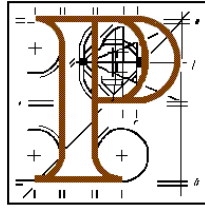


An Bord Pleanála



Inspector's Report

Referral Reference:	RL02. RL3472
Question Referred:	Whether the existing development of a detached stables building within the curtilage of an existing house is or is not development and is or is not exempted development.
Referrer:	Cavan County Council
Planning Authority (P.A.):	Cavan County Council
P.A. Reference:	None
Location:	Roebuck, Mountnugent, County Cavan.
Occupier:	Plunkett and Mary Govern.
Site Inspection:	22 June 2016
Inspector:	Patricia Calleary

1.0 INTRODUCTION

1.1 The background to this case arose from a complaint initially received by the Planning Authority, stating that unauthorised construction of a stables building had commenced. This led onto a warning letter and the commencement of enforcement proceedings regarding unauthorised development as the Planning Authority were of the view that the stables building was located within the curtilage of the house and did not benefit from exempted development provisions. In response to the enforcement notice, the landowner/occupier contends that the stables are for agricultural use and therefore constitutes exempted development. The Planning Authority referred this question forward to the Board under Section 5(4) of the Planning and Development Act 2000, as amended.

2.0 SITE LOCATION AND DESCRIPTION

2.1 The subject structure is located in the townland of Roebuck, located at the end of a cul de sac / laneway, c. 230m east of the R154 Regional route which connects northwards to the village of Mountnugent in County Cavan. The laneway has an unbound surface for the most part and serves 3 houses and lands. These houses include that of the landowner/occupiers (Plunkett and Mary Govern) in this referral case as well as Peter Gibson's house (one of the two observers in this referral) and also, as stated in written correspondence, the house occupied by the landowner's sister.

2.2 The site, c. 0.36ha in size comprises a dormer style house and a stable building within a gated house curtilage at the end of the existing laneway. There is a double agricultural gate positioned to the west of the house site. There are agricultural fields located to the rear (north) and to the east of the house and stable site. The boundaries on both sides of the site are defined by mature hedge and trees and the rear boundary is semi-open connecting with the land to the rear which it is stated is used by the landowner (Mary Govern) for agricultural / equine activities. An exercise area was present to the rear of the shed.

2.3 The wider area is primarily rural with a number of one-off houses. The site is located close to the Cavan/Meath border and lies c.3.5m east of Lough Sheelin.

3.0 DEVELOPMENT AS CONSTRUCTED

The stables building, with a stated floor area of c.104 sq.m consists of a simple form rectangular footprint and an overall height of c.6m. Walls are

finished externally in a constituted stone façade identical to that of the house façade on site. The roof finish is a dark grey cladded covering on a pitched roof structure. The stable building lies within the curtilage of and adjacent to the principal house, sited generally along the front building line of the house and is readily accessed from the driveway. The building is laid out as 4 stables accessible from it's west side facing the east house gable and the front has a roller door insert.

4.0 PLANNING HISTORY

4.1 Plan Ref: 04/1120 – On 6th September 2004, permission was granted to *‘demolish existing dwelling and erect dormer style **dwelling, garage, stables, well, proprietary sewage treatment unit, entrance and entrance walls at Roebuck, Mountnugent.**’*

A scanned copy of the drawings and grant of permission are contained on the boards file.

5.0 GROUNDS OF REFERRAL

5.1 On 30th March 2016, a declaration was sought by Cavan County Council in accordance with Part 1, Section 5(4) of the Planning and Development Act 2000, as amended with respect to *‘whether the existing development of a detached stables building within the curtilage of an existing house is development and is not exempted development’.*

5.2 The referral is accompanied by a written report which is supported by photographs, maps and a copy of an enforcement notice served on the owner. The principal points of the submission can be summarised as follows:

- Planning permission issued under PI Ref: 04/1120 on 11 October 2010. A commencement notice was lodged on 20 December 2004. Permission expired on 10th October 2009.
- An initial complaint was received from Mr. Peter Gibson, Ratheever, Mountnugent on 18th June 2013, alleging that the construction of a garage/stables had commenced, questioning if the works had the benefit of planning permission.
- A site inspection on 20th June 2013 by the planning enforcement officer revealed a concrete slab, blocks laid on top of the concrete slab, precast effluent storage tank at the end of the concrete slab. A warning letter issued.

- A response was received from the landowner, Mary Govern stating that they considered the construction of an agricultural building was exempted development. It also stated intention to apply for retention permission.
- Letter received from complainant Mr. Liam Gibson stated works to the shed had continued and were now complete.
- A follow up site inspection on 2nd October 2013 by the planning enforcement officer revealed that a stable building had been constructed on the lands. It was constructed in a different location, 6-8m forward of the previously approved permission under PI Ref 04/1120.
- A subsequent response from the landowner dated 3rd October 2013 stated that the building is for horse breeding and that the building had been registered as an equine premises with the Department of Agriculture. On 4th October 2013 a further response to the warning letter was received by the Planning Authority, stating that the stable building did not require planning permission and requesting clarification from the Planning Authority regarding what breach of planning law had occurred.
- The Planning Authority issued a second warning letter on 11th November 2013 which stated that the stables building were constructed within the curtilage of a dwellinghouse and does not fall within the exempted developments categories listed under Schedule 2, Part 1, Class 3 of the Planning and Development Regulations 2001, as amended.
- An enforcement notice issued on 26th March 2015 for the construction of a stables building within the curtilage of a dwellinghouse without planning permission, wastewater treatment unit was installed at a different location than permitted under Plan Ref: 04/1120 and for non-compliance with 5 conditions attached to the grant of that permission.
- A response received from the landowner to the enforcement notice on 19th May 2015 stated that permission was granted and the stables building sub-floor was constructed prior to the expiry of the planning permission; also considers the development is exempted development and while the effluent treatment is not in the exact same position as permitted, does not affect the planning of the area, interfere with others rights or pose a threat to public health.

- In relation to exemptions relating to agricultural development under Schedule 2 Part 1 (Classes 1 to 8 and 9 to 13), the Planning Authority states that such exemptions are not available for development within the curtilage of a house. In relation to the effluent treatment plant, the Planning Authority restates its position that it is unauthorised as was not constructed with the benefit of planning permission or in the same location as permitted under Plan Ref: 04/1120.

6.0 RESPONSES

6.1 Owner/Occupier response to referral

The following is a summary of the main points included in the response of the landowner / occupier (c/o Sheelin & McCabe) to the referral.

- Permission was granted in 2004 for the stables and the foundations and sub floor were constructed prior to the expiration of that permission.
- Stables building was completed on the basis that it constituted exempted (agricultural) development. The building is less than 200 sq.m, does not exceed 7m, is not within 10m of the public road and is greater than 100m from Mr. Peter Gibson's house.
- There are 3 habitable dwellings in the vicinity (Plunkett & Mary Govern's own dwelling, dwelling occupied by Mary Govern's sister and the complainant, Peter Gibson).
- Accepts the stable is **within the curtilage of the house** but it is **also within the curtilage of the adjoining lands** within which Mary Govern carries out **agricultural/equine activities**. States her holding and stables are a **registered equine premises** with Department of Agriculture, Food and Marine (DAFM).
- Only reason that the dwelling was separated from the lands was to enable a mortgage to be secured on the dwellinghouse.

Provides description to photographs attached as follows:

- Photo 1 (taken in 2002) – Shows original farmhouse, farm shed and adjoining lands. Lands were farmed by Mary Govern's grandfather all of his life.
- Photo 2 (taken in 2014) – Shows current situation. States stable block is situated on the site of the old farm building and part of the lands are being used as a sand arena. Farmland is all farmed as one unit.

In addition, the following attachments are enclosed:

- Site layout map
- OS Map with landholding outlined in blue
- Aerial Photograph stated to be taken in 2002 (with original farmhouse and shed)
- Aerial Photograph stated to be taken in 2014 (with current house and stable block).

6.2 First Observer response to referral – Mr. Liam Gibson

The following is a summary of the main points included in the response from Mr. Liam Gibson, Raheever, Mounnugent, to the referral request as received by the board on 25th April 2016.

- Building use is for horse breeding and storage of feed stuff resulting in extra traffic and health and safety issues.
- Foundations and sub floor were constructed post the expiration of the planning permission.
- Septic tank and percolation area also in different location.
- In May 2013, a second septic tank was constructed alongside the gable of the unauthorised building, without planning permission.
- Other ground works have taken place on site.

6.3 Planning Authority Response to first observer's submission

The Board invited the Planning Authority to respond to the submission received from Mr. Liam Gibson. The Planning Authority's response was received by the Board on 3rd June 2016 and the following provides a summary of the main points.

- The Planning Authority have no knowledge or evidence of the stables having changed its use from residential to commercial business.
- Refers to extract of warning letter outlining that the PA considered the stables to be in the curtilage of the dwellinghouse and accordingly would not fall within the exempted provisions listed in Schedule 2, Part 1, Class 3 of the Planning and Development Regulations (2001) as amended.
- Location of septic tank and percolation area is not subject of the referral.
- No further evidence that unauthorised works have taken place.

In addition, the following attachments are enclosed:

- A copy of an internal memo is enclosed (dated 31st May 2016), backing up that the development is not used for horse breeding and that the main equine activity practices on the property appears as show jumping.
- A copy of a fax correspondence from Ronan Healy – Fore Enterprises (dated 21st October 2009) on behalf of a client, Mr. Gibson who raises concerns that unauthorised works had commenced on the Govern site.
- Reply to Ronan Healy – Fore Enterprises (dated 14th October 2009) with subject matter – breaking of entrance into existing lane. It states that works being carried out by Plunkett Govern is substantially compliant and that the file is closed.

6.4 Owner/occupiers response to first observer’s submission.

The following is a summary of the new relevant points contained in the further response received from the owners, Plunkett and Mary Govern on 1 June 2015.

- Liam Gibson does not live on the lane.
- Number of horses at max = 4. Currently 3 on the farm.
- Restates that foundations and subfloor were constructed prior to the expiration of planning permission.
- Percolation area was not interfered with when the stable building was constructed.
- All works regarding the stable block were carried out in accordance with Department of Agricultural Standards.
- No second septic tank was constructed.
- Surface water has not been diverted to Mr. Gibson’s lands.

A map (extract from The Property Registration Authority) is attached.

6.5 Second Observer response to referral and first observation – Mr. Peter Gibson.

Information on file states that a telephone call was received by the An Bord Pleanála from Mr. Peter Gibson requesting that he be invited to comment on the referral. Following a subsequent invitation, a response was received by the Board on 1 June 2015. The following is a summary of the relevant points contained in that response.

- Stables constructed after expiry of permission.
- Septic tank and percolation area constructed in a different location than granted.
- Stables built above the percolation area.
- Building use has changed for use for horse breeding and storage of feedstuff.
- Increase in traffic on road has resulted. Private gravel laneway not safe.

In addition, the following attachments are enclosed:

- Copy of correspondence from Cavan County Council regarding the updated position on the enforcement notice on Plunkett and Mary Govern is enclosed. The letter is undated but it refers to Mr. Gibson's letter of 19th January 2016.
- Copy of letter (dated 8th December 2010) from Cavan County Council to Peter Gibson regarding the warning letter issued to Plunkett & Mary Govern.

7.0 RELEVANT PREVIOUS REFERRALS

7.1 From an examination of the Board's database of references/referrals, I can find no previous referral or reference that has directly dealt with the issue of a horse stable building within the curtilage of a house. The following cases are relevant for horse stables / agricultural structures in the context of the issues raised in the current referral.

RL3098 - The erection of a single storey agricultural building was considered to be development which is exempted development.

RL2763 - The retention and completion of a shed to be used for agricultural storage purposes was considered to be development which is not exempted development.

8.0 STATUTORY CONTEXT

8.1 The relevant provisions of the Planning and Development Act 2000 as amended and the Planning and Development Regulations of 2001 as amended are summarised as set out below.

8.2 The Planning and Development Act 2000 as amended.

8.2.1 Section 2(1) provides the following interpretations:

Agriculture: *'includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the **training of horses** and the rearing of bloodstock, the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and 'agricultural' shall be construed accordingly'.*

Structure: *'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'.*

Works: *'any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior of a structure'.*

8.2.2 Section 3(1) provides the following interpretation:

Development: *'except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land'.*

8.2.3 Section 4(1)(a) states *'Development consisting of the use of any land for the purpose of agriculture and development consisting of the use for that purpose of any building occupied together with land so used'.*

8.2.4 Section 4(2)(a) states *'The Minister may by regulations provide for any class of development to be exempted development for the purposes of this Act where he or she is of the opinion that:-*

(i) *By reason of the size, nature or limited effect on its surroundings, of development belonging to that class, the carrying out of such development **would not offend against principles of proper planning and sustainable development.***

8.2.5 Section 4(2)(b) states *'Regulations under paragraph (a) may be subject to conditions and be of general application or apply to such area or place as may be specified in the regulations'.*

8.3 Planning and Development Regulations 2001 as amended.

8.3.1 **Article 6(1)** identifies that, subject to Article 9, certain development shall, **subject to conditions and limitations**, be exempted development for the purposes of the Act, as per Schedule 2 to Regulations provided that such development **complies with the conditions and limitations specified in column 2** of the said Part 1 opposite the mention of that class in the said column 1.

8.3.2 **Article 6(3)** of the Regulations states that “*subject to Article 9 in areas other than a city, town or an area specified in Section 19(1)(b) of the Act or the excluded areas as defined in Section 9 of the Local Government (Reorganisation) Act, 1985 development of a class specified in Column 1 of Part 3 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in Column 2 of the said Part 3 opposite dimension of the class in the said Column 1*”.

8.3.3 **Class 3 of Part 1 of the Second Schedule (General)** of the 2001 Regulations refers to **development within the curtilage of a house:**

‘The construction, erection or placing within the curtilage of a house of any tent, awning, shade or other object, greenhouse, garage, store, shed or other similar structure’. Column 2 refers to conditions and limitations that apply (see extract included in Appendix).

8.3.4 **Class 6 of Part 3 of the Second Schedule (Rural)** of the 2001 Regulations refers to **agricultural structures:**

*‘Works consisting of the provision of a roofed structure for the **housing** of cattle, sheep, goats, donkeys, **horses**, deer or rabbits, having a gross floor space not exceeding 200 square metres (whether or not by extension of an existing structure), and any ancillary provision for effluent storage’.*

Column 2 refers to conditions and limitations that apply (see extract in Appendix), including the following:

1. No such structure shall be used for any purpose **other than the purpose of agriculture.**
2. The gross floor space of such structure together with any other such structures situated within the same farmyard complex or within

100 metres of that complex **shall not exceed 300 square metres** gross floor space in aggregate.

3. **Effluent Storage** to be constructed in line with the Department of Agricultural and Department of Environment and Local Government requirements and have regard to the need to avoid water pollution.
4. No such structure shall be situated, and no effluent from such structure shall be stored, **within 10 metres of any public road.**
5. No such structure within 100 metres of any public road shall exceed **8 metres in height.**
6. No such structure shall be situated...within 100 metres of any house (other than the house of the person providing the structure) **save with the consent in writing of the owner** and, as may be appropriate, **the occupier or person in charge thereof.**
7. **No unpainted metal sheeting** shall be used for roofing or on the external finish of the structure.

8.3.5 Restrictions on exemption

Article 9(1)(a) of the Regulations sets out a number of restrictions and exemptions. The specific exemptions which are relevant to the current referral include:

*(iii) **Endanger public safety** by reason of traffic hazard or obstruction of road users.*

*(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 impact on the integrity of the environment.*

9.0 REFERRAL QUESTION

- 9.1 The Board have been asked by the Planning Authority as to *‘whether the existing development of a detached stables building within the curtilage of an existing dwellinghouse is development and is not exempted development’*. The Planning Authority contend that the stable building is located within the curtilage of the house and therefore is not exempted development. The landowner/occupiers accepts that this may be so but firmly submit that it is also within the curtilage of the adjoining agricultural lands. In that context and as will become clear in my assessment under Section 10 below, I consider that in order to bring balance to the referral question, it should be restated as follows:

‘Whether works comprising of an existing detached stables building for the purpose of housing of horses, constructed at Roebuck, Mounthugent, County Cavan is or is not development and is or is not exempted development’.

10.0 ASSESSMENT

10.1 Introduction

I have assessed the referral under the following headings:

- **Development**
- **Planning History**
- **Exempted Development – Curtilage of a house**
- **Exempted Development – Agricultural Structure**
- **Restrictions on Exemptions – Article 9**

10.2 Development

At the outset, the construction of a detached stable building consists of a structure which **is ‘works’** as defined in Section 2(1) of the Planning and Development Act, as amended, and which in turn **is ‘development’** within the meaning of Section 3(1) of the Act. The remainder of my assessment centres on whether the development undertaken can be considered exempted development.

10.3 Planning History

10.3.1 Permission was granted by Cavan County Council for a house and stable building on site under PI Ref: 04/1120. It appears from documentation on file that the house was built first. There are arguments as to when the stables building was built. The invited observers (**Liam and Peter Gibson**) state it was built after the permission expired and the landowners/occupiers (**Governs**) state that it was commenced prior to the expiration of the planning permission where works to subfloor level were completed. My inspection of the planning drawings and documents reveal that the stable was constructed as a smaller footprint and in a different location, 6-8m forward, of the previously approved permission under PI Ref 04/1120.

10.3.2 I accept that it is perfectly in order to have built the house, entrance and its domestic wastewater treatment system on foot of the permission referred to (PI Ref: 04/1120), i.e. omitting the stable building and garage which was also permitted under that same planning

permission. There is no requirement to build out all of the parts of development permitted once they are severable, which I consider they clearly are. This concept of 'severable development' has been clarified under planning law cases, e.g. *Dwyer Nolan Developments Limited versus Dublin County Council [1986] IR 130*, where it was held that a planning permission did not have to be implemented in its entirety unless the planning authority imposes a condition to that effect, so long as the partially constructed portions were severable.

10.3.3 Thereafter and separately, it is also in order to carry out development, including the construction of the stable building, provided it has a grant of planning permission **or** that it constitutes **exempted development**.

10.3.4 Against that background, I do not agree with the argument put forward by the landowner's agent that the stable building was built and completed with the benefit of a live planning permission as it was ultimately built out differently and was not constructed prior to the expiration of the grant of planning permission. The evidence on file leads me to conclude that the stables building was not built with the benefit of planning permission.

10.4 Exempted Development – Curtilage of house

10.4.1 The Planning Authority consider that the stable building is located within the curtilage of a house and would not benefit from the exempted provisions listed in Schedule 2, Part 1, Class 3 of the Planning and Development Regulations (2001) as amended. In considering this argument, it is necessary to consider what is meant by the curtilage of a house. The term curtilage is not defined under the Planning and Development Act 2000. However, the Oxford English Dictionary defines it as 'an area of land attached to a dwelling-house and forming one enclosure with it'. The government's Guidelines on Architectural Heritage Protection (in the context of Protected Structures) state that curtilage can be taken to be the parcel of land immediately associated with that structure.

10.4.2 When I visited the site, it became very clear that the stable building lies within the parcel of land immediately associated with the house. The stable is located within the side garden of the house and is accessed via the house driveway. The stable and house are located within the red line boundary of the site of the house (and a stable building) granted planning permission granted under PI Ref: 04/1120.

10.4.3 Schedule 2, Part 1 provides for classes of development which are exempted (general). Class 3 provides for 'The construction, erection or placing **within the curtilage of a house** of any tent, awning, shade or other object, greenhouse, garage, store, **shed** or other similar structure'. This class **does not** provide for a **horse stable** building. I am satisfied, and concur with the Planning Authority, that the horse stable development would not benefit from the exempted development provisions under Schedule 2, Part 1, Class 3 of the Planning and Development Regulations (2001) as amended.

10.5 Exempted Development – Agricultural Structure

10.5.1 The other argument put forward by the landowner is that the stable building is exempted development in its own right as an agricultural building.

10.5.2 The landowners' rationale as put forward is that the building is less than 200 sq.m, does not exceed 7m in height, is not within 10m of the public road and is greater than 100m from Peter Gibson's house. The landowner accepts that the stable is within the curtilage of the house on site but affirms that it is also within the curtilage of the lands directly abutting the house within which Mary Govern carries out agricultural/equine activities. A map of those lands surrounding the house and stable site was received by the Board (marked as Map B) on 27th April 2016. It is further submitted that the dwelling curtilage was only separated from the lands so as to enable a mortgage to be secured for the construction of the dwellinghouse. The landowners state that a similar arrangement existed on the site previously whereby the original farmhouse and farm sheds (since demolished to accommodate the current house and stable building) were located side by side on the farm and an aerial photograph of the previous arrangement was also submitted in support of this argument. It is also stated that the landholding and stables building are a registered equine premises with the Department of Agriculture, Food and the Marine under separate statute.¹

10.5.3 On the day of my inspection I noted that the rear boundary of the site in which the house and stables are located was semi-open and connected directly with the adjoining lands to the rear. In relation to the

¹ The registration of an equine premises is required under 'Application for registration of an Equine Premises under the Control on Places where horses are kept. Regulations 2014 (S.I. No 113 of 2014)'. The requirement for registration also extends to the use of land for keeping of horses.

map submitted to support the landowners position of carrying out agricultural/equine activities, this is a superimposed overlay marked as a blue line boundary on an OSI base map and the land ownership has not been verified by copies of Folio details or similar evidence. Nonetheless, the farming use of those lands by Mary Govern has not been disputed by any party in the referral process so I accept the information as put forward. I consider the focus of this part of my assessment should be on whether or not the development would fall within Article 6(3) of the Regulations which states that “*subject to Article 9 in areas other than a city, town or an area specified in Section 19(1)(b) of the Act or the excluded areas as defined in Section 9 of the Local Government (Reorganisation) Act, 1985, development of a class specified in Column 1 of Part 3 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in Column 2 of the said Part 3 opposite dimension of the class in the said Column 1*”.

- 10.5.4** Article 6(3) effectively provides for exemptions for agricultural structures **in rural areas**. Of note, there are **no exclusion** for agricultural structures which lie adjacent to the principal house, or within its curtilage **in a rural area**. The category of buildings which are exempted and the limitations are set out under Class 6 of Part 3 of the Second Schedule (Rural) of the 2001 Planning and Development regulations, as amended. This class specifically allows for ‘*Works consisting of the provision of ‘a roofed structure for the housing of cattle, sheep, goats, donkeys, horses, deer or rabbits, having a gross floor space not exceeding 200 square metres (whether or not by extension of an existing structure) and any ancillary provision for effluent storage*’.
- 10.5.5** Clearly, the horse stable building which is the subject of this referral fits within Class 6 category. However, the conditions and limitations set down under the same schedule must also be considered. I have listed these in summary under Section 8 above and provided a copy in the Appendix to this report. There are 7 conditions/limitations in all.
- 10.5.6** There can be no argument that the development of a stable building for use of keeping of horses does not contravene the majority of the conditions/limitations, including No.1 (agriculture purpose), 2 (gross floor space not to exceed 300 sq.m within or close to a farmyard complex), 4 (location greater than 10m from public road), 5 (not to exceed 8m in height if within 100m of a public road), 7(no unpainted metal sheeting).

10.5.7 In relation to **Condition/Limitation No.3** (adequate effluent storage facilities), the landowners' state that all of the works regarding the stable block exceed the minimum specification required by the Department of Agriculture, Food and Marine (DAFM). However, they have not provided any documentary evidence or drawings to support this statement. The DAFM Specification S108 lays down the minimum specification for dungsteads and there is no evidence put forward that such a dungstead exists or will exist. I noted a concrete tank at one end of the building but I have no information on the use of the tank or whether it is for clean or soiled water. Notwithstanding the statement from the owner's agent confirming works were carried out in accordance with the DAFM requirements, in the absence of drawings or documentary evidence, I cannot conclude that the stable building development satisfies Condition/limitation No.3.

10.5.8 Condition/limitation No.6 requires a separation distance of 100m from the agriculture structure to a house (or other sensitive building) or alternatively written consent from the owner and as may be appropriate, the occupier or person in charge thereof. I note that there is one adjoining landowner within 100m of the stables. This landowner is stated to be occupied by the stable owner's sister in correspondence received by the Board from the landowner on 27th April 2016 and the house is labelled as the stable landowner's uncle's house on a map received by the Board from the landowner on 1 June 2016. It is stated to lie 66m from the stable building. Notwithstanding that this adjoining and closest house is owned and/or occupied by a family relative, there is no evidence on file that written consent from the owner and, as may be appropriate, the occupier or person in charge, has been received. Accordingly, I am of the view that this condition/limitation has not been satisfied.

10.5.9 In conclusion, having regard to the evidence and information on file and based on my site inspection, I am satisfied that the stables building, clearly located in a rural area is used for the purposes of agriculture. It clearly meets Conditions 1,2,4,5 and 7 of the conditions and limitations. In relation to effluent storage facilities for the stable building, which I consider to be ancillary but intrinsic to the development, I consider that there is insufficient evidence on file which confirms that the stable building meets Condition No.3. Furthermore, based on the information on file, where no consent in writing of the owner and, as may be appropriate, the occupier or person in charge thereof in relation to the house located within a 100m distance from the shed structure.

Accordingly, it does not meet Condition No.6 of the conditions and limitations under Part 3.

Article 6(3) requires that in order to constitute exempted development, the development must comply with the conditions and limitations in Column 2. As it **does not comply with Conditions No.s 3 and 6**, I consider the development **is not exempted development** under Article 6(3) and Class 6 of Part 3 of the Second Schedule (Rural) of the 2001 Planning and Development regulations, as amended.

10.6 Restrictions on Exemptions – Article 9

10.6.1 While I have arrived at a view that the development of the stable building does not constitute exempted development and should the Board reach a different conclusion, I also continue my assessment regarding any of the restrictions on exemptions under Article 9 of the Regulations.

10.6.2 Article 9(1)(a) of the Regulations sets out a number of restrictions on exemptions. The specific exemptions which are relevant to this referral case include:

*(iii) **Endanger public safety** by reason of traffic hazard or obstruction of road users.*

*(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 impact on the integrity of a European site.*

I will deal with these restrictions as set out under.

10.6.3 Article 9(1)(a)(iii) – Endanger public safety – traffic hazard

The access to the site is off a laneway which itself lies off a well trafficked regional road (R154). The road has a continuous white line at the junction with the laneway. Visibility in both directions is reasonable. The provision of the stables did itself not involve creating any new access either onto the laneway or the R154. On the day of my site inspection, I saw no evidence on site that the stables would be used for anything other than the keeping of up to 4 horses. While the provision of housed accommodation for horses would arguably lead to increased visits to the site, I consider these would be low for a maximum of 4

horses. I do not consider that the increase in traffic as a result of the of the erection of the stables would materially alter or intensify the use of the entrance onto the regional road (via the laneway), such as to de-exempt the development under section 9(1)(a)(iii) on the grounds that the carrying out of the development would endanger public safety by reason of a traffic hazard or obstruction of road users.

10.6.4 Article 9(1)(a)(viiB) – Appropriate Assessment requirement

With regard to the restrictions and limitations set out in Article 9, I would consider that the restrictions under Article 9(1)(a)(viiB) which relates to an Appropriate Assessment requirement, would not be applicable to this referral site. The closest designated Natura 2000 sites are Lough Sheelin SPA (Site Code 004065), located 3.5km to the west of the stable building and Moneybeg and Clare Island bogs SAC (Site Code 002340), located c.5km to the west. There are no hydrological or other connections between the site and the SPA and SAC. It is reasonable to conclude that the construction of a modest horse stables for housing of horses would not impact on any of the qualifying interests or conservation objectives associated with Lough Sheelin SPA (Site Code 004065) or Clare Island bogs SAC (Site Code 002340).

11.0 CONCLUSIONS AND RECOMMENDATION

Having regard to the assessment above, I consider the subject stables building constitutes **works** which are **development** within the meaning of the Planning and Development Act 2000, as amended. While the development comes within the scope of Class 6 of Part 3 of Schedule 2 to the Planning and Development Regulations, 2001, it cannot be considered as exempted development, by virtue of not complying with Condition / Limitations No.s 3 and 6 in column 2 set out in class 6. I therefore consider that the stables building for the purpose of housing of horses, as constructed at Roebuck, Mountnugent, County Cavan **is not exempted development.**

Accordingly, I recommend that the Board issue a declaration in accordance with the following draft order:

DRAFT DECLARATION

WHEREAS a question has arisen as to whether works comprising of an existing detached stables building for the purpose of housing of horses, constructed at Roebuck, Mountnugent, County Cavan is or is not development and is or is not exempted development.

AND WHEREAS Cavan County Council, requested a declaration on the question from An Bord Pleanála under Section 5(4) of the Planning and Development Act, 2000, on the 30th March 2016.

AND WHEREAS An Bord Pleanála in considering this referral, had regard particularly to:

- (a) Section 2, 3 and 4 of the Planning and Development Act 2000,
- (b) Articles 6(1), 6(3), 9(1)(a)(iii) and 9(1)(a)(viiB) of the Planning and Development Regulations, 2001, as amended,
- (c) Class 1 of Part 1 of the Second Schedule (General) of the Planning and Development Regulations 2001, as amended,
- (d) Class 6 of Part 3 of the Second Schedule (Rural) of the Planning and Development Regulations 2001, as amended,
- (e) The submissions on file and the report of the inspector.

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The subject stable building structure constitutes works, which in turn constitutes development within the meaning of the Planning and Development Act 2000, as amended.
- (b) The development generally comes within the scope of Class 6 of Part 3 of Schedule 2 to the Planning and Development Regulations, 2001, as amended. However, in the absence of sufficient documentary evidence regarding adequate effluent storage facilities, it cannot be concluded that the stable building satisfies Condition/limitation No.3 of the same class. Furthermore, being sited within 100 metres of a dwellinghouse not within the ownership of the person providing the structure and without a letter of consent from the owner and, as may be appropriate, the occupier or person in charge thereof, the development does not comply with the Conditions / Limitation No.6 of that class.

- (c) The subject development is development which shall not be exempted development for the purposes of the Act as it does not comply with the Conditions/ Limitations No.s 3 and 6 specified in Column 2 of Class 6 of Part 3 of Schedule 2 to the Planning and Development Regulations, 2001, as amended.

NOW THEREFORE An Bord Pleanála in exercise of the powers conferred on it by Section 5(4) of the Planning and Development Act, 2000, hereby decides that an existing detached stables building for the purpose of housing of horses, constructed at Roebuck, Mountnugent, County Cavan is development and is not exempted development.

Patricia Calleary
Senior Planning Inspector.

01 July 2016