



An
Bord
Pleanála

Inspector's Report ABP-317633-23

Question

Whether the re-activation of the use of the existing entrance to a former residential dwelling is or is not development or is or is not exempted development.

Location

Ballycloona, Carrick-on-Suir, Co. Tipperary.

Declaration

Planning Authority

Tipperary County Council

Planning Authority Reg. Ref.

S5/23/58

Applicant for Declaration

Walter Power

Planning Authority Decision

Is not exempted development

Referral

Referred by

Walter Power

Owner/ Occupier

Walter Power

Observer(s)

None

Date of Site Inspection

16th of February 2024

Inspector

Angela Brereton

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1.0 Site Location and Description

- 1.1. The subject referral site is at Ballycloona, to the north of Carrick on Suir, Co. Tipperary and c. 8.2km to the northeast of the village of Kilsheelan. The site is adjacent to the N-76 (National Road) and is to the north of the junction with the R696 (from Carrick on Suir). There is a view of the site to the north of this junction.
- 1.2. There is an existing old cottage on site that has been partially restored (re-roofed). It does not appear that the house i
- 1.3. s habitable, works have taken place but were not on-going on the day of the site visit. There is an access onto the N-76 that now has with gated access (field gate not recessed). It is noted that this is a fast busy route and that it did not appear in the interests of road safety to stop on the hard shoulder/grass verge in front of the site. The site is within the 80km/h speed limit.
- 1.4. The Planner's Report notes that as well as being a national road, this is a designated Strategic Road as defined in the Tipperary County Development Plan 2022.

2.0 The Question

- 2.1. Whether the re-activation of the use of the existing entrance to a former residential dwelling is or is not development or is or is not exempted development, on lands at Ballycloona, Carrick on Suir, Co. Tipperary.

3.0 Request to the Planning Authority

- 3.1. A Request under Section 5 of the Planning and Development Act 2000, as amended was made to the Planning Authority on behalf of Walter Power, on the 12th of June 2023 and is summarised under the following headings:

Background

- The application for a section 5 stems from a warning letter issued by Tipperary County Council, under Ref.no.TUD-23-10 to Walter Power and note

is had of a subsequent meeting held with the representative of the Planning Authority on the 8th of May 2023.

- They submit that the biggest issue that the Planning Authority have is their view that the use of the existing entrance serving the cottage has been abandoned and that therefore the use of this entrance would be treated as if it were a new access onto a regional road which would not be looked on favourably from a planning perspective.
- Walter Power purchased this property in 2006 with the sole intension of 'doing up' the property for one of his children or renting it out. That the site area is 0.49ha and doesn't form part of any other holding.
- The previous owner was Patrick Maher (Deceased), who was living in the property up to the point of purchase. The house is a pre-1963 property with no planning history.
- There were title issues to such an extent that the property wasn't fully registered until 2008.
- They note that the Referrer put a charge against the property in 2011 with the ACC bank.
- He registered the septic tank in 2013.
- He erected a chainlink fence to block the entrance in 2009. The purpose of this was to prevent illegal dumping at the site.
- The Referrer was unable to finance the renovations of the cottage at that time due to the financial turndown, but in no way should be construed as abandoning the property. He attended the property to keep it safe and had horses on the land on a number of occasions.

Abandonment

- This is not defined in either the Planning and Development Act or the Regulations. Reference is had to the Yvonne Scannell publication 'Environment and Planning Law', which suggest four tests for abandonment.
- These are a) the owners intention, b) the period of discontinuation, c) any intervening uses, and d) the physical condition.

- The cottage has not been abandoned because it is the intention of the owner to refurbish the property and details are given.
- The cottage was last occupied in 2006 and was purchased with the intention of doing it up for domestic purposes, not to abandon it.
- Therefore, the use of the entrance for domestic purposes has not been abandoned.
- The construction of a chainlink fence was a temporary measure to protect the property until such time as the Referrer was in a position to finance the refurbishment.
- The period of discontinuance of the entrance was from c. 2010 to 2023. This was necessary to protect the property and should not be construed as an abandonment of use.
- There have been no intervening uses or any changes to the physical appearance of the property.
- The use of a domestic entrance comes within the scope of Section 4(1)(j) of the Planning and Development Act 2000, which states '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'.

Conclusion

The erection of a chainlink fence does not render the use of the entrance abandoned. The use of the entrance is not development and is exempt development.

4.0 **Planning Authority Declaration**

4.1. **Declaration**

On the 6th of July 2023, Tipperary County Council, determined that that:

The works, the reactivation of the use of the existing entrance to a former residential dwelling at Ballycloona, Carrick on Suir, Co. Tipperary constitute development and are not exempted development.

4.2. Planning Authority Reports

The Planner noted the Section 5 Referral made to the Council and the Question asked including relevant to the works carried out (as noted in the Question above). Their response included the following:

Background

- They had regard to the site location, noting it is adjacent to the N-76 (National Road), and to the refurbishment of the existing cottage.
- As well as being a national road, this is a designated Strategic Road as defined in the Tipperary CDP 2022.

Legislative Context

- They have regard to the relevant provisions of the Planning and Development Act 2000 (as amended) and the Planning and Development Regulations 2001 (as amended).

Assessment

- They note works proposed and that for the purpose of this Declaration they provided that the question is as follows:

Does the reactivation of the use of an access to an existing cottage, at Ballycloona, Carrick on Suir, Co. Tipperary, constitute development and if so does it constitute exempted development.

- When considering the question of development, the condition of the subject site and the issue of non-use are important issues.
- They refer to a review of Google Streetview and include photos which shows views of the site in 2009, 2011, 2017 and 2019.
- They provide that as illustrated the dwelling in 2009 was in poor condition, and by 2011 the entrance had been closed off and by 2019, the site was overgrown.
- At a point in early 2023, the entrance was reopened and works commenced on restoring the dwelling on site (Figure 6 refers).

- This Declaration relates to the reactivation of the use of the original entrance which served a residential property on this site. The querist has not sought a declaration as to whether the restoration of the house on site constitutes exempted development.

Abandonment

- The central question in respect of this declaration is abandonment. Should it be determined that the residential use of the structure on site was abandoned, it follows that the use of the access to facilitate entry to the site was also abandoned.
- The reactivation of its use would therefore constitute a material change of use in the land.
- They note the Referrers case in support of the site and the entrance not been abandoned.
- They refer to case law and some of the suggested tests of abandonment relevant to this issue (Yvonne Scannell, 1995).
- The site was last occupied in 2006 and the entrance was closed in 2009. It is not sufficient for the owner to simply not have the intention to abandonment.
- They refer to the case of Dublin City Council -v- Tallaght Block Company and the issue of abandonment.
- They consider that having regard to the background details as noted, that the reuse of the development including the entrance constitutes abandonment.
- The reactivation/reuse of the entrance cannot rely on the previous residential use. As such the entrance must be reassessed de novo.

Is it exempted development

- The exemption provided by Class 5 of Schedule 2 Part 1 of the Planning and Development Regulations 2001 does not apply as it relates to works within the curtilage of a dwelling. Not bounding the site.
- No details of any form of gate were provided. They also provide that the provisions of Class 9 of Schedule 2 Part 1 of the Planning and Development Regulations 2001 (as amended).

- Notwithstanding the provisions on exempted development as set out in Article 9(1)(a), (ii and iii) were noted. Given that the works would result in an entrance onto a road in excess of 4m in width, the creation of an entrance at this point cannot be considered exempted development.

Regard to AA and EIA

- They considered that the proposed development would not be likely to have a significant effect individually, or in-combination with other plans and projects on the Natura 2000 network and AA is not therefore required.
- The proposed development has been subject to a preliminary examination to determine the requirement for EIA, which is not required.

Conclusion

- Having considered the information received the Planning Authority has concluded that the existing residential use on the site has been abandoned.
- The residential use cannot be relied upon so as to re-activate/resume the use of the entrance to serve that property in the absence of a future grant of planning permission.
- The reuse of the entrance therefore must be considered de novo.
- As the residential use of the site has been abandoned, the provisions of Class 9 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 are applicable.
- The restrictions on exempted development as set out under Article 9(1)(a)(ii) apply as the entrance onto a public road the surfaced carriageway of which exceeds 4m in width.
- They determined that the works, the reactivation of the use of the existing entrance to a former residential dwelling constitute development and are not exempted development.

4.3. Other Technical Reports

None noted on file.

5.0 Planning History

The Planner's Report notes that there is no valid planning history file on site, but that there is an enforcement file Ref. TUD-23-013, open in respect of the renovation of the cottage and the use of the entrance on site.

6.0 Policy Context

6.1. Tipperary County Development Plan 2022-2028

Section 12 deals with Sustainable Transport.

Figure 12.2 provides a Map of the County showing the Strategic and Non-Strategic Roads. The N76 is a Strategic National Primary route.

Section 12.5.2 refers to Safeguarding the Strategic Road Network.

Section 12.6 provides the Planning Policy.

Policy 12.4 seeks to: *Maintain and protect the safety, capacity and efficiency of Tipperary's roads network and associated junctions in accordance with the Spatial Planning and National Roads Guidelines for Planning Authorities, (DECLG, 2012) and the Trans-European Networks Regulations and to avoid the creation of additional access points to national roads to which speed limits greater than 60kmh apply.*

6.2. Natural Heritage Designations

The subject site is located c.2.6kms from the Lower River Suir SAC, c.14.6kms from the River Barrow and River Nore SAC and c.14.9kms from the Comeragh Mountains SAC.

7.0 The Referral

7.1. Referrer's Case

Will McGarry & Associates has made a Referral on behalf of the owner/occupier Walter Power, for a formal declaration to the Board under Section 5 (3)(a) of the

Planning and Development Act 2000 (as amended) and the Planning and Development Regulations 2001 (as amended). This included the following:

General Observations

- In relation to the Section 5 application the original submission still stands. It is contended that the closing of the entrance was a temporary measure to protect the dwellinghouse and site from vandalism and illegal dumping. It was carried out by the owner until he was able to properly refurbish the property.
- As stated in his letters he always accessed the site during the dormant period and never intended to abandon the property.
- They have been advised by the Planning Authority that should a planning application be made for a new entrance, that it will be refused based on the current County Development Plan to protect the carrying capacity of the Regional Road.
- This would then render the situation whereby the owners would have to park on the side of the road, which would be wholly unsafe from a traffic perspective.
- They refer to the Dublin City Council-v-Tallaght Block Company relative to the issue of abandonment and note that the critical element is that the Referrer has always intended to resume the residential use.

Conclusion

- They submit that the Referrer has demonstrated that he always intended to resume the use of the dwelling house and for reasons outside his control was unable to do so and that the Board should overturn the refusal by the Planning Authority and that the use of the existing entrance is exempted development.
- Attachments include a letter from the Referrer providing a history of his ownership of the property.

7.2. Planning Authority Response

Their response to the Referral to the Board includes the following:

- The Council is satisfied that the decision to determine the works proposed to be development and not exempted development for the reasons set out in the original planning report.
- Given that the Planning Authority is satisfied that the use of the land for residential purposes had been abandoned, it follows that the use of the entrance to facilitate access to the dwelling was also abandoned.
- Its reuse constitutes development and is not considered to be exempted development for the reasons set out in the original planning report.
- That the Board should uphold their decision to determine the works proposed to be development and not exempted development and in the interest of the proper planning and development of the area.

8.0 Statutory Provisions

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

Section 2(1) - Interpretation

In this Act, except where the context otherwise requires –

- “*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;
- “*house*” means a building or part of a building which is being or has been occupied as a dwelling or was provided for use as a dwelling but has not been occupied, and where appropriate, includes a building which was designed for use as 2 or more dwellings or a flat, an apartment or other dwelling within such a building;
- “*structure*” as any building, structure, excavation or other thing constructed or made on, in or under any land, or part of a structure so defined, and-

(a) where the context so admits, includes the land on, in or under which the structure is situate

- “use”, in relation to land, does not include the use of the land by the carrying out of any works thereon.
- “works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal.

Section 3(1) states that:

- In this Act, ‘development’ means, except where the context otherwise requires, the carrying out of works on, in, over or under land or the making of any material change in the use of any structures or over land’.

Section 4(1) of the Act sets out various forms and circumstances in which development is exempted development for the purposes of the Act. Of note this includes:

Section 4(1)(h)

- Development consisting of the carrying out of works for the maintenance, improvement or alteration of any structure, being works which only affect the interior of the structure or which do not materially affect the external appearance so as to render it inconsistent with the character of the structure or neighbouring structures.

Section 4(1)(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(2) of the Act notes that the Minister may, by regulations, provide for any class of development to be exempted development. The main regulations made under this provision are the Planning and Development Regulations 2001, as amended.
- 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.

Section 5

- This section provides the details of the process of a declaration and referral on development and exempted development and facilitates a review by An Bord Pleanála on the determination.
- Section 5(1) provides in summary that any person may seek a declaration on a referral from the planning authority.
- Section 5(3)(a) Where a declaration is issued under this section, any person issued with a declaration under subsection (2)(a) may, on payment to the Board of such fee as may be prescribed, refer a declaration for review by the Board within 4 weeks of the date of the issuing of the declaration.

Part XAB – Appropriate Assessment

Section 177U refers to Screening for AA by the competent authority.

— (1) A screening for appropriate F930[assessment of a draft Land use plan or application for consent for proposed development] shall be carried out by the competent authority to assess, in view of best scientific knowledge, if that Land use plan or proposed development, individually or in combination with another plan or project is likely to have a significant effect on the European site.

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

Article 6(1) Exempted Development

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.

Article 9 Restrictions on exemption.

(1) Development to which article 6 relates shall not be exempted development for the purposes of the Act. The Restrictions on Exemption are listed and these include:

- (i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act;
- (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,
- (iii) endanger public safety by reason of traffic hazard or obstruction of road users
- (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.

Schedule 2 Part 1 Exempted Development – General

<p><i>Development within the curtilage of a house</i></p> <p>CLASS 1</p> <p>The extension of a house, by the construction or erection of an extension (including a conservatory) to the rear of the house or by the conversion for use as part of the house of any garage, store, shed or other similar structure attached to the rear or to the side of the house</p>	<p>1. (a) Where the house has not been extended previously, the floor area of any such extension shall not exceed 40 square metres.</p>
<p>CLASS 5</p> <p>The construction, erection or alteration, within or bounding the curtilage of a house, of a gate, gateway, railing or wooden fence or a wall of brick, stone, blocks with</p>	<p>1. The height of any such structure shall not exceed 2 metres or, in the case of a wall or fence within or bounding any garden or other space in front of a house 1.2metres.</p>

<p>decorative finish, other concrete blocks or mass concrete.</p>	<p>2. Every wall other than a dry or natural stone wall bounding any garden or other space shall be capped and the face of any wall of concrete or concrete block (other than blocks with decorative finish) which will be visible from any road, path or public area, including public open space, shall be rendered or plastered.</p> <p>3. No such structure shall be a metal palisade or other security fence.</p>
<p><i>Sundry Works</i> CLASS 9 The construction, erection, renewal or replacement, other than within or bounding the curtilage of a house, of any gate or gateway.</p>	<p>1. The height of any such structure shall not exceed 2 metres</p>

Note I have only included the limitations on Exemption that maybe of relevance.

8.3. Case Law

The Referrer makes reference to a legal case, which they consider to be of relevance. In summary this is noted as follows:

- Dublin County Council -V-Tallaght Block Company

This Judgement was delivered on the 17th day of May 1983, by Hederman J. This concerns unauthorised development and abandonment of use. As noted by the Referrer this includes:

"Where a previous use of land had been not merely suspended for a temporary and determined period, but had ceased for a considerable time, with no evidenced intention of resuming it at any particular time, the Tribunal

of Fact was, entitled to find that the previous use had been abandoned, so that when it was resumed the resumption constituted a material change of use".

A copy of this legal judgment is included in the Appendix to this Report.

9.0 Assessment

9.1. Introduction

- 9.1.1. The purpose of a referral is not to determine the acceptability or otherwise of the subject matter in respect of 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, within the meaning of the relevant legislation. The onus of proof is on the party seeking to prove the exemption, and the development in question must fall clearly and unambiguously within the terms of the exemption claimed.
- 9.1.2. It should be stated at the outset, that this is not a planning application under consideration. Reference is had to the Referrer rather than the Appellant. The planning merits as to whether or not the development should take place is not the basis on which to determine the referral.

9.2. Is or is not development

- 9.2.1. Section 3 (1) of the Planning and Development Act, 2000 (as amended) states that development "means, except where the context otherwise requires, the carrying out of works on, in, over or under land or the making of any material change in the use of any structures or over land".
- 9.2.2. I would note that works have taken place to the original dwellinghouse, which currently does not appear to be habitable (2009 photo shows the difference and it is noted that re-roofing and additional roofing on what appeared to have been a flat roofed side element has taken place). This has changed the external appearance and in this respect regard is had to Section 4(1)(h) of the Planning and Development Act 2000 (as amended).

9.2.3. The Planning Authority Report has regard to photographs and noted that at a point in early 2023, the entrance was reopened and works commenced on restoring the dwelling on site. On my site visit, I viewed that such works had taken place. In this case I would consider that as the entrance has been reactivated and fencing and a gate erected that works have occurred and that therefore development has taken place.

9.2.4. However, any refurbishment works to the original dwelling are not the subject of the current Referral which refers to the reactivation of the existing entrance. In addition, it must be noted that, if there is any unauthorised development that, planning enforcement is a matter for the planning authority, and does not fall within the jurisdiction of the Board.

9.3. **Is or is not exempted development**

9.3.1. Under the Irish planning system, development can lawfully be carried out in either of the following circumstances:

- In accordance with the terms of the planning permission granted for it; or
- In the case of an exempted development, without planning permission but in accordance with the terms of the exemption.

9.3.2. Article 9(1)(a)(i) of the Regulations states that development to which Article 6 relates shall not be exempted development for the purposes of the Act if the carrying out of the development would contravene a condition attached to a permission issued under the Act or if it would be inconsistent with any use specified in a permission under the Act.

9.3.3. In this case as noted in the Planning History Section, the original house was built pre-1963 and there is no planning history relative to this site.

9.3.4. Section 9(1)(a) also refers to the following which are of note:

- (iv) 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,
- (v) endanger public safety by reason of traffic hazard or obstruction of road users.

9.3.5. In this case as noted on the Google street view photographs in the Planner's Report, there appears to have been no defined vehicular entrance onto the N76 (2009 photo relates). It has not been shown that there was ever a defined and gated vehicular entrance to serve this pre-1963 cottage, which is set very close to the road. It appears from the 2009 photograph that a vehicle may have just pulled in front off the main road, but as to whether there was previously a gated vehicular entrance in this location appears to be questionable. This is a fast busy national primary road, and speed limits on this stretch are 80kph. It is also to the north of and proximate to the junction with the R696. These roads are not local or county roads and considerably exceed 4m in width.

9.3.6. As noted in Section 12 of the Tipperary CDP 2022-2028 the N76 is a Strategic National Primary route. In summary Policy 12.4 seeks to maintain and protect the safety, capacity and efficiency of the county road networks and avoid the creation of additional access points to national roads with speed limited greater than 60kph. That details on any previous vehicular entrance to the site has not been documented nor submitted with this referral. I would consider that the creation, widening or reactivation of any former vehicular entrance to serve this pre 1963 former dwelling would endanger public safety by reason of traffic hazard.

9.4. **Abandonment of use**

9.4.1. Based on case law some suggested tests of abandonment relevant to this issue are referred to in 'Environmental and Planning Law in Ireland' (Yvonne Scannell, 1995) i.e:

- The intention of the owner and/or occupier to abandon or not abandon.
- The period during which the use was discontinued. The longer the period the more likely the use is to be abandoned.
- Whether or not there have been any intervening issues.
- The physical condition of the land or structure.

9.4.2. As noted in the Planning Authority Report, they consider that having regard to the history of the site, the use/occupation of the house and likewise the entrance had been abandoned. They include a number of photographs from Google Maps (dated

2009, 2011, 2017, 2019) in support of this. They provide that the reactivation of the entrance constitutes development and a material change of use.

- 9.4.3. The Referrer does not agree with this and contends that the closing of the entrance was a temporary measure to protect the dwellinghouse and site from vandalism and illegal dumping. That it was carried out by the owner until he was able to properly refurbish the property. That as stated in the documentation submitted that the Referrer (owner of the site) has always accessed the site during the dormant period and never intended to abandon the property. This notes that the house had been used for habitable purposes by the former owner until 2006, when it was purchased by the Referrer. It appears that it has not been occupied since 2006, and that renovations have been undertaken at the cottage since c.2023.
- 9.4.4. The Request to the Council noted that the period of discontinuance of the use of the entrance was from c.2010 to 2023 and that this should not be construed as an abandonment of use. It is also noted that during this period fencing was erected to close off the site. Therefore, it would appear that the use of the entrance has been abandoned for a period of c.13 years.
- 9.4.5. The Referrer considers that the Referral should come within the exemption provided by Section 4(1)(j) of the said Act which states: *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*. I would note that the question raised in the Referral is relative to the reactivation of the entrance, which would imply that it has not been in continuous use for some time. I would consider that having viewed the site and had regard to the documentation submitted by both the Council and the Referrer, that in view of the time period that had lapsed and the fact that the house was not in habitable use and the site was fenced off and the access was no longer in use, that the issue of abandonment is of note in this case. I would concur with the Council that the habitable use of the cottage and the entrance have been abandoned and the resumption of an entrance in this context would constitute a material change of use.

9.5. Restrictions on exempted development

Schedule 2, Part 1, Class 5 and Class 9 of the Planning and Development Regulations (as amended)

- 9.5.1. As has been noted in the Statutory Provisions section above, Class 5 is included for *development within the curtilage of a house* and it refers to the construction, erection or alteration of a gate or gateway within or bounding the curtilage of the site.
- 9.5.2. Class 9 concerns *Sundry Works* and is relevant to the construction, erection, renewal or replacement other than within or boundary the curtilage of a house of any gate or gateway. Therefore, these classes are relevant to two different scenarios for gated entrances i.e within or not within the curtilage of the site.
- 9.5.3. On site I noted that a metal field gate type structure has been erected and looking at the photographs this appears to be more recent. Documentation has not been submitted showing the full extent of the curtilage of the house or describing its gated access. However, I would note that the Referral concerns the reactivation of an entrance and not the erection of a gate, so I would not consider either of these Classes to be relevant in this instance.

9.6. Regard to Precedent cases

- 9.6.1. While there are no Board decisions relating directly to the question raised in this Referral, there are nevertheless some precedent type cases which while they arise from different scenarios, raise a few similar type issues and some of these are noted below:

ABP-304512 - A question arose as to '*whether the erection of an extension of circa 29 square metres, the erection of a boiler house, the keeping or storing of a caravan or campervan within the curtilage of a house and the replastering of existing masonry in lime mortar to match original finish of this house, at Ballagh, Newtownforbes, County Longford is or is not development or is or is not exempted development.*'

The Board decided in summary (with the exception of the replastering works) that the said works are development and are not exempted development.

It is of note that the Board's conclusion included:

(b) the existing cottage structure on the site, in respect of which the works are proposed and within whose curtilage the keeping of the caravan or campervan is proposed, is not in residential use and, on the basis of the documentation submitted (which indicated that it ceased to be used/inhabited in the 1980's), there is no evidence on file of any residential use of this cottage structure for a significant period of time. The Board is, therefore, satisfied that the residential use of this structure has been abandoned, and the resumption of such residential use of the subject building would now constitute a change of use that is material, having regard to the potential for consequences in planning terms, including the potential for implications in terms of wastewater, the provision of services in an unzoned, unserviced rural area, and the potential for the intensification of use of the local road fronting the site, and would, therefore, constitute development, which development does not come within the scope of any of the legislative provisions for exempted development,

ABP – 308807– A question arise as to ‘ *Whether the restoration of the previously permitted pre 1963 dwelling to its previous condition at Somerton Lane/ Lower Lucan Road, Strawberry Beds, Dublin 15 is or is not development or is or is not exempted development*’.

The Board decided in summary that the said works are development and are not exempted development.

It is of note that the Board’s conclusion included:

(c) The existing structure on the site, in respect of which the restoration works are proposed, is not in residential use and, on the basis of the documentation submitted, there is no evidence on file of any residential use of this structure including in recent times, or for a significant period of time, and the resumption of such residential use of the subject building which is now in a derelict condition, would now constitute a change of use that is material, having regard to the potential for consequences in planning terms, including the potential for implications in terms of servicing the site including wastewater, the potential for the intensification of use of

the access and the local road network in the vicinity and the impact on visual amenity in this sensitive area would, therefore, constitute development, which development does not come within the scope of any of the provisions for exempted development, as set out in the Planning and Development Regulations, 2001 (as amended); and..

ABP-302930 – A question arose as to whether the refurbishment of a timber house and associated infrastructure and entrance at The Chalet, Furbo Hill, Spiddal, County Galway is or is not development or is or is not exempted development.

The Board decided that the refurbishment of a timber house and associated infrastructure is development and is not exempted development and the works to the entrance of these premises are development and are exempted development.

It is of note that the Board's conclusion included:

(f) the works to the entrance would come within the scope of Class 5 of Part 1 of the Second Schedule to the Planning and Development Regulations 2001, as amended, and are exempted development. On the basis of the documentation submitted with the referral, the Board is satisfied that the works in question have not resulted in the material widening of this means of access to the public road, and, accordingly, the restrictions on exemption set out in Article 9 (1)(a)(ii) of the Planning and Development Regulations 2001, as amended, do not apply in this instance.

ABP-304134 – A question arose as to whether the creation of an access road and associated entrances at Rathmoylan, Dunmore East, County Waterford is or is not development or is or is not exempted development.

The Board decided that the said works were development and were not exempted development.

Their conclusion included:

(d) There are no other provisions, in section 4 of the Planning and Development Act, 2000, as amended, and in the Planning and Development Regulations, 2001, as amended, whereby the development in question would be classified as exempted development

9.6.2. Copies of these Board decisions are included in the Appendix to this Report. I would conclude that each case is considered on its merits and while there may be some similarities, they are not comparable, to the question raised or the context of the current Referral.

9.7. Screening for Appropriate Assessment

9.7.1. 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, no Appropriate Assessment issues arise and it is not considered that the development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

10.0 Recommendation

10.1. 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 re-activation of the use of the existing entrance to former residential dwelling is or is not development or is or is not exempted development at Ballycloona, Carrick on Suir, Co. Tipperary:

AND WHEREAS Walter Power requested a declaration on this question from Tipperary Council and the Council issued a declaration on the 6th day of July, 2023 stating that the matter was development and was not exempted development:

AND WHEREAS Walter Power referred this declaration for review to An Bord Pleanála on the 19th day of July, 2023:

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

- (a) Section 2(1). 3(1), 4(1)(h) and (j) of the Planning and Development Act, 2000, as amended,
- (b) article 6(1) and article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (c) Class 5 and Class 9 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (d) the planning history of the site,
- (e) the context and pattern of development in the area,
- (f) the submissions on file:

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The works and alterations to be carried out to facilitate the reactivation of the vehicular entrance associated with the former residential use of the now derelict structure would constitute 'works' that are 'development' under section 3(1) of the Planning and Development Act 2000 (as amended).
- (b) The existing structure on the site, in respect of which the reactivation works to facilitate the entrance are proposed, is not in residential/habitable use and, on the basis of the documentation submitted, there is no evidence on file of any residential use of this structure including in recent times, or for a significant period of time, the associated reactivation of the entrance would now constitute a change of use that is material, having regard to the potential for consequences in planning terms, including the potential for implications in terms of road safety, would, therefore, constitute development, which development does not come within the scope of any of the provisions for exempted development, as set out in the Planning and Development Regulations, 2001 (as amended); and
- (c) the works to facilitate the use of the reactivated access onto the wider national primary road network in the vicinity, close to the

junction with the regional road, in an area where maximum speed limits apply would result in traffic hazard or obstruction of road users and would not comply with the restrictions on exemption as provided by Article 9(1)(ii) and (iii) of the Planning and Development Act 2000 (as amended).

- (d) There are no other provisions, in section 4 of the Planning and Development Act, 2000, as amended, and in the Planning and Development Regulations, 2001, as amended, whereby the development in question would be classified as exempted development.

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 works, the re-activation of the use of the existing entrance to a former residential dwelling at Ballycloona, Carrick on Suir, Co.Tipperary are development and are 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.

Angela Brereton
Planning Inspector

24th of April 2024