



An
Bord
Pleanála

Inspector's Report ABP315174-22

Question

Whether the construction of a 25 square metre garage, a 40 square metre boiler house, photovoltaic panels 12 square metres and an open pergola to the rear of a dwelling house at Castle View, Moydrum, Athlone, N37 HY45, County Westmeath is or is not exempted development

Location

Castle View, Moydrum, Athlone, County Westmeath.

Declaration

Planning Authority

Westmeath County Council.

Planning Authority Reference.

S5- 20-22

Applicant for Declaration

John Hayden

Planning Authority Decision

Is development.

Referral

Third Party

Referred by

John Hayden

Owner Occupier

John Hayden

Observer(s)

None.

Date of Site Inspection

3rd July 2024.

Inspector

Derek Daly.

1.0 Site Location and Description

- 1.1. The proposed site is located in a rural area approximately a kilometre west of Bealin and approximately 5 kilometres north east of the town of Athlone in County Westmeath.
- 1.2. On the site is a detached dormer bungalow, with a detached single storey structure to the rear and which is referred to in drawings and documentation as a studio/office. There is a concrete base also located to the rear of this structure with two steel fabrication sheds located on the base.

2.0 The Question

- 2.1. The question before the Board relates to whether the following;

The construction of a 25 square metre garage, a 40 square metre boiler house, photovoltaic panels 12 square metres and an open pergola to the rear of a dwelling house is or is not exempted development.

3.0 Planning Authority Declaration

3.1. Declaration

- 3.1.1. Westmeath County Council issued a declaration dated 22nd November 2022 (Ref: S5-20-22) that the construction of the proposed garage, boiler house, photovoltaic panels and pergola contained as one structure to the rear of a dwelling is development and does not come within the scope of Class 3 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 taken together with previous structures previously constructed erected or placed within the said curtilage exceeds 25 sq.m in size. The proposal as described is development, and is not exempt development,

3.2. Planning Authority Reports

- 3.2.1. Planning Report of the 16th November 2022 refers to the planning history of the site, the legislative provisions considered relevant to the declaration and an assessment of the proposals in the context of these provisions with a recommendation that the proposal is development and not exempted development.

4.0 Planning History

4.1. The site has an extensive planning history largely relating to the permission of the dwelling and extensions applied for.

4.2. ABP 304215-19

This reference was included in the referrer's submission as a question was raised in relation to the provision of a boiler house which serves the dwelling is or is not exempted development.

5.0 Policy Context

5.1. Local Planning Policy

The relevant plan is the Westmeath County Development Plan but provisions are not relevant to this reference.

5.2. Natural Heritage Designations

None relevant. The site is not within a Natura Site or directly connected with a Natura Site.

6.0 The Referral

6.1. **Referrer's Case**

6.1.1. In summary the referrer indicates;

- Reference is made to the chronology of the case referred to the planning authority and that the date of the declaration was not issued within the appropriate period.
- It is accepted that the proposals constitute development.
- The proposed boiler house is exempted under Class 2 as there is no restriction on area, height or location.
- Reference is made in this regard to precedence under ABP 304215-19.
- In relation to Class 3 is there a cumulative restriction of 25m². There is only one garage which is 25m² and none previously constructed on the site.

- The inference that that being a single structure somehow militates against a declaration is nonsense and reference is made to the erection of a porch is referred to in this regard.

6.2. Planning Authority Response

- 6.2.1. In a response to the Board dated the 25th November 2022 it was indicated that the request for a declaration was received on the 27/09/2022, the decision was due on the 25/10/2022 and the declaration was issued on the 22/11/2022.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

Section 2 – Interpretation

- ‘development’ has the meaning assigned to it by section 3 and ‘develop’ shall be construed accordingly.
- Exempted development has the meaning specified in section 4.
- “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 – Development

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 – Exempted Development

Section 4 (2) (a) The Minister may by regulations provide for any class of development to be exempted development for the purposes of this Act.

7.2. Planning and Development Regulations, 2001 as amended.

7.2.1. **Article 6 (1) –**

Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided

that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.

7.2.2. Article 9 (1) –

Development to which article 6 relates shall not be exempted development for the purposes of the Act and the restrictions and limitation are outlined in this Article.

Classes 2 and 3 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001

7.2.3. Schedule 2, Part 1: Exempted Development

Development within the curtilage of a house

Class 2 (a) The provision as part of a heating system of a house, of a chimney or flue, boiler house or fuel storage tank or structure.

Conditions and Limitations. The capacity of an oil storage tank shall not exceed 3,500 litres.

Class 2 (c) The placing or erection on a roof of a house, or within the curtilage of a house, or on a roof of any ancillary buildings within the curtilage of a house (this class does not include apartments) of a solar photo-voltaic and/or a solar thermal collector installation.

Conditions and Limitations provide for the following which may be relevant to this reference.

1. The distance between the plane of the roof and the solar photo-voltaic or solar thermal collector panels shall not exceed 50cm in the case of a flat roof or 15cm in any other case.

2. The solar photo-voltaic or solar thermal collector panels shall be a minimum of 50cm from the edge of a roof on which it is mounted.

4. The total aperture area of any free standing solar photo-voltaic and solar thermal collector panels taken together with any other such existing free standing panels shall not exceed 25 square metres.

9. Development under this Class which causes hazardous glint and/or glare shall not be exempted development and any solar photo-voltaic or solar thermal collector panels which are causing hazardous glint and/or glare shall either be removed or be

covered until such time as a mitigation plan to address the hazardous glint and/or glare is agreed and implemented to the satisfaction of the Planning Authority.

CLASS 3 The construction, erection or placing within the curtilage of a house of any tent, awning, shade or other object, greenhouse, garage, store, shed or other similar structure.

Conditions and Limitations provide for the following which may be relevant to this reference.

2. The total area of such structures constructed, erected or placed within the curtilage of a house shall not, taken together with any other such structures previously constructed, erected or placed within the said curtilage, exceed 25 square metres.

Class 56 (d) and (e) refers to the placing or erection on a roof or wall of an industrial building and light industrial, or within the curtilage of an industrial building, or on a roof or wall of any ancillary buildings within the curtilage of an industrial building of a solar photo-voltaic and/or a solar thermal collector installation. This is not relevant to the current reference as the site is residential.

Classes 60 and 61 refers to the placing or erection on a roof of a building comprising apartments and a range of other uses, or on a roof of any ancillary buildings within the curtilage of a building comprising apartments of a solar photo-voltaic and/or solar thermal collector installation. This is not relevant to the current reference as the site is residential but not an apartment building or a use referred to in classes 60 and 61.

8.0 Assessment

- 8.1. The purpose of this referral is not to determine the acceptability or otherwise of the development referred to in the question but rather whether or not the matter in question constitutes development, and if so, falls within the scope of exempted development.
- 8.2. The drawings submitted are for a single building with a uniform ridge roof 4 metres in height to the roof ridge. The building would incorporate three elements, a garage 25m² in area, a boiler house approximately 35 m² in area and what is referred to as

an open pergola/shade approximately 40m² in area and is open on two sides with solar panels on the roof of this section.

8.3. Is or is not development.

8.3.1. The questions as put forward by the referrer does not dispute that the construction of a 25 square metre garage, a 40 square metre boiler house, photovoltaic panels 12 square metres and an open pergola building as indicated to the rear of a dwelling house constitutes development within the statutory provisions of the Planning and Development Act 2000 as amended but contends that it would constitute exempted development. Having examined the documentation submitted the development as referred to in the questions constitutes development.

8.4. Is or is not exempted development

8.4.1. In respect to the question put forward by the referrer the planning authority considered that the development did not constitute exempted and relied on the provisions of class 3 of Schedule 2, Part 1 of the Planning and Development Regulations 2001 as amended which does provide by way of exemption for the construction, erection or placing within the curtilage of a house of any tent, awning, shade or other object, greenhouse, garage, store, shed or other similar structure subject to conditions and limitations and the planning authority have made a specific reference to condition 2 that the total area of such structures constructed, erected or placed within the curtilage of a house shall not, taken together with any other such structures previously constructed, erected or placed within the said curtilage, exceed 25 square metres.

8.4.2. The referrer's contention is that the proposals constitute development; that reliance is made solely to class 3 and that class 2 exempts a boiler house and there is no restriction on area, height or location. Similarly, there are exemptions for photovoltaic panels which are mounted on a pergola which does not have floor area, one garage is proposed which does not exceed 25m² and the inference that that being a single structure somehow militates against a declaration is nonsense and reference is made to the erection of a porch is referred to in this regard.

8.4.3. In relation to class 3 of Schedule 2, Part 1 of the Planning and Development Regulations 2001 as amended it is my understanding that the provision does provide by way of exemption for the construction, erection or placing within the curtilage of a

house of many structures which would be considered ancillary to a dwelling including any tent, awning, shade or other object, greenhouse, garage, store, shed or other similar structure. Although a pergola is not specifically stated it does refer to other similar structure to awning, shade or other object. It also specifically refers to a garage. There are conditions and limitations including that the total area of such structures constructed, erected or placed within the curtilage of a house shall not, taken together with any other such structures previously constructed, erected or placed within the said curtilage, exceed 25 square metres. There are already structures on the site which include a detached building used as a studio/office and two steel sheds.

8.4.4. The area of the proposed structure housing the garage boiler house and pergola/shade based on the drawings would be in excess of 160m² and the condition and limitation is clear in stating the total area of such structures constructed, erected or placed within the curtilage of a house shall not, taken together with any other such structures previously constructed, erected or placed within the said curtilage, exceed 25 square metres. This limitation applies to overall floor area of the structures and not a limitation to individual elements of whether they are under a single roof or a number of individual structures.

8.4.5. I would note that class 2 of the regulations does provide for a specific exemption for a boiler house, that there is no limitation in relation to height and floor area in relation to the boiler house but it is noted that the provision is as part of a heating system of a house, of a boiler house or fuel storage tank or structure subject to a condition and limitation that the capacity of an oil storage tank shall not exceed 3,500 litres. As it is specifically provided for in class 2 the limitations under class 3 may not specifically apply but class 3 does refer to a garage, store, shed or other similar structure in limiting the overall floor area. In this particular situation the boiler house is not a freestanding stand alone structure and the regulations do not require it to be but it is proposed to be part of an overall structure in excess of 160m². A boiler house of the height and area as a stand alone structure could be considered as exempt under class 2 but the clear intention of class 2 it would appear is the provision of a heating system in a dwelling and making provision for the structural elements required in the provision of the heating system including a chimney, flue and or boiler house. A boiler house as part of a larger structure which clearly does not comply with the

conditions and limitations of class 3 to constitute exempted development would not, I consider, be exempted development when considered in the context of tent, awning, shade or other object, greenhouse, garage, store, shed or other similar structure.

- 8.4.6. In relation to the placement of photovoltaic panels 12 square metres in area, class 2 (c) by way of exemption does provide for the placing or erection on a roof of a house, or within the curtilage of a house, or on a roof of any ancillary buildings within the curtilage of a house (this class does not include apartments) of a solar photo-voltaic and/or a solar thermal collector installation. There are 9 conditions and limitations stated. Based on the information and drawings submitted it would appear that photovoltaic panels can be provided which would meet the conditions and limitations. The issue arises however in relation to restrictions on exempted development stated in Article 9(1) and if it is proposed to erect the panels on a structure deemed not to be exempted development and if works proceeded in relation to the structure would the works be unauthorised development under Article 9(1) (viii) if the carrying out of such development would consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure. The exemption under class 2 (c) would therefore only apply where it occurs on a structure on which it is proposed to place the panels is itself authorised and exempt

8.5. Environmental Impact Assessment (EIA) Preliminary Examination

- 8.5.1. Development in respect of which an environmental impact assessment or appropriate assessment is required cannot be exempted development (Section 4(4) of the Planning and Development Act 2000 (as amended)). Schedule 5, Part 1 and Part 2 of the Planning and Development Regulations, 2001 (amended) sets out specified development for which EIA is mandatory and development which requires screening for EIA.
- 8.5.2. Having regard to the limited nature and scale of development and the absence of any significant environmental sensitivity in the vicinity of the site, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.
- 8.6. Appropriate Assessment

- 8.6.1. Having regard to nature and scale of the development and the nature of the receiving environment and the distance and lack of connections to the nearest European sites, it is concluded that no Appropriate Assessment issues arise as the 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 the construction of a 25 square metre garage, a 40 square metre boiler house, photovoltaic panels 12 square metres and an open pergola to the rear of a dwelling house is or is not exempted development: AND

WHEREAS John Hayden requested a declaration on this question from Westmeath County Council and the Council issued a declaration on the 22nd day of November 2022 stating that the matter was development and was not exempted development: AND WHEREAS John Hayden referred this declaration for review to An Bord Pleanála on the 24th day of November 2022: AND

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

- (a) Section 2(1) of the Planning and Development Act, 2000, as amended,
- (b) Section 3 of the Planning and Development Act, 2000,
- (c) Section 4 of the Planning and Development Act, 2000, as amended,
- (d) articles 6 and 9 of the Planning and Development Regulations, 2001, as amended,
- (e) Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (f) the planning history of the site,

AND WHEREAS An Bord Pleanála has concluded that:

- a) that the construction of a 25 square metre garage, a 40 square metre boiler house, photovoltaic panels 12 square metres and an open pergola building as

indicated to the rear of a dwelling house constitutes development as defined under section 3(1)(a) of the Planning and Development Act 2000 (as amended),

(b) it is not exempted development as it does not come within the scope of Classes 2 and 3 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001 (as amended) as the overall area of the structure exceeds the area specified in the conditions and limitations and the placing of the photovoltaic panels 12 square metres in area on such a structure which is not exempted development would not constitute exempted development,

(c) there are no exemptions provided for in the said Planning and Development Act, 2000 (as amended) and the Planning and Development Regulations, 2001 (as amended), and

(d) restrictions on exemptions provided for in Article 9 (1)(a)(viii) would apply it would appear that the installation of photovoltaic panels 12 square metres in area and carrying out of such development would be on an unauthorised and non-exempted structure.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (1) (a) of the 2000 Act (as amended), hereby decides that the construction of a 25 square metre garage, a 40 square metre boiler house, photovoltaic panels 12 square metres and an open pergola to the rear of a dwelling house 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.

Derek Daly
Planning Inspector

13th August 2024