



An  
Bord  
Pleanála

## Inspector's Report ABP-301518-18

---

### Question

Whether or not amendments to a house and keeping or storing of a caravan or campervan in the curtilage of a house is or is not development or is or is not exempted development.

### Location

Ballagh, Newtownforbes, Co. Longford.

### Declaration

Planning Authority

Longford County Council

Planning Authority Reg. Ref.

DC 18/4

Applicant for Declaration

Tom Devine

Planning Authority Decision

Is not exempted development.

### Referral

Referred by

Tom Devine.

Owner/ Occupier

Tom Devine.

Observer(s)

None.

Date of Site Inspection

16<sup>th</sup> October 2018.

Inspector

Deirdre MacGabhann

# Contents

1.0 Site Location and Description .....	3
2.0 The Question .....	3
3.0 Planning Authority Declaration.....	4
3.1. Declaration.....	4
3.2. Planning Authority Reports .....	4
4.0 Planning History.....	5
5.0 Policy Context.....	5
5.1. Longford County Development Plan 2015 to 2021.....	5
6.0 The Referral.....	6
6.1. Referrer's Case .....	6
6.2. Planning Authority Response .....	6
7.0 Statutory Provisions.....	7
7.2. Previous Cases .....	7
8.0 Assessment.....	7
8.1. Is or is not development .....	7
8.2. Is or is not exempted development/ Restrictions on exempted development	8
9.0 Recommendation.....	11

## 1.0 Site Location and Description

- 1.1. The subject site lies c.3km to the north east of Newtownforbes, in the townland of Ballagh, Co. Longford. It lies on a minor public road c.1.5km east of the N4. Alongside the public road is ribbon development.
- 1.2. The site comprises a small landholding, to the west of the public road, with two stone buildings situated to the east of the site, one perpendicular to the road (described a store in the application to the Board) and one facing it (described as a house). To the west of these is a mobile home. Access to the site is from the public road, to the south of the stone building lying perpendicular to the public road.

## 2.0 The Question

- 2.1. The question referred to the Board is whether or not the following, in respect of the application site, constitute development or exempted development:
  - i. Rewiring of the house and store.
  - ii. Erecting of boiler house.
  - iii. Replacement of the decayed profiled metal roof on the house with profiled metal roofing.
  - iv. Replacing windows and external doors with replica timber windows and doors.
  - v. Altering internal dividing wall to create an internal pantry.
  - vi. Dismantling of internal chimney to fit clay flue liners and rebuilding chimney after.
  - vii. Removing of loose plaster and re-plastering of internal and external walls.
  - viii. Relocating of internal doorways.
  - ix. Erection of extension to rear (c.36sqm),
  - x. Demolition of part of gable to existing store.
  - xi. Improving existing driveway with additional gravel and kerbs.
  - xii. Keeping or storing of caravan or campervan within the curtilage of house.
  - xiii. Painting the interior and exterior of wall surfaces.

## 3.0 Planning Authority Declaration

### 3.1. Declaration

- 3.1.1. On the 30<sup>th</sup> April 2018 the planning authority issued their decision under Section 5 that the items referred to did not constitute exempted development.

### 3.2. Planning Authority Reports

#### Planning Reports

- 3.2.1. The Planning Report (25<sup>th</sup> April 2018) refers to the existing house, shed and mobile home on the appeal site. It describes the house as *'a derelict and abandoned 'A' frame cottage type dwelling with rusted metal roof, boarded up window openings without window frames, boarded up front door opening and vegetation growing around chimneys and roof and significant cracks in the front porch structure'*. The stone shed is referred to *'with new metal roof sitting perpendicular to the front site boundary with newly constructed gate pillar and electrical supply box'*.
- 3.2.2. The report refers to the planning history of the site, and the following statutory provisions:
- Planning and Development Act 2000 (as amended)
    - Section 2(1) meaning of the terms 'development' and 'habitable house'.
    - Section 4(h) meaning of the term exempted development.
- 3.2.3. It states:
- The structure currently on the appeal site, referred to by the applicant as a house, is not currently in a habitable condition as defined in the Planning and Development Act, 2000 (as amended) and is considered to be derelict. It therefore does not constitute a 'habitable dwelling' as per section 2(1) of the Act.
  - The proposed works are intended to resume habitable use which (a) will materially alter its appearance from its traditional form (described as a traditional cottage) and render its appearance inconsistent with the character of the structure, and therefore, outside the scope of exempted development

as set out in section 4(h) of the Act, and (b) give rise to planning implications including the provision of an additional residence on the landholding, implications for wastewater treatment system, the provision of services in an un-zoned, unserviced rural area and the intensification of an access onto the public road.

- As per section 4(h) of the Act, it is considered therefore that the proposed works constitute development that is outside the scope of the exempted development provisions and is not therefore exempted development.

#### Other Technical Reports

3.2.4. None.

### **4.0 Planning History**

4.1.1. Under PA ref. UNA 1173 an Enforcement Notice was served on the landowner (14<sup>th</sup> December 2017) in respect of unauthorised development at the subject site, comprising an unauthorised mobile home and concrete slab. It required the removal of the mobile and home and slab within six weeks of the Notice. On foot of the enforcement notice an application was made to the planning authority for a Section 5 declaration in respect of the mobile home. It was determined by the planning who considered the compartment development to be development and not exempted development. The determination was referred to the Board under our reference no. ABP-300951-18 and it is currently with the Board for decision.

### **5.0 Policy Context**

#### **5.1. Longford County Development Plan 2015 to 2021**

5.1.1. The subject site lies in a rural area north of Longford Town and north east of Newtownforbes. The site is not subject to any specific designations and it is removed from features of archaeological interest, designated scenic routes, views or and prospects and from sites of nature conservation interest, including European Sites.

## 6.0 The Referral

### 6.1. Referrer's Case

6.1.1. In the original Section 5 application to the planning authority, the referrer states that he relies on the following sections of the Planning Act:

- Section 2(1), definition of 'house' and 'works'.
- Section 3(1), definition of 'development'.
- Section 4(1)(h), exempted development provisions which include works to maintain, improve or alter any structure.
- Section 4(2)(a), which provides powers for the Minister to make Regulations to provide for any class of development to be exempted.

6.1.2. He subsequently lists each item of proposed works and sets out an argument, in each case, supporting his conclusion that the works comprise exempted development under the different provisions (see file). The referrer has regard to case law, including *Cronin v An Bord Pleanála* [2017], in his reference to works under section 4(1)(h).

6.1.3. In correspondence with the Board, accompanying his referral, the referrer argues:

- The planning authority's decision has no supporting report or legislative extracts or reasoning for decision.
- The proposed works clearly fall within section 4(1)(h) of the Act, even allowing for the most restrictive interpretations from the recent *Cronin* Supreme Court Case.
- The planning authority's Declaration wrongly refers to the Planning and Development (Amendment) Act 2015.
- The planning authority failed to address the exemptions claimed under section 4(1)(h) and section 4(2) of the 2000 Act.

### 6.2. Planning Authority Response

6.2.1. None.

## 7.0 Statutory Provisions

7.1. The appropriate legal context for the referral is the Planning and Development Act, 2000 (as amended) and the Planning and Development Regulations, 2001 (as amended). The following specific provisions are relevant to this case:

- Planning and Development Act, 2000 (as amended) – Sections 2, 3 and 4.
- Planning and Development Regulations, 2001 (as amended) – Articles 6 and 9 and Classes 1, 2, 8 and 13, Part 1 of Schedule 2.

## 7.2. Previous Cases

7.2.1. The Board has previously dealt with the following case in respect of works to a derelict farmhouse, PL91.RL3352.

## 8.0 Assessment

### 8.1. Is or is not development

8.1.1. The following terms are defined in the Planning and Development Act, 2000 (as amended):

- ‘habitable house’, section 2(1) – *‘a house which (a) is used as a dwelling, (b) is not in use but when last used was used, disregarding any unauthorised use, as a dwelling and is not derelict, or (c) was provided for use as a dwelling but has not been occupied’.*
- ‘house’, section 2(1) – *‘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’.*
- ‘works’, section 2(1) - *‘any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal’.*

- ‘development’, section 3(1) - *‘the carrying out of works on, in, over or under land or the making of any material change in the use of any structures or other land’*,

8.1.2. Section 3(2)(b) of the Act states that where land becomes used for *‘(i) the placing or keeping of any vans, tents or other objects, whether or not moveable and whether or not collapsible, for the purpose of caravanning or camping or habitation, (ii) the storage of caravans or tents’*, the use of the land shall be taken as having materially changed.

8.1.3. The referrer lists a number of acts or operations to the structures on the subject site, including for example, re-wiring, erecting a boiler house, replacing the roof and windows, altering internal dividing walls etc. All of the acts listed would fall within the definition of works and I would consider that they, therefore, comprise development.

8.1.4. The referrer also lists *‘the keeping or storing of a caravan or campervan within the curtilage of a house’* in his section 5 application. Having regard to section 3(2) of the Act referred to above, I would also consider this act to comprise development, by way of a material change of use.

## 8.2. **Is or is not exempted development/ Restrictions on exempted development**

8.2.1. Section 4 of the Act sets out certain types of developments which are deemed to be exempted development. These include in section 4(1)(h) *‘development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures’*.

8.2.2. A structure is defined as *‘any building, structure, excavation or other thing construed or made on, in or under any land, or any part of a structure so defined...’*.

8.2.3. Section 4(2) enables the Minister to make regulations to provide for any class of development to be exempted development. Article 6(1) of the Planning and Development Regulations, 2001 (as amended), states that 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. The following types of development are listed in column of Part 1 of the schedule:

*Development within the curtilage of a house:*

- The extension of a house, to the rear, or conversion of any garage, store or shed or other similar structure attached to the rear or side of the house (Class 1), subject to a limitation of 40sqm.
- The provision as part of a heating system of a house, of a chimney or flue, boiler house or fuel storage tank or structure (Class 2), subject to a capacity limit of 3,500 litres for an oil storage tank.
- The keeping or storing of a caravan or campervan within the curtilage of a house (Class 8).

*Sundry Works*

- The repair or improvement of any private street, road or way, being works carried out on land within the boundary of the street, roadway or way, and the construction of any private footpath or paving (Class 13), subject to any such footpath not exceeding 3m.

8.2.4. Having regard to the above and the acts listed by the referrer, I would comment as follows:

- i. A number of the acts referred to would affect only the interior of the structure and/or would have no material impact on the external appearance of the structure, namely rewiring, altering internal dividing walls, internal works to chimney, repairing/re-plastering internal walls, re-locating internal doorways and painting the interior and exterior surfaces. Further, the works would not trigger any of the limitations on exempted development set out in article 9 of the Regulations. I consider that these would, therefore, constitute exempted development.
- ii. Improving the existing driveway could reasonably fall within Class 13 (Sundry Works), Part 1 of Schedule 2 of the Regulations. However, the referrer provides little detail on the nature of the existing driveway of the proposed works to demonstrate that these works fall within the description and/or limitations of the Class. In the absence of such justification, I do not consider that the works could be deemed, therefore, to fall within this Class.

- iii. Other acts referred to would affect the external appearance of the structure, i.e. replacement of metal roofing, windows and external doors, repair/replacement of external plaster and demolition of part of the gable to the existing store (to provide sightlines at the entrance to the site).

I note the case law referred to by the referrer (including *Cronin v An Bord Pleanála* [2017] IESC 36), however, the effect of this remains to restrict interpretation of the exempted development provisions under section 4(1)(h) of the Act to those which do not materially affect the external appearance of a structure, so as to render it inconsistent with the character of the structure or of neighbouring structures.

The key point here, is therefore, whether or not the proposed works to the roof, windows and external doors, external plaster and store would materially affect the external appearance.

As stated by the planning authority, the structures on the site would have been traditional buildings (c.1800s), typically with the main structure comprising a one room deep cottage, with modest window openings, stone walls with lime mortar and thatched roof. There is little detailed information on the proposed works, for example, the nature of external plaster, window and roof details. Further, it is evident from the information which is presented, that openings are enlarged and have a contemporary appearance. I consider, therefore, that there is a significant risk that the works would materially affect the character of the structure, which currently remains inherently traditional.

Having regard to the overall intention of the exempted development provisions set out in the Planning and Development Act, I would consider that these acts, therefore, do not fall within the provisions of section 4(h) of the Act and do not constitute exempted development.

- iv. With regard to the erection of a boiler house, the erection of an extension to the rear of the structure and the keeping of a caravan on site, these acts all rely, for the purpose of the exempted development provisions, on the structure being construed as a 'house'. However, it is evident from the inspection of the site and photographs of it, that the structures on the site are not habitable. Rather, with the presence of boarded up windows, vegetation

growing through external walls and chimneys, the main structure on site is clearly derelict. The resumption of a habitable use of the structure(s), would therefore constitute a material change of use, for example, arising from the requirement to service the site. I would consider therefore, that these acts do not fall within the provisions of Schedule 2 (Part 1) of the Planning and Development Regulations 2001 (as amended).

## 9.0 Recommendation

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

- i. Rewiring of the house and store.
- ii. Erecting of boiler house.
- iii. Replacement of the decayed profiled metal roof on the house with profiled metal roofing.
- iv. Replacing windows and external doors with replica timber windows and doors.
- v. Altering internal dividing wall to create an internal pantry.
- vi. Dismantling of internal chimney to fit clay flue liners and rebuilding chimney after.
- vii. Removing of loose plaster and re-plastering of internal and external walls.
- viii. Relocating of internal doorways.
- ix. Erection of extension to rear (c.36sqm),
- x. Demolition of part of gable to existing store.
- xi. Improving existing driveway with additional gravel and kerbs.
- xii. Keeping or storing of caravan or campervan within the curtilage of house.
- xiii. Painting the interior and exterior of wall surfaces.

**AND WHEREAS** Tom Devine requested a declaration on this question from Longford County Council and the Council issued a declaration on the 30<sup>th</sup> day of April 2018 stating that the matter was development and was not exempted development:

**AND WHEREAS** referred this declaration for review to An Bord Pleanála on the 1<sup>st</sup> day of May 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(2) of the Planning and Development Act, 2000,
- (c) Section 4(1) and 4(2) 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 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (f) the planning history of the site,
- (g) the details on file regarding the proposed works to the structures on site.

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

- (a) The acts referred to either fall within the definition of the term ‘works’ or comprise a material change of use (keeping or storing of a caravan or campervan) and, therefore, comprise development under section

3(2) of the Planning and Development Act, 2000, as amended.

- (b) The rewiring of the house and store, altering internal dividing walls, repairing/re-plastering internal walls, re-locating internal doorways, internal works to chimney, painting the interior and exterior surfaces comprise works for the maintenance, improvement or other alteration of the structure which only affect the interior of the structure and do not materially affect the external appearance of the structure, and are therefore exempted development under section 4(1)(h) of the Planning and Development Act 2000, as amended.
- (c) The replacement of metal roofing, windows and external doors, repair/replacement of external plaster and demolition of part of the gable to the existing store comprise works which have the potential to materially affect the external appearance of the structure so as to render it inconsistent with the character of the structure, and is therefore not exempted development under section 4(1)(h) of the Planning and Development Act, 2000, as amended.
- (d) The erection of a boiler house, extension to the rear of the structure and the keeping of a caravan on site rely, for the purpose of the exempted development provisions, on the structure being construed as a 'house'. However, there is no evidence of the residential use of the structure and the Board is satisfied, therefore, that the residential use has been abandoned. Therefore, that these acts do not fall within the provisions of Schedule 2 (Part 1) of the Planning and Development Regulations 2001 (as amended).
- (e) The works to the driveway are insufficiently detailed to demonstrate compliance with the detailed provisions of Class 13 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, hereby decides that:

- (i) The rewiring of the structures on site, altering of internal dividing walls, re-plastering of internal walls, relocating of internal doorways, internal

works to chimney and painting of internal and external surfaces is development and is exempted development, and

(ii) The erection of a boiler house and rear extension, replacement of metal roofing, windows and doors, re-plastering of external walls, demolition of gable, improvement to existing driveway and keeping or storing a caravan or campervan on the site is development and is not exempted development.

---

Deirdre MacGabhann  
Senior Planning Inspector

19<sup>th</sup> November 2018