



An  
Bord  
Pleanála

## Inspector's Report ABP-314443-22

### Question

Whether the reduction in floorspace of an existing structure from c. 244sq.m to 190sq.m and the use of the resulting building for agricultural purposes, specifically as a stable block, is or is not development or is or is not exempted development

### Location

Coghlanstown East, Ballymore  
Eustace, Co. Kildare

### Declaration

Planning Authority

Kildare County Council

Planning Authority Reg. Ref.

ED/00931

Applicant for Declaration

Matthew Buckley

Planning Authority Decision

Is not exempted development

### Referral

Referred by

Applicant

Owner/Occupier

Matthew Buckley

Observer(s)

None

Date of Site Inspection

26<sup>th</sup> May 2023

Inspector

Philip Maguire

## 1.0 Site Location and Description

- 1.1. Located in the townland of Coghlanstown East, in rural County Kildare, the referral site is c. 1.5km west of Ballymore Eustace. It is situated along and north of a local secondary road (L6048). The surrounding area is characterised by gently undulating farmland with some ribbon development to the west. The River Liffey is to the south.
- 1.2. The referral site consists of a large agricultural field. It is irregular shaped, predominantly under grass and dry underfoot. The site has a stated area of 1.887ha and road frontage of c. 85m. Site topography rises initially above road level and gradually falls back to grade towards the northern boundary. The roadside boundary is defined by a grass bank and stud rail fencing. Access is via a recessed gate opening towards the eastern end. The western boundary is defined by mature trees and hedgerow. Northern and eastern boundaries are defined by post and rail fencing.
- 1.3. Similar post and rail fencing frames an access track to a five-bay structure to the north of the site, albeit unfinished. The structure is of block construction with numerous openings to front, rear and side elevations. The structure has a partially completed pitched roof with rafters exposed, and projecting elements to the front and rear. Each gable end includes unglazed window openings. A decorative turret is located centrally along the ridgeline. Two horses were observed on the referral site during inspection.

## 2.0 The Question

- 2.1. The question relates to the reduction in floor space of an existing structure and its resultant use for agricultural purposes, specifically as a stable block. The matter has been referred by the applicant for the declaration. The original question as set out in Section 4, Question 7 of the application form to the Planning Authority was:

*'Whether the reduction in floorspace of an existing structure from circa 244 square meters to 190 square meters and the use of the resulting building for agricultural purposes, specifically as a stable block, is development or is exempted development under the Planning and Development Regulations 2001 (as amended), Schedule 2, Part 3, Class 6.'*

- 2.2. The referral documentation includes a cover letter and report prepared by Farry Town Planning and architectural drawings prepared by CGA Consulting.

- 2.3. The drawings illustrate the existing structure. It is setback some 125m from the road edge (shown as 0.0mTBM) and 126m from the nearest house. It is orientated due south and the finished floor level is illustrated as +0.3m. As noted, it is a five-bay pitched roof structure. It has a footprint of 24.013m by 10.017m. The ridge height is shown as 8.310m. The top of the decorative turret is shown as 10.850m. The internal and external areas are illustrated as 226sq.m and 244.5sq.m respectively. The drawings indicate that the roof and openings are incomplete, which I can corroborate.
- 2.4. The submitted drawings also illustrate the proposed structure following the demolition of a bay to the western end and the ridgeline turret. The resultant structure would have a footprint of 19.000m by 10.017m. The internal and external areas are illustrated as 178sq.m and 190sq.m respectively. The openings in the front and rear elevations are blocked up bar the large door openings, illustrated as solid timber stable doors, with new windows inserted in the projections above. The eastern elevation is unchanged bar the insertion of solid timber stable doors and a new window. The western elevation replicates the demolished elevation in terms of window and door arrangement, with solid timber stable doors and a new window also inserted. The drawings indicate that the structure will have a grey slate tiled roof and natural colour rendered walls. Internally, the structure is laid out with 3 no. horse boxes and a store.
- 2.5. I note that the cover letter submitted along with the application form to the Planning Authority includes “the removal of the ridge line turret” within the stated referral question. Reference to the turret’s removal is also made in the subject referral documentation. Removal of the turret does not form part of the substantive issue and I do not consider its inclusion or exclusion will fundamentally alter the question posed.

### **3.0 Planning Authority Declaration**

#### **3.1. Declaration**

- 3.1.1. The Planning Authority issued a declaration on 18<sup>th</sup> August 2022 which stated:

*The development is a type of development which falls within the provisions of Class 6 of Part 3 of Schedule 2 of the Planning and Development Regulations 2001 (as amended) as provided for under Article 6 of the Planning and Development Regulations 2001 (as amended). However, that exemption is restricted by Article 9(1)*

*which states that development to which Article 6 relates shall not be exempted development for the purposes of the Act—(a) if the carrying out of such development would – (iii) endanger public safety by reason of traffic hazard or obstruction of road users. The proposed development would lead to an intensification of use of the existing sub-standard entrance which would therefore endanger public safety by reason of traffic hazard.*

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

- Planning Report (25/03/22): It concluded that the proposal comprised works which constituted development and this development may be exempt under Class 6 subject to further information to demonstrate that the restriction under Article 9(1)(a)(iii) did not apply. Further Information was sought on this basis.
- Planning Report (17/08/22): Basis for the Planning Authority decision. It noted the applicant's Further Information response and considered that the proposal would generate additional trips to the site via a substandard entrance and would therefore intensify an existing traffic hazard. It concluded that the proposal is development and not exempted development by virtue of the restriction under Article 9(1)(a)(iii).

### 4.0 Planning History

#### 4.1. Referral site:

**PA ref. 21/1133:** Permission **refused** in July 2022 for retention and completion of partially completed stables. The Planning Authority considered that the proposed development would endanger public safety by reason of a traffic hazard and obstruction of road users. Having regard to its height and design, they also considered that it would negatively impact on landscape character and seriously injure the amenities of the area. The decision is currently on appeal under **ABP-314414-22**.

**PA ref. UD/7565:** Enforcement Notice **served** in March 2021 in respect of an agricultural 'American Barn' type structure for the housing of horses with a floor area of c. 260sq.m. Remedial measures required *inter alia* the demolition of the stables by September 2021. Legal proceedings commenced in May 2022 for a failure to comply.

## **5.0 Policy Context**

### **5.1. Kildare County Development Plan 2023-2029**

- 5.1.1. The current Development Plan came into effect on 28<sup>th</sup> January 2023. The Planning Authority decision of 18<sup>th</sup> August 2022 was made under the previous Plan for the period 2017-2023. This referral shall be determined under the current Plan.
- 5.1.2. The site is located in a rural area outwith a designated settlement. Relevant policies and objectives are set out under Chapter 13 (Landscape, Recreation and Amenity).

### **5.2. Natural Heritage Designations**

- 5.2.1. None relevant.

## **6.0 The Referral**

### **6.1. Referrer's Case**

- 6.1.1. The referrer's case can be summarised as follows:
- It is stated that the referral made pursuant to s. 5(3)(b) of the Planning Act in respect of the failure of Kildare County Council to issue a declaration within the statutory period.
  - It is submitted that the subject land is currently used for agricultural purposes and the Board is invited to expressly acknowledge that this use on which the stable block is located does not require planning permission. Reference is made to s. 4(1)(a) of the Planning Act and the definition of agriculture under section 2.
  - It is noted that a number of buildings and structures which are required to accommodate agricultural activities on the subject landholding do not require permission. Reference is made to Classes 6, 9 and 10 of Schedule 2, Part 3 of the Planning Regulations.
  - It is set out that statutory provisions cannot be implicitly changed by inferior instruments such as regulations and hence Article 9 of the Planning Regulations does not affect "section 4(1)(h)" of the Planning Act so as to disentitle the referrer

from the right to use his land for farming purposes without consent. Reference is made to ABP refs. 06F.RL2162 and 17.RL2748 for precedent.

- The Board are invited to accept that the subject landholding is wholly lawful for agricultural activities and that its use for farming purposes can continue.
- It is submitted that no part of planning law stipulates that farm structures must be located on an agricultural holding to be exempt. Reference is made to ABP ref. 23.RL3147 for precedent.
- It is suggested that the partial demolition of the existing structure is capable of comprising exempted development under Class 50 of the Planning Regulations. Reference is made to ABP ref. 06S.RL3043 for precedent.
- It is stated that the Council's objection relates to an access which has historically served the subject site, and which can continue to facilitate its use for farming purposes. Reference is made to ABP-303326-18.
- It is indicated that that the Council misinterpreted Article 9(1)(a) of the Planning Regulations when intimating that the exemption provisions under Article 6 could be withdrawn in the circumstances identified in the Further Information request. Reference is made to *Cunningham v. An Bord Pleanála* for legal precedent.
- It is submitted that it would not be legally appropriate for the Board to conclude that planning permission is required for the stable block on the basis existing sightlines fall short of the requirements of DN-GEO-0360, especially as the existing entrance arrangements which serve the landholding do not form part of the referral.
- Finally, it is requested that the Board determine that the subject agricultural building comprises exempted development under the Planning Regulations and that this does not require permission under the Planning Act.

## **6.2. Planning Authority Response**

6.2.1. The Planning Authority's response can be summarised as follows:

- It notes that the agent's referral letter states that Kildare County Council failed to reach a decision on the question posed in the Section 5 request but states that the Council did issue a declaration within the appropriate period.

- It indicates that the declaration request was received on 21<sup>st</sup> March 2022 and Further Information was sought on 29<sup>th</sup> March 2022. It states that a response to the Further Information request was received on 29<sup>th</sup> July 2022 and a declaration was issued on 18<sup>th</sup> August 2022 which was within the appropriate period.
- Finally, it concludes that Kildare County Council has no further comment or observations to make and directs the Inspector to previous reports and declaration.

## 7.0 Statutory Provisions

7.1. The relevant provisions are set out in the Planning and Development Act 2000 (as amended) ('PDA 2000 or the Act') and the Planning and Development Regulations 2001 (as amended) ('PDR 2001 or the Regulations').

### 7.2. Section 2 – PDA 2000

7.2.1. Section 2(1) provides the following interpretations which are relevant:

**“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;

**“alteration”** includes—

(a) plastering or painting or the removal of plaster or stucco, or

(b) the replacement of a door, window or roof,

that materially alters the external appearance of a structure so as to render the appearance inconsistent with the character of the structure or neighbouring structures;

**“structure”** means *inter alia* 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 where the context so admits, includes the land on, in or under which the structure is situate etc.;

**“unauthorised structure”** means a structure other than—

- (a) a structure which was in existence on 1 October 1964, or
- (b) a structure, the construction, erection or making of which was the subject of a permission for development granted etc., or which exists as a result of the carrying out of exempted development etc.;

**“unauthorised works”** means any works on, in, over or under land commenced on or after 1 October 1964, being development other than—

- (a) exempted development etc., or
- (b) development which is the subject of a permission granted etc., and which is carried out in compliance with that permission or any condition to which that permission is subject;

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

**“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.

### 7.3. **Section 3 – PDA 2000**

#### 7.3.1. Section 3(1)(a) defines “development” as:

*The carrying out of any works in, on, over or under land, or the making of any material change in the use of any land or structures situated on land.*

### 7.4. **Section 4 – PDA 2000**

#### 7.4.1. Section 4(1) provides a list of statutory exemptions including:

*(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.*

## 7.5. **Section 5 – PDA 2000**

7.5.1. Section 5(2)(b) provides that a planning authority shall issue the declaration within 3 weeks of the date of the receipt of the further information.

7.5.2. Section 5(3)(a) provides for a referral of a declaration for review by the Board within 4 weeks of the date of issuing of the declaration. Section 5(3)(b) provides for the referral of the question for decision to the Board within 4 weeks of the declaration due date in the event that no declaration is issued by the Planning Authority.

## 7.6. **Article 6 – PDR 2001**

7.6.1. Article 6 provides (subject to the restrictions in article 9) for the classes of exempted development under column 1 of Parts 1, 2 and 3 of Schedule 2, subject, where applicable, to the conditions and limitations imposed upon such classes as set out in column 2. The referrer makes specific reference to Classes 50 (Pt. 1) and 6 (Pt. 3).

7.6.2. Schedule 2, Part 1, Class 50(a) of the PDR 2001 provides an exemption for:

<b>Column 1</b>	<b>Column 2</b>
<p><b><i>The demolition of a building, or buildings, within the curtilage of—</i></b></p> <p><b><i>(i) a house,</i></b></p> <p><b><i>(ii) an industrial building,</i></b></p> <p><b><i>(iii) a business premises, or</i></b></p> <p><b><i>(iv) a farmyard complex.</i></b></p>	<ol style="list-style-type: none"> <li>1. <i>No such building or buildings shall abut on another building in separate ownership.</i></li> <li>2. <i>The cumulative floor area of any such building, or buildings, shall not exceed:</i> <ol style="list-style-type: none"> <li><i>(a) in the case of a building, or buildings within the curtilage of a house, 40 square metres, and</i></li> <li><i>(b) in all other cases, 100 square metres.</i></li> </ol> </li> <li>3. <i>No such demolition shall be carried out to facilitate development of any class prescribed for the purposes of section 176 of the Act.</i></li> </ol>

7.6.3. Schedule 2, Part 3, Class 6 of the PDR 2001 provides an exemption for:

Column 1	Column 2
<p><b><i>Works consisting of the provision of a roofed structure for the housing of cattle, sheep, goats, donkeys, horses, deer or rabbits, having a gross floor space not exceeding 200 square metres (whether or not by extension of an existing structure), and any ancillary provision for effluent storage.</i></b></p>	<ol style="list-style-type: none"> <li>1. No such structure shall be used for any purpose other than the purpose of agriculture.</li> <li>2. The gross floor space of such structure together with any other such structures situated within the same farmyard complex or within 100 metres of that complex shall not exceed 300 square metres gross floor space in aggregate.</li> <li>3. Effluent storage facilities adequate to serve the structure having regard to its size, use and location shall be constructed in line with Department of Agriculture, Food and Rural Development and Department of the Environment and Local Government requirements and shall have regard to the need to avoid water pollution.</li> <li>4. No such structure shall be situated, and no effluent from such structure shall be stored, within 10 metres of any public road.</li> <li>5. No such structure within 100 metres of any public road shall exceed 8 metres in height.</li> <li>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.</li> <li>7. No unpainted metal sheeting shall be used for roofing or on the external finish of the structure.</li> </ol>

7.6.4. I also note Schedule 2, Part 3, Class 9 of the PDR 2001 provides an exemption for:

<p><b><i>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.</i></b></p>	<ol style="list-style-type: none"> <li>1. <i>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.</i></li> <li>2. <i>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.</i></li> <li>3. <i>No such structure shall be situated within 10 metres of any public road.</i></li> <li>4. <i>No such structure within 100 metres of any public road shall exceed 8 metres in height.</i></li> <li>5. <i>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.</i></li> <li>6. <i>No unpainted metal sheeting shall be used for roofing or on the external finish of the structure.</i></li> </ol>
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## 7.7. Article 9 – PDR 2001

7.7.1. Article 9 imposes specific restrictions on development of classes specified in Parts 1, 2 and 3 of Schedule 2 and in effect de-exempts certain classes of development that would be exempt under normal circumstances. The restrictions under Article 9(1)(a) apply if the carrying out of such development would *inter alia*:

- (iii) endanger public safety by reason of traffic hazard or obstruction of road users,*
- (viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use.*

## **7.8. Precedent Referral Cases**

- 7.8.1. In ABP ref. 08.RL2383 the Board considered whether the extension to an existing horse stables was or was not development or was or was not exempted development. It concluded *inter alia* that by reason of its scale and design, the development could not be deemed an extension to a stables, but is laid out as a dwelling house and therefore, the development does not come within the exempted development provisions of Class 6 of Part 3 of Schedule 2 of the Planning Regulations.
- 7.8.2. In ABP ref. 06S.RL3043 the Board considered whether a stable block and associated storage building was or was not development or was or was not exempted development. The Board considered that the components of the development could be considered separately for the purposes of Class 6 and Class 9 respectively of Part 3, Schedule 2 of the Planning Regulations, and these buildings fell within the specified conditions and limitations on exemption specified in these classes. Furthermore, based on relevant case law including the Supreme Court decision in *Fingal County Council v William P. Keeling and Sons Limited*, the referrer was not precluded from availing of exempted development provisions by reason of the fact that planning permission had previously been obtained for a similar development at this location.
- 7.8.3. The other cases cited by the referrer are also noted but not considered as relevant.

## **7.9. Precedent Judgements**

- 7.9.1. In *Fingal County Council v William P. Keeling and Sons Limited* [2005] 2 IR 108, the courts held that a developer cannot be estopped from making a claim that a development is an exempted development, by reason only of having made an application for permission for retention of that development.
- 7.9.2. In *Horne v Freeney* [1982] IEHC 20, the courts held that a planning permission is indivisible in that it authorises the carrying out of the totality of the permitted works and it is not possible to undertake alterations during the construction simply because the variation would have been exempted development once the building was completed.
- 7.9.3. In *Cunningham v An Bord Pleanála* [2013] IEHC 234, the courts confirmed that the exemption under s. 4(1)(a) of the Planning Act only applies to development (in the more limited sense of that term) which consists of the use of land and buildings for agricultural purposes. It does not apply in the case of the construction of such a

structure. Hogan J. also noted that, taken literally, the construction of a building would constitute development, the use of which could come under the exemption in s.4(1)(a). However, that proposition was rejected as being absurd, given that the logical consequence would be that a farmer could construct any building for agricultural use, irrespective of the impact, such as fire hazard or danger to road users etc. The courts did however emphasise that a traffic hazard must arise as a result of the carrying out of the development and held that the Board misapplied Article 9(1)(iii) of the Planning Regulations, by applying the wrong test in relation to the question of traffic hazard.

## **8.0 Assessment**

### **8.1. Preliminary Points**

- 8.1.1. I note that the subject referral, received on 22<sup>nd</sup> August 2022, states that the Planning Authority failed to issue a declaration within the statutory period and the referral was therefore made pursuant to s. 5(3)(b) of the Planning Act. The Planning Authority have confirmed that a declaration was issued on 18<sup>th</sup> August 2022. This is within the statutory period as required by s. 5(2)(b) of the Act i.e. 3 weeks from the Further Information response of 29<sup>th</sup> July 2022. Having reviewed the issues raised by the referrer, particularly those relating to traffic safety, and having regard to the Planning Authority's declaration and subsequent response, I do not consider that either party has been prejudiced. I will therefore consider this referral under s. 5(3)(a) of the Act.
- 8.1.2. The reduction in floor space of the existing structure to create a modified structure involves a number of interrelated building operations including demolition and construction etc. These alterations, as described in para. 2.4 above, together with the subsequent use of the resulting building, form the substantive issue for consideration.
- 8.1.3. However, in order to answer the referred question, I first must consider the status of the existing structure as described above and then address the proposed alterations.

### **8.2. Existing Structure**

#### Development – *Is or is not...*

- 8.2.1. Having regard to the definition of 'agriculture' which includes the rearing of bloodstock, the building does not involve any change of use or material change of use.

8.2.2. The building itself involved works however, so therefore constitutes development.

Exempted Development – Is or is not...

8.2.3. In the alternative in relation to para. 8.2.1 above, the use of the building for agricultural purposes is exempted development by reference to s. 4(1)(a) of the Planning Act.

8.2.4. In relation to the building itself, as a structure involving works, there is however no exemption under the Planning Act as confirmed in *Cunningham v An Bord Pleanála*.

8.2.5. By reference to the Planning Regulations, Class 6 of Part 3, Schedule 2 provides exemptions for certain agricultural structures, including those for the housing of horses. However, the size limit for such structures is 200sq.m. The existing structure has a stated floor space of 244sq.m so does not fall within the terms of that class.

8.2.6. It may well fall within the conditions and limitations of Class 9 of Part 3, Schedule 2 of the Regulations and be a structure less than 300sq.m but that proposition has not been advanced by the referrer and it does not have the appearance of a store, barn, shed etc. in any event. The facts in ABP ref. 08.RL2383, as cited above, would appear to be somewhat analogous in terms of the scale and design of the existing structure.

8.2.7. The existing structure, therefore, is not exempted development. It is also noted that no planning permission exists for the structure and that it is the subject of a current appeal to the Board under ABP-314414-22. Although I accept that this does not preclude the referrer from seeking a declaration as confirmed in *Fingal v Keeling* etc.

### **8.3. Proposed Alterations**

Development – Is or is not...

8.3.1. The proposed alterations to the structure to reduce the floor space from 244sq.m to 190sq.m constitutes works and is therefore development. This matter is not disputed.

Exempted Development – Is or is not...

8.3.2. The referrer makes reference to s. 4(1)(h) of the Planning Act which provides a broad exemption for works for the maintenance, improvement or 'other alteration of any structure'. It does however include the caveat that works shall not 'materially affect the external appearance of the structure' etc. The proposed alterations, including a significant reduction in floor space and blocking-up of the majority of the existing

openings, will, in my opinion, materially affect the external appearance of the structure etc. Moreover, in accordance with the judgement in *Horne v Freeney*, a development seeking exemption rights, such as under s. 4(1)(h), must first have been completed in accordance with its permission. No permission applies in this instance and therefore the referrer cannot avail of the exemption under s. 4(1)(h) of the Planning Act.

- 8.3.3. The question posed refers explicitly to “Schedule 2, Part 3, Class 6” of the Planning Regulations. I note that Class 6 includes a scenario whereby the exemption may be exercised whether or not ‘by extension of an existing structure’. Significantly, it does not include ‘by reduction of an existing structure’ etc. This would suggest that the ‘works’ are somewhat constrained in this instance notwithstanding the statutory interpretation which I accept includes acts of demolition. I do not consider the referrer can avail of the exemption under Class 6 of Part 3, Schedule 2 in this instance. This exemption, were it to apply, is restricted under Article 9 in any event – see section 8.4.
- 8.3.4. In the supporting documentation, the referrer suggests that the demolition is capable of comprising exempted development under Class 50 of the Regulations and refers to ABP ref. 06S.RL3043 for precedent. Specifically, Class 50(a)(iv) of Part 1, Schedule 2, exempts the demolition of a building within the curtilage of a farmyard complex. I do not accept this interpretation having regard to the Oxford English Dictionary (3<sup>rd</sup> ed.) definitions of ‘farmyard’, ‘complex’ and ‘building’, to which I defer in the absence of a statutory definition. Building being defined as “a structure with a roof and walls”. Complex being “a group of similar buildings or facilities on the same site” and farmyard being “a yard or small area of land surrounding by or next to farm buildings”. There is evidently no buildings or farmyard complex in this instance or curtilage thereof.
- 8.3.5. I have reviewed the referral under ABP ref. 06S.RL3043, as cited above, and whilst it may be somewhat analogous to the present case, I note that a distinction can be drawn between the prevailing set of circumstances and particularly in respect of the planning history of the cited referral and the observed use of the structure for the housing of horses. The referrer cannot avail of the exemption under Class 50(a)(iv) and this exemption, were it to apply, is restricted under Article 9 in any event – see section 8.4.
- 8.3.6. The proposed alterations are not exempted development. It must therefore follow that the subsequent use of the resulting building cannot be exempted development either.

#### 8.4. Restrictions on Exempted Development

- 8.4.1. Any exemptions that would normally apply under Article 6 of the Planning Regulations, including Class 50(a)(iv) of Part 1 and Class 6 of Part 3 of Schedule 2, were they to apply *prima facie* in the present circumstances, would be restricted in this case under Article 9(1)(a)(viii) as they would 'consist of the alteration to an unauthorised structure'.

#### 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 reduction in floorspace of an existing structure from circa 244 square metres to 190 square metres and the use of the resulting building for agricultural purposes, specifically as a stable block, at Coghlanstown East, Ballymore Eustace, County Kildare is or is not development and is or is not exempted development:

**AND WHEREAS** Matthew Buckley requested a declaration on this question from Kildare County Council and the Council issued a declaration on the 18<sup>th</sup> day of August, 2022 stating that the matter was development and was not exempted development:

**AND WHEREAS** Matthew Buckley referred this declaration for review to An Bord Pleanála on the 22<sup>nd</sup> day of August, 2022:

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

- (a) Sections 2(1), 3(1)(a), 4(1)(a), 4(1)(h), 5(3)(a) and 5(3)(b) of the Planning and Development Act, 2000, as amended,



- (b) Articles 6(1), 6(3) and 9(1)(a)(viii) of the Planning and Development Regulations, 2001, as amended,
- (c) Class 50(a)(iv) of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001, as amended;
- (d) Classes 6 and 9 of Part 3 of Schedule 2 of the Planning and Development Regulations, 2001, as amended;
- (e) the documentation on file, including submissions from the referrer and the Planning Authority;
- (f) the planning history, scale and design of the existing structure; and
- (g) relevant precedent referrals and judgments:

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

- (a) The existing structure is development and would not come within the scope of exempted development under section 4(1)(a) of the said Act or Classes 6 or 9 of Part 3 of Schedule 2 of the said Regulations;
- (b) The proposed alterations are development and would not come within the scope of exempted development under section 4(1)(h) of the said Act, or Class 50(a)(iv) of Part 1 or Class 6 of Part 3 of Schedule 2 of the said Regulations;
- (c) The subsequent use of the resulting building for agricultural purposes, specifically as a stable block, is development and would not come within the scope of exempted development under section 4(1)(a) of the said Act.

**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 the reduction in floorspace of an existing structure from circa 244 square metres to 190 square metres and the use of the resulting building for agricultural purposes,

specifically as a stable block, at Coghlanstown East, Ballymore Eustace, County Kildare is development and is not exempted development.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

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Philip Maguire

Planning Inspector

23<sup>rd</sup> August 2023