



An
Bord
Pleanála

Inspector's Report ABP-302959-18

Question	Whether (a) an extension, (b) 'outhouse' to the rear is or is not development and is or is not exempted development.
Location	8 Herbert Park, Bray, Co. Wicklow
Referrer	Roman Jaferov
Planning Authority	Wicklow County Council
Planning Authority Reg. Ref.	Ex. 49/18
Observer	None
Date of Inspection	7 th February 2019
Inspector	Kenneth Moloney

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1.0 Site Location and Description

- 1.1. The referral site is located within a suburban housing development within Bray, Co. Wicklow.
- 1.2. No. 8 Herbert Park is an end of terraced two-storey residential property.
- 1.3. The house has a side entrance which provides access to the rear of the house and the rear garden.
- 1.4. There is a single storey extension situated to the rear of the house.
- 1.5. There is a single storey concrete built outhouse situated within the rear garden.
- 1.6. The outhouse is used as a bedroom / living space.
- 1.7. The outhouse has a tiled roof, render finished external walls and pvc windows and door.

2.0 The Declaration

- 2.1. The Planning Authority issued a declaration on the 15th of October 2018, to the effect that the (a) 14m² extension to the rear of no. 8 Herbert Park, Bray is development and is exempt development, and (b) the 'outhouse' to the rear of no. 8 Herbert Park, Bray is development and is not exempted development.
- 2.2. This Declaration has now been referred to the Board, pursuant to Section 5 of the Act, for review.
- 2.3. The main points of the Planner's report, upon which the Declaration decision was based, is summarised as follows: -

Rear Extension

- The erection of the single storey extension is works.
- The works is development in accordance with Section 3 of the 2000 Act.
- The extension would be exempt in accordance with Part 1, Class 1 of Schedule 2.

- The extension to the rear of no. 8 Herbert Park is development and is exempted development.

Outhouse

- The outhouse comprised of the erection of a structure on lands and is therefore works within the definition of development.
- The applicant is seeking to avail of exemptions set out in Class 3, Part 1 of Schedule 2 of the Planning and Development Regulations, 2001.
- The applicant has stated that the outhouse is used as temporary accommodation for the applicant's brother and partner. This would therefore not be exempted development in accordance with condition no. 6 of, Class 3, Part 1 of Schedule 2.
- Referral case RL2484 outlined that Class 3 related to other structures that are typically found within the curtilage of a house and that are not for human habitation purposes.
- Referral case RL2001 determined that the use of a children's den does not come within the provisions of Class 3 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001.
- A site inspection concluded that the outhouse is good enough to allow human habitation.
- As such Class 3 of Part 1 of Schedule 2 of the Planning and Development Regulations would not apply to the subject outhouse.
- Having regard to referral case RL2001 a gym would be considered to be a similar use to a playroom.
- It is considered that storage is ancillary to gym and accommodation uses. The use would not be storage in accordance with Class 3, Part 1, Schedule 2 of the Planning Regulations, 2001.
- It is considered that the structure represents an extension to an existing house.

- As the structure is not physically connected to the house it is considered that Class 1 of Part 1 of Schedule 2 of the Planning and Development Regulations do not apply.
- The structure represents an extension to the habitable area of the house and therefore the structure does not represent development for any purpose incidental to the enjoyment of the house as such the provisions of Section 4(1) (j) would not apply.

3.0 The Question

“Whether (a) the 14m² extension and (b) outhouse to the rear, is or is not development and/or is or is not exempted development’.

4.0 Policy Context

4.1. Development Plan

The operational Development Plan is the Bray Municipal District Local Area Plan, 2018.

Some relevant considerations of the LAP include;

- The appeal site is zoned RE ‘Existing Residential’.

5.0 The Referral

5.1. This referral relates to Part 2 of the Local Authority declaration. The following is the summary of the referral submission;

- The outhouse is a gym and ancillary storage, which is incidental to the enjoyment of the house.
- The applicant has allowed his brother to use the outhouse for temporary accommodation (rent free) due to the accommodation crisis in Dublin.

- The applicant is not requesting that this temporary accommodation use is exempt from planning.
- The request is that the temporary accommodation is not confused with the use as a gym and ancillary storage.
- It is submitted that there is a clear differentiation in the uses in order to determine an exemption and a non- exemption.
- It is submitted that it is acknowledged that the outhouse is not an extension to the dwelling.
- It is submitted that there is an inappropriate confusion of uses in the Section 5 Declaration as defined in this submission.
- An Bord Pleanala are requested to clarify a concise definition and separation of uses.

5.2. **Planning Authority Response**

None

5.3. **Referrer's Response**

None

5.4. **Observations**

None

6.0 **Evaluation**

6.1. **The Facts of the Case**

The facts of the matter include the following;

- On the **27th August 2018** a warning letter was issued by Wicklow County Council to the referrer.

- On the **19th of September 2018** a Section 5 application was submitted to Wicklow County Council asking the question whether (1) the 14m² extension and (2) ‘outhouse’ is or is not development or is or is not exempted.
- On the **24th of November 2018** Wicklow County Council issued a declaration that the planning authority considered that the extension is development and is exempted development and that the ‘outhouse’ is development and is not exempted development.
- On the **7th November 2018**, a first party referral was received by Roman Jaferov in accordance with the provisions of Section 5(3)(a) of the 2000 Act.

6.2. Statutory Provisions

I consider the following statutory provisions relevant to this referral case:

Planning and Development Act, 2000 (as amended)

Section 2 (1) states: - ‘development’ has the meaning assigned to it by Section 3, and ‘develop’ shall be construed accordingly;

Section 3 (1) states: -

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

Section 4 (1) sets out various forms and circumstances in which development is exempted development for the purposes of the Act.

Section 4 (2) of the Act provides that the Minister may, by regulations, provide for any class of development to be exempted development. The main regulations made under this provision are the Planning and Development Regulations, 2001.

Planning and Development Regulations, 2001(as amended)

Article 6(1) of the Regulations states as follows: - “(a) Subject to article 9, development consisting 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.

Part 1 of Schedule 2: Exempted Development – General:

Class 3:

Column 1 Description of Development	Column 2 Conditions and Limitations
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.	<ol style="list-style-type: none">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

	<p>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.</p> <p>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.</p>
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6.3. Other Relevant Case(s)

- RL 2001 – This case related to a question whether a children’s den and a garden store is or is not development and is or is not exempted development. Both structures were located in the rear garden of an existing house. The Board determined that a children’s den would not come within the scope of Class 3, Part 1, Schedule 2 of the Planning and Development Regulations, 2001 (as amended) and that the construction of the garden store would come within Class 3 and as such is exempted development.

6.4. Assessment

6.4.1. Is or is not development

The single storey extension and the outhouse would represent development having regard to the definition of ‘works’ and ‘structure’ in the Act as referred to above. I am satisfied that the construction of the subject extension and outhouse does constitute ‘development’.

6.4.2. Is or is not exempted development

Extension

- 6.4.3. The referrer submits that he is not appealing the declaration in relation to the single storey extension. In the Local Authority declaration, it was determined that the single

storey extension is exempted development having regard to Class 1, Part 1, Schedule 2 of the Planning and Development Regulations, 2001 (as amended).

- 6.4.4. I concur with the Local Authority that the single storey extension satisfies all the prescribed requirements stipulated under Column 1 Conditions and Limitations of Class 1. I conclude that the single storey extension constitutes development that is in fact exempted development.

Outhouse

- 6.4.5. The subject outhouse is located in the rear garden and is not attached to the rear or side of the house. Therefore the exempted development regulations applicable in accordance with Class 1, Part 1, Schedule 2 of the Planning and Development Regulations, 2001 (as amended) would not apply to the subject outhouse as these exemptions only apply to extensions that are attached to the house.
- 6.4.6. However, the subject outhouse is located within the curtilage of no. 8 Herbert Park and as such Class 3, Part 1, Schedule 2 of the Planning and Development Regulations, 2001, would be the relevant provisions for considering whether the outhouse is exempted development.
- 6.4.7. I would consider that the exempted development provisions available under Class 3, Part 1, Schedule 2 of the Planning Regulations, 2001, relate to both the structure and the use. The current use of the outhouse, as was evident from my site inspection, is a different use than the use for which exempted development is sought by the referrer.
- 6.4.8. The referral submission sought an exemption for a gym and ancillary storage. The referral submission also referred to the use of the outhouse for temporary accommodation for a relative of the applicant. I noted from my site inspection that the 'outhouse' was used as living accommodation. The internal area of the outhouse included a bed, wardrobe, desk with chair, and toilet and shower facility. The internal

area was serviced by heating, lighting and was alarmed. The structure, was effectively a bedroom with an ensuite. It was also evident from my site inspection that the accommodation unit was occupied and this is demonstrated in the attached photographs.

- 6.4.9. There are therefore two separate uses for the Board to consider. The use for which the exemption is sought i.e. gym and ancillary storage and the actual use within the structure, i.e. a one bedroom unit with ensuite. I will firstly consider whether a gym and ancillary storage area would actually be exempted development. As referred to above the 'outhouse' is not attached to the main house however it is situated within the curtilage of the house. As such I will consider Class 3, Part 1, Schedule 2 of the Planning Regulations, 2001.
- 6.4.10. Column 1 of Class 3 states '*the construction, erection or placing within the curtilage of a house of any tent, awning, shade, or other object, greenhouse, garage, store, shed or similar structure*'. I would consider that the outhouse in question, given the standard of construction, is a liveable space or a habitable space. The proposed use of the outhouse is a gym which in my view is a living space. As such I would consider that the gym use is effectively an extension of a living space. An extension of the living space is not covered by a '*tent, awning, shade, or other object, greenhouse, garage, store, shed or similar structure*'.
- 6.4.11. In supporting this argument, I would refer to referral case RL2001. In this case the applicant sought an exemption for a children's den in accordance with Class 3 Part 1, Schedule 2. The proposed children's den was a detached structure within the curtilage of a house. The Board determined that '*having regard to the stated use and the proposed construction, the said children's den does not come within the provisions of Class 3 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, not being, in particular, a garage, store, shed or other similar structure*'. I would recommend to the Board that a gym, within a liveable structure would not come within scope of Class 3 as this structure would represent a living space.

6.4.12. Nonetheless should the Board consider that the outhouse used for a gym is acceptable within Column 1 Class 3 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001, it would then be necessary to apply 6 no. tests to determine whether the structure is exempted development.

6.4.13. Regarding the question of whether the subject development meets the six criteria given under conditions and limitations for Class 3,

- The structure is not proposed to be located in front of the house
- The max area of the structure is given as 25m²
- The amount of private amenity space is not less than 25m²
- External finishes match the existing structure on the site
- The height of the structure is less than 4 metres.
- It is proposed to be used as a “gym” i.e. for the enjoyment of the house

Therefore, the structure, seems to meet the criteria 1 – 5 and a question arises whether it would meet condition no. 6.

6.4.14. As I have concluded the structure accommodating the gym is a liveable structure and as such it is not used for a purpose incidental to the enjoyment of the house. I would conclude that in this instance the structure for the proposed gym is part of the living area and is not for any purpose incidental to the enjoyment of the house. Therefore, the gym would not be exempted development in accordance with Section 4(1)(j) of the Planning and Development Act, 2000 (as amended).

6.4.15. The referral submission also refers to the use of the outhouse for temporary accommodation for a relative. I would consider that temporary accommodation would be a space for human habitation and as such would not be exempted development

having regard to condition no. 6 of Class 3, Part 1, Schedule 2 of the Planning and Development Regulations, 2001. Condition no. 6 clearly states that the '*structure shall not be used for human habitation*'.

6.5. **Appropriate Assessment**

Having regard to the nature and scale of the development under consideration, the nature of the receiving environment, the availability of public services, it is my opinion that no appropriate assessment issues arise and that the development would not be likely to have a significant effect, either individually or in combination with other plans or projects, on any Natura 2000 site.

7.0 **RECOMMENDATION**

7.1. **Conclusions and Recommendations**

Accordingly, I would recommend an order along the following lines: -

WHEREAS *a question has arisen as to whether a single storey extension and outhouse at 8 Herbert Park, Bray, Co. Wicklow is or is not development or is or is not exempted development:*

AND WHEREAS *the said question was referred to An Bord Pleanála by Roman Jaferov*

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)(j) of the Planning and Development Act 2000 (as amended),
- d. Articles 6 and 9 of the Planning and Development Regulations 2001 (as amended) and Part 1 of Schedule 2 to those Regulations, including Class 1 and Class 3,

AND WHEREAS *An Bord Pleanála* has concluded: -

- a. the single storey extension and outhouse structure is development having regard to the provisions of section 2(1) and section 3(1) of the Planning and Development Act 2000 (as amended);
- b. the single storey extension comes within the scope of Class 1 Part 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended);
- c. having regard to the gym use and the standard of construction, the said outhouse structure does not come within the provisions of Class 3 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, not being, in particular, a garage, store, shed or other similar structure, and
- d. temporary accommodation does not come within the scope of Class 3, Part 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended) as the development does not comply with the Conditions and Limitations specified in column 2 of the said Part 1, specifically Condition and Limitation No. 6 as the structure shall not be used for human habitation.

- e. the development does not come within the scope of section 4(1)(j) of the Planning and Development Act 2000 (as amended) as gym is not a use which is incidental to the enjoyment of the house on the site;

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 single storey extension at no. 8 Herbert Park, Bray, Co. Wicklow, is development and is exempted development and also decides that the outhouse structure to the same address is is development and is not exempted development.

Kenneth Moloney
Planning Inspector

20th February 2019