



An
Bord
Pleanála

Inspector's Report ABP-304512-19

Question

Whether the (a) erection of a boilerhouse, (b) erection and extension c.29sq.m. (c) the keeping or storing of a caravan or campervan within the curtilage of a house and (d) re-plastering of existing masonry in lime mortar to match original are or are not development or are or are not exempted development.

Location

Ballagh, Newtownforbes, Co. Longford.

Declaration

Planning Authority

Longford County Council

Planning Authority Reg. Ref.

DC195

Applicant for Declaration

Tom Devine

Planning Authority Decision

Split Decision

Referral

Referred by

Tom Devine

Owner/ Occupier

Tom Devine

Observer(s)

None

Inspector

Angela Brereton

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1.0 Site Location and Description

- 1.1. The subject site lies c.3km to the north east of Newtownforbes, in the townland of Ballagh, Co. Longford. It lies on a minor public road c.1.5km east of the N4. Alongside the public road is ribbon development. The site also partly adjoins a minor side road to the north of the site.
- 1.2. The site comprises a small landholding, to the west of the public road, with two stone buildings situated to the east of the site, one perpendicular to the road and one facing it (described as a house). To the west of these is a mobile home, which appears to be occupied. The mobile home is slightly elevated, sitting on two/three courses of block and to the front of it (roadside) a concrete hardstanding is apparent. Gated access to the site is from the public road, to the south of the stone building lying perpendicular to the public road.

2.0 Planning Authority

2.1. The Questions to the Planning Authority

- a) Whether the following constitute development or exempted development:
- a. Erecting a boiler house;
 - b. Erecting an extension to the rear of the house c.29sq.m;
 - c. The keeping or storing of a caravan or campervan within the curtilage of a house;
 - d. The replacement of the decayed profiled metal roof on the house with profiled metal roofing;
 - e. The replacement of existing timber frame windows with replicated sash windows; and
 - f. The re-plastering of existing masonry in lime mortar to match the original.

2.2. Declaration

Following an assessment of the subject works, the Planning Authority concluded that:

- a. The development consisting of the provision of a mobile home within the curtilage of the subject site comprises of a material change of use of the subject land and, therefore, comprise development under section 3(2) of the Planning and Development Act, 2000, as amended;
- b. The erection of a boiler house and an extension to the rear of the structure rely, for the purpose of the exempted development provisions, on the structure being construed as a 'house'. However, there is no evidence of the residential use of the structure and the Planning Authority is satisfied, therefore, that the residential use of the structure has been abandoned. Therefore, these matters do not fall within the provisions of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001, as amended;
- c. The proposed development of a lime mortar render to the exterior walls would, in view of the Planning Authority and in the absence of any sufficient evidence to the contrary in relation to the original appearance of the structure, 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 and, therefore, not exempted development under section 4(1)(h) of the Planning and Development Act, 2000, as amended; and
- d. The proposed repair and replication of the existing roof of the previous cottage structure with a profiled metal sheeting in slate grey colour and the proposed replacement and replication of the timber windows within the previous cottage structure are not considered works which will 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 and, therefore, are considered exempted development under section 4(1)(h) of the Planning and Development Act, 2000, as amended.

2.3. Planning Authority Reports

2.3.1. Planning Reports

The report refers to the planning history of the site and has regard to the relevant statutory provisions.

Their Assessment included the following:

- This Section 5 application for declaration of exempted development revisits a number of items previously assessed by both the PA (under Ref. DC18/4) and the Board in its referral assessment of DC18/4 under ABP- 301518-18.
- The subject structure is in a derelict state and does not constitute a 'habitable house' as per Section 2(1) of the Planning and Development Act 2000, as amended.
- They have regard to the previous works to the cottage structure and to the exempted development provisions in the Planning and Development Regulations 2001 (as amended).
- They remain of the view that the main structure is clearly derelict and the resumption of a habitable use of this structure would constitute a material change of use.
- They consider the repair and replication of the existing roof with a profiled metal sheeting in slate grey colour and the proposed replacement and replication of the timber windows within the previous cottage structure to be development and exempted development.
- They provide that the erection of a mobile home changes the use of the land materially and is development and not exempted development.
- Their conclusions are noted (as quoted above) in the Declaration Section of their Report.

2.3.2. Other Technical Reports

None

3.0 Planning History

- 3.1.1. Under PA ref. UNA 1173 an Enforcement Notice was served on the landowner (14th December 2017) in respect of unauthorised development at the subject site, comprising an unauthorised mobile home and concrete slab. It required the removal of the mobile and home and slab within six weeks of the Notice. On foot of the enforcement notice an application was made to the planning authority for a Section 5 declaration in respect of the mobile home. It was determined by the planning who considered the compartment development to be development and not exempted development. The determination was referred to the Board under our reference no. ABP-300951-18 and was subsequently withdrawn.
- 3.1.2. Under PA ref. DC18/4 a Section 5 Referral was made to the Council and subsequently to the Board (Ref. ABP-301518-18 refers) as to whether a number of listed works on the subject site were development or were or were not exempted development. Regard is had to the Board's conclusions and they decided that:
- (i) The rewiring of the structure on site, altering of internal dividing walls, re-plastering of internal walls, relocating of internal doorways, internal works to chimney and painting of internal and external surfaces is development and is exempted development.
 - (ii) The erection of a boiler house and rear extension, replacement of metal roofing, windows and doors, re-plastering of external walls, demolition of gable, improvement to existing driveway and keeping or storing a caravan or campervan on the site is development and is not exempted development.

A copy of the Inspector's Report and Board decision is contained in the History Appendix to this Report.

4.0 Policy Context

4.1. Longford County Development Plan 2015-2021

The subject site lies in a rural area north of Longford Town and north east of Newtownforbes. The site is not subject to any specific designations and it is removed

from features of archaeological interest, designated scenic routes, views or and prospects and from sites of nature conservation interest, including European Sites.

4.2. **Natural Heritage Designations**

There are no proximate designated sites.

5.0 **The Referral**

5.1. **Referrer's Case**

This Section 5 Referral has been made by Liam Madden of Vitruvius Hibernicus on behalf of Tom Devine and includes the following:

History

- Various questions have arisen in the past on this site. The questions were the subject of a previous section 5 request and referral no. DC18/4 and Board ref: 301518-18.
- This request/referral is a re-submission of six questions, clarified in the meanwhile. The Council has found in the Referrer's favour in two of the six questions posed i.e the replica windows and the replica roof sheeting.

5.2. **The Question to the Board**

- This referral relates to the other four questions i.e whether the
 - (a) Erecting a boilerhouse,
 - (b) Erecting an extension c. 29sq.m,
 - (c) The keeping or storing of a caravan or campervan within the curtilage of a house,
 - (d) Re-plastering of existing masonry in lime mortar to match originalis/are exempted development.

5.3. Supporting Arguments (a), (b) and (c)

- The Council in this matter and the Board in the previous referral 301518-18 attached some importance to whether the existing cottage was still in use as a dwelling.
- It is contended that the Board's previous referral 301518 went 'astray' in its Inspector's Assessment.
- The cottage is not in use as a dwelling and they consider this wholly irrelevant. The relevant exemption Classes refer to exemptions referable to a 'house'.
- If the cottage is a 'house' then the exemption Classes apply to the cottage.
- Therefore, the erection of a boilerhouse is exempted under Class 2 Schedule 2 Part 1.
- Therefore, the erection of an extension c.20sq.m is exempted, subject always to compliance with the attached limitations and conditions but exempt nonetheless under Class 1 of Schedule 2 Part 1.
- Therefore, the keeping or storing of a caravan or campervan is within Class 8 of Schedule 2, Part 1. They submit that the Council's re-wording as a 'mobile home' is incorrect, and this was not the subject of the Section 5 Referral.
- The underlying reason for re-submission of certain questions is to afford the Council in the first instance and more particularly the Board an opportunity to correct its previous serious mistake.
- The mistake made by the Board was to invent a new legal definition for 'house' by wrongfully inferring that the 'house' has to be in use.
- The Act already has a definition of 'house'. There is only one definition of 'house'. There are no conditions/limitations attaching to the definition.
- Concerns are expressed re: judicial review.

5.4. Supporting Argument (d)

- The re-plastering of the external walls is clearly exempted under Section 4(1)(h).
- The Council in its definition relies on the absence of evidence of the original finish.
- This is not correct: the submitted photos show the remaining areas of lime mortar plaster on the face of the external walls.
- They look forward to the Board's correct interpretation and application of the law.

5.5. Planning Authority Response

None

6.0 Statutory Provisions

The appropriate legal context for the referral is the Planning and Development Act, 2000 (as amended) and the Planning and Development Regulations, 2001 (as amended). The following specific provisions are relevant to this case:

6.1. Planning and Development Act, 2000 (as amended)

Section 2(1) - Interpretation

In this Act, except where the context otherwise requires –

- “*habitable house*” means a house which—
 - (a) is used as a dwelling,
 - (b) is not in use but when last used was used, disregarding any unauthorised use, as a dwelling and is not derelict, or
 - (c) was provided for use as a dwelling but has not been occupied;
- “*house*” means a building or part of a building which is being or has been occupied as a dwelling or was provided for use as a dwelling but has not been

occupied, and where appropriate, includes a building which was designed for use as 2 or more dwellings or a flat, an apartment or other dwelling within such a building;

- “*structure*” as any building, structure, excavation or other thing constructed or made on, in or under any land, or 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, or under land or the making of any material change in the use of any such structures or other land.

(2) For the purposes of subsection (1) and without prejudice to the generality of that subsection -

(b) (i) the placing or keeping of any vans, tents or other objects, whether or not moveable and whether or not collapsible, for the purpose of caravanning or camping or habitation or the sale of goods,

(ii) the storage of caravans or tents, or...

the use of the land shall be taken as having materially changed.

Section 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;

(j) development consisting of the use of any structure or other land within the curtilage of a house for any purpose incidental to the enjoyment of the house as such;

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—

6.2. **Planning and Development Regulations, 2001 (as amended)**

Article 5

This provides Interpretations and includes:

“house” does not, as regards development of classes 1, 2, 3, 4, 6(b)(ii), 7 or 8 specified in column 1 of Part 1 of Schedule 2, or development to which articles 10(4) or 10(5) refer, include a building designed for use or used as 2 or more dwellings or a flat, an apartment or other dwelling within such a building;

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 2.

Article 9(1)

This provides *Restrictions on Exemption* to which article 6 relates.

Schedule 2 Part 1

Exempted Development – General

Development within the curtilage of a house

Class 1

The extension of a house, by the construction or erection of an extension (including a conservatory) to the rear of the house or by the conversion for use as part of the house of any garage, store, shed or other similar structure attached to the rear or to the side of the house.

As noted above Column 1 provides a *Description of Development* and Column 2 *Conditions and Limitations*. This includes:

1(a) where the house has not been extended previously, the floor area of any such extension shall not exceed 40sq.m.

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

Class 8

The keeping or storing of a caravan, campervan or boat within the curtilage of a house. This includes exemptions 1 to 3. The latter is of note:

3. No caravan, campervan or boat shall be so kept or stored for more than 9 months in any year or occupied as a dwelling while so kept stored.

Class 50

(a) The demolition of a building or other structure, other than—

(i) a habitable house,

(ii) a building which forms part of a terrace of buildings, or

(iii) a building which abuts on another building in separate ownership.

(b) The demolition of part of a habitable house in connection with the provision of an extension or porch in accordance with Class 1 or 7, respectively, of this Part of this Schedule or in accordance with a permission for an extension or porch under the Act.

7.0 Assessment

7.1. Is or is not development

7.1.1. Regard is had to the four Questions asked as put forward in the Referrer's submission to the Board and as noted above. It is of note that these issues as raised

in the questions submitted, require works or in the case of the question relative to the keeping or storing of a caravan or campervan comprise a material change of use and constitute development under Sections 3(1) and 3(2) of the Planning and Development Act 2001 (as amended).

7.2. Is or is not exempted development/Restrictions on exempted development

- 7.2.1. In this case the argument being put forward is that whether or not these works are exempted development, depends on interpretation of 'house' and 'habitable house'. The issue is whether there is a distinction between the two. The Referrer notes that the cottage is not in use as a dwelling. They consider the term 'habitable house' irrelevant in the context of Schedule 2 Part 1 *Exempted Development – General* of the Planning and Development Regulations 2001 (as amended). It is of note that this refers to *Development within the curtilage of a house* and does not specifically refer to a *Habitable house*. As noted in Column 2 *Conditions and Limitations* regard is had to the floor area of extensions to the house.
- 7.2.2. It has been put forward that a house could not be extended unless it were habitable and for use for habitable purposes i.e to accommodate additional living space. No evidence/documentation has been submitted of when the house was in residential use and it would appear that the residential use of this now derelict structure is long abandoned. Having regard to the Conditions and Limitations of this Class 1, subsection 4(c) is of note in that it includes the word 'dwelling' and subsection 5 includes the wording *reserved exclusively for the use of the occupants of the house*. Also, of note is Class 50 *Miscellaneous* of the said Schedule which includes regard to the *demolition of a habitable house*. Therefore, it is not stated that there is a distinction or that a house/structure which is not *habitable* can avail of the exemptions offered by Class 1 of the Schedule. Rather it could be considered as a material change of use to convert this now derelict structure where the habitable use has been long abandoned back to residential habitable use and to the implications relative to this unserviced and unzoned site in the rural area. Regard is had to the Precedent Cases below.
- 7.2.3. The Referrer contends that the boilerhouse falls into Class 2(a) of the said Schedule. This class refers to *the provision as part of a heating system of a house*. It is again

arguable as to why a house would need a heating system if it were not habitable in the first place. Therefore, I would consider that the need for a boilerhouse aligns to the house being habitable, which as noted above is not the case in this instance.

- 7.2.4. The Referrer considers that the keeping or storing of a caravan or campervan is exempted development under Class 8 of the said Schedule. Again, this is with the Section on *Development within the Curtilage of a house*. This includes the Condition and Limitation 3. i.e: *No caravan, campervan or boat shall be so kept or stored for more than 9 months in any year or occupied as a dwelling while so kept or stored.*
- 7.2.5. It is clear when on site that the said structure is not a caravan or campervan and is a mobile home erected on blocks that is in occupation as a dwelling. Therefore, this exemption would not apply. Regard is had to Section 3 (2)(b)(i) and (ii) of the Planning and Development Act 2000 (as amended), relative to material change of use. In this instance I would consider that as such the erection and habitation of a mobile home on these lands constitutes a *material change of use*. It does not therefore, constitute exempted development.
- 7.2.6. Regard is had to the question concerning the *re-plastering of existing masonry in lime mortar to match original*. The Referrer contends that this is exempted development under Section 4(1)(h) of the Planning and Development Act 2000 (as amended). Having viewed the structure on site, it appears as a derelict former stone cottage, with very little original plastering remaining. It has not been ascertained in the documentation submitted as to what the finish of the original structure looked like externally. I would consider that the aforementioned works would *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*.
- 7.2.7. Having regard to these issues it is considered that they would involve a material change of use i.e from an abandoned former derelict cottage to a habitable extended dwelling and the installation of a caravan/campervan or mobile home on site. Also, the associated works to include the extension and boilerhouse and the re-plastering works would result in a material change in the external appearance of the structure. Therefore, I would consider that the questions raised in this referral constitute development and are not exempted development.

7.3. Regard to Precedent Cases

- 7.3.1. Regard has been had in the Planning History Section above to P.A ref. DC18/4 a Section 5 Referral made to the Council and subsequently to the Board (Ref. ABP-301518-18 refers) as to whether a number of listed works on the subject site were development or were or were not exempted development. This referred to the subject site and raised many similar issues, a copy of the Board decision is included in the Appendix to this Report.
- 7.3.2. Also, of note, is Ref. RL21.RL3395 where a Question was raised as to Whether renovation/construction and extension to a derelict cottage/shed is or is not development or is or is not exempted development at Rinn, Strandhill, Co. Sligo. The Board's conclusion included sections (a) to (e). The latter is of note and it includes regard to the concepts of abandonment of the residential use and the resumption of a habitable use of the building would now be material in terms of potential implications including the provisions of services and wastewater and intensification of a narrow road fronting the site in this unzoned, unserviced rural area. The Board decided that the reconstruction/renovation and extension of a derelict cottage/shed at Rinn, Strandhill, County Sligo is development and is not exempted development.
- 7.3.3. Relative to Ref. DC-136-14/PC/CL, and subsequently in Ref. 91. RL.3352 a Question arose as to whether works carried to a derelict single storey farmhouse for habitable use at Carrigmartin, Ballyneety, County Limerick are or are not development or are or are not exempted development. The Board's conclusion included sections (i) to (iv). The latter is of note in that it includes regard to the concepts of abandonment of the residential use and the resumption of a habitable use of the building would now be material in terms of potential implications including the provisions of services and wastewater in this unzoned, unserviced rural area and potential for the intensification of use of a private access on a Regional Road. The Board decided that the works carried out on a derelict single-storey farmhouse for habitable use at Carrigmartin, Ballyneety, County Limerick are development and are not exempted development.

7.4. Screening for Appropriate Assessment

- 7.4.1. Having regard to nature and scale of the development and the nature of the receiving environment and the distance and lack of connections to the nearest European sites, no Appropriate Assessment issues arise and 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.

8.0 Recommendation

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

WHEREAS a question has arisen as to whether the following is or is not development or is or is not exempted development:

- i. Erecting a boilerhouse.
- ii. Erecting an extension c.29sq.m.
- iii. The keeping or storing of a caravan or campervan within the curtilage of a house.
- iv. Re-plastering of existing masonry in lime mortar to match original

AND WHEREAS Tom Devine requested a declaration on this question from Longford County Council and the Council issued a declaration on the 14th day of May, 2019 stating that the matter was development and was not exempted development:

AND WHEREAS Tom Devine referred this declaration for review to An Bord Pleanála on the 15th day of May, 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) and 3(2) of the Planning and Development Act, 2000,
- (c) Section 4(1)(h) and 4(2) of the Planning and Development Act, 2000, as amended,
- (d) article 6(1) and article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (e) Parts 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (f) the planning history of the site,
- (g) the details on file regarding the proposed works to the structures on site.

AND WHEREAS An Bord Pleanála has concluded that:

- (a) there is no evidence on file of any residential use of this derelict building in several years, and the Board is, therefore, satisfied that the residential use was abandoned; and the resumption of a habitable use of the subject building and residential extension to this building would now constitute a change of use that is material, having regard to the potential for consequences in planning terms, including the potential for implications in terms of wastewater, the provision of services in an unzoned, unserviced rural area, and the potential for the intensification of use of the local road fronting the site, and would, therefore, constitute development, which development does not come within the scope of any of the legislative provisions for exempted development.
- (b) The erection of a boiler house, extension to the structure and the keeping of a caravan on site rely, for the purpose of the exempted development provisions, on the structure being construed as a 'house'. However, there is no evidence of the residential use of the

structure and the Board is satisfied, therefore, that the residential use has been abandoned. Therefore, that these acts do not fall within the provisions of Schedule 2 (Part 1) of the Planning and Development Regulations 2001 (as amended).

- (c) There is no exemption within the legislation for the erection of a mobile home for habitable purposes on site.
- (d) The acts referred to either fall within the definition of the term 'works' or comprise a material change of use (keeping or storing of a caravan or campervan) and, therefore, comprise development under section 3(2) of the Planning and Development Act, 2000, as amended.
- (e) The re-plastering of existing masonry in lime mortar to match original comprise works which have the potential to materially affect the external appearance of the structure so as to render it inconsistent with the character of the structure and is therefore not exempted development under section 4(1)(h) of the Planning and Development Act, 2000, 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 works proposed including the provision of an extension, a boilerhouse and re-plastering of the derelict cottage and the keeping or storing of a caravan or campervan within the curtilage of this structure formerly used as a cottage, at Ballagh, Newtownforbes, Co. Longford are development and are not exempted development.

Angela Brereton,
Planning Inspector

11th of September 2019