

File With _____

SECTION 131 FORM

Appeal NO: AP-305540-19

Defer Re O/H

TO:SEO

Having considered the contents of the submission dated received 06/10/19

from

Stratton Co. Co. I recommend that section 131 of the Planning and Development Act, 2000

be/not be invoked at this stage for the following reason(s): No new material issues.

E.O.: Jack Phelan

Date: 14/2/19

To EO: _____

BPRL20 to issue

Section 131 not to be invoked at this stage.

Section 131 to be invoked – allow 2/4 weeks for reply.

S.E.O.: _____

Date: _____

S.A.O.: _____

Date: _____

M _____

Please prepare BP _____ - Section 131 notice enclosing a copy of the attached submission

to: _____

Allow 2/3/4weeks – BP _____

EO: _____

Date: _____

AA: _____

Date: _____

File With _____

CORRESPONDENCE FORM

Appeal No: ABP-305540-19

M S. Carleton

Please treat correspondence received on 31/10/19 as follows:

1. Update database with new agent for Applicant/Appellant _____ 2. Acknowledge with BP <u>RL20</u> 3. Keep copy of Board's Letter <input type="checkbox"/>	1. RETURN TO SENDER with BP _____ 2. Keep Envelope: <input type="checkbox"/> 3. Keep Copy of Board's letter <input type="checkbox"/>
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Amendments/Comments

Monaghan County Council's response to BPRLO7 sent 04/10/19. LD: 31/10/19 ON TIME

4. Attach to file (a) R/S <input checked="" type="checkbox"/> (d) Screening <input type="checkbox"/> (b) GIS Processing <input type="checkbox"/> (e) Inspectorate <input type="checkbox"/> (c) Processing <input type="checkbox"/>	RETURN TO EO <input type="checkbox"/> <i>PTD</i>
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	Plans Date Stamped <input type="checkbox"/> Date Stamped Filled in <input type="checkbox"/>
EO: <i>Mark Mulvey</i>	AA: <i>Jennifer Carleton</i>
Date: <i>06/11/19</i>	Date: <i>06.11.19</i>

Mary Ledwith

From: Bord
Sent: Thursday 31 October 2019 16:32
To: procbordemail
Subject: FW: ABP-305540-19 McDaid
Attachments: McDaid Sec 5 Referral.pdf

From: Adrian Hughes [mailto:adrian.hughes@monaghancoco.ie]
Sent: Thursday 31 October 2019 15:58
To: Bord <bord@pleanala.ie>
Cc: Joan Ryan <jryan@monaghancoco.ie>; Angela Gallagher <agallagher@monaghancoco.ie>
Subject: ABP-305540-19 McDaid

Your ref: ABP-305540-19
Our ref: EX 19/22
Date: 31 Oct 2019

For the attention of Mark Kielty

Dear Sir

Re: Referral under Section 5 of the Planning and Development Act 2000 (as amended)
Mr Donal McDaid – Installation of animal underpass and animal effluent holding tank at Beagh D.E.D. (Crosslare), Carrickmacross, County Monaghan

I refer to your letter of 04 October 2019 in respect of the above matter.

Please find attached comments from Monaghan County Council submitted under Section 129 of the Planning and Development Act 2000 (as amended).

I would be obliged if you could confirm receipt.

A hard copy has been forwarded in the post.

Regards

Adrian Hughes
Senior Planner
Monaghan County Council

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rúnda nó faoi phribhléid a bheith istigh inti agus murach tusa an faighteoir beartaithe, níl cead agat an ríomhphost seo a scaipeadh, a dháileadh nó a chóipeáil. Má fuair tú an ríomhphost seo de bharr botúin, cuir in iúl don té a sheol é láithreach, le do thoil, trí ríomhphost a chur, agus scríos é ó do chóras. Ní féidir a dheimhniú go mbeidh seachadadh ríomhphoist slán agus mar sin de ní ghlacann Comhairle Contae Mhuineacháin le freagracht dhlíthiúil as ábhar na teachtaireachta seo. Ach gurb é gnáthchomhfhreagras gnó atá i gceist, is leis an údar amháin aon bharúil nó tuairim a chuirtear i láthair agus ní gá gurb ionann iad agus barúil nó tuairim Comhairle Contae Mhuineacháin. Tá ríomhchláir frithvíreas i bhfeidhm ag Comhairle Contae Mhuineacháin, ach ní ghlacaimid le freagracht as aon díobháil d'aon sórt a mbeidh seachadadh víris mar chúis léi. Déanann Comhairle Contae Mhuineacháin monatóireacht ar chumarsáid ríomhphoist ar chúiseanna oibriochtúla, slándála agus gnó..

Monaghan County Council

Planning and Development

An Bord Pleanala Reference Number: ABP-305540-19

Reference Number: EX19/22
Applicant: Mr Donal McDaid
Development: Installation of cattle underpass and animal effluent holding tank
Location: Beagh D.E.D. (Crosslare), Carrickmacross, Co Monaghan

Referral to An Bord Pleanala under Section 5(3)(a) of the Planning and Development Act 2000 (as amended)

Submission by Monaghan County Council under section 129 of the Planning and Development Act 2000 (as amended)

1.0 Introduction

1.1 This submission is made under the provisions of section 129 of the Planning and Development Act 2000 (as amended) in respect of a referral to An Bord Pleanala by Donal McDaid.

The reports submitted by the Planning Authority, dated 04 September 2019 (Reference EX 19/22) and 26 July 2019 (Reference EX 19/14) are taken as read, and their content is not repeated in this report.

1.2 It is noted that a significant amount of written commentary has been provided by the applicant with this referral. Some of this was submitted with the request for a declaration to the Planning Authority on 08 August 2019, while some of it is new. The Planning Authority is of the opinion that significant parts of the commentary provided, while related to the development, are immaterial to the determination as to whether it is, or is not, exempted. The motivation for the submission of such information cannot be determined, but it is clear that its inclusion has the potential to 'muddy the waters'. The planning authority strongly disagrees with some of these comments made, but it has generally avoided responding to these for reasons of relevance, clarity and brevity.

Comments provided in this report relate in the main to matters raised in the referral by Mr McDaid to An Bord Pleanala on 02 October 2019, which were not previously raised in the request for a declaration made to the Planning Authority on 08 August 2019. In this regard, particular attention is drawn to the letter dated 01 October 2019 from Ger Fahy Planning, and the letter dated 29 September 2019 from Mary Moran-Long.

1.3 A short commentary has been provided in respect specific points raised under a number of headings.

2.0 General

- 2.1 Mary Moran-Long in her letter of 29 September 2019 (paragraph 4.9) states that the Planning Authority has an *'entrenched view which biased its ability to objectively assess'*. Ger Fahy Planning on page 14 of their letter of 01 October 2019 states that Mr McDaid is *'simply seeking a fair and impartial assessment of this case by An Bord Pleanala'*.

In this regard the Planning Authority would stress that it has at all times acted in a professional, transparent, impartial, and objective manner, and that opinions given to the contrary are made without fact, are incorrect and are disingenuous.

- 2.2 Both Ger Fahy Planning (page 14 and page 19 of their letter dated 01 October 2019) and Mary Moran-Long (paras 2.4 and 3.5 of letter of 29 September 2019) reference conversations between employees of Monaghan County Council and Mr McDaid, where it is contended that verbal 'consent' was given for the development to proceed without planning permission. This position is most strongly contested by the planning authority. In respect of the comments attributed to Ms Hurson and Ms McEvoy from the Environment Section of Monaghan County Council, it is important to point out that this claim somewhat peculiarly, has never been raised in any previous proceedings.

Notwithstanding the above, it is clear that any verbally exchanges between employees of the Council and members of the public cannot confer planning permission or render a development exempted.

Grounds for Referral

- 3.0 **Works constitute works in compliance with a Notice under Section 12 of the Local Government Water Pollution Act 1977 as amended by Section 9 of the Local Government (Water Pollution) Act 1990**

Ger Fahy Planning in their letter dated 01 October 2019 (page 17) references a notice issued to Mr McDaid on 11 January 2008 under Section 76 of the Roads Act 1993 requiring him to *'prevent water, soil, or other material from flowing onto a public road from the aforementioned land within 14 days'* of the date of the notice.

Ger Fahy Planning contends that it is clear that *'the polluting matter in the Section 12 Notice is obviously the same polluting matter the subject of the Notice'* issued by the Road Section. This statement is unsubstantiated and speculative, as is the attempt to link the notice issued under the Roads Act to the Section 12 Notice.

What is clear however, is that the Local Authority employed the powers available to it under the Roads Act to address matters relating to the public road. Matters relating to water pollution were addressed completely independently under the Section 12 Notice issued under the Water Pollution Act.

- 3.1 Separately, reference by Ger Fahy Planning to the notice issued under Section 76 of the Roads Act, is a tacit acceptance that the road traversing Mr McDaid's farm is in fact a public road.

4.0 Works constitute exempted development under Class 9 of the Planning and Development Regulations 2001 (as amended)

4.1 Schedule 2, Part 3, Class 9 of the Planning and Development Regulations 2001 (as amended) identifies particular forms of agricultural development which are considered exempted development.

Column 2, Conditions and Limitations No 1 of this class of development, states that;

'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'.

In this regard attention is drawn to drawing No 1, titled 'Site Plan, site sections & general details' submitted to the Planning Authority on 08 August 2019. Detailed on the drawing and clearly annotated, is the inclusion of a proposed 40N concrete slurry holding tank with slatted cover. It is also noted that an animal effluent holding tank is included in the description of the development submitted by the applicant.

The inclusion of the tank in the development for the storage of effluent, in the form of slurry, excludes the development from being exempted development under Class 9 as referenced above.

4.2 Considerable commentary has been provided by both Ger Fahy Planning and Mary Moran-Long in their submissions in respect of the status of the road traversing Mr McDaid's farm. The Planning Authority maintains the position given in its consideration of 04 September 2019 under planning reference EX19/22 that the road is a public road. Notwithstanding the difference of opinion between both parties, what is clear is that the status of the road and whether it is a public road is irrelevant in the context of the provisions of Schedule 2, Part 3 Class 9 and the limitations on the storage of effluent referenced above.

5.0 The works constitute exempted development under Section 4(1) of the Planning and Development Act 2000 (As amended)

The Planning Authority has no further comments in respect of this section of the Act.

6.0 Planning Applications

Mary Moran-Long in her letter of 29 September references the submissions of two planning applications (paragraphs 4.10 and 4.11) which were invalidated by the Planning Authority as they did not meet the statutory requirements. It is noted that the first of these applications, which was submitted in 2018, did not contain any effluent storage facility. The second application made reference in the development description to a 'controlled sewage system' but did not include any related details in the associated drawings.

A third planning application was submitted by Mr Donal McDaid to Monaghan County Council on 14 October 2019 for the '*retention and completion of underpass for the movement of livestock, including the installation of an effluent holding tank and ancillary site works underneath the road*'. That planning application was subsequently withdrawn by the applicant on 15 October 2019. The development contained in that application was the same as that which forms the basis of this referral to An Bord Pleanála.

A fourth planning application was submitted by Mr Donal McDaid to Monaghan County Council on 18 October 2019 for the *'retention and completion of underpass for the movement of livestock, including the installation of an effluent holding tank and ancillary site works underneath the road (LT81012)'*. The subject development contained in this most recent application is the same as that which forms the basis of this referral to An Bord Pleanála. This application is currently under consideration by the Planning Authority

7.0 Conclusion

The Planning Authority remain of the opinion that the development is not considered exempted development for the reasons outlined above as well as those detailed in the report of 04 September 2019 previously submitted with this referral.



Adrian Hughes
Senior Planner

31 October 2019