



An
Bord
Pleanála

Inspector's Report ABP-303121-18

Question

Whether installation of 3 no. windows on the east side elevation of the commercial farm machinery maintenance and sales building is or is not development and is or is not exempted development

Location

Freighduff, Cashel, Co. Tipperary.

Declaration

Planning Authority

Tipperary County Council

Planning Authority Reg. Ref.

S518/108

Applicant for Declaration

Siobhan Burke

Referral

Referred by

Siobhan Burke

Owner/ Occupier

Conor Breen

Date of Site Inspection

29th January 2019

Inspector

Colin McBride

1.0 Site Location and Description

1.1. The appeal site is located within a rural area in the townland of Freaghduff. The site is located approx. 2.5km to the north of Cashel and approx. 2.4km west of junction 7 on the M8 motorway in County Tipperary. The appeal site is accessed from the L1303 Cashel to Ardmayle Road, and extends across the road to include an existing business sign located opposite the site. The site comprises an existing house and Breen Farm Machinery (BFM) enterprise that provides sales and services for agricultural machinery and plant. The site also contains domestic storage buildings and a timber enterprise.

2.0 The Question

2.1 Whether the installation of 3 no. windows on the east side elevation of the commercial farm machinery maintenance and sales building is or is not development and is or is not exempted development within the meaning of the Act.

3.0 Planning Authority Declaration

3.1 Declaration

On the 01st day of November a declaration was issued by Tipperary County Council stating that the installation of 3 no. windows on the east side elevation of the commercial farm machinery maintenance and sales building constitutes development and is not exempted development.

3.2 Planning Authority Reports

3.2.1 Planning Reports

Planning report (31/10/18): It is noted no permission was granted for the granting of permission. The installation of the windows was assessed under Section 4(1)h of the Planning and Development Act, 2000 (as amended). It was considered that the

works in question constitutes development which materially affects the external appearance of the structure and which renders its appearance inconsistent with the character of the structure and of neighbouring structures. The works does not come under the provisions of Section 4(1)h and there are no exemptions provided in the Planning and Development Act, 2000 (as amended) or the Planning and Development Regulations, 2001 (as amended). It was determined the works in question constitutes development and is not exempted development within the meaning of the Act.

4.0 Planning History

- 4.1 ABP-302242-18: Permission granted to construct a revised site boundary to dwelling for additional amenity area, commercial compound area for the storing and display of plant & agricultural machinery, small storage shed. Permission also granted for retention of first floor office and first floor storage area within an existing commercial building and all associated site works.
- 4.2 4PL92.248370: Permission granted for construction of extension to commercial building, increase commercial compound area for storing plant and machinery, wastewater treatment plant, relocate wash bay and upgrading of existing entrance.
- 4.3 15/6000765: Grant of permission for change of use of existing domestic yard and shed for storage and processing of timber logs.
- 4.4 12/294: Permission granted for retention of domestic shed, extension as constructed to commercial garage, change of use of existing residential area to commercial compound, change of use of agriculture lands to an existing of the commercial compound and perimeter concrete block wall.
- 4.5 96/5: Permission granted for retention for a domestic shed.

- 4.6 P312565: Permission granted for extension to existing dwelling.
- 4.7 P39911: Permission granted for erection of a garage and workshop.
- 4.8 P38587: Permission granted for use of garage for commercial purposes.
- 4.9 P36491: Permission granted for storage shed.
- 4.10 P33505: Permission granted for garage.

5.0 Policy Context

5.1 Development Plan

The relevant Development Plan is the South Tipperary County Development Plan 2009.

6.0 The Referral

6.1 Referrer's Case

A referral has been submitted by Peter Thomson Planning Solutions on behalf of Siobhan Burke, Freighduff, Cashel, Co. Tipperary.

- It is noted the referrer agrees with the declaration issued by Tipperary County Council however wishes it to be confirmed by An Bord Pleanala.
- It is noted there is a current appeal (ABP-302242-18, now decided) in respect of permission for new works and retention of existing unauthorised works. It is noted that there are already a number of works on site that are unauthorised and such would automatically de-exempt any further works.

- The Board is requested to issue a declaration confirming the Planning Authority's view that the works in question fall within the definition of development and are not exempted development.

6.2 Planning Authority Response

No response.

6.3 Owner/ occupier's response

A response has been received from the owner/occupier, Breen Farm Machinery.

- It is noted that the original design changed the location of the proposed offices and the windows were installed to supply fresh air and daylight. The windows face a boundary wall and cannot be seen from the neighbouring dwelling or the public road.
- The owner/occupier believed the works to be classed as minor changes and would not require planning permission.
- It is noted that the site is in full planning compliance and the windows could be considered as a minor change which would exempt them.

7.0 Statutory Provisions

7.1 Planning and Development Act, 2000

Section 3 provides definition of Development.

3(1) 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 provides for Exempted Development

4(1) The following shall be exempted developments for the purposes of this act

(h) development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures.

4(2) (a) The minister may by regulations provide for any class of development to be exempted development for the purposes of this Act

7.2 **Planning and Development Regulations, 2001**

Article 6 includes provisions under which certain advertisements may be deemed to be exempted development.

Article 9 specifies 'Restrictions on Exemption'

9 (1) Development to which article 6 relates shall not be exempted development for the purposes of the Act –

(a) if the carrying out of such development would-

(i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act ...

8.0 **Precedent cases**

8.1 There are a number of cases relating to windows and section 4(1)h, however such relate to dwellings and not commercial premises as in this case. The most recent of these case is the following...

RL3011: Whether the existing first floor windows to the rear, as constructed, are or are not development or are or are not exempted development. The windows were deemed to be development and not exempted development.

9.0 Assessment

9.1 The question at issue is whether the installation of 3 no. windows on the east side elevation of the commercial farm machinery maintenance and sales building is or is not development or is or is not exempted development within the meaning of the Act.

9.2 Is or is not development

9.2.1 The initial question arises in relation to whether the installation of 3 no. windows on the east side elevation of the commercial farm machinery maintenance and sales building is or is not development. The construction subject to the referral includes the installation of 3 no. window openings in the eastern elevation of the existing commercial building. Section 3 defines development 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. Works as defined in section 2 (1) includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal. Having regard to the definition of development and the nature of the works subject to the referral I would consider that the installation of the 3 no. windows constitutes development.

9.3. Is or is not exempted development

9.3.1 The main issue arises as to whether the development is or is not exempted development. As noted above the referral relates to the installation of 3 no. windows on the eastern elevation of an existing commercial structure. The three windows serve existing offices within the building. I would firstly note that there is an extensive planning history on the site, however the installation of the 3 no. windows is not authorised under any of the permissions granted on site.

9.3.2 In the context of the Planning and Development Regulation, 2001 (as amended), the works in question do not fall under scope of any of categories of exempted

development listed under Schedule 2, Part 1, 2, 3 and 4 of the Planning and Development Regulations, 2001 (as amended).

9.3.3 The owner occupier in response to the referral has noted that the works in question come under minor changes and the Planning Authority in assessing the referral examined the works under Section 4(1)h of the Planning and Development Acts, 2001 (as amended). Section 4(1)h states the following...

4(1) The following shall be exempted developments for the purposes of this act
(h) development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures.

9.3.4 As noted earlier the proposal is the installation of 3 no. windows on the eastern elevation of an existing commercial building. The 3 no. windows do materially affect the external appearance of the structure. It is acknowledged that they do face a block wall along the eastern boundary of the site, but this does not mean that they do not materially affect the external appearance of the structure. I would consider that the works in question do materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures. The works in question therefore do not constitute exempted development under Section 4(1)h of the Planning and Development Regulations, 2001 (as amended).

9.4 Conclusions

9.4.1 In considering this referral I have had regard to the Planning and Development Act 2000 (as amended) and the Planning and Development Regulations 2001 (as amended); to the planning history of the subject site and my observations during site inspection. Arising from this, I conclude that the installation of 3 no. windows on the east side elevation of the commercial farm machinery maintenance and sale building

constitute development and is not exempted development within the meaning of the Act.

10. 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 installation of 3 no. windows on the east side elevation of the commercial farm machinery maintenance and sales building, is or is not development or is or is not exempted development within the meaning of the Act.

AND WHEREAS the said question was referred to An Bord Pleanála by Siobhan Burke on the 28th day of November 2018:

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

- (a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended
- (c) Articles 9 and 10 of the Planning and Development Regulations, 2001-2011
- (d) The planning history and internal layout of the premises,

AND WHEREAS An Bord Pleanála has concluded that –

(a) The works in question do not come under the scope of Section 4(1)h of the Planning and Development Act, 2000 (as amended).

(b) The works in question do come under the scope of any of the categories of exempted development listed under Schedule 2 of 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) (a) of the 2000 Act, hereby decides that the installation of 3 no. windows

on the east side elevation of the commercial farm machinery maintenance and sales building is development and is not exempted development.

Colin McBride
Planning Inspector

28th February 2019