



An
Bord
Pleanála

Inspector's Report ABP 301153-18

Question

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 ground level is or is not development or is or is not exempted development.

Location

No 2 Rosehill, Wicklow, Co. Wicklow.

Declaration

Planning Authority

Wicklow Co. Council

Planning Authority Reg. Ref.

Ex03/18

Applicant for Declaration

Daragh McAuliffe

Planning Authority Decision

Is not exempted development

Referral

Referred by

Daragh McAuliffe

Owner/ Occupier

Daragh McAuliffe

Date of Site Inspection

4/7/2018

Inspector

Siobhan Carroll

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1.0 Site Location and Description

1.1. Rosehill housing estate is located on elevated lands on the outskirts of Wicklow Town. The subject property no. 2 Rosehill is a detached dormer dwelling with associated garden and vehicular driveway. It is one of four dwellings which were construction circa ten years ago to the west of the existing dwellings within Rosehill housing estate. The property is served by a rear garden with a depth of circa 13m. It features a patio, grass lawn and the subject wooden cabin located in the north-western corner of the rear garden. A granite stone retaining wall has been constructed to the south of the cabin.

2.0 The Question

2.1. 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 ground level is or is not development or is or is not exempted development.

3.0 Planning Authority Declaration

3.1. Declaration

Wicklow County Council issued a declaration under Section 5 of the Planning and Development Act 2000, on the 9th day of February, 2018 stating that the Planning Authority considers that the change of ground level by excavation, the construction of a retaining wall for support and the erection of a wooden cabin for use as study/office on the new ground level is development but is not exempted development.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The referral relates to the erection of a wooden cabin for use as a study/office and whether it is or is not exempted development within the meaning of the Planning and Development Acts, 2000 as amended.

- It was noted on inspection, that the ground level where the cabin was erected had been lowered below that the adjoining ground level and that a 1.5m high retaining wall had been erected.
- It was established that there were three elements relating to the ongoing works, the change of ground level by excavation, the construction of a retaining wall and the erection of a wooden cabin as a study.
- The change in ground levels was over 1m below the adjoining ground level. It was concluded that the development did not come within the scope of the exemption provision of Schedule 2, Part 1 Class 6 if the Planning and Development Regulations 2001 (as amended).
- The 1.5m high granite stone retaining wall located within the curtilage of a house was considered due to its height and location to come within the provisions of Schedule 2, Part 1 Class 5 if the Planning and Development Regulations 2001 (as amended).
- The wooden cabin erected to the rear of the dwelling has an area of 12sq m and is 2.6m high. It has a monopitch roof with a timber finish. It was concluded that while the wooden cabin due to its location within the curtilage of a house, to the rear of the property and due to its size and use would come within the provisions of Schedule 2, Part 1 Class 3 if the Planning and Development Regulations 2001 (as amended), however as the ground on which the wooden cabin and retaining wall were erected was altered below 1m of the adjoining ground level that the works and alterations does not come within the exemption provisions and that the works and alterations has no benefit of planning permission and therefore is considered unauthorised development.

4.0 Planning History

PA Reg. Ref. D04/783 – Permission was granted for 4 no. detached dormer bungalows, estate road and ancillary site development works at Rose Hill, Ballyguile Road, Wicklow.

5.0 Policy Context

5.1. Development Plan

The operative development plan is the Wicklow Town – Rathnew Development Plan 2013 – 2019. The site is zoned RE: Existing Residential. The objective for this zoning is to protect, provide and improve residential amenities of existing properties and areas while allowing for infill residential development that reflects the established character of the area in which it is located and with minimal impact on the existing residential amenity.

6.0 The Referral

6.1. Referrer's Case

- The rear garden is sloped and terraced with gradients between 7° and 30°. The ground level fall by 2.25m over a length of 10m.
- The levelling of ground was necessary to restrict the overall height of the erected wooden cabin. This approach was adopted in order to protect residential amenities of neighbouring properties.
- If the ground level were not altered in this manner the construction would have been 600mm higher. The excavation carried out at the deepest point is 400mm.
- The subject wall was constructed with reclaimed Wicklow granite. Soil was placed above and behind the wall and increased the change of level by more than 1m.
- It was intended to fill the lower level of the excavation between the wall and the cabin with patio stones. This measure would decrease the change of level by 100mm - 150mm. The soil above the wall was not levelled or had not settled at the time that it was inspected by the Planning Officer from Wicklow Co. Council. It is considered that when the soil was levelled and distributed throughout the garden that the change in level would decrease by 300mm – 400mm.

- The report provided by Wicklow Co. Council states that the wall measures 1.5m high. It is stated in the referral submission that the wall is no more than 1.3m high.
- With the reduction in the change of ground level following the levelling of the soil it is considered that the change in ground level would be no more than 800mm either side of the wall.
- Mr. McAuliffe states that the specific planning requirements in relation to excavation were not clear to him and therefore were overlooked. He states that he is amenable to altering the ground level in order to address the matter to the satisfaction of the Planning Authority.

6.2. Planning Authority Response

- The Planning Authority stated that they have no observations.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000 (as amended)

Under Section 2(1), the following is the interpretation of 'works':

"...includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal..."

'unauthorised development' includes the "carrying out of unauthorised works (including the construction, erection or making of any unauthorised structure) or the making of any unauthorised use."

'unauthorised works' means any works on, in over or under land commenced on or after the 1st of October 1964, being a use which is a material change in use of any structure or other land and being development other than –

(a) Exempted development (within the meaning of section 4 of the Act of 1963 or section 4 of this Act, or.....

(b) development which is the subject of a permission granted under Part IV of the Act of 1963 or under section 34 of this Act, being a permission which has not been revoked, and which is carried out in compliance

with that permission or any conditions to which that permission is subject'

Section 3 (1) states as follows:

"In this Act, 'development' means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land."

Section 4(1) of the Act states that the following shall be exempted developments for the purposes of this Act:

Section 4 (2)(a) of the Act enables certain classes of development to be deemed exempted development by way of regulation.

7.2. Planning and Development Regulations, 2001 (as amended)

Article 6 (1) states as follows:

Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.

Article 9 (1) (a) sets out the instances where development, to which Article 6 relates, shall not be exempted development for the purposes of the Act (a) if the carrying out of such development would — (i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act and (viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use,

Schedule 2

Part 1 – Exempted Development – General – Development within the curtilage of a house

CLASS 3

The construction, erection or placing within the curtilage of a house of any tent, awning, shade or other object, greenhouse, garage, store, shed or other similar structure.

Conditions and Limitations

1. No such structure shall be constructed, erected or placed forward of the front wall of a house.
2. The total area of such structures constructed, erected or placed within the curtilage of a house shall not, taken together with any other such structures previously constructed, erected or placed within the said curtilage, exceed 25 square metres.
3. The construction, erection or placing within the curtilage of a house of any such structure shall not reduce the amount of private open space reserved exclusively for the use of the occupants of the house to the rear or to the side of the house to less than 25 square metres.
4. The external finishes of any garage or other structure constructed, erected or placed to the side of a house, and the roof covering where any such structure has a tiled or slated roof, shall conform with those of the house.
5. The height of any such structure shall not exceed, in the case of a building with a tiled or slated pitched roof, 4 metres or, in any other case, 3 metres.
6. The structure shall not be used for human habitation or for the keeping of pigs, poultry, pigeons, ponies or horses, or for any other purpose other than a purpose incidental to the enjoyment of the house as such.

CLASS 5

The construction, erection or alteration, within or bounding the curtilage of a house, of a gate, gateway, railing or wooden fence or a wall of brick, stone, blocks with decorative finish, other concrete blocks or mass concrete.

Conditions and Limitations

1. The height of any such structure shall not exceed 2 metres or, in the case of a wall or fence within or bounding any garden or other space in front of a house, 1.2 metres.
2. Every wall other than a dry or natural stone wall bounding any garden or other space shall be capped and the face of any wall of concrete or concrete block (other than blocks with decorative finish) which will be visible from

any road, path or public area, including public open space, shall be rendered or plastered.

3. No such structure shall be a metal palisade or other security fence.

CLASS 6

(a) The construction of any path, drain or pond or the carrying out of any landscaping works within the curtilage of a house.

(b) Any works within the curtilage of a house for—

(i) the provision to the rear of the house of a hard surface for use for any purpose incidental to the enjoyment of the house as such, or,

(ii) the provision of a hard surface in the area of the garden forward of the front building line of the house, or in the area of the garden to the side of the side building line of the house, for purposes incidental to the enjoyment of the house as such.

Conditions and Limitations

The level of the ground shall not be altered by more than 1 metre above or below the level of the adjoining ground.

Provided that the area of the hard surface is less than 25 square metres or less than 50% of the area of the garden forward of the front building line of the house, or 50% of the area of the garden to the side of the side building line of the house, as the case may be, whichever is the smaller,

or

if the area of the hard surface is 25 square metres or greater or comprises more than 50% of the area of the garden forward of the front building line of the house, or 50% of the area of the garden to the side of the side building line of the house, as the case may be, it shall be constructed using permeable materials or otherwise allow for rainwater to soak into the ground.

8.0 Assessment

8.1. Is or is not development

- 8.1.1. Development is defined under Section 3(1) of the Planning and Development Act, 2000 (as amended) as *'the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land'*. Works is defined under Section 2(1) of the Act *"...includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal..."*
- 8.1.2. Therefore, having regard to Sections 2(1) and 3(1) of the Planning and Development Act 2000 (as amended) it is considered that the change of ground level by excavation, the construction of retaining wall for support and the erection of a wooden cabin would constitute development under the above provisions of the Act.

8.2. Is or is not exempted development

- 8.2.1. The development which is the subject of the referral refers to three separate elements, (i) change of ground level by excavation (ii) the construction of retaining wall for support (iii) erection of a wooden cabin for use as a study/office on ground level
- 8.2.2. Having reviewed the provisions of Class 6(a) of Part 1 of Schedule 2, of the Planning and Development Regulations, 2001, as amended which refers to development within the curtilage of a house. This provision of the Regulations specifically refers to landscaping works within the curtilage of a house. The conditions and limitations which refer to this state that *"the level of the ground shall not be altered by more than 1 metre above or below the level of the adjoining ground."*
- 8.2.3. On inspection of the rear garden of the property I measured the height of the retaining wall constructed in the north-west corner of the garden. The height of the wall varies between 1.24m at the centre to 1.3m adjacent to the western boundary of the property. Therefore, the level of the ground at this area of the rear garden has been altered by more than 1 metre as the landscaping works have resulted in the level of the garden in the north-west corner being over 1 metre lower than the adjoining area of the garden. Accordingly, the change of ground level by excavation carried out does not come with the provisions of the exemption provided under of

Class 6(a) of Part 1 of Schedule 2, of the Planning and Development Regulations, 2001, as amended.

- 8.2.4. In relation to the construction of retaining wall, Class 5 of Part 1 of Schedule 2, of the Planning and Development Regulations, 2001, as amended which refers to the construction, erection or alteration within or bounding the curtilage of a house of a gate, gateway, railings or wooden fence or wall and it includes a stone wall. The conditions and limitations which refer to this state that *“the height of any such structure shall not exceed 2 metres or, in the case of a wall or fence within or bounding any garden or other space in front of a house, 1.2 metres.”*
- 8.2.5. The subject retaining wall has been constructed with granite stones. The height of the wall from my measurement on inspection was 1.24m at the centre of the wall with a maximum height of 1.3m at the western end of the wall near the boundary. As the height of the wall is under 2 metres and as it is not located to the front of the property, it satisfies the conditions and limitations. Accordingly, I consider that the subject granite stone retaining wall comes within the scope of the exempted development provided for under Class 5 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended.
- 8.2.6. However, I consider that the restriction on the exemption provided under Article 9 (1) (a) (viii) in relation to Article 6 applies. The subject granite stone retaining wall cannot avail of the exemption provided under Class 5 of Part 1 of Schedule 2, being development which has occurred on lands where there is unauthorised development, i.e. on lands where there has been a change of ground level by excavation. As set out above the change of ground level by excavation is not exempted development and it did not receive planning permission.
- 8.2.7. The wooden cabin is located in the rear garden in the north-west corner. The height of the structure from my measurement on inspection is 2.8m. The external width of the structure is 4.1m and the external depth of the structure is 3.1m. The area of the wooden cabin is circa 12sq m. Class 3 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended refers to development within the curtilage of a house with specific reference to the erection of a garage, store or shed or similar structure. There are 6 no. conditions and limitations which refer to provisions Class 3, the subject wooden cabin is under 25 square metres, is not located to the front of the dwelling, it would not reduce the area of rear garden to less

than 25 square metres, the monopitch roof has a height less than 3 metres and the use of the structure is as an study/office and not for human habitation or the keeping of animals.

- 8.2.8. Accordingly, I consider that the subject wooden cabin for uses as a study/office comes within the scope of the exempted development provided for under Class 3 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended. However, I consider that the restriction on the exemption provided under Article 9 (1) (a) (viii) in relation to Article 6 applies because the wooden cabin is a structure constructed on lands where unauthorised development has occurred i.e. on lands where there has been a change of ground level by excavation. As set out above the change of ground level by excavation is not exempted development and it did not receive planning permission.

9.0 Recommendation

- 9.1. I recommend that the Board should decide this referral in accordance with the following draft order.

WHEREAS a question has arisen as to 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 ground level is or is not development or is or is not exempted development.

AND WHEREAS Daragh McAuliffe requested a declaration on this question from Wicklow County Council and the Council issued a declaration on the 9th day of February, 2018 stating that the matter is development and is not exempted development:

AND WHEREAS Daragh McAuliffe referred this declaration for review to An Bord Pleanála on the 7th day of March, 2018:

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

particularly to –

- (a) Sections 2, 3 and 4 and Section 4(1)(a) of the Planning and Development Act, 2000, as amended,
- (b) Article 6 and 9 of the Planning and Development Regulations, 2001, as amended, and Part 1 of Schedule 2 to those Regulations, including Class 3, 5 and 6 and the conditions and limitations applicable
- (c) the planning history of the subject site:

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The raising of the ground levels has resulted in the level of the ground being altered by more than 1metre above the level of the adjoining ground and,
- (b) Therefore, does not come within the scope of the exempted development provisions of Class 6, Part 1, Schedule 2 of the Planning and Development Regulations, 2001 as amended,
- (c) The granite stone retaining wall is a development of a type coming generally within the scope of the exempted development provisions of Class 5, Part 1, Schedule 2 of the Planning and Development Regulations, 2001, as amended, but cannot avail of the exemption therein, being development which has occurred on lands where there is unauthorised development,
- (d) The wooden cabin is a development of a type coming generally within the scope of the exempted development provisions of Class 3, Part 1, Schedule 2 of the Planning and Development Regulations, 2001, as amended, but cannot avail of the exemption therein, being development which has occurred on lands where there is unauthorised development,

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3) (a) of the 2000 Act, 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 is development and is not exempted development.

Siobhan Carroll
Planning Inspector

12th of October 2018