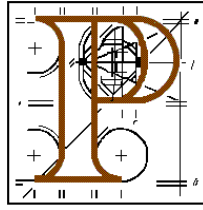


An Bord Pleanála



Inspector's Report

Referral Case: 07. RL3496

Question:

Whether an agricultural development, comprising of the alteration of an existing structure, involving a reduction in its height and the retention of the modified building, is or is not development, or is or is not exempted development, on lands at Famina Village, Inis Oirr, County Galway.

Referral Application

Planning Authority: Galway County Council

Planning Authority File No. ED16/25

Referrer: Stiofan Seoige

Owners: Stiofan Seoige

Date of Site Inspection: 28th October 2016

Inspector: Karla Mc Bride.

1.0 INTRODUCTION

1.1 Inspection

I inspected the site on 28th October 2016 when I took photographs that are included in the Appendix to this report together with a location map.

1.2 Site Location

The referral site is located on the island of Inis Oirr in County Galway, to the SE of the village and to the W of Lough Mor. The site forms part of an agricultural landholding and it is located within an elevated, open and exposed rural landscape. The site is occupied by the structure which is the subject of this referral.

1.3 Planning History

EN.16/030: The County Council's Enforcement section issued a Warning Letter on 17th February 2016 in relation to the unauthorised construction of a new building and enforcement proceedings were initiated on 25th April 2016.

1.4 Background

Mr Stiofan Seoige has erected a structure with a stated floor area of c.127.8sq.m. on a 0.319ha site. The structure is stated to be 9.14m wide, 13.98m deep and 8.53m high with a ridged roof. Following a complaint to Galway County Council that the structure may not have the benefit of a planning permission, an Enforcement file was opened under EN.16/030. A Warning Letter was issued to the owner/occupier on 17th February 2016. A reply was received from Mr. Seoige's Agent (O' Flynn Architects) on 14th March 2016 which stated that they would be submitting a report within 4-5 weeks. An Enforcement Notice was issued to the owner/occupier on 25th April 2016. The County Council conducted a site inspection 3rd June 2016 when it was noted that there was no activity on site and the building was closed up. No further correspondence was received from the Agent or the owner/occupier.

1.5 Submission with referral to Planning Authority

The Agent (O' Flynn Architects) acting on behalf of the owner/occupier (Stiofan Seoige) made a formal request for a Section 5 Declaration to the planning authority on 24th April 2016 in relation to the alleged unauthorised activity carried out on the landholding at Famina Village, Inis Oirr. The submission was accompanied by a report.

1.6 Planning Authority reports

The planning authority's decision on the Declaration is based on a report from its Planning Officer dated 24th June 2016, and the Declaration was issued on 29th June 2016.

The Planning Officer had regard to the relevant sections (2, 3 & 4) of the Planning and Development Act 2000 (as amended) and the relevant articles (6 & 9) of the Planning and Development Regulations, 2001 (as amended), including the conditions and limitations attached to Schedule 2, Part 3, Classes 6, 7 & 8 of the Regulations in relation to agricultural structures.

The Planning Officer had regard to the report submitted by the Agent for the owner/occupier. The Planning Officer concluded that the site in which the structure is located does not appear to constitute a farmyard or to be part of an existing farm, and that the applicant did not specify what the structure is to be used for other than for agricultural activities. The Planning Officer also had regard to the location of the structure within a Class 5 (Unique) Landscape, an SAC and an NHA.

The Planning Officer considered that the works referred to in the request for a Section 5 Declaration would not be exempted development. The construction of the structure and any subsequent modification to its height would be deemed to not be exempted development as the proposal would not meet the conditions and limitations as set out under Classes 6, 7 and 8, Schedule 2 of Part 3 of the Planning and Development Regulations 2001 (as amended).

2.0 THE DECLARATION

The Planning Authority issued the Declaration on 29th June 2016 which stated that the works do not constitute exempted development.

3.0 SUBMISSIONS

3.1 Submission by referrer

Mr Stiofan Seoige made a referral to the Board which was received on 18th July 2016 and it was accompanied by maps, drawings and photographs. The referrer asked the following question:

Whether an agricultural development, comprising of the alteration of an existing structure, involving a reduction in its height and the retention of the modified building, as illustrated on a drawing which forms part of the present submission, on land at Inis Oirr Co. Galway is development and/ or is exempted development.

The main points of the submission are summarised below:

Dimensions:

- The floorspace of the structure is less than 200sq.m., it is located 191m from the nearest house and over 10m from the public road, and the height would be reduced to under 8m; the development does not require planning permission by reason of its size, location or height as per Classes 6-9 in Part 3 of the Second Schedule.
- The partial demolition works required to reduce the height of the agricultural structure constitute exempted development and do not require planning permission.

- The Board determined (06.RL.3043) that a stable building which did not comply with the numerical controls in its current form, could be categorised as exempted development, if or when reduced in scale.
- The modified structure would comply with the height parameters for exempted development status under the P&D Regulations 2001.

Land use:

- There is no requirement for the structure to be located within an existing farmyard, the heading for Part 3 of the Second Schedule refers to Exempted Development – “Rural” and not “Farmyard” and there is no farming or farmyard precondition for exempted development status.
- Request the Board to confirm that the use of land for agricultural purposes does not require planning permission and that an agricultural structure positioned on this site is also capable of constituting exempted development as per Article 6(3) of the Regulations.
- The structure is located on an ancestral farm of c.20.65acres which is currently used for cattle and horses.
- The structure, as modified will house sheep, goats or donkeys under Class 6 of the Regulations.

Visual considerations:

- Article 9 withdraws exempted development rights in certain circumstances including under 9(1) (a) (vi) where it would interfere with the character of a designated landscape, view or prospect.
- The lands in the vicinity of the site comprise a barren landscape with stone walls; the alleged adverse impact of the structure on this area has not been explained by the planning officer; and the structure would not interfere with local visual amenity.

Ecological considerations:

- Article 9 withdraws exempted development rights where a structure would require an appropriate assessment or would affect wildlife.
- The planning officer's report refers to the SAC, the Wildlife Acts & the Flora Protection Order and the NHA, but it does not explain that the works involved in the erection of this structure actually affected any feature of environmental significance.

Conclusions:

- Request the Board to determine that the structure comprises development which is exempt under the P&D Regulations, 2001.

3.2 Response by Planning Authority

No response from the planning authority.

4.0 THE QUESTION

Having regard to the foregoing, and in the light of the issues set out in the referral, I consider that the question to be determined by the Board in this case is:

Whether an agricultural development, comprising of the alteration of an existing structure, involving a reduction in its height and the retention of the modified building, is or is not development, or is or is not exempted development, on lands at Famina Village, Inis Oirr, County Galway.

5.0 EVALUATION

5.1 Statutory provisions.

I consider the following to be the statutory provisions relevant to this referral case:

EU Habitats Directive (92/43/EEC)

The Habitats Directive deals with the Conservation of Natural Habitats and of Wild Fauna and Flora throughout the European Union. Article 6(3) of this Directive requires that any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. The competent authority must be satisfied that the proposal will not adversely affect the integrity of the European site.

Planning and Development Act 2000 (as amended)

Section 2 (1) of the Act states as follows: -

"In this Act, except where the context otherwise requires –

"development" has the meaning assigned to it by Section 3

"works" includes 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 or exterior of a structure.

Section 3 (1) of the 2000 Planning and Development Act states as follows: -

“In this Act, 'development' means, except where the context otherwise requires, the carrying out of works on, in, over or under land or the making of any material change in the use of any structures or other land.”

Section 4 (1) sets out various forms and circumstances in which development is exempted development for the purposes of the Act.

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

Section 4 (4) states that notwithstanding paragraph (a) of subsection (1) and any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment is required.

Planning and Development Regulations, 2001-2015

Article 6(3) states:

Subject to Article 9, in areas other than a city, a 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 (No.7 of 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 the mention of that class in the said column 1.

Article 9(1) states that:

Development to which Article 6 relates shall not be exempted development for the purposes of the Act –

(a) if the carrying out of such development would:

(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 the 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.

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

(viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use.

Class 6 of Part 3 of Schedule 2 of the Planning and Development Regulations states that the following are exempted development:

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 200sq.m. (whether or not by extension of an existing structure), and any ancillary provision for effluent storage.

The *conditions and limitations* associated with Class 6 of Part 3 Schedule 2 of the Planning and Development Regulations, 2001 to 2015 state that:

| |
|--|
| 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 structures situated within the same farmyard complex or within 100m of that complex shall not exceed 300sq.m. gross floor space in aggregate |
| 3. Effluent storage facilities adequate to serve the structure having regard to its size, use and location shall be constructed in line with Department of Agriculture, Food and Rural Development and Department of Environment and Local Government requirements and shall 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 10m of any public road. |
| 5. No such structure within 100m of any public road shall exceed 8m in height. |
| 6. No such structure shall be situated, and no effluent from such structure shall be stored, within 100m of any house (other than the house of the person providing the structure) or other residential building or school, hospital, church or building used for public assembly, save with the consent on writing of the owner and, as may be appropriate, the occupier or person in charge. |
| 7. No unpainted metal sheeting shall be used for roofing or on the external finish of the structure. |

Class 7 of Part 3 of Schedule 2 of the Planning and Development Regulations states that the following are exempted development:

Works consisting of the provision of a roofed structure for the housing of pigs, mink or poultry, having a gross floor area not exceeding 75sq.m. (whether or not by extension of an existing structure), and any ancillary provision for effluent storage (subject to 8 conditions and limitations)

Class 8 of Part 3 of Schedule 2 of the Planning and Development Regulations states that the following are exempted development:

Works consisting of the provision of roofless cubicles, open loose yards, self feed silo or silage areas, feeding aprons, assembly yards, milking parlours, or structures for the making or storage of silage or any other structures of a similar character or description, having an aggregate gross floor space not exceeding 200sq.m., and any ancillary provision for effluent storage (subject to 7 conditions and limitations).

5.2 Previous referrals/references

15. RL.2235: The Board determined on 25th July 2005 that the construction of an agricultural structure for use as stables within the curtilage of a dwelling house at Cornamucklagh, Omeath, County Louth is not exempted development.

The Board had regard to:

- Sections 2 & 3 of the Planning & Development Act, 2000;
- Articles 6 & 9 of the Planning & Development Regulations, 2001; and

- Class 1, Part 1 & Class 6 of Part 3 of Schedule 2 of the Planning & Development Regulations, 2001.

The Board concluded that:

- (a) as the development is located in the curtilage of a dwelling house, the development provisions associated with a dwelling house do not include the development,
- (b) as there is no established agricultural use on the landholding in which the development is located and, as such, the provisions of Class 6 do not apply, and
- (c) as the development lies in a landscape the preservation of which is an objective of the current development plan for the area, the development may interfere with the character of the landscape.

06S.RL3043: The Board determined on 13th June 2013 that a stable block and associated storage building on land at Badger's Hill, Johnstown, Killeel Road, Rathcoole, County Dublin is exempted development.

The Board had regard to:

- Sections 4 of the Planning & Development Act, 2000;
- Article 9 and Classes 6 & 9 of Part 3 of Schedule 2 of the Planning & Development Regulations, 2001,
- The planning history of the site,
- The structures that exist on site,
- Relevant case law including the Supreme Court decision in Fingal County Council v William P. Keeling and Sons, and
- The submission on file.

The Board concluded that:

- (a) the structures on site comprise a stable block and associated storage building,
- (b) the stated area of the stable block is 78sq.m. and the stated area of the associated storage building is 244sq.m., and
- (c) the stable block comes within the scope of Class 6 of Part 3, Schedule 2 of the Planning and Development Regulations, 2001, as amended and the associated storage building comes within the scope of Class 9 of Part 3, Schedule 2 of the Planning and Development Regulations, 2001, as amended.

5.3 European sites

The site is located within the Inis Oirr Island SAC (Site code: 001275) which is designated for the following Annex 1 & 2 habitats and species:

- Coastal lagoons (priority habitat)
- Reefs
- European dry heaths
- Semi-natural dry grasslands and scrubland facies on calcareous substrates (Festuco Brometalia) (important orchid sites & priority habitat)
- Lowland hay meadows
- Limestone pavements (priority habitat)

5.4 Development Plan

The site at Famina Village, Inis Oirr is located within an area covered by the Galway County Development Plan 2015-2021.

The site is located within the Inisheer Island SAC (Site code: 001275).

Objective NHB 1 (Protected Habitats and Species) seeks to:

Support the protection of habitats and species listed in the Annexes to and/or covered by the EU Habitats Directive (92/43/EEC) (as amended) and the Birds Directive (2009/147/EC), and regularly

occurring-migratory birds and their habitats and species protected under the Wildlife Acts 1976-2000 and the Flora Protection Order.

The site is located within the Inishheer Island pNHA (Site code: 001275).

Policy NHB 1 (Natural Heritage and Biodiversity) seeks to:

Support the protection, conservation and enhancement of natural heritage and biodiversity, including the protection of the integrity of European sites, that form part of the Natura 2000 network, the protection of Natural Heritage Areas, proposed Natural Heritage Areas Ramsar Sites, Nature Reserves, Wild Fowl Sanctuaries and Connemara National Park.

The site is located within a Class 1 (Unique) Sensitive Landscape.

Objective LCM1 (Landscape Sensitivity Classification) states:

The Planning Authority shall have regard to the landscape sensitivity classification of sites in the consideration of any significant development proposals and, where necessary, require a Landscape/Visual Impact Assessment to accompany such proposals.

Objective LCM 2 (Landscape Sensitivity Ratings) states:

Consideration of landscape sensitivity ratings shall be an important factor in determining development uses in areas of the County. In areas of high landscape sensitivity, the design and the choice of location of proposed development in the landscape will also be critical considerations.

5.4 Assessment

(a) “Is or is not development”

In the case of the items that are the subject of this referral, it is evident that they involve the carrying out of works, as defined, and hence constitute development within the meaning of the Act.

(b) “Is or is not exempted development”

The Referrer submits that the works, which comprise an agricultural development, comprising of the alteration of an existing structure, involving a reduction in its height and the retention of the modified building, on land at Inis Oirr Co. Galway constitute exempted development.

Exempted development:

The question as to whether or not an agricultural development, comprising of the alteration of an existing structure, involving a reduction in its height and the retention of the modified building, on land at Inis Oirr Co. Galway is exempted development will be assessed.

The existing 8.53m high agricultural structure which has a stated a floor area of 127.8 sq.m. was constructed in a rural area without the benefit of planning permission. The Referrer has confirmed that the structure is located on ancestral farmland which comprises approximately 20 acres and that the structure will be used to house sheep, goats or donkeys. It is proposed to reduce the height of the structure from 8.53m to 7.95m and retain the modified structure.

The structure occupies an elevated, open and exposed position on the E side of the island, it is located within an agricultural field which is well set back from the public road, access is via a narrow laneway and the field boundaries are defined by dry stone walls. The surrounding area is sparsely populated, there are no other agricultural structures in the vicinity and there are clear interrupted views from the site across Lough Mor to Galway Bay and beyond.

The structure is also located within the Inis Oirr SAC, pNHA and a Class 5 Sensitive Landscape which is classified as Unique, and these designations cover most of the island.

Having regard to the European site designation, the starting point in the assessment of whether or not the development is or is not exempted development, is to carry out a Stage 1 Screening for Appropriate Assessment.

Stage 1 Screening for Appropriate Assessment

The referral site is located within the Inis Oirr Island SAC (Site code: 001275) which is designated for the following Annex 1 habitats and Annex 2 species:

- Coastal lagoons (priority habitat)
- Reefs
- European dry heaths
- Semi-natural dry grasslands and scrubland facies on calcareous substrates (*Festuco Brometalia*) (important orchid sites & priority habitat)
- Lowland hay meadows
- Limestone pavements (priority habitat)

The referral site is also located within or in close proximity to an area covered by a number of the Qualifying Interests for this SAC as indicated on Map No. 5 of the NPWS Conservation Objectives document. The Conservation Objective for each of these Qualifying Interests seeks to maintain their favourable conservation condition, which is defined by a list of site specific attributes and targets.

The Qualifying Interests for the SAC which occur on or in the vicinity of the referral site are listed below:

- Potential Limestone Pavements including associated habitats
- Semi Natural Grassland including semi-natural dry grasslands and scrubland facies on calcareous substrates (*Festuco-Brometea*) (important orchid sites)

- Lowland hay meadows (*Alopecurus pratensis*, *Sanguisorba officinalis*)

The referral site is located within an area that is identified in Map no.5 as comprising potential Limestone Pavements including associated habitats. It would appear from the site inspection that the structure which is the subject of this referral has been erected on Limestone Pavement and that a section of this substrate may have been removed to accommodate the construction works. The Conservation Objective for Limestone Pavements seeks “To maintain the favourable conservation condition of Limestone Pavements in Inisheer Island SAC.” This is defined by a list of attributes and targets related to habitat area, distribution and vegetation composition. The target for the distribution attribute states that there should be no decline in the occurrence of Limestone Pavement. Therefore, there is potential for likely, significant, direct effects on the Conservation Objectives for this European site and an Appropriate Assessment would be required. There are no other plans or projects in the surrounding area that would give rise to the potential in-combination effects.

The referral site is also located within or close to an area that is identified in Map no.5 as containing two other Qualifying Interests for the SAC. These comprise Semi Natural Grassland including Semi-natural dry grasslands and scrubland facies on calcareous substrates (*Festuco-Brometea*) (*important orchid sites) and Lowland hay meadows (*Alopecurus pratensis*, *Sanguisorba officinalis*). Although there does not appear to be a direct connection between these Qualifying Interests for the SAC and the referral site, this issue would require further investigation.

Having regard to the foregoing, I am not satisfied that the development that is the subject of this referral, individually, or in combination with other plans and or projects would not be likely to have a significant effect on European site no: 001275 or any other European site, in view of the site’s Conservation Objectives. An Appropriate Assessment is therefore required.

Consideration of exemption:

Section 4 (1) (a) of the Planning and Development Act 2000 (as amended) states that development consisting of the use of any land for the purposes of agriculture and development consisting of the use for that purpose of any building occupied together with land so used. However, Section 4 (4) states that notwithstanding subsection (1) (a) development shall not be exempted development if an environmental impact assessment or an appropriate assessment is required.

Article 6(3) of the Planning and Development Regulations 2001-2015 states that subject to Article 9 development of a class specified in Column 1 of Part 3 of Schedule 2 shall be exempted development for the purposes of the Act, subject to conditions and limitations which will be assessed in the following section. However, Article 9 (1) (a) (viiB) states that development to which Article 6 relates shall not be exempted development for the purposes of the Act if the carrying out of such development would 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.

It is quite clear from the foregoing that the development which is the subject of this referral does not constitute exempted development with regard to Section 4 (4) of the Planning and Development Act, 2000 (as amended) and Article 9 (1) (a) (viiB) of the Planning and Development Regulations 2001-2015 as an Appropriate Assessment would be required.

In the event that the Board does not concur with this conclusion:

Article 9(1) (a) (vi):

Article 9(1) (a) (vi) of the Planning and Development Regulations states that development to which Article 6 relates shall not be exempted development for

the purposes of the Act if the carrying out of such development would 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 the development plan.

The development that is the subject of this referral is located within an open and exposed landscape and there are clear uninterrupted views of the site from several vantage points around the island. It is also located within an area that has been identified as a Class 1 (Unique) Sensitive Landscape in the Galway County Development Plan 2015-2021. Objective LCM1 states that the Planning Authority shall have regard to the landscape sensitivity classification of sites in the consideration of any significant development proposals and Objective LCM 2 states that consideration of landscape sensitivity ratings shall be an important factor in determining development uses in areas of the County.

The Oxford English Dictionary defines preserve as “keep something in its original or existing state” and preservation as “the action of preserving something.” The Development Plan does not contain a specific objective to preserve the character of this landscape and the de-exemption provided for under Article 9(1) (a) (vi) is not applicable to this case.

Article 9(1) (a) (vii C):

Article 9(1) (a) (viiC) of the Planning and Development Regulations states that development to which Article 6 relates shall not be exempted development for the purposes of the Act if the carrying out of such development would consist of or comprise development which would be likely to have an adverse impact on an area designated as a natural heritage area by order made under section 18 of the Wildlife (Amendment) Act 2000.

The development that is the subject of this referral is located within the Inis Oirr Island pNHA (Site code: 001275) and the construction phase had the potential to have an adverse impact on the pNHA as the works may have resulted in the removal of Limestone Pavement.

Therefore, the development which is the subject of this referral does not constitute exempted development with regard to Section 4 (4) of the Planning and Development Act, 2000 (as amended) and Article 9 (1) (a) (viiC) of the Planning and Development Regulations 2001-2015.

Article 9(1) (a) (viii):

Article 9(1) (a) (viii) of the Planning and Development Regulations 2001-2015 states that development to which Article 6 relates shall not be exempted development for the purposes of the Act if the carrying out of such development would consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use.

The assessment carried out above in relation to Article 9 (1) (a) (viiB) and Article 9 (1) (a) (viiC) and of the Planning and Development Regulations concluded that the existing (unmodified) structure did not constitute exempted development by reference to the European site designation and the need for an Appropriate Assessment, and the proposed Natural Heritage Area designation. The existing structure is therefore unauthorised.

Therefore, the development which is the subject of this referral does not constitute exempted development with regard to Section 4 (4) of the Planning and Development Act, 2000 (as amended) and Article 9 (1) (a) (viii) of the Planning and Development Regulations 2001-2015.

Part 3 of Schedule 2: Exempted Development - Rural:

Section 4 (1) (a) of the Act states that development consisting of the use of any land for the purposes of agriculture and development consisting of the use for that purpose of any building occupied together with land so used is exempted development. However, Article 6(3) of the Planning and Development Regulations states that subject to Article 9 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 the mention of that class in the said column 1.

The Referrer states that the structure is located on the family farm landholding, the floorspace is less than 200sq.m., it is located 191m from the nearest house and over 10m from the public road, the height would be reduced to under 8m, and it will be used (when modified) to house sheep, goats or donkeys under Class 6 of the Regulations.

Class 6 of Part 3 of Schedule 2:

Class 6 of Part 3 of Schedule 2 of the Planning and Development Regulations states that 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 200sq.m. (whether or not by extension of an existing structure), and any ancillary provision for effluent storage, are exempted development.

The following table summarises which of the conditions and limitations associated with Class 6 of Part 3 of Schedule 2 of the Regulations are applicable and not applicable:

| Conditions & Limitations | Comment | Applicable |
|--|---|---|
| 1. No such structure shall be used for any purpose other than the purpose of agriculture. | The structure is located on the family farm landholding and its stated use is for the purpose of agriculture. | No |
| 2. The gross floor space of such structure together with any other structures situated within the same farmyard complex or within 100m of that complex shall not exceed 300sq.m. gross floor space in aggregate | There are no other structures and the floor area of the structure does not exceed 300sq.m. | No |
| 3. Effluent storage facilities adequate to serve the structure having regard to its size, use and location shall be constructed in line with Department of Agriculture, Food and Rural Development and Department of Environment and Local Government requirements and shall have regard to the need to avoid water pollution. | The structure would be used to house sheep, goats or donkeys and no effluent storage facilities are provided. | Yes |
| 4. No such structure shall be situated, and no effluent from such structure shall be stored, within 10m of any public road. | The structure is located in excess of 10m from the public road. | No |
| 5. No such structure within 100m of any public road shall exceed 8m in height. | The existing structure is located within 100m of a public road and its height is in excess of 8m, although after the proposed modifications the height will be reduced to less than 8m. | Yes (existing structure) No (modified structure) |

| | | |
|---|--|-----------|
| <p>6. No such structure shall be situated, and no effluent from such structure shall be stored, within 100m of any house (other than the house of the person providing the structure) or other residential building or school, hospital, church or building used for public assembly, save with the consent on writing of the owner and, as may be appropriate, the occupier or person in charge.</p> | <p>The existing structure is located in excess of 100m of the nearest house.</p> | <p>No</p> |
| <p>7. No unpainted metal sheeting shall be used for roofing or on the external finish of the structure.</p> | <p>No unpainted metal sheeting has been used</p> | <p>No</p> |

The assessment carried out above in relation to the conditions and limitations specified in Column 2 of Class 6 of Part 3 of the Second Schedule concluded that the existing (unmodified) structure did not constitute exempted development. This is by reference to condition and limitation no. 3 as it does not provide adequate effluent storage facilities, and condition and limitation no. 5 as the structure is located within 100m of a public road and the height exceeds 8m.

Therefore, the development which is the subject of this referral does not constitute exempted development with regard to Section 4 (1) (a) of the Planning and Development Act, 2000 (as amended), and Article 9(1) (a) (viii) which states that development to which Article 6 relates shall not be exempted development for the purposes of the Act if the carrying out of such development would consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use.

The assessment carried out above in relation to the conditions and limitations specified in Column 2 of Class 6 of Part 3 of the Second Schedule concluded that the structure (as proposed to be modified) did not constitute exempted development by reference condition and limitation no. 3 as it does not provide adequate effluent storage facilities.

Having regard to the foregoing, the development which is the subject of this referral does not constitute exempted development with regard to Section 4 (1) (a) of the Planning and Development Act, 2000 (as amended) and Article 6(3) of the Planning and Development Regulations by way of non-compliance with condition and limitation no.3 as specified in Column 2 of Class 6 of Part 3 of Schedule 2.

Class 7 of Part 3 of Schedule 2:

Class 7 of Part 3 of Schedule 2 of the Planning and Development Regulations states that works consisting of provision of a roofed structure for the housing of pigs, mink or poultry, having a gross floor area not exceeding 75sq.m. (whether or not by extension of an existing structure), and any ancillary provision for effluent storage (subject to 8 conditions and limitations). As the referrer has clearly stated that the structure would be used to house sheep, goats or donkeys, Class 7 is not applicable to the referral case.

Class 8 of Part 3 of Schedule 2:

Class 8 of Part 3 of Schedule 2 of the Planning and Development Regulations states that works consisting of of roofless cubicles, open loose yards, self feed silo or silage areas, feeding aprons, assembly yards, milking parlours, or structures for the making or storage of silage or any other structures of a similar character or description, having an aggregate gross floor space not exceeding 200sq.m., and any ancillary provision for effluent storage (subject to 7 conditions and limitations). As the referrer has clearly stated that the structure would be used to house sheep, goats or donkeys, Class 8 is not applicable to the referral case.

5.5 Conclusion

I conclude that the works related to the reduction in height of an agricultural structure and the retention of the modified building that was the subject of the Planning Authority's Declaration is not exempted development, by reason of non-compliance with:- Section 4 (4) of the Planning and Development Act, 2000 (as amended); Article 6(3) and Article 9 (1) (a) (viiB), (viiC) and (vii) of the Planning and Development Regulations 2001-2015; and condition and limitation no.3 as specified in Column 2 of Class 6 of Part 3 of Schedule 2 of the Planning and Development Regulations 2001-2015.

6.0 Recommendation

Having regard to the above, I recommend that the Board should decide as follows:

The question was referred to the Board, by way of review of the Planning Authority's Declaration of 29th day of June 2016 under Section 5 of the Planning and Development Act, 2000, is:

Whether or not an agricultural development, comprising of the alteration of an existing structure, involving a reduction in its height and the retention of the modified building, on land at Inis Oirr Co. Galway is or is not development, or, is or is not exempted development.

In considering this referral, the Board had regard particularly to:

- (a) Section 2, 3 and 4 of the Planning and Development Act, 2000 (as amended);
- (b) Section 4 (4) of the Planning and Development Act, 2000 (as amended);
- (b) Articles 6 (3) and 9 (1) (a) (viiB) (viiC) and (vii) of the Planning and Development Regulations, 2001-2015.

- (d) Condition and Limitation no.3 of Column 2 of Class 6 of Part 3 of Schedule 2 of the Planning and Development Regulations 2001-2015.

AND WHEREAS An Bord Pleanála, in exercise of its powers conferred on it by Section 5 of the 2000 Act, hereby decides that the agricultural development, comprising of the alteration of an existing structure, involving a reduction in its height and the retention of the modified building, on land at Inis Oirr Co. Galway is development, and is not exempted development.

Karla Mc Bride
Senior Planning Inspector
07th December 2016