



An
Bord
Pleanála

Inspector's Report ABP301570-18

Question	Whether an existing Portal frame shed for agricultural use is development and is or is to exempted development.
Location	Coolfore, Monasterboice, County Louth.
Declaration	
Planning Authority	Louth County Council.
Planning Authority Reg. Ref.	S.5 2018/16.
Applicant for Declaration	Fergus Neilon.
Type of Application	Referral.
Planning Authority Decision	Works constitute development which is not exempted development.
Referral	
Referred by	Green Design Build on behalf of Fergus Neilon
Owner/Occupier	Fergus Neilon
Date of Site Inspection	4 th September, 2018.
Inspector	Paul Caprani.

Contents

1.0 Introduction	3
2.0 Site Location and Description	3
3.0 The Question	4
4.0 Planning Authority's Determination	4
5.0 The Referral to the Board	5
6.0 Planning Authority's Response	6
7.0 Legislation	6
8.0 Assessment	8
9.0 Appropriate Assessment	12
10.0 EIA Screening Determination	12
11.0 Conclusions and Recommendation	12

1.0 Introduction

A question has arisen pursuant of Section 5 of the Planning and Development Act whether an existing steel frame shed and associated blockwork for agricultural use covering an area of 112 square metres constitutes development, and if it constitutes development, whether or not such development is exempted development under the Planning and Development Legislation. The shed in question is located in the townland of Coolfore, Monasterboice, County Louth. The applicant referred the question to Louth County Council and the Council concluded that the shed is not part of any farmyard complex and is located within the curtilage of a dwellinghouse and therefore the structure constitutes development which is not exempted development. The owner/occupier of the lands refer the said question to An Bord Pleanála for determination.

2.0 Site Location and Description

- 2.1. The townland of Coolfore is located between the small settlements of Begrath, Monasterboice and Tullyallen approximately 7 kilometres north-west of Drogheda in south-east County Louth. Coolfore comprises of a cluster of approximately 20 dwellings scattered around a Y-shaped junction approximately 1 kilometre west of the M1 Motorway. The subject shed is located to the west of the junction and to the south of a dwellinghouse which has been recently constructed on site. Both the dwellinghouse and shed are located approximately 150 metres from the access road serving the site to the west. According to the drawings submitted on file, the site has a total area of 4.53 hectares (10.7 acres) and comprises of approximately 3 large fields. A smaller area of land on the western side of the access road directly opposite the site also appears to be under the ownership of the referrer's family and these lands accommodate the original farmhouse holding and sheds according to the information submitted. (See rural place map).
- 2.2. The site itself which is located on the eastern side of the access road accommodates a haybarn close to the entrance to the site. A newly constructed large single-storey dwelling has been constructed further back within the site. Approximately 15 metres

to the south of the new dwellinghouse a recently constructed shed is located. The shed is the subject of the current referral.

- 2.3. This shed comprises of a brick base with a kingspan metal clad upper portion. It is 14.5 metres in length and 8 metres in width. It incorporates a large roller shutter door on its front (northern elevation). The lower brick portion of the building incorporates a plaster render finish. The building rises to a ridge height of 5.1 metres. A pedestrian doorway is also located on the front elevation. A mobile home is located to the immediate rear (south) of the shed. According to the information on file the shed occupies an area of approximately 112 square metres.

3.0 The Question

The question before the Board is whether or not the subject shed constitutes development and if it constitutes development whether or not such development is exempted development under the planning legislation.

4.0 Planning Authority's Determination

- 4.1. A report on file from the Planning Enforcement Unit of Louth County Council (Reg. Ref. 17U107 dated 31st July, 2017) states that on foot of a site inspection it was concluded that an unauthorised portal framed shed and lean-to has been constructed adjacent to a partially constructed house on the subject site. It is concluded therefore that unauthorised development has taken place and it is recommended that a warning letter be issued to the owner/occupiers of the land in question.
- 4.2. A warning letter pursuant to Section 152 of the Act was issued on 1st August, 2017.
- 4.3. A letter on behalf of the owner/occupier dated 3rd August, 2017 states that the shed complies with the exempted development Regulations under Article 6, Part 3, Class 9 of S.I. 600 of 2001.
- 4.4. The Board will note that there is additional correspondence on file between the owner/occupier of the lands in question and the Planning Authority in respect of whether or not the structure in question falls within the exempted development Regulations. In this correspondence the Planning Authority maintains that the said

shed in question is within the curtilage of the garden associated with the house, and as it exceeds 25 square metres, it constitutes unauthorised development. A further email on file dated 19th October, 2017 on behalf of the owner/occupier states that it is the owner/occupier's intention to make an application for declaration of exempted development.

- 4.5. An application seeking a declaration under the provisions of Section 5 was submitted on behalf of the applicant by Green Design Build Architects. It argues that the shed complies with Article 6, Part 3, Class 9 of S.I. 600/2001 and also complies with all the conditions and limitations in respect of the said exemption class.
- 4.6. The planner's report in respect of the Section 5 declaration (dated 10th April, 2018) states that the shed lies within the curtilage of the planning application site granted under 15/456. It is noted that the site plan submitted for the house granted under 15/456 for a dwellinghouse did not show the subject structure within the red line of the boundary.
- 4.7. It is stated that the structure must be located within the same farmyard of other agricultural structures. The only other structures noted as farm buildings are located c.97 metres as shown in the applicant's drawings submitted as part of the Section 5 declaration drawings.
- 4.8. The site plan for the dwelling granted under 15/456 did not indicate any structure such as that constructed on site and it is determined that the site is not an agricultural structure but a shed within the curtilage of a domestic dwelling and accordingly is not exempted development. For the above reasons Louth County Council determined that the works is development and not exempted development.

5.0 The Referral to the Board

- 5.1. Green Design Build, agents on behalf of the referrer Mr. Fergus Neilon appealed the decision of Louth County Council under the provisions of Section 5 of the Planning and Development Act to An Bord Pleanála. The referral included drawings, floor plans, elevations, a site location map, photos of the structures and extracts of the Planning and Development Regulations as they relate to the question. The original application form and decision of Louth County Council were also submitted.

- 5.2. It is contended that the shed as constructed complies with Article 6, Part 3, Class 9 of S.I. No. 600 of 2001. It is also stated that each condition and limitation set out under Class 9 is also complied with.
- 5.3. It is also stated that the owner of the dwelling in question Ms. Olivia Smith received a warning letter in respect of the shed/store. The Board are requested to note that it is the farmer Fergus Neilon who built the shed and it does not relate to the planning application granted under Reg. Ref. 15/456.

6.0 Planning Authority's Response

A response received by Louth County Council on 6th June, 2018 stated that the planner involved in the referral case has no further comment to make in relation to the referral before the Board.

7.0 Legislation

7.1. Planning and Development Act 2000 (as amended)

Section 2 - Definitions

“*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 (a) where the context so admits includes the land on, in or under which the structure is situate.

“*Works*” include any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal.

Section 3 - Development

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 of use of any structures or other land.

Section 4 - Exempted Development

The following shall be exempted development for the purposes of the Act.

Section 4(1)(a) – 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 the land so used.

7.2. **Planning and Development Regulations 2001 (as amended)**

Article 6

Article 6.3 states that subject to Article 9, in areas other than a city or 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 development 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 2.

Class 9

Works consisting of the provision of any store, barn, shed, glasshouse or other structure not being of a type specified in Class 6, 7 or 8 of this Schedule and having a gross floor area not exceeding 300 square metres. The conditions and limitations in respect of Class 9 are as follows:

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 area of such elements together with any other structures situated within the same farmyard complex or complex of such structures within 100 metres of that complex shall not exceed 900 square metres gross floor area in aggregate.
3. No such structure shall be situated within 10 metres of a 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 first question which the Board is required to determine is whether or not the structure in question constituted works in accordance with the definition set out under Section 2 of the Act. Works include any act or operation of construction. The shed in question constitutes construction and, therefore as such, would fall under the definition of 'development' as set out in the Act. The Board can therefore reasonably conclude that the shed in question constitutes development under the Act.
- 8.2. The next question which the Board must determine is whether or not the works constitute exempted development under the provision of the Act and Regulations. Agricultural development is exempted under the provisions of Section 4(1)(a) of the Act.
- 8.3. Article 6 of the Act also exempts works carried out under Schedule 2, Part 3, Class 9 provided the gross floorspace does not exceed 300 square metres. The shed in question at approximately 112 square metres would fall within this limit.
- 8.4. While I did not have an opportunity during my site inspection to enter the shed in question, I refer the Board to the various photographs submitted with the referral which clearly in my view, indicates that the shed in question is used for agricultural storage. I note from the photographs that there is a tractor and various other agricultural machinery being stored within the building. The Board in my opinion could reasonably conclude based on the photographs submitted that the shed is used for agricultural storage.
- 8.5. I have consulted details of the planning application for the adjacent dwelling house (register ref. 15/456) on Louth County Council's website and I would highlight to the Board that the area delineating the planning application site appears to be the same as that delineated on the Rural Place Map submitted with the current referral. That is to say that, the area to which planning reference 15/456 relates amounts to 4.55 hectares and 10.7 acres. I further note that the planner's report in relation to same specifically states that the site is "agricultural land and extends to approximately 10 acres" (see Section 1 of planner's report).

- 8.6. Furthermore, during my site inspection I noted that the lands surrounding the newly constructed dwellinghouse was used for the growing of a grain or cereal crop. I refer the Board to the photographs attached. It would be unreasonable in my view to form a conclusion that in the grant of planning permission for the dwellinghouse that the entire lands within the red boundary line could be regarded as a private garden associated with the house. While planning permission was granted for the house in question, it is evident that the lands included within the application site have been continued in use as arable land for the growing of crops.
- 8.7. Therefore, notwithstanding the fact that planning permission has been granted for a dwellinghouse on the site, the lands surrounding the site continue to be used for agricultural purposes and as such I would not agree with the Planning Authority's conclusion that the shed is not part of any farmyard complex and is located within the curtilage of a dwellinghouse approved under 15/456.
- 8.8. It is clear that the lands surrounding the subject site are still used for agricultural purposes and as such the shed in question could be classed as an agricultural shed.
- 8.9. If the Board agree with this conclusion and also agree that the structure in question falls below the limit set out under Class 9, a question now arises as to whether or not the said shed complies with all the conditions and limitations set out under Class 9 in order to be afforded exempted development status.
- 8.10. The compliance with the conditions and limitations set out under Class 9 are assessed below.

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'.*

As already stated I did not have the opportunity during my site inspection to gain access to the shed in question. However, it appears clear from the photographs contained on file that the shed is used for the storage of agricultural machinery and is not used for the housing of livestock nor the storing of effluent. I therefore consider the shed in question would comply with this condition.

2. That the gross floor area of such structures together with any such structures situated within the same farmyard complex or complex of such structures within 100 metres of that complex shall not exceed 900 square metres gross floor area in aggregate.

Louth County Council came to the conclusion that the proposal did not comply with this condition as the shed is not part of any farmyard complex and is located within the curtilage of a dwellinghouse. I have argued above that the area surrounding the dwellinghouse is currently used as a farm and therefore the building in question constitutes an agricultural building. While it may not form part of a farmyard complex comprising of a number of buildings this does not in itself de-exempt the structure in question. The rationale behind Condition No. 2 is a requirement that the cumulative gross floor area of farmyard buildings within 100 metres of each other within the farm should not exceed 900 square metres gross floorspace. The building in question in combination with all other buildings within 100 metres would not exceed 900 square metres. There is one other building other than the dwellinghouse within the confines of the site. This is a haybarn located near the entrance of the site and while this building appears to be within 100 metres of the subject shed I estimated it to be less than 250 square metres in size. Therefore, the aggregate gross floor areas of the building within the 10.7 acre site falls well below the 900 square metre threshold as stipulated in Condition No. 2.

3. That no such structure shall be situated within 10 metres of any public road.
The shed at its nearest point is located approximately 140 metres from the nearest public road.
4. No such structure within 100 metres of any public road shall exceed 8 metres in height.
As stated above the structure in question is not located within 100 metres of any public road. Furthermore, at 5.1 metres it does not exceed 8 metres in height.
5. That 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 as may be appropriate the occupier or person in charge thereof.

There is only 1 dwellinghouse located within 100 metres of the subject site, this being the house granted under Reg. Ref. 15/456. The nearest dwellinghouse to the west of the shed in question is located in excess of 100 metres from the shed. Having inspected the documentation on file I note that the dwellinghouse granted planning permission under Reg. Ref. 15/456 is in different ownership from the shed in question. The referral submitted to the Board states the following:

“It should also be noted that another one of our clients, Olivia Smith, of Coolfore, Monasterboice, County Louth received a warning letter (Ref. 17U107) about the shed/store on their lands. Please note that it is the farmer Fergus Neilon who built the shed and it does not relate to the planning application granted (Ref. 15/456) and under construction nearby”.

It appears therefore that the house which is under construction and the shed in question are in separate ownership. It also appears that there is no letter of consent on file which specifically states that Ms. Olivia Smith has specifically given her consent in writing to the shed in question.

It is assumed however that the owner of the said dwellinghouse is fully aware of the issues surrounding the planning status of the shed in question as it was the owner of the house that was originally served with the warning letter. While the referral submitted to the Board indicates that there is compliance with the condition and limitation no. 5 as set out under Class 9, no evidence has been submitted confirming this. Therefore, prior to issuing a declaration on the said question the Board may wish to seek further information confirming that the occupier of the dwelling in question provide consent in writing in respect of the said structure.

It would seem unreasonable in my view to de-exempt the agricultural structure purely because such a letter of consent was not submitted without seeking further information in this regard.

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

It is clear from the photographs attached that the metal sheeting on the structure in question has been painted and therefore fully complies with this stipulation.

9.0 Appropriate Assessment

Having regard to the nature and scale of the proposed development and nature of the receiving environment together with the proximity to the nearest European site, 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 EIA Screening Determination

The development in question does not fall within a class of development for which EIAR is required and as such an Environmental Impact Assessment is not required in this instance.

11.0 Conclusions and Recommendation

Arising from my assessment above I consider that the building in question constitutes an agricultural building on the grounds that it is located within lands accommodating agricultural activity. I further consider that the building in question falls within Part 3, Class 9 of the Exempted Development Regulations under S.I. No. 600/2001 (as amended). I further consider that the structure in question appears to comply with all the conditions and limitations set out under Class 9. I do however note that there is no specific letter of consent in respect of the said structure from the resident of the residential dwelling granted under Reg. Ref. 15/456. With this in mind, the Board may wish to clarify in writing that the occupier of the dwelling in question consents to the structure in question in accordance with the condition and limitations set out under Condition/Limitation 6 of Class 9 prior to issuing a formal declaration in respect of the question before the Board.

In the event that the Board clarify this issue of consent, or indeed come to the conclusion that such a letter is not deemed necessary, and it is satisfied that the development in question fully complies with all other conditions and limitations associated with Class 9, Part 3 Schedule 2, I recommend that the Board should decide this referral in accordance with the following draft order.

WHEREAS a question has arisen as to whether an existing portal framed shed for agricultural use is or is not development or is or is not exempted development.

AND WHEREAS Fergus Neilon requested a declaration on this question from Louth County Council and the Council issued a declaration on the 12th day of April, 2018 stating that the matter was development and was not exempted development.

AND WHEREAS the owner/occupier referred this declaration for review to An Bord Pleanála on 8th day of May, 2018.

AND WHEREAS An Bord Pleanála in considering this referral had particular regard 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) Class 9 of Part 3 of Schedule 2 to the Planning and Development Regulations 2001, as amended and the conditions and limitations attached thereto.

AND WHEREAS An Bord Pleanála concluded that the lands surrounding the building are in agricultural use and the building in question falls within Class 9 of Part 3 of Schedule 2 of the Planning and Development Regulations, 2001, as amended, and the building in question complies with all the conditions and limitations set out under 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 3 of the 2000 Act, hereby decides that the existing portal framed shed for agricultural uses is development and is exempted development.

Paul Caprani,
Senior Planning Inspector.

October 1st, 2018.