



An
Bord
Pleanála

Inspector's Report 08.RL3802

Question	Whether renovation works carried out to an old dilapidated cottage is or is not development or is or is not exempted development.
Location	Ballyarkane Eighter, Castlemaine, Co. Kerry.
Declaration	
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	EX589
Applicant for Declaration	Mahmood Hussain
Planning Authority Decision	Is not exempted development
Referral	
Referred by	Mahmood & George Hussain
Owner/ Occupier	Mahmood & George Hussain
Observer(s)	None
Date of Site Inspection	4 th December 2017
Inspector	Michael Dillon

1.0 Site Location and Description

- 1.1. The site is located on the north side of the R561 Regional Road linking Castlemaine to Inch, in Co. Kerry. The 80kph speed restriction applies in this area. There is a single, unbroken, white line in the centre of the road in the vicinity of the site. There are no hard shoulders on the road and hedgerows are not set back. There is no public lighting and there are no public footpaths in the area. There are two houses on the opposite side of the road. There is agricultural land surrounding the site on three sides. Immediately to the rear of the building are some sheep pens and a sheep dipping facility. A septic tank has recently been constructed approximately 5m to the northeast of the building – within the rear yard area.
- 1.2. There is an old stone building on the site, which is undergoing renovation. It is located below the level of the road – a retaining wall is in place in front of the front door. The building is sited approximately 1.0m below the level of the adjoining R561. There is no roadside boundary to the site, allowing for vehicles to pull off the road onto a hard-standing area in front of the building. Vehicular access exists to the east side of the building, and there is also a pull-in area immediately in front of the building. Sight distance at this entrance is almost non-existent to the east, for emerging vehicles – coming as they would be from a lower level than the road. On the other side of the building there is an agricultural gateway – the sight distance at this gateway being almost as poor. The building is not occupied. The roof of the cottage has been raised, and three roof-lights installed in the front pitch of the slated roof. A first floor is in the process of being created within the building, although no staircase is in place to access it. A single-storey lean-to extension exists to the side of the structure, with corrugated iron roof and roof-light. A two-storey, flat-roofed extension has been erected to the rear of the building. External finishes comprise exposed stone wall, exposed concrete blockwork, plaster and grey corrugated metal sheeting. The two ground floor front windows of the original window have been closed-up with concrete blocks. There does not appear to be any connection to the electricity supply, and it is not clear if there is a water supply to the building.

2.0 The Question

- 2.1. Whether renovation works carried out to an old dilapidated cottage is or is not development, and if development, whether it is or is not exempted.
- 2.2. The referrer had sought a section 5 declaration of exempted development from KCC on 12th July 2017. This arose in response to enforcement proceedings taken by KCC against the owner – under section 160 of the P&D Act 2000 (as amended) – issued on 16th May 2017.

3.0 Planning Authority Declaration

3.1. Declaration

By Order dated 8th August 2017, Kerry County Council declared that the renovation works carried did not constitute exempted development.

3.2. Planning Authority Reports

The Planner's Report of 4th August 2017, states-

- Rusted corrugated iron roof was removed and stone chimneys were removed.
- Parts of the rubble stone external wall were taken down.
- Concrete blockwork to un-roofed and unfinished lean-to shed attached to the western gable of old cottage was demolished.
- Stone external walls were rebuilt and their heights (including gables) were increased.
- New roof with slate covering and roof-lights to the front elevation was constructed.
- New lean-to extension constructed to the western gable.
- New two-storey extension constructed to the rear.

The works are considered to be development under the terms of section 3(1) of the Act. The nature and extent of the works would not fall under section 4(1)(h). The extensions constructed to the side and rear of the house would not comply with the

conditions and limitations attached to exemptions for extension to an house, provided for at Class 1, Part 1, Schedule 2 of the P&D Regulations, 2001 (as amended). The door and window opes were blocked up, and the cottage has not been occupied for a period of in excess of thirty years, and the residential use is considered to be abandoned. Therefore, the proposed use of the renovated building as a dwelling house would constitute a material change of use.

The report is accompanied by four Google street-view photographs of the building (undated), and a series of 24 no. colour photographs of works carried out to date on the building, and of the environs.

4.0 Planning History

None.

5.0 Policy Context

5.1. Development Plan

The relevant document is the Kerry County Development Plan 2015-2021. The site is not zoned for development. There are Views & Prospects listed along the R561 in the vicinity of the site – but on the opposite side of the road only – over Castlemaine Harbour. Objective R6-16 states that it is objective of the Council to- “Give favourable consideration to applications for the conversion and reuse of existing traditional farm buildings or rural houses. These properties should be structurally intact and exhibit essential physical characteristics of a dwelling house”.

5.2. Natural Heritage Designations

The referral site is not located either within or immediately adjoining any European site. The closest such is Castlemaine Harbour SAC (Site code 000343) some 400m to the south. The similarly-named Castlemaine Harbour SPA (Site code 004029) is located approximately 420m to the south. Both of these European sites are located downslope of the referral site. The Slieve Mish Mountains SAC (Site code 002185) is located some 600m to the northeast of the referral site (at its closest). This

European site is located upslope of the referral site, and so can be discounted – there being no pathway for any potential impact.

6.0 The Referral

6.1. Referrer's Case

6.1.1. This case, referred to the Board by Cunnane Stratton Reynolds, agent on behalf of the Mahmood & George Hussain, and received on 1st September 2017, can be summarised in bullet point format as follows-

- The old cottage on site (approximately one hundred years old) functioned as a dwelling-house and associated shop in the past. It was last occupied in the 1980's. Since that time it fell into dereliction.
- The use was never abandoned by the family.
- The lean-to to the west of the house was constructed in the 1930's.
- Works have been carried out to ensure the structural integrity of the building. Original stonework has been restored. The corrugated iron roof has been removed and replaced with a slate roof with three roof-lights. Chimneys have been repaired and reconstructed. The back kitchen was repaired and a first floor extension added (17sq.m).
- The property was signed up to a local group water scheme in the 1980's, and a resubscription was sought in 2016.
- In 2012, the owners registered a septic tank at this address – which was accepted and processed by the DoEH&LG in September 2012.
- It is intended to reoccupy the house on the completion of the restoration works.
- There is no planning history attaching to the house.
- There is a precedent case from the Board – PL 23.RF0875 – in which case it was considered that the house had not been abandoned, even though unoccupied from 1973 to 1997.

- The restoration works carried out do not constitute development, and a change of use has not occurred.
- Section 2 of the P&D Act, 2000 (as amended) defines ‘house’ as follows- “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 two or more dwellings or a flat, an apartment or other dwelling within such a building”.
- The restoration works carried out would fall within the exemption provided for at section 4(1)(h). The extension at the western end of the house was in fact an existing lean-to which was repaired and rebuilt, and is not a new addition to the house. Similarly, the back kitchen was an existing pre-1963 addition which was repaired and rebuilt. The owner has added a first floor extension which measures 17sq.m, and which can be considered exempted development under the terms of the 2001 Regulations (as amended).
- Section 2 of the P&D Act, 2000 (as amended) defines “habitable house” as a house which is- a) used as a dwelling; b) is not in use but when last used, disregarding any unauthorised use, as a dwelling and is not derelict, or; c) was provided for use as a dwelling but has not been occupied”. No Derelict Sites Notice was issued in relation to this property, so it cannot have been considered derelict.
- The residential use of this property has an established right. The owner of this right cannot be deprived by oblique means, but only in a manner laid down by statute (*O’Hara & McGuinness v An Bord Pleanála*).
- Restoration works carried out do not materially alter the appearance of the structure and neither does it render its appearance inconsistent with the original structure. The works do constitute exempted development and fall within the limitations as set out in Class 1, Column 2, Article 6(1) of the P&D Regulations, 2011 [sic] (as amended).
- The appropriate planning unit to consider is the building. The principal use of the building remains the same and a material change of use has not occurred.

6.1.2. The submission is accompanied by a copy of a receipt from the DoEH&LG in relation to the septic tank registration process.

6.2. **Planning Authority Response**

None received.

7.0 **Statutory Provisions**

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

S.2(1) Defines, amongst other things, “works” – as including any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal...

S.2(1) ‘house’ is defined as follows- “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 two or more dwellings or a flat, an apartment or other dwelling within such a building”

S.2(1) ‘habitable house’ is defined as follows- “a house which is- a) used as a dwelling; b) is not in use but when last used, disregarding any unauthorised use, as a dwelling and is not derelict, or; c) was provided for use as a dwelling but has not been occupied”.

S.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.

S.4(1) 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 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;

7.2. Planning and Development Regulations, 2001

7.2.1. Article 6(1) refers to classes of development which can be considered to be exempted. Class 1, Part 1, Schedule 2 states, in relation to development within the curtilage of a house-

The extension of a house, by the construction or erection of an extension (including 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.

This exemption contains conditions and limitations which are listed at Column 2, as follows-

1. (a) Where the house has not been extended previously, the floor area of any such extension shall not exceed 40 square metres.
1. (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.
1. (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.
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.
2. (b) Subject to paragraph (a), where the house is terraced or semi-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 12 square metres.

2. (c) Subject to paragraph (a), where the house is detached and has been extended previously, the floor area or 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.
3. Any above ground floor extensions shall be a distance of not less than 2 metres from any party boundary.
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.
4. (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.
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.
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.
6. (a) Any window proposed at ground level in any such extension shall not be less than 1 metre from the boundary it faces.
6. (b) Any window proposed above ground level in any such extension shall not be less than 11 metres from the boundary it faces.
6. (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 than 11 metres from the boundary it faces.
7. The roof of any extension shall not be used as a balcony or roof garden.

7.2.2. Article 9(1)(a) places restrictions on exemption, if the carrying out of such development would-

(iii) endanger public safety by reason of traffic hazard.

8.0 Assessment

8.1. Is or is not development

8.1.1. Development is defined as the carrying out of any “works”. This has certainly occurred in the case of the renovations to this building – relating to construction, demolition, extension, alteration and repair. The single-storey lean-to extension to the west of the original building has been demolished and replaced with a structure, whilst similar in shape, is considerably higher than the original. The original was a shed/garage, whilst the new has been incorporated into the adjoining building to the east. Similarly, the height of the original building on this site has been raised and, a new first floor inserted. New roof-lights have been installed in the roof – which is a replacement in slate, in place of the old corrugated iron one. A new two-storey extension has been constructed to the rear of the building – on what is claimed as the original footprint of a back kitchen. Finally, a septic tank would appear to have been installed in the rear yard of the building – located some 5m from the gable wall of the house. The fact that this or some other septic tank may have been registered with the Department of the Environment, Heritage and Local Government in 2012, does not render the structure authorised. The location of the septic tank (newly constructed) does not comply with the EPA Code of Practice Guidelines (2009) for the location of such structures in relation to houses – requiring that they be at least 7m from any house.

8.1.2. I would consider that the residential use of this building was abandoned and that the house is derelict. The referrer states that the building was last occupied in the 1980's, without giving any evidence of such last use. Reference is made to an application to sign-up to a local group water scheme – with reapplication in 2016. There is no evidence that this building was ever provided with a water supply. The building does not appear to have an electricity supply. Most significantly, the two front ground floor windows were closed up with concrete blocks – which still remain

in place. Google Street-View (June 2011) shows that the corrugated iron roof is corroded to such an extent as to be worn away in places, and the lintel stone for the front door appears to be missing. A metal bar attached to the front of the structure may have been a rail to which a sliding gate for the garage/shed structure was attached. A tree bole is clearly visible within the former lean-to shed/garage structure.

- 8.1.3. I note that the building on this site does not appear on the latest edition of the OS on-line maps for the area – even though the original building on the site was clearly of considerable age. The building does not appear on the OS 25” map of the area (1889-1913). The building does appear in OS aerial photographs from 1995 onwards.

8.2. Is or is not exempted development

- 8.2.1. Section 4(1)(h) of the Act does not apply in this instance, as the alterations made involve changes to the size and external appearance of the building and are not just confined to the interior of the structure, and do materially affect the external appearance of the structure, by reference to photographs of the original structure on this site, submitted by KCC.
- 8.2.2. Article 9(1)(a) of the Regulations places restrictions on exempted development where the carrying out of such development would endanger public safety by reason of traffic hazard. There is a difference in levels between this building and the R561, of approximately 1.0-1.5m. There is no safe egress for vehicular traffic from this site, arising from the absence of a roadside boundary for the site, poor sight visibility in either direction for exiting traffic, and the change in levels between site and road. The residential occupation of this structure would seriously endanger public safety by reason of traffic hazard, caused by vehicular turning movements out of the site.

8.3. Restrictions on exempted development

- 8.3.1. Class 1, Part 1, Schedule 2 of the Regulations relates to exempted development within the curtilage of a house. I have elsewhere in this report argued that I consider the residential use to have been abandoned. However, should the Board be minded to consider otherwise, then this Class is of relevance to any consideration of the

case. In relation to detached houses (such as this building), the extension of a house into the garage to the side is allowed for. I would consider that the total floor area of extensions to this building considerably exceeds the 40sq.m limitation imposed; when consideration is taken of the 17sq.m first floor extension to the rear, the extension into the former garage/shed lean-to structure, and the creation of a new first floor within what was originally a single-storey house. The creation of this first floor within the building has necessitated the raising of the height of walls and the construction of a new roof, with three new roof-lights in the front pitch. The first floor rear extension exceeds the height of the rear wall of the original house, thereby removing any exempted status by reference to paragraphs 4.(a) and 4.(c).

9.0 Recommendation

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

WHEREAS a question has arisen as to whether renovation works carried out to an old dilapidated cottage is or is not development and is or is not exempted development;

AND WHEREAS Mahmood Hussain requested a declaration on this question from Kerry County Council, and the Council issued a declaration on the 8th day of August 2017, stating that the matter was development and was not exempted development;

AND WHEREAS Mahmood and George Hussain referred this declaration for review to An Bord Pleanála on the 1st day of September 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 (as amended);
- (c) section 4(1)(h) of the Planning and Development Act, 2000 (as amended);
- (d) articles 6(1) and 9(1) of the Planning and Development Regulations, 2001 (as amended);
- (e) Class 1, Part 1 of Schedule 2 to the Planning and Development Regulations, 2001 (as amended);
- (f) the planning history of the site;
- (g) the pattern of development in the area;

AND WHEREAS An Bord Pleanála has concluded that-

- (a) the residential use on this site has been abandoned;
- (b) the demolition, construction, alteration, repair and renewal act/operation at this site constituted “works”;
- (c) arising from the “works” carried out, development has taken place on the site;
- (d) the works carried out included the raising of the height of the roof of the original house, and installation of three roof-lights in the front pitch of the roof, which materially affect the external appearance of the structure, so as to render the appearance inconsistent with the character of the structure. Therefore, the provisions of section 4(1)(h) of the Planning and Development Act, 2000 (as amended), do not apply;
- (e) the floor area of the original house on this site has been extended by more than 40sq.m, thereby removing any exemption which may have applied by virtue of Class 1, Part 1 of Schedule 2 of the Planning and Development Regulations, 2001 (as amended);

- (f) the height of the two-storey extension to the rear of the original house exceeds the height of the rear wall of the original house (even though the height of the rear wall has been raised): thereby removing any exemption which may have applied by virtue of Class 1, Part 1 of Schedule 2 of the Planning and Development Regulations, 2001 (as amended);
- (g) traffic turning movements out of this site would endanger public safety by reason of traffic hazard, thereby removing any exemption provided for under Class 1, Part 1 of Schedule 2 of the Planning and Development Regulations, 2001 (as amended), – as provided for under article 9(1)(a)(iii) of the aforementioned Regulations;
- (h) the separation distance between the septic tank and the building is insufficient to comply with the Environmental Protection Agency “Code of Practice – Wastewater Treatment and Disposal Systems Serving Single Houses (p.e.<10)”. The occupation of this structure would, therefore, be prejudicial to public health.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 of the Planning and Development Act, 2000 (as amended), hereby decides that works carried out at this derelict cottage constitutes development, which is not exempted development.

Michael Dillon
Planning Inspectorate

13th December 2017.