



An  
Bord  
Pleanála

## Inspector's Report RL25M.RL3814

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### Question

Whether the subdivision of an existing structure to accommodate uses associated with Class 6 and Class 9 of Schedule 2, Part 3 of the Planning and Development Regulations constitute development which is exempted development.

### Address

Baylin, Athlone, County Westmeath.

### Planning Authority

Westmeath County Council.

### Referrer

Westmeath County Council.

### Owner/Occupier

Declan and Caroline Ganley and  
M.I.M. Limited.

### Type of Application

Section 5 Referral

### Date of Site Inspection

20<sup>th</sup> February, 2018.

### 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 as to whether or not a development comprising, as asserted by the owner/occupier, of a Class 6 Agricultural Shed and a Class 9 Agricultural Shed is or is not exempted development. The referral relates to an extant structure in Baylin, Athlone, County Westmeath. A declaration on the said question has been sought by Westmeath County Council. This referral should be assessed in conjunction with two cases which are currently live RL 3510 and RL 3559.

## 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 part of the site accommodates a large agricultural-type shed, the gross floor area of which is approximately 425 square metres. The remainder of the field is under grass and is used for occasional grazing. The shed is setback approximately 110 metres from the western boundary of the site where the local access to 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 subject building. A dwelling to the rear (south-east) is just over 80 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. Under PL25A.246083 retention of planning permission was sought for the construction of a shed, concrete yard and the proposed erection of a dungstead together with the completion of a wastewater treatment plant along with landscaping for equine/agricultural purposes on the subject site. Westmeath County Council issued notification to refuse planning permission for six reasons relating to:

- 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 sight lines serving the access.
- The appellant has not demonstrated that the site is suitable for a proprietary wastewater treatment system.

3.2. The decision was 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 of the county development plan.

- A second reason for refusal stated that the establishment of a new farmyard is considered inappropriate due to the deficiencies in the road network and the deficiencies and sight lines on accessing the public road. This decision was dated 25/05/16.

3.3. Two referral cases were also submitted to the Board in respect of the subject site. Under RL25M.RL3510 the following questions were put to the Board under the provisions of Section 5 of the Act.

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

At the time of preparing this report An Bord Pleanála had yet to determine the questions above.

3.4. A separate referral was also submitted to the Board under RL25M.RL3559 which also sought a number of declarations under the provisions of Section 5 on the subject site. These questions were as follows:

1. 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.

2. Whether the erection of a wall is or is not development and where it is decided it is development whether or not it is exempted development.
3. 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.
4. 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.

#### **4.0 The Question under the Current Referral**

Westmeath County Council referred a question submitted by Vitruvius Hibernicus (Liam Madden) on behalf of the owner/occupier, a Mr. Declan Ganely as to whether or not development comprising of what the applicant asserts are a Class 6 agricultural shed and a Class 9 agricultural shed is or is not development or is or is not exempted development. Mr. Madden's submission is attached to a covering letter submitted as part of the referral by Westmeath County Council. The covering letter by Westmeath County Council also sets out the planning history relating to the site.

In support of his client's case the submission from Mr Madden states that building works commenced on site immediately after his client purchased the land. The works comprise of two semi-detached sheds side by side which are incomplete. The works were the subject of a warning letter which resulted in a planning application to Westmeath County Council and an appeal to An Bord Pleanála both of which were refused planning permission.

The warning letter it is contended in the submission was initiated because of a complaint from a neighbouring dwelling located 97.5 metres away. It is contended that in all other respects the shed constitutes exempted development. It is submitted that the shed is exempted based on the following:

- The lands are used for agricultural purposes and are exempt under 4(1) of the Act. The exempted status is not relevant on any provisions contained in the development plan.
- It follows logically that the agricultural structure which are likewise exempted can be erected on agricultural lands.
- The submission goes on to suggest that the structure erected on site is compliant with all the conditions and limitations set out in Class 6 and Class 9 with the exception of being within 100 metres of a neighbouring house.
- It was also suggested that the structure does not contravene any of the restrictions on exempted development set out under Article 9.

The submission goes on to contend that the enforcement notice served on the owner/occupier by the Planning Authority is flawed and does not amount to a charge of carrying out unauthorised development.

In relation to the nearest houses, the submission argues that the closest house to the shed is 86 metres away. The owner of this house has given written consent in respect of the agricultural structure. In respect of the next closest house which is 97.5 metres away, it is argued that this house was not erected in accordance with the permission granted. It is contended that part of the dwelling in question was erected on lands owned by the current referrer. This results in unauthorised development. Furthermore, the submission maintains that this unauthorised development cannot be subject of a retention application as this would require the written consent of the owner of the lands in question (it was also the owner/occupier of the subject which is the subject of the current referral).

Thus, it is argued that if the dwelling was carried out in accordance with the drawings submitted with the original application, and was wholly located within lands owned by the occupier of the dwelling, it would be 106 metres from the agricultural structure and would therefore be compliant with all the conditions and limitations set out within the relevant exemption classes. It is argued that as it stands the agricultural structure is not exempt by being located within 100 metres of the dwellinghouse. However, this dwellinghouse is unauthorised and was illegally constructed as it was partially constructed on lands outside the owner's control. Were the house in question built in exact accordance with the permission issued, the owner/occupier of the shed which

is the subject of the current referral, would comply with all conditions and limitations set out in the exempted development regulations. The submission by Mr. Madden together with some correspondence between the Planning Authority and the referrer is attached to the submission.

#### **4.1. Further Submission on behalf of the Owner/Occupier received by the Board on 26<sup>th</sup> October, 2017.**

This submission was also submitted on behalf of the owner/occupier by Liam Madden. It makes some general comments regarding perceived inaccuracies in the covering letter submitted by Westmeath County Council as part of the original referral to the Board. The submission goes on to make various comments in respect of Westmeath County Council's interpretation of planning law particularly in respect of terms of "extension", "use of land for agriculture" and "appropriate period". The comments contained in the submission appear to be made in the context of a recent District Court proceedings which took place between the owner/occupier of the structure and Westmeath County Council on 4<sup>th</sup> October, 2017.

The response goes on to state that the structure, which is the subject of the referral, is incomplete and that the "missing ingredient" is an internal wall which results in a Class 6 store c.200 square metres in size and a Class 9 store c.220 square metres in size. It is stated that there is nothing in the Act or Regulations which precludes the owner/occupier creating a semi-detached type structure accommodating a Class 6 agricultural structure and a Class 9 agricultural structure.

Arguments regarding the unauthorised nature of the house, as contended by the applicant, located 97.5 metres away from the structure which is the subject of the referral are reiterated.

#### **5.0 Submission by Claire Hickey dated 5<sup>th</sup> January, 2018.**

Ms. Hickey co-owner of the dwelling located 97.5 metres from the structure which is the subject of a current referral was invited by the Board to make a submission in respect of the referral. A submission on her behalf was prepared by Mr. Brandon O'Brien Limited Consulting Engineer. This submission goes on to state the following:



- The building as constructed is in excess of the limit in respect of the gross floor area permitted under the Exempted Development Regulations as it exceeds the 200 square metres and 300 square metres under Class 6 and Class 9 respectively.
- The drawings submitted to Westmeath County Council shows that the horse stable has an area of 254 square metres and this is above the limit permitted to claim exemption under Class 6 of the Regulations.
- With regard to the location of the said in the context of surrounding development, it is stated that the shed is located 95.8 metres from Ms. Hickey's property.
- Furthermore, the owner/occupier of the structure the subject of the referral takes the view that a letter of consent from the owner of a dwelling 86 metres away removes the requirement from obtaining planning permission. It is contended that this is not the case.
- Subdividing the shed so as to comply with gross floor area limits stipulated under Class 6 and Class 9 is clearly an attempt to exploit the exemptions allowed in the Regulations. No such internal partition was indicated in the original application.
- The matter of the location of the Kelly/Hickey house and its contention that it lies within the owner/occupier's lands is a matter which is currently before the Circuit Court. The Kelly/Hickey family dispute this alleged trespass. The disputed lands were bought by the owner/occupier of the shed four years after the Kelly/Hickey bought the house in question. The owner/occupier of the lands cannot credibly claim that the Kelly/Hickey trespassed on lands that the owner/occupied did not own at the time. While a mapping error may have occurred in relation to the boundary of the site, there was no moving of the boundary to obtain land surreptitiously. In any case it does not matter as there is no material impact in terms of road frontage, wastewater treatment etc. A number of overlays are submitted where it is contended that the house is constructed almost exactly as per the planning permission. The distances referred to in the submission to Westmeath County Council which suggests that the actual distance between the footprint of the dwelling as granted

planning permission and the shed in question is over 106 metres apart is incorrect. Had the dwellinghouse being constructed exactly on the footprint as set out in the planning permission, the difference in terms of what was constructed on the ground would be negligible.

## 6.0 **Submission by Westmeath County Council dated 5<sup>th</sup> January 2018.**

This submission reiterates that the Planning Authority consider that the structure which is the subject of the referral constitutes the development which is not exempted development.

- It states that Westmeath County Council initiated prosecution proceedings against the referrer. This case was heard on 4<sup>th</sup> October, 2017 but was struck out on a typographical error contained in the Chief Executive's Order.
- A further warning letter was issued and it is highly likely that the Council would seek further prosecution in this case. This Court case has been adjourned on a number of occasions pending the outcome of An Bord Pleanála's determination of the three referrals in question. In this regard it is respectively requested that a decision be made in respect of RL3510, RL3559 and RL3814 at the earliest possible opportunity.

## 7.0 **Relevant Legislation**

### 7.1. **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.

*“Authorised structure”* means a structure other than

- (a) a structure which was in existence at the 1<sup>st</sup> 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 1<sup>st</sup> 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 1<sup>st</sup> 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’.

## 7.2. **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:
  - (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 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 6 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 a roofed structure for the housing of cattle, sheep, goats, donkeys, horses, deer, or rabbits, having a gross floor area not exceeding 200 sq.m (whether or not by extension of an existing structure).

The Conditions and Limitations associated with Class 6 are as follows:

1. No such structure shall be used for any purpose other than the purpose of agriculture.
2. The gross floor area of such a structure together with any other structure situated within the same farmyard complex are located within 100 m of that complex shall not exceed 300 sq.m gross floor space in aggregate.
5. No such structure within 100 metres of any public road will exceed 8 meters in height.
6. No such structure shall be situated, and no effluent from such a structure shall be stored within 100 meters 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.

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 charger thereof.
6. No unpainted metal sheeting shall be used for the roofing or the external finish of the structure.

## 8.0 **Assessment**

### 8.1. **Introduction**

- 8.2. Unlike the other referrals submitted to the Board under RL25M.RL3510 and RL3559 only a single question has been put before the Board in this referral; namely whether an agricultural shed, where it is asserted that the shed constitutes a semi-detached structure which is yet to be completed, complies with Class 6 and Class 9 of Part 3 of the Exempted Development Regulations. The owner/occupier of the lands in question contends that, if the existing shed on site was subdivided into two semi-detached structures, and one of the structures was used for the housing of horses while the other structure was used as a general agricultural store/barn/shed, that the structure in question would constitute exempted development under the Planning Acts. A question does arise, and it is acknowledged by the owner /occupier that the shed is located less than 100m from a house, where consent has not be obtained as per limitation /condition No.6 and No.5 of Class 6 and Class 5 respectively. It is however argued that the house was on constructed in accordance with the permission and if it had have been constructed in accordance with the permission the 100 m separation distance would have been complied with.
- 8.3. The shed in question was built without the benefit of planning permission and the owner/occupier of the shed in this instance is seeking in some way to retrospectively confer exempted development status on the structure by exploring various means under which the shed could be altered/reconfigured in order to comply with the exempted development regulations.

8.4. This has resulted in my opinion in the posing of somewhat curious and theoretical questions being put before the Board under the three referrals. However, there appears to be nothing in the legislation which precludes the owner/occupier from adapting such a strategy in an attempt to confer exempted development status on the structure in question. It is proposed therefore to assess the current question before the Board in accordance with the requirements of Section 5 of the Planning and Development Act 2000. I have already argued in respect of referral RL3510 (Question 1) that the use of the lands surrounding the structure in question (1.89 hectares) for the grazing of horses constitutes agriculture as set out in the definition of Section 2 of the Act and as such would constitute development which is exempted development. It is clear however that the shed as constructed exceeds the 300 square metres gross floor area set out in the legislation for which exempted development status can be claimed, under both Class 6 (200 square metres) and Class 9 (300 square metres). The owner/occupier therefore seeks to sub-divide the unit in order to comply with the limitations and conditions set out in Class 6 and Class 9.

8.5. **Unauthorised Nature of Existing Structure**

8.6. In the first instance it shall be noted that as it stands the structure and the use (agricultural storage) was refused planning permission by both the planning authority and An Bord Pleanála. As it stands therefore the use is unauthorised. It does not have permission under the Act and as such cannot in my opinion seek exempted development status under the provisions of the Act. To claim exemption for the use of an unauthorised structure for agricultural storage / housing of animals under Class 6 and/or Class 9 is in my view inconsistent with the spirit of the Planning Acts.

8.7. **The Planning Unit**

8.8. Perhaps a more pertinent issue in relation to the question put before the Board relates to the extant structure on site in the context of the overall planning unit. It is not appropriate or in accordance with the spirit of the Regulations to subdivide an extant unauthorised structure into various sub-units in order to avail of exempted development status by virtue of not exceeding stated gross floor areas.

8.9. With regard to the claim that the north-western portion of the building should be deemed to be exempt under the provisions of Class 9, the gross floor space given over to Class 9 within the structure amounts to 221 square metres. This would not exceed the limit set out under Class 9 of 300 square metres. However, in my opinion the same arguments apply with regard to the planning unit. It is not appropriate nor is it within the spirit of the legislation that an existing agricultural unit which is deemed to be unauthorised as it was refused planning permission by both the Planning Authority and An Bord Pleanála on appeal should be subdivided into various agricultural units in order to avail of exempted development status.

8.10. **Subdivision of the Unit.**

It appears that the owner /occupier of the structure is attempting to avail of some provision of the Exempted Development Regulations in order to try and retrospectively obtain exempted development status on the building question. Under the current referral the submission on behalf of the owner /occupier attempts to argue that the works on the structure are not yet complete and what is proposed in this instance is a pair of semi-detached structures, one for use under Class 9 and one under Class 6. This argument is now being put forward despite the fact that (a) construction on the building commenced c.3 years ago, and this internal partition has yet to be completed. (b) None of the previous drawings submitted with the application/appeal or with the referrals indicated an internal partition wall or the nature now put before the Board. (c) Neither the original application submitted or the referrals submitted make reference to an internal partition to be completed for the purposes of availing of Class 6 or Class 9 exempted status. (d) Having inspected the interior of the building, the building appears to be complete and I could find no evidence that the works were either commenced or eminent in terms of partitioning the structure. I can only assume based on the evidence therefore, that it was never originally the owner/occupier's intent to undertake an internal partition. It has in my opinion been retrospectively considered in an attempt to avail of exempted development status for a structure constructed without the benefit of planning permission.



### 8.11. **Size of the Class 6 Structure**

- 8.12. Notwithstanding this point, and if the Board are not satisfied that any exemption should fall away with the unauthorised nature of the structure or the arguments set out in relation to the planning unit, a question still arises that were the applicant to subdivide the structure in question as proposed, would the structure then qualify as exempted development in accordance with the provisions and stipulations set out under Class 6 and Class 9 of the Planning and Development Regulations 2001 (as amended)?
- 8.13. Class 6 specifically relates to agricultural structures and includes works consisting of the provision of a roofed structure for the housing of cattle, sheep, goats, donkeys, horses, deer or rabbits having a gross floor area not exceeding 200 square metres (whether or not by extension of an existing structure) and any ancillary provision for effluent storage. Drawings were submitted on behalf of the owner/occupier to Westmeath County Council (which were submitted as part of the referral) which indicates that the south-eastern part of the store would be used as a Class 6 structure with according to the drawings with the floor area of 200 square metres. It appears however from the measurements of the drawings submitted that the gross floor space of the Class 6 area is not 200 square metres as indicated in the drawings but the gross floor space in this instance as measured from the distance between the points of the two external walls (17 metres by 12.5 metres) amounts to a gross floor space of 212.5 metres. Thus, in accordance with the drawings submitted that portion of the shed to be given over to Class 6 storage does not amount to 200 square metres as suggested in the submission on behalf of the owner/occupier, but amounts to a gross floor space of 212.5 square metres and as such exceeds the maximum limit of 200 square metres for which the owner/occupier of the structure could claim exempted development status. Hence it appears from the drawings submitted that as the area of the shed proposed to be used for Class 6 exceeds the maximum floor area of 200 meters, exempted development status cannot be calimed in accordance with the drawings submitted.

#### 8.14. **Proximity to Houses**

- 8.15. Conditions and limitations associated with both Class 6 and Class 9 argue that no such structure (i.e. the structure to which the current referral relates) shall be situated within 100 metres of any house (other than the house of the person providing the structure or other residential building, school, hospital, church or building uses for public assembly (save with the consent in writing of the owner and as may be appropriate the occupier or person in charge thereof). In essence the owner/occupier of the structure which is the subject of the referral acknowledges that this structure is less than 100 metres from a dwellinghouse where the consent of the owner has not been received. I note the submission on behalf of Ms. Hickey which suggests that it is irrelevant if a homeowner within 100 metres consents to the subject shed being built in order to claim exempted status. However, it is clear from the condition and limitations that where a consent in writing has been obtained, this satisfies the requirements of the legislation.
- 8.16. The submission on behalf of the owner/occupier of the shed in this instance suggests that in the case of the owner of the dwelling where consent has not been obtained, that this house was in fact not carried out in accordance with the plans and particulars lodged with the permission obtained (07/1139). The submission on behalf of the owner/occupier goes on to contend that if the development was constructed in accordance with the permission granted, the house would in fact be 106 metres from the shed in question.
- 8.17. It is clear from the documentation on file that Court proceedings are on-going and therefore definitive conclusions have yet to be arrived at in respect of this matter. However, the owner/occupier of the shed and the owner/occupier of the dwelling, both submitted a set of drawings as to where, in their opinion, the footprint of the dwelling ought to have been located in accordance with the actual permission granted. In the case of the owner/occupiers of the dwelling but perhaps more importantly in the case of the drawings submitted by Mr. Liam Madden, indicate that the actual variation in the footprint of the building between that granted and that built on site, varies by approximately two metres. To suggest, as Mr. Madden does, that the variation in footprint amounts to c.10 metres is not credible based on the drawings submitted by Mr. Madden. Thus, it appears from the information contained

on file that even in the case where the dwelling was not located strictly in accordance with the plans and particulars lodged with the application under (07/1139), it appears that the variations as depicted in the drawings submitted by Mr. Madden it would not result in an increase in the separation distance to over 100 metres as claimed.

- 8.18. It should also be pointed out that the issue in relation to the location of the house and the potential trespass onto owner/occupier's lands is a matter of Court proceedings at the moment and in this regard it would be premature in my opinion for the Board to come to any conclusive opinion on this matter prior to any determination in the Courts. As it stands all parties are in agreement that the distance between the shed in question and the house to the south-west is less than 100 metres and therefore does not comply with the conditions and limitations set out under Class 6 or Class 9.

## 9.0 **Appropriate Assessment**

Having regard to the nature and scale of the proposed development and nature of the receiving environment together with 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.

## 10.0 **Conclusions and Recommendation**

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

**WHEREAS** a question has arisen as to whether a development comprising of the subdivision of a shed for the housing of livestock as per Class 6 of Part 3 of the Exempted Development Regulations – Rural and a separate part of the shed for the provision of a store, barn or shed as per Class 9 of the Exempted Development Regulations Part 3 – Rural is or is not development or is or is not exempted development.

**AND WHEREAS** Westmeath County Council requested a declaration on this question under the provisions of Section 5(4) of the Planning and Development Act 2000, as amended, on 3<sup>rd</sup> October, 2017.

**AND WHERE** An Bord Pleanála in considering this referral had particular regard to:

- (a) The unauthorised nature of the existing structure on site.
- (b) The overall planning unit of the structure
- (c) The fact that there has, in a previous application and appeal to An Bord Pleanála, under Register Reference 25M PL 246083 and current referrals before the An Bord Pleanála namely RL25M RL3510 and RL25M RL3559, no reference to any internal partition within the structure in question,
- (d) Class 6 of Schedule 2, Part 3 of the Planning and Development Regulations 2001 (as amended) and the limitations and conditions associated with this class of the development and in particular condition and limitation No. 6.
- (e) Class 9 of Schedule 2, Part 3 of the Planning and Development Regulations 2001 and the limitations and conditions associated with this class of development and in particular condition and limitation No. 5.

**NOW THEREFORE** An Bord Pleanála in exercise of the power conferred on it by Section 5(4) of the 2000 Act, hereby decides that the subdivision of the said unauthorised structure constitutes development that is not exempted development.

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Paul Caprani,  
Senior Planning Inspector.

March 12<sup>th</sup> 2018, 2018.