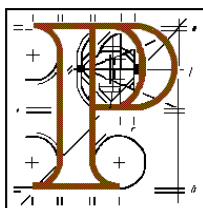


An Bord Pleanála



Inspector's Report

Reference No.:	20.RL3433
Details of Reference:	Whether works consisting of re-roofing with overhang, in particular over the public road is or is not development and is or is not exempted development.
Location:	Derreenasoo, Leitrim, Carrick-on-Shannon, Co. Roscommon.
Referred By:	Annette McGuinness
Owner/ Occupier:	Francis & Marie McKiernan
Other Submissions	Seamus Gunning Gerard McCabe
Planning Authority:	Roscommon County Council
Planning Authority Ref:	DED176
Date of Site Inspection:	18/0/2016
Inspector:	Gillian Kane

1.0.0 SITE LOCATION AND DESCRIPTION

1.0.1 This referral relates to two agricultural structures on either side of a public road, in Derreenasoo, Leitrim, Carrick-on-Shannon. Derreenasoo is a townland with a single road running northwards off the L5029, perpendicular to the River Shannon, in a rural area west of Drumshanbo, Co. Leitrim.

1.0.2 The road serves a number of dwellings and agricultural landholdings. The landholding of the Referrer crosses the public road, with a number of structures on either side. At the point of the subject structures, the road narrows and turns north-eastwards.

2.0.0 BACKGROUND TO REFERAL

2.1.0 This referral is submitted by Annette McGuinness, a landowner at Derreenasoo, Leitrim, Carrick-on-Shannon, Co. Roscommon under section 5(3)(a) of the Planning and Development Act 2000 (hereafter “the Act”). The referral was made on the 13th November 2015.

2.2.0 It follows the Section 5 determination by Roscommon County Council on 22nd October 2015 that re-roofing of the subject structures is development and is exempted development. The declaration was based on 9(1)(a)(viiB) of the Planning and Development Regulations and section 4(1)(h) of the Planning and Development Acts

3.0.0 THE QUESTION

3.1.0 The question posed is whether works consisting of the re-roofing of two structures, which includes an overhang on to the public road is or is not development and is or is not exempt development.

4.0.0 PLANNING HISTORY

4.1.0 **UDR2188:** Following a submission from three landowners (Seamus Gunning, Gerard McCabe and Annette McGuinness) that re-roofing work carried out on two structures on either side of a public road was unauthorised as it restricted traffic on the road, a letter issued to the landowner Francis McKiernan advising of the possible need to regularise.

4.1.1 A report on file from the **SE Engineer** notes that the section of road in question was unlikely to have been suitable for vehicular movements associated with heavy forestry machinery. The engineer notes that the

normal passing distance of a vehicle is 600mm – 1000mm. The roof overhang is noted to be between 100mm and 200mm (where a gutter is present) and therefore the roof overhang is not a determining issue. The engineer notes that if a particular vehicle needs to be closer than 600mm to the external building wall than the road is not suitable for such a vehicle. The conclusion of the report is that “the road in question is severely restricted and functions at a very low level. The works carried out do not appear to have increased the restriction and / or reduced the function of the road to any perceptible degree.”

4.1.2 The Planning report on file states that the re-roofing falls under section 4(1)(h) and therefore is exempted development.

5.0.0 REFERRAL

5.1.0 Referrer’s Case

5.1.0 The referrer submits that the overhang created by the re-roofing of the two structures has narrowed the separation distance between the two buildings, thereby causing a traffic hazard for large vehicles. The issues raised in the referral request can be summarised as follows:

- A complaint was made to Roscommon County Council by three landowners Seamus Gunning, Gerard McCabe and Annette McGuinness, regarding access being limited by the overhang of the new roofs.
- The re-roofing including overhangs are part of class 6 and class 9 agricultural structures. The structures are within 100m of Seamus Gunnings home and therefore class 6, condition 6 and class 9, condition 5 applies.
- The overhangs extend over the public road and as such require planning permission – class 6, condition 4 and class 9 condition 3.
- Photos show that the old roof did not overhang the road at the western corner with 25mm protrusion on the eastern building.
- The Council did not meet with the complainants.
- The restricted road may hinder emergency vehicle access.
- The overhangs are limiting access for certain types of vehicles

5.1.2 The referral is accompanied by an Appendix, the details of which are as follows:

1. Photo of vehicle stuck between the two structures 23.05.2015
2. Photo of shed in July 2010. Absence of overhang identified
3. Photo of shed 1 now, with overhang identified
4. Photo of shed 2 no, with overhang identified
5. Letter of complaint to Council

6. Letter from Council stating work is exempt
7. Letter to Council advising of appeal of decision and requesting a section 5 declaration
8. Section 5 Declaration
9. Letter from RCC advising that Enforcement file no. UDR2188 is being investigating
10. Letter from RCC acknowledging Section 5 request.

5.2.0 Planning Authority's Case

5.2.1 The planning authority have not responded to the referral. The Planner's report in respect of the original declaration can be summarised as follows:

- The proposed development can be considered to be works for the maintenance, improvement or other alteration of the structure. The replacement roofs are not significantly different from the old roofs.
- The proposed development constitutes development as defined in the Planning and Development Acts and Regulations
- Having regard to article 9(1)(a)(viiiB) of the regulations, there is no need for EIA or AA
- Having regard to section 4(1)(h) of the Planning and Development Acts, the proposed development does not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or neighbouring structures.

5.3.0 Owner's Case

5.3.0 The case submitted by the owner of the two structures in question can be summarised as follows:

- The work in question consists of the re-roofing of two old roadside houses. No extension of the structures occurred.
- The houses were re-roofed in the 1950's. The recent re-roofing reinstated the original overhang which had been diminished by the passing of large HGV's.
- The roofs were in a poor state of repair and were dangerous to passing traffic.
- The houses can be seen on the OSI maps from 1829-1841
- The owner will work with Roscommon County Council to ensure access.
- Emergency services have navigated the road from the early 1990's up to 2011
- Other out-houses in the area are being damaged by passing HGV's.
- History of out-houses, residences and residents of Derreenasoo.

- 5.3.1 The owners response is accompanied by a large number of appendices, which can be grouped together as follows:
1. Photos of two structures from 1950's to 2010 approx. Annotations show the original corrugated iron roofs overhanging the public road.
 2. Photos of damage to the two structures, caused by passing HGV's
 3. Photos and other documentation referring to damage to a third shed which was demolished following an accident in which a HGV damaged the shed.
 4. Maps showing the landholding
 5. History of the Musgrave/ Crawford family (former owners of the landholding)
 6. Archaeology Report from NUI Galway stating that the structures in question were identified on maps from 1838 and therefore they have heritage value. Report notes that re-roofing has not damaged the buildings.
 7. Photos of neighbouring out-buildings
 8. Roads Engineering Report (as referred to and summarised in section 4.1.1 above). Photos of the northern and southern sections of the road from 19810's and 2015 showing how the owner has widened the road way. Photos of Derreenasoo road.
 9. Photo of truck stuck between the two structures and letter stating that no complaint was made to the Gardaí
 10. Copies of documentation in the Enforcement file UDR2188 and DED176

5.4.0 Responses to the Referral

- 5.4.1 Seamus Gunning, Derreenasoo, Leitrim, Carrick-on-Shannon, a neighbour of the Referrer and one of the original complainants to the Council has responded to the referral. The response can be summarised as follows:
- The subject development has restricted access to houses and farms
 - The roof overhangs are a traffic hazard that endanger the safety of people living to the north of the corner
 - For the past 15 years HGV's have used the road without problem. Houses , farm buildings and roads have been constructed.
 - No consideration has been given to residents who are now inconvenienced.
 - The overhangs are a traffic hazard which de-exempts them.
 - Regardless of the extent of the overhangs, as they extend over the public road they should require planning permission.
 - Photographs showing the old roofs with no overhang were not available to RCC at the time of their decision.

- Gunning home is 80m from the subject structures and permission should have been required from the Gunnings as required under the regulations.

5.4.2 Gerard McCabe, Derreenasoo, Leitrim, Carrick-on-Shannon, a neighbour of the Referrer and one of the original complainants to the Council has responded to the referral. The response can be summarised as follows:

- Supports referral of A McGuinness
- HGV's have been able to use the road for a number of years without any problems.
- The delivery of 23.05.2016 to the McCabe house had difficulties due to the restricted width of the road
- Concerned about farm deliveries and access for emergency vehicles.
- Undated letter from Quarry company stating that four axel lorries made deliveries to Derreenasoo, past McKiernan's corner without any difficulty for the past 15 years.

6.0.0 STATUTORY PROVISIONS

6.0.1 The following statutory provisions are relevant in this instance.

6.1.0 Planning and Development Act, 2000

6.1.1 Section 2(1) In this Act, except where the context otherwise requires - "**works**" includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal ...; "**structure**" means any building, structure, excavation or other thing constructed or made on, in or under any land, or any part of a structure so defined.

6.1.2 Section 3(1) In this Act, "**development**" means, except where the context otherwise requires, the carrying out of any works on, in, or under land or the making of any material change in the use of any such structures or other land.

6.1.3 Section 4(1) Sets out developments that shall be exempted development for the purposes of this Act.

6.1.4 Section 4(2) of the Act provides that the Minister may, by regulations, provide for any class of development to be exempted development. The principle regulations made under this section are the Planning and Development Regulations, 2001.

6.2.0 Planning and Development Regulations, 2001

6.2.1 Article 6(3) Subject to article 9, in areas other than a city, a town or an area specified in section 19(1)(b) of the Act or the excluded areas as defined in section 9 of the Local Government (Reorganisation) Act, 1985 (No. 7 of 1985), development of a class specified in column 1 of Part 3 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 3 opposite the mention of that class in the said column 1.

6.2.2 Article 9(1) Sets out criteria under which development to which article 6 relates shall not be exempted development for the purposes of the Act including:

- (a) If the carrying out of such development would – [*inter alia*]
- (iii) endanger public safety by reason of traffic hazard or obstruction of road users,
- (iv) except in the case of a porch to which class 7 specified in column 1 of Part 1 of Schedule 2 applies and which 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, comprise the construction, erection, extension or renewal of a building on any street so as to bring forward the building, or any part of the building, beyond the front wall of the building on either side thereof or beyond a line determined as the building line in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development
- (xi) obstruct any public right of way,

6.3.0 Roads Act 1993

6.3.1 Section 2(1) In this Act, except where the context otherwise requires - “public road” means a road over which a public right of way exists and the responsibility for the maintenance of which lies on a road authority; “road” includes — [*inter alia*]

- (a) any street, lane, footpath, square, court, alley or passage,
- (b) any bridge, viaduct, underpass, subway, tunnel, overpass, overbridge, flyover, carriageway (whether single or multiple), pavement or footway,

7.0.0 ASSESSMENT

7.1.0 It should be stated at the outset that the purpose of this referral is not to determine the acceptability or otherwise of the re-roofing of the

subject roofs to include an overhang of a public road, in respect of the proper planning and sustainable development of the area, but rather whether or not the erection of same constitutes development, and if so falls within the scope of exempted development. Likewise, planning enforcement is a matter for the planning authority and does not fall within the jurisdiction of the Board.

7.2.0 Is or is not development

7.2.1 The first matter relates to whether or not the re-roofing of the subjects structures, which re-roofing involves an overhang of a public road comprises development. Having regard to sections 2 and 3 of the Planning and Development Act 2000, I consider the re-roofing involving overhangs, constitutes 'development' within the meaning of the Act, being the carrying on of an act of construction on land. I note that this is not disputed by the parties.

7.3.0 Is or is not exempted development

7.3.1 Development can be exempted from the requirement for planning permission by either (a) section 4 of the Planning and Development Act, 2000 (the Act), or (b) article 6 of the Planning and Development Regulations 2001 (the Regulations).

7.3.2 The relevant exemption under **Section 4** relates to 4(1)(h) – “development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure”. The Planning Authority and the referrer state that the subject roofs are replacing damaged roofs and so are for the maintenance and / or improvement of the structure. It is the case of the neighbours / referrers that the replacement roofs are not a like for like replacement as the old roof did not overhang the public road. On one of the photos of the two sheds in 2010 submitted by the referrer, handwritten notes point to “no overhang” on the western shed and a “slight overhang” on the eastern shed.

7.3.3 The owner of the sheds has also submitted a number of photographs from the 1950's, 1980's, 1990's and 2010. It is the submission of the owner that these photographs show that the roofs of the two sheds always projected over the public road and that where no overhang is shown on later photos that is due to damage caused to the buildings by passing vehicles. I am satisfied that the evidence before the Board shows that the roofs of both structures, in their original form, extended over the public road and that over time, the overhang was reduced due to other factors. It cannot be definitively stated that the extent of the overhang is identical, nonetheless the photographic evidence

submitted shows the older corrugated iron roofs overhanging into a gully and downpipe. I am satisfied that the subject roof, including the overhang of the public road are a replacement of a similar roof for the maintenance of the structure.

- 7.3.4 As can be seen in the photos, the two structures were roofed with corrugated iron roofs. The material of the replacement roofs is not stated but with the exception of the colour, the appearance of the new roofs is almost identical to that of the previous roofs. The subject roofs do not materially alter the external appearance of the sheds. I am satisfied that the replacement roofs can be considered to be exempted development under section 4(1)(h) as the subject development is “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”.
- 7.3.5 Should the Board disagree and in the interests of clarity, noting that the referrer raises the de-exempting conditions of class 6 and class 9, the provisions of Article 6 of the regulations are set out below.
- 7.3.6 **Article 6** of the Regulations exempts works specified under different Classes as set out in Schedule 2 of the Regulations. These classes of development can, however, be de-exempt under the restrictions set out in article 9.
- 7.3.7 The first step is, therefore, to consider into which Class the development in question falls. The referrer requests the Board to consider that conditions 4 and 6 of Class 6 and conditions 3 and 5 of class 9 de-exempt the subject development.

Class 6 *Works consisting of the provision of a roofed structure for the housing of cattle, sheep, goats, donkeys, horses, deer or rabbits, having a gross floor space not exceeding 200 square metres (whether or not by extension of an existing structure), and any ancillary provision for effluent storage.*

Condition 4. No such structure shall be situated, and no effluent from such structure shall be stored, within 10 metres of any public road.

Condition 6. No such structure shall be situated, and no effluent from such structure shall be stored, within 100 metres of any house (other than the house of the person providing the structure) or other residential building or school, hospital, church or building used for

public assembly, save with the consent in writing of the owner and, as may be appropriate, the occupier or person in charge thereof.

Class 9 *Works consisting of the provision of any store, barn, shed, glass-house or other structure, not being of a type specified in class 6, 7 or 8 of this Part of this Schedule and having a gross floor space not exceeding 300 square metres.*

Condition 3. No such structure shall be situated within 10 metres of any public road.

Condition 5. No such structure shall be situated within 100 metres of any house (other than the house of the person providing the structure) or other residential building or school, hospital, church or building used for public assembly, save with the consent in writing of the owner and, as may be appropriate, the occupier or person in charge thereof.

7.3.8 Notwithstanding that the owner of the structures in question states that the structures were used for 'agricultural purposes such as cow house, calf house, dairy, piggery, poultry and the storage of animal feed', the development in question does not involve "the provision" of such structures. The structures in question have been in existence and in agricultural use for many years. The development in question is the re-roofing of existing structures and so does not fall within class 6 or 9, regardless of any conditions or limitations.

7.3.9 The final issue raised by the referrer is that of traffic hazard caused by the development in question. I note article 9(1)(a)(iii) which provides for the de-exemption of development if the carrying out of such development would endanger public safety by reason of traffic hazard or obstruction of road users. The owner of the two structures has submitted evidence of the existence of a third shed at right angles to the eastern shed. This shed was demolished following a traffic accident in 2002. From the photos it would appear that the angle of the shed to eastern shed resulted in the public road having a very sharp bend at this point. It is likely that the turn in the road at that point was very difficult for cars to manoeuvre. One must presume that HGV's could not have made the turn. This would correlate with evidence from the referrers that HGV's have ably used the road in the past 15 years (i.e. once the third shed was demolished). This would also correlate with the finding of the Planning Authority that the road is not and was not suitable for such vehicles. It is the case of the Planning Authority that the road in question is not suitable for movement of HGV's and that the extra restriction placed by the overhanging roofs is not material. I am minded to agree with this finding. I am satisfied that the overhang of the roofs in question onto the public road does not create

a traffic hazard over and above that which previously existed and therefore the development in question cannot be considered de-exempt under the provisions of article 9(1)(a)(iii). Likewise, I am satisfied that the subject development does not obstruct any public right of way and therefore would not be de-exempted by the provision of article 9(1)(a)(xi).

- 7.3.10 Article 9(1)(a)(iv) provides that development which would comprise the construction, erection, extension or renewal of a building on any street so as to bring forward the building, or any part of the building, beyond the front wall of the building on either side thereof shall not be exempted development for the purposes of article 6 of the Act. I note the Order of the Board in RL3062 that a building line for the purposes of article 9(1)(a)(iv) refers to a building 'either side' of the shed only. The western shed, subject of this referral is directly connected to and along the same building line as the residence of this farm landholding. The question therefore, is whether the 'renewal' of the building has brought the building forward of the building line created by the dwelling. As can be seen from the appended photos, the building line created by the overhanging roof matches that of the overhanging roof of the dwelling. Therefore, I am satisfied that article 9(1)(a)(iv) does not apply to the subject development.

7.4.0 Conclusion

- 7.4.1 I am satisfied that the roofs in question, which overhang the public road are a replacement of previous roofs of a largely similar shape and profile. Therefore the subjects development can be considered to be "development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure" and are exempt under section 4(1)(h) of the Planning and Development Acts.

8.0.0 RECOMMENDATION

Having regard to the above, I recommend an Order in the following terms:

WHEREAS the question has arisen as to whether works consisting of re-roofing in particular the overhang over the public road at Derreenasoo, Leitrim, Carrick-on-Shannon Co. Roscommon is or is not development and is or is not exempted development.

AND WHEREAS Annette McGuinness requested a declaration on this matter from An Bord Pleanála on the 13th day of November 2015:

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

- (a) section 2 and 3 of the Planning and Development Acts, as amended
- (b) section 4(1)(h) of the Planning and Development Acts, as amended
- (c) articles 6 and 9 of the Planning and Development Regulations, 2001, and

AND WHEREAS the Board has concluded that –

- (a) works consisting of re-roofing in particular the overhang over the public road constitutes the carrying out of works which comes within the meaning of development in section 3(1) of the Planning and Development Act 2000,
- (b) works consisting of re-roofing in particular the overhang over the public road constitute 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, and as such comes within the scope of section 4(1)(h) of the Planning and Development Acts , 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, hereby decides that whether works consisting of re-roofing in particular the overhang over the public road at Derreenasoo, Leitrim, Carrick-on-Shannon Co. Roscommon is development and is exempt development.

Gillian Kane,
Planning Inspectorate
03.03.2016