



An
Bord
Pleanála

Inspector's Report ABP 302612-18

Question

Whether or not the erection of an agricultural structure is or is not exempted development.

Location

Newcastle Farm, Newcastle, Co. Wicklow.

Declaration

Planning Authority

Wicklow Co. Council

Planning Authority Reg. Ref.

Ex41/18

Applicant for Declaration

Gildas O'Laoire

Planning Authority Decision

Is development but is not exempted development

Referral

Referred by

Gildas O'Laoire

Owner/ Occupier

Gildas O'Laoire

Date of Site Inspection

18/12/2018

Inspector

Siobhan Carroll

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1.0 Site Location and Description

- 1.1. Newcastle Farm is situated circa 0.9km to the south-west of Newcastle, Co. Wicklow. The property comprising an overall landholding of circa 1.2 hectares. It is located on the western side of Church Lane circa 1.1km to the south of the junction between Church Lane and the L5051.
- 1.2. The subject agricultural building is served by a gated vehicular access off Church Lane. It is set back 135m from Church Lane and served by a tarmacked access road. It is constructed within the site of a former quarry. There is a pond circa 60m to the south and the landholding adjoins a forested area to the south and west.
- 1.3. There are two dwellings circa 150m to the west of the subject agricultural building. To the south-east there are four dwellings. The closest dwelling is located 88m to the south-east.

2.0 The Question

- 2.1. Whether or not the erection of an agricultural structure is or is not exempted development.

3.0 Planning Authority Declaration

3.1. Declaration

Wicklow County Council issued a declaration under Section 5 of the Planning and Development Act 2000, on the 23rd day of August, 2018 stating that the Planning Authority considers that the erection of an agricultural structure is development but is not exempted development.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The Planning Authority noted that the gross floor area of the shed is 293sq m and that the height of the building is 5.47m.

- The Planning Authority determined that the construction of the 293sq m would come with the definition of works and therefore constitutes development as set out under Section 3 of the Planning and Development Act 2000 (as amended).
- Schedule 2 of the Planning and Development Regulations 2001 (amended), provides for Exempted Development, Class 9 refers to Rural Development. In order to avail of this exemption it must be shown that the shed will be used for agriculture and that it is clearly part of an agricultural holding/enterprise/farm.
- An Bord Pleanála referral case RL3205 is cited where the Inspector stated *'the exemption in class 9 should not be extended to any shed that is outside a town and less than 300sq m unless the shed's use for exclusively agricultural purposes is consistent with its form and location'*
- The overall landholding in this instance associated with the shed is 1.2 hectares and no evidence was submitted to indicate that the shed is in use for agricultural purposes. The site given it's size and characteristics does not form part of an agricultural holding.
- It was concluded that the structure would not accord with the description/limitation 1 of Class 9 and that it would not accord with limitation 5 of Class 9 as the structure is located within 88m of an existing dwelling to the south-east which would breach the limit of 100m
- Therefore the Planning Authority determined that the shed is development and is not exempted development.

4.0 Planning History

Section 5 Referral Ref No: 60/14 – The Planning Authority determined that the acceptance of engineering grade material to improve substandard ground is development but is not exempted development. The subject lands refers to an area within the landholding to the south of the subject agricultural structure.

5.0 Policy Context

5.1. Development Plan

The operative development plan is the Wicklow County Development Plan 2016 – 2022.

- Chapter 5 – Economic Development
- Section 5.6 refers to Wicklow's Rural Economy

6.0 The Referral

6.1. Referrer's Case

- The nature of the proposed development is apiculture. The referrer Mr. Gildas O'Laoire bought the landholding and the subject shed to develop a beekeeping business and pollination service. He purchased the property in July 2017. It is stated that the agricultural shed was constructed by the vendor in 2014. As part of the sale his solicitor was provided with a certificate of exemption under Class 9 development.
- It is accepted that no evidence of the agricultural use of the shed was included with the Section 5 application submitted to the Planning Authority. It is submitted that the agricultural activity planned for the building and the surrounding land and forestry is beekeeping and its related products and processes.
- Mr. O'Laoire states that he produces honey, hives and bee colonies for sale. Summer 2018 is the first active summer since he purchased the property including the shed in 2017.
- Regarding the use of the agricultural building, it is planned to create spaces for the extraction and storage of produce, to keep records and provide for general administration. A work space will be provided for the making, maintaining and storage of hives and equipment. Beehives and equipment are currently being made on site and the "honey kitchen" for the extraction and bottling is currently under construction.

- The operation of the business is guided by the principles and best practices as set out in the document prepared by Teagasc “Profitable Beekeeping” and other relevant Department of Agriculture documents.
- The adherence to this guidance is necessary in order to obtain licences and be eligible for grants and supports from the Department of Agriculture. It is planned to have the facilities in place to Department of Agriculture standards by spring 2019. Mr. O’Laoire states that it is also planned to develop the agritourism side of the business.
- The five year plan for the business is to have a total of 60 active hives on the landholding by 2023. It is planned that 5 bee colonies would be in place by spring 2019 with a total of 10 by autumn 2019. A programme of bee friendly planting has taken place including trees and a wild flower meadow. The farm adjoins broad leaf forestry which provides a good location for the bees to forage.
- Regarding the matter of the proximity of the agricultural shed to the nearest dwelling, and it being less than 100m, the referrer states that the building was in place when he purchased the lands. He was furnished with a certificate of compliance from the vendor.
- The nearest house is not visible from the building and due to the topography of the area it is difficult to judge the distance. The subject agricultural shed is built in a quarry which is 1.8m below the surrounding fields and is therefore not visible from the surrounding dwellings or road.
- The furthest distance between the shed and the dwelling is 96.57m and the closest distance is 88.63m as indicated on Google Earth.
- The breach in distance is considered minor and it is reiterated that as the building was in situ when Mr. O’Laoire bought the landholding, that therefore it was not made by him.
- In the absence of the declaration of exemption Mr. O’Laoire Mr. O’Laoire states that he is unable to apply for an Irish Water supply and obtain insurance for the building. These matters are essential for the apiculture business to be successful.

- Mr. O'Laoire requests that the minor nature of the breach be taken into consideration in determining the referral.

6.2. Planning Authority Response

- None received

7.0 Statutory Provisions

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

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 a use which is a material change in use of any structure or other land and 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.....

(b) development which is the subject of a permission granted under Part IV of the Act of 1963 or under section 34 of this Act, being a permission which has not been revoked, and which is carried out in compliance with that permission or any conditions to which that permission is subject'

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

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

Article 6 (1) states as follows:

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) (a) sets out the instances where 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 and (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,

Schedule 2

Part 3 – Exempted Development – Rural

CLASS 9 provides the exemptions for Agricultural Structures

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. (Class 6 refers to structures for the housing of cattle, sheep, goats, donkeys, horses, deer or rabbits; Class 7 refers to structures for the housing of pigs and Class 8 refers to the provision of roofless cubicles, open loose yards, self-feed silo or silage areas, feeding aprons, assembly yards, milking parlours or structures for the making or storage of silage or any other structures of a similar character)

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 floor space of such structures together with any other such structures situated within the same farmyard complex or complex of such structures or within 100 metres of that complex shall not exceed 900 square metres gross floor space 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, 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. Is or is not development

- 8.1.1. Development is defined under Section 3(1) of the Planning and Development Act, 2000 (as amended) 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'*. Works is defined under Section 2(1) of the Act *"...includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal..."*
- 8.1.2. Therefore, having regard to Sections 2(1) and 3(1) of the Planning and Development Act 2000 (as amended) it is considered that the erection of an agricultural building would constitute development under the above provisions of the Act.

8.2. Is or is not exempted development

- 8.2.1. The development which is the subject of the referral relates to the erection of an agricultural structure on a 1.2 hectare landholding at Newcastle Farm in the rural

area to the south-west of Newcastle, Co. Wicklow. The subject agricultural shed has a gross floor area of 293sq m and a roof height of 5.47m

- 8.2.2. Having reviewed the provisions of Class 9 of Part 3 of Schedule 2, of the Planning and Development Regulations, 2001, as amended which refers to rural development, this provision of the Regulations specifically refers agricultural buildings. The description refers to *“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.”*
- 8.2.3. Class 6 refers to structures for the housing of cattle, sheep, goats, donkeys, horses, deer or rabbits. Class 7 refers to structures for the housing of pigs and Class 8 refers to the provision of roofless cubicles, open loose yards, self-feed silo or silage areas, feeding aprons, assembly yards, milking parlours or structures for the making or storage of silage or any other structures.
- 8.2.4. The use of the subject agricultural structure as set out in the submission from the referrer Mr. O’Laoire is for apiculture. In relation to the use of the building it is stated that it is planned to create spaces for the extraction and storage of produce, to keep records and provide for general administration. There is a work space provided for the making, maintaining and storage of hives and equipment. Beehives and equipment are currently being made on site and the “honey kitchen” for the extraction and bottling is currently under construction.
- 8.2.5. Mr. O’Laoire bought the land holding and subject building in July 2017. Summer 2018 was the first summer of operation. The five year business plan as detailed in the submission states that it is intended to have a total of 60 active hives on the landholding by 2023. It is planned that 5 bee colonies would be in place by spring 2019 with a total of 10 by autumn 2019. A programme of bee friendly planting has taken place on the subject landholding including trees and a wild flower meadow. It is noted that Newcastle farm adjoins broad leaf forestry which provides a good location for the bees to forage.
- 8.2.6. On inspection of the structure, I observed that there was an area where wooden bee hives were being made. There was section of the building where internal walls were under construction to provide a separate production area “honey kitchen.” A wooden stairs and mezzanine floor level has been constructed to provide an area for

office/administration functions. The operation of apiculture business requires daily records to be kept and maintained in relation each bee hive (colony). On inspection I also noted that the internal walls and roof have been insulated in order to ensure a regulated temperature. Having regard to the details provided by the referrer and having inspected the site, I am satisfied that the use of the subject agricultural structure is for apiculture and that the 1.2 hectare landholding is also in use for apiculture. The landholding adjoins a forested area which forms part of the area where the bees forage. Apiculture is form or subset of agriculture. I note that the European Commission on Agriculture and Rural Development describes honeybee colonies as essential for agriculture and environment, ensuring plant reproduction by pollination, while beekeeping participates to the development of rural areas. Therefore, I would consider that apiculture is primarily a rural based activity.

- 8.2.7. In relation to the matter of the proximity of the agricultural shed to neighbouring dwellings, conditions and limitations no. 5 of, Class 9 of Part 3 of Schedule 2, of the Planning and Development Regulations, 2001, as amended states,

“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.”

- 8.2.8. Therefore, the exemption for an agricultural structure would only apply where neighbouring dwellings not in the ownership of the owner of the agricultural structure are located 100m or more from the building to ensure that the exemption under Class 9 applies. The closest neighbouring dwelling is situated 88m to the south-east of the subject agricultural structure. This dwelling is not in the ownership of the referrer Mr. O’Laoire and a letter of consent has not been provided from the owner of the dwelling. Therefore, the subject agricultural structure cannot of avail of the exemption provided under Class 9 because it does not adhere to condition and limitation no. 5.

- 8.2.9. In conclusion, I consider that the subject agricultural structure does not comes within the scope of the exempted development provided for rural development under Class 9 of Part 3 of Schedule 2 to the Planning and Development Regulations, 2001, as amended.

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 erection of an agricultural shed is or is not development or is or is not exempted development.

AND WHEREAS Gildas O'Laoire requested a declaration on this question from Wicklow County Council and the Council issued a declaration on the 23rd day of August, 2018 stating that the matter is development and is not exempted development:

AND WHEREAS Gildas O'Laoire referred this declaration for review to An Bord Pleanála on the 18th day of September, 2018:

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

(a) Sections 2, 3 and 4 and Section 4(1)(a) of the Planning and Development Act, 2000, as amended,

(b) Article 6 and 9 of the Planning and Development Regulations, 2001, as amended, and Part 3 of Schedule 2 to those Regulations, including Class 9 and the conditions and limitations applicable

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,

(b) The subject shed is in agricultural use for the purposes of apiculture,

(c) The subject agricultural shed is located within 88m of an existing dwelling which is not in the ownership of the applicant seeking the Declaration, the shed therefore does not comply with the provisions of Limitation No. 5 of Class 9 of Part 3 of Schedule 2 of the Planning and Development Regulations, as amended.

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

Siobhan Carroll
Planning Inspector

24th of December 2018