



An  
Bord  
Pleanála

## Inspector's Report ABP-306518-20

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<b>Question</b>	Whether the construction of a slatted unit at Roscliff, Ballynacally, Co. Clare, is or is not development and is or is not exempted development.
<b>Location</b>	Roscliff, Ballynacally, Co. Clare
<b>Declaration</b>	
Planning Authority	Clare County Council
Planning Authority Reg. Ref.	R1921
Applicant for Declaration	Fintan Meaney
Planning Authority Decision	Is not exempted development
<b>Referral</b>	
<b>Referred by</b>	Fintan Meaney.
<b>Owner/ Occupier</b>	Fintan Meaney.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	19 <sup>th</sup> March 2020.
<b>Inspector</b>	Bríd Maxwell

## 1.0 Site Location and Description

- 1.1. This referral relates to a rural site located within the townland of Roscliff circa 400m south east of Ballynacally village and 15km south west of Ennis in Co Clare and to the northern side of the River Fergus Estuary. The referral site is roughly trapezoid in shape with a curved northern boundary defined by the Ballynacally Creek. The referral site is approximately .2ha in size and part of a small landholding of .4ha. The referral site is set back circa 65m from the local road to the east. Within the referral site there is an existing slatted shed with a floor area of 208sq.m (14.4m x 14.5m) with underground tank and which incorporates a cattle crush along the eastern elevation. A gravelled access road runs along the northern boundary of the site adjacent to the river and an overhead ESB power line also traverses the northern part of the site with a pole located within the site. To the front of the site a hard-surfaced area is provided and on the date of my site visit I noted buses parked thereon.
- 1.2 The referral site is within 50m of the designated waters of the Lower River Shannon SAC and within 260m of the River Shannon and the River Fergus Estuaries SPA. Flood maps designate the northern part of the site to be located within Flood Risk Zone A associated with the Ballynacally Creek.
- 1.3 There are a number of dwellings in the vicinity including a dwelling circa 65m to the north east and a dwelling circa 90m to the southeast.

## 2.0 The Question

- 2.1. The question as referred is whether the construction of a slatted unit at Roscliff, Ballynacally, Co Clare is or is not development or is or is not exempted development. I note that during the course of the referral to Clare County Council the referrer altered the detail of the proposed shed with regard to its siting and underground storage tank size.
- 2.2. The proposal comprises a slatted shed with covered feed area and it is to be located within 2.6m adjacent to the eastern side of the existing slatted shed. Application details indicate that the shed will extend to 14.5 x 6.6m.(95sq.m) with a maximum height of 4.7m. I note that the submitted drawings are not to scale. Underground tank

is 17.4m by 4.1m by 2.4m deep. The proposed shed is to be constructed of RSJ steel beams with concrete wall and cladding to lean-to roofs. Proposed shed is to be constructed 1.2m above existing ground level.

### 3.0 Planning Authority Declaration

#### 3.1. Declaration

3.1.1 Following a request for additional information regarding details of the gross floorspace of the existing cattle housing structure within the site, the decision of Clare County Council was as follows:

- (a) The construction of a slatted unit at Roscliff, Ballynacally, Co Clare, constitutes works which come within the scope of Section 2 (1) of the Planning and Development Act 2000, as amended.*
- (b) The said works constitute “development” which comes within the scope of section 3(1) of the Planning and Development Act 2000, as amended*
- (c) The said development of the construction of a slatted unit at Roscliff, Ballynacally, Co Clare, generally falls within the conditions and limitations of class 6 of Part 3 of Schedule 2 of the Planning and Development Regulations 2001, as amended. However it is considered that the development would 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, and as such the proposal would come within the restrictions on exemption as set out in Article 9(1)(a)(viiB) of the said Regulations.*

*Now Therefore: The Planning Authority in exercise of the powers conferred on it by Section 5 of the Planning and Development Act 2000 (as amended), hereby decides that: the construction of a slatted unit at Roscliff, Ballynacally, Co Clare constitutes development which is not exempted development as defined within the Planning and Development Acts, 2000 (as amended) and associated regulations.*

## 3.2. Planning Authority Reports

### 3.2.1. Planning Reports

Initial assessment noted the conditions and limitations set out in Class 6 of Part 3 of Schedule 2 of the Regulations and sought additional information with regard to the following

- the size of the existing cattle house structure on the site in the context of the 300 sq.m threshold.
- Consent of the relevant homeowner with regard to location within 100m of dwelling house.
- Screening for Appropriate assessment having regard to proximity to Lower River Shannon SAC and location within Flood Risk Zone A.

Following submission of additional information, the planner's report notes that the revised location takes the proposal outside the 100m distance from the existing dwelling house. Based on submitted details cumulative size will not exceed the 300m<sup>2</sup>.

In relation to spreadlands a portion of the lands (c40%) are within Flood Risk Zone A and may not be suitable. The report concludes that the proposed development would comprise a development in relation to which an appropriate assessment would be required as it would be likely to have significant effect on the integrity of a European Site and would therefore come within the restrictions on exemption as set out in Article 9(1)(a)(viiB) of the said regulations.

### 3.2.2. Other Technical Reports

3.2.2.1 Environment Section Report notes that the information supplied gives a total slurry volume of 280m<sup>3</sup> (existing and proposed). Current animal number is 25 (1-2-year-old) dry stock which would typically produce 117m<sup>3</sup> slurry volume over an 18-week period. Therefore, the current tank is under capacity for the stock held and the additional tank would provide for the shortfall. Accounting for extended housing period due to weather there is still a significant amount of spare capacity unless the applicant plans to increase stock numbers further. With regard to spreadlands the

applicant has submitted a total number of 8.75ha which equates to 162.85 kgN/ha/yr which is within the prescribed 170kgN/ha/yr limit (using values for 25 dry stock 1.2 yr olds.) In any regard all farms must comply with Good Agricultural Practice Regulations with respect to compliance with the grassland stocking rate.

3.2.2.2. Environmental Assessment Officer - notes direct hydrological connectivity between the site and the Lower River Shannon cSAC European Site. Given the absence of a screening for AA it is not possible to exclude the potential for significant effects on the adjacent European site.

## 4.0 Planning History

**18/240** Application for construction of a slatted unit with underground slurry storage tank for housing livestock on the farm. Further information requested and no response received. Application was therefore deemed withdrawn.

Enforcement History

**UD15-048** Alleged Unauthorised Development of Slatted shed on the site. Case closed following decision of the Planning Authority that the development constituted exempted development.

## 5.0 Policy Context

### 5.1. Development Plan

The Clare County Development Plan 2017-2023 refers

### 5.2. Natural Heritage Designations

The referral site is within 50m of the designated waters of the Lower River Shannon SAC and within 260m of the River Shannon and the River Fergus Estuaries SPA.

## **6.0 The Referral**

### **6.1. Referrer's Case**

The referrer's case is outlined as follows:

- In 2014 a slatted unit was built on the site and subsequently after a series of correspondence was deemed to be exempted development and there was no obligation to carry out expensive screening on the slurry spreadlands area.
- The proposed shed is also within the remit of exempted development.
- It is unclear as to why the current referral has been dealt with in a different manner to the previous case.
- Details of additional spreadlands are provided.

### **6.2. Planning Authority Response**

Response of the Planning Authority respectfully requests An Bord Pleanála to uphold the Council's decision in relation to the declaration.

## **7.0 Statutory Provisions**

### **7.1 Planning and Development Act, 2000**

Section 3(1) of the Act states the following in respect of 'development':

"In this Act, 'development' means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land."

Section 2(1) of the Act states the following in respect of 'works':

"Any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal..."

Section 4(1) sets out various forms and circumstances in which development is exempted development for the purposes of the Act.

*Section 4 (1) (a)* states that development consisting of the use of any land for the purposes of agriculture and development consisting of the use for that purpose of any building occupied together with land so used.

Section 4 (2)(a) of the Act enables certain classes of development to be deemed exempted development by way of regulation.

*Section 4 (4)* states that notwithstanding paragraph (a) of subsection (1) and any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment is required.

### **Planning and Development Regulations, 2001 as amended**

#### **Article 6(3) 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.

**Class 6:**

*Class 6 of Part 3 of Schedule 2* of the Planning and Development Regulations states that the following are exempted development:

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 200sq.m. (whether or not by extension of an existing structure), and any ancillary provision for effluent storage.

Conditions and limitations associated with Class 6 of Part 3 Schedule 2 of the Planning and Development Regulations, 2001 to 2015 state that:

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 structures situated within the same farmyard complex or within 100m of that complex shall not exceed 300sq.m. gross floor space in aggregate
3. Effluent storage facilities adequate to serve the structure having regard to its size, use and location shall be constructed in line with Department of Agriculture, Food and Rural Development and Department of Environment and Local Government requirements and shall have regard to the need to avoid water pollution.
4. No such structure shall be situated, and no effluent from such structure shall be stored, within 10m of any public road.
5. No such structure shall be situated, and no effluent from such structure shall be stored, 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, save with the consent on writing of the owner and, as may be appropriate, the occupier or person in charge.
6. No unpainted metal sheeting shall be used for roofing or on the external finish of the structure.



Article 9 (1) (a) provides that certain development to which Article 6 relates (i.e. exempted development) shall not be exempted in various circumstances.

*Article 9(1)* states that:

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:

(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 the development plan ....

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

(viiC) consist of or comprise development which would be likely to have an adverse impact on an area designated as a natural heritage area by order made under section 18 of the Wildlife (Amendment) Act 2000.

(viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use.

## **7.2 Precedent Referral Cases**

**RL3496** In case to determine Whether the reduction in height of an agricultural structure and the retention of the modified building at Formina Village, Inis Oirr, Co. Galway, is development and is not exempted development, the Board noted that the location of the structure within the Inisheer Island Special Area of Conservation (Site Code 001275), and the structure had been constructed on lands where there is Limestone Pavement, which is an Annex I priority habitat, and which is one of the qualifying interests for that European site, (c) the Board, as the relevant competent authority in relation to appropriate assessment, determined that an appropriate assessment would have been required prior to the construction of the subject development. The structure, intended to be used for the housing of sheep, goats or donkeys, would generally come within the scope of Class 6, Part 3 of Schedule 2 to the Planning and Development Regulations 2001, but does not comply with

Conditions and Limitations number 3 of this Class. Finally having regard to the fact that an appropriate assessment would have been required prior to the construction of the subject development, the development is not exempted development by reason of section 4 (4) of the Planning and Development Act, 2000, as amended, and by reason of Article 9 (1) (a), (viiB) of the Planning and Development Regulations, 2001, as amended.

**RL2982** Whether the erection of a slatted cattle shed with straw bedded area, yard with manure pit and cattle crush is or is not exempted development. Auburn House, Malahide Co Dublin. The referral related to the construction of an agricultural cattle shed on the grounds of a protected structure and adjoining a ditch. The Planning Authority held that notwithstanding that the ditch was dry, it was considered a water body and therefore the development was not exempt. Discharges to the drainage ditch within the site could subsequently enter the Broadmeadow Estuary (an SPA) and may have a deleterious effect on the watercourse. The Board decided that the construction of the slatted shed, apron and manure pit was exempted development, as follows:

- A screening exercise found that the proposed development would not be likely to have a significant effect on a Natura 2000 site and therefore AA was not required.
- The slatted shed being less than 200sq.m. was exempt under Part 3 Class 8 ; that the shed, the yard with the cattle crush and the manure pit were generally constructed in line with pertinent guidance and requirements and so came within the exempted development provisions of Part 3 Classes 6 and 8 of PDR, 2001.

## **8.0 Assessment**

### **8.1. Is or is not development**

- 8.1.1. Having regard to Section 2(1) and Section 3(1) of the Planning and Development Act 2000, I consider that the proposed construction of a of a slatted unit constitutes works on land and would constitute development within the meaning of the Act.

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

8.2.1 The proposed slatted shed comes within Class 6 insofar as it is a roofed structure for the purposes of housing of cattle not exceeding 200 square metres and ancillary provision for effluent storage. I note that the parties to the referral are in agreement on this issue. I note that the level of information provided to the Board on the referral file is extremely limited. The referrer has not provided any detailed particulars in relation to the extent of the overall landholding and whilst a map was provided indicating possible spreadlands to the west of the village of Ballynacally, details in this regard are unclear. I note that the first party has raised questions and alleged inconsistency in terms of the previous decision of Clare County Council with regard to the established shed on the site in declaring that to be exempted development. I note that the details of the previous deliberations and decision have not been provided to the Board and I do not propose to revisit this case. I consider it appropriate to focus on the current case on its merit.

## **8.3. Restrictions on exempted development**

8.3.1. In considering the relevant conditions and limitations associated with Class 6 of Part 3 Schedule 2 I note the following:

1. No such structure shall be used for any purpose other than the purpose of agriculture. - The intended use is for housing of animals for the purposes of agriculture.
2. The gross floor space of such structure together with any other structures situated within the same farmyard complex or within 100m of that complex shall not exceed 300sq.m. gross floor space in aggregate. - Based on the submitted details the existing structure is 208.8sq.m and the proposed shed extends to 92 sq.m therefore the 300sq.m aggregate floorspace would not be exceeded.

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 Environment and Local Government requirements and shall have regard to the need to avoid water pollution. – The proposal provides storage tank to address a current shortfall (based on stocking numbers of 25 1-2yr olds) and additional spare capacity to take account of extended housing period due to adverse weather.
4. No such structure shall be situated, and no effluent from such structure shall be stored, within 10m of any public road. – The structure and effluent storage are in excess of 10m from the public road.
5. No such structure within 100m of any public road shall exceed 8m in height. – The maximum height of the structure is 4.7m.
6. No such structure shall be situated, and no effluent from such structure shall be stored, 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, save with the consent on writing of the owner and, as may be appropriate, the occupier or person in charge. – The structure and effluent storage are in excess of 100m from any residential building.
7. No unpainted metal sheeting shall be used for roofing or on the external finish of the structure. – Precoated roof cladding is proposed.

### **8.3.2 Environmental Impact Assessment - Preliminary Examination**

Having regard to the nature and scale of the development, it is considered that the issues arising from the proximity and connectivity to European Sites can be adequately dealt with under the Habitats Directive (Appropriate Assessment), as there is no likelihood of other significant effects on the environment. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

### **8.3.3 Article 9**

- 8.3.3.1 Article 9 of the Regulations states that development will not be exempt under the Regulations in particular circumstances. In this case the planning authority relies on Section 4 of the Act and Article 9viiB of the Regulations which restricts exemption where development needs an appropriate assessment.
- 8.3.3.2 The referral site is located within 50m of the designated waters of the Lower River Shannon SAC (Site Code 002165) which is of great ecological interest as it contains a high number of habitats and species listed on Annexes I and II of the E.U. Habitats Directive. The marine area is designated for the Annex I habitats Sandbanks which are slightly covered by sea water all the time (1110), Estuaries (1130), Mudflats and sandflats not covered by seawater at low tide (1140), Coastal lagoons (1150), Large shallow inlets and bays (1160) and Reefs (1170). The bay supports a variety of sub-tidal and intertidal sedimentary and reef habitats. The area is also designated for marine mammals (bottlenose dolphin, otter), freshwater fish (Sea, Brook, and River lampreys), the freshwater mussel and the Atlantic salmon (only in freshwater). Conservation Objectives for these habitats and species were identified by NPWS (Version 1 7 August 2012) and relate to the requirement to maintain habitat distribution, structure and function, as defined by characterising (dominant) species in these habitats. For designated species the objective is to maintain various attributes of the populations including population size, cohort structure and the distribution of the species in the SAC.
- 8.3.3.3 The proposed shed and associated effluent facilities would be located within approximately 33m of the Ballynacally Creek which flows into the SAC within 50m. I note that the northern part of the site, which includes road access to the proposed shed is noted to be within a designated flood zone. Given the direct hydrological connectivity to the Lower River Shannon SAC and based on the source pathway receptor model there is a potential risk from the development related to water quality arising from pollutants or sedimentation to ground or surface water at construction or operational phases of the proposed development. I note that the Planning Authority requested further information from the referrer to inform this issue including a screening assessment and further detail with regard to construction, site drainage,

disturbance, surface and storm water runoff increases in stocking density, potential for increased phosphorous loading on adjacent lands, and increase in slurry. The applicant failed to respond in any detail to this request.

8.3.3.4 Based on the information provided it cannot in my view be ruled out with certainty that the development and nature of the use and associated effluent run off is unlikely to contribute to a risk of pollutants to soil and to surface water and groundwater to the Ballycanally Creek and designated waters of the Lower River Shannon SAC. It is not therefore possible to conclude that the proposed development individually and in combination with other plans and projects would not be likely to have a significant effect on Lower River Shannon SAC in view of the site's conservation objectives and an appropriate assessment is therefore required.

8.3.3.5 I consider it reasonable to conclude that the said development would therefore be likely to have significant effects on a Natura Site and such effects are more significant when considered in combination with effluent run off in conjunction with existing farming activities on the site. An appropriate assessment of the development is therefore necessary in order to comply with Article 5 of the Habitats Directives. On this basis I conclude that the proposed development is development and is not exempted development.

## 9.0 Recommendation

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

**WHEREAS** a question has arisen as to whether the construction of a slatted unit at Roscliff, Ballynacally is or is not development or is or is not exempted development:

**AND WHEREAS Fintan Meaney** requested a declaration on this question from Clare County Council and the Council issued a declaration on the

nineteenth day of December 2019 stating that the matter was development and was not exempted development:

**AND WHEREAS** Fintan Meaney referred this declaration for review to An Bord Pleanála on the 23<sup>rd</sup> day of January, 2020:

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

- (a) Section 2(1) of the Planning and Development Act, 2000, as amended,
- (b) Section 3(1) of the Planning and Development Act, 2000,
- (c) Section 4(1)(a) 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) Class 6 Part 3 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (f) the nature and extent of development on the site,
- (g) the location of the Ballycanally Creek on the northern boundary of the site which flows directly into the Lower River Shannon SAC (Site Code 002165) at close proximity:

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

- (a) The proposed works are development
- (b) The proposed works would be within the terms of development envisaged by Class 6 of Part 3 of Schedule 2 of the Planning and Development Regulations
- (c) The proposed works are consistent with the conditions and limitations of this Class of exempted development

(d) Based on the submitted details it is not possible to state beyond reasonable doubt that the proposed development would not have a significant negative impact on a European Site. Accordingly, the said construction comes within the scope of the restrictions on exemption under Article 9 of the 2001 Planning and Development Regulations, apply to the subject proposal. The proposed development would require Appropriate Assessment.

**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 construction of a slatted unit at Roscliff Ballynacally Co Clare is development and is not exempted development.

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Brid Maxwell

Planning Inspector

29<sup>th</sup> April 2020