



Questions

- (i) Whether the provision as part of a heating system for an agricultural building of a biomass boiler, including a boiler house, flues on the boiler and overground fuel storage tank is or is not development and where it is decided that it is development whether it is exempted development.
- (ii) Whether the erection of a wall is or is not development and where it is decided that it is development whether or not it is exempted development.
- (iii) Whether the installation or erection within the curtilage of an agricultural holding of solar panels is or is not development and where it is decided it is development whether it is exempted development.

- (iv) Whether the erection of a 300 square metre structure for the purposes of housing a fully enclosed combined heat and power system is development and where it is decided it is development whether or not it is exempted development.

Location	Baylin, Athlone, County Westmeath.
Planning Authority	Westmeath County Council.
Referrer	Declan Ganley
Owner Occupier	Declan Ganley
Date of Site Inspection	14 th June, 2017.
Inspector	Paul Caprani.

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1.0 Introduction

A Declaration is sought from An Bord Pleanála pursuant to Section 5 of the Planning and Development Act, 2000 in relation to a number of questions as to whether or not certain works constitute development and if the said works constitute development whether or not the works are exempted development under the provisions of the Act. A total of four questions were put before the Planning Authority. Westmeath County Council determined in the case of each of the questions put before it that the works undertaken constituted development and did not constitute exempted development. A third party referral in respect of each of these questions was submitted to An Bord Pleanála.

2.0 Site Location and Description

The subject site is located approximately five kilometres east of Athlone Town. The site is located to the north of the small settlement of Bealin (or Baylin). The settlement ostensibly comprises of an agglomeration of one-off houses set around various intersections in the local road network. A local national school is also located within the settlement. The subject site is located in the northern environs of Bealin and comprises of a single large field approximately 1.89 hectares in size. The north-eastern of the site accommodates a large shed the gross floor area of which is approximately 425 square metres. The remainder of the field is undergrass. The shed is setback approximately 110 metres from the western boundary of the site where the local access through the site is located. The shed is approximately 36.5 metres in length and 12.2 metres in width. It is set within a large area of hardstanding and is located on a finished floor area approximately 2 to 3 metres above the ground level of the remainder of the field. The shed rises to a ridge height of 6.3 metres and incorporates a nap plaster finish along the lower portion of the building with an olive green kingspan cladding on the upper portion and roof of the building. Two large roller shutters are located on the front (south-western) elevation of the building. The remainder of the field appears to be used for the occasional grazing of horses. The nearest dwellinghouse is located to the south-west and its

closest point is just under 100 metres from the building. A dwelling to the rear (south-east) is just over 60 metres at its closest point to the building. The building is used for the housing of horses as well as general storage purposes. A number of vintage cars are also stored within the building.

3.0 Planning History

3.1. Two files are attached.

3.2. Under RL25M.RL3510 An Bord Pleanála were requested to issue a declaration on six separate questions within the subject site. The Referral was made by the owner/occupier of the site to An Bord Pleanála on foot of Westmeath County Council's determination of the Referral. These questions have yet to be determined by the Board.

3.3. Under PL25A.246083 retention of planning permission was sought for the construction of a shed, concrete yard and the proposed erection of a dungstead and the completion of a wastewater treatment system together with landscaping for equine/agricultural purposes on the subject site.

3.4. 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 development plan.
- The development for which retention of planning permission is sought is contrary to Policy P-NH1 of the 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.

This decision was the subject of a first party appeal. The Board upheld the decision of the Planning Authority for two reasons which are set out below.

- 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.
- 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.

4.0 Planning Authority Assessment of the Current Referral.

- 4.1. Westmeath Co Council determined the following in respect of the questions put before it.

Question 1

The provision as part of a heating system for an agricultural building of a biomass boiler, including a boilerhouse, flues on the boiler and overground storage tank.

The provision as part of a heating system for an agricultural building of a biomass boiler, including a boilerhouse, flues on the boiler and overground storage tank to serve a structure which is unauthorised would constitute development which is not exempted development by reason of Article 9(1)(viii) of the Planning and Development Regulations 2001.

Question 2

The erection of a wall.

The erection of a 2m high wall would constitute development which is not exempted development by reason of Section 2 of the planning and Development Act 2000 (as amended).

Question 3

The Installation or erection within the curtilage of an agricultural holding of solar panels.

The Installation or erection within the curtilage of an agricultural holding of solar panels would constitute development which is not exempted development by reason of Article 9(1)(viii) of the Planning and Development Regulations 2001.

Question 4

The construction of a 300m² structure for the purposes of housing a fully enclosed combined heat and power system.

The construction of a 300m² structure for the purposes of housing a fully enclosed combined heat and power system in this instance does not come within the scope of Class 56(b) of Schedule 2 Part 1 of the Planning and Development Regulations 2001-2015 and would therefore constitute development which is not exempted development.

5.0 Referral Submitted to the Board

A referral was submitted to the Board on behalf of the owner occupier of the lands by Vitruvius Hibernicus on the 14th March 2017.

In respect of Question 1 the following is stated:

That the Council's view is grounded on the false premise that the boiler is to serve an unauthorised structure and therefore secondly or in the alternative is de-exempted by Article 9(1)(vii).

In respect of Question 2 the following is stated:

Section 2 of the Act only deals with definitions and interpretations and as such the Council's declaration in this regard is a total mystery.

In respect of Question 3 the following is stated:

That the Council's reasoning for de-exempting the solar panels under Article 9(1)(viii) is based on the premise that it relates to an unauthorised structure which it is manifestly untrue.

In respect of Question 4 the following is stated:

That the Council citing non-compliance with Class 56(b) of Schedule 2 Part 1 for its declaration is remarkable as the proposal is exempt under Class 18(a) of Schedule 2 Part 3.

Finally, it is stated that the proposals are located within the footprint of an existing building but are not part of that building.

6.0 Responses

No response was received by Westmeath Co. Council.

7.0 Assessment

7.1. Question No. 1

Whether the provision is part of a heating system for an agricultural building of a biomass boiler, including a boiler house, flues on the boiler and overground fuel storage tank is or is not development.

Legislation

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

Section 2 'Definitions'. - 'Works' includes any Act or operation of construction excavation, demolition, extension, alteration, repair or renewal.

Section 3(1) In this Act "*Development*" means, except where the context otherwise requires, the carrying out of any works on, in, under or over land or the making of any material change in the use of any structures or other land.

Planning and Development Regulations, 2001, (as amended).

Article 6(1) states that 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 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) 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, inter alia,

- (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.

Schedule 2, Part 3, Class 18(e)

The provision as part of a heating system for an agricultural building of a biomass boiler, including a boiler house, flues mounted on the boiler house, and overground fuel storage tank or structure.

Conditions and Limitations associated with this exempted development class includes the following:

1. The gross space of the boiler house shall not exceed 20 square metres.
2. The capacity of the fuel storage tank or structure shall not exceed 75 cubic metres.
3. The height of a boiler house or fuel storage tank installed above ground level shall not exceed 3 metres.
4. The height of the flue mounted on a biomass unit shall not exceed 20 metres from ground level.
5. No more than two flues shall be erected.
6. Not more than one such structure shall be erected within the agricultural holding.
7. The diameter of any flues shall not exceed 1 metre.
8. The boiler house shall not be located within:

- (a) 10 metres of any public road.
 - (b) 100 metres of the nearest habitable 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 as may be appropriate the occupier or person in charge therefore.
9. Noise levels must not exceed 43 dB(A) during normal operation, as measured from the site boundary.
10. The fuel shall not include products derived from wood containing dangerous substances.

Assessment of Question 1

Introduction

As in the case of the associated file RL3510 (attached) many of the questions put before the Board in this case are somewhat hypothetical in that they do not relate to development that has actually taken place on site or currently under construction on site. They merely relate to works which have yet to be undertaken. I carried out a site inspection on 8th March, 2017 in respect of File RL 25M 3510 and carried out a subsequent inspection on 14th June, 2017 in respect of RL 25M 2559 and I noted no further works appear to have been undertaken on the site in question in the period between these two dates. Thus, as in the case of RL3510, under the current referral, 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 these works would constitute development and if constituting development whether such development could be deemed to be exempted under the legislation.

The Board have already determined under PL25A.246083 that planning permission be refused for the retention of the existing shed on site. Therefore, any decision made in respect of the questions currently 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 previously been refused by the Board under the above decision.

Assessment of the Question before the Board

In respect of Question No. 1, the Board is being asked to adjudicate on whether or not provision as part of a heating system for an agricultural building of a biomass boiler, including a boiler house, flues, an overground storage tank is or is not exempted development. I reiterate that having inspected the site no such biomass boiler has been constructed on site. Drawings submitted indicate that the boiler house would have a gross floor area of 16 square metres and a height of 2.9 square metres. The flue would extend approximately 1.1 metres above the roof of the boiler house. The drawings would indicate that the boiler house complies with all the limits and conditions set out under Class 18(e) of the Regulations. Likewise, the proposed fuel storage tank would also comply with the conditions and limitations set out under the Class.

However, a key consideration in determining whether or not the proposed development constitutes development which is exempted development is the fact that the heating system is exempt where it involves a heating system for an agricultural building. The Board will be aware in this instance that the building in question does not have the benefit of planning permission for agricultural use and as such it can be reasonably argued in my view that the boiler if it is to serve the existing building on site, it would not be exempted development on the grounds that the existing building does not have the benefit of planning permission for agricultural use.

The Referrer argues however in the grounds of appeal and specifically states that the boiler in question will not serve the existing building on site but will serve a new building which apparently according to the referral is under construction. However, I felt no evidence of any such building being constructed on site.

However, if the Board were to take a strict interpretation of the question put before it, it would appear that the provision of a heating system for an agricultural building of a biomass boiler and associated works for a new building which would either (a) constitute exempted development under the provisions of the Act or (b) require and obtain the benefit of planning permission for agricultural use, then it could be reasonably determined in my view that the heating system proposed, comprising of a biomass boiler including boiler house, flues and overground fuel storage tank is

development that is exempted development by virtue of Class 18(e) of Part 3 of Schedule 2 of the exempted development classes.

7.2. Question No. 2

This question relates to whether the erection of a wall is or is not exempted development. The wall in question does not appear to have been constructed on site but the drawings submitted with the referral indicate that the wall in question is to be 2 metres in height and is to extend around the perimeter of the existing building with a gap incorporated on the north-eastern elevation to the rear of the existing building.

Legislation

Planning and Development Regulations, 2001, (as amended).

Section 2 – Definitions - ‘Works’ includes any Act or operation of construction excavation, demolition, extension, alteration, repair or renewal.

Section 3(1) In this Act “*Development*” means, except where the context otherwise requires, the carrying out of any works on, in, under or over land or the making of any material change in the use of any structures or other land.

Article 6(1) It states 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 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) 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, inter alia,

- (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.

Schedule 2 Part 3 – Exempted Development Classes

Class 4 states the construction, erection or maintenance of any wall or fence other than a fence of sheet metal or a wall or fence within the bounding of the curtilage of a house. Both the conditions and limitations are as follows:

The height of the wall or fence, other than a fence referred to in Paragraph 2, shall not exceed 2 metres.

The height of any fence for the purposes of deer farming or conservation shall not exceed 3 metres.

In Class 11 of Schedule 2 Part 3 The construction, erection, lowering, repair or replacement, other than within or bounding the curtilage of a house of:

- (a) Any fence (not being a hoarding or metal sheeting) or
- (b) Any wall of brick stone blocks with decorative finish, other concrete blocks or mass concrete.

The conditions and limitations in respect of Class 11 are as follows:

1. The height of any new structure shall not exceed 1.2 metres or the height of the structure being replaced, whichever is the greater, and in any event shall not exceed 2 metres.
2. Every wall other than a dry or natural stone wall, constructed or erected bounding a road shall be capped and the face of any wall of concrete or concrete blocks (other than blocks of a decorative finish) which will be visible from any road path or public area including a public open space shall be rendered or plastered.

Assessment of Question 2 before the Board

It appears from the drawings submitted that the wall in question is to replace the elevations of the existing structure on site save a gap in the north-eastern elevation where part of the existing north-western elevation is to be demolished. It also appears from the drawings submitted that the walls in question are not to be enclosed by any roof and are to be 2 metres or less in height.

Therefore, in the case where the proposal does not involve retaining the existing building but involves the demolition of the existing structure and construction of the

walls in accordance with Class 11 or Class 4 of Schedule 2, Part 3 of the Exempted Development Regulations. It would appear that the proposal would constitute works and by extension development. But this development would constitute exempted development by way of Class 4 and Class 11 of Exempted Development Regulations.

7.3. Question No. 3

Question 3 seeks a declaration on whether the installation or erection within the curtilage of an agricultural holding of solar panels is or is not development.

Legislation

Planning and Development Act, 2000 (as amended).

Section 2 definitions 'Works' includes any Act or operation of construction excavation, demolition, extension, alteration, repair or renewal.

Section 3(1) In this Act "*development*" means, except where the context otherwise requires, the carrying out of any works on, in, under or over land or the making of any material change in the use of any structures or other land.

Planning and Development Regulations, 2001.

Article 6(1) It states 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 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) 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, inter alia,

- (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 18(c) relates to the installation or erection on an agricultural structure, or within the curtilage of an agricultural holding of solar panels (thermal collector or photovoltaic). The following conditions and limitations apply:

1. The total aperture area of any such panel taken together with any other such panel previously placed on or within the said holding, shall not exceed 50 square metres or 50% of the total roof area whichever is the lesser.
2. The distance between the plane of the wall and the panel shall not exceed 15 centimetres.
3. The distance between the plane of the pitched roof and the panel shall not exceed 50 centimetres.
4. The distance between the plane of the flat roof and the panel shall not exceed 2 metres.
5. The solar panel shall be a minimum of 50 centimetres from the edge of the wall or roof on which it is mounted, or 2 metres in the case of a flat roof.
6. The total aperture area on any wall mounted panel or freestanding solar array shall not exceed 25 square metres.
7. Any equipment associated with panels including water tanks shall be located within the roofspace of the building.
8. The height of the freestanding solar array shall not exceed 2 metres, at its highest point above ground level.

Assessment of Question 3 before the Board

As in the case of the other questions put before the Board, the referrer is requesting that the Board determine whether or not the works proposed to be undertaken would be done so in the absence of the existing unauthorised agricultural shed on site. The installation and erection of solar panels on an agricultural structure or within the curtilage of an agricultural holding would constitute works under the definition set out in the Act. As such it would constitute development.

Likewise, it could be reasonably argued that demolition of the existing unauthorised agricultural shed and the erection of a wall 2 metres in height in its place would constitute an agricultural structure within an agricultural holding (please see

Question 1 of associated Referral RL3510). It appears from the drawings that the solar panel comprise of freestanding panels on top of the wall. The panels are to be erected on 7 no. 2.1 metre high poles along the entire length of the front of the wall. The panels themselves are 0.69 metres in height along the 36 metre long wall. The proposed solar panels will amount to an area of 24.84 square metres which is below the limits set out in Condition No. 6 of Class 18(c) which requires the total aperture area of any wall mounted panel or freestanding solar array shall not exceed 25 square metres. Likewise, the proposed development appears to comply with the conditions and limitations set out in 2, 3, 4 and 5 of the conditions and limitations set out under Class 18(c).

The key question is whether or not the panels in question mounted on top of a 2 metre high wall constitute freestanding panel. Limitation No. 8 states that the height of a freestanding solar array shall not exceed 2 metres at its highest point above ground level. The panels in question, being mounted on a wall amount to a height of 4.79 metres according to the drawings submitted. This is above the limit set out in the limitation referred to above. In fact, if the Board were to consider the erection of the panels in the absence of any 2 metre high wall the freestanding element of the solar panels would amount to a height of 2.79 metres. The freestanding element would therefore exceed 2 metres.

Having regard to condition and limitation no. 8, I consider that the erection of photovoltaic solar panels as proposed, would contravene this limitation and would therefore constitute development which is not exempted development.

7.4. Question No. 4

Question no.4 seeks a declaration on whether the erection of a 300 square metre structure for the purposes of housing a fully enclosed combined heat and power system is or is not exempted development.

Legislation

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

Section 2 – “Works” includes any Act or operation of construction excavation, demolition, extension, alteration, repair or renewal.

Section 3(1) In this Act “*Development*” means, except where the context otherwise requires, the carrying out of any works on, in, under or over land or the making of any material change in the use of any structures or other land.

Planning and Development Regulations, 2001, (as amended).

Article 6(1) It states 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 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) 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, inter alia,

- (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 18(a) exempts the construction, erection and placing within an agricultural holding of a structure for the purposes of housing and “fully enclosed” combined heat and power system.

The conditions and limitations associated with this exemption are as follows:

1. The gross floor area of the structure shall not exceed 300 square metres.
2. No such structure shall exceed 8 metres in height, or 40 metres in length.
3. No such structure shall be within:
 - (a) 10 metres of any public road.
 - (b) 100 metres of the nearest habitable house (other than the house of the person providing the structure) or any other residential building or school or hospital or church or building used for public assembly save with the consent in writing of the owner, and as appropriate, the occupier of the person in charge thereof.

4. No structure shall have more than two flues, neither of which shall exceed 16 metres in height from ground level.
5. The diameter of any flue shall not exceed 1 metre.
6. Noise levels must not exceed 43 dB(A) during normal operation measured at the party boundary.
7. Not more than one structure be erected within the agricultural holding.
8. The structure shall be used for the purposes of housing a combined heat and power unit only.

Assessment of Question 4 before the Board

The information submitted with the Referral indicates that the proposal in this instance does not involve retaining the existing building or any part thereof. The drawings submitted indicate that the structure for a combined heat and power system amounts to a gross floor area of 298.8 square metres (30 metres by 8.3 metres). As such the proposal complies with Condition No. 1.

The proposal would also comply with Condition No. 2 that no structure exceed 8 metres in height or 40 metres in length. The structure in this instance rise to a maximum in height of 6.3 metres.

In relation to Condition No. 3, the structure is not located within 10 metres of the public road and therefore complies with condition and limitation 3(a). With regard to the proximity to the nearest habitable house, I refer the Board to Site Map (A3) submitted with the Referral. It indicates that the south-western elevation of the proposed heat and power system would be setback 100 metres from the nearest habitable house that does not have the consent in writing of the owner and as such would appear to comply with Limitation 3(b).

It also appears from the drawing submitted that the proposed structure would comply with limitations 4, 5, 7 and 8 based on the information contained on file. Whether or not noise levels would not exceed 43 dB(A) as per Limitation No. 6 cannot be determined at this juncture as the combined heat and power system is not operational.

Again, as in the case of other questions put before the Board Question No. 4 is somewhat hypothetical in the sense that no structure exists on the ground. However, it appears from the drawings submitted in the information contained on file that if the proposal were to be carried out in accordance with the plans and particulars submitted, the combined heat and power system would constitute development which is exempted development on the grounds that it complies with the conditions and limitations set out under Class 18(a).

8.0 **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, the nearest European Site, Carn Bog SAC (site code 002336), no appropriate assessment issues arise and it is not considered that the proposed works envisaged under the declarations sought would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

9.0 **Conclusions and Recommendation**

Arising from my assessment above I consider that the Board should issue the following determinations 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 or not the provision as part of a heating system for an agricultural building of a biomass boiler, including a boiler house, flues on the boiler and overground storage tank is or is not exempted development

AND WHEREAS the owner occupier requested a declaration on this question from Westmeath Co Council on January 25th 2017.

AND WHEREAS Westmeath Co Council issued a declaration stating that the provision as part of a heating system for an agricultural building of a biomass boiler,

including a boiler house, flues on the boiler and overground storage tank is development and is not 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 14th of March, 2017

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

- the definition of 'works and development' under Section 2 and 3 of the Planning and Development Act 2000, as amended
- Article 6 and Article 9 of the Planning and Development Regulations, 2001 (as amended)
- Class 18 of Part 3 of Schedule 2 of the Planning and Development Regulations, 2001 (as amended) and the conditions and limitations attached to this Class

AND WHEREAS An Bord Pleanála concluded that where the proposed heating system for an agricultural building of a biomass boiler including a boiler house, flues on the boiler and over ground storage tank, in the case where it is not part of the existing unauthorised agricultural structure on site, concluded that the proposal would constitute development which is exempted development in accordance with the provisions of Class 18 of Part 3 of Schedule 2 of the Planning and Development Regulations, 2001 (as amended)

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

Question 2

WHEREAS a question has arisen as to whether the erection of a wall is or is not exempted development

AND WHEREAS the owner occupier requested a declaration on this question from Westmeath Co Council on January 25th 2017.

AND WHEREAS Westmeath Co Council issued a declaration stating that erection of a wall is development and is not 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 14th March 2017

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

- Sections 2 and 3 of the Planning and Development Act 2000, (as amended)
- Article 6 and 9 of the Planning and Development Regulations, 2001 (as amended)
- Class 11 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001 (as amended)
- Class 4 of Part 3 of Schedule 2 of the Planning and Development Regulations, 2001 (as amended) and the conditions and limitations associated with both classes of exempted development

AND WHEREAS An Bord Pleanála concluded that the proposed wall where it is not in any way related or connected to the existing unauthorised shed on site constituted development that is exempted development

Question 3

WHEREAS a question has arisen as to whether the installation or erection within the curtilage of an agricultural holding of solar panels is or is not development and where it is considered to be development whether or not it is or is not exempted development

AND WHEREAS the owner occupier requested a declaration on this question from Westmeath Co Council on January 25th 2017.

AND WHEREAS Westmeath Co Council issued a declaration stating that the installation or erection within the curtilage of an agricultural holding of solar panels is development and is not 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 14th March 2017

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

- Sections 2 and 3 of the Planning and Development Act, 2000
- Articles 6 and 9 of the Planning and Development Regulations 2001 (as amended)
- Class 18(c) of Part 3, Schedule 2 of the Planning and Development Regulations, 2001 (as amended) and the conditions and limitations associated with this class of exempted development

AND WHEREAS An Bord Pleanála decided that the height of the freestanding solar panels exceeded 2 metres at its highest point above ground level contravened Condition and Limitation No. 8 associated with Class 18(C)

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 installation and erection of the solar panels is development which is not exempted development.

Question 4

WHEREAS a question has arisen whether or not the construction of a 300 square metre structure for the purposes of housing and fully enclosed combined heat and power system is or is not development and if it is development is or is not exempted development.

AND WHEREAS the owner occupier requested a declaration on this question from Westmeath Co Council on January 25th 2017.

AND WHEREAS Westmeath Co Council issued a declaration stating that the construction of a 300 square metre structure for the purposes of housing and fully enclosed combined heat and power system is development and is not 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 14th March 2017

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 and Article 9 of the Planning and Development Regulations, 2001 (as amended)
- Class 18(a) of Part 3 of Schedule 2 of the Planning and Development Regulations, 2001 (as amended).

AND WHEREAS An Bord Pleanála decided that the construction, erection or placing within an agricultural holding of a structure for the purposes of housing, a (fully enclosed) combined heat and power system, not being part of the existing unauthorised shed on site would where it fully complies with the conditions and limitations set out under Class 18(a) would constitute development that is exempted development

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 construction, erection or placing within an agricultural holding of a structure for the purposes of housing a (fully enclosed) combined heat and power system constitutes development that is exempted development.

Paul Caprani,
Senior Planning Inspector.

18th July, 2017.