



An
Bord
Pleanála

Inspector's Report ABP-302517-18

Question

Whether the construction of a 200sq.m horse stables is or is not development or is or is not exempted development.

Location

Cushinstown, Co. Meath

Declaration

Planning Authority

Meath County Council

Planning Authority Reg. Ref.

AA/S51823

Applicant for Declaration

Mark Watkins

Planning Authority Decision

Is development and is not exempted development

Referral

Referred by

Mark Watkins

Owner/ Occupier

Owner

Observer(s)

None

Date of Site Inspection

7th of December 2018

Inspector

Angela Brereton

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1.0 Site Location and Description

- 1.1. The subject site is located in the townland of Cushinstown, Co. Meath approximately 9km north-west of Ashbourne. The landholding and site is on the western side of the N2. It is to the north of the junction with the R152 (Duleek road). There is an existing on site agricultural entrance further to the south of the location for the stables. There is a dormer bungalow on the opposite side of the road and a single storey dwelling to the south of the landholding. The site is located in an area of moderate landscape sensitivity and high character value in the Central Lowlands.
- 1.2. The structure for the stables building has been partially erected on site. There were horses seen on site in their jackets on the day of the December site visit. There is a dense deciduous hedgerow along the roadside boundary which provides screening.

2.0 The Question

- 2.1. Whether the construction of a 200sq.m horse stables is or is not development or is or is not exempted development.

3.0 Referral to the Council

- 3.1.1. Manahan Planners Town Planning Consultants were requested by Mark Watkins to lodge a new Section 5 application to seek clarification in relation to the building of a stables on his lands at Cushinstown, Co. Meath. As the details provided in their Referral to the Council are relatively similar to that to the Board it is considered further in this context below.

4.0 Planning Authority Declaration

4.1. Declaration

The Council's Declaration provided that the erection of a 200sq.m horse stables is development is not exempted development.

4.2. **Planning Authority Reports**

Planner's Report

This has regard to the location of the site and to the Planning History and Relevant Legislation.

- They provide that the proposed development is essentially the same as that previously refused in AAS51814 and the reasons are still valid.
- While the location of the stables has been slightly changed, access is still via the N2.
- They consider the development is not exempt having regard to section 9(1)(iii) and (vi) of the Planning and Development Regulations 2001-2017. This is on the basis that the proposed development would intensify traffic movements onto a non-recessed access from the N2 which would endanger public safety by creation of a traffic hazard and would be out of character with the area which would interfere with the visual amenity and character of the landscape.

They recommended that an Exemption Certificate be refused for the following reason:

1. The proposed development taken in conjunction with the existing exempted agricultural use on the site would lead to an over intensification of traffic movements onto a non-recessed access from the N2 National Primary Road which would endanger public safety by way of traffic hazard.
2. The location of the proposed developments is out of character with the area and it is considered that same would interfere with the character of the landscape and injure the visual amenity of the area.

4.3. **Other Technical Reports**

Transportation Office

They recommended refusal and were concerned that the proposal would generate additional traffic on the N2, would endanger traffic safety by reason of traffic hazard

and would be contrary to planning policy in the Meath CDP and the Spatial Planning and National Road guidelines 2012.

5.0 Planning History

The Planner's Report includes regard to the following history relative to Referrals on the subject site:

- Ref. AAS51814 – Exemption Certificate refused to Mark Watkins for the construction of a 200sq.m horse stables. The reasons for refusal were as follows:
 1. The proposed development taken in conjunction with the existing exempted agricultural use on the site would lead to an over intensification of traffic movements onto a non-recessed access from the N2 National Primary Road which would endanger public safety by creation of a traffic hazard.
 2. The location of the proposed development is out of character with the area and it is considered that same would interfere with the character of the landscape and injure the visual amenity of the area.
- AAS51746 – Exemption Certificate granted to Mark Watkins for an agricultural poly-tunnel of 93sq.m on agricultural lands.

6.0 Policy Context

6.1. Meath County Development Plan 2013-2019

Section 2.2 refers to the Strategic Planning Approach.

Core Principle 8: *To support agriculture and agricultural related development in Meath and strengthen the county as a hub for the vibrant agricultural and food sectors.*

Section 4.4 notes the importance of and seeks to support the agricultural sector. This encourages economic development to meet the needs of rural areas whilst recognising their environmental character.

Chapter 10 refers to Rural Development and Rural Development Strategic Objectives RUR DEV SO7 and SO8 refer.

Section 10.8 to Agriculture and Section 10.8.1 notes the importance of the equine industry both economically in Meath.

Section 10.9 refers to Agricultural Buildings

Section 11.13.1 refers to the sustainability of Agricultural Buildings & Structures. This has regard to design and materials to minimise visual obtrusion and notes that particular attention should be paid to developments in sensitive landscapes as identified in the Landscape Character Assessment (LCA – Appendix 7 refers). Also, that developments shall comply with the Good Agricultural Practices Regulations.

Section 10.16.1 refers to restricting access to National Primary and National Secondary Routes. Policies RD POL 37 and 38 apply.

6.2. **Spatial Planning and National Roads Guidelines 2012**

These guidelines were issued under Section 28 of the Planning and Development Act 2000(as amended) by the Department of Environment, Community and Local Government in January 2012.

Section 2.5 includes reference to:

Lands adjoining National Roads to which speed limits greater than 60 kmh

apply: *The policy of the planning authority will be to avoid the creation of any additional access point from new development or the generation of increased traffic from existing accesses to national roads to which speed limits greater than 60 kmh apply. This provision applies to all categories of development, including individual houses in rural areas, regardless of the housing circumstances of the applicant.*

7.0 **The Referral**

7.1. **Referrer's Case**

- 7.1.1. Manahan Planners Town Planning Consultants has submitted a Referral on behalf of Mark Watkins under Section 5 to the Board relative to the Council's Declaration. This

reference is in respect of a building of stables on his lands at Cushinstown, Co. Meath. This includes the following:

- The previous application Reg. Ref. AAS51814 was for a somewhat different development. A decision was made by the Planning Authority on the 5th of June 2018 that the proposed development required permission.
- The Planner's Report then noted: *The proposed development of a horse stables at this location would lead to an over-intensification of traffic movements on the N2 National Primary Road which would endanger public safety by creation of a traffic hazard and would interfere with the visual amenity and character of the area.*
- They are now revising the siting for the stable block and seek to address the two limiting issues raised.

Traffic Hazard

- While it is agreed that there is a need to avoid over intensification of traffic movements they do not consider that this limitation reason applicable in this case.
- They note the historical use of these lands for holding livestock over the past 100years and that a Herd Licence is in place. There are cattle handling facilities located at the main gate along the N2 and the access to and from these lands has been used for the past 50 years without any issues.
- There are residential properties in the vicinity that have access off this road.
- The existing entrance is opposite a paved entrance to a field/farm.
- The applicants entrance should not be considered a traffic hazard if the same traffic considerations exists across the road and along the road.
- The frequency of visits is likely to be a minimum of 3per day and more in winter. There is a necessary for surveillance and a duty to comply with the Regulations to ensure that the health and welfare of the animal's needs. This is a non-residential farm whereby random visitation/passive surveillance is not possible.

- By constructing the stables the applicant hopes to visit the animals less and they will be in warm dry conditions.
- The Department of Agriculture has advised the applicant to provide shelter for the animals should they get sick and a stable to recover. This also applies in cold/wet periods which are expected to worsen due to climate change.
- There will be no over intensification of traffic movements as a consequence of this building, in fact the reverse maybe true.

Visual Alteration to the Landscape

- The topography is undulating and the stables are to be located down slope from the road and the existing hedgerow and should not be visible from the public road.
- They include some images to show the reduction in impact and distance from the road and they consider that a stable block will be seen as part of the rural landscape.
- The materials used to construct the stables are in keeping with the rural character of the area.
- They consider that this second application to move the stables further away from the road, down the slope in the field will ensure that the proposal will not interfere with the visual amenity or alter the character of the landscape.
- Based on the revised location for the Stable building, they are re-applying for a Section 5 Exempted Development Certificate.

Assessment of Current Proposal

They also provide an assessment of the amended proposal against the 7 conditions of Schedule 3, Part 3, Class 6. This is referred to in the context of the Assessment below.

7.2. Planning Authority Response

There is no response from the Planning Authority to the Referral to the Board.

8.0 Statutory Provisions

In order to assess whether or not the activity constitutes development that is exempted development, regard must be had to the following items of legislation:

8.1. Planning and Development Act, 2000

Under 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;

Under Section 2(1), the following is the interpretation of 'works':

"...includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal..."

'unauthorised development' includes the "carrying out of unauthorised works (including the construction, erection or making of any unauthorised structure) or the making of any unauthorised use."

'unauthorised works' means any works on, in over or under land commenced on or after the 1st of October 1964, being development other than –

(a) Exempted development (within the meaning of section 4 of the Act of 1963) or section 4 of this Act, or.....

Section 3 (1) states as follows:

"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(1) of the Act states that the following shall be exempted developments for the purposes of this Act:

Section 4(1)(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;

Section 4 (2)(a) of the Act enables certain classes of development to be deemed exempted development by way of regulation.

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

Article 6 (1) provides: Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.

Article 9 (1) provides: 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.

(ii) consist of or comprise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width,

(iii) endanger public safety by reason of traffic hazard or obstruction of road users,

(vi) interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of a development plan for the area in which the development is proposed or, 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 development plan,

(viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use.

Article 6(3) of the Regulations states that: Subject to article 9, in areas other than a city, 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 (No. 7 of 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 1.

SCHEDULE 2

Part 1 relates to Exempted Development - General

Part 3 relates to Exempted Development – Rural.

Class 6 of Part 3 provides exemptions for Agricultural Structures.

<p>Works consisting of the provision of a roofed structure for the housing of cattle, sheep, goats, donkeys, horses, deer or rabbits, having a gross floor space not exceeding 200 square metres (whether or not by extension of an existing structure), and any ancillary provision for effluent storage.</p>	<ol style="list-style-type: none"> 1. No such structure shall be used for any purpose other than the purpose of agriculture. 2. The gross floor space of such structure together with any other such structures situated within the same farmyard complex or within 100 metres of that complex shall not exceed 300 square metres gross floor space in aggregate. 3. Effluent storage facilities adequate to serve the structure having regard to its size, use and location shall be constructed in line with Department of Agriculture, Food and Rural Development and Department of the Environment and Local Government requirements and shall have regard to the need to avoid water pollution. 4. No such structure shall be situated, and no effluent from such structure shall be stored, within 10 metres of any public road. 5. No such structure within 100 metres of any public road shall exceed 8 metres in height. 6. No such structure shall be situated, and no effluent from such structure shall be stored, within 100 metres of any house (other than the house of the person providing the structure) or other residential building or school, hospital, church or building used for public assembly, save with the consent in writing of the owner and, as may be appropriate, the occupier or person
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	<p>in charge thereof.</p> <p>7. No unpainted metal sheeting shall be used for roofing or on the external finish of the structure.</p>
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Class 9 provides the exemptions for Agricultural Structures i.e.

Works consisting of the provision of any store, barn, shed, glass-house or other structure, not being of a type specified in class 6, 7 or 8 of this Part of this Schedule, and having a gross floor space not exceeding 300 square metres.

While Class 9 allows for a greater floor area it does not allow for the housing of animals or the storing of effluent. Therefore Class 6 is the relevant class.

9.0 Assessment

The Question has been noted above i.e: *Whether the construction of 200sq.m horse stables is or is not development or is or is not exempted development.* Having regard to this point of Referral and having regard to the arguments set out above and having inspected the site and reviewed all the documents on file, the following is my assessment of the case:

9.1.1. (i) - Is or is not development

The first matter relates to whether or not the works comprises development. Having regard to sections 2 and 3 of the Planning and Development Act 2000, I consider that the erection of an agricultural shed c.200sq.m constitutes 'development' within the meaning of the Act, being the carrying on of an act of construction (i.e. 'works') on land. I note that this is not disputed by the parties.

9.1.2. I also consider that the access to this stables via the existing agricultural access from the N2 constitutes development within the meaning of the Act, being the carrying on of an act of 'works' on land. I note that this is not disputed by the parties.

9.1.3. (i) - Is or is not exempted development – Stables

The use of buildings for agricultural development are classified as exempt development in accordance with the provisions of Section 4(1)(a) of the Act subject to any limitations which the Minister may prescribe by Regulation in accordance with Section 4(2)(a) of the Act.

- 9.1.4. Article 6(3) of the Planning and Development Regulations, 2001 as amended sets out the classes of exempted rural development and the particular type of rural development which is the subject of this referral relates to Class 6 (Schedule 2, Part 3 Exempted Development – Rural). The restrictions on exemption relative to the subject agricultural storage shed are briefly commented on below.

9.2. Restrictions on exempted development

- 9.2.1. The structure in question according to the information submitted, is to be used as a stables for horses and the g.f.a is given as 200sq.m. Therefore, it is not proposed that the development will exceed the maximum 200sq.m threshold as per the Class 6 Rural Exemption. It is noted that a polytunnel has been erected on site as exempt development Ref. AA/S51746 refers. While on site I noted that the skeleton of the stables had been erected. However, such is currently unauthorised and it is of note that enforcement is not within the remit of the Board and is more appropriately dealt with by the Council.
- 9.2.2. The Referrer seeks to address each of the exemptions in Class 6 and his response to each of the 7 items is as follows:
1. The applicant has stated on the application form that the application relates to the construction of a horse stables.
 2. There is an agricultural poly-tunnel measuring 93sq.m located approx. 52m south of the proposed location of the horse stables within the red line boundary. However, it is noted that a poly-tunnel falls under a different Class (Class 9, Part 3, Schedule 2).
 3. The applicant has not included information regarding effluent storage facilities to serve the structure.
 4. The proposed structure is located more than 10m from the road.
 5. The proposed structure measures 5.59m in height.

6. The closest dwelling is located c.104m east of the proposed structure.

7. The applicant is proposing to use timber cladding and sheet/tile roof. The applicant has not indicated the colour of the sheet metal to be used.

9.2.3. The Referrer provides that on the basis of the above, the development constitutes development and falls within the criteria set down in Schedule 2, Part 3, Class 6 of the Planning and Development Regulations 2001-2017. They believe that the proposal does not constitute traffic hazard nor would be seriously injurious to the visual amenities of the area for the Reasons set out in this Referral. They ask the Board to determine that the building the subject of this reference is Exempted Development.

9.3. Concerns regarding Exemption

9.3.1. However, it must be noted that the Council considered that the reasons for refusal issued under the previous Referral Declaration Ref. AAS51814 are still valid. The location of the stables has been slightly altered on site (by 12m approx.) the proposed development is essentially the same as that submitted under the previous Referral. The main issue of concern is that access is proposed off the N2 National Primary Road. While it has not been clarified presumably the existing non-recessed agricultural entrance would be used. This is a very fast and busy section of the N2, it has not been demonstrated that there are adequate sightlines. Stopping/pulling in on the hard shoulder appears hazardous with several trucks passing and other vehicles passing at speed.

9.3.2. The Council's Transportation Section's concerns have been noted. They are concerned that the proposal would generate additional traffic on the N2 strategic primary route which already operates near capacity. They recommended that it be refused as it contravenes the requirements of the Meath CDP (Section 10.16) and the Spatial Planning and National Road guidelines (Section 2.5) published by the DoECLG (Jan 2012). Regard is also had to Policy RD POL 37 of the said Plan which seeks: *To ensure that future development affecting national primary or secondary roads, shall be assessed in accordance with the guidance given in the document 'Spatial Planning and National Roads - Guidelines for Planning Authorities'*. Also to Policy RD POL 38 which seeks: *To ensure that all development accessing off the*

county's road network is at a location and carried out in a manner which would not endanger public safety by way of traffic hazard.

- 9.3.3. It is of note that this is a Referral made under Section 5 (3)(a) of the Planning and Development Act 2001 as amended. The issue in a referral is not whether a development is recommended for permission or refusal. Rather whether it is development and is exempted development i.e that planning permission would not be required.
- 9.3.4. In this case it is considered that the Referrer has demonstrated that the stables would fit into Class 6, Part 3, Schedule 2 of the Planning and Development Regulations 2001 (as amended). I would also consider that in view of the proposed revised siting, the topography of the site and the dense hedgerow along the roadside boundary it will not impact adversely on the visual amenity or character of the area. However, in view of the concerns with potential traffic hazard relative to the use of the access to/from the busy N2 as outlined in the Council's Transportation Section's comments and as seen on site, it is considered that it would fall within the Restrictions on Exemption provided for in Article 9(1)(iii) of the said Regulations i.e: *endanger public safety by reason of traffic hazard or obstruction of road users.* In this case if this proposal is to be pursued, there would be a need to apply for planning permission to demonstrate that this would not be the case and therefore it cannot be deemed exempted development.

9.4. **Regard to Precedent Cases**

- 9.4.1. While not of particular relevance to the subject case, regard is had to previous Board conclusions/determinations relative to agricultural buildings/stables. In Ref. RL17.RL2855 – A Question arose as to whether the construction of buildings, including stables, exercise area for training of horses and road/ways, and associated development on lands within the Brú Na Boinne World Heritage Site in Knowth Townland, County Meath is or is not development or is or is not exempted development. The Board concluded that the stables building, sand arena and roadway constitutes development, which would generally come within the exempted development provisions as set out in Classes 6 and 10 of Part 3 and Class 13 of Part 1 of the Second Schedule of the said Regulations. However, the said development interfered with the character of the landscape, the preservation of which is an

objective of the development plan for the area. Furthermore, the development involved that excavation of a site of archaeological interest, the preservation of which is an objective in the development plan. They decided that this is development and is not exempted development.

- 9.4.2. In Ref. 05D. RL2876 – A Question arose as to whether the construction of an agricultural shed within 12m from the edge of the National Primary Road (N13) at Dooballagh, Letterkenny, County Donegal is or is not exempted development. The Board concluded that the development would normally come within the scope of Class 6 of Part 3 of the Second Schedule of the Planning and Development Regulations 2001, however they were concerned at the lack of set back from the N13 and provided that the restriction on exempted development in Article 9(1)(a)(iv) of the Planning and Development Regulations, 2001 therefore applies. Note it would appear that this should have read Article 9(1)(a)(iii) which refers to traffic hazard rather than 9(1)(a)(iv) which is an exemption class relevant to domestic porches.
- 9.4.3. In Ref. 11. RL3074 – A Question arose as to whether works comprising the construction of agricultural stables at Derrycloney, Mountmellick, County Laois is or is not development or is or is not exempted development. The Board concluded that the proposed development would be likely to have a significant effect on the integrity of a Natura site and therefore requires an Appropriate Assessment and comes within the scope of Sections 4(4) and 34(12) of the Planning and Development Act 2000, as amended.
- 9.4.4. While regard is had to these cases as they show a variety of restrictions on exemption and in particular relative to that provided in Class 6, Part 3 of Schedule 2, they nevertheless raise different issues and refer to different forms of development. Each case is considered on its merits and regard must be had to the issue of traffic hazard relative to the location of the subject site with access to the N2.

9.5. **Screening for Appropriate Assessment**

- 9.5.1. This has not been presented as a particular issue in this referral. Screening for AA has not been carried out by the Referrer or the Council. Regard has been had to Map Data in the National Parks and Wildlife Service and this shows that there are no Natura 2000 sites within 10kms of the subject site.

9.5.2. Having regard to the nature and scale of the proposed development and/or nature of the receiving environment and the distance 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.

9.6. **Screening for Environmental Impact Assessment**

9.6.1. Having regard to the nature the proposed development as horse stables and taking into account, the capacity of the soils on site to accommodate wastewater and the distance of the site from nearby sensitive receptors, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

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 the construction of 200sq.m horse stables at Cushinstown, Co. Meath is or is not development or is or is not exempted development:

AND WHEREAS Mark Watkins requested a declaration on this question from Meath Council and the Council issued a declaration on the 24th day of August, 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 5th day of September, 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(1) of the Planning and Development Act, 2000,
- (c) Section 4(1)(a) of the Planning and Development Act, 2000, as amended,
- (d) article 6(1) and 6(3) and article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (e) Parts 1 and 3 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (f) the planning history of the site and landholding,
- (g) the location of the site proximate and with access onto the N2 National Primary Route.

AND WHEREAS An Bord Pleanála has concluded that:

- (a) the works constitute development, being works which come within the scope of section 3(1) of the Planning and Development Act 2000 as amended;
- (b) the development would normally come within the scope of Class 6 of Part 3 of the Second Schedule of the Planning and Development Regulations 2001;
- (c) however, Section 10.16.1 of the Meath County Development Plan 2013-2019 restricts access or the generation of increased traffic from existing accesses to national roads to which speed limits greater than 60kmh apply. It has also not been shown to comply with Policies RD POL 37 or RD PO 38 of the said Plan and Section 2.5 of the Department of the Environment, Community and Local Government ‘Spatial Planning and National Roads – Guidelines for Planning Authorities’ 2012. These guidelines are issued under section 28 of the Planning and Development Act 2000 (as

amended).

- (d) It has not been demonstrated that the development of the stables with access from the N2 National Primary Route would not increase traffic generation or cause traffic hazard at a point where maximum speed applies. Therefore, the exemptions provided in Class 6 of Part 3, Schedule 2 do not apply.
- (e) The works would come within the restrictions on exempted development contained in Article 9(1)(a)(iii) of the Planning and Development Regulations 2001 (as amended) in view of the concerns raised relative to public safety and traffic hazard on the N2, National Primary Route.

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 construction of 200sq.m horse stables at Cushinstown, Co. Meath is development and is not exempted development.

Angela Brereton
Planning Inspector

10th of December 2018