



An
Bord
Pleanála

Inspector's Report ABP-321643-25

Question

Whether the formation of an agricultural access or the replacement of concrete post and concrete rail boundary by a gated access is or is not development and is or is not exempted development.

Location

Ardivaghan, Mullingar, Co.
Westmeath.

Declaration

Planning Authority

Westmeath County Council

Planning Authority Reg. Ref.

S5-46-24

Applicant for Declaration

Eamonn O'Rourke

Planning Authority Decision

Is not exempted development

Referral

Referred by

Eamonn O'Rourke

Owner/ Occupier

Eamonn O'Rourke

Observer(s)

None

Date of Site Inspection

9th April 2025

Inspector

Aoife McCarthy

1.0 Site Location and Description

- 1.1. The subject site is located in the townland of Ardivaghan, c. 2.3km west of Mullingar town centre. The site bounds Ardilaun Green estate to the south-east; with lands in agricultural use to the north, south and west.
- 1.2. There is a concrete boundary fence across the full northern boundary of the estate. The site is in agricultural use, with the wider area to the east, primarily residential in character. The site is in agricultural use noted to currently comprise grasslands.
- 1.3. As referenced within a previous application (**Reg. Ref.: 18/6018**), the subject site has a stated area of 9.5 hectares.

2.0 The Question

- 2.1. The submission as made to the planning authority included 4 no. components:
 1. Whether the use of the subject lands for agriculture (unspecified) is development,

and if considered development,

Whether it is development requiring permission or whether it is exempted development under Section 4(1)(a) of the Act?
 2. Whether the formation of an agricultural access consists (or is consistent with) the use of the lands for agriculture and is exempted development under Section 4(1)(a) of the Act?
 3. Whether the current temporary boundary treatment of concrete post and rail if replaced by a gated access boundary less than 2 metres in height does this conforms with Class 9, of Schedule 2 of the Planning and Development Regulations that being:

The construction, erection, renewal or replacement, other than within or bounding the curtilage of a house, of any gate or gateway” and the height of any such structures shall not exceed 2 metres.

4. Whether the carrying out of works to the maintenance or improvement of a road by the local authority [in exercising their power under Section 4(1)(6) of the Roads Act] is development, and is or is not exempted development?

2.1.1. The Referrer sets out the following partially revised queries with an additional question (Q5) as listed below;

1. Whether the use of the subject lands for agriculture or the growing of willow is development, and is exempted development under Section 4(1)(a) of the Act?
2. Whether the formation of an associated [road] access for the purpose of agricultural use (not a material change of use where no intervening use has occurred), is development under Section 4(1)(a) of the Act?

The Appellant states that,

“in essence, we are principally seeking to confirm that the use of the lands for an agricultural use are unrestricted for the purposes of agriculture and as such, the formation of the access to enable the use of the lands for the purposes of agriculture are similarly unconstrained and as such, are also exempted development.”

3. Whether the current temporary boundary treatment of concrete post and rail if replaced by a gated access boundary less than 2 metres in height is development and is exempted development?
4. Whether the carrying out of works to the maintenance or improvement of a road or local authority is development and is or is not exempted development?
5. Whether the local authority as the roads authority are enabled to carry [out] such new road or improvement works (to provide a point of access to the subject lands) is or is not development under Section 4(1)(e) of the Act (in respect of the works) and is or is not development (in respect of associated works for an access for the purpose of the exempted use)?

2.1.2. Query 4 remains largely unchanged.

3.0 Planning Authority Reports

3.1. Planning Report (6th December 2024)

- 3.1.1. The report includes a description of the site and reference to planning history on site (**P. A. Reg. Ref. 18/6018;ABP Ref: 302207-18; P. A. Reg. Ref. 14/6231**).
- 3.1.2. The Planning Authority considered that insufficient information has been provided with respect to the specific form of agriculture intended by the Applicant, in order to determine the potential impact on nearby European sites. This includes whether spreadlands form part of the proposed agricultural works, or not.
- 3.1.3. Query 1 is non-specific, lacks detail pertaining to agricultural usage and activities; and as a result, a determination is not possible.
- 3.1.4. With respect to Queries 2 and 3; the report notes the case as proposed by the Referrer; that his lands must be accessible, in order to implement an agricultural use. The report refers to permitted development (**P.A. Reg. Ref.:18/6018; ABP Ref. 302207-18**), which unintentionally landlocked the Applicant's lands.
- 3.1.5. Notwithstanding, the Referral concludes that, as development would consist of the formation of an access to a public road where the surface carriageway exceeds 4 metres in width, and would endanger public safety by reason of a traffic hazard (with reference to the above referenced planning history as noted above); the provision of a gate at this location would contravene a condition of the parent permission associated with the development of neighbouring lands, and therefore cannot qualify under Class 9, and this element is not exempt development.
- 3.1.6. With respect to Query 4, the planning authority considers that this query is also non-specific, and that insufficient information has been submitted to make a determination on this element of the referral.

3.2. **Other Technical Reports**

- 3.2.1. None.

4.0 **Planning History**

4.1. **Subject Site**

- 4.1.1. **P. A. Reg. Ref. 18/6018; ABP Ref. 302207-18:**Planning permission refused by local authority and subsequently by An Bord Pleanála on 20th December 2018 for part demolition of an existing boundary wall, provision of an agricultural entrance with

gates, piers and all associated site works. The application was refused by the Board for the following reasons and considerations:

“1. Having regard to the location of the proposed agricultural entrance, the potential traffic such an entrance would generate, the distance between it and the public road network with the route between the two running through a formally designed and laid out housing estate, it is considered that the proposed development would result in conflict with existing road users as well as users of the public domain within this housing estate. As such, the proposed development would endanger public safety by reason of a traffic hazard and would, therefore, be contrary to the proper planning and sustainable development of the area.

2. The proposed development would be located at the end of a cul-de-sac, Ardilaun Green, which is characterised by residential development and a pocket of open space that is in itself an important amenity resource for residents. It is considered that the provision of an agricultural entrance at this location would be at variance with the predominant pattern of residential development in the estate. The proposed development would seriously injure the residential amenities of the area by reason of agricultural traffic and disturbance and would, therefore, be contrary to the proper planning and sustainable development of the area.”

4.2. **P. A. Reg. Ref. 14/6231:** Planning permission refused on the 20th December 2015 for the provision of a gate to the above lands. The application was refused for the following reasons:

1. The proposed development would endanger public safety by reason of traffic hazard and would be contrary to Policy P-TM6 of the Mullingar Local Area Plan 2014-2020.
2. The proposal would seriously injure the amenities of residents in the vicinity of the site.

4.2.1. **P. A. Reg. Ref. 99/1661:** Planning permission granted on 26th June 2000 for the provision of 386 no. 2, 3 and 4 bedroom 2 storey houses, at Ballymahon Road, Sarsanstown, Mullingar, Co. Westmeath. This development is located to the immediate west of the subject lands.

4.2.2. Condition **No. 1** states the following:

Subject to the conditions set out below the development shall be carried out strictly in accordance with the plans and details submitted to the planning authority on the 23rd December 1999 and also on the 20th April 2000.

Reason: In the interests of orderly development.

4.2.3. Condition **No. 11** states the following:

(a) The major access roads are to consist of a 6 metre wide carriageway with two 12 metre wide grass margins with two 2 metre wide footpaths, total 12 metre width. The minor access roads are to consist of **a minimum 5.5 metre wide** carriageway with a 1 metre wide grass margin with a 2 metre wide footpath on the sides which have access to housing frontage. At all locations where a footpath is not necessary a grass margin of 1 metre minimum width is to be provided. The width of some of the access roads has been shown in excess 6 metres and this will require modification.

Reason: In the interests of traffic safety.

4.2.4. Condition **No. 46** states the following:

A screen wall of solid block construction 2 metres in height and suitably plastered or dashed and capped shall be erected along the entire perimeter of the development, prior to the occupation of any dwelling which abuts this boundary.

Reason: In the interests of residential amenity.

5.0 Statutory Provisions

5.1. Planning and Development Act, 2000 (as amended)

5.1.1. **Part 1, Section 3(1)** of the Act states that “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”.

5.1.2. **Part 1, Section 2(1)** of the Act states that ““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”.

- 5.1.3. **Part 1, Section 2(1)** of the Act also states that “‘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;”.
- 5.1.4. **Section 4(1)** sets out the various forms and circumstances in which development is exempted development for the purposes of the Act. **Section 4(1)(a)** defines the following as exempted development “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.”
- 5.1.5. **Section 4(1)(e)** refers to “development consisting of the carrying out by a local authority of any works required for the construction of a new road or the maintenance or improvement of a road”.
- 5.1.6. **Section 4(1B)** states that “Development referred to in paragraph (a), (d), (e) or (g) of subsection (1A) shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required.”
- 5.2. **Planning and Development Regulations, 2001 (as amended)**
- 5.2.1. **Article 6 (1)** states that “subject to article 9, 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 the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1”.
- 5.2.2. **Article 9** sets out the following relevant restrictions on exempted development:
- (1) Development to which article 6 relates shall not be exempted development for the purposes of the Act –
 - (a) 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,

- (ii) consist of or comprise the formation, laying out or material widening of a means of access to a public road, the surfaced carriageway of which exceeds 4 metres in width,
- (iii) endanger public safety by reason of traffic hazard or obstruction of road users,

5.2.3. **Schedule 2, Part 1, Class 9** of the Regulations defines the following as exempted development: “**the construction, erection, renewal or replacement, other than within or bounding the curtilage of a house, of any gate or gateway**”, with the condition and limitation that the **height** of any structure shall not exceed **2 metres**.

5.2.4. **Schedule 2, Part 1, Class 13** of the Regulations defines the following as exempted development: “**the repair or improvement of any private street, road or way being works carried out on land within the boundary of the street, road or way**, and the construction of any private footpath or paving” with the condition and limitation that “the **width** of any such private footpath or paving shall not exceed **3 metres**”.

5.2.5. **Article 6 (3)** of the Regulations states “subject to article 9, in areas other than a city, a town or an area specified in section 19(1)(b) of the Act or the excluded areas as defined in section 9 of the Local Government (Reorganisation) Act, 1985 (No. 7 of 1985), development of a class specified in column 1 of Part 3 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 3 opposite the mention of that class in the said column 1.”

6.0 Natural Heritage Designations

- 6.1. Lough Owel SPA and SAC is located 2.5km to the north-east of the site, Lough Ennell SPA and SAC is located 2.8 km to the south of the site, Scragh Bog SAC is located 5.9km to the north-east of the site; Wooddown Bog SAC is located 6.5km to the north-east of the site. Garriskil Bog SAC and SPA is located 14.2km to the north-west of the site.
- 6.2. The closest proposed Natural Heritage Area is the Royal Canal (Site Code: 002103) located c.524m to the south-west of the subject site at it's closest point.

7.0 The Referral

7.1. The Referrer's Case

7.1.1. The referrer submits the following:

- The Referrer's lands were subject to Residential zoning objective, under the Mullingar Local Area 'Plan (LAP) under the Westmeath County Development Plan 2008-2014.
- The Referrer intended to proceed with a residential development (comprising 189 no. units in 2011), utilising an access arrangement by way of a wayleave agreement (with Westmeath County Council) through Ardilaun Green to the immediate south-west of the site. Due to the economic downturn, the Referrer did not proceed with the proposal.
- The previous decision has unintentionally left the Referrer's lands landlocked (**P.A. Ref.: 18/6018**); and that it had been the intention that a spur was designed to enable access to the Referrer's lands (further emphasised within the wayleave agreement) (**P.A. Reg. Ref: 99/1661**).
- The Referrer's lands are outside the functional boundary of the Mullingar Town Plan, under the current Westmeath County Development Plan 2021-2027 (the Development Plan).
- The use of these lands for agricultural use, supported by the wayleave, enables the formation of an access to serve this proposed use.
- *Fingal County Council v Willam P. Keeling & Sons Ltd.* [2005 IESC55 2 IR108], supports the continued use of lands for agricultural purposes.
- The Referrer intends to utilise the lands for willow production (osier use), which can be used as an energy source.
- To facilitate the use of these lands for agriculture, "they must be logically accessible serviceable and harvestable".
- Biosolids and spreadlands will not be used as part of this agricultural use.

- The local road network within the adjacent estate has been designed to accommodate significant traffic movements, including for use for refuse and emergency service vehicles.
- The use of the lands for agricultural use would not trigger AA or EIA under Article 9 of the Planning and Development Regulations 2001 (as amended) (the Regulations).
- The boundary fence to the adjoining estate is temporary in nature, to enable access and connectivity to this estate.
- Traffic hazard is not a limitation under s.4 of the Planning and Development Act 2000 (as amended) (the Acts). The enabling of an access to serve the use of the lands for agricultural purposes is development, but exempted development.
- The boundary treatment to the estate is consistent with Condition No. 46 of the adjacent permission (**P.A. Reg. Ref.: 99/1661** refers).

7.2. Planning Authority Response

7.2.1. None received.

7.3. Landowner Response

7.3.1. Not applicable.

7.4. Further Responses

7.4.1. None received.

8.0 Declaration

8.1.1. A Declaration was issued by Westmeath County Council on 6th December 2024 as follows:

Questions 1 and 4: Insufficient information has been submitted to enable the authority to issue a declaration, having regard to the nature of these queries.

Questions 2 and 3: The formation of an agricultural access in association with lands at Ardivaghan, Mullingar, Co. Westmeath is development and is NOT exempted development.

9.0 Assessment

- 9.1. Having reviewed the file, visited the site, I note that the local authority determined that insufficient information was provided to complete Questions 1 and 4. In this context, in my opinion, the Referrer has included sufficient detail to make a Declaration in respect to Questions 1 and 4.
- 9.2. The Referrer sought to amend the initial Query 3, by the omission of reference to Class 9 Schedule 2 of the Regulations.
- 9.3. The Referrer has included an additional question (Question 5 within this report).
- 9.3.1. For clarity, I note that this appeal can only address matters relevant under Section 34 of the Planning and Development Act, 2000 (as amended) (the Acts) and that, matters including those relating to, inter alia, wayleaves and the rationale of the planning authority to undertake works (as referenced in Questions 4 and 5 below), are outside the scope of this report.
- 9.4. **Question 1: Whether the use of the subject lands for agriculture for the growing of willow [osier] is development, and is exempted development under Section 4(1)(a) of the Act?**
- 9.4.1. The purpose of this referral is not to determine the acceptability or otherwise of the **use** of the lands for agricultural (osier) use, in respect of the proper planning and sustainable development of the area, but rather whether or not the matter in question constitutes development, and if so, falls within the scope of exempted development.
- Is or is not development**
- 9.4.2. A question has arisen as to whether the use of the lands for agricultural purposes (as osier lands) is development within the meaning of the Planning and Development Act 2000 (amended).
- 9.4.3. The site is located outside the town boundary of the Mullingar Town Plan, under the Westmeath County Development Plan 2021-2027, and pursuant to Article 6(3), the relevant exempted development provisions in this case, are those under Part 3, Schedule 2 of the Regulations. In effect, agricultural use of lands outside the boundary of the town is exempted development under Section 4(1)(h).

- 9.4.4. The Referrer does not specify the type of agriculture currently undertaken site, however Section 3.0 of the Section 5 as prepared on behalf of the Referrer, includes reference to horticulture, fruit growing, seed growing, meadow land, market gardens and nursery grounds. At the time of site visit, access to the subject lands was restricted; however, I nonetheless confirm that the site appears to reflect the site as presented within the photographs within the Planner 's Report, comprising mainly grasslands.
- 9.4.5. The Referrer sets out that it is the intention that willow will be cultivated as an energy source on the subject lands. There is therefore a change in the purpose of the land from food/crop production to production for energy production purposes.
- 9.4.6. As noted in Section 5.0 above, agriculture includes "the use of the land as osier land". In my opinion, the use of the subject site as osier land falls within the definition of "agriculture", under Part 1, Section 2(1) of the Acts, and therefore the use of the site as osier land is consistent with the current use (horticulture or grasslands), and does not constitute a material change of use, and is not development.

Conclusion

- 9.4.7. In my opinion, the use of the site for the growing of willow (osier) falls within the definition of agriculture and therefore the change from grassland or horticulture to the use as osier land does not constitute a material change of use and so is not development.
- 9.5. **Question 2: "Whether the formation of an associated [road] access for the purpose of agricultural use (not a material change of use where no intervening use has occurred), is development [that is exempted development] under Section 4(1)(a) of the Act?"**
- 9.5.1. Section 4(1)(a) concerns agricultural use. The formation of an access involves works and is therefore development.
- 9.5.2. In my opinion, the provision of an access to the Referrer's lands includes the removal of the concrete post and rail fence and other works to facilitate the formation of an access, is therefore development within the meaning of the Act. There is provision under Section 4(1)(a) for works to provide an access to lands in agricultural use.

Conclusion

- 9.5.3. In my opinion, the provision of an access to the Referrer's lands constitutes works and therefore constitutes development within the meaning of the Act. The formation of an access is not exempted development under Section 4(1)(a).

9.6. **Question 3: Whether the replacement of the current temporary boundary treatment of concrete post and rail by a gated access less than 2 metres in height would constitute development and whether it is exempted development?**

- 9.6.1. The Referrer has not specified the scale, dimension of the existing section of boundary wall.

Is or is not development

- 9.6.2. In my opinion, the replacement of a section of a boundary wall with a gated access constitutes works and therefore constitutes development within the meaning of the Act.

Is or is not exempted development

- 9.6.3. I do not consider that the works would fall within the scope provided under Section 4(1) of the Act including under Section 4(1)(a) of the Act. I will now examine the provisions for exemptions under the Regulations.

Restrictions on exempted development

- 9.6.4. A gate 2 metres in height is generally exempt development. However, restrictions under Article 9(1)(a) of the Regulations include the following;
- (i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,
- 9.6.5. In my opinion, the replacement of a section of the boundary wall with a gated access would contravene Condition **46** of the adjoining residential development (P.A. Ref. **09/1661**); requiring the provision of a boundary treatment around the full perimeter of the site.

Conclusion

- 9.6.6. In my opinion, the replacement of a section of the boundary wall with a gated access at the subject site constitutes works and therefore constitutes development, that is

not exempted development under Article 9(1)(a)(i), and as such, constitutes development which is not exempted development.

9.7. **Question 4: Whether the maintenance or improvement of a road by a local authority is development, and if development, whether it is exempted development.”**

Is or is not development

- 9.7.1. In my opinion, the maintenance or improvement of a road by a local authority includes works and therefore constitutes development within the meaning of the Act.

Is or is not exempted development

- 9.7.2. Section 4(1)(e) of the Act provides an exemption to a local authority to carry out works for road improvements.

Conclusion

- 9.7.3. In my opinion, the maintenance or improvement of a road by a local authority is constitutes works and therefore constitutes development under the meaning of the Act.

9.8. **Question 5: Whether the provision by a local authority of new road works to provide access to the subject lands is development, and if development, whether it is exempted development?**

- 9.8.1. The Referrer has included an additional query, that is “whether the planning authority is enabled to carry out new road improvement works to provide a point of access and associated works for the purpose of an exempted use”.

- 9.8.2. I note that the Referrer seeks to determine whether the planning authority is enabled to complete these works to facilitate connectivity “in the interests of a common good”, and whether the works are exempted development for the purposes of road improvements.

Is or is not development

- 9.8.3. In my opinion, the provision of an access road to the Referrer’s lands involves works and constitutes development within the meaning of the Act.

Is or is not exempted development

- 9.8.4. I consider that the works would fall generally within the exemptions under Section 4(1)(e) of the Act. However, 4(1)(e) only applies to works that would improve a new road.
- 9.8.5. In this context, I note that permission has been refused most recently in February 2019 (**P.A.218/6018; ABP Ref.302207-18**) for the provision of an agricultural entrance to provide access the subject lands. The proposal sought to utilise the existing egress point to the R394, which serves all units within the estate.
- 9.8.6. In refusing permission, the Board considered that the proposal would give rise to conflicting traffic movements that would endanger traffic safety. On that basis, it would appear that the works would not improve the road and therefore cannot avail of the exemption under Section 4(1)(e).

Conclusion

- 9.8.7. In my opinion, the provision of the subject access constitutes works and therefore constitutes development under the meaning of the Act and cannot avail of the exemptions.

10.0 Appropriate Assessment

- 10.1. As referenced above, Westmeath County Council considered that insufficient information had been submitted with the Referral to enable the determination with respect to the proposed use of the subject lands for agricultural use, including with respect to Appropriate Assessment.
- 10.2. The Referral and appeal are not accompanied by an Appropriate Assessment Screening Report or Natura Impact Statement relating to the subject works.
- 10.3. In this instance, the project includes the change from horticulture/fruit growing or as grassland, to the use as osier lands (the growing of willow) and the formation of an access to serve the subject lands, all within the townland of Ardivaghan, Mullingar, Co. Westmeath.
- 10.4. The Referrer has confirmed that biosolids or spreadlands would not be used in the growing of willow. The planting is noted to require harvesting 3-4 years from planting, and then on a 2 year harvesting cycle.

10.5. Reference is made in a previous application to a drain traversing the site. At the time of the site visit access to the site was not possible. Notwithstanding, from the wider site view, it appears that the site is as presented in Plates 1-4 accompanying the Ecological Assessment (**P.A. Reg. Ref.: 14/6231**) and within the Westmeath County Council's Planner's Report relating to this Section 5 Referral.

10.6. In addition, EPA mapping indicates that there are no natural waterbodies traversing the site, and the closest waterbody is the Royal Canal Main Line (Lower Shannon) (Waterways Ireland Waterbody Ref.: IE_25A_AWB_RCMLW).

10.7. The closest European sites to the subject site are the Lough Owel SPA and SAC, located 2.5km north-east of the subject site.

10.8. 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 relates to:

- The nature of the proposed works on established agricultural lands.
- The non-use of spreadlands or biosolids as part of the Project.
- The separation distance between the Project and closest European Sites.

10.9. 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 and projects.

10.10. Having considered the nature, scale and location of the works relating to the provision of an access (Questions 4 and 5 of the Referral refer), 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 relates to:

- The limited nature of the proposed works.
- The separation distance between the Project and closest European Sites.

10.11. I conclude that on the basis of objective information, that the provision of an access would not have a likely significant effect on any European Site either alone or in combination with other plans and projects.

11.0 EIA Screening

- 11.1. The proposed use of the change in use of lands agriculture (from horticulture/fruit growing/ grasslands to willow growing (as osier land) and the provision of an access to subject lands through the existing estate (Ardilaun Green).
- 11.2. The proposed development is not a class for the purposes of EIA as per the classes of development set out in Schedule 5 of the Planning and Development Regulations 2001, as amended (or Part V of the 1994 Roads Regulations). No mandatory requirement for EIA therefore arises and there is also no requirement for a screening determination.
- 11.3. Works relating to the provision of an access to the subject lands, as raised in Questions 4 and 5, is also not a class for the purposes of EIA as per the classes of development set out in Schedule 5 of the Planning and Development Regulations 2001, as amended (or Part V of the 1994 Roads Regulations). No mandatory requirement for EIA therefore arises and there is also no requirement for a screening determination. Refer to Form 1 in Appendix 1 of report.

12.0 Recommendation

- 12.1. I recommend that the Board issue an order as follows:

WHEREAS questions have arisen in relation as to the following:

- 1) whether the use of the subject lands for agriculture (osier use) is development, and whether it is exempted development.
- 2) whether the formation of an agricultural access consists of (or is consistent with) the use of the lands for agriculture and is exempted development, under 4(1)(a) of the Act.
- 3) Whether the replacement of the current temporary boundary treatment of concrete post and concrete rail by a gated access boundary less than 2 metres in height would constitute development and whether it is exempted development.

- 4) Whether the carrying out of works to the maintenance or improvement of a road by a local authority, is development, and whether it is exempted development.

AND WHEREAS Eamonn O'Rourke requested a declaration on this question from Westmeath County Council and the Council issued a declaration on the 6th day of December, 2024 stating that;

(1) Relating to Items 1) and 4) that, due to the lack of specific and sufficiently detailed information, that the Planning Authority was unable to make a Determination.

(2) Relating to Item 2), that the formation of an agricultural access constitutes development and such development is not exempted development.

(3) Relating to Item 3), that the replacement of the current temporary boundary treatment of concrete post and rail by a gated access boundary less than 2m in height constitutes development and such development is not exempted development.

AND WHEREAS Eamonn O'Rourke referred this declaration for review to An Bord Pleanála on the 21st day of January, 2025, with revised queries and the inclusion of an additional query (Question 5 in in this report).

AND WHEREAS An Bord Pleanála, in considering the referral including revised queries and additional Question, had regard to –

- (a) Sections 2, 3, 4 of the Planning and Development Act, 2000, as amended,
- (b) Articles 6 and Article 9 of the Planning and Development Regulations, 2001, as amended,
- (c) Classes 9 and 13, Schedule 2, Part 1 of the Planning and Development Regulations, 2001, as amended,
- (d) Planning history of the site and environs,
- (e) The pattern of development in the area.

AND WHEREAS An Bord Pleanála has concluded that –

- (1) The use of the lands for osier use comes within the scope of agriculture use and is not development.

- (2) The formation of an access consists of works and therefore constitutes development within the meaning of the Act; which does not come within the scope of Section 4(1)(a) which relates to agricultural use. It is development which is not exempted development.
- (3) (a) The insertion of a gate into a temporary boundary treatment constitutes development within the meaning of the Act. The provision of a gate 2 metres in height or less, generally comes within the scope of Class 9 (Schedule 2, Part 1) of the Regulations.
- (b) The restriction on exempted development under Article 9(1)(a)(i), applies, and as such, constitutes development which is not exempted development.
- (4) (a) The provision by a local authority of road improvement works consists of works and therefore constitutes development within the meaning of the Act;
- (b) The provision, accordingly, of an access by the local authority would not come under the exemptions under section 4(1)(h), which only applies to improvement works. It has been determined under **(P.A. Reg. Ref. 18/6018; ABP Ref.:302207-18)** that such an access would not be in the interests of traffic safety.
- (5) (a) The maintenance and improvement by a local authority of a road would materially contravene Condition **46 (P.A. Reg. Ref. 99/1661)** and therefore constitutes development that is not exempted development under Section 4(1)(h).
- (b) The exemptions under Section 4(1)(h) apply to improvement works only.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by Section 5(3) of the 2000 Act, hereby decides that

- 1) the use of lands for agriculture (osier) does not constitute a material change of use, and is therefore not development.
- 2) the formation of an access constitutes development, and such development is not exempted development.

- 3) the replacement of a section of the boundary with a gated access less than 2 metres in height, constitutes development but would materially contravene a condition attached to a Permission under the Act, and such development is not exempted development.
- 4) the provision by a local authority of a new road to provide access to the subject lands constitutes development and such development is not exempted development.
- 5) the maintenance or improvement of a road by a local authority constitutes development and such development, 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.

Aoife McCarthy
Planning Inspector

24th April 2025

Appendix 1
Form 1 - EIA Pre-Screening

Case Reference	321643-25
Proposed Development Summary	Use of 9.5ha lands for agricultural use (osier) use and the provision of an access from Ardilaun Green. Provision of an access by to adjoining lands.
Development Address	Ardivaghan, Mullingar, Co. Westmeath.
	In all cases check box /or leave blank
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (For the purposes of the Directive, "Project" means: - The execution of construction works or of other installations or schemes, - Other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources)	<input checked="" type="checkbox"/> Yes, it is a 'Project'. Proceed to Q2. <input type="checkbox"/> No, No further action required.
2. Is the proposed development of a CLASS specified in Part 1, Schedule 5 of the Planning and Development Regulations 2001 (as amended)?	
<input type="checkbox"/> Yes, it is a Class specified in Part 1. EIA is mandatory. No Screening required. EIAR to be requested. Discuss with ADP.	
<input checked="" type="checkbox"/> No, it is not a Class specified in Part 1. Proceed to Q3	
3. Is the proposed development of a CLASS specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) OR a prescribed type of proposed road development under Article 8 of Roads Regulations 1994, AND does it meet/exceed the thresholds?	

<input checked="" type="checkbox"/> No, the development is not of a Class Specified in Part 2, Schedule 5 or a prescribed type of proposed road development under Article 8 of the Roads Regulations, 1994. No Screening required.	
<input type="checkbox"/> Yes, the proposed development is of a Class and meets/exceeds the threshold. EIA is Mandatory. No Screening Required	
<input type="checkbox"/> Yes, the proposed development is of a Class but is sub-threshold. Preliminary examination required. (Form 2) OR If Schedule 7A information submitted proceed to Q4. (Form 3 Required)	
4. Has Schedule 7A information been submitted AND is the development a Class of Development for the purposes of the EIA Directive (as identified in Q3)?	
Yes <input type="checkbox"/>	Screening Determination required (Complete Form 3)
No <input checked="" type="checkbox"/>	Pre-screening determination conclusion remains as above (Q1 to Q3)