

Property Clinic

Your queries answered

My adult son wants to convert my attic to live in it. Do we need planning permission?

Q I am a mature lady with some health issues living alone in a remote three-bedroom bungalow in the west of Ireland. My son, who is in his 30s, has offered to convert the attic so he can be on the property, but with his own entrance at the gable. It would be a kitchen, diner, one-bed, one-bathroom unit. My question is, does this require planning permission? There will be no Velux, just two skylights at the back of the house. Please advise as planning takes so long and obviously costs. Thanks for your advice.

A Your query requires two answers: the first dealing with planning and exemptions and the second dealing with compliance with building regulations.

But before I address either point, I should point out the assumptions I am making. As it is a bungalow in the country, I am assuming it has a traditional cut-timber roof and not a prefabricated truss raft construction.

Generally, trusses are not suitable for adaptation or conversion to open usable attic spaces. I am also going to assume for the purposes of the planning question that the attic was not presented for use as a habitable room on the drawings on foot of which the original planning permission was granted.

To be exempt from planning permission, the floor area of the attic must be less than 40sq m (431sq ft) – most attics are, but the combined floor area of this conversion and any other extensions in the past must come in under 40sq m (refer to Class

1, Part 1 of the Second Schedule of the Planning and Development Regulations 2001). Even if that requirement is satisfied, there is another that may affect your plans: creating a separate self-contained residential unit with its own independent access is not an exempt development under the planning Acts.

Now for the building regulations question. The lack of windows makes the proposed dwelling non-compliant in terms of daylight, ventilation, and fire escape. You will need windows to ensure adequate means of escape in the event of a fire, and these, in an attic situation, are usually top-hung Velux windows. A dormer window, while better, is much more expensive to build and will change the overall look of the house (unless it is to the rear). It is important to consider the positioning of the Velux windows to ensure compliance with building regulations. The sill must be at minimum 600mm from the floor; a maximum height of 1,100mm from the floor and the maximum distance from the Velux to the eaves is 1,700mm.

From your own point of view, there may be an effect on your enjoyment of your own home. For example, there will be additional noise with people walking above your ceiling. Other things to consider are fire safety, where your water storage tank will go (this is normally in the attic in a bungalow to ensure adequate water pressure without the need for a pump), how you will split utility bills, and even storage issues such as where you will put your Christmas decorations.

With clever design, it may be possible to create an exempt development. My advice



■ With clever design it may be possible to create an attic conversion that would be an exempt development

Got a query?

Send your queries to propertyquestions@irishtimes.com or to

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is to consult your local architect, building surveyor or engineer who will direct you following an inspection of the situation on the ground.

If the extension goes ahead and is not exempt, the local authority planning enforcement section may be notified of the breach of planning laws and an enforcement

notice may be issued. This should be a consideration for anyone who intends to build an extension, or convert an attic or garage.

Pat McGovern is a chartered building surveyor and a member of the Society of Chartered Surveyors Ireland, scsi.ie

Do I need to register the right of way from my home to my garage?

Q My home has rear access to my garage via a laneway. I have a right of way over the laneway shown in my title documentation, and I use this frequently for access. The laneway is registered with the Property Registration Authority [PRA], with rights of way listed for several adjoining homeowners. My home is not registered with the PRA and is presumably covered by the Registry of Deeds. I saw that there was a deadline of 30 November 2021 to register rights of way, and after reading everything I can find, I am uncertain as to whether this applies to my situation. Can I rely on my

existing title documentation, or do I need to pay a professional to register my right of way in order to preserve it?

A The short answer is yes, you can rely on your existing title documentation. It is understandable that you are concerned about your right of way as there has been significant commentary and some concern in relation to rights of way in recent years.

Rights of way and other rights such as wayleaves for services, etc, are easements and are generally described under the heading of easements in legislation and relevant documents.

The recent concerns relate to the second of the following two categories of easements:

(1) Easements that are formally documented by way of deed or agreement. These may, or may not, be registered with the PRA, ie, the Land Registry.

(2) Easements that have been established by long use only, without any written agreement. These are known as "easements by prescription".

The recent concern relates to legislation passed in 2009, and amending legislation in 2011, which contained a requirement that easements by prescription be

registered with the PRA. The deadline for applications for registration was November 30th, 2021. However, to the relief of many beneficiaries of easements by prescription, this requirement has now been removed by the provisions of the recently enacted Land and Conveyancing Law Reform Act, 2021.

In your case, your right of way is included in your title deeds, ie, category (1) as described above. Therefore, its existence had not been put at risk, or affected by the requirement that was in place prior to the 2021 Act referred to above.

However, I suggest you have a discussion with your solicitor about protecting your right of way and to advise if it can be registered as a burden of the folio on which the laneway is registered, and also to discuss the advantages of registering your own property. Easements, including rights of way, are frequently subject to different interpretations in relation to how they are permitted to be used.

For instance, a change in ownership of the registered title in the laneway may result in a more restrictive interpretation, by the new owner, of how you and others are permitted to use it. Your solicitor will check your title deeds and will advise you in relation to the precise nature of your rights, and in relation to registration.

One of the advantages of having your title interests registered is that folios and relevant file plans, (ie, Land Registry maps) are available to the public. Your solicitor will advise if your right of way can be registered as an appurtenant on your folio if you decide to register your title. If registered as a burden and/or an appurtenant on the respective folio(s), it means that in the event of any issues arising that may concern the use of the laneway, such as obstructions, maintenance, etc, other relevant parties will be aware of your rights.

In summary, the requirements in place prior to the 2021 legislation, did not concern your situation. You can rely on your title documentation and, as stated, your solicitor will advise you on the best way to protect your right of way in the future.

Patrick Shine is a chartered geomatics surveyor, a chartered civil engineer, and a member of SCSI, scsi.ie

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2 bed apartment €535,000 11.15am to 11.45am	New 3 bed house €950,000 10.00am to 10.30am	3 bed house €750,000 10.00am to 11.00am	2 bed townhouse €570,000 11.00am to 11.30am
28 Shelbourne Park Apts, South Lotts Rd BER C3	29 Waterloo Lane, Ballsbridge BER C1	9 Maple Hall, Mount St. Anne's, Milltown BER B2	34 The Warehouse, Blackpitts BER B3
2 bed apartment €350,000 10.00am to 10.30am	3 bed mews €1,300,000 11.00am to 11.30am	2 bed apartment €510,000 11.15am to 11.45am	2 bed penthouse €750,000 12.00pm to 12.30pm

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