



An
Bord
Pleanála

Inspector's Report ABP-316152-23

Question

Whether the home office built within the property boundary is or is not placed forward of the front wall of the house and whether the home office is or is not development and is or is not exempted development

Location

The Dunes, Seapoint, Termonfeckin, Co. Louth

Declaration

Planning Authority

Louth County Council

Planning Authority Reg. Ref.

S52023/02

Applicant for Declaration

Valerie and Gary Keating.

Planning Authority Decision

Is not exempted development

Referral

Referred by

Valerie and Gary Keating.

Owner/ Occupier

Valerie and Gary Keating.

Observer(s)

None.

Date of Site Inspection

24th April 2024

Inspector

Lucy Roche

1.0 Site Location and Description

- 1.1. The referral site is at Seapoint in the rural townland of Duffsfarm in County Louth, c1km east of the settlement of Termonfeckin and adjacent to Termonfeckin Beach. The site is located on and is served by a private road, that is accessed via cul-de-sac at the southern end of Strand Road. The private road traverses the site, providing access to neighbouring properties to the north. The site comprises a single storey detached dwelling and separate home office structure (the subject of this referral) which are both located to the west of the private road. A driveway / hard surfaced area connects the private road to the dwelling. Pathways, formed by paving stones set within lawn, provide access to the home office from both the dwelling and the private access road.
- 1.2. The site has an area of approximately 0.3ha.

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 the home office built within the property boundary is or is not placed forward of the front wall of the house and whether the home office is or is not development and is or is not exempted development.

- 2.2. Section 5 relates to requests for declarations and/ or referrals to ABP on the question of what, in any particular case, is or is not development or is or is not exempted development within the meaning of the Act. The question of whether the home office built within the property boundary is or is not placed forward of the front wall of the house, while relevant to the consideration of the referral, does not in itself fall within the remit of Section 5 as it not a question of development or exempted development. Therefore, in the interests of clarity, I consider it appropriate that the question referred to the Board be reworded as follows:

Whether the home office built within the property boundary is or is not development and is or is not exempted development.

3.0 Planning Authority Declaration

3.1. Declaration

3.1.1. On the 7th of February 2023, a request for a Declaration in accordance with Section 5 of the Planning and Development Act, 2000 (as amended) on the above question was received by Louth County Council from Brady Hughes Consulting Engineers on behalf of Valerie and Gary Keating.

3.1.2. On the 3rd of March 2023 a declaration was issued by Louth County Council stating that:

(a) The construction of a 21.6 square metre home Office structure is considered to constitute development.

(b) The construction of the structure as illustrated on the plans and particulars submitted by reason of its location forward of the front wall of the house and therefore fails to comply with limitation no.1 of class 3.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The report of the case Planner (28th of February 2023), forms the basis for the Planning Authority's decision.
- With regard to the planning history of the site, the report notes that the existing dwelling on site was permitted under LCC Planning Ref: 80/699 and that there is no recent planning history associated with the site.
- It considers that no EIA or AA issues arise.
- It considers that the home office constitutes development.
- It considers the home office to constitute a "similar structure' to a shed / store and as such, that Class 3 of Part 1, Schedule 2 of the Regulations is relevant.

- It considers that, notwithstanding the information submitted in support of the referral, that the home office is constructed forward of the front wall of the house and therefore does not comply with Condition 1 of Class 3.
- The report considers the gross floor area of the structure (21.6sqm), the extent of private open space reserved for occupants, the height of the structure (2.8m) and its use as a home office and considers that the structure meets conditions/ limitations No's 2, 3, 5 and 6.
- In terms of Condition / limitation No. 4, relating to external finishes, the structure being a steel frame structure with timber cladding does not conform with those of the house and as such does not meet with this condition / limitation. As the structure in question is forward of the building line this is a moot point however were the structure considered to be to the side of the house it would not be considered to comply with this limitation.
- The report concludes that the proposal constitutes development which is not exempted development.

3.2.2. Other Technical Reports

None

4.0 Planning History

- 4.1. There is no recent planning history pertaining to the subject site. The existing dwelling was permitted under Louth Reg. Ref: 80/699.
- 4.2. The report of the Local Authority Case Planner refers to Enforcement File Ref: UD22U153.

5.0 Policy Context

5.1. Development Plan

Operative Plan: Louth County Development Plan 2021- 2027.

Policy Zone: Rural Policy Zone 2: Area under strong urban influence

5.2. Natural Heritage Designations

The site is not within a designated site. The North-West Irish Sea SPA (site Code 004236) is located c100m to the east along the coast. The Boyne Coast and Estuary SAC (site Code 001957) is located c200 to the southeast.

6.0 The Referral

6.1. Referrer's Case

6.1.1. The referral was submitted by Brady Hughes Consulting on behalf of Valerie and Gary Keating and is accompanied by a site location map and site layout plan along with plans and elevations of the home office structure. The main points raised in the referral can be summarised as follows:

- The issue of contention is whether the home office, the subject of the referral has been placed forward of the front wall of the house and thus whether it would accord with Condition 1 of Class 3.
- Regarding, Condition 1 of Class 3, the case is made that the intention of this limitation was to protect the public at large from developments appearing in the front garden of houses along the public road, where it has potential to effect established building lines and have an impact on other people and the public at large. Exempted developments are exempt because they are likely to have little or no impact on other people.
- The case is made that, as there is no definition in the regulations on the 'front wall' of a house, the decision maker has discretion.
- The planning authority's definition of 'front wall' meaning the wall where the front door is, may be appropriate in most cases, however, the case is made that in this instance the 'front wall' can be considered to mean the building line closest to the public road /street.
- The public road ends outside the gates to the property in question. There are signs on the gates telling people that the roadway beyond is private. The home office building, the subject of this referral, is approx. 17m behind the building line.

- In most new housing schemes, there are dual aspect houses turning corners as bookends on streets – their front door is often at the side, but this wouldn't allow them to build an extension in their front garden.
- In support of the case, the referral submission includes:
 - At figure 2, an aerial image of a house at Monasterboice, Co. Louth. The house backs onto the public road. It is contended that in a case like this, the definition of 'front wall' applied by the planning authority is inappropriate.
 - At figure 3, a site layout plan which indicates the location of the home office structure in respect of the 'line of front wall' and line of public road.

6.2. Planning Authority Response

- The Planning Authority considers that the structure in question, is placed forward of the existing front wall of the house and therefore does not comply with limitation No.1 of Class 3.
- As no new matters for consideration have been raised within the appeal statement and the Planning Authority has no further comment to make.
- It remains the Planning Authority's opinion that the Section 5 declaration be refused.

6.3. Further Responses

None

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

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

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

“structure” means any building, structure, excavation, or other thing constructed or made on, in or under 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.

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

“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) sets out various forms and circumstances in which development is exempted development for the purposes of the Act.

Section 4(2)(a)(i) “The Minister may by regulations provide any class of development to be exempted development for the purposes of this Act where he or she is of the opinion that – (i) By reason of the size, nature or limited effect on its surroundings, of development belonging to that class, the carrying out of such development would not offend against principles of proper planning and sustainable development, or”

Section 4(4) provides that development shall not be exempted development if an Environmental Impact Assessment (EIA) or an Appropriate Assessment (AA) of the development is required.

7.2. Planning and Development Regulations, 2001

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 General)

7.2.3. The relevant section of the Regulations which is referred to herein is Class 3. Class 3 and its conditions and limitations are as follows:

| <p>Column 1: Description of Development</p> | <p>Column 2: Conditions and Limitations</p> |
|---|--|
| <p>The Construction, erection or placing within the curtilage of a house of any tent, awning, shade or other object, greenhouse, garage, store, shed or other similar structure.’</p> | <ol style="list-style-type: none"> 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 |

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| | <p>a tiled or slated roof, shall conform with those of the house.</p> <p>5. The height of any such structure shall not exceed, in the case of a building with a tiled or slated pitched roof, 4 metres or, in any other cases, 3 metres.</p> <p>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.</p> |
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7.3. Restrictions on Exemptions

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 Precedent Referral Cases

8.1.1. The following referral determinations by the Board provide some useful context.

Determining the Front / Rear of a House

8.1.2. **ABP case ref. RL3358 (2015).** The question here referred to whether the as-built extension at 10 Ballynoe Grove, Bray, Co. Wicklow was or was not development etc. The Board concluded that the as-built extension was development but was not exempt development. In deciding not to accept the Inspector's recommendation that the development was exempted development, the Board did not share her view that the private amenity space serving the house would necessarily comprise a rear garden. The Board considered that the rear of the house is normally opposite to the front of the house and that, in this particular case, the location of the front and principal elevation of the house, having a front door and entrance hallway, is clear. The Board did not share the Inspector's view that a rear garden could be to the side of this house. In this case, the rear of the house abuts another house, and there is no rear garden.

The Board was satisfied that, in this case, the private amenity space serving the house was to the side of the house.

8.1.3. **ABP case ref. RL2620 (2009).** The question here referred to whether the erection of a sunroom to the western gable of an existing house at Gort na Carraige, Slate, Newcastle, Co. Wicklow was or was not development etc. The Board decided that the erection of the sunroom was development and was not exempted development as it would be sited to the side of the house and would not come within the scope of the exemption provided in Class 1 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended. In this case the referrer stated that the rear of a house is that part of a house furthest from and out of view of the main road. The Inspector considered that the front elevation of a house is normally the elevation which includes the front door, and the rear elevation normally includes the rear door, although not always the case. The Inspector did not agree with the referrer's interpretation of the 'rear of the house' noting that the 'the front elevation (at the opposite end of the house to the proposed extension) comprises a blank wall'. The Inspector did not consider this would be a reasonable interpretation of 'front' and 'rear'.

8.1.4. **ABP case ref. RL2441 (2007),** The question here referred to whether works comprising *inter alia* an extension to a dwelling at Carrick, Lough Ennell, Kilbeggan, Co. Westmeath was or was not exempted development etc. In deciding that the extension was development and not exempted development, the Board concluded that the extension was to the side of the house. In determining the position of the house, the Inspector took into account the characteristics of the site and its landscape context, features of the dwellinghouse and fenestration. The Board appeared to agree with this approach.

Class 3 Structures:

8.1.5. **ABP-309322-21 (2021),** The question here referred to whether the replacement of existing log cabin structure located beyond the front wall of the existing dwelling and alterations to boundary wall is or is not development or is or is not exempted development. The Board concluded, *inter alia*, that the replacement log cabin 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 is located forward of the front wall of a house and the finishes do not conform with the existing house.

9.0 **Assessment**

- 9.1. This referral relates to a structure erected in the curtilage of a house - The Dunes, Seapoint, Termonfeckin, Co. Louth. In accordance with the details submitted, the structure is a small domestic garden room that was erected on the property in December 2021, to provide additional space and a work-from-home area (home office). The structure has a stated area of 21.6sqm and the dimensions as detailed on the submitted drawings are 3.6m (L) x 6m (W) x 2.7 (H). The structure has a flat roof and is of a steel frame construction, finished in timber cladding.
- 9.2. It should be stated at the outset that the purpose of this referral is not to determine the acceptability or otherwise of the home office 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.
- 9.3. In assessing the merits of the case, I have reviewed previous relevant declarations made by the Board.
- 9.4. **Is or is not development?**
- 9.4.1. The first matter relates to whether or not the home office constitutes development. Having regard to sections 2 and 3 of the Planning and Development Act 2000 as amended, I consider that the erection of a home office constitutes 'development' within the meaning of the Act, being the carrying out of an act of construction on land. This matter is not disputed by any of the parties.
- 9.4.2. The next question is whether the works carried out are or are not exempted development.

9.5. Is or is not exempted development?

- 9.5.1. Development can be exempted from the requirement for planning permission by virtue of either Section 4 of the Planning and Development Act, 2000 (as amended) (the Act), or Article 6(1) and 9(1) of the planning and Development Regulations 2001 (as amended) (the Regulations).
- 9.5.2. Section 4(1) of the Act sets out provisions in relation to exempted development. I am satisfied that there is no relevant exemption under Section 4.
- 9.5.3. Article 6(1) 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 of the said Part 1 opposite the mention of that class in the said column 1. The structure, the subject of this referral could be considered to fall within Class 3 of Part 1 of Schedule 2 which provides an exemption for development consisting of 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. Again, this matter is not disputed by the parties.
- 9.5.4. Class 3 is subject to six conditions / limitations. The Planning Authority in their determination of the Section 5 Declaration concluded that the structure did not comply with Condition / Limitation no.1 of class 3 due to its location forward of the front wall of the house.
- 9.5.5. Condition / limitation 1 states that *no such structure shall be constructed, erected, or placed forward of the front wall of a house*. The agent for the referrer, contends that as the 'front wall of a house' is not defined in the regulations, the decision maker (the Board) has discretion on the matter. The case is made that in this instance the 'front wall' can be considered to mean the building line closest to the public road /street. The building line closest to the public road /street, as interpreted by the agent for the referrer, is indicated as a broken blue line on Figure 3 of the referral submission. This line is shown to run parallel to the site's southwestern boundary, touching the southernmost corner of the house.

- 9.5.6. The Board will note that Condition / Limitation no.1 refers to the front wall of a house. There is no reference in the condition to the 'building line' or indeed to the location or orientation of the house relative to the public road.
- 9.5.7. Having considered the documentation on site and inspected the site I agree with the position of the planning authority that the 'front wall' of the house is the southeast elevation. My determination in this regard is based on the design features and layout of the dwelling. In terms of design, it is evident that the southeast elevation is the principal elevation. The southeast elevation contains the main entrance door which is centrally located between two projecting gables, and which set behind a pillared porch. The southeast elevation is oriented towards the access road. The lands forward of the southeast elevation (the lands between the dwelling and the private access road), although bounded in part by a low hedge, are clearly visible and accessible from the access road. They are also visible from the public road to the south of the site. These lands in my opinion could not be considered 'private'. I also note that the lands forward of the southeast elevation are separated from the private amenity areas to the side (southwest) and rear (west) of the property by a high wall and gate.
- 9.5.8. On the basis that the front wall of the house is the southwest elevation, the home office structure is clearly forward of the front wall of the house and therefore Condition / Limitation no.1 of class 3 has not been complied with.
- 9.5.9. *Condition / limitation 2 states that 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.* The structure in question has a stated area of 21.6sqm. It is stated in the documentation on file (referrers submission to planning authority) that the garden room is the only external structure within the site, and I note that this point has not been disputed by the planning authority. However, during site inspection, I observed an additional structure to the rear of the dwelling, abutting the northeastern boundary of the site. This structure has not been shown on the plans submitted and its area is unknown, however it would appear from visual inspection to exceed 3.4sqm, which if the case, would result in Condition / limitation 2 of Class 3, not being complied with.

- 9.5.10. Condition / limitation 3 requires the retention of no less than 25sqm of private open space to the rear or the side of the house. I am satisfied that this condition/limitation 3 has been complied with.
- 9.5.11. Condition / limitation 4 requires that 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. The structure in question is finished in timber cladding, which does not conform with the external finish of the house. The planning authority in their determination of the case considered this a moot point, given that the structure had been placed forward of the front wall of this house. However, in my opinion, the placing of the home office structure forward of the front building line, where it is clearly visible from public areas outside the site, has an equal or greater visual impact, as a structure to the side of the house. Therefore, I would be of the opinion that the spirit of the condition / limitation 4 has not been complied with.
- 9.5.12. Condition / limitation 5 places a restriction on the height of the structure. As indicated on the submitted plans, the maximum height of the structure is 2.8m which would accord with condition / limitation 4 of Class 3.
- 9.5.13. Condition / limitation 6 requires that the structure 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. In accordance with the details on file, the structures use as a home office, is incidental to the enjoyment of the house; it is not designed for the habitation of people or the keeping of pigs, poultry, pigeons, ponies, or horses. In the absence of any information to the contrary I am of the view that condition / limitation 6 of Class 3 is complied with.

9.6. Screening for Appropriate Assessment

- 9.6.1. The subject site is located at at Seapoint in the rural townland of Duffsfarm, c1km east of the settlement of Termonfeckin. The site is not within a designated site. The closest European site, the North-West Irish Sea SPA (site Code 004236) is located c100m to the east along the coast. The Boyne Coast and Estuary SAC (site

Code001957) is located c200 to the southeast. In accordance with the information available, the erection of the home office (the subject of this referral case) preceded the designation of the North-West Irish Sea an SPA which occurred in 2023.

- 9.6.2. Having considered the nature, scale, and location of the project, I am satisfied that it can be eliminated from further assessment because there is no conceivable risk to any European Site. The reason for this conclusion is based on the nature and limited scale of the development, the location of the development within the curtilage of a dwelling, the lack of direct connection to designated sites and the screening assessment of the local authority. I conclude that on the basis of objective information, that the proposed development would not have a likely significant effect on any European Site either alone or in combination with other plans or projects. Likely significant effects are excluded and therefore Appropriate Assessment (stage 2) is not required.

9.7. **Screening for Environmental Impact Assessment**

- 9.7.1. Projects which are likely to have significant effects on the environment are identified in Annex I and Annex II of the EIA Directive, which have been transposed into Irish legislation by Part I and Part II, Schedule 5 of the Planning and Development Regulations 2001 (as amended). The proposal comprises a small, detached structure built within the curtilage of a house for purposes incidental to the enjoyment of the house. Such structures are not of a Class of development listed under Part 1 or 2 (Schedule 5) of the Planning and Development Regulations 2001. As such, Environmental Impact Assessment does not apply in this case. Thus, the provisions of Section 4(4) of the Planning and Development Act 2000 (as amended) are not relevant.

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 whether the home office built within the property boundary of The Dunes, Seapoint, Termonfeckin, Co. Louth is or is not development and is or is not exempted development.

AND WHEREAS Valerie Keating requested a declaration on this question from Louth County Council and the Council issued a declaration on the 3rd day of March 2023 stating that the matter was development and was not exempted development:

AND WHEREAS Valerie and Gary Keating referred this declaration for review to An Bord Pleanála on the 28th day of March 2023:

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) Class 3 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001 as amended,
- (f) the documentation on file, including submissions from the referrer and the Planning Authority.
- (g) the character and pattern of development in the area:

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The home office built within the property boundary of The Dunes, Seapoint, Termonfeckin, Co. Louth, constitutes development as defined in Section 3 of the Planning and Development Act 2000, as amended.
- (b) The home office built within the property boundary of The Dunes, Seapoint, Termonfeckin, Co. Louth 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 has been placed forward of the front wall of the house, as the area of the structure, when taken together with other such structures previously constructed, erected or placed within the said curtilage, would likely exceed 25 square metres and as the finishes of the structure do not conform with those of the existing house.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3) (a) of the 2000 Act, hereby decides that the home office built within the property boundary of The Dunes, Seapoint, Termonfeckin, Co. Louth, 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.

Lucy Roche
Planning Inspector

13th May 2024