



An
Bord
Pleanála

Inspector's Report ABP-313742-22

Question

Whether the works for improvement/refurbishment of existing chalet, the maintenance and renewal of the existing access for parking and servicing of existing chalet, the formation of new boundary and reconnection and maintenance of existing water supply, wastewater connection and electrical services is or is not development or is or is not exempted development.

Location

Barrymore Townland, Hodson Bay, Athlone, Co Roscommon.

Declaration

Planning Authority

Roscommon County Council

Planning Authority Reg. Ref.

DED515

Applicant for Declaration

Edvinas Cinga & Giedre Cinge.

Planning Authority Decision

Is development and is not exempted development

Referral

Referred by

Applicant.

Owner/ Occupier

Edvinas Cinga & Giedre Cinge.

Observer(s)

None.

Date of Site Inspection

30th September 2022.

Inspector

Barry O'Donnell

1.0 Introduction

- 1.1. This report relates to a referral by Edvinas Cinga & Giedre Cinge as to whether works for the maintenance an improvement of an existing holiday chalet, including works in its vicinity, are or are not development and are or are not exempted development. A number of individual questions are asked of the Board, as are set out in Section 3 below.
- 1.2. The original cover letter provided with the Section 5 application to the Planning Authority states that the application has been made in accordance with the District Court's recommendations on Roscommon County Council v Edvinas Cinga and Roscommon County Council v Giedre Cinge. A copy of an Enforcement Notice and subsequent District Court summons are appended to the cover letter.

2.0 Site Location and Description

- 2.1. The subject site is located on the shores of Lough Ree, in the townland of Barrymore, approx. 8km north of Athlone. It comprises a small plot that contains a mobile holiday home/chalet and its associated curtilage.
- 2.2. The site is enclosed by a timber panel fence and gate to the north (front) and west (side) and by a welded mesh fence to the north-east (side). The rear site boundary appears to be open, with evidence of recent tree planting in the area.
- 2.3. The site is located on a single lane boreen north-east of the Hodson Bay Hotel. There are other holiday homes/chalets in the vicinity of the site.

3.0 The Question

- 3.1. The questions before the Board relate to works for the maintenance an improvement of an existing holiday chalet on the subject site. The matter has been referred by the applicant. The original questions as set out in the application form to the Planning Authority are:
 - a) *Whether the carrying out of works for the improvement/refurbishment of the existing chalet is or is not development and, if deemed development, is or is not exempted development.*

- b) *Whether the maintenance & renewal of the existing level access for parking and servicing of the subject chalet by motorised vehicle (referred to in the subject enforcement notice dated the 23rd February 2021 as the 'Raised Stone Platform') is or is not development and, if deemed development, is or is not exempted development.*
- c) *Whether the clearing of scrub, under and overgrowth of self-seeded and other vegetation and replanting of grassland, native tree species and general landscaping is or is not development and, if deemed development, is or is not exempted development.*
- d) *Whether the formation of new boundary treatment to define the chalet boundary (as replacing previous boundary structures and gate) not exceeding 1.2 metres in height (Class 11 exemptions as refers to all other scenarios not associated with a domestic dwelling) and a new gate not exceeding 2 metres (Class 9 Exemptions) is or is not development and is or is not exempted development.*
- e) *Whether the reconnection and maintenance of existing water supply, wastewater connections and electrical services is or is not development and, if deemed development, is or is not exempted development.*

3.1.1. The following documentation has been submitted in conjunction with the referral:

- Completed application form,
- Cover letter prepared on behalf of the applicant by The Planning Partnership,
- Ecology Report, prepared by APEM Environmental Consultants Ltd,
- Copy of Planning Authority records pertaining to the Section 5 application, including Appropriate Assessment Screening Report.

4.0 Planning Authority Declaration

4.1. Declaration

4.1.1. The Planning Authority issued a declaration on 10th May 2022, stating as follows: -
...in respect of (a), (b), (d) & (e):

- 1) *The proposed development constitutes development as defined in the Planning & Development Act, 2000, (as amended) and associated Regulations;*
- 2) *The proposed development is not exempted development as defined in the Planning & Development Act 2000 (as amended) and associated Regulations.*
- 3) *The likelihood of significant impacts on European sites as a result of the proposed development cannot be ruled out and Stage 2 Appropriate Assessment is required.*

And in respect of (c):

- 1) *The proposed works does not constitute development as defined in the Planning & Development Act 2000, (as amended) and associated Regulations.*

4.2. Planning Authority Reports

- 4.2.1. A Planning Report dated 9th May 2022 has been provided, which reflects the Planning Authority's determination on the application. The report summarises the development in the context of applicable exempted development provisions and states that in the case of (a) improvement/refurbishment of the existing chalet, (b) maintenance & renewal of the existing level access for parking and servicing of the subject chalet, (d) the formation of new boundary treatment to define the chalet boundary and (e) the reconnection and maintenance of existing water supply, wastewater connections and electrical services, each constitutes development and is not exempted development. The report further states that in the case of (b) and (e) the potential for significant effects on a European site cannot be ruled out at screening stage and that Stage 2 Appropriate Assessment is required. In the case of (c) the clearing of scrub, under and overgrowth of self-seeded and other vegetation and replanting of grassland, native tree species and general landscaping, the report states that this does not constitute development.

- 4.2.2. Other Technical Reports

None.

5.0 Planning History

- 5.1. I did not encounter any recent planning records pertaining to the site. The Planning Report refers to the following historic planning record for the site.

Reg. Reg. 158: Permission granted on 31st December 1964 for the erection of six chalets at Hodson Bay, subject to 13 No. conditions.

Other relevant referrals

PL26.RL2925: Referral relating to whether the replacement of a mobile home on site is or is not development or is or is not exempted development, on a site at Kilmuckridge, Co. Wexford. The Board determined on 25th January 2012 that the replacement of a mobile home on site is development and is not exempted development.

PL28.RL2866: Referral relating to whether replacement of a mobile home is or is not development or is or is not exempted development, on a site at Inchydoney Island, Clonakilty, Co. Cork. The Board determined on 31st August 2011 that the replacement of a mobile home, which had occupied the site for more than 30 years and was re-orientated within that time frame, with a new mobile home of a larger dimensions within a three-month time frame is development and is not exempted development:

6.0 Policy Context

6.1. Roscommon County Development Plan 2022-2028

- 6.1.1. The site is located in a rural area, identified by the County Development Plan as being an 'area under urban influence.'

6.2. Natural Heritage Designations

- 6.2.1. The site is located within Lough Ree Special Area of Conservation (Site Code 000440). Lough Ree Special Protection Area (Site Code 004064) encroaches to the south site boundary.

6.2.2. Lough Ree is also designated as a Proposed Natural Heritage Area (Site Code 000440) and the designated encompasses the majority of the site.

6.3. **Environmental Impact Assessment**

6.3.1. The matters the subject of this referral relate to works for the maintenance and improvement of an existing holiday chalet. This type of development does not constitute an EIA project, as contained in Schedule 5 of the Planning and Development Regulations 2001-2022 and so the question as to whether or not it might be sub-threshold does not arise.

7.0 **The Referral**

7.1. **Referrer's Case**

- Improvement/refurbishment of the chalet.
 - Whether or not the structure retains any original fabric is irrelevant.
 - The fact that works were carried out off-site is irrelevant.
 - The works fall under S4(1)(h) of the Act as they are works which do materially affect the external appearance of the structure.
- Maintenance and renewal of existing level access for parking and servicing of the chalet.
 - Undergrowth was cleared by scraping back and removal of the top layer of vegetation and a new layer of stone material was added.
 - The Planning Authority's contention that appropriate assessment is required is based on the understanding that the new surface is hard and that there is an absence of detail relating to the treatment of surface water. The surface is not hard, it is permeable. It falls under Class 6 of Part 1 of Schedule 2 of the Regulations.
- New boundary treatment
 - As the chalet is not a house, it can benefit from exemptions under Class 9 and 11 of Part 1 of Schedule 2 of the Regulations.
 - If the Board requires, the boundary can be reduced to 1.2m.

- Reconnection and maintenance of water supply, wastewater and electrical services
 - Notwithstanding claims by the Planning Authority that no information was provided in relation to reconnection, the applicant has made it clear that all services associated with power, water supply and wastewater collection are in situ and have remained in place since first occupation of the chalet in 1965.
 - No works have been carried out as none were necessary. In view of this, no significant effects on applicable European sites can arise.
- Preliminary point regarding S4(1)(h) of the Act
 - The reference within the Planning Report to S4(1)(h) of the Regulations is confusing and is a potentially significant error in the Planning Authority's assessment.
 - Article 9(1) (Restrictions on Exemption) of the Regulations only applies to Article 6 (Exempted Development) of the Regulations. It does not apply to S4(1)(h) of the Act.
 - Article 6 is only relied upon in relation to boundary works.
- Appropriate assessment
 - It is repeated that no works have taken place in relation to wastewater collection and treatment.
 - It is assumed that concerns regarding surface water collection and disposal are linked to the access surface material. It is repeated that this surface is permeable.
 - An ecology report is provided with the referral, which addresses the Planning Authority's appropriate assessment screening report.
- Planning Report recommendation
 - The statement within the Report that the scale and magnitude of works carried out to the chalet result in a material deviation in its character is not accepted.
 - S4(1)(h) of the Act does not require that works need to be carried out on-site.

- The Ecology Report responds to concerns over the hardstanding/hardcore area mentioned by the Planning Authority.

7.2. **Planning Authority Response**

7.2.1. None received.

7.3. **Further Responses**

7.3.1. None.

8.0 **Statutory Provisions**

8.1. **Planning and Development Act, 2000, as amended**

- 8.1.1. Section 2(1) - “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.
- 8.1.2. Section 3(1) - “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.
- 8.1.3. Section 4(1)(h) - The following shall be exempted developments for the purposes of this Act— 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.

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

8.2.1. Article 6(1) Exempted Development

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.

8.2.2. Article 9(1)(viii) Restrictions on Exemption

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—(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.

8.2.3. Schedule 2, Part 1 – Exempted Development

CLASS 5 - The construction, erection or alteration, within or bounding the curtilage of a house, of a gate, gateway, railing or wooden fence or a wall of brick, stone, blocks with decorative finish, other concrete blocks or mass concrete.

Conditions and limitations

1. The height of any such structure shall not exceed 2 metres or, in the case of a wall or fence within or bounding any garden or other space in front of a house, 1.2 metres.
2. Every wall other than a dry or natural stone wall bounding any garden or other space shall be capped and the face of any wall of concrete or concrete block (other than blocks with decorative finish) which will be visible from any road, path or public area, including public open space, shall be rendered or plastered.
3. No such structure shall be a metal palisade or other security fence.

CLASS 6 - (a) The construction of any path, drain or pond or the carrying out of any landscaping works within the curtilage of a house.

(b) Any works within the curtilage of a house for— (i) the provision to the rear of the house of a hard surface for use for any purpose incidental to the enjoyment of the house as such, or, (ii) the provision of a hard surface in the area of the garden forward of the front building line of the house, or in the area of the garden to the side of the side building line of the house, for purposes incidental to the enjoyment of the house as such.

Conditions and limitations

The level of the ground shall not be altered by more than 1 metre above or below the level of the adjoining ground.

Provided that the area of the hard surface is less than 25 square metres or less than 50% of the area of the garden forward of the front building line of the house, or 50% of the area of the garden to the side of the side building line of the house, as the case may be, whichever is the smaller,

Or

if the area of the hard surface is 25 square metres or greater or comprises more than 50% of the area of the garden forward of the front building line of the house, or 50% of the area of the garden to the side of the side building line of the house, as the case may be, it shall be constructed using permeable materials or otherwise allow for rainwater to soak into the ground.

CLASS 9 - The construction, erection, renewal or replacement, other than within or bounding the curtilage of a house, of any gate or gateway.

Conditions and limitations

The height of any such structure shall not exceed 2 metres.

CLASS 11 - The construction, erection, lowering, repair or replacement, other than within or bounding the curtilage of a house, of – (a) any fence (not being a hoarding or sheet metal fence), or (b) any wall of brick, stone, blocks with decorative finish, other concrete blocks or mass concrete.

Conditions and limitations

1. The height of any new structure shall not exceed 1.2 metres or the height of the structure being replaced, whichever is the greater, and in any event shall not exceed 2 metres.
2. Every wall, other than a dry or natural stone wall, constructed or erected bounding a road shall be capped and the face of any wall of concrete or concrete blocks (other than blocks of a decorative finish) which will be visible from any road, path or public area, including a public open space, shall be rendered or plastered.

9.0 Assessment

9.1. Background

- 9.1.1. The subject matter of this referral appears to arise following planning enforcement proceedings. As part of the referral the applicant has provided a copy of an Enforcement Notice dated 23rd February 2021, which required the cessation of works on the site, together specified repair works to be undertaken, and has also provided a copy of a District Court summons dated 28th July 2021. The referral documents state that the application is made in accordance with the District Court's direction in the proceedings taken against the applicants.

9.2. Is or is not development

- 9.2.1. There are a number of different aspects to this referral. Regarding questions (a), (b) and (d), I am satisfied that each constitutes 'development', which is defined under Section 3(1) of the Planning and Development Act, 2000 as amended (the Act), as *"the carrying out of works on, in, over or under land..."* Works are defined, under Section 2(1) of the Act as including *"any act or operation of construction, excavation, demolition, extension..."*
- 9.2.2. Regarding question (c) the clearance of scrub, under and overgrowth of self-seeded and other vegetation and replanting of grassland, native tree species and general landscaping does not involve any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and thus, in my view, does not constitute development.
- 9.2.3. Regarding question (e), the appellant states that all available services associated with power, water supply and wastewater collection are in situ and have remained in place since first occupation of the chalet. The applicant further states that potable and wastewater connections are in place, with a connection to a septic on the opposite side of the road, and that reconnection to the ESB supply does not require any on-site works. In this context, reconnection of these services does not involve any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and thus, in my view, does not constitute development.

9.3. Is or is not exempted development

9.3.1. I consider questions (a), (b) and (d) separately below.

(a) The carrying out of works for the improvement/refurbishment of the existing chalet

9.3.2. Alterations to the chalet are depicted on elevation and floor plan drawing No. 205. It can be seen from this drawing that the structure has been increased in width by 480mm, reduced in length by 75mm and increased in height by 160mm. Additional and revised window/door openings are incorporated across all elevations and its external appearance has been altered by the incorporation of vertical timber cladding.

9.3.3. The appellant submits that these works are exempted development, under S4(1)(h) of the Act as they do not materially affect the external appearance of the structure so as to render it inconsistent with the permitted structure or neighbouring structures and will not affect its permitted use. Works undertaken are submitted as falling within the tolerances of S4(1)(h) and alterations to the chalet's dimensions are also considered to be *de minimis*.

9.3.4. Regarding the Planning Authority's assessment, the applicant contends that commentary regarding whether any of the original fabric of the building has been retained is irrelevant to the determination.

9.3.5. Section 4(1)(h) of the Act provides that 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 shall be exempted development. The provision clearly applies to a 'structure,' which I consider encompasses a mobile home

9.3.6. Having considered the drawings provided with the application and also the photographic records of the chalet in both its previously existing and refurbished states, it is my opinion that the refurbished structure is materially different to the previously existing structure on the site. Its dimensions have been altered, additional and revised openings are incorporated across all elevations and its external

appearance has been altered by the incorporation of vertical timber cladding. In view of the foregoing, I do not consider the provisions of S4(1)(h) apply as the 'structure' is materially different in its size and appearance to the structure that was previously on the site.

9.3.7. There is no provision for exemption in the Planning and Development Regulations, 2001-2010 in relation to 'mobile homes'.

9.3.8. In view of my assessment, I conclude that the carrying out of works for the improvement/refurbishment of the existing chalet is not exempted development.

(b) Maintenance & renewal of the existing level access

9.3.9. This question relates to the area described by the Planning Authority as a raised stone platform.

9.3.10. The applicant states that undergrowth was cleared from the area by scraping and removing the top of layer of vegetation, with a new layer of aggregate (referred to Clause 804 type aggregate) applied and compacted. The applicant states that the level of the affected area remains unchanged and argues that the works undertaken amount to landscaping or groundworks and are not an act of development that requires permission.

9.3.11. Class 6 of Schedule 2 of Part 1 of the Planning and Development Regulations 2001-2022 provides an exemption for the provision of a hard surface in the area of the garden forward of the front building line of the house, or in the area of the garden to the side of the side building line of the house, for purposes incidental to the enjoyment of the house as such. The provision is subject to a limitation that the hard surface area should be less than 25sqm or less than 50% of the area forward of the forward building line or side of the side building line, whichever is the smaller.

9.3.12. The area of the hardcore base is unstated and no site layout drawing was submitted with the application, from which the area in question could be estimated. The site was secured at the time of my site visit but I observed on my site visit that the affected area is to the immediate east side of the chalet. The affected area can also be seen in photographs provided with the application. As the area of hardstanding is unclear, the Board may wish to clarify this with the applicant.

- 9.3.13. Notwithstanding the above, Article 9(1)(a)(viii) states the development to which Article 6 relates (exempted development) shall not be exempted development if the carrying out of such 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.
- 9.3.14. I have previously concluded above that refurbishment of the chalet is not exempted development as the structure is materially different to the previously existing structure on the site. It therefore appears to be unauthorised. The hardcore base is stated to be used for parking, associated with occupation of the chalet and, in this context, I consider the provisions of Article 9(1)(a)(viii) apply. The works to maintain & renew the existing level access therefore do not comprise exempted development.
- 9.3.15. I note that the Planning Authority determined that this aspect of the proposal is not exempted development, by reason of a determination that significant effects on a European site could not be ruled out in the absence of Stage 2 Appropriate Assessment. Issues pertaining to Appropriate Assessment are considered at Section 9.4 of my report.

(d) New boundary treatment and gate

- 9.3.16. The question before the Board relates to formation of a new boundary treatment not exceeding 1.2m in height and a new gate not exceeding 2m in height.
- 9.3.17. Regarding the boundary treatment, I have previously advised the Board that there are two different boundary fences along the road frontage: a timber panel fence of varied height and a weld mesh fence. The applicant clarifies within the application documents that the development the subject of the referral is the weld mesh fence, which is submitted as comprising repair or replacement of a previous concrete pole and wire fence.
- 9.3.18. The applicant contends that the chalet is a non-domestic structure and that, in this context, Classes 9 and 11 of Schedule 2 of Part 1 of the Regulations apply, which provide for the construction of a gate and fence other than within or bounding the curtilage of a house, subject to specified limitations and conditions.
- 9.3.19. As the Planning Authority states in its report on the application, the legislation does not differentiate between permanent housing and holiday homes, for the purposes of

exempted development provisions. In view of the approved and long-established nature of the use of the subject site as a holiday home, I consider Class 5 of Schedule 2 of Part 1 of the Regulations is the applicable class in this instance and it provides for the construction of a wooden fence or gate within or bounding the curtilage of a house, subject to specified limitations and conditions.

9.3.20. Regarding the weld mesh fence, the application drawings do not identify its height but the Board will note that the question before it states that the fence does not exceed 1.2m in height. In this context, Class 5 provides for the construction of a fence of 1.2m in height, in front of a house, and I am satisfied that the development falls within the Class.

9.3.21. However, and notwithstanding the above, Article 9(1)(a)(viii) of the Regulations is equally applicable in this instance. The boundary fence is directly associated with the use of chalet, which I have previously concluded is not exempted development and thus appears to be unauthorised. It therefore does not comprise exempted development.

9.3.22. The height of the gate is also not identified on the application drawings, but again, the Board will note that the question before it states that the gate does not exceed 2m in height. The 2m height exceeds the maximum 1.2m allowable in front of a house under Class 5 and thus does not accord with the requirements of the Class. It therefore does not constitute exempted development.

9.4. Appropriate Assessment Screening

9.4.1. The question arises as part of this referral as to whether the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site. In such circumstances Article 9(1)(viii) of the Regulations states that development to which Article 6 applies (exempted development) shall not be exempted development. Questions (b) and (d) of the referral relate to development that I have considered in the context of exempted development classes that are linked to Article 6.

European sites

- 9.4.2. As I have stated above, the site is located within Lough Ree Special Area of Conservation (Site Code 000440) and Lough Ree Special Protection Area (Site Code 004064) encroaches to the south site boundary.
- 9.4.3. There are a number of other European sites within a 15km search zone but I am satisfied that, in view of the smallscale nature of the subject development, there is no likelihood significant effects on any European site other than in the immediate vicinity of the site. My assessment therefore focusses on Lough Ree SAC and SPA.

Planning Authority assessment

- 9.4.4. As part of its assessment of the application, the Planning Authority undertook screening for appropriate assessment and in respect of Lough Ree SAC and SPA, determined that *'in the absence of details in relation to the treatment and disposal of waste water, surface water collection and disposal and the type and amount of material imported to the site, significant impacts cannot be ruled out and therefore a stage 2 AA is required.'*
- 9.4.5. As part of the referral, the applicant has submitted a report entitled 'Review of Roscommon Co. Co. AA Screening Report,' prepared by APEM Environmental Consultants Ltd. The report responds to the AA screening undertaken by the Planning Authority.

Evaluation of potential effects

- 9.4.6. As I have stated questions (b) and (d) of the referral relate to development that I have considered in the context of exempted development classes that are linked to Article 6.
- 9.4.7. Regarding maintenance & renewal of the existing level access, the applicant states that undergrowth was cleared from the area by scraping and removing the top of layer of vegetation, with a new layer of aggregate (referred to Clause 804 type aggregate) applied and compacted. The area of fill and the volume of material imported are unstated.
- 9.4.8. The site is located within the SAC and the SPA designation extends to the south site boundary. The Clause 804 type material imported comprises porous, crushed stone. The surface water drainage system for the site is unstated but, given the porous nature of the material, surface waters will infiltrate through to the ground and there is

a likelihood of suspended solid and/or pollutant content in run-off. Any such discharges have the potential to affect hydrological processes occurring within the SAC and may also affect QI/SCI by degrading habitats and reducing prey availability. In view of the above, I consider there is a risk of significant effects arising from surface water discharges from the site and stage 2 appropriate assessment is required.

- 9.4.9. Regarding the new boundary treatment and gate, both have a very small on the ground footprint. I am satisfied that there is no real likelihood of significant effects on either European site and there is no requirement for stage 2 appropriate assessment.

Screening Determination

- 9.4.10. The proposed development was considered in light of the requirements of Section 177U of the Planning and Development Act 2000 as amended. Having carried out Screening for Appropriate Assessment of the project, it has been concluded that Appropriate Assessment is required as it cannot be excluded on the basis of objective information that the proposed development, individually or in combination, will have a significant effect on the following European sites.

- Lough Ree Special Area of Conservation (Site Code 000440), and
- Lough Ree Special Protection Area (Site Code 004064).

This determination is based on the importation and use of Clause 804 type material, a porous material, for the hard surfaced area to the side and front of chalet. This material is porous and is likely to allow for surface water run-off containing suspended solid and/or pollutant content to enter the European sites.

10.0 Recommendation

- 10.1. I recommend that the Board should decide this referral in accordance with the following draft order.

WHEREAS a question has arisen as to: -

- a) Whether the carrying out of works for the improvement/refurbishment of the existing chalet is or is not development and, if deemed development, is or is not exempted development.
- b) Whether the maintenance & renewal of the existing level access for parking and servicing of the subject chalet by motorised vehicle (referred to in the subject enforcement notice dated the 23rd February 2021 as the 'Raised Stone Platform') is or is not development and, if deemed development, is or is not exempted development.
- c) Whether the clearing of scrub, under and overgrowth of self-seeded and other vegetation and replanting of grassland, native tree species and general landscaping is or is not development and, if deemed development, is or is not exempted development.
- d) Whether the formation of new boundary treatment to define the chalet boundary (as replacing previous boundary structures and gate) not exceeding 1.2 metres in height (Class 11 exemptions as refers to all other scenarios not associated with a domestic dwelling) and a new gate not exceeding 2 metres (Class 9 Exemptions) is or is not development and is or is not exempted development.
- e) Whether the reconnection and maintenance of existing water supply, wastewater connections and electrical services is or is not development and, if deemed development, is or is not exempted development.

AND WHEREAS Edvinas Cinga & Giedre Cinge requested a declaration on this question from Roscommon Council and the Council issued a *declaration on the 10th day of May, 2022 stating the following: -*

...in respect of (a), (b), (d) & (e):

- 1) *The proposed development constitutes development as defined in the Planning & Development Act, 2000, (as amended) and associated Regulations;*

- 2) *The proposed development is not exempted development as defined in the Planning & Development Act 2000 (as amended) and associated Regulations.*
- 3) *The likelihood of significant impacts on European sites as a result of the proposed development cannot be ruled out and Stage 2 Appropriate Assessment is required.*

And in respect of (c):

- 1) *The proposed works does not constitute development as defined in the Planning & Development Act 2000, (as amended) and associated Regulations.*

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 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, 2001-2022,

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The carrying out of works for the improvement/refurbishment of the existing chalet results in a structure that is materially different in size and appearance to the previously existing structure on the site and thus do not accord with the provisions of Section 4(1)(h) of the said Act.

- (b) Maintenance & renewal of the existing level access for parking and servicing of the subject chalet by motorised vehicle does not constitute exempted development, in accordance with Article 9(1)(a)(viii) of the said Regulations, as it comprises the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use. Further, stage 2 appropriate assessment is necessary as there is a risk of significant effects on Lough Ree SAC and SPA arising from surface water discharges from the site containing suspended solids and/or pollutants.
- (c) The clearing of scrub, under and overgrowth of self-seeded and other vegetation and replanting of grassland, native tree species and general landscaping does not constitute development, in accordance with the meaning provided at Section 3 of the said Act.
- (d) The formation of new boundary treatment to define the chalet boundary, not exceeding 1.2 metres in height, falls generally within the scope of the exempted development provisions of Class 5 of Part 1 of Schedule 2 of the said Regulations but does not constitute exempted development, in accordance with Article 9(1)(a)(viii) of the said Regulations, as it comprises the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use.

The formation of a new gate not exceeding 2m in height does not constitute exempted development as it exceeds the maximum allowable 1.2m height allowed under Class 5 of Part 1 of Schedule 2 of the said Regulations

- (e) The reconnection and maintenance of existing water supply, wastewater connections and electrical services does not constitute development, in accordance with the meaning provided at Section 3 of the said Act.

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 following is not development: -

- (c) The clearing of scrub, under and overgrowth of self-seeded and other vegetation and replanting of grassland, native tree species and general landscaping
- (e) The reconnection and maintenance of existing water supply, wastewater connections and electrical services.

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 following is development and is not exempted development: -

- (a) The carrying out of works for the improvement/refurbishment of the existing chalet
- (b) The maintenance & renewal of the existing level access for parking and servicing of the subject chalet by motorised vehicle
- (e) The formation of new boundary treatment to define the chalet boundary, not exceeding 1.2 metres in height, and a new gate not exceeding 2 metres

Barry O'Donnell
Planning Inspector

14th November 2022.