



**Question**

Whether the construction of a slatted shed for housing cattle at Cloonfree Townland, Strokestown, County Roscommon is or is not development and is or is not exempted development.

**Location**

Cloonfree, Strokestown, Co. Roscommon

**Declaration**

Planning Authority

Roscommon County Council

Planning Authority Reg. Ref.

DED460

Applicant for Declaration

Cormac Dolan.

Planning Authority Decision

Is development and is not exempted development

**Referral**

**Referred by**

Cormac Dolan.

**Owner/ Occupier**

Cormac Dolan.

**Observer(s)**

None.

**Date of Site Inspection**

20<sup>th</sup> April 2022.

**Inspector**

Brid Maxwell

## 1.0 Site Location and Description

- 1.1. This referral relates to a rural site located within the townland of Cloonfree approximately 1.5km west of Strokestown and circa 16km north of Roscommon town. The referral site has a stated area of .22 acres and is on the northern side of the N5 national primary road which connects Longford and Westport.
- 1.2. The site is occupied by an existing agricultural building comprising a hay shed and slatted shed. The N5 at the location of the entrance is marked by a continuous white line in both directions. The referral site is part of a larger landholding of 22 acres. There is a residential dwelling immediately adjacent to the east of the referral site and a dwelling also adjacent to the referral site access which runs along the western boundary of the site.
- 1.3. There is a recorded monument - moated site (RMP RO029-009) within 80m to the west of the referral site. (within approximately 150m of the proposed shed).

## 2.0 The Question

- 2.1. The question as referred is whether the construction of a slatted shed and associated site works at Cloonfree Townland, Strokestown Co Roscommon is or is not development and is or is not exempted development.
- 2.2. The proposal involves the construction of a slatted shed (184sq.m) for the housing of cattle. The proposed shed is to be located adjacent to east of the existing shed structure. The height of the proposed shed is 6.35m. with a slurry tank capacity of 90m<sup>3</sup>.

## 3.0 Planning Authority Declaration

### 3.1. Declaration

By order dated 1 April 2021 Roscommon County Council issued notification of decision as follows:

- “a) The proposed development constitutes development as defined in the Planning and Development Act 2000, (as amended) and associated regulations*
- b) The proposed development is not exempted development as defined in the Planning and Development Act 2000(as amended) and associated Regulations*
- c) The proposed development individually and in combination with other plans or projects would not be likely to have a significant effect on any European site and that the requirement for AA or EIAR does not apply with respect to the current case.*

*....It is hereby declared that the said construction of a slatted shed and associated site works at Cloonfree Townland, Strokestown, County Roscommon, constitutes development that is not exempted development as defined within the Planning and Development Act 2000 (as amended) and associated Regulations and having particular regard to Article 9(1)(iii) of the Planning and Development Regulations, 2001, (as amended).”*

## **3.2. Planning Authority Reports**

### **3.2.1. Planning Reports**

Planner’s report considers that the proposal would result in an intensification of use of agricultural activity and therefore represent a traffic hazard. Existing entrance serving the site may be unauthorised.

### **3.2.2. Other Technical Reports**

None

## **4.0 Planning History**

No planning history on the appeal site.

The following cases relate to the adjacent dwelling immediately to the east of the referral site. I note also an overlap with the current referral site. (Submitted site

layout plans indicate that the septic tank percolation area serving the adjacent dwelling is within the boundary of the current referral site.)

**01389** Permission to alter entrance construct garage and extension to existing dwelling. Granted 20/12/2001

**19/556** Retention of steel domestic shed as constructed. Granted 13/12/19

## 5.0 Policy Context

### 5.1. Development Plan

The Roscommon County Development Plan 2022-2028 is the statutory plan for the area.

### 5.2. Natural Heritage Designations

The site is not within a designated area. The nearest such site is Annaghmore Lough (Roscommon) SAC (Site Code 001626) which occurs within 1.3km to the northwest of the referral site.

## 6.0 The Referral

### 6.1. Referrer's Case

6.1.1 The case is referred by Liam Madden, Architect on behalf of the referrer Cormac Dolan. Grounds of referral are summarised as follows:

- Letter from applicant's agricultural advisor, Ian Tighe, Agricultural Consultant, outlines the requirement for slurry storage. Cattle already exist on the land and proposal provides winter housing.
- The access predates the 1963 Act.
- The use of the access will continue whether or not the cattle have a roof over their heads.

- Vehicular use of the access comprises once a day jeep access, twice weekly tractor access for silage in June, slurry removal in March and/or September. Tractors normally housed on the lands.
- Lean to shed is merely the second half of the development commenced 2012 / possibly 2005.
- As there is no possible intensification of use then Article 9(1)(3) does not apply.
- The development complies entirely with all conditions and limitations attaching to class 6.
- Request the Board to set aside Council's decision and declare the proposed development exempted development.

## 6.2. Planning Authority Response

The Planning Authority did not respond to the grounds of referral.

## 7.0 Statutory Provisions

### 7.1. Planning and Development Act, 2000

7.1.1 Section 3(1) of the Act states the following in respect of 'development': "In this Act, 'development' means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land."

Section 2(1) of the Act states the following in respect of 'works': "Any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal..."

Section 4(1) sets out various forms and circumstances in which development is exempted development for the purposes of the Act. Section 4 (1) (a) states that development consisting of the use of any land for the purposes of agriculture and development consisting of the use for that purpose of any building occupied together with land so used.

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

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

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

7.2.1 Article 6(3) states: Subject to Article 9, in areas other than a city, a town or an area specified in section 19 (1) (b) of the Act or the excluded areas as defined in section 9 of the Local Government (Reorganisation) Act, 1985 (No.7 of 1985), development of a class specified in Column 1 of Part 3 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 3 opposite the mention of that class in the said column 1.

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

Works consisting of the provision of a roofed structure for the housing of cattle, sheep, goats, donkeys, horses, deer or rabbits, having a gross floor space not exceeding 200sq.m. (whether or not by extension of an existing structure), and any ancillary provision for effluent storage. Conditions and limitations associated with Class 6 of Part 3 Schedule 2 of the Planning and Development Regulations, 2001 to 2015 state that:

1. No such structure shall be used for any purpose other than the purpose of agriculture.
2. The gross floor space of such structure together with any other structures situated within the same farmyard complex or within 100m of that complex shall not exceed 300sq.m. gross floor space in aggregate
3. Effluent storage facilities adequate to serve the structure having regard to its size, use and location shall be constructed in line with Department of Agriculture, Food and Rural Development and Department of Environment and Local Government requirements and shall have regard to the need to avoid water pollution.

4. No such structure shall be situated, and no effluent from such structure shall be stored, within 10m of any public road.

5. No such structure shall be situated, and no effluent from such structure shall be stored, within 100m of any house (other than the house of the person providing the structure) or other residential building or school, hospital, church or building used for public assembly, save with the consent on writing of the owner and, as may be appropriate, the occupier or person in charge.

6. No unpainted metal sheeting shall be used for roofing or on the external finish of the structure

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

Article 9(1) states that: Development to which Article 6 relates shall not be exempted development for the purposes of the Act – (a) if the carrying out of such development would:

(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 4m in width

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

(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,

(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.

### **Relevant Board Decisions.**

The following Board decisions were considered relevant.

**RL2304**



Whether the construction of 4 no. stables, tack room, store and associated works at Bellurgan, Co. Louth is or is not development or is or is not exempted development. The Board decided that the development was not exempted development, concluding that whilst the construction of stables, tack room and store would generally come within the scope of the exempted development provisions of Part 3 Class 6 of PDR, 2001, that the stables would result in an intensification of traffic on a site with substandard sightlines at the entrance located along a heavily trafficked regional road. Accordingly, the material intensification of traffic movements combined with the deficient sightlines would endanger public safety by reason of traffic hazard or obstruction to other road users. The development was therefore de-exempted per Article 9(1)(a)(iii) (traffic hazard).

#### **RL3124**

On the question as to whether ground works/access carried out at Cloonlish / Robinhood Townland, Castlerea, Co. Roscommon is or is not development. The referral related to works on a rural site of c.1.6 hectares comprising the recontouring and levelling of the site and the provision of an access onto the public road.

The Board issued a split decision:

- the groundworks was development and was exempted development
- the opening of a new access onto the public road was development and was not exempted development for the following key reasons:
  - the groundworks entailed reclamation of land within a farm and came within the exemption set out in Article 8C of PDR, 2001. The incidental drainage works were exempt under Article 8B.
  - the removal of roadside boundary to form a gateway to the public road would be exempt per Schedule 2 Part 1 Class 9, but the resulting increase in traffic on a narrow substandard roadway was considered to endanger public safety by reason of traffic hazard and obstruction of road users, thereby removing any exemptions (Article 9 (1)(a)(iii) of PDR, 2001).

## **308601**

Whether the construction of a cattle shed with a gross external area of 120sqm, a hay and 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 at Hilltown, Dunboyne, Co. Meath is or is not development or is or is not exempted development

The board concluded that;

(a) the cattle shed would generally come within the scope of the exempted development provisions of Class 6, Part 3 of Schedule 2 of the Regulations 2001,

(b) the hay and feed shed, machinery shed and workshop would generally come within the scope of the exempted development provisions of Class 9 of the Regulations,

(c) the construction of the sheds would not endanger public safety by reason of traffic hazard or obstruction of road users and would not be restricted by any other provision of Article 9 of the Regulations.

The Board decided that the said sheds/workshop are development and are exempted development.

## **8.0 Assessment**

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

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

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

8.2.1 The proposed slatted shed comes within Class 6 insofar as it is a roofed structure for the purposes of housing of cattle not exceeding 200 square metres and ancillary provision for effluent storage.

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

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

1. No such structure shall be used for any purpose other than the purpose of agriculture. - The intended use is for housing of animals for the purposes of agriculture.

2. The gross floor space of such structure together with any other structures situated within the same farmyard complex or within 100m of that complex shall not exceed 300sq.m. gross floor space in aggregate. - Based on the submitted details the existing slatted shed structure is 102sq.m and the proposed shed extends to 184sq.m giving an aggregate area of 286sq.m therefore the 300sq.m aggregate floorspace would not be exceeded.

3. Effluent storage facilities adequate to serve the structure having regard to its size, use and location shall be constructed in line with Department of Agriculture, Food and Rural Development and Department of Environment and Local Government requirements and shall have regard to the need to avoid water pollution. – The proposal provides storage tank to address a current shortfall (based on stocking numbers of 10 cows, 10 weanlings and 14 store cattle).

4. No such structure shall be situated, and no effluent from such structure shall be stored, within 10m of any public road. – The structure and effluent storage are in excess of 10m from the public road.

5. No such structure within 100m of any public road shall exceed 8m in height. – The maximum height of the structure is 6.353m.

6. No such structure shall be situated, and no effluent from such structure shall be stored, within 100m of any house (other than the house of the person providing the structure) or other residential building or school, hospital, church or building used for public assembly, save with the consent on writing of the owner and, as may be appropriate, the occupier or person in charge. – The structure and effluent storage are proposed within approximately 60m of the established dwelling to the east. A letter of consent has been provided from the owner.

7. No unpainted metal sheeting shall be used for roofing or on the external finish of the structure. – Precoated roof cladding is proposed.

Based on the foregoing it is apparent that the proposed structure complies with the requirements and limitations as set out and I am satisfied that the structure complies with the provisions of Schedule 2, Part 3 Class 6.

#### **8.4 Restrictions on exemption by virtue of Article 9(1)(a) of the Planning and Development Regulations 2001 (as amended)**

8.4.1 Article 9 of the Regulations states the development will not be exempt under the Regulations in particular circumstances. In this case the planning authority refers to Article 9(1)(a)(iii) of the Regulations which restricts exemption where development “*would endanger public safety by reason of traffic hazard or obstruction of road users*”. I also note Article 9(1)(a)(ii) which imposes such a restriction if development “*consists or comprises the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4m in width.*” And 9 (1)(a)(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*”.

8.4.2 The access to the site is by way of an entrance from the N5. The first party appeal submission asserts that the access predates the 1963 Act however provides no evidence to support this. Based on review of Geohive maps, also submitted with the appeal, it is clear that while the entrance / access are not evident on Geohive maps 2004-2006, the entrance and access road become evident on Geohive maps 2005-2012. Based on this evidence it can be determined that the means of access has either been created or widened to a material degree in recent years to facilitate access to the existing agricultural shed on the site. No permission has been granted in respect of this access. The surfaced carriageway of the N5 is in excess of 4 metres and therefore requires permission.

8.4.3 Based on the information available I have concluded that the proposed development would involve the continued use of an 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, be restricted by Article 9(1)(a)(viii) of the Planning and Development Regulations.

8.4.4 The Planning Authority refers in its decision to Article 9(1)(a)(iii) which restricts exemption where development would endanger public safety by reason of traffic hazard or obstruction of road users. The first party asserts that the proposed development will not result in increased traffic movements – the cattle currently exist on the site and traffic generated is not significant. I note that the site abuts the N5 National Primary Road. The Roscommon County Development Plan 2022-2028 places a restriction on the creation of new access points or the generation of increased traffic from existing accesses to national roads to which a speed limit of greater than 60km/h applies which is also in line with national policy as outlined in the Spatial Planning and National Roads Guidelines for Planning Authorities 2012. The restrictive policy is required to protect the carrying capacity and preserve investment in the national road network. The entrance to the referral site is at a point on the N5 marked with continuous white lines and where sightlines are restricted due to the curvature of the road. Given the conditions pertaining and having regard to the volume of traffic on this national primary road, I would be in agreement with the planning authority that traffic hazard applies in this case. On this basis the development would be restricted by Article 9(1)(a)(iii) of the Planning and Development Regulations.

## **8.5 EIA Screening**

8.5.1 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 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.

## **8.6 Screening for Appropriate Assessment**

8.6.1 As regards Appropriate Assessment Section 4(4) of the Planning and Development Act restricts exemption where development needs an appropriate assessment. In view of the small scale and the nature and extent of the development, together with the separation and hydrological distances from the nearest European sites, 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.

## **8.7 Conclusion**

8.7.1 I have concluded that the construction of the slatted shed constitutes 'works' and 'development' as defined in Sections 2 and 3 of the Planning and Development Act. The development comes within the scope of the exemption for farm buildings provided by Section 4(1)(a) of the Planning and Development Act 2000 as it comes within the scope of Class 6 of Part 3 Schedule 2 of the Planning and Development Regulations 2001 (as amended), and complies with the relevant conditions and limitations. Notwithstanding this it is considered that any such exemption is restricted by the terms of Article 9(1)(a) (iii) and (viii). On this basis I conclude that the proposed development is development and is not exempted development.

## **8.0 Recommendation**

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

**WHEREAS** a question has arisen as to whether the construction of a slatted shed for housing cattle at Cloonfree Townland, Strokestown is or is not development or is or is not exempted development:

**AND WHEREAS** Mr Cormac Dolan, Cloonfree, Strokestown, requested a declaration on this question from Roscommon Council and the Council issued a declaration on the 4th day of June, 2021 stating that the matter was development and was not exempted development:

**AND WHEREAS** Mr Cormac Dolan, Cloonfree, Strokestown, referred this declaration for review to An Bord Pleanála on the 25<sup>th</sup> day of June 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) Class 6 of Part 3 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (f) the planning history of the site,
- (g) the submissions on file :

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

- (a) The proposed works are development as defined in Section 3 of the Planning and Development Act 2001 as amended
- (b) The proposed works would be within the terms of development envisaged by Class 6 of Part 3 of Schedule 2 of the Planning and Development Regulations,
- (c) The proposed works would comply with the conditions and limitations of this class,
- (d) The access to the site has been either created or widened to a material degree in recent years to facilitate access to the lands,
- (e) The access to the site is from the N5 at a point where sightlines are substandard and where the maximum speed limit applies and having regard to the additional traffic turning movements at this point on the road consequent to the use of the slatted shed and to the deficiency in the available sightlines, the proposed development would endanger public safety by reason of a traffic hazard or obstruction of road users.
- (f) Therefore, by virtue of the provisions of Article 9(1)(a)(iii) and 9(1)(a)(viii) the proposed shed does not come within the said exempted development provisions of Class 6 of Part 3 of Schedule 2 to the said Regulations.

**NOW THEREFORE** An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3) (a) of the 2000 Act, hereby decides that the construction of a slatted shed for housing cattle at Cloonfree Townland, Strokestown, Co Roscommon is development and is not exempted development.

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Bríd Maxwell  
Planning Inspector

26th September 2022