



The Secretary  
An Bord Pleanála  
64 Marlborough Street  
Dublin 1

AN BORD PLEANÁLA

LDG- 077195-25

ASP-

10 JAN 2025

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Thursday, 9<sup>th</sup> January 2025  
[By Registered Post]

## :- SECTION 5 REFERRAL :-

Dear Sir/Madam,

**RE: SECTION 5 DECLARATION IN RELATION TO AGRICULTURAL USE OF LAND PARCEL AT ARDIVAGHAN TOWNLAND, MULLINGAR, CO. WESTMEATH**

### 1.0 INTRODUCTION

#### 1.1 Purpose of this Section 5 Referral – Use of Lands for Agricultural Purposes

*The Planning Partnership*, The Bank Building, 52 Oliver Plunkett Street, Mullingar, Co. Westmeath acting on behalf of Mr. Eamonn O'Rourke (owner of the subject lands), 55 Howth Lodge, Howth, Dublin 13, hereby refer to An Bord Pleanála the Declaration of Westmeath County Council, dated 6<sup>th</sup> December 2024 (see **Appendix A**), under the provisions of Section 5 (3) (a.) of the *Planning and Development Act, 2000 – 2024*, **P&D Act** hereafter.

The nature of the proposed activities and use of the lands are detailed below along with our planning opinion regarding the status of same, including a review of the local Planning Authority Declaration and the appropriate fee of €220.00. The purpose of the declaration application was to confirm whether or not planning permission is required to undertake the proposed use, activities and any enabling works or works associated with the activity, namely:

- the use of any land for agricultural purposes, and
- development consisting of (or consistent with) the use of the land for agricultural purposes.

In effect, we are principally seeking to confirm that the use of the lands for an agricultural use are unrestricted for the purposes of agriculture and as such the formation of an access to enable the use of the lands for the purposes of agriculture are similarly unconstrained and as such are also exempted development.

The Referrer disputes the conclusions reached on this matter by Westmeath County Council which we respectfully submit does not provide a detailed explanation of the local Planning Authority's rationale for determining that the works in question require planning permission. Specifically, we consider that the Planning Authority have erred in:

1. Their inability to make a declaration on the basis that their interpretation of the question asked regarding 'agriculture' is 'non-specific' to an agricultural use;
2. The prejudicial interpretation that the agricultural use could include 'spreadlands' as might trigger the requirement for Appropriate Assessment on the qualifying interests of EU Designated Sites;

3. Where the ability to seek further information under *Section 5 (2) (b.)* of the P&D Act was prejudicially omitted and where the specific information required in this instance would have arguably enabled a positive determination for agricultural use;
4. By dismissing the agricultural use of the land as not exempt, without full and proper consideration, unnecessarily fetters the consequential consideration of 'works' for the purpose of its use in agriculture, namely as would provide a form of access,
5. The extent of limitations on exemptions under Section 4 are as restricted under Section 4 (4) alone i.e. *if an environmental impact or an appropriate assessment is required* and whereby the Minister from time to time is enabled to make regulations for any class of development to be exempted development as experienced recently in respect of the Covid Pandemic, the housing of Ukrainian refugees and international protected persons; and
6. Similarly, we had sought the determination by the planning authority that if the works (as might refer to a road improvement and by consequence a point of access) were undertaken by a local authority under *Section 4 (1) (e.)* of the P&D Act could they confirm that they would be exempted, and again where no limitations extend beyond EIA or AA in that instance.

We wish to confirm our understanding that if seeking to rely on *Exempted Development under Article 6 (1) of the Planning & Development Regulations 2001* (as amended), **P&D Regs** hereafter, the planning authority have confirmed, as follows that the formation of an access under *Class 9 of Schedule 2* of the P&D Regs, to the subject lands;

- a) Would not be exempted development under *Article 9 (1) (a.)* of the P&D Regs by contravening a condition of permission, although no specific condition or conditions are confirmed as associated with 99/1661 (**Appendix B**), and
- b) Whereas this might refer to Condition No. 46 (99/1661) associated with a required screen wall of solid block construction of 2 metres in height but as not confirmed, but it could be concluded that the boundary treatment constructed might be unauthorised in any event; and whereas,
- c) The construction, erection, renewal or replacement of any gateway under Class 9 would form a means of access to a 'public road' and is thereby 'de-exempted', and
7. The planning authority have adjudged that such an access not knowing or understanding the level of activity as associated with an unknown agricultural use will endanger public safety by reason of traffic hazard notwithstanding the construction of the roads to public standards and speed controls associated at the time of granting permission.

In this regard we seek the Board's consideration and declaration further respectfully clarified by the understanding of the local planning authority. We therefore seek to restrict the Board to their consideration under *Section 4 (1) (a.)* of the P&D Act and have chosen a particular activity in respect of the following as limited to agriculture, namely 'osier land'.

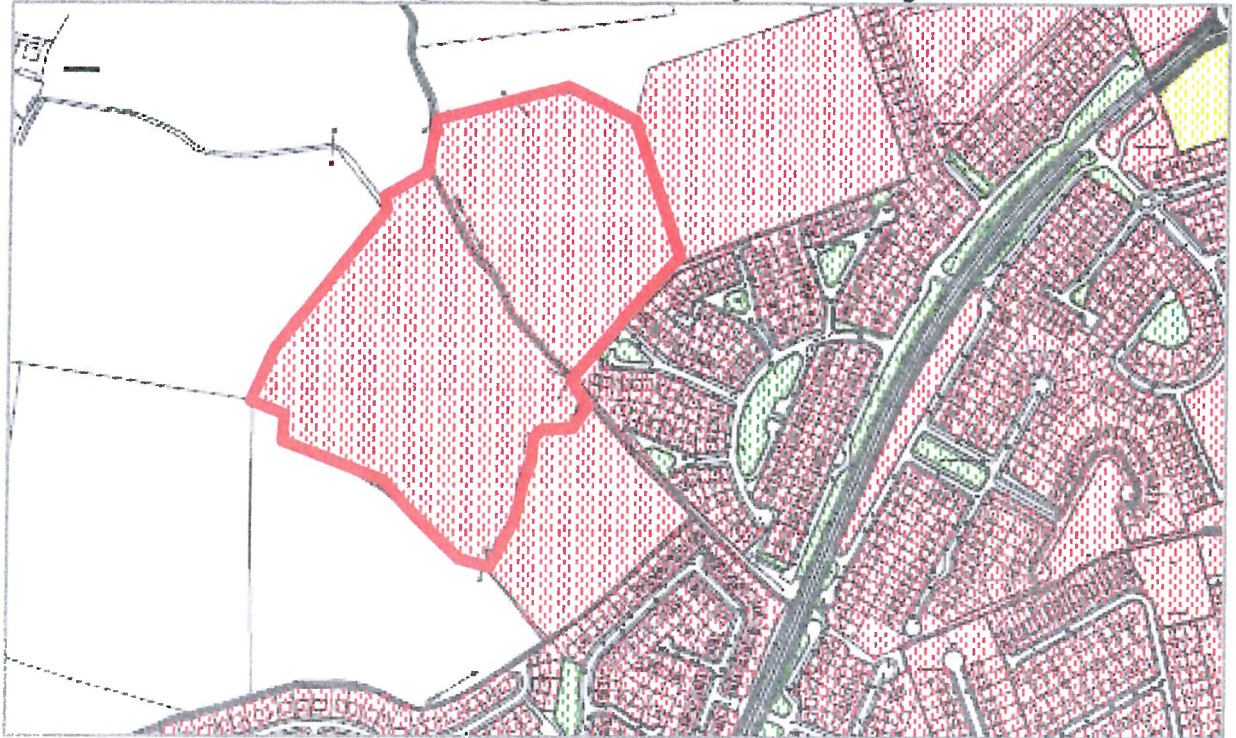
The planting of willow can be utilised as a form of sustainable development and an energy source and requires minimal intervention with harvesting occurring after year 3 or 4 from planting and then can be harvested on 2-year cycles thereafter.

## 1.2 Background Context

The Querist / Landowner purchased the lands (an agricultural land parcel) in and around May 2011 when the subject lands had a beneficial 'residential' zoning within the Mullingar Local Area Plan at the time and as contained within the Westmeath County Development Plan of 2008-2014 (**Figure 1.1**) and the preceding Development Plan 2002-2008. Neighbouring residential development was occurring from the early 2000's and was completed on foot of relevant permissions granted namely 99/1661 & 01/1089.



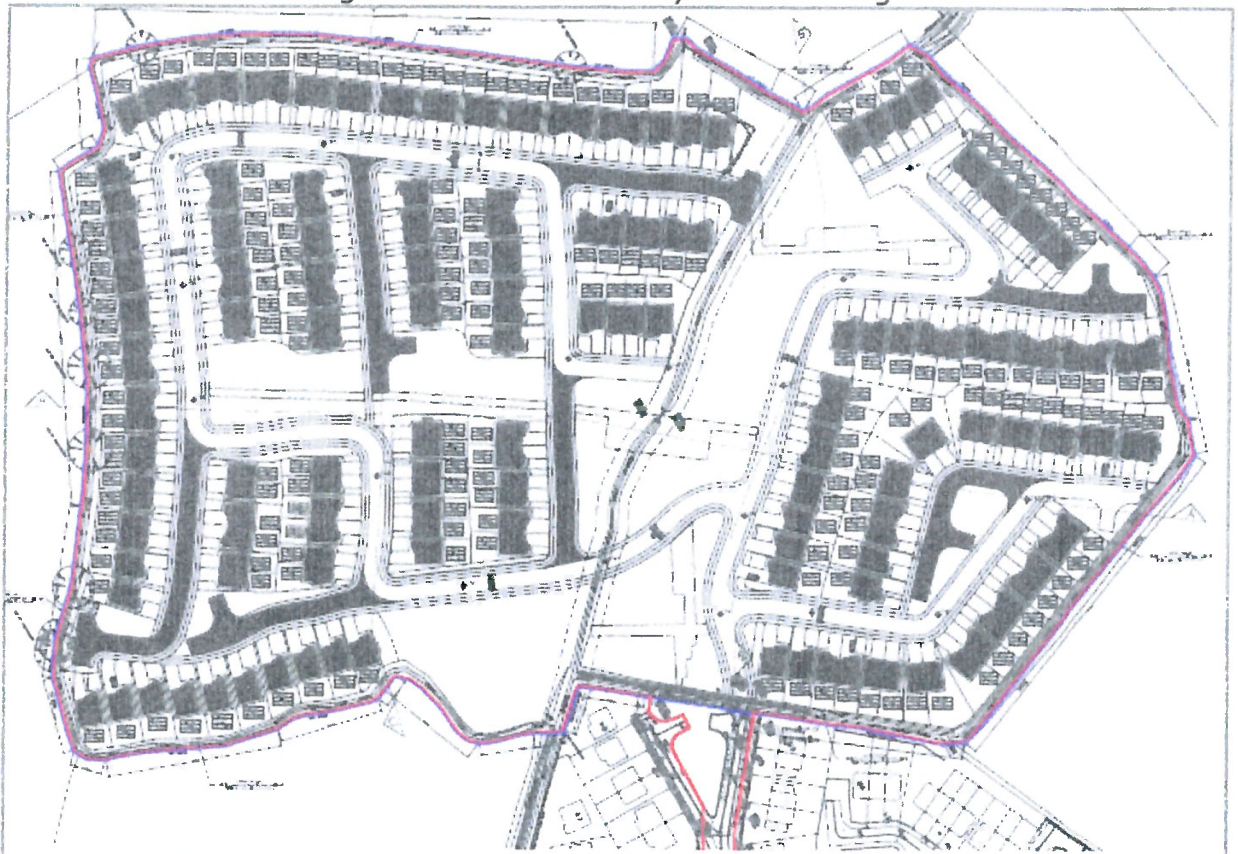
Figure 1.1 Mullingar Zoning Plan with Subject Lands Edged Red



Source: Westmeath County Development Plan (Mullingar Zoning Plan) 2008-2014

A planning application for the subject lands was being prepared for a residential development of circa. **189 no. residential units** in 2011 (Figure 1.2) reliant on an access arrangement and as to be facilitated by a *Wayleave Agreement* dated, 13<sup>th</sup> May 2011, attached at Appendix C.

Figure 1.2: Indicative Site Layout for Planning



Source: Equator Architects, July 2011 – Site layout for Pre-Planning

The site and lands availability for use for agriculture remains in this regard, where no intervening use has occurred. The land's residential development was not pursued due to the economic uncertainty as prevailed at that time (2011) within the depths of the associated economic downturn and the construction industry crash. The economic upturn and the recovery of the construction industry was not fully embraced and in recovery until 2016/17, we respectfully contend.

The subject lands were de-zoned in the intervening period as confirmed under the *Mullingar Local Area Plan 2014-2020* and remain unzoned whereby the MLAP was extended a further 5 years, the Draft Plan for Mullingar is anticipated in draft form this *Quarter 1* of 2025.

In this regard we present that the agricultural use of agricultural lands as supported by a wayleave agreement from 2011 as refers to 'successors in title' of the access road (namely Westmeath County Council) enables the ability to form an access as associated with Section 4 (1) (a.) for the purpose of its use in the farming of land and further that a means of access if not allowed under 4 (1) (a.) could ultimately be available to a 'willing' local authority under Section 4 (1) (e.) similarly unrestricted by limitations on exemptions under Article 9 of the P&D Regs.



## 2.0 CLARIFICATION OF QUESTION POSED

The Referrer seeks the Board's determination as to whether;

1. *Use of the lands for agriculture, so defined for the purposes of this request, to the growing of willow; and*
2. *Associated access provision for the purpose of its defined agricultural use*

*is or is not development or is or is not exempted development under Section 4 (1) (a.) of the Planning and Development Acts 2000-2024 (in respect of use i.e. not a material change of use where no intervening use has occurred) and is or is not development (in respect of associated works for an access for the purpose of the exempted use).*

We are fully aware of the planning history locally and acknowledge the reasons for refusal associated at that time with public safety concerns due to traffic hazard. Notwithstanding same the Section 5 approach is neither prejudiced by the decision of the planning authority in this regard and the Applicant is not estopped from seeking exemptions under Section 4 (1) (a.) by virtue of an application made under Section 34 of the P&D Act.

The Referrer considers that the works are exempted development and in accordance with the judgment of Fennelly J. in *Fingal County Council -v- William P. Keeling & Sons Ltd*<sup>1</sup> is not estopped from pursuing same.

Significant reference in the Planner's Report is made in respect of not only the LPA and the Board determinations in this regard. However, it is also respectfully considered significant and important to note that the local road network was designed to absorb significant traffic movements akin to the residential layout presented at **Figure 1.2**, above.

The residential design and layout presented (Figure 1.2) would have supported in the region of 190 no. residential units with conservatively 100+ return vehicle movements in and out of the local road network on a daily basis. Furthermore, associated service vehicles both civic waste and emergency vehicles would require access. With up to 4 no. civic waste (refuses vehicle) operators functioning locally on 3-4 different days in a week would represent a scale, size (of vehicle) and level of vehicle movements more impactful than any associated 'exempted' agricultural use of the lands.

Notwithstanding same the consideration of development consisting of (or consistent with) the use of the land for agricultural purposes would not trigger and is not limited by considerations under Article 9 of the P&D Regulations, only limitations as referred under Section 4 (4) requiring EIA or AA.

The Applicant additionally seeks the Board's determination as to whether:

3. *The local authority as the roads authority are enabled to carry such new road or improvement works to provide a point of access to the subject lands*

*is or is not development or is or is not exempted development under Section 4 (1) (e.) of the Planning and Development Acts 2000-2024 (in respect of works) and is or is not development (in respect of associated works for an access for the purpose of the exempted use).*

Again, reference to the Planners Report and considerations associated with the refusal of the previous application, Policy Objective P—TM6 of the Mullingar Local Area Plan 2014-2020, *to ensure the safety of road users in new applications* runs contrary to wider WCDP 2021-2027 plan objectives for *Housing Layout and Design* Section 3.8: *A good development creates a 'sense of place' and*

<sup>1</sup> 2005 IESC 55 2 IR 108

*community belonging to the residents. This is created by providing ..... connectivity of the site to other places.*

Connectivity and permeability present a sustainable development plan objective and if the local authority wanted to deliver on adopted plan policy to increase and improve access it is empowered to do so and utilise *Section 4 (1) (e.)* of the P&D Act.

In this regard and associated with the Section 5 Referral process we wish to explore; that the use of the lands for agriculture being exempted as involves; 'the use of the land', infers that any development associated with the use of the land for agriculture i.e. field boundary, maintenance, introduction of water supply and services, any openings, gates etc. is an associated exemption in terms of use of the land for agriculture.

To 'use the lands' they must logically be accessible and serviceable and harvestable. The definition of agriculture refers; *or for the purpose of its use in the farming of land*. The current landholding being landlocked and to be appropriately used for the purposes of agriculture can rightfully be investigated, presented and explored seeking the available *Section 5 Declaration/Referral* approach to the respective planning authority.

As well as exemptions available to landowners additionally, **exemptions are applicable to planning authorities** in the carrying out of their duties. In this regard and in respect of the proper planning and sustainable development, access to lands should not be unfairly prejudiced particularly where access is available from a public road.

Would the local planning authority in the carrying out of their duties in respect of a roads and planning authority reflecting the objectives and policies developed and presented within their development plan to increase linkages, accessibility and connectivity be encouraged to undertake exempted development under *Section 4 (1) (e.) construction maintenance or improvement of a road*.

### Summary Considerations

In this regard the Referrer respectfully directs that whilst the Board are enabled to consider the works or development consistent with the use of the lands for agriculture in the formation of an access for the intended and allowable use for agriculture not restricted by Article 9 limitations (under P&D Regs) then the use and any associated facilitating works can be deemed exempted development (under P&D Act).

The previous decision of the planning authority (18/6018) has, we believe, unintentionally landlocked the Referrers lands whereas the intentions presented in association with WCC planning application register reference 99/1661 and the 'Taking in Charge' documents of 2011 established that the residential access spur was designed to be constructed hard to the boundary to remove any so called 'ransom' strips (as could logically be deduced) and as incorporated in a re-design during the application process as could further be logically considered and expressed to allow for unfettered access, further emphasised within the Wayleave Agreement as applicable to successors in title (the Planning/Roads Authority).

The nature and type of boundary erected at the subject location is intentionally temporary in nature i.e. concrete post and rail and not permanent block built as per other boundary structures (Condition No. 46 of the relevant permission expresses) to the perimeter of the neighbouring residential estate as suggests the enabling opportunity for access and linkage.

Not only does the Referrer have the ability to facilitate an access consistent with the use of the lands for agriculture but so do the planning authority, to undertake works as exempted development to facilitate the original intentions of connectivity and permeability and now enhanced by plan policies and objectives associated with same.

### 3.0 GROUNDS OF REFERRAL

We note that the merits of the Referrer's case are set out in detail in the original Section 5 Declaration Cover Letter (see **Appendix D**) which are not restated herein to avoid duplication.

The following sets out our considered views on the rationale of the County Council in determining the Declaration application within the associated Declaration at **Appendix A** and further considered and as elaborated within the Planners Report (see **Appendix E**), and the respective *Planning Assessment* at Pages 7 & 8 of same.

As noted above, we consider that there are 5 no. key issues to be addressed which form the basis of the County Council rationale, which are rebutted in detail in the following sections.

#### 3.1 The Non-Specific Agricultural Use as Precluded a Determination by Local Planning Authority

The Planners Report states:

*The planning authority considers that this question is non-specific and lacks precise details pertaining to agricultural usage and activities which are the subject to this referral. Accordingly, on the basis of a lack of specific details to consider, a determination is not possible*

As referred above in Section 1.1 we seek the Board's consideration on a specific agricultural activity as presented with the definition of 'agriculture' within the P&D Act, namely 'osier land'. The planting of willow can be utilised as a form of sustainable development and an energy source and requires minimal intervention with harvesting occurring after year 3 or 4 from planting and then can be harvested on 2-year cycles thereafter.

Whilst the ability of the planning authority to seek further information is available under *Section 5 (2) (b.)* of the P&D Act they chose not to pursue or engage in this process as may have satisfied and confirmed a determination. The only available limitation on exemptions under *Section 4* of the P&D Act relates to the potential requirement of appropriate assessment. The *Planning Assessment* states:

*The details submitted with this Section 5 Declaration are not sufficient in order to determine the impact of these lands on any nearby European Sites as the information is vague with respect to agricultural activities, details of the applicant's entire landholding and whether spreadlands are associated with the proposal or otherwise.*

Notwithstanding the ability of the planning authority to further request or confirm details as associated with the landholding, which we confirm are adequate through presented OS Land Registry Mapping and supporting identified landholding within the Declaration application we can also confirm that the use of the lands for agriculture will expressly 'exclude' referred landspreading of slurry.

Whilst it is widely acknowledged that landspreading of agricultural slurries is a normal part of agricultural practices, these activities are regulated by the European Communities (Good Agricultural Practice for the Protection of Waters) Regulations 2022 (S.I. No. 113 of 2022, as amended).

In this regard and to aid the respective determination of the Referral in this regard we can confirm that in this instance the intention is for the use of lands for agricultural practice recognised as 'osier' lands or the planting of willow without the spreading of biosolids. It should be noted however that



An Bord Pleanála has adjudged previously that the spreading of biosolids on willow does not require planning permission.

We confirm in this instance the exclusion of 'spreadlands', notwithstanding that it is not a term referred within the P&D Act definition of 'agriculture' but of course could be considered to impact the requirement of appropriate assessment.

Similarly, if required or as to enable a Declaration at local authority stage this provision as to exclude same could have been expressed in the determination or reference to 'other' relevant Regulations associated with Good Agricultural Practice could have equally been referred. It is not the purpose of the P&D Act to duplicate Waste Management or 'over-extend' or prejudice other applicable legislation.

It is important to note that the planning authority did determine in their planning assessment that environmental impact assessment does not apply in this case and as not limiting of Section 4 Exemptions.

### 3.2 The Prjudicial Consideration of Exemption by virtue of previous Section 34 Applications

The Planners Report states:

The Planning authority considers that the formation of an agricultural access at this location does not fall under the parameters of section 4(1)(a) of the Act.

Permission has previously been sought twice on the same lands, under planning Ref: PL18/6018 for *"part demolition of existing boundary and provision of an agricultural entrance (including pedestrian "wicker gate")* and PL 14/6231 *"The Development which will consist of provision of a gate to the above lands"*.

Both planning applications were refused on the basis that the proposed development would endanger public safety by reason of a traffic hazard and that the proposed development would seriously injure the amenities of residents in the vicinity.

We respectfully maintain that the Section 5 approach is neither prejudiced by the decision of the planning authority in this regard and the Applicant is not estopped from seeking exemptions under Section 4 (1) (a.) by virtue of any previous application(s) made under Section 34 of the P&D Act.

The Referrer considers that the works are exempted development and in accordance with the judgment of Fennelly J. in *Fingal County Council -v- William P. Keeling & Sons Ltd* is not estopped from pursuing same.

The issue of 'traffic hazard' is not a limitation on exemptions under Section 4 of the P&D Act. Additionally, and respectfully, as principally laid out above in Section 2.0, the standard of road design and layout for the existing estate was intentionally designed to facilitate adjacent residential zoned lands at the time and as could have supported upward of 190+ residential units and associated large service vehicles such as refuse trucks.

In this regard the Declarants (Westmeath County Council) **failed to assess the question on the formation of an access** as being consistent with the use of the lands for agriculture and have defaulted to Article 9 (*Restrictions on Exemptions*) associated with Article 6 Exemptions associated with the P&D Regs.

In this regard we seek the Board's consideration of *Section 4 (1) (a.)* of the P&D Act as *development consisting of* (and we add consistent with) *the use of any land for agriculture.*

We re-emphasise our contention that to 'use the lands' they must logically be accessible and serviceable and harvestable. The definition of agriculture refers; *or for the purpose of its use in the farming of land.* The current landholding being landlocked and to be appropriately used for the purposes of agriculture can rightfully be investigated, presented and explored seeking the available *Section 5 Declaration/Referral* approach to the relevant planning authority.

### 3.3 Current Referral omits reference to Class 9 of Schedule 2 P&D Act

We seek to amend the Referral by omission and reference to Class 9 of Schedule 2, as states:

*The construction, erection, renewal or replacement, other than within or bounding the curtilage of a house, of any gate or gateway.*

*The height of any such structure shall not exceed 2 metres.*

And whereby the *Planning Assessment* of the Planners Report states:

*Article 9(1)(a) of the Planning and Development Regulations 2001 as amended, provides that development to which article 6 relates shall not be exempted development for the purposes of the Act- if the carrying out of such development would -*

- *contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act*
- *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,*
- *endanger public safety by reason of traffic hazard or obstruction of road users, formation of an access*

*Accordingly, as the development to which this referral relates would consist of the formation of access to a public road where the surfaced carriageway exceeds 4 metres in width and which would endanger public safety by reason of a traffic hazard (ref. decisions on planning application 18/6018 and 14/6231) and the provision of a gate at this location would contravene a condition of the parent permission associated with the development of neighbouring lands and as such cannot qualify under Class 9 it is considered that this element is not exempt development*

We acknowledge that the planning authority have concluded that they are precluded from considering a Class 9, Schedule 2 'construction of a gateway' on the basis that such an access with very limited use it must be added would endanger public safety.

The Board may wish to pursue this consideration further, but our principal question relates to the formation of an access consistent with the use of agricultural lands under *Section 4 (1) (a.)* of the P&D Act.

It is presented that the nature and extent of any exempted access is neither precluded under the available use of the land for agriculture *under Section 4 (1) (a.)*, being that the only restrictions as applying to an access consistent with the use of the lands for agriculture can only be de-exempted by the potential that the access could represent the requiring of an Environmental Impact Assessment or an Appropriate Assessment. Neither of these limitations herein apply in this instance.

Any agricultural use and enabling of same by an access to provide consistent with the agricultural use of the lands, is in our opinion an allowable element of works, acknowledged as development but as not development requiring permission under the available exemptions under Section 4 (1) (a).

Our principal claim is that development consisting of the use of the land for agriculture (where an access consists of and is consistent with the use of the lands for the purposes of agriculture) is integral to allow for the purpose of the use of the land so occupied and to be so used for agriculture.

We are not seeking the use of 'a building' on the lands where a building might refer to allowable and exempted buildings associated with agricultural uses rather than the 'any building' or construction associated with a gated access.

### 3.4 The Non-Compliance of the Current Boundary with Condition No. 46 of WCC Reg. Ref: 99/1661

Just as a side point and not seeking to be relied upon by the Referrer, who is focusing their claim for exemptions associated with Section 4, is the issue of condition non-conformity or otherwise as a limiting factor under Article 6 Exemptions.

In this regard a reference is made in the *Planners Assessment* to the fact that the limitations applied to Class 9 development is also limited or restricted if it contravenes a condition or would be inconsistent with a condition of permission as applied under the P&D Act. In this regard Condition No. 46 of the residential development, as might be a relevant condition, refers:

*46. A screen wall of solid block construction 2 metres in height and suitably plastered or dashed and capped shall be erected along the entire perimeter of the development, prior to the first occupation of any dwelling which abuts this boundary.*

#### **Reason: In the interests of residential amenity**

The reason for the condition is to protect residential amenity. In this regard the nature of the boundary wall associated with residential amenity would herein be protected and unaffected.

However, interestingly the screen wall at the location under consideration is noted to be of a nature, form of construction and intention, to link with future development potential and neighbouring lands rather than the "solid block construction" referred to in the planning permission. We are not aware of anything on the planning register to suggest the boundary treatment is unauthorised in this regard and would rely that the specific nature and construction form in this location was to promote permeability to neighbouring lands.

### 3.5 Planning Authority has sufficient Information to Make an Adjudication on Section 4 (1) (e)

The question posed of the planning authority with regards as to; *whether the carrying out of works to the maintenance or improvement of a road by a local authority is development and is or is not exempted development*. The response of the planning authority in their Planning Assessment and Declaration being:

The planning authority considers that this question is not specific and is not supported by the necessary information to enable the Planning Authority to make a determination on this element of the referral.

Whilst we acknowledge the question in this regard was quite a general question, we would have respectfully considered that there would be legitimate expectation that the level of information and



detail was available to the planning authority and specifically where the planning authority in their assessment had referred and had regard to planning applications associated with previous refusals on the subject lands.

In effect, if the Declarant found that no exemptions existed for use or works consistent with agriculture (as involves enabling agriculture) would it then only be available for a planning authority with a role for a wider and balanced public interest in sustainable development and as might act in the interests of the common good, to utilise their powers as a public authority to undertake such works under Section 4 (1) (e.) of the P&D Act. Whereby, it refers:

*(e) development consisting of the carrying out by a local authority of any works required for the construction of a new road or the maintenance or improvement of a road;*

Ultimately, if the agricultural user cannot utilise the requisite exemptions maybe the local authority could be motivated to undertake such works. The Declaration on same would have provided further clarity in this regard.

The Referrer does not present that the local authority has an obligation to undertake such work(s) but would potentially if required. For example, if the lands were acquired by any public or local authority, for example to provide for housing or any civic amenity, open space or other use, they would no doubt be enabled to utilise the relevant Section of the Act.

#### 4.0 CONCLUDING COMMENTARY

We trust that the Board will find this referral in order, and we look forward to receipt of an acknowledgement at your earliest convenience.

We respectfully submit that the allowable use of the subject lands and proposed works consistent with that use fall within the scope of *Section 4(1) (a.)* and would accordingly constitute exempted development and the use of the lands for agriculture would not constitute a material change of use of the lands and would accordingly not constitute development.

The Board might also be enabled to confirm that the powers of a local authority to maintain, construct or improve the road network associated with providing access to the subject lands is within their remit and as exempted development under *Section 4 (1) (e.)*.

Please revert to us should you require further clarification in relation to any aspect of this referral and we look forward to an early and favourable decision.

Yours faithfully



Mark Brindley  
Principal  
The Planning Partnership



## APPENDIX A

### DECLARATION OF WESTMEATH COUNTY COUNCIL, DATED 6<sup>TH</sup> DECEMBER 2024





The Planning Partnership,  
The Bank Building,  
52 Oliver Plunkett Street,  
Mullingar,  
Co Westmeath

6 December 2024  
Our Ref: S5-46-24

**Re: Section 5 Declaration Your Client Eamon O'Rourke**

**Whereas** a question has arisen as to whether the formation of an agricultural access or the replacement of concrete post and concrete rail boundary by a gated access at Ardivaghan, Mullingar, Co. Westmeath is or is not development, and if it constitutes development, whether or not such development constitutes exempt development

Dear Sir/Madam,

Westmeath County Council has examined your application for a declaration under Section 5 of the Planning & Development Act 2000 as amended and has decided that the subject of your application constitutes development and **is not exempted development** for the reasons set out in the attached Schedule.

A Declaration made by the Planning Authority may be appealed to An Bord Pleanála with the required fee within four weeks of the date of the issuing of the Declaration in accordance with Section 5(3) (a) of the Planning & Development Act 2000 as amended.

Yours faithfully

Suzanne Cooke

Suzanne Cooke  
Staff Officer  
Planning Department

**Westmeath County Council**  
**Planning and Development Act 2000 (as amended)**

**Section 5 Declaration Reference S5-4 62024**

**WHEREAS** a question has arisen as to:

1. Whether the use of the subject lands for agriculture
2. Whether the formation of an agricultural access consists (or is consistent with) the use of the lands for agriculture under Section 4(1)(a) of the Act
3. Whether the current temporary boundary treatment of concrete post and concrete rail if replaced by a gated access boundary less than 2 metres in height conforms with Class 9
4. Whether the carrying out of works to the maintenance or improvement of a road by a local authority

at Ardivaghan, Mullingar, Co. Westmeath, is or is not development, and if it constitutes development, whether or not such development constitutes exempt development:

**AND WHEREAS** the said question is the subject of a request under Section 5 of the Planning and Development Act 2000 as amended.

**AND WHEREAS** Westmeath County Council, in considering this request, had regard particularly to –

- Sections 2, 3 and 4 of the Planning & Development Act, 2000 (as amended);
- Article 6 and 9 of the Planning & Development Regulations, 2001 (as amended);
- Class 9, Part 1 of Schedule 2 to the Planning and Development Regulations, 2001 (as amended),

**AND WHEREAS** Westmeath County Council having considered

- Question 1 - Whether the use of the subject lands for agriculture is development, and
- Question 4 - Whether the carrying out of works to the maintenance or improvement of a road by a local authority is development or exempted development

is satisfied that due to the lack of specific information and insufficiency of detail received in association with this request, to enable the Planning Authority to make a determination, the referral cannot be further considered by the Planning Authority.

**AND WHEREAS** Westmeath County Council in considering this request has concluded that:

- The formation of an agricultural access in association with the use of lands at Ardivaghan, Mullingar, Co. Westmeath for agriculture under Section 4(1)(a) of the Act, falls within the definition of 'development' under Section 3(1) of the Planning and Development Act 2000 (as amended) and that said development would consist of the formation of access to a public road where the surfaced carriageway exceeds 4 metres in width and that such access would endanger public safety by reason of a traffic hazard. Accordingly, such development is not exempt development having regard to the provision of Article 9(1)(a) of the Planning and Development Regulations 2001 (as amended).
- The current temporary boundary treatment of concrete post and concrete rail if replaced by a gated access boundary less than 2 metres in height does at Ardivaghan, Mullingar, Co. Westmeath does not conform with Class 9 of the Planning and Development Regulations 2001 (as amended) as the development would contravene a condition attached to a permission under the Act. The works are therefore considered development as defined by Section 3 of the Planning and Development Act 2000 (as amended) but not exempted development under Class 9 of the Planning and Development Regulations 2001 (as amended), Part 1 Schedule 2, or under Article 9(1)(a) of the Planning and Development Regulations 2001 (as amended).



**NOW THEREFORE** Westmeath County Council, in exercise of the powers conferred on it by Section 5 of the Planning & Development Act 2000 (as amended), hereby decides that works consisting of: the formation of an agricultural access or the replacement of concrete post and concrete rail boundary by a gated access at Ardivaghan, Mullingar, Co. Westmeath is 'Development' and is Not "Exempted Development".



## APPENDIX B

### SCHEDULE OF CONDITIONS ASSOCIATED WITH 99/1661



1. Subject to the conditions set out below the development shall be carried out strictly in accordance with plans and details submitted to the Planning Authority on the 23rd December 1999 and also on the 20<sup>th</sup> April 2000.

**Reason:** *In the interests of orderly development.*

2. This permission relates to the erection of 386 No. dwelling units and does not include the area referred to as A, B and C, commercial, retail and crèche unit and the same said area shall be subject to a future Planning Application.

**Reason:** *To avoid any misunderstanding as to the proper construction of this permission.*

3. Before any work on the proposed development commences, the applicant shall pay to Westmeath County Council the sum of £386,000 (Three Hundred and Eighty Six Thousand) as a contribution towards the cost incurred by the Council in providing piped public water supply/sewerage services which serves the site and other lands.

**Reason:** *These public facilities facilitate the proposed development and it is considered reasonable that the developer should contribute towards their cost.*

4. Prior to the commencement of development, the developer shall lodge with Westmeath County Council a cash deposit, a bond of an insurance company or other agreed security to the value of £386,000 (three hundred and eighty six thousand pounds) to secure the provision and maintenance until taken in charge by the said council of roads, footpaths and other services or parts of the development which the council may agree to take in charge coupled with an agreement empowering the said council to apply such security or part thereof for the satisfactory completion of maintenance as aforesaid for any part of the development.

**Reason:** *To ensure the satisfactory completion of the development.*

5. Prior to commencement of development, the developer shall pay a contribution of £800 per dwelling (Three Hundred and Eight Thousand, Eight Hundred Pounds) towards the cost of upgrading the foul and surface water networks and treatment works to cater for additional areas at Grange. This assessment is in line with current Service Land Initiative levies (additional) but may be reviewed when detailed estimates are prepared as part of Extension to Mullingar Drainage Areas and Waste Water Treatment Plant.

**Reason:** *These public facilities facilitate the proposed development and it is considered reasonable that the developer should contribute towards their cost.*



6. The Distributor Road running north to south across the site shall be set out and constructed by the developer to Westmeath County Councils alignment, design, cross section, phasing requirements and access to adjoining lands not in the ownership of the Applicant..

Prior to the commencement of development and pursuant to the terms of the Local Government (Planning and Development) Act 1963 the applicant shall enter into an agreement with Westmeath County Council to construct the roadway between chainages 500m and 1020m (or the northern boundary, whichever is furthest) inclusive. Said roadway shall be handed over to the Council when completed. The Distributor Road which forms part of this application shall be constructed to the specification of Westmeath County Council and Westmeath County Council may agree to offset part of the agreed costs of the construction of this Distributor Road against the development levies.

**Reason:** *In the interests of traffic safety, or orderly development and it is considered reasonable that the developer should contribute towards the cost of the provision of the Distributor Road.*

7. Prior to the commencement of any development on this site, details of phasing proposals shall be submitted and have obtained the written agreement of the Planning Authority. Infrastructural works required on foot of each agreed phase shall be completed prior to the occupation of the dwellings and also prior to the commencement of work on the next phase. Cognisance of the provision of the Distributor Road required on foot of condition No. 5 above shall be taken into account in the submission of the same said phasing proposals.

**Reason:** *In the interests of orderly development*

8. The pavement Construction Specification of the Distributor Road shall at a minimum provide for the following:

Material	Depth	Clause
HRA Wearing Course	45 mm	905
DBM Basecourse	110mm	902
Wetmix Macadam Roadbase	150mm	810
Subbase	250mm	804
Capping Layer	350mm (for subgrade CBR >2%)	616
Capping Layer	600mm (for subgrade CBR <2%)	616

Compaction of layers as per CI 705 for bituminous materials.

Compaction of layers as per CI 802 for granular materials.

Level tolerance and surface irregularity as per 700 series of DOE Specification for Roadworks.

**Reason:** *In the interests of orderly development.*

9. Prior to the commencement of the development the applicant shall submit a detailed design for the Distributor Road drainage for the written agreement of the Planning Authority.

**Reason:** *To avoid the creation of water hazard on the public road*

10. Longitudinal gradients and surface water drainage details of all access roads within the proposed development are to be submitted for the written agreement of the Planning Authority prior to the commencement of any development.  
The applicant shall ensure that at all side roads the gradient of the side road shall not be greater than 1:50 for a distance of 7 metres from its junction with the major access road. In general the longitudinal gradient of roads shall lie between 1:20 and 1:200.

**Reason:** *To avoid the creation of water hazard on the public road.*

11. (a) The major access roads are to consist of a 6 metre wide carriageway with two 1 metre wide grass margins with two 2 metre wide footpaths, total 12 metre width. The minor access roads are to consist of a minimum 5.5 metre wide carriageway with a 1 metre wide grass margin with a 2 metre wide footpath on the sides which have access to housing frontage. At all locations where a footpath is not necessary, a grass margin of 1 metre minimum width is to be provided. The width of some of the access roads has been shown in excess of 6 metres and this will require modification.

(b) Footpaths shall be constructed in 100 mm concrete 30N20 (minimum cement content 250kg/cu.m.) on 150 mm subbase with precast concrete kerbing. The footpaths to be dished and laid level at crossing points at junctions with tactile paving, the locations of which are to be agreed with the Planning Authority prior to the commencement of development.

**Reason:** *In the interests of traffic safety.*

12. Traffic calming measures shall be introduced onto the access roads such that the operating maximum target speed is reduced to less than 25 mph on the major access roads and 20 mph on the minor access roads. These measures may include inter alia speed control bends and/or vertical deflections in the form of raised pedestrian crossings. Details to be submitted for the written agreement of the Planning Authority. Furthermore the applicant is to submit details of 'contrasting material' which has been shown for the 5.5 metre wide roads around the neighborhood playlot areas.

**Reason:** *In the interests of pedestrian safety.*

13. Emergency vehicular links are to be provided to allow alternate one way access in the event of the principal means of access becoming blocked. This is required where only one access serves more than 50 dwellings. It is to have an unobstructed width of 3 metres minimum but may be normally designated as a footpath. Devices shall be provided to prevent its use by unauthorized vehicles (e.g. Lockable bollards).

**Reason:** *In the interests of public safety and orderly development.*

14. Revised detailed proposals of adequate forward visibility on the access roads shall be submitted for the written agreement of the Planning Authority prior to the commencement of any development.

The following table is provided as a guide to the applicant.

Radius of Curve	Speed Attenuation	Target Speed	Forward Visibility
30 metres		25mph	45 metres
20 metres		20mph	33 metres
15 metres		15mph	23 metres

In particular forward visibility shall be checked on the speed attenuation curves along the access roads parallel and adjacent to the proposed Mullingar Western Link Road in areas A and B along the access road outside house type B on the west side of Playlot C, along the access road outside house type B on the southwest side of Playlot H.

**Reason:** *In the interests of traffic safety.*

15. Prior to the commencement of development the applicant shall submit for the written agreement of the Planning Authority revised details of all horizontal curves on internal access roads to allow for the turning maneuvers of rigid vehicles (e.g. Refuse lorries, Oil Delivery Lorries). In particular the curves around the Playlot areas, on the speed attenuation curves along the access roads parallel and adjacent to the proposed Mullingar Western Link Road in areas A and B and along the access road outside house type B on the southwest side of Playlot H will require modification which may take the form of carriageway widening at these locations.

**Reason:** *In the interests of traffic safety.*

16. Prior to the commencement of any development on this site the applicant shall submit revised details of turning areas shown on the Site Plan which are below the minimum standard size shown in Figure A, page 100 of the County Development Plan. Furthermore a number of the turning areas do not make provision for the fact that housing accesses directly into them. The standard size needs to be increased in order to cater for the inevitability of car parking in the turning area where this situation arises. Revised details to be submitted for the written agreement of the Planning Authority.

**Reason:** *In the interests of orderly development and traffic safety.*

17. All internal junctions are to have Kerlin radii of 6 metres. This will involve modification of the submitted plans. Revised details to be submitted for the written agreement of the Planning Authority.

**Reason:** *In the interests of orderly development and traffic safety.*

18. The width of the access road which services the car parking spaces outside the Type D 2 Bedroom Clustered Housing in area B shall be increased to 6 metres.

**Reason:** *In the interest of orderly development and traffic safety.*

19. The layout of the internal roads shall be modified to incorporate:
  - minimum separation of 30 metres between all junctions measured centreline to centreline,

- avoidance of the cross road type junction layout on the major access road to area C.

This will involve modification of the submitted plans and revised details are to be submitted for the written agreement of the planning Authority prior to the commencement of any development on this site.

**Reason:** *In the interests orderly development and traffic safety.*

20. Public lighting within the development to be in accordance with the ESB's current "Public Lighting in Residential Areas", details of which are to be submitted to the Planning Authority.

**Reason:** *In the interests of traffic safety.*

21. All public services for the proposed development including electrical, television, telephone cables and equipment shall be located underground throughout the development and details of the same shall be submitted to Westmeath County Council for written agreement.

**Reason:** *In order to minimize the effects on amenity.*

22. All siteworks to be carried out in accordance with The Department of The Environment and Local Government publication 'Recommendations for Site Development Works for Housing Areas', November 1998.

**Reason:** *In the interests of orderly development.*

23. All internal roads and approach roads and junctions shall be marked and signed in accordance with the D.O.E. Traffic Signs Manual.

**Reason:** *In the interests of traffic safety.*

24. Typical road construction details shall be as follows (or similar approved):

**Main access road:**

Wearing course	45mm Hot Rolled Asphalt, clause 905 – DOE Spec. for Road Works
Base course	55mm Dense Bitumen Macadam, clause 902 – DOE Spec. for Road Works
Roadbase	60mm Dense Bitumen Macadam, clause 812 – DOE Spec. for Road Works
Sub-base	150mm Type B , clause 804 – DOE Spec. for Road Works

**Minor access road:**

Wearing course	25mm Dense Bitumen Macadam (10mm), clause 904 – DOE Spec. for Road Works
Base course	40mm Dense Bitumen Macadam (20mm), clause 902 – DOE Spec. for Road Works
Roadbase	80mm Dense Bitumen Macadam, (40mm), clause 812 – DOE Spec. for Road Works
Sub-base	150mm Type B , clause 804 – DOE Spec. for Road Works

The CBR and frost susceptibility of the subgrade shall be tested and the depth of the capping layer required in the both of the above cases (if any) shall be determined from the CBR results. Details of the above to be submitted to the Planning Authority prior to commencement of development on site.

**Reason:** *In the interests of traffic safety.*

25. Prior to the commencement of development revised proposals for modification of access roads shall be submitted for the written agreement of the Planning Authority.

**Reason:** *In the interests of traffic safety.*

26. Prior to the commencement of development revised proposals indicating, the access road shown at the middle of the southern boundary of area A and also for the 5 metre wide hatched area off the turning area to the south of plot D, shall be submitted for the written agreement of the Planning Authority.

**Reason:** *In the interests of pedestrian safety.*

27. The exact location of the entrances to the houses off the access roads shall be clearly identifiable at all locations. Entrances onto kerb radii at junctions shall not be permitted. Details of the location of all entrances to be submitted for the written agreement of the Planning Authority prior to the commencement of development.

**Reason:** *In the interests of orderly development and traffic safety.*

28. Surface water from the site shall not be allowed to flow on to the public road. All surface water shall be disposed of on site. Details of same shall be submitted to the Planning Authority for their approval.

**Reason:** *To avoid the creation of water hazard on the public road.*

29. The development shall be signposted and the roads marked in accordance with the D.O.E Traffic Signs Manual. Details to be agreed with the Planning Authority.

**Reason:** *In the interests of orderly development and traffic safety.*

30. Foul drains serving 2 No. or more houses shall be a minimum of 150mm in diameter.

**Reason:** *In the interests of proper sanitary services provision*

31. Foul sewer layout shall be in accordance with drawing numbers 99131-1, 2, 3, 4, 5, 20, 21, 22, 23, 24, 25.

**Reason:** *In the interests of proper sanitary services provision*

32. All foul sewers servicing more than one property shall be located on public space. Each house shall have its own individual connection to the main sewer. A

manhole shall be placed on the service pipe, within the house site, not more than 12 metres from the junction with the main foul sewer.

**Reason:** *In the interests of public health.*

33. Connection to public foul and surface water sewers shall be carried out to Sanitary Authority's specification

**Reason:** *In the interests of proper sanitary services provision.*

34. Only clean uncontaminated surface water shall be discharged to the surface water system. Only foul sewage shall be discharged to the foul sewerage system.

**Reason:** *In the interests of proper sanitary services provision and conservation of foul sewer capacity.*

35. Location and construction of surface water sewers and foul sewers shall be generally in accordance with drawing submitted, No's 99131-1, 2, 3, 4, 5, 10, 11, 12, 13, 14, 15, and to the satisfaction of the Planning Authority.

**Reason:** *In the interests of proper sanitary services provision.*

36. All surface water sewers servicing more than one house must be on public space. Each house shall have its own individual connection to the main surface water sewer. A manhole shall be placed on the service pipe, within the house site, not more than 12 metres from the junction with the main surface water sewer.

**Reason:** *In the interests of public health.*

37. Lockable type gully traps shall be utilised on all surface water drains to the satisfaction of the Planning Authority.

**Reason:** *In the interests of proper sanitary services provision.*

38. The developer shall provide and lay an 8" Class C uPVC or ductile iron watermain which shall be extended from the Horizon Ballroom to the existing take-off point of Greenpark Estate. This main shall be taken in charge by Westmeath County Council when construction is completed to the satisfaction of the Planning Authority.

Full design and construction details for the works to be carried out, shall be submitted to the Sanitary Authority for written agreement prior to the commencement of development.

**Reason:** *In the interests of proper sanitary services provision.*



39. Proposed watermain on site shall be Class C uPVC or ductile iron. uPVC shall be overlaid with a tape containing a tracer wire to the satisfaction of the Planning Authority. Layout of watermain shall be in accordance with Drawing Layout No's 99131-1, 2, 3, 4, 5.

*Reason: In the interests of proper sanitary services provision.*

40. Hydrants shall be screwdown type to B.S. 750 with 2½" round thread screwed outlets.

*Reason: In the interests of proper sanitary services provision.*

41. Domestic Control Units shall be installed on all water service connections in accordance with Westmeath County Council specification. Said units shall be located outside the curtilage of each individual housing site. The sequence shall be as follows:

Watermain → Control Unit → Non-Return Valve → Stopcock → House

*Reason: In the interests of public health.*

42. (A) A 100mm dia. A.B.B. magmaster water meter with radio transmitter suitable for linking to Westmeath County Council Telemetry System shall be installed on 150mm watermain near take-off point at location to be approved by the Sanitary Authority. Chamber with minimum internal dimensions to be agreed shall be constructed to house the meter and installation to be in accordance with Sanitary Authority.

(B) Dead ends shall not be permitted.

(C) The main shall be looped within the site.

*Reason: In the interests of public health.*

43. On completion of the development the developer shall provide the following:
- (1) Details of water and air tests carried out on sewer.
  - (2) Infiltration test for manholes.
  - (3) CCTV survey including location map and condition report.
  - (4) Record drawing of all underground services including SUS 25 sewer survey.

All of above to be certified by a chartered Civil Engineer with professional indemnity insurance.

*Reason: In the interests of proper sanitary services provision.*

44. Any damage to the surrounding public road to be made good to the satisfaction of the Planning Authority.

*Reason: In the interests of public safety and orderly development.*

45. (A) Prior to the occupation of the proposed development a detailed landscaping scheme to include areas to be grassed and planted, proposed tree and shrub species and timetable for implementation shall be submitted to the Planning Authority for written agreement.

(B) Such scheme shall clearly identify all areas which are to be designated as public open space and all such areas shall, when developed in accordance with the scheme, be made available for the continuous use and enjoyment of the residents of the estate and shall be enclosed or fenced off in any way or sold or transferred to any individual house owner.

(D) All designated green areas shall be covered in 9 inches of topsoil which shall be picked free of stones and seeded.

(E) Prior to the commencement of development the developer shall submit proposals for the provision and maintenance of litterbins through out the entire development for the written agreement of the Planning Authority.

**Reason:** *In order to secure the provision of adequate amenities for the residents of the estate.*

46. A screen wall of solid block construction 2 metres in height and suitably plastered or dashed and capped shall be erected along the entire perimeter of the development, prior to the first occupation of any dwelling which abuts this boundary.

**Reason:** *In the interests of residential amenity.*

47. (A) Prior to the commencement of development samples of external finish and roofing material shall be agreed in writing with the planning Authority. The external finishes of the proposed dwellings shall consist of either entirely nap plaster finish or entirely brick and not a mixture.

(B) All walls shall be uniformly finished externally and shall match the proposed buildings in finish and colour.

**Reason:** *In the interests of orderly development.*

48. All services shall be provided and laid in accordance with "Recommendations for Site Development Works in Housing Areas", published by An Foras Forbartha.

**Reason:** *In the interests of proper sanitary services provision.*

(A) The public road shall be kept clean at all times during the construction phase of the proposed development.

(B) Prior to the commencement of development, detailed proposals for wheel washing facilities shall be submitted for the written agreement of the Planning Authority.

**Reason:** *In the interests of public safety and to avoid creation of water hazard on the public road.*

49. No signs, symbols, nameplates or advertisements shall be erected on the premises without the prior Approval of the Planning Authority whether or not such development would constitute exempted development under the Local Government (Planning and Development) Regulations, 1994 as amended.

**Reason:** *In the interests of the visual amenity of the area*

50. The developer shall notify the Planning Authority in writing of the commencement date of development works at least fourteen days before any development is commenced.

**Reason:** *To maintain proper planning control over the development*

**APPENDIX C**

WAYLEAVE AGREEMENT DATED, 13<sup>TH</sup> MAY 2011



LAND REGISTRY

COUNTY WESTMEATH

FOLIO 4042F

FOLIO 4025F

FOLIO 24623F

THIS AGREEMENT is made the 13 day of MAY 2011

**A. Definitions**

In this Agreement and the several schedules hereto:-

- i) "The Conduits" means pipes, drains, sewers, ducts, mains, wires, cables and other conducting media.
- ii) "The Dominant Premises" means the entire of the property comprised in Folio 24623F of the Register County Westmeath.
- iii) "the Grantor" means **ARDLEIGH DEVELOPMENTS LIMITED** (registration number 197781) having its registered office at Riverview Business Centre, Dublin Road, Celbridge, County Kildare which expression shall include their executors, administrators and assigns / successors and assigns
- iv) "the Grantees" mean **Eamonn O'Rourke, P J Monaghan, Tommy Murray and Denis Kavanagh** of Burnell Square, Northern Cross, Malahide Road, Dublin 17 which expression shall include their executors, administrators and assigns;
- v) "the Local Authority" means Westmeath County Council or such other Statutory Body as is empowered to deal with the functions of the issuing of inter alia planning permissions for the Dominant Premises.
- vi) "the Permission" means such planning permission or permissions that the Grantees shall obtain from the Local Authority in respect of the Dominant Premises at any time.
- vii) "the Servient Premises" means the entire of the property comprised in Folios 4042F and 4025F County Westmeath.
- viii) "Statutory Utilities Provider" means the owners or installers of conduits or utilities either private or semi-public.
- ix) "the Utilities" means water, soil and waste of all kinds, gas, electricity, communication and data transmission lines.

B (i) the Grantor is the registered beneficial owner of the lands more



particularly comprised in the Servient Premises.

- (ii) the Grantees are the registered beneficial owners of the Dominant Premises.
- (iii) the Grantees intend to apply to the Local Authority for permission to construct a residential development on the Dominant Premises ("the Permission").
- (iv) In order to facilitate the development the Grantor and the Grantees have entered into this Agreement so that the Grantees can avail of certain easements, rights and privileges over the Servient Premises as more particularly set out in paragraph C (a) (i) – (xii) and further that the Grantor will enter into certain covenants and conditions in relation to the Servient Premises as are more particularly set out in paragraph D (i) – (iv).
- (v) The Grantees shall pay to the Grantors the sum of €10.00 as consideration for the easements, rights and privileges granted and covenants hereinafter contained.

C. In consideration of the payment of €10 (ten euros) by the Grantees to the Grantor (the receipt of which the Grantor acknowledges) the Grantor hereby agrees as follows:-

- a) the Grantor, the registered owner as beneficial owner of the Servient Premises hereby grants to the Grantees their successors and assigns, and the owners for the time being of the Dominant Premises full right and liberty for the Grantees their successors and assigns and their servants, agents, workmen, licensees, invitees, tenants and undertenants and the owners and occupiers of the Dominant Premises and each and every part thereof in common with the Grantor and all other persons who have or may hereafter have the like right:-
  - (i) The free and uninterrupted right to pass and repass over all roads and footpaths now laid and coloured yellow on the map attached hereto or to be laid at any time in, under, on or over the Servient Premises or any part thereof and to and from the Dominant Premises to the public road known as the C Ring Road at all times by day and by night on foot and with all manner of motor vehicles for all purposes connected with the construction work associated with the development of the Dominant Premises in accordance with the Permission and for the use and enjoyment of the Dominant Premises and each and every part thereof;

- (ii) at any time to enter upon the Servient Premises and to lay and construct beneath the surface of the Servient Premises along that portion of the route coloured yellow on the map attached hereto and marked "X"- "Y" and along such other routes as shall be required by the Planning Permission or Statutory Utilities Provider or as shall be laid at any time such Conduits together with all necessary manholes as shall be required for the development of the Dominant Premises, all such work to be carried out in a good and workmanlike manner and to the reasonable satisfaction of the local, sanitary or other competent authority and for these purposes to enter into and upon such portion of the Servient Premises restoring the surface of the Servient Premises on completion of such works;
- (iii) the free passage and running to and from the Dominant Premises and each and every part thereof of the Utilities through the Conduits now in, under, on or over or at any time to be laid in, under or over the Servient Premises or any part thereof;
- (iv) to connect up with and to inspect, cleanse, repair and renew the Conduits and enter upon the Servient Premises upon reasonable notice (except in the case of emergency) with workmen and others and all necessary equipment and remain there for such reasonable time as is necessary for the purposes of inspecting, cleansing, repairing and renewing the Conduits making good any damage thereby occasioned to the satisfaction of the Grantor and its architect and engineer provided however that the Grantee shall not be required to put the Servient Premises into any better state of repair or condition than it currently was in prior to the carrying out of the works contemplated by this Agreement or to such standard of repair and condition as shall be required by the Permission but not being responsible for any temporary inconvenience or temporary damage caused by such works,
- (v) to construct such additional roadways and footpaths as are required to connect the Southern boundary of the Dominant Premises to the Servient Premises through the existing roads and footpaths on the Servient Premises and such other roads and footpaths as shall be constructed by the Grantor on the Servient Premises at any time or as shall be required by the Local Authority or the Permission to permit the Grantees to develop the Dominant Premises;
- (vi) to extend the existing roads and footpaths on the Servient Premises and to demolish where appropriate the boundary wall between the Dominant Premises and the Servient Premises and construct and lay out such revised

boundary treatments as shall be required to facilitate the development of the Dominant Premises pursuant to the Permission;

- (vii) to construct and install traffic calming measures including but not limited to curb realignment, raised junction platforms, traffic islands, white lining and road markings within the areas identified on the map attached hereto and highlighted in blue hatched lines thereon;
- (viii) to upgrade the existing water service pipe between house numbers 69 and 79 as outlined with a green hatched line on the map attached hereto to facilitate the increase in water demand from the Dominant Premises provided that it is under the existing roadway or such roadway as shall be constructed at any time;
- (ix) upgrade the existing 150 mm diameter foul water sewer between house numbers 69 and 77 as detailed on the map and carry out such further upgrades and extensions as are required by the Permission provided that it is under the existing roadway or such roadway as shall be constructed at any time;
- (x) to carry out such further additional works and measures as shall be required pursuant to any planning permission obtained by the Grantees for the development of the Dominant Premises at any time;
- (xi) to carry out such further works at the sole cost and expense of the Grantee as shall be required by the Local Authority in respect of the Permission relating to the development of the Dominant Premises insofar as they relate to the Servient Premises whereby the existing roads, footpaths and services may be required to be upgraded to permit the development contemplated under the Permission
- (xii) to lay a pedestrian walkway, roadway and footpath over the culvert running from the North Eastern boundary of the Servient Premises to the C Ring Road.

D. The Grantor covenants with the Grantees as follows:-

- (i) that for the consideration hereinbefore recited that the Grantor confirms that the easements, rights and privileges granted are exclusive to the Grantees over the roads, footpaths and services including but not limited to the Conduits and the Utilities and that the Grantor will not grant similar rights to any third party adjoining owner without the consent of the Grantees; and

- (ii) that the Servient Premises shall not be offered to Westmeath County Council or the relevant Local Authority then having charge of roads, footpaths and services without the consent of the Grantees; and
- (iii) that subsequent to the development of the Dominant Premises the Grantor will be responsible for the maintenance and repair of the roads, footpaths, Conduits and Utilities and the Grantor and the Grantee shall discharge such costs and the costs of maintaining and insuring them pro rata to the number of residential units in the Dominant Premises and the Servient Premises or if none in the Servient Premises in the existing Ardilaun Estate owned by Ardleigh Developments Limited.
- (iv) The Grantor hereby covenants that it will not either directly or through any of its servants, agents, shareholders, licensees or any other connected party lodge or make any objection to the Grantee's application for the Permission.

E. The Grantees covenant with the Grantor as follows:-

- (i) that for so long as the Grantees are utilising the Utilities and Conduits in the Servient Premises and they have not been taken in charge by the Local Authority or is undertaken by a Statutory Utilities Provider the Grantees shall indemnify the Grantor in respect of any actions, costs, claims, losses, expenses, demands, proceedings, damages or liabilities whatsoever or howsoever arising in respect of any injury or death to any person or damage to any property directly attributable to the development of the Dominant Premises and the Conduits and Utilities on the Servient Premises exclusively by the Grantees;
- (ii) ensure that any contractor used by the Grantees arranges and maintains all risks insurance on the development of the Dominant Premises and any works being carried out on the Servient Premises including but not limited to works connecting to, improving or upgrading the Conduits and Utilities;
- (iii) ensure that its contractors arrange and maintain employers liability and public liability insurance in accordance with the provisions of the building contracts to be entered into and that such insurance has been extended to provide an indemnity to the Grantors in a similar manner to that being provided to the Grantees under the provisions of their respective building contracts;
- (iv) furnish to the Grantor a copy of the insurance policy or policies or such other evidence as may be required from time to time (including receipts for

insurance premiums payments and evidence of renewal) in order to prove compliance with the aforesaid obligations;

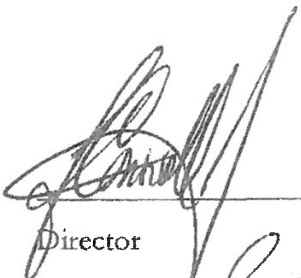
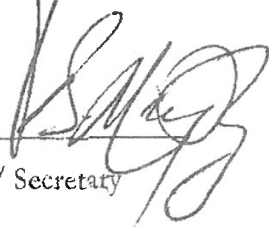
- (v) the Grantees are seeking permission for 214 residential units in their current application for Permission from the Local Authority. On the basis of the current planning advice being furnished to the Grantees they have been advised to ensure that they have an entitlement to utilise all three of the roadways coloured yellow on the map annexed hereto and marked with the letters "X" - "Y", "V" - "W" and "T" - "U". In the event that Permission is granted for not less than 214 units on the Servient Premises and the Local Authority consent to the use of a single limb of the spine roads in the estate being the route marked "X" - "Y" the Grantees shall release their easements, rights and privileges over the routes marked "V" - "W" and "T" - "U". In the event that the initial permission is for a density of less than 214 residential units on the Dominant Premises then the Grantees shall be entitled at any time to apply for such further permissions as they shall require to complete the development of the Dominant Premises and until such time as planning has been obtained for not less than a total of 214 residential units on the entire of the Dominant Premises then the easements, rights and privileges over the entire of the Estates, roadways, footpaths, Conduits and Utilities shall remain in full force and effect in favour of the Grantees.

- F. The Grantor hereby assents to the registration of the easements, rights, privileges and covenants specified in clauses C (a) (i)-(xii) and D (i) - (iv) as burdens on the Servient Premises and to the use of Land Certificates for Folios 4042F and 4025F of the Register County Westmeath for the purposes of such registration.

**IT IS HEREBY CERTIFIED** that Section 29 (conveyance on sale combined with building agreement for dwellinghouse / apartment) of the Stamp Duties Consolidation Act 1999 does not apply to this instrument

**IT IS HEREBY FURTHER CERTIFIED** that Section 29 of the Companies (Amendment) Act 1990 that the Grantor and the Grantees are not bodies corporate connected with one another in a manner which would require this transaction to be ratified by a resolution of either.

The Common Seal of  
**Ardleigh Developments Limited**  
Was affixed to this Deed and this Deed  
was Delivered

  
\_\_\_\_\_  
Director  
  
\_\_\_\_\_  
Director / Secretary

**SIGNED** as a Deed and Delivered

By **Eamonn O'Rourke**


In the presence of

Witnesse's Signature

Witnesse's Name

Witnesse's Occupation

Witnesse's Address

X   
\_\_\_\_\_  
**Eamonn O'Rourke**

**SIGNED** as a Deed and Delivered

By **P. J. Monaghan**

In the presence of

Witnesse's Signature

Witnesse's Name

Witnesse's Occupation

Witnesse's Address

  
\_\_\_\_\_  
**P. J. Monaghan**

**SIGNED** as a Deed and Delivered

By **Tommy Murray**

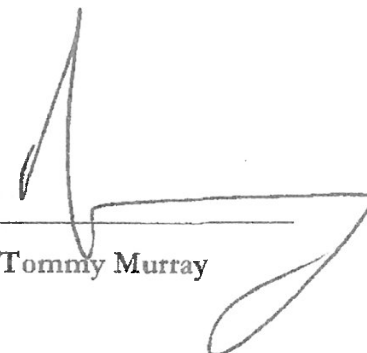
In the presence of

Witnesse's Signature

Witnesse's Name

Witnesse's Occupation

Witnesse's Address

  
\_\_\_\_\_  
**Tommy Murray**

**SIGNED** as a Deed and Delivered



By **Denis Kavanagh**

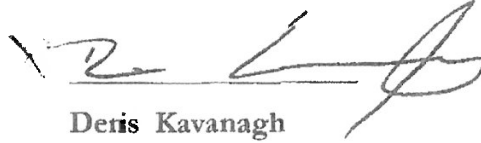
In the presence of

Witness's Signature

Witness's Name

Witness's Occupation

Witness's Address



**Denis Kavanagh**

LAND REGISTRY

COUNTY WESTMEATH

FOLIO 4042F

FOLIO 4025F

FOLIO 24623F

Ardleigh Developments Limited

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Grantor

Eamonn O'Rourke, P J Monaghan, Tommy Murray and Denis Kavanagh

---

Grantees

WAYLEAVE AGREEMENT

P J O' Driscoll & Sons

Solicitors,

73, South Mall,

Cork

Ref: JF.BK.ROU11.39/1053804



This map should be read in conjunction with the folio.

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(centre-line of parcel(s) edged)

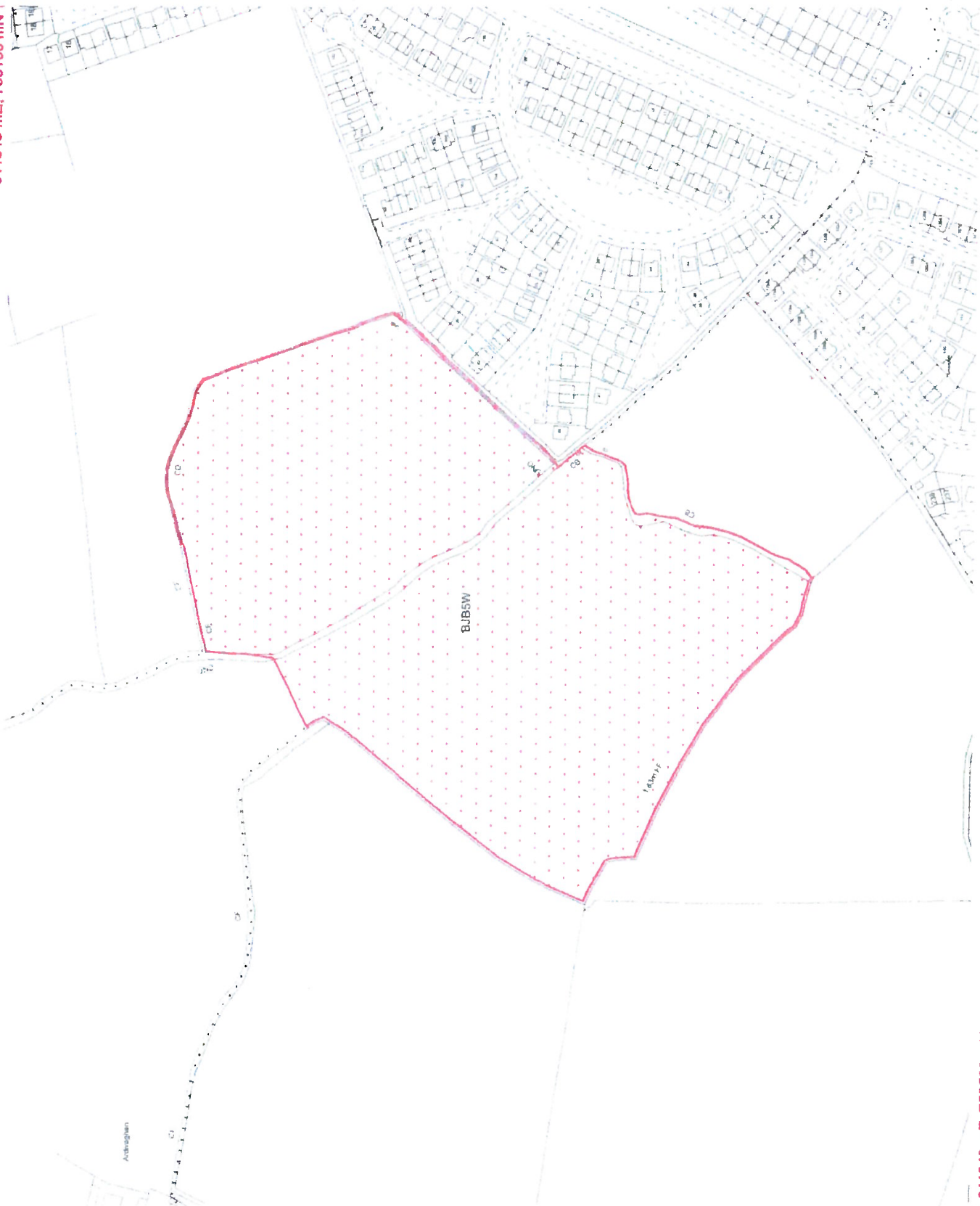
- Freehold
- Leasehold
- SubLeasehold

Burdens (may not all be represented on map)

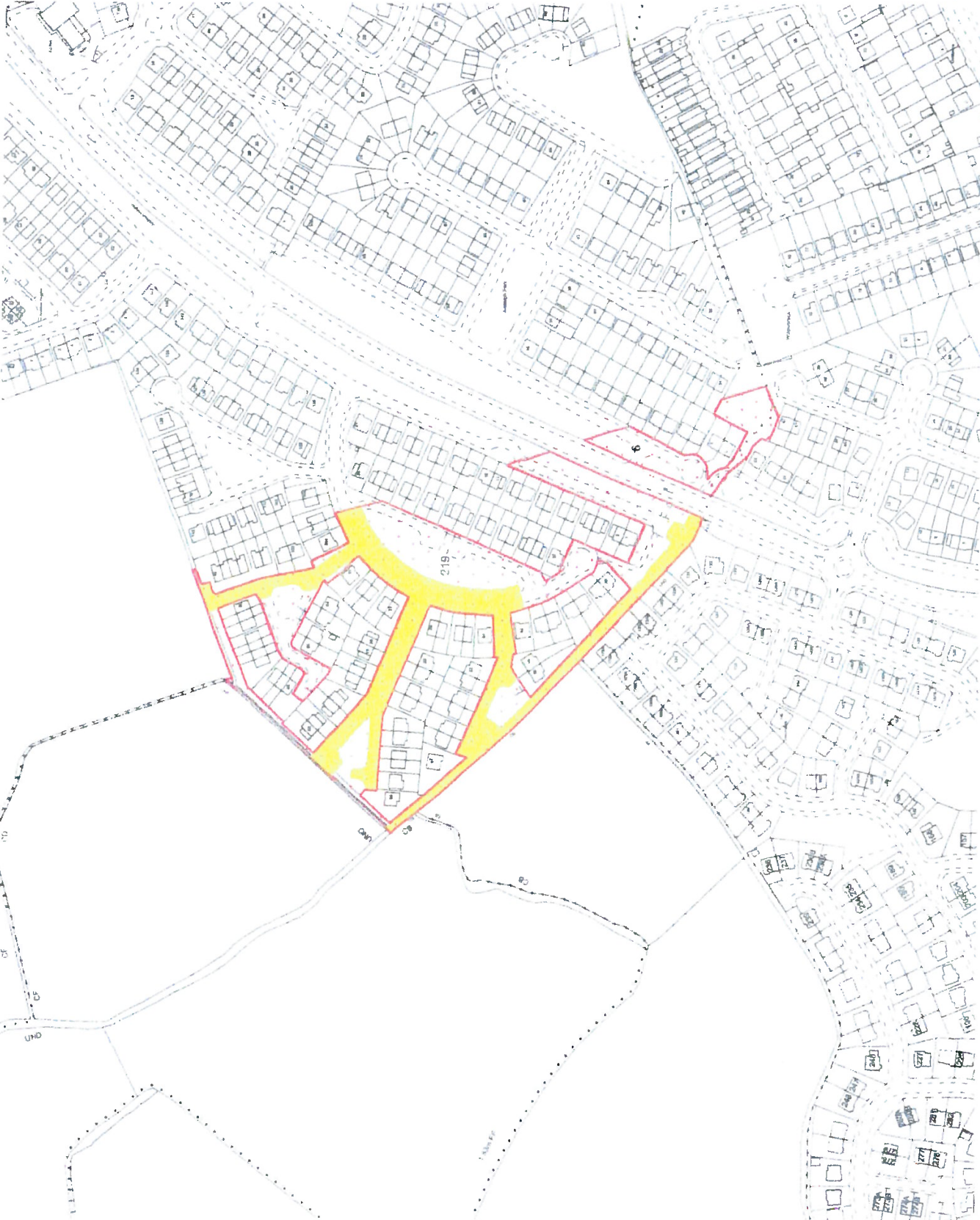
- Right of Way / Wayleave
- Turbary
- Pipeline
- Well
- Pump
- Septic Tank
- Soak Pit

A full list of burdens and their symbology can be found at: [www.landdirect.ie](http://www.landdirect.ie)

**The registry operates a non-conclusive boundary system. The Registry Map identifies properties not boundaries meaning neither the description of land in a register nor its identification by reference to a registry map is conclusive as to the boundaries or extent.** (see Section 85 of the Registration of Title Act, 1964). As inserted by Section 62 of the Registration of Deed and Title Act 2006







This map should be read in conjunction with the folio.

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- (centre line of parcel(s) edged)
- Freehold
  - Leasehold
  - SubLeasehold
- Burdens (may not all be represented on map)
- Right of Way / Wayleave
  - Turbary
  - Pipeline
  - Well
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The Property  
Registration Authority  
An tÚdarás  
Clárúcháin Maoin  
Folio: WH4042F



This map should be read in conjunction with the folio

Registry maps are based on OSI topographic mapping. Where registry maps are printed at a scale that is larger than the OSI published scale, accuracy is limited to that of the original OSI map scale.

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(centre-line of parcel(s) edged)

- Freehold
- Leasehold
- SubLeasehold

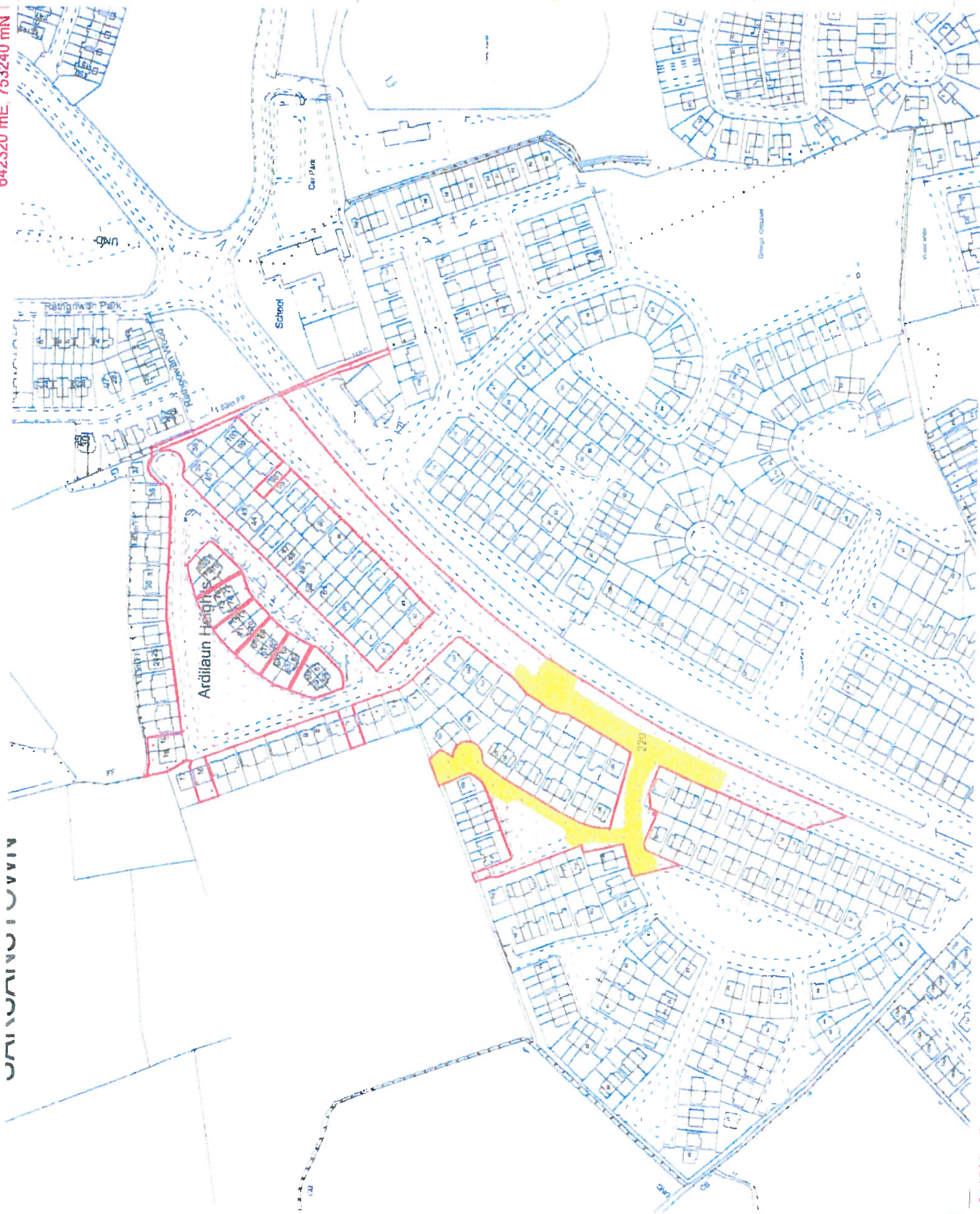
Burdens (may not all be represented on map)

- Right of Way / Wayleave
- Turbary
- Pipeline
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1:2500 Scale







## APPENDIX D

### SECTION 5 DECLARATION COVER LETTER DATED, 11<sup>TH</sup> NOVEMBER 2024





Principal Officer  
Planning Department  
Westmeath County Council  
County Buildings  
Mount Street  
Mullingar  
Co. Westmeath

Monday, 11<sup>th</sup> November 2024  
[By hand]

## -: SECTION 5 DECLARATION :-

Dear Sir/Madam,

**RE: SECTION 5 DECLARATION IN RELATION TO AGRICULTURAL USE OF LAND PARCEL AT ARDIVAGHAN TOWNLAND, MULLINGAR, CO. WESTMEATH**

### 1.0 INTRODUCTION

#### 1.1 Purpose of this Section 5 Referral – Use of Lands for Agricultural Purposes

*The Planning Partnership*, The Bank Building, 52 Oliver Plunkett Street, Mullingar, Co. Westmeath acting on behalf of Mr. Eamonn O'Rourke (owner of the subject lands), 55 Howth Lodge, Howth, Dublin 13, hereby seeks a 'declaration' from Westmeath County Council under Section 5 of the *Planning and Development Acts, 2000 – 2024*, **P&D Act** hereafter.

The nature of the proposed activities and use of the lands are detailed below along with our professional planning opinion regarding the status of same all supported by the provision of the considered requisite information and the appropriate fee of €80.00.

The purpose of this request for a declaration is to confirm our understanding that no act of development would occur in respect of the following items:

- the use of any land for agricultural purposes, and
- development consisting of (or consistent with) the use of the land for agricultural purposes.

In effect, we are principally seeking to confirm that the use of the lands for an agricultural use are unrestricted for the purposes of agriculture and as such the formation of an access to enable the use of the lands for the purposes of agriculture are similarly unconstrained and as such are also exempted development.

We herein present the 'declaration' to allow the use for the purposes of agriculture as normally exempted under **Section 4 (1)(a.)** (agriculture has a wide meaning and definition in the Act) and unrestricted by the Articles as constrain exempted development under the P&D Regs (Article 9).

The definition of agriculture in the **P&D Act** refers:

*"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;*

Additional provisions exist under the *Planning & Development Regulations 2001-2024*, **P&D Regs.** hereafter, make provision for *Sundry Works – Class 9*, for:

*The construction, erection, renewal or replacement, other than within or bounding the curtilage of a house, of any gate or gateway.*

Limitations present that the height of any such structure shall not exceed 2 metres and where restrictions on exemptions under *Article 9* may similarly apply as includes any endangerment to public safety by reason of traffic hazard.

## 1.2 Clarification of Question(s) Posed

The first question posed relates to:

**'whether the use of the subject lands for agriculture is development'**

and if considered development,

**'whether it is development requiring permission or whether it is exempted development under Section 4 (1) (a) of the Act'**

and that being:

*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 the land so used*

The second question posed relates to:

**'whether the formation of an agricultural access consists (or is consistent with) the use of the lands for agriculture and is exempted development under Section 4 (1) (a) of the Act'**

and that being:

*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 the land so used*

Furthermore, the establishment of an agricultural access does not prescribe the scale width and type of access gate be it pedestrian or vehicular.

The third question being posed is that if considered that the formation of an agricultural access under Section 4 (1) (a.) fails the test under *Section 4* then can it qualify under *Class 9*, of *Schedule 2* of the **P&D Regs** that being:

*The construction, erection, renewal or replacement, other than within or bounding the curtilage of a house, of any gate or gateway.*

*The height of any such structure shall not exceed 2 metres.*

And as supplementary to this point:

*"if the current temporary boundary treatment of concrete post and concrete rail is replaced by a gated access boundary less than 2 metres in height does this conform with Class 9."*

Finally, the fourth question being:

*'whether the carrying out of works to the maintenance or improvement of a road by a local authority is development or exempted development.'*

And that being works carried out under Section 4 (1) (e.) as follows:

*(e) development consisting of the carrying out by a local authority of any works required for the construction of a new road or the maintenance or improvement of a road*

### 1.3 Definitions

**Development** for the purposes of the Act is referred under Section 3 (1) as:

*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*

**Exempted Development** is referred under Section 4 (1) as:

*(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;*

*e) development consisting of the carrying out by a local authority of any works required for the construction of a new road or the maintenance or improvement of a road*

**Agriculture** is so defined under Section 2 'Interpretation' as:

*'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*

**Section 4(4) of the P&D Act** limits the exemptions available under 4(1) (a.) as follows:

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

**Article 6 of the P&D Regs** reads as follows:

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.*

#### 14 Summary of Opinion

In this regard and associated with a Section 5 Declaration process we wish to explore; that the use of the lands for agriculture being exempted as involves; 'the use of the land', infers that any development associated with the use of the land for agriculture i.e. field boundary, maintenance, introduction of water supply and services, any openings, gates etc. is an associated exemption in terms of use of the land for agriculture.

To 'use the lands' they must logically be accessible and serviceable and have stable. The definition of agriculture refers; *or for the purpose of its use in the farming of land*. The current landholding being landlocked and to be appropriately used for the purposes of agriculture can rightfully be investigated, presented and explored seeking the available *Section 5 Declaration* approach to the planning authority.

As well as exemptions available to landowners additionally, **exemptions are applicable to planning authorities** in the carrying out of their duties. In this regard and in respect of the proper planning and sustainable development, access to lands should not be unfairly prejudiced particularly where access is available from a public road.

Would the local planning authority in the carrying out of their duties in respect of a roads and planning authority reflecting the objectives and policies developed and presented within their development plan to increase linkages, accessibility and connectivity be encouraged to undertake exempted development under (e.) *improvement of a road* or (f.) *in its capacity as a planning authority* (referred above).

The previous decision of the planning authority (18/6018) has, we believe, unintentionally landlocked the O'Rourke lands whereas the intentions presented from our file search in association with WCC planning application register reference 99/1661 and the 'Taking in Charge' documents of 2011 established that the residential access spur was designed to be constructed hard to the boundary to remove any so called 'ransom' strips (as could logically be deduced but where no written reports on planning file are available) and as incorporated in a re-design during the application process as could further be logically considered and expressed to allow for unfettered access.

The nature and type of boundary erected at the subject location is intentionally temporary in nature i.e. concrete post and rail and not permanent block built as per other boundary structures to the perimeter of the neighbouring residential estate as suggests the enabling opportunity for access and linkage.

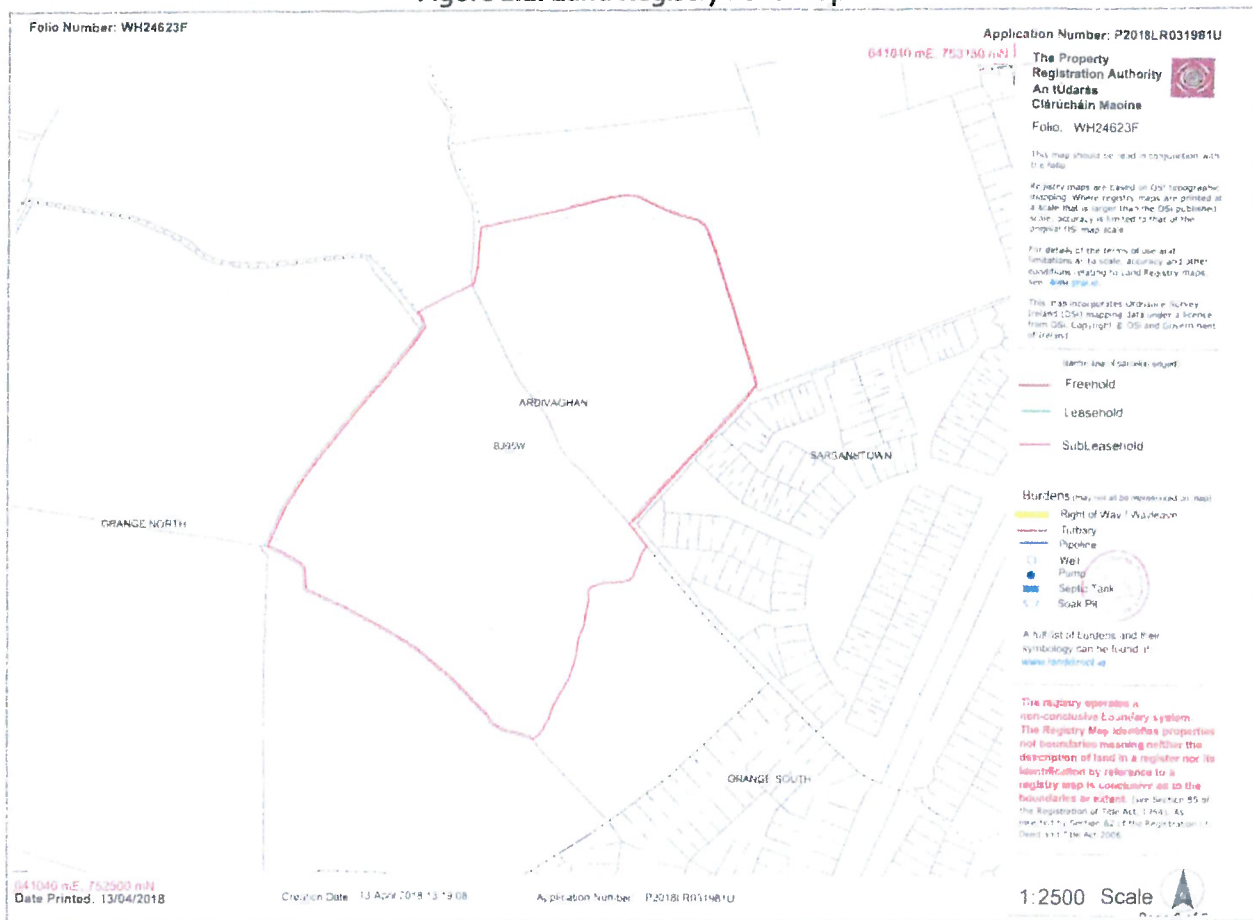
The planning authority in this respect have the ability, in our considered opinion, to undertake works as exempted development to facilitate the original intentions of connectivity and permeability and now enhanced by plan policies and objectives associated with same.

For example, Section 7.6.3 of the *WCDP 2021-2027* refers to available *URD Funding* for active land management of improved infrastructure for accessibility. *Housing Layout and Design* Section 3.8: *A good development creates a 'sense of place' and community belonging to the residents. This is created by providing ..... connectivity of the site to other places.*



## 2.0 SITE LOCATION AND DEVELOPMENT CONTEXT FOR PURPOSES OF THE SECTION 5

Figure 2.1: Land Registry Folio Map



Source: Eamonn O'Rourke – Reproduced under The Planning Partnership OS Licence No.: CYAL50365403

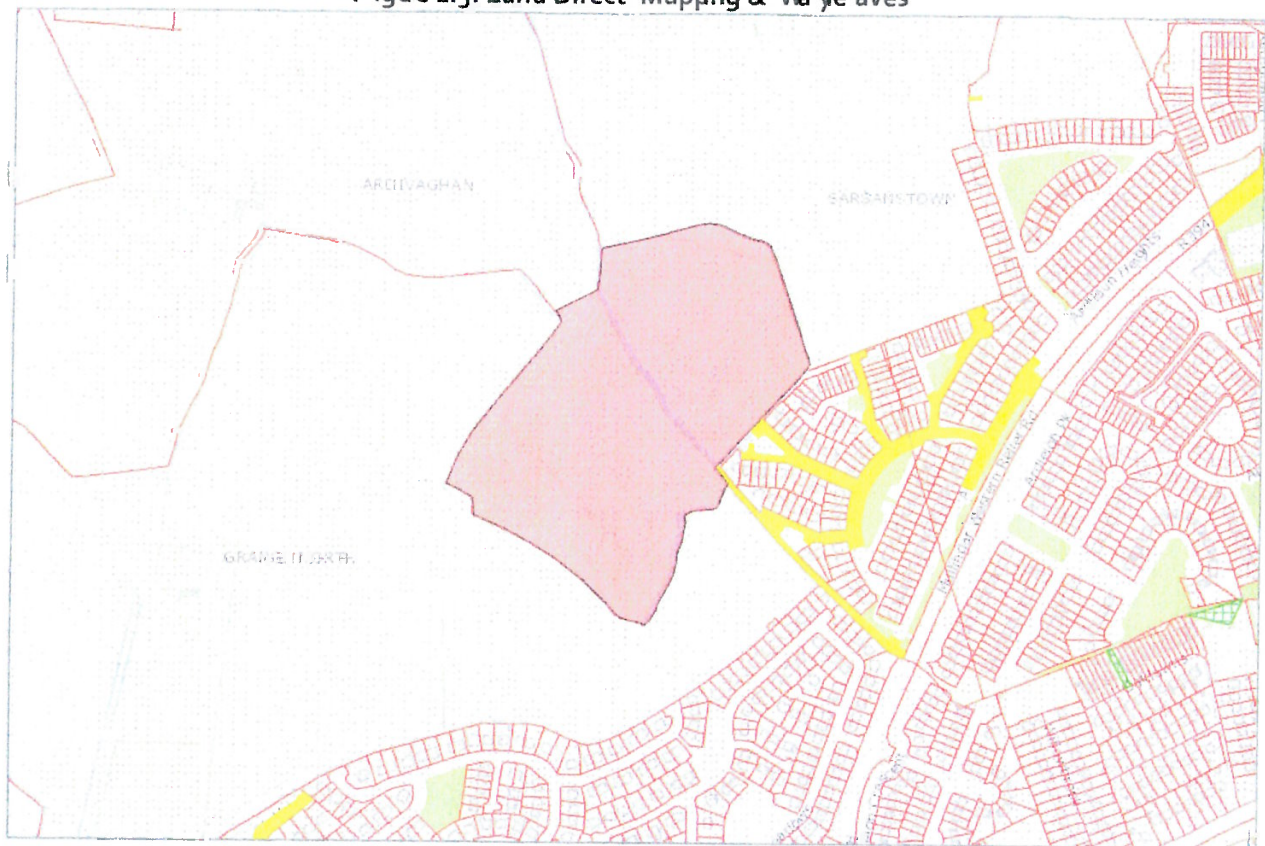
Figure 2.2: Aerial Photograph



Source: ArcGIS by ESRI under licence to The Planning Partnership



Figure 2.3: Land Direct Mapping &amp; Wayleaves



Source: [www.landdirect.ie](http://www.landdirect.ie)

## 2.1 Land to which the Referral Relates

The land parcel and landholding as highlighted and indicated above represents a land parcel previously zoned for proposed residential development in 2 no. successive development plans the *Mullingar Local Area Plans 2002-2008 & 2008-2014*. The fields represented at that time agricultural lands to the west of the town and provided the intended and natural extension to the Ardilaun Green residential estate.

Plate 2.1: Ardilaun Green – O'Rourke Lands due West



The boundary treatment associated with the presented landholding as indicated in Plate 2.1 above is not of permanent structure and the tarmacadam access road (a public road being taken in charge) is hard to the boundary and does not present a ransom strip.

The intentions of the planning authority at the time of making the originating planning decision in association with the 1999 planning application are clear and evident so as not to prejudice future access rights of neighbouring landholdings, be they for future development or continued use for agriculture and be that pedestrian or vehicular.

The access roads from R394 (Western C-Link) as complying with roads design standards for refuse trucks and emergency fire tender access are constructed for two way passing traffic with separated footpath and active transportation routes.

### 3.0 WHETHER THE WORKS CONSTITUTE EXEMPTED DEVELOPMENT

The access and use of the subject lands for 'agriculture' as '*includes horticulture, fruit growing, seed growing, ..... meadow land, market gardens and nursery grounds*', can be presented as an agricultural use falling under the terms of **Section 4 (1) (a)** of the **P&D Act**.

Eamonn O'Rourke seeks a declaration from Westmeath County Council in respect of whether the formation of an entrance (be it pedestrian / vehicle or both) from an agricultural tract of land onto the local public road network as includes pedestrian and vehicle carriageways, within the townland of Ardivaghan and the installation of associated gate structure(s) on or near the front boundary of this land, is or is not development or is or is not exempted development.

#### 3.1 The Nature and Extent of the Access – No expressed limitations under Section 4

It is presented that the nature and extent of any exempted access is neither precluded under the available use of the land for agriculture *under Section 4 (1) (a.)*, being that the only restrictions as applying to an access consistent with the use of the lands for agriculture can only be de-exempted by the potential that the access could represent the requiring of an Environmental Impact Assessment or an Appropriate Assessment. Neither of these limitations herein apply in this instance.

#### 3.2 The Principal Use - Agriculture

Any agricultural use and enabling of same by an access to provide consistent with the agricultural use of the lands, is in our opinion an allowable element of works, acknowledged as development but as not development requiring permission under the available exemptions under Section 4 (1.) (a.).

Our principal claim is that development consisting of the use of the land for agriculture (where an access consists of and is consistent with the use of the lands for the purposes of agriculture) is integral to allow for the purpose of the use of the land so occupied and to be so used for agriculture.

We are not seeking the use of '*a building*' on the lands where a building might refer to allowable and exempted buildings associated with agricultural uses rather the '*any building*' or construction associated with a gated access.

Whilst we seek to confirm the exemptions under Section 4 and wish to restrict the consideration of the planning authority to this form of exemption, we also note that other provisions for formation

of gated access points other than those associated with residential access points are also available under the **P&D Regs** and as refers under Class 9, of Schedule 2 of the **P&D Regs** that being:

*The construction, erection, renewal or replacement, other than within or bounding the curtilage of a house, of any gate or gateway*

*The height of any such structure shall not exceed 2 metres.*

### 3.3 The Planning & Development Regulations (Schedule 2, Class 9) Exemptions.

In this regard and not wanting to extend the deliberations beyond Section 4 of the P&D Act there is an ability of the planning authority, if they feel it is required to consider an access gate to the lands under Schedule 2, Class 9 of the P&D Regs as referred above.

The principal limitations reflect conditions of the permission and any adverse public safety consideration by reason of traffic hazard.

### 3.4 Limitations not applying to the Agricultural Use Limitations on Applying to Certain Forms of Development under the Regulations

The use of limitations or restrictions on exemptions, it must be stated, can only be applied to those exemptions sought under the Regulations and do not apply or restrict any exempted development under Section 4 (1) of the P&D Act. The Board have determined this issue on a number of occasions, and we cite one example here (ABP Ref: 29S.RL.2120).

The consideration of limitations under agricultural use is not appropriate as Section 4 (1) of the Act provides clarity and is principally a list of classes of exempted development and the first of those is for the purpose of agriculture which includes the works associated with and allowing for the use of agriculture. Of course this only extends to the use of the lands and not the carrying out of works but in this regard it should halt the local planning authority's consideration of restrictions on exemptions to the principal question asked was that the formation of a pedestrian and/or a vehicular access from an agricultural tract of land is or is not development and is or is not development requiring permission within Section 4 (1) (a) of the Act.

### 3.5 Previous Cases before An Bord Pleanála

We cite the following cases for the assistance of the declaration herein intended; RL.2640, RL.3538 & ABP-303326-18 and as represents a spread throughout the country associated with the relevant planning authorities of Louth, Waterford & Kildare, respectively.

#### 4.0 CONCLUSIONS

We, on behalf of the *Declarant* (Eamonn O'Rourke), seek a Section 5 Declaration from Westmeath County Council in respect of whether the formation of an entrance (be it pedestrian / vehicle or both) from an agricultural tract of land onto the local public road network as includes pedestrian and vehicle carriageways, within the townland of Ardivaghan and the installation of associated gate structure(s) on or near the front boundary of this land, is or is not development, and is or is not exempted development.

We request that the planning authority consider the use of the lands in the first instance under Section 4 (1) (a) of the P&D Act and whereas there are no limitations on exemptions under the P&D Regs. The restrictions on exemptions referred in this instance only apply to exemptions sought under Schedule 2 of the P&D Regs., the secondary query.

In addition, if the planning authority acknowledges the original intentions of the development (99/1661) and the connectivity of adjacent lands as intended and integral to the design & layout of the development, they may be encouraged to use their powers of exempted development whereby it befits their plan objectives in creating connected communities.

The Referrer in this instance seeks to rely on Section 4 (1) (a) to establish that the use of lands for agriculture and the ability to service and access the lands for same, as was clearly anticipated at the grant of the previous planning permission, to allow the use of the lands for agricultural purposes and so allowed by the definition of 'agriculture' within the P&D Act.

We trust that the information herein provided will enable a swift and conclusive decision. If further information is required to further assist in the Referral, *The Planning Partnership* will respond accordingly.

Yours faithfully



Mark Brindley  
Principal  
The Planning Partnership



## APPENDIX E

### WESTMEATH COUNTY COUNCIL - PLANNERS REPORT & *PLANNING ASSESSMENT*





**Westmeath County Council**  
**Planner's Report**

<b>To:</b>	Cathaldus Hartin, Senior Planner
<b>From:</b>	Suzanne O'Toole, Executive Planner
<b>Applicant(s):</b>	Eamonn O'Rourke
<b>Development Description:</b>	Use of lands for agricultural purposes as exempt under Section 4(1)(a) and for the purposes of its use in the farming of land (AGRI)
<b>Location:</b>	Ardivaghan, Mullingar, Co. Westmeath
<b>Ref No.:</b>	S5-46-2024

As per the details submitted with this Section 5 application, the primary elements pertaining to this referral are as follows:

1. Whether the use of the subject lands for agriculture (unspecified) is development.
2. Whether the formation of an agricultural access consists (or is consistent with) the use of the lands for agriculture and is exempted development under Section 4(1)(a) of the Act.
3. If the current temporary boundary treatment of concrete post and concrete rail is replaced by a gated access boundary less than 2 metres in height does this conform with Class 9.
4. Whether the carrying out of works to the maintenance or improvement of a road by a local authority is development or exempted development.

Lands comprising the application site are owned by the Applicant.

#### **Site Location & Context**

The application site consists of existing grassland in the rural townland of Ardivaghan, which bounds the settlement boundary for Mullingar Town, and immediately adjoining Ardilaun Green residential development on the western fringe of Mullingar, Co. Westmeath. The site slightly undulating in nature. There is a concrete fence forming the boundary with the access road of Ardilaun Green. There are no buildings located within the subject site lands.







Photo of boundary fence:



Photo of site

#### Planning History.

18/6018 Eamon O'Rourke sought permission for partial demolition of existing boundary and provision of an agricultural entrance (including pedestrian "wicker gate") and all associated site works including pillars and a culvert at Adavaghan Towland, Adjoining Ardlaun Green, Mullingar. **Refused, appealed to AEP and subsequently refused by reason of.**

*Having regard to the location of the proposed agricultural entrance, the potential traffic such an entrance would generate, the distance between it and the public road network with the route between the two running through a formally designed and laid out housing estate, it is considered that the proposed development would result in conflict with existing road users as well as users of the public domain within this housing estate. As such, the proposed development would endanger public safety by reason of a traffic hazard and would, therefore, be contrary to the proper planning and sustainable development of the area.*

14/6231

Eamonn O'Rourke sought permission for Development on lands at Sarsanstown, Ardilaun Green, Mullingar. The Development will consist of provision of a gate to the above lands. **Refused by reason of:**

1. *The proposed development would endanger public safety by reason of traffic hazard and would therefore be contrary to policy P-TM6 of the Mullingar Local Area Plan 2014-2020*
2. *The proposed development would seriously injure the amenities of residents in the vicinity.*

#### **Flood Risk Assessment:**

Following an examination of the relevant GIS information in relation to flood risk, the application site is not located within an identified flood risk area (Pluvial and Groundwater).

#### **Statutory & Other Designations:**

**Built Heritage:** There is no built / architectural heritage (Record of Protected Structures / National Inventory of Architectural Heritage) within the immediate vicinity.

**Archaeology:** There are no national / recorded monuments (Sites and Monuments Record) within the vicinity of the application site.

#### **Legislative Provisions**

##### **Planning and Development Act 2000 (as amended)**

Section 2(1) of the Act sets out definitions with the following relevant in the context of the proposal:

- **"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—
  - where the context so admits, includes the land on, in or under which the structure is situate, and
  - in relation to a protected structure or proposed protected structure, includes—
    - the interior of the structure,
    - the land lying within the curtilage of the structure,

- any other structures lying within that curtilage and their interiors, and
- all fixtures and features which form part of the interior or exterior of any structure or structures referred to in subpara graph (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.
- “ **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

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

Section 4(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;

Section 4(2) provides for the making of Regulations. The primary Regulations are the Planning and Development Regulations 2001, as amended.

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

#### **Planning and Development Regulations 2001 (as amended).**

Article 6(3) of the Regulations states, *inter alia*, that:

“Subject to Article 9, in areas other than a city, a town or an area specified in section 19(1)(b) of the Act or the excluded areas as defined in section 9 of the Local Government (Reorganisation) Act, 1985 (No. 7 of 1985), development of a class specified in column 1 of Part 3 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 3 opposite the mention of that class in the said column 1”.

Article 9 (1) of the Regulations states, *inter alia*, that:

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

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

(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.

*Planning and Development Regulations 2001 (as amended), Article 6, Part 1 Schedule 2 – Exempted Development – General*

Sundry Works	
Class 9	
The construction, erection, renewal or replacement, other than within or bounding the curtilage of a house, of any gate or gateway.	The height of any such structure shall not exceed 2 metres.

Article 6, Part 1 Schedule 2 – Exempted Development – General of the Planning and Development Regulations 2001 (as amended) provides for ancillary agricultural development exemptions which are subject to associated conditions and limitations.

**Appropriate Assessment (AA) Determination**

Article 9(1) of the Planning and Development Regulations (2001) as amended sets out restrictions on exemption in respect of development under Article 6. Article 9(1)(a)(viiB) set out that where the competent authority determines that the proposed development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site, the exemptions do not apply.

The Habitats Directive deals with the Conservation of Natural Habitats and of Wild Fauna and Flora throughout the European Union. Article 6(3) of this Directive requires that any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. The competent authority must be satisfied that the proposal will not adversely affect the integrity of the European site before consent can be given.

I note the site is not located within or adjacent to a European Site. However, it is not clear if there are drainage channels traversing through the referral lands. The nearest European Sites are:

- Lough Owel SPA and SAC – 2.45km
- Lough Ennell SPA and SAC – 2.8km
- Scragh Bog SAC – 5.8km
- Wooddown Bog SAC – 6.5km
- Garriskil Bog SAC and SPA – 14.2km



- Lough Iron SPA – 8.7km
- Lough Derravaragh – 10.6km
- River Boyne and River Blackwater SAC – 14.3km

With respect to the referral questions, the most pertinent question from an Appropriate Assessment perspective relates to Question 1 i.e. Whether the use of the subject lands for agriculture is development.

The details submitted with this Section 5 Declaration are not sufficient in order to determine the impact of these lands on any nearby European Sites as the information is vague with respect to agricultural activities, details of the applicant's entire landholding and whether the lands are associated with the proposed or otherwise.

#### **Environmental Impact Assessment (EIA) Determination**

Projects which are likely to have significant effects on the environment identified in Annex I and Annex II of the EIA Directive which have been transposed into Irish legislation by Part I and Part II, Schedule 5 of the Planning and Development Regulations 2001 (as amended). Use of agricultural lands for agriculture and formation of an agricultural access are not of a Class of development listed under Part 1 or 2 (Schedule 5) of the Planning and Development Regulations 2001.

Having regard to the criteria outlined in Schedule 7 of the Planning and Development Regulations 2001 (as amended) it is considered that due to the nature and scale of the proposal, consisting of the use of agricultural lands for agricultural purposes and the formation of an agricultural access, there is no real likelihood of significant effects on the environment arising from the proposed development in the context of EIA legislation (Directive 2014/52/EU).

As such, Environmental Impact Assessment does not apply in this case. Thus, the provisions of Section 4(4) of the Planning and Development Act 2000 (as amended) are not relevant.

#### **Planning Assessment**

##### ***Is or is not Development***

The referral poses 4 distinct questions and it is proposed assess each one individually.

The question posed:

1. *'Whether the use of the subject lands for agriculture is development'.*

And if considered development,

*'Whether it is development requiring permission or whether it is exempted development under Section 4(1)(a) of the Act'.*

The planning authority considers that this question is non-specific and lacks precise details pertaining to agricultural usage and activities which are the subject to this referral. Accordingly, on the basis of a lack of specific details to consider, a determination is not possible.

2. *'Whether the formation of an agricultural access consists (or is consistent with) the use of the lands for agriculture and is exempted development under Section 4(1)(a) of the Act'.*
3. *If the formation of an agricultural access under Section 4(1)(a) of the Act fails the test under Section 4, then can it qualify under Class 9, of Schedule 2 of the Planning and Development Regulations that being:*

*"The construction, erection, renewal or replacement, other than within or bounding the curtilage of a house, of any gate or gateway" and the height of any such structure shall not exceed 2 metres.*

It is submitted as part of the documentation received in association with this referral that "to use lands they must logically be accessible and serviceable and harvestable". The applicant considers that a previous decision by WCC under planning reference 18/6018 unintentionally landlocked the referrers lands. The submission considers that the planning authority have the ability to undertake works under exempted development to facilitate the original intention of connectivity and permeability.

The applicant states that the subject lands were previously zoned for proposed residential in 2 no. successive development plans, Mullingar Local Area Plan 2002-2008 and 2008-2014.

The Planning authority considers that the formation of an agricultural access at this location does not fall under the parameters of section 4(1)(a) of the Act.

Permission has previously been sought twice on the same lands, under planning Ref: PL18/6018 for "part demolition of existing boundary and provision of an agricultural entrance (including pedestrian "wicker gate") and PL 14/6231 "The Development which will consist of provision of a gate to the above lands".

Both planning applications were refused on the basis that the proposed development would endanger public safety by reason of a traffic hazard and that the proposed development would seriously injure the amenities of residents in the vicinity.

Article 9(1)(a) of the Planning and Development Regulations 2001 as amended, provides that development to which article 6 relates shall not be exempted development for the purposes of the Act— if the carrying out of such development would -

- contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act
- 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,
- endanger public safety by reason of traffic hazard or obstruction of road users, formation of an access

Accordingly, as the development to which this referral relates would consist of the formation of access to a public road where the surfaced carriageway exceeds 4 metres in width and which would endanger public safety by reason of a traffic hazard (ref. decisions on planning application 18/6018 and 14/6231) and the provision of a gate at this location would contravene a condition of the parent permission associated with the development of neighbouring lands and as such cannot qualify under Class 9 it is considered that this element is not exempt development.

4. *Whether the carrying out of works to the maintenance or improvement of a road by a local authority is development or exempted development.*

The planning authority considers that this question is not specific and is not supported by the necessary information to enable the Planning Authority to make a determination on this element of the referral.

#### **Recommendation**

Having regard to Questions 1 and 4 of this referral the Planning Authority consider that due to the nature of the referral and to the totality of documentation submitted with this application, it is considered that the detail presented by the referrer is insufficient to enable the Planning Authority to determine the questions as contained within the referral so as to enable the Planning Authority to issue a declaration.

With respect to Questions 2 and 3 the Planning Authority consider that the formation of an agricultural access in association with lands at Ardagh, Mullingar, Co. Westmeath is development and is NOT exempt development for the reasons outlined above.



**Suzanne O'Leary**  
**Executive Planner**

29<sup>th</sup> November 2024

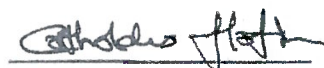
**Date**



**Brendan O'Brien**  
**Senior Executive Planner**

6<sup>th</sup> December 2024

**Date**



**Cathaluis Hartin**  
**Senior Planner**

06/12/ 2024

**Date**