



An
Bord
Pleanála

Inspector's Report RL15.RL3566

Question

Whether the placing of a mobile home on lands in association with farming and animal husbandry is or is not development and is, or is not, exempted development.

Location

South of Drogheda Street, Collon, Co. Louth

Declaration

Planning Authority

Louth County Council

Planning Authority Reg. Ref.

S52016/14

Applicant for Declaration

Tara Mulholland

Planning Authority Decision

The placing of the existing mobile home on the lands is development and not exempted development.

Referral

Referred by

Tara Mulholland

Owner

Arthur Goring

Date of Site Inspection

18th June 2018

Inspector

Erika Casey

1.0 Site Location and Description

1.1. The subject site is located in Collon Village, approximately 300 metres from the village centre. The site is located south of Drogheda Street and comprises greenfield, agricultural lands. At the time of the site visit, the mobile home had been removed from the site. The stated area of the mobile home in the referral documentation is c. 10 metres long by 3.6 metres wide and 2 metres high.

2.0 The Question

2.1. The question that has arisen is *“whether the placing of a mobile home on lands in association with farming and animal husbandry is or is not development and is, or is not, exempted development.”*

2.2 It should be noted that the wording of the question has been amended for clarity from that submitted by the referrer to include the wording *“is or is not development and is, or is not, exempted development.”*

3.0 Planning Authority Declaration

3.1. Declaration

3.1.1 The placing of the existing mobile home on the lands is development and not exempted development.

3.2. Planning Authority Reports

3.2.1. Planning Report (16.06.2016 and 10.03.2017)

- Section 2 of the Planning and Development Act 2000 interprets agricultural activity as including inter alia horticulture, fruit growing, breeding and keeping of livestock and the use of land as grazing land and section 4 (1) (a) PDA 2000 provides that development consisting of the use of any land for the purpose of agriculture shall be exempted development. It is considered that the farming and husbandry elements of this referral are development and are exempted development.

- Class 17 provides for temporary on site accommodation in association with exempted development such as the use of land for agricultural activity subject to the removal of such accommodation at the expiration of the period of use. It is unlikely that the legislature intended to provide for temporary on site accommodation on such agricultural lands in perpetuity which would in effect exempt the placing of mobile homes on all agricultural lands insofar as these lands remained in agricultural use.
- Class 17 is provided for under the heading Temporary Structures and Uses and the applicant has suggested that the mobile home will remain on site for a period between four and five years. It is considered that Class 17 does not provide an exemption from the obligation to obtain planning permission for the placing of mobile home accommodation on the above lands.

3.2.2. **Other Technical Reports**

- No other reports received.

4.0 **Planning History**

4.1 There is no relevant planning history pertaining to the site. There is an enforcement file pertaining to the lands – **Reference 15 U157.**

5.0 **Policy Context**

5.1. **Development Plan**

5.1.1 The operative Development Plan is the Louth County Development Plan 2015-2020. Collon is a level 3 settlement. Under the Collon zoning map, the subject site is outside the village boundary and is unzoned.

5.2. **Natural Heritage Designations**

5.2.1 The nearest Natura 2000 site is the River Boyne and River Blackwater SAC located c. 6.4 km to the south east of the site.

6.0 The Referral

6.1. Referrer's Case

- States that the mobile home is associated with a sustainable living project. It is the referrer's intention to develop a subsistence farming development on the site comprising a vegetable patch, fruit trees and a flock of chickens for domestic consumption. A geese and goat herd may be acquired in the future.
- The mobile home is a fundamental inclusion in the agricultural holding to provide adequate care for the livestock. It is the intention to build a small holding on site over time and to expand into an education facility providing classes and workshops on sustainable, organic domestic food production. Cites other relevant examples.
- States that the necessary equipment for an organic rainwater harvesting and filtration system have been acquired as well as for a reed bed and willow greywater treatment system and compost toilet.

6.2. Planning Authority Response

- No further comment.

6.3. Owner Response

Arthur Goring, Riverview, Mell, Drogheda, Co. Louth (Owner of Land)

- Supports the occupation and lease of the lands to Ms. Mulholland. Notes that it is beneficial to have a full time steward of the lands. States that Ms. Mulholland has registered for a small flock of chickens for subsistence purposes and it would be neglectful for her not to reside on site to provide adequate care for the fowl.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

Section 2 (1) of the Act provides the following definitions of relevance:

“agriculture” includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the training of horses and the rearing of bloodstock, the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and “agricultural” shall be construed accordingly;

“unauthorised development” means, in relation to land, the carrying out of any unauthorised works (including the construction, erection or making of any unauthorised structure) or the making of any unauthorised use;

“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,

“unauthorised structure” means a structure other than—

(a) a structure which was in existence on 1 October 1964, or

(b) a structure, the construction, erection or making of which was the subject of a permission for development granted under Part IV of the Act of 1963 or deemed to be such under section 92 of that Act, being a permission which has not been revoked, or which exists as a result of the carrying out of exempted development (within the meaning of section 4 of the Act of 1963 or section 4 of this Act);

“unauthorised use” means, in relation to land, use commenced on or after 1 October 1964, being a use which is a material change in use of any structure or other land and being development other than—

(a) exempted development (within the meaning of section 4 of the Act of 1963 or section 4 of this Act), or

(b) development which is the subject of a permission granted under Part IV of the Act of 1963, being a permission which has not been revoked, and which is carried out in compliance with that permission or any condition to which that permission is subject;

Section 3(1) of the Act states the following in respect of ‘development’:

“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 3(2) of the Act states “for the purposes of subsection (1) and without prejudice to the generality of that subsection—

(b) where land becomes used for any of the following purposes—

(i) the placing or keeping of any vans, tents or other objects, whether or not moveable and whether or not collapsible, for the purpose of caravanning or camping or habitation or the sale of goods,

the use of the land shall be taken as having materially changed.”

Section 4 (1) sets out various forms and circumstances in which development is exempted development for the purposes of the Act. It states that the following shall be exempted development 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;”

Section 4 (2)(a) of the Act enables certain classes of development to be deemed exempted development by way of regulation.

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 certain conditions and limitations.

Article 9 (1) of PDR sets out various restrictions on works that would otherwise be exempted development under Article 6.

Class 17 of Part 1, Schedule 2 of the Regulations states:

“The erection, construction or placing on land on, in, over or under which, or on land adjoining which, development (other than mining) is being, or is about to be carried out, pursuant to any permission, consent, approval or confirmation granted under the Act or any other enactment or as exempted development, of temporary on-site accommodation for persons employed, or otherwise engaged, in connection with the carrying out of the development, during the period in which it is being carried out.”

Conditions and Limitations

“Such accommodation shall be removed at the expiration of the period and the land shall be reinstated save to such extent as may be authorised or required by the permission, consent, approval or confirmation granted under the Act or any other enactment.”

8.0 Assessment

8.1 Preliminary Matters

8.1.1 It should be noted that the purpose of this referral is not to determine the acceptability or otherwise of a mobile home on the lands in association with farming and animal husbandry, but rather whether or not the matter in question constitutes development, and if so falls within the scope of exempted development.

8.1.2 As noted above, at the time of the site visit, the mobile home referred to in the referral was no longer on site.

8.1.2 There have been a number of other referrals relating to mobile homes including RL2744, RL2925, RL2848, RL3343, RL2866, RL3349, RL2255.

8.2 Is or is not development

8.2.1 The definition of ‘development’ involves the carrying out of works on, in, over or under land or the making of any material change in the use of any structures or other land. Section 3(2)(b)(i) refers to the placing or keeping of any vans, tents or other objects, whether or not moveable etc. for the purpose of camping, caravanning or habitation.

8.2.2 I consider a mobile home to be an object for the purpose of human habitation, and in this context, the placing of a mobile home on the lands would constitute a material

change of use and would, therefore, constitute development under section 3 (2) (b) (i) of the Act.

8.3 Is or is not exempted development

8.3.1 It is noted that the referrer has not specified under which provisions of the Act or Regulations the exemption is sought. It is their assertion that the mobile home is exempt as it is on lands in association with farming and animal husbandry. Section 4(1) of the Act sets out provisions in relation to exempted development. Under Section 4 (1) (a) it is stated *“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”*.

8.3.2 Agriculture is defined under Section 2 (1) of the Act to include: *“horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the training of horses and the rearing of bloodstock, the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and “agricultural” shall be construed accordingly.”*

8.3.3 It is argued by the referrer, that she is engaged in a subsistence farming development and that the mobile home is an inherent part of this agricultural development. The agricultural use of the site is described as a vegetable patch and planting of fruit trees and animal husbandry comprising the keeping of five chickens for domestic consumption.

8.3.4 It was observed on site that there was no evidence of any agricultural activity as described by the applicant taking place. The mobile home has been removed and there was no livestock or chickens on the site, nor any vegetable patch or fruit trees. The description of the ‘subsistence farming’ practices submitted by the referrer are in my view domestic in character and do not constitute agricultural activity.

8.2.5 Furthermore, it is my view that the clear intent of the exemption set out regarding any building occupied together with lands so used under section 4(1) (a) refers to agricultural buildings and not habitable buildings. A mobile home is clearly a structure used for the purpose of human habitation. It is not an agricultural structure and not related to the purported agricultural use of the lands. It is clearly not the

intent of the legislation to de-exempt the requirement to apply for permission for habitable structures on agricultural lands. No reasonable interpretation of the legislation could conclude that this was the purpose of this exemption.

8.2.6 I, therefore, do not consider the development to consist of the use of land for the purpose of agriculture, nor of a development consisting of the use for that purpose of any building occupied together with land so used.

8.2.7 The assessment of the Planning Authority also makes reference to Class 17 of Part 1, Schedule 2 of the Regulations. Class 17 refers to the “*erection, construction or placing on land on, in, over or under which, or on land adjoining which, development (other than mining) is being, or is about to be carried out, pursuant to any permission, consent, approval or confirmation granted under the Act or any other enactment or as exempted development, of temporary on-site accommodation for persons employed, or otherwise engaged, in connection with the carrying out of the development, during the period in which it is being carried out.*”

8.2.8 As noted above, a mobile home is a habitable structure. The intent of the legislation is not in my view to permit temporary habitable accommodation for persons engaged in exempted development on a site. The exemption relates specifically to on site accommodation directly associated with an exempted development activity and not a structure utilised for domestic purposes and human habitation. Furthermore, it is evident from the referrer’s submitted documentation, that it was the intention to keep the mobile home insitu for a period of 4 to 5 years. This in my view would not constitute a temporary period. In this regard, the provisions of Class 17 are in my view not applicable to the subject site.

8.4 Restrictions on exempted development

8.4.1 Article 9 of the regulations sets out a number of restrictions on exempted development. I do not consider any of these restrictions applicable to the subject site.

Appropriate Assessment

8.4.2 Having regard to the nature and extent of the development within an established urban area, and that the distance of the site to nearest European site, 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.

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 placing of a mobile home on lands in association with farming and animal husbandry is or is not exempt from the requirement to obtain planning permission.

AND WHEREAS Tara Mulholland requested a declaration on this question from Louth County Council and the Council issued a declaration on the 10th day of March, 2017 stating that the matter was development and was not exempted development:

AND WHEREAS referred this declaration for review to An Bord Pleanála on the 3rd day of April 2017:

AND WHEREAS An Bord Pleanála reconfigured the question as follows:

Whether the placing of a mobile home on lands in association with farming and animal husbandry is or is not development and is, or is not, exempted development.

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) The definitions of agriculture as set out in Section 2 (1) of the Planning and Development Act 2000,

- (c) Article 6(1) and article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (d) Class 17 of Part 1 Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (e) The reports of the Planning Authority and the Inspector.

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The placing of a mobile home on lands in association with farming and animal husbandry constitutes an object for the purpose of human habitation. The use of the land would, therefore, materially change, and constitute development, in accordance with section 3(2)(b)(i) of the Planning and Development Act 2000 (as amended).
- (b) The placing of a mobile home on lands in association with farming and animal husbandry would not be exempted under the provisions of Section 4 (1) (a) of the Planning and Development Act.
- (c) The mobile home does not constitute temporary on site accommodation pursuant to an exempted development and, therefore, does not come within the exempted development provisions under Class 17 of Part 1 Schedule 2 to the Planning and Development Regulations, 2001, as amended.
- (d) Does not come within any of the other exempted development provisions of the Act or Regulations.

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 placing of a mobile home on lands in association with farming and animal husbandry is development and is not exempted development.

Erika Casey
Senior Planning Inspector

18th June 2017