



An
Bord
Pleanála

Inspector's Report ABP-318223-23

Question

Whether the construction of a conservatory, 3 no. structures and an access track is or is not development and is or is not exempted development.

Location

Lettergesh East, Renvyle, Co. Galway

Declaration

Planning Authority

Galway County Council

Planning Authority Reg. Ref.

ED23/89

Applicant for Declaration

Sean Harrington

Planning Authority Decision

Is development and is not exempted development

Referral

Referred by

Sean Harrington

Owner/ Occupier

Sean Harrington

Observers

None

Date of Site Inspection

17th July 2024

Inspector

Ian Campbell

1.0 Site Location and Description

- 1.1. This case relates to a referral submitted under Section 5(3)(a) of the Planning and Development Act, 2000, as amended, where the Planning Authority has issued a declaration on a referral and this determination is now the subject of appeal.
- 1.2. The subject of this referral is located at Lettergesh East, Renvyle, Co. Galway (c. 15 km north-east of Clifden). The referral property is situated on the western side of Lough Fee in a highly scenic location.
- 1.3. Access to the referral site is via a narrow gravel track, which connects to a local access road (L-5102-23). A watercourse runs along the northern boundary of the site.
- 1.4. The referral site accommodates a detached cottage with single storey rear return and a conservatory attached to the side/south; a stone shed/greenhouse with Perspex roof (described as a stone shed/former cottage); and 2 no. sheds (described as 'agricultural sheds'). An access track connects the house to a gated entrance to the north-east of the referral site. To the north of the referral site a metal bridge over the watercourse connects into adjoining lands.
- 1.5. The particulars submitted with the referral state that the farmstead has an area of c. 2.5 acres (c. 1 Ha).

2.0 The Question

- 2.1. The question that has been submitted in the referral is as follows:
 - Whether the construction of a conservatory is or is not development and is or is not exempted development.
 - Whether the 3 no. structures are or are not development and are or are not exempted development.
 - Whether the construction of a new access track is or is not development and is or is not exempted development.
- 2.2. The referrer's submission to the Planning Authority and the Board provides the following elaborations;

- The 2 no. sheds are intended as stores for the housing of agricultural/horticultural and forestry machinery and equipment, necessary to enable and manage the horticultural plantation, (i.e. the plantation and propagation of seedlings) and are not for residential or commercial use.
- The 2 no. sheds replaced 2 no. shed structures which were previously on the site.
- Concrete sheep pens previously existed at the location of the 2 no. replacement sheds however these pens have been removed. The Appropriate Assessment Screening report submitted to the Planning Authority notes that the shed structures and sheep enclosures which were previously on the site sat on a concrete slab which was removed to facilitate the proposed replacement sheds.
- The former cottage¹ was reroofed with a modern roof as a greenhouse. Reference is also made to the renovation/weather tightening of the existing structure. No increase in the footprint of the building occurred. The structure is not intended for habitation but for the propagation and nurture of agricultural seedlings prior to planting.
- The particulars submitted refer to there being an existing gate and 'access track' on the site in 2021 when the referrer purchased the site. A photograph of the gate has been submitted. The referrer notes that the gate has been repositioned 8 metre west from its previous location. The site plan indicates an access track traversing the site from north-east to south-west, whereas the access track which is in-situ runs parallel with the watercourse along the northern boundary of the site.

2.3. Having regard to the information on the file, including the particulars submitted to the Board, and based on my observations of the site and structures thereon, it is

¹ From comparing a photograph of the structure indicated as 'stone shed/former cottage' submitted with the referral to the PA it is apparent that in addition to the structure being reroofed the external and internal walls have also been built up. The particulars submitted also indicate the removal of an internal wall. The AA Screening report submitted to the PA also refers to the wall plate of the structure having been 'repaired to original dimensions'.

considered appropriate that the question(s) referred to the Board be reworded as follows:

- Whether the construction of a conservatory, replacing a lean-to on the side gable/south elevation of the house, is or is not development and is or is not exempted development.
- Whether the building up of external and internal walls, the removal of an internal wall, and the provision of a Perspex roof on a ruinous structure, previously used as a shed/cottage, is or is not development and is or is not exempted development.
- Whether the construction of 2 no. shed structures², are or are not development and are or are not exempted development.
- Whether the construction of a new access track³ is or is not development and is or is not exempted development.

I intend to proceed with my assessment on the basis of the reworded question(s).

3.0 Planning Authority Declaration

3.1. Declaration

On the 30th of August 2023, a request for a Declaration in accordance with Section 5 of the Planning and Development Act, 2000, as amended, on the above questions (see para. 2.1) was received by Galway County Council from Sean Harrington.

² The particulars submitted to the PA and to the Board refer to removal of existing structures on the site, i.e. the sheep enclosure, a sheep shelter/farm shed and a barn structure. No details, for example floor plans, areas etc. have been submitted with the referral and as such I do not consider that these elements form part of the referral.

³ Reference is made to access gates/new entrance in the referrer's submission to the Board however I note that the application form submitted to the PA did not specifically refer to these elements. I further note that, whilst the location of the previous gates and the new gates have been indicated on a site plan drawing, the drawings and particulars submitted to the Planning Authority and the Board do not include elevations of the access gates/entrance. Accordingly I do not consider that these elements come under the referral.

In accordance with Section 5 of the Planning and Development Act, 2000, as amended, Galway County Council (GCC) issued a Declaration on the 13th of September 2023 that the subject of the referral, that being, the construction of, 3 no. structures, a new access track and a conservatory, at Lettergest East, Renvyle, is development and is not exempted development.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report of the Planning Officer includes the following comments;

- The subject of the referral are considered to be 'works' and also development.
- The site is surrounded and partially within The Twelve Bens/Garraun Complex SAC, and therefore would not satisfy Article 9 (1) (a) (viiB). The Planning Authority are not satisfied, based on the information submitted, and specifically in respect of the extent of demolition and construction activity which has taken place, that Appropriate Assessment can be screened out.
- The access track and entrance would trigger the restriction on exemptions, i.e. Article 9 (1) (a) (iii) *endanger public safety by reason of traffic hazard or obstruction of road users*.
- The conservatory to the side of the dwelling would not fall within Class 1 of the Planning and Development Regulations, 2001, as amended.
- The construction of the 2 no. agricultural sheds and reroofing of the existing stone shed would not satisfy the criteria of the Planning and Development Act, 2000, as amended. Reference to 4 (1) (h) of Planning and Development Regulations, 2001, as amended, follows this statement.
- The restrictions under Article 9 (1) (a) (vi) of the Planning and Development Regulations, 2001, as amended, i.e. interference with the character of a landscape, the preservation of which is an objective of a development plan apply, noting the applicable landscape designation of the site, i.e. Class 4 (Iconic).

3.2.2. Other Technical Reports

None received.

4.0 **Planning History**

4.1. Subject Site

PA. Ref. 21/312 – Permission GRANTED for replacement effluent treatment system with new septic tank and integrated constructed wetland treatment system and associated site works.

Correspondence submitted by the referrer notes that the PA issued an Enforcement Notice, Ref. EN22/130 for development carried out on the site. Reference is also made to the issuing of a Warning Letter.

4.2. **Referral History**

I have undertaken a review of the referrals database in order to determine if there are any history cases that relate to development of the same form as that the subject of this case. I have identified the following cases of relevance;

Re. Section 4 (1) (h)

RL 3433 - The question arose as to whether works consisting of re-roofing a structure is or is not development, and is or is not exempted development. The Inspector concluded that as the replacement roof was identical it came under Section 4 (1) (h) of the Planning and Development Act, 2000, as amended.

Re. Agricultural Sheds

ABP. 302390-18 - The question arose as to whether an agricultural shed is or is not development, and is or is not exempted development. The Inspector concluded that as the shed was not linked to any evident agricultural activity that the provisions of Class 9, Part 3, Schedule 2 of the Planning and Development Regulations 2001, as amended, did not pertain.

Re. Access Track/Road

304134 - The question arose as to whether the creation of an access road (and entrance) is or is not development, and is or is not exempted development. In relation to the access road, the Inspector concluded that Class 13, Part 1, Schedule 2 of the Planning and Development Regulations 2001, as amended, does not apply to the construction of a new road, as this would not entail the repair or improvement, and that reference in Class 13 to 'paving' in the context of 'the construction of a private footpath or paving' relates to pedestrian use and not vehicular use, and therefore this part of Class 13 would not confer an exemption for an access road.

5.0 Policy Context

5.1. Development Plan

- 5.1.1. The relevant Development Plan is the Galway County Development Plan 2022 – 2028. The subject site is not subject to a specific land-use zoning in the Galway County Development Plan 2022 – 2028.
- 5.1.2. In terms of Landscape Character Type, the referral site is located within the 'Uplands and Bog Landscape' (see Appendix 4 of CDP), which has an 'Iconic' landscape sensitivity. The appeal site is not affected by any protected views (see Map 08, Appendix 4). The road on the opposite/eastern side of Lough Fee is designated as a Maritime Scenic Route (see Map 09, Appendix 4).

5.2. Natural Heritage Designations

- The referral site is surrounded by and partially within The Twelve Bens/Garraun Complex SAC (Site Code 002031). The elements which are the subject of this referral are not located within the SAC however. The access track is situated c. 4 metres from the SAC boundary.
- The referral site is surrounded by The Twelve Bens/Garraun Complex pNHA (Site Code 002031). The elements which are the subject of this referral are not located

within the pNHA however. The access track is situated c. 4 metres from the pNHA boundary.

6.0 The Referral

6.1. Referrer's Case

The following is a summary of the main issues raised by the referrer in the submission to the Board.

Re. Background/Rationale:

- The property was purchased in 2021 and consisted of a farmstead comprising a dwelling and a number of agricultural outbuildings, some in a ruinous state but with walls intact.
- The applicant/referrer intends to use the farmstead for their own private agricultural and horticultural use. No livestock are proposed.
- A mix of native trees⁴ were planted to enhance drainage and facilitate a small green tea plantation and market vegetables (neither of which are on a commercial basis).

Re. Conservatory

- The conservatory replaces a former 'lean to' structure.

Re. Former Cottage Reroofed as Greenhouse:

- Section 4 (1) h of the Planning and Development Act, 2000, as amended, applies to the former cottage which has been reroofed as a greenhouse with a modern roof and renovated/weather tightened.
- No increase in the footprint of the building occurred. The structure is not intended for habitation but for the propagation and nurture of agricultural seedlings prior to planting.

⁴ The particulars submitted with the referral to the Board indicated 400 no. trees within the site.

- The new roof does not affect the external appearance of the structure to such a degree that it would be inconsistent with the character of the structure or neighbouring structures.
- The works maintain the character exactly as the structure would have looked.
- Roof materials may also have changed over time, e.g. slate, metal etc.
- The proposal provides for the preservation of the cluster of farmstead buildings on the site.
- The effect of the reroofing of the structure has an imperceptible impact the character of neighbouring structures given its inconspicuous location to the rear of the house.

Re. Replacement shed no. 1 and 2:

- The PA have erroneously applied Section 4 (1) (h) to the 2 no. sheds, i.e. replacement shed no. 1 and 2.
- Replacement shed no. 1 and 2 are to be used for housing agricultural/horticultural equipment and come under Class 9, Schedule 2, Part 3 of the Planning and Development Regulations, 2001, as amended.
- In respect of the conditions and limitations applicable to Class 9, the structures are intended for agricultural use; do not exceed 300 sqm cumulatively and are within the same farmyard complex; are not within 10 metres of a public road; do not exceed 8 metres in height; and will not comprise unpainted metal. The sheds are within 100 metres of a house however a letter of consent has been provided.

Re. New Access Track:

- Following the termination of a right-of-way across neighbouring lands to the north and removal of a concrete bridge over a stream, an access track was constructed to connect to the existing access road along the shore running past the property.
- The PA appear to have acceded to the referrer's case regarding carriage width, non-contravention of a condition and consisting of or comprising the formation,

layout out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4m.

- In relation to the issue of traffic hazard/obstruction of road user, it is contended that the access track would not give rise to a traffic hazard or the obstruction of road users and does not give rise to any increase in traffic generation. The new entrance replaces the previous access to the property which accessed the same access road, albeit at a location a short distance to the north of the new access point. The potential for traffic hazard and/or obstruction to road users is highly unlikely given that only one other property uses this access road beyond the referrer's property. The new access/egress does not obstruct or interfere with the use of the shoreline access road. There is sufficient visibility at the access.
- Letter from engineer accompanies the referrer's submission concluding that the proposal will not result in a traffic hazard or obstruction of road users.

Re. Conservatory:

- The PA have not provided a reason as to why it considers the conservatory not to fall within Class 1 of the Planning and Development Regulations, 2001, as amended.
- The conservatory complies with the conditions and limitations under Class 1 of the Planning and Development Regulations, 2001, as amended. The conservatory is single storey; 13.5 sqm in area and when combined with other extension(s) i.e. 15 sqm, does not exceed 40sqm; the height of the walls of the conservatory do not exceed the side walls of the house and the height of the highest part of the roof of the conservatory does not exceed the height of the highest part of the roof of the house; the conservatory did not reduce the area of private open space; no window is situated within 1 metre of a boundary; and the roof of the conservatory will not be used as a balcony/roof garden.

Re. Art. 9 (1)(a)(viiB):

- The basis for the PA's position in relation the proposal not being exempted development on foot of Art. 9 (1)(a)(viiB) has not been provided.

- The fact the site is surrounded by a SAC does not result in an automatic requirement for Appropriate Assessment. Determining whether AA is required is based on AA Screening, and AA Screening has been submitted by the referrer. The AA Screening determined that the works had no relationship with the designated site and Appropriate Assessment was not required.
- The construction of the access road was undertaken during a dry period to prevent sediment run-off. Wet curing or chemical binding was not required. The road finish prevents run-off. The use of the road will be minimal and it will revegetate over time.
- A small section of the land⁵ within the SAC resulted in the loss of improved agricultural grassland habitat which is of low ecological value. No loss of qualifying habitat occurred. The works did not give rise to fragmentation, displacement, disruption to qualifying habitats, or habitats of supporting qualifying features nor would the works have resulted in potential significant impact to water quality given the absence of a hydrological connection between the works and the lake either then, or now.
- Letter from Ecologist accompanies the referrer's submission noting;
 - The access route existed pre-designation.
 - The area has been the subject of anthropogenic influence over time.
 - The land surrounding the properties with its mineral soil enclosed meadows is significantly different from The Twelve Bens/ Garraun conserved area which is mainly open peatlands. There is no habitat or species for which the area is conserved within the project area.
 - The area where the entrance was widened is not integral to the conserved area and is of low ecological value with typical agricultural grassland species. There is no habitat or species for which the Natura area is conserved present there. It is a very small area with marginal ecological value on the margins of the conserved area.

⁵ The cover letter/report submitted with the referral to the PA states that part of the access road is within a designated site.

- The upgrading of the lane to the property with gravel poses no significant risk to the conserved area as natural porous material was used allowing colonisation and regeneration of grass and other species and avoiding sealing of the area. The area is also part of the grassland meadow of low ecological value that is not integral to the integrity of the site as a whole.
- The only risk that could have or that may arise as a result of the development is to water from the production of domestic wastewater. The installation of a modern tertiary treatment system to replace a Septic tank system is a positive change in this respect.

Re. Art. 9 (1)(a)(vi):

- The basis for the PA's position in relation the proposal not being exempted development on foot of Art. 9 (1)(a)(vi) has not been provided.
- The restrictions provided by Art. 9 (1)(a)(vi) do not apply merely on the basis of there being objectives to persevere the landscape/landscape sensitivity, but rather when the works interfere with the character of the landscape, view or prospect, the preservation of which is an objective of a development plan.
- The form and scale of the works are such as not to give rise to adverse impacts on the landscape, views, prospects etc. Images of the proposal has been submitted to demonstrate same. The works have an imperceptible impact within the receiving landscape, and are indistinguishable from the established pattern of development in the area.

6.2. Planning Authority Response

None received.

6.3. Observations

None received.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000, as amended

Section 2 Interpretation

(Agriculture)

“agriculture” includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the training of horses and the rearing of bloodstock, the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and “agricultural” shall be construed accordingly.

(Alteration)

includes —

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

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

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

(Works)

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)

(a) 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 (1) (Exempted Development)

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.

(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 (4) (Environmental Impact Assessment or Appropriate Assessment)

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.

Section 177U (9) (Appropriate Assessment)

In deciding upon a declaration or a referral under section 5 of this Act a planning authority or the Board, as the case may be, shall where appropriate, conduct a screening for appropriate assessment in accordance with the provisions of this section.

7.2. Planning and Development Regulations, 2001, as amended

Article 6 (1) states the following:

Subject to Article 9 the development of a Class specified in Column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with conditions and limitations specified in Column 2 of the Act opposite the mention of that Class in the said Column 1.

Article 9 (1)(a) provides that 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,

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

(iii) endanger public safety by reason of traffic hazard or obstruction of road users.

(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.

Class 1, Part 1, Schedule 2 of the Planning and Development Regulations 2001, as amended,

Development within the curtilage of a house

The extension of a house, by the construction or erection of an extension (including a conservatory) to the rear of the house or by the conversion for use as part of the house of any garage, store, shed or other similar structure attached to the rear or to the side of the house.

Subject to the following conditions and limitations;

1

(a) Where the house has not been extended previously, the floor area of any such extension shall not exceed 40 square metres.

(b) Subject to paragraph (a), where the house is terraced or semi-detached, the floor area of any extension above ground level shall not exceed 12 square metres.

(c) Subject to paragraph (a), where the house is detached, the floor area of any extension above ground level shall not exceed 20 square metres.

2.

(a) Where the house has been extended previously, the floor area of any such extension, taken together with the floor area of any previous extension or extensions constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 40 square metres.

(b) Subject to paragraph (a), where the house is terraced or semi-detached and has been extended previously, the floor area of any extension above ground level taken together with the floor area of any previous extension or extensions above ground level constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 12 square metres.

(c) Subject to paragraph (a), where the house is detached and has been extended previously, the floor area of any extension above ground level, taken together with the floor area of any previous extension or extensions above ground level constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 20 square metres.

3.

Any above ground floor extension shall be a distance of not less than 2 metres from any party boundary.

4.

(a) Where the rear wall of the house does not include a gable, the height of the walls of any such extension shall not exceed the height of the rear wall of the house.

(b) Where the rear wall of the house includes a gable, the height of the walls of any such extension shall not exceed the height of the side walls of the house.

(c) The height of the highest part of the roof of any such extension shall not exceed, in the case of a flat roofed extension, the height of the eaves or parapet, as may be appropriate, or, in any other case, shall not exceed the height of the highest part of the roof of the dwelling.

5.

The construction or erection of any such extension to the rear of the house shall not reduce the area of private open space, reserved exclusively for the use of the occupants of the house, to the rear of the house to less than 25 square metres.

6.

(a) Any window proposed at ground level in any such extension shall not be less than 1 metre from the boundary it faces.

(b) Any window proposed above ground level in any such extension shall not be less than 11 metres from the boundary it faces.

(c) Where the house is detached and the floor area of the extension above ground level exceeds 12 square metres, any window proposed at above ground level shall not be less than 11 metres from the boundary it faces.

7.

The roof of any extension shall not be used as a balcony or roof garden.

Class 6, Part 1, Schedule 2 of the Planning and Development Regulations 2001, as amended,

The construction of any path, drain or pond or the carrying out of any landscaping works within the curtilage of a house.

Subject to the following conditions and limitations;

The construction of any path, drain or pond or the carrying out of any landscaping works within the curtilage of a house

Class 13, Part 1, Schedule 2 of the Planning and Development Regulations 2001, as amended,

The repair or improvement of any private street, road or way, being works carried out on land within the boundary of the street, road or way, and the construction of any private footpath or paving.

Subject to the following conditions and limitations;

The width of any such private footpath or paving shall not exceed 3 metres.

Class 9, Part 3, Schedule 2 of the Planning and Development Regulations 2001, as amended,

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.

Subject to the following 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. The purpose of this referral is not to determine the acceptability or otherwise of the proposal but rather whether or not the matter(s) in question constitute development, and if so fall within the scope of exempted development within the meaning of the relevant legislation.

8.2. I have examined all the documentation on the file, inspected the site, and have had regard to the legislative provisions set out in both the Planning and Development Act, 2000, as amended, and the Planning and Development Regulations, 2001, as amended. I consider that the issues raised in the referral can be assessed under the following headings.

- Whether the proposal set out in paragraph 2.3 of this report, and comprising, the construction of a conservatory, replacing a lean-to on the side gable/south elevation of the house; the building up of external and internal walls, the removal of an internal wall and the provision of a Perspex roof on a ruinous structure, previously used as a shed/cottage; the construction of 2 no. shed structures; and the construction of a new access track, are or are not development and are or are not exempted development.
- Whether the works can be considered exempted development under the provisions of the Planning and Development Act, 2000 as amended, or under the Planning and Development Regulations, 2001, as amended.

8.3. Is or is not development

8.3.1. 'Works' are defined as including 'any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal'. I consider each of the aforementioned elements of this referral to be 'works' as they each comprise acts of construction.

8.3.2. In accordance with Section 3(1) of the Planning and Development Act, 2000 as amended, 'works' become development when they are carried out on, in, over or under land and therefore the works which are the subject of this referral are considered to comprise 'development'.

8.4. Is or is not exempted development

8.4.1. Section 4 of the Planning and Development Act, 2000, as amended, sets out certain forms of development which shall be exempted development. Additionally, Schedule 2 of the Planning and Development Regulations, 2001, as amended sets out forms of development which are exempted development within specific context.

8.4.2. **Conservatory** – the conservatory attached to the side/southern elevation of the dwelling is stated as replacing a previous ‘lean-to’ type structure (photographs and a floor plan of same are provided in referrer’s submission). The floor plan indicates dimensions of 4.5 metres (L) x 3 metres (W), giving a floor area of c. 13.5 sqm. The structure has a maximum height of 3.1 metres. Class 1, Part 1, Schedule 2 of the Planning and Development Regulations 2001, as amended, provides that development within the curtilage of a house comprising the extension of a house, by the construction or erection of an extension (including a conservatory) to the rear of the house or by the conversion for use as part of the house of any garage, store, shed or other similar structure attached to the rear or to the side of the house⁶. As the conservatory replaces an lean-to structure I consider that it falls within the description of ‘the conversion for use as part of the house of any garage, store, shed or other similar structure attached to the rear or to the side of the house’. To avail of the exemption under Class 1, the proposal must comply with the conditions and limitations in Colum 2, listed 1 – 7. I note that the conservatory complies with the applicable conditions and limitations and in this regard I note the following;

- The conservatory is single storey.
- The floor area of the conservatory and the existing rear annex does not exceed 40 sqm.
- The height of the conservatory does not exceed the rear wall of the house, and the height of the highest part of the roof of the conservatory does not exceed the highest part of the house.

⁶ My emphasis.

- The conservatory is located to the side of the house and does not affect private open space to the rear of the house.
- The conservatory is situated in excess of 1 metre from the opposing site boundary.
- The roof of the conservatory is not used as a balcony or roof garden.

I consider that the conservatory comes within the scope of the exempted development provisions of Class 1, Part 1, Schedule 2 of the Planning and Development Regulations, 2001, as amended and **is exempted development**.

8.4.3. **Building up of external and internal walls, the removal of an internal wall, and the provision of a Perspex roof on a ruinous structure, previously used as a shed/cottage** – the works undertaken to the structure indicated as ‘former cottage in ruin’ comprise the building up of the side wall of the structure as indicated on *Drawing No. OCR-01*, the removal of an internal wall and the provision of a Perspex pitched roof. The referrer contends that the provisions of Section 4 (1) (h) of the Planning and Development Act, 2000, as amended confer an exemption of these works. Section 4 (1) (h) provides for ‘*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*’. In my opinion the works to the external and internal walls of the structure would come under Section 4 (1) (h), being works for the improvement of the structure, and which in the case of the removal of the internal wall affect only the interior of the structure. The building up of the outer wall does not materially affect the external appearance of the structure, but rather provides for the restoration of the structure to its prior condition. The provision of the Perspex roof, whilst works for the improvement of the structure, would in my view be inconsistent with the character of the structure itself. Whilst I agree with the referrer’s contention that the roof of the original structure may have changed over time I note that the use of a modern material like Perspex would not have been used and is therefore inconsistent with the original design of the structure. Additionally, the

transparency of the material is in my opinion incongruous with the design idiom of the structure.

In summation, I consider that the building up of external and internal walls and the removal of an internal wall of the conservatory comes within the scope of Section 4 (1) (h) of the Planning and Development Act, 2000, as amended and **is exempted development**, but that the provision of a Perspex roof does not come within the scope of the exempted development provisions of Section 4 (1) (h) of the Planning and Development Act, 2000, as amended and **is not exempted development**.

8.4.4. **Construction of 2 no. shed structures** – 2 no. sheds with stated dimensions of 3.2 metres (W) x 9.5 metres (L), and floor areas of c. 30.sqm (each), occupy a location north of the dwelling on the referral site. The structures have pitched roofs with a maximum height of 3.5 metres and are finished in powder coated metal cladding. The sheds are described as ‘replacement sheds/buildings for agricultural use’, and are intended as stores for the housing of agricultural/horticultural and forestry machinery and equipment, necessary to enable and manage the horticultural plantation, (i.e. the plantation and propagation of seedlings) and are not for residential or commercial use. I was unable to gain entry to the sheds. The 2 no. sheds are described as replacing 2 no. shed structures which were previously on the site, a barn and a sheep shelter/farm shed. Particulars submitted also indicate concrete sheep pens at the location of the 2 no. replacement sheds however these pens have been removed.

Agriculture is described in Section 2 of the Planning and Development Act, 2000, as amended, as including *‘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”*. Having inspected the referral site, and noting the interpretations contained in Section 2 of the Planning and Development Act, 2000, as amended, I do not consider that the referral site could reasonably be described as being used for the purpose of agriculture. With the exception of 6 no. planter beds located adjacent to the sheds there is no evidence of horticultural activity on the referral site. The particulars submitted refers to a

horticultural plantation for residential use and not for commercial and having inspected the site and noting the scale and extent of the growing of herbs/vegetables etc. I found this to be the case. The referrer makes reference to a green tea plantation and market vegetables however based on my observations this appears to be aspirational and I could not identify the existence of either on the referral site. The first condition/limitation applicable to the exemption provided under Class 9 Part 3, Schedule 2 of the Planning and Development Regulations 2001, as amended, provides that 'no such structure shall be used for any purpose other than the purpose of agriculture or forestry'. Noting the description of agriculture contained in the Planning and Development Regulations 2001, as amended, the information submitted, and in particular noting that the horticultural plantation is intended for residential use and not on a commercial basis, and my observations during my site inspection, I do not consider that the exemptions provided in Class 9, Part 3, Schedule 2 of the Planning and Development Regulations 2001, as amended, would not therefore confer an exemption on the sheds. I consider that the 2 no. sheds **are not exempted development.**

Should the Board consider that the sheds are used for the purpose of agriculture I note that the structures each accord with the conditions and limitations under Column 2 of Class 9 of the Planning and Development Regulations 2001, as amended. In this regard I note that each structure is less than 300 sqm in area; that the gross floor area of the 2 no. sheds together with other such structures do not exceed 900 sqm; that no structure is located within 10 metres of a public road; that the structures are within 100 metres of an neighbouring house but a letter of consent has been submitted; and that the structures do not comprise unpainted metal sheeting.

- 8.4.5. **Construction of Access Track** – an access track, comprising compacted hardcore/gravel has been constructed along the northern boundary of the site connecting to a gated entrance. Having reviewed the referrer's submission to the Planning Authority and the Board it is unclear whether a specific Class in Schedule 2 of the Planning and Development Regulations, 2001, as amended is being invoked in support of the contention that the access track is exempted development. Having reviewed the provisions in the Planning and Development Act, 2000, as amended, and

Schedule 2 of the Planning and Development Regulations, 2001, as amended, I note that, Class 6 and 13 of Part 1, Schedule 2 of the Planning and Development Regulations, 2001 refers to a form of development which may be considered analogous with the access track. Class 6 refers to *'the construction of any path, drain or pond or the carrying out of any landscaping works within the curtilage of a house'*. In my opinion the access track would not comprise a 'path', which in my view would be associated foot traffic as opposed to the vehicular traffic, as is the case with the access track connecting to a vehicular access. On this basis I do not consider that Class 6 would confer an exemption on the access track. Class 13 relates to *'the repair or improvement of any private street, road or way, being works carried out on land within the boundary of the street, road or way, and the construction of any private footpath or paving'*, and is subject to the width of any such private footpath or paving not exceeding 3 metres. The first part of Class 13 is not applicable as it relates to the repair or improvement of a private street, road or way. The proposal in this regard did not entail repair or improvement works, but rather the construction of new access track. The latter part of Class 13 relates to the construction of a 'private footpath or paving'. As addressed above in the context of Class 6, the construction of an access track caters for vehicles in not therefore analogous with a private footpath or paving. However, should the Board consider that Class 13 does confer an exemption on the access track, I note that its width, when measured at a number of locations exceeded 3 metres. I consider that the construction of the access track **is not exempted development**.

8.5. Restrictions on exempted development

- 8.5.1. The restrictions provided in Article 9 of the Planning and Development Regulations, 2001, as amended, relate to Article 6 of the Planning and Development Regulations, 2001, as amended, which in turn refers to classes of development specified in Part 1, Schedule 2 of the Planning and Development Regulations, 2001, as amended. Article 6 also refers to Article 9 in the context of development specified in Part 3, Schedule 2 of the Planning and Development Regulations, 2001, as amended, i.e. rural.

8.5.2. Article 9 (1) (a) provides that development to which Article 6 relates shall not be exempted development for the purposes of the Act, if, (a) 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,

Having reviewed the planning history relating to the referral site I note that the various elements which are the subject of this referral would not contravene a condition attached to a permission, or be inconsistent with any use specified in a permission, i.e. PA. Ref. 23/312.

(iii) endanger public safety by reason of traffic hazard or obstruction of road users.

Noting the nature of the elements which are the subject of this referral, and in particular the access track, I do not consider that the development would endanger public safety by reason of traffic hazard or obstruction of road users. I note that the access track is located entirely with the referrer's landholding. As addressed above at paragraph 2.1. the provision of a new entrance is not considered under this referral.

(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,

The referral site is located within an 'Iconic' landscape typology in terms of sensitivity and the road on the opposite/eastern side of Lough Fee is designated as a Maritime Scenic Route. Objective PVSR1 of the Galway County Development Plan 2022 – 2028 seeks to preserve protected views and scenic routes. Noting the scale, design and location of the conservatory, the works to the stone shed/former cottage, the sheds and access track, I do not consider that these elements would interfere with the character of the landscape, or a view or prospect, the preservation of which is an objective of the 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.

See paragraph 8.6 (below).

As Article 9 of the Planning and Development Regulations, 2001, as amended, relates exclusively to Article 6 of the Planning and Development Regulations, 2001, as amended, which in turn refers to classes of development specified in Part 1 (General), 2 (Advertisements) and 3 (Rural), Schedule 2 of the Planning and Development Regulations, 2001, as amended consideration of development under Section 4(1)(h) of the Planning and Development Act, 2000, as amended, is not affected by Article 9.

8.6. Appropriate Assessment – Screening

- 8.6.1. I have considered the development which is the subject of this referral at Lettergesh East, Renvyle, Co. Galway in light of the requirements S177U of the Planning and Development Act 2000 as amended.
- 8.6.2. The referral site is surrounded by The Twelve Bens/Garraun Complex SAC (Site Code 002031) with the access track being located c. 4 metres from the SAC boundary. The watercourse directly adjacent/north of the referral site and the access track discharges to Lough Fee, which is part of The Twelve Bens/Garraun Complex SAC.
- 8.6.3. The Planning Authority considered that given the nature and scale of the works, the information submitted in relation to the extent of demolition and construction activity which has taken place, and as part of the site is located within The Twelve Bens/Garraun Complex SAC⁷, that an Appropriate Assessment would be required.
- 8.6.4. Having regard to the limited scale of the conservatory and the works relating to the stone shed/former cottage in ruins, and the weakness in connectivity between these elements and The Twelve Bens/Garraun Complex SAC, or any other European site, there is no likelihood of significant effects on a European Site, either alone or in

⁷ I note that no elements which are the subject of this referral are located within The Twelve Bens/Garraun Complex SAC.

combination with other plans or projects, and an Appropriate Assessment would not be required in respect of these works. Regarding the 2 no. sheds, similarly, noting the scale of the works and the weakness in connectivity between these elements and The Twelve Bens/Garraun Complex SAC, or any other European site, there is no likelihood of significant effects on a European Site, either alone or in combination with other plans or projects, and an Appropriate Assessment would not be required.

- 8.6.5. The access track comprises hardcore/gravel and is situated in close proximity (c. 5 metres) to a watercourse which discharges to Lough Fee, which is within The Twelve Bens/Garraun Complex SAC. Noting the potential for polluted run-off, including sedimentation and hydrocarbons, to enter this watercourse during the construction of the access track, I conclude that significant effects on The Twelve Bens/Garraun Complex SAC arising from the construction of the access track cannot be excluded, and therefore Appropriate Assessment is required.
- 8.6.6. I note the Appropriate Assessment Screening report which was submitted with the referral states that ‘there may have impacts on the conserved areas’ in relation to the entrance laneway. Given the identification of a potential for an impact on a European Site in the Appropriate Assessment Screening report submitted by the referrer, and notwithstanding statements in the Appropriate Assessment that there were no QI within the area concerned, minimal excavation involved in the construction of the access track, and that the construction of the access track was undertaken during dry weather, I consider that, noting the proximity of the watercourse to the track, and the potential surface water pathway to The Twelve Bens/Garraun Complex SAC, an Appropriate Assessment is required.
- 8.6.7. In addition, I note that the construction of tracks, paths, roads and access routes are classified by the National Parks and Wildlife Service (NPWS) as an Activity Requiring Consent (ARC), i.e. specific activities which have the potential to damage a Special Area of Conservation (SAC) or Special Protection Area (SPA). I note that ARCs require consent from the Minister for Housing, Local Government and Heritage (‘the Minister’) or another relevant public authority to which the consent function for that activity falls, that this prior consent requirement ensures that the Minister (or the relevant competent authority) carries out the necessary environmental assessment to

determine if the activity can take place and if any conditions should be attached to any consent given.

8.7. EIA - Screening

- 8.7.1. The works which are the subject of this referral, i.e. the construction of a conservatory; the building up of external and internal walls, the removal of an internal wall, and the provision of a Perspex roof on a ruinous structure, previously used as a shed/cottage; the construction of 2 no. shed structures; and the construction of a new access track⁸, do not fall within a class of development set out in Part 1 or Part 2 of Schedule 5 of the Planning and Development Regulations, 2001, as amended, and therefore is not subject to EIA requirements.

9.0 Recommendation

- 9.1. I recommend that the Board should decide this referral in accordance with the following draft order.

WHEREAS a question has arisen as to whether the construction of a conservatory, 3 no. sheds and an access track at Lettergesh East, Renvyle, Co. Galway, is or is not development, and is or is not exempted development.

AND WHEREAS Sean Harrington requested a declaration on this question from Galway County Council who issued a declaration on the 13th day of September 2023 stating that the matter was development and was not exempted development:

AND WHEREAS Sean Harrington referred this declaration for review to An Bord Pleanála on the 9th day of October 2023:

⁸ Schedule 5, Part 2, 10 (dd) of the Planning and Development Act, 2000, as amended, refers to 'all private roads which would exceed 2000 metres in length'. The subject of this referral includes 'an access track' comprising an unpaved surface, and not a road.

AND WHEREAS An Bord Pleanála has reworded the question(s) as follows:

- Whether the construction of a conservatory, replacing a lean-to on the side gable/south elevation of the house, is or is not development and is or is not exempted development.
- Whether the building up of external and internal walls, the removal of an internal wall, and the provision of a Perspex roof on a ruinous structure, previously used as a shed/cottage, is or is not development and is or is not exempted development.
- Whether the construction of 2 no. shed structures, are or are not development and are or are not exempted development.
- Whether the construction of a new access track is or is not development and is or is not exempted development.

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

- (a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended,
- (b) Article 6(1) and Articles 9(1)(a), (i), (ii), (vi) and (viiB) of the Planning and Development Regulations, 2001, as amended,
- (c) Class 1, 6 and 13 of Part 1 of the Second Schedule to the Planning and Development Regulations, 2001, as amended,
- (d) Class 9, Part 3, of the Second Schedule to the Planning and Development Regulations, 2001, as amended,
- (e) The nature and extent of the works.
- (f) The documentation on file, including the submission of the referrer and the documentation provided by the Planning Authority.

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The construction of the conservatory; the building up of external and internal walls, the removal of an internal wall, and the provision of a Perspex roof on a ruinous structure; the construction of 2 no. shed structures and access track constitutes the carrying out of “works” and is therefore “development” within the meaning of Section 3 of the Planning and Development Act, 2000, as amended;
- (b) The construction of the conservatory comes within the scope of Class 1 of Part 1 of the Second Schedule to the Planning and Development Regulations, 2001, as amended, and complies with the conditions and limitations to which this Class is subject;
- (c) The building up of external and internal walls and the removal of an internal wall comes within the scope of Section 4 (1) (h) of the Planning and Development Act, 2000, as amended;
- (d) The provision of a Perspex roof on a ruinous structure does not come within the scope of Section 4 (1) (h) of the Planning and Development Act, 2000, as amended;
- (e) The construction of the 2 no. sheds does not come within the scope of Class 9 of Part 3 of the Second Schedule to the Planning and Development Regulations, 2001, as amended;
- (f) The construction of the access track does not come within the scope of Class 6 or Class 13 of Part 1 of the Second Schedule to the Planning and Development Regulations, 2001, as amended;
- (g) There are no other provisions, in Section 4 of the Planning and Development Act, 2000, as amended, or in Planning and Development Regulations, 2001, as amended, whereby the construction of the access track would be classified as exempted development.

(h) The works which are the subject of this referral, specifically the access track would require an Appropriate Assessment as it cannot be concluded that these works would not be likely to have a significant effect on the integrity of a European site, and therefore the restriction on exemptions under Article 9(1)(a)(viiB) of the Planning and Development Regulations, 2001, as amended, and Section 4 (4) of the Planning and Development Act, 2000, as amended, apply.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 of the Planning and Development Act, 2000 Act, as amended, hereby decides that the construction of a conservatory, replacing a lean-to on the side gable/south is development and is exempted development; the building up of external and internal walls and the removal of an internal wall is development and is exempted development; the provision of a Perspex roof on a ruinous structure is development and is not exempted development; the construction of 2 no. shed structures is development and is not exempted development; and the construction of a new access track 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.

Ian Campbell
Planning Inspector

27th September 2024