



An
Bord
Pleanála

Inspector's Report ABP-308601-20

Question

Whether the replacement farm buildings on existing farmyard site is or is not development or is or is not exempted development

Location

Hilltown, Dunboyne, Co. Meath

Declaration

Planning Authority

Meath County Council

Planning Authority Reg. Ref.

RAS52056

Applicant for Declaration

Seamus Lonergan.

Planning Authority Decision

Is not exempted development

Referral

Referred by

Applicant.

Owner/ Occupier

Seamus Lonergan.

Observer(s)

None.

Date of Site Inspection

2nd March 2021.

Inspector

Barry O'Donnell

1.0 Site Location and Description

- 1.1. The subject site is located in the townland of Hilltown, south of Dunboyne and near the county boundary between Meath and Dublin.
- 1.2. The site consists of an old farmyard complex and includes a derelict farm cottage and a number of outbuildings. The site forms part of a larger landholding, which includes the applicant's home to the east.
- 1.3. The farmyard complex is enclosed along the roadside boundary by a mature hedge and along the east boundary by a recently planted hedge, which forms the boundary of the applicant's garden. The south boundary of the farmyard is marked by a block wall and fencing, which allows access to the landholding. A piped stream runs parallel to the east site boundary.

2.0 The Question

- 2.1. The question before the Board relates to the construction of replacement farm buildings on an existing farmyard site. The matter has been referred by the applicant. The original question as set out in the application form to the Planning Authority was:
'Replacement farm buildings on existing farmyard site.'
- 2.2. As part of the referral the applicant has proposed to widen and reconfigure the existing agricultural access, by setting the access gate back from the road by 10m.
- 2.3. Having reviewed the referral documentation, I consider there are a number of separate questions to be addressed, as follows:
 - (1) *'Whether the construction of a cattle shed with a gross external area of 120sqm is or is not development or is or is not exempted development.'*
 - (2) *'Whether the construction of a hay & feed shed with a gross external area of 170sqm, cattle yard with an area of 120sqm and a silage yard with an area of 96sqm is or is not development or is or is not exempted development.'*
 - (3) *Whether the construction of a machinery shed with a gross external area of 170sqm and a workshop with a gross external area of 66sqm is or is not development or is or is not exempted development.*

(4) Whether widening the existing agricultural access and provision of new 1.8m high pressed metal gates is or is not development or is or is not exempted development.'

2.4. I intend to proceed with my assessment on the basis of the reworded question.

2.4.1. The following documentation has been submitted in conjunction with the referral:

- Completed application form;
- Cover letter prepared on behalf of the applicant by Latimer Architecture;
- Schedule of accommodation;
- Architectural drawings depicting each of the subject structures;
- Flood Risk Assessment prepared by Hydro-S Engineering.

3.0 Planning Authority Declaration

3.1. Declaration

3.1.1. The Planning Authority issued a declaration dated 13th October 2020, which stated that the proposed development is not exempted development.

3.2. Planning Authority Reports

3.2.1. Planning Report dated 13th October 2020, which reflects the Planning Authority's determination. The report summarised the proposed development, in the context of applicable exempted development provisions, and determined that it was unclear if the development would result in a traffic hazard onto the local road. The report outlined that additional details relating to the existing traffic levels were not provided and concluded that the development was de-exempt under Article 9(1)(iii) of the Planning and Development Regulations 2001-2021 and thus not exempted development.

3.2.2. Other Technical Reports

None.

4.0 Planning History

RA190781 – Permission refused on 18th June 2020 for (1) The erection of 2 no. farm buildings for the keeping of livestock (cattle, sheep), storage of feed and farm machinery to include hard standings and run-off tank, (2) Demolition of existing old farm buildings, and (3) The relocation of existing farm entrance and gates. Permission was refused for 3 reasons, relating to the design of the proposed buildings, the absence of documentation relating to the applicant's farming practices and material contravention of planning permission Reg. Ref. DA140021.

DA140021 - Permission granted for a 2-storey replacement dwelling, double garage and access, together with retention of an existing cottage and agricultural outbuildings.

5.0 Policy Context

5.1. Development Plan

- 5.1.1. The site is located in a rural area, identified by the Meath County Development Plan 2013-2019 as being a '*rural area under strong urban influence.*'

5.2. Natural Heritage Designations

- 5.2.1. The site is not located within or adjacent to any Natura 2000 sites.

5.3. Environmental Impact Assessment

- 5.3.1. The proposed development comprises replacement agricultural buildings and structures, with a combined area of 710sqm, within an existing farmyard complex. This type of development does not constitute an EIA project and so the question as to whether or not it might be sub-threshold does not arise.

6.0 The Referral

6.1. Referrer's Case

The applicant's case can be summarised as follows:

- Irregularities during the declaration process.
 - In making its determination on the application, the Planning Authority did not set out the main reasons and considerations on which its decision was based, contrary to Section 5(2) of the Planning and Development 2000, as amended.
 - The failure to provide this information prejudiced the applicant's ability to lodge a fulsome appeal of the determination.
- Planning Report.
 - Paragraph 5.0 of the report states that the application was deemed to be de-exempt, under Article 9(1)(iii). The word de-exempt does not exist within relevant planning legislation, to the applicant's understanding. In using this terminology, the Planning Authority effectively created another category of non-exempt development, which does not exist within the scope of planning legislation.
 - The Planning Authority incorrectly cited Article 9(1)(iii) as the basis for rendering the development 'de-exempt.' On the basis that the concerns relate to road safety, the correct citation of the article is Article 9(1)(a)(iii). This incorrect reference created ambiguity and an unfair advantage to the Planning Authority.
- Failure to use the provisions of Section 5(2)(b) of the Act.
 - The Planning Authority could have sought additional information on the matter of a potential traffic hazard before making its determination. In failing to seek additional information, the applicant was prejudiced.
 - Had the applicant been requested to provide additional information, they would have had the opportunity to address the concerns and explain that by allowing the development to proceed, the farm and farmyard would become

more efficient as it would have its own storage facilities for hay and feedstuff, which is currently brought in on an as-needed basis.

- A request for additional information would also have allowed the applicant an opportunity to attempt to reach a compromise on an adjustment to the layout of the existing entrance. A proposed alteration of the entrance has been provided as part of the referral, which is considered to be exempted development.
- No increase in vehicular activity is envisaged as a result of the development and it was not considered necessary to address this issue in the application.

6.2. Planning Authority Response

6.2.1. Submission received dated 30th November 2020, the content of which can be summarised as follows:

- The issues raised in the referral were addressed in the Planner's Report. The Planning Authority is satisfied that the correct declaration was made in this instance.
- The development is considered de-exempt under Article 9(1)(a)(iii) of the Regulations and thus the works constitute development that is not exempted development.
- The proposed widened and relaid entrance is considered to be not exempted development, in accordance with Article 9(1)(a)(iii) of the Regulations.
- Additional information was not sought at the application stage as the entrance would need to be upgraded and as such would not constitute exempted development.

6.3. Further Responses

6.3.1. None.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

- 7.1.1. Section 3(1) of Planning and Development Act 2000, as amended, states – 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.
- 7.1.2. Section 2 (1) of the act states - “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.

7.2. Planning and Development Regulations, 2001

7.2.1. Article 6 - Exempted Development

6. (1) Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.

7.2.2. Article 9 – Restrictions on Exemption

9(1)(a)(ii) 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 (ii) consist of or comprise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width.

9(1)(a)(iii) 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.

7.2.3. Schedule 2, Part 3 – Exempted Development

Class 6: 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.

Conditions and limitations

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 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.
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.

Class 8: Works consisting of the provision of roofless cubicles, open loose yards, selffeed silo or silage areas, feeding aprons, assembly yards, milking parlours or structures for the making or storage of silage or any other structures of a similar character or description, having an aggregate gross floor space not exceeding 200 square metres, and any ancillary provision for effluent storage.

Conditions and limitations

1. No such structure shall be used for any purpose other than the purpose of agriculture.
2. The gross floor space of such structures 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 Agriculture, Food and Rural Development and the Department of the 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 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.

Class 9: Works consisting of the provision of any store, barn, shed, glass-house or other structure, not being of a type specified in class 6, 7 or 8 of this Part of this Schedule, and having a gross floor space not exceeding 300 square metres.

Conditions and limitations

1. No such structure shall be used for any purpose other than the purpose of agriculture or forestry, but excluding the housing of animals or the storing of effluent.
2. The gross floor space of such structures together with any other such structures situated within the same farmyard complex or complex of such structures or within 100 metres of that complex shall not exceed 900 square metres gross floor space in aggregate.

3. No such structure shall be situated within 10 metres of any public road.
4. No such structure within 100 metres of any public road shall exceed 8 metres in height.
5. No such structure shall be situated within 100 metres of any house (other than the house of the person providing the structure) or other residential building or school, hospital, church or building used for public assembly, save with the consent in writing of the owner and, as may be appropriate, the occupier or person in charge thereof.
6. No unpainted metal sheeting shall be used for roofing or on the external finish of the structure.

8.0 Assessment

8.1. Is or is not development

8.1.1. The questions raised are as follows:

- (1) *'Whether the construction of a cattle shed with a gross external area of 120sqm is or is not development or is or is not exempted development.'*
- (2) *'Whether the construction of a cattle yard with an area of 120sqm and a silage yard with an area of 96sqm is or is not development or is or is not exempted development.'*
- (3) *'Whether the construction of a hay & feed shed with a gross external area of 170sqm, a machinery shed with a gross external area of 170sqm and a workshop with a gross external area of 66sqm is or is not development or is or is not exempted development.'*
- (4) *'Whether widening the existing agricultural access and provision of new 1.8m high pressed metal gates is or is not development or is or is not exempted development.'*

8.1.2. Development is defined, under Section 3(1) of the Planning and Development Act, 2000 – 2014, as “the carrying out of works on, in, over or under land...” Works are defined, under Section 2(1) of this Act, as including “any act or operation of construction, excavation, demolition, extension...”

8.1.3. The construction of a cattle shed, hay & feed shed, cattle yard, silage yard, machinery shed and workshop and widening the existing agricultural access and provision of new 1.8m high pressed metal gates consist of the carrying out of 'works' and therefore constitute 'development', as defined in Section 3 of the Planning and Development Act 2000, as amended.

8.2. Is or is not exempted development

8.2.1. Schedule 2, Part 3 of the Planning and Development Regulations 2001-2020 sets out classes of agricultural development which are deemed to constitute exempted development.

Cattle Shed

8.2.2. Class 6 of Part 3 relates to '*the provision of a roofed structure for the housing of...cattle...having a gross floor space not exceeding 200 square metres*', however; condition 2 of this Class stipulates that the gross floor space of such a 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.

8.2.3. The proposed cattle shed has a gross external area of 120sqm and so falls below the maximum size threshold for an individual structure.

8.2.4. Regarding the aggregate floor area of such structures, there are two separate aspects to be considered; existing animal housing within the farmyard and proposed animal housing within the farmyard. For existing structures, the application documents do not identify that any of these structures is/was used for animal housing and I noted on my inspection that neither building appeared suitable for such use, with the barn being open-fronted and the shed being heavily enclosed. In any case, the gross floor space of these structures, together with the proposed cattle shed would not exceed 300sqm. Regarding proposed structures, none of the other proposed structures forming part of this application is identified for use as animal housing.

8.2.5. Having reviewed the application drawings, I am satisfied that other conditions and limitations associated with the Class would not be breached or exceeded. I am

therefore satisfied that the proposed cattle shed accords with the requirements of Class 6.

Cattle Yard and Silage Yard

- 8.2.6. Class 8 of Part 3 relates to *'the provision of roofless cubicles, open loose yards, selffeed silo or silage areas, feeding aprons, assembly yards, milking parlours or structures for the making or storage of silage or any other structures of a similar character or description, having an aggregate gross floor space not exceeding 200 square metres, and any ancillary provision for effluent storage.'*
- 8.2.7. In my opinion cattle yard and silage yard developments are similar in character to those itemised under Class 8, in that they are outside and are essentially open, and therefore fall to be considered under this Class. I note that the Planning Authority also took the view that these elements fell to be considered under Class 8.
- 8.2.8. The proposed structures have total areas of 120sqm and 96sqm, respectively, both falling below the maximum threshold for an individual structure under the Class.
- 8.2.9. In relation to the aggregate area of such structures, there are no other structures proposed or to be retained in conjunction, that would result in an exceedance of the maximum threshold.
- 8.2.10. Having reviewed the application drawings, I am satisfied that other conditions and limitations associated with the Class would not be breached or exceeded. I am therefore satisfied that the proposed cattle yard and silage yard accord with the requirements of Class 8.
- 8.2.11. I note that the application drawings identify a 'min. 20,000 litre effluent tank for run-off', to be provided under the silage yard and adjacent to the cattle yard. Condition 3 of the Class requires that adequate effluent storage facilities shall be constructed in line with Department of Agriculture, Food and Rural Development and the Department of the Environment and Local Government requirements. I am satisfied that such additional development falls under Class 8.

Hay & Feed Shed, Machinery Shed and Workshop

- 8.2.12. Class 9 of Part 3 relates to *'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.'*

Condition 2 of the Class stipulates that the gross floor space of such structures together with any other such structures situated within the farmyard complex shall not exceed 900 square metres gross floor space in aggregate.

8.2.13. The proposed hay & feed shed has a gross external area of 170sqm, the proposed machinery shed has a gross external area of 170sqm and the proposed workshop has a gross external area of 66sqm. Each fall below the maximum threshold for an individual structure under the Class and the aggregate area also falls below the maximum total of such floorspace allowable.

8.2.14. Having reviewed the application drawings, I am satisfied that other conditions and limitations associated with the Class would not be breached or exceeded. I am therefore satisfied that the proposed hay & feed shed, machinery shed and workshop accord with the requirements of Class 9.

Widened Access and New Gates

8.2.15. As part of the referral, and following concerns expressed by the Planning Authority, the applicant has proposed to widen the existing access and to move the gate further back from the road, so that the gate is set back 10m from the road. This development would constitute material widening of a means of access to a public road, the surfaced carriageway of which exceeds 4 metres in width and, in accordance with Article 9(1)(a)(ii), it would not constitute exempted development.

8.3. Restrictions on exempted development

8.3.1. Article 9(1)(a)(iii) of the Regulations outlines that development which would otherwise constitute exempted development 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 a traffic hazard or obstruction of road users.

8.3.2. Concerns were expressed by the Planning Authority, in its assessment of the application, that the development would result in a traffic hazard on a local road.

8.3.3. The farmyard complex has an existing agricultural access, to the south of the existing hay barn. The applicant has outlined that sightlines of 90m are available in both directions and from my visit to the site, I am satisfied that this is adequate to serve the site.

- 8.3.4. Regarding traffic movements, in my view, it is the use of the lands rather than the extent of buildings, which will generate traffic movements to and from the site and, in this regard, I am cognisant that the farmyard complex and wider landholding currently operate without any control over vehicle movements. The applicant has outlined that no increase in vehicular activity is envisaged and where the site is served by an adequately laid out access, I do not consider that the provision of replacement structures and buildings on the site is likely to endanger public safety by reason of traffic hazard or obstruction of road users.
- 8.3.5. I also note and accept the applicant's statement that the farm and farmyard would become more efficient as it would have its own storage facilities for hay and feedstuff, which is currently brought in on an as-needed basis.
- 8.3.6. I am satisfied that the provisions of Article 9(1)(a)(iii) are not applicable in this instance.

8.4. Appropriate Assessment

- 8.4.1. The proposed development comprises replacement agricultural buildings and structures, with a combined area of 710sqm. The stream which routes parallel to the east site boundary flows into the Royal Canal, to the east.
- 8.4.2. The Rye Water Valley/Cartron Special Area of Conservation (Site Code 001398) is approx. 4km south and it encompasses a section of the Royal Canal around Louisa Bridge/Leixlip rail station.
- 8.4.3. Having regard to the nature and scale of the proposed development, together with the degree of separation between sites, I do not consider that any Appropriate Assessment issues arise and I do not consider that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

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:

- a) Whether the construction of a cattle shed with a gross external area of 120sqm is or is not development or is or is not exempted development.
- b) Whether the construction of a cattle yard with an area of 120sqm and a silage yard with an area of 96sqm is or is not development or is or is not exempted development.
- c) Whether the construction of a hay & feed shed with a gross external area of 170sqm, a machinery shed with a gross external area of 170sqm and a workshop with a gross external area of 66sqm is or is not development or is or is not exempted development.
- d) Whether widening the existing agricultural access and provision of new 1.8m high pressed metal gates is or is not development or is or is not exempted development.

AND WHEREAS Seamus Lonergan requested a declaration on this question from Meath County Council and the Council issued a declaration on the 13th day of October, 2020 stating that the matter was development and was not exempted development:

AND WHEREAS Seamus Lonergan referred this declaration for review to An Bord Pleanála on the 6th day of November, 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) Article 6(1) and article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (d) Part 3 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,

- (e) The site's planning history,
- (f) the pattern of development in the area:

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The construction of a cattle shed with a gross external area of 120sqm would come generally within the scope of the exempted development provisions of Class 6 of Part 3 of Schedule 2 of the said Regulations,
- (b) The construction of a cattle yard with an area of 120sqm and a silage yard with an area of 96sqm would come generally within the scope of the exempted development provisions of Class 8 of Part 3 of Schedule 2 of the said Regulations,
- (c) The construction of a hay & feed shed with a gross external area of 170sqm, a machinery shed with a gross external area of 170sqm and a workshop with a gross external area of 66sqm would come generally within the scope of the exempted development provisions of Class 9 of Part 3 of Schedule 2 of the said Regulations,
- (d) The widening of an existing agricultural access and provision of new 1.8m high pressed metal gates would not constitute exempted development, in accordance with Article 9(1)(a)(ii), as the development would constitute material widening of a means of access to a public road, the surfaced carriageway of which exceeds 4 metres in width

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 following is development and is exempted development:

- (a) The construction of a cattle shed with a gross external area of 120sqm,
- (b) The construction of a cattle yard with an area of 120sqm and a silage yard with an area of 96sqm,

(c) The construction of a hay & feed shed with a gross external area of 170sqm, a machinery shed with a gross external area of 170sqm and a workshop with a gross external area of 66sqm,

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 following is development and is not exempted development:

(a) The widening of an existing agricultural access and provision of new 1.8m high pressed metal gates

Barry O'Donnell
Planning Inspector

8th March 2021