



An
Bord
Pleanála

Inspector's Report ABP-320280-24

Question

Whether refurbishment works to existing cottage, existing access roadway will be used, no new development taking place, is or is not development or is or is not exempted development.

Location

Cloonlara, Swinford, Co. Mayo, F12 TR92.

Declaration

Planning Authority

Mayo County Council

Planning Authority Reg. Ref.

P24/219

Applicant for Declaration

Niamh O' Malley.

Planning Authority Decision

Is not exempted development

Referral

Referred by

Niamh O' Malley

Owner/ Occupier

Niamh O'Malley.

Observer(s)

None.

Date of Site Inspection

31/01/2025.

Inspector

Darragh Ryan

1.0 Site Location and Description

- 1.1. The proposed site lies in the townland of Cloonlara, Swinford , Co Mayo. The site is accessed via an access track off the southern side of the N5. The site is located 2km east of the village of Swinford Co Mayo. There is an existing access track and bungalow dwelling on site. There is a secondary access to the farm lands adjacent tp the existing access. The site is located 210m off the N5 road.

2.0 The Question

- 2.1. Whether the use of the existing roadway is or is not development or is or is not exempted development
- 2.2. Whether the refurbishment works to the existing dwelling is or is not development or is or is not exempted development.

3.0 Planning Authority Declaration

3.1. Declaration

The refurbishment to existing cottage, existing access roadway to be used (no new development taking place) comprises “works” and “development” having regard to the definitions set out in Section 3 of the Planning and Development Act, as amended.

The development would come within the scope of the restrictions on exempted development as defined in Article 9 (1) (iii) of the Planning and Development Regulations, as amended due to a traffic hazard, and is therefore not exempted development.

3.2. Planning Authority Reports

- 3.2.1. There is a single planning report on file.

The report from the National Road Design Office has been noted – the proposal seeks to gain access onto a National Road via an agricultural access where 100km speed limit applies and on a section of road that has been identified as a high

collision location which is twice above the National rate. The proposal contravenes a number of policies set out in the Mayo County Development Plan 2022 to 2028. Accordingly the proposal will endanger public safety by reason of a traffic hazard.

Regarding Archaeology, the entrance to the subject site is located within the buffer of a protected zone for a Recorded Monument – MA062-056. An archaeological assessment is required. The development would not come within the scope of the restrictions on exempted development as defined in Article 9 (1) (iii) of the Planning and Development Regulations, as amended due to a traffic hazard

Main Considerations:

- a) The details supplied with application
- b) Section 2, 3 & 4 of the Planning and Development Act 2000, (as amended)
- c) Article 6 and 9 of the Planning and Development Regulations 2001, (as amended)

The extent of refurbishment works proposed to the existing cottage have not been detailed.

3.2.2. Other Technical Reports

- Road Design Office - The proposal seeks to gain access onto a National Road via an agricultural access where 100km speed limit applies and on a section of road that has been identified as a high collision location which is twice above the National rate. The proposal contravenes a number of policies set out in the Mayo County Development Plan 2022 to 2028.
- Mayo County Council Archaeologist - The entrance to the subject site is located within the buffer of a protected zone for a Recorded Monument – MA062-056. An archaeological assessment is required.

4.0 Planning History

None Recent

5.0 Policy Context

5.1. Mayo County Development Plan 2022 to 2028

RHP 7 To consider replacement dwellings or development of other structures to habitable homes in all rural areas, subject to normal planning considerations.

RHO 10 To require that any proposal to extend/refurbish an existing rural dwelling house, occupied or otherwise, takes account of the siting and size of the existing building and endeavours to ensure that the design, scale and materials used in the refurbishment and/or extension are in keeping and sympathetic with the existing structure and that mature landscape features are retained and enhanced, as appropriate

MTP 23 To protect the capacity, efficiency and safety of the national road network in Mayo by complying with the 'Spatial Planning and National Roads -Guidelines for planning authorities' (2012).

MTP 24 - To avoid the creation of additional direct access points from new development adjoining national roads or the generation of additional traffic from existing direct accesses to national roads to which speed limits greater than 60 km/h apply.

6.0 The Referral

6.1. Referrer's Case

The house was erected before 1935 & is shown on the Raster Ordnance Survey Maps from the period. Niamh O' Malley purchased the house and farm on the 27/09/2022.

There is a second derelict house in the adjoining property, this derelict house does not have access to the main road except for agricultural access. It appears the Road Section of Mayo County Council has mistaken the referrers house for the adjacent derelict house. The report from National Road Design Office of Mayo County Council suggest that the applicant is seeking to gain access via an agricultural access. This is not the case. The NRDO of Mayo County Council completed the Charlestown to

Swinford Realignment in 2007. As part of the project the project organisers acquired lands and setback fences and gates. A residential gate and farm gate were provided under the scheme to the referrer's lands and the gate hanger for the agricultural gate to the west beside the pole is visible in all google photos from 2009. The referrer has provided evidence of same.

No works have taken place at the entrance, the original gates were replaced as is standard for tubular gates. The fenceposts were erected by NRDO in 2007. This does not constitute works under the Planning Act.

An extract from the Swinford Bypass junction safety Assessment Report is provided. Its stated that of the accident junction points identified none were identified at the junction between the N5 and the site.

6.2. Planning Authority Response

- None

6.3. Further Responses

- None

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

Section 2(1) – Interpretation

The following are relevant to the subject question:

structure means –

‘any building structure excavation or other thing constructed or made on in or under any land, a part of any structure so defined and

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

(b) in relation to a protected structure or proposed protected structure includes

- (i) the interior of the structure
- (ii) the land lying within the curtilage of the structure
- (iii) any other structures lying within that curtilage and their interiors and
- (iv) all fixtures and features which form part of the interior or exterior of any structure or structures referred to. In some paragraphs (i) or (iii)'

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

In the Act '...'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) sets out development that is exempt from requiring planning permission.

Section 4(4) 'Exempted development'

'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.'

7.2. Planning and Development Regulations, 2001

- 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.

- As provided for in Article 9(1)(a), the following development to which article 6 relates, shall not be exempted development, if the carrying out of such development would, inter alia:

- (iii) endanger public safety by reason of a traffic hazard or obstruction to road users

7.2.1. Class 1

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.	1. (a) Where the house has not been extended previously, the floor area of any such extension shall not exceed 40 square meters.
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8.0 Assessment

8.1. The question asked by the refer is:

- (i) Whether use of existing access road is or is not exempted development.
- (ii) whether refurbishment works to existing cottage is or is not exempted development

8.2. Background.

The planning authority concluded that there was only a single access to the site that would serve the dwelling house and the farm and associated lands, making a declaration that the use of the existing access was not exempted development by reason of a traffic hazard. On the day of the site inspection, there were 2 entrances clearly defined on the roadside boundary. One entrance led to the dwelling house and the other entrance led to the farm and associated lands.

8.3. Question 1 - Whether use existing access road is or is not exempted development

8.3.1. Is or is not development

Having regard to Section 2(1) and Section 3(1) of the Planning and Development Act 2000 as amended, it is considered that the following elements do not constitute 'works' and 'development' within the meaning of the Act;

- Use of existing access roadway.

The applicant has provided extensive documentation to indicate the existing access roadway to the dwelling house has been in situ for a considerable period of time and is an established use. The google maps images and ordnance survey maps indicate two access roads one to the farm and lands and one to the dwelling house. Two gates and access roads are visible from all google maps images dating back to 2009. It appears from the documentation submitted the dwelling and its access have been in situ since approximately 1935.

Under Section 3(1) of the Act, "development" means "(a) the carrying out of any works in, on, over or under land", and "works includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal" or the making of any material change in the use of any structures or other land. I do not consider the removal of bramble and replacement of existing tubular gates with new tubular gates to come within the definition of "works" and "development" within the meaning of the Act.

8.3.2. Having established that there are **no** proposed 'works' that amount to 'development,' the next issue to be considered is whether the development is exempted development or not. Development can be exempt from the requirement for planning permission by either Section 4 of the Planning and Development Act 2000 as amended, or by Article 6 of the Planning and Development Regulations 2001 as amended. If an activity does not involve "works", it may still constitute development if it involves a material change of use.

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

The continued use of existing access roadway to gain access to existing residential development does not require planning permission. There is no change of use associated with the proposed access and therefore its continuation of use does not necessitate planning approval.

8.3.4. **Restrictions on exempted development**

8.3.5. The Declaration of the planning authority is that the development would come within the scope of the restrictions on exempted development as defined in Article 9 (1) (iii) “endanger public safety by reason of traffic hazard or obstruction of road users” of the Planning and Development Regulations, as amended, due to potential increase of traffic from an existing farm access entrance, directly onto the N5 which may create an additional traffic hazard and is therefore **not exempted development**.

8.3.6. I do not consider that there will be an intensification of use onto an existing access road. The house on site has the benefit of its own separate established access onto the N5, therefore there is no intensification of use or potential increase in traffic. The farm and associated lands also have their own access. As the applicant has demonstrated that the existing access to the residential dwelling has been in situ for a considerable period of time, I am satisfied that no intensification of use would occur as a result of the use of the existing access. Therefore, I consider there is no change of use associated with the access road and therefore the continued use of existing access roadway for the purposes of access to the residential does not require planning permission.

8.3.7. Regarding the Advice note on the declaration of Mayo County Council, concerns that upgrade works to the existing entrances have taken place and this may have had an impact on a Recorded Monument MA062 -056 immediately to the west of the site, the buffer zone of this encompasses the entrance to the site. As stated under Section 8.2.1 above, I do not consider the removal of bramble/ scrub and replacement of gates to come within the scope of “works” within the meaning of the Act. I do not consider the upgrade works as referenced by the council to be significant as this area was already a highly modified environment as can be seen from the documentation submitted with the application.

8.4. Question 2 - whether refurbishment works to existing cottage is or is not exempted development.

The applicant has provided no details as to the extent of proposed refurbishment works for the existing cottage on site. I note a number of exemptions are listed Schedule 2, Part 1, Class 1 of the Planning and Development Regulations.

In the absence of any information that informs the Board of the level of refurbishment works to be undertaken to the existing cottage, I do not consider there is a specific question with which to make a declaration in this instance.

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 use of existing access road is or is not development or is or is not exempted development:

AND WHEREAS Niamh O'Malley requested a declaration on this question from Mayo Council and the Council issued a declaration on the 9th day of July, 2024 stating that the matter was development and was not exempted development:

AND WHEREAS Niamh O' Malley referred this declaration for review to An Bord Pleanála on the 24th day of July , 2024:

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(1) of the Planning and Development Act, 2000,

- (c) Section 4(1)(a) of the Planning and Development Act, 2000, as amended,
- (d) article 6(1) and article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (e) Parts 1 and 3 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (f) the planning history of the site,
- (g) the pattern of development in the area:

AND WHEREAS An Bord Pleanála has concluded that:

Question 1

The use of the existing access road is not development.

The continued use of the existing access road for the purposes of accessing existing residential dwelling does not require planning permission.

Question 2

In the absence of any information that informs the Board of the level of refurbishment works to be undertaken to the existing cottage, there is no specific question with which to make a declaration.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (4) of the 2000 Act, hereby decides that the use of the existing access road is not development and does not require planning permission.

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.

Darragh Ryan
Planning Inspector

31st of March 2025