



An
Bord
Pleanála

Inspector's Report ABP 313950 - 22

Question

Whether the use of a shed, containers, concrete loading area and access laneway to facilitate potato storage and distribution at lands at Derrylackey, Mullinavat, County Kilkenny is or is not development and is or is not exempted development within the meaning of the Planning and Development Act 2000, as amended.

Location

Derrylackey, Mullinavat, County Kilkenny.

Referral

Referred by

Kilkenny County Council (Ref. DEC704).

Owner/ Occupier

Maguire Maher Enterprises Limited.

Observer(s)

Thomas Maguire, Maguire Maher Enterprises Limited.

Date of Site Inspection

21 June 2024.

Inspector

B. Wyse.

1.0 Site Location and Description

- 1.1. The site is a farm complex in the rural area of Derrylackey, Mullinavat, County Kilkenny. The complex comprises; two sheds; several containers; a concrete loading area; a hardstanding area; and a hardcore access road.
- 1.2. The site is at the end of a cul-de-sac laneway (local road LS7452) which is connected to the local secondary road (LS7451 – Glenpipe Road). This road in turn connects to the regional road (R704) at Ballynooney East.
- 1.3. The referral specifically refers to; one of the sheds (the large shed identified in the referral cover letter on an aerial image and estimated to have a footprint of approx. 330sqm); the containers; the concrete loading area; and the access road.
- 1.4. At the time of my inspection there were a total of 7no. containers/portacabins on site; one to the north east of the cattle shed and appearing to be in office use (see Photograph 2); one adjacent and immediately to the north of the large shed and appearing to be in office use (see Photograph 3); and five across the yard to the west of the large shed – four of these appeared to be in use for storing pallets and assorted equipment and the fifth was partially used for similar purposes but mostly for office use (see Photographs 4 and 5). The 3no. containers indicated on the aerial image in the key map for the photographs adjacent to and immediately south of the large shed were no longer in place (see Photograph 7).
- 1.5. It was also evident, and as can be seen on the aerial image in the key map for my photographs, that the area of hardstanding in and around the farmyard, generally made up of hardcore material and not sealed, has been extended considerably since the time of the Google Maps images included in the planning authority cover letter to the referral. I consider that this area needs to be considered in conjunction with the concrete loading area.

2.0 The Referral

2.1. Referrer's Case

- 2.1.1. The referrer in this case is the planning authority, Kilkenny County Council. The question put to the Board is as follows:

Whether the use of a shed, containers, concrete loading area and access laneway to facilitate potato storage and distribution at lands at Derrylackey, Mullinavat, County Kilkenny is or is not development and is or is not exempted development within the meaning of the Planning and Development Act 2000, as amended.

2.1.2. The planning authority's case includes the following:

By reference to the definition of 'agriculture' in Section 2 of the Act, it is considered that the current use of the shed (approx. footprint 330sqm – see enclosed Google Maps images) is as a warehouse distribution centre, involving the delivery of pallets of potatoes in articulated lorries and storage in the shed and containers on site. Vans arrive to collect the produce which is then delivered to customers.

This use of the structure for commercial purposes such as warehousing/distribution constitutes a material change of use from agricultural use to commercial.

The development does not fall within the scope of exempted development.

Traffic movements associated with the development raise concerns about the impact of large articulated lorries on the condition of the narrow cul-de-sac lane.

The planning authority submission includes a substantial amount of documentation set out in six appendices to the cover letter. The appendices contain the following:

Appendix 1 – Copy of Enforcement Notices and a Warning Letter issued between 2018 and 2020 in relation to the development [PA Ref. ENF18051].

Appendix 2 – Copy of Planner's reports and site inspection photos, spanning a period from 2018 to 2022, in relation to PA Ref. ENF18051.

Appendix 3 – Copy of Planner's report from 2019 in relation to a refusal of planning permission under PA Ref. 19/767.

Appendix 4 – Copy of company printout for 'Maguire Maher Enterprises Limited' (Co. No. 618389) obtained from the Companies Registration Office.

Appendix 5 – Copy of submissions from various parties in relation to PA Ref. ENF18051.

Appendix 6 – Copy of email correspondence containing photographic submissions from complainant in relation to PA Ref. ENF18051.

2.2. Planning Authority Reports

2.2.1. Planning Reports

Apart from the planning authority's cover letter the referral does not include a planner's report specifically addressing the referral. As indicated above Appendix 2 of the referral contains a number of planner's reports spanning 2018 to 2022 in relation to the planning authority's enforcement proceedings (PA Ref. ENF 18051). The Board will note that these planning reports also include numerous photographs. The most recent report (dated 10 March 2022) includes the following relevant information:

- Mr. Maguire indicates that truck movements to the site consist of twice weekly HGV potato deliveries. The planning authority do not consider this to be a realistic figure.
- The planning authority considers that the introduction of a bagging/packing process (in the large storage shed) constitutes a material change of use.
- Mr. Maguire is of the opinion that the bagging/packing process still constitutes use for agricultural purposes.
- The origin of the potatoes, whether grown on Mr. Maguire's farm or brought in from elsewhere, appears to be an important consideration in the planning authority's position.
- The access laneway was measured at 3.7m in width at three different point along its length. At the access to the farmyard it widens to a measured 9m. Mr. Maguire maintains that this last section is part of the farmyard and is not part of the laneway and that a gate had been erected delineating the end of the laneway.
- The planning authority referenced ABP Ref. RL2806 wherein the Board decided that the creation of a laneway using hardcore material to access an agricultural shed on private lands would generally come within the provisions of exempted development. However, the subject laneway was in excess of 3.0m in width and, therefore, exceeded the conditions and limitations of Class

13 of Part 1 of Schedule 2 of the Regulations. It was determined, therefore, not to be exempted development.

- The entire laneway was filled with construction and demolition waste. The laneway crosses two streams that are culverted.
- Mr. Maher contends that the new farm roadway (laneway) is exempted development by reference to Part 3, Exempted Development – Rural , Column 1, Class 9.
- The original complainant, Ms. Maher, refers to:
 - Commercial use and HGVs creating a traffic hazard and road damage.
 - Early morning and late evening hours of operation, including Sundays.
 - Noise, disturbance and dust impacting residential amenity.

The Board will note that further information, including photographs, on the complainants position is contained in Appendix 6 of the planning authority's referral documentation.

- On the approach to the site road widening has been carried out at the junction of the LS7452-8 and the L-7452 (Glenpipe Junction). A passing bay has been constructed on the cul-de-sac LS7452-8. [The Board will note that LS7452-8 appears to be LS7452 and LS7452 appears to be LS7451 as referenced at Section 1.2 above].
- The latest inspection (17 November 2021) indicated the large shed (subject of the referral) contained hay bales, bagged potatoes and chips on pallets and machinery, including a tractor and forklift.
- Mr. Maguire confirmed the shed was in use for dry goods storage and that the bagging plant machinery was not used on site and was in storage.
- 7no. containers were observed on site. The containers were used to store pallets and loose potatoes. One was in use as an office.
- The concrete loading area had been extended further.

The earlier reports include the following:

- The planning authority's measurements of the various structures on site, on 30 April 2020, included:
- The cattle shed to the front of the site has a floor area of 135.5sqm with a feeding apron of 26sqm. The adjoining concrete slab had a total area of 54sqm.
- The large storage shed had a floor area of 345.6sqm (external measurement). A section portioned off internally was said to be used for calves (72sqm). However, it is noted that the planning authority's inspectors never observed calves and hay was observed on several occasions.
- The two containers (then present) were each 33sqm, totalling 66sqm of additional storage.
- The concrete loading area was on a 1.5m high raised embankment and had a total area of 48sqm.
- The planning authority noted that under PA Ref. P13/204 ABP Ref. 10.242248 the Board ruled that development at O'Shea's Farm, Piltown, County Kilkenny, which included a carrot washing building, constituted agricultural development and should be charged agricultural rates for the purposes of development contributions. The Board Inspector is quoted in reference to an opinion expressed that the process to clean and sort any harvest is agricultural and that it usually occurs on the farm itself – the latter is given particular emphasis through underlining.
- The planning authority also noted that under PA Ref. P04/1978 and Eddie Doyle, Luffany, Mooncoin, County Kilkenny, was charged commercial development contributions in relation to a grant of planning permission for a potato/packing store. However, he challenged this decision and there is correspondence on the Finance Section file (Kilkenny County Council) stating that the development is agricultural and, therefore, no development contributions apply.
- According to the planning authority, notwithstanding the very recent erection of a bagging plant, the issue with the subject site is that the produce is

primarily being brought to the site already bagged as the bagging plant had yet to be put in to use. Mr. Maguire claimed that the produce was his own which he had grown on con-acre sites in association with Doyle Produce, Mooncoin. However, despite numerous requests Mr. Maguire had not produced any evidence to support this claim.

- It is acknowledged by the planning authority that Maguire Maher Enterprises Ltd now has a growers number and has very recently commenced growing potatoes. However, the planning authority is of the view that this appears to be limited to a 3.5 acre field on the landholding, notwithstanding Mr. Maguire's assertion that he had an additional 20 acres on con-acre in various fields.

3.0 Owner/Occupiers Response

3.1. This is lodged by Mr. Thomas Maquire of Maguire Maher Enterprises Limited. The submission includes:

- The business is engaged in the growing and sale of potatoes to fast food takeaways throughout the southeast. It has grown significantly as a result of Brexit as much of the potatoes used by fast food shops had formerly been imported from the UK. Bord Bia has also promoted Irish growers. The operators are Bord Bia approved growers and, contrary to the assertion by Kilkenny County Council, have a current Grower Number issued by the Department of Agriculture (copy attached).
- The shed is not just used for storage of potatoes but also for storage of hay and straw for our suckler cow herd.
- The complaints lodged are the result of a long running family feud over the farmland at Derrylackey and have nothing to do with the use of the laneway or the agricultural buildings.
- The internal farm roadway at Derrylackey was constructed to join the existing farm complex to Peter Mahers original farm complex which avoids the use of a significant portion of the existing cul-de-sac.
- The growing of agricultural produce and the subsequent storage, packaging and sale is an agricultural activity.

4.0 Planning History

PA Ref. 19/767

Permission refused in 2019 for the retention of 2no. steel containers, concrete loading base and all associated works.

Reasons for refusal referred to: traffic hazard due to the unsuitability of the public road network to accommodate heavy goods vehicles associated with proposed development; contrary to policy to locate developments in towns/villages where suitable infrastructural services exist. Development considered to be a non-conforming commercial warehousing development use in a rural area lacking such infrastructural services.

PA Ref. ENF18051

Current Enforcement file in relation to alleged unauthorised development, namely:

- The construction of an internal farm access laneway and all associated site works.
- Unauthorised use of 2no. agricultural buildings for warehousing and as a distribution centre.
- Unauthorised containers erected on site and associate concrete loading area.

5.0 Policy Context

5.1. Development Plan

Kilkenny City and County Development Plan 2021-2027.

5.2. Natural Heritage Designations

The nearest European site is the River Barrow and River Nore SAC (Site Code 002162) at a distance of approximately 4kms (straight line) to the north-east at its nearest point (Arrigle River) and within a separate drainage catchment.

6.0 Statutory Provisions

6.1. Planning and Development Act, 2000 (as amended)

Section 2(1) - "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 land as grazing land, meadow land, osier land, market gardens and nursery grounds, and "agricultural" shall be construed accordingly;

"structure" means any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined....

Section 3(1) - In this Act, except where the context otherwise requires, "development" means—

(a) the carrying out of any works in, on, over or under land, or the making of any material change in the use of any land or structures situated on land...

Section 4(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....

Section 4(4) - 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.

6.2. Planning and Development Regulations, 2001 (as amended)

Article 6(1) provides that, subject to Article 9, certain classes of development specified in column 1, Part 1 (Exempted Development – General), Schedule 2 shall be exempted development.

The relevant class of development is:

CLASS 13

The repair or improvement of any private street, road or way, being works carried out on land within the boundary of the street, road or way, and the construction of any private footpath or paving.

Conditions and Limitations:

The width of any such private footpath or paving shall not exceed 3 metres.

Article 6(3) provides that, subject to Article 9, certain classes of development in rural areas specified in column 1, Part 3, Schedule 2 shall be exempted development.

The relevant classes of development are:

CLASS 6

Works consisting of the provision of a roofed structure for the housing of cattle, sheep, goats, donkeys, horses, deer or rabbits, having a gross floor space not exceeding 200 square metres (whether or not by extension of an existing structure), and any ancillary provision for effluent storage.

Conditions and Limitations:

1. No such structure shall be used for any purpose other than the purpose of agriculture.
2. The gross floor space of such structure together with any other such structures situated within the same farmyard complex or within 100 metres of that complex shall not exceed 300 square metres gross floor space in aggregate.
3. Effluent storage facilities adequate to serve the structure having regard to its size, use and location shall be constructed in line with Department of Agriculture, Food and Rural Development and Department of the Environment and Local Government requirements and shall have regard to the need to avoid water pollution.
4. No such structure shall be situated, and no effluent from such structure shall be stored, within 10 metres of any public road.
5. No such structure within 100 metres of any public road shall exceed 8 metres in height.
6. No such structure shall be situated, and no effluent from such structure shall be stored, 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.
7. No unpainted metal sheeting shall be used for roofing or on the external finish of the structure.

CLASS 8

Works consisting of 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 or description, having an aggregate gross floor space not exceeding 200 square metres, and any ancillary provision for effluent storage.

Conditions and Limitations:

1. No such structure shall be used for any purpose other than the purpose of agriculture.
2. The gross floor space of such structures together with any other such structures situated within the same farmyard complex or within 100 metres of that complex shall not exceed 300 square metres gross floor space in aggregate.
3. Effluent storage facilities adequate to serve the structure having regard to its size, use and location shall be constructed in line with Department of Agriculture, Food and Rural Development and the Department of the Environment and Local Government requirements and shall have regard to the need to avoid water pollution.
4. No such structure shall be situated, and no effluent from such structure shall be stored, within 10 metres of any public road.
5. No such structure within 100 metres of any public road shall exceed 8 metres in height.
6. No such structure shall be situated, and no effluent from such structure shall be stored, 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.
7. No unpainted metal sheeting shall be used for roofing or on the external finish of the structure.

CLASS 9

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.

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.

Article 9(1) includes the following restrictions on Article 6 exemptions:

If the carrying out of such development would –

(a)(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.

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

(a)(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.

6.2.1. Referrals database (and other) – Relevant Cases

ABP Ref. RL3016

This is a 2013 decision by the Board in relation to a question concerning a number of agricultural structures and uses at a farm complex at Annagharvey, Tullamore, County Offaly.

The decision included that the use of the farm complex for a potato services business, involving the grading and packing of potatoes, is ancillary to the agricultural use of the landholding and to the use of the farmyard complex, comes within the scope of Section 4(1)(a) of the Act and is not development.

The Inspector, who made a contrary recommendation on this point, had noted in his assessment that it was not clear if the packing and possibly processing of potatoes related only to the landowners own produce or if potatoes were brought onto the site, stored and/or packaged for resale.

ABP Ref. RL2806

This is the 2011 case as referenced by the planning authority in relation to the construction of a laneway using hardcore material to access an agricultural shed – see Section 2.2.1 above.

ABP Ref. 242248

This is the 2013 development contribution appeal case as referenced by the planning authority in relation to the issue of a carrot washing facility being deemed to be an agricultural development – see Section 2.2.1 above.

7.0 Assessment

7.1. Introduction

- 7.1.1. The Board will note that the submissions and arguments in this case variously refer to both the use and works elements of the subject development. As indicated at Section 1.3 above the referral specifically refers to certain structures only within the farm complex. It is also the case that since the referral was lodged some changes have occurred at the site. In the interests of clarity, therefore, I consider that the question should more properly be amended slightly to read as follows:

Whether a shed, containers, concrete loading and other hardstanding areas and access laneway to facilitate potato storage and distribution at lands at Derrylackey, Mullinavat, County Kilkenny is or is not development and is or is not exempted development within the meaning of the Planning and Development Act 2000, as amended.

- 7.1.2. For clarity, therefore, this assessment refers to both use and works elements in relation to the following structures currently in place at the site: the large shed; the 7no. containers/portacabins; the concrete loading and hardstanding areas; and the access laneway/road.

7.2. Is or is not development

- 7.2.1. In terms of the use element the issue focusses on whether or not the storage and distribution of potatoes, and which may or may not include packing, as carried out at the site falls within the definition of agriculture.
- 7.2.2. I am satisfied, contrary to the position of the planning authority, that this use does fall within the definition of agriculture. Thus conclusion aligns with the decisions of the

Board under ABP Refs. RL3016 and 242248 (see Section 6.2.1 above) and the planning authority position under PA Ref. P04/1978 (see Section 2.2.1 above). In my view, the storage of produce, in this case potatoes, and washing/grading/packing of same on a farm-holding, and the subsequent transport off-site, is a normal and intrinsic part of agricultural activity.

- 7.2.3. The question of where exactly the potatoes in this instance come from was clearly an important consideration in the planning authority's thinking and is also a matter referred to by ABP Inspectors in the cases referenced above. In my view, this is not a critical consideration. Many farms are made up of disparate parcels of land spread over considerable distances which inevitably leads to produce being transported to a single point, or several points, for storage and/or further processing. It also would not be unusual for several farmers in an area to co-operate around storage and/or processing in the interests of efficiency, also generating movements of produce from one holding to another. None of this necessarily, in my view, puts such activity outside the realm of agriculture. The intrinsic nature of the activity remains the same whether conducted entirely within one coherent farm or across several land-holdings or individual farms.
- 7.2.4. The other issue central to the planning authority's consideration as to the nature of the use being conducted was the type and volume of traffic movements being generated. Photographic and other evidence included in the planning authority submission to the Board, including that from complainants in the earlier enforcement case, suggests a level of HGV traffic has occurred. However, there is no definitive evidence of the volume of such traffic, the planning authority considering that Mr. Maguire's contention that it amounts to twice weekly truck movements not being considered realistic.
- 7.2.5. While clearly some truck movements are involved I do not consider that this, in itself, puts the activity outside the realms of agriculture either. In modern agriculture it is to be expected that various activities would generate such traffic, including HGVs, at least from time to time. It is also the case that modern agricultural machinery, including tractors, trailers, livestock transporters etc., is very large and, in many cases, similar in size to HGVs. While there might be concerns about the effects of large vehicles on minor rural roads, as alluded to by the planning authority, such concerns could also be applied to all of the above traffic. I did not observe any

notable or obvious damage to the local roads. The passing bays and local widening referred to by the planning authority appears to me to be fairly typical for such rural areas and could equally be deemed necessary for agricultural vehicles and machinery as for trucks and HGVs.

- 7.2.6. Traffic movements associated with developments such as this are essentially a function of the scale of the operation which in turn is essentially a function of the size of the buildings and other structures. The size of agricultural structures is subject to control under the Regulations and this is dealt with below.
- 7.2.7. In conclusion, as I consider that the use (activity) in this instance falls within the definition of agriculture, no change of use, and, therefore, no material change of use, has occurred. Therefore, the activity or use in question does not constitute development for the purposes of the Planning Act and Regulations.
- 7.2.8. In terms of the works elements of the activity it is clear that these do constitute development. The next test, therefore, is whether or not these elements are exempted development.

7.3. Is or is not exempted development

The Large Shed

- 7.3.1. The Board will note that at the time of my inspection this shed was in use solely for storage purposes (bagged potatoes). Mr. Maguire (see Section 3.1 above) indicates that it may also at times be used to store hay and straw. In any case I am satisfied that the shed is properly described as a store, notwithstanding Mr. Maguire's earlier assertion that a part of the shed was used to house calves (see Section 2.2.1). The shed, therefore, falls under Class 9, Part 3, Schedule 2 of the exempted development regulations. With a floor area of either 330sqm or 345.6sqm (external measurement) as measured by the planning authority, and not disputed by Mr. Maguire, and noting that the internal floor area would be only marginally less, the exceeds the maximum gross floor area of 300sqm allowed for under Class 9. The shed, therefore, does not constitute exempted development.

The Containers/Portacabins

- 7.3.2. The 7no. containers/portacabins on site are also mostly used for storage purposes so it follows, as these add further to the store or Class 9 floor area, that these do not constitute exempted development either. The part use of some of these for offices does not alter this conclusion.

Concrete Loading and Other Hardstanding Areas

- 7.3.3. The concrete loading area as referred to in the original referral question appears to be that enclosed area immediately to the west of the large storage shed and onto which the shed opens. An earlier measurement by the planning authority indicated an area of 48sqm for this but it is clear that it was subsequently extended. The concreted area now appears to be not dissimilar the floor area of the storage shed, probably in the region of 300sqm. As previously indicated the unsealed hardcore area, the hardstanding area, around the farmyard generally has also been considerably extended. I estimate the concreted area and the hardstanding area combined to cover an area in excess of 2000sqm.
- 7.3.4. I consider that these areas fall to be assessed under Class 8, Part 3, Schedule 2 of the exempted development regulations – noting, in particular, the reference to “...any other structures of a similar character or description...”(to various yards, aprons etc.). Class 8 allows for a maximum area of such structures of 200sqm. Clearly the yard areas in this instance vastly exceed this threshold so that they do not constitute exempted development.

The Access laneway

- 7.3.5. The access laneway, or access road, extends for a distance of almost 500m. The planning authority measured the laneway at 3.7m in width at three different points. It also noted the widened section to 9.0m at the approach to the farmyard. While Mr. Maguire contended that the latter was part of the farmyard and was gated off no such gate was in place at the time of my inspection. Mr. Maguire has not contested the measurements. The planning authority state that the laneway was constructed from construction and demolition waste and that it crosses two streams by culvert.

The laneway is certainly made up of varied hardcore material and two part culverted streams can be identified. Mr. Maguire does not contest any of this information.

- 7.3.6. As referenced by the planning authority the Board's decision under ABP Ref. RL 2806 is of relevance here. (see Section 2.2.1 above). As indicated the Board's decided in that case that Class 13, Part 1, Schedule 2 of the exempted development regulations was the appropriate class for agricultural roads/laneways. By reference to this Class the critical condition/limitation is that the width of any such private footpath or paving (laneway) shall not exceed 3.0m. The laneway in this instance clearly exceeds this and, therefore, does not constitute exempted development.

8.0 Recommendation

- 8.1. I recommend that the Board should decide this referral in accordance with the following draft order.

WHEREAS Kilkenny County Council has referred a question to An Bord Pleanala on the 24th day of June, 2022 as to whether the use of a shed, containers, concrete loading area and access laneway to facilitate potato storage and distribution at lands at Derrylackey, Mullinavat, County Kilkenny is or is not development or is or is not exempted development:

AND WHEREAS An Bord Pleanala has amended the question to read as follows:

Whether a shed, containers, concrete loading and other hardstanding areas and access laneway to facilitate potato storage and distribution at lands at Derrylackey, Mullinavat, County Kilkenny is or is not development and is or is not exempted development.

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

- (a) Sections 2(1) and 3(1) of the Planning and Development Act, 2000, as amended,
- (b) article 6(1) and Parts 1 and 3 of Schedule 2 of the Planning and Development Regulations, 2001, as amended,
- (c) ABP case Refs. RL3016, RL2806 and 242248, and
- (d) the documentation on file and the report of the Planning Inspector:

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The use (activity) on site, involving the storage of potatoes, and including washing/grading/packing as the case may be, and subsequent distribution of same falls within the definition of agriculture under Section 2(1) of the Act. As such no change of use or material change of use has occurred. The use or activity as described, therefore, does not constitute development.
- (b) The shed constitutes development. It does not fall within the scope of Class 9, Part 3, Schedule 2 of the Regulations as the floor area of the shed exceeds the maximum threshold of 300sqm under that class. The shed, therefore, does not constitute exempted development.
- (c) The containers/portacabins constitute development. Also used mostly for storage, they add further to Class 9 floor area and, therefore, do not constitute exempted development.
- (d) The concrete loading and other hardstanding areas constitute development. They do not fall within the scope of Class 8, Part 3, Schedule 2 of the Regulations as their combined areas exceed the maximum threshold of 200sqm under that class. They, therefore, do not constitute exempted development.

(e) The access laneway constitutes development. It does not fall within the scope of Class 13, Part 1, Schedule 2 of the Regulations as the width of the laneway exceeds the maximum threshold of 3.0m under that class. The laneway, therefore, does not constitute exempted development.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (4) of the 2000 Act, as amended, hereby decides that (a) the use for potato storage and distribution is not development, (b) the shed is development and is not exempted development, (c) the containers/portacabins are development and are not exempted development, (d) the concrete loading and other hardstanding areas are development and are not exempted development, and (e) the access laneway is development and is not 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.

B. Wyse
Planning Inspector

30 June 2024