



An
Bord
Pleanála

Inspector's Report ABP-301780-18

Question	Whether the temporary open storage of scaffolding and building materials is or is not development or is or is not exempted development.
Location	Tullydonnell Townland, Togher, County Louth
Declaration	
Planning Authority	Louth County Council
Planning Authority Reg. Ref.	S52018/22
Applicant for Declaration	Colm Doyle
Planning Authority Decision	Is development and is not exempted development
Referral	
Referred by	Colm Doyle
Owner/ Occupier	Colm Doyle
Observer(s)	None
Date of Site Inspection	21 st September 2018
Inspector	Niall Haverty

1.0 Site Location and Description

- 1.1. The site to which the referral relates is located in the townland of Tullydonnell, c. 2.5km north west of Togher, and 4km north east of Dunleer in Co. Louth.
- 1.2. The site is located on the western side of the L-2225-20 local road in a rural area where agriculture is the predominant land use. There is also a considerable amount of one-off rural housing ribbon development along local roads in the area.
- 1.3. The site comprises a detached two storey dwelling house with a detached garage to the north. There are a number of large agricultural style buildings and an associated yard area to the north of this. The area between the house and the local road comprises a mix of bare soil and a hardstanding area, with a number of unrendered blockwork pillars. An area immediately to the north west of the vehicular entrance is identified as the area of temporary open storage of scaffolding and building materials, and was in use for that purpose on the date of my site inspection.
- 1.4. In the course of my inspection I also noted the presence of significant quantities of stacked steelwork and other materials within the farmyard area to the west of the abovementioned open storage area, outside of the identified referral site.

2.0 The Question

- 2.1. The referral was made by Mr Colm Doyle and the referral question is formulated as follows:
 - Whether the temporary open storage of scaffolding and miscellaneous building materials is or is not development or is or is not exempted development.

3.0 Planning Authority Declaration

3.1. Declaration

- 3.1.1. The Planning Authority issued a Declaration stating that the temporary open storage of scaffolding and building materials on lands at Tullydonnell Td., Togher, Co. Louth comprises a material change of use of the lands, that it is development and that is not exempted development.

3.2. Planning Authority Reports

3.2.1. The Planning Officer's report can be summarised as follows:

- The existing dwelling and farm buildings appear to be largely in accordance with the planning history in terms of site layout, however it is clear that the development is in non-compliance with conditions pertaining to Reg. Ref. 02/1499.
- The area to the front of the sheds is being used for commercial type storage, i.e. shuttering pans clearly unrelated to the farming activities in breach of Condition No. 1 and the comprehensive planting permitted has not been carried out in breach of Condition No. 6.
- The open storage of scaffolding and builders materials, whether temporary or otherwise, falls within the definition of development set out in Section 3(1) of the PDA in that it involves the material change in use of land beyond what would normally be expected within or adjacent to the curtilage of a house or farmyard.
- It is clear that other parts of the farmyard, albeit outside the confines of this application, are being used for commercial storage purposes.
- The exemption under Section 4(1)(a) does not apply in this instance as the storage of scaffolding and builders materials is a non-agricultural use.
- The exemption under section 4(1)(j) does not apply in this instance as the storage of scaffolding and builders materials is an incidental residential use.
- On its face, Class 16 suggests that it provides for storage of structures, works, plant or machinery in association with exempted development such as the use of land for agricultural activity (Section 4(1)(a)) or maintenance of structures (Section 4(1)(h)) subject to the removal of such structures, works, plant or machinery at the expiration of the period of use.
- As the use of land for agricultural activity, in theory, does not expire nor does the requirement to maintain buildings wane. It is highly unlikely that the legislature intended to provide for 'temporary storage' on such lands in perpetuity.

- Class 16 is provided for under the heading 'Temporary Structures and uses' and Class 16 does not provide for an exemption from the obligation to obtain planning permission for open storage of scaffolding and building materials in an unregulated manner.
- Article 9(1)(a)(i) of the PDR de-exempts development that would normally constitute exempted development under article 6 where the development would contravene a condition attached to a permission or be inconsistent with any use specified in a permission.
- The temporary storage of scaffolding and building materials on the lands is in breach of Condition Nos. 1 and 6 of permission Reg. Ref. 02/1499.
- The open storage of scaffolding and building materials, temporary or otherwise, constitutes a material change of use being development and not exempted development.
- Recommend that application for an exempted development certificate is refused.

3.3. Other Technical Reports

- None.

4.0 Planning History

4.1. Referral Site and Surrounding Area

- 4.1.1. **17U005:** Enforcement file relating to the material change of use of agricultural pasture lands and agricultural yard to provide for the open storage of steel girders, scaffolding and other miscellaneous building materials and equipment and the open storage of forestry equipment and machinery.
- 4.1.2. **Reg. Ref. 051440:** Permission granted for two storey dwellinghouse, domestic garage and associated development.
- 4.1.3. **Reg. Ref. 021500:** Permission granted for two storey farm dwellinghouse, garage and associated development.

4.1.4. **Reg. Ref. 021499:** Permission granted for 1,080 sq m agricultural store, including reduced roof level, landscaping, revised entrance, boundary treatment and associated siteworks. The following conditions are noted:

1. The development hereby approved shall be used exclusively for the purposes of agriculture and no other use including commercial storage, shall be permitted without the prior consent of the Planning Authority given by way of a planning application.

Reason: In the interests of the proper planning and sustainable development of the area and to prevent unauthorised development.

6. Planting as required above to be carried out in the first planting season following commencement of building operations and permanently retained thereafter. Any plant which fails in the first planting season to be replaced.

Reason: To protect the amenity of the area.

4.1.5. **Reg. Ref. 02917:** Permission refused for two storey dwellinghouse, garage and retention of 1,080 sq m agricultural store.

4.1.6. **Reg. Ref. 001230:** Permission granted for retention of general purpose agricultural store.

4.2. **Relevant Board Decisions**

4.2.1. **PL29N.RL3063:** The subject matter of the referral was whether perimeter hoarding, portocabins, fuel tanks, skips, security barriers and deposit of construction material is or is not development or is or is not exempted development. The Board concluded that:

- the lands that are the location of the subject referral do not comprise a development site, as no development consisting of works pursuant to a permission or as exempted development are currently being undertaken on these lands, and the Board is not satisfied, on the basis of the submissions made, that such development is about to be carried out on these lands, and
- the placing of perimeter timber hoarding, portocabins, fuel tanks, skips, security barriers and the deposit of other construction materials, subject to permission granted under planning register reference number 1366/06,

constitutes development, but is not within the scope of Classes 16 and 17, as the lands in question are not a development site.

- 4.2.2. The Board therefore decided that perimeter hoarding, portocabins, fuel tanks, skips, security barriers and deposit of construction material are development and are not exempted development.

5.0 Policy Context

5.1. Louth County Development Plan 2015-2021

- 5.1.1. The referral site is located within a rural area, outside of any designated settlement. The area is, however, located within Development Zone 5, the purpose of which is to “protect and provide for the development of agriculture and sustainable rural communities and to facilitate certain resource based and location specific developments of significant regional or national importance. Critical infrastructure projects of local, regional or national importance will also be considered within this zone”.

5.2. Natural Heritage Designations

- 5.2.1. The referral site is not located within or adjacent to any Natura 2000 sites, Natural Heritage Areas or proposed Natural Heritage Areas. The closest such sites are as follows:

- Dundalk Bay SPA and SAC (Site Codes 004026 and 000455, respectively): 3.3km to the north.
- Stabannan-Braganstown SPA (Site Code 004091): 7.7km to the north west.
- Clogher Head SAC (Site Code 01459): 9.9km to the south east.

- 5.2.2. The sites listed above are also all pNHAs.

6.0 The Referral

6.1. Referrer’s Case

- 6.1.1. The case submitted by the referrer can be summarised as follows:

- The land in question is an agricultural farm yard and remains an agricultural farm yard.
- Temporarily placing necessary scaffolding and materials on the farm yard does not materially change the use of the lands when this material is needed temporarily in connection with maintenance works necessary to maintain the farm buildings.
- Class 16 provides an exemption in respect of the placing of plant or machinery on land on which works are being or are about to be carried out as exempted development needed temporarily in connection with that development.
- Class 16 requires that the associated works are being or are about to be carried out. There is no definition of the term 'about to', however, this may be regarded as meaning commencing imminently.
- The original warning letter was issued in February 2017. From this date, maintenance works have already been carried out to farm buildings to include repair of cladding and cleaning of gutters using the scaffolding.
- The Board is asked to have regard to the necessity to have this type of equipment on site for any farm yard to carry out necessary maintenance works and to avail of an exemption to temporarily store this equipment.
- Otherwise every farm yard in the country has materially changed its use from its agricultural use, which is ludicrous.
- This material has been stored on site from the early 1990s both on-site and in a shed, and used for the construction of farm buildings, grain store sheds in 1998-1999, and construction of the farm house in 2003-2005.
- Now that the material has been moved from one location on site to another location on site it is deemed to be a material change of use, which is incomprehensible.
- The Board is asked to compare a photograph dated 07/03/17 and the extent of stored items in comparison to any site inspection that may occur.

- For the subject development to be exempted under Class 16, the main development has to be authorised by a permission or be exempted development. The development in question consists 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 in accordance with section 4(1)(h) of the PDA.

6.1.2. The referrer also submitted a copy of his original referral to the Planning Authority.

6.2. Planning Authority Response

6.2.1. No further response.

6.3. Further Responses

6.3.1. None.

7.0 Statutory Provisions

7.1. Planning and Development Act 2000, as amended ('the Acts')

7.1.1. Section 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;
- "development" has the meaning assigned to it by section 3, and "develop" shall be construed accordingly;
- "use", in relation to land, does not include 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...

7.1.2. Section 3

- (1) “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.
- (2) For the purposes of subsection (1) and without prejudice to the generality of that subsection—
- (a) where any structure or other land or any tree or other object on land becomes used for the exhibition of advertisements, or
- (b) where land becomes used for any of the following purposes—
- ...
- (iii) the deposit of vehicles whether or not usable for the purpose for which they were constructed or last used, old metal, mining or industrial waste, builders’ waste, rubbish or debris,
- the use of the land shall be taken as having materially changed.

7.1.3. Section 4(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;
- ...
- (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;
- ...

- (j) development consisting of the use of any structure or other land within the curtilage of a house for any purpose incidental to the enjoyment of the house as such;

7.1.4. Section 4(4)

- Notwithstanding paragraphs (a), (i), (ia) and (l) of subsection (1) and any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required.

7.2. **Planning and Development Regulations 2001, as amended**

7.2.1. Article 6(1)

- 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.

7.2.2. Article 9(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—
 - (i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,
 - ...
 - (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,

7.2.3. Schedule 2, Part 1: Exempted Development – Classes of Use

Column 1 Description of Development	Column 2 Conditions and Limitations
<p>CLASS 16</p> <p>The erection, construction or placing on land on, in, over or under which, or on land adjoining which, development consisting of works (other than mining) is being or is about to be, carried out pursuant to a permission under the Act or as exempted development, of structures, works, plant or machinery needed temporarily in connection with that development during the period in which it is being carried out.</p>	<p>Such structures, works, plant or machinery shall be removed at the expiration of the period and the land shall be reinstated save to such extent as may be authorised or required by a permission under the Act.</p>

8.0 Assessment

8.1. Is or is not development

- 8.1.1. The first matter to consider is whether or not the temporary open storage of scaffolding and building materials on the lands in question comprises development. Section 3(1) of the Planning and Development Act 2000, as amended ('the Acts'), states that 'development' means 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.
- 8.1.2. There are two tests for determining whether a material change of use has occurred. Firstly, there must be an actual change in use, and secondly, that change must be material.
- 8.1.3. I note that Section 3(2)(b)(iii) of the Acts states that where land becomes used for, *inter alia*, the deposit of old metal, builders' waste, rubbish or debris, then the use of the land shall be taken as having materially changed. In this instance the referrer contends that the building materials, scaffolding etc. have a purpose, and are

temporarily stored in this location, and therefore this provision of the Acts may not apply.

- 8.1.4. The lands to which the referral relates comprise a house, garage, driveway and the area where the building materials are being stored. The referrer's adjacent farmyard and agricultural buildings are outside of what he has identified as the referral site, but taken together the lands form a residential farm. I noted on my site inspection, however, that there were significant quantities of stacked steelwork elements and other materials located in the referrer's adjacent yard area.
- 8.1.5. With regard to the area that the referrer has identified as the temporary storage area, I noted the presence of metal and timber scaffolding elements, concrete capping stones, pallets, shuttering equipment, piles of gravel and miscellaneous other items.
- 8.1.6. Whilst both residential and agricultural land uses can often entail the storage of limited quantities of materials for the purposes of maintenance and repair works as an ancillary element of the principal land use, in my opinion the nature and scale of the materials stored on the referral site are beyond what could reasonably be considered to comprise ancillary elements of either the permitted residential or agricultural uses of the landholding. In my opinion, the storage area to which the referral relates is more akin to a builder's yard than a residential farm and I therefore consider that a change of use has occurred.
- 8.1.7. With regard to the materiality of this change in use, I consider that the stored materials are unsightly and objectionable, and that their placement in a prominent location plainly visible from the public road has a detrimental impact on the visual amenities and rural character of the area and is thereby contrary to the proper planning and sustainable development of the area. While the use is stated to be temporary, the materials appear to have been present for a number of years, and based on the information submitted by the referrer, there is no indication that he intends to remove these materials within a reasonable time period.
- 8.1.8. Having regard to the abovementioned considerations, I consider that the temporary open storage of scaffolding and miscellaneous building materials on the referral site has resulted in a material change in the use of the lands, and therefore comprises 'development' as defined in the Acts.

8.2. Is or is not exempted development

- 8.2.1. Having established that the open storage of scaffolding and miscellaneous building materials, whether temporary or otherwise, is 'development' as defined by the Acts, it must then be determined whether or not such development constitutes exempted development.
- 8.2.2. The referrer contends that the development comprises exempted development under Class 16 of Schedule 2, Part 1 of the Regulations, and that the materials are being temporarily stored for use in connection with works on the farmyard which he contends comprise exempted development under section 4(1)(h) of the Acts.
- 8.2.3. Section 4(1)(h) states that 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 comprises exempted development. It is of note that only works can be exempted under section 4(1)(h), and not a material change of use, and therefore this exemption cannot be relied upon for the storage of building materials.
- 8.2.4. Considering other subsections within section 4(1), I note that Section 4(1)(a) states that development consisting of the use of any land for the purpose of agriculture comprises exempted development. I do not consider that the storage of scaffolding and building materials falls within the definition of 'agriculture' set out in section 2(1) of the Acts and I do not consider that this provision can be relied upon. Similarly, section 4(1)(j) states that development consisting of the use of land within the curtilage of a house for any purpose incidental to the enjoyment of the house as such comprises exempted development. I do not consider that the storage of scaffolding and building materials is incidental to the enjoyment of the house and therefore this provision cannot be relied upon either.
- 8.2.5. Returning to Class 16, this is one of a number of Classes set out in Schedule 2, Part 1 of the Regulations under the heading 'Temporary structures and uses'. It states that the erection, construction or placing on land of structures, works, plant or machinery can be exempted development in certain circumstances.

8.2.6. Breaking Class 16 into its constituent elements, the required circumstances that must be met are as follows:

1. It must relate to land on which, or on land adjoining which, development consisting of works is being, or is about to be, carried out.
2. The undertaking of said development must be pursuant to a permission under the Act or as exempted development.
3. The structures, works, plant or machinery must be needed temporarily in connection with that development during the period in which it is being carried out.
4. The structures, works, plant or machinery shall be removed at the expiration of this period and the land shall be reinstated save to such extent as may be authorised or required by a permission under the Act.

8.2.7. The referrer states that the material has been stored on-site in various locations since the early 1990s and has been used for the construction of farm buildings, sheds and his house, and in more recent times for the repair of cladding and guttering on the agricultural buildings.

8.2.8. While the scaffolding and building materials may have been utilised for construction and repair/maintenance works on the farmyard in the past, it is clear to me that Class 16 is not intended to facilitate the ongoing storage of structures, works, plant or machinery on the basis that it may be required at some future date in connection with permitted or exempted development. Class 16 relates to the temporary placing of plant or machinery on lands on or adjacent to a development site, that are required to facilitate that development. It only allows such plant or machinery to be kept on the lands during the period in which the development is being carried out, and it requires that the plant or machinery be removed at the expiration of this period and the lands reinstated.

8.2.9. There is no extant planning permission for development on the referral site or the adjacent farmyard and the referrer has failed to identify any specific exempted development that is being, or that is about to be carried out on the lands or adjoining lands that would require a significant quantity of scaffolding and other building materials. On the basis of the information submitted, I do not consider that the lands to which the referral relates comprise a development site or that they adjoin a

development site, and I therefore consider that the open storage of scaffolding and miscellaneous building materials on the subject site would not come within the scope of Class 16 of Schedule 2, Part 1 of the Regulations 2000 Act and that it would not comprise exempted development.

8.3. Restrictions on exempted development

- 8.3.1. Notwithstanding my conclusion that the open storage of scaffolding and miscellaneous building materials on the subject site is development and is not exempted development, I have considered below the issue of 'de-exemptions'.
- 8.3.2. Article 9 of the Regulations sets out a number of restrictions which can de-exempt development that would otherwise constitute exempted development. This includes Article 9(1)(a)(i), where the carrying out of such development would contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act.
- 8.3.3. I note that under planning permission Reg. Ref. 021499, the area where the scaffolding and other materials are being stored was indicated as 'Woodland Area A', with a list of tree species to be planted. Condition 1 of that permission states that "the development hereby approved shall be used exclusively for the purposes of agriculture and no other use including commercial storage, shall be permitted without the prior consent of the Planning Authority given by way of a planning application", while Condition 6 of that permission states that "planting as required above to be carried out in the first planting season following commencement of building operations and permanently retained thereafter. Any plant which fails in the first planting season to be replaced".
- 8.3.4. Having regard to the non-agricultural use of the lands to which the referral relates, and the failure to carry out and permanently retain planting on these lands, I consider that the development would contravene conditions 1 and 6 of planning permission Reg. Ref. 021499, and thus the de-exemption under article 9(1)(a)(i) would apply.
- 8.3.5. A further restriction is set out in section 4(4) of the Acts which states that development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required.
- 8.3.6. **Appropriate Assessment**

8.3.7. Having regard to the nature and scale of the development which relates to the storage of scaffolding and building materials on lands which are adjacent to a house and farmyard and which are not located in or adjacent to any European sites, I do not consider that any Appropriate Assessment issues arise and I do not consider that the development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.3.8. **Environmental Impact Assessment**

8.3.9. Having regard to the nature and scale of the development, the nature of the receiving environment and proximity to the nearest sensitive locations, there is no real likelihood of significant effects on the environment arising from the development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required

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 temporary open storage of scaffolding and miscellaneous building materials is or is not development or is or is not exempted development:

AND WHEREAS Colm Doyle requested a declaration on this question from Louth County Council and the Council issued a declaration on the 4th day of May, 2018 stating that the matter was development and was not exempted development:

AND WHEREAS Colm Doyle referred this declaration for review to An Bord Pleanála on the 31st day of May, 2018:

AND WHEREAS An Bord Pleanála, in considering this referral, had regard particularly to –

- (a) Sections 2(1), 3, 4(1)(a), 4(1)(h), 4(1)(j) and 4(4) of the Planning and Development Act, 2000, as amended,
- (b) Articles 5, 6(1) and 9(1) of the Planning and Development Regulations, 2001, as amended,
- (c) Parts 1 and 4 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (d) the planning history of the site:

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The placing of scaffolding and miscellaneous building materials on the lands that are the subject of the referral constitutes development, being a material change in the use of said lands,
- (b) Class 16 of Schedule 2, Part 1 of the Planning and Development Regulations 2001, as amended, relates to the temporary placing of structures, works, plant or machinery on lands on or adjacent to a development site, during the period in which the development is being carried out. It requires that such items be removed at the expiration of this period and the lands reinstated and as such it does not facilitate ongoing storage on the basis that such items may be required at some future date in connection with permitted or exempted development,
- (c) the lands that are the subject of the referral do not comprise a development site, as no development consisting of works pursuant to a permission or as exempted development are currently being undertaken on these lands that would require the use of the significant quantities of scaffolding and miscellaneous building materials stored thereon, and the Board is not satisfied, on the basis of the submissions made, that such development is about to be carried out on these lands, and
- (d) the placing of scaffolding and miscellaneous building materials on the lands that are the subject of the referral does not come within the

scope of Class 16 of Schedule 2, Part 1 of the Planning and Development Regulations 2001, as amended, as the lands in question are not a development site.

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 temporary open storage of scaffolding and miscellaneous building materials on lands at Tullydonnell Townland, Togher, County Louth is development and is not exempted development.

Niall Haverty
Planning Inspector

20th November 2018