



An
Coimisiún
Pleanála

Inspector's Report ABP-323870-25

Question

Whether the erection of a 282.96m² agricultural shed is or is not development or is or is not exempted development.

Location

Gaurus, Ennis, Co. Clare.

Declaration

Planning Authority

Clare County Council.

Planning Authority Reg. Ref.

R25-81

Applicant for Declaration

Declan McCormack.

Planning Authority Decision

Is Development and is Not Exempted Development.

Referral

Referred by

Declan McCormack

Owner/ Occupier

Declan McCormack

Observer(s)

N/A

Date of Site Inspection

29th January 2026.

Inspector

Kathy Tuck.

1.0 Site Location and Description

- 1.1. The subject site is located in the townland of Garus which is situated c.2.7 km to the east of Ennis Town Centre. Access to the site is provided from the L-461. The site is mainly greenfield in nature with the exception of the structure, subject to this referral.
- 1.2. There are a number of existing on off rural dwelling situated to the west of the subject site and the established residential area of Rosslevan situated to the north. The site shares its northern boundary with Spancelhill River.

2.0 The Question

- 2.1. The question before the Commission relates to whether the erection of a 282.96m² agricultural shed is or is not development or is or is not exempted development.

3.0 Planning Authority Declaration

3.1. Declaration

- 3.1.1. Clare County Council issued a declaration that the construction of a 282.96m² agricultural shed was development and was not exempted development for the following reasons:

- A. *The construction of a 282.96sq.m agricultural shed dose constitute work which comes within the scope of Section 2(1) of the Planning and Development Act, 2000 (as amended);*
- B. *The said work constitutes development which comes within the scope of Section 3(1) of the Planning and Development Act, 2000 (as amended);*
- C. *Based on the details as submitted with the referral to date, The Planning Authority are not satisfied that the proposed development is linked to any agricultural activity and does not comply with condition no.5 by reason of its proximity within 100m of a number of dwellings for which consent from the landowner/occupier/person in charge thereof has not been provided. Therefore, the subject shed is not exempt under Class 9, Part 3 of Schedule 2 of the Planning and Development Regulations, 2001 (as amended).*

D. Based on the location of the subject development on lands which comprise a mapped wetland habitat which is adjacent to an existing watercourse with direct connectivity to the Lower River Shannon SAC, it cannot be concluded beyond a reasonable scientific doubt that there would be likely significant effects on a European Site without the use of mitigation measures. Therefore, the subject site is not exempted under Article 9(vii)(b) of the Planning and Development Regulations, 2001 (as amended).

E. There are no other exemptions in the Planning and Development Regulations 2001 (as amended) by which the construction of the shed and access road would constitute exempted development.

Therefore the Planning Authority in exercising their power conferred on it by Section 5 of the Planning and Development Act 2000, as amended decides that the development consisting of the erection of a 282.96m² agricultural shed at Gaurus, Ennis, Co. Clare constitutes development and is not exempt development as defined within the Planning and Development Acts 2000 (as amended) and associated regulations.'

4.0 Planning Authority Reports

4.1. Planning Report

The report of the Planning Officer, dated the 17th October 2025 states:

- The structure subject to this Section 5 application is also subject to enforcement proceedings under UD-25-015.
- Reference is made to Section 2 and 3(1) of the Planning and Development Act, 2000 (as amended) and consider that the development falls within the definition of works and also under the definition of development.
- Reference is made to Section 4(1)(a) of the Planning and Development Act, 2000(as amended) which refers to exempted development for existing buildings for the purpose of agricultural and development consisting of the use for that purpose of any building occupied together with land so used. The Planning Officer consider that following the undertaking of a site visit, the structure does

not appear to be in use for agriculture and is therefore not exempt under this section of the Act.

- The assessment notes that the scale of the structure is acceptable in terms of Class 9 of the 2001 regulations, and that there is no other structure on site.
- However, it was further asserted that given the lack of evidence provided that the structure is in or will be used for agricultural purposes it fails to comply with limitation/condition no. 1 of Class 9. Furthermore, the folio associated with the subject lands indicate that the lands are registered to 'Everright Civil Ltd.' which is a civil engineer company which further casts doubt over the structures intended use.
- The report states that the structure complies with condition/limitation nos. 2, 3, 4 and 6 of Class 9, Part 3 of schedule 2 of the Planning and Development Regulations 2001 (as amended). However, the Planning Officer notes that the location of the structure is within 100m of a number of dwellings to the west and south-west of the site and consent has not been provided from the occupants of such. Therefore, the proposal fails to comply with condition/limitation no. 5 of Class 9, Part 3 of schedule 2 of the Planning and Development Regulations 2001 (as amended).
- With regard to Article 9 of the Planning and Development Regulations 2000 (as amended) it was determined that the proposal would raise concern with regard to Article 9(ii)(iii) and vii(b). The planning officer stated in respect to Article 9(ii) that the existing access to the site has been widened and in respect of 9(iii) that while there is an existing access serving the site, if it was used for purposes other than agricultural purposes that it may give rise to traffic hazard, obstruction and endangerment of public safety. However, these concerns were not included in the conclusion and decision issued.
- In respect of 9(vii)(b), the Planning Officer noted that the works carried out are situated on land which are a mapped wetland habitat and adjacent to an open watercourse which is directly connected to the Lower River Shannon SAC approximately c.200m downstream. The works involved would likely require

mitigation measures to ensure no significant effects on the integrity of the Natura 2000 site and therefore an appropriate assessment would therefore be required.

- The report concluded that the works are development and not exempt development in line with the decision issued by the Planning Authority.

4.2. Other Technical Reports

None received.

5.0 Planning History

5.1. Subject site

There is no planning history pertaining to the subject site.

5.2. Relevant Referrals

I have examined the Commissions database of references and referrals. The following cases are relevant in the context of the issues raised in the current referral:

ABP Ref: 314121-22 - The question arose as to whether the general purpose / dry good shed with an area of 291.45sq.m is or is not development and is or is not exempted. The referrer claimed that the development under consideration is a dry good store used for the applicants dairy farming activities, and not related to the poultry farming activities adjacent and therefore is class 9 compliance. The Board declared that the structure would contravene a condition (Condition No. 7 attached to Ref. 18/538) and would therefore be contrary to Article 9(1)(a)(i) of the Planning and Development Regulations, 2001 (as amended).

ABP Ref: 302390-18 – The question arose as to whether an existing agricultural shed of approximately 288 sq.m is or is not development or is or is not exempted development. The shed was in a rural area, and the referrer claimed class 9 compliance. The Board declared that the use of the shed was not linked to any agricultural activity and therefore could not be considered within the scope of Class 9

or Part 3 of Schedule 2 to the Planning and Development Regulations, 2001, as amended.

6.0 Policy Context

6.1. Clare County Development Plan 2023-2029

There are 2 no. land use zoning pertaining to the subject site as per the Ennis land use zoning map. The western part of the site is zoned as 'Open Space' and the remained of the site to the east is zoned as 'Buffer Space'.

The objective of each lands use zoning is set out as:

- It is intended that lands zoned 'open space' will be retained as undeveloped open space, mainly for passive open space related activities. The open space/park areas could contain active play facilities such as children's play areas, but these should only be a small component of the overall areas involved.
- Buffer spaces are intended to provide a buffer of undeveloped land for the conservation of biodiversity, visual amenity or green space. Buffer spaces may include natural features such as floodplains, riparian zones, turloughs, valuable biodiversity areas including designated sites, amenity areas, woodlands, hedgerows, green spaces and archaeological features.

The site is also located within Flood Zone and covered by a mapped Habitat Area classified as 'FS1 Reed and large Sedge Swamp' and 'WS1 Scrub'.

6.2. Natural Heritage Designations

The subject site is not situated within or immediately abutting any Natura 2000 designated site. The site is situated 200m to the east of the Lower Shannon SAC (Site Code 002165).

7.0 The Referral

7.1. Referrer's Case

7.1.1. The referral is made by Vitruvius Hibernicus Ltd. on behalf of the applicant Declan McCormack. The following provides a summary of the key points raised:

1. Lands shown on registry map (attached)
 - Part of larger family-owned land holding (c.50 acres).
 - Lands are in agricultural use – family farmlands.

2. Structure is 282.96sq.m in area.
 - Complies entirely with Schedule 2 Part 3 Class 9 of the Planning and Development Regulations, 2001 (as amended).
 - Planning Authority contests proposal complies with Condition/Limitation 5 of Class 9.
 - When commenced only 2 inhabited houses within 100m.
 - Consent has been provided from both inhabited dwellings – marked as A and B on attached google map extract.

3. Rosslevan Housing Estate situated to the north
 - Granted permission under ABP-309568-21 (amended under PA Ref 23/507 and 23/583).
 - Most recent permitted houses were incomplete and unoccupied when development stated – evident on maps included from Google, Geohive and Planning Register.
 - Clare County Council are factually incorrect.

4. Conclusion (d) also incorrect –

- Clare County Council’s AA determination on PA Ref 23/507 and PA Ref 23/583 specific reference is made to An Coimisiun Pleanála’s determination on ABP-309568-21 which concluded:

“The absence of proximity or connectivity to a European Site no Appropriate Assessment issues arise and I do not consider that the proposed development (design alterations) would be likely to have a significant effect individually or in combination with other plans or projects, on a European site.”

An Coimisiun Pleanála in relation to the likelihood of adverse effects on the SAC concluded:

“No reasonable scientific doubt as to the absence of such effect’.

- Site is directly above the subject site and directly abuts the Garus watercourse – what’s good for the goose is good for the gander.

5. There is a further weighty legal consideration

- AA Screening or an NIS deals only with ‘reasonable scientific doubt’.
- This arises from the CJEU case 258/11 Sweetman V An Bord Pleanála which found:

So far as concerns the assessment carried out under Article 6(3) of the Habitats Directive, it should be pointed out that it cannot have lacunae and must contain complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the works proposed on the protected site concerned.

- What is ordinary exempted development under Article 6 can be De-Exempted under Article 9.
- Plannign Authority relies on Article 9(1)(viiB) which states:
9(1) Development shall not be exempt if

(viiB)the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site.

- Exemptions can be de-exempt if it is likely to have a significant effect on a SAC.
 - But that is not what the Planning Authority said. It said ...
 - 2... [the site]is adjacent to an existing watercourse with direct connectivity to the Lower River Shannon SAC, it cannot be concluded beyond a reasonable scientific doubt that there would be likely significant effects on a European Site without the use of mitigation measures.*
 - It cannot be concluded beyond a reasonable scientific doubt that there would be likely significant effects in NOT the same as likely to have a significant effect.
 - Legally a likely significant effect is a much higher crossbar than mere doubt.
 - There has to be no finding or conclusion off a likely significant effect – in the absence of such a finding the exemption cannot legally be de-exempt by Art. 9.
 - Compounding mischief lies in the conclusions the Council quoted in permission 20/158 and ABP-309568 along with PA Ref 23/507 and PA Ref 23/583 where a much bigger development abutting the same watercourse is declared not to be directly connected to the SAC and beyond reasonable doubt about the absence of significant effects.
 - These previous conclusions directly contradict the Planning Authority's conclusion in this case.
6. Paragraph C – Linked to agricultural activities
- Dose not have to be.
 - Absurd and irrelevant states which should be read in conjunction with e-mail correspondence from Planning Authority (attached to referral).
 - Planning and Development Act is still a live and well – not yet replaced.
 - Section 4(1) of the 2000 Act states:

‘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’

- No prosecution could be justified on this gross interpretation and incompetence.
- Mayh be the case this was spotted by someone in the Planning Authority and has compounded the matter by inventing artificial planning obstacles.
- Seems the Planning and Development Act 2000 does not apply to Clare.

7. Reason E – other exemptions also flawed.

- Without making reference to any/all exemptions the Planning Authority declares –

There are no other exemptions in the Planning and Development Regulations 2001 (as amended) by which the construction of the shed and access road would constitute exempted development.

First – the access road was no part of the Section 5 Declaration.

Second – the access pre-existed as did the entrance to the lands (see Google Street View)

Third – Multiple other exemptions could apply – Schedule 2 Part 1 Class – 13,17,19, 20(a), 21(a), 21(b), 29 (b), 42 and Part 3 Class 18.

8. Inexcusable and unjustified that Planning Authority ignored own ABP order in previous precedent immediately abutting the site and separated only by a watercourse.

If An Coimisiun Pleanála is of the view that AA Screening – replicating the AA and NIS previous findings – would be helpful then open to Comisiun to seek same from applicant.

7.2. Planning Authority Response

None received.

7.3. Further Responses

7.3.1. None Received.

8.0 Statutory Provisions

8.1. Planning and Development Act, 2000, as amended

Section 2(1): 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

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

“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...

Section 3(1): Development

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.

Section 4: Exempted development

(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.

8.2. Planning and Development Regulations, 2001, as amended

Part 2 – Exempted Development

8.2.1. Article 6 (1): Exempted Development

‘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.’

8.2.2. Article 9 (1): Restrictions on exemption:

(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—

(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,

(iiia) endanger public safety by reason of hazardous glint and/or glare for the operation of airports, aerodromes or aircraft.

(iv) – except in the case of a porch be forward of a building.

(v) – re works under a public road...

(vi) Interfere with the character of the landscape, or view or prospect of special amenity value or of special interest, the preservation of which is an objective of the Development Plan for the area in which the development is proposed for, pending the variation of a Development Plan or the making of a new

Development Plan in the Draft Variation of the Development Plan or the Draft Plan.

(vii) re excavation, alteration or demolition of places etc...

(viiA) re excavation, alteration or demolition of monument...

(viiB) Comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site,

(viiC) Consist of or comprise development which would be likely to have an adverse impact on an area designated as a natural heritage area by order made under section 18 of the Wildlife (Amendment) Act 2000

(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,

(ix) demolition or such alteration of a building or other structure as would preclude or restrict the continuance of an existing use ... objective of the planning authority to ensure remain available.

(x) consist of the fencing or enclosure of any land habitually open

(xi) obstruct any public right of way.

(xii) further to the provisions of section 82 of the Act .. where the structure concerned is located within an architectural conservation area.

8.2.3. Class 9 in Part 3 of Schedule 2 - Exempted Development: Rural

Column 1 Description of Development	Column 2 Conditions and Limitations
<p><u>Class 9</u></p> <p>Works consisting of the provision of any store, barn shed, glasshouse or other structure not being a type specified in Class 6, 7 or 8 of this part of this</p>	<p>1. No such structure shall be used for any purpose other than the purpose of agriculture or forestry, but,</p>

Schedule and having a gross floor area not exceeding 300m square metres.

excluding the housing of animals or the storing of effluent.

2. The gross floorspace 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 floorspace 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 the external finish of the structure.

9.0 Assessment

9.1. Is or is not development

- 9.1.1. The question put forward by the referrer relates to the retention of a shed with a floor area of 282.96 sqm and a maximum height of 6.55m, which the applicant has indicated is used for agricultural practices associated with the family farmlands. The referrer's case states that the shed can be considered to be exempted development under the provisions of Class 9, Part 3, Schedule 2 of the Planning and Development Regulations, which sets out the conditions and limitations to the exemptions applied to agricultural structures.
- 9.1.2. The first question to consider is whether or not the proposal constitutes development under the definitions contained in the Planning Act. Section 3(1) of the 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 and/or whether there was a material change in the use of the structure or land.
- 9.1.3. Within Section 2, (1) of the Planning Act, 'works' are defined as '*any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal...*'.
- 9.1.4. The construction of the shed involved the carrying out of works as defined in the Act and therefore constitutes development. I note that this was also the opinion of the Planning Authority within their assessment.

9.2. Is or is not exempted development

- 9.2.1. The second question to answer is whether the development is or is not exempt development. The referrer states that the shed is used in connection with family farming activities and can therefore be considered to be exempt under the conditions and limitation set out in Class 9, Part 3 of Schedule 2, Planning and Development Regulations, 2001 (as amended). In order to consider whether or not the shed complies with the conditions and limitations listed under Class 9, it must first be determined whether or not the shed can be considered to be an agricultural structure.

9.2.2. Section 4 (1) (a) refers to the exempted development for buildings associated for the purposes of agricultural or forestry as being occupied together with land so used for agriculture or forestry. Section 2 of the Act, 2000 (as amended), includes a definition of 'agriculture' which states:

'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 the land as grazing lands, meadow land, osier land, market gardens and nursery grounds and agricultural shall be constructed accordingly'.

9.2.3. Section 4(1) of the Planning and Development Act 2000 (as amended) refers to exempted development and Section 4(1)(a) provides an exemption for '*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*'.

9.2.4. The shed is located in a rural location which has undergone some change recently. The Referrer in this instance has stated that the site is part of a larger family land holding of c.50 acres (c.20.234 ha) which are in agricultural use and that the lands are shown on a registry map attached.

9.2.5. In the first instance I note that I did not observe any farming activity being undertaken on the subject site when I undertook my site visit and I noted that the site does not appear to be connected to any wider farmlands or an area where farming activities are being undertaken. I did not observe any of the activities prescribed within the definition of 'agriculture' as per Section 2 of the Act being undertaken on site.

9.2.6. The Planning Authority in their assessment also raised concerns of what the actual use of the structure was for as no evidence was provided with the section 5 application to demonstrate the use of the structure was indeed for agricultural purposes. This has not been remedied by the Referrer within the documentation provided to the Commissions as part of this referral.

9.2.7. The Referrer has stated that there is no requirement or onus to demonstrate that the use of the shed is for agricultural purposes. Under Schedule 2, Part 3 Exempted Development – Rural of the Planning and Development Regulations, 2001 (as

amended) Class 9 applies to: 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. There are six Conditions and Limitations relating to Class 9.

- 9.2.8. Condition and Limitation No. 1 associated with Class 9 clearly states '*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.*
- 9.2.9. Therefore, given the lack of evidence provided and feomm what I observed from a site visit, I am not satisfied that the shed would be classified as an "agricultural structure" and would therefore not accord with Condition and Limitation No. 1 associated with Class 9 of Part 2 Schedule 3 of the Plannign and Development Regulations 2001 (as amended).
- 9.2.10. The structure has a stated area of 282.96sq.m, has a ridge height of 6.55m and is set in excess of 10 metres of any public road, therefore satisfying Condition and Limitation No. 2, No.3 and No. 4 associated with Class 9.
- 9.2.11. Condition and Limitation no. 5 associated with Class 9 requires 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.
- 9.2.12. The Referrer has stated that there were only 2 no. inhabited houses within 100m of the site from when the works commenced and letters of consents have been provided from the occupants of both. Furthermore, the Referrer has indicated on a map where these two dwellings are situated.
- 9.2.13. In the first instance I note that the addresses provided on the letters of consent do not correctly correspond to the locations indicated on the extract from google maps provided by the Referrer.
- 9.2.14. Secondly, from a review of google street view I found that there are 3 no. additional dwellings situated along the L4611 which are situated less than 100m to both the west and south-west of the structure which are occupied and appear to be present prior to the structure subject to this referral as per street view on Google Maps. The street

view tool on google map presents images from 2024 where it appears that only ground works have occurred on site with some mounding present. The Eircode's of these are as follows V95 E4W5, V95 V2TR, and V95 D8K0. No letters of consent from the occupants of these dwellings have been provided.

- 9.2.15. Therefore, in conclusion the structure fails to comply with Condition Limitation 1 and 5 of Class 9 of Schedule 2 Part 3 of the Planning and Development Regulations 2001 (as amended).

9.3. Restrictions on exempted development

- 9.3.1. Development within the context of Section 3 (1) of the Planning and Development Act 2000, (as amended), has been carried out on the site. The development carried out is not considered to be an 'agricultural structure' and fails to comply with all the conditions and limitations listed for Class 9 of Schedule 2 Part 3 of the Planning and Development and Regulations 2001 (as amended).

- 9.3.2. Article 9 (1) of the Development and Regulations 2001 (as amended), as amended, states the following: - 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 –

(viiB) Comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment, and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site.'

- 9.3.3. The Planning Authority in their assessment noted that the works carried out are situated on lands which are a mapped wetland habitat and adjacent to an open watercourse which is directly connected to the Lower River Shannon SAC approximately 200m downstream. It was considered that the works involved would likely require mitigation measures to ensure no significant effects on the integrity of the Natura 2000 site and therefore an appropriate assessment would therefore be required. This would therefore deem the development to be not-exempt having regard to Article 9(1)(a)(viiB) of the Planning and Development Act, 2000 (as amended).

- 9.3.4. The Referrer makes reference to the determination made by An Comisiuin Pleanála under ABP-309568-21, which relates to a site situated immediately north of the subject

site and the Planning Authorities determinations on AA relating to 2 no. cases amending the scheme permitted under ABP-309568-21, which found in all cases 'No reasonable scientific doubt as to the absence of such effect' in terms of the Lower Shannon SAC (Site Code 002165). It is contended that development site to the north is directly abutted by the same watercourse as this site and as such there is a contradiction from the determination made in the Section 5 application and the assessment of the development to the north.

- 9.3.5. I note that as part of the assessment of ABP-309568-21 An Comisiuin Pleanála, previously An Bord Pleanála, sought under Section 132 of the Act, the applicant to submit a Natura Impact Statement (NIS). As such, the conclusion of the Board was drawn based upon the reliance of mitigation measures that were included within said NIS which would ensure that there would be 'no likely significant impacts on any European Site'.
- 9.3.6. In this instance given that the structure has already been constructed in the absence of an AA Screening Determination and the lack of information as to what impact the operation phase of the structure may have and that there is a direct connection from the subject site to the Lower Shannon SAC (Site Code 002165), I consider that I cannot conclude beyond a reasonable scientific doubt that the development will not be likely to have a significant effect on the integrity of a European site.
- 9.3.7. Notwithstanding the case made by the referrer and on review of the planning assessment highlighted by same, I consider the development fails to comply with Article 9(1)(A)(viiib).

10.0 **Appropriate Assessment**

- 10.1. I have considered case ABP-323870-25 in light of the requirements S177U of the Planning and Development Act, 2000, as amended. The closest European Sites, part of the Natura 2000 Network, is the Lower Shannon SAC (Site Code 002165) which is situated 2003m to the west of the subject site.
- 10.2. Having considered the nature, scale and location of the project, and the direct connection from the subject site to the Lower Shannon SAC (Site Code 002165) via an open water course, I am not satisfied that it can be eliminated from further assessment because it could not have any effect on a European Site.

10.3. The reason for this conclusion is as follows:

- Location-distance from nearest European site.
- The nature and scale of development.
- The absence of any ecological pathway from the development site to the nearest European Site.

10.4. Therefore, I cannot conclude, on the basis of objective information, that the development would not have a likely significant effect on any European Site either alone or in combination with other plans or projects.

11.0 Recommendation

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

WHEREAS a question has arisen as to whether the provision of a agricultural building is or is not development or is or is not exempted development:

AND WHEREAS: Declan McCormack requested a declaration on this question from Clare County Council on the 25th day of September 2025 stating that the matter was development and was not exempted development.

AND WHEREAS Declan McCormack referred this declaration for review to An Bord Pleanála on the 14th day of November 2025:

AND WHEREAS: An Coimisiun 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,
- c) Section 4(1)(a) of the Planning and Development Act, 2000, as amended,
- d) article 6(1) and article 9(1) of the Planning and Development Regulations, 2001, as amended,
- e) Part 3 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- f) the planning history of the site,
- g) the pattern of development in the area:
- h) the report of the Planning Inspector:

AND WHEREAS An Coimisiún Pleanála has concluded that:

- a) The agricultural shed constitutes development as defined under Section 2 (1) of the Planning and Development Act 2000 (as amended),
- b) The agricultural shed, based on the details submitted, would come not within the scope of exemptions set out in Class 9 of Part 3 of Schedule 2 of the Planning and Development Regulations, 2001, as amended, as it would fail to meet conditions and limitation no1 and no. 5 of Class 9 as no details have been provided as to demonstrate its intended use and it is situated within 100m of a number of dwellings which pre-date the erection of the structure and which no consent has been provided; and
- c) The structure is situated on a site which has a direct connection to a the Lower Shannon SAC (Site Code 002165) and it cannot be concluded beyond a reasonable scientific doubt that the development will not be likely to have a significant effect on the integrity of a European site and would therefore be contrary to

Article 9(1)(a)(viib) of the Planning and Development Regulations, 2001 (as amended).

NOW THEREFORE: An Coimisiun Pleanála, in exercise of the powers conferred on it by section 5 (4) of the 2000 Act, hereby decides that the agricultural structure at Gaurus, Ennis, Co. Clare is development and is not exempted development

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

Kathy Tuck

Planning Inspector

18th February 2026.

**Appendix 1
EIA Pre-Screening**

Case Reference	ABP-323870-25
Proposed Development Summary	Construction of an agricultural shed
Development Address	Creggaunahilla, Clarecastle, Ennis, Co. Clare
	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.	State the Class here
<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,	No Screening required.

<p>Schedule 5 or a prescribed type of proposed road development under Article 8 of the Roads Regulations, 1994.</p> <p>No Screening required.</p>	
<p><input type="checkbox"/> Yes, the proposed development is of a Class and meets/exceeds the threshold.</p> <p>EIA is Mandatory. No Screening Required</p>	
<p><input type="checkbox"/> Yes, the proposed development is of a Class but is sub-threshold.</p> <p>Preliminary examination required. (Form 2)</p> <p>OR</p> <p>If Schedule 7A information submitted proceed to Q4. (Form 3 Required)</p>	

<p>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)?</p>	
<p>Yes <input type="checkbox"/></p>	<p>Screening Determination required (Complete Form 3)</p>
<p>No <input checked="" type="checkbox"/></p>	<p>Pre-screening determination conclusion remains as above (Q1 to Q3)</p>

Inspector: _____ Date: _____