



An
Bord
Pleanála

Inspector's Report ABP-313609-22

Question

Whether the proposed connection of 6 no. driveways and associated footpath (as permitted under ABP-308310-20) to meet southern edge of the existing Oranhill Avenue estate road is or is not development or is or is not exempted development.

Location

Oranhill Avenue, Oranhill, Co. Galway

Declaration

Planning Authority

Galway County Council

Planning Authority Reg. Ref.

ED22/21

Applicant for Declaration

Decourcey Developments Ltd.

Planning Authority Decision

Is not exempted development

Referral

Referred by

Decourcey Developments Ltd.

Owner/ Occupier

Decourcey Developments Ltd and others.

Observer(s)

None.

Date of Site Inspection

13th October 2022.

Inspector

Barry O'Donnell

1.0 Introduction

- 1.1. This report relates to a referral by Decourcey Developments Ltd as to whether the proposed connection of 6 No. driveways and associated footpath to meet the southern edge of the Oranhill Avenue estate road is or is not development or is or is not exempted development. Permission has been granted for the development of 6 No. houses on the lands but the area closest to the estate road where the vehicular crossover for each plot is located was omitted from the application site.
- 1.2. The referral follows the Planning Authority's determination that the development is not exempted development.

2.0 Site Location and Description

- 2.1. The subject site is located toward the west end of the Oranhill Avenue estate, south of Oranmore village in County Galway. Oranhill Avenue is a relatively new housing estate, which was still under construction in parts at the time of my inspection. It forms part of a larger residential neighbourhood that is accessed from the L4101 Maree Road.
- 2.2. The site consists of a residential plot that contains an unoccupied house and its attendant garden. It is elevated above the level of adjacent housing and it set back from the estate road. At the time of my inspection, it was contained behind heras fencing.
- 2.3. The estate road in the area of the site is very wide, measuring in excess of 10m wide. There is a pedestrian footpath to the east of the site, which terminates adjacent to its north-east corner.

3.0 The Question

- 3.1. The question before the Board relates to the proposed connection of 6 No. driveways and associated footpath to meet the southern edge of the Oranhill Avenue estate road. The matter has been referred by the applicant. The original question as set out in the application form to the Planning Authority is:

'Whether the proposed connection of 6 No. driveways and the associated footpath (as permitted under ABP-308310-20), to meet the southern edge of the existing Oranhill Avenue estate road, is or is not exempted development.'

- 3.2. Having reviewed the referral documentation, I note that the applicant acknowledges that the area closest to the road that is the subject of this referral (identified as a marginal strip of ground c.1m in width) was omitted from the application site that was the subject of Reg. Ref. 20/173 (and appeal Ref. ABP-308310-20). The application and appeal drawings confirm that this strip of land was not included within the application site. In this context, I consider the question to be addressed should be amended slightly, to read as follows:

'Whether the proposed connection of 6 No. driveways and the associated footpath, to meet the southern edge of the existing Oranhill Avenue estate road, is or is not development or is or is not exempted development.'

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

- 3.4. The following documentation has been submitted in conjunction with the referral:

- Completed application form;
- Cover letter prepared by Planning Consultancy Services,
- Site location and site layout maps.

4.0 Planning Authority Declaration

4.1. Declaration

- 4.1.1. The Planning Authority issued a declaration dated 20th April 2022, which states that the proposed development is not exempted development.

4.2. Planning Authority Reports

- 4.2.1. An undated Planning Report has been provided. It states that the proposal falls within the description of development, as defined under legislation. It further states that in view of Article 9(1)(iii) of the Regulations, which relates to traffic hazards, the

proposal would conflict with restrictions on exemption and would thus not constitute exempted development.

4.2.2. Other Technical Reports

None.

5.0 Planning History

20/173 (ABP-308310-20): Permission granted on 1st February 2021 for demolition of a house and construction of 6 houses and ancillary site works.

Other relevant referrals

06D.RL2656: Referral relating to whether the removal of an existing garden gate and adjoining wall to create a double leaf gate is or is not development, or is or is not exempted development on a site at 52 Ulverton Road, Dalkey, Co. Dublin. The Board determined on 13th January 2010 that the development is exempted development.

6.0 Policy Context

6.1. Galway County Development Plan 2022-2028

- 6.1.1. The new County Development Plan 2022-2028 was adopted following submission of the application and took effect on 20th June 2022.
- 6.1.2. Oranmore is identified as a Metropolitan Area settlement and it is allocated a proportion of planned growth for the county, over the CDP period.
- 6.1.3. Volume 2 contains the Metropolitan Area Strategic Plan and Section 2.12 relates to Oranmore. The section contains a zoning map for Oranmore and policy objectives to guide and control development. The main part of the site is zoned 'R- Residential Existing' and the part closest to the estate road is zoned 'OS – Open Space/Recreation & Amenity'.

6.2. Natural Heritage Designations

- 6.2.1. The site is not located within or adjacent to any designated European site, the closest such site being Cregganna Marsh SPA (Site Code 004142) which encroaches to within c. 30 south-east of the site.
- 6.2.2. Cregganna Marsh is also designated as a Natural Heritage Area (Site Code 000253).

7.0 The Referral

7.1. Referrer's Case

- 7.1.1. The referrer's case can be summarised as follows: -
- The Planning Authority's determination is flawed.
 - The principle of 6 No. driveways to serve 6 No. houses was established under ABP-308310-20, which considered and determined the safety and appropriateness of the driveways in this location.
 - The site is located at the end of the cul-de-sac to a private estate road and is lightly trafficked. It is misleading to refer to the road as an open carriageway.
 - In view of the fact that the proposal would not create a traffic hazard or obstruct other road users, it can be considered exempted development.
 - Driveways within the estate were not shown on the permitted site layout plan but were inferred. It is unreasonable of the Planning Authority to determine that the minor works require planning permission.
 - Application of the Planning Authority's logic suggests that all of the individual driveways within the estate are unauthorised.
 - With reference to restrictions on exemption contained at Article 9(1) of the Regulations, they are not considered to be affected or triggered by the development.
 - It can be argued that the works are exempted development under S4(1)(h) of the Act as they consist of minor alterations of the driveway and footpath structures.

- The consent of owners of this section of the estate road is provided with the application and referral.

7.2. Planning Authority Response

7.2.1. None received.

7.3. Further Responses

7.3.1. None.

8.0 Statutory Provisions

8.1. Planning and Development Act, 2000

- 8.1.1. Section 2(1) - “works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.
- 8.1.2. 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.
- 8.1.3. Section 4(1)(h) - The following shall be exempted developments for the purposes of this Act— 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.
- 8.1.4. Section 4(2) of the Act provides that the Minister may, by regulations, provide for any class of development to be exempted development. The main regulations made under this provision are the Planning and Development Regulations 2001-2022.

8.2. Planning and Development Regulations, 2001

Article 6(1) Exempted Development

- 8.2.1. Article 6(1) of the Planning and Development Regulations 2001-2022 provides that ‘subject to article 9, 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 the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1’. Schedule 2 of Part 1 to the Regulations sets out the classes of exempted development, including those pertaining to ‘general development within the curtilage of a house’.
- 8.2.2. There is no exempted development class within the Schedule that relates to the construction of vehicular crossover, driveway and footpath extension.

Articles 9(1)(a)(ii) and (iii) Restrictions on Exemption

- 8.2.3. 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.

9.0 Assessment

9.1. Is or is not development

- 9.1.1. The development entailed within this referral relates to the proposed connection of 6 no. driveways and associated footpath to meet the southern edge of the existing Oranhill Avenue estate road. I am satisfied that the proposal constitutes ‘development’, which is defined under Section 3(1) of the Planning and Development Act, 2000 as amended (the Act), as “*the carrying out of works on, in, over or under land...*” Works are defined, under Section 2(1) of the Act as including “*any act or operation of construction, excavation, demolition, extension...*”

9.1.2. In view of the above, the question therefore arises as to whether the works constitute exempted development. This is considered in detail in the following section.

9.2. **Is or is not exempted development**

9.2.1. The applicant submits that the works are exempted development under Section 4(1)(h) of the Act as they consist of minor alterations to existing structures.

9.2.2. Section 4(1) defines certain specified types of development that are deemed to be exempted development for the purposes of the Act. S4(1)(h) states that *'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'* shall be exempted development.

9.2.3. Section 2 of the Act defines a 'structure' as *'any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined...'* I am satisfied that the estate road and footpath, the provision of which required acts of excavation and construction, accord with this definition and so can be considered as 'structures' for the purposes of S4(1).

9.2.4. As can be seen from the above, S4(1)(h) provides that works for the maintenance, improvement or other alteration of any structure shall be exempted development, provided they do not render the appearance inconsistent with the character of the structure or of neighbouring structures. In this instance, the Oranhill Avenue estate is characterised by a series of similarly laid out and scaled driveways to the proposal and each house is also connected to the estate footpath network. In my view, the proposal would not render the appearance of the road or footpath structures in the area of the subject site inconsistent with their character elsewhere in the estate and would thus accord with the requirements of S4(1)(h).

9.3. **Restrictions on exempted development**

9.3.1. The Board will note that the Planning Authority's report on the application states that that the development is not exempted development, in view of the provisions of

Article 9(1)(iii) of the Regulations, as it would be prejudicial to public safety and would call for a traffic safety review.

- 9.3.2. I would advise the Board that the provisions of Article 9(1)(iii) do not apply, as the provision only applies to development that is exempted under Article 6 of the Regulations. There is no such reliance in this instance, as I consider the development to be exempted under S4(1)(h) of the Act.
- 9.3.3. In any case, I do not share the Planning Authority's concerns regarding potential road and traffic safety issues. The site is located at the end of a cul-de-sac where there are 6-8 houses, where traffic volumes associated with these houses will be of a very low order. The estate road is also very wide, at c.10m, and there is adequate visibility to the east from each of the proposed accesses. It is my view that the provision of vehicular accesses to each of the affected properties would not give rise to any traffic safety issues.

9.4. **Appropriate Assessment**

- 9.4.1. As I have stated above, Cregganna Marsh SPA (Site Code 004142) encroaches to within c. 30 south-east of the site. Notwithstanding the relatively close proximity of this site, the proposed development is smallscale in nature, involving minor construction works. I am satisfied that there is no real likelihood of significant effects on the European site, arising from the development.

10.0 **Recommendation**

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 connection of 6 No. driveways and the associated footpath, to meet the southern edge of the existing Oranhill Avenue estate road is or is not development or is or is not exempted development:

AND WHEREAS Decourcey Developments Ltd requested a declaration on this question from Galway County Council and the Council issued a

declaration on the 20th day of April, 2022 stating that the matter was not exempted development:

AND WHEREAS Decourcey Developments Ltd referred this declaration for review to An Bord Pleanála on the 16th day of May, 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)(h) of the Planning and Development Act, 2000, as amended,
- (d) the planning history of the site,
- (e) the pattern of development in the area:

AND WHEREAS An Bord Pleanála has concluded that the existing estate road and footpath are each a ‘structure’ in accordance with the meaning provided at Section 2 of the Planning and Development Act, 2000, as amended and that the construction of vehicular accesses and footpath extension, to serve approved housing, which involves an act of construction and thereby constitutes development, would not render the appearance of the road or footpath structures in the area of the subject site inconsistent with their character elsewhere in the estate, in accordance with the requirements of Section 4(1)(h) of the Act.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5(4) of the 2000 Act, hereby decides that the proposed connection of 6 No. driveways and the associated footpath, to meet the

southern edge of the existing Oranhill Avenue estate road is development and is exempted development.

Barry O'Donnell
Planning Inspector

25th November 2022.