Ronan Megannety

From: Appeals2
Sent: Wednesday 4 December 2024 14:22
To: Ronan Megannety
Subject: FW: See attached
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From: ian doyle <iandoyleplanner@gmail.com>
Sent: Wednesday, December 4, 2024 1:56 PM
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REF: APB-320954-24

Ronan Megannety,
Executive Officer,
An Board Pleanála,

Sent vial email:appeals@pleanala.ie

Date: 04/11/2024

Re: *Response to invitation to comment on the above referenced Section 5 declaration under S131 of the Planning & Development Act 2000. Killrugger Farm, Killugger, Killinick, Co. Wexford and in particular to the submission made by Sheen Planning on behalf of Premier Pigs Ltd.*

To whom it may concern,

The following submission has been prepared by Ian Doyle Planning Consultant and is submitted on behalf of Katherine Bail and others, Ballykelly, Drinagh, Co. Wexford.

The referral question before the Board as submitted by Wexford County Council is as follows:

- *Does the current use of the existing agricultural shed situated in the southeast corner of the farm to house pigs require a change of use planning permission?*
- *Do the development works carried out to this shed including the additional floor area, the construction of slatted tanks, the raised ground level and the addition of a concrete ramp require retention permission?*

The above was reformatted by the Board as ***"whether (i) the current use of the existing agricultural shed to house pigs is a change of use and (ii) the additional floor area, the construction of slatted tanks, the raised ground level and the addition of concrete ramp is or is not development or is or is not exempted development."***

(i) the current use of the existing agricultural shed to house pigs is a change of use

A change of use clearly has occurred from a conventional dairy farm to a commercial finishing unit for pigs.

The following details were provided as part of a Freedom of Information Request and consist of a report from Steve Gooden, Technician with the Planning Department of Wexford County Council. It is noted that the report specifically mentions that the owner stated to him while he was conducting a site visit, that *"Pigs had been kept in the shed since 2016, cattle were kept previous to this".*

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Planning History:
Plan Reg 20081365 – Construction of a new Agricultural Shed and ancillary site works. Decision - Granted subject to conditions 16th July 2008.
Condition no. 1 of Plan Reg 20081365 states that the development be carried out strictly in accordance with the plans lodged with the planning application.
The floor plan / elevations submitted with Plan Reg 20081365 do not show slatted tanks incorporated into the shed.

Exempt Development Application relating to the building:
Plan Reg EXD00824 – Agricultural Shed – change of use form Class 6 to Class 7. Decision – Not Exempt

Site Visit:
I inspected the site on 10th August 2020 and noted the following:

I met the owner [redacted]. He stated that pigs had been kept in the shed since 2016 (cattle were kept previous to this).
In the large shed in the south east corner of the site, the floor level had been raised in order to incorporate slatted tanks directly beneath the floor where the pigs were kept (see layout plan and photos 1 and 2). The slatted tanks covered the entire floor area of the building (approx. 1770m2).

Conclusion:

The agricultural shed was initially used for the keeping of cattle (Class 6) but now is currently being used for pigs (Class 7). As per Plan Reg EXD00824 this change of use is not exempt and requires planning permission. Therefore the keeping of pigs in the shed is unauthorised change of use from Class 6 to Class 7 in Part 3, Article 6, Exempted Development – Rural.

The floor level of the agricultural shed has been raised so as to incorporate slatted tanks directly below where the pigs are being kept. Such development is not in compliance with condition no. 1 of Plan Reg 20081365 as slatted tanks are not shown on the drawings.

Recommendation:
Issue Enforcement Notice for the following:
Unauthorised change of use of the agricultural shed from Class 6 to Class 7.

Non-compliance with condition no. 1 of Plan Reg 20081365 (slatted tanks are not shown on the drawings) lodged with the planning application.

S. Gooden

Steve Gooden
Technician, Planning Department.

In addition to the above admission by the piggery owner the submission by Sheehan Planning clearly refers to the previous use as *"livestock cattle"*. A change of use has therefore occurred from cattle to pigs and as such from Class 6 to Class 7 in the absence of planning permission.

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Question 15 of Wexford County Councils planning application form

Question 15 of Wexford County Councils planning application form requires the applicant to state the existing use and to state the floor area of buildings proposed for a *"material change of use"* to that existing or established. While the answer to this question over the planning history of the site varies from "agriculture" to "Farmyard" there is no mention of commercial pig finishing. More importantly no material change of use was stated as being proposed.

No material change of use from the previously established use was ever proposed by any of the planning applications submitted and approved. Condition one of the permitted applications require that the development be carried out in accordance with the details submitted. As a material change of use was not proposed in response to Question 15 of the associated planning application forms for any of the permitted developments, it could be argued that permissions granted are therefore limited to the class of use on site at the time of their making which was not general agriculture but the keeping of cattle.

Much has been made of the perceived openness of the governing permission being described as "agriculture". It is noted that a change of use can occur from class 6 to class 7 despite both being considered agriculture. The more important question is whether such a change of use requires planning permission.

Comparison to Retail Planning

A similar comparison occurs in the retail sector. While a "shop" is described as *"structure for the sale, display or delivery of a service principally to the public and for the retail sale of goods".* Subcategories of retail namely, convenience, comparison and bulky goods exist, and a material change of use can occur between categories based on the type of goods sold. Relevant cases include:

RL3520 - whether a material change of use arises by reason of the type of goods being sold and consequently whether it is or is not development or is or is not exempt about. Is development (quashed currently being reconsidered).

21.2988 - the board determined that a change of use had occurred by reason of the class of type of goods being sold at home store and more, Sligo retail park, County Sligo.

RL3445- the board determined the change of use of former retail warehouse to use a supermarket for sale of non-bulky goods was development at the end for access centre Longford

A change of use can occur to a "shop" based on the type of goods sold and similarly a change of use can occur to an "agricultural building" based on the type of animal being farmed. A significant difference arises in that while the categories of retail are not separated out into separate classes (in terms of the P&D Regulations), types of farming are (namely Class 6 (cattle) and class 7 (pigs)).

A change of use has occurred. The idea that the change of use is protected or unenforceable as a result of the parent permission being described simply as "agriculture" is contrary to the spirit of the

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regulations and to proper planning and development. As is the case in retail planning, a change of use from one type of retail to another amounts to a change of use and is enforceable.

(ii) the additional floor area, the construction of slatted tanks, the raised ground level and the addition of concrete ramp is or is not development or is or is not exempted development

Additional floor area

It is stated in the planning authority's referral that the shed currently used to house the pigs was granted permission for 1012sqm and that the shed as constructed is approximately 677sqm larger. This equates to a 67% increase in size. The development therefore was not carried out in accordance with Condition 1 of its governing permission which states:

1. The proposed development shall be carried out strictly in accordance with the plans and particulars lodged with the planning application, except as otherwise required by the conditions of this permission.

   REASON:

   To ensure the proposed development strictly accords with the permission and that effective control is maintained.

A 67% increase in floor area is not of a trivial nature and essentially amounts to an entirely different structure than that permitted. The shed in its entirety therefore constitutes unauthorised development.

The construction of slatted tanks, the raised ground level and the addition of concrete ramp

While avoiding reference to the obvious increase in floor area, the submission by Sheehan Planning states that the slatted tanks, the raised ground level and the addition of a concrete ramp constitute exempted development in accordance with 4(1)(a) and 4(1)(h) of the Planning and Development Act which states the following:

(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

(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

The concrete ramp is excessive in scale and alters the ground level by more than 2m. Any alteration to ground level in excess of 1m requires planning permission. Furthermore the ramp significantly alters the external appearance of the building and as such requires the benefit of planning permission.

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Corajio Unlimited Company Trading as Mr Price Branded Bargains (the Applicant), V's An Bord Pleanála (the Board)

A recent ruling by the high court in the case Corajio Unlimited Company Trading as Mr Price Branded Bargains (the Applicant), V's An Bord Pleanála is relevant in this instance considering the fact that the shed was constructed prior to the slatted tanks and concrete ramp under a planning permission granted in 2008. (As stated above, Premier Pigs Ltd took over the site and carried out additional works to the shed in 2016).

In the case Corajio Unlimited Company Trading as Mr Price Branded Bargains, V's An Bord Pleanála, the Applicant sought to avail of an exemption from the requirement to apply for planning permission for a change of use from car sales to a retail shop which usually constitutes exempted development (schedule 2 Class 14 (a)).

Of the governing permission the usual *"shall be carried out in accordance with the drawings and documentation submitted to the Planning Authority"* condition was applied. Similar to the subject referral this condition was not complied with. The applicant, sought a Section 5 declaration from the Planning Authority in 2016 posing the question *"whether the change of use from the former car garage to use as a retail shop, is development, and or is not exempted development"*.

The Board accepted that the proposed change of use would generally come within the scope of Class 14 (a) of Part 1 of Schedule 2 of the P&D Regulations, and would generally be considered exempted development. However, the building had not been built in accordance with the original planning permission granted. Therefore, the Board decided that change of use of the premises was development and was not exempted development. The decision of the Board was judicially reviewed by the Applicant. Ms. Justice Siohbán Phelan concluded that:

"Exemption provisions operate to assist the compliant developer who carries out development which has been exempted from the requirement to obtain planning permission in respect of changes treated as non-material under the statutory scheme. They do not avail an errant developer in regularising planning status where there has been noncompliance with the planning permission granted in the first place."

Considering the above, the fact that the subject shed was not carried out in accordance with the details submitted means that exempted development is not applicable regardless of the use. The shed, slatted tanks and concrete ramp are therefore unauthorised and require a retention planning application.

Other Considerations

The submission by Sheehan Planning attempts to counter observations made by third parties with regards to traffic impact, AA screening, EIAR screening, and the need for EPA licencing. A section 5 referral is not the correct procedural avenue for such counter arguments and the need for same only further justifies the fact that a planning application is clearly required in this instance.

Third party references to the potential impacts of the commercial pig finishing facility are valid.

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The environmental implications of such a use have never been determined and properly assessed. The spreading of waste, the transportation of waste, the spreading of pig slurry and soiled waters, the potential impact on aquifers and existing wells (including the public borehole well (approx 350 meters north of the shed which feeds into Uisce Éireann's main water scheme of Mayglass water Tower), the formulation and implementation of a nutrient management plan, the maintenance of a register in relation to land spreading, noise impact and odour emissions all remain unchecked, unassessed and unregulated.

AA screening and Natura Impact

More worryingly is the apparent flippant response to AA screening and Natura impact despite the clear identification of Natura sites in close proximity to the site. The submission states clearly that Premier Pigs were not requested to provide EIA and/or AA screening and as such no AA/EIAR screening has occurred.

> *Finding that of Section 4 agricultural exemption did not apply by virtue of s.4(4)*
>
> Section 4(4) of the 2000 Act only applies where it is concluded that either an AA and/or an EIA is actually required.
>
> Premier Pigs has not been asked to prepare screening reports, did not make the referral and there is insufficient time in the period allowed for submissions to commission an EIA and/or AA screening report. Without prejudice to the above we note[8] that:
>
> The site is c. 1.6 km west of the Wexford Harbour and Slobs proposed NHA;
>
> The site is c. 1.7 km west of Wexford Harbour and Slobs SPA (004076);
>
> The site is c.3.8 km southwest of Slaney River Valley SAC (000781); and
>
> There are no indirect pathways or streams within 100m of the shed that filter to the above sites.

The submission on behalf of Premier Pigs states *"this case has already been the subject of legal proceedings. The facts and omissions as set out above all tend towards a suspicion the true purpose of this referral is to ground some form of enforcement action and or to force premier pigs limited to apply for retention permission if this were proven to be the case it would represent a clear abusive process."*

In response to this and conversely, the same can be said of Premier Pigs assertion that planning permission is not required. The referral by the planning authority seeks to determine whether or not a planning application is required in this instance. Despite clear evidence that a change of use has occurred, that the initial shed is clearly unauthorised and has been constructed significantly larger than previously permitted. That alterations have been made to the shed consisting of a large concrete ramp which in itself constitutes development, enforcement proceedings have not been taken. Arguably the absence of enforcement in favour of a Section 5 referral process has afforded

Premier Pigs Ltd the opportunity to stay open and trading despite clear evidence that unauthorised development has take place.

Environmental Impact Assessment

In relation to EIA it is noted that the threshold for mandatory EIA for intensive pig rearing is 2,000 places for production pigs. It is stated in the Sheehan Planning submission that the shed has the potential to accommodate 1792 pigs. The current operation is therefore just 10% below the mandatory threshold. This is sufficient to require sub threshold screening.

Article 92 of the Planning & Development Regulations of 2001, as amended define: 'sub- threshold development' as:

"development of a type set out in Part 2 of Schedule 5 which does not equal or exceed, as the case may be, a quantity, area or other limit specified in that Schedule in respect of the relevant class of development."

Annex III of the EIA Directive (2011/92/EU, as amended) as transposed into Schedule 7 of the Planning and Development Regulations – establishes the criteria by which sub-threshold projects are reviewed to determine if they should be subject to EIA. The declaration of Wexford County Council referred to by the Sheehan Planning submission is not in accordance with the required criteria and as such does not constitute a valid subthreshold screening process.

Schedule 7A of the Planning and Development Regulations outlines the information to be provided by the applicant or developer for the purposes of screening sub-threshold development for Environmental Impact Assessment as follows:

1. **A description of the project,** including in particular:
    - A description of the physical characteristics of the whole project and, where relevant, of demolition works.
    - A description of the location of the project, with particular regard to the environmental sensitivity of geographical areas likely to be affected.
2. **A description of the aspects of the environment likely to be significantly affected by the proposed development.**
3. **A description of any likely significant effects, to the extent of the information available on such effects, of the proposed development on the environment** resulting from:
    - The expected residues and emissions and the production of waste, where relevant, and
    - The use of natural resources, in particular soil, land, water and biodiversity.

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4. **Compilation of the above information taking into account criteria in Schedule 7** as appropriate.

Schedule 7, as referenced in Item 4 of Schedule 7A provides a further list of criteria for determining whether development listed in Part 2 of Schedule 5 should be subject to an environmental impact assessment and include

1. Characteristics of the Proposed Development.
2. Location of the Proposed Development.
3. Types and characteristics of potential impacts

Adequate subthreshold screening of the existing pig finishing facility has not taken place.

Traffic Impact

A conversation between the previous farm manager and the owner of Premier Pigs that took place on the 9th or 10th of November does not constitute a Traffic and Transportation Assessment. The submitted information is flawed in this regard.

Conclusion

By Premier Pigs own admission, the previous use of the subject shed was housing cattle. A change of use has occurred from class 6 to class 7 when they purchased the site in 2016 and began utilising the shed for the purpose of commercial pig finishing. Therefore, a change of use has occurred.

Regardless of the use of the shed the fact that it was constructed significantly larger then permitted under its governing permission renders all subsequent development claimed by Premier Pigs Ltd. to be exempt, as constituting development. Therefore, all development associated with the shed, including the shed itself, the slatted tanks, raised ground level and the concrete ramp are unauthorised, are enforceable and require a retention planning application.

In accordance with the precedent established by Corajio Unlimited Company Trading as Mr Price Branded Bargains, V's An Bord Pleanála, the subject development is not exempt development.

If you require further discussions with regards to the above, please do not hesitate to contact me.

Kind Regards

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