



An
Bord
Pleanála

Board Direction
ABP-305218-19

The submissions on this file and the Inspector's report were considered at a Board meeting held on December 20th, 2019.

The Board decided, as set out in the following Order, that works carried out to maintain and improve a chalet and a septic tank/waste water treatment system at The Chalet, Furbo Hill, Spiddal, Co Galway are development and are not exempted development.

Board Order as follows:-

WHEREAS a question has arisen as to whether works carried out to maintain and improve a chalet and a septic tank/waste water treatment system at The Chalet, Furbo Hill, Spiddal, Co Galway are or are not development or are or are not exempted development.

AND WHEREAS Eamonn Murray of The Chalet, Furbo Hill, Spiddal, Co Galway, requested a declaration on this question from Galway County Council, and the Council issued a declaration on the 24th day of July 2017 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 20th day of August 2019.

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

(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 maintenance and improvement of the original chalet on the site and the repair/upgrade of the septic tank / wastewater treatment system on the site, all involved the carrying out of works, and, therefore, constitute development within the meaning of the legislation,

(c) the works for the maintenance and improvement 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 maintenance/improvement of a septic tank and wastewater treatment system, 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.

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 works carried out to maintain and improve a chalet and a septic tank/waste water treatment system at The Chalet, Furbo Hill, Spiddal, Co Galway are development and are not exempted development.

Note. The Board fully concurs with the Inspector in her analysis and response to the six questions posed by the referrer in his email to An Bord Pleanála on the 9th day of September 2019. However, because these questions were not set out in his original Section 5 request to the planning authority for a declaration on the 1st day of July

2019, and therefore were not included in the planning authority's declaration of July 24th, 2019, and as it is the planning authority's declaration that is referred to An Bord Pleanála for review, under Section 5 of the Act, the responses to the six questions are not included in the Board Order. This note is therefore provided in this Direction for clarity.

[Please issue a copy of this Direction to the referrer and to the planning authority, with the Board Order.]

Board Member

Date: 20th December 2019

Philip Jones