



An  
Bord  
Pleanála

## Inspector's Report RL93.RL3548.

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### Question

Whether a store/games room is or is not development or is or is not exempted development.

### Location

12 The Dell, Grantstown Park,  
Waterford.

### Declaration

Planning Authority

Waterford City and County Council.

Planning Authority Reg. Ref.

D5/2017/1

Applicant for Declaration

Stephen Morrissey.

Planning Authority Decision

No decision.

### Referral

Referred by

Stephen Morrissey.

Owner/ Occupier

Stephen Morrissey.

Observer(s)

None.

Date of Site Inspection

29<sup>th</sup> April and 24<sup>th</sup> May 2017.

Inspector

Susan McHugh.

## **1.0 Site Location and Description**

- 1.1. The site is located in the eastern suburbs of Waterford City along the Dunmore Road. It is located within an established housing estate, Grantstown Park, characterised by medium density two storey semi-detached houses.
- 1.2. The site comprises a two-storey semi-detached red brick house, and slopes downwards from front to rear. There is a detached structure located to the side of the house and a larger single storey shed to the rear.
- 1.3. The larger detached shed, the subject of the proposed referral, described as a store/games room, is substantially completed apart from the external finishes and is used for storage purposes. It has concrete roof tiles, two roof windows and two side windows facing the applicants house. The windows and doors are fitted.
- 1.4. The smaller detached structure to the side is open to the elements and includes four rendered walls enclosing a space which contains a shelf for storage of household items.
- 1.5. There is decking to the side and rear garden. There is also a pond feature situated to the northern corner of the rear garden and in front of the store/games room.
- 1.6. Maps and photographs attached.

## **2.0 The Question**

- 2.1. Under section 5(3)(b) of the Planning and Development Act 2000 Liam Buck, (Agent on behalf of Stephen Morrissey), has sought a decision from the Board as to whether a store/games room of 24.17 sq.m is or is not development or is or is not exempted development.

## **3.0 Planning Authority Declaration**

- 3.1. On 3rd January 2017, a Section 5 declaration application was submitted to Waterford City and County Council on behalf of the referrer Stephen Morrissey by Liam Buck, Registered Building Engineer and Chartered Architectural Technologist, requesting whether certain matters are or are not exempted development. The

Council issued a request for further information on 8<sup>th</sup> February 2017 which was outside the appropriate period set out in Section 5 of the Act. No declaration, therefore, was made.

## **3.2. Planning Authority Reports**

### **3.2.1. Planning Reports**

The Planner was not satisfied that sufficient details had been provided to allow a decision to be made and recommended that further information be submitted in relation to the following (request subsequently issued on 8<sup>th</sup> Feb 2017);

- Notes the provisions of Section 4(2)(a)(i) of the Act, and consider the strict interpretation of Class 3, in isolation of the conditions set out in PL 31.235626, the District Court Order pertaining to the development and any future Order pending the outcome of this section 5 referral, the persistent failure of the applicant to complete the development in terms of its external cladding and the grievance this has caused to the neighbouring residents over a period of 8 years, would be contrary to the provisions set out in Section 4(2)(a)(i) and such an interpretation of Class 3 would therefore be incorrect.
- Considers that applying an exemption under Class 3 would be inappropriate and unreasonable as the external surface of the study/games room remains incomplete 8 years after the act of construction commenced.
- Considers that the conditions attached to PL31.235626 while not giving a strict timeframe during which the development would be completed, were devised in order to ensure that the development was completed in a timely fashion given the retention nature of same and the offending nature of the unfinished structure which is visible from the public road.
- Doubt as to whether the provisions of Article 9(1)(a)(i) are applicable i.e. development to which article 6 relates shall not be exempted development for the purposes of the Act if the carrying out of such development would contravene a condition attached to a permission under the Act.
- Consider that any declaration issued at this moment in time would not be favourable until such time as the study/games room is completed as per the

terms and conditions of PL31.235626 and in particular the agreed cladding (Cedral Weatherboard) is affixed permanently to the exterior of the structure.

## 4.0 Planning History

### **PA Reg. Ref. 09/200 ABP PL 31.235626**

Permission granted (June 2010) for indefinite retention and completion of detached single storey games room (24.71 sq.m floor area) to the rear of existing dwelling house, and the indefinite retention of shed (11 sq.m floor area) to the side of existing dwelling house, decking and pond feature to the rear, subject to 2 conditions.

Condition 1 states that the games room shall be modified by removal of the roof overhang on the north-west elevation, and by reduction in its floor level by 200mm with consequent reduction in the overall height of the structure. Revised drawings were to be submitted for written agreement within four weeks and the modification work to be carried out within six weeks of the planning authority agreement.

Condition 2 states that within four weeks details of external finishes to the games room shall be submitted for written agreement.

A compliance submission was submitted 26<sup>th</sup> July 2010, and drawings indicated a reduction in floor level and consequent overall height of 200mm of the structure. The 1000mm wide roof overhang was cut back and a sample of the cladding proposed, Tegral Weatherboard Beige, was submitted. The compliance submission was deemed to be compliant with conditions 1 and 2 of PL 31.235626, in correspondence from Waterford City and County Council on 17<sup>th</sup> August 2010.

### 4.1. **Background to the reference**

4.2. **PA UD42-09** - Unauthorised works had been carried out on the site and was the subject of an initial warning letter issued on 26/02/2009, and a subsequent enforcement notice on the 28/04/2009 seeking the removal of the structure on site.

- 4.3. The works continued and resulted in legal proceedings being initiated by the Planning Authority on 06/08/2009. A conviction was secured under Section 154 of the Planning and Development Act 2000, as amended, against Mr. Alan Morrissey in the District Court on 14/01/2011.
- 4.4. Due to the ongoing failure to comply with the conditions of PL 31.235626, a second warning letter was issued by the Planning Authority, followed by an enforcement notice on 21/05/2016 seeking the completion of the study/games room in compliance with the planning permission, within a period of four weeks.
- 4.5. Failure to comply with the terms of the enforcement notice resulted in the initiation of legal proceedings on 16/08/2016 against Stephen Morrissey and on the 08/09/2016 against Alan Morrissey. The matter was listed for hearing in the District Court on 12/12/2016, but has been deferred pending the outcome of this referral.

## 5.0 Policy Context

### 5.1. Development Plan

The operative plan for the area is the **Waterford City Development Plan 2013-2019**. The site is identified in the Development Plan as being in an area zoned 'developed residential'.

### 5.2. Natural Heritage Designations

None of relevance.

## 6.0 The Referral

### 6.1. Referrer's Case

6.1.1. This can be summarised as follows:

- The referral includes site location maps, site layout plan, and plans and elevations of the store/games room.
- The cumulative floor area of the games room (24.17 sq.m) and the garden shed (11 sq.m) was a dominating factor in the requirement for planning

permission for the development in 2009, as individually they would have been considered to be exempted development.

- The garden shed (11 sq.m) has now been removed, leaving the store/games room as the only building within the curtilage of the dwelling house, and the store/games room is now considered to be exempted development.
- The original intention was to construct the store/games room as a recreation area for the applicant to pursue their hobby, related to the keeping of Carp within the garden pond area.

## 6.2. Planning Authority Response to Referral

The Planning Authority responded and included a full copy of their file, PA Ref.D5 2017-1 including the planners report and further information request.

## 6.3. Referrer's response to Planning Authority

No further response.

## 7.0 Statutory Provisions

### 7.1. Planning and Development Act, 2000, as amended.

#### Section 2

*“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,”*

#### Section 2(1)

*‘Works’ includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and.... ”*

**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”.*

**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...”*

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

**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.”*

**Schedule 2, Part 1- (Exempted Development General) Class 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:

Column 1	Column 2
Description of Development	Conditions and Limitations
<p><b>CLASS 3</b></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"> <li>1. No such structure shall be constructed, erected or placed forward of the front wall of a house.</li> <li>2. The total area of such structures constructed, erected, or placed within the curtilage of a house shall not, taken</li> </ol>

	<p>together with any other such structures previously constructed, erected or placed within the said curtilage, exceed 25 square metres.</p> <ol style="list-style-type: none"> <li>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 to the side of the house to less than 25 square metres.</li> <li>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 any such structure has a tiled or slated roof, shall conform with those of the house.</li> <li>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 case, 3 metres.</li> <li>6. The structure shall not be used for human habitation or for the keeping of pigs, poultry, pigeons, ponies or horses, or for any other purpose incidental to the enjoyment of the house as such.</li> </ol>
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### **Article 9(1) 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:*

- (i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,*
- (viiB) comprise development in relation to which a planning authority or An Bord Pleanala is the competent authority in relation to appropriate assessment because it would be likely to have a significant effect on the integrity of a European site,*
- (viii) 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,”*



## 8.0 Assessment

8.1. It should be stated at the outset that the purpose of this referral is not to determine the acceptability or otherwise of the development in respect of the proper planning and sustainable development of the area, but rather whether or not the matter in question constitutes development, and if so, falls within the scope of exempted development.

### 8.2. Is or is not development?

8.2.1. The first question before the Board relates to whether or not the works comprises development. Having regard to sections 2 and 3 of the Planning and Development Act 2000, as amended, I consider the store/games room constitutes 'development' within the meaning of the Act, being the carrying out of an act of construction (i.e. works) on land.

### 8.3. Is or is not exempted development?

8.3.1. Development can be exempted from the requirement for planning permission by either Section 4 of the Planning and Development Act, 2000 (the Act), or Article 6(1) and 9(1) of the planning and Development Regulations 2001 (as amended) (the Regulations).

8.3.2. Under Article 6(1) Class 3 (Schedule 2, Part 1) refers to '*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*' and therefore, it is necessary to determine whether or not the subject games room accords with the conditions and limitations set out in Column 2 of Class 3 as follows:

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

The store/games room in question is located within the rear garden of the existing dwelling and has not been constructed, erected or placed forward of the

front wall of same. Accordingly, I am satisfied that the existing structure accords with this requirement.

2. *The total area of such structures constructed, erected or places 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.*

In the first instance, it can be confirmed that there are two structures within the curtilage of the house. These include the store/games room subject of the referral which is located to the rear, and another smaller detached structure to the side of the house. I will deal with each separately.

- *Store / Games Room*

From a review of the submitted drawings and dimensions provided thereon (i.e. 5.670m x 4.350m), the internal total floor area of the existing store / games room can be calculated as 24.66 sq.m. The games room permitted on appeal had a stated floor area of 24.71sqm.

From my own measurements on site the internal floor area of the timber structure (i.e. 4.672m x 6.133m) is calculated as 28.65sq.m. The external dimensions (i.e. 4.79m x 6.25m) is calculated as 29.93sqm. The total area therefore exceeds 25 square metres.

- *Smaller Detached Structure*

The other structure comprises of the four external walls of the shed previously permitted on appeal. The roof, part of the side gables on either end and the door on the rear elevation have been removed. The remaining four walls are 2m in height and enclose an open area.

The referrer states that the garden shed of 11sqm, has been removed and so can avail of the exemption under Class 3 of Part 1 of the Regulations, in respect of the store / games room.

I can confirm from my site inspection that the garden shed referred to is only partially demolished, and has not been entirely removed. As such I consider that this can be classed as a structure, and should be included in the combined area with the store / games room in order to avail of this exemption.

From my own measurements on site the internal floor area of this masonry structure (i.e.4.972m x 2.595m) is calculated as 12.9sq.m. The external dimensions (i.e.5.21 x 2.83m) is calculated as 14.7sq.m.

I consider, therefore, that the floor area of the store / games room combined with the remaining garden shed exceeds the allowance of 25sqm and thus cannot avail of the exemption as set out in Class 3 of Part 1 of Schedule 2 of the Regulations.

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

From a review of the submitted drawings, I can confirm that the construction of the games room in question has not reduced the area of private open space reserved exclusively for the use of the occupants of the dwelling house to the rear or to 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 any such structure has a tiled or slated roof, shall conform with those of the house.*

The existing store / games room has been constructed to the rear, as opposed to the side, of the dwelling house. This restriction, therefore, does not apply.

5. *The height of any such structure shall not exceed, in the case of a building with a tiled or slated roof, 4 metres or, in any other case, 3 metres.*

The existing games room has a tiled pitched roof construction, and has a stated height of 3.49m and does not exceed 4m. Accordingly, I am satisfied that the shed in question adheres to this requirement.

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

Following a site inspection, it can be confirmed that the store / games room in question is not in use for human habitation nor is it used for the keeping of pigs, poultry, pigeons, ponies or horses. At present it is used for the storage of various domestic items, including a motorcycle. I am satisfied that the existing store / games room is used for purposes incidental to the enjoyment of the house as such.

- 8.4. In conclusion, I am satisfied, that the store / games room located to the rear of the house is development and not exempted development as the floor area of the store / games room and the other structure to the side of the house exceeds 25 square metres and does not come within the scope of the exemption provided at Class 3 of Part 1 of Schedule 2 of the Planning and Development Regulations.

#### 8.5. **Precedent Cases**

##### 8.5.1. **06D.RL.3009 (April 2013)**

The question here referred to whether the as built garden structure, primarily used as a games room, and located to the rear of a semi-detached house at 31 Greenfield Road, Mount Merrion, Co. Dublin, is or is not exempted development. The Board decided that due to its size, which was in excess of 25 square metres, together with its fabric and characteristics, it did not come within the scope of Class

3 of Part 1 of Schedule 2 to Article 6 of the Planning and Development Regulations 2001 (as amended) and that the works constituted development and was not exempted development.:

**8.5.2. 09.RL.2885 (September 2011)**

The question here referred to whether a structure in the rear garden area at 16 Rail Park, Maynooth, Co. Kildare is or is not exempted development. The Board decided the said structure was exempted development. Element of note is that the gross floor area internally of the said structure did not exceed 25 square metres while the area, based on external measurements, was stated to be 27.17 square metres.

**8.5.3. 28.RL2860 (Sept 2011)**

The question here referred to whether the construction of a shed at 33/33A Wilton Lawn, Cork was exempted development. The Board concluded that the works constituted development and were not exempted development as the floor area which exceeded 25 square metres did not come within the scope of the exemption provided at Class 3 of Part 1 of Schedule 2 of the Planning and Development Regulations.

**8.5.4. 06S.RL.2484 (July 2008)**

The question here referred to whether the construction of a utility room/shed at the rear of 22 Greenfield Park, Ballycullen Road, Dublin was development and or constituted exempted development.

The Board concluded that the utility room/shed came within the scope of Class 3 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001, by reason of the aggregate floor area of structures in the rear garden being less than 25 square metres. The Board decided that the erection of a utility room/shed was development and was exempted development.

**8.5.5. 06D.RL2420 (July 2007)**

The question here referred to whether a structure in the rear garden at 8 Glenabbey Road, Mount Merrion, Co. Dublin is or is not exempted development. The Board decided the said structure was not exempted development as the structure exceeded 25 square metres in total floor area. In this case, the area as measured externally was stated as being 31.734 square metres with the floor area being stated as being 24.58 square metres.

## 9.0 Recommendation

- 9.1. Arising from my assessment above I consider that the erection of a store/games room at 12 The Dell, Grantstown Park, Waterford constitutes development that is not exempted development.
- 9.2. 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 a store/games room at 12 The Dell, Grantstown Park, Waterford is or is not development or is or is not exempted development:

**AND WHEREAS** Stephen Morrissey, 12 The Dell, Grantstown Park, Waterford requested a declaration on this question from Waterford City and County Council failed to issues a declaration within the required period:

**AND WHEREAS** Stephen Morrissey referred this declaration for review to An Bord Pleanála on the 10<sup>th</sup> day of February, 2017:

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

- (a) Section 2(1), 3(1), and 4(2)(a)(i) of the Planning and Development Act, 2000, as amended,
- (b) Article 6(1) and article 9(1) and Class 3, Part 1, Schedule 2 of the

- Planning and Development Regulations, 2001, as amended,
- (c) the planning history of the site,
  - (d) the Report of the Planning Inspector:

**AND WHEREAS** An Bord Pleanála has concluded that:

- (a) The development comes within the scope of Sections 2(1), and 3(1) of the Planning and Development Act 2000, as amended, and constitutes development, and
- (b) The total floor area, which exceeds 25 square metres, does not come within the scope of Class 3, Part 1, Schedule 2, of the Planning and Development Regulations, as amended,

**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 a store / games room at 12 The Dell, Co. Waterford is development and is not exempted development.

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Susan McHugh  
Planning Inspectorate

8<sup>th</sup> June 2017