



An
Bord
Pleanála

Inspector's Report ABP-310365-21

Question	Whether the construction of an agricultural shed is or is not development or is or is not exempted development.
Location	Glenmacnass, Laragh, Co. Wicklow.
Declaration	
Planning Authority	Wicklow County Council
Planning Authority Reg. Ref.	22/2021
Applicant for Declaration	Nathan Nicholl.
Planning Authority Decision	Is not exempted development
Referral	
Referred by	Nathan Nicholl.
Owner/ Occupier	Nathan Nicholl.
Observer(s)	No Observers.
Date of Site Inspection	14 th September 2022
Inspector	Elaine Sullivan

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1.0 Site Location and Description

- 1.1. The subject site has a stated area of 0.0445ha and is located approximately 3km to the north of the village of Laragh in County Wicklow and on the western side of the R115, regional road. The site is irregular in shape and extends from the R115 along its eastern boundary to the Glenmacnass River to the west.
- 1.2. On the occasion of the site visit I was unable to gain access to the site. However, I observed that the site was generally open in nature with no noticeable changes in level. To the west of the site is a large, forested area with some trees and vegetation along the northern, southern and eastern boundaries. Access to the site is via a wooden gate set back from the R115. Wooden panels flank the gate on either side and form sections of the roadside boundary.
- 1.3. There is a large wooden structure with a monopitch roof in place on the site. The structure has been painted green and has been set back from the roadside boundary. A concrete platform/ base is in place adjacent to eastern site boundary and in the south-eastern corner of the site. Planning history for the site indicates that this is the remnants of a previous structure on the site.

2.0 The Question

- 2.1. The question before the Board relates to whether the construction of an agricultural shed, is or is not development, or, is or is not exempted development.

3.0 Planning Authority Declaration

3.1. Declaration

- 3.1.1. On the 30th day of April 2021 Wicklow County Council issued a declaration that the construction of a 48sqm storage shed was development and was not exempted development for the following reasons,
 - The proposed shed is not located on lands used for agricultural purposes or within an agricultural landholding, and therefore it is not considered to be an agricultural structure that comes within the scope of Schedule 2, Part 3, Class 9 of the Planning and Development Act 2000, as amended.

- The construction of the shed would result in the deterioration of Prospect ID: 17 which is a prospect of special amenity value listed under the County Development Plan 2016-2022.
- The access to the shed would result in a traffic hazard along a Regional Road as sight distances at the access are extremely limited.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report of the Planning Officer dated the 28th day of April 2021 includes the following,

- Planning history for the site which includes Enforcement Reference 4956, which relates to a 'large timber structure with concrete base without the benefit of planning permission'. At the time of writing the PO noted that this file was still open.
- The proposal relates to a shed with a gross floor area of 48sqm and which has a chalet-type appearance.
- It is detailed as being 8m in height and 20m from the road and would be used for the storage of tools and possibly feed.
- The closest house is 120m from the site.
- There is a second A-framed structure on the site, which will be removed.
- The proposal constitutes 'development' as it relates to the provision of a structure on lands which requires 'works' to be carried out.
- The exemption provision was examined under Class 9, Schedule 2 and Part 3 of the Planning and Development Regulations, which relates to the provision of a shed for agricultural purposes.
- Previous Referrals issued by An Bord Pleanála make it clear that these exemptions apply where it can be shown that the shed will be used for agricultural and is clearly part of an agricultural holding/farm.

- The subject proposal does not form part of an agricultural holding and no agriculture is taking place on the lands. Therefore Class 9 does not apply.
- Furthermore, the proposal would interfere with a prospect, (ID - 17) listed for protection within the County Development Plan. It is unclear if the existing access has the benefit of planning permission. The existing sightlines are unsatisfactory and would result in a traffic hazard on the regional road.
- Therefore, the limitations set out in Article 9, (1), (iii) and (vi) would apply.

3.2.2. Other Technical Reports

- No other technical reports on file.

4.0 Planning History

688/22 – Planning application lodged with the PA on the 20th June 2022 for the retention of a domestic shed and permission for a new dwelling, new entrance onto public road, blocking up the existing entrance onto public road, wastewater treatment unit, soil polishing filter and new well. This application has not yet been determined as the applicant requested an 8-month time extension. This request was granted by the PA and a decision is due on the application on the 10th day of April 2023.

19/1330 – Planning permission refused by the PA on the 10th day of February 2020 for a single storey A-framed agricultural store (type 4 structure) together with associated site works. The development was refused for reasons relating to the following:

- The location of the development within an Area of Outstanding Natural Beauty and within a listed prospect and the impact of the proposal on the character of the landscape.
- Lack of information with regard to the farming connections and the failure of the applicant to demonstrate the necessity of the structure for the operation of a farm.
- Lack of information submitted to determine the impact of the development on the Wicklow Mountains SAC which is hydrologically linked to the site.

- The potential for the development to endanger public safety by reason of a traffic hazard from inadequate sight line distances.

19/812 – Planning permission refused by the PA on the 16th September 2019 for the retention of a single storey A-frame agricultural building together with associated siteworks. The development was refused for reason relating to the following:

- The location of the development within an Area of Outstanding Natural Beauty and within a listed prospect and the impact of the proposal on the character of the landscape.
- Lack of information with regard to the farming connections and the failure of the applicant to demonstrate the necessity of the structure for the operation of a farm.
- Lack of information submitted to determine the impact of the development on the Wicklow Mountains SAC which is hydrologically linked to the site.

EX09/33 – Section 5 - Referral for development stated as 'land reclamation' in the report of the PO. The report states that the Section 5 Exemption was refused due to traffic issues. No information has been provided regarding this Section 5 and no information is available on the public file online.

EX10/25 – Section 5 – Referral for development stated as 'land reclamation' in the report of the PO. The report states that the Section 5 Exemption was refused due to traffic issues. No information has been provided regarding this Section 5 and no information is available on the public file online.

Enforcement File –

UD/4956 – Enforcement file opened by the PA on the 17th day of August 2018 regarding an alleged unauthorised development comprising the erection of a wooden structure on a concrete base.

5.0 Policy Context

5.1. Development Plan

5.1.1. The site is located within the administrative boundary of Wicklow County Council. At the time of writing the operative Development Plan for the area is the Wicklow County Development Plan, (CDP), 2016-2022. However, the Wicklow County Development Plan 2022-2028 was adopted on the 12th September 2022 and will come into effect six weeks after this date.

5.1.2. The referral was assessed by Wicklow County Council in accordance with the policies and objectives of the Meath County Development Plan 2016-2022, which was the operative Development Plan at the time.

5.1.3. On review of the contents of both plans I note that there are no material changes between the 2016 County Development Plan and the 2022 County Development Plan as they relate to the appeal site and the current proposal. I have outlined the relevant sections from each plan below.

5.1.4. Wicklow County Development Plan 2016-2022

5.1.5. Volume 3 – Appendix 5 – Landscape Assessment

- The subject site is located within the Mountain and Lakeshore Area of Outstanding Natural Beauty.
- Schedule 10.15 – Prospects of Special Amenity Value or Special Interest
- The subject site is located within protected Prospect 17 – R115 Military Road Glenree to Laragh – Prospect of both sides of mountainous terrain.

5.1.6. Wicklow County Development Plan 2022-2028

Chapter 17 – Natural Heritage and Biodiversity

- Schedule 17.12 – Prospects of Special Amenity Value or Special Interest, (Map no. 17.11).
- The subject site is located within protected Prospect 17 – R115 Military Road Glenree to Laragh – Prospect of both sides of mountainous terrain.

5.2. **Natural Heritage Designations**

No designations apply to the subject site.

The Wicklow Mountains SAC, (Site Code 002122), is located to the east, west and south of the site and is approximately 0.2km at its closest point to the west.

6.0 **The Referral**

6.1. **Referrer's Case**

The referrer has appealed the decision of the Planning Authority and the issues raised can be summarised as follows / and the case outlined includes the following,

- The structure is for the storage of tools and possibly feed, which is in accordance with Class 9 of Schedule 2, Part 3.
- Bees are kept on the land for most of the year, apart from the summer months of July and August. There is also a large polytunnel of 12 x 10m that is used for growing vegetables.
- The structure has a floor area of 48sqm, is less than 8m in height, is 20m from the public road and would be painted green. All of the characteristics are within the limitations set out in Class 9, Part 3 of Schedule 2.

6.2. **Planning Authority Response**

- The Planning Authority has no further comment to make in relation to the referral.

6.3. **Further Responses**

- No further responses.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

Section 2 – Interpretation

- “Agriculture” includes 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 the land as grazing lands, meadow land, osier land, market gardens and nursery grounds and agricultural shall be constructed accordingly.
- “structure” means any building, structure, excavation or other thing constructed or made on, in or under land or any part of structure so defined and where in the context so admits includes the land on, in or under which the structure is situate
- “Works” includes any Act or operation of the construction, excavation, demolition, extension, alteration, repair or renewal.

Section 3 – Development

- Section 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 - Exempted Development

- Section 4 (1) The following shall be exempted developments for the purposes of this Act-
 - (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;

7.2. Planning and Development Regulations, 2001

Part 2 – Exempted Development

- 7.2.1. Article 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 (1) – Restrictions on Exemption
- 7.2.3. Article 9 (1) - 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.
 - (ii) Consist of or comprise the formation, laying out or material widening of a means of access to a public road the surface carriageway of which exceeds 4 metres in width.
 - (iii) Endanger public safety by reason of a traffic hazard or obstruction to road users.
 - (iv) – except in the case of a porch be forward of a building.
 - (v) – re works under a public road...
 - (vi) Interfere with the character of the landscape, or view or prospect of special amenity value or of special interest, the preservation of which is an objective of the Development Plan for the area in which the development is proposed for, pending the variation of a Development Plan or the making of a new Development Plan in the Draft Variation of the Development Plan or the Draft Plan. (vii) re excavation, alteration or demolition of places...
 - (viiA) re excavation, alteration or demolition of monument...
 - (viiB) Comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site,

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

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

7.2.4. Schedule 2, Part 3: Exempted Development – Rural

Class 9 - Works consisting of the provision of any store, barn shed, glasshouse or other structure not being a type specified in Class 6, 7 or 8 of this part of this Schedule and having a gross floor area not exceeding 300m 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 floorspace 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 floorspace 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 the external finish of the structure.

8.0 Referrals Database

- 8.1. I have examined the Boards database of references and referrals. The following cases are relevant in the context of the issues raised in the current referral:

304215-19 – The question arose as to whether the provision of a building measuring 154.87m² internally and the provision of a boiler house as part of a central heating system is or is not development or is or is not exempted development. The shed and boiler house were located within a peri-urban area and the referrer claimed exemption under Section 4 (1) (a) of the Planning and development Act and Class 9 of Part 3, Schedule 2 of the Planning and development Regulations. In relation to the building, the Board determined that the building in question is not linked to any agricultural activity and therefore could not be considered within the scope of Class 9 or Part 3 of Schedule 2 to the Planning and Development Regulations, 2001, as amended.

302390-18 – The question arose as to whether an existing agricultural shed of approximately 288 sq.m is or is not development or is or is not exempted development. The shed was in a rural area and the referrer claimed class 9 compliance. The Board declared that the use of the shed was not linked to any agricultural activity and therefore could not be considered within the scope of Class 9 or Part 3 of Schedule 2 to the Planning and Development Regulations, 2001, as amended.

9.0 **Assessment**

9.1. **Is or is not development**

- 9.1.1. The question put forward by the referrer relates to the retention of a single storey wooden shed with a stated floor area of 48sqm and a maximum height of 3.9m, which is used for the storage of tools and possibly feed if required. The referrer's case states that the shed can be considered to be exempted development under the provisions of Class 9, Part 3, Schedule 2 of the Planning and Development Regulations, which sets out the conditions and limitations to the exemptions applied to agricultural structures.
- 9.1.2. The first question to consider is whether or not the proposal constitutes development under the definitions contained in the Planning Act. Section 3(1) of the Act defines 'development' as the *'carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land'*. In terms

of determining whether development has occurred, the relevant tests to apply is to establish whether 'works' were carried out and/or whether there was a material change in the use of the structure or land.

- 9.1.3. Within Section 2, (1) of the Planning Act, 'works' are defined as 'any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal...'. The construction of the wooden shed would involve the carrying out of works as defined in the Act and would therefore constitute development.

9.2. Is or is not exempted development

- 9.2.1. The second question to answer is whether the development is or is not exempt development. The referrer states that the shed is used in connection with agriculture and can therefore be considered to be exempt under the conditions and limitation set out in Class 9, Part 3 of Schedule 2, Planning and Development Regulations. In order to consider whether or not the shed complies with the conditions and limitations listed under Class 9, it must first be determined whether or not the shed can be considered to be an agricultural structure.
- 9.2.2. Section 4 (1) (a) refers to the exempted development for buildings associated for the purposes of agricultural or forestry as being occupied together with land so used for agriculture or forestry. Section 2 of the Act includes a definition of 'agriculture' which includes, *'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 the land as grazing lands, meadow land, osier land, market gardens and nursery grounds and agricultural shall be constructed accordingly'*.
- 9.2.3. In the documentation submitted to the Board, the referrer states that the shed is used for the storage of tools and possibly feed. He also states that he keeps bees on the site for most of the year, apart from the summer months of July and August and that there is large polytunnel of 12 x 10m that is used for growing vegetables. The referrer did not include details of how many bees were kept on the site.
- 9.2.4. On the occasion of the site inspection, I was unable to gain access to the site or the shed. However, it was possible to see the shed and large sections of the site from

the public road. There was no activity on the site during the inspection and I did not observe any evidence of bee keeping on the parts of the site that I could see.

However, I did observe the frame of the polytunnel, which had no covering and did not appear to be in use for the purpose of growing vegetables.

- 9.2.5. The keeping of bees would qualify as 'agriculture'. Commercial apiary is controlled under EU regulations which require that persons involved with the production of honey, must be registered as Food Business Operators with the Department of Agriculture, Food and the Marine in order to legally sell honey. The referrer has not provided any information which would indicate that he is involved in commercial or recreational bee keeping or any other activity that would be considered to be an agricultural use.
- 9.2.6. Section 4 (1) (a) refers to the exempted development for buildings associated for the purposes of agricultural or forestry as being occupied together with land so used for agriculture or forestry. The location of the shed did not appear to be connected with any agricultural activity on the site and the referrer did not include any information on any adjacent agricultural lands which are within his ownership. The definition of agriculture, as per the Act, refers to the activity on the lands and, in my opinion any such buildings permitted for agricultural are to be linked to an agricultural activity. It cannot be assumed that a shed within a rural area is intrinsically linked to agricultural activity as defined above in the Act.
- 9.2.7. Having regard to the location of the building, on a site with no clear evidence of agricultural activity and the lack of any information to demonstrate agricultural activity, I am satisfied that the shed cannot be considered an agricultural structure.

9.3. Restrictions on exempted development

- 9.3.1. Development within the context of Section 3 (1) of the Planning and Development Act 2000, (as amended), has been carried out on the site. The development carried out is not considered to be an 'agricultural structure' as it has not been demonstrated that it is in use for any specific agricultural purpose or in connection with a specific agricultural use.
- 9.3.2. Notwithstanding the information as set out above, in the event that the Board do not agree, and consider that the structure is in agricultural use and can be considered

under the conditions and limitations of Class 9, the following is my assessment of whether the proposal is or is not exempt development.

9.3.3. On the occasion of the site visit, access to the site was restricted and I could not take any measurements of the structure. The following table is based on the information submitted with the referral and from my observations.

<p>Class 9</p> <p>Conditions and Limitations</p>	
<p>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.</p>	<p>The shed is not connected with any agricultural use on the site.</p>
<p>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.</p>	<p>The stated floor area of the structure is 48sqm. Having visited the site, I am satisfied that the floor area of the structure complies with this condition.</p>
<p>3. No such structure shall be situated within 10 metres of any public road.</p>	<p>The stated distance between the structure and the public road is in excess of 15m. Having visited the site, I am satisfied that the location of the structure complies with this condition.</p>
<p>4. No such structure within 100 metres of any public road shall exceed 8 metres in height.</p>	<p>The stated height of the structure is 3.9m. Having visited the site, I am satisfied that the height of the structure complies with this condition.</p>

<p>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.</p>	<p>The structure is in excess of 100m from any house or building.</p>
<p>6. No unpainted metal sheeting shall be used for roofing or on the external finish of the structure.</p>	<p>The structure is painted green and complies with this condition.</p>

9.3.4. Should the Board decide that the structure in question is used in connection with agricultural purposes and that it can be considered under the conditions and limitations of Class 9, I am satisfied that the structure complies with the conditions and limitations of Class 9 from No's 2 – 6.

Article 9 (1) of the Planning and Development Regulations states the following:

- Development to which article 6 relates shall not be exempted development for the purposes of the Act—

(a) if the carrying out of such development would—

(iii) endanger public safety by reason of traffic hazard or obstruction of road users.

(vi) interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of a development plan for the area in which the development is proposed, or pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan.

9.3.5. Access to the site set back from the public road and on the western side of the R115. Sightlines from the site are restricted in both directions by trees and hedgerows. The

road also curves to the north and south which further restricts views of oncoming traffic. As the site opens onto a Regional Road, the existing access arrangement could result in a traffic hazard and as such is not exempt under Article 9, (1), (iii).

- 9.3.6. The subject site is located within the Mountain and Lakeshore Area of Outstanding Natural Beauty, as designated in the Wicklow County Development Plan 2016-2022 and the recently adopted Wicklow County Development Plan 2022-2028. The site is also located within a Prospect of Special Amenity Value or Special Interest, (Ref. Prospect 17), which includes prospects on both sides of the R115 Military Road Glencree to Laragh. The proposed development would interfere with a protected prospect, within an Area of Outstanding Natural Beauty and can therefore is not exempt under Article 9, (1), (vi).

10.0 Recommendation

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

WHEREAS a question has arisen as to whether the construction of an agricultural shed, is or is not development, or, is or is not exempted development,

AND WHEREAS Nathan Nicholl requested a declaration on this question from Wicklow County Council and the Council issued a declaration on the 30th day of April, 2021, stating that the matter was development and was not exempted development:

AND WHEREAS Nathan Nicholl referred this declaration for review to An Bord Pleanála on the 26th day of May, 2021:

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

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

- (b) Section 3(1) of the Planning and Development Act, 2000,
- (c) Section 4(1)(a) of the Planning and Development Act, 2000, as amended,
- (d) article 6(1) and article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (e) Part 3 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (f) the planning history of the site,
- (g) the pattern of development in the area.

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The proposed shed constitutes development as defined under Section 2 (1) of the Planning and Development Act 2000 (as amended) by virtue of the carrying out of works,
- (b) The proposed development was not linked to any agricultural activity and therefore could not be considered within the scope of Class 9, Parts 3 of Schedule 2 to the Planning and Development Regulations, 2001, as amended.
- (c) The proposed development would interfere with Protected Prospect 17 as designated in the Wicklow County Development Plan and would result in a traffic hazard by virtue of an inadequate access and would not be exempted development under Article 9, (1), (iii) and (vi).

. 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 shed is development and is not exempted development.

. Elaine Sullivan
Planning Inspector

19th of September 2022.