



An
Bord
Pleanála

Inspector's Report ABP-301488-18

Question

Shelter for 2 Horses

Location

Thornabrucky, Bushy Park, Galway

Declaration

Planning Authority

Galway County Council

Planning Authority Reg. Ref.

ED 17/43

Applicant for Declaration

Ciaran & Aline Morrison

Planning Authority Decision

Is development and is not exempted development

Referral

Referred by

Ciaran & Aline Morrison

Owner/ Occupier

Ciaran & Aline Morrison

Date of Site Inspection

31 July 2018

Inspector

Dolores McCague

1.0 Site Location and Description

1.1. The site is located at Thornabrucky, Bushy Park, Galway. Thornabrucky is a townland and an area west of Galway City. The site is located in the townland of Drum East about one and a half kilometres from the city on a local road running north south connecting the Moycullen Road (N59) to the north with the Ragoon Road to the south. The site is close to a junction with another local, Letteragh Road, which runs from the west of the city (Westside) to the N59 at Pollagh. The remainder of the landholding identified in the application is in the townland of Boleynasruhaun.

2.0 The Question

2.1.1. The request to the planning authority was stated as follows:

We are applying to have the following construction declared as an exempted development as an Agricultural Structure under Class 6 of the Exempted development – Rural (Part 3 of Schedule 2 under Article 6 of the Planning and Development Regulations, 2001). The proposed structure is to be a field shelter for 2 horses, with the proposed dimensions of 9.7m x 3.7m, giving a total area of 36m². An overhang from the roof will cover an additional 2.4m x 9.7m (23.2 m²), so the entire footprint will comprise 59.3m².

A site map 1:2,500 shows the location of current field walls and the 100m clearance required from existing houses.

2.1.2. I consider that the referral question should be restated as follows:

Whether works comprising of the erection of a field shelter for 2 horses, with a floor area of 36m² and an overhanging roof with an additional area of 23.2 m², total footprint 59.3m², is or is not development and is or is not exempted development.

3.0 Planning Authority Declaration

3.1. Declaration

Planning Authority Decision is that the development of an agricultural structure for the housing of 2 horses (59.3m²) is development and is not exempted development.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The planning report states that the site is located 1.9km south west of Lough Corrib SAC and 1.2km Southwest of Lough Corrib SPA which are designated European Sites for rare and threatened flora and fauna. There is a water course to the rear of the site which drains into these European sites. The water course has been identified by the OPW as being at risk from flooding.

Having regard to the nature of the proposed project, the proximity of the site to lands which have been identified by the OPW as being at risk from flooding, the connectivity of the site with these European sites, the qualifying interest and conservation objectives of the sites and in the absence of any of the following: screening report, maps of land ownership and slurry spreadable lands for the slurry generated; the Planning Authority, as competent authority, is not satisfied that the need for an appropriate assessment has been screened out.

4.0 Planning History

ED 16/39 exemption certificate stated in appeal to have been obtained on September 12, 2015, for the construction of a wooden shelter for 2 horses of 20m² in the same location at Thornabrucky.

Per on-line planning register:

EN 14/095 Warning letter re: unauthorised construction of a horse riding arena, creation / formation of an access onto the public road and formation of a roadway across lands.

14/1036 Ciaran Morrison - development: gate for field access, retention and completion of a sand arena for non-commercial horse riding and permission for erection of a new gate to allow access; withdrawn.

15/ 800 Ciaran Morrison, change of use of part of the lands at the at Drum East/Boleynasruhaun as a private non-commercial horse riding arena and for permission to retain the access from the public road to same, permission granted.

5.0 Policy Context

5.1. Development Plan

5.1.1. Galway County Development Plan 2015-2021 is the relevant plan.

5.1.2. The Development Plan Maps indicate this location as being relatively close to the Galway City development boundary, in an area of strong urban influence, close to the boundary between landscape category 3-5 and An Ghaeltacht (Map RHO2), between low and moderate landscape sensitivity and between high and medium landscape value rating.

5.2. Natural Heritage Designations

The nearest Natura sites are the Lough Corrib SAC (site code 000297), and Lough Corrib SPA (site code 004042) located distances of c2.2km and c2.3km away.

6.0 The Referral

6.1. Referrer's Case

6.1.1. The referrers, Ciaran & Aline Morrison, made the application to Galway County Council. Their case includes:

- The decision is a complete reversal of a previous decision and is unjustified. They applied and received an agricultural exemption ED 16/39 September 12, 2016, for the construction of a wooden shelter for 2 horses of 20m² in the same location at Thornabrucky. The exemption now requested is for a blockwork shelter, of slightly larger dimensions that nevertheless falls under the 200m² gross floor space limit.

The gross floor space is 36m², an overhang from the roof will cover an additional 2.4m x 9.7m (23.2 m²), so the entire footprint will comprise 59.3m².

- The location and purpose of the proposed structure is identical to the previously exempted one. The rationale for blockwork rather than wood is to ensure that the animals are provided with more solid and reliable housing. Given the short time between the two applications, there is no substantive difference in the reasons for exemption and the change in decision is unjustified.
- Neither the previous exemption ED 16/39 or a relevant permission 15/800 were cited in the planner's report. There is no evidence of the site having been visited for 17/43. Different planners were involved and there is an apparent absence of continuity.
- Statements forming the basis of the decision are incorrect and not relevant. It is stated that an agricultural use does not currently exist at this location. This is incorrect. This land has had horses kept on it for many years. The applicants bought this land in 2013 and have kept horses on it since then. Prior to the purchase it was rented out for stock use.
- The permission granted, for a non-commercial horse - riding arena on an adjacent field within the overall holding, demonstrates that an agricultural use is established on the land.
- The risk of flooding is of no relevance, the structure being an open shelter in an elevated position.
- In the previous decision the landscape sensitivity was classified as Class 2 (5 being most sensitive) and it was stated that the proposal would have no significant impact. The same considerations apply. The number of horses is the same. They are held on c9 acres, a substantial area for the spreading of manure.
- Appropriate assessment was carried out on 15/800 and it was found not to have a significant effect on the designated site.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

Section 2 – interpretation, includes the following:

2(1)

“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;

“house” means a building or part of a building which is being or has been occupied as a dwelling or was provided for use as a dwelling but has not been occupied, and where appropriate, includes a building which was designed for use as 2 or more dwellings or a flat, an apartment or other dwelling within such a building;

“structure: means any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined, and where the context so admits, includes the land on, in or under which the structure is situate”;

“works includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior of a structure’.

Section 3 defines development

3(1) In this Act, “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 – exempted development.

Section 4(1)(a) states ‘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’.

Section 4(2)(a) states ‘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 exempted development

Subject to article 9, development of a class specified in column 1 of Part 1 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 1 opposite the mention of that class in the said column 1.

Article 9 Restrictions on exemption

(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

(viiB) comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site,

(viiC) consist of or comprise development which would be likely to have an adverse impact on an area designated as a natural heritage area by order made under section 18 of the Wildlife (Amendment) Act 2000.

Schedule 2

Part 3 Exempted Development — Rural

CLASS 6

Works consisting of the provision of a roofed structure for the housing of cattle, sheep, goats, donkeys, horses, deer or rabbits, having a gross floor space not exceeding 200 square metres (whether or not by extension of an existing structure), and any ancillary provision for effluent storage.

Conditions and Limitations:

1. No such structure shall be used for any purpose other than the purpose of agriculture.
2. The gross floor space of such structure together with any other such structures situated within the same farmyard complex or within 100 metres of that complex shall not exceed 300 square metres gross floor space in aggregate.
3. Effluent storage facilities adequate to serve the structure having regard to its size, use and location shall be constructed in line with Department of Agriculture, Food and Rural Development and Department of the Environment and Local Government requirements and shall have regard to the need to avoid water pollution.

4. No such structure shall be situated, and no effluent from such structure shall be stored, within 10 metres of any public road.

5. No such structure within 100 metres of any public road shall exceed 8 metres in height.

6. No such structure shall be situated, and no effluent from such structure shall be stored, 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.

7. No unpainted metal sheeting shall be used for roofing or on the external finish of the structure.

8.0 Assessment

8.1. Is or is not development

It is proposed to erect a structure as a field shelter for 2 horses, made of blockwork and painted metal.

The referrer is not claiming that the works are not development and the works are clearly development.

8.2. Is or is not exempted development

8.2.1. In their application to the planning authority the referrers claimed that the works are exempted development, under class 6 Exempted Development – Rural, in part 3 of Schedule 2 of the Planning and Development Regulations, 2001.

8.2.2. The class referred to is cited in full in section 7 above.

8.2.3. The proposed development is the erection of a roofed structure for the housing of horses, per class 6.

Conditions and Limitations:

- 8.2.4. Per condition no. 1. It can be stated to be for the purpose of agriculture, which includes 'the training of horses and the rearing of bloodstock'.
- 8.2.5. Per condition no. 2. The size is well within the 300 square metres limit.
- 8.2.6. Per condition no. 3 which states that 'effluent storage facilities adequate to serve the structure having regard to its size, use and location shall be constructed in line with Department of Agriculture, Food and Rural Development and Department of the Environment and Local Government requirements and shall have regard to the need to avoid water pollution'; no effluent storage is proposed. It is worth noting that the proposed structure is an open shelter. It will be open on one side (east) so that the 2 animals for which it is proposed will be free to move in and out, therefore it is unlikely that significantly more effluent will collect within the structure than outside on the adjoining land.
- 8.2.7. Per conditions no. 4, 5 & 7 the structure as shown on the site map is more than 10m from the public road, will be 3.6m high, and will include painted steel cladding.
- 8.2.8. Per conditions no. 6, in support of their claim they have submitted a copy of an Ordnance Survey map, given as scale 1:2,500, with a circle inscribed, centred on a point at the centre of the proposed structure, and stated to be 100m radius, i.e. to indicate the absence of any house within that distance.
- 8.2.9. It should be noted that the map, although represented as scale 1:2,500, does not scale to 1:2,500 but is a slightly reduced representation of the OS 1:2,500 map. It should also be noted that inscribing a circle of 100m centred on a point at the centre of the proposed structure would not ensure compliance with class 6 Exempted Development – Rural, since to comply with condition 6 of the class, no part of the structure can be situated within 100 metres of any house. The board will note that there is a house just outside the circle and others close to the circle. Nevertheless, after allowing for the distortion in scale, it appears to me that there is no house within 100m of the location of the proposed structure as shown on the map.
- 8.2.10. The conditions & limitations of class 6 are therefore complied with.

8.3. Restrictions on exempted development

Article 9 of the regulations sets out restrictions on exemption:

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

Those which are relevant to the current referral are:

(a) if the carrying out of such development would

(viiB) comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site,

(viiC) consist of or comprise development which would be likely to have an adverse impact on an area designated as a natural heritage area by order made under section 18 of the Wildlife (Amendment) Act 2000.

- 8.3.1. The planning authority in their decision refer to Article 9(1)(a), and the planner's report refers to the proximity of the site to lands identified by the OPW as being at risk of flooding, the proximity to European Sites Lough Corrib SAC Site Code 000297 and Lough Corrib SPA Site Code 004042 and the connectivity provided by the watercourse to the rear of the site.
- 8.3.2. I accept that the stream at the rear of this narrow strip of land provides a pathway to the protected sites, however I do not accept that the provision of a shelter as proposed would be likely to significantly affect the protected sites, having regard to the use of this land for agriculture and the proposed use of the structure: to provide a shelter for two horses, held on this 9ac landholding.
- 8.3.3. In my opinion it is reasonable to conclude in relation to appropriate assessment that the development would not require an appropriate assessment because it would not be likely to have a significant effect on the integrity of the European Sites Lough Corrib SAC and SPA or any other sites.

- 8.3.4. In relation to natural heritage areas, the subject development is close to part of the natural heritage area Moycullen Bogs NHA Site Code 002364, being less than 500m at the nearest point from one of these areas, there are other unconnected lands designated Moycullen Bogs NHA at a greater distance from the subject site. The adjoining stream provides connectivity to the nearest part of the heritage area, although it is upstream of the subject site. I accept that the stream at the rear of this narrow strip of land provides a pathway to part of the protected site, however I do not accept that the provision of a shelter as proposed would be likely to significantly affect the protected site, having regard to the use of this land for agriculture and the proposed use of the structure, to provide a shelter for two horses, which are already held on this 9ac landholding.
- 8.3.5. In my opinion by virtue of the nature, size and location of the development it would not be likely to have significant effects on the environment or to require an environmental impact assessment.

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 a field shelter for 2 horses is or is not development or is or is not exempted development:

AND WHEREAS Ciaran & Aline Morrison requested a declaration on this question from Galway County Council and the Council issued a declaration on the 5th day of April, 2016 stating that the matter was development and was not exempted development:

AND WHEREAS Ciaran & Aline Morrison referred this declaration for review to An Bord Pleanála on the 30th day of May, 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(1) and article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (e) Part 3 of Schedule 2 to the Planning and Development Regulations, 2001, as amended, and
- (f) the planning history of the site,

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The erection of the structure is development
- (b) The structure will be used for agricultural use
- (c) The structure will not significantly affect the integrity of the European Sites Lough Corrib SAC and SPA or any other European sites
- (d) The structure will not significantly affect the integrity of the natural heritage area Moycullen Bogs NHA Site or any other natural heritage area,

And furthermore that:

- (e) by virtue of the nature, size and location of the development, it would not be likely to have significant effects on the environment or to require an environmental impact assessment.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred

on it by section 5 (3) of the 2000 Act, hereby decides that the erection of a field shelter for 2 horses is development and is exempted development.

Planning Inspector

21st December 2018

- 1 Photographs
- 2 Extracts from the Galway County Development Plan 2015-2021