



An  
Bord  
Pleanála

## Inspector's Report ABP-316296-23

### Question

Whether the siting of a timber shed is or is not development and is or is not exempted development.

### Location

Cloonkeen Townland, Castlerea, Co. Roscommon

### Declaration

Planning Authority

Roscommon County Council

Planning Authority Reg. Ref.

DED 541

Applicant for Declaration

Andrzej Szlag

Planning Authority Decision

Is development and is not exempted development

### Referral

Referred by

Andrzej Szlag

Owner/ Occupier

Andrzej Szlag

Observers

None

Date of Site Inspection

7<sup>th</sup> March 2023

**Inspector**

Ian Campbell

## 1.0 Site Location and Description

- 1.1. This case relates to a referral submitted under Section 5(3)(a) of the Planning and Development Act, 2000, as amended, where the Planning Authority has issued a declaration on a referral and this determination is now the subject of appeal.
- 1.2. The subject of this referral is located at Cloonkeen Townland, Castlerea, Co. Roscommon. The Mayo rail line runs to the south of the referral site. Access to the referral site is via a level crossing, which in turn connects to the N60 via a local access road (L-6555). An area of woodland/forest is located to the north of the referral site. A watercourse<sup>1</sup> runs along the northern boundary of the site.
- 1.3. The referral site accommodates a timber shed (the subject of this referral) and a stone dwelling. Part of the referral site is surfaced in hardcore. The referral site bound by a post and wire fence. A metal gate forms the entrance to the site.
- 1.4. The subject of this referral is a timber shed which is located to the rear/north of a stone structure which is used as a dwelling. The shed structure has a pitched roof (finished in felt) with a stated ridge height of 2.3 metres. Dimensions of the shed are stated as 3.66 metres (L) x 2.5 metres (W). The shed has an area of 9.15 sqm. The shed is placed on concrete blocks. A door and window are located on the west and north elevations respectively.
- 1.5. The stone structure, which the shed is located to the rear of, appears to have been recently refurbished. A corrugated metal roof appears to have been added recently in addition to a window, door and chimney. Part of the structure is unroofed.

## 2.0 The Question

- 2.1. The question that has been submitted in the referral is as follows:
  - Whether the siting of a timber shed is or is not development and is or is not exempted development.

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<sup>1</sup> The flow direction of this watercourse on EPA mapping is indicated as west to east.

## 3.0 Planning Authority Declaration

### 3.1. Declaration

On the 21<sup>st</sup> of February 2023, a request for a Declaration in accordance with Section 5 of the Planning and Development Act, 2000, as amended, on the above question was received by Roscommon County Council from Andrzej Szelag.

In accordance with Section 5(2)(a) of the Planning and Development Act, 2000, as amended, Roscommon County Council (RCC) issued a Declaration on the 20<sup>th</sup> of March 2023 that the subject of the referral, that being whether, the siting of a timber shed at Cloonkeen Townland, Castlerea, Co. Roscommon, is development and is not exempted development.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

The report of the Planning Officer includes the following comments;

- History of enforcement at the site is noted, and relates to the refurbishment of a stone structure; the placing of a caravan on the site; the creation of a hardstanding; the erection of a shed; and the use of dry toilet.
- The applicant stated in the application form that the use of the land/structure was agricultural however there is no evidence of agricultural activity on the site and the structures on the site do not have planning permission. The shed structure resembles a domestic shed and the lands are used for domestic purposes.
- The shed is considered to constitute development.
- The shed is not considered to fall under Class 3 or Class 9 of the Planning and Development Regulations, 2001, as amended, noting the non-agricultural use of the site and the unauthorised activity on the site.
- Noting the proximity of the site to Cloonchambers Bog SAC, c. 100 metres from the site, it is considered that the development could individually or in-

combination with other plans or projects be likely to have a significant effect on a European site.

- Appropriate Assessment Screening is attached to PA's report and notes that due to the limited information submitted there could be potential impact on Cloonchambers Bog SAC given the proximity of the development to the designated area. As a Stage 2 Appropriate Assessment is considered to be required, Article 9 (1) (a) (viiB) is considered to pertain.

#### 3.2.2. Other Technical Reports

None received.

## 4.0 Planning History

### 4.1. Subject Site

Correspondence from the PA refer to a referral (PA. Ref. DED 528) on the site for the construction of a tractor, machinery and produce barn, which the PA considered to be development and not exempted development. This referral was not indicated on RCC's Planning Portal.

The PA note a history of enforcement at the referral site (UDR2717 refers).

### 4.2. Referral History

I have undertaken a review of the referrals database in order to determine if there are any history cases that relate to development of the same form as that the subject of this case.

309911-21 – The question arose as to whether the construction of a farm storage shed is or is not development, and is or is not exempted development. There was an existing unauthorised shed on the site which the proposed structure was intended to replace. As the proposed shed was to be used for commercial purposes and not for agricultural use the provisions in relation to exemptions for agricultural structures (i.e. Class 9, of Part 3, Schedule 2) were deemed not to apply. The Inspector also examined relevant Article 9 restrictions in the event that the Board considered that Class 9 applied and concluded that should the existing shed not be removed from the site (for whatever

reason) that the proposed shed would result in the effective extension of the unauthorised structure and would come within the scope of Article 9(1)(a)(viii). The Board agreed with the Inspector's position in relation Article 9(1)(a)(viii), however based on the facts of this particular case noted that they could not be conclusive on the issue.

305315-19 – The question arose as to whether the construction of a domestic shed is or is not development and is or is not exempted development, having regard to the conditions attached to Reg. Ref. No. 17/392 (ABP15.249291). The Inspector concluded that the shed fell under the exemption provided by Class 3, Schedule 2, Part 1 of the Planning and Development Regulations 2001 (as amended), and also within Section 4 (1) (j) of the Planning and Development Act 2000 (as amended). The Boards Direction noted that the shed came under Class 3 but did not explicitly refer to Section 4 (1) (j).

302774-18 - The question arose as to whether an existing attic conversion, a rear extension and a domestic shed is or is not development and is or is not exempted development. The Inspector concluded that the shed fell under the exemption provided by Class 3, Schedule 2, Part 1 of the Planning and Development Regulations 2001 (as amended). The Boards Direction also concluded that the shed came under Class 3.

## **5.0 Policy Context**

### **5.1. Development Plan**

- 5.1.1. The relevant Development Plan is the Roscommon County Development Plan 2022 – 2028. The subject site is not subject to a specific land-use zoning in the Roscommon County Development Plan 2022 – 2028.
- 5.1.2. The subject site is not indicated as being subject to any specific objectives relating to the protection of views or prospects.

## 5.2. Natural Heritage Designations

- Cloonchambers Bog SAC (Site Code 000600) – c. 150 metres west.
- Cloomchambers Bog pNHA (Site Code 000600) – c. 150 metres west.

## 6.0 The Referral

### 6.1. Referrer's Case

The following is a summary of the main issues raised by the referrer in the submission to the Board.

- The applicant purchased the site with a derelict house on it with the intention of developing the house for habitation.
- The applicant has nowhere else to live.
- The shed is used to store tools.
- The shed would be exempt if the house was not derelict.
- The house was last resided in in the 1940's according to local knowledge.
- There are other illegal developments in the area.

### 6.2. Planning Authority Response

None received.

### 6.3. Observations

None received.

## 7.0 Statutory Provisions

### 7.1. Planning and Development Act, 2000

**Section 2** Interpretation

(Agriculture)

*“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.*

(Habitable house)

*“habitable house” means a house which—*

- *(a) is used as a dwelling,*
- *(b) is not in use but when last used was used, disregarding any unauthorised use, as a dwelling and is not derelict, or*
- *(c) was provided for use as a dwelling but has not been occupied;*

(Works)

*Works includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.*

**Section 3(1) (Development)**

*(a) 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 (1) (Exempted Development)**

*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.*



- (j) development consisting of the use of any structure or other land within the curtilage of a house for any purpose incidental to the enjoyment of the house as such.

**Section 4 (4)** (Environmental Impact Assessment or Appropriate Assessment)

*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.*

**Section 32 (obligation to obtain permission)**

This section has a general obligation to obtain permission in respect of any development of land not being exempted development, and in the case of development not authorised for the retention of unauthorised development.

**Section 177U (9)** (Appropriate Assessment)

*In deciding upon a declaration or a referral under section 5 of this Act a planning authority or the Board, as the case may be, shall where appropriate, conduct a screening for appropriate assessment in accordance with the provisions of this section.*

**7.2. Planning and Development Regulations, 2001**

**Article 6 (1)** states the following:

*Subject to Article 9 the 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 conditions and limitations specified in Column 2 of the Act opposite the mention of that Class in the said Column 1.*

**Article 9 (1)(a)** provides that development to which Article 6 relates shall not be exempted development for the purposes of the Act, if the carrying out of such development would,

*(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.*

*(viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use.*

**Class 3**, Part 1, Schedule 2 of the Planning and Development Regulations 2001, as amended,

*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 the following conditions and limitations;

*1. No such structure shall be constructed, erected or placed forward of the front wall of a house.*

*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.*

*3. The construction, erection or placing within the curtilage of a house of any such structure shall not reduce the amount of private open space reserved exclusively for the use of the occupants of the house to the rear or to the side of the house to less than 25 square metres.*

*4. The external finishes of any garage or other structure constructed, erected or placed to the side of a house, and the roof covering where any such structure has a tiled or slated roof, shall conform with those of the house.*

*5. The height of any such structure shall not exceed, in the case of a building with a tiled or slated pitched roof, 4 metres or, in any other case, 3 metres.*

*6. The structure shall not be used for human habitation or for the keeping of pigs, poultry, pigeons, ponies or horses, or for any other purpose other than a purpose incidental to the enjoyment of the house as such.*

**Class 9**, Part 3, Schedule 2 of the Planning and Development Regulations 2001, as amended,

*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.*

Subject to the following 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.*

## **8.0 Assessment**

8.1. The purpose of this referral is not to determine the acceptability or otherwise of the proposal but rather whether or not the matter in question constitutes development, and if so falls within the scope of exempted development within the meaning of the relevant legislation.

8.2. I have examined all the documentation on the file, inspected the site, and have had regard to the legislative provisions set out in both the Planning and Development Act, 2000, as amended, and the Planning and Development Regulations, 2001, as

amended. I consider that the issues raised in the referral can be assessed under the following headings.

- Whether the proposal set out in paragraph 2.1 of this report, and comprising a timber shed, is or is not development, and is or is not exempted development.
- Whether the works can be considered exempted development under the provisions of the Planning and Development Act, 2000 as amended, or under the Planning and Development Regulations, 2001, as amended.

### **8.3. Is or is not development**

- 8.3.1. Works are defined as including 'any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal'. The proposal consists of a timber shed. No information has been provided in relation to whether the shed was assembled/constructed on site or whether it was delivered in an assembled state. I note that the shed sits on concrete blocks which form a base for the structure. In my opinion the creation of the base for the structure, which entailed the laying of concrete blocks which are joined in a cement bond, comprises 'an act or operation of construction'. As the base forms an integral part of the structure (akin to foundation) I consider the proposal to be 'works' as it entails an act of construction.
- 8.3.2. In accordance with Section 3(1) of the Planning and Development Act, 2000 as amended, 'works' become development when they are carried out on, in, over or under land and therefore the works which are the subject of this referral are considered to comprise development.

### **8.4. Is or is not exempted development**

- 8.4.1. Section 4 of the Planning and Development Act, 2000, as amended, sets out certain forms of development which shall be exempted development. Additionally, Schedule 2 of the Planning and Development Regulations, 2001, as amended sets out forms of development which are exempted development within specific context.
- 8.4.2. The application form refers to the use of the lands as 'agriculture'. Having inspected the site, and noting the interpretations contained in Section 2 of the Planning and

Development Act, 2000, as amended, I do not consider the land on which the shed is located to be used for the purpose of agriculture. Based on the information contained in the referrer's submission to the Board the shed is used for the storage of tools. The exemptions provided in Class 9, Part 3, Schedule 2 of the Planning and Development Regulations 2001, as amended, would not therefore confer an exemption on the shed.

- 8.4.3. Class 3, Part 1, Schedule 2 of the Planning and Development Regulations 2001, as amended, provide that *'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'*, is exempted development subject to specific conditions and limitations. Noting the context of the site and the uses thereon I consider this provision to be the most relevant.
- 8.4.4. To avail of the exemption provided under Class 3 the shed must be located within the curtilage of house. I note that the applicant states in the application form that when he purchased the site the house on the site was derelict, and that based on information obtained from people in the area that the house was resided in up until the 1940's. I note that the planning status of the refurbishment works which have been carried out to the dwelling has been partially relied upon by the PA in reaching the conclusion that the shed is not exempted development. Further consideration could equally be given to the question as to whether the use of the dwelling was abandoned, prior to being reoccupied on foot of the refurbishment works. I submit to the Board however that an examination of these issues would be a different question to that posed in this referral, which relates solely to whether the shed is development, and is exempted development. Regarding any issue of unauthorised development at the subject property, I note that the purpose of An Bord Pleanála in relation to Section 5 referrals is to ascertain what is and is not development and if development, whether that development is exempted development or not. It is not the purpose of the Board to review planning permissions granted under Section 34, other than through the appeals system. An Bord Pleanála does not have a role in relation to unauthorised development, which falls under the remit of the planning authority.
- 8.4.5. Having reviewed the drawings submitted of the shed, and specifically its dimensions and material finishes, and noting that it is located within the curtilage of a house, that

it is not located forward of the front wall of the house, does not reduce the area of private open space reserved for the house to less than 25 sqm, does not exceed a height of 3 metres, and its incidental use to the enjoyment of the house, I consider that the shed comes within the scope of the exempted development provisions of Class 3, Part 1, Schedule 2 of the Planning and Development Regulations, 2001, as amended.

8.4.6. I consider that the development which is the subject of this referral is exempted development.

## 8.5. Restrictions on exempted development

8.5.1. The restrictions provided in Article 9 of the Planning and Development Regulations, 2001, as amended, relate to Article 6 of the Planning and Development Regulations, 2001, as amended, which in turn refers to classes of development specified in Part 1, Schedule 2 of the Planning and Development Regulations, 2001, as amended.

8.5.2. Article 9(1)(a)(viiB) of the Planning and Development Regulations, 2001, as amended, provides that development to which Article 6 relates shall not be exempted development for the purposes of the Act if the carrying out of such development would 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. This is addressed below at paragraph 8.6 and in summation I have concluded that likely significant effects are excluded and therefore Appropriate Assessment (stage 2) (under Section 177V of the Planning and Development Act 2000) is not required.

8.5.3. Article 9(1)(a)(viii) of the Planning and Development Regulations, 2001, as amended, provides that development to which Article 6 relates shall not be exempted development for the purposes of the Act if the carrying out of such development would consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use. As addressed above An Bord Pleanála does not have a role in relation to unauthorised development, which falls under the remit of the planning authority. In any event, the development which comprises a shed would not in my opinion fall under 'an extension, the alteration, the repair or the renewal of a structure'.

## 8.6. Appropriate Assessment – Screening

- 8.6.1. I have considered the proposed development at Cloonkeen Townland, Castlerea, Co. Roscommon in light of the requirements S177U of the Planning and Development Act 2000 as amended.
- 8.6.2. The subject site is located c. 150 metres west of Cloonchambers Bog SAC (Site Code 000600)<sup>2</sup>. A watercourse is located c. 10 metres north of the shed. This watercourse flows from west to east, i.e. in the opposite direction of Cloonchambers Bog SAC
- 8.6.3. The proposed development comprises a timber shed. The PA considered that given the extent of information submitted with the referral that a Stage 2 Appropriate Assessment would be required.
- 8.6.4. Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment because there is no conceivable risk to any European Site. The reason for this conclusion is as follows;
- The nature and small scale of the development, specifically noting that the shed is comprised of timber and that its erection/placing on the site would not have entailed the pouring of concrete or activities which would have generated significant emissions, e.g. dust, noise or surface water run-off.
  - The location of the development site and distance from nearest European site(s), and the lack of connections between the development site and European sites, in particular noting that the watercourse located adjacent to the site flows in the opposite direction of Cloonchambers Bog SAC.
- 8.6.5. I conclude that on the basis of objective information, that the proposed development would not have a likely significant effect on any European Site either alone or in combination with other plans or projects.

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<sup>2</sup> The QI for Cloonchambers Bog SAC area – Active raised bogs [7110]; Degraded raised bogs still capable of natural regeneration [7120]; and, Depressions on peat substrates of the Rhynchosporion [7150].

8.6.6. Likely significant effects are excluded and therefore Appropriate Assessment (stage 2) (under Section 177V of the Planning and Development Act 2000) is not required.

## 8.7. EIA - Screening

8.7.1. The works which are the subject of this referral do not fall within a class of development set out in Part 1 or Part 2 of Schedule 5 of the Planning and Development Regulations, 2001, as amended, and therefore is not subject to EIA requirements.

## 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 siting of a timber shed at Cloonkeen Townland, Castlerea, Co. Roscommon, is or is not development, and is or is not exempted development.

**AND WHEREAS** Andrzej Szlag requested a declaration on this question from Roscommon County Council who issued a declaration on the 20<sup>th</sup> day of March 2023 stating that the matter was development and was not exempted development:

**AND WHEREAS** Andrzej Szlag referred this declaration for review to An Bord Pleanála on the 12<sup>th</sup> day of April 2023:

**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) Article 6(1) and Articles 9(1)(a)(viiB) and 9(1)(a)(viii) of the Planning and Development Regulations, 2001, as amended,



- (c) Class 3 of Part 1 of the Second Schedule to the Planning and Development Regulations, 2001, as amended,
- (d) Class 9, Part 3, of the Second Schedule to the Planning and Development Regulations, 2001, as amended,
- (e) The nature and extent of the works.
- (f) The documentation on file, including the submission of the referrer and the documentation provided by the Planning Authority.

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

- (a) The construction of the subject shed constitutes the carrying out of “works” and is therefore “development” within the meaning of Section 3 of the Planning and Development Act, 2000, as amended;
- (b) The subject shed is located within the curtilage of a dwelling, and comes within the scope of Class 3 of Part 1 of the Second Schedule to the Planning and Development Regulations, 2001, as amended, and complies with the conditions and limitations to which this Class is subject;
- (c) the works which are the subject of this referral would not require an appropriate assessment as they would not be likely to have a significant effect on the integrity of a European site, and therefore the restriction on exemptions under Article 9(1)(a)(viiB) of the Planning and Development Regulations, 2001, as amended, do not apply in this instance.

**NOW THEREFORE** An Bord Pleanála, in exercise of the powers conferred on it by section 5 of the Planning and Development Act, 2000 Act, as

amended, hereby decides that the sitting of a timber shed is development and is exempted development.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

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Ian Campbell  
Planning Inspector

22<sup>nd</sup> August 2024