

An  
Bord  
Pleanála

## Inspector's Report ABP-303734-19

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### Question

Whether infilling & drainage of wetland and construction of a road access within/adjacent to Lough Lene Special Area of Conservation is or is not development and is or is not exempted development.

### Location

Lough Lene, Collinstown, Co. Westmeath.

### Declaration

Planning Authority

Westmeath County Council

Planning Authority Reg. Ref.

S5-1-19

Applicant for Declaration

National Parks and Wildlife Services.

Planning Authority Decision

None.

### Referral

Referred by

Westmeath County Council.

Owner/ Occupier

Ronan Fagan.

Observer(s)

None.

**Date of Site Inspection**

23<sup>rd</sup> May 2019.

**Inspector**

Karen Kenny

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## 1.0 Site Location and Description

- 1.1. The lands that are the subject of the referral are located in the rural townland of Collinstown in Co. Westmeath, c. 1.5 km north of Collinstown Village.
- 1.2. The subject site comprises two connected agricultural fields (c. 7.3 ha). The fields are broadly rectangular in shape and run along a north west to south east alignment between Lough Lene and a county road. The fields are separated by a central hedgerow. The field boundaries with adjoining fields also comprise native hedgerows with intermittent tree planting.
- 1.3. Ground levels in the area slope gently towards the lake. There is a recessed entrance into the south western field from the adjoining county road and a stone access road along the full extent of the south western field boundary. There is a spur off the roadway at a mid-point, that connects to the northern field (through a gap in the hedgerow).
- 1.4. The south western field is entirely in grass, while the north eastern field is primarily in grass with a small area of reeds and other wetland and woodland type vegetation in the northern section of the field. There is an open land drain separating the wetland section from the field to the south. There are also open land drains on either side of the central field boundary hedge. I noted on inspection that underground pipework from the field drains into the open drains at regular intervals.
  - 1.4.1. The County road serving the site is subject to an 80km/hour speed limit and has a carriageway width of c.5 metres. The entrance from the public road is a substantial recessed entrance with a wooden gate.
- 1.5. On sections of the field where grass cover is absent or light, it is clear that material has been imported into the field (a mix of stones and soil was visible).

## 2.0 The Question

- 2.1. The documentation submitted to Westmeath County Council seeks a Section 5 declaration in relation to the planning status of works that have taken place within and adjacent to the Lough Lene Special Area of Conservation (Site Code:002121) in the townland of Collinstown in Co. Westmeath. The submission describes the nature and extent of the works but does not pose a specific question.

2.2. I would note that Section 127(1) of the P&D Act states that “an appeal or referral shall – (d) state in full the grounds of appeal or referral and the reasons, considerations and arguments on which they are based”. I consider that the submission is sufficiently clear in relation to the grounds of the referral.

2.3. I would suggest that the question to be considered, based on the submitted details, is whether the infilling and drainage of wetland and construction of a road access on lands at Collinstown, Co. Westmeath is or is not development and is or is not exempted development.

### **3.0 Planning Authority Declaration**

#### **3.1. Declaration**

3.1.1. The Planning Authority have referred the matter directly to An Bord Pleanála for a consideration. A letter from the Planning Authority states that this is due to the nature of the declaration requested, situated adjacent to and within Lough Lene SAC, and the lack of available ecological expertise within the Council for the purpose of determining appropriate assessment requirements.

#### **3.2. Planning Authority Reports**

##### **3.2.1. Planning Reports**

None.

##### **3.2.2. Other Technical Reports**

None.

### **4.0 Planning History**

None.

## 5.0 Policy Context

### 5.1. Development Plan

The Westmeath County Development Plan 2014-2020 is the relevant statutory plan for the area. The site is located on in a rural area and is outside of a designated settlement. The following policies of the Development Plan are considered to be relevant.

**P-NAT2:** To protect and conserve Special Areas of Conservation, candidate Special Areas of Conservation, Special Protection Areas and candidate Special Protection Areas, designated by the National Parks and Wildlife Service of the Department of the Arts Heritage and the Gaeltacht under the EU Birds and Habitats Directives respectively.

**P-NTA3:** To protect plant, animal, species and habitats which have been identified by the Habitats Directive, Birds Directive, Wildlife Act (1976) and (Amendment Act) 2000, and the Flora Protection Order S.I No. 94 of 1999.

**P-NTA4:** To assess any plan or project in accordance with Article 6 of the Habitats Directive, and assess whether the Plan or project is likely to have a significant effect on the site either individually or cumulatively upon the integrity, conservation objectives and qualifying interest of any Natura 2000 site.

**P-NTA5:** To require environmental assessment such as EIA (Environmental Impact Assessment) and/or ecological appraisal for development not directly connected with or necessary to the management of a European site, or a proposed European Site and which are likely to have significant effects on the European site either individually or cumulatively.

### 5.2. Natural Heritage Designations

5.2.1. The site is within and adjacent to Louth Lene Special Area of Conservation (Site Code: 002121). The qualifying interests of the SAC are as follows:

- Hard oligo-mesotrophic waters with benthic vegetation of Chara spp. (3140);  
and

- *Austropotamobius pallipes* (White-clawed Crayfish) (1092).

## 6.0 The Referral

### 6.1. Referrer's Case

6.1.1. NPWS have sought a Section 5 declaration in relation to the planning status of works that have taken place within and adjacent to Lough Lene SPA. The following works and impacts are described in the submission:

- The infilling and drainage of a wetland (namely reed and large sedge swamp and march habitats) within and immediately adjacent to the Lough Lene SPA (Site Code:002121). The submission states that:
  - An area of c. 0.25 ha of former march and reed bed habitat has been infilled with up to 30-40 centimetres of soil and partly burned tree trunks and branches.
  - The area infilled includes c. 0.04 ha within the designated area of the SAC.
  - The remaining wetland habitat within the SAC has been affected by dumped soil on the north side of a new drain.
  - The remaining area of the wetland habitat is likely to be negatively affected by the interference with water levels due to the presence of the new drainage channel.
  - The development has removed a buffer zone between intensively farmed land and the lake.
- The submission refers to the construction of a new road of c. 228 metres in length and between 3.5 and 4 metres in width on the former wet and dry grassland habitat all within the SAC and the construction of a turning area of c. 200 square metres in area on former dry grassland habitat all within the Lough Lene SAC. The road and turning area are covered with hard core and crushed rock.

## 6.2. Planning Authority Response

None.

## 6.3. Owner/ occupier's response

None.

## 7.0 Statutory Provisions

### 7.1. Planning and Development Act, 2000

#### 7.1.1. Section 2(1) of the act Defines, among other things:

“agriculture” – as including 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 land as grazing land, meadow land, osier land, market gardens and nursery grounds, and “agricultural” shall be construed accordingly;

“works” – as including any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal...

Section 3(1) defines “development”, except where the context otherwise requires, as 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(2)(a) of the Act enables certain classes of development to be deemed exempted development by way of regulation.

Section 4 (4) states that notwithstanding *paragraphs (a), (i), (ia) and (l) of subsection (1) and any regulations under subsection (2)*, development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required.



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

Article 5 (1) defines, "wetlands" as natural or artificial areas where biogeochemical functions depend notably on constant or periodic shallow inundation, or saturation, by standing or flowing fresh, brackish or saline water.

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 the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.

Article 6 (3) states that subject to article 9...in areas other than a city, a town or an area specified in section 19(1)(b) of the Act or excluded areas as defined in section 9 of the Local Government (Reorganisation) Act, 1985, development of a class specified in Column 1 of Part 3 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 3 opposite the mention of that class in the said column 1.

Article 9(1) states 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 (inter alia) -

- (i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,
- (ii) consist of or comprise the formation, laying out or material widening of a means of access to a public road, the surfaced carriageway of which exceeds 4 metres in width,
- (iii) endanger public safety by reason of traffic hazard or obstruction of road users, .....

- (viiB) comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site,  
.....
- (c) if it is development to which Part 10 applies, unless the development is required by or under any statutory provision (other than the Act or these Regulations) to comply with procedures for the purpose of giving effect to the Council Directive,”

## **Schedule 2, Part 1. Exempted Development – General**

### Sundry Works

#### Class 13

The repair or improvement of any private street, road or way, being works carried out on land within the boundary of the street, road or way, and the construction of any private footpath or paving (column 1) – subject to the following restrictions (set out in column 2) – The width of any such private footpath or paving shall not exceed 3 metres.

### Temporary structures and uses

#### Class 16

*“The erection, construction or placing on land on, in, over or under which, or on land adjoining which, development consisting of works (other than mining) is being or is about to be, carried out pursuant to a permission under the Act or as exempted development, of structures, works, plant or machinery needed temporarily in connection with that development during the period in which it is being carried out (column 1) – subject to the following restrictions (set out in column 2) - Such structures, works, plant or machinery shall be removed at the expiration of the period and the land shall be reinstated save to such extent as may be authorised or required by a permission under the Act.”*

## **Schedule 2, Part 3. Exempted Development – Rural**

### *Land Reclamation*

#### Class 11

Development consisting of the carrying out of drainage and/or reclamation of wetlands (column 1) – subject to the following restrictions (set out in column 2) -

1. The area to be affected shall not exceed 0.1ha.
2. Where development has been carried out within a farm holding under this class, the total area of any such development taken together with the area of any previous such development within the farm holding shall not exceed the limits set out in 1. above.

## **8.0 Precedent Cases**

**RL3359:** Land infilling on lands that were proximate to and had hydrogeological connections to the Inagh River Estuary SAC. It appeared that some of the infilling works had been undertaken by the Local Authority, and that some had been undertaken by the landholder. The referral was made by a Third Party. The Board decided that the development was not exempted development, concluding as follows:

- The infill/reclamation of lands involved works, which were development; and the infill/reclamation of areas A, B, C and D constituted one project involving land improvements to facilitate the agricultural use of the landholding, which cumulatively exceeded two hectares in scale, and constituted wetlands as per Article 5 of PDR, 2001, and exceeded the EIA threshold.
- The likelihood of significant effects on the environment could not be excluded, given the direct hydrological link to the Inagh River Estuary SAC,
- It could not be excluded that the development undertaken to date, and which was ongoing, did not have significant effects on the environment and therefore AA would have been required,
- Given the requirement for both EIA & AA, the restriction on exempted development per S.4(4) of PDA, 2000 applied,

- The development was not undertaken solely by or on behalf of the local authority and could not avail of the exemptions under section (4)(1).

**RL2479:** The referral related to the disposal of soil and topsoil for the purposes of land reclamation. The Board found that the disposal of soil and topsoil on the lands for the purposes of land reclamation and increased productivity of the agricultural land constituted works under section 2(1) of the PDA, 2000, was 'development' under section 3(1) of the PDA, 2000 and subject to article 9 of the PDR 2001, the works generally came within the scope of the exemption provided at Class 11 of Part 3 of Schedule 2 of the PDR, 2001. However, the said works were deemed to come within the scope of the restriction on that exemption set out at article 9 (1)(a)(iii) of the PDR, insofar as it was considered that the proposal would endanger public safety by reason of traffic hazard and obstruction of road users, due to the traffic turning movements that the proposed development would generate on the Regional Road. The Board thereby decided that the said land recovery project for the importation of soil and topsoil for deposition and spreading on land was development and was not exempted development.

**RL2472:** The main issue of the case was the filling of 8.3 hectares with inert materials to enable beneficial agricultural after use (dairy farming) of the lands. The Board found that the activity was development but was exempted development as follows: the disposal of inert soil and stones on low-lying ground for the purposes of land reclamation for productive agricultural land constituted works under section 2 (1) of the PDA 2000, that these works constituted 'development' under section 3 (1) of the PDA 2000, and that they came within the scope of the exemption provided at class 11 of Part 3 of Schedule 2 to the PDR, 2001. The Board decided that the works did not give rise to traffic hazard nor obstruction of road users and, therefore, did not come within the scope of the restriction on that exemption as set out at article 9(1)(a)(iii).

**RL2324:** The referral related to a site of 6.4 hectares in a rural area. The site was served by a County road, which was substandard in width and alignment, with significant ribbon development in the vicinity. The works comprised the delivery of inert material for use as fill (soil and stone from local housing development sites), which would result in an overall raising of ground levels by 1.8 metres. The existing farm laneway was to be upgraded. The latter, combined with the principle works, would produce a total c.5948 no. lorry movements of over three years, approximately.

The Board decided that the development was not exempted development as follows: The land reclamation constituted works that were development per Sections 2(1) and 3(1) of PDA, 2000, and those works came within the exempted development provisions of Part 3 Class 11 of PDR, 2001. However, the restrictions on exemption per Article 9(1)(a)(iii) applied insofar as the intensified use of the county road, which was substandard in terms of width and alignment, would be a traffic hazard.

## 9.0 Assessment

### 9.1. Introduction

- 9.1.1. The question to be considered is whether the infilling and drainage of wetland and construction of a road access on lands at Collinstown, Co. Westmeath is or is not development and is or is not exempted development. The lands are within and immediately adjacent to the Lough Lene SAC (Side Code: 002121).
- 9.1.2. The third-party referral states that the following has occurred:
- Infilling and drainage of a wetland (reed and large sedge swamp and march habits) over an area of c. 0.25 hectares.
  - Infilling with up to 30-40 centimetres of soil and partly burned tree trunks and branches.
  - Excavation of a land drain (c. 137 m in length and 1.5 m in width) through the wetland within and immediately adjacent to the Lough Lene SAC, with connection into an existing land drain that flows into Lough Lene.
  - Construction of a roadway (228 m in length and 3.5 m to 4.0 m in width) and a turning area (c. 200sq.m in area) on former wetland and dry grassland habitat within the Lough Lene SAC.
- 9.1.3. An Bord Pleanála sent a copy of the referral to the owner / occupier of the land and advised that a submission or observation in relation to the referral could be made within a period of 4 weeks. No response has been received.
- 9.1.4. I have visited the site and the surrounding area and have reviewed OSI Mapping (2011-2013 and 2017) and Google Earth Imagery (2009, 2014 and 2016) for the area. It is clear that works have been undertaken on the lands that are the subject of the

referral. The full extent of the works and lands impacted, the quantum of infill material imported and the associated traffic movements are not known. On inspection, I noted that the field is predominantly under grass. There was evidence, on sections of ground where grass cover is light or absent, that stones and soil (inert material) has been imported into the field. There are open drainage ditches on either side of the central hedgerow and a series of underground drains that drain into the open drains.

- 9.1.5. There is an area of wetland vegetation (reeds, marsh ground and wet woodland) at the northern edge of the referral lands and on the adjacent lands to the north that would come within the definition of "wetlands" set out in Article 5 (1) of the PRD. An open drain has been constructed along the southern fringe of the wetlands. Aerial imagery for the area indicates that the lands to the immediate south east of the wetland had a similar character to the wetlands prior to the undertaking of works in this area.

## 9.2. **Is or is not development**

- 9.2.1. Section 2(1) of the Planning and Development Act 2000 defines "works" as including any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal... In the 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."
- 9.2.2. I note the definition of 'works' outlined above, and having examined same, I am of the opinion that the said (1) infilling and drainage of wetland and (2) construction of a road access, amounts to 'works' within the meaning of Section 2 (1) of the Act and is therefore development within the meaning of Section 3 of the Planning and Development Act 2000, as a consequence of the works being undertaken.

## 9.3. **Is or is not exempted development**

- 9.3.1. Development can be considered exempt under either Section 4 of the Planning and Development Act or under Article 6 or 8 of the Planning and Development Regulations. Section 4 (1) of the Act sets out the provisions in relation to exempted development and is separate to and has primacy over the exempted development provisions of the Regulations. However, as there are no applicable exemptions under the Act, the

referral will be considered under the relevant provisions of the Planning and Development Regulations, 2001 (as amended).

9.3.2. In considering whether the development is or is not exempted development I would note the following:

- The lands were in use for agricultural purposes at time of inspection and it is reasonable to assume that the works were undertaken for agricultural purposes.
- The imported material would appear to comprise inert material (stones and soil). The area of land affected, the quantity of imported material and the extent of drainage infrastructure and works is not known.
- It is reasonable to assume, having consulted the submitted information, the Site Synopsis for the Lough Lene SAC published by NPWS and OSI and Google imagery, that the affected lands include areas of wetland vegetation as defined under article 5 (1) of the PDR. The referrer states that c. 0.25 hectares of wetland has been removed.
- In terms of the limitations under Article 9, the entrance to the public road has been widened and recessed; a stone roadway has been constructed along the full extent of the north western boundary and into the central area of the site and remains in place; and the lands are within and adjacent to the designated area of the Lough Lene SAC (Site Code: 002121).

#### **Article 6**

9.3.3. Under Article 6 (3) of the Regulations (and subject to Article 9) development of a class specified in Column 1 of Part 1 of Schedule 2; and in Column 1 of Part 3 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in Column 2 of the said Part.

9.3.4. The following provisions of Part 3 of Schedule 2 (Exempted Development – Rural) are considered to be relevant in respect of the infilling and drainage works.

#### Class 11

*Development consisting of the carrying out of drainage and/or reclamation of wetlands (column 1) – subject to the following restrictions (set out in column 2)-*

1. *The area to be affected shall not exceed 0.1ha.*
2. *Where development has been carried out within a farm holding under this class, the total area of any such development taken together with the area of any previous such development within the farm holding shall not exceed the limits set out in 1. above.*

The infilling and drainage works could come within the scope of Class 11, however, the referral states that the infilled area included a wetland of 0.25 hectares, which would exceed the 0.1-hectare threshold set out in Column 2 of Class 11. It cannot be concluded, therefore, that the development falls clearly and unambiguously within the scope of Class 11.

- 9.3.5. The following provisions of Part 1 of Schedule 2 (Exempted Development – General) are considered to be relevant in respect of the access road.

#### Class 13

*“The repair or improvement of any private street, road or way, being works carried out on land within the boundary of the street, road or way, and the construction of any private footpath or paving (column 1) – subject to the following restrictions (set out in column 2) – The width of any such private footpath or paving shall not exceed 3 metres”.*

Class 13 falls under the exemptions for “sundry works”. The construction of an access road could fall within this Class. However, the access road exceeds the 3-meter width threshold set out in Column 2 of Class 13. Furthermore, there is no indication that there was an existing road or way in place prior to the laying of the access road. The development does not therefore, fall within the scope of Class 13.

#### Class 16

*“The erection, construction or placing on land on, in, over or under which, or on land adjoining which, development consisting of works (other than mining) is being or is about to be, carried out pursuant to a permission under the Act or as exempted development, of structures, works, plant or machinery needed temporarily in connection with that development during the period in which it is being carried out (column 1) – subject to the following restrictions (set out in column 2) - Such*



*structures, works, plant or machinery shall be removed at the expiration of the period and the land shall be reinstated save to such extent as may be authorised or required by a permission under the Act”.*

Class 16 falls under the exemptions for “temporary structures and uses”. The access road may have been constructed to facilitate access to the lands for the purpose of infilling and drainage works and could therefore fall within the scope of Class 16. However, as discussed in Section 9.4.2 above, the landfilling and drainage works were not carried out pursuant to a permission under the Act, nor do they clearly fall within the scope of Class 11. Furthermore, the road remains in place after the ending of the works and cannot therefore be considered temporary. The access road does not, therefore, fall within the scope of Class 16.

#### **9.4. Restrictions on exempted development**

- 9.4.1. In respect of the restrictions set out in sub Article 9(1)(ii) of the PDR, consideration needs to be given to whether the works would consist of or comprise the formation, laying out or material widening of a means of access to a public road, the surfaced carriageway of which exceeds 4 metres in width, thereby de-exempting the works. The original agricultural access (Google Earth 2009, 2014 and 2016 and Google Street View 2009 refers) has been widened through the provision of a large recessed vehicular entrance onto the county road to the front of the site, which has a carriageway of 5 metres (approx.). Exemptions provided for under Article 6 cannot therefore be relied upon.
- 9.4.2. In relation to the restrictions set out in sub Article 9(1)(iii) of the PDR, which refers to development that would endanger public safety by reason of traffic hazard or obstruction of road users, I would note that sightlines from the entrance are good and that the road is of good width and alignment.

#### **Appropriate Assessment**

- 9.4.3. In respect of sub article 9 (a)(viiB) of the Regulations or Section 4 (4) of the Planning and Development Act 2000, consideration needs to be given to whether the works undertaken could impact on European sites in the area, thereby de-exempting the works.

9.4.4. The site is within and immediately adjacent to the designated area of the Lough Lene SAC. The Site Synopsis for the Lough Lene SAC, published by NPWS, refers to areas of well-developed marsh, swamp and wet woodland vegetation in the sheltered areas at both the eastern and western ends of the SAC. The qualifying interests of the SAC are:

- Hard oligo-mesotrophic waters with benthic vegetation of Chara spp. (3140); and
- Austropotamobius pallipes (White-clawed Crayfish) (1092).

The conservation objective is “to maintain or restore the favourable conservation condition of the Annex I habitat(s) and/or the Annex II species for which the SAC has been selected”.

9.4.5. The works in question are a development in their own right and so they need to be screened for AA. The physical link between the referral site and the Natura 2000 gives rise to a clear source – pathway - receptor link between the site and the works. The works involved the removal of habitat both within and immediately adjacent to the designated area of the SAC, the importation of new material and alterations to the drainage regime in the area.

9.4.6. Having regard to the nature of the works and to the physical connection to the SAC, I consider that any screening exercise for the development in question would be likely to conclude that significant impacts, both direct and indirect, on the Lough Lene SAC cannot be excluded on the basis of objective scientific information and that Stage 2 Appropriate Assessment would be required.

#### **Environmental Impact Assessment**

9.4.7. In respect of the restrictions on exempted development set out in sub article 9(c) of the PDR or in Section 4 (4) of the Planning and Development Act, consideration needs to be given to whether an environmental impact assessment would have been required. Part 2 of Schedule 5 of the Planning and Development Regulations 2001, details development for which an EIS is required. The relevant classes in this instance are as follows:

Class 11 (b) refers to “installations for the disposal of waste with an annual intake greater than 25,000 tonnes”.

Class 1 (c) refers to “development consisting of the carrying out of drainage and/or reclamation of wetlands where more than 2 hectares of wetlands would be affected”.

- 9.4.8. I consider that having regard to the nature of infilling that has occurred that the volume of material would be unlikely to exceed the threshold detailed in Class 11 (b). However, in the absence of clear detail in relation to the baseline environment and the extent of wetland that has been drained and / or reclaimed or impacted I cannot conclude that the development would not meet or exceed the 2-hectare threshold for mandatory EIA. Furthermore, given the sensitivity of the receiving environment proximate to a lake and within and adjacent to a SAC, it cannot be excluded that the proposed development would not meet any of the criteria set out in Schedule 7 of the Regulations for determining whether a sub-threshold development would be likely to have significant effects on the environment. I would therefore submit that on the basis of the available information, the need for an EIS cannot be excluded.

**Conclusion:**

- 9.4.9. I consider that the development does not fall clearly and unambiguously within the scope of any of the exemptions provided for under the Planning and Development Act 2000 (as amended) or under the Planning and Development Regulations 2001 (as amended). Should the Board take a different view in respect of the exemptions provided for under Article 6 of the aforementioned Regulations, I consider that the limitations provided for under Article 9 (subsections (1)(a)(ii), (1)(a)(viiB) and 1(c) would de-exempt any such exemption.

## 10.0 Recommendation

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

**WHEREAS** a question has arisen as to whether the infilling and drainage of wetlands and the construction of a road on lands at Collinstown, Co. Westmeath is or is not development and is or is not exempted development:

**AND WHEREAS** NPWS requested a declaration on this matter from Westmeath County Council:

**AND WHEREAS** Westmeath County Council referred this request to An Bord Pleanála on the 14<sup>th</sup> day of February, 2019:

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

- (a) Section 2(1) of the Planning and Development Act, 2000, as amended,
- (b) Section 3(1) of the Planning and Development Act, 2000,
- (c) Section 4(1)(a) of the Planning and Development Act, 2000, as amended,
- (d) article 6(1), and article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (e) Part 1 and Part 3 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (f) the planning history of the site,
- (g) the pattern of development in the area:

**AND WHEREAS** An Bord Pleanála has concluded that -


- (a) the infilling and drainage of wetlands and construction of an access road constitutes works that come within the scope of section 2(1) of the Planning and Development Act, 2000,
- (b) the said works constitute development that comes within the scope of section 3(1) of the said Act,
- (c) the said works do not clearly and unambiguously come within the scope of the exemption provided under article 6(1) and Part 1 and Part 3 of Schedule 2 of the said Regulations,

(d) the said works do come within the scope of the restrictions on exemptions set out at:

- article 9 (1)(a)(ii) of the Planning and Development Regulations, 2001 (as amended), whereby the works consisted of the material widening of a means of access to a public road, the surfaced carriageway of which exceeds 4 metres in width;
- article 9 (1)(a)(viiB) of the said Regulations, whereby the works comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European Site; and
- article 9 (c) of the said Regulations, whereby the need for Environmental Impact Assessment cannot be excluded.

(e) Furthermore, the said works do come within the scope of the restrictions on exemptions set out under section 4 (a) of the Planning and Development Act 2000 (as amended) insofar as it is considered that the need for Appropriate Assessment and Environmental Impact Assessment cannot be excluded:

**NOW THEREFORE** An Bord Pleanála, in exercise of the powers conferred on it by section 5 (X) (x) of the 2000 Act, hereby decides that the (1) infilling and drainage of land and (2) the construction of a road on lands at Collinstown, Co. Westmeath is development and is not exempted development.

  
Karen Kenny

Senior Planning Inspector

29<sup>th</sup> May 2019