



An  
Bord  
Pleanála

## Inspector's Report

### ABP-308966-20

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<b>Development</b>	Retention of agricultural building 417.69sqm and concrete yard and dungstead.
<b>Location</b>	Twyford, Baelin, Athlone, Co. Westmeath.
<b>Planning Authority</b>	Westmeath County Council
<b>Planning Authority Reg. Ref.</b>	207146
<b>Applicant(s)</b>	Declan Ganley
<b>Type of Application</b>	Retention Permission
<b>Planning Authority Decision</b>	Refuse Retention Permission
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Declan Ganley
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	1 <sup>st</sup> of April 2021
<b>Inspector</b>	Angela Brereton

## 1.0 Site Location and Description

- 1.1. The subject site is located approximately five kilometres east of Athlone Town. The site is located to the north 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 only by a local national school. The subject site is taken off the larger field area. As given on the application form the rectangular site has an area of approximately 0.906 hectares. The north-eastern part of the field accommodates a large shed described as an 'agricultural building'. The remainder of the site comprises of a field which is under grass. The shed is set back approximately 110 metres from the north western boundary of the site and has gated entrance from the end of the access road. This private road serves the subject site and a number of dwellinghouses to the south and south-east.
- 1.2. The building is on the more elevated part of the site. I gained access to the shed on the day of the site visit and found it to be empty apart from some storage of logs. Apart from some straw over a grid area and two darker floor areas, in the north western end of the shed, I did not see any evidence of horses in the shed or grazing in the adjoining field.
- 1.3. Access to the site is from the L-1427 via a private cul de sac which also serves a number of houses to the south and south east. The nearest dwellinghouse is located to the south-west and at its closest point c.100 metres from the subject building. There are playing fields to the rear of the school to the south east. There is gated entrance to adjoining agricultural lands (not associated with the subject site) to the north-west. The National Monument (ref. no. WM029-008), Bealin High Cross is visible on top of a mound, partly screened by vegetation on the opposite side of the road, to the south west.

## 2.0 Proposed Development

- 2.1. This proposal is for the Retention of an Agricultural Building with a stated area of 417.69sq.m, and a concrete yard and dungstead.

- 2.2. A letter has been submitted by Liam Madden providing details of the planning history and a description of the retention development.
- 2.3. A separate letter attaches photos of the grill/floor-drain in the existing building which they provide was previously overlooked.
- 2.4. A Site Layout Plan, Floor Plans, Sections and elevations have been submitted.

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

On the 27<sup>th</sup> of November 2020, Westmeath County Council, refused permission for the retention development for the following reason:

1. *It is considered that the agricultural need for the scale and extent of the structure to be retained has not been demonstrated in terms of serving an agricultural landholding and accordingly would contravene policy P-GA1 of the Westmeath County Development Plan 2014-2020. Furthermore, having regard to its design and siting, it is considered that in the absence of satisfactory justification to the contrary, the subject structure which is more akin to an industrial design form and is visually prominent in a rural context, would interfere with the character of the landscape which is necessary to protect and accordingly would contravene policies P-AB1, P-NH1 and P-LLM1 of the Westmeath County Development Plan, would set an undesirable precedent and would therefore be contrary to the proper planning and sustainable development of the area.*

#### **3.2. Planning Authority Reports**

##### **3.2.1. Planning Reports**

The Planner had regard to the locational context of the site, planning history and policy and to the interdepartmental reports. They noted that no submissions were made. Their Assessment included the following:

- No details/documentation have been submitted with regard to the type of agricultural activity on site or justification for the scale and requirement of same.
- There are discrepancies between the subject application and the previous application relative to the gross floor area and site area.
- They consider that the building appears as a large industrial type structure.
- The applicant has not demonstrated or justified that the structure is used for agricultural purposes as part of the application submitted.
- On site visit they found no evidence of agricultural or equine activity/use at the application site or on the landholding.
- They have regard to the Planning History and note comments of previous Inspector's Reports relative to usage, design and layout.
- They consider that the proposal would impact negatively on the visual amenity and character of the area and contravenes policies P-NH1 and P-LLM1 of the Westmeath CDP and would set an undesirable precedent.
- They have some concerns regarding the width of the access route and right of way.
- They are unclear about the location and intended use of the dungstead.
- The footprint of the development intended for retention is not subject to an identified flood risk.
- Having regard to the nature of the development and distance to the nearest Natura 2000 sites, the proposed development would not have any significant effect individually or in combination with other plans or projects on a European site.
- They recommended that retention permission be refused.

### 3.3. Other Technical Reports

#### Environment Section

They note that the applicant has demonstrated that soiled water from the yard and dungstead is directed to a soiled water tank with a sedimentation chamber. All rain water is directed to soakaways. They have no objections subject to recommended conditions.

#### District Engineer

They are unclear about the dimensions and intended use of the dungstead.

The Planning Authority has noted that the access servicing the proposed development is not a public road. They requested that the applicant submit proof of right of way ensuring a right of access to the property/site for the applicant across this private laneway along the route proposed to the development.

### 3.4. **Prescribed Bodies**

#### Irish Water

They have no objections to the development.

### 3.5. **Third Party Observations**

None noted on file.

## 4.0 **Planning History**

There is an extensive planning history relevant to this site. This includes a previous Retention Application and a number of Referrals made to the Board. There is also a history of Planning Enforcement on this site. A Summary of the Planning History is referenced below under the following headings:

### 4.1. **Retention Application**

**Reg.Ref.15/7120** - Permission refused by the Council for the Retention of a constructed shed (425 square metres), a perimeter concrete yard and a partially installed wastewater treatment system and the proposed erection of a dungstead and the completion of a partially installed wastewater system, and all associated groundworks and landscaping. The shed was proposed to be completed and used

for its intended agricultural purpose and as including the stabling of horses and associated storage of agricultural machinery and equipment, all at Twyford, Baylin, County Westmeath.

Westmeath County Council issued notification to refuse planning permission for six reasons, in summary:

1. Contrary to policy P-EQ2 of the current Westmeath County Development plan (CDP).
2. Elevated site and prominent location - contrary to Policy P-NH1 of the CDP.
3. Vulnerable groundwater - contrary to P-LLM1 of the CDP.
4. Establishment of a new farm is contrary to P-AB1 of the CDP.
5. Establishment of new farm inappropriate due to deficiencies of rural road network structure and sightlines.
6. Development may cause pollution, contrary to Sections 9.5 and 9.7 and Policies P-GW4, P-WST1 and P-WST4 of the CDP.

4.2. The decision of Westmeath County Council was the subject of a first party appeal by Declan Ganley (Ref. PL25A.246083 relates). The Board upheld the decision of the Planning Authority for two reasons which are set out in summary 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 25<sup>th</sup> May 2016.

It is noted that at that time the adjoining site to the south was not separate but was included as part of the subject landholding.

**Adjoining Site –**

- Reg.Ref.19/7250 – Outline refused to Declan Ganley by Westmeath County Council for the construction of a dwellinghouse, wastewater treatment unit, boundary fence/walls, vehicular access and all associated works.

This was subsequently refused by the Board – Ref. ABP-306726-20 refers.

- Reg.Ref. 20/7159 – Outline permission refused to Aaron Ganley by the Council for the construction of a dwellinghouse, wastewater treatment unit, boundary fence/walls and driveway.

This is currently the subject of an appeal to the Board Ref. ABP-309133-20 refers.

### Referrals

4.3. A number of Referral cases have been 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 and the Board's Conclusions are briefly summarised below:

#### 4.4. **ABP-303127-18**

In summary this case concerned 5no. Questions asked regarding various issues including the shed (the subject of the current retention application), and associated works and structures and as to whether or not they are development or exempted development. This case has not as yet been, decided by the Board.

#### 4.5. **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 24<sup>th</sup> 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.

#### 4.6. **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.

#### 4.7. **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 24<sup>th</sup> July, 2018.

#### 4.8. **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.

Copies of these Board Decisions are included in the History Appendix to my Report.

## 5.0 **Policy Context**

### 5.1. **Westmeath County Development Plan 2014-2020**

This is the pertinent plan and there are a number of policies and objectives that relate.

#### Agricultural

Section 3.33 refers to the need to promote Farm Diversification provided the proposal is related directly either to the agricultural operation engaged on the farm or the rural nature of the area and provided it does not unacceptably impact on the landscape and character of the area and is compatible with the existing road infrastructure in the area.

Section 3.35 refers to General Agricultural Policies & Objectives

Policy P-GA1 seeks: *To support agricultural development as a contributory means of maintaining population in the rural area and sustaining the rural economy, whilst*

*maintaining and enhancing the standing of the rural environment through application of the Water Framework and Habitats Directives.*

### Equine

*P-EQ1 – To support equine related activities (e.g. farriers, bloodstock sales etc.) of an appropriate size and at suitable locations.*

*P-EQ2 – To ensure that equine based developments are located on suitable viable landholdings and are subject to normal planning siting and design considerations and related establishments.*

### Agriculture Buildings Policy

*P-AB1 – To take account of the following in relation to proposals for new agricultural buildings:*

- Proximity to adjacent dwellings.*
- The rural character of the area.*
- Utilisation of natural landscape and land cover as screening.*
- Waste management in terms of storage and disposal.*
- Environmental carrying capacity.*

### Section 14.6.2 New Buildings/Structures

*New buildings for industrial or farm related commercial enterprises on farm holdings may be acceptable if they are small-scale and can be satisfactorily integrated into an existing group of farm buildings.*

### Natural Heritage Policy

*P-NH1 – To protect, manage and enhance the natural heritage, biodiversity, landscape and environment of County Westmeath, in recognition of its importance as a non-renewable resource, unique identifier and as a natural resource asset.*

*P-LLM1 – To require that development is sensitively designed, so as to minimise its visual impact on the landscape, nature conservation, archaeology and groundwater quality.*

### Groundwater Policy and Objectives

P-GW4 – *To protect groundwater resources and associated habitats and species, in accordance with the requirements of the Groundwater Directive (2006/118/EC).*

#### Wastewater Policy and Objectives

P-WST1 – *To promote the provision of safe and secure wastewater infrastructure to ensure that public health is protected and permitted development is within the environmental carrying capacity and does not negatively impact upon habitat quality or species diversity.*

P-WST4 – *To require that wastewater treatment and disposal systems for new single houses are implemented in accordance with the 2009 EPA Code of Practice Wastewater Treatment for Disposal Systems serving single houses (p.e.<10), or any revision thereof.*

## 5.2. **Natural Heritage Designations**

The site lies c.600m north of Carn Park Bog SAC (Site Code: 002336) and c.2.7km north east of Crosswood Bog SAC (Site Code 004016). It lies c.3.6 km south east of Lough Ree SAC (Site Code 00040) and SPA Site Code 004064. Middle Shannon Callows SPA (004096) and River Shannon Callows SAC (000216) is located c.7.6m to the south west of the site.

## 5.3. **EIA Screening**

- 5.3.1. 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.

## 6.0 **The Appeal**

### 6.1. **Grounds of Appeal**

Liam Madden, Architect has submitted a First Party Appeal on behalf of the Applicant. The grounds of appeal are summarised below and include the following:

- Reference is made to the Planner's Report and it is submitted that it does not cite the full planning history. 4no. Referrals to the Board are omitted and also the legal import of the Board's orders on the single refusal reason in this application.
- There is only one reason for refusal which is broken into 3no. sub-sections and in summary relates to the following policies:
  - (i) Policy P- GA1- is supportive of agricultural development.
  - (ii) P- AB1- relates to form, visual prominence, interference with character of the landscape.
    - P- NH1 – protection, management and enhancement of the natural heritage, biodiversity, the environment etc.
    - P- LLM1 – to require development to be sensitively designed.
  - (iii) Undesirable precedence; contrary to proper planning and sustainable development.
- They contend that the Planner's Report is deeply flawed as is the Development Plan on which it is founded. There are legal conflicts with the Planning and Development Act 2000, as amended.
- They draw the Board's attention to the Equine Policies P-EQ1 and P-EQ2 which refer to *appropriate size* and *viable landholdings*.
- This application is for 'retention' and not for a 'proposed internal dividing wall'. The latter as declared by the Board, is exempted development under s.4.(1)(h) of the Act.
- Details are given relative to site visits by the Council's Planners.
- The most serious flaw in the Planner's Report is the total omission of the Referral declarations made by the Board and the fact that the Council has currently a referral before the Board to decide whether the development on site is or is not exempted development.
- The P.A is currently trying to prosecute for non-compliance with an Enforcement Notice related to development which they don't know is exempt or not.

### Policy P-GA1

- This is a planning argument that was advanced successfully in RL3510 and RL3559 and repeated in RL 301310-18. Details are given relative to these Referral cases.
- Westmeath County Development Plan includes this Policy which is in legal conflict with s.4-(1)(a) of the Planning and Development Act 2000, as amended.
- The use of land for the purposes of agricultural is development – but development which is exempted from the need to seek planning permission.
- The reference to viable land holdings, appropriate (farm) size, justification for the scale, acceptable if small scale, justification for need etc are all in legal conflict with the Act. Their inclusion has no legal basis.
- This is improper because the Act says that any land maybe used for the purposes of agriculture. It is not necessary to demonstrate an agricultural need to use lands for agricultural purposes, however small these lands maybe.
- The incorporation of Policy P-GA1 into the Development Plan was illegal and in refusing permission was also illegal.

### RL3510

- The Board decided this question in RL3510 and RL3559. They decided that the erection of a 300sq.m agricultural building on these lands was also exempted development.
- They decided that extensions to the above were also exempted development.
- These extensions when added to the 300sq.m edifice are precisely the same area as this building on site, at 417.69sq.m.
- Reference is also had to the erection of a Class 6 and a Class 9 agricultural shed side by side, semi-detached and measuring together 417.69 sq.m. with the earlier dividing wall between them.
- These are also exempted development subject only to compliance with the Conditions and Limitations.

- The important Condition is the written consent of nearby neighbours.
- The Board has no legal capacity to decide whether a development is unauthorised or not.
- The Board is urged to study all this history of Referrals in detail especially the Referral currently before the Board.
- Reference is made further to the Agricultural Exemption Classes and to the provisions of Article 9 of the Planning and Development Regulations 2001(as amended).
- There are no archaeological or historical features protected on this site and the building is all but invisible behind screen planting.
- The Planner says that the building looks like an industrial building. The look of the building is entirely irrelevant.
- The policies P-AB1, P-NH1 and P-LLM1 manifest themselves in listing and mapping of NHAs, pNHAs, National Amenity Areas, SPAs, SACs, Protected Views and landscapes etc. None of which are close to the site. The Board is urged to examine in detail the entire mappings/listings in the CDP 2014-2020, Volume 2 Book of Maps.

#### Planning History

- The Board is urged to study the Planning History in great detail.
- The Council has in reality invented reasons to refuse this application.
- It is submitted that there have been many procedural and legal blunders and that this is an opportunity to remedy matters without a High Court Judicial Review.

#### Analysis of Refusal

- Policy P-GA1 – it is considered that the reason for refusal is totally unrelated and contradictory and incompatible to this policy.
- P-GA1 supports agricultural development, demonstration of agricultural need is not mentioned.



- Justification is not required for either the use of land or agricultural purposes or for the erection of agricultural buildings. The Act says this and so the Board has ruled in RL3510 and RL3559.
- There is nothing whatsoever in the Development Plan which would de-exempt under Article 9 of the Regulations what would be and is exempted development. And so, the Board has ruled in RL3510 and RL3559.
- The building is all but invisible due to extensive screen planting. Any further concerns can be readily addressed by a Condition of Permission.
- Such conditions can readily satisfy the broad aspirational policies P-AB1, P-NH1 and P-LLM1 notwithstanding the total absence of NHAs, pNHAs, National Amenity Areas, SPAs, SACs, Protected Views and Landscapes etc.
- The Planner's opinion that the building is more industrial in design is irrelevant. Regard is had to the appropriateness of this building relative to the equine industry.
- Not alone does this development not, contravene Policy P-GA1, it complies with the Policy by affording employment.
- A Condition maybe attached to a Permission forbidding any other use but agricultural.

#### RL 301319-18

- This Referral is currently before the Board, referred by Westmeath County Council.
- It is argued that the Board when dealing with RL3510, RL3559, RL3810 erroneously represented the existing building on site as unauthorised. The Board has no such justification.
- The Council is in effect asking in RL 301319-18 as to whether the proposal is exempted development or not.
- The Council is prosecuting for non-compliance with an Enforcement Notice, when they do not know if what the Notice refers is actually exempted or not.
- Reference is had to contentious matters relative to Referrals before the High Court and details are given.

- It is queried as to the practical or legal point in pursuing and prosecuting Enforcement if the identical building maybe lawfully re-erected.
- It is submitted that this application makes all the legal/planning problems go away.

### Summary

- It is submitted that the development on site is exempted development.
- Notwithstanding this is also an application for retention of exempted development.
- The refusal reason is unsound and has no legal basis because of the words: *demonstration of need*.
- The *absence of satisfactory justification* in the special circumstances that there are protected landscapes, views etc, is unsound.
- It is put forward that a dilemma for the Board is that the Board's Order in this Appeal must be grounded on the County Development Plan which is demonstrably unsound.
- It is requested that the Board grant planning permission, and that a Condition may/should be attached forbidding use for anything other than agriculture. Also, that condition(s) may be attached regarding the cosmetics of the building.

## 6.2. **Planning Authority Response**

There is no response from the Planning Authority noted on file.

## 7.0 **Assessment**

### 7.1. **Principle of Development and Planning Policy**

- 7.1.1. The application site is located in the rural agricultural area to the north of and outside of the unserviced settlement of Bealin (Baylin). It is noted that the extent of unserviced settlements while referred to as a concept in Section 11.3.1 *Rural Centres* and in Appendix 14 are not subsequently shown in the current Westmeath

County Development. Reference including a 'Planning Assessment of Baylin' and Map showing the Area of the Unserviced Settlements – Athlone Area, was included in the 2008-2014 County Development Plan.

- 7.1.2. The current proposal seeks the Retention of an agricultural building of 417.69sq.m and concrete yard and dungstead. The issue for consideration relative to a retention application is whether the development would have been permitted if permission had been sought in the first place i.e. prior to the development taking place, without the benefit of planning permission. Therefore, it at issue as to whether the principle of the subject development, taking into account the locational context, design and layout and usage would be in accordance with the policies and objectives in the current Westmeath County Development Plan 2014-2020.
- 7.1.3. An agricultural building is acceptable in principle on unzoned land in the rural agricultural area, provided in complies with planning policies and objectives. Regard is had to Policy P-GA1 of the Westmeath CDP, which is supportive of sustainable agricultural development. However, the issue in the current case is whether the shed for retention, is required or necessary for agricultural purposes. As noted on the site visit it is currently vacant and could in view of its nature and scale be used for a number of purposes. It is noted that it is not associated with an agricultural holding and agricultural usage has not been documented.
- 7.1.4. The First Party Appeal refers to equine connections. Details submitted with the application note the applicant is not engaged full time in agriculture, that is, he is not a farmer, but is amongst other things a racehorse owner. There are two indicative stable areas noted at the northern end of the shed. However, there was no evidence of any recent equine presence either in the shed or on the associated landholding noted on the day of the site visit and documentation to support such usage of the shed has not been submitted. Nor does it appear that the shed is set up for such purpose. Regard had been had to the Equine Policies (P-EQ1 and PEQ2) in the Policy Section above.
- 7.1.5. Therefore, as noted an agricultural/equine need for the building has not been established, in the current application and a business plan has not been presented as to its future use. However, the building is currently in place, without the benefit of planning permission, and as such it is vacant and not in any particular use. It is

submitted that the applicant, if the Board decides to permit is amenable to include a condition to restrict the usage of the building to agricultural purposes.

## **7.2. Regard to Planning History**

- 7.2.1. The First Party Appeal makes reference to the considerable Planning History of the subject site. This includes the previous Retention application and Referrals made to the Board. These have been summarised in the Planning History Section above. Copies of the Board Decisions are included in the History Appendix to this Report. They provide that this application seeks 'Retention' planning permission of a development which is exempted development, and that this is not an admission that it requires permission. At this juncture I do not consider it appropriate to comment on or revisit this planning history, or previous Board decisions made. However, it is acknowledged that if the Board decides to grant retention permission that the development as applied for would be regularised and have the benefit of planning permission.
- 7.2.2. It must now be ascertained as to whether the current application for retention, which is seen in the context of a planning application rather than a referral, would be in the interests of the proper planning and sustainable development of the area. In addition, whether the reasons in the Council's refusal relative to Reg.Ref. 20/7146 and in the Board's previous refusal relative to the previous retention application Ref. PL25A.246083 can be overcome in the current application.

## **7.3. Design and Layout**

- 7.3.1. The application form provides that the area of the 'agricultural building' for retention is 417.69sq.m. This differs from that referred to in the previous appeal relative to retention where the floor area of the building to be retained was given as 425sq.m. in Ref. PL25A.246083. The shed is sizable, and on the day of the site visit, I did an internal measurement (tape measurement) of the shed and found it to be 36.2m in length and 11.7m in width i.e. 423.54sq.m. Internally the shed is an open structure and I noted no internal walls in situ. As shown on the elevations submitted the shed has a pitched roof and is 6.3m in height 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.

- 7.3.2. The shed is surrounded by an area of hardstanding (concrete yard) which extends outwards from the south-western elevation of the shed. 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.

#### **7.4. Impact on the Character and Amenities of the Area**

- 7.4.1. The Council's reason for refusal refers to a number of policies in the Westmeath County Development Plan relative to impact on the character of the landscape in the area. Section 11.26 of the Westmeath CDP 2014-2020 provides the Agricultural Buildings Policy P-AB1 refers. In this case the 'agricultural building' is c.100m to the north of the nearest dwelling. The area while proximate to the unserviced settlement of Bealin (Baylin) is rural in character. The site is elevated so it is visible in the landscape. The applicant has established some screen planting particularly to the north and west of the building. The Site Layout Plan shows that it is proposed to establish further planting to the south, north and east of the building. It is considered important if the Board decide to grant that a landscaping scheme be conditioned.
- 7.4.2. As details have not been submitted with this application, relative to the type or level of usage proposed for this retention development, details relative to waste management in terms of storage and disposal or details on the environmental carrying capacity in accordance with this policy (P-AB1) have not been given.
- Section 5.3 of the Westmeath CDP provides the Natural Heritage Policies. P-NH1 is quoted in the Council's reason for refusal. This seeks to protect, manage and enhance the natural heritage, biodiversity, landscape and environment of the County in recognition of its importance as a non-renewable resource. Section 6.21 of the Plan provides the Landscape Management Policies. This includes P-LLM1 which includes that development be sensitively designed to minimise the visual impact of the landscape. As shown on the Landscape Character Map no.4 Bealin is within LCA 7 – Western Lowlands, characterised by lowlands and undulating topography.
- 7.4.3. The building to be retained while well set back from the road (c.110m) is in an elevated position. In view of its scale, height and massing it is visible in and is not

sensitively designed so as to minimise its visual impact on the landscape. This Policy (P-LLM1) also seeks to explore the potential for natural resources and this includes reference to archaeology. The National Monument no. WM029-008, Bealin High Cross is visible in the distance on top of a mound, partly screened by vegetation on the opposite side of the road, to the south west. Therefore, the building for retention, although some distance from, is visible in the landscape from the high cross.

- 7.4.4. Other than some screen landscaping becoming more established, I do not consider that there has been a change from that retention application previously refused by the Board in Ref. PL25A.246083.

## 7.5. Drainage

- 7.5.1. There is limited information relative to drainage in the current application. However, regard was had to this issue in the previous retention application Ref. PL.25A.246083 (A copy is included in the History Appendix). It is noted that the Planning Inspector did not refer to drainage as a major issue and that it was not included in the reasons for refusal.
- 7.5.2. There is an underground concrete tank located east of the shed which is stated to store collected rain-water from the roof of the shed. There is a toilet in the shed and a septic tank located on the western side of the shed.
- 7.5.3. It is also proposed to retain the existing dungstead, located to the west of the building. Details have been submitted, showing the dungstead. It is provided that this currently unfinished building is proposed to be served by the Dept. of Agriculture dungstead per S108 June 2017. It is noted that the Council's Engineering Section sought further details of the dungstead and its intended use.

## 7.6. Access

- 7.6.1. The access to the site is via a surfaced cul-de-sac laneway c.425m long, which serves c.11 one-off houses to the south and south east, agricultural lands to the north and Bealin High Cross. The laneway connects to the L-1427 at Baylin village, where sightlines at the junction are more restricted in an easterly direction (i.e towards Baylin). The site is at the northern end of and has gated access from this laneway. There are two gates in close proximity serving the agricultural land to the

north, which is not part of the subject landholding. The access road is narrow and is not in charge of the Local Authority. It appears to have been recently surfaced.

7.6.2. The Planning Authority has noted that the access road servicing the proposed development is not a public road. They recommend that the applicant be requested to submit proof of Right-of-Way ensuring a right of access to the property/site for the applicant across this private laneway along the route of the proposed development. While no submissions have been made details have not been submitted with the application relative to the applicant's right-of-way along this private laneway.

7.6.3. Details submitted with the application relative to traffic generation are limited, as the type and level of proposed usage has not been defined. However, it is provided that one vehicle a day is anticipated. Having regard to the road network, I do not consider that the Board's second reason for refusal on road safety grounds has been overcome in the current application.

## **7.7. Screening for Appropriate Assessment**

7.7.1. 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.

## **8.0 Recommendation**

8.1. I recommend that permission for retention be refused for the reasons and considerations below.

## **9.0 Reasons and Considerations**

1. It is considered that the agricultural need for the scale and extent of the shed structure and ancillary works proposed to be retained has not been demonstrated in terms of serving an agricultural landholding. Having regard to its height, bulk and mass, it is, therefore, considered that, in the absence of such justification, the development proposed to be retained, which is visually

prominent in a rural context, would interfere with the character of the landscape which it is necessary to protect and accordingly would contravene policies P-NH1 (which seeks to protect the character of the landscape) and P-LLM1 (which requires development to be sensitively designed to minimise its visual impact on the landscape) of the Westmeath County Development Plan 2014 – 2020. The development proposed to be retained and completed would, therefore, seriously injure the amenities of the area and be contrary to the proper planning and sustainable development of the area.

2. The establishment of a new farm-yard servicing and dependent on a dispersed landholding is considered inappropriate in this location having regard to the deficiencies of the road network serving the development in terms of capacity, width and the structural condition of the pavement of the laneway and deficiencies in the sightlines on accessing the public road. The development proposed to be retained would, therefore, endanger public safety by reason of traffic hazard.

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Angela Brereton  
Planning Inspector

14<sup>th</sup> of April 2021