



An  
Bord  
Pleanála

## Inspector's Report ABP-311366-21

### Question

Whether

- i. the current use of the existing agricultural shed to house pigs is a change of use and
  - ii. the additional floor area, the construction of slatted tanks, the raised ground level and the addition of concrete ramp
- is or is not development or is or is not exempted development.

### Location

Killlugger Farm, Killlugger, Killinick, Co. Wexford

### Declaration

Planning Authority

Wexford County Council

Planning Authority Reg. Ref.

20081365

Applicant for Declaration

Wexford County Council

Planning Authority Decision

No declaration

### Referral

<b>Referred by</b>	Wexford County Council
<b>Owner/ Occupier</b>	Premier Pigs Limited
<b>Observer(s)</b>	Alice Clarke; Marian and Thomas Boggan; Katherine Bail and others; Peg Wilson and others.
<b>Date of Site Inspection</b>	29 <sup>th</sup> September 2022
<b>Inspector</b>	Una O'Neill

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## 1.0 Site Location and Description

- 1.1. The subject site is location in a rural area, in the townland of Killuger, Killinick, in Co. Wexford. The site is located off the N25 Wexford to Rosslare Road. There is an existing short laneway leading to the farm complex and a dwelling house.
- 1.2. There are a number of large sheds within the farmyard complex. The shed subject of this referral is located in the southeast corner of the farmyard.

## 2.0 The Question

- 2.1. The original question as posed by Wexford County Council in their referral submitted to ABP on 8<sup>th</sup> September 2021 is as follows:
  - Does the current use of the existing agricultural shed situated in the southeast corner of the farm to house pigs require a change of use planning permission?
  - Do the development works carried out to this shed including the additional floor area, the construction of the slatted tanks, the raised ground level and the addition of a concrete ramp require retention planning permission?
- 2.2. I note the PA in a further submission modified the referral question. I consider the follow is the question to be addressed by the Board.

Whether

- i. the current use of the existing agricultural shed to house pigs is or is not development or is or is not exempted development
- ii. the additional floor area constructed, the construction of slatted tanks, the raised ground level and the addition of concrete ramp is or is not development or is or is not exempted development.

## 3.0 Planning Authority Declaration

### 3.1. Declaration

No declaration issued as referral is being made directly by Wexford County Council.

## 4.0 Planning History

PA Reg Ref 20081365 - Permission GRANTED in 2008 for the construction of a new agricultural shed, with stated gross floor area of 1012 sqm and ancillary site works, on 16<sup>th</sup> July 2008. [This permitted shed is the subject of this referral].

PA Reg Ref 20100598 – Permission GRANTED on 27<sup>th</sup> July 2010 for the construction of an agricultural shed. [This shed is located to the north of the shed that is the subject of this referral].

PA Reg Ref 20032095 – Permission GRANTED on 13<sup>th</sup> August 2003 for the construction of an agricultural shed. [This shed is located to the west of the shed that is the subject of this referral].

EXD00824 – Declaration of Exempted Development decision issued on 4<sup>th</sup> September 2020. Change of use from Class 6 to Class 7, relating to cattle sheds at Killuger, Killinick, Co. Wexford. Is development and is not exempted development.

[This section 5 application was made by Alice Clarke of Tomhaggard, Co. Wexford and relates to the sheds on the farm complex, including the shed that is subject of this referral. The question was asked whether planning permission is required to change agricultural shed from class 6 to class 7].

## 5.0 Policy Context

### 5.1. Wexford County Development Plan 2022-2028

Chapter 6, Economic Development Strategy - Section 6.7.6.2 Agriculture

Development:

- Objective ED99: To facilitate the development of sustainable agricultural practices and facilities within the county, subject to complying with best practice guidance, normal planning and environmental criteria and the development management standards in Volume 2.
- Objective ED101: To facilitate the modernisation of agriculture and to encourage best practice in the design and construction of new agricultural buildings and installations to protect the environment, natural and built heritage and residential

amenity. Planning applications for new agricultural structures must clearly outline the use of the structure (livestock / equine / pig / poultry / storage) subject to Objectives ED97 and ED98.

- Objective ED103: Intensive agriculture units will only be considered where it is clearly demonstrated by the applicant to the Council that the proposed development will not give rise to negative impacts on animal welfare, the environment, natural or built heritage or residential amenity. The scale and intensity of operations, including the cumulative impact of similar type developments in close proximity, shall be clearly detailed in the application and shall inform the assessment. All applications for such development shall be required to demonstrate that the proposal complies with Objective ED97 and Objective ED98 and

- Is located more than 500 metres from any residential property not located on the holding, or at a greater distance if there is potential for significant impacts on residential amenity, particularly in terms of odour.

- An assessment and modelling of odour has taken place where required.

#### Volume 2 Development Management Manual

- Section 8.8.4 Agricultural Waste: Agricultural waste shall be managed in an environmentally sustainable manner in accordance with the principles set by the Rural Environment Protection Scheme, the Farm Waste Management Scheme and relevant EU and national legislation, in particular, the EC Good Agricultural Practice for the Protection of Waters Regulations 2017 (SI 605 of 2017).

## 5.2. **Natural Heritage Designations**

The site is located 1.6km west of Wexford Harbour and Slobs proposed NHA and is 1.7km west of Wexford Harbour and Slobs SPA (004076). The site is 3.8km southwest of Slaney River Valley SAC (000781).

## 6.0 The Referral

### 6.1. Planning Authority's (Referrer's) Case

- The referral pertains to an agricultural shed in the southeast corner of the existing farm. Under Section 5(4) of the Act, the referral related to two points:
  - Does the current use of the existing agricultural shed situated in the southeast corner of the farm to house pigs require a change of use planning permission?
  - Does the development works carried out to this shed including the additional floor area, the construction of slatted tanks, the raised ground level, and the addition of a concrete ramp require retention planning permission?
- The most recent planning permission was in 2008 (ref 20081365, for 1012sqm new agricultural shed). The shed was to be constructed to ground level, as per plans. No slatted tanks, raised floor level, or access ramp was shown on the plans. The shed was constructed 677sqm larger than permitted.
- Purpose is to determine if the current use is development which requires the benefit of a change of use planning permission. And do the alterations to the shed require planning permission for retention.

### 6.2. Owner/Occupier's Response

An Bord Pleanála circulated this referral to Premier Pigs Limited on the 28<sup>th</sup> September 2021. A submission from Sheehan Planning on behalf of Premier Pigs Limited was received by ABP on 26<sup>th</sup> October 2021, which was recirculated to all observers in the interests of natural justice. This submission is summarised as follows:

- The current use of the shed to house pigs is not development, and even if it is considered to represent development, it is exempted development.
- Sheehan Planning has not measured the shed but is advised that it was completed in 2009, save for the later addition of a ramp and internal slatted tanks. Any 2009 works are out of time for enforcement.

- Requiring the Board to determine whether retention permission is required is not a proper planning question for a Section 5.
- The agricultural shed (including the later slatted unit and access ramp) is in use for housing of pigs, which comes within definition of agriculture. This use for housing of pigs is not inconsistent with any planning conditions. Section 4(1)(a) is also applicable.
- In relation to Section 4(4), Sheehan Planning state they are advised that the scale of the activity on the farm is significantly below the Environmental Impact Assessment (EIA) threshold for rearing of pigs. In order for Section 4(4) to apply an EIA must actually be required for the activities on the farm and it is not sufficient merely that a screening for EIA be undertaken. There is no evidence that EIA or Appropriate Assessment (AA) would be required for activities on the farm.
- The use is exempted development under Section 4(1) of the 2000 Act.
- Internal work of slatted tank and raising of ground floor level has taken place. External works relate to the access ramp. These works come within Section 4(1)(h) of the Act as they affect only the interior to the structure and do not materially affect the external appearance of the structure (a farm shed situated within a farmyard context).
- The planning status of the shed is not relevant to the exemptions claimed as the exemptions derive from statute and are not constrained by anything within that statute or by the provision of the Planning and Development Regulations, which is secondary legislation.

### 6.3. Observer Submissions

#### 6.3.1. Observer Submission from Alice Clarke

ABP circulated this referral on 6<sup>th</sup> October 2021 to Alice Clarke, who had submitted a clarification to Wexford County Council in relation to this referral. Her submission was received from ABP on 26<sup>th</sup> October 2021 and is summarised as follows:

- WCC consider this development is not exempt and have yet to act on their decision, instead opting for an enforcement notice for the installation of slats and a loading ramp.

- The environment section of the council was expected to take a case in relation to foul smells that have been ongoing from some time, but this has been deferred.
- Will the 7 year enforcement rule apply if the planning permission regulations are not enforced by 2024?
- Copy of newspaper article enclosed and correspondence with planners.
- The legislation is EU derived and statute binding for environmental protection and applied to all pig housing developments.

### 6.3.2. **Observer Submission from Peg Wilson and Others (signed by 118 others)**

This submission was received by ABP on 4<sup>th</sup> October 2021 and is summarised as follows:

- Concerns raised with the council since 2017 in relation to both planning and environmental matters. WCC closed the case in November 2017 as they were satisfied that there was no unauthorised development at the site.
- In April 2020 a warning letter was issued in relation to the slats and ramps.
- A S5 referral, ref EXD00824, by WCC which stated change of use from Class 6 to Class 7 was not exempted development.
- There are other planning issues: site is less than 100m from Rosslare Road N25; development exceeds 8m in height; shed far exceeds 1012sqm permitted; a measurement from Steve Gooden indicates the shed is 1770sqm.
- A number of modifications and upgrades have been undertaken to amend the former cattle shed to its current use as a commercial scale pig operation, including: extractor fans releasing gases, including ammonia, methane, and hydrogen sulphide, and fumes; ramp, slatted sheds, bioproducts feed system, and several silos. No planning permissions for these modifications exist.
- Planning conditions of the permission have been breached, including condition to manage activity so as not to cause environmental pollution. Potential on site to extend pigs into other sheds.
- Concern in relation to release of dangerous gases and impact on human health.

- The development is 350m from a bore-hole water supply water to the local scheme.
- Potential impact on health, air, water supplies, landscape, fauna and flora.
- Overall serious impact on residential amenity – smells when windows opened in neighbouring homes; hanging washing on clothes lines no longer possible; difficult to maintain and upkeep gardens due to smells; entertaining outdoors in gardens an issue due to smells; some residents vacated homes in the summer due to the smells; some residents have complained about the horrific squealing of pigs. Overall devaluation of homes in the area.
- Significant traffic increase due to desludging activity associated with commercial scale piggery.
- 40-50 houses within 1km radius and so is not a rural agricultural setting. Also several small businesses in the area.
- Solar panels on roof also have no permission.
- No material change of use was proposed from previous established use by any of the applications submitted and approved.

### 6.3.3. **Observer Submission from Katherine Bail and Others (signed by two others)**

This submission was received by ABP on 4<sup>th</sup> October 2021 and is summarised as follows:

- The commercial scale pig operation has severely impacted lives and property, in relation to air quality and environmental pollution, and unknown impact from emissions on health long term.
- Obnoxious smells, increase in flies and vermin.
- Homes have been devalued.
- Extractor fans and emission of gases – impacts on human health.
- No permission granted for change of use from cattle to pigs.
- Modifications and upgrades to the building to accommodate the pigs do not have permission.

- Specific pig modification not mentioned in planning permission granted, ref 20081365. Not the condition relating to the document referenced from Dept of Ag and Food Size requirements were not met for pigs.
- No material change of use has ever been applied for or permitted.
- Earlier permissions related to emissions from cows, not pigs.
- Concern relating to proximity to water bore hole on the R739, 350m from the pig operation.
- Note report from Environment Section of WCC states they have no issues with management of pig facility and with their environmental compliance; report states EIA threshold not being met; report notes retention for authorised works would likely be acceptable.
- Slurry and monitoring of waste and other environmental implications of using the site as an intensive pig finishing unit have never been properly assessed.

#### 6.3.4. **Response from Marian and Thomas Boggan**

This submission was received by ABP on 1<sup>st</sup> October 2021:

- Agricultural shed was used for cattle and never for intensive pig farming.
- Use for pigs commenced in August 2017.
- Complaints made between 2017 and 2020 and council maintained no unauthorised development has taken place and change of use was exempt.
- Section 5 submitted in relation to change of use from class 6 to class 7 and deemed not exempt.
- Many alterations made to the building without planning permission.
- Appendix 110-12 – information from enforcement file, including building dimension.
- Appendix 4, Planning Enforcement Report, dated 8.11.17.
- No assessment of odour nuisance, air pollution or of public water source or private wells in the area.
- WCC in past said no change of use has occurred.

- There has been a change from ordinary agricultural purposes and not intensive agriculture such as pigs or poultry.
- Pre app with Killugger Farm/Premier Pigs and WCC took place but details of meeting not released.
- Queries to WCC resulted in statements that no authorised development has taken place and change of use exempt.
- A third party sent in a section 5 asking if change of use from class 6 to class 7 is required and declaration issued stating not exempt.
- Many alterations have been made to the shed for which no permission has been granted 14 extractor/ventilation fans in the roof; raised floor with slatted tanks; access ramp; solar panels on adjacent shed; large feed silos.
- Capacity of shed is greater than 2000 finishing pigs. Possible requires an EIA and licence from EPA. The EPA state they cannot take any action as there is an ongoing planning issue.
- Dwelling house is 350m as crow flies from the site. Since 2017 have had to live with vile odours, possible air pollution, extra flies etc. Concern re proximity of 350m from site to existing public water bore hole.

#### 6.4. Further Responses

##### 6.4.1. Further Response of the Planning Authority to submission from Sheehan Planning on behalf of Premier Pigs Ltd – received on 17<sup>th</sup> November 2021

A response from Wexford County Council (WCC) in relation to the owners submission from Sheehan Planning was received by ABP on 17<sup>th</sup> November 2021. The further response is summarised as follows:

- Purpose of the referral is to determine whether the current use of the subject agricultural shed to house pigs is or is not development or is or is not exempted development. Secondly it is to determine if the development works carried out to the shed including the additional floor area, the construction of slatted tanks, the raised ground level, and the addition of a concrete ramp is or is not development or is or is not exempted development.

- The agricultural shed constructed was not constructed in accordance with the dimensions submitted with the planning permission for the shed, the floor area being approx. two thirds larger (677 sqm) than that permitted.
- Clarification is being sought regarding the exempt development status of the more recent alterations to the shed without a grant of planning permission, including the addition of slatted tanks inside the shed and construction of a large concrete ramp outside the shed. The floor area of the shed has been raised by 2m above ground level in order to incorporate slatted tanks directly below where the pigs are housed.
- The concrete ramp was constructed for movement of the pigs in and out of the shed. These works are not confined to the interior of the shed.
- The housing of pigs results in effluents and soiled water which cannot by their nature be contained within the structure itself.
- The PA considers that Section 4(1)(h) of the Planning and Development Act 2000 as amended is not applicable in relation to the slatted tanks and concrete ramp.

**6.4.2. Further Response from Peg Wilson to submission from Sheehan Planning on behalf of Premier Pigs Ltd – received on 11<sup>th</sup> November 2021**

- The issue of adherence and compliance to planning has not been addressed.
- The farm was a working cattle farm used primarily for over wintering of cattle in a straw based shed prior to being bought by Premier Pigs Ltd in 2017.
- A change of use from class 6 to class 7 is required.
- The sheds have been dramatically altered without planning to include silos, slurry tank, and solar panels.
- Negative impact on residents in the area from horrendous smells, increase in number of flies and increase in vermin.
- Request a full environmental assessment be carried out to assess the impact of this farm on health of residents in area and in terms of air pollution, water pollution and flora and fauna.

**6.4.3. Further Response from Marian and Thomas Boggan to submission from Sheehan Planning on behalf of Premier Pigs Ltd – received on 16<sup>th</sup> November 2021**

- Shed was used for cattle when built. No permission to change to intensive pig farm. The keeping of poultry or pigs has specific requirements, conditions and controls which do not apply to other agricultural animals.
- Change of use from class 6 to class 7 has occurred.
- Many alterations have been made to the building to make it suitable for pigs.
- The building has the capacity to accommodate over 2000 pigs and as such requires an IPC licence from the EPA.
- EPA has stated that capacity and not the stated number of animals is the relevant factor.
- The site is within the zone of influence of an SAC therefore it is not exempted development. There is a river stream close to the farm, which enters the Sally Stream, then the Drinagh intake which borders the South Slobb lands.
- Shed was constructed larger than was permitted and it is therefore non-compliant with condition 1 of the permission. Retention permission is required.
- Development of slatted sheds, raised floor level and addition of concrete ramp are all developments to convert a class 6 shed to a class 7 shed for the purpose of operating an intensive pig finishing/fattening units and is development and is not exempted development.
- There are houses nearby, 140m to the nearest house; 250m from a pub/restaurant and 300-500m from other businesses.

**6.4.4. Response from Katherine Bail to submission from Sheehan Planning on behalf of Premier Pigs Ltd – received on 16<sup>th</sup> November 2021**

- Unauthorised works to building of extractor fans, ramp, raising of floor level to hold slurry tank, silos to change it from housing cattle to a commercial use as a piggery.

- Planning law allows for rearing of pigs within any building not exceeding more than 75sqm or 100sqm aggregate without a change of use. Shed was never designed to house pigs.
- Past permissions were limited to the class of use on site at the time of their making and was not general agriculture or piggery but the keeping of sheep and cattle.
- There has been no assessment in terms of Wexford Slobs and Harbour SAC.
- Environmental pollution occurring and serious injury of residential amenity, therefore in breach of planning conditions.
- No EIA assessment undertaken.
- Scale of shed breaches planning permission.
- 2100 pigs have been counted on the site. Owner stated to Wexford County Council it was a changeover day, however, it was still a breach. There are places for 2500 pigs in the shed.
- No information in relation to capacity of slurry tanks and monitoring of waste, carcasses and flies.

## 7.0 Statutory Provisions

### 7.1. Planning and Development Act, 2000

**Section 2(1)** of the Planning and Development Acts 2000 (as amended) states

In this Act, except where the context requires otherwise –

.....

“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;

“development” has the meaning assigned to it by section 3, and “develop” shall be construed accordingly.

“works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal ...

**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.

**Section 4** of the Act 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;

....

(h) development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures;

.....

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

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

**Article 6(3)** of the Regulations states that: 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.

### **Schedule 2, Part 3, Exempted Development - Rural**

- Classes 6 - 10 provides exemptions for Agricultural Structures.

**Article 9 (1)** provides: 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—

(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.

(c) if it is development to which Part 10 applies, unless the development is required by or under any statutory provision (other than the Act or these Regulations) to comply with procedures for the purpose of giving effect to the Council Directive.

### **Schedule 5, Development for the Purposes of Part 10**

**Part 1, 17** - Installations for the intensive rearing of poultry or pigs with more than-

...

(b) 3,000 places for production pigs (over 30 kilograms), or

(c) 900 places for sows

## **8.0 Assessment**

### **8.1. Introduction**

- 8.1.1. The referral question relates to an agricultural shed within an existing farmyard complex. There are a number of other sheds within the complex, with the referral question relating to the shed in the southeast corner of the farmyard.

- 8.1.2. The shed in question was granted planning permission in 2008, under PA reg ref 20081365. The description of development was for the construction of an agricultural shed and ancillary site works. The stated gross floor area of the shed was 1012 sqm. The submitted floor plans did not indicate what the agricultural shed was to be used for. I note no conditions were attached in terms of what was to be stored in the agricultural shed.
- 8.1.3. As per section 2, the reformulated question for this referral is as follows:
- (i) Whether the current use of the subject agricultural shed to house pigs is or is not development or is or is not exempted development.
  - (ii) If the development works carried out to this shed including the additional floor area, the construction of slatted tanks, the raised ground level and the addition of a concrete ramp is or is not development or is or is not exempted development.
- 8.1.4. It should be stated at the outset that the purpose of this referral is not to determine the acceptability or otherwise of the use of the shed for pigs 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.
- 8.1.5. The issue of enforcement, where it arises, is a matter for the planning authority. Issues relating to licencing and pollution control are a matter for the EPA and the Department of Agriculture.
- 8.1.6. In assessing the merits of the case I have reviewed previous relevant declarations made by the Board.
- 8.1.7. Wexford County Council has made the referral in accordance with the requirements of Section 127 of the Planning and Development Act 2000 (as amended).

## 8.2. **Is or is not development**

- 8.2.1. I address in turn each of the two parts of the question:

Whether

- i. the current use of the existing agricultural shed to house pigs is a change of use;
- ii. the additional floor area, the construction of slatted tanks, the raised ground level and the addition of concrete ramp

is or is not development.

### **Use of Existing Agricultural Shed**

- 8.2.2. With regard to use, I note the shed was permitted for agricultural purposes under PA Reg Ref 20081365, with a stated floor area of 1012sq. The description of development was permission for an agricultural shed. There was nothing indicated on the plans or in the planning application form as to what the shed was to be used for and no conditions in this regard were attached. Part (i) of Wexford County Council's question relates solely to the use of the shed for the housing of pigs and asks whether a change of use has occurred from the permitted agricultural use.
- 8.2.3. Section 3 (1) of the Act defines 'agriculture' as including 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.
- 8.2.4. In terms of use, the shed was permitted for agricultural use and is being used for an agricultural use as defined under Section 3(1) of the Act, whereby agriculture includes 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 breeding and rearing of pigs is considered an agricultural use, therefore no change of use has occurred on the site.
- 8.2.5. The question arises in addressing change of use, as to whether an intensification of use has occurred, which would be considered a material change of use and therefore development. The permitted agricultural shed was 1012sqm in area and as per the PA's measurements, the constructed floor area of the shed is greater in area than what was permitted, being an additional 677sqm in size, which is 67% larger than permitted. I am of the view that the increased floor area would have given rise to additional planning considerations in relation to issues such as noise, odour and sensitivity of the receiving environment. Given the significant increase in floor area over that which was permitted, the capacity of the shed has increased and I consider it reasonable to conclude that an intensification of use has occurred and therefore a material change of use has occurred, which constitutes development, as per Section

3(1) of the P&D Act 2000 (as amended). Given development has occurred, the next question is whether it is or is not exempted development. I address this issue under Section 8.3 hereunder.

- 8.2.6. For clarity this part of the referral question relates solely to the use of the shed and not any other works that may or may not have taken place on the site.

**Construction of additional floor area to an existing shed, the construction of slatted tanks, the raised ground level and the addition of concrete ramp**

- 8.2.7. Permission was granted for an agricultural shed, with a stated floor area of 1012sqm, with plans indicating construction at ground level and no provision for slatted sheds or a concrete ramp.
- 8.2.8. The PA states an additional floor area has been constructed over that which was permitted, in addition to slatted tanks, a raised floor level, and access ramp. Pictures are attached with the referral. The Sheehan Planning submission on behalf of the owner state Sheehan Planning has not measured the shed but is advised that it was completed in 2009, save for the later addition of a ramp and internal slatted tanks and that any 2009 works are out of time for enforcement.
- 8.2.9. Upon site inspection, I noted the internal floor area of the shed has been raised to +1 level within the shed, with an internal corridor within the +1 level, off which are heavy doors, which lead into walkways off which are pig pens. The ground level has been converted into tanks with slats above, with access to the building/+1 level via a built up ramp and retaining wall on one side of the building and a stairwell on the other side.
- 8.2.10. Having regard to Section 2(1) of the Planning and Development Act 2000 (as amended) and the definition of works and Section 3 (1) of the Act and the definition of development, the construction of an additional floor area over that which was permitted to an existing shed, construction of slatted tanks, the raising of the ground level, and the construction of an external ramp to the building, all constitute works and are considered development. The next question relates to whether the works described is or is not exempted development. I discuss this hereunder under Section 8.3

### 8.3. Is or is not exempted development

#### Use of Existing Agricultural Shed

- 8.3.1. The intensification of use of the shed, as noted above, is considered to constitute a material change of use and therefore development.
- 8.3.2. Section 4.—(1) of the Act states: The following shall be exempted development 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;
- 8.3.3. The development that has occurred (intensified housing of pigs) is still for the purposes of agriculture. By reference to Section 4(1), the use is development and is exempted development.
- 8.3.4. I consider here Section 4(4) of the Act which states, 'Notwithstanding paragraphs (a), (i), (ia) and (l) of subsection (1) and any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required'.
- 8.3.5. The development comprising the housing of pigs is of a class (class 17) specified within Part 1, Schedule 5 of the Planning and Development Regulations 2001 (as amended). An EIA is required in installations for the intensive rearing of pigs where there are 3000 places for production pigs (over 30kg) or 900 places for sows. Part 2 Class 1(e)(ii) states 'relating to installations for the intensive rearing of pigs not included in Part 1 of Schedule 5, which would have more than 2000 spaces for production of pigs (over 30kg) in a finishing unit, more than 400 places for sows in a breeding under or more than 200 places for sows in an integrated unit.
- 8.3.6. An observer to the referral includes copies of documentation relating to the enforcement file from Wexford County Council, including a copy of the 'Planning Enforcement Report', which states 'the approximate number of pigs being kept at the farm was noted during a site inspection on 25.10.2017. It is concluded that the current pig farm activity is in keeping with the approved agricultural use of the shed'. I note the submitted report does not include the actual number of pigs and the information in the planning enforcement file is now five years old. I note another

observer indicates 2100 pigs were counted as part of the enforcement file. The submission from Sheehan Planning on behalf of the owner states they are 'advised that the scale of the activity on the farm is significantly below the Environmental Impact Assessment (EIA) threshold for rearing of pigs', and further states 'in order for Section 4(4) to apply an EIA must actually be required for the activities on the farm and it is not sufficient merely that a screening for EIA be undertaken. There is no evidence that EIA or Appropriate Assessment (AA) would be required for activities on the farm'.

8.3.7. No verified information exists on the file in relation to the number of pigs being stored in the shed in question and the owner has in their submission from Sheehan Planning not submitted these details. There is not therefore enough information on file to conclude that EIA is not required, therefore it cannot be concluded that the development is exempted development.

8.3.8. In relation to AA, the Habitats Directive deals with the Conservation of Natural Habitats and of Wild Fauna and Flora throughout the European Union. Article 6(3) of this Directive requires that any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. The competent authority must be satisfied that the proposal will not adversely affect the integrity of the European site before consent can be given. I note the site is not located within or adjacent to a European Site. There is a stream 187m south of the farmyard. Wexford Harbour and Slob SPA is the closest European site to the farmyard in question and is a distance of 1.7km east of the site (as the crow flies). Overall, there is insufficient information on file for me to be satisfied that the proposal will not adversely affect the integrity of a European site, therefore it cannot be concluded that the development is exempted development.

**Construction of additional floor area to an existing shed, the construction of slatted tanks, the raised ground level and the addition of concrete ramp**

8.3.9. The construction of an additional floor area to the shed, above what was permitted, constitutes development and is not exempted development.

- 8.3.10. In relation to the construction of the slatted sheds and the raised ground level, consideration of Section 4(1)(h) is required, ie the development is exempt if it is 'development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures'. The construction of the effluent storage tanks at ground level with slats and animals stored above are all works internal to the shed, therefore I consider Section 4(1)(h) applies.
- 8.3.11. With regard to the construction of the ramp, I consider this does not come within the scope of Section 4(1)(h), as it is not a part of the structure of the shed, it is a separate structure, added to the side of the shed. The ramp is development, which in my opinion is not exempt development.

## 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 the use of an agricultural building to house pigs is or is not development or is or is not exempted development; and whether the additional floor area, the construction of slatted tanks, the raised ground level and the addition of concrete ramp is or is not development or is or is not exempted development.

**AND WHEREAS** Wexford County Council requested a declaration on this question from An Bord Pleanála on the 8<sup>th</sup> day of September 2022:

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

- (a) Section 2(1) of the Planning and Development Act, 2000, as amended,

- (b) Section 3(1) of the Planning and Development Act, 2000,
- (c) Section 4(1)(a) of the Planning and Development Act, 2000, as amended,
- (d) Section 4(1)(h) of the Planning and Development Act, 2000, as amended, and
- (e) the planning history of the site,

**AND WHEREAS** An Bord Pleanála has concluded that:

- (a) The use of the subject shed for agricultural use, which includes the storage of pigs, is an intensification of use based on the increased floor area of the shed above the permitted size of development, which amounts to a material change of use and hence development,
- (b) Having regard to Section 4(4) of the Act and the information on file, it is not clear that an environmental impact assessment or an appropriate assessment of the development is not required, therefore the development cannot avail of any exemptions that might otherwise be available for use of a building for agricultural purposes under Section 4(1)(a) of the Planning and Development Act, 2000, as amended, or under the Planning and Development Regulations, 2001, as amended.
- (c) The construction of additional floor area and construction of a ramp is development and is not exempted development;
- (d) The construction of slatted tanks and raising of the ground level is development and is exempted development;

**NOW THEREFORE** An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3) (a) of the 2000 Act, hereby decides that a material change of use has occurred that is development and is not exempted development; the construction of additional floor area to a permitted shed and construction of a ramp is development and is not exempted

development; and the construction of slatted tanks and the raising of the floor area internal to the building is development and is exempted development.

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Una O'Neill  
Senior Planning Inspector

21<sup>st</sup> November 2022