



An
Bord
Pleanála

Inspector's Report

ABP 302905-18

Question

Whether a railing atop a shed and a timber fence beside the roof of this feature, the retention of a garden shed comprises exempted development.

Location

3 Wellfield Close, Wicklow, Co.
Wicklow.

Declaration

Planning Authority

Wicklow Co. Council

Planning Authority Reg. Ref.

Ex. 50/18

Applicant for Declaration

Seamus Mitchell

Referral

Referred by

Seamus Mitchell

Owner/ Occupier

Seamus Mitchell

Date of Site Inspection

29th January 2019

Inspector

Erika Casey

1.0 Site Location and Description

1.1. Wellfield Close off Monkton Row is located in the centre of Wicklow Town. The subject property no. 3 Wellfield Close is a detached gable fronted dwelling (single storey to the front and two storey to the rear) with associated vehicular driveway and gated access. The first floor of the dwelling has been constructed at street level with a lower floor accessible via external steps to the front and rear of the property. The property is served by a yard to the rear. The subject shed is situated in the south-western corner of the yard c. 5m from the dwelling. There is a stepped access to the roof area which is set out as a private amenity space. This private amenity space is bound to the south by the side wall of an existing structure on the adjacent site, by the boundary wall with timber fencing to the west and by a railing to the north where it overlooks the lower rear garden area. The Board should note that there is a concurrent referral relating to the subject property – ABP 302175-18.

2.0 The Question

2.1. Whether, following the removal of three features comprising a walkway (between the house and the roof of the shed), a railing atop this shed and a timber fence beside the roof of this same feature, the retention of a garden shed which contains 19.1 sq. metres and which is located to the rear of a dwelling at 3 Wellfield Close, Monkton Row, Wicklow, comprises exempted development. This referral specifically excludes the use of the roof of this structure for sitting out purposes and expressly entails the removal of steps which lead from the surface within the site to this roof.

3.0 Planning Authority Declaration

3.1. Declaration

- No declaration issued. Correspondence from Wicklow County Council dated the 16.10.2018 advises that the Planning Authority will not be issuing a Declaration for the reason that it has effectively already undertaken an assessment and issued a Declaration regarding this matter under Ref: EX 28/18.

3.2. Planning Authority Reports

Planning Reports 10.10.2018

- Notes that in relation to condition 11 attached to PRR1377/86 and condition 5 of PRR1823/92 as referenced in the referral documentation, the Planning Authority is satisfied that these conditions relate solely to the areas of public open space within the residential development of Wellfield and, therefore, are not relevant in the assessment of this section 5 application. In addition the Planning Authority is satisfied that Condition 12 as attached to PRR1377/76 does not authorise the works of excavation undertaken to the rear of no. 3 Wellfield Close.
- States that under referral reference EX28.18 the applicant accepted that the existing shed structure does not fall within the exempted development provisions set out in the Planning and Development Act 2000 but was of the opinion that the structure can be rendered lawful through removal of part of its fabric i.e. the removal of three features comprising a walkway between the house and the roof of the shed, a railing atop the shed and a timber fence beside the roof of this same feature. The Planning Authority considered that the development constituted development and was not exempted development.
- States that the Section 5 referral is almost identical to this previous referral save for the additional citation *“expressly entails the removal of the steps which lead from the surface within the site to the roof.”*
- It is noted that the ‘removal of the steps which lead from the surface within this site to this roof’ does not actually form part of the referral question nor has the removal of the steps been detailed on the submitted drawings, instead it would appear that the applicant wishes the Planning Authority to exclude the steps, along with the use of the roof of the shed for sitting out purposes from its assessment of this referral question. This however, is not considered acceptable or appropriate. The steps form an intrinsic part of the shed structure and, therefore, they have to be considered as part of this referral as to do otherwise would undermine the referral process and result in a declaration that is without merit.

- Consider that the construction of the shed constitutes development.
- Following an assessment of the planning history of the site, Wicklow Town Council, Planning Ref: 1823/92, it would appear that extensive works of excavation in excess of 1m below ground level has been carried out to the rear of the dwelling in the absence of planning permission.
- The construction of the garden shed could not have been carried out without these works having first taken place. It is not considered possible within the assessment to isolate the construction of the shed from the works of excavation previously undertaken.
- The excavation works carried out on site (where the ground level was altered by more than 1m) which resulted in a significant lowering of the ground level exceed the conditions and limitations under Class 3 to facilitate construction of the shed. Therefore, it does not come within the scope of the development set out in Class 3 of Part 1 of Schedule 2 of the Planning and Development Regulations.
- Regarding the use of the roof of the shed as an amenity space, it is noted that it is laid out and designed as an amenity space. It is considered that the use of the roof as an amenity space would comprise development and would give rise to planning issues such as overlooking/loss of privacy, visual amenity etc. that would not normally arise for the roof of a garden shed.
- The reference question refers to the removal of three features comprising a walkway between the house and the roof of the shed, a railing atop the shed and a timber fence beside the roof. It is specified that it excludes the use of the roof of the structure for sitting out purposes along with the steps which lead from the surface within this site to the roof. It is not considered possible to isolate the roof of the shed and its use as an amenity space. While elements of the existing structure are to be removed, it is not considered that these works would be sufficient to ensure that the roof of the structure cannot and would not be used as an amenity space. In particular, it is noted that the roof of the site is designed to be easily and directly accessed via the existing steps.

- The walkway is to be removed however, the steps which form part of the shed structure are to be retained and, therefore, the steps should be considered in the assessment of the referral.
- It is considered that the erection of the steps constitutes works and is, therefore, development. The steps are not required for the use of the structure as a shed. The steps provide direct access to and facilitate the use of a flat roof as an amenity space. This is a change of use which is considered material and constitutes development.
- Note that the shed was constructed on lands which were excavated without planning consent and, therefore, considered that Article 9(1) (a) (viii) of the regulations would apply.
- The Planning Authority concluded that the removal of three features comprising a walkway (between house and the roof of the shed), a railing atop this shed and a timber fence beside the roof of the feature, the retention of a garden shed of 19.1 sq. m. and which is located to the rear of a dwelling is development and is not exempted development.

4.0 Planning History

PA Reg. Ref. 17/1424 – Permission was granted for the retention of the existing porch as constructed.

PA Reg. Ref. 16/844 – Permission was refused for the retention of the existing porch as constructed for the following reason:

“The proposed development would represent consolidation of unauthorised development on this site, having regard to the existing development on site (shed, patio, steps and railings) for which no permission exists, the provision of such a form of development unduly impacts on the amenities of adjoining properties, undermines the planning regulations and would be contrary to the proper planning and sustainable development of the area.”

PA Reg. Ref. WTC92/1823 – Permission was granted for revisions to the subject dwelling.

Referral Reference EX28/18/Appeal Reference 302175

“Whether the removal of three features comprising a walkway (between house and the roof of the shed), a railing atop this shed and a timber fence beside the roof of the feature, the retention of a garden shed of 19.1 sq. m. and which is located to the rear of a dwelling at 3 Wellfield Close, Monkton Row, Wicklow comprises exempted development. This specifically excludes the use of the roof of this structure for sitting out purposes.”

Wicklow Co. Co. issued a declaration in June 2018 that the proposed development is not exempted development. The reason stated:

“The proposed development does not come within the scope of the development set out in Class 3 of Part 1 of Schedule 2 of the Planning and Development Regulations (as amended) because:

- a) The degree and scale of the works (which would not be exempted development having regard to the Planning and Development Regulations 1992 onwards) required to facilitate the construction of the shed.*
- b) The incorporation of a flat roof that is accessed via external steps which facilitate the use of the roof as an amenity space.”*

The Planning Authority considers that the garden shed referred to under this referral is development and is not exempted development.

This referral has been referred to the Board (ABP302175-18) and the decision is pending.

5.0 Policy Context

5.1. Development Plan

5.1.1 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.

5.2 Natural Heritage Designations

5.2.1 The nearest Natura 2000 site is the Murrow SPA located c. 0.5km to the north west of the site.

5.3 EIAR Screening

5.3.1 Having regard to nature of the development comprising an infill dwelling and the urban location of the site there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Referral

6.1. Referrer's Case

- The Planning Authority unequivocally accepts that the shed satisfies all of the regulatory prerequisites for exempted development. Consider that just 2 issues are contested, one of which concerns the use of the roof and as this is a matter which has been specifically excluded from the referral, with the access thereto now being proposed for omission, the substantive issue on which the planning authority concludes that this shed required permission comprises a belief that ground levels were altered to facilitate this feature. Consider there is no evidence before the Board which supports such a conclusion.
- The subject shed is of a type, height, size and position which would not require permission if erected in most rear gardens. The shed is beneath the size threshold in Class 3 Part 1 of the Second Schedule and no part of the structure is forward of the front wall of the house. The works which are required to change this structure into a building which complies with the provisions of Class 3, Part 1 of the second Schedule of the Planning and Development Regulations entail the demolition of the existing railings and the removal of the walkway between the house and the roof of this structure. It is considered that these alterations do not require planning permission.
- The present submission comprises a refined version of the earlier referral (EX28/18) with the submission of drawings that show the removal of the steps which lead to the roof of this shed.

The Board should note that the referrer's submission appears to be incomplete. The following points are noted from the submission made to Wicklow County Council dated the 15th of September 2018:

- The Report of the Planning Officer in Reg. EX. 28/18 acknowledged that the *'roof of the shed is...accessed via a walkway...to be removed'*, it observes that *'the steps... are to be retained'* and *'must therefore be considered'*. The difficulty with this approach is that the steps form part of the roof itself and indeed, even if removed, the roof would theoretically be accessible via a small step ladder (given the levels changes within the sites). In order to address this concern, however, it is proposed to alter this development in a manner which involves the removal of the steps which are of concern to the Council.
- The steps that currently serve the roof area are to be removed and filled in. Consider that these works can be undertaken pursuant to s. 4 (1) (h) of the Planning and Development Act. Note previous referral where the Board has held that an illegal development could later be rendered exempt.
- Note that enforcement correspondence from the Planning Authority does not question the external finishes of the structure, its height or its use for purposes incidental to the enjoyment of the house. There is clearly *prima facie* evidence to support the opinion that the subject development is exempt.
- The Planning Authority's reason concluding that the subject structure requires permission stems from the existence of a railing, fence, walkway, as well as the threat of this rooftop being used as an outdoor seating area. However, as these physical features are to be removed under section 163 of the Planning and Development Act, 2000 (as amended) and as the use of the roof as an amenity area is expressly and explicitly eliminated as part of this referral, there are no grounds under Article 9 of the Planning and Development Regulations, 2001 (as amended) to support the conclusion that the structure falls outside the parameters for exempted development status.
- The Board should note that the subject referral does not address in detail the issue of groundworks and excavation which it is contended by the Planning Authority have been carried out on site. This issue is addressed in the referrers original referral submission to Wicklow County Council under Reg. Ref.

Ex28/18 made on the 23rd of July 2018. Refer to ABP302175-a8 for further detail.

6.2. Planning Authority Response

Wicklow County Council Response 22/11/2018

- Notes this is the second Section 5 Declaration sought by Mr. Mitchell for the same development on his property at 3 Wellfield Close. The Planning Authority is satisfied that the reports on file in relation to both applications (Wicklow County Council Reference Ex28/18 and Ex50/18) adequately address the query raised by Mr. Mitchell.
- The Planning Authority is of the opinion that the Section 5 application relevant to this referral (Wicklow County Council Ref. 50/18) although rephrased/reworded slightly, is essentially the same as that previously submitted under EX28/18. The Planning Authority is concerned that the applicant is attempting to phrase the question in a particular way so as to obtain a Section 5 Declaration for this development which is not considered an appropriate use of the Section 5 process.

7.0 Statutory Provision

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..."

'Structure' means *"any building, structure, excavation or other thing constructed or made on, in or under any land, or any part of a structure so defined, and –*

(a) Where the context so admits, includes land on, in or under which the structure is situate"

'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 sets out the types of works that while considered development can be exempted development 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 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 Preliminary Matters

8.1.1 It should be noted that the purpose of this referral is not to determine the acceptability or otherwise of the subject development, but rather whether or not the matter in question constitutes development, and if so falls within the scope of exempted development.

8.1.2 In carrying out this assessment, the planning referrals data base was consulted. The following referral of relevance was found.

RL.2757

Whether the use of a flat roof as a balcony or roof garden at “Ivy Sea”, Sea Road, Arklow, County Wicklow is or is not development or is or is not exempted development. The Board found:

- (a) The provision of railings around a flat roof constitutes works and these works facilitate a change of use of a flat roof to use as open space in the form of a balcony or roof garden, which is a change of use and which is considered to be a material change of use and which together with the works constitutes development.
- (b) The development does not come within the scope of section 4 (1) (h) of the Planning and Development Act, 2000, being works which materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure and of neighbouring structure.
- (c) The development does not come within the scope of Class 6 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001, as the height of the hard surface relative to the adjoining ground exceeds that specified in the Conditions and Limitations attached to that class being more than one metre above ground level, and
- (d) The development does not come within the scope of Class 1 of Part 1 of the Schedule 2 of the Planning and Development Regulations, 2001, as the conditions and limitations attached to the said Class 1 stipulate that the roof of any extension shall not be used as a balcony or roof garden.

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 erection of a shed, walkway, railings and timber fence, 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 the removal of three features comprising a walkway (between house and the roof of the shed), a railing atop this shed and a timber fence beside the roof of the feature. The subject referral also refers to the retention of a garden shed of 19.1sq m.
- 8.2.2. In relation to the subject removal of the walkway, railing atop the subject shed and timber fence beside the roof of the feature, it is stated by the referrer that these works have been excluded from the query because such alterations do not require planning permission under Section 163 of the Planning and Development Act. Whilst I am satisfied that the removal of these elements of the development is likely to constitute exempted development as defined in section 4(1)(h) of the Planning and Development Act, 2000, as amended, as this issue has been excluded from the referral question, I do not propose to consider it further in this assessment.
- 8.2.3. In relation to the subject shed, it is located in the rear garden in the north-west corner. The height of the structure is c. 2.2m. The area of shed is circa 19.1 sq. 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 shed 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 flat roof has a height less than 3 metres and the use of the structure is for storage ancillary to the dwelling and not for human habitation or the keeping of animals.
- 8.2.4. The wording of the submitted question specifically excludes the use of the roof of this structure for sitting out purposes as well as the steps which lead from the surface within the site to the roof. The Planning Authority in their assessment of the referral (dated 10.10.2018) stated that in relation to the use of the roof of the shed as an amenity space, that they are satisfied that the shed structure was designed and constructed to facilitate the use of the roof as an amenity space. Furthermore, it is considered that the steps form an intrinsic part of the shed structure and, therefore, they have to be considered as part of the referral. The Planning Authority is, therefore, of the opinion that the referrer's attempt to isolate the roof of the shed and

its use as an amenity space from the shed as well as the connecting stairs is inappropriate.

- 8.2.5. The shed has been designed and built with external steps located directly over the fuel storage section of the shed which provides access to the flat roof above the shed. The provision of the external steps provides easy access to the roof of the shed for amenity or other purposes which is a change of use of the structure, which represents a material change and which represents an unauthorised use. In the subject referral, it is indicated on the drawings submitted including drawing references 15/147/011F1 and 15/147/013F1 that the subject steps will be infilled to restrict access to the roof of the shed. It is asserted by the referrer that such works are exempt under Section 4(1)(h) of the Planning and Development Act, 2000, as amended. Whilst I would question whether the infilling of such steps would be exempted development under the provisions of Article 4 (1) (h), I consider this is a matter for determination by the Planning Authority under their enforcement powers. I note in this instance, the referrer has explicitly excluded these works - comprising the removal of the said steps and the use of the roof of the structure for amenity purposes from the referral question. I do not, therefore, propose to consider this matter further in this assessment. The key issue to considered is whether the provisions of Article 9)1) (a) (viii) of the regulations are applicable in this instance having regard to the opinion of the Planning Authority that the shed was constructed on lands which were excavated without planning consent.
- 8.2.6. The provisions of Class 6(a) of Part 1 of Schedule 2, of the Planning and Development Regulations, 2001, as amended 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 class 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.”*
- 8.2.7. It is contended by the Planning Authority that extensive works of excavation have been carried out to the rear of the property and that the construction of the shed could not have been carried out without these works having taken place first. In relation to these alterations of the ground level carried out to the rear of the dwelling, the referrer contends in their submission made under Reference EX28/18 (ABP Reference 302175-18) that the Planning Authority are incorrect in their assertion that

the ground level to the rear of the property was lowered in excess of 1m below the original ground level in the absence of planning permission. In response to the matter the referrer puts forward the case that there are no records in the history files under Reg. Ref 1377/86 and Reg. Ref. 1823/93 which depict land levels in the garden prior to permission being granted and there are no historical notes on file to support the details presented by the Council in relation to the site levels.

- 8.2.8. Drawing No: 1010-C2B submitted by the referrer in reference case 302175-18 illustrates a cross section of the dwelling and the ground levels to the rear of the property. The Planning Authority in determining enforcement proceedings in relation to the property placed ground levels in red ink on the drawing. While I note that the referrer disputes these ground levels, this drawing provides the only available record of ground levels of the dwelling as permitted under PA. Reg. Ref. 92/1823 and as built. As indicated on the drawing, there is a height difference of 1.35m between the ground level as granted and the ground level as built.
- 8.2.9. The letter submitted by Deane Turner Associates Consulting Engineers in September 2015 on behalf of the referrer Mr. Mitchell to the Planning Authority in response to enforcement proceedings (see file 302175) stated that the floor level of these sheds was lowered to approximately 1.2m from their original ground level. Whilst, I note this figure is later revised by Deane Turner Associates Consulting Engineers from 1.2m to 0.86m, having regard to plans and documentation available and having inspected the site, I would be of the opinion that the level of the ground at this area of the rear garden has been altered by more than 1 metre below the permitted ground level to the rear of the dwelling.
- 8.2.11 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 as the level of the ground was altered by more than 1 metre below the level of the adjoining ground.
- 8.2.10. In conclusion, I consider that the subject shed 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 shed 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 in excess of 1 metre. As set out above, the change of ground level by excavation is not exempted development and it did not have the benefit of 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, following the removal of three features comprising a walkway (between house and the roof of the shed), a railing atop this shed and a timber fence beside the roof of this same feature, the retention of a garden shed of 19.1 sq. m. and which is located to the rear of a dwelling at 3 Wellfield Close, Monkton Row, Wicklow is or is not development and is or is not exempted development.

AND WHEREAS Seamus Mitchell requested a Declaration on the said question to An Bord Pleanála on the 31st day of October 2018.

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

- (a) Sections 2 and 3 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 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 construction of the subject shed constitutes “works” and is therefore “development” within the meaning of Section 3 of the Act,
and

- (b) The lowering of the ground levels to the rear of the property has resulted in the level of the ground being altered by more than 1 metre below the level of the adjoining ground and,
- (c) The development, 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, having regard to the conditions and limitations which state "*The level of the ground shall not be altered by more than 1 metre above or below the level of the adjoining ground.*" The restrictions on exemptions outlined in Article 9 (1) (a) (viii) are applicable in this instance as the shed is a structure constructed on lands where unauthorised development has occurred.
- (d) The shed 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) (b) of the 2000 Act, hereby decides that retention of a garden shed of 19.1 sq. m. is development and is not exempted development.

Erika Casey

Senior Planning Inspector

29th January 2019