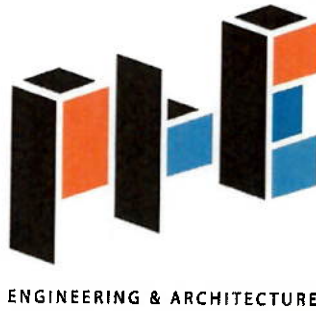


Civil
Structural
Surveying
Fire Safety



Architecture
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Reports

09th January 2022

An Bord Pleanála,
64 Marlborough St,
Rotunda,
Dublin 1,
D01 V902

AN BORD PLEANÁLA	
LDG-	_____
ABP-	_____
11 JAN 2023	
Fee: €	220
Type:	deigue
Time:	_____
By:	post

Our reference no: 19-16-LHF03

Planning reference no: ED22/50

Declaration of Exempted development under Section 5 of the Planning and Development Act 2000 for the above proposed a storage shed with access roadway, land improvement at Cloghaun, Claregalway, Co. Galway.

Dear Sir/Madam,

We wish to appeal the decision of the planning authority to refuse a Declaration of Exempted development under Section 5 of the Planning and Development Act 2000 for the above proposed a storage shed with access roadway, land improvement at Cloghaun, Claregalway, Co. Galway.

It will be noted from the site layout lodged with the application that the site entrance is existing and therefore a new or varied site entrance to the site is not part of the application. The grounds of appeal are quite narrow as the decision of the Planning Authority is quite narrow and essentially it will be seen from their decision and from the planners report that the planning authority was satisfied that the works for which the declaration was sought were exempt but they were also of the view that the works would not satisfy article 9(1)(a) subsection (iii) of the Planning and Development Regulations and therefore the Planning Authority were of the view that the proposed works would "endanger public safety by reason of traffic hazard or obstruction of road users". The Planning Authority formed this view due to the amount of fill that would be required to carry out the land improvement works. It will be clear from the documentation lodged with the planning application that the purpose of the land improvement works is simply to improve the lands as agricultural lands.

As part of an RFI the Planning Authority had sought clarity on the amount of material which would require importation into the site and the period of time over which this would be carried out. We estimated the amount of material to be approximately 9000m³ and the Planning Authority have translated this to be approximately 900 lorry loads and we have no difficulty with this calculation. In our reply to the RFI we had stated that this would occur over a period of time as it is simply not possible to confirm the exact timeframe. It can only be done when such

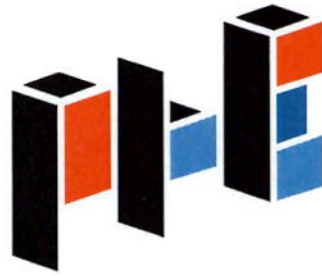
Padraic Hession & Associates Ltd T/A PHE Engineering & Architecture

Registered Offices: Unit 6 Galway Technology Park, Parkmore, Galway

T: 091 704280 E: consulting@phe.ie W: www.phe.ie

Director: Padraic Hession B.E. M.I.E.I. VAT No. IE9644282J Registered in Ireland: 432148

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Fire Safety



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not an enterprise where high costs can be incurred to achieve the land improvement works. It will be seen that the area of the lands comprises 2.16 ha or 5.34 acres and the quality of the land is poor in an area where agricultural values would only currently be in the region of approximately €4,000 per acre for such lands. If the lands can be reclaimed to good quality agricultural lands then this would probably increase to approximately €7000/acre. At a rate of approximately €4,000 per acre this values the land at approximately €21,000. Therefore, the cost of the land improvement works, and simply the importation of the soil on its own, could easily outstrip the actual value of the land if all this soil was to be purchased. Therefore this is not the intention and cannot be the intention as it will simply make no financial sense. It is typically the case if there is a nearby house being constructed or other such works requiring lands to be stripped of soil that landowners will require somewhere to remove clean soil and subsoil to and this is therefore the manner in which this work would be carried out. Even if a short period of time of two years is taken this would result in less than nine truck movements per week. This could not be seen to be excessive for the public road by any manner of means, even in such a country road. It should be noted that there is absolutely nothing whatsoever to prevent such truck movements on this road at the moment. Also, it is probably realistically the case that two years is too short of a time period to expect the works to be carried out in but we also want to offer proposals as realistic as possible.

As the current use of the lands is a agricultural and the proposed use of the lands is agricultural and the current site entrance is in place and the truck movements will be low and spread over time we have to disagree with the conclusion that the Planning Authority have reached in relation to road safety. It may have been possible to reach this conclusion if there was a new site entrance being proposed but as stated above this is not the case and there is nothing to substantiate this risk perceived by the Planning Authority.

We therefore call on An Bord Pleanala to overturn the decision of Galway County Council and to a grant a declaration that the proposed works are considered exempted development.

Yours sincerely,

Padraic Hession
Director
PHE
Engineering & Architecture

Padraic Hession & Associates Ltd T/A PHE Engineering & Architecture
Registered Offices: Unit 6 Galway Technology Park, Parkmore, Galway
T: 091 704280 **E:** consulting@phe.ie **W:** www.phe.ie
Director: Padraic Hession B.E. M.I.E.I. VAT No. IE9644282J **Registered in Ireland:** 432148

Our Ref: ED 22/50

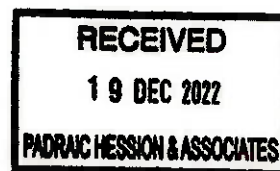


**Comhairle Chontae na Gaillimhe
Galway County Council**

Bosca Poist Uimhir 27,
Aras an Chontae,
Cnoc na Radharc,
Gaillimh

Telephone (091) 509308
Email: planning@galwaycoco.ie
Web: www.galway.ie

Homefarm Diaries,
c/o PHE Engineering & Architecture,
Unit 6 Galway Technology Park,
Parkmore,
Galway



08th December, 2022

RE: Declaration of Exempted Development under section 5 of the Planning & Development Act 2000

ED22/50– *Proposed new agricultural storage shed with access roadway land improvement at Cloghaun, Claregalway, Co. Galway*

DECISION – NOT EXEMPTED DEVELOPMENT

A Chara,

I refer to the above application which was received by this office on the 24th August, 2022.

The Planning Authority, in considering this Section 5 application, had regard particularly to:

- (a) The definition of "works" set out in Section 2 of the Planning and Development Act 2000 (as amended).
- (b) The definition of "development" set out in Section 3 of said Planning and Development Act.
- (c) Section (3) of said Planning and Development Act.
- (d) Section 4 (1) (h) & (4) of said Planning and Development Acts.
- (e) Article 6(1) of said Planning and Development Regulations.
- (f) Article 9(1)(a) subsections (i), (vi), (vii), (viiB) & (viiC) of said Planning and Development Regulations.
- (g) Article 8C of the 2001 Planning and Development Regulations
- (h) Documents submitted from the referrer in this Section 5 application.

The Planning Authority, in exercise of the powers conferred on it by Section 5 of the 2000 Planning Act (as amended), hereby decides that:

The construction of an agricultural shed (194.5sqm) with access roadway, land improvement works and all associated services at Cloghaun, Claregalway, Co. Galway is development and is not exempted development under Article 9(1) (a) (iii) of the Planning and Development Regulations 2001 (as amended).

Our Ref: ED 22/50

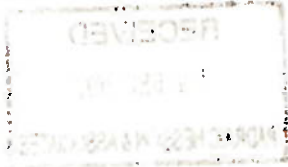
Please note that you may appeal this decision to **An Bord Pleanála** within four weeks of the issue of this declaration on payment of the prescribed fee.

Mise le meas



Robert Lydon
Planning & Sustainable Development Unit

Encl.



PLANNER'S REPORT

File Ref: ED 22/50

Applicant: Homefarm Dairies.

Location: Cloghaun, Claregalway, Co. Galway.

Section 5 of the Planning and Development Act 2000 (as amended)

If any question arises as to what, in any particular case, is or is not development or is or is not exempted development within the meaning of the Act, any person may, on payment of the prescribed fee, request in writing from the relevant planning authority a declaration on that question, and that person shall provide to the planning authority any information necessary to enable the authority to make its decision on the matter.

Proposed – Application

Whether the construction of an agricultural shed (194.5sqm) with access roadway, land improvement works and all associated services at Cloghaun, Claregalway, Co. Galway is or is not development or, is or is not exempted development within the meaning of the Planning and Development Acts, 2000 (as amended) and Planning and Development Regulations, 2001 (S.I. No. 600 of 2001) (as amended).

Site Location

The site is located in the townland of 'Cloghaun', along the local road the L-6195-32 and is circa 3.2 km north of the settlement boundary of Clargalway village.

Relevant Legislation

The following excerpts from current planning legislation are relevant to the assessment of this referral.

2000 Planning and Development Act

Section 2 of the Planning and Development Act, 2000 defines the terms used within the act and states that

"Works" includes any act or operation of construction, excavation, demolition, extension or alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes...

and

"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,

Section 3(1) states:

"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 4 sets out the types of works that while considered 'development', can be considered 'exempted development' for the purposes of the Act. (The 2001 Planning Regulations as amended derive from this section and designate further works as being exempted development for the purposes of the act)

2001 Planning and Development Regulations (as amended)

Article 6 deems the development set out in Schedule 2 to be exempted development. Column 1 describes the development which can be considered exempted development, while Column 2 describes the conditions and limitations applicable to such exemption. Part 3 sets out exemptions for rural areas.

"Class 9' and its conditions/limitations are as follows:

Works consisting of the provision of any store, barn, shed, glass-house or other structure, not being a type specified in class 6, 7 or 8 of this Part of the Schedule, and having a gross floor space not exceeding 300 square metres.

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.
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.
3. No such structure shall be situated within 10 metres of any public road.
4. No such structure within 100 metres of any public road shall exceed 8 metres in height.
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.
6. No unpainted metal sheeting shall be used for roofing or on the external finish of the structure.

Article 9 (1) (a) sets out general restrictions on exemption, stating that "Development to which article 6 relates shall not be exempted development for the purposes of the Act if the carrying out of such development would..." before going on to list several applicable circumstances.

Planning Assessment:

The applicant is seeking written opinion from the Planning Authority under Section 5 of the Planning and Development Act, 2000 (as amended), as to whether the construction of an agricultural shed (194.5sqm) with access roadway, land improvement works and all associated services at Cloghaun, Claregalway, Co. Galway is or is not development or, is or is not exempted development within the meaning of the Planning and Development Acts, 2000 (as amended) and Planning and Development Regulations, 2001 (S.I. No. 600 of 2001) (as amended).

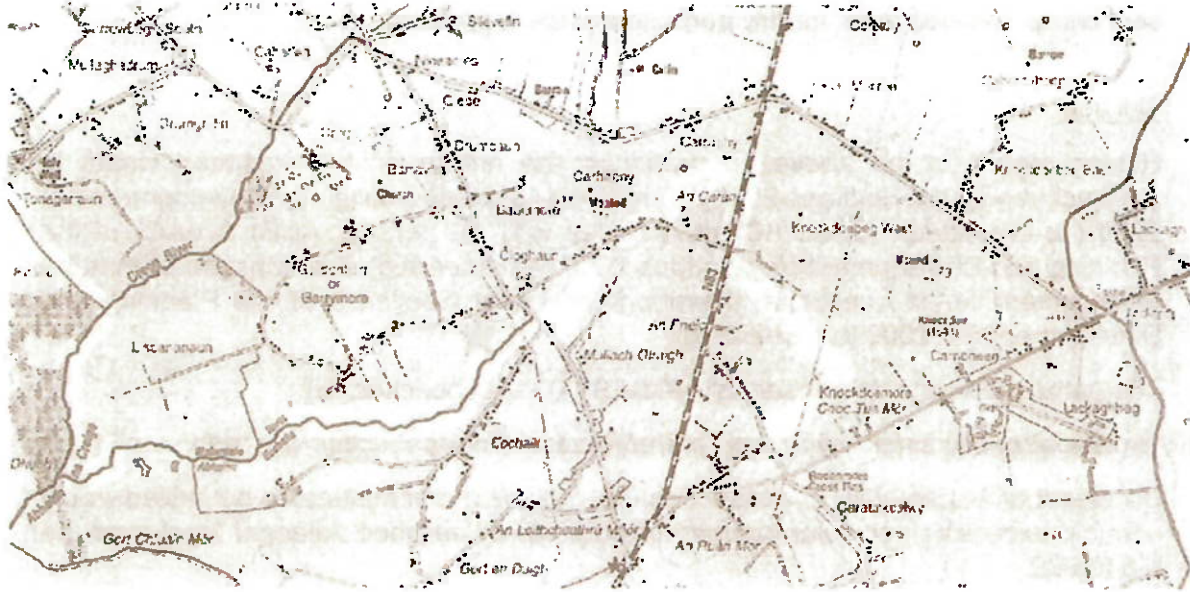
Planning History:

19/673 – for an agricultural storage shed with access roadway and all associated services. Gross floor space of proposed works: 163 sqm. **Withdrawn.**

Galway County Development Plan, 2022-2028:

Landscape:

The site is located within a Class 1 designated rural landscape, which has a landscape sensitivity rating of 'Low'.



Appropriate Assessment:

The application site is located on a site outside any Natura 2000 site; however, it is situated within 15km of the following Natura 2000 sites (5):

- SAC:Lough Corrib SAC
- SAC:Galway Bay Complex SAC
- SPA:Inner Galway Bay SPA
- SPA:Lough Corrib SPA
- SPA:Cregganna Marsh SPA

The site is located circa 2.3km north of Lough Corrib SAC (site code: 000297) which are designated European sites for rare and threatened flora and fauna (i.e. Natura 2000 network) protected under the EU Habitats Directive (92/43/EEC) & EU Birds Directive (79/409/EEC, as amended by Directive 2009/147/EC) and the European Communities (Natural Habitats) Regulations 1997, as amended by the European Communities (Birds and Natural Habitats) Regulations 2011 and part XAB of the Planning and Development, 2000 as amended.

Proposed Works:

The proposed works include the construction of an agricultural shed (194.5sqm) with access roadway, land improvement works and all associated services.

Nature of the Development.

The construction of an agricultural shed (194.5sqm) with access roadway, land improvement works and all associated services comes within the scope of 'works' as defined by the 2000 Act. As such, the construction of an agricultural shed (194.5sqm) with access roadway, land improvement works and all associated services is 'development' for the purposes of the legislation.

Opinion:

Having regard to the above, in particular the nature of the proposed works in conjunction with the Sections 2, 3, 4(1)(h) & 4(4) of the Planning and Development Act 2000 (as amended), Article 8C and Articles 9(1) (a) (vi),(vii), (viiB) & (viiC) of the Planning and Development Regulations 2001 (as amended), it is considered that the development would constitute 'development' under Section 3 of the Planning and Development Act 2000 (as amended).

The proposed works do not satisfy Article 9 (1) (a) subsection (iii):

"endanger public safety by reason of traffic hazard or obstruction of road users".

In respect of Article 9 (1) (a) subsection (iii), the volume of material to be infilled would result in excessive vehicular movement onto the established adjacent local road the L-6195-32.

Looking at the volume of material to infill the area, there would be circa 900 lorry movements and such vehicular movement would cause a significant additional hazard to the public using the road.

Therefore, the proposed works are considered to not be exempted development as per criteria set out in **Articles 9(1) (a) (iii)** of the 2001 Planning and Development Regulations.

Recommendation:

The Planning Authority, in considering this Section 5 application, had regard particularly to:

- (a) The definition of "works" set out in Section 2 of the Planning and Development Act 2000 (as amended).
- (b) The definition of "development" set out in Section 3 of said Planning and Development Act.
- (c) Section (3) of said Planning and Development Act.
- (d) Section 4 (1) (h) & (4) of said Planning and Development Acts.
- (e) Article 6(1) of said Planning and Development Regulations.
- (f) Article 9(1)(a) subsections (i), (vi), (vii), (viiB) & (viiC) of said Planning and Development Regulations.
- (g) Article 8C of the 2001 Planning and Development Regulations
- (h) Documents submitted from the referrer in this Section 5 application.

The Planning Authority, in exercise of the powers conferred on it by Section 5 of the 2000 Planning Act (as amended), hereby decides that:

The construction of an agricultural shed (194.5sqm) with access roadway, land improvement works and all associated services at Cloghaun, Claregalway, Co. Galway is development and is **not exempted development** under Article 9(1) (a) (iii) of the Planning and Development Regulations 2001 (as amended)

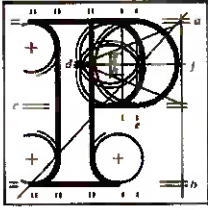


Prepared By: Robert Lydon, Technician Gr 2, Planning

Counter-signed By: Alan O'Connell, Senior Executive Planner

Director's/Manager's Recommendation

Decided By: Michael Owens, Director of Services



An
Bord
Pleanála

Planning Appeal Form

Your details

1. Appellant's details (person making the appeal)

Your full details:

(a) Name

Homefarm Dairies

(b) Address

Knockdoe, Claregalway, Co. Galway.

Agent's details

2. Agent's details (if applicable)

If an agent is acting for you, please **also** provide their details below. If you are not using an agent, please write "Not applicable" below.

(a) Agent's name

PHE Engineering & Architecture

(b) Agent's address

Unit, 6, Galway Technology Park, Parkmore,
Galway H91 W30F

Postal address for letters

3. During the appeal we will post information and items to you **or** to your agent. For this appeal, who should we write to? (Please tick ✓ one box only.)

You (the appellant) at the address in Part 1

The agent at the address in Part 2

Details about the proposed development

4. Please provide details about the planning authority decision you wish to appeal. If you want, you can include a copy of the planning authority's decision as the appeal details.

(a) Planning authority

(for example: Ballytown City Council)

Galway County Council

(b) Planning authority register reference number

(for example: 18/0123)

ED22/50

(c) Location of proposed development

(for example: 1 Main Street, Baile Fearainn, Co Ballytown)

Cloghaun, Claregalway, Co. Galway

Appeal details

5. Please describe the grounds of your appeal (planning reasons and arguments). You can type or write them in the space below or you can attach them separately.

Appeal Against Refusal under Planning Reference ED22/50.

Please see attached letter for grounds of appeal.

Supporting material

6. If you wish you can include supporting materials with your appeal.

Supporting materials include:

- photographs,
- plans,
- surveys,
- drawings,
- digital videos or DVDs,
- technical guidance, or
- other supporting materials.

Acknowledgement from planning authority (third party appeals)

7. If you are making a third party appeal, you **must** include the acknowledgment document that the planning authority gave to you to confirm you made a submission to it.

Fee

8. You **must** make sure that the correct **fee** is included with your appeal. You can find out the correct fee to include in our [Fees and Charges Guide](#) on our website.

Oral hearing request

9. If you wish to **request the Board to hold an oral hearing** on your appeal, please tick the “yes, I wish to request an oral hearing” box below.

Please note you will have to pay an **additional non-refundable fee** of €50. You can find information on how to make this request on **our website** or by contacting us.

If you do not wish to request an oral hearing, please tick the “No, I do not wish to request an oral hearing” box.

Yes, I wish to request an oral hearing

No, I do not wish to request an oral hearing

NALA has awarded this document its Plain English Mark

Last updated: April 2019.

