An Bord Pleanála

Planning Appeal Form

Your details

1. Appellant's details (person making the appeal)

Your full details:

(a) Name	Martin O' Toole
(b) Address	141 Charnwood, Bray, Wicklow, Ireland

Agent's details

2. Agent's details (if applicable)

If an agent is acting for you, please **also** provide their details below. If you are not using an agent, please write "Not applicable" below.

(a) Agent's name	Michael O'Toole
(b) Agent's address	141 Charnwood, Bray, Wicklow, Ireland

Postal address for letters

3. During the appeal we will post information and items to you **or** to your agent. For this appeal, who should we write to? (Please tick ✓ one box only.)

You (the appellant) at the address in Part 1	✓	**The agent at the address in Part 2**	☐

Details about the proposed development

4. Please provide details about the planning authority decision you wish to appeal. If you want, you can include a copy of the planning authority's decision as the appeal details.

(a) **Planning authority**
(for example: Ballytown City Council)

Wicklow County Concil

(b) **Planning authority register reference number**
(for example: 18/0123)

EX85/19

(c) **Location of proposed development**
(for example: 1 Main Street, Baile Fearainn, Co Ballytown)

Church Lane, Newcastle Upper, Wicklow, Ireland

Appeal details

5. Please describe the grounds of your appeal (planning reasons and arguments). You can type or write them in the space below or you can attach them separately.

ATTACHED SEPARATELY

Supporting material

6. If you wish you can include supporting materials with your appeal. Supporting materials include:

- photographs,
- plans,
- surveys,
- drawings,
- digital videos or DVDs,
- technical guidance, or
- other supporting materials.

Acknowledgement from planning authority (third party appeals)

7. If you are making a third party appeal, you **must** include the acknowledgment document that the planning authority gave to you to confirm you made a submission to it.

Fee

8. You **must** make sure that the correct fee is included with your appeal. You can find out the correct fee to include in our Fees and Charges Guide on our website.

Oral hearing request

9. If you wish to request the Board to hold an oral hearing on your appeal, please tick the “yes, I wish to request an oral hearing” box below.

   Please note you will have to pay an **additional non-refundable fee** of €50. You can find information on how to make this request on our website or by contacting us.

   If you do not wish to request an oral hearing, please tick the “No, I do not wish to request an oral hearing” box.

Yes, I wish to request an oral hearing	✓
No, I do not wish to request an oral hearing	☐

NALA has awarded this document its Plain English Mark

Last updated: April 2019.

Plain English
Approved by NALA

AN BORD PLEANÁLA

13 JAN 2020

LTR DATED ________ FROM ________

LDG- ________

ABP- ________

27th November 2019.

Michael O'Toole,
141 Charnwood
Bray,
Co Wicklow.

Re: Applicalton for Section 5 Declaration - Ex 85/19 – Martin O'Toole
Stables for purposes for sheltering horses, fodder, sheep and goats at Church Lane, Newcastle Upper.

A Chara,

I refer to your Section 5 application made on the 11th November 2019 regarding the construction of stables for the purpose of sheltering horses, fodder, sheep and goats at Church Lane, Newcastle Ulpper and whether same is exempted development or not.

It is noted that the structure in question has been the subject of 4 previous Section 5 applications (EX 46/19), (EX 17/18) (EX 43/16) (EX 34/16) and that in all cases the Planning Authority determined that this structure did not come within the scope of the exempted development provisions as set out in the Planning & Development Act 2000 (as amended) or its associate regulations.
While it is noted that the further information/documentation has been submitted in support of the application, the Planning Authority is not satisfied that the application is significantly different to previous Section 5 applications and, therefore, the Planning Authority has decided not to issue a Declaration in this instance.

I would refer you to Section 5 (3) (b) of the Planning & Development Act 2000 (as amended) which states "in the event that no declaration is issued by the Planning Authority, any person who made a request under subsection (1) may on payment to the Board of such fee as may be prescribed , refer the question for decision to the Board within 4 weeks of the date that a declaration was due to be issued under subsection (2).

I would advise that in this regard the decision due date on this application (EX 85/19) IS DUE ON THE 6TH December 2019.

15th January last day to Appeal

Mise le meas

STAFF OFFICER
PLANNING DEVELOPMENT & ENVIRONMENT.

REG POST.

MEMO:

To:	**Catherine McDonald**
Re:	**Section 5 Application REF:EX85/19**
Name:	**Martin O'Toole**
Development:	**Stables for the purpose of sheltering horses, fodder, sheep and goats**
Location:	**Church Lane Newcastle Upper**

Catherine,

I have review this Section 5 application and the planning history associated with this site. I note that the structure in question has been the subject of 4 previous section 5 applications (EX46/19; EX17/18; EX43/16; EX34/16) and that in all cases and that in all cases the Planning Authority determined that this structure did not come within the scope of the of the exempted development provisions as set out in the Planning and Development Act 2000 (as amended) or its associate regulations. While I note that the applicant has attempted to overcome the reasons cited under previous Section 5 applications, it is not considered that the information / documentation submitted is significantly different to that submitted in support of previous applications and therefore it is not recommended that a further declaration be issued in this instance. The applicant should however be advised of his right to appeal.

Please issue the following letter to the applicant:

I refer to your Section 5 Application made on the 11th November 2019 regarding the construction of stables for the purpose of sheltering horses, fodder, sheep and goats at Church Lane Newcastle Upper and whether same is exempted development or not.

It is noted that the structure in question has been the subject of 4 previous section 5 applications (EX46/19; EX17/18; EX43/16; EX34/16) and that in all cases the Planning Authority determined that this structure did not come within the scope of the of the exempted development provisions as set out in the Planning and Development Act 2000 (as amended) or its associate regulations.
While it is noted that the further information / documentation has been submitted in support of this application, the Planning Authority is not satisfied that the application is significantly different to previous section 5 applications and therefore, the Planning Authority has decided not to issue a Declaration in this instance.

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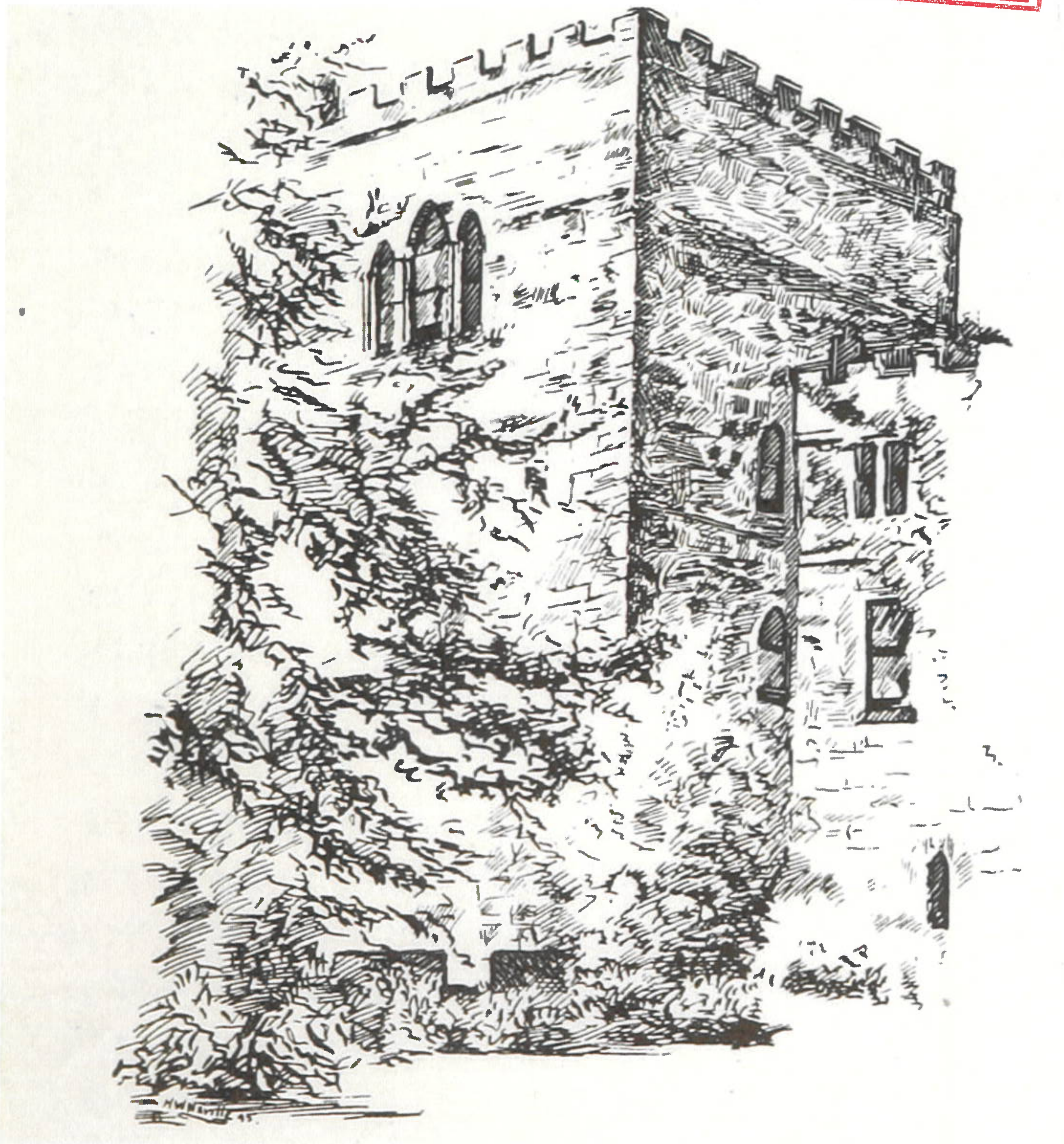
I would advice that in this regard the decision due date on this application (EX85/19) is due on the **6th December 2019**

Lucy Roche

Lucy Roche
Executive Planner
27/11/2019

GROUNDS OF APPEAL -EX 85/19
CHURCH LANE
NEWCASTLE
WICKLOW



CHAPTER 1
INTRODUCTION TO CASE FILE AND THE MEN BEHIND IT

My client Martin O'Toole purchased these lands in early 2015 with hard earned savings with the intention of going back to his roots and perform traditional methods of farming. Since this date he has been farming these lands. He bought the lands with 1 existing structure on site which is a corrugated sheet building running across the western boundary and has always been unsuitable. There was also 4 existing entrances with 3 being in a state of disrepair. There was running water on site serving a large number of horse troughs but the supply was cut off in a dispute. Through handwork, Martin and his family were determined to create a sustainable land holding that could be used for precedent start-ups. Mr O'Toole resides in Bray, Co Wicklow, where he works in the local Garda station. He is a man of pristine character and has a hard-working life. He purchased these lands for farming them and passing the skills he learned as a child to his children and the wider community. This is a non-residential farm, which is within easy commuting distance of our client's home. The Planning Authority obviously had concerns at that time in relation to whether Mr O'Toole was legitimately farming these lands. We now have detailed evidence of Mr O'Toole's agricultural experience and his farming activities on this land since he bought this small farm in 2015. This was straining to get because no amount of evidence seemed enough for the council. Mr O'Toole is from a rural background outside of Rathdrum, Co Wicklow close to Clara village. His family had always farmed, and he grew up on the family farm. Approximately 30 years ago, the family farm was sold, and his mother moved the family to Bray. For many years. Mr O'Toole has assisted Mr Richard Redden of Old Long Hill, Kilinacanogue in farming his lands. See in case file PROOF (EX85/19). Mr Redden and Mr O'Toole continue to assist each other in their farming activities at Kilmacanogue and at Newcastle. Mr O'Toole has substantial livestock grazing on the site. At present, this comprises of 46 sheep, 15 goats, three horses, two standard beehives and 16 tree beehives. Our client also has 13 sheep, one horse and three standard beehives on other lands which he rents. This however fluctuates understandably depending on season and the sustainability. He is unique in his farming techniques as he is using traditional methods to farm and bring back older breeds into the community. If you ask anyone in the area, he is well known for his amazing animals such as his newly acquired Llama.

As Martins farm started to grow he was depended on by his animals to deliver water on to the site as his supply was cut off. This meant weekly runs guaranteed and during drought daily runs of hauling water tanks of water onto his site. This was unsustainable and impossible for future progress. Martin decided in Late 2015 To drill his own well. In the meantime Anti-social behaviour was increasing in and around Martins Site. He received numerous threats that diesel was going to be poured down his new well and would spoil the water and make it unconsumable for any animal. Martin O' Toole **son** who is currently compiling this appeal took it on his judgement to decide to build a pumphouse that would make contamination of any kind impossible. While going through college he Dug the foundations, Poured the concrete, Placed the stone and finished the roof all on his own. The result was beautiful and has become a local Landmark. This victory for Martin gave him the confidence to precede with future agricultural developments if the planning law would allow it.

develop the farm further. I Michael O' Toole designed and planned the grand proposed development knowingly within the exempted guidelines which were being hammered into me at the time through college lectures. So I knew what I was doing. 2 building were decided to be constructed . 1 of which was to be a class 6 structure aka a stable aka the building of this appeal and the second was to be a class 9 structure to house the ever expanding farming machinery. Because these were larger and more resources were going to be needed I decided to put in a section 5 referral which would give me time to recover and focus on my studies. These were refused on the petite grounds of being a traffic hazard or not providing enough information to prove they were going to be used for agriculture. So I and I alone advised My father to downplay what they said and took it they they hand not much of an argument. I knew our intensions were good and being the person I am with the level of skill I have both Intellectually and Physically, I gave the go ahead on construction. Construction went excellent and apart from a few weather delays the 2 structures were finished to floor level. Having done the pumphouse with such character and the obvious effort I wanted the same for the 2 structures which were going to be used more. I designed them to last. I designed them like many farmers would not. I did this because I have seen farm buildings in Ireland and Wicklow and how quickly they can become unsafe with heavy use and exposed to natures elements. It was my intention to build traditional agricultural buildings with traditional materials but with the strength and technology of the modern era. As quoted in Wicklow county Council's own Development design standards. "Buildings shall utilise suitable materials and colours, which are compatible with the rural area. Stone and traditional building materials will be particularly encouraged. Where cladding is used on the exterior of farm buildings, dark colours (preferably dark green, red or grey) with matt finishes will normally be required. Roof areas should be coloured the same or in darker shade of the colour used on the side panels;. "

When reading this and knowing that I was following all the standard guidelines myself and my Father were over the moon. We were living the dream, creating something beautiful and dependable and most of all sustainable. No painting, Minimal Maintence, It was all surreal. The next time the good weather would come we were determined to move on to the next stage from floor level and finish these 2 structures. Then out of the blue with no warning or even a call, The postman angrily ran up to us one day in our farm and insisted we take this letter and do what you like with it. It was a warning letter from Wicklow County Council. We read it in confusion and tried calling the council to try to get answers and possibly remedy some doubts that may have been in the council's mind or were unaware of our intentions or what we were doing. They were not having any talk and kept repeating to reply in 30 days on full details on what we were doing or they were intending to send enforcement proceedings. What happened next over the coming years was that all construction stopped but farming continued. There was constant back and forward paperwork with section 5 referrals and planning applications which cut out points they had mentioned but also led to new ones. We hired experts in the field as my father was doubting me but we were reassured many times. Even by a former An Bord Peanla member (Frank O Gallagher) who we hireded for 1 Referral insisted we had done no wrong and begged us to go to the Bord to get this solved. We didn't t the time because we wanted to root out all the points the council were insisting we were doing wrong first and then no further error could be made. This sums up the case file on the current issues and we are yet to fix it.

While all this was happening something clicked with the neighbours around the said site and everyone seemed to be against us because of this each year we suffering from Vandals, Larceny, property stolen, Animal Poisonings, Constant Harassing, Abusive Behaviour, Dangerous Driving and much much more. See in case file (EX85/19PROOF).

CHAPTER 2
INTRODUCTION TO THE SITE AND IT'S HISTORY

- Mr Martin O' Toole is the proud owner of his farm comprising of circa 3.84 ha (9.49acres). This is a non-residential farm. It is located in the town of Newcastle Upper. The site is located on the western side of Church Lane. The lane is unsurfaced but is in use for residential, agricultural and commercial use. The public part of the lane has been resurfaced and now the private part of lane is being given similar treatment by its residents. The site comprises of an agricultural field. There are four existing entrances into the subject site from Church Lane. Theses entrances date back hundreds of years, and similar entrances can be found following the Church Lane road further south. The site is currently in grass and is being used for the grazing by livestock, including sheep, goats, bees and horses. The site slopes upwards from Church Lane and then levels off to create a natural platform and hence will shield much of any proposed development. The proposed development is shield from the North, West, and South Boundarys by a dense Mature mixed Broadleaf Forest and future Forestation is planned including new shelter belts. The subject site is located within the NI 1 Corridor Area Landscape Category is designated in the Wicklow County Development Plan. It is in the rural area outside of Newcastle town development boundary. Wicklow County council are a boundary with 2 of their own properties, one of which has come under ownership discussion and the other was ordered to be demolished in 1997 which never occurred. There is a farmyard complex 200 metres away from Martins proposed developments which is being used semi-illegally for commercial horse riding. There is also a number of agricultural developments in the vicinity fields all of which have seemed to be okay with the council ?

- The subject site is located in the rural area outside of Newcastle town. It is located in a rural area. There are farms to the north, south, east and west of the subject lands. Wicklow County Council lets two rural cottages adjacent to the subject site to the north. There are also more than four other houses using this road. Currently, all the surrounding land is being farmed, and to the best of our knowledge always has been. Therefore, the existing use of these lands is agricultural. The structure, which is the subject of this application is an
- agricultural structure based on the local style of the older farm buildings in the area. There is no change of use or material change of use, resulting from the erection of the said structure. Please see the Newcastle Lodge Agriculture Complex which was built 300 hundred years ago and is located half up the lane for an example.

  - Planning History
- Planning Register Reference 18/298 refused planning permission to Martin O'Toole for the retention of a well and pump house, and associated site works. The reason a refusal was based on the fact that the Council did not feel enough justification was given for a well, and because of alleged unauthorised developments, i.e. a caravan that had been placed temporarily on the site. There were no specific planning grounds specified in the reason for the refusal. Decision Not appealed

exempt development on site. The justification for this declaration of non-exemption was primarily because of the lack of justification of the agricultural use of this site. This decision was not appealed.

Section 5 Reference Ex 43/16; Agricultural buildings of 112 sq.m. and 144 sq.m. on site were deemed to be development and not exempt development on-site The justification for this declaration of non-exemption was primarily because of the lack of justification of the agricultural use of this site. This decision was not appealed.

Section 5 Reference Ex 34/16: Development of two agricultural buildings on-site deemed to be development and not exempt development on site. The justification for this declaration of non-exemption was primarily because of the lack of justification of the agricultural use of this site.

Planning Register Reference 09/675: Permission for a rural dwelling refused to M Craven because of reasons, referring to sporadic development and traffic hazard.

Section 5 Reference Ex 46/19 - Construction of 3 agricultural structures were deemed to be development and not exempt development on site. This application saw some progression as the Council seemed to accept that Martin was a farmer and the development was justified for a farmer. Still, there was no existing exemption for a pumphouse.

Planning Register Reference 19/1202: refused planning permission to Martin O'Toole for the retention of a well

and pump house, and associated site works. The reason a refusal was cited that it may consolidate alleged unauthorised development and that it may become a visual intrusion. Decision shall be appealed and should be looked at when assessing this Appeal.

Section 5 Reference Ex 85/19 - Construction of 1 agricultural structure not talked about but given the right to appeal. Reasons are as stated with previous application mainly the development being a traffic hazard and not a existing agricultural farmyard complex being developed on.

Unauthorised Development, File Reference 4858 - Construction of structures, placement of mobile home/caravan on lands and drilling of well without the benefit of planning permission. A warning letter was served on our client in June 2018 following the commencement of work on the agricultural structures which 1 is the subject of this Appeal.

CHAPTER 3
THE QUESTION PUT FORWARD

Is the construction of an agriculture structure/Stable measuring 153m2 and used for horses, sheep, Goat housing & fodder storage development and if so is it exempted development?

When assessing please look at all documentation provided including An bord Peanla precedents.

- PROPOSED WORKS

The proposed works is an agricultural structure, which is the subject of this Appeal.

Farm Building 1 — ***stables, sheep housing & fodder storage of circa 153 sq.m***

Ancillary effluent storage tank to the Department of Agricultural speciation's and standards.

-PLANNING CONSIDERATIONS

Definition of Development

Section 3 of the 2000 Planning & Development Act as amended, includes at Section 3 (1) the following definition of development. "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".

This does constitute as development yes. But now the question must be asked does it apply under the exempted guideline planning laws.

Class 6 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.
No such structure shall be used for any purpose other than the purpose of agriculture.
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.

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.
No such structure shall be situated, and no effluent from such structure shall be stored, within 10 metres of any public road.
No such structure within 100 metres of any public road shall exceed 8 metres in height.
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.
No unpainted metal sheeting shall be used for roofing or on the external finish of the structure.

Assessment
Structure is under 200m2 – Yes, Farmyard Not required!!!!

- Structure is intended to be used for animal's stated – Yes

- Structure has shown 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. - Yes

- Structure or Effluent is not placed within 10m of public road- yes

- Structure not 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- yes

- No unpainted metal sheeting shall be used for roofing or on the external finish of the structure. – Correct, materials shall be of a sustainable nature and shall be naturally beautiful if possible and not of unpainted metal.

- **Known restriction that may apply that if a proposed exempted development is a traffic hazard it may**
- **not benefit under the exempted development guidelines.**

- The Proposed exempted development is minor in nature and shall create a decrease in traffic due to Martin not having to visit his land as much cut his traffic on the lane by half. Whether or not this development is here, Martin shall and is entitled to visit his land and is he not a traffic then ? Using his land for agriculture benefits from the agricultural exempted development guidelines why would a building not if it's going to decrease use and ease traffic. My humble opinion from 1 Planning law Graduate to another is that the development does not create a traffic hazard and is fully exempt.

CHAPTER 4
EXPLAINING THE NECESSITY

- Mr O'Toole is in the process of preparing a 5-10 year Farm plan, with technical agricultural advice_ See attached. In The case file the first implementation stage. Unfortunately, he cannot implement such a plan until such time as the threat of planning enforcement by Wicklow County Council is lifted. This appeal is intended to secure clarification of the planning status of the Building 1 structure on which workers commenced on the farm. This structure is intended to be a class 6 stable . We attach details of our client's Farm Plan plus an email of
- support from his agricultural adviser. It is clear from the above that Mr O'Toole is bone fide farming this land.
- Of course, it is clear that he is not a full-time farmer. However, the majority of farmers in Ireland are not full-time farmers, and it is not a reason to deny Mr O'Toole the benefit of agricultural development that encouraged in the Planning Acts. If it were then all, part-time farmers would not have the benefit having such agricultural structures exemptions which was solely created for small time farmers.

- The lack of suitable animal housing means that his livestock is at the expense of the elements and is affecting animal health. It is not conducive to good animal husbandry. Hence the pumphouse has become a medical warehouse for his supplies. Denying him this is denying him the benefit of treating his animals that are unfairly out in the weather. He needs to have this 153 sq.m. building in order to maintain his progress. Denying him this undermines him and the relevant planning regulations.

- This farmer has no secure livestock housing, fodder sheds or barns. The animals, their feed and agricultural machinery on the site are exposed to the elements and are not in safe buildings. Because of this, the farm has been the subject of many acts of vandalism and robbery. See attached Garda reports of three such incidents in the case file. Such incidents have also included threating of diesel being poured down the well which is why Martin has built the building to the best of his ability. In response to this, antifreeze was poured directly into animal throughs. This has to stop. The Council have the ability to mitigate this situation by accepting the problems and coming together to find the best solutions. The declaration which we need to receive will help
- put a stop to the acts of crime against the farm as everything on site will be more secure and orderly.

CHAPTER 5
REASONS FOR PAST REFUSAL AND JUSTIFICATION THAT THEY DON'T APPLY NOW

REASONS FOR PAST REFUSAL AND HOW THEY NOW DON'T APPLY.

The local council were unsure the need and **not enough justification** was shown for the buldings. It is now clear that there is a clear reason for such construction with the supplied documentation in the case file.

If further information is needed, just state it and it can be got.

Refusal on basis of a traffic hazard. As clearly seen this is a double standard for Martin as other agricultural developments are being deemed exempt and not his own.

Church lane is currently being resurfaced

On a number of applications in the area it was deemed that such agricultural an residential use on church lane would not create a traffic hazard, see attached

Drivers have a responsibility to keep to the speed limit and if Martin or his buildings are not there then the lane is still a traffic hazard. It is up to a driver of a vehicle to be mindful of the conditions he is driving in and to act responsibility.

His entrances are pre-existing and have adequate site lines and with a good result from this application a road may be constructed on the land in order for construction to recommence.

Refusal on basis of no existing Farmyard Complex. There is no legal requirement for a farmyard complex and this I have talked with Irelands top person informally on planning law. (Berna Grist)

There is no legal requirement to have an existing farmyard on small agricultural developments and small agricultural development are like the one set out in the exempted guidelines.

CHAPTER 6
CLARIFYING OTHER DEVELOPMENT ON SAID LAND

lding 2

- It is intended to make a full, and final comprehensive section 5 referral on this building, and this referral shall be submitted around the same time as this current as this appeal being be put in. This shall be be under class 9 of the planning regulations . We intend to go under the Agricultural exemption set out in the planning act. And the result of this appeal will also determine its ground as exempt.

- Well and pumphouse
- A current planning application has been put in and is has been refused. This shall be appealed.

Access Route

- The access route to the farm is identified in the site layout drawing submitted. It is not intended to construct a road on this route until such time as planning permission has been granted. It is intended to simply use the existing entrance as heretofore as the field has amazing drainage properties. For this reason, the said proposed road is not included in this application. It be be allowed to be constructed for construction purposes under the exempted guidelines.

Proposed Earthen Mound

- A 1m high proposed mound as shown, adjacent to the farm, which would screen it substantially from Church Lane. However, it is recognised that such a mound would require a section 5 referral.

- 4.4 Temporary Structures
- There are two other temporary structures on the site and indicated on the site layout drawing. There is an existing barn of circa 55 square metres, which is used to store farm machinery and fodder. There is another small temporary structure of 20 square metres comprising of four poles used for agricultural storage, and This is unroofed. Following the service of the warning letter by Wicklow County Council no works are being carried out to the structures,
- It is intended to remove these structures when a decision on this and future appeals enables our client to complete buildings 1 and 2. Being Class 9 agricultural structures, both the structures are exempted developments. However, these are strictly not part of this appeal because it is intended to remove them.

CHAPTER 7
CONCLUSIONS

- Mr Martin O'Toole of the bona fide part-time farmer using these lands for agricultural purposes only. He has a family home in Bray and has no intention to build a house on these lands. We believe that this development consisting of a 153M2 Stable is development but is also exempted development. Please contact us if we can be of any further assistance in this matter. We would welcome an early decision on this matter. We started with full intentions of using this for agriculture and we will still use it for agriculture no matter the result.

- Martin and his developments are not trying to undermine the planning regulations, but he is merely trying to protect what took him so hard to build up.

- We feel the council are purposely trying to delay us because of other legal issues that are going on.

- This is a 100% need a stable condition and no other result that a good one will help anything or anyone up on church lane Newcastle Wicklow.

- **When assessing please look at all documentation provided including An bord Peanla precedents.**

- **Please give us the honour of hearing our pleas in a oral hearing and let you understand how we are**
- **not a traffic hazard on church lane as that seems to be the only concrete evidence the council have on denying us any application.**

ıis is a functioning farm, there is dangerous animals on site. Please give my client at least 4 hours' notice before a visit to prepare his land in a safe manner. The council agreed to this and it worked out fine.

An Bord Pleanála

Inspector's Report
ABP 302612-18

Question	Whether or not the erection of an agricultural structure is or is not exempted development.
Location	Newcastle Farm, Newcastle, Co. Wicklow.
	CHURCH LANE
Declaration	
Planning Authority	Wicklow Co. Council
Planning Authority Reg. Ref.	Ex41/18
Applicant for Declaration	Gildas O'Laoire
Planning Authority Decision	Is development but is not exempted development
	NO TRAFFIC HAZARD REASON STATED.
Referral	
Referred by	Gildas O'Laoire
Owner/ Occupier	Gildas O'Laoire
	THIS SITE IS 200MS AWAY FROM MARTIN O'TOOLE
Date of Site Inspection	18/12/2018
Inspector	Siobhan Carroll

Contents

1.0 Site Location and Description

1.1. Newcastle Farm is situated circa 0.9km to the south-west of Newcastle, Co. Wicklow. The property comprising an overall landholding of circa 1.2 hectares. It is located on the western side of Church Lane circa 1.1km to the south of the junction between Church Lane and the L5051.

1.2. The subject agricultural building is served by a gated vehicular access off Church Lane. It is set back 135m from Church Lane and served by a tarmacked access road. It is constructed within the site of a former quarry. There is a pond circa 60m to the south and the landholding adjoins a forested area to the south and west.

1.3. There are two dwellings circa 150m to the west of the subject agricultural building. To the south-east there are four dwellings. The closest dwelling is located 88m to the south-east.

2.0 The Question

2.1. Whether or not the erection of an agricultural structure is or is not exempted development.

3.0 Planning Authority Declaration

3.1. Declaration

Wicklow County Council issued a declaration under Section 5 of the Planning and Development Act 2000, on the 23rd day of August, 2018 stating that the Planning Authority considers that the erection of an agricultural structure is development but is not exempted development.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The Planning Authority noted that the gross floor area of the shed is 293sq m and that the height of the building is 5.47m.

- The Planning Authority determined that the construction of the 293sq m would come with the definition of works and therefore constitutes development as set out under Section 3 of the Planning and Development Act 2000 (as amended).
- Schedule 2 of the Planning and Development Regulations 2001 (amended), provides for Exempted Development, Class 9 refers to Rural Development. In order to avail of this exemption it must be shown that the shed will be used for agriculture and that it is clearly part of an agricultural holding/enterprise/farm.
- An Bord Pleanala referral case RL3205 is cited where the Inspector stated *'the exemption in class 9 should not be extended to any shed that is outside a town and less than 300sq m unless the shed's use for exclusively agricultural purposes is consistent with its form and location'*
- The overall landholding in this instance associated with the shed is 1.2 hectares and no evidence was submitted to indicate that the shed is in use for agricultural purposes. The site given it's size and characteristics does not form part of an agricultural holding.
- It was concluded that the structure would not accord with the description/limitation 1 of Class 9 and that it would not accord with limitation 5 of Class 9 as the structure is located within 88m of an existing dwelling to the south-east which would breach the limit of 100m
- Therefore the Planning Authority determined that the shed is development and is not exempted development.

4.0 Planning History

Section 5 Referral Ref No: 60/14 – The Planning Authority determined that the acceptance of engineering grade material to improve substandard ground is development but is not exempted development. The subject lands refers to an area within the landholding to the south of the subject agricultural structure.

5.0 Policy Context

5.1. Development Plan

The operative development plan is the Wicklow County Development Plan 2016 – 2022.

- Chapter 5 – Economic Development
- Section 5.6 refers to Wicklow's Rural Economy

6.0 The Referral

6.1. Referrer's Case

- The nature of the proposed development is apiculture. The referrer Mr. Gildas O'Laoire bought the landholding and the subject shed to develop a beekeeping business and pollination service. He purchased the property in July 2017. It is stated that the agricultural shed was constructed by the vendor in 2014. As part of the sale his solicitor was provided with a certificate of exemption under Class 9 development.
- It is accepted that no evidence of the agricultural use of the shed was included with the Section 5 application submitted to the Planning Authority. It is submitted that the agricultural activity planned for the building and the surrounding land and forestry is beekeeping and its related products and processes.
- Mr. O'Laoire states that he produces honey, hives and bee colonies for sale. Summer 2018 is the first active summer since he purchased the property including the shed in 2017.
- Regarding the use of the agricultural building, it is planned to create spaces for the extraction and storage of produce, to keep records and provide for general administration. A work space will be provided for the making, maintaining and storage of hives and equipment. Beehives and equipment are currently being made on site and the "honey kitchen" for the extraction and bottling is currently under construction.

- The operation of the business is guided by the principles and best practices as set out in the document prepared by Teagasc “Profitable Beekeeping” and other relevant Department of Agriculture documents.
- The adherence to this guidance is necessary in order to obtain licences and be eligible for grants and supports from the Department of Agriculture. It is planned to have the facilities in place to Department of Agriculture standards by spring 2019. Mr. O’Laoire states that it is also planned to develop the agritourism side of the business.
- The five year plan for the business is to have a total of 60 active hives on the landholding by 2023. It is planned that 5 bee colonies would be in place by spring 2019 with a total of 10 by autumn 2019. A programme of bee friendly planting has taken place including trees and a wild flower meadow. The farm adjoins broad leaf forestry which provides a good location for the bees to forage.
- Regarding the matter of the proximity of the agricultural shed to the nearest dwelling, and it being less than 100m, the referrer states that the building was in place when he purchased the lands. He was furnished with a certificate of compliance from the vendor.
- The nearest house is not visible from the building and due to the topography of the area it is difficult to judge the distance. The subject agricultural shed is built in a quarry which is 1.8m below the surrounding fields and is therefore not visible from the surrounding dwellings or road.
- The furthest distance between the shed and the dwelling is 96.57m and the closest distance is 88.63m as indicated on Google Earth.
- The breach in distance is considered minor and it is reiterated that as the building was in situ when Mr. O’Laoire bought the landholding, that therefore it was not made by him.
- In the absence of the declaration of exemption Mr. O’Laoire Mr. O’Laoire states that he is unable to apply for an Irish Water supply and obtain insurance for the building. These matters are essential for the apiculture business to be successful.

- Mr. O'Laoire requests that the minor nature of the breach be taken into consideration in determining the referral.

6.2. Planning Authority Response

- None received

WHY NO TRAFFIC HAZARD?

7.0 Statutory Provisions

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

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

"…includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal…"

'unauthorised development' includes the "carrying out of unauthorised works (including the construction, erection or making of any unauthorised structure) or the making of any unauthorised use."

'unauthorised works' means any works on, in over or under land commenced on or after the 1st of October 1964, being a use which is a material change in use of any structure or other 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 IV of the Act of 1963 or under section 34 of this Act, being a permission which has not been revoked, and which is carried out in compliance with that permission or any conditions to which that permission is subject'

Section 3 (1) states as follows:

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

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

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

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

Article 6 (1) states as follows:

Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.

Article 9 (1) (a) sets out the instances where development, to which Article 6 relates, shall not be exempted development for the purposes of the Act (a) if the carrying out of such development would — (i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act and (viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use,

Schedule 2

Part 3 – Exempted Development – Rural

CLASS 9 provides the exemptions for Agricultural Structures

Works consisting of the provision of any store, barn, shed, glass-house or other structure, not being of a type specified in class 6, 7 or 8 of this Part of this Schedule, and having a gross floor space not exceeding 300 square metres. (Class 6 refers to structures for the housing of cattle, sheep, goats, donkeys, horses, deer or rabbits; Class 7 refers to structures for the housing of pigs and Class 8 refers to the provision of roofless cubicles, open loose yards, self-feed silo or silage areas, feeding aprons, assembly yards, milking parlours or structures for the making or storage of silage or any other structures of a similar character)

Conditions and Limitations

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 floor space of such structures together with any other such structures situated within the same farmyard complex or complex of such structures or within 100 metres of that complex shall not exceed 900 square metres gross floor space in aggregate.
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, 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.
6. No unpainted metal sheeting shall be used for roofing or on the external finish of the structure.

8.0 Assessment

8.1. Is or is not development

8.1.1. Development is defined under Section 3(1) of the Planning and Development Act, 2000 (as amended) 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'*. Works is defined under Section 2(1) of the Act *"...includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal..."*

8.1.2. Therefore, having regard to Sections 2(1) and 3(1) of the Planning and Development Act 2000 (as amended) it is considered that the erection of an agricultural building would constitute development under the above provisions of the Act.

8.2. Is or is not exempted development

8.2.1. The development which is the subject of the referral relates to the erection of an agricultural structure on a 1.2 hectare landholding at Newcastle Farm in the rural area to the south-west of Newcastle, Co. Wicklow. The subject agricultural shed has a gross floor area of 293sq m and a roof height of 5.47m

8.2.2. Having reviewed the provisions of Class 9 of Part 3 of Schedule 2, of the Planning and Development Regulations, 2001, as amended which refers to rural development, this provision of the Regulations specifically refers agricultural buildings. The description refers to *"works consisting of the provision of any store, barn, shed, glass-house or other structure, not being of a type specified in class 6, 7 or 8 of this Part of this Schedule, and having a gross floor space not exceeding 300 square metres."*

8.2.3. Class 6 refers to structures for the housing of cattle, sheep, goats, donkeys, horses, deer or rabbits. Class 7 refers to structures for the housing of pigs and Class 8 refers to the provision of roofless cubicles, open loose yards, self-feed silo or silage areas, feeding aprons, assembly yards, milking parlours or structures for the making or storage of silage or any other structures.

8.2.4. The use of the subject agricultural structure as set out in the submission from the referrer Mr. O'Laoire is for apiculture. In relation to the use of the building it is stated that it is planned to create spaces for the extraction and storage of produce, to keep records and provide for general administration. There is a work space provided for the making, maintaining and storage of hives and equipment. Beehives and equipment are currently being made on site and the "honey kitchen" for the extraction and bottling is currently under construction.

8.2.5. Mr. O'Laoire bought the land holding and subject building in July 2017. Summer 2018 was the first summer of operation. The five year business plan as detailed in the submission states that it is intended to have a total of 60 active hives on the landholding by 2023. It is planned that 5 bee colonies would be in place by spring 2019 with a total of 10 by autumn 2019. A programme of bee friendly planting has taken place on the subject landholding including trees and a wild flower meadow. It is noted that Newcastle farm adjoins broad leaf forestry which provides a good location for the bees to forage.

8.2.6. On inspection of the structure, I observed that there was an area where wooden bee hives were being made. There was section of the building where internal walls were under construction to provide a separate production area "honey kitchen." A wooden stairs and mezzanine floor level has been constructed to provide an area for office/administration functions. The operation of apiculture business requires daily records to be kept and maintained in relation each bee hive (colony). On inspection I also noted that the internal walls and roof have been insulted in order to ensure a regulated temperature. Having regard to the details provided by the referrer and having inspected the site, I am satisfied that the use of the subject agricultural structure is for apiculture and that the 1.2 hectare landholding is also in use for apiculture. The landholding adjoins a forested area which forms part of the area where the bees forage. Apiculture is form or subset of agriculture. I note that the European Commission on Agriculture and Rural Development describes honeybee colonies as essential for agriculture and environment, ensuring plant reproduction by pollination, while beekeeping participates to the development of rural areas. Therefore, I would consider that apiculture is primarily a rural based activity.

8.2.7. In relation to the matter of the proximity of the agricultural shed to neighbouring dwellings, conditions and limitations no. 5 of, Class 9 of Part 3 of Schedule 2, of the Planning and Development Regulations, 2001, as amended states,

"No such structure shall be situated within 100 metres of any house (other than the house of the person providing the structure) or other residential building or school, hospital, church or building used for public assembly, save with the consent in writing of the owner and, as may be appropriate, the occupier or person in charge thereof."

8.2.8. Therefore, the exemption for an agricultural structure would only apply where neighbouring dwellings not in the ownership of the owner of the agricultural structure are located 100m or more from the building to ensure that the exemption under Class 9 applies. The closest neighbouring dwelling is situated 88m to the south-east of the subject agricultural structure. This dwelling is not in the ownership of the referrer Mr. O'Laoire and a letter of consent has not been provided from the owner of the dwelling. Therefore, the subject agricultural structure cannot of avail of the exemption provided under Class 9 because it does not adhere to condition and limitation no. 5.

8.2.9. In conclusion, I consider that the subject agricultural structure does not comes within the scope of the exempted development provided for rural development under Class 9 of Part 3 of Schedule 2 to the Planning and Development Regulations, 2001, as amended.

9.0 Recommendation

9.1. 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 erection of an agricultural shed is or is not development or is or is not exempted development.

AND WHEREAS Gildas O'Laoire requested a declaration on this question from Wicklow County Council and the Council issued a declaration on the 23rd day of August, 2018 stating that the matter is development and is not exempted development:

AND WHEREAS Gildas O'Laoire referred this declaration for review to An Bord Pleanála on the 18th day of September, 2018:

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

(a) Sections 2, 3 and 4 and Section 4(1)(a) of the Planning and Development Act, 2000, as amended,

(b) Article 6 and 9 of the Planning and Development Regulations, 2001, as amended, and Part 3 of Schedule 2 to those Regulations, including Class 9 and the conditions and limitations applicable

AND WHEREAS An Bord Pleanála has concluded that:

(a) The works constitute development, being works which come within the scope of section 3(1) of the Planning and Development Act 2000,

(b) The subject shed is in agricultural use for the purposes of apiculture,

(c) The subject agricultural shed is located within 88m of an existing dwelling which is not in the ownership of the applicant seeking the Declaration, the shed therefore does not comply with the provisions of Limitation No. 5 of Class 9 of Part 3 of Schedule 2 of the Planning and Development Regulations, as amended.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3) (a) of the 2000 Act, hereby decides that the erection of the agricultural structure is development and is not exempted development.

Siobhan Carroll
Planning Inspector

24th of December 2018

An Bord Pleanála Ref.: 27. RL3205

An Bord Pleanála

Inspector's Report

Planning Authority	Wicklow County Council
Site	Carrigeenshinagh Lane, Roundwood, Co. Wicklow
Question	Whether a shed is exempted development
Reg. Ref. No.	39/13
Referrer	Johnny Fortune
Owner/Occupier	Johnny Fortune
Inspector	Stephen J. O'Sullivan
Date of Site Inspection	6th May 2014

1.0 INTRODUCTION

1.1 This report deals with a referral, by the owner, of a declaration by the planning authority that a shed in the countryside was development and was not exempted development.

2.0 THE SITE

2.1 The site is in a rural area c. 2km west of the village of Roundwood, Co. Wicklow. It contains two sheds, a larger one which is the subject of this referral, and a smaller one nearby to the west. The landcover on the site includes rough grass, scrub, trees, bushes and some compacted and weathered gravel. The ground on the site and the surrounding landscape slopes down from north to south, generally. The northern boundary of the site is marked by a line of trees and hedges. A lane runs along the other side of that boundary. There is an access to this lane towards the eastern end of the northern boundary of the site. This access is near a public road that runs along the eastern boundary of the site. The adjoining land to the south is the curtilage of a dwellinghouse. The layout of the site and the structures upon it conform to the drawings submitted with the declaration and the referral.

3.0 LEGISLATION

3.1 <u>Section 2(1) of the Planning and Development Acts 2000-2013 states</u>

In this Act, except where the context requires otherwise –

.....

"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 land as grazing land, meadow land, osier land, market gardens and nursery grounds, and "agricultural" shall be construed accordingly;

....

"use", in relation to land, does not include the use of the land by the carrying out of any works thereon;

....

"works" includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal…

....

<u>Section 3(1) of the act states</u>

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 of the act states

(1) The following shall be exempted developments for the purposes of this Act—

(a) development consisting of the use of any land for the purpose of agriculture and development consisting of the use for that purpose of any building occupied together with land so used;
………

(2) (a) The Minister may by regulations provide for any class of development to be exempted development for the purposes of this Act where he or she is of the opinion that—

(i) by reason of the size, nature or limited effect on its surroundings, of development belonging to that class, the carrying out of such development would not offend against principles of proper planning and sustainable development,
…….

Section 5 of the act states

1) 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 this 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.
……

(3) (a) Where a declaration is issued under this section, any person issued with a declaration under subsection (2)(a) may, on payment to the Board of such fee as may be prescribed, refer a declaration for review by the Board within 4 weeks of the date of the issuing of the declaration.

Section 127(1) of the act states

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,
…..

3.2 Article 6(3) of the Planning and Development Regulations, 2001 – 2011, states

Subject to article 9, in areas other than a city, a town or an area specified in section 19(1)(b) of the Act or the excluded areas as defined in section 9 of the Local Government (Reorganisation) Act, 1985 (No. 7 of 1985), development consisting 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) of the regulations 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—

......

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

......

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

Column 1 of Class 9 of Part 3 of Schedule 2 to Article 6 of the aforementioned Regulations, states

Works consisting of the provision of any store, barn, shed, glass-house 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 space not exceeding 300 square metres.

Column 2 of the class states

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 floor space of such structures together with any other such structures situated within the same farmyard complex or complex of such structures or within 100 metres of that complex shall not exceed 900 square metres gross floor space in aggregate.

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, 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.

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

4.0 DEVELOPMENT PLAN

4.1 The site is in an area designated as the *Mountain and Lakeshore Area of Outstanding Natural Beauty* in the 2010 Wicklow Development Plan, which is declared to be the area of highest scenic amenity and the most vulnerable to development. A similar designation was made by the previous county development plan.

4.2 The prospects from the roads to the south and east of the site are designated for protected under section 17.9.2 of the development plan. Similar designations were made under the previous development plan.

5.0 HISTORY

On the site

5.1 Reg. Ref. 07/83 – the planning authority received an application from Mr Fortune on 18th January 2007 to retain the shed on the site as a private garage. This application was withdrawn on 26th September 2007.

5.2 Reg. Reg. Ex 08//14 – following a request for a declaration under section 5 of the planning act in respect of the shed on the site, the planning authority decided on 23rd April 2008 to "refuse to issue a certificate of exemption", referring to the lack previous planning application, a lack of information regarding any agricultural landholding, the use of the surrounding land, and the interference with a listed prospect and location of the site in an area of outstanding natural beauty.

Declarations cited by the planning authority –

5.3 RL15. 2235 – the board declared that a shed on the curtilage of a dwellinghouse could not avail of the exemption under Class 9 of Part 3 of Schedule 2 of the planning regulations because it was not on a landholding with an established agricultural use.

5.4 RL17. 2950 – the board declared that two sheds were not exempted development under the said class 9. It is not immediately obvious from the order as to why the sheds would contravene the conditions and limitations for that class. The inspector's report includes statement that the sheds might not have been used exclusively for agricultural purposes.

6.0 THE REFERENCE

6.1 The owner and occupier of the site sought a declaration from the planning authority regarding the shed on the site. The owner stated that the previous application for a declaration referred to Class 6, while the owner's position for the current application is that the shed would be exempt under Class 9.

6.2 The reference was accompanied by drawings of the shed in plan, section and elevation, as well as a site layout plan. It shows a shed on the site with a floor area of $38m^2$ and a pitched roof 4.93m high. The floor is a concrete slab, the frame and the walls are timber, and the roof is metal clad.

6.3 The covering letter stated that the shed is the subject of court proceedings between the owner and the planning authority, which were adjourned to allow the current request. The judge is quoted to the effect that the reasons given for the planning authority's previous declaration were unsatisfactory.

6.4 The owner argued that the shed on the site does not unreasonably intrude on the landscape, being screened by vegetation and the slope of the ground, and is not readily visible from the adjacent public road. It is a barely visible speck in views from the public roads to south and west. Its design, finish and screening ensure that it does not intrude on any designated view or prospect identified in the county development plan, notwithstanding its location in an area designated as a *Mountain and Lakeshore Area of Outstanding Natural Beauty.* The shed is not visible from the house on the adjoining site to the south.

6.5 The owner stated that the shed was constructed in 2006 for agricultural purposes to store straw, hay and various items that are incidental to the keeping of horses and ponies in the ownership of the Fortune family. It was subsequently used by Mr Fortune's son for the restoration and storage of vehicles, but this use was temporary and ceased before September 2009. Since that date the shed has been used for the storage of straw, hay and various items that are incidental to the keeping of horses and ponies, as attested by the owner in an affidavit. So the shed was constructed for agricultural use and has been so used since the cessation of its use for the unauthorised storage of vehicles.

Therefore the shed is exempted development under class 9 of Schedule 2 of Part 3 of the Planning and Development Regulations 2001.

7.0 THE DECLARATION

7.1 The planning authority made a declaration which stated that the shed in question was development and was not exempted development. The declaration referred to the details submitted with the request and the observations made during site visits, and the declaration made by the board under 15. RL2235. The declaration included "main reasons" which stated –

- That the site is not on land used for agricultural purposes or within an agricultural landholding and so class 9 of schedule 3 of part 2 of the planning regulations does not apply,

- That the side is within 100m of a house owned by someone else who has not provided written consent to the shed and so it does not comply with condition no. 5 of class 9, and

- That the shed would generate more traffic movements to and from the site which would endanger public safety by reason of traffic hazard, and so the restriction on exemption at article 9(1)(a)(iii) of the regulations applies.

7.2 The planner's report on the request stated that the site was on a substandard lane off a county road, and within a prospect (No. 26) listed in the county development plan. On inspection, the shed was being used to store hay. There were animal droppings in it. The field in which it stands had no agricultural activity. The development does not come within the exemption at section 4(1)(a) of the act. The shed is within 100m of a house whose owner has not given written consent, and so it contravenes condition no 5 of class 9 of part 3 of schedule 2 of the planning regulations. The sightlines at the entrance to the lane are substandard, the lane itself is substandard in width and alignment, and the gradient of the driveway to the shed is steep. The use of the shed would increase traffic movements and would result in traffic hazard. The shed is at a level 18m above the public road and so would interfere with the character of the landscape and with a listed prospect.

7.3 A supplementary report from a Senior Engineer cited the board's declarations under 15. RL2235 and 17. RL2950 to support the argument that agricultural structures can only benefit from the exemption at Class 9 if they are on agricultural land within agricultural holdings. Structures on other sites do not benefit from the exemption in Class 9, even if the structures themselves are used for agricultural purposes. The entrance to the site onto Carrigeenshinagh Lane is substandard due to the available sightlines and the proximity to the junction of the lane with the public road. Any development increasing the traffic there would result in traffic hazard. The shed would so increase traffic because the site is not otherwise in agricultural use. The shed would not interfere with the character of the landscape or a view designated for protection. An appropriate assessment is not required. The statements made when an application for permission to retain the shed under 07/83 indicate that it was built as a garage, however no definitive opinion is expressed as to whether this would effect the exempted status of a structure now used for agricultural purposes.

8.0 THE REFERRAL

8.1 The owner referred the planning authority's declaration to the board. The owner referred to the arguments submitted to the planning authority with the request for a declaration. The planning authority only gave its 'main' reasons, implying that there may be other reasons for its decision.

8.2 The owner states that the horses and ponies whose keeping is facilitated by the shed are owned, used and enjoyed by himself and his extended family who live in the immediate vicinity of the site, which is only a part of a substantive agricultural holding in the ownership of the Fortune family. The site is in agricultural use and forms an integral part of the Fortune family's overall agricultural landholding. The planning authority's contention that the land is not in agricultural use is not sustainable, as the site is zoned for only agricultural use.

8.3 A letter is provided from the owner of the house to the south confirming that she does not object to the shed or its use for the storage of material incidental to the keeping of horses and ponies.

8.4 The only possible traffic associated with the storage of straw, hay and various items incidental to the keeping of horses and ponies would only generated limited traffic of 5 or 6 trailer loads per year. This could hardly be considered as constituting an increase in traffic that would constitute a traffic hazard or contravene the restriction contained in article 9(1)(a)(iii) of the planning regulations.

8.5 The three reasons contained in the planning authority's declaration are therefore unreasonable and unsustainable and the subject shed qualifies as exempted development.

9.0 RESPONSE

9.1 The planning authority's response states that -

- The shed had not been used exclusively and continuously for agricultural purposes because it was used for the storage of vehicles between 2006 and 2009.

- The three reasons stated in the declaration are the reasons for that declaration. The phrase "main reasons and considerations" is taken from section 5 of the act.

- The planning authority observed that the lands on the site were uncultivated and no animals were present.

- So details were submitted of the '"substantive agricultural landholding in the ownership of the Fortune family".

- No evidence of the ownership of horses or ponies has been submitted.

- The lands are not zoned under the development plan. The actual use of the lands cannot be determined from that fact for the purposes of a section 5 declaration.

- The planning authority does not agree that the shed would generate as few as 5 or 6 trailer loads per year, as the traffic generated would depend on the type and amount of materials stored at the shed and the location of the lands served. The substandard nature of the entrance is also relevant to an assessment is whether a traffic hazard under article 9(1)(a)(iii) is likely, as well as the number of traffic movements.

10.0 ASSESSMENT

10.1 The building of the shed in question constituted works and so was development under section 3(1) of the act. A material change in the use of the shed or surrounding site would also constitute development under same section. However if that change was to a use ancillary to the keeping of horses or ponies, then the change of use would be exempted development under section 4(1)a) of the act. The exemption for a change of use would not make the works involved in building the shed exempted development.

10.2 Due to the limited size and timber finish of the shed, and the fact that it has a backdrop of vegetation and rising ground, I would agree with the planning authority's conclusion that it would not interfere with the character of the landscape, or a view or prospect of special amenity value. So article 9(1)(a)(vi) of the planning regulations would not deprive the shed in question of an exemption that it might otherwise have

10.3 I would disagree with the planning authority's conclusion that the shed would give rise to a traffic hazard. The road network around the site is typical of an upland rural area. The width and alignment of the roads and lanes serving the shed, and the visibility at the junctions between them, would all fail to meet current standards for road design and construction. The planning authority's position on the matter is therefore reasonable. However the same situation prevails across large parts of the countryside where agricultural use occurs without giving rise to unacceptable traffic hazards. If drivers behaved as if the road network around the site achieved 80kph design standards, then serious traffic hazards would result whether or not the shed was in place. However competent drivers in this area adopt a slow and cautious approach. In this circumstance the traffic that would be generated by the use of a shed of the size in question on this site for the storage of feed and other items in connection with the keeping of horses would not be likely to give rise to a traffic hazard. A larger structure or one of a more intensive use on this site might cause a traffic hazard, as might a similar structure elsewhere in this area due to a more localized road constraint. But in this case the board is advised that article 9(1)(a)(iii) would not deprive the shed in question of an exemption that it might otherwise have. It is noted that the report of the planning authority's Senior Engineer distinguished this shed from other agricultural structures on the basis that this site was not already in agricultural use. However the exemption for agricultural use is granted by the act rather than the regulations, and so it is not constrained by article 9(1)(a)(iii). So someone could start using the site for agriculture as exempted development whether or not it caused a traffic hazard.

10.4 The referrer submitted the written consent of the neighbouring householder to the shed. So condition no. 5 in column 2 of Class 9 of Part 3 of Schedule 2 of the regulations has been discharged.

10.5 So the crux of the case is the shed's status in relation to agriculture.

Neither article 6(3) of the regulations nor the description in column 1 of Class 9 of Part 3 of Schedule 2 refer to agricultural use. They provide a general exemption for sheds of less than $300m^2$ in the countryside. The shed in question is less than $300m^2$ and is in the countryside. However column 2 of the schedule contains conditions and limitations that restrict that exemption. Condition no. 1 is that no such (exempted) structure shall be used for any purpose other than the purpose of agriculture or forestry. According the owner's submissions in this case and to the application for permission Reg. Ref. 07/83, the shed has been used for purposes other than agriculture and forestry, namely the storage and restoration of vehicles. Therefore condition no. 1 has been broken, and the shed may not avail of Class 9 of Part 3 of Schedule 2 of the planning regulations. So the shed is not exempted development.

10.6 The conclusion in the above paragraph is sufficient to determine the present referral. However neither the position of the planning authority nor that of the requester relied upon such a simple application of the plain meaning of the words in condition no. 2 of class 9. So, in case the board does not adopt the particular approach that I advise, the following commentary is provided on the parties' submissions. After inspection of the site, I would agree with the finding of fact by the planning authority that the site on which the shed stands is not in agricultural use. I would also advise the board that the requester has not shown that it is part of an agricultural landholding. Sections 5 and 127 of the act place the onus on the person requesting a declaration or making a referral to submit all the information necessary for the making of a declaration. So the omission by the requestor of specific or verifiable information as to the extent, use or ownership of the purported landholding, even though there was an opportunity to do so after the matter was clearly raised in the declaration by the planning authority, is a sufficient basis on which to conclude that the site is not part of an agricultural landholding for the purposes of the present referral.

10.7 The planning authority cites the board's declaration under RL2235 to the effect that a shed needs to be on an agricultural landholding with an established agricultural use in order to avail of the exemption in class 9. This is an accurate citation of the previous declaration. However the previous case concerned a shed on the curtilage of a dwellinghouse where the likelihood of agricultural use could be discounted. So it can be distinguished from the current site where agricultural use could commence as exempted development without displacing another beneficial use. Nevertheless it can be reasonably inferred declaration in that case, and in the case RL2950, that the exemption in class 9 should not be extended to any shed that is outside a town and less than $300m^2$ unless the shed's use for exclusively agricultural purposes is consistent with its form and location. To hold otherwise would be to unduly broaden the scope of the class beyond that envisaged by section 4(2)(a)(i) of the act so that it would allow development that had a significant effect on its surroundings and could offend against the principles of proper planning and sustainable development.

10.8 Against this, the requester's agent reports his client's intention when erecting the shed to use it for agricultural purposes, and to use it only for such purposes from now on. I would advise the board that submissions made by party or an observer in course any referral or appeal are simply arguments made in the course of an administrative procedure. They may include documents or accounts of facts which are not in dispute. However such submissions are not comparable to sworn evidence given by a witness in court who may be subject to cross examination, and they should not be treated as such. Disputes may arise as to matters of fact or intention in the course of an appeal or referral. The board may have to adopt a position in relation to such disputes. However it should do so on the basis of objective observations or publicly available documents. The board should be careful not to base its conclusions on assessments of the veracity or credibility of any person or their statements. It has neither the expertise nor the legal power to make such assessments, certainly not if they might impugn a person's good name. The board's role is therefore very different from that of a judge in court, whose office is to weigh and balance evidence given by witnesses. Of course the board does have particular expertise on technical planning matters.

10.9 What this implies for the current case is that the board should not rely on reports of the owner's intentions in deciding whether the purpose of the shed in question is within that contemplated by Class 9, because the board is not competent to pass judgement on such reports. Rather it should look to the uncontested facts, the observable circumstances of the site and relevant public documents. These include the references in the submissions from the parties to the use of the shed to store and repair vehicles, my report on the current use of the site surrounding the shed, and the planning application made under Reg. Ref. 07/83. These would indicate that the shed in question does not come within the exemption provided for agricultural sheds by class 9 of schedule 3 of part 2 of the planning regulations.

10.10 So an expert planning tribunal such as the board, basing its assessment on the submissions of the parties, the planning history of the site and the observable circumstances of the shed, should declare that the shed in question is development and is not exempted development. This is so whether it follows the simple reasoning which I advise, or the more complicated approach adopted by the parties. The submissions from the requestor referred to ongoing legal proceedings relating to the shed. However those proceedings are distinct from the present case before the board. It may be noted that the board has no direct role in enforcement proceedings under Part XIII of the planning act. Furthermore neither section 5 nor any other part of the act provides that a declaration by the board would determine any matter before the courts in such enforcement proceedings. This is unsurprising, given the very different powers and functions of the courts compared to the board.

11.0 CONCLUSION

11.1 The erection of the shed in question involved works and was development. The shed was used to store and repair vehicles. It stands on the site that is not used for agriculture and which is not part of an agricultural landholding. Therefore the shed is not exempted under Class 9 of Part 3 of Schedule 2 of the planning regulations because it contravenes condition and limitation no.1. It would not be exempt under any other provision of the act or regulations. Therefore the shed in question is development and is not exempted development

12.0 RECOMMENDATION

12.1 I recommend that the board declare the shed that is the subject of this referral to be development and not exempted development, as set out below–

WHEREAS a question has arisen as to whether the construction of a shed at Carrigeenshinagh Lane, Roundwood, County Wicklow is or is not exempted development:

AND WHEREAS the said question was referred to An Bord Pleanála by Mr Johnny Fortune on the 10th day of February, 2014:

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

(a) Sections 2, 3 and 4 of the Planning and Development Act, 2000,

(b) articles 6 and 9 of the Planning and Development Regulations, 2001,and

(c) class 9 of Part 3 of Schedule 2 to the said Regulations and the condition and limitation no 1 attached thereto:

AND WHEREAS An Bord Pleanála has concluded, on the basis of the submissions from the parties, the circumstances of the site and the application for permission made under Reg. Ref. 07/83, that

- the shed in question has been used for purposes other than the purposes of agriculture and forestry, and
- the shed in question stands on a site that is not in agricultural use and is not part of an established agricultural landholding:

AND WHEREAS An Bord Pleanála therefore concludes that the shed in question does not comply with condition and limitation no. 1 attached to class 9 of Part 3 of Schedule 2 to the said Regulations:

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (4) of the 2000 Act, hereby decides that the said construction of construction of a shed at Carrigeenshinagh Lane, Roundwood, County Wicklow is development and or not exempted development:

Stephen J. O'Sullivan
13th May 2014

PLANNING AND DEVELOPMENT ACTS 2000 – 2006

Reference Number in Register: 09/90

S C H E D U L E

1. The proposed development would not represent a necessary dwelling in this Landscape Zone designated Corridor Area and would **materially contravene** the provisions of Section 4.3, Chapter 3 of the County Development Plan 2004-2010. These provisions are required to maintain scenic amenities, recreational utility, existing character, and to preserve views of special amenity value and special interest and to conserve the attractiveness of the county for the development of tourism and tourist related employment.
   The Council's settlement strategy policy is to encourage further growth of existing settlements and to restrict rural housing development to cases where there is a bona fide necessity to live in the rural area instead of in existing settlements. It is considered that the applicant does not come within the scope of the housing need criteria as set out under Policy SS9 of the County Development Plan as all his ties are to the urban settlement of Newcastle. The proliferation of non-essential housing in rural landscape areas erodes the landscape value of these areas and seriously detracts from views of special amenity value.

2. The proposed development would endanger public safety by reason of serious traffic hazard because the access road serving the site is inadequate in width, surface and alignment to cater for the proposed dwelling and is suitable for agricultural vehicles only.

3. It is a stated policy of the Council as defined in Section 8.3 Chapter 5 of the County Development Plan 2004-2010 that new dwellings should *" be nestled into the landscape and not be located above a ridgeline or in an elevated position on a site. New houses should be located sympathetically within their surroundings"* and should "*make use of local contours, avoid skylines where development interrupts the flow of the landform. Avoid open field or exposed locations that prevent the development being integrated with its surroundings"*.
   The proposed development is located on an elevated site in a Corridor Area that is visually prominent when viewed from the east and would form an incongruous and intrusive feature on the landscape and would therefore be contrary to the above County Development Plan policy and proper planning and development.

AN BORD PLEANÁLA REF.: 25M. RL3215

AN BORD PLEANÁLA

FILE REFERENCE:	25M.RL3215
QUESTION:	Whether an agricultural shed to be constructed on site is or is not development or is or is not exempted development
LOCATION:	Newdown, The Downs, Mullingar, Co. Westmeath
OWNER/OCCUPIER:	Thomas Kennedy
REFERRER:	Thomas Kennedy
DATE LODGED:	03/04/14
INSPECTOR	Fiona Fair
SITE INSPECTION	25th June 2014

1.0 INTRODUCTION

A question has arisen pursuant of Section 5 of the Planning and Development Act 2000 (as amended) as to whether or not the construction of an agricultural shed (9.144m x 14.1m to ridge height 4.287m) is or is not development or is or is not exempted development at Newdown, The Downs, Mullingar, Co. Westmeath. Westmeath County Council issued a declaration stating that the agricultural shed is development and is not exempted development on the grounds that the proposed development does not come within scope of Article 6(3) of the Planning and Development Regulations 2001 – 2011. The declaration issued by Westmeath County Council was referred to the Board by Thomas Kennedy under the provisions of Section 5(3)(a).

2.0 SITE LOCATION AND DESCRIPTION

The site lies in the locality known as the Downs, some 8 kilometres southeast of Mullingar in Co. Westmeath. It is located approximately 100 metres north of the Downs to Killucan Road on the west side of a single-track county Road. The site of the proposed shed is set back from the County Road some 135 meters and is accessed via a private gated laneway access, which runs to the side and rear of a large relatively new two storey dwelling house (granted planning permission in 2003 on foot of Reg. Ref. 03/5163). The proposed location of the shed is to the north-west corner of a field (field to the back of the two storey dwelling). There are no structures on the site and the rubble access lane way does not fully extend to the proposed shed location. A small tractor was evident parked to the eastern field boundary, to the rear of the adjoining dwelling house.

Three dwellings are located along this stretch of the County Road, to the east of the proposed shed. From documentation on file it is submitted that the referrer Thomas Kennedy is the stated owner of the lands subject to the section 5 referral, lands outlined in blue. I note however that the planning history denotes that John and Martina Kennedy were granted planning permission on foot of Reg. Ref. 03/5163 to demolish existing derelict dwelling and construct a two storey dwelling, with garage and mini treatment system at the location now indicated as 'applicants dwelling'. An occupancy clause was attached to this permission. It is noted that under Reg. Ref. 03/5163 the landholding outlined in blue included the subject lands and extended to both the east and west of the county road and comprised some 10 acres.

I note that the family name of the referrer Kennedy corresponds with the family name of John and Martina Kennedy. A typed letter of consent which states '*We John and Martina Kennedy give permission to the applicant to erect a shed on our lands at the above address'* is attached to the file, it is unsigned.

It is also noted that the lands upon which the 'existing dwelling' to the south of John and Martina Kennedy's dwelling is located formed part of the lands outlined in blue in family land ownership under the previous planning application Reg. Ref. 03/5163.

The plans submitted indicate an agricultural shed (9.144m x 14.1m to ridge height 4.287m) with an unroofed gravel yard area 15.2 m x 20m (304 sq. m) attached to the east and a 7m x 9m (63 sq. m) cattle crush attached to the south.

John and Martina Kennedy's dwelling is located 101m from the closest point of the shed & cattle crush subject to the referral and 86 m from the proposed yard area.

The neighbouring dwelling house to the north of the denoted 'applicants dwelling' on the plan submitted is located 115m from the shed location and 100m from the proposed yard.

The neighbouring dwelling to the south of the denoted 'applicants dwelling' on the plan submitted is located 112m from the shed location and 96m from the proposed yard.

3.0 THE QUESTION

The section 5 referral put to the planning authority dated 17th December 2013 stated the description of the proposed development as: *'Construct an agricultural shed 9.144m x 14.1m with a height of 4.287m. Shed to house turf, hay, tractor and farm machinery (maybe some livestock)'.*

Following further information request with respect to (1) extraction and storage of turf and (2) details of nature and scale of agricultural enterprise, intention to house livestock in the shed (3) details of farm machinery (4) clarification of ownership and written consent from adjoining landowners within 100m of the shed / hard surface / cattle crush (5) correct dimensions and scaled plans (6) letters of consent from adjoining landowners and occupiers of dwellings within 100m of the gravel surface (7) effluent storage from the shed and cattle crush areas, the applicant revised the referral.

By way of Further Information submitted to the planning authority on the 17th February 2014 it was confirmed that John and Martina Kennedy are the landowners and an unsigned letter of consent was submitted. The location of the shed, gravel yard and cattle crush was amended such that now the cattle crush and shed are outside 100m of all adjacent dwellings, the yard area however is still within 100m of house on blue land (John and Martina Kennedy) and house to the southeast of the proposed farm yard area. It was submitted that proposed use of the shed is for storage of farm machinery and agricultural feed stuffs and that there will be no turf or animals housed in the shed at any time.

4.0 THE PLANNING AUTHORITY'S DECLARATION

On the 5th of March 2013, a declaration was issued, by Westmeath County Council under Section 5 (1) of the Planning and Development Act 2000, which states: '*the construction of an agricultural shed 9.144m x 14.1m, height to ridge 4.287, shed to house turf, hay, tractor and farm machinery (maybe some live stock) is development as defined by Section 3 of the Planning and Development Act 2000, as amended and does not come within the scope of Article 6 (3) of the Planning and Development Regulations 2001 – 2013 and is therefore deemed to be development and not exempted development*':

The declaration issued under s.5(2) by the planning authority indicates in considering this request Westmeath County Council particularly had regard to:

- *Schedule 2 Part 3 Classes 6, 7, 8 and 9 of the Planning and Development Regulations 2001 – 2013*

And concluded that: '*the construction of an agricultural shed 9.144m x 14.1m, height to ridge 4.287, shed to house turf, hay, tractor and farm machinery is development and not exempted development*':

On the 3rd of April 2014 a referral was received by An Bord Pleanala

The question which is the subject of the referral relates to '*whether an agricultural shed less than 300 sq. m proposed to be constructed on site is Exempted Development*'.

5.0 PLANNING HISTORY

5.1 The following planning history is of relevance to this case:

Reg. Ref. 03/5163 Permission granted to John and Martina Kennedy for a two storey dwelling house to the south of the referral site and within the lands outlined in blue on the plans submitted with the referral.

5.2 Enforcement:

None recorded on file.

6.0 SUBMISSION BY REFERRER

The submission by John Madden and Associates on behalf of Mr. Thomas Kennedy states that they wish to appeal the decision by Westmeath County Council to determine whether, an agricultural shed less than 300 sq. m proposed to be constructed on site is Exempted Development.

The submission sets out that:

- Mr. Kennedy has no storage facility on site when he operates his land from March to October for storage of goods, machinery etc.
- Mr. Kennedy sent in further information to Westmeath County Council indicating the items he intends storing in his shed
- The referrer farms this land with his son and only cuts grass, hay etc. or utilizes it for storage of animal feed (bagged manure) etc.
- The shed will not house animals or turf
- The distance from neighbours properties complies with that set out in the exempted development requirements and the usage has been clearly stated
- Enclosed: copy of further information response, photographs of farm machinery to be stored in the shed. Proposed Layout Map indicating the location of the proposed shed 9.144m x 14.1m (128.93 sq. m) in size, with an unroofed yard area 15.2 m x 20m (304 sq. m) attached to the east and a 7m x 9m (63 sq. m) cattle crush attached to the south.

7.0 SUBMISSION BY THE PLANNING AUTHORITY

7.1 A response was received from the planning authority it is summarized as follows:

- The planning authority is of the opinion that the construction of a shed, cattle crush and yard constitute development as defined under section 3 of the planning and development act 2010 – 2014
- Not satisfied on the basis of the information submitted that the development is directly associated with an established farm landholding, given the size and nature of the landholding involved
- Does not comply with article 6 (3) of part 2 of the Planning and Development Regulations 2001 – 2013,

8.0 STATUTORY PROVISIONS

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

8.1 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)

8.2 Planning and Development Regulations 2001, as amended.

Article 6 Schedule 2 Part 3 Classes 6, 7, 8 and 9 *Agricultural Structures* of the Planning and Development Regulations 2001 – 2013 – excerpt attached as appendix to this report.

Article 6(1) identifies that, subject to Article 9, certain development shall, subject to conditions and limitations, be exempted development for the purposes of the Act, as per Schedule 2 to Regulations.

Schedule 2, Part 3 covers Exempted development – Rural.
Class 6: works consisting of the provision of a roofed structure for the housing of cattle etc.
Class 7: works consisting of the provision of a roofed structure for the housing of pigs etc.
Class 8: works consisting of the provision of roofless cubicles ... feeding aprons etc.
Class 9: works consisting of the provision of any store, barn, shed, glass house or other structure, not being of a type specified in Class 6, Class 7 or 8 of this part of this Schedule, and having a gross floorspace not exceeding 300 square metres. Restrictions on the exemption in this Class 9 may be summarised as follows:

1. Confined to use for agriculture or forestry, but excluding housing of animals or storing of effluent.
2. A cumulative limit of 900 square metres, taking account of other agricultural structures within 100 metres of the complex.
3. 10 metre minimum distance from public road required.
4. Any structure within 100 metres of the public road shall not exceed 8 metres in height.
5. No such structure should be situated within 100 metres of any house save with the consent of the owner etc.
6. No unpainted metal sheeting shall be used for roofing or other external finish.

8.3 A number of restrictions and exemptions are set out in **Article 9(1)(a)** of the Regulations. The specific exemptions which are relevant to the case in question include:

(iii) *Endanger public safety by reason of a traffic hazard or obstruction to 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 impact on the integrity of the environment.*

9.0 PREVIOUS BOARD DECISIONS OF RELEVANCE

9.1 RL3053

WHEREAS a question has arisen as to whether the construction of a shed of the dimensions shown for the purposes of storing meal for livestock at Muckinish, Bellharbour, County Clare is or is not exempted development

An Bord Pleanála has concluded that -

(a) the proposed works and use would generally come within the terms of development envisaged by Class 9 of Part 3 of Schedule 2 of the Planning and Development Regulations, 2001,

(b) the proposed works are consistent with the conditions and limitations of this class of exempted development, on the assumption that the shed not be used for the housing of livestock or storage of effluent, not be within 10 metres of any public road, and that metal sheeting not be used for the external finish, and

(c) the 'restrictions on exemption' under Article 9 of the said Regulations, do not apply to the subject proposal as the proposed works would not impact on a Natura 2000 site or proposed Natural Heritage Area and would not interfere with the character of the landscape or a view or prospect of special amenity value, as set out in the current development plan for the area:

An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3) (a) of the 2000 Act, hereby decides that the said construction of a shed of the dimensions shown for the purposes of storing meal for livestock at Muckinish, Bellharbour, County Clare is exempted development.

9.2 RL3147:

WHEREAS a question has arisen as to whether the construction of an agricultural shed with a gross floor area of 256 square metres at Ballypatrick, Clonmel, County Tipperary is or is not development or is or is not exempted Development

An Bord Pleanála has concluded that the development falls within Class 9 of Part 3, Schedule 2 of the Planning and Development Regulations, 2001, and that none of the Conditions or Limitation under either Class 9 or Article 9 would apply in this instance.

An Bord Pleanála, in exercise of the powers conferred on it by section 5(3)(a) of the 2000 Act, hereby decides that the said construction of an agricultural shed with a gross floor area of 256 square metres at Ballypatrick, Clonmel, County Tipperary is development and is exempted development.

10.0 DEVELOPMENT PLAN

The relevant plan is the *Westmeath County Development Plan, 2014 - 2020.*

The appeal site is located outside of any of the identified settlements and is in an area that is identified in the Plan as being a rural area under pressure from urban generated rural housing.

11.0 ASSESSMENT

Having inspected the site and reviewed the file documents, I consider that the issues raised by this appeal can be assessed under the following broad headings.

11.1 Wording of the declaration for consideration

11.2 Nature of the Proposed Use & Structures

11.2.1 Agricultural shed

11.2.2 Open Gravel Yard

11.2.3 Cattle Crush

11.3 Restrictions on Exemption - Article 9

11.1 Wording of the declaration for consideration

The initial stated description of the proposed development as per the referrers Section 5 application to the planning authority was '*construction of an agricultural shed 9.144m x 14.1m, height to ridge 4.287, shed to house turf, hay, tractor and farm machinery (maybe some live stock)'*

Subsequent to the further information response by the applicant clarifying the use of the shed for agricultural uses only, the declaration issued, by Westmeath County Council under Section 5 (1) of the Planning and Development Act 2000, classified the development as falling within Class 6, Article 6 (3) of part 2 of the Planning and Development Regulations 2001 – 2013, and it is therefore deemed to be development and not exempted development.

In essence the shed was considered as falling within Class 6 of Schedule 2, Part 3 of the Regulations which sets out that 'works consisting of the provision of a roofed structure for the housing of cattle, sheep, goats, donkeys, horses, deer, or rabbits,' require effluent storage facilities in order to be exempt. The yard area and cattle crush were considered as falling within Class 8. The planners report states: '*It is not considered that the applicant has provided sufficient evidence that the proposal is directly associated with an agricultural use. Furthermore the yard area breaches the distance criteria outlined in class 8 to dwelling houses and the consents of the landowners / occupiers for either house has not been provided.'*

The plans submitted indicate an agricultural shed 9.144m x 14.1m (128.93sq.m) to ridge height 4.287m with an unroofed gravel yard area 15.2 m x 20m (304 sq. m) attached to the east and a 7m x 9m (63 sq. m) cattle crush attached to the south.

The stated use of the shed, as per the referrers submission to the Board is '*for storage of agricultural goods, machinery etc.*' and it is submitted it will '*not be used for housing animals or turf*', this description is as per the further information response to the planning authority and would be within the terms of Class 9 which excludes 'the housing of animals or the storing of effluent', see section 8.2 of this report above. I highlight that the revised question put to the planning authority and to the Board '*whether an agricultural shed less than 300 sq. m proposed to be constructed on site is Exempted Development*' does not refer to the proposed yard area and cattle crush area also proposed.

Having regard to the foregoing, and in the light of the issues set out in the referral, I consider that the question to be determined by the Board in this case in the interest of clarity, cognizance being had to s.5(3)(a), of the Planning and Development Act 2000, as amended, should be reworded as follows:

'*Whether an agricultural shed less than 300 sq. m, gravel open yard area (304 sq., m in area) and Cattle Crush (63 sq. m in area) proposed to be constructed on site is Exempted Development*'.

11.2 Nature of the Proposed Use & Structures

11.2.1 Agricultural shed

The structure in question according to the information contained on file, will be used for the purposes of agriculture, and is below 300 sq. m threshold for exemption. It is noteworthy that the applicant can only avail of the exempted development regulations on the basis that the structure in question will be used for the purposes of agriculture in accordance with Class 9 of Schedule 2 Part 3 of the Planning Regulations 2001, as amended 'excluding the housing of animals or the storing of effluent.'

There appear to be no other structures within the landholding and therefore the cumulative gross floor area of agricultural structures within the landholding will not exceed 900 sq. m.

The proposed structure is not located within 10 metres of the public road and does not exceed 8 metres in height. The drawings submitted indicate that the agricultural structure will be finished with 'dark green cladding' and therefore will comply with the limitations set out in Point 6 of Class 9. Furthermore the structure is not located within 100 metres of any house.

It appears therefore that the proposed agricultural structure complies with the limitations and conditions set out in Class 9.

I reiterate that the building in question can only be classed as exempted development provided it serves an agricultural use as this is stipulated specifically in the first condition/limitation set out under Class 9 of the exempted development regulations. If the shed is used for any purpose other than agriculture it cannot avail of exempted development status under the provisions of Class 9.

11.2.2 Open gravel yard area

The open gravel yard area 20m x 15.2 m (304 sq. m) located to the east of the agricultural shed is in excess of the 200 sq. m exemption provided for in Class 8 Schedule 2 Part 3.

The Class 8 exemption relates to *'works consisting of the provision of roofless cubicles, open loose yards... assembly yards....having an aggregate gross floor space not exceeding 200 sq. m and any ancillary provision for effluent storage.'*

The proposed yard area clearly exceeds the gross floor space and also taken in conjunction with the proposed shed would be contrary to limitation point 2 gross floor space, point 3 effluent storage requirement and point 6 100 m separation distance of any house (other than the house of the person providing the structure). From the plans submitted the proposed gravel yard area is located 86m from the 'applicants house' to the east, I note the unsigned letter from John and Martina Kennedy on file and their kinship with the applicant Thomas Kennedy, and 96m from the neighbouring dwelling to the south east.

It appears therefore that the proposed 20m x 15.2 m gravel yard area does not comply with the limitations and conditions set out in Class 8.

11.2.3 Cattle Crush

The cattle crush which measures some 9m x 7 m (63 sq. m in area) located to the south of the agricultural shed would not be exempt development by reason of Class 8 of Schedule 2 Part 3 of the Regulations.

Albeit that the proposed structure does not exceed 200 sq. m in area, is not located within 100 metres of any house, is not located within 10 metres of the public road and does not exceed 8 metres in height, no provision for effluent storage has been made. It would therefore in my opinion fail to comply with point 3 limitation and conditions set out in Class 8 Schedule 2 Part 3.

11.3 Restrictions on Exemption - Article 9

With regard to the restrictions and limitations set out in Article 9, of the planning and Development Regulations 2001, as amended, I do not consider that any of the restrictions under Article 9 apply in the subject instance.

I note that two Schedules are attached to the file one dated 5th March signed by the Director of Services and one dated 3rd March 2014 unsigned. I note that the unsigned Schedule states that the development does not come within the scope of Article 6(3) and Article 9(1)(a)(iii) of the Planning and Development Regulations 2001 – 2011 – traffic hazard was not raised as an issue in the planning report and reference to Article 9(1) (a)(iii) would appear to have been an error and was omitted prior to signing the schedule.

The agricultural shed in question will be served by an existing access. It is not proposed to create a new access onto a roadway, which is less than 4m in width. Having inspected the site I consider that the existing private access lane which serves the field subject to the proposed development is acceptable in terms of sightlines width and layout.

I would consider that the restrictions under Article 9(1)(a)(viib) which relates to an Appropriate Assessment requirement, would also not be applicable. I note the planning authority report also considers that the proposal would not give rise to significant adverse direct, indirect or secondary impacts on the integrity of any nearby Natura 2000 sites having regard to their conservation objectives, arising from the development.

12.0 CONCLUSION AND RECOMMENDATION

The subject structures (i) *agricultural shed (ii) gravel open yard area and (iii) Cattle Crush* are development within the meaning of the Act. This is not disputed by the parties.

The *'agricultural shed less than 300 sq. m'* would be exempted development by reference to the parameters specified in Schedule 2 of the 2001 Planning and Development Regulations, subject to the provisions of Article 9 of the Regulations.

The *'gravel open yard area (304 sq., m in area)'* would not be exempted development by reference to the parameters specified in Schedule 2 of the 2001 Planning and Development Regulations, subject to the provisions of Article 8 of the Regulations and limitations / conditions of same.

The *'Cattle Crush (63 sq. m in area)'* would not be exempted development by reference to the parameters specified in Schedule 2 of the 2001 Planning and Development Regulations, subject to the provisions of Article 8 of the Regulations limitations / conditions of same.

I recommend that the Board should determine on the basis of the evidence submitted that an *agricultural shed less than 300 sq. m,* is development and is exempted development. That *a gravel open yard area (304 sq., m in area)* is development and is not exempted development. And that a *Cattle Crush (63 sq. m in area)* is development and is not exempted development.

Accordingly I recommend an Order in the following terms:

WHEREAS a question has arisen as to whether an agricultural shed less than 300 sq. m, gravel open yard area (304 sq., m in area) and Cattle Crush (63 sq. m in area) proposed to be constructed on site is Exempted Development at Newdown, The Downs, Mullingar, Co. Westmeath is or is not exempted development.

AND WHEREAS Mr. Thomas Kennedy has referred the question for decision to An Bord Pleanala on the 03.04.2014

AND WHEREAS An Bord Pleanala in considering this referral had regard particularly to:

1. Section 2 and 3 of the Planning and Development Act 2000 (as amended)
2. Section 5(3)(a) of the Planning and Development Act 2000 (as amended)
3. Article 6(3) and Class 8 and 9 of the rural exempted development classes of the Planning and Development Regulations 2001 (as amended)
4. Article 9 (1) (a) of the Planning and Development Regulations 2001 (as amended)

AND WHEREAS An Bord Pleanala, has concluded that:

(a) The agricultural shed less than 300 sq. m, would be within the terms of the development envisaged by Class 9 of Part 3 of Schedule 2 of the Planning and Development Regulations and that none of the conditions or limitations under either Class 9 or Article 9 would apply in this instance

(b) The gravel open yard area (304 sq. m in area) and Cattle Crush (63 sq. m in area) falls within Class 8 of the rural exempted development class and that the conditions or limitations 2, 3 and 6 would apply in this instance.

NOW THEREFORE An Bord Pleanala in exercise of the powers conferred on it by Section 5(3)(a) of the 2000 Act hereby decides that the construction of an *agricultural shed less than 300 sq. m,* constitutes development and is exempted development, that the *gravel open yard area (304 sq., m in area)* constitutes development and is not exempted development, and that a *Cattle Crush (63 sq. m in area)* constitutes development and is not exempted development.

____

Fiona Fair
Planning Inspector
26.06.2014

An Bord Pleanála

Inspector's Report

REFERRAL REFERENCE:	11.RL3207
QUESTION:	Whether proposed agricultural building for the housing of horses • At Dangans, Mountmellick, County Laois. Is or is not development or Is or is not exempted development?
REFERRER:	Edward Horan
OWNER:	Edward Horan
PLANNING AUTHORITY:	Laois County Council
DATE OF SITE INSPECTION:	9th May, 2014.
INSPECTOR:	Dermot Kelly

REPORT FORMAT

This report follows my examination including reading the documents on file, and follows a Site Inspection on 9th May, 2014 which included the Photographs in Appendix B of this report.

1. SITE LOCATION

The Planning Report for the Planning Authority described the Subject Site as follows:

"The subject site is located just off the R422, which it accesses from an existing agricultural entrance in the townland of Dangans located approximately 2.8 kilometres east of the town of Mountmellick. The applicant proposes to retain and complete a proposed agricultural building for the housing of horses."

2. REFERRER'S SUBMISSION

The Referrer's Submission received 19th February, 2014 included:

"1. My field at Dangans, Mountmellick, County Laois is zoned as agricultural land and in a rural area. I bought it over 3 years ago as a place to keep my horses. See map attached.

2. I started constructing stables as I needed somewhere to house my horses. Before construction commenced, I referred to the list of exempt developments outlined on the Laois County Council website and I was satisfied that my stables were exempt from planning, as it is a Type 1 structure that is, less than 300 square metres.

3. The exempted developments outlined on the Laois County Council website stated that '*a roofed structure housing pigs, cattle, sheep, poultry, donkeys, horses, deer or rabbits provided that the floor area does not exceed 300 square metres*', is an exempted development. My proposed stables are only 132.665 square metres.

4. Laois County Council issued a warning letter (dated 3rd October, 3013) and an enforcement notice (dated 18th November, 2013) on me, for the aforementioned development. Therefore, at an on site meeting (dated 6th December, 2013) with Yvonne O'Reilly and Angela McEvoy of LCC, it was agreed that a Section 5 request should be submitted to LCC for consideration in order to deal with the enforcement notice.

5. I am completely taken aback that Laois County Council did not grant me a Section 5 Declaration for my much needed stables. While I can understand that, the shape of the building is unconventional, a round building is more natural and organic than the rectangular shaped. I thought it would blend in with the trees and reduce the impact on the local vernacular.

6. My proposed stables are set back from the main road by 115 metres and the structure is obscured from view due to a mature

tree line. The maximum height of the proposed stables will be 5.850 metres which is less than the 8 metre restriction outlined on the LCC website.

7. The proposed finishes of proposed structure are typical of stable construction:-

(a) Roof finish:	Sheet Galvanising
(b) Wall finish:	Finished Blockwork
(c) Window openings:	Timber Shutters
(d) Door Opening:	Timber stable doors and the large passageway doors will be hinged both sides and open outwards.

Finally to summarise, my proposed development is on land zoned agricultural, in a rural area, for the housing of horses, it is less than 300 square metres (actually 132.665 square metres), greater than 10 metres (actually 115 metres) from a public road and the maximum height of the structure will be less than 8 metres (actually 5.85 metres)."

"1. Housing my horses on this land will result in less frequent trips in and out because I have the feed, hay (which is saved on this land), and grazing there. If I had my stables completed, I could leave my horses on my property and I would not have to enter and exit as frequently as I do now. As it stands, I am in and out twice a day, sometimes more.
   If I had my stables completed, I would only have to go out once a day to check on my horses. Therefore, reducing the possibility of endangering public safety by reason of traffic hazard or obstruction.
2. Please see attached the historic map from 1839 which clearly outlines that there has been an existing access at this point onto my property for over 175 years. In addition, this access was called 'Skinners Lane' and there was approximately 6 houses down the lane.

Therefore, in light of the fact that the access predates planning law, the fact that the previous use was far greater than my agricultural use, the fact that my proposed stables are on land zoned agricultural, in a rural area, it is less than 300 square metres, greater than 10 metres from a public road and the maximum height of the structure will be less than 8 metres, request that you declare that my proposed stables are an exempt development."

The Referrer's Submission dated 16th December, 2013 to the Planning Authority in requesting a Section 5 Declaration is noted including:
"Finally to summarise, my proposed development is on land zoned agricultural, in a rural area for the housing of horses, it is less than 300

square metres (actually 132.665 square metres), greater than 10 metres (actually 115 metres) from a public road and the maximum height of the structure will be less than 8 metres (actually 5.85 metre)."

3. THE REFERRAL QUESTION

The Referral Question submitted is as follows:
'Whether proposed agricultural building for the housing of horses at Dangans, Mountmellick, County Laois, is or is not development or is or is not exempted development?'

4. PLANNING AUTHORITY DECLARATION

The Planning Authority by letter dated 24th January, 2014 issued a Declaration as follows:
"I refer to the above and wish to advise that having regard to the provisions of Article 9(1)(a)(iii) of the Planning and Development Regulations 2001 as amended, which restricts exemption on a development if the carrying out of such development would endanger public safety by reason of traffic hazard or obstruction of road users, the proposed development for the proposed agricultural building for the housing of horses is not exempt development."

The Planning Report for the Planning Authority noted the provisions of Class 6 'Agricultural Structures' of Part 3 'Exempted Development – Rural' in Schedule 2 of the Planning and Development Regulations 2001 as amended, as also the provisions of Article 9(1)(a)(iii) of the Regulations. It was further noted as follows:
"It is noted from an email from Steven Craig, Roads Engineer, dated 20th January, 2014 (copy attached to this report) that the use of the existing access onto the R422 constitutes a traffic hazard, as relatively slow moving horse trailers would take longer than a car to vacate the Emo bound lane at the access when leaving the site. It is therefore considered that the Section 5 Declaration should not be granted as the proposed development would constitute a traffic hazard in accordance with Article 9(1)(iii) of the Planning and Development Regulations 2001 as amended."
The attached Road Engineer's Report for the Planning Authority dated 20th January, 2014 is noted.

5. RESPONSES

5.1 Planning Authority Response

The Planning Authority Response received 16th March, 2014 included stating as follows in regard to a Site Meeting:

"A site meeting took place on the 29th November, 2013 with Edward Horan, Thomas Horan, Angela McEvoy, Senior Planner and Yvonne O'Reilly, Executive Technician, Planning Enforcement. The owner/developer and his agent were advised of the following concerns of the Planning Authority:

- The intended use of both structures.
- The proposed finish of the alleged stable.
- The existing entrance onto a strategic regional road.
- Provision of appropriate sight lines along the strategic regional road.
- The concerns regarding the previous planning application, no reference was made to any part of the site being part of a farmyard complex.

The developer advised that he has passports for 4 animals and is also a registered member of a breeder association. It was agreed that Mr. Horan would submit a section 5 application for the development."

The Planning Authority Response also stated as follows:

"It is considered that the development would comply with the above stated exemption with regard to floor area, height, distance from dwellings and roads subject to the use of the building for the housing of horses.

However, notwithstanding this class of exemption *Article 9 of the Planning and Development Regulations 2001 as amended* states that:

(1) 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 –

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

It is noted from an email from Steven Craig, Assistant Engineer, Roads Design Office, dated 20th January, 2014 (copy attached to this report) that the use of the existing access onto the R422 constitutes a traffic hazard, as relatively slow moving horse trailers would take longer than a car to vacate the Emo bound lane at the access when leaving the site.

Conclusions

It is therefore requested that the Board have regard to the above and determine that the above mentioned development is development and not exempt development, as it would constitute a traffic hazard, in accordance with paragraph 9(1)(iii) of the Planning and Development Regulations as amended."

5.2 Referrer's Response to Planning Authority Response

The Referrer's Response received 17th April, 2014 included:
"Laois County Council has not stated exactly how my proposed development would endanger public safety by reason of traffic hazard or obstruction or road users. However please note, there is an existing access, there is an existing frequency of access and egress, and there is an existing use of the land. Furthermore as stated, on the completion of the stables the frequency of access and egress will reduce.
Please note, if I do not have my stable, there still will be a 4x4 and horse trailer entering and exiting my land onto the R422, twice a day or sometimes more for grazing purposes. Would common sense not state that by having the stables completed, I won't need to move my horses as frequent thus, perhaps reducing the possibility of '*endanger public safety by reason of traffic hazard or obstruction of road users*'.
As outlined in my previous letter, access and egress onto my land is nothing new. In fact, there has been an existing access at this point onto my property for over 175 years. This access was called 'Skinners Lane' and there were approximately 6 houses down the lane."

6. PLANNING HISTORY

The Planning Report for the Planning Authority has not documented any relevant Planning History in this area.

7. DEVELOPMENT PLAN

The provisions of the Laois County Development Plan are noted.

8. STATUTORY PROVISIONS

The Planning Report for the Planning Authority noted as follows:
"The most relevant class of exemption contained in the Planning and Development Regulations 2001-2013 is:
Class 6, Part 3, Schedule 2.
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.

Conditions and Limitations:

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 floorspace 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 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.
7. No unpainted metal sheeting shall be used for roofing or on the external finish of the structure.

Notwithstanding this class of exemption it is noted that **Article 9 Restrictions on Development** states that:

(1) 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 –

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

9. PLANNING ASSESSMENT – ISSUES AND EVALUATION

I note the Referral Question submitted is as follows:

'Whether proposed agricultural building for the housing of horses at Dangans, Mountmellick, County Laois, is or is not development or is or is not exempted development?'

I note the Planning Report for the Planning Authority described the Subject Site as follows:
"The subject site is located just off the R422, which it accesses from an existing agricultural entrance in the townland of Dangans located approximately 2.8 kilometres east of the town of Mountmellick. The applicant proposes to retain and complete a proposed agricultural building for the housing of horses."

I note the Referrer's Submission received 19th February, 2014 included:
"The exempted developments outlined on the Laois County Council website stated that '*a roofed structure housing pigs, cattle, sheep, poultry, donkeys, horses, deer or rabbits provided that the floor area does not exceed 300 square metres*', is an exempted development. My proposed stables are only 132.665 square metres.", and
"My proposed stables are set back from the main road by 115 metres and the structure is obscured from view due to a mature tree line. The maximum height of the proposed stables will be 5.850 metres which is less than the 8 metre restriction outlined on the LCC website.", and
"Finally to summarise, my proposed development is on land zoned agricultural, in a rural area, for the housing of horses, it is less than 300 square metres (actually 132.665 square metres), greater than 10 metres (actually 115 metres) from a public road and the maximum height of the structure will be less than 8 metres (actually 5.85 metres).", and also
"If I had my stables completed, I would only have to go out once a day to check on my horses. Therefore, reducing the possibility of endangering public safety by reason of traffic hazard or obstruction.
Please see attached the historic map from 1839 which clearly outlines that there has been an existing access at this point onto my property for over 175 years. In addition, this access was called 'Skinners Lane' and there was approximately 6 houses down the lane.
Therefore, in light of the fact that the access predates planning law, the fact that the previous use was far greater than my agricultural use, the fact that my proposed stables are on land zoned agricultural, in a rural area, it is less than 300 square metres, greater than 10 metres from a public road and the maximum height of the structure will be less than 8 metres, request that you declare that my proposed stables are an exempt development."

I note the Planning Authority by letter dated 24th January, 2014 issued a Declaration as follows:
"I refer to the above and wish to advise that having regard to the provisions of Article 9(1)(a)(iii) of the Planning and Development Regulations 2001 as amended, which restricts exemption on a

development if the carrying out of such development would endanger public safety by reason of traffic hazard or obstruction of road users, the proposed development for the proposed agricultural building for the housing of horses is not exempt development."

I note the Planning Report for the Planning Authority noted the provisions of Class 6 'Agricultural Structures' of Part 3 'Exempted Development – Rural' in Schedule 2 of the Planning and Development Regulations 2001 as amended, as also the provisions of Article 9(1)(a)(iii) of the Regulations. It was further noted as follows:
"It is noted from an email from Steven Craig, Roads Engineer, dated 20th January, 2014 (copy attached to this report) that the use of the existing access onto the R422 constitutes a traffic hazard, as relatively slow moving horse trailers would take longer than a car to vacate the Emo bound lane at the access when leaving the site. It is therefore considered that the Section 5 Declaration should not be granted as the proposed development would constitute a traffic hazard in accordance with Article 9(1)(iii) of the Planning and Development Regulations 2001 as amended."

I note the Planning Authority Response also stated as follows:
"It is considered that the development would comply with the above stated exemption with regards to floor area, height, distance from dwellings and roads subject to the use of the building for the housing of horses.
However, notwithstanding this class of exemption *Article 9 of the Planning and Development Regulations 2001 as amended* states that:
(1) 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 –
      (iii) endanger public safety by reason of traffic hazard or obstruction of road users.

It is noted from an email from Steven Craig, Assistant Engineer, Roads Design Office, dated 20th January, 2014 (copy attached to this report) that the use of the existing access onto the R422 constitutes a traffic hazard, as relatively slow moving horse trailers would take longer than a car to vacate the Emo bound lane at the access when leaving the site.
Conclusions
It is therefore requested that the Board have regard to the above and determine that the above mentioned development is development and not exempt development, as it would constitute a traffic hazard, in accordance with paragraph 9(1)(iii) of the Planning and Development Regulations as amended."

I note the Planning Report for the Planning Authority stated:

"The most relevant class of exemption contained in the Planning and Development Regulations 2001-2012 is:

Class 6, Part 3, Schedule 2.

*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.*

Conditions and Limitations:

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 floorspace 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 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.
7. No unpainted metal sheeting shall be used for roofing or on the external finish of the structure.", (*Italics added*), and also

"Notwithstanding this class of exemption it is noted that **Article 9 Restrictions on Development** states that:

'(1) 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 – ......

(iii) *endanger public safety by reason of traffic hazard or obstruction of road users*'." (*Italics added*)

I note that Section 2(1) of the Planning and Development Act 2000, as amended, provides that 'the proposed agricultural building for the housing of horses' constitutes 'works' as described at Section 2(1):
""works" includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewals and, in relation to a protected structure…."

I note also in this regard that Section 3(1) of the Planning and Development Act 2000, as amended, under 'Development' states:
"3. (1) 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."

I note also in this regard that Article 6(1) of the Planning and Development Regulations 2001 – 2013 as amended states as follows:
"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."

I have considered all the submissions on file as detailed above and further to site inspection – see Photographs in Appendix B of this report – when in particular I noted the heavily-trafficked nature of the Regional Road R422 between Mountmellick and Emo at the location of the subject site, and that the vehicular access for the subject site is located along a pronounced bend on the Regional Road (see Photographs in Appendix B). The 'proposed agricultural building for the housing of horses' further to Article 6(1) of the Planning and Development Regulations 2001 – 2013 as amended, would comply with 'the conditions and limitations' specified under Class 6, Part 3, Schedule 2 in the Planning and Development Regulations 2001 – 2013 as amended as also considered in the Planning Authority Response where stated as follows:
"It is considered that the development would comply with the above stated exemption *with regard to floor area, height, distance from dwellings and roads* subject to the use of the building for the housing of horses." (*Italics added*)

I also concur with the Planning Authority that at this location *at the vehicular access for these lands* at the subject site in the townland of Dangans, onto the heavily-trafficked Regional Road R442 at a pronounced bend in the roadway, that notwithstanding an existing

agricultural access at this location, that the 'proposed agricultural building for the purpose of housing horses' the subject of the Referral, would not constitute 'exempted development' by reason that as stated by the Planning Authority in the issued Declaration as follows:
"the provisions of Article 9(1)(a)(iii) of the Planning and Development Regulations 2001 as amended, which restricts exemption on a development *if the carrying out of such development would endanger public safety by reason of traffic hazard or obstruction of road users*, the proposed development for the proposed agricultural building for the housing of horses is not exempt development." (*Italics added*)

In this regard I concur with the Roads Engineer's Report dated 20th January, 2014 for the Planning Authority where stated as follows:
"I would say that the use of the access as it stands constitutes a traffic hazard, especially considering that relatively slow-moving horse trailers would take longer than a car to vacate the Emo-bound lane at the access when leaving the site.
The Roads Standard for sight distance for that road class (Strategic Regional Road) is 180 metres."

In this regard I have noted the Referrer's Response received 17th April, 2014 including where submitted as follows:
"Laois County Council has not stated exactly how my proposed development would endanger public safety by reason of traffic hazard or obstruction or road users. However please note, there is an existing access, there is an existing frequency of access and egress, and there is an existing use of the land. Furthermore as stated, on the completion of the stables the frequency of access and egress will reduce.
Please note, if I do not have my stable, there still will be a 4x4 and horse trailer entering and exiting my land onto the R422, twice a day or sometimes more for grazing purposes. Would common sense not state that by having the stables completed, I won't need to move my horses as frequent thus, perhaps reducing the possibility of '*endanger public safety by reason of traffic hazard or obstruction of road users*'.
As outlined in my previous letter, access and egress onto my land is nothing new. In fact, there has been an existing access at this point onto my property for over 175 years. This access was called 'Skinners Lane' and there were approximately 6 houses down the lane."

In my opinion – and again I refer to the Photographs in Appendix B of this report – vehicles accessing and exiting the subject site at this location at a pronounced bend on the heavily-trafficked Regional Road R422, would *endanger public safety by reason of traffic hazard or obstruction of road users* and "*the use of the access as it stands* *constitutes a traffic hazard*" as submitted in the Roads Engineer's Report for the Planning Authority. The 'proposed agricultural building for the housing of horses' the subject of the Referral, would endanger public safety by reason of traffic hazard or obstruction of road users at this location at a pronounced bend on the heavily-trafficked Regional Road R422, and as such as set out under 'Restrictions on Exemption' under Article 9(1)(a)(iii) of the Planning and Development Regulations 2001 – 2013 as amended:

"(1) 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 – ……

(iii) *endanger public safety by reason of traffic hazard or obstruction of road users.*" (*Italics added*)

10. CONCLUSIONS AND RECOMMENDATION

SCHEDULE

WHEREAS a question has arisen as to whether the proposed agricultural building for the housing of horses at Dangans, Mountmellick, County Laois, is or is not development or is or is not exempted development?

AND WHEREAS Edward Horan requested a Declaration on the said Question under Section 5(4) of the Planning and Development Act, 2000 as amended from Laois County Council, and the said Council issued a Declaration on the 24th day of January, 2014 including stating that having regard to the provisions of Article 9(1)(a)(iii) of the Planning and Development Regulations 2001 – 2013 as amended, which restricts exemption on a development if the carrying out of such development would endanger public safety by reason of traffic hazard or obstruction of road users, the proposed development of the proposed agricultural building for the housing of horses is not exempted development.

AND WHEREAS the said Edward Horan referred the Declaration to An Bord Pleanála for review by letter received 19th day of February, 2014.

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

(a) Sections 2(1) and 3(1) of the Planning and Development Act 2000 as amended,

(b) Class 6 'Agricultural Structures' of Part 3 'Exempted Development – Rural' in Schedule 2 of the said Planning and Development Regulations 2001 – 2013 as amended,

(c) Article 6(1) 'Exempted Development' of the said Regulations,

(d) Article 9(1)(a)(iii) 'Restriction on Exemption' of the said Regulations,

AND WHEREAS An Bord Pleanála has concluded that –

(a) the 'proposed agricultural building for the housing of horses' constitutes "works" as described at Section 2(1) of the Planning and Development Act, 2000 , as amended, and

(b) the said "works" constitute "development" as defined at Section 3(1) of the said Act, and

(c) the said "works" come within the scope of the exemption provided at Class 6 of Part 3 of Schedule 2 of the Planning and Development Regulations 2001 – 2013 as amended, and

(d) such 'exempted development' further to Article 6 of the said Regulations is subject to Article 9 of the said Regulations, and

(e) Article 9(1)(a)(iii) 'Restrictions on Exemption' applies at this location at a pronounced bend on the heavily-trafficked Regional Road R422 i.e.

"(1) 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 – .....

(iii) *endanger public safety by reason of traffic hazard or obstruction of road users."*

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by Section 5 of the 2000 Act, hereby decides that the proposed agricultural building for the housing of horses at Dangans, Mountmellick, County Laois, is development and is not exempted development.

DERMOT KELLY
SENIOR PLANNING INSPECTOR

26th May, 2014.
sg

APPENDICES

APPENDIX A - LOCATION MAP
APPENDIX B - PHOTOGRAPHS (incl. KEY PLAN)
APPENDIX C - STATUTORY PROVISIONS:

- Sections 2(1) and 3(1) of the Planning and Development Act, 2000 as amended,
- Class 6 'Agricultural Structures' of Part 2 'Exempted Development – Rural' in Schedule 2 of the Planning and Development Regulations 2001 – 2013 as amended,
- Article 6(1) 'Exempted Development' of the said Regulations,
- Article 9(1)(a)(iii) 'Restrictions on Exemption' of the said Regulations.

An Bord Pleanála

Board Direction

Ref: RL11 .RL.3207

The submissions on this file and the Inspector's report were considered at a meeting of all available Board members held on 25th June 2014.

The Board decided by a margin of 5:3 that the works the subject of the referral were development and were exempted development.

Reasons and considerations-
As per the attached copy inspector's report as amended by manuscript.

In disagreeing with the inspector the Board considered that it could not conclude that the development represented an intensification of use and it could therefore not conclude that the development consisted of works the carrying out of which would endanger public safety by reason of traffic hazard.

Board Member: ______________________ Date: 25th June 2014.
Michael Leahy

An Bord Pleanála

Inspector's Report

RL91.RL3579

Question	Whether construction of curved roof hay barn with green corrugated metal sheeting at Shannongrove House (a Protected Structure) is or is not development or is or is not exempted development.
Location	Shannongrove House, Pallaskenry, Co. Limerick
Declaration	
Planning Authority	Limerick City and County Council
Planning Authority Reg. Ref.	EC17/16
Applicant for Declaration	Carleton Varney.
Planning Authority Decision	Development and is Not Exempted Development.
Referral	
Referred by	Carleton Varney.
Owner/ Occupier	Carleton Varney.
Observer(s)	None
Date of Site Inspection	11th August 2017
Inspector	Fiona Fair

2.0 Site Location and Description

2.1. The site is located in the small townland of Shannongrove located approx. 1.86 Km north of Pallaskenry Village and approx. 1.5 Km to the south of the south channel of the River Shannon, some 15 Km west of Limerick City.

2.2. The agricultural shed / hay barn the subject of the referral is situated approx. 270 m to the south of 'Shannongrove House', a Protected Structure.

2.3. The green / grey corrugated, barrel roofed traditional style hay-barn is constructed close to a grove of trees which are south of the main house and to the west of the access laneway to the property. The north, east and western elevations of the shed are clad in green / grey corrugated cladding with the southern façade open to the elements. The shed is three bay, with a height of some 6.6m and was in use as a hay barn on the date of my inspection.

2.4. "'Shannongrove House' comprises a detached five-bay two-storey over basement country house, built c. 1709 and completed in c. 1723, with extensions to sides. Hipped roof with dormered attic and two tall chimneystacks of patterned brickwork. Square-headed window openings. Simple doorcase with segmental pediment to entrance front dated 1709, Baroque styled doorcase to garden front dated 1723 with a flight of steps leading to it. Roughcast rendered walls. House flanked by two L-shaped detached wings with mullion and transom windows. Pigeon house to east of house with a honeycombed interior".

2.5. "This is a very distinguished early eighteenth-century house, which was begun by John Bury and completed by his son, William. It was designed by an architect who may have been one of the Rothery family. It is a highly significant house in terms of its style, along with the decorative elements such as the doorcases and the tall, massive patterned brick chimneystacks. It is sited significantly on the south shore of the Shannon estuary and the different doorway treatment on the river side underlines the importance of the riverine elevation. The survival of the pigeon house adds further technical interest in terms of the honeycombed interior which survives in this demesne related building."

The above description is copied from the National Inventory of Architectural Heritage (NIAH)website

3.0 The Question

3.1. Whether construction of curved roof hay barn with green corrugated metal sheeting at Shannongrove House (a Protected Structure) Pallaskenry, Co Limerick is or is not development or is or is not exempted development.

4.0 Planning Authority Declaration

4.1. Declaration

4.2. On the 10th April 2017 the planning authority issued a Declaration, under Section 5(2)(a) of the Planning and Development Act 2000, as amended stating that 'construction of curved roofed hay barn with green corrugated metal sheeting at Shannongrove House, Pallaskenry, Co. Limerick does not come within the scope of exempted development as defined by Class 9 of Part 3 of Schedule 2 of the Planning and Development Regulations 2001 by virtue of Article 9(1)(a)(vi) of the Planning and Development Regulations 2001, as amended'. That the development as described is development and is not exempted development.

4.3. Planning Authority Reports

4.3.1. Planning Reports

The Planning authority report under Section 5 of the Planning and Development Act 2000 (as amended) sets out the following:

The planning enforcement department received a complaint that a structure was being erected close to Shannongrove House in Pallaskenry. The development inspector of Limerick City and County Council carried out a site visit on the 25th May 2016.

A warning letter was issued to Carlton Varney, the owner of the property on the 8th July 2016 to state that it had come to the attention of Limerick City and County Council that an unauthorised development was being carried out namely, the construction of an agricultural building within the curtilage of a protected structure reference No. B3(12)

In response to the warning letter a letter was received from Cáit Ni Cheallacháin Conservation Architect to state that in her opinion the agricultural structure was not within the curtilage of the protected structure and she requested that the curtilage of Shannongrove House be defined. Limerick City and County Council informed Cáit Ni Cheallacháin that it was the opinion of the planning authority, the agricultural building was within the curtilage of the protected structure and if she was of a different opinion, she had the right to apply for a declaration under Section 5 of the Planning and Development Act.

The report of the Limerick City and County Council development inspector concluded that the agricultural building would come within the scope of Class 9 of Part 3 of Schedule 2 of the Planning and Development Regulations 2001, as amended. However, the exemption under Class 9 is restricted by Article 9 (1)(a)(vi). It was therefore considered that the said works is development and not exempted development under Article 9(1)(a)(vi) of the Planning and Development Regulations 2001, as amended.

4.3.2. Other Technical Reports

The Development Inspector report on file refers to a report from Tom Cassidy, Architectural Conservation Officer. It is stated that in this report that the barn as constructed would be considered to have a detrimental impact on the setting of Shannongrove House which is a building considered to be of National Significance and that in the opinion of the Architectural Conservation Officer the development would not be exempt.

5.0 Planning History

Reg. Ref. 15/898 Permission granted for retention of existing window, internal door opening and partially constructed chimney stacks in proposed new kitchen. Permission granted for demolition of lean-to extension on east side of existing kitchen with new east window, new kitchen, living room in former stable block, one rebuilt flue stack and one new flue stack and for the restoration of south facing Dutch gables to each of the east and west wings.

Reg. Ref. 02/1904 Permission Granted for change of use of part of existing wing from agricultural to residential use and ancillary works.

6.0 Policy Context

6.1. Development Plan

Limerick County Development Plan 2010-2016 – The appeal site is located in an Agriculturally zoned area. The site is also located in an area of strong agricultural base (map 3.2).

6.2. Natural Heritage Designations

The Lower River Shannon SAC (site code 002165) and the River Shannon and River Fergus Estuaries SPA (site code 004077) are located approx. one Km to the north of the appeal site.

7.0 The Referral

7.1. Referrer's Case

- The landscape of Shannongrove House has not been identified in the Development Plan as being affected by the restrictions on Exemptions Section 9(1)(a)(vi) of the Planning and Development Regulations, 2001 as amended.
- Sets out detailed history of Shannongrove Estate (for information)
- Views and Prospects are illustrated on Map No. 7.6 in the Limerick CDP 2010 – 2016. The Shannongrove Estate is not shown.
- The Shannongrove landholding lies south of the Shannon and outside of both the designated SPA and SAC designations.
- Regard being had to Objective EH 036 of the Limerick County Development Plan 2010 – 2016 Shannongrove is not defined and shown as an ACA in Vol 2 Maps 7.7.1 to 7.7.6 inclusive.

- Limerick County Council was asked to define the curtilage of Shannongrove, this was agreed but not officially confirmed.
- There is no definition of curtilage in Planning Law in Ireland, but there is in Criminal Law.
- Chapter 13 'Curtilage and Attendant Grounds' Paragraph's 13.1.1 and 13.1.4 of the Architectural Heritage Protection Guidelines for Planning Authorities are of relevance.
- Such infringement as described by Limerick City and County Council '…the construction of an agricultural building within the curtilage of a Protected Structure…' does not exist in the Planning Acts
- Shannongrove
  - Is not in an ACA
  - Is not in a 'view or prospect of special amenity value or special interest' named in the Development Plan
  - Is not a 'designated landscape'
  - Is not a 'park' or 'parkland'
  - Is more likely 'a rural agricultural landscape'
- Had the conservation officer confirmed officially the curtilage as agreed on the 7th September 2016, the hay barn would be exempted development, as it would be in the 'Attendant Grounds' of a protected structure, but not within its curtilage.
- The hay barn is a small rural agricultural building, built to serve the present use of Shannongrove land, as grazing for horses, which is a use compatible with its farming origins.
- It is not an infringement of the Protected Structures setting
- Ribbon development permitted along the west boundary of the historic Shannongrove estate is far more of an infringement of the protected structures setting than this small barn.
- The 'Classic Irish House of the Middle Size' along with many others, struggles to be economically viable. It needs the farming income to sustain itself.

- It seems excessive that Limerick City and County Council would serve a warning notice rather than define the curtilage of a protected structure.
- Referral accompanied with:
    - Appendix 1
        - Warning Letter from LC&CC
        - Response to Warning Letter
        - Contemporaneous memo
        - Correspondence sent to Conservation Officer
        - Letter from Limerick City and County Council
        - Application for Section 5
        - Decision on Declaration No. EC17/16
        - Key to Photographs
        - Photographs of the hay barn and all related features.
- Appendix 2
    - Bury Family details from the Landed Estates Database
    - Down Survey map of the Barony of Kenry 1657
    - Down Survey Aerial View with townland Boundaries
    - Record Place Map with present holding outlined in Blue and historic estate boundaries outlined in red
    - History of Shannongrove House from Conservation Report
    - Champion Trees (Tree Council of Ireland) 2005 & Photographs
    - 1840 Map of Shannongrove Estate
    - Present Aerial View of the Shannongrove Estate
    - NIAH Listings for Shannongrove
    - Protected Structure Listing
    - Map No. 7.6 View and Prospects

- Page 7.28 Environment and Heritage

7.2. Planning Authority Response

- No response has been received

8.0 Statutory Provisions

8.1. Planning & Development Act 2000, Part I, Section 2(1):

"attendant grounds", in relation to a structure, includes land lying outside the curtilage of the structure;

"protected structure" means—
(*a*) a structure, or
(*b*) a specified part of a structure,
which is included in a record of protected structures, and, where that record so indicates, includes any specified feature which is within the attendant grounds of the structure and which would not otherwise be included in this definition;

"protection", in relation to a structure or part of a structure, includes conservation, preservation and improvement compatible with maintaining the character and interest of the structure or part;

"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, and
(a) where the context so admits, includes the land on, in or under which the structure is situate, and

b) in relation to a protected structure or proposed protected structure, includes—

(i) the interior of the structure,

(ii) the land lying within the curtilage of the structure,

(iii) any other structures lying within that curtilage and their interiors, and

(iv) all fixtures and features which form part of the interior or exterior of any structure or structures referred to in subparagraph (i) or (iii);

"works" includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.

8.2. **Planning & Development Act 2000, Part I, Section 3(1):**

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 of use of any structures or other land.

8.3. **Planning & Development Act 2000, Part IV, Section 57(1):**

Notwithstanding section 4(1)(h), the carrying out of works to a protected structure, or a proposed protected structure, shall be exempted development only if those works would not materially affect the character of—

(a) the structure, or

(b) any element of the structure which contributes to its special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest

8.4. **Planning & Development Regulations 2001,**

Article 6 Exempted Development — Rural Part 3

Class 9 Works consisting of the provision of any store, barn, shed, glass-house or other structure, not being of a type specified in class 6, 7 or 8 of this Part of this Schedule, and having a gross floor space not exceeding 300 square metres

.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 floor space of such structures together with any other such structures situated within the same farmyard complex or complex of such structures or within 100 metres of that complex shall not exceed 900 square metres gross floor space in aggregate.

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, 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.

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

Part 2 Exempted Development, Article 6(1), states: 'Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.

Restrictions on exemption Article 9(1) (a) (vi) 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

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

8.5. **Other**

Limerick County Development Plan 2010 – 2016

Volume 3 Record of Protected Structures Edition 4

Reg. Ref. 699, Shannongrove House, Shannongrove, Pallaskenry,

Ref. number B3(12) Description -Country House. Map 3

Notes: (Including features in the attendant grounds in same ownership): 'Dovecot, Windmill Tower'

9.0 Assessment

9.1. Is or is not development

With reference to the provision of the Planning & Development Act 2000, Part I, Section 2 (1) as outlined above, I am satisfied that the construction of a curved roof hay barn, with a ridge height of some 6.6m and a GFA of 131.76 sq. m constitutes 'works'. With reference to the definition as contained in Section 3(1) of the Planning & Development Act 2000, I am satisfied that the works constitute 'development'.

9.2. Is or is not exempted development

In this regard I consider that the provisions of Class 9 of Article 6 Part 3 'Exempted Development' – Rural, conditions and limitations 1 – 6 have to be considered.

'Works consisting of the provision of any <u>store, barn, shed</u>, glass-house or other structure, not being of a type specified in class 6, 7 or 8 of this Part of this Schedule, and having a gross floor space not exceeding 300 square metres.'

With reference to limitation 1 the structure is not for use for any purpose other than agriculture, and therefore Condition / limitation 1 is complied with.

With reference to limitation 2 the gross floor space of the hay barn together with any other such structures situated within the same farmyard complex or complex of such structures or within 100 metres of that complex does not exceed 900 square metres gross floor space in aggregate, and therefore Condition / limitation 2 is complied with.

With reference to limitation 3 the hay-barn is not situated within 10 metres of any public road, and therefore Condition / limitation 3 is complied with.

With reference to limitation 4 the hay-barn does not exceed 8 m in height, and therefore Condition / limitation 4 is complied with.

With reference to limitation 5 the hay-barn is not located within 100m of any house or other residential building or school, hospital, church or building used for public assembly, and therefore Condition / limitation 5 is complied with.

With reference to limitation 6 the external finish and roof of the hay-barn comprises painted green / grey corrugated metal sheeting and a low block wall, and therefore Condition / limitation 6 is complied with.

Having regard to the foregoing I am satisfied that the structure complies with the provision of Schedule 6 Part 3 Class 9 Conditions 1 – 6

9.3. Restrictions on exempted development

However, a further issued needs to be considered in this instance. As per Map No. 3 and Volume 3 Record of Protected Structures, Edition 4, of Limerick County Development Plan 2010 - 2016, 'Shannongrove House', a protected structure, is located approx. 270 m to the north of the hay-barn location.

The planning authority considered that the structure is located within the curtilage of the protected structure and, therefore, that the exemption under Class 9 is restricted by Article 9(1)(a)(vi) Part 2 'Exempted Development' of the Planning and Development Regulations, 2001, as amended.

In this regard the Planning and Development Regulations, 2001, as amended, state:

'Restrictions on exemption 9(1) 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

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

The referrer submits that such an infringement as described by Limerick City and County Council '…the construction of an agricultural building within the curtilage of a Protected Structure…' does not exist in the Planning Acts. That 'Shannongrove House' is not in an ACA, is not in a 'view or prospect of special amenity value or special interest' named in the Development Plan, is not ina 'designated landscape', is not a 'park' or 'parkland' setting and is more likely 'a rural agricultural landscape'.

I highlight that Part 1, Section 2(1) of the Planning and Development Act 2000, defines a 'protected structure' as:

'(*a*) a structure, or (*b*) a specified part of a structure, which is included in a record of protected structures, and, where that record so indicates, includes any specified feature which is within the attendant grounds of the structure and which would not otherwise be included in this definition.'

and 'protection', as:

'in relation to a structure or part of a structure, includes conservation, preservation and improvement compatible with maintaining the character and interest of the structure or part.'

Volume 3 Record of Protected Structures listed in the Limerick County Development Plan 2010 – 2016 (Map 3) describes Shan'nongrove House', Protected Structure as a 'County House', including 'Dovecot' and 'Windmill Tower' in its attendant grounds in the same ownership.

It is submitted that, despite a request by the referrer, the curtilage of 'Shannongrove House' has not been statutorily defined by Limerick City and County Council. I note the undated report by Michael O'Brien Development Inspector, on the file. The report was compiled on application under section 5. It refers to reports by Tom Cassidy, Conservation Officer, dated 27th May 2016 and 05th January 2017, of which reports, or copies of same, are not attached and it states: '*confirms that in his opinion* (Tom Cassidy) *the structure is located within the curtilage of the protected structure'.*

Paragraph 13.1.1 of the Architectural Heritage Protection Guidelines for Planning Authorities, 2011, states:

'By definition, a protected structure includes the land lying within the curtilage of the protected structure and other structures within that curtilage and their interiors. The notion of curtilage is not defined by legislation, but for the purposes of these guidelines it can be taken to be the parcel of land immediately associated with that structure and which is (or was) in use for the purposes of the structure. It should be noted that the meaning of 'curtilage' is influenced by other legal considerations besides protection of the architectural heritage and may be revised in accordance with emerging case law.'

Paragraph 13.1.2 goes on to state: '…In the case of a large country house, the stable buildings, coach houses, walled gardens, lawns, ha-has and the like may all be considered to form part of the curtilage of the building unless they are located at a distance from the main building'.

I consider that paragraph 13.2 of the Guidelines with respect to determining the attendant grounds of the protected structure are of relevance in the instance case. It states: 'The attendant grounds of a structure are lands outside the curtilage of the structure but which are associated with the structure and are intrinsic to its function, setting and/or appreciation. In many cases, the attendant grounds will incorporate a designed landscape deliberately laid out to complement the design of the building or to assist in its function…The attendant grounds of a country house could include the entire demesne, or pleasure grounds, and any structures or features within it such as follies, plantations, earthworks, lakes and the like'.

I am further of the opinion that the provisions of s.57 of the principal act need to be considered. Section 57 (1) states:

'Notwithstanding section 4(1)(h), the carrying out of works to a protected structure, or a proposed protected structure, shall be exempted development only if those works would not materially affect the character of—

(a) the structure, or

(b) any element of the structure which contributes to its special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest

A 'protected structure' is deemed, under the provisions of Section 2 of the Planning and Development Acts, 2000 to 2010, to consist of the following:

(i) the interior of the structure,
(ii) the land lying within the curtilage of the structure,
(iii) any other structures lying within that curtilage and their interiors, and

(iv) all fixtures and features which form part of the interior or exterior of any structure or structures referred to in subparagraph (i) or (iii)".

It is my opinion having carried out a site visit that the traditional, agricultural, green corrugated hay-barn, located to the east of a significant grove of mature trees, some 270 m to the south of the main house (protected structure) and to the west of the access road to the property, is located within the attendant grounds of the protected structure. It is not visible from 'Shannongrove House' and no views of the main house are visible from the location of the hay barn. When approaching the main house, 'Shannongrove', along the winding access laneway, which is not tree lined, or avenue like in character, while the hay-barn is observable, views of the hay-barn and main house, 'Shannongrove', are not simultaneously observable.

I highlight the referrers case that the hay-barn is a small rural agricultural building, built to serve the present use of Shannongrove land, as grazing for horses, which is a use compatible with its origins. The hay-barn, located in a paddock, distant from the main 'Shannongrove House', 'Dovecot' and 'Windmill Tower' is screened from the main house by a substantial grove of trees.

I am of the opinion that the traditional style hay-barn, for the purpose of agriculture, located in a rural, equestrian, landscape setting is unobtrusive. It does not adversely impact upon the character or setting of the adjoining protected structure. The character of the landscape is agricultural with clusters of trees and open paddocks.

I consider, regard being had to the 'Architectural Heritage Protection Guidelines for Planning Authorities', 2011, that an argument can be made that the hay-barn is located within the attendant grounds and not the curtilage of the protected structure.

I am satisfied that the character of the protected structure, 'Shannongrove House', or any element of that protected structure, is not materially affected by the hay-barn and therefore can be considered exempted development, regard being had to Part IV, Section 57(1) of the Planning and Development Act 2000, as amended, as the works would not materially affect the character of the structure or any element of the structure which contributes to its special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest. I agree with the referrer that the development is not subject to restrictions on exemption under Part 2, Article 9(1)(a)(vi) Planning and Development Regulations, 2001, as amended,

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 construction of curved roof hay barn with green corrugated metal sheeting at Shannongrove House (a Protected Structure) Pallaskenry, Co Limerick is or is not development or is or is not exempted development.

AND WHEREAS Carleton Varney under section 5(3)(a) of the Planning and Development Act, 2000, as amended, referred a declaration for review from An Bord Pleanala on the 8th May 2017:

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

(a) Section 2(1) Planning & Development Act 2000, as amended.

(b) Section 3(1) of the Planning and Development Act, 2000,

(c) Part IV Section 57(1) of the Planning and Development Act, 2000, as amended,

(d) Article 6(1) and 9(1)(a)(vi) Part 2 of the Planning and Development Regulations, 2001, as amended,

(e) Class 9, Part 3 of Schedule 2 of the Planning and Development Regulations, 2001, as amended,

AND WHEREAS An Bord Pleanála has concluded that:

(a) The hay-barn is located within the attendant grounds and not the curtilage of the protected structure, 'Shannongrove House'.

(b) The hay-barn, located at a distance of some 270m from the main building, 'Shannongrove House' protected structure, is screened from view of the main house by a substantial grove of trees.

(c) The curved roof structure comes within the scope of Part IV, Section 57(1) of the Planning and Development Act, 2000, being works which does not materially affect the character of 'Shannongrove House', protected structure, or any element of the protected structure which contributes to its special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest.

(d) Use as an agricultural hay-barn complies with Class 9, Part 3 of Schedule 2 of the Planning and Development Regulations, 2001, as amended.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3)(a) of the 2000 Act, hereby decides that construction of a curved roof hay barn with green corrugated metal sheeting at Shannongrove House (a Protected Structure) Pallaskenry, Co Limerick is development which is exempted development.

Fiona Fair
Planning Inspector
30.08. 2017

An Bord Pleanála

Inspector's Report ABP-300773-18

Question	Whether the construction of an agricultural shed is or is not development or is or is not exempted development
Location	Rosdooaun, Newport, Co. Mayo.

Declaration

Planning Authority	Mayo County Council
Planning Authority Reg. Ref.	P17/954
Applicant for Declaration	Ronan McGreevy
Planning Authority Decision	Is Development and Is Not Exempt Development

Referral

Referred by	Ronan McGreevy
Owner/ Occupier	Ronan McGreevy
Observer(s)	None

Date of Site Inspection	4th May 2018.

Inspector Una O'Neill

Contents

1.0 Site Location and Description

1.1. The subject site is located between Newport and Westport, in the townland of Rosdooaun, in north Co. Mayo. The site is rural in character and is accessed from a minor road, west off the N59. Clew Bay is approx. 1km west of the site. The Rossow River runs approx. 53m to the south of the site, with the lands draining to this river, which links into Clew Bay.

1.2. This greenfield agricultural site has a stated area of 1.16ha, is rectangular in shape, and slopes down from the road to a low point at the southern end of the field. The land is subdivided, with the southern section fenced off with a wire fence and agricultural gate. The land on the southern section had vegetation indicating wetter ground conditions. Sheep were observed grazing the land at the time of site inspection on the northern section of the field. No structures exist on the land.

2.0 The Question

2.1. The original question proposed to Mayo County Council was 'Whether the construction of an agricultural barn is an exempted development under Class 5 Schedule 2 of the Planning and Development Regulations?'. I note the applicant in referring the case to An Bord Pleanala states that the application made to the Planning Authority was incorrectly made under Class 5 and should have been made under Schedule 2 – Exempted Development – Rural, Class 9. I have reworded the question accordingly as follows:

> Whether the construction of an agricultural barn is an exempted development under Schedule 2 – Exempted Development – Rural, Class 9?

3.0 Planning Authority Declaration

3.1. Declaration

It is considered that the proposed works constitute development....It is considered that the proposed agricultural barn is not located within an existing farmyard complex as set out in Article 6, Part 3, Classes 6-9 inclusive, Column 1 & 2 of the Planning and Development Regulations 2011-2015 and therefore the exemption is not applicable due to the conditions and limitations set out and therefore the proposed development is not exempt by the Planning and Development Regulations 2001-2015.

3.2. Planning Authority Reports

3.2.1. Planning Reports

It is considered that the proposed barn is not located within an existing farmyard complex as set out in Article 6, Part 3, Classes 6-9 inclusive, Column 1 & 2 of the Planning and Development Regulations 2001-2015.

3.2.2. Other Technical Reports

None.

4.0 Planning History

11/102 – Declaration for construction of a wind turbine and 240sqm of barn was deemed not exempt.

11/400 – Declaration for the development of 240sqm of single storey farm shed/barn deemed not exempt.

11/412 – Declaration for the construction of a wind turbine was deemed not exempt.

11/784 – Permission REFUSED to construct a honey packing shed, septic tank, and percolation area.

5.0 Policy Context

5.1. Development Plan

- The Landscape Appraisal for County Mayo is a supporting document of the Development Plan. It specifies 'area designations' for the county based on the Corine Lane Cover Project. The shoreline of the Rossow River is designated as being vulnerable. To be considered for permission, development in the environs of these vulnerable areas must be shown not to impinge in any significant way upon its character, integrity or uniformity when viewed from the surroundings.

- There are no designated scenic routes/scenic view in proximity to the referral site.

5.2. Natural Heritage Designations

Clew Bay Complex SAC, European Site No. 001482, is approx. 190m northwest of the appeal site at its closest point from the northern boundary and 800m west of the site from its southwestern boundary. Rossow River, which is linked to Clew Bay Complex SAC, is approx. 55m from the southern boundary of the site with a drain connecting the southern boundary of the site to the river.

6.0 The Referral

6.1. Referrer's Case

- The application was incorrectly made under Class 5, Schedule 2 of the regulations. The application should have been made under Class 9.
- Mayo County Council states the proposed agricultural barn is not located within an existing farmyard complex as per Article 6, Part 3, Classes 6-9 inclusive, Colum 1 and 2 of the Planning & Development Regulations 2001-2015.
- There is no reference in Article 6 and Class 9 which states that an agricultural barn would have to be within a farmyard complex to avail of the exemptions.
- Mr. McGreevy is a forester and farmer. The proposed building is to be located on farmland and this land is bounded by Mr McGreevy's forest.
- The proposed development of a 167sqm agricultural barn is exempted development.

6.2. Planning Authority Response

None.

6.3. Further Responses

None.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

Section 2(1) of the Planning and Development Acts 2000 (as amended) states

> In this Act, except where the context requires otherwise –
>
> .....
>
> "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 land as grazing land, meadow land, osier land, market gardens and nursery grounds, and "agricultural" shall be construed accordingly;
>
> "works" includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal ...

Section 3 (1) defines development as follows:

> "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 of the Act states:

> (1) The following shall be exempted developments for the purposes of this Act—
>
> (a) development consisting of the use of any land for the purpose of agriculture and development consisting of the use for that purpose of any building occupied together with land so used;
>
> ....

(2) (a) The Minister may by regulations provide for any class of development to be exempted development for the purposes of this Act where he or she is of the opinion that—

(i) by reason of the size, nature or limited effect on its surroundings, of development belonging to that class, the carrying out of such development would not offend against principles of proper planning and sustainable development,

…….

7.2. Planning and Development Regulations, 2001

Article 6(3) of the Planning and Development Regulations, 2001 (as amended) states

Subject to article 9, in areas other than a city, a town or an area specified in section 19(1)(b) of the Act or the excluded areas as defined in section 9 of the Local Government (Reorganisation) Act, 1985 (No. 7 of 1985), development consisting 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) of the regulations 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—

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

Column 1 of Class 9 of Part 3 of Schedule 2 to Article 6 of the aforementioned Regulations, states

Works consisting of the provision of any store, barn, shed, glass-house 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 space not exceeding 300 square metres.

Column 2 of Class 9 states

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 floor space of such structures together with any other such structures situated within the same farmyard complex or complex of such structures or within 100 metres of that complex shall not exceed 900 square metres gross floor space in aggregate.

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, 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.

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

8.0 Assessment

8.1.1. The applicant proposes to construct a barn, which is stated on the drawings to be 9.2m in depth x 18.1m in width, which equates to an area of 167sqm. The overall height of the barn is stated to be 4.77m. The applicant states the barn is to be considered under Class 9 of the regulations and that they erred in applying originally under Class 5.

8.1.2. It should be stated at the outset that the purpose of this referral is not to determine the acceptability or otherwise of this barn in respect to the proper planning and sustainable development of the area, but rather whether or not the matter in question constitutes development, and if so falls within the scope of exempted development.

8.1.3. In assessing the merits of the case I have reviewed previous relevant declarations made by the Board.

8.2. Is or is not development

8.2.1. The erection of a barn is considered to constitute works, as per Section 2(1) of the Planning and Development Act 2000 (as amended) and is therefore development, as per Section 3 of the Act.

8.3. Is or is not exempted development

8.3.1. Section 4 of the Act states development shall be exempt where development consists of the use of any land for the purpose of agriculture and development consisting of the use for that purpose of any building occupied together with land so used. The applicant states that he proposes to build an agricultural barn. In accordance with Section 4, the barn needs to be on an agricultural landholding with an established agricultural use, in order to avail of the exemptions in Class 9 of the Regulations. As observed on site, the land is used for grazing of sheep, which is an agricultural use, and the proposed barn is stated to be an agricultural barn.

Schedule 2, Class 9 of the Regulations

8.3.2. Article 6 of the Regulations provides that development of a class specified in Schedule 2 to the Regulations shall be exempted, provided that that the conditions and limitations attached to those various classes are met. The applicant states that proposed development is for an agricultural barn. While the applicant does not specify what will be stored in the barn, he does state that it will come within Class 9 of the Regulations. I note the applicant states he is a farmer and forester and the land bounding this site is in forestry use. I observed a notice in relation to forestry on the entrance to the land subject of this declaration, however no forestry was evident on this land. I am satisfied that it is the intention of the applicant that the use will be for agricultural or forestry purposes, not including the housing of animals, given the applicant's statement that the proposal is being made under Class 9. I have no evidence before me to believe otherwise and I note any deviation from the use would be a matter for the planning authority. I am therefore of the opinion that condition/limitation 1 of Class 9 is complied with.

8.3.3. I observed, upon site inspection, sheep grazing the land, which comes within the definition of agricultural use. From my reading of Class 9 of the Regulations, there is no requirement for an agricultural shed to be on an existing farmyard, as per the decision of the Planning Authority. In assessing the cumulative floor area of a barn, reference is made in the conditions/limitations to Class 9 to the inclusion of other buildings in a farmyard or if close to an existing farmyard inclusion of other structures within 100m, but does not specify the building itself has to be part of an existing farmyard. I am satisfied that the proposed barn, which is no greater than 300 square metres in gross floor space, is not within 100m of an existing farmyard complex or part of such a complex and that the gross floor space is not impacted upon in the context of other buildings. I am of the view that condition/limitation 2 of Class 9 is complied with.

8.3.4. With reference to limitation 3 the agricultural barn is not situated within 10 metres of any public road, and therefore condition/limitation 3 is complied with.

8.3.5. With reference to condition/limitation 4, the barn does not exceed 8 m in height, and therefore condition/limitation 4 is complied with.

8.3.6. With reference to condition/limitation 5 the barn is not located within 100m of any house or other residential building or school, hospital, church or building used for public assembly, and therefore condition/limitation 5 is complied with.

8.3.7. With reference to limitation 6, the regulation states 'No unpainted metal sheeting shall be used for roofing or on the external finish of the structure'. The external finish and colour of the barn is not stated. The drawings state cladding in relation to the external finish. It is reasonable to assume the cladding is to be finished to an appropriate standard in that the applicant states they will comply with all the conditions and limitations specified in the regulations and attached a copy with the submission.

8.3.8. Having regard to the foregoing I am satisfied that the structure complies with the provision of Schedule 2, Part 3, Class 9 Conditions 1 – 6.

8.4. Restrictions on exempted development

8.4.1. The Planning and Development Regulations, 2001, as amended, state: 'Restrictions on exemption 9(1) 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

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

8.4.2. The proposed agricultural barn is on a low lying part of the site. There is no scenic view or vista identified in the development plan in relation to this site.

8.5. Appropriate Assessment

8.5.1. Section 4(4) of the Act states that development shall not be exempted development if an appropriate assessment of the development is required.

8.5.2. The referral site is not within any Natura 2000 sites, therefore the proposed development would not have a direct effect on any designated site. However Clew Bay Complex SAC, European Site No. 001482, is the closest Natura 2000 site, being approx. 190m northwest of the appeal site at its closest point from the northern boundary and 800m west of the site from its southwestern boundary and the lands drain to the Rossow River which is linked to Clew Bay SAC. While there are other Natura 2000 sites within 15km of the subject site, there are no pathways from the appeal site to those Natura 2000 sites which would be relevant to their conservation objectives, and there is no potential for likely significant effects upon them to arise from the proposed development whether considered individually or in combination with other plans or projects.

8.5.3. Clew Bay Complex is a Special Area of Conservation (SAC) selected for the following habitats and/or species listed on Annex I / II of the E.U. Habitats Directive (* = priority; numbers in brackets are Natura 2000 codes): [1140] Tidal Mudflats and Sandflats; [1150] Coastal Lagoons*; [1160] Large Shallow Inlets and Bays; [1210]

Annual Vegetation of Drift Lines; [1220] Perennial Vegetation of Stony Banks; [1330] Atlantic Salt Meadows; [2110] Embryonic Shifting Dunes; [2120] Marram Dunes (White Dunes); [21A0] Machairs (* in Ireland); [91A0] Old Oak Woodlands; [1013] Geyer's Whorl Snail (Vertigo geyeri); [1355] Otter (Lutra lutra); and [1365] Common (Harbour) Seal (Phoca vitulina). The conservation objectives for the SAC are to maintain the favourable conservation condition of these habitats

8.5.4. Following consideration of the 'source-pathway-receptor' model, it can be determined that particular consideration needs to be given to the likelihood of the proposed development to have a significant effect on the conservation objectives of the Clew Bay Complex SAC in terms of the potential for the possibility of water pollution arising during construction works which could lead to a deterioration in water quality within the Natura 2000 site. The site is linked to Clew Bay Complex SAC via groundwater and surface water/river connection. Rossow River is approx. 55m from the southern boundary of the site with a drain connecting the southern boundary of the site to the river. The proposed barn is positioned approx. 15m north of this drain.

8.5.5. The proposed barn is to be used for the purpose of agriculture or forestry, excluding the storage of animals or the storing of effluent. The barn appears to be located outside of the area where plants associated with wet ground was observed. I am satisfied that standard construction management practices, which would be an intrinsic part of the project, would be sufficient to avoid an indirect effect on water quality during construction to the Natura 2000 site. I am satisfied that the operation of the barn will not result in potential for pollution from effluent via surface water or groundwater..

8.5.6. It is reasonable to conclude that on the basis of the information on the file, which I consider to be adequate in order to issue a screening determination that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on European Site No. 001482 (Clew Bay Complex SAC), or any other European Site, in view of the site's conservation objectives, and that a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required.

9.0 Recommendation

9.1. 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 construction of an agricultural barn at Rosdooaun, Newport, Co. Mayo is or is not development or is or is not exempted development:

AND WHEREAS Ronan McGreevy requested a declaration on this question from Mayo County Council and the Council issued a declaration on the 3rd January 2018 stating that the matter was development and was not exempted development:

AND WHEREAS Ronan McGreevy referred this declaration for review to An Bord Pleanála on the 24th day of January 2018:

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) and Section 4(4) of the Planning and Development Act, 2000, as amended,

(d) Article 6(3) and article 9(1)(a)(vi) of the Planning and Development Regulations, 2001, as amended,

(e) Part 3 of Schedule 2, Class 9, to the Planning and Development Regulations, 2001, as amended,

AND WHEREAS An Bord Pleanála has concluded that:

(a) Construction of an agricultural barn complies with Class 9, Part 3 of Schedule 2 of the Planning and Development Regulations, 2001, as amended.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5(3)(a) of the 2000 Act of the 2000 Act, hereby decides that the agricultural barn is development and is exempted development.

Una O'Neill
Senior Planning Inspector

13th June 2018

An Bord Pleanála Ref. No.: **PL 13.RL3211**

An Bord Pleanála

Inspector's Report

Development: Whether a development described as a cattle holding pen is or is not development or is or is not exempted development at Cloongownagh, Adare, Co. Limerick.

Application:

Planning Authority:	Limerick County Council
Planning Authority Reg. Ref.:	DD01/14
Owner / Occupier:	Donal Neville
Type of Application:	Section 5 Declaration
Planning Authority Decision:	Is Exempted Development

Planning Referral:

Referrer(s):	John & Sarah Ryan
Observers:	None
Date of inspection:	17/06/2014
Inspector:	A. Considine

1.0 THE SITE

1.1 The site the subject of this referral, is located in the townland of Cloongownagh, Co. Limerick, approximately 3.4km north-northwest of the village of Adare and 3.4km south of Kildimo New. The area, although rural in its character, has a number of one off houses and farms in the vicinity of the site. The site the subject of this referral comprises an agricultural field entrance which lies between existing houses and serves a larger field, of approximately 4.09ha (10 acres), which runs to the rear of a number of roadside houses. The access is approximately 10m in width and runs for a depth of approximately 23m and there is mature hedging on the boundaries with the houses. The roadside boundary comprises an open access and the remnants of a stone wall.

1.2 Within the access, there is an enclosure recessed back approximately 15m from the public road which is defined by fencing comprising 4 No. rows of steel tubular piping affixed to vertical steel stanchions with five-bar field gates erected at either end of same. The enclosure is less than 2m in height and 23m in length. The side fencing is located approximately 6m from the referrers house, and 9m from the other adjacent house.

2.0 SECTON 5 DECLARATION REQUEST:

2.1 The question arising in relation to this Section 5 Declaration request is presented as follows:

> Whether the erection of a cattle holding pen at Cloongownagh, Adare, Co. Limerick, is or is not development or is or is not exempted development.

3.0 REPORTS ON PLANNING AUTHORITY FILE

3.1 There are no interdepartmental reports from Limerick County Council with regard to the subject referral.

3.2 There was a site inspection undertaken by the Development Inspector of Limerick County Council, and the submitted report notes the history associated with the subject site. The report notes that there has been no material alteration of the site since the first visit in 2010. It is concluded that the area is not being used as a holding pen.

4.0 DECISION OF THE PLANNING AUTHORITY

The Planning Authority made the following determination in relation to the question raised on the 20th day of February, 2014:

WHEREAS a question has arisen as to whether the erection of a cattle holding pen at Cloongownagh, Adare, Co. Limerick, is or is not development or is or is not exempted development;

AND WHEREAS the Planning Authority in considering this application having regard particularly to:

(a) Sections 2 & 3 of the Planning and Development Act, 2000-2013,

(b) Class 4 & 8 of Part 3 of Schedule 2 of the Planning and Development Regulations, 2001-2013.

(c) Documentation submitted on 16th January 2014 and 17th February 2014.

NOW THEREFORE the Planning Authority in exercise of the powers conferred on it by Section 5(2)(a) of the Planning and Development Act, 2000-2013, hereby decides that the said development consisting of the erection of fencing around a portion of an agricultural field comes within the scope of Class 4 of Part 3 of Schedule 2 being a fence of less than 2m in height is development and is exempted development.

5.0 RELEVANT PLANNING HISTORY

PA 08/2422: Application by Padraig Ryan for permission for 6 No. stables, tack room, feed room, dung stead and hay storage and all associated site works. Application was withdrawn.

PA 05/3579: Kildimo AFC was refused permission on 15^{th} February, 2006, for the construction of a playing field, car park and entrance.

ABP 13.RL2628: On 18^{th} November, 2009 this referral held that the construction of an agricultural building at Cloongownagh, Adare, Co. Limerick, was development which was not exempted development.

ABP 13.RL2843: On 10^{th} June, 2011 this referral held that the erection of a steel fence structure and gates, for the sole function of loading and unloading cattle, at Cloongownagh, Adare, Co. Limerick is development and is exempted development.

Other Relevant Files:

ABP 17.RL2343: On 22^{nd} December, 2006 this referral held that a cattle holding pen at Begsreeve, Lobinstown, Navan, Co. Meath, was development which was not exempted development.

6.0 POLICY CONTEXT

Development Plan:

The site is located in a rural area within County Limerick which has been designated as being an Area of Strong Agricultural Base in the Plans Rural Settlement Strategy. The site is located on a local county road.

7.0 LEGISLATIVE CONTEXT:

I consider the following to be the statutory provisions relevant to this referral case:

Planning & Development Act, 2000 - 2012

7.1 Section 2 (1) of the 2000 Planning and Development Act states as follows:-

"In this Act, except where the context otherwise requires – 'development' has the meaning assigned to it by Section 3 …"

In Section 2 (1) of the Act "works" are interpreted as including "*any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure*".

7.2 Section 3 (1) of the 2000 Planning and Development Act states as follows:-

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

7.3 Section 4 (2) of the Planning and Development Act provides that the Minister, by regulations, provide for any class of development to be exempted development. The principal regulations made under this provision are the Planning and Development Regulations, 2001.

Planning & Development Regulations, 2001-2013

7.4 Article 6(1) of the Planning & Development Regulations, 2001 as amended states as follows:-

"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."

7.5 Article 9(1) of the Planning & Development Regulations, 2001 as amended, and in particular, parts (a)(i), (a)(ii) and (a)(iii) of this Article might reasonably be considered relevant in this instance, and which reads as follows:

Development to which article 6 relates shall not be exempted development for the purposes of the Act -

(a) if the carrying out of such development would -

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

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

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

7.6 Class 4 of Part 3 of Schedule 2 – Exempted Development – Rural (subject to the conditions and limitations imposed under Column 2):-

'The construction or erection of any wall of fence, other than a fence of sheet metal, or a wall or fence within or bounding the curtilage of a house'.

Conditions and Limitations:

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

7.7 Class 8 of Part 3 of Schedule 2 – Exempted Development – Rural (subject to the conditions and limitations imposed under Column 2):-

'Works consisting of the provision of roofless cubicles, open loose yards, self-feed silo or silage areas, feeding aprons, assembly yards, milking parlours or structures for the making or storage of silage or any other structures of a similar character or description, having an aggregate gross floor space not exceeding 200 square metres, and any ancillary provision for effluent storage'

8.0 REFERRAL

Grounds of Reference:

8.1 This request has been sought by Hutch O'Malley Consulting Engineers on behalf of John & Sarah Ryan. The request notes Limerick County Council under DD01/14 determined that the development comes within the scope of Class 4 of Part 3 of Schedule 2 being a fence of less than 2m in height is development and is exempt development. The Board note that this is the third application on this matter and the Board has already given a direction on this issue, ABP ref RL2843, where it was determined that 'the erection of a steel fence structure and gates, for the sole function of loading and unloading cattle, at Cloongownagh, Adare, Co. Limerick is development and is exempted development'. In arriving at its decision, which differed from the Inspectors recommendation, the Board noted that the said pen was not for the holding of cattle but simply for the loading and unloading of cattle.

8.2 It is the submission of the referrer that the following points clearly change the status of the cattle holding pen:

1. The grounds on which the pen has been established was previously upgraded to provide a solid driveway to the field and does not conform with the Boards direction.

2. The Board connected the pen with the field but did not connect the pen with normal usage of the field for grazing etc. the pen could effectively be used transient operation on a daily basis so long as the field or land play a part in its operation.

3. We argue that the cattle holding pen can be located elsewhere in the field a sufficient distance away from the dwelling house and either an extension to the existing hard surface down to the pen or the separated cattle drive up the current access with pen for loading.

8.3 The comprehensive submission provides a background to the development of the area and it is submitted that the use of the holding pen is not controlled by the current Board direction and it is submitted that the pen can be used to any level the developer desires provided the field is connected to its use. It is therefore concluded that the holding pen can be described as an enclosure and thus must be considered as an assembly yard. If cattle are to be processed for either collection or selection, then the structure which controlled this activity can only be considered as being an assembly yard. It is submitted that the fact that the yard does not have a sealed floor does not mean that effluent generated will not be a nuisance. The proximity of the cattle pen to houses will impact upon existing gardens and hedgerows and should be kept away from residential dwellings. There are health and safety issues arising with regard to the use of the access and traffic as well as children.

8.4 It is concluded that the Board has failed to understand that the holding pens primary function is to control cattle for a host of activities in connection with the field and the words 'sole function is to load and unload cattle' are at odds with the function of the holding pen. It is submitted that the decision previously made by the Board is adverse to other Board decisions. It is requested that the above arguments are considered and determined that the development is not exempted development because it is not the natural field as the Board indicated it was and that by its location and function can only service to be used as a holding pen, which could be located elsewhere in the field.

9.0 RESPONSES

Owner / Occupier Response to the Referral:

9.1 The owner, through their consulting engineers, submitted a response to the referral, as follows:

- A number of claims made are irrelevant and or false.
- The area is for loading livestock only as previously stated.
- The land has been accessed at this point since at least 1996.
- The pen has never been used for veterinary testing, selecting cattle or as a mobile crush.
- There has been no alteration to the surface of this small area of the overall field.
- The landowner cuts hay mid summer and in late summer brings in 14-15 livestock to graze for 4-6 weeks.
- The location of the pen is ideally located to herd stock without causing stress to animals.
- Several batches of cattle are not held in the field.
- Appropriate signage is provided at the entrance to the farm land.
- The references made in the referral are for holding pens, and assembly yards. The pen in question is only for loading and unloading livestock.
- The referral is based on what the landowner might do in the future rather than what has been done in the past or present..
- As part of the landowners health and safety files, a risk assessment was carried out in relation to the loading and unloading of livestock. The pen is to facilitate the safe loading and unloading of livestock.

Planning Authority response to Owner / Occupier Response to Referral:

9.2 The Planning Authority submitted a letter advising that it has no further observations to make.

10.0 OBSERVERS TO APPEAL

None.

11.0 ASSESSMENT

11.1 The question has been posed as to whether a development described as a cattle holding pen is or is not development and if it is deemed to be development, whether or not this development would constitute exempted development as defined under the Planning Acts and Regulations. In this regard, I consider it reasonable to address both issues separately.

11.2 At the outset, I would refer the Board to its previous decision in relation to this matter under RL2843. The Board decided that 'the erection of a steel fence structure and gates, for the sole function of loading and unloading cattle, at Cloongownagh, Adare, Co. Limerick is development and is exempted development'. In arriving at its decision, which differed from the Inspectors recommendation, the Board noted that the said pen was not for the holding of cattle but simply for the loading and unloading of cattle. Having undertaken a site inspection and considered the information provided, I would respectfully suggest that there has been no change in circumstance since this decision.

11.3 Essentially, the third party seeks to submit that the development in question, which consists of an enclosed area, amounts to a holding pen whose function and purpose is designed to concentrate cattle for a host of purposes. It cannot be confined to just loading and unloading cattle. Such an argument would suggest that, given the proximity to adjacent dwelling houses and the lack of consent for same being provided, the development does not constitute exempted development pursuant to Class 8 of Part 3 of Schedule 2 of the Planning and Development Regulations, 2001. There is essentially, a dispute between the parties as to the nature of the 'development'.

Is or Is Not Development?

11.4 Section 2 (1) of the Act defines "works" as including "*any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure*".

I am satisfied that, in accordance with the above definition, the works undertaken on the site to accommodate the foundations to support the fencing, together with the erection of the steel tubular fencing and gates to facilitate the enclosure of this area of the overall field comprises 'works'. In addition, and in terms of section 3(1) of the Act, I am satisfied that the said 'works' comprise 'development'. This determined, consideration is required as to whether the 'works' would constitute "*exempted development*".

Is or Is Not Exempted Development?

Is the Development Exempt under the Act?

11.5 Having established that the 'works' undertaken amount to 'development', the issue to be considered is whether the development is exempted development or not. Section 4(1) of the Act defines certain types of development as being '*exempted development*'. Of potential relevance is section 4(1)(a) which provides as follows;

(a) development consisting of the use of any land for the purposes of agriculture and development consisting of the use for that purpose of any building occupied together with land so used;

I am satisfied that the development in question falls within the above, in that the nature of the development is for agricultural purposes provided in the Act, and therefore, can be considered to be exempted development under the provisions of the Planning & Development Act, 2000 – 2013.

Is the Development Exempt under the Regulations?

Articles 6 and 9 of the Regulations are relevant in terms of this referral.

11.6 Article 6 (1) of the Regulations states as follows:

"*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 a 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."*

11.7 The following classes of development are considered relevant in relation to this referral:

Class 4 of Part 3 of Schedule 2 – Exempted Development – Rural

'The construction or erection of any wall or fence, other than a fence of sheet metal, or a wall or fence within or bounding the curtilage of a house.'

Conditions and Limitations:

1. *The height of the wall or fence, other than a fence referred to in paragraph 2, shall not exceed 2 metres.*
2. *The height of any fence for the purposes of deer farming or conservation shall not exceed 3 metres.*

Class 8 of Part 3 of Schedule 2 – Exempted Development – Rural

'Works consisting of the provision of roofless cubicles, open loose yards, self-feed silo or silage areas, feeding aprons, assembly yards, milking parlours or structures for the making or storage of silage or any other structure of a similar character or description having an aggregate gross floor space not exceeding 200 square metres, and any ancillary provision for effluent storage.'

Conditions and Limitations: There are 7 indicated conditions and limitations in relation to Class 8 developments.

11.8 It is clear that the works the subject of this referral comprise development, but given the lack of any physical alteration to the existing agricultural field surface, I would concur with the previous Board decision that works do not come within the scope of the above Class 8 of Part 3 of Schedule 2 Exempted development – Rural. As such, I would concur that the development comes within Class 4 development and does not conflict with the conditions and limitations cited for said class.

11.9 Article 9(1) of the Planning & Development Regulations, 2001 as amended deals further with restrictions on exemptions, and in particular, parts (a)(i), (a)(ii) and (a)(iii) of this Article might reasonably be considered relevant in this instance, and which reads as follows:

Development to which article 6 relates shall not be exempted development for the purposes of the Act -

(a) if the carrying out of such development would -

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

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

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

I am satisfied that the referral before the Board does not compromises any of the above stated restrictions.

11.10 In light of the above, I am of the opinion, having due regard to the provisions of the Planning & Development Act, 2000-2013, and associated Regulations, the development works would not be constrained by the restrictions on exempted development detailed in Article 9 of the Planning & Development Regulations, 2001, and therefore, the works constitute exempted development.

11.11 The Board will note that the third party has considered that the status of the 'cattle holding pen' has changed for three stated reasons. I will deal with each reason individually as follows:

1. The grounds on which the pen has been established was previously upgraded to provide a solid driveway to the field and does not conform with the Boards direction: Having undertaken a site inspection I would submit that there does not appear to be any hardstand or solid surface provided within the area the subject of this referral. The area was under high grass save for where a vehicle or vehicles traversed the area, clearly to access the overall site. The main body of this field

has recently been cut. There has been no change to the surface of the area, in my opinion.

2. The Board connected the pen with the field but did not connect the pen with normal usage of the field for grazing etc. the pen could effectively be used transient operation on a daily basis so long as the field or land play a part in its operation: I am not clear as to what exactly is implied in this comment. Clearly the subject area comprises part of the overall field which, in my opinion, would include the normal usage of the field in terms of the agricultural practice which is carried out here. The landowner has clearly indicated that the area the subject of this referral is, and has for many years, used to access the main body of the field and as such no disconnect should or could reasonably be considered.

3. The third party argues that the cattle holding pen can be located elsewhere in the field a sufficient distance away from the dwelling house and either an extension to the existing hard surface down to the pen or the separated cattle drive up the current access with pen for loading: I consider that the landowner has provided a reasonably justification for the use of this area of the field to load and unload livestock.

12.0 CONCLUSION & RECOMMENDATION

Conclusion:

12.1 I note the comments of Mr. & Mrs Ryan, who are the referrers in this instance and the response of the first party in this case. Having regard to the above, I am satisfied that the general question raised in this referral can be determined as follows:

- The works, being the erection of fencing, is clearly development
- The erection of the fencing and gates fall within Class 4 of Part 3 of Schedule 2 of the Planning & Development Regulations, 2001.
- There is no evidence to suggest that the area is being used as a holding pen in the true sense of the term and it is accepted that the area said pen is simply for the safe loading and unloading of cattle.

Recommendation:

12.2 I recommend therefore that the Board find as follows:

WHEREAS a question has arisen as to whether the erection of a cattle holding pen at Cloongownagh, Adare, Co. Limerick, is or is not development or is or is not exempted development;

AND WHEREAS the said question was referred to An Bord Pleanala by John & Sarah Ryan on the 18th day of March, 2014;

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

(a) Sections 2, 3 and 4 of the Planning and Development Act, 2000-2013,

(b) Articles 6 and 9 of the Planning and Development Regulations, 2001,

(c) Class 4 of Part 3 of Schedule 2 of the Planning and Development Regulations, 2001 and

(d) Class 8 of Part 3 of Schedule 2 of the Planning and Development Regulations, 2001,

AND WHEREAS An Bord Pleanála has concluded that:

(a) Works carried out comprise the erection of fencing around a portion of an agricultural field solely to facilitate the loading or unloading of cattle and not involving any alteration to the existing agricultural field surface, does not come within the scope of Class 8 of Part 3 of Schedule 2 Exempted Development – Rural, not being, '*Works consisting of the provision of roofless cubicles, open loose yards, self-feed silo or silage areas, feeding aprons, assembly yards, milking parlours or structures for the making or storage of silage or any other structure of a similar character or description having an aggregate gross floor space not exceeding 200 square metres, and any ancillary provision for effluent storage.*'

(b) The said works fall within Class 4 of Part 3 of Schedule 2 of the Planning and Development Regulations, 2001, being a fence and being less than 2 metres in height is exempted development

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by Section 5 of the Planning and Development Act, 2000-2013, hereby decides that the said development consisting of the erection of fencing around a portion of an agricultural field comes within the scope of Class 4 of Part 3 of Schedule 2 being a fence of less than 2m in height is development and is exempted development.

____

A. Considine

Planning Inspector,

18th June, 2014

An Bord Pleanála

Inspector's Report

Details of Reference: Whether the erection of a slatted shed with straw bedded area and yard with manure pit and cattle crush is or is not development or is or is not exempted development.

Location	: Auburn House, Malahide, Co. Dublin
Referred By	: Mary McEvaddy
Other Parties to the Reference	: None
Planning Authority	: Fingal County Council
Inspector	: Pauline Fitzpatrick
Date of Site Inspection	: 26/04/12

1.0 SITE LOCATION AND DESCRIPTION

1.1 The site in question is within a field to the north of Auburn House c. 2km to the south-west of Malahide town centre. Abington Housing Estate comprising of detached dwellings is to the north, west and east of the field. Auburn House is accessed by a gated driveway off the Malahide Road. The site in question can be accessed through the house's grounds and from a track off Streamstown Lane to the south.

1.2 The field is relatively level with its boundaries delineated by hedgerows. A mature band of trees separates the field from Auburn House. A dry ditch runs along the southern boundary of the field.

2.0 BACKGROUND TO REFERRAL

2.1 A Section 5 Declaration was sought from Fingal County Council. The proposal is for the erection of a 190.6 sq.m. slatted cattle shed with straw bedded area, in addition to a 64 sq.m. yard with manure pit and cattle crush. The mono-pitch structure is to have a height of 7.2 metres. It is to be erected adjoining the southern boundary of the field and is to be accessed from Streamstown Lane.

2.2 It is submitted that the structure does not fall within the curtilage of a protected structure and comprises exempted development under Classes 6 and 8 of Part 3 of the Planning and Development Regulations 2001.

2.3 The Planning Officer's report in the Record of Executive Business and Manager's Order notes that the site is not within the curtilage of Auburn House. This does not necessarily prevent it materially affecting the protected structure as scale, mass, visibility or other factors may have an impact. It is unclear whether the conditions attached to Class 6, Part 3 Exempted Development can be met. It is noted that the slatted unit would be located adjacent to an existing ditch. Water Services, as a general rule, require storage facilities for manure or dung to be located not less than 50 metres from any waterbody in the case of new farmyards. It is considered that the proposal does not constitute exempted development having regard to the conditions and limitations pertaining to Class 6.

3.0 REFERRAL

The submission by Deaton Lysaght, Architects is accompanied by supporting information and can be summarised as follows:

- The boundary to Auburn House is extensively wooded and the field in which the slatted shed is proposed cannot be seen from the house and will not affect any view of it.

- Neither the conditions and limitations pertaining to Class 6 or the restrictions on exemption set out in Article 9(1) of the Regulations deal with impact upon a protected structure.
- There are no farm buildings within 100 metres of the proposed development. There is no farmyard complex. This will be the first structure and would be self-contained.
- The Nitrates Plan (copy attached) dictates the size of the herd. It allows for 16 suckler cows and calves. The storage capacity of the tank and yard have been oversized on the basis of 20 cows and calves and will have storage capacity well in excess of that required by the size of the herd.
- The building and yard are to be built to Department of Agriculture specifications.
- The ditch along the southern boundary is a dry ditch and is not a waterbody and has remained dry even in conditions of heavy rainfall.
- The 50 metre set back from a water body is not a requirement set out in the Regulations but appears to be an internal Local Authority rule. It has no statutory basis.
- The location of effluent storage facilities will comply with the separation distances as set out in the Regulations.

4.0 PLANNING AUTHORITY'S RESPONSE TO REFERRAL

The response, which is accompanied by supporting information, can be summarised as follows:

- The 50 metre separation rule to any waterbody is taken from the Department of Agriculture and Food Minimum Specifications for Manure Pits and Dungsteads S108 August 2007 (copy attached).
- The manure pit and effluent tank would be less that 50 metres from the existing drainage ditch.
- Drainage ditches (whether dry or not) are considered watercourses under the 1977 and 1990 Water Pollution Acts.
- Discharges to the drainage ditch within the site could subsequently enter the Broadmeadow Estuary and may have a deleterious effect on the watercourse. The Estuary is a SPA.
- The Water Framework Directive requires all relevant authorities to achieve 'good status' for all waters by 2015. Fingal County Council is charged with protecting waters in its jurisdiction designated as 'good status' and to improve waters which are below 'good status' to at least 'good status'. Broadmeadow Estuary has been classified as 'moderate' status.

5.0 SECTION 131 NOTICE RESPONSE

The Planning Authority's response was circulated for comment. A response was received from Deaton Lysaght Architects which can be summarised as follows:

- S108 is advisory, only, where a grant application has not been sought.
- S108 quotes varying recommendations for minimum distances between a storage facility and a water course ranging from 50 metres in the case of new farmyards and 10 metres in the case of existing farmyards. The varying distances suggests that they are rule-of thumb and do not have a scientific basis.
- A 'water-body' is not defined in SI 108. The PA is relying on a definition taken from the 1977 Water Pollution Acts. It is unsafe to assume that it was the intention of SI 108 to include a dry ditch as a water body for the purposes of the recommendation for siting of storage facilities. The ditch is a field ditch the primary purpose of same being the containment of livestock. It has no drainage function because it has neither an inlet or outlet. It is not a river, stream, lake, canal, reservoir, aquifer, pond, watercourse or other inland water.
- If field ditches were to be considered to be watercourses for the purpose of siting of storage facilities few farmyards across the country would comply with same as the structure would have to be located in the middle of a field.
- There is no likelihood of an accidental discharge into the field ditch finding its way into the Broadmeadow Estuary as the ditch is not a watercourse.
- The development complies with the SI 610 2010 regulations in respect of provision and management of storage facilities.
- Should the Board consider the location to the field ditch to be fatal it is requested that an opinion be given as to whether the filling-in of the ditch would be an acceptable solution and whether such works could be considered exempted development.

Note: The Referrer's response above was circulated to the PA for comment. It has no further comment to make.

6.0 RELEVANT PLANNING HISTORY

I am not aware of any recent planning applications on the site to which the referral pertains. The planning history within the curtilage of Auburn House is detailed in the Record of Executive Business and Manager's Order on file, copies of which are attached.

7.0 DEVELOPMENT PLAN PROVISIONS

The site is within an area zoned RA in the Fingal County Development Plan the objective for which is to provide for new residential communities with approved local area plans and subject to the provision of the necessary social and physical infrastructure. Agricultural buildings are not permitted in such zones.

8.0 RELEVANT LEGISLATION

In order to assess whether or not the works to be carried out constitute exempted development, regard must be had to the following items of legislation:

8.1 Planning and Development Act, 2000

S.3.(1) 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.

S.4 (1) (a) – (l) set out what is exempted development for the purposes of this Act including
(a) Development consisting of the use of any land for the purpose of agriculture and development consisting of the use for that purpose of any building occupied together with land so used.

S.57(1) states that notwithstanding section 4(1)(h) the carrying out of works to a protected structure or a proposed protected structure, shall be exempted development only if those works would not materially affect the character of –
(a) the structure, or
(b) any element of the structure which contributes to its special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest.

8.2 Planning and Development Regulations, 2001-2011

Article 6 (1) 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.

Schedule 2 Part 3 Exempted Development - Rural

CLASS 6

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.

Conditions:

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.

CLASS 8

Works consisting of the provision of roofless cubicles, open loose yards, self-feed silo or silage areas, feeding aprons, assembly yards, milking parlours or structures for the making or storage of silage or any other structures of a similar character or description, having an aggregate gross floor space not exceeding 200 square metres, and any ancillary provision for effluent storage.

Conditions

1. No such structure shall be used for any purpose other than the purpose of agriculture.
2. The gross floor space of such structures 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 the 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) sets out the instances where development to which article 6 relates shall not be exempted development for the purposes of the Act

9.0 ASSESSMENT

9.1 Having regard to the definition of 'works' under section 2(1) of the 2000 Act I am satisfied that the proposed works would constitute development within the meaning of section 3(1) of the Act.

9.2 The matter that falls to be determined in the context of this referral is whether or not the works would constitute exempted development. The planning authority has issued a declaration stating that the works constitute development and require planning permission.

Classes 6 & 8

9.3 Specific provision for agricultural structures are provided for within the Planning and Development Regulations, 2001. Article 6, subject to Article 9, provides for exemption of development described in Column 1, subject to the limitations and conditions specified in Column 2 of Part 1, Schedule 2 thereof. Classes 1 – 17, Part 3, pertain to rural and agricultural development.

9.4 I consider that the slatted shed can be described as coming within Class 6 insofar as it is a roofed structure for the housing of cattle. In my opinion the the yard with manure pit and cattle crush, whilst ancillary to the shed, would come within Class 8.

9.5 The proposed structure is to have a stated area of 190.6 sq.m. and thus is below the 200 sqm. maximum allowable floorspace. The manure pit and cattle crush has a stated area of 64 sq.m. and is also below the 200 sq.m. ceiling.

The conditions and restrictions attached to the said classes largely overlap and I propose to address each in turn.

9.6 *Condition 1: Use*
The slatted shed is to house a maximum of 16 suckler cows and as such is intended for agricultural purposes.

9.7 *Condition 2: Aggregate Floor Space*
The agent for the applicant clarified that there is currently no existing farmyard complex. The buildings within the curtilage of Auburn House are not used for agricultural purposes. The slatted shed and cattle crush would

equate to 254.6 sq.m. which is below the 300 sq.m. aggregate floorspace allowable.

9.8 *Condition 3: Storage Facilities*
I consider that the agent for the referrer has provided sufficient details to support the assertion that the effluent storage facilities are adequate to serve the structure. The proposal is to house a maximum of 16 suckler cows and calves with the underground tank oversized to accommodate 20 cows and calves. A copy of the Nitrates Plan is submitted in support. Further details are provided in a section 131 response which state that the proposal would accord with the requirements of SI 610, which are the most recent regulations issued by the Department of Agriculture and Food.

9.9 The substantive issue arising in this regard pertains to the proposed location of the shed immediately adjacent to a drain. I extrapolate from the documentation on file that the PA considers that the need to avoid water pollution cannot be met.

9.10 The PA considers that the drain is covered by the definition of 'water' as given in the Local Government (Water Pollution) Act 1977 and that due regard must be had to its obligations under the Water Framework Directive (WFD). It is considered that the ditch could drain into the Broadmeadow Estuary which is designated as having moderate status and is a SPA. Note is also made of its legal obligation to bring such waters up to good status under the WFD.

9.11 Reference is made by the PA to document S108 relating to *Minimum Specification for Manure Pits and Dungsteads* dated August 2007. As noted by the agent for the referrer the document is quite clear in stating that where the word 'shall' is used then that standard (at least) must be followed in grant-aided buildings while a procedure that is 'recommended' is advice, only, based on good practice. Taking this into consideration it is evident that the language used in section A.4 relating to siting of manure pits and dungsteads (in terms of the 50 metre separation from any waterbody) is a recommendation only. As noted at the outset of the document dungsteads are not grant-aided.

9.12 As noted by the agent for the referrer SI 610 European Communities (Good Agricultural Practice for Protection of Waters) Regulations 2010 is a more recent piece of legislation and I submit that this would be of greater relevance in terms of the assessment of the proposal in the context of the requirements of the relevant condition. No minimum setback requirements are set out therein. I note that the definition of 'waters' is largely the same as that cited in the Local Government (Water Pollution) Act 1977 and is as follows:

"waters" includes—

(*a*) any (or any part of any) river, stream, lake, canal, reservoir, aquifer, pond, watercourse, or other inland waters, whether natural or artificial,
(*b*) any tidal waters, and
(*c*) where the context permits, any beach, river bank and salt marsh or other area which is contiguous to anything mentioned in paragraph

(*a*) or (*b*), and the channel or bed of anything mentioned in paragraph (*a*) which is for the time being dry, but does not include a sewer; "waterlogged ground" means ground that is saturated with water such that any further addition will lead, or is likely to lead, to surface run-off; and cognate words shall be construed accordingly.

9.13 As noted on day of inspection (which followed a period of heavy rainfall), the said drain was completely dry with no inlet or outlet noted (see photos 3 & 4). As such the applicant's assertion that the ditch provides a cattle containment function, only, is accepted.

9.14 Notwithstanding the above view I submit that neither condition 3 nor indeed any condition attached to both classes 6 & 8 specifically refer to a minimum setback distance from such a channel.

9.15 Thus taking into consideration the legislative requirements to be met by the referrer under SI 610, the absence of any minimum setback requirements set out in same and the fact that the storage capacity of the tank and yard have been oversized which would prevent any threat of overflow, I consider that the development can be constructed in line with Department of Agriculture, Food and the Marine requirements and can have regard to the need to avoid water pollution.

9.16 I note the PA reference to its obligations under the Water Framework Directive but do not consider this a relevant consideration in this assessment.

9.17 *Conditions 4 & 5: Setback from Road*
The site is to be accessed via a track off Streamstown Lane and is to be set back approx. 104 metres from the said track. The site is over 400 metres from the Malahide Road. The structure at 7.2 metres is below the 8 metre height limit.

9.18 *Condition 6: Setback from Dwellings*
The shed is to have a setback of approx. 105 metres from the nearest dwelling to the north and c.130 metres from the nearest dwelling to the west (Abington Estate).

9.19 *Condition 7: External Finishes*
The prohibition of unpainted metal sheeting can be secured in its construction.

Article 9(1)

9.20 It is my opinion that none of the restrictions on exemption as set out in Article 9(1) of the Regulations would be applicable in this instance.

Protected Structure

9.21 As is evident from the aerial photograph attached to this report the site to the north of Auburn House is outside the curtilage of the said protected structure. The thick band of mature trees which encloses the house effectively screens the site from the house and, in my opinion, the proposed development would not have an impact on the integrity of the house or its setting. Thus, in the context of the provisions of section 57(1) of the P & D Acts I consider that the proposal would not materially affect the character of the structure or any element of the structure which contributes to its special interest.

Appropriate Assessment – Stage 1 Screening

9.22 The site in question is not within nor abutting a designated Natura 2000 site. The site is approx. 1.6km from the Malahide Estuary SAC and SPA. Generic conservation objectives pertain to the designated sites namely, to maintain or restore the favourable conservation status and habitat and species of community interest. The site is of importance for wintering waterfowl supporting a particularly good diversity of species including an internationally important population of Brent Geese.

9.23 The main potential risk from the development is considered to be related to water quality.

9.24 Effluent storage facilities have been designed to comply with the requirements of the Nitrates Directive and Department of Agriculture standards with the storage capacity to exceed the minimum requirements thus providing for a buffer against any prospect of an overflow.

9.25 It is reasonable to conclude that on the basis of the information available, which I consider adequate in order to issue a screening determination, that the proposed development individually and in combination with other plans or projects would not be likely to have a significant effect on any European site and in particular specific site numbers 000205 (Malahide Estuary SAC), 004025 (Malahide Estuary SPA) in view of the sites' conservation objectives and an appropriate assessment is not therefore required.

Note: The agent for the referrer requests the Board to comment on whether the filling in of the field ditch would be an acceptable solution should it consider the location of the slatted shed adjacent to same to be a material consideration. This does not form part of the original question posed to the Board in the section 5 request and consider that it should more appropriately form the basis for a further request. I therefore do not propose to comment further on same.

10.0 CONCLUSION AND RECOMMENDATION

In conclusion I consider that the evidence on site would support the claims that the proposed development would comply with the conditions attached to classes 6 and 8 as such would constitute exempted development.

DECISION

WHEREAS a question has arisen as to whether a slatted shed with straw bedded area and yard at Auburn House, Malahide, Co. Dublin is or is not development or is or is not exempted development:

AND WHEREAS Deaton Lysaght Architects on behalf of Mary McEvaddy requested a declaration on the said question from Fingal County Council and the said Council issued a declaration on the 26th day of January 2012 stating that the said development would not constitute exempted development:

AND WHEREAS the said Deaton Lysaght Architects on behalf of Mary McEvaddy referred the declaration for review to An Bord Pleanála on the 22nd day of Feburary, 2012:

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

(a) sections 2, 3 and 4 of the Planning and Development Act, 2000 as amended,

(b) section 57(1) of the Planning and Development Act, 2000 as amended,

(c) articles 6 and 9 of the Planning and Development Regulations, 2001 as amended,

(d) classes 6 and 8 of Part 3 of Schedule 2 to the Planning and Development Regulations, 2001 as amended:

AND WHEREAS An Bord Pleanála has concluded that -

(a) the slatted shed is of a type coming generally within the provisions of class 6 of Part 3 of Schedule 2 of the Planning and Development Regulations, 2001, as amended, and is less than 200 square metres in floor area,

(b) The yard with cattle crush and manure pit is of a type coming within the provisions of class 8 of Part 3 of schedule 2 of the Planning and Development Regulations, 2001, as amended, is less than 200 square metres in floor area.

(c) The aggregate floor area of the slatted shed and yard with cattle crush and manure pit is less than 300 square metres.

(d) the slatted shed, yard with cattle crush and manure pit can be served by adequate effluent storage facilities having regard to its size, use and location and can be constructed in line with Department of Agriculture and Food and Department of the Environment, Heritage and Local Government requirements and can have regard to the need to avoid water pollution

(e) The ditch along the southern boundary of the field in which the slatted shed is to be located is a dry ditch without an inlet or outlet

(f) the slatted shed, yard with cattle crush and manure pit would not materially affect the character of Auburn House which is a protected structure

(g) accordingly, the slatted shed and yard with cattle crush and manure pit comes within the exempted development provisions of classes 6 and 8 of Part 3 of Schedule 2 of the said Regulations,

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3) (a) of the 2000 Act as amended, hereby decides that the construction of the slatted shed, apron and manure pit is exempted development.

Pauline Fitzpatrick
Inspectorate

May, 2012