal of the original chimney, insertion of a modern chimney in the rear roof plane and insertion of five new rooflights. The building as originally constructed was a single storey vernacular farmhouse, and the Board considered the increase in height and the re-roofing of the building incorporating removal of the original chimney (inter alia) materially affected the external appearance of this structure such as to render its appearance inconsistent with the character of the structure.

7.2. 05B.RL2858 (August 2011)

This file relates to a question as to whether the raising of extension walls of a structure by approximately 0.5m and the construction of a replacement roof incorporating velux windows at a structure on the rear of Front Street, Ardara, Co. Donegal is exempt development. The Board had regard to Section 3 and Section 4(1)(h) of the Act, the layout of the site and the juxtaposition of the outhouses and the cumulative changes including the raising of the roof and installation of roof lights and concluded that the works would materially affect the external appearance of the structure so as to render it inconsistent with the character of the structure and of neighbouring structures.

7.3. **67.RL.2418 (July 2008)**

This file posed a number of questions including whether works to the interior of a dwelling constituted exempt works. The Board concluded that the internal works which affect only the interior of the structure is exempt development.

8.0 **Assessment**

It should be stated at the outset that the purpose of this referral is not to determine the acceptability or otherwise of the development in respect 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.

Three questions arise which I will address in turn. While the referrer used the word 'consistent' in posing question C, from a review of the submission where the case is made that the changes are consistent with the character of the structure, it is assumed to be a typing error and the three questions should read as follows:

Whether,

- a) Works which affect only the interior of the structure,
- b) Works which are for the conversion of a structure attached to the rear or side of a house for use as part of a house,
- c) Works involving the raising of part of the roofline, not involving an extension as such, and which do not materially affect the external appearance of the

house so as to render the appearance inconsistent with the character of the house and/or neighbouring structures, are, or are not, exempted development.

The referrer states that the works carried out on site departed from the planning permission (KCC Reg. Ref. 12/491) to a “lesser or greater degree” in the original submission. In the response to the Council’s submission, the referrer considers that the permission was not availed of and they “built something different from that for which permission was granted”.

I note the house is referred to as a pre-1963 dwelling in this referral. This does not appear to be in dispute. The referrer considers that the original extension works are not unauthorised development (see Section 5 above ‘Referrers response to the Planning Authority submission’). However, I consider that the planning status of the original extensions remains unclear. Case law (Dublin Corporation v Sullivan 1984) would lay the onus on the referrer to prove the case which he is making and no such information has been forthcoming to demonstrate that the 1991 planning application was decided (by default or otherwise).

I note that the 2012 Planning Application was subject to a Further Information Request. The referrer’s then agent responded to the request confirming that no planning permissions existed for the dwelling, shed and various extensions and requested that the requirement for approval be revised to include the demolition of the existing shed (141.457sq.m), retention of the existing dwelling (196.070sq.m) and proposed extension of the existing dwelling (118.786sq.m).

From my site visit and a review of the 2012 planning application documentation, all the evidence points towards works being carried out substantially in accordance with the permission granted by the Council in October 2012. Furthermore, a Commencement Notice was submitted to the Council in 2013.

A Development Contribution was determined by the Council as part of that planning permission. The referrer considers the additional attic-loft area was inaccurately represented in the planning application as additional floor area. The referrer is of the opinion that other aspects of the development are/were exempt development. Whether or not the development contribution fee was applied correctly is not the question before the Board and will not be addressed herein.

Notwithstanding the planning application, case law (Keeling judgement) has determined that a person is not debarred from availing of exemptions, simply by seeking planning permission. Therefore, I have considered the development with respect to that judgement, i.e. considered if the works could have availed of exemptions in the first instance.

8.1. Question A “Works which affect only the interior of the structure”.

The referrer states that the relocation of walls and stairs are works which only affect the interior of the dwelling and are therefore exempt development. I agree with the referrer that normally works carried out by occupants of houses, resulting in amalgamations of rooms or creating modern open spaces for example, would normally be exempt from the requirement to obtain planning permission. However, in this instance, the rearrangement of the rooms included the construction of a number of new windows and doors on the exterior of the dwelling.

The referrer states that the works to the interior are exempt due to exemptions expressly stated in Section 4(1)(h) which provides for occupiers of dwellings to make internal changes. Section 4(1)(h) states *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 do not materially affect the external appearance so as to render the appearance inconsistent with the character of the structures or of neighbouring structures.*

I have underlined the relevant sections to assist in answering the question posed. When the section of the Act is examined, it can be seen that alterations which only affect the interior of the structure or do not materially affect the external appearance to render it inconsistent with the character of the structure or neighbouring structures can avail of the exemption.

In this instance, the works do not only affect the interior of the structure – the moving of walls etc. has necessitated the installation of windows and/or doors where none existed previously, which does affect the exterior of the structure.

The next item to be addressed is if the works materially affect the external appearance and if the works render it inconsistent with the character of the structure. It would appear that a number of extensions have been added to the house over the years. However, the character of the house was mainly that of a single storey

dwelling with the exception of the two small bedrooms to the rear of the house at first floor level (which was considered another extension when described in the 2012 planning application). The addition of windows on all facades, but particularly at first floor to the raised front façade, as well as the insertion of rooflights, changes the character of the dwelling to that of a two storey dwelling which is not consistent with the character of the structure.

In coming to this conclusion, I have had regard to the *Cairnduff v O'Connell* case which the referrer included in the submission. I consider the changes do materially alter the character of the dwelling unlike the *Cairnduff* case which involved changes to the rear, including the insertion of a balcony and a window, which the Judge considered were a common feature of Georgian Houses.

In conclusion, the works do not only affect the interior of the structure and is development and is not exempted development.

8.2. Question B Works which are for the conversion of a structure attached to the rear or side of a house for use as part of a house

The referrer considers that the conversion of a structure attached to the side of the house to a sunroom is exempt under Section 4(2) and Class 1 of the Act and Regulations respectively.

Class 1 states that *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 is exempt development, subject to the conditions and limitations in Column 2 and subject to the provisos of Article 9 of the Regulations. The Council submits that the referrer cannot avail of the exemption because of the restrictions in Article 9 (in this case Condition 21 relating to development contributions has not been discharged and therefore the extensions remain unauthorised).*

As stated above, case law has clearly determined that the owner of land should not be estopped from asserting an exemption, if a proposed development is exempted development, merely by reason of making a planning application (*Fingal County Council v William P. Keeling & Sons Ltd*). The referrer included a copy of this judgement as part of the submission documents.

Therefore, it is appropriate to determine if the development is exempt in the first instance to avoid being a cause and effect dilemma in relation to Article 9.

The previous extension to the side of the house is shown on the drawings as a typical sunroom with a low wall at ground level and fully glazed windows and roof. It was single storey and appeared to be at a height below the eaves of the front section of the house (i.e. the single storey element). The revised design included raising the roof and changing the materials of the extension to be more in keeping with the rest of the house. The new sunroom area is stated as being 6.030m x 3.480m (20.98sq.m).

Without considering Article 9, I am of the opinion that the changes to the structure would fall within Class 1 and do not fall foul of any of the conditions or limitations contained therein.

The Council argues that the exemption cannot be availed of because the extensions remain unauthorised due to the condition requiring contributions not being discharged. Notwithstanding this, in light of the Keeling case, I am of the opinion that had this been a standalone modification to the house, then this would be exempt development and planning permission would not have been required. However, I draw the Board's attention to the issue of whether the original extensions were authorised in the first instance to permit the referrer to avail of the exemptions. As noted above the referrer has not demonstrated satisfactorily that this is the case. The 2012 planning application, at Further Information stage, was modified to seek retention for the extensions (albeit the dimensions are confusing). The then agent for the owners states, in response to the Further Information request², "*I can confirm that the existing dwelling and the existing shed along with the various extensions to this dwelling do not have planning permission*".

In conclusion, I am satisfied, prima facie, that the modifications to the sunroom to the side of the house are development and are exempt development within the meaning of Class 1 of the Regulations, however, due to the restrictions placed by Article 9(1)(a)(viii) in relation to extensions/alterations to unauthorised structures, this exemption cannot be availed of.

² Received by Kildare County Council 11th September 2012

8.3. Works involving the raising of part of the roofline, not involving an extension as such, and which do not materially affect the external appearance of the house so as to render the appearance inconsistent with the character of the house and/or neighbouring structures

The works involve raising the roof of the existing attic-loft to enable the construction of two bedrooms with sufficient headroom. The works were carried out on the façade facing the road and included the installation of two new windows on the upper floor and the installation of rooflights.

I consider this work as a material change to the character of the structure. The character of the structure was of a single storey dwelling – the works resulted in the dwelling becoming a two storey dwelling. The referrer submits that the raising of the roofline would make the structure consistent with the rear roof line and therefore consistent with the character. I do not agree with this assessment.

As previously mentioned the planning merits of the proposal are not considered herein, nor whether the development contribution fee has been correctly applied.

In conclusion, I consider the works involving raising the roofline, to materially affect the external appearance of the house so as to render it inconsistent with the character of the house. The works are development and are not exempted development.

8.4. Appropriate Assessment

Notwithstanding the conclusion that the development in question is not exempted development and as such, the restriction in respect of Appropriate Assessment is not relevant, I have considered the potential for significant effects on European sites in the interests of completeness.

Having regard to the nature and scale of development proposed and to the nature of the receiving environment, 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 a European site.

9.0 Conclusions and Recommendation

9.1. In conclusion, I consider:

A) *Works which affect only the interior of the structure,*

to be development and not to be exempt development because those works involved the installation of windows and doors in the exterior of the structure which materially affected the appearance of the structure to render it inconsistent with the character of the structure.

B) *Works which are for the conversion of a structure attached to the rear or side of a house for use as part of a house,*

to be development and to be exempt development under Class 1, Part 1 of Schedule 2, of the Planning and Development Regulations 2000, as amended. However, the development would not be exempt development having regard to Article 9(1)(a)(viii) as it would consist of the alteration of an unauthorised structure. Therefore, the conversion of a structure to the side of the house is development and is not exempt development,

C) *Works involving the raising of part of the roofline, not involving an extension as such, and which do not materially affect the external appearance of the house so as to render the appearance inconsistent with the character of the house and/or neighbouring structures,*

to be development and not to be exempt development because those works involving the raising of the roofline and the insertion of rooflights do materially affect the external appearance of the house to render the appearance inconsistent with the character of the house.

10.0 Draft Order

WHEREAS the following questions have arisen as to whether:

- a) Works which affect only the interior of the structure,
- b) Works which are for the conversion of a structure attached to the rear or side of a house for use as part of a house,
- c) Works involving the raising of part of the roofline, not involving an extension as such, and which do not materially affect the external appearance of the house so as to render the appearance consistent with the character of the house and/or neighbouring structures,

are, or are not, exempted development,

AND WHEREAS Liam Madden, Vetruius Hibernicus, on behalf of his client Elaine Duignan of Ballygoran, Maynooth, Co. Kildare, requested a declaration on these questions from Kildare County Council and the Council failed to issue a declaration in the appropriate time,

AND WHEREAS Liam Madden, Vetruius Hibernicus, on behalf of his client Elaine Duignan referred this declaration for review to An Bord Pleanála on the 12th day of October, 2016,

AND WHEREAS An Bord Pleanála in considering this referral, amended the question as follows:

Whether,

- a) Works which affect only the interior of the structure,
- b) Works which are for the conversion of a structure attached to the rear or side of a house for use as part of a house,
- c) Works involving the raising of part of the roofline, not involving an extension as such, and which do not materially affect the external appearance of the house so as to render the appearance inconsistent with the character of the house and/or neighbouring structures,

are, or are not, exempted development,

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

- a) Section 3 of the Planning and Development Act, 2000, as amended,
- b) Section 4(1)(h) of the Planning and Development Act, 2000, as amended,
- c) Article 6(1) & Article 9(1)(a)(viii) of the Planning and Development Regulations 2001, as amended,
- d) Class1 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001, as amended, and
- e) the submissions on file,

AND WHEREAS An Bord Pleanála has concluded that –

- a) The works are development for the purposes of Section 3 of the Planning and Development Act 2000, as amended.
- b) Works to the interior of the structure do materially affect the external appearance to render it inconsistent with the character of the structure and is not exempt development under Section 4(1)(h) of the Planning and Development Act 2000, as amended.
- c) Works for the conversion of a structure attached to the side of the house comprise exempt development under Class 1 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001, as amended. The development would not be exempted development having regard to Article 9(1)(a)(viii) as it would consist of the alteration of an unauthorised structure.
- d) Works involving the raising of part of the roofline, not involving an extension as such, and which do materially affect the external appearance of the house so as to render the appearance inconsistent with the character of the house is not exempt development under Section 4(1)(h) of the Planning and Development Act 2000, as amended.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5(3)(a) of the 2000 Act, hereby decides that,

- a) Works to the interior of the dwelling is development and is not exempted development,
- b) Works for the conversion of a structure is development and is not exempted development,
- c) Works involving the raising of the roofline is development and is not exempted development,

at Ballygoran, Maynooth, Co. Kildare.

Ciara Kellett
Inspectorate

27th January 2017