



An
Bord
Pleanála

Inspector's Report ABP-306369-20

Question

Whether the construction of stables for the purpose of sheltering horses, fodder, sheep and goats is or is not development or is or is not exempted development.

Location

Church Lane, Newcastle Upper,
Wicklow, Co. Wicklow.

Declaration

Planning Authority

Wicklow County Council

Planning Authority Reg. Ref.

EX85/19

Applicant for Declaration

Martin O'Toole

Planning Authority Decision

None issued.

Referral

Referred by

Martin O'Toole

Owner/ Occupier

Martin O'Toole

Observer(s)

None.

Date of Site Inspection

5th May, 2020

Inspector

Robert Speer

1.0 Introduction

- 1.1. Please be advised that this referral should be considered in conjunction with the concurrent planning application lodged under ABP Ref. No. ABP-306522-20 on the basis that both files concern works within the same site / development.

2.0 Site Location and Description

- 2.1. The site in question is located in the rural townland of Newcastle Upper, Co. Wicklow, approximately 1.2km southwest of the village of Newcastle, where it occupies a position along a minor local roadway known as Church Lane which extends southwards from Newcastle Church of Ireland to its junction with the R761 Regional Road. It comprises a large agricultural field which has been subdivided into a series of paddocks for the holding of livestock (sheep, goats, and horses etc.) and also includes a number of outbuildings / agricultural structures.
- 2.2. The principle concentration of structures / activity is focused within the south-western corner of the field on an elevated plateau bounded by woodland to the west which rises above the adjacent roadway to offer expansive views eastwards over the intervening lands towards the sea. Within this area, there are a variety of outbuildings, including a pumphouse, an animal pen, and 2 No. unfinished 'farm buildings' which have only been completed as far as the foundations and base floor level. This area is also used for the storage of assorted farming / agricultural equipment, including 2 No. vintage tractors, a small dumper, a woodchipper, a horsebox, and a number of trailers / transporters, as well as silage bales and water tanks.
- 2.3. Access to the wider site may be obtained via a series of 4 No. separate entrances from the roadway that bounds the lands to the east, however, the principle access to the area occupied by the subject matter of this referral is located within the south-eastern corner of the site opposite the entrance to a nearby equestrian / equine enterprise. The access roadway serving the site is narrow and typical of less heavily trafficked rural roads / laneways, although it would appear to have been upgraded in part for a distance along the approach to the site from the north through the application of loose chippings as surface dressing.

3.0 The Question

- 3.1. On 11th November, 2019 Martin O'Toole submitted a request to Wicklow County Council for a declaration in accordance with Section 5 of the Planning and Development Act, 2000, as amended, to determine whether or not the construction of stables for the purpose of sheltering horses, fodder, sheep and goats at Church Lane, Newcastle Upper, Wicklow, Co. Wicklow, constitutes development which is exempted development.
- 3.2. The Planning Authority subsequently failed to issue a formal declaration on the matter within the statutory period and, therefore, pursuant to Section 5(3)(b) of the Act, Martin O'Toole has now referred the matter to the Board for a determination.
- 3.3. At this point, and in the interests of clarity, I would advise the Board that the subject matter of the Section 5 application as lodged with the Planning Authority refers to *'the construction of stables for the purpose of sheltering horses, fodder, sheep and goats'*. Furthermore, it is apparent from a review of the submitted plans and particulars that the works in question will be limited to the construction of a single building described as *'Farm Building 1 / Building 1'* pursuant to Class 6 of Part 3 of Schedule 2: *'Exempted Development – Rural'* of the Planning and Development Regulations, 2001, as amended. In this regard, it is of particular relevance to note the following:
- Sections 4.1 - 4.4 of the *'Planning Rationale'* provided with the initial Section 5 application clearly state that the subject referral is limited to the construction of 'Building No. 1'. Specific reference is made to an intention to lodge a separate Section 5 application in relation to the construction of 'Building No. 2' (pursuant to Class 9 of Part 3 of Schedule 2: *'Exempted Development – Rural'* of the Regulations). It is also stated that the farm access roadway, earthen screening mound, and 2 No. existing 'temporary' Class 9 agricultural structures on site, do not form part of the subject application.
 - Class 6 of the Regulations only refers to the provision of roofed structures for *'the housing of cattle, sheep, goats, donkeys, horses, deer or rabbits'*. It does not include for the storage of fodder and any such structures would require consideration by reference to Class 9 of Part 3 of Schedule 2 i.e. works consisting of the provision of any store, barn, shed, glass-house or other

structure. Accordingly, in seeking to clarify the intended use of Building 1, I would refer the Board to Drg. No. 01 Rev. MOT (Job No. 0002) received by the Planning Authority on 11th November, 2019 which includes a floor plan showing the housing of sheep, goats and horses with no provision for the storage of fodder. Therefore, in light of the foregoing, and as the intention is that the referral be assessed by reference to Class 6 of Part 3 of Schedule 2: Exempted Development – Rural, in my opinion, the question before the Board should be reformulated so as to omit the reference to the ‘sheltering’ of fodder.

Regrettably, the plans and particulars lodged with the Section 5 application include 2 No. differing sets of drawings for ‘Building No. 1’ and, therefore, there is a degree of confusion as to which of the building plans is intended for consideration. Furthermore, although some development works have been undertaken on site, it has not been possible from a site inspection to definitively ascertain which of the submitted designs has commenced construction. However, given that the gross floor area of Building No. 1 is referenced on Drg. No. 01 Rev. MOT as equating to 153m² (as opposed to 150m² as detailed on the opposing set of drawings) and that this would tally with Section 2 of the ‘Planning Rationale’, I am satisfied that it is appropriate to determine the subject referral on the basis of the plans and elevations etc. shown on Drg. No. 01 Rev. MOT (although the remaining second set of drawings expressly refers to the construction of that building having started and ceased at floor level and, therefore, reference to these drawings should not be entirely dismissed).

- 3.4. Therefore, having conducted a site inspection, and following a review of the submitted information, in my opinion, the question before the Board can be reformulated as follows:

‘Whether the construction of stables for the purpose of sheltering horses, sheep and goats at Church Lane, Newcastle Upper, Wicklow, Co. Wicklow, is or is not development and is or is not exempted development’.

4.0 Planning Authority Declaration

4.1. Declaration

- 4.1.1. In correspondence dated 27th November, 2019, the Planning Authority advised the applicant that as it had already been determined on 4 No. separate occasions pursuant to Section 5 of the Planning and Development Act, 2000, as amended, that the structure in question did not constitute exempted development and as the subject application did not significantly differ from those previous applications, no declaration would issue in this instance.

4.2. Planning Authority Reports

4.2.1. *Planning Reports:*

Provides the basis for the correspondence issued to the applicant by the Planning Authority on 27th November, 2019.

4.2.2. *Other Technical Reports:*

None.

5.0 Planning History

5.1. *On Site (Planning Applications):*

PA Ref. No. 09/675. Was refused on 17th November, 2009 refusing Martin Craven permission for a rural dwelling house, garage with solar panels, wastewater treatment installation to EPA standards and all associated site works.

PA Ref. No. 18/298. Was refused on 3rd May, 2018 refusing Martin O'Toole permission for the retention of a well together with pumphouse and connection to all services and associated site works.

- Having regard to the site size, the scale of the agricultural operation on site and the lack of justification for the need of the proposed well and pumphouse, it is considered that the proposed development is not justified and to permit the proposed development in the absence of such justification, would set a precedent for the provision of multiple wells supplying small land holdings

which would have an unacceptable combined environmental impact. The proposed development would therefore be contrary to proper planning and sustainable development.

- Having regard to the unauthorised development on site, namely the caravan and partly built structures, it is considered that the proposed well could consolidate such unauthorised development. Therefore, to permit the proposed development would be contrary to proper planning and sustainable development.

PA Ref. No. 18/1286. Was refused on 15th January, 2019 refusing Martin O'Toole permission for a farmyard complex comprising of 2 mixed use stables, a pumphouse containing well, agricultural waste storage tank, a dungstead, 2 temporary sheeted outbuildings and all associated site works.

- Having regard to
 - a) the size and scale of the agricultural buildings / farmyard complex,
 - b) The limited size of the applicant's landholding,
 - c) The location of the development on an exposed site visible in views from a wide area.
 - d) The position, siting and design of the proposed buildings, which do not represent agricultural structures,
 - e) The non-clustered or unified design of the proposed buildings within the farmyard complex,
 - f) The lack of evidence to show that agricultural practices are being carried out on site that would necessitate a farmyard complex of this size.

It is considered that to permit the proposed development in the absence of such justification, the proposed farmyard complex would not represent a necessary farmyard complex, would impinge on the visual amenities of this area, and would be contrary to the provisions of the County Development Plan in relation to agricultural development, proper planning and sustainable development.

- The proposed development would endanger public safety by reason of traffic hazard because the road (Church Lane) leading to the site is considered to be deficient in terms of its width, alignment and surfacing in order to cater for the traffic that would be generated by the proposed development. It has also not been demonstrated to the satisfaction of the Planning Authority that adequate sight distances can be achieved at the junction of the site entrance with the public road or that surface waters generated on site will not enter onto the public road network or onto adjoining properties. The proposal would therefore endanger public safety by reason of traffic hazard and would impact upon the amenity of adjoining properties.
- The proposed development would represent the consolidation of unauthorised development having regard to the number of existing entrances serving the subject site for which no record of permission exists and which have not been detailed on the Site Layout Plan submitted.

The provision of such a form of development unduly impacts on the amenities of the area, undermines the planning regulations and would be contrary to the proper planning and sustainable development of the area

- Having regard to the lack of detail submitted with regard to the disposal of waste from the proposed agricultural buildings, it has not been demonstrated that the proposed development will not give rise to adverse impacts contrary to Objective AGR4 of the County Development Plan which requires that the disposal and storage of agricultural waste shall comply with the standards required by the Council, therefore to permit this development in the absence of such information would be contrary to Development Plan Policy and to proper planning and sustainable development.
- The proposed development would be contrary to the proper planning and sustainable development of the area and would contravene Objectives NH2 because insufficient information has been submitted, about the nature of the proposed development, for the Planning Authority to screen out the requirement for Appropriate Assessment in accordance with Article 6(3) of the Habitats Directive and to permit this development in the absence of such information would be contrary to Wicklow County Council policies/objectives

as set out in the County Development Plan 2016 – 2022 and contrary to proper planning and sustainable development.

PA Ref. No. 19/1202 / ABP Ref. No. ABP-306522-20. On 2nd January, 2020 the Planning Authority issued a notification of a decision to refuse permission for the retention of a well together with a pumphouse and connection to all services and associated site works for the following 2 No. reasons:

- The proposed development would represent the consolidation of unauthorised development having regard to the existing development on site for which no permission exists. The provision of such a form of development unduly impacts on the amenities of the area, undermines the planning regulations and would be contrary to the proper planning and sustainable development of the area.
- Having regard to:
 - a) Objective ARG5 of the County Development Plan, which permits the development of new, appropriately located and designed agricultural buildings, which are necessary for the efficient and environmentally sound use of the agricultural practice and which do not create a visual intrusion in the landscape;
 - b) The siting of the proposed structure in an elevated and unscreened position within the landholding;

It is considered that the proposed development would form an inappropriate and intrusive feature on the landscape which would be contrary to the visual amenities of this area and would set an undesirable precedent for similar inappropriate development in the area. The proposed development would therefore be contrary to proper planning and sustainable development.

This decision has been appealed and a determination is pending with the Board.

5.2. *On Site (Section 5 Declarations / Referrals):*

PA Ref. No. EX46/19. Was determined on 16th July, 2019 wherein it was held that the development of a farmyard comprising – Building 1: stables, sheep housing and fodder storage; Building 2: Goat housing and dungstead; hardstanding area; and an

effluent storage tank, at Church Lane, Newcastle Upper, Newcastle, Co. Wicklow, was development and was not exempted development.

PA Ref. No. EX17/18. Determined that the construction of 3 No. agricultural structures at Church Lane, Newcastle, Co. Wicklow, was development and was not exempted development.

PA Ref. No. EX43/16. Was determined on 20th July, 2016 wherein it was held that the construction 2 No. agricultural buildings at Church Lane, Tiglin, Newcastle, Co. Wicklow, was development and was not exempted development.

PA Ref. No. EX34/16. Was determined on 28th June, 2016 wherein it was held that the construction of 2 No. agricultural buildings at Church Lane, Newcastle, Co. Wicklow, was development and was not exempted development.

5.3. *On Sites in the Immediate Vicinity:*

PA Ref. No. EX41/18 / ABP Ref. No. ABP-302612-18. Was determined on 23rd January, 2019 wherein it was held that the erection of an agricultural shed at Newcastle Farm, Newcastle, Co. Wicklow, was development and was not exempted development.

PA Ref. No. 15198. Was refused on 15th May, 2015 refusing Bergin Equine permission for (1) retention of existing equestrian/livery facility comprising of conversion/change of use of agricultural building into stables/tack room (152.03sqm), use of outdoor riding arena for commercial purposes, flood lighting, 2 no. storage buildings, mobile home (for administration purposes): total: 69.92sqm, access road/car parking area, vehicular entrance, ancillary site development works. (2) permission for proposed portable chemical toilet, all at Brambly Hedge Farm, Church Lane, Tiglin, Newcastle, Co. Wicklow.

- The proposed development would endanger public safety by reason of serious traffic hazard because:
 - a) The laneway is located on a seriously substandard and unsurfaced minor laneway, which is inadequate in width, alignment and structural condition and which is served by substandard road junctions and therefore cannot cater for the increase in traffic that would be generated by this development.

- b) Inadequate sightlines exist at the site entrance.
- The proposed development would not be prejudicial to public health because the submitted proposal for the provision of a portable chemical toilet to serve the proposed development is not an acceptable solution for the management of wastewater on site.
- The retention of a mobile home where no proven need for such a form of development has been established would, by reason of its design and materials of construction, be out of character with the pattern of development in this rural area, would establish an undesirable precedent for similar substandard forms of development in the area, and would be contrary to the visual amenities of the area and to the proper planning and sustainable development of the area.

6.0 Policy Context

6.1. Wicklow County Development Plan, 2016 – 2022:

Chapter 5: Economic Development:

Section 5.6: Objectives for Wicklow's Rural Economy: Agriculture:

Strategic Objective: To encourage the continued operation of farming and its associated uses where it already exists, and to facilitate the diversification of the agricultural economy through the support of appropriate alternative farm enterprise sources.

AGR1: To facilitate the development of environmentally sustainable agricultural activities, whereby watercourses, wildlife habitats, areas of ecological importance and other environmental assets are protected from the threat of pollution, and where development does not impinge on the visual amenity of the countryside. Developments shall not be detrimental to archaeological and heritage features of importance.

AGR2: To encourage and facilitate agricultural diversification into suitable agri-businesses. Subject to all other objectives being complied with, the Council will support the alternative use of agricultural land for the following alternative farm enterprises:

- Specialist farming practices, e.g. organic farming, horticulture, specialised animal breeding, deer and goat farming, poultry, flower growing, forestry, equine facilities, allotments, bio-energy production of crops and forestry, organic and speciality foods; and
- Suitable rural enterprises.

AGR3: To protect agricultural or agri-business uses from incompatible uses, which are more suited to being located within an urban settlement.

AGR4: To ensure that agricultural developments do not cause increased pollution to watercourses. Developments will be required to adhere to the Nitrates Directive (91/676/EC), and the EC (Good Agricultural Practice for Protection of Waters) Regulations 2009, with regard to storage facilities, concerning the protection of waters against pollution caused or induced by nitrates from agricultural sources. Developments will be required to comply with relevant measures, which operate to protect water quality from pollution by agricultural sources. The disposal and storage of agricultural waste shall comply with the standards required by Council.

AGR5: To permit the development of new, appropriately located and designed agricultural buildings, which are necessary for the efficient and environmentally sound use of the agricultural practice. New buildings will generally only be permitted in cases where there are no suitable redundant buildings on the farm holding which would accommodate the development and where the Council is satisfied that the proposal is necessary for the efficient operation of the farm. Developments shall be compatible with the protection of rural amenities, and should not create a visual intrusion in the landscape or be the cause of an environmental nuisance.

Chapter 10: Heritage:

Section 10.3.9: Wicklow's Landscape: 3. Corridor Area: 4(a) - The N11:

This area covers the main access corridor area along the east of the County. The boundary of the eastern access corridor generally follows what is considered to be

the areas upon which the greatest influence is exerted by this primary access route. This route, for the most part, runs through the more low lying and accessible tracts of land, dissects the Glen of the Downs wood in the north of the County and provides expansive coastal views north of Wicklow Town. This landscape area acts as the main connection between the major towns along the east coast of the County.

Appendix 1: Development and Design Standards:

Section 3: Commercial / employment development in rural areas (including agriculture, forestry and quarries)

Appendix 5: Landscape Assessment:

Section 4.5.4: Corridor Area: 4(a) - The N11

Section 5.3: Key Development Considerations

Section 5.3.14: Corridor Area KDC (see Appendix 4 Map 10.13(d)):

1. To protect views and prospects from the corridor area towards the surrounding landscape areas from development that would either obstruct the views / prospect from the identified vantage point or form an obtrusive or incongruous feature in that view / prospect. Due regard will be paid in assessing development applications to the span and scope of the view / prospect and the location of the development within that view / prospect.
2. Development proposals within this area should aim to locate within existing clusters of structures / tree stands and avoid locating new development in open fields.

6.2. Natural Heritage Designations

6.2.1. The following natural heritage designations are located in the general vicinity of the proposed development site:

- The Murrough Proposed Natural Heritage Area (Site Code: 000730), approximately 1.6km east of the site.
- The Murrough Wetlands Special Area of Conservation (Site Code: 002249), approximately 1.6km east of the site.

- The Murrough Special Protection Area (Site Code: 004186), approximately 1.7km east of the site.

7.0 The Referral

7.1. Referrer's Case

- This non-residential holding has been farmed by the applicant on a part-time basis since his acquisition of the lands in 2015. In this regard, the Board is referred to the accompanying correspondence / documentation as evidence of the legitimacy of his farming / agricultural activities. At present, the landholding supports a variety of livestock (sheep, goats & horses) and a number of beehives with additional activities conducted from other rented farmland. The applicant utilises traditional farming practices / methods and has sought to rear older breeds of livestock.
- While the lands in question were previously served by a running water supply, this was cut off due to a dispute with the result that the applicant was required to undertake daily / weekly runs hauling water tanks to the site. Accordingly, it was decided to drill a well on site, however, this also necessitated the securing of the supply within a pumphouse due to instances of anti-social behaviour as well as threats from parties that the well would be contaminated with diesel thereby rendering the water unsuitable for consumption.
- Following completion of the well & pumphouse, it was decided to develop the farm further through the construction of a number of additional buildings which were considered to comply with the exempted development provisions of the Planning and Development Regulations, 2001, as amended. Whilst a Section 5 referral determined that the aforementioned structures were not exempted development, it was considered that the case of the Planning Authority lacked merit and thus the decision was made to commence works on the construction of the buildings up to floor level. Similar to the proposed pumphouse, the design and finish of these structures was intended to reflect more traditional agricultural construction in accordance with the development & design standards set out in the County Development Plan. However,

following the receipt of a Warning Letter, the construction works ceased and efforts were then made to regularise the situation through recourse to the lodgement of multiple Section 5 referrals and planning applications, although the farming of the lands continued.

- The proposed development will be screened to the north, south and west by mature broadleaf forest and further forestation is planned, including the provision of new shelter belts.
- The proposed development site is located in a rural area outside of the Newcastle town boundary where the predominant land use is characterised by agriculture and associated development.
- The subject works involve the construction of an agricultural structure (floor area: 153m²) to be used as stables, sheep housing and for the storage of fodder in addition to an ancillary effluent storage tank compliant with the specifications and standards set by the Department of Agriculture. This building constitutes development as defined by Section 3 of the Planning and Development Act, 2000, as amended, and is also considered to constitute exempted development by reference to Class 6 of Part 3 of Schedule 2: 'Exempted Development – Rural' of the Planning and Development Regulations, 2001, as amended.
- In reference to the conditions and limitations set out in Column 2 of Class 6 of Part 3 of Schedule 2: 'Exempted Development – Rural' of the Regulations:
 - The proposed structure has a gross floorspace of less than 200m² and will not form part of an existing farmyard complex.
 - The purpose of the proposed structure is to provide housing for the animals stated.
 - Effluent storage facilities adequate to serve the structure having regard to its size, use and location will 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.

- Neither the structure nor any associated effluent storage will be located within 10m of the public road.
 - Neither the structure nor any associated effluent storage will be located within 100m 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.
 - No unpainted metal sheeting will be used for the roofing or on the external finish of the structure.
- With regard to Article 9(1) of the Regulations which states that development to which Article 6 relates shall not be exempted development for the purposes of the Act if the carrying out of such development would endanger public safety by reason of traffic hazard, it is submitted that the development is of a minor nature and will serve to reduce traffic movements along the adjacent laneway due to the fact that the applicant will not be required to visit his lands as frequently. Moreover, should the development not proceed, the applicant will nevertheless be required to visit the lands.
 - That part of Church Lane which is a public road has been resurfaced and the remaining privately-owned section is to be given similar treatment by its residents.
 - In the assessment of a number of other applications in the area, it was held that agricultural and residential use along Church Lane would not give rise to a traffic hazard e.g. PA Ref. No. EX41/18 / ABP Ref. No. ABP-302612-18.
 - Notwithstanding if the proposed development were not to proceed or if the applicant were to cease farming at the subject lands, the existing laneway may continue to pose a traffic hazard.
 - It is the responsibility of individual motorists / drivers to adhere to the speed limit and to be mindful of road conditions.
 - The existing entrances to the subject lands are long-established and have adequate sightlines. In addition, a new roadway may be constructed on the lands in order to facilitate the recommencement of construction works.

- The applicant is preparing a 5-10 year farm plan with the technical assistance of an agricultural advisor, however, he is not in a position to implement this plan until such time as the threat of enforcement action by the Planning Authority has been lifted.
- The lack of suitable animal housing means that the applicant's livestock is exposed to the elements which is not conducive to good animal husbandry.
- The applicant has no secure animal housing, fodder sheds or barns with the result that all livestock, feedstuffs and agricultural machinery on site are exposed to the elements. The property has therefore been subjected to repeated acts of vandalism and burglary with multiple incidents having been reported to An Garda Síochána, including threats to contaminate the water supply. The proposed development will aid in securing the farm against crime.
- There is no legal requirement for an existing farmyard to be in place in order to allow small agricultural developments as evidenced by previous Section 5 determinations made by the Board (please refer to the examples appended to the subject referral).
- The applicant is a *bona fide* part-time farmer who uses these lands for agricultural purposes only. Furthermore, he has a family home in Bray and has no intention of developing a dwelling on the lands.

7.2. Planning Authority Response

None.

7.3. Further Responses

None.

8.0 Statutory Provisions

8.1. Planning and Development Act, 2000

8.1.1. Section 2(1) of the Act defines “works” as follows:

“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.

8.1.2. Section 3(1) of the Planning and Development Act, 2000, as amended, states the following:

“Development” in this Act 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 use of any structures or other land.

8.1.3. Section 4(2) of the Act states that the ‘Minister’ may by Regulation provide for any class of development to be exempted development for the purposes of the Act.

8.2. Planning and Development Regulations, 2001

8.2.1. Article 6(1) of the Regulations states the following:

‘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 1’.

8.2.2. Article 9(1) of the Regulations states as follows:

‘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 –

(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,*
- (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.*

8.2.3. *Part 3 of Schedule 2: Exempted Development – Rural:*

Agricultural Structures:

Class 6:

Column 1: Description of Development	Column 2 Conditions and Limitations
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.	<ol style="list-style-type: none"> 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

	<p>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.</p> <ol style="list-style-type: none">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.
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Class 9:

Column 1: Description of Development	Column 2 Conditions and Limitations
<p>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

	<p>in writing of the owner and, as may be appropriate, the occupier or person in charge thereof.</p> <p>6. No unpainted metal sheeting shall be used for roofing or on the external finish of the structure.</p>
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9.0 Assessment

9.1. Is or is not development

9.1.1. Section 3 of the Planning and Development Act, 2000, as amended, defines “*development*” as 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. In my opinion, the construction of the building in question clearly involves an act of development having regard to Section 2 of the Act where “works” are defined as:

“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 to exterior of a structure.

9.1.2. Accordingly, having established that the construction of a building for the housing / sheltering of horses, sheep and goats constitutes development, the question arises as to whether or not these works constitute exempted development.

9.2. Is or is not exempted development

9.2.1. Section 4 of the Planning and Development Act, 2000, as amended, states that 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, shall be exempted development for the purposes of the Act. In this respect, I would advise the Board at the outset that following a review of the

available information, and having conducted a site inspection, I am satisfied that the subject lands are being actively used for agricultural purposes and that the structure in question is intended to be used by the applicant for such purposes. In support of the foregoing, I refer to the assertion by the applicant as detailed in the referral documentation that he has farmed this non-residential holding (in addition to other lands rented for such purposes) on a part-time basis since their acquisition in 2015 and that 'Building 1' is intended to be used for the housing of animals / livestock (i.e. horses, sheep and goats) in accordance with Class 6 of Part 3 of Schedule 2: '*Exempted Development – Rural*' of the Planning and Development Regulations, 2001, as amended. It was also readily apparent from observations made during the course of my site inspection that the wider landholding, which has been divided into a series of paddocks, is being used for the grazing of livestock (including sheep, horses, goats and lamas) whilst the concentration of structures / activities within the south-western corner of the site are of an agricultural nature e.g. a goat enclosure / pen and the parking / storage of assorted farm machinery and silage bales etc.

9.2.2. Article 6 of the Planning and Development Regulations, 2001, as amended, provides that development of a class specified in Schedule 2 of the Regulations, subject to the restrictions imposed by Article 9, shall be exempted development provided that such development complies with the conditions and limitations specified. In this respect I would draw the Board's attention to Class 6 of Part 3 of Schedule 2 of the Regulations which states that agricultural structures encompassing '*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*', subject to the conditions and limitations set out in Column 2 of the class, will constitute exempted development. Therefore, it is necessary to determine whether or not the subject structure accords with the definition set out in Column 1 of Class 6 in addition to the conditions and limitations applicable to same as per Column 2.

9.2.3. Firstly, the building in question (Building No. 1) as shown on Drg. No. 01 Rev. MOT (Job No. 0002) received by the Planning Authority on 11th November, 2019 comprises a roofed structure with a stated gross floor area of 153m² which is

intended to be used for the housing of sheep, goats and horses and, therefore, it accords with the development description set out in Column 1 of Class 6.

9.2.4. With respect to the conditions and limitations set out in Column 2 of Class 6:

1. *No such structure shall be used for any purpose other than the purpose of agriculture:*

I am satisfied that it is the intention of the applicant to use the structure in question for agricultural purposes given the information submitted and his express reference to the proposal having been made under Class 6 of Part 3 of Schedule 2: '*Exempted Development – Rural*' of the Regulations. Any deviation in the use of the structure from that specified in Class 6 is a matter for the Planning Authority.

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:*

For the purposes of clarity, it is my understanding of Class 6 of the Regulations that there is no requirement for any such structure to be developed as part of an existing complex of farm buildings and, therefore, it is entirely permissible for such an agricultural structure to be constructed in isolation as a standalone development.

The proposed building has a gross floor area of 153m² and does not form part of an existing complex of farm buildings. Furthermore, although there is an existing shed on site approximately 73m distant of the building in question, this would appear to have a floor area of c. 50m² whilst it is also identified as a Class 9 agricultural structure (i.e. a store, barn, shed, glass-house or other structure, not being of a type specified in Class 6, 7 or 8 of Part 3 of Schedule 2 of the Regulations) on the submitted site layout plan i.e. it is not used for animal housing. Similarly, the existing well / pumphouse to the immediate south of the subject building is of a different use class.

Therefore, given the absence of any other Class 6 structures within 100m of the subject building and its gross floor space of 153m², I am satisfied that the structure in question accords with this condition / limitation.

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:*

It has been submitted that the subject works include for the construction of an ancillary effluent storage tank compliant with the specifications and standards set by the Department of Agriculture and, therefore, the proposed development would comply with this condition / limitation.

4. *No such structure shall be situated, and no effluent from such structure shall be stored, within 10 metres of any public road:*

The structure in question is not situated within 10m of any public road and whilst the siting of the effluent storage facilities has not been shown on the submitted drawings, it will be a requirement for compliance with this provision that any such facilities are not situated within 10m of any public road.

(By way of further comment, I would refer the Board to the site layout plan provided with the concurrent planning application made under PA Ref. No. 19/1202 / ABP Ref. No. ABP-306522-20 which details the provision of a sealed concrete tank designed to collect effluent from the subject building (and Building No. 2) in accordance with the requirements of the Department of Agriculture, Food and Rural Development).

5. *No such structure within 100 metres of any public road shall exceed 8 metres in height:*

The subject structure is less than 8m in height and is not within 100m of any public road. Therefore, it complies with this condition / limitation.

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:

The structure in question is not located within 100m of any house or other residential building or school, hospital, church or building used for public assembly and, therefore, complies with this condition / limitation.

In order to avail of this exemption, it will also be necessary for any associated effluent storage facilities to be situated in excess of 100m from 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. In this respect, I would again draw the Board's attention to the site layout plan submitted with PA Ref. No. 19/1202 / ABP Ref. No. ABP-306522-20 which details the provision of a concrete effluent storage tank to serve the subject building at a location which would satisfy the locational requirements of this condition / limitation.

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

It has been confirmed that no unpainted metal sheeting is to be used in either the roofing or external finish of the structure in question. Indeed, it would appear to be the intention to finish the building in natural stone and roof slates to match the adjacent pumphouse.

Whilst I would concede that the overall design and quality of the construction proposed would appear to be of a higher standard than that normally associated with the construction of similar agricultural buildings, in my opinion, this does not in itself render the building non-compliant with any of the conditions / limitations required with respect to Class 6 agricultural structures.

- 9.2.5. Having regard to the foregoing, I am satisfied that 'Building 1' would appear to comply with the provisions of Class 6 of Part 3 of Schedule 2 of the Planning and Development Regulations, 2001, as amended.

9.2.6. At this point, I would reiterate that the building in question can only be classed as exempted development provided it is used for agricultural purposes as stipulated in the first condition / limitation of Class 6. If it is used for any purpose other than agriculture, it cannot avail of this exempted development provision. Furthermore, any reliance on this exemption will also require adherence to the full terms of the conditions and limitations set out in Column 2 of Class 6, including the effluent storage requirements.

9.3. Restrictions on exempted development

9.3.1. Article 9(1)(a) of the Regulations states that development to which Article 6 relates shall not be exempted development for the purposes of the Act if the carrying out of the development would:

- (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,
- (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.

9.3.2. Therefore, I propose to assess the relevance of each of the foregoing restrictions in order to ascertain their applicability in respect of the subject referral (in the interests of clarity, I am satisfied that no other aspects of Article 9 of the Regulations are of relevance to the determination of this referral):

9.3.3. *(iii): Endanger public safety by reason of traffic hazard or obstruction of road users:*

The development in question is intended for agricultural purposes and is located in a rural area where the predominant land use is for agriculture. In my opinion,

agriculturally-related developments such as that proposed are an inherent part of rural life and are typically accommodated in most areas without incident.

Whilst I would acknowledge that the surrounding road network is somewhat substandard, it is nevertheless typical of many rural roadways where agricultural use occurs without giving rise to unacceptable traffic hazards. Therefore, having regard to the site context and the limited scale and intended use of the subject building for agricultural purposes, I am of the opinion that the levels of traffic to be generated by the development in question are unlikely to give rise to a traffic hazard or the obstruction of road users.

- 9.3.4. *(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:*

Landscape Objective NH49 of the Wicklow County Development Plan requires all development proposals to have regard to the County landscape classification hierarchy and, in particular, the key landscape features and characteristics identified in the Wicklow Landscape Assessment and the 'Key Development Considerations' set out for each landscape area as detailed in Section 5 of the Wicklow Landscape Assessment. In this regard, I would advise the Board that the site in question is located within the 'Corridor Area: 4(a) - The N11' landscape categorisation which is described as covering the main access corridor area along the east of the County. The boundary of this eastern access corridor generally follows what is considered to be the areas upon which the greatest influence is exerted by the N11 National Route whilst the route itself, for the most part, runs through the more low lying and accessible tracts of land, dissects the Glen of the Downs wood in the north of the County and provides expansive coastal views north of Wicklow Town. This landscape area is considered to act as the main connection between the major towns along the east coast of the County.

Notably, the 'Corridor Area' is not identified as either an 'Area of Outstanding Natural Beauty' or an 'Area of High Amenity' in the Development Plan which are both afforded a greater level of protection as regards the preservation of their respective

landscape characters. Indeed, within the landscape hierarchy set out in the Landscape Assessment appended to the Development Plan (descending from Nos. 1-6 with the most sensitive / important landscape comprising the *'Mountain and Lakeshore AONB'* and the least notable landscape classification being the *'Urban Area'*), the *'Corridor Area'* occupies a position at No. 4 within the lower ranks of the county landscape categorisation.

In reference to the *'Key Development Considerations'* for the Corridor Area (as set out earlier in this report), from a review of Map Nos. 10.14A & 10.15 of the Development Plan, I am satisfied that the development in question will not obstruct any view or prospect of special amenity value or special interest identified in the Plan nor will it form an obtrusive or incongruous feature within any such view / prospect (KDC No. 1). Similarly, although the development in question will be located on a locally elevated plateau, it will be bounded in part by woodland, will not be overtly visible in a wider context, and will not detract from the prevailing landscape character of the surrounding primarily rural area. Accordingly, it is my opinion that the proposal will not contravene the provisions of KDC No. 2.

Therefore, having reviewed the available information, and following a site inspection, I am satisfied that the subject development will not unduly interfere with the character of the landscape, or any view or prospect of special amenity value or special interest, the preservation of which is an objective of the Development Plan and, therefore, it is not de-exempted by reason of Article 9(1)(a)(vi) of the Regulations.

9.3.5. *(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:*

Concerns have been raised by the Planning Authority as regards the relationship of the subject building with the existing well / pumphouse for which permission for retention has been sought under PA Ref. No. 19/1202 / ABP Ref. No. ABP-306522-20 to the effect that it has been suggested the structure in question will serve to consolidate unauthorised development.

Considering the nature of the subject development, in my opinion, it does not involve the extension, alteration, repair or renewal of an unauthorised structure nor is it intrinsically reliant on the existing well / pumphouse. I would also suggest that the

Board may wish to take cognisance of its decision-making with regard to ABP Ref. No. ABP-306522-20 considering that said application has been purposely lodged in an effort to regularise the planning status of the well / pumphouse.

9.3.6. *Other Considerations:*

By way of further comment, it is my opinion that Objective AGR5 of the Development Plan, which seeks to manage the location and design of agricultural buildings, is not intended to be construed so rigidly as to de-exempt the statutory provisions set by the Oireachtas in national legislation by reference to Part 3 of Schedule 2 of the Planning and Development Regulations, 2001, as amended.

9.4. **Appropriate Assessment:**

- 9.4.1. Having regard to the nature and scale of the development under consideration, the nature of the receiving environment, and the proximity of the lands in question to the nearest European site, it is my opinion that no appropriate assessment issues arise and that the development would not be likely to have a significant effect, either individually or in combination with other plans or projects, on any Natura 2000 site.

10.0 **Recommendation**

- 10.1. 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 construction of stables for the purpose of sheltering horses, sheep and goats at Church Lane, Newcastle Upper, Wicklow, Co. Wicklow, is or is not development or is or is not exempted development.

AND WHEREAS Martin O'Toole requested a declaration on this question from Wicklow County Council and the Council did not issue a declaration.

AND WHEREAS Martin O'Toole referred this question to An Bord Pleanála on the 13th day of January, 2020 for determination.

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

- a) Sections 2, 3, and 4 of the Planning and Development Act, 2000, as amended,
- b) Articles 6 and 9 of the Planning and Development Regulations, 2001, as amended, and
- c) Class 9 of Part 3 of Schedule 2 to those Regulations:

AND WHEREAS An Bord Pleanála has concluded that:

- a) the construction of the stables for the purpose of sheltering horses, sheep and goats comprises works and these works constitute development within the meaning of Section 3 of the Planning and Development Act, 2000, as amended,
- b) the construction of the stables for the purpose of sheltering horses, sheep and goats, based on the details submitted by the referrer, would come within the scope of exemptions set out in Class 6 of Part 3 of Schedule 2 of the Planning and Development Regulations, 2001, as amended, and
- c) none of the restrictions on exemption set out in Article 9(1)(a) of those Regulations apply in this case:

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3) (b) of the 2000 Act, hereby decides that the construction of stables for the purpose of sheltering horses, sheep and goats at Church Lane, Newcastle Upper, Wicklow, Co. Wicklow, is development and is exempted development.

Robert Speer
Planning Inspector

9th May, 2020