



An
Bord
Pleanála

Inspector's Report ABP-317413-23

Section 5 Referral

Question	Whether the construction of two agricultural sheds is or is not development and if they are development, whether or not they are exempted development
Location	Long Island, Schull, County Cork
Declaration	
Planning Authority	Cork County Council
Planning Authority Reg. Ref.	D/14/23
Applicant for Declaration	Albert Manifold
Planning Authority Decision	Is development and is not exempted development
Referred by	Albert Manifold
Owner/ Occupier	Albert Manifold
Date of Site Inspection	17 th January 2024
Inspector	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 construction of two agricultural sheds is development and if they are development, whether or not they are exempted development.

The question relates to existing sheds. The first shed is described as an agricultural store building with a floor area of 18.5sqm and height of 2.63 metres. The design is flat roofed and externally comprised of stone and green cladding to the walls with a sedum/grass roof. The second shed is described as a generator building with a floor area of 2.29sqm and height of 2.1 metres. The design is also flat roofed and externally comprised of stone with a sedum/grass roof.

3.0 Planning Authority Declaration

3.1. Declaration

Cork County Council issued a declaration on the question on 26th May 2023 declaring that the two structures constitute development and are not exempted development for the following reasons:

1. The Planning Authority is not satisfied that the 2 no. structures are being used for agricultural purposes therefore it does not come within the scope of Class 9, Part 3 of Schedule 2 of the Planning and Development Regulations 2001, as amended.

2. It is considered that the two structures and associated works carried out on site have interfered with the character of this High Value Landscape, where views and prospects of important coastal landscapes are protected under a number of policy objectives of the Cork County Development Plan 2022 including GI 14-9, GI14-10 and GI 14-12, thereby making it de-exempt under Article 9(1)(a)(vi) of the Planning and Development Regulations, 2001 as amended.
3. The construction of these 2 no. buildings would have involved the removal of qualifying interest habitat from the site and likely caused damage to other habitats within the SAC. The works associated with the construction of 2 no. storage sheds on site would have required Appropriate Assessment and are therefore de-exempt under Article 9(1)(a)(viiB) of the Planning and Development Regulations 2001, as amended.

3.2. Planning Authority Reports

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 the impact on the landscape and 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 18th May 2023) – This report concluded that the works were de-exempt under Articles 9(1)(a)(vi) and 9(1)(a)(viiB) of the Planning and Development Regulations and recommended a site reinstatement plan. It was stated that this recommendation was based on a site visit and consultations with the NPWS with evidence at the site indicating that the works had involved the removal of qualifying interest habitat and likely caused damage to other habitats within the SAC. 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 7th November 2022).

4.0 Planning History

Referral 317408-23

This was referred to the Board on 20th June 2023 by Albert Manifold and is awaiting a decision. The referral is in relation to the construction of replacement fencing 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 20th June 2023. The referral was accompanied by the following documentation:

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

The Referral can be summarised as follows:

- The sheds are being used for agricultural purposes and there is no evidence for the Council to come to the conclusion that they are not being used as such.
- It is unfair to assess the visual impact of the works during the course of construction. There is no assessment or reasoned conclusion as to why the

Council consider the sheds have interfered with the character of this landscape and diminished views and prospects.

- A landscape assessment is undertaken assessing the works against objectives GI14-9, GI14-10 and GI14-12 of the Cork County Development Plan 2022-2028.
- 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 16th February 2023 which mapped the full extents of European dry heath on the site. 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.

“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.

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 9, Part 3, Schedule 2

Works consisting of the provision of any store, barn, shed, glass-house or other structure, not being of a type specified in class 6, 7 or 8 of this Part of this Schedule, and having a gross floor space not exceeding 300 square metres.

Conditions and Limitations

1. No such structure shall be used for any purpose other than the purpose of agriculture or forestry, but excluding the housing of animals or the storing of effluent.
2. The gross floor space of such structures together with any other such structures situated within the same farmyard complex or complex of such structures or within 100 metres of that complex shall not exceed 900 square metres gross floor space in aggregate.
3. No such structure shall be situated within 10 metres of any public road.
4. No such structure within 100 metres of any public road shall exceed 8 metres in height.
5. No such structure shall be situated within 100 metres of any house (other than the house of the person providing the structure) or other residential building or school, hospital, church or building used for public assembly, save with the consent in writing of the owner and, as may be appropriate, the occupier or person in charge thereof.
6. No unpainted metal sheeting shall be used for roofing or on the external finish of the structure.

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 2 no. agricultural sheds 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 construction of agricultural sheds. These acts of construction 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. The use of buildings for agricultural development are classified as exempt development in accordance with the provisions of Section 4(1)(a) 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 9 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 8.26 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 two structures, 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 https://www.npws.ie/sites/default/files/proTECTED-sites/conservation_objectives/CO000101.pdf	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 https://www.npws.ie/sites/default/files/proTECTED-sites/conservation_objectives/CO001040.pdf	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 within the Roaringwater Bay and Islands SAC 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 during construction a mini digger machine was used to clear minimal amounts of grassland vegetation and soil to expose the ground for accessing and installing foundations for the two structures. It is stated that the footprint of the development does not overlap with any European dry heath on site. It is also stated that new building materials were introduced into the site during the construction phase which have the potential to introduce invasive species. The screening report states that no invasive species were recorded within the site during the field survey in February 2023, however, acknowledges that this is not the optimal time of year for flowering plants.
- 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. Having regard to the construction methodology undertaken onsite which included the introduction of a mini-digger onsite, the introduction of materials on to the site and to the proposed soil disturbance and vegetation clearance, I have doubt as to whether I could definitely confirm at screening stage that the construction works wouldn't 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-317408-23. 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-317408-23, 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.

Mitigation Measures

- 8.24. 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.
- 8.25. 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. The screening report actually states that there was potential for the introduction of invasive species. 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

- 8.26. 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"> Habitat loss Habitat fragmentation Habitat disturbance 	<ul style="list-style-type: none"> Potential works related to ABP-317408-23 	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.

- 8.27. Notwithstanding this AA screening conclusion, I will proceed to assess the development against the conditions and limitations set out under Class 9 of Part 3 of Schedule 2 of the Planning and Development Regulations 2001, as amended.
- 8.28. The referral states that both structures are directly associated with sheep farming. One is used for storing animal feed and the other stores the generator necessary for sheep shearing. I consider that these uses would comply with Condition/Limitation 1 of Class 9.
- 8.29. The referral states that combined the two sheds have a gross floor area of 20.44sqm and there is no traditional farmyard complex associated with the landholding. I note the plans provided with the referral. I consider that the development complies with Condition/Limitation 2 of Class 9.
- 8.30. The referral states that the structures are not situated within 10 metres of any public road. I consider that the development complies with Condition/Limitation 3 of Class 9.
- 8.31. The referral states that the sheds have a maximum height of 2.1 metres and 2.6 metres respectively. I note the elevation drawings provided with the referral. I consider that the development complies with Condition/Limitation 4 of Class 9.
- 8.32. The referral states that the nearest occupied building to a farm shed is over 100 metres away. Having measured the distance on Google Earth I can confirm that the development complies with Condition/Limitation 5 of Class 9.
- 8.33. The referral states that the external finish of the shed used to store feed is a corrugated green coloured panel and the external finish of the smaller shed is stone. I noted these finishes on the date of my site inspection and therefore, I consider that the development complies with Condition/Limitation 6 of Class 9.
- 8.34. To conclude, I consider that the development complies with the conditions and limitations of Class 9 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

- 8.35. 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.
- 8.36. I note the detailed argument of the Referrer's planning consultant that the works subject to this referral will not have a significant impact in terms of landscape or views. However, the purpose of this assessment is not to determine whether the development will result in a significant impact on the landscape or views, but rather whether the works will **interfere** (*my emphasis*) with the character of the landscape and views, the preservation of which is an objective of the Cork County Development Plan 2022-2028.
- 8.37. The environment, before the works took place, comprised of a coastal landscape with no structures in existence. The works have introduced 2 no. structures into this landscape and thus have changed the landscape and views. Therefore, it is my view that the works have, by definition, interfered with the character of this high value landscape area and have interfered with sea views in which Objectives GI14-9, GI14-10 and GI14-12 of the Cork County Development Plan 2022-2028 seeks to protect. Therefore, I consider that the works are de-exempted in this regard.

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

- 8.38. As assessed under paragraphs 8.7 to 8.26 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.

8.39. 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 construction of two agricultural sheds 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 26th 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 20th 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 9 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 construction of the two agricultural sheds 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 9 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 9 of Part 3 of Schedule 2 of the Planning and Development Regulations 2001, as amended;
- (e) The development would interfere with the character of a designated high value landscape area under the Cork County Development Plan 2022-2028 and would interfere with sea views in which Objectives GI14-9, GI14-10 and GI14-12 of the Cork County Development Plan 2022-2028 seek to protect. Therefore, the development comes within the restriction on exemption in article 9(1)(a)(vi) of the Planning and Development Regulations 2001, as amended;
- (f) 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 construction of two agricultural sheds 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.

Gary Farrelly
Planning Inspector

14th February 2024

Appendix 1 - EIA Pre-Screening

An Bord Pleanála Case Reference	317413		
Proposed Development Summary	Construction of two agricultural sheds		
Development Address	Long Island, Schull, County Cork		
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? <small>(that is involving construction works, demolition, or interventions in the natural surroundings)</small>		Yes	X
		No	No further action required
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?			
Yes			EIA Mandatory EIAR required
No	X		Proceed to Q.3
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]?			
		Threshold	Comment (if relevant)
			Conclusion
No	X		No EIAR or Preliminary Examination required
Yes			Proceed to Q.4
4. Has Schedule 7A information been submitted?			
No			Preliminary Examination required
Yes			Screening Determination required

Inspector: _____

Date: _____

Gary Farrelly