



An
Bord
Pleanála

Inspector's Report ABP-315843-23

Question

Whether the construction of an agricultural shed consistent with the description, conditions and limitations set out in Class 6 of Part 3 to Schedule 2 of the Planning and Development regulations 2001 (as amended) on lands in the townland of Ardara, Co. Donegal for the housing of cattle is or is not development or is or is not exempted development.

Location

Ardara, Co. Donegal.

Declaration

Planning Authority

Donegal County Council

Planning Authority Reg. Ref.

S5 22/45

Applicant for Declaration

Declan Gallagher.

Planning Authority Decision

Is not exempted development

Referral

Referred by

Declan Gallagher.

Owner/ Occupier	Declan Gallagher.
Observer(s)	None.
Date of Site Inspection	12 th of October 2023.
Inspector	Stephanie Farrington

1.0 Site Location and Description

- 1.1. The referral site is located in the townland of Ardara to the northeast of Ardara town centre. The site is currently in agricultural use and located to the south of an existing dwelling. Access to the site is provided via an existing local road to the north. The site rises from a north to a south direction. A Recorded Monument “Ardara Fort” (DG074-010) is located on lands to the southwest of the referral site on lands within the ownership of the applicant. The N56 is located to the south.

2.0 The Question

- 2.1. The question before the Board relates to whether the construction of an agricultural/slatted shed of 200 sq.m. and consistent with the description, conditions and limitations as set out in Class 6 of Part 3 to Schedule 2 to the Planning and Development Regulations 2001 (as amended) on lands in the townland of Ardara, Donegal PO, Co. Donegal for the housing of cattle is or is not exempted development.

3.0 Planning Authority Declaration

3.1. Declaration

- 3.1.1. Donegal County Council issued the following declaration in respect of the Referral:

“The proposal is development within the meaning of the Planning and Development Act 2000 (as amended) and is not exempted development as it does not come within the scope of Class 6 of Part 3 of Schedule 2 of the Planning and Development Regulations 2001 (as amended) as it is considered that the development is de-exempted under Article 9 (1) (a) (vi & vii) of the aforementioned regulations”.

3.2. Planning Authority Reports

- 3.2.1. Planning Reports

Planner’s Report (13/01/2023)

The planner’s report outlines that the development is de exempted under Article 9 (1) (a) (vi & vii) of the Planning and Development Regulations in accordance with the

Planning Authority decision. The following provides a summary of the key points raised:

- The site is located adjacent to an existing ringfort (DG074-010) which is designated as a National Monument.
- Owing to the location of the site in proximity to a National Monument the provisions of Article 9 (1) (a) (vi), (vii) and (vii A) are of relevance.
- The Planning Authority is satisfied that the erection of a slatted shed would constitute “works” and would constitute “development” as defined in Sections 2 & 3 of the Act respectively.
- The National Monument is given statutory protection in the Record of Monuments and Places and Policies AHP1 and AHP8 of the Donegal County Development Plan.
- The site is located within an Area of High Scenic Amenity. The report refers to the provisions of Section 7.1.1 of the DCDP and Policy NH-P-7 which seeks to facilitate “new development which are of a “nature, location and scale” which integrate with and reflect the character and amenity designation of the landscape.
- The report outlines that Policies AH-P-1, AH-P-3 and Objective TOU-0-11 of the Donegal County Development Plan are of relevance.
- The planner’s report outlines that the development would materially contravene Objective TOU-0-11 of the DCDP by reason of its location and siting which would result in the imposition of a visually incongruous development which would impact the visual, scenic and cultural amenities of the surrounding area, particularly having regard to the proximity to and intervisibility with a heritage site.
- The planner’s report raises concern in relation to the siting of the proposed shed and outlines that the structure will read in the context of the monument and detract from and negatively impact on same.
- The report cross refers to discussion with the conservation officer on 15/03/2022 who raised concern in relation to the proximity of the site to the

ringfort. The report concludes that the development represents an inappropriate format of development in a highly sensitive landscape.

- The Planning Authority is satisfied that Appropriate Assessment is not required in this instance.

3.2.2. Other Technical Reports

None

4.0 Planning History

4.1. The following planning history relates to the referral site and surrounding area.

Referral Site

PA Ref: 2250144: Permission refused in March 2022 for erection of a 274 sq.m. agricultural slatted shed with underground tank and associated site development works on grounds including (1) the development would result in the imposition of a visually incongruous development which would impact the visual, scenic and cultural amenities of the surrounding area, particularly having regard to the proximity to and intervisibility with a heritage site. The decision outlined that the development would materially contravene Objective TOU-O-11 of the Donegal County Development Plan 2018-2024 and (2) the impact of the development on residential amenity by reason of noise, odours and general disturbance.

The observation on the file from the Department of Housing, Local Government and Heritage (08/03/2022) raised concern in relation to the negative visual impact of the proposal on the character and settling of the Recorded Monument – DG074-010 – Ringfort, Ardara. The report recommends that a Visual Impact Assessment should be undertaken with accompanying photomontages which addresses views to and from the ringfort. A request for further information is recommended in this regard.

PA Ref: 2151264: Permission refused in August 2021 for construction of a 274 sq.m. agricultural slatted shed with underground tank and all associated site development works on site. The reason for refusal referred to the location of the site within an area of High Scenic Amenity and within proximity to a ringfort and outlined that the development would result in the imposition of a visually incongruous development which would impact the visual, scenic and cultural amenities of the surrounding area,

particularly having regard to the proximity to and intervisibility with a heritage site. The decision outlined that the development would materially contravene Objective TOU-O-11 of the Donegal County Development Plan 2018-2024.

Existing House

PA Ref: 16/51840: Permission granted in April 2017 for the construction of a two-storey dwelling house with attached domestic garage and connection to existing public sewerage system and all associated site development works.

Lands to the north of the existing residential dwelling adjacent to the access road

PA Ref: 15/50623: Permission refused in January 2016 for construction of a 257 sq.m. agricultural shed and all associated site development works on grounds including impact on residential amenity.

Relevant Referrals

4.2. I have examined the Boards database of references and referrals. The following cases are relevant in the context of the issues raised in the current referral:

- *ABP Ref: 304094-19* – *The question arose as to whether a proposed farm building for the housing of horses and storage of food is or is not development or is or is not exempted development and the Board declared that the proposed farm building for the keeping of horses and storage of food at Knockaneroe, Kilbrittain, Co. Cork is development and is exempted development.*

5.0 Policy Context

5.1. Development Plan

Donegal County Development Plan 2018-2024 (as varied)

5.1.1. Ardara is designated as a Layer 2B Strategic Town within the County Settlement hierarchy set out within Table 2A.3 of the Donegal County Development Plan. Table 3.2 of the Development Plan which sets out “The Reasons for Identification of Strategic Towns, Performing Special Economic Functions” outlines the tourism function of Ardara and its location along the Wild Atlantic Way. Ardara is identified as a heritage town with significant built heritage resources.

- 5.1.2. Policy TV-P-1 outlines that: *“It is the policy of the Council to encourage proposals aimed at harnessing particular ‘Special Economic Functions’ of the County’s ‘Strategic Towns’ subject to other policies of this Plan including Part C and subject to the proper planning and sustainable development of the area”.*
- 5.1.3. Part C of the development plan contains interactive mapping in relation to the layer 2B settlements and the subject site is identified as falling to the north of the settlement boundary of Ardara. The southern part of the referencers landholding is located within the settlement boundary and designated as an “amenity area”.
- 5.1.4. Chapter 7 of the Development Plan relates to the Natural Heritage and Built Heritage of the County. The Plan refers to the designation of 5 no. heritage towns within the County, including Ardara, and outlines that *“‘Heritage Towns’ continue to have an evolving and important role in the economic development of the County and as such have been identified within the Core Strategy as having a special economic and tourism function. Future development in these towns should be informed by their built heritage to protect their unique historic character”.*
- 5.1.5. Section 7.1 of the Plan relates to Natural Heritage and outlines that the landscape of the County has been categorised into 3 layers as illustrated within Map 7.1.1 of the Development Plan, namely, “Especially High Scenic Amenity”, “High Scenic Amenity” and “Moderate Scenic Amenity”.
- 5.1.6. The site is located within an area designated as High Scenic Amenity within Map 7.1.1 of the Development Plan. The Plan outlines the following in respect of areas designated as High Scenic Amenity:
- Areas of High Scenic Amenity (HSA) Areas of High Scenic Amenity are landscapes of significant aesthetic, cultural, heritage and environmental quality that are unique to their locality and are a fundamental element of the landscape and identity of County Donegal. These areas have the capacity to absorb sensitively located development of scale, design and use that will enable assimilation into the receiving landscape and which does not detract from the quality of the landscape, subject to compliance with all other objectives and policies of the plan.*
- 5.1.7. Policy NG-P-7 is of relevance:

- Policy NG-P-7: *Within areas of 'High Scenic Amenity' (HSC) and 'Moderate Scenic Amenity' (MSC) as identified on Map 7.1.1: 'Scenic Amenity', and subject to the other objectives and policies of this Plan, it is the policy of the Council to facilitate development of a nature, location and scale that allows the development to integrate within and reflect the character and amenity designation of the landscape.*

5.1.8. Section 7.3 of the Plan relates to archaeological heritage. Ardara Ringfort, a recorded monument is located to the southwest of the appeal site. The following policies and objectives are of relevance:

- AH-O-1: *To conserve and protect the County's archaeological heritage for present and future generations.*
- AH-P-1: *It is a policy of the Council to: a) Protect and enhance the integrity of Archaeological Monuments and to secure the preservation in situ of all archaeological monuments included on the Record of Monuments and Places. Preservation by record shall only be considered in exceptional circumstances where the principles of the Department of Arts, Heritage, Gaeltacht and the Islands publication entitled; 'Framework and Principles for the Protection of Archaeological Heritage' can be satisfied. b) Protect the settings of such archaeological monuments save to the extent necessary to allow for the provision of the TEN-T Priority Route Improvement Project, Donegal.*
- AH-P-3: *It is a policy of the Council to: a) Protect the character of National Monuments and Recorded Monuments and to manage development which would be considered to (physically) intrude upon or inhibit the enjoyment of the amenities of these sites. b) Protect the settings of and views from such archaeological monuments save to the extent necessary to allow for the provision of the TEN-T Priority Route Improvement Project, Donegal.*

The following provisions of the plan are also of relevance:

- TOU-O-11: *To protect and enhance the built and historical heritage of the county (including structures on the RPS, NIAH, recorded monuments, heritage towns and battlefield sites) as an important element of the County's overall tourism product in accordance with, and to the extent provided for, in the built heritage policies and objectives of this plan.*

- UB-P-12: *It is the policy of the Council both to protect the residential amenity of existing residential units and to promote design concepts for new housing that ensures the establishment of reasonable levels of residential amenity.*

Draft Donegal County Development Plan 2024-2030

5.1.9. The Draft Donegal County Development Plan 2024-2030 was on public display from the 4th of August to the 13th of October 2023. The referral site is located within an area of High Scenic Amenity as identified within Draft Map 11.1 Scenic Amenity. No scenic routes or protected views and prospects are identified within the vicinity of the site.

- Policy L-P-2 seeks: *To protect areas identified as ‘High Scenic Amenity’ and ‘Moderate Scenic Amenity’ on Map 11.1 ‘Scenic Amenity’. Within these areas, only development of a nature, location and scale that integrates with, and reflects the character and amenity of the landscape may be considered, subject to compliance with other relevant policies of the Plan.*

5.2. Natural Heritage Designations

5.2.1. The referral site is not located within any designated European site. The nearest designated European sites to the appeal site, including SAC’s and Special Protection Areas (SPA’s) include the following:

- The nearest designated site to the referral site is the West of Ardara/ Mass Road SAC (Site Code 000197) which is located 0.8 km to the west. This is also designated as a Proposed Natural Heritage Area.
- The Slieve Tooley/Tormore Island/Loughros Beg Bay SAC (Site Code 000190) and pNHA is located c.1.6 km to the south west.
- Special Area of Conservation: Lough Nillan Bog (Carrickatlieve) SAC and pNHA (Site Code 000165) and Lough Nillan Bog SPA (Site Code 004110) located 4.2km to the south east.

5.3. Environmental Impact Assessment

5.3.1. The proposed development comprises an agricultural building with a gross floor area of 200 sq.m. It does not constitute an EIA project.

6.0 The Referral

6.1. Referrer's Case

6.1.1. The referral was made by Joe Bonner Town Planning Consultant on behalf of Mr. Declan Gallagher. The following provides a summary of the key points raised:

- The Board is requested to review the declaration of Donegal County Council.
- The referrer does not concur with the assessment of Donegal County Council and considers that the agricultural shed is exempted development.
- The Board is requested to review the attached documentation including the Planning Report and Drawings of the Proposed Structure together with Donegal County Council's Planning Officer's Report and decision.

6.1.2. The following documentation is attached to the referral:

- Section 5 Application Form
- Donegal County Council Declaration dated 19th of December 2023
- Donegal County Council Section 5 Referral Report
- Planning Report prepared by Joe Bonner Town Planning Consultant submitted to Donegal County Council in support of the referral.

6.1.3. I note that details of Donegal County Council's declaration and a summary of the planner's report which informs the Planning Authority decision is provided in Sections 3.1 and 3.2 of this report. The following provides a summary of the Planning Report prepared by Joe Bonner Planning Consultant submitted in conjunction with the application:

- The referrers landholding is located to the north of Ardara town and the proposed shed is located to the south of the existing dwelling on the site.
- The lands in the ownership of Mr. Gallagher extends to 5.02 ha and includes "Ardara Fort" a Recorded Monument.
- The proposed cattle shed is located outside of the settlement boundary for Ardara as identified within the Donegal County Development Plan. The

southern part of Mr. Gallagher's landholding is located within the settlement boundary and designated as an "amenity area".

- The report refers to the Conditions and Limitations attached to Class 6 Agricultural Exemptions. Images 3.1 and 3.2 of the report illustrates the areas of Mr. Gallagher's landholding which are not located within 100m of an existing house.
- Section 4 of the Report refers to the restrictions imposed under Article 9 of the Planning and Development Regulations and sets out an assessment of the proposal in light of these restrictions. The Planning Report concludes that the proposed development would not be restricted by virtue of any of the limitations set out in Article 9 of the Planning and Development Regulations 2001 (as amended).
- EIA Screening: Agricultural sheds are not a Class of development listed under Part 1 or 2 (Schedule 5) of the Planning and Development Regulations 2001.
- The report cross refers to the attached drawings which show that the slatted shed would be construction in compliance with all the conditions and limitations set out in Class 6 to Schedule 2 of the Planning and Development Regulations.

6.2. Planning Authority Response

Donegal County Council (07/03/2023)

- The Planning Authority has no further comments to make.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

Section 2 – Interpretation

- "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.

- “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 situate.
- “Works” includes any Act or operation of the construction, excavation, demolition, extension, alteration, repair or renewal.

Section 3 – Development

- Section 3 (1) - In this Act, “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

- Section 4 (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

- 7.2.1. Article 6 (1) - Subject to article 9, 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 the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.

Article 9 (1) – Restrictions on Exemption

- 7.2.2. Article 9 (1) - Development to which article 6 relates shall not be exempted development for the purposes of the Act—
- (a) if the carrying out of such development would—
 - (i) Contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act.

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

(iii) Endanger public safety by reason of a traffic hazard or obstruction to road users.

(iv) – except in the case of a porch be forward of a building.

(v) – re works under a public road...

(vi) Interfere with the character of the landscape, or view or prospect of special amenity value or of special interest, the preservation of which is an objective of the Development Plan for the area in which the development is proposed for, pending the variation of a Development Plan or the making of a new Development Plan in the Draft Variation of the Development Plan or the Draft Plan.

(vii) consist of or comprise the excavation, alteration or demolition (other than peat extraction) of places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest, the preservation, conservation or protection of which is an objective of a development plan or local area plan for the area in which the development is proposed or, pending the variation of a development plan or local area plan, or the making of a new development plan or local area plan, in the draft variation of the development plan or the local area plan or the draft development plan or draft local area plan.

(viiA) consist of or comprise the excavation, alteration or demolition of any archaeological monument included in the Record of Monuments and Places, pursuant to section 12 (1) of the National Monuments (Amendment) Act 1994, save that this provision shall not apply to any excavation or any works, pursuant to and in accordance with a consent granted under section 14 or a licence granted under section 26 of the National Monuments Act 1930 (No. 2 of 1930) as amended.

(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,

(viiC) Consist of or comprise development which would be likely to have an adverse impact on an area designated as a natural heritage area by order made under section 18 of the Wildlife (Amendment) Act 2000

(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,

Schedule 2, Part 3: Exempted Development – Rural

Agricultural Structures

CLASS 6: 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.

8.0 Assessment

8.1. Is or is not development

- 8.1.1. The question put forward by the referrer relates to the construction of an agricultural slatted shed with a stated floor area of 200 sq.m. for the purposes of housing cattle.
- 8.1.2. The first question to consider is whether or not the proposal constitutes development under the definitions contained in the Planning Act. Section 3(1) of the Act defines 'development' as the 'carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land". In terms of determining whether development has occurred, the relevant tests to apply is to establish whether 'works' were carried out and/or whether there was a material change in the use of the structure or land.
- 8.1.3. Within Section 2, (1) of the Planning Act, 'works' are defined as 'any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal...'.
- 8.1.4. The construction of the shed would involve the carrying out of works as defined in the Act and would therefore constitute development.

8.2. Is or is not exempted development

- 8.2.1. The second question to answer is whether the development is or is not exempt development. The referrer states that the shed is used in connection with applicants farming activities and can therefore be considered to be exempt under the conditions and limitation set out in Class 6, Part 3 of Schedule 2, Planning and Development Regulations. In order to consider whether or not the shed complies with the conditions and limitations listed under Class 6, it must first be determined whether or not the shed can be considered to be an agricultural structure.
- 8.2.2. Section 4 (1) (a) refers to the exempted development for buildings associated for the purposes of agricultural or forestry as being occupied together with land so used for agriculture or forestry. Section 2 of the Act includes a definition of 'agriculture' which

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'.

8.2.3. The referral site is located in a rural location on an agricultural landholding to the north of the settlement boundary of Ardara. The referrer outlines that the shed would be used for housing cattle. There were cattle present on-site inspection. On the basis of the information submitted in support of the referral, I am satisfied that the shed would be classified as an "agricultural structure".

8.2.4. The referrer seeks to avail of the exemption set out under Schedule 2, Part 3 Exempted Development – Rural of the Planning and Development Regulations, Class 6 applies to: *"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"*.

8.2.5. The question set out within the referral relates to a 200sq.m. shed. I note the dimensions illustrated on the Plan, Section and Elevation Drawing submitted in support of the referral illustrates that the dimensions of the shed is over 200 sq.m. (i.e. length of 20m and width of 10.435m = 208 sq.m.). I note that there is an anomaly between the question posed and information submitted in this regard. On the basis of the dimensions set out within the submitted plan the shed would not fall within the classification of Class 6. For the purposes of clarity, I am addressing the details within the submitted question namely "an agricultural shed with a floor area of 200 sq.m." within this referral.

8.2.6. There are seven Conditions and Limitations relating to Class 6 and the following may be noted:

- Condition no. 1. No such structure shall be used for any purpose other than the purpose of agriculture. The shed is described as an agricultural shed for housing of cattle.

- Condition no. 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. – On site inspection I noted no other farmyard structures within the landholding.
- Condition no. 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. The Plan Section and Elevation Drawing illustrates that the shed includes an underground holding tank. The applicant states they will comply with all the conditions and limitations specified in the regulations.
- Condition no. 4. No such structure shall be situated, and no effluent from such structure shall be stored, within 10 metres of any public road. The site is set back over 10m from the existing road network to the north and south. I am satisfied that condition/limitation 4 is complied with.
- Condition no. 5. No such structure within 100 metres of any public road shall exceed 8 metres in height. The Plan Section and Elevation Drawing illustrates that the shed will have a maximum height of 6.523m. Condition/limitation 5 is complied with.
- Condition no. 6. In terms of compliance with Condition no. 6, I refer to the Planning Report submitted in conjunction with the referral. Image 3.2 illustrates that the structure is not located within 100m of any house, other than the occupant's property.
- Condition no. 7. No unpainted metal sheeting shall be used for roofing or on the external finish of the structure. – No details of the proposed finishes for the shed are set out within the referral drawings. It is reasonable to assume the structure is to be finished to an appropriate standard in that the applicant states they will comply with all the conditions and limitations specified in the regulations.

Having regard to the above, I am satisfied that the construction of a 200 sq.m. agricultural shed would comply with the description, limitations and conditions of Class 6 of Schedule 2 Part 3 of the Planning and Development Regulations.

8.3. Restrictions on exempted development

8.3.1. Article 9 (1) of the Planning and Development Regulations states the following: -
Development to which article 6 relates shall not be exempted development for the purposes of the Act –

(a) if the carrying out of such development would –

(vi) Interfere with the character of the landscape, or view or prospect of special amenity value or of special interest, the preservation of which is a lands objective of the Development Plan for the area in which the development is proposed for, pending the variation of a Development Plan or the making of a new Development Plan in the Draft Variation of the Development Plan or the Draft Plan.

(vii) consist of or comprise the excavation, alteration or demolition (other than peat extraction) of places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest, the preservation, conservation or protection of which is an objective of a development plan or local area plan for the area in which the development is proposed or, pending the variation of a development plan or local area plan, or the making of a new development plan or local area plan, in the draft variation of the development plan or the local area plan or the draft development plan or draft local area plan.

(viiA) consist of or comprise the excavation, alteration or demolition of any archaeological monument included in the Record of Monuments and Places, pursuant to section 12 (1) of the National Monuments (Amendment) Act 1994, save that this provision shall not apply to any excavation or any works, pursuant to and in accordance with a consent granted under section 14 or a licence granted under section 26 of the National Monuments Act 1930 (No. 2 of 1930) as amended.

- 8.3.2. Section 4.0 of the Planning Report prepared by Joe Bonner Planning Consultants and submitted in support of the referral addresses compliance of the development with the various provisions of Article 9 (1) (a).
- 8.3.3. Donegal County Council's decision outlines that the development is de-exempted under Article 9 (1) (a) (vi and vii) of the Planning and Development Regulations having regard to the following reasons and considerations:
- The site is located within an Area of High Scenic Amenity. The report refers to the provisions of Section 7.1.1 of the DCDP and Policy NH-P-7 which seeks to facilitate "new development which are of a "nature, location and scale" which integrate with and reflect the character and amenity designation of the landscape.
 - The planner's report outlines that the development would materially contravene Objective TOU-0-11 of the DCDP by reason of its location and siting which would result in the imposition of a visually incongruous development which would impact the visual, scenic and cultural amenities of the surrounding area, particularly having regard to the proximity to and intervisibility with a heritage site.
- 8.3.4. I consider the development in line with the provisions of Article 9 (1) (a) (vi and vii, viiA) as follows.
- Article 9 (1) (a) (vi)*
- 8.3.5. The subject site is located within a rural area to the north of the settlement boundary identified for Ardara within the Donegal County Development Plan. The site forms part of a larger landholding in the ownership of the referrer. The site is located to the northeast of a designated national monument Ardara Ringfort (Monument DG 074-010).
- 8.3.6. Map 7.1.1 of the Donegal County Development Plan 2018-2024 relates to Scenic Amenity Designations. The site is located within a designated area of High Scenic Amenity within both the existing DCDP 2018-2024 and the Draft DCDP 2024-2030. The site is not located within the path of an identified scenic route, view or prospect as identified within the Donegal County Development Plan 2018-2024 (as varied) or the Draft Donegal County Development Plan 2024-2030. The southern part of the

referrer's landholding is located within the settlement boundary and designated as an "amenity area".

8.3.7. The Development Plan outlines the following in respect of areas designated as High Scenic Amenity:

"Areas of High Scenic Amenity (HSA) Areas of High Scenic Amenity are landscapes of significant aesthetic, cultural, heritage and environmental quality that are unique to their locality and are a fundamental element of the landscape and identity of County Donegal. These areas have the capacity to absorb sensitively located development of scale, design and use that will enable assimilation into the receiving landscape and which does not detract from the quality of the landscape, subject to compliance with all other objectives and policies of the plan".

8.3.8. While I note that the agricultural shed would be visible from the adjoining road network having regard to the use, height and scale of the structure and the established pattern of development in the area it is my view that the structure would not interfere with the established rural character of the landscape.

8.3.9. I note the location of the existing Recorded Monument to the southwest of the referral site. I refer to the planning history of the site, wherein permission was previously refused for agricultural sheds under PA Ref: 2250144 and PA Ref: 2151264 on grounds including the impact of the structure on the visual, scenic and cultural amenities of the surrounding area, particularly having regard to the proximity to and intervisibility with a heritage site and non-compliance with Objective TOU-O-11 and Policy AH-P-3 of the Development Plan in this regard.

- Objective TOU-O-11 of the Development Plan seeks: *To protect and enhance the built and historical heritage of the county (including structures on the RPS, NIAH, recorded monuments, heritage towns and battlefield sites) as an important element of the County's overall tourism product in accordance with, and to the extent provided for, in the built heritage policies and objectives of this plan.*
- Policy AH-P-3 of the Plan furthermore outlines that: *It is a policy of the Council to: a) Protect the character of National Monuments and Recorded Monuments and to manage development which would be considered to (physically) intrude upon or inhibit the enjoyment of the amenities of these sites. b) Protect the*

settings of and views from such archaeological monuments save to the extent necessary to allow for the provision of the TEN-T Priority Route Improvement Project, Donegal.

8.3.10. Given the distance of the structure from the existing ringfort, its location outside of the zone of notification for the ringfort, and the siting of the shed which follows the building line established by the existing residential dwelling to the west, I do not consider that it would impact on the character and setting of the existing national monument.

8.3.11. Having regard to the above reasons and considerations I am satisfied that the development is not contrary to Article 9 (1) (a) (vi) of the Planning and Development Regulations.

Article 9 (1) (a) (vii) and (viiA)

8.3.12. Figure 4.1 of the Planning Report prepared by Joe Bonner Town Planning Consultancy outlines that the shed is located outside the zone of notification of the ring fort and would not comprise the excavation, alteration or demolition of any archaeological monument in the Record of Monuments and Places. The proposed shed is located to the north east of the ringfort and the structure does not impinge on the physical extent of the ringfort or its zone of notification.

8.3.13. In terms of Article 9 (1) (a) (vii) and (viiA) I am satisfied that the development does not comprise the excavation, alteration or demolition of places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest or archaeological monument included in the Record of Monuments and Places, pursuant to section 12 (1) of the National Monuments (Amendment) Act 1994.

8.3.14. I am satisfied that the development is not contrary to Article 9 (1) (a) (vii) and (viiB) of the Planning and Development Regulations.

8.3.15. On the basis of the above assessment, I consider that the proposed agricultural shed would constitute works and therefore constitute development in accordance with Section 3 of the Planning and Development Act, 2000, as amended, but that the building would constitute exempted development in accordance with the provisions of Class 6 of Part 3 of the Planning and Development Regulations, 2001, as amended. I further conclude that none of the restrictions set out in Article 9 would apply in this instance.

8.4. **Appropriate Assessment**

- 8.4.1. Article 9 (1) (a) (viiB) of the Planning and Development Regulations states that the exemptions under Article 6 of the Regulations shall not apply if the carrying out of such development would 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.
- 8.4.2. Having regard to nature and scale of the development and the nature of the receiving environment and the distance and lack of connections to the nearest European sites, no Appropriate Assessment issues arise, and it is not considered that the development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.
- 8.4.3. I am satisfied that the development is not contrary to Article 9 (1) (a) (viiB).

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 an agricultural shed, is or is not development, or, is or is not exempted development.

AND WHEREAS [redacted] requested a declaration on this question from Donegal County Council and the Council issued a declaration on the 19th day of January 2023 stating that the matter was development and was not exempted development:

AND WHEREAS Declan Gallagher referred this declaration for review to An Bord Pleanála on the 14th day of February 2023:

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) article 6(1) and article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (e) Part 3 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (f) the provision of the Donegal County Development Plan 2018-2014 (as amended)
- (g) the planning history of the site,
- (h) the pattern of development in the area:

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The agricultural shed constitutes development as defined under Section 2 (1) of the Planning and Development Act 2000 (as amended),
- (b) The agricultural shed, based on the details submitted by the referrer, would come within the scope of exemptions set out in Class 6 of Part 3 of Schedule 2 of the Planning and Development Regulations, 2001, as amended

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3) (a) of the 2000 Act, hereby decides that the agricultural shed is development and is 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.

Stephanie Farrington
Senior Planning Inspector

18th of January 2024