

Comhairle Contae Chill Dara
Kildare County Council



Date: 13th May 2024.
Our Ref: ED/1120.

Paul Brophy,
c/o D. C. Turley & Associates,
2 The Crescent,
Pipers Hill,
Naas,
Co. Kildare.

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

Dear Sir/Madam,

I refer to your correspondence received on 16th April 2024 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/1120.

WHEREAS a question has arisen as to whether Solar PV panels on the roof of a farm building at Newlands, Naas, Co. Kildare is exempted development,

AS INDICATED on the plans and particulars received by the Planning Authority on 16th April 2024

AND WHEREAS Paul Brophy 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

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

- (a) Sections 2, 3, 4 of the Planning and Development Act 2000 (as amended);
- (b) Articles 6 and 9 of the Planning and Development Regulations 2001 (as amended);
- (c) Schedule 2, Part 2, Class 18 (c) of the Planning and Development Regulations 2001 (as amended); and
- (d) The nature, extent and purpose of the works;

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 installation of solar PV panels on the roof of a farm building

IS development and IS EXEMPTED development pursuant to Section 2, 3 and 4 of the Planning and Development Act as amended and Article 6, Article 9 and Schedule 2 Part 2 Class 18 (c) of the Planning and Development Regulations 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.

13th May 2024.



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/1120.

Name Of Applicant(s):	Paul Brophy.
Address Of Development:	Newlands, Naas, Co. Kildare.
Development Description:	Solar PV panels on roof of farm building.
Due date	14/5/2024.

Introduction

This is a request for a **DECLARATION** under Section 5(1) of the Planning and Development Act 2000 (as amended) to establish whether under Section 5 of the Act the installation of solar PV panels on the roof of a farm building is or is not exempted development.

Site Location

The site is located on a local road c. 2.5km southwest of Naas. The surrounding lands are primarily agricultural in nature. There is a single storey detached dwelling located to the west of the site. The site appears to comprise of a number of agricultural buildings and associated outbuildings. Permission was granted in 2023 on the site for the construction of 4 no. Polytunnels for agricultural use.

Description of Proposed Development

The proposal relates to the installation of Solar PV panels on the roof of an existing agricultural building. The drawings submitted as part of the application documents refer to 'SOLARWATT Vision 60m Style' PV Panels or equal.

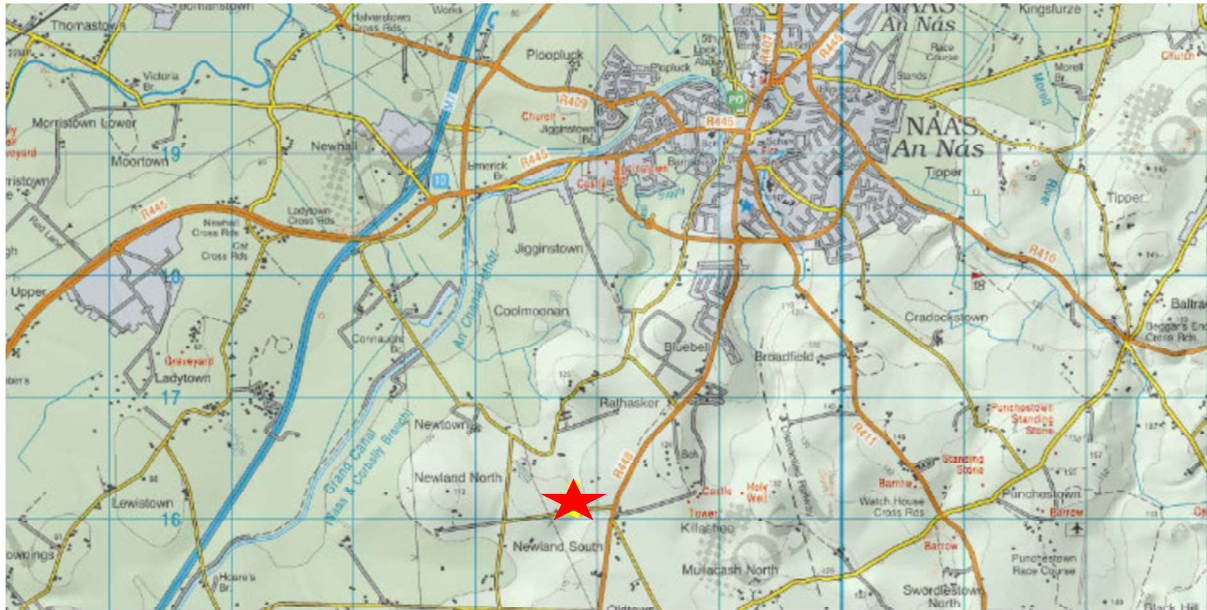


Fig 1: Site Location and context

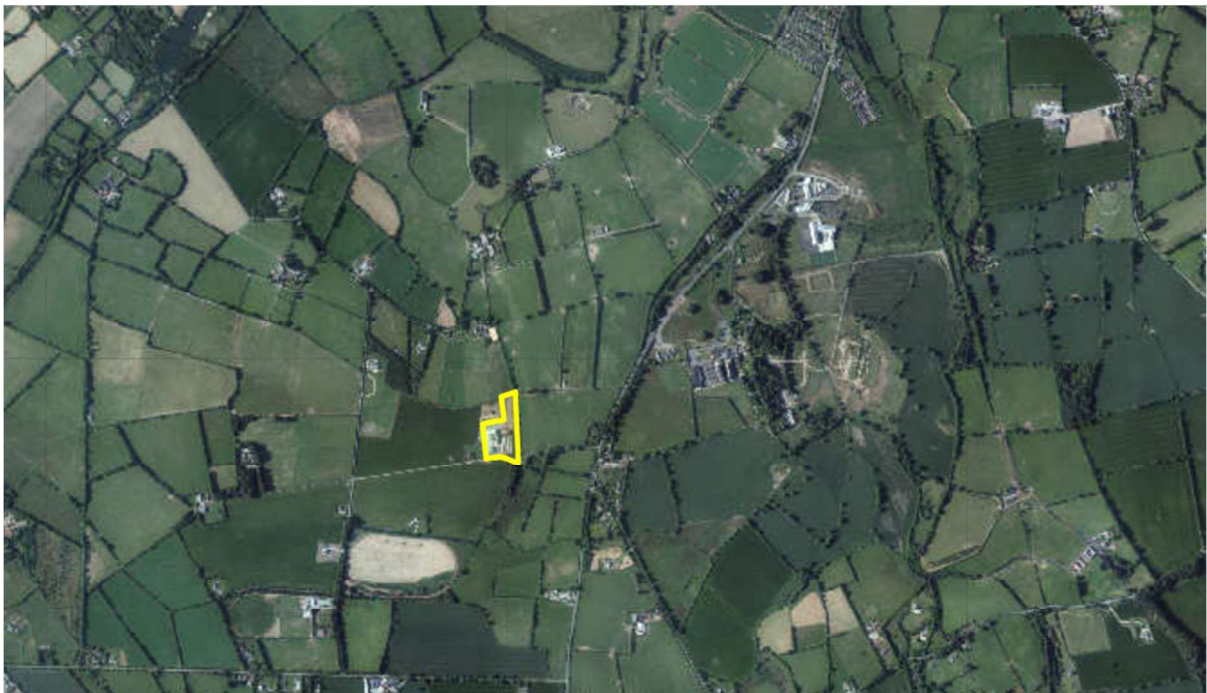


Fig 2: Aerial view of subject site (Source: GIS)

Planning History

23/320 - Permission was **granted** to Brophy Produce Ltd for the construction of 4 no. Agricultural polytunnels.

23/63 - Permission was **granted** to ESB Telecoms Limited to erect a 24m lattice type telecommunications structure carrying antennae and communication dishes within a proposed 2.4m high palisade fence compound with associated ground-mounted equipment, to be shared with multiple operators.

12/90 - Permission was **granted** to Paul Brophy for works including Extension (ground floor area = 1247 sqm, mezzanine floor area = 144 sqm) to existing cold storage

building (floor area = 228 sqm) provide new goods packaging area, new cold room, goods outwards area, offices, sanitary facilities, staff changing areas and to include for the decommissioning of the existing septic tank and provision of a new septic tank and percolation area, and all associated site works.

Relevant Legislative Background

Planning and Development Act 2000 (as amended)

Section 2(1)

'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)

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

Section 4(1)

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

(h) development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures;

Planning and Development Regulations 2001 (as amended)

Schedule 2, Part 2, Class 18 (c)

The placing or erection on a roof or wall of an agricultural structure, or within the curtilage of an agricultural holding, or on a roof or wall of any ancillary buildings within the curtilage of an agricultural holding of a solar photo-voltaic and/or solar thermal collector installation.

- 1. Where such development is located within a solar safeguarding zone, the total aperture area of any solar photovoltaic and/or solar thermal collector panels, taken together with any other such panels previously placed on a roof, shall not exceed 300 square metres.*
- 2. Where such development is located within a solar safeguarding zone, the planning authority for the area shall be notified in writing no later than 4 weeks after the commencement of such development and such notification shall include details regarding the location and scale of the development.*
- 3. The distance between the plane of the roof and the solar photo-voltaic or solar thermal collector panels shall not exceed 1.2 metres in the case of a flat roof or 15cm in any other case.*
- 4. The solar photo-voltaic or solar thermal collector panels shall be a minimum of 2 metres in the case of a flat roof or 50cm in any other case from the edge of the roof on which it is mounted.*

5. Development shall not be exempted development where the highest part of the solar photo-voltaic or solar thermal collector installation exceeds the highest part of any roof that is not a flat roof (excluding any chimney).
6. Any ancillary equipment associated with solar photo-voltaic or solar thermal collector panels shall not be placed or erected on a wall or any roof that is not a flat roof.
7. The height of any ancillary equipment associated with solar photo-voltaic or solar thermal collector panels on a flat roof shall not exceed 1.6 metres above roof level.
8. Any ancillary equipment associated with solar photo-voltaic or solar thermal collector panels on a flat roof shall be a minimum of 2 metres from the edge of the roof on which it is mounted.
9. The total aperture area of any wall mounted solar photo-voltaic and solar thermal collector panels taken together with any other such existing wall mounted panels shall not exceed 75 square metres.
10. The distance between the plane of the wall and the solar photo-voltaic or solar thermal collector panels shall not exceed 15cm.
11. The solar photo-voltaic or solar thermal collector panels shall be a minimum of 50cm from the edge of the wall on which it is mounted.
12. Any free-standing solar photo-voltaic or solar thermal collector installation shall not be placed or erected forward of the front wall of the nearest agricultural structure, within the curtilage of the agricultural holding, to a public road.
13. The total aperture area of any freestanding solar photo-voltaic and solar thermal collector panels taken together with any other such existing freestanding panels shall not exceed 75 square metres.
14. The height of any free-standing solar photo-voltaic or solar thermal collector installation shall not exceed 2.5 metres at its highest point above ground level.
15. The placing or erection of any freestanding solar photo-voltaic or solar thermal collector installation within an Architectural Conservation Area shall only be exempted development if those works would not materially affect the character of the area.
16. No sign, advertisement or object not required for the functioning or safety of the solar photo-voltaic or solar thermal collector installation shall be attached to or exhibited on such installation.
17. Development under this Class shall only be exempted development where the solar photo-voltaic or solar thermal collector installation is primarily used for the provision of electricity or heating for use within the curtilage of the agricultural holding, and shall not be considered a change of use for the purposes of the Act.
18. Development under this Class which causes hazardous glint and/or glare shall not be exempted development and any solar photo-voltaic or solar thermal collector panels which are causing hazardous glint and/or glare shall either be removed or be covered until such time as a mitigation plan to address the hazardous glint and/or glare is agreed and implemented to the satisfaction of the Planning Authority.

Section 5(7) EIA Screening

The proposed development is not specified in Part 2 of Schedule 5 of the Planning and Development Regulations 2001(as amended). In any event, it is considered, having regard to nature, size and location, the proposed development would not be likely to have significant effects on the environment. Therefore, EIA is not required.

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.

Article 9 (1)(a)(i)

Restrictions on exemption.

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

(a) if the carrying out of such development would—.....(15 items)

Assessment

The Applicant proposes to erect solar panels on the roof of an existing cold room structure within an overall agricultural landholding.

The application site is not located within a solar safeguarding zone. It appears that the solar photo-voltaic installation will be primarily used for the provision of electricity or heating for use within the curtilage of the agricultural holding, and shall not be considered a change of use for the purposes of the Act.

The proposed development has been assessed under Schedule 2, Part 2, Class 18 (c) of the Planning and Development Regulations 2001 (as amended). It is considered that the development meets the limitations under Schedule 2, Part 2, Class 18 (c) of the Planning and Development Regulations 2001 (as amended)

Conclusion

Having regard to:

- Sections 2, 3, 4 of the Planning and Development Act 2000 (as amended);
- Articles 6 and 9 of the Planning and Development Regulations 2001 (as amended);
- Schedule 2, Part 2, Class 18 (c); of the Planning and Development Regulations 2001 (as amended) and
- 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 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 exempted development*.

Signed: Caitiana Dockery
Assistant Planner

Date: 09/05/2024

Signed:

Aoife Donohoe
A/Senior Executive Planner
09/05/2024

A. Brangan
Aoife Brangan
A/SP
10/05/24

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 the installation of solar PV panels on the roof of a farm building,

AS INDICATED on the plans and particulars received by the Planning Authority on 16/04/2024

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

- Sections 2, 3, 4 of the Planning and Development Act 2000 (as amended);
- Articles 6 and 9 of the Planning and Development Regulations 2001 (as amended);
- Schedule 2, Part 2, Class 18 (c) of the Planning and Development Regulations 2001 (as amended); and
- The nature, extent and purpose of the works;

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 installation of solar PV panels on the roof of a farm building

IS development and IS EXEMPTED development pursuant to Section 2, 3 and 4 of the Planning and Development Act as amended and Article 6, Article 9 and Schedule 2 Part 2 Class 18 (c) of the Planning and Development Regulations as amended.

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.

Signed: _____

Appendix 1: Appropriate Assessment Screening

	APPROPRIATE ASSESSMENT SCREENING REPORT AND DETERMINATION	
(A) Project Details		
Planning File Ref	ED1120	
Applicant name	Paul Brophy	
Development Location	Newlands, Naas, Co. Kildare.	
Site size	c.2.06 Ha	
Application accompanied by an EIS (Yes/NO)	No	
Distance from Natura 2000 site in km	c.7.2km southeast of Mouds Bog SAC	
Description of the project/proposed development – Installation of solar PV panels on roof of agricultural building		

(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>	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> River Barrow and Nore, Rye Water/Carton Valley, Pollardstown Fen, Mouds Bog, Ballynafagh Bog, Red Bog, Ballynafagh Lake	<i>(bog, marsh, fen or heath), or within 1 km of same?</i>	
3	Impacts on designated terrestrial habitats. <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 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 the scale and nature of the development and the distance to the nearest designated site, it is not considered there would be potential for any significant effects on the European sites network.		
Name:	C. Dockery	
Position:	Assistant Planner	
Date:	09/05/2024	

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: DO52641 **Section:** Planning

SUBJECT: ED/1120.
Application for a Declaration of Exempted Development under Section 5 of Planning and Development Act 2000 (as amended) for development at Newlands, Naas, Co. Kildare.

SUBMITTED: File Ref. ED/1120 with recommendation from the A/Senior Planner and reports from the Council's Technical Officers.

ORDER: *ADH*
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 exempted development.

MADE THIS 13th DAY
OF May YEAR 2024

SIGNED: *Alan Dunney*
DIRECTOR OF SERVICES

Kildare County Council

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

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..... Brophy Forenames..... Paul
Phone No..... Fax No.....
2. Address Woodside, Newlands, Naas, Co. Kildare

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

1. Name of Person/Agent: Surname..... Turley Forenames..... Robert
Phone No..... 086-1729358 Fax No.....
2. Address D. C. Turley & Associates, 2 The Crescent, Piper's Hill, Naas, Co. Kildare

Section 3 Company Details (if applicable)

1. Name of Company Brophy Produce Ltd.
Phone No..... 086-2608399 Fax No.....
2. Company Reg. No. 618784
3. Address Newlands, Naas, Co. Kildare

Section 4 Details of Site

1. Planning History of Site 23/320, 12/90.
2. Location of Proposed Development Newlands, Naas, Co. Kildare
3. Ordnance Survey Sheet No. 3607-B
4. Please state the Applicants interest in the site Owner
5. Please state the extent of the proposed development Solar PV panels on roof of farm building.

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).....
.....
..The Planning and Development Act 2000 (Exempted Development) (No. 3) Regulations 2022.....

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


.. Confirmation required that the installation of PV panels on the roof of this agricultural building are now exempt development.
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Section 5	The following must be submitted for a valid application
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(Please Tick)		
1.	Site Location Map (1:2500 Rural Areas) (1:1000 Urban Areas)	X
2.	A Site Layout Plan (Scale 1:500) in full compliance with Article 23 of Planning and Development Regulations 2001	X
3.	Drawings of the development (Scale 1:50) in full compliance with Article 23 of Planning and Development Regulations 2001	X
4.	All drawings to differentiate between the original building, all extensions and proposed development	X
5.	Fee of 80 Euro	X

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

Signature: 

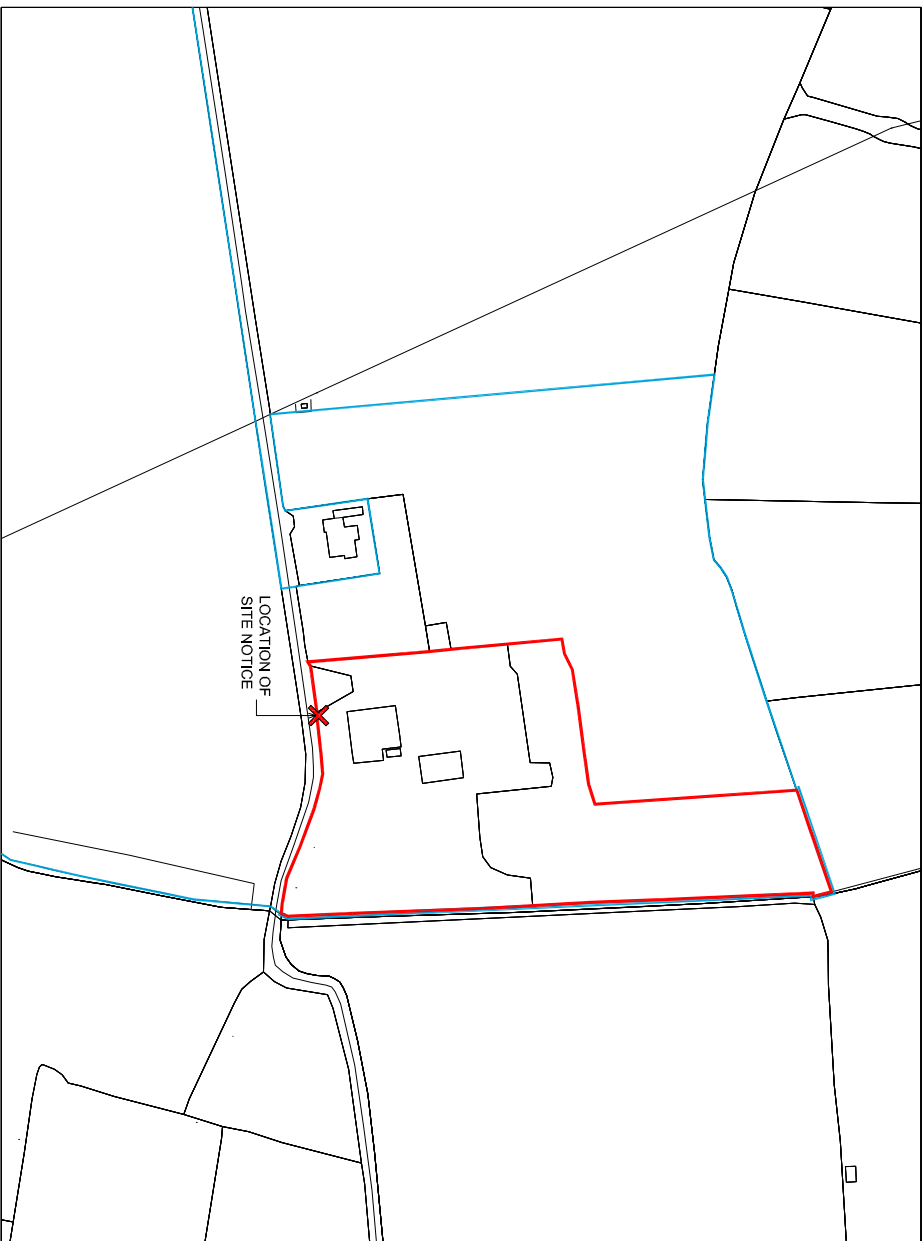
Date: 16/04/24

Description:	Digital Landscape Model (DLM)
Publisher / Source:	Distance Survey / Ireland (DS)
Date / Source / Reference:	PRIORCE
File Format:	Autoodesk AutoCAD (DWG, D2013)
File Name:	50826/5_1.dwg

1
002 SITE LOCATION MAP
1:2,500 @ A3



DRAWING DESCRIPTION :		SITE LOCATION MAP	
STATUS :		FILE : DCT / 22 / 010	
DATE :		REV : 1	
SCALE :		DRAWN / CHECKED : RT	
1:2500 @ A3		DWG No : P-002	
		CLIENT : BROPHY PRODUCE LTD.	
		LOCATION : WOODSIDE, NEULANDS SOUTH, NMAAS, Co. KILDARE, W914AWP	
		PROJECT : RETENTION OF EXISTING POLYTUNNELS	



**SITE BOUNDARY
OUTLINED IN RED**
**SITE AREA: 2.0609 Hectares
5.09 Acres**

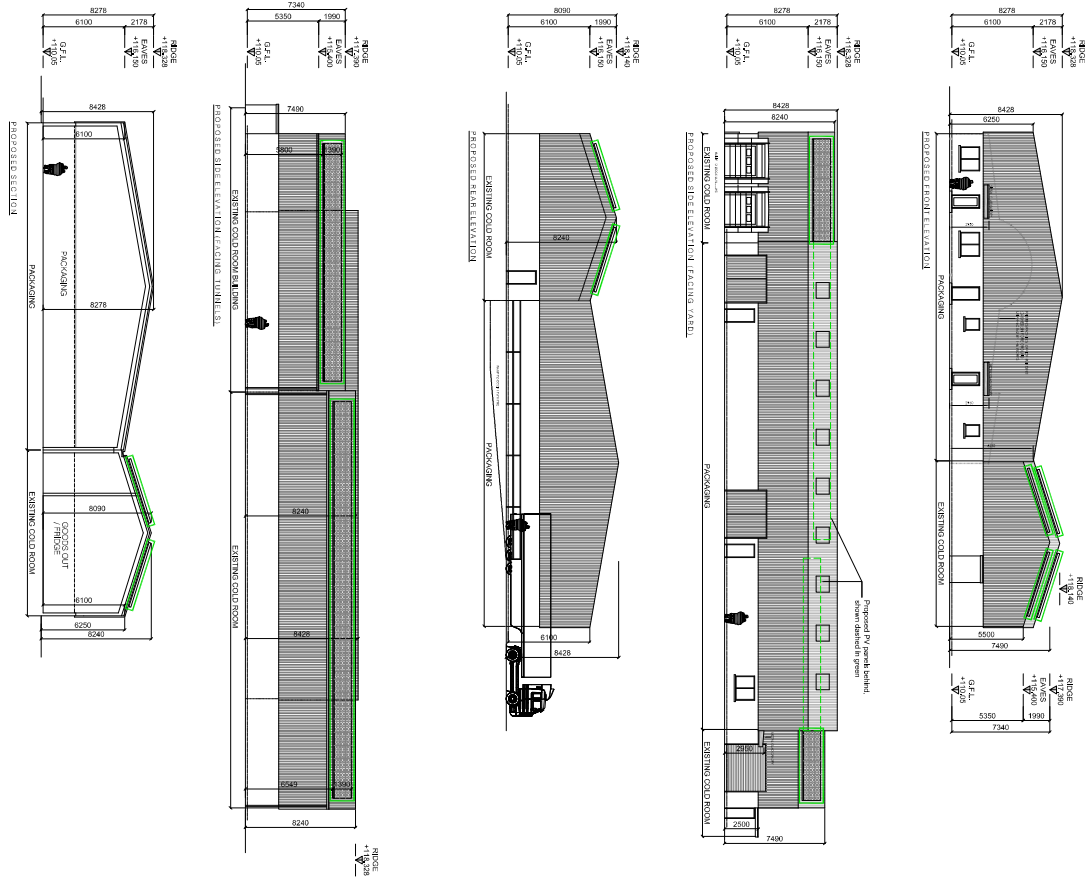
ADJACENT LANDS IN OWNERSHIP
OF APPLICANT OUTLINED IN BLUE

D.C. TURLEY AND ASSOCIATES.
 ————— CHARTERED CIVIL ENGINEERS
 ARCHITECTURAL DESIGN —————
 2 THE CRESCENT, SPERS HILL, NAAS, Co. KILDARE - W91W93 PH 045-876220



The drawing shows a building facade with a grid of windows. The main facade is 30650 units wide and 60842 units high. It features two rows of windows, each with 8 units. Below the main facade, there are two smaller sections, each 17700 units wide and 10847 units high. To the right, a detailed view of a window unit is shown, with a height of 8098 units. The drawing includes dimensions for the overall facade, the individual window units, and the smaller sections below.

EXISTING ROOF PLAN



AREAS TO WHICH APPLICATION
RELATES TO, OUTLINED IN GREEN