



An
Bord
Pleanála

Inspector's Report RL3610

Question	Whether use of existing property formerly a dwelling with a guest house activity, solely as a dwelling is or is not development or is or is not exempted development.
Location	Westport Road, Castlebar, Co Mayo
Declaration	
Planning Authority	Mayo County Council
Planning Authority Reg. Ref.	P17/521
Applicant for Declaration	Ann Cannon
Planning Authority Decision	Is development and is not exempted development
Referral	
Referred by	Ann Cannon
Owner/ Occupier	Owner and occupier
Date of Site Inspection	28 th September 2017
Inspector	Dolores McCague

1.0 Site Location and Description

1.1. The site is located at Ballymacragh, Westport Road, Castlebar, the house is set well back from the National Primary road accessed via a laneway. The site as outlined extends from the N5 in a long narrow strip to the shore of a lake and appears to be a small farm holding with farm buildings to the rear of the subject dwelling. It is unclear if this entire area is the planning unit relevant to the planning history.

2.0 The Question

2.1. The request to the planning authority was stated as follows:

whether use of existing property, formerly a dwelling with a guest house activity, solely as a dwelling is or is not development or is or is not exempted development.

- In support of the request 'The Planning Partnership' point out that no physical work or construction is proposed and that no exemptions are being relied on. They consider that the use of the existing property solely as a dwelling is not development with the relevant test of development being whether the omission of the partial guesthouse would be a material change of use.
- Only a material change of use constitutes development.
- The original premises was a dwelling with ancillary guesthouse being added including under planning ref 93/950, while it also included the family home.
- It is therefore a dwelling with ancillary guesthouse.
- It is well established that it is the primary use that is the benchmark.
- The cessation of ancillary uses does not affect the primary use.
- Therefore the use solely as a dwelling does not constitute development.

2.2. Background – the dwelling was built in 1902 and extended in the 1940's and c1992 when the guest house commenced; and this was regularised under ref 93/950. It is clear that the premises included both a family home and interconnected area for guests, but no restriction on use of guest rooms as family rooms applied.

2.3. The home element comprised 4 bedrooms and there were 5 guest bedrooms.

- 2.4. It operated on a seasonal basis until it ceased taking guests c1997.
- 2.5. Operating a separate independent use was not envisaged when granting permission.
- 2.6. Under other codes the premises has been classified as a dwelling, e.g. for property tax, rates etc.
- 2.7. Keeling, N and Valentine, F in Construction Projects – Law and Practice is cited re. ancillary uses 'the commencement or cesser of an ancillary use will not be considered a fresh act of development requiring planning permission'. Gore Grimes in Key Issues in Planning and Environment Law is cited, where one or more uses are incidental or subordinate to the main use, the ancillary use will not amount to a material change of use.
- 2.8. Notwithstanding that planning permission was granted for the guesthouse element, guesthouse was fundamentally ancillary.
- 2.9. If otherwise the premises would then have a de facto composite dual use as a dwelling and as a guesthouse. Omission of guest house would not necessarily constitute development; it would have to intensify the remaining dwelling use. Development Control Practice is cited in this regard. As is the legal case Philglow v SoS 1984.
- 2.10. Triggering a material change of use as opposed to a de minimis change of use would require impacts or effects on the area or the proper planning and sustainable development of the area. It would not arise in this case.
 - Galway Co Co v Lackagh Rock Ltd is cited in this regard.
 - Monaghan Co Co v Brogan is cited: not only the use itself but also its effects.
 - Traffic would be reduced
 - There would be no external impacts
 - The tests in Brogan are met.
- 2.11. The cessation of the guesthouse has not resulted in its abandonment. It could be reactivated if desired. The subject application is made to provide the applicant with clarity on the options available for the use of the property.

- 2.12. Should the Planning Authority determine that it is development it would confirm the applicant's ability to create distinct elements within the property: a dwelling and a separate commercial accommodation business.
- 2.13. The absence of information in relation to the planning authority's decision is contrary to the Development Management Guidelines.
- 2.14. Section 4 and articles 6 and 9 relate to exempted development which are not relevant to the question at hand. A9(1)(a)(viii) is not relevant to the matter.

3.0 Planning Authority Declaration

3.1. Declaration

- 3.1.1. Planning Authority Decision is that the use of existing property, formerly a dwelling with a guest house activity, solely as a dwelling, constitutes development and is not exempted development.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The planning report includes:

- Located in an area designated as urban pressure CDP 2014-2020.
- End of a private road along the N5 on the western outskirts of the town.
- Use as a guesthouse is contained in Class 6 of part 4 of the P&D Regs.
- A dwelling is not contained in this class.

4.0 Planning History

93/950 retain existing modifications to dwellinghouse, construct extension and change use to guesthouse, granted.

5.0 Policy Context

5.1. Development Plan

Mayo County Development Plan 2014-2020 is the relevant plan. Map 3 of the Development Plan 'Rural Area Types' identifies the area as a rural area under strong urban influence.

Relevant objectives include to ensure that future housing in rural areas complies with the Sustainable Rural Housing Guidelines for Planning Authorities 2005 (DoEHLG), and to support to support the sustainable development of agriculture, with emphasis on local food supply and agriculture diversification including tourism enterprises.

5.2. Natural Heritage Designations

The nearest natura site is the River Moy SAC (site code 002298), located a distance of c5km away.

6.0 The Referral

6.1. Referrer's Case

The Planning Partnership consultancy has referred the decision on behalf of the owner and occupier Ann Cannon to the Board for review. The referrer has presented the case to the Board in a similar way as presented to the Planning Authority.

- They consider that the use of the existing property solely as a dwelling is not development with the relevant test of development being whether the omission of the partial guesthouse would be a material change of use.
- Only a material change of use constitutes development.
- The subject scenario would not be a material change of use.
- They attach a copy of the original referral case for the Board's consideration.

- They are fundamentally concerned at the fact that the Planning Authority did not set out the basis of their decision.
- There is no planning report. This is contrary to the development management guidelines, which is cited:

9.4 Preparing recommendations on declarations

In making its decision on a declaration, the planning authority is restricted to considering what is, or is not, development, or is, or is not, exempted development, within the provisions of the Planning Act and Regulations. A planning report should be prepared **clearly setting out the matters which have been considered** in making the decision and **giving the main reasons** on which the decision is based.

The planning report should be typed/in electronic form, logically set out and clearly signed by the person who prepared it. The Report should contain details of the question that is being asked, together with a brief description of the location and of the site;

- Contain a summary of the planning history (if any) relating to the question and site;
- Contain details of the question that is being asked, together with a brief description of the location and of the site;
- **Examine the issue in relation the definition of development** and exempted development as set out in the Planning Act and Regulations;
- Address the adequacy of further information where such information has been obtained.

The Report should **structure the above considerations in a way that is clear to the applicant and to the wider public** and that **enables informed judgements to be made as to the merits of a referral to the Board**. The decision of the planning authority on the question at issue should be clearly stated, (their emphasis).

- The absence of a planning report seriously prejudices the applicant in terms of understanding the rationale for the decision.
- The Board is requested to consider the question de novo.
- They refer to the rationale and explanation of the question attached in an appendix.
- They state that the planning authority referred to section 4 of the Planning and Development Act, and Articles 6 and 9 (1) (a) (iii) of the Planning and Development Regulations, The matter in question relates to the issue of development as distinct from exempted development. The planning authority have taken irrelevant matters into account.
- They request the Board to disregard the same and to assess the question on the basis of the issue of whether or not development would occur, supported by the enclosed cover letter.
- The letter referred to is a copy of that submitted to the planning authority summarised earlier in this report.

6.2. **Planning Authority Response**

6.3. The planning authority have not responded to the grounds of appeal.

6.4. **Statutory Provisions**

6.5. **Planning and Development Act, 2000**

Section 2 – Interpretation, includes:

“house” means a building or part of a building which is being or has been occupied as a dwelling or was provided for use as a dwelling but has not been occupied, and where appropriate, includes a building which was designed for use as 2 or more dwellings or a flat, an apartment or other dwelling within such a building;

“unauthorised use” means, in relation to land, use commenced on or after 1 October 1964, being a use which is a material change in use of any structure or other land and being development other than—

(a) exempted development (within the meaning of section 4 of the Act of 1963 or *section 4* of this Act), or

(b) development which is the subject of a permission granted under Part IV of the Act of 1963 or under section 34, 37G or 37N, being a permission which has not been revoked, and which is carried out in compliance with that permission or any condition to which that permission is subject.

“exempted development” has the meaning specified in *section 4*;

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.

4.—(1) The following shall be exempted developments for the purposes of this Act—

(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.

(2) (a) The Minister may by regulations provide for any class of development to be exempted development for the purposes of this Act

(3) A reference in this Act to exempted development shall be construed as a reference to development which is—

(a) any of the developments specified in *subsection (1)*, or

(b) development which, having regard to any regulations under *subsection (2)*, is exempted development for the purposes of this Act.

6.6. Planning and Development Regulations, 2001

Article 6 exempted development

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.

Article 9 Restrictions on exemption

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.

Article 10 changes of use

(1) change of use within any one of the classes of use within classes set out in Part 4 of Schedule 2 is exempted.

2 (a) A use which is ordinarily incidental to any use specified in Part 4 of Schedule 2 is not excluded from that use as an incident thereto merely by reason of its being specified in the said Part of the said Schedule as a separate use

(4) Development consisting of the use of not more than 4 bedrooms in a house, where each bedroom is used for the accommodation of not more than 4 persons as overnight guest accommodation, shall be exempted development for the purposes of the Act, provided that such development would not contravene a condition attached to a permission under the Act or be inconsistent with any use specified or included in such a permission.

References to guest house in the Regulations include its exclusion from the definition of business premises.

Schedule 2

Part 1 Exempted Development — General

CLASS 14

Development consisting of a change of use—

(e) from use as 2 or more dwellings, to use as a single dwelling, of any structure previously used as a single dwelling

Part 4 Exempted development- Classes of Use

CLASS 6 ‘Use as a residential club, a guest house or a hostel (other than a hostel where care is provided).’

7.0 **Assessment**

The site as outlined extends some 625m from the road to Lannagh or Castlebar Lough which is to the rear; and is in excess of 10ha in area; its principle use being farming. No documentation has been provided in relation to the permitted guesthouse use: either the site or the building areas. It is unclear what exact areas are associated with the guesthouse the subject of the referral.

The servicing arrangements are not set out but it is likely that a single wastewater treatment system services the development. No building layout has been provided, but from the information presented it is likely that household kitchen serves the 5 guest bedrooms and that other household facilities are shared in common with the guests.

From the information available it appears to me that the use as a guest house is not independent of the use as a dwelling. It also appears to me that the principle use, although occupying only 4 of the 9 stated bedrooms, is use as a dwelling.

The permission for overnight guest accommodation obtained in 1993 was implemented. The guesthouse operation was carried on from 1992 to 1997 and was a seasonal business. It is stated that operating a separate independent use was not envisaged when granting permission and on the face of it this statement appears reasonable.

The argument is made that the primary use is the benchmark and that the cessation of ancillary uses does not affect the primary use.

The referrer has requested the Board to disregard exempted development, and to consider the materiality of the change of use from part guest house / part dwelling to solely dwelling use.

- 7.1. The first matter which the Board has to consider is whether change of use of part of the premises from guest house to dwelling would be a material change of use constituting development. The details available, in relation to the change of use to part guesthouse, are limited. The development is referred to in the planning report as '93/950 retain existing modifications to dwellinghouse, construct extension and change use to guesthouse – granted'. No special circumstances or conditions have been recorded and no details have been submitted for the Board's attention.
- 7.2. In my opinion, in the change of use of part of the premises from guest house to dwelling external impacts would be reduced. Based on the information available, it is difficult to envisage a situation in which the change of use of part of the premises from guest house to single dwelling, albeit an expanded dwelling, would be a material change of use. In the circumstances of this particular case, I consider that the change of use is not a material change of use and therefore not development.

8.0 Recommendation

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

WHEREAS a question has arisen as to whether use of existing property, formerly a dwelling with a guest house activity, solely as a dwelling is or is not development or is or is not exempted development:

AND WHEREAS Ann Cannon requested a declaration on this question from Mayo Council and the Council issued a declaration on the 19th day of July, 2017 stating that the matter was development and was not exempted development:

AND WHEREAS Ann Cannon referred this declaration for review to An Bord Pleanála on the 8th day of August, 2017:

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

- (a) Section 3(1) of the Planning and Development Act, 2000, and
- (b) the planning history of the site.

AND WHEREAS An Bord Pleanála has concluded that:

- (a) use of existing property, formerly a dwelling with a guest house activity, solely as a dwelling is not a material change of use.

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 use of existing property, formerly a dwelling with a guest house activity, solely as

a dwelling is not development.

Planning Inspector

20th March 2018

Appendices

- 1 Photographs
- 2 Extracts from the Mayo County Development Plan 2014-2020
- 3 Extracts from the Castlebar Town and Environs Development Plan