



An
Bord
Pleanála

Inspector's Report ABP-300285-17

Question

Whether works at Kiltimagh Railway Line is or is not development or is or is not exempted development

Location

Kiltimagh, Co. Mayo.

Declaration

Planning Authority

Mayo County Council

Planning Authority Reg. Ref.

P17/773

Applicant for Declaration

Brendan Quinn

Planning Authority Decision

Split Decision

Referral

Referred by

Brendan Quinn

Owner/ Occupier

Irish Rail.

Observer(s)

John Mulligan.

Date of Site Inspection

14/03/18

Inspector

John Desmond

Contents

1.0 Site Location and Description	4
2.0 The Question	4
3.0 Planning Authority Declaration.....	5
3.1. Declaration.....	5
3.2. Planning Authority Reports	5
4.0 Planning History.....	6
5.0 Policy Context.....	6
5.1. Development Plan.....	6
5.2. Natural Heritage Designations	7
6.0 The Referral.....	8
6.1. Referrer's Case	8
6.2. Planning Authority Response.....	12
6.3. Owner/ occupier's response.....	13
6.4. Observations	15
6.5. Further Responses.....	17
7.0 Statutory Provisions.....	21
7.1. Planning and Development Act, 2000.....	21
7.2. Planning and Development Regulations, 2001	22
7.3. Other	23
8.0 Assessment.....	25
8.1. Is or is not development	25
8.2. Is or is not exempted development	30
8.3. Restrictions on exempted development	32
9.0 Recommendation.....	33

1.0 Site Location and Description

- 1.1. The referral question relates to a section of the closed Claremorris to Collooney railway line, between and including the townlands of Murneen and Tonroe, centred (approximately) on Kiltimagh railway station, in County Mayo. The section of railway concerned is stated as 12km by IRD Kiltimagh and indicated as 15.3km (9.5 miles) by Íarnród Éireann.
- 1.2. According to Íarnród Éireann, this railway line closed to railway traffic in 1975, with the station building and associated structures converted into a museum and exhibition centre during the 1980's.

2.0 The Question

- 2.1. The applicant has posed 9no. questions (one more than was posed in the declaration application to the Planning Authority) concerning works being carried out by Mayo County Council, however for the purposes of this referral I have refined the question(s) posed to the Board as follows:
 - (i) Whether the removal of vegetation from a railway line is or is not development and is or is not exempted development?
 - (ii) Whether the works facilitating the proposed velorail use, comprising:
 - reinstatement / replacement of railway sleepers and rail track at one location;
 - repair of subsidence at one location;
 - (unspecified) minor drainage works;
 - Replacement of existing gates/ gateways;
 - Removal of (unspecified) obstructions from within fenced wayleave (for the purposes of rebuilding the railway at public road crossings)is or is not development and is or is not exempted development?
 - (iii) Whether the use of a closed section of railway line as a velorail is or is not development and is or is not exempted development?

- (iv) Whether the change of use of the Kiltimagh Railway Station from museum to use for a tourism and leisure attraction (velorail) is or is not development and is or is not exempted development?

3.0 Planning Authority Declaration

3.1. Declaration

The Planning Authority issued a declaration (25/10/17) that:

- the subject facilitating works, comprising removal of vegetation from the railway line, were not development;
- the rebuilding of sections of the line, comprising reinstatement / replacement of railway sleepers and tracks at one location, the repair of subsidence of rail track at one location, minor drainage works, replacement of existing gates / gateways and removal of obstructions from within the fenced wayleave (for the purposes of rebuilding the closed railway at public road crossings) constitute development under s.3 of the Act, but are exempt development under s.38 of the Transport (Railway Infrastructure) Act 2001;
- the change of use from railway (within the meaning of the Transport (Railway Infrastructure) Act, 2001), a use which has not been abandoned, to use as a velorail is not a material change of use but an ancillary use.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report of the Council's A/Director of Services for Planning, Communications and Economic and Community Development (25/10/17) is consistent with the Declaration that issued from the Planning Authority. The statutory provisions referred to comprise:

Planning and Development Acts, 2000-2017:

Part 1 Section 2 – Interpretation

Section 3 – Development

Section 4 – Exempted Development

Part 2 - Exempted development

Schedule 2 Class 23

Transport (Railway Infrastructure) Act 2001:

Section 2 – Interpretation

Section 38 – Exempted Development

3.2.2. Other Technical Reports

None

4.0 Planning History

ABP Ref.29N.RL2009: The Board concluded, inter alia, that the works to the bridge and boundary wall come within the scope of Class 23 being development required in connection with the movement of traffic by rail in, on, over or under the operational land of the statutory undertaker, and declared that the proposed rebuilding of the said bridge over East Wall Road and Tolka River and the construction of a higher boundary wall along Stoney Road is exempted development.

5.0 Policy Context

5.1. Development Plan

Mayo County Development Plan 2014-2020

Core Strategy & Settlement Strategy – Transport : ‘... *The disused part of the Western Rail Corridor which runs through the east of the County, if re-opened, could potentially provide important strategic links along a north-south axis to Sligo, Galway, Limerick, Cork, Waterford and Rosslare. The Settlement Strategy therefore supports the growth of towns along the Western Rail Corridor.*’

3. Infrastructure Strategy

The Council will also continue to support extensions and improvements to existing infrastructure and services in the County such as Ireland West Airport Knock, rail and bus network, rural transport programme etc.

Table 3 - Priority Infrastructure Projects for Co. Mayo 2014-2020: [includes] Western Rail Corridor

RL-01 It is an objective of the Council to support and encourage the provision of a high quality rail network and service (including commuter services) and ancillary works for passenger and freight carriage to, from and within the County, including the reopening of the Western Rail Corridor where it can be demonstrated that the development will not have significant adverse effects on the environment including the integrity of the Natura 2000 network.

RL-02 It is an objective of the Council, to work with Irish Rail, to safeguard and protect all existing or historic rail lines and associated facilities from redevelopment for non transport related purposes in order to not preclude their future use as an operational transportation network.

RL-03 It is an objective of the Council, in conjunction with Iarnród Éireann and relevant tourism interests to investigate the use of the Western Rail Corridor for velo-rail as an interim use for the rail line pending its reopening for passenger and rail freight.

NH-01 It is an objective of the Council to protect, enhance, conserve and, where appropriate restore: (f) The conservation value of disused railway lines, waterways, walkways etc. notwithstanding that some of these items (e.g. disused rail lines) may be developed at some future date as part of the County's infrastructure where it can be demonstrated that the development will not have significant adverse effects on the environment including the integrity of the Natura 2000 network.

Area Plans for Key Towns: ...The Council recognizes the important role of smaller towns, and these include the Key Towns such as Killala, Newport and Knock in the context of their location as outlined in the National Spatial Strategy (NSS) and of Kiltimagh due to its location on the Western Rail Corridor and in an area of Village Strengthening and Rural Area Opportunities (NSS).

5.2. Natural Heritage Designations

River Moy SAC site no.002298 – this would appear to overlap a portion of the site concerned in up to four locations. The Conservation Objectives for the Features of Interest for which the site has been designated are as follow:

To restore the favourable conservation condition, in the River Moy SAC, of: Active raised bogs (*priority habitat). No separate conservation objectives have been set for two habitats inherently links to that for active raised bog: Degraded raised bogs still capable of natural regeneration; Depressions on peat substrates of the Rhynchosporion.

To maintain the favourable conservation condition, in the River Moy SAC, of: Alkaline fens, Old sessile oak woods with Ilex and Blechnum in the British Isles, Alluvial forests with Alnus glutinosa and Fraxinus excelsior (Alno-Padion, Alnion incanae, Salicion albae) (*priority habitat), Austropotamobius pallipes (White-clawed Crayfish), Petromyzon marinus (Sea Lamprey), Lampetra planeri (Brook Lamprey), Salmo salar (Salmon), Lutra lutra (Otter).

6.0 The Referral

6.1. Referrer's Case

The case made by Brendan Quinn (21/11/17) concerns the allegedly unauthorised development of closed railway in vicinity of Kiltimagh, Co. Mayo for the publicly funded 'velorail' tourism project by Kiltimagh IRD.

The referrer requests the Board to issue a declaration on 9no. separate points, which may be summarised as follows:

- 1) Whether the velorail project requires planning permission.
- 2) Whether velorail use of the closed railway constitutes a change of use that requires planning permission.
- 3) Whether the completed works comprising replacement of closed railway track with additional old rail tracks, not usable for the purpose of rail usage, for use for the velorail projects following requires planning permission.
- 4) Whether the clearing of vegetation along the closed railway is development and whether its comes under relevant environmental restrictions.
- 5) Whether an EIAR is required as part of the planning process.

- 6) Whether the change of use of the station buildings, platforms and built infrastructure to use for a tourism and leisure attraction requires planning permission.
- 7) Whether the public has a right to be consulted via the planning process in the context of the significant public funding received and the impacts on the local environment, traffic flows and publicly-owned amenity.
- 8) To rule on the health and safety compliance requirements.
- 9) To consider changes in traffic in the vicinity of the closed railway and station buildings should be subject of a planning application.

The Referrer disputes specific points underpinning the declaration issued by the Planning Authority.

- In its assessment and in the May CDP 2014-2020 the PA incorrectly defined the railway as ‘disused’ rather than the officially correct definition of ‘closed’, as defined by the owner of the railway (appendix 3 refers), but finally accepted in the declaration of 25/10/17 that the railway line between Claremorris to Charlestown is closed.
- MCC was dismissive of submissions from the public alerting it that cutting back of vegetation was being carried out during the prohibited period.
- MCC has concluded that the rail line has not been abandoned but this is contradicted by the reality of encroachment on the line, although the alignment of the route, which is fenced off and clearly still owned by Irish Rail, has not been abandoned. The conclusion in point (c) of the declaration that *‘the use of the railway as a railway is the current use’* is factually incorrect in that it has been closed for over 40 years and is no longer maintained.
- It is not credible that the use of the line as a velorail does not exclude the primary use as a railway.
- A velorail is not ancillary to the primary use as a railway, given the definition ‘ancillary’ in the Oxford English Dictionary as *‘providing necessary support to the primary activities or operation of an organisation, system, etc.’* but is contrary thereto.

- As the railway is no longer fit for purpose as a railway, is defined as closed by the Department of Transport and by the NTA and is no longer used as a railway, use of the line as a velorail constitutes a change of use and necessitate planning permission.
- The determination that use is not a material change of use and is not development is therefore based on false assumptions.

Rebuilding

- The Railway Infrastructure Act clearly relates to the building or rebuilding of a railway, which would have to be to an international standard to allow trains to use the route. The works concerned comprise provision of an inadequate track to carry velorail carts, similar to a fairground ride, and do not constitute 'railway works'.
- It is not a railway development covered by the Railway Act as a railway is not being built, but a velorail track.
- The nature of the velorail crossings is entirely different to those of a scheduled railway in terms of frequency, randomness and nature, not being protected by crossing gates and signals, with different traffic and safety implications.
- MCC did not answer the question of whether the closed status of the railway line effectively means that any development works thereto constitutes development and removes any exemptions.
- MCC did not answer the question of whether or not works on the closed railway to facilitate velorail constitute development and exempted development.
- MCC paid no heed to the need for an EIS.
- The development taking place on a closed railway by a private company using public funds to develop the route for a purpose other than running a railway constitutes a change of use with issues of safety and traffic flows arising that should have been addressed as part of the project and with public consultation in the form of a planning application.

Additional background information

- Claremorris to Collooney railway line closed in 1975.
- Ongoing issues around trespass and squatting
- Failure of Ennis-Athenry line to attract sufficient passengers has put an end to the ‘west on track’ lobby group’s attempts to get the line reopened.
- Velorail proposals have been raised on a number of occasions as an alternative use.
- Most viable proposal is the development of a long-distance greenway cycling / walk path from Athenry to Enniskillen.
- Velorail is favoured by the railway lobby, which would block greenway development, and which would suggest a precursor to reinstatement of the railway line.
- In 2017, Kiltimagh IRD commenced repair on the track around Kiltimagh, including removal of extensive vegetation, replacement of some of the worst sections of track and several hundred metres of rail and sleepers that had been removed several years back.
- Kiltimagh IRD intend to open the road crossings and to change the use of the station to facilitate velorail.
- Repeated requests to MCC that this publicly owned asset be made accessible by people who are not velorail customers through provision of a walking and cycling track alongside the rails were refused or ignored. Such a track should be installed for safety reasons for access in case of accidents.
- 83% of all submissions on the Mayo County Development Plan 2014-2020 requested that the route be used for a greenway; no submissions requested the velorail project (note, the Swinford Area Community Action Plan 2013-2014 included an objective for a greenway on the on the railway line). Instead the CDP supported the velorail proposal and in countless documents MCC, including in its official response to the submissions to the plan, referred to the line as ‘disused’ rather than as ‘closed’.

- MCC's treatment of the matter of unauthorised development on the closed railway line to which it was alerted in March 2017 was referred to the ombudsman (details appended).

Principle of public consultation on publicly funded development

- The velorail project (in receipt of €200,000 grants from Dept. Rural and Community Development) has been subject to zero public scrutiny as MCC have stifled debate and are seemingly determined to provide Kiltimagh IRD with immunity from the planning process.
- Accountability for such funding is needed as would be provided through the planning process and third-party participation.
- Overwhelming public support in Kiltimagh for a parallel greenway alongside the proposed greenway route, attracting 850 signatures online and 166 signatures on paper, which were presented to MCC in May 2017 (details attached to appendix 6).

6.2. Planning Authority Response

The main points of the planning authority's response, c/o Ian Douglas, Senior Planner (05/03/18) may be summarised as follow:

Change of use

- Velorail on Claremorris to Collooney rail line falls within the definition of 'railway' as set out under section 2 of the Railway Safety Act 2005.

Need for planning permission

- The development is being carried out by Mayo County Council, under licences from CIÉ, with IRD Kiltimagh providing assistance and is therefore not subject to Section 34 of the Planning and Development Act, 2000, as amended.
- Does not fall within scope of Part 8 of the Planning and Regulations 2001-2018, Article 80(1)(e)-(j).
- Section 38 of the Transport (Railway) Infrastructure Act 2001 exempts railway works for maintenance, improvement or repair of railway from the Act of 2000.

- Regarding the restrictions on exemption under Article 9(1)(a)(x) concerning fencing or enclosure of land, the enclosure was in place on opening of the line in 1895, with lineside fencing erected by Irish Rail to preserve the line in 2007, repaired by the County Council where necessary.

Status of railway line

- There is no difference in meaning between ‘disused’ or ‘closed’, neither term being referred to in the legislation. Closed is the term used by Irish Rail.
- The closure of the line relieves Irish Rail only of its obligation to operate trains, not of any of its other statutory duties which require the making of an Abandonment Order and the disposal of lands.

Other

- The Wildlife Act 1976 is not relevant to a Section 5 referral.
- Velorail and train definition – flanged wheel.

6.3. Owner/ occupier’s response

The main points of the response of Iarnród Éireann / Irish Rail, c/o C. Hedderly Senior Track and Structures Engineer (26/04/18), may be summarised as follow:

- With the exception of a handful of locations where vandalism has occurred, the track and railway infrastructure is entirely intact between Claremorris and Collooney.
- Regular traffic ceased on the line in 1975 and Iarnród Éireann (IÉ) has no plans for its resumption, but the line remains part of IÉ infrastructure and is not abandoned which would require Ministerial Order under the Transport Act 1950 relieving IÉ of its statutory duties to maintain accommodation works, drains, fences, bridges, etc., on the line.
- The most recent significant engineering works on the line carried out by IÉ was the clearing of 40 miles of track of vegetation and the erection of lineside fencing (from 3 milepost to 43 milepost) to preserve the rail line and exercise IÉ’s ownership, funded by the CLAR programme, and various minor bridge repairs following collision by road vehicles and erection of new signage.

- IÉ has indicated that it is supportive of the velorail concept, in general, and noted the benefits to the locality and executed a license agreement for Mayo County Council to take over responsibility for the section of line from 4½ miles to 14 miles to facilitate the development of Velorail at the beginning of 2015. MCC can use and must maintain the line but must hand back the rail line and all infrastructure in no worse condition that when taken over.
- The license agreement notes the works required for Velorail and its subsequent operation and management include:
 - i. Removal of vegetation and re-instatement of small sections of missing trackwork;
 - ii. Drainage and surfacing works;
 - iii. Improvement of railway bridges over Trimogue, Yellow and Gorge rivers;
 - iv. Installation of safety railings;

Which are works IÉ regards as maintenance. Items (iii) and (iv) being simply to make structures safe for the public should they need to traverse them by foot.

- IÉ's submission to DTTaS's 'Strategy for Future Development of Greenways' public consultation document, attached to the response, mentions the Velorail license and sets out the position and benefits to IÉ and local authorities in using rail lines for such purpose where there is no medium-term prospect to re-establish rail services.
- Note – the submission includes a map of closed and abandoned railway lines in IÉ's ownership.

6.4. Observations

6.4.1. The main points of the observations from **John Mulligan**, Boyle, Co. Roscommon (13/12/17) may be summarised as follows:

- The observer's health and safety concerns (detailed in the observation) could have been addressed if proper planning procedures had been followed, including provisions for third party observations.
- Restrictions on exemptions under A.9(1)(x) of the Planning and Development Regulations 2001, as amended, concerning enclosing of lands used for recreation or as a means of access thereto. The line has been closed for four decades and is used as a recreational utility habitually open to the public.
- Incorrect reference to 'disused' railway line rather than the correct, official definition as 'closed', in the County Development Plan, although the Council finally used the correct definition in response to question 2. Any decision made by the Council in respect of the closed line was based on false information.
- Cutting / clearing of vegetation on uncultivated land, or in hedges or ditched during nesting and breeding season is restricted from 1st March to 31st August (Hedge Cutting Notice 2016, NPWS 1st March 2016), but this was ignored by the County Council in preparatory works carried out ahead of the project in the absence of oversight that a planning process would have provided.
- The same planning laws should apply to local authorities as to private citizens.
- Planning laws ensure that all projects, especially those involving public funds, are subject to transparency and public scrutiny.

6.4.2. The observations from **Brendan Quinn**, Enniscrone, Sligo (27/02/18), fully supports all the points made by John Mulligan.

6.4.3. The mains points of the observations from **IRD Kiltimagh**, c/o Joe Kelly (03/04/18), may be summarised as follow:

- The velorail project is being pursued by IRD Kiltimagh CLG and Kiltimagh Tourism Association, to preserve and utilise the existing rail infrastructure for the benefit of the locality.
- Velorail is the running of flanged wheeled carts in convoy and is similar to the carts that maintenance personnel would have used when the railway was operational.
- CIE / Irish Rail indicated they would support the velorail project if Mayo County Council was the promoter and the Council, as the promoter, has secured a 12-year license from CIE/IR for the purposes of operating a velorail facility.
- The license is immediately revocable should the line be required by CIÉ / IR to reopen a rail service.
- The license covers 12km of the railway line from Murneen townland to Tonroe townland, through Kiltimagh, in ownership of CIE/IR (from Athenry to Collooney)
- Funding secured by MCC from the Department of Community and Rural Development in 2016.
- MCC, as the promoter, is working in close partnership with IRD Kiltimagh CLG and Kiltimagh Tourism Association.
- Irish Rail undertook significant maintenance works on the line in 2009.
- The railway is closed, not abandoned and the licensed section can facilitate travel of railway maintenance vehicles passing through to Claremorris or to Collooney.
- The works referred to by Mr Quinn amount to clearing of overgrowth along the 12km section of track, together with the repair of actual track were damaged by a bog fire, or where track had been removed by theft. The works were completed by a contractor on behalf of Mayo County Council.

- Other minor works, including some repairs to existing lateral fencing, small scale track drainage, spraying of weeds, etc., have been undertaken by staff of the IRD community organisation working under the instruction of Mayo County Council.
- The said works are maintenance / reinstatement works. No development has taken place.
- The referral is motivated by an agenda to convert the rail line from Collooney to Athenry to a greenway. The Board should be aware that there is another pressure groups petitioning for the reinstatement of freight services on the entire railway.

6.5. Further Responses

6.5.1. The main points of the additional observation made by **John Mulligan** (23/04/18) concerning the submission by Kiltimagh IRD may be summarised as follow:

- Disputes that Irish Rail undertook significant maintenance on the line in 2009, or that it has ever been maintained since it closed and Irish Rail has described the line as 'of scrap value only'.
- Disputes the description of the works carried out as maintenance / reinstatement, as the works have not resulted in a railway that could carry trains.
- Disputes that the referral by Mr Quinn is vexatious and submits that the issue is very much one of public interest.
- The statement that '*the Velorail is ancillary to the activities that would historically have been carried out as part of the maintenance of a railway in the course of its normal operations*' is an elastic representation of facts and the project is not in any way ancillary to any kind of rail use.
- The justification put forward for laying of new tracks on long sections where no track has existed for several years is akin to the issue of demolition and rebuilding in construction projects.

- It is disingenuous to compare the proposed velorail carts to the hand-pumped carts used for maintenance a century ago, within a live rail schedule, on a line that is not fit for rail use.
- The maintenance of a live railway is different from a leisure pursuit involving untrained members of the public.
- The rail line has been open to pedestrians for several decades, albeit unofficially, and the interface between the existing users and velorail users and with the interface of road traffic on minor roads should have been examined within a planning process, as should the change of use of the station.
- Planning process in the form of a railway order would be required to reinstate a railway on this current alignment.

6.5.2. The main points of the response submitted by **Brendan Quinn** (26/04/18) concerning the submission by Kiltimagh IRD may be summarised as follow:

- Questions whether the letter from Kiltimagh IRD should be considered by the Board given the late date of submission.
- Regarding community benefit, the community also wants a greenway to run at least alongside the closed railway, with a campaign being run across the three counties concerned and adopted by Sligo County Council.
- The observer has no personal agenda, but is a registered lobbyist on the governments register of lobbyists on the greenway issue for many years¹. The referral is not vexatious or frivolous.
- Without a planning process for the Velorail project, there is no process by which the observer could progress the idea of the greenway alongside the Velorail project.
- The closeness of the partnership between IRD and MCC makes it difficult to discern who is the project promoter, further confused by radio interviews of Joe Kelly of the IRD (on IRD's facebook account 06/04/17) and of Minister

¹ I consider it unnecessary to recite the extensive details of his history with the greenway campaign, including pages 6-7, but note same.

Ring and Joe Kelly (06/03/18) which also raises issues to do with lack of public consultation, use of station building and the significance and extent of works required at road crossings.

- The project has received two tranches of grants from Minister Ring and Mayo County Council, totalling €323,000, without planning or public consultation.
- The track has not been maintained since closure in mid-1970's and the works carried out in 2009 was not significant, only clearance of vegetation and spraying of weed-killer.
- Joe Kelly acknowledges the line is closed but failed to note that a closed railway line would need a railway order to be re-opened and, in the observer's view, would require planning permission for change of use from railway to velorail.
- It is bizarre to claim that a closed railway, the state of which cannot facilitate railway maintenance vehicles, is still legally a railway – it is not.
- The development is not exempted development due to the provisions of the Wildlife Act 1976.
- Provides an overview of the setting up of the Kiltimagh Greenway Group, registered with Mayo Public Participation Network as an interest group, and its facebook page set up by the observer at the request of the local residents and is administered by, inter alia, a resident of Kiltimagh. Also provides an overview of the level of public support locally for a greenway and in the wider area for the Sligo to Athenry greenway.

6.5.3. An additional response by **Brendan Quinn** (27/04/17), concerning submission by Kiltimagh IRD, includes a cover letter that repeats points already made and a compendium of documents outlining the details of the campaign to promote Sligo Mayo greenway, which I do not consider necessary to summarise for the purposes of the Board's consideration of this referral.

6.5.4. The further response from **Mayo County Council** (30/04/18) concerning the submission by Kiltimagh IRD indicates that the Council concurs with the matters set out in that submission.

6.5.5. The main points of the further response submitted by **Brendan Quinn** (22/05/18), concerning the submission from Iarnród Éireann, may be summarised as follow:

- Contrary to IÉ's suggestion, the railway infrastructure is far from entirely intact, with '*the exception of a handful of locations where vandalism has occurred*', from Claremorris to Collooney and contrary to the findings of the survey of 2011 by campaigners for the greenway (see details photographs appended to submission).
- No tracks were lifted and relaid during the works carried out on 40 miles of track in 2007, only the clearing of vegetation which is not '*engineering works*'.
- The acceptance that the line is closed rather than disused raises questions about the legality of the Mayo County Development Plan proposals in this regard, which refers to disused.
- The sections of missing track amounted to over 100m, stolen in 2012, and would require significant engineering works.
- The use of closed railways for greenways have been, or are currently subject of, or proposed to be subject of applications for permission. Why is a velorail project any different in terms of going through due process by way of a planning application?

6.5.6. The further response from **Mayo County Council** (21/05/18) concurs with the position of Iarnród Éireann.

6.5.7. The main points of the further response from **John Mulligan** (22/05/18) concerning the submission from Iarnród Éireann, may be summarised as follow:

- A 117m section of the line south of Kiltimagh was stolen in 2012 and was not reinstated until recently as part of the works in question. This is not a small section.
- IÉ acknowledges that safety rails are required to accommodate the change of use from rail to leisure.
- IÉ makes no reference to the need to open up rail traffic across road openings long covered by local roads.

- IÉ is on record that the existing rails, sleepers and stone ballasts on the route are of scrap value only and would all have to be replaced to accommodate a railway and the reopening of the railway on this line would therefore require a railway order.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

S.2(1) – “statutory undertaker” means a person, for the time being, authorised by or under any enactment of instrument under an enactment to –

(a) construct or operate a railway, canal, inland navigation, dock, harbour or airport, [...] (c) provide services connected with, or carry out works for the purposes of the carrying on of the activities of, any public undertaking;

S.2(1) – “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.

S.3(1) - 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.

S.4(1) - The following shall be exempted developments for the purposes of this Act—
F28[(aa) development by a local authority in its functional area

(f) development carried out on behalf of, or jointly or in partnership with, a local authority, pursuant to a contract entered into by the local authority concerned, whether in its capacity as a planning authority or in any other capacity;]

S.4(2)(a) - *The Minister may by regulations provide for any class of development to be exempted development for the purposes of this Act [...].*

S.4(4) - *Notwithstanding paragraphs (a), (i), (ia) and (l) of subsection (1) and any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required.*

7.2. **Planning and Development Regulations, 2001**

A.6(1) *Subject to article 9, development of a class specified in column 1 of Part 1 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 1 opposite the mention of that class in the said column 1.*

A.9(1) *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—

(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,

A.10(1) *Development which consists of a change of use within any one of the classes of use specified in Part 4 of Schedule 2, shall be exempted development for the purposes of the Act...[.]*

A.10(2) (a) *A use which is ordinarily incidental to any use specified in Part 4 of Schedule 2 is not excluded from that use as an incident thereto merely by reason of its being specified in the said Part of the said Schedule as a separate use.*

Part 1, Schedule 2 of the Regulations - Development by statutory undertakers

CLASS 23 - *The carrying out by any railway undertaking of development required in connection with the movement of traffic by rail in, on, over or under the operational land of the undertaking, except—*

(a) *the construction or erection of any railway station or bridge, or of any residential structure, office or structure to be used for manufacturing or repairing work, which is not situated wholly within the interior of a railway station, or*

(b) *the reconstruction or alteration of any of the aforementioned structures so as materially to affect the design or external appearance thereof.*

Schedule 5, Development for the Purposes of Part 10, Part 2,

10. Infrastructure projects

(c) *All construction of railways and of intermodal transshipment facilities and of intermodal terminals not included in Part 1 of this Schedule which would exceed 15 hectares in area.*

(h) *All tramways, elevated and underground railways, suspended lines or similar lines of a particular type, used exclusively or mainly for passenger transport.*

7.3. Other

Transport Act of 1950

S.21(2) (a) *Where—*

(i) *an order has been made under section 9 of the Railways Act, 1933 (No. 9 of 1933), authorising the termination of all train services run over a specified railway line owned or operated by the Board, ...*

then, the Board may, subject to this subsection, by order (in this section referred to as an abandonment order) declare its intention of abandoning that railway line.

(b) *An abandonment order shall operate as an authority to the Board to abandon the railway line to which the order relates.*

Transport (Railway) Infrastructure Act, 2001

S.2(1) *Interpretation –*

“Agency” means Railway Procurement Agency established under section 9;

“railway” means a railway (whether above, on or under the ground) whose operation is authorised by a railway order;

“railway infrastructure” means any land, buildings, structures, equipment, systems, vehicles, services or other thing used in connection with, or necessary or incidental to, the movement of passengers or freight by railway;

“railway works” means any works required for the purposes of a railway or any part of a railway, including works ancillary to the purposes aforesaid such as parking by buses or by persons using vehicles who intend to complete their journey by railway, and relocation of utilities, and in this definition “works” includes any act or operation of construction, excavation, tunnelling, demolition, extension, alteration, reinstatement, reconstruction, making good, repair or renewal;

S38.—Each of the following shall be exempted development for the purposes of the Act of 2000—

(a) development consisting of the carrying out of railway works, including the use of the railway works or any part thereof for the purposes of the operation of a railway, authorised by the Minister and specified in a railway order or of any incidental or temporary works connected with such development;

(b) development consisting of the carrying out of railway works for the maintenance, improvement or repair of a railway that has been built pursuant to a railway order.

Railway Safety Act 2005

S.2(1) Interpretation –

“railway” means—

(a) a railway which has a gauge of not less than 350 mm and which is used for the carrying of fare-paying passengers, or fee-paying members, or the conveyance of merchandise,

“railway infrastructure” means the fixed assets used for the operation of a railway including, but not limited to, rail track, railway stations, permanent way and plant used for signalling or exclusively for supplying electricity for operational purposes to the railway;

“train” means a vehicle with flanged wheels designed to operate on a railway for whatever purpose, and includes carriages and rolling stock.

“railway undertaking” means—

(a) Iarnród Éireann—Irish Rail,

(b) a heritage railway, or

(c) any other person who operates a railway;

S.4(1) This Act applies to all railway undertakings.

(2) Notwithstanding section 69 of the Transport (Railway Infrastructure) Act 2001, this Act applies to any railway works authorised by a railway order under section 43 of that Act.

(3) This Act does not apply to the operation of railway infrastructure solely for industrial use, except insofar as it has an interface with a public road or with a railway undertaking.

(4) This Act does not apply to fairground equipment which has been granted a valid certificate of safety in accordance with section 239 of the Planning and Development Act 2000, unless, in the opinion of the Commission, it is appropriate to apply it in the interest of the safety of persons.

(5) The Commission may by regulations specify any other infrastructure to be a railway for the purposes of this Act where, in the opinion of the Commission, it is appropriate to do so in the interest of the safety of persons.

(6) The Commission may by regulations specify any person to be a heritage railway for the purposes of this Act where, in the opinion of the Commission, it is appropriate to do so in the interest of the safety of persons.

8.0 Assessment

8.1. Is or is not development

- 8.1.1. **Change of use of railway:** The referrer took issue with the Planning Authority’s referring to the line as ‘*disused*’ rather than ‘*closed*’, whereas the Planning Authority’s response considered the two terms to be effectively interchangeable. For

clarity, Iarnród Éireann indicate that the subject line is one of the ‘closed’ lines within its ownership².

- 8.1.2. The current use status of the railway line - whether or not the closed railway line still has the benefit of use as a “railway” – is pertinent. Iarnród Éireann (IÉ) has confirmed that the railway line between Claremorris and Collooney ceased carrying regular traffic in 1975³ ⁴ but that the railway ‘line ... is not abandoned’, which would require a Ministerial Order under the Transport Act 1950, relieving IÉ of its statutory duties of maintenance, etc. It can therefore be concluded that the railway line, being physical infrastructure, has not been legally abandoned.
- 8.1.3. IÉ describes the line as ‘entirely intact’ except for a handful of locations where vandalism has occurred (locations and extent not specified) and refers to certain works (described as significant engineering works⁵) carried out by IÉ in recent years on the line. The intactness of the railway line is disputed by the parties and IÉ does not define what it means by ‘intact’. It is on record that a person pleaded guilty to removing 18 lengths of rail from the railway line near Kiltimagh in 2012⁶, alleged by the referrer as extending to 100m and by an observer as 117m. A survey of the line carried out by campaigners for the greenway in 2011 also appears to show sections of the line, removed, buried and /or enclosed as part of private property. In addition, from inspecting the site, it is apparent that the rails have been covered by the tarmac road surface at a number of crossing points along the line, including at either end of Kiltimagh train station, or possibly removed.
- 8.1.4. According to the Transport (Railway) Infrastructure Act, 2001, a “railway” means a railway (whether above, on or under the ground) **whose operation is authorised by a railway order**’ (bold is my emphasis). There is no evidence that railway operations have been authorised by a railway order on this railway line such that this line can be

² Appendix to IÉ submission 26/04/18.

³ It is not stated by IÉ whether the ceasing of the running of trains on this railway line was subject of a Ministerial Order (such as under s.9 of the Railways Act 1933 or equivalent).

⁴ The Museums of Mayo website indicates that the passenger line closed to operation in 1963 and the freight line closed 1979. Elsewhere the website refers to 1984 as the year the line closed to freight. It is possible the line remained technically open to, but did not actually carry, freight between 1979 and 1984. (<http://www.museumsofmayo.com/Kiltimagh1.htm> (accessed 13/07/18)).

⁵ The significance of the works referred to be IÉ is disputed by the referrer, but for the purposes of the Board’s determination of this case, I do not consider it necessary to debate that issue.

⁶ *Man to pay €5,000 for railway line theft*’ (Mayo News, 08/07/14)

http://www.mayonews.ie/?option=com_content&view=article&id=20231:man-to-pay-5000-for-railway-line-theft&catid=23:news&Itemid=46 (accessed 29/06/18)

defined as a “*railway*” under the Act of 2001. In its response to the referral, the Planning Authority introduced an alternative definition of “*railway*” under s.2(1) of the Railway Safety Act 2005, as ‘*a railway ... used for the carrying of fare paying passengers ... or the conveyance of merchandise*’, having referred only to the definition under the Act of 2001, previously. Both definitions are useful in determining this referral.

- 8.1.5. Based on the information available to me, the railway line is not and has not been in use or operational as a “*railway*” for ‘*the carrying of fare paying passengers*’ for at least 42 years, or for ‘*the conveyance of merchandise*’ for at least 30 years, such that it cannot therefore be defined as a “*railway*” under the Act of 2005. It does not appear to be covered by a Railway Order such that the railway line can be defined as a “*railway*” under the Act of 2001. IÉ confirm that there are no plans to resume operations and it is evident that operations cannot be resumed without significant works to the railway infrastructure (due to long term lack of maintenance).
- 8.1.6. Having regard to case law concerning abandonment of use – Dublin County Council v. Tallaght Block Co. Ltd, [1985] ILRM 512; Cork County Council v. Ardfert Quarries Ltd, High Court, unreported, 2/12/1982⁷, notwithstanding that the railway line, as infrastructure, has not been legally abandoned by IÉ under s.21 of the Transport Act of 1950, I am satisfied that the *use* of the railway line as a “*railway*” has been abandoned. The resumption of the abandoned “*railway*” use on this railway line would therefore constitute a material change of use of the railway line that is development under s.3(1) of the Act of 2000.
- 8.1.7. **Change of use from “*railway*” to velorail use** - The question arises as to whether the change of use from “*railway*” to use as “*velorail*” constitutes a material change of use.
- 8.1.8. The velorail use and operations are not clearly described by any of the parties, but I have noted several examples online and attached photographs of same to this report. In general, velorail entails the use of individual small, low-lying flanged-wheel vehicles or carts of varying designs, accommodating usually up to 6 people, propelled by integrated pedal/cycle power and using traditional railway line infrastructure. The planning authority submits that a velorail falls within the definition

⁷ ‘*Environmental & Planning Law*’, Scannell, Y., (The Round Hall Press, 1995)

of a “train” under the Act of 2005, being ‘a vehicle with flanged wheels designed to operate on a railway for whatever purpose, and includes carriages and rolling stock’, whilst IRD Kiltimagh refers to it as ‘the running of flanged wheeled carts in convoy’, with carts similar to those that maintenance personnel would have used when the railway was operational (the velorail examples I have found do not travel in convoy). However, I consider it to be the nature of the use or operations rather than the design of the carts with flanged wheels that is the pertinent issue.

- 8.1.9. The use is a leisure use. It can reasonably be assumed that the objective of the velorail journey is the journey itself, not the reaching of a destination, as would normally be the case for a “railway”. However, the Act of 2005 refers to “heritage railways” of historical or touristic interest, which would have a similar objective to that of velorail. It would appear that the velorail would not operate between any existing stations and it is not clear how riders / passengers would complete circuits on this single-track line. There is nothing to suggest that the velorail would operate on a scheduled timetable basis like a “railway”, which would have implications for the operations of existing road crossings, including potential road traffic safety issues. Based on the foregoing I consider velorail to constitute a material change of use from “railway”.
- 8.1.10. In its declaration decision the Council stated that the use is ‘an ancillary use’ to use as a railway. “Ancillary” is not defined under the Act of 2000 or the Regulations 2001. According to the Oxford English Dictionary “ancillary” means ‘providing necessary support to the primary activities or operation of an organization, system, etc.’ I am satisfied that a velorail would not support the primary use of a “railway”, but rather, the operations would be incompatible with the operation of a “railway”. In this instance, a velorail could not be ancillary to a primary use of the railway line, as there is no “railway” on this line.
- 8.1.11. The change of use from “railway” to velorail would constitute a material change of use of the railway line and therefore constitutes development under s.3(1) of the Act of 2000.
- 8.1.12. **Change of use of closed railway line to use as velorail** – I have concluded that velorail use is a material change of use from use as a “railway”. The question

therefore arises as whether the use of an existing closed railway line, which no longer has the benefit of use as a “*railway*”, for use as a velorail is development.

8.1.13. The use of the closed railway line as an operational velorail would make a material change of use of the closed railway line (in that the line no longer has a use and never had benefit of velorail use), that would constitute development under s.3(1) of the Act of 2000.

8.1.14. **Change of use of the station and associated infrastructure** – The existing station house is in use as a railway museum (Kiltimagh Railway Museum) which falls within Class 10(b) ‘*a museum*’, under Part 4 Exempted development – Classes of Use, of Schedule 2 of the Regulations of 2001. The proposed use, described as tourist / leisure attraction, would appear to fall within the scope of Class 2(c) ‘*any other services (including use as a betting office) where the services are proposed principally to visiting members of the public*’. By reasons of their occupation of different use classes under the Regulations, it would generally be inferred that the change of use from museum to a tourist / leisure attraction would constitute a material change of use, that is development under s.3(1) of the Act of 2000. However, in this instance there is a distinct relationship between the museum, being a railway museum, and the leisure activity, which is based on the railway line subject of the museum. The proposed use can therefore be considered incidental to the museum use and, having regard to the provisions of A.10(2)(a), the change of use is not development.

8.1.15. **Works**

8.1.16. The works referred to in the Council’s declaration referred to:

- i Removal of vegetation from the railway line;
- ii Rebuilding of sections of the line, comprising reinstatement / replacement of railway sleepers and tracks at one location, the repair of subsidence of rail track at one location, minor drainage works, replacement of existing gates / gateways and removal of obstructions from within the fenced wayleave;

8.1.17. The works referred to in IÉ submission, largely overlap with the Council’s declaration comprise, but with additional works under points ii (unspecified surfacing works), iii and iv relating to works to railway bridges, including new railings:

- i. Removal of vegetation (over 40 miles of track) and re-instatement of small sections of missing trackwork (length and extent not stated);
- ii. Drainage and surfacing works (extent and nature not stated);
- iii. Improvement of railway bridges over Trimogue, Yellow and Gorge rivers (extent and nature not stated);
- iv. Installation of safety railings;

The works (i) and (ii) are considered by IÉ as maintenance, with works (iii) and (iv) described as being works simply to make structures safe for the public should they need to traverse them by foot.

8.1.18. The works (replacement rails, etc.) are poorly described in nature and extent. It is apparent that the implementation of the velorail project will necessarily entail the removal of the existing surface of public roads and likely also the removal of fencing erected across the track. I am satisfied the said works, excluding the removal of vegetation, fall within the definition of “works” under the Act of 2000, as they include the ‘*act or operation of construction, excavation, demolition, extension, alteration, repair or renewal*’ and therefore the “*carrying out*” of same constitutes development under Section 3(1) of the Act of 2000.

8.2. Is or is not exempted development

8.2.1. Change of use

8.2.2. There are no relevant exemptions for use as a “*railway*” under the Planning and Development Act, 2000, as amended, or the Regulations of 2001, as amended, or otherwise. The resumption of an abandoned use does not constitute exempted development.

8.2.3. Neither “*railway*” use nor velorail use fall within a class of use under *schedule 2 of the Regulations, 2001, Part 4 Exempted development - Classes of Use*, and therefore the exempted development provisions under A.10(1) and (2) of the Regulations do not therefore apply. The change of use from railway to velorail is not exempted development.

8.2.4. Works

- 8.2.5. The Planning Authority declared that the said works are exempted development under s.38(a) and (b) of the Transport (Railway Infrastructure) Act 2001. S.38(a) exempts '*development consisting of the carrying out of railway works⁸ ... for the purposes of the operation of a railway, authorised by the Minister and specified in a railway order or of any incidental or temporary works connect with such development*'. For clarity, it exempts the provision or construction of a railway, as authorised and in accordance with a "railway order" under s.43 of the Act of 2005, which does not apply to the development concerned. The development is not exempted development under s.38(a).
- 8.2.6. S.38(b) exempts '*development consisting of the carrying out of railway works for the maintenance, improvement or repair of a railway that has been built pursuant to a railway order*'. For clarity, it exempts the maintenance, repair and improvement works to a railway that has been constructed pursuant to a "railway order" under s.48 of the Act of 2005, which does not apply to the development concerned. The development is not exempted development under s.38(b).
- 8.2.7. Under Part 1 Exempted Development – General, Schedule 1 of the Regulations of 2001, exemptions pertaining to development by statutory undertakes include class 23 for '*the carrying out by any railway undertaking of development required in connection with the movement of traffic by rail in, on, over or under the operational land of the undertaking*' except for works specified under (a) and (b) of that class. The works concerned is development required in connection with the movement of traffic by rail (velorail). The development is not being carried out by a ÍÉ, but by Mayo County Council under licence from CÍÉ. Having regard to the definition of statutory undertaker under s.2(1) of the Act 2000, Mayo County Council can be considered a railway undertaker, being statutory undertaken authorised to carry out works for the purposes of the carrying on activities of a public undertaking. The development, comprising works which do not fall within the scope of works specified under (a) and (b) of class 23, therefore has the benefit of exemption under the said class.

⁸ "Railway works" are defined under section 2(1) of the Act of 2001, but it is unnecessary to go into the detail of same here.

8.2.8. The Planning Authority submits that the development is being carried out by Mayo County Council under license from CIÉ, with IRD Kiltimagh providing assistance (as confirmed by IÉ) and is therefore not subject of s.34 of the Act. S.4(1)(aa) provides that '*development by a local authority in its functional area*' and (f) '*development carried out on behalf of, or jointly or in partnership with, a local authority, pursuant to a contract entered into by the local authority concerned, whether in its capacity as a planning authority or in any other capacity*' is exempted development for the purposes of the Act 2000. The development, comprising of works, is therefore exempted development under the Act.

8.3. Restrictions on exempted development

8.3.1. S.4(4) of the Act states 'Notwithstanding paragraphs (a), (i), (ia) and (l) of subsection (1) and any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required.'

8.3.2. **EIA** - I am satisfied that the development does not come within the scope of construction of a railway under 10(c) or tramway under 10(h) of Part 1, Schedule 5 Development for the purposes of Part 10 [EIA] as the infrastructure is almost wholly in place, and does not therefore require EIA.

8.3.3. **AA** - The development site is within a European site, River Moy SAC site no.002298, at four locations. The development is not directly connected with or necessary for the management of the site. The nature and extent of the development relative to the boundary of the European site is not clear, but the development includes drainage works, which may or may not drain to the European site and may or may not drain from the European site, and which include improvement works to existing railway bridges over the Trimogue, Yellow and Glore⁹ Rivers, which are within the European site.

8.3.4. The description, location and detail of the works are vague. The nature and extent of drainage works are of particular concern as they have the potential to significantly affect the European site having regard to the site's Conservation Objective to restore

⁹ Reference to the Gorge River would appear to be in error.

the favourable conservation condition of ‘*Active raised bogs*’ (priority habitat) in the SAC, in addition to ‘*Degraded raised bogs still capable of natural regeneration*’ and ‘*Depressions on peat substrates of the Rhynchosporion*’, being Features of Interest for which the European site has been designated.

- 8.3.5. Similarly, the nature and extent of improvement works to the existing bridge crossings of the SAC have the potential to significantly affect the European site having regard to the site’s Conservation Objective to maintain the favourable Conservation Condition of *Austropotamobius pallipes* (White-clawed Crayfish), *Petromyzon marinus* (Sea Lamprey), *Lampetra planeri* (Brook Lamprey), *Salmo salar* (Salmon), *Lutra lutra* (Otter).
- 8.3.6. On the basis of the information provided with the referral and in submissions thereto, and in the absence of a Natura Impact Statement the Board cannot be satisfied that the proposed development individually, or in combination with other plans or projects would not be likely to have a significant effect on European site No.002298, or any other European site, in view of the site’s Conservation Objectives. Accordingly, an Appropriate Assessment would be required and, therefore, the said works are not exempted development under the provisions of s.4(4) of the Act of 2000.
- 8.3.7. There are no de-exemptions under the Act of 2000 of the Regulations of 2001 concerning the provisions of the Wildlife Act 1976, as amended.
- 8.3.8. Concerning the restrictions under A.9(1)(a), I am satisfied that the carrying out of the development, comprising “works” (but excluding velorail operation), would not (iii) ‘*endanger public safety by reason of traffic hazard or obstruction of road users*’.
- 8.3.9. No other restrictions under the Act of 2000, or the Regulations, 2001, as amended, are relevant to the case at hand.

9.0 Recommendation

- 9.1. I recommend that the Board should decide this referral in accordance with the following draft order.

WHEREAS a question has arisen as to whether:

- (i) the removal of vegetation from a railway line;

- (ii) the works facilitating the change of use of the railway line to use for velorail;
- (iii) the change of use of the section of closed railway line for use as a velorail;
- (iv) the change of use of the station building from use as a museum to use as a tourist / leisure attraction for velorail,

is or is not development and is or is not exempted development:

AND WHEREAS Brendan Quinn requested a declaration on point (i), (ii) and (iii) of this question from Mayo County Council and the Council issued a declaration on the 25th day of October, 2016 stating that the matter under (i) is not development under s.3(1) of the Act of 2000, that the matter under (ii) is development under s.3(1) and is exempted development under s.38 of the Transport (Railway) Infrastructure Act 2001, and (iii) is not development under s.3(1) of the Act of 2000:

AND WHEREAS Brendan Quinn referred this declaration for review to An Bord Pleanála on the 21st day of November, 2017, including an additional question, question (vi), above.

AND WHEREAS An Bord Pleanála, in considering this referral, considered it necessary to address the question of the nature of the existing use of the existing railway line.

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

- (a) Section 2(1), 3(1), 4(1)(a), 4(2)(a) and 4(4) of the Planning and Development Act, 2000, as amended,
- (b) Article 6(1), 9(1) and 10(1) and (2)(a) of the Planning and

Development Regulations, 2001, as amended

- (c) Parts 1 and 4 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (d) Section 2(1), 38 and 43 of the Transport (Railway) Infrastructure Act, 2001, as amended,
- (e) Section 2(1) of the Railway Safety Act, 2005, as amended,
- (f) The Transport Act, 1950,

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The removal of vegetation from a railway line is not development within the meaning of section 3(1) of the Act of 2000;
- (b) The works facilitating the change of use of the railway line to use for velorail is development within the meaning of section 3(1);
- (c) The works facilitating the change of use of the railway line to use for velorail, as carried out by and / or on behalf of Mayo County Council under license from CíÉ, is exempted development under section 4(1)(aa) and 4(1)(f) that falls foul of the restrictions on exempted development under section 4(4) as an appropriate assessment of the development is required;
- (d) Based on prolonged period of non-use of the use of the subject railway line for the carrying of fare paying passengers or the conveyance of merchandise, the use of the railway line as a “*railway*” has been abandoned;
- (e) The change of use of the closed railway line, the use of which as a “*railway*” has been abandoned, to use as a velorail, would entail the making of a material change of use of the land or structure within the meaning of section 3(1) of the Act of 2000;
- (f) There are no exemptions under the Act of 2000, the Regulations of 2001, the Act of 2001, or otherwise, for the change of use from

abandoned “*railway*” use to velorail use;

- (g) The change of use of Kiltimagh Railway Station from museum use (Class 10), in part, to use for velorail services (Class 2(c)), a use that can in the context, having regard to the provisions of Article 10(2)(a) of the Regulations, be considered ‘*a use ordinarily incidental to*’ Class 10, would not constitute a material change of use within the meaning of section 3(1) of the Act of 2000 and is not development.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 of the 2000 Act, hereby decides that:

- (i) The removal of vegetation from a railway line **IS NOT development**;
- (ii) The works facilitating the change of use of the railway line to use for velorail, carried out by or on behalf of Mayo County Council, **IS development** that **IS NOT exempted development**;
- (iii) The change of use of the closed railway line, the use of which for use as a “*railway*” has been abandoned, to use as velorail **IS development** that **IS NOT exempted development**;
- (iv) The change of use, in part, from museum use (Class 10) to use for velorail services (Class 2(c)) **IS NOT development**.

John Desmond
Senior Planning Inspector

16th July 2018