An Coimisiún Pleanála

Inspector's Report
ABP-320954-24

Question	Whether (i) the current use of the existing agricultural shed to house pigs is a change of use and (ii) the additional floor area, the construction of slatted tanks, the raised ground level and the addition of concrete ramp is or is not development or is or is not exempted development.
Location	Killugger Farm, Killugger, Killinick, Co. Wexford.

Declaration	
Planning Authority	Wexford County Council
Planning Authority Reg. Ref.	20081365
Applicant for Declaration	Wexford County Council.
Planning Authority Decision	No declaration

Referral	
Referred by	Wexford County Council.
Owner/ Occupier	Gerard and Philip Stafford.

	Kevin Riordan (Premier Pigs).
Observer(s)	Marian and Thomas Boggan (two separate submissions) Peg Wilson (original submission) Katherine Bail and others (two separate submissions) Alice Clarke (original submission)
Date of Site Inspection	2 May 2025.
Inspector	Stephen Rhys Thomas

Contents

1.0 Site Location and Description

1.1. The site is located in south county Wexford along the N25 (Rosslare Road) at a point approximately midway between Wexford town and Rosslare. The farmyard complex is located in the townland of Kilrugger, 7.2 kilometres south of Wexford town and 8 kilometres east of Rosslare. The farmyard complex is accessed from a 160 metre long avenue set at a right angle to the N25. The farmyard complex is surrounded by large agricultural fields, currently in tillage. There are a number of large agricultural buildings within the complex and the subject building is positioned at the eastern side. The subject shed is a modern agricultural building similar to others within the overall complex. The shed is of portal frame construction, pitched roof and clad with dark green sheets. There are vents on the roof.

1.2. The shed is accessed from the northern elevation via a short steel staircase to an access door, this is a single person access way. The main entrance to the shed is from the south via a wide external ramp that provides access to a raised marshalling area and a threshold to a single doorway to the central passageway within. The central passageway runs north/south through the centre of the shed and provides access to individual pig fattening pens contained within a number of individual rooms. Food and water are distributed centrally to each pen and pigs enter and exit the facility via this external ramp to the south. The central passageway and pig units are raised above the ground, and the entire floor comprises cast concrete slats that provide access for waste to tanks below. On the day of my site visit, the facility was occupied by a number of pigs, some pens were empty, no excessive odours or noise detectable.

2.0 The Question

2.1. The referrer seeks a determination as to:

- Does the current use of the existing agricultural shed situated in the southeast corner of the farm to house pigs require a change of use planning permission?

- Do the development works carried out to this shed including additional floor area, the construction of slatted tanks, the raised ground level and the addition of a concrete ramp require retention planning permission?

2.2. All at a shed located at Kilrugger Farm, Killinick, Co Wexford. In their question, the planning authority have set out two elements, they are change of use and works carried out to add floor area, construct slatted tanks, raise ground level and the addition of an external concrete ramp. Both these points are in the form of whether a planning permission or retention permission is required. I also note that there is disagreement from the applicant/owner that no new floor area has been added and this should form part of a separate enforcement process. I will not answer the question that relates to the need or not of any future planning consent or enforcement process. I concentrate my mind to the definition of development and whether exempted development.

2.3. For clarity, I set out the two part question in these words:

A) The referrer seeks a determination as to whether the change of use of an agricultural shed to house pigs is or is not development and is or is not exempted development within the meaning of the Planning and Development Acts, 2000 (as amended) and Planning and Development Regulations, 2001 (as amended).

2.4. And:

B) Whether the development works carried out to construct slatted tanks, raise ground level and the addition of a concrete ramp is or is not development and is or is not exempted development within the meaning of the Planning and Development Acts, 2000 (as amended) and Planning and Development Regulations, 2001 (as amended).

3.0 Planning Authority Declaration

3.1. Declaration

3.1.1. No declaration, the planning authority is the referrer.

3.2. **Planning Authority Reports**

3.2.1. Planning Reports

The planning authority are the referrer in this case, the following is a summary of their referral submission:

- Planning permission was granted in 2008 for an agricultural shed of 1,012 sqm, reference 20081365 refers. The permitted plans and particulars do not show a raised floor area, slatted tanks or access ramp. The completed shed is 677 sqm larger and the ground level is 2 metres higher, than indicated on drawings.
- The planning authority seek clarity as to whether the current use of the shed to house pigs is a change of use and whether the alterations all require a retention permission.

The referral is accompanied by drawings and photographs of the shed, the notification to grant permission together with six conditions (dated 16 July 2008).

3.2.2. Other Technical Reports

None.

4.0 Planning History

4.1. **Site:**

EXD00824 – Declaration – Agricultural shed, change of use from class 6 to 7. Not Exempt. September 2020.

20081365 – Agricultural shed 1,012 sqm, as per application form. July 2008. FFL 20.45

20032095 – Agricultural shed, 864.9 sqm. August 2003. Not constructed.

4.2. **Overall Farm Complex**

20100598 – Agricultural shed 615 sqm. July 2010. No conditions restricting use.

4.3. **Relevant Referrals**

4.3.1. I have examined the Commission's database of references and referrals. The following cases are relevant in the context of some of the issues raised in the current referral. Most referrals within the database relate to the construction of new farm buildings. However, I note that the matter of existing and permitted agricultural structures and change of use are addressed to some degree in the cases outlined below:

ABP-321707-25 - Whether the construction of two farm sheds is or is not development and is or is not exempted development, the Board decided that the construction of two farm sheds at Moyle Moss, Newtowncunningham, Co. Donegal, is development and is not exempted development. In coming to their determination, the Board concluded that significant effects on designated sites could not be excluded.

ABP RL09.314443 - Whether the reduction of the floor space of an existing structure from circa 244 sq. metres to 190 square meters, the removal of the roof ridge line turret and the use of the resulting building for agricultural purposes, specifically as a stable block, is or is not development or is or is not exempted development under the Planning and Development Regulations 2001 (as amended), Schedule 2, Part 3, Class 6. Decision - Is development and is not exempted development.

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

ABP-315843-23 - Whether the construction of an agricultural shed consistent with the description, conditions and limitations set out in Class 6 of Part 3 to Schedule 2 of the Planning and Development regulations 2001 (as amended) on lands in the townland of Ardara, Co. Donegal for the housing of cattle is or is not development or is or is not exempted development. The Board declared that it is development and is exempted development.

RL21A.RL2907 - Whether erection of a roof over two containers to form a shed is or is not exempted development. Is development and is not exempted development. Decision Quashed. Cunningham v An Bord Pleanála [2013] IEHC 234.

RL21A.RL2907 Reactivated case - Whether erection of a roof over two containers to form a shed is or is not exempted development. Is development and is exempted development.

RL25.RL2969 - Whether the drainage of boglands, peat extraction, accesses from public roads, peat handling activities is or is not development or is or is not exempted development. Decision - Is development and is not exempted development, April 2013. Note Bulrush Horticulture Ltd v An Bord Pleanála (No1) (2018) IEHC 58.

5.0 Policy Context

5.1. Development Plan

Wexford County Development Plan 2022-2028

The plan came into effect on Monday, 25th July 2022. Relevant sections of the plan include:

Objective ED97

To ensure that all buildings are appropriately sited and sympathetic to their surroundings in terms of scale, design, materials and colour. The grouping of buildings will be encouraged in the interests of visual amenity. In general, the removal of hedgerows to accommodate agricultural buildings will generally not be permitted.

Objective ED101

To facilitate the modernisation of agriculture and to encourage best practice in the design and construction of new agricultural buildings and installations to protect the environment, natural and built heritage and residential amenity. Planning applications for new agricultural structures must clearly outline the use of the structure (livestock / equine / pig / poultry / storage) subject to Objectives ED97 and ED98.

Objective ED103

Intensive agriculture units will only be considered where it is clearly demonstrated by the applicant to the Council that the proposed development will not give rise to negative impacts on animal welfare, the environment, natural or built heritage or residential amenity. The scale and intensity of operations, including the cumulative impact of similar type developments in close proximity, shall be clearly detailed in the application and shall inform the assessment. All applications for such development shall be required to demonstrate that the proposal complies with Objective ED97 and Objective ED98 and

- Is located more than 500 metres from any residential property not located on the holding, or at a greater distance if there is potential for significant impacts on residential amenity, particularly in terms of odour.
- An assessment and modelling of odour has taken place where required.

5.2. Natural Heritage Designations

5.2.1. Wexford Harbour and Slobs SPA (site code 004076) is located 1.6 kilometres to the south east.

5.2.2. Slaney River Valley SAC (site code 000781) is located 4 kilometres to the north east.

5.2.3. Proposed Natural Heritage Areas: Wexford Slobs and Harbour is located 1.1 kilometres to the south east.

6.0 The Referral

6.1. Referrer's Case

6.1.1. The referrer states that planning permission was granted in 2008 for an agricultural shed of 1,012 sqm, planning authority reference 20081365 refers. The permitted plans and particulars do not show a raised floor area, slatted tanks or access ramp. The completed shed is 677 sqm larger and the ground level is 2 metres higher, than indicated on drawings.

6.1.2. The planning authority seek clarity as to whether the current use of the shed to house pigs is a change of use and whether the alterations all require a retention permission.

6.2. Planning Authority Response

6.2.1. The planning authority are the referrer in this case.

6.3. Owner/ occupier's response

6.3.1. The owner has responded as follows:

- The use of the shed for housing pigs does not require planning permission. It may be development, but it is exempted development.

  None of the conditions attached to the grant of permission, restrict the use of the agricultural shed.

- The alleged works to the shed in 2009 are not relevant and not appropriate matters to be considered in a Section 5 reference. The planning authority are trying to link these works with a permission to demonstrate non-compliance, in order to continue with enforcement action. In any case the works to the shed should be considered within the section 4(1)(h) of the 2000 Act.

- 'Agriculture', 'works' and 'use' are all defined at section 2 (1) of the Planning and Development Act 2000 as amended. Section 4 of the 2000 Act is set out.

- The use of the shed is for agricultural purposes not constrained by conditions, there is no change in use section 4(1)(a) of the 2000 Act refers. No de-exemption occurs because the shed is used to house a lesser amount of pigs than the threshold that would require EIA.

The submission includes a legal opinion to substantiate the views outlined above, specifically, that the works fall under section 4(1)(h) and it has not been established in law that the works carried out are in fact unauthorised.

6.3.2. Dated 11th November 2024, the owner/occupier provides the following information:

Specific Information following a section 131 of the 2000 Act request as follows:

- The shed is in use as a finishing unit for pigs over 30 kilograms.

- Teagasc Inspection 7th November 2024 – 1,636 pigs on site, though the facility could accommodate 1,792 pigs. This is below the threshold for an Industrial Emissions licence and below that for mandatory EIA.

Response to section 131 of the 2000 Act:

- Permission was granted for an agricultural shed, not limited by any conditions, no change of use required.
- The site is located in a rural area, not in a residential area.
- Traffic movements are not excessive and are detailed as total movements (all vehicles) 37 per week.
- EPA correspondence confirming that an Industrial Emissions licence is not required, dated 1st November 2023.
- EIAR is not required.
- The process used by the planning authority is criticised at length, specifically that correct names and addresses were not given, and that the entire purpose was to oblige Premier Pigs into applying for retention permission.
- The previous Inspectors Report and Board Order (ABP-311366-21) are criticised, intensification of use does not necessarily follow an increase in floor area (traffic movements have decreased), environmental impacts (EIA and AA) not properly dealt with, section 4(4) of the 2000 Act does not refer.
- Manure is managed in accordance with the relevant regulations, note EPA letter regarding Industrial Emissions Licence not required.

The submission is accompanied by legal opinion that provides the basis for the owner's premise about exempted development, and borehole results.

6.4. Further Responses

6.4.1. Referrer (planning authority) response to the points made by the owner/occupier's response.

Submission dated 17 November 2021, from the planning authority as follows:

The subject shed is larger than permitted and works have been carried out that cannot be considered under section 4(1)(h) of the 2000 Act.

Submission dated 13th November 2024, from the planning authority as follows:

Planning history is outlined for three sheds constructed in the last 20 years. The floor area of all these sheds amounts to 2,491 sqm, the conditions and limitations of class

6 and 7 in terms of change of use exceed 100 sqm and so permission would be required. As the sheds were previously used for housing cattle, the move to pigs is a change of use and screening for EIA would be required. Ridge heights, floor areas and distance to a public road are all exceeded and so permission is required.

6.5. Observations

6.5.1. A number of observations have been received with reference to this referral, and the names are listed on the front cover of this report, issues are summarised as follows:

- The planning history of the site is set out, together with the exempted development declaration and enforcement action.
- Details are given around the change from cattle to pig housing.
- The nuisance to neighbouring dwellings caused by housing pigs, such as noise, odour, vermin and visual amenity. This is because of the intensive rearing of pigs and the proximity of the shed to housing.

6.5.2. In addition to those submissions made to the quashed section 5 referral (reference ABP-311366-21), further observations were invited by the Board. Those observers that made a new submission reiterate the issues already set out and call for their earlier submissions to be taken into consideration; matters include:

- The council have yet to act on their previous section 5 referral that states development is not exempt.
- In 2022 Premier Pigs were fined for causing emissions.
- The shed is larger than permitted, but no correspondence has stated by how much.
- EPA state that capacity and not stated number of animals is relevant.
- The site is the zone of influence for a designated site, South Slob Lands.
- New feed silos have been installed on the site, to store pig feed.
- Chimneys have been installed on the shed, to vent noxious smells. Solar panels in excess of exempted development have been installed.
- Examples of other planning applications in other counties are presented.

- In terms of the holding and spreading of waste, what controls are in place and regulations being followed?
- The number of pigs on site exceeds 2,000 at times, and even so EIA can be required in sub threshold cases. No section 7A information was submitted and the referral was not properly screened for EIA.
- Comparisons are drawn with the requirement to apply for change of use permission in retail planning.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000, as amended

7.1.1. Section 2 – Interpretation

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

"development" has the meaning assigned to it by section 3, and "develop" shall be construed accordingly;

"exempted development" has the meaning specified in section 4

"structure" means any building, structure, excavation or other thing constructed or made on, in or under land or any part of structure so defined and where in the context so admits includes the land on, in or under which the structure is situate.

"use", in relation to land, does not include the use of the land by the carrying out of any works thereon;

"Works" includes any Act or operation of the construction, excavation, demolition, extension, alteration, repair or renewal.

7.1.2. Section 3 – Development

Section 3 (1) - In this Act, “development” means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land.

7.1.3. Section 4 - Exempted Development

Section 4 (1) The following shall be exempted developments for the purposes of this Act-

(a) development consisting of the use of any land for the purpose of agriculture and development consisting of the use for that purpose of any building occupied together with land so used;

(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;

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

7.1.5. Section 177U (9) - In deciding upon a declaration or 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

7.2.1. Changes of Use 10. (1) Development which consists of a change of use within any one of the classes of use specified in Part 4 of Schedule 2, shall be exempted development for the purposes of the Act…

7.2.2. Part 3 Article 6 Exempted Development – Rural

Agricultural Structures

CLASS 6 Works consisting of the provision of a roofed structure for the housing of cattle, sheep, goats, donkeys, horses, deer or rabbits, having a gross floor space not exceeding 200 square metres (whether or not by extension of an existing structure), and any ancillary provision for effluent storage.

Conditions and Limitations include:

1. No such structure shall be used for any purpose other than the purpose of agriculture.

2. The gross floor space of such structure together with any other such structures situated within the same farmyard complex or within 100 metres of that complex shall not exceed 300 square metres gross floor space in aggregate.

3. Effluent storage facilities adequate to serve the structure having regard to its size, use and location shall be constructed in line with Department of Agriculture, Food and Rural Development and Department of the Environment and Local Government requirements and shall have regard to the need to avoid water pollution.

4. No such structure shall be situated, and no effluent from such structure shall be stored, within 10 metres of any public road.

5. No such structure within 100 metres of any public road shall exceed 8 metres in height.

6. No such structure shall be situated, and no effluent from such structure shall be stored, within 100 metres of any house (other than the house of the person providing the structure) or other residential building or school, hospital, church or building used for public assembly, save with the consent in writing of the owner and, as may be appropriate, the occupier or person in charge thereof.

7. No unpainted metal sheeting shall be used for roofing or on the external finish of the structure.

CLASS 7 Works consisting of the provision of a roofed structure for the housing of pigs, mink or poultry, having a gross floor space not exceeding 75 square metres (whether or not by extension of an existing structure), and any ancillary provision for effluent storage.

Conditions and Limitations include:

1. No such structure shall be used for any purpose other than the purpose of agriculture.

2. The gross floor space of such structure together with any other such structures situated within the same farmyard complex or within 100 metres of that complex shall not exceed 100 square metres gross floor space in aggregate.

3. Effluent storage facilities adequate to serve the structure having regard to its size, use and location shall be constructed in line with Department of Agriculture, Food and Rural Development and Department of the Environment and Local Government requirements and shall have regard to the need to avoid water pollution.

4. No such structure shall be situated, and no effluent from such structure shall be stored, within 10 metres of any public road.

5. No such structure within 100 metres of any public road shall exceed 8 metres in height.

6. No such structure shall be situated, and no effluent from such structure shall be stored, within 100 metres of any house (other than the house of the person providing the structure) or other residential building or school, hospital, church or building used for public assembly, save with the consent in writing of the owner and, as may be appropriate, the occupier or person in charge thereof.

7. No unpainted metal sheeting shall be used for roofing or on the external finish of the structure.

8. Boundary fencing on any mink holding must be escape-proof for mink.

CLASS 9

7.2.3. Article 9 – Restrictions on Exemption

Article 9(1)(a)(viii) which provides for a restriction on exempted development where it would

(viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use.

Article 9(1)(a)(viiB) - 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 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.

7.2.4. Schedule 5 Development for the Purposes of Part 10 Article 93 Part 1

17. Installations for the intensive rearing of poultry or pigs with more than-

(a) 85,000 places for broilers, 60,000 places for hens,

(b) 3,000 places for production pigs (over 30 kilograms), or

(c) 900 places for sows.

7.2.5. Schedule 5 Development for the Purposes of Part 10 Article 93 Part 2

1. Agriculture, Silviculture and Aquaculture

(e) (i) Installations for intensive rearing of poultry not included in Part 1 of this Schedule which would have more than 40,000 places for poultry.

(ii) Installations for intensive rearing of pigs not included in Part 1 of this Schedule which would have more than 2,000 places for production pigs (over 30 kilograms) in a finishing unit, more than 400 places for sows in a breeding unit or more than 200 places for sows in an integrated unit.

8.0 Assessment

8.1. Introduction

8.1.1. The purpose of a referral is not to determine the acceptability or otherwise of the proposed works in respect of the proper planning and sustainable development of the area, but rather to determine whether or not the matter in question constitutes development and if so falls within the scope of exempted development. The planning authority have framed their questions with reference to the requirement to seek permission and retention permission. The issue of any future consent process or enforcement is a matter for the owner/developer and the planning authority to resolve if that turns out to be the case, I do not intend to offer any commentary with respect to enforcement matters except where matters of verifiable fact emerge.

8.2. Question

8.2.1. I have clarified and summarised the referrer's questions as follows:

8.2.2. The referrer seeks a determination as to:

8.2.3. A) Whether the change of use of an agricultural shed to house pigs is or is not development and is or is not exempted development within the meaning of the Planning and Development Acts, 2000 (as amended) and Planning and Development Regulations, 2001 (as amended).

And,

8.2.4. B) Whether the development works carried out to construct slatted tanks, raise ground level and the addition of a concrete ramp is or is not development and is or is not exempted development within the meaning of the Planning and Development Acts, 2000 (as amended) and Planning and Development Regulations, 2001 (as amended).

8.2.5. I have combined the questions as phrased by the planning authority, as the manner in which the pigs are housed cannot occur without a structural change of arrangements and the provision to store animal waste effluent.

8.3. Is or is not development

8.3.1. The facts are that an agricultural shed was granted permission with no specific conditions to constrain the intended uses that could be carried out within. Condition 1 of the permission relates to the plans and particulars submitted with the application, and points to the intended uses confined to agriculture in general, PA ref 20081365 refers. I consider the shed in question to be an agricultural shed.

8.3.2. Separately and in the past, I note that the planning authority were asked to determine if the change of use from class 6 to 7 of an agricultural shed was exempted development, PA ref EXD00824 refers. The planning authority determined that a change from Class 6 to Class 7 was development and was not exempted development. This declaration was not appealed/referred to the Board at the time by the owner, who now questions the correctness of the decision made by the planning authority but does not expressly refer those matters to the Commission. The validity or correctness of the planning authority's initial determination to do with EXD00824 is not part of this question. I note case law (Narconon Trust v An Bord Pleanála) where the Court of Appeal concluded that the Board was precluded from determining a Section 5 referral, in circumstances where the planning authority had previously determined the same, or substantially the same, question in respect of the same land, and where there was no evidence that there had been a change in the planning facts and circumstances since the earlier Section 5 declaration. In this case now before the Commission the facts are slightly different and a shift between Class 6 and 7 does not form the basis of the referrer's question and so the Commission is at liberty to consider this case without being fettered by a previous Section 5 declaration.

8.3.3. In this new and different case, the first question for the Commission to consider is whether or not the reference constitutes development under the definitions contained in the Planning Act. Section 3(1) of the 2000 Act defines 'development' as the 'carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land". In terms of determining whether development has occurred, the relevant tests to apply is to establish whether 'works' were carried out or whether there was a material change in the use of the structure or land.

8.3.4. <u>Works</u> – With reference to Section 2 (1) of the Planning Act, 'works' are defined as 'any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal…'. In this instance and with reference to the drawings submitted with the planning application and which the planning authority issued a grant of permission, a large but simple portal frame agriculture shed has been constructed.

8.3.5. I can be certain that works of some kind, such as internal divisions, construction of a holding tank for effluent, raised floor area and external access ramp, were carried out and that these facilitated the agricultural uses now evident on site. The planning authority refer to additional floor area, the owner/occupier disputes this and in any case, I have no verifiable drawings on file to compare what was permitted and what now stands on the site. However, on the matter of the definition of development as set out in the 2000 Act, I am certain that works have taken place and that these constitute development as defined by the 2000 Act.

8.3.6. Section 3(1)(a) of the 2000 Act lists out what is considered to be development as follows: the carrying out of any works in, on, over or under land, I have concluded that works did take place.

8.3.7. The second part of 3(1)(a) refers to the making of any material change in the use of any land or structures. However, this second component of what is considered to be development is qualified by the word 'or'. This means that works do not have to take place in tandem with a change in the use that is material or significant. It can be the case that works can be carried out alone or that a significant change of use can occur or indeed that both can happen.

8.3.8. In this instance, the provision of internal changes and external access ramp, facilitate the keeping of pigs in a more intensive manner than the simple portal frame shed permitted and constructed. If the Commission consider that works have not been carried out or if the question of a change of use should be dealt with on its own, then I set out the following analysis.

8.3.9. <u>Change of Use</u> – The Office of the Planning Regulator has produced a publication entitled – A Guide to Planning Permission (September 2022). This document simply states that a material change in use, is something that is significant. To be more precise, a frequently cited test to assist in determining whether a change of use is material, is that proffered by Barron, J in The County of Galway v Lackagh Rock Ltd [1984 21 MCA] for the determining of whether or not a material change of use has occurred. In this case, Barron, J considered that '*in determining whether or not a present use was materially different from a use being made on the appointed day* *one must look at matters which the planning authority would take into consideration if a planning application were made on both dates and if these matters were materially different, then, the present use must be equally materially different*.'.

8.3.10. The case cited related to the intensification of use of a quarry (before and after 1st October 1964 – the operative date for the Local Government (Planning & Development Act, 1963). The factors to be taken into consideration in assessing the intensification of use of a quarry are somewhat different to the factors relevant to the operation of a permitted agricultural shed for the use of fattening pigs, an intrinsically agricultural use. Specifically, the 2000 Act states that agriculture includes the following activities:

> *includes… 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),*

8.3.11. The keeping of pigs (livestock) for the purposes of fattening, is clearly agricultural for the purposes of the 2000 Act.

8.3.12. The principle set out in the 'Lackagh Rock' case is however, instructive. In short, if the matters considered in assessing a planning application for an agricultural shed with no specific use are materially different to the matters for consideration in the assessment of a planning application for an intensive pig fattening unit then the uses must be materially different and the change from one to the other must be a material change of use.

8.3.13. The Commission might note that the planning authority have already determined that a change of use has occurred, the owner disputes their finding as an error of interpretation but did not appeal that decision at the time. It may be that the planning authority conflated classes of development under Part 3 of the 2001 Regulations (class 6 and 7) and classes involved in change of use. These are not classes of use they are classes of development for the purposes of exemption.

8.3.14. I note that Part 4 of the 2001 regulations lists out classes of use and agriculture is not listed at all. In this instance, it is an existing agricultural shed that changed operations to accommodate a different agricultural enterprise (intensive pig fattening) and therefore planning considerations come into play. Observers have raised the many planning issues that arise and they relate to emissions such as noise and odour, as well as traffic impacts and so on.

8.3.15. Turning back to the Lackagh Rock case, it is my experience that the use of a large portal frame agricultural shed could include things like the storage of agricultural machinery and other agricultural necessities (fencing materials, hurdles, feeders, gates and so on), storage of arable produce before export off site, and livestock housing (dependant on the appropriate treatment of waste). In fact, a large portal frame shed like that permitted on the site could potentially be used for a wide variety of farming purposes that might be exempt, so long as they are related to agriculture and not limited by Environmental Impact Assessment, Appropriate Assessment criteria or licensing restrictions.

8.3.16. In order to use the existing shed to intensively fatten pigs, some changes were necessary. The intensive fattening of pigs could not have occurred without regard being had to the requirement for specifically designed housing, mechanised food and water delivery, ventilation and crucially the retention of waste generated (holding tank). Additionally, the farming enterprise now carried out within the shed is different to that which would be expected to be carried out in the shed originally permitted and based upon the plans approved. Understandably and in common with issues raised by observers, this new enterprise raises new planning considerations that should be assessed and hence the change is material and constitutes ‘development’.

8.3.17. New planning considerations to consider would include:

Odour – the intensive rearing of pigs brings challenges with regard to the generation of odours. Simply put, more animals in a confined space generate more waste that must be collected, stored and odour managed. Measures must be put in place to ensure storage complies with various regulations and standards. The potential for the generation of odours that could become a nuisance and affect residential amenity must be assessed. Observers, make claims about excessive odour generation and how this impacts their existing amenities. The owner dismisses these claims, the area is rural in character, residential properties are a sufficient distance away and no complaints have been investigated and upheld by the planning authority. I note that correspondence from a Teagasc Pig Advisor dated 8th November 2024 states that given the number of pigs accommodated (1,792 maximum), no Industrial Emissions Licence is required from the EPA and the facility operates in compliance with all relevant guidelines, correspondence form the EPA dated November 2023 is noted.

Noise – Common with the generation of odours, excessive noise can be a result of intensive livestock rearing. As with odours, noise can be nuisance and must be managed. I have no evidence on the file with regard to the generation of noise, however, on the day of my site visit I did not detect any excessive noise emanating from the shed in question. Feeding times may be different, but as I understand it, feed is mechanised and is available to stock on a continual basis and not punctuated by active feeding times. In addition, the unit as I observed, is set out for pig fattening and not pig rearing, for which the creation of noise could be an issue. Finally, the mechanisation of feed and the provision of mechanical ventilation may contribute to the overall noise environment of the farm complex. I have no information on file to understand if noise generated on farm would impact residential property in the wider farming area.

Traffic – The shed is situated within a large operational farmyard, set amidst arable fields. The site is accessed from a long avenue perpendicular to the N25. There may be traffic impacts, but given the large and operational nature of the existing farmyard complex, it is hard to judge the impacts if any.

Landscape – The site is not set in a landscape that is subject to any particular designation with constraints. The use occupies a shed already permitted, constructed and set within an existing farmyard complex, there may be no adverse visual amenity impacts.

8.3.18. In my view, the change from the portal frame agricultural shed to accommodate an intensive pig fattening unit, though still an agricultural use introduces different planning matters to be considered and hence a material change of use has occurred. Understandably, the current development plan supports intensive agricultural enterprises subject to a number of planning and environmental considerations, Objective ED103 refers.

8.3.19. On balance, therefore, I consider that while there are obvious overlaps between the characteristics of a large portal frame agricultural shed and the characteristics of an intensive pig fattening unit, there are additional factors relevant for consideration in the assessment of an intensive pig fattening unit to those relevant to the assessment of an agricultural shed with no specific use identified. In these circumstances, (based on the test set out in The County of Galway v Lackagh Rock Ltd [1984 21 MCA]), I consider that the change of use carried out within the shed constitutes a material change of use and thus constitutes ‘development’ at this point of the analysis and no more.

8.3.20. Development or not - Summary - Based on the above analysis, I consider that the physical changes made to an agricultural shed to a shed used for the intensive fattening of pigs involves both ‘works’ as defined for the purposes of the Act and a ‘material change of use’ and, thus, constitutes ‘development’ as defined for the purposes of the 2000 Act. That being the case, development has occurred, the next question to understand is whether such development is or is not exempted development.

8.4. Is or is not exempted development

8.4.1. For the purposes of determining if development has taken place, I have not explored the difference between classes of development and classes of use and how they can be confused. To be clear, Schedule 2, Part 3 of the 2001 Regulations sets out exempted development as it refers to rural development, to be considered exempt, development is implied. In this instance the case is different, the structure exists, changes have been made and pigs are fattened in an intensive manner.

8.4.2. Use - As a reminder, the referrer asks if the change of use of an agricultural shed to house pigs is or is not exempted development. I have established that development has taken place, in the form of ‘works’ and a ‘material change of use’ that also constitutes ‘works’ and now some thought must be directed to the nature of this change of use and if it is exempted development or not exempted development. The owner states that a change of use cannot have occurred and relies on section 4(1)(a) of the 2000 Act.

8.4.3. Section 4 of Part 1 of the 2000 Act, sets out exempted development, section 4(1)(a) states that

> *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;

8.4.4. I have already set out that development has taken place, because of works carried out and a material change of use has also occurred with the intensive housing of pigs, thus development has clearly occurred. With reference to exempted development and agriculture the 2000 Act states that the use of land and buildings for agricultural purposes is exempted development. There are no conditions or limitations, other than the thresholds that refer to Environmental Impact Assessment (EIA) and need for Appropriate Assessment (AA), section 4(4) of the 2000 Act refers.

8.4.5. The owner has stated that the enterprise carried out in the shed is as a finishing unit for pigs. This means that young pigs (over 30kg live weight) are brought on to the site, fattened and then exported off site. I observed this to be the case, insofar as I did not see any evidence of crates for farrowing, nor mature sows in the housing units I inspected. According to an inspection by a Teagasc official (7th November 2024), a total of 1,636 pigs were on site and it is calculated that a maximum of 1,792 pigs could be accommodated. On the day of my site visit, I did not count pigs but found a number of pens empty within each cluster. The number of pigs is important as it is connected with Environmental Impact Assessment thresholds, examined later in this report.

8.4.6. The permitted agricultural shed, was designed and permitted as a portal frame structure with no internal divisions, raised floors or other internal or external arrangements that could accommodate livestock in the way that I observed. The report of the planning authority notes that prior to the use for housing pigs, the shed accommodated cattle but I cannot confirm if this statement refers to the shed in question. Certainly, other sheds in the complex house cattle or have done in the past. In any case the subject shed has been altered to accommodate livestock in an intensive manner and with that certain planning considerations are brought in to play. Issues like noise and odour emissions are open to be examined, and the matter of traffic movements may be relevant. I have already looked at these points, they are well made by observers and refuted by the owner. It is sufficient to conclude that the initial use of the shed has changed from that permitted by the submitted plans and particulars and it now provides accommodation for intensively fattening pigs, by definition a more intensive use. This change is a material change of use and so development has taken place, but is this exempt or not?

8.4.7. The owner relies on Section 4 of Part 1 of the 2000 Act, and this sets out exempted development, under section 4(1)(a) agriculture is dealt with in very broad terms. There are no classes or sub classes of use in relation to agriculture, this poses questions. The matter of exempted development and agriculture as it is set out in the 2000 Act was given some consideration by Hogan J., in Cunningham v An Bord Pleanála [2013] IEHC 234. In this case the applicant erected a new shed on his farmland to store a tractor. Other matters in the case revolved around traffic and the decision making process and do not concern the case on hand.

8.4.8. In the Cunningham case, close examination around the scope of section 4(1)(a) was explored by Hogan J., specifically that the meaning of ‘development’ should be narrowed to just the use of a structure for agricultural purposes, not the construction of a new structure. Of importance, is that the broad definition of development as it is set out in section 3 of the 2000 Act, must be limited because there might be circumstances where the context would otherwise require a narrower meaning of the word. Put plainly, it would be absurd to interpret ‘development’ in its broadest meaning, combine that with section 4(1)(a) and conclude that agricultural structures could be erected for agricultural purposes indiscriminately. Hogan J, wraps up by concluding that the scope of exemption set out by section 4(1)(a) extends only to the use of a building (and lands) for agriculture and not the construction of a new building altogether. The case on hand is slightly different, the owner erected a large shed with the requisite planning permission and then decided at some point later to make alterations and house pigs intensively. The Cunningham case is helpful up to a point, but it does not solve the question of a vastly different and more intensive farming practice taking place within an existing farm building, albeit subject to modifications.

8.4.9. The planning authority have already determined that a change of use between Class 6 and 7 has occurred. However, that determination is problematic, not least of which is that Part 3 Exempted Development — Rural Class 6 and 7 of the 2001 Regulations, relates to the provision of agricultural structures for certain livestock and certain gross floor space. In my mind, the word provision in this instance, means to provide a use by the erection of some new structure. In any case, the activity in question exceeds the thresholds in both cases and so there is no exemption to avail of here, if any were to be considered at all.

8.4.10. The fattening of pigs is clearly an agricultural practice and as such section 4(1)(a) of the 2000 Act should apply as it directly relates to the use of land and buildings that occupy that land for purposes of agriculture. The use of the shed to house pigs is clearly an agricultural undertaking. My conclusion that a material change of use has occurred in order to demonstrate that development has taken place, naturally proceeds to the next question – exempted or not? There are no classes of agricultural use that can be used to quickly conclude a move from one class to the other. Section 4(1)(a) does not refer to a 'change of use' of land to agriculture as exempted development, it simply refers to use. If the drafters of the legislation had meant to restrict the exemption to apply changes of use only, it would have referred to changes of use. It did not.

8.4.11. The definition of agriculture in section 2 of the 2000 Act explicitly included use of the 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). Use for the keeping of pigs is therefore exempted development. Using this logic, this exemption could just as easily apply to the change of use of any farm building to any livestock shed once agricultural.

8.4.12. In Bulrush Horticulture Ltd v An Board Pleanála, the meaning of 4(1)(a) in the context of 4(4) of the 2000 Act is further refined. In that case the question around change of use and agriculture, specifically turbary, was explored. In essence and applied to this case, starting up an intensive pig unit in an agricultural building on land so used for agriculture, would involve an intensification of a use that amounted to a material change, and so constitute development. Based on that conclusion and the interpretation of statutes and regulations outlined in section 7.0 of this report above, the Commission could note that the material change of use of the building that resulted from development the subject of this referral was exempted development under section 4(1)(a) because it involved use as keeping of livestock which is included in the definition of agriculture at section 2 of the 2000 Act.

8.4.13. The change of use of the permitted shed building from general farm storage or low density cattle housing to intensive pig fattening is a completed development and the change of use is the subject of this referred request. In my mind the ‘change in use’ from one agricultural practice to another simply results in the conclusion that ‘development’ has taken place. The use of the building to fatten pigs continues at present and will continue into the future. However, if such a change in use of the buildings to house pigs in the present manner required environmental impact assessment or appropriate assessment then such works must be development and not exempted development according to section 4(4) of the 2000 Act. Put briefly: as long as the use remains agricultural and environmental assessments are not necessary, then such development would be exempted. This matter is considered at section 8.5 below.

8.4.14. Works – the planning authority have also asked if the works carried out constitute development and if the works can be considered exempted development. I have already concluded that the works carried out constitute development. The owner states that the works carried out should be considered under section 4(1)(h) of the 2000 Act. Section 4(1)(h) states:

> *(1) 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;*

8.4.15. In detail, the owner carried works to the interior of the shed that included raising the floor level to provide space for effluent storage. To meet animal welfare requirements mechanical ventilation has been added and vents positioned on the roof. In addition, various other ancillary components such as feed/water conduits, internal lighting, room subdivisions, pens and so on were added. Finally, a concrete ramp and marshalling area was constructed at the southern elevation to convey livestock to and from the facility. Most of the changes have occurred within the building with the only external differences noticeable being the vent stacks on the roof and the ramped accessway.

8.4.16. The planning authority are critical about an increase in floor area from that permitted, a figure of 677 sqm and a floor 2 metres higher than that permitted on plan is referred to. In the mind of the planning authority no exempted development provisions can apply to an unauthorised structure, that is true. However, this is a matter of compliance with an existing permission and the only route open to the planning authority is through the relevant enforcement procedures. With reference to enforcement matters, I understand from the file contents that a warning letter may have issued, and enforcement action may be in progress. However, I have not seen a warning letter or enforcement notice and so I cannot conclude with certainty that the structure the subject of this referral is in any way unauthorised. It is a large agricultural shed and having visited the site but not surveyed the shed in question, it is difficult to determine with certainty whether the shed had originally been constructed as permitted. Thus, in my consideration of the question of exempted development I have taken the permitted building to have been erected in compliance with its permission and any changes and alterations have been made to a permitted structure as constructed. The Commission is reminded that there is no role in the 2000 Act for the Commission to decide on matters to do with enforcement, that is a matter for the local planning authority. I acknowledge that there has been a passage of time since the remittal of this case and enforcement action may be under way, however, no new correspondence has come to the file and I am satisfied that no further action is required on this matter.

8.4.17. Turning back to section 4(1)(h) of the 2000 Act, it is clear that works have taken place and that these works have upgraded and altered the structure (shed) and such works have mostly taken place within the structure. Some works, notably the access ramp and ventilation stacks have taken place outside of the shed and are visible from the farmyard and beyond. The question is, have these internal and external changes modified the building to such an extent that its appearance is inconsistent with the character of the structure or of neighbouring structures? To be clear the subject shed is set within and at the edge of a large farmyard complex, positioned well away from the public road and amidst arable farmland. The subject shed is a permitted building as are others on the farm. There are other large agricultural sheds in this complex, of a similar design, scale and height. The changes made to the subject shed are so marginal so as to be barely noticeable, other than the roof mounted ventilation stacks, but these changes made are not unusual or out of place. Certainly, the character of the structure concerned or of neighbouring structures is not affected in any meaningful way. After all, this is a large and modern farmyard complex set within arable fields in an agriculturally productive part of the country. To be clear the external changes, I consider to be minor and 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.

8.4.18. The area is not subject to any particular designation with reference to architectural heritage, the area is not an Architectural Conservation Area (ACA) and nor are any of the buildings in the farmyard complex or wider area listed on the Record of Protected Structures (RPS). Hence the character of the buildings and the building concerned are not impugned by the works carried out. I am satisfied that the development works that have been carried out are entirely within the scope of section 4(1)(h) of the 2000 Act and rendered exempted development under that provision. Given the evidence provided by the applicant it is evident that the original shed was used to house cattle and that the amendments to the shed happened afterwards in which case section 4(1)(h) exemptions could apply.

8.4.19. Use and Works Summary – Despite the fact that intensively fattened pigs housed in the manner that I observed could not have occurred without the changes and alterations carried out by works (raised floor, tanks, ramps etc). I am satisfied that the change of use of the shed for the housing of pigs can be considered to be exempted development under Section 4(1)(a) of the 2000 Act and those works carried out to facilitate the housing of pigs can be considered exempted development under Section 4(1)(h) of the 2000 Act. However, exempted development status under section 4(1)(a) of the 2000 Act is removed by section 4(4) of the 2000 Act if Environmental Impact Assessment (EIA) or an Appropriate Assessment (AA) is required and this is explored below at section 8.5.

8.5. Restrictions on exempted development

8.5.1. At this point, I have concluded that the use of buildings for agricultural development are classified as exempted development in accordance with the provisions of Section 4(1)(a) of the 2000 Act subject to any limitations which the Minister may prescribe by Regulation in accordance with Section 4(2)(a) of the Act. There are no published limitations with regard to agriculture in the context of this case now before the Commission.

8.5.2. However, under Section 4(4) of the Act, no development can be exempted development if it requires an Environmental Impact Assessment (EIA) or an Appropriate Assessment (AA). Set out as follows:

> *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.*

Further, Section 4(4A) states that:

> *Notwithstanding subsection (4), the Minister may make regulations prescribing development or any class of development that is—*
>
> *(a) authorised, or required to be authorised by or under any statute (other than this Act) whether by means of a licence, consent, approval or otherwise, and*
>
> *(b) as respects which an environmental impact assessment or an appropriate assessment is required,*
>
> *to be exempted development.*

No regulations have so far been published by the minister in this respect.

8.5.3. In order to determine whether the change of use and ongoing use described in the referred request are exempted development, the Commission must determine whether they would require an environmental impact assessment or an appropriate assessment. The first question depends upon a judgment as to whether they would be likely to have significant effects on the environment by reference to the categories set out in schedule 5 and the criteria set out in schedule 7 of the 2001 regulations (as amended). The second depends upon a judgement as to whether it would be likely to have a significant effect on any Natura 2000 site, either individually or in combination with other projects. Screening development to determine whether it requires environmental impact assessment or appropriate assessment is an integral part of the decision making processes set out in the EIA and Habitats Directives respectively for which the Commission is the competent national authority. These matters are therefore within the particular competence and expertise of the Commission.

8.5.4. Environmental Impact Assessment (EIA) – Observers to this file have raised concerns that environmental matters have not been addressed, specifically that all the information required under Schedule 7A has not been prepared by the owner. The owner states that the facility cannot accommodate the number of pigs that would require mandatory Environmental Impact Assessment Report (EIAR), and so no further assessment is required. I have set out at appendix 1 and 2 of this report that the development does not trigger the need for EIA.

8.5.5. Schedule 5 Development for the purposes of Part 10 (EIA) of the 2001 regulations sets out a list of what projects would be considered as having a mandatory requirement for the preparation of an EIAR. The carrying out of an EIA is mandatory for the types of development listed in Part 1 or Part 2 of Schedule 5, the two most relevant types of projects include:

> *Part 1*
>
> *17. Installations for the intensive rearing of poultry or pigs with more than- (a) 85,000 places for broilers, 60,000 places for hens, (b) 3,000 places for production pigs (over 30 kilograms), or (c) 900 places for sows.*
>
> *Part 2*
>
> *1. Agriculture, Silviculture and Aquaculture*
>
> *(e) (ii) Installations for intensive rearing of pigs not included in Part 1 of this Schedule which would have more than 2,000 places for production pigs (over 30 kilograms) in a finishing unit, more than 400 places for sows in a breeding unit or more than 200 places for sows in an integrated unit.*

8.5.6. As I have already outlined and according to an inspection by a Teagasc official (7th November 2024), a total of 1,636 pigs were on site and it is calculated that a maximum of 1,792 pigs could be accommodated in total. The development is below the relevant threshold, the keeping of up to 1,792 pigs on the site and would be likely to have effects but not significant effects on the environment and so the requirement for environmental impact assessment is limited.

8.5.7. The continued operation to fatten pigs at the scale currently undertaken on the site raised in the referred request would not be likely to have significant effects on the environment and there is no requirement for environmental impact assessment. Should operations intensify further, it might be that a consent authority may, after having regard to an EIAR and any mitigation measures described therein, and to the result of consultation with other expert bodies and with the public, decide that the likelihood or magnitude of the residual impact of the development on the environment (compared to whatever public benefit that it might give) would not justify withholding consent for the project. However these are matters to be considered by a consent authority in the course of an environmental impact assessment before any such consent is given. They are irrelevant to the question of whether an environment impact assessment is necessary in the first place, given the circumstances that present themselves on the site.

8.5.8. Appropriate assessment - The continued operation to fatten pigs at the scale currently undertaken on the site specified in the request presents a risk of emissions to surface waters that may be hydrologically connected to the Lower Slaney Estuary, part of the Wexford Harbour and Slobs SPA and Slaney River Valley SAC. The conservation objectives of the SPA are to maintain the favourable conservation condition of Qis and for the SAC include the restoration of the favourable conservation condition of QIs. The said development could be likely to have significant effects on a Natura 2000 site, and such effects could be even more significant when considered in combination with other farming activities carried out on site and in the area in general. It would therefore be necessary for an appropriate assessment of the works to be carried out before public authorities considered whether to agree to their continuation, in order to comply with the requirement of article 6 of the Habitats Directive. It is possible that information could be presented to a consent authority that demonstrated that the development would not have an adverse impact on the integrity of that SPA or any other Natura site. However, this is the issue to be determined in the course of an appropriate assessment, not before it is decided whether the appropriate assessment is necessary, appendix 3 of this report should be noted.

8.5.9. Conclusion The development comprises works that result in the housing of pigs to fatten in an intensive manner, though still an agricultural enterprise, it is a material change of use that comprises development, and such a use requires appropriate assessment. Therefore, the change of use from agricultural shed to intensive pig farming is development and not exempted development, by virtue of the constraints imposed by section 4(4) of the 2000 Act.

8.6. **Summary of Conclusions**

8.6.1. The use of an agricultural shed to house and to continue to house up to a maximum of 1,792 pigs on the site that is the subject matter of the request and referral constitute development both by virtue of the material change in the use of the lands that they caused and the necessity to carry out construction works to accommodate the use now involved.

8.6.2. The intensive fattening of pigs could be exempted development under section 4(1)(a) of the 2000 Act because section 2 of that act included use of land and building for 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) in its definition as agriculture. The change of use of the lands was completed in order to avail of the exemption granted by section 4(1)(a) of the 2000 Act, however the development comprised the material change of use and continuation of the works to accommodate intensive pig farming on the site and this could be likely to have a significant effect on the Wexford Harbour and Slobs SPA and Slaney River Valley SAC. Such development would therefore require appropriate assessment. It would therefore not be exempted development due to the restriction of the scope of exempted development arising from section 4(4) of the 2000 Act. I therefore recommend that the Commission make a declaration as set out hereunder.

9.0 Recommendation

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

WHEREAS the question has arisen as to whether the use to house pigs and the works to facilitate said housing of pigs, on a site Killugger Farm, Killugger, Killinick, Co. Wexford, is or is not development or is or is not exempted development,

AND WHEREAS the said question was referred to An Bord Pleanála by Wexford County Council on the 8th day of September 2021,

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

(a) Section 2(1) of the Planning and Development Act, 2000, as amended,

(b) Section 3(1) of the Planning and Development Act, 2000, as amended,

(c) Section 4(1)(a) of the Planning and Development Act, 2000, as amended,

(d) Section 4(1)(h) of the Planning and Development Act, 2000, as amended,

(e) Section 4(4) of the Planning and Development Act, 2000, as amended,

(f) Schedule 5 of the Planning and Development Act, 2000, as amended,

(g) Section 177U (9) of the Planning and Development Act, 2000, as amended,

(h) article 6(1) and article 9(1) of the Planning and Development Regulations, 2001, as amended,

(i) the planning history of the site,

(j) the rural character and pattern of development in the area:

(k) the nature and extent of the works that were described in the request and referral and in the various other submissions made in connection with them, and the nature and extent of the works that were apparent upon inspection of the site,

AND WHEREAS An Coimisiún Pleanála has concluded that:

(a) the intensive housing of pigs and associated works that are the subject matter of this referral, involve the carrying out of works on land in an intensive and sustained manner and the commencement of such works involved a material change in the use,

(b) both the carrying out of the said works and the material change of use to which their commencement gave rise constitute development under section 3(1) of the 2000 Act as amended,

(c) both the material change of the use of the site and the carrying out of works was exempted development by virtue of section 4(1)(a) and section 4(1)(h) of the 2000 Act because agriculture as defined by section 2 of the 2000 Act includes 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), and if the term “use of land for agriculture” bears any meaning it must include reference to works to house livestock and that the works carried out to the permitted and completed shed 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,

(d) The development alone or in combination with other plans and projects is likely to give rise to significant effects on the Wexford Harbour and Slobs SPA (site code 004076) and the Slaney River Valley SAC (site code 000781) European Site(s) in view of the site’s conservation objectives, therefore, the development is subject to an Appropriate Assessment and cannot be considered exempted development under Section (4)4 of the Planning and Development Act 2000, as amended.

NOW THEREFORE An Coimisiún Pleanála, in exercise of the powers conferred on it by section 5 (3) (a) of the Planning and Development Acts, as amended, hereby declares that:

A) the use of the shed to house pigs and associated works to do with the intensive keeping of pigs on the site that is the subject of this request and referral is development and is not exempted development.

B) the construction of slatted tanks, the raised ground level and the addition of concrete ramp on the site that is the subject of this request and referral 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.

Stephen Rhys Thomas
Senior Planning Inspector

23 July 2026

10.0 Appendix 1 - Environmental Impact Assessment (EIA) Pre-Screening

<table>
<tr><td>An Bord Pleanála Case Reference</td><td colspan="4">ABP-320954-24</td></tr>
<tr><td>Proposed Development Summary</td><td colspan="4">Whether (i) the current use of the existing agricultural shed to house pigs is a change of use and (ii) the additional floor area, the construction of slatted tanks, the raised ground level and the addition of concrete ramp is or is not development or is or is not exempted development.</td></tr>
<tr><td>Development Address</td><td colspan="4">Killugger Farm, Killugger, Killinick, Co. Wexford.</td></tr>
<tr><td colspan="3" rowspan="2">1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?
(that is involving construction works, demolition, or interventions in the natural surroundings)</td><td>Yes</td><td>✓</td></tr>
<tr><td>No</td><td></td></tr>
<tr><td colspan="5">2. Is the proposed development of a CLASS specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended)?</td></tr>
<tr><td>Yes</td><td>✓</td><td>Part 1
17. Installations for the intensive rearing of poultry or pigs with more than- (a) 85,000 places for broilers, 60,000 places for hens, (b) 3,000 places for production pigs (over 30 kilograms), or (c) 900 places for sows.
Part 2
1. Agriculture, Silviculture and Aquaculture
(e) (ii) Installations for intensive rearing of pigs not included in Part 1 of this Schedule which would have more than 2,000 places for production pigs (over 30 kilograms) in a finishing unit, more than 400 places for sows in</td><td colspan="2">Proceed to Q3.</td></tr>
</table>

		a breeding unit or more than 200 places for sows in an integrated unit.	
No			
3. Does the proposed development equal or exceed any relevant THRESHOLD set out in the relevant Class?			
Yes			
No	✓		Proceed to Q4
4. Is the proposed development below the relevant threshold for the Class of development [sub-threshold development]?			
Yes	✓		Preliminary examination required (Form 2)

5. Has Schedule 7A information been submitted?		
No	✓	**Screening determination remains as above (Q1 to Q4)**
Yes	Tick/or leave blank	**Screening Determination required**

Inspector: ________________________________ **Date:** ____________________

11.0 Appendix 2 - EIA Preliminary Examination

Case Reference	ABP-320954-24
Proposed Development Summary	Whether (i) the current use of the existing agricultural shed to house pigs is a change of use and (ii) the additional floor area, the construction of slatted tanks, the raised ground level and the addition of concrete ramp is or is not development or is or is not exempted development.
Development Address	Killugger Farm, Killugger, Killinick, Co. Wexford.
This preliminary examination should be read with, and in the light of, the rest of the Inspector's Report attached herewith.	
Characteristics of proposed development (In particular, the size, design, cumulation with existing/ proposed development, nature of demolition works, use of natural resources, production of waste, pollution and nuisance, risk of accidents/disasters and to human health).	**The development includes the intensive keeping of pigs in a permitted and existing agricultural shed. In relation to the characteristics of the development: the maximum number of pigs that can be accommodated on the site amounts to 1,792 and this is below the threshold set out in Part 2, paragraph 1(e)(i). The effect of the pig fattening unit when combined with other agricultural activities in the existing farmyard complex would be cumulative, however, not unexpected and controlled by other licensing regimes. The development has the potential to give rise to pollution arising from emissions to air and water, however, measures to control emissions to air (ventilation stacks above roof level) and water (effluent storage tanks).** **The maximum number of pigs that can be accommodated in the shed is less than thresholds set out in the 2001 Regulations.**

	The development has the capacity to generate waste, produce odours and noise that will requirement management, but does not trigger the requirement for an Industrial Emissions Licence (IEL), not EPA letter dated 1st November 2023.
Location of development (The environmental sensitivity of geographical areas likely to be affected by the development in particular existing and approved land use, abundance/capacity of natural resources, absorption capacity of natural environment e.g. wetland, coastal zones, nature reserves, European sites, densely populated areas, landscapes, sites of historic, cultural or archaeological significance).	**In relation to location: the geographical area in which the development would occur is of limited environment sensitivity due to the agricultural characteristics of the area and the proximity of the Proposed Natural Heritage Areas: Wexford Slobs and Harbour, and the Special Protection Areas: Wexford Harbour and Slobs SPA and Slaney River Valley SAC, some distance away.** **The site is located within an existing building within an existing farmyard complex. There are designated sites in the wider area. There is no watercourse on the site but there is an existing watercourse to the south with downstream connections to designated sites.**
Types and characteristics of potential impacts (Likely significant effects on environmental parameters, magnitude and spatial extent, nature of impact, transboundary, intensity and complexity, duration,	**Having regard to the characteristics of the agricultural development and the low environmental sensitivity of its location, there may be limited potential for effects on environmental parameters, but such effects would not be considered significant. Any effects such as odours, noise and traffic have been highlighted by observers but refuted by the applicant/owner and would be the type of effects to be expected in a productive agricultural**

cumulative effects and opportunities for mitigation).	**location such as this. Given the farming character of the area, the existing and operational farmyard complex with an entrance to the public road, the likelihood of significant effects is considered to be low and subject to other pollution licensing regimes (EPA and local authority).**

Conclusion	
Likelihood of Significant Effects	**Conclusion in respect of EIA**
There is no real likelihood of significant effects on the environment.	**EIA not required**
There is significant and realistic doubt regarding the likelihood of significant effects on the environment.	
There is a real likelihood of significant effects on the environment.	

Inspector: ________________________________Date: ________________

DP/ADP: __________________________________Date: ________________

(only where Schedule 7A information or EIAR required)

12.0 **Appendix 3 - AA Screening Determination**

Screening for Appropriate Assessment **Test for likely significant effects**

Step 1: Description of the project and local site characteristics

Case file: ABP-320954-24

Brief description of project	Whether (i) the current use of the existing agricultural shed to house pigs is a change of use and (ii) the additional floor area, the construction of slatted tanks, the raised ground level and the addition of concrete ramp is or is not development or is or is not exempted development.
Brief description of development site characteristics and potential impact mechanisms	The site is within an established farmyard complex set on productive arable farmland. A field boundary watercourse is located to the south of the site and flows onwards to the Slaney River Valley SAC (site code 000781) and Wexford Harbour and Slobs SPA (site code 004076).
Screening report	No
Natura Impact Statement	No
Relevant submissions	None

Step 2. Identification of relevant European sites using the Source-pathway-receptor model

A watercourse is located to the south of the site and flows onwards to the Slaney River Valley SAC (site code 000781) and Wexford Harbour and Slobs SPA (site code 004076).

European Site (code)	Qualifying interest	Distance from the development (km)	Ecological connections	Consider further in screening Y/N
Slaney River Valley SAC (site code 000781)	1130 Estuaries (To restore the favourable conservation condition) 1140 Mudflats and sandflats not covered by seawater at low tide (To maintain the favourable conservation condition) 1330 Atlantic salt meadows (Glauco-Puccinellietalia maritimae) – no conservation objective listed. 1410 Mediterranean salt meadows (Juncetalia maritimi) (To maintain the favourable conservation condition)	4	Hydrological Link	Y

	3260 Water courses of plain to montane levels with the Ranunculion fluitantis and Callitricho-Batrachion vegetation (To maintain the favourable conservation condition) 91A0 Old sessile oak woods with Ilex and Blechnum in the British Isles (To restore the favourable conservation condition) 91E0 Alluvial forests with Alnus glutinosa and Fraxinus excelsior (Alno-Padion, Alnion incanae, Salicion albae)* (To restore the favourable conservation condition) 1029 Freshwater Pearl Mussel Margaritifera margaritifera (The status of the freshwater pearl mussel (Margaritifera margaritifera) as a qualifying Annex II species for the Slaney River Valley SAC is currently under review. The outcome of this review will determine whether a site-specific conservation objective is set for this species) 1095 Sea Lamprey Petromyzon marinus (To restore the favourable conservation condition)			

	1096 Brook Lamprey Lampetra planeri (To restore the favourable conservation condition) 1099 River Lamprey Lampetra fluviatilis (To restore the favourable conservation condition) 1103 Twaite Shad Alosa fallax fallax (To restore the favourable conservation condition) 1106 Salmon Salmo salar (To restore the favourable conservation condition) 1355 Otter Lutra lutra (To restore the favourable conservation condition) 1365 Harbour Seal Phoca vitulina (To maintain the favourable conservation condition) https://www.irishstatutebook.ie/eli/2023/si/637/made/en/pdf 15 December 2023 and site synopsis – 21 October 2011			
Wexford Harbour and Slobs SPA (site	Tachybaptus ruficollis - Little Grebe Podiceps cristatus - Great Crested Grebe Phalacrocorax carbo - Cormorant Ardea cinerea - Grey Heron	1.6	Hydrological Link	Y

code 004076)	Cygnus columbianus bewickii - Bewicks Swan Cygnus cygnus - Whooper Swan Anser albifrons flavirostris - Greenland White-fronted Goose Branta bernicla hrota - Light-bellied Brent Goose Tadorna tadorna - Shelduck Anas Penelope - Wigeon Anas crecca - Teal Anas platyrhynchos - Mallard Anas acuta - Pintail Aythya marila - Scaup Bucephala clangula - Goldeneye Mergus serrator - Red-breasted Merganser Circus cyaneus - Hen Harrier Fulica atra - Coot Haematopus ostralegus - Oystercatcher Pluvialis apricaria - Golden Plover Pluvialis squatarola - Grey Plover Vanellus Vanellus - Lapwing Calidris canutus - Knot			

	Calidris alba - Sanderling Calidris alpina - Dunlin Limosa limosa - Black-tailed Godwit Limosa lapponica - Bar-tailed Godwit Numenius Arquata - Curlew Tringa tetanus - Redshank Chroicocephalus ridibundus - Black-headed Gull Larus fuscus - Lesser Black-backed Gull Sterna albifrons - Little Tern A999 Wetlands In all cases, the conservation objective is to maintain the favourable conservation condition. https://www.irishstatutebook.ie/eli/2012/si/194/made/en/print 16 May 2012			

Step 3. Describe the likely effects of the project (if any, alone or in combination) on European Sites

AA Screening matrix

Site name **Qualifying interests**	**Possibility of significant effects (alone) in view of the conservation objectives of the site***	
	Impacts	**Effects**
Slaney River Valley SAC (site code 000781) 1130 Estuaries 1140 Mudflats and sandflats not covered by seawater at low tide 1330 Atlantic salt meadows (Glauco-Puccinellietalia maritimae)	Due to the lack of information submitted with the referral, it is unclear as to the storage of waste materials (pig slurry) activity involved within the shed, in a location close to a watercourse which could have likely significant effects on the qualifying interests of the Slaney River Valley SAC and therefore it is not possible to determine any potential impacts on the Slaney River Valley SAC.	Due to the lack of information submitted with the referral, it is unclear as to the storage of waste materials (pig slurry) activity involved within the shed, in a location close to a watercourse which could have likely significant effects on the qualifying interests of the Slaney River Valley SAC and therefore it is not possible to determine any potential impacts on the Slaney River Valley SAC.

1410 Mediterranean salt meadows (Juncetalia maritimi) 3260 Water courses of plain to montane levels with the Ranunculion fluitantis and Callitricho-Batrachion vegetation 91A0 Old sessile oak woods with Ilex and Blechnum in the British Isles 91E0 Alluvial forests with Alnus glutinosa and Fraxinus excelsior (Alno-Padion, Alnion incanae, Salicion albae)* 1029 Freshwater Pearl Mussel Margaritifera margaritifera			

1095 Sea Lamprey Petromyzon marinus 1096 Brook Lamprey Lampetra planeri 1099 River Lamprey Lampetra fluviatilis 1103 Twaite Shad Alosa fallax fallax 1106 Salmon Salmo salar 1355 Otter Lutra lutra 1365 Harbour Seal Phoca vitulina		
Likelihood of significant effects from proposed development (alone): Uncertain		
Is there likelihood of significant effects occurring in combination with other plans or projects? Uncertain		
Possibility of significant effects (alone) in view of the conservation objectives of the site* Uncertain		
Wexford Harbour and Slobs SPA (site code 004076)	Due to the lack of information submitted with the referral, it is unclear as to the storage of waste materials (pig slurry) activity involved	Due to the lack of information submitted with the referral, it is unclear as to the storage of waste materials (pig slurry) activity involved within the

Tachybaptus ruficollis - Little Grebe Podiceps cristatus - Great Crested Grebe Phalacrocorax carbo - Cormorant Ardea cinerea - Grey Heron Cygnus columbianus bewickii - Bewicks Swan Cygnus cygnus - Whooper Swan Anser albifrons flavirostris - Greenland White-fronted Goose Branta bernicla hrota - Light-bellied Brent Goose Tadorna tadorna - Shelduck Anas Penelope - Wigeon Anas crecca - Teal	within the shed, in a location close to a watercourse which could have likely significant effects on the qualifying interests of the S Wexford Harbour and Slobs SPA and therefore it is not possible to determine any potential impacts on the Wexford Harbour and Slobs SPA.	shed, in a location close to a watercourse which could have likely significant effects on the qualifying interests of the S Wexford Harbour and Slobs SPA and therefore it is not possible to determine any potential impacts on the Wexford Harbour and Slobs SPA.	

Anas platyrhynchos - Mallard Anas acuta - Pintail Aythya marila - Scaup Bucephala clangula - Goldeneye Mergus serrator - Red-breasted Merganser Circus cyaneus - Hen Harrier Fulica atra - Coot Haematopus ostralegus - Oystercatcher Pluvialis apricaria - Golden Plover Pluvialis squatarola - Grey Plover Vanellus Vanellus - Lapwing Calidris canutus – Knot Calidris alba - Sanderling Calidris alpina - Dunlin			

Limosa limosa - Black-tailed Godwit Limosa lapponica - Bar-tailed Godwit Numenius Arquata - Curlew Tringa tetanus - Redshank Chroicocephalus ridibundus - Black-headed Gull Larus fuscus - Lesser Black-backed Gull Sterna albifrons - Little Tern A999 Wetlands		
Likelihood of significant effects from proposed development (alone): Uncertain		
Is there likelihood of significant effects occurring in combination with other plans or projects? Uncertain		
Possibility of significant effects (alone) in view of the conservation objectives of the site* Uncertain		

The referral submitted relates to the housing of pigs within an existing shed and associated works that include a waste storage tank, a watercourse is located to the south that hydrologically links to Wexford Harbour and Slobs SPA (site code 004076) located 1.6 kilometres to the south east and Slaney River Valley SAC (site code 000781) located 4 kilometres to the north east. No details in relation to the construction methods deployed that altered the internal part of the shed, including the effluent storage tanks have been submitted, and no appropriate assessment screening was submitted. Therefore, there is uncertainty as to the potential effects on the Natura 2000 sites, therefore, it is not possible to exclude that the proposed development alone would result in significant effects on the Natura 2000 sites.

Step 4 Conclude if the proposed development could result in likely significant effects on a European site

It is not possible to exclude the possibility that proposed development alone would result significant effects on Wexford Harbour and Slobs SPA (site code 004076) and Slaney River Valley SAC (site code 000781) from effects associated with the farm shed. An appropriate assessment is required on the basis of the possible effects of the project 'alone.' Further assessment in combination with other plans and projects may be required at screening stage.

Screening Determination

Significant effects cannot be excluded.

In accordance with Section 177U of the Planning and Development Act 2000 (as amended) and on the basis of the information considered in this AA screening, I conclude that it is not possible to exclude that the proposed development alone [or in combination with other plans and projects] will give rise to significant effects on Wexford Harbour and Slobs SPA (site code

004076) and Slaney River Valley SAC (site code 000781) European Site(s) in view of the site's conservation objectives. Appropriate Assessment is required.

This determination is based on:

- Lack of information on the construction methods deployed to carry out works and the any details of effluent storage tanks.
- Location and proximity to Natura 2000 Sites.
- The potential for a Hydrological Link to Natura 2000 Sites.