



An
Bord
Pleanála

Board Direction
ABP-302930-18

The submissions on this file and the Inspector's report were considered at a Board meeting held on April 12th 2019.

The Board decided, as set out in the following Order, that the refurbishment of a timber house and associated infrastructure at The Chalet, Furbo Hill, Spiddal, Co Galway is development and is not exempted development and that works to the entrance of these premises is development and is exempted development.

Board Order as follows:-

WHEREAS a question has arisen as to whether the refurbishment of a timber house and associated infrastructure and entrance at The Chalet, Furbo Hill, Spiddal, Co Galway is or is not development or is or is not exempted development.

AND WHEREAS Eamonn Murray requested a declaration on this question from Galway County Council, and the Council issued a declaration on the 11th day of October 2018 stating that the matters in question were all development and were not exempted development.

AND WHEREAS Eamonn Murray referred this declaration for review to An Bord Pleanála, on the 5th day of November 2018.

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

- (a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended,
- (b) Articles 6 and 9 of the Planning and Development Regulations 2001, as amended,
- (c) Classes 1, 3, 5 and 41 of Part 1 of the Second Schedule to the Planning and Development Regulations 2001, as amended,
- (d) The submissions on file, including photographs submitted by the referrer and by the planning authority, and
- (e) The report of the Inspector.

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The original chalet situated on this site was a “house” and a “habitable house” within the meaning of Section 2 of the Planning and Development Act, 2000, as amended, and, on the basis of the documentation submitted as part of the referral, was in existence prior to the appointed day of 1st October 1964, and was therefore established.
- (b) The works for the refurbishment of the original chalet on the site, the improvement to the infrastructure, including the provision of a percolation area and the repair/upgrade of the septic tank on the site, and the removal of the pier from the existing entrance, all involved the carrying out of works, and therefore constitute development within the meaning of the legislation.

- (c) The works for the refurbishment of the original chalet on the site, in so far as can be ascertained from the documentation submitted on the file by the referrer and by the planning authority, involved the substantial removal of the original chalet and its replacement by the structure now existing on the site, and therefore, notwithstanding that the structure now existing on the site may have had the same floor area and be on the same footprint as the original chalet, would not come within the scope of Section 4 (1)(h) of the Planning and Development Act, 2000, as amended, not being works for the maintenance, improvement or other alteration of the original structure, but rather works for the provision of a new structure that has replaced that original structure;
- (d) There are no other provisions, in the Planning and Development Act 2000, as amended, or in the Planning and Development Regulations 2001, as amended, whereby this development would be classified as exempted development, and this development is therefore not exempted development;
- (e) The development involving the repair/upgrade of a septic tank and the provision of a percolation area, if the subject of an advisory notice under Section 70(H)(5) of the Water Services Act 2002, as amended, would be exempted development under Class 41(g) of Part 1 of the Second Schedule to the Planning and Development Regulations, 2001, as amended, but as no evidence of the service of such notice has been supplied as part of this referral, the development in question is not exempted development ;
- (f) The works to the entrance would come within the scope of Class 5 of Part 1 of the Second Schedule to the Planning and Development Regulations 2001, as amended, and are exempted development. On the basis of the documentation submitted with the referral, the Board is satisfied that the works in question have not resulted in the material widening of this means of access to the public road, and accordingly the restrictions on exemption set

out in Article 9 (1)(a)(ii) of the Planning and Development Regulations 2001, as amended, do not apply in this instance.

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 the refurbishment of a timber house and associated infrastructure at The Chalet, Furbo Hill, Spiddal, Co Galway is development and is not exempted development and that works to the entrance of these premises are development and are exempted development.

Board Member

Date: 12th April 2019

Philip Jones