



An
Bord
Pleanála

Inspector's Report ABP 304094-19

Question

Whether the proposed farm building for housing of horses and storage of food is or is not development or is or is not exempted development

Location

Knockaneroe, Kilbrittain, Co. Cork

Declaration

Planning Authority

Cork County Council

Planning Authority Reg. Ref.

D/315/18

Applicant for Declaration

Peter Verdake & Mary Horgan

Planning Authority Decision

Is not exempted development

Referral

Referred by

Peter Verdake & Mary Horgan

Owner/Occupier

Peter Verdake

Observer(s)

None

Date of Site Inspection

24/06/19

Inspector

Pauline Fitzpatrick

1.0 Site Location and Description

The site subject of the referral is in the townland of Knockaneroe c. 3km to the south-west of Ballinspittle and 4.5km to the south-east of Kilbrittain. It is accessed via the driveway serving the referrers' dwelling off a lightly trafficked local road.

There is a partly constructed structure on the site which is located c.50 metres to the south (rear) of the dwelling owned by the referrers. A concrete floor and side walls have been constructed with timber supports and roof trusses in place. As measured on day on inspection the concrete floor has an area of in the region of 252 sq.m. (20 m x 12.6m). Whilst the timber columns and roof trusses extend the full length of the concrete floor the side walls do not (southern end). The height of the structure is in the region of 5.5 metres. There are doors openings provided for in the north and south elevations with window openings in the side elevation.

The lands to the south of the structure are under forestry with that to the east used as a paddock.

The structure is set back over 170 metres from the local road with the nearest dwelling not in the ownership of the referrers c. 130 metres to the northeast.

2.0 The Question

Whether a proposed farm building for the keeping of horses and storage of food is or is not development or is or is not exempted development.

The case made by the referrers is comparable to that in the section 5 referral made to the Board and which is summarised in section 6 below.

A response to a further information request confirms that an open sided roofed area is proposed for the purpose of storage of feed for the horses. In terms of effluent storage there will be a manure storage bay constructed. There will also be a leachate storage and soiled water tanks in accordance with S.I. 31/2014.

3.0 Planning Authority Declaration

3.1. Declaration

The proposed farm building is not exempted development.

The Planning Authority concluded that:

- i. The structure constitutes works which, in turn, constitutes development
- ii. The building is a single structure
- iii. A single structure can be used for the purposes of one class but not for a combination thereof.
- iv. The building has a total floor area in excess of 200 sq.m. and exceeds the floor area allowable under Class 6.
- v. The building to be used for the housing of horses does not come within the scope of class 9.
- vi. It has not been demonstrated that the structure satisfies all the conditions and limitations attached to class 6.
- vii. The development may come within the restrictions on exemption set out in Article 9(1)(a)(i)(iii) and (vi).

3.2. Planning Authority Reports

3.2.1. Planning Reports

The 1st Planner's report (countersigned) notes that this is the 2nd referral made to the planning authority. EIA and AA would not be required. On inspection it was noted that the structure as partly constructed does not match the drawings submitted. A request for further information is recommended seeking revised plans, details on open roofed area to the south, gross floor space and effluent storage and disposal. The 2nd report following further information notes that the demolition of walls at the southern end have not been carried out as intended. The internal floor area therefore exceeds 200 sq.m. The assessment of the referral cannot be based on any intent for works to be undertaken. The consideration of the referral is based on the situation on the ground. The drawings are considered to be an attempt to try and

come within the scope of the exempted development provisions, however they are misleading. The structure in question is one building, a single roofed structure with the main purpose being the housing of horses. It would be highly unlikely that feeding for horses would be stored in an unsheltered area, open to the elements. Class 6 of Part 3 of Schedule 2 of the regulations is for the housing of horses. Class 9 is a store, barn or other structure not being a typed specified in class 6 and specifically does not allow for the housing of animals or storage of effluent. The proposals for storage of effluent are unsatisfactory and do not satisfy condition no.3 of class 6. The proposed building is development and is not exempted development.

3.2.2. Other Technical Reports

The 1st Senior Executive Scientist's reports notes that from the drawings accompanying the submission the overall area of the building appears to be 260.6 sq.m. While the enclosed area of the building may be less than 200 sq.m. it is reasonable to assume that the open sided roofed area of the building will also be used in some form or other for the keeping/management of horses. Therefore, the area of the overall structure is greater than 200 sq.m. While the applicant states that effluent will be managed in accordance with best practice standards there is no provision made for storage of effluent. The 2nd report (via email) following further information notes that the proposed manure pit should be sufficient however the effluent storage tank is not. A tank size of 3.3m³ minimum is required to provide 15 days storage for soiled water runoff from the manure pit. The soil water and stormwater proposals are satisfactory.

4.0 Planning History

D/277/18 – the planning authority decided in October 2018 that a proposed farm building for the housing of horses and ancillary equipment on the site subject of the current referral is not exempted development. The planning authority's conclusions are comparable to those set out in its decision on the current case.

5.0 Policy Context

5.1. Development Plan

The Cork County Development Plan refers.

The site is within an area designated as a High Value Landscape.

No views or prospects are listed for protection in the vicinity of the site.

5.2. Natural Heritage Designations

The nearest designated sites are Courtmacsherry Bay SPA (site code 004219) and SAC (site code 001230) c.2.5 km to the west.

6.0 The Referral

6.1. Referrer's Case

The submission by D.A.Kearney on behalf of the referrers which is accompanied by supporting documentation can be summarised as follows:

- It is accepted that the structure is works and constitutes development
- The building is to be used for the keeping of horses only.
- The gross floor area of the building is 198.645 sq.m.
- Class 9 exemption was not sought. It is irrelevant.
- The structure satisfies all of the conditions and limitations attached to class 6 as follows:
 - It will be used for keeping horses only.
 - There are no other agricultural structures on the applicants' holding that would raise the aggregate figure to 300 sq.m.
 - Effluent shall be managed according to best practice standards under the guidance of Teagasc and the Department.
 - The structure is located in excess of 170 metres from the public road. Effluent storage will be adjacent to the structure.

- The building has a maximum height of 5.7 metres.
- There are no public buildings nearby. The nearest dwelling is located 130 metres to the north-east.
- The roofing of the structure shall be painted metal cladding in grey/green and the external wall finishes shall be stained timber cladding.
- Article 9 restrictions on exemptions do not apply as follows:
 - The site lies outside the boundary to which permission ref. 97/3642 refers. Condition 6 attached to the said permission de-exempting additional structures does not apply. The structure is within additional lands to the rear purchased consequent to the said permission.
 - The existing unaltered entrance will serve the structure.
 - There will be no material increase in traffic or turning movements. Road alignment is of a suitable standard and the geometry of the entrance is to County Council standards. The road is lightly trafficked. The proposal will not give rise to obstruction or hazard.
 - The development plan has listed no specific views or prospects for preservation in the vicinity. The structure does not interfere with the character of the landscape in the area based on a special assessment of landscape character and sensitivity (findings attached in appendix).
 - There are no heritage features that are preserved or protected in the development in the vicinity. There are no European Sites or NHAs in the vicinity and all indications are that an AA is not required in this case. This is confirmed in the Council Planner's report.
 - Articles 9 (v), (viii), (ix), (x), (xi) and (xii) do not apply.

6.2. Planning Authority Response

No observations to make.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

Section 2(1)

In this Act, except where the context otherwise requires -

"structure" means any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined, and -

(a) where the context so admits, includes the land on, in or under which the structure is situate ...

"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 ...;

Section 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.

7.2. Planning and Development Regulations, 2001

Article 3 - "gross floor space" means the area ascertained by the internal measurement of the floor space on each floor of a building (including internal walls and partitions), disregarding any floor space provided for the parking of vehicles by persons occupying or using the building or buildings where such floor space is incidental to the primary purpose of the building.

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 the mention of that class in the said column 1.

Article 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,

(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,

(viiB) comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site,

PART 3, SCHEDULE 2

CLASS 6

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.

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 in charge thereof.

7. No unpainted metal sheeting shall be used for roofing or on the external finish of the structure.

8.0 **Assessment**

At the outset I consider that it is appropriate to clarify the nature and extent of the development which is the subject of the referral. From my interpretation of the documentation on file and an assessment of the Council Planner's reports the structure, as partly constructed on site at the time of her inspection, was deemed to be the subject of the question. As noted from the photographs attached to her 1st

report the entire concrete floor area was enclosed by concrete walls giving an approx. floor area of 252 sq.m.

On my inspection I noted that the concrete walls to the rear (southern) end of the structure had been removed with the timber columns and roof trusses covering the entire floor area remaining in place. This would correspond with the plans of the proposed structure which accompany the referral which would provide for an enclosed floor area of c.198.6 sq.m. with an open area to the south, albeit roofed.

I submit that the question before the Board pertains to the structure as proposed and detailed on the plans and details accompanying the referral and not what may have been constructed and subsequently demolished on site. The fact that works may have been carried out so as to bring the structure within the parameters of the maximum permissible exempted floor area is not relevant to this consideration. Should a development be considered to be exempt on the basis of the plans submitted in support of the case the declaration would apply to those details, only. Any deviation from same would not be covered by the said declaration.

Therefore, I submit that the structure to which the question refers is as follows:

Farm building for the keeping of horses and storage of food. It would have a fully enclosed floor area of 198.6 sq.m. with a roofed open area on the southern elevation with a floor area of c. 53 sq.m. The structure is to have an overall height of 5.5 metres.

8.1. Is or is not development

Having regard to sections 2 and 3 of the Planning and Development Act 2000, as amended the works associated with the erection of the structure subject of this referral constitute development. This is not disputed by the referrers.

The matter that falls to be determined in the context of this referral is whether or not the works would constitute exempted development. The planning authority has issued a declaration stating that the works are not exempted development.

8.2. Is or is not exempted development

I note that the referrers have an overall landholding of 60 acres, details of which accompany the referral. The lands on which the structure is located were acquired consequent to their acquisition of the dwelling site. I therefore consider that the application of the provisions for agricultural structures provided for within the Planning and Development Regulations 2001, as amended, to be reasonable in this case.

Article 6, subject to Article 9, provides for exemption of development described in Schedule 2 of the regulations subject, in certain cases, to limitations and conditions. Classes 1 – 17, Part 3, pertain to rural and agricultural development.

I consider that the structure can be described as coming within Class 6 insofar as it is a roofed structure for the housing of horses. To avail of the exemption provisions (subject to the conditions and limitations) the gross floor space should not exceed 200 sq.m.

As per the plans accompanying the referral the gross floor area within the walled structure would be 198.645 sq.m. which complies with the 200 sq.m. limit. The question is whether the open, albeit roofed area, to the south elevation would be included within the gross floor area. It is proposed for the storage of feed for the horses.

As per Article 3, Part 1 of the Planning and Development Regulations 2001, as amended, “gross floor space” means the area ascertained by the internal measurement of the floor space on each floor of a building (including internal walls and partitions), disregarding any floor space provided for the parking of vehicles by persons occupying or using the building or buildings where such floor space is incidental to the primary purpose of the building.

On the basis of this definition I would conclude that the said area does not come within the gross floor area and, as such, the structure as proposed comes within the 200 sq.m. gross floor area parameter. The use of the roofed open area is for the storage of food for the horses and, in my view, would be considered to be ancillary to the primary purpose of the building.

In terms of the conditions and limitations attached to the class I note the following:

1. The structure is to be used for keeping of horses and ancillary equipment/feed associated with same, only. It is therefore proposed to be used for agricultural purposes only.
2. There are no other agricultural structures on the holding or within 100 metres of the structure.
3. As per the details given in the further information response a manure storage bay is to be constructed in addition to leachate storage and soiled water tanks in accordance with S.I. 31/2014. I submit that sufficient detail has been provided that effluent storage would avoid pollution and meet departmental requirements.
4. The structure and proposed effluent storage would be over 170 metres from the public road.
5. With a height of 5.5 metres it would not exceed the 8 metre limit.
6. The structure is over 130 metres from the nearest dwelling (not that of the referrers) to the north-east.
7. The roofing of the structure shall be painted metal cladding in grey/green and the external wall finishes shall be stained timber cladding.

On the basis of the above I consider that the structure as proposed complies with the conditions and limitations of Class 6

8.3. Restrictions on exempted development

Article 9 of the Planning and Development Regulations, 2001, as amended, details restrictions on development exempted under article 6. In view of same I note the following:

- i. the structure is not within the site to which permission 97/3642 for the dwelling in the referrers' ownership refers. The lands on which the structure is situated were acquired after the said permission was granted. Evidence to this fact accompany the referral. It would therefore not contravene a condition attached to the said permission or be inconsistent with a permitted use.
- ii. the entrance serving the site is to remain unaltered.

- iii. the road serving the site is lightly trafficked with reasonable sight distances from the existing entrance which is adequate in terms of width. It is not considered that the vehicular movements arising from the structure would endanger public safety by reason of traffic hazard or obstruction of road users.
- v. The referral is accompanied by a landscape character assessment. The site is within an area designated as being a High Value Landscape in the current County Development Plan with no views or prospects listed for protection in the vicinity. Agriculture is the dominant use. The structure is setback from the road and backed by mature coniferous planting and is of a size and scale that would not be at variance with other agricultural buildings found in such an area. On this basis I do not consider that the proposed structure would have an adverse impact on the character of the landscape.
- viiB The nearest designated sites are Courtmacsherry SPA and SAC c. 2.5 km to the west. There is no hydrological or other connection between the site and the said European sites. Having regard to the separation distance between the Natura sites and the referral site, the qualifying interests for which these European sites have been designated and the form of development to which this referral relates, I am satisfied that no appropriate assessment issues arise. It is not considered that the development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

I consider that iv, v, viii, xi, x, xi and xii are not relevant to the case.

On the basis of the above assessment I consider that the proposed farm building would constitute works and therefore constitute development in accordance with Section 3 of the Planning and Development Act, 2000, as amended, but that the building would constitute exempted development in accordance with the provisions of Class 6 of Part 3 of the Planning and Development Regulations, 2001, as amended. I further conclude that none of the restrictions set out in Article 9 would apply in this instance.

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 a proposed farm building for the housing of horses and storage of food is or is not development or is or is not exempted development:

AND WHEREAS D.A. Kearney on behalf of Peter Verdake and Mary Horgan requested a declaration on this question from Cork County Council and the Council issued a declaration on the 6th day of March, 2019 stating that the matter is development and is not exempted development:

AND WHEREAS D.A. Kearney on behalf of Peter Verdake and Mary Horgan referred this declaration for review to An Bord Pleanála on the day of 29th day of March, 2019:

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, as amended,
- (c) Article 3 (3), Part 1 of the Planning and Development Regulations 2001, as amended,
- (d) Article 6 (3), Part 1 of the Planning and Development Regulations 2001 as amended

(e) Class 6, Part 3 of Schedule 2 of the Planning and Development Regulations, 2001, as amended,

(f) Article 9 (1), Part 1 of the Planning and Development Regulations 2001, as amended.

AND WHEREAS An Bord Pleanála has concluded that the development falls within Class 6 of Part 3, Schedule 2 of the Planning and development Regulations, 2001, as amended and that none of the Conditions or Limitations under either Class 6 or Article 9 would apply in this instance

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3) (a) of the 2000 Act, as amended, hereby decides that the proposed farm building for the keeping of horses and storage of food at Knockaneroe, Kilbrittain, Co. Cork is development and is exempted development.

Pauline Fitzpatrick
Senior Planning Inspector

July, 2019