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**Planning and Development Acts 2000 to 2018**

**Planning Authority: Wicklow County Council**

**Planning Register Reference Number: EX 03/18**

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

**AND WHEREAS** Darragh McAuliffe of number 2 Rosehill Close, Wicklow Town, County Wicklow 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 number 2 Rosehill Close, Wicklow Town, County Wicklow is or is not development or is or is not exempted development:

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

**AND WHEREAS** Darragh McAuliffe of number 2 Rosehill Close, Wicklow Town, County Wicklow referred the declaration for review to An Bord Pleanála on the 7<sup>th</sup> 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”, and
- (b) Articles 6 and 9 of the Planning and Development Regulations, 2001, as amended, and Part 1 of Schedule 2 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 one metre above the level of the adjoining ground, and, therefore, these changes are not exempted development under Class 6 of Part 1 of Schedule 2 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 Schedule 2 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, and

(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 Schedule 2 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 2000 Act, as amended, hereby decides 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 number 2 Rosehill Close, Wicklow Town, County Wicklow is development and is not exempted development.

## **Matters Considered**

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

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**Philip Jones**

**Member of An Bord Pleanála  
duly authorised to authenticate  
the seal of the Board.**

**Dated this            day of            2018.**