



An  
Bord  
Pleanála

**Board Order**  
**ABP-321643-25**

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**Planning and Development Acts 2000 to 2022**

**Planning Authority: Westmeath County Council**

**Planning Register Reference Number: S5-46-24**

**WHEREAS** a question has arisen as to-

- (1) Whether the use of the subject lands for agriculture,
- (2) Whether the formation of an agricultural access consists (or is consistent with) the use of lands for agriculture under Section 4(1)(a) of the Act,
- (3) Whether the construction, erection, renewal or replacement other than within or bounding the curtilage of a house, or any gate or gateway, and
- (4) Whether the carrying out of works to the maintenance or improvement of a road by a local authority

on a land parcel at Ardivaghan Townland, Mullingar, County Westmeath is or is not development or is or is not exempted development:

**AND WHEREAS** Eamonn O'Rourke care of The Planning Partnership of The Bank Building, 52 Oliver Plunkett Street, Mullingar, County Westmeath requested a declaration on these questions from Westmeath County Council:

**AND WHEREAS** Westmeath County Council considered that, having regard to

- (1) the use of the subject lands for agriculture, and
- (4) the carrying out of works to the maintenance or improvement of a road by a local authority, that

due to the lack of specific information and insufficiency of detail received in association with this request, to enable the planning authority to make a determination, the referral could not be further considered by the planning authority.

**AND WHEREAS** Westmeath County Council, in further considering this request, and having reworded question 3, concluded that:

- (2) the formation of an agricultural access consists (or is consistent with) the use of lands for agriculture under Section 4(1)(a) of the Act, and
- (3) whether the current temporary boundary treatment of concrete post and concrete rail if replaced by a gated access boundary less than two metres in height conforms with Class 9

is development and is not exempted development.

**AND WHEREAS** Eamonn O'Rourke referred this declaration, with revised questions and an additional question for review to An Bord Pleanála, on the 10<sup>th</sup> day of January 2025:

**AND WHEREAS** An Bord Pleanála, in considering this referral, had regard particularly 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) the planning history of the site and environs, and
- (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.
- (d) 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 2000 Act, hereby decides that

- (1) The use of land, including osier land, for the purposes of agriculture is exempted development,
- (2) The formation of a new vehicular access constitutes works, and therefore constitutes development and is not exempted development,
- (3) The replacement of a section of the boundary to the rear of Ardilaun Green with a gated access is development and is not exempted development.

- (4) The carrying out by a local authority of road improvement works would constitute works and therefore constitutes development and is not exempted development.
- (5) The construction by a local authority of an access, for the benefit of a third party, is development and is not exempted development.



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**Emer Maughan**

**Member of An Bord Pleanála**

**duly authorised to authenticate  
the seal of the Board.**

**Dated this**

**13<sup>th</sup> day of May**

**2025.**