



An  
Bord  
Pleanála

## Inspector's Report ABP-302930-18

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<b>Question</b>	Whether the refurbishment of a timber house and associated infrastructure and entrance is or is not development or is or is not exempted development.
<b>Location</b>	The Chalet, Furbo Hill, Spiddal, Co. Galway. H91NVY7
<b>Declaration</b>	
Planning Authority	Galway County Council
Planning Authority Reg. Ref.	ED18/49
Applicant for Declaration	Eamon Murray
Planning Authority Decision	Is not exempted development
<b>Referral</b>	
<b>Referred by</b>	Eamon Murray.
<b>Owner/ Occupier</b>	Eamon Murray.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	18 <sup>th</sup> January 2019.
<b>Inspector</b>	Sarah Lynch

## **1.0 Site Location and Description**

- 1.1. The development is situated in a rural location at Furbo hill, 5km east of Spiddal Village and c. 500 metres west of Furbogh Beach on the northern side of the R336. The site is directly accessed off the regional road and abuts a junction to the west where a minor road meets the R336.
- 1.2. The site is accessed via an open entrance directly off the R336 and is bounded by a mature hedgerow and treeline. The lands slope up in a northerly direction and form part of a small wood to the north east. The driveway is finished with loose stone and is bounded by a rough dry stone wall.
- 1.3. A small metal shed is sited to the east of the entrance within the driveway and the drive meanders around this structure to the existing chalet. The chalet is c. 40 square metres, single storey in height and finished with a metal roof and timber clad walls. An open garden area is provided to the south and south west of the chalet. The site is well screened from the surrounding area due to the dense hedging and treeline along all boundaries and is largely out of sight from the public roads.

## **2.0 The Question**

- 2.1. Whether the refurbishment of a timber house and associated infrastructure and entrance is or is not development or is or is not exempted development.

## **3.0 Planning Authority Declaration**

### **3.1. Declaration**

The Declaration issued by the planning authority concluded:

- The construction of existing timber frame house, existing infrastructure and existing entrance onto the R336 on lands at Furbo Hill, Spiddal County Galway is development, and is Not Exempted Development, as the existing chalet appears to have been completely replaced and
- the existing effluent treatment system upgraded to EPA standards after the 1<sup>st</sup> of October 1964.

- the widened entrance on to R336 regional road is Not Exempt Development as the regional road's width is greater than 4 metres.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

The report of the area planner reflects the declaration that the proposed construction of existing timber frame house, existing infrastructure and existing entrance onto the R336 on lands at Furbo Hill, Spiddal County Galway is development under Section 3 of the Planning and Development Act 2000, as amended, and is Not Exempted Development under Article 6 of the Planning and Development Regulations, 2001, as amended, as the existing chalet appears to have been completely replaced and the existing effluent treatment system upgraded to EPA standards after the 1<sup>st</sup> of October 1964. Furthermore, the widened entrance on to R336 regional road is Not Exempt Development as the regional road's width is greater than 4 metres. The following issues have been considered within the planners report and are summarised as follows:

- Google imagery from 2010 shows the chalet missing from the site.
- Upgrade works to effluent treatment system have been carried out post 1<sup>st</sup> October 1964 and are considered development.
- It has not been established by the applicant whether the entrance had been widened or not post 1<sup>st</sup> October 2018.

#### 3.2.2. Other Technical Reports

- None

### 4.0 Planning History

- 18/1340 – Permission was **refused** for the partial dismantling of existing single-storey timber frame chalet and construction of a new first floor extension and relocation of existing entrance.

## 5.0 Policy Context

### 5.1. Development Plan

The site is located in a Class 3 designated rural landscape, which has a landscape sensitivity rating of high.

### 5.2. Natural Heritage Designations

None

## 6.0 The Referral

### 6.1. Referrer's Case

- The chalet has been in situ since 1960.
- It has been refurbished and not replaced.
- Building needed urgent care and maintenance.
- All works were carried out on site.
- The appearance was not materially affected in accordance with Article 4(1)(h).
- It is on the same footprint, is the same size and has the same cubic capacity and the pitch of the roof has been maintained.
- Original cladding was 53 years old and needed to be replaced.
- A letter of support has been submitted with the referral which states that the chalet has been on site for an extensive period of time.
- Entrance had been widened as far back as 2010.
- The pillar had deteriorated, the removal improves sight lines.

### 6.2. Planning Authority Response

- None

## 7.0 Statutory Provisions

### 7.1. Planning and Development Act, 2000

- Section 2 (1) of the Act provides the following definitions of relevance:
  - “habitable house” means a house which –
    - (a) is used as a dwelling,
    - (b) is not in use but when last used was used, disregarded any unauthorised use, as a dwelling and is not derelict, or
    - (c) was provided for use as a dwelling but has not been occupied;
  - “house” means -
    - a building or part of a building which is being or has been occupied as a dwelling or was provided for use as a dwelling but has not been occupied, and where appropriate, includes a building which was designed for use as 2 or more dwellings or a flat, an apartment or other dwelling within such a building;
  - “works” -
    - “...includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal.....”
- Section 3(1) of the Act states the following in respect of ‘development’:

“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)(a)- (i) set out what is exempted development for the purpose of the Act-
  - (h) development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures.

- Section 4 (2) provides for the making of the Regulations, Planning and Development Regulations, 2001.
- Section 5 (3) (A) states the following:
 

“Where a declaration is issued under this section, any person issued with a declaration under subsection (2)(a) may, on payment to the Board of such a fee as may be prescribed, refer a declaration for review by the Board within 4 weeks of the date of issuing the declaration.”

## 7.2. Planning and Development Regulations, 2001

- Section 9 (1) 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—
  - (ii) consist of or comprise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width
  - (iii) endanger public safety by reason of traffic hazard or obstruction of road users,
  - (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,

## 7.3. Referrals

- RL2046 - Restoration of Extension to dwelling at North Beach, Rush -
 

The Board concluded that the development was more properly described as the demolition of a previously existing structure and construction of a new dwelling and that the works did not come within the scope of Section 4(1)(g) of the 1963 Act. No evidence of the original chalet existed on the site.
- RL.2190 - Refurbishment works and an extension at Blackrock C. Louth – are development and are not exempt development as extent of works were demolition and replacement.

## 8.0 **Assessment**

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

### 8.2. **Is or is not development**

8.3. The works comprised replacement of existing roof, windows, door and timber cladding, upgrade and repair of existing percolation area and septic tank and removal of pillar at entrance. Section 2(1) of the Planning and Development Act 2000, (as amended) includes the definition of works as "...includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal...."

8.4. Section 3(1) of the Act states the following in respect of 'development', "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."

8.5. The works carried out on the chalet therefore constitute development within the meaning of the Act. The question that is relevant in this instance is whether the works carried out are or are not exempted development.

8.6. The works carried out to the septic tank and the provision of an upgraded percolation area constitute development within the meaning of the Act. The question that is relevant in this instance is whether the works carried out are or are not exempted development.

8.7. The works carried out to widen the existing entrance constitute development within the meaning of the Act. The question that is relevant in this instance is whether the works carried out are or are not exempted development.

### 8.8. **Is or is not exempted development**

8.9. There are essentially three elements to the question being asked, firstly is the refurbishment of the existing chalet exempted development, secondly is the upgrade

and repair of the existing septic tank and percolation area exempted development and thirdly is the widening of the entrance exempted development.

8.10. It is clear from the evidence available, including ordnance survey maps, that a house has existed on this site for a lengthy period. In Section 2 of the 2000 Act “house” is defined as:

a building or part of a building which is being or has been occupied as a dwelling or was provided for use as a dwelling but has not been occupied, and where appropriate, includes a building which was designed for use as 2 or more dwellings or a flat, an apartment or other dwelling within such a building.

and “habitable house” is defined as

a house which –

(a) is used as a dwelling,

(b) is not in use but when last used was used, disregarding any unauthorised use, as a dwelling and is not derelict, or

(c) was provided for use as a dwelling but has not been occupied.

8.11. The works carried out to the exterior of the chalet consist of the replacement of the roof, door and windows, and replacement of wooden cladding. The applicant has stated that he refurbished the building to its original size and shape on the original footprint. He further states that the construction and finish of the house employs identical materials to those that were in place already, only the quality of the building has been upgraded.

8.12. Having regard to the information submitted I consider that the extent of the works carried out were significant. It appears from the information submitted that the walls and roof of the chalet have been replaced. For the works in question to be exempted, they must fall within the range of operations specified in Section 4(1)(h) of the 2000 Act, which is expressed as follows:

(h) development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to



render the appearance inconsistent with the character of the structure or of neighbouring structures.

- 8.13. The relevant terms to be applied to the works carried out are improvement and alteration. Having regard to the description of works submitted by the applicant it is doubtful that any of the original structure remains, it is clear from the information supplied by the applicant that the works carried out resulted in the complete replacement of the structure in question. I therefore consider, that based on the extent of works carried out, the development would be more properly described as the demolition of a previously existing chalet and construction of a new chalet within the same footprint.
- 8.14. Thus, whilst I acknowledge that the appearance of the works does not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure, I consider the extent of works carried out can not be described as improvement and alteration and are more appropriately described as demolition and replacement. As such this element of the works is development and is not exempted development.
- 8.15. No specific details have been submitted with regard to the repair and maintenance of the existing septic tank. I note that the applicant refers to the works carried out on the septic tank and percolation area provide for a system that is now in accordance with current standards. In order to upgrade a system that is in excess of 50 years old to this level, significant works would be required.
- 8.16. There are no provisions within either the Planning and Development Act 2000 (as amended) or the Planning and Development Regulations 2001 (as amended) which refer to exemptions for this type development. I therefore conclude that the works carried out to the septic tank and percolation are development and are not exempted development.
- 8.17. The existing entrance has been widened in previous years by the removal of one entrance pillar, it is noted that the applicant states that these works were carried out as a result of the deterioration of the pillar and whilst I acknowledge the circumstances the resultant development was the widening of an existing access onto a Regional Road for which there are no provisions within either the Planning and Development Act 2000 (as amended) or the Planning and Development

Regulations 2001 (as amended) which refer to exemptions for this type of development, restrictions on this type of development are referred to as follows.

#### 8.18. **Restrictions on exempted development**

8.19. It is contended by the applicant that the pier to the east of the entrance fell down and was not removed intentionally, and as such the applicant maintains that he did not widen the entrance. Nonetheless the existing entrance has been altered and directly accesses the R336 regional road. Article 9(1) of the Planning and Development Regulations 2001 (as amended) restricts the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width.

8.20. I therefore conclude that the works carried out at the entrance of the site are development and by virtue of Article 9 (1)(a)(ii) are not exempted development.

### 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 refurbishment of a timber house and associated infrastructure and entrance is or is not development or is or is not exempted development:

**AND WHEREAS** Eamon Murray requested a declaration on this question from Galway County Council and the Council issued a declaration on the 11<sup>th</sup> day of October 2018 stating that the matter was development and was not exempted development:

**AND WHEREAS** referred this declaration for review to An Bord Pleanála on the 20<sup>th</sup> day of November, 2018:

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

particularly to –

- (a) Section 2(1) of the Planning and Development Act, 2000, as amended,
- (b) Section 3(1) of the Planning and Development Act, 2000, as amended,
- (c) Section 4(1)(a) of the Planning and Development Act, 2000, as amended,
- (d) Section 4(2) of the Planning and Development Act, 2000, as amended,
- (e) Section 5(3) of the Planning and Development Act, 2000, as amended,
- (f) article 6(1) and article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (g) Parts 1 and 3 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (h) the planning history of the site,

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

- (a) the works initiated to improve and alter the original chalet had the effect of demolishing the entire house which existed on the site, the structure now existing on the site is for all practical purposes a new house replacing the original house, the works carried out on the house do not fall within the range of works set out in Section 4(1)(h) of the Planning and Development Act, 2000,
- (b) there is no provision for exemption for works to repair/upgrade a septic tank or percolation area under the exempted development provisions of the Planning and Development Regulations 2001 (as amended).
- (c) The removal of the pier from the existing entrance has resulted in the

widening of this access which directly adjoins and accesses onto the R336 regional road. This road has a surfaced carriageway width of more than 4 metres. Article 9 of the Planning and Development Regulations, 2001, as amended restricts the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width.

**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 refurbishment of a timber house and associated infrastructure and entrance is development and is not exempted development.

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Sarah Lynch  
Planning Inspector

15<sup>th</sup> March 2019