



An
Bord
Pleanála

Inspector's Report ABP-301312-18

Question	Whether (1) Installation of septic tank and percolation area (2) Construction of a house connected to septic tank (3) Erection of pillar box on right of way is or is not development or is or is not exempted development.
Location	Drumquill, Castleblaney, Co. Monaghan.
Declaration	
Planning Authority	Monaghan County Council
Planning Authority Reg. Ref.	EX 18/06
Applicant for Declaration	Patrick Carragher.
Planning Authority Decision	No declaration issued.
Referral	
Referred by	Patrick Carragher.
Owner/ Occupier	Eamon Brennan.
Observer(s)	Martin Molloy.
Date of Site Inspection	15 th September 2018.
Inspector	Karla Mc Bride

1.0 Site Location and Description

- 1.1. The appeal site is located to the NW of Castleblaney in County Monaghan and to the N of the R183 regional road to Monaghan town. The surrounding area is rural in character and there are several farms and detached houses in the vicinity. The site is located along a rural laneway which provides access to a number of houses and farms. There is a farm yard and agricultural buildings to the W of the site. The overall landholding comprises lands on the N and S side of the laneway.
- 1.2. The site comprises a detached 2-storey house and a partially constructed detached storey and a half garage structure which are located perpendicular each other. There is a garden to the rear W of the house and a large hard standing area to the fore of the house and garage. The site boundaries to the N, E and W are defined by a mix of fences and hedges whilst the S boundary with the laneway is undefined.
- 1.3. There may be a wastewater treatment system located in the S section of the overall landholding and there is a small pillar box structure which houses an electricity meter located along the laneway to the E of the site on the N side of the lane.
- 1.4. Photographs and maps in Appendix 1 describe the site and environs in more detail.

2.0 The Question

- 2.1. The question that has arisen in this referral is whether the:

- (1) installation of a septic tank and percolation area;
- (2) construction of a house and connection to septic tank; and
- (3) erection of a pillar box

is or is not development or is or is not exempted development'. It was referred to the Board by Mr. Patrick Carragher of Drumquill, Castleblaney, Co. Monaghan, who states that he is the owner of an adjacent agricultural shed and lands.

3.0 **Planning Authority Declaration**

3.1. **Declaration**

The Planning Authority did not issue a declaration within the prescribed period and the question was referred to the Board for decision by the referrer under the provisions of Section 5 (3)(b) of the Planning & Development Act 2000, as amended.

3.2. **Planning Authority Reports**

Planning Reports

- None on file in relation to this referral.

Other Technical Reports

- None on file.

4.0 **Previous declarations**

The Board should note that it issued three previous Declarations in relation to the same Questions for the same works on the same site in 2017 and 2018 to the same Referrer and Observer (Patrick Carragher and Martin Molloy) and the owner-occupier of the lands and structures was stated to be John Brennan. The case numbers are PL18.RL3811, PL18.RL3594 and PL18.RL3532 and the details are summarised in section 5.0 below. The Referrers case and the Observer's comments are summarised in Section 7.0 below. Their concerns relate to a suspected change in ownership of the referral lands between John Brennan and his brother Eamon Brennan and the Board is requested to make new Declarations which take account of this suspected change in ownership.

Given that the Board has already issued three separate Declarations in relation to the three Questions being asked by the Referrer and that the details of these declarations have been entered in the register in accordance with Section 5 (5) of the Planning and Development Act. 2000, as amended, I am satisfied that there is no requirement to duplicate the previous consideration and assessment of these Questions, and that Board should refer to the Inspector's reports attached to PL18.RL3811, PL18.RL3594 and PL18.RL3532.

5.0 Planning History

5.1. There is a lengthy and complex planning, referral and enforcement history which relates to both the appeal site and the lands on the S side of the laneway.

5.2. Recent Referrals

PL18.RL3811: Section 5 referral, submitted by Martin Molloy, asking whether the construction of a pillar structure to house an electricity meter on the edge of a laneway is or is not exempted development. The Board determined that it is development and is not exempted development.

PL18.RL3594: Section 5 referral, submitted by Patrick Carragher, asking whether the construction of a house, site clearance and connection to septic tank is development or is not exempted development. The Board altered the wording to ask whether the construction of a structure within the curtilage of an existing house and all associated site development works to include site clearance and connection to septic tank is development or is not exempted development. The Board determined that it is development and is not exempted development.

PL18.RL3532: Section 5 referral, submitted by Martin Molloy, asking whether the installation of a septic tank and percolation area is or is not development or is or is not exempted development. The Board determined that it is development and is not exempted development.

5.3. Other Referrals

Ref. 10/581: The Council issued a Declaration stating that the use of a structure as a dwelling house was not exempt development. The basis of the declaration was that the residential use of the structure had been abandoned and that the structure was derelict prior to the commencement of refurbishment/restoration works.

Ref. E16/27: Section 5 Referral regarding works to reinstate the residential use of a derelict structure of which the residential use had been abandoned. The PA requested the referrer to submit evidence that the dwelling had become abandoned and derelict, no indication as to whether such evidence was submitted.

5.4. Other planning applications

ABP-301554-18: Current third party appeal before the Board against the decision of the planning authority to refuse permission for the retention and completion of partially constructed domestic garage.

ABP-301047-18: Permission refused to Eamon Brennan for the construction of a storey and a half dwelling house, WWTS and new entrance on lands to the S of the subject site, which are in the applicant's ownership. Permission refused for 2 reasons related to adverse visual impact and inadequate WWT proposals relative to the site characteristics. Concerns also raised about sightlines and traffic hazard.

Reg. Ref. 16/403: Planning application to change use of existing house to domestic storage, construction of new house, upgrade of existing septic tank with new wastewater treatment system and other works. Application deemed invalid.

Reg. Ref. 16/235: Planning application for a storey and a half dwelling house, upgrading of existing septic tank system with new wastewater treatment system and percolation area and other works. Application withdrawn by applicant.

Reg. Ref. 16/41: Planning application for extension to existing house and retention of waste water treatment system and percolation area. Application deemed withdrawn following failure to respond to request for FI. This included a request to provide additional information in respect of the wastewater treatment system.

Reg. Ref. 14/217: Permission refused for the retention and completion of a partially constructed storey and a half extension to the side of existing dwelling house and ancillary site development works. Refused for 3 reasons related to: - proximity to agricultural building, excessive scale of extension and precedent. Following the receipt of FI the PA accepted that the residential use of the existing house had not been abandoned but that there was no independent evidence to confirm the planning status of the septic tank.

6.0 Policy Context

6.1. Monaghan County Development Plan 2013 to 2019

Zoning: the site is located on un-zoned agricultural lands.

Core Strategy Map: the site is designated as being within a 'Stronger Rural Area'.

6.2. Natural Heritage Designations

No European sites within a 15km radius of the referral site.

Lough Smiley pNHA c.1.7km to the SE of the referral site.

7.0 The Referral

7.1. Referrer's Case

The following provides a summary of the referrer's case:

- It would appear that ownership of the property with unauthorised developments within close proximity to Referrer's agricultural shed has changed hands from John Brennan to Eamon Brennan.
- ABP is currently considering the same questions under the ownership of John Brennan and the Council are waiting further information from Mr Brennan in relation to Reg. Ref. 17/357 in which he claims to be the owner of the lands.
- It would appear from Reg. Ref. 17/395 that Eamon Brennan is now the owner of the lands.
- Copies of Rural Place Maps and page 2 question 7 of the application form for Reg. Ref.17/357 and Reg. Ref. 17/395 attached.
- Under Reg. Ref.17/395 Eamon Brennan is seeking to upgrade an existing septic tank that is currently before the Board for consideration.
- Given the high profile of this longstanding situation and also given the large number of related planning applications and Section 5 referrals, there is sufficient information to make a determination.

7.2. Planning Authority Response

The Planning Authority forwarded a copy of their Section 5 Declaration file. It included a copy of the Exempted Development application form and supporting documents and map. The submission also included the history documents associated with Ref. Ref.16/234 which relate to a planning application for a storey and a half dwelling house, upgrading of existing septic tank system with new wastewater treatment system and percolation area and other works. This application was withdrawn by applicant and no decision was issued by the planning authority.

7.3. Owner's Response

No response.

7.4. Observer

An observation on this referral was received from Mr. Martin Molloy with an address at Drumquill, Castleblaney, Co. Monaghan. Mr. Molloy was the referrer in two recent referral cases to the Board. RL18.RL3811 related to a pillar box on a right of way and RL18.RL3532 related to the installation of a septic tank and percolation area. The Board determined both cases to be development and not exempted development. Mr. Molloy was also an Observer in a recent referral case which was submitted to the Board by Patrick Carragher. RL18.RL3594 related to the construction of a house (reworded to the construction of a structure within the curtilage of an existing house), site clearance and connection to a septic tank. The Board determined this to be development and not exempted development.

The points made in the observation are summarised as follows:

- ABP has already dealt with all three of these questions and has found all three to be development and not exempt development.
- John Brennan responded to one referral, accepted that it was development which was not exempt in the second and submitted a late response to the third – does this mean that ownership has changed hands?
- The Council failed to respond to the three referrals under either John or Eamon Brennan's names, both brothers claim ownership of the property in

separate and contemporary applications, and the PA has failed to use its powers to ascertain the truth.

- Accept that a change in ownership should not substantively alter the decision already made by the Board.
- The unauthorised site clearance (RL18.RL3594) which moved a large quantity (of fill) onto another part of the property is now part of the planning permission granted to Eamon Brennan (on appeal).
- The ownership issues if further complicated by the fact that this property in the HQ of a development company (JJ Brenan Ltd.) whose principle activity is building construction and John Brennan is the sole director.
- In the case where ownership has not changed hands and given Eamon Brennan's application to develop this property thereby increasing the value of the property, then John and Eamon Brenan are described as partners in law.
- S.35 of the P&D Act is relevant as it relates to the carrying out of substantial unauthorised development.
- Ground works took place on the site over the June Bank Holiday weekend which may affect the inspection process.

8.0 Statutory Provisions

8.1. Planning and Development Act 2000, as amended

Refer to Section 7.0 of the Inspector's Report attached to PL18.RL3811, PL18.RL3594 and PL18.RL3532.

8.2. Planning and Development Regulations 2001-2017

Refer to Section 7.0 of the Inspector's Report attached to PL18.RL3811, PL18.RL3594 and PL18.RL3532.

8.3. Restrictions on Exemptions

Refer to Section 7.0 of the Inspector's Report attached to PL18.RL3811, PL18.RL3594 and PL18.RL3532.

9.0 **Assessment**

9.1. **Is or is not development?**

Refer to Section 8.0 of the Inspector's Report attached to PL18.RL3811, PL18.RL3594 and PL18.RL3532.

9.2. **Is or is not exempted development?**

Refer to Section 8.0 of the Inspector's Report attached to PL18.RL3811, PL18.RL3594 and PL18.RL3532.

9.3. **Conclusion on Exempted Development**

Refer to Section 8.0 of the Inspector's Report attached to PL18.RL3811, PL18.RL3594 and PL18.RL3532.

9.4. **Restrictions on exempted development**

Refer to Section 8.0 of the Inspector's Report attached to PL18.RL3811, PL18.RL3594 and PL18.RL3532.

9.5. **Appropriate Assessment**

- 9.5.1. Notwithstanding the conclusion arrived at that the development in question is not exempted development and as such the restriction in respect of Appropriate Assessment is not relevant, I have considered the potential for significant effects on European sites in the interests of completeness.
- 9.5.2. Having regard to the nature and scale of the proposed development which relates to a structure which is not within or in close proximity to any European sites, no Appropriate Assessment issues arise and 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.

10.0 Recommendation

I recommend that the Board should decide this referral in accordance with the following draft order which amalgamates the previous Board Orders under PL18.RL3811, PL18.RL3594 and PL18.RL3532.

WHEREAS a question has arisen as to whether the:

- (1) Installation of a septic tank and percolation area,
- (2) Construction of a house and connection to septic tank (reworded to whether the construction of a structure within the curtilage of an existing house and all associated site development works to include site clearance and connection to a septic tank), and
- (3) Erection of a pillar box on a right of way,

is or is not development or is or is not exempted development:

AND WHEREAS Patrick Carragher requested a declaration on this question from Monaghan County Council and the Council did not issue a declaration within four weeks of the receipt of the request:

AND WHEREAS Patrick Carragher referred this declaration for review to An Bord Pleanála on the twenty second day of March 2018:

AND WHEREAS An Bord Pleanála has concluded that **(1)**:

- (a) the installation of a septic tank and percolation area on, in or under the land involves the carrying out of works, as defined under section 3(1) of the Planning and Development Act, 2000, and is, therefore, development;
- (b) the development that has taken place does not come within the scope of section 4(1) of the Planning and Development Act 2000, as

amended;

- (c) the development that has taken place does not come within the scope of any class of development listed in Part 1 of Schedule 2 to the Planning and Development Regulations 2001, as amended;
- (d) there is no evidence that the septic tank and percolation area have the benefit of a grant of planning permission or pre-date the commencement of the Local Government (Planning and Development) Act 1963.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5(3)(b) of the 2000 Act, hereby decides that the installation of a septic tank and percolation area at Drumquill, Castleblaney, County Monaghan is development and is not exempted development.

AND WHEREAS An Bord Pleanála has concluded that **(2)**:

- (a) the construction of a structure within the curtilage of an existing house and all associated site development works to include site clearance and connection to a septic tank constitutes works, which in turn constitutes development within the meaning of the Planning and Development Act 2000, as amended, and the development does not benefit from any exemption under Section 4 of the Act.
- (b) The development of the structure that has taken place does not come within the scope of Class 3 of Part 1 of Schedule 2 to the Planning and Development Regulations 2001-2017, as it does not appear to meet all of the limitations of Column 2 of the same class. Specifically, it would not meet the requirements set out under Condition/Limitation 1, 2,4 or 5. It would appear to meet the requirements set out under Condition/Limitation No. 3 and if it's permanent use remains as one incidental to the enjoyment of the house, it would meet the requirements of Condition/Limitation No.6.
- (c) Accordingly, the development of the 'structure', and by association,

ancillary site development works, cannot be determined to be exempted development since not all of the applicable Conditions and Limitations of Class 3 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001-2017, have been complied with, as is required by Article 6(1) of these Regulations.

- (d) The connection of the structure to a septic tank does not come within the scope of any afforded exempted development status either under the provisions of the Act or under Article 6 of the Regulations;

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5(3)(b) of the 2000 Act, hereby decides that the construction of a structure within the curtilage of an existing house and all associated site development works to include site clearance and connection to a septic tank at Drumquill, Castleblaney, County Monaghan is development and is not exempted development.

AND WHEREAS An Bord Pleanála has concluded that **(3)**:

- (a) The construction of a pillar structure to house an electricity meter on the edge of a laneway constitutes works, which in turn constitutes development within the meaning of the Planning and Development Act 2000, as amended.
- (b) The development of the structure that has taken place does not come within the scope of any provisions afforded exempted development status under Section 4(1)(g) of the Planning and Development Act 2000, as amended, as while this section allows for certain works to constitute exempted development when undertaken by a statutory undertaker, there is no evidence that the development was carried out by a statutory undertaker and in any case the provisions afforded exempted development status do not include the construction of any pillar or similar-type structure.

(c) The development of the structure does not come within the scope of any class afforded exempted development status for the purposes of the Planning and Development Act 2000, as amended, under Article 6 and Class 26 of Part 1 of Schedule 2 to the Planning and Development Regulations 2001-2018, as this exemption class relates only to underground works, as specified, and only where the works are carried out by a statutory undertaker.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5(3)(b) of the Planning and Development Act 2000, as amended, hereby decides that the erection of a pillar box on a right of way, at Drumquill, Castleblaney, County Monaghan is development and is not exempted development.

AND NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5(3)(b) of the Planning and Development Act 2000, as amended, hereby decides that the (1) Installation of a septic tank and percolation area, (2) the construction of a structure within the curtilage of an existing house and all associated site development works to include site clearance and connection to a septic tank, and (3) Erection of a pillar box on a right of way, at Drumquill, Castleblaney, County Monaghan is development and is not exempted development.

Karla Mc Bride

Senior Inspector

08th October 2018