

# VINCENT JP FARRY AND CO LTD

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AN BORD PLEANÁLA

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ABP- 013724-19.

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Fee: € 220 Type: cheque

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LTR DATED \_\_\_\_\_ FROM \_\_\_\_\_

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24 February 2019

The Secretary  
An Bord Pleanala  
64 Marlborough Street  
Dublin 1

### STRUCTURE AT THE BUNGALOW NEWTOWN KILL COUNTY KILDARE KILDARE COUNTY COUNCIL REGISTER REFERENCE NUMBER ED00702

Dear Sir

We act for Mark Brady whose address is 'The Bungalow', Newtown, Kill, Co. Kildare in this case.

By report dated 12 December 2018, we lodged a referral with Kildare County Council under s.5 of the Planning and Development Act, 2000 on whether particular works require consent, as follows:

*'Whether works to an existing turf shed which is located to the rear of 'The Bungalow' Newtown, Kill, Co. Kildare comprising the physical alteration of its three external walls, the erection of one internal wall and the installation of a garage door and surrounding apron comprise exempted development'.*

The Council has, by letter dated 1 February 2019, confirmed that works which have been undertaken on this property require permission and we hereby request An Bord Pleanala to review this decision.

We attach herewith a copy of the County Council's original acknowledgement of our referral, along with a copy of this recent decision. We understand that our initial submission will be forwarded by the Planning Authority to An Bord Pleanala, along with a copy of its internal report on this referral.

Aside from inviting the Board to re-consider whether permission is required, for the reasons set out in our original report, we ask An Bord Pleanala to note how the Council's decision is not based on the proposal which was detailed in our report of 12 December 2018, but rather on a variation of the works which were discussed and described therein. To a large degree, our present request is based on the fact that the Council did not actually consider the project which is the subject of this referral.

For example, the Report of the Planning Officer refers to a purported statement by the referrer to the effect that 'the turf shed was replaced with the existing structure in 2013', but our client denies having made this statement. The County Council's decision in this case is based on the claim, in this same internal assessment, to the effect that 'the original turf shed has been entirely replaced', but this is not the development which was articulated in our initial submission of 1 December 2018.

Linked to this error is the conclusion to the effect that the works 'materially affect the character of the original turf shed' and we question the veracity of this claim, largely on the basis that the author of this County Council assessment only inspected the site after this development has been completed and was unable to undertake a comparative exercise. The Report of the Planning Officer failed to explain the nature or extent of the changes involved, so as to justify the conclusion that the works involved fall outside the ambit of s.4(1) of the Planning and Development Act, 2000 (as amended).

Guidance on the assessment of external changes is set out in Planning and Development Law 2<sup>nd</sup> Edition in which Garrett Simons SC, citing the case of *Cairnduff v. O'Connell* advises as follows:

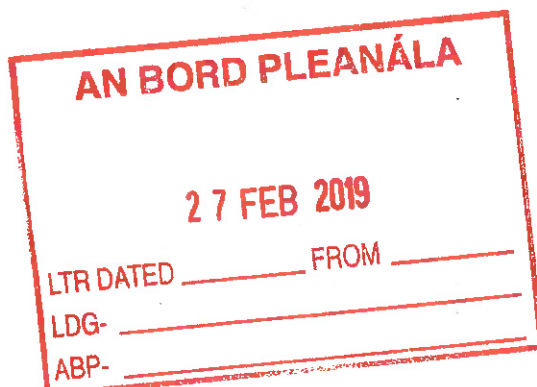
*'The character of a structure relates to its shape, colour, design, ornamental features and layout and not to its particular use...'*

Given the physical characteristics of this development, applied in the light of these considerations, we conclude that the subject works comprise development for the maintenance, improvement or other alteration of this structure and based on *Cairnduff v. O'Connell*, as such works do not materially affect its appearance so as to render such appearance inconsistent with its character or that of neighbouring structures. Accordingly, such works are covered by s.4(1) of the Planning and Development Act 2000 and comprises exempted development for which permission is not needed.

Yours faithfully



**Vincent JP Farry and Co Ltd**



Comhairle Contae Chill Dara  
Kildare County Council



18/12/2018

Our Ref: ED/00702

Mr Mark Brady  
c/o Mr Vincent Farry  
Vincent JP Farry & Co Ltd  
Suite 180  
No 28 South Frederick Street  
Dublin 2

Re: Application for a Declaration of Exempted Development under Section 5:  
"The Bungalow", Newtown, Kill, Co Kildare

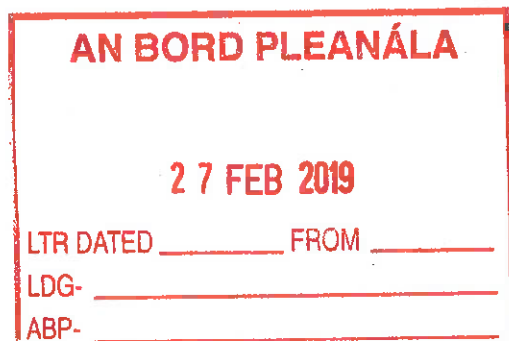
Dear Mr Brady

I refer to your correspondence received 14 December 2018 in connection with the above.

Your application is now being considered and we will revert to you in due course.

Yours sincerely

  
Senior Executive Officer  
Planning Department





**Declaration on Development and Exempted Development  
under Section 5 of the  
Planning and Development Act 2000 (as amended)**

ED/00702

**WHEREAS** a question has arisen as to whether works to an existing turf shed is or is not development and is or is not exempted development.

**AS INDICATED** on the particulars received by the Planning Authority on 14<sup>th</sup> December 2018.

**AND WHEREAS** Mark Brady, c/o Vincent Farry, Vincent JP Farry & Co Ltd, Suite 180, No 28 South Frederick Street, Dublin 2, requested a declaration on the said question from Kildare County Council;

**AND WHEREAS** Kildare County Council as the Planning Authority, in considering this application for a declaration under Section 5 of the Planning and Development Act 2000 (as amended), had regard to;

(a) Sections 3 and 4 of the Planning and Development Act 2000 (as amended);

**AND WHEREAS** Kildare County Council has concluded that:

(a) The works as described to the original turf shed constitutes material works which materially affect its external appearance of the structure and render the appearance inconsistent with the character of the structure and cannot be considered to be exempted development under Section 4(1)(h) of the Planning and Development Act 2000 as amended and

(b) The said development does not come within the scope of any exempted development provision in the Planning and Development Act 2000 (as amended) or the Planning and Development Regulations 2001 (as amended).

**NOW THEREFORE** Kildare County Council, in exercise of the powers conferred on it by Section 5(2)(a) of the Planning and Development Act 2000 (as amended), hereby decides that works to an existing turf shed comprising the physical alteration of its three external walls, the erection of one internal wall and the installation of a garage door and infill wall to enclose an open elevation located to the rear of "The Bungalow" Newtown Kill, Co. Kildare is development and is not exempted development.

Please note that any person issued with a declaration under subsection 2(a) of the Planning and Development Act 2000 (as amended) may on payment to the Board of the prescribed fee, refer a declaration to An Bord Pleanála within 4 weeks of the issuing of the decision.

Signed   
DIRECTOR OF SERVICES

Date: 15<sup>th</sup> February 2019

AN BORD PLEANÁLA

27 FEB 2019

LTR DATED \_\_\_\_\_ FROM \_\_\_\_\_

LDG \_\_\_\_\_