



An
Bord
Pleanála

Inspector's Report RL03.RL3513

Question

Whether an agricultural storage shed and whether access to the shed via unauthorised entrance on Loop Head peninsula is or is not development and is or is not exempted development.

Location

Kiltrellig, Kilbaha, Kilrush, Co. Clare

Declaration

Planning Authority

Clare County Council

Planning Authority Reg. Ref.

R16-073

Applicant for Declaration

Margaret & Henry Kennaugh

Planning Authority Decision

Is exempted development and is not exempted development

Referral

Referred by

Margaret & Henry Kennaugh

Owner/ Occupier

Eoin Gibson

Observer(s)

None

Date of Site Inspection

19th of April 2017

Inspector

Angela Brereton

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1.1. Site Location and Description

- 1.1.1. The site is located to the south of the R487 Regional Road. The regional route is on the Loop Head peninsula in SW County Clare, which is a designated Scenic Route in the Clare County Development Plan 2017-2023. The subject shed is well set back from the road to the rear of the buildings in an existing farm yard complex. There were a number of tractors and some farm machinery stored there on the day of the site visit. Views are available of the structure from the Scenic Route. There is a Heritage Landscape designation adjacent to the site. It was also noted that there are other larger agricultural type sheds in the vicinity, including not on the subject landholding.
- 1.1.2. There are a number of agricultural buildings and sheds within the landholding on this side of the road, the farmhouse and some other agricultural buildings are located on the opposite side of the R487. There are a number of accesses into the southern farmyard complex. This includes the older gated access opposite the farm house and more recent wider splayed western most entrance adjacent to the Referrer's single storey bungalow.

2.0 The Question

- 2.1. Whether the construction of an agricultural storage shed of c.265sq.m, which is located on a sensitive, open and exposed landscape, on a designated scenic route on the Loop Head peninsula, and adjacent to a designated Heritage landscape is or is not development and is or is not exempted development and whether access to this shed via an unauthorised entrance from the R487 is or is not exempted development and is or is not exempted development.

3.0 Referral to the Council

- 3.1.1. A Planning Statement has been submitted to the Council by Downey Planning on behalf of the Referrers Margaret and Henry Kennaugh. This has regard to the Site Location and context and to the Planning History. They provide that this Section 5 application concerns the construction of an agricultural storage shed which they consider unauthorised development and also refers to the access via the

unauthorised entrance. They include details of this and maps and photographs showing the site context and the shed being constructed.

- 3.1.2. They note that the agricultural storage shed was refused permission by ABP under Ref. PL03.245604. It is noted that the shed has been reduced in size from the previously proposed 752sq.m to c.265sq.m. However, they do not consider that the structure falls within the exempted development categories noting the previous refusal by the Board and the restrictions on exempted development as set out in Article 9 of the Planning and Development Regulations 2001-2016.
- 3.1.3. They also note that concrete foundations and starter bars have also been constructed to the size of the storage shed that was refused planning permission (i.e. foundations are in place to construct a 752sq.m storage shed) and ask whether the use of an unauthorised entrance to serve the structure is or is not development and is or is not exempted development.
- 3.1.4. A Section 5 declaration was sought from Clare County Council as to whether the construction of the agricultural storage shed on this sensitive, open and designated scenic route, is or is not development and is or is not exempted development. They have regard to planning policy and note that the lands are designated along this scenic route in Loop Head and thus the views are of high amenity value. They consider that the shed injures the visual amenity of the area and interferes with the character of the landscape of which it is necessary to preserve and refer to this being contrary to Article 9(1) (a)(vi) of the Planning and Development Regulations 2001 (as amended).
- 3.1.5. They consider that the entire agricultural storage shed which is under construction materially contravenes a specific objective of the CCDP to preserve sensitive areas from inappropriate development. They provide that this was confirmed under Ref. PL03.245604. They noted that the Board also considered that the height, bulk and mass of the shed was such that it would seriously injure the amenity of the area. While the floor area of the structure has been reduced in size from 752sq.m to 265sq.m, the height of the structure has not been reduced (they include a number of photographs showing the shed structure in the context of the area).
- 3.1.6. They consider that the agricultural storage shed is not exempted development noting the restrictions on exemption as set out in Article 9 of the Planning and Development

Regulations 2001-2016. They further consider that the culmination of the entire floor area of the farm complex (they note that the existing structures within the complex are 1004sq.m) is such that the exempted development criteria for size thresholds are not met and note that the agricultural storage shed is accessed via an unauthorised entrance that is linked to the use of the unauthorised agricultural shed and is hazardous to public safety.

- 3.1.7. They provide that contrary to Class 9, Part 3 of Schedule 2 of the Planning and Development Regulations 2001, as amended, the agricultural storage shed is located within 100m of the neighbouring residential dwellings (i.e their client's dwelling). They note that this is stated in the Inspector's Report (Ref. PL03.245604) i.e: *the agricultural shed would be set back c.80m from the neighbouring house to the north west*. They therefore consider that the shed is unauthorised, requires planning permission and cannot be considered exempted development.
- 3.1.8. They consider that the entrance to the farmyard at Kilreilig that provides machinery access to the agricultural storage shed, is not exempted development and is development. This entrance is linked to the use of the agricultural storage shed and facilitates the use of the shed. They consider that the entrance presents a traffic hazard given that visibility splays and sightlines cannot be achieved. Article 9(1)(a)(iii) of the Regulations states that developments shall not be exempted where such development would endanger public safety by reason of traffic hazard or obstruction of road users.
- 3.1.9. They note that it has been determined that the entrance to the shed was statute barred from enforcement and no proceedings for an offence under Section 157(4)(a)(1) of the Planning and Development Act (as amended) in respect of a development where no permission has been granted shall commence. However, they provide that the existing entrance is serving an unauthorised structure and refer to case law in this respect. The unauthorised road entrance which serves the farm and the unauthorised structure is proximate to neighbouring residential dwellings.
- 3.1.10. They also note that there are 2no. silage slabs on the farmyard that do not have planning permission and which are within 100m of the Referrer's property. This silage slab is currently only accessible through the unauthorised entrance. There are 2 original small farm yard accesses located on the southern curtilage but neither

could accommodate large modern machinery now serving this extended yard and contracting business.

3.1.11. In light of their concerns and the issues raised they sought a Section 5 Declaration from the Council.

4.0 Planning Authority Declaration

4.1. Declaration

On the 26th of October 2016 Clare County Council decided:

- (i) The construction of an agricultural shed of c.265sq.m at Kiltrellig, Kilbaha, Kilrush, County Clare constitutes development which is exempted development.
- (ii) The existing entrance from the R487 regional road at Kiltrellig, Kilbaha, Kilrush, County Clare constitutes development which is not exempted development.

4.2. Planning Authority Reports

Planner's Report

4.2.1. The Planner has regard to the location context, planning history and policy. They noted that two distinct questions relative to exemption had been posed i.e. regarding the agricultural shed and the entrance from the R487. They had regard to the Statutory Provisions, including the Planning and Development Act 2000 (as amended) and to the Planning and Development Regulations 2001 (as amended), in particular relative to agricultural development. They noted the reduction in size from 725sq.m to 265sq.m. They had regard to Class 9 of Part 3 of Schedule 2 of the Planning and Development Regulations 2001, as amended. They also had regard to planning policy relative to the location proximate to a Heritage Landscape and on a scenic route. They concluded that construction of an agricultural storage shed of c.265sq.m constitutes both 'works and 'development', but was exempted development.

- 4.2.2. They also provided an assessment relative to the entrance from the R487. They noted that this road is in excess of 4m. in width. They had concerns that the existing access point would not provide adequate turning movements for HGV's or large farm machinery entering or exiting the site. As such they considered that the existing access would endanger public safety by reason of traffic hazard or obstruction of other users. Analysis of satellite imagery indicates that the existing access is in place for more than 7 years. As such having regard to Section 157 (4)(a)(1), they are statute barred from taking enforcement proceedings in this instance. They concluded that the existing access point to the R487 constitutes both 'works' and 'development' is development and is not exempted development.
- 4.2.3. Clare County Council carried out Screening for AA and Determination and concluded a finding of no significant impacts on European sites.

5.0 Planning History

- 5.1.1. The following is the recent planning history of the site:
- Reg.Ref. P15/501 – Retention Permission granted subject to conditions by the Council for development which consisted of the constructed steel frame and timber purlins for an agricultural storage shed along with associated site works and permission for development consisting of the completion of the agricultural storage shed and associated works. Subsequent to a Third Party Appeal this was refused by the Board (PL03.245604) for the following reason:
The subject site is located within a sensitive, open and exposed landscape, on a designated scenic route on the Loop Head peninsula, and adjacent to a designated Heritage landscape. It is considered that the agricultural need for the scale and extent of the development proposed to be retained and completed has not been demonstrated in terms of serving this landholding, and having regard to its height, bulk and mass, it is therefore considered that in the absence of such justification the development would seriously injure the visual amenities of this area, would interfere with the character of the landscape which it is necessary to preserve, and accordingly would contravene Objective 16.6 (scenic routes) of the Clare County Development Plan 2011 – 2017, as varied, which seeks to protect sensitive areas from

inappropriate development. The development proposed to be retained and completed would, therefore, be contrary to the proper planning and sustainable development of the area.

It is of note that the agricultural shed refused was substantially larger than the existing shed. In that case the completed shed would be 752sq.m and c.22m wide, c30m deep and between c.4.1m and 7.4m high.

- Reg.Ref. P08/1197 – Permission granted by the Council subject to conditions, to John Gibson for an agricultural development consisting of the construction of a cubicle house with underslat tank, the construction of an overground slurry store and associated site works.
- Reg.Ref.P02/1183 – Permission granted by the Council subject to conditions to John Gibson for the development of an easi-feed cattle shed (276sq.m), cubicle shed (175sq.m) covered slurry tank, silage slab and yard.
- 97-163 – Permission granted for the construction of a slatted unit.

5.1.2. Planning Enforcement History

It is noted that the Planner's Report provides that the planning enforcement file relative to UD15-055 was closed as the Planning Authority concluded that the works undertaken were exempted development and that the entrance was in place in excess of 7 years and thus the P.A. was statute barred from taking enforcement action.

6.0 Policy Context

6.1. Clare County Development Plan 2017-2023

This is the pertinent plan and policies and objectives include the following:

CDP 6.20 seeks to support rural enterprise and the rural economy, includes:

b) Supporting and facilitating proposals for new small-scale rural enterprises or extensions to existing small-scale, rural based, indigenous industries subject to compliance with appropriate planning and services requirements;

Map H9 of the Plan shows that the site is located on a scenic route, proximate to a Heritage Landscape and to the north east of the settlement of the settlement of Kilbaha.

Section 13.3 refers to Clare's Living Landscapes and this includes regard to Heritage Landscapes i.e. *areas where natural and cultural heritage are given priority and where development is not precluded but happens more slowly and carefully.*

Section 13.3.2.3 provides that *Heritage Landscapes are those areas within the county where sensitive environmental resources - scenic, ecological and historic, are located.* The site is proximate to Heritage Landscape 4: The Coast. Objective 13.5 includes: *To require that all proposed developments in Heritage Landscapes demonstrate that every effort has been made to reduce visual impact.*

Objective 13.7 refers to Scenic Routes i.e. It is an objective of Clare County Council:

- a) To protect sensitive areas from inappropriate development while providing for development and change that will benefit the rural community;*
- b) To ensure that proposed developments take into consideration their effects on views from the public road towards scenic features or areas and are designed and located to minimise their impact;*
- c) To ensure that appropriate standards of location, siting, design, finishing and landscaping are achieved.*

Appendix 1 – Development Management Guidelines

A1.9.2 refers to Sight Distances

A1.11 refers to Agricultural Developments.

Appendix 5 refers to Scenic Routes.

7.0 The Referral

7.1. Referrer's Case

- 7.1.1. Regard is had to the Referrer's Case to the Council in the details submitted and as noted above. Subsequent to the Council's Declaration, Downey Planning on behalf of their client Margaret and Henry Kennaugh referred this case to An Bord Pleánala

for their consideration. The Question is as noted above. Their Referral to the Board includes the following:

- Their client and Downey Planning are of the considered opinion that the development does not comply with the exempted development criteria, and indeed is development that is restricted from being considered exempted development.
- The agricultural storage shed was refused permission by the Board under Ref. PL03.245604 as the agricultural storage shed is located within a 'sensitive, open and exposed landscape, on a designated scenic route on the Loop Head peninsula, and adjacent to a designated heritage landscape...and accordingly would contravene Objective 16.6 (scenic routes) of the CCDP 2011-2017.'
- They note that the shed has been reduced to c.265sq.m in order to comply with the size threshold of exempted development, however it remains within 80m of their client's property as noted in the Inspector's Report (PL03.245604 refers). The shed should only be considered exempted development if it is over 100m from their client's property.
- The shed was deemed to be on a designated scenic route and would contravene Objective 16.6 of the CCDP. Thus it cannot be considered exempted development as set out in Article 9(1) of the Planning and Development Regulations 2001-2016.
- The reduction of the shed to comply with the exempted development criteria and avoid a further application to remedy the planning issues on the farm cannot be seen to be exempt from the requirement to obtain planning permission.
- They refer to precedent cases (Ref.03.RF.1069 and Ref.RL.15.2457) and consider the Board decisions on these referrals provide precedent relative to their current referral.
- They remain of the opinion that the entire agricultural storage shed is not exempted development and is therefore unauthorised and as such requires planning permission.

- Reducing the size of the shed to fall within the exempted development criteria to avoid the requirement to obtain planning permission does not overcome the previous reason for refusal on the lands relating to the shed's interference with the character of the landscape.
- They request the Board to consider the case put before them when assessing this Section 5 Declaration referral.

7.2. Planning Authority Response

7.2.1. There has been no response from the Planning Authority to this Referral to the Board.

7.3. Owner/ occupier's response

7.3.1. Hassett Leyden & Associates has submitted a response on behalf of the owner, Mr. Eoin Gibson, Kiltrelilig, Kilbaha, Kilrush. They provide that they have reviewed the documentation submitted and their response includes the following:

- They provide a planning history of the Gibson family farm and note that they have been farming in the area for the past 70years.
- They note that vital infrastructure for the farming activities have evolved over the years and bigger units are as a result of regulations and market economics.
- They have a very small and compact infrastructure to run a 70 hectares farm. They enclose a plan which shows the overall buildings and their historic evolution over the last 70 years.
- The section of road fronting the farm and the R487 is not designated a 'scenic route'. The site is not within a 'heritage landscape' and policy CDP 16.5 of the 2011-2017 CCDP does not apply in this instance.
- The agricultural shed would clearly comply with Objective CDP 6.20 relative to supporting rural enterprise and it makes sense to extend an existing facility with an established use such as farming.

- They provide details of the size and locational context of the shed. They note it is approx. 265sq.m in size and the overall height is below 8m. Also that it is located 114m away from the Kennaugh's holiday home (as shown on the plan showing the farm complex, submitted). Photographs showing the shed in the landscape have been included.
- They provide that the design and location complies with the requirements as set out in the Planning & Development Regulations (2001-2015), Exempted Development, Schedule 2, Part 3 Rural, Class 9 and all associated conditions and limitations.
- They provide that the development is not located within an area designated as a natural heritage area by order made under section 18 of the Wildlife (Amendment) act, 2000. The development is located on a settled landscape with covers c. 80% of County Clare. The shed enjoys access from two routes, one being uncontested and the other is questioned in this referral.
- The second access to the farm was established pre 2005 as can be seen on the O.S maps. Their clients were not aware that this new access may be considered development under the Planning and Development Regulations.
- They have been in contact with Clare County Council and have complied with their requirements. They understand that the statute of limitations may apply in this instance.
- They ask the Board to uphold the findings contained in the Council's Section 5 Declaration.

8.0 Statutory Provisions

8.1. Legislative Context

In order to assess whether or not the activity constitutes development that is exempted development, regard must be had to the following items of legislation:

8.2. Planning and Development Act, 2000 (as amended)

Under Section 2(1), the following is the interpretation of 'works':

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

‘unauthorised development’ includes the “carrying out of unauthorised works (including the construction, erection or making of any unauthorised structure) or the making of any unauthorised use.”

‘unauthorised works’ means any works on, in over or under land commenced on or after the 1st of 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.....

Section 3 (1) states as follows:

“In this Act, ‘development’ means, 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.”

Section 4(1) of the Act states that the following shall be exempted developments for the purposes of this Act:

Section 4(1)(a) 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;

Section 4 (2)(a) of the Act enables certain classes of development to be deemed exempted development by way of regulation.

8.3. **Planning and Development Regulations 2001, as amended**

Article 6 (1) provides: Subject to article 9, 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 the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.

Article 9 (1) provides: 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—

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

(ii) consist of or comprise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width,

(iii) endanger public safety by reason of traffic hazard or obstruction of road users,

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

(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.

Article 6(3) of the Regulations states that: 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.

SCHEDULE 2

Part 1 relates to Exempted Development - *General*

Part 3 relates to Exempted Development – *Rural*.

Class 9 provides the exemptions for Agricultural Structures.

<p>CLASS 9</p> <p>Works consisting of the provision of any store, barn, shed, glass-house or other structure, not being of a type specified in class 6, 7 or 8 of this Part of this Schedule, and having a gross floor</p>	<p>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.</p> <p>2. The gross floor space of such</p>
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<p>space not exceeding 300 square metres.</p>	<p>structures together with any other such structures situated within the same farmyard complex or complex of such structures or within 100 metres of that complex shall not exceed 900 square metres gross floor space in aggregate.</p> <p>3. No such structure shall be situated within 10 metres of any public road.</p> <p>4. No such structure within 100 metres of any public road shall exceed 8 metres in height.</p> <p>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, 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.</p> <p>6. No unpainted metal sheeting shall be used for roofing or on the external finish of the structure.</p>
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9.0 Assessment

9.1.1. The Question has been noted above. It is broken into two separate issues, which are considered in the context of this assessment below i.e:

- (i) Whether the construction of an agricultural storage shed of c.265sq.m, which is located on a sensitive, open and exposed landscape, on a designated scenic route on the Loop Head peninsula, and adjacent to a designated Heritage landscape is or is not development and is or is not exempted development.
- (ii) Whether access to this shed via an unauthorised entrance from the R487 is or is not development and is or is not exempted development.

9.2. (i) - Is or is not development

9.2.1. The first matter relates to whether or not the works comprises development. Having regard to sections 2 and 3 of the Planning and Development Act 2000, I consider that the erection of an agricultural shed c.265sq.m constitutes 'development' within the meaning of the Act, being the carrying on of an act of construction (i.e. 'works') on land. I note that this is not disputed by the parties.

9.3. (ii) – Is or is not development

9.3.1. Having regard to sections 2 and 3 of the Planning and Development Act 2000, I consider that the access to this shed via an unauthorised entrance from the R487 constitutes development within the meaning of the Act, being the carrying on of an act of 'works' on land. I note that this is not disputed by the parties.

9.4. (i) - Is or is not exempted development – Agricultural Shed

9.4.1. The use of buildings for agricultural development are classified as exempt development in accordance with the provisions of Section 4(1)(a) of the Act subject to any limitations which the Minister may prescribe by Regulation in accordance with Section 4(2)(a) of the Act.

9.4.2. Article 6(3) of the Planning and Development Regulations, 2001 as amended sets out the classes of exempted rural development and the particular type of rural development which is the subject of this referral relates to Class 9 (Schedule 2, Part 3 Exempted Development – Rural). The restrictions on exemption relative to the subject agricultural storage shed are briefly commented on below.

9.5. Restrictions on exempted development

- 9.5.1. The History of the development in particular the Board's decision (PL03.245604 refers) to refuse permission for a larger agricultural shed on the subject site has been noted above. Since that time a smaller scale agricultural shed has been constructed on site, which the Referrer's consider is unauthorised development. The structure in question according to the information submitted, will be used as an agricultural storage shed, and the g.f.a as given at c.265sq.m is below the 300sq.m threshold for exemption – Class 9 relates. While on site I noted that the outline of the larger footprint of the original shed previously refused by the Board was visible. However, the shed now constructed is further set back and is reduced in floor area but still appears sizeable. In view of this, I measured the area of the shed, which has been clad and appears largely complete and found it to be 19.3m x 16.4m i.e 316.52sq.m which exceeds the 300sq.m exemption. Therefore, the footprint of the shed now constructed would not comply with the exemption provided in Class 9, in that it exceeds 300sq.m.
- 9.5.2. It is noted that there are a number of other agricultural structures within the same farmyard complex and it has not been ascertained in the information submitted that the gross floor space of the structure that is the subject of this referral plus the other structures would not exceed 900sq.m. Therefore, it is not considered that it has been shown that Class 9(2) is complied with.
- 9.5.3. In relation to the information submitted in response to the Referral on behalf of the owner, Mr Gibson it is noted that the shed is below 8m in height and is set back further than 100m from the public road and more than 100m from the Referrer's house. Therefore, having regard to the plan submitted it is considered that while it appears that these sub-section maybe complied with, the over-riding issue is that in view of the size of the structure, the exemption provided by Class 9 is not applicable in this case.

9.6. Regard to Precedent Cases

- 9.6.1. The Referrer includes regard to a number of precedent cases, issued by the Board in relation to development on scenic routes. They provide that these referrals set precedent for assessing the current declaration being submitted for the consideration

by the Board. In Ref.03/RF.1069 – A Question arose as to whether (i) infilling and levelling of a swallow hole associated with the '59 series cave', (ii) the making of a road running from Ballinalacken/Doolin Road to the site of the excavation works and (iii) the construction of a concrete lined vertical shaft carried out at Pol-an Ionáin, Craggycorrada West, Doolin, County Clare is or is not exempted development. The Board conclusion included (e) *the construction of the shaft together with its associated excavation and the spreading of spoil would, by reason of its extent and location, interfere with a view or prospect from a scenic route identified for preservation in the current Clare County Development Plan... and would, therefore, come within the restriction on exemption in Article 10(1)(a)(vi) of the 1994 Regulations.*

9.6.2. In Ref.RL.15.2457 – A Question arose as to whether the erection of a wind turbine is or is not exempted development. The Board conclusion included (b): *The said wind turbine would interfere with the character of the landscape and with a view or prospect, from Faughart Hill, of special amenity value, the preservation of which is an objective of the development plan for the area.* The Board decided that by reason of the provisions of article 9(1)(a)(vi) of the said Regulations, the erection of the wind turbine at Upper Faughart, Dundalk, County Louth does not come within the exempted development provisions of the Planning and Development Regulations, 2001-2007 and is not exempted development.

9.6.3. The Referrer considers that these precedent cases clearly indicate that the exempted development criteria does not apply for developments that interfere with a view or prospect from a scenic route and note the wording of the Board's reason for refusal relative to this issue regarding the designated scenic route in PL03. 245604. They consider that the shed would interfere with the character of the landscape.

9.6.4. While regard is had to these cases, the raise different issues and refer to different forms of development. Each case is considered on its merits and regard is had to the impact on landscape relative to the current Referral case in this assessment below.

9.7. **Impact on Landscape**

9.7.1. The Referrer's Question includes reference to the siting of the shed *on a sensitive, open and exposed landscape, on a designated scenic route on the Loop Head*

peninsula, and adjacent to a designated Heritage landscape. It is of note that such wording, comes from the Board's reason for refusal relative to the impact on this character landscape of the retention and completion of the larger shed in Ref.PL03.245604.

9.7.2. However, this is also of note relative to the existing shed and the issue of interference with the character of landscape as per the Restrictions on Exemption provided in Article 9 (1)(a)(vi) of the Planning and Development Regulations 2001(as amended). Since that refusal, the current Clare County Development Plan 2017 to 2023 is now in place and the relevant policies and objectives apply. Regard is had in particular to Map H9 'Areas of Special Control'. This shows that the subject site is just north of the Heritage Landscape coastal area, to the north east of Kilbaha. Objective CDP 13.5 now refers to Heritage Landscapes. It also shows that it is located on the south side of a scenic route (indicated yellow) on this map. Objective CDP13.7 (Scenic Routes) is similar to Objective CDP 16.6 (Scenic Routes) of the previous CCDP 2011-2017 as quoted in the Board's reason for refusal refers. It is considered that in view of the location, in the open landscape, and the wording of the Board's refusal, the impact of the reduced size of the shed now constructed proximate to this sensitive landscape needs to be taken into account relative to the restriction on exemption provided in Article 9(1)(a)(vi). As there is some impact and the siting is visible from the scenic route, it is considered that in this case this restriction on exemption would apply. Such matters could be more appropriately considered further in the context of a planning application.

9.8. **Other issues**

9.8.1. A number of issues have been raised by both the Referrer and the First Party Response to the Referral relative to compliance issues with planning policy and objectives of the Clare County Development Plan. However, it is considered that they are more relevant in the context of a planning application rather than a Referral.

9.9. (ii) – Is it or is it not Exempted Development - Access

- 9.9.1. This Section relates to the second Question posed by the Referrer relative to whether access to the shed via an unauthorised entrance from the R487 is or is not exempted development.
- 9.9.2. The First Party response to the Referral provides that there are two separate entrances to the farm, this was as seen on site. The unauthorised entrance referred to as the second entrance, is the wider entrance and now appears to be the main farm entrance to this complex of agricultural structures on the south side of the R487 and also provides access to the shed.
- 9.9.3. As noted in the relevant Section above it has been accepted that this constitutes 'works' and therefore development. Article 9(1)(a)(ii) and (iii) of the Planning and Development Regulations 2001 (as amended) sets out the restrictions on development relative to access taking into account the width of the access road and issues regarding public safety.

9.10. Restrictions on exempted development

- 9.10.1. The R487 is a Regional road and exceeds 4m in width therefore the restrictions on exemption relative to Article 9(1)(a)(ii) apply. The Planning Authority concerns regarding the safety of the access have been noted in the Planner's Report, therefore the restrictions on exemption relative to Article 9(1)(a)(iii) apply
- 9.10.2. It is noted that the access has been in situ for some time and is visible on the OSI Ortho Map 2005, but is not visible on the earlier 2000 Ortho Map. Therefore, having regard to the information submitted, it has been determined that the entrance to the shed is statute barred from enforcement and no proceedings for an offence under Section 157(4)(a)(1) of the Planning and Development Act 2000 (as amended) shall be taken i.e. the statute of limitations apply in this instance. However, this does not mean that it is permitted development, rather that enforcement proceedings would not apply, but the entrance remains unauthorised as planning permission has not been obtained. Therefore, access to the unauthorised agricultural shed is via an existing unauthorised entrance. In this respect the Referrer has regard to case law and provides a quote from (Planning and Development Plan, second Edition, Gareth

Simmons). Regard also needs to be had to the restrictions on exemption relative to unauthorised development as per Article 9 (1)(a)(viii).

9.11. **Screening for Appropriate Assessment**

9.11.1. This has not been presented as a particular issue in this referral. Screening relative to AA has been carried out by the Council. The Inspector's Report in PL03.245604 noted that the site does not have any direct aquatic connection to the Lower River Shannon SAC which is located c.600m to the South and considered that the proposed works would not have an adverse effect on the integrity of this European site. Having regard to the nature and type of the agricultural development proposed for retention and to be used for storage purposes and to the nature of the receiving environment, it is not considered that appropriate assessment issues arise in this case.

10.0 **Recommendation**

10.1. I recommend that the Board should decide this referral in accordance with the following draft order.

WHEREAS a question has arisen as to whether

- (i) the construction of an agricultural storage shed of c.265 sq.m, which is located on a sensitive, open and exposed landscape, on a designated scenic route on the Loop Head peninsula, and adjacent to a designated Heritage Landscape is or is not development or is or is not exempted development.
- (ii) access to this shed via an unauthorised entrance from the R487 is or is not development or is or is not exempted development.

AND WHEREAS Margaret and Henry Kennaugh requested a declaration on this question from Clare County Council and the Council issued a declaration on the 26th day of October, 2016 stating that (i) the agricultural storage shed matter was development and was exempted development and (ii) the unauthorised access was development and was not exempted

development:

AND WHEREAS Margaret and Henry Kennaugh referred this declaration for review to An Bord Pleanála on the 15th day of November, 2016:

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

- (a) Section 2(1) of the Planning and Development Act, 2000, as amended,
- (b) Section 3(1) of the Planning and Development Act, 2000,
- (c) Section 4(1)(a) of the Planning and Development Act, 2000, as amended,
- (d) article 6(1) and 6(3) article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (e) Parts 1 and 3 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (f) Class 9, Part 3 of Schedule 2 to the Planning and Development Regulations 2001, as amended,
- (g) the planning history of the site and the farm complex,
- (h) the location of the site proximate to a designated Heritage Landscape and scenic route as it applies to the R487,
- (i) the report of the Planning Inspector:

AND WHEREAS An Bord Pleanála has concluded that:

- (a) the works constitute development, being works which come within the scope of section 3(1) of the Planning and Development Act 2000,
- (b) the agricultural storage shed has a gross floor space which exceeds

300sq.m, therefore the exemptions provided in Class 9 of Schedule 2 of Part 3 do not apply.

(c) notwithstanding this it has also not been demonstrated that the agricultural storage shed included with the other agricultural structures in the farmyard complex does not exceed an aggregate of 900sq.m gross floor space, therefore the exemptions provided in Class 9(2) of Schedule 2 of Part 3 do not apply.

(d) In view of the planning history of the site, including the previous reason for refusal by An Bord Pleanála (Ref.PL03.245604), it has not been demonstrated that the agricultural shed, by reason of its size and location, would not interfere with the character of the proximate Heritage Landscape and scenic route as designated in the current Clare County Development Plan 2017-2023 and would, therefore, come within the restriction on exemption in Article 9(1)(a)(vi) of the 2001 Regulations (as amended).

(e) the works relative to the unauthorised entrance come within the restrictions on exempted development contained in Article 9(1)(a)(ii)(iii) of the Planning and Development Regulations 2001 in view of concerns raised relative to public safety and as they comprise the formation of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3) (a) of the 2000 Act, hereby decides that:

(i) the construction of the agricultural storage shed, (which is in excess of 300sq.m) and is located on a sensitive, open and exposed landscape, on a designated scenic route on the Loop Head peninsula, and adjacent to a designated Heritage Landscape is development and is not exempted development.

(ii) access to this shed via an unauthorised entrance from the R487 is development and is not exempted development.

Angela Brereton
Planning Inspector

18th of May 2017