

An
Bord
Pleanála

Board Direction ABP-321643-25

The submissions on this file and the Inspector's report were considered at a Board meeting held on 07/05/2025.

The Board decided, as set out in the following Order, that

Board Order as follows:-

WHEREAS questions have arisen in relation as to the following:

- 1) whether the use of the subject lands for agriculture (osier use) is development, and whether it is exempted development.
- 2) whether the formation of an agricultural access consists of (or is consistent with) the use of the lands for agriculture and is exempted development, under 4(1)(a) of the Act.
- 3) Whether the replacement of the current temporary boundary treatment of concrete post and concrete rail by a gated access boundary less than 2 metres in height would constitute development and whether it is exempted development.
- 4) Whether the carrying out of works to the maintenance or improvement of a road by a local authority, is development, and whether it is exempted development.

AND WHEREAS Eamonn O'Rourke requested a declaration on this question from Westmeath County Council and the Council issued a declaration on the 6th day of December, 2024 stating that;

- 1) Relating to Items (1) and (4) that, due to the lack of specific and sufficiently detailed information, that the Planning Authority was unable to make a Determination.
- 2) Relating to Item (2), that the formation of an agricultural access constitutes development and such development is not exempted development.
- 3) Relating to Item (3), that the replacement of the current temporary boundary treatment of concrete post and rail by a gated access boundary less than 2m in height constitutes development and such development is not exempted development.

AND WHEREAS Eamonn O'Rourke referred this declaration for review to An Bord Pleanála on the 21st day of January 2025, with revised queries and the inclusion of an additional query (Question 5).

AND WHEREAS An Bord Pleanála, in considering the referral including revised queries and additional Question (Question 5), had regard to –

- (a) Sections 2, 3, 4 of the Planning and Development Act, 2000, as amended,
- (b) Articles 6 and Article 9 of the Planning and Development Regulations, 2001, as amended,
- (c) Classes 9 and 13, Schedule 2, Part 1 of the Planning and Development Regulations, 2001, as amended,
- (d) Planning history of the site and environs,
- (e) The pattern of development in the area.

AND WHEREAS An Bord Pleanála has concluded that:

- (1) Section 4(1)(a) of the Planning and Development Act 2000, as amended, provides that the use of land for the purposes of agriculture, including osier land, constitutes exempted development for the purposes of the Act.
- (2)
 - (a) The formation of a vehicular access constitutes works, and therefore constitutes development as defined by section 3 of the Planning and Development Act 2000, as amended.
 - (b) Such development is not exempted by the provisions of Section 4(1)(a) of the Planning and Development Act 2000, as amended, which relates only to agricultural use of land and use for that purpose of any building occupied together with land so used.
- (3)
 - (a) The insertion of a gate into a temporary boundary treatment constitutes development within the meaning of the Act.
 - (b) The provision of a gate or gateway, other than within or bounding the curtilage of a house, with a height not exceeding 2 metres, generally comes within the scope of Class 9 (Schedule 2, Part 1) of the Planning and Development Regulations 2001, as amended. However, the restriction on exemption as provided for in article 9(1) of the Planning and Development Regulations 2001, as amended, apply to all such development.
 - (c) The restriction on exemption as provided for in article 9(1)(a)(i) of the Planning and Development Regulations 2001, as amended, states 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 contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act.
 - (e) Condition number 46 of planning permission ref: 99/1661 required that a screen wall of solid block construction 2 metres in height and suitably plastered or dashed and capped shall be erected along the entire

perimeter of that development, prior to the occupation of any dwelling which abuts this boundary. The opening of an access in that boundary would contravene that specific condition of planning permission, and it is therefore considered that such development would not constitute exempted development having regard to the provisions of article 9(1)(a)(i) of the Planning and Development Regulations 2001, as amended.

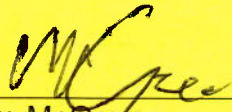
- (4) (a) The carrying out by a local authority of road improvement works would constitute works, and therefore constitutes development, as defined by section 3 of the Planning and Development Act 2000, as amended.
- (b) Section 4(1)(e) of the Planning and Development Act 2000, as amended, provides that development consisting of the carrying out by a local authority of any works required for the construction of a new road or the maintenance or improvement of a road constitutes exempted development for the purposes of the Act.
- (5) The construction by a local authority of an access, for the benefit of a third party, would constitute works, and therefore constitute development, as defined by section 3 of the Planning and Development Act 2000, as amended. Such development would not come within the scope of the exemption provided for at section 4(1)(e) of the Planning and Development Act 2000, as amended, which applies only to the construction of a new road or the maintenance or improvement of an existing road and would not therefore constitute exempted development.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by Section 5 (3)(a) of the Planning and Development Act, 2000, as amended, hereby decides that:

- 1) The use of land for the purposes of agriculture, including osier land, constitutes exempted development for the purposes of the Act.
- 2) The formation of a new vehicular access constitutes works, and therefore constitutes development, as defined by section 3 of the Planning and Development Act 2000, as amended. Such development is not exempted by the provisions of Section 4(1)(a) of the Planning and Development Act 2000, as amended, which relates only to agricultural use of land, and use for that purpose of any building occupied together with land so used, and not the carrying out of works on those lands.
- 3) The replacement of a section of the boundary to the rear of Ardilaun Green with a gated access would constitute development. Such development would materially contravene a condition attached to a planning permission under the Act (Condition number 46 of planning permission ref: 99/1661), and such development is therefore not exempted development.
- 4) The carrying out by a local authority of road improvement works would constitute works, and therefore constitutes development, as defined by section 3 of the Planning and Development Act 2000, as amended. Section 4(1)(e) of the Planning and Development Act 2000, as amended, provides that development consisting of the carrying out by a local authority of any works required for the construction of a new road or the maintenance or improvement of a road constitutes exempted development for the purposes of the Act.

- 5) The construction by a local authority of an access, for the benefit of a third party, would constitute works, and therefore constitute development, as defined by section 3 of the Planning and Development Act 2000, as amended. Such development would not come within the scope of the exemption provided for at section 4(1)(e) of the Planning and Development Act 2000, as amended, and such development is therefore not exempted development.

Board Member:



Liam McGree

Date: 09/05/2025