



An  
Bord  
Pleanála

## Inspector's Report ABP-317408-23

### Section 5 Referral

<b>Question</b>	Whether the erection of replacement fencing to enclose the site is development, and if it is development, whether or not it is exempted development
<b>Location</b>	Long Island, Schull, County Cork
<b>Declaration</b>	
Planning Authority	Cork County Council
Planning Authority Reg. Ref.	D/15/23
Applicant for Declaration	Albert Manifold
Planning Authority Decision	Is development and is not exempted development
<b>Referred by</b>	Albert Manifold
<b>Owner/ Occupier</b>	Albert Manifold
<b>Date of Site Inspection</b>	17 <sup>th</sup> January 2024
<b>Inspector</b>	Gary Farrelly

## 1.0 Site Location and Description

The subject site is located on the island of Long Island which is located south of Schull, County Cork. Access to the island is from Colla Pier via boat. The subject site is located on the eastern side of the island and is accessed via a single carriageway road. The site is located within the Roaringwater Bay and Islands Special Area of Conservation (SAC). European dry heath is located throughout the site which is a qualifying interest of this SAC.

## 2.0 The Question

The question before the Board is the following:

- Whether the erection of replacement fencing to enclose the site, is development, and if it is development, whether or not it is exempted development.

The question relates to replacement fencing that is of the same type and height of a previous existing fence. The replacement fence is a wire and post fence of 1.2 metres in height. The submitted site layout plan indicates the question relates to post and wire fencing along the north, east and west boundaries of the site. However, I noted further fencing along the south boundary of the site on the date of my site inspection, which is not illustrated on the drawings.

## 3.0 Planning Authority Declaration

### 3.1. Declaration

Cork County Council issued a declaration on the question on 26<sup>th</sup> May 2023 declaring that the replacement fencing constitutes development and is not exempted development for the following reason:

- The replacement fencing installed on site does not come within the scope of Part 3, Class 4 of Schedule 2 of the Regulations, or to any exemptions under Article 6, taking into account of in-combination effects when considered with the other works undertaken at the site which have caused damage to Dry Heath habitat, a qualifying interest habitat within an SAC. The works associated with

the replacement fencing would have required an Appropriate Assessment and are therefore de-exempt under Article 9(1)(a)(viiB) of the Planning and Development Regulations 2001, as amended.

#### Planning Reports

- The Area Planner's report acknowledged the high value landscape designation, the location within the Roaringwater Bay and Islands SAC, the enforcement history of the site, the legislative context for assessing the declaration and assessed the declaration in terms of Appropriate Assessment. The report concluded that the works were not exempted development and this recommendation was endorsed by the Senior Executive Planner.

#### Other Technical Reports

- Ecologist report (dated 18<sup>th</sup> May 2023) – This report concluded that the works were de-exempt under Article 9(1)(a)(viiB) of the Planning and Development Regulations and recommended a site reinstatement plan. It was stated that the replacement fencing was assessed to have caused localised damage to the European dry heath when considered in-combination with the full extent of works undertaken on the site and the stocking density observed during site inspections. The Ecologist also stated that the replacement fencing would not be a significant concern from an ecological perspective and would not trigger a requirement for AA subject to stocking levels being resolved to the satisfaction of the NPWS and other interventions on the site. The reference to the NPWS within the report was accepted by the Cork Regional Manager for the NPWS.
- Enforcement Report on file from PA Ecologist (dated 7<sup>th</sup> November 2022).

## 4.0 Planning History

### Referral 317413-23

This was referred to the Board on 20<sup>th</sup> June 2023 by Albert Manifold and is awaiting a decision. The referral is in relation to the construction of two agricultural sheds on the subject site.

## 5.0 Policy Context

### 5.1. Development Plan

#### Cork County Development Plan 2022-2028

##### Section 14.7 Landscape

Very high sensitivity landscapes are extra vulnerable landscapes (e.g. seascape area with national importance) which are likely to be fragile and susceptible to change. Landscape Character Types which have a very high or high landscape value and high or very high landscape sensitivity and are of county or national importance are considered to be our most valuable landscapes and therefore are designated as High Value Landscapes (HVL).

#### GI 14-9: Landscape

(a) Protect the visual and scenic amenities of County Cork's built and natural environment.

#### GI 14-10: Draft Landscape Strategy

Ensure that the management of development throughout the County will have regard for the value of the landscape, its character, distinctiveness and sensitivity as recognised in the Cork County Draft Landscape Strategy and its recommendations, in order to minimize the visual and environmental impact of development, particularly in areas designated as High Value Landscapes where higher development standards (layout, design, landscaping, materials used) will be required.

#### GI 14-12: General Views and Prospects

Preserve the character of all important views and prospects, particularly sea views, river or lake views, views of unspoilt mountains, upland or coastal landscapes, views of historical or cultural significance (including buildings and townscapes) and views of natural beauty as recognized in the Draft Landscape Strategy.

#### Cork County Council Draft Landscape Strategy (Nov 2007)

Type 4: Rugged Ridge Peninsulas

- Landscape Value: Very High

- Landscape Sensitivity: Very High
- Landscape Importance: National

## 5.2. Natural Heritage Designations

The subject site is located within the Roaringwater Bay and Islands Special Area of Conservation (SAC) (Site Code 000101) and the Roaringwater Bay and Islands proposed Natural Heritage Area (pNHA).

## 6.0 The Referral

### 6.1. Referrer's Case

A referral was lodged to the Board on 20<sup>th</sup> June 2023. The referral was accompanied by the following documentation:

- Planning Report
- Information to Inform Stage 1 Appropriate Assessment Screening Report;
- Heathland Management Plan;
- Construction Methodology Report, and
- Consultant Ecologist Response to Council's Declaration.

The Referral can be summarised as follows:

- The fence is a replacement to a longstanding fence which was in a poor state of repair due to weather, the exposed nature of the site and former use of the site as an area for keeping cattle.
- The replacement fence is a wire and post fence of 1.2 metres in height erected on the line of the existing fence and therefore there was no increase in development footprint as a result of the replacement of fences.
- The replacement fencing is a stand alone development and did not interact with any other development onsite and therefore, there is no likelihood for in-combination effects occurring either at construction or at operational stage.

- The commentary of the council that the works caused localised damage to the dry heath habitat is inconsistent to their report where they state that the retention of fencing would not be a significant concern from an ecological perspective and would not trigger a requirement for AA.
- The development is consistent with Article 6(2) of the Habitats Directive, i.e. that sheep grazing is necessary for the conservation of the European dry heath. The habitat management plan is a conservation grazing regime and an appropriate and necessary land management approach to secure the ongoing health of European dry heath.
- The council did not take into account the detailed ecological survey carried out on 16<sup>th</sup> February 2023 which mapped the full extents of European dry heath on the site. There is no evidence that European dry heath has been removed.
- The in-combination impact has been addressed through separate AA screening reports and concluded that there were no likely significant effects of the works either alone or in-combination with others.
- Mitigation measures were incorporated to ensure no direct or indirect impacts, with the primary measure minimising the impact on soil and vegetation during the construction phase. It is stated that such mitigation can now be considered following the CJEU ruling in case C727-21.

## 6.2. Planning Authority Response

The Planning Authority had no comments and referred the Board to the technical reports on file.

## 7.0 Statutory Provisions

### 7.1. Planning and Development Act 2000, as amended

#### Section 2(1)

“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.

“fence” includes a hoarding or similar structure but excludes any bank, wall or other similar structure composed wholly or mainly of earth or stone;

“structure” means 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— (a) where the context so admits, includes the land on, in or under which the structure is situated.

“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.

#### Section 3(1)

“development” means 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.

#### Section 4

(1)(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.

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

Section 4(2) of the Act provides that the Minister may, by regulations, provide for any class of development to be exempted development. The main regulations made under this provision are the Planning and Development Regulations 2001, as amended.

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

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

Article 6(3) of the Planning and Development Regulations 2001, as amended, (hereinafter 'the Regulations') provide that 'subject to article 9, development of a class specified in column 1 of Part 3 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 3 opposite the mention of that class in the said column 1.

As provided for in Article 9(1)(a), development to which article 6 relates, shall not be exempted development for the purposes of the Act, if the carrying out of such development would: (*inter alia*)

- (vi) interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of a development plan for the area in which the development is proposed or, 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 development plan,
- (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.

#### Class 4, Part 3, Schedule 2

The construction, erection or maintenance of any wall or fence, other than a fence of sheet metal, or a wall or fence within or bounding the curtilage of a house.

#### *Conditions and Limitations*

1. The height of the wall or fence, other than a fence referred to in paragraph 2, shall not exceed 2 metres.
2. The height of any fence for the purposes of deer farming or conservation shall not exceed 3 metres.

## **8.0 Assessment**

- 8.1. It should be stated at the outset that the purpose of the assessment of this referral is not to determine the acceptability or otherwise of the erection of replacement fencing in respect of the proper planning and sustainable development of the area, but rather, whether or not the matter in question constitutes development, and if so, falls within the scope of exempted development.

### **The Question of Development**

- 8.2. The proposal comprises the erection of replacement fencing to enclose the site. This act of construction, alteration and repair may reasonably be determined to comprise 'works' in accordance with the definition set out under section 2(1) of the Planning and Development Act 2000, as amended. These works have been carried out on, in and over land and thereby constitute "development" in accordance with section 3(1) of the Planning and Development Act 2000, as amended.

### **The Question of Exempted Development**

- 8.3. It is stated that the purpose of the replacement fencing structure is to enclose sheep livestock. Therefore, the development can be classified as exempt development in

accordance with the provisions of Sections 4(1)(a) and 4(1)(h) of the Act, subject to any limitations which the Minister may prescribe by Regulation in accordance with Section 4(2)(a) of the Act. I consider the relevant class to which the development relates to be Class 4 of Part 3 of Schedule 2 of the Planning and Development Regulations 2001, as amended.

- 8.4. Additionally, under Section 4(4) of the Act, no development can be exempted development if it requires an Environmental Impact Assessment (EIA) or an Appropriate Assessment (AA).
- 8.5. In relation to EIA, the development is not a class for the purposes of EIA as per the classes of development set out in Schedule 5 of the Planning and Development Regulations 2001, as amended. No mandatory requirement for EIA therefore arises and there is also no requirement for a preliminary examination or screening assessment. Refer to Appendix 1.
- 8.6. In relation to AA, I have undertaken a screening assessment under paragraphs 8.7 to 8.28 below.

### **Appropriate Assessment Screening**

#### Compliance with Article 6(3) of the Habitats Directive

- 8.7. The requirements of Article 6(3), as related to screening the need for appropriate assessment of a project under part XAB, section 177U(9) of the Planning and Development Act 2000 (as amended), are considered fully in this section.

#### Background on the Application

- 8.8. The Referrer has submitted a screening report for Appropriate Assessment as part of the referral documentation ('Information to Inform Stage 1 Appropriate Assessment Screening' April 2023). I am satisfied that the Stage 1 AA Screening Report was prepared in line with current best practice guidance, provides a description of the development and identifies European Sites within a possible zone of influence of the development. The Screening Report concluded that *"the installation of the replacement fencing, either alone or in combination with other plans or projects has not resulted in any significant effects on European Sites. This conclusion was made without considering any mitigation measures or measures designed to avoid or reduce impacts on European Sites"*. Additionally, a response from the author of the screening

report (i.e. the consultant ecologist) is provided as part of Appendix C of the referral documentation, in response to Cork County Council's declaration.

- 8.9. A Heathland Management Plan (April 2023) was also prepared as part of the documentation. This identified the European dry heath (EDH) habitat within the site, the extent of its coverage and management recommendations. This plan states, inter alia, that on-going monitoring will be needed regularly to check on the quality of the EDH.
- 8.10. Having reviewed the referral documentation, the reports on file from Cork County Council and their correspondence with the National Parks and Wildlife Service (NPWS), I am satisfied that the information allows for a complete examination and identification of any potential significant effects of the development, alone or in combination with other plans and projects, on European Sites.

#### Screening for Appropriate Assessment - Test of likely significant effects

- 8.11. I acknowledge that sheep grazing is considered a management practice for the maintenance of the European dry heath habitat in good condition, as outlined within the 2020 European Commission's 'Action plan to maintain and restore to favourable conservation status the habitat type 4030 European dry heaths'. However, I consider that the subject development is not directly connected with or necessary to the management of the European Site(s) and therefore it needs to be determined if the development is likely to have significant effects on the European site(s).

#### Brief description of the development

- 8.12. The Referrer's consultant ecologist (CE) provides a description of the project within Sections 1.1 and 2.4 of the AA Screening Report. The development site is described as comprising a total coverage of 5,044sqm of European dry heath habitat, with a mosaic of heather, bell heather and western gorse also present. Other parts of the landholding are dominated by scrub, wet grassland and dry-humid acid grassland. A stream flows southwards through the landholding directly into Roaringwater Bay south of the site.
- 8.13. Taking account of the characteristics of the development in terms of its location and the scale of works, the following issues are considered for examination in terms of implications for likely significant effects on European Sites:

- Construction related habitat loss/fragmentation
- Construction related habitat degradation as a result of hydrological impacts
- Construction related habitat degradation as a result of invasive species
- Construction related habitat disturbance and species disturbance

### European Sites

- 8.14. The subject site is located within the Roaringwater Bay and Islands Special Area of Conservation (SAC) (Site Code 000101). Having reviewed the National Parks and Wildlife (NPWS) Designations Viewer GIS Map, I note that most of the island comes under this SAC designation, however, interestingly, there are little pockets throughout the island comprising of dwellings and clusters of dwellings that are not included in the designation.
- 8.15. The closest other European Sites to the subject site are the Barley Cove to Ballyrisode Point SAC (001040), which is located approximately 8km west of the site, and the Sheep's Head to Toe Head SPA (004156), which is located approximately 11km west and southwest of the site.
- 8.16. A summary of European Sites within a possible zone of influence of the development is presented in Table 1 below. Where a possible connection between the development and a European Site has been identified, these sites are examined in more detail.

Table 1: Summary Table of European Sites within a possible zone of influence of the development

European Site	Qualifying Interest	Distance from development	Connections	Considered further in screening
Roaringwater Bay and Islands SAC (000101)	8 QIs <a href="https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO000101.pdf">https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO000101.pdf</a>	Development is within the designated site.	Yes	Yes

Sheep's Head to Toe Head SPA (004156)	Peregrine (Falco peregrinus) [A103] Chough (Pyrrhocorax pyrrhocorax) [A346]	Approximately 11km west and southeast.	No, due to distance pathway is significantly remote. AA Screening Report did not identify any ex-situ species during field survey. Desktop survey did not encounter a record of these within 2km of the site.	No
Barley Cove to Ballyrisode Point SAC (001040)	9 QIs <a href="https://www.nps.ie/sites/default/files/protection/sites/conservation_objectives/CO001040.pdf">https://www.nps.ie/sites/default/files/protection/sites/conservation_objectives/CO001040.pdf</a>	Approximately 8km west.	No, due to distance pathway is significantly remote.	No

#### Identification of likely significant effects

- 8.17. This section will examine how elements of the project may have resulted in impacts on the Roaringwater Bay and Islands SAC (000101) during the construction stage and how those impacts may have affected the conservation objectives of the site. This section also assesses the in-combination impact with other plans or projects that together could have affected the conservation objectives of the site.
- 8.18. Having regard to the location and nature of the development, I consider that the relevant Qualifying Interest (QI) that may have been impacted by the development is European dry heath [4030] via habitat loss, fragmentation and/or disturbance. The conservation objective for European dry heath is to maintain its favourable conservation condition. As summarised under Table 2 below, I am satisfied that the development would not have likely resulted in a significant effect on the other seven QIs of the SAC, having regard to the nature of the works undertaken and to the pressures and threats associated with these QIs (having reviewed the National Parks and Wildlife Service's Article 17 Habitats and Species Assessments).

- 8.19. I note that the screening report states that the footprint of the development does not overlap with any European dry heath on site. A mini digger was used and tracked along the boundary fencing line and minimal quantities of vegetation were cleared off the existing fence boundary margins. It is also stated that there was no evidence of any dry heath removal along these boundary margins during the field survey in February 2023. The screening report states that the installation phase did not involve the transport of materials to the site and there is no likelihood of the introduction of invasive species.
- 8.20. I acknowledge that the development is already in place and some of the terminology within the submitted reports state that the development has not resulted in any significant effect on European Sites. Notwithstanding this, the Board should note that as the competent authority, in order to be satisfied that an Appropriate Assessment is not required, the screening determination needs to conclude that there would be no **likely** (*my emphasis*) significant effects, either alone or in-combination with other plans or projects, on any European Site, in view of the sites' conservation objectives.
- 8.21. I acknowledge that the fencing in question is replacement fencing. However, it is replacement fencing in a highly sensitive area. Having regard to the construction methodology undertaken onsite which included the introduction of a mini-digger onsite which would have traversed the site, and to the proposed soil disturbance and vegetation clearance, there is doubt as to whether the construction works would not have resulted in habitat loss, fragmentation or disturbance. The reason for this is due to the works being located within the SAC, the proximity of the European dry heath to the areas of development and to the main pressures and threats associated with this habitat, having regard to the NPWS Article 17 Habitat Assessment and to Section 3.4 of the 2020 European Commission's Action plan.
- 8.22. With regards to any potential in-combination impact, I consider it reasonable to assess the impact of this development in-combination with the works carried out elsewhere on the site and which are also before the Board under Referral ref. ABP-317413-23. I note that it is suggested that as the projects are not interdependent and took place separately over an extended period of time from September 2021 to June 2022 that no cumulative impact could occur. I consider this issue would be relevant if it related to project splitting in order to circumvent the EIA process. I consider it was entirely

reasonable for the Council to consider both of these projects as part of the in-combination impact.

- 8.23. Having regard to the nature of the works undertaken related to this referral and to my conclusion under referral ABP-317413-23, I consider that the in-combination impact of both projects would have likely resulted in significant effects on the SAC and, therefore, should have been subject to an appropriate assessment in this regard.
- 8.24. Additionally, I note the Council's concerns regarding the relationship between the fencing enclosing the site and the high stocking rates on site. I have already established under paragraph 8.11 above that the fencing is not directly connected with or necessary to the management of the European Site(s). Therefore, I would consider it to be unreasonable to conclude that the replacement fencing would result in overgrazing of the European dry heath, having regard to the replacement nature of the fencing. Furthermore, significant changes in livestock density is considered an activity requiring consent of the Minister (ARC20) within Schedule 4 of SI No. 470 of 201 European Union Habitats (Roaringwater Bay and Islands Special Area of Conservation 000101) Regulations 2021.

#### Reference to similar case

- 8.25. I note the reference by the referrer to case ABP-309494-21, where the Board considered that the construction of a palisade fence within the Lower River Shannon SAC (Site Code 002165) was development and exempted development. However, I do not consider these cases similar due to the different qualifying interests for SAC 000101 and SAC 002165. I note that the Inspector's report for ABP-309494-21 stated that many of the QIs in 002165 were marine habitats and marine based species which would not have been effected by any construction works due to the inland location of the development.

#### Mitigation Measures

- 8.26. I note that the CE response as part of appendix C of the referral documentation stated that mitigation measures were incorporated by the construction team to further ensure no direct or indirect impacts with the primary measure being to minimise impact on soil and vegetation during the construction phase. I note the CE stated that such mitigation can be considered and references the judgement of C-721-21 in this regard. This

judgement by the CJEU related to standard features incorporated into a projects design which do not have the aim of reducing negative effects.

- 8.27. In this case, I consider that measures during the construction phase would have had to have been taken into account with the sole intention of avoiding or reducing any harmful effect on the European Site, due to the fact that the location of the development was within the European Site and to the proximity of the European dry heaths habitat. Additionally, the fact that a habitat management plan was undertaken, which included the surveying of the site for the location of European dry heath, suggests to me that the project should have proceeded to Appropriate Assessment.

#### Screening Determination

- 8.28. Having regard to the above, I cannot be certain at the screening stage to confirm that there would not have been likely significant effects on the Roaringwater Bay and Islands SAC (Site Code 000101), alone or in combination with other plans or projects, in view of the sites' conservation objectives for European Dry Heath, and a full Appropriate Assessment is required to be carried out. Therefore, I consider that the development cannot be considered exempted development having regard to Section 4(4) of the Planning and Development Act 2000, as amended.



Table 2: AA Screening summary matrix

Summary Screening Matrix – Roaringwater Bay and Islands SAC				
Qualifying Interests	Conservation Objective	Possible Effect alone	In-combination effects	Screening conclusions
European Dry Heaths [4030]	To maintain the favourable conservation condition	<ul style="list-style-type: none"> <li>Habitat loss</li> <li>Habitat fragmentation</li> <li>Habitat disturbance</li> </ul>	<ul style="list-style-type: none"> <li>Potential works related to ABP-317413-23</li> </ul>	Possible significant effects cannot be ruled out without further analysis and assessment.
Lutra Lutra (Otter) [1355]	To restore the favourable conservation condition	No records of the species within 2km of the site. Site suitable for commuting or resting, however, no habitat loss.	No possibility of effects.	No likelihood of significant effects.
Phocoena phocoena (Harbour Porpoise) [1351]	To maintain the favourable conservation condition	No effects on surface water and no potential for contaminants to effect the species.	No possibility of effects.	No likelihood of significant effects.
Large shallow inlets and bays [1160] Reefs [1170] Vegetated sea cliffs of the Atlantic and Baltic coasts [1230] Submerged or partially submerged sea caves [8330] [1351] Halichoerus grypus (Grey Seal) [1364]	To maintain the favourable conservation condition	No possibility of effects	No possibility of effects	No likelihood of significant effects.

- 8.29. Notwithstanding the AA screening conclusion above, I will proceed to assess the development against the conditions and limitations set out under Class 4 of Part 3 of Schedule 2 of the Planning and Development Regulations 2001, as amended.
- 8.30. The referral states that the fencing was replacement fencing erected to enclose the site. The height of the fence is outlined as 1.2 metres. On the date of my site inspection I measured the height of the fencing in two locations; along the south boundary of the site at a height of approximately 1.2 metres and along the west boundary of the site at a height of approximately 1.5 metres. I note that this height is not as described in the documentation, however, is below the 2 metre limitation. Therefore, I consider that the development would comply with Condition/Limitation 1 of Class 4. I consider that Condition/Limitation 2 is not relevant.
- 8.31. To conclude, I consider that the development complies with the conditions and limitations of Class 4 of Part 3 of Schedule 2 of the Planning and Development Regulations 2001, as amended, subject to Article 9(1) of said Regulations.

#### **Article 9(1) - Restrictions on exempted development**

##### **1. Article 9(1)(vi)**

**Interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of a development plan for the area in which the development is proposed or, 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 development plan**

- 8.32. The subject site is within an area designated as a high value landscape under the Cork County Development Plan 2022-2028. Objectives GI14-9, GI14-10 and GI14-12 seek to protect visual and scenic amenities and preserve the character of all important views and prospects, particularly sea views and coastal landscapes.
- 8.33. The fence is a post and wire fence typical to that of an agricultural setting. Having regard to this, to its 1.5 metre height and to the nature of it being a replacement fence, I am satisfied that the development does not interfere with the character of the landscape or views or prospects of special amenity value or special interest. Therefore, I consider that the development is not de-exempted in this regard.

8.34. The Board should note that my conclusion here is not inconsistent with my conclusion under referral 317413-23, due to the different scale and nature of the two developments.

**2. Article 9(1)(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**

8.35. As assessed under paragraphs 8.7 to 8.28 above, an Appropriate Assessment is required and therefore is de-exempted in this regard.

**3. Article 9(1)(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.**

8.36. I note that the subject site is located within the Roaringwater Bay and Islands proposed Natural Heritage Area (pNHA). Therefore, to date the area has not been designated as a natural heritage area by Order under Section 18 of the Wildlife (Amendment) Act 2000 and thus this restriction on exemption does not apply.

## **9.0 Recommendation**

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 erection of replacement fencing to enclose the site is or is not development or is or is not exempted development:

**AND WHEREAS** Albert Manifold requested a declaration on this question from Cork County Council and the Council issued a declaration on the 26<sup>th</sup> day of May 2023 stating that the matter was development and was not exempted development:

**AND WHEREAS** Albert Manifold referred this declaration for review to An Bord Pleanála on the 20<sup>th</sup> day of June 2023:

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

- (a) Sections 2(1), 3(1) and 4 of the Planning and Development Act 2000, as amended,
- (b) Articles 6(3) and 9(1) of the Planning and Development Regulations 2001, as amended,
- (c) Part 3 of Schedule 2 of the Planning and Development Regulations 2001, as amended,
- (d) Class 4 of Part 3 of Schedule 2 of the Planning and Development Regulations 2001, as amended,
- (e) The location of the development within a designated High Value Landscape area under the Cork County Development Plan 2022-2028,
- (f) The location of the development within the Roaringwater Bay and Islands Special Area of Conservation (SAC) (000101), where the habitat European dry heath [4030] is a Qualifying Interest and the

conservation objective is to maintain the favourable conservation condition of this habitat, and

(g) The submissions of the parties to the referral:

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

- (a) The erection of replacement fencing to enclose the site constitutes development, being works which come within the scope of section 3(1) of the Planning and Development Act 2000, as amended;
- (b) The development, alone and in-combination with other plans and projects, would have likely resulted in a significant effect on the Roaringwater Bay and Islands Special Area of Conservation (SAC) in view of the Site's conservation objectives. Therefore, the development is subject to an Appropriate Assessment and cannot be considered exempted development under Section 4(4) of the Planning and Development Act 2000, as amended;
- (c) The development comes within the scope of Class 4 of Part 3 of Schedule 2 of the Planning and Development Regulations 2001, as amended;
- (d) The development complies with the conditions and limitations of Class 4 of Part 3 of Schedule 2 of the Planning and Development Regulations 2001, as amended;
- (e) The development comes within the restriction on exemption in article 9(1)(a)(viiB) 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 Planning and Development Act 2000, as amended, hereby decides that the erection of replacement fencing to enclose the site, 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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Gary Farrelly  
Planning Inspector

14<sup>th</sup> February 2024

## Appendix 1 - EIA Pre-Screening

<b>An Bord Pleanála Case Reference</b>	317408-23		
<b>Proposed Development Summary</b>	Erection of replacement fencing to enclose the site		
<b>Development Address</b>	Long Island, Schull, County Cork		
<b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b> <small>(that is involving construction works, demolition, or interventions in the natural surroundings)</small>		<b>Yes</b>	X
		<b>No</b>	No further action required
<b>2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?</b>			
<b>Yes</b>			EIA Mandatory EIAR required
<b>No</b>	X		Proceed to Q.3
<b>3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?</b>			
		<b>Threshold</b>	<b>Comment (if relevant)</b>
			<b>Conclusion</b>
<b>No</b>	X		No EIAR or Preliminary Examination required
<b>Yes</b>			Proceed to Q.4
<b>4. Has Schedule 7A information been submitted?</b>			
<b>No</b>			Preliminary Examination required
<b>Yes</b>			Screening Determination required

Inspector: \_\_\_\_\_

Date: \_\_\_\_\_

**Gary Farrelly**