



An
Bord
Pleanála

Inspector's Report ABP-302390-18

Question

Whether an existing agricultural shed of approximately 288 sq.m is or is not development or is or is not exempted development.

Location

Tonroe, Ardrahan, Co. Galway.

Declaration

Planning Authority

Galway County Council

Planning Authority Reg. Ref.

ED 17/52

Applicant for Declaration

Frank Higgins

Planning Authority Decision

Is not exempted development

Referral

Referred by

Frank Higgins.

Owner/ Occupier

Frank Higgins.

Observer(s)

None.

Date of Site Inspection

18th of December 2018

Inspector

Karen Hamilton

1.0 Site Location and Description

1.1. The subject site contains a large shed within the townland of Tonroe, c. 2.5km north of the settlement of Ardrahan, South County Galway. The site is accessed from a local road which radiates off the main R458 and provides access to a dwelling and disused quarry. The shed is 284m² and c.8m high and is part finished with corrugated iron and block brick along the bottom. There is private access, currently fenced off, and an area of hard standing along the front of the site and immediately around the building. The remainder of the site is fenced off from the surrounding rural fields.

2.0 The Question

2.1. Whether an existing agricultural shed of approximately 288m² is or is not development or is or is not exempted development.

3.0 Planning Authority Declaration

3.1. Declaration

Under Section 5(1) of the Planning and Development Act 2000 (as amended),

1. The planning authority considered the proposed shed is DEVELOPMENT and is NOT EXEMPT from the requirement to obtain planning permission under Section 32 of the Planning and Development Acts 2000.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report of the area planner refers to the size and nature of the structure, does not consider the shed is being used for agricultural purposes and therefore cannot be classified as exempt development.

3.2.2. Other Technical Reports

None received.

4.0 Planning History

Enforcement Notice EN10-181

Unauthorised construction of a workshop and storage building and unauthorised use of the building for the storage of machinery/ building materials.

Reg Ref 16/1467

Permission refused for the demolition of an agricultural shed and construction of a dwelling house (212.3m²) and associated site works for reasons including the failure of the applicant to demonstrate sufficient substantial rural need and in the absence of satisfactory evidence of a potable water supply.

Adjoining site.

ABP 301871-18 (Reg Ref 17/1438)

Permission currently before An Bord Pleanála on an adjoining site to the east for the development of an asphalt plant and associated works.

A split decision was issued by Galway County Council to grant permission for the restoration of a previously quarried area (19.26ha) and refuse permission for the development of an asphalt plant and associated works to include the use of an existing weighbridge, wheelwash, toilet (4.14m²), the renovation of an existing staff office (65.76m²), the construction of a material storage and maintenance building (1,120m²) and the erection and operation of the asphalt plant on the former quarry processing/dispatch yard area (2.86 hectares (ha)).

5.0 Policy Context

5.1. Galway County Council Development Plan 2015-2021

The site is located within an area designated as Landscape Sensitivity Class 1 (where Class 1 is the least sensitive).

The site is located within the GTPS (Rural Area Under Strong Urban Pressure).

The site is located within an area designated as Regionally Important Aquifer (RKC) conduit karst aquifer.

5.2. Natural Heritage Designations

The site is located c. 300m to the south of Castletaylor Complex SAC (site code 000242), c.400m to the north of Ardrahan Grassland SAC (site code 002244) and c.1.3km to the east of Kiltiernan Turlough SAC (site code 001285).

6.0 The Referral

6.1. Referrer's Case

The referrer has appeal the decision of the Planning Authority and the issues raised are summarised below:

- The Planning Authority failed to pinpoint the exact reason for refusal for the Section 5 Declaration.
- Section 2 of the Act and reference to “works” has no relevance to this declaration.
- Section 3 of the Act and reference to “development” has no relevance to the declaration. This is a vague reason for refusal.
- Item D of the refusal, Section 4 (1) (h) & (4) in the Act has no relevance to the proposal.
- Item E and reference to Article 6 (1) of the Regulations has no relevance to the proposal.
- There are no other planning permissions on the site and no features of landscape interest.
- There is a large quarry to the east of the site and new motorway bridge to the new M18 to the west.
- There are no appropriate assessment issues on the site or surrounding area.
- The applicant proved in their submission that Class 9 of the Act was relevant and therefore is not unauthorised.

- Class 9 compliance:
 - The shed is for agricultural use and does not exceed 300m² (284m²).
 - The shed is used for storing hay, straw, and feed and agricultural machinery.
 - The structure is located more than 10m from the public road.
 - The structure does not exceed 8m in height.
 - The structure is not situated within 100m of a house or public building.
 - No painted metal sheeting is used for the roofing or other external material.
 - The site is located in a Class 1 Landscape Sensitivity in the Galway County Development Plan (low sensitivity).

6.2. Planning Authority Response

None received.

6.3. Owner/ occupier's response

The owner/ occupier is the referrer.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

Section 2

"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 the land as grazing lands, meadow land, osier land, market gardens and nursery grounds and agricultural shall be constructed accordingly.

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

“*Works*” includes any Act or operation of the construction, excavation, demolition, extension, alteration, repair or renewal.

Section 3

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

(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;

7.2. Planning and Development Regulations, 2001

Article 6 of the Regulations state the following:

(1) Subject to Article 9 the 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 conditions and limitations specified in Column 2 of the Act opposite the mention of that Class in the said Column 1.

(2) Article 9 of the Regulations identifies circumstances by which development under Article 6 shall not be exempted development including:

- (i) Contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act.
- (ii) Consist of or comprise the formation, laying out or material widening of a means of access to a public road the surface carriageway of which exceeds 4 metres in width.
- (iii) Endanger public safety by reason of a traffic hazard or obstruction to road users.

(vi) Interfere with the character of the landscape, or view or prospect of special amenity value or of special interest, the preservation of which is an objective of the Development Plan for the area in which the development is proposed for, pending the variation of a Development Plan or the making of a new Development Plan in the Draft Variation of the Development Plan or the Draft Plan.

Article 9 - Restrictions on Exempt development

(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.

Schedule 2, Part 3: Exempted Development – Rural

Class 9

Works consisting of the provision of any store, barn shed, glasshouse or other structure not being a type specified in Class 6, 7 or 8 of this part of this Schedule and having a gross floor area not exceeding 300m².

Conditions and Limitations

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 floorspace of such structures together with any other such structures situated within the same farmyard complex or complex of such structure are within 100 metres of that complex shall not exceed 900 metres gross floorspace in aggregate.
3. No such structure shall be situated within 10 metres of any public road.
4. No such structure within 100 metres of any public road shall exceed 8 metres in height.

5. No such structure shall be situated within 100 metres of any house (other than the house of the person providing the structure or other residential building or school or 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 the roofing or the external finish of the structure

8.0 Assessment

8.1. Is or is not development

- 8.1.1. The proposed development includes the retention of the use of an existing shed as agricultural namely storing hay, straw, feed and agricultural machinery. The referrer's case states that the use will be for no other purpose other than agriculture, forestry and not used for the housing of animals or the storing of effluent.
- 8.1.2. There is no planning history for the erection of the shed and considering the design of the structure and use of modern materials I do not consider the current building has the benefit of any historic exemption. Therefore, I consider the inclusion of the structure of the shed comes within the scope of this declaration.
- 8.1.3. Section 3 of the Planning and Development Act 2001, as amended (hereafter known as the Act), refers to "development" as 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. I am satisfied that, having regard to the definition of "works" under section 2 and "development" under section 3(1) of the Act, the erection of the shed is development. In addition, considering the use determined by the planning authority, workshop/ commercial, which is further discussed below, a material change of use has occurred on the site.

8.2. Is or is not exempted development

- 8.2.1. The referral has been made by the owner/ occupier of an existing shed which is located within the rural area of Tonroe, south of County Galway. Galway County Council declared the use of the shed to be development and not exempt

development as they determined the use within the shed is not related to agricultural. The planning authority submits that enforcement action is being undertaken in relation to unauthorised development on the site and the report of the planner notes this action as “*Unauthorised constriction of workshop/storage building. Unauthorised use of building for the storage of machinery/ building materials*”.

- 8.2.2. The referrer submits that the declaration issued by the planning authority does not specify the exact reason for not deeming the shed as agricultural and it is argued that the use falls within the terms of Class 9 of the Act, and is not unauthorised.
- 8.2.3. The question for determination refers to the use of the shed as agricultural. Section 2 of the Act includes a definition of “agriculture” which involves 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 the land as grazing lands, meadow land, osier land, market gardens and nursery grounds. The referrer argues the use of the shed is for the storage of hay, straw, feed and agricultural machinery. The contents of the shed where not accessible during site inspection as access into the site was restricted and there was no activity during inspection.
- 8.2.4. Section 4 (1) (a) refers to the exempted development for buildings associated for the purposes of agricultural or forestry as being occupied together with land so used for agriculture or forestry.
- 8.2.5. Class 9 of Schedule 2, Part 3, exempted development, allows works of the provision of any store barn, shed or glasshouse or structure, for agriculture or forestry, not exceeding 300m² subject to conditions and limitations. I note the location of the shed is isolated from any agricultural activity and the site location map does not include any agricultural lands which are within the ownership of the referrer. The definition of agriculture, as per the Act, refers to the activity on the lands and in my opinion any such buildings permitted for agricultural are to be linked to an agricultural activity and I do not consider it cannot be assumed that a shed within the rural area is intrinsically linked to agricultural activity, as defined above in the Act.

- 8.2.6. Having regard to the location of the building in isolation of any agricultural activity, I consider the applicant has failed to justify the necessity for the use of the building for any agricultural activity.
- 8.2.7. As stated above, I do not consider the use of the shed is linked to any agricultural activity, although should the Board consider it falls within the scope of Class 9, the conditions and limitations associated with this class must be observed. The size of the shed is within the 300m² upper limit and is less than 8m² in height. The location of the shed is more than 10m from any public road and over 100 m from a house or other public building. Limitation no. 6 states that “no unpainted metal sheeting shall be used for roofing or the external finish of the structure” and it is of note that the exterior of the shed is finished with corrugated iron. Therefore, the size, scale and location of the shed are within the remaining condition and limitations of Class 9.
- 8.2.8. Having regard to the absence of any evidence that the use of the shed is linked to any agricultural activity I do not consider the proposed development falls within the scope of Class 9 of Schedule 2, Part 3 of the Regulations and is therefore not exempted development.

9.0 **Appropriate Assessment**

- 9.1. The site is located c.300m to the south of Castletaylor Complex SAC (site code 000242), c.400m to the north of Ardrahan Grassland SAC (site code 002244) and c.1.3km to the east of Kiltiernan Turlough SAC (site code 001285).
- 9.2. Castletaylor Complex SAC features of interest include Turloughs (3180) heaths (4060) and grasslands (6210) and Limestone Pavements (8240), Ardrahan Grasslands SAC includes the same habitats aside from the Turloughs and Kiltiernan Turlough SAC only includes Turloughs as feature of interest. I consider those features of interest of these European Sites within the vicinity of the site are water sensitive and susceptible to negative impacts from changes in hydrological activities particularly groundwater changes.
- 9.3. The groundwater vulnerability (GSI groundwater data) of x, rock at or near surface or Karst, the proposed development does not include any water or waste water connection and a previous proposal for a dwelling (Reg Ref 16/1467) was refused by the Council for two reasons of which one related to absence of any satisfactory

evidence of a potable water supply. The referrer states that the use of the shed is for the storage of agricultural machinery and dry hay. I consider both the use detailed in the council enforcement notice (workshop and storage building) and any proposed agricultural use (storage of machinery/ dry hay etc.) would necessitates the incorporation of proposals to treat waste water and surface water.

- 9.4. Having regard to the vulnerable groundwater conditions on the site, the proximity of the site from European Sites, namely Castletaylor Complex SAC (site code 000242), Ardrahan Grassland SAC (site code 002244) and Kiltiernan Turlough SAC (site code 001285), and in the absence of sufficient information on the proposed treatment of water, including surface water, on the site I do not consider an assessment of the impact of the proposed development on the conservation objectives of those European sites in the vicinity can be undertaken.
- 9.5. Article 9 (1) (a) (viiB) of the Regulations includes a restriction on exempt development where An Bord Pleanála “*would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site*”. Therefore, I do not consider the proposed development is exempt development.

10.0 Recommendation

- 10.1. I recommend that the Board should decide this referral in accordance with the following draft order.

WHEREAS a question has arisen as to whether an existing agricultural shed of approximately 288m² is or is not development or is or is not exempted development:

AND WHEREAS Mr Frank Higgins requested a declaration on this question from Galway County Council and the Council issued a declaration on the 31st day of July, 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 22nd day of August, 2018:

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

- (a) Section 2 of the Planning and Development Act, 2000, as amended,
- (b) Section 3(1) of the Planning and Development Act, 2000, as amended,
- (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) Parts 3 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (f) the planning history of the site,
- (g) the pattern of development in the area:

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The proposed development was not linked to any agricultural activity and therefore could not be considered within the scope of Class 9, Parts 3 of Schedule 2 to the Planning and Development Regulations, 2001, as amended.
- (b) The proposed development could not be screening for appropriate assessment and therefore it could not be concluded that there would not be a negative impact on the conservation objectives of any European site within the immediate vicinity.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3) (a) of the 2000 Act, hereby decides that the use of the shed is development and is not exempted development.

Karen Hamilton
Planning Inspector

07th of January 2019