



An  
Bord  
Pleanála

## Inspector's Report ABP-304215-19

### Question

Whether the development of a structure on agricultural land is or is not development or is or is not exempted development, at Stonepark, Longford

### Location

Stonepark, Longford, Co. Longford

### Declaration

Planning Authority

Longford County Council

Planning Authority Reg. Ref.

DC 19/2

Applicant for Declaration

W McGinley

Planning Authority Decision

Is not exempted development

### Referral

Referred by

W McGinley

Owner/ Occupier

B P Nic Fhionnlaigh (Owner) / W McGinley (Occupier)

Date of Site Inspection

14<sup>th</sup> June 2019

Inspector

Dolores McCague

## 1.0 Site Location and Description

- 1.1.1. The site is situated at Stonepark, Longford, Co. Longford. The site, which is part of a dwelling plot, comprises an enclosed area to the rear of a dwellinghouse, with a gated access and surrounded by block walls in excess of 2m in height, accessed via the dwellinghouse plot. The dwelling is one of two dormer bungalows of recent origin which occupy adjoining rural sites.
- 1.1.2. The dwelling site fronts the road, regional road R397, and the roadside boundary is formed by rendered walls with ornate wrought iron fencing above. The high piers and double wrought iron gates along the roadside are replicated in the entrance to the area to the rear of the dwelling where the subject building is sited.
- 1.1.3. To the east and north there is the remainder of a small field in agricultural use and farther north is a recently constructed dwelling, opposite which is an entrance to the canal towpath.
- 1.1.4. A spur of the Royal Canal which connects the Royal Canal to Longford town runs along the opposite side of the public road.
- 1.1.5. The subject building is c 7m high x 10.5m x 14.75m; 154.87m<sup>2</sup> in area internally. Aligned east west the building is metal clad with the lower portion of the walls in blockwork. In the northern elevation there are two large roller shutter doors and two other entrances. The building is sited at the southern end of the compound and the area to the front ie. north is hard surfaced.
- 1.1.6. The site is a short distance south of the N63, and less than 1km from the town of Longford and is just north of the rural settlement of Stonepark. This area is peri-urban with development stretching outwards from the town, including a filling station and shop to the south of the subject site.

The subject building has an internal division near the eastern end and on the date of inspection an internal height division at ceiling level was being installed in that section. The remainder of the building, with the two roller shutter doors and an additional pedestrian doorway, has no internal divisions and extends upwards to the roof. There is a boiler inside the western side wall.

## 2.0 The Question

2.1.1. There are three questions before the Board all of which together concern the development of a structure to the rear of a dwelling at Stonepark, Longford. The first concerns the use of the land for agriculture; the second is regarding the provision of an agricultural shed and the third is the provision of a boiler house serving the dwelling. They all relate to the building on the site which has been the subject of an enforcement notice.

2.1.2. In my opinion the questions could be stated as:

- Is the use of this land for agricultural use exempted development?
- Is the erection of a shed for agricultural use exempted development?
- Is the provision of a boilerhouse which serves the dwelling exempted development?

## 3.0 Planning Authority Declaration

### 3.1. Declaration

The planning authority stated the question as: whether the use of land being the site edged in red on the attached map being development consisting of the use of any for the purposes of agriculture and development consisting of the use for that purpose of any building occupied together with land so used is or is not exempted development, the provision of a building measuring 154.87m<sup>2</sup> internally as a class 9 agricultural shed is or is not exempted development, the provision of a boiler house as part of a central heating system for the adjoining house is or is not exempted development; and declared the development to be development and not exempted development.

### 3.2. Planning Authority Reports

3.2.1. Planning Reports

3.2.2. The planning report includes:

3.2.3. The proposed site is located to the rear of a dwelling house within its own walled off area which has access through a set of gates and a pedestrian access.

Enforcement notice 18/10 was issued for unauthorised development at the site, ref UNA 1201.

It refers to Class 2 of Schedule 2 Part 1 of the 2001 regulations re. the provision as part of a heating system of a house of various structures.

It refers to Class 9 of Schedule 2 Part 3 of the 2001 regulations re. the provision of a shed

#### 3.2.4. Other Technical Reports

none

### 4.0 Planning History

300384-17 The Board refused outline permission for a dwelling and wastewater treatment unit and percolation area, with entrance from the public road, on adjoining lands to the north.

UNA1201. - Enforcement notice 18/10 was issued for unauthorised development at the site.

### 5.0 Policy Context

#### 5.1. Development Plan

5.1.1. The site is located in Landscape Unit 6 – Peatlands, where the Royal Canal is an important landscape feature, not only due to its heritage associations but also its wider influence on the landscape including features that were built to support it, such as the bridges, towpaths, lock keepers cottages and lock gates. Works are ongoing on the opening up of the canal, which will have a considerable impact on how the landscape is perceived throughout the area.

5.1.2. The area is generally of low landscape sensitivity. An exception to this designation is the vicinity of the Royal Canal, where sensitivity is high.

5.1.3. Agricultural potential in the area is limited given the nature of the dominant landcover, however, some reclaimed sections of land support large pastoral farming enterprises, particularly in the northern sector.

## 5.2. Natural Heritage Designations

- 5.2.1. The nearest Natura sites are Mt Jessop Bog SAC located c. 2km to the north (site code 002202), and Brown Bog SAC located c. 3.3km to the south east (site code 002346).

## 6.0 The Referral

### 6.1. Referrer's Case

The referrer has appealed the decision of the Planning Authority and the issues raised can be summarised as follows:

- The structure has a tractor-trailer in it and there is a boiler in the building which heats the dwellinghouse.
- The request to the planning authority posed three questions
  - a) The use of the land for the purposes of agriculture;
  - b) The provision of an agricultural shed;
  - c) The provision of a boilerhouse serving a dwellinghouse.
- Re a) they rely on S 4 1) a) of the 2000 Act: any land may be used for agricultural use.
- In relation to b) they rely on Class 9 of Part 3 of Schedule 2 of the 2001 regulations.
- In relation to c) they rely on Class 2 of Schedule 2 Part 1 of the 2001 regulations. The planning report states that the use of the structure is not in any way linked to the heating requirements of the adjoining dwelling house, this is untrue. The referrer requests an internal inspection of the building.

### 6.2. Planning Authority Response

The planning authority has not responded to the grounds of appeal.

## 7.0 Statutory Provisions

### 7.1. Planning and Development Act, 2000

#### Section 2

“*Agriculture*” includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur or for the purpose of its use in the farming of land, the training of horses and the rearing of bloodstock, the use of the land as grazing lands, meadow land, osier land, market gardens and nursery grounds and agricultural shall be constructed accordingly.

“structure” means any building, structure, excavation or other thing constructed or made on, in or under land or any part of structure so defined and where in the context so admits includes the land on, in or under which the structure is situate

“Works” includes any Act or operation of the construction, excavation, demolition, extension, alteration, repair or renewal.

#### Section 3

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 - Exempted Development

(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;

### 7.2. Planning and Development Regulations, 2001, as amended

Article 6 of the Regulations state the following:

(1) Subject to Article 9 the 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 conditions and limitations specified in Column 2 of the Act opposite the mention of that Class in the said Column 1.

Article 9 of the Regulations identifies circumstances by which development under Article 6 shall not be exempted development including:

- (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 surface carriageway of which exceeds 4 metres in width.
- (iii) Endanger public safety by reason of a traffic hazard or obstruction to road users.
- (iv) – except in the case of a porch be forward of a building.
- (v) – re works under a public road...
- (vi) Interfere with the character of the landscape, or view or prospect of special amenity value or of special interest, the preservation of which is an objective of the Development Plan for the area in which the development is proposed for, 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 Plan.
- (vii) re excavation, alteration or demolition of places etc...
- (viiA) re excavation, alteration or demolition of monument...
- (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,
- (viiC) Consist of or comprise development which would be likely to have an adverse impact on an area designated as a natural heritage area by order made under section 18 of the Wildlife (Amendment) Act 2000
- (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 1: Exempted Development – General

Development within the curtilage of a house

## CLASS 2

a) The provision as part of a heating system of a house, of a chimney or flue, boiler house or fuel storage tank or structure

### Conditions and Limitations

The capacity of an oil storage tank shall not exceed 3,500 litres

## Schedule 2, Part 3: Exempted Development – Rural

### Class 9

Works consisting of the provision of any store, barn shed, glasshouse or other structure not being a type specified in Class 6, 7 or 8 of this part of this Schedule and having a gross floor area not exceeding 300m square metres.

### 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 floorspace 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 floorspace 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 the external finish of the structure

## 8.0 Referrals database

8.1.1. I have examined the Board's database of references/referrals. The following cases are relevant in the context of the issues raised in the current referral.

- 302390 -18 - whether an existing agricultural shed of approximately 288 sq.m is or is not development or is or is not exempted development. The shed was in a rural area and the referrer claimed class 9 compliance. The Board declared that the use of the shed was not linked to any agricultural activity and therefore could not be considered within the scope of Class 9 or Part 3 of Schedule 2 to the Planning and Development Regulations, 2001, as amended.
- RL. 2235 – re. the construction of stables close to a dwelling house and garage. The Board declared that a shed was within the curtilage of a dwellinghouse and could not avail of the exemption under Class 9 of Part 3 of Schedule 2 of the planning regulations because it was not on a landholding with an established agricultural use.

## 9.0 Assessment

9.1.1. The referral under Section 5(1) of the Planning and Development Act 2000 (as amended). There are three questions to consider, the first is in relation to use. The other two questions accept that there is development and question whether or not the development is exempted development?

### 9.2. Q1

### 9.3. Is or is not development

9.3.1. In relation to the first the question, is the use of this land for agricultural use exempted development, it falls to be considered whether a change of use is involved and if so whether or not it is a material change of use.

9.3.2. The site is in a rural area and extends over an area of less than 800 sq m.(40m x 20m). It comprises a building and a hard surfaced area. It is close to the rear wall of the dwelling and is part of its curtilage. It appears to me that residential use became the established use on the site with the erection of the dwelling, and therefore that this land is no longer in agricultural use. Use for agriculture would be a change of use.

#### **9.4. Is or is not exempted development**

9.4.1. No argument has been advanced that the change of use would not be a material change of use.

9.4.2. No details of the planning permission for the dwelling house on the site have been supplied. Notwithstanding this, the area attached to the dwelling house is clearly marked by a common boundary wall. Although partially in a separate compound the grounds surrounding the shed are accessed through the vehicular entrance serving the dwelling. Any development in the area attached to the property i.e. within its curtilage, should be considered in the context of the primary use of the property, as a residential dwelling.

9.4.3. There are areas of crossover between agricultural use and uses which would be ancillary to residential use, for example vegetable growing, however use for agriculture is a different category of use, and to elevate such incidental and ancillary residential uses to a principal use in its own right would be a material change of use.

9.4.4. In my opinion agricultural use would be a 'material' change of use in this case and would not be exempted development.

#### **9.5. Q2&3**

#### **9.6. Is an agricultural shed exempted development.**

9.6.1. The building on the site exceeds the height exemption for a shed associated with a domestic dwelling. There is no apparent need for a Class 9 building on this residential site, the shed's use for exclusively agricultural purposes is not consistent with its form and location, the requester has not shown that it is part of an agricultural landholding and use as an agricultural building would involve change of use of part

of this residential site to agricultural use, which change of use has, under previous paragraphs, been assessed as requiring permission.

- 9.6.2. In relation to the conditions and limitations of exemption for a Class 9 agricultural building, the Board should note item 1, which states that no such structure shall be used for any purpose other than the purpose of agriculture or forestry. The referral refers to a boiler in the building which heats the dwellinghouse. This point is one of the three questions that the Board is requested to address. Were the erection of a Class 9 agricultural building to be otherwise exempted development, this fact would de-exempt it.
- 9.6.3. In my opinion the erection of a shed for agricultural use in this case is not exempted development.

**9.7. Is the provision of a boiler house serving the dwellinghouse exempted development.**

- 9.7.1. CLASS 2 of Schedule 2 of Part 1: Exempted Development – General - Development within the curtilage of a house, sets out under item a) that ‘the provision as part of a heating system of a house, of a chimney or flue, boiler house or fuel storage tank or structure’, is exempted development provided that the capacity of an oil storage tank shall not exceed 3,500 litres.
- 9.7.2. The provision of a boiler and fuel storage tank is exempted development, however it is impossible to accept that a building, with a floor area of 154.87m<sup>2</sup> (internally) and with external dimensions of c 7m high x 10.5m wide x 14.75m long, and which is provided with two roller shutter doors as well as other doors and windows, is a boiler house. In my opinion the exemption claimed under class 2 does not apply.

## 10.0 Recommendation

- 10.1. I recommend that the Board should decide this referral in accordance with the following draft order.

**WHEREAS** a number of questions have arisen in relation to the development of a building to the rear of a dwelling: whether the use of the

land to the rear of the dwelling for agricultural use is or is not development or is or is not exempted development; whether the erection of a shed for agricultural use is or is not exempted development; and whether the provision of a boiler within the building, which serves the dwelling is or is not exempted development?

**AND WHEREAS** W McGinley requested a declaration on this question from Longford County Council and the Council issued a declaration on the 25<sup>th</sup> day of March, 2019 stating that the matter was development and was not exempted development:

**AND WHEREAS** W McGinley referred this declaration for review to An Bord Pleanála on the 16th day of April, 2019:

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

- (a) Section 2(1), 3(1) and 4(1)(a) of the Planning and Development Act, 2000, as amended,
- (b) article 6(1) and article 9 of the Planning and Development Regulations, 2001, as amended,
- (c) Parts 1 and 3 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (d) the planning history of the site,
- (e) the pattern of development in the area:

**AND WHEREAS** An Bord Pleanála has concluded that:

- (a) the development was located within the curtilage of a dwellinghouse and the use of the land for agriculture would involve a change of use,

- (b) the use of the shed was not linked to any agricultural activity and therefore could not be considered within the scope of Class 9 or Part 3 of Schedule 2 to the Planning and Development Regulations, 2001, as amended, and
- (c) the shed was not a boilerhouse and class 2 of Schedule 2 of Part 1, did not apply.

**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 development of this building to the rear of a dwelling at Stonepark, Longford is development and is not exempted development.

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Planning Inspector

24 June 2019

Appendices

Appendix 1 Photographs

Appendix 2 Extract from Longford County Development Plan 2015-2021