



An
Bord
Pleanála

Board Direction
25M.RL3814

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 as set out in the following Order.

Board Order as follows:-

WHEREAS a question has arisen as to whether a development comprising of what the applicants assert are a Class 6 agricultural shed and a Class 9 agricultural shed, at Twyford, Baylin, Athlone, Co. Westmeath are or are 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 this question from Westmeath County Council on the 7th day of September 2017, and the Council referred this question to An Bord Pleanála for determination, under Section 5 (4) of the Planning and Development Act 2000, as amended, on the 3rd day of October 2017.

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 6 and 9 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 erection of the subject building involved the carrying out of works, and therefore constitutes development within the meaning of Section 3 of the Planning and Development 2000, as amended;
- (b) If the existing building is subdivided, as indicated on submitted documentation, that part of the building which it is stated would be used as a Class 6 agricultural building would not come within the scope of Class 6 of Part 3 of the Second Schedule to the Planning and Development Regulations 2001, as amended, because the floor area of that part of the building exceeds 200 square metres, based on the documentation submitted with the referral. Furthermore, the development would not comply with Condition and Limitation number 6, to which Class 6 is subject, as no evidence has been provided that the consent in writing of the owners and occupiers of all houses within 100 metres of the building had been given prior to the provision of the building in question. In addition, on the basis of the documentation submitted with the referral, it cannot be established that Conditions and Limitation number 6, to which that Class is subject, has been complied with, in that no details of whether effluent storage facilities adequate to serve the structure have been constructed were provided 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. The development in question is not, therefore, exempted development.

- (c) If the existing building is subdivided, as indicated on submitted documentation, that part of the building which it is stated would be used as a Class 9 agricultural building would come within the scope of Class 9 of Part 3 of the Second Schedule to the Planning and Development Regulations 2001, as amended, but would not comply with Condition and Limitation number 5, to which that Class is subject, as no evidence has been provided that the consent in writing of the owners and occupiers of all houses within 100 metres of the building had been given prior to the provision of the building in question. The development in question is not, therefore, exempted development.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by Section 5 (4) of the Planning and Development Act, 2000, as amended, hereby decides that a development comprising of what the applicants assert are a Class 6 agricultural shed and a Class 9 agricultural shed, at Twyford, Baylin, Athlone, Co. Westmeath is development and is not exempted development.

Note: In reaching its decision on this matter, the Board noted that the exempted development provisions under Classes 6 and 9 of Part 3 of the Second Schedule to the Planning and Development Regulations 2001, as amended, relate to “the provision” of the agricultural buildings/structures in question, and that therefore, compliance with the conditions and limitations of these Classes must be complied with prior to “the provision” of these buildings, in order for such buildings to be able to avail of the exempted development provisions. Accordingly, in the case of condition and limitation number 6 of Class 6, and the corresponding condition and limitation number 5 of class 9, it is necessary for the consent of the owners and

occupiers of all houses within 100 metres to be obtained before the buildings in question are provided. As the building in question is already in existence, and the future activity envisaged by the applicants merely involves the insertion of an internal wall within this building, the development in question does not comply with the relevant conditions and limitations.

[Please issue a copy of this Direction to the parties and observers (Mark Kelly and Claire Hickey) with the Board Order.]

Board Member

Date: 6th July 2018

Philip Jones