



An  
Bord  
Pleanála

## Inspector's Report ABP-313920-22

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Question(s)	Whether the placing on land of machinery is or is not development and/or is or is not exempted development
Location	Cloonnacartan, Recess, Co. Galway.
Declaration	Issued by Planning Authority
Planning Authority	Galway County Council
Planning Authority Reg. Ref.	ED 22/32
Land Owner/Occupier	David and Elizabeth Burke.
Planning Authority Decision	Is development and is exempted development.
Referred by	Patrick Cleary
Date of Inspection	14 <sup>th</sup> day of February 2024
Inspector	Fergal Ó Bric

## 1.0 Introduction

- 1.1. This Section 5 referral has been submitted to the Board by Mr. Patrick Cleary, a neighbouring resident within the townland of Cloonnacartan, which is located approximately three kilometres north of the village of Recess in Connemara, Co. Galway. The referrer has requested a determination from the Board under Section 5(3)(a) of the Planning and Development Act 2000 (as amended). The referral relates to the placing of machinery on land at Cloonacartan, Recess Co. Galway.
- 1.2. The piece of land in question is located along the edge of a mountain road, within the Maumturk Mountain range, immediately east of David and Elizabeth Burkes residential property and west of (on the opposite side of the road) to the residential property of the referrer, Mr Cleary. On the day of my site inspection, there was one trailer stored on the lands in question. However, from the photographic images submitted by the referrer and the occupiers, it is apparent that machinery in the form of tractors, trailers and excavators are stored on these lands at various stages throughout the year.
- 1.3. The site is located within a rural and unserviced area where the lands are unzoned and identified as agricultural. There is sporadic development of one-off rural dwellings and agricultural buildings in this area. The nearest dwellings are located approximately 40 metres north-west of the lands (the occupiers family dwelling) and 40 metres east of the lands on the opposite side of the mountain road (the referrers dwelling).

## 2.0 The Question

- 2.1 At the outset, it is important to clearly define the question which is the subject of this referral case. The referrer (Mr Cleary) in his referral submission to the Board specifies that the question he is seeking a response to relates to the placing of machinery on land. I note that within his observations to the Planning Authority he references construction machinery. I note that the Planning Authority in its

assessment of the referral under Section 5(2) of the Act referenced the placing of construction machinery on lands. In the interest of clarity, I will consider the question asked of the Board by the referrer within his referral submission in relation to the placing of machinery on lands. This specific question will be the subject of my assessment.

### **3.0 Planning Authority Declaration**

3.1 Galway County Council issued a declaration on the 16th day of June 2022 in accordance with Section 5(2)(a) of the Planning and Development Act (PDA) 2000 (as amended), in respect of the development. The Planning Authority determined that the placing on land of construction machinery is development and is exempted development only where it meets the exempted provisions as set out within Class 16 of Schedule 2, Part 1 of the Planning and Development Regulations 2001 (as amended).

### **4.0 Planning History**

I am not aware of any planning history pertaining to the lands which are the subject of this referral.

### **5.0 Policy Context**

The relevant Development Plan for the Connemara area is the Galway County Development Plan 2022-2028. The Galway County Development Plan 2022 - 2028 was adopted by the Planning Authority on 9<sup>th</sup> May 2022 and came into effect on the 20<sup>th</sup> day of June 2022. The following information is contained within the Plan:

- The site is located in an area identified as a: Structurally Weak Area.
- There are no protected structures identified on site.
- The area is classified as being: An Upland and bog landscape as per Map 8.1.

- The area is classified as having a Class 4 iconic landscape sensitivity which is unique and highly sensitive to change.
- The lands, the subject of the referral overlook the Sraith Salach/Letterfrack scenic route as per Map 8.3
- There are no designated protected views to/from the lands as per Map 8.4.

## 6.0 Natural Heritage Designations

The subject lands are not located within any of the designated European sites. The nearest European site, the Maumturk Mountains SAC (site code 00200), is located approximately 145 metres north-west of the lands and the Garraun Complex/Twelve Pins SAC (site code 002031) is located approximately 350 metres east of the lands.

## 7.0 Planning Authority's Reports

### Planning Report

A report was prepared by the Planning Authority and the main focus of attention pertained to the definition of works, structures, development, and exempted development as set out within Sections 2, 3, and 4 of the Planning and Development Act (PDA), 2000 (as amended) and Articles 6 and 9 of the Planning and Development Regulations (PDR) 2001 (as amended), relating to exempted development.

The Planning Authority stated that having regard to the provisions of Sections 2, 3, 4(i) (h) and 4 (4) of the Planning and Development Act (PDA) and Articles 9(1) (a) (ii) (iii) (vi) (viiB) and (viiC) of the Planning and Development Regulations (PDR) 2001 (as amended), that the works on site, comprising the placing on

land of construction machinery could fall within Class 16, Schedule 2, Part 1 of the Regulations which sets out the following:

The erection, construction or placing on land, on, in, over or under which, or on land adjoining which development consisting of works (other than mining) or being or is about to be, carried out pursuant to a permission under the Act or is exempted development of structures, works, plant or machinery needed temporarily in connection with that development during the period in which it is being carried out.

The conditions and limitations associated with this particular class exemption set out the following:

Such structures, works, plant or machinery shall be removed at the expiration of the period and the land shall be reinstated save to such extent as may be authorised or required by a permission under the Act.

On this basis, the Planning Authority concluded that the placing on land of construction machinery is development and is exempted development under the provisions of Class 16, and, therefore, would not require planning permission.

The Planning Authority did not screen the development in relation to the need to carry out Environmental Impact Assessment nor assess whether a mandatory EIA is triggered by the placing of the machinery on the lands.

In relation to Appropriate Assessment, the Planning Authority made reference to the European sites within a fifteen-kilometre radius of the lands in question and

specifically referenced the Maumturk Mountains SAC. However, no Appropriate Assessment (AA) screening of the development was undertaken by the Planning Authority in terms of assessing the potential for the development to significantly impact any European site(s).

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## 8.0 The Referrer's Submission

The referral by Patrick Cleary can be summarised as follows:

- The Planning Authority declared that the placing of construction machinery on land as development and is exempted development where it meets the conditions and limitations set out under Class 16, Schedule 2, part 1 of the Planning Regulations, 2001, as amended.
- Class 16 relates to temporary structures and uses.
- Class 16 requires that such structures, works, plants or machinery be removed at the expiration of the period and the land reinstated.
- The Council did not express specific reasons or considerations supporting the case that Class 16 applies in this instance.
- The lands in question have been used to store construction machinery including trailers, a low loader and earth dumper since 2020 and that the lands have rarely been free of machinery since this time.
- I consider that the development would not satisfy the provisions of Class 16 of the Planning Regulations 2001, as amended.
- In May 2022, a Section 5 referral was submitted to The Planning Authority setting out that no works had been permitted, nor was there exempted

development work being carried out on the land on which the machinery had been placed, as required for the Class 16 exemption to apply.

- A number of photographic images dating from September 2020 to June 2022 have been submitted showing the machinery being stored on the lands in question.
- The use of this commonage land for the storage/placing of construction equipment is development and is not exempted development.

## 9.0 **Response to Referrer's Submission**

9.1 Galway County Council made no additional comment to the referral made by Mr.

Cleary nor to the Section 5 declaration issued by themselves on the 16<sup>th</sup> day of June 2022.

## 10.0 **Statutory Provisions**

### 10.1 **Planning and Development Act 2000 (as amended)**

#### Section 2(1)

In this Act, except where the context otherwise requires—

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

#### Section 3(1)

In this Act, “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’.

Section 4(1)(a) – Provides that the use of land for the purpose of agriculture and development for the use of agriculture is exempted development.

Section 4(2) – Provides that the Minister can make regulations to provide classes of development to be exempted development.

Section 4(4A) (b) – Provides that development shall not be exempt where an Environmental Impact Assessment or an Appropriate Assessment is required.

## 10.2 **Planning and Development Regulations, 2001 (as amended)**

PART 2 - Exempted Development

*Article 6(1)*

Subject to Article 9, development of a class specified in Column 1, Part 1, 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.

*Article 9(1)*

Development to which Article 6 relates shall not be exempt development for the purposes of the Act. In particular, the following are relevant.

(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, ...
- (iii) Endanger public safety by reason of traffic hazard or obstruction of road users.
- (x) Consist of the fencing or enclosure of any land habitually open to or used by the public during the 10 years preceding such fencing or enclosure for recreational purposes or as a means of access to any seashore, mountain, lakeshore, riverbank or other place of natural beauty or recreational utility,
- (xi) Obstruct any public right of way

Schedule 2, Part 1, exempted development-Rural exempts development in the following situations:

Class 16, Schedule 2, Part 1 of the Regulations which sets out the following:

The erection, construction or placing on land, on, in , over or under which, or on land adjoining which, development consisting of works (other than mining) or being or is about to be, carried out pursuant to a permission under the Act or is exempted development of structures, works, plant or machinery needed temporarily in connection with that development during the period in which it is being carried out.

The conditions and limitations set out with this exemption set out the following:

Such structures, works, plant or machinery shall be removed at the expiration of the period and the land shall be reinstated save to such extent as may be authorised or required by a permission under the Act.

### 10.3 Referrals Database

Following a review of the Board's database of referrals, I note there are a number of referrals relating to agricultural development, agricultural structures and modified agricultural structures, including (RL 3496), and for the construction of an agricultural structure for use as stables (RL 2235 refers) In both of these instances it is clear that agricultural structures were being developed, in the latter instance, it was deemed that the development occurred on a modest holding, not deemed sufficient in scale to constitute an agricultural land holding and both were deemed to constitute development, and were not exempted development. There are a significant number of referrals relating to the fencing, gating and vehicular access to agricultural lands. I do not propose to summarise these given the extent listed. However, I have not been able to find a previous referral that I consider to be comparable to the subject referral.

### 11.0 Assessment

#### 11.1 Introduction

##### Question which is the subject of this referral

11.1.1 At the outset it is important to clearly define the question which is the subject of this referral case. I will consider the question asked of the Board by the referrer within his referral submission in relation to the placing of machinery on lands. This specific question will be the subject of my assessment.

##### Commonage land

11.1.2 The referrer has raised the issue of the storage of the machinery on commonage land. He sets out that the commonage land is partly owned by the occupier, and that there are other people who have ownership rights over the lands, including

himself. Commonage is not defined within either the Planning and Development Act nor within the Regulations.

11.1.3 Under Section 5.13 of the Development Management Guidelines for Planning Authorities, it sets out that the planning system is not designed as a mechanism for resolving disputes about rights over land and that these are ultimately matters for resolution in the Courts. Section 34(13) of the Planning and Development Act 2000 (as amended) states: A person shall not be entitled solely by reason of a permission (or exemption) under this section to carry out any development.

Is or is not development?

11.2.1 Section 3(1) of the Planning and Development Act 2000 (as amended) defines development as 'the carrying out of works on, in, over or under land or the making of a material change in use of any structures or other land. The referrer states that use of the land for the storage of machinery at Cloonnacartan, Recess, constitutes 'development, as set out within Section 3(1) of the Act.

11.2.2 I note that the occupier of the lands, Mr. Burke and his wife are landowners themselves and have submitted details, including folio maps of land ownership extending to approximately 230 hectares as well as details of lands leased in the area and having access to commonage lands at Cloonnacartan. I note that mountain sheep were grazing on the lands adjacent to the referral site on the date of my site inspection.

11.2.3 The occupiers of the lands explain that the trailers, tractors and excavators are used for a number of farming activities including: To haul animal feed from the main road up the mountain road to their farm lands, transporting fertilisers, for the purpose of fencing on soft ground, transporting farmyard manure, transporting the excavators used for the carrying out of land drainage and turf cutting and fencing, transporting and cutting turf. They state that the larger excavator is used for land drainage, stock proofing and farm road maintenance. They state that their lands are used for the purpose of agriculture and specifically hill grazing.

They state that they are continuously improving their lands, through active land management and improvement of fences, drainage, cutting turf and reclaiming lands in accordance with Department of Agriculture and National Parks and Wildlife best practice guidance. The Burke's also state that they are fully engaged in agricultural activities and each of them have their own herd numbers. The land occupiers are, therefore, considered to be large farmers who would require machinery such as tractors, trailers, and excavators to assist them in the operation of their extensive land holdings. Mr. Burke acknowledges that he does supplement his farm income with income generated from off farm activities.

11.2.4 The Burke's set out within their referral submission that the various pieces of machinery that are stored on the lands in question are required to assist in carrying out these various activities on the farmlands. I am of the opinion that the use of the machinery in this instance is ancillary to and necessary for the conducting of various farming activities within and between the various extensive land parcels, as set out by the Burkes and referenced in Section 11.2.3 above. I also note that the placing of the machinery on lands is in close proximity to their family dwelling, in that the lands in question are located immediately adjacent to the entrance to the Burke family dwelling.

11.2.5 The lands are not fenced off, no hardcore has been laid down on them, the lands remain accessible and are available for use for agricultural purposes and, therefore, I am satisfied that no change of use of the lands has occurred in this instance and no works have occurred on the lands, in terms of structures, fencing etc. I consider the storage of the machinery on the lands in this instance to be ancillary and necessary for the conducting of the farming activities on the lands farmed by the Burke's. I consider that the placing of the machinery on the lands and as detailed within the occupiers' referral submission, is not development as defined under Section 3 (1) of the Planning and Development Act 2000, as amended, and is exempted development.

11.2.6 In conclusion, I would concur with the opinion expressed by the Planning Authority and the referrer that the storage of machinery on lands is not

development, as set out in Section 3(1) of the PDA and are, therefore, considered to be exempted development.

11.2. Would the placing of machinery on lands represent an intensification of use, such that a material change in the use of the site arises, resulting in development and the subsequent requirement for planning permission?

11.2.1 The Board will also note that the making of any material changes in the use of land, including the deposit of vehicles (including tractors), or other land constitutes 'development' also in accordance with Section 3 (2) (1) (b) of the Act. I am satisfied that the storage of agricultural machinery in this instance, given no material changes have been made to the lands and the lands remain in agricultural use and remain accessible. The use of the lands for the placing of machinery, which is necessary and intrinsically required in order for the Burke's to be able to carry out their farming activities between the various extensive land parcels which the Burke's own, lease and/or occupy, all of which are part of day-to-day farming activities. Therefore, I am satisfied that there is an intrinsic link between the necessity to the placing of the machinery in question on the lands and the ability of the Burke's to carry out their day to day farming related activities on their lands.

11.2.2 Judge Barron held in the case of Galway County Council v Lacknagh Rock, that the onus is on the Planning Authority (decision maker) to prove that the intensification of activity amounted to a change of use which was material. It is apparent from Section 11.2 above, that a material change of use has not occurred in this instance, they have not been altered and they remain accessible. Therefore, as per the provisions of Section 3 (2) (1) (b) of the PDA, I am satisfied that a material change of use of the lands has not occurred.

## 12.0 **Environmental Impact Assessment Preliminary Screening**

12.1` The next element of the question is whether the development would trigger a requirement to prepare an Environmental Impact Assessment Report (EIAR). In this regard I would refer the Board to the provisions Schedule 5, Part 2, Article 1, of the Regulations in relation to agriculture. These provisions could trigger a requirement for the submission of a mandatory EIAR, and hence the requirement to submit a planning application, if the thresholds, as set out, are exceeded. The types of development referenced within this part of the Regulations relate to the carrying out of drainage, deforestation, intensive poultry and/or pig production. The parking of machinery does not readily fall within any of these categories of development. Therefore, I am satisfied that the submission of a mandatory EIAR is not required in this instance, under these provisions.

## 13.0 **Appropriate Assessment Preliminary Screening**

13.1 The appeal site is located approximately 142 metres south-east of the Maumturk Mountains SAC (site code 002008).and approximately 350 metres east of the Twelve Bens/Garraun Complex SAC (site code 002031).

13.2 There are no surface water drains or watercourses within the referral site boundary. Therefore, there are no surface water pathways linking the referral site to any European site. I am satisfied by virtue of the modest scale and intermittent nature of the machinery placed on site,, the separation distances involved and the lack of hydrological and/or ecological connectivity between the appeal site and the European sites, that it is unlikely that the placing of machinery on the lands would significantly impact upon these European sites qualifying interests' or adversely impact upon water quality and, therefore, these two sites can be screened out.

13.3 In conclusion. having regard to the location of the development on a greenfield site, where there is no requirement for watermain or foul sewer services, the lack

of suitable habitat within the referral site boundary and the separation distance from Natura 2000 sites and absence of ecological/hydrological connectivity to any European site via surface or groundwater, I consider that the placing of the machinery either alone, or, in combination with other plans or projects, would not be likely to have significant effects on a European site, in view of the sites' conservation objectives and that, therefore, an Appropriate Assessment Screening is not required in this instance.

#### 14.0 CONCLUSIONS AND RECOMMENDATION

**WHEREAS** a question has arisen as to whether the storage of machinery on lands at Cloonacartan, Recess, Galway is or is not development and is or is not exempted development:

**AND WHEREAS** the said question was referred to An Bord Pleanála by Patrick Cleary. on the 24th day of June 2022:

**AND WHEREAS** An Bord Pleanála, in considering this referral, had particular regard 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.
- (c) Section 3 (2) (1) (b) of the Planning and Development Act, 2000, as amended.
- (d) Section 4(1)(a) of the Planning and Development Act, 2000, as amended,
- (e) Article 6(1) and Article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (f) Schedule 5, Part 2, Articles 11 and 13 of the Planning and Development Regulations, 2001, as amended,
- (g) the planning history of the site,

(h) the pattern of development in the area:

**AND WHEREAS** An Bord Pleanála has concluded that-

The storage of machinery in this instance does not constitute a material change of use/development of land by reason of Section 3 (2) (1) (b) of the Planning and Development Act 2000 (as amended) and is not development as defined under Section 3 (1) of the Act and therefore constitutes exempted 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 development referred to above 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.

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Fergal O'Bric

Planning Inspectorate

28<sup>th</sup> day of March, 2024