



An
Coimisiún
Pleanála

Inspector's Report ACP-323969-25

Question

Whether the wall, fence and solar PV panels is or is not development or is or is not exempted development.

Location

Larass, Strandhill, County Sligo

Declaration

Planning Authority

Sligo County Council

Planning Authority Reg. Ref.

ED610

Applicant for Declaration

Áine Nic Amhlaidh

Planning Authority Decision

Split Decision

Referral

Referred by

Áine Nic Amhlaidh

Owner/ Occupier

John & Lisa Monahan

Observer(s)

As above

Date of Site Inspection

12th June 2026

31st July 2026

Inspector

Philip Maguire

Contents

1.0 Introduction	3
2.0 Site Location and Description	3
3.0 The Question	4
4.0 Planning Authority Declaration.....	5
4.1. Declaration.....	5
5.0 Planning History.....	7
6.0 Policy Context.....	8
6.1. Sligo County Development Plan 2024-2030	8
6.2. Natural Heritage Designations	8
7.0 The Referral.....	9
7.1. Referrer's Case.....	9
7.2. Planning Authority Response.....	10
7.3. Owner / Occupier's Response	10
8.0 Statutory Provisions.....	11
8.1. Overview	11
8.2. Planning and Development Act.....	12
8.3. Planning and Development Regulations	14
9.0 Assessment.....	17
9.1. Preliminary Points	17
9.2. Is or Is Not Development.....	19
9.3. Is or Is Not Exempted Development	20
9.4. Restrictions on Exempted Development	21
10.0 AA Screening.....	23
11.0 Recommendation	24

1.0 Introduction

- 1.1. This case relates to a referral by Áine Nic Amhlaidh under Section 5(3)(a) of the Planning and Development Act 2000, as amended ('the Act'), in respect of a declaration made by Sligo County Council regarding lands at Larass, Strandhill, Sligo.
- 1.2. This Inspector's Report (IR) and recommendation is made pursuant to Section 376(3) of the Planning and Development Act 2024, as amended ('the 2024 Act'). An Coimisiún Pleanála ('the Commission') is required to consider both before determining the case.
- 1.3. I also note that there was a recent appeal case before the Commission under case reference PL-501084-SO-26, the subject matter of which is relevant to this referral.

2.0 Site Location and Description

- 2.1. Located off and to the northern side of the R292, east of its junction with Burma Road (R277), the referral site is situated to the northern periphery of Strandhill, Co. Sligo, some 1.3km east of the seafront promenade. The surrounding area is characterised by a cul-de-sac of residential properties overlooking Dorrins Strand and Sligo Bay. Sligo Rugby Club is located to the southeast and rolling agricultural land to the north. Knocknarea is visible to the south and Benbulbin over a longer distance to the north.
- 2.2. The referral site has an area of 0.29 hectares and consists of a two-storey split-level over basement dwellinghouse with mono-pitch roof structure and contemporary finishes including weathered timber clad walls and a sedum roof. The detached garage, which is located immediately north of the access, has a similar mono-pitched, sedum roof with plaster to the external walls. The western boundary, adjacent to the garage, consists of a low stone wall and perpendicular wing walls. This boundary transitions in a northerly direction to a block wall with a plaster finish similar to the garage. This section of wall, some 26 metres long, supports two field gates which provide access to the agricultural lands to the west of the referral site. The wall is stepped in three sections due to the localised fall in levels. The remainder of this boundary is defined by a two-metre-high fence with support struts on the site side. The eastern boundary is defined by fencing with mature trees/hedgerow to the rear.
- 2.3. The northern boundary is defined by a post and wire fence adjacent to which are 20 no. solar photovoltaic (PV) panels in two separate arrays, each some 12 metres long. The area south of the PV panels appears to be maintained as a wild grass meadow.

3.0 The Question

3.1. The matter has been referred by a third party. In the absence of a Section 5 application form, I rely on submitted correspondence between the referrer and planning authority.

3.2. By letter dated 30th October 2025, the referrer posed the following questions:

1. *Is it exempted development that the new height of the development is 10.5m, according to the planner's report, the height limit is 9.5m.*

Supplementary questions under Question 1 include:

Is it exempted development that the area of the approved dwelling been exceeded from the 375sqm permitted by approx. 100 sqm.

Is it exempted development that the house built is not the 'split level two storey and single storey' planning application appraised by the planners.

2. *Is the new boundary wall and fence exempted development, the wall extends the length of the dwelling and the fence which extends to the boundary of the property?*

I note the following supplementary question under Question 2:

Is it exempted development to remove all boundary hedging at the lower end of the site for ground solar panels in an aerodrome environment with a helipad and airport within 500 m development [sic.]?

3. *Is it exempted development that the property zoning was changed outside of the Development Planning process from agricultural to residential.*
4. *Is it exempted development that the land level of the lower site and that of the neighbouring site were raised by the importation of hundreds of tonnes of soil and fill to absorb the lake which appeared following construction of the septic system.*
5. *Is it exempted development that no commencement notice has been issued for this development?*
6. *Is it exempted development that the stipulation in the Engineer's Report requiring a connection for site waste water disposal to the closest man hole has been met or is the current disposal to surface considered exempted development?*

I note the following supplementary question under Question 6:

Has a licence for the discharge from the dwelling's DWWTS system's percolation area directly to surface been issued by the local authority?

7. *Is it exempted development that no pre-connection application or mandatory disclosure to Irish water for this connection to the Irish Water Network has been made?*
8. *Is it exempted development that all the excavated materials, soil and rocks were disposed into the fields surrounding this site development?*
9. *Is the import of tonnes of fill and soil classified development, this was done to fill the lake that opened up at the bottom of the site upon completion of the roof following heavy rain, changing the levels of the land from 280OD to 290OD.*

3.3. The referral submitted to the Commission and date received 18th December 2025 includes a cover letter prepared by the referrer in addition to appended documentation:

- Addendum A – Planning Permission and Conditions (PL 19218)
- Addendum B – Development as Constructed (photographs and analysis)
- Addendum C – Chronology Table
- Addendum D – Freedom of Information Request (including FOI 64/20)
- Addendum E – Enforcement and Compliance Material
- Addendum F – Pre-Planning Consultation Records
- Addendum G – Commencement Notice and Validation Issues
- Addendum H – Additional Supporting Documentation

4.0 Planning Authority Declaration

4.1. Declaration

4.1.1. A Section 5 declaration was issued by Sligo County Council on 21st November 2025.

4.1.2. The declaration is set out in the following format:

- *The “new height of the development is 10.5m, according to the planner’s report, the height limit is 9.5m”.*

This is not development as the site was surveyed on the 11/08/2020 and it was

concluded that the overall height of the dwelling was compliant with the planning permission granted on site. Refer to ENF2701.

- *The house built is not the 'split level two storey and single storey' planning application appraised by the planners.*

The alterations to the house design constitutes 'development', however this issue was resolved under PL21/182, retention permission granted for a development consisting of the addition of a new window on ground floor, alterations to window size and positions, alterations to rooflight dimensions and a reduction in the height and width of the garage from that permitted under planning application PL19/218.

- *The "boundary wall and wooden fence".*

Constitutes 'development' and does NOT constitute 'exempted development' for the following reason:

The overall height of the wall exceeds 2m.

- *The lower end of the site and the neighbouring site were raised by the importation of hundreds of tonnes of soil and fill to absorb the lake which appeared following the construction of the septic tank.*

The deposition of soil would constitute 'development'; however the soil was imported to raise the ground at the location of the percolation area, and the works are therefore in accordance with the permission granted on site under PL19/218.

- *Excavated materials, soil and rocks were disposed of into the fields surrounding this site development?*

The deposition of soil would constitute 'development', however there is no evidence in the subject application that this occurred, it was not evident on inspection of the site, and the issue was not raised by any of the adjoining landowners.

- *The import of hundreds of tonnes of fill and soil classified development, this was done to fill the lake that opened up at the bottom of the site upon completion of the roof following heavy rain, changing the levels of the land from 280OD and 290OD.*

Constitutes 'development', however soil was imported to raise the ground at the location of percolation area, and the works are therefore in accordance with the permission granted on site under PL19/218.

5.0 Planning History

5.1. Referral Site

- 5.1.1. PA ref. 26/60016 – in August 2026, the decision of the planning authority was generally upheld on appeal and permission granted for the retention of a 26 metres section of wall varying in height from 1.25 to 3 metres high (case reference PL-501084-SO-26).
- 5.1.2. PA ref. ED591 – in August 2025, a Section 5 declaration issued as follows:

- *The “new high boundary brick wall and wooden fence” constitutes ‘development’ and does NOT constitute ‘exempted development’ for the following reason:*

The overall height of the wall exceeds 2m and the development contravenes conditions 1 & 4 of the permission granted on site under PL19/218.

- *The “removal of boundary hedging at the lower end of the site”.*

In accordance with Section 2 of the Planning and Development Act 2000 (As Amended), the removal of hedgerow does not constitute development.

- *The “import of tonnes of soil and fill to significantly raise the ground level within and beyond the property boundary by the septic tank and percolation area”.*

The ground at the location of the percolation area was raised in accordance with the permission granted on site under PL19/218.

- *The “addition of one metre to the height of the dwelling”.*

The issue of the overall height of the dwelling was resolved under ENF2701. The site was surveyed on the 11/08/2020 and it was concluded that the overall height of the dwelling was compliant with the planning permission granted on site.

- *The “split level two storey and single storey dwelling re-submitted application exempted development per John Monahan cover letter, PL 19218 on 5/6/19 which was appraised by the planners or is this in fact a different design completely”.*

The dwelling was originally permitted under PL19/218 and the retention of alterations to the dwelling house were permitted under PL21/182, which resolved any issues relating to the design of the dwelling.

- 5.1.3. PA ref. 19/218 – in August 2019, the planning authority granted permission for a dwelling, garage and domestic wastewater treatment system (DWWTS) etc. This permission was subsequently amended in August 2021 under PA ref. 21/182. It

authorised generally minor changes to the parent permission including retention of new / revised window and rooflight positions / sizes, and alterations to the size of the permitted garage, as well as a new flue, changes to the outdoor covered area (east elevation), new covered area (west elevation) and new stone wall at the site entrance.

6.0 Policy Context

6.1. Sligo County Development Plan 2024-2030

- 6.1.1. The current Development Plan came into effect on 11th November 2024. The Plan was subject to a draft Ministerial Direction in July 2024 and is pending a final decision by the Minister following public consultation and OPR recommendations (Oct. 2024). The planning authority declaration was made under the provisions of this current Plan.
- 6.1.2. The site is located within the development limit of Strandhill and thus subject to the provisions of Chapter 19 of the County Development Plan (Strandhill Village Plan). It is partly zoned 'eRES – existing residential areas' in the associated zoning map.
- 6.1.3. Section 10.5.3 of the Plan sets out the zoning objective for 'eRES – existing and infill residential use'. It seeks to protect and enhance the residential amenity of established areas and their communal or public open space and allow for small-scale infill development which is appropriate to the character and pattern in the immediate area.
- 6.1.4. The northern part of the site is zoned 'GB – green belt' with a zoning objective to contain and consolidate settlements, while safeguarding lands for their future expansion and for the provision of strategic infrastructure. I note that the lands to the west of the referral site are zoned 'nRES – new residential areas' with an objective to promote the development of greenfield, infill lands etc. for high-quality residential uses.
- 6.1.5. The Sligo coastline is designated as a Visually Vulnerable Area in the Plan but the site is within a Normal Rural Landscape (Chapter 23 / Landscape Characterisation Map). There are no relevant Special Amenity Area Orders (SAAOs) in operation in the area.

6.2. Natural Heritage Designations

- Cummeen Strand/Drumcliff Bay (Sligo Bay) pNHA (000627) – c. 0.5km north
- Cummeen Strand/Drumcliff Bay (Sligo Bay) SAC (000627) – c. 0.5km north
- Cummeen Strand SPA (004035) – c. 0.5km north

7.0 The Referral

7.1. Referrer's Case

7.1.1. The referrer's case can be summarised as follows:

- Referral arises from discrepancies between:
 - the pre-planning consultation record;
 - the planner's report and grant of permission;
 - enforcement and compliance records (including FOI material);
 - commencement notice documentation; and
 - the development as constructed.
- The following issues require clarification:
 - Pre-planning contradictions – site identified as visually vulnerable, acceptability of septic tank queried and proposal described as 3-storey whereas characterised differently in the planner's report without explanation
 - Change of materials / enforcement – FOI material confirms the existence of enforcement records relating to a change of materials under PL 19218; and
 - Commencement notice anomaly – commencement notice has the address of a property already constructed and occupied in the adjacent estate.
- Referral relates to development carried out pursuant to planning ref. PL 19218.
- Statutory question arising for determination under Section 5 is whether the development, as constructed and/or altered, constitutes:
 - exempted development,
 - development requiring planning permission, or
 - unauthorised development within the meaning of the Act.
- Submits the following matters arise for determination under Section 5:
 - whether the development is consistent with the pre-planning record;
 - whether the re-classification from three-storey to two-storey accurately reflects the development as built;

- whether the site's identification as visually vulnerable was properly addressed;
- whether the provision of a septic tank was lawfully assessed;
- whether the change of materials constitutes a material alteration;
- whether the commencement notice was valid and accurately applied;
- whether the development, in whole or in part, requires planning permission;
- whether the development should be regarded, in whole or in part, as unauthorised development.

7.2. Planning Authority Response

7.2.1. No response was received from the planning authority.

7.3. Owner / Occupier's Response

7.3.1. The response from the owner, John Monahan, can be summarised as follows:

- Confirms he is the owner and occupier of the dwelling, as well as project architect.

Development as Constructed

- Dwelling constructed in accordance with the permission granted under PL 19218 in terms of scale, height, footprint, layout and external appearance.
- Development has been subject to enforcement inspections, all of which confirmed compliance with the planning permission.

Pre-Planning Consultation

- Matters referenced in the pre-planning consultations were non-statutory in nature.
- Application was assessed on the basis of the application documents etc.

Storey Description

- Dwelling, as constructed, accords with the approved drawings.
- References to alternative or earlier design iterations do not alter the nature of the development permitted and constructed, which is correctly described in the grant.

Wastewater Treatment

- DWWTS was authorised by the grant of permission and installed accordingly.
- Site is not served by a public sewer.

Materials and Minor Alterations

- Potential changes to roof and basement wall materials were considered during construction and a subsequent application was deemed withdrawn at FI stage.
- No changes were implemented and the dwelling was completed using the materials expressly permitted under PL 19218.
- Any alterations to the approved design were subject to a separate retention application permitted under PL 21182 and do not give rise to unauthorised works.

Boundary Wall

- Notes that a limited portion of the wall exceeds the exemption threshold.
- Notes that a separate retention application has been lodged for the wall.
- Wall is ancillary to the dwelling and does not affect its scale, form or character.

Commencement Notice

- Commencement Notice contained a clerical error in the address; this did not affect the identification of the site or lawfulness of the development.
- Planning Authority was fully aware of the site location and undertook enforcement inspections during construction.

8.0 Statutory Provisions

8.1. Overview

8.1.1. Relevant provisions:

- Planning and Development Act 2000, as amended ('the Act'), and
- Planning and Development Regulations 2001, as amended ('the Regulations').

8.2. Planning and Development Act

Section 2

8.2.1. Section 2(1) provides the following interpretations which are relevant:

“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;

“house” means a building or part of a building which is being or has been occupied as a dwelling or was provided for use as a dwelling but has not been occupied, and where appropriate, includes a building which was designed for use as 2 or more dwellings or a flat, an apartment or other dwelling within such a building;

“structure” means *inter alia* 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 where the context so admits, includes the land on, in or under which the structure is situate etc.; and

“unauthorised development” means, in relation to land, the carrying out of any unauthorised works (including the construction, erection or making of any unauthorised structure) or the making of any unauthorised use;

“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 etc., or which exists as a result of the carrying out of exempted development etc.;

“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 etc., or
- (b) development which is the subject of a permission granted etc., and which is carried out in compliance with that permission or any condition to which that permission is subject;

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

Section 3

- 8.2.2. Except where otherwise required, Section 3(1)(a) defines “development” as:

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.

Section 4

- 8.2.3. Section 4(1) provides a list of statutory exemptions, including:

(h) development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures.

- 8.2.4. Section 4(4) provides development shall not be exempted development if an Environmental Impact Assessment (EIA) or an Appropriate Assessment (AA) of the development is required.

Section 5

- 8.2.5. Section 5(1) provides that if any question arises as to what, in any particular case, is or is not development or is or is not exempted development, any person may request in writing from the relevant planning authority a declaration on that question. Section 5(3)(a) provides for a review by referral within 4 weeks of the date of the declaration.

Section 32

- 8.2.6. Section 32 sets out a general obligation to obtain permission and states that permission shall be required in respect of any development of land, not being exempted development, and in the case of development which is unauthorised, for the retention of that unauthorised development.

Section 138

- 8.2.7. Section 138 provides an absolute discretion to dismiss a referral where it is of the opinion that the referral is vexatious, frivolous or without substance etc.

Section 177U

- 8.2.8. Section 177U(9) provides that in deciding a referral under Section 5, a screening for AA shall be conducted in accordance with the provisions Section 177U of the Act.

8.3. Planning and Development Regulations

Article 6

- 8.3.1. Subject to the restrictions in Article 9, Article 6(1) provides for the classes of exempted development under column 1 of Parts 1, 2 and 3 of Sch. 2, subject, where applicable, to the conditions and limitations opposite such classes as set out in column 2.
- 8.3.2. The following classes of exempted development are considered relevant.
- 8.3.3. Schedule 2, Part 1, Class 2:

Column 1	Column 2
<i>(c) The placing or erection on a roof of a house, or within the curtilage of a house, or on a roof of any ancillary buildings within the curtilage of a house (this class does not include apartments) of a solar photo-voltaic and/or a solar thermal collector installation.</i>	<i>3. Any free-standing solar photo-voltaic or solar thermal collector installation shall not be placed or erected forward of the front wall of the house.</i> <i>4. The total aperture area of any freestanding solar photo-voltaic and solar thermal collector panels taken together with any other such existing freestanding panels shall not exceed 25 square metres.</i> <i>5. The placing or erection of any freestanding solar photo-voltaic or solar thermal collector installation shall not reduce the remaining area of private open space, reserved exclusively for the use of the occupants of the house, to the rear or to the side of the house to less than 25 square metres.</i> <i>6. The height of any free-standing solar photo-voltaic or solar thermal collector installation shall not exceed 2.5 metres at its highest point above ground level.</i> <i>9. Development under this Class which causes hazardous glint and/or glare shall not be exempted development and any solar photo-voltaic or solar thermal collector panels which are causing hazardous glint and/or glare shall either be removed or be covered until such time as a mitigation plan to address the hazardous glint and/or glare is agreed and implemented to the satisfaction of the Planning Authority.</i>

8.3.4. Schedule 2, Part 1, Class 5:

Column 1	Column 2
<i>The construction, erection or alteration, within or bounding the curtilage of a house, of a gate, gateway, railing or wooden fence or a wall of brick, stone, blocks with decorative finish, other concrete blocks or mass concrete.</i>	1. The height of any such structure shall not exceed 2 metres or, in the case of a wall or fence within or bounding any garden or other space in front of a house, 1.2 metres. 2. Every wall other than a dry or natural stone wall bounding any garden or other space shall be capped and the face of any wall of concrete or concrete block (other than blocks with decorative finish) which will be visible from any road, path or public area, including public open space, shall be rendered or plastered. 3. No such structure shall be a metal palisade or other security fence.

Article 9

8.3.5. Article 9 imposes specific restrictions on development of classes specified in Parts 1, 2 and 3 of Schedule 2 and in effect de-exempts certain classes of development that would be exempt under normal circumstances. The restrictions under Article 9(1)(a) apply if the carrying out of such development would *inter alia*:

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

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

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

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

8.4. Precedent Referral Cases

Boundary Walls, Fences etc.

- 8.4.1. Under case ref. ABP-322724-25, the Commission considered whether a wooden fence at 73 Grosvenor Road, Rathmines, Dublin 6 was/was not development/exempted development. The Commission concluded that the wooden fence falls to be considered under Class 5, Part 1, Schedule 2 of the Regulations, but being in excess of 1.2 metres in height it did not satisfy all of the conditions and limitations of this class and therefore did not fall within its scope; it was therefore not exempted development.

Solar PV Panels

- 8.4.2. Under case ref. 83.RL.2811, the Board considered whether the erection of solar panels on the rear elevation of a dwelling at 67 Whitehall, Tullamore, Co. Offaly was/was not development/exempted development. The Board concluded *inter alia* that while the said solar panels would generally come within Class 2(c) of the Regulations, the panels exceed the conditions and limitations of the class, being in excess of 15 centimetres of the plane of the wall on which they are located and within 50 centimetres from the edge of the gable wall; not therefore exempted development.

8.5. Precedent Legal Judgements

Enforcement and Exempted Development

- 8.5.1. In *O'Connor v Kerry County Council* [1988] ILRM 660, Costello J. held that “if a person on whom the enforcement notice is served objects to the notice on the ground that the development is exempted development, it seems to me that he has a remedy in that he may apply to the planning board to determine the question. When matters of a technical nature are involved, as arises here, it is not appropriate that the court should be asked to determine whether or not the development that is in issue is exempted or not.” This was not in the Courts view the proper function for an application for *certiorari*.

Matters Previously Determined

- 8.5.2. In *Narconon Trust v An Bord Pleanála and Others* [2021] IECA 307, the Court of Appeal upheld the High Court ruling that the Board is precluded from determining a Section 5 referral in circumstances where a planning authority previously determined substantially the same question in respect of the same land and where there is no evidence of a change in planning facts and circumstances. Heslin J., in the High Court, [2020] IEHC 25, also held that the referral requests were, in fact and in substance,

attempts to question the validity of the prior decision by seeking to obtain a different answer to the question that had already been answered by the planning authority.

Reformulation of Referral Question

- 8.5.3. In *Roadstone Provinces Ltd v An Bord Pleanála [2008] IEHC 210*, the High Court considered that the Board is entitled to reformulate questions posed where necessary. In this instance, Finlay Geoghegan J. noted at para. 31 that the Planning Inspector was critical of the content of the referral, having regard to Section 127 of the Act, and that the Inspector summarised the questions which she considered she could extract.

9.0 Assessment

9.1. Preliminary Points

Referrer's Case

- 9.1.1. It should be noted at the outset, that the purpose of the referral is for the Commission to conclude upon whether or not the matters in question constitute development, and if so, fall within the scope of exempted development. Thus, the various procedural concerns raised by the referrer are outside the Commission's remit as it does not have an ombudsman role in this regard. I specifically consider that the following matters, as raised by the referrer, do not fall within the scope of the Section 5 referral process:

- *whether the development is consistent with the pre-planning consultation record,*
- *whether the re-classification from three-storey to two-storey accurately reflects the development as built,*
- *whether the site's identification as visually vulnerable was properly addressed,*
- *whether the provision of a septic tank was lawfully assessed,*
- *whether the commencement notice was valid and accurately applied.*

- 9.1.2. Whilst "any question" under Section 5 of the Act could be construed as inferring a wider scope, this is not the case. The 'question' is evidently one of a qualified nature, and for complete clarity, the questions raised above do not seek to confirm whether something is development or not, they are evidently questions about a development.

- 9.1.3. The other matters expressly submitted by the referrer for determination are:

- *whether the change of materials constitutes a material alteration;*

- *whether the development, in whole or in part, requires planning permission;*
- *whether the development should be regarded, in whole or in part, as unauthorised development.*

9.1.4. Likewise, the enforcement of planning control falls outside the remit of the Commission. This is for the planning authority to deal with as they see fit. Therefore, I do not propose to deal with any extraneous issues raised in the referral submission.

Planning Authority Declaration

- 9.1.5. The format and content of the planning authority's declaration is set out in full above.
- 9.1.6. Amongst the questions answered were queries in relation to the height and design of the existing dwelling, the boundary wall, importation of soil and the alleged deposition of soil etc. In all cases, bar the boundary wall and alleged deposition of material, the planning authority declared that the dwelling and DWWTS accorded with a relevant permission. The wall was declared as 'development and not exempted development' and it was stated there was no evidence of soil deposition, including during inspection.
- 9.1.7. Similar to the framing of the questions, the planning authority declaration could be construed as a response to queries regarding alleged unauthorised development. It is important to reiterate that this is not a matter for the Commission or the correct application of the Section 5 referral process in my opinion. Whilst the interaction between exempted development and planning enforcement was considered in *O'Connor v Kerry County Council*, it was in the context of the applicant, Dr. O'Connor, objecting to the service of an enforcement notice based on the ground that a development was exempted development. The High Court held in that case that the applicant had an available remedy to apply to the Board to determine that question.
- 9.1.8. That is evidently not the case here and the referrer appears to be primarily concerned with the lawfulness of the dwelling permitted under PA ref. 19/218 and amended under PA ref. 21/182. All issues pertaining to that are a matter for the Council or the Courts.

Legal Jurisdiction

- 9.1.9. It is also important to draw the Commission's attention to a broadly similar declaration in relation to the referral site. The format and content of this unchallenged declaration from August 2025 is detailed above (PA ref. ED591). In addition to the boundary wall, the importation of soil and the height and design of the dwelling, the 'removal of boundary hedging' was also considered and declared as not constituting development.

- 9.1.10. In this regard, I advise the Commission to be mindful of the *Narconon Trust* judgement. Therefore, they may wish to consider whether the referred question could be seeking to now challenge a previously unchallenged declaration on the matter (PA ref. ED591).
- 9.1.11. The subject referral appears to be, by fact and by substance, an attempt to question the validity of this prior decision by the planning authority by seeking to obtain different answers to the questions posed and which have already been answered. In such circumstances, the Commission has the option of dismissing the referral under Section 138. I do, however, note the referrers claim that notification of same was not received.

The Question

- 9.1.12. There are, however, aspects of the referrer's wide-ranging set of questions to the planning authority that could be reformulated to fit within the scope of a Section 5 referral. I particularly note the expressed declaration on the boundary wall as well as the supplementary question in respect of the boundary hedging 'at the lower end of the site' for ground solar panels in an aerodrome environment etc. Whilst the removal of hedgerow has already been answered and unchallenged, as noted above, the planning authority did not form a view in relation to the solar PV panels at that location.
- 9.1.13. Thus, having regard to the above and the observations made during my site inspection, I intend to proceed with my assessment on the basis of the question as submitted to the planning authority, albeit reformulated in light of relevant fact and law:

Whether the wall and wooden fence along the western boundary and the solar PV panels along the northern boundary of a dwellinghouse at Larass, Strandhill, County Sligo is or is not development or is or is not exempted development.

9.2. Is or Is Not Development

- 9.2.1. Section 3 of the Act defines development as 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. According to Section 2, "works" include any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal etc.
- 9.2.2. I note from the drawings submitted under PA ref. 26/60016 (appeal case reference PL-501084-SO-26) that the subject wall is 26 metres long and varies in height from 1.25 to 3 metres. The fence that continues along the boundary is 2 metres high. The

height of the fence was verified during inspection from lowest adjacent ground level¹ i.e., within the site boundary. The wall height was also measured and is marginally higher on the site side. The building of this wall comprised works and is development.

- 9.2.3. No details have been provided by the referrer in respect of the solar PV panels along the northern boundary. They are set out in two arrays, each consisting of 10 no. panels and measuring some 12 metres in width. Exact panel dimensions were measured 1.155 metres by 1.69 metres; thus each panel has an aperture area of 1.95sq.m. The placing of these PV panels in two arrays comprised works and thus is development.

Conclusion on Development

- 9.2.4. The wall and wooden fence along the western boundary and the solar PV panels along the northern boundary of the dwellinghouse constitute works and are development.

9.3. Is or Is Not Exempted Development

- 9.3.1. Class 5 of Part 1 of Schedule 2 of the Regulations provides an exemption for the construction of a wooden fence and block wall etc. The conditions and limitations of this exemption state that the height of any such structure shall not exceed 2 metres or, in the case of a wall or fence within or bounding any garden or other space in front of a house, 1.2 metres. Additionally, every wall (other than a dry or natural stone wall) bounding any garden or other space shall be capped and the face of any wall of concrete block (other than blocks with decorative finish) which will be visible from any road, path or public area, including public open space, shall be rendered or plastered.
- 9.3.2. The wooden fence is 2 metres high and appears to benefit from a Class 5 exemption. The wall, whilst capped and rendered, exceeds 2 metres and is not Class 5 exempt.
- 9.3.3. Class 2 of Part 1 of Schedule 2 of the Regulations provides an exemption for the placing within the curtilage of a house of a solar PV installation. The conditions and limitations of this exemption state that any free-standing PV panels shall not be placed or erected forward of the front wall of the house; not exceed 25 square metres in total aperture area; not reduce the remaining area of private open space to less than 25 square metres; and not exceed 2.5 metres at its highest point above ground level.

¹ Article 5(2) of the Regulations provides that "ground level" means the level of the ground immediately adjacent to the structure and where the level of the ground where the structure is to be situated is not uniform, the level of the lowest part of the ground adjacent to it.

- 9.3.4. I also note that development under this class which causes hazardous glint and/or glare shall not be exempted development and any solar PV panels which are causing hazardous glint and/or glare shall either be removed or be covered until such time as a mitigation plan to address the hazardous glint and/or glare is agreed and implemented to the satisfaction of the planning authority. In this regard, I am mindful of the proximity of the referral site to the runway at Sligo Airport (c. 1km) however there is no information on file to suggest that the panels cause hazardous glint and/or glare.
- 9.3.5. Moreover, whilst I note that the referral site is located within the solar safeguarding zone for Sligo Airport (Schedule 1, Map 35 of S.I. No. 492/2022), the notification procedure to the planning authority, as applies to other classes, does not apply here. Thus, the concerns regarding proximity to the aerodrome have been fully considered.
- 9.3.6. The PV panels, whilst generally within Class 2 (c) of the Regulations, exceed 25 square metres in total aperture area and are not exempted development i.e., 39sq.m.

Conclusion on Exempted Development

- 9.3.7. The wall along the western boundary and the solar PV panels along the northern boundary of the dwellinghouse are not exempted development. The wooden fence is.

9.4. Restrictions on Exempted Development

- 9.4.1. As noted, Article 9 of the Regulations in effect de-exempts certain classes of development that would be exempt under normal circumstances. The de-exemption can be triggered if the development contravenes a condition attached to a permission; would endanger public safety by reason of hazardous glint and/or glare for the operation of airports, aerodromes or aircraft; interfere with the character of a landscape; or require AA as it would likely have a significant effect on a European site.

Contravention of a Condition

- 9.4.2. In this regard, I note that the declaration issued by the planning authority in August 2025 stated that the wall and wooden fence did not constitute exempted development as the overall height of the wall exceeded 2 metres and it contravened condition numbers 1 and 4 of PA ref. 19/218. The similar declaration issued in November 2025, the subject matter of this referral, does not make reference to any such contravention.
- 9.4.3. Condition 1 of PA ref. 19/218 required compliance with the plans and particulars lodged with the application in order to clarify the documents to which the permission

relates. Condition 4 required all existing tree/hedgerows on the site/boundaries to be retained and maintained in the interest of visual amenity and protection of wildlife.

- 9.4.4. Neither the site layout drawing (no. 1719_P.01) nor the site landscape plan (no. 1719_P.06) permitted under PA ref. 19/218 illustrate the pre-existing boundary treatments along the eastern or northern boundaries. The latter illustrates a “stock proof fence” to the western and northern site boundaries. It also illustrates “existing hedgerow cut back to boundary to allow for new planting” along the eastern boundary. Given the context, it appears to me that condition number 4 related to this boundary.
- 9.4.5. Moreover, there is no evidence to suggest that the western boundary was anything more than a post and wire fence with intermittent vegetation as detailed in publicly available ‘street view’ imagery of the area. The northern boundary was open and undefined. Thus, I find no rational basis to support the view that the new boundary wall contravened condition number 4 of the permission granted under PA ref. 19/218. Nor do I consider it represents a contravention of condition number 1. To apply such a standard would, in effect, de-exempt all development within the curtilage of a house.
- 9.4.6. It is also important to highlight that a determination on this aspect of the referral is not curtailed by the principles established in the *Narconon Trust* judgement. The height of the fence appears to have been reduced in the intervening period to some 2 metres.

Endangerment of Public Safety

- 9.4.7. The de-exemption in respect of potential endangerment of public safety by reason of hazardous glint and/or glare for the operation of airports, aerodromes or aircraft was partly alluded to by the referrer in their submission to the planning authority. A similar condition and limitation applies to Class 2 (c) as noted and considered above. There is no information on file to suggest that the restriction under Article 9(1)(a)(iiia) applies.

Interference with Landscape Character

- 9.4.8. The referral site is located within a Normal Rural Landscape, as opposed to a Visually Vulnerable Area. Whilst I note the restriction under Article 9(1)(a)(vi) regarding landscape preservation, as anchored by Development Plan, it does not apply here.

Conclusion on Restrictions on Exempted Development

- 9.4.9. I do not consider any of the restrictions under Article 9 of the Regulations apply to the wall and wooden fence along the western boundary or the solar PV panels along the northern boundary. The requirement for AA has been considered separately below.

10.0 AA Screening

Screening the need for Appropriate Assessment: Screening Determination (Stage 1, Article 6(3) of Habitats Directive) as required by Section 177U(9)

I have considered case ACP-323969-25 in light of the requirements of Section 177U of the Planning and Development Act 2000, as amended.

The referral site is located to the northern periphery of Strandhill and within a peri-urban environment. It comprises a two-storey split-level over basement dwelling with mono-pitch roof structure including sedum finishes and weathered timber clad walls. There is a detached garage to the front of the house; wall and timber fence along the western boundary; fence / hedgerow to the east; and post and wire fence along the northern boundary, adjacent to which are 20 no. PV panels in two arrays.

The closest European sites, part of the Natura 2000 Network, are Cummeen Strand/Drumcliff Bay (Sligo Bay) SAC (site code 000627) and Cummeen Strand SPA (site code 004035) located c. 0.50km north of the referral site.

Having considered the nature, scale and location of the development, I am satisfied that it can be eliminated from further assessment because it did/could not have any effect on a European site.

The reason for this conclusion is as follows:

- Small scale and domestic nature of the development; and
- The distance from European sites, nature of intervening habitats and absence of ecological pathways to any European site.

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

Likely significant effects are excluded and therefore Appropriate Assessment (stage 2) (under Section 177V of the Planning and Development Act 2000) is not required.

11.0 Recommendation

11.1. Having regard to the above, I consider that the Commission has the following options:

1. Dismiss the referral under the provisions of Section 138 of the Planning and Development Act 2000, as amended, as by fact and by substance it amounts to an attempt to question the validity of a prior decision made by Sligo County Council under PA ref. ED591, outside the statutory timeframe for doing so; or
2. Proceed to determine the question generally as reformulated above.

11.2. In the event that the Commission proceed with the second option, I recommend that the Commission decide this referral in accordance with the following Draft Order.

WHEREAS a question has arisen as to whether the wall and wooden fence along the western boundary and the solar PV panels along the northern boundary of a dwellinghouse at Larass, Strandhill, County Sligo is or is not development or is or is not exempted development:

AND WHEREAS Áine Nic Amhlaidh requested a declaration on this question from Sligo County Council and the Council issued a declaration on the 21st day of November, 2025 stating that the “boundary wall and wooden fence” was development and was not exempted development and did not make a declaration in respect of the solar PV panels:

AND WHEREAS Áine Nic Amhlaidh referred this declaration for review to An Coimisiún Pleanála on the 18th day of December, 2025:

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

- (a) the nature, scale, extent and scope of the works,
- (b) the existing and past site context,

- (c) Sections 2, 3, 4, 5 and 177U of the Planning and Development Act, 2000, as amended,
- (d) Articles 6 and 9 of the Planning and Development Regulations, 2001, as amended,
- (e) Classes 2 and 5 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001, as amended,
- (f) the planning history of the referral site, and specifically the permission granted under PA ref. 19/218 as amended by PA ref. 21/182,
- (g) the drawings submitted under PA ref. 26/60016 (appeal case reference PL-501084-SO-26),
- (h) measurements taken during site inspection,
- (i) relevant precedent referrals and judgements,
- (j) the pattern of development in the area, and
- (k) the provisions of the Sligo County Development Plan 2024-2030 as they apply to the referral site:

AND WHEREAS An Coimisiún Pleanála has concluded that:

- (a) The wall and wooden fence along the western boundary and the solar PV panels along the northern boundary constituted “works” that are “development” under Section 3(1) of the Planning and Development Act, 2000, as amended;
- (b) The wall along the western boundary is not exempted development under Class 5 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001, as amended, as it does not satisfy all of the conditions and limitations of this class i.e., it exceeds 2 metres in height;
- (c) The wooden fence along the western boundary is exempted development under Class 5 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001, as amended, as it does satisfy all of the conditions and limitations of this class; and

(d) The solar PV panels along the northern boundary are not exempted development under Class 2 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001, as amended, as they do not satisfy all of the conditions and limitations of this class i.e., they exceed 25 square metres in total aperture area.

NOW THEREFORE An Coimisiún Pleanála, in exercise of the powers conferred on it by Section 5 of the 2000 Act, as amended, hereby decides that the wall along the western boundary and the solar PV panels along the northern boundary of a dwellinghouse at Larass, Strandhill, County Sligo is development and is not exempted development and the wooden fence along the western boundary 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.

Philip Maguire

Inspectorate

6th August 2026