



An
Bord
Pleanála

Inspector's Report ABP-312165-21

Question

Whether the request to regularise planning anomalies and to correct the flaw, both in procedure and interpretation, is or is not development or is or is not exempted development

Location

Mallows, Healeys Lane, Portrane, Co Dublin.

Declaration

Planning Authority

Fingal County Council

Planning Authority Reg. Ref.

FS5/062/21

Applicant for Declaration

David Murphy

Planning Authority Decision

Is not exempted development

Referral

Referred by

David Murphy

Owner/ Occupier

David Murphy

Observer(s)

None

Date of Site Inspection

22nd of June 2022.

Inspector

Karen Hamilton

Contents

1.0 Site Location and Description	4
2.0 The Question	4
3.0 Planning Authority Declaration.....	4
3.1. Declaration.....	4
3.2. Planning Authority Reports	5
4.0 Planning History.....	5
5.0 Policy Context.....	8
5.1. Fingal County Development Plan 2017-2023.....	8
5.2. Natural Heritage Designations	10
6.0 The Referral.....	10
6.1. Referrer's Case	10
6.2. Planning Authority Response	13
6.3. Further Responses.....	13
7.0 Statutory Provisions.....	13
7.1. Planning and Development Act, 2000	13
7.2. Planning and Development Regulations, 2001	14
8.0 Previous Referrals	14
9.0 Assessment	16
9.1. Status of the building on site	16
9.2. Is or is not development	17
9.3. Restrictions on exempted development	17
10.0 Appropriate Assessment	19
11.0 Recommendation	20

1.0 Site Location and Description

- 1.1. The site is located on Healy's Lane, a narrow cul- de-sac, accessed from the Burrow Lane at Portrane, Co. Dublin. The site (c.0.09ha) contains a small single storey dwelling which faces directly onto Healy's Lane with vehicular access into the site and a large garden which faces east and provides access directly onto the coast. Healy's Lane is characterised by detached dwellings set on individual plots.
- 1.2. Construction works on the existing dwelling where being undertaken during site inspection.

2.0 The Question

- 2.1. The applicant has requested the Board to determine the following question:

“Whether the request to regularise planning anomalies and to correct the flaw, both in procedure and interpretation, is or is not development or is or is not exempted development”
- 2.2. The planning anomalies described in the declaration question relate to three questions before the Board all of which together concern the development of a structure/ chalet along Healy's Lane, Portrane.
- 2.3. The first concerns the works to the front and side of a house; the second is regarding works to the interior of a house and the third is the provision of additional works to a house including an extension, garage, greenhouse, boiler house and temporary accommodation for persons carrying out the works to the house. They all relate to the building on the site which has been the subject of an enforcement notice.

3.0 Planning Authority Declaration

3.1. Declaration

The proposal is considered DEVELOPMENT and IS NOT EXEMPTED DEVELOPMENT.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report of the area planner reflects the declaration and notes the following:

- There is no evidence that planning permission has been granted for the structure currently on the site.
- The structure is considered unauthorised and there is a current enforcement file on the matter.
- The proposal involves extension and alterations to the structure and the provision of a temporary structure to accommodate persons engaged in the undertaking of development works.
- Having regard to the location of proposal from Rogerstown Estuary SAC (c. 1m) and Rogerstown Estuary SPA (c.15m) it is considered that an Appropriate Assessment of the proposal would be required.
- As there is no evidence of planning permission on the site, the works do not benefit from the exemptions available under the Planning and Development Act, 2000 (as amended) and the planning and Development Regulations, 2001 (as amended).
- The works are unauthorised and therefore Article 9 (1) (a) (viii) of the Regulations is applicable.

3.2.2. Other Technical Reports

None enclosed.

4.0 Planning History

FS5/026/21

Section 5 Declaration for the development of a 34m² extension to the rear of a house, minor alterations to glazing on existing structure and redesign of roof. The works were deemed DEVELOPMENT and NOT EXEMPTED DEVELOPMENT.

ABP 300822-18 (Reg Ref F17A/6685)

Permission refused for the demolition of a house and construction of a house for two reasons as stated below:

1. The site is zoned High Amenity in the Fingal County Development Plan 2017-2023, with an objective to protect and enhance high amenity areas. It is the policy of the Planning Authority, as set out in the Development Plan, to limit new housing development in the High Amenity area, to persons who have a defined essential housing need based on their involvement in farming or based on exceptional health circumstances (Objective RF32). The replacement or conversion of existing coastal chalets or seaside huts will also be considered in the High Amenity area, in exceptional circumstances, where the criteria set out in the Development Plan are met (Objective RF42). The Board is not satisfied on the basis of the details submitted with the application and appeal that there is an established residential use on the appeal site, that the applicant has a defined essential housing need based on their involvement in farming or based on exceptional health circumstances, or that the criteria for the replacement or conversion of existing coastal chalets and seaside huts, are met. It is, therefore, considered that the proposed development does not accord with the overall zoning objective for the area and the policies set out in the Fingal County Development Plan 2017-2023 in relation to the protection of high amenity areas. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.
2. It is the policy of the Planning Authority, as set out in the Development Plan, to prohibit new development outside of urban areas, in coastal areas that are at risk from coastal erosion unless it can be objectively established based on the best scientific information available at the time of the application, that the likelihood of erosion at a specific location is minimal (Objective DMS174). Furthermore, it is the policy of the Planning Authority, to prohibit development along the coast, outside existing urban areas, where such development could not be adequately safeguarded over the lifetime of the development without the need to construct additional coastal defences (Objective NH61). The proposed development is situated in an area that is identified in the Fingal

Development Plan 2017-2023 (Green Infrastructure Maps) as being at risk of coastal erosion and it is considered based on current conditions and future coastal erosion predictions that coastal protection measures would be required to avoid damage by the sea at this location in the future. It is, therefore, considered that the proposed development does not accord with the policies set out in the Fingal County Development Plan 2017-2023 in relation to development in areas that are at risk of coastal erosion. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

Reg Ref F17A/040

Permission refused for the demolition of an existing dwelling and the construction and replacement of a two-storey dwelling for 4 no reasons as summarised below:

1. The applicant has failed to demonstrate compliance with this Objective RF42 of the Development Plan which states that replacement or conversion of existing coastal chalets and seaside huts by dwellings which can be resided in all year round will only be considered in exceptional circumstances
2. The area is identified as being at risk of coastal erosion. Objective DMS174 prohibits new development outside urban areas within the areas indicated on Green Infrastructure Maps, which are within 100m of a coastline and at risk from coastal erosion, unless it can be established based on best available scientific information, that the likelihood of erosion at a specific location is minimal.
3. Considered that coastal protection measures would be required to avoid damage by the sea in the future. Development would therefore contravene materially Objective NH61 of the Development Plan.
4. The development is located between the sea and the coast road on lands zoned High Amenity and would therefore contravene materially Objective RF49 of the Development Plan.

Reg Ref F11B/0078

Permission refused for the construction of an extension to an existing dwelling for two reasons as summarised below:

1. The proposal does not comply with Objective RH26 of the development plan which allows the conversion of existing chalet/seaside huts to permanent residential dwellings.
2. The proposal is in an area which is the subject of coastal erosion, and the proposed development would materially contravene the requirements of Objective CT13 (development in areas at risk of coastal erosion).

Reg Ref F00A/0430

Permission granted for the removal of an existing temporary dwelling and the provision of a new bungalow.

Reg Ref F99A/0074

Permission refused for a replacement dwelling for one reason relating to the preservation of the site for the purposes of agriculture and the requirement for genuine rural connections for any new dwellings.

5.0 Policy Context

5.1. Fingal County Development Plan 2017-2023

5.1.1. Land Use Zoning

The site is zoned as High Amenity (HA) where it is an objective “to protect and enhance high amenity areas”.

- Residential development is limited to persons that comply with the Rural Settlement Strategy.

5.1.2. Settlement Strategy in the Open Countryside

Objective RF32: Permit houses in areas with zoning objective HA, only to those who have a defined essential housing need based on their involvement in farming or exceptional health circumstances.

Objective RF42: The replacement or conversion of existing coastal chalets and seaside huts by dwellings which can be resided in all the year round will only be considered in exceptional circumstances where the following criteria is fully met:

- Verifiable documentary evidence indicating the unit is occupied on a year-round basis and has been for a period of 7 years or more.
- The proposal satisfies planning criteria in relation to appropriate design and layout, drainage, access and integration with the character of the landscape.
- The site shall not be liable to the impacts of climate change, including coastal erosion and flooding.
- Impacts on European Sites will be fully assessed by Screening for Appropriate Assessment.

Objective RF49: Require that no new houses are permitted on High Amenity zoned lands which are located between the sea and the coast road except in such cases indicated in Objective RF50.

Objective RF51: Ensure that the development of any coastal site through the extension or replacement of existing buildings or development of any new buildings is of an appropriate size, scale and architectural quality and that it does not detract from the visual amenity of the area or impact negatively on the natural or built heritage.

Objective NH52: Ensure that development reflects and reinforces the distinctiveness and sense of place of High Amenity areas, including the retention of important features or characteristics, taking into account the various elements which contribute to its distinctiveness such as geology and landform, habitats, scenic quality, settlement pattern, historic heritage, local vernacular heritage, land-use and tranquillity

Objective NH59: Protect the special character of the coast by preventing inappropriate development along the coast, particularly on the seaward side of coastal roads. New development for which a coastal location is required shall, wherever possible, be accommodated within existing developed areas.

Objective NH60: Strictly control the nature and pattern of development within coastal areas and ensure that it is designed and landscaped to the highest standards and sited appropriately so as not to detract from the visual amenity of the area. Development shall be prohibited where the development poses a significant or

potential threat to coastal habitats or features, and/or where the development is likely to result in altered patterns of erosion or deposition elsewhere along the coast.

Objective NH61: Prohibit development along the coast outside existing urban areas where such development could not be adequately safeguarded over the lifetime of the development without the need to construct additional coastal defences.

Objective DMS174: Prohibit new development outside urban areas within the areas indicated on Green Infrastructure Maps, which are within 100m of coastline at risk from coastal erosion, unless it can be objectively established based on the best scientific information available at the time of the application, that the likelihood of erosion at a specific location is minimal taking into account, inter alia, any impacts of the proposed development on erosion or deposition and the predicted impacts of climate change on the coastline

5.1.3. Objective specific to Portrane

Objective Portrane 7: The replacement of chalets/holiday huts by permanent dwellings, which can be resided in on an all year basis within 'HA' zoned land at The Burrow, will be considered in the context of verifiable documentary evidence indicating the unit is occupied on a year-round basis and has been for a period of 7 years or more, flood risk, site size, EPA standards for waste water disposal, access, impact on Habitats Directive Annex I Habitats including the priority habitats

5.2. Natural Heritage Designations

The rear of the site abuts the Rogerstown Estuary SAC (Side Code: 000208) and the Rogerstown SPA (Site Code: 004015) is located c. 27m to the east along the coastline.

6.0 The Referral

6.1. Referrer's Case

The referral has been submitted by an agent on behalf of the owner of the premises in response to the Section 5 Declaration by the Planning Authority (PA). The referral is summarised below:

6.1.1. Planning Status

- A lease dated 1952 and 1960 is attached.
- These leases predate the 1963 Planning and Development Act.
- The enforcement notice from the PA refers to the 01st day of October 1964.
- The Enforcement notice is flawed in so far as it requires the new dwelling structure to be removed which indicates the entire house erected in 1952.
- The owner does not believe the works are unauthorised.

6.1.2. Warning Letter

- The warning letter has no legal significance.
- The wording in the warning letter differs from the enforcement notice.
- The warning letter refers to the demolition of a dwelling and erection of a new dwelling.
- The owner states they are not demolishing a dwelling or erecting a new dwelling.

6.1.3. Works to the front and side of the house (Point 1)

- The main works to the roof include the repair and maintenance of the existing front tile-profile.
- The original red tile sheeting was removed.
- The tile profile sheeting will be replaced by using a hip facing Healy Lane, over the bathroom roof and replacing the original timbered gables.
- These works are exempt under Section 4 (1) (h) of the Act, and they do not materially affect the appearance of the structure or render it inconsistent with the neighbouring structures.
- The erection of the porch is not greater than 2m² and is exempt under Class 7, Schedule 2, Part 2 of the Regulations.
- The external insulation and plaster are exempt under Section 4 (1) (h) of the Act and do not materially affect the appearance of the structure.

- The top was removed from a broken chimney with the removed section rebuilt, these works are exempt under Section 4 (1) (h) of the Act.
- The replacement of the window frames with new Upvc on the north and two on the south does not materially alter the external appearance of the structure.
- The new window opening on the south wall (c. 0.60 by 1m) does not affect the external appearance of the structure.

6.1.4. Works affecting only the interior of the house (Point 2)

- The internal works include the removal of internal walls, rewiring of the house, re-plumbing, replastering, demolition of a rear wall to accommodate a new extension, redecorating and new kitchen fittings.
- These works are exempt under Section 4 (1) (h) as development which only affects in the interior of the structure.

6.1.5. Extensions and Temporary Structure

- Works to the outside include a rear extension, erection of a garage, greenhouse/ store, boiler house and accommodation for persons engaged in carrying out the exempt development.
- The structure is not unauthorised, as confirmed by the deeds submitted of 1952 and 1960.
- The definition of habitable house is applicable as the LPT payment has been accepted since its introduction
- As the dwelling is classified as a house the applicable exemptions for the extension, garage, greenhouse/ store and boiler house (referral ABP 304215-19 included) can be applied.
- Schedule 2 Part 1: Temporary structures can be applied for the accommodation and should be removed once the development is complete.

6.2. Planning Authority Response

The PA submitted a response to the referral, acknowledging the appeal and requesting the Board to uphold the decision of the PA.

6.3. Further Responses

No further responses.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

7.1.1. Section 2 (1)

“development” has the meaning assigned to it by Section 3, and “develop” shall be construed accordingly

"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.

7.1.2. Section 3 (1)

'development' means, except where the context otherwise requires, the carrying out of works on, in, over or under land or the making of any material change in the use of any structures or other land."

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

Section 4 (1) (h) states:-

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

7.1.5. Section 4(4) states “notwithstanding paragraphs 9a), (i), (ia) and (l) of subsection (1) and any regulations under subsection (2), development shall not be exempted development is an environmental impact assessment or an appropriate assessment of the development is required”.

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

7.2.1. Article 6 (1) of the Regulations state the following:

Subject to Article 9 the 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 conditions and limitations specified in Column 2 of the Act opposite the mention of that Class in the said Column 1.

7.2.2. Article 9 (1) of the Regulations sets out circumstances in which development to which Article 6 relates shall not be exempted development.

Article 9 (1) (viii) applies in this case, it states as follows: “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,”

Class 1 of Part 1 of the Second Schedule to the Regulations states as follow “The extension of a house, by the construction or erection of an extension (including a conservatory for use as part of the house of any garage, store shed, or any similar structure attached to the rear or to the side of the house.”

8.0 **Previous Referrals**

8.1. A number of previous referrals to the Board on similar proposals as summarised below:

8.1.1. **RL0732**

Referral relating to the removal of a garage and replacement with living accommodation.

The Board considered the main premises could not be regarded as a dwelling house and was not used as such. The proposal was not considered exempt development.

8.1.2. RL2559

Referral relating to alterations and extension to a “coach house” including a single storey extension, extension to rear, garage conversion and change of use of outbuilding,

The Board considered the use of the building was never an official dwelling house and as such any works were not exempt development.

8.1.3. RL2908

Referral relating to the improvement and alteration to an existing cottage and conversion of store attached to the site of the cottage to habitable accommodation.

The Board considered the planning status of the cottage having regard to previous decisions on the site and the works undertaken were considered to be significantly larger and different which was inconsistent with the character of the original cottage. The works were not exempt development.

8.1.4. ABP 304215-19

Referral relating to a change of use of agriculture and the provision of an agricultural shed and a boiler house for use as ancillary to residential.

The Board the lands are all within the curtilage of a dwelling and do therefore not form part of an agricultural holding, the use for agricultural would involve a change of use and the boiler is afforded an exemption and it is within a class of exemption.

9.0 Assessment

9.1. Status of the building on site

- 9.1.1. The proposed development includes the retention of the works to a building, described as a chalet/ holiday home. The referrer's case states that the works to the interior and exterior of the building are exempt in so far as the use of the building use is a residential dwelling.
- 9.1.2. There is a significant amount of planning history on the site relating to the demolition of the building on the site and erection of a new dwelling. The most recent planning decision ABP 300822-18 (Reg Ref F17A/6685) refused permission for the demolition of the existing building and construction of a replacement dwelling. The applicant was not the same as the current owner. The first reason for refusal made reference to the details submitted with the application and appeal and did not consider there was sufficient evidence to establish a residential use on the site. In this regard, the Board considered the building on site was deemed as a coastal chalet/ seaside hut. The conversion of such types of accommodation to permanent residential were precluded under Objective RF 42, in High Amenity areas only in expectational circumstances.
- 9.1.3. In the absence of any established residential use on the site the PA have undertaken enforcement action to prevent any further works to the building. The appeal referenced both the Enforcement Notice and Warning Letter. I consider these proceedings a matter for the PA.
- 9.1.4. I note documentation submitted with the referral includes deeds dating back to 1952 and 1960. An accompanying letter from the applicant's solicitor states that the deeds do not specifically refer to dwelling house and it is assumed that reference to "maintain, repair and keep" would suggest a dwelling house had already been constructed. The solicitor also refers to the 1960 deeds which mentions "bungalow".
- 9.1.5. I am of the opinion that the information submitted with this referral appeal, in relation to the deeds, does not substantially alter the conclusions from previous planning decisions of the PA and Board in relation to the absence of an established residential use on the site. This is particularly relevant in considering if the proposed development is exempt.

9.2. **Is or is not development**

- 9.2.1. The applicant has set out the proposed works under three headings, works to the front and side of the house, works affecting only the interior and extensions.
- 9.2.2. The works to the building are currently underway and upon site inspection the external materials had been stripped, rear extension built and alterations to the roof in the process. The information in the documentation is brief, although having regard to the plans and particulars submitted and those which accommodated the previous application (ABP 300822-18) I consider the works undertaken and proposed to the previous building are substantial. Additional works, not already undertaken, relate to the extension of a garage, boiler house and temporary accommodation for construction workers on site.
- 9.2.3. Section 3 of the Planning and Development Act 2001, as amended, refers to “development” as 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. I am satisfied that, having regard to the definition of “works” under section 2 and “development” under section 3(1) of the Act, the alterations to the exterior of the building and extensions to accommodate the garage, store, rear extension and temporary on-site development is development. In addition, considering the use determined by the planning authority and previous Board decisions, which I concur with and is further discussed below, a material change of use has occurred on the site.
- 9.2.4. I consider the proposed development IS DEVELOPMENT.

9.3. **Restrictions on exempted development**

- 9.3.1. The applicant considers the proposed works are exempted development, having regard to the residential use on the site and the exemptions listed in Schedule 2, Part 1, Class 1 of the Planning and Development Regulations, 2001, as amended.
- 9.3.2. As stated above, the Board has recently concluded that there is insufficient evidence to suggest that a permanent residential use has been established on the site and I find no further evidence in the appeal documentation to indicate a permanent residential use was on the site. In this regard, I do not consider the exempted

development rights in Part 1, Class 1 of the Planning and Development Regulations, apply to the erection of extension and alteration to the dwelling.

- 9.3.3. In relation to the external works, including the change of material and profile of the roof, external material from brick to plaster, repair of chimney, replacement of window frames and new window ope and frame on the south, the applicant does not consider the works materially affect the external appearance of the structure. As stated above, substantial works had commenced on site and the fabric of the original building removed. I note a picture submitted with the documentation which illustrates a modest brick building with red tiled roof. Having regard to the significant amount of works proposed to the exterior of the building, I am of the opinion that the combination of works carried out and in the process of being carried out are of such a nature and scale that it is considered they materially affect the external appearance of the structure and render its appearance inconsistent with the original structure and therefore cannot avail of the exempted development provision of section 4 (1) (h) of the Planning and Development Act, 2000, as amended.
- 9.3.4. In relation to the exemption for the boiler house or storage tank, I note the applicant's drawings indicate the removal of an existing rear extension and further extension to the existing dwelling as being the boiler house. I am of the opinion that a proposed rear extension attached to the rear of the building does not come within the definition of a boiler house and therefore any exemptions of Part 1, Class 2, oil storage tank capacity not exceeding 3,500 litres, are applicable.
- 9.3.5. In relation to the erection of temporary on-site accommodation for persons engaged employed/ engaged in connection with the construction, I note the documentation refers to an area (10 x 3.3m) at the rear of the existing access. No further details of type of accommodation etc are included. It appears from the plans this proposed temporary accommodation would overlap with the proposed garage. This aside, I consider the carrying out of any development of any development to an unauthorised structure is not exempt development having regard to Article 9 (1) of the Planning and Development Act, 2000, as amended.
- 9.3.6. Therefore, having regard to the planning history on the site I consider the limitations on exemptions in Article 9 of the Planning and Development Regulations, 2001, as amended, to all works apply and the proposed alterations and extension to the

building are not exempt. In addition, having regard to the nature and scale of the proposed works to the building include the rear extensions, garage, shed etc, I consider the proposed development would be of such a scale as to render the appearance inconsistent with the character of the structure and would materially affect the external appearance of the building.

9.3.7. I consider the proposed development IS NOT EXEMPT DEVELOPMENT.

10.0 Appropriate Assessment

- 10.1. The rear of the site abuts the Rogerstown Estuary SAC (Side Code: 000208) and the Rogerstown SPA (Site Code: 004015) is located c. 27m to the east along the coastline.
- 10.2. The report of the PA noted the location of the site from the European Sites in the Rogerstown Estuary and considered an Appropriate Assessment would be required.
- 10.3. Rogerstown Estuary SAC features of interest relate to the coastal environment and include Estuaries [1130], Mudflats and sandflats not covered by seawater at low tide [1140], Salicornia and other annuals colonising mud and sand [1310], Atlantic salt meadows (*Glauco-Puccinellietalia maritima*) [1330], Mediterranean salt meadows (*Juncetalia maritimi*) [1410], Shifting dunes along the shoreline with *Ammophila arenaria* (white dunes) [2120], Fixed coastal dunes with herbaceous vegetation (grey dunes) [2130]. The objective is to maintain or restore the favorable conservation status of these habitats.
- 10.4. The species qualifying of interest at Rogerstown Estuary SPA include wetland and waterbirds relating to the coastal environment and include Greylag Goose (*Anser anser*) [A043], Light-bellied Brent Goose (*Branta bernicla hrota*) [A046], Shelduck (*Tadorna tadorna*) [A048], Shoveler (*Anas clypeata*) [A056], Oystercatcher (*Haematopus ostralegus*) [A130], Ringed Plover (*Charadrius hiaticula*) [A137], Grey Plover (*Pluvialis squatarola*) [A141], Knot (*Calidris canutus*) [A143], Dunlin (*Calidris alpina*) [A149], Black-tailed Godwit (*Limosa limosa*) [A156], Redshank (*Tringa totanus*) [A162]
- 10.5. No screening assessment was included with the referral. It is unclear from the documentation how the temporary onsite accommodation will be serviced. In the

absence of any detailed information, it is my opinion that the proposed works cannot be screened for Appropriate Assessment. In this regard I consider Section 4 (4) of the Act is relevant, whereas development shall not be exempted if an appropriate assessment is required.

11.0 Recommendation

11.1. 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 request to regularise planning anomalies and to correct the flaw, both in procedure and interpretation, is or is not development or is or is not exempted development:

AND WHEREAS David Murphy requested a declaration on this question from Fingal County Council and the Council issued a declaration on the day of 30th of November 2021 stating that the matter was development and was not exempted development:

AND WHEREAS referred this declaration for review to An Bord Pleanála on the 10th day of December 2021:

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

- (a) Section 2 and 3 of the Planning and Development Act, 2000, as amended,
- (b) Section 4(1) and 4 (4) of the Planning and Development Act, 2000, as amended,
- (c) Article 6(1) and article 9(1) of the Planning and Development Regulations, 2001, as amended,

- (d) Parts 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (e) the nature and extent of the works carried out,
- (f) the planning history of the site, in particular ABP 300822-18,
- (g) the pattern of development in the area.

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The status of the existing dwelling has been previously accepted by An Bord Pleanála as a chalet/holiday home and not that of a permanent residence and therefore cannot avail of the exempted development provisions of the Planning and Development Regulations, 2001, as amended.
- (b) The works carried out to the exterior of the holiday chalet are of a nature and scale that materially affect the external appearance of the structure and render the building inconsistent with the scale and character of the original building.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 of the 2000 Act, hereby decides that the internal and external alterations and proposed permanent and temporary structures to the rear of the existing building IS DEVELOPMENT and IS NOT EXEMPT DEVELOPMENT.

. Karen Hamilton
Senior Planning Inspector

14th of July 2022