



An
Bord
Pleanála

Inspector's Report ABP RL.307272-20

Question

Whether the installation of a timber frame Garden Room / Gym, (floor area when fully insulated will be less than 25 sq.m.) with pitched roof with a height less than 4 metres is or is not development or is or is not exempted development.

Location

Rose Cottage, Brackenstown Road, Swords, Co. Dublin, K67 H4F8.

Declaration

Planning Authority

Fingal County Council

Planning Authority Reg. Ref.

FS5/007/20

Applicant for Declaration

Daniel Fanning

Planning Authority Decision

Is Not Exempted Development

Referral

Referred by

Daniel Fanning

Owner/ Occupier

Daniel Fanning

Observer(s)

None

Date of Site Inspection

1st September 2020

Inspector

Brendan Coyne

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1.0 Site Location and Description

- 1.1. The subject site is located on the southern side of the Brackenstown Road, a narrow cul-de-sac, c. 2.1 km west of Swords town centre. The site contains an end-of terrace 1.5 storey cottage with a raised first floor extension to its eastern side. The main elevations of the dwelling comprise grey coloured stone cladding with red brick around ground floor window apertures. The elevation finish of the first-floor side extension is rendered. Roof tiles are black in colour. The dwelling has a garden to its eastern side and rear. The side garden contains a small timber shed located along its northern boundary. A timber fence c. 2m high defines the northern roadside boundary and the rear garden boundary is defined with a low-rise timber post and rail fence. The Ward River Valley adjoins the site to the south.

2.0 The Question

- 2.1. The original question put before Fingal County Council was as follows;

Whether the construction of a timber frame garden room/gym, with a floor area less than 25 sq.m. when fully insulated and a pitched roof with a height less than 4 metres is or is not development and is or is not exempted development.

- 2.2. The Declaration of the Planning Authority has been referred to the Board for review by the owner / occupant. Having reviewed the available information, I consider that the question before the Board is as follows;

'Whether the construction of a timber framed structure, to the side of the existing dwelling, to be used as a garden room / gym, with a floor area less than 25 sq.m. when fully insulated and a pitched roof less than 4 metres, 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 12th March 2020, Fingal County Council issued a decision declaring that;

Based on the documentation submitted and having regard to the floor area of the structure proposed, that the provision of a garden room / gym structure to

the side of the existing house would not comply with the Conditions and Limitations pertaining to Class 3 Schedule 2 Part 1 of the Planning and Development Regulations 2001 (as amended) and comprises development and is NOT exempted development.

3.2. Planning Authority Reports

3.2.1. Planning Report

Basis for the Planning Authority's decision. Includes:

- The proposal is for a timber framed, fully insulated garden room/gym with a pitched roof less than 4m and a floor area of less than 25 sq.m.
- The proposal will not be located forward of the front wall of the house, however its precise location cannot be verified. The location of the proposal is indicated with an 'X' on the Site Layout Plan submitted.
- The submitted drawings indicate the floor area of the proposed structure will be 26.85 sq.m. This exceeds the 25 sq.m. allowance as specified under Limitation No. 2 of Class 3 Schedule 2 Part 1 of the Planning and Development Regulations 2001 (as amended). The size of the proposed garden room / gym is therefore NOT exempted development.
- No details are provided regarding the external finishes and roof covering of the proposed structure, apart from the applicant's statement that the structure will have a timber frame.
- It is not possible to verify whether the external finishes and roof covering of the proposed structure will conform with those of the existing house.
- The applicant has stated on the application form that the height of the proposed structure will be less than 4 metres. However, the height of the proposed structure cannot be verified based on the details submitted.
- Insufficient details have been submitted in the form of scaled floor plans and elevation drawings to quantify the full extent of the proposal and to demonstrate compliance with the Conditions and Limitations pertaining to Class 3.

3.2.2. Other Technical Reports

None

4.0 Planning History

F18B/0216 Permission GRANTED in 2018 for the construction of a 1.5 storey extension to the side of Rose Cottage and alterations to the original house comprising two roof windows to the front elevation and a new roof window and window alterations to the rear elevation.

Note: Site inspection found that this extension has not yet been constructed.

F15B/0276 Permission GRANTED in 2016 for the construction of a single storey and 1.5 storey extension to the side of the existing dwelling and all associated site works.

F08A/0060 Permission REFUSED in 2008 for the construction of a two-storey cottage with off-street parking.

F03A/0115 / ABP Ref. PL 06F.202583 Permission GRANTED ON APPEAL in 2003 for the retention, alteration and completion of works consisting of the demolition of a single storey dwelling and the construction of a dormer bungalow and associated site works.

F02A/1272 Permission REFUSED in 2002 for the retention and completion of works consisting of the demolition of a single storey dwelling and the construction of a new dormer style bungalow and associated site works.

F00A/1206 Permission REFUSED in 2000 for the replacement of an existing derelict dwelling with a 3 bed, 2 storey dwelling alongside the existing terrace structure.

5.0 Policy Context

5.1. Development Plan

Fingal County Development Plan 2017-2023 is the statutory plan for the area.

Zoning: The site is located within lands zoned objective 'HA - High Amenity' which seeks to 'Protect and enhance high amenity areas'.

5.2. Natural Heritage Designations

5.2.1. The site is located c. 3.2 km to the south-west of the Malahide Estuary SAC (Site Code: 000205) and SPA (Site Code: 004025).

6.0 The Referral

6.1. Referrer's Case

6.2. A 1st party referral was received from the owner / occupier of the dwelling Daniel Fanning, against the decision made by the Planning Authority, that the above works do not constitute exempted development, under the relevant provisions of the Planning and Development Act 2000 (as amended) and the Planning and Development Regulations 2001 (as amended). The case submitted by the referrer can be summarised as follows:

- The garden room / gym will not be placed forward of the front wall of the house.
- The floor area of the garden room / gym will be less than 25 sq.m. and will be the only structure in the garden.
- When the garden room / gym is constructed, the amount of private open space left will be greater than 25 sq.m.
- As the garden room / gym will be to the side of the house, the external finish and tiled roof will conform with those of the house.
- The garden room / gym will have a tiled roof and will have a height less than 4 metres.
- The garden room / gym will only be used for purposes incidental to the enjoyment of the house.
- The garden room / gym will not be used for human habitation or for the keeping of pigs, poultry, pigeons, ponies or horses.

- The Referrer was advised by the Planning Authority that the 25 sq.m. floor area limitation is calculated internally.
- Reference made to Article 3 of the Planning and Development Regulations 2001 (as amended) which defines “gross floor area” as the area ascertained by the internal measurement of the floor space on each floor of a building (including internal walls and partitions).
- Reference made to ABP Ref. 09.RL.2885 Order where An Bord Pleanála concluded that –
 - (a) The gross floor area internally, which is the internal floor area as defined in Article 3 of the Planning and Development Regulations 2001 to 2011, of the said structure does not exceed 25 sq.m.,
 - (b) The structure comes within the provisions of Class 3 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 to 2011:
- Reference made to ABP Ref. PL44.239090 Inspector’s Report which states in its assessment that –

The storage shed / games room which it is proposed to retain is only marginally in excess of that which would constitute exempt development under Class 3 of Schedule 2, Part 1 of the Planning and Development Regulations 2001 (floor area – 25.62 sq.m. v 25 sq.m.).
- The wall construction of the proposed structure will comprise the following:
 - 60mm external solid wood
 - 100mm internal insulation
 - 19mm internal cladding
- The Timber Frame Company floor plan of the proposed structure shows the internal measurements from the external solid wood wall. The 26.85 sq.m. shown on the floor plan is the floor area excluding the insulation and internal cladding.
- When the insulation and internal cladding are included to complete the wall, the floor area will be 24.23 sq.m.

- The Timber Frame Company design software does not allow the insulation and internal cladding to be included on the floor plan.
- When the walls of the proposed structure are complete, the floor area will be 24.23 sq.m.

6.2.1. Documentation submitted with the referral includes;

- Fingal County Council Notification of Declaration
- Case for Appeal
- Copy of correspondence from Fingal County Council and the Dept. of Housing, Planning and Local Government.
- Relevant provisions (Class 3) of the Planning and Development Regulations 2001 (as amended).
- An Bord Pleanála Order No. 09.RL.2885
- An Bord Pleanála Inspectors report PL44.239090
- Application Form
- Rural Place Map, Proposed Site Layout Plan, Floor Plan and illustration of proposed structure.

6.3. **Planning Authority Response**

6.3.1. The Planning Authority's response is as follows;

- Having assessed and had regard to the appeal submission and the original application, it remains the opinion of the Planning Authority that the proposed development would not comply with the Conditions and Limitations pertaining to Class 3 Schedule 2 Part 1 of the Planning and Development Regulations 2001 (as amended) and comprises development and is not exempted development.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

Section 2(1) Interpretation - defines the terms used within the Act including the following;

“**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, and...

“**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) defines **development** as follows:

“**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) of the Act refers to **Exempted Development** and states;

- (1) The following shall be exempted developments for the purposes of this Act—
- (j) development consisting of the use of any structure or other land within the curtilage of a house for any purpose incidental to the enjoyment of the house as such;

7.2. Planning and Development Regulations, 2001

Article 3 Interpretation -

“**gross floor space**” means the area ascertained by the internal measurement of the floor space on each floor of a building (including internal walls and partitions), disregarding any floor space provided for the parking of vehicles by persons occupying

or using the building or buildings where such floor space is incidental to the primary purpose of the building;

Part 2 Exempted Development -

Article 6 Exempted Development

Article 6(1) states;

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.

Article 9 Restrictions on Exemption

Schedule 2 Part 1 Exempted Development – General

Class	Conditions and Limitations
<p><i>Development within the curtilage of a house</i></p> <p>Class 3</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>	<p>1. No such structure shall be constructed, erected or placed forward of the front wall of a house.</p> <p>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.</p> <p>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.</p> <p>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.</p>

	<p>5. The height of any such structure shall not exceed, in the case of a building with a tiled or slated pitched roof, 4 metres or, in any other case, 3 metres.</p> <p>6. The structure shall not be used for human habitation or for the keeping of pigs, poultry, pigeons, ponies or horses, or for any other purpose other than a purpose incidental to the enjoyment of the house as such.</p>
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8.0 Assessment

8.1.1. The question before the Board in this instance can be stated as follows:

‘Whether the construction of a timber framed structure, to the side of the existing dwelling, to be used a garden room / gym, with a floor area less than 25 sq.m. when fully insulated and a pitched roof less than 4 metres, is or is not development and is or is not exempted development.’

8.1.2. It should be stated at the outset that the purpose of this referral is not to determine the acceptability or otherwise of the proposed development in respect to 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. In assessing the merits of the case, I have reviewed previous relevant declarations made by the Board.

8.2. Is or is not development

8.2.1. The first matter relates to whether or not the proposal comprises development. Having regard to the definition of ‘works’ and ‘structure’ in the Act as referred to above, I am satisfied that the construction of the subject garden room / gym structure does constitute ‘development’.

8.3. Is or is not exempted development

8.3.1. The Referrer proposes the construction of a timber framed garden room / gym structure in the garden to the side of the existing dwelling.

8.3.2. Article 6 of the Regulations provides 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. Schedule 2, Part 1 of the Regulations refers to 'Exempted Development – General' and Class 3 refers to 'the construction, erection or placing within the curtilage of a house of any.... store, shed or other similar structure'. I consider that the proposed garden room / gym structure should be assessed under Class 3. There are 6 no. Conditions / Limitations under Class 3 and the proposed development is assessed against these as follows;

8.3.3. Condition No. 1

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

8.3.4. The referrer's 'Case for Appeal' document submitted states that the proposed structure will not be placed forward of the front wall of the house. The Proposed Site Layout Plan details the location of the proposed structure with an 'X' to the side of the dwelling. The precise location and layout of the proposed structure is not detailed. I am, thereby, unable to measure the distance between the proposed structure and the front wall of the house. I note the Planning Authority in its assessment of the referral states that the location of the proposed structure cannot be verified based on the details submitted. Notwithstanding this, given the Referrer's confirmation that the proposed structure will not be placed forward of the front wall of the house, I am satisfied that the proposal complies with Condition No. 1.

8.3.5. Condition No. 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.

- 8.3.6. The Planning Authority in its assessment of the referral states that the drawing submitted of the proposed structure indicates a floor area of 26.85 sq.m. and that this exceeds the 25 sq.m. floor area limitation under Condition No. 2 of Class 3. On this basis, the Planning Authority state that the size of the proposed garden room / gym structure is NOT exempted development.
- 8.3.7. The Referrer states in the 'Case for Appeal' that the floor area of the proposed structure will be less than 25 sq.m. and will be the only structure in the garden. The Referrer states that the proposed structure will have 100mm internal insulation and that the figure of 26.85 sq.m. shown on the floor plan is the floor area excluding the insulation and internal cladding. The Referrer clarifies that when the insulation and internal cladding are added to the internal wall, the internal floor area of the proposed structure will be 24.23 sq.m. The Floor Plan submitted with the referral details the provision of 100mm internal insulation and 19mm internal cladding to the internal walls of the proposed structure. The Floor Plan details the internal measurements of the proposed structure as having a length of 7.67m and width of 3.16m, thereby providing an internal floor area of 24.23 sq.m. I note that the floor plan submitted is hand drawn and a scale is not given.
- 8.3.8. With regard the wording of Condition No. 2 which requires that '*The total area of such structures...*' be calculated, the referrer refers to Article 3 of the Planning and Development Regulations 2001 (as amended) which defines "gross floor area" as 'the area ascertained by the internal measurement of the floor space on each floor of a building (including internal walls and partitions)'. The referrer also refers to a previous An Bord Pleanála referral ABP Ref. 09.RL.2885 where the Order concluded that –
- (a) the gross floor area internally, which is the internal floor area as defined in Article 3 of the Planning and Development Regulations 2001 to 2011, of the said structure does not exceed 25 sq.m.,
 - (b) The structure comes within the provisions of Class 3 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 to 2011:
- The referrer also refers to previous An Bord Pleanála referral ABP Ref. PL44.239090 Inspector's Report which states in its assessment that "the storage shed / games room which it is proposed to retain is only marginally in excess of that which would constitute

exempt development under Class 3 of Schedule 2, Part 1 of the Planning and Development Regulations 2001 (floor area – 25.62 sq.m. v 25 sq.m.).

8.3.9. Having regard to the aforementioned previous An Bord Pleanála referral ABP Ref. 09.RL.2885, this referral related to a structure in the rear garden of a dwelling and, like the development under the subject referral, was assessed having regard (inter alia) to the Conditions and Limitations under Class 3 of Part 1 of Schedule 2 of the Planning and Development Regulations. I note that in this previous referral, the Inspector's Report in assessing the structure against Condition No. 2 of Class 3 calculated the total area based on its external measurements (27.15 sq.m.) and stated that *"the terminology in Condition and Limitation No 2 indicates 'area' as opposed to 'internal floor area' and I consider that in order that the correct interpretation of the condition and limitation is to apply it to the external measurements, that is the area of the footprint of the structure"*. I note however, that the Board in its Order of ABP Ref. 09.RL.2885 concluded (inter alia) that *"the gross floor area internally, which is the internal floor area as defined in Article 3 of the Planning and Development Regulations 2001 to 2011, of the said structure does not exceed 25 square metres"*.

8.3.10. Having regard to the Boards Order in this precedent referral and the definition of "gross floor space" as defined in Article 3 of the Regulations, I consider it appropriate that the gross floor area of the proposed structure should be assessed. Given that the internal floor area of the proposed structure will be 24.23 sq.m. and the Referrer's confirmation that the proposed structure will be the only such structure within the curtilage of the house, I am satisfied that the proposal complies with Condition No. 2.

8.3.11. **Condition No. 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.

8.3.12. The Planning Authority in its assessment of the referral states that it would appear from site inspection that the remaining garden area exceeds 25 sq.m., however this cannot be verified as insufficient detailed is provided.

8.3.13. The Referrer states in the 'Case for Appeal' that when the proposed structure is constructed, the amount of private open space left will be greater than 25 sq.m. Having regard to the Proposed Site Layout Plan submitted which shows the permitted extension to the side (yet to be constructed), I calculate that construction of the proposed structure would result in excess of c. 160 sq.m. private open space reserved exclusively for the use of the occupants of the house to the side and rear of the house. I am satisfied, therefore, that the proposal complies with Condition No. 3.

8.3.14. **Condition No. 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.

8.3.15. The Planning Authority in its assessment of the referral states that no details regarding the external finishes of the proposed structure or roof covering have been provided, apart from the Referrer's statement on the application form that the structure will have a timber frame. The Planning Authority states that in the absence of these details, it is not possible to verify whether the external finishes and roof covering of the proposed structure will conform with those of the existing house.

8.3.16. The Referrer states in the 'Case for Appeal' that as the proposed structure will be to the side of the house and its external finish and tiled roof will conform with those of the house. The Referrer details that the proposed structure will be timber framed and its external walls will comprise solid wood. No further details are provided of the external elevation finishes and roof cover of the proposed structure.

8.3.17. Further to site inspection, I found that the main elevations of the existing dwelling comprise grey coloured stone cladding with red brick detailing around window opens and the first-floor side extension is clad with render finish. Roof tiles are black in colour. A brown coloured timber fence, c. 2m high, extends along the front boundary of the site, to the eastern side of the dwelling.

8.3.18. Having reviewed the drawings submitted and in the absence of design details, I am of the opinion that the external finishes and roof covering of the proposed structure is open to question. Notwithstanding this, given the Referrer's confirmation that the

external finish and tiled roof of the proposed structure will conform with those of the existing house, I am satisfied that the proposal complies with Condition No. 4.

8.3.19. Condition No. 5

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

8.3.20. The Planning Authority in its assessment of the referral states that that the height of the proposed structure cannot be verified based on the details submitted.

8.3.21. The Referrer states in the 'Case for Appeal' that the proposed structure will have a tiled roof and will have a height less than 4 metres. No further design details are provided of the roof height and cover of the proposed structure. In the absence of the design details the roof height and cover of the proposed structure, I am of the opinion that the roof height and cover of the proposed structure is open to question. Notwithstanding this, given the Referrer's confirmation that the proposed structure will have a tiled roof and will have a height less than 4 metres and having regard to the illustration submitted which shows that the proposal will have a pitched roof, I am satisfied that the proposal complies with Condition No. 5.

8.3.22. **Condition No. 6** requires the following;

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.

8.3.23. The proposed structure will be used as a garden room / gym. The Referrer states in the 'Case for Appeal' that the proposed structure will only be used for purposes incidental to the enjoyment of the house and will not be used for human habitation or for the keeping of pigs, poultry, pigeons, ponies or horses. On this basis, I am satisfied that the proposal complies with Condition No. 6.

8.4. Restrictions on exempted development

- 8.4.1. The proposed development would not be constrained by any restrictions on exempted development detailed in Article 9 of the Planning and Development Regulations 2001 (as amended).

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 construction of a timber framed structure, to the side of the existing dwelling, to be used a garden room / gym, with a floor area less than 25 sq.m. when fully insulated and a pitched roof less than 4 metres is or is not development or is or is not exempted development:

AND WHEREAS Daniel Fanning requested a declaration on this question from Fingal Council and the Council issued a declaration on the 12th day of March, 2020 stating that the matter was development and was not exempted development:

AND WHEREAS Daniel Fanning referred this declaration for review to An Bord Pleanála on the 02nd day of June 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)(a) of the Planning and Development Act, 2000, as amended,

- (d) Article 3, article 6(1) and article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (e) Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (f) the referrers submission,
- (g) the Planning Authority's assessment,
- (h) the planning history of the site,
- (i) previous relevant referrals decided by An Bord Pleanála.

AND WHEREAS An Bord Pleanála has concluded that:

- (a) the construction of the subject structure constitutes "works" and is therefore "development" within the meaning of Section 3 of the Act, and
- (b) the structure comes within the scope of Class 3 of Part 1 of Schedule 2 to the said Regulations, and complies with the Conditions and Limitations to that Class,
- (c) the proposed structure will not be placed forward of the front wall of the house and thereby satisfies Condition and Limitation No. 1 under Column 2 of Class 3 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended),
- (d) the gross floor area of the proposed structure, which is the internal floor area as defined in Article 3 of the Planning and Development Regulations 2001(as amended), shall not exceed 25 square metres,
- (e) the proposed structure shall not reduce the amount of private open space reserved exclusively for the use of the occupants of the house to the side and rear of the house to less than 25 square metres.
- (f) the external finishes of the proposed structure shall conform with those of the house and thereby satisfies Condition and Limitation No. 4 under Column 2 of Class 3 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended),

- (g) the proposed structure will have a tiled pitched roof and will have a height less than 4 metres house and thereby satisfies Condition and Limitation No. 5 under Column 2 of Class 3 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended),
- (h) the use of the structure is for a purpose incidental to the enjoyment of the dwelling house.

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 structure is development and is exempted development.

Brendan Coyne
Planning Inspector

09th September 2020