

Comhairle Contae Chill Dara
Kildare County Council



Date: 14th August 2024.
Our Ref: ED/1139.

C

John Miller
Glenbawn,
Burtown,
Athy,
Co. Kildare.
R14 AR29.

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

Dear Sir/Madam,

I refer to your correspondence received on 12th 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/1139.

WHEREAS a question has arisen as to whether a dog play area, parking area and chain link fence at Glenbawn, Burtown, Athy, Co. Kildare, is exempted development,

AS INDICATED on the plans and particulars received by the Planning Authority on 12th July 2024.

AND WHEREAS John Miller 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, 4 & 5 of the Planning and Development Act 2000 (as amended);
- (b) Articles 6 and 9 of the Planning and Development Regulations 2001 (as amended);
- (c) Class 4 in Part 3 of Schedule 2 of the Planning and Development Regulations 2001 (as amended) - Exempt Development - 'Minor Works and structures'
- (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 Dog Play Area, Parking Area & Chain Link Fence at Glenbawn, Burtown, Athy, Co. Kildare **is development and is NOT exempted development** pursuant to Section 4(1)(h) of the Planning and Development Act 2000 (as amended) for the following reason:

Section (2,3,4 & 5) 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 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.

14th 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/1139

Name Of Applicant(s):	John Miller
Address Of Development:	Glenbawn, Burtown, Athy, Co.Kildare
Development Description:	Dog Play Area, Parking Area & Chain Link Fence

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 a Dog Play Area, Parking Area & Chain Link Fence are exempted development

Site Location

The subject site is located within the townland of Glenbawn, Burtown and approx. 4km to the east of the Athy settlement boundary. The subject site has a stated total area of 4acres and is accessed via a local road off the N78. There is no planning history at the site.



Figure 1: Site Location (Outlined in Red)

Description of Proposed Development

The development is described in the application form as:

'Is it ok for me to put up a six-foot high chain and link wire fence around a 4-acre area with a split of 1 acre for a smaller area. Also, a fence around the parking area so that area would be doubled fenced. The 1-acre area would have a small sand pit, a plastic pipe as a tunnel, a few more wooden fences, large old tyres (play area). Then option of going into the 3 acre area with long grass and a few walking tracks kept cut. I would also have to run a security camera out to that area. Also, I would be putting a wooden fence for privacy between parking area and the back yard'.

Planning History

None.

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.

"Structure" means any building, structure, excavation, or other thing constructed or made on, in or under land, or any part of a structure so defined."

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)**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.

Exempted Development – Part 3

Minor works and structures

Class 4	
<i>The construction, erection or maintenance of any wall or fence, other than a fence of sheet metal, or a wall or fence within or bounding the curtilage of a house</i>	<ol style="list-style-type: none"><i>1. The height of the wall or fence, other than a fence referred to in paragraph 2 shall not exceed 2 metres.</i><i>2. The height of any fence for the purposes of deer farming or conservation shall not exceed 3 metres.</i>

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)

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.

Assessment

The applicant seeks to construct a Dog Play Area, Parking Area, Chain Link Fence & other items on their own agricultural land.

“Works” are defined in Section 2 of the Act as ‘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 to exterior of a structure’.

Section 3 of the Planning and Development Act 2000 (as amended) defines *“development”* as 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’*. It is considered that the proposal constitutes development as ‘works’, including alterations and construction would be undertaken in the process of changing the use of the site to a dog play area, in the construction of a chain link fence and in the process of making the car park compliant with the relevant car parking standards.

It is considered that the proposed development which seeks to install a dog play area would result in change of use of the land, and as such is not considered to be exempted development.

Having regard to the description of exempted development for fences (in rural areas) outlined in *Part 3: Class 4*, of the Planning and Development Regulations 2001, it is considered that the proposed installation of a chain link fence is not exempted development in this case. The installation of a fence in this instance would establish a separation between the grounds of the existing house and the proposed development site, while not being within or bounding the curtilage of the overall dwelling. The installation of this chained link fence would not be for the purpose of the dwelling, but in fact for the proposed change of use of the site. The proposed development is therefore not in accordance with Class 4 – Exempted Development.

Drawings or figures have not been provided as part of the submission which highlight the number of car parking spaces that would be provided at the site. Details of upgrade works have also not been provided. From the images provided it is considered that development works would have to be undertaken in order to make the car park compliant with the relevant standards. This part of the proposal is as such not exempt development.

As part of the application, a sand pit, a piped tunnel and tyres have proposed to be included as part of the dog play area. Having regard to it already being established that the applicant seeks to change the use of the site for the purpose of a dog play area, it is considered that the items listed are ancillary to the enjoyment of a dog play area and as such would be considered exempted development in this case.

However, the items can only be considered ancillary once permission has been granted for the change of use of the site to a dog play area. As such for the purpose of this declaration, the items can not be deemed exempt development, as it is considered that they are not ancillary to the current agricultural use of the site.

It is unclear from the information provided as to whether the proposed security camera would constitute exempted development. Having regard to Section 4(1), the *applicant would have to demonstrate that the proposed security camera would 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'.*

Overall, the proposal to change the site to a dog play area is not considered to be exempt development. There are parts of the application that may be determined exempt due to their ancillary nature, if the site was to be permitted a change of use in the future.

Conclusion & Recommendation

Having regard to:

- Sections 2, 3, 4 & 5 of the Planning and Development Act 2000 (as amended);
- Articles 6 and 9 of the Planning and Development Regulations 2001 (as amended);
- Class 4 in Part 3 of Schedule 2 of the Planning and Development Regulations 2001 (as amended) - 'Minor Works and structures' 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 not exempt development** as defined by the Planning and Development Act 2000 (as amended) and the Planning and Development Regulations 2001 (as amended).

The applicant should be advised of the above

A handwritten signature in black ink, appearing to read 'D. Waldron', with a large, stylized initial 'D'.

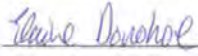
Signed:

Daniel Waldron A/Assistant Planner 01/08/2024

Note to applicant:

It would be recommended that the applicant engages with the Planning Authority in the form of a pre planning meeting to establish the requirements for an application of this kind.

Signed:

A handwritten signature in blue ink, appearing to read 'Elaine Dwyer', written over a horizontal line.

A/Senior Executive Planner

14/08/2024

**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 a Dog Play Area, Parking Area & Chain Link Fence is exempted development.

AS INDICATED on the plans and particulars received by the Planning Authority on 12/07/2024

AND WHEREAS John Miller 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, 4 & 5 of the Planning and Development Act 2000 (as amended);
- (b) Articles 6 and 9 of the Planning and Development Regulations 2001 (as amended);
- (c) Class 4 in Part 3 of Schedule 2 of the Planning and Development Regulations 2001 (as amended) - Exempt Development - '*Minor Works and structures*' 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 -

a Dog Play Area, Parking Area & Chain Link Fence is exempted development.

IS development and IS NOT EXEMPTED development pursuant to Section (2,3,4 & 5) 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.

Signed: _____

D. Waldron

Appendix 1: Appropriate Assessment Screening



**APPROPRIATE ASSESSMENT SCREENING REPORT
AND
DETERMINATION**

(A) Project Details	
Planning File Ref	ED1139
Applicant name	John Miller
Development Location	Glenbawn, Burtown, Athy
Site size	4 acre
Application accompanied by an EIS (Yes/NO)	No
Distance from Natura 2000 site in km	Approx 6.75km from River Barrow SAC
Description of the project/proposed development – Dog play area, parking area & chain link fence	

(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/Cartron 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. <u>Sites to consider:</u> River Barrow and Nore, Rye Water/Cartron Valley, Pollardstown Fen, Mouds Bog, Ballynafagh Bog, Red Bog, Ballynafagh Lake	<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</i>	No

	<u>Sites to consider:</u> River Barrow and Nore, Rye Water/Carton Valley, Pollardstown Fen, Ballynafagh Lake	<i>Conservation whose qualifying interests 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 not considered there would be potential for significant effects on the Natura 2000 network.		
Name:	Daniel Waldron	
Position:	A/Assistant Planner	
Date:	01/08/2024	

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: DO54291 **Section:** Planning

SUBJECT: ED/1139
John Miller, Glenbawn, Burtown, Athy, Co. Kildare. Exempt Development Application for Dog Play Area, Parking Area and Chain Link Fence at Glenbawn, Burtown, Athy, Co. Kildare.

SUBMITTED: File Ref. ED1139 with recommendation from the Senior Executive 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.

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.

MADE THIS 14th DAY
OF August 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

ED1139

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 MILLER Forenames JOHN
Phone No. [REDACTED] Fax No.
2. Address GLENBAWN BURTOWN
ATHY Co. KILDARE
R14 AR29

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

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

Section 3 Company Details (if applicable)

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

Section 4 Details of Site

1. Planning History of Site... NONE
2. Location of Proposed Development... GLENBAWN BURTOWN ATHY
Co. KILDARE
3. Ordnance Survey Sheet No.....
4. Please state the Applicants interest in the site OWNER - FARMING
5. Please state the extent of the proposed development... 4 ACRE



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).....

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

IM WONDERING IS IT OK FOR ME TO PUT UP A SIXFOOT HIGH CHAIN AND LINK WIRE FENCE AROUND A 4 ACRE AREA WITH A SPOT OF 1 ACRE FOR A SMALLER AREA. ALSO A FENCE AROUND THE PARKING AREA SO THAT AREA WOULD BE DOUBLE FENCED. THE 1 ACRE FREE WOULD HAVE A SMALL SAND PIT, A PLASTIC PIPE AS A TUNNEL, A FEW WOODEN FENCES, LARGE OLD TYRES (PLAY AREA). THEN OPTION OF GOING INTO THE 3 ACRE AREA WITH LONG GRASS AND A FEW WALKING TRACKS KEPT CUT. I WOULD ALSO HAVE TO RUN A SECURITY CAMERA OUT TO THAT AREA. ALSO I WOULD BE PUTTING A WOODEN FENCE FOR PRIVACY BETWEEN PARKING AREA AND THE BACK YARD.

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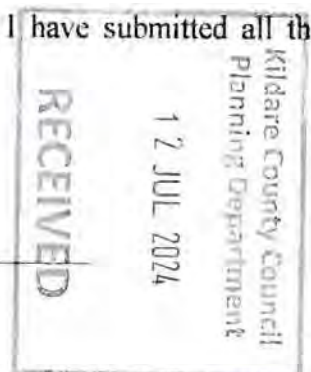
		(Please Tick)
1.	Site Location Map (1:2500 Rural Areas) (1:1000 Urban Areas)	✓
2.	A Site Layout Plan (Scale 1:500) in full compliance with Article 23 of Planning and Development Regulations 2001	✓
3.	Drawings of the development (Scale 1:50) in full compliance with Article 23 of Planning and Development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

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

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

Signature: [Signature]

Date: 12/7/24



This would be a Private area where people from
Abbey and the surrounding area could come and
let their dogs run and play off the lead, on a
hourly basis, just dog and owner or their own. This
is a 24 acre grass field of my own that I cut
silage off two or three times a year. Traffic would
be no busier than what it is now as only one car
would be loading at a time.

I have a parking area out the back of the
farm yard and an existing entrance from the
road.


The fencing and work would be paid for myself
and done by a local fencing contractor Carol Wall
from Bray Abbey, wire and stakes supplied by him.

The photos I have included are just done myself.

- ① Is a Department of Agriculture Map of the Area.
- ② A photo of the Parking Area looking into the field.
- ③ A photo of existing entrance from the Road.
- ④ A Map of the Parking Area (Whippings and small store)
- ⑤ A preferred option of the lay out.
- ⑥ Another option of the lay out
- ⑦ My amazing Artwork!!!

Thank you.

John Miller



6



SPLIT

RECEIVED
Kildare County Council
Planning Department
12 JUL 2024

An Roinn Talmhaíochta,
Bia agus Mara
Department of Agriculture,
Food and the Marine

For Basic Payment Income Support for Sustainability, Areas
of Natural Constraint Scheme and other Area Based Scheme
purposes only
Year: 2024

Name: JOHN MILLER
Address: BURTOWN
ATHY
CO KILDARE
R14 AR29

Held Nos: I1140021
Townland Code : I11404
Townland Name: BURTOWN BIG

Parcel	Digitised	Eligible Hectare	Claimed
I1140400048	0.49	0.49	0.46

Exclusions	Parcel	Area	Red%	Elig Type
	I1140400048	0.03	100	0

Townland Code : I11407
Townland Name: INCH

Parcel	Digitised	Eligible Hectare	Claimed
I1140700012	6.92	6.92	0
I1140700013	0.91	0.91	20.78
I1140700015	23.79	23.79	8.1
I1140700017	8.1	8.1	8.1

Exclusions	Parcel	Area	Red%	Elig Type
	I1140700015	0.23	100	0

Ortho Used: VSCR_LATEST_ORTHO

All areas displayed above are in hectares

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Imagery Dates: 20/04/2020
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I1140021
Page 4 of 5 Fri Dec 08 07:38:20 2023

Kildare County Council
Planning Department

12 JUL 2024

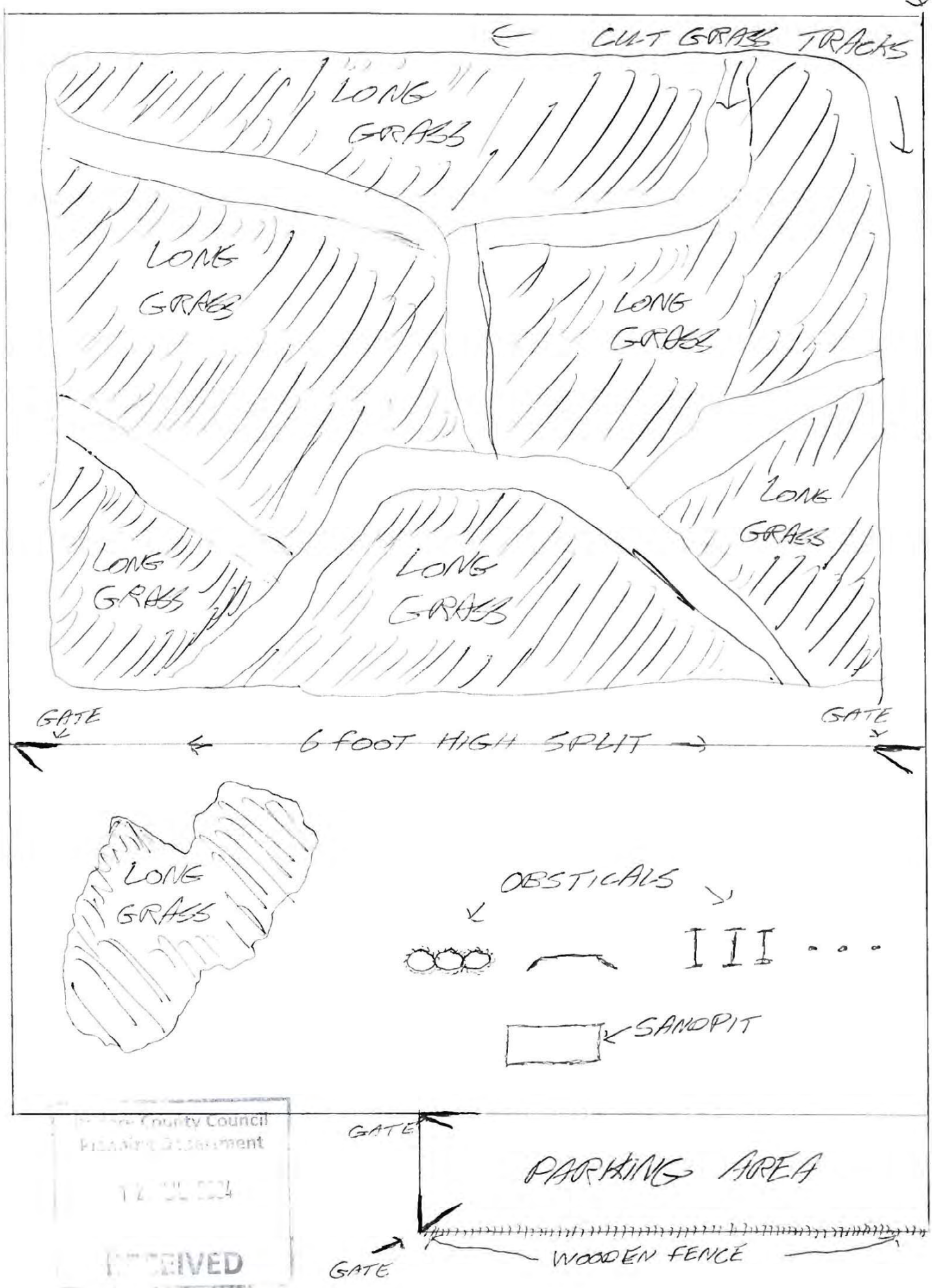
RECEIVED





7

6 FOOT HIGH WIRE ALL AROUND THE OUTSIDE



County Council
Fire and Air Department
12 JUL 2024
RECEIVED

3

Kildare County Council
Planning Department

12 JUL 2024

P1

ENTRANCE FROM THE ROAD.



2

Kildare County Council
Planning Department
12 JUL 2024
RECEIVED



4



RECEIVED

12 JUL 2024

Kildare County Council
Planning Department

5



Kildare County Council
Planning Department
12 JUL 2024



FINANCE CASH OFFICE
Kildare County Council
Aras Chlii Dara
Devoy Park
Naas
Co. Kildare
12/07/2024 10:46:45

Receipt No. : FIN1/0/501847
***** REPRINT *****

John Miller

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

Total : 80.00 EUR

Tendered
Credit Card 80.00
VD
**1302
0000

Change : 0.00

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