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**Planning and Development Acts 2000 to 2017**

**Planning Authority: Cork County Council**

**Planning Authority Reference Number: EF15022**

**WHEREAS** questions have arisen as to whether –

- (1) the works undertaken to change the location of the house by circa five metres closer to the estate road and circa five metres closer to the local public road, when compared with the location shown on the drawings permitted by planning register reference number 08/6647 are or are not development or are or are not exempted development,
- (2) the works undertaken to change the location of the domestic garage by circa five metres forward and running parallel with the back wall of the house, when compared with the location shown on the drawings permitted by planning register reference number 08/6647 are or are not development or are or are not exempted development,
- (3) the construction of a roof terrace balcony constructed on south-east (front) elevation where a flat roof was permitted by planning register reference number 08/6647 is or is not development or is or is not exempted development,

- (4) the omission of a window on south-east (front) elevation permitted by planning register reference number 08/6647 and the provision of a porch door in lieu is or is not development or is or is not exempted development,
- (5) the omission of the play/family room side extension from the as constructed house when compared with the plans permitted by planning register reference number 08/6647 is or is not development or is or is not exempted development and whether it could be regarded as a material departure from the plans which could be interpreted as a different house plan,
- (6) the omission of the stone cladding on south-east (front) elevation permitted by planning register reference number 08/6647 and the provision of a plaster finish in lieu is or is not development or is or is not exempted development,
- (7) the omission of a window on dormer on south-east (front) elevation permitted by planning register reference number 08/6647 and the provision of a French door in lieu is or is not development or is or is not exempted development,
- (8) the changes to height of the front elevation ground floor wall and ground floor window and the relationship of these with the eaves on the dormer roof from that permitted by planning register reference number 08/6647 are or are not development or are or are not exempted development,
- (9) the omission of a chimney permitted by planning register reference number 08/6647 on north-east (side) elevation is or is not development or is or is not exempted development,
- (10) the modification of arrangement of rear windows/roof lights on north-west (rear) elevation from that permitted by planning register reference number 08/6647 is or is not development or is or is not exempted development,

- (11) the provision of extra first floor gable window on south-west (side) elevation from that permitted by planning register reference number 08/6647 is or is not development or is or is not exempted development,
- (12) the modification of proportions between walls, windows and roof on south-east (side) elevation from that permitted by planning register reference number 08/6647 is or is not development or is or is not exempted development,
- (13) the provision of an embankment retained by a stone wall at road boundary in lieu of a gradual slope with a timber post fence on the plans permitted by planning register reference number 08/6647 is or is not development or is or is not exempted development,
- (14) the alterations to the structures individually or cumulatively come within the scope of Section 4(1)(h) of the Planning and Development Act, 2000 on the basis that they were carried out during the construction of the house for which permission was granted under planning register reference number 08/6647,
- (15) the alterations to the house individually or cumulatively come within the scope of Section 4(1)(h) of the Planning and Development Act, 2000 by materially affecting the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures,
- (16) any possible exemptions available to the developer are restricted by Article 9(1)(a)(i) of the Planning and Development Regulations, 2001, as amended, by reason of the terms of condition number 1 of planning register reference number 08/6647,

(17) the alterations to the house individually or cumulatively carried out to improve the energy performance of the building are or are not development and are or are not exempted development.

all at site number 1, Atlantic View, Ballinluska, Myrtleville, County Cork,

**AND WHEREAS** these questions were referred to An Bord Pleanála by Cork County Council of County Hall, Cork 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 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 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 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 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 register reference number 08/6647.

**NOW THEREFORE** An Bord Pleanála, in exercise of the powers conferred on it by section 5 (4) of the 2000 Act, hereby decides that, at site number 1, Atlantic View, Ballinluska, Myrtleville, County Cork, –

- (1) the works undertaken to change the location of the house by circa five metres closer to the estate road and circa five metres closer to the local public road, when compared with the location shown on the drawings permitted by planning register reference number 08/6647 are development and are not exempted development,
- (2) the works undertaken to change the location of the domestic garage by circa five metres forward and running parallel with the back wall of the house, when compared with the location shown on the drawings permitted by planning register reference number 08/6647 are development and are not exempted development,
- (3) the construction of a roof terrace balcony constructed on south-east (front) elevation where a flat roof was permitted by planning register reference number 08/6647 is development and is not exempted development,

- (4) the omission of a window on south-east (front) elevation permitted by planning register reference number 08/6647 and the provision of a porch door in lieu is development and is not exempted development,
- (5) the omission of the play/family room side extension from the as constructed house when compared with the plans permitted by planning register reference number 08/6647 is development and is not exempted development,
- (6) the omission of the stone cladding on south-east (front) elevation permitted by planning register reference number 08/6647 and the provision of a plaster finish in lieu is development and is not exempted development,
- (7) the omission of a window on dormer on south-east (front) elevation permitted by planning register reference number 08/6647 and the provision of a French door in lieu is development and is not exempted development,
- (8) the changes to height of the front elevation ground floor wall and ground floor window and the relationship of these with the eaves on the dormer roof from that permitted by planning register reference number 08/6647 are development and are not exempted development,
- (9) the omission of a chimney permitted by planning register reference number 08/6647 on north-east (side) elevation is development and is not exempted development,
- (10) the modification of arrangement of rear windows/roof lights on north-west (rear) elevation from that permitted by planning register reference number 08/6647 is development and is not exempted development,
- (11) the provision of extra first floor gable window on south-west (side) elevation from that permitted by planning register reference number 08/6647 is development and is not exempted development,

- (12) the modification of proportions between walls, windows and roof on south-east (side) elevation from that permitted by planning register reference number 08/6647 is development and is not exempted development,
- (13) the provision of an embankment retained by a stone wall at road boundary in lieu of a gradual slope with a timber post fence on the plans permitted by planning register reference number 08/6647 is development and is not exempted development,
- (14) the alterations to the structures individually or cumulatively do not come within the scope of Section 4(1)(h) of the Planning and Development Act, 2000,
- (15) the alterations to the house individually or cumulatively do not come within the scope of Section 4(1)(h) of the Planning and Development Act, 2000,
- (16) any possible exemptions available to the developer are restricted by Article 9(1)(a)(i) of the Planning and Development Regulations, 2001, as amended, by reason of the terms of condition number 1 of planning register reference number 08/6647,
- (17) the alterations to the house individually or cumulatively carried out to improve the energy performance of the building are development and are not exempted development.



