

An  
Bord  
Pleanála

**AN BORD PLEANÁLA**  
TIME \_\_\_\_\_ BY Key.  
**23 APR 2018**  
LTR DATE \_\_\_\_\_ FROM LC  
PL LDG-004275-18

**AN BORD PLEANÁLA**  
Received: 23-04-18  
Fee: €220cheque.  
Receipt No: \_\_\_\_\_

## Planning Appeal Check List

(Please read notes overleaf before completing)

1. The appeal must be in writing (e.g. not made by electronic means).

2. State the

name of the appellant  
(not care of agent)

Ciaran and Aline Morrison

address of the  
appellant  
(not care of agent)

Thonabrocky, Bushy Park, Galway

3. If an agent is involved, state the

name of the agent

address of the agent



4. State the Subject Matter of the Appeal\*

Brief description of the development

A blockwork field shelter for 2 horses.

The appeal concerns a request to have this declared as an exempted development as an Agricultural Structure under Class 6 of the Exempted Development- Rural (Part 3 of Schedule 2 under Article 6 of the Planning and Development Regulations, 2001).

Location of the development

Thonabrucky, Galway

AN BORD PLEANÁLA

TIME \_\_\_\_\_ BY \_\_\_\_\_

23 APR 2018

Name of planning authority

Galway County Council

LTR DATE \_\_\_\_\_ FROM \_\_\_\_\_

PL \_\_\_\_\_

Planning authority register reference number

ED 17/43

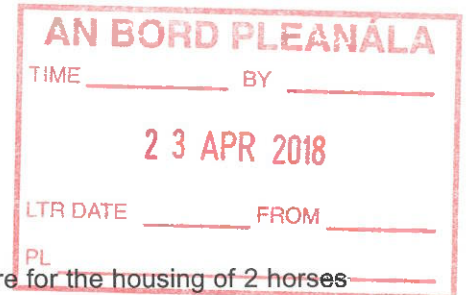
\* Alternatively, enclose a copy of the decision of the planning authority as the statement of the Subject Matter of the Appeal.

5. Attach, in full, the grounds of appeal and the reasons, considerations and arguments on which they are based.
6. Attach the acknowledgement by the planning authority of receipt of your submission or observations to that authority in respect of the planning application, the subject of this appeal. (Not applicable where the appellant is the applicant).
7. Enclose / Pay the correct fee for the appeal and, if requesting an oral hearing of same, the fee for that request see "[Guide to Fees Payable](#)" under heading of Making an Appeal on Home Page of this website for current fees.
8. Ensure that the appeal is received by the Board in the **correct manner and in time**.



Thonabrucky,  
Bushy Park,  
Galway.  
19<sup>th</sup> of April, 2018.

**Re: Application for exempted development ED 17/43**



Dear Sir/ Madam:

We are appealing the decision on ED 17/43, that the agricultural structure for the housing of 2 horses at Thonabrucky, Bushy Park, Galway, is development and is not exempted development.

Our grounds for appeal are the following:

- 1. This decision is a complete reversal of a previous decision on exemption and is unjustified.**
- 2. Statements forming the basis of this decision are incorrect or not relevant.**

I provide details of the considerations and arguments supporting these grounds, as follows:

**1. This decision is a complete reversal of a previous decision on exemption and is unjustified.**

We applied for and received an agricultural exemption ED 16/39 exemption of September 12, 2016 for the construction of a wooden shelter for 2 horses of 20m<sup>2</sup> in the same location at Thonabrucky, Bushy Park, Galway. The exemption requested under ED 17/43 is for a blockwork shelter, of slightly larger dimensions, that nevertheless falls under the 200m<sup>2</sup> gross floor space limit for exempted development. The gross floor space of the proposed structure is 36m<sup>2</sup>. An overhang from the roof will cover an additional 2.4m x 9.7m (23.3m<sup>2</sup>), so the entire footprint will comprise 59.3m<sup>2</sup>.

The location of the proposed structure is identical to the previously-exempted one, as is the purpose, namely the housing of 2 horses; the rationale for blockwork, rather than wood, is simply to ensure that the animals are provided with more solid and reliable housing. Given the short time between the two applications, there is no substantive difference in the reasons for exemption and thus we submit that the change in the decision is unjustified.

Application ED 17/43 was received on October 10, 2017. Given the very minor changes in the proposal, it is disappointing that a decision on this took almost 6 months to issue, despite more than 5 emails and multiple phone calls requesting updates, and that the decision was entirely at variance in all significant respects with the previous exemption ED 16/39. It is notable that neither the previous exemption ED 16/39 or a relevant permission 15/800 were cited in the planner's report on decision ED 17/43. It is also notable that in contrast to the planner's report on ED 16/39, there is no evidence of the site having been visited for the report in ED 17/43. While different planners were involved in these decisions, there is an apparent absence of continuity in the process and we further submit that this lack of continuity highlights the poorly-justified nature of the decision on ED 17/43, supporting our appeal.



**2. Statements forming the basis of this decision are incorrect or not relevant.**

Decision ED 17/43 states that an agricultural use does not currently exist at this location. This is entirely incorrect; this land has had horses kept on it for many years. We bought this land in 2013 and have kept horses on it since then; prior to our purchase, this was rented out for stock use. A photograph taken for the planner's report for ED 16/39 shows clearly the horses on the land, refuting the claim that there is no agricultural use. Furthermore, the planning permission granted to us for a non-commercial horse-riding arena (15/800) on an adjacent field within the overall footprint of the holding demonstrates clearly that an agricultural use is established for our land.

Decision ED 17/43 states that there is a risk of flooding and that the proximity of the site to an SAC and SPA raises concerns of environmental impact. We consider that the potential flooding is of no relevance, the proposed structure being an open shelter in an elevated position.

The previous decision ED 16/39 classified the landscape sensitivity as Class 2 (of 5, with 5 being the most sensitive) and stated that 'it is not considered that the current proposal will have a significant impact owing to its nature, which is simply a wooden field shelter measuring 20m<sup>2</sup> and no effluent storage'. The same considerations apply to the current application- the number of horses is the same (2) and they are being held on c. 9 acres of land, a substantial area for the distribution of manure in the normal course of things. Decision 16/39 also noted that Appropriate Assessment was carried out under our application 15/800 on the adjacent site and that it was found not to have a significant impact on the designated site. Therefore, we submit that the environmental impact of the proposed structure has effectively been assessed and declared by the planning authority not to be significant.

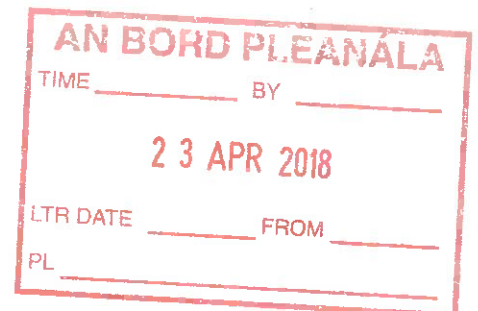
**Note:** The phrasing of the planner's report for decision ED 17/43 is unclear as it concludes a paragraph-long sentence by saying that the project 'is unlikely to have a significant adverse impact' on the conservation objectives named. For our appeal, we advise that we concur with the above statement.

We hope that the information we provide here will be sufficient to support the appeal that we are lodging and that the proposed shelter for horses can be considered exempted development.

Sincerely,



Ciaran and Aline Morrison.



**Enclosures:**

Fee, €220.

1. Decision ED17/43 and planner's report;
2. Decision ED 16/39 and planner's report;
3. Decision 15/800.







CM/ED 17/43

**Comhairle Chontae na Gaillimhe  
Galway County Council**

5<sup>th</sup> April 2018



Ciaran & Aline Morrison  
Thonabrucky  
Bushy Park  
Galway  
H91 AN2Y

**RE: Declaration of Exempted Development under section 5 of the Planning & Development Act 2000 – ED 17/43**

A Chara,

I refer to the above application which was received by this office on the 10<sup>th</sup> October 2017.

The Planning Authority, in considering this Section 5 application, had regard particularly to

- (a) The definition of "works" set out in Section 2 of the Planning and Development Act 2000 (as amended).
- (b) The definition of "development" set out in Section 3 of said Planning and Development Act.
- (c) Article 9(1)(a) of said Planning and Development Regulations.
- (d) Class 6 of Schedule 2 Part 3 of the 2001 Planning and Development Regulations.
- (e) Documents submitted from the referrer in this Section 5 application.

Cont'd

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## Comhairle Chontae na Gaillimhe Galway County Council

The Planning Authority, in exercise of the powers conferred on it by Section 5 of the 2000 Planning Act (as amended), hereby decides that:

**The agricultural structure for the housing of 2 horses (59.3 sqm) at Thonabrucky, Bushypark, County Galway is development and is not exempted development.**

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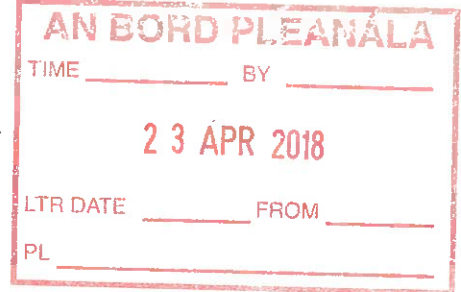
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**Leabharlann**  
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Mise le meas

PP Paula Connaughton  
Assistant Planner  
Planning & Sustainable Development Unit





## PLANNER'S REPORT

File Ref: ED 17/43

Applicant: Cianran & Aline Morrison

Location: Thonabrucky, Bushypark, County Galway.

### Section 5 of the Planning and Development Act 2000 (as amended)

If any question arises as to what, in any particular case, is or is not development or is or is not exempted development within the meaning of the Act, any person may, on payment of the prescribed fee, request in writing from the relevant planning authority a declaration on that question, and that person shall provide to the planning authority any information necessary to enable the authority to make its decision on the matter.

### Proposed – Application

Whether the erection of an agricultural structure for the housing of 2 horses (59.3 sqm) at Bushypark, Thonabrucky, County Galway is or is not development or, is or is not exempted development within the meaning of the Planning and Development Acts, 2000 (as amended) and Planning and Development Regulations, 2001 (S.I. No. 600 of 2001) (as amended).

### Site Location

The site is located on a local Road c 3km northwest of the centre of Galway City

### Relevant Legislation

The following excerpts from current planning legislation are relevant to the assessment of this referral.

#### 2000 Planning and Development Act

Section 2 of the Planning and Development Act, 2000 defines the terms used within the act and states that

*"Works" includes any act or operation of construction, excavation, demolition, extension or alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes...*

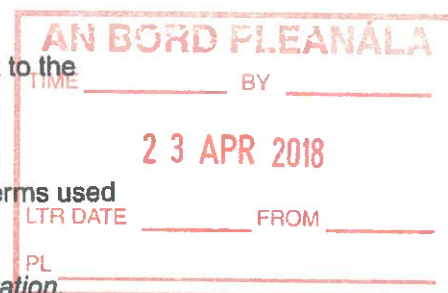
and

*"structure" means any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined,*

Section 3(1) states:

*"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 sets out the types of works that while considered 'development', can be considered 'exempted development' for the purposes of the Act. (The 2001 Planning Regulations as amended derive from this section and designate further works as being exempted development for the purposes of the act)





2001 Planning and Development Regulations (as amended)

Article 6 deems the development set out in Schedule 2 to be exempted development. Column 1 describes the development which can be considered exempted development, while Column 2 describes the conditions and limitations applicable to such exemption. Part 3 sets out exemptions for rural areas. 'Class 6' and its conditions/limitations are as follows:

Works consisting of the provision of a roofed structure for the housing of cattle, sheep, goats, donkeys, horses, deer or rabbits, having a gross floor space not exceeding 200 square metres (whether or not by extension of an existing structure), and any ancillary provision for effluent storage.

1. No such structure shall be used for any purpose other than the purpose of agriculture.
2. The gross floor space of such structure together with any other such structures situated within the same farmyard complex or within 100 metres of that complex shall not exceed 300 square metres gross floor space in aggregate.
3. Effluent storage facilities adequate to serve the structure having regard to its size, use and location shall be constructed in line with Department of Agriculture, Food and Rural Development and Department of the Environment and Local Government requirements and shall have regard to the need to avoid water pollution.
4. No such structure shall be situated, and no effluent from such structure shall be stored, within 10 metres of any public road.
5. No such structure within 100 metres of any public road shall exceed 8 metres in height.
6. No such structure shall be situated, and no effluent from such structure shall be stored, 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.
7. No unpainted metal sheeting shall be used for roofing or on the external finish of the structure.

Article 9 (1) (a) sets out general restrictions on exemption, stating that 'Development to which article 6 relates shall not be exempted development for the purposes of the Act— (a) if the carrying out of such development would— consist of or comprise the excavation, alteration or demolition (other than peat extraction) of places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest, the preservation, conservation or protection of which is an objective of a development plan or local area plan for the area in which the development is proposed or, pending the variation of a development plan or local area plan, or the making of a new development plan or local area plan, in the draft variation of the development plan or the local area plan or the draft development plan or draft local area plan'

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**Planning Assessment:**

The applicant is seeking written opinion from the Planning Authority under Section 5 of the Planning and Development Act, 2000 (as amended), as to whether the erection of an





agricultural structure for the housing of 2 horses (59.3 sqm) at Thonabrucky, Bushypark, County Galway is or is not development or, is or is not exempted development within the meaning of the Planning and Development Acts, 2000 (as amended) and Planning and Development Regulations, 2001 (S.I. No. 600 of 2001) (as amended).

**Part 3 sets out exemptions for rural areas. 'Class 6': Agricultural structures:** The subject site is a greenfield site and does not consist of other farm buildings. The proposed development would establish an agricultural use at this location which does not currently exist. Condition and Limitation 2 of Class 6 refers to other structures and a farmyard complex. Having regard to the limitations and conditions attached to class 6 GCC considers that the exemptions only apply to exiting an farm yard complex and the proposed development as a stand alone agricultural structure is not exempt development.

**Article 9(1) (a) states** '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—  
consist of or comprise the excavation, alteration or demolition (other than peat extraction) of places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest, the preservation, conservation or protection of which is an objective of a development plan or local area plan for the area in which the development is proposed or, pending the variation of a development plan or local area plan, or the making of a new development plan or local area plan, in the draft variation of the development plan or the local area plan or the draft development plan or draft local area plan'

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#### Ecology:

The site is located 1.9km south west of Lough Corrib Special Area of Conservation (cSAC site code: 000297) and 1.2km southwest of the Lough Corrib Special Protection Area (cSAC site code: 004042), which are designated European sites for rare and threatened flora and fauna (i.e. Natura 2000 network) protected under the EU Habitats Directive (92/43/EEC) & EU Birds Directive (79/409/EEC, as amended by Directive 2009/147/EC) and the European Communities (Natural Habitats) Regulations 1997, as amended by the European Communities (Birds and Natural Habitats) Regulations 2011. There is a water course to the rear of the site which drains into the aforementioned European sites. This water course has been identified by the OPW as being at risk from flooding.

Having regard to the nature of the proposed project, the proximity of the site to lands which have been identified by the OPW as being at risk of flooding, the proximity of the site to European sites Lough Corrib SAC and SPA, the connectivity of the site with these European sites via the watercourse to the rear of the site, the qualifying interest and conservation objectives of Lough Corrib SAC and SPA, and in the absence of any of the following Screening Report, Maps of land ownership and slurry spreadable lands for the slurry generated, the Planning Authority, who is the competent authority with the responsible to carry out an Appropriate Assessment in accordance with the requirements of Article 6(3) of the EU



Habitats Directive under Part XAB of the Planning and Development Act, 2000 (as amended), is not satisfied that the need for an Appropriate Assessment has been screened out, as a result of the proposed project, individually or in combination with any other projects, as the project is unlikely to have a significant adverse impact on the integrity or conservation objectives on the above named European sites.

**Recommendation:**

The Planning Authority, in considering this Section 5 application, had regard particularly to

- (a) The definition of "works" set out in Section 2 of the Planning and Development Act 2000 (as amended).
- (b) The definition of "development" set out in Section 3 of said Planning and Development Act.
- (c) Article 9(1)(a) of said Planning and Development Regulations.
- (d) Class 6' of Schedule 2 Part 3 of the 2001 Planning and Development Regulations.
- (e) Documents submitted from the referrer in this Section 5 application.

The Planning Authority, in exercise of the powers conferred on it by section 5 of the 2000 Planning Act (as amended), hereby decides that:

The agricultural structure for the housing of 2 horses (59.3 sqm) at Thonabrucky, Bushypark, County Galway is development and is not exempted development.

Prepared By: Paula Connaughton, Assistant Planner

Counter-signed By: James Russell, (A) Senior Executive Planner

**Director's/Manager's Recommendation**

Decided By: Eileen Ruane, Director of Services

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ED 16/39 SK/GC



Comhairle Chontae na Gaillimhe  
Galway County Council

2

12<sup>th</sup> September, 2016

Ciaran & Aline Morrison  
Thonabrucky  
Bushy Park  
Galway

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**Re: Application for Declaration of Exempted Development under Section 5, Planning & Development Act 2000 ED 16/39**

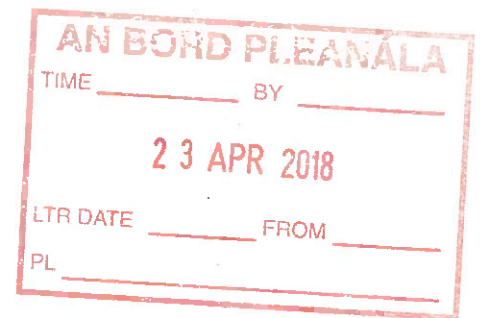
A Chara,

I refer to the application for Declaration of Exempted Development received by the Planning Authority on the 11<sup>th</sup> July 2016.

Having regard to Schedule 2, Part 3, Class 6 of the Planning and Development Regulations 2001, the proposed development **is considered to be exempted development.**

Mise le meas,

*P.P. G. O'Shaughnessy*  
**Saoirse Kennedy**  
**Senior Executive Planner**  
**Planning & Sustainable Development Unit**





**File ref:** ED 16/39

**Applicant:** Ciaran and Aline Morrisson

**Location:** Tonabrucky, Bushypark, County Galway.

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**Section 5 of the Planning and Development Acts, 2000-2010**

If any question arises as to what, in any particular case, is or is not development or is or is not exempted development within the meaning of the Act, any person may, on payment of the prescribed fee, request in writing from the relevant planning authority a declaration on that question, and that person shall provide to the planning authority any information necessary to enable the authority to make its decision on the matter.

**Proposed Application:**

Whether the proposed development, consisting of a wooden field shelter, constitutes exempted development or not within the meaning of the Planning and Development Act 2000-2012.

**Site location and development:**

The site is located at Tonabrucky, Bushypark, County Galway.









TIME \_\_\_\_\_ BY \_\_\_\_\_  
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**History:**

15/800 : PP gtd adjacent site, use of part of land as private non-commercial riding arena, Ciaran Morrisson.

**Assessment:**

Landscape sensitivity Class 2 (5 being the most sensitive and 1 the least).

The site is located in the GTPS.

The site is located in the Gaeltacht.

Appropriate Assessment screening was carried out under application 15/800 on an adjacent site, for the same applicant and was found not to have a significant impact on the designated site. It is not considered the current proposal will have a significant impact owing to its nature which is simply a wooden field shelter measuring 20sq.m and no effluent storage.

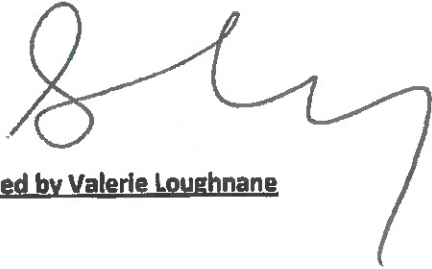
The proposed development meets all the limitations set out in Schedule 2, Part 3, Class 6 of the ED Regulations 2001.

**Recommendation:**

Having regard to Schedule 2, Part 3, Class 6 of the Regulations 2001, the proposed development is considered to be exempted development.



Prepared by Saoirse Kennedy



07/9/16

Countersigned by Valerie Loughnane

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<b>23 APR 2018</b>	
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C3

**GALWAY COUNTY COUNCIL**

**PLANNING AND DEVELOPMENT ACTS 2000-2010**

**DECISION under SECTION 34 of the ACT of 2000**

**Ref No. in Planning Register: 15/800**

**Date of Receipt of Application: 02/07/2015**

Ciaran Morrison  
c/o James Roche B.E.  
16 Forster St.  
Galway

**I hereby give you NOTICE that the Galway County Council has by order dated 30 NOV 2015 granted RETENTION**

**to the above named, for development of land, in accordance with documents lodged, namely:**

**Of the use of part of the lands at the at Drum East/Boleynasruhaun as a private non-commercial horse riding arena and for permission to retain the access from the public road to same. in the townland of Drum East**

**and subject to the condition(s) set out in the schedule hereto.**

**Main reasons and considerations on which the decision is based:-** The proposed development has been assessed, within the restrictions imposed by the principles of proper planning and sustainable development and having regard to the policies and objectives of Galway County Council as set out in the 2015 - 2021 County Development Plan. Based on this assessment it is considered that the proposed development is in accordance with the proper planning and sustainable development of the area and with the provisions of the Development Plan.

**Signed this 30<sup>th</sup> day of November 2015 on behalf of Galway County Council**

*E. Keaveney*  
**pp COUNTY SECRETARY**

**SEE ATTACHED SCHEDULE**

**(CONDITION NO.'S 6)**

*Please see attached sheet for important Notice*

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