



An  
Bord  
Pleanála

## Inspector's Report ABP-312387-22

<b>Question</b>	Whether the development of an agricultural store/barn is or is not development or is or is not exempted development
<b>Location</b>	Shallon Lane, The Ward, Co. Dublin
<b>Declaration</b>	
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	FS5/063/21
Applicant for Declaration	Kenneth McCarthy
Planning Authority Decision	Is development but not exempted development
<b>Referral</b>	
<b>Referred by</b>	Kenneth McCarthy
<b>Owner/ Occupier</b>	Kenneth McCarthy
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	25 <sup>th</sup> May 2022
<b>Inspector</b>	Ian Boyle

## **1.0 Site Location and Description**

- 1.1. The site is situated on the eastern side of Shallon Lane, The Ward, in north County Dublin. It is within a rural area where the predominant land use is agriculture.
- 1.2. Shallon Lane is a narrow local road which is situated between the R122 and R135 regional routes. There is a deep ditch running along the eastern side of the lane and a galvanised yard gate provides access to the site. A drainage channel runs along the rear (eastern) boundary of the site.
- 1.3. There is an existing barn type structure / storage shed in the northeastern corner of the site and a stand of planted trees are situated along the western site boundary and within the centre part of the site. A gravel driveway runs from the access gate up as far as the shed, which is the subject of this referral application.
- 1.4. The existing shed is offset from the road (Shallon Lane) by approximately 80m. It is approximately 24m by 12m giving an overall area of approximately 288sqm and has a height of 4.3m to eaves level (6.5m at top of parapet) .
- 1.5. The external materials are green painted agriclad panels (or metal sheeting) for the walls and the roof is steel clad. The front (western) elevation has a metal sheet door for access purposes.
- 1.6. There is an existing detached dwelling approximately 125m to the southwest, on the opposite side of the lane.
- 1.7. The site has a stated area of 0.5ha.

## **2.0 The Question**

- 2.1. Whether or not the erection of the subject agricultural structure is or is not exempted development.

## **3.0 Planning Authority Declaration**

### **3.1 Declaration**

The Planning Authority stated the question:

*'Whether the dry store / barn is or is not development and is or is not exempt development at Shallon Lane, The Ward, Co. Dublin.'*

The Planning Authority issued a declaration under Section 5 of *the Planning and Development Act 2000 (as amended)* ('the Act'), on 2<sup>nd</sup> December 2021, stating that:

*'the proposal is not exempted development under Section 5(1) of the Planning and Development Act 2000 for the following reason(s):*

*I recommend that the declaration be issued pursuant to Section 5 of the Planning and Development Acts, as amended and regulations made thereunder, informing the applicant that the development of an agricultural store / barn is Development and is not Exempted Development as the structure has been used for purposes other than agriculture and is not located within an existing farming complex. The structure which is the subject of this declaration cannot therefore avail of the exemptions specified under Schedule 2, Part 3, (Exempted Development – Rural – Agricultural Structures) of the Planning and Development Regulations 2001 (as amended).'*

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Report**

- The Planning Authority considers the dry store / barn development, and not exempted development, as the structure has been used for purposes other than agriculture and is not located within an existing farming complex.
- Section 3(1) of the Act defines development, except where the context otherwise requires 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'.
- Given the nature of the works in question, it is considered that the constructed dry store / barn is development.

#### Assessment under Schedule 2, Part 3, Class 9 of the Planning and Development Regulations 2001 (as amended)

- Schedule 2, Part 3, Class 9 of the Planning and Development Regulations 2001 (as amended) ('the Regulations') is relevant to this assessment and it is

noted that the dry store must comply with the conditions and limitations specified in Column 2 of Class 9 of the Regulations:

1. The shed was inspected in August 2021 and found it was not being used as a 'dry store'. It was being used for storing furniture and vehicles of a third party and not for the purposes of agriculture or forestry.
2. The dry store / barn is a stand-alone structure of 295sqm that does not form part of a farmyard complex or complex of structures, nor is it located within 100m of such a complex. In this regard, the development is considered to be a stand-alone structure and is not linked to an existing farmyard complex.
3. The structure is located approximately 79m from the public road.
4. The roof height is indicated as 6.5m.
5. There is no dwelling house, other residential building or school, hospital, church or building used for public assembly located within 100m of the structure.
6. The external finish of the structure is painted metal cladding and no unpainted classing metal sheeting has been utilised.

#### Consideration of Section 4(4) of the Act

- This section effectively de-exempts a development that attracts a requirement for Environmental Impact Assessment (EIA) or Appropriate Assessment (AA).
- It is considered that due to its location, scale and nature that the development would not be likely to have significant effects on the environment, taking account of the criteria set out in schedule 7 and 7A of the Regulations.
- Having regard to the location of the development in relation to Natura 2000 sites and distance from such sites, and from the drawings and details submitted, it is not considered that the development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

## 4.0 Planning History

None relevant.

## 5.0 Policy Context

### 5.1. Fingal Development Plan 2017-2023

- The site is zoned 'GB – Greenbelt' under the Fingal Development Plan 2017-2023 which has the objective, 'to protect and provide for a Greenbelt'.
- The site is within the Outer Public Safety Zone, the Airport Red Approach Area and Noise Zone A.

### 5.2. Natural Heritage Designations

There are no natural heritage designations in the vicinity of the site.

## 6.0 The Referral

### 6.1. Referrer's Case

The Referrer has appealed the Decision of the Planning Authority. The main issues raised are:

- The structure is used for agricultural purposes.
- The structure is part of the farmyard complex of 200 acres.

### 6.2. Planning Authority Response

- The interpretation of the limitation set out in Column 2 of Schedule 2, Part 3, of the Planning and Development Regulations 2001 (as amended) as applicable to Class 9 in the subject case followed the precedent set by declarations issued under Fingal County Council Reg. Refs. FS5/035/16 and FS5/050/18.

- The determination is consistent with the established precedent by the Planning Authority.

### 6.3. Owner / occupier's response

- The owner / occupied is the referrer.

## 7.0 Statutory Provisions

### 7.1. Planning and Development Act, 2000

#### Section 2(1)

- "*Works*" includes any act or operation of the construction, excavation, demolition, extension, alteration, repair or renewal.
- "*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 situated.
- "*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.

#### 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 4 'Exempted Development'

- (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

**Article 6** of the Regulations state the following:

- (1) *Subject to Article 9 the 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 conditions and limitations specified in Column 2 of the Act opposite the mention of that Class in the said Column 1.*

**Article 9** of the Regulations identifies circumstances by which development under Article 6 shall not be exempted development, including (a) if the carrying out of such development that 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,*
- (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.*

### **Schedule 2, Part 3: Exempted Development – Rural**

**Class 9** provides the following exemption for Agricultural Stores:

‘Works consisting of the provision of any store, barn, shed, glass-house or other structure, not being of a type specified in class 6, 7 or 8 of this Part of this Schedule, and having a gross floor space not exceeding 300 square metres.

(Class 6 refers to structures for the housing of cattle, sheep, goats, donkeys, horses, deer or rabbits; Class 7 refers to structures for the housing of pigs and Class 8 refers to the provision of roofless cubicles, open loose yards, self-feed silo or silage areas,

feeding aprons, assembly yards, milking parlours or structures for the making or storage of silage or any other structures of a similar character).’

### **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 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.
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 on the external finish of the structure.

## **8.0 Assessment**

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

- 8.1.1. Development is defined under Section 3(1) of the Planning and Development Act, 2000 (as amended) 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’*. Works is defined under Section 2(1) of the Act *“...includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal...”*
- 8.1.2. Therefore, the existing onsite structure, which is an agricultural barn / store, is considered to constitute works under Section 2(1) of the Planning and Development



Act, 2000 (as amended) and is, therefore, development as per Section 3(1) of the Act.

## 8.2. Is or is not exempted development

- 8.2.1. The information on file shows that the existing storage barn / shed measures approximately 24m by 12m, giving an overall area of approximately 288sqm, and has an overall height of 6.5 to the top of its apex.
- 8.2.2. The structure is setback from the nearest public road, which is Shallon Lane, by approximately 80m.
- 8.2.3. The external materials used in the construction of the shed is metal sheeting, which is painted in a dark green colour.
- 8.2.4. Class 9 (Part 3) of Schedule 2, of the Planning and Development Regulations, 2001 (as amended) specifically refers to agricultural buildings. The description refers to *'works consisting of the provision of any store, barn, shed, glass-house or other structure, not being of a type specified in class 6, 7 or 8 of this Part of this Schedule, and having a gross floor space not exceeding 300 square metres.'*
- 8.2.5. The remaining classes under the heading of 'Agricultural Structures' do not apply as Class 6 refers to structures for the housing of cattle, sheep, goats, donkeys, horses, deer or rabbits. Class 7 refers to structures for the housing of pigs and Class 8 refers to the provision of roofless cubicles, open loose yards, self-feed silo or silage areas, feeding aprons, assembly yards, milking parlours or structures for the making or storage of silage or any other structures.
- 8.2.6. From inspecting the site and reviewing the application documentation, I note that the shed is remote from any agricultural activity and neither the site location map, nor proposed site layout plan, shows any agricultural lands which are owned or operated by the Referrer.
- 8.2.7. 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 must be linked to an agricultural activity or purpose. In my opinion, it cannot be assumed that because a shed is situated within a rural area that is intrinsically linked to an agricultural activity, as defined above in the Act.

- 8.2.8. I note that the Applicant has not submitted any material to support their appeal case that might suggest otherwise. There is no information that I can find, either on file, or by physically inspecting the site, that indicates there is agricultural activity taking place in this location.
- 8.2.9. In my opinion, it would have been quite straightforward for the Applicant to provide some form of information to demonstrate that he is operating an agricultural activity on the land and that the shed is necessary for that reason. However, this has not occurred and the material accompanying the application is sparse.
- 8.2.10. Therefore, having regard to the paucity of information on the file, and in the absence of any apparent agricultural activity taking place on the site, I am not satisfied that the existing onsite structure is necessary, nor is linked, to an existing farmyard complex or the purposes of agriculture.
- 8.2.11. In summary, I consider the existing structure is in isolation from any agricultural activity, and it is my opinion that the Applicant has not successfully justified the necessity of the use of the building for the purpose of agriculture. Condition / Limitation 1 ('limitation') of Class 9 is not, therefore, complied with and the store / barn cannot be considered exempted development.
- 8.2.12. Regarding the remaining limitations, I am satisfied that the proposed barn, which is no greater than 300 square metres in gross floor space – it is approximately 288sqm –, is not within 100m of an existing farmyard complex, nor part of such a complex. Therefore, I am of the view that limitation 2 of Class 9 is complied with.
- 8.2.13. With reference to limitation 3, the agricultural building is not within 10m of a public road. Therefore, limitation 3 is complied with.
- 8.2.14. With reference to limitation 4, the agricultural building does not exceed 8m in height, as it has an overall height of c. 6.5m. Therefore, limitation 4 is complied with.
- 8.2.15. With reference to limitation 5, the agricultural building is not located within 100m of any house, or any other residential building or school, hospital, church or building used for public assembly, that is not within the Applicant's ownership. Therefore, limitation 5 is complied with.
- 8.2.16. With reference to limitation 6, the regulations state that 'no unpainted metal sheeting shall be used for roofing or on the external finish of the structure'. The external

treatment of the proposed structure is painted metal sheeting. Therefore, limitation 6 is complied with.

8.2.17. In summary, and having regard to the above, I am satisfied that the structure would fall within the scope of the provisions of Schedule 2, Part 3, Class 9, Conditions 2 – 6, but not Class 1.

## 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 an existing agricultural store/barn is or is not development or is or is not exempted development:

**AND WHEREAS** Kenneth McCarthy requested a declaration on this question from Fingal County Council and the Council issued a declaration on 2<sup>nd</sup> December 2021 stating that the matter was development and was not exempted development:

**AND WHEREAS** Kenneth McCarthy referred this declaration for review to An Bord Pleanála on the 6<sup>th</sup> day of January, 2022

**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, Class 9 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 development is not linked to any agricultural activity and, therefore, could not be considered to come within the scope of Class 9, Part 3 of Schedule 2 of the Planning and Development Regulations, 2001 (as amended).

**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 existing agricultural store/barn is development and is not exempted development.

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Ian Boyle  
Planning Inspector

9<sup>th</sup> June 2022