



An  
Coimisiún  
Pleanála

## Inspector's Report ACP323389-25

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<b>Question</b>	Whether the use of an existing shed as a dry store/ machinery shed at is or is not development or is or is not exempted development.
<b>Location</b>	Knockduff Upper, Meelin, County Cork.
<b>Declaration</b>	
Planning Authority	Cork County Council.
Planning Authority Reference.	D/273/25
Applicant for Declaration	
<b>Planning Authority Decision</b>	Is not exempted development.
<b>Referral</b>	Third/ First Party
<b>Referred by</b>	Michael O Callaghan
<b>Owner Occupier</b>	Eily O Callaghan
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	21 <sup>st</sup> November 2025.
<b>Inspector</b>	Derek Daly.

## **1.0 Site Location and Description**

- 1.1. The proposed site is located in a field on the fringe and to the southeast of the village of Meelin in the northwest of County Cork. The field in which the shed which is the subject of this referral does not have direct frontage onto a public road site. Access to the field is via a private road which has an access onto the public road and the track leads to farm buildings and a bale storage and the shed which is the subject of the referral is located to the east of a slatted unit.
- 1.2. The shed is a conventional modern frame structure measuring on drawings submitted to the planning authority as 15.2 metres in length and 14.4 metres in width with a pitched roof to a maximum height of 4.87 metres. There are three accesses into the building two on the south elevation and one on the north elevation. The internal layout of the structure provides for an internal partition with a double door providing access to both internal areas of the structure.
- 1.3. At the time of inspection, the shed was in use for the storage of farm machinery and agricultural feedstuff.

## **2.0 The Question**

- 2.1. The question before the Commission relates to whether the use of an existing shed as a dry store/ machinery shed at is or is not development or is or is not exempted development.

## **3.0 Planning Authority Declaration**

### **3.1. Declaration**

- 3.1.1. Cork County Council issued a declaration dated the 21<sup>st</sup> July 2025 (Ref: D/273/25) having considered whether the use of an existing shed as a dry store/ machinery shed at Knockduff Upper, Meelin is or is not development or is or is not exempted development has declared it is not exempted development as the development although it comes within the scope of Class 9 Schedule 2 of the Planning and Development Regulations 2001 as amended however it is restricted by Article 9(1)(viii) as the shed which is the subject of an Enforcement notice, therefore it

comprises the alteration of an unauthorised structure and is not exempt development.

### 3.2. **Planning Authority Reports**

- 3.2.1. Planning Report of the 18<sup>th</sup> July 2025 refers to the planning history. The relevant statutory provisions are referred to and an assessment which refers specifically to Class 9 indicating that the shed appears to meet the conditions and limitations of Class 9. Reference is made to Article 9(1)(viii) and to an enforcement notice in respect of the shed and that the proposed shed cannot be considered exempt given it comprises the alteration of an unauthorised structure. The report concludes that although the development comes within the scope of Class 9 it is restricted by Article 9(1)(viii) of the Planning and Development Regulations 2001 as the shed is the subject of an enforcement notice and therefore comprises the alteration of an unauthorised structure and is not exempted development.

## 4.0 **Planning History**

- 4.1. The planning report refers to

P.A. Ref. No. 24/5805

Permission refused for retention of a commercial dog kennels. Three reasons stated which in summary refer to residential amenities, noise, inappropriate business in a rural area, inadequate waste infrastructure and risk of pollution, the presence of an existing dog kennels which is unauthorised and which it is proposed to intensify.

P.A. Ref. No 23/5887

Permission refused for retention of a commercial dog kennels. Three reasons stated which in summary refer to residential amenities, noise, inappropriate business in a rural area, inadequate waste infrastructure and risk of pollution, the presence of an existing dog kennels which is unauthorised and which it is proposed to intensify.

P.A. Ref. No 21/4666

Permission granted to construct a new machinery shed/dry store which the planning report indicates was not constructed.

P.A. Ref. No 19/6742 / ABP Ref. No 307868-20

Permission granted for an easy feed slatted livestock unit. Leave to appeal was refused and the planning report indicated that the structure was constructed.

D/214/20

This relates to a declaration of exempted development in relation to a slatted livestock unit of 198m<sup>2</sup>.

Enforcement Notice EF24-023

The notice refers to a request for the cessation of the commercial dog kennel use and demolition of 2 no unauthorised structures including foundations.

## 5.0 Policy Context

5.1. No relevant Planning Policy or County development plan provisions apply in relation to this referral.

5.2. Natural Heritage Designations

None relevant. The site is not within a Natura Site or directly connected with a Natura Site.

## 6.0 The Referral

6.1. Referrer's Case

6.1.1. In summary the referrer indicates;

- The referrer sought a declaration from the planning authority that the use of an existing shed as a farm machinery shed constitutes exempted development under Class 9, Part 3, Schedule 2 of the Planning and Development Regulations 2001 as amended.
- The planning authority does acknowledge that the proposed use does fall within the scope of Class 9 but refused the declaration as it is excluded by Article 9(1)(viii) due to the shed being the subject of a prior Enforcement notice and a previous refusal for retention as a dog kennel.
- The planning authority has misapplied Article 9(1)(viii)

- The current section 5 declaration is for a distinct and materially different use to the commercial dog kennels which was refused.
- The use as farm machinery shed must be assessed independently.
- Article 9(1)(viii) applies to alterations of an unauthorised structure and no alterations to the structure are proposed and the Section 5 application applies solely to the use of the farm machinery shed.
- The planning merits must be considered in relation to Section 5 and the presence of an enforcement notice or a past retention refusal does not negate this obligation nor does it render all future uses of the structure unauthorised.
- An Bord Pleanála has upheld that a structure may still qualify for an exemption for a new or alternative use even where enforcement action or previous refusal are on file provided the new use clearly falls within a class of exempted development and does not involve physical alteration or intensification.
- The structure and the proposed use aligns fully with Class 9.
- Photographs are submitted with the submission.

## 6.2. Planning Authority Response

- 6.2.1. No response was received specific to matters raised in the referrer's submission to An Coimisiún.

## 7.0 Statutory Provisions

- 7.1. Planning and Development Act, 2000

### Section 2(1) – Interpretation

“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 any land, or any part of a structure so defined, and—

(a) where the context so admits, includes the land on, in or under which the structure is situate, and

“works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal.

“unauthorised structure” means a structure other than;

- (a) a structure which was in existence on 1 October 1964, or
- (b) a structure, the construction, erection or making of which was the subject of a permission for development granted under Part IV of the Act of 1963 or deemed to be such under section 92 of that Act, being a permission which has not been revoked, or which exists as a result of the carrying out of exempted development (within the meaning of section 4 of the Act of 1963 or section 4 of this Act);

“unauthorised use” means, in relation to land, use commenced on or after 1 October 1964, being a use which is a material change in use of any structure or other land and being development other than—

- (a) exempted development (within the meaning of section 4 of the Act of 1963 or section 4 of this Act), or
- (b) development which is the subject of a permission granted under Part IV of the Act of 1963 or under section 34, 37G, 37N or 293 of this Act, being a permission which has not been revoked, and which is carried out in compliance with that permission or any condition to which that permission is subject.

“unauthorised works” means any works on, in, over or under land commenced on or after 1 October 1964, being development other than—

- (a) exempted development (within the meaning of section 4 of the Act of 1963 or section 4 of this Act), or
- (b) development which is the subject of a permission granted under Part IV of the Act of 1963 or under section 34, 37G, 37N or 293] of this Act, being a permission which has not been revoked, and which is carried out in compliance with that permission or any condition to which that permission is subject;

### Section 3(1) – Development

In this Act, except where the context otherwise requires, "development" means—

(a) the carrying out of any works in, on, over or under land, or the making of any material change in the use of any land or structures situated on land,

#### 7.2. Planning and Development Regulations, 2001 as amended

##### 7.2.1. “Article 6 (1) –

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.

##### 7.2.2. Article 9 (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 (relevant excerpts referenced)
  - (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.

##### 7.2.3. Schedule 2, Part 3: Exempted Development — Rural

###### Class 9

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

###### Conditions and Limitations

1. No such structure shall be used for any purpose other than the purpose of agriculture or forestry, but excluding the housing of animals or the storing of effluent.
2. The gross floor space of such structures together with any other such structures situated within the same farmyard complex or complex of such

structures or within 100 metres of that complex shall not exceed 900 square metres gross floor space in aggregate.

3. No such structure shall be situated within 10 metres of any public road.
4. No such structure within 100 metres of any public road shall exceed 8 metres in height.
5. No such structure shall be situated within 100 metres of any house (other than the house of the person providing the structure) or other residential building or school, hospital, church or building used for public assembly, save with the consent in writing of the owner and, as may be appropriate, the occupier or person in charge thereof.
6. No unpainted metal sheeting shall be used for roofing or on the external finish of the structure.

## 8.0 **Assessment**

- 8.1. The purpose of this referral is not to determine the acceptability or otherwise of the development referred to in the question but rather whether or not the matter in question constitutes development, and if so, falls within the scope of exempted development.
  - 8.1.1. The primary issue in relation to the question relates to the issue of whether the use of an existing shed as a dry store/ machinery shed at is or is not development and whether although the development comes within the scope of Class 9 of Schedule 2, Part 3: Exempted Development — Rural of the Planning and Development Regulations 2001 as amended in relation to exempted development is it restricted in relation to exempted development by Article 9(1)(viii) of the Planning and Development Regulations 2001 as the shed is the subject of an enforcement notice and therefore comprises the alteration of an unauthorised structure and is not exempted development.
- 8.2. Is or is not development.
  - 8.2.1. The shed which is the subject of this Section 5 referral is a conventional modern frame structure approximately 218m<sup>2</sup> in area measuring on drawings submitted to

the planning authority as 15.2 metres in length and 14.4 metres in width with a pitched roof to a maximum height of 4.87 metres.

8.2.2. The works as proposed would constitute development within the definition of development as stated in section 3(1) (a) of the Planning and Development Act 2000 as amended, except where the context otherwise requires, "development" means the carrying out of any works in, on, over or under land, or the making of any material change in the use of any land or structures situated on land.

8.3. Is or is not exempted development

8.3.1. There are developments in rural areas which are by regulation deemed to be exempted development. Specifically in relation to the shed in question Schedule 2, Part 3: Exempted Development — Rural Class 9 provides for exemption of works consisting of the provision of any store, barn, shed, glass-house or other structure, not being of a type specified in class 6, 7 or 8 of this Part of this Schedule, and having a gross floor space not exceeding 300 square metres. 6 conditions and limitations in relation to this class are stated which I shall consider before addressing the issue of Article 9(1)(viii) of the Planning and Development Regulations 2001 as referred to in the Planning Authority declaration decision;

1. No such structure shall be used for any purpose other than the purpose of agriculture or forestry, but excluding the housing of animals or the storing of effluent.

In relation to this matter notwithstanding the planning history and the Planning Authority declaration decision the shed at the time of inspection was not being used for the housing of animals or the storing of effluent.

2. The gross floor space of such structures together with any other such structures situated within the same farmyard complex or complex of such structures or within 100 metres of that complex shall not exceed 900 square metres gross floor space in aggregate.

Based on the documentation submitted the gross floor space of structure together with any other such structures situated within the same farmyard complex or complex of such structures or within 100 metres of that complex does not exceed 900 square metres gross floor space in aggregate area.

3. No such structure shall be situated within 10 metres of any public road.

The structure is not within 10 metres of any public road.

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

The structure has a stated maximum height of 4.87 metres.

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

There is no dwelling situated within 100 metres.

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

The shed complies with this provision in relation to external finishes.

- 8.3.2. The shed as constructed with the provisions, conditions and limitations stated and this matter as they relate to Class 9 in relation to exempted development and this is not in dispute by the planning authority as referenced in the planning authority report.

8.3.3.

- 8.3.4. The issue which arises is whether the exemption as provided for in Class 9 is restricted by Article 9(1)(viii) of the Planning and Development Regulations 2001 as the planning authority contend that the shed is the subject of an enforcement notice and therefore comprises the alteration of an unauthorised structure and is not exempted development.

- 8.3.5. The referrer contends that the planning authority does acknowledge that the proposed use does fall within the scope of Class 9 but refused the declaration as it is excluded by Article 9(1)(viii) due to the shed being the subject of a prior enforcement notice and a previous refusal for retention as a dog kennel and in doing so the planning authority has misapplied Article 9(1)(viii).

The current section 5 declaration is for a distinct and materially different use to the commercial dog kennels which was refused and that the use as farm machinery shed must be assessed independently.

Article 9(1)(viii) applies to alterations of an unauthorised structure and no alterations to the structure are proposed and the Section 5 application applies solely to the use of the farm machinery shed. The planning merits must be considered in relation to Section 5 and the presence of an enforcement notice or a past retention refusal does not negate this obligation nor does it render all future uses of the structure unauthorised.

- 8.3.6. In relation to the issue of enforcement this is matter for the planning authority and not An Coimisiún Pleanála and any decision in relation to this Section 5 declaration would not amend any past or ongoing action of the planning authority in relation to enforcement proceedings.
- 8.3.7. From an examination of the planning history, it is reasonable to conclude that the shed which is the subject of this referral initially would appear to have been constructed with the intention of a use as a commercial dog kennels and that ongoing enforcement proceedings for the cessation of the commercial dog kennel use has arisen.
- 8.3.8. The building at the time of inspection was not in use as a dog kennel or housing of any animals and was in use for the storage of farm machinery and feedstuff.
- 8.3.9. In relation to its current use, it complies with the provisions, conditions and limitations of Class 9 comprising of works consisting of the provision of any store, barn, shed, glass-house or other structure, not being of a type specified in class 6, 7 or 8 of this Part of this Schedule, and having a gross floor space not exceeding 300 square metres. Classes 6, 7 and 8 refers specifically to structures for the housing of animals and other works consisting of the provision of roofless cubicles, open loose yards, self-feed silo or silage areas, feeding aprons, assembly yards, milking parlours or structures for the making or storage of silage or any other structures of a similar character or description.
- 8.3.10. Specifically in relation to the time of inspection the shed was not being used for the housing of animals or the storing of effluent or in a use which would be deemed unauthorised within the conditions and limitations specified. This does not infer a

prior unauthorised use occurred in relation to the shed. It is also important to state that the planning history specifically refused planning permission for a dog kennels and therefore no regularisation of this use exists in relation to the shed.

8.3.11. In relation to Article 9 (1)(a)(viii) where development to which article 6 relates shall not be exempted development for the purposes of the Act would if the carrying out of such development the Article makes reference to 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.

8.3.12. In relation to Article 9 (1)(a)(viii) I would note the following;

No extension has occurred based on the documentation available.

No alteration, repair or renewal has occurred based on the documentation available.

The structure itself would not unauthorised with reference to Class 9 if conditions and limitations are adhered to.

The use of the structure which is an unauthorised use and which was specifically referred to in the enforcement notice was not evident at the time of inspection. It is noted that the enforcement notice required the cessation of the use of the structure as a dog kennels to demolish the structure and refund the cost and expenses incurred by the County Council.

8.3.13. As it seems that the subject structure was constructed with the intention of a use as a commercial dog kennels and for which retention permission was refused and therefore Having regard to the definition as stated in Section 2 of the Planning and Development Act 2000 as amended of "unauthorised structure" and "unauthorised works" in the act, it appears that the shed when constructed was an unauthorised structure and constituted unauthorised works.

8.3.14. The issue therefore is to consider and the question in this referral is whether the use of an existing shed as a dry store/ machinery shed at is or is not development or is or is not exempted development and can the change of use of the shed change its status to consider that it complies with Class 9 and its conditions and limitations. Class 9 refers to the "provision" of a shed for certain purposes. It is not clear that what was considered to be constructed as initially an unauthorised shed for a particular purpose can or cannot be retrospectively brought into this class by using

solely for the purposes provided for in Class 9 but it can be indicated that the unauthorised use referred to in enforcement proceedings have ceased and the structure and use currently complies with Class 9.

- 8.3.15. It is however noted that the subject use specifically referred to in the question does not appear to raise any new planning considerations such that the use would constitute a material change of use eliminating a structure from the storage of animals and provision for the storage of effluent arising, and therefore development. As already indicated the shed in its present use and specifically referred to in the question would comply with the conditions and limitations stated for Class 9.
- 8.3.16. The exempted status of the use would not necessarily appear to change the underlying status of the shed for a use other than provided for under Class 9 and the issue of whether unauthorised development has ceased or continues would be a matter to be determined in relation to enforcement and the matter for An Coimisiún is to consider the question raised in the referral.
- 8.3.17. The declaration as sought specifically is for the use of an existing shed as a dry store/ machinery shed and it is I consider reasonable that a shed can be used for a new use which would qualify for an exemption under class 9 as the use raised in the question is not material change of use, and therefore development.
- 8.3.18. The declaration of exemption would specifically apply to the use of an existing shed as a dry store/ machinery shed specified in the declaration request as it comes within the definition of any store, barn, shed, glass-house or other structure not used for the storage of animals or the storing of effluent. It would be within a structure used for the purposes as set out in class 9 and complies with the conditions and limitation specified and the use of which is not currently an unauthorised use or requested to be used for an unauthorised use within the request of a use made for the declaration.

## 9.0 EIA Screening

- 9.1. The proposed development is not one to which Schedule 5 of the Planning and Development Regulations, 2001, as amended, applies and therefore, the requirement for submission of an EIAR and carrying out of an EIA may be set aside.

## 10.0 AA Screening

- 10.1. I have considered the proposal which is relation to the construction of an extension to the rear of an existing dwelling house in light of the requirements S177U of the Planning and Development Act 2000 as amended. The subject site is located on an established residential site and within an established residential area.
- 10.2. The proposed development to a use in effect a relatively minor development for the storage of machinery and a dry store with no effluent discharge. Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment because there is no conceivable risk to any European Site. The reason for this conclusion is as follows; the nature of the development, the distance to designated sites and the absence of pathway to these sites.
- 10.3. I conclude that on the basis of objective information, that the proposed development would not have a likely significant effect on any European Site either alone or in combination with other plans or projects and likely significant effects are excluded and therefore Appropriate Assessment (stage 2) (under Section 177V of the Planning and Development Act 2000) is not required.

## 11.0 Recommendation

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

WHEREAS a question has arisen as to whether the use of an existing shed as a dry store/ machinery shed is or is not exempted development: AND

WHEREAS Michael O'Callaghan requested a declaration on this question from Cork County Council and the Council issued a declaration on the 21<sup>st</sup> day of July 2025 stating that the matter was development and was not exempted development: AND

WHEREAS Michael O'Callaghan referred this declaration for review to An Coimisiún Pleanála on the 13<sup>th</sup> August 2025: 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 of the Planning and Development Act, 2000,
- (c) Articles 6 and 9 of the Planning and Development Regulations, 2001, as amended,
- (d) Part 3 of the Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (e) the planning history of the site,
- (f) existing buildings on the site and environs,
- (g) the pattern of development in the area:

AND WHEREAS An Coimisiún Pleanála has concluded that:

- (a) the shed constitutes development as defined under section 3(1) of the Planning and Development Act 2000 (as amended),
- (b) The development as constructed complies with the conditions and limitations specified in Schedule 2 Part 3 Class 9 and all conditions and limitations of the Planning and Development Regulations, 2001, as amended.
- (c) The use of the structure indicated in the request for a declaration accords with the use and all conditions and limitations of the Planning and Development Regulations, 2001, as amended.
- (d) The declaration relates solely to the use as sought in the declaration.
- (e) The use referred to in the question therefore comes within the scope of Schedule 2 Part 3 Class 9 and all conditions and limitations of the Planning and Development Regulations, 2001, as amended.

NOW THEREFORE An Coimisiún Pleanála, in exercise of the powers conferred on it by section 5 (3) (a) of the 2000 Act (as amended), hereby decides that the use of an existing shed as a dry store/ machinery shed

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.

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Derek Daly  
Planning Inspector

3<sup>rd</sup> December 2025

### Form 1 - EIA Pre-Screening

Case Reference	32389-25
Proposed Development Summary	The use of an existing shed as a dry store/ machinery shed
Development Address	Knockduff Upper, Meelin, County Cork.
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?	<input type="checkbox"/> it is a 'Project'.
	<b>X No</b> , No further action required.
<b>2. Is the proposed development of a CLASS specified in Part 1, Schedule 5 of the Planning and Development Regulations 2001 (as amended)?</b>	
<input type="checkbox"/> it is a Class specified in Part 1.	
<input type="checkbox"/>	
<b>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?</b>	
<b>X No</b> , 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. <b>No Screening required.</b>	
<b>No</b> , the proposed development is of a Class and meets/exceeds the threshold.	
<b>Yes</b> , the proposed development is of a Class but is sub-threshold.  <b>Preliminary examination required. (Form 2)</b>	
<b>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)?</b>	
Yes <input type="checkbox"/>	<b>Screening Determination required (Complete Form 3)</b>

No X <input type="checkbox"/>	Pre-screening determination conclusion remains as above (Q1 to Q3)

**Inspector: Derek Daly      Date: 3<sup>rd</sup> December 2025**