



An
Bord
Pleanála

Board Direction
25M.RL3559

The submissions on this file and the Inspector's report were considered at a Board meeting held on June 21st 2018.

The Board determined the referral, generally as recommended by the Inspector, as set out in the following Order.

Board Order as follows:-

WHEREAS questions have arisen as to whether:

- (1) The provision, as part of a heating system for an agricultural building, of a biomass boiler, including a boiler house, flues on the boiler and overground storage tank, at Twyford, Baylin, Athlone, Co. Westmeath is or is not development or is or is not exempted development.
- (2) The erection of a wall at Twyford, Baylin, Athlone, Co. Westmeath is or is not development or is or is not exempted development.
- (3) The installation or erection on a wall, within the curtilage of an agricultural holding at Twyford, Baylin, Athlone, Co. Westmeath, of photovoltaic solar panels is or is not development or is or is not exempted development.
- (4) The erection of a 300 sq metre structure for the purposes of housing a fully enclosed combined heat and power system at Twyford, Baylin, Athlone, Co. Westmeath is or is not development or is or is not exempted development.

AND WHEREAS Liam Madden of Convent Road, Longford, on behalf of Midland Industrial Maintenance Ltd and of Declan and Caroline Ganley, requested a declaration on these questions from Westmeath County Council, and the Council issued a declaration on the 27th day of February 2017 stating that the matters in question were development and were not exempted development.

AND WHEREAS Liam Madden of Convent Road, Longford, on behalf of Midland Industrial Maintenance Ltd and of Declan and Caroline Ganley referred these questions for determination to An Bord Pleanála, on the 14th day of March 2017.

AND WHEREAS An Bord Pleanála, in considering this referral, restricted its deliberations to the hypothetical provision of new structures on the lands in question, and not the existing unauthorised building on the lands, which had been refused planning permission by its decision under planning register reference number 15/7120 (An Bord Pleanála reference number PL25A.246083), and noted that this interpretation was in accordance with the questions as put by the referrer's agent in the submitted referral, which explicitly stated that none of the proposals involved retaining the existing building or any part thereof.

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

- (a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended,
- (b) Articles 6 and 9 of the Planning and Development Regulations 2001, as amended,
- (c) Classes 4, 11 and 18 of Part 3 of the Second Schedule to the Planning and Development Regulations 2001, as amended,

- (d) Relevant case law, and in particular *South Dublin County Council – v - Fallowvale Ltd* [2005] IEHC 408 and *Dillon – v – Irish Cement* [Supreme Court 1984], and
- (e) The planning history of the site, the submissions received and the report of the Inspector.

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The provision, as part of a heating system for an agricultural building, of a biomass boiler, including a boiler house, flues on the boiler and overground storage tank, on the lands in question would constitute development. Such a heating system would generally come within the scope of Class 18(e) of Part 3 of the Second Schedule to the Planning and Development Regulations, 2001, as amended. However, as there is no agricultural building in place on the site, other than the existing unauthorised building, in respect of which such a development would provide part of the heating system, and as it has not been established that any future such agricultural building, to which the proposed development would relate, would itself be exempted development, the development in question would not be exempted development. Furthermore, on the basis of the documentation submitted with the referral, it cannot be established that Conditions and Limitations numbers 8, 9 and 10, to which Class 18 (e) is subject, can be complied with, and, having regard to case law, the onus for establishing that a development is exempted development is on the person claiming or seeking to avail of such exemption, and therefore the development in question would not be exempted development.
- (b) The erection of a wall would be development. If a new wall is proposed in this instance, following the demolition and removal of the existing unauthorised building on the site, then this would come within the scope of Class 11 of Part 3 of the Second Schedule to the Planning and Development Regulations 2001, as amended, and would therefore be exempted

development. However, if the wall in question involves the removal of part of the existing structure on the site, leaving the remaining structure as a wall, then this would not come within the scope of Class 11, or any other provision, and would not be exempted development.

- (c) The installation or erection on a wall of photovoltaic solar panels would constitute development. If these panels are installed or erected on a new wall, referred to in question (b), and if this wall is itself exempted development, then the installation or erection of the solar panels would come within the scope of Class 18 (c) of Part 3 of the Second Schedule to the Planning and Development Regulations 2001, as amended, and would therefore be exempted development. If the wall on which the solar panels are proposed to be installed or erected is not itself exempted development, then the installation or erection of the solar panels would not be exempted development by reason of the restrictions on exemption set out in Article 9(1)(a) of the Planning and Development Regulations 2001, as amended.
- (d) The erection of a new 300 sq metre structure for the purposes of housing a fully enclosed combined heat and power system would be development. Such development would come within the scope of Class 18 (a) of Part 3 of the Second Schedule to the Planning and Development Regulations 2001, as amended, but, on the basis of the documentation submitted with the referral, it cannot be established that all of the Conditions and Limitations to which this Class is subject can be complied with, and, having regard to case law, the onus for establishing that a development is exempted development is on the person claiming or seeking to avail of such exemption, and therefore the development in question would not be exempted development.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by Section 5 (3)(a) of the Planning and Development Act, 2000, as amended, hereby decides that:-

- (1) The provision, as part of a heating system for an agricultural building, of a biomass boiler, including a boiler house, flues on the boiler and overground

storage tank, at Twyford, Baylin, Athlone, Co. Westmeath would be development and, in the circumstances of this case, would not be exempted development.

(2) The erection of a wall at Twyford, Baylin, Athlone, Co. Westmeath would be development. If a new wall is proposed in this instance, following the demolition and removal of the existing unauthorised building on the site, it would be exempted development. However, if the wall in question involves the removal of only part of the existing structure on the site, leaving the remaining structure as a wall, then it would not be exempted development.

(3) The installation or erection on a wall, within the curtilage of an agricultural holding at Twyford, Baylin, Athlone, Co. Westmeath, of photovoltaic solar panels would be development. If these panels are installed or erected on a new wall, referred to in question (2), and if this wall is itself exempted development, then the installation or erection of the solar panels would be exempted development. However, if the wall on which the solar panels are proposed to be installed or erected is not itself exempted development, then the installation or erection of the solar panels would not be exempted development.

(4) The erection of a 300 sq metre structure for the purposes of housing a fully enclosed combined heat and power system at Twyford, Baylin, Athlone, Co. Westmeath would be development and, in the circumstances of this case, would not be exempted development.

Board Member

Date: 6th July 2018

Philip Jones