



An
Bord
Pleanála

Inspector's Report ABP-314916-22

Question

Whether the construction of a stable building and sand arena for use by the Referrer's family alone, along with the removal of short stretches of hedgerow and two dying/diseased trees which were located on or close by the front boundary of the site and the planting and/or replanting of the removed shrubbery in the same location is or is not development and is or is not exempted development.

Location

Riverview House, Thomastown, Naas, Co. Kildare

Declaration

Planning Authority

Kildare County Council

Planning Authority Reg. Ref.

ED/00978

Applicant for Declaration

John Curry and Catriona Howley

Planning Authority Decision

Is not exempted development

1.0 Site Location and Description

- 1.1. The site is situated at Riverview House, Thomastown, Nass, Co. Kildare, W91 TW52. It is roughly 2km south of Carragh and 7km north of Newbridge. It is situated within an area of open countryside within a rural area.
- 1.2. The property has a regular shape covering an area of approximately 0.34ha. It has frontage onto the Thomastown Road (L7087), which has a designated Local Road status. The site accommodates an existing stable block and sand arena for exercising horses. The stable block is roughly 26m from the public road. The arena is demarcated with a traditional style post and rail fence. There is an associated storage area for collecting equestrian waste and used bedding. The remaining area of the property is mainly grassed.
- 1.3. The Referrers own the adjoining property to the west of the application site. This property accommodates a detached dwelling and associated domestic garage. These buildings, like the stable block, are well setback from the public road and screened by a dense hedgerow and small trees / shrubs running along the front (northern) boundary of the site.
- 1.4. There are some detached dwellings to the north of the site, on the far side of the L7087, several of which are on spacious plots of land. The River Liffey runs along the rear (southern) boundary of the site. There is a network of small watercourses and culverted drainage channels serving the wider area which flow into the Liffey. There is a shallow fall across the site from north (higher ground) towards the south (lower ground).
- 1.5. The application comprises the stable building and sand arena, which is for the sole use of the Referrers and their family. It also comprises the removal of a stretch of hedgerow and two dying/diseased trees which were located on, or close to, the front boundary of the site and planting/replanting of this previously removed shrubbery.

2.0 The Question

- 2.1. Whether the construction of a stable building and sand arena for use by the Referrers' family alone, along with the removal of short stretches of hedgerow and two dying/diseased trees which were located on or close by the front boundary of the

3.2. Planning Authority Reports

3.2.1. Planning Report

Stable Block

- The stable block is 60sqm and used for housing / stabling. There are no other agricultural or equine structures onsite. It complies with Class 6 (exemption) of the Planning and Development Regulations, 2001 ('the Regulations').
- The effluent storage facilities are provided in a dedicated hardstand walled area (25sqm) and equiskips containers for manure and used bedding They are in accordance with the Department of Agriculture, Food and Marine (S108) and the Department of the Environment and Local Government requirements.
- The stable building is further than 10m from the public roadway to the north and roughly 4.75m in height.
- The Applicant's dwelling is within c. 10m of the stables. Signed letters of consent from all five properties / occupiers within 100m of the development are included in Appendix B of the Referral Report.
- No unpainted metal sheeting shall be used for roofing or on the external finish of the structure. Walls are finished in nap render, doors timber, and roofing material of blue/black slate.

Sand Arena

- The sand arena is unroofed with a low fenced area with a post and rail wire fence. It is used for exercising horses. There is a drainage bed underneath.
- The arena is for the Referrers' own use.
- It is setback 10.5m approx. from the public roadway / northern boundary. Access is from the existing hard surface main entrance to the Applicant's house and not off a public roadway. The previous entrance from the public roadway has been closed up and replanted with new, replacement vegetation.
- The height of the arena does not exceed 2m in height.

The alleged unauthorised development relates to:

- An unauthorised vehicular entrance, unauthorised arena and unauthorised stables and associated works.
- Removal of onsite trees and hedgerows which is contrary to condition 6(a) and 6(b) of Permission Reg. Ref. 11/807.
- Removal of roadside boundary hedgerow and trees which is contrary to condition 6(b) of Permission Reg. Ref. 11/807.
- Use of the site for stables and arena which is contrary to Condition 10 of Permission Reg. Ref. 11/807.

Permission Reg. Ref. 11/807

The Planning Authority **granted** permission in September 2011 for a dwelling, proprietary wastewater treatment system, including percolation area, domestic garage, associated site works and the removal of Condition No. 6 of Reg. Ref. 566/90 to desterilise the remainder of the overall landholding for the purposes of the planning application.

Notable conditions include:

Condition 6

- a) All existing hedgerows, trees and shrubs on all site boundaries shall be retained, preserved and maintained except at the proposed entrance, or where their removal is required to facilitate sight lines.
- b) All existing roadside boundary hedgerow/trees to be carefully retained, apart from the 31 metres west of the entrance and 20 metres east of the entrance as shown on the site layout map drawing no. PLN-002 submitted on 08/08/11.
- c) The above sections of hedgerow shall be transplanted in accordance with the details submitted with the application.
- d) Existing on-site trees as shown on drawing no. PLN-002 submitted on 08/08/11 shall be retained.
- e) Within the first planting season of the occupation of the dwelling house th site shall be landscaped in full in accordance with landscaping proposal drawing no. 100 and details submitted on 08/08/11.

that the Referrers could not be expected to be aware of detailed planning law and note a previous Board Decision in this regard (ABP Ref. 07.LS.0031¹).

- The Planner's Report accepts that 'the use of the stable building ... appears to be used for the applicant's own family... but considers that Condition 10 is being breached on the basis the 'applicant is relying on exemptions under Class 6 for agricultural development. This conflicts with Condition 10 of the planning permission as the development is not domestic in nature'. This suggests that an agricultural activity must always be non-domestic in nature, a view that is not supported by the definition of agriculture in Section 4 of the Act.
- The referral decision should turn on whether the housing of horses on the property is in breach of Condition 10 of Reg. Ref. 11/807.
- The development is not commercial. The Planning Authority accepts that the stable block is for the sole use of the Referrers family to train ponies.
- The development is, therefore, domestic agriculture. This concept has been accepted by the Planning Authority under previous Decisions (further information requested under Reg. Ref. 13/236 and Condition 4 of Permission Reg. Ref. 19/597 – see Page 5 of Appeal for further details).
- The Planning Authority's assessment found that the sand arena requires permission as it runs counter to Condition 10 of Permission Reg. Ref. 11/807.
- The Referrer removed some of the vegetation from the site which had not successfully established itself and in poor condition. This vegetation was planted c. 10 years ago and has since been replaced with other planting. There is no other vehicular entrance to the site, other than that which has permission.
- In summary, it is submitted to the Board that planning permission is not required for the stable block, sand arena or replacement planting on the site.

¹ Application for leave to apply for substitute consent for an agricultural structure.

the Act, provided that such development complies with conditions and limitations specified in Column 2 of the Act opposite the mention of that Class in the said Column 1.

Article 9 of the Regulations identifies circumstances by which development under Article 6 shall not be exempted development, including (a) if the carrying out of such development would –

- (i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act.*
- (viiB) comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site.*

Schedule 2, Part 3: Exempted Development – Rural

Class 6 provides the following exemption for Agricultural Structures:

‘Works consisting of the provision of a roofed structure for the housing of cattle, sheep, goats, donkeys, horses, deer or rabbits, having a gross floor space not exceeding 200 square metres (whether or not by extension of an existing structure), and any ancillary provision for effluent storage.’

Conditions and Limitations

1. No such structure shall be used for any purpose other than the purpose of agriculture.
2. The gross floor space of such structure together with any other such structures situated within the same farmyard complex or within 100 metres of that complex shall not exceed 300 square metres gross floor space in aggregate.
3. Effluent storage facilities adequate to serve the structure having regard to its size, use and location shall be constructed in line with Department of Agriculture, Food and Rural Development and Department of the Environment and Local Government requirements and shall have regard to the need to avoid water pollution.

8.1.2. Therefore, the existing onsite structures, which are a stable block and sand arena, are considered to constitute works under Section 2(1) of the Planning and Development Act, 2000 (as amended) and are, therefore, development as per Section 3(1) of the Act.

8.2. Is or is not exempted development

8.2.1. This section of my report addresses each of the three components cited in the declaration application under the headings of (1) Stable Block, (2) Sand Arena and (3) Hedgerow and Tree Removal.

Stable Block

8.2.2. The information on file shows that the existing stable block is approximately 8.7m by 7.8m with an overall gross floor area of approximately 60sqm. The structure is used for housing horses. Therefore, it is compliant with Class 6 of the Regulations in this respect.

8.2.3. In terms of the conditions and limitations, I note that there seven such criteria. The first of these (no. 1) requires that the structure shall not be used for any purpose other than the purpose of agriculture, which I consider is complied with.

8.2.4. With reference to limitation 2, the structure in its entirety is 60sqm. Therefore, it does not exceed 300sqm. There is no other such farm related or equine structures on the same property.

8.2.5. There is a dedicated storage area for collecting equestrian waste (denoted as 'equiskips container area' on the Site Layout Plan, drwg. no. PA-01). The Referrer confirms that it has been constructed in accordance with the requirement of the Department of Agriculture, Food and Rural Development and Department of the Environment and Local Government. The storage area comprises a dedicated hardstand and concreted space which is roughly 25sqm. The containers are regularly collected and transported to other locations for offsite disposal. Therefore, I am of the view that limitation 3 of Class 6 is complied with.

8.2.6. The stable block and waste collection area are setback roughly 26m from the public road which runs along the northern boundary of the site. Therefore, I am of the view that limitation 4 of Class 6 is complied with.

This exceeds the 10m distance specified under the relevant condition for this exemption. Access to the arena is via the existing vehicular entrance and driveway serving the Referrer's adjoining property to the west. There is no separate, direct access from the public road. Therefore, I consider that limitation 3 of Class 10 is complied with.

8.2.14. The sand arena does not exceed 2m in height. Therefore, I am of the view that limitation 4 of Class 10 is complied with.

8.2.15. In summary, and having regard to the above, I am satisfied that the sand arena falls within the scope of the provisions of Schedule 2, Part 3, Class 10, including Conditions 1 – 4.

Hedgerow and Tree Removal

8.2.16. The Planning Authority issued a Warning Letter in July 2022 which states that alleged unauthorised development has taken place on the site in terms of the previous removal of onsite and roadside trees and hedgerows.

8.2.17. The letter states that this is contrary to Condition 6, sub-sections (a) and (b), of Permission Reg. Ref. 11/807. This requires that all existing hedgerows, trees and shrubs on the site boundaries must be retained except at the proposed entrance, or where their removal is required to facilitate sightlines, or as shown on the relevant drawing(s).

8.2.18. The Referrer states in their Cover Letter that a small amount of vegetation and landscaping planted on the site, some ten years ago, when the house was built, did not establish itself properly on the site. Therefore, the landowner removed this shrubbery to create space for new replacement species to be planted in lieu.

8.2.19. During my physical inspection of the site, there was no apparent break or missing sections in the hedgerow and that there was no secondary access onto the property from the public road. Whilst I cannot be certain of the exact extent and nature of the vegetation removed, it does not appear as though this would have been significant. The full extent of the boundary hedgerow is intact and continuous along the northern boundary – save for where the permitted vehicular access is situated – and a dense screen of shrubbery, undergrowth and small trees is evident.

states that 'the overall site shall be used for domestic-related purposes only, and not for any commercial, workshop, or other non-domestic use'. I note that the condition was applied under Reg. Ref. 11/807 and that the red line boundary of the relevant plans and particulars extends around the land which is the subject of this referral.

- 8.3.6. I accept that the keeping of horses belonging to the family in the stable block and use of the sand arena for exercising them is not for commercial gain. The development is, therefore, not for financial benefit. It is purely for the enjoyment of the Referrers and their family, and I consider that it would be on a much smaller scale than any formal stud farm or livery stables. In my opinion, a clear distinction can be drawn between these types of domestic and commercial equine activities. I consider that the type of development, which is the subject of this appeal case, should be viewed as recreational pastime or hobby, for which there is an exemption with the Regulations.
- 8.3.7. In terms of the wording of the Condition (no. 10 of 11/807), I note that it specifically states that the site 'shall be used for domestic-related purposes only, and not for any commercial, workshop, or other non-domestic use'. It is my opinion that as the development is not being used for commercial purposes, is not a workshop, and that it is being used in association with the existing dwelling on an adjoining property – by the referrer's family exclusively, and no-one else – that it can be accurately described as being for domestic-related purposes.
- 8.3.8. I conclude that as the works do not contravene a condition attached to a permission under the Act that the provisions of Article 9(i) do not apply in this instance and, therefore, this restriction on exempt development does not apply.

Appropriate Assessment

- 8.3.9. Article 9(1)(a)(viiB) of the Regulations includes a restriction on exempt development where the Planning Authority, or An Bord Pleanála, requires an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site.
- 8.3.10. I note that screening for AA has not been carried out by the referring party or the Planning Authority. However, I have had regard to the information on the National Parks and Wildlife Service website and reviewed the online NPWS Designations

stable building and sand arena constitutes development and is not exempted development; the removal of short stretches of hedgerow, where it creates a vehicular access point onto a public road which does not have the benefit of planning permission, constitutes development and is not exempted development; and the removal of short stretches of hedgerow, where it does not create a vehicular access point onto a public road which does not have the benefit of planning permission, and the removal of two dying/diseased trees, and planting and/or replanting of the removed shrubbery, is not considered to constitute development;.

AND WHEREAS referred this declaration for review to An Bord Pleanála on the 21st October 2022:

AND WHEREAS An Bord Pleanála, in considering this referral, had regard particularly to –

- (a) Section 2(1), 3(1) and 4(1)(a) of the Planning and Development Act, 2000, as amended,
- (b) Articles 6 and 9 of the Planning and Development Regulations, 2001, as amended,
- (c) Classes 6 and 10 under Schedule 2, Part 3 of the Planning and Development Regulations, 2001, as amended,
- (d) the planning history of the site,
- (e) the location of the development in a rural setting, and
- (f) the pattern of development in the area:

AND WHEREAS An Bord Pleanála has concluded that:

- (a) *The construction of a stable building and sand arena constitutes Development as defined in section 3(1) of the Planning and Development Act 2000 (as amended) and is Exempted*