

Date: 6th August 2024. Our Ref: ED/1138.

Annemarie & Thomas Dunne c/o Kelleher & Associates, 17 Upper Baggott Street,

Dublin 4.

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

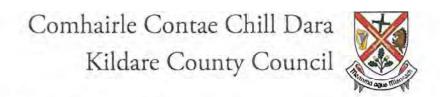
Dear Sir/Madam,

I refer to your correspondence received on 10th July 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/1138.

WHEREAS a question has arisen as to whether an agricultural field entrance at Graigepottle, Donadea, Co. Kildare, is exempted development,

AS INDICATED on the plans and particulars received by the Planning Authority on 10th July 2024.

AND WHEREAS Annemarie & Thomas Dunne 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) Documentation received with the application

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

- (a) Sections 2, 3, of the Planning and Development Act 2000 (as amended);
- (b) Articles 6 and 9 in the Planning and Development Regulations 2001 (as amended);
- (c) Class 5 in Part 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended);
- (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 an agricultural field entrance at Graigepottle, Donadea, Co. Kildare *is development and is NOT exempted development* pursuant to Section 5 (2)(a) of the Planning and Development Act as amended and Article 6, Article 9 of the Planning and Development Regulations as amended.

The creation of the entrance gate onto the public road, would endanger public safety by reason of a traffic hazard or obstruction of road users.

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.

6th August 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/1138		
Name Of Applicant(s):	Annemarie & Thomas Dunne	
Address Of Development:	Graiguepottle, Donadea, Co.Kildare	
Development Description:	Agricultural field access gate to maintain hedges	
	and land	
Due date	7 th August 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 works; an agricultural entrance.

Site Location

Graiguepottle, Donadea, Co Kildare

Description of Proposed Development

The construction of a new agricultural entrance consisting of a 16ft six bar gate flanked by a four rail timber fence on both sides, the gate is less than 2m in height.



Fig 1: Site Location and context. Site identified with a red star.



Fig 2: Aerial view of subject site. Site outlined in yellow. (Google Images) **Planning History**

07/131 Planning prmission refused to the same applicants for the construction of a new two storey dwelling, garage, effluent treatment system, entrance gates 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 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)

<u>Assessment</u>

The first question to address relates to whether or not the proposed entrance would constitute development in accordance with the provisions of the 2000 Act (as amended). "Works" as defined in the Act include any act or operation of construction, excavation, demolition, extension, alteration. In this regard the gate, which involves the removal of part of an existing field boundary and the erection of a gate, would

constitute works in accordance with the definitions set out in Section 2 of the Act. The proposed entrance would therefore constitute development in accordance with Section 3(1) of the Act.

The next question which arises is whether or not the proposed gate constitutes exempted development. Class 9 of Schedule 2, Part 1 of the Regulations, Sundry Works provides for the construction, erection, renewal or replacement, other than within or bounding the curtilage of a house, of any gate or gateway and such gate or gateway shall not exceed 2m in height. The file was referred to the Transportation section of Kildare County Council for comment who advised that the proposed development would not constitute exempted development for the following reasons:

- 1. The agricultural traffic generated by the proposed development would create a traffic hazard on the existing access road which is narrow in width of circa 3.1m.
- 2. The sight lines at the proposed site entrance are not fully in compliance with the TII Document (DN-GEO-03060).
- 3. Turning movements of agricultural traffic in and out of the proposed site entrance are restricted by the narrow width of the access road and the access road may have to be widened.
- 4. The vegetation at the existing boundaries on the access road appear to be very overgrown at this location which has an impact on the safety of road users on the access road where sight lines are blocked and impaired.

Conclusion

Having regard to:

- Sections 2, 3, 5, of the Planning and Development Act 2000 (as amended);
- Articles 6 and 9 of the Planning and Development Regulations 2001 (as amended); and
- The nature, extent and purpose of the works;

It is considered, based on the foregoing, that the proposed gate comes within the scope of Class 9 as referred to in the foregoing. However, in terms of the restrictions on exemptions in Article 9(1)(a) (iii) of the Regulations that:

(1) The creation of the entrance gate onto the public road, would endanger public safety by reason of a traffic hazard or obstruction of road users.

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:
Planner: James Kelly
Date: 06/08/2024

Signed:

Plane Donohof A/Senior Executive Planner

06/08/2024

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 construction of an agricultural entrance*

AS INDICATED on the plans and particulars received by the Planning Authority on 10/07/2024

AND WHEREAS Annemarie and Thomas Dunne 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:

- (a) Sections 2, 3, of the Planning and Development Act 2000 (as amended);
- (b) Articles 6 and 9 in the Planning and Development Regulations 2001 (as amended);
- (c) Class 5 in Part 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended);
- (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 proposed agricultural entrance

IS development and IS NOT EXEMPTED development pursuant to Section 5 (2)(a) of the Planning and Development Act as amended and Article 6, Article 9 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.

Appendix 1: Appropriate Assessment Screening



APPROPRIATE ASSESSMENT SCREENING REPORT AND DETERMINATION

(A) Project Details	
Planning File Ref	ED1138
Applicant name	Annemarie and Thomas Dunne
Development Location	Graiguepottle, Donadea Co. Kildare
Site size	0.3 ha
Application	no
accompanied by an EIS	
(Yes/NO)	
Distance from Natura	7.4
2000 site in km	
Description of the projec	t/proposed development – An agricultural entrance

	Identification of Natura 2000 posed development	sites which may be impa	cted by the
			Yes/No If answer is yes, identify list name of Natura 2000 site likely to be impacted.
1	Impacts on sites	Is the development	
	designated for freshwater	within a Special Area of	
	habitats or species.	Conservation whose	
		qualifying interests	
	Sites to consider: River	include freshwater	No
	Barrow and Nore, Rye	habitats and/or species,	
	Water/Carton Valley,	or in the catchment	
	Pollardstown Fen,	(upstream or	
	Ballynafagh lake	downstream) of same?	
2	Impacts on sites	Is the development	
	designated for wetland	within a Special Area of	
	habitats - bogs, fens,	Conservation whose	No
	marshes and heath.	qualifying interests	140
	Sites to consider: River	include wetland habitats	
	Barrow and Nore, Rye	(bog, marsh, fen or	

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

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) S	SCREENING C	ONCLUSION STATEMENT	
Sele	cted relevant c	ategory for project assessed by ticking box.	
1	AA is not re	quired because the project is directly connected	
	with/necess	ary to the conservation management of the site	
2	No potential	significant affects/AA is not required	Х
3	Significant e	ffects are certain, likely or uncertain.	
	Seek a Natu	ıra İmpact Statement	
	Reject prop	osal. (Reject if potentially damaging/inappropriate)	
Justif	y why it falls	into relevant category above (based on information	
in abo	ove tables)		
No sig	nificant effects	3	
Nam	e:	James Kelly	
Posi	tion:	Graduate Planner	
Date	:	06/08/2024	•

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:

DO54149

Section:

Planning

SUBJECT:

ED1138

Annemarie & Thomas Dunne, c/o Kelleher & Associates, 17 Upper Baggot Street, Dublin 4. Exempt Development Application for an agricultural entrance at Graiguepottle, Donadea, Co. Kildare

SUBMITTED:

ED1138 with recommendation from the Senior Executive Planner

and reports from the Council's Technical Officers

ORDER:

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.

Please note that any person issued with a declaration under subsection 2(a) of the Planning and Development Act (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.

DIRECTOR OF SERVICES

Kildare County Council

Declaration of Exempt Development under Section 5,

of the Planning and Development Act 2000

ED1138

Incomplete application forms will be deemed <u>invalid</u> and <u>returned</u>



All responses must be in block letters

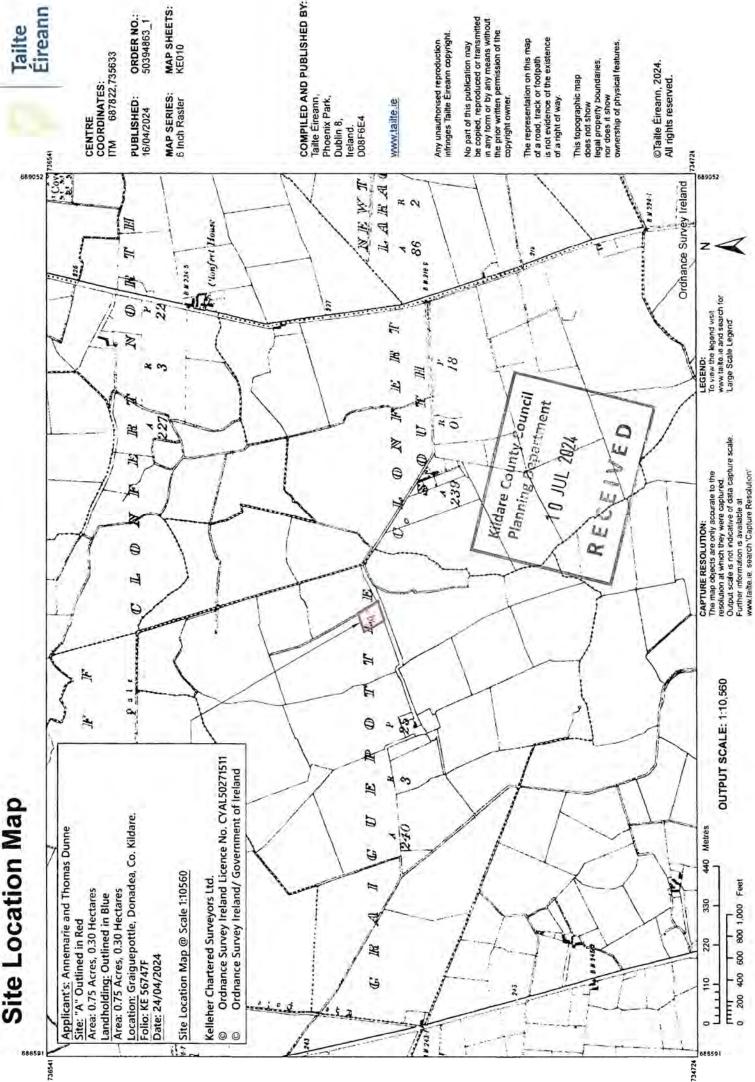
Section 1	Details of Applicants
2. Address	Phone No. Phone No. Fax No. Clonlyon, Kilcock, Co.Meath. W23 ENKO.
Section 2	Person/Agent acting on behalf of applicant (if applicable) N/A
2. Address	rson/Agent: Surname
Section 3	Company Details (if applicable)
	mpanyKelleher & Associates,
2. Company R	mpanyKelleher & Associates,
2. Company R 3. Address	mpanyKelleher & Associates,
2. Company R 3. Address Section 4 1. Planning Hi 2. Location of	mpanyKelleher & Associates,
2. Company R 3. Address Section 4 1. Planning Hi 2. Location of	mpanyKelleher & Associates Phone No01 685 6935Emailinfo@kelleherassociates.ie eg. No 7 Upper Baggot Street, Dublin 4 Details of Site story of SitePlanning permission application refused in 2007 under Ref no. 07/131 Proposed DevelopmentGraiguepottle, Donadea, Co. Kildare - Folio KE 56747F urvey Sheet No3190-D & KE010.
2. Company R 3. Address Section 4 1. Planning Hi 2. Location of	mpanyKelleher & Associates

Deve "Clas house	elopment R ss 9 'Sundry e, of any gate	Regulations 2001 is exe Works', the construction or gateway. The heigh	g and Development 2000 and/or what provision of the Planning emption sought (specific details required)	
7. Pl	ease give a	detailed description o	of the Proposed Development (Use separate page if necessary)	*********
	entrance wo		ultural field access gate to maintain hedges and land within the 3/4 ix bar gate with four rail timber fencing on each side, not exceeding	
600n	ım drainag	e pipework would be p	proposed within the dry ditch across the entrance.	
The	road width	at this location is 3.1 r	meters, which is similar along the length of the road.	
	tion 5	The following	must be submitted for a valid application	
	tion 5	The following		ase Tick)
				se Tick)
Sec	Site Loc	ation Map (1:2500 Ru	(Pleanural Areas) (1:1000 Urban Areas) 00) in full compliance with Article 23 of Planning and	ase Tick)
Sec	Site Loc A Site L Develop Drawing	ation Map (1:2500 Ru ayout Plan (Scale 1:50 ment Regulations 200 gs of the development	(Pleanural Areas) (1:1000 Urban Areas) 00) in full compliance with Article 23 of Planning and	/
1. 2.	Site Loc A Site L Develop Drawing Develop	ation Map (1:2500 Ru ayout Plan (Scale 1:50 ment Regulations 200 gs of the development ment Regulations 200 vings to differentiate b	(Plea aral Areas) (1:1000 Urban Areas) (O) in full compliance with Article 23 of Planning and (Scale 1:50) in full compliance with Article 23 of Planning and (O) - Scale is 1:100 due to nature of application. (Setween the original building, all extensions and proposed Kildare County Council	✓ ✓
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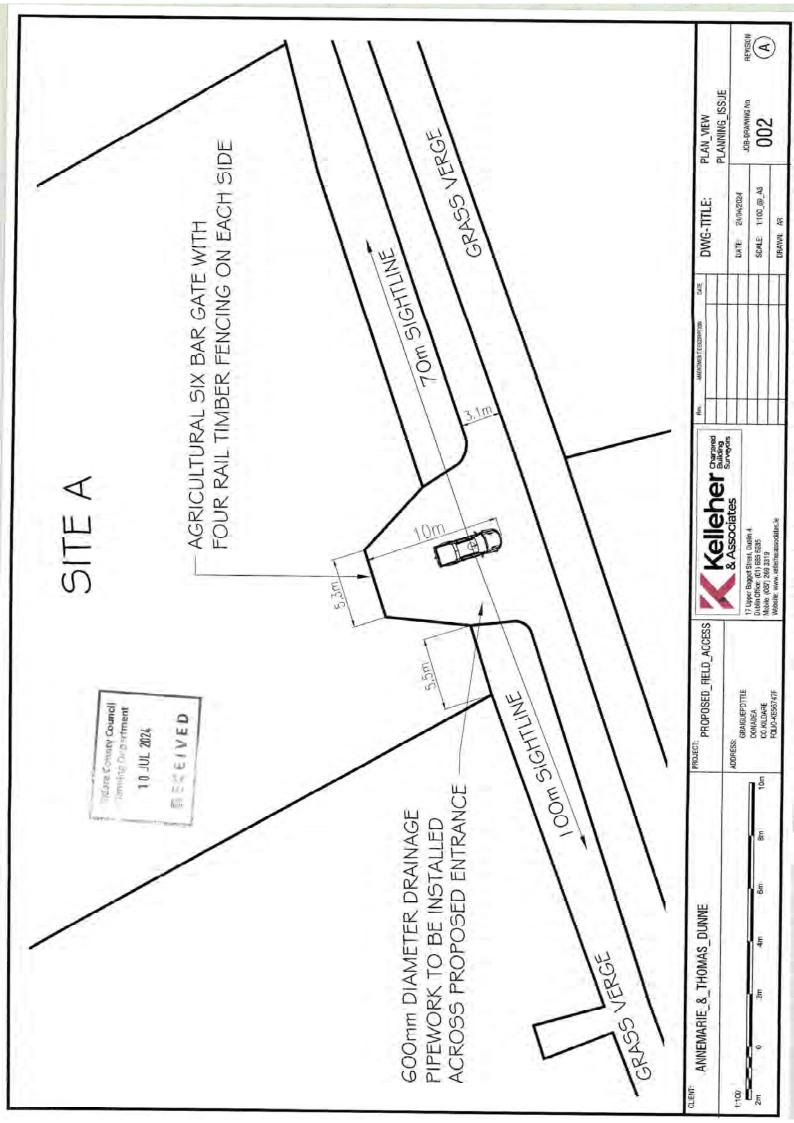
Signature: Thomas Home

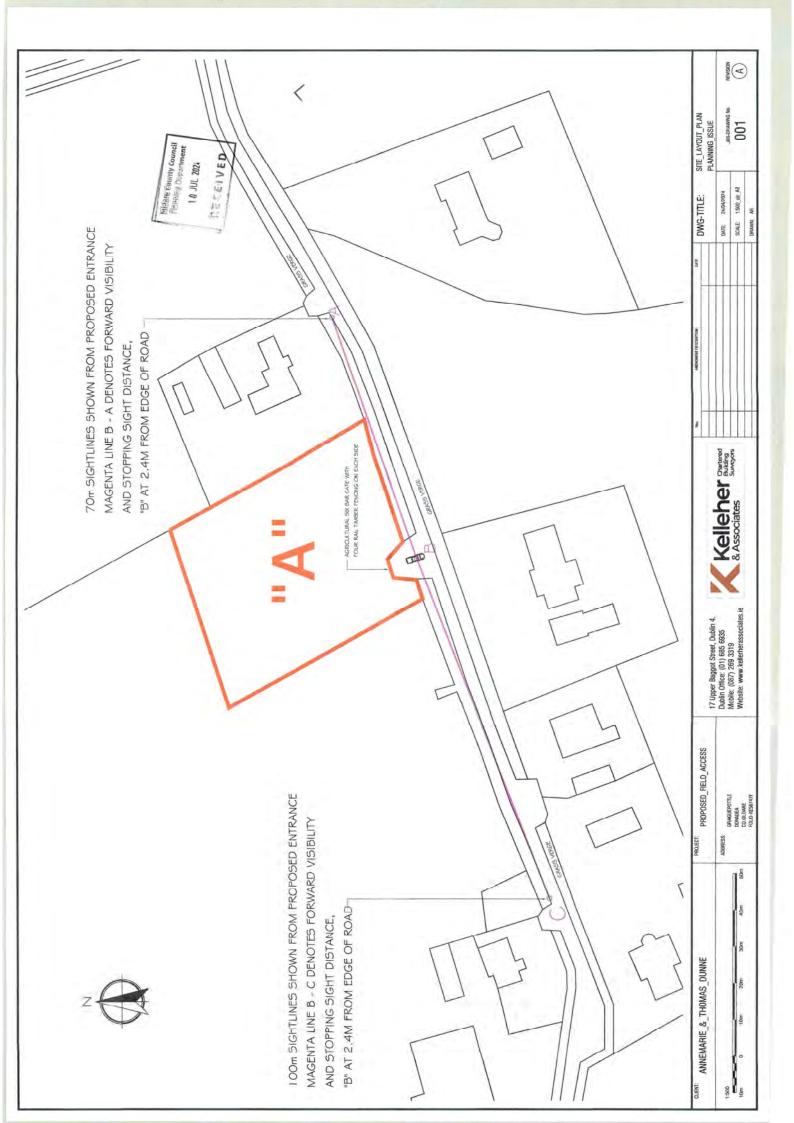
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Stephen Cunningham

From: James Kelly

Sent: 06 August 2024 11:46 **To:** Stephen Cunningham

Subject: FW: Section 5 exempted development query

Attachments: application form.pdf; site location.pdf; site layout.pdf

Hi Stephen,

See below.

Many thanks, James

James Kelly, Graduate Planner

Planning Department, Kildare County Council, Áras Chill Dara, Devoy Park, Naas, Co.Kildare. W91 X77F 2015 1087 6954237 | 12 ickelly@kildarecoco.ie



From: George Willoughby <gwilloughby@kildarecoco.ie>

Sent: Tuesday, August 6, 2024 10:04 AM **To:** James Kelly < jckelly@kildarecoco.ie>

Subject: FW: Section 5 exempted development query

James,

I have examined the Exempted Development referral ED1138 as attached and from my analysis **the proposed development is NOT exempted development** for the following reasons:

- 1. The agricultural traffic generated by the proposed development would create a traffic hazard on the existing access road which is narrow in width of circa 3.1m.
- 2. The sight lines at the proposed site entrance are not fully in compliance with the TII Document (DN-GEO-03060).
- Turning movements of agricultural traffic in and out of the proposed site entrance are restricted by the narrow width of the access road and the access road may have to be widened.
- 4. The vegetation at the existing boundaries on the access road appear to be very overgrown at this location which has an impact on the safety of road users on the access road where sight lines are blocked and impaired.

Regards

George

George Willoughby BA/BAI CEng MIEI Chartered Engineer
Senior Executive Engineer
Kildare County Council
Roads, Transportation & Public Safety Department

From: James Kelly < <u>ickelly@kildarecoco.ie</u>>
Sent: Tuesday, July 23, 2024 4:07 PM

To: George Willoughby <<u>gwilloughby@kildarecoco.ie</u>> **Subject:** Section 5 exempted development query

Hello George,

Could you please examine Exempted Development referral ED1138. The details have been attached.

The referral is for a new agricultural entrance which would appear to be exempt under Class 9 Sundry works, However there are restrictions on development:

9 (1) 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—

- (ii) consist of or comprise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width,
- (iii) endanger public safety by reason of traffic hazard or obstruction of road users,

This request is a matter of urgency. If you could have a look at it at your earliest convenience it would be very much appreciated.

All the best, James

James Kelly, Graduate Planner

Planning Department, Kildare County Council, Áras Chill Dara, Devoy Park, Naas, Co.Kildare. W91 X77F

☐: 045 980200 | 087 6954237 | 1: ickelly@kildarecoco.ie





Tá an ríomhphost seo príobháideach agus ní ceadmhach úsáid an ríomhphoist seo d'éinne ach don

té ar seoladh chuige é. D'fhéadfadh go mbeadh eolas ann atá faoi phribhléid agus rúnda de réir an dlí. Munar duit an ríomhphost seo, déan teagmháil leis an seoltóir chomh luath agus is féidir. D'fhéadfadh nach iad tuairimí Chomhairle Contae Chill Dara na tuairimí atá curtha in iúl sa ríomhphost seo. Déanann Comhairle Contae Chill Dara iarracht ríomhphoist a chosaint ó víris. Mar sin féin, moltar duit gach ríomhphost a scanadh, mar ní ghlacann an Chomhairle aon dliteanas i leith damáiste do do chórais. Le haghaidh eolas ar do chearta príbháideachta agus ar conas a bhainistímid sonraí pearsanta, logáil isteach ar

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Tá an ríomhphost seo príobháideach agus ní ceadmhach úsáid an ríomhphoist seo d'éinne ach don té ar seoladh chuige é. D'fhéadfadh go mbeadh eolas ann atá faoi phribhléid agus rúnda de réir an dlí. Munar duit an ríomhphost seo, déan teagmháil leis an seoltóir chomh luath agus is féidir. D'fhéadfadh nach iad tuairimí Chomhairle Contae Chill Dara na tuairimí atá curtha in iúl sa ríomhphost seo. Déanann Comhairle Contae Chill Dara iarracht ríomhphoist a chosaint ó víris. Mar sin féin, moltar duit gach ríomhphost a scanadh, mar ní ghlacann an Chomhairle aon dliteanas i leith damáiste do do chórais. Le haghaidh eolas ar do chearta príbháideachta agus ar conas a bhainistímid sonraí pearsanta, logáil isteach ar

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Tá an ríomhphost seo príobháideach agus ní ceadmhach úsáid an ríomhphoist seo d'éinne ach don té ar seoladh chuige é. D'fhéadfadh go mbeadh eolas ann atá faoi phribhléid agus rúnda de réir an dlí. Munar duit an ríomhphost seo, déan teagmháil leis an seoltóir chomh luath agus is féidir. D'fhéadfadh nach iad tuairimí Chomhairle Contae Chill Dara na tuairimí atá curtha in iúl sa ríomhphost seo. Déanann Comhairle Contae Chill Dara iarracht ríomhphoist a chosaint ó víris. Mar sin féin, moltar duit gach ríomhphost a scanadh, mar ní ghlacann an Chomhairle aon dliteanas i leith damáiste do do chórais. Le haghaidh eolas ar do chearta príbháideachta agus ar conas a bhainistímid sonraí pearsanta, logáil isteach ar

https://scanner.topsec.com/?d=1340&r=show&u=https%3A%2F%2Fkildarecoco.ie%2FYourCouncil %2FGovernanceandCompliance%2FDataProtection%2F&t=9049ce10de41f63072c1541f7ee63edde afe46c1 Chun do chuid sonraí pearsanta a nuashonrú cuir ríomhphost chugainn ag customercare@kildarecoco.ie Caithfidh tú deis a thógáil don Chomhairle cé thú féin a chinntiú trí cruthúnas céannachta agus/nó seoladh a sholáthar, sula ndéanaimid aon athruithe.

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FINANCE CASH OFFICE Kildare County Council Áras Chill Dara Devoy Park Naas Co. Kildare 10/07/2024 10:04:44

Receipt No. : FIN1/0/501736

ED1138 Ann Marie Dunne

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

Total ;

80.00 EUR

Tendered Credit Card VD ***8706

80.00

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Change

0.00

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