



An
Bord
Pleanála

Inspector's Report ABP-303127-18

Question

Questions regarding Agriculture structures on whether they are or are not development or are or are not exempted development.

Location

Twyford, Baylin, Athlone, County Westmeath

Declaration

Planning Authority

Westmeath County Council

Planning Authority Reg. Ref.

S5-23-18

Applicant for Declaration

Westmeath County Council

Referral

Caroline Ganley

Referred by

Westmeath County Council

Owner/ Occupier

Owner

Observer(s)

None

Date of Site Inspection

27th of March 2019

Inspector

Angela Brereton

1.0 Introduction

This declaration was originally sought from Westmeath County Council relative to a referral submitted to them by Liam Madden of Vitruvius Hibernicus on behalf of Caroline Ganley being the co-director of the company and the owner of the lands in question at Twyford, Baylin, Athlone, Co. Westmeath. The subject site has been the subject of numerous referrals questions under RL3510, RL3559 and RL3814 and the most recent being ABP-301319-18. In view of the complex planning history including relative to judicial reviews, the Council did not issue a declaration.

A declaration has been sought by Westmeath County Council from An Bord Pleanála pursuant to Section 5(4) of the Planning and Development Act 2000, in respect of five questions asked as noted below.

2.0 Site Location and Description

- 2.1. A site inspection was carried out specifically in respect of the questions currently before the Board. The subject site is located approximately five kilometres east of Athlone Town. The site is located in the northern periphery of the small settlement of Bealin (or Baylin). The settlement of Baylin comprises of agglomeration of one-off houses set around various intersections in the local road network. The settlement is served by a local national school. The subject site is located in the northern environs of the settlement and comprises of a single large field approximately 1.89 hectares in size. The north-eastern part of the field accommodates a large agricultural type shed. The remainder of the site comprises of a large field which is under grass and is used for occasional grazing particularly horses. The shed is set back approximately 110 metres from the western boundary of the site where the local access road is located and serves the subject site and a number of dwellinghouses to the south and south-east.
- 2.2. The shed is approximately 36.5 metres in length and 12.2 metres in width (as measured externally on site) with a gross floor area of 445 square metres. It is set within a large area of hardstanding and is located on a finished floor level approximately two to three metres above the ground level of the remainder of the field. The shed rises to a ridge height of approximately 6.3 metres and incorporates a nap plaster finish along the lower portion of the building with an olive green kingspan

cladding on the upper portion and roof of the building. Two large roller shutters are located to the front (south-western) elevation of the building.

- 2.3. The building is surrounded by an area of hardstanding which extends outwards from the south-western elevation of the shed. The nearest dwellinghouse is located to the south-west and at its closest point c.100 metres from the subject building. While I gained access to the site the building was locked on the day of the site visit. I note that in the previous most recent referral Ref. ABP-301319-18 the Inspector's Report provided that the building *is used for the housing of horses as well as general storage purposes including agricultural equipment and a number of vintage cars*. On the day of my site visit the site was clean and tidy and I did not see any evidence of horses/being housed in the shed or grazed in the adjoining field area. I also did not see any vintage cars being stored on the hardstanding area outside the shed.

3.0 The Questions

1. Whether the provision of a new all-weather surface together with a soft surface material for the training of horses (i.e agricultural use) is or is not exempted development?
2. Whether the repair and improvement of a pre-existing lane is or is not exempted development?
3. Whether the provision, as part of a heating system for an agricultural building, of a biomass boiler, including a boilerhouse, flues on the boiler and overground storage tank is or is not development and is or is not exempted development?
4. Whether the erection of a wall is or is not development and is or is not exempted development?
5. Whether the provision of a Class 6 agricultural shed and a Class 9 agricultural shed is development and is not exempted development at Twyford, Baylin, Athlone, County Westmeath?

4.0 Planning History

Most Recent

4.1. **ABP-301319-18**

1. Whether the surrounding soft area (that is grassed area) is or is not development.
2. Whether hard surface area (that is concrete yard) taken together with soft surface area (that is grassed area) is or is not exempted development at Twyford, Baylin, Athlone, County Westmeath.

The Board concluded that in the particular circumstances, the referral should not be further considered by it having regard to the nature of the referral which referred to questions already addressed and determined by an Bord Pleanála, under reference number 25M.PL.3510 by order dated 24th of July, 2018. Accordingly, it was considered that the referral should be dismissed pursuant to section 138(1)(b)(i) of the Planning and Development Act, 2000, as amended.

Previous History

- 4.2. Under **PL25A.246083** retention of planning permission was sought for the construction of the shed, concrete yard and the proposed erection of a dungstead together with the completion of a wastewater treatment plant along with landscaping for equine/agricultural purposes on the subject site. Westmeath County Council issued notification to refuse planning permission for six reasons relating to:

- The application for which retention of planning permission is sought is contrary to Policy P-EQ2 of the development plan.
- The development for which retention of planning permission is sought is contrary to Policy P-NH1 of the development plan which relates to the preservation of views.
- The development for which retention of planning permission is sought is contrary to Policy P-LLM1 of the county development plan.
- The development for which retention of planning permission is sought is contrary to Policy P-AB1 of the county development plan in that the new farmyard would not be ancillary to the landholding.
- The new farmyard would access onto a deficient road network where there are deficiencies in sightlines serving the access.

- The appellant has not demonstrated that the site is suitable for a proprietary wastewater treatment system.

4.3. The decision of Westmeath County Council was the subject of a first party appeal. The Board upheld the decision of the Planning Authority for two reasons which are set out below.

- The agricultural need for the scale and extent of the shed structure and the ancillary works has not been demonstrated in terms of serving the agricultural holding. The size, scale and height of the shed would interfere with the character of the landscape and would therefore be contrary to P-NH1 and P-LLM1 of the county development plan.
- A second reason for refusal stated that the establishment of a new farmyard is considered inappropriate due to the deficiencies in the road network and the deficiencies in the sightline and accessing the public road. This decision was dated 25th May, 2016.

Previous Referrals

4.4. Subsequent to this Board decision a number of referral cases were submitted to the Board seeking declarations as to whether or not certain works were classed as development which required planning permission. Details of these referrals are briefly summarised below:

4.5. RL 3510

1. Whether the use of lands measuring 1.84 hectares at Twyford, Baylin, Athlone for agriculture is development or is or is not exempted development.

The Board concluded that the use of the subject lands for agriculture and parts of the lands for market garden would constitute development and would be exempted development under Section 4(1)(a) of the Act.

2. Whether use of parts of the lands at the subject site for the purposes of market gardening is or is not development or is or is not exempted development.

The Board concluded that the use of parts of the land for market gardening would constitute development and would be exempted development.

3. The provision of a building of 298.48 square metres at Twyford, Baylin is or is not development or is or is not exempted development.

And the Board concluded that the construction of a new building following the demolition and removal of the existing building on site would constitute development and would come within the scope of Class 9, Part 3 of the Exempted Development Regulations provided that it complies with the conditions and limitations to which Class 9 is subject and in such hypothetical circumstances would be exempted development but not otherwise.

4. Whether the provision of an all-weather surface with a drainage bed for the training of horses at Twyford, Baylin, County Westmeath is or is not development or is or is not exempted development.

In respect of this question, the Board concluded that the provision of an all-weather surface with a drainage bed for the training of horses would constitute development if such an area was provided following the removal of the existing concrete hardstanding on the lands in question, it would come within the scope of Class 10, Part 3 of the Second Schedule of the Regulations provided that it complies with the conditions and limitations to which Class 10 is subject. But if it used the existing concrete hardstanding on the lands for this purpose it would not come within the scope of Class 10 or any other provisions for this purpose it would not come within the scope of Class 10 or any other provisions and therefore would not be exempted development.

5. Whether the repair and improvement of a pre-existing private paved lane within the lands is or is not development or is or is not exempted development.

The Board concluded that the repair and improvement of pre-existing private lane within the lands in question would be development and provided that it does not involve works to the access from the lane onto the public road along the western boundary of the subject site would be exempted development but not otherwise.

6. Whether the provision of an internal wall within the new building would constitute development.

The Board concluded that the construction of an internal wall within the new building erected under the provisions of Class 9 of Part 3 of the Second Schedule of the Planning and Development Regulations 2001, with a gross floor area of 298.48 square metres would be development and if this new building was itself exempted development and had been previously constructed and completed prior to the erection of such an internal wall would be exempted development but not otherwise.

4.6. **RL3559**

1. Whether the provision as part of a heating system for an agricultural building of a biomass boiler including a boiler house, flues on the boiler and over ground storage stand is or is not development or is or is not exempted development.

In respect of this question the Board concluded that the provision as part of a heating system for an agricultural building of a biomass boiler including boiler house flues on the boiler and an over ground storage tank on the lands in question would constitute development. Such a heating system would generally come within the scope of Class 18(e) of Part 3 of the Second Schedule of the Planning and Development Regulations. However, it is noted that there is no agricultural building in place on site other than the existing unauthorised building, in respect of which such a development would part of the heating system and as it has not been established that any future agricultural building, to which the proposed development would relate, would in itself be exempted development, the development in question would not be exempted development. Furthermore, in the basis of the documentation submitted it cannot be established that the various conditions and limitations can be complied with.

2. That the erection of a wall is or is not development or is or is not exempted development.

The Board declared that the erection of a wall would be development. If a new wall is proposed in this instance following the demolition and removal of the existing unauthorised building on site, then this would come within the scope of Class 11, Part 3 of the Second Schedule of the Planning and Development Regulations 2001 and therefore would be exempted development. However, if the wall involves

removal of part of the existing structure on site leaving the remaining structure as a wall then this would not come within the scope of Class 11 – or any other provision and would not be exempted development.

3. The installation or erection on a wall, within the curtilage of an agricultural holding of photovoltaic solar panels is or is not development or is or is not exempted development.

The Board determined that the installation or erection of a wall of photovoltaic solar panels would constitute development. If these panels were installed or erected on a new wall referred to in the previous question and if this wall is itself exempted development then the installation or erection of solar panels would come within the scope of Class 18(c) of Part 3 of the Second Schedule of the Planning and Development Regulations 2001 and would therefore be exempted development. If the wall on which the solar panels are proposed to be installed or erected is not in itself exempted development, then the installation or erection of the solar panels would not be exempted development by reason of the restrictions on exemptions set out in Article 9(1)(a) of the Planning and Development Regulations 2001, as amended.

4. Whether or not the erection of a new 300 square metre structure for the purposes of housing a fully enclosed combined heat and power system would be development and would be exempted development.

The Board determined that the erection of a 300 square metre structure for the purposes of housing a full enclosed combined heat and power system would be development. Such development would come within the scope of Class 18(a) of Part 3 of the Second Schedule of the Planning and Development Regulations 2001 on the basis of the documentation submitted with the referral, it cannot be established that all the conditions and limitations to which the class is subject can be complied with and having regard to case law the onus for establishing that a development is exempted development is on the person claiming or seeking to avail of such exemption and therefore the development in question would not be exempted development. The Board's decision was dated 24th July, 2018.

4.7. RL3814

A declaration was sought from the Board as to whether or not a development comprising of what the applicants assert are Class 6 Agricultural Shed and Class 9 Agricultural Shed at the subject site are or are not exempted development.

The Board determined in relation to this question that development comprising of what the applicants assert are a Class 6 Agricultural Shed and a Class 9 Agricultural Shed is development and is not exempted development.

5.0 Planning Authority Referral

- 5.1. Westmeath County Council note that an application for a Section 5 Declaration has been submitted to the Planning Authority by Liam Madden on behalf of Caroline Ganley on the 30th of October 2018.
- 5.2. They note that the Board issued Section 5 Declarations under reference nos. RL3510, RL3559 and RL3814 in July 2018 and also refer to reference 301319-18 and note that all relate to the same site. They note that Groarke & Partners, Solicitors for Midland Industrial Maintenance Ltd are seeking to have all three of the issued declarations judicially reviewed in the High Court (Record No. 2018/748JR).
- 5.3. They provide that having regard to the complex planning history associated with the site that they considered it prudent that An Bord Pleanála should adjudicate on the new Section 5 application, SS-23-18. It is noted that the date of their referral to the Board is the 26th of November 2018.
- 5.4. They also provide that it should be noted that the Council have initiated prosecution proceedings against Declan & Caroline Ganley for the unauthorised development of an agricultural shed and associated yard on this site. In their subsequent letter to the Board dated the 12th of December 2018, they note details relative to planning history and enforcement proceedings submitted.

6.0 Current Referral

6.1. Referrer's Case

6.1.1. This has been submitted by Liam Madden of Vitruvius Hibernicus on behalf of Caroline Ganley being the co-director of the company and the owner of the lands in question at Twyford, Baylin, Athlone, Co. Westmeath. Regard is had to the planning history of the site noting that four Section 5 requests have been made and all of which were the subject of referrals to the Board. These are RL3510, RL3559, RL3810 and RL301319-18 (which was then awaiting determination by the Board).

6.1.2. RL3510, RL3559 and RL3810 are currently before the High Court for Judicial Review.

- RL3510 posed 6no. Questions. Q.4 and Q.5 are under review.
- RL3559 posed 4no. Questions. Q.1 and Q.2 are under review.
- RL3810 posed one question, divided into 2no. sub-questions. Both sub-sections (i) and (ii) are under review.

They provide however, some of the matters under review are of a minor nature and are resolvable.

6.2. Reference to RL3510

6.2.1. Q.4 *Whether the provision of an all-weather surface for the training of horses is or is not exempted development.* They refer to the Board's determination and provide that the Judicial Review seeks to delete all reference to the removal of the existing hardstand and the reference to the use of the existing hardstand for horse(agricultural) use. They underline sections of the determination that the JR seeks to remove and note their reasoning includes the following:

- (a) The references to the removal of the existing hardstand is grounded on the erroneous conclusion that the hardstand – or the building is unauthorised. The conclusion by the Board is grounded on flawed logic that because the development doesn't have planning permission or was refused permission that it must be unauthorised. Reaching that conclusion was ultra vires of the Board's powers. There is no finding that the hardstand – or the building – is

unauthorised. Only a Court of competent jurisdiction can reach that conclusion. The Board's conclusion was unilateral and ultra vires and they provide wholly illogical and irrational, contrary to plain reason and common sense and indefensible.

They refer to the Supreme Court ruling *Fingal County Council and William Keeling & Son* and also to the High Court Ruling *Roadstone Provinces Ltd. v ABP* IN 2007 No. 419Jr which declared inter alia that the Board has no power to determine whether a development is unauthorised or not.

- (b) The use of any land for the purposes of agricultural was declared exempted development in answer to Q.1 of RL3510 and note this is enshrined, without condition or limitation, in Section 4 -1(a) of the 2000 Act. They provide that it follows that the words restricting the use of the hardstand, or indeed any land, for the use by horses (i.e. Agricultural) is wrong in planning and wrong in law. The use of the existing hard surface was not part of the question before the Board. They provide that the Board answered a question it wasn't asked and improperly commented on whether the use was unauthorised or not.

- 6.2.2. They contend that the Board in RL3510 has made one error in a matter of fact. This was a minor error easily put right by consent. This error was made in answer to Q.5 of RL3510 i.e. *Whether the repair and improvement of a pre-existing lane is or is not exempted development.*

- 6.2.3. They note that Westmeath County Council decided that the development was exempted. When referred to the Board they also decided it was exempted development. However, they provide that the Board went further and they underline the offending words in the Board's determination. In a previous appeal no. PL25A.246083 (P.A. ref.15/7120) the Board recognised and acknowledged that the road along the western boundary is a private road. It is not a public road and has not been taken in charge. Part of the private road is owned by Midland Maintenance Limited (MIM). They attach confirmation from the Council to this effect. They note that the confirmation arises from the Council carrying out works on foot of a 2017 Local Area Scheme which attracted a modest grant from the Council. Also, that the attached confirmation expressly provides that the Council will have no part in the maintenance of the road after carrying of the granted aided works.

6.2.4. They provide that what this Section 5 requests is that the Council re-issue its own previous decision in the wording they have quoted, omitting the underlined words which were added by the Board. The intention is that the Council decision would then be ratified by the Board in a Referral and this error corrected by consent. They provide that the High Court would then be saved valuable time and costs.

6.3. Reference to RL3559

6.3.1. They refer to and quote the Board's decision on Q.1 relative to: *The provision, as part of a heating system for an agricultural building of a biomass boiler, including a boilerhouse, flues on the boiler and overground storage tank.* They note that the JR seeks to have the underlined word 'not' removed from the decision. The JR seeks to have the Board's conclusion dropped.

6.3.2. They provide that the logic is simple. The Board concluded that the existing building is unauthorised. The Board has no competence to decide whether the existing building is or is not unauthorised. The conclusion reached was ultra vires. They refer to the Supreme Court ruling: *Fingal County Council and William Keeling & Son* and also to the High Court Ruling: *2007 No. 419 Roadstone Provinces Ltd. v ABP* which found, inter alia, that the Board has no power to determine whether a development is unauthorised or not.

6.3.3. The only question the Board should have addressed was whether the development was exempted or not. They note that the Board had generally decided that the development fell within the Class 18(e) exemption and that they should not have considered a matter outside of its competence.

6.3.4. They also note that the Board decided in answer to Q.3 in Referral RL3510 that the provision of a 298sq.m agricultural building would be exempted development which completely undermines and contradicts their underlying reason for deciding this development not to be exempted development. They provide the following:

- (i) Class 9 Condition/Limitation number 6 does not require the 'prior' written consent of house owners/occupiers. The consent may be retrospective.
- (ii) Class 9 development has the benefit of written consent of the nearest house owner/occupier, a second house owner/occupier was within 100m of the development. It was accepted that the Class 6 development is at the nearest

point 97.5m away but was physically further away from the relevant house. Although the 100m clearance was not notated with written dimension, the clearance could have been scaled or further information could have been sought on this single point.

6.4. Re-Assessment

- 6.4.1. In place of the quashed decision and conclusion, it is now proposed that the semi-detached Class 6 and Class 9 developments be re-assessed on the basis of this most recent and augmented Section 5 Request drawings.
- 6.4.2. They note that the Section 5 process, as in planning applications can be reconsidered and have amendments re-lodged until the scheme is approved. Also, that the Board's Inspector has accepted this concept of retrospective amendment/approval. Together with that concept is the underlying legal purpose of enforcement. They provide that the purpose of enforcement is to achieve compliance and is not to penalise.

6.5. New Section 5 Request

- 6.5.1. They provide that the purpose of this new Section 5 Request is to resolve the matters at issue by way of the simple planning procedure whereby the issues at the heart of the JR maybe resolved by agreement/consent between the parties. They consider that agreement in this way would save the High Court valuable time and greatly reduce or eliminate the High Court costs.
- 6.5.2. They invite that the self-evident previous errors by the PA and/or ABP be corrected having special regard to attached Supreme Court and High Court Orders. They provide a list of Questions A-E to be Determined as have been noted in the relevant section above. They include maps and drawings relating to the above.
- 6.5.3. They ask that the following be noted:
 - A The wording and map has been adjusted to expressly include the soft (grassed) area to accord with the wording in the Class 10 exemption.
 - E. To accommodate the miscalculation of internal area of the Class 6 shed, the internal dividing wall width has been increased from 400mm to 600mm. In all

other respects, Class 6 and Class 9 sheds are identical to those in RL3814. The location of this, a brand new building, is deliberately shown 100m from the second house so that the written consent of the owner/occupier is not required. The written consent of the owner/occupier of the house 86m away is attached.

6.5.4. The following are included with the Referral:

- Section C. 1-8 relates to Dungsteads. This provides details of the following issues: Safety, Foundation of Dungstead Floor, Foundations for steel uprights, Uprights, Walls, Floor, Ramp and Effluent Tank. Relative to Walls the following is noted in bold: *Where any wall or part of a wall is below yard level is shall be reinforced as above on both faces.*
- Drawings are included showing the Dungstead, elevations, section of perforated wall, channel and foundation and soiled water tank and sedimentation chamber.
- An Aerial Photograph 'Ganley/M.I.M. Ltd, Folio showing the folio number of the site.
- Details of the Westmeath County Council, Local Improvement Scheme.
- A Site Map showing the area of the site and the location of the various uses.
- Elevations and Floor Plans of the Class 6 and Class 9 sheds.

6.6. Planning Authority Response

6.6.1. Westmeath County Council have not made a specific response to the Referral. In response to the Board's request dated the 3rd of December 2018, they have submitted a letter dated 12th of December 2018 providing details of the relevant and extensive planning and enforcement history of the site. This includes that the name and address of the owner and occupier of the said land is Midland Industrial Maintenance Ltd and the two listed Directors are Declan and Caroline Ganley, Baylin, Athlone.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

Section 2 Definitions

Agriculture “includes horticulture, food growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skin or fur or for the purposes of its use in the farming of land, the training of horses, the rearing of bloodstock, the use of the land as grazing lands, meadow land, osier land, market gardens and nursery grounds and agriculture shall be construed accordingly”.

“*Use*” – In relation to land does not include the use of land for the carrying out of any works thereon.

Section 3 –

“*Development*” – 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 land of structures or other land.

“*Works*” – Works include any Act or operation, construction, excavation, demolition, extension, alteration, repair or renewal.

Separate definitions are also given relative to “*unauthorised use*” and “*unauthorised works*”.

Section 4 Exempted Development

Section 4 states that the following shall be exempted development for the purposes of the Act.

- (a) Development consisting of the use of any land for the purposes of agriculture and development consisting of the use for that purpose of any building occupied together with the land so used.

7.2. Planning and Development Regulations, 2001

Article 6(1) states that 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.

Article 9 – Restriction on Exemptions.

Article 9(1)(viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use.

Exempted Development

Part 1 relates to Exempted Development – *General*

Part 2 relates to Exempted Development – *Rural*

Class 6 and Class 9 relate to *Agricultural Structures*.

Class 6 - Works consisting of the provision of a roofed structure for the housing of cattle, sheep, goats, donkeys, horses, deer or rabbits, having a gross floor space not exceeding 200 square metres (whether or not by extension of an existing structure), and any ancillary provision for effluent storage. The condition and limitation associated with this class of exempted development include:

1. No such structure shall be used for any purpose other than the purpose of agriculture.
2. The gross floor space of such structure together with any other such structures situated within the same farmyard complex or within 100 metres of that complex shall not exceed 300 square metres gross floor space in aggregate.
3. Effluent storage facilities adequate to serve the structure having regard to its size, use and location shall be constructed in line with Department of Agriculture, Food and Rural Development and Department of the Environment and Local Government requirements and shall have regard to the need to avoid water pollution.
4. No such structure shall be situated, and no effluent from such structure shall be stored, within 10 metres of any public road.
5. No such structure within 100 metres of any public road shall exceed 8 metres in height.

6. No such structure shall be situated, and no effluent from such structure shall be stored, within 100 metres of any house (other than the house of the person providing the structure) or other residential building or school, hospital, church or building used for public assembly, save with the consent in writing of the owner and, as may be appropriate, the occupier or person in charge thereof.
7. No unpainted metal sheeting shall be used for roofing or on the external finish of the structure.

Class 9 - 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 300 square metres.

1. No such structure shall be used for any purpose other than the purpose of agriculture or forestry, but excluding the housing of animals or the storing of effluent.
2. The gross floor space of such structures together with any other such structures situated within the same farmyard complex or complex of such structures or within 100 metres of that complex shall not exceed 900 square metres gross floor space in aggregate.
3. No such structure shall be situated within 10 metres of any public road.
4. No such structure within 100 metres of any public road shall exceed 8 metres in height.
5. No such structure shall be situated within 100 metres of any house (other than the house of the person providing the structure) or other residential building or school, hospital, church or building used for public assembly, save with the consent in writing of the owner and, as may be appropriate, the occupier or person in charge thereof.
6. No unpainted metal sheeting shall be used for roofing or on the external finish of the structure.

Exempted Development - *Horses*

Class 10 – the erection of an unroofed fenced area for the exercising or training of horses or ponies, together with a drainage bed or soft surface material to provide an all-weather surface. The condition and limitation associated with this class of exempted development include:

1. No such structure shall be used for any purpose other than the exercising and training of horses and ponies.
2. No such area shall be used for the staging of public events.
3. No such structure shall be situated within 10 metres of any public road and no entrance to such an area shall be directly off any public road.
4. The height of any such structure shall not exceed 2 metres.

Renewable Technologies – Class 18

(e) The provision as part of a heating system for an agricultural building of a biomass boiler, including a boiler house, flues mounted on the boiler house, and over-ground fuel storage tank or structure.

1. The gross floor space of the boiler house shall not exceed 20 square metres.
2. The capacity of the fuel storage tank or structure shall not exceed 75 cubic metres.
3. The height of a boiler house or fuel storage tank installed above ground level shall not exceed 3 metres.
4. The height of a flue mounted on a biomass unit shall not exceed 20 metres, measured from ground level.
5. No more than 2 flues shall be erected
6. Not more than one such structure shall be erected within the agricultural holding.
7. The diameter of any flue shall not exceed 1 metre.
8. The boiler house shall not be located within:
 - (a) 10 metres of any public road,
 - (b) 100 metres of the nearest habitable house (other than the house of the person providing the structure) or other residential building or school, hospital, church or building used for public assembly, save with the consent in writing of the owner and, as may be appropriate, the occupier or person in charge thereof.
9. Noise levels must not exceed 43db(A) during normal operation, as measured from the site boundary.

10. The fuel shall not include products derived from wood containing dangerous substances.

8.0 Assessment

8.1. Regard to the 5 Questions Asked

1. *Whether the provision of a new all-weather surface together with a soft surface material for the training of horses (i.e. agricultural use) is or is not exempted development?*

I would refer the Board to their Determination in Ref.25M. RL3510 relative to Q4. I note the Referrer's case currently put forward relative to this issue. However, I do not consider that the question poised is materially different to that already determined by the Board.

2. *Whether the repair and improvement of a pre-existing lane is or is not exempted development?*

I would refer the Board to their Determination in Ref.25M. RL3510 relative to Q5. I note the Referrer's case currently put forward relative to this issue. However, I do not consider that the question poised is materially different to that already determined by the Board.

3. *Whether the provision, as part of a heating system for an agricultural building, of a biomass boiler, including a boilerhouse, flues on the boiler and overground storage tank is or is not development and is or is not exempted development?*

I would refer the Board to their Determination in Ref.25M. RL3559 relative to Q1. I note the Referrer's case currently put forward relative to this issue. However, I do not consider that the question poised is materially different to that already determined by the Board.

4. *Whether the erection of a wall is or is not development and is or is not exempted development?*

I would refer the Board to their Determination in Ref.25M. RL3559 relative to Q2. I note the Referrer's case currently put forward relative to this issue. However, I do not consider that the question poised is materially different to that already determined by the Board.

5. *Whether the provision of a Class 6 agricultural shed and a Class 9 agricultural shed is development and is not exempted development at Twyford, Baylin, Athlone, County Westmeath?*

I would refer the Board to their Determination in Ref.25M. RL3814 relative to Q1. I note the Referrer's case currently put forward relative to this issue. However, I do not consider that the question poised is materially different to that already determined by the Board.

8.2. Conclusion

- 8.2.1. I have viewed the documentation on file, visited the site and taken careful note of the substantial planning history as noted in the history section above, including relative to previous referrals some of which are now the subject of judicial review. I do not consider that the questions currently poised present a case/scenario that is materially different to those already considered and determined by the Board. I would refer the Board in particular to the determinations made relative to RL3510, RL3559, RL3814 and ABP-301319-19 (copies attached in the Appendix). While regard is had to the current referral and to the documents submitted including the Site Layout Plan, I do not consider that there has been a material change in circumstances or in the Questions raised.
- 8.2.2. It is noted that the Board has power to dismiss an appeal or referral. Section 138(1) provides that that Board shall have an absolute discretion to dismiss an appeal or referral and this includes (a)(i) where *it is vexatious, frivolous or without substance or foundation*, or (a)(ii) *is made with the sole intension of delaying the development...* Section 138(1)(b)(i) (referred in recent Board decision ABP-301319-18) provides that *where the Board is satisfied that, in the particular circumstance the appeal or referral should not be further considered by it having regard to – (i) the nature of the appeal*

(including any question which in the Board's opinion is raised by the appeal or referral)...

8.2.3. I would recommend that the Board dismiss this Referral on this basis.

8.3. Appropriate Assessment

8.3.1. Having regard to the nature and scale of the proposed development and nature of the receiving environment together with the proximity to the nearest European site, no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.4. EIAR Screening Determination

8.4.1. On the basis of the information on the file, which I consider adequate in order to issue a screening determination, it is reasonable to conclude that there is no real likelihood of significant effects on the environment arising from the proposed development and an environmental impact assessment is not required.

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 -

1. the provision of a new all-weather surface together with a soft surface material for the training of horses (i.e agricultural use) at Twyford, Baylin, Athlone, County Westmeath, is or is not exempted development.
2. the repair and improvement of a pre-existing lane at Twyford, Baylin, Athlone, County Westmeath, is or is not exempted development.
3. the provision, as part of a heating system for an agricultural building, of a biomass boiler, including a boilerhouse, flues on the boiler and overground storage tank at Twyford, Baylin, Athlone, County

Westmeath, is or is not development and is or is not exempted development.

4. the erection of a wall at Twyford, Baylin, Athlone, County Westmeath, is or is not development and is or is not exempted development.
5. the provision of a Class 6 agricultural shed and a Class 9 agricultural shed is development and is not exempted development at Twyford, Baylin, Athlone, County Westmeath, is or is not development or is or is not exempted development:

AND WHEREAS Caroline Ganley care of Vitruvius Hibernicus of Convent Road, Longford requested a declaration on these questions from Westmeath County Council and they did not issue a declaration as per their letter dated 26th of November 2018:

AND WHEREAS Westmeath County Council referred this referral to An Bord Pleanála for determination on the 26th day of November, 2016:

AND WHEREAS An Bord Pleanála, in considering this referral, considered the nature of the questions, is satisfied that the referral should not be further considered by it:

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 138(1) of the Planning and Development Act, 2000, as amended, hereby dismisses the said referral under subsection (1)(b)(i) of Section 138 of the said Act, based on the reasons and considerations set out below.

Reasons and Considerations

The Board is satisfied that, in the particular circumstances, the referral should not be further considered by it having regard to the nature of the referral which

referred to questions already addressed and determined by An Bord Pleanála under reference number 25M.RL.3510, 25M.RL.3559 and 25M.RL.3814 by Order dated 24th day of July, 2018. Accordingly, it is considered that the referral should be dismissed pursuant to section 138(1)(b)(i) of the Planning and Development Act, 2000, as amended.

Angela Brereton
Planning Inspector

29th of March 2019