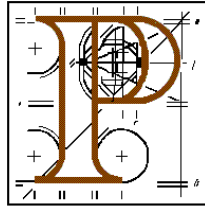


An Bord Pleanála



Inspector's Report

Reference No.: RL27.RL3404

Details of Reference: Whether use of the agricultural building known as "Arthurs Barn" and associated lands occasionally for small scale events is or is not development or is or is not exempted development.

Referred By: David Brabazon

Owner/ Occupier: David Brabazon

Planning Authority: Wicklow County Council

Planning Authority Ref: 42/15

Location: Lands at Belmont Demesne,
Templecarrig Road, Bray, Co. Wicklow

Date of Site Inspection: 9/12/15

Inspector: Siobhan Carroll

1.0 SITE LOCATION AND DESCRIPTION

- 1.1 Belmont Demesne is located in north Co. Wicklow. It lies to the south of the Killruddery Estate and south-east of Giltspur Mountain ('Little Sugar Loaf'). It is accessed off the Templecarrig Road which runs south from the junction with R761 Bray to Greystones Road. The lands at Belmont Demesne are situated on the western side of Templecarrig Road. It is served by a gated entrance defined by granite stone pillars. The entrance is recessed circa 2m back from the public road. The roadside boundary is formed by a random rubble wall. A private road of circa 400m runs west from Templecarrig Road to serve the walled garden and agricultural buildings.
- 1.2 The subject agricultural building, "Arthurs Barn" is located at the south-eastern corner of a 1.8 acre walled garden. The walled garden is located 30m to the south-west of the ruined Belmont demesne house. The garden walls have been recently restored and there is a gated vehicular entrance to the north-eastern corner. The subject barn is timber framed with the main structure having a gable roof with high level windows to all elevations. The main structure is surrounded by a single storey roof canopy with canvas retractable walls. The subject barn is in agricultural use. It is currently accommodating a number of ponies and there is farm machinery and hay also in storage.

2.0 PLANNING HISTORY & BACKGROUND TO REFERRAL

- 2.1 Wicklow County Council received a request under Section 5 of the Planning and Development Act 2000 from David Brabazon as to whether use of the agricultural building known as "Arthurs Barn" and associated lands occasionally for small scale events is or is not development or is or is not exempted development.
- 2.2 The Declaration was referred to An Bord Pleanála for review on the 17th of September 2015.

3.0 THE QUESTION

- 3.1 The question arises as to whether or not use of an agricultural building known as "Arthurs Barn" and associated lands occasionally for small scale events is or is not development or is or is not exempted development within the meaning of the Planning and Development Act 2000.

4.0 CONTEXT

4.1 Planning History

Reg. Ref. 15/427 – Current application for the retention as constructed of the agricultural building from that permitted under Reg. Ref. 08/1280. Further information was sought regarding the concrete hardstanding area abutting the shed and the hardstanding area to the north of the walled garden. A response to the further information requested was received on the 11th of December 2015.

Reg. Ref. 10/2636 – Permission was granted for a change of design of stable building from that previously granted under Reg. Ref. 08/1280. Permission was subject to 11 no. conditions.

Condition no. 2 stated;

2. *The proposed stable block shall be used solely for agricultural purposes and no change of use shall take place without the prior permission of the Planning Authority, whether or not such change of use would constitute exempted development as defined in the Planning and Development Acts and Associated Regulations.*

Reason: In the interests of proper control and development in the interest of amenity and proper planning and development.

Reg. Ref. 08/1280 – Permission was granted for 2 no horse stable buildings, 1 no sheep shed, 1 no storage shed, 1 no roofed manure pit, 1 no effluent tank, 1 no horse sand arena, 2 no yards 1 no well, a car park area and associated works.

UD4419 – alleged unauthorised development concerning the use of the barn and the walled garden.

4.2 Development Plan Policy

The relevant development plan is the Wicklow County Development Plan 2010 - 2016.

5.0 REFERRAL

5.1 Submission by David Brabazon

5.1.1 Referring to the documentation enclosed by Auveen Byrne Associates on behalf of Mr David Brabazon it is requested that An Bord Pleanála

determine the question as to whether or not the use of agricultural building known as “Arthurs Barn” and associated lands occasionally for small scale events is or is not development or is or is not exempted development.

The documentation attached by the referrers is as follows;

- Document of Referral of Declaration for Review to An Bord Pleanála.
- Traffic Assessment for Belmont Demesne prepared by Conor Mc Carty & Associates Ltd, Consulting Engineers and Project managers.
- Copy of a letter from the Wicklow Cub Scout Event Coordinator, Aileen Lennon.
- Copy of a letter from the President, Leinster Motor Club, Rhoda Cahill.
- Copy of a letter from the Deputy President of motor Cycling Ireland, Frank Blackbyrne.
- Copy of a letter from the District Commissioner of Bray Hunt Pony Club, Wendy Lee.
- Copy of a letter from representative of Greystones Cricket Club, Stephen Booth.

5.2 Referrers’ Case

The report submitted by Auveen Byrne Associates sets out the referrers’ case as follows;

- The referral refers the long history of the use of lands at Belmont Demesne for organisations including Scouting Organisations, the Pony Club and the Leinster Motor Club.
- Under planning permission ref. 10/2636 permission was granted to construct the barn in the restored walled garden as part of the farm complex and instead of the horse stable that had been permitted under ref. 08/1280.
- Condition no. 2 of reg. ref. 10/2636 limits the use of the building to solely agricultural purposes and provides that ‘no change of use shall

take place without the prior permission of the Planning Authority whether or not such change of use would otherwise constitute exempted development as defined in the Planning and Development Acts and associated Regulations.'

- The barn has been used for occasional events including weddings, parties and for filming. However since its construction its use remains that of agricultural shed and no change of use has occurred.
- It is intended that the use of the barn will continue as an agricultural building with the occasional use of the barn and grounds as for charitable and social events.
- The historical context provides that the occasional use of the barn and Belmont demesne for local events is in keeping with the established use of the farm and is not development. It is considered that no change or material intensification of use arises.
- The proposed uses can be considered exempted development under Class 37, Schedule 2, Part 1 of the Planning and Development Regulations 2001(as amended).
- Article 9(1)(a)(i) precludes exemption if the carrying out of the relevant development would contravene a condition of a permission. Condition no. 2 of reg. ref. 10/2636 precludes any change of use from agricultural use. However, pursuant to Class 37 it would not constitute a change of use.
- Article 9(1)(a)(iii) precludes exemption if the development would endanger public safety by reason of traffic hazard or obstruction of road users. Adequate sightlines at the entrance to Belmont from the Templecarrig Road can be provided by lowering of the stone wing walls. These works can be done as exempted development.

5.3 Response from Planning Authority

A Notice in accordance with section 128 of the Planning and Development Act 2000 was issued to Wicklow County Council requiring;

- i. details of previous decisions affecting the site;
- ii. any correspondence that has taken place between the person(s) issued with a declaration under subsection (2)(a) of section 5 of the 2000 Act and the planning authority.

- iii. the name and address of the owner of the land in question and the name of the occupier of the said land, if different;
- iv. where no declaration was issued by you, indicate the date that the referral was due to be issued in accordance with subsection (2) of section 5 of the 2000 Act.

Wicklow County Council submitted the following;

- All correspondence relating to Section 5 Declaration 42/15.
- Copies of planning decisions Ref. 08/1281 and Ref. 10/2636 which relate to the site.
- The Planning Authority confirmed that the applicant Mr David Brabazon is the owner of the lands in question.
- The Planning Authority states that the historical use of Belmont Demesne should not be considered in relation to the declaration as the query specifically relates to the use of 'Arthurs Barn'.
- Condition no. 2 of Ref. 10/2136 restricts the use of the barn to agricultural uses only and it restricts a change of use to occur even if it would constitute exempted development.
- The type of events specified under Class 37 of Schedule 2 Part 1 of the Planning and Development Regulations 2001 (as amended) would constitute community events that would be open to the public to attend. The nature and type of events that the referrer indicates that has taken place in the barn include weddings and filming. It is not considered that these works would be classed as local events but rather private functions and activities and therefore would not fulfil the criteria of a "local event" as required under Class 37.
- The Planning Authority has also stated that they have concerns that the local road network may not have the capacity to cater for traffic associated with the activities on site and therefore the development would result in the creation of a traffic hazard.
- Section 5 decision issued on the 21st of August 2015.

6.0 STATUTORY PROVISIONS

In order to assess whether or not the works to be carried out constitute exempted development, regard must be had to the following items of legislation:

Planning and Development Act, 2000 (as amended)

Section 3 (1) states as follows:

3. (1) In this 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) states as follows:

4. (1) 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;

Planning and Development Regulations, 2001-2015

Article 6 (1) states as follows:

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) (a) sets out the instances where 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,

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

Schedule 2, Part 1 Exempted Development – General

CLASS 37

Development consisting of the use of land for any fair, funfair, bazaar or circus or any local event of a religious, cultural, educational, political, social, recreational or sporting character and the placing or maintenance of tents, vans or other temporary or movable structures or objects on the land in connection with such use.

Conditions and Limitations

1. The land shall not be used for any such purposes either continuously for a period exceeding 15 days or occasionally for periods exceeding in aggregate 30 days in any year.
2. On the discontinuance of such use the land shall be reinstated save to such extent as may be authorised or required by a permission under the Act.

7.0 Assessment

This referral has arisen from a Wicklow County Council's Declaration, under Section 5 (1) of the Planning and Development Act, 2000, as amended. The Planning Authority having regard to the details submitted, Section 3 of the Planning and Development Act 2000 (as amended), Articles 6 and 9 of the Planning and Development Regulations 2001 (as amended) and Schedule 2 Part 1 Class 37 of the Planning and Development Regulations and issued a Declaration to Mr David Brabazon which stated that the use of agricultural building known as "Arthurs Barn" and associated lands occasionally for small scale events is development but is not exempted development.

In this case two main questions need to be examined in determination of the said question:

1. Whether the use of agricultural building known as "Arthurs Barn" and associated lands occasionally for small scale events is development.
2. Whether the use of agricultural building known as "Arthurs Barn" and associated lands occasionally for small scale events is considered Exempt Development.

In relation to the questions asked firstly it is necessary to establish if the said use constitutes development.

Section 3 (1) of the Planning and Development Act, 2000, as amended defines 'development' as follows:

"In this 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."

In order to determine if a use would constitute the making of any material change in the use to represent development under Section 3 (1) of the Planning and Development Act it is appropriate to examine how the matter has been dealt with in case law. In the case of Galway County Council versus Lackagh Rock Limited [1985] I.R.120, Barron J. held that in order *"to test whether or not the uses are materially different, it seems to me that what should be looked at are the matters which the planning authority would take into account in the event of a planning application being made, either for the use on the appointed day or for the present use. If the matters are materially different, then the nature of the use must be materially different"*.

In the case of the subject referral the agricultural building known as "Arthurs Barn" is in agricultural use and this is the permitted use under the permission granted on foot of Reg. Ref. 10/2636. The use which is the subject of the referral is for small scale events. The uses are elaborated upon in the accompanying documentation with the referral. These uses include weddings, charity events, sporting events, barbeques and television and movie filming.

Based on the inherent differences between an agricultural use and the holding of a social event and private functions such as a wedding or charity event in terms of the numbers of persons in attendance, it is inevitable that such a social event would have parking and traffic implications. Furthermore the accommodation of people in a social context for a number of hours would also require that there be sanitary facilities available whether in a temporary or permanent capacity. Accordingly, for the reasons set out above, I consider that the use of the barn and associated lands for social events and private functions constitutes a material change in the use.

Accordingly, the proposed use constitutes a material change in the use as set out above therefore constitutes 'development' as defined under Section 3 (1) of the Act.

The remaining question which needs to be examined is;

Whether the use of agricultural building known as “Arthurs Barn” and associated lands occasionally for small scale events is or is not Exempted Development.

It is set out in the referrers’ case that the proposed uses can be considered exempted development under Class 37, Schedule 2, Part 1 of the Planning and Development Regulations 2001(as amended). Class 37 refers to the following;

Development consisting of the use of land for any fair, funfair, bazaar or circus or any local event of a religious, cultural, educational, political, social, recreational or sporting character and the placing or maintenance of tents, vans or other temporary or movable structures or objects on the land in connection with such use.

This class of use is subject to conditions and limitations that the land shall not be used for any such purposes either continuously for a period exceeding 15 days or occasionally for periods exceeding in aggregate 30 days in any year and that on the discontinuance of such use the land shall be reinstated save to such extent as may be authorised or required by a permission under the Act.

The Planning Authority in their determination on the Section 5 Declaration considered that the nature of the uses including weddings and television and movie filming did not constitute a ‘*local event*’. I would concur with the assessment of the Planning Authority in that respect. Such uses would in my opinion constitute a broader interpretation as uses including a wedding or television and movie filming would be generated by persons beyond the immediate local area and also would be private events not open to the local public.

The Planning and Development Regulations, 2001, as amended Article 9 (1) (a) sets out the instances where 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 -

(i) *contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,*

or

(iii) *endanger public safety by reason of traffic hazard or obstruction of road users,*

Regarding provision (i) of Article 9 (1) (a), I consider that the use of agricultural building and associated lands occasionally for small scale events is development which is not subject to the same use class as agricultural use and therefore it would contravene condition no. 2 of Planning Register Reference 10/2136 which states;

2. *The proposed stable block shall be used solely for agricultural purposes and no change of use shall take place without the prior permission of the Planning Authority, whether or not such change of use would constitute exempted development as defined in the Planning and Development Acts and Associated Regulations.*

Reason: In the interests of proper control and development in the interest of amenity and proper planning and development.

Article 9 (1) (a)(iii) refers to the matter of traffic hazard and would de-exempt otherwise exempt development where, if the carrying out of such development would endanger public safety by reason of traffic hazard or obstruction of road users. The Planning Authority in determining the Section 5 Declaration were of the opinion that the uses based on the information submitted would generate traffic movements which would endanger public safety by reason of traffic hazard and therefore the restriction on exemptions under Article 9 (1) (a)(iii) would apply.

A Traffic Assessment for Belmont Demense prepared by Conor Mc Carty & Associates Ltd, Consulting Engineers and Project managers has been submitted as part of the documentation with the referral. It is stated in the assessment that the maximum number of vehicles which would be catered for within 90 minutes would be 60 vehicles. The barn and lands at Belmont Demense are served by an existing vehicular entrance onto Templecarrig Road. It is stated in the assessment that the sightlines at the entrance can be improved to provide for safe traffic movements. It is set out in the submission from Auveen Byrne Associates on behalf of the referrer that works to improve the sightlines at the vehicular entrance would constitute exempted development and could be carried out as such.

Regarding the matter of the capacity of the local road network to accommodation traffic movements generated by events at Belmont Demesne it is stated in the assessment that the level of traffic associated with those events would not coincide with the peak flows on the existing local road network.

In relation to the details submitted as set out above including the Traffic Assessment for Belmont Demesne, I am not of the opinion that the use of the barn and associated lands for the uses and events set out in the referral would definitively constitute a traffic hazard, however such uses would certainly have traffic and parking implications.

Therefore, in conclusion, I consider that the said use of the agricultural building known as “Arthurs Barn” and associated lands occasionally for small scale events Lands at Belmont Demesne, Templecarrig Road, Bray constitutes development which is not exempted development.

8.0 RECOMMENDATION

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

- (a) section 3 of the Planning and Development Act, 2000, as amended
- (b) articles 6 and 9 of the Planning and Development Regulations, 2001, as amended
- (c) Class 37, Schedule 2, Part 1 of the Planning and Development Regulations, 2001, as amended
- (d) Condition no. 2 of Planning Register Reference 10/2136.
- (e) the planning history of the site, and the documentation submitted with the referral.

AND WHEREAS An Bord Pleanála has concluded that -

- (a) the use of the agricultural building known as “Arthurs Barn” and associated lands occasionally for small scale events, is development, in accordance with the provisions of Section 3 of the Planning and Development Act, 2000, as amended;

- (b) having regard to nature of the uses detailed in the referral the use of the agricultural building known as “Arthurs Barn” and associated lands occasionally for small scale events, is not exempted development, in accordance with the provisions of Article 6, Schedule 2, Class 37 of the Planning and Development Regulations 2001, as amended.
- (c) having regard to nature of the uses detailed in the referral the use of the agricultural building known as “Arthurs Barn” and associated lands occasionally for small scale events would contravene condition no. 2 attached to Planning Register Reference 10/2136. The restrictions on exemptions provided under Article 9 (1)(a)(i) of Planning and Development Regulations 2001, as amended applies.

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 said use of agricultural building known as “Arthurs Barn” and associated lands occasionally for small scale events at Lands at Belmont Demesne, Templecarrig Road, Bray County Wicklow is development and is not exempted development.

Siobhan Carroll
Planning Inspector
23rd of December 2015