



An
Bord
Pleanála

Inspector's Report ABP-316125-23

Question

Whether the erection of temporary living accommodation on construction site at Ballinatone Lower, Greenan, County Wicklow is or is not exempted development.

Location

Ballinatone Lower, Greenan, County Wicklow

Declaration

Planning Authority

Wicklow County Council

Planning Authority Reg. Ref.

EX7/2023

Applicant for Declaration

Kerrin G. Buck.

Planning Authority Decision

Is not exempted development

Referral

Referred by

Kerrin G. Buck.

Owner/ Occupier

Kerin G. Buck.

Observer(s)

None.

Date of Site Inspection

26th February 2024.

Inspector

Emma Nevin

1.0 Site Location and Description

1.1. The site is located in the townland of Ballinatone lower on a laneway off the local road. Existing on site is a structure under construction above the foundation level (subject to a concurrent appeal under ABP-316022-23). The site is screened by existing planting. The structure subject to the referral is located to the east and southeast corner of the site.

1.2. At the time of site inspection, the single storey A-framed structure, with an overall height of 4 metres, was inhabited by the applicant and his family.

2.0 The Question

2.1. The question referred to the planning authority pursuant to Section 5(1) of the Planning and Development Act, 2000, as amended (“the Act”) and subsequently referred by referrer to the Board, pursuant to Section 5(3)(b) of the Act is, as follows:

“Whether the erection of temporary living accommodation on construction site at Ballinatone Lower, Greenan, County Wicklow is or is not exempted development”.

3.0 Planning Authority Declaration

3.1. Declaration

On the 7th March 2023 Wicklow County Council issued a decision concluding that on the basis of the information submitted advised that the erection of temporary living accommodation on the subject site would not come within the exemption provision as set out under Part 1 or Schedule 2, Class 17 of the Planning and Development Regulations because:

1. The decision of the Planning Authority under PPR 22/800 for the retention permission of foundations and rising walls constructed on site and permission for completion of dwelling with some alterations to same with site associated works is still within the appeal period, and hence there is no current permission on the site. Therefore, the proposed structure would not come within the scope of the description of Class 17.

2. The limitations and conditions attached for Class 17 require the removal of the temporary accommodation and the reinstatement of the lands on the completion of the permitted development. The proposal to retain the structure on site after the expiration of the relevant period would be contrary to the said limitations and conditions.

Accordingly, the Planning Authority considers that “the erection of temporary living accommodation on construction site at Ballinatone Lower, Greenan, Co. Wicklow” is development and is not exempted development.

3.2. Planning Authority Reports

3.2.1. The basis for the Planning Authority’s decision includes:

- The building is less than 25 sq. m. in floor area and is 4 metres in height.
- The external finished are timber and cladding.
- The structure is being used as temporary accommodation and the applicant argues that the proposed structure comes under Schedule 2, Part 1, Class 17 of the Regulations.
- Having regard to description of the works carried out on site, it is considered that the erection of temporary living accommodation structure on site comes within the definition of development as stated under section three of the planning and development act 2000.
- On the 14th of February 2023, a decision issued under PPP or 22/800 for the retention permission of foundations and rising walls constructed on site and permission for completion of dwelling with some alterations to same with associated site works.
- The final grant was not issued at the time of planners’ assessment.
- The original permission for the existing uncompleted development on site has expired, therefore no permission currently exists on site for any construction works to be undertaken.
- It was considered that the development would not come within the exempted provision Schedule 2 Part 1, Class 17 of the Planning and Development

Regulations, 2001 (as amended). Therefore, the development on site is not exempted development.

3.2.2. Other Technical Reports

None.

4.0 Planning History

22/800 – A recommendation to grant planning permission was issued by Wicklow County Council on 14th February 2023, for retention permission of foundations and rising walls constructed on site (granted under PRR11/4667 & 05/3286) and Permission for completion of dwelling with some alterations to same with associated site works. This application is currently under appeal to An Bord Pleanála - ABP-316022-23, **the decision is pending on this appeal.**

11/4667 – Extension of duration of permission was granted by Wicklow County Council on 14th November 2011 for the development permitted under PRR 05/3286. The extension of duration was granted for 2.5 years.

05/3286 - Permission was granted by Wicklow County Council on 9th August 2006 for a dwelling and septic tank.

Application for Section 5 Declaration

Ex25/2022 - A question has arisen as to whether or not the construction of residential chalet built in September and October 2022 on land is exempted development.

Wicklow County Council determined that: the construction of residential chalet built in September and October 2022 is development and is not exempted development.

Ex39/2022 - A question has arisen as to whether or not 1) Existing substantially incomplete works toward building a rural house started under a now lapsed planning permission. 2) Whether upon lapsing of permission for rural house the future use of lands for residential. 3) New development works carried on an incomplete rural house after the lapsing of 5 years planning permission. 4) Erection of and inhabitation of 2 tents on with no planning permission. 5) Storage of waste and construction materials on lands. At Ballinatone Lower, Co Wicklow is or is not exempted development.

Wicklow County Council determined that concluded that:

- Existing substantially incomplete works toward building a rural house started under a now lapsed planning permission is development and is permitted development.
- The future use of lands for residential is not development within the meaning of the Planning and Development Acts 2000 (as amended).
- New development works carried on an incomplete rural house after the lapsing of 5 years planning permission is development and is not exempted development.
- Erection of and inhabitation of 2 tents on with no planning permission is development and is not exempted development.
- Storage of waste and construction materials on lands is development and is not exempted development.

Enforcement

UD File: 5592 - Alleged unauthorised development consisting of (a) Site clearance works, (b) Construction of block work / walls and (c) Placement of tents on lands without the benefit of planning permission.

5.0 Policy Context

5.1. Development Plan

- 5.1.1. The relevant Development Plan is the Wicklow County development Plan 2022-2028.
- 5.1.2. Wicklow Settlement Hierarchy – Level 10, Open Countryside – *“This is the ‘rural area’ of County Wicklow. Put simply, it forms the ‘open countryside’ and includes all lands outside of the designated settlement boundaries”.*
- 5.1.3. The site is not subject to any specific designations, and it is removed from features of archaeological interest, designated scenic routes, views or and prospects and from sites of nature conservation interest.

5.2. Natural Heritage Designations

5.2.1. The subject site is not located within a designated European Site.

6.0 The Referral

6.1. Referrer's Case

6.1.1. A first party referral was received from the owner of the site Kerrin G Buck, 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 Regulations, 2001 (as amended). The case submitted by the referrer can be summarised as follows:

- Based on the Planning and Development Act, 2000 (as amended) Article 152 (1) (a), and Article 152 (2), that Wicklow County Council and An Bord Pleanála have a responsibility to not recognise and act upon the vexatious, inflammatory, fictitious, complaints and appeals received from Buck Planning Services (BPS). A compliant that was issued to Wicklow County Council has been submitted with the referral.
- The development in question is minor, it is a temporary structure, under 25 sq. m. and 4 metres high built within the curtilage of the existing substantially constructed house.
- In the spirit of Irish Law, it is intended service to the people of Ireland, temporary structures, which address the immediate needs of our people for shelter, protection and sanctuary. To enforce letter of the law approached curtailing the pursuit of improved living conditions would be unlawful and in conflict with the nature of Irish Law.
- The temporary accommodation is a modest A-frame studio for a family who are engaged in restoration of the existing permitted works and their completion.
- Wicklow County Council are mistaken in their decision and the temporary structure is exempted development under Planning and Development Regulations, 2001 (as amended), Part 1, Article 6 – Class 17 and/or Class 3.

It is the intention to use the temporary accommodation (Class 17) until the house is complete and it will become a studio.

- Temporary accommodation is allowed where permitted development exists. In that respect reference is made to Order Number 1182/2022, which states regarding the incomplete dwelling that existing substantially incomplete works towards building a rural house. The applicant is currently engaged in carrying out conservation and restoration works, and there is no accommodation locally, therefore on-site accommodation is required.
- There is a planning application on appeal with An Bord Pleanála (Planning Ref: 22/800) to complete the substantially built single dwelling. The appeal to An Bord Pleanála by BPS is a continuation of a vexatious agenda towards the applicant and his family.
- Local authorities are experiencing grave difficulty in providing housing or emergency accommodation for those in need, and to address these concerns the cabin was designed and built by the applicant.
- The temporary accommodation has been connected to the existing septic tank and the applicant recognises that the domestic wastewater treatment system is not complete and commits to ensuring that the septic tank is connected to the proposed percolation area once complete.

6.2. Planning Authority Response

- 6.2.1. The Planning Authority had no further comment and referred all parties to the planning report on file.

6.3. Owner/ occupier's response *(where not the referrer)*

None

6.4. Further Responses

None

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000, as amended

7.1.1. Section 2 (1) of the Act provides the following definitions of relevance:

“unauthorised development” means, in relation to land, the carrying out of any unauthorised works (including the construction, erection or making of any unauthorised structure) or the making of any unauthorised use;

“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,

“unauthorised structure” means a structure other than—

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

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

“unauthorised use” means, in relation to land, use commenced on or after 1 October 1964, being a use which is a material change in use of any structure or other land and being development other than— (a) exempted development (within the meaning of section 4 of the Act of 1963 or section 4 of this Act), or (b) development which is the subject of a permission granted under Part IV of the Act of 1963, being a permission which has not been revoked, and which is carried out in compliance with that permission or any condition to which that permission is subject;

Section 3(1) of the Act states the following in respect of ‘development’:

“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 3(2) of the Act states “for the purposes of subsection (1) and without prejudice to the generality of that subsection— (b) where land becomes used for any

of the following purposes— (i) the placing or keeping of any vans, tents or other objects, whether or not moveable and whether or not collapsible, for the purpose of caravanning or camping or habitation or the sale of goods, the use of the land shall be taken as having materially changed.”

Section 4 (1) sets out various forms and circumstances in which development is exempted development for the purposes of the Act. Section 4 (1) (a) – (l) sets out what is exempted development for the purposes of this Act and includes: (f) providing for ‘*development carried out on behalf of, or jointly or in partnership with, a local authority, pursuant to a contract entered into by the local authority concerned, whether in its capacity as a planning authority or in any other capacity*’, and (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*”.

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, as amended.

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

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, as amended.

7.2. Planning and Development Regulations, 2001

- 7.2.1. Article 6(1) of the Planning and Development Regulations 2001(as amended) (hereinafter ‘the 2001 Regulations’) provide 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’.

7.2.2. As provided for in Article 9(1) of the Planning and Development Regulations sets out various restrictions on works that would otherwise be exempted development under Article 6.

7.2.3. Class 17 of Part 1, Schedule 2 of the Regulations states:

“The erection, construction or placing on land on, in, over or under which, or on land adjoining which, development (other than mining) is being, or is about to be carried out, pursuant to any permission, consent, approval or confirmation granted under the Act or any other enactment or as exempted development, of temporary on-site accommodation for persons employed, or otherwise engaged, in connection with the carrying out of the development, during the period in which it is being carried out.”

Conditions and Limitations

“Such accommodation shall be removed at the expiration of the period and the land shall be reinstated save to such extent as may be authorised or required by the permission, consent, approval or confirmation granted under the Act or any other enactment.”

This is discussed in section 8 of this report.

7.3. **Previous Cases**

7.3.1. I could not locate any previous case in respect of ‘temporary living accommodation’, however, the Board has previously dealt with cases in respect of mobile homes, RL2744, RL2925, RL2848, RL3343, RL2866, RL3349, RL2255 and RL3566 relates.

8.0 **Assessment**

8.1. **Preliminary Matters**

8.1.1. It should be noted that the purpose of this referral is not to determine the acceptability or otherwise of a temporary structure for living accommodation on the lands in association with the development of a single residential dwelling, but rather whether or not the matter in question constitutes development, and if so, falls within the scope of exempted development.

8.1.2. As noted above, at the time of the site visit, the temporary living accommodation referred to in the referral was in situ on site and was occupied by the applicant and his family.

8.2. **Is or is not development**

8.2.1. The definition of 'development' involves 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. Section 3(2)(b)(i) refers to the placing or keeping of any vans, tents or other objects, whether or not moveable etc. for the purpose of camping, caravanning or habitation.

8.2.2. I consider the temporary structure to be an object for the purpose of human habitation, and in this context, the placing of a temporary structure on the lands would constitute a material change of use and would, therefore, constitute development under section 3 (2) (b) (i) of the Act.

8.3. **Is or is not exempted development**

8.3.1. Section 6(1) of the Planning and Development Regulations, 2001 (as amended), states that subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2.

8.3.2. Class 17 deals with temporary structures and uses in particular to provide accommodation for persons engaged in carrying out the development. In principle, I would accept that the temporary living accommodation could fall within Class 17, if used to provide temporary accommodation for persons engaged in a development. However, Class 17 requires that the development being carried out or about to be carried out is pursuant to a permission/consent/approval or is exempted development.

8.3.3. In this instance, and at time of site inspection, there was no granted permission on site in respect of any existing buildings on the subject site. The referrer notes the planning history on site, 11/4667 (PRR 05/3286), which has expired, and references the current application on appeal with An Bord Pleanála (Reg. Ref. 22/800 – ABP-

316200-23). Notwithstanding the recommendation to grant permission by Wicklow County Council under Reg. Ref. 22/800, the decision on the current appeal ABP-316022-23 is pending with the Board at this time.

- 8.3.4. In the absence of evidence of compliance in respect of works being carried out, therefore, with the details of the requirements of Class 17 i.e. that the works being/to be carried out demonstrably comprise exempted development, I do not consider that the temporary living accommodation can be construed as falling within the provisions of Class 17.
- 8.3.5. The referrer has stated that it is the intention to use the temporary accommodation until the house is complete and it will become a studio and as such Class 3 of the Regulations relates. I note that the question posed under this referral relates to the use of the structure as 'temporary living accommodation', and not its use as a studio. Therefore, the assessment is based on the question posed only.

8.4. Restrictions on exempted development

- 8.4.1. Appropriate Assessment: Under Section 177U(9) of the Planning and Development Act, 2000 (as amended) it is stated that "in deciding upon a declaration or a referral under section 5 of this Act a planning authority or the Board, as the case may be, shall where appropriate, conduct a screening for appropriate assessment in accordance with the provisions of this section."
- 8.4.2. Section 4 (4) of the Act also states that "notwithstanding paragraphs (a), (i), (ia) and (l) of subsection (1) and any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required".
- 8.4.3. As noted in Section 5.2.1 above, the subject site is not located within a designated European Site. Notwithstanding, there are no works relating to the change of use by itself and within the context of the site and surroundings. Having regard to the nature and scale of the development and the nature of the receiving environment and/or proximity to the nearest European site, no Appropriate Assessment issues arise, and it is not considered that the development would be likely to have a significant effect individually or in combination with other plans or projects on a European site. Accordingly, there are no restrictions in this regard.

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 erection of temporary living accommodation on construction site at Ballinatone Lower, Greenan, County Wicklow is or is not development or is or is not exempted development:

AND WHEREAS Kerrin G. Buck requested a declaration on this question from Wicklow County Council and the Council issued a declaration on the 7th day of March, 2023 stating that the matter was development and was not exempted development:

AND WHEREAS referred this declaration for review to An Bord Pleanála on the 23rd day of March, 2023:

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

- (a) Sections 2, 3 and 4 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) Class 17 of Part 1 Schedule 2 of the Planning and Development Regulations, 2001, as amended,
- (d) the planning history of the site,
- (e) the pattern of development in the area:

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The erection of temporary living accommodation on construction site constitutes an object for the purpose of human habitation. The use of the land would, therefore, materially change, and constitute development, in accordance with section 3(2)(b)(i) of the Planning and Development Act 2000 (as amended).
- (b) The erection of temporary living accommodation on construction site does not constitute temporary on site accommodation pursuant to permission, consent, approval or confirmation granted and, therefore, does not come within the exempted development provisions under Class 17 of Part 1 Schedule 2 to the Planning and Development Regulations, 2001, as amended.
- (c) Does not come within any of the other exempted development provisions of the Act or Regulations.

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 erection of temporary living accommodation is development and is not exempted development.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.



Emma Nevin
Planning Inspector

5th March 2024