



An
Bord
Pleanála

Inspector's Report ABP-306660-20

Question

Whether the extension of chalet to rear of structure by 92m². Finishes to match existing structure and new entrance door to Eastern Elevation is or is not development or is or is not exempted development.

Location

Mullarkeys' Cliff Road, Ardmore, Co. Waterford.

Declaration

Planning Authority

Waterford City and County Council

Planning Authority Reg. Ref.

Applicant for Declaration

Richard Lincoln

Planning Authority Decision

No Decision Issued

Referral

Referred by

Richard Lincoln.

Owner/ Occupier

Richard Lincoln

Observer(s)

None.

Date of Site Inspection

3rd June, 2020.

Inspector

Stephen Kay

1.0 Site Location and Description

- 1.1. The appeal site is located on Cliff Road in Ardmore to the east of the village centre. The site is on the sea side of the road, and is currently occupied by a single storey chalet or holiday cabin. The stated area of this structure is 23 sq. metres.
- 1.2. The chalet structure bounds the road though, other than a rooflight, there are no windows or other openings in this elevation or in the west facing elevation. There is an existing window in the east facing elevation and a patio type door and window in the north facing elevation towards the coast. Internally, the chalet is laid out with a small kitchen, WC / shower area and area for a sofa / sofa bed. There is also accommodation at a mezzanine level that extends over approximately half of the floorplan. The floor area of the chalet is stated to be 23 sq. metres including the loft / mezzanine area.
- 1.3. Access to the site is via a pedestrian gate that is located on the eastern side of the chalet and the area to the east and north east of the structure is level and laid out as a garden. There are two steps inside the existing gate that access the level of the chalet and garden. In addition to this open area, there is a further small area of level open space at a lower level that is accessed via a set of steps. The area to the immediate north and east of the chalet is characterised by a concrete slab, and the northern extent of the upper garden area is defined by a fence and hedgerow. The boundary of the site is indicated as extending further north from the level site on which the chalet and garden are sited, however this area is steeply sloping and inaccessible. In this regard, the stated area of the overall site is c.204 sq. metres.
- 1.4. To the immediate east of the site are a set of steps that provides public access from Cliff Road to the shoreline below.

2.0 The Question

- 2.1. The question as posed by the referrer in the documentation submitted to the Planning Authority on 30th April, 2019 is as follows:

Whether the extension of chalet to the rear of structure by 9 sq. metres and new entrance door to the eastern elevation is or is not development and is or is not exempted development.

From an inspection of the drawings submitted and on file the main aspects of the proposed development are as follows:

- New conservatory extension to the north facing elevation having a floor area of c.9 sq. metres and eaves and pitched roof to the same height as the existing chalet and hipped into the existing roof. New windows to the east and north facing elevations.
- New porch extension to the east facing elevation measuring c. 1.4 metres by 1.4 metres and with a floor area of c.2 sq. metres. Pitched roof to this extension with eaves height matching the existing and ridge line below that of the existing chalet structure. New window to the east facing elevation of this extension and new door to the south facing elevation.
- All external finishes to match the existing structure.
- The submitted plans also indicate alterations to the area inside the entrance gate with the existing steps being replaced with an access ramp running west to east accessing the garden / chalet level and having a railing on its northern side.

In view of the above, it is my opinion that the question should be reworded as follows:

Whether the extension of an existing chalet by the addition of an extension of 9 sq. metres to the north elevation and a porch extension incorporating new access to the east elevation is or is not development and is or is not exempted development.

3.0 Planning Authority Declaration

3.1. Declaration

An application for a declaration was submitted by the first party (Mr Richard Lincoln) to Waterford City and County Council on 30th April, 2019. The Planning Authority issued a request for further information on 11th December, 2019 and a response to this request was submitted by Mr Lincoln on 19th December, 2019. The Planning Authority did not issue a decision prior to the issue being referred to the Board for determination on 12th February, 2020.

3.2. Planning Authority Reports

3.2.1. Planning Reports

A Planning Officer report dated 6th December, 2019 notes a number of the provisions of the Planning and Development legislation and specifically Class 1 of Part 1 of the Second Schedule which provides for an exemption for extension to the rear of a house. The report notes that the house has not been extended previously and that the scale of any extension is less than 40 sq metres. The scale of the extension is considered to be unclear from the information submitted but likely to be single storey. The development is considered to satisfy the requirement that a minimum of 25 sq. metres of private open space be retained and that there would not be any new windows facing boundaries. Report notes that the structure on site appears to be recent, that there is no record of any planning history on the site and that the existing structure therefore appears to be unauthorised. The restriction on exemption provided for under Art. 9(1)(a)(viii) would therefore appear to apply. Report concludes the details submitted regarding the development are unclear and require clarification and that the existing chalet on the site is unauthorised. Further information on these issues is recommended.

4.0 Planning History

The following recent planning history relates to the site:

Waterford City and County Ref. 20/147 – Permission refused by the Planning Authority for a single storey extension to the side and rear of dwelling. The reasons for refusal related to the following:

1. That the site is located in an area that is visually vulnerable and adjoining a streetscape of distinctive character and involves bracing of the cliff, the proposal would seriously detract from the visual amenities of the area.
2. That the development does not meet the minimum floor area requirement for a two bedroom apartment and would therefore resident in a sub standard level of residential amenity.
3. That the development would be contrary to the qualitative and quantitative standards set out in the Sustainable Residential Development Guidelines for Planning Authorities and would result in a sub standard form of residential development.
4. That there is no planning history relating to the site and in the absence of such information the planning authority is precluded from granting permission where it has not been demonstrated that the residential use is authorised.

The following referral cases are noted:

- An Bord Pleanála Ref. ABP-305218-19 - Whether works carried out to maintain and improve a chalet and a septic tank/waste water treatment system at The Chalet, Furbo Hill, Spiddal, County Galway are or are not development or are or are not exempted development. The Board concluded that the original chalet situated on this site was a “house” and a “habitable house” within the meaning of section 2 of the Act, 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. Also determined that, on the basis of the information available, the works for the maintenance and improvement of the original chalet on the site, involved the

substantial removal of the original chalet and its replacement by the structure now existing on the site, (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) and such that these works 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. The Board therefore concluded that the works carried out to maintain and improve a chalet and a septic tank/waste water treatment system at The Chalet, Furbo Hill, Spiddal, County Galway were development and are not exempted development.

- An Bord Pleanála Ref. ABP-302930-18 – Referral relating to the above site at Furbo Hill, Spiddal, C. Galway. The Board concluded, inter alia, that the works undertaken to the chalet on site were of an extent that they represented the replacement of the original structure and were not therefore exempt under s.4(1)(h) of the Act. The development would therefore represent an extension of an unauthorised structure and is not therefore exempted development.
- An Bord Pleanála Ref. 26.RL.2540 – Case of extension to the rear of a chalet at Rosslaire, Co. Wexford, the Board determined that it was not exempted development on the basis that having regard to the orientation of the house facing the strong linear feature of the coast and strand road and the fenestration of the house facing the sea, that the front of the house faces the sea. Concluded by the board that the structure on the site comes within the definition of ‘house’ and is not unauthorised development.
- An Bord Pleanála Ref. 26.RL2441 – Case relating to the extension of a single storey timber dwelling that faced Lough Ennell in C. Westmeath. The Board determined, inter alia, that the dwelling was side on to the public road and that the proposed extension was therefore to the side rather than the rear of the dwelling and therefore such that it was not exempted development.

- An Bord Pleanála Ref. 26.RL.2049 – Case of extension to a holiday chalet in Wexford. The chalet was originally erected in 1935, but was subsequently relocated in the 1980's on the site due to coastal erosion of half of the site. The referrer wished to provide an extension to the chalet of c. 25 sq. metres, either on the roadside elevation or on the coastal elevation, but the Planning Authority declared the extension to the roadside to be to the front, and hence not exempted, and that to the rear (coast) not be not exempted development, mainly on the basis that the existing relocated chalet was unauthorised, The Board decided that the previous relocation of the chalet constituted development and was not exempted, and therefore that the chalet was an unauthorised structure and such that the proposed extension would not, therefore, constitute exempted development.

5.0 Policy Context

5.1. Development Plan

The site is located on lands that are not zoned for any particular purpose under the provisions of the *Waterford County Development Plan, 2011-2017* as the site is located on the northern side of the Cliff Road with the zoning only extending as far as the sites on the southern side of the road.

The map of the village indicates scenic views (blue arrows) running from the bay area south east towards the shore and including towards the section of coastline where the subject site is located.

5.2. Natural Heritage Designations

The site is not located within any European site. The closest such European site to the subject site is the Ardmore Head SAC which is located c.300 metres to the east of the site at the closest point.

6.0 The Referral

6.1. Referrer's Case

The submission made to the Board by the referrer essentially comprises the drawings and correspondence as submitted to the Planning Authority. The following is a summary of the main issues raised in the case made by the referrer:

- Stated that the existing building has an area of 26.5 sq. metres inclusive of the c.8 sq. metre loft / mezzanine area. Other drawings indicate an area of 23 sq. metres total floor area.
- Drawings indicate that the area to the rear of the structure measures 196 sq. metres and that the proposed extensions comprise a new conservatory on the north side of the building of 9 sq. metres and a new porch extension on the east side with an area of 2 sq. metres.
- That the south side (Cliff Road side) is the main point of access to the site and is therefore considered to be the front of the property.
- Submitted that the porch structure is exempt regardless of whether the house faces the road or the sea.
- Claiming that the side of the building fronting and adjacent to the roadway is the front of the house and claiming that the extension on the north side is exempt by reference to Schedule 2, Part I of the Planning and Development Regulations.
- Submitted that the building pre dates the planning acts having existed on the site since 1910.
- Submitted that it has always been a domestic habitable building which has over the years undergone many upgrades and modifications, but has always been the same size and use as today.
- Stated that building is serviced and connected to the public water supply and foul drainage.
- Stated that local property tax has been paid on the structure as a domestic dwelling.

- That the structure is indicated on the 1924 OS map.
- That in the ownership of Amy and Snow Dwyer (1935-1969) the property was used by their driver (John Mullarkey) which is where the building derives its name.
- An affidavit confirming the use of the structure can be provided if required.
- That the premises have clearly been in use as a residential property prior to 1st October, 1964.

6.2. Planning Authority Response

There is no response on file from the Planning Authority.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

Section 2(1) of the Act states that:

“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;

“unauthorised structure” means a structure other than—

(a) a structure which was in existence on 1 October 1964, or

(b) a structure, the construction, erection or making of which was the subject of a permission for development granted under Part IV of the Act of 1963 or deemed to be such under section 92 of that Act F21[or under section 34, 37G or 37N of this Act], being a permission which has not been revoked, or which exists as a result of the carrying out of exempted development (within the meaning of section 4 of the Act of 1963 or section 4 of this Act);

“**works**” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.

Section 3(1) of the Act states that, “**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 provides for exempted development at 4(1) and 4(2) states that the minister may by regulations provide for any class of development to be exempted development for the purposes of this Act.

Section 4(1)(h) provides that the following shall be exempted development for the purposes of the Acts:

‘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(4) states that *‘Notwithstanding paragraphs (a), (i), (ia) and (l) of subsection (1) and any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required.’*

7.2. Planning and Development Regulations, 2001

Art 6(1) states that:

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.

Art 9(1) states that:

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—

(vi) interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of a development plan for the area in which the development is proposed or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,

(viiB) comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site,

(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,

Classes 1 and 7 of Part 1 of the Second Schedule (and the Conditions and Limitations potentially of relevance in this case) state as follows:

Exempted Development —

General Column 1

Column 2

Description of Development

Conditions and Limitations

Development within the curtilage of a house

CLASS 1

The extension of a house, by the construction or erection of an extension (including a conservatory) to the rear of the house or by the conversion for use as part of the house of any garage, store, shed or other similar structure attached to the rear or to the side of the house.

1. (a) Where the house has not been extended previously, the floor area of any such extension shall not exceed 40 square metres.

4. (a) Where the rear wall of the house does not include a gable, the height of the walls of any such extension shall not exceed the height of the rear wall of the house.

(b) Where the rear wall of the house includes a gable, the height of the walls of any such extension shall not exceed the height of the side walls of the house.

(c) The height of the highest part of the roof of any such extension shall not exceed, in the case of a flat roofed extension, the height of the eaves or parapet, as may be appropriate, or, in any other case, shall not exceed the height of the highest part of the roof of the dwelling.

5. The construction or erection of any such extension to the rear of the

house shall not reduce the area of private open space, reserved exclusively for the use of the occupants of the house, to the rear of the house to less than 25 square metres.

6. (a) Any window proposed at ground level in any such extension shall not be less than 1 metre from the boundary it faces.

7. The roof of any extension shall not be used as a balcony or roof garden.

CLASS 7

The construction or erection of a porch outside any external door of a house.

1. Any such structure shall be situated not less than 2 metres from any road.

2. The floor area of any such structure shall not exceed 2 square metres.

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

8.0 Assessment

8.1. Is or is not development

8.1.1. The proposal involves the construction of a conservatory extension to the north facing side of the existing chalet structure and the relocation of the entrance to the east facing elevation where access would be provided via a new porch type extension.

8.1.2. The proposal would therefore involve an act of construction and extension of the existing structure on the site and such that works would be undertaken. It is therefore my opinion that the proposal would constitute development as defined in Section 3(1) of the Act.

8.2. Is or is not exempted development

8.2.1. With regard to whether the proposed development is or is not exempted development, as identified by both the referrer and the Planning Authority, the most appropriate provisions of the legislation the exemptions provided for under Class 6 of the Regulations, the exemptions set out at Classes 1 and 7 of Part I of the Second Schedule and the restrictions on exemptions provided for under Article 9. With regard to the issue of whether the proposed development comes within the scope of the development within the curtilage of a house as listed in Classes 1 and 7 of Part I of the Second Schedule, I consider that the following questions are of relevance:

- Is the existing structure on the site a *'house'*,
- Planning status of the existing structure on the site,
- What is the front / rear of the structure / house,

Status of the Structure on the Site as a House

8.2.2. The exemptions provided for under Classes 1 and 7 of Part I of the Second Schedule relate to '*development within the curtilage of a house*' and therefore the question arises as to whether the structure on the site is a house. The definition of a "house" as given in s.2(1) of the Planning and Development Act includes '*as a building or part of a building which is being or has been occupied as a dwelling.....*'. The structure on site is clearly currently being used as a holiday home and despite its limited size does have the capacity to provide overnight accommodation. I note the fact that the first party states that the structure has been the subject of property tax. I also note that the history of the property as submitted indicates that the property was used as permanent residential accommodation in the past, specifically during the period c.1935-1969 when, in the ownership of Amy and Snow Dwyer, the property was used by their driver (John Mullarkey) which is where the building derives its name.

8.2.3. Neither the history or the payment of property tax on the property can be formally verified on the basis of the information submitted and is not supported by documentation, however, on the basis of the information presented it would appear to me to be likely that the structure on the site was occupied as a dwelling and has, over a very significant number of years, been used as a holiday home, albeit one which was owned by persons local to the area and likely therefore not frequently used for overnight accommodation. It is therefore my opinion that it is likely, though not possible to fully verify on the basis of the information presented, that the structure on the site is a 'house' as defined in the Planning and Development Act and that the exemptions provided for in Class I of the Second Schedule of the Planning and Development Regulations are therefore applicable.

Planning Status of the Existing Structure on the Site

8.2.4. The report on file from the Planning Officer raises concerns as to whether the structure on site is authorised and therefore whether the Planning Authority can declare that the proposed works are exempt due to the restrictions on exemptions to unauthorised developments under Article 9 of the Planning and Development Regulations.

- 8.2.5. In response, the referrer contends that the building pre dates the planning acts having existed on the site since 1910 and that the structure is indicated on the 1924 OS map. An extract from this 1924 map is submitted and I note that there appears also to be a structure on the site in the Cassani 6" map available on the Boards GIS and which dates from c.1940s. On the basis of this information it is my opinion that there was a structure on the site since before the appointed day of 1st October, 1964 and that the structure is pre the commencement of the Planning Acts.
- 8.2.6. The question then arises as to whether the structure has been the subject of significant reconstruction or redevelopment over the course of its life such that it would be such that permission would have been required. On this issue the referrer contends that it has always been a domestic habitable building which has over the years undergone many upgrades and modifications, but has always been the same size and use as today. The current condition of the structure is good with the walls and roof in a good condition and state of repair. No documentary evidence in the form of photographs of the property over a number of years such as would enable an assessment of the extent of works undertaken to the structure are presented. On the basis of the slatted timber and slate roof finishes however I am satisfied that the basic form of the structure is consistent with that which likely originated on the site, and that any works undertaken since 1st October, 1964 are therefore likely such as to be considered works of '*maintenance, improvement or other alterations*' which do not render the appearance inconsistent with the character of the structure or of neighbouring structures and were therefore exempted development.

What is the Front / Rear of the House

- 8.2.7. The wording of Class 1 of Part I of the second Schedule makes reference to the fact that the exemption is for '*the extension of a house, by the construction or erection of an extension (including a conservatory) to the rear of the house ...*'. As noted in the inspector reports relating to a number of the referral cases cited in the Planning History section above, neither the Planning Acts or Regulations provide a definition of what constitutes the rear of a house, and there is no reference in the wording of Class 1 to the orientation of extensions relating to the public road. Given this, a common sense approach to what constitutes the front and the back of a house has

to be adopted and this can be seen in the previous determinations of the Board on cases similar to that on the subject site. Specifically, in the case of RL2540, the Board determined that the proposed extension of a chalet was not exempted development on the basis that the orientation of the house facing the strong linear feature of the coast and strand road and the fenestration of the house facing the sea meant that the front of the house faced the sea. Conversely, in the case of RL.2049 relating to an extension to a holiday chalet in Wexford, the Planning Authority determined that the front of the chalet was that facing the public road. A similar position appears to have been accepted by the Planning Authority in the subject case.

- 8.2.8. In the case of the subject site, the existing chalet fronts directly onto Cliff Road and the only access to the site is from Cliff Road, both of which would support the contention of the referrer that this is the front of the house. Against this however, the primary windows and aspect of the house is to the north over the coast and there are no windows or other openings in the south facing elevation that fronts Cliff Road. The existing access into the chalet is also currently on the southern side facing the sea and the garden / open space area is primarily to the side (east).
- 8.2.9. On balance therefore, and having particular regard to the fact that the main entrance to the building is on the south facing (sea) side, that the elevation to the public road (north facing) is a blank elevation and that the pedestrian access to the site accesses the north facing elevation, it is my opinion that the north facing elevation facing the sea is the front elevation of the property and that the elevation facing the road is the rear. It is therefore my opinion that the proposed conservatory extension would be to the front of the structure and would not come within the scope of Class 1 of Part I of the Second Schedule. In the event that the Board do not agree with this interpretation, section 8.3 sets out the extent to which this aspect of the proposed development would comply with the restrictions listed relating to Class 1 of Part I.
- 8.2.10. The exemption under Class 7 of Part I of the Second Schedule relates to a porch and states as follows, '*The construction or erection of a porch outside any external door of a house*'. The structure proposed to be erected to the eastern elevation of the existing chalet in my opinion comprises a porch within the meaning of this class. I do however note the fact that the structure proposed would not serve an existing external door, and that it is proposed as part of the development that a new door

opening would be created in the position of the existing window. I do not therefore consider that the proposed development complies with a strict interpretation of the wording of Class 7 of Part I on the basis that the structure would not serve an existing external door and that the opening of the door would in itself need to be taken under exempted development. In the event that the Board do not agree with this interpretation, section 8.3 sets out the extent to which this aspect of the proposed development would comply with the restrictions listed relating to Class 7 of Part I.

8.3. Restrictions on Exempted development

Restrictions on Class 1 – Rear Extension

- 8.3.1. Notwithstanding the view set out in 8.2 above that the proposed conservatory extension would be to the front rather than the rear of the existing chalet structure on site, there are a number of conditions and limitations attached to Class 1 that are in my opinion relevant. Specifically, I do not consider that there is 25 sq. metres of usable open space proposed to be retained to the rear of the building line. The referrer contends that the minimum 25 sq. metre open space area is met by virtue of the fact that there would be 196 sq. metres of the site retained to the rear of the building. However, the nature of this site area is that it is steeply sloping cliffs which are not usable open space areas and which have no amenity value. It is therefore my opinion that the only part of the site which can be considered as open space serving the house is that which is level and accessible.
- 8.3.2. The current layout is such that there is c.24 sq. metres of open space in the main upper garden area with a further c.2.5 sq. metres at the lower level. With the proposed development, the rear of the existing building line would be reduced to c.14.5 sq. metres (7.25 by 2.0 deep) and the area to the rear of the new building line formed by the conservatory structure would comprise only the 2.5 sq. metres at the lower garden level. Condition and Limitation 5 relating to Class 1 requires as follows:

5. The construction or erection of any such extension to the rear of the house shall not reduce the area of private open space, reserved exclusively for the use of the occupants of the house, to the rear of the house to less than 25 square metres.

- 8.3.3. The proposed development would result in the area of private open space to the rear of the existing rear building line being reduced to less than 25 sq. metres and the area to the rear of the house (rear of the proposed extension) would comprise only the 2.5 sq. metre lower garden. It is therefore considered that the restriction on exemption relating to retained open space is not met and that the exemption provided for in Class 1 of Part 1 does not therefore apply.
- 8.3.4. I have reviewed the other conditions and limitations attaching to Class 1 of Part I of the Second Schedule and consider that these would be complied with. Specifically, the development is less than the 40 sq. metres maximum specified and there would not be any new windows created that would be within 1 metre or less of any boundary.

Restriction on Class 7 - Porch

- 8.3.5. Notwithstanding the view set out in 8.2 above that the proposed porch extension would not be to an existing doorway and is not therefore exempted development, the proposed structure is in my opinion consistent with the conditions and limitations specified in Class 7 of Part I. Specifically, the structure would be more than 2 metres from any public road, the floor area would not exceed 2 sq. metres and the height of the proposed pitched roof structure would be less than the 4 metres maximum specified.

Restrictions Under Art. 9

- 8.3.6. Article 9(1) of the Regulations sets out a number of general limitations on exemptions provided for under Article 6 and which are set out in the Second Schedule. In the case of the subject site and proposal, the most relevant provisions of Article 9(1) are 9(1)(vi) relating to whether a development would interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of a development plan for the area

in which the development is proposed, 9(1)(viiB) which relates to whether a development would be such that a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site, or 9(1)(viii) where the development would 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.

- 8.3.7. As set out in 8.2 above, I do not consider that the existing development on the site is unauthorised, albeit that there is limited information presented that enables an accurate assessment of the nature of works undertaken to the structure and whether these constitute works for the purpose of maintenance, improvement or other alterations as provided for under s.4(1)(h).
- 8.3.8. The map of the village included in the *Waterford County Development Plan, 2011-2017 (as extended)* indicates scenic views (blue arrows) running from the bay area south east towards the shore and including towards the section of coastline where the subject site is located. The nature and scale of the proposed development and the fact that it is to an existing structure is in my opinion such that it is not reasonable to conclude that the proposed extensions would interfere with these views.
- 8.3.9. Finally, as set out below, I do not consider that the extensions proposed would be likely to have a significant effect on the integrity of a European site.

8.4. Appropriate Assessment Screening

- 8.4.1. The site is not located within any European site. The closest such European site to the subject site is the Ardmore Head SAC which is located c.300 metres to the east of the site at the closest point.
- 8.4.2. The proposed development comprises the extension of an existing chalet structure through the addition of a conservatory extension to the north facing elevation and the addition of a porch extension to the east facing elevation. The combined floor area of these proposed extensions is c.11 sq. metres.

8.4.3. The conservation objectives for the Ardmore Head SAC are to maintain the favourable conservation condition of the following qualifying interests:

- Vegetated sea cliffs of the Atlantic and Baltic coasts,
- European dry heaths.

8.4.4. The existing chalet is connected to the public water and drainage networks and there would not therefore be any foul discharges or surface water pathways that would impact on the conservation objectives of the Ardmore Head site. The construction of the extensions would involve the undertaking of development on the north side of the existing structure up to or very close to the existing cliff boundary. No details are provided on file regarding the undertaking of any reinforcement or underpinning structural works that may be required to undertake the proposed extensions, and specifically that proposed on the northern side of the existing building. Given the nature of the proposed works, the set back of the works area from the sea and the degree of separation (c.300 metres) between the subject site and the European site, including the presence of the pier, I do not consider that there is a clear pathway for emissions from the site arising from construction activities to reach the SAC and therefore I do not consider that there are any likely significant negative impacts arising in this regard.

8.4.5. Having regard to the above, the proposed development is not likely to have significant effects on the Ardmore Head SAC site or any other European sites, in the light of the conservation objectives of these sites.

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 extension of an existing chalet by the addition of an extension of 9 sq. metres to the north elevation and a porch extension incorporating new access to the east elevation is or is not development and is or is not exempted development:

AND WHEREAS Richard Lincoln requested a declaration on this question from Waterford City and County Council and no declaration on foot of this request was issued:

AND WHEREAS referred this declaration for review to An Bord Pleanála on the 12th day of February, 2020:

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,
- (c) Section 4(1)(h) of the Planning and Development Act, 2000, as amended,
- (d) article 6(1) and article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (e) Class 1 and 7 of Parts 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (f) the nature of the development existing on the site and the planning and development history of the site,
- (g) the layout of development on the site and the pattern of development in the area:

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The existing structure on the site is not an unauthorised structure or use and comes within the definition of a 'house' under Section 2(1) of the Planning and Development Act, 2000 (as amended),
- (b) Having regard to the pattern of development in the area, the orientation of the house relative to the coast and Cliff Road, the fenestration of the house with windows facing the sea and blank elevation facing Cliff Road and the fact that the existing access to the house is from the sea side (north), it is considered that the front of the house faces the sea,
- (c) The fact that the proposed porch extension would not be constructed outside of any existing external door,
- (d) The conservatory extension is, therefore, not exempted development under class 1 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001 (as amended) as this extension would be to the front rather than the rear of the dwelling, and
- (e) The porch extension is, therefore, not exempted development under Class 7 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001 (as amended) as it would not serve an existing external door.

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 extension of an existing chalet by the addition of an extension of 9 sq. metres to the north elevation and a porch extension incorporating new access to the east elevation is development and is not exempted development.

Stephen Kay
Planning Inspector

21st June, 2020