



An  
Bord  
Pleanála

## Inspector's Report ABP-320553-24

### Question

Whether the replacement of unstable shed to the front of the applicant's property with a shed of similar scale and size, is or is not development or is or is not exempted development.

### Location

Poulawaddra, Ballyseedy, Tralee, Co. Kerry

### Declaration

Planning Authority

Kerry County Council

Planning Authority Reg. Ref.

EX1245

Applicant for Declaration

Margaret and Emmet Kelly

Planning Authority Decision

Is development and is not exempted development

### Referral

Referred by

Margaret and Emmet Kelly

Owner/ Occupier

Margaret and Emmet Kelly

Observer(s)

None

Date of Site Inspection

18<sup>th</sup> February 2025

Inspector

Phillippa Joyce

## Contents

1.0 Site Location and Description .....	3
2.0 The Question .....	3
3.0 Planning Authority Declaration.....	3
4.0 Planning History.....	4
5.0 Policy Context.....	5
6.0 The Referral.....	5
7.0 Statutory Provisions.....	6
8.0 Assessment .....	7
9.0 Recommendation.....	11
Appendix 1: Environmental Impact Assessment – Pre-Screening .....	14

## **1.0 Site Location and Description**

- 1.1. The referral site is located at Poulawaddra, Ballyseedy, c.4.3km southeast of Tralee town centre (crow flies). The site is in a rural location, characterised by detached dwellings, agricultural fields, and farm buildings. The site is located on the southern side of a narrow public road (local tertiary road L2012).
- 1.2. The site is rectangular in configuration and indicated as measuring c.0.39ha. The site accommodates a detached single storey dwelling with front and rear garden areas. The site's northern boundary, adjacent to the public road, is defined by a low concrete wall.
- 1.3. In the northwestern corner of the site is located a detached, single storey shed, subject of the referral case. The shed is sited to the front of the dwelling and abutting the property's front boundary wall, proximate to the public road.
- 1.4. The shed, indicated as measuring 8sqm, is of recent construction, of rendered concrete blockwork, with door and/ or window opes on three elevations (blank northern elevation), and a flat roof profile.

## **2.0 The Question**

- 2.1. A question has arisen pursuant of section 5 of the Planning and Development Act 2000, as amended, as to whether the replacement of an unstable shed to the front of the applicant's property with a shed of similar scale and size, is or is not development, and is or is not exempted development.

## **3.0 Planning Authority Declaration**

### **3.1 Declaration**

- 3.1.1. Kerry County Council, in accordance with section 5 of the Planning and Development Act 2000, as amended (2000 Act), issued a notification of declaration on the 30<sup>th</sup> July 2024 stating that the '... proposed works would constitute development which is not exempted development'.

### **3.2 Planning Authority Reports**

- 3.2.1. Planning Report

The planner's report serves as the basis for the declaration decision, the main points of which include:

- Reference to the planning history case, the plans of which indicated the location of the previous shed structure.
- Confirms the location of original shed is the same as the shed structure subject of the referral.
- Includes images from Google Streetview, dated October 2009, identifying the original shed structure.
- Refers to Class 3 (Condition 1), Part 1, Schedule 2 of the Planning and Development Regulations 2001, as amended (2001 Regulations).
- States the original shed was demolished and the replacement shed has been built beyond the building line of the dwelling, i.e., development has occurred forward of the front wall of the house.
- Concludes that the proposal constitutes works (as per section 2(1) of the 2000 Act), constitutes development (as per section 3(1)), and does not fall for consideration under exemption Class 3 (Condition 1), Part 1, Schedule 2 of the 2001 Regulations.

3.2.2. There are no Technical Reports from internal departments on the declaration case.

## 4.0 Planning History

### Referral Site

PA Ref. 13/554

Retention permission granted to Emmet Kelly for the demolition of an old dwelling house, and permission to retain and complete existing dwelling house as built on-site complete with all ancillary site works associated with the development.

(Note: planning authority report includes photographs of the original house and shed structure).

Final grant date on 28<sup>th</sup> November 2013, subject to 13 conditions. Including Condition 6 as follows:

6. No part of any garage or other exempted structure shall be erected within 4.5 metres of the centre of any divisional boundary or adjoining property on either side of the proposed dwelling house.

Reason: To regulate and control the layout of the development.

## **5.0 Policy Context**

### **5.1. Local Planning Context**

- 5.1.1. The applicable development plan for the referral case is the Kerry County Development Plan 2022-2028 (CDP). Within the CDP (Appendices 2 and 4), lands located within the town boundaries of Tralee, Killarney, and Listowel are subject to zoning objectives. The site is within a rural area of the county.
- 5.1.2. Applicable CDP designations include the 'Rural Type Area' classifications. The site is located within a 'Rural areas under significant urban influence' classification associated with Tralee town.
- 5.1.3. The site does not contain any heritage designations (e.g., archaeological monuments, protected structures, architectural conservation area), and is not located within/ subject to any other CDP designations (visually sensitive area, protected views and prospects, wind energy, flood risk).

### **5.2. Natural Heritage Designations**

- 5.2.1. The referral site is not located in or immediately adjacent to a European Site, a Natural Heritage Area (NHA) or a proposed NHA. There are no watercourses at or adjacent to the site. The site is c.260m west of Lisardboola Stream.
- 5.2.2. The European Site designations in proximity to the referral site include (measured at closest proximity):
  - Slieve Mish Mountains SAC (site code: 002185) is c.640m to the southwest.
  - Ballyseedy Wood SAC (site code: 002112) is c.1.08km to the north.

## **6.0 The Referral**

### **6.1. Referrer's Case**

6.1.1. The main points raised in the referrer's case include:

- Original shed structure was indicated in the plans and particulars submitted with relevant planning history case at the site (retention and completion of works to the original dwelling house, dated 2013).
- Shed structure described as being unstable, with urgent repair works required for health and safety reasons.
- Replacement process described as including the removal of the corrugated iron sheets comprising the roof; sections of wall as saved, and the remainder being restored; and cavity wall being built inside the older wall and tied together.
- Restoration works undertaken to the shed structure from August 2023.
- Outline of engagement with the planning authority (planning advices, enforcement procedure).

## 6.2. **Planning Authority Response**

6.2.1. No response has been received from the planning authority on the referral.

## 7.0 **Statutory Provisions**

### 7.1. **Planning and Development Act, 2000**

7.1.1. Section 2(1): Interpretation

“Structure” means any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of any structure so defined...

‘Works’ includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal...

7.1.2. Section 3(1): Development

“Development” means –

(a) 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...

7.1.3. Section 4(1): Exempted Development

The following shall be exempted developments for the purposes of this Act—

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

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

### **7.2.1. Part 2, Exempted Development**

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.

Article 9(1) - Development to which article 6 relates shall not be exempted development for the purposes of the Act –

(a) if the carrying out of such development would –

(i) Contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act...

### **7.2.2. Schedule 2, Part 1: Exempted Development – General**

Column 1, Description of Development: Development within the curtilage of a house

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.

Column 2, Conditions and Limitations:

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

## **8.0 Assessment**

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

- 8.1.1. The question put forward by the referrer relates to the replacement of an original shed located to the front of the dwelling house with a new shed. The referrer's case states that the original shed was unstable, and urgent repairs were required to be carried out for health and safety reasons. The referrer describes the nature of the replacement process undertaken.
- 8.1.2. The first question to consider is whether or not the proposal constitutes development under the definitions contained in the 2000 Act. Section 3(1) of the Act defines "development" as the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land.
- 8.1.3. To determine whether development has occurred, the relevant tests to apply is to establish whether "works" were carried out and/ or whether there was a material change in the use of the structure or land.
- 8.1.4. "Works" are defined in section 2(1) of the Act as any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal. "Structure" is also defined in section 2(1) of the Act (see section 7.0 of this report above). Following a review of the particulars in the case file and my site inspection, I confirm to the Board that the shed is a structure as so defined.
- 8.1.5. The replacement of the shed structure as outlined by the referrer involved several steps. I identify the process as having comprised activities of demolition, alteration, restoration, and construction. I consider that these activities are within the scope of works and, therefore by implication, within the definition of development in the Act.
- 8.1.6. In summary, I am satisfied that the replacement of the original shed structure with the new shed involved the carrying out of works and therefore constitutes development.

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

- 8.2.1. The second question to answer is whether the development is or is not exempted development. The referrer states the new shed has been reconstructed in the same location as the original shed and describes the new shed as being of a similar scale and size to that of the original.
- 8.2.2. The referrer does not expressly identify or state under which section of the 2000 Act and/ or article of the 2001 Regulations that the replacement of the shed is



considered to constitute exempted development. As I outlined above, the referrer's case focusses on why the works were deemed to be necessary and a justification for same.

- 8.2.3. I identify the relevant legislative provisions for the referral case as being, firstly, section 4(1)(h) of the 2000 Act, and secondly, article 6(1), article 9(1) and Schedule 2, Part 1, Class 3 of the 2001 Regulations (see section 7.0 of this report above).

Section 4(1)(h) of the 2000 Act

- 8.2.4. Section 4(1)(h) of the Act is of relevance as the question posed by the referrer uses the terms 'unstable' and 'replacement' in describing the condition of the original shed structure, and the process of alteration, demolition, and construction of the new shed.
- 8.2.5. On review of the particulars on the case file (especially the photographic images of the original shed) and having undertaken my site inspection (including of the interior and exterior of the new shed), I consider that the nature and extent of the works undertaken are beyond what could be reasonably described and accepted as the 'maintenance, improvement or other alteration works of any structure' (i.e., the subject of section 4(1)(h)).
- 8.2.6. I did not identify any remains of the original shed structure incorporated into the new shed structure. The new shed appears to be constructed wholly of concrete blockwork, with new roof, windows and door opes, and exterior walls finished with rendered plasterwork.
- 8.2.7. Further, for the avoidance of doubt, I do not consider the works undertaken to accord with the restrictions in section 4(1)(h). That being, I consider the nature and extent of the works undertaken are such that they affect more than the interior of the structure and they materially affect the external appearance of the new shed so as to render its appearance inconsistent with the character of the original shed (i.e., the existing shed structure is unquestionably a new building, with a new roof profile and external finish, altered window and door opes, and with no evidence of the character of the original shed remaining).

Article 6(1) and Schedule 2, Part 1, Class 3 of the 2001 Regulations

- 8.2.8. Article 6(1) refers to classes of development in Part 1 of Schedule 2 of the Regulations which are deemed to be exempted development once in compliance with the associated conditions and limitations.
- 8.2.9. Applicable to the referral case, is the category of 'development within the curtilage of a house'. Specifically, Class 3 of that category relates to the construction within the curtilage of a house of a shed or other similar structure.
- 8.2.10. Six conditions and limitations pertain to Class 3. Of direct relevance to the referral case is Condition 1 which states that no such structure within the curtilage of a house shall be constructed forward of the front wall of that house. I confirm to the Board that the new shed is sited to the front of the main dwelling house, adjacent to the front boundary wall and the public road.
- 8.2.11. In summary, the new shed structure does not comply with the limitations of Condition 1 of Class 3. Accordingly, I find the proposal fails to comply with the provisions of article 6(1) of the Regulations. I am satisfied that the proposal is not exempted development.

### **8.3. Restrictions on exempted development**

#### Other Considerations

- 8.3.1. In the interests of completeness for the Board, from the details on the case file and my site inspection, I consider that the limitations of the remaining Conditions 3, 4, and 6 of Class 3 (Part 1, Schedule 2) are complied with. However, there is insufficient information on the case file to definitively determine whether Conditions 2 and 5 are complied with.
- 8.3.2. Further, should the Board be of the opinion that the works undertaken to the new shed structure do constitute exempted development through the available legislative provisions, I highlight the planning history at the site which is of relevance to the referral case.
- 8.3.3. Condition 6 of PA Ref. 13/554 (see section 4.0 of this report above) restricts the construction of any part of a garage or other exempted structure (i.e., the new shed if the Board should so deem it) from being built within 4.5m of the centre of the shared boundaries with adjacent properties.

- 8.3.4. From a review of the plans and particulars available on the case file (including the planning history documentation), aerial photographic images, and observations at my site inspection, I calculate that the western gable wall of the new shed structure is c.3.13m to the centreline of the shared boundary with the adjacent property to the west.
- 8.3.5. Article 9(1)(a)(i) of the Regulations revokes the exempted development provisions allowed for under article 6(1) if the undertaking of such development would contravene a condition attached to a permission. As the new shed appears to have been constructed within 4.5m of the centreline of the shared boundary with the western property, I consider the proposal to be in contravention of Condition 6.
- 8.3.6. A potential implication from the planning history (e.g., Condition 6) does not appear to have been raised in the documentation on the case file (i.e., assessment of the section 5 declaration by the planning authority, or by the referrer). If the matter transpires to be of relevance to the Board's determination, the Board may consider this to be a new issue, and decide it is necessary to advise the parties accordingly, and request comments on same.

#### **8.4. Appropriate Assessment Screening**

- 8.4.1. 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.

#### **8.5. Environmental Impact Assessment Pre-Screening**

- 8.5.1. The proposal does 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 (see Appendix 1).

### **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 replacement of an unstable shed to the front of the applicant's property with a shed of similar scale and size, is or is not development, or, is or is not exempted development:

**AND WHEREAS** Margaret and Emmet Kelly requested a declaration on this question from Kerry County Council and the Council issued a declaration on the 30<sup>th</sup> day of July 2024 stating that the matter was development and was not exempted development:

**AND WHEREAS** Margaret and Emmet Kelly referred this declaration for review to An Bord Pleanála on the 14<sup>th</sup> day of August 2024:

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

- (a) Sections 2(1), 3(1), and 4(1) of the Planning and Development Act, 2000, as amended,
- (b) Articles 6(1) and 9(1) of the Planning and Development Regulations, 2001, as amended,
- (c) Class 3 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (d) the planning history of the site,
- (e) the pattern of development in the area:

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

- (a) The replacement of an unstable shed with a shed structure of similar scale and size in a location forward of the front wall of the main dwelling house (i.e., the proposal) comprises works and constitutes

development as defined under sections 2(1) and 3(1) respectively of the Planning and Development Act 2000, as amended,

- (b) The proposal does not comply with the provisions of section 4(1)(h) of the Planning and Development Act 2000, as amended,
- (c) The proposal does not comply with Condition 1 of Class 3, Part 1, Schedule 2 of the Planning and Development Regulations 2001, as amended,
- (d) The proposal contravenes a condition (Condition 6 attached to PA Ref. 13/554) and would therefore be contrary to article 9(1)(a)(i) and by association article 6(1) of the Planning and Development Regulations 2001, as amended.

**NOW THEREFORE** An Bord Pleanála, in exercise of the powers conferred on it by section 5(3)(a) of the Planning and Development Act 2000, as amended, hereby decides that the works as described 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.

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Phillippa Joyce  
Senior Planning Inspector

8<sup>th</sup> April 2025

## Appendix 1: Environmental Impact Assessment – Pre-Screening

<b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b> (that is involving construction works, demolition, or interventions in the natural surroundings)		Yes	✓
		No	
<b>2. Is the proposed development of a CLASS specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended)?</b>			
Yes			
No	✓		
<b>3. Does the proposed development equal or exceed any relevant THRESHOLD set out in the relevant Class?</b>			
Yes		N/A	
No			
<b>4. Is the proposed development below the relevant threshold for the Class of development [sub-threshold development]?</b>			
Yes		N/A	
No			
<b>5. Has Schedule 7A information been submitted?</b>			
No	✓	Pre-screening determination conclusion remains as above (Q1 to Q4)	
Yes			

Inspector: \_\_\_\_\_

Date: \_\_\_\_\_