Inspector's Report
ACP-324174-26

Question	Whether (1) the expansion and operation of the Strandhill WWTP beyond its permitted footprint; and (2) the intensification of use of the Killaspugbrone Looped Trail etc. is or is not development or is or is not exempted development
Location	Townlands of Killaspugbrone, Larass and Carrowbunnaun, Strandhill, Sligo
Declaration	
Planning Authority	Sligo County Council
Planning Authority Reg. Ref.	ED628
Applicant for Declaration	Áine Nic Amhlaidh
Planning Authority Decision	Is not development
Referral	
Referred by	Áine Nic Amhlaidh
Owner/ Occupier	Uisce Éireann
Observer(s)	None
Date of Site Inspection	17th July 2026
Inspector	Philip Maguire

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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 2000 Act'), in respect of a declaration made by Sligo Co. Co. regarding various lands at Strandhill, Co. 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.

2.0 Site Location and Description

2.1. Strandhill Wastewater Treatment Plant (WWTP) is located off and to the western side of the R277, due west of the terminal buildings at Sligo Airport, and to the northern periphery of Strandhill, County Sligo, some 1km north of the seafront promenade. The immediate surrounding area is characterised by dune formations and grassland with the airfield in close proximity to the north and Strandhill beach located to the west. Knocknarea is visible to the south and Benbulben over a longer distance to the north.

2.2. The WWTP is accessible via a gated entrance along the R277, just south of the airport. It leads to a 400 metre long, single track roadway which terminates at the gated access to the treatment plant. An information sign at the R277 indicates that the roadway leads to a National Looped Walk known as Killaspugbrone Loop / Looped Walk. This trail, which covers some 7km across various townlands, forms part of the referral site.

2.3. The WWTP is located on a relatively modest, rectangular shaped footprint. Site boundaries are defined by concrete post and chainlink security fencing topped with deterrent wire. The gates were locked at the time of inspection. Ground levels are marginally higher to the rear of the site and the infrastructure nestles into the landform.

2.4. Killaspugbrone Loop, as noted, is accessible from the roadway to the WWTP via a track through the dune system. It is located some 50 metres west of the WWTP boundary and follows the coastline in a northerly direction to Killaspug Point and from there in an easterly direction towards Dorrins Strand passing an early Christian site (group of recorded monuments) and the northern part of the airfield, after which it follows laneways and a local road in a southerly direction to the R292. From the R292 the loop continues in a westerly direction back towards Strandhill seafront promenade.

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 15th February 2026, the referrer posed the following question:

Does the expansion of the WWTP footprint into the SAC, operated under an unfinalised EPA license and based on an obsolete 2013 AA Screening together with the Killaspugbrone Looped Trail constitute development that is not exempt under Section 4(4) of the Planning and Development Act 2000?

3.3. The referral submitted to the Commission and date received 27th March 2026 includes a cover letter and core grounds in addition to various exhibits labelled as follows:

- Exhibit A – Evidence of Historical Negligence
- Exhibit B – Environmental Failure
- Exhibit C – The Data Contradiction
- Exhibit D – Procedural Obstruction
- Exhibit E – Tidal Hazard & Habitat Damage

3.4. The referral documentation also includes volumes of other reports, correspondences, photographs and notes, including correspondence from Uisce Éireann dated 12th March 2026 following a request by the referrer under the AIE Directive (2003/4/EC).

4.0 Planning Authority Declaration

4.1. Declaration

4.1.1. A Section 5 declaration issued by Sligo County Council on 12th March 2026 as follows:

"Order: Pursuant to Section 5 of the Planning & Development Act 2000, Sligo County Council hereby decides that the works as submitted namely; 1. The physical expansion and operation of the Strandhill Waste-Water Treatment Plant beyond its 2007 permitted footprint is compliant with the works previously considered under Part 8, and 2. The intensification of use of the Killaspugbrone Looped Trail, currently exceeding 500,000 annual visitors, without contemporary Appropriate Assessment

(AA) or physical mitigation as shown on the documents submitted to the Planning Authority on 16/02/2026 does not constitute development."

5.0 Planning History

5.1. Referral Site

5.1.1. Strandhill Wastewater Treatment Plant Improvement Works Part 8 – authorisation to proceed came following agreement by Sligo County Council in September 2007.

5.2. Other Relevant History

5.2.1. Strandhill Emergency Works Scheme Part 8 – public consultation on the proposal to construct coastal revetment on the upper foreshore north of Strandhill Promenade closed in August 2026. The proposed works includes the placing of 2,500 tonnes of 1-3 tonne rock armour onto a c. 90m section of the upper foreshore, above the HWM.

5.2.2. Strandhill Public Realm Enhancement Part 8 – authorisation to proceed came via resolution of Sligo County Council in July 2025 subject to retention of the cannon etc.

6.0 Policy Context

6.1. Sligo County Development Plan 2024-2030

6.1.1. The current Development Plan came into effect on the 11th of November 2024. It 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). Variation No. 1 of the Development Plan came into effect on the 11th of May 2026.

6.1.2. The WWTP is located outside the development limit of Strandhill but subject to the provisions of Chapter 19 of the Development Plan (Strandhill Village Plan) nonetheless i.e., it is zoned 'TU – transport and utilities infrastructure' in zoning map.

6.1.3. Section 10.5.3 of the Plan sets out the zoning objective for 'TU – transport and utilities-related infrastructure'. It seeks to facilitate the provision and improvement/upgrading of transport-related infrastructure and essential services/utilities such as power supply, telecoms, gas infrastructure, waste facilities, water supply, wastewater treatment etc.

6.1.4. Killaspugbrone Looped Trail is predominantly on zoned 'GB – green belt' lands 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 remainder of the trail overlaps the development limit and mostly along public roads.

6.1.5. The Sligo coastline is designated as a Visually Vulnerable Area in the Plan and this applies to the WWTP and most of the Killaspugbrone Looped Trail (Chapter 23 / Landscape Characterisation Map). The Scenic Route designation terminates at the airport and otherwise there are no designated views or prospects of special amenity.

6.1.6. Section 27.7 of the Plan relates to outdoor recreation. It notes that there are a number of established walking routes in Sligo, and these routes, long-distance and local walks, represent an important recreational resource and their integrity should be protected.

6.2. Natural Heritage Designations

- Cummeen Strand/Drumcliff Bay (Sligo Bay) pNHA (000627) – 0km / overlaps site
- Cummeen Strand/Drumcliff Bay (Sligo Bay) SAC (000627) – 0km / overlaps site
- Cummeen Strand SPA (004035) – 0km / overlaps site

7.0 The Referral

7.1. Referrer's Case

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

Introduction and Purpose of Appeal

- Contends that the planning authority has erred in law under Section 4(4) of the 2000 Act i.e., the de-exemption status is decoupled where AA is required.
- States that the Council has failed to acknowledge at the current scale of development / operation triggers a mandatory Stage 2 AA.

Ground 1

- Breach of defined environmental constraints and hydrological sensitivity.
- Violation of the "footprint constraint" – refers to 2013 AA Screening.
- Disregard for specialist hydrological evidence i.e., report by Dr. Evelyn Moorkens.
- Inconsistency with 2025 public realm Part 8 – refers to "in combination" effects.

Ground 2

- Physical deviation from 2007 Part 8 footprint – refers to 2021 upgrades.

Ground 3

- Intensification of use as “material change of use” i.e., local to national-scale trail.
- Council failed to assess the cumulative impact of the Surf Centre and WWTP.

Ground 4

- Environmental failure – refers to EPA site visit report SV27364 (November 2023).
- Suggests there is a conflict with “policy P-IU-W-1” of the Sligo Development Plan.
- Submits there is a regulatory vacuum the planning authority has failed to address.

Grounds 6, 7, 8 and 9

- Contradiction with 2025 public realm Part 8 AA screening i.e., it refers to “extreme human-induced pressure” yet 500,000 visitors has no material impact on WWTP.
- Submits there are two conflicting sets of environmental data for the same area.
- Explicit contradiction with contemporary planning data.
- Submits that the most recent scientific baseline data has been ignored.
- Suggests that there is a legal error and refers to *Waddenzee*[1].
- Submits that there is an impact on visual and cultural immunity.
- Refers to 10 years of communication attempting to highlight this issue.

Ground 11

- Submits that there is a documented environmental and public health impact.
- Refers to EPA site visit report SV27333 (October 2023) and “tourism loading”.
- Scientific obsolescence i.e., Council’s declaration relies on 2013 AA screening.

Grounds 12, 15 and 21

- Submits that Strandhill WWTP is unauthorised as it violates specific conditions i.e., upgrade works must not be deeper, wider or larger than existing footprint.

[1] Case C-127/02.

- The 2021 construction is deeper, wider etc. and exceeds the 2007 / 2013 footprint.
- Notes the 2007 Part 8 provided 4,500 PE; submits the 2021 upgrade exceeds this.
- The expanded footprint encroaches directly into Annex 2 Whorl Snail habitat.
- Requests the Board to note the Lough Talt WWTP upgrade where development was halted and redirected due to the presence of Narrow-mouthed Whorl Snail.
- States that the refusal to perform a contemporary AA is a strategic attempt to bypass the precautionary principle.
- Refers to improper use of mitigation measures.
- Refers to a systemic failure in relation to site specific conservation objectives.
- Submits that the works constitute development and not exempted development because they require Stage 2 AA as evidenced by Council's 2013 AA Screening.

Grounds 13 and 22

- Suggests that there has been an obstruction of environmental reporting by the relevant authorities and therefore a regulatory vacuum has been created.
- Submits that planning authority actively suppressed environmental complaint data.
- Refers to other regulatory compliance issues, including EPA licensing.

Ground 14

- Suggests that there has been a deliberate attempt to withhold FOI and AIE requests in respect of environmental assessment and AA for the walking trail.

Ground 16

- Submits that the planning authority has wilfully ignored higher tier planning directives to facilitate unsustainable development in Strandhill.

Ground 17

- Challenges the "scientific baseline" used to claim the WWTP has sufficient capacity.

Ground 18

- Refers to submitted evidence of longstanding failures to address WWTP concerns.

Ground 19 and 20

- Refers to report by Dr. Evelyn Moorkens in 2013 AA Screening report.
- Submits that the planning authority has actively obstructed the gathering of evidence required to challenge the Section 5 declaration.
- Requests the Board to draw an adverse inference from the fact that the Council cannot produce the 2013 baseline data while equally relying on a 2013 screening.

Ground 20

- States that the 2013 Habitats Directive screening report explicitly states that amendments like the trail were "likely to have adverse effects".
- Refers to judgement in *People Over Wind*[2] regarding the use of mitigation.
- Suggests that the adverse effects predicted in 2013 have manifested and refers to evidence of failure i.e., draft Biodiversity Action Plan, Coastal Erosion Study etc.
- Refers to a Development Plan process in 2013 and Amendment A-11 in relation to the coastal walkway extension which was excluded on environmental grounds.

Mandatory Moratorium on Further Development

- Requests the Board to impose an immediate moratorium on all new connections to the Strandhill WWTP.
- Refers to a capacity breach at the WWTP.
- Suggests that there are vested interests and overzoning issues at play.
- Refers to a legal mandate under *Waddenzee* i.e. reasonable scientific doubt.
- Until a Stage 2 NIS is completed and a EPA license is granted for the actual (not 2013) PE any further development in Strandhill is unauthorised and reckless.

Environmental Destruction and Public Safety Risk

- Requests an immediate stay on all works at the walking trail pending a full health and safety and environmental impact assessment.
- Demands that the Board orders the restoration of the salt marsh and a permanent stay on trail upgrades until a transparent Flood Risk Assessment is conducted.

[2] Case C-313/17.

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. No response was received from the WWTP operator's, Uisce Éireann.

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;

"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 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 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;

"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;

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

"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:

(f) development carried out on behalf of, or jointly or in partnership with, a local authority, pursuant to a contract entered into by the local authority concerned, whether in its capacity as a planning authority or in any other capacity;

(g) development consisting of the carrying out by any local authority or statutory undertaker of any works for the purpose of inspecting, repairing, renewing, altering or removing any sewers, mains, pipes, cables, overhead wires, or other apparatus, including the excavation of any street or other land for that purpose;

(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 138

8.2.6. 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

8.2.7. Section 177U(9) provides that in deciding a referral under Section 5, a screening for AA shall be conducted, where appropriate, as per the provisions under Section 177U.

Section 179

8.2.8. Section 179 relates to local authority own development, i.e., 'Part 8 development'.

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. Schedule 2, Part 1, Class 33 relates to development for amenity and recreational purposes. Class 33 (c) is noted generally in the context of the referral.

Column 1	*Column 2*
Development consisting of the laying out and use of land— *(c) for athletics or sports (other than golf or pitch and putt or sports involving the use of motor vehicles, aircraft or firearms), where no charge is made for admission of the public to the land.*	

Article 9

8.3.3. 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*:

(viiB) comprise development [etc.] *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.*

Article 80

8.3.4. Article 80 sets out the classes of prescribed development for the purposes of 'Part 8' (Section 179 of the Act). It includes the construction or erection of pumping stations, treatment works, holding tanks or outfall facilities for waste water or storm water; and any other unspecified development, the estimated cost of which exceeds €126,000.

9.0 Precedent Decisions

9.1. Precedent Referral Cases

Works etc. for Recreational Use

9.1.1. Under case ref. RL2076, it was considered whether the laying out and use of a field at Glenageary Killiney NS, Killiney, Co. Dublin for sports and recreational use was / was not development or was / was not exempted development. Having regard particularly to the extent of works, the raising and lowering of ground levels, and the importation

of large quantities of fill material, it was concluded that it did not come within the scope of Class 33 (c) etc. and was therefore development and not exempted development.

9.1.2. Under case ref. ABP-320887-24, it was considered whether the laying of a football pitch at Tower Road, Mornington, Co. Meath was / was not development or was / was not exempted development. It was concluded that a football pitch constitutes very minor development both in terms of works and use, falling within scope of Class 33 (c) etc. without any requirement for AA so that the restriction under Article 9(1)(a)(viiB) didn't apply. It was therefore decided to be development and exempted development.

Intensification / Material Change of Use

9.1.3. Under case ref. RL3240, it was considered whether the intensification of use of Kilkenny Airfield for sponsored parachute jumping at Holdensrath, Co. Kilkenny was / was not development or was / was not exempted development. It was concluded *inter alia* that the significant increase in the frequency of take-off and landing manoeuvres of light aircraft, together with a significant increase in the extent to which such aircraft would be in the immediate vicinity of the aerodrome as a result constitutes an intensification of use. Further, this intensification involves a material increase in the noise and disturbance experienced by nearby residents of properties in the vicinity and these impacts were not anticipated at the time that the use as an aerodrome was established. It was thus decided to be development and not exempted development.

9.1.4. Under case ref. RL3331, it was considered whether the use of lands at Kilkenny Airport, Holdensrath, Co. Kilkenny for airport and aviation use was / was not development or was / was not exempted development. It was concluded *inter alia* that the 1977 runway extension represented an intensification of use of the lands to such a degree as to represent a material change of use. It involved a material increase in noise and disturbance experienced by nearby residents of properties in the vicinity; and permitted the use of heavier, larger aircraft than that for which the established use had envisaged, which impacts and use would not have been anticipated at the time that the use as an aerodrome was established, and therefore was material in planning terms. It was therefore decided to be development and not exempted development.

9.1.5. Under case ref. RL3301, it was considered whether the use of the grounds of Clonliffe College, Clonliffe Road, Drumcondra, Dublin 3 as a commercial car park related to events at Croke Park Stadium was / was not development or was / was not exempted development. It was concluded *inter alia* that the historic use of the college grounds

as a car park has intensified over and above its level of usage prior to the appointed day in 1964, and this intensification resulted in material impacts on the surrounding area, including increased traffic movements along Clonliffe Road. Such impacts were considered to be material in planning terms, and therefore, the intensification of use in question constituted a change of use which was considered to be a material change of use. It was therefore decided to be development and not exempted development.

De-exemption – European sites etc.

9.1.6. Under case ref. RL3466, it was considered whether *inter alia* the removal, clearance and mulching of woodland within Headfort Demesne ACA, Kells, Co. Meath and within The River Boyne and River Blackwater SAC (and affecting the SPA) was / was not development or was / was not exempted development. It was concluded that the removal, clearance and mulching of woodland involved works and was therefore development that would generally come within the scope of Section 4(1)(i) of the Act being development consisting of the thinning or felling of trees or works ancillary to that development, however, having regard to the close proximity of the subject site to the SAC and SPA, and the potential for effects on these European sites as a result of the development, including indirect effects resulting from potential runoff from the works into the European sites, it was considered that it could not be established, beyond reasonable scientific doubt, that the development in question would not have significant effects on those sites, and therefore an AA was considered to be required. Pursuant to Section 4(4) of the Act, the development was not exempted development.

De-exemption – European sites and EIA etc.

9.1.7. Under case ref. ABP-303550-19, it was considered *inter alia* whether the laying out and use of the land for car drifting events etc. at Weir Island, Carrigtwohill, Co. Cork was / was not development or was / was not exempted development. It was concluded that the laying out and use of these lands for such use raises planning issues that are materially different from its established use and is therefore development. Significantly, it was also concluded that the use is dependent upon the layout of the land as a motor park with implications for EIA and AA and thus the development was not exempted development under Section 4(4) of the Act. It was therefore decided that the use for car drifting events was development and not exempted development.

9.2. **Precedent Legal Judgements**

Enforcement and Exempted Development

9.2.1. 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*.

Reformulation of Referral Question

9.2.2. 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.

Change of Use / Intensification of Use / Material Change of Use

9.2.3. In *Butler v Dublin Corporation* [1999] 1 ILRM, the courts indicated that a fleeting change in use of lands (such as that involved in a one or two-day pop concert) would not represent a material change in use such as to trigger a requirement to obtain planning permission, notwithstanding the judgement regarding concerts at Slane[3]. It was further noted that whilst the expression 'intensification of use' is not to be found in our planning code or its English equivalent, the legislatures in both jurisdictions must have envisaged that a particular use could be so altered in character by the volume of activities or operations being carried on that the original use must be regarded as having materially changed, e.g., one man digging up stones in a field and carrying them away in a wheelbarrow being succeeded by fleets of bulldozers etc. on the same site. Whilst the use in both instances may properly be described as 'quarrying', that intensification to a particular degree may constitute a material change in original use.

9.2.4. In *Roadstone Provinces Ltd v An Bord Pleanála* [2008] IEHC 2010, the courts approved the decision in *Galway Co Co v Lackagh Rock* (cited below) and concluded

[3] *Earl of Mountcharles v Meath County Council* [1997] 1 ILRM

that the Board would have to consider that there had been a change in use, including any intensification of use which may amount to a change in use of the lands, before looking at planning considerations to determine the materiality of the identified change.

9.2.5. In *Monaghan County Council v Brogan* [1987] IR 333, the courts confirmed that the term "material" means material in planning terms, that is whether the issues raised by the change of use would raise matters normally considered by a planning authority if it were dealing with an application for permission, i.e., residential amenity, traffic safety or policy issues in relation to statutory plans. This decision was confirmed in *Westmeath Co Co v Quirke & Sons* (unreported, 23 May 1996), where consideration of the materiality of a change in use means not only the use itself but also its effects.

9.2.6. In *Galway Co Co v Lackagh Rock Ltd* [1985] IR 120, the courts concluded that in determining whether or not a present use was materially different to a previous use, regard must be had to matters of planning concern arising from the previous use when compared with the present use. If these matters were materially different than the nature of the present use, it must be equally materially different in planning terms.

9.2.7. In *Stanley v An Bord Pleanála* [2022] IEHC 177, the courts refused a challenge to the validity of the Board's determination that a change of use was 'material' and affirmed the authorities under *Galway Co Co, Monaghan Co Co* and *Roadstone Provinces*.

Material Change of Use by Intensification of Use – The Tests

9.2.8. In *Weston Ltd v An Bord Pleanála* [2010] IEHC 255, the courts identified five principles by reference to which a material change of use through the intensification of activity may be found to exist. Firstly, if a different product is being produced, the object of the operation may have changed to the extent that an unauthorised intensification of use may have occurred. Secondly, a change in the method of production, whereby a low level of production is geared into an industrial scale etc., may lead to a finding of intensification. Thirdly, intensification of use arises in a comparison of the scale of operations as compared with the prior use, albeit within the tolerance of some reasonable level of variation. Fourthly, the court has regard to the effects in planning or environmental terms of such intensification in order to assess whether there has been a material change for planning purposes, however a more successful use of particular land, which has a low impact in terms of such planning considerations as traffic, visual amenity, appropriateness to the area, strain on infrastructure and sustainability, will not necessarily be found to be an intensification of use. Finally, if

there is a planning permission in an intensification of use claim, then it must be construed objectively as to what it permits, i.e., what is permitted by law on the site?

Approach to Determining Gradual Intensification

9.2.9. In *Cork County Council v Slattery Pre Cast Concrete Ltd* [2008] IEHC 291, the approach to be adopted in cases where there is a gradual intensification of use over time was identified. It was held that the court should assess, as of the relevant date for the purposes of the limitation period, what development (in the shape of a material change of use) has taken place. That development, being the intensification which had already occurred as of the relevant date for the purposes of the limitation period, can no longer be the subject of enforcement but any further intensification which is sufficient to ground a finding of a further material change of use within the period, can. This approach was endorsed in *Lanigan & Other v Barry & Others* [2016] IESC 46.

Improvement of a structure etc.

9.2.10. In *Michael Cronin (Readymix) Ltd v An Bord Pleanála and Others [2017] IESC 36, [2017] 2 I.R. 658*, the Supreme Court considered whether an extension to a structure (a concrete yard within a quarry) constituted exempted development. The court agreed with the Board's submission that the exemption under Section 4(1)(h) of the Act applies to a limited category of works that amount to alterations (with the concepts of maintenance and improvement being subsets), which are either wholly internal or, if external, are insignificant. An "improvement", for the purposes of an exemption, must be something that relates to the internal use and function of the structure, resulting in either no externally noticeable difference or an insignificant difference.

10.0 **Assessment**

10.1. **Preliminary Points**

Referrer's Case

10.1.1. 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:

- Alleged obstruction to environmental reporting
- Alleged suppression of environmental complaint data
- Allegations regarding other regulatory compliance issues
- Allegations regarding the withholding of AIE and FOI requests
- Concerns raised regarding the Development Plan making process

10.1.2. 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 concerns raised above do not seek to confirm whether something is development or not, they are expressing concerns about a development.

10.1.3. 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

10.1.4. The format and content of the planning authority's declaration is set out in full above.

10.1.5. Similar to the framing of the question, the planning authority declaration could be, in part, construed as a response to concerns 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 exempt development. The High Court held in that case that the applicant had an available remedy to apply to the Board to determine that question.

10.1.6. That is evidently not the case here and the referrer appears to be primarily concerned with Strandhill WWTP and the upgrades thereto as previously authorised, to use a neutral term, under Part 8. Issues pertaining to that are a matter for the Council and Uisce Éireann and/or the EPA and the courts, where injunctive relief may be pursued[4].

[4] Section 160 of the Planning Act provides for injunctions in relation to unauthorised development.

10.1.7. It is, however, important to note that there is no evidence that the Strandhill WWTP has strayed beyond its "footprint" having regard to publicly available aerial photos. In this regard, I note an aerial image from March 2009 clearly indicates the delineated curtilage of the treatment plant. This was observed during my site inspection as a concrete post and chainlink fence topped with security wire. The curtilage is unchanged in a later aerial image from April 2014 with evidence of the upgrade works ongoing within the curtilage in an image from May 2018. Those works appear to have been completed in a subsequent image from March 2021 and this is corroborated in correspondence from Uisce Éireann to the referrer which states that the works were completed in February 2020. The site is unchanged in the latest image from May 2026.

10.1.8. The issue of contemporary environmental assessments, including AA, in respect of Part 8 development, whilst novel, is not a matter for the Commission in this case and it is the position of Uisce Éireann that the works were authorised in September 2007.

The Question

10.1.9. There is, however, aspects of the referrer's wide-ranging set of referral grounds that could be reformulated to fit within the scope of a Section 5 referral. I particularly note the expressed declaration regarding Killaspugbrone Looped Trail where the planning authority declared that the alleged intensification of trail use was not development.

10.1.10. 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 increased usage of Killaspugbrone Looped Trail in the townlands of Killaspugbrone, Larass and Carrowbunnaun in Strandhill, County Sligo, is or is not development or is or is not exempted development.

10.2. Is or Is Not Development

10.2.1. 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. There is no apparent dispute in relation to the existing walking routes which facilitate the trail and therefore the question centres on whether increased usage represents a change of use and if that change would be material in planning terms.

10.2.2. Indeed, having reviewed the voluminous documentation referred to in the submission, including that related to Variation No. 1 of the Sligo County Development Plan 2011-2017 ('Strandhill Mini-Plan'), I note that the existing trail is indicatively outlined in Map 3 of same. The associated draft text of that variation outlines the intention to maintain existing trails ('section 44.7'). Whilst the subsequent Manager's Report on the submissions received on the draft notes that any improvement to the trails will be undertaken in consultation with the landowners, it states that the 'indicative recreation trails' represent recognition of existing walking routes "used by locals in Strandhill".

10.2.3. In this similar regard, it is also worth noting that Amendment A-11 to that particular Development Plan process, which was excluded on environmental grounds as noted by the referrer, did not seek to extend any of the existing coastal walkways, as claimed.

10.2.4. It is the referrer's contention that a material change of use has been arrived at by reason of intensification of use. In this regard, they suggest that visitors to Killaspugbrone Looped Trail now exceed 500,000 annually. To put this in context, according to Fáilte Ireland data[5], Dublin Zoo received just over 1 million visitors in 2024 whilst the National Botanic Gardens received around 600,000, and the visitor numbers to Blarney Castle was under 500,000. Locally, the largest attraction in Co. Sligo was Drumcliffe Church and Grave of W.B Yeats with 100,000 visitors recorded.

10.2.5. The referrer cites an Appropriate Assessment Screening Report (LUC, February 2025) prepared for the Strandhill Public Realm Enhancement Part 8 in support of this contention. I have reviewed this report and I have been unable to pin-point where exactly it "admits to 500,000+ visitors" as claimed. In this regard, it is important not to conflate the visitor numbers to Strandhill as a whole with usage of the walking trail.

10.2.6. Moreover, I note a document titled 'FOI 126/21 Report' submitted with the referral. It appears to be data from sensor or detection beam counters for four geographic locations in Strandhill for the months of April to October, inclusive. The surveyed locations are stated as Queen Maeve Trail, Knocknarea Trail, Airport and Strandhill Carrowbunnaun. The August record for Queen Maeve Trail is illegible but the monthly figures generally reflect a seasonal summer peak tapering off in April and October.

[5] Fáilte Ireland. (n.d.). *Visitor numbers to attractions dashboard.* Retrieved October 15, 2026, from https://www.failteireland.ie/en/research-and-insights/visitor-numbers-dashboard

10.2.7. The total 7-month figure for 'Knocknarea Trail' is 21,803 whereas the figures for 'Airport' and 'Strandhill Carrowbunnaun' are 29,215 and 71,933 respectively. Even if these figures were extrapolated for a 12-month period, I am not fully persuaded that more than 500,000 people use the trail annually. Indeed, within these survey figures an element of double counting would exist. I thus reiterate the point that overall visitor numbers to Strandhill should not be conflated with usage of the trail. Similarly, whilst I do accept it is now a national trail, that does not in and of itself intensify the usage.

10.2.8. Whilst it is possible over time for a gradual intensification of use to lead to a material change in use, as detailed in the case law cited above, I am not convinced that this is the case presently with the trail. Nor am I convinced that the current usage of the trail is materially different in planning terms to represent a change of use in the first place.

10.2.9. Whilst I also acknowledge the fundamental environmental concerns threaded through the referrer's submission, and I fully accept that these concerns are genuine and are reflective of the anthropogenic pressures facing Strandhill as a tourism resource, they are peripheral to this Section 5 process. In this regard, it is important to state that the Commission has no legal jurisdiction to impose a moratorium on further development generally or a stay on works at the trail specifically as the referrer has requested.

Conclusion on Development

10.2.10. The increased usage of Killaspugbrone Looped Trail does not constitute a material change in use by reason of intensification and is thus not considered development.

10.2.11. I recommend that the planning authority declaration be partly upheld in this regard.

10.3. Is or Is Not Exempted Development

10.3.1. In the absence of development, there is no requirement to consider the various exempted development provisions under the Act and Regulations. I do, however, note the generous statutory exemptions afforded to local authorities and statutory undertakers under Sections 4(1)(f) and (g) specifically, as detailed above, as well as certain amenity and recreational exemptions where there is no charge for admission.

10.4. Restrictions on Exempted Development

10.4.1. As noted, in certain cases, development normally deemed exempted development may be de-exempted by virtue of Section 4(4) of the Act or Article 9 of the Regulations.

Section 4(4)

10.4.2. Development shall not be exempted development if an Environmental Impact Assessment (EIA) or an Appropriate Assessment (AA) of the development is required.

10.4.3. The referrer notes this in their submission and states that the planning authority has erred in law. A de-exemption only applies, however, if there is a reliance on an exemption in the first instance. The planning authority have concluded that there is no development and therefore there is no requirement to consider any de-exemptions.

10.4.4. For the reasons outlined above, and as previously noted, I agree with this conclusion.

11.0 AA Screening

11.1.1. As noted, in deciding upon a referral under section 5 of the Act, Section 177U(9) requires the Commission to conduct an Appropriate Assessment, where appropriate.

11.1.2. In the absence of development, it is not appropriate to conduct an AA screening.

11.1.3. In terms of AA, it is also worth highlighting a mapping anomaly associated with Cummeen Strand/Drumcliff Bay (Sligo Bay) SAC whereby the footprint of the Strandhill WWTP straddles the SAC boundary. These boundary discrepancies were previously acknowledged by the planning authority during the process of varying the Sligo County Development Plan 2011-2017 and are a matter for the NPWS to address.

12.0 Recommendation

12.1. I recommend that the Commission decide this referral in accordance with the following Draft Order.

WHEREAS a question has arisen as to whether the increased usage of the Killaspugbrone Looped Trail in the townlands of Killaspugbrone, Larass and Carrowbunnaun inStrandhill, 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 12th

day of March, 2026 stating that the "intensification of use of the Killaspugbrone Looped Trail, currently exceeding 500,000 annual visitors" etc. does not constitute development:

AND WHEREAS Áine Nic Amhlaidh referred this declaration for review to An Coimisiún Pleanála on the 27th day of March, 2026:

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

(a) the nature, scale, extent and scope of the use,

(b) the existing and past site context,

(c) Sections 2, 3, 4, 5, 177U and 179 of the Planning and Development Act, 2000, as amended,

(d) Articles 6, 9 and 80 of the Planning and Development Regulations, 2001, as amended,

(e) Class 33 (c) 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 Strandhill Wastewater Treatment Plant Improvement Works Part 8,

(g) relevant precedent referrals and judgements,

(h) the pattern of development in the area, and

(i) the provisions of the Sligo County Development Plan 2024-2030, as varied, as they apply to the referral site:

AND WHEREAS An Coimisiún Pleanála has concluded that:

(a) There is no evidence presented in the referral documentation of a change of use of Killaspugbrone Looped Trail by reason of intensification of use,

(b) In the absence of a change of use there is no “material change in the use” that would constitute “development” under Section 3(1) of the Planning and Development Act, 2000, as amended;

(c) In the absence of “development” there is no requirement for a contemporary Appropriate Assessment (AA) or screening for AA:

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 increased usage of Killaspugbrone Looped Trail in the townlands of Killaspugbrone, Larass and Carrowbunnaun in Strandhill, County Sligo, is not 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
22nd October 2026