



An
Bord
Pleanála

Inspector's Report ABP-305218-19

Question

Whether the works carried out to a chalet and maintenance works to a wastewater treatment system is or is not development or is or is not exempted development.

Location

The Chalet, Furbo Hill, Spiddal, Co. Galway.

Declaration

Planning Authority

Galway County Council

Planning Authority Reg. Ref.

UD1945

Applicant for Declaration

Eamon Murray

Planning Authority Decision

Is not exempted development

Referral

Referred by

Eamon Murray

Owner/ Occupier

Eamon Murray

Observer(s)

None

Date of Site Inspection

13/12/2019

Inspector

Gillian Kane

1.0 Site Location and Description

- 1.1.1. The development is situated in a rural location at Furbo hill, 5km east of Spiddal Village and c. 500 metres west of Furbo 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.
- 1.1.2. 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.
- 1.1.3. A small metal shed is sited to the east of the entrance within the driveway. The chalet is c. 40sq.m., 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 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 works carried out to a Chalet, maintenance works to a WWTS is or is not development and is or is not exempted development.

3.0 Planning Authority Declaration

3.1. Declaration

- 3.1.1. On the 24th July 2019, the Planning Authority issued a declaration that “The works carried out at the chalet and site to maintain and improve, at Furbo Hill, Spiddal, County Galway, is development and is not exempted development under article 4(1) of the 2000 Planning and Development Act, as amended”.

3.2. Planning Authority Reports

- 3.2.1. **Planning Report:** Photos submitted show a material difference between the Chalet in the 1970's (photo G) and the present (photo H). Works materially alter the external appearance of the structure and so do not fall under 4(1)(h) and are not exempted development. Report submitted regarding the existing septic tanks states that inspection was visual only and that the tank was plastered. This contradicts the

drawings which show a precast concrete tank. Works are not exempted development.

4.0 Planning History

4.1.1. **ABP-302930-18:** Asked whether the refurbishment of a timber house and associated infrastructure and entrance at The Chalet, Furbo Hill, Spiddal, County Galway is or is not development or is or is not exempted development, the Board concluded that:

(a) the original chalet situated on this site was a “house” and a “habitable house” within the meaning of section 2 of the Planning and Development Act, 2000, as amended, and, on the basis of the documentation submitted as part of the referral, was in existence prior to the appointed day of 1st October, 1964, and was, therefore, established,

(b) the works for the refurbishment of the original chalet on the site, the improvement to the infrastructure, including the provision of a percolation area and the repair/upgrade of the septic tank on the site, and the removal of the pier from the existing entrance, all involved the carrying out of works, and, therefore, constitute development within the meaning of the legislation,

(c) the works for the refurbishment of the original chalet on the site, in so far as can be ascertained from the documentation submitted on the file by the referrer and by the planning authority, involved the substantial removal of the original chalet and its replacement by the structure now existing on the site, and, therefore, notwithstanding that the structure now existing on the site may have had the same floor area and be on the same footprint as the original chalet, would not come within the scope of section 4 (1)(h) of the Planning and Development Act, 2000, as amended, not being works for the maintenance, improvement or other alteration of the original structure, but rather works for the provision of a new structure that has replaced that original structure,

(d) there are no other provisions, in the Planning and Development Act 2000, as amended, or in the Planning and Development Regulations, 2001, as amended, whereby this development would be classified as exempted development, and this development is, therefore, not exempted development,

(e) the development involving the repair/upgrade of a septic tank and the provision of a percolation area, if the subject of an advisory notice under Section 70(H)(5) of the Water Services Act 2002, as amended, would be exempted development under Class 41(g) of Part 1 of the Second Schedule to the Planning and Development Regulations, 2001, as amended, but as no evidence of the service of such notice has been supplied as part of this referral, the development in question is not exempted development, and

(f) the works to the entrance would come within the scope of Class 5 of Part 1 of the Second Schedule to the Planning and Development Regulations 2001, as amended, and are exempted development. On the basis of the documentation submitted with the referral, the Board is satisfied that the works in question have not resulted in the material widening of this means of access to the public road, and, accordingly, the restrictions on exemption set out in Article 9 (1)(a)(ii) of the Planning and Development Regulations 2001, as amended, do not apply in this instance:

Therefore, the Board decided that that the refurbishment of a timber house and associated infrastructure is development and is not exempted development and the works to the entrance of these premises are development and are exempted development

- 4.1.2. Planning Authority Reg. Ref. **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. Galway County Development Plan 2015-2022

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

6.0 The Referral

6.1. Referrer's Case

- 6.1.1. Six questions are posed:

1 Are maintenance works to a pre-existing WWTS exempted development?

- 2 Are refurbishment works, for the maintenance, improvement or other alteration of The Chalet, exempted development?
- 3 Given that the original Chalet is / was an exempted building under legislation, what processes were engaged in during this refurbishment that would invalidate that exemption?
- 4 Is the “development” that took place, during this refurbishment and WWT works, development that can be considered ‘acceptable development’ for the purposes of ‘retention’ under planning law?
- 5 Would the conclusion of An Bord Pleanála be different given the change in material evidence?
- 6 Why wouldn’t the works to the Chalet qualify for exempted development?

6.1.2. The submission presents reasons and arguments, as follows:

The refurbishment works to the Chalet

Galway County Council’s assessment of the development was that “the works carried out materially alter....”. The An Bord Pleanála Inspector (302930) found that the works to The Chalet “do not materially affect”. An Engineering report (appendix 1) and a Building Report (appendix 3) commissioned by the Referrer also state that the works “do not materially alter”. Neighbours have not objected to the development. The location of the door has been altered to avoid the wind, the window layout has been altered but is not inconsistent with the character of the structure or neighbouring structures. Photos of neighbouring dwellings are submitted. The Board is asked to determine that the works “do not materially affect the external appearance” and therefore are exempted development under section 4(1)(h) of the Act.

WWT Works

The works undertaken to the WWTS were maintenance and care of an existing septic tank and percolation area. They were not an upgrade of the system. There was a percolation area on site, when it malfunctioned work was undertaken. An engineering report (appendix 1) states that the works were care and maintenance, were not an upgrade and were advisable. Contradictions in the Galway CC report are explained as errors in the Engineering report (Appendix 10). The Board

Direction for 302930 (Appendix 5) refers to an advisory notice. No such notice was received by the Referrer. It is noted that it is an offence not to maintain a WWTS. The Referrer was advised by Irish Water to care for his system in 2012. Ponding occurred, which required remediation. The Referrer asks how bringing the WWTS back to its original function is breaking a law. Development is exempt where there is a limited impact on the surrounding environment. The subject works to the WWTS qualify for this exemption.

Previous Applications and Decisions

The works at The Chalet have been the subject of three applications: ED17/20, ED18/49 and ABP-302930-18. All three reports refer to a “missing” Chalet, leading to the conclusion that a new Chalet was erected. In the most recent Galway CC report, this allegation of a missing Chalet has been dropped. The only reason for deeming the works not exempt is external appearance.

History and Background to The Chalet

- The Chalet was erected in 1960 by the Referrers parents
- It was used as a summer house from 1960-1980. Referrer lived there fulltime from 1987-1993. It has been rented full-time since then.
- It is exempt from 1963/1964.
- In 2004 the Referrer took over ownership and maintenance.
- The Chalet was damaged in 2012.
- 2013 all works completed
- 2017 Warning letter issued.
- Evidence of the Chalet being missing prejudiced applications.
- The Chalet is in the same spot, is the same size, made of the same materials and serves the same function.
- It has served the Murray family for over 59 years.
- The Chalet has been substantially refurbished but was not missing in 2010.
- Phone calls to the planning Office confirmed that planning permission for a refurbishment was not required.
- There are no guidelines on how to carry out a refurbishment. The Chalet was refurbished to best practice standards. It looks like a new-build but refurbishment should look new.

6.1.3. The referral is accompanied by the following:

- 1 Engineering Report stating that the works do not materially alter the external appearance of the structure. The WWT has not been upgraded to EPA standard. Care and maintenance of the system was advisable.
- 2 Extract of Planning Inspectors report 302930
- 3 Architects letter stating that the works do not materially alter the external appearance of the structure.
- 4 Extract of Planning Inspectors report 302930
- 5 Extract of Board Direction 302930
- 6 Extract of Galway CC Report under Planning Authority reg. ref. 19/45
- 7 Copy of photos
- 8 Explanation regarding use of Google maps historical imagery
- 9 Extract of Galway CC Report under Planning Authority reg. ref. 19/45
- 10 Engineering report confirming that the survey of the WWTA did review the tank but not the percolation area.

6.2. Planning Authority Response

6.2.1. None on file.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

7.1.1. 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.....”

7.1.2. 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.”

7.1.3. Section 4(1)(a)(i) sets 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.

7.1.4. Section 4(2) provides for the making of the Regulations, Planning and Development Regulations, 2001.

7.1.5. 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**

7.2.1. 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,

8.0 Assessment

- 8.1.1. Notwithstanding that the Referrer has posed six questions to the Board, the works that are the subject of those questions are the same works that were determined by the Board under ABP-302930-18. As noted above, in that instance, the referrer Eamon O'Malley had requested the Board to determine whether works undertaken to a chalet, a WWTS and an entrance were or were not development and were or were not exempted development. As per the Boards Order, the Board concluded that the works to the Chalet and the WWTS were development and were not exempted development but that the work to the entrance was exempted development.
- 8.1.2. Mr. Eamon O'Malley, under the subject referral, seeks to present additional information to the Board, stating that this information provides new material evidence that the works previously deemed not to be exempt (the Chalet and the WWTS), now should be considered exempted development. I note that at no point, has any party challenged the decision of the Board or the Planning Authority that the works are development. Nor, has any party to this referral raised the issue of the entrance works.
- 8.1.3. I shall proceed on the basis that, as per the Board Order under ABP-302930-18, the works undertaken to the Chalet and the WWTS are development. The only question therefore, is whether said development is exempted development.

8.2. Is or is not exempted development

- 8.2.1. The Referrer has submitted that damage caused to the Chalet in 2012 necessitated refurbishment. It is the case of the Referrer that these works have not materially altered the appearance of the structure.
- 8.2.2. Mr O'Malley submits that the previous Board Inspector found that the works "do not materially alter the external structure". This extract / partial sentence from the Inspectors report is not an accurate reflection of the assessment. The Inspector is clear that the extent of works carried out was so significant it effectively resulted in the demolition of the existing chalet and the construction of a new chalet on the same footprint.

- 8.2.3. Further, I note the photographs submitted to the Planning Authority showing the Chalet in 1970. It is clear that there has been significant work carried out, to the extent that the structure currently on site is materially altered from that which existed on the site in 1970. I draw the Boards attention to the roof profile, the window layout and quantity and the door layout. The footprint and materials may be the same but the current structure bears no resemblance to that in the photograph of 1970.
- 8.2.4. Regarding the allegation of a “missing chalet” I find no evidence in the previous Inspectors report or the Board Order that this formed the basis of the findings of the Inspector or the determination of the Board. Indeed, the Board refers to the original chalet in its Board order, therefore removing any substance to the claim that they believed it removed in 2010.
- 8.2.5. I find no reason to deviate from the finding of the Board under 302930 that the works for the refurbishment of the original chalet on the site, in so far as can be ascertained from the documentation submitted on the file by the referrer and by the planning authority, involved the substantial removal of the original chalet and its replacement by the structure now existing on the site, and, therefore, notwithstanding that the structure now existing on the site may have had the same floor area and be on the same footprint as the original chalet, would not come within the scope of section 4 (1)(h) of the Planning and Development Act, 2000, as amended, not being works for the maintenance, improvement or other alteration of the original structure, but rather works for the provision of a new structure that has replaced that original structure. I am satisfied that there are no other provisions, in the Planning and Development Act 2000, as amended, or in the Planning and Development Regulations, 2001, as amended, whereby this development would be classified as exempted development, and this development is, therefore, not exempted development.
- 8.2.6. Regarding the works carried out to the WWTS. The Referrer states that the works to the system were care and maintenance and not an upgrade. He notes that the Board, in their Order, advised that were the works the result of an advisory notice under section 70(H)(5) of the Water Services Act, they would be exempt. Mr O'Malley acknowledges that he did not receive such a notice. The exemption offered by the Water Services Act therefore does not apply.

- 8.2.7. Mr O'Malley states that an error was made in the "Existing Septic Tank Report" which was submitted to the Planning Authority. The report refers to a visual inspection only. Mr O'Malley and his engineer (appendix 10) state that the "visual inspection only" reference refers only to the percolation area and not the tank. This does not explain the contradiction pointed out by the County Council however, that the report refers to a plaster inside the tank where a precast concrete tank is shown on the submitted drawings. The report states that the system was only "serviced" and has not been upgraded from the original design. Mr O'Malley states that malfunctioning of the system became apparent in 2012 / 2013. Given that the septic tank report does not provide a date of the survey and is an assessment of the existing tank, there is no way of knowing if the system was changed / upgraded etc in 2012 when the problems occurred.
- 8.2.8. The submitted report refers to an assessment of the existing tank only, it does not detail the works undertaken to remedy the faults experienced in 2012. Therefore, I find no reason to deviate from the finding of the Board in ABP-302930-18 that as the works were not mandated by a Water Services Act notice, they are not exempted development.
- 8.2.9. To summarise, the answers to the six no. questions posed by the Referrer are as follows:
- 1 Are maintenance works to a pre-existing WWTS exempted development?
The works undertaken to the WWTS are development and are not exempted development.
 - 2 Are refurbishment works, for the maintenance, improvement or other alteration of The Chalet, exempted development?
The works undertaken to the Chalet are development and are not exempted development.
 - 3 Given that the original Chalet is / was an exempted building under legislation, what processes were engaged in during this refurbishment that would invalidate that exemption?
The works for the refurbishment of the original chalet on the site, in so far as can be ascertained from the documentation submitted on the file by the referrer and

by the planning authority, involved the substantial removal of the original chalet and its replacement by the structure now existing on the site, and, therefore, notwithstanding that the structure now existing on the site may have had the same floor area and be on the same footprint as the original chalet, would not come within the scope of section 4 (1)(h) of the Planning and Development Act, 2000, as amended, not being works for the maintenance, improvement or other alteration of the original structure, but rather works for the provision of a new structure that has replaced that original structure.

- 4 Is the “development” that took place, during this refurbishment and WWT works, development that can be considered ‘acceptable development’ for the purposes of ‘retention’ under planning law?

The assessment of what constitutes acceptable development for retention is not a matter for this section 5 referral and can only be determined by the relevant Planning Authority upon receipt of an application for retention.

- 5 Would the conclusion of An Bord Pleanála be different given the change in material evidence?

No change in material evidence has been submitted.

- 6 Why wouldn't the works to the Chalet qualify for exempted development?

The works for the refurbishment of the original chalet on the site, in so far as can be ascertained from the documentation submitted on the file by the referrer and by the planning authority, involved the substantial removal of the original chalet and its replacement by the structure now existing on the site, and, therefore, notwithstanding that the structure now existing on the site may have had the same floor area and be on the same footprint as the original chalet, would not come within the scope of section 4 (1)(h) of the Planning and Development Act, 2000, as amended, not being works for the maintenance, improvement or other alteration of the original structure, but rather works for the provision of a new structure that has replaced that original structure.

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 at The Chalet, Furbo Hill, Spiddal, County Galway is or is not development or is or is not exempted development:

AND WHEREAS Eamonn Murray of The Chalet, Furbo Hill, Spiddal, County Galway requested a declaration on this question from Galway County Council and the Council issued a declaration on the 24th day of July, 2019 stating that the matters in question were all development and were not exempted development:

AND WHEREAS Eamonn Murray referred the declaration for review to An Bord Pleanála on the 20th day of August, 2019

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

(a) sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended,

(b) Articles 6 and 9 of the Planning and Development Regulations 2001, as amended,

(c) Classes 1, 3, 5 and 41 of Part 1 of the Second Schedule to the Planning and Development Regulations, 2001, as amended,

(d) the submissions on file, including photographs submitted by the referrer and by the planning authority, and

(e) the report of the Inspector:

AND WHEREAS An Bord Pleanála has concluded that -

(a) the original chalet situated on this site was a “house” and a “habitable house” within the meaning of section 2 of the Planning and Development Act, 2000, as amended, and, on the basis of the documentation submitted as part of the referral, was in existence prior to the appointed day of 1st October, 1964, and was, therefore, established,

(b) the works for the refurbishment of the original chalet on the site, the improvement to the infrastructure, including the provision of a percolation area and the repair/upgrade of the septic tank on the site, and the removal of the pier from the existing entrance, all involved the carrying out of works, and, therefore, constitute development within the meaning of the legislation,

(c) the works for the refurbishment of the original chalet on the site, in so far as can be ascertained from the documentation submitted on the file by the referrer and by the planning authority, involved the substantial removal of the original chalet and its replacement by the structure now existing on the site, and, therefore, notwithstanding that the structure now existing on the site may have had the same floor area and be on the same footprint as the original chalet, would not come within the scope of section 4 (1)(h) of the Planning and Development Act, 2000, as amended, not being works for the maintenance, improvement or other alteration of the original structure, but rather works for the provision of a new structure that has replaced that original structure,

(d) there are no other provisions, in the Planning and Development Act 2000, as amended, or in the Planning and Development Regulations, 2001, as amended, whereby this development would be classified as exempted development, and this development is, therefore, not exempted development,

(e) the development involving the repair/upgrade of a septic tank and the provision of a percolation area, if the subject of an advisory notice under Section 70(H)(5) of the Water Services Act 2002, as amended, would be exempted development under Class 41(g) of Part 1 of the Second Schedule to the Planning and Development Regulations, 2001, as amended, but as no evidence of the service of such notice has been supplied as part of this referral, the development in question is not exempted development,

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3) (a) of the 2000 Act, hereby decides that the refurbishment of a timber house and associated infrastructure is development and is not exempted development and the works to the entrance of these premises are development and are exempted development, all at The Chalet, Furbo Hill, Spiddal, County Galway.

Gillian Kane
Senior Planning Inspector

16 December 2019