



An
Bord
Pleanála

Inspector's Report ABP-312339-21

Question

Whether a Shed of 19.9 sqm internal floor area to rear of house is or is not development or is or is not exempted development.

Location

Doogan's Warren, Rosslare Strand,
Co. Wexford Y35HY00.

Declaration

Planning Authority

Wexford County Council

Planning Authority Reg. Ref.

EXD00927

Applicant for Declaration

Helen Meehan

Planning Authority Decision

Is not exempted development

Referral

Referred by

Leo and Helen Meehan

Owner/ Occupier

Leo and Helen Meehan

Observer(s)

None

Date of Site Inspection

1st December 2022

Inspector

Emer Doyle

1.0 Site Location and Description

- 1.1. The site is located in the village of Rosslare Strand, Co. Wexford between the coast road and the beach. The application site has a stated area of 0.0708ha.
- 1.2. The site accommodates a newly built replacement chalet building together with the subject shed. The site has been recently landscaped and paved.
- 1.3. The beach is immediately to the east of the site. To the north there is an informal grassed parking area adjoining the coast road and from this parking area there is a sandy track linking to the beach to the east. To the south is a single storey U-shaped house and to the west is the coast road.

2.0 The Question

- 2.1. A question has arisen pursuant to Section 5 of the Planning and Development Act 2000 as amended as to whether a shed of 19.9 square metres internal floor area to the rear of the house is or is not development or is or is not exempted development.

3.0 Planning Authority Declaration

3.1. Declaration

- 3.1.1. Wexford County Council, in accordance with Section 5 of the Planning and Development Act 2000 as amended, considered that the development as described was not exempted development.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The Planning report focused on the measurements of the existing shed. Technical staff of Wexford County Council measured the shed as having an area of 28.08 square metres in total using external dimensions. The planner noted precedent cases of the Board – 09.RL.2885 and 06D.RL2420 which were based on external measurements.

- It was concluded that the total floor area of 28.08 square metres exceeded 25 square metres and therefore did not come within the scope of Class 3, Part 1, Schedule 2 of the Planning and Development Regulations, as amended.
- Two precedent cases of An Bord Pleanála were referred to in the report – 09.RL.2885 and 06D.RL2420.
- The draft order as set out in the planner’s report was as follows:

WHEREAS a question has arisen as to whether a shed of 19.9 square metres internal floor area to the rear of a house constitutes exempted development;

AND WHEREAS Wexford County Council, in considering this referral, had regard particularly to –

- Sections 3 and 4 of the Planning and Development Act 2000 (as amended);
- Articles 6 and 9 of the Planning and Development Regulations 2001 (as amended); and
- Schedule 2, Part 1 Class 3 of the Planning and Development Regulations 2001 (as amended)

Wexford County Council has concluded that the construction of a shed of 19.9 square metres internal floor area to rear of dwelling house is development and is not exempted development.

NOW THEREFORE Wexford County Council, in exercise of the powers conferred on it by section 5(2) of the Planning and Development Act 2000 (as amended), hereby decides that the construction of a shed of 19.9 square metres internal floor area to the rear of a dwelling is development and is not exempted development.

3.2.2. Other Technical Reports

No other reports.

4.0 Planning History

ABP 306854-20/ PA Reg. Ref. 20191681

Permission granted by Wexford County Council and by ABP on appeal for the demolition of a chalet and for a replacement chalet.

5.0 Policy Context

5.1. Wexford County Council Development Plan 2022-2028

The site is located in a designated coastal zone - See Map 3 Volume 1- Coastal Zone Management.

Chapter 12 sets out objectives for coastal zone planning.

Volume 2 Development Management Guidelines - Section 3.2 outlines standards for domestic garages and stores.

Volume 3 Section 4 sets out specific objectives for Rosslare Strand.

5.2. Natural Heritage Designations

None relevant.

6.0 The Referral

6.1. Referrer's Case

6.1.1. The appeal makes the following points:

- The building complies with all six conditions for Class 3 exemption as follows:

The structure is not placed forward of the front wall of the house.

The area is less than 25 square metres.

The area of private open space is not reduced to less than 25 square metres.

The structure is to the rear of the house and the nature of the finishes conform to those of the house.

The height of the structure does not exceed 3m.

The structure is not for 'human habitation or for the keeping of pigs, poultry, pigeons, ponies or horses, or for any purpose incidental to the enjoyment of house as such'.

- All of the precedent cases from Wexford County Council decisions use the internal measures of buildings.
- A number of precedent cases of ABP are also mentioned which use internal measurements – 09.RL.2885, 06S.RL.2484, 28. RL2860

6.2. Planning Authority Response

- A response to the Board states that *'due to increased work loads and high levels of staff vacancies we are not able to provide further comments and refer to the planner's recommendation report in this case.'*

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000, as amended

7.1.1. Under Section 2, the following is the interpretation of 'works': '...includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal...'

7.1.2. Section 2(1) defines a 'structure' as:

'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, 'use', in relation to land, does not include the use of land by the carrying out of any works thereon;

'works' includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal...

Section 3(1) In this Act, 'development' means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land.

Section 4(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, as amended

7.2.1. Article 6(1)

Subject to Article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.

7.2.2. Schedule 2, Part 1 – Exempted Development

Class 3 of Part 1 of the Second Schedule (General) refers to development within the curtilage of a house.

Column 1 (description of development):

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.'

Column 2 (conditions and limitations):

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

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.

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 the side of the house to less than 25 square metres.

4. The external finishes of any garage or other structure constructed, erected or placed to the side of a house, and the roof covering where such structure has a tiled or slated roof, shall conform with those of the house.

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 cases, 3 metres.

6. The structure shall not be used for human habitation or for 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.

7.3. Restrictions on Exemptions

7.3.1. Article 9 of the Regulations provides that exempted development under article 6 of Regulations shall not be exempted development in certain specified circumstances.

8.0 Assessment

8.1. It should be stated at the outset that the purpose of this referral is not to determine the acceptability or otherwise of the shed in respect of the proper planning and sustainable development of the area, but rather whether or not the erection of same constitutes development, and if so falls within the scope of exempted development. Likewise, planning enforcement is a matter for the planning authority and does not fall within the jurisdiction of the Board.

8.2. Is or is not development

8.2.1. The first matter relates to whether or not the shed constitutes development. Having regard to sections 2 and 3 of the Planning and Development Act 2000 as amended, I consider that the erection of the shed constitutes 'development' within the meaning of the Act.

8.3. Is or is not exempted development

- 8.3.1. The case made by the referrer is that the shed was built at the same time as a replacement chalet granted on the site under 20191681 and on appeal to the Board under ABP 306854-20. The appeal states that the shed was built 'at the same time as the house, and to the same standards, for the purpose of housing water pump, water softner, general storage, and possible use as a home office. We built the shed in good faith, in the reasonable belief that the building was in compliance with exempted development regulations.'
- 8.3.2. The basis for the contention of the referrer that the development constitutes exempted development relates to the provisions of Class 3 of Part 1 of the Second Schedule of the Planning and Development Regulations. The Planning Officer report concurs that this is the relevant class however considers that the development does not accord with Condition/ Limitation 3 having regard to the size of the shed.
- 8.3.3. The planning report indicates that technical staff from Wexford County Council measured the structure on the 18th day of August 2021 and the internal dimensions were calculated as 19.84 square metres and the external dimensions were calculated a 28.08 square metres. The case made by the Planning Officer is that the total area exceeds 25 square metres and the applicant cannot therefore avail of the exemption set out in Class 3.
- 8.3.4. I concur with both the referrer and the Planning Authority that Class 3 is the relevant Class the development falls into. In terms of the area, I refer the Board to Article 3 of Part 1 of the Planning and Development Regulations which defines 'gross floor space' as meaning 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.
- 8.3.5. I also refer the Board to a precedent case- ABP 09.RL.2885 (file attached) in relation to a structure in the rear garden of a dwelling in Maynooth, Co. Kildare. The Board order considered that the development was exempted and included the following wording which is relevant to the current case – 'the gross floor area internally, which

is the internal floor area as defined in Article 3 of the Planning and Development Regulations 2001-2011, of the said structure does not exceed 25 square metres.

8.3.6. The main basis for the conclusion of the Planning Authority rests on the area of the building which is taken as the external measurements. Having regard to the above, I consider that the internal measurement is applicable and as measured by Wexford County Council technical staff at 19.84 square metres, is below the threshold of 25 square metres set out in Class 3. I am satisfied that the development complies with the conditions and limitations 1, 2, 3, 4, 5 and 6 of Class 3.

8.3.7. Notwithstanding the above, having regard to the statement of the referrer in the appeal that 'the shed was built at the same time as the house', I consider that the development does not come within the scope of Class 3 and cannot avail of the exempted development regulations. The Board has consistently maintained the view that a house has to be completed and fully occupied as a dwelling prior to being able to avail of the exempted development regulations.

8.4. Restrictions on exempted development

8.4.1. I have examined the restrictions on exempted development and conclude that there are none of relevance to this case.

8.4.2. I have examined the history case on the site and note that permission was not sought for a garage or shed and there were no conditions restricting same on the site.

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 a shed of 19.9 square metres to the rear of a house at Doogan's Warren, Rosslare Strand, Co. Wexford is or is not development or is or is not exempted development:

AND WHEREAS Helen Meehan, Carraig Ard, Coolcotts Lane, Co. Wexford requested a declaration on this question from Wexford County Council and the Council issued a declaration on the 10th day of December, 2021 stating that the matter was not exempted development:

AND WHEREAS Leo and Helen Meehan, Carraig Ard, Coolcotts Lane, Co. Wexford referred this declaration for review to An Bord Pleanála on the 21st day of December, 2021:

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

- (a) Sections 2(1) and 3(1) of the Planning and Development Act, 2000, as amended,
- (b) Article 6(1) and Article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (c) the planning history of the site, and
- (d) the report of the Planning Inspector

AND WHEREAS An Bord Pleanála has concluded that –

- (a) the shed does not fall within the scope of Class 3 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001, as amended, as it was erected at the same time as the 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 erection of a

shed of 19.9 square metres to the rear of a house at Doogan's Warren, Rosslare Strand, Co. Wexford is development and is not exempted development.

Emer Doyle
Planning Inspector

13th January 2023