



An
Bord
Pleanála

Inspector's Report PL18.RL3594

Question	Whether the construction of a house, site clearance and connection to septic tank 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.	EX 17/15.
Applicant for Declaration	Patrick Carragher.
Planning Authority Decision	No declaration issued.
Referral	
Referred by	Patrick Carragher.
Owner/ Occupier	John Brennan.
Observer(s)	Martin Molloy.
Date of Site Inspection	15 th September 2017.
Inspector	Patricia Calleary.

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1.0 Site Location and Description

- 1.1. The referral site is located in the townland of Drumquill, which is c.4.3km north west of Castleblaney in County Monaghan. It is accessed off a laneway which connects to a local road. The N2 National Road is located c. 780m to the south west, while Laragh Lough is c. 520m to the south of the site. The area surrounding the site is generally in agricultural use and there are a number of one-off houses in the vicinity.
- 1.2. The site extends to the north and south of the laneway. It comprises a two storey stone-built structure, which appears to be in use as a dwellinghouse and a partially constructed blockwork structure positioned perpendicular to the dwelling, the latter which is the structure at the centre of this referral. Both of the structures on the referral site are surrounded to their front elevations by a hardstanding area.

2.0 The Question

- 2.1. The question that has arisen in this referral is 'whether the construction of a house, site clearance and connection to septic tank is or is not development or is or is not exempted development'. It was referred to the Board by Mr. Patrick Carragher of Drumquill, Castleblaney, Co. Monaghan, who states that he is the owner of an adjacent agricultural shed and lands.
- 2.2. Having regard to the planning history and the information on file, including a copy of the Section 5 Declaration submitted to the Planning Authority enclosed with the referral, it appears that the partially constructed structure on the site, which is central to this referral, was initially constructed as an extension to the original stone house on the site. A physical connection, which was previously formed and which linked the existing stone house and the partly constructed 'structure' appears to have been removed in the intervening period and the structure reads as a standalone 'shed/store' within the curtilage of the site occupied by the existing house. While it appears to be two storey in scale when viewed externally, no first floor has been added internally. Noting this context and in the interest of clarity, it is suggested that the question referred to the Board be reworded as follows: *'Whether the construction of a structure within the curtilage of an existing house and all associated site development works to include site clearance and connection to a septic tank, is or is*

not development or is or is not exempted development' and I intend to proceed with my assessment on the basis of the reworded question.

3.0 **Planning Authority Declaration**

3.1. **Declaration**

- 3.1.1. The Planning Authority did not issue a declaration within the prescribed period and the question was referred to the Board for decision by the referrer under the provisions of Section 5 (3)(b) of the Planning & Development Act 2000, as amended (hereafter referred to as 'the Act').

3.2. **Planning Authority Reports**

3.2.1. Planning Reports

- None on file in relation to this referral.

3.2.2. Other Technical Reports

- None on file.

4.0 **Planning History**

4.1. **Enclosures provided by the Planning Authority**

- 4.1.1. The following Planning and Referral/Declaration history for the subject site has been provided by the Planning Authority by way of four enclosures, copies of which are on the referral file. The contents of each of these are summarised as follows:
- **Enclosure 1 - Ex 14/217¹** - This enclosure contains details of a planning application relating to 'retain and complete development' on 8th April 2015 and which was refused permission by Monaghan County Council under Reg Ref: 14/217. The proposal relates to a partially constructed storey and a half extension to the side of an existing two-storey house and the completion of

¹ There is no cover sheet accompanying this enclosure. The Planning Authority's reference number for the planning application is 14/217.

same together with ancillary site development works. (Note: The structure in question evidently formed part of the works presented on that planning application. An existing septic tank is indicated on the accompanying planning drawings, positioned to the east of the stone house).

- **Enclosure 2 - Ref. Ex 17/5** – entitled ‘Copy of Ex17/5 – Patrick Carragher’. This enclosure contains a copy of a declaration (unnumbered) request by Patrick Carragher, made under section 5 of the Act, regarding works to use a structure as a dwelling house. The file contains a copy of a letter from Monaghan County Council to Mr. Pat Carragher (dated 19th July 2010) stating the works are not considered to be exempted development. The enclosure also contains a letter from Monaghan County Council (dated 05th August 2014) to Mr. Pat Carragher, stating that a planning application was lodged on 14th July 2014 by Mr. Brennan for the retention and completion of works to the subject property.
- **Enclosure 3- Ref. Ex 16/27** entitled ‘Copy of File Ex16/27 – Patrick Carragher’. This enclosure contains a copy of a Declaration submitted by Patrick Carragher to Monaghan County Council under section 5 of the Act regarding works to reinstate the residential use of a derelict structure of which the residential use had been abandoned. The request is dated 25th October 2016. On 24th November 2016, the Planning Authority requested Mr. Carragher to submit evidence that the dwelling indicated in the Declaration request had become abandoned and derelict and there is no further documentation on file indicating whether such evidence was submitted.
- **Enclosure 4** - entitled ‘Copy of Exempt Development File – Patrick Carragher’. This includes an unnumbered declaration requested by Patrick Carragher under section 5 of the Act regarding works to reinstate the residential use of a derelict structure of which the residential use had been abandoned. The request is dated 4th July 2016. The Planner’s assessment includes a recommendation for an order that the works were exempt development under Section 4(1)(h) of the Act and that the use of the structure for residential purposes was not considered to be development as provided under Article 10(1)(d) of the Planning and Development Regulations as the Planning Authority did not consider the use was abandoned since its pre 1st

October 1964 status. The correspondence also contains a copy of the previous letter dated 19th July 2010 furnished to Mr. Patrick Carragher. This is a copy of the same letter contained in the documents marked as Ref. Ex 17/5 by the Planning Authority and detailed above under Enclosure 2.

4.2. Other Referrals

4.2.1. There is a referral on the same site under **PL18.RL.3532** currently with the Board regarding the question as to 'whether the installation of a septic tank and percolation area is or is not development or is or is not exempted development'.

4.2.2. Other Planning Applications

It appears from correspondence furnished to the Board by the Planning Authority, that three applications on or overlapping the referral site were either invalid, withdrawn or deemed withdrawn. These include the following file details:

- **16/235** – Permission to erect a storey and a half dwelling house, upgrading of existing septic tank system with new wastewater treatment and percolation area to serve development, use of existing entrance onto public road and all ancillary site development works. Withdrawn by applicant on 13th July 2016;
- **16/41** – Permission to construct a storey and a half extension to side of existing two-storey dwellinghouse and will consist of retention for the following works: waste water treatment system and percolation area with all ancillary site development works. Deemed withdrawn by Planning Authority on 19th October 2016;
- **16/403** – Permission for change of use of existing two storey dwellinghouse to domestic storage area, construct a replacement storey and a half dwellinghouse, upgrade existing septic tank on site with new waste water treatment system to serve the development, use of existing entrance onto public road with all ancillary site development works. Invalidated by Planning Authority on 28th October 2016.

5.0 Policy Context

5.1. Development Plan

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

5.2. Natural Heritage Designations

5.2.1. There are no Natura 2000 sites within a 15km radius of the referral site. The closest site with a national heritage designation is Lough Smiley proposed Natural Heritage Area (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 following provides a summary of the referrer's case:

- The structure in question began as the major part of an extension to a structure already deemed unauthorised by Monaghan County Council;
- Extension commenced in 2011 and is well within 100m of referrers agricultural shed;
- Monaghan County Council stated that the development was unauthorised and that enforcement proceedings were in train;
- Retention permission was applied for the structure and this was refused;
- Enforcement proceedings continued and the owner removed a small portion of the development, but the structure, ancillary works and the septic tank remain in place;
- Further planning applications were submitted, but these did not reference the structure as being in existence;
- In May 2017, owner commenced reconstruction works including the building of a wall and underground ancillary works.

6.2. Planning Authority Response

6.2.1. The Planning Authority forwarded a copy of their Section 5 Declaration file. It included a copy of the Planning Officer's report, which is summarised as follows:

- Works relate to the construction of a one and a half storey structure and associated site works;
- Provides details of planning history;
- The Planning Authority formed the view that the original dwellinghouse on site was authorised, when it investigated a complaint in 2010 and 2011 and that renovation of the original dwelling were exempted development under the provisions of Section 4(1)(h);
- Since permission was refused in 2014, the landowner has demolished part of the extension on site, but a one and a half storey structure remains;
- As this results in two structures on site, clarification is required from the person who made the request for the Declaration as to which structure the referral relates to;
- An Bord Pleanála are considering a separate referral regarding the septic tank;
- Considers the development does not comply with the provisions of Class 1 and 3 of Schedule 2, Part 1 of the Planning & Development Regulations 2001-2017 (hereafter 'the Regulations');

6.2.2. The Planning Officer recommended a request for further information to clearly identify the structures relating to the declaration, given that there are two structures on the site.

6.2.3. Following a request for further information, a response was received. It included a photograph identifying the actual development being referred to (marked A), which includes the one and a half storey structure, floors and foundations (marked B), sewer pipes (marked C) and the overall site (marked D).

6.3. Owner's Response

6.3.1. The Board received a response to the referral from Sean Lucy & Associates, acting on behalf of the owner. The response is summarised as follows:

- In 2014, Monaghan County Council made the owner aware that they considered the works, which are the subject matter of the referral, to constitute unauthorised development;
- The matters raised in the referral, form part of an enforcement notice issued to the owner in 2015, at which point the works ceased;
- Owner remains in discussion with Monaghan County Council with a view to regularising some portion of the unauthorised works carried out by way of a further planning application;
- It is the owner's position that the referral is without substance, given the fact that all parties are in agreement that the works, the subject of this referral, are development and not exempted development;
- In the circumstances which arise, no substantive question arises in this instance and the Board may therefore dismiss this referral under Section 138 of the Act.

6.4. Observer

6.4.1. An observation on this referral was received from Mr. Martin Molloy with an address at Drumquill, Castleblaney, Co. Monaghan. Mr. Molloy is the referrer in the referral case RL18.RL3532 which is currently with the Board for consideration. The points made in the observation are summarised as follows:

- Original works were already determined not to be exempt development by Monaghan County Council;
- The structure which is the subject matter of this referral is part of an unauthorised extension to a previous unauthorised building;
- Following commencement of enforcement proceedings and a refusal of a retention application, the owner eventually removed a small part of the unauthorised structure;

- A number of planning applications and retention planning applications were submitted to the Planning Authority;
- Further works took place in May 2017, which included construction of a wall and works to the wastewater treatment system and percolation area. Additional works were undertaken in July 2017 including works in two fields to the south of the referral site.

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 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.

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;

7.1.4. Section 4(2)(a)

- ‘The Minister may by regulations provide for any class of development to be exempted development for the purposes of this Act where he or she is of the opinion that: - By reason of the size, nature or limited effect on its surroundings, of development belonging to that class, the carrying out of such development would not offend against principles of proper planning and sustainable development’.

7.1.5. Section 4(2)(b)

- ‘Regulations under paragraph (a) may be subject to conditions and be of general application or apply to such area or place as may be specified in the regulations’.

7.2. **Planning and Development Regulations 2001-2017**

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. Schedule 2, Part 1 – Exempted Development – General

Class 3 of Part 1 of the Second Schedule (General) of the Regulations refers to development within the curtilage of a house. Column 2 refers to conditions and limitations that apply. For ease of reference, the contents of Class 3 are repeated under as follows:

Column 1 – Description	Column 2 – Conditions and Limitations
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of Development	
<p><i>Development within the curtilage of a house</i></p> <p>CLASS 3 The construction, erection or placing within the curtilage of a house of any tent, awning, shade or other object, greenhouse, garage, store, shed or other similar structure.</p>	<ol style="list-style-type: none"> 1. No such structure shall be constructed, erected or placed forward of the front wall of a house. 2. The total area of such structures constructed, erected or placed within the curtilage of a house shall not, taken together with any other such structures previously constructed, erected or placed within the said curtilage, exceed 25 square metres. 3. The construction, erection or placing within the curtilage of a house of any such structure shall not reduce the amount of private open space reserved exclusively for the use of the occupants of the house to the rear or to the side of the house to less than 25 square metres. 4. The external finishes of any garage or other structure constructed, erected or placed to the side of a house, and the roof covering where any such structure has a tiled or slated roof, shall conform with those of the house. 5. The height of any such structure shall not exceed, in the case of a building with a tiled or slated pitched roof, 4 metres or, in any other case, 3 metres. 6. The structure shall not be used for human habitation or for the keeping of pigs, poultry, pigeons, ponies or horses, or for any other purpose other than a purpose incidental to the enjoyment of the house as such.

7.3. Restrictions on Exemptions

- 7.3.1. Article 9 of the Regulations provides that exempted development under article 6 of Regulations shall not be exempted development in certain specified circumstances.

8.0 Assessment

8.1. Is or is not development?

- 8.1.1. Based on information on file and also gathered during my site inspection, I am satisfied that the partially complete structure on site lies within the parcel of land immediately associated with the house and appears to serve as a shed/store in connection with the house. The structure is at the construction stage of blockwork complete and it is roofed with a single skin profile metal cladding. On the day of my inspection, no doors or windows had been fitted in the opes reserved for such. There is no reference on the documentation contained within the referral file to the location of the septic tank. The position of an 'existing septic tank' was shown on a site layout drawing which accompanied the planning application made to Monaghan County Council under Reg Ref: 14/217. However, neither the septic tank nor any connections from the structure to the tank were evident on the ground on the day of my inspection.
- 8.1.2. By way of background, it appears that two declarations were previously requested from the Planning Authority in relation to the two-storey stone house on the site, which is separate to the current referral subject matter. In a letter furnished by the Planning Authority to Mr. Patrick Carragher, the referrer in that case (dated 19th July 2010) states that on the basis of information submitted, the development was not considered to be exempt development. A subsequent declaration made by Patrick Gallagher to the Planning Authority regarding the reinstatement of a residential use of a derelict structure was not concluded. On 24th November 2016, 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. I am satisfied both of these related to the two-storey stone house on site.
- 8.1.3. The construction of the 'structure' on site which is central to this referral and all associated site development works to include site clearance and connection to a septic tank is clearly '**works**' as defined in Section 2(1) of the Act and which in turn is '**development**' within the meaning of Section 3(1) of the Act.

8.1.4. There is no evidence that the development has the benefit of planning permission or to pre-date the commencement of the Local Government (Planning and Development) Act 1963.

8.2. Is or is not exempted development?

- 8.2.1. Development can be exempted from the requirement for planning permission by either Section 4 of the Acts, or Article 6 of the Regulations.
- 8.2.2. I am satisfied that neither the structure nor the associated site development works as described, including site clearance and the connection to the septic tank, can benefit from any exemption under Section 4 of the Act.
- 8.2.3. Schedule 2, Part 1 of the Regulations provides for classes of development which are exempted (general). Under column 1, Class 3 provides for the following exemption: - 'The construction, erection or placing within the curtilage of a house of any tent, awning, shade or other object, greenhouse, garage, store, shed or other similar structure'. There were some construction materials which appear to be associated with the construction of the referral structure and some household goods and toys stored in the structure on the day of my site inspection. There was also a clothes line in use within the structure. Accordingly, I am satisfied that the 'structure' on site fits this class of development, under the categories of 'shed' or 'store' set out under Column 1 as it is functioning as a shed / store ancillary to the dwellinghouse on site.
- 8.2.4. Notwithstanding the above, Column 2 of the same schedule provides six conditions and limitations which must also be complied with in order for a development to benefit from exempted development status. **Condition/Limitation No.1** which requires that no such structure shall be constructed, erected or placed forward of the front wall of a house would not be met in this instance, having regard to the position of the structure relative to the front wall of the house. Given the gross floor area (GFA) of the structure at c.70 sq.m, it would not meet the requirements of **Condition/Limitation No. 2** which requires the total area of a structure not to exceed 25 sq.m. The requirements set out under **Condition/Limitation No.3** regarding private open space not to reduce below 25 sq.m would evidently be met. Not all of the external finishes to the structure are known as yet, and it would be physically possible to finish the façade in stonework. However, given the metal roof

finish, this clearly does not conform with the slated roof finishes of the house and as such **Condition/Limitation No.4** would not be met. Given the overall height of the structure, which I estimate is c. 7m, as this would exceed 4m it would not meet the requirements of **Condition/Limitation no.5**. The intended use of the structure has not been stated so it is not possible to ascertain whether or not it would meet the requirements of **Condition/Limitation No.6** which restricts the use of the structure for human habitation or for the keeping of pigs, poultry, pigeons, ponies or horses, or for any other purpose other than a purpose incidental to the enjoyment of the house as such. I accept that it currently appears to function as a shed/store for the purpose incidental to the enjoyment of the house as it stands and if this would remain as its permanent use, it would meet the requirements of Condition/Limitation No.6.

8.2.5. In summary, the construction of the structure, which is the subject matter of this referral, cannot benefit from the exempted development provision under Article 6(1) of the Regulations, given that it does not meet all of the limitations of Column 2 of Class 3 of Schedule 2 of Part 1 (Exempted Development – General). Specifically, it would not meet the requirements set out under Condition/Limitation 1, 2,4 or 5. It would appear to meet the requirements set out under Condition/Limitation No. 3 and if its permanent use remains as one incidental to the enjoyment of the house, it would meet the requirements of Condition/Limitation No.6.

8.2.6. Having reviewed Article 6 of the Regulations or associated schedules, I do not consider it provides for a new connection to a septic tank, a matter raised in the referral, to constitute exempted development.

8.3. **Conclusion on Exempted Development**

8.3.1. Having regard to the above, I am satisfied that the construction of the structure within the curtilage of an existing house at Drumquill, Castleblaney, Co. Monaghan and all associated site development works to include site clearance and connection to a septic tank is development and is not exempted development.

8.4. **Restrictions on exempted development**

8.4.1. I have concluded that the development cannot benefit from the exempted development provisions under Article 6(1) of the Planning and Development

Regulations 2001-2017. Accordingly, consideration of restrictions on exemptions under Article 9 of the regulations is not relevant.

8.5. **Appropriate Assessment**

8.5.1. Notwithstanding the conclusion arrived at 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.

8.5.2. Having regard to the nature and scale of the proposed development which relates to a structure 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 construction of a structure within the curtilage of an existing house and all associated site development works to include site clearance and connection to a septic tank, is or is not development or is or is not exempted development,

AND WHEREAS Patrick Carragher 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 Patrick Carragher referred this declaration for decision to An Bord Pleanála on the thirteenth day of June, 2017,

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

particularly to –

- (a) Section 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, 2001-2017,
- (c) Class 3 of Part 1 of Schedule 2 to the Planning and Development Regulations 2001-2017,
- (d) the planning history of the site,
- (e) the pattern of development in the area,
- (f) the submissions on file and the report of the inspector.

AND WHEREAS An Bord Pleanála has concluded that:

- (a) the construction of a structure within the curtilage of an existing house and all associated site development works to include site clearance and connection to a septic tank constitutes works, which in turn constitutes development within the meaning of the Planning and Development Act 2000, as amended, and the development does not benefit from any exemption under Section 4 of the Act.
- (b) The development of the structure that has taken place does not come within the scope of Class 3 of Part 1 of Schedule 2 to the Planning and Development Regulations 2001-2017, as it does not appear to meet all of the limitations of Column 2 of the same class. Specifically, it would not meet the requirements set out under Condition/Limitation 1, 2,4 or 5. It would appear to meet the requirements set out under Condition/Limitation No. 3 and if it's permanent use remains as one incidental to the enjoyment of the house, it would meet the requirements of Condition/Limitation No.6.
- (c) Accordingly, the development of the 'structure', and by association, ancillary site development works, cannot be determined to be exempted development since not all of the applicable Conditions

and Limitations of Class 3 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001-2017, have been complied with, as is required by Article 6(1) of these Regulations.

- (d) The connection of the structure to a septic tank does not come within the scope of any afforded exempted development status either under the provisions of the Act or under Article 6 of the Regulations;

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 construction of a structure within the curtilage of an existing house and all associated site development works to include site clearance and connection to a septic tank at Drumquill, Castleblaney, Co. Monaghan is development and is not exempted development.

Patricia Calleary
Senior Planning Inspector

16th September 2017