



An
Bord
Pleanála

Inspector's Report ABP-313293-22

Question

Whether works consisting of new wider gates (2 No.) is or is not development and is or is not exempted development.

Location

Lissalway, Co Roscommon

Declaration

Planning Authority

Roscommon County Council

Planning Authority Reg. Ref.

DED507

Applicant for Declaration

Dr. Patricia Browne

Planning Authority Decision

Is development and is not exempted development

Referral

Referred by

Dr. Patricia Browne

Owner/ Occupier

Dr. Patricia Browne

Observer(s)

None

Date of Site Inspection

26th October 2022

Inspector

Ian Campbell

1.0 Site Location and Description

- 1.1. This case relates to a referral submitted under Section 5(3)(a) of the Planning and Development Act, 2000, as amended, where the Planning Authority has issued a declaration on a referral and this determination is now the subject of appeal.
- 1.2. The subject of this referral comprises two sites (hereafter referred to as 'Site 1' and 'Site 2') in the townland of Lissalway, c. 6.5 km east of Castlerea, Co. Roscommon.
- 1.3. **Site 1** is located on the northern side of the R377, c. 215 metres east of the junction with the L1218. Site 1 comprises an agricultural landholding comprising a number of fields. There is a dwelling to the south-west corner of this landholding. A gated field entrance is located along the roadside boundary. The roadside boundary of Site 1 consists of a low stone wall with a wire fence behind. Based on measurements taken during my site inspection I note that the existing entrance is c. 2.6 metres in width (between pillars). The pillars have a height of c. 1.3 metres. The carriage width of the R377 at this location is c. 5 metres. There is a broken white line on the R377 at this location and the posted speed limit is 80 kmph. A detached dwelling is situated to the immediate south, on the opposite side of the road from the subject site.
- 1.4. **Site 2** is located on the southern side of the R377, c. 1.2 km east of Site 1. Site 2 comprises an agricultural field. There is an existing gated field entrance along the roadside boundary. Based on measurements taken during my site inspection I note that the existing entrance is c. 2.7 metres in width (between pillars). The pillars have a height of c. 1.3 metres. The carriage width of the R377 at this location is c. 5.7 metres. There is a broken white line on the R377 at this location and the posted speed limit is 80 kmph. There are a number of detached dwellings situated to the immediate north, on the opposite side of the road from the subject site.
- 1.5. Based on the documentation on the file I note that the referrer is the registered owner of Site 2 and that Site 1 is in the process of being transferred to the referrer.

2.0 The Question

- 2.1. The question that has been submitted in the referral is as follows:

- Whether works consisting of new wider gates (2 No) (gate 1 - widened from 8 foot to 12 foot and gate 2 - widened from 8 foot to 15 foot), is or is not development, and is or is not exempted development.

2.2. In the interest of clarity, it is considered appropriate that the question referred to the Board be reworded as follows:

- Whether the proposed widening of 2 no. existing gated agricultural entrances, from 8 foot to 12 foot, and 8 foot to 15 foot, fronting onto the R377 at Lissalway, Co Roscommon, is or is not development, and is or is not exempted development.

2.3. I intend to proceed with my assessment on the basis of the reworded question.

3.0 Planning Authority Declaration

3.1. Declaration

On the 15th February 2022, a request for a Declaration in accordance with Section 5 of the Planning and Development Act, 2000, as amended, on the above question was received by Roscommon County Council from Dr. Patricia Browne.

In accordance with Section 5(2)(a) of the Planning and Development Act, 2000, as amended, Roscommon County Council issued a Declaration on the 14th March 2022 that 'works consisting of new wider gates (2 no.) (no. 1 - 8 ft to 12 ft and no. 2 - 8 ft to 15 ft)' at Lissalway, Co. Roscommon, is development and is not exempted development.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report of the Planning Officer includes the following comments;

- Articles 9 (1) (ii) of the Planning and Development Regulations, 2001 (as amended) states '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 4 metres in width’.

- The proposed works are considered to be development which is not exempted development. The surfaced carriageway at both subject locations along the R377 Regional Road exceeds 4 metres in width.

3.2.2. Other Technical Reports

None received.

4.0 Planning History

4.1. Subject Sites

Site 1:

PA. Ref. 20/21 – Permission for upgrade of existing agricultural entrance. Incomplete application.

Site 2:

None.

4.2. Referral History

I have undertaken a review of the referrals database in order to determine if there are any history cases that relate to development of the same form as that the subject of this case.

RL29N.304340 – The question arose as to whether the widening of a vehicular entrance at 14a Cremore Villas, Dublin 11 is or is not development, and whether it is or is not exempted development.

The Board has concluded that

- (a) The proposed widening of the vehicular entrance would involve the carrying out of works and would, therefore, constitute development.;
- (b) The development, involving alterations to the existing wall and piers bounding the curtilage of the house on site, in order to widen the existing entrance, would come

within the scope of Class 5 of Part 1 of the Second Schedule to the Planning and Development Regulations, 2001, as amended;

(c) The proposed widening of the vehicular entrance onto Cremore Villas, which is a public road and the surfaced carriageway of which exceeds four metres in width, would be a material widening, and would, therefore, not be exempted development by reason of the restriction on exemption set out in Article 9 (1)(a)(ii) of the Planning and Development Regulations, 2001, as amended.

PL.04. RL2614 - The question arose as to whether the widening an access to a public road at Begley's Cross, Ballygroman Upper, Ovens, Co. Cork, is or is not development, and whether it is or is not exempted development.

The Board has concluded that the widening of an access onto the public road, which is greater in width than 4m, is restricted under article 9 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001, as amended, and therefore is development and is not exempted development.

5.0 Policy Context

5.1. Development Plan

5.1.1. The relevant Development Plan is the Roscommon County Development Plan 2022 – 2028. The subject sites are not zoned in the Roscommon County Development Plan 2022 – 2028.

5.1.2. The subject sites are not indicated as being subject to any specific objectives relating to the protection of views or prospects.

5.2. Natural Heritage Designations

The appeal sites are not located within or close to any European site.

6.0 The Referral

6.1. Referrer's Case

The following is a summary of the main issues raised by the referrer in the submission to the Board.

- The proposed gates are replacing existing gates.
- The proposal is required to allow for the continued, safe and practical use of the land, from which the referrer derives an income.
- The Officer of the Planning Regulator (Planning Leaflet 9) states that 'much agricultural development, especially uses of land for agricultural purposes, is exempt'.
- Roscommon County Council Planner's report is not clear in relation to the relevance of the legislation to the proposal.
- The width of the road makes the proposal even more necessary, so that the lands can be accessed quickly and safely.
- Supplementary documentation also accompanies the referral, including documentation in relation to a Will; documentation relating to a previous invalid planning application and correspondence from the Planning Authority in relation to same; extracts from the Planning and Development Regulations, 2001, as amended, and the Planning and Development Act, 2000, as amended; Planning Leaflet 9 from The Officer of the Planning Regulator, and a document relating to the integrity of Irish Local Authorities.

6.2. Planning Authority Response

None received.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

Section 2 (Works)

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)

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 (1) (Exempted Development)

The following shall be exempted development 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) (Environmental Impact Assessment or Appropriate Assessment)

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.

Section 177U (9) (Appropriate Assessment)

In deciding upon a declaration or a referral under section 5 of this Act a planning authority or the Board, as the case may be, shall where appropriate, conduct a screening for appropriate assessment in accordance with the provisions of this section.

7.2. Planning and Development Regulations, 2001

Article 6 (1) states the following:

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 (1)(a) provides that development to which Article 6 relates shall not be exempted development for the purposes of the Act, 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 4 metres in width.

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

(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.

Class 9 (Sundry Works), Part 1, Schedule 2, provides that the following is exempted development;

The construction, erection, renewal or replacement, other than within or bounding the curtilage of a house, of any gate or gateway.

Subject to the following condition/limitation;

The height of any such structure shall not exceed 2 metres.

8.0 **Assessment**

8.1. The purpose of this referral is not to determine the acceptability or otherwise of the proposed widening of the agricultural entrances but rather whether or not the matter in question constitutes development, and if so falls within the scope of exempted development within the meaning of the relevant legislation.

8.2. I have examined all the documentation on the file, inspected the site(s), and have had regard to the legislative provisions set out in both the Planning and Development Act, 2000, as amended, and the Planning and Development Regulations, 2001, as

amended. I consider that the issues raised in the referral can be assessed under the following headings.

- Whether the proposed widening of a 2 no. existing gated agricultural entrances fronting onto the R377 at Lissalway, Co Roscommon, is or is not development, or is or is not exempted development.
- Whether the works can be considered exempted development under the provisions of the Planning and Development Act, 2000 as amended, or under the Planning and Development Regulations, 2001, as amended.

8.3. Is or is not development

8.3.1. 'Works' are defined as including 'any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal'. The proposal consists of 'the widening of 2 no. existing agricultural entrances. I consider the proposal to comprise 'works' as it entails the alteration of existing entrances.

8.3.2. In accordance with Section 3(1) of the Planning and Development Act, 2000 as amended, 'works' become development when they are carried out on, in, over or under land and therefore the works which are the subject of this referral are considered to comprise 'development'.

8.4. Is or is not exempted development

8.4.1. Section 4 of the Planning and Development Act, 2000, as amended, sets out certain forms of development which shall be exempted development. Additionally, Schedule 2 of the Planning and Development Regulations, 2001, as amended set out forms of development which are exempted development within specific context.

8.4.2. The referrer contends that the proposal should be considered exempted development as it entails the replacement of an existing entrance(s) and that the use of the land for the purposes of agriculture could be considered to confer exempted development status on the proposal. Section 4 (1) (a) of the Planning and Development Act, 2000, as amended, provides that '*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*'. It is apparent from the above that

Section 4(1)(a) relates to the use of land for purposes of agriculture. Whilst the widening of the entrances may facilitate/improve access to allow the use of agricultural land, it does not constitute 'use', but rather constitutes works'. As such, I do not consider that Section 4 (1) (a) of the Planning and Development Act, 2000, as amended, would confer an exemption for the proposal.

- 8.4.3. Class 9, Part 1, Schedule 2 of the Planning and Development Regulations, 2001, as amended, provides an exemption in relation to the construction, erection, renewal or replacement, other than within or bounding the curtilage of a house, of any gate or gateway, subject to the height of any such structure not exceeding 2 metres. Whilst the referrer has not specified the height of the revised structures, noting that the description of the proposal relates solely to an increase in the width of the entrances, and noting that the height of the pillars, in the case of each entrance, is less than 2 metres, I consider it reasonable to assume that the height of the gate would be less than 2 metres and as such I consider that in principle Class 9 would confer an exemption on the proposal.

8.5. Restrictions on exempted development

- 8.5.1. Article 9 of the Planning and Development Regulations, 2001, as amended, relates to exemptions provided under Article 6 of the Planning and Development Regulations, 2001, as amended, and is therefore relevant in considering the applicability of Class 9 in respect of the proposal.
- 8.5.2. Article 9 (1) (a) (ii) of the Planning and Development Regulations, 2001, as amended, provides that development to which Article 6 relates shall not be exempted development for the purposes of the Act, if the carrying out of such development would *'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 4 metres in width'*. The proposal entails the material widening of a means of access onto a public road (R377) at locations where the width of the carriageway exceeds 4 metres. As such, Class 9, Part 1, Schedule 2 of the Planning and Development Regulations, 2001, as amended, would not confer an exemption for the development which is the subject of this referral.

8.5.3. Additionally, I note that Article 9 (1) (a) (iii) of the Planning and Development Regulations, 2001, as amended, provides that development to which Article 6 relates shall not be exempted development for the purposes of the Act, if the carrying out of such development would endanger public safety by reason of traffic hazard or obstruction of road users. Noting the nature of the R377 at the locations, specifically the presence of a broken white line along the front of both entrances, the alignment of the road, and level of visibility at both entrances, I do not consider that the carrying out of such development would endanger public safety by reason of traffic hazard or obstruction of road users.

8.6. **Appropriate Assessment – Screening**

8.6.1. Having regard to the nature and limited scale of the works which are the subject of this referral, the developed nature of the landscape between the site and European sites and the lack of a hydrological or other pathway between the site and European sites, it is considered that no Appropriate Assessment issues arise and that the works which are the subject of this referral would not be likely to have a significant effect either individually or in combination with other plans or projects on any European site.

8.7. **EIA - Screening**

8.7.1. The works which are the subject of this referral do not fall within a class of development set out in Part 1 or Part 2 of Schedule 5 of the Planning and Development Regulations, 2001, as amended, and therefore are not subject to EIA requirements.

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 proposed whether the proposed widening of 2 no. existing gated agricultural entrances, from 8 foot to 12 foot, and 8 foot to 15 foot, fronting onto the R377 at Lissalway, Co Roscommon, is or is not development, or is or is not exempted development.

AND WHEREAS Dr. Patricia Browne requested a declaration on this question from Roscommon County Council and the Council issued a declaration on the 14th day of March 2022 stating that the matter was development and was not exempted development:

AND WHEREAS Dr. Patricia Browne referred this declaration for review to An Bord Pleanála on the 8th day of April 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, as amended,
- (a) Section 4(1) (a) of the Planning and Development Act, 2000, as amended,
- (b) Section 4(4) of the Planning and Development Act, 2000, as amended,
- (c) Article 6(1) and Article 9(1)(a)(ii),(iii) and (viiB) of the Planning and Development Regulations, 2001, as amended,
- (d) Class 9, Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,

AND WHEREAS An Bord Pleanála has concluded that:

- (a) the widening of 2 no. existing gated agricultural entrances comprises works, and therefore comes within the scope of the definition of development as set out at Section 3 of the Planning and Development Act, 2000, as amended,

- (b) while the works which are the subject of this referral come within the scope of Class 9, Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended, the width of the carriageway at the location of both entrances on the R377 exceeds 4 metres, and accordingly the restriction on exemptions set out in Article 9 (1) (a) (ii) of the Planning and Development Regulations, 2001, as amended, apply,
- (c) the works which are the subject of this referral are not likely to have significant effects on any European sites,
- (d) the works which are the subject of this referral do not fall within a class of development set out in Part 1 or Part 2 of Schedule 5 of the Planning and Development Regulations, 2001, as amended, and therefore are not subject to EIA requirements.

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 widening of 2 no. existing gated agricultural entrances is development and is not exempted development.

Ian Campbell
Planning Inspector

18th November 2022