



An  
Bord  
Pleanála

## Inspector's Report ABP-303807-19

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<b>Question</b>	Whether works to an existing turf shed which is located to the rear of 'The Bungalow' is/is not development and is/is not exempted development.
<b>Location</b>	'The Bungalow', Newtown, Kill County Kildare
<b>Declaration</b>	
Planning Authority	Kildare County Council
Planning Authority Reg. Ref.	ED00702
Applicant for Declaration	Mark Brady.
Planning Authority Decision	Is development
<b>Referral</b>	
<b>Referred by</b>	Mark Brady.
<b>Owner/ Occupier</b>	Mark Brady.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	12 <sup>th</sup> July 2019.
<b>Inspector</b>	Susan McHugh

## Contents

1.0 Site Location and Description .....	3
2.0 The Question .....	4
3.0 Planning Authority Declaration.....	4
3.1. Declaration.....	4
3.2. Planning Authority Reports .....	4
4.0 Planning History.....	5
5.0 Policy Context.....	6
5.1. Development Plan.....	6
5.2. Natural Heritage Designations .....	6
5.3. Environmental Impact Assessment – Screening.....	6
6.0 The Referral.....	6
6.1. Referrer’s Case .....	6
6.2. Planning Authority Response .....	7
6.3. Further Responses.....	7
7.0 Statutory Provisions.....	8
7.1. Planning and Development Act, 2000 (as amended).....	8
7.2. Planning and Development Regulations, 2001, as amended.....	9
8.0 Assessment.....	10
8.2. Is or is not development.....	10
8.3. Is or is not exempted development .....	11
9.0 Recommendation.....	16

## 1.0 Site Location and Description

- 1.1. The site is located on the southern edge of Kill, Co. Kildare, within an established residential area. The area is characterised by low density detached houses with substantial rear gardens, and medium density two storey semidetached houses.
- 1.2. The rear garden of the existing house on site known as 'The Bungalow' is defined by mature planting along its boundaries and is adjoined to the north and south by the rear gardens of the adjoining residential properties. To the west the site is bounded by the rear garden boundary walls of semidetached houses No's 36 and 37 The Avenue.
- 1.3. 'The Bungalow' is accessed from Hartwell Green Road / Oldtown Lawns to the east, and benefits from a long rear garden and driveway providing access to a number of sheds to the rear, one of which is subject to the referral.
- 1.4. The rear garden of 'The Bungalow' is affectively subdivided by mature planting and trees, providing a landscaped rear garden area to the rear/west, and a separate area in the end/western part of the rear garden area.
- 1.5. This rear garden area accommodates a large concrete flat roofed structure, two smaller timber sheds, concrete yard area, and open turf storage area which are accessed via a surfaced driveway along the southern boundary of the existing house and garden.
- 1.6. The concrete flat roofed structure comprises three separate elements each of which are accessed along the south facing elevation.
- 1.7. The larger shed to the west is in use as a car mechanics storage/work area and includes a green painted roller shutter door. A narrow storage/corridor area which is accessed via a wooden door is located between it and a smaller shed. The smaller shed is accessed via a grey painted roller shutter door and is in use as a spray painting facility. Internally it includes a large duct which forms part of an air filtration system, which feeds externally to a flue along the eastern elevation.

## 2.0 The Question

- 2.1. Under section 5 of the Planning and Development Act 2000, Vincent JP Farry, (Agent on behalf of Mark Brady), has sought a decision from the Board as to whether works to an existing turf shed which is located to the rear of 'The Bungalow' Newtown, Kill, Co. Kildare comprising the physical alteration of its three external walls, the erection of one internal wall and the installation of a garage door and surrounding apron comprise exempted development.

## 3.0 Planning Authority Declaration

### 3.1. Declaration

**ED/00702** The Planning Authority issued a Section 5 Declaration on 1<sup>st</sup> February 2019 which had regard to the details submitted and the relevant sections of the Planning and Development Acts, and Planning and Development Regulations. The Declaration states that

- (a) The works as described to the original turf shed constitutes material works which materially affect its external appearance of the structure and render the appearance inconsistent with the character of the structure and cannot be considered to be exempted development under Section 4(1)(h) of the Planning and Development Act 2000 as amended and
- (b) The said development does not come within the scope of any exempted development provision in the Planning and Development Act 2000 (as amended) or the Planning and Development Regulations 2001 (as amended).

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Report

The Planner considered that in the context of Sections 3 and 4 of the Planning and Development Act, and the definitions as set out therein, that the proposal constitutes 'development' and is not 'exempted development'.

Regard was also had to the planning history of the subject site including the enforcement file, historic OSI mapping and a site inspection in the company of the

referrer Mr Brady. It was concluded that in effect the original turf shed has been entirely replaced under the guise of 'improvements to the three external walls and maintenance and alteration of its roof'. It considered that these works extend beyond what would reasonably be considered maintenance or alteration works and are therefore considered to be works which materially affect the character of the original turf shed, therefore render its appearance inconsistent with its original character.

### 3.2.2. Other Technical Reports

**Planning Technical Office:** Planning history search details, and land registry details.

## 4.0 Planning History

**P.A. Reg. Ref. 92/22:** Permission **granted** (April 1992) to Philip Brady for the raising of pitch of existing roof and conversion of attic to bedroom accommodation.

**P.A. Reg. Ref. 71/1113:** Permission **granted** (March 1971) to Philip Brady (applicants' father) for construction of a bungalow.

### 4.1. Background to the Reference

#### *Enforcement*

**P.A. UD 6454:** Unauthorised works were carried out on the site and were the subject of an initial Warning letter issued on 16/01/2014.

A subsequent Enforcement Notice describing the works as;

*'including cladding, roof, sealed doors and air filtration system to previous fuel shed to create a purpose built extension to the existing garage and associated unauthorised use of the extension in association with the developers business known as Autoskill which includes crash repairs, 4x4 conversions, graphics and body styling'.*

was issued on the 07/05/2015 seeking the removal of the extension to the eastern side of the original garage on site.

## *Declaration*

**P.A. ED 00563:** Section 5 Declaration by Mark Brady as to whether works to an existing turf shed which is located to the rear of 'The Bungalow' comprises exempted development **withdrawn**.

## **5.0 Policy Context**

### **5.1. Development Plan**

The relevant Development Plan is the Kildare County Development Plan 2017-2023. The site is identified as a small town and in Volume 2 of the Development Plan as being in an area zoned '**Existing Residential/Infill**' (see map attached).

### **5.2. Natural Heritage Designations**

None of relevance.

### **5.3. Environmental Impact Assessment – Screening**

The proposed development is of a type that does not fall within a class of development set out in Part 1 or Part 2 of Schedule 5 of the Planning and Development Regulations, 2001 (as amended). The need for screening for environmental impact assessment is therefore not required.

## **6.0 The Referral**

### **6.1. Referrer's Case**

The referral to the Board has been submitted by Vincent JP Farry and Co. Ltd. Planning and Development Consultants, on behalf of Mark Brady 'The Bungalow' Newtown, Kill, Co. Kildare. It can be summarised as follows:

- The planning authority decision is not based on the proposal, which was detailed in Referrers' report dated 12<sup>th</sup> December 2018, but rather on a variation of the works which were discussed and described therein.

- Contend that the planning authority decision did not actually consider the project which is the subject of this referral.
- The report of the planning officer refers to a purported statement by the Referrer to the effect that '*the turf shed was replaced with the existing structure in 2013*', which the referrer denies having made.
- The planning authority's decision is based on the claim that '*the original turf shed has been entirely replaced*' but contend that this is not the development as described in the initial submission of 1<sup>st</sup> December 2018.
- Linked to this error is the conclusion that the works '*materially affect the character of the original turf shed*', and question this claim on the basis that the planning officer only inspected the site after this development has been completed and unable to undertake a comparative exercise.
- The report of the planning officer failed to explain the nature or extent of the changes involved, so as to justify the conclusion that the works involved fall outside the ambit of s.4(1) of the Planning and Development Act, 2000 (as amended).
- Given the physical characteristics of the development which comprise development for the maintenance, improvement or other alteration of this structure and based on *Cairnduff v. O'Connell*, such works do not materially affect its appearance so as to render such appearance inconsistent with its character or that of neighbouring structures. Accordingly, under s.4(1) of the Planning and Development Act 2000 comprises exempted development for which permission is not needed.

## 6.2. Planning Authority Response

The planning authority confirmed that they had no further comments on the referral.

## 6.3. Further Responses

None.

## 7.0 Statutory Provisions

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

#### Section 2

*“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 the land on, in or under which the structure is situate,”*

#### Section 2(1)

*“works” includes any act or operation of construction, excavation, demolition, extension, alterations, repair or renewal and ....”*

#### Section 3(1)

*“ 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)(h)

*‘The following shall be exempted developments for the purposes of this 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)(a)(i)

*“The Minister may by regulations provide any class of development to be exempted development for the purposes of this Act where he or she is of the opinion that –*

- (i) By reason of the size, nature or limited effect on its surroundings, of development belonging to that class, the carrying out of such development would not offend against principles of proper planning and sustainable development, or ....”*



7.2. **Planning and Development Regulations, 2001, as amended.**

**Article 6(1)**

*“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.”*

**Schedule 2, Part 1- (Exempted Development General) Class 3**

The relevant section of the Regulations which is referred to herein is Class 3. Class 3 and its conditions and limitations are as follows:

Column 1	Column 2
Description of Development	Conditions and Limitations
<p><b>CLASS 3</b></p> <p>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.</p>	<ol style="list-style-type: none"><li>1. No such structure shall be constructed, erected or placed forward of the front wall of a house.</li><li>2. The total area of such structures constructed, erected, or placed within the curtilage of a house shall not, taken together with any such structures previously constructed, erected or placed within the said curtilage, exceed 25 square metres.</li><li>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 25square metres.</li><li>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</li></ol>

	<p>house.</p> <p>5. The height of any such structure shall not exceed, in the case of a building with a tiled or slated 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 incidental to the enjoyment of the house as such.</p>
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**Article 9(1) Restrictions on Exemption**

“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:*

*(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,”*

**8.0 Assessment**

8.1.1. It should be stated at the outset that the purpose of this referral is not to determine the acceptability or otherwise of the development in respect of the proper planning and sustainable development of the area, but rather whether or not the matter in question constitutes development, and if so, falls within the scope of exempted development.

8.1.2. The main parties to this referral are as follows;

- Mark Brady (Referrer)
- Kildare County Council

**8.2. Is or is not development**

8.2.1. The first question before the Board relates to whether or not the works comprises development. Having regard to sections 2 and 3 of the Planning and Development

Act 2000, as amended, I consider the shed constitutes 'development' within the meaning of the Act, being the carrying out of an act of construction (i.e. works) on land.

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

- 8.3.1. Development can be exempted from the requirement for planning permission by either Section 4 of the Planning and Development Act, 2000 (the Act), or Article 6(1) and 9(1) of the planning and Development Regulations 2001 (as amended) (the Regulations).
- 8.3.2. The P.A. in their assessment determined that the works described to the original turf shed materially affect its external appearance and render the appearance inconsistent with the character of the structure and cannot be considered to be exempted development under 4(1)(h) of the Planning and Development Act 2000 as amended.
- 8.3.3. The P.A. also determined that the development does not come within the scope of any exempted development provisions in the Planning and Development Act 2000 (as amended) or the Planning and Development Regulations 2001 (as amended).
- 8.3.4. The Referrer submits that the P.A. did not actually consider the project which is the subject of the referral and failed to explain the nature or extent of the changes involved, noting that the planning officer only inspected the site after this development had been completed, and therefore was unable to undertake a comparative exercise.
- 8.3.5. I note the report and assessment of the planner of the P.A., which outlines (during the course of the inspection in the company of the referrer Mr. Brady) a description of the original turf shed and works carried out. This assessment, however, appears to be based on a conversation with the referrer.
- 8.3.6. I note that no drawings or dimensions of the former/original turf shed were submitted as part of the referral, nor was any photographic evidence or aerial view imagery illustrating the nature and extent of the structure subject of the referral.
- 8.3.7. I also note from a review of historic OSi Mapping that the original garage is clearly identified; however, the former/original turf shed is not.

- 8.3.8. On the basis of the information submitted by the owner in this Referral, (which does not include drawings or dimensions of the existing structure subject of the referral), and noting the nature and extent of the purpose built shed/garage, (which includes a large internal air filtration system and external duct), with ancillary storage area, it is not possible to make any comparison between the former and existing structure.
- 8.3.9. It is therefore considered appropriate to consider the existing structure subject of the referral under Article 6(1) Class 3 (Schedule 2, Part 1).
- 8.3.10. Under Article 6(1) Class 3 (Schedule 2, Part 1) refers to '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' and therefore, it is necessary to determine whether or not the subject shed/garage accords with the conditions and limitations set out in Column 2 of Class 3 as follows:

1. *No such structure shall be constructed erected or placed forward of the front wall of a house.*

The shed/garage in question is located within the rear garden of the existing dwelling and has not been constructed, erected or placed forward of the front wall of same. Accordingly, I am satisfied that the existing structure accords with this requirement.

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.*

In the first instance, it can be confirmed that the structure subject of the referral forms part of a larger structure within the curtilage of the house. These include the shed/garage, separate ancillary storage area subject of the referral, and larger shed/garage area which are all located to the rear of the existing dwelling. I will deal with each separately.

- *Shed/Garage & ancillary storage area*

Again, I would note that no drawings or dimensions were submitted as part of the referral. From my own measurements on site the external dimensions of the shed/garage and ancillary storage area (i.e. 7.5m x 5.45m) is calculated as 40.875m. The total area, therefore, exceeds 25 square metres.

- *Original Larger Shed/Garage*

The other contiguous structure comprises the original larger shed/garage, and I consider that this should also be included in the combined area with the shed/garage and ancillary storage area subject of the referral. From my own measurements on site the external dimensions of this contiguous shed/garage (i.e. 7.5m x 8.75m) is calculated as 65.625m.

I consider, therefore, that the floor area of the shed/garage and ancillary storage area subject of the referral combined with the original larger shed/garage significantly exceeds the allowance of 25sqm and thus cannot avail of the exemption as set out in Class 3 of Part 1 of Schedule 2 of the Regulations.

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.*

From a review of the submitted drawings, I can confirm that the construction of the shed/garage in question has not reduced the area of private open space reserved exclusively for the use of the occupants of the dwelling 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.*

The existing shed/garage room has been constructed to the rear, as opposed to the side, of the dwelling house. This restriction, therefore, does not apply.

5. *The height of any such structure shall not exceed, in the case of a building with a tiled or slated roof, 4 metres or, in any other case, 3 metres.*

The existing shed/garage has a flat/felt roof construction and has a stated height of 3.4m and therefore, exceeds 3m. Accordingly, I am satisfied that the shed in question does not adhere to this requirement.

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.*

Following a site inspection, it can be confirmed that the shed/garage and ancillary storage area in question is not in use for human habitation, nor is it used for the keeping of pigs, poultry, pigeons, ponies or horses.

At present it is used in connection with the crash repairs, 4x4 conversions, graphics and body styling business operating on site. I am satisfied that the existing shed/garage and ancillary storage area, is used for commercial purposes which are not incidental to the enjoyment of the house as such.

8.3.11. In conclusion, I am satisfied, that the shed/garage and ancillary storage area subject of the referral, which is located to the rear of the existing house is development and not exempted development, as the floor area of the shed/garage and ancillary storage area and the adjoining shed/garage structure to the rear of the house exceeds 25 square metres, exceeds 3m in height and is in commercial use which is not incidental to the enjoyment of the existing house. It does not therefore, come within the scope of the exemption provided at Class 3 of Part 1 of Schedule 2 of the Planning and Development Regulations.

#### 8.4. **Precedent Cases**

The following precedent referrals are also of relevance:

##### 8.4.1. **93.RL.3548 (September 2018)**

The question here referred to whether the erection of a store/games room, located to the rear of 12 The Dell, Grantstown Park, Waterford, is or is not development or is or is not exempted development. The Board decided that due to the combined floor area of the store/games room and other structure in the rear garden which exceeded 25 square metres did not come within the scope of Class 3 of Part 1 of Schedule 2 to

Article 6 of the Planning and Development Regulations 2001 (as amended) and that the works constituted development and was not exempted development.

**8.4.2. 06D.RL.3009 (April 2013)**

The question here referred to whether the as built garden structure, primarily used as a games room, and located to the rear of a semi-detached house at 31 Greenfield Road, Mount Merrion, Co. Dublin, is or is not exempted development. The Board decided that due to its size, which was in excess of 25 square metres, together with its fabric and characteristics, it did not come within the scope of Class 3 of Part 1 of Schedule 2 to Article 6 of the Planning and Development Regulations 2001 (as amended) and that the works constituted development and was not exempted development.:

**8.4.3. 09.RL.2885 (September 2011)**

The question here referred to whether a structure in the rear garden area at 16 Rail Park, Maynooth, Co. Kildare is or is not exempted development. The Board decided the said structure was exempted development. Element of note is that the gross floor area internally of the said structure did not exceed 25 square metres while the area, based on external measurements, was stated to be 27.17 square metres.

**8.4.4. 28.RL2860 (September 2011)**

The question here referred to whether the construction of a shed at 33/33A Wilton Lawn, Cork was exempted development. The Board concluded that the works constituted development and were not exempted development as the floor area which exceeded 25 square metres did not come within the scope of the exemption provided at Class 3 of Part 1 of Schedule 2 of the Planning and Development Regulations.

**8.4.5. 06S.RL.2484 (July 2008)**

The question here referred to whether the construction of a utility room/shed at the rear of 22 Greenfield Park, Ballycullen Road, Dublin was development and or constituted exempted development.

The Board concluded that the utility room/shed came within the scope of Class 3 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001, by reason of the aggregate floor area of structures in the rear garden being less than 25 square metres. The Board decided that the erection of a utility room/shed was development and was exempted development.

## 9.0 Recommendation

- 9.1. Arising from my assessment above I consider that the erection of a shed/garage at 'The Bungalow', Kill Co. Kildare constitutes development that is not exempted development.
- 9.2. I recommend that the Board should decide this referral in accordance with the following draft order.

**WHEREAS** a question has arisen as to whether works to an existing turf shed which is located to the rear of 'The Bungalow' Newtown, Kill, Co. Kildare comprising the physical alteration of its three external walls, the erection of one internal wall and the installation of a garage door and surrounding apron is or is not development or is or is not exempted development:

**AND WHEREAS** Mark Brady requested a declaration on this question from Kildare County Council and the Council issued a declaration on the 1<sup>st</sup> day of February 2019 stating that the matter was development and was not exempted development:

**AND WHEREAS** Mark Brady care of Vincent JP Farry and Co. Ltd. Planning and Development Consultants referred this declaration for review to An Bord Pleanála on the 27<sup>th</sup> day of February, 2019:

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



- (a) Section 2(1), 3(1) and 4(2)(a)(i) of the Planning and Development Act, 2000, as amended,
- (b) Article 6(1), Article 9(1) and Class 3 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001, as amended,
- (c) the planning history of the site, and
- (d) the pattern of development in the area:

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

- (a) the works come within the scope of Sections 2(1) and 3(1) of the Planning and Development Act, 2000, as amended, and, therefore, constitute development, and
- (b) the total floor area, which exceeds 25 square metres, does not come within the scope of Class 3 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended:

**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 the works to an existing turf shed which is located to the rear of 'The Bungalow' Newtown, Kill, Co. Kildare comprising the physical alteration of its three external walls, the erection of one internal wall and the installation of a garage door and surrounding apron is development and is not exempted development.

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Susan McHugh  
Senior Planning Inspector

7<sup>th</sup> February 2020