

Date: 23rd January 2024.
Our Ref: ED/1057.

Registered Post.

Robert Wilson Wright,
Coolcarrigan House,
Coill Dubh,
Naas,
Co. Kildare.

RE: Application for a Declaration of Exempted Development under Section 5 of the Planning and Development Act 2000 (as amended) for development at Brockagh, Allenwood, Co. Kildare.

Dear Sir,

I refer to your correspondence received on 14th July 2023 and 13th 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.**

<p style="text-align: center;">Declaration of Development & Exempted Development under Section 5 of the Planning and Development Act 2000 (as amended).</p>
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ED/001057.

WHEREAS a question has arisen as to whether development comprising “Construction of two new roads in forestry for improvement and rehabilitation. These works are required to facilitate safe access and egress to the forest felling areas for plant and equipment and transport trucks include structural improvements to the forest roads” at Brockagh, Allenwood is exempted development,

AS INDICATED on the plans and particulars received by the Planning Authority on 14th July 2023 and 13th December 2023

AND WHEREAS Robert Wilson Wright 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);
- (b) Planning and Development Regulations 2001 (as amended) and;
- (c) Documentation received with the application and further information received on foot of a further information request;

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

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

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 the works ***are development and are not considered exempted development*** because:

Having regard to the significant quantity of material required and scale of works proposed, it is considered the proposed development **constitutes development** as defined in Section 3(1) of the Planning and Development Act 2000 (as amended). The applicant has not indicated a valid license approved under section 6 of the Forestry Act 2014 (No. 31 of 2014) which is required and detailed in Article 8(g) and therefore the proposed development **is NOT EXEMPTED development** as defined by the Planning and Development Act 2000 (as amended).

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.

23rd January 2024.

**Senior Executive Officer,
Planning Department.**

KILDARE COUNTY COUNCIL	
PLANNING DEPARTMENT	
Section 5 declaration & referral on development & exempted development Planning & Development Act 2000 (as amended)	
Reference No. ED/1057	
Name of Applicant(s):	Robert Wilson-Wright,
Address of Development:	Brockagh, Allenwood, Co. Kildare
Is Fee paid (€ 80)	Yes
Development Description:	Construction of two new roads in forestry.

Site Location

The proposed development site is located approximately 585m west of Coill Dubh Village and comprises an existing forestry plantation.

Relevant Planning History

ED1054: Applicant Robert Wright Wilson sought a Section 5 Declaration regarding the use of crusher on site, importation of concrete to crush for the rehabilitation, improvement and stabilisation of existing forestry roads. The opinion of the Planning Authority

Having regard to:

- Sections 3, 4, and 5 of the Planning and Development Act 2000 (as amended);
- Articles 6, 8 and 9 of the Planning and Development Regulations 2001 (as amended);

ED00881: Applicant Robert Wright Wilson sought a Section 5 Declaration regarding the construction of forestry access road to facilitate tree felling and removal offsite. Soil and stone is proposed to be imported to site to construct access road.

The opinion of the Planning Authority was as follows:

Having regard to:

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

- Articles 6, 8(g) and 9 of the Planning and Development Regulations 2001 (as amended)

It is considered that the proposed construction of forestry road does constitute development as defined in Section 3(1) of the Planning and Development Act 2000 as amended and is exempted development as defined by Article 8(g) of the Planning and Development Regulations 2001 as amended.

ED00748: The applicant Robert Wilson Wright, a section 5 was issued in relation to the rehabilitation of existing forestry roads to facilitate tree felling and maintenance of fire breaks in forestry at Brockagh, Allenwood, Co. Kildare.

The opinion of the Planning Authority was as follows:

The rehabilitation of existing forestry roads comes within the scope of article 8G of the Planning and Development Regulations 2001 (as amended). Therefore, the Planning Authority decides that the proposed was development and was exempted development.

Description of the Development

The applicant has stated the proposed development as follows:

“Construct two new roads in forestry for improvement and rehabilitation. These works are required to facilitate safe access and egress to the forest felling areas for plant and equipment and transport trucks include structural improvements to the forest roads. Felling of trees is being completed at present. Similar works have been carried out in this site and are ongoing”

Relevant Legislative Background

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.

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

Exempted Development is legislated for under Section 4 of the Planning and Development Act 2000 (as amended) and further prescribed under Article 8 (G) of the Planning and Development Regulations 2001 (as amended) which is stated as follows:

“Development (other than where the development consists of provision of access to a public road) consisting of the construction, maintenance or improvement of a road (other than a public road), or works ancillary to such road development, where the road serves forests and woodlands, shall be exempted development”.

Assessment

The declaration is being sought under the provisions of Article 8 (G) which refers to construction, maintenance or improvement of a non-public road which serves forests and woodlands.

The planning history on site indicates that previous section 5s was issued to the Applicant for forestry roads and also the rehabilitation of the existing roads. The proposal indicated in the Section 5 Declaration form submitted is for the “construction of two new roads in the forestry, for forestry maintenance and improvement works and to replant trees”. Such works would need construction material. The applicant has not indicated the quantity of imported material to be used or the number of HGV movements required for same. In addition, details have not been offered regarding the length of road it is proposed to upgrade and further information should be provided in this regard. A detailed site layout has not been submitted (the layout submitted indicates hand drawn roads without dimensions).

AA Screening

A screening for Appropriate Assessment accompanies this report. The site is located c. 1.5km from Ballynafagh Lake SAC.

Conclusion

Having regard to the lack of any detail included within this Section 5 Declaration of Exempt Development application, the Applicant is requested to provide details on the following:

1. details of the proposed roads, including road lengths and widths.
2. the projected quantity and nature of the material to be imported to the site,
3. an estimate of the number of truck movements required to carry out the works (for the proposed construction of roads and for the replanting aspect of the proposed development).

The response to the request for further information was received 13/12/2023.

- Referral: Transportation, Mobility and Open Spaces Department (report received 12/01/2024)

Assessment

The ‘Planning History’ section, detailed above, has been updated to reflect the recent decision (01/12/2023) of the Planning Department regarding ED1054 (use of crusher on site, importation of concrete to crush for the rehabilitation, improvement and stabilisation of existing forestry roads), which the Planning Authority deemed was development and was not exempted development.

The applicant’s response to the further information request states that a proposed site layout plan has been submitted indicating the details of the road lengths (stated on the drawing as 344m for Road No 1 and 242m for RoadNo.2) and locations (Road No. 1 located midway through overall site and Road No. 2 located to the south west of the site). The response further states that the projected quantity of the material is calculated to be 44,250m³. The nature of the material to be imported consists of clean soil and stone crushed rocks. It is estimated that the truck movements associated with this volume of material is 3687.5 deliveries based on articulated HGV carrying 12 cubic

metres per load. It is expected that importation would be conducted over a 12–18-month period. This would result in 10-15 deliveries per day over this anticipated time period based on 250 operational days per annum.

Article 8(g) of the Planning and Development Regulation 2001 (as amended) states: “Development (other than development consisting of the provision of access to a national road within the meaning of the Roads Act 1993 (No. 14 of 1993)) that is licensed or approved under section 6 of the Forestry Act 2014 (No. 31 of 2014) and that consists of - (a) the construction, maintenance or improvement of a road (other than a public road within the said meaning), that serves a forest or woodland, or (b) works ancillary thereto, shall be exempted development”.

The Planning Authority notes the significant scale of the existing roads within the site which are of significant width, for such a use. The lands in question, due to sinkage and resultant spread, HGV movements on site etc, require the repeated addition of significant levels of material. The further information submitted indicates a significant number of trip movements for the construction of additional roads within the subject site.

The applicant has not provided details of a valid license approved under section 6 of the Forestry Act 2014 (No. 31 of 2014), which is required and detailed in Article 8(g). It is considered the proposed development is constitutes development and is not exempted development.

Conclusion

Having regard to:

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

it is considered that the proposed development **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).

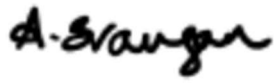
Recommendation

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



Danielle Cantwell
Executive Planner

22/01/2024



Aoife Brangan
A/SP
23/01/24

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 development comprising “Construction of two new roads in forestry for improvement and rehabilitation. These works are required to facilitate safe access and egress to the forest felling areas for plant and equipment and transport trucks include structural improvements to the forest roads” is or is not exempt development.

AS INDICATED on the plans and particulars received by the Planning Authority on 14/07/2023 and further information received 13/12/2023.

AND WHEREAS Robert Wilson-Wright has 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 further information received on foot of a further information request;

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 8 of the Planning and Development Regulations 2001 (as amended), and

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 **the works are development and are not considered exempted development** because:

- Having regard to the significant quantity of material required and scale of works proposed, it is considered the proposed development **constitutes development** as defined in Section 3(1) of the Planning and Development Act 2000 (as amended). The applicant has not indicated a valid license approved under section 6 of the Forestry Act 2014 (No. 31 of 2014), which is required and detailed in Article 8(g) and therefore the proposed development **is NOT EXEMPTED development** as defined by the Planning and Development Act 2000 (as amended).

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

ED1057

Applicant name

Robert Wilson-Wright

Development Location

Brockagh, Allenwood, Co. Kildare

Site size	Unknown
Application accompanied by an EIS (Yes/NO)	No
Distance from Natura 2000 site in km	Forest is c1km from Ballynafagh LakeSAC
Description of the project/proposed development Construction of 2no forestry roads	

(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 Nore, Rye Water/Carton Valley, Pollardstown Fen, Ballynafagh lake	<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>	If Yes go to section 1 in table C No
2	Impacts on sites designated for wetland habitats - bogs, fens, marshes and heath. <u>Sites to consider:</u> River Barrow and Nore, Rye Water/Carton Valley, Pollardstown Fen, Mouds	<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>	If Yes go to section 2 in table C YES

	Bog, Ballynafagh Bog, Red Bog, Ballynafagh Lake		Forest c1km from SAC
3	Impacts on designated terrestrial habitats. Sites to consider: River Barrow and Nore, Rye Water/Carton Valley, Pollardstown Fen, Ballynafagh Lake	<i>Is the development within a Special Area of Conservation whose qualifying interests include woodlands, dunes or grasslands, or within 100m of same?</i>	If Yes go to section 3 in table C 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>	If Yes go to section 4 in table C 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**.

(C) Identification of Potential Impacts on Habitats and Birds.	
1	Impacts on designated rivers, streams, lakes and fresh water dependant habitats and species. <i>Answer the following if the answer to question 1 in table B was YES</i> <i>Does the development involve any of the following:</i>

1 . 1	Works within the boundary of a Special Area of Conservation excluding small extensions/alterations to existing buildings.	N
1 . 2	Discharge to surface water or groundwater within 5km of SAC.	N
1 . 3	Abstraction from surface water or groundwater within 5km of SAC.	N
1 . 4	Removal of topsoil within 500m of watercourses	N
1 . 5	Infilling or raising of ground levels within 100m of watercourses	N
1 . 6	Construction of drainage ditches within 1km of SAC.	N
1 . 7	Installation of waste water treatment systems; percolation areas; septic tanks within 500 m of watercourses	N
1 . 8	Construction within a floodplain or within an area liable to flood	N
1 . 9	Crossing or culverting of rivers or streams within 5km of SAC	N
1 . 10	Storage of chemicals, hydrocarbons or organic wastes within 1km of a watercourse	N
1 . 11 1	Development of a large scale which involves the production of an EIS	N
1 . 12	Development of quarries/mines	N

1 . 1 3	Development of windfarms	N
1 . 1 4	Development of pumped hydro electric stations	N
1 . 1 5	Construction of roads or other infrastructure on peat habitats within 1km rivers, streams, lakes and fresh water dependant habitats	Y F o r e s t c 1 k m f r o m S A C
2	<p>Impacts on designated wetlands - bogs, fens, marshes and heath.</p> <p><i>Answer the following if the answer to question 2 in table B was YES</i></p> <p><i>Does the development involve any of the following:</i></p>	
2.1	Works within the boundary of a Special Area of Conservation excluding small extensions/alterations to existing buildings.	N
2.2	Construction of roads or other infrastructure on peat habitats within 1km of bog, marsh, fen or heath habitat within a Natura 2000 site	Y fore st with in c1k m of SAC

2.3	Development of a large scale within 1km of bog, marsh, fen or heath habitat within a Natura 2000 site which involves the production of an EIS	N
3	Impacts on other designated terrestrial habitats (woodland, grasslands) <i>Please answer the following if the answer to question 3 in table B YES</i> <i>Does the development involve any of the following:</i>	
3.1	Works within the boundary of a Special Area of Conservation.	N
3.2	Development within 200m of Natura 2000 site with woodland, grassland or coastal habitats.	N
3.3	Development of a large scale within 1km of Natura 2000 site with woodland, grassland or coastal habitats which involves the production of an EIS.	N
4	Impacts on birds in SPAs <i>Answer the following if the answer to question 4 in table B was YES</i> <i>Does the development involve any of the following:</i>	
4.1	Works within the boundary of a Special Protection Area excluding small extensions/alterations to existing buildings.	
4.2	Erection of wind turbines within 5km of an SPA.	NA
4.3	Proposed discharges directly to SPA	NA
4.4	Development of cycleways or walking routes within 100m of SPA	NA

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.

<p>Consideration of potential impacts on protected species within SACs</p>

Many of our Special Areas of Conservation are designated for species as well as for habitats. These are listed below, alongside the sites for which they are designated. Included is a short list of the types of activities which could have an impact on these species. Please tick if you are concerned that the proposed development could have an impact on these species.

Species	Relevant Sites	Activities which could have impacts on species	Possible Impacts Identified Yes/No
Otter	River Barrow and Nore, Pollardstown Fen	Activities that interfere with river banks.	N
Atlantic Salmon	River Barrow and Nore, Rye Water /Carton Valley	Activities that interfere with water quality, levels or the river bed;	N
River Lamprey	River Barrow and Nore	Activities that interfere with water quality, levels or the river bed;	N
Brook Lamprey	River Barrow and Nore, Pollardstown Fen	Activities that interfere with water quality, levels or the river bed;	N

White-clawed Crayfish	River Barrow and Nore, Rye Water /Carton Valley	Activities that interfere with water quality or the river bed;	N
Freshwater Pearl Mussel	River Barrow and Nore	Activities that interfere with water quality, levels or the river bed ;	N
Whorled Snail	River Barrow and Nore, Rye Water /Carton Valley, Pollardstown Fen, Ballynafagh Lake	Activities that result in loss of fen, marsh or wet grassland habitat within or close to the SAC.	N
Marsh Fritillary	Ballynafagh Lake	Activities that result in loss of heath/grassland habitat within or close to the SAC.	N

Conclusion:

If the answer to all of the above is **No**, significant impacts on species can be ruled out.

If the answer to any of the above is **Yes**, then further information is likely to be required in relation to potential for impact on that particular species.

(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	
3	Significant effects are certain, likely or uncertain. Seek a Natura Impact Statement	X

	Reject proposal. (Reject if potentially damaging/inappropriate)	
Justify why it falls into relevant category above (based on information in above tables)		
<p>Having regard to the proximity of the nearest SAC site, and the scale, nature and extent of the proposal, adequate information has not been submitted to determine whether a potential exists for significant effects on the Natura 2000 network. The precautionary principle should therefore be applied, and Stage 2 (AA) is required.</p>		
Name:	Danielle Cantwell	
Position	Executive Planner	
Date	22/01/2024	

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: DO50911 **Section:** Planning

SUBJECT: ED1057.
Application for a Declaration of Exempted Development under Section 5 of the Planning and Development Act 2000 (as amended) for development at Brockagh, Allenwood, Co. Kildare.

SUBMITTED: File Ref. ED1057 with recommendation from the A/Senior Planner and reports from the Council's Technical Officers.

ORDER: *AD* **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 23rd DAY

OF Jan YEAR 2024.

SIGNED: Alan Dunney
DIRECTOR OF SERVICES

Comhairle Contae Chill Dara
Kildare County Council



Date: 1st December 2023.
Our Ref: ED/1057.

REGISTERED POST

Robert Wilson Wright,
Coolcarrigan House,
Coill Dubh,
Naas,
Co. Kildare.

RE: Application for a Declaration of Exempted Development under Section 5 of the Planning and Development Act 2000 (as amended) for development at Brockagh, Allenwood, Co. Kildare.

Dear Sir,

I refer to your application for a Section 5 Declaration received on 14th July 2023. Having regard to the lack of any detail included within this Section 5 Declaration of Exempt Development application, the following further information is required to properly assess your application.

1. Details of the proposed roads, including road lengths and widths.
2. The projected quantity and nature of the material to be imported to the site,
3. An estimate of the number of truck movements required to carry out the works (for the proposed construction of roads and for the replanting aspect of the proposed development).

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

Yours sincerely,


Senior Executive Officer,
Planning Department.

KILDARE COUNTY COUNCIL



PLANNING DEPARTMENT

Section 5 declaration & referral on development & exempted development

Planning & Development Act 2000 (as amended)

Reference No. ED/1057

Name of Applicant(s):	Robert Wilson-Wright,
Address of Development:	Brockagh, Allenwood, Co. Kildare
Is Fee paid (€ 80)	Yes
Development Description:	Forestry road improvements

Site Location

The proposed development site is located approximately 585m west of Coill Dubh Village and comprises an existing forestry plantation.

Relevant Planning History

ED1054: Applicant_Robert Wright Wilson sought a Section 5 Declaration regarding the use of crusher on site, importation of concrete to crush for the rehabilitation, improvement and stabilisation of existing forestry roads. The opinion of the Planning Authority

Having regard to:

- Sections 3, 4, and 5 of the Planning and Development Act 2000 (as amended);
- Articles 6, 8 and 9 of the Planning and Development Regulations 2001 (as amended);

it is considered that the proposed development **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).

ED00881: Applicant Robert Wright Wilson sought a Section 5 Declaration regarding the construction of forestry access road to facilitate tree felling and removal offsite. Soil and stone is proposed to be imported to site to construct access road.

The opinion of the Planning Authority was as follows:

Having regard to:

- Sections 2, 3 and 4 of the Planning and Development Act 2000 (as amended), and
- Articles 6, 8(g) and 9 of the Planning and Development Regulations 2001 (as amended)

It is considered that the proposed construction of forestry road does constitute development as defined in Section 3(1) of the Planning and Development Act 2000 as amended and is exempted development as defined by Article 8(g) of the Planning and Development Regulations 2001 as amended.

ED00748: The applicant Robert Wilson Wright, a section 5 was issued in relation to the rehabilitation of existing forestry roads to facilitate tree felling and maintenance of fire breaks in forestry at Brockagh, Allenwood, Co. Kildare.

The opinion of the Planning Authority was as follows:

The rehabilitation of existing forestry roads comes within the scope of article 8G of the Planning and Development Regulations 2001 (as amended). Therefore, the Planning Authority decides that the proposed was development and was exempted development.

Description of the Development

Relevant Legislative Background

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.

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

Exempted Development is legislated for under Section 4 of the Planning and Development Act 2000 (as amended) and further prescribed under Article 8 (G) of the Planning and Development Regulations 2001 (as amended) which is stated as follows:

“Development (other than where the development consists of provision of access to a public road) consisting of the construction, maintenance or improvement of a road (other than a public road), or works ancillary to such road development, where the road serves forests and woodlands, shall be exempted development”.

Assessment

The declaration is being sought under the provisions of Article 8 (G) which refers to construction, maintenance or improvement of a non-public road which serves forests and woodlands.

The planning history on site indicates that previous section 5s was issued to the Applicant for forestry roads and also the rehabilitation of the existing roads. The proposal indicated in the Section 5 Declaration form submitted is for the “construction of two new roads in the forestry, for forestry maintenance and improvement works and to replant trees”. Such works would need construction material. The applicant has not indicated the quantity of imported material to be used or the number of HGV movements required for same. In addition, details have not been offered regarding the length of road it is proposed to upgrade and further information should be provided in this regard. A detailed site layout has not been submitted (the layout submitted indicates hand drawn roads without dimensions).

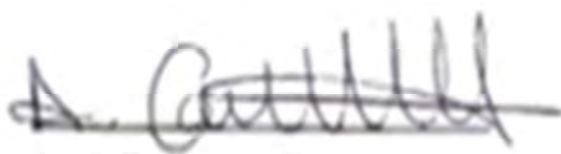
AA Screening

A screening for Appropriate Assessment accompanies this report. The site is located c. 1.5km from Ballynafagh Lake SAC.

Conclusion

Having regard to the lack of any detail included within this Section 5 Declaration of Exempt Development application, the Applicant is requested to provide details on the following:

1. details of the proposed roads, including road lengths and widths.
2. the projected quantity and nature of the material to be imported to the site,
3. an estimate of the number of truck movements required to carry out the works (for the proposed construction of roads and for the replanting aspect of the proposed development).



Danielle Cantwell
Executive Planner

30/11/2023

Signed:



A/Senior Executive Planner

30/11/2023

**APPROPRIATE ASSESSMENT SCREENING REPORT
AND
CONCLUSION STATEMENT**



(A) Project Details			
Planning File Ref		ED01057	
Applicant name		Robert Wilson-Wright	
Development Location		Brockagh, Allenwood, Co. Kildare	
Site size		Unknown	
Application accompanied by an EIS (Yes/NO)		No	
Distance from Natura 2000 site in km		The site is located c. 1.5km west of Ballynafagh Lake SAC	
Description of the project/proposed development Forestry road upgrade			
(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> Rye Water Valley / Carton, Pollardstown Fen, Ballynafagh lake, Wicklow Mountains.	<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> Rye Water Valley / Carton, Pollardstown Fen, Mouds Bog, Ballynafagh Bog, Red Bog, Ballynafagh Lake, Wicklow Mountains.	<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.	<i>Is the development within a Special Area of Conservation whose qualifying interests</i>	No

	<u>Sites to consider:</u> Rye Water Valley / Carton, Pollardstown Fen, Ballynafagh Lake, Wicklow Mountains.	<i>include woodlands, dunes or grasslands, or within 100m of same?</i>	
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 the proximity of the nearest SAC and given the location, nature and extent of the proposed development it is considered the potential for significant effects on the Natura 2000 network are uncertain. The explanatory note set out in the Planning and Development (Amendment) Act 2018 (Commencement) Order 2020 and Planning and Development (Exempted Development) Regulations 2020 is that specified forest road development, including the provision of access to public roads (but not to national roads), is exempt entirely from planning, including where an EIA and/or AA is required for that development.		
Name:	Danielle Cantwell	
Position:	Executive Planner	
Date:	30/11/20023	

Planning Dept
Kildare County Council
Aras An Chontae
Naas
Co Kildare



13th December 2023

ED 1057 Response for further information

A Chara

Please find enclosed a copy of your further information request and a copy of our reply to your further information we have answered all queries that was asked?

Can you please let me know do we have to provide more information

Kind regards

Fiona Moore
RWW
Coolcarrigan Farm
Coil Dubh
Naas
Co Kildare

Comhairle Contae Chill Dara
Kildare County Council



Date: 1st December 2023.
Our Ref: ED/1057.

REGISTERED POST

Robert Wilson Wright,
Coolcarrigan House,
Coill Dubh,
Naas,
Co. Kildare.



RE: Application for a Declaration of Exempted Development under Section 5 of the Planning and Development Act 2000 (as amended) for development at Brockagh, Allenwood, Co. Kildare.

Dear Sir,

I refer to your application for a Section 5 Declaration received on 14th July 2023. Having regard to the lack of any detail included within this Section 5 Declaration of Exempt Development application, the following further information is required to properly assess your application.

1. Details of the proposed roads, including road lengths and widths.
2. The projected quantity and nature of the material to be imported to the site,
3. An estimate of the number of truck movements required to carry out the works (for the proposed construction of roads and for the replanting aspect of the proposed development).

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

Yours sincerely,

Senior Executive Officer,
Planning Department.



Planning Dept
Kildare County Council
Áras An Chontae
Naas
Co. Kildare



18 September 2023

1087

ED 1052: Response to Further Information

A Chara,

WSP Ireland Consulting Ltd are nominated agents for Mr. Robert Wilson-Wright who has requested that WSP respond on his behalf to a request for further information in respect of an application for a Declaration of Exempt Development, Reference ED1052.

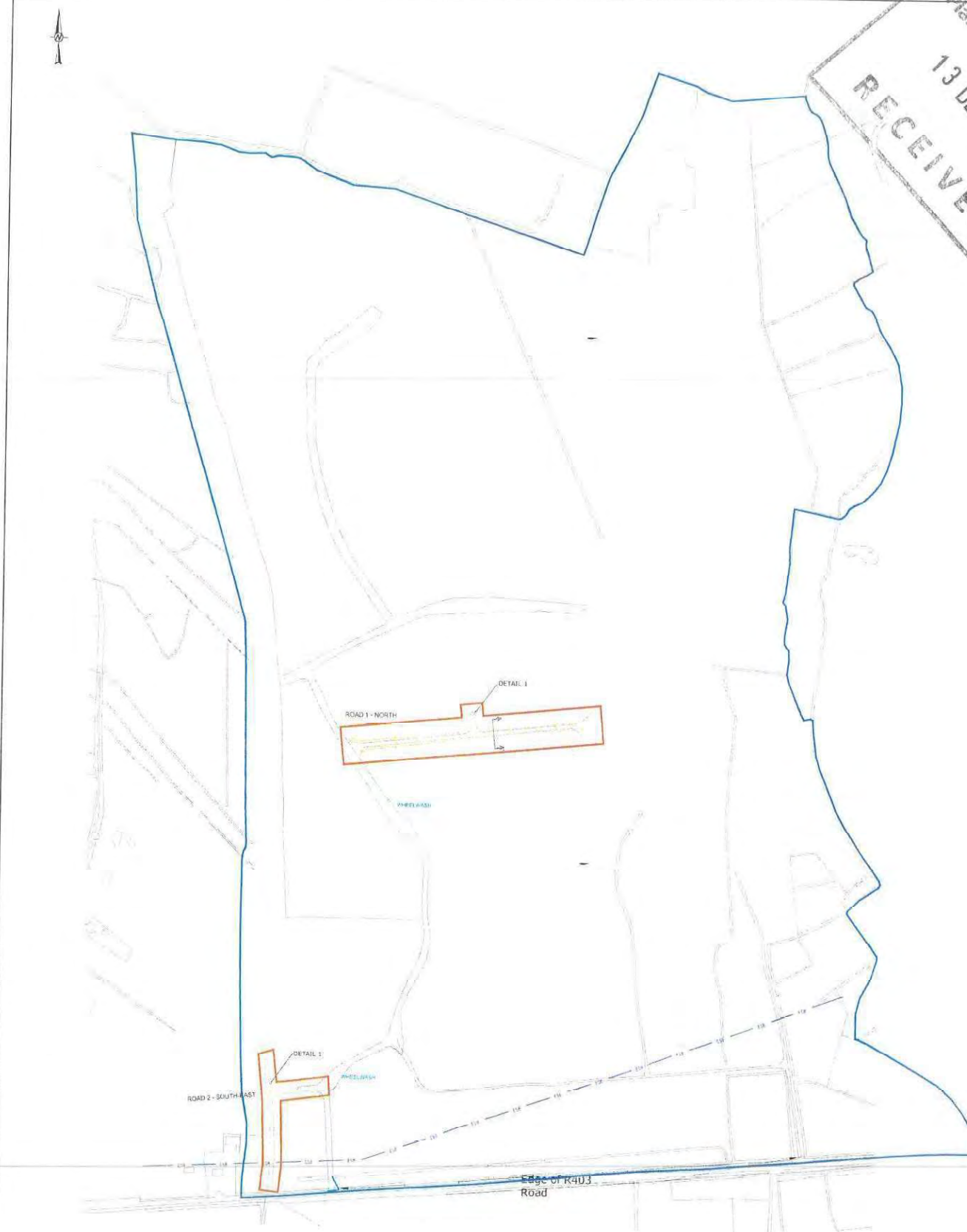
Response

1. Details of the road including road length and location which requires upgrading are provided on the attached: **Proposed Site Layout Plan – Drawing No.01, Rev A. 1:5000A3.**
2. The projected quantity of the material is calculated to be 44, 250m³. The nature of the material to be imported consists of clean soil and stone and crushed rock.
3. It is estimated that the truck movement associated with this volume of material is 3687.5 deliveries based on articulated HGV carrying 12 cubic metres per load. It is expected that importation will be conducted over an 12-18 month period resulting in 10-15 deliveries per day over this anticipated time period based on 250 operational days per annum.

Yours faithfully

Ruth Treacy
Technical Manager

Drawings Attached.



ROAD LENGTHS:
Road No. 1 North (including Turning circle) = 344 m
Road No. 2 South East (including Turning circle) = 242 m

-  PLANNING BOUNDARY
-  OVERHEAD POWER LINES
-  ORIGINAL OS MAP FEATURES
-  APPLICATION BOUNDARY
-  PROPOSED NEW CONTOURS
-  PROPOSED NEW ROADS EDGE
-  PROPOSED NEW ROAD CENTERLINE
-  PROPOSED NEW ROAD FILL TOE



Q111111

ROBERT WILSON ALLENWOOD

CONSULTANT



YY/MM/DD	2023-Sep-01
PREPARED BY	POB
DESIGN	DC
REVIEW	RI
APPROVED	RT

PROJECT

SECTION 5 APPLICATION

FILE	DATE	DESCRIPTION
100	10/10/10	100
101	10/10/10	101
102	10/10/10	102
103	10/10/10	103
104	10/10/10	104
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PROPOSED SITE LAYOUT

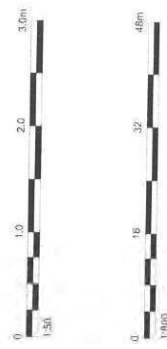
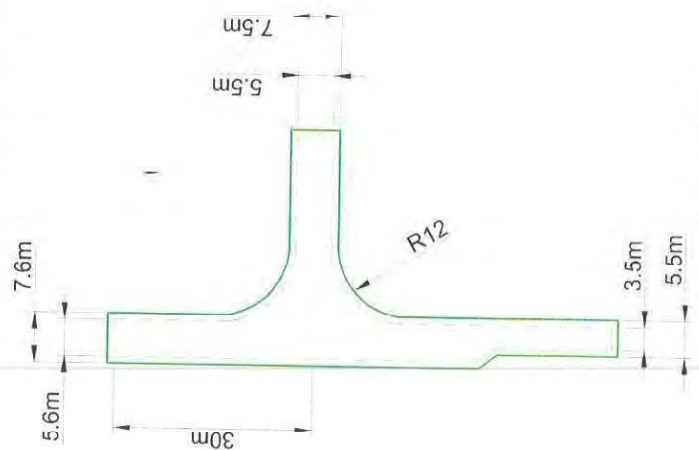
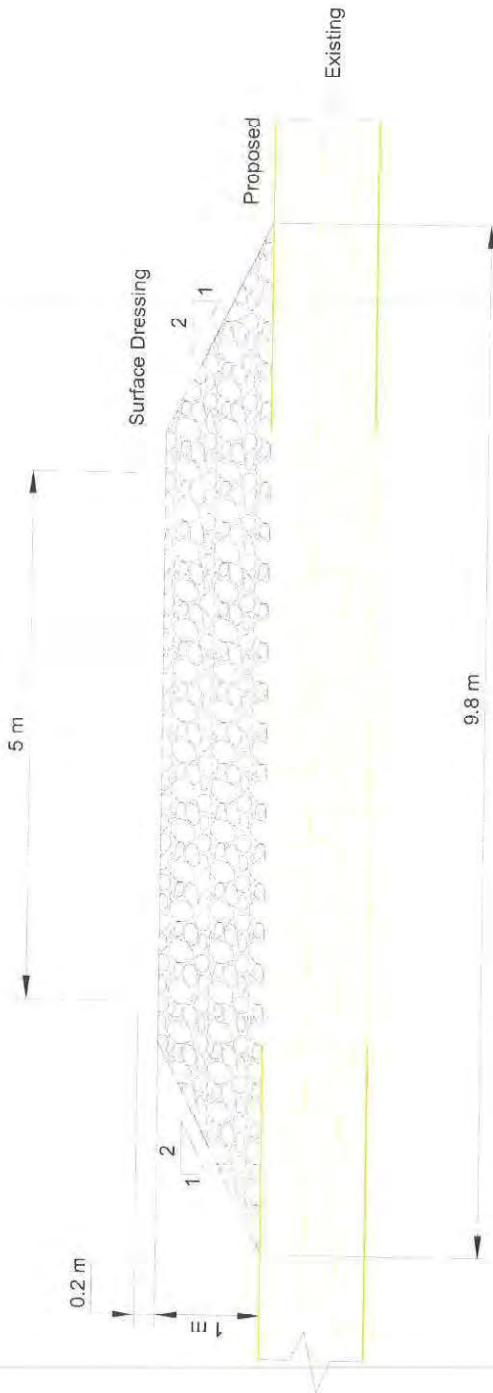
PROJECT No.
41000025

01

B

SCALE
1/5000 A3

Kildare County Council
Planning Department
13 DEC 2023
RECEIVED



CLIENT		ROBERT WILSON ALLENWOOD		SECTION 5 APPLICATION	
CONSULTANT		RTM/MS		FILE	
PROJECT NO.		41000025		DRAWING NO.	
DATE		02		SCALE	
AS SHOWN		A		As shown A3	



DATE	2023-Sep-09
PREPARED BY	POB
DESIGNED BY	DC
CHECKED BY	RT
APPROVED BY	RT

ROAD SECTION AND TURNING POINT DETAILS

ED - 00881

Kildare County Council

Declaration of Exempt Development under Section 5,
of the Planning and Development Act 2000Incomplete application forms will
be deemed invalid and returnedAll responses must be in block
letters

Section 1 Details of Applicants

1. Name of Applicant(s) A. Surname Wilson-Wright Forenames Robert
Phone No. [REDACTED] Fax No. [REDACTED]
2. Address Coolcamgen House, Calldubh, Naas
Co. Kildare

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

1. Name of Person/Agent: Surname Mare Forenames Fiona
Phone No. 087 125546 Fax No. [REDACTED]
2. Address As Above

Section 3 Company Details (if applicable)

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

Kildare County Council
Planning Department

14 JUL 2023

RECEIVED

Section 4 Details of Site

1. Planning History of Site... N/A
2. Location of Proposed Development Brackagh Allenwood
Naas Co. Kildare
3. Ordnance Survey Sheet No... Attached
4. Please state the Applicants interest in the site Owner
5. Please state the extent of the proposed development Construction of 2 new

Roads for Forestry Maintenance
& Improvement works and to
re Plant trees

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

8G of Planning & Development Regs 2013 s1 219/2013

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

Construct two new roads in forestry for improvement and rehabilitation. These works are required to facilitate safe access & egress to the forest felling areas for plant & equipment and transport trucks include structural improvements to the forest roads. Felling of trees is being completed at present. Similar works have been carried out in this site and is ongoing.

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

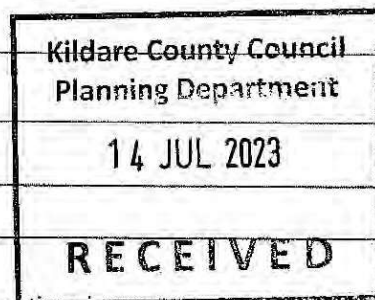
		(Please Tick)
1.	Site Location Map (1:2500 Rural Areas) (1:1000 Urban Areas)	✓
2.	A Site Layout Plan (Scale 1:500) in full compliance with Article 23 of Planning and Development Regulations 2001	✓
3.	Drawings of the development (Scale 1:50) in full compliance with Article 23 of Planning and Development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

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

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

Signature: Fiona Moore

Date: 14/7/2023



~~ED056~~ ED1257

Fiona Moore
Robert Wilson Wright
Coolcarrigan
Corduff
Coildubh
Naas
Co Kildare

Date: 14th July 2023

Planning Section
Kildare County Council
Naas
Co Kildare

RE: Application for Section 5 to Construct two new roads to assist Tree Felling

Dear Sirs

Please find enclosed our completed Section 5 application to construct two new roads as has been done previously on this forestry. Exempt development has been granted and attached ED-00881.

We are constructing forestry roads in order to create safe access and access through the forestry for plant equipment and machines and Trucks and in order to fell trees and to re-sow new trees.

We have previously done same in this forestry. The exempt declaration was granted for this also ED-00881.

I would be grateful if you would consider my application and if there are any queries or planning would like to visit the forestry please contact me 087 1255016 or my email is fionamoore111@gmail.com.

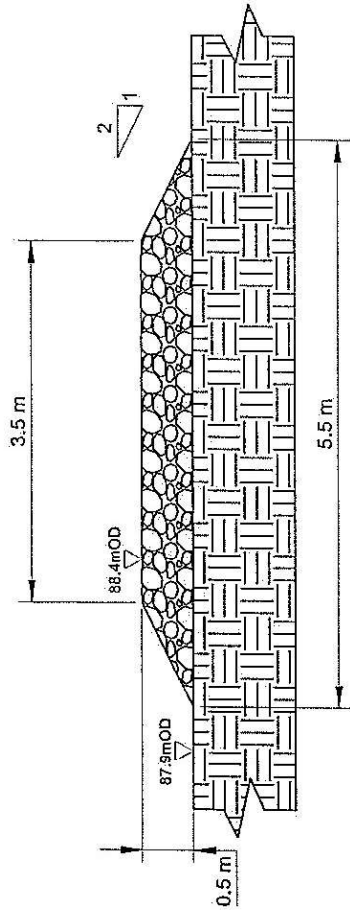
Kind regards

Fiona Moore
RWW

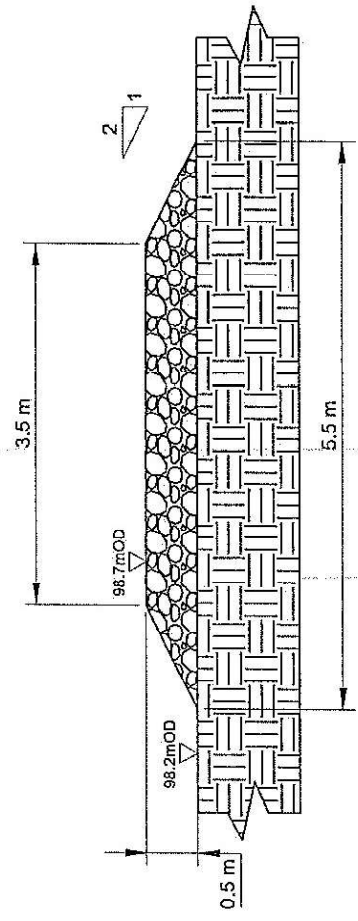
Kildare County Council
Planning Department

14 JUL 2023

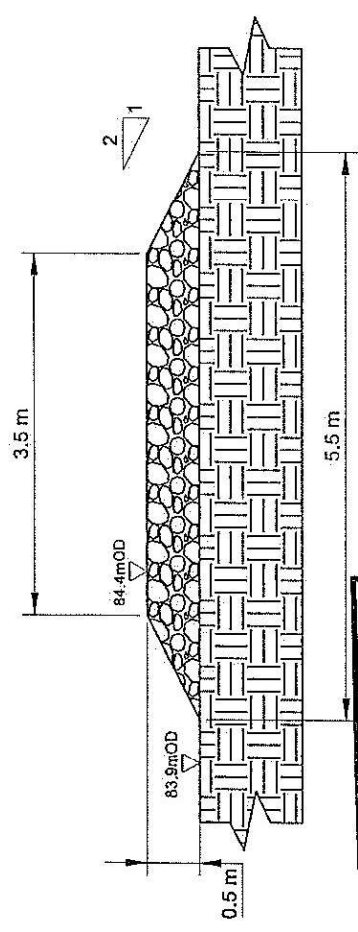
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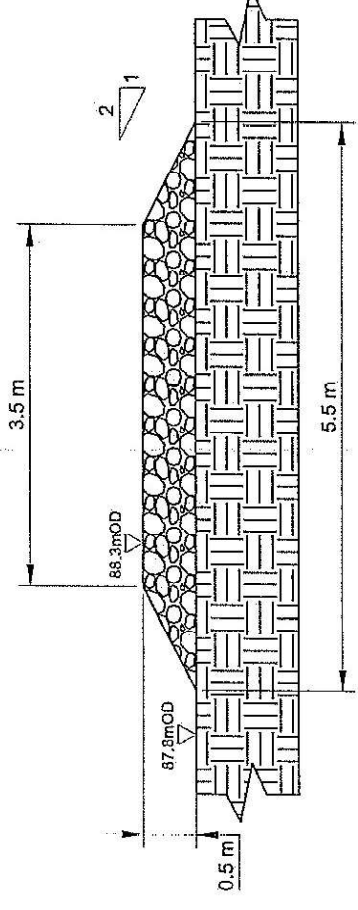
CROSS SECTION I-I'



CROSS SECTION J-J'



CROSS SECTION M-M'



CROSS SECTION D-D'



Kildare County Council
Planning Department
14 JUL 2023
RECEIVED

CLIENT
ROBERT WILSON WRIGHT

CONSULTANT
GOLDER
MEMBER OF WSP

PROJECT
EXEMPT DEVELOPMENT APPLICATION,
ALLENWOOD, NAAS, CO. KILDARE

TITLE
ROAD SECTIONS I, J & M

DATE
2022-FEB-23

PREPARED
JD

DESIGN
JD

NO
RT

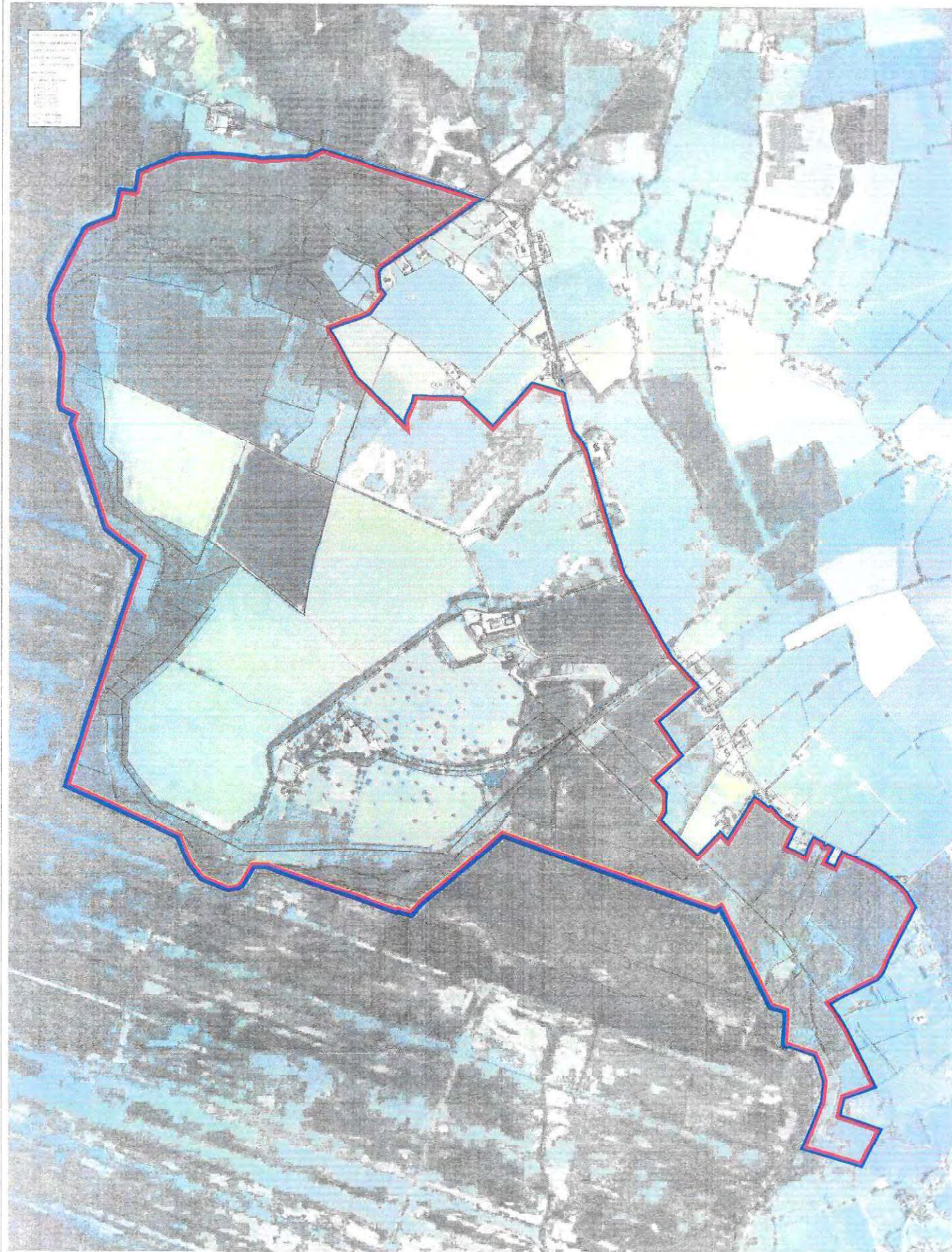
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PROJECT NO.
19124856

DRAWING NO.
00C

SCALE
A As shown A3

7/8/2023



Scale: 1:4000
Map Date: 10/10/2022
Map Author: [illegible]
Map Title: [illegible]



001 SURVEY DATA
AS 1000000

LEGEND
— AREA UNDER CONTROL OF APPLICANT
— APPLICATION SITE BOUNDARY

ROBERT WILSON WRIGHT FORESTRY EXEMPTION APPLICATION

Kildare County Council
GO Planning Department

10/12/2022

02

1:4000 A0

14 JUL 2023
RECEIVED

Planning Report

Date: 12th January 2024.

To: George Willoughby.
Senior Executive Engineer.

From: Colm Lynch.
Executive Engineer.

Reference: Potential unauthorised development of landfilling at Brockagh, Allenwood Co. Kildare that is not in compliance with the submitted particulars of the Declarations of Exempted Development planning register references: ED00748 and ED00881.



Site Location Map: Brockagh, Allenwood Co. Kildare.

Relevant Planning History.

ED00748: A declaration was made by Kildare County Council on the 9th August 2019 declaring the construction, maintenance and improvement of a road (other than a public road), or works ancillary to such road development, where the road serves forests and woodlands is development and is exempted development.

ED00881: A declaration was made by Kildare County Council on the 1st September 2021 that development (other than where the development consists of the provision of access to a public road) consisting of the construction, maintenance and improvement of a road (other than a public road), or works ancillary to such road development, where the road serves forests and woodlands is development and is exempted development.

ED01054: A declaration was made by Kildare County Council on the 1st December 2023 that development consisting of the use of a crusher on site and the importation of concrete to crush when necessary for rehabilitation and improvement of forestry roads and to create stabilisation of existing roads is development and not exempted development.

ED01057: An application was made to Kildare County Council on the 14th July 2023 requesting whether the construction of two new roads for forestry maintenance and improvement works and to replant trees is or is not development or is or is not exempted development. **Decision pending on or around the 12th January 2024.**

Assessment.

This analysis is for indicative purposes only and requires further detailed assessment from Planning Enforcement following the method set out below.

1. Fig 1.0 is comparing the submitted Site Layout Plan of ED00748 to recent Google Earth Photography. It appears land filling has taken place outside the proposed forestry roads of the submitted Site Layout Plan. It is also noted lengths of road have been constructed that are not in accordance with the submitted Site Layout Plan. (Please see the green arrows). These would also appear to be unauthorised development.
2. Fig 2.0 is comparing the submitted site layout Plan of ED00881 to recent Google Earth Photography. It appears land filling has taken place outside the proposed roads of the submitted Site Layout Plan. It is also noted that it appears the area indicated by the yellow arrows (outside the permitted area of ED00748) may have been land filled is indicated on the submitted Site Layout Plan of ED00881.
3. From the above analysis, it would appear land filling has taken place outside the locations of the roads as indicated as being exempted development under ED00748 and ED00881. Therefore, it appears unauthorised development has taken place on the lands.



Fig 1.0 Submitted Site Layout Plan of ED00748 compared to Google Earth.



Fig 2.0 Submitted Site Layout Plan of ED00881 compared to Google Earth.

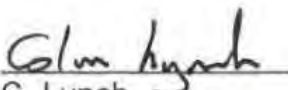
Conclusion and Recommendation.

1. This is a Planning Enforcement Matter.
2. From this desktop exercise it appears land filling and road construction has taken place that is not in accordance with the declarations **ED00748** and **ED00881**. Therefore unauthorised development appears to have taken place on the lands. It will also be required to establish the true use of the lands and whether the site is being used as landfill for soil material disposal which in itself would also be considered to be unauthorised development. I recommend the Planning Authority

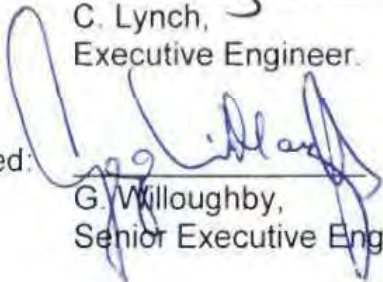
carry out a full on-site inspection and topographical survey and an aerial fly over (as a matter of urgency). These actions were both previously conducted (in-house) in relation to unauthorised quarries in the county. This to establish the extent of the unauthorised development on the lands.

The methodology as contained in the assessment of this report is to be conducted in detail in hard copy with the submitted Site Layouts of the declarations.

3. The development may represent a gross and severe endangerment of public safety by the number of unregulated HGV traffic movements too and from the site whilst also having consideration to the detrimental effect this may also be having on the public road network and bridges in the area. On this basis, this investigation should be prioritised as a matter of urgency.
4. Once **item 2** has been fully assessed and in reference to the current application for a declaration under **ED01057**, it would appear the Planning Authority are not in a position in determining the proposed development as being exempted development. The Planning And Development Act 2000 – 2023 does not specify restrictions for exempted development as set out in Section 4 of the Act. However, in such cases relevant case law has held that the matter of unauthorised development should still be taken account of when considering issues of exempted development. Reference should be had to Mr. Justice T.C Smyth ruling in the case of *Fynes v An Bord Pleanála & Fingal County Council*, [2005] IEHC 213. To apply this case, a developer cannot avail of the benefit of exempted development whilst simultaneously carrying out unauthorised development on the lands.

Signed: 
C. Lynch,
Executive Engineer.

Date:

Endorsed: 
G. Willoughby,
Senior Executive Engineer.

Date:



FINANCE CASH OFFICE

Kildare County Council

Áras Chill Dara

Devoy Park

Naas

Co. Kildare

14/07/2023 14:28:54

Receipt No. FIN1/0/488863

***** REPRINT *****

~~ED 1057~~ FIONA MOORE

ED1057

PLANNING EXEMPT DEVELOP FEES 80.00

GOODS 80.00

VAT Exempt/Non-vatable

Total : 80.00 EUR

Tendered :

Credit Card 80.00

VD

**5061

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Change : 0.00

Issued By : Pat Gibbons

From : Financial Lodgement Area

Vat reg No.0410571C