



An  
Bord  
Pleanála

## Inspector's Report ABP-314443-22

### Question

Whether the reduction in floorspace of an existing structure from c. 244sq.m to 190sq.m and the use of the resulting building for agricultural purposes, specifically as a stable block, is or is not development or is or is not exempted development

### Location

Coghlanstown East, Ballymore  
Eustace, Co. Kildare

### Declaration

Planning Authority

Kildare County Council

Planning Authority Reg. Ref.

ED/00931

Applicant for Declaration

Matthew Buckley

Planning Authority Decision

Is not exempted development

### Referral

Referred by

Applicant

Owner/Occupier

Matthew Buckley

Observer(s)

None

Date of Site Inspection

26<sup>th</sup> May 2023

Inspector

Philip Maguire

- 2.3. The drawings illustrate the existing structure. It is setback some 125m from the road edge (shown as 0.0mTBM) and 126m from the nearest house. It is orientated due south and the finished floor level is illustrated as +0.3m. As noted, it is a five-bay pitched roof structure. It has a footprint of 24.013m by 10.017m. The ridge height is shown as 8.310m. The top of the decorative turret is shown as 10.850m. The internal and external areas are illustrated as 226sq.m and 244.5sq.m respectively. The drawings indicate that the roof and openings are incomplete, which I can corroborate.
- 2.4. The submitted drawings also illustrate the proposed structure following the demolition of a bay to the western end and the ridgeline turret. The resultant structure would have a footprint of 19.000m by 10.017m. The internal and external areas are illustrated as 178sq.m and 190sq.m respectively. The openings in the front and rear elevations are blocked up bar the large door openings, illustrated as solid timber stable doors, with new windows inserted in the projections above. The eastern elevation is unchanged bar the insertion of solid timber stable doors and a new window. The western elevation replicates the demolished elevation in terms of window and door arrangement, with solid timber stable doors and a new window also inserted. The drawings indicate that the structure will have a grey slate tiled roof and natural colour rendered walls. Internally, the structure is laid out with 3 no. horse boxes and a store.
- 2.5. I note that the cover letter submitted along with the application form to the Planning Authority includes "the removal of the ridge line turret" within the stated referral question. Reference to the turret's removal is also made in the subject referral documentation. Removal of the turret does not form part of the substantive issue and I do not consider its inclusion or exclusion will fundamentally alter the question posed.

### **3.0 Planning Authority Declaration**

#### **3.1. Declaration**

- 3.1.1. The Planning Authority issued a declaration on 18<sup>th</sup> August 2022 which stated:

*The development is a type of development which falls within the provisions of Class 6 of Part 3 of Schedule 2 of the Planning and Development Regulations 2001 (as amended) as provided for under Article 6 of the Planning and Development Regulations 2001 (as amended). However, that exemption is restricted by Article 9(1)*

## **5.0 Policy Context**

### **5.1. Kildare County Development Plan 2023-2029**

- 5.1.1. The current Development Plan came into effect on 28<sup>th</sup> January 2023. The Planning Authority decision of 18<sup>th</sup> August 2022 was made under the previous Plan for the period 2017-2023. This referral shall be determined under the current Plan.
- 5.1.2. The site is located in a rural area outwith a designated settlement. Relevant policies and objectives are set out under Chapter 13 (Landscape, Recreation and Amenity).

### **5.2. Natural Heritage Designations**

- 5.2.1. None relevant.

## **6.0 The Referral**

### **6.1. Referrer's Case**

- 6.1.1. The referrer's case can be summarised as follows:
- It is stated that the referral made pursuant to s. 5(3)(b) of the Planning Act in respect of the failure of Kildare County Council to issue a declaration within the statutory period.
  - It is submitted that the subject land is currently used for agricultural purposes and the Board is invited to expressly acknowledge that this use on which the stable block is located does not require planning permission. Reference is made to s. 4(1)(a) of the Planning Act and the definition of agriculture under section 2.
  - It is noted that a number of buildings and structures which are required to accommodate agricultural activities on the subject landholding do not require permission. Reference is made to Classes 6, 9 and 10 of Schedule 2, Part 3 of the Planning Regulations.
  - It is set out that statutory provisions cannot be implicitly changed by inferior instruments such as regulations and hence Article 9 of the Planning Regulations does not affect "section 4(1)(h)" of the Planning Act so as to disentitle the referrer

- It indicates that the declaration request was received on 21<sup>st</sup> March 2022 and Further Information was sought on 29<sup>th</sup> March 2022. It states that a response to the Further Information request was received on 29<sup>th</sup> July 2022 and a declaration was issued on 18<sup>th</sup> August 2022 which was within the appropriate period.
- Finally, it concludes that Kildare County Council has no further comment or observations to make and directs the Inspector to previous reports and declaration.

## 7.0 Statutory Provisions

7.1. The relevant provisions are set out in the Planning and Development Act 2000 (as amended) ('PDA 2000 or the Act') and the Planning and Development Regulations 2001 (as amended) ('PDR 2001 or the Regulations').

### 7.2. Section 2 – PDA 2000

7.2.1. Section 2(1) provides the following interpretations which are relevant:

**“agriculture”** includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the training of horses and the rearing of bloodstock, the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and “agricultural” shall be construed accordingly;

**“alteration”** includes—

- (a) plastering or painting or the removal of plaster or stucco, or
- (b) the replacement of a door, window or roof,

that materially alters the external appearance of a structure so as to render the appearance inconsistent with the character of the structure or neighbouring structures;

**“structure”** means *inter alia* 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 where the context so admits, includes the land on, in or under which the structure is situate etc.;

*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.*

## 7.5. Section 5 – PDA 2000

- 7.5.1. Section 5(2)(b) provides that a planning authority shall issue the declaration within 3 weeks of the date of the receipt of the further information.
- 7.5.2. Section 5(3)(a) provides for a referral of a declaration for review by the Board within 4 weeks of the date of issuing of the declaration. Section 5(3)(b) provides for the referral of the question for decision to the Board within 4 weeks of the declaration due date in the event that no declaration is issued by the Planning Authority.

## 7.6. Article 6 – PDR 2001

- 7.6.1. Article 6 provides (subject to the restrictions in article 9) for the classes of exempted development under column 1 of Parts 1, 2 and 3 of Schedule 2, subject, where applicable, to the conditions and limitations imposed upon such classes as set out in column 2. The referrer makes specific reference to Classes 50 (Pt. 1) and 6 (Pt. 3).
- 7.6.2. Schedule 2, Part 1, Class 50(a) of the PDR 2001 provides an exemption for:

<b>Column 1</b>	<b>Column 2</b>
<p><b><i>The demolition of a building, or buildings, within the curtilage of—</i></b></p> <p><b><i>(i) a house,</i></b></p> <p><b><i>(ii) an industrial building,</i></b></p> <p><b><i>(iii) a business premises, or</i></b></p> <p><b><i>(iv) a farmyard complex.</i></b></p>	<ol style="list-style-type: none"> <li>1. <i>No such building or buildings shall abut on another building in separate ownership.</i></li> <li>2. <i>The cumulative floor area of any such building, or buildings, shall not exceed:</i> <ol style="list-style-type: none"> <li><i>(a) in the case of a building, or buildings within the curtilage of a house, 40 square metres, and</i></li> <li><i>(b) in all other cases, 100 square metres.</i></li> </ol> </li> <li>3. <i>No such demolition shall be carried out to facilitate development of any class prescribed for the purposes of section 176 of the Act.</i></li> </ol>

7.6.4. I also note Schedule 2, Part 3, Class 9 of the PDR 2001 provides an exemption for:

<p><b><i>Works consisting of the provision of any store, barn, shed, glass-house or other structure, not being of a type specified in class 6, 7 or 8 of this Part of this Schedule, and having a gross floor space not exceeding 300 square metres.</i></b></p>	<ol style="list-style-type: none"> <li>1. 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.</li> <li>2. The gross floor space of such structures together with any other such structures situated within the same farmyard complex or complex of such structures or within 100 metres of that complex shall not exceed 900 square metres gross floor space in aggregate.</li> <li>3. No such structure shall be situated within 10 metres of any public road.</li> <li>4. No such structure within 100 metres of any public road shall exceed 8 metres in height.</li> <li>5. No such structure shall be situated within 100 metres of any house (other than the house of the person providing the structure) or other residential building or school, hospital, church or building used for public assembly, save with the consent in writing of the owner and, as may be appropriate, the occupier or person in charge thereof.</li> <li>6. No unpainted metal sheeting shall be used for roofing or on the external finish of the structure.</li> </ol>
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## 7.7. Article 9 – PDR 2001

7.7.1. Article 9 imposes specific restrictions on development of classes specified in Parts 1, 2 and 3 of Schedule 2 and in effect de-exempts certain classes of development that would be exempt under normal circumstances. The restrictions under Article 9(1)(a) apply if the carrying out of such development would *inter alia*:

- (iii) *endanger public safety by reason of traffic hazard or obstruction of road users,*
- (viii) *consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use.*

structure. Hogan J. also noted that, taken literally, the construction of a building would constitute development, the use of which could come under the exemption in s.4(1)(a). However, that proposition was rejected as being absurd, given that the logical consequence would be that a farmer could construct any building for agricultural use, irrespective of the impact, such as fire hazard or danger to road users etc. The courts did however emphasise that a traffic hazard must arise as a result of the carrying out of the development and held that the Board misapplied Article 9(1)(iii) of the Planning Regulations, by applying the wrong test in relation to the question of traffic hazard.

## **8.0 Assessment**

### **8.1. Preliminary Points**

- 8.1.1. I note that the subject referral, received on 22<sup>nd</sup> August 2022, states that the Planning Authority failed to issue a declaration within the statutory period and the referral was therefore made pursuant to s. 5(3)(b) of the Planning Act. The Planning Authority have confirmed that a declaration was issued on 18<sup>th</sup> August 2022. This is within the statutory period as required by s. 5(2)(b) of the Act i.e. 3 weeks from the Further Information response of 29<sup>th</sup> July 2022. Having reviewed the issues raised by the referrer, particularly those relating to traffic safety, and having regard to the Planning Authority's declaration and subsequent response, I do not consider that either party has been prejudiced. I will therefore consider this referral under s. 5(3)(a) of the Act.
- 8.1.2. The reduction in floor space of the existing structure to create a modified structure involves a number of interrelated building operations including demolition and construction etc. These alterations, as described in para. 2.4 above, together with the subsequent use of the resulting building, form the substantive issue for consideration.
- 8.1.3. However, in order to answer the referred question, I first must consider the status of the existing structure as described above and then address the proposed alterations.

### **8.2. Existing Structure**

#### Development – Is or is not...

- 8.2.1. Having regard to the definition of 'agriculture' which includes the rearing of bloodstock, the building does not involve any change of use or material change of use.

openings, will, in my opinion, materially affect the external appearance of the structure etc. Moreover, in accordance with the judgement in *Horne v Freeney*, a development seeking exemption rights, such as under s. 4(1)(h), must first have been completed in accordance with its permission. No permission applies in this instance and therefore the referrer cannot avail of the exemption under s. 4(1)(h) of the Planning Act.

- 8.3.3. The question posed refers explicitly to "Schedule 2, Part 3, Class 6" of the Planning Regulations. I note that Class 6 includes a scenario whereby the exemption may be exercised whether or not 'by extension of an existing structure'. Significantly, it does not include 'by reduction of an existing structure' etc. This would suggest that the 'works' are somewhat constrained in this instance notwithstanding the statutory interpretation which I accept includes acts of demolition. I do not consider the referrer can avail of the exemption under Class 6 of Part 3, Schedule 2 in this instance. This exemption, were it to apply, is restricted under Article 9 in any event – see section 8.4.
- 8.3.4. In the supporting documentation, the referrer suggests that the demolition is capable of comprising exempted development under Class 50 of the Regulations and refers to ABP ref. 06S.RL3043 for precedent. Specifically, Class 50(a)(iv) of Part 1, Schedule 2, exempts the demolition of a building within the curtilage of a farmyard complex. I do not accept this interpretation having regard to the Oxford English Dictionary (3<sup>rd</sup> ed.) definitions of 'farmyard', 'complex' and 'building', to which I defer in the absence of a statutory definition. Building being defined as "a structure with a roof and walls". Complex being "a group of similar buildings or facilities on the same site" and farmyard being "a yard or small area of land surrounding by or next to farm buildings". There is evidently no buildings or farmyard complex in this instance or curtilage thereof.
- 8.3.5. I have reviewed the referral under ABP ref. 06S.RL3043, as cited above, and whilst it may be somewhat analogous to the present case, I note that a distinction can be drawn between the prevailing set of circumstances and particularly in respect of the planning history of the cited referral and the observed use of the structure for the housing of horses. The referrer cannot avail of the exemption under Class 50(a)(iv) and this exemption, were it to apply, is restricted under Article 9 in any event – see section 8.4.
- 8.3.6. The proposed alterations are not exempted development. It must therefore follow that the subsequent use of the resulting building cannot be exempted development either.



- (b) Articles 6(1), 6(3) and 9(1)(a)(viii) of the Planning and Development Regulations, 2001, as amended,
- (c) Class 50(a)(iv) of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001, as amended;
- (d) Classes 6 and 9 of Part 3 of Schedule 2 of the Planning and Development Regulations, 2001, as amended;
- (e) the documentation on file, including submissions from the referrer and the Planning Authority;
- (f) the planning history, scale and design of the existing structure; and
- (g) relevant precedent referrals and judgments:

**AND WHEREAS** An Bord Pleanála has concluded that:

- (a) The existing structure is development and would not come within the scope of exempted development under section 4(1)(a) of the said Act or Classes 6 or 9 of Part 3 of Schedule 2 of the said Regulations;
- (b) The proposed alterations are development and would not come within the scope of exempted development under section 4(1)(h) of the said Act, or Class 50(a)(iv) of Part 1 or Class 6 of Part 3 of Schedule 2 of the said Regulations;
- (c) The subsequent use of the resulting building for agricultural purposes, specifically as a stable block, is development and would not come within the scope of exempted development under section 4(1)(a) of the said Act.

**NOW THEREFORE** An Bord Pleanála, in exercise of the powers conferred on it by section 5(3)(a) of the 2000 Act, hereby decides that the reduction in floorspace of an existing structure from circa 244 square metres to 190 square metres and the use of the resulting building for agricultural purposes,