



An
Bord
Pleanála

Inspector's Report ABP-302878-18

Question	Whether works carried out to change the level of land up to 3m in parts, leading to the destruction of a boundary hedgerow and redirection of groundwater is or is not development or is or is not exempted development.
Location	Drumquill, Castleblaney, Co. Monaghan.
Declaration	
Planning Authority	Monaghan County Council
Planning Authority Reg. Ref.	EX18/25
Applicant for Declaration	Martin Molloy.
Planning Authority Decision	No declaration issued.
Referral	
Referred by	Martin Molloy.
Owner/ Occupier	John or Eamon Brennan.
Observer(s)	Patrick Carragher
Date of Site Inspection	02 nd January 2019
Inspector	Karla Mc Bride

1.0 Site Location and Description

- 1.1. The appeal site is located to the NW of Castleblaney in County Monaghan and to the N of the R183 regional road to Monaghan town. The surrounding area is rural in character and there are several farms and detached houses in the vicinity. The site is located along a rural laneway which provides access to a number of houses and farms. There is a farm yard and agricultural buildings to the W of the site. The overall landholding comprises lands on the N and S side of the laneway.
- 1.2. The N part of the site comprises a detached 2-storey house and a partially constructed detached 2-storey garage structure which are located perpendicular each other. There is a garden to the rear W of the house and a large hard standing area to the fore of the house and garage. The lands slope down from N to S towards the laneway and the hill has been partly excavated to accommodate the garage structure. The site boundaries to the N, E and W are defined by a mix of fences and hedges whilst the S boundary with the laneway is undefined.
- 1.3. The S part of the site comprises two agricultural fields that slope down from N to S towards the main road. The site boundaries are defined by mature hedgerows and trees and there is a noticeable change in level with the neighbouring field to the E. There may be a wastewater treatment system located in the W field and there is a small pillar box structure which houses an electricity meter located along the laneway to the E of the site on the N side of the lane.
- 1.4. Photographs and maps in Appendix 1 describe the site and environs in more detail.

2.0 The Question

- 2.1. The question that has arisen in this referral is whether the:
Works carried out to change the level of land up to 3m in parts, leading to the destruction of a boundary hedgerow and redirection of groundwater,
is or is not development or is or is not exempted development'. It was referred to the Board by Martin Molloy of Drumquill, Castleblaney, Co. Monaghan.

3.0 Planning Authority Declaration

3.1. Declaration

The Planning Authority did not issue a declaration within the prescribed period and the question was referred to the Board for decision by the referrer under the provisions of Section 5 (3)(b) of the Planning & Development Act 2000, as amended.

3.2. Planning Authority Reports

Planning Reports: None on file.

Other Technical Reports: None on file.

4.0 Previous declarations

The Board should note that it issued four previous Declarations in relation to the subject lands in 2017 and 2018 to the same Referrer and Observer (Martin Molloy and Patrick Carragher) and the owner- occupier of the lands and structures was stated to be John or Eamon Brennan. The case numbers are ABP-301312-18, PL18.RL3811, PL18.RL3594 and PL18.RL3532 and the details are summarised in section 5.0 below. The Referrers case and the Observer's comments are summarised in Section 7.0 below.

5.0 Planning History

5.1. There is a lengthy and complex planning, referral and enforcement history which relates to the lands on the N and S side of the laneway.

5.2. Recent Referrals

ABP-301312-18: Section 5 referral, submitted by Patrick Carragher, asking whether the whether the (1) Installation of septic tank and percolation area (2) Construction of a house connected to septic tank (3) Erection of pillar box on right of way is or is not development or is or is not exempted development. The Board determined that it is development and is not exempted development.

PL18.RL3811: Section 5 referral, submitted by Martin Molloy, asking whether the construction of a pillar structure to house an electricity meter on the edge of a laneway is or is not exempted development. The Board determined that it is development and is not exempted development.

PL18.RL3594: Section 5 referral, submitted by Patrick Carragher, asking whether the construction of a house, site clearance and connection to septic tank is development or is not exempted development. The Board altered the wording to ask whether the construction of a structure within the curtilage of an existing house and all associated site development works to include site clearance and connection to septic tank is development or is not exempted development. The Board determined that it is development and is not exempted development.

PL18.RL3532: Section 5 referral, submitted by Martin Molloy, asking whether the installation of a septic tank and percolation area is or is not development or is or is not exempted development. The Board determined that it is development and is not exempted development.

5.3. Other Referrals

No other similar referral cases.

5.4. Other planning applications

ABP-301554-18: Permission refused to John Brennan for the retention and completion of partially constructed domestic garage for one reason related to adverse impact on the visual amenities of the area.

ABP-301047-18: Permission refused to Eamon Brennan for the construction of a storey and a half dwelling house, WWTS and new entrance on lands to the S of the subject site, which are in the applicant's ownership. Permission refused for 2 reasons related to adverse visual impact and inadequate WWT proposals relative to the site characteristics. Concerns also raised about sightlines and traffic hazard.

Reg. Ref. 16/403: Planning application to change use of existing house to domestic storage, construction of new house, upgrade of existing septic tank with new wastewater treatment system and other works. Application deemed invalid.

Reg. Ref. 16/235: Planning application for a storey and a half dwelling house, upgrading of existing septic tank system with new wastewater treatment system and percolation area and other works. Application withdrawn by applicant.

Reg. Ref. 16/41: Planning application for extension to existing house and retention of waste water treatment system and percolation area. Application deemed withdrawn following failure to respond to request for FI. This included a request to provide additional information in respect of the wastewater treatment system.

Reg. Ref. 14/217: Permission refused for the retention and completion of a partially constructed storey and a half extension to the side of existing dwelling house and ancillary site development works. Refused for 3 reasons related to: - proximity to agricultural building, excessive scale of extension and precedent. Following the receipt of FI the PA accepted that the residential use of the existing house had not been abandoned but that there was no independent evidence to confirm the planning status of the septic tank.

6.0 Policy Context

6.1. Monaghan County Development Plan 2013 to 2019

Zoning: The site is located on un-zoned agricultural lands.

Core Strategy Map: The site is designated as being within a 'Stronger Rural Area'.

6.2. Natural Heritage Designations

No European sites within a 15km radius of the referral site.

Lough Smiley pNHA c.1.7km to the SE of the referral site.

7.0 The Referral

7.1. Referrer's Case

The following provides a summary of the referrer's case (Martin Molloy):

- Referrer witnessed John Brennan raising the level of the field up to 3m in part and the destruction of a boundary ditch between their properties.
- The fill came from soil excavated during unauthorised works from another part of the site as indicated on an accompanying map.

7.2. Planning Authority Response

The Planning Authority stated that a decision was due to issue on 01/10/2018 and the response included details of previous planning and referral applications.

7.3. Owner's Response

No response.

7.4. Observer

An observation on this referral was received from Mr. Patrick Carragher with an address at Drumquill, Castleblaney, Co. Monaghan.

The points made in the observation are summarised as follows:

- Sworn Affidavit submitted which states that this Observer witnessed the soil removal & transportation works being carried out over a period of 2 months.
- Both John and Eamon Brennan claim ownership of the lands.
- Soil excavation in region of 6000 ton.
- Map indicates the location of the excavation and deposition sites.
- The soil is impermeable clay which has cut off the food supply for several indigenous plant & tree species which make up the boundary hedgerows.

8.0 Statutory Provisions

8.1 Planning and Development Act 2000, as amended

Section 2(1)

“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 and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.

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.

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.

Section 4(2)(a)

The Minister may by regulations provide for any class of development to be exempted development for the purposes of this Act where he or she is of the opinion that: - By reason of the size, nature or limited effect on its surroundings, of development belonging to that class, the carrying out of such

development would not offend against principles of proper planning and sustainable development’.

Section 4(2)(b)

Regulations under paragraph (a) may be subject to conditions and be of general application or apply to such area or place as may be specified in the regulations.

8.2 Planning and Development Regulations 2001, as amended

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.

Article 6(3)

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 mention of that class in the said column 1.

Article 8C

Land reclamation works (other than reclamation of wetlands) consisting of re-contouring of land, including infilling of soil (but not waste material) within a farm holding, shall be exempt development.

Schedule 2, Part 1 – Exempted Development – General

No relevant Classes.

Schedule 2, Part 3 – Exempted Development – Rural

No relevant Classes.

8.1. **Restrictions on Exemptions**

Article 9 of the Regulations provides that exempted development under Article 6 of Regulations shall not be exempted development in certain specified circumstances including if the carrying out of such development would -

Article 9 (1) (a) (viii)

Consists of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use.

9.0 **Assessment**

9.1. **The Question**

In relation to the N part of the subject site, the Board previously determined under PL18.RL3594 that the construction of a structure within the curtilage of an existing house and all associated site development works to include site clearance and connection to septic tank is development and is not exempted development. The Board subsequently refused permission under ABP-301554-18 for the retention and completion of the same partially constructed structure on the site.

In relation to the S part of the subject site, the referrer has asked whether the works carried out to change the level of land up to 3m in parts, leading to the destruction of a boundary hedgerow and redirection of groundwater is or is not development or is or is not exempted development. The Referrer states that the soil excavated from the N part of the site to enable the construction of the aforementioned structure was deposited in the S part of the site with an ensuing change in site levels.

The referral lands comprise an agricultural field that is located in the SE section of the overall landholding and the lands slope down from NW to SE. The site boundaries are defined by mature trees and hedges, there is a drainage ditch located along the E site boundary and the neighbouring lands are at a lower level than the subject site. The field is covered with vegetation so it is not possible to

ascertain how much soil has been deposited on the site nor is it possible to ascertain if ground water flows have been affected or to what extent the boundary was altered.

Given that the soil was excavated from the N part of the site to enable the construction of a structure which does not have the benefit of planning permission and that this structure and associated site clearance works were determined by the Board to be development and not exempted development, and having regard to the purported destruction of a field boundary and redirection of groundwater flows as a result of the change in site levels, I recommend that the Question be reworded as follows:

Whether works carried out to change the level of land up to 3m in parts by the excavation and deposition of soil from another part of the landholding is or is not development or is or is not exempted development at Drumquill, Castleblaney, Co. Monaghan.

9.2. **Is or is not development?**

The works that are the subject of this referral clearly constitute development by reference to Section 2(1) Planning and Development Act 2000, as amended which defines “works” including any act or operation of construction, **excavation**, demolition, extension, alteration, repair or renewal, and Section 3(1) which defines “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.

9.3. **Is or is not exempted development?**

The subject site is located in a rural area that is covered by the Monaghan County Development Plan 2013 to 2019 and within un-zoned agricultural lands, and the site and surrounding area is not subject to any natural heritage or amenity designations.

In relation to the Planning and Development Act 2000, as amended, Section 4(1) states that development consisting of (a) the use of any land for the purpose of agriculture shall be exempted development for the purposes of this Act.

In relation Planning and Development Regulations 2001, as amended, Article 6(1) states that subject to Article 9, development of a class specified in column 1 of Part 1

of Schedule 2 (General) shall be exempted development for the purposes of the Act and Article 6(3) states that development of a class specified in column 1 of Part 3 of Schedule 2 (Rural), shall be exempted development for the purposes of the Act. The works that are the subject of this referral are not covered by any of the Classes in Part 1 or Part 3.

Article 8C of the Planning and Development Regulations 2001, as amended states that land reclamation works (other than reclamation of wetlands) consisting of re-contouring of land, including infilling of soil (but not waste material) within a farm holding, shall be exempt development. According to the information provided by the Referrer, the site has been infilled with soil and not waste material. However, the owner/occupier has not provided any information in relation to the need for the soil deposition works and therefore the exemption granted under Article 8C in relation to land reclamation does not apply.

The infill soil was excavated from the N part of the site to enable the construction of a structure on the excavated site and then transported for deposition in the S part of the site. This structure does not have the benefit of planning permission and permission to retain it was refused by the Board under ABP. Furthermore, both the structure and the associated site clearance works were determined by the Board to be development and not exempted development under PL18.RL3594.

Given that the soil excavation works were intrinsically linked to the site clearance and construction of this structure, I am satisfied that any exemption granted under Article 8C of the Regulations in relation to land reclamation cannot apply as Article 9 (1) (a) (viii) of de-exempts the carrying out of development that would 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.

9.4. Conclusion on Exempted Development

Having regard to the above, I am satisfied that the works carried out to change the level of land by the excavation and deposition of soil from another part of the landholding is development and is not exempted development at Drumquill, Castleblaney, Co. Monaghan.

9.5. Restrictions on exempted development

Article 9 (1) (a) (viii) of the Regulations places a restriction on any exempted development provision granted under Article 8C as the carrying out of such development would 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.

9.6. Appropriate Assessment

Notwithstanding the conclusion arrived at that the development in question is not exempted development and as such the restriction in respect of Appropriate Assessment is not relevant, I have considered the potential for significant effects on European sites in the interests of completeness.

Having regard to the nature and scale of the proposed development which relates to a structure which is not within or in close proximity to any European sites, no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

10.0 Recommendation

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:

Works carried out to change the level of land by the excavation and deposition of soil from another part of the landholding is or is not development or is or is not exempted development.

at Durmquill, Castleblaney, County Monaghan.

WHEREAS Martin Molloy requested a declaration on this question from Monaghan County Council and the Council did not issue a declaration

within four weeks of the request.

WHEREAS Martin Molloy referred this declaration to An Bord Pleanála on the thirtieth day of October 2018.

AND WHEREAS An Bord Pleanála, in considering this referral, has regard particularly to:

- (a) Sections 2, 3 and 4 of the Planning and Development Act 2000, as amended,
- (b) Articles 6(1) and 9(1) of the Planning and Development Regulations 2001, as amended,
- (c) Article 8C of the Planning and Development Regulations 2001, as amended,
- (d) The planning history of the site,
- (e) The submissions on the file and the report of the Inspector.

WHEREAS An Bord Pleanála has concluded that:

- (a) the works carried out to change the level of land by the excavation and deposition of soil from another part of the landholding is development, as defined under section 2 (1) and section 3(1) of the Planning and Development Act, 2000;
- (b) the development that has taken place does not come within the scope of Article 8C (land reclamation) of the Planning and Development Regulations 2001, and is therefore not exempted development;
- (c) the development that has taken place is intrinsically linked to existing developments on the landholding that do not have the

benefit of planning permission and the works come within the scope of Article 9 (1) (a) (viii) of the Planning and Development Regulations 2001, as amended, and are therefore not exempted development;

(d) the development that has taken place does not come within the scope of any class of development listed in Part 1 or Part 3 of Schedule 2 to the Planning and Development Regulations 2001, as amended;

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5(3)(b) of the 2000 Act, hereby decides the works carried out to change the level of land by the excavation and deposition of soil from another part of the landholding at Drumquill, Castleblaney, County Monaghan is development and is not exempted development

Karla Mc Bride

Senior Inspector

11th February 2019