



An
Bord
Pleanála

Inspector's Report ABP-315532-23

Question

Whether a proposed new agricultural shed (194.5 sqm) with access roadway and land improvements and all associated services is or is not development and is or is not exempted development.

Location

Cloghaun, Claregalway, Co. Galway

Declaration

Planning Authority

Galway County Council

Planning Authority Reg. Ref.

ED22/50

Applicant for Declaration

Homefarm Daries

Planning Authority Decision

Is development is not exempted development

Referral

Referred by

Homefarm Daries

Owner/Occupier

-

Observer(s)

None

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- Evidence of farming activities, i.e., Nutrient Management Plan (NMP), herd numbers, and Land Registry maps of the applicant's land holdings.
- An effluent management plan for the proposed livestock area.
- Details of land improvements, i.e., sources of soil and quantity and method of delivery.
- Clarify "associated services".

The applicant responded by submitting a Homefarm Dairies NMP, and by stating that 9000 cubic metres of top-soil and sub-soil would be sourced locally and used to raise the site by 400 – 500mm, and by explaining that "associated services" refers to drainage for the shed and roadway/yard, although the latter would be composed of crushed limestone, which is permeable.

3.2.2. Other Technical Reports

None

4.0 Planning History

19/673: Proposed agricultural storage shed (163 sqm) with access roadway and all associated services: Deemed withdrawn following request for further information that the applicant did not respond to.

5.0 Policy Context

5.1. Development Plan

Under the Galway County Development Plan 2022 – 2028, the site is shown as lying outside the metropolitan area of the County and in a rural area under strong urban influence, which lies within the Central Galway Complex (landscape character type) and the Black River Basin (landscape character unit).

5.2. Natural Heritage Designations

- Lough Corrib SAC and pNHA (000297)
- Lough Corrib SPA (004042)

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

Section 3(1): Development

In this Act, “development” means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land.

Section 2(1): Interpretation

“works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure;

“land” includes any structure and any land covered with water (whether inland or coastal);

“structure” means 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—

(a) where the context so admits, includes the land on, in or under which the structure is situate,

Section 4: Exempted development

(1) The following shall be exempted developments for the purposes of this Act—

(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;

(1B) Development referred to in paragraph (a), (d), (e) or (g) of subsection (1A) shall not be exempted development if an environmental impact assessment of the development is required.

(1C) Development referred to in paragraph (a), (d), (e) or (g) of subsection (1A) shall not be exempted development if an appropriate assessment of the development is required.

(3) Subject to article 9, in areas other than a city, a town or an area specified in section 19(1)(b) of the Act or the excluded areas as defined in section 9 of the Local Government (Reorganisation) Act, 1985 (No. 7 of 1985), development of a class specified in column 1 of Part 3 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 3 opposite the mention of that class in the said column 1.

Article 8C

Land reclamation works (other than reclamation of wetlands) consisting of re-contouring of land, including infilling of soil (but not waste material) within a farm holding, shall be exempted development.

Article 9(1): Restrictions on exemption

Development to which article 6 relates shall not be exempted development for the purposes of the Act—

(a) if the carrying out of such development would—

(ii) consist of or comprise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width,

(iii) endanger public safety by reason of traffic hazard or obstruction of road users,

(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,

Part 1 of Schedule 2 to Article 6: Exempted development – general

<i>Column 1 Description of Development</i>	<i>Column 2 Conditions and Limitations</i>
<i>Temporary structures and uses</i> <i>CLASS 16</i>	

	<p><i>Development and Department of the Environment and Local Government requirements and shall have regard to the need to avoid water pollution.</i></p> <p><i>4. No such structure shall be situated, and no effluent from such structure shall be stored, within 10 metres of any public road.</i></p> <p><i>5. No such structure within 100 metres of any public road shall exceed 8 metres in height.</i></p> <p><i>6. No such structure shall be situated, and no effluent from such structure shall be stored, 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.</i></p> <p><i>7. No unpainted metal sheeting shall be used for roofing or on the external finish of the structure.</i></p>
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7.3. Other

None

exempted development, I will break it down into its component parts, i.e., land improvements and temporary access, and new agricultural shed with access road.

- 8.2.2. The applicant proposes to raise the levels of the site by between 400 and 500mm by means of the importation of soil from local building sites over approximately a 2-year period. The volume of soil envisaged would be 9000 cubic metres and the estimated number of lorry loads would be c. 900.
- 8.2.3. Under Article 8C of the Planning and Development Regulations 2001 (as amended) (hereafter referred to as the Regulations), land reclamation works consisting of re-contouring of land by means of infilling with soil is deemed to be exempted development. This description of works would encompass the above cited land improvements envisaged by the applicant, which would enhance the agricultural value of the site.
- 8.2.4. During my site visit, I observed that a new entrance and access road have been constructed on the western side of the site and a wheel-wash structure has been installed. Under Class 16 of Part 1 of Schedule 2 to Article 6 of the Regulations, structures, works, plant or machinery needed temporarily in connection with development is exempted development, provided it is removed on completion of the development and the land reinstated. If the new entrance and access road on the western side of the site are used only as a haul road for the duration of the land improvements, then they would, along with the accompanying wheel-wash structure, be exempted development.
- 8.2.5. The new agricultural shed (194.5 sqm) would be used predominantly to house livestock. Under Class 6 of Part 3 of Schedule 2 to Article 6 of the Regulations, livestock buildings with a gross floorspace of no more than 200 sqm are exempted development, provided they come within certain parameters, i.e., conditions and limitations. The former relate to the exclusive use of the building for agriculture, the provision of satisfactory effluent facilities, and the need to specify painted cladding. The latter relate to aggregate areas, siting, height, and proximity to, amongst other things, houses.
- Turning to the conditions, the submitted plans indicate an agricultural after-use, they are silent on effluent facilities, and they state that grey/green coloured metal sheeting would be specified.

the opposite side of the local road and accompanying paved pull-in areas, I do not consider that they can reasonably be included within the formal carriageway. Accordingly, Item (ii) is not applicable.

- 8.3.3. Item (iii) relates to development which would endanger public safety by reason of traffic hazard or obstruction of road users. The PA based its declaration on this provision with respect to the envisaged use of the existing access to the site, i.e., the one adjacent to the north-eastern corner. The applicant in its referral states that the use of this access, as distinct from any new one, would be capable of functioning safely. In this respect, it refers to the likely frequency of lorry loads at c. 9 per week.
- 8.3.4. In practise, the new access adjacent to the north-western corner of the site is being used. This access is opposite a farmstead with a yard that is continuous with the adjoining carriageway of the local road. Accordingly, there is the possibility of conflict with vehicular movements to the farmstead.
- 8.3.5. The applicant has described how it envisages sourcing soil locally for the land improvements on the site. Typically, it envisages such soil coming from the clearance and laying out of sites for one-off dwelling houses. Under such a scenario, I would envisage that multiple lorry loads would come to the site during a relatively short period of time followed by intervals with little vehicular activity. Accordingly, while the overall construction phase may average out at c. 9 lorry loads a week, this would mask a pattern of peaks and troughs. Accordingly, I share the PA's concern that obstruction to other road users may arise. I, therefore, consider that Item (iii) is applicable.
- 8.3.6. I conclude that the temporary access to the site is de-exempted under Item (iii) of Article 9(1)(a) of the Regulations.

8.4. Section 4(4) of the Act: the need for EIA and AA

- 8.4.1. Section 4(4) of the Act makes clear that, where development consisting of the use of any land for the purpose of agriculture requires to be the subject of EIA and/or AA, any exempted development status that it might otherwise have is forfeited.
- 8.4.2. As described above the land improvements would be exempted development under Article 8C of the Regulations. However, they fall to be assessed as to their need for EIA and AA.

Alkaline fens [7230] – M

Limestone pavements [8240] – M

Old sessile oak woods with Ilex and Blechnum in the British Isles [91A0] – M

Bog woodland [91D0] – M

Margaritifera margaritifera (Freshwater Pearl Mussel) [1029] – R

Austropotamobius pallipes (White-clawed Crayfish) [1092] – M

Petromyzon marinus (Sea Lamprey) [1095] – R

Lampetra planeri (Brook Lamprey) [1096] – M

Salmo salar (Salmon) [1106] – M

Rhinolophus hipposideros (Lesser Horseshoe Bat) [1303] – R

Lutra lutra (Otter) [1355] – M

Najas flexilis (Slender Naiad) [1833] – M

Hamatocaulis vernicosus (Slender Green Feather-moss) [6216] – R

Lough Corrib SPA

Gadwall (*Anas strepera*) [A051] – R

Shoveler (*Anas clypeata*) [A056] – R

Pochard (*Aythya ferina*) [A059] – R

Tufted Duck (*Aythya fuligula*) [A061] – R

Common Scoter (*Melanitta nigra*) [A065] – M

Hen Harrier (*Circus cyaneus*) [A082] – R

Coot (*Fulica atra*) [A125] – R

Golden Plover (*Pluvialis apricaria*) [A140] – M

Black-headed Gull (*Chroicocephalus ridibundus*) [A179] – R

Common Gull (*Larus canus*) [A182] – R

Common Tern (*Sterna hirundo*) [A193] – R

Arctic Tern (*Sterna paradisaea*) [A194] – R

Greenland White-fronted Goose (*Anser albifrons flavirostris*) [A395] – R

WHEREAS a question has arisen as to whether a proposed new agricultural shed (194.5 sqm) with access roadway and land improvements and all associated services is or is not development or is or is not exempted development:

AND WHEREAS Homefarm Dairies requested a declaration on this question from Galway County Council and the Council issued a declaration on the 8th day of December 2016 stating that the matter was development and was not exempted development:

AND WHEREAS Homefarm Dairies referred this declaration for review to An Bord Pleanála on the 11th day of January 2016:

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

- (a) Section 2(1) of the Planning and Development Act, 2000, as amended,
- (b) Section 3(1) of the Planning and Development Act, 2000,
- (c) Section 4(1)(a) and 4(4) of the Planning and Development Act, 2000, as amended,
- (d) Section 5 of the Planning and Development Act, 2000, as amended,
- (e) Article 6(1), Article 8C, and Article 9(1)(a) of the Planning and Development Regulations, 2001, as amended,
- (f) Parts 1 and 3 of Schedule 2 to the Planning and Development Regulations, 2001, as amended, and
- (g) The planning history of the site:

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.



Hugh D. Morrison
Planning Inspector

4th August 2023