



An
Bord
Pleanála

Inspector's Report ABP 305804-19

Question

Whether construction of agricultural shed and extension of access lane is or is not development or is or is not exempted development.

Location

Liosúl Cottage, Gigginstown, Mullingar, Co. Westmeath.

Declaration

Planning Authority

Westmeath County Council

Planning Authority Reg. Ref.

S5-19-19

Applicant for Declaration

Emer O'Siochru

Planning Authority Decision

Not Exempted Development

Referral

Referred by

Emer O'Siochru

Owner/ Occupier

Emer O'Siochru

Observer(s)

None

Date of Site Inspection

Not inspected

Inspector

Brendan Coyne

1.0 Site Location and Description

- 1.1. The subject site (0.57 ha) is located on the southern side of a local secondary road (L-5624-22) in the townland of Gigginstown, c. 11.5 km north-east of Mullingar. The site is rectangular in shape and contains a detached single storey dwelling with an access lane to its western side and a polytunnel to its rear. The side and rear boundaries of the site are defined with mature trees and vegetation. A hedgerow separates a field located in the southern section of the site. A residential dwelling is located c. 50 metres to the west of the site. The character of the surrounding area is rural.

2.0 The Question

- 2.1. The original question put before Westmeath County Council was as follows;

Whether the construction of an agricultural steel shed with paint finish corrugated panels to roof and wall 9m x 12m x 3.6m eaves height and yard in the back field; extension of access lane 3.4m wide to existing lane and existing entrance gate to road for making, crushing and bagging for agricultural and horticultural uses is or is not exempted development .

- 2.2. The Declaration of the Planning Authority has been referred to An Bord Pleanála for review, by the owner / occupant. Having reviewed the available information, I consider that the question before the Board can be reworded as follows;

'Whether the construction of an agricultural shed, yards and an extension of an access lane is or is not exempted development'.

3.0 Planning Authority Declaration

3.1. Declaration

On the 4th October 2019, Westmeath County Council issued a decision declaring that a 'the construction of an agricultural steel shed with paint finish corrugated panels to roof and walls 9m x 12m x 3.6m eaves height and yard in the back field: extension of access lane 3.4m wide to existing lane and existing entrance gate to road for making, crushing and bagging for agricultural and horticultural uses at Liosúl Cottage, Gigginstown, Mullingar' is development and is NOT exempted development.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Basis for the Planning Authority's decision. Includes:

- The building of the proposed shed would constitute works and development as specified in Section 3(1) of the Planning and Development Act 2000 (as amended).
- The supporting documentation submitted with the Declaration outlines the nature of the proposed use of the shed, which is for the processing and manufacturing of bio-stock supplied by participating farmers to produce charcoal.
- It is considered that the nature and use of the shed would not fall within the definition of agriculture, as it involves the processing and manufacturing of products including the making, crushing and bagging of the product.
- The internal plan of the proposed shed, which includes an office, toilet, delivery, dispatch, product packaging and weighing area and a biochar grinding area, does not reflect a typical agricultural shed but is similar to a manufacturing / industrial business.
- Class 9 of Part 3 of Schedule 2 of the Planning and Development Regulations 2001 (as amended) provides a general exemption for sheds in a rural area with a floor area less than 300 sq.m. Given the nature of the shed does not fall within the definition of agriculture, the shed does not fall within the criteria of Class 9 and is therefore not exempt.
- The manufacturing process of the woody biomass requires the feedstock to be pyrolysed in 3 mobile open-air kilns on site. No details of the kilns have been provided as part of this declaration request.
- A new 3.4m wide track is proposed to join the existing lane and entrance from the proposed shed and yard.
- In the submission received, it is estimated that the shed and related activities will generate 2 tractor trailer/ truck movements per week at most and then only in winter months.
- The biohub will directly create 1 full time and 2-3 part time jobs.

- The width of the entrance and sightlines at the current entrance are substandard.
- The proposed development would result in an increase of traffic movements in and out of the site. Further to discussions with the District Engineer it was considered that the proposal would create a traffic hazard and would thereby be contrary to Article 9(1)(a)(iii) of the Regulations.
- The proposed yard, in this instance, is considered to be works and could not be considered ancillary to the existing residential use of the land. As such the proposed yard would require planning permission.

3.2.2. **Other Technical Reports**

None

4.0 **Relevant Planning History**

ABP Ref. PL25C.230350 & P.A. Ref. 06-2416 Permission GRANTED in 2009 for an anaerobic digester and associated sunken tanks to process local farm manure and other organic material to produce electricity, heat and fertilizer. Permission also granted for a barn and two polytunnels.

P.A. Ref. 98-736 Permission GRANTED in December 1998 for alterations to the front facade & roof of the existing cottage and the provision of a new sewerage treatment system.

5.0 **Policy Context**

5.1. **Development Plan**

Westmeath County Development Plan 2014-2020 is the statutory plan for the area.

5.2. **Natural Heritage Designations**

The site is located 4km to the south-west of the River Boyne And River Blackwater SAC (Site Code: 002299).

6.0 The Referral

6.1. Referrer's Case

6.1.1. A 1st party referral was received from the owner / occupier of the lands, Emer O'Siochru, against the decision made by the Planning Authority, that the above works do not constitute exempted development, under the Planning and Development Act 2000 (as amended). The following is a summary of the issues raised;

- The applicant has been farming a 43 acre farm in Upperchurch, Thurles, Co. Tipperary for over 10 years. Details of Herd No. provided.
- The applicant has owned a 1.75 acre permaculture and pasture smallholding at the subject lands in Gigginstown, Mullingar, Co. Westmeath for over 20 years.
- As a committed environmentalist for many years, the applicant became concerned about the climate impact of beef production.
- Details provided of how the grazing of Irish cattle produce greenhouse gas emissions which will have a negative impact on carbon dioxide equivalent (CO₂eq) reduction efforts.
- About 6 years ago the applicant discovered biochar, a clean form of charcoal, which offers an effective mechanism to reduce the impact of cattle (and other agricultural practices) on the climate.
- The applicant refers to the International Biochar Initiative (IBI) which is gaining global recognition for biochar as a major climate mitigation technology and sets out their main objectives.
- The applicant is currently the Chair of the Irish Biochar Co-operative Ltd.
- Reference made to a study by G. Lannigan et al of Teagasc (2015) which found that biochar has the potential to reduce GHG losses arising from slurry application.
- Biochar as a feed ingredient has the ability to preserve silage quality, improve ruminant gut health, reduce methane and add to soil carbon and biome health.
- For these reasons, the Biochar Co-op decided to concentrate efforts on animal feed for its first biochar product introduction to the Irish agricultural market.

- Animal feed category products require specialised premises and a HACCP (Hazard Analysis & Critical Control Point) Plan to meet Dept. of Agriculture standard for inputs into the food chain including animal feed under EU Regulations.
- The use of biochar (i.e. vegetal carbon) as a feed is authorised by EU Feed Regulations.
- The Biochar Co-op decided to start a pilot production and processing unit or a 'biohub' at the applicant's landholding in Gigginstown, by reason of its good road access, proximity to a range of beef and dairy farms as well as forestry and tillage.
- The cottage would be used for occasional training and demonstration purposes.
- The biochar produced on the landholding will be used on the applicant's farm in Tipperary and for the greater part sold to the Co-op for marketing to cattle and dairy farmers in Westmeath.
- Biohubs must be small in scale and geographically distributed so that CO₂ used in travel from the source of biomass to the production site and to its final incorporation in the soil is minimised to enhance its carbon offset value.
- The Irish Biochar Coop's vision is for hundreds of small biohubs throughout the Irish countryside, serving an optimal area of 10-20 kilometres in radius.
- Feedstock will come from woody biomass sourced locally from hedgerows, forestry brush or nuisance plants such as rushes or bracken.
- The feedstock will be pyrolysed in 3 mobile open-air kilns on-site and occasionally off-site at feedstock locations.
- The kilns, approx. 2m x 2m in height and width are of simple round steel dish design that maximise low carbon semi-activated biochar production at the expense of their energy. Their current design cannot capture or otherwise utilise the heat or gases produced in the process.
- The proposed shed is required under Department of Agriculture Animal Feed Regulations for the drying, grinding and bagging of the biochar or 'vegetal carbon', an EU recognised animal feed.
- The proposed activity differs in no way from the simple drying, crushing and storing of oats for animal feed.

- The biohub at Gigginstown will directly create 1 full time and 2-3 part-time jobs and will contribute to the economic security of many local beef and dairy farmers as they transition to a low carbon future.
- The proposed development conforms with the definition of Agriculture, as defined in the Planning and Development Act 2000 (as amended).
- The proposed shed conforms with the Planning and Development Regulations 2001 (as amended) rural exempted development provisions, as set out under Class 9.
- Reference made to a previous Section 5 referral ABP 300773 where the question arose whether an agricultural barn had to be within a farmyard of the main agricultural holding to be exempted development. The ABP Inspector's report stated that "there is no requirement for an agricultural shed to be on an existing farmyard".
- Details provided on the Biochar Cattle Feed Production Process and related works and activities. Key points are summarised as follows;
 - Woody feedstock is brought to the site by participating farmers using a tractor and trailer or small truck.
 - The woody feedstock is stacked beside the shed and/or polytunnel.
 - The mobile kilns must be used in the open air and are located beside the polytunnel or shed.
 - The biochar produced from the kilns are transferred to the shed and prepared for processing into 2 proposed products including a) a fodder supplement and b) a silage additive.
 - The biochar is ground in small batches by a grinder.
 - Batches are air dried in the shed, weighed, packed into 25 litre bags and stored ready for dispatch.
- Details of the shed include the following;
 - The premises will be vermin and bird proof.
 - It will have an area to store trolleys, lift machinery, tools etc.

- The shed consists of steel portal frames with green and grey finish single skin steel corrugated sheeting with two large roller shutter doors on two elevations to facilitate movement of trolleys and racks.
- The shed will include an office area and a mezzanine store.
- The shed will include a toilet and cloakroom with doors and window to the main work area.
- A 3m x 2.4m roller shutter on the steel façade will provide security.
- A new track 3.4m wide of compacted selected hard core will be constructed in the back field which will run behind the polytunnel to join the existing lane and entrance gate to the side of the cottage.
- The existing unsatisfactory round pebble surface dressing on the entrance setback will be replaced with more suitable compacted hard-core, thus obviating the need for a tarmac surface.
- It is estimated that the shed and related activities will generate two tractor / truck movements per week at most, and then only in the winter busier season.
- The shed is well shielded by existing mature trees and hedgerow.
- The cottage will continue as a family weekend cottage as well as an occasional visitor resource for the biohub business.

Documentation submitted with the referral includes;

- A Rural Place Map, Site Layout Plan, Floor Plans and Elevation Drawings.

6.2. Planning Authority Response

No response

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000 (as amended)

7.1.1. Section 2(1) Interpretation - defines the terms used within the Act including the following;

“**agriculture**” includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the training of horses and the rearing of bloodstock, the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and “agricultural” shall be construed accordingly;

“**structure**” means any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined, and—

(a) where the context so admits, includes the land on, in or under which the structure is situate, and..

“**use**”, in relation to land, does not include the use of the land by the carrying out of any works thereon

“**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.

7.1.2. Section 3(1) defines development as follows:

“**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.

7.1.3. **Section 4(1)** of the Act refers to **Exempted Development** and states;

(1) The following shall be exempted developments for the purposes of this Act—

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

7.2. **Planning and Development Regulations, 2001 (as amended)**

7.2.1. **Part 2 Exempted Development**

Article 5 Interpretation for this part – defines the following;

‘Biomass’ means the biodegradable fraction of products, waste and residues from agriculture (including vegetal and animal substances), forestry and related industries, as well as the biodegradable fraction of industrial and municipal waste.

“business premises” means—

(a) any structure or other land (not being an excluded premises) which is normally used for the carrying on of any professional, commercial or industrial undertaking or any structure (not being an excluded premises) which is normally used for the provision therein of services to persons,

“industrial process” means any process which is carried on in the course of trade or business, other than agriculture, and which is-

(a) for or incidental to the making of any article or part of an article, or

(b) for or incidental to the altering, repairing, ornamenting, finishing, cleaning, washing, packing, canning, adapting for sale, breaking up or demolition of any article, including the getting, dressing or treatment of minerals,

7.2.2. **Article 6 Exempted Development**

Article 6(3) states;

Subject to article 9, in areas other than a city, a town or an area specified in section 19(1)(b) of the Act or the excluded areas as defined in section 9 of the Local Government (Reorganisation) Act, 1985 (No. 7 of 1985), development of a class specified in column 1 of Part 3 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 3 opposite the mention of that class in the said column 1.

7.2.3. **Article 9 Restrictions on Exemption**

Article 9(1) states –

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—

(ii) consist of or comprise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width,

(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,

7.2.4. **Schedule 2 Part 3 Exempted Development – Rural**

Class	Conditions and Limitations
<p><i>Agricultural Structures</i></p> <p>Class 8</p> <p>Works consisting of the provision of roofless cubicles, open loose yards, self-feed silo or silage areas, feeding aprons, assembly yards, milking parlours or structures for the making or storage of silage or any other structures of a similar character or description, having an aggregate gross floor space not exceeding 200 square metres, and any ancillary provision for effluent storage.</p>	<ol style="list-style-type: none"> 1. No such structure shall be used for any purpose other than the purpose of agriculture. 2. The gross floor space of such structures 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 the 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.

<p>Class 9</p> <p>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.</p>	<ol style="list-style-type: none"> 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.
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7.3. Waste Management Act 1996

Section 3 (1) states that “This Act shall not apply to –

(g) faecal matter, if not covered by subsection (2) (b), straw and other natural non-hazardous agricultural or forestry material used in farming, forestry or for the production of energy from such biomass through processes or methods which do not harm the environment or endanger human health.

8.0 Assessment

- 8.1.1. The applicant proposes the construction of a stated agricultural shed, a yard 'in the back field' and a 3.4m wide extension to an existing access lane to the side and rear of the property, for the making, crushing and bagging of biochar. It is unclear from the drawings / documentation submitted if the yard 'in the back field', as referred to by the applicant, is the yard to the rear/south of the proposed shed or the yard to the rear/south of the polytunnel. In the interest of clarity and the avoidance of doubt, I shall assess both yards against exempted development provisions.
- 8.1.2. It should be stated at the outset that the purpose of this referral is not to determine the acceptability or otherwise of the proposed development in respect to the proper planning and sustainable development of the area, but rather whether or not the matter in question constitutes development, and if so falls within the scope of exempted development.
- 8.1.3. In assessing the merits of the case, I have reviewed previous relevant declarations made by the Board.

8.2. Is or is not development?

- 8.2.1. Section 3(1) of the Planning and Development Act 2000 (as amended) defines "development" as *"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"*.

The construction of an agricultural shed, yard and an access lane are considered to constitute works, as per Section 2(1) of the Planning and Development Act 2000 (as amended) and is therefore development, as per Section 3(1) of the Act.

8.3. Is or is not exempted development?

- 8.3.1. Section 4 of the Act states development shall be exempt where "development consists of the use of any land for the purpose of agriculture and development consisting of the use for that purpose of any building occupied together with land so used".

Article 6 of the Regulations provides that development of a class specified in Schedule 2, Part 3 of the Regulations shall be exempted, provided that the conditions and limitations attached to those various classes are met.

In the interest of clarity, the proposed shed, yards and access lane shall be addressed separately below.

8.4. Proposed Shed

8.4.1. Schedule 2, Part 3 of the Planning and Development Regulations 2001 (as amended) refers to 'Exempted Development – Rural'. Class 6 – 10 refer to 'Agricultural Structures'. It is considered that the proposed shed with a floor area of 129 sq.m. (including internal mezzanine floor area) should be assessed under Class 9, which refers to '*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*'. There are 6 no. Conditions / Limitation under Class 9 which are addressed as follows;

8.4.2. **Condition No. 1** states the following;

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.

8.4.3. With regards the use of the proposed structure, the supporting documentation submitted details the following;

- The shed will include an office and w.c.
- The shed will be used for the production on biochar.
- Materials for the production of biochar will come from woody biomass sourced locally from hedgerows, forestry brash or nuisance plants such as rushes or bracken.
- Biochar is produced by heating biomass at high temperatures in mobile kilns on the outside yard.

- The biochar produced from kilns stored externally are transferred to the shed and prepared for processing into 2 proposed products including a) a fodder supplement and b) a silage additive.
- Within the shed, the biochar is air dried, ground in small batches by a grinder, weighed, packed into 25 lite bags and stored ready for dispatch.
- The biochar will be privately used on the applicant's farm in Co. Tipperary and sold to the Biochar Co-op for marketing to cattle and dairy farmers in Westmeath.
- The applicant puts forward that the proposal would be an 'agricultural shed'.

8.4.4. The Planning and Development Act and Regulations make no specific exempted development provisions for the production of biochar. The key question, therefore, is whether or not the production of biochar is agricultural and whether or not the use of the shed is agricultural.

8.4.5. The definition of "agriculture", as set out in Section 2(1) of the Act does not include the production of biochar within its description.

8.4.6. The applicant describes the production of biochar whereby feedstock will be pyrolysed in 3 mobile open-air kilns on-site and occasionally off-site at the feedstock locations. For reference purposes, the Encyclopaedia Britannica describes "Pyrolysis" as follows;

"the chemical decomposition of organic (carbon-based) materials through the application of heat... Two well-known products created by pyrolysis are a form of charcoal called biochar, created by heating wood, and coke... Pyrolysis also produces condensable liquids (or tar) and non-condensable gases...Pyrolysis transforms organic materials into their gaseous components, a solid residue of carbon and ash, and a liquid called pyrolytic oil (or bio-oil)".

8.4.7. It is evident, therefore, that the production of biochar is a thermo-chemical process and the proposed shed would be an integral part of the production of the end product, i.e. biochar to be used as a fodder supplement and silage supplement. It is my view that while the end-product may be agricultural in its application and use, the thermo-chemical process and activity involved in its production is not agricultural. The definition of agriculture under the Planning Act and Regulations makes no provisions

for such activity / process. Furthermore, I consider that the use of the shed, which incorporates an office, would be used partly as a business premises. The applicant confirms that that the biochar produced in the shed would be sold commercially. Such use may be considered an agri-business but does not fall within the definition of agriculture as set out in Section 2(1) of the Act. For this reason, I conclude that the proposed shed used for the production and selling of biochar would be not agricultural in use and therefore does comply with the terms of Condition No. 1.

8.4.8. **Condition No. 2** requires the following;

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.

The floor area of the proposed shed is 108 sq.m. at ground level and c. 21. sq.m at mezzanine floor level, providing a combined total gross floor area of c.129 sq.m. The Site Layout Plan submitted shows that there is a polytunnel located on the landholding which has a measured gross floor area of c.140 sq.m. As the gross floor area of the proposed shed together with the polytunnel do not exceed 900 sq.m. in aggregate, the proposal complies with Condition No. 2.

8.4.9. **Condition No. 3** requires the following;

No such structure shall be situated within 10 metres of any public road.

The proposed shed would be set back 75 metres from the public road. The proposal therefore would comply with this Condition.

8.4.10. **Condition No. 4** requires the following;

No such structure within 100 metres of any public road shall exceed 8 metres in height.

As the proposed structure is not located within 100 metres of any public road, this Condition is not applicable to the proposal.

8.4.11. **Condition No. 5** requires the following:

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.

The Site Layout Plan details that the proposed structure would be located 101 metres from the nearest dwelling, located on adjoining lands to the north-west. As such the proposal would comply with this Condition.

8.4.12. **Condition No. 6** requires the following:

No unpainted metal sheeting shall be used for roofing or on the external finish of the structure.

In the application form to the Planning Authority, the applicant describes the proposed development as an 'agricultural steel shed with paint finish corrugated panels to roof'. In the documentation submitted the applicant states that the shed will consist of steel portal panels with green and grey paint finish. The proposal would therefore comply with this Condition.

8.5. Is the proposal de-exempted by any of the provisions in Article 9 of the Planning and Development Regulations 2001 (as amended)?

8.5.1. The Planning and Development Regulations 2001 (as amended) state: '*Restrictions on exemption 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

(vi) interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of a development plan for the area in which the development is proposed or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan'.

- 8.5.2. Having regard to the ridge height of the proposed shed at 4.7m, its location to the rear of the existing cottage and the dense trees and hedgerows along the side and rear boundaries of the site, I consider that the proposal would not be highly visible in the surrounding rural landscape. There is no scenic view or vista identified in the Development Plan in relation to this site. As such the proposed shed is not de-exempted by the provisions in Article 9 of the Regulations.
- 8.5.3. Notwithstanding the above, I conclude that the proposed shed would not be agricultural in use and thereby does not comply with the terms of Condition No. 1 of Class 9 of Schedule 2, Part 3 of the Planning and Development Regulations 2001 (as amended). The proposed shed would, therefore, not be exempted development.

8.6. Proposed Yards and Extension of Access Lane.

- 8.6.1. The applicant proposes the construction of a yard 'in the back field' and a 3.4m wide extension to an existing access lane to the side and rear of the property. The Drawings submitted show the provision of a yard to the rear / south of the proposed shed (c.10m deep and 17m wide) and the provision of a 4.6m wide concrete slab to the western side of the proposed shed. The Drawings also show the provision of a yard to the rear / south of an existing polytunnel. As stated above, it is unclear from the drawings / documentation submitted if the yard 'in the back field', as referred to by the applicant, is the yard to the rear/south of the proposed shed or the yard to the rear/south of the polytunnel. In the interest of clarity and the avoidance of doubt, I shall assess both yards against exempted development provisions.
- 8.6.2. Schedule 2, Part 3 of the Planning and Development Regulations 2001 (as amended) refers to '*Exempted Development – Rural*'. Class 6 – 10 refer to '*Agricultural Structures*'. It is considered that the proposed yards should be assessed under Class 8, which refers to "Works consisting of the provision of roofless cubicles, **open loose yards**, self-feed silo or silage areas, feeding aprons, assembly yards, milking parlours or structures for the making or storage of silage or any other structures of a similar character or description, having an aggregate gross floor space not exceeding 200 square metres, and any ancillary provision for effluent storage". There are 7 no. Conditions / Limitation under Class 8 which are addressed as follows;
- 8.6.3. **Condition No. 1** states the following;

No such structure shall be used for any purpose other than the purpose of agriculture.

The applicant details that the proposed yards would be used for the production and delivery of biochar. The Site Layout Plan submitted details that 2 no. kilns used for the production of the biochar would be located on the yard to the rear / south of the polytunnel. The applicant states feedstock will be pyrolysed in 3 mobile open-air kilns on-site. As detailed above, it is my view that the thermo-chemical process and activity involved in its production of biochar is not agricultural. As such, I consider that the proposed yards would not be used for the purposes of agriculture, and therefore do not comply with the terms of Condition No. 1.

8.6.4. **Condition No. 2** requires the following;

The gross floor space of such structures 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.

Having regard to the Site Layout Plan, I calculate that the gross floor area of the yard to the rear / south of the proposed shed is c.90 sq.m., the concrete slab is 46 sq.m. and the yard to the south of the polytunnel (excluding the access lane) is c.120 sq.m. This provides a cumulative total of 256 sq.m. The proposed yards therefore comply with this Condition.

8.6.5. **Condition No. 3** requires the following;

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 the Department of the Environment and Local Government requirements and shall have regard to the need to avoid water pollution.

I have no evidence before me to demonstrate that the proposed yards would be used as an effluent storage facility. The terms of this condition therefore do not apply in this instance.

8.6.6. **Condition No. 4** requires the following;

No such structure shall be situated, and no effluent from such structure shall be stored, within 10 metres of any public road.

The proposed yards would not be located within 10 metres of the public road. The yard to the rear / south of the polytunnel would be setback 40 meters from the public road. The proposal would therefore comply with this Condition.

8.6.7. **Condition No. 5** requires the following;

No such structure within 100 metres of any public road shall exceed 8 metres in height.

Given the nature of the open yards, the terms of this condition do not apply.

8.6.8. **Condition No. 6** requires the following;

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.

The yard to the rear / south of the proposed shed would be located c.105m from the closest dwelling located to the north-west. The concrete slab located to the western side of the proposed shed would be located in excess of 100m for the most part from the closest neighbouring dwelling. The infringement is minimal. As such it is my view that the proposed yard to the side and rear of the proposed shed complies with the terms of Condition No. 6.

The proposed yard to the south of the existing polytunnel would be located 55 metres at its closest point from the neighbouring dwelling, located on adjoining lands to the north-east. The Site Layout Plan details that 2 no. kilns used for the production of the biochar would be located on this yard. The applicant has not submitted written consent from the owner/occupier of the said neighbouring dwelling. As such this yard, by reason of its proximity to the neighbouring dwelling, does not comply with the terms of Condition No. 6.

8.6.9. **Condition No. 7** requires the following;

No unpainted metal sheeting shall be used for roofing or on the external finish of the structure.

The terms of Condition No. 7 are not relevant to the proposed yards.

8.7. Is the proposal de-exempted by any of the provisions in Article 9 of the Planning and Development Regulations 2001 (as amended)?

8.7.1. The Planning and Development Regulations 2001 (as amended) state: '*Restrictions on exemption 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

(ii) consist of or comprise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width,

(iii) endanger public safety by reason of traffic hazard or obstruction of road users,

8.7.2. The applicant proposes to extend the existing lane to the side of the house with a 3.4m wide lane, extending for a length of c. 105 metres to join the proposed shed. As such the width of the proposed access lane is not de-exempted by the provisions in Article 9 (1)(a)(ii) of the Regulations.

8.7.3. The applicant states that it is estimated that the shed and related activities will generate 2 tractor trailer/ truck movements per week at most and then only in the winter months. Having regard to the existing vehicular entrance and laneway serving the site, the nature and scale of the proposed development, the anticipated low levels of tractor trailer/ truck movements per week to the site and the availability of a pull-in point to the front of the dwelling, it is my view that the proposed development would not endanger public safety by reason of traffic hazard or create an obstruction of road users. Having regard to the Planning History on the site under ABP Ref. PL25C.230350, I note that the Board considered that the local road network was adequate to manage the nature and volume of traffic associated with a relatively small-scale operation treating agricultural waste on the site and decided to grant permission

for the proposed anaerobic digester and associated sunken tanks to process local farm manure and other organic materials to produce electricity, heat and fertiliser and also a barn, to store the fibre and machinery and two horticultural polytunnels. The basis of this decision informs my assessment.

- 8.7.4. Notwithstanding the above, I conclude that the proposed yards and extension of the access lane would not be agricultural in use and thereby does not comply with the terms of Condition No. 1 of Class 8 of Schedule 2, Part 3 of the Planning and Development Regulations 2001 (as amended). The proposed yards and access lane extension would, therefore, not be exempted development.

8.8. **Appropriate Assessment**

The subject development comprises a shed, yards and an access lane that is situated c.4km from the nearest Natura 2000, the River Boyne And River Blackwater SAC (Site Code: 002299). Having regard to the modest scale and nature of the development and its distance from any sensitive sites, 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.

8.9. **Recommendation**

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

WHEREAS a question has arisen as to whether the construction of an agricultural shed, yards and an extension of an access lane is or is not exempted development:

AND WHEREAS Emer O'Siochru requested a Declaration on this question from Westmeath County Council and the Council issued a declaration on the 4th day of October 2019 stating that the matter was development and was not exempted development:

AND WHEREAS Emer O'Siochru referred this declaration for review to An Bord Pleanála on the 25th day of October, 2019:

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

- (a) Sections 2, 3 and 4 of the Planning and Development Act, 2000 (as amended),
- (b) Articles 5, 6 and 9 and Schedule 2 of the Planning and Development Regulations, 2001 (as amended), and
- (c) The planning history of the site.

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The construction of a shed for the production and sale of biochar is not agricultural in use and therefore does not comply with Condition No. 1 of Class 9, Part 3 of Schedule 2 of the Planning and Development Regulations, 2001, as amended.
- (b) The construction of yards and an access lane extension for the production and sale of biochar is not agricultural in use and, therefore, does not comply with Condition No. 1 of Class 8, Part 3 of Schedule 2 of the Planning and Development Regulations, 2001 (as amended).

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by Section 5 of the 2000 Act, hereby decides the following;

The construction of a shed, yards and an access lane extension for the production and sale of biochar is development and is not exempted development.

Brendan Coyne
Planning Inspector

20th May 2020.