



An
Bord
Pleanála

Inspector's Report 309911-21

Question	Whether the construction of a farm storage shed is or is not development or is or is not exempted development
Location	Ardmore, Sneem, Co. Kerry
Declaration	
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	EX – 885
Applicant for Declaration	Diarmuid Breen
Planning Authority Decision	Is not exempted development
Referral	
Referred by	Diarmuid Breen
Owner/ Occupier	Diarmuid Breen
Observer(s)	None
Date of Site Inspection	7 th June 2021

1.0 Site Location and Description

- 1.1.** The site is located in the townland of Ardmore, approx. 8km to the southwest of the village of Sneem. It is situated on the N70 National Secondary Road, (Ring of Kerry), between Castlecove and Sneem. The site is on the eastern side of the road, and has road frontage to and is accessed directly from the national road. A speed limit of 80km per hour applies to this stretch of the national road, which has a central broken white line. There is no hard shoulder on the eastern side of the carriageway and a narrow hard shoulder (substandard width) on the western side opposite the site, which tapers out to the north and to the south of the site.
- 1.2.** The site of the referral has a stated area of 0.501ha. and comprises an agricultural field with a large farm shed sited in the middle of the field. The shed is situated on an area of hard surface. The site is roughly square shaped and is lower than the level of the adjoining road. The River Bunnow flows alongside the eastern boundary. The site is accessed by means of a wide splayed entrance with an agricultural type gate which is set back from the road edge.

2.0 The Question

- 2.1.** The question has arisen as to whether the construction of a farm storage shed is or is not development or is or is not exempted development.

3.0 Planning Authority Declaration

3.1. Declaration

- 3.1.1.** The P.A. made a declaration on the 8th March 2021 stating that having regard to the following considerations -
 - a. The proposed development of an agricultural shed would constitute 'works' that would come within the scope of Section 2(1) of the Planning and Development Act 2000-2021,
 - b. The said works constitute 'development' that comes within the scope of Section 3(1) of the Planning and Development Act 2000-2021,

c. The proposed agricultural storage shed would come within the scope of exemption provided that at Class 9 of Part 3 of Schedule 2 of the Planning and Development Regulations 2001-2021, would comply with the conditions and restrictions attached to Class 9, but would not comply with the Restriction on Exemption at Article 9 of the said Regulations as follows:

- I. Sub-article 9(1)(a)(iii) – The proposed development would endanger public safety by reason of traffic hazard and obstruction of road users.

Therefore, the proposed development would constitute development which is not exempted development.

The decision was based on the plans and particulars submitted to the planning authority on the 12th February 2021.

3.2. Planning authority reports

- 3.2.1.** The Planner's Report of 4th March 2021 noted that there is an existing large detached metal clad structure on the site, which is unauthorised, and which is located to the south of where the proposed farm storage shed is to be sited. The planning history of the site was outlined whereby permission to retain the said unauthorised structure had been refused on four separate occasions, and two of these decisions were upheld by the Board on appeal. The reasons for refusal related principally to traffic hazard. Following the most recent refusal in 2020, the planning authority had secured a Court Order requiring the demolition of the unauthorised structure on the site.
- 3.2.2.** It was considered that the farm shed would fall within Class 9, Part 3, Schedule 2 of the Planning and Development Regulations 2001 (as amended), as the floor area of the proposed shed is 299sq.m. It was further considered that it would comply with the conditions and limitations of Class 9. However, it was stated that any such exemption would not apply if it was subject to any of the restrictions under Article 9(1)(a) of the Planning and Development Regulations 2001 (as amended). The Area Planner concluded that the exemption provided would be restricted by sub-article (iii) of Article 9 (1) (a) as the proposed development would endanger public safety by reason of a traffic hazard and obstruction of road users.
- 3.2.3.** It was considered that the proposed development would not be restricted by any of the other sub-articles of Article 9(1)(a) or by Articles 9(1)(b), 9(1)(c) or 9(1)(d). It was

concluded that the proposed development would constitute development which is not exempted development. A decision was made by the P.A. on this basis.

4.0 Planning History

- 4.1. **15/85** – permission **REFUSED** to retain the existing agricultural shed and all associated site works for two reasons. The applicant (James Breen) had stated that the main purpose was to provide shelter and safe storage for machinery, but also stated that it was intended to house farm animals during the winter months. However, he had not proposed any measures to deal with the effluent. It is noted that in response to a FI request, the size of the landholding was revised from 12.705ha to 81ha. The P.A. had noted that the larger landholding had included access onto a local road. The reasons for refusal were based on access onto the national primary road and absence of proposals for effluent disposal. The first reason stated that having regard to the availability of an alternative access to a non-national road, the proposal would contravene CDP policy and government policy in relation to access to national routes.
- 4.2. **16/414** – Permission **REFUSED** to (James Breen) for the retention of the existing agricultural farm entrance and accessway to include (A) entrance gates, (b) entrance pillars and fencing (c) accessway and (d) all associated site works. The reason for refusal was similar to Reason 1 of 15/85.
- 4.3. **ABP.301739-18 (18/231)** – Permission **REFUSED** (to Diarmuid Breen son of James Breen), by both P.A. and the Board on appeal, to retain agricultural machinery and storage shed. At this point in time the speed limit on the national road was 100kph and the reports on file indicate that the N70 along this stretch had been realigned. Notwithstanding a positive roads report from the Council's Roads Engineer regarding adequate sightlines, the application was refused on the grounds of traffic hazard and contravention of policy associated with access onto a national road. TII was opposed on policy grounds. The applicant had claimed that the landholding had been subdivided between three children and that he had received a farm with access only onto the N70 (29.82ha). It was further claimed that the shed was initially planned to be less than 300m² and would have constituted exempted development, but that once it was built, the commitment to give the remaining lands

to the other children had already been made. Hence there was no alternative access available to the applicant.

- 4.3.1.** The Board stated that it was not satisfied that the proposal constituted ‘exceptional circumstances’ in terms of the application of local and national policy in respect of access to national roads and considered that it would endanger public safety by reason of traffic hazard and obstruction of road users, and would contravene the Government and CDP policies to secure the efficiency, capacity and safety of the national road network. The Inspector had noted that at the time that the shed had been constructed, alternative access was available and that “As yet, the Folio has not been transferred into the applicant’s name”. The Board Direction (11/09/18) included a comment regarding the claim of exempted development and raised the issue of the restrictions on exemption under Article 9(1)(a)(iii) of the PDR by reason of a traffic hazard.
- 4.4. ABP.306859 (19/1249)** – Permission **REFUSED** following first party appeal (Diarmuid Breen) to retain an agricultural machinery shed. Reason for refusal based on traffic hazard and contravention of policy regarding access onto national roads. The proposal was supported by a Road Safety Audit and a Traffic Impact Assessment. The applicant had claimed that ‘exceptional circumstances’ should apply as there is no alternative access available, that the speed limit has been reduced to 80kph with adequate sightlines, that the road is ‘lightly trafficked’ with less than 3,000 AADT and that the issues identified in the RSA can be remedied.
- 4.4.1.** The P.A. Roads Report (10/02/20) stated that the speed limit had been reduced to 80kph (following new bye-law) and that sightlines were acceptable, but that it was a matter for the Planning Dept. to determine acceptability of access. TII opposed on policy grounds. Application supported by solicitor’s letter declaring that applicant does not have any access to a non-national road and developer claims that the criteria for ‘exceptional circumstances’ are met. However, the P.A. and the Board decided to refuse permission on similar grounds to **301739**. The Inspector had noted that the traffic volumes significantly increase during the summer months and considered that there was uncertainty regarding the potential for traffic generation associated with the current contracting business compared with the original farming use. The Inspector concluded that the erection of the shed breached planning policy

at the time, which had not changed in the interim and the subsequent subdivision of the lands was not considered to be a planning issue.

5.0 Policy Context

5.1. National Policy

Spatial Planning and National Roads – Guidelines for Planning Authorities (2012)

- Section 2.5 states that the policy of the PA will be to avoid the creation of any additional access point from new development or the generation of increased traffic from existing accesses to national roads to which speed limits greater than 60kph apply. This provision applies to all categories of development, including individual houses in rural areas, regardless of the housing circumstances of the applicant.
- Section 2.6 states that the PA may identify stretches of national roads where a less restrictive approach may be applied, but only as part of the process of reviewing or varying the relevant development plan and having consulted and taken on board the advice of the NRA and having followed the approach as detailed including lightly trafficked sections of national secondary routes.

5.2. Development Plan

Site is located within a Rural Secondary Special Amenity Area.

Section 3.3.2.2 states that any proposal must be designed and sited so as to ensure that it is not unduly obtrusive. The onus is, therefore, on the applicant to avoid obtrusive locations. Existing site features including trees and hedgerows should be retained to screen the development. Any proposal will be subject to the Development Management requirements set out in the County Development Plan in relation to design, site size, drainage etc.

Section 7.2.1.2 – Access onto National Routes – The creation of an access or the intensification of useage of an existing access onto a National Road shall only be considered where it is in compliance with Spatial Planning and National Roads

Planning Guidelines (DoECLG 2012). In compliance with Section 2.6 of the Guidelines, the following 'exceptional circumstances' as agreed with the NRA shall pertain in County Kerry whereby new accesses or the intensification of existing accesses will be considered along the following sections of the National Secondary Network.

N70 – Killorglin to Cahersiveen-Kenmare

Table 7.3 Criteria

- There is no suitable alternative non-national public road access available.
- The development otherwise accords with the Development Plan
- Safety issues and considerations can be adequately addressed in accordance with the NRA's design manual for roads and bridges.

Objective RD-17 – protect the capacity and safety of the national road and strategically important regional road network in the County and ensure compliance with the Spatial Planning and National Roads Planning Guidelines (January 2012) and the NRA Traffic and Transport Assessment guidelines (2007).

6.0 The Referral

6.1. Referrer's Case

6.1.1. The referral was submitted by the landowner's agent, Frank Coffey Consulting Engineers, and was accompanied by plans and documentation in support of the proposed development. These included

- Site layout plans, floor plans and elevations of the proposed shed
- a Road Safety Audit Report
- a Traffic Impact Assessment Report
- Copy of Kerry Co. Co. Roads Report (2015)
- Extracts from Planning and Development Regulations 2001 (as amended)
- TII – Rural Road Link Publication – Table 6.1 DN-GEO-03031
- A report setting out the background and justification for the application.

6.1.2. Background – the shed was constructed in c.2013. Although initially it had been intended to keep the floor area below the threshold of 300m², the floor area of the shed as constructed was 448m². Following several decisions to refuse permission to retain the structure, the owner has now been ordered to remove it under the PA enforcement process (Ref. U317/07). It is stated that the Courts have granted a stay on the demolition but that it is accepted that the existing shed will have to be removed. The landowner has inherited the site from his parents, who had divided up the family farm into several lots, which were given to various offspring.

The original family farm comprised various folios, some of which abut a minor, non-national road, L-11612-0. It is stated that the landowner, Diarmuid Breen, obtained possession of Folio KY68088F in 2012, which has access solely onto the N70. At this time Mr. Breen was living and working in Australia but had intended returning home to set up a business as an agricultural/forestry contractor. The shed was constructed in his absence for this purpose, but had exceeded the threshold for exempted development. It is accepted that the shed must be removed as he has failed to obtain retention permission to date.

Notwithstanding the comment that the current landowner gained possession of the Folio KY68088F in 2012, the documents submitted with the planning application for retention of the shed, (Reg. Ref. 19/1249 and ABP.306859), include a Solicitor's letter (6/12/19) which states that the Folio in question was transferred to the landowner (i.e. deed of transfer completed) in December 2018. It should be noted that this Folio does not include the site of the referral which is contained within a separate Folio KY15783 on the opposite side of the road, (which includes the site the subject of the application/appeal 19/1249, ABP.306859). The same Solicitor's letter stated that both Folios were transferred to Diarmuid Breen in December 2018.

6.1.3. Requirement for shed – when the existing shed was originally constructed in 2013, Diarmuid Breen, who was working abroad at the time, had it built as part of his preparations to return home to set up in business as an agricultural/forestry contractor. The shed was constructed with the intention of storing agricultural/forestry contracting machinery. The landowner is still committed to involve himself in part-time farming and agricultural/forestry contracting. He therefore wishes to demolish the existing shed and to construct a shed which would

be just under the threshold of 300m², hence the application for a Declaration of Exemption from the planning authority.

6.1.4. Grounds for Reference – The P.A. stated reason for refusal relates to Article 9(1)(a)(iii) which places a restriction of an exemption in relation to circumstances where a development would endanger public safety by reason of traffic hazard or obstruction of road users. It is submitted, however, that the planning authority are not entitled to rely on this restriction as it does not apply to Part 3 of Schedule 2 of the Planning and Development Regulations (as amended). It is therefore submitted that the reasons for refusal by the planning authority are invalid.

6.1.5. Response to Traffic issues Discussed - notwithstanding the points summarised in 6.1.4 above, the main issues relate to traffic hazard and obstruction. It is stated that these are road design issues which can be evaluated in a technical manner, and that the TIA and RSA submitted in support of the previous applications for retention of the existing shed are provided in support of the appeal. The following specific points were made:

- **Impact on Road Safety** – The Road Safety Audit identified minor issues which can be addressed. These were (i) to maintain a minimum of 160m sight distance by keeping clear all obstructions (in this case foliage), (ii) to provide a drainage channel along the entrance and (iii) to provide a stop line at the exit. It is stated that sight distances of 220m can be achieved in each direction. The junction meets the TII standards for such junctions and the P.A. Road Engineers have previously raised no objection (2015).
- **Impact on the Capacity of N70** – The traffic that would be generated by the proposed development would have a negligible impact on the capacity of the N70 for the following reasons –
 - a. The road at the subject site is a long straight stretch with over 400m sight distance to the south and 300m to the north.
 - b. The road has been realigned to a modern up-to-date standard of 7.5 carriageway with 0.5/1.0m hard shoulders.
 - c. The speed limit is below the national level at 80kph. This is due to the presence of bends at both ends of the straight section, not because it is

dangerous. The N70 has a depressed speed limit for many sections of its length.

- d. The carrying capacity of a 7.5m carriageway is technically 8,600 AADT at level of serviced and with an average speed of 80kph. The actual AADT is 2246. The 6 no. or so daily traffic movements generated by the proposed development will clearly not impact on capacity or slow existing traffic, when capacity is compared to existing traffic.

6.1.6. It is stated that the current application for exemption should not be judged on the basis of the site history, which should be kept separate. It is considered that it was a grave error in procedure to fail to seek the opinion of the P.A.'s roads engineers, and as such the P.A. was influenced by the past history rather than carrying out a proper technical evaluation.

6.1.7. It is submitted that the prevention of an entrance at this location on the grounds that it would endanger public safety by reason of traffic hazard is unreasonable and would result in no permission being granted for even the smallest development along the N70 or elsewhere.

6.2. Planning Authority Response

The P.A. has responded to the referral on the 26th of April 2021. The submission set out details of the previous 4 no. planning decisions to refuse permission to retain the existing unauthorised shed between September 2015 and September 2020. Reference was also made to an “ongoing and active enforcement file”. The name and address of the landowner was also provided.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

7.1.1 Section 2 (1)

“Works” are defined in this section as including any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal.

“Agriculture” includes –

Horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock, the training of horses and the rearing of bloodstock, the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and “agriculture” shall be construed accordingly.

“Structure” means any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined, and –

- (a) Where the context so admits, includes the land on, in or under which the structure is situate,”

7.1.2 Section 3 (1) of the Act defines “*Development*” as, ‘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’.

7.1.3 Section 4 of the Act refers to ‘*Exempted Development*’ and Subsection (1) sets out categories of development that shall be exempted development for the purposes of this Act.

Subsection (1) (a) states the following:

‘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’.

Subsection (2)(a) provides for the Minister to make Regulations for any class of development to be exempted development for the purposes of this Act.

7.2. Planning and Development Regulations, 2001 (as amended)

7.2.1. Article 5 (1)(a) defines a “business premises” as follows:

Any structure or other land (not being an excluded premises) which is normally used for the carrying on of any professional, commercial or industrial undertaking or any structure (not being an excluded premises) which is normally used for the provision of services to persons.

- 7.2.2.** **Article 6 (3)** provides that 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 excluded areas....development of a class specified in column 1 of Part 3 of the Second Schedule shall be exempted development for the purposes of the Act subject to the conditions and limitations specified in column 2. The classes of potential relevance include Classes 6, 7 and 8 and Class 9.
- 7.2.3.** Classes 6, 7 and 8 relate to 'Agricultural Structures' for the housing/feeding of animals. As the current proposal does not include the housing of any animals, Class 9 is the only class of relevance.
- 7.2.4.** **Class 9** Part 3, Schedule 2 relates to 'Works consisting of the provision of any store, barn, shed, glass house or other structure, not being of a type specified in Class 6, 7 or 8 of this Part of this Schedule, and having a gross floor space not exceeding 300 square metres'. There are six conditions/limitations listed in column 2 opposite column 1.
- 7.2.5.** Article 9(1)(a) lists the exceptions where development would not be exempted development (by virtue of Article 6). These include subsections (ii), (iii) and (vi) and (viii) –
- (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.
 - (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.....
 - (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.

- 8.0 Relevant Board Decisions** The following Board decisions in relation to Section 5 Reference/Referral cases are considered to be of relevance.
- 8.1. RL2272 – whether the erection of gates at Dungarvan Co. Waterford constitutes exempted development under Class 4 (Part 3, Schedule 2 of the Planning and Development Regulations 2001 (as amended))**
- 8.1.1.** The development in question related to the erection of gates and fencing, which raised a further question of whether it amounted to the formation of an entrance onto a road which was greater than 4 metres in width, (and hence exemption would be restricted by Article 9(1)(a)(ii) of the PDR.
- 8.1.2.** The Inspector’s report indicated that the means of access had already existed and in fact had been narrowed rather than widened, and as such this restriction do not apply. However, it was considered that the entrance would give rise to a traffic hazard and obstruction of road users as the county road provided a means of access to several farms and houses and had a significant function in this regard. It was considered that the alterations to the access would be likely to obstruct other road users, particularly where large vehicles were involved. As such it was considered that this restriction applied (Art. 9(1)(a)(iii)). The Board agreed and decided that the development would not be exempted development by reason of this restriction as it would endanger public safety by reason of traffic hazard and obstruction of road users.
- 8.2. RL2772 – whether erection of a 200sq.m farm storage shed is or is not exempted development on Cruagh Mountain, Rathfarnham, in the Dublin Mountains.**
- 8.2.1.** The referrer argued that the shed, which was intended for agricultural use, was exempted development and did not interfere with a view listed in the Development Plan, as it was obscured by forestry from the public road.
- 8.2.2.** The Board concluded (2011) that the shed would generally come within the provisions of Class 9 of Part 3 of Schedule 2 to the Regulations. However, it was considered that as the site was located in an elevated exposed position within the local topography, it would interfere with the character of the Dublin Mountain landscape, the preservation of which was an objective of zone “H” in the

Development Plan. Accordingly, the shed was not exempted development as it came within the restrictions of article 9(1)(a)(vi).

8.3. RL2774 – whether the opening of an agricultural entrance onto a public road near Athlone is or is not development or is or is not exempted development.

8.3.1. The referral related to the opening of an agricultural access onto a public road, which was a cul-de-sac in a rural area, in order to facilitate the construction of an agricultural building was development and if so, was exempted development. The access in question opened onto an agricultural lane which was very lightly trafficked and was less than 4 metres in width. The entrance was at the end of the lane with only one other dwelling in the vicinity. It was queried whether the works in question came within the scope of an exemption under Class 16, which related to works carried out pursuant to a permission under the Act or as exemption.

8.3.2. The Board concluded (2010) that the access, the creation of which was development, came within the exempted development provisions of Class 16 of Part 1 of Schedule 2 to the Regulations, and on the facts would not have constituted a traffic hazard, and therefore did not conflict with the provisions of article 9(1)(a)(iii) in relation to traffic safety. It was therefore exempted development.

8.4. RL3513 – Whether the construction of an agricultural storage shed of c. 265sq.m on Loop Head Peninsula, Co. Clare is or is not development or is or is not exempted development.

8.4.1. The referral related to the construction of an agricultural shed in a location which was described as a sensitive, open and exposed landscape, and on a designated scenic route on the Loop Head peninsula, and adjacent to a Heritage Landscape. Access to the shed was via an unauthorised entrance from the R487.

8.4.2. The Board (2017) concluded that the construction of the shed, which had a gross floor space which exceeded 300sq.m., did not comply with the limitations of Class 9. Furthermore, it was considered that the shed would interfere with the character of the Heritage landscape and the Scenic Route and would therefore come within the restriction on exemption in article 9(1)(a)(vi) of the Regulations. In coming to this view, the Board had regard to the planning history of the site including a previous refusal of permission on similar grounds.

8.4.3. The Board further decided that the works relating to the entrance came within the restrictions on exempted development contained in Article 9(1)(a)(ii) of the Regulations as it would have comprised the formation of a means of access to a public road the surfaced carriageway of which exceeds four metres in width. It was therefore not exempted development.

8.5. RL3516 – Whether the forming of two entrances to a field at the end of two cul-de-sacs at Cahirdown Wood Housing Estate, Listowel, Co. Kerry, is or is not development and is or is not exempted development.

8.5.1. The Referral related to whether the formation of two entrances to a field at the end of two cul-de-sacs was development, and if so would be exempted development having regard to article 9(1)(a)(iii). The Inspector drew a distinction between an entrance which facilitated the use of lands for agriculture and one that was being used for agricultural purposes. It was considered that the entrance amounted to the former and as such did not come within the scope of an exemption under Section 4(1)(a) of the Act.

8.5.2. The Board concluded (2017) that the forming of the entrances would endanger public safety by reason of traffic hazard or obstruction of road users, and as such is development and is not exempted development as it would conflict with the provisions of article 9(1)(a)(iii) of the Planning and Development Regulations 2001 (as amended).

8.6. 302517-18 – whether the construction of horse stables of 200sq.m at Cushinstown Co. Meath is or is not development or is or is not exempted development.

8.6.1. The referral related an agricultural building which would normally come within the scope of Class 6 of the Part 3 of Schedule 2 of the Regulations. The development included alteration to an access onto the N2 National Primary route. However, it was noted that the County Development Plan restricted access or the generation of increased access to National Roads to which speed limits of greater than 60 kph apply. It was considered that it had not been demonstrated that the development would not increase traffic generation or endanger public safety by reason of traffic hazard at a point where the maximum speed limit applies. Furthermore, it had not been demonstrated that the access would comply with the Spatial Planning and

National Roads Guidelines and related CDP policies. It was therefore concluded that any exemption under Class 6 would come within the restrictions under article 9(1)(a)(iii) in view of public safety and traffic hazard on a National Road.

9.0 Assessment

9.1.1. The questions arising from this referral fall into the following main parts.

1. Whether the construction of a storage shed is development and if so is exempted development by reason of Section 4(1)(a) of the Planning and Development Act 2000 (as amended);
2. Whether the storage shed to be constructed is exempted development by reason of Article 6 and comes within the scope of any of the classes of exempted rural development set out in Part 3, Schedule 2 of the Planning and Development Regulations 2001 (as amended).
3. If the proposed shed is development and is exempted development, whether any such exemption provided under Article 6 is restricted by the terms of Article 9(1)(a) of the Planning and Development Regulations 2001 (as amended).

9.1.2. I have checked the Board's Referral database and have summarised the relevant precedents in section 8.0 above. It should be stated at the outset, that the purpose of this referral is not to determine the acceptability or otherwise of the construction of the farm storage shed at this location in respect of the proper planning and sustainable development of the area, but rather, whether or not the matter in question constitutes development, and if so, falls within the scope of exempted development.

9.2. Is the construction of the storage shed development and if so, is it exempted development under the provisions of Section 4(1)(a) of the Planning and Development Act 2000 (as amended)?

9.2.1. The construction of a structure comes within the definition of “works” as defined in Section 2 of the P & D Act, 2000 (as amended). The definition of “development” in Section 3(1) of the 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 the use of any structures or other land. Having regard to sections 2 and 3 of the Planning and Development Act 2000 (as amended) it is considered that the construction of a storage shed c.299sq.m in area constitutes ‘development’ within the meaning of the Act. This matter is not disputed by any of the parties.

9.2.2. Section 4(1) of the P & D Act sets out development which shall be exempted development for the purposes of the Act. Subsection (a) provides for exemption for the following –

4(1)(a) – 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.

9.2.3. This exemption relates to the use of land, or a structure, for agricultural purposes, and not to the construction of such a structure. Thus in terms of the construction of the building, any exemption that might apply would have to be determined in terms of the classes of rural development in Part 3 of Schedule 2 of the Planning and Development Regulations, which will be examined below. Thus, it is considered that the development does not come within the scope of the exemption provided by Section 4(1)(a) of the Planning and Development Act 2000 (as amended).

9.3. Would the construction of the shed come within the scope of exemption provided by any of the classes of development set out in Part 3, Schedule 2 of the Planning and Development Regulations 2001 (as amended)?

9.3.1. Subject to Article 9, Article 6(3) of the PDR provides for exempted development of classes of development in rural areas as set out in Column 1 of Part 3, Schedule 2 of the Regulations provided that such development complies with the conditions and limitations specified in Column 2 of the said Part 3. Agricultural structures include

Classes 6-9 inclusive, but Classes 6-8 inclusive relate to structures which involve the housing/storage of animals. It is considered that the storage shed that is proposed to be constructed could be considered to fall within Class 9 which reads as follows:

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 the Schedule, and having a gross floor space not exceeding 300 square metres.

9.3.2. The conditions and limitations of Class 9 are as follows:-

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 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 metre gross floor space in aggregate.
3. No such structure shall be situated within 10 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.

9.3.3. In terms of the proposed use, (Condition 1), it is considered that the nature of the use of the land has changed during the course of the planning history of the site. When the initial application was submitted to the planning authority by James Breen in 2015 (15/85) for the retention of the existing larger shed, it was stated that the shed in question was to be used for the purposes of agriculture. It was confirmed

that the shed would not be used for commercial purposes and that the intention was to store farm machinery and to house farm animals during the winter months, in association with the landowner's landholding of 81ha. It was also stated that this was his only shed on the farmholding. The subsequent application (16/414) was by the same applicant for the retention of the means of access to the said agricultural shed.

9.3.4. The applications submitted by James Breen's son Diarmuid in 2018, (18/231) and 2019 (19/1249), however, related to the retention of the same shed and associated access for the purposes of storing machinery for the purposes of 'agricultural and forestry contracting'. The documentation submitted with these later applications/appeals by Diarmuid Breen indicated that the applicant had been working abroad in Australia and the UK and it was his intention to return home and establish a livelihood based on agricultural/forestry contracting. The referral now relates to the construction of a new shed with a smaller floor area, but for the same stated purpose, i.e. for the storage of machinery for the purposes of agricultural and forestry contracting.

9.3.5. 'Agriculture' is defined in S2 of the P & D Act as follows -

Horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock, (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the training of horses and the rearing of bloodstock, the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and "agriculture" shall be construed accordingly.

A 'business' is defined in Article 5(1)(a) of the P & D Regulations 2001 (as amended) as

'any structure or other land (not being an excluded premises) which is normally used for the carrying on of any professional, commercial or industrial undertaking or any structure (not being an excluded premises) which is normally used for the provision of services to persons'.

9.3.6. Given that as the stated purpose of the proposed shed is for the storing of machinery/vehicles associated with an agricultural/forestry contracting business, the

use of the proposed structure cannot be stated to be for the 'purpose of agriculture or forestry' as specified in condition 1, but rather is for a storage use connected with a business, which may be related to agriculture/forestry, but is a commercial business providing a service to persons.

9.3.7. I would agree with the planning authority that the proposed shed would comply with conditions 2, 3, 4, 5 and 6 of Class 9, but would disagree regarding compliance with condition 1 as set out above, as the proposed structure is for use as a commercial business rather than for the purposes of forestry or agriculture. I am not satisfied therefore that the works come within the scope of Class 9 of Part 3, Schedule 2 of the Planning and Development Regulations 2001 (as amended) and cannot be considered to be exempted development by virtue of this provision. If the Board disagrees, however, and accepts that it falls within the scope of Class 9, it is necessary to examine the terms of article 9(1)(a) to determine whether any restrictions on exemption are applicable.

9.3 If exempted under Class 9, would the exemption be restricted by the terms of Article 9(1)(a) of the Planning and Development Regulations 2001 (as amended)?

9.3.8. Development to which article 6 relates is de-exempted in certain circumstances, as set out in Article 9 of the PDR.

9.3.9. Art. 9(1)(a)(ii) imposes such a restriction if the development consists of or comprises the formation, laying out or material widening of a means of access to a public road, the surfaced carriageway width of which exceeds 4 metres in width. The sole means of access to the site is stated to be from the N70, and this access forms an integral part of the development. The existing means of access has either been created or widened to a material degree in recent years to facilitate access to the existing unauthorised shed on the site. No permission has been granted for these works and permission has been refused on four occasions on the grounds of traffic hazard, obstruction of road users and contravention of local and national policy regarding access to national roads. This access is now proposed as the means of access to the proposed shed to be constructed on the site.

9.3.10. The surfaced carriageway of the road (N70) exceeds 4 metres in width and the means of access is shown on the submitted plans as being a splayed entrance of approx. 22 metres in width. No evidence has been submitted to indicate when these works took place. However, the OSI Ortho map for 2000 shows no evidence of such an entrance. Although the developer has in the past stated that an agricultural entrance has existed at this location for many years, no evidence of this has been presented and there is no record of a planning permission having been granted for either its creation or material widening. Thus, it is considered that any exemption conferred on the development of a storage shed under Class 9 would be restricted from such exemption by virtue of Article 9(1)(a)(ii).

9.3.11. Article 9(1)(a)(iii) restricts such an exemption where the development would endanger public safety by reason of traffic hazard or obstruction of road users. The issue of traffic hazard, obstruction of road users and the non-compliance with national and local policy in relation to access onto a national road has been the subject of four previous refusals of retention permission on this site to date (as summarised at 4.0 above). It is clear that the planning authority and the Board have been wholly consistent in their approach on this matter, and that the TII has also consistently raised objection and serious concerns about the retention of the access onto the national road at this location on these grounds.

9.3.12. The CDP policy appears to be in accordance with Government policy in respect of access to National Roads (as summarised at 5.0 above). Provision is made for 'exceptional circumstances' in the Development Plan in respect of the N70 between Killorglin and Cahersiveen and between Cahersiveen and Kenmare in accordance with the following criteria (Table 7.3 of CDP)

- There is no suitable alternative non-national public road access available.
- The development otherwise accords with the Development Plan
- Safety issues and considerations can be adequately addressed in accordance with the NRA's design manual for roads and bridges.

9.3.13. The Referring Party claims that there are 'exceptional circumstances' to the application of the national roads policy in this instance. The stated 'exceptional circumstances' are based on the view that there are no traffic hazard issues given that adequate sightlines can be achieved at the entrance, the speed limit has been

reduced to 80-kph and the stretch of road has been recently realigned. It is submitted that there are no significant road safety issues that cannot be addressed by means of relatively minor works/measures as identified in the Road Safety Audit. It is further submitted that the road is lightly trafficked, (as supported by the AADT of less than 3,000 per annum and set out in the TIA), and that the proposed development would generate such a small volume of traffic that it would have a negligible effect on the capacity and safety of the national road at this point. The referring party is also adamant that there is no alternative access to a non-national road available to the landowner.

- 9.3.14.** In terms of the lack of access to a non-national road, it has been established previously (in Appeal references 301739 and 306859, respectively), that the unauthorised shed and entrance were constructed/created at a time when the current policy regarding access to national roads was in place, and several years prior to the subdivision of the farmholding of 81ha, which did have access to a non-national road. The fact that the current landowner does not have access to a non-national road, when it had been clearly established through several refusals of planning permission (by the same applicant or his family members) that access to the national road was unacceptable on the grounds of non-compliance with policy, road safety and the efficiency and capacity of the national road network, does not, in my view amount to complice with one of the criteria for 'exceptional circumstance' to the policy regarding access to national roads.
- 9.3.15.** In terms of road safety, traffic hazard, obstruction of road users and protection of capacity and safety of the national road network, I would point out that these issues have been examined in detail by the Board and the planning authority during the course of the previous applications for retention of the existing unauthorised entrance and storage shed. In the most recent application/appeal (306859), the same RSA and TIA were submitted in support of the applicant's case. The Inspector was not convinced that the retention of the shed for the storage of machinery in connection with an agricultural/forestry contracting business would not give rise to increased traffic movements compared with the original farm use and considered that notwithstanding the AADT figures provided, the traffic flow increases significantly during the summer months/tourist season. The Board was not satisfied that the proposed development would not endanger public safety by reason of traffic

hazard and obstruction of road users and would contravene Government and CDP policy to secure the efficiency, capacity and safety of the national road network.

- 9.3.16.** There has been no change in policy or local circumstances to deviate from the views expressed in the previous decisions regarding the unauthorised structure and entrance. The only difference relates to the current proposal to demolish the larger shed (488m²) and construct a smaller shed (299m²), but the other factors remain the same, i.e. the applicant, the proposed use and nature of traffic movements and the retention and use of the existing entrance. It is acknowledged that the required sightlines could be achieved at the entrance, but this would necessitate the cutting back of vegetation and the ongoing maintenance of sight distances at the entrance. If the proposed development was deemed to be exempted development, there would be no means of controlling this matter in the future.
- 9.3.17.** The fact also remains that this stretch of road is substandard for a national road which accommodates a significant volume of traffic including tourist buses and other vehicles as well as farm machinery, which would pass the site on a frequent, daily basis during the tourist season. It is considered that the absence of standard-width hard shoulders and the presence of dips in the road, together with the nature of the traffic (both on the road and associated with the use) would combine to create hazardous conditions. The contracting business is likely to involve more frequent movements of large machinery into and out of the site than the original farm use, which gives rise to the potential for slow-moving, large vehicles stopping and/or turning at this point where there is a narrow carriageway width. Such manoeuvring and turning movements would be likely to obstruct road users as well as contribute to hazardous conditions.
- 9.3.18.** In light of the foregoing, I would agree with the planning authority's view that the restriction provided by Article 9(1)(a)(iii) applies in this case.
- 9.3.19.** **Article 9(1)(a)(vi)** restricts such an exemption where such development would interfere with the character of a landscape or a view/prospect of special amenity value/interest, the preservation of which is an objective of a development plan for the area. The site is located in an Secondary Special Amenity Area. Section 3.3.2.2 requires any proposal to be designed and sited so as to ensure that it is not unduly obtrusive. The onus is, therefore, on the applicant to avoid obtrusive locations.

Existing site features including trees and hedgerows should be retained to screen the development. The proposed shed would be located below the level of the adjoining road, which is a strategic tourist route. Although visible from the road, and sited within 1.5km of the sea, the proposed building would be sited in a relatively unobtrusive location and would be well screened by means of existing and proposed planting. It is considered that this restriction would not apply.

9.3.20. Article 9(1)(a)(viii) restricts such an exemption where such development would consist of the extension, alteration, repair or renewal of an unauthorised structure the use of which is unauthorised. The site currently accommodates a large unauthorised structure which is the subject of enforcement action, and which it is stated will be removed. However, should the existing structure not be removed, for whatever reason, the proposed new shed would result in the effective extension of the unauthorised structure and use of the land, and as such, would come within the scope of this restriction. However, it is acknowledged that it is intended to remove the unauthorised structure, and in that case, the restriction would not be applicable.

9.3.21. The proposed development would also involve the continued use of the existing entrance which would appear to have been either created or at least materially widened without the benefit of a planning permission. Thus, it is considered that the development is likely to comprise the extension, alteration, repair or renewal of the unauthorised entrance and the use of same. In such circumstances, the development would, therefore, also be restricted by Article 9(1)(a)(viii) of the Planning and Development Regulations.

9.4. Screening for Environmental Impact Assessment

9.4.1. Projects which are likely to have significant effects on the environment are identified in Annex I and Annex II of the EIA Directive, which have been transposed into Irish legislation by Part I and Part II, Schedule 5 of the Planning and Development Regulations 2001 (as amended). Agricultural sheds or storage sheds are not of a Class of development listed under Part 1 or 2 (Schedule 5) of the Planning and Development Regulations 2001. As such, Environmental Impact Assessment does not apply in this case. Thus, the provisions of Section 4(4) of the Planning and Development Act 2000 (as amended) are not relevant.

9.5. Screening for Appropriate Assessment

- 9.5.1.** The site is located approx. 1.3km to the west of Killarney National Park, Macgillicuddy Reeks and Caragh river Catchment SAC (site code 00365). There is no hydrological connection between the site of the referral and this European site and the N70 lies between them.
- 9.5.2.** The site is located approx. 1.5km to the north of the Kenmare river SAC (site code 002158). The Bunnow River flows along the eastern boundary of the site and flows into the SAC, with a hydrological distance of c.2.3km. There are no effluent disposal facilities within the proposed shed and no details of surface water drainage have been provided. However, in view of the small scale and the nature and extent of the the development, together with the separation and hydrological distances from the European site, it is considered that no appropriate assessment issues arise. It is considered that the development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site. Appropriate Assessment is not therefore required and the provisions of Section 4(4) of the Planning and Development Act 2000 (as amended) are not relevant.

9.6. Conclusion

- 9.6.1.** The construction of the farm storage shed constitutes 'works' and 'development' as defined in Sections 2 and 3 of the P & D Act. However, the development does not come within the scope of the exemption for farm buildings provided by Section 4(1)(a) of the Planning and Development Act 2000 (as amended), which provides for exemption for the use of land or structures for agricultural purposes not the construction of such structures. The proposed development does not come within the scope of Class 9 of Part 3 Schedule 2 of the Planning and Development Regulations 2001 (as amended), as it would not comply with condition/limitation 1, which requires that the use of the structure be for 'agricultural purposes'. Given that the stated purpose of the use of the structure is for storage of machinery in connection with an agricultural/forestry contracting business, it cannot be stated to be for agricultural purposes.
- 9.6.2.** Notwithstanding this, and should the Board disagree and consider that the proposed development complies with the conditions and limitations of Class 9, it is considered that any such exemption would be restricted by the terms of Article 9(1)(a) (ii), (iii)

and (viii), respectively, as it would involve the formation, laying out or material widening of a means of access to a road with a width greater than 4 metres, it would endanger public safety by reason of traffic hazard or obstruction of road users, and it would consist of the extension, alteration, repair or renewal of an unauthorised entrance.

9.6.3. Thus, the proposed development is development and is not exempted development.

10 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 a farm storage shed is or is not development or is or is not exempted development;

AND WHEREAS Diarmuid Breen, Sneem Co. Kerry requested a declaration on this question from Kerry County Council and the Council issued a declaration on the 8th day of March, 2021, stating that the matter was development and was not exempted development;

AND WHEREAS Diarmuid Breen referred this declaration for review to An Bord Pleanála on the 6th day of April 2021

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

- (a) Sections 2 and 3 of the Planning and Development Act, 2000, as amended,
- (b) Section 4(1)(a) of the Planning and Development Act, 2000, as amended,

- (c) Article 6(3) 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 planning history of the site
- (f) the nature and extent of the works

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The works of construction of a farm storage shed come within the scope of 'development' as set out in Section 3 of the Planning and Development Act 2000 (as amended);
- (b) The proposed agricultural storage shed would not come within the scope of exemption provided at Class 9 of Part 3 of Schedule 2 to the Planning and Development Regulations 2001 (as amended) as it would not comply with Condition 1 attached to Class 9 which requires that the structure be used for agricultural purposes.
- (c) Therefore the proposed development does not come within the scope of the exemptions provided by Part 3 of Schedule 2 to the Planning and Development Regulations 2001 as amended, and is not therefore exempted development.

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 the farm storage shed at Ardmore, Sneem Co. Kerry is development and is not exempted development.

Mary Kennelly
Senior Planning Inspector
13th January 2022