



An
Bord
Pleanála

Inspector's Report

RL91.RL3579

Question

Whether construction of curved roof hay barn with green corrugated metal sheeting at Shannongrove House (a Protected Structure) is or is not development or is or is not exempted development.

Location

Shannongrove House, Pallaskenry,
Co. Limerick

Declaration

Planning Authority

Limerick City and County Council

Planning Authority Reg. Ref.

EC17/16

Applicant for Declaration

Carleton Varney.

Planning Authority Decision

Development and is Not Exempted
Development.

Referral

Referred by

Carleton Varney.

Owner/ Occupier

Carleton Varney.

Observer(s)

None

Date of Site Inspection

11th August 2017

Inspector

Fiona Fair

2.0 Site Location and Description

- 2.1. The site is located in the small townland of Shannongrove located approx. 1.86 Km north of Pallaskenry Village and approx. 1.5 Km to the south of the south channel of the River Shannon, some 15 Km west of Limerick City.
- 2.2. The agricultural shed / hay barn the subject of the referral is situated approx. 270 m to the south of 'Shannongrove House', a Protected Structure.
- 2.3. The green / grey corrugated, barrel roofed traditional style hay-barn is constructed close to a grove of trees which are south of the main house and to the west of the access laneway to the property. The north, east and western elevations of the shed are clad in green / grey corrugated cladding with the southern façade open to the elements. The shed is three bay, with a height of some 6.6m and was in use as a hay barn on the date of my inspection.
- 2.4. "'Shannongrove House' comprises a detached five-bay two-storey over basement country house, built c. 1709 and completed in c. 1723, with extensions to sides. Hipped roof with dormered attic and two tall chimneystacks of patterned brickwork. Square-headed window openings. Simple doorcase with segmental pediment to entrance front dated 1709, Baroque styled doorcase to garden front dated 1723 with a flight of steps leading to it. Roughcast rendered walls. House flanked by two L-shaped detached wings with mullion and transom windows. Pigeon house to east of house with a honeycombed interior".
- 2.5. "This is a very distinguished early eighteenth-century house, which was begun by John Bury and completed by his son, William. It was designed by an architect who may have been one of the Rothery family. It is a highly significant house in terms of its style, along with the decorative elements such as the doorcases and the tall, massive patterned brick chimneystacks. It is sited significantly on the south shore of the Shannon estuary and the different doorway treatment on the river side underlines the importance of the riverine elevation. The survival of the pigeon house adds further technical interest in terms of the honeycombed interior which survives in this demesne related building."

The above description is copied from the National Inventory of Architectural Heritage (NIAH)website

3.0 The Question

- 3.1. Whether construction of curved roof hay barn with green corrugated metal sheeting at Shannongrove House (a Protected Structure) Pallaskenry, Co Limerick is or is not development or is or is not exempted development.

4.0 Planning Authority Declaration

4.1. Declaration

- 4.2. On the 10th April 2017 the planning authority issued a Declaration, under Section 5(2)(a) of the Planning and Development Act 2000, as amended stating that 'construction of curved roofed hay barn with green corrugated metal sheeting at Shannongrove House, Pallaskenry, Co. Limerick does not come within the scope of exempted development as defined by Class 9 of Part 3 of Schedule 2 of the Planning and Development Regulations 2001 by virtue of Article 9(1)(a)(vi) of the Planning and Development Regulations 2001, as amended'. That the development as described is development and is not exempted development.

4.3. Planning Authority Reports

4.3.1. Planning Reports

The Planning authority report under Section 5 of the Planning and Development Act 2000 (as amended) sets out the following:

The planning enforcement department received a complaint that a structure was being erected close to Shannongrove House in Pallaskenry. The development inspector of Limerick City and County Council carried out a site visit on the 25th May 2016.

A warning letter was issued to Carlton Varney, the owner of the property on the 8th July 2016 to state that it had come to the attention of Limerick City and County Council that an unauthorised development was being carried out namely, the construction of an agricultural building within the curtilage of a protected structure reference No. B3(12)

In response to the warning letter a letter was received from Cáit Ni Cheallacháin Conservation Architect to state that in her opinion the agricultural structure was not within the curtilage of the protected structure and she requested that the curtilage of Shannongrove House be defined. Limerick City and County Council informed Cáit Ni Cheallacháin that it was the opinion of the planning authority, the agricultural building was within the curtilage of the protected structure and if she was of a different opinion, she had the right to apply for a declaration under Section 5 of the Planning and Development Act.

The report of the Limerick City and County Council development inspector concluded that the agricultural building would come within the scope of Class 9 of Part 3 of Schedule 2 of the Planning and Development Regulations 2001, as amended. However, the exemption under Class 9 is restricted by Article 9 (1)(a)(vi). It was therefore considered that the said works is development and not exempted development under Article 9(1)(a)(vi) of the Planning and Development Regulations 2001, as amended.

4.3.2. Other Technical Reports

The Development Inspector report on file refers to a report from Tom Cassidy, Architectural Conservation Officer. It is stated that in this report that the barn as constructed would be considered to have a detrimental impact on the setting of Shannongrove House which is a building considered to be of National Significance and that in the opinion of the Architectural Conservation Officer the development would not be exempt.

5.0 Planning History

Reg. Ref. 15/898 Permission granted for retention of existing window, internal door opening and partially constructed chimney stacks in proposed new kitchen.

Permission granted for demolition of lean-to extension on east side of existing kitchen with new east window, new kitchen, living room in former stable block, one rebuilt flue stack and one new flue stack and for the restoration of south facing Dutch gables to each of the east and west wings.

Reg. Ref. 02/1904 Permission Granted for change of use of part of existing wing from agricultural to residential use and ancillary works.

6.0 Policy Context

6.1. Development Plan

Limerick County Development Plan 2010-2016 – The appeal site is located in an Agriculturally zoned area. The site is also located in an area of strong agricultural base (map 3.2).

6.2. Natural Heritage Designations

The Lower River Shannon SAC (site code 002165) and the River Shannon and River Fergus Estuaries SPA (site code 004077) are located approx. one Km to the north of the appeal site.

7.0 The Referral

7.1. Referrer's Case

- The landscape of Shannongrove House has not been identified in the Development Plan as being affected by the restrictions on Exemptions Section 9(1)(a)(vi) of the Planning and Development Regulations, 2001 as amended.
- Sets out detailed history of Shannongrove Estate (for information)
- Views and Prospects are illustrated on Map No. 7.6 in the Limerick CDP 2010 – 2016. The Shannongrove Estate is not shown.
- The Shannongrove landholding lies south of the Shannon and outside of both the designated SPA and SAC designations.
- Regard being had to Objective EH 036 of the Limerick County Development Plan 2010 – 2016 Shannongrove is not defined and shown as an ACA in Vol 2 Maps 7.7.1 to 7.7.6 inclusive.

- Limerick County Council was asked to define the curtilage of Shannongrove, this was agreed but not officially confirmed.
- There is no definition of curtilage in Planning Law in Ireland, but there is in Criminal Law.
- Chapter 13 'Curtilage and Attendant Grounds' Paragraph's 13.1.1 and 13.1.4 of the Architectural Heritage Protection Guidelines for Planning Authorities are of relevance.
- Such infringement as described by Limerick City and County Council '...the construction of an agricultural building within the curtilage of a Protected Structure...' does not exist in the Planning Acts
- Shannongrove
 - Is not in an ACA
 - Is not in a 'view or prospect of special amenity value or special interest' named in the Development Plan
 - Is not a 'designated landscape'
 - Is not a 'park' or 'parkland'
 - Is more likely 'a rural agricultural landscape'
- Had the conservation officer confirmed officially the curtilage as agreed on the 7th September 2016, the hay barn would be exempted development, as it would be in the 'Attendant Grounds' of a protected structure, but not within its curtilage.
- The hay barn is a small rural agricultural building, built to serve the present use of Shannongrove land, as grazing for horses, which is a use compatible with its farming origins.
- It is not an infringement of the Protected Structures setting
- Ribbon development permitted along the west boundary of the historic Shannongrove estate is far more of an infringement of the protected structures setting than this small barn.
- The 'Classic Irish House of the Middle Size' along with many others, struggles to be economically viable. It needs the farming income to sustain itself.

- It seems excessive that Limerick City and County Council would serve a warning notice rather than define the curtilage of a protected structure.
- Referral accompanied with:
 - Appendix 1
 - Warning Letter from LC&CC
 - Response to Warning Letter
 - Contemporaneous memo
 - Correspondence sent to Conservation Officer
 - Letter from Limerick City and County Council
 - Application for Section 5
 - Decision on Declaration No. EC17/16
 - Key to Photographs
 - Photographs of the hay barn and all related features.
 - Appendix 2
 - Bury Family details from the Landed Estates Database
 - Down Survey map of the Barony of Kenry 1657
 - Down Survey Aerial View with townland Boundaries
 - Record Place Map with present holding outlined in Blue and historic estate boundaries outlined in red
 - History of Shannongrove House from Conservation Report
 - Champion Trees (Tree Council of Ireland) 2005 & Photographs
 - 1840 Map of Shannongrove Estate
 - Present Aerial View of the Shannongrove Estate
 - NIAH Listings for Shannongrove
 - Protected Structure Listing
 - Map No. 7.6 View and Prospects

- Page 7.28 Environment and Heritage

7.2. Planning Authority Response

- No response has been received

8.0 Statutory Provisions

8.1. Planning & Development Act 2000, Part I, Section 2(1):

“attendant grounds”, in relation to a structure, includes land lying outside the curtilage of the structure;

“protected structure” means—

(a) a structure, or

(b) a specified part of a structure,

which is included in a record of protected structures, and, where that record so indicates, includes any specified feature which is within the attendant grounds of the structure and which would not otherwise be included in this definition;

“protection”, in relation to a structure or part of a structure, includes conservation, preservation and improvement compatible with maintaining the character and interest of the structure or part;

“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, and

b) in relation to a protected structure or proposed protected structure, includes—

(i) the interior of the structure,

(ii) the land lying within the curtilage of the structure,

(iii) any other structures lying within that curtilage and their interiors, and

(iv) all fixtures and features which form part of the interior or exterior of any structure or structures referred to in subparagraph (i) or (iii);

“works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.

8.2. Planning & Development Act 2000, Part I, Section 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 of use of any structures or other land.

8.3. Planning & Development Act 2000, Part IV, Section 57(1):

Notwithstanding section 4(1)(h), the carrying out of works to a protected structure, or a proposed protected structure, shall be exempted development only if those works would not materially affect the character of—

(a) the structure, or

(b) any element of the structure which contributes to its special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest

8.4. Planning & Development Regulations 2001,

Article 6 Exempted Development — Rural Part 3

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

.1. No such structure shall be used for any purpose other than the purpose of agriculture or forestry, but excluding the housing of animals or the storing of effluent.

2. The gross floor space of such structures together with any other such structures situated within the same farmyard complex or complex of such structures or within 100 metres of that complex shall not exceed 900 square metres gross floor space in aggregate.

3. No such structure shall be situated within 10 metres of any public road.
4. No such structure within 100 metres of any public road shall exceed 8 metres in height.
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.
6. No unpainted metal sheeting shall be used for roofing or on the external finish of the structure.

Part 2 Exempted Development, Article 6(1), states: ‘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.

Restrictions on exemption Article 9(1) (a) (vi) states:

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

(vi) interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of a development plan for the area in which the development is proposed 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 plan’.

8.5. Other

Limerick County Development Plan 2010 – 2016

Volume 3 Record of Protected Structures Edition 4

Reg. Ref. 699, Shannongrove House, Shannongrove, Pallaskenry,

Ref. number B3(12) Description -Country House. Map 3

Notes: (Including features in the attendant grounds in same ownership): ‘Dovecot, Windmill Tower’

9.0 Assessment

9.1. Is or is not development

With reference to the provision of the Planning & Development Act 2000, Part I, Section 2 (1) as outlined above, I am satisfied that the construction of a curved roof hay barn, with a ridge height of some 6.6m and a GFA of 131.76 sq. m constitutes 'works'. With reference to the definition as contained in Section 3(1) of the Planning & Development Act 2000, I am satisfied that the works constitute 'development'.

9.2. Is or is not exempted development

In this regard I consider that the provisions of Class 9 of Article 6 Part 3 'Exempted Development' – Rural, conditions and limitations 1 – 6 have to be considered.

'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.'

With reference to limitation 1 the structure is not for use for any purpose other than agriculture, and therefore Condition / limitation 1 is complied with.

With reference to limitation 2 the gross floor space of the hay barn together with any other such structures situated within the same farmyard complex or complex of such structures or within 100 metres of that complex does not exceed 900 square metres gross floor space in aggregate, and therefore Condition / limitation 2 is complied with.

With reference to limitation 3 the hay-barn is not situated within 10 metres of any public road, and therefore Condition / limitation 3 is complied with.

With reference to limitation 4 the hay-barn does not exceed 8 m in height, and therefore Condition / limitation 4 is complied with.

With reference to limitation 5 the hay-barn is not located within 100m of any house or other residential building or school, hospital, church or building used for public assembly, and therefore Condition / limitation 5 is complied with.

With reference to limitation 6 the external finish and roof of the hay-barn comprises painted green / grey corrugated metal sheeting and a low block wall, and therefore Condition / limitation 6 is complied with.

Having regard to the foregoing I am satisfied that the structure complies with the provision of Schedule 6 Part 3 Class 9 Conditions 1 – 6

9.3. **Restrictions on exempted development**

However, a further issued needs to be considered in this instance. As per Map No. 3 and Volume 3 Record of Protected Structures, Edition 4, of Limerick County Development Plan 2010 - 2016, 'Shannongrove House', a protected structure, is located approx. 270 m to the north of the hay-barn location.

The planning authority considered that the structure is located within the curtilage of the protected structure and, therefore, that the exemption under Class 9 is restricted by Article 9(1)(a)(vi) Part 2 'Exempted Development' of the Planning and Development Regulations, 2001, as amended.

In this regard the Planning and Development Regulations, 2001, as amended, state:

'Restrictions on exemption 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

(vi) interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of a development plan for the area in which the development is proposed 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 plan'.

The referrer submits that such an infringement as described by Limerick City and County Council '...the construction of an agricultural building within the curtilage of a Protected Structure...' does not exist in the Planning Acts. That 'Shannongrove House' is not in an ACA, is not in a 'view or prospect of special amenity value or special interest' named in the Development Plan, is not in a 'designated landscape', is not a 'park' or 'parkland' setting and is more likely 'a rural agricultural landscape'.

I highlight that Part 1, Section 2(1) of the Planning and Development Act 2000, defines a 'protected structure' as:

'(a) a structure, or (b) a specified part of a structure, which is included in a record of protected structures, and, where that record so indicates, includes any specified feature which is within the attendant grounds of the structure and which would not otherwise be included in this definition.'

and 'protection', as:

'in relation to a structure or part of a structure, includes conservation, preservation and improvement compatible with maintaining the character and interest of the structure or part.'

Volume 3 Record of Protected Structures listed in the Limerick County Development Plan 2010 – 2016 (Map 3) describes Shan'nongrove House', Protected Structure as a 'County House', including 'Dovecot' and 'Windmill Tower' in its attendant grounds in the same ownership.

It is submitted that, despite a request by the referrer, the curtilage of 'Shannongrove House' has not been statutorily defined by Limerick City and County Council. I note the undated report by Michael O'Brien Development Inspector, on the file. The report was compiled on application under section 5. It refers to reports by Tom Cassidy, Conservation Officer, dated 27th May 2016 and 05th January 2017, of which reports, or copies of same, are not attached and it states: '*confirms that in his opinion (Tom Cassidy) the structure is located within the curtilage of the protected structure*'.

Paragraph 13.1.1 of the Architectural Heritage Protection Guidelines for Planning Authorities, 2011, states:

'By definition, a protected structure includes the land lying within the curtilage of the protected structure and other structures within that curtilage and their interiors. The notion of curtilage is not defined by legislation, but for the purposes of these guidelines it can be taken to be the parcel of land immediately associated with that structure and which is (or was) in use for the purposes of the structure. It should be

noted that the meaning of 'curtilage' is influenced by other legal considerations besides protection of the architectural heritage and may be revised in accordance with emerging case law.'

Paragraph 13.1.2 goes on to state: '...In the case of a large country house, the stable buildings, coach houses, walled gardens, lawns, ha-has and the like may all be considered to form part of the curtilage of the building unless they are located at a distance from the main building'.

I consider that paragraph 13.2 of the Guidelines with respect to determining the attendant grounds of the protected structure are of relevance in the instance case. It states: 'The attendant grounds of a structure are lands outside the curtilage of the structure but which are associated with the structure and are intrinsic to its function, setting and/or appreciation. In many cases, the attendant grounds will incorporate a designed landscape deliberately laid out to complement the design of the building or to assist in its function...The attendant grounds of a country house could include the entire demesne, or pleasure grounds, and any structures or features within it such as follies, plantations, earthworks, lakes and the like'.

I am further of the opinion that the provisions of s.57 of the principal act need to be considered. Section 57 (1) states:

'Notwithstanding section 4(1)(h), the carrying out of works to a protected structure, or a proposed protected structure, shall be exempted development only if those works would not materially affect the character of—

(a) the structure, or

(b) any element of the structure which contributes to its special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest

A 'protected structure' is deemed, under the provisions of Section 2 of the Planning and Development Acts, 2000 to 2010, to consist of the following:

- (i) the interior of the structure,
- (ii) the land lying within the curtilage of the structure,
- (iii) any other structures lying within that curtilage and their interiors, and

- (iv) all fixtures and features which form part of the interior or exterior of any structure or structures referred to in subparagraph (i) or (iii)".

It is my opinion having carried out a site visit that the traditional, agricultural, green corrugated hay-barn, located to the east of a significant grove of mature trees, some 270 m to the south of the main house (protected structure) and to the west of the access road to the property, is located within the attendant grounds of the protected structure. It is not visible from 'Shannongrove House' and no views of the main house are visible from the location of the hay barn. When approaching the main house, 'Shannongrove', along the winding access laneway, which is not tree lined, or avenue like in character, while the hay-barn is observable, views of the hay-barn and main house, 'Shannongrove', are not simultaneously observable.

I highlight the referrers case that the hay-barn is a small rural agricultural building, built to serve the present use of Shannongrove land, as grazing for horses, which is a use compatible with its origins. The hay-barn, located in a paddock, distant from the main 'Shannongrove House', 'Dovecot' and 'Windmill Tower' is screened from the main house by a substantial grove of trees.

I am of the opinion that the traditional style hay-barn, for the purpose of agriculture, located in a rural, equestrian, landscape setting is unobtrusive. It does not adversely impact upon the character or setting of the adjoining protected structure. The character of the landscape is agricultural with clusters of trees and open paddocks.

I consider, regard being had to the 'Architectural Heritage Protection Guidelines for Planning Authorities', 2011, that an argument can be made that the hay-barn is located within the attendant grounds and not the curtilage of the protected structure.

I am satisfied that the character of the protected structure, 'Shannongrove House', or any element of that protected structure, is not materially affected by the hay-barn and therefore can be considered exempted development, regard being had to Part IV, Section 57(1) of the Planning and Development Act 2000, as amended, as the works would not materially affect the character of the structure or any element of the structure which contributes to its special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest. I agree with the referrer that

the development is not subject to restrictions on exemption under Part 2, Article 9(1)(a)(vi) Planning and Development Regulations, 2001, as amended,

10.0 Recommendation

10.1. I recommend that the Board should decide this referral in accordance with the following draft order.

WHEREAS a question has arisen as to whether construction of curved roof hay barn with green corrugated metal sheeting at Shannongrove House (a Protected Structure) Pallaskenry, Co Limerick is or is not development or is or is not exempted development.

AND WHEREAS Carleton Varney under section 5(3)(a) of the Planning and Development Act, 2000, as amended, referred a declaration for review from An Bord Pleanála on the 8th May 2017:

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

- (a) Section 2(1) Planning & Development Act 2000, as amended.
- (b) Section 3(1) of the Planning and Development Act, 2000,
- (c) Part IV Section 57(1) of the Planning and Development Act, 2000, as amended,
- (d) Article 6(1) and 9(1)(a)(vi) Part 2 of the Planning and Development Regulations, 2001, as amended,
- (e) Class 9, Part 3 of Schedule 2 of the Planning and Development Regulations, 2001, as amended,

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The hay-barn is located within the attendant grounds and not the curtilage of the protected structure, 'Shannongrove House'.
- (b) The hay-barn, located at a distance of some 270m from the main building, 'Shannongrove House' protected structure, is screened from view of the main house by a substantial grove of trees.
- (c) The curved roof structure comes within the scope of Part IV, Section 57(1) of the Planning and Development Act, 2000, being works which does not materially affect the character of 'Shannongrove House', protected structure, or any element of the protected structure which contributes to its special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest.
- (d) Use as an agricultural hay-barn complies with Class 9, Part 3 of Schedule 2 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 2000 Act, hereby decides that construction of a curved roof hay barn with green corrugated metal sheeting at Shannongrove House (a Protected Structure) Pallaskenry, Co Limerick is development which is exempted development.

Fiona Fair

Planning Inspector

30.08. 2017