



An
Bord
Pleanála

Inspector's Report ABP-313151-22

Question

Whether a proposal comprising refurbishment of agricultural structures at Bolton Forest, Hobartstown, Moone, Co. Kildare is or is not development or is or is not exempted development.

Location

Bolton Forest, Hobartstown, Moone, Co. Kildare.

Declaration

Planning Authority

Kildare County Council

Planning Authority Reg. Ref.

ED/00925

Applicant for Declaration

Mervyn Hill

Planning Authority Decision

Is not exempted development

Referral

Referred by

Mervyn Hill

Owner/ Occupier

Mervyn Hill

Observer(s)

None

Date of Site Inspection

25th August 2023

Inspector

Ian Boyle

1.0 Site Location and Description

- 1.1. The site is situated in the townland of Hobartstown, County Kildare. It is roughly 4km north of Castledermot and 11km southeast of Athy.
- 1.2. The property comprises an existing farm in a rural area which is currently operated by Bolton Forest Farms Ltd. It includes an existing pig farm, pig house, stock shed, feed barriers and several other related outbuildings and structures. The site is accessed by a laneway / farm access road leading off the R448 (Regional Road) to the west. There are no apparent natural habitats on the subject lands and the land is generally given over to artificial surfaces, hardstand, small grassed areas and the aforementioned agricultural structures.
- 1.3. The proposed development is for the refurbishment of the existing piggery in accordance with a recently approved grant issued by the Department of Agriculture, Food and the Marine (DAFM). It comprises repair and improvement works in the form of replacement of slats, new ventilation apparatus and fans, internal lighting and ancillary refurbishment works for the existing pig house. The stated reason for the works is that they are part of the normal management and upkeep of the piggery / agricultural structure. They would not result in any expansion in the capacity of the farm, increase in organic fertiliser storage or change to the type of activities currently taking place on the land. There are also no new structures proposed and the works are mainly internal.
- 1.4. The River Lerr is approximately 90m to the east of the site and is a tributary of the River Barrow. The Lerr River runs in a general north - south direction towards Castledermot. After reaching this point, it flows southwest until it meets the River Barrow at the townland of Newacre in County Carlow. The River Barrow and River Nore Special Area of Conservation (SAC) (Site Code: 002162) is approximately 550m south of the subject site and applies to a section of the River Lerr.
- 1.5. The predominant land uses in the surrounding vicinity are agriculture and one-off rural housing.
- 1.6. The site has a stated area of 1.3ha.

2.0 The Question

- 2.1. Whether or not the carrying out of refurbishment works for the maintenance and improvement of the subject agricultural structure is or is not development and is or is not exempted development.

3.0 Planning Authority Declaration

3.1. Declaration

The Planning Authority stated the question:

“Whereas a question has arisen as to whether a proposal comprising refurbishment of agricultural structures at Bolton Forest, Hobartstown, Moone, Co. Kildare is or is not development and is or is not exempted development.”

The Planning Authority issued a declaration under Section 5 of *the Planning and Development Act 2000 (as amended)* ('the Act'), on 2nd March 2022, stating that the works are development and are not considered exempted development.

3.2. Planning Authority Reports

3.2.1. Planning Report

The main following issues were raised:

Assessment

- The proposal constitutes 'works' and is therefore considered development in accordance with Section 3(1) of the Act.
- The development comprises works to structures already permitted on site.
- The works do not involve any new or additional buildings and relate mainly to the repair and refurbishment of existing permitted structures. The alterations may affect the interior and exterior appearance of the subject building. However, it is not considered they would render their appearance inconsistent with their existing character. Therefore, it is considered that the subject works fall within the provisions of section 4(1)(h) of the Act.

- However, Article 9(1)(a)(viiB) of the Planning and Development Regulations, 2001 (as amended) ('the Regulations'), to which Article 6 relates, states that development shall not be exempted development for the purposes of the Act if the carrying out of such development would require Appropriate Assessment because it would be likely to have a significant effect on the integrity of a European Site.
- Furthermore, Section 4(4) of the Act states development will not be considered exempt if it requires an Appropriate Assessment (AA). The proposed development cannot be screened out for the purposes of AA and it is considered that an NIS is required in this instance.

Appropriate Assessment

- An Appropriate Assessment Screening Report was prepared as part of the subject application. It is noted that a previous Section 5 Declaration was issued for this development and that significant impacts to a European Site could not be screened out (Reg. Ref. ED00905). This is particularly the case for the River Barrow and River Nore SAC.
- The Referrer refutes Item 1.10 of Section C of the AA Screening undertaken by the Planning Authority for the previous Reg. Ref. ED00905 (i.e., the previous declaration) stating that the development would not involve the storage of any chemicals, hydrocarbons, or organic waste within 1km of a watercourse.
- However, it is not clear how this could be the case as the site is less than 100m from a watercourse that is directly connected to an SAC and the stated use of the site is for animal housing, which would inevitably entail the storage of organic waste.

4.0 Planning History

Reg. Ref. 17/367: The Planning Authority granted permission in September 2017 for repair works to an existing disused stock shed and the construction of a new stock shed extension, feed barriers, slatted underground effluent storage tank and associated site works.

Reg. Ref. ED905: The Planning Authority issued a Declaration under Section 5 of the Act in December 2021 stating that works comprising refurbishment works for the maintenance and improvement of agricultural structures is development and is not exempted development.

The Declaration is similar to that of the subject Declaration which is currently before the Board for consideration.

5.0 Policy Context

5.1. Kildare County Development Plan 2023-2029

- 5.1.1. The Kildare County Development Plan 2023-2029 ('Development Plan') was adopted by the Elected Members of Kildare County Council on 9th December 2022. The Plan came into effect on 28th January 2023 and replaces the previous Kildare County Development Plan 2017-2023.
- 5.1.2. The subject site is unzoned. Chapter 9 is in relation to the Rural Economy.

5.2. Natural Heritage Designations

- 5.2.1. No natural heritage designations apply directly to the subject site.
- 5.2.2. The nearest European Site is the River Barrow and River Nore Special Area of Conservation (SAC) (Site Code: 002162), which is approximately 550m south of the subject 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 as follows:

- The proposed development is for the refurbishment of an existing pig house on an existing pig farm, which is suited to a rural agricultural area such as this.

- The Planning Authority accepts that the site is an established farm, there are several agricultural buildings already present on the land, there would be no significant environmental impacts likely to occur, no additional structures are proposed, and the works relate mainly to the repair and refurbishment of the existing permitted structures on the site.
- The AA Screening Report submitted with the application determines that a Stage 2 AA is not required. However, the Planning Authority states that a full NIS is necessary and, therefore, the proposal cannot be considered exempted development for this reason.
- The Planner's Report states that when undertaking an AA screening, the proposed works should be considered alongside other potential impacts arising, such as those arising due to construction process and potential accidents. This is pragmatic and not unreasonable. However, there is no potential for any such adverse impacts as there is no proposed demolition, construction or use of products / materials that could be considered to pose a risk to a European Site.
- The Planning Authority considers the existing development, including the already permitted activity on the farm (i.e., the housing and rearing of pigs), as part of their determination as to whether a full NIS is required. This is not appropriate. The proposed development seeks only to ensure that the existing activity is carried out to a higher efficient and environmental standard and any potential requirement for an NIS should be based solely on the subject development proposal, which are refurbishment works only.
- The Planning Authority has erred in their conclusion that a Stage 2 AA is required by taking into account the potential impacts on a European Site from organic fertilizer resulting from the existing permitted activities, rather than completing their assessment on the proposed development only. The proposed works would have no increase in the permitted stock numbers, organic fertiliser production or storage capacity of the permitted facility.

6.2. Planning Authority Response

- The Planning Authority has no further comments or observations to make.
- It is respectfully requested that the Board uphold the Decision that the proposed development is not exempted development as set out in the Notification of Decision on 2nd March 2022.

6.3. Owner/ occupier's response

- The owner/occupier 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;*
- *(h) development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures.*

7.2. Planning and Development Regulations, 2001

Article 6 of the Regulations states 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 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.*

8.0 Assessment

8.1. Is or is not development

- 8.1.1. The Declaration is in relation to the refurbishment of an existing piggery, which is part of an existing farm, in accordance with a recently approved grant by the Department of Agriculture, Food and the Marine (DAFM). The proposal is for repair and improvement works in the form of replacement of slats, new ventilation apparatus and fans, internal lighting and ancillary refurbishment works for the existing pig house structure.
- 8.1.2. 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..."
- 8.1.3. The proposed development is for the carrying out of refurbishment works to an existing agricultural structure on the site. The structure is a pig house, which is situated near the centre of an existing, permitted piggery within a larger farming holding owned and operated by the referrer.
- 8.1.4. The purpose of the development is for maintenance, repair and renewal of the existing agricultural facility. It 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 application form states that the proposed works are to be in accordance with a recently approved grant issued by the Department of Agriculture, Food and the Marine (DAFM) (dated 29th September 2021). The letter is approval from DAFM to commence investment and general improvement work on the farm. It references the various proposed works sought under the subject application, including the replacement of damaged slats, new ventilation fans, removal of an existing internal agitation point, lighting upgrades and other associated refurbishment works. There is also drawing on file which shows the provisional fan locations on the structure.

- 8.2.2. The Referrer confirms in their appeal that there would not be any expansion in the capacity of the farm, increase in organic fertiliser storage or change to the type of activities currently taking place as part of the piggery operation. There are no new structures proposed and no existing buildings would be physically extended.
- 8.2.3. The works are in keeping with the character of the area, in my opinion, which is an existing farm in a rural area. The property has in use as a commercial pig farm for many years – albeit it is not currently in operation due to needing repairs – and there are various other agriculture buildings and farm infrastructure present on the land, including the pig house itself, a stock shed, feed barriers, ancillary outbuildings, sheds, storage areas, silos, etc.
- 8.2.4. Most of the proposed works are internal to the existing pig house. Whilst I note some alterations may involve the exterior of the building, such as new ventilation fan fixtures and coverings, I do not consider that such modifications to the building would render the appearance of the structure inconsistent with its character or that of neighbouring structures. I noted also during my physical inspection of the site that the existing development is largely screened and not visually apparent to the surrounding area, including from the public road network or other third party lands.
- 8.2.5. In summary, and in having regard to the nature, scale and extent of works proposed, I conclude that the works are development and exempted development under the provisions of Section 4(1)(h) of the Planning and Development Regulations, 2001 (as amended).

8.3. Restrictions on exempted development

- 8.3.1. Article 9(1)(a)(viiB) of the Regulations includes a restriction on exempt development where the Planning Authority, or An Bord Pleanála, requires an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site.
- 8.3.2. The subject site is not subject to any European Site designation (also referred to as a Natura 2000 site). The nearest European Site is the River Barrow and River Nore Special Area of Conservation (SAC) (Site Code: 002162), which is approximately 550m south of the subject site. The Slaney River Valley SAC is roughly 7.8km to the east.

- 8.3.3. The application is accompanied by an Appropriate Assessment Screening Report (dated January 2022). It provides a description of the proposed development, the project site and the surrounding area in Sections 3.1 and 3.2, respectively. It outlines the methodology used for assessing potential impacts on the habitats and species within the European Site identified, and which has the potential to be affected by the proposed development (Section 2.0). The Report also describes the potential changes and impacts on the European Site within the zone of influence, and its conservation objectives, and assesses in-combination effects with other plans and projects. Having reviewed the AA Screening Report, I am satisfied that it provides adequate information in respect of the baseline conditions, clearly identifies the potential impacts of the development proposed, and uses best scientific information and knowledge.
- 8.3.4. Based on the Source-Pathway-Receptor model, and the absence of an ecological connection, I do not consider that the Slaney River Valley SAC comes within the zone of influence for the purposes of Appropriate Assessment. However, I note that the River Barrow and River Nore SAC is roughly 550m to the south of the site. A section of the River Lerr is c. 90m to the east of the site and is a tributary of the River Barrow. The River Barrow and River Nore SAC is therefore within the zone of influence for the site, and I note that this is referenced as such on Page 17 of the AA Screening Report (and in Table 2 and Figures 5 and 6, respectively). I consider that there is a potential hydrological connection between the subject site and the River Barrow and River Nore SAC, via the River Lerr, given its physical proximity and note also that the site slopes generally downwards in its direction from west to east.
- 8.3.5. I have reviewed Section 4.0 of the AA Screening Report which is entitled 'Impact Assessment'. As noted above, the proposed works are for the refurbishment, repair and general improvement of an existing agricultural building on the site, which is the pig house. There would be no expansion in the capacity of the existing farm, increase in organic fertiliser storage, or change to the type of activities currently taking place on the property on foot of the proposed changes. There are no additional standalone structures proposed. There is no construction work or excavation required and the majority of the works will involve installation of internal fixtures and equipment only, including floor slats, ventilation fans and lighting fittings.

- 8.3.6. The installation phase for the proposed works (fans, lighting fixtures, etc.) is not likely to result in any construction waste or groundwater / surface water run-off through soil extraction, or landscaping works, which might otherwise lead to potential contaminants or sediments discharging to this European Site. Similarly, given the nature, scale and characteristics of the proposed works, I consider that there is no real likelihood of any significant effects arising during the operational phase.
- 8.3.7. I consider it appropriate to consider the matter of appropriate assessment in terms of the subject development proposal only; and note that the existing pig farm is a separate, permitted development, which has operated for many years prior to the making of this Referral application.
- 8.3.8. Whilst I acknowledge the existing facility is for animal housing, which involves the storage of organic compounds and animal waste, I consider that the information provided as part of the application is explicit in that there would be no expansion in terms of livestock, no additional atmospheric emissions and that the overall volume of manure produced on the property would not change on foot of the works set out under this referral application. I also do not consider that the proposed refurbishment works, in and of themselves, either comprise or would be likely to give rise to the storage of any additional chemicals, hydrocarbons or organic waste material. I accept such practices likely occur as part of the wider, existing farm operation. However, they would be intensified or altered through the works proposed by this application.
- 8.3.9. Having regard to the nature and small scale of the proposed development, which comprises refurbishment works to an existing, permitted agricultural building, I conclude that the proposed development, individually or in-combination with other plans or projects would not be likely to have a significant effect on the above referenced European site, or any other European site, in view of the site's conservation objectives. A Stage 2 Appropriate Assessment is not, therefore, required.
- 8.3.10. I conclude that as the proposed works do not require Appropriate Assessment the provisions of Article 9(1)(a)(viiB) do not apply in this instance and, therefore, this restriction on exempt development does not apply.

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 a proposal comprising the refurbishment of agricultural structures at Bolton Forest, Hobartstown, Moone, Co. Kildare is or is not development and is or is not exempted development:

AND WHEREAS Mervyn Hill requested a declaration on this question from Kildare County Council and the Council issued a declaration on the 2nd March 2022 stating that the matter was development and was not exempted development:

AND WHEREAS Mervyn Hill referred this declaration for review to An Bord Pleanála on the 29th March 2022:

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

- (a) Sections 2(1), 3(1), 4(1)(a) and 4(1)(h) of the Planning and Development Act, 2000, as amended,
- (b) Articles 6 and 9 of the Planning and Development Regulations, 2001, as amended,
- (c) Schedule 2, Part 1 of the Planning and Development Regulations, 2001, as amended,
- (d) the planning history of the site,
- (e) the location of the development within an existing farm in a rural setting, and

(f) the pattern of development in the area:

AND WHEREAS An Bord Pleanála has concluded that:

- (a) the works constitute development, being works which come within the scope of section 3(1) of the Planning and Development Act 2000 (as amended), and
- (b) the works come within the scope of section 4(1)(h) of the Planning and Development Act 2000 (as amended), being works comprising the refurbishment of an existing agricultural building which affect mainly the interior of the structure, and which do not materially affect the external appearance of the structure, so as to render its appearance inconsistent with the character of the structure or of neighbouring structures:

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5(3)(a) of the 2000 Act (as amended), hereby decides that the said works comprising refurbishment of an existing agricultural building on these lands, is development and is exempted development.

[I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.]

Ian Boyle
Senior Planning Inspector

29th August 2023