



An
Bord
Pleanála

Inspector's Report ABP-314830-22

Question

Whether works consisting of (1) provision of a gate entrance to leased land and (2) filling of land with hardcore stone topped with gravel to allow parking for cars, trailers and motorhomes at Roosky Harbour, Roosky, Co. Roscommon, is or is not development or is or is not exempted development

Location

Roosky Harbour, Roosky, Co. Roscommon.

Declaration

Planning Authority	Roscommon County Council
Planning Authority Reg. Ref.	DED525
Applicant for Declaration	Ciaran Fallon.
Planning Authority Decision	Is not exempted development

Referral

Referred by	Ciaran Fallon.
Owner/ Occupier	Ciaran Fallon.
Observer(s)	None.

Date of Site Inspection	2 nd February 2023.
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Inspector	Deirdre MacGabhann
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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.....	4
4.0 Planning History.....	5
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/Further Responses.....	6
7.0 Statutory Provisions.....	6
7.1. Planning and Development Act, 2000 (as amended)	6
7.2. Planning and Development Regulations, 2001	7
8.0 Assessment	7
8.1. Is or is not development	7
8.2. Is or is not exempted development	8
8.3. Environmental Impact Assessment	9
8.4. Appropriate Assessment	10
9.0 Recommendation.....	10

1.0 Site Location and Description

- 1.1. The c.1.13 acre (0.45ha) referral site¹ is situated on the western side of the River Shannon in the village of Roosky, County Roscommon. The L-shaped site lies south of the R371, on the southern end of Roosky harbour. It is bound to the east by the River Shannon and to the north and west by a Waterways Ireland access road. To the south is a water treatment plant. The site is fenced and comprises rough grazing land. Electricity and telephone lines cross the site.
- 1.2. To the east of the site is land leased by the applicant with a shed used for boat repairs and yard/hardstanding used for overnight parking of motor homes.

2.0 The Question

- 2.1. The question before the Board is whether works consisting of:

- (1) Provision of a gate entrance to leased lands, and
- (2) Filling of land with hardcore topped with gravel to allow parking for cars, trailers and motorhomes,

At Roosky Harbour, Roosky, County Roscommon is or is not development and is or is not exempted development.

3.0 Planning Authority Declaration

3.1. Declaration

- 3.1.1. On the 13th September 2022 Roscommon County Council made a declaration under Section 5(2)(a) of the Planning and Development Act 2000 (as amended) considered that:
 - Having regard to sections 2, 3, 4 and 5 of the Planning and Development Act 2000, as amended,

¹ NB the completed Roscommon County Council Exempted Development form refers to a site of 0.75acres (c.0.3ha).

- Articles 6 and 9 of the Planning and Development Regulations 2001, as amended,
- The record forward to the PA in accordance with subsection (6)(c) of Section 5 of the Act, and
- The planning history of the site,

Concluded that the development constituted development, was not exempted development and individual and in combination with other plans or projects would not be likely to have a significant effect on any European site and that the required for AA or EIA did not apply.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- 5th September 2022 – The Planning report refers to legal provisions in respect of development and exempted development, the location and description of the site and its planning history (nil). It considers that the proposed development comprises the carrying out of ‘works’ and ‘development’ as defined in Section 3 of the Act. The development is not considered to be exempted development under the provisions of the P&D Regulations 2001 (as amended) as it does not come within any of the uses classes identified in the Regulations. With regard to Article 9(1)(a) of the Regulations, it is considered that the development individually or in combination with other plans or projects would not be likely to have a significant effect on a European site and that the need for AA does not apply. It is also considered that EIA is not required. The report concludes that the referred works, consisting of gate entrance to land and filling of land to facilitate parking for cars, trailers and motorhomes, is development and is not exempted development and that individually and in combination with other plans or projects would not be likely to have a significant effect on a European site and that the requirement for AA and EIA does not apply.

3.2.2. Other Technical Reports

- None.

4.0 Planning History

- None.

5.0 Policy Context

5.1. Development Plan

The Roscommon County Development Plan 2022-2028 came into effect on the 19th April 2022. Roosky is identified in the Plan as a 'serviced village'. Policy Objective CS 2.16 aims to ensure that serviced settlements throughout the county maintain existing population levels and services and to ensure that future growth is balanced and sustainable. The subject site lies within the Plan Boundary for the village. Policy DO 3 encourages appropriate opportunities for employment development.

5.2. Natural Heritage Designations

- 5.2.1. The appeal site lies c.225m south of Lough Boderg and Lough Bofin proposed Natural Heritage Area (site code 001642), designated on land to the north of R371 and extending to Lough Bofin and adjoining lands. Approximately 5km to the south of the site, Lough Forbes is designated as a proposed Natural Heritage Area (pNHA), Special Area of Conservation (SAC) and Special Protection Area (SPA) under the following designations:

- Lough Forbes Complex pNHA and SAC (shared site code 001818).
- Ballykenny-Fishertown Bog SPA (site code 004101).

6.0 The Referral

6.1. Referrer's Case

- 6.1.1. In his submission to the Board, the referrer makes the following comments:
- Referrer has the remains of a 99 year lease, from Waterways Ireland, on lands at the southern end of Roosky Harbour. Currently he supplies fuel and mooring to boats, has a craft and fishing tackle shop, a large shed for boat

repairs and over half an acre for overnight parking of motor homes similar to 'Aire' in France.

- He plans to expand into the adjoining 1.13 acres of wasteland owned by Waterways Ireland on a phased basis. Waterways Ireland has agreed to a lease for 25 years provided he gets a letter of exemption. 1.13 acres would revert back to Waterways Ireland at end of 25 years.
- His intention is to hardcore c.1/3 of the area to provide extra space for the parking of boats, trailers, cars and their jet ski, speed boats or fishing boat trailers and the occasional motorhome on a Bank Holiday weekend (currently space limits the number of cars and trailers that can be accommodated).
- Roosky is one of the main villages on the Shannon River, with most cruisers passing through to use the facilities in the village.
- The site is at the southern end of the harbour and does not interfere with the supermarket, its patrons or those wishing to park and observe river.
- The proposed works are required to allow cars, trailers and motorhomes to avoid sinking in the waste ground.
- The proposed facilities are water based sports and motorhome parking, seasonal and would blend in with the general area and have great tourism potential.

6.2. Planning Authority Response/Further Responses

- None.

7.0 Statutory Provisions

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

- Sections 2, 3 and 4 of the Planning and Development Act 2000 (as amended).

7.2. Planning and Development Regulations, 2001

- Articles 5, 6, 8C and 9 Schedule 2, Part 1 and Part 3 of the Planning and Development Regulations 2001 (as amended).

8.0 Assessment

8.1. Is or is not development

8.1.1. The following acts are referred to the Board:

- Provision of gate and
- Laying of hardcore
- To provide parking area for cars, trailers and motorhomes.

8.1.2. Section 3(1) of the Planning and Development Act, 2000, as amended defines 'development' as *'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'*. And the term 'works' is defined in section 2 as *'any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal'*.

8.1.3. Having regard to the foregoing, I would conclude that the provision of a gate and laying of hardcore for the purpose of providing a parking area (including for motorhomes) are both acts of construction, taking place on or over land, and a material change in the use, as they are provided to change the use of the existing agricultural land to a parking area (for cars, trailers and motorhomes), and are both therefore works and development.

8.1.4. (Section 3(2) states that where land becomes used for the placing or keeping of caravanning, the use of the land shall be taken as materially changed. However, caravanning is not directly comparable to 'motorhome-ing', with the former having no engine and the latter self-propelled).

8.2. Is or is not exempted development

- 8.2.1. Section 4 of the Planning and Development Act 2000 (as amended) makes provision for certain development to be exempted development (subject to there being no requirement for environmental impact assessment or appropriate assessment). Section 4(1) and (1A) specify certain types of development which are exempted. For example, the use of land for the purpose of agriculture, certain development by a coastal planning authority, certain development carried out by a local authority or statutory undertaker. There are no specific exemptions in the section 4(1) for the provision of a gate or for the laying of hard core to create a parking area.
- 8.2.2. In section 4(2), the Act provides that the Minister may make regulations to provide for any class of development to be exempted development. Notwithstanding section 4(2), section 4(4) also provides that development shall not be exempted in an EIA or AA is required.
- 8.2.3. Articles 5 to 10 of the Part 2 of the Planning and Development Regulations 2001, as amended, provide regulations in respect of exempted development.
- 8.2.4. Under article 6(1) development of a class specified in column 1 of Part 1, Exempted Development General, of Schedule 2, is exempted development, subject to compliance with the conditions and limitations specified in column 2 of Part 1. Part 1 of Schedule 2 refers to a wide range of works including in respect of a dwelling house, painting of the external part of any building, the repair or improvement of any private street or road, changes of use, temporary structures and uses, development for industrial purposes, development by statutory undertakes, electric vehicle charging points, development for amenity or recreational purposes and miscellaneous development. None of the classes specified, including changes of use, apply to the subject development. Class 9 refers to the erection of a gate within or bounding the curtilage of a dwelling house and therefore does not apply.
- 8.2.5. Article 6(2) refers to advertisement and is not relevant to the subject case.
- 8.2.6. Article 6(3) provides that development of a class specified in column 1 of Part 3, Exempted development - Rural, of Schedule 2, shall be exempted development subject to compliance with the conditions and limitations specified in column 2 of Part 1. Class 1 of Part 3 refers to the temporary use of land for camping, including

the temporary placing of a campervan on it (subject to certain conditions and limitations). In this instance, this exemption is not directly relevant as it refers to a temporary use, does not include the parking of cars and trailers or provide for the filling of lands with hardcore to provide for parking area. Other classes of development include minor works and structures to watercourses, agricultural structures, land reclamation (drainage and/or reclamation of wetlands), peat extraction, renewable technologies, temporary structures and rainwater harvesting. Again, none of the classes specified apply to the subject development.

- 8.2.7. Other sub-sections of article 6 do not apply to the proposed development. Similarly exempted development under articles 7 and 8 do not apply. In this regard, under article 8C, provision is made for land reclamation works (other than reclamation of wetlands) consisting of the re-contouring of land including infilling of soil within a farm holding. However, in this instance, the infilling of lands is proposed to provide a parking area and is not within a farm holding.
- 8.2.8. Article 9 of the Regulations provides for restrictions on exemptions. However, these are not relevant as the works referred to do not comprise exempted development.
- 8.2.9. Article 10 of the Regulations provides that a change of use within any one of the classes of use specified in Part 4 of Schedule 2, shall be exempted, subject to certain limitations. Again, none of the classes provide for the subject development.
- 8.2.10. Having regard to the foregoing, I do not consider that neither the Planning and Development Act 2000 (as amended) or the Planning and development Regulations 2001 (as amended) make provisions for the exemption of the proposed development.

8.3. Environmental Impact Assessment

- 8.3.1. Having regard to the nature and scale of the proposed development it is considered that there is no likelihood of other significant effects on the environment. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

8.4. Appropriate Assessment

- 8.4.1. The appeal site lies c.5km upstream of Lough Forbes Complex SAC (site code 001818) and Ballykenny-Fishertown Bog SPA (site code 004101). However, having regard to the relatively modest nature of the proposed development, the location of the site substantially upstream of nearest European sites and the likely effects of settlement and dissipation in the substantial body of water that separate the subject site from the European sites, and in the absence of any mitigation measures, it is concluded that no Appropriate Assessment issues arise as the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

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 works consisting of (1) provision of a gate entrance to leased land, and (2) filling of land with hardcore stone topped with gravel to allow for parking of cars, trailers and motorhomes at Roosky Harbour, Roosky, County Roscommon is or is not development or is or is not exempted development:

AND WHEREAS Ciaran Fallon requested a declaration on this question from Roscommon County Council and the Council issued a declaration on the 13th day of September 2022, stating that the matter was development and was not exempted development:

AND WHEREAS Ciaran Fallon referred this declaration for review to An Bord Pleanála on the 7th day of October 2022;

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

- (a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended,
- (b) Articles 6, 8, 9 and 10 of the Planning and Development Regulations, 2001, as amended,
- (c) Parts 1 and 3 of Schedule 2 to the Planning and Development Regulations, 2001, 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:

- (a) The provision of a gate entrance to leased land and filling of land with hardcore stone topped with gravel to allow for parking of cars, trailers and motorhomes comprises works and development,
- (b) The proposed works do not fall within the exemptions provided in the Planning and Development Act, 2000 (as amended) or the Planning and Development Regulations, 2001 (as amended).

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 provision of a gate entrance to leased land and filling of land with hardcore stone topped with gravel to allow for parking of cars, trailers and motorhomes comprise works and is development and is not exempted development.

Deirdre MacGabhann

Planning Inspector

7th February 2023