



An
Bord
Pleanála

Inspector's Report ABP-305550-19

Question	Whether the construction of an agricultural shed and all associated site works are or are not development and are or are not exempted development
Location	Derrinacahara, Dunmanway, County Cork
Declaration	
Planning Authority	Cork City Council
Planning Authority Reg. Ref.	D/21/19
Applicant for Declaration	Declan White
Planning Authority Decision	Is development & is not exempted development
Referral	
Referred by	Declan White
Date of Inspection	23 rd January, 2020
Inspector	Kevin Moore

1.0 Introduction

On 19th August 2019, Declan White sought a Declaration under section 5 of the Planning and Development Act from Cork County Council that the construction of an agricultural shed on lands in his ownership constituted exempted development. It was submitted that the construction of the shed would fall under Class 9 of Part 3 of Schedule 2 of the Planning and Development Regulations.

2.0 Site Location / Description

The site relating to the referral is located within the rural townland of Derrinacahara approximately 7km north-west of the village of Dunmanway in West Cork. The lands at this location are in agricultural use. The River Bandon flows in a south-west/north-east direction immediately north of the location for the proposed shed. The farmland on which the shed would be constructed is flanked by a minor local road to the south. There is substantial rock outcrop on the lands in the vicinity and an open land drain to the west of the location for the shed traverses in a south/north direction through the farmland leading to the river. The ground has been cleared in the general area on which it is proposed to construct the agricultural shed.

3.0 The Question

3.1 The question before the Board is:

Whether the construction of an agricultural shed and all associated site works are or are not development and are or are not exempted development.

4.0 Planning Authority Declaration

4.1 On 16th September 2019, Cork County Council issued a declaration stating that the construction of an agricultural shed on the lands is development and is not

exempted development under Class 9 of Part 3 of Schedule 2 of the Planning and Development Regulations 2001, as amended.

- 4.2 The Declaration referred to the development requiring an appropriate assessment because it would likely have a significant effect on the integrity of a European Site and that, as such, it is subject to the restrictions on exemptions as set down in Article 9(1)(a)(viiB) of the Planning and Development Regulations.

5.0 Planning Authority's Reports

5.1 Planning Report

The Planner noted that a section of the site is located within the 100 year Flood Risk Area as mapped on the Draft PFRA Maps and that the site is c. 4.7km upstream of the Bandon River SAC. It was submitted that it would appear that the works would fall within the description of development set out in Class 9 and would comply with associated conditions and limitations set down in Column 2 of Class 9. The water quality sensitivity of the SAC was noted and species and habitats for which the SAC is designated were acknowledged. It was submitted that it cannot be ruled out that the proposed works, and those which have already been carried out to facilitate the development, would not have potential to give rise to significant effects on the Bandon River SAC and it was considered that an appropriate assessment would be required in order to enable the planning authority to determine whether the proposed development would give rise to likely significant impacts on the SAC. It was concluded that the proposal would trigger appropriate assessment and accordingly any exemption under Class 9 is removed by Article 9(1)(a)(viiB).

6.0 The Referrer's Submission

6.1 The following is submitted:

- The Bandon River SAC appears to be approximately 5km away from the site. If one was to follow the river course, the distance would be in excess of 6km.
- The proposed shed is within the required size limits set out in Class 9 of Part 3 of Schedule 2 of the Planning and Development Regulations and complies with all the restrictions. It is strictly for storage and will not include any appliance that would lead to the discharge of effluent or other waste. It will cause minimal visual obstruction. It will provide much needed storage for farming equipment.
- The referral relating to ABP Ref. 03.RL.3053 constituted development that had similar characteristics and the proposal could be classified as exempted development.
- It is not accepted that the works would necessitate an appropriate assessment that would be likely to have a significant effect on the integrity of a European site.

7.0 Planning Authority Response

The planning authority stated it had no further comments.

8.0 Statutory Provisions

8.1 Planning and Development Act 2000

Section 2(1)

In this Act, except where the context otherwise requires—

“works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.

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.

8.2 **Planning and Development Regulations, 2001**

PART 2 - Exempted Development

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 – ...

(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, ...

Schedule 2

Part 3 Exempted Development – Rural

Column 1 Description of Development	Column 2 Conditions and Limitations
<p><i>Minor works and structures</i></p> <p>CLASS 9 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 of this Part of this Schedule, and having a gross floor space not exceeding 300 square metres.</p>	<ol style="list-style-type: none"> 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 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. 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 on the external finish of the structure.
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9.0 Assessment

9.1 The Question of 'Development'

The proposal would comprise the construction of an agricultural shed and all associated site works. These acts of construction may reasonably be determined to comprise 'works' in accordance with the definition set out under section 2(1) of the Planning and Development Act 2000 (as amended). These works would be carried out on, in and over land and thereby would constitute "development" in accordance with section 3 of the Planning and Development Act, 2000 (as amended).

9.2 The Question of Exempted Development

9.2.1 The Nature and Extent of the Proposed Development

The proposed development would comprise the construction of an agricultural shed. It is apparent from the referrer's submissions to date that it is intended that this shed would be used for storage purposes. Therefore, it is not intended to house animals or to use it for purposes from which there would be an effluent or other such discharge arising from its use. It would be understood that clean water runoff from the development would result.

9.2.2 Compliance with Class 9

Article 6(3) of the Planning and Development Regulations 2001 (as amended) states:

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.

Under Schedule 2, Part 3 *Exempted Development – Rural* of the Planning and Development Regulations, Class 9 applies to:

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 of this Part of this Schedule, and having a gross floor space not exceeding 300 square metres.

The referrer seeks to avail of this exemption provision. Arising from this, it is evident that the gross floor space of the proposed agricultural shed, as presented in the drawing details, would not exceed 300 square metres. There are six Conditions and Limitations relating to Class 9 and the following may be noted:

- The structure is intended to be used solely for agricultural purposes and not for the housing of animals or the storing of effluent.
- This would be a single structure and would not form part of a complex of other such structures or be within 100 metres of any complex of such structures.
- The structure would not be within 10 metres of the public road.

- The structure would not exceed 8 metres in height
- The structure would not be within 100 metres of any house or other residential building or school, hospital, church or building used for public assembly.
- The external finishes of the shed would be painted.

Having regard to the above, the proposed development would comply with the description, limitations and conditions of Class 9 of Schedule 2 Part 3 of the Planning and Development Regulations.

9.2.3 The Bandon River Special Area of Conservation

The location for the proposed works is approximately 4.7km upstream of the Bandon River Special Area of Conservation (Site Code 002171). The European site is a SAC selected for the following Annex I habitats and species listed in Annex II of the Habitats Directive:

Water courses of plain to montane levels with the *Ranunculion fluitantis* and *Callitriche-Batrachion* vegetation [3260]

Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (*Alno-Padion*, *Alnion incanae*, *Salicion albae*) [91E0]

Margaritifera margaritifera (Freshwater Pearl Mussel) [1029]

Lampetra planeri (Brook Lamprey) [1096]

The conservation objective is:

“To maintain or restore the favourable conservation condition of the Annex I habitat(s) and/or the Annex II species for which the SAC has been selected”.

9.2.4 The Need for Appropriate Assessment

In accordance with article 6(3) of the Planning and Development Regulations, the exempted development provisions provided for under Class 9 of Part 3 of Schedule 2 are subject to article 9 of the Regulations. I note article 9(1) includes the following:

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 – ...

(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, ...

My considerations in relation to the issue of Appropriate Assessment are as follows:

- Any potential effect from the proposed development would be at the construction stage. The proposed shed would be used as a storage building that would not generate an effluent requiring discharge.
- There would be no direct habitat loss as the proposed development would not be on or in any Natura 2000 site.
- The Bandon River Special Areas of Conservation is some 4.7km from the location for the proposed development. The referrer states that the distance is in excess of 6km if one was to follow the river course.
- This SAC has been selected for two Annex I habitats and two Annex II species, with the conservation objective being to maintain or restore the

favourable conservation condition of the Annex I habitats and Annex II species for which the SAC has been selected.

- It is acknowledged that the location for the proposed development is upstream of the SAC and that the proposed works would adjoin a section of the Bandon River that is distant from the nearest part of the river designated a European site.
- Arising from the above, it may reasonably be determined that there is a hydrological link with that part of the Bandon River that is designated an SAC.
- The proposed development, being physically separated from the designated SAC, could potentially have indirect effects on the Natura 2000 site.
- The potential indirect effects arising from the proposed development are seen to relate to potential loss, damage and fragmentation of habitat and disturbance of species relating to construction works effecting water quality.
- The construction works associated with the development of the shed would not be on, in or over the adjoining river. The river characteristics and flow conditions would not likely alter at that location. The completed works would not likely have any effect on the river's channel geometry, longitudinal profile or morphology within that part of the river forming the distant SAC.
- The potential construction-related effect would result from sedimentation / siltation due to works in proximity to the river bank. The river substrate at the location of the proposed works could potentially be effected at the construction stage. The nature and extent of the works would not likely result in any spillage or leakage of any hazardous or toxic substances.
- The sedimentation / siltation arising from the construction works adjoining the river bank could not have any likely effect on the habitats and species that form the Features of Interest in the Bandon River SAC some 4.7km or more downstream due to the dilution of sediment and silt within the immediate environs of the location of the proposed work and a short distance downstream of these works. Sediment and/or silt arising from the construction phase would not travel 4.7km or more downstream of the location for the proposed development.

- There is no other known development for which it can reasonably be concluded that in-combination effects would arise.

Having regard to the above, the likelihood of any potential effect occurring for the Bandon River SAC by the construction of an agricultural shed adjoining the Bandon River, at a distance of 4.7km or more from the SAC, could not reasonably be determined to be significant. It is, therefore, reasonable to determine that the proposed development would not require an appropriate assessment because it would not be likely to have a significant effect on the integrity of any European site. A Stage 2 Appropriate Assessment would, thus, not be required.

The provisions of article 9(1)(viiB) of the Planning and Development Regulations 2001 (as amended) would not apply in this instance.

10.0 CONCLUSION AND RECOMMENDATION

WHEREAS a question has arisen as to whether the construction of an agricultural shed and all associated site works at Derrinacahara, Dunmanway, County Cork is or is not development and is or is not exempted development:

AND WHEREAS the said question was referred to An Bord Pleanála by Declan White on the 11th day of October, 2019:

AND WHEREAS An Bord Pleanála, in considering this referral, had particular regard to:

- (a) sections 2 and 3 of the Planning and Development Act 2000 (as amended),

- (b) articles 5-11 of the Planning and Development Regulations 2001 (as amended), with particular reference to articles 6(3) and 9(1)(a)(viiB),
- (c) Part 3 of Schedule 2 *Exempted Development – Rural* of the Regulations, with particular reference to Class 9, and
- (e) the submissions of the parties to the referral,

AND WHEREAS An Bord Pleanála has concluded that:

- (a) the construction of an agricultural shed and its associated site works constitute ‘development’ for the purposes of the Planning and Development Act, and
- (b) the construction of an agricultural shed and its associated site works would not likely have a significant effect on the integrity of a European Site, namely the Bandon River Special Area of Conservation:

NOW THEREFORE the Board, in exercise of the powers conferred on it by section 5 of the 2000 Act, has decided that the construction of an agricultural shed and its associated site works constitute development and development that is exempted development.

Kevin Moore
Senior Planning Inspector
5th February 2020