

The Secretary
An Bord Pleanála
Marlborough Street
Dublin 1

27th March 2023

LDG-	062059-23	
ABP-		
28 MAR 2023		
Fee: €	220	Type: CHQ
Time:		By: Ray Post

RE: Referral of decision by Louth County Council on Section 5 Declaration application in relation to whether a home office built within the property boundary is or is not placed forward of the front wall of the house and whether the home office is or is not development and/or is or is not exempted development at The Dunes, Seapoint, Termonfeckin, Co. Louth

Dear Sir/Madam,

On behalf of my clients Ms Valerie Keating and her husband Gary. I wish to formally refer to you the decision that Louth County Council has made with respect to an Application for Declaration on Development and Exempted Development Under Part 1, Section 5 of the Planning and Development Act 2000 (as amended).

Valerie and Gary Keating's address is The Dunes, Seapoint, Termonfeckin, Co. Louth. We, Brady Hughes Consulting, are the agent and our address is 26A Magdalene Street, Drogheda, Co. Louth.

In this regard, please find attached a copy of the Section 5 application which was submitted to Louth County Council on 7th February 2023, and this comprises the following documents:

- Section 5 Declaration Application Form
- The Cover Letter which accompanied the declaration application setting out our client's views and position.
- Drawing no. DR01 Site Location Map
- Drawing no. DR02 Site Layout Plan
- Drawing no. 101 Office Structure

Please also find attached a copy of the Decision issued by Louth County Council dated March 3rd and a copy of the planner's report on the matter set out how this decision was reached.

Please also find attached a cheque in the sum of €220 the prescribed fee in respect of an R1 referral whereby we wish to refer to An Bord Pleanála a declaration made by a planning authority on a question that was put to it.

Background to the application

The site is located outside of Termonfeckin and is adjacent to Termonfeckin Beach. Please see the extract below from the Google Maps satellite view for the location of the site indicated in red. The site is large and located on un-zoned land in the rural area of County Louth at the end of a public road with houses either side. Other houses are accessed to the north via a private laneway through our client's garden.

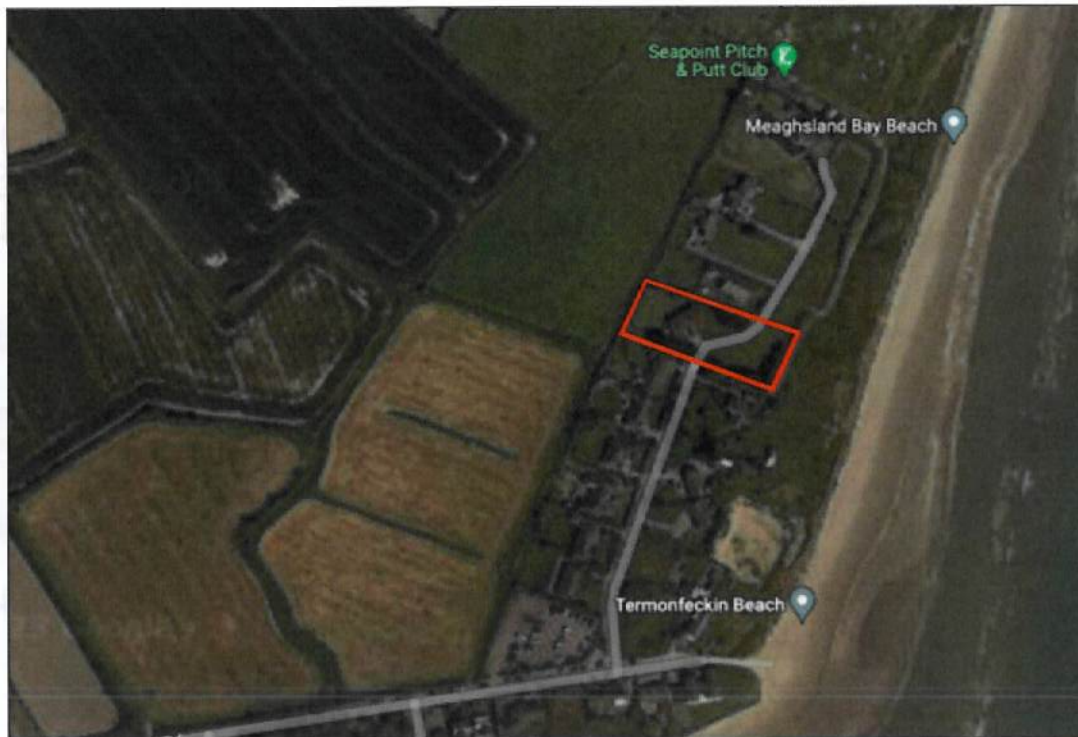


Figure 1 Site Location

A home office building (the subject of this referral) was erected in December 2021, to provide additional space and a work-from-home area. It is a small domestic garden room, typical of many that have become popular all over Ireland and measures just 21.6 m², designed to be domestic in scale and appearance and to accord with exempt development provisions.

Louth County Council Decision

According to the decision issued by Louth County Council on March 3rd, they considered the following question:

WHEREAS a question as to whether the home office built within the property boundary is or is not placed forward of the front wall of the house; whether the home office is or is not development and is or is not exempted development.

The decision issued by the planning authority is stated as follows:

AND WHEREAS Louth County Council in considering this reference, had regard reference particularly to –

- a) The definition of development in the Planning and Development Act 2000 (as amended)
- b) The provisions under Part 1 of Schedule 2, Class 3 of the Planning & Development Regulations 2001 (as amended),
- c) Article 6 and 9 of the Planning & Development Regulations 2001 (as amended)
- d) Plans and particulars forwarded to the planning authority; and
- e) Planning history pertaining to the site in question

NOW THEREFORE Louth 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 the development at The Dunes, Seapoint, Termonfeckin, Co Louth constitutes development that is not exempted development.

AND WHEREAS Louth County Council has concluded that on the basis of the information submitted that

- (i) The construction of a 21.6sqm home office structure is considered to constitute development;
- (ii) The construction of the structure as illustrated on the plans and particulars submitted by reason of its location forward of the front wall of the house and therefore fails to comply with limitation no. 1 of Class 3.

A declaration of exemption was therefore refused because the planning authority concluded that the structure was forward of the front wall of the house. The planner's report sets out the various conditions/limitations considered under Class 3, Schedule 2 of the Planning & Development Regulations 2001 (as amended) in their report. In respect to this front wall limitation, the planner's report notes as follows:

The referrer has submitted a covering statement prepared by Brady Hughes Consulting which questions where the front wall of the house is based on the location and arrangement of the road/driveway leading to the subject dwelling and neighbouring dwellings. The planning authority however is satisfied that the location of the structure, having regard to the existing site layout plan submitted (Drawing No. DR02), is constructed forward of the front wall of the house and therefore does not comply with Condition No. 1.

There is no definition in the regulation that states how to determine the front wall of a house and in this regard, we believe that the decision maker has discretion. In this case, it appears that the front wall means the wall where the front door is. In most cases, this would seem to be appropriate but not necessarily in all cases. We believe the 'front wall' can be considered to mean the building line closest to the public road/street. It is reasonable to conclude that this limitation was intended to protect the public at large from developments appearing in the front gardens of houses along the public road, where it has the potential to effect established building lines and have an impact on other people and the public at large. Exempt developments are exempt because they are likely to have little or no impact on other people.

Please see figure 2 below. This shows an aerial image of a house at Monasterboice Co Louth. The front door into this house faces South West, and you can see how the driveway comes in from the public road and around the house to where cars park at the front door. In this case, the back of the house faces the public road. In cases like this, the definition of 'front wall' applied by the Planning Authority in the Keating Case doesn't seem appropriate. I would contend that the front wall in this case is the one facing the public road, and that an extension to the 'rear' of this house would not be exempt because it would not be behind the 'front wall'. The simple determination that the front door tells you where the front wall is, isn't always the right one. In most new housing schemes, there are dual aspect houses turning corners as bookends on streets – their 'front' door is often at the side, but this wouldn't allow them to build an extension in their 'front garden'.



Figure 2 House at Monasterboice, Co. Louth

In the subject case, the 'front wall' could be reasonably considered to be the building line closest to the public road – which ends outside their gates. There are signs on the gates telling people that the roadway beyond (serving the Keatings and their neighbours to the north) is private. The home office building which is the subject of this referral is approx. 17m behind the building line i.e., the 'front wall' of their house, please see the below figure.

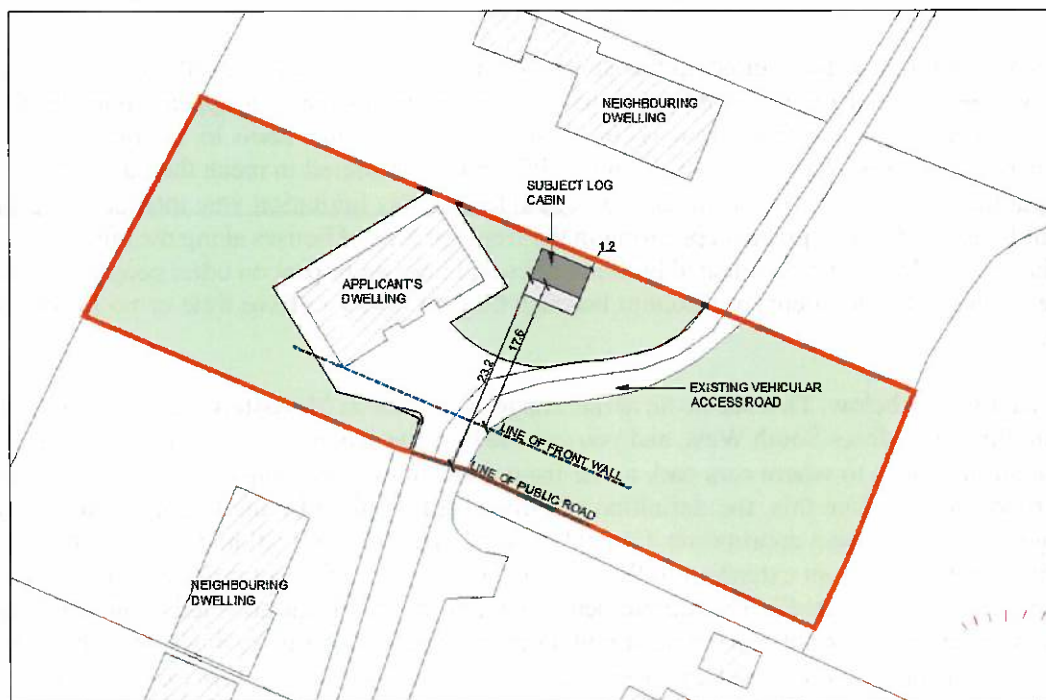


Figure 3 Site Layout

Figure 4 Garage & House in Riverstown, Co. Louth

Conclusion

We trust that you will take the foregoing and the details and information that we supplied to Louth County council with our application into consideration and that when determining this Section 5 declaration decision referral.

We hope that you will find that the development as outlined in the application form is not in fact 'Development' as defined by the Planning and Development Act 2000 (as amended) and that it is exempted and does not require planning permission.

Your Faithfully

A handwritten signature in black ink, appearing to read 'Brian Hughes', with a stylized flourish at the end.

Brian Hughes
BA BAI CEng MIEI
Chartered Engineer

Section 5 Declaration - Application Form

1. Name and address of person seeking the declaration:

Valerie Keating – The Dunes, Seapoint, Termonfeckin, Co. Louth

Phone Number: _____

E-Mail: _____

2. Name and address of agent (if any):

Brady Hughes Consulting

Phone Number: 0419839379

E-Mail: info@bradyhughes.com

3. Name and address for all correspondence (if not completed, correspondence will be sent to person seeking declaration)

Brady Hughes Consulting – 26A Magdalene Street, Drogheda, Co. Louth

4. Interest in site of the person seeking declaration:

Owner

(if applicant is not freehold owner of the property in question, please provide name and address of owner if known)

5. Location of development referred to in Question 6 (specify house no. and street name, where applicable)**

The Dunes, Seapoint, Termonfeckin, Co. Louth

6. Question for determination under Section 5 (be as specific as possible) :

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

7. Does the development consist of works to be carried out to an existing or proposed protected structure? Yes ☐ No ☒

If Yes, has a Declaration under Section 57 of the Planning and Development Act 2000 been requested or issued for the property by the Planning Authority?

N/A

I certify that the aforementioned is correct.

Signature of Applicant: _____ Date _____

Please include one copy of the following documents with this application form:

- **Site Location Map:** (Scale 1:1000)
- **Site Layout Map:** (Scale 1:200 or 1:500)
- **Floor Plans & Elevations:** (Scale 1:50, 1:100 or 1:200)
- **Application fee:** (€80)

****NOTE:** If the property outlined in Question 5 is a Protected Structure please submit two copies of all documentation listed above.

Completed Application Form & Fee of €80.00 must be submitted to:

**Planning Office
Louth County Council
Town Hall
Crowe Street, Dundalk
County Louth
A91W20C**

Planning Department
Louth County Council
Town Hall
Crowe Street
Dundalk
Co. Louth

2nd February 2023

**RE: Application for Section 5 Declaration in relation
to a home office shed at The Dunes, Seapoint, Termonfeckin, Co. Louth.**

Dear Sir/Madam,

With reference to the above, and on behalf of our client Ms Valerie Keating and her husband Gary, please find attached a completed application form for a declaration under Section 5 of the Planning and Development Act 2000 (as amended).

In support of this application, please find attached a cheque in the sum of €80, the prescribed fee and the following documents:

1. Application fee - €80
2. Drawing No. DR01 Site Location Map – 1 Copy
3. Drawing No. DR02 Existing Site Layout Plan – 1 Copy
4. Drawing No. 101 Office Structure – 1 Copy

The Question

The development is a 21.6 sq.m. domestic structure used as home office and study space, used an extension of the family home, and incidental to the enjoyment of the home.

The Question: Whether the structure built within the property boundary is or is not development and/or is or is not exempted development?

Site Location

The site is located outside of Termonfeckin and is adjacent to Termonfeckin Beach. Please see the extract below from the Google Maps satellite view for the location of the site indicated in red. The site is large and located on un-zoned land in the rural area of County Louth at the end of a public road with houses either side. Other houses are accessed to the north via a private laneway through our clients garden.



Figure 1 Site Location

Planning History

The planning permission for the house was granted in January 1981 (PI ref. 80699). County Louth's ePlan system has no details scanned for the permission the dwelling other than basic drawings of the house. I don't believe that there are any conditions on the file ref. 80699 which would preclude Valerie and Gary from building a small shed in her garden.

Apart from the parent permission for the dwelling, there have been no other planning applications made in relation to this property or land. A number of other planning permissions for houses and extensions to houses that use the private road through the Keatings garden were noted on the planning register.

An enforcement warning letter (Ref No. 22U153) was issued to Valerie Keating alleging an unauthorised development was taking place at the subject property involving an *"unauthorised structure in front garden and unauthorised wooden panel fencing to the front of the property"*. We are in contact with the enforcement section in that regard.

Background to the application.

Following receipt of the planning enforcement letter, Ms Keating engaged Brady Hughes Consulting to review the case and prepare a response. This application for a Section 5 declaration is part of that response.

In accordance with Class 3, Schedule 2 of the Planning and Development Regulations, 2001, *'The construction, erection or placing within the curtilage of a house of any tent, awning, shade*

or other object, greenhouse, garage, store, shed, or similar structure' is exempt development as long as it meets the following conditions & 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 purpose incidental to the enjoyment of the house as such.

In our case, we believe that the domestic garden structure erected adjacent to Valerie Keating's house is exempt development and meets the stipulations set out in the second schedule for the following reasons:

- 1) The position of the structure: The existing houses and surrounding gardens are not laid out in a manner one would call typical. It is not clear whether the garden structure is or is not in forward of the front wall of the house. 'Forward of the front wall of a house' could be taken to mean in the direction of the public road shown in yellow in the fig 2 below, not in the direction of the pathway through the Keatings Garden used by their neighbours in green. Therefore, the home office shed is on the eastern side of the house not on the forward of the front wall of the house.



Figure 2 Site Layout

The regulations were written with a very typical house layout design in mind, one which covers most Irish properties. It is obvious that Valerie's house is not one of these cases. In this regard, please note the following examples of the similar situations.

Example 1 – Houses at Dublin Rd, Railway Terrace, Wheaton Hall, Drogheda, Co. Louth.



Figure 3 Houses at Dublin Rd, Railway Terrace, Wheaton Hall, Drogheda, Co. Louth, Ireland

As shown above, it seems as though gardens sheds etc have been built forward of the front wall of the houses, on the opposite side of the public road in what could be considered their front gardens (south of their front doors). Are these domestic structures ones which would need planning permission? We contend that it would be extremely onerous to suggest that they do, even though neighbours must pass between them and

their neighbours houses to get to their own. We've provided this as another example, along with the Keatings situation, where discretion of the planning authority is provided for in how they interpret the meeting of the regulations, and in this case, the definition of 'front wall', i.e. not necessarily being outwards from the front door.

Example 2 – Houses at Bayview Bettystown, Co. Meath



Figure 4 Houses at Bayview Bettystown, Co. Meath

The front garden of these houses shown in figure 4 above appears to be facing the public road with the back gardens facing the beach. Quite a bit of development has happened on the public road side of the houses, and the side of the house facing the public road isn't necessarily the wall referred to as the 'front wall' in the regulations.

These examples are provided merely to show that the definition of front wall is open to interpretation. If the gateway to the public road of the Keatings Property is the front gate, then the domestic structure in this case is positioned tight to the back boundary of the property.

- 2) This garden room is the only external structure within the site of Valerie's house and it has a gross floor area of 21.6 m², less than the maximum limit for exempt development of this kind.
- 3) The total site area is approximately 0.25ha. The building will 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. The remaining area of private open space surrounding Ms. Keating's house is approximately 1929 m² and it is well in excess of the required 25 square metres.
- 4) The domestic structure is made of steel frame with timber cladding. While the shed does not have the same finishes as the house, it is in keeping with and conforms to the general domestic aesthetic of the property, and is typical of gardens rooms that are of modular construction and deemed exempt all over Ireland.

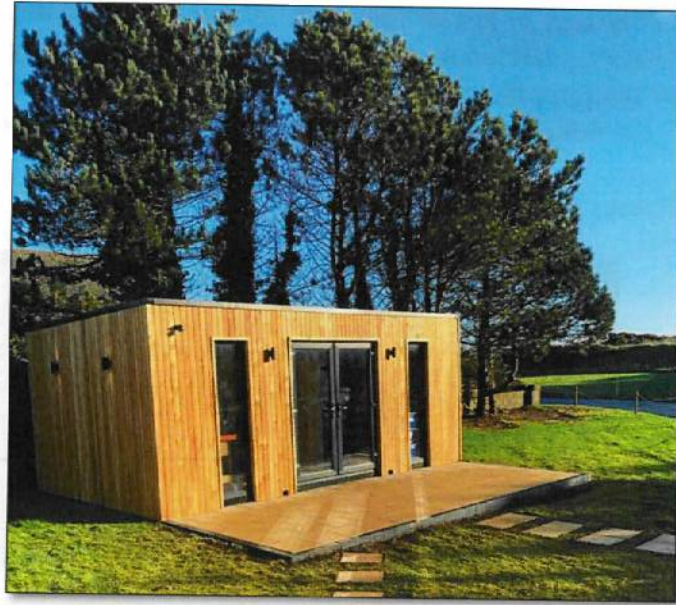


Figure 5 Home Office Shed

- 5) The height of the building is 2.7m in height which is less than the maximum 3m for a structure with no tiled or slated pitched roof.
- 6) The structure's use is incidental to the enjoyment of the house. It is not designed for the habitation of people or for the keeping of pigs, poultry, pigeons, ponies or horses. Ms. Keating has no intention of changing this.

Discussion / Comment

The building was erected in December of 2021, to provide additional space and a work from home area. The building is helping support a new business that the Keatings had to start due to the collapse of their event management business because of the COVID 19 pandemic. Its is a small domestic garden room, typical of many all over Ireland and measures just 21.6 m².

We believe that the construction/erection of Valerie's home office space is an exempted development and that it does not need planning permission for the reasons outlined above.

We trust that you will take the foregoing into consideration when determining this Section 5 declaration application, and look forward to hearing from you in due course.

Your Faithfully

A handwritten signature in black ink, appearing to read 'Brian Hughes'.

Brian Hughes
BA BAI CEng MIEI
Chartered Engineer



Comhairle Contae Lú
Louth County Council

REGISTERED POST

Valerie Keating,
c/o Brady Hughes Consulting Engineers Ltd,
26 Magdalene Street,
Drogheda,
Co. Louth

03rd March, 2023

Re: Ref. S5 2023/02

Application for Declaration of "Exempted Development" Part 1, Section 5, Planning & Development Act 2000 (as amended)
Whether a home office built within the property boundary is or is not placed forward of the front wall of the house and whether the home office at The Dunes, Seapoint, Termonfeckin, Co. Louth is or is not development and is or is not exempt development within the meaning of the Planning and Development Act, 2000 (as amended)

Dear Sir/Madam,

I wish to acknowledge receipt of your application received on 7th February, 2023 in relation to the above. Having assessed all information and enclosures received with the application, the Planning Authority wishes to advise as follows:-

WHEREAS a question as to whether the home office built within the property boundary is or is not placed forward of the front wall of the house; whether the home office is or is not development and is or is not exempted development.

AND WHEREAS the said question was referred to Louth County Council by Valerie Keating, The Dunes, Seapoint, Termonfeckin, Co. Louth

AND WHEREAS Louth County Council in considering this reference, had regard reference particularly to –

- a) The definition of development in the Planning and Development Act 2000 (as amended)
- b) The provisions under Part 1 of Schedule 2, Class 3 of the Planning & Development Regulations 2001 (as amended),
- c) Article 6 and 9 of the Planning & Development Regulations 2001 (as amended)
- d) Plans and particulars forwarded to the planning authority; and
- e) Planning history pertaining to the site in question

Comhairle Contae Lú
Halla an Bhaile
Sráid Crowe
Dún Dealgan
Contae Lú
A91 W20C

Louth County Council
Town Hall
Crowe Street
Dundalk
County Louth
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F + 353 42 9334549
E info@louthcoco.ie
W www.louthcoco.ie

Cuirfear fáilte roimh chomhfhreagras Gaeilge - Correspondence in Irish is welcome
Féach foláirimh faoi Lú ón aComhairle ar www.mapalserter.ie/Louth

AND WHEREAS Louth County Council has concluded that on the basis of the information submitted that

- (i) The construction of a 21.6sqm home office structure is considered to constitute development;
- (ii) The construction of the structure as illustrated on the plans and particulars submitted by reason of its location forward of the front wall of the house and therefore fails to comply with limitation no. 1 of Class 3.

NOW THEREFORE Louth 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 the development at The Dunes, Seapoint, Termonfeckin, Co Louth constitutes development that is not exempted development.

In Summary

A Declaration of Exemption is hereby REFUSED for the development as described above at The Dunes, Seapoint, Termonfeckin, Co. Louth.

This decision may be referred by you to An Bord Pleanála for review within 4 weeks of the date of this letter subject to the payment of the appropriate fee.

Yours faithfully,

Niamh Lynch
Planning Section

**Louth County Council
Planner's Report**

Planning Ref:	S5 2023/02
Applicant's Name:	Valerie Keating
Type of Application:	Section 5 Declaration
Development:	Whether the home office built within the property boundary is or is not placed forward of the front boundary wall of the house and whether it is or is not exempted development.
Site Location:	The Dunes, Seapoint, Termonfeckin, Co. Louth
Report Date:	28 th February 2023
Due Date:	5 th March 2023

Part 1 – Overview

1. Introduction

A declaration is sought to determine if the home office built within the property boundary is or is not exempt.

2. Site location and description

The applicant has submitted a site location map which illustrates the location of the dwelling at Seapoint, Termonfeckin within Rural Policy Zone 2 as outlined within the Louth County Development Plan 2021-2027, as varied.

The site comprises of an existing dwelling and the structure subject of this Section 5 declaration.



Photographs 1 & 2: Illustrating structure in question (photographs taken from enforcement file UD 22U153)

3. Site History

No recent planning history at the site.

Dwelling granted under Reg Ref 80/699.

4. Declaration Sought

The applicant has stated that the question for determination is as follows:

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

5. Legislative Context

Planning & Development Act 2000 (as amended)

In this Act, except where the context otherwise requires –

Section 2

"development" has the meaning assigned to it by section 3, and "develop" shall be construed accordingly;

"exempted development" has the meaning specified in section 4;

"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.

Section 3(1)

"Development" in this Act 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 5 of the Planning & Development Act (PDA) 2000 (as amended)

Section 5 PDA 2000 provides inter alia:

(1) If any question arises as to what, in any particular case, is or is not development or 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, and that person shall provide to the planning authority any information necessary to enable the authority to make its decision on the matter.

(2) (a) Subject to *paragraph (b)*, a planning authority shall issue the declaration on the question that has arisen and the main reasons and considerations on which its decision is based to the person who made the request under *subsection (1)*, and, where appropriate, the owner and occupier of the land in question, within 4 weeks of the receipt of the request.

(b) A planning authority may require any person who made a request under *subsection (1)* to submit further information with regard to the request in order to enable the authority to issue the declaration on the question and, where further information is received under this paragraph, the planning authority shall issue the declaration within 3 weeks of the date of the receipt of the further information.

(c) A planning authority may also request persons in addition to those referred to in paragraph (b) to submit information in order to enable the authority to issue the declaration on the question.

Section 32 of the Planning & Development Act (PDA) 2000 (as amended)

Section 32 PDA 2000 sets out a general obligation to obtain planning permission in respect of any development of land, not being exempted development, and in the case of development which is unauthorised, for the retention of that unauthorised development.

Class 3, Schedule 2 of the Planning & Development Regulations 2001 (as amended)

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.

Conditions/Limitation:

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 25sqm.
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 25sqm
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.

Article 6 of the Planning & Development Regulations (PDR) 2001 (as amended)

Article 6 PDR 2001 provides (subject to the restrictions in article 9 PDR 2001) for the classes of exempted development under column 1 of Parts 1, 2 and 3 of Schedule 2, subject, where applicable, to the conditions and limitations imposed upon such classes as set out in column 2.

Article 9 of the Planning and Development Regulations 2001 (as amended)

Article 9 imposes specific restrictions on development of classes specified in Parts 1, 2 and 3 of Schedule 2 and in effect, de-exempts certain classes of development that would be exempt under normal circumstances.

Part 2 Environmental Impact Assessment and Appropriate Assessment

6. EIA Screening and determination

Council Directive 85/337/EEC (as amended) on the assessment of the effects of certain public and private projects on the environment ('the EIA Directive') is designed to ensure that projects likely to have significant effects on the environment are subject to a comprehensive assessment of their environmental effects prior to development consent being given. The latest amendments to the EIA Directive are provided under Directive 2014/52/EU and Circular letter PL 1/2017. The development is not a development type listed under Part 1 or 2 of Schedule 5 of the Planning & Development Regulations (PDR) 2001 (as amended) nor is it considered a sub-threshold development for the purposes of Schedule 7 PDR. Based on information provided and having considered the nature, size and location of the development, there is no real likelihood of significant effects on the environment and as such as EIAR is not required.

7. Appropriate Assessment

The nearest European site is Boyne Coast and Estuary SAC which is c. 0.25km to the south east of the subject site. Having regard to the nature and scale of the proposed development it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site (Special Area of Conservation or Special Protected Area) and as such an Appropriate Assessment (Stage 2 AA) is not required.

Part 3 – Planning Assessment

8. Assessment:

Does the proposal constitute development? Does the proposal constitute exempt development?

Having regard to the definition of 'development' in the Planning and Development Act 2000 (as amended) i.e. *"the carrying out of works on, in, over or under lands or the making of any material change in the use of any structures or other land"*, the proposed construction of home office with a stated floor area of 21.6sqm, constitutes development.

Does the proposal constitute exempt development?

Schedule 2, Part 1 of the Planning & Development Regulations 2001 (as amended) refers to 'Exempted Development – General' and Class 3 of same 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." The structure in question is considered to constitute a "similar structure" to a

shed/store. There are 6no. Limitations and the development is assessed against these as follows:

Limitation 1

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

The referrer has submitted a covering statement prepared by Brady Hughes Consulting which questions where the front wall of the house is based on the location and arrangement of the road/driveway leading to the subject dwelling and neighbouring dwellings. The planning authority however is satisfied that the location of the structure, having regard to the existing site layout plan submitted (Drawing No. DR02), is constructed forward of the front wall of the house and therefore does not comply with Condition No.1.

Limitation 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 25sqm.

The structure has a stated floor area of 21.6sqm and the referrer has submitted a floor plan and elevations of the structure. Based on the information submitted, I am satisfied that the structure in question does not exceed 25sqm. No other structures are shown on the submitted existing site layout plan submitted (Drawing No. DR02). I am therefore satisfied that the structure complies with Condition 2.

Limitation 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 25sqm.

I am satisfied, based on the information provided on the existing site layout plan submitted (Drawing No. DR02) that the structure does not reduce the amount of private open space associated with the dwelling to less than 25sqm and therefore complies with Condition 3.

Limitation 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 structure is steel framed with timber cladding. While details of the material finishes of the existing dwelling have not been submitted, the referrer has confirmed within the covering statement prepared by Brady Hughes Consulting that the structure does not have the same finish as the house. The planning authority thereby does not consider that the structure complies with Condition 4.

As the structure in question is forward of the building line this is a moot point however were the structure considered to the side of the house it would not be considered to comply with this limitation by virtue of its finishes which do not conform with the house on site.

Limitation 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.

The maximum height of the structure as indicated on the submitted plans is 2.8m which is therefore considered to be in compliance with limitation 5.

Limitation 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.

The referrer has stated that the structure is used as home office space and is not designed for habitation. The Oxford dictionary defines 'habitation' as *"the act of living in a place" or "a place where people live"*. Having regard to the stated use as a home office and the definition of 'habitation', I am satisfied that the structure will not be used for human habitation.

Having regard to the above, the planning authority is not satisfied that the structure complies with Limitation No's 1 and 4 of Class 3 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended) and is therefore not exempted development.

9. Conclusion:

It can be concluded, given the foregoing, and having regard to the relevant provisions of the Planning & Development Act, 2000 (as amended), the Planning & Development Regulations 2001 (as amended), that the proposal constitutes development which is not exempted development.

WHEREAS a question as to whether the home office built within the property boundary is or is not placed forward of the front wall of the house; whether the home office is or is not development and is or is not exempted development.

AND WHEREAS the said question was referred to Louth County Council by Valerie Keating, The Dunes, Seapoint, Termonfeckin, Co. Louth

AND WHEREAS Louth County Council in considering this reference, had regard reference particularly to –

- a) The definition of development in the Planning and Development Act 2000 (as amended)
- b) The provisions under Part 1 of Schedule 2, Class 3 of the Planning & Development Regulations 2001 (as amended),

- c) Article 6 and 9 of the Planning & Development Regulations 2001 (as amended)
- d) Plans and particulars forwarded to the planning authority; and
- e) Planning history pertaining to the site in question


AND WHEREAS Louth County Council has concluded that on the basis of the information submitted that


- (i) The construction of a 21.6sqm home office structure is considered to constitute development;
- (ii) The construction of the structure as illustrated on the plans and particulars submitted by reason of its location forward of the front wall of the house and therefore fails to comply with limitation no. 1 of Class 3.

NOW THEREFORE Louth 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 the development at The Dunes, Seapoint, Termonfeckin, Co Louth constitutes development that is not exempted development.

Ann McCormick
Assistant Planner
Date: 28.02.2022

I note the recommendation provided by the Assistant planner and the documentation submitted by the Referrer, in particular the reference to precedent cases elsewhere. Limitations are provided within different classes. Either a development seeking an exemption as per Section 5 of the Planning and Development Act, 2000 as amended, conforms with the limitations or not. It is not open to the Planning Authority to consider what is reasonable or otherwise as is being intimated in the documentation submitted. The structure for which the question as arisen for determination in this instance, is placed forward of the existing front wall of the house and therefore does not comply with limitation no. 1 of Class 3.


Joanna Kelly
Senior Planner
Date: 3rd March 2023


Thomas McEvoy
Director of Services
Date: 3/3/23