Comhairle Contae Chill Dara
Kildare County Council

Date: 20/07/2022
Our Ref: ED/00949

REGISTERED POST
Peter & Mary Ryan,
c/o Emma Gilmartin,
WSP Ireland Consulting LTD,
(T/A Golder),
Town Centre House,
Naas,
Co. Kildare.

Re: Application for a Declaration of Exempted Development under Section 5 at Silverhills Lower, Ballymore Eustace, Co. Kildare.

Dear Sir/Madam,

I refer to your correspondence received 24th June 2022 in connection with the above.

Please find attached declaration made under Section 5 of Planning and Development Acts 2000 as amended in this regard.

Yours sincerely,

Senior Executive Officer
Planning Department

Declaration of Development & Exempted Development under Section 5 of the Planning and Development Act 2000 (as amended)

ED/00949

WHEREAS a question has arisen as to whether a development comprising infilling the lands with soils to facilitate of the re-contouring of lands at Silverhills Lower, Ballymore Eustace, Co. Kildare with soils to be sourced from sites where the Economic Operator will process an Article 27 application process with the Environmental Protection Agency, where their by-product status would be confirmed prior to the material being transported is or is not development and is or is not exempted development,

AS INDICATED on the plans and particulars received by the Planning Authority on 24th June 2022,

AND WHEREAS Peter and Mary Ryan, have requested a declaration on the said question from Kildare County Council,

AND WHEREAS Kildare County Council as the Planning Authority, in considering this application for a declaration under Section 5 of the Planning and Development Act 2000 (as amended), had regard to:

- Planning and Development Act 2000 (as amended);
- Planning and Development Regulations 2001 (as amended) and;
- Documentation received with the application;

AND WHEREAS Kildare County Council has concluded that the proposed works comprise development to which the provisions of the following applies:

- Sections 2, 3, 4 and 5 of the Planning and Development Act 2000 (as amended);
- Articles 8C of the Planning and Development Regulations 2001 (as amended) and;

AND WHEREAS Kildare County Council, in exercise of the powers conferred on it by Section 5(2)(a) of the Planning and Development Act 2000 (as amended), hereby decides

(a) The importation soil for the purpose of recontouring land constitutes 'works', and 'development' as defined in Section 2 and Section 3, respectively, of the Planning and Development Act, 2000, as amended.

(b) The importation of soil to be sourced from sites where the Economic Operator will process an Article 27 application process with the Environmental Protection

Agency, where the by-product status would be confirmed prior to the material being transported and soil analysis be conducted by the Economic Operator to prove the soil can be considered clean fill, do comply with the provisions set out within Article 8C of the Planning and Development Regulations, 2001, and therefore, comprise exempted development.

NOW THEREFORE conferred on it by section 5(4) of the 2000 Act, hereby decides that the said infilling the lands with soils to facilitate of the re-contouring of lands at Silverhills Lower, Ballymore Eustace, Co. Kildare with soils to be sourced from sites where the Economic Operator will process an Article 27 application process with the Environmental Protection Agency, where their by-product status would be confirmed prior to the material being transported **is exempted development.**

Please note that any person issued with a declaration under subsection 2(a) of the Planning and Development Act 2000 (as amended) may on payment to the Board of the prescribed fee, refer a declaration to An Bord Pleanála within 4 weeks of the issuing of the decision.

20th July 2022

Director of Services

KILDARE COUNTY COUNCIL

PLANNING DEPARTMENT

Section 5 declaration & referral on development & exempted development

Planning & Development Act 2000 (as amended)

Reference No. ED/00949

Name of Applicant(s):	Peter and Mary Ryan
Address of Development:	Silverhills Lower, Ballymore Eustace, Co. Kildare
Is Fee paid (€ 80)	Yes
Development Description:	The development consists of infilling the lands with soils to facilitate of the re-contouring of lands at Silverhills Lower

Introduction

This is a requested for a **DECLARATION** under Section 5(1) of the Planning and Development Act 2000 (as amended) for development comprising infilling the lands with soils to facilitate of the re-contouring of lands at Silverhills Lower. The proposed objective of soil placing, is to allow for safe grazing for horses and other animals at this location to be improved. The lands in this area are undulating with hollows and dips. Recontouring, through the infilling of soils will help with agricultural grazing condition on the site. The soils are to be sourced from sites where the Economic Operator will process an Article 27 application process with the EPA, where their by-product status would be confirmed prior to the material being transported. Soil analysis will also be conducted by the Economic Operator to prove the soil can be considered clean infill. A maximum of ten truck movements per day site from the local road from either direction. A security gate is already installed at the entrance to the access to the road.

Under Section 5 of the Act if a question arises as to what, in any particular case, is or is not development or is or is not exempted development within the meaning of the Act, any person may, on payment of the prescribed fee, request in writing from the relevant planning authority a declaration on that question.

Site Location

The site is located in the townland of Silverhill Lower, approx. 1.2km south east of Ballymore Eustace Village. The site is accessed by an existing entrance from the L2026 which runs along the southern boundary. The site is currently used for agricultural grazing. The River Liffey is located 180m to the north of the site. An access lane runs along the eastern boundary and provides access to what appears to be an agricultural farm yard.

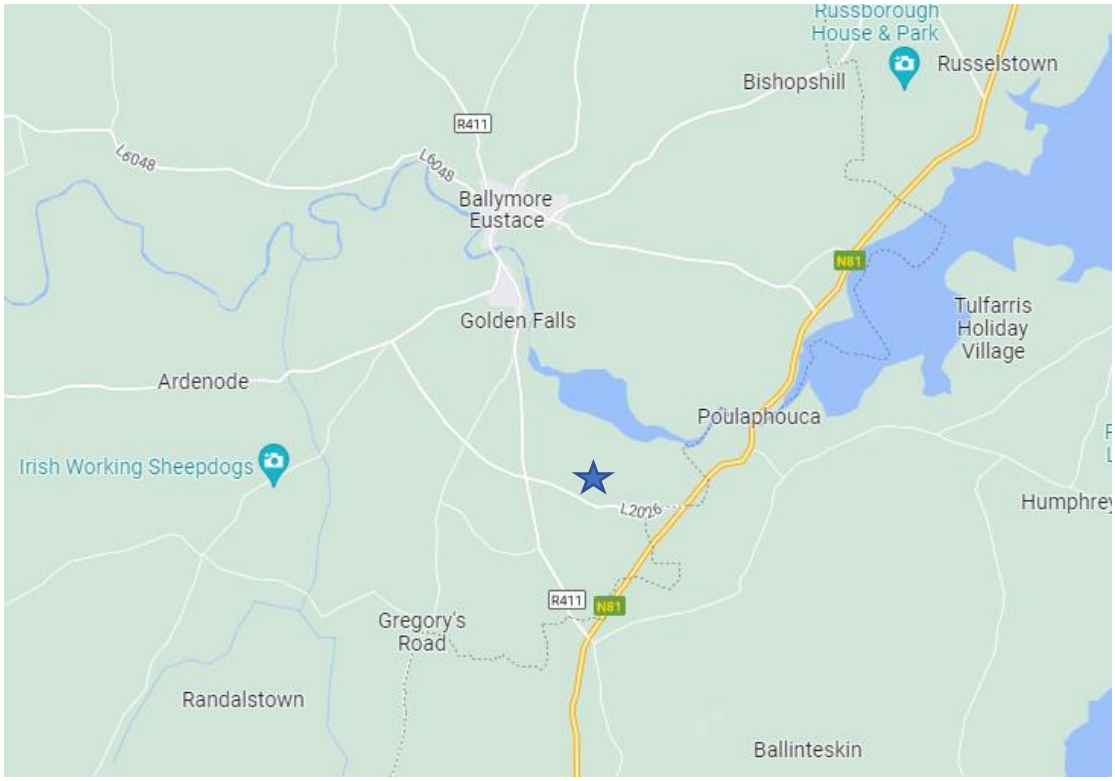


Fig. 1: Site Location



Fig. 2: Aerial view

Relevant Planning History

None for subject site

Site Adjacent to the east:
UD5126 – Stables exceeding maximum size to be exempted. File was statute barred and was closed

Relevant Legislative Background

Planning and Development Act
Section 2(1) of the Planning and Development Act 2000 (as amended) provides a definition of "works" in the Act:

> *"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.*

Section 3(1) of the Planning and Development Act 2000 (as amended) defines development:

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

Section 4(1) of the 2000 Act states that certain developments shall be "exempted development" for the purposes of the Act including (a) development consisting of the use of any land for the purposes of agriculture and development consisting of the use for that purpose of any building occupied together with land so used; (l) development consisting of the carrying out of works referred to in the Land Reclamation Act, 1949, not being works comprised in the fencing or enclosure of land which has been open to or used by the public within the ten years preceding the date on which the works are commenced

I note that the "works" in the Land Reclamation Act 1949 refers to the following:—

(a) field drainage;
(b) land reclamation;
(c) the construction and improvement of watercourses;
(d) the removal of unnecessary fences;
(e) the construction of new fences and the improvement of existing ones;
(f) improvement of hill grazing;
(g) reclamation of estuarine marsh land and of callows;
(h) any operations ancillary to the foregoing.

In this regard, the proposed development comprises works and also therefore is considered 'development'.

Planning and Development Regulations 2001 (as amended)

Article 8(C) states

Land reclamation works (other than reclamation of wetlands) consisting of re-contouring of land, including infilling of soil (but not waste material) within a farm holding, shall be exempted development.

EIA Screening

Parts 1 and 2 of Schedule 5 of the Planning and Development Regulations 2001 (as amended) set out classes of development for which an Environmental Impact Assessment is required. Having regard to the nature, size and location of the development, together with the documentation received with this application, it is considered that no significant environmental impacts are likely to be predicted.

AA Screening

A screening for Appropriate Assessment Report was prepared and is appended to this report. It concludes that no likely significant impacts are predicted due to the relative distance and nature of the proposed development from the surrounding European Sites.

Assessment

Is or is not development

The development as set out within the grounds of the application comprises the

infilling the lands with soils to facilitate of the re-contouring of lands. Having regard to the statutory definition of the terms 'works' and 'development', referred to above, which define works as, amongst other things, any act or 'operation of construction' or 'alteration' and development as the 'carrying out of works on land', I would consider that the creation of new surface layers and the alteration of the existing land form by importation of soils would comprise both 'works' and 'development', as defined in the Planning and Development Act, 2000 (as amended).

Is or is not exempted development

Article 8C, of the Planning and Development Regulations, 2001 (as amended) states "Land reclamation works consisting of re-contouring of land, including infilling of soil (but not waste material) within a farm holding shall be exempted development." I note the applicant has stated "the soils are to be sourced from sites where the Economic Operator will process an Article 27 application process with the Environmental Protection Agency, where the by-product status would be confirmed prior to the material being transported. Soil analysis will also be conducted by the Economic Operator to prove the soil can be considered clean fill", therefore Article 8C of the Regulations applies.

I consider that the proposed development, which involves the importation of soil (which is to be sourced from sites where the Economic Operator will process an Article 27 application process with the Environmental Protection Agency, and where the by-product status would be confirmed prior to the material being transported and soil analysis is conducted by the Economic Operator to prove the soil can be considered clean fill) to farm lands which would be re-contoured to improve grazing conditions on the site, would be exempted development as set out in Article 8C of the Planning and Development Regulations, 2001 (as amended).

Conclusion
Having regard to:

- Sections 2, 3, 4 and 5 of the Planning and Development Act 2000 (as amended);
- Articles 8C of the Planning and Development Regulations 2001 (as amended) and;
- The details contained in the application form

It is considered that the importation of soil on lands for agricultural use which is to be sourced from sites where the Economic Operator will process an Article 27 application process with the Environmental Protection Agency, and where the by-product status would be confirmed prior to the material being transported and soil analysis is conducted by the Economic Operator to prove the soil can be considered clean fill, for recontouring of land **is development and is exempted development**.

Recommendation
It is recommended that the applicant be advised that the development as described in the application **is development and is exempted development**.

Oisín Boland
A/Executive Planner
19/07/2022

Kehinde Oluwatosin
Senior Executive Planner
19/07/2022

Emer Uí Fhátharta
Senior Planner

July 20th 2022

Declaration of Development & Exempted Development under

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

WHEREAS a question has arisen as to whether a development comprising infilling the lands with soils to facilitate of the re-contouring of lands at Silverhills Lower with soils are to be sourced from sites where the Economic Operator will process an Article 27 application process with the EPA, where their by-product status would be confirmed prior to the material being transported is or is not development and is or is not exempted development.

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the material being transported and soil analysis be conducted by the Economic Operator to prove the soil can be considered clean fill, do comply with the provisions set out within article Article 8C of the Planning and Development Regulations, 2001, and is therefore, comprise exempted development.

NOW THEREFORE conferred on it by section 5(4) of the 2000 Act, hereby decides that the said infilling the lands with soils to facilitate of the re-contouring of lands at Silverhills Lower with soils are to be sourced from sites where the Economic Operator will process an Article 27 application process with the EPA, where their by-product status would be confirmed prior to the material being transported is exempted development.

Please note that any person issued with a declaration under subsection 2(a) of the Planning and Development Act 2000 (as amended) may on payment to the Board of the prescribed fee, refer a declaration to An Bord Pleanála within 4 weeks of the issuing of the decision

Signed: _____ Date: _____

APPROPRIATE ASSESSMENT SCREENING REPORT
AND
CONCLUSION STATEMENT

(A) Project Details	
Planning File Ref	ED949
Applicant name	Peter and Mary Ryan
Development Location	Silverhills Lower, Ballymore Eustace, Co. Kildare
Site size	1.2ha
Application accompanied by an EIS (Yes/NO)	No
Distance from Natura 2000 site in km	c. 1.2km south west of Poulaphouca Reservoir SPA
Description of the project/proposed development The development consists of infilling the lands with soils to facilitate of the re-contouring of lands at Silverhills Lower	

(B) Identification of Natura 2000 sites which may be impacted by the proposed development			
			Yes/No **If answer is yes, identify list name of Natura 2000 site likely to be impacted.**
1	**Impacts on sites designated for freshwater habitats or species.** <u>Sites to consider</u>: River Barrow and River Nore, Rye Water Valley / Carton, Pollardstown Fen, Ballynafagh Lake	*Is the development within a Special Area of Conservation whose qualifying interests include freshwater habitats and/or species, or in the catchment (upstream or downstream) of same?*	**No**
2	**Impacts on sites designated for wetland habitats - bogs, fens, marshes and heath.**	*Is the development within a Special Area of Conservation whose qualifying interests include wetland habitats*	**No**

	Sites to consider: River Barrow and River Nore, Rye Water Valley / Carton, Pollardstown Fen, Ballynafagh Lake	*(bog, marsh, fen or heath), or within 1 km of same?*	
3	**Impacts on designated terrestrial habitats.** Sites to consider: River Barrow and River Nore, Rye Water Valley / Carton, Pollardstown Fen, Ballynafagh Lake	*Is the development within a Special Area of Conservation whose qualifying interests include woodlands, dunes or grasslands, or within 100m of same?*	**No**
4	**Impacts on birds in SPAs** Sites to consider: Poulaphouca Reservoir	*Is the development within a Special Protection Area, or within 5 km of same?*	**Yes**

Conclusion:
If the answer to all of the above is **No**, significant impacts can be ruled out for habitats and bird species.
No further assessment in relation to habitats or birds is required.
If the answer is **Yes** refer to the relevant sections of **C**.

4	**Impacts on birds in SPAs** ***Answer the following if the answer to question 4 in table B was YES*** *Does the development involve any of the following:*	
4.1	Works within the boundary of a Special Protection Area excluding small extensions/alterations to existing buildings. NO	
4.2	Erection of wind turbines within 5km of an SPA.	**No**
4.3	Proposed discharges directly to SPA	**No**
4.4	Development of cycleways or walking routes within 100m of SPA	**No**

Conclusion:
If the answer to all of the above is **No**, significant impacts on habitats within Natura 2000 sites can be ruled out. No further assessment is required in relation to habitats.
If the answer is **Yes**, you will require further information, which should be provided in the form of a Natura Impact Statement which should address the particular issues of concern as identified through the above.

(G) SCREENING CONCLUSION STATEMENT *Selected relevant category for project assessed by ticking box.*		
1	AA is not required because the project is directly connected with/necessary to the conservation management of the site.	
2	No potential significant affects/AA is not required.	**X**
3	Significant effects are certain, likely or uncertain. Seek a Natura Impact Statement. Reject proposal. (Reject if potentially damaging/inappropriate).	
Justify why it falls into relevant category above (based on information in above tables)		
Having regard to the proximity of the nearest SPA and given the location, nature and extent of the proposed development it is not considered there would be potential for significant effects on the Natura 2000 network.		
Name:	Oisin Boland	
Position:	A/Executive Planner	
Date:	19/07/2022	