PLANNING SECTION
LEITRIM COUNTY COUNCIL
ED-26-71
08.10.26
REF P.

The application is made pursuant to Section 5 of the Planning and Development Act, 2000 (as amended) which seeks a declaration as to whether works for the reconstruction and improvement of an existing structure at Leonagh, Drumkeeran, County Leitrim is an exempted development.

The Structure

The structure comprises an existing masonry structure (structure being defined in Section 2 of the Planning and Development Act, 2000 as any building or structure or any thing made or constructed on land) which is situated within a 70 acre farm located at Leonagh, Drumkeeran, Co. Leitrim. The structure was originally a 19th century dwelling/byre which appears on the Ordinance Survey Maps as included as included at Schedule I of the application, with external walls of stone and which had originally a thatched and later a slate roof. The lands are used for agriculture and forestry with a significant portion of the lands having been planted with native deciduous woodland, the existing woodland having been retained with grazing for horses and sheep comprising the remained of the land. At present there are three Connemara ponies grazing on the land and from time to time additional stock is maintained thereon.

The reconstruction of the existing structure is to provide a weatherproof facility for the storage of hay and feed material and where the structure is 15 metres in length and 4 metres in width as shown on the plans and particulars attached hereto at Schedule II.

The application for a Declaration that the works proposed to be carried out constitute exempted development are based on two separate statutory provisions –

(1) Section 4 of the Planning and Development Act provides that the carrying out of any works to an existing structure (and the existing building is a structure for the purpose of Section 4(1)(h)) which works are for the improvement or alteration of that structure (which clearly apply in this case) are exempted development so long as they are works to the interior of the building or in the case of external works, that the works are such as to be consistent with the character of the structure and not inconsistent with the character of neighbouring structures.

The works are exempt furthermore by virtue of Class 9 of Part 3 (Exempted Development – Rural) of Schedule 2 of the Planning and Development Regulations, 2001. This provides that 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 (which classes 6, 7 and 8 relate to structures used for the housing of animals) which in this case is for dry storage of animal related materials: hay, feedstuffs, farm equipment and having a gross floor area not exceeding 300m^2 is exempted development.

Section 4(1)(h) Planning and Development Act, 2000

The development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure being works which effect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render such appearance inconsistent with the character of the structure or of neighbouring structures... shall be an exempted development.

The only limitations therefore on this exemption is that contained in Section 4(1)(h).

It is necessary therefore in order to determine whether the said development falls within the exemption contained in Section 4(1)(h) that each of the requirements of that exemption are addressed.

The first requirement is that the activity amounts to "development" for the purpose of the Planning and Development Act. The said proposal consists of the carrying out of works for the maintenance, improvement and alteration of the structure and works are defined in Section 2 as *"any act of construction, excavation, alteration, demolition, repair or renewal"*. Accordingly the said proposal amounts to development for the purposes of Section 4(1)(h). The works proposed must be for the *"maintenance, improvement or other alteration or any structure"*.

The works proposed must be for the maintenance, improvement and alteration. The works will consist of the reconstruction of the existing building using the existing stone in a manner which is similar to the existing stone in the existing structure so as to replicate the character of the existing structure both in terms of its external walls and in terms of its roof and therefore are works which have as their primary objective to replicate the character and design of the existing structure and accordingly fall within the definition of *"maintenance, improvement or other alteration of any structure"*.

The existing building is a structure a defined for the purposes of Section 4(1)(h). A structure is defined in Section 2 of the Planning and Development Act as any building or structure or any thing made or constructed on land is a structure for the purposes of Section 4(1)(h).

The internal wall within the structure is to be removed so as to provide a single space but this is provided for in Section 4(1)(h) as the limitation only extends to the works to the exterior of the building.

Character in this context was examined in *Cairnduff v. O'Connell* in a 1986 Supreme Court decision wherein the Court stated as follows: *"Character would ...be more dominantly effected by its street appearance than by its rear appearance. Secondly, I am satisfied that the character of the structure provided for in the subsection must relate, having regard to the provisions of the Act in general, to the shape, colour, design, ornamental features and layout of the structure concerned"*.

Having regard to the nature of the proposed works which will replicate insofar as it is possible the shape, colour, design and ornamental features and external layout of the structure, it falls

squarely within the test provided for in *Cairnduff v. O'Connell.* The object of the exercise is to preserve the character of the existing structure but make it suitable for its use for agriculture, namely for the storage for hay and feed and some incidental use for forestry related activities.

Insofar as there are neighbouring structures, the nearest structure to the property is approximately 300 metres which is the existing dwelling house related to the farm and therefore there are no neighbouring structures that the building could be deemed to be inconsistent with as that is the closest structure. Even if there was structures adjoining/adjacent to the existing structure, in terms of each and every element of its character could not but be deemed to be consistent with the character of those neighbouring structures.

Accordingly the entirety of the works fall within the provisions of Section 4(1)(h) of the Planning and Development Act, 2000.

Section 4(1)(h) is a self-contained exemption and once there is compliance with the requirements of the Section (that is a structure whose character is being retained) then it follows that the works are entitled to a Declaration in the terms sought in this application.

Class 9 Part III Schedule 2 of the Planning and Development Regulations, 2001

Section 4(2) of the Planning and Development Act provides for the making of Regulations by the Minister and where the Regulations made pursuant to that provision provide for certain classes of development that are an exempted development.

This application relies on Class 9 of Part III of Schedule 2 of the Planning and Development Regulations, 2001 (as amended). Class 9 provides that 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 300m^2 is prima facie exempted development.

The structure proposed in this instance has a footprint of significantly less than the 300m^2 specified in Class 9 (the gross floor space proposed is 60m^2).

Column 2 of Class 9 requires that the six preconditions be complied as set out in that column.

1. Paragraph 1 of column 2 provides that the structure shall not be used for any purpose other than agricultural or forestry and excluding the housing of animals or the storing of effluent and as the structure is to be used exclusively for the keeping of animal feed materials or for purposes ancillary to the existing forest. The limitation is paragraph 1 is complied with in full.

2. The gross floor space of any such structure together with any other structures within the same farmyard complex or complex of such structures within 100 metres of that complex shall not exceed 900m^2 and it can be confirmed that there are no structures

within 200 metres of this existing structure and therefore the requirements of paragraph 2 are complied with in full.

3. Paragraph 3 provides that no such structure shall be situated within 10 metres of any public road and the structure is located approximately 300 metres from the road and complies with the obligations set out in paragraph.

4. No such structure may be located within 100 metres of any public road, shall exceed 8 metres in height and as the structure in height and in any event is not within 100 metres of any public road, the proposal complies with paragraph 4.

5. The structure is not located within 100 metres of any house and in any event the nearest house is that of the Applicant and there are no schools, hospitals, churches or buildings used for public assembly and therefore the development falls within the exemption contained in column 2 paragraph 5 in that regard.

6. It is not proposed to use any metal sheeting for roofing with the roofing material to be of thatch and/or slate depending on whether appropriate materials and expertise can be secured and while unnecessary to do so in the event any such sheeting material being used then it shall be appropriately finished and painted to comply with the obligations in paragraph 6.

The exemption therefore falls within the parameters of Class 9 of Part 3 of Schedule 2. It is necessary to consider in addition the restrictions under Article 9 which provides that the exemptions to which reference has been made shall not apply if any of the requirements of paragraph A are not complied with. The relevant provisions have been examined and it can be confirmed that:

There is no contravention of any condition attached to a permission in respect of the lands to which this application is made, does not consist or comprise the formation or laying out or materially widening of a mean of access to a public road, the surface area of which exceeds 4 metres. In any event "the surfaced carriageway" in respect of access taken is less than 4 metres in width. There is no issue that the works would endanger public safety by reason of traffic hazard nor are there any works proposed to be carried out under a public road nor does the works interfere with the character of the landscape. The works do no affect places, caves, site. Features or other objects of archaeological, geological, historical, scientific interest.

The works do not consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or structure used which is an unauthorised use nor do the works restrict the continuance of an existing use of a building or structure which is it is an objective of the Planning Authority would remain available for such use. The works will not relate to lands which are habitually open or used by the public nor will they obstruct any right of way and therefore in respect of all of the elements of Class 9 there is no breach of the requirements

such as to disapply the exemption contained in Class 9 of Part III of Schedule 2 of the Planning and Development Regulations, 2001.

Accordingly it is respectfully submitted that the Applicant is entitled to a declaration that the carrying out of works for the improvement/alteration of a structure while development amounts to an exempted development having regard to Sections 2, 3 and 4 of the Planning and Development Act, 2000 and for the purposes of Class 9 of Part 3 of Schedule 2 of the Planning and Development Regulations, 2001.

For the avoidance of doubt in respect of use, Section 4(1)(a) provides that the use of any structure for agriculture shall be an exempted development under that statutory provision and therefore no issue arises in the respect of the use of this building/structure for agricultural use. Agriculture is defined as the use of land as grazing land, the keeping of horses and livestock generally, and specifically Class 9 provides that the use of a structure either for agricultural and/or forestry or both fall within the specific exemption but the use of the said structure is limited to dry storage only, as is the case proposed here, and therefore the use in that regard is specifically exempted under the provisions of Class 9 of Part 3 of Schedule 2 of the Planning and Development Regulations, 2001 and having regard to the definition of agriculture and Section 4(1)(a) of the Planning and Development Act, 2000.

Accordingly, a Declaration in the following terms is requested:

That works for the reconstruction/improvement/alteration of a structure consisting of the provision of a structure for agricultural use: for the dry storage of animal feed and/or for forestry related purposes comprising a gross floor area not exceeding 60m^2 at Leonagh, Drumkeerin, Co. Leitrim, while "development" is an exempted development having regard to Sections 2, 3, 4 of the Planning and Development Act, 2000 and specifically Section 4(1)(h) thereof.

The development as aforesaid is an exempted development by virtue of 9 of Part 3 Schedule 2 of the Planning and Development Regulations, 2001.