



An
Bord
Pleanála

Inspector's Report ABP 314397-22

Question

Whether the placement of a 23.4sq.m. shed for agricultural use is or is not exempted development

Location

Springhill, Ballyemonduff Road,
Sandyford Dublin 18

Declaration

Planning Authority

Dun Laoighre-Rathdown Co. Council

Planning Authority Reg. Ref.

7522

Applicant for Declaration

Colm Ryan

Planning Authority Decision

Is Development and is not Exempted
Development

Referral

Referred by

Colm Ryan.

Owner/ Occupier

Colm Ryan

Observer(s)

None received

Date of Site Inspection

25th January 2024

Contents

1.0 Site Location and Description	3
2.0 The Question.....	3
3.0 Planning Authority Declaration.....	3
3.1. Declaration.....	3
3.2. Planning Authority Reports.....	3
4.0 Planning History	4
5.0 Policy Context	5
5.1. Development Plan	5
5.2. Natural Heritage Designations.....	5
6.0 The Referral	5
6.1. Referrer's Case.....	5
6.2. Planning Authority Response	6
6.3. Owner/ occupier's response (<i>where not the referrer</i>)	6
6.4. Further Responses	Error! Bookmark not defined.
7.0 Statutory Provisions	6
7.1. Planning and Development Act, 2000	6
7.2. Planning and Development Regulations, 2001	7
7.3. Other (<i>as appropriate</i>)	Error! Bookmark not defined.
8.0 Assessment.....	9
8.1. Is or is not development	Error! Bookmark not defined.
8.2. Is or is not exempted development.....	Error! Bookmark not defined.
8.3. Restrictions on exempted development	11
9.0 Recommendation	12

1.0 Site Location and Description

- 1.1. The site is located on the west side of the Ballyemonduff Road on which there is an existing portacabin which appears not to be in use. The site is located off a sharp bend on the road and there is no vehicular access point to the site

2.0 The Question

- 2.1. Whether the placement of a 23.4sq.m. shed for agricultural use is or is not exempted development

3.0 Planning Authority Declaration

3.1. Declaration

Is considered development and is not Exempted Development

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The Planner refers to Article 9(1) (a)(vi) of the Planning & Development Regulations (as amended) in his report which states that development which is normally exempted under the legislation does not apply where such a development would *'Interfere with the character of a landscape or view or prospect of special amenity value or special interest, the preservation of which is an objective of a development plan for the area in which the development is proposed.....'*
- The report further states that views on the Ballyedmonduff Road are protected and that as such Article 9(1) (a)(vi) applies and as such the development is not exempt.

3.2.2. Other Technical Reports

- None received

4.0 Planning History

- D20A/0109 retention permission refused for the following:

Retention permission and permission for development. The development will consist/consists of 1. Retention of existing entrance with permission to construct a new vehicular entrance, pillars, gates and wing walls. 2. Permission for the retention of existing portacabin on site and permission for the relocation of the portacabin on site. 3. Permission for the construction of a polytunnel. 4. Permission for the placing of 2 No. Storage Containers on site. 5. Permission for the construction of a single storey storage shed on site. 6. Permission for a Portable Toilet on site. 7. Permission to create a hardcore yard on site. 8. Permission to create a hardcore parking area on site. 9. Permission to use all the above for use as a horticultural development for Golden Grove Landscapes and all associated site works.

- Permission was refused for the following reasons:
 1. The Planning Authority is not satisfied that the proposed land use accords with the policy objectives outlined in the Dun Laoghaire Rathdown County Development Plan 2016 - 2022. It is considered that the proposed development, which would comprise visually prominent and unsightly structures in a high-amenity area in addition to substantial excavation works already undertaken, would have an adverse impact on the amenity and views of a landscape that it is an objective of the County Development Plan to protect. The proposed development would, therefore, be contrary to the objective 'G' zoning of the site and Policy LHB6: Views and Prospects of the Dún Laoghaire-Rathdown County Development Plan 2016-2022. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
 2. The vehicular entrance to be retained would, due to the inadequate sightlines that can be achieved for vehicles exiting the site, endanger public safety by reason of a traffic hazard. The vehicular entrance to be

retained would, therefore, be contrary to the proper planning and sustainable development of the area.

5.0 Policy Context

5.1. Development Plan

- The Dun Laoighre Rathdown County Development Plan 2022-2028 is the statutory plan in force at present and came into effect on the 21st April 2022.
- The site is partly zoned as Objective B 'To protect and improve rural amenity and to provide for the development of agriculture' and partly zoned as Objective G 'To protect and improve high amenity areas'
- Views on both sides of the Ballymonduff Road have being designated so as 'To preserve views' These views are indicated as blue arrows in the land use zoning maps associated with the Dun Laoighre Rathdown County Development Plan 2022-2028.
- Policy Objective GIB6: View and Prospects: It is a policy objective to preserve, protect and encourage the enjoyment of views and prospects of special amenity value or special interests, and to prevent development, which would block or otherwise interfere with Views and/or Prospects

5.2. Natural Heritage Designations

Dublin Mountains SAC (Site Code 002122) is located 4.5km to south west

Dublin Mountains SPA (Site Code 004040) is located 5km to south west

6.0 The Referral

6.1. Referrer's Case

- That Section 9.(1) (a) (vi) of the Act does not apply in this case as views to the site from the Ballyedmonduff Road are not preserved. This is clearly shown on Zoning Map 9 of the Dun Laoighre Rathdown County Development Plan

2022-2028 as there are no arrows on the said map pointing towards the site and as such the views are not preserved.

- Photos have been submitted from the Ballymonduff Road which show that the shed is not visible from the said road.
- Views to the shed are very much localised due to the road alignment and the low lying position of the shed within the overall site
- That the site is located on lands zoned as Objective B 'To protect and improve rural amenity and to provide for the development of agriculture'

6.2. Planning Authority Response

None received

6.3. Owner/ occupier's response

Not Applicable

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

Section 2(1) of the Planning and Development Acts 2000 (as amended) states:

In this Act, except where the context requires otherwise –

“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;

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

Section 3 (1) defines development as follows:

“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 of the Act states:

(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;

(2) (a) The Minister may by regulations provide for any class of development to be exempted development for the purposes of this Act where he or she is of the opinion that

(i) by reason of the size, nature or limited effect on its surroundings, of development belonging to that class, the carrying out of such development would not offend against principles of proper planning and sustainable development,

7.2. Planning and Development Regulations, 2001

Article 6(3) of the Planning and Development Regulations, 2001 (as amended) states;

Subject to article 9, in areas other than a city, a town or an area specified in section 19(1)(b) of the Act or the excluded areas as defined in section 9 of the Local Government (Reorganisation) Act, 1985 (No. 7 of 1985), development consisting of a class specified in column 1 of Part 3 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 3 opposite the mention of that class in the said column 1.

Article 9(1) of the regulations states that;

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

(vi) interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of a development plan for the area in which the development is proposed or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan

Column 1 of Class 9 of Part 3 of Schedule 2 to Article 6 of the aforementioned Regulations states,

Works consisting of the provision of any store, barn, shed, glass-house or other structure, not being 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 (are exempt subject to the provisions as set out below)

Column 2 of Class 9 states

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.

8.0 Assessment

- 8.1.1. The application refers to an existing portacabin on site which is stated on the drawings to be 6.8m in depth x 4.1m in width, and a floor area of 23.4sqm. The overall height of the shed is stated to be 2.705m. It is stated that the said structure which is called a shed in this referral is for agricultural use.
- 8.1.2. It should be stated at the outset that the purpose of this referral is not to determine the acceptability or otherwise of this portacabin/shed in respect to the proper planning and sustainable development of the area, but rather whether or not the matter in question constitutes development, and if so falls within the scope of exempted development.
- 8.1.3. In assessing the merits of the case I have reviewed previous relevant declarations made by the Board.

8.2. Is or is not development

- 8.2.1. The portacabin/shed is considered to constitute works, as per Section 2(1) of the Planning and Development Act 2000 (as amended) and is therefore development, as per Section 3 of the Act.

8.3. Is or is not exempted development

- 8.3.1. Section 4 of the Act states development shall be exempt where development consists 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.
- 8.3.2. The referral states that the portacabin is for agricultural use and it is located within a landholding the size of a stated size of 1.631ha (in accordance with details obtained from history files).

- 8.3.3. I refer to Condition 2 of column 2 of Class 9 of Part 3 of Schedule 2 to Article 6 of the Planning & Development Regulations 2001 (as amended) as set above, states that the gross floor area of any structure together with any other such structures situated 'within the same farmyard complex' shall not exceed 300sqm gross floor space in aggregate. This condition implies that the agricultural structures exempted under Part 3, Class 6 are being brought forward within the context of an existing agricultural land use. Further, Section 4(2)(a) of the Planning and Development Act 2000, provides that the Minister may, by regulations, provide any class of development to be exempted development for the purposes of the Act where he or she is of the opinion that the by reason of the size, nature or limited effect on its surroundings, of development belonging to that class, the carrying out of such development would not offend against principles of proper planning and sustainable development. Having regard to the principles in this primary legislation, I do not consider that it is the intention of the Planning and Development Regulations to facilitate agricultural structures on land which are not already in agricultural use.
- 8.3.4. I am of the opinion therefore that the shed needs to be on an agricultural landholding with an established agricultural use in order to avail of the exemptions in Class 9 of the Regulations. As observed on site, the land nor the shed for that matter is not currently in agricultural use. On this basis, I do not consider that the referral comes within the scope of Class 9 of the regulations
- 8.3.5. Notwithstanding the same, I consider it appropriate in any rate to assess the proposal against the limitations as set out in column 2 of Class 9.
- 8.3.6. With respect of limitation 1, I am not satisfied that the structure, referred to as a shed is used presently for agriculture or forestry, and the land on which it is situated equally also is not used for such purposes.
- 8.3.7. I am satisfied that the shed, which is no greater than 300 square metres in gross floor space, is not within 100m of an existing farmyard complex or part of such a complex and that the gross floor space is not impacted upon in the context of other buildings. I am of the view that condition/limitation 2 of Class 9 is complied with.
- 8.3.8. With reference to limitation 3 the agricultural shed is not situated within 10 metres of any public road, and therefore condition/limitation 3 is complied with.

- 8.3.9. With reference to condition/limitation 4, the shed does not exceed 8 m in height, and therefore condition/limitation 4 is complied with.
- 8.3.10. With reference to condition/limitation 5 the shed is located within 100 metres of 3 houses, however, letters consenting to the same has been submitted by each of the said houses (as is allowed for under this limitation). The shed is not located within 100 metres of or other residential building or school, hospital, church or building used for public assembly, and therefore condition/limitation 5 is complied with.
- 8.3.11. With reference to limitation 6, the regulation states 'No unpainted metal sheeting shall be used for roofing or on the external finish of the structure'. The external finish of the shed comprises of a composite sheeting of an off white colour. In this regard limitation 6 has been complied with

8.4. Restrictions on exempted development

- 8.4.1. The Planning and Development Regulations, 2001, as amended, state: 'Restrictions on exemption Article 9(1) 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 (vi) interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of a development plan for the area in which the development is proposed or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan'.
- 8.4.2. The shed is on the lowest part of the site for the most part on lands zoned with Objective B in the statutory development plan which has the objective 'To protect and improve rural amenity and to provide for the development of agriculture. Lands to the rear of the shed, upslope, are zoned as Objective G 'To protect and improve high amenity areas'. This is contrary to what is stated in the local authorities case planners report.
- 8.4.3. Zoning Map 9 of the Dun Laoighre Rathdown County Development Plan 2022-2028 shows for arrows on the said map along the Ballyemonduff Road, at random locations along the said road pointing towards views which are preserved by the plan

and are subject to Policy Objective GIB6: View and Prospects: It is a policy objective to preserve, protect and encourage the enjoyment of views and prospects of special amenity value or special interests, and to prevent development, which would block or otherwise interfere with Views and/or Prospects

8.4.4. There are no arrows in the said map pointing towards the shed in question and as such Policy Objective GB6 above does not apply.

8.4.5. With respect of the above, it is concluded that Article 9(1)(a)(vi) of the regulations therefore does not apply

8.4.6. Appropriate Assessment

Section 4(4) of the Act states that development shall not be exempted development if an appropriate assessment of the development is required. 8.5.2. The referral site is not within any Natura 2000 sites, therefore the proposed development would not have a direct effect on any designated site. While there are other Natura 2000 sites within 15km of the subject site specifically, Dublin Mountains SAC and SPA, there are no pathways from the appeal site to those Natura 2000 sites which would be relevant to their conservation objectives, and there is no potential for likely significant effects upon them to arise from the proposed development whether considered individually or in combination with other plans or projects.

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 placement of a 23.4sq.m. shed for agricultural use at Springhill, Ballyemonduff Road, Sandyford Dublin 18 is or is not exempted development is or is not exempted development:

AND WHEREAS the said question was referred to An Bord Pleanála by Colm Ryan on the 31st August 2022 stating that the matter was development and not exempted development

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

- (a) Sections 2, 3 and 4 of the Planning and Development Act, 2000,
- (b) Articles 6 and 9 of the Planning and Development Regulations, 2001, and
- (c) Part 3 of Schedule 2, Class 9, to the Planning and Development Regulations, 2001, as amended:

AND WHEREAS An Bord Pleanála has concluded, on the basis of the submissions from the parties, and the circumstances of the site

- that the shed in question is not currently used for purposes of agriculture, and
- the shed in question stands on a site that is not in agricultural use and is not part of an established agricultural landholding:

AND WHEREAS An Bord Pleanála therefore concludes that the shed in question does not comply with condition and limitation no. 1 attached to class 9 of Part 3 of Schedule 2 to the said Regulations:

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 said construction of construction of a shed at Springhill, Ballyemonduff Road, Sandyford Dublin 18 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.

Andrew Hersey

Planning Inspector

20th February 2024