

An Bord Pleanála  
64 Marlborough St.,  
Dublin 1.

AN BORD PLEANÁLA  
LDG- 055 461 -22  
ABP- \_\_\_\_\_  
20 JUL 2022  
Fee: € 220 Type: cheque  
Time: \_\_\_\_\_ By: reg post

12<sup>th</sup> July 2022

RE: Pauric Courtney, Cormoy, Lisdoonan, Carrickmacross, Co. Monaghan  
Monaghan County Council - P.A. Reg. Ref: EX 22-15

Dear Sir/Madame

I refer to a Section 5 declaration/referral submitted to Monaghan Co. Co. on behalf of Mr. Pauric Courtney (Ref. EX 22-15).

This First Party Appeal in respect of application EX 22-15 has been prepared by CLW Environmental Planners Ltd., The Mews, 23 Farnham Street, Cavan on behalf of Mr. Pauric Courtney.

Please find enclosed;

1. a copy of the said decision notifying the applicant of Monaghan County Council's decision considering the works to be development and not exempted development;
2. a copy of the applicant's appeal against this decision;
3. The appropriate appeal fee. As this is an Agricultural (not a commercial) development with no retention element, the appropriate appeal/referral fee is understood to be €220.

Should you have any queries in relation to this, or, require any further information please do not hesitate to contact me at the above number or on 087-6794459.

Yours faithfully,

  
Pauric Fay B.Agr.Sc.

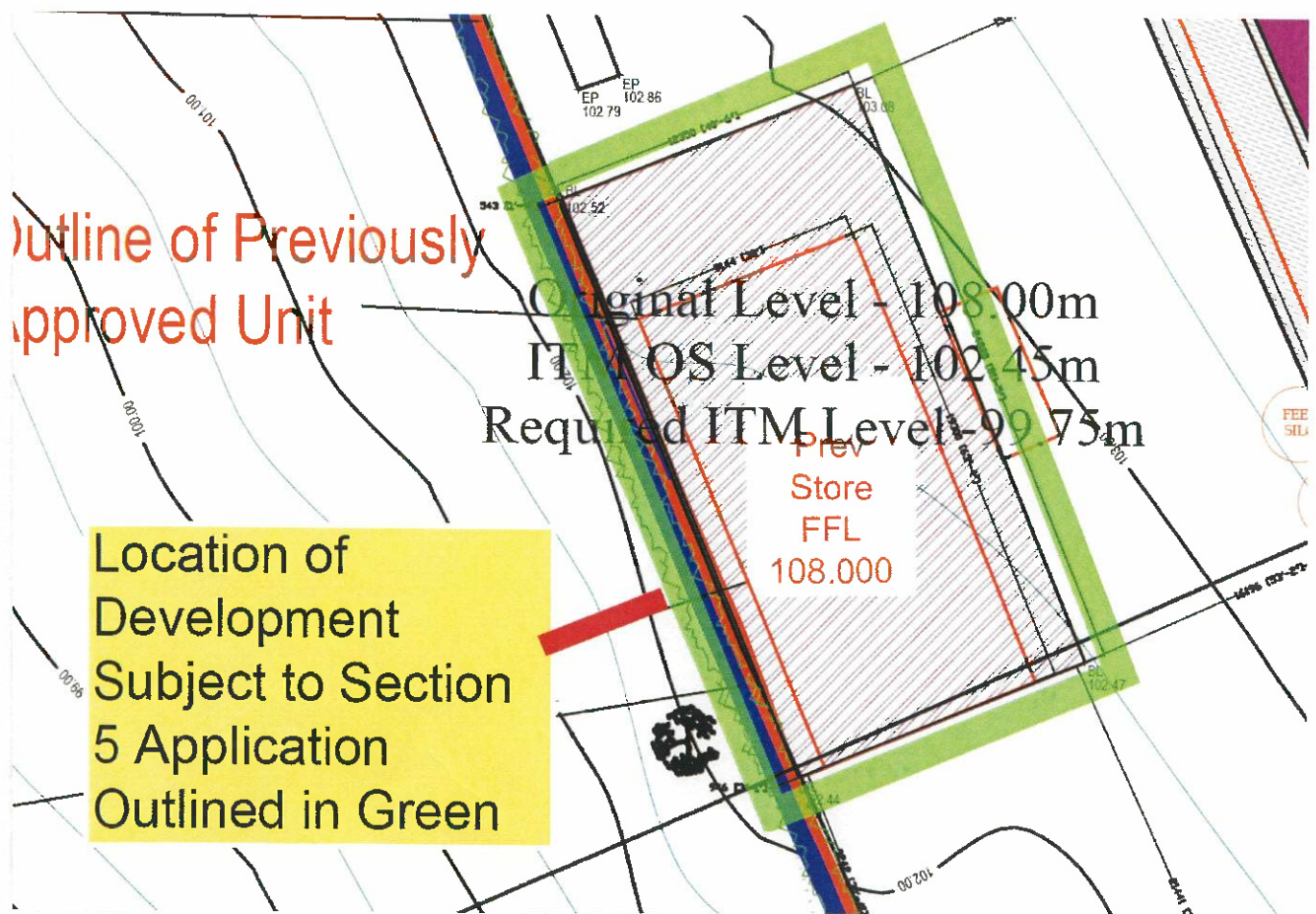
**1<sup>st</sup> Party Appeal against Monaghan County Council's decision to consider the existing general purpose / dry good storage shed at Cormoy, Lisdoonan, Carrickmacross, Co. Monaghan as development and not exempted development.**

**Preface:**

This is a first party (i.e. applicant) appeal on behalf of the applicant (Mr. Pauric Courtney) in relation to Monaghan County Council's decision to consider the storage shed as development and not exempted development.

**1. Planning Appeal / Referral**

The proposed development relates specifically and exclusively to the existing storage shed on site as outlined in green on the site plan as submitted with the application to Monaghan Co.Co.



The applicant appreciates that there are compliance issues with the proximate poultry house which are to be addressed separately with Monaghan Co. Co. / An Bord Pleanala as applicable.

As part of their assessment, Monaghan Co. Co have correctly identified (Planners Report Page 1) that the storage shed that is the subject matter of this application "may comply with Exempted development (Rural) provisions of Class 9 of the Planning and development Regulations".

Notwithstanding the above assessment Monaghan Co. Co. go on to;

- A. Consider that the application site in this instance was the entire site as outlined in red, when it was clearly identified that **the applicable structure to be adjudicated on under this application was outlined in green.** The application site for this application was outlined in green (as detailed on drawings and not red as detailed in the decision letter, with the red line boundary relating to a different application). As per Section 5 of the Planning and Development Act simple drawings are sufficient for a section 5 declaration and same are not subject to the same strict criteria (re scales, dimensions, site outlined in red etc. as for normal planning drawings.

(It is appreciated that the drawing could have been revised (for the purposes of this appeal) to, remove the existing redline boundary and revise the green boundary to red, however it was felt that this may actually cause more confusion, however same can be submitted if required.)

Assessing the site in red (as confirmed in correspondence), was not the subject matter of this section 5 application, however the applicant does appreciate that the change from standard drawing etiquette may have caused Monaghan Co. Co. some confusion.

- B. It is stated that the subject development is part of an unauthorized development under 18/538. However this is not the case.

The development under consideration is a dry good store (as detailed in the application) used for the applicants dairy farming activities, and **not related to the poultry farming activities adjacent.**

Planning ref: 18/538 provided for a manure store at this location, **however this was not constructed.** As detailed in Monaghan Co. Co. own reports this store was not constructed as, and is not suitable for use as, a manure store. Also as detailed in the current application the store is being used for the storage of straw for the applicants' bovine enterprise and is not related to the operation of the adjacent poultry house. Notwithstanding that permission for one type of development has been / was approved at this location, that does not preclude the applicant from completing an alternative development (exempted development or development approved under any subsequent permission) at this location, thus the exempted development could not be considered to be a breach of a planning condition, as planning wasn't needed for same, and the exempted development completed/concerned did not / was not required to seek permission and thus was not covered by the previous permission granted.

- C. In addition to the above it should also be noted that the development under consideration was not submitted for retention under, 22/78. Reference to the drawings as submitted with application 22/78 specifically detail that this shed was considered exempted development, and identified on the drawings as such. The purpose of this Section 5 declaration was to confirm this, as the application referred to had been invalidated for other reasons, and we wanted to confirm the status of this shed with Monaghan Co. Co. prior to dealing with the poultry house development adjacent to same.

## 6 Conclusion

The proposed development satisfies the criteria to be considered as exempted development(as confirmed by Monaghan Co. Co.)

This confirmation alone (in essence confirming that the structure as completed is a different class, and thus a different structure to what was approved at this location), supports the argument that this development completed, differs from and thus was not approved under, the previous planning permission granted to this site. As the approved development was a manure store and the constructed development a dry goods store that can not be used as a manure store, it is inappropriate to consider that the development as completed breached the conditions of, a pre-existing, but unrelated, planning permission as said permission did not relate to development which was completed.

Therefore if it is a different type of development for which planning permission was not sought, or required, the exempted development status can not be removed, simply because the development does not comply with planning permission/conditions granted for an alternative development at this location (i.e. the previous grant of planning permission does not prevent the applicant from completing an exempted development in lieu of a development that has been granted permission).

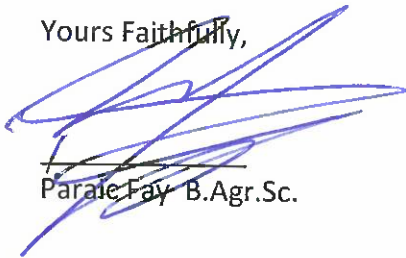
It is the applicants conclusion that the decision of Monaghan Co. Co. is in error as the development has been deemed not to be exempt, solely and exclusively on the basis of the failure to comply with a condition of a previous planning permission, irrespective of the fact that said planning permission does not cover the exempted development as constructed and relates to a different development at the same location.

- The previously approved development (i.e. manure store) was not completed,
- The conditions of the permission as granted for a manure store (that required planning) do not relate to the dry good store as completed, which is an exempted development on its own merits.
- The development as completed (which as acknowledged by Monaghan Co. Co. satisfies all other criteria to be considered as exempted development) was not covered by the previous permission as granted, and
- therefore the restriction on exemption (non compliance with planning conditions) does not apply in this instance.

In this regard we would urge the Board to re-consider the decision reached, to overturn the notification of decision to consider the proposed works to be development and not exempted development issued by Monaghan Co. Co., and to issue a declaration that the works as completed, (and confined to the site currently the subject of this section 5 Declaration) do constitute exempted development.

Should you have any queries in relation to this, or, require any further information please do not hesitate to contact me at the above number or on 087-6794459.

Yours Faithfully,



Parale Fay B.Agr.Sc.

**Attachment No. 1**

**Copy of Monaghan Council Decision.**



# Comhairle Contae Mhuineacháin Monaghan County Council

Acmhainní Daonna  
Human Resources  
047 30586

Airgeadas  
Finance  
047 30589

Na Bóithre  
Roads  
047 30597

Clár na dTogthóirí  
Register of Electors  
047 30551

Comhshaol  
Environment  
042 9661240

Na hEalaíona  
Arts  
047 38162

Iasachtaí /Deontais Tithíochta  
Housing Loans/Grants  
047 30527

Leabharlann an Chontae  
County Library  
047 74700

Mótarcháin  
Motor Tax  
047 81175

Músaem an Chontae  
County Museum  
047 82928

Pleanáil  
Planning  
047 30532

Pobal  
Community  
047 73719

Rialú Dóiteáin/Foirgnimh  
Fire/Building Control  
047 30521

Oifig Fiontair Áitiúil  
Local Enterprise Office  
047 71818

Seirbhísí Uisce  
Water Services  
047 30504/30571

30<sup>th</sup> June 2022

CLW Environmental Planners Ltd  
The Mews  
23 Farnham Street  
Cavan  
Co. Cavan

Re: Ex 22-15 – Pauric Courtney, Cormoy, Lisdoonan, Carrickmacross, Co. Monaghan

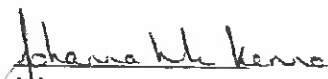
A Chara,

As per the details submitted to the Planning Authority on the 8<sup>th</sup> June 2022, the subject development is not considered Exempted Development under 'Agricultural Structures' (Class 9) of Part 3 Exempted Development (Rural) of the Planning and Development Regulations 2001 (as amended).

The application site (red line boundary) includes the overall site of the unauthorised development, and the subject development formed part of the unauthorised development that was constructed in noncompliance with permission reference 18/538, for which retention permission was sought under application reference 22/78.

Accordingly, as the subject development contravenes Condition 7 of permission reference 18/538, it does not comply with Article 9(1)(i) of the Planning and Development Regulations 2001 (as amended).

Mise le meas

  
Johanna Mc Kenna  
Planning Section

Fálltíonn an tUdarás Áitiúil roimh chomhfhreagras i nGaeilge.  
Comhairle Contae Mhuineacháin, Oifigí an Chontae, An Gleann, Muineachán, Éire.  
Monaghan County Council, Council Offices, The Glen, Monaghan, Ireland.

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✉ eolas@monaghancoco.ie info@monaghancoco.ie

MONAGHAN COUNTY COUNCIL  
PLANNING AND DEVELOPMENT  
EXEMPTED DEVELOPMENT

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Ref No.	EX22-15 (Not Exempt Development)
Applicant:	Pauric Courtney
Proposal:	proposed shed for use as permitted by Class 9 (Exempted Development Rural)
Location:	Cormoy, Lisdoonan, Carrickmacross, Co. Monaghan

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**Site Description (as per planners report on 18/538)**

- 3.9 ha plot, above the associated local road.
- Bounded to the west, north and east by mature trees and hedgerow.
- The site is elevated locally and there is a <100m house to the south.

**Planning History**

**18/538:** permission to construct 1 No. single storey free range broiler poultry unit together with 2 No. meal storage silos, 1 No. single storey litter storage shed and 1 No. general storage shed. Ancillary works will include a concrete yard, installation of gas storage tank and chain link fencing. Site works will include storm drainage, installation of 1 No. holding tank and silt trap, works to existing entrance laneway and all other associated site works.

Granted subject to 7 conditions.

This development has been constructed not in accordance with the permission and thus is unauthorised. A planning application for retention of the development under 22/78 was deemed invalid on the basis that the Planning Authority had concluded that a screening determination was required to assess the likely significant effects of the development on the environment, and in accordance with Section 34 (12B) of the Planning and Development Act 2000 (as amended), the application could not be considered further by the Planning Authority and was thus returned to the applicant.

**Planning Legislation**

Planning and Development Act 2000 (as amended).

Planning and Development Regulations 2001 (as amended).

- Schedule 2, Part 3 Exempted Development (Rural).
- Class 6-10 of Part 3 of the Regulations refers to 'Agricultural Structures'.
- Article 6 - Exempted Development
- Article 9 - Restrictions on Exempted Development to which Article 6 relates

**Assessment**

The Applicant has submitted a "Section 5 Declaration for 1no. shed associated with the existing authorised agricultural activity on the farm" stating that the shed is:

- "currently used for straw/machinery storage associated with the applicant's dairy enterprise"
- "currently used for the storage of dry agricultural goods and not designated for the storage of animal manure as there are no effluent collection facilities provided"

The Planning Authority has assessed the following:

- Shed outlined in green with the application site outlined in red
- previously approved permission 18/538
- outline of previously approved poultry unit and associated store as per submitted plans under 18/538
- constructed poultry unit and store in non compliance with plans approved under 18/538
- restrictions on exemptions set out under Article 9 of the Planning and Development Regulations 2001 which sets out a number of circumstances in which development shall not be Exempted Development.

While the Planning Authority notes that the shed may comply with Exempted Development (Rural) provisions of Class 9 of the Planning and Development Regulations, the application site (red line boundary) includes the overall site of the unauthorised development and formed part of the unauthorised development that was constructed in non compliance with permission 18/538, for which retention permission was originally sought under 22/78.



Article 9 (1)(a)(i) "Development shall not be exempted development for the purposes of the Act if the carrying out of such development would contravene a condition attached to a permission under the act or be inconsistent with any use specified in a permission under the act".

The proposed development as constructed contravened Condition 7 of 18/538

The development shall be carried out strictly in accordance with the plans and documents submitted on the 16/11/18 as amended on the 28/03/19 and the 18/04/19, except as may otherwise be required in order to comply with the above conditions.

**Reason: In the interest of proper planning and sustainable development.**

The proposed development is not considered Exempted Development under the 'restrictions on exemption' set out in Part 2 Exempted Development Article 9 of the Planning and Development Regulations 2001 (as amended).

#### Appropriate Assessment Screening

Under Article 6(3) of the EU Habitats Directive and Regulation 30 of SI no. 94/1997 "European Communities (Natural Habitats) Regulations" (1997) any plan or project which has the potential to significantly impact upon the integrity of a Natura 2000 site (i.e. SAC or SPA) must be subject to an Appropriate Assessment.

This requirement is also detailed under Section 177(U) of the Planning and Development Acts (2000-2010).

Policy HLP13 of MCDP 2019-2025 states "To resist development in or adjacent to any Natura 2000 site (SPA or SAC) where it would result in the deterioration of that habitat or any species reliant on it. The onus will be on the developer to demonstrate that any such development will not adversely impact on the qualifying interest of such sites subject to the preparation of an appropriate assessment exercise under the provisions of the EU Habitats Directive"

Previous Planners Report states "The site is removed from any Natura 2000 sites and there are no significant pathway connectors in the vicinity.

#### Recommendation

The subject development is not considered Exempted Development under 'Agricultural Structures' (Class 9) of Part 3 Exempted Development (Rural) of the Planning and Development Regulations 2001 (as amended) as the application site (red line boundary) includes the overall site of the unauthorised development, and the subject development formed part of the unauthorised development that was constructed in non compliance with permission reference 18/538, for which retention permission was sought under application reference 22/78. Accordingly, as the subject development contravenes Condition 7 of permission reference 18/538, it does not comply with Article 9(1)(i) of the Planning and Development Regulations 2001 (as amended).

Aisling King

Aisling King Mc Kenna, Assistant Planner, Date: 27/6/2022

T. Crowley  
27-6-22