

Comhairle Contae Chill Dara
Kildare County Council



Date: 25th January 2024.

Our Ref: ED/1032. 1008

Nicholas Cullen,
Ballysax,
The Curragh,
Co. Kildare.
R56 X285.

C

RE: Application for a Declaration of Exempted Development under Section 5 at Ballysax, The Curragh, Co. Kildare.

Dear Sir,

I refer to your correspondence received on 4th January 2023 and 22nd December 2023 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/001008.

WHEREAS a question has arisen as to whether 3 no. Polythene Tunnels 20m x 7m at Ballysax, The Curragh, Co. Kildare is exempted development,

AS INDICATED on the plans and particulars received by the Planning Authority on 4th January 2023 and 22nd December 2023

AND WHEREAS Nicholas Cullen 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;

- (a) Planning and Development Act 2000 (as amended); and
- (b) Planning and Development Regulations 2001 (as amended); and
- (c) The nature, extent and purpose of the works,

AND WHEREAS Kildare County Council has concluded that the proposal comprises of development to which the provisions of the following applies:

- (a) Section 3, 4, and 5 of the Planning and Development Act 2000 (as amended);
- (b) Article 6 and 9 of the Planning and Development Regulations 2001 (as amended); and
- (c) Schedule 2, Part 3, Class 9 (exempted Development – Rural) of the Planning and Development Regulations 2001 (as amended)

NOW THEREFORE 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 that 3 no. Polythene Tunnels 20m X 7m

IS development and IS NOT 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.

25th January 2025.


**Senior Executive Officer,
Planning Department.**

KILDARE COUNTY COUNCIL



PLANNING & STRATEGIC DEVELOPMENT DEPARTMENT

Section 5 referral & declaration on development & exempted development

Planning & Development Act 2000 (as amended)

Reference No. ED/1008

Name Of Applicant(s):	Nicholas Cullen (Cullen Organic Farms)
Address Of Development:	Ballysax Little, Curragh, Co. Kildare
Development Description:	Polythene Tunnels

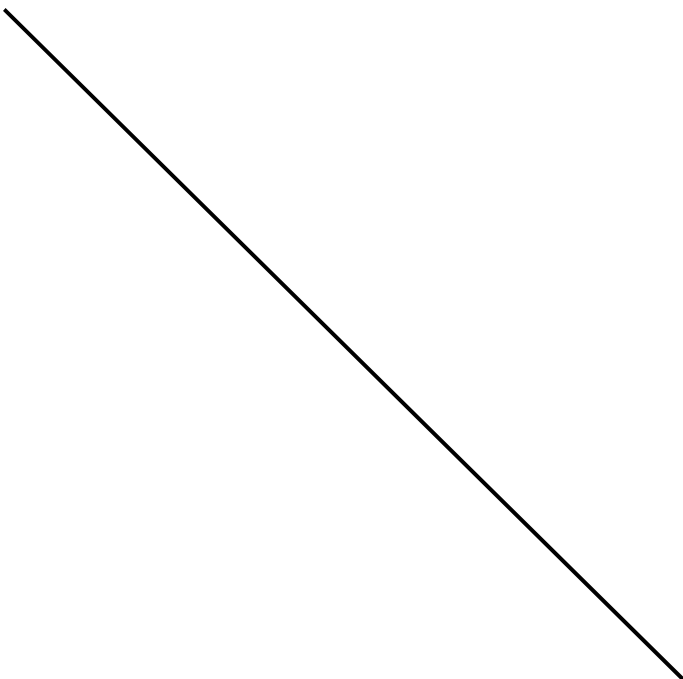
Introduction

This is a request for a **DECLARATION** under Section 5(1) of the Planning and Development Act 2000 (as amended) to establish whether the following constitute exempted development:

Site Location

The site is located in Ballysax Little Co. Kildare outside Cut Bush, a rural settlement under the CDP.

Fig 1 Site Location and Context



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

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

(i) the interior of the structure

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

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

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

- Section 3(1)

“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)

The following shall be exempted development for the purposes of the Act-

(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;

Planning and Development Regulations 2001 (as amended)

Article 6

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

(3) 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 – Restrictions on exemptions

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 – (inter alia)*

9. (1) *Development to which article 6 relates shall not be exempted development for the purposes of the Act—*

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

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

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

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

Exempted development classes in Part 3 of Schedule 2 (Rural Development)

Class 9

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

1. No such structure shall be used for any purpose other than the purpose of agriculture or forestry, but excluding the housing or the storing of effluent.
2. The gross floor space of such structures together with any other such structures situated within the same farmyard complex or complex of such structures or within 100 metres of that complex shall not exceed 900 square metres gross floor space in aggregate.
3. No such structures shall be situated within 10 metres of any public road.

4. No such structure within 100 metres of any public road shall exceed 8 metres in height.
5. No such structure shall be situated within 100 metres of any house (other than the house of the person providing the structure or other residential building or school, hospital church or building used for public assembly save with the consent in writing of the owner and, as many be appropriate, the occupier or person in charge thereof.
6. No unpainted metal sheeting shall be used for roofing or on the external finish of the structure.

1	Information not sufficient
2	Information not sufficient
3	Sufficient
4	Sufficient
5	Sufficient
6	Information not sufficient

Assessment:

There are a number of outstanding issues relating to the development proposed for under Section 5 for the site in Ballysax Little. The Applicant has not given a clear indication as to the purpose or use of the 3 no. proposed polythene structures. It is noted that the gross floor area of the 3 proposed polytunnel equates to approx. 405sqm (with an associated a site compound encompassing 805sqm as indicated on the site location map). While the overall proposed development area falls below the aggregate 900sqm, the Applicant has not made it clear through the documentation submitted the total number of existing structures on site or the cumulative square area of these structures in total. In addition to this, no precise indication has been given as to the current land use of the overall site.

It would be recommended for the Applicant to clarify the location of the main access point into the proposed site from the main road for vehicles or if another any other access point maybe proposed. This should be indicated on the site location map. The Applicant should outline any other potential impacts on

surrounding properties and dwellings resultant from the proposed development both during construction and operation in the application form. The proposed elevational drawings should indicate the materials proposed for the 3 no. polytunnels along with any proposed walls or fencing partitioning the site compound along with key dimensions. The proposed site layout Plan should indicate all existing structures on site within the Applicants ownership. The red site outline should encompass all structures relevant to the proposed development on the site location map. The application form and drawings must address all outstanding issues and relevant information accordingly in order for the Planning Authority to conduct a comprehensive appraisal of the development proposed for under section 5 of the Planning & Development Act.

AA Screening

An AA Screening has been carried out and is appended to this report. There is no impact on the integrity of the Natura 2000 network.

Initial Conclusion

Having regard to:

- Section 3, 4, and 5 of the Planning and Development Act 2000 (as amended);
- Article 6 and 9 of the Planning and Development Regulations 2001 (as amended); and
- Schedule 2, Part 3, Class 9 (exempted Development – Rural) of the Planning and Development Regulations 2001 (as amended)

It is considered necessary that all outstanding issues relating to the development are clarified and may be attained through further information.

Recommendation

It is recommended that further information is required as follows:

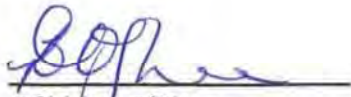
1. The Applicant is requested to indicate the extent of the landholding at this location and the farmyard complex, if applicable.
2. The Applicant should indicate the total number of structures currently existing on within the complex/landholding and their floor area.
3. All existing structures & boundaries should be clearly defined and indicated on the associated site layout plan.
4. The Applicant is requested to indicate the proposed purpose and use of the 3 no. Polytunnels.
5. Applicant is requested to clarify the location of other related activities to the proposed development/business.
6. The Applicant must indicate on the site layout plan the proposed access point from the main road and/or if any other access point may later be proposed.

3. The Applicant should indicate on the proposed elevation drawings what materials are proposed for the façades and roofs of the 3 no. proposed polytunnels. If any fence or boundary wall is proposed to partition the compound area indicated on the site location map, elevations must be submitted along with key dimensions.



Garrett Hulgraine
Assistant Planner

Date: 21/02/23



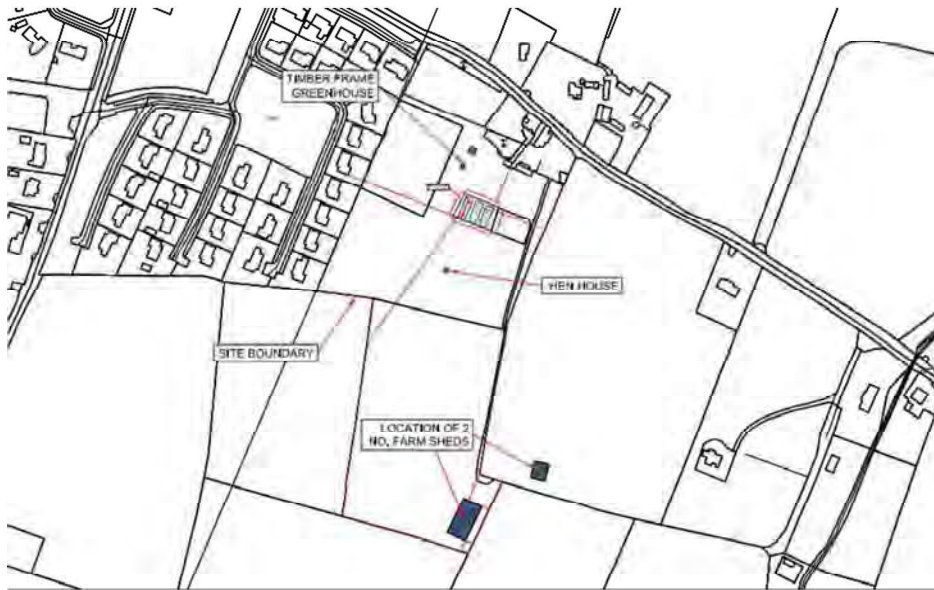
Bébhinn O'Shea
Senior Executive Planner
22/02/2023

FURTHER INFORMATION RESPONSE

The following further information was requested and the response is as follows:

1. The Applicant is requested to indicate the extent of the landholding at this location and the farmyard complex, if applicable.

Applicants response: The extent of the landholding is shown in the land map attached below. Animals are outwintered on this farm and there is no machinery shed, so there is no functioning farmyard complex, just some sheds formerly used to house animals now used for general storage and unconnected with the proposed polytunnels.



3. All existing structures & boundaries should be clearly defined and indicated on the associated site layout plan.

Applicants response: These structures and boundaries are indicated on the site layout plan. The boundary indicated on the map is that of the fields in which the sheds are located. The farm boundary has been already indicated

4. The Applicant is requested to indicate the proposed purpose and use of the 3 no. Polytunnels.

Applicants response: The proposed purpose of the polytunnels is the growing of vegetables, eg. tomatoes, cucumber peppers etc..

5. Applicant is requested to clarify the location of other related activities to the proposed development/business.

Applicants response: The other activity related to the polytunnels on the farm is the growing of field vegetables such as brassicae which are propagated under polythene. All fields on the farm have been used over the years, in rotation, to grow vegetables.

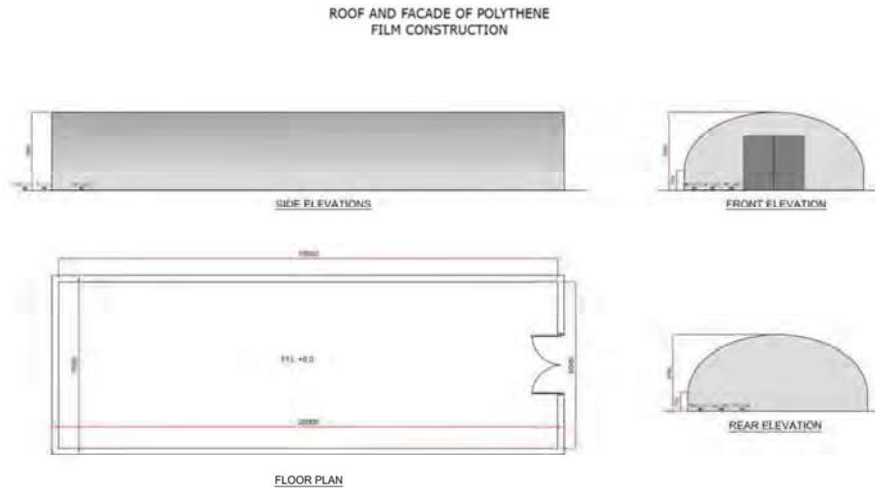
6. The Applicant must indicate on the site layout plan the proposed access point from the main road and/or if any other access point may later be proposed.

Applicants response: There is no access point associated with this structure as the cabbage transplants or tomatoes are small items which will be carried manually from the field.

7. The Applicant should indicate on the proposed elevation drawings what materials are proposed for the façades and roofs of the 3 no. proposed polytunnels. If any fence or boundary wall is proposed to partition the compound area indicated on the site location map, elevations must be submitted along with key dimensions.

Applicants response: The structures are polythene tunnels or polytunnels and their outside surface is entirely polythene. This is now shown in the plans and elevations

drawing attached below. There will be no need to construct a boundary fence or wall around these structures.



Further Information Assessment:

Class 9

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

1. No such structure shall be used for any purpose other than the purpose of agriculture or forestry, but excluding the housing or the storing of effluent.
2. The gross floor space of such structures together with any other such structures situated within the same farmyard complex or complex of such structures or within 100 metres of that complex shall not exceed 900 square metres gross floor space in aggregate.
3. No such structures shall be situated within 10 metres of any public road.
4. No such structure within 100 metres of any public road shall exceed 8 metres in height.

5. No such structure shall be situated within 100 metres of any house (other than the house of the person providing the structure or other residential building or school, hospital church or building used for public assembly save with the consent in writing of the owner and, as many be appropriate, the occupier or person in charge thereof.
6. No unpainted metal sheeting shall be used for roofing or on the external finish of the structure.

1	<i>Sufficient-used for growing vegetables as part of the farming practice on the landholding.</i>
2	<p><i>The gross floor area of the existing structures on the landholding is 903sqm. All of these structures are scattered around the landholding and are within different fields, defined by hedgerow and boundaries. It is noted the site layout plan indicates that there is another small structure north of the timber frame greenhouse but this structure is not of significant scale (less than 80sqm)</i></p> <p><i>The existing structures within the field where the proposed three polytunnels are located are the greenhouse (16sqm) and the hen house (13sqm) and the small unidentified structure (>80sqm). All of these structures (existing and proposed) have a cumulative floor area of less than 900sqm.</i></p> <p><i>However, the floor area of the proposed three polytunnels (20 x 7) is 420sqm which is over 300sqm, the maximum floor area under Class 9.</i></p>
3	<i>Sufficient</i>
4	<i>Sufficient</i>
5	<i>Sufficient</i>
6	<i>Sufficient, the outside surface is entirely polythene</i>

Conclusion

Having regard to:

- Section 3, 4, and 5 of the Planning and Development Act 2000 (as amended);
- Article 6 and 9 of the Planning and Development Regulations 2001 (as amended); and
- Schedule 2, Part 3, Class 9 (exempted Development – Rural) of the Planning and Development Regulations 2001 (as amended)
- The nature, extent and purpose of the works,

It is considered that the proposed works **constitutes development** as defined in Section 3(1) of the Planning and Development Act 2000 (as amended) and **is NOT exempted development** as defined by the Planning and Development Act 2000 (as amended) and the Planning and Development Regulations 2001 (as amended).

Recommendation

It is recommended that the applicant be advised that the development as described in the application *is development and IS NOT exempted development*.

Signed: 
L. Murphy
Executive Planner

Date: 23/01/2024


Bébhinn O'Shea
Senior Executive Planner

19/1/2024



Aoife Brangan
A/SP
25/01/24

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 3 no. Polythene Tunnels 20m x 7m is or is not exempted development

AS INDICATED on the plans and particulars received by the Planning Authority on 04/01/2023 and further information received on the 21/12/2023

AND WHEREAS Nicholas Cullen 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;

- (1) Planning and Development Act 2000 (as amended); and
- (2) Planning and Development Regulations 2001 (as amended); and
- (3) The nature, extent and purpose of the works,

AND WHEREAS Kildare County Council has concluded that the proposal comprises of development to which the provisions of the following applies:

- (a) Section 3, 4, and 5 of the Planning and Development Act 2000 (as amended);
- (b) Article 6 and 9 of the Planning and Development Regulations 2001 (as amended); and
- (c) Schedule 2, Part 3, Class 9 (exempted Development – Rural) of the Planning and Development Regulations 2001 (as amended)

NOW THEREFORE 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 that -

3 no. Polythene Tunnels 20m X 7m

IS development and IS NOT EXEMPTED development

Please note that any person issued with a declaration under Section 5 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.



APPROPRIATE ASSESSMENT SCREENING REPORT AND CONCLUSION STATEMENT

(A) Project Details	
Planning File Ref	ED/1008
Applicant name	Nicholas Cullen (Cullen Organic Farms)
Development Location	Ballysax Little, Curragh, Co. Kildare
Application accompanied by an EIS (Yes/NO)	NO
Distance from Natura 2000 site in km	The site is approx. 6.6m north east of the River Barrow and River Nore Special Area of Conservation, approx.. 5km south of Pollardstown Fen Special Area of Conservation and approx. 9km south of Mouds Bog Special Area of Conservation.
Description of the project/proposed development – 26 metre x 6 metre polythene tunnel	

(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> Mouds Bog SAC and Pollardstown Fen SAC	<i>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?</i>	NO
2	Impacts on sites designated for wetland habitats - bogs, fens, marshes and heath. <u>Sites to consider:</u> Mouds Bog SAC and Pollardstown Fen SAC	<i>Is the development within a Special Area of Conservation whose qualifying interests include wetland habitats (bog, marsh, fen or heath), or within 1 km of same?</i>	NO
3	Impacts on designated terrestrial habitats. <u>Sites to consider:</u> Mouds Bog SAC and Pollardstown Fen SAC	<i>Is the development within a Special Area of Conservation whose qualifying interests include woodlands, dunes or grasslands, or within 100m of same?</i>	NO
4	Impacts on birds in SPAs <u>Sites to consider:</u> Poulaphouca Reservoir	<i>Is the development within a Special Protection Area, or within 5 km of same?</i>	NO

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**.

(G) SCREENING CONCLUSION STATEMENT		
<i>Selected relevant category for project assessed by ticking box.</i>		
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 nature of the proposed developments and the distance from the nearest Natura 2000 site, it is considered there would not be potential for significant effects on the Natura 2000 network.	
Name:	Garret Hulgraine
Position:	Assistant Planner
Date:	16/02/2023

COMHAIRLE CONTAE CHILL DARA

KILDARE COUNTY COUNCIL

Director of Services Order



I, Alan Dunney, Director of Services, am duly authorised and delegated by Chief Executive's Order number: CE48043 to make the following Order in accordance with Section 154 of the Local Government Act, 2001, as amended.

ORDER NO: DO50947

Section: Planning

SUBJECT: ED/1008.
Application for a Declaration of Exempted Development under Section 5 at Ballysax, The Curragh, Co. Kildare.

SUBMITTED: File Ref. ED1008 with recommendation from the A/Senior Planner and reports from the Council's Technical Officers.

ORDER: *ADA* **I hereby order the following** 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 that the proposed development is development and is not exempted development.

MADE THIS 25th DAY

OF Jan YEAR 2024

SIGNED: *Alan Dunney*

DIRECTOR OF SERVICES

Comhairle Contae Chill Dara
Kildare County Council



Date: 6th April 2023.
Our Ref: ED/1008.

Nicholas Cullen,
Ballysax,
The Curragh,
Co. Kildare.
R56 X285.

RE: Application for a Declaration of Exempted Development under Section 5 at Ballysax, The Curragh, Co. Kildare.

Dear Sir,

I refer to your application for a Section 5 Declaration received on 4th January 2023. The following further information is required to properly assess your application.

1. The Applicant is requested to indicate the extent of the landholding at this location and the farmyard complex, if applicable.
2. The Applicant should indicate the total number of structures currently existing on within the complex/landholding and their floor area.
3. All existing structures & boundaries should be clearly defined and indicated on the associated site layout plan.
4. The Applicant is requested to indicate the proposed purpose and use of the 3 no. Polytunnels.
5. Applicant is requested to clarify the location of other related activities to the proposed development/business.
6. The Applicant must indicate on the site layout plan the proposed access point from the main road and/or if any other access point may later be proposed.
7. The Applicant should indicate on the proposed elevation drawings what materials are proposed for the façades and roofs of the 3 no. proposed polytunnels. If any fence or boundary wall is proposed to partition the compound area indicated on the site location map, elevations must be submitted along with key dimensions.

The time period for the Council's determination shall commence upon receipt of the above information.

Yours sincerely,


**Senior Executive Officer
Planning Department**

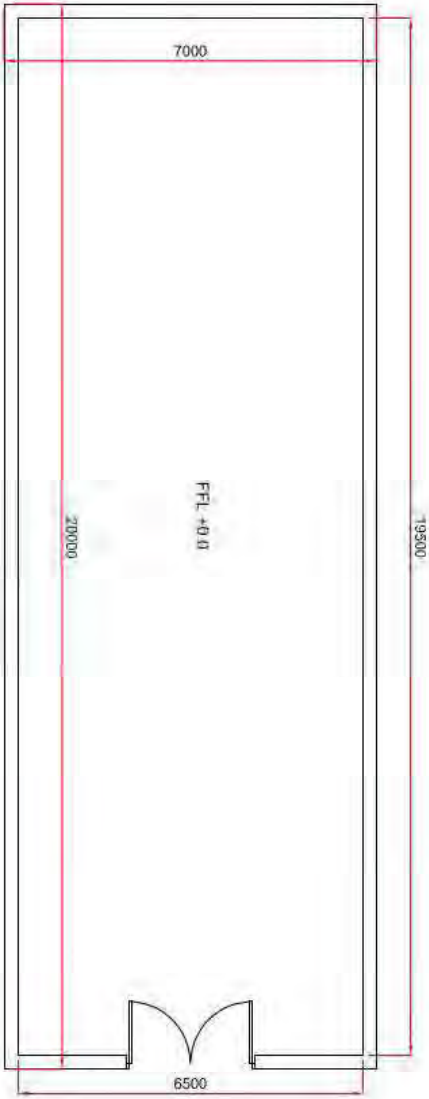
ROOF AND FACADE OF POLYTHENE
FILM CONSTRUCTION



SIDE ELEVATIONS



FRONT ELEVATION



FLOOR PLAN



REAR ELEVATION

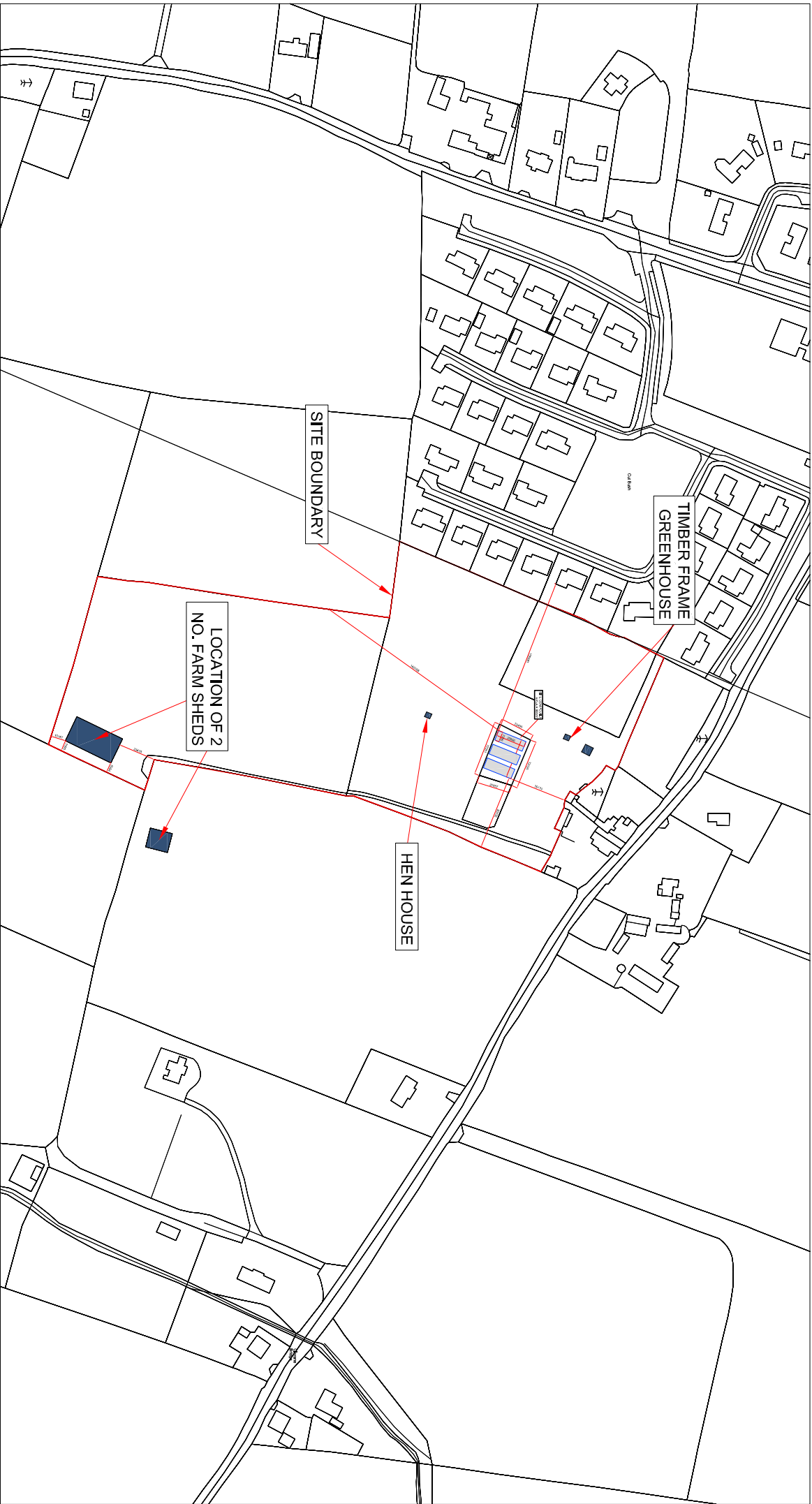
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FUREY
CONSULTING ENGINEERS

PROJECT	PROPOSED DEVELOPMENT AT BALVYSSY LITTLE, CURRACH, CO. KILDARE	DWG NO.	A2-001
DRAWING TITLE	PLANS & ELEVATIONS	SCALE	1:100 @ A3
CLIENT	CULLEN ORGANIC FARMS	DATE	04-01-23
STATUS	PRELIMINARY	BY	EF
		CHK	REF



REV/ DESCRIPTION

DATE

BY

CHK

(+353) 45 686 229
fureyconsulting.ie
Olds World Garage,
Barriscover Road,
Naas, Co. Kildare

FUREY
CONSULTING ENGINEERS

PROJECT PROPOSED DEVELOPMENT AT
BALLYSAX LITTLE, CURRAGH, CO. KILDARE

DRAWING SITE LAYOUT

CLIENT CULLEN ORGANIC FARMS

STATUS PRELIMINARY

DWG NO A1-005

SCALE 1:2500 @ A3

DATE 08-05-23

BY EF

CHK CF

KILDARE COUNTY COUNCIL



PLANNING & STRATEGIC DEVELOPMENT DEPARTMENT

Section 5 referral & declaration on development & exempted development

Planning & Development Act 2000 (as amended)

Reference No. ED/1008

Name Of Applicant(s):	Nicholas Cullen (Cullen Organic Farms)
Address Of Development:	Ballysax Little, Curragh, Co. Kildare
Development Description:	Polythene Tunnel

Introduction

This is a request for a **DECLARATION** under Section 5(1) of the Planning and Development Act 2000 (as amended) to establish whether the following constitute exempted development:

Site Location

The site is located in Ballysax Little Co. Kildare outside Cut Bush, a rural settlement under the CDP.

Fig 1 Site Location and Context



Legislative/Regulatory Provisions

Planning and Development Act 2000 (as amended)

- Section 2

“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...

“structure” means any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined, and-

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

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

(i) the interior of the structure

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

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

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- Section 3(1)

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Planning and Development Regulations 2001 (as amended)

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(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.

(3) 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.

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9. (1) Development to which article 6 relates shall not be exempted development for the purposes of the Act—

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

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

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

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

Exempted development classes in Part 3 of Schedule 2 (Rural Development)

Class 9

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- 2. The gross floor space of such structures together with any other such structures situated within the same farmyard complex or complex of such structures or within*

100 metres of that complex shall not exceed 900 square metres gross floor space in aggregate.

3. No such structures shall be situated within 10 metres of any public road.
4. No such structure within 100 metres of any public road shall exceed 8 metres in height.
5. No such structure shall be situated within 100 metres of any house (other than the house of the person providing the structure or other residential building or school, hospital church or building used for public assembly save with the consent in writing of the owner and, as many be appropriate, the occupier or person in charge thereof.
6. No unpainted metal sheeting shall be used for roofing or on the external finish of the structure.

1	Information not sufficient
2	Information not sufficient
3	Sufficient
4	Sufficient
5	Sufficient
6	Information not sufficient

Assessment:

There are a number of outstanding issues relating to the development proposed for under Section 5 for the site in Ballysax Little. The Applicant has not given a clear indication as to the purpose or use of the 3 no. proposed polythene structures. It is noted that the gross floor area of the 3 proposed polytunnel equates to approx. 405sqm (with an associated a site compound encompassing 805sqm as indicated on the site location map). While the overall proposed development area falls below the aggregate 900sqm, the Applicant has not made it clear through the documentation submitted the total number of existing structures on site or the

cumulative square area of these structures in total. In addition to this, no precise indication has been given as to the current land use of the overall site.

It would be recommended for the Applicant to clarify the location of the main access point into the proposed site from the main road for vehicles or if another any other access point maybe proposed. This should be indicated on the site location map. The Applicant should outline any other potential impacts on surrounding properties and dwellings resultant from the proposed development both during construction and operation in the application form. The proposed elevational drawings should indicate the materials proposed for the 3 no. polytunnels along with any proposed walls or fencing partitioning the site compound along with key dimensions. The proposed site layout Plan should indicate all existing structures on site within the Applicants ownership. **The red site outline should encompass all structures relevant to the proposed development on the site location map.** The application form and drawings must address all outstanding issues and relevant information accordingly in order for the Planning Authority to conduct a comprehensive appraisal of the development proposed for under section 5 of the Planning & Development Act.

AA Screening

An AA Screening has been carried out and is appended to this report. There is no impact on the integrity of the Natura 2000 network.

Conclusion

Having regard to:

- Section 3, 4, and 5 of the Planning and Development Act 2000 (as amended);
- Article 6 and 9 of the Planning and Development Regulations 2001 (as amended); and
- Schedule 2, Part 3, Class 9 (exempted Development – Rural) of the Planning and Development Regulations 2001 (as amended)

It is considered that all outstanding issues relating to the development are clarified and may be attained through further information.

Recommendation

It is recommended that further information is required as follows:

1. The Applicant is requested to indicate the extent of the landholding at this location and the farmyard complex, if applicable.
2. The Applicant should indicate the total number of structures currently existing on within the complex/landholding and their floor area.
3. All existing structures & boundaries should be clearly defined and indicated on the associated site layout plan.
4. The Applicant is requested to indicate the proposed purpose and use of the 3 no.

Polytunnels.

5. Applicant is requested to clarify the location of other related activities to the proposed development/business.
6. The Applicant must indicate on the site layout plan the proposed access point from the main road and/or if any other access point may later be proposed.
3. The Applicant should indicate on the proposed elevation drawings what materials are proposed for the façades and roofs of the 3 no. proposed polytunnels. If any fence or boundary wall is proposed to partition the compound area indicated on the site location map, elevations must be submitted along with key dimensions.



Garrett Hulgraine
Assistant Planner

Date: 21/02/23



Bébhinn O'Shea
Senior Executive Planner

22/02/2023



APPROPRIATE ASSESSMENT SCREENING REPORT AND CONCLUSION STATEMENT

(A) Project Details	
Planning File Ref	ED/1008
Applicant name	Nicholas Cullen (Cullen Organic Farms)
Development Location	Ballysax Little, Curragh, Co. Kildare
Application accompanied by an EIS (Yes/NO)	NO
Distance from Natura 2000 site in km	The site is approx. 6.6m north east of the River Barrow and River Nore Special Area of Conservation, approx.. 5km south of Pollardstown Fen Special Area of Conservation and approx. 9km south of Mouds Bog Special Area of Conservation.
Description of the project/proposed development – 26 metre x 6 metre polythene tunnel	

(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> Mouds Bog SAC and Pollardstown Fen SAC	<i>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?</i> NO
2	Impacts on sites designated for wetland habitats - bogs, fens, marshes and heath.	<i>Is the development within a Special Area of Conservation whose qualifying interests include wetland habitats</i> NO

	<u>Sites to consider:</u> Mouds Bog SAC and Pollardstown Fen SAC	<i>(bog, marsh, fen or heath), or within 1 km of same?</i>	
3	Impacts on designated terrestrial habitats. <u>Sites to consider:</u> Mouds Bog SAC and Pollardstown Fen SAC	<i>Is the development within a Special Area of Conservation whose qualifying interests include woodlands, dunes or grasslands, or within 100m of same?</i>	NO
4	Impacts on birds in SPAs <u>Sites to consider:</u> Poulaphouca Reservoir	<i>Is the development within a Special Protection Area, or within 5 km of same?</i>	NO

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**.

(G) SCREENING CONCLUSION STATEMENT		
<i>Selected relevant category for project assessed by ticking box.</i>		
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 nature of the proposed developments and the distance from the nearest Natura 2000 site, it is considered there would not be potential for significant effects on the Natura 2000 network.		
Name:	Garret Hulgraine	
Position:	Assistant Planner	
Date:	16/02/2023	

KILDARE COUNTY COUNCIL



PLANNING & STRATEGIC DEVELOPMENT DEPARTMENT

Section 5 referral & declaration on development & exempted development

Planning & Development Act 2000 (as amended)

Reference No. ED/1008

Name Of Applicant(s):	Nicholas Cullen (Cullen Organic Farms)
Address Of Development:	Ballysax Little, Curragh, Co. Kildare
Development Description:	Polythene Tunnel

Introduction

This is a request for a **DECLARATION** under Section 5(1) of the Planning and Development Act 2000 (as amended) to establish whether the following constitute exempted development:

Site Location

The site is located in Ballysax Little Co. Kildare outside Cut Bush, a rural settlement under the CDP.

Fig 1 Site Location and Context



Legislative/Regulatory Provisions

Planning and Development Act 2000 (as amended)

- Section 2

“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...

“structure” means any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined, and-

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

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

(i) the interior of the structure

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

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

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

- Section 3(1)

“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)

The following shall be exempted development for the purposes of the Act-

(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;

Planning and Development Regulations 2001 (as amended)

Article 6

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

(3) 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 – Restrictions on exemptions

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 – (inter alia)*

9. (1) Development to which article 6 relates shall not be exempted development for the purposes of the Act—

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

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

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

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

Exempted development classes in Part 3 of Schedule 2 (Rural Development)

Class 9

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

- 1. No such structure shall be used for any purpose other than the purpose of agriculture or forestry, but excluding the housing or the storing of effluent.*
- 2. The gross floor space of such structures together with any other such structures situated within the same farmyard complex or complex of such structures or within*

100 metres of that complex shall not exceed 900 square metres gross floor space in aggregate.

3. No such structures shall be situated within 10 metres of any public road.
4. No such structure within 100 metres of any public road shall exceed 8 metres in height.
5. No such structure shall be situated within 100 metres of any house (other than the house of the person providing the structure or other residential building or school, hospital church or building used for public assembly save with the consent in writing of the owner and, as many be appropriate, the occupier or person in charge thereof.
6. No unpainted metal sheeting shall be used for roofing or on the external finish of the structure.

1	Information not sufficient
2	Information not sufficient
3	Sufficient
4	Sufficient
5	Sufficient
6	Information not sufficient

Assessment:

There are a number of outstanding issues relating to the development proposed for under Section 5 for the site in Ballysax Little. The Applicant has not given a clear indication as to the purpose or use of the 3 no. proposed polythene structures. It is noted that the gross floor area of the 3 proposed polytunnel equates to approx. 405sqm (with an associated a site compound encompassing 805sqm as indicated on the site location map). While the overall proposed development area falls below the aggregate 900sqm, the Applicant has not made it clear through the documentation submitted the total number of existing structures on site or the

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Garrett Hulgraine
Assistant Planner

Date: 21/02/23



Bébhinn O'Shea
Senior Executive Planner

22/02/2023



APPROPRIATE ASSESSMENT SCREENING REPORT AND CONCLUSION STATEMENT

(A) Project Details	
Planning File Ref	ED/1008
Applicant name	Nicholas Cullen (Cullen Organic Farms)
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Conclusion:

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<i>Selected relevant category for project assessed by ticking box.</i>		
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Having regard to nature of the proposed developments and the distance from the nearest Natura 2000 site, it is considered there would not be potential for significant effects on the Natura 2000 network.		
Name:	Garret Hulgraine	
Position:	Assistant Planner	
Date:	16/02/2023	

**The Property
Registration Authority
An tÚdarás**

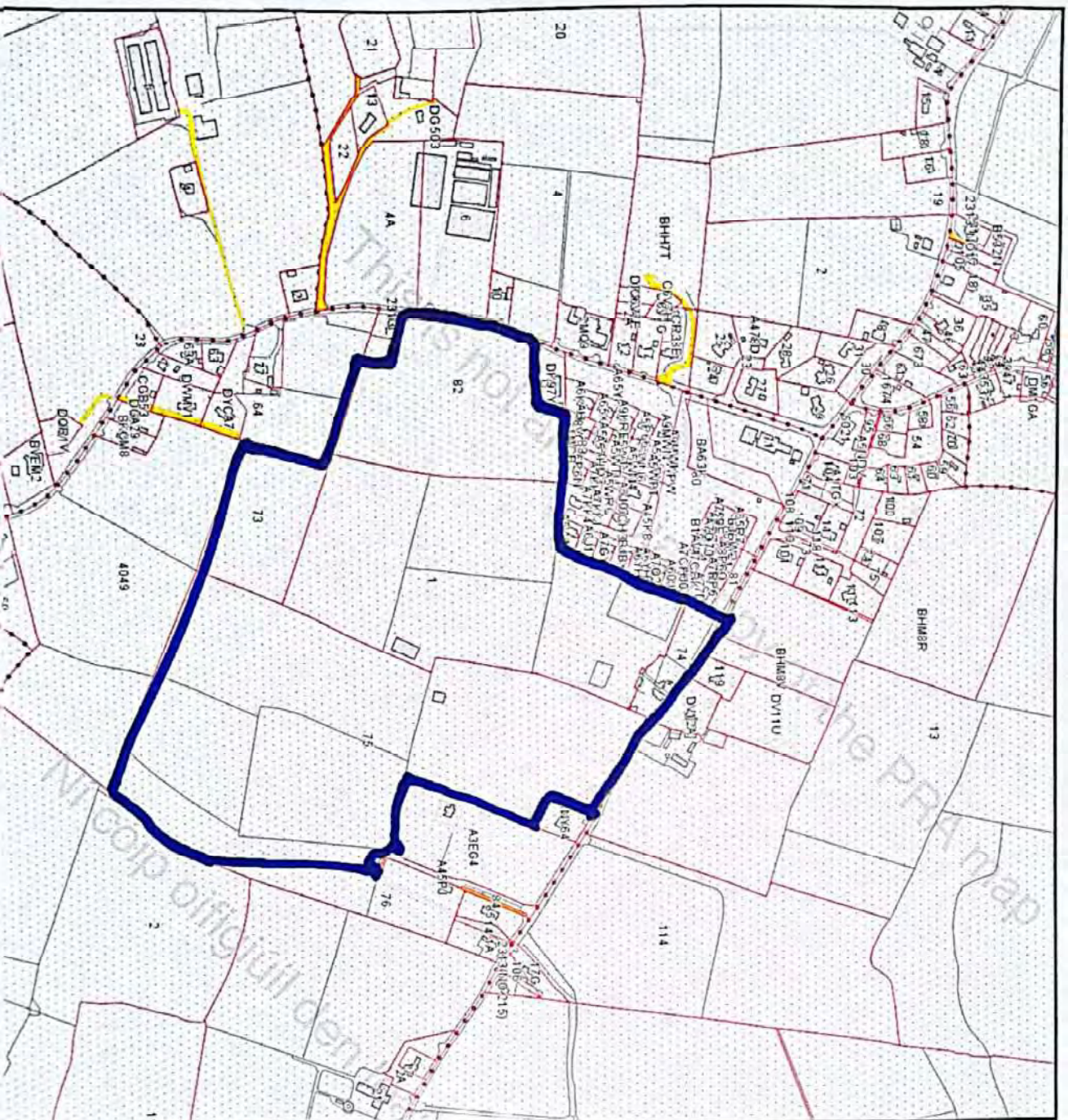
Official Property Registration Map

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.

For details of the terms of use, and limitations as to scale accuracy and other conditions relating to Land Registry Maps, see www.prairie.ca.

This map incorporates Ordnance Survey Ireland (OSi) mapping data under a licence from OSi. Copyright © OSi and Government of Ireland.







(centre-line of parcel(s) edged)

- Freehold
- Leasehold
- Subleasehold
- 'S' Register

(see Section 8(D)(III) of Registration of Title Act 1964 and Rule 224 & 225 Land Registration Rules 1972 - 2010).

Burdens (may not all be represented on map)

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

A full list of bursters and their symbology can be found at www.hardrockle.be

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.

Kildare County Council

Declaration of Exempt Development under Section 5, of the Planning and Development Act 2000 as amended

Incomplete application forms will
be deemed invalid and returned



All responses must be in block
letters

Section 1 Details of Applicants

1. Name of Applicant(s) A: Surname CULLEN Forenames NICHOLAS
Phone No. [REDACTED] Fax No. [REDACTED]
2. Address BALLY SAX, THE CURRAIGH, CO. KILDARE
R56 X 285

Section 2 Person/Agent acting on behalf of applicant (if applicable) NA

1. Name of Person/Agent: Surname [REDACTED] Forenames [REDACTED]
Phone No. [REDACTED] Fax No. [REDACTED]
2. Address [REDACTED]

Section 3 Company Details (if applicable) NA

1. Name of Company [REDACTED] Phone No. [REDACTED] Fax No. [REDACTED]
2. Company Reg. No. [REDACTED]
3. Address [REDACTED]

RECEIVED
04 JAN 2023
Kildare County Council
Planning Department

Section 4 Details of Site

1. Planning History of Site NONE
2. Location of Proposed Development BALLY SAX, The Curraigh Co. Kildare
3. Ordnance Survey Sheet No. 28/E.10 3719-D
4. Please state the Applicants interest in the site owner
5. Please state the extent of the proposed development 3 polytunnels 20 x 7 metres

6. Under what Section of the Planning and Development 2000 as amended and/or what provision of the Planning and Development Regulations 2001 as amended is exemption sought (specific details required).....

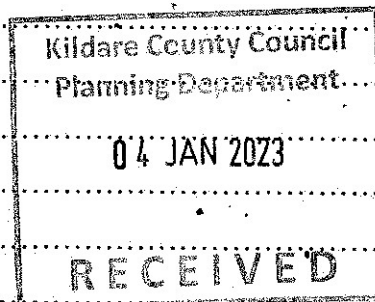
The Planning + Development Regulations 2001

Class 9 Glass houses

7. Please give a detailed description of the Proposed Development (Use separate page if necessary).....

3 poly tunnels 20 x 7 metres

100 metres from all dwellings apart from family farm house



Section 5	The following must be submitted for a valid application
-----------	---

		(Please Tick)
1.	Site Location Map (1:2500 Rural Areas) (1:1000 Urban Areas)	<input checked="" type="checkbox"/>
2.	A Site Layout Plan (Scale 1:500) in full compliance with Article 23 of Planning and Development Regulations 2001 as amended	<input checked="" type="checkbox"/>
3.	Drawings of the development (Scale 1:50) in full compliance with Article 23 of Planning and Development Regulations 2001 as amended	<input checked="" type="checkbox"/>
4.	All drawings to differentiate between the original building, all extensions and proposed development	NA
5.	Fee of 80 Euro	<input checked="" type="checkbox"/>

Section 6	Declaration
-----------	-------------

I, Nick Collier certify that all of the above information is correct and I have submitted all the required documents as outlined at Section 6 above.

Signature: N Collier

Date: 23-12-22



FINANCE CASH OFFICE
Kildare County Council
Aras Chill Dara
Devoy Park
Naas
Co. Kildare
04/01/2023 13:56:21

Receipt No. : FIN1/0/481601
***** REPRINT *****

ED1008 Nicholas Cullen

PLANNING EXEMPT DEVELOP FEES 80.00
GOODS 80.00
VAT Exempt/Non-vatable

Total : 80.00 EUR

Tendered :
Cheque 80.00

Change : 0.00

Issued By : Sally Pallister Finance Section
From : Financial Lodgement Area
Vat reg No.0440571C