



Questions

- (i) Is the use of the application site, edged in red and measuring 1.89 hectares, for the use of agriculture exempted development?
- (ii) Is the use of part(s) of the application site for the purposes of market gardening exempted development?
- (iii) Is the provision of a building 298.48 square metres in area exempted development?
- (iv) Is an all-weather surface together with a drainage bed for the training of horses exempted development?
- (v) Is the repair and improvement of a pre-existing private paved lane within the application exempted development?
- (vi) Is the erection of an Internal wall within the Class 9 structure as per (3) above exempted development?

Address	Baylin, Athlone, County Westmeath.
Planning Authority	Westmeath County Council.
Referrer	Declan Ganley.
Owner/Occupier	Declan Ganley.
Date of Site Inspection	8 th March, 2017.
Inspector	Paul Caprani.

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1.0 Introduction

A number of questions have arisen pursuant to Section 5 of the Planning and Development Act as to whether or not certain works and uses relating to a farm area constitute development and if it is determined that the works constitute development whether or not those works constitute exempted development. A total of 6 questions were put before the Planning Authority. Westmeath County Council determined that in the case of five of the six questions put before it, that the works constitute development which was not exempted development. This determination by Westmeath County Council is subject to a referral to An Bord Pleanála.

2.0 Site Location and Description

- 2.1. The site is located approximately 5 kilometres east of Athlone. It comprises of a field with an area of 1.89 hectares. Access to this field is provided via a cul-de-sac local road which runs along the western boundary of the field in a northerly direction and provides access to two fields adjoining the subject site. This road is approximately 400 metres in length. There are a number of dwellings fronting on to this local road to the south of the site.
- 2.2. The site is located to the north of a small settlement of Bealin. The settlement ostensibly comprises of an agglomeration of one-off houses set around various intersections in the local road network. A national school is located within the settlement.
- 2.3. The site comprises of a single large field approximately 1.89 hectares in size. The field accommodates a large shed with a gross floor area of approximately 425 square metres. The remainder of the field is under grass. The shed is located adjacent to the north-eastern boundary of the site near the rear of the site setback approximately 110 metres from the western boundary of the site where the access road serving the field is located. The shed is approximately 36.5m in length by 12.21m in width. It is set within a large area of hardstanding and it is located on a finished floor area approximately 2 to 3 metres above the ground levels within the remainder of the field. The shed rises to a ridge height of 6.3 metres and incorporates a nap plaster finish along the southern part of the building with an olive green kingspan cladding in the upper portion and roof of the building. Two large

roller shutters are located on the front (south-western) elevation of the building. The nearest dwellinghouse is to the south-west, which at its closest point is just under 96 square metres from the building. A dwelling to the rear (south-east) is just over 60 metres at its closest point to the building.

3.0 The Questions

A total of 6 questions were put to Westmeath County Council and were subsequently referred to the Board. These are as follows:

1. Is the use of the application site, edged in red and measuring 1.89 hectares (i.e. the subject field referred to in my site description) for the use of agriculture exempted development?
2. Is use of part of the application site for the purposes of market gardening exempted development?
3. Is the provision of a building, 298.48 square metres in area exempted development?
4. Is the all-weather surface together with the drainage bed for the training of horses exempted development?
5. Is the repair and improvement of a pre-existing private paved lane within the application exempted development?
6. Is the erection of an internal wall within the Class 9 structure referred to in (Q.3) above exempted development?

4.0 Planning History

- 4.1. There is one appeal file attached which is relevant to the current referral before the Board.
- 4.2. Under PL25A.246083 retention of planning permission was sought for the construction of a shed, concrete yard and proposed erection of a dungstead and the completion of a wastewater treatment system and landscaping for equine/agricultural purposes on the subject site.

4.3. Westmeath County Council issued notification to refuse planning permission for six reasons. These are briefly set out below:

- The application for which retention of planning permission is sought is contrary to Policy P-EQ2 of the County Development Plan.
- The development for which retention of planning permission is sought is contrary to Policy P-NH1 of the County Development Plan which relates to the preservation of views.
- The development for which retention of planning permission is sought is contrary to Policy P-LLM1 of the County Development Plan.
- The development for which retention of planning permission is sought is contrary to Policy P-AB1 of the County Development Plan in that the new farmyard would not be ancillary to the landholding.
- The new farmyard would access onto a deficient road network where there are deficiencies in the sightline serving the access.
- The applicant has not demonstrated that the site is suitable for a proprietary wastewater treatment system.

4.4. The decision was the subject of a first party appeal. The Board upheld the decision of the Planning Authority for two reasons:

1. Firstly, the agricultural need for the scale and extent of the shed structure and ancillary works has not been demonstrated in terms of serving the agricultural holding. The size, scale and height of the shed would interfere with the character of the landscape and therefore be contrary to P-NH1 and P-LLM1.
2. Secondly, the establishment of a new farmyard is considered inappropriate due to the deficiencies in the road network and the deficiencies in the sightlines on accessing the public road.

5.0 Determination of Referral by Westmeath County Council

A declaration was sought on the questions above by the current Referrer on the 9th August, 2016.

On September 5th Westmeath County Council requested additional information in respect of the following:

- An original signed letter of consent from the owner of the dwelling situated within 100 metres of the proposed agricultural structure.
- Clarification of the activity, including traffic generation, which would result from the incorporation of market gardening on the subject site.
- Evidence of the established agricultural land use on the subject holding taking account of permitted unauthorised structures.
- Details of any other lands within the referrer's ownership.
- Further details in relation to the area for the training and exercising of horses and ponies within the subject site.

5.1. Further Information Submission

Further information was submitted on 16th September, 2016. The information included the following:

- Written consent of the neighbour consenting to the construction of an agricultural shed within 100 metres of his house.
- The market gardening area will give rise to traffic generation of approximately 1 vehicular movement per week. It is noted that the access serving the shed currently serves approximately 10 houses. Furthermore, the use of the lands for market gardening is exempted under the provisions of Section 4 of the Act.
- It is acknowledged that the structure in question has been the subject of enforcement and does not comply with the exempted development regulations. Demolition will be requirement. However, enforcement issues are not relevant to the question before the Planning Authority. In terms of the agricultural use, the response states that the field which is the subject of the referral currently accommodates two and sometimes three horses.

- The applicant has access to between 8 to 10 acres in the wider area owned by his brother-in-law. However, it is noted that this information is not strictly relevant as planning permission is not being sought in this instance.
- Details of the area to be used for Class 10 (Schedule 2 Part 3) purposes is also set out in the response.

5.2. **Planner's Report dated 18th October, 2016.**

The report summarises the applicant's response and concludes the following in respect of the questions posed.

Question 1 – The lands are occupied by an existing unauthorised structure, the use of which is not exclusively for agricultural purposes. The lands are associated with the unauthorised structure, and as such the use for the purposes of agriculture is not exempted development.

Question 2 – Following on from the above, the use of the lands for the purposes of market gardening is likewise not exempted development.

Question 3 – The structure would constitute in part, the alteration of an unauthorised structure and would therefore constitute development which is not exempted development.

Question 4 – Following on from the above, the use of the hardstanding associated with the authorised shed for Class 10 development would constitute development which is not exempted development.

Question 5 – The repair and improvement of an existing private lane, the width of which does not exceed 3 metres is deemed to be exempted development.

Question 6 – The erection of an internal wall within an authorised structure would constitute an alteration to this unauthorised structure and would therefore constitute development.

A declaration to this effect was issued to the applicant on the 24th October, 2016.

6.0 **Referral to An Bord Pleanála**

The questions which were put to Westmeath County Council were referred to and received by the Board on 18th October, 2016. The Board will note that the referral

was lodged 6 days prior to Westmeath County Council issuing a declaration on the questions posed. In this regard I refer the Board to the memo on file dated 26th October, 2016 which notes that under the provisions of Section 5(2)(b) of the Act the Planning Authority is required to issue a declaration within three weeks of the date of receipt of any further information. As the Planning Authority did not issue a declaration within this three-week period, the applicant was entitled to refer the questions to An Bord Pleanála for determination.

6.1. **Grounds of Referral**

In respect of Question 1 – whether the use of the application site edged in red and measuring 1.89 hectares for the use of agriculture is exempted development reference is made to Section 4(1) of the Planning and Development Act 2000. It is stated that there are no conditions, limitations, restrictions or caveats attached to Section 4-1 and it is therefore self-evident that the use of any land for the purposes of agriculture is exempted development.

In respect of Question 2 - again reference is made to Section 4(1) of the Planning and Development Act. It is submitted that it is self-evident that the use of part of the applications lands for market gardening is exempted development.

In respect of Question 3 – is the provision of a building of 298.48 square metres in area exempted development? reference is made to Schedule 2, Part 3 of the Regulations which relates to agricultural structures. Class 9 states that works consisting of any store, barn, shed, glasshouse or other structure not being of a type specified in Class 6, 7 or 8 and having a gross floor area not exceeding 300 metres is exempted development. In relation to Condition/Limitation No. 5 of Class 9, it is noted that there are two houses nearby. One house to the south-east is 86 metres away and written consent has been attached to the referral submission. A house to the south-west is exactly 100 metres away from the proposed shed. It should be noted that the Class 9 structure is not the same building as that currently on site.

In respect Question 4 – whether an all-weather surface together with a drainage bed for the training of horses is exempted development? reference is made to Class 10 of Schedule, Part 3 of the Regulations which exempts the erection of an unroofed fenced area for the exercising or training of horses or ponies together with a

drainage bed or soft surface material to provide an all-weather surface. There are four attached conditions/limitations all of which have been complied with.

In respect of Question 5, which relates to whether or not the repair and improvement of pre-existing private lane within the application site is exempted development reference is made to Schedule 2, Part 1, Class 13 where it is argued that the stoned lane is a pre-existing rough drive/lane leading from the private access road to the application lands. Its presence is confirmed by historical OS Maps viewable on line.

It is further submitted in addition or in the alternative that the works are exempted under the provision of Section 4(1)(h) in the that it is submitted that external appearance of the lane is not materially affected and indeed is exactly the same as it was prior to the resurfacing of same and therefore its appearance is not inconsistent with its own character or of neighbouring structures.

In response to Question 6 - which relates to the erection of an internal wall within the Class 9 structure (i.e. agricultural shed) again reference is made to Section 4(1)(h) of the Act that 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 that structure constitutes exempted development. A number of drawings are submitted indicating the site layout and agricultural shed as proposed.

7.0 Planning Authority's Response

- 7.1. The Planning Authority did not appear to have submitted a formal response to the referral. However, on the 7th December, 2016 An Bord Pleanála received documentation from the Planning Authority which include details of enforcement letters issued to the owner of the lands (including Land Registry Folios).
- 7.2. Also enclosed is the original planner's report of 5th September, 2016 on foot of which a further information request was sought.

8.0 Relevant Legislation

8.1. Planning and Development Act 2000 – 2012

Section 2(1)

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

“*structure*” means any building, structure, excavation or other thing constructed or made on, in or under land or any part of structure so defined and where in the context so admits includes the land on, in or under which the structure is situate.

“*Unauthorised structure*” means a structure other than

- (a) a structure which was in existence at the 1st October 1964, or
- (b) a structure, the construction, erection or making of which was the subject of a permission for development granted under Part 4 of the Act of 1963 or deemed to be such under Section 2 of that Act, being a permission which has not been revoked, or which exists as a result of carrying out exempted development (within the meaning of Section 4 of the Act of 1963 or Section 4 of this Act).

“*Unauthorised use*” means in relation to land, the use commenced on or after the 1st October, 1964 being a use which is a material change in the use of any structure or any land and being development other than

- (a) exempted development (within the meaning of Section 4 of the Act of 1963 or Section 4 of this Act), or
- (b) development which is the subject of a permission granted under Part 4 of the Act 1963, being a permission which has not been revoked, and which is carried out in compliance with the 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 the 1st October, 1964 being development other than

- (a) exempted development (within the meaning of Section 4 of the Act of 1963 or Section 4 of this Act), or
- (b) development which is the subject of a permission granted under Part 4 of the Act 1963, being a permission which has not been revoked, and which is carried out in compliance with that permission or any condition to which that permission is subject.

“*Works*” includes any Act or operation of the construction, excavation, demolition, extension, alteration, repair or renewal.

Section 4(1)(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 neighbouring structures’.

8.2. **Planning and Development Regulations 2001 – 2011**

Article 6 of the Regulations state the following:

- (1) Subject to Article 9 the development of a Class specified in Column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with conditions and limitations specified in Column 2 of the Act opposite the mention of that Class in the said Column 1.
- (2) Article 9 of the Regulations identifies circumstances by which development under Article 6 shall not be exempted development including:
 - (ii) Consist of or comprise the formation, laying out or material widening of a means of access to a public road the surface carriageway of which exceeds 4 metres in width.
 - (iii) Endanger public safety by reason of a traffic hazard or obstruction to road users.

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

Class 9 of Schedule 2, Part 3 of the Planning and Development Regulations 2001 – 2015 states the following in respect of exempted development.

Works consisting of the provision of any store, barn shed, glasshouse or other structure not being a type specified in Class 6, 7 or 8 of this part of this Schedule and having a gross floor area not exceeding 300 square metres.

The condition and limitations in respect of Class 9 are as follows:

1. No such structure shall be used for any purpose other than the purpose of agriculture or forestry, but excluding the housing of animals or the storing of effluent.
2. The gross floorspace of such structures together with any other such structures situated within the same farmyard complex or complex of such structure are within 100 metres of that complex shall not exceed 900 metres gross floorspace in aggregate.
3. No such structure shall be situated within 10 metres of any public road.
4. No such structure within 100 metres of any public road shall exceed 8 metres in height.
5. No such structure shall be situated within 100 metres of any house (other than the house of the person providing the structure or other residential building or school or hospital, church or building used for public assembly save with the consent in writing of the owner and as may be appropriate the occupier or person in charge thereof).
6. No unpainted metal sheeting shall be used for the roofing or the external finish of the structure.

Class 10 - The erection of an unroofed fenced area for the exercising and training of horses or ponies together with a drainage bed or soft surface material to provide an all-weather surface.

The conditions and limitations in respect of Class 10 are as follows:

1. No such structure shall be used for any purpose other than the exercising or training of horses or ponies.
2. No such area shall be used for the staging of public events.
3. No such structure shall be situated within 10 metres of any public road and no entrance to such area shall be directly off any public road.
4. The height of any such structure shall not exceed 2 metres.

Schedule 2, Part 1 Exempted Development General – *Sundry Works* – Class 13 - The repair, improvement of any private street, road or way, being works carried out on land within the boundary of the street, road or way and the construction of any private footpath or paving.

The sole condition and limitation in respect of this development class is the width of any such private footpath or paving shall not exceed 3 metres.

9.0 **Assessment**

9.1. **Introduction**

Many of the questions put before the Board in the case of the current Referrer are somewhat theoretical in that they do not relate to development which is actually taking place on the site, but merely relate to works which have yet to be undertaken. In many respects the Board is being requested to adjudicate on aspects of works which are intended to be undertaken at some future date and whether or not such works would constitute development and if constituting development whether such development could be deemed to be exempted development under the legislation. It is proposed that this report to interpret and assess in the strictest manner the questions put before the Board in the context of whether or not the works proposed constitute development or exempted development within the meaning of the Act.

The Board have already determined under PL25A.246083 that planning permission be refused for the retention of a constructed shed (425 square metres). A perimeter concrete yard, a partially installed wastewater treatment system and the proposed erection of a dungstead and all associated ancillary works. Thus any decision made in respect of the questions currently put before the Board and in this referral case, cannot undo the decision under PL25A.246083 nor can it confer any development consent on the works which have been previously determined by the Board under the above decision.

Question 1 – Is the use of the application site edged in red and measuring 1.89 hectare, for the use of agriculture exempted development?

The applicant has stated that the field in question is to be used for the grazing of two to three horses. Having inspected the site I noted the presence of horses in the subject field. The definition of agriculture is set out in Section 2 of the Act and includes, inter alia, in its definition “the training of horses and the rearing of bloodstock and the use of lands as grazing lands”. The use of lands for the rearing and grazing of horses would in my view constitute an agricultural use and as such the use of the land would be development that would be exempted development.

I would not agree with the interpretation of the Planning Authority, that merely because the structure which was refused planning permission constituted unauthorised development, that that implies that the entire parcel of lands constitutes an unauthorised use. The Board should not that the enforcement notice issued by Westmeath County Council specifically refers to unauthorised development consisting of the construction of:

- A large shed.
- A concrete yard.
- An access track.

It does not relate to the lands surrounding this unauthorised structure. The use of the lands for the grazing of horses would in my view constitute development which is exempted development.

Question 2 – Is the use of part(s) of the application site for the purpose of market garden exempted development?

I would consider that the exact same arguments as set out in the previous section are applicable to Question 2. The definition of agriculture set out in the Act specifically refers to the uses of land for, inter alia, “market gardens” constitutes agriculture. It is also clear that the envisaged traffic generated by the market garden (one delivery vehicle per week) will not have a material impact on planning terms. The proposed unauthorised structures on site do not relate to the lands surrounding these structures and therefore the use of lands for the purposes of market gardening constitutes development which is exempted development.

Question 3 – Is the provision of a building of 298.48 square metres in area exempted development?

A strict interpretation of the question put before the Board can only lead to the conclusion that such a structure is development and is not exempted development, as there is no specific reference to the structure being a Class 9 (agricultural structure). It is only in the case where a building complies with the use provisions set out under Schedule 2, Part 3, Class 9 which relate to works consisting of the provision of any store, barn, shed, glasshouse or other structure not being a type specified in Class 6, 7 or 8 of part of this Schedule, can it be considered as exempted development. Having regard to Question 6 which specifically refers to the construction of an internal wall within a Class 9 structure it can be assumed that the question put before the Board specifically related to Class 9 structures. It may be appropriate therefore that the question (in any decision issued by the Board) be rephrased as follows: Is the provision of a building of 298.48 square metres for uses permitted under Class 9 of Schedule 2, Part 3 of the Planning and Development Regulations development which is exempted development?

The Planning Authority have argued that the provision of such a building would involve alterations to an existing unauthorised structure and as such would constitute development which is not exempted development.

The Referrer submission states “it should be noted that the above Class 9 structure is not the same building as is currently on-site”. It can only be assumed therefore that the applicant in this instance is proposing to demolish the existing structure and

construct a replacement structure in accordance with the plans and particulars submitted with the Referral which indicates a gross floor area of 298.48 square metres. It is also submitted that the structure shown on the attached drawing complies with the 6 conditions and limitations set out for Class 9 under the Exempted Development Regulations. Again the question put before the Board in this instance is somewhat theoretical in that it relates to a future structure to be constructed on site and does not relate to any works carried out. For the purposes of clarity, it is clear that the Board have already determined that the existing structure on site does not accord with the proper planning and sustainable development of the area and refusal of planning permission was issued in respect of retaining the structure. The structure is de facto unauthorised as a result of the Board's decision.

However, as per the question currently put before the Board, if the existing structure is demolished and a new structure is put in its place with a gross floor area of 298.48 square metres for the purposes of general agricultural storage (not being a type specified in Class 6, 7 or 8 of Schedule 2 of Part 3 of the Planning and Development Regulations) and that such a structure fully complies with the 6 conditions and limitations set out under Class 9, I can only conclude that such a structure would constitute development which is exempted development under the provisions of the Planning and Development Act 2000. However, as already pointed out in my introduction any conclusion in respect of Question No. 3 put before the Board can only relate to a replacement structure on the subject site and should not or cannot confer any rights of development consent or planning permission in respect of the existing structure on site which has been deemed to be unauthorised.

Question 4 – Is an all-weather surface together with a drainage bed for the training of horses exempted development?

There is currently an area of hardstanding to the front of the existing shed on site. The site map submitted with the grounds of referral indicate that this area is to represent a Class 10 all-weather surface. Arising from my site inspection there is nothing on the ground that would indicate that this area is currently being used for the exercising or training of horses or ponies. Currently the area comprises of a concrete apron and cannot be described as a drainage bed or soft surface material to provide an all-weather surface as required under Class 10 of Schedule 2, Part 3 of the Exempted Development Regulations. It appears from my site inspection that this

area currently provides an all-purpose hardstanding area which could be used for an array of activities including parking and open air storage.

In this regard it could be reasonably argued in my view that the area as currently established would contravene Limitation No. 1 of Class 10 which requires that “no such structure shall be used for any purpose other than the exercising or training of horses or ponies”. I acknowledge however that it is unlikely that the area will contravene any of the other conditions or limitations namely:

- That no such area shall be used for the staging of public events.
- That no such structure shall be situated within 10 metres of any public road, and no entrance to such area shall be directly off any public road.
- The height of any such structure shall not exceed 2 metres.

The Referral submitted suggests that the four attached conditions and limitations to Class 10 are all complied with and that the area is complete with surface water drainage discharging to soakaways entirely within the application lands.

If the Board accept the applicant’s contention that the area for the erection of an unroofed fenced area for the exercising and training of horses or ponies is complete, I can only conclude that the works as undertaken would not comply with Class 10 in that the area has not been treated with a soft surface material or a drainage bed in order to provide an all-weather surface. Furthermore, because of the generic nature of the hard concrete surface, I consider that the Board could reasonably come to the conclusion that the area in question is not purpose built for the exercising and training of horses and as such could be used for any purpose other than the exercising and training of horses and ponies. As such it would contravene Limitation No. 1 of Class 10.

Based on the above assessment I can only conclude therefore that the proposed development constitutes development which is not exempted development.

Question 5 – Is the repair and improvement of a pre-existing private paved lane within the application site exempted development?

The Referrer argues that the works undertaken fall within Class 13 “the repair or improvement of any street, road or way being works carried out on land within the boundary of a street, road or way and the construction of any private footpath or

paving". The subject pathway leading to the shed is approximately 120 metres in length and is less than 3 metres in width. There can be no doubt that the repair and improvement of any private road would constitute works under the definition set out in Section 2 of the Act. However, the laneway in question appears to be less than 3 metres in width and also appears to be fully located within the applicant's lands and as such would constitute a private road/lane and therefore would comply with the provisions of Class 13 of Schedule 2, Part 1 of the Planning and Development Regulations 2001, as amended.

Again for the purposes of clarity, the question before the Board merely relates to works to be carried out on the laneway within the curtilage of the applicant's lands. It in no way confers any rights or planning status in relation to the access onto the public road. The Board have previously determined that the access from the shed onto the public road which runs along the western boundary of the site is deficient in terms of capacity, width and structural condition and is also deficient in terms of sightlines. The Board therefore determined that the access onto the public road to be retained would endanger public safety by reason of a traffic hazard. Any works involved in the repair, renewal or maintenance of the private laneway within the curtilage of the applicant's land relates to the laneway itself and not the proposed access. Conferring exempted development status on the laneway in no way has any implications for the unauthorised access linking the laneway onto the public road.

Question 6 –Whether or not the erection of an internal wall within the Class 9 structure referred in in Question 3 above is or is not exempted development.

Again this question before the Board appears to be somewhat theoretical as, according to the information contained in the referral, as the Class 9 structure referred to is not the same building as is currently on site. Were it to be the case that the existing structure on site were to be demolished and a replacement structure constructed in accordance with the requirements of Class 9, and the conditions and limitations associated with this Class were adhered to, I would consider that the construction of any internal wall within the structure, while constituting works and therefore development, would also constitute exempted development on the grounds that it is associated with an overall structure which would be exempted under the provisions of Schedule 2, Part 3, Class 9 of the Planning and Development Regulations 2001, as amended. There are no conditions or limitations under this

specific Class which prohibits or de-exempts the construction of internal walls within the structure. Again I stress for the purpose of clarity that exempted development status could only be conferred on a new structure to replace the existing structure on site and that complies with all the conditions and stipulations set out under Class 9.

10.0 **Appropriate Assessment**

Having regard to the nature and scale of the works undertaken on site or proposed to be undertaken as per the questions posed in the Referral before the Board and the nature of the receiving environment and the proximity to the nearest European site, no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

11.0 **Conclusions and Recommendations**

Arising from my assessment above I consider that the Board should issue the following determination in respect of the questions put before it under the provisions of Section 5 of the Planning and Development Act 2000.

Question 1

WHEREAS a question has arisen as to whether the use of the application site, edged in red and measuring 1.89 hectares for the use of agriculture is exempted development

AND WHEREAS the owner occupier requested a declaration on this question under the provisions of section 5(4) of the Planning and Development Act 2000, (as amended) on 18th of October, 2016

AND WHEREAS An Bord Pleanála in considering this referral had particular regard to

- the definition of 'agriculture' under Section 2 and 4 (1)(a) of the Planning and Development Act 2000, as amended

AND WHEREAS An Bord Pleanála concluded that the use of the said lands for the grazing/ rearing of horses falls within the definition of agriculture set out in Section 2 of the Act

FURTHERMORE the Board considered that the exempted development provisions under Section 4 (1)(a) of the Act would therefore apply in this instance.

NOW THEREFORE An Bord Pleanála in exercise of the powers conferred on it by section 5(4) of the 2000 Act, hereby decides that the activities undertaken on the subject site constitutes development that is exempted development.

Question 2

WHEREAS a question has arisen as to whether the use of part(s) of the application site, for the purposes of market gardening is exempted development

AND WHEREAS the owner occupier requested a declaration on this question under the provisions of section 5(4) of the Planning and Development Act 2000, (as amended) on 18th October 2016

AND WHEREAS An Bord Pleanála in considering this referral had particular regard to

- the definition of 'agriculture' under Section 2 and 4 (1)(a) of the Planning and Development Act 2000, as amended

AND WHEREAS An Bord Pleanála concluded that the use of parts of the said lands for market gardening falls within the definition of agriculture set out in Section 2 of the Act

FURTHERMORE the Board considered that of the exempted development provisions under Section 4 (1)(a) of the Act would therefore apply in this instance.

NOW THEREFORE An Bord Pleanála in exercise of the powers conferred on it by section 5(4) of the 2000 Act, hereby decides that the activities undertaken on the subject site constitutes development that is exempted development.

Question 3

WHEREAS a question has arisen as to whether the provision of a building 298.48 sq.m in area is development and if it is development whether or not it constitutes exempted development

AND WHEREAS the owner occupier requested a declaration on this question under the provisions of section 5(4) of the Planning and Development Act 2000, (as amended) on 18th October 2016

AND WHEREAS An Bord Pleanála in considering this referral specifically rephrased the question to so as to specifically relate to the erection of a building under the provisions of Schedule 2 Part 3 Class 9 of the Planning and Development Regulations,

FURTHERMORE, in determining the question before it, the Board restricted its deliberations to the provision of a new structure on the site in question and **not** the existing unauthorised structure on site,

AN WHEREAS the Board had particular regard to:

- Sections 2 and 3 of the Planning and Development Act 2000 (as amended)
- Article 6 of the Planning and Development Regulations 2001 (as amended)
- Class 9 of Schedule 2 Part 3 of the Planning and Development Regulations 2011 (as amended) and the limitations and conditions associated with this class of development and subject to compliance with said limitations and conditions,

NOW THEREFORE An Bord Pleanála in exercise of the powers conferred on it by section 5(4) of the 2000 Act, hereby decides that the erection of a new structure on the subject site in accordance with the provisions of Class 9 of Schedule 2 Part 3 and subject to the limitations and conditions attached therein, constitutes development that is exempted development.

Question 4

WHEREAS a question has arisen as to whether the provision of an all-weather surface together with a drainage bed for the training of horses is development and if it is development whether or not it is exempted development.

AND WHEREAS the owner occupier requested a declaration on this question under the provisions of section 5(4) of the Planning and Development Act 2000, (as amended) on 18th October 2016

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

- Sections 2 and 3 of the Planning and Development Act 2000 (as amended)
- Article 6 of the Planning and Development Regulations 2001 (as amended)
- Schedule 2 Part 3 Class 10 of the Planning and Development Regulations 2001 (as amended).

AND WHEREAS the Board decided that the area to be used for the exercising and training of horses comprised of a hardstanding area and did not comprise of a drainage bed or soft surface material and was a hard standing area that could be used for an array of purposes other than exercising or training of horses or ponies as such the works undertaken do not comply with the provisions of Schedule 2 Part 3 Class 10 of the Planning and Development Act 2001 (as amended) nor do the works undertaken comply with the limitations and conditions associated with Class 10.

NOW THEREFORE An Bord Pleanála in exercise of the powers conferred on it by section 5(4) of the 2000 Act, hereby decides that the area to be used for the exercising and training of horses constitutes development that is not exempted development.

Question 5

WHEREAS a question has arisen as to whether the repair and improvement of a pre-existing private paved lane within the application site constitutes development, and if it constitutes development whether or not it is exempted development

AND WHEREAS the owner occupier requested a declaration on this question under the provisions of section 5(4) of the Planning and Development Act 2000, (as amended) on 18th October 2016

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

- Sections 2 and 3 of the Planning and Development Act 2000 (as amended)
- Article 6 of the Planning and Development Regulations 2001 (as amended)
- Schedule 2 Part 1 Class 13 of the Planning and Development Regulations 2001 (as amended).

AND WHEREAS the Board decided that the works fell within the definition of works to be undertaken in accordance with the Schedule 2 Part 1 Class 13 of the Planning and Development Regulations and that the lane was less than 3 meters in width

NOW THEREFORE An Bord Pleanála in exercise of the powers conferred on it by section 5(4) of the 2000 Act, hereby decides that the repair and improvement of an existing private paved lane within the application site constitutes development that is exempted development.

Note: For the purposes of clarity, the exempted development status relates to the repair and improvement of the laneway only and not the access onto the public road along the western boundary of the site which was deemed to be unauthorised in accordance with the Board decision under PL25A. 246083.

Question 6

WHEREAS a question has arisen as to whether the construction of an internal wall with a building erected under the provisions of Schedule 2 Part 3 Class 9 with a gross floor area of 298.48 sq.m constitutes development and if it constitutes development whether or not the development is exempted development

AND WHEREAS the owner occupier requested a declaration on this question under the provisions of section 5(4) of the Planning and Development Act 2000, (as amended) on 18th October 2016

AND WHEREAS in determining the question before it, the Board restricted its deliberations to the provision of a new structure on the site in question and **not** the existing unauthorised structure on site, the Board had particular regard to:

Class 9 of Schedule 2 Part 3 of the Planning and Development Regulations 2011 (as amended) and the limitations and conditions associated with this class of development and noted that none of the conditions precluded the erection of an internal partition within the building constructed and used in accordance with the provisions of Class 9.

NOW THEREFORE An Bord Pleanála in exercise of the powers conferred on it by section 5(4) of the 2000 Act, hereby decides that the erection of a new internal wall within a replacement structure on the subject site in accordance with the provisions of Class 9 of Schedule 2 Part 3 and subject to the limitations and conditions attached therein, constitutes development that is exempted development.

Paul Caprani,
Senior Planning Inspector.
April 5th, 2017.

