



Comhairle Contae Chill Mhantáin Wicklow County Council

Forbairt Pleanála agus Comhshaol
Planning Development and Environment

Áras An Chontae / County Buildings
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23rd November 2018-11-23

Your Ref: ABP-302905 -18

Our Ref: EX 50/18

An Bord Pleanála
64 Marlborough Street
Dublin 1.

REj: Whether a railing a top a shed and a timber fence beside the roof of this feature, the retention of a garden shed comprises exempted development at 3 Wellfeld Close, Monkton Row, Wicklow. - Seamus Mitchell

A Chara,

I refer to your letter received on the 5th November 2018 with regard to the above application for a Certificate of Exemption.

I attach herewith copy file for Ex 50/18

The applicant is the owner of the land/property.

No Declaration issued – application was due on the 17th October 2018.

A Further submission by the Planning Authority is also attached for your information.

I also enclose copy file Ex 28/18 in relation to this application

This application was found to be exempt.

A decision was due on the 28th June 2018 and a decision issued on the 27th June 2018.

A submission was made on this appeal also .

Mise le meas

STAFF OFFICER
PLANNIGN & DEVELOPMENT

Encls.

| | |
|-------------------------|-------------|
| AN BORD PLEANÁLA | |
| LDG- _____ | |
| ABP- _____ | |
| 27 NOV 2018 DC | |
| Fee: € _____ | Type: _____ |
| Time: _____ | By: Post |



16TH October 2018.

Vincent JP Farry & Co Ltd,
Suite 180, 28 South Frederick Street
Dublin 2.

RE: Application for Certificate of Exemption under Section 5 of the Planning & Development Acts 2000 (as amended) _ Ex 50/18 Seamus Mitchell, 3 Wellfeld Close Wicklow Town.

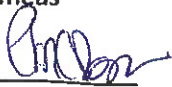
A Chara,

I refer to your recent application in the above regard and I am to advise that the Planning Authority will not be issuing a Declaration for the reason that it has effectively already undertook an assessment and issued a Declaration regarding this matter under Ref: Ex 28/18.

I would refer you to Section 5 (3) (b) of the Planning & Development Act 2000 (as amended) which states "in the event that no declaration is issued by the Planning Authority, any person who made a request under subsection (1) may , on payment to the Board (An Bord Pleanala) of such a fee as may be prescribed, refer the question for decision to the Board within 4 weeks of the date that a Declaration was due to be issued under subsection (2)

I would advise that in this regard, that the decision due date on this application (Ex 50/18) is 17th October 2018.

Mise le meas



**STAFF OFFICER
PLANNING DEVELOPMENT & ENVIRONMENT**

Ref: EX50/18
Name: Seamus Mitchell
Development: Following the removal of three features comprising: walkway between the house and the roof of the shed) a railing atop the shed and a timber fence beside the roof of the this same feature, the retention of the garden shed which contains 19.1sqm and is located to the rear of Dwelling at 3 Wellfield Close, Monkton Row, Wicklow, comprises exempted development
Location: 3 Wellfield Close Wicklow Town

Application Site:

Service Road Wellfield Row - L57271-0

Details: Wellfield Row is a residential cul-de-sac serving 5no detached dwellings. The subject site accommodates a detached gable fronted dwelling (single storey to the front and two storey to the rear), a parking bay to the south and a detached structure to the southwest corner. The detached structure (the subject of this section 5 application) comprises two sheds with stepped access to the roof area which is set out as a private amenity space. This private amenity space is bounded to the south by the side wall of an existing structure on the adjacent site, by the boundary wall with timber fencing to the west and by a railing to the north where it overlooking the lower rear garden area, In accordance with the details submitted the interior of this shed is used for domestic storage purposes.

Planning History:

Ref: 17/1424
Applicant: Seamus Mitchell
Development: Retention of existing porch as constructed
Decision: Grant

Ref: 16/844
Applicant: Seamus Mitchell
Development: Retention of existing porch as constructed
Decision: Refused

Refusal reason: *The proposed development would represent consolidation of unauthorised development on this site, having regard to the existing development on site (shed, patio, steps and railings) for which no permission exists, the provision of such a form of development unduly impacts on the amenities of adjoining properties, undermines the planning regulations and would be contrary to the proper planning and sustainable development of the area.*

Ref: WTC92/1823
Applicant: Bellfield Developments Ltd
Development: Revised house types and amended site layouts for 3 houses
Decision: grant

Ref: WTC 1377/86
Applicant: Oliver O'Reilly
Development: Residential development of 11 units at Monkton Row, Wicklow
Decision: grant

Section 5 (Declaration on Exemptions)

Ref: 28/18

Applicant: Seamus Mitchell
Question: Whether, following the removal of three features comprising a walkway (between house and the roof of the shed), a railing atop this shed and a timber fence beside the roof of this same feature, the retention of a garden shed 19.1sqm and which is located to the rear of a dwelling at 3 Wellfield close, Monkton Row, Wicklow comprises exempted development. This specifically excludes the use of the roof of this structure for sitting out purposes.

PA Opinion: Proposal is development and is not exempted development
Reasons: The proposed development does not come within the scope of the development set out in Class 3 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended).because:

- a) The degree and scale of the works (~which would not be exempted development having regard to the Planning and Development Regulations 1992 onwards) required to facilitate the construction of the shed
- b) The incorporation of a flat roof that is accessed via external steps which facilitate the use of the roof as an amenity space

Status: Referred to An Bord Pleanala

NOTE: In relation to condition 11 attached to PRR1377/86 and condition 5 of PRR1823/92 as referenced in the referral documentation, the planning authority is satisfied that these conditions relate solely to the areas of public open space within the residential development of Wellfield and therefore are not relevant in the assessment this section 5 application. In addition, the Planning Authority is satisfied that condition 12 as attached to PRR1377/86 does not authorise the works of excavation undertaken to the rear of no.3 Wellfield Close.

Planning Enforcement:

Ref: UD4411
Details: construction of two sheds

- erection of railing around the roof of the sheds
- construction of steps onto the roof of the shed
- erection of timber screen fence on roof of the sheds
- construction of over ground walkway from the rear of the house to the roofs of the sheds
- use of the roof of the sheds as roof garden
- construction of porch on the front elevation of the house

Status: Legal Action

Question:

In Section 3(iv) of the application form, the applicants have outlined details of the proposal. In essence it would appear that the question being asked is

Whether or not Following the removal of three features comprising: walkway (between the house and the roof of the shed) a railing atop the shed and a timber fence beside the roof of this same feature, the retention of the garden shed which contains 19.1sqm and is located to the rear of Dwelling at 3 Wellfield Close, Monkton Row, Wicklow, comprises exempted development.

This referral specifically excludes the use of the roof of this structure for sitting out purposes and expressly entails the removal of the steps which lead from the surface within this site to this roof.

Legislative Context

Planning and Development Act 2000 (as amended)

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 2(1) of the Act states the following in respect of the following:

'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 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, and
- (b) In relation to a "protected structure" or proposed protected structure, includes –
 - (i) The interior of the structure
 - (j) The land lying within the curtilage of the structure
 - (k) Any other structures lying within that curtilage and their interiors, and
 - (l) All fixtures and features which form part of the interior of the structure or structures referred to in subparagraph (i) or 9iii)

Section 4 sets out the types of works that while considered 'development', can be considered 'exempted development' for the purposes of the Act.

Section 4(2) makes provision for ministerial regulations to set out further exemptions. The 2001 Planning Regulations as amended derive from this section and designate further works as being exempted development for the purposes of the act.

Planning and Development Regulations 2001(as amended)

Article 6 states:-

"(1) Subject to Article 9, development of a class specified in column 1 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.

Article 9

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

(vii) Consist or compromise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is unauthorised

Schedule 2, Part 1, CLASS 3:

Column 1:

The construction, erection or placing within the curtilage of a house of any tent, awning, shade or other object, greenhouse, garage, store, shed or other similar structure.

Column 2- Conditions and Limitations:

1. No such structure shall be constructed, erected or placed forward of the front wall of a house.
2. The total area of such structures constructed, erected or placed within the curtilage of a house shall not, taken together with any other such structures previously constructed, erected or placed within the said curtilage, exceed 25 square metres.
3. The construction, erection or placing within the curtilage of a house of any such structure shall not reduce the amount of private open space reserved exclusively for the use of the occupants of the house to the rear or 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.
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.
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 the house as such.

Schedule 2, Part 1, CLASS 6(b)(ii)

Column 1:

Any works within the curtilage of a house for ...the provision of a hard surface area in the area of the garden forward of the front building line of the house, or in the areas of the garden to the side building line of the house, for purposes incidental to the enjoyment of the house as such,

Column 2 includes the following condition/limitation of note:

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

Relevant An Bord Pleanala Referrals:

Ref: RL2076

Question: Whether the laying out and use of a field for sports and recreational use at Glenageary Killiney National School, Killiney Road, Killiney, Co. Dublin is or is not development or is or is not exempted development.

Conclusion: An Bord Pleanala in considering this referral, had regard particularly to –

- (a) the extent of works,
- (b) the raising and lowering of ground levels, and
- (c) the importation of large quantities of fill material:

AND WHEREAS An Bord Pleanála has concluded that the laying out and use of the said field as a hard surface area for sports and recreational use does not come within the scope of laying out and use of land as set out in Class 33 (c) of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001:

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 laying out and use of the said field as a hard surface area for sports and recreational use is development and is not exempted development.

Ref: RL2539

Question: Whether the basement located under a timber decking and raised planter is or is not development or is or is not exempted development.

Conclusion: An Bord Pleanála has concluded that the construction of the basement located under a timber decking and raised planter constitutes a shed:

AND WHEREAS the shed comes within the scope of Class 3 of Part 1 of Schedule 2 of the said Regulations and complies with the conditions and limitations of the Class:

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 said development is exempted development.

Note: *The timber decking and raised planter had the benefit of planning permission*

Ref: RL.2757

Question: whether the use of a flat roof as a balcony or roof garden at "Ivy Lea", Sea Road, Arklow, County Wicklow is or is not development or is or is not exempted development

Conclusion:

- (a) the provision of railings around a flat roof constitutes works and these works facilitate a change of use of a flat roof to use as open space in the form of a balcony or roof garden, which is a change of use and which is considered to be a material change of use and which together with the works constitutes development,
- (b) the development does not come within the scope of section 4(1)(h) of the Planning and Development Act, 2000, being works which materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure and of neighbouring structures,
- (c) the development does not come within the scope of Class 6 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001, as the height of the hard surface relative to the adjoining ground exceeds that specified in the Conditions and Limitations attached to that class, being more than one metre above ground level, and

(d) the development does not come within the scope of Class 1 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001, as the Conditions and Limitations attached to the said Class 1 stipulate that the roof of any extension shall not be used as a balcony or roof garden:

Details Submitted in support of proposal:

- The subject structure in this instance comprises a detached out building of 19.1sqm stable Block *(note: reference to the structure being a stable block appears to be an error however for clarification the use of this structure for the keeping of horses (or other animals) would fall under the exempted development provision of the Planning and Development Act or its associated regulations)*
- This feature is beneath the size threshold in Class 3
- No part of this structure is forward of the front wall of the house
- There are no other buildings within the curtilage of the dwelling which would bring the total floor space above 25sqm
- The refer would still benefit from private open space of 25sqm
- The external finishes of the building conform with those of the host house
- The shed, as modified is under 3m in height
- It is used exclusively for purposes incidental to the enjoyment of the house, as such

Following consideration of the details submitted in support of this application it would appear that the applicant accepts that the existing shed structure does not fall within the exempted development provisions set out in the Planning and Development Act 2000 (as amended) or its associated regulations but is of the opinion that the structure can be rendered lawful through the removal of part of its fabric, i.e. the removal of three features comprising: walkway (between the house and the roof of the shed) a railing atop the shed and a timber fence beside the roof of this same feature. The applicant is satisfied that the removal of these features does not require planning permission as the removal of these features ~~is required~~ is required by a section 154 Enforcement Notice (reference is made to Section 163 of the Planning and Development Act, 2000 (as amended)).

Previous Section 5 Application (subsequently referred to An Bord Pleanála)

Earlier this year the applicant submitted a section 5 application (REF: EX28.18) on the following question:

Whether, following the removal of three features comprising a walkway (between house and the roof of the shed), a railing atop this shed and a timber fence beside the roof of this same feature, the retention of a garden shed 19.1sqm and which is located to the rear of a dwelling at 3 Wellfield close, Monkton Row, Wicklow comprises exempted development.

This specifically excludes the use of the roof of this structure for sitting out purposes.

Following consideration of this question it was the conclusion of the planning authority that the proposal constituted development but was not exempted development for the following reason:

The proposed development does not come within the scope of the development set out in Class 3 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended).because:

- a) *The degree and scale of the works (~which would not be exempted development having regard to the Planning and Development Regulations 1992 onwards) required to facilitate the construction of the shed*

- b) *The incorporation of a flat roof that is accessed via external steps which facilitate the use of the roof as an amenity space*

This Section 5 referral is almost identical save for the following additional citation attached to the referral question (underlined) - *This referral specifically excludes the use of the roof of this structure for sitting out purposes and expressly entails the removal of the steps which lead from the surface within this site to this roof.*

It is noted that the 'removal of the steps which lead from the surface within this site to this roof' does not actually form part of the referral question nor has the removal of the steps been detailed on the submitted drawings, instead it would appear that the applicant wishes the Planning Authority to exclude these steps, along with the use of the roof of the shed for sitting out purposes, from its assessment of this referral question. This however is not considered acceptable or appropriate. The steps form an intrinsic part of the shed structure and therefore they have to be considered as part of this referral as to do otherwise would undermine the referral process and result in a declaration that is without merit.

On the above basis it is considered that the question asked in this referral is identical to that previously asked under REF: EX28.18, the assessment of this referral shall reflect this opinion.

Assessment

The first assessment must be whether or not the proposal outlined above constitutes development within the remit of Section 3 of the Planning and Development Act 2001.

In this regard, Section 3 of the Planning and Development Act provides that:

"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.

It should be noted that Section 2 of the Act defines works as:

"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.

I am satisfied that the building of the shed in question constituted works and so was development under Section 3(1) of the act.

The second stage of the assessment is to determine whether or not the proposed development would be exempted development under the Planning and Development Act 2000 (as amended) or its associated Regulations. In this regard the documentation submitted in support of this application makes reference to Schedule 2, Part 1, CLASS 3 of the Planning and Development Regulations 2001 as amended which provides for 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. Following assessment of the plans and particulars submitted in support of this application and the planning history associated with this site I am not however satisfied that Class 3 is applicable. In this regard the following is noted.

Works of Excavation:

Following assessment of the planning history associated with this site, in particular WTC REF1823/92 it would appear that extensive works of excavation (in excess of 1m below the original ground level) have been carried out to the rear of the dwelling house in the absence of planning permission¹. While it is unclear when these works were carried out (it can be reasonably assumed that they were carried out during or after the construction of the development permitted under WTC Ref1823/92)

The construction of the garden sheds could not have been carried out without these works having first taken place, therefore it is not considered possible within the assessment of this Section 5 application to isolate the construction of the sheds from the works of excavation previously undertaken.

Class 3 provides an exemption for the construction, erection or placing of sheds (or other similar structures) within the curtilage of a house. While it can reasonably be assumed that the Class 3 exemption allows for ancillary site development works, such as excavation of the lands for the provision of foundations etc, the extent of the ground works carried out on site, which resulted in a significant lowering of the ground levels far exceeded what would be envisaged under class 3 to facilitate the construction of a shed. I am therefore of the opinion that the works carried out on site to facilitate the garden sheds exceed the scope of the Class 3 exemption and therefore the garden sheds do not come within the scope of the development set out in Class 3 of Part 1 of Schedule 2 to the Planning and Development Regulations

In support of the above, I refer to An Bord Pleanala References R2076 and RL2539 (outlined above)

RL2076 relates to Class 33, which provides an exemption for the layout out and use of lands for athletics or sports. In this case the Board were satisfied that Class 33 did not apply due to (a) the extent of works, (b) the raising and lowering of ground levels, and (c) the importation of large quantities of fill material:

RL2539 related to the construction of a shed at basement level underneath an authorized timber decking and raised planted. In this case the construction of the shed was deemed to be exempt because, while the floor level of the structure had been sunk, the ground level around the structure had not been altered by more than one metre and therefore these works came within the exemption set out under Class 6 (see above).

In relation to this current application it would appear from the information currently available to the Planning authority, that the ground levels were altered by more than 1m and therefore Class 6 cannot be relied upon².

¹ In relation to what evidence the planning authority has in relation to the alterations to the ground levels on site, it should be noted that this site is the subject of enforcement proceedings and that though consideration of the evidence obtained during this process the planning authority is satisfied that the ground levels to the rear of the site, upon which the sheds in question have been constructed, were lowered by in excess of 1m in the absence of planning permission

² While the Planning and Development Regulations dating back to 1964 include an exemption for the carrying out of landscaping works within the curtilage of a house (currently - Class 6 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001 (as amended)) it does not appear that at any such exemption allowed for the level of the ground to be altered by more than 1 meter above or below the level of the adjoining ground.

The Use of the Roof of the Shed as an amenity space:

The structure, the subject of this application, currently comprises 2 sheds the roof of which is laid out and designed as an amenity space.

It is considered that it could be reasonably assumed that the roof of the structures provided for under Class 3 do not in themselves have a defined use (their function is to provide shelter to the interior of the structure). The use of the roof of the structure as an amenity space (roof top garden, viewing area, storage area etc), particularly the one adjacent to the site boundary as in this case, would give rise to planning issues such as overlooking/loss of privacy, visual amenity etc that would not normally arise for the roof of the garden shed or similar structure (unused roof) it is therefore considered that the use of the roof as an amenity space would comprise development.

While the applicant has requested that the use of the roof of this structure for sitting out purposes along with the steps which lead from the surface within this site to the roof, be excluded from the referral it is not considered possible to isolate the roof of the shed and its use as an amenity space from the shed as they form part of the same structure. While elements of the existing structure are to be removed it is not considered that these works would be sufficient to ensure that the roof of the structure cannot and would not be used as an amenity space. In particular it is noted that the roof of the site is designed to be easily and directly access via the existing steps.

Access Steps:

The roof of the shed structure is currently accessed via a walkway from the first floor of the house and from steps leading directly to the roof of the sheds from the parking bay to the south of the dwelling. The walkway is to be removed however it would appear from the details submitted that the steps, which form an intrinsic part of the shed structure, are to be retained. The steps must therefore be considered in the assessment of this Section 5 application

In this regard it is considered that:

- The erection of these steps constitutes works and is therefore development
- These steps are not required for the use of the structure as a shed
- These steps provide direct access to and facilitate the change of use of a flat roof to use as an amenity space. This is a change of use which is considered to be a material change of use and constitutes development.

In support of the above I refer to ABP Referral REF: RL2757 (see above).

In conclusion it is considered that the garden sheds which incorporate external steps which provide direct access to and facilitate the use of the roof as an amenity space does not come within the scope of the development set out in Class 3 of Part 1 of Schedule 2 to the Planning and Development Regulations.

Additional Notes:

If said garden sheds did come within the scope of Class 3 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001 (as amended), it is considered that Article 9(1)(a)(viii) of the regulations would apply as it is considered the sheds would *consist or compromise the extension, alteration, repair or renewal of an unauthorized structure (a structure meaning any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined)*, as the sheds were constructed on lands which were excavated without planning consent.

Recommendation

With respect to the query under Section 5 of the Planning and Development Act 2000, as to whether

Whether or not Following the removal of three features comprising: walkway (between the house and the roof of the shed) a railing atop the shed and a timber fence beside the roof of this same feature, the retention of the garden shed which contains 19.1sqm and is located to the rear of Dwelling at 3 Wellfield Close, Monkton Row, Wicklow, comprises exempted development.

This referral specifically excludes the use of the roof of this structure for sitting out purposes and expressly entails the removal of the steps which lead from the surface within this site to this roof.

The Planning Authority considers that:

Whether or not Following the removal of three features comprising: walkway (between the house and the roof of the shed) a railing atop the shed and a timber fence beside the roof of this same feature, the retention of the garden shed which contains 19.1sqm and is located to the rear of Dwelling at 3 Wellfield Close, Monkton Row, Wicklow, comprises exempted development is development and is not exempted development.

Main Considerations with respect to Section 5 Declaration:

- The details submitted with this application 20th September 2018
- The Planning History of the site in particular WTC REF1823/92
- Sections 2 and 3 of the Planning and Development Act 2000(as amended).
- Section 4 of the Planning and Development Act 2000(as amended).
- The Planning and Development Regulations 1964 onwards
- Classes 3 Part 1 of Schedule 2 of the Planning and Development Regulations, 2001 (as amended)
- Articles 6 and 9 of the Planning and Development Regulations 2001 (as amended)
- An Bord Pleanala Declaration; Reference Numbers: **RL2076; RL.2757; RL2539**

Main Reasons with respect to Section 5 Declaration:

The proposed development does not come within the scope of the development set out in Class 3 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended).because:

- c) The degree and scale of the works (which would not be exempted development having regard to the Planning and Development Regulations 1992 onwards) required to facilitate the construction of the shed
- d) The incorporation of a flat roof that is accessed via external steps which facilitate the use of the roof as an amenity space

Lucy Roche
10/10/18
Lucy Roche
 Executive Planner
 10/10/18

I recommend that this declaration is not issued for the reason that it has effectively already issued. My consideration is that the question is not clear whether or not "the removal of the steps which lead to the roof" can be left out of the question posed for the purposes the declaration. However, I do concur with the view that the referral in effect undermines the referral process. Under EX 28/15 the P.A. issued a declaration on a question related to the existing structure - site, given the reason debated for that declaration the answer to the current question (which is a minor modification of the question under 28/15) can be easily concluded from that declaration - where the modification is taken as part of the question. On this basis I consider that the P.A. has already issued a declaration in relation to this structure and that the current question is the same question as

MEMO

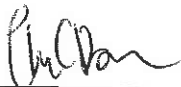
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|--|---|
| FROM: ADMINISTRATIVE OFFICER PLANNING | TO: Lucy Roche Executive Planner |
| Date: 21st September 2018 | |
| | |

RE: SECTION 5 APPLICATION – EX 50/18

Seamus Mitchell – Following the removal of three features comprising a walkway (between the house and the roof of the shed) a railing atop this shed and a timber fence beside the roof of this same feature, the retention of a garden shed which contains 19.1 sqm and is located to the rear of dwelling at 3 Wellfeld Close, Monkton Row, Wicklow.

I attach herewith application for Section 5 Declaration received on 20th September 2018 in respect of the above. I would be obliged for your report on same.

A decision is due on this application on the 17th October 2018



STAFF OFFICER
PLANNING & DEVELOPMENT

ENCL

21st September 2018

**Vincent JP Farry & Co Ltd,
Suite 180, 28 South Frederick Street,
Dublin 2**

**Re: Application for Certificate of Exemption under Section 5 of the
Planning and Development Acts 2000 (as amended) – Ex
50/18 - Seamus Mitchell, 3 Wellfield Close, Wicklow Town.**

A Chara,

I wish to acknowledge receipt of application in the above regard received on the 20th September 2018 . I am to advise that this is presently receiving consideration and a decision is due on this application on the **17th October 2018**

Mise le meas



**SENIOR STAFF OFFICER
PLANNING DEVELOPMENT & ENVIRONMENT**

LW
6 28/18
LW



REVENUE SECTION
20 SEP 2018
WICKLOW COUNTY COUNCIL
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Co Wicklow
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Fax 0404 69462

Date Received _____
Fee Received _____

**APPLICATION FORM FOR A
DECLARATION IN ACCORDANCE WITH SECTION 5 OF THE PLANNING &
DEVELOPMENT ACTS 2000 (AS AMENDED) AS TO WHAT IS OR IS NOT
DEVELOPMENT OR IS OR IS NOT EXEMPTED DEVELOPMENT**

1. Applicant Details

(a) Name of applicant: Seamus Mitchell _____
Address of applicant: 3 Wellfield Close Wicklow Town Co. Wicklow _____

Note Phone number and email to be filled in on separate page.

AN BORD PLEANÁLA
27 NOV 2018
LTR DATED _____ FROM _____
LDG- _____
APP- _____

2. Agents Details (Where Applicable)

(b) Name of Agent (where applicable) Vincent JP Farry & Co Ltd _____
Address of Agent : Suite 180, No. 28 South Frederick Street Dublin 2 _____

Note Phone number and email to be filled in on separate page.

WICKLOW COUNTY COUNCIL
20 SEP 2018
PLANNING DEPT.

3. Declaration Details

i. Location of Development subject of Declaration: 3 Wellfield Close Wicklow
Town Co. Wicklow _____

ii. Are you the owner and/or occupier of these lands at the location under i. above ?
Yes.

iii. If 'No' to ii above, please supply the Name and Address of the Owner, and or
occupier Not Applicable _____

iv. Section 5 of the Planning and Development Act provides that: If any question
arises as to what, in any particular case, is or is not development and is or is not
exempted development, within the meaning of this act, any person may, on
payment of the prescribed fee, request in writing from the relevant planning
authority a declaration on that question. You should therefore set out the query
for which you seek the Section 5 Declaration: Please see attached submission _____

Additional details may be submitted by way of separate submission.

v. Indication of the Sections of the Planning and Development Act or Planning
Regulations you consider relevant to the Declaration: Please see attached
submission _____

Additional details may be submitted by way of separate submission.

vi. Does the Declaration relate to a Protected Structure or is it within the curtilage of a Protected Structure (or proposed protected structure)? No _____

vii. List of Plans, Drawings submitted with this Declaration Application. Please see attached submission. _____

viii. Fee of € 80 Attached? Yes _____

Signed : Seamus J. J. J. Dated : 17. Sep 1 2018

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15 September 2018

Senior Executive Officer
Planning Department
Wicklow County Council
County Hall
Wicklow

LAND AT 3 WELLFIELD CLOSE WICKLOW

Dear Sir or Madam

We refer to the above and we confirm that we act for Seamus Mitchell of 3 Wellfield Close, Wicklow.

We hereby lodge a referral pursuant to s.5 of the Planning and Development Act, 2000 in relation to development on this land, which is owned by our client, the details of which are set out hereunder.

We invite the Council to confirm that the referror's garden shed comprises exempted development.

Yours faithfully



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REFERRAL REPORT IN RELATION TO A DEVELOPMENT ON LAND AT 3 WELLFIELD CLOSE WICKLOW

REPORT PREPARED ON BEHALF OF THE REFERROR
MR. SEAMUS MITCHELL

Vincent JP Farry BA MRUP LLB MSc PDipEnvEng MRTPI MIPI MAPI

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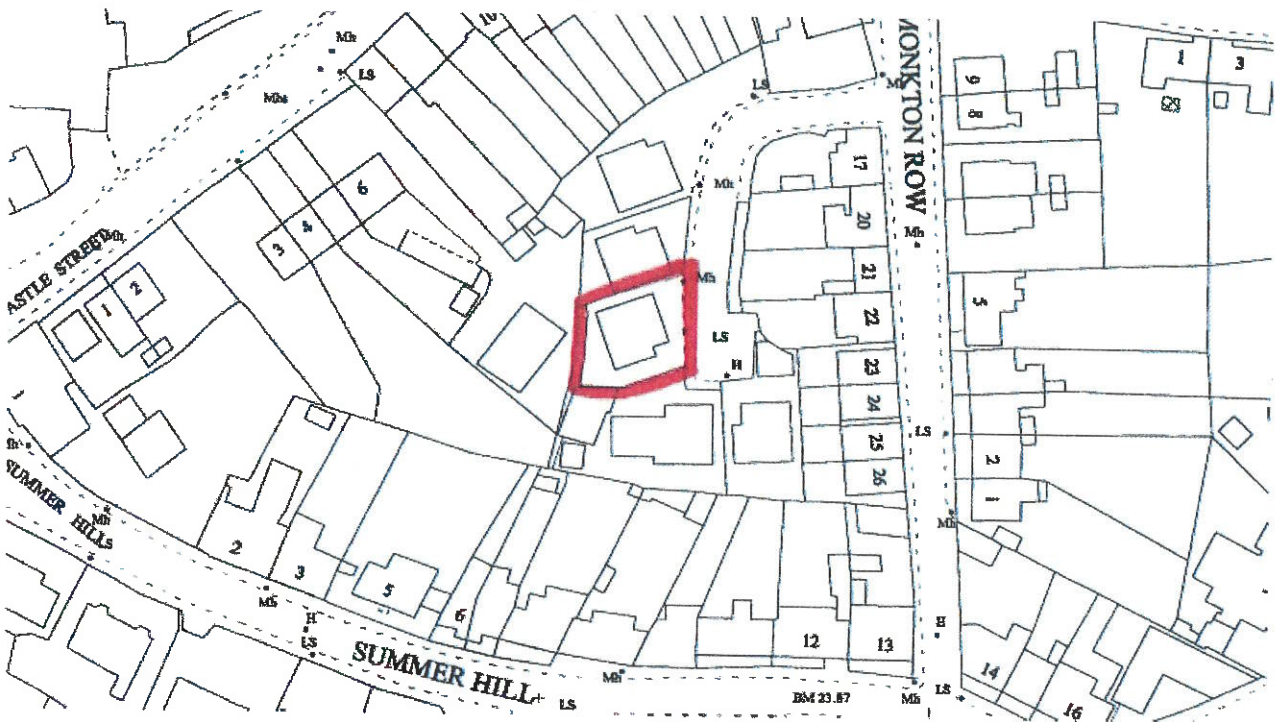
- 6. Planning Submission**
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1. Introduction

This planning submission has been drafted on behalf of the owner of a tract of land at 3 Wellfield Wicklow and has been prepared for lodgement with Wicklow County Council in its capacity as the statutory planning authority for the area within which the subject site is situated. The document comprises a referral under section 5 of the Planning and Development Act, 2000 (as amended) and seeks to show that a particular development is exempt from the need to obtain planning permission.

2. The Site and its Surroundings

The referral site is located on Wellfield Close, a residential no-through-road which is itself located off Monkton Row, Wicklow. The site comprises a regularly-shaped allotment which covers an area of 0.022ha (0.05 ac.) and which is located within a mature residential area on the edge of the town centre.



Map 1: The subject site comprises a regularly-shaped tract of land which is located on Wellfield Close, Wicklow

The land accommodates a detached house which contains two levels of accommodation which together provide a floorspace of approximately 160 sq. metres. This building is illustrated overleaf.

The site also accommodates a detached garden shed which is positioned to the rear of this house and this shed is the subject of the present submission. The referral question is set out in s. 4 of this report.

3. Planning History.

Planning permission was initially granted by Wicklow County Council on 31 July 1986 (under register reference no. 1377/86) for a development which is described on the Council's internal file papers as:

'Residential development at Monkton Row Wicklow'

We take this opportunity to reproduce condition no. 11 and 12 of this permission, inter alia, as follows:

'11. The open spaces in this development shall be levelled, drained, cultivated and topsoiled if necessary with vegetable soil...

Reason: To ensure that the amenity open space shall be left in a satisfactory and useful condition on completion of the development and will be available for amenity and recreational purposes to the residents of the estate.

12. Adequate precautions shall be taken to provide for the structural stability of houses built on made-up ground...any steep slopes shall be fenced or otherwise protected to prevent injury to persons...

Reason: In the interests of safety and to ensure a proper standard of development works'.



Photograph 1: The site accommodates a detached house which is the referror's home.

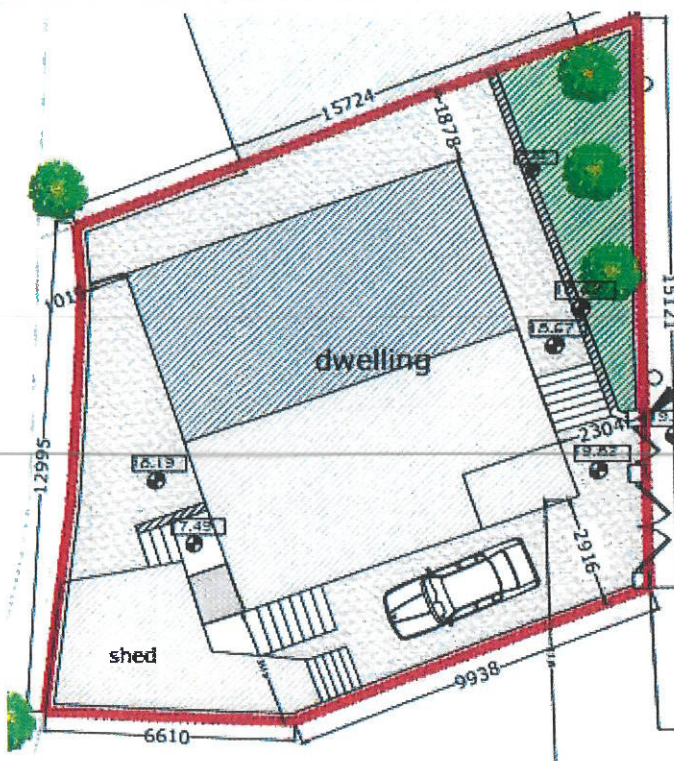
Permission was later granted in the year 1993 under reg. 1823/92 for the following (this description having been taken from the County Council's Notification of Decision which is dated 26 March 1993):

'Revised house types at Monkton Row, Wicklow for Wellfield Developments Ltd'.

Condition no. 5 of this planning permission is reproduced, in full, for ease of reference, as follows:

- '5 (a) All open spaces shown on the site layout map shall be levelled, drained and topsoiled.
Open space areas shall be sown with grass seed to give a uniform pasture land condition.
(b) Open space areas shall be dedicated to the use of the residents on completion of the works of the development of the estate.*

Reason: To ensure that the amenity open space shall be left in a satisfactory and useful condition on completion of the development and will be available for amenity and recreational purposes to the residents of the estate'.



As illustrated in Fig. 1 opposite, the subject site accommodates a detached dwelling along with a parking bay, which is positioned to the site of the house and a detached garden shed, which is located behind the dwelling. This garden shed, which is depicted pictorially below, with its interior being illustrated in image no. 3 overleaf, contains a total floorspace of 19.1 sqm. and is used solely for domestic purposes, containing a water tank, boiler, household and related items, home heating oil and miscellaneous residential equipment which is used for maintenance, gardening and other general activities by the referrer and which are incidental to his enjoyment of his home as such. (Note: Wicklow County Council has not indicated or intimated in its enforcement papers that this structure requires permission by reason of its use for commercial purposes and our referral has been prepared in this context).

Fig. 1: Illustrative layout of the referral site

On 6 July 2015, under ref. ED4411, the Council issued an Enforcement Notice which concerned:

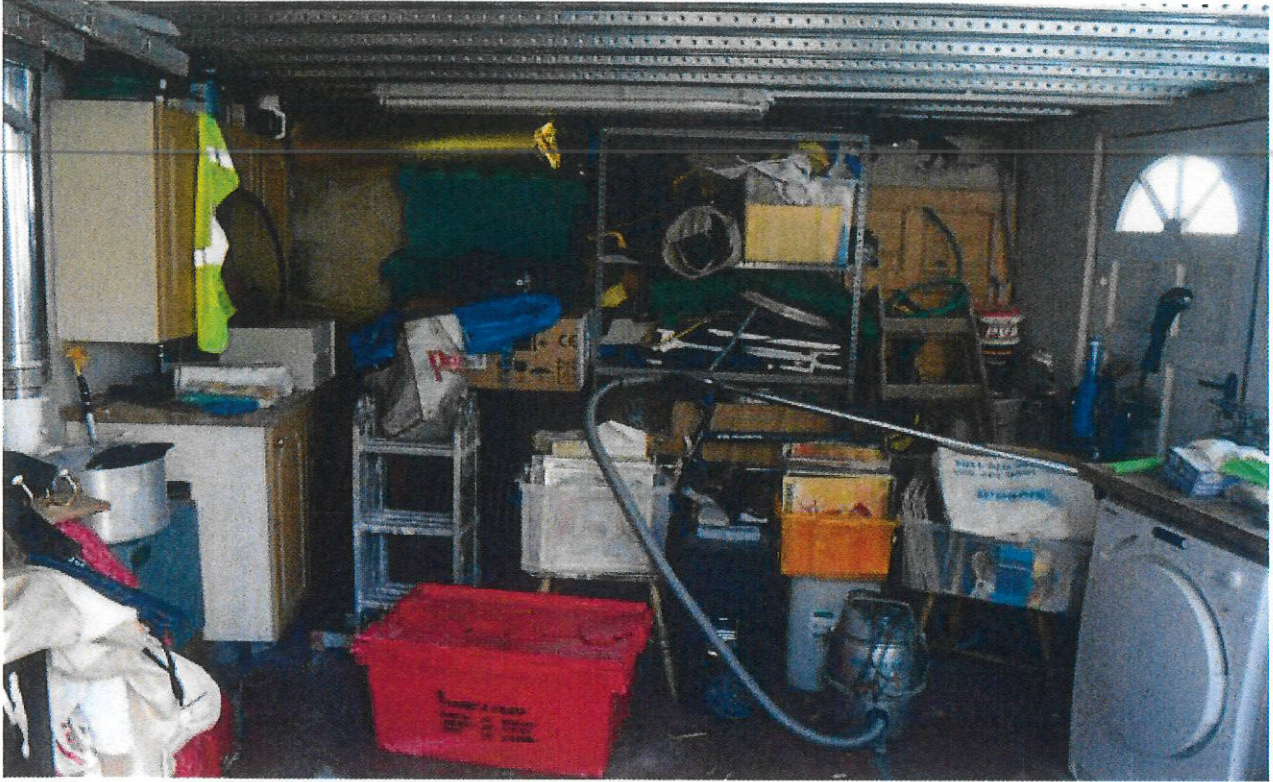
1. Construction of two sheds with roof top gardens;
2. Raising of rear boundary wall;
3. Insertion of door in rear first floor rear elevation of the dwelling on the site;
4. Construction of walkway from the new door to the roofs of the subject sheds'.



Photograph 2: The site contains a shed which is positioned behind the referrer's home.

The Council, through its Enforcement Notice, then directed the referrer to take the following steps:

1. Cease all use of both the interior and the roof of the two sheds.
2. Demolish and remove the two sheds, associated railings and the above-ground level walkway linking the dwelling to the roofs of the said sheds.
3. Remove the timber fencing and recently added rows of concrete blocks from the rear boundary wall of the site.
4. Remove the recently added patio door from the rear first floor of the dwelling.
5. Restore the lands to their condition prior to the commencement of development in so far as it practicable'.

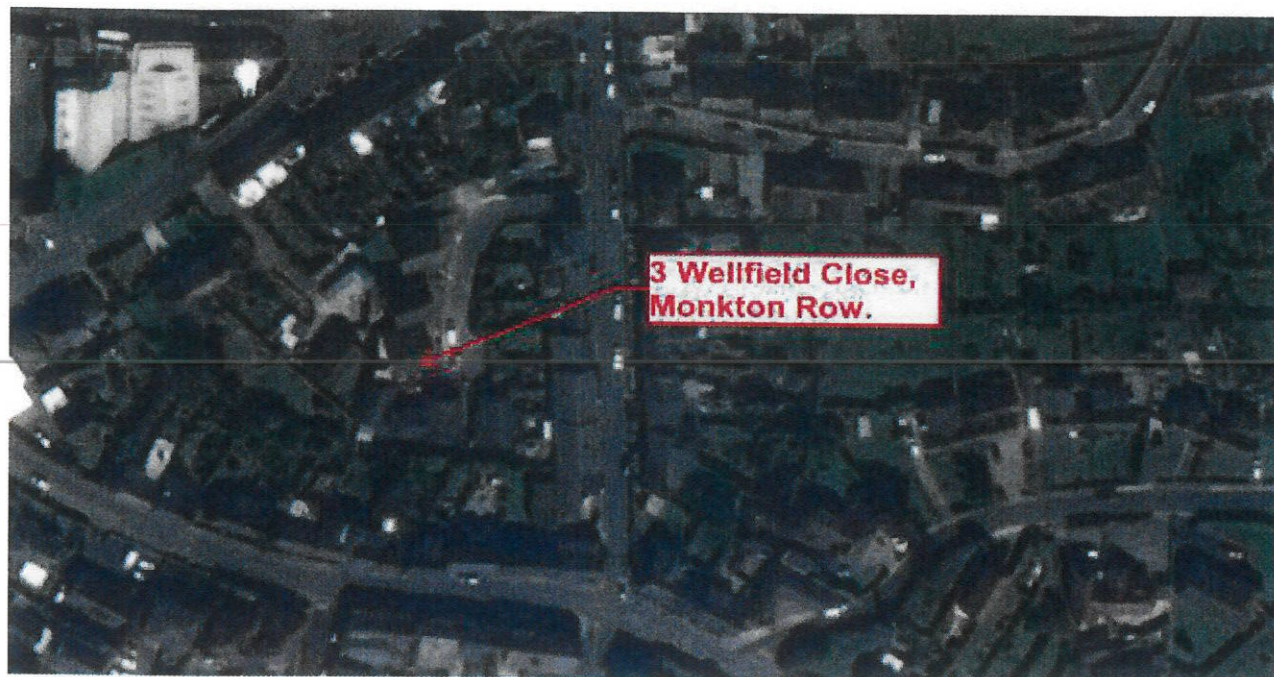


Photograph 3: The subject shed is used for the storage of home heating oil and for a variety of household items and appliances.

By Notice of Motion to the Circuit Court, the Council subsequently sought the following Orders:

1. An Order pursuant to Section 160(1) of the Planning and Development Act, 2000, as amended, restraining the Respondent from carrying on or continuing the following unauthorised development features at his lands and premises situate at 3, Wellfield Close Wicklow, in the County of Wicklow:
 - a) the construction of two sheds thereon with a single flat roof
 - b) the erection of a railing on the said flat roof;
 - c) the installation of fencing adjacent to the said flat roof;
 - d) the construction of a walkway leading from the house to the said flat roof;
 - e) the construction of a porch at the said house.
2. A further Order pursuant to Section 160(1) of the Planning and Development Act, 2000, as amended, restraining the Respondent from using the said flat roof as a roof garden or any other form of residential amenity.
3. An Order pursuant to Section 160(2) of the Planning and Development Act, 2000, as amended, directing the Respondent to remove the said sheds, railing, fencing, steps, walkway and porch, together with a further Order pursuant to Section 160(1) of the Planning and Development Act, 2000 directing the respondent to restore the front of the said house to its condition prior to the construction of the aforesaid porch'.

This latter stipulation has been superseded by events to the degree that the Council, under application reg. 17/1424, granted permission for the retention of the porch which is to the front of the dwelling.



Aerial Image 1: The site is positioned in a residential area within Wicklow Town.

On 27 June 2018, under ref. Ex. 28/18 the Council decided that the subject works do not constitute exempted development and that this garden shed requires permission, with Director of Services Order No. 1202/18 concluding under the heading 'Main Reasons with respect to Section 5 Declaration' that:

'The proposed development does not come within the scope of the development set out in Class 3 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001 (as amended) because:

- a) The degree and scale of the works (which would not be exempted development having regard to the Planning and Development Regulations 1992 onwards) required to facilitate the construction of the shed*
- b) The incorporation of a flat roof that is accessed via external steps which facilitate the use of the roof as an amenity space'*

The Report of the Planning Officer accepts that the structure is within the referrer's garden ('private amenity space') and acknowledges that the shed is used for 'domestic storage purposes' (both citations being from page 1 thereof). Equally, although not directly discussed in this Council assessment, the Planning Authority does not suggest that the development requires permission by reason of its position (not being 'forward of the front wall of a house' as per the Regulations), its size ('does not exceed 25 sq. metres', which is the exempted development threshold) and or its height, being no taller than 3m, which is the maximum height which a garden shed of this nature can attain as exempted development.

Based on this assessment, there are just three reasons as to why the Planning Authority has concluded that this structure does not comprise exempted development and these are discussed overleaf. It is immediately apparent from a brief perusal of the Report of the Planning Officer that this shed is of a type, height, size and position that it would not require permission, if erected in most domestic rear gardens. In this regard, the Council concludes that consent is needed on this occasion firstly, on the basis that groundworks were undertaken for the construction of this shed; secondly, because the development breaches article 9 of the Planning and Development Regulations, 2001 (as amended) and thirdly, that the use of its roof for amenity purposes is not covered by a specific regulatory exemption.

As noted below, this present submission comprises a refined version of our earlier referral to the degree that the attached drawings show the removal of the steps which lead to the roof of this shed.

4. Referral Question

We take this opportunity to pose the following referral query for the County Council's consideration:

'whether, following the removal of three features comprising a walkway (between the house and the roof of the shed), a railing atop this shed and a timber fence beside the roof of this same feature, the retention of a garden shed which contains 19.1 sq. metres and which is located to the rear of a dwelling at 3 Wellfield Close, Monkton Row, Wicklow, comprises exempted development. This referral specifically excludes the use of the roof of this structure for sitting out purposes and expressly entails the removal of steps which lead from the surface within this site to this roof'.

The proposed development is as illustrated on architectural drawings which form part of this referral.

5. Planning Law

(i) Statutory Provisions

Section 163 of the Planning and Development Act, 2000 reads as follows, for ease of reference:

'Notwithstanding Part III, permission shall not be required in respect of development required by a notice under section 154...'

(ii) Regulatory Provisions

Article 6 of the Planning and Development Regulations, 2001 (as amended) states inter alia as follows:

'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'.

Class 3, Part 1 of the Second Schedule to this Instrument is reproduced as follows for ease of reference:

'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'.

This regulatory entitlement is subject to a number of pre-conditions, which are set out hereunder:

- 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 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.*
- 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.*
- 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'.*

6. Submission

(i) Introduction

The Planning and Development Act, 2000 (as amended) and the Planning and Development Regulations, 2001 (as amended) together prescribe a series of developments for which planning permission is not required in the first instance and, as illustrated in section 5 of this present referral submission, such works include the provision of various outbuildings within the curtilage of a dwellinghouse, subject to conditions. As depicted on the accompanying drawings, the subject structure in this instance comprises a detached out building of 19.1 sq.m stable block and we invite the Council to accept, as a preliminary point, that this feature is beneath the size threshold in Class Three, Pt 1 of the Second Schedule to the Planning and Development Regulations, 2001 (as amended).

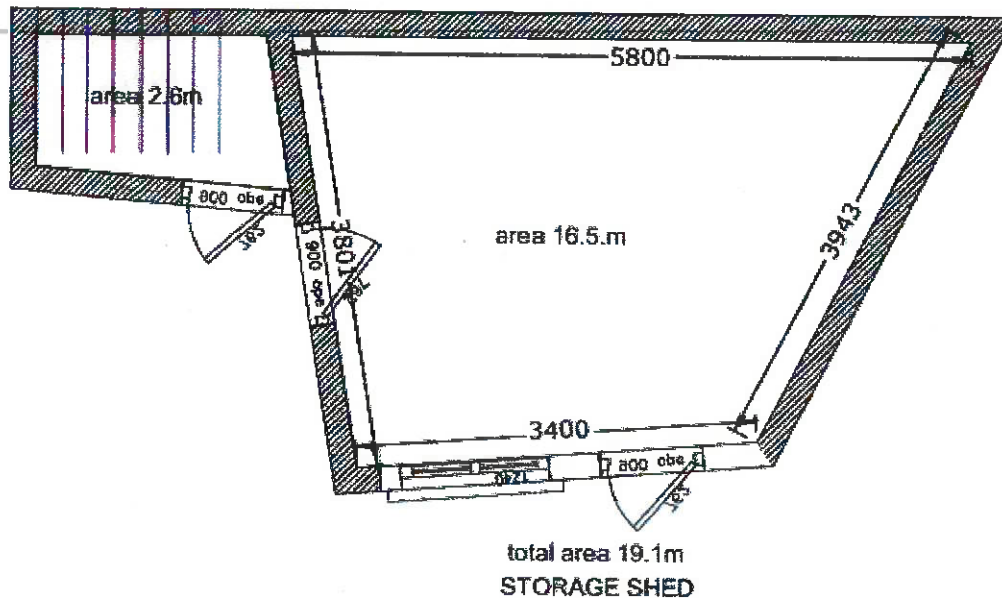


Fig. 2: The subject structure contains a total floorspace of 19.1 sq. metres

We invite the Council to accept no part of this structure is forward of the front wall of the house, that there are no other buildings within the curtilage of this dwelling which would bring the total floorspace of such features above 25 square metres and that the referrer would still benefit from private open space of 25 sq. metres. We also ask the Planning Authority to accept that the external finishes of the building conform with those of the host house, that the shed, as modified (see below) is under 3 metres in height and that it is used exclusively for purposes incidental to the enjoyment of the house, as such.

(ii) Alterations to the Existing Development

The works which are required to change this structure into a building which complies with the provisions within Class 3, Pt 1 of the Second Schedule to the Planning and Development Regulations, 2001 (as amended) entail the demolition of the existing railings (metallic and timber) atop the subject shed, along with the removal of the walkway between the house itself and the roof of this structure.

These works, although identified in the referral, have been expressly and explicitly excluded from the query which is presented for consideration; this is because such alterations, by law, do not require planning permission, not because of a provision relating to exempted development *per se*, but rather because of section 163 of the Planning and Development Act, 2000 (as amended). As the Council is only empowered under section 5 of the Act of 2000 (as amended) to consider whether particular works comprise development or exempted development and not whether proposed changes fall within s.163 thereof, we have not asked whether the removal of these existing features is specifically exempt.

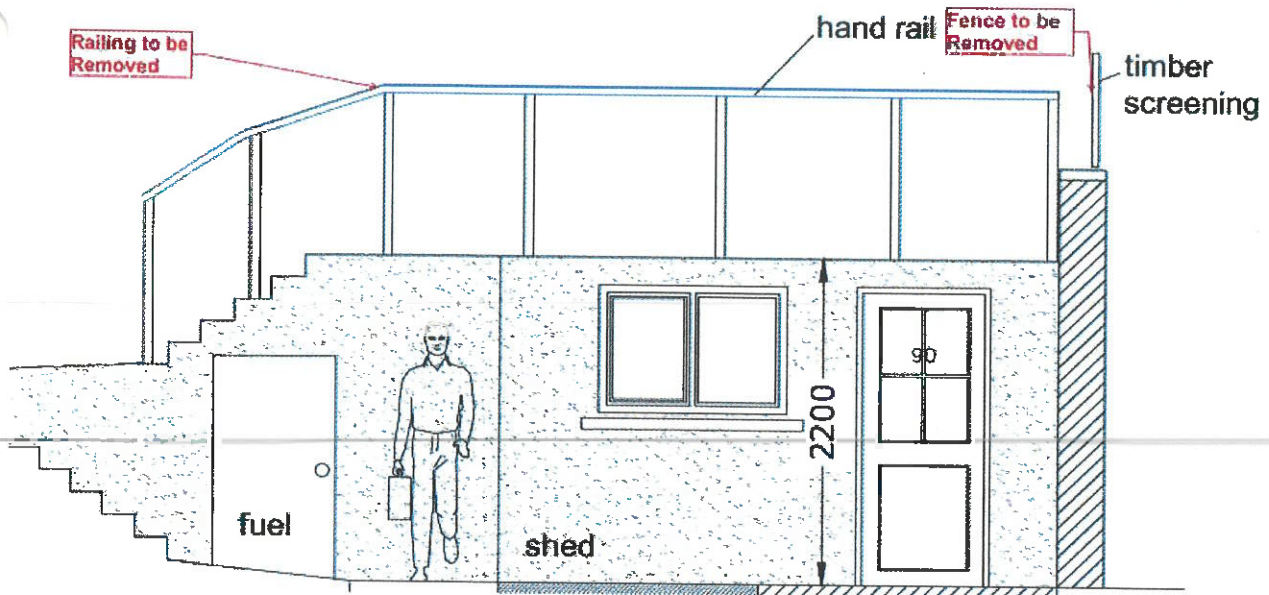


Fig. 3: The referror proposes to remove the railing and screen which are atop the shed.

We turn to address the issue of whether a development which the Planning Authority considers to be illegal, can subsequently be rendered lawful, specifically through compliance with the exempted development provisions of the Planning and Development Regulations, 2001 (as amended). By way of introduction, in the case of referral ref. PL29S.RL 2120 the Report of the Inspector reached the preliminary conclusion that the works were of a type which would normally comprise exempted development but opined that the Board should decide that consent was needed on the following basis:

'This case is complicated by virtue of the fact that it is proposed to alter an unauthorised structure. The planning authority in its declaration in this case, while it accepted that the provision of a velux window is exempted development by virtue of Section 4(1)(h), concluded that the development was no exempt by virtue of Article 9(1)(a)(viii) which states:

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-*
 - (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.*

The provisions of Article 9(1)(a)(viii) effectively de-exempts normally exempt development if the works proposed consist of the extension, alteration, repair or renewal of an unauthorised structure. In this case, the dormer window is unauthorised and the proposal involves the alteration of this unauthorised development by the provision of a velux window'.

However, the Board disagreed with this approach and, in recognition of the fact that s.4(1)(h) does not apply exclusively to lawful developments, formally determined that permission was not needed.

In ref. RL17..RL2748, the Board considered whether works to an unlawful building could comprise exempted development. The Report of the Inspector stated that the Council concluded otherwise on the basis that, as the house did not have consent, *'the proposed works did not constitute exempted development'* as such operations are not within *'either (i) within the scope of section 4(1)(h) of the Planning and Development Act 2000 or (ii) within the exempted development provisions of ...the Planning and Development Regulations 2001'*. However, this Board analysis concluded differently:

'I would concur with the opinion of the referrer and consider that the planning authority misinterpreted the legislation in this instance. While the secondary legislation provides for an expansion of classes of exempted development over and above those described in Section 4(1) (a)-(l) of the Act, it does not provide, as the referrer correctly points out, for any amendment to the exempted development provisions of the Act by way of subsequent regulation. I acknowledge that this point was also made in the Inspectors report of RL2162 in relation to a development in Swords, Co. Dublin. In addition, I concur with the referrer's assertion that it is clear from the text of Article 9(1) of the Regulations that the de-exemption referred to therein relates to development to which Article 6 relates, namely development of a class specified in Column 1 of Part 1 of Schedule 2 and does not apply to exempted development as set out in Section 4(1) of the Act, as amended'.

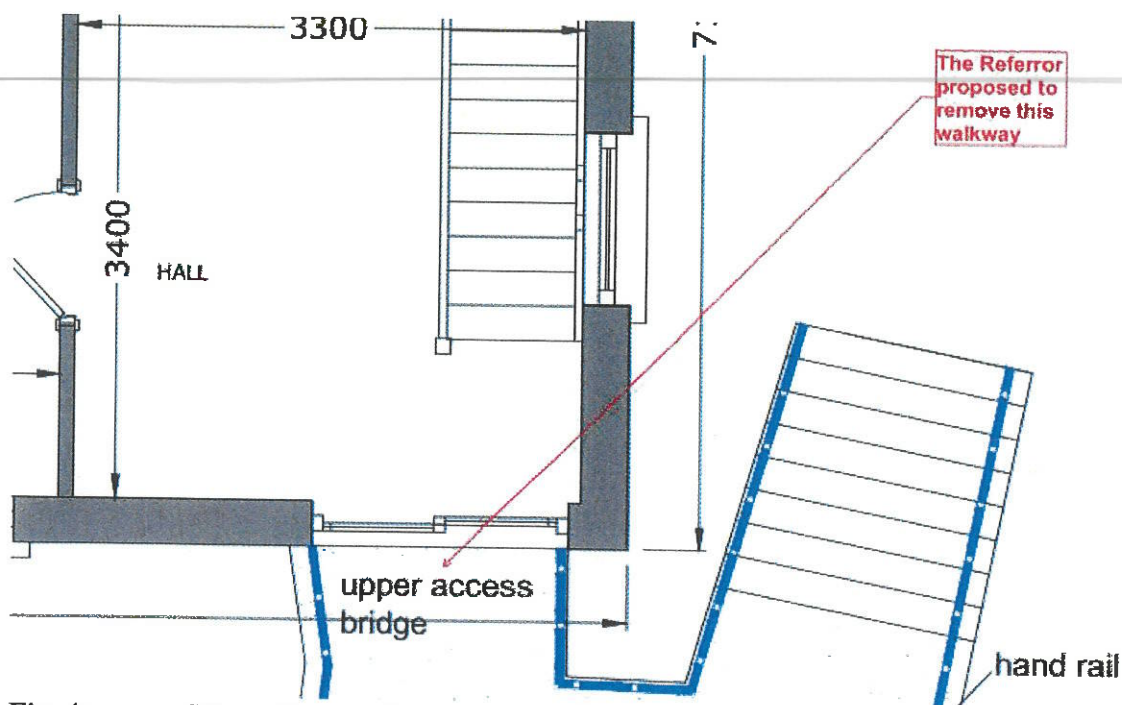


Fig. 4: The referrer plans on removing the link between the kitchen / dining area of the house to the roof of the garden shed.

Furthermore, although the Report of the Planning Officer in reg. Ex. 28/18 acknowledges that the 'roof of the shed is ...accessed via a walkway...to be removed', it observes that 'the steps...are to be retained' and 'must therefore be considered'. The difficulty with this approach is that the steps form part of the roof itself and indeed, even if removed, the roof would theoretically be accessible via a small stepladder (given levels changes within the site) and we suspect that the Council would surmise, even if the steps are deleted, that the roof area would still be traversable, on which basis permission would be required. In order to address this concern, however, we now propose to alter this development in a manner which involves the removal of the steps which are of concern to the Council.

We submit that this element of the present proposal can be undertaken pursuant to s.4(1)(h) of the Planning and Development Act, 2000 (as amended). Whilst many planning authorities take the view that a landowner cannot avail of the exempted development provisions of planning law where a stricture might be unauthorised, this is factually incorrect, with this approach only applying to the rights set out in the Planning and Development Regulations, 2001 (as amended). The privileges which are enshrined in the Planning and Development Act, 2000 (as amended) are otherwise inviolable and are not subject to preconditions, specifically as regards the legitimacy of the structure.

In this regard, we reproduce part of the Report of the Planning Officer in ref. RL17.RL2748 as follows:

'However, the main reasoning for the planning authority's decision is as follows. They state that as the existing dwelling unit does not have the benefit of a grant of planning permission, it is not considered that the proposed works in this application constitute exempted development due to their direct use associated with an unauthorised change of use of a garage to a residential unit. They contend that these works do not therefore come either (i) within the scope of section 4(1)(h) of the Planning and Development Act 2000 or (ii) within the exempted development provisions of Class 1 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001.

...the referrer...that as statutory provisions cannot be amended by regulation, the provision of Article 9 does not affect Section 4(1)(h) of the Planning and Development Act 2000 so as to otherwise disentitle the referrer from these statutory benefits in this particular case. I concur that it is a core principle of statutory interpretation that an Act cannot be amended by secondary legislation and if it had been the intention of the legislature to restrict privileges set out in Section 4(1)(h) to authorised structures only, this would have been explicitly and expressly stated in the Act. I would concur with the opinion of the referrer and consider that the planning authority misinterpreted the legislation in this instance. While the secondary legislation provides for an expansion of classes of exempted development over and above those described in Section 4(1) (a)-(l) of the Act, it does not provide, as the referrer correctly points out, for any amendment to the exempted development provisions of the Act by way of subsequent regulation.

...this point was also made in the Inspectors report of RL2162 in relation to a development in Swords, Co. Dublin. In addition, I concur with the referrer's assertion that it is clear from the text of Article 9(1) of the Regulations that the de-exemption referred to therein relates to development to which Article 6 relates, namely development of a class specified in Column 1 of Part 1 of Schedule 2 and does not apply to exempted development as set out in Section 4(1) of the Act...'



Photograph 4: The shed contains the referrer's domestic household fuel supply.

We also note An Bord Pleanála referral ref. 06S.RL.3043 on 'whether a stable block and associated storage building on land at Badger's Hill, Johnstown, Killeel Road, Rathcoole, County Dublin is or is not development or is or is not exempted development'. This decision establishes that an illegal structure can be rendered lawful through the removal of part of its fabric. Although the building in that case was unauthorised, it held '(a) the structures on site comprise a stable block and associated storage building, (b) the stated area of the stable block is 78 square metres and the stated area of the associated storage building is 244 square metres, and (c) the stable block comes within the scope of Class 6 of Part 3, Schedule 2 of the Planning and Development Regulations, 2001, as amended and the associated storage building comes within the scope of Class 9 of Part 3, Schedule 2 of the Planning and Development Regulations, 2001'. On the basis of future compliance with the Regulations, the Board held that an illegal development could later be rendered exempt.

(iii) Domestic Exempted Development Provisions

We have had the benefit of seeing an enforcement-related exchange of correspondence between the Planning Authority, on one hand and the referrer's agent, Deane Turner Associates. Based on our perusal of these papers, it is our opinion that the Council accepts that the shed is sub-threshold, relative to the conditions for exempted development status and that its concerns stem from ancillary elements. As observed, the structure is behind the house and contains less than 25 square metres and is thereby capable of comprising exempted development, especially as there are no other outbuildings within this garden (whose remaining area exceeds 25 sq. metres). As these items of correspondence do not otherwise question the external finishes of the structure, its height or its use for purposes incidental to the enjoyment of the house, as such, we suggest that there is clearly a *prima facie* case to support the opinion that the subject development is exempt from the requirement to obtain planning permission.

The only ground in law on which the Planning Authority might conclude that permission is needed relates to the provisions in article 9 of the Planning and Development Regulations, 2001 (as amended). However, aside from the fact that the constraints which are contained within this provision to not apply to the removal of the railing, fence and walkway (as art. 9 does not affect or otherwise limit the operation of section 163 of the Planning and Development Act, 2000 (as amended)), it would be unlawful for the Council to decide that planning permission is needed on the basis of art. 9(1)(a)(viii).

In this regard, we have drawn attention to the features which have been itemised by Wicklow County Council in its Notice of Motion and, with the grant of permission for the retention of the referrer's porch under reg. 17/1424 and the planned removal of the railing, fence and walkway under s.163 of the Act of 2000 (as amended), there are no other items or structures on this site which would enable the Planning Authority to conclude that the subject shed does not comprise exempted development.

We further suggest that it is not necessary for these latter three features to first be removed before the Council can issue the declaration sought and we have already drawn attention, in this regard, to the decision of An Bord Pleanála in referral ref. no. PL06S.RL.3043, in which it determined that work as for the planned conversion of an unauthorised building into an exempted development did not need consent and issued its Order this this effect prior to the offending elements thereon being removed.

7. Concluding Comment

It is immediately apparent from the provision at article 6 of the Planning and Development Regulations, 2001 (as amended), considered in conjunction with Class 3, Part 1 of the Second Schedule to this Statutory Instrument, that a domestic garden shed is capable of comprising exempted development and we respectfully ask Wicklow County Council to candidly accept that this is the case. We have highlighted the six pre-conditions which are contained within the aforementioned Class 3 and have shown that the referrer's garden shed satisfies each and every one of these stipulations. Indeed, based on the enforcement-related correspondence to which we have already alluded, we suggest that it is common case between the parties that this structure complies with the Regulations.

It is equally apparent that the Planning Authority's reason for concluding that the subject structure requires permission stems from the existence of a railing, fence and walkway, as well as the threat of this rooftop being used as an outdoor sitting area. However, as these physical features are to be removed under section 163 of the Planning and Development Act, 2000 (as amended) and as the use of the roof as an amenity area is expressly and explicitly eliminated as part of this referral, there are no grounds under article 9 of the Planning and Development Regulations, 2001 (as amended) to support the conclusion that the structure falls outside the parameters for exempted development status.



Vincent JP Farry and Co Ltd

