



An
Bord
Pleanála

Inspector's Report RL18.RL3811

Question	Whether the erection of a pillar box on a right of way 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.	No reference number
Planning Authority Decision	No declaration issued
Referral:	
Referred by	Martin Molloy
Owner/ Occupier	John Brennan
Observer(s)	None
Date of Site Inspection	9 th January 2018
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 contains a small concrete pillar structure and electricity meter and it is positioned along the edge of a laneway, which the referrer states is a right of way. Further west along the laneway there is a two-storey stone-dwellinghouse and a partially-constructed separate blockwork structure, positioned perpendicular to the two-storey dwelling structure. The pillar structure is located c. 30m east of the stated owner's dwellinghouse and there is also a dwelling house located c.110m past the pillar structure to the east.
- 1.2. The N2 national road is located approximately 780m to the south west, while Laragh Lough is approximately 520m to the south of the site. The area surrounding the referral site is largely in agricultural use, with a number of one-off houses.

2.0 The Question

- 2.1. The question as submitted by the referrer is *'whether the pillar box which was constructed on the right of way is or is not development or is or is not exempted development'*.
- 2.2. The pillar structure appears to have been constructed as a support for an electricity meter box and the meter box sits within a recess of the structure. It is stated by the referrer that the structure was constructed in 2010 to serve metering of electricity for an unauthorised development that includes a septic tank. The referrer refers to the septic tank being the subject matter of a separate referral made under An Bord Pleanála reference: RL 3532.
- 2.3. Noting this context and information gathered during my site inspection, and in the interest of clarity, it is considered appropriate that the question referred to the Board be reworded as follows: *'Whether the construction of a pillar structure to house an electricity meter on the edge of a laneway, at Drumquill, Castleblaney, Co. Monaghan is or is not development or is or is not exempted development'*. 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 by the referrer to the Board for a decision, 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.

3.2.2. Other Technical Reports

- None on file.

4.0 Planning History

4.1 Planning History

- 4.1.1. The referrer notes **Planning Reg Ref. 14/217**. This relates to a planning application by Mr. John Brennan for the retention of a partially-constructed storey and a half extension to the side of an existing two-storey house and the completion of same together with ancillary site development works. Retention permission was refused by the Planning Authority for this development. In the response to the further information, the applicant, through his agent refers to a proposal to remove the pillar structure.
- 4.1.2. Other planning applications noted by the referrer include other applications lodged by Mr. John Brennan, the owner of adjacent structures to the west of the current referral site are summarised as follows:
- **16/41** – Permission sought to construct a storey and a half extension to the side of existing two-storey dwellinghouse and retention of waste water treatment system and percolation area with all ancillary site development works. Deemed withdrawn by the Planning Authority on 19th October 2016;

- **16/235** – Permission sought to erect a storey and a half dwelling house, upgrading of an existing septic tank system with a new waste water 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;
- **16/403** – Permission sought 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 the Planning Authority on 28th October 2016.
- **16/463** – Permission sought 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 the Planning Authority on 9th December 2016.

4.2. Referral History

- 4.2.1. There are two concurrent referrals which are currently under consideration by the Board. These include: **RL18.RL.3532** regarding the question as to '*whether the installation of a septic tank and percolation area is or is not development or is or not exempted development*' or is or is not exempted development and **RL18.RL3594** regarding the question as to '*whether the construction of a structure within the curtilage of an existing house and all associated site works to include site clearance and connection to a septic tank, is or is not development or is or is not exempted development*'. The stated owner in relation to the above two referrals is also Mr. John Brennan, the same owner and party to this referral.

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 area is located within a 'stronger rural area' and there are no zoning objectives or other specific designations applicable to the site location.

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, a 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:

- Question put to An Bord Pleanála whether a pillar box which was constructed on a right of way is or is not development, or, is or is not exempted development;
- Structure is owned by Mr. John Brennan;
- The 'pillar box' was constructed in 2010 and appears to serve unauthorised development which includes a septic tank which was installed without planning permission and which is the subject of a referral under PL18.RL3532;
- Monaghan County Council referred to the structure as being unauthorised in previous planning applications (quotes from a further information request under File No. 14/217) and wrote to the applicant and requested that it be removed;

- Mr. Brennan’s agent made a commitment that the unauthorised structure would be removed (quotes from Mr. John Brennan’s response to the Planning Authority under Planning Application reg. ref: 14/217);
- The site has an extensive history of applications and referrals;
- Right of way is frequented by agricultural machinery, livestock and regular traffic and numerous persons have a right of way along the lane.

6.1.2. The referral was accompanied by an A4 marked copy of a rural place map/site location map, a copy of the declaration submitted to Monaghan County Council and a payment receipt for the Declaration received from the Planning Authority. The Declaration was accompanied by a marked up A4 site layout plan and photographs.

6.2. Planning Authority Response

6.2.1. The Planning Authority forwarded a copy of the Section 5 Declaration application, which it received from the referrer. The documentation furnished to the Planning Authority by the referrer, stated the nature of the development as being ‘a pillar of c.1.9m in height which appears to be for electricity serving unauthorised development including a septic tank along a right of way’.

6.3. Owner’s Response

- No response on file.

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...

- “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—
 - (g) development consisting of the carrying out by any local authority or **statutory undertaker** of any works for the purpose of **inspecting, repairing, renewing, altering or removing** any sewers, mains, pipes, cables, overhead wires, or other apparatus, including the excavation of any street or other land for that purpose. (*My emphasis in bold*).

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—
 - (i) 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 ...

7.2. **Planning & Development Regulations 2001-2018**

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 26 of Part 1 of the Second Schedule (General) of the Planning & Development Regulations 2001-18 (hereafter referred to as ‘the Regulations’) under an earlier category of ‘Development by statutory undertakers’ provides the following class of development to be exempted:

‘The carrying out by any undertaker authorised to provide an electricity service of development consisting of the **laying underground** of mains, pipes, cables or other apparatus for the purposes of the undertaking’. (*My emphasis in bold*).

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. The pillar appears to have been constructed as a structural support to house an electricity meter and to facilitate meter reading. It is minor in scale measuring c.1800mm high x c.900mm wide x c.470mm deep and appears to be constructed of concrete blocks with a rendered finish. It houses an electricity meter inserted in a recessed upper section facing the roadside. It is stated by the referrer that the meter is connected to an electricity supply serving a development which includes a septic tank.
- 8.1.2. During 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.
- 8.1.3. Based on the information on file and my site inspection, I consider that notwithstanding the minor scale of the structure housing an electricity meter, it constitutes ‘**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. I have not been provided with any evidence that the development has the benefit of planning permission.

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

8.2.1. While not altogether clear, it is most likely that the electricity meter housed within the pillar structure relates to an electricity supply in the vicinity. Development can be exempted from the requirement for planning permission by either Section 4 of the Act or Article 6 of the Regulations for certain works by statutory undertakers including electricity providers. However, in this case, there is no evidence that the development has been carried out by a statutory undertaker such as an electricity undertaker. Nonetheless, for completeness, I have also considered the question referred in this context (i.e. should the stated works have been undertaken by a statutory undertaker).

8.2.2. I have considered 4(1)(g) of the Act which allows for certain development to be exempted development by a **statutory undertaker**. However, the development categories under 4(1)(g) do not include the construction of any pillar structure or similar-type structure. Therefore notwithstanding that there is no evidence that the development was carried out by a statutory undertaker and even if it was, the subject pillar structure cannot benefit from any exemption under Section 4(1)(g) of the Act.

8.2.3. Class 26 of Part 1 of the Second Schedule (General) of the Regulations also allows for certain works to be exempted development by a statutory undertaker. An exemption afforded under Class 26 relates to development consisting of the **laying underground** of mains, pipes, cables or other apparatus for the purposes of the undertaking. Notwithstanding that there is no evidence that the development was carried out by a statutory undertaker, in any case while the meter box could be considered an apparatus, the structure which it is housed in cannot and it is not laid underground. I am satisfied that it cannot therefore benefit from exempted development status under Class 26 of Part 1 of the Second Schedule.

8.2.4. Having reviewed Section 4 of the Act and Article 6 and associated schedules of the Regulations, I do not consider there is any other provision which allows for the construction of a pillar structure to house an electricity meter to constitute exempted development.

8.3. **Conclusion on Exempted Development**

- 8.3.1. Having regard to the foregoing, the construction of a pillar structure to house an electricity meter on the edge of a laneway, at Drumquill, Castleblaney, County Monaghan 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 4 of the Act or Article 6 and related schedules of the Regulations. 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 pillar structure to house an electricity meter on the edge of a laneway, at Drumquill, Castleblaney, County Monaghan 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 twenty-ninth day of September 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 2001-2018,
- (c) Class 26 of Part 1 of Schedule 2 to the Planning and Development Regulations 2001-2018,
- (d) The pattern of development in the area,
- (e) The submissions on file and the report of the Inspector.

AND WHEREAS An Bord Pleanála has concluded that:

- (a) the construction of a pillar structure to house an electricity meter on the edge of a laneway constitutes works, which in turn constitutes development within the meaning of the Planning and Development Act 2000, as amended.
- (b) The development of the structure that has taken place does not come within the scope of any provisions afforded exempted development status under Section 4(1)(g) of the Planning and Development Act 2000, as amended, as while this section allows for certain works to constitute exempted development when undertaken by a statutory undertaker, there is no evidence that the development

was carried out by a statutory undertaker and in any case the provisions afforded exempted development status do not include the construction of any pillar or similar-type structure.

- (c) The development of the structure does not come within the scope of any class afforded exempted development status for the purposes of the Planning and Development Act 2000, as amended, under Article 6 and Class 26 of Part 1 of Schedule 2 to the Planning and Development Regulations 2001-2018, as this exemption class relates only to underground works, as specified, and only where the works are carried out by a statutory undertaker.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5(3)(b) of the Planning and Development Act 2000, as amended, hereby decides that the construction of a pillar structure to house an electricity meter on the edge of a laneway, at Drumquill, Castleblaney, County Monaghan is development and is not exempted development.

Patricia Calleary
Senior Planning Inspector

10th January 2018