



An
Bord
Pleanála

Inspector's Report ABP-303810-19

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| Question | Whether a portal frame shed for agricultural usage, 5.07m in height and site boundary revisions is or is not development or is or is not exempted development. |
| Location | Coolfore, Monasterboice, Co. Louth. |
| Declaration | |
| Planning Authority | Louth County Council |
| Planning Authority Reg. Ref. | S5 2018/58 |
| Applicant for Declaration | Fergus Nelson. |
| Planning Authority Decision | Is not exempted development |
| Referral | |
| Referred by | Fergal Nelson. |
| Owner/ Occupier | Fergal Nelson. |
| Observer(s) | None. |
| Date of Site Inspection | 5 th June 2019. |
| Inspector | Deirdre MacGabhann |

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1.0 Site Location and Description

- 1.1. The appeal site lies in the townland of Coolfore, approximately 7km north-west of Drogheda, County Louth. It lies between the villages of Begerath, Monasterboice and Tullyallen, to the west of the M1.
- 1.2. The c.4ha application site/landholding comprises two conjoined agricultural fields that extend to the east of the public road. Access to the site is from this public road, with the driveway passing to the north of agricultural buildings that are situated at the entrance to the site (see photographs). Towards the centre of the site is a single-storey dwelling house. The subject shed lies to the south of this. It comprises a shed, with block wall and profiled cladding above. A roller shutter door in its northern elevation, facing the residential property. To the south a projecting single storey extension is open.

2.0 The Question

- 2.1. The question before the Board is whether or not the subject shed, is or is not exempted development under Article 6, Part 3, Class 9 of the Planning and Development Regulations, 2001 (as amended).

3.0 Planning Authority Declaration

3.1. Declaration

- 3.1.1. In January 2019, the planning authority decided that the development was not exempted, under 'Agricultural Structures', Article 6, Part 3, Class 9 of the Planning and Development Regulations 2001 (as amended) having regard to:
 - (a) The shed is not part of a farmyard complex and is located in the curtilage of a dwelling house approved under 15/456 and constitutes works and a use that falls within the scope of section 2(1) of the Planning and Development Act, 2000 (as amended), and on the grounds that
 - (b) The subject site does not comply with limitation No. 2 of Class 9 as the shed is over 108m from any farm complex buildings and cannot be considered an agricultural shed being within the curtilage of an approved dwelling house.

3.2. Planning Authority Reports

Planning Reports

3.2.1. The planning authority refer to the planning history of the site and the legislative context for the referral. In their assessment, they consider that the development constitutes development but not exempted development on the grounds that:

- The shed lies within the curtilage of a planning application granted under PA ref. 15/456. It was not indicated in the application drawings.
- Other farm buildings lie c.108m from the subject shed and existing house.
- The applicant has submitted a letter from the owner of the dwelling stating that they have agreed with the farmer to adjust site boundaries, to include the shed in agricultural lands. Boundary changes have not taken place on site and there is no legal agreement has been submitted.
- The development does not comply with the conditions and limitations under Class 3, Part 1, Schedule 2 of the Planning and Development Regulations 2001 (as amended).
- The development does not comply with Class 9 of the Regulations as the shed is over 108m away from any farm complex buildings and within the curtilage of an approved dwelling house.

4.0 Planning History

- PA ref. 15456 - Permission was granted on the subject site, for a detached single storey dwelling with basement garage/store, reuse of the existing site entrance and demolition of existing farm sheds and haybarn. The rear garden of the development includes the site of the subject shed (Drawing no. 1503-301, see file).
- PA ref. 17U107 - The planning authority commenced enforcement action against an alleged unauthorised shed at the subject site.
- PA ref. S5/2017/39 and **ABP-301570-18** – Declaration sought under Section 5 for the subject shed on the grounds that it complied with the exempted development provisions under Article 6, Part 3, Class 9 of the Planning and Development Regulations, 2001 (as amended). The Board decided that the subject shed was

development but not exempted development, for the following reasons; the development was constructed within the curtilage of a house and therefore falls within Class 3, Part 1, Schedule 2 of the Planning and Development Regulations, 2001 (as amended), the shed did not meet the limitations of the Class and the building is used for a purpose other than incidental to the enjoyment of the house. In deciding not to accept the Inspector's recommendation that the building falls within Class 9 of the Regulations, the Board considered that the building was constructed within the curtilage of a house permitted under PA ref. 15/456 and more specifically, within the rear garden of that house, as delineated on Drawing no. 1503-301, and therefore fell within Class 3 of the Regulations.

5.0 Policy Context

5.1. Development Plan

The appeal site falls within the administrative area of the Louth County Development Plan 2015 to 2021. Nearest natural heritage designations lie c.2km to the south of the subject site and comprises King William's Glen pNHA (site code 001804) and the River Boyne and River Blackwater SAC (site code 002299).

6.0 The Referral

6.1. Referrer's Case

6.2. The referrer makes the following arguments:

- The Section 5 application is made on foot the Inspector's report under ABP-301570-18 who believed that the shed was exempt.
- House applicant has agreed to revise site boundaries, such that Agri-shed is completely within field and therefore agricultural without question.
- Boundaries can be moved as the site is a very large site and the small revision could be considered exempt from planning.
- Shed is needed by farmer for mainly the storage of farm machinery and equipment as covered under exempted regulations.

- Shed has been built by a farmer, Fergus Neilon and it does not relate to the planning application granted under PA ref. 15456.
- Shed complies with the Exempted Development Guidelines for Rural Agricultural structures under Article 6, Part 3, Class 9 of the Planning and Development Regulations, 2000.

6.3. Accompanying the application for referral are:

- Correspondence from Olivia Smith stating that, as applicant for the house on the subject site, she has agreed to adjust the house fence boundaries so that agricultural shed is no longer part of the curtilage of the house. It is stated that no fences have been erected as of yet but can be put in place in accordance with the plans submitted.
- Plans accompanying the referral indicate fencing, around the grounds of the dwelling house, with the subject shed to be situated to the south, outside of this area, but within the wider landholding surrounding the dwelling.

6.4. **Planning Authority Response**

6.4.1. The planning authority make the following additional comments:

- No legal agreement has been submitted for consideration in relation to amending the site boundaries of the dwelling granted under PA ref. 15456 and no works have taken place on the ground.
- Remain of the view that the shed is within the curtilage of the dwelling house.

6.5. **Further Responses**

6.5.1. The referrer provides the following in response to the planning authority (above):

- Subject barn is 90m from existing farm complex (distance of subject shed to yard to rear of existing barn which is used to load and store hay).
- Farm complex is on both sides of the public road which is normal enough in rural locations where the farm complex is spread over several fields and sites (see coloured site map and rural place map).

- Legal letter and self-declaration from Fergus Neilon stating that the folio map for the dwelling house incorrectly included the shed within its boundaries and that he has instructed his solicitor to apply to the Property Registration Authority for amendment of the boundaries of the folio, so that the agricultural shed would be excluded from it.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

- Section 3(1) Planning and Development Act, 2000 (as amended), defines 'development' as the carrying out of works on, over, under land or the making of any material change in use of any structures or other land.

7.2. Planning and Development Regulations, 2001

- Articles 6(1) and 6(3) of the Planning and Development Regulations, 2001 (as amended) provide that, subject to article 9, development of a class specified in column 1 of Part 1 and Part 3 of Schedule 2 (respectively) shall be exempted development, provided that it complies with the conditions and limitation specified in column 2.
- Class 3, Part 1, Schedule 2, Development within the curtilage of a house, provides that the construction, erection or placing within the curtilage of a house of any garage, store, shed or other similar structure, shall be exempted development, subject to compliance with the following conditions/limitations:
 - No such structure shall be constructed, erected or placed forward of the front wall of a house.
 - The total area of such structures constructed, erected or placed within the curtilage of a house shall not, taken together with any other such structures previously constructed, erected or placed within the said curtilage, exceed 25 square metres.
 - The construction, erection or placing within the curtilage of a house of any such structure shall not reduce the amount of private open space

reserved exclusively for the use of the occupants of the house to the rear or to the side of the house to less than 25 square metres.

- The external finishes of any garage or other structure constructed, erected or placed to the side of a house, and the roof covering where any such structure has a tiled or slated roof, shall conform with those of the house.
- The height of any such structure shall not exceed, in the case of a building with a tiled or slated pitched roof, 4 metres or, in any other case, 3 metres.
- The structure shall not be used for human habitation or for the keeping of pigs, poultry, pigeons, ponies or horses, or for any other purpose other than a purpose incidental to the enjoyment of the house as such.
- Class 9, Part 3, Schedule 2, Agricultural Development, provides that 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 (these principally refer to structures for animals) and not exceeding 300sqm, shall be exempted development, subject to compliance with the following conditions/limitations:
 - 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.
 - 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.
 - No such structure shall be situated within 10 metres of any public road.
 - No such structure within 100 metres of any public road shall exceed 8 metres in height.
 - 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.

- No unpainted metal sheeting shall be used for roofing or on the external finish of the structure.
- Article 9(1) restricts the provisions of article 6 in certain circumstances.

8.0 **Assessment**

8.1. **Is or is not development**

- 8.1.1. The proposed development comprises development under the definition of development set out in section 2(1) of the Planning and Development Act, 2000 (as amended). This is not disputed.

8.2. **Is or is not exempted development**

- 8.2.1. This referral before the Board differs from that previously submitted, in that the applicant proposes to (a) revise the folio arrangements for the subject site, to remove it from the folio associated with the residential property, and (b) provide fencing along the perimeter of the residential property and separate it from the agricultural shed. It is also argued that the subject shed comprises a building within a dispersed cluster, being 90m from the yard to the rear of the existing agricultural building at the entrance to the subject site.
- 8.2.2. At the time of site inspection, the existing residential property and subject shed share the same access driveway, the proposed site boundaries were not in place and the subject shed was physically removed from any nearby farm buildings/complexes. Furthermore, the yard referred to by the referrer was not apparent to the side or rear of the existing agricultural shed (to the west of the site) and the area was not demarcated in anyway (it appeared to comprise part of the sown agricultural field – see photograph 1). There is therefore, in practice, no clear separation of land uses, and the two structures would appear to be in common/collective usage.
- 8.2.3. Notwithstanding this, planning permission was granted under PA ref. 15456 for a residential property on the subject site. It included a rear garden area to the south of the property (see copy of drawing no. 1503-301 on file). The proposed shed has been constructed in the defined curtilage of this residential property. In the absence of planning permission, neither the artificial separation of the overall landholding into

two separate folios or the erection of timber fencing to separate the uses change this planning status. The referral must therefore be adjudicated upon, on this basis.

- 8.2.4. Part 1 of Schedule 2 of the Planning and Development Regulations provides exempted development arrangements for development within the curtilage of a dwelling house. Class 3 refers to the construction, erection or placing within the curtilage of a house of any garage, store, shed or other similar structure. Conditions and limitations of the Class are set out above and, as previously decided by the Board, the subject shed does not comply with these, notably in terms of location, size, height or external finish. Accordingly, I do not consider that the development comprises exempted development.

9.0 Appropriate Assessment

- 9.1. The subject development comprises an agricultural shed that is situated c.2km from the nearest Natura 2000 site. Having regard to the modest scale and nature of the development and its distance from any sensitive 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 EIA Screening Determination

- 10.1. The subject development comprises the execution of construction works and falls within a class for which environmental impact assessment is required (Agriculture). However, having regard to the limited nature and scale of the proposed development and the absence of any significant environmental sensitivity in the vicinity, 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.

11.0 Recommendation

- 11.1. 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 portal frame shed for agricultural usage, 5.07m in height, at Coolfore, Monasterboice, County Louth is or is not exempted development:

AND WHEREAS Fergus Neilon requested a declaration on this question from Louth County Council and the Council issued a declaration on the 31st day of January 2016 stating that the matter was not exempted development:

AND WHEREAS the owner/occupier referred this declaration for review to An Bord Pleanála on the 26th day of February 2016:

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

Section 3(1) of the Planning and Development Act, 2000, article 6(1) and article 9(1) of the Planning and Development Regulations, 2001, as amended,

Class 3 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,

the planning history of the site under planning register reference 15/456 and the curtilage and rear garden of the permitted house, as delineated on Drawing No. 1503-301.

AND WHEREAS An Bord Pleanála has concluded that:

The building is a shed constructed, erected and placed within the curtilage of a house and, therefore, falls within Class 3 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,

The area of the building in question exceeds 25 square metres, the external finishes and roof covering of the building do not conform with those of the house, the height of the building exceeds three metres, the

building is used for a purpose other than incidental to the enjoyment of the house, and

The development, therefore, does not comply with the conditions and limitations set out under Class 3, Part 1 of 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 existing portal frame shed for agricultural use is not exempted development.

Deirdre MacGabhann

Planning Inspector

12th June 2019