



An  
Bord  
Pleanála

**Board Direction**  
**04.RL3571**

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The submissions on this file and the Inspector's report were considered at a Board meeting held on May 18<sup>th</sup> 2018.

The Board decided, as set out in the following Order, that  
*[please list questions 1 – 17 as per PA letter received on 11<sup>th</sup> April]*  
are development and are not exempted development.

Board Order as follows:-

**WHEREAS** questions have arisen as to whether  
*[please list questions 1 – 17 as per PA letter received on 11<sup>th</sup> April]*  
are or are not development or are or are not exempted development.

**AND WHEREAS** Cork County Council referred these questions to An Bord Pleanála, pursuant to Section 5 (4) of the Planning and Development Act, 2000, as amended, on the 11<sup>th</sup> day of April 2017

**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, and the Classes set out in Part 1 of the Second Schedule to these Regulations.
- (c) The planning history of the site, including planning permission register reference number 08/6647, and the terms and conditions of that permission,
- (d) The nature and extent of the works have been carried out and the date when such works were carried out,
- (e) The documentation on file, including submissions by the owner/occupier,
- (f) Relevant case law, and in particular *Horne vs Freeney* [1982 IEHC 20], and
- (g) The report of the Inspector, including of his inspection of the subject site.

**AND WHEREAS** An Bord Pleanála has concluded that:

- (a) The works undertaken on site constitute development, as defined under Sections 2 and 3 of the Planning and Development Act 2000, as amended;
- (b) The works that have been carried out on site were carried out during the construction of the house proposed under planning permission register reference number 08/6647, but were materially different from the development authorised by that permission, and were therefore not carried out in compliance with that permission. The works that were carried out were therefore not permitted development.
- (c) The locations of the subject house and of the domestic garage are significantly and materially different from the locations as permitted under planning permission register reference number 08/6647, and this development is therefore not 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 an existing structure, but rather works for the construction of new structures;

- (d) The other development that has taken place on the site, as outlined in the referral, involving alterations to the house, are not 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 an existing structure, but rather works carried out during the construction of the house, such house being a new structure, and having regard to case law, the exemptions afforded under Section 4 (1)(h) cannot be availed of as the house had not, prior to the works, first been built in accordance with the plans and particulars of planning permission register reference number 08/6647;
- (e) The other development that has taken place on the site, as outlined in the referral, involving works along the road boundary, are not 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 an existing structure, and would not be exempted development under Article 6 of the Planning and Development Regulations, 2001, as amended, or any Class set out in the Second Schedule to these Regulations, by reason of the restriction on exemption set out in Article 9 (1)(a)(i), as the development in question would contravene condition 1 of planning permission register reference number 08/6647.

**NOW THEREFORE** An Bord Pleanála, in exercise of the powers conferred on it by Section 5 (4) of the Planning and Development Act, 2000, as amended, hereby decides that *[please list questions 1 – 17 as per PA letter received on 11<sup>th</sup> April]* are development and are not exempted development.

**Board Member**

**Date:** 4<sup>th</sup> July 2018

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Philip Jones