



An
Bord
Pleanála

Inspector's Report ABP-307078-20

Question

Whether the use of the curtilage of a house for the parking of a school bus is or is not development or is or is not exempted development.

Location

Borranstown, Ashbourne, Co. Meath.

Declaration

Planning Authority

Fingal County Council

Planning Authority Reg. Ref.

Applicant for Declaration

Eamonn Keenan

Planning Authority Decision

Is not exempted development

Referral

Referred by

Eamonn Keenan

Owner/ Occupier

Eamonn Keenan

Date of Site Inspection

20th August 2020

Inspector

Colin McBride

1.0 Site Location and Description

1.1. The site is located is approximately 5km to the north of Ashbourne, Co. Meath. The site subject to the referral is occupied by a single-storey dwelling and a garage. Also part of the site is a small yard area with a shed and a separate vehicular entrance located to the south of the existing dwelling. Adjoining land uses include agricultural lands to the north and east of the site and an existing dwelling to the south.

2.0 The Question

2.1. Whether the use of the curtilage of a house for the parking of a school bus is or is not development or is or is not exempted development.

3.0 Planning Authority Declaration

3.1. Declaration

On the 23rd of March 2020 Fingal County Council determined that the use of the curtilage of a house for the parking of a school bus is not exempted development.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Planning report (26/11/19): Further information required including clarification of the owner of the bus, the owner of the land and the planning status of a structure on such.

Planning report (23/03/20): Due to the absence of a specific class of development to provide an exemption under the 2001 Regulations and failure to demonstrate that the parking of the bus is incidental to the enjoyment of the house within the meaning of section4(1)(j) of the Planning and Development Act it was determined that such is not exempted development.

3.2.2. Other Technical Reports

Transportation Planning (12/12/19): No objection declaration of exemption.

4.0 Planning History

F94A/0275: Permission granted to Tony Keenan for a bungalow and septic tank.

92A/0449: Permission refused to Paul Dothery for a dormer bungalow.

5.0 Policy Context

5.1. Development Plan

The relevant development plan is the Fingal County Development Plan. The site is zoned 'RU Rural' with a stated objective 'to protect and promote in a balanced way, the development of agriculture and rural related enterprise, biodiversity, the rural landscape, and the built cultural heritage'.

5.2. Natural Heritage Designations

None in the vicinity.

6.0 The Referral

6.1. Referrer's Case

A referral has been submitted by Eamonn Keenan, Borranstown, Ashbourne, Co. Meath.

- The referrer outlines the background of the site and that he has parked a commercial vehicle (haulier) within the yard area at this location associated with his work activities over a prolonged period of time. The referrer also notes that the yard area was used for business activities for a period (construction materials distribution).

- The referrer notes that he permits the bus to be parked within the curtilage of his dwelling as it is efficient location for the purposes of the driver and the school area it serves minimising journey times and environmental impact.
- The Council commenced enforcement proceedings regarding the parking of the bus. It is considered unreasonable and unsustainable.
- The referrer seeks clarification on the status of parking of a commercial vehicle and notes it has repercussions for other commercial drivers who park their vehicles within the curtilage of their dwelling.
- The referrer considers the determination unreasonable in planning terms and to have a negative social and environmental impact.

6.2. Planning Authority Response

No response.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

Section 2(1)

“Works” includes any act or operation of construction, excavation, demolition, extension, alterations, repair or renewal and

Section 3 provides definition of Development.

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.

Section 4 provides for Exempted Development

4(1) The following shall be exempted developments for the purposes of this act

(h) development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures.

4(2) (a) The minister may by regulations provide for any class of development to be exempted development for the purposes of this Act

7.2. Planning and Development Regulations, 2001

7.2.2 Article 6(1) states-

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.

Article 9(1) states-

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—

(i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,

Class 6 of Schedule 2 Part 1 states that the following works are exempted development: -

(a) The construction of any path, drain or pond or the carrying out of any landscaping works within the curtilage of a house.

(b) Any works within the curtilage of a house for—

(i) the provision to the rear of the house of a hard surface for use for any purpose incidental to the enjoyment of the house as such,

or,

(ii) the provision to the front or side of the house of a hard surface for the parking of not more than 2 motor vehicles used for a purpose incidental to the enjoyment of the house as such.

Class 8 refers to the keeping of a caravan, campervan or boat within the curtilage of a house. Conditions in column 2 include that no more than one caravan, campervan or boat be stored, that it shall not be kept for the purposes of any business and that it shall not be kept for more than 9 months in any year.

Class 14 of Schedule 2 Part 1, as referred to in the planning authority's decision relates to exemptions for change of use between certain uses, none of which I consider to be applicable to the current case.

I note that 'Curtilage' is not defined within current planning legislation but in *Sinclair-Lockhart's Trustees v Central Land Board* it was declared that ground which is used for the comfortable enjoyment of a house may be regarded as being within the curtilage of that ground which is used for the comfortable enjoyment of a house may be regarded as being within the curtilage of that house.

7.3. Relevant Cases

7.3.1 26.RL2424: Whether or not the parking, washing and re-fuelling of 2 limousines and a mini bus is or is not development, and is or is not exempted development. Determined that such is not development.

24.RL.2135 : Whether the parking of oil trucks on a residential site and the transfer of oil between trucks is or is not development / exempted development.

The board found that the parking of these trucks constituted a material change of use, as it could not be considered incidental to the enjoyment of the dwelling as such, having particular regard to the fact that the driver of only one such vehicle was resident in the dwelling on site. The board also found that the transfer of oil was not

incidental to the use of the dwelling as such.

24.RL.2135: This referral included the issues raised under 24.RL2135, but expanded the works to be considered to include repair and servicing of the trucks, facilitating works including lighting and soil clearance, and the use of part of the dwelling as an office premises associated with the business. As per the previous case, the board found that all these activities and works were development and not exempted development.

7.4 Case Law

7.4.1 Dublin Corporation v Moore, which dealt with similar issues to the subject referral, is of relevance. This case related to the parking of two large modern style ice-cream vans at 144 New Cabra Road. Parking was taking place in the front entrance driveway of the house. The judgement does not refer to any works being undertaken to facilitate the parking of vehicles in the front driveway. The vans were connected to the domestic electricity supply from time to time.

The determination of the majority decision was that the parking of vans was not development within the meaning of s.3 of the 1963 Act and they were not being parked there for the purpose of the sale of goods within the meaning of s.3(2)(b)(i), as the latter relates to the sale of goods on the premises in question.

The dissenting judge decided that the parking of vans was a material change of use and therefore constituted development – this development was deemed not to be exempted development as the vans were not parked for any purpose incidental to the enjoyment of the house. I have included a copy of the report of this case as an attachment.

8.0 Assessment

9.1 The question arises whether the use of the curtilage of a house for the parking of a school bus is or is not development or is or is not exempted development.

9.2 Is or is not development

9.2.1 Firstly the question is whether the works in question constitute development. The definition of works under Section 2 of the Act includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal. The definition of 'development' under Section 3 of the Act includes the carrying out of any works on, in, or under land. In this case the issue concerns parking of a commercial vehicle within the curtilage of a dwelling. The parking of a bus does not conform to the definition of works with the main issue to be determined whether such is material and whether it's a material change of use.

9.2.2 I concur with the referrer's contention that it is commonplace for commercial vehicles to be parked within the curtilage of residential properties. An evening inspection of any residential area would reveal a multitude of overtly commercial vehicles such as delivery vans with logos, along with 'domestic' cars that may be primarily or partly used in conjunction with the work of one of the residents. As such, it is reasonable to expect a certain amount of parking of such vehicles within the curtilage of a house. On this basis, I consider that such a use falls within the terms of 'purposes incidental to the enjoyment of the house as such' as per the terms of Section 4(1)(j) and item b(ii) of Class 6. It should be noted that the corollary of this position would be to oblige all self-employed people to park vehicles used primarily for commercial purposes on the public road, to secure alternate commercial premises for such purposes, or to apply for planning permission. The absurdity of such a scenario was highlighted in the judgement of McCarthy J in *Dublin Corporation v Moore*, referred to in Section 7.4 of this report. It could be considered that the exemption for the parking of motor vehicles to the front and side of a house does not extend to commercial vehicles by virtue of the specific exemption that is extended under Class 8 of Schedule 2 Part 1 of the 2001 Regulations, which expressly refers to the parking of caravans, campervans and boats under certain circumstances. However, I consider the parking of the vehicles described in the referral would be significantly closer to the parking of a domestic vehicle than a caravan/campervan/boat, both in terms of the definitions under the planning regulations and in terms of impacts on surrounding properties.

9.2.3 Based on the information on file the bus is not owned or operated by the referrer/owner of the site. The referrer/site owner allows for the bus to be parked within the curtilage of his property as it is convenient in terms of location for the route it serves and is efficient and minimises its journey and subsequent environmental impact. I would be of the view that if the bus was being parked at the dwelling of the owner and operator of the bus it would fall within the terms of 'purposes incidental to the enjoyment of the house as such' as per the terms of Section 4(1)(j) and item b(ii) of Class 6. I would however consider that given the bus is not parked within the curtilage of the owner/operators house but being stored at a third party's property that it is storage of a commercial vehicle and a vehicle of sizeable proportions, I would therefore consider that the parking of the bus within the curtilage of the dwelling is a change of use and is a material change of use.

9.2.4 The area the bus is stored in is a yard area with a separate entrance and an existing shed. The information on file indicates that the yard area and shed was used for commercial purposes, however it does not appear such had any permitted planning status. The question submitted relates to the curtilage of a dwelling house and there is no reason to assess the question under any other circumstances.

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

8.1.1. I would note that there are no exemptions under the Planning and Development Regulations, 2001 (as amended) that would render the parking of the bus within the curtilage of a dwelling as 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 use of the curtilage of a house for the parking of a school bus is or is not development or is or is not exempted development. Borranstown, Ashbourne, Co. Meath is or is not exempted development.

AND WHEREAS the said question was referred to An Bord Pleanála by Eamonn Keenan on the 16th day of April 2020:

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

- a) Sections 2, 3 and 4 of the Planning and Development Act, 2000 (as amended)
- b) articles 5, 6 9, and 10 of the Planning and Development Regulations, 2001 (as amended), and
- c) the submissions of the parties to the reference in relation to the uses described in the referral

AND WHEREAS An Bord Pleanála has concluded that the parking of a bus within the curtilage of a dwelling does constitutes a material change of use of the land because it is not use incidental to the enjoyment of the dwelling as such, having regard in particular to the fact that it not stored within the curtilage of the owner or operator of said vehicle and is allowed to be stored within the curtilage of the dwelling in question

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 use of the curtilage of a house for the parking of a school bus is development which is not exempted development.

Colin McBride
Planning Inspector

26th August 2020

