



An  
Bord  
Pleanála

## Inspector's Report PL18.RL3532

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### Question

Whether the installation of a septic tank and percolation area is or is not development or is or is not exempted development.

### Location

Drumquill, Castleblaney, Co. Monaghan

### Declaration

Planning Authority

Monaghan County Council

Planning Authority Reg. Ref.

None

Applicant for Declaration

Martin Molloy

Planning Authority Decision

No declaration issued

### Referral

Referred by

Martin Molloy

Owner/ Occupier

John Brennan

Observer(s)

Patrick Carragher

Date of Site Inspection

7<sup>th</sup> April 2017

Inspector

Niall Haverty

## **1.0 Site Location and Description**

- 1.1. The referral site is located in the townland of Drumquill, c.4.3km north west of Castleblayney, Co. Monaghan. The site is accessed off a local road via a laneway which also serves two other houses. The N2 National Road is located c. 780m to the west, while Laragh Lough is c. 520m to the south of the site. The area surrounding the referral site is generally in agricultural use, with a number of one-off houses.
- 1.2. The site extends to the north and south of the laneway, with a relatively small two storey stone-built structure which appears to be in use as a dwellinghouse, a partially constructed structure and an extensive area of hardstanding surrounding the structures on the northern side of the laneway, and a field on the southern side of the laneway, which is where the percolation area is indicated as being located. A small stream, which appears to be known as the Cloghan stream, flows along the southern boundary of the site, and connects to Laragh Lough.

## **2.0 The Question**

- 2.1. The referral was made by Mr Martin Molloy, a resident of a house neighbouring the referral site. Having reviewed the file, I consider that the referral question can be formulated as follows:
  - Whether the installation of a septic tank and percolation area is or is not development or is or is not exempted development?

## **3.0 Planning Authority Declaration**

### **3.1. Declaration**

- 3.1.1. The Planning Authority did not issue a Declaration to the referrer.

### **3.2. Planning Authority Reports**

- 3.2.1. None available.

## 4.0 Planning History

### 4.1. Reg. Ref. 16/403

- 4.1.1. Planning application to change use of existing house to domestic storage, construction of new house, upgrade of existing septic tank with new wastewater treatment system and other works. Application deemed invalid.

### 4.2. Reg. Ref. 16/235

- 4.2.1. Planning application for a storey and a half dwelling house, upgrading of existing septic tank system with new wastewater treatment system and percolation area and other works. Application withdrawn by applicant.

### 4.3. Reg. Ref. 16/41

- 4.3.1. Planning application for extension to existing house and retention of waste water treatment system and percolation area. Application deemed withdrawn following failure to respond to request for further information. This included a request to provide additional information in respect of the wastewater treatment system.

### 4.4. Reg. Ref. 14/217

- 4.4.1. Retention permission refused for a partially constructed storey and a half extension to the side of existing two storey dwelling house and completion of same and ancillary site development works.

### 4.5. Ref. 10/581

- 4.5.1. Monaghan County Council issued a Declaration in July 2010 stating that the use of a structure as a dwelling house was not considered to be exempt development. The basis of the declaration was that the residential use of the structure had been abandoned and that the structure was derelict prior to the commencement of refurbishment/restoration works. The Planning Officer noted that works had only commenced in April 2010, and that the structure and works were subject to enforcement action (Ref. E10/42). The referrer in that instance was Mr Patrick

Carragher, and he stated that the house had last been lived in 33 years ago and that there was never a septic tank associated with the house.

**4.6. Ref. E14/36**

4.6.1. Enforcement file, including a number of enforcement notices requiring the demolition of an unauthorised structure.

**4.7. Unnumbered Section 5 Referral, dated 4<sup>th</sup> July 2016**

4.7.1. Referral under section 5 of the Planning and Development Act 2000, as amended regarding works to reinstate the residential use of a derelict structure of which the residential use had been abandoned. This referral included a sworn affidavit from Patrick Carragher stating that there was no septic tank connected to the structure or lands until Mr JJ Brennan installed a septic tank in 2010. The Planning Authority does not appear to have issued a Declaration.

**4.8. Ref. E16/27**

4.8.1. Referral under section 5 of the Planning and Development Act 2000, as amended regarding works to reinstate the residential use of a derelict structure of which the residential use had been abandoned. The Planning Authority requested the referrer to submit evidence that the dwelling had become abandoned and derelict, and there is no further documentation indicating whether such evidence was submitted.

**5.0 Policy Context**

**5.1. Development Plan**

The relevant plan is the Monaghan County Development Plan 2013-2019. The referral site is located within a 'stronger rural area' and there are no zoning objectives or other designations applicable to the referral site.

## 5.2. Natural Heritage Designations

There are no Natura 2000 sites within 15km of the referral site. The closest site with a natural heritage designation is Lough Smiley pNHA, which is located c. 1.7km to the south east of the referral site.

## 6.0 The Referral

### 6.1. Referrer's Case

6.1.1. The case submitted by the referrer can be summarised as follows:

- In 2010 works to use an abandoned structure as a dwelling were found not to be exempted development.
- Several planning applications since, none of which sought to retain the unauthorised works.
- Owner/occupier (Mr Brennan) claims that he upgraded the septic tank in 2008.
- A neighbour (Mr Carragher) stated that he witnessed a septic tank being installed in 2010.
- Mr Brennan subsequently stated that he upgraded the septic tank in 2012.
- Mr Brennan's agent claimed in 2016 that the septic tank is suffering from wear and tear.
- There was never a wastewater treatment system serving the structure before it was abandoned.
- Mr Brennan has been asked to make the septic tank and percolation area available for inspection, but no such inspection has taken place.
- The position of the septic tank may be closer to the dwelling house than indicated.
- Referrer's interest in the case is due to his property being adjacent to the referral site and his right of way.

6.1.2. The referrer also submitted a copy of a site layout map from a planning application made by the owner/occupier, which indicates an existing septic tank and percolation area at the referral site.

## 6.2. **Planning Authority Response**

6.2.1. No response was received from the Planning Authority.

## 6.3. **Owner/ occupier's response**

6.3.1. The submission from the owner/occupier (Mr John Brennan) was received late.

## 6.4. **Observations**

6.4.1. Comments on the referral were made by another local resident, Mr Patrick Carragher. Mr Carragher stated that at no time did he give permission for the installation of a septic tank or percolation area on this site, as it is located within 100m of his agricultural sheds.

## 7.0 **Statutory Provisions**

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

#### 7.1.1. Section 2(1)

- “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, 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...

#### 7.1.2. Section 3(1)

- “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.

### 7.1.3. Section 4(1)

- 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;
  - (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;

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

### 7.2.1. 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.

7.2.2. Article 9 sets out various restrictions on exemptions.

### 7.2.3. Schedule 2, Part 1 – Exempted Development – General

7.2.4. Classes 1 to 8 of Schedule 2, Part 1 of the Regulations make provision for certain forms of development within the curtilage of a house to be exempted development, subject to specified conditions and limitations.

7.2.5. Class 41(g) states that the carrying out of remedial works in compliance with an advisory notice issued under section 70H(5) of the Water Services Act 2007 (as

inserted by section 4 of the Water Services (Amendment) Act 2012) shall be exempted development.

## **8.0 Assessment**

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

- 8.1.1. The first matter relates to whether or not the installation of a septic tank and a percolation area comprises development. Having regard to section 2 of the Planning and Development Act 2000, as amended ('the Acts'), I consider that both the septic tank and the percolation area constitute 'structures' within the meaning of the Acts, with both items being a structure, excavation or other thing constructed or made on, in or under any land.
- 8.1.2. I also consider that the installation of these structures constitutes 'development' within the meaning of the Acts, being the carrying on of an act of excavation and construction (i.e. 'works') on, in or under land.

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

- 8.2.1. Having established that 'development' as defined by the Planning and Development Act 2000, as amended, has taken place, it must then be determined whether or not such development constitutes exempted development. Development can be exempted from the requirement for planning permission by either section 4 of the Acts, or article 6 of the Planning and Development Regulations 2001, as amended ('the Regulations').
- 8.2.2. I do not consider that the installation of a septic tank or a percolation area would come within the scope of subsection 4(1)(h) or 4(1)(j) of the Acts. Section 4(1)(h) relates solely to works for the maintenance, improvement or other alteration of a structure, and section 4(1)(j) relates solely to the use of a structure or land within the curtilage of a house. It is clear to me that neither subsection relates to the installation or construction of a structure, and neither can be relied upon in this instance.
- 8.2.3. The Regulations make provision for certain works within the curtilage of a house to be exempted development, subject to specified conditions and limitations. Having reviewed these provisions, I do not consider that there is any provision in the



Regulations for a septic tank or percolation area to be installed or constructed as exempted development. While Class 41(g) of Schedule 2, Part 1 of the Regulations allows for remedial works to be undertaken to a domestic wastewater treatment system, this is only on foot of an advisory notice issued by a water services authority. There is no evidence of any such advisory notice having been issued.

- 8.2.4. There is no response to the referral on file from the owner/occupier. However, it is apparent from the planning history, and as referenced in the referrer's case, that the owner/occupier has previously contended that the septic tank was existing and was upgraded rather than newly installed when the house on the referral site was refurbished/restored. Having reviewed the planning history, there is no evidence of planning permission ever having been granted for a septic tank or percolation area at the referral site and there is no evidence that a septic tank or percolation area was in place prior to the commencement of the Local Government (Planning and Development) Act 1963. It appears that the house on the referral site was vacant for a considerable period and I note that the Planning Authority issued a declaration in 2010 (Ref. 10/581) stating that the use of the structure as a dwelling house was not considered to be exempted development on the basis that the residential use of the structure had been abandoned and that the structure was derelict prior to the commencement of refurbishment/restoration works. I note that one of the photographs attached to the Planning Officer's report in respect of referral Ref. 10/581 is stated as being taken on 13<sup>th</sup> April 2010 and appears to indicate an open trench along the line of the pipe connecting the septic tank to the percolation area as indicated on the drawing provided by the referrer.
- 8.2.5. On my site inspection I did not see any evidence of either a septic tank or a percolation area in the locations indicated on the drawing submitted by the referrer. The indicated location of the septic tank is covered by a mound of earth and rubble, and there was no evidence of a distribution box, vents etc. in the vicinity of the indicated percolation area.
- 8.2.6. In conclusion, based on the information on file, including the planning history, and my site inspection, I am not satisfied that the septic tank and percolation area have the benefit of planning permission or pre-date the commencement of the Local Government (Planning and Development) Act 1963, and I therefore consider that the

installation of a septic tank and a percolation area constitutes development and is not exempted development.

### 8.3. **Appropriate Assessment**

- 8.3.1. Notwithstanding the conclusion that the development in question is not exempted development and as such the restriction in respect of Appropriate Assessment is not relevant, I have considered the potential for significant effects on European sites in the interests of completeness.
- 8.3.2. Having regard to the nature and scale of the proposed development which relates to the installation of a septic tank and percolation area which is not within or in close proximity to any European sites, no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

## 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 installation of a septic tank and percolation area is or is not development or is or is not exempted development:

**AND WHEREAS** Martin Molloy requested a declaration on this question from Monaghan County Council and the Council did not issue a declaration within four weeks of the receipt of the request:

**AND WHEREAS** Martin Molloy referred this declaration for review to An Bord Pleanála on the sixth day of January, 2017:

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

- (a) Sections 2, 3 and 4 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) Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (d) the planning history of the site,

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

- (a) the installation of a septic tank and percolation area on, in or under the land involves the carrying out of works, as defined under section 3(1) of the Planning and Development Act, 2000, and is, therefore, development;
- (b) the development that has taken place does not come within the scope of section 4(1) of the Planning and Development Act 2000, as amended;
- (c) the development that has taken place does not come within the scope of any class of development listed in Part 1 of Schedule 2 to the Planning and Development Regulations 2001, as amended;
- (d) there is no evidence that the septic tank and percolation area have the benefit of a grant of planning permission or pre-date the commencement of the Local Government (Planning and Development) Act 1963.

**NOW THEREFORE** An Bord Pleanála, in exercise of the powers conferred on it by section 5(3)(b) of the 2000 Act, hereby decides that the installation of a septic tank and percolation area is development and is not exempted development.

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Niall Haverty  
Planning Inspector

10<sup>th</sup> April 2017