



An
Coimisiún
Pleanála

Inspector's Report ABP-320857-24

Question

Whether minor alterations to the north-western boundary treatments to a house, is or is not development and is or is not exempted development.

Location

Rosshill Road, Galway City, H91 EOAC

Declaration

Planning Authority

Galway City Council

Planning Authority Reg. Ref.

S5.29.24

Applicant for Declaration

Tony and Laura Caulfield

Planning Authority Decision

Is development and is not exempted development

Referral

Referred by

Tony and Laura Caulfield

Owner/ Occupier

Tony and Laura Caulfield

Observers

None

Date of Site Inspection

3rd December 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 Rosshill Road (L-50371), c. 5 km south-east of Galway City. The site is situated on the western side of Rosshill Road, in the Roscam Peninsula. There are a number of detached dwellings in the vicinity of the site, with dwellings of varying design. The site to which this referral relates accommodates a recently constructed¹ detached, part two-storey, part single-storey dwelling. The site is traversed by an overhead ESB line. The site to the north accommodates a detached dormer bungalow.
- 1.3. The subject of this referral comprises the side/north-western boundary of the site. The boundary consists of a linear element extending 80 metres along the north-western boundary of the site, in addition to a portion of rear boundary spanning c. 8 metres. The extent of the boundary is indicated on *Drawing No. S5-01*, annotated as 'Extent of Section 5 (Subject Works) Lined Red'. The chainage of the boundary is denoted on *Drawing No. S5-01* as being from a point indicated as 'J' to 'I' and onto 'X'. The planning statement submitted to the Planning Authority (see page 2) refers to the extent of the referral as being from points J – X. The portion of rear site boundary (i.e. the c. 8 metre element north-south) is not specified as being included in the referral, but is indicated on the OS map as forming part of the referral. No elevations of this element of the boundary have been submitted. I consider the omission of reference to this element in the planning statement to be an oversight. Having inspected the site and noting the photographs of this c. 8 metre element of boundary on the file I consider that this element forms part of the referral and can be included for consideration.
- 1.4. Previous nature of Boundary - prior to the construction of the replacement house on the site the north-western boundary of the site is indicated as having comprised a c. 1.9 metre – 2 metre high timber fence infilled with concrete posts (i.e. from the location marked J - I), and 1.6 metre high 'concrete fence posts' and 1.9 metre to 2 metre high concrete fence posts infilled with timber panels (i.e. from the location marked I -X).

¹ Permission was granted under PA. Ref. 20/168 / ABP – 308148-20 for a replacement house on this site.

The fence was described as being in a dilapidated condition (see photographs attached to file). A belt of Cypress trees also ran along the side/north-western site boundary. Based on the photographs submitted the rear (c. 8 metre long) element of site boundary formally comprised a post and timber fence with broken wooden panels. Part of the north-western boundary of the site, i.e. along the side/north of the previously demolished house on the site, comprised a block wall. This wall has been retained and appears to have been recently replaced. This part of the boundary does not fall under the scope of the referral.

- 1.5. Permitted Boundary - the key on the Site Layout Drawing (*Drawing No. P-02*) submitted under PA. Ref. 20/168 / ABP – 308148-20 indicates the north-western site boundary (i.e. from J – I) as comprising ‘existing Cypress trees and timber boundary fence retained’. I note that the landscape plan submitted under PA. Ref. 20/168 / ABP – 308148-20 did not specify a boundary treatment along the north-western boundary of the site, but rather referred to ‘existing coniferous hedge to be retained’.
- 1.6. North-western boundary as constructed – comprises a block wall c. 2 metres in height (rendered and capped) with replacement trees planted alongside (i.e. at J - I). From I – X the boundary comprises the original concrete fencing posts which have been repaired and infilled with green colour chain-link mesh and hedge protective mesh. The height of this part of the boundary is indicated as c. 1.9 metres.

2.0 The Question

- 2.1. The question that has been submitted in the referral is as follows:
 - Whether minor alterations to the north-western boundary treatments to a house, is or is not development and is or is not exempted development.
- 2.2. Having reviewed the documentation submitted with the referral I submit to the Commission that the proposal should be reworded as follows –
 - Whether, (i) the provision of a block wall in lieu of timber fence, and (ii) the repair and infilling of the original concrete fencing posts with green colour chain-link mesh and hedge protective mesh, is or is not development and is or is not exempted development.

3.0 Planning Authority Declaration

3.1. Declaration

On the 7th of August 2024, a request for a Declaration in accordance with Section 5 of the Planning and Development Act, 2000, as amended, on the above question was received by Galway City Council from Tony and Laura Caulfield.

In accordance with Section 5(2)(a) of the Planning and Development Act, 2000, as amended, Galway City Council issued a Declaration on the 27th of August 2024 that the subject of the referral, that being whether, alterations to the north-western boundary treatments to a house², is or is not development and is or is not exempted development at Rosshill, Galway City, 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;

- Regarding Section 4 (1) (h) of the Planning and Development Act, 2000, as amended –
 - the provision of a wall is considered inconsistent with the fence which it replaces, and the proposal in this regard cannot be considered to be non-material.
 - if the proposal entailed the replacement of the fence with a similar fence then the provisions of Section 4 (1) (h) would apply.
 - the proposal represents a material change to the approved boundary treatment, that being the replacement of a fence with a wall.
- Regarding limitations contained under Article 9 of the Planning and Development Regulations, 2001, as amended –

² The decision issued by GCC omitted reference to the word 'minor' in the description of the referral.

- Art. 9 (i) (i.e. contravention of a condition) - the proposal is contrary to Condition No. 1 (i.e. development to be carried out in accordance with plans and particulars lodged) and Condition No. 10 (i.e. landscaping scheme shown on *Drawing no. 1952-02* shall be carried out) of PA. Ref. 20/168 / ABP – 308148-20, and therefore is not exempted development.
 - Art. 9 (vi) (i.e. interference with character of landscape, view or prospect) – this limitation is not deemed to apply given the absence of views of the boundary within the wider landscape.
 - Art. 9 (viiB) (i.e. comprise development which the Planning Authority or An Bord Pleanála is the competent authority for in relation to Appropriate Assessment, and the development would require an Appropriate Assessment) – it has not been demonstrated that the development would not require an Appropriate Assessment.
- The development is not exempted development as it would contravene conditions attached to a permission under the Planning and Development Act, 2000, as amended, and would comprise development which the 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.

3.2.2. Other Technical Reports

None received.

4.0 Planning History

4.1. Subject Site

PA. Ref. 20/168 / ABP-308148-20 – Permission GRANTED for the demolition of existing single storey house, construction of new replacement house, renovation of two existing sheds, upgrade of existing septic tank system to a tertiary wastewater treatment system, widening of existing site entrance, associated landscaping and site

works. A Natura Impact Statement was submitted to the Planning Authority with the application.

PA. Ref. 23/053 – refers to a history of enforcement at the referral site.

4.2. Referral History

Having undertaken a review of the referrals database I note that there are no history cases that are directly relevant to the subject of this case.

5.0 Policy Context

5.1. Development Plan

5.1.1. The relevant Development Plan is the Galway City Development Plan 2023 – 2029. The subject site is zoned 'G'- 'Agriculture and High Amenity'³ in the Galway City Development Plan 2023 – 2029.

5.1.2. There is a map based objective 'views and prospects' to the front/east of the site along the public road. This appears to correspond with V.9 (view towards sea at Roscam), indicated in Table 5.9 of the written statement of the Development Plan.

5.2. Natural Heritage Designations

- Inner Galway Bay SPA (Site Code 004031) – c. 200 metres south.
- Galway Bay Complex SAC (Site Code 000268) – c. 200 metres south.
- Galway Bay Complex pNHA (Site Code 000268) – c. 200 metres south.

³ The report of the Planning Officer states that the site which is subject to this referral is un-zoned, following Ministerial Direction, however from reviewing the Development Plan map (annotated as having been amended by High Court Order on the 19th May 2025) and the GIS viewer on Galway City Council's website I note that the site is zoned 'G' (Agriculture and High Amenity). It is the lands to the immediate north which are un-zoned.

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 Commission.

- The proposed boundary is intended to provide a more robust, upgraded boundary treatment and is not materially different to the previous boundary. No significant changes to the height of boundary have been made.
- Section 4 (1) (h) of the Planning and Development Act, 2000, as amended, confers an exemption for the proposal. The proposal provides for the 'maintenance, improvement and minor alteration' to the boundary. The boundary is not visible from the public realm and is not inconsistent with the character of the boundary heretofore.
- Condition No. 4 of PA. Ref. 20/168 / ABP – 308148-20 required an overhead ESB line to be laid underground. The installation of a duct in the ground required to removal of a stretch of Cypress trees and the removal of the pre-existing block wall and timber fence, which were in poor condition. A more robust block wall was required along the underground ESB cable. As compliance with Condition No. 1 is subject to compliance with Condition No. 4 the boundary treatment between points I and J can be considered exempted development.
- Class 5 and Class 11⁴ of the Planning and Development Regulations, 2001, as amended, also provides an exemption for the proposal (Table 1 of the submission to the Commission outlines compliance with the relevant conditions and limitations within these Classes). The table notes that the wall does not exceed 2 metres in height; the chain link fence does not constitute metal palisade or security fencing; and is not visible from the public realm.
- In response to the Planning Authorities assessment, the following is noted –

⁴ Class 11 is noted as being relevant should the Commission consider the boundary not to be located within the curtilage of a house.

- the proposal was carried out in the interests of 'maintenance and improvement' of the boundary.
- a 2 metre high blockwork wall always existed along the north-western gable of the former house on the site (now demolished) and therefore a continuation of this wall is not inconsistent with the character of the north-western boundary of the site.
- at points I – X, chain link and mesh has been installed on pre-existing concrete posts which formed part of this boundary to the former (demolished) dwelling. The north-western boundary is not visible from the public realm and cannot therefore be considered inconsistent with the character of the structure or neighbouring structures.
- Regarding restrictions on exemptions;
 - Art. 9 (i) – the proposal entails the replacement of a timber fence and Cypress trees with a block wall and new hedge/tree planting between points I – J. This is not a significant departure from the planning permission. Condition No. 1 provides for an exemption to comply with other conditions. The proposal was carried out to comply with the requirements of Condition 4 of PA. Ref. 20/168 / ABP – 308148-20, i.e. to facilitate the provision of ducting for the undergrounding of an ESB pole. The chain link and mesh fence (at points I – X) does not constitute palisade or security fencing. The proposal is not inconsistent with Condition No. 10, requires only minor alterations to landscaping, and owing to the requirements of Condition No. 4 the removal of trees along this boundary was required. Replacement trees have been planted at this location.
 - Art. (viiB) – the works are minor in nature and the location of the works are not within or adjacent to a European site. There are no hydrological or ecological connections between the works and any European Sites. The requirements of Condition

No. 2 of PA. Ref. 20/168 / ABP – 308148-20, i.e. mitigation measures from the NIS were complied with. The wall was completed outside the wintering bird season. An Appropriate Assessment Screening Report prepared by a qualified ecologist has been prepared in relation to the proposed wall (attached to applicant's submission).

- The Planning Authority recently assessed a planning application (PA. Ref. 23/240 – extension to house) on an adjacent site closer to European Sites and concluded that the proposal would not result in significant effects on any European Site.
- Ecology Technical Notes submitted – notes that mitigation measures required under Condition No. 2 of PA. Ref. 20/168 / ABP – 308148-20 in relation to the NIS were complied with, and that there were no effects on SCI species of Inner Galway Bay SPA and that no effects on water quality in Galway Bay occurred as a result of the proposal.
- Appropriate Assessment Screening Report (AASR) submitted in respect of the proposal which notes - the absence of any ecological/hydrological pathway between the location of the proposal and Galway Bay Complex SAC or Inner Galway Bay SPA; the absence of the use of any hydrocarbons during the construction of the wall or fence, thereby ruling out any potential impacts on groundwater; the construction of the wall and fence was undertaken outside the wintering bird season; and that the proposed works were carried out with NIS mitigation measures implemented as part of the parent permission. The AASR concludes that no significant effects occurred on the qualifying interests or conservation objectives of the surrounding European Sites, either alone or in combination with other plans or projects 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

Section 2 Interpretation

(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 —

(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 32 (obligation to obtain permission)

This section has a general obligation to obtain permission in respect of any development of land not being exempted development, and in the case of development not authorised for the retention of unauthorised development.

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

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.

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

The construction, erection or alteration, within or bounding the curtilage of a house, of a gate, gateway, railing or wooden fence or a wall of brick, stone, blocks with decorative finish, other concrete blocks or mass concrete.

Subject to the following conditions and limitations;

- 1. The height of any such structure shall not exceed 2 metres or, in the case of a wall or fence within or bounding any garden or other space in front of a house, 1.2 metres.*
- 2. Every wall other than a dry or natural stone wall bounding any garden or other space shall be capped and the face of any wall of concrete or concrete block (other than blocks with decorative finish) which will be visible from any road, path or public area, including public open space, shall be rendered or plastered.*
- 3. No such structure shall be a metal palisade or other security fence*

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 in question constitutes development, and if so falls 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 –
 - (i) the provision of a block wall in lieu of timber fence, and
 - (ii) the repair and infilling of the original concrete fencing posts with green colour chain-link mesh and hedge protective mesh,is or is not development and is or is 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'. The proposal consists of (i) the construction of a rendered block wall, with a maximum height of 2 metres, in lieu of a timber post fence and, (ii) the repair and infilling of original concrete fencing posts with green colour chain-link mesh and hedge protective mesh. The construction of a wall and repair and infilling of the fence comprises 'an act or operation of construction' in the case of the wall, and 'alteration' in the case of the modifications to the fence, and I therefore consider the proposal to be 'works'.
- 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. Section 4 (1) (h) - the referrer makes the case that Section 4 (1) (h) of the Planning and Development Act, 2000, as amended, affords an exemption to the proposal. Section 4 (1) (h) provides that 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'*, is exempted development. I do not consider that the provision of a block wall in lieu of a timber fence could be reasonably considered to comprise the 'maintenance, improvement or alteration' of the boundary. The original boundary, a fence, is being replaced in its totality with a different type of boundary, and therefore the original boundary/structure could not therefore be considered to be maintained, improved or altered. The referrer also makes the case that the block wall, which is proposed in lieu of a timber fence, could be seen as a continuation of the existing block wall⁵ which is located to the side of the house, and that in this regard the new replacement wall, adjoining the existing wall, would not be inconsistent with the boundary at this location. I do not agree with the referrers' position on this. A wall is clearly different in terms of its appearance compared to a timber fence and in my view this position is not sustainable. In summation, I do not consider that Section 4 (1) (h) of the Planning and Development Act, 2000, as amended, would afford an exemption to the provision of a block wall in place of a timber fence. Regarding the repair and infilling of original concrete fencing posts with green colour chain-link mesh and hedge protective mesh, this element similarly results in a different boundary compared to what previously existed along the boundary of the site, as the timber infill element would no longer exist, with only the concrete posts remaining. In my view the new boundary would be inconsistent with that which previously existed. This element of the proposal in my view would not be afforded an exemption under the provisions of Section 4 (1) (h) of the Planning and Development Act, 2000, as amended.

8.4.3. Class 5 - Class 5, Part 1, Schedule 2 of the Planning and Development Regulations 2001, as amended, provides that *'the construction, erection or alteration, within or bounding the curtilage of a house, of a gate, gateway, railing or wooden fence or a*

⁵ Indicated as having been replaced a previous blockwork wall.

wall of brick, stone, blocks with decorative finish, other concrete blocks or mass concrete', is exempted development subject to specific conditions and limitations. The boundary which is subject to this referral is within the curtilage of a house and therefore I consider this provision to be relevant. To avail of the exemption provided under Class 5, the structure, in this case a wall, must not exceed height of 2 metres, and shall be capped. As the wall is not visible from any road, path or public area, or public open space I do not consider that there is a requirement for the wall to be rendered, however in this case I note that the wall is rendered. The element of the boundary which has undergone repair and infilling of the original concrete fencing posts with green colour chain-link mesh and hedge protective mesh comprises the alteration of wooden fence and also does not exceed 2 metres in height. This fence does not consist of a metal palisade or other security fence. I consider that, in principle, Class 5, Part 1, Schedule 2 of the Planning and Development Regulations 2001, as amended, would afford an exemption to the proposal.

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 9 (1) of the Planning and Development Regulations, 2001, as amended, 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 -

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

Re. Condition No. 1 - the Planning Authority contend that the proposal would contravene Condition No. 1 (i.e. that the development is carried out in accordance with plans and particulars lodged with the planning application), and Condition No. 10 (i.e. that the landscaping scheme shown on *Drawing No. 1952-02* shall be carried out) of the authorising permission, i.e. PA. Ref. 20/168 / ABP – 308148-20. Regarding Condition No. 1, the plans submitted indicate the retention of existing trees and timber

fence at the north-western boundary of the site. The proposal did not propose the erection of new/different boundary treatment at this location. Should the positioning of the Planning Authority be sustained it would essentially serve to de-exempt all forms of exempted development on the basis of certain features being identified on the site plan as being existing, or to be retained. Importantly, I note that there were no conditions attached under PA. Ref. 20/168 / ABP – 308148-20 stipulating a specific boundary treatment at any location, or limiting subsequent alterations to boundaries within the site through the removal of exempted development, for example prohibiting changes to boundaries on of Class 5, Part 1, Schedule 2 of the Planning and Development Regulations 2001, as amended. I therefore do not consider that the proposal would contravene Condition No. 1 of PA. Ref. 20/168 / ABP – 308148-20.

The referrer makes the case that Condition No. 4 of PA. Ref. 20/168 / ABP – 308148-20 required an overhead ESB line to be laid underground, that the installation of a duct in the ground required the removal of a stretch of Cypress trees and the removal of the pre-existing block wall and timber fence, and that on foot of this requirement a block wall was provided along the boundary. The referrer contends that as compliance with Condition No. 1 is subject to compliance with Condition No. 4 the north-west boundary treatment is exempted development. I note the requirements of Condition No. 4 however in my opinion there is no clear reason as to why a replacement fence could not have been erected along the north-western boundary. I do not consider that the replacement wall would be exempt development on foot of the requirement of Condition No. 4.

Re. Condition No. 10 - condition No. 10 of PA. Ref. 20/168 / ABP – 308148-20 requires that the landscaping scheme shown on *Drawing No. 1952-02* shall be carried out. The landscape plan, as it relates to the north-western boundary of the site, contains an annotation stating 'existing coniferous hedgerow to be retained'. I note that the applicant has removed Cypress trees at this location in order to facilitate the undergrounding of overhead cables/provision of ducting. I note that replacement trees have been planted at this location. I note that *Drawing No. 1952-02* did not include any reference to the timber fence. Importantly, Condition No. 10 explicitly refers to 'landscaping', and does not concern boundary treatments, and as such I do not

consider that the proposed wall or alterations to the fence would contravene Condition No. 10.

- 8.5.3. *(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 Planning Authority note that the north-western boundary of the site is not visible within the wider landscape. Having visited the site and surrounding area I do not consider that the boundary, which is the subject of this referral, would interfere with the character of the landscape, or of the views which I note it is an objective of the Development Plan to protect, given that the boundary is not discernible from outside the site.

- 8.5.4. *(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.*

The Planning Authority consider that that the development would require an Appropriate Assessment because it would be likely to have a significant effect on the integrity of a European Site, and that on this basis the subject of the referral would not be exempted development on the basis of the restriction provided under Article 9 (1) (viiB). The referrer has submitted an Appropriate Assessment Screening Report (AASR) with the referral, and I have undertaken screening for Appropriate Assessment (see paragraph 8.6 below) and have concluded that that the proposed development would not have a likely significant effect on any European Site, either alone or in combination with other plans or projects. Likely significant effects are excluded and therefore Appropriate Assessment (stage 2) (under Section 177V of the Planning and Development Act 2000) is not required. In my opinion, Article 9 (1) (viiB) would not limit the development being considered exempted development under Class 5.

8.5.5. In summation, having reviewed the drawings submitted of the north-western boundary, and specifically its dimensions and material finishes, and noting that it is located within the curtilage of a house, that it is not located to the front of the house, and that the wall is capped, and that the fence does not consist of a metal palisade or other security fence, I consider that the wall and fence do not come within the scope of Section 4 (1) (h) of the Planning and Development Act, 2000, as amended but do come within the scope of the exempted development provisions of Class 5, Part 1, Schedule 2 of the Planning and Development Regulations, 2001, as amended. I consider that the development which is the subject of this referral is exempted development.

8.6. **Appropriate Assessment – Screening**

8.6.1. I have considered the proposed development at Rosshill Road, Galway City in light of the requirements S177U of the Planning and Development Act 2000 as amended.

8.6.2. The subject site is located c. 200 metres north of Inner Galway Bay SPA (Site Code 004031) and Galway Bay Complex SAC (Site Code 000268). The subject of this referral comprises the provision of a block wall in place of a timber fence, and the repair and infilling of original concrete fencing posts with green colour chain-link mesh and hedge protective mesh. The Planning Authority considered that a Stage 2 Appropriate Assessment would be required. Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment because there is no conceivable risk to any European Site. The reason for this conclusion is as follows;

- The nature and small scale of the development.
- The location of the development site and distance from nearest European site(s), and the lack of connections between the development site and European sites.

8.6.3. I conclude that on the basis of objective information, that the proposed development would not have a likely significant effect on any European Site either alone or in combination with other plans or projects. Likely significant effects are excluded and therefore Appropriate Assessment (stage 2) (under Section 177V of the Planning and Development Act 2000) is not required.

8.7. EIA - Screening

- 8.7.1. The works which are the subject of this referral 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 Commission should decide this referral in accordance with the following draft order.

WHEREAS a question has arisen as to whether minor alterations to the north-western boundary treatments to a house at Rosshill Road, Galway City, is or is not development, and is or is not exempted development, and WHEREAS this question was reworded so as to reflect the situation on the site to - whether, the (i) the provision of a block wall in lieu of timber fence, and (ii) the repair and infilling of the original concrete fencing posts with green colour chain-link mesh and hedge protective mesh, is or is not development, and is or is not exempted development.

AND WHEREAS Tony and Laura Caulfield requested a declaration on this question from Galway City Council who issued a declaration on the 27th day of August 2024 stating that the matter was development and was not exempted development:

AND WHEREAS Tony and Laura Caulfield referred this declaration for review to An Coimisiún Pleanála on the 19th day of September 2024:

AND WHEREAS An Coimisiún 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), (vi), and (viiB) of the Planning and Development Regulations, 2001, as amended,
- (c) Class 5 of Part 1 of the Second Schedule to the Planning and Development Regulations, 2001, as amended,
- (d) The nature and extent of the works.
- (e) The documentation on file, including the submission of the referrer and the documentation provided by the Planning Authority.

AND WHEREAS An Coimisiún Pleanála has concluded that:

- (a) The provision of a block wall in lieu of timber fence, and the repair and infilling of the original concrete fencing posts with green colour chain-link mesh and hedge protective mesh, 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 block wall and fence are located within the curtilage of a dwelling, and come within the scope of Class 5 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 works which are the subject of this referral would not require an appropriate assessment as they 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, do not apply in this instance.

NOW THEREFORE An Coimisiùn 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 provision of a block wall in lieu of timber fence, and the repair and infilling of the original concrete fencing posts with green colour chain-link mesh and hedge protective mesh is development and is exempted development.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Ian Campbell
Senior Planning Inspector

22nd October 2025