



An  
Bord  
Pleanála

## Inspector's Report ABP-314916-22

### Question

Whether the construction of a stable building and sand arena for use by the Referrer's family alone, along with the removal of short stretches of hedgerow and two dying/diseased trees which were located on or close by the front boundary of the site and the planting and/or replanting of the removed shrubbery in the same location is or is not development and is or is not exempted development.

### Location

Riverview House, Thomastown, Naas, Co. Kildare

### Declaration

Planning Authority

Kildare County Council

Planning Authority Reg. Ref.

ED/00978

Applicant for Declaration

John Curry and Catriona Howley

Planning Authority Decision

Is not exempted development

**Referral**

**Referred by** John Curry and Catriona Howley

**Owner/ Occupier** John Curry and Catriona Howley

**Observer(s)** None

**Date of Site Inspection** 21<sup>st</sup> September 2023

**Inspector** Ian Boyle

## 1.0 Site Location and Description

- 1.1. The site is situated at Riverview House, Thomastown, Nass, Co. Kildare, W91 TW52. It is roughly 2km south of Carragh and 7km north of Newbridge. It is situated within an area of open countryside within a rural area.
- 1.2. The property has a regular shape covering an area of approximately 0.34ha. It has frontage onto the Thomastown Road (L7087), which has a designated Local Road status. The site accommodates an existing stable block and sand arena for exercising horses. The stable block is roughly 26m from the public road. The arena is demarcated with a traditional style post and rail fence. There is an associated storage area for collecting equestrian waste and used bedding. The remaining area of the property is mainly grassed.
- 1.3. The Referrers own the adjoining property to the west of the application site. This property accommodates a detached dwelling and associated domestic garage. These buildings, like the stable block, are well setback from the public road and screened by a dense hedgerow and small trees / shrubs running along the front (northern) boundary of the site.
- 1.4. There are some detached dwellings to the north of the site, on the far side of the L7087, several of which are on spacious plots of land. The River Liffey runs along the rear (southern) boundary of the site. There is a network of small watercourses and culverted drainage channels serving the wider area which flow into the Liffey. There is a shallow fall across the site from north (higher ground) towards the south (lower ground).
- 1.5. The application comprises the stable building and sand arena, which is for the sole use of the Referrers and their family. It also comprises the removal of a stretch of hedgerow and two dying/diseased trees which were located on, or close to, the front boundary of the site and planting/replanting of this previously removed shrubbery.

## 2.0 The Question

- 2.1. Whether the construction of a stable building and sand arena for use by the Referrers' family alone, along with the removal of short stretches of hedgerow and two dying/diseased trees which were located on or close by the front boundary of the

site and the planting and/or replanting of the removed shrubbery in the same location is or is not development and is or is not exempted development.

### 3.0 Planning Authority Declaration

#### 3.1. Declaration

The Planning Authority stated the question:

*'Whereas a question has arisen as to whether the construction of a stable building and a sand arena, along with the removal of stretches of hedgerow and two dying/ diseased trees, and the planting and/ or replanting of the removed shrubbery in the same location at Riverview House, Thomastown, Carragh, Co. Kildare, is exempted development or is not exempted development.'*

The Planning Authority issued a declaration under Section 5 of *the Planning and Development Act 2000 (as amended)* on 27<sup>th</sup> September 2022 stating that:

- *'The construction of a stable building and sand arena constitutes **Development** as defined in section 3(1) of the Planning and Development Act 2000 (as amended) and is not **Exempted Development** as defined by the Planning and Development Act 2000 (as amended) and the Planning and Development Regulations 2001 (as amended).*
- *The removal of short stretches of hedgerow, where it creates a vehicular access point onto a public road which does not have the benefit of planning permission, constitutes **Development** defined in section 3(1) of the Planning and Development Act 2000 (as amended) and is not **Exempted Development** as defined by the Planning and Development Act 2000 (as amended) and the Planning and Development Regulations 2001 (as amended).*
- *The removal of short stretches of hedgerow, where it does not create a vehicular access point onto a public road which does not have the benefit of planning permission, and the removal of two dying/diseased trees, and planting and/or replanting of the removed shrubbery, is not considered to constitute **Development** as defined in section 3(1) of the Planning and Development Act 2000 (as amended).'*

## 3.2. Planning Authority Reports

### 3.2.1. Planning Report

#### Stable Block

- The stable block is 60sqm and used for housing / stabling. There are no other agricultural or equine structures onsite. It complies with Class 6 (exemption) of the Planning and Development Regulations, 2001 ('the Regulations').
- The effluent storage facilities are provided in a dedicated hardstand walled area (25sqm) and equiskips containers for manure and used bedding They are in accordance with the Department of Agriculture, Food and Marine (S108) and the Department of the Environment and Local Government requirements.
- The stable building is further than 10m from the public roadway to the north and roughly 4.75m in height.
- The Applicant's dwelling is within c. 10m of the stables. Signed letters of consent from all five properties / occupiers within 100m of the development are included in Appendix B of the Referral Report.
- No unpainted metal sheeting shall be used for roofing or on the external finish of the structure. Walls are finished in nap render, doors timber, and roofing material of blue/black slate.

#### Sand Arena

- The sand arena is unroofed with a low fenced area with a post and rail wire fence. It is used for exercising horses. There is a drainage bed underneath.
- The arena is for the Referrers' own use.
- It is setback 10.5m approx. from the public roadway / northern boundary. Access is from the existing hard surface main entrance to the Applicant's house and not off a public roadway. The previous entrance from the public roadway has been closed up and replanted with new, replacement vegetation.
- The height of the arena does not exceed 2m in height.

## Article 9

- Article 9 of the Regulations identifies circumstances for which development under Article 6 shall not be exempted development, including where the development contravenes a condition attached to a permission under the Act or is consistent with any use specified in a permission under the Act.
- Condition 10 (Reg. Ref. 11/807) requires that 'the overall site shall be used for domestic-related purposes only, and not for any commercial, workshop, or other non-domestic use'.
- The use of the stables and sand arena appear to be used for the Applicant's own family as part of the wider property (dwelling permitted under Reg. Ref. 11/807). However, the applicant is relying on the exemptions under Class 6 for agricultural development. This conflicts with Condition 10 of planning permission as the development is not domestic in nature – it is agricultural.

## Tree Removal

- The removal of vegetation to create a vehicular entrance constitutes development.
- The extent of hedgerow/tree/shrub removal indicated, in the absence of a new vehicular entrance, and with replacement planting, does not constitute development.

## Recommendation

- As per the Declaration (see Section 3.1 above).

## 4.0 **Planning History**

### **Subject Site**

#### Warning Letter

The Planning Authority issued a Warning Letter (dated 20<sup>th</sup> July 2022) stating that unauthorised development had taken place on the site.

The alleged unauthorised development relates to:

- An unauthorised vehicular entrance, unauthorised arena and unauthorised stables and associated works.
- Removal of onsite trees and hedgerows which is contrary to condition 6(a) and 6(b) of Permission Reg. Ref. 11/807.
- Removal of roadside boundary hedgerow and trees which is contrary to condition 6(b) of Permission Reg. Ref. 11/807.
- Use of the site for stables and arena which is contrary to Condition 10 of Permission Reg. Ref. 11/807.

#### Permission Reg. Ref. 11/807

The Planning Authority **granted** permission in September 2011 for a dwelling, proprietary wastewater treatment system, including percolation area, domestic garage, associated site works and the removal of Condition No. 6 of Reg. Ref. 566/90 to desterilise the remainder of the overall landholding for the purposes of the planning application.

Notable conditions include:

#### Condition 6

- a) All existing hedgerows, trees and shrubs on all site boundaries shall be retained, preserved and maintained except at the proposed entrance, or where their removal is required to facilitate sight lines.
- b) All existing roadside boundary hedgerow/trees to be carefully retained, apart from the 31 metres west of the entrance and 20 metres east of the entrance as shown on the site layout map drawing no. PLN-002 submitted on 08/08/11.
- c) The above sections of hedgerow shall be transplanted in accordance with the details submitted with the application.
- d) Existing on-site trees as shown on drawing no. PLN-002 submitted on 08/08/11 shall be retained.
- e) Within the first planting season of the occupation of the dwelling house the site shall be landscaped in full in accordance with landscaping proposal drawing no. 100 and details submitted on 08/08/11.

**Reason:** To protect the rural character of the area.

#### Condition 10

The overall site shall be used for domestic-related purposes only, and not for any commercial, workshop, or other non-domestic use.

**Reason:** In the interest of the proper planning and development of the area.

## 5.0 Policy Context

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

- 5.1.1. The Kildare County Development Plan 2023-2029 ('Development Plan') was adopted by the Elected Members of Kildare County Council on 9<sup>th</sup> December 2022. The Plan came into effect on 28<sup>th</sup> January 2023 and replaces the previous Kildare County Development Plan 2017-2023.

### 5.2. Natural Heritage Designations

- 5.2.1. No natural heritage designations apply directly to the subject site.
- 5.2.2. The closest European Site is Mouds Bog Special Area of Conservation (SAC) (Site Code: 002331), which is approximately 2.8km to the west.

## 6.0 The Referral

### 6.1. Referrers' Case

- The Referrers built Riverview House about a decade ago and have been living in the house ever since. They recently carried out a development on their land for a stable block and sand arena so that their daughter's horses could be exercised.
- The development was constructed on the basis that it could avail of the exempted development provisions. The Board is requested to be cognisant



that the Referrers could not be expected to be aware of detailed planning law and note a previous Board Decision in this regard (ABP Ref. 07.LS.0031<sup>1</sup>).

- The Planner's Report accepts that 'the use of the stable building ... appears to be used for the applicant's own family... but considers that Condition 10 is being breached on the basis the 'applicant is relying on exemptions under Class 6 for agricultural development. This conflicts with Condition 10 of the planning permission as the development is not domestic in nature'. This suggests that an agricultural activity must always be non-domestic in nature, a view that is not supported by the definition of agriculture in Section 4 of the Act.
- The referral decision should turn on whether the housing of horses on the property is in breach of Condition 10 of Reg. Ref. 11/807.
- The development is not commercial. The Planning Authority accepts that the stable block is for the sole use of the Referrers family to train ponies.
- The development is, therefore, domestic agriculture. This concept has been accepted by the Planning Authority under previous Decisions (further information requested under Reg. Ref. 13/236 and Condition 4 of Permission Reg. Ref. 19/597 – see Page 5 of Appeal for further details).
- The Planning Authority's assessment found that the sand arena requires permission as it runs counter to Condition 10 of Permission Reg. Ref. 11/807.
- The Referrer removed some of the vegetation from the site which had not successfully established itself and in poor condition. This vegetation was planted c. 10 years ago and has since been replaced with other planting. There is no other vehicular entrance to the site, other than that which has permission.
- In summary, it is submitted to the Board that planning permission is not required for the stable block, sand arena or replacement planting on the site.

---

<sup>1</sup> Application for leave to apply for substitute consent for an agricultural structure.

## 7.0 Statutory Provisions

### 7.1. Planning and Development Act, 2000

#### Section 2(1)

- “*Works*” includes any act or operation of the construction, excavation, demolition, extension, alteration, repair or renewal.
- “*Structure*” means any building, structure, excavation or other thing constructed or made on, in or under land or any part of structure so defined and where in the context so admits includes the land on, in or under which the structure is situated.
- “*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 the land as grazing lands, meadow land, osier land, market gardens and nursery grounds and agricultural shall be constructed accordingly.

#### Section 3(1)

- “*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 ‘Exempted Development’

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

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

### 7.2. Planning and Development Regulations, 2001

**Article 6** of the Regulations states the following:

- (1) *Subject to Article 9 the development of a Class specified in Column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of*

*the Act, provided that such development complies with conditions and limitations specified in Column 2 of the Act opposite the mention of that Class in the said Column 1.*

**Article 9** of the Regulations identifies circumstances by which development under Article 6 shall not be exempted development, including (a) if the carrying out of such development would –

- (i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act.*
- (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.*

### **Schedule 2, Part 3: Exempted Development – Rural**

**Class 6** provides the following exemption for Agricultural Structures:

‘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.’

#### Conditions and Limitations

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

4. No such structure shall be situated, and no effluent from such structure shall be stored, within 10 metres of any public road.
5. No such structure within 100 metres of any public road shall exceed 8 metres in height.
6. No such structure shall be situated, and no effluent from such structure shall be stored, within 100 metres of any house (other than the house of the person providing the structure) or other residential building or school, hospital, church or building used for public assembly, save with the consent in writing of the owner and, as may be appropriate, the occupier or person in charge thereof.
7. No unpainted metal sheeting shall be used for roofing or on the external finish of the structure.

**Class 10** provides the following exemption for Agricultural Structures:

‘The erection of an unroofed fenced area for the exercising or training of horses or ponies, together with a drainage bed or soft surface material to provide an all-weather surface.’

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

## 8.0 **Assessment**

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

- 8.1.1. Development is defined under Section 3(1) of the Planning and Development Act, 2000 (as amended) (‘the Act’) as *‘the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land’*. Works is defined under Section 2(1) of the Act “...includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal...”

8.1.2. Therefore, the existing onsite structures, which are a stable block and sand arena, are considered to constitute works under Section 2(1) of the Planning and Development Act, 2000 (as amended) and are, therefore, development as per Section 3(1) of the Act.

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

8.2.1. This section of my report addresses each of the three components cited in the declaration application under the headings of (1) Stable Block, (2) Sand Arena and (3) Hedgerow and Tree Removal.

### Stable Block

8.2.2. The information on file shows that the existing stable block is approximately 8.7m by 7.8m with an overall gross floor area of approximately 60sqm. The structure is used for housing horses. Therefore, it is compliant with Class 6 of the Regulations in this respect.

8.2.3. In terms of the conditions and limitations, I note that there seven such criteria. The first of these (no. 1) requires that the structure shall not be used for any purpose other than the purpose of agriculture, which I consider is complied with.

8.2.4. With reference to limitation 2, the structure in its entirety is 60sqm. Therefore, it does not exceed 300sqm. There is no other such farm related or equine structures on the same property.

8.2.5. There is a dedicated storage area for collecting equestrian waste (denoted as 'equiskips container area' on the Site Layout Plan, drwg. no. PA-01). The Referrer confirms that it has been constructed in accordance with the requirement of the Department of Agriculture, Food and Rural Development and Department of the Environment and Local Government. The storage area comprises a dedicated hardstand and concreted space which is roughly 25sqm. The containers are regularly collected and transported to other locations for offsite disposal. Therefore, I am of the view that limitation 3 of Class 6 is complied with.

8.2.6. The stable block and waste collection area are setback roughly 26m from the public road which runs along the northern boundary of the site. Therefore, I am of the view that limitation 4 of Class 6 is complied with.

- 8.2.7. The stable block has an eaves height of 2.6m approximately. The overall height of the structure to top of apex is c. 4.7m. Therefore, I am of the view that limitation 5 of Class 6 is complied with.
- 8.2.8. The nearest dwelling to the stable block is the Referrer's own residence (Riverview House), which is roughly 26m to the west. There are a further five dwellings within 100m of the stables, which are shown on Appendix B of the Referrer's Report to the Planning Authority. I have viewed aerial photography and online mapping in this regard and can corroborate that five houses are within 100m of the stables. I note that signed letters of consent form from each of these property owners form part of the declaration application. These are also included under Appendix B of the Referrer's Report. Therefore, I am of the view that limitation 6 of Class 6 is complied with.
- 8.2.9. The stables utilise a combination of natural slate and a painted metal finish for the primary roof materials. The external walls are treated with nappe plaster. Therefore, is no unpainted metal sheeting used as part of the roof or external finish, and I consider that limitation 7 of Class 6 is complied with.
- 8.2.10. In summary, and having regard to the above, I am satisfied that the stable block falls within the scope of the provisions of Schedule 2, Part 3, Class 6, including Conditions 1 – 7.

#### Sand Arena

- 8.2.11. The sand arena is for training and exercising horses owned by the Referrers. It is an unroofed and fenced area, which has a soft surface material to provide an all-weather surface. Therefore, it is compliant with Class 10 of the Regulations in this regard.
- 8.2.12. The arena is for the sole use of the Referrers and their family. The Planning Authority accepts this is the case, and I also have no reason to believe otherwise. The arena is relatively modest in physical area and the associated stables are small, providing accommodation for two horses. Therefore, I am of the view that limitations 1 and 2 of Class 10 are complied with.
- 8.2.13. I have viewed the information on file and note that the arena is setback from the public road by c. 10.5m at its nearest point (see Site Layout Plan, drwg. no. PA-01).

This exceeds the 10m distance specified under the relevant condition for this exemption. Access to the arena is via the existing vehicular entrance and driveway serving the Referrer's adjoining property to the west. There is no separate, direct access from the public road. Therefore, I consider that limitation 3 of Class 10 is complied with.

8.2.14. The sand arena does not exceed 2m in height. Therefore, I am of the view that limitation 4 of Class 10 is complied with.

8.2.15. In summary, and having regard to the above, I am satisfied that the sand arena falls within the scope of the provisions of Schedule 2, Part 3, Class 10, including Conditions 1 – 4.

#### Hedgerow and Tree Removal

8.2.16. The Planning Authority issued a Warning Letter in July 2022 which states that alleged unauthorised development has taken place on the site in terms of the previous removal of onsite and roadside trees and hedgerows.

8.2.17. The letter states that this is contrary to Condition 6, sub-sections (a) and (b), of Permission Reg. Ref. 11/807. This requires that all existing hedgerows, trees and shrubs on the site boundaries must be retained except at the proposed entrance, or where their removal is required to facilitate sightlines, or as shown on the relevant drawing(s).

8.2.18. The Referrer states in their Cover Letter that a small amount of vegetation and landscaping planted on the site, some ten years ago, when the house was built, did not establish itself properly on the site. Therefore, the landowner removed this shrubbery to create space for new replacement species to be planted in lieu.

8.2.19. During my physical inspection of the site, there was no apparent break or missing sections in the hedgerow and that there was no secondary access onto the property from the public road. Whilst I cannot be certain of the exact extent and nature of the vegetation removed, it does not appear as though this would have been significant. The full extent of the boundary hedgerow is intact and continuous along the northern boundary – save for where the permitted vehicular access is situated – and a dense screen of shrubbery, undergrowth and small trees is evident.

- 8.2.20. Therefore, any previously removed vegetation has been compensated for by replacement species, which, in this case, I consider appropriate and in keeping with the normal maintenance and management of such planting / landscaping. I further note there is no new or any additional site entrance to the property and that the only vehicular access which exists is the one serving the existing dwelling.
- 8.2.21. In conclusion, I consider that the removal and replacement of short stretches of hedgerow and two dying trees does not constitute development as defined under Section 3(1) of the Planning and Development Act, 2000 (as amended).

### 8.3. Restrictions on exempted development

#### Contravention of a Condition

- 8.3.1. Article 9(1)(a)(i) of the Regulations includes a restriction on exempted development where if the carrying out of such development would contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act.
- 8.3.2. In this regard, I consider Condition 10 of Permission Reg. Ref. 11/807 relevant to this appeal. The condition states:
- 'The overall site shall be used for domestic-related purposes only, and not for any commercial, workshop, or other non-domestic use.'*
- Reason:** *In the interest of the proper planning and development of the area.'*
- 8.3.3. The Planning Authority accepts that the stables and sand arena are being used solely by the Referrers' own family as part of the wider property. As noted above, I consider that the stable block and sand arena falls within the definition of Class 6 of the Regs and, I note, also, that this is not contested by the Planning Authority.
- 8.3.4. However, the Planning Authority takes the view that the Referrers are relying on exemptions under Class 6 of the Regulations, which are in relation to agriculture. It is stated that this conflicts with the condition (no. 10) of the previous planning decision on the site, which seeks to control certain activities and uses from occurring on the site, including non-domestic uses.
- 8.3.5. The Referrer, though their agent, accepts that the issue turns on whether the development is effectively 'de-exempted' due to the presence of this condition, which



states that 'the overall site shall be used for domestic-related purposes only, and not for any commercial, workshop, or other non-domestic use'. I note that the condition was applied under Reg. Ref. 11/807 and that the red line boundary of the relevant plans and particulars extends around the land which is the subject of this referral.

- 8.3.6. I accept that the keeping of horses belonging to the family in the stable block and use of the sand arena for exercising them is not for commercial gain. The development is, therefore, not for financial benefit. It is purely for the enjoyment of the Referrers and their family, and I consider that it would be on a much smaller scale than any formal stud farm or livery stables. In my opinion, a clear distinction can be drawn between these types of domestic and commercial equine activities. I consider that the type of development, which is the subject of this appeal case, should be viewed as recreational pastime or hobby, for which there is an exemption with the Regulations.
- 8.3.7. In terms of the wording of the Condition (no. 10 of 11/807), I note that it specifically states that the site 'shall be used for domestic-related purposes only, and not for any commercial, workshop, or other non-domestic use'. It is my opinion that as the development is not being used for commercial purposes, is not a workshop, and that it is being used in association with the existing dwelling on an adjoining property – by the referrer's family exclusively, and no-one else – that it can be accurately described as being for domestic-related purposes.
- 8.3.8. I conclude that as the works do not contravene a condition attached to a permission under the Act that the provisions of Article 9(i) do not apply in this instance and, therefore, this restriction on exempt development does not apply.

#### Appropriate Assessment

- 8.3.9. Article 9(1)(a)(viiB) of the Regulations includes a restriction on exempt development where the Planning Authority, or An Bord Pleanála, requires an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site.
- 8.3.10. I note that screening for AA has not been carried out by the referring party or the Planning Authority. However, I have had regard to the information on the National Parks and Wildlife Service website and reviewed the online NPWS Designations

Viewer. This shows that there are no Natura 2000 sites within proximity to the subject property.

- 8.3.11. The closest European Site is Mouds Bog Special Area of Conservation (SAC) (Site Code: 002331), which is roughly 2.8km to the west. The Dublin Hueston – Limerick and Ennis railway line runs in between the site and this SAC and, therefore, severs any physical or ecological connection between source and receptor.
- 8.3.12. Having regard to the nature and small scale of the proposed development which comprises a small stable block, sand arena and replacement planting, I conclude that the proposed development, individually or in-combination with other plans or projects would not be likely to have a significant effect on the above referenced European site, or any other European site, in view of the site's conservation objectives. A Stage 2 Appropriate Assessment is not, therefore, required.
- 8.3.13. I conclude that as the proposed works do not require Appropriate Assessment the provisions of Article 9(1)(a)(viiB) do not apply in this instance and, therefore, this restriction on exempt development does not apply.

## 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 construction of a stable building and a sand arena, along with the removal of stretches of hedgerow and two dying/diseased trees, and the planting and/or replanting of the removed shrubbery in the same location, at Riverview House, Thomastown, Carragh, Co. Kildare, is or is not development or is or is not exempted development;

**AND WHEREAS** John Curry and Catriona Howley requested a declaration on this question from Kildare County Council and the Council issued a declaration on the 27<sup>th</sup> September 2022, stating that the construction of the

stable building and sand arena constitutes development and is not exempted development; the removal of short stretches of hedgerow, where it creates a vehicular access point onto a public road which does not have the benefit of planning permission, constitutes development and is not exempted development; and the removal of short stretches of hedgerow, where it does not create a vehicular access point onto a public road which does not have the benefit of planning permission, and the removal of two dying/diseased trees, and planting and/or replanting of the removed shrubbery, is not considered to constitute development;.

**AND WHEREAS** referred this declaration for review to An Bord Pleanála on the 21<sup>st</sup> October 2022:

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

- (a) Section 2(1), 3(1) and 4(1)(a) of the Planning and Development Act, 2000, as amended,
- (b) Articles 6 and 9 of the Planning and Development Regulations, 2001, as amended,
- (c) Classes 6 and 10 under Schedule 2, Part 3 of the Planning and Development Regulations, 2001, as amended,
- (d) the planning history of the site,
- (e) the location of the development in a rural setting, and
- (f) the pattern of development in the area:

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

- (a) *The construction of a stable building and sand arena constitutes Development as defined in section 3(1) of the Planning and Development Act 2000 (as amended) and is Exempted*

*Development as defined by the Planning and Development Act 2000 (as amended) and the Planning and Development Regulations 2001 (as amended).*

*(b) The removal of short stretches of hedgerow, where it does not create a vehicular access point onto a public road which does not have the benefit of planning permission, and the removal of two dying/diseased trees, and planting and/or replanting of the removed shrubbery, is not considered to constitute development as defined in section 3(1) of the Planning and Development Act 2000 (as amended).'*

**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 construction of a stable block and sand arena at Riverview House, Thomastown, Naas, Co. Kildare, for the purpose of housing and exercising horses by the Referrers' family only is development and is exempted development, and that the removal and replacement of sections of hedgerow and dying/dead trees on the same site, where it does not create a vehicular access point onto a public road (which does not have the benefit of planning permission) is not considered 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.]

---

Ian Boyle  
Senior Planning Inspector

4<sup>th</sup> December 2023