



An
Bord
Pleanála

Board Direction
ABP-304220-19

The submissions on this file and the Inspector's report were considered at a Board meeting held on December 6th, 2019.

The Board decided, as set out in the following Order, that all of the matters listed in the question, as outlined below, are development and are not exempted development.

Board Order as follows:-

WHEREAS a question has arisen as to whether the following are or are not development and are or are not exempted development:

1. Office building at entrance to site.
2. Toilet building at entrance to site.
3. Small shed adjacent to timber chalet and car parking.
4. 2 sheds/structures at rear of yard.
5. Septic tank and percolation area in bog at north eastern corner of the site.
6. Timber storage shed.
7. Shed containing car lift and toilet block.
8. Toilet block in bog area.
9. Filling with imported C&D waste to the bog land north at the north-eastern corner of the site.
10. Concrete slab at north western corner of site also in bog, and
11. Storage of scrap cars in bog area.

all at Knockloughlin, Longford, Co Longford.

AND WHEREAS Brian Kane c/o Liam Madden, Vitruvius Hibernicus, Convent Road, Longford, Co Longford requested a declaration on this question from Longford County Council and the Council issued a declaration on the 1st day of April 2016 stating that the matters were development and were not exempted development:

AND WHEREAS Brian Kane referred this declaration for review to An Bord Pleanála on the 16th day of April 2016:

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

- (a) Section 2(1) of the Planning and Development Act, 2000, as amended,
- (b) Section 3(1) and (2) of the Planning and Development Act, 2000,
- (c) Section 4(1)(a) of the Planning and Development Act, 2000, as amended,
- (d) article 6(1), 6(3) and article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (e) Parts 1 and 3 of the Second Schedule to the Planning and Development Regulations, 2001, as amended,
- (f) the planning history of the site, and
- (g) relevant case law, including *Fingal Co Co – v – Crean and Signway Holdings Ltd* [2005] IEHC 408 and *Dillon – v - Irish Cement* (Supreme Court 1986).

AND WHEREAS An Bord Pleanála has concluded that:

- (a) All of the matters set out in items numbers 1 to 8 and number 10 of the question, involved the carrying out of works, and are therefore

development within the meaning of the Planning and Development Act, 2000, as amended.

- (b) The filling with imported C & D waste of the bog land at the north-eastern corner of the site (item number 9 of the question) and the storage of scrap cars and cars in the bog area (item number 11 of the question), both constitute, by reason of the provisions of Section 3 (2) (b) (iii) of the Planning and Development Act, 2000, as amended, a material change of use of the land concerned, which was previously used for agricultural/forestry purposes, and are therefore development.

- (c) The office building at the entrance to site (item number 1 of the question), toilet building at entrance to site (item number 2 of the question), and the small shed adjacent to timber chalet (part of item number 3 of the question) do not come within the scope of Class 3 of Part 1 of the Second Schedule to the Planning and Development Regulations, 2001, as amended, as they do not comply with all of the conditions and limitations to which this Class is subject, having regard to the floor areas of the other structures already completed and permitted under planning permission register reference number 07/1227 within the curtilage of the house, in the light of the floor area limitation of 25 square metres as set out in condition and limitation number 2.

- (d) The car parking within the curtilage of the house (part of item number 3 of the question), which is of a scale and nature inconsistent with solely the parking of a car or cars used by/for the owner/occupier of the house, does not come within the scope of any exemptions set out in the Planning and Development Act or the Planning and Development Regulations, and is therefore not exempted development.

- (e) None of the structures referred to in the question come within the scope of Class 17 of Part 1 of the Second Schedule to the Planning and Development Regulations, 2001, as amended, as the referrer has not provided any evidence that they relate to the carrying out of any development that is being or is about to be carried out pursuant to any permission, consent, approval or confirmation, or how the works referred to are temporary in nature and, having regard to case law, the onus of proving that such works are exempted development lies on the person seeking to come within any exemption.
- (f) The two no. sheds/structures at rear of yard (item number 4 of the question), the timber storage shed (item number 6 of the question), the shed containing car lift and toilet block (item number 7 of the question), the toilet block in bog area item number 8 of the question) and concrete slab at north western corner of site (item number 10 of the question) do not come within the scope of Class 9 of Part 3 of the Second Schedule to the Planning and Development Regulations, 2001, as amended, by reason of the fact that the referrer has not demonstrated that the structures are being used for agriculture and, in the case of the timber storage shed, if it comes within the scope of this Class, it does not satisfy all of the conditions and limitations to which this Class is subject, and therefore these developments are not exempted development.
- (g) The septic tank and percolation area in the bog at north eastern corner of the site (item number 5 of the question), if provided, would not come within the scope of any exemptions provided in the Planning and Development Act 2000, as amended, and the Planning and Development Regulations, 2001, as amended, and is therefore not exempted development.
- (h) The development comprising the storage of scrap cars and cars in the bog area (item number 11 of the question) does not come within

the scope of any exemptions provided in the Planning and Development Act 2000, as amended, and the Planning and Development Regulations, 2001, as amended, and is therefore not exempted development.

- (i) Filling with imported C&D waste to the bog land north at the north-eastern corner of the site (item number 9 of the question), does not come within the scope of any exemptions provided in the Planning and Development Act 2000, as amended, and the Planning and Development Regulations, 2001, as amended, and is therefore not exempted development.

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 matters listed in the referral, as set out above, are all development and are all not exempted development.

Board Member

Date: 19th December 2019

Philip Jones