



An
Bord
Pleanála

Board Direction
ABP-301153-18

The submissions on this file and the Inspector's report were considered at a Board meeting held on October 30th 2018.

The Board decided, generally in accordance with the recommendation of the Inspector, and as set out in the following Order, that the change of ground level by excavation, the construction of retaining wall for support and the erection of a wooden cabin for use as a study/office on the new ground level, at 2 Rosehill Close, Wicklow Town, Co Wicklow, is development and is not exempted development.

Board Order as follows:-

WHEREAS a question has arisen as to whether the erection of a wooden cabin for use as a study/office at 2 Rosehill Close, Wicklow Town, Co. Wicklow is or is not development or is or is not exempted development.

AND WHEREAS Darragh McAuliffe, requested a declaration on this question from Wicklow County Council, and the Council re-formulated the question as follows:-

Whether the change of ground level by excavation, the construction of retaining wall for support and the erection of a wooden cabin for use as a study/office on the new ground level, at 2 Rosehill Close, Wicklow Town, Co Wicklow, is or is not development and is or is not exempted development

AND WHEREAS Wicklow County Council issued a declaration on the question, as reformulated, on the 9th day of February 2018, stating that the matter was development and was not exempted development.

AND WHEREAS Darragh McAuliffe referred this declaration for review to An Bord Pleanála, on the 7th day of March 2018.

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

- (a) Sections 2, 3, 4 and 5 of the Planning and Development Act, 2000, as amended, including the definitions of “development” and “structure”;
- (b) Articles 6 and 9 of the Planning and Development Regulations, 2001, as amended, and Part 1 of the Second Schedule to those Regulations, including Classes 3, 5 and 6 and the conditions and limitations applicable to those Classes.

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The change in the ground levels in the subject garden, the construction of the wall and the erection of the wooden cabin all involved works, and therefore constitute development, as defined;
- (b) The change in ground levels from the original levels in the subject rear garden, at the location of the subject cabin and wall, has resulted in the level of the ground being altered by more than 1 metre above the level of the adjoining ground, and therefore these changes are not exempted development under Class 6 of Part 1 of the Second Schedule to the Planning and Development Regulations 2001, as amended, because this change in level does not comply with Condition and Limitation number 1, to which this Class is subject.
- (c) The change in ground levels has not obtained planning permission and, as it is not exempted development, has been stated by the Planning Authority, as part of its determination of the question, to be unauthorised development;

(d) The granite stone retaining wall that has been erected is a development of a type that would generally come within the exempted development provisions of Class 5 of Part 1 of the Second Schedule to the Planning and Development Regulations 2001, as amended, but cannot avail of this exemption, being development that is dependent upon, and relates directly to, the unauthorised alteration in ground levels of the land, and would therefore consist of the alteration or renewal of an unauthorised structure, by reason of Article 9 (1)(a)(viii) of these Regulations, and is therefore not exempted development;

(e) The wooden cabin that has been erected is a development of a type that would generally come within the exempted development provisions of Class 3 of Part 1 of the Second Schedule to the Planning and Development Regulations 2001, as amended, but cannot avail of this exemption, being development that is dependent upon, and relates directly to, the unauthorised alteration in ground levels of the land, and would therefore consist of the alteration or renewal of an unauthorised structure, by reason of Article 9 (1)(a)(viii) of these Regulations, and is therefore not exempted development.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by Section 5 (3)(a) of the Planning and Development Act, 2000, as amended, hereby decides that that the change of ground level by excavation, the construction of retaining wall for support and the erection of a wooden cabin for use as a study/office on the new ground level, at 2 Rosehill Close, Wicklow Town, Co Wicklow, is development and is not exempted development.

Board Member

Philip Jones

Date:

31st October 2018