



An
Bord
Pleanála

Inspector's Report ABP-310682-21

Question

Whether the placement of trailers and agricultural hardware on lands and the placement of mounds of soil and stones is or is not development or is or is not exempted development

Location

Ardbane, Downings, Co. Donegal.

Declaration

Planning Authority

Donegal County Council.

Planning Authority Reg. Ref.

S521/20

Applicant for Declaration

Anne Murray.

Planning Authority Decision

Is development and is exempted development.

Referral

Referred by

Anne Murray.

Owner/ Occupier

Michael McGeever Jnr.

Observer(s)

None.

Date of Site Inspection

10th March 2022.

Inspector

Barry O'Donnell

1.0 Site Location and Description

- 1.1. The subject site is located at Ardbane, Downings, in north County Donegal. It comprises an area land to the front of 2 No. detached bungalows and adjacent to a narrow country lane. The area is identified by the referrer as a right-of-way access to their property and it also provides access to the other bungalow. At the time of my inspection the area contained a livestock trailer, an open sided trailer and a number of soil and stone deposits.
- 1.2. The land in question is bounded by a low-level stone wall at the front boundary of the north-adjoining house and by a post and wire fence at the boundary of the north-west adjoining house. Access to the land to the north of these houses is also provided, via an agricultural access between the properties.

2.0 The Question

- 2.1. The referrer has provided a lengthy written submission as part of the referral and it can be seen from it that there is an ongoing property/access dispute at the site. The referrer states that the land the subject of the referral falls within Folio DL42379F but that it is a right-of-way to which Folio DL50900F has benefit. Access to the referrer's property is stated to have been impeded by reason of the placement of items along the boundary of the right of way.
- 2.2. A series of photographs have also been provided, which depict the layout of the subject site at various times. The photographs indicate that the subject site was previously open and that incremental deposits of soil and stones and placement of trailers and agricultural hardware in the area adjacent to the shared boundary with the referrer's property has taken place. One of the photographs identifies 7 No. trailers placed in the area adjacent to the shared boundary.
- 2.3. The referrer's completed application form includes Section 10, 'details of works', wherein reference is made to (a) trailers and agricultural items having been placed in identified locations on Folio DL42379F and (b) placement of mounds of stone and soil on land within Folio DL42379F.
- 2.4. From the information available to me, I consider the questions the subject of this referral to be:

- (i) Whether the placement of mounds of stones and soil on land within Folio DL42379F is or is not development and is or is not exempted development.
- (ii) Whether the placement of up to 7 trailers and other agricultural hardware on land within Folio DL42379F is or is not development and is or is not exempted development.

3.0 Planning Authority Declaration

3.1. Declaration

- 3.1.1. The Planning Authority issued a declaration on 11th June 2021, which stated that the subject matter of the referral is development and is exempted development.

3.2. Planning Authority Reports

3.2.1. Planning Reports

A Planning Report dated 4th June 2021 has been provided, which reflects the Planning Authority's determination. The report summarises and analyses the proposed development, in the context of the legislation and any applicable exempted development provisions, and determines that parking of trailers on the site appeared to be incidental to the occupier's use of the house and their farming operation. The placement of mounds was considered to be incidental to the use of the house. By reference to Section 4(1)(a) and 4(1)(j) of the Act, both elements of the referral were considered to constitute exempted development. Blocking of a right-of-way is considered by the report to be a civil matter, outside of the remit of the Planning Authority.

3.2.2. Other Technical Reports

None.

4.0 Planning History

007794 – Permission granted on 23rd March 2001 for a proposed house and septic tank. Permission was subsequently granted for a revised house type, under Reg. Reg. 017643.

0651608 – Permission refused on 9th February 2007 for a proposed house, garage and septic tank. Permission was refused for 2 No. reasons related to (i) non-compliance with rural housing location policies and (ii) the precedent that a grant of permission for a backland development would set

5.0 Policy Context

5.1. Development Plan

- 5.1.1. The site is located in a rural area, identified by the Donegal County Development Plan 2018-2024 as being a '*structurally weak rural area.*'

5.2. Natural Heritage Designations

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

5.3. Environmental Impact Assessment

- 5.3.1. The matters the subject of this referral relate to the placement of trailers and agricultural hardware and the placement of mounds of stones and soil on land that is identified as a right-of-way and which is located between houses. This type of development does not constitute an EIA project, as contained in Schedule 5 of the Planning and Development Regulations 2001-2022 and so the question as to whether or not it might be sub-threshold does not arise.

6.0 The Referral

6.1. Referrer's Case

- 6.1.1. The referrer's case can be summarised as follows:
- The referrer wishes to ascertain whether the nature of the subject matter is development and, if so, is exempted development and also whether it contravenes a planning condition.
 - The planning condition in question, condition No. 3 of Reg. Ref. 01/7643, states that the property was to be located further back off the county road, to

cater for parking completely off the edge of the public road boundary.

Reference is made to Section 157(4)(b) of the Act.

- The area in question, part of Folio DL42379F, includes a right of way to which Folio DL50900F has benefit. There are mounds of stone and soil and trailers in the area of the right of way and beyond it.
- Trailers and agricultural hardware have been placed in this area since 2018 and are parked or abandoned, contrary to Section 3(2)(b)(iii) of the Act. They are not used for farming purposes.
- The landowner does not have a house on the land or in the vicinity, he lives approx. 1 mile away.
- It is questioned how the Planning Authority could have deemed that trailers, etc, which remain in-situ for extended periods are for the purposes of agriculture.
- Reference is made to historic and ongoing disputes between the referrer and the owner of the land within Folio DL42379F.

6.2. Planning Authority Response

6.2.1. A submission from the Planning Authority was received on 20th July 2021, the contents of which can be summarised as follows: -

- The majority of issues raised have been addressed by the Planning Report on the application or relate to a civil matter concerning a right of way or a neighbourly dispute which the Planning Authority does not get involved in.
- Regarding the alleged breach of a planning condition, it is noted that the referrer refers to permission Reg. Ref. 01/7643. It appears there is no relevant condition that prevents the placement of trailers and agricultural items on lands or the placement of mounds of soil and stones. The condition identified by the referrer, condition No. 3, required the applicant to ensure standard entrance details in accordance with the development plan's technical specifications. The standard applies to all residential applications, where there is a requirement for vehicular access and parking.

6.3. Owner's Response

- 6.3.1. An emailed submission was received from Michael McGeever Jnr, confirming that he is the registered owner of the subject property.

6.4. Further Responses

- 6.4.1. None received.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000, as amended

Section 2(1) - "works" includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.

Section 3(1) - "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 3(2)(b)(iii) – for the purposes of subsection (1) ...- the deposit of vehicles whether or not usable for the purpose for which they were constructed or last used, old metal, mining or industrial waste, builder's waste rubbish or debris, the use of the land shall be taken as having materially changed.

Section 4(1)(a) – the following shall be exempted development for the purposes of this Act- 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 the land so used.

Section 4(1)(j) - the following shall be exempted development for the purposes of this Act- development consisting of the use of any structure or other land within the curtilage of a house for any purpose incidental to the enjoyment of the house as such.

7.2. **Planning and Development Regulations 2001-2022**

- 7.2.1. Article 9(1)(a)(i) states that development to which Article 6 (Exempted Development) relates shall not be exempted development for the purposes of the Act if the carrying out of such development would contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act.

8.0 **Assessment**

- 8.1. The referrer has provided a lengthy written submission as part of the referral and it can be seen from it that there is an ongoing property/access dispute at the site. The referrer states that the land the subject of the referral falls within Folio DL42379F but that it is a right-of-way to which Folio DL50900F has benefit and that access has been impeded by reason of the placement of items along the boundary of the right of way.

- 8.2. In essence what the Board is asked to adjudicate on is: -

- (i) Whether the placement of mounds of stones and soil on land within Folio DL42379F is or is not development and is or is not exempted development.
- (ii) Whether the placement of up to 7 trailers and other agricultural hardware on land within Folio DL42379F is or is not development and is or is not exempted development.

8.3. **Is or is not development**

- 8.3.1. Regarding the issue of the placement of mounds of stone and soil on land within Folio DL42379F, I counted 16 separate small mounds at the time of my site visit, which include large stones content, the majority of which appeared to have been in place for some time and had become grassed. There was also evidence of more recent deposition, which was not grassed over at the time. The mounds cover a large amount of what was a previously open area and impede vehicular access to and usage of the area.

- 8.3.2. Available Google Earth aerial photograph imagery indicates that material was first deposited on the site sometime between the aerial photographs dated 21st September 2019 and 15th April 2021.
- 8.3.3. Having considered Section 2(1) of the Act, the placement of soil and stone on the land did not require an act of construction, excavation, demolition or extension and did not involve an act of alteration, repair or renewal, so I do not consider the act constitutes works.
- 8.3.4. Also of relevance, Section 3(2)(b)(iii) of the Act states that the deposit of vehicles whether or not usable for the purpose for which they were constructed or last used, old metal, mining or industrial waste, builders' waste, rubbish or debris shall give rise to a material change of use of the land.
- 8.3.5. The more recent deposits that remain ungrassed contain spoil and large stones content and it is my opinion that this deposited material comprises debris. With reference to Section 3(2)(b)(iii), and in view of the number of deposits and the impact of same on the usage of and access to the site, I am of the view that the use of the land has been materially changed and, therefore in accordance with Section 3(1) of the Act, I consider the act constitutes development.
- 8.3.6. Regarding the placement of trailers and agricultural hardware in the part of the site adjacent to Folio DL50900F, the photographs provided as part of the referral identify numerous items, including enclosed and open-sided trailers adjacent to the referrer's property (one photograph identifies 7 such trailers) and the referrer states that this has been ongoing since 2018.
- 8.3.7. On my site visit there were 2 trailers on the site, in the area adjacent to the referrer's property so some movement of trailers and agricultural hardware has evidently taken place at some point since the referrer's photographs were taken. However and notwithstanding this, the question that has been asked of the Board relates to the placement of trailers and agricultural hardware on the site and I note that the referrer states that these items are parked or abandoned.
- 8.3.8. As I have outlined previously, Section 3(2)(b)(iii) of the Act states that where land becomes used for the deposit of vehicles whether usable or not, the use of the land shall have materially changed. In this instance, I consider the placement of trailers

and agricultural hardware is consistent with vehicles, in the context of Section 3(2)(b)(iii), and I therefore consider this act constitutes development.

8.4. Is or is not exempted development

- 8.4.1. The Planning Authority's decision on the application states that the subject matter of the referral is exempted development as it falls within the scope of Sections 4(1)(a) and 4(1)(j) of the Act.
- 8.4.2. I did not see any evidence of agricultural activity on the third-party lands, as identified on the map provided with the original application. The land to the north of the houses, which is the main part of the landowner's holding, was not obviously in use at the time of my site visit. I would also point out that the soil and stone mounds appear to be an impediment to vehicular access to this land. The landowner, Michael McGeever Jnr, made a submission on the referral to confirm his ownership of the site and to confirm his address (Gortnamore, Downings) but did not provide any clarification regarding the use of the land.
- 8.4.3. I have given consideration to exempted development provisions at Section 4 of the Act and, from the information available to me, I am satisfied that Section 4(1)(a) does not apply as there is no evident agricultural activity ongoing at the site. I am also satisfied that Section 4(1)(j) does not apply, as the site is not within the curtilage of a house and the use is not incidental to the enjoyment of a house.
- 8.4.4. There are no other exempted development provisions at Section 4 of the Act which are applicable in this instance and there is no applicable exempted development class within the Regulations.
- 8.4.5. I therefore conclude that the placement of mounds of stones and soil on land within Folio DL42379F and the placement of up to 7 trailers and other agricultural hardware on land within Folio DL42379F are not exempted development.

8.5. Restrictions on exempted development

- 8.5.1. The referrer cites condition No. 3 attached to permission Reg. Ref. 01/7643, which relates to the provision of a boundary wall/fence and vehicular access arrangement and questions whether the subject matter of the referral is a contravention of this

condition. Condition No. 3 requires a specified layout of the access to the property north of the subject site to be provided, which would by reason of its layout provide space for a single car to park entirely off the road. I note that the Planning Authority's submission on the referral similarly states that the intention of the condition is to ensure a specified layout of the site access is provided.

- 8.5.2. The layout of the access to this property is not as shown on the site layout drawing provided with application Reg. Ref. 01/7643 but this is a matter for the Planning Authority, which has responsibility for enforcement.
- 8.5.3. Article 9(1)(a)(i) of the Regulations provides for de-exemption of development which would otherwise be exempted development under the Regulations, where the carrying out of such development would contravene a condition attached to a permission. However, as I have outlined already, there is no applicable exempted development class within the Regulations, so Article 9(1)(a)(i) is not applicable in this instance.

8.6. **Appropriate Assessment**

- 8.6.1. The subject site is not within or adjacent to a European site, with the nearest occurring c.750m to the west of the site (Horn Head to Fanad Head SPA, Site Code 004194). At this distance and having regard to the smallscale nature of the works referred, no Appropriate Assessment issues arise, and it is not considered that the subject development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

9.0 **Recommendation**

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

WHEREAS a question has arisen as to: -

- (i) Whether the placement of mounds of stones and soil on land within Folio DL42379F is or is not development and is or is not exempted development.

(ii) Whether the placement of up to 7 trailers and other agricultural hardware on land within Folio DL42379F is or is not development and is or is not exempted development.

AND WHEREAS Anne Murray requested a declaration on this question from Donegal County Council and the Council issued a declaration on the 11th day of June, 2021 stating that the matter is development and is exempted development:

AND WHEREAS Anne Murray referred this declaration for review to An Bord Pleanála on the 25th 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, as amended,
- (c) Section 3(2)(b)(iii) of the Planning and Development Act, 2000, as amended,
- (d) Section 4(1)(a) of the Planning and Development Act, 2000, as amended,
- (e) Section 4(1)(j) of the Planning and Development Act, 2000, as amended,
- (f) Article 6(1) and article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (g) Parts 1 and 3 of Schedule 2 to the Planning and Development Regulations, 2001, as amended, and
- (h) the planning history of the site,

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The placement of soil and stone mounds on land within Folio DL42379F is consistent with the placement of debris and, in the context of Section 3(2)(b)(iii) of the Act, gives rise to a material change in the use of the land; and
- (b) The placement of up to 7 trailers and other agricultural hardware on land within Folio DL42379F is consistent with the placement of vehicles on land and, in the context of Section 3(2)(b)(iii) of the Act, gives rise to a material change in the use of the land

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 placement of mounds of stones and soil on land within Folio DL42379F is development and is not exempted development; and
- The placement of up to 7 trailers and other agricultural hardware on land within Folio DL42379F is development and is not exempted development.

Barry O'Donnell
Planning Inspector

12th April 2022.