



An  
Bord  
Pleanála

## Inspector's Report ABP-301372-18

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### Question

Whether the use of a shed for agricultural store purposes is or is not development or is or is not exempted development.

### Location

Marlinstown Bog, Mullingar, Co. Westmeath.

### Declaration

Planning Authority

Westmeath County Council

Planning Authority Reg. Ref.

S5-5-18

Applicant for Declaration

John O'Connell

Planning Authority Decision

Is development and is not exempted development

### Referral

Referred by

John O'Connell

Owner/ Occupier

Syl and Enda Geoghegan

Observer(s)

None

Date of Site Inspection

3<sup>rd</sup> August and 25<sup>th</sup> September 2018

Inspector

Una O'Neill

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## **1.0 Site Location and Description**

- 1.1. The subject site is located north of the N4, just off junction 15, in the rural environs east of Mullingar in County Westmeath. The site is accessed off a private laneway, and is adjacent to a remediated landfill, forestry lands and open fields in agricultural use. The north and west boundaries of the site are formed by the laneway and the east boundary is bounded by a stream.
- 1.2. The subject site comprises a shed, stated to be 299sqm in area, with an overall height of 6.5m. To the side of the shed is a shipping container. There is a compacted gravel yard to the front of the shed and the perimeter of the site is enclosed by a palisade fence.

## **2.0 The Question**

- 2.1. Whether the use of the subject shed for agricultural purposes is development and

Whether it is development requiring permission or whether it is exempted development under Section 4(1) of the Planning and Development Act 2000-2017

## **3.0 Planning Authority Declaration**

### **3.1. Declaration**

The use of the subject shed for agricultural purposes at Marlinstown Bog, Mullingar, Co. Westmeath does not fall within the scope of Section 4(1) Planning and Development Act 2000, as amended, Part 3 of the Planning and Development Regulations 2001, as amended, and is therefore NOT Exempted Development.

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

The following is of note from the planning officer's report:

- Section 4(1) relates to the use of the land and permission may be required for the construction of buildings or other works unless they are specifically exempted.
- It is considered that the development which took place amounted to works in the form of the construction of a shed and that the use now proposed is based on unauthorised work, it is therefore not possible for the applicant to rely on section 4(1).
- Irish Wild Bird Conservancy and Commissioners of the Office of Public Works v Clonakilty Golf and Country Club Ltd from 1996 is quoted.

### 3.2.2. Other Technical Reports

None.

## 4.0 Planning History

### Section 5 Ref S5-25-17 –

Whether use of the subject shed for agricultural purposes at Marlinstown Bog is development and, if considered development, whether it is development requiring permission or whether it is exempted development under Class 9 of Part 3 of Schedule 2 of the Planning and Development Regulations 2001-2017.

The planning authority determined the shed was not in agricultural use but in commercial use, as observed upon site inspection. The shed was deemed to constitute development and was not exempted development in accordance with Class 9 of Part 3 of Schedule 2 of the regulations given the commercial use.

**16/6108** – Retention Permission REFUSED for a machinery shed, 299sqm in area, with a maximum ridge height of 6.5m, an assorted electrical meter shed (16 sqm), an associated yard and a perimeter fence (app by Syl and Enda Geoghegan).

**ENF:14088** – Shed Enforcement notice.

**09/5202** – Permission REFUSED for construction of an agricultural style building for the storage of machinery (and no other purpose commercial or otherwise).

## 5.0 Policy Context

### 5.1. Westmeath County Development Plan 2014-2020

**P-GA1** To support agricultural development as a contributory means of maintaining population in the rural area and sustaining the rural economy, whilst maintaining and enhancing the standing of the rural environment and through application of the Water Framework and Habitats Directives.

**P-RE9** The Council will favourably consider proposals for enterprise and employment uses on their merits in rural locations and where their specific location offers amenity, environmental and economic advantage...

### 5.2. Natural Heritage Designations

The site is not located within or adjoining a Natura 2000 site. Wooddown Bog SAC (002205) is located approx. 1km to the northeast of the site. There is a stream adjoining the site and a number of drainage channels in the immediate area.

## 6.0 The Referral

### 6.1. Referrer's Case

The following argument is put forward by the referrer:

- The use of any land or structure for the purposes of agriculture is exempted development. As no works are proposed, the use of the proposed shed for agricultural purposes is therefore exempted development.
- The shed was originally constructed for agricultural use, which is exempt from permission.
- The shed was subsequently used for a time for a non-compliant commercial use. The commercial use has relocated and a new bona fide agricultural use has been established in the shed. As a result of the move of the commercial use, the 16sqm electrical shed has been removed.

- The change of use of the subject shed to use for agricultural purposes is exempted development in accordance with Section 4(1) of the planning act.
- The applicant John O’Connell leases the former landfill from Westmeath County Council for his sheep flock. The shed is used to house farming equipment associated with this adjoining agricultural use.

## 6.2. Planning Authority Response

None.

## 7.0 Statutory Provisions

### 7.1. Planning and Development Act, 2000 (as amended)

**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;

“use” in relation to land is defined as “not including the use of the land by the carrying out of any works thereon”;

“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 (as amended)**

**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—

(viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use.

**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. The applicant, John O'Connell, has asked

Whether the use of the subject shed for agricultural purposes is development.

Secondly if the change of use is considered to be development:



Where the change of use is development, whether it is development requiring permission or whether it is exempted development under Section 4(1) of the Planning and Development Act 2000-2017.

The applicant considers that if it is not considered to be a change of use requiring permission, then the development shall be exempted development in accordance with the Act

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

The applicant considers that planning permission is not required to use the subject shed at Marlinstown Bog, Mullingar, Westmeath for the purpose of agriculture.

It is stated that the applicant will not argue that the change from commercial to agricultural use is anything other than a material change of use, but the development is exempted development in accordance with Section 4(1) of the Planning and Development Act 2000-2017.

- 8.2. I note that there are other structures around the site, namely palisade fencing, a large hard standing area and a shipping container which I am not assessing as part of this referral and which are matters for the planning authority to address separately. I am limiting myself in this instance to the question posed in relation to the use of the shed.
- 8.3. It should be stated at the outset that the purpose of this referral is not to determine the acceptability or otherwise of this shed in respect of the proper planning and sustainable development of the area, but rather whether or not the use of the shed in question constitutes development, and if so it falls within the scope of exempted development, as set out in Section 4(1) of the Act.
- 8.4. In assessing the merits of the case I have reviewed previous relevant declarations made by the Board.

## 8.5. Is or is not development

8.5.1. The applicant contends that the focus of this application is on the use of the shed and not on the structure. It is stated that the shed was built for agricultural purposes and that Section 4 of the Act applied:

(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;

8.5.2. The applicant states that the shed is now currently in use for agricultural purposes, namely for the housing of farming equipment and that the unauthorised commercial use of the building has ceased. The applicant, John O'Connell, states that he currently leases the shed from Syl and Enda Geoghegan and leases the adjoining remediated landfill site from Westmeath County Council for his sheep flock.

8.5.3. I note the form and scale of the building takes the form of an agricultural shed. Upon site inspection, hay and trailers were observed inside the shed. In terms of context, I note the structure falls within the conditions and limitations of Class 9 of Part 3 of Schedule 2 to Article 6. I am not of the view that the unauthorised use of the shed in the past results in the exemptions associated with Class 9 being permanently removed from the structure. The applicant contends that the structure was built for agricultural purposes. While I note the planning history in relation to this site, no evidence has been presented to contradict this assertion.

8.5.4. The use for agricultural purposes does not in my view constitute a change of use, as the use is as per the original stated intended use of agriculture in accordance with section 4(1) and therefore the resumption of use of the shed for its intended agricultural purpose does not in my view constitute a change of use, and does not constitute development.

8.5.5. I note that a material change in the use of the shed from agricultural use would constitute development and this would require permission, however, as currently presented the reuse of the shed for agricultural purposes does not constitute development.

## Conclusion

8.6. The shed in question is an agricultural shed. While an unauthorised commercial use occurred on the site, this has ceased and the shed has reverted to its original intended agricultural use. There is no change of use involved and the use of the shed does not amount to development.

## 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 use of the subject shed for agricultural purposes is development and whether the use is development requiring permission or whether it is exempted development under Section 4(1) of the Planning and Development Act 2000-2017:

**AND WHEREAS** John O'Connell requested a declaration on this question from Westmeath County Council and the Council issued a declaration on the 14<sup>th</sup> day of March, 2016 stating that the matter was development and was not exempted development:

**AND WHEREAS** John O'Connell referred this declaration for review to An Bord Pleanála on the 6<sup>th</sup> 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) of the Planning and Development Act, 2000,
- (c) Section 4(1)(a) of the Planning and Development Act, 2000, as amended,
- (d) article 6(3) and article 9(1) of the Planning and Development

- Regulations, 2001, as amended,
- (e) Parts 3 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (f) the planning history of the site:

**AND WHEREAS** An Bord Pleanála has concluded that:

- (a) The use of the subject shed for agricultural purposes does not constitute 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 use of the subject shed for agricultural purposes is not development.

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Una O'Neill  
Senior Planning Inspector

26<sup>th</sup> September 2018