



An
Bord
Pleanála

Inspector's Report ABP-300773-18

Question

Whether the construction of an agricultural shed is or is not development or is or is not exempted development

Location

Rosdooaun, Newport, Co. Mayo.

Declaration

Planning Authority

Mayo County Council

Planning Authority Reg. Ref.

P17/954

Applicant for Declaration

Ronan McGreevy

Planning Authority Decision

Is Development and Is Not Exempt Development

Referral

Referred by

Ronan McGreevy

Owner/ Occupier

Ronan McGreevy

Observer(s)

None

Date of Site Inspection

4th May 2018.

Contents

1.0 Site Location and Description	3
2.0 The Question	3
3.0 Planning Authority Declaration.....	3
3.1. Declaration.....	3
3.2. Planning Authority Reports	4
4.0 Planning History.....	4
5.0 Policy Context.....	4
5.1. Development Plan.....	4
5.2. Natural Heritage Designations	5
6.0 The Referral.....	5
6.1. Referrer's Case	5
6.2. Planning Authority Response	5
6.3. Further Responses.....	6
7.0 Statutory Provisions.....	6
7.1. Planning and Development Act, 2000.....	6
7.2. Planning and Development Regulations, 2001	7
8.0 Assessment.....	8
8.2. Is or is not development	9
8.3. Is or is not exempted development	9
8.4. Restrictions on exempted development	11
9.0 Recommendation.....	13

1.0 Site Location and Description

- 1.1. The subject site is located between Newport and Westport, in the townland of Rosdooaun, in north Co. Mayo. The site is rural in character and is accessed from a minor road, west off the N59. Clew Bay is approx. 1km west of the site. The Rossow River runs approx. 53m to the south of the site, with the lands draining to this river, which links into Clew Bay.
- 1.2. This greenfield agricultural site has a stated area of 1.16ha, is rectangular in shape, and slopes down from the road to a low point at the southern end of the field. The land is subdivided, with the southern section fenced off with a wire fence and agricultural gate. The land on the southern section had vegetation indicating wetter ground conditions. Sheep were observed grazing the land at the time of site inspection on the northern section of the field. No structures exist on the land.

2.0 The Question

- 2.1. The original question proposed to Mayo County Council was ‘Whether the construction of an agricultural barn is an exempted development under Class 5 Schedule 2 of the Planning and Development Regulations?’. I note the applicant in referring the case to An Bord Pleanala states that the application made to the Planning Authority was incorrectly made under Class 5 and should have been made under Schedule 2 – Exempted Development – Rural, Class 9. I have reworded the question accordingly as follows:

Whether the construction of an agricultural barn is an exempted development under Schedule 2 – Exempted Development – Rural, Class 9?

3.0 Planning Authority Declaration

3.1. Declaration

It is considered that the proposed works constitute development....It is considered that the proposed agricultural barn is not located within an existing farmyard complex as set out in Article 6, Part 3, Classes 6-9 inclusive, Column 1 & 2 of the Planning and Development Regulations 2011-2015 and therefore the exemption is not

applicable due to the conditions and limitations set out and therefore the proposed development is not exempt by the Planning and Development Regulations 2001-2015.

3.2. Planning Authority Reports

3.2.1. Planning Reports

It is considered that the proposed barn is not located within an existing farmyard complex as set out in Article 6, Part 3, Classes 6-9 inclusive, Column 1 & 2 of the Planning and Development Regulations 2001-2015.

3.2.2. Other Technical Reports

None.

4.0 Planning History

11/102 – Declaration for construction of a wind turbine and 240sqm of barn was deemed not exempt.

11/400 – Declaration for the development of 240sqm of single storey farm shed/barn deemed not exempt.

11/412 – Declaration for the construction of a wind turbine was deemed not exempt.

11/784 – Permission REFUSED to construct a honey packing shed, septic tank, and percolation area.

5.0 Policy Context

5.1. Development Plan

- The Landscape Appraisal for County Mayo is a supporting document of the Development Plan. It specifies 'area designations' for the county based on the Corine Lane Cover Project. The shoreline of the Rossow River is designated as being vulnerable. To be considered for permission, development in the environs of these vulnerable areas must be shown not to

impinge in any significant way upon its character, integrity or uniformity when viewed from the surroundings.

- There are no designated scenic routes/scenic view in proximity to the referral site.

5.2. Natural Heritage Designations

Clew Bay Complex SAC, European Site No. 001482, is approx. 190m northwest of the appeal site at its closest point from the northern boundary and 800m west of the site from its southwestern boundary. Rossow River, which is linked to Clew Bay Complex SAC, is approx. 55m from the southern boundary of the site with a drain connecting the southern boundary of the site to the river.

6.0 The Referral

6.1. Referrer's Case

- The application was incorrectly made under Class 5, Schedule 2 of the regulations. The application should have been made under Class 9.
- Mayo County Council states the proposed agricultural barn is not located within an existing farmyard complex as per Article 6, Part 3, Classes 6-9 inclusive, Colum 1 and 2 of the Planning & Development Regulations 2001-2015.
- There is no reference in Article 6 and Class 9 which states that an agricultural barn would have to be within a farmyard complex to avail of the exemptions.
- Mr. McGreevy is a forester and farmer. The proposed building is to be located on farmland and this land is bounded by Mr McGreevy's forest.
- The proposed development of a 167sqm agricultural barn is exempted development.

6.2. Planning Authority Response

None.

6.3. Further Responses

None.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

Section 2(1) of the Planning and Development Acts 2000 (as amended) states

In this Act, except where the context requires otherwise –

.....

“agriculture” includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the training of horses and the rearing of bloodstock, the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and “agricultural” shall be construed accordingly;

“works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal ...

Section 3 (1) defines development as follows:

“development” 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 4 of the Act states:

(1) The following shall be exempted developments for the purposes of this Act—

(a) development consisting of the use of any land for the purpose of agriculture and development consisting of the use for that purpose of any building occupied together with land so used;

.....

(2) (a) The Minister may by regulations provide for any class of development to be exempted development for the purposes of this Act where he or she is of the opinion that—

(i) by reason of the size, nature or limited effect on its surroundings, of development belonging to that class, the carrying out of such development would not offend against principles of proper planning and sustainable development,

.....

7.2. **Planning and Development Regulations, 2001**

Article 6(3) of the Planning and Development Regulations, 2001 (as amended) states

Subject to article 9, in areas other than a city, a town or an area specified in section 19(1)(b) of the Act or the excluded areas as defined in section 9 of the Local Government (Reorganisation) Act, 1985 (No. 7 of 1985), development consisting of a class specified in column 1 of Part 3 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 3 opposite the mention of that class in the said column 1.

Article 9(1) of the regulations states –

Development to which article 6 relates shall not be exempted development for the purposes of the Act—

(a) if the carrying out of such development would—

(vi) interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of a development plan for the area in which the development is proposed or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan

Column 1 of Class 9 of Part 3 of Schedule 2 to Article 6 of the aforementioned Regulations, states

Works consisting of the provision of any store, barn, shed, glass-house or other structure, not being a type specified in Class 6, 7 or 8 of this Part of this Schedule, and having a gross floor space not exceeding 300 square metres.

Column 2 of Class 9 states

1. No such structure shall be used for any purpose other than the purpose of agriculture or forestry, but excluding the housing of animals or the storing of effluent.
2. The gross floor space of such structures together with any other such structures situated within the same farmyard complex or complex of such structures or within 100 metres of that complex shall not exceed 900 square metres gross floor space in aggregate.
3. No such structure shall be situated within 10 metres of any public road.
4. No such structure within 100 metres of any public road shall exceed 8 metres in height.
5. No such structure shall be situated within 100 metres of any house (other than the house of the person providing the structure) or other residential building or school, hospital, church or building used for public assembly, save with the consent in writing of the owner and, as may be appropriate, the occupier or person in charge thereof.
6. No unpainted metal sheeting shall be used for roofing or on the external finish of the structure.

8.0 Assessment

- 8.1.1. The applicant proposes to construct a barn, which is stated on the drawings to be 9.2m in depth x 18.1m in width, which equates to an area of 167sqm. The overall height of the barn is stated to be 4.77m. The applicant states the barn is to be considered under Class 9 of the regulations and that they erred in applying originally under Class 5.
- 8.1.2. It should be stated at the outset that the purpose of this referral is not to determine the acceptability or otherwise of this barn in respect to the proper planning and

sustainable development of the area, but rather whether or not the matter in question constitutes development, and if so falls within the scope of exempted development.

- 8.1.3. In assessing the merits of the case I have reviewed previous relevant declarations made by the Board.

8.2. **Is or is not development**

- 8.2.1. The erection of a barn is considered to constitute works, as per Section 2(1) of the Planning and Development Act 2000 (as amended) and is therefore development, as per Section 3 of the Act.

8.3. **Is or is not exempted development**

- 8.3.1. Section 4 of the Act states development shall be exempt where development consists of the use of any land for the purpose of agriculture and development consisting of the use for that purpose of any building occupied together with land so used. The applicant states that he proposes to build an agricultural barn. In accordance with Section 4, the barn needs to be on an agricultural landholding with an established agricultural use, in order to avail of the exemptions in Class 9 of the Regulations. As observed on site, the land is used for grazing of sheep, which is an agricultural use, and the proposed barn is stated to be an agricultural barn.

Schedule 2, Class 9 of the Regulations

- 8.3.2. Article 6 of the Regulations provides that development of a class specified in Schedule 2 to the Regulations shall be exempted, provided that the conditions and limitations attached to those various classes are met. The applicant states that proposed development is for an agricultural barn. While the applicant does not specify what will be stored in the barn, he does state that it will come within Class 9 of the Regulations. I note the applicant states he is a farmer and forester and the land bounding this site is in forestry use. I observed a notice in relation to forestry on the entrance to the land subject of this declaration, however no forestry was evident on this land. I am satisfied that it is the intention of the applicant that the use will be for agricultural or forestry purposes, not including the housing of animals, given the applicant's statement that the proposal is being made under Class 9. I have no evidence before me to believe otherwise and I note any deviation from the use would

be a matter for the planning authority. I am therefore of the opinion that condition/limitation 1 of Class 9 is complied with.

- 8.3.3. I observed, upon site inspection, sheep grazing the land, which comes within the definition of agricultural use. From my reading of Class 9 of the Regulations, there is no requirement for an agricultural shed to be on an existing farmyard, as per the decision of the Planning Authority. In assessing the cumulative floor area of a barn, reference is made in the conditions/limitations to Class 9 to the inclusion of other buildings in a farmyard or if close to an existing farmyard inclusion of other structures within 100m, but does not specify the building itself has to be part of an existing farmyard. I am satisfied that the proposed barn, which is no greater than 300 square metres in gross floor space, is not within 100m of an existing farmyard complex or part of such a complex and that the gross floor space is not impacted upon in the context of other buildings. I am of the view that condition/limitation 2 of Class 9 is complied with.
- 8.3.4. With reference to limitation 3 the agricultural barn is not situated within 10 metres of any public road, and therefore condition/limitation 3 is complied with.
- 8.3.5. With reference to condition/limitation 4, the barn does not exceed 8 m in height, and therefore condition/limitation 4 is complied with.
- 8.3.6. With reference to condition/limitation 5 the barn is not located within 100m of any house or other residential building or school, hospital, church or building used for public assembly, and therefore condition/limitation 5 is complied with.
- 8.3.7. With reference to limitation 6, the regulation states 'No unpainted metal sheeting shall be used for roofing or on the external finish of the structure'. The external finish and colour of the barn is not stated. The drawings state cladding in relation to the external finish. It is reasonable to assume the cladding is to be finished to an appropriate standard in that the applicant states they will comply with all the conditions and limitations specified in the regulations and attached a copy with the submission.
- 8.3.8. Having regard to the foregoing I am satisfied that the structure complies with the provision of Schedule 2, Part 3, Class 9 Conditions 1 – 6.

8.4. Restrictions on exempted development

8.4.1. The Planning and Development Regulations, 2001, as amended, state: 'Restrictions on exemption 9(1) Development to which article 6 relates shall not be exempted development for the purposes of the Act—

(a) if the carrying out of such development would

(vi) interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of a development plan for the area in which the development is proposed or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan'.

8.4.2. The proposed agricultural barn is on a low lying part of the site. There is no scenic view or vista identified in the development plan in relation to this site.

8.5. Appropriate Assessment

8.5.1. Section 4(4) of the Act states that development shall not be exempted development if an appropriate assessment of the development is required.

8.5.2. The referral site is not within any Natura 2000 sites, therefore the proposed development would not have a direct effect on any designated site. However Clew Bay Complex SAC, European Site No. 001482, is the closest Natura 2000 site, being approx. 190m northwest of the appeal site at its closest point from the northern boundary and 800m west of the site from its southwestern boundary and the lands drain to the Rossow River which is linked to Clew Bay SAC. While there are other Natura 2000 sites within 15km of the subject site, there are no pathways from the appeal site to those Natura 2000 sites which would be relevant to their conservation objectives, and there is no potential for likely significant effects upon them to arise from the proposed development whether considered individually or in combination with other plans or projects.

8.5.3. Clew Bay Complex is a Special Area of Conservation (SAC) selected for the following habitats and/or species listed on Annex I / II of the E.U. Habitats Directive (* = priority; numbers in brackets are Natura 2000 codes): [1140] Tidal Mudflats and Sandflats; [1150] Coastal Lagoons*; [1160] Large Shallow Inlets and Bays; [1210]

Annual Vegetation of Drift Lines; [1220] Perennial Vegetation of Stony Banks; [1330] Atlantic Salt Meadows; [2110] Embryonic Shifting Dunes; [2120] Marram Dunes (White Dunes); [21A0] Machairs (* in Ireland); [91A0] Old Oak Woodlands; [1013] Geyer's Whorl Snail (*Vertigo geyeri*); [1355] Otter (*Lutra lutra*); and [1365] Common (Harbour) Seal (*Phoca vitulina*). The conservation objectives for the SAC are to maintain the favourable conservation condition of these habitats

- 8.5.4. Following consideration of the 'source-pathway-receptor' model, it can be determined that particular consideration needs to be given to the likelihood of the proposed development to have a significant effect on the conservation objectives of the Clew Bay Complex SAC in terms of the potential for the possibility of water pollution arising during construction works which could lead to a deterioration in water quality within the Natura 2000 site. The site is linked to Clew Bay Complex SAC via groundwater and surface water/river connection. Rossow River is approx. 55m from the southern boundary of the site with a drain connecting the southern boundary of the site to the river. The proposed barn is positioned approx. 15m north of this drain.
- 8.5.5. The proposed barn is to be used for the purpose of agriculture or forestry, excluding the storage of animals or the storing of effluent. The barn appears to be located outside of the area where plants associated with wet ground was observed. I am satisfied that standard construction management practices, which would be an intrinsic part of the project, would be sufficient to avoid an indirect effect on water quality during construction to the Natura 2000 site. I am satisfied that the operation of the barn will not result in potential for pollution from effluent via surface water or groundwater..
- 8.5.6. It is reasonable to conclude that on the basis of the information on the file, which I consider to be adequate in order to issue a screening determination that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on European Site No. 001482 (Clew Bay Complex SAC), or any other European Site, in view of the site's conservation objectives, and that a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required.

9.0 Recommendation

9.1. I recommend that the Board should decide this referral in accordance with the following draft order.

WHEREAS a question has arisen as to whether the construction of an agricultural barn at Rosdooaun, Newport, Co. Mayo is or is not development or is or is not exempted development:

AND WHEREAS Ronan McGreevy requested a declaration on this question from Mayo County Council and the Council issued a declaration on the 3rd January 2018 stating that the matter was development and was not exempted development:

AND WHEREAS Ronan McGreevy referred this declaration for review to An Bord Pleanála on the 24th day of January 2018:

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) of the Planning and Development Act, 2000,
- (c) Section 4(1)(a) and Section 4(4) of the Planning and Development Act, 2000, as amended,
- (d) Article 6(3) and article 9(1)(a)(vi) of the Planning and Development Regulations, 2001, as amended,
- (e) Part 3 of Schedule 2, Class 9, to the Planning and Development Regulations, 2001, as amended,

AND WHEREAS An Bord Pleanála has concluded that:

(a) Construction of an agricultural barn complies with Class 9, Part 3 of Schedule 2 of the Planning and Development Regulations, 2001, as amended.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5(3)(a) of the 2000 Act of the 2000 Act, hereby decides that the agricultural barn is development and is exempted development.

Una O'Neill
Senior Planning Inspector

13th June 2018