



An
Bord
Pleanála

Inspector's Report ABP-311365-21

Question

Whether the current use of agricultural shed for housing pigs is or is not development or is or is not exempted development.

Location

Ballynagale, Taghmon, Co. Wexford.

Declaration

Planning Authority

Wexford County Council

Planning Authority Reg. Ref.

20021864

Applicant for Declaration

Wexford County Council

Planning Authority Decision

No declaration

Referral

Referred by

Wexford County Council

Owner/ Occupier

Healy Pigs Limited

Observer(s)

None

Date of Site Inspection

29th September 2022 & 1st November 2022

Inspector

Una O'Neill

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1.0 Site Location and Description

- 1.1. The subject site is located in a rural area in the townland of Ballynagle, c. 3km south of the village of Taghmon, in Co. Wexford. The site is accessed off the western side of the R739 Kilmore Road.
- 1.2. The site comprises a small number of agricultural buildings arranged around a farmyard. The largest of these buildings is the shed subject of this referral, which is located to the southwest of the yard. The original shed, constructed in 1976, is c. 1083sqm in area (c. 57m long x 19m deep), with a more recent permission in 2002 providing for the addition of c. 189sqm lean-to extension containing a slatted tank.

2.0 The Question

- 2.1. Whether the current use of agricultural shed for housing pigs is or is not development or is or is not exempted development.

3.0 Planning Authority Declaration

3.1. Declaration

No declaration issued – referral is from Wexford County Council.

4.0 Planning History

PA Ref Reg no. 20021864 – Permission GRANTED on 23rd August 2002 to construct a slatted unit slurry tank with lean-to cover. The area of the slatted unit was indicated to be 189sqm.

- I note permitted and constructed extension is attached to an existing larger shed, which is stated to date from 1976. The shed and adjoining constructed slatted tank structure is the subject of this referral (as per the image submitted by the referrer, ie Wexford County Council).

EXD00832 – Development consisting of a change of use from Class 6 to Class 7 of the exempted development regulations is development is not exempted development.

- This Section 5 Decision from Wexford County Council was issued in response to a referral from Alice Clarke in relation to two sheds within a farmyard – one of the sheds is the subject of this referral.
- I note the planners report on the referral included an incorrect site description and an incorrect Eircode, however, I note the assessment and photo appear to relate to the correct site (the site subject of this referral application). I further note an Executive Order from the County Council on the file which states that pursuant to Section 146A(1), an incorrect Eircode was removed from the order. An email on file states the planner assessed the correct site.

5.0 Policy Context

5.1. Wexford County Development Plan 2022-2028

Chapter 6, Economic Development Strategy - Section 6.7.6.2 Agriculture Development:

- Objective ED99: To facilitate the development of sustainable agricultural practices and facilities within the county, subject to complying with best practice guidance, normal planning and environmental criteria and the development management standards in Volume 2.
- Objective ED101: To facilitate the modernisation of agriculture and to encourage best practice in the design and construction of new agricultural buildings and installations to protect the environment, natural and built heritage and residential amenity. Planning applications for new agricultural structures must clearly outline the use of the structure (livestock / equine / pig / poultry / storage) subject to Objectives ED97 and ED98.
- Objective ED103: Intensive agriculture units will only be considered where it is clearly demonstrated by the applicant to the Council that the proposed development

will not give rise to negative impacts on animal welfare, the environment, natural or built heritage or residential amenity. The scale and intensity of operations, including the cumulative impact of similar type developments in close proximity, shall be clearly detailed in the application and shall inform the assessment. All applications for such development shall be required to demonstrate that the proposal complies with Objective ED97 and Objective ED98 and

- Is located more than 500 metres from any residential property not located on the holding, or at a greater distance if there is potential for significant impacts on residential amenity, particularly in terms of odour.
- An assessment and modelling of odour has taken place where required.

5.2. Natural Heritage Designations

pNHA Bannow Bay and Bannow Bay SAC (000697) is located c.4.7km to the west of the referral site (on a direct route/as the crow flies)

pNHA Ballyteige Burrow and Ballyteige Burrow SAC (000696) is located c. 8.2km to the south of the site (on a direct route). This distance is c. 10.6km following the River Muck.

Wexford Harbour and Slobs SPA (004076) is located c.15km to the east (on a direct route).

6.0 The Referral

6.1. Referrer's Case

The referral was made by Wexford County Council. The Council's case is as follows:

- The purpose of the referral is to determine whether the current use of the subject agricultural shed to house pigs is or is not development or is or is not exempted development.
- The referral is a separate process to the planning enforcement case which relates to the same development.

- The previous established use comes under the description of Class 6, Part, 3 Schedule 2 Article 6 of the P&D Regs 2001 (as amended). The current use comes within Class 7 Part 3 Schedule 2 Article 6 of the P&D Regs 2001 (as amended).
- Reg ref 20021864 sets out the established use as a cowshed, cattle shed, and machinery shed, as per the drawings submitted. A slatted slurry tank was permitted, however, the slatted sheds have now been installed in the entire shed.

6.2. Owner/ occupier's response

A response to Wexford County Council Section 5 Referral was received by ABP on 18th October 2021, from Sheehan Planning on behalf of Healy Pigs Limited. The response received is summarised as follows:

- Permission granted under ref 20021864 was for a slatted shed and did not involve works to the pre-existing shed. The use of the shed is not related to that application and condition 1 of that permission refers both to cows and pigs, therefore the permission did not limit the shed to housing cows.
- The pre-existing shed was built in 1976 as an agricultural shed pursuant to exempted development provisions in the regulations at that time, which did not distinguish between cattle and pig use.
- A section 5 declaration, ref EXD00832, issued by Wexford County Council on 3rd September 2020, comprised errors and the referral is being made to correct past errors of the Council in order to pursue enforcement action against Mr. Healy. WCC has not consulted with Mr Healy on this referral. It is requested the Board dismiss this referral.
- Class 6 of the P&D exempted development regulations 1967 is quoted and it is stated that the structure was built under these provisions, where there was no distinction between the various animals which could use the shed.
- The planning application which referred to use of the shed for cows, only relates to the part of the shed within the red line boundary. It does not apply to the balance of the shed, which is much larger, and does not preclude the use

of the balance of the shed being used to house pigs. No condition was attached restricting the use of the slatted unit to cattle or cows only. Condition 1(3) refers to the spread of cattle slurry and to the spread of pig slurry.

- A letter, dated 25th May 2021, is included which is stated to be from the original owner of the site, which confirms the shed was built in 1976 and used for agricultural purposes.

6.3. Further Response

6.3.1. Third Party Response to Owner/Occupier's Response:

- In response to a S5 application, WCC confirmed that this development is not exempted development.
- On 16/04/21 letter issued to third party (Alice Clarke) stating that an Enforcement Notice was issued to the developer instructing them to cease the use of the shed to house pigs within six weeks.
- This development is close to a stream which feeds into the Ballyteige Lagoon, via Duncormick, under SAC protection.
- All developments for pig housing should have to comply with the regulations under the Planning and Development Act 2000 as amended, being fair to all.

6.3.2. Planning Authority's Response to Owner/Occupier's Response:

- The purpose of the referral is to determine whether the current use of the subject agricultural shed to house pigs is or is not development or is or is not exempted development.
- The referral was submitted following consideration of a response on behalf of the owner/operator of the pig farm to an enforcement notice. The referral is a separate process to the planning enforcement case which relates to the same development.
- PA considered that the previous established use came under description of Class 6 Part 3 Schedule 2 Article 6 of the P&D Regulations 2001 as amended and the current use to be within Class 7 Part 3 Schedule 2 Article 6 of the P&D Regulations 2001 as amended.

- Permitted development 20021864 sets out the established use, where annotated drawings showed the shed divided into three units – a cowshed, cattle shed, and machinery shed. Planning permission was granted for a covered slurry tank to be attached to the subject shed, however, the slatted tanks have not been installed in the entire shed. The established use at the time of the application was to house cattle. This is supported by a letter from the previous owner. The current use falls within Class 7.

7.0 Statutory Provisions

7.1. Planning and Development Act, 1963

Section 2(1) In this Act, save where the context otherwise requires-

“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 use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, the use of land for turbarry, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes, and “agricultural” shall be construed accordingly.

7.2. Planning and Development Regulations, 1967

Third Schedule, Part III, Exempted Development - Rural

CLASS 6 - The construction, excavation, extension, alteration or replacement of any store, barn, byre, shed, glasshouse, pen, sty, poultryhouse, silo or other structure on land not less than 30 feet from any public road the metalled part of which is more than 12 feet in width or from the site of any road improvement work or new road and carrying out or construction of which is an objective of any development plan or, during the period prior to the making of a development plan, is declared by resolution of a planning authority to be an objective which they propose to include in a development plan.

Conditions: 1. No such structure shall be used for any purpose other than the purpose of agriculture or forestry; 2. No such structure for the housing of pigs or

poultry or for the making of silage shall be situated within 100 feet of any dwellinghouse save with the consent of the owner and occupier thereof; 3. No such structure within 100 yards of any public road shall exceed 21 feet in height above ground level.

7.3. **Planning and Development Act, 2000 (as amended)**

Section 2(1) of the Planning and Development Act 2000 (as amended) states

In this Act, except where the context requires otherwise –

.....

“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 land as grazing land, meadow land, osier land, market gardens and nursery grounds, and “agricultural” shall be construed accordingly;

“development” has the meaning assigned to it by section 3, and “develop” shall be construed accordingly.

“works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal ...

Section 3 (1) defines development as follows: “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 of the Act states:

(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;

.....

Section 4(4) Notwithstanding paragraphs (a), (i), (ia) and (l) of subsection (1) and any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required.

7.4. **Planning and Development Regulations, 2001 (as amended)**

Article 6(3) of the Regulations states 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 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.

Schedule 2, Part 3, Exempted Development - Rural

- Classes 6 - 10 provides exemptions for Agricultural Structures.

Article 9 (1) provides: 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—

(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.

(c) if it is development to which Part 10 applies, unless the development is required by or under any statutory provision (other than the Act or these Regulations) to comply with procedures for the purpose of giving effect to the Council Directive.

8.0 **Assessment**

8.1. **Introduction**

- 8.1.1. The shed subject of this referral sits within an existing farmyard comprising a small number of sheds, with the shed in question being the largest of the sheds. I note the documentation submitted indicates the main shed was constructed in 1976, pursuant to exempt development regulations in force at the time, with a permitted addition constructed to the shed in 2002.
- 8.1.2. A letter is submitted as part of the owner/occupier's case stating the original shed was constructed in 1976 under the then exempt development regulations. This is not disputed by the PA. The original shed was, by my measurements, c. 1083 sqm. I note under the 1967 exempt development regulations the size of any such shed was not limited, nor was the type of animals to be stored within limited to cows and sheep, but to agricultural use. Subsequent exempt development regulations in 1977 limit such sheds to 400sqm. I was not able to gain access to the building upon my site inspection, however, I note that it would appear from the positioning of the access doors that the floor level of the main shed has been raised internally and it was clear the shed was being used for the storage of pigs, given the noise of pigs squealing was audible to me standing outside the shed.
- 8.1.3. There is a permission dating from 2002 for the construction of a lean-to structure over a slatted base to be attached to the main shed, with an internal link between the proposal and the existing shed. This additional element has been constructed. I note this permission (PA Ref Reg no. 20021864,) had a red line around the location of the slatted structure only and was not around the entirety of the shed. Condition 1 of that permission relates to the spreading of slurry, which includes parameters in terms of annual volume permissible to be spread where it relates to cattle slurry and volume permissible if pig slurry. I note no conditions on that permission limit what animals could be stored in the lean-to structure. From site inspection, I note that the permitted lean-to structure, which was proposed to have a canopy roof structure, is a fully enclosed shed, which appears to have its entrance raised with the slatted tank element appearing not to be fully underground as indicated on the permitted drawings. Whether this shed has been constructed in accordance with its permission is a matter for the planning authority. The question in this referral relates solely to the use of the shed, including the new addition.
- 8.1.4. Issues raised by the owner of the site in relation to the validity of enforcement proceedings does not fall within the jurisdiction of the Board. Matters of enforcement

are for the planning authority to adjudicate on. The question in this referral is as set out in section 2 of this report: Whether the current use of agricultural shed for housing pigs is or is not development or is or is not exempted development. The question does not relate to other works undertaken at the site.

- 8.1.5. The submission from Sheehan Planning on behalf of Healy Pigs Limited takes issue with the lack of consultation by Wexford County Council with Healy Pigs Limited prior to the submission of the referral to ABP. Under Section 5(4) of the Planning and Development Act 2000 (as amended), a planning authority may, on payment to the Board of such fee as may be prescribed, refer any question as to what, in any particular case, is or is not development or is or is not exempted development to be decided by the Board. There is no requirement for consultation to be undertaken with the owner/occupier of the site subject of a referral. The County Council has made the referral in accordance with the requirements of Section 127 of the Planning and Development Act 2000 (as amended).
- 8.1.6. In assessing the merits of the case I have reviewed previous relevant declarations made by the Board.
- 8.1.7. It should be stated at the outset that the purpose of this referral is not to determine the acceptability or otherwise of the use of the shed for pigs in respect to 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.

8.2. Is or is not development

- 8.2.1. The shed subject of this referral, which includes a permitted attached shed, is in existence. The main body of the shed is stated to have been constructed in 1976 under exempt development regulations. A letter, dated 25th May 2021, is included in the submission from Sheehan Planning on behalf of Healy Pigs Ltd, which is stated to be from the original owner of the site and which confirms the shed was built in 1976 with the aid of the farm modernisation scheme and used for agricultural purposes, stating: ‘...it [the shed] was used extensively for cattle housing, sheep housing and horses from 1976 to present day’. I have no information before me to suggest the agricultural shed was not constructed in accordance with the legislation in place at

the time and the PA raises no issues in this regard. I note that under the exempt development regulations at the time, it was permitted to stock any animals in the shed, with one of the limitations being that 'no such structure shall be used for any purpose other than the purpose of agriculture or forestry'. I note there is no enforcement history on file in relation to the construction of the shed. I accept, based on the information submitted, that the shed was originally built and used since then as an agricultural shed in accordance with the then regulations.

- 8.2.2. The expansion of the shed with the attached structure is permitted development and the use of the expanded shed was not limited by condition in terms of what could be stored within, notwithstanding information with the file did indicate cows.
- 8.2.3. It is contended by Wexford County Council that there has been a recent change of use to the existing agricultural shed. The Council state the previous established use comes under the description of Class 6, Part, 3 Schedule 2 Article 6 of the P&D Regs 2001 (as amended).
- 8.2.4. I note the shed was constructed under exempt development regulations in force in 1967 and one of the main limitations to the construction of a shed under the then exempt regulations was that 'No such structure shall be used for any purpose other than the purpose of agriculture'. The definition of agriculture allowed for the storage/rearing of pigs under the then Act. Class 6/Class 7 exempt development provisions under current planning and development regulations are not applicable to this existing structure. The established use of the shed is defined by reference to the 1963 Act and the 1967 regulations.
- 8.2.5. The addition to the shed has a permission, was not built under exempt provisions of the current act, and the permission granted did not limit the use of the extension to cattle or pigs. The use was stated on the application form to be an agricultural use. While an elaboration of the application form in relation to the nature and extent of development referred to cows, I note no condition was attached limiting its use to cows, and condition one of that permission refers to both cow slurry and pig slurry spreading, so it cannot be inferred that because cows were indicated in the application documentation, that it could only be used for cows.
- 8.2.6. Section 2(1) of the Planning and Development Act 2000 (as amended) states "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 land as grazing land, meadow land, osier land, market gardens and nursery grounds, and “agricultural” shall be construed accordingly. Section 4 of the Act states: (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.

- 8.2.7. Section 3 (1) of the Act defines development as follows: “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.
- 8.2.8. The use of the constructed shed for housing pigs, instead of cows/machinery, is questioned, ie does the change in content within the shed constitute development. The proposal to use the shed for storage of pigs instead of cows is in my opinion still an agricultural use, and therefore no change of use has occurred on the farm, and no development has taken place.
- 8.2.9. The question then arises in relation to whether an intensification of use has occurred, which would constitute a material change of use and which would be development. In this instance the shed is stated to have been constructed at a scale in accordance with the then regulations, which placed no limit on the number of animals allowed to be stored in the shed. There has been no unauthorised increase in the size of the shed. The slatted tank and shed attached to the main shed is permitted development and I do not consider it reasonable to infer an intensification of use based on the limited scale of the unit (c.189sqm) compared to the scale of the original shed (c.1083sqm). I consider no intensification of use over what was originally allowable in the shed has occurred and therefore no material change of use has occurred. As a material change of use has not occurred and no development has occurred, the question in relation to exemptions is not therefore applicable.
- 8.2.10. I note a number of observers question intensification in terms of the numbers of pigs being stored/reared in the shed. This is an issue relating to Environmental Impact Assessment (EIA) and does not relate to an intensification of use in terms of the use

of the structure as originally permitted, which was not limited in terms of the number of animals that could be stored but was limited to an agricultural use, which is what is occurring on the site. No EIA issues arose in relation to the extension.

8.2.11. I note a number of observers refer to the 2001 exempted development regulations Class 6 and Class 7, however, as indicated above, these regulations are not applicable in this instance as this shed was constructed in 1976 and is governed by the 1967 Regulations.

8.2.12. I note separately that Sheehan Planning Ltd state that they are 'advised that the scale of the activity on the farm is below the EIA threshold for rearing of pigs'.

8.2.13. In my opinion no development has occurred, therefore the question in relation to exempted development does not arise.

8.3. Conclusion

8.3.1. I consider the use of the shed in question for the storage of pigs remains an agricultural use, which is not a material change of use, therefore no development has occurred.

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 whether the current use of agricultural shed for housing pigs is or is not development or is or is not exempted development:

AND WHEREAS Wexford County Council requested a declaration on this question from An Bord Pleanála on the 8th day of September, 2021:

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

- (a) Section 2(1) of the Planning and Development Act, 1963,
- (b) Part 3 of the Exempted Development Regulations, 1967,
- (c) the planning history of the site,

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The use of the agricultural shed for the storage of pigs is an agricultural use which is not a material change of use and is not 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 use of the agricultural shed to store pigs is not development.

Una O'Neill
Senior Planning Inspector

21st November 2022