



An
Bord
Pleanála

Inspector's Report 09RL3555

Question

Whether a proposed development comprising an extension to the rear of an existing single storey semi-detached dwelling is or is not development or is or is not exempted development.

Location

8 River Lawns, Kill, Co Kildare.

Declaration

Planning Authority

Kildare County Council

Planning Authority Reg. Ref.

ED/00615.

Applicant for Declaration

Laura Foley.

Planning Authority Decision

Is development and is not exempted development.

Referral

Referred by Owner/ Occupier

Laura Foley.

Observer(s)

None.

Date of Site Inspection

4th July 2017

Inspector

Brid Maxwell.

1.0 Site Location and Description

- 1.1. The referral site comprises a semi-detached single storey dwelling site located within a well-established residential estate, River Lawns in Kill, County Kildare. The subject dwelling is located on a cul de sac and comprises a modest building with red brick façade, a pitched tiled roof and a small garden to front and rear.
- 1.2. The works subject of the referral have commenced on the site (constructed to wall plate level) as evidenced in photographs included in Appendices to this report. The proposed extension, as set out on the submitted plans, extends to 35.1m² and is built immediately adjacent to the north eastern and north western common site boundary with adjacent dwelling sites. The extension is intended to provide a dining living room and en-suite bedroom. Windows and doors are provided only to the south western elevation opening to remaining amenity space.

2.0 The Question

- 2.1. The question referred is whether a single storey extension to the rear of an existing single storey semi-detached dwelling at 8 River Lawns, Kill, Co Kildare is or is not development or is or is not exempted development.

3.0 Planning Authority Declaration

3.1. Declaration

Kildare County Council decided that the extension does not comply with Condition / Limitation 4(c) for class 1 in Part 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended) for the following reason:

- 1) On the basis of site assessment by the Planning Authority on 16/6/2017 and the submitted plans and sections dated 20/01/2017, the highest part of the extension roof, being a flat roofed extension exceeds the height of the eaves of the dwelling house.

Therefore, Kildare County Council decided that the extension is not exempted development.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planning report itemises the relevant conditions and limitations in Class 1 and asserts that the extension is not exempted development as it does not comply with condition / limitation 4 of Class 1, as the height of the highest part of the proposed extension will exceed the height of the eaves of the existing dwelling.

4.0 Planning History

- No recent applications on the site.
- UD6883 Warning letter issued in respect of works.

5.0 Policy Context

5.1. Development Plan

The Kildare County Development Plan 2017-2023 refers.

5.2. Natural Heritage Designations

- Red Bog Kildare SAC 6.5km to the southeast of the site
- Poulaphoca Reservoir SPA 9.5km to southeast.
- Wicklow Mountains SAC 13km to the east
- Ballynafagh Bog SAC 12km to west
- Mouds Bog SAC 14km to the west
- Glenasmole Valley SAC 14km to east.
- Rye Water Valley Carton SAC 14.5km to the northeast

6.0 The Referral

6.1. Referrer's Case

The submission by Conor Furey and Associates Ltd Consulting Engineers and Project Managers on behalf of the referrer Ms Laura Foley who resides at the property.

- Extension was being constructed within the definition of the exempted development except where the eaves height of the flat roof was not in line with the existing pitched roof of the property. The wall plate is to be constructed at the same level as that of the existing dwelling.
- The issue at stake is the definition of the eaves height.
- In RL2117 a similar case, the reporting Inspector's assessment accepted that the wall appeared higher as the eaves of the extension contained less of an overhang than the eaves of the house however agreed with the referrer that the wall height should be determined from the wall plate level.
- The Local Authority dismissed the comparison with RL2117 on basis that this extension had a pitched roof. The differentiation is somewhat irrelevant and inconsistent.
- Exempted development cannot apply to a flat roofed extension to a bungalow where internal floor to ceiling height is 2.4m and the rear garden is relatively level preventing the use of a step down to allow the eaves to remain level with the eaves as defined by the pitch as opposed to the eaves on a flat roof (defined by the wall plate height).

6.2. Planning Authority Response

The Planning Authority did not respond to the referral.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

Section 3 (1) states the following in respect of 'development':

(i) 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 2(1) defines 'works' as including:

'Any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal.'

Section 4(1) (a) to (f) specifies various categories of development which shall be exempted for the purposes of the Act.

Section 4(2) provides for certain classes of development to be designated as exempted development by way of regulation.

7.2 Planning & Development Regulations, 2001, as amended

Article 6 refers to Exempted Development and states that 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.

Class 1 of Part 1 of Schedule 2 lists the following Development within the curtilage of a house: -

Column 1 – Description of Development

"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

Column 2 – Relevant Conditions and Limitations

2(a) Where the house has been extended previously, the floor area of any such extension, taken with the floor area of any previous extension or extensions constructed or erected after 1st October 1964, including those for which planning permission has been obtained, shall not exceed 40 square metres.

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.*

(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.*

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 sq.m.*

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

(b) *Any window proposed above ground level in any such extension shall not be less than 11 metres from the boundary it faces.*

7 *The roof of any extension shall not be used as a balcony or roof garden.*

7.2. **Relevant Referrals**

RL2117 The Referring party makes reference to this case which refers to a sunroom extension (pitched roof) to the rear of a pitched roofed dwelling. The Reporting Inspector in this case noted that while the wall of the extension appeared higher due to the fact that the eaves on the extension contained less of an overhang than the eaves of the house, however recommended that wall height should be determined by wall plate level where there was no difference.

8.0 **Assessment**

8.1. **Is or is not development**

- 8.1.1. The issue of whether or not the proposed works constitute development is not disputed. Having regard to the definition of “works” as set out in Section 2 of the Planning and Development Act 2000, it is clear that the works constitute development for planning purposes.

8.2. Is or is not exempted development

8.2.1. The dispute arising in relation to this case is in relation to the interpretation of condition 4(a) and (c) of class 1 as both parties accept that all other conditions and limitations have been complied with.

9.0 The relevant condition and limitation is:

10.0 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.”*
And

4(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.”

In the case of condition and limitation 4(a) it is indicated that the height of the wall of the proposed extension will not exceed that of the existing dwelling and I am satisfied that the wall plate is the appropriate point of reference in this regard. Indeed, I note that the Planning authority did not dispute this issue. As regards condition and limitation 4(c). I note that the “eaves” is defined in the Oxford dictionary as “the part of the roof that meets or overhangs the wall of the building” and Collins as *“the lower edges of its roof”*. In the case of the proposed development it is evident that the height of the extension roof exceeds the eaves height by approximately 200mm therefore does not comply with the relevant condition/limitation. On this basis I conclude that notwithstanding its marginal exceedance the proposed development does not satisfy the stated requirement of Class 4(c) of the relevant legislation and is therefore not exempted development.

As regards Natura 2000 sites having regard to the fact to the nature of the proposed development and that the location in relation to the nearest European sites, 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.

11.0 Recommendation

11.1. I recommend that the Board should decide this referral in accordance with the following draft order.

WHEREAS a question has arisen as to whether a proposed development comprising an extension to the rear of an existing single storey semi-detached dwelling is or is not development or is or is not exempted development.

AND WHEREAS Laura Foley care of Conor Furey and Associates Ltd requested a declaration on this question from Kildare County Council and the Council issued a declaration on the 24th day of February, 2017 stating that the matter was development and was not exempted development:

AND WHEREAS Laura Foley care of Conor Furey and Associates Ltd referred this declaration for review to An Bord Pleanála on the 7th day of March, 2017:

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

- (a) Section 2(1) of the Planning and Development Act, 2000, as amended,
- (b) Section 3(1) of the Planning and Development Act, 2000,
- (c) Section 4(1)(a) of the Planning and Development Act, 2000, as amended,

- (d) article 6(1) and article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (e) Parts 1 and 3 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (f) Condition 4(c) of Class 1 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001.

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The height of the highest part of the roof of the extension, being a flat roofed extension, exceeds the height of the eaves of the dwellinghouse.

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 the said development is development and is not exempted development.

Bríd Maxwell

Planning Inspector

07th July 2017