

Comhairle Contae Chill Dara
Kildare County Council



Date: 6th November 2024.
Our Ref: ED/1158.

Rebecca Griffin & Jason Loughrey,
River Cottage,
Tuckmilltown,
Straffan,
Co. Kildare.
W23 V8WR.

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

Dear Sir/Madam,

I refer to your correspondence received on 1st October 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/1158.

WHEREAS a question has arisen as to whether proposed change of route for driveway and alternative access from an existing entrance at Tuckmilltown, Straffan, Co. Kildare is exempted development,

AS INDICATED on the plans and particulars received by the Planning Authority on 1st October 2024

AND WHEREAS Rebecca Griffin & Jason Loughrey 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 development comprises works to which the provisions of the following applies:

- (a) Sections 2, 3, 4, etc. of the Planning and Development Act 2000 (as amended);
- (b) 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 use of an alternative access to serve the dwelling permitted under Reg Ref 19/548 at Tuckmilltown, Straffan, Co. Kildare

IS development and IS NOT EXEMPTED development pursuant to Section 3 of the Planning and Development Act 2000 (as amended) and Article 6, Article 9 of the Planning and Development Regulations 2001 (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.

6th November 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/1158

| | |
|---------------------------------|--|
| Name Of Applicant(s): | Rebecca Griffin & Jason Loughrey |
| Address Of Development: | Tuckmilltown, Straffan, Co. Kildare W23 V8WR |
| Development Description: | Requires new access / Entrance |

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 – use of an alternative entrance.

Site Location

The site is located in the rural townland of Tuckmilltown c. 900m north of the Blackrock Interchange junction 6 of the N7. The area is rural in character, with a mix of uses including one off housing, agriculture and golf course uses.



Fig 1: Site Location and context



Fig 2: Aerial view of subject site (Google Images)

Description of Proposed Development

The ED application seeks to provide for an alternative access to serve a newly constructed dwelling permitted under reg ref 19/548.

Planning History

19/548 – Permission granted to Rebecca Griffin and Jason Loughrey for
 A) Construction of a new three bedroom single storey type dwelling. B) New Oakstown BAF waste water treatment system and percolation area. C) Alterations to the existing site entrance to provide a new double recessed entrance. D) New

access to the proposed development via a right of way through the existing site owned by the applicant's parents, along with all facilitating and associated site development works. A grant of permission for this proposed dwelling will involve a variation of condition no. 10 of permission No. 88/460 granted on 20/01/89.

Condition 13 of the planning permission is as follows:

13. A recessed entrance shall be part of a combined recessed entrance provided to site and shall be constructed generally in accordance with Site Layout Plan Drawing No LJR-18-P-03 received by the Planning Authority 17th May 2018. Outer piers shall be fully 2.4 metres back from the road edge.

Reason: In the interest of traffic safety.

Note: typing error – date of application was 17/05/2019.

UD8052 – Warning Letter issued for (a) Non-compliance with Conditions No. 1, 2, 7, 16, 17 & 23(c) of Planning File Register No. 19/0548. and (b) Possible non-compliance with Conditions No. 22, 23(a), (b), (d) & (e), 24 & 26 of Planning File Register No. 19/0548

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. – *(The Regulations list 15 scenarios where Exempted Development under Article 6 will not apply).*

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 (*inter alia*)

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

Assessment

The applicants submit that the proposal falls within the parameters of Class 13 Exempted Development General of the Planning and Development Regulations 2001 as amended, as follows:

CLASS 13 The repair or improvement of any private street, road or way, being works carried out on land within the boundary of the street, road or way, and the construction of any private footpath or paving.

The width of any such private footpath or paving shall not exceed 3 metres.

It is submitted that the original permission for a one off house (19/548) has a driveway (right of way) granted through the property of the Griffin family home. It is also submitted that it is now a preference to use a different entrance to access the dwelling, located to the north of the permitted entrance and outside the red line boundary of the application site.

The applicants submit that the use of the proposed entrance would not require any building/digging or works to access or use the new driveway as it is recessed from the road and is wide enough to accommodate the intended use.

The proposed use of the existing entrance to serve the dwelling is considered to be development for the purposes of the Act.

Notwithstanding the applicants' assertion regarding lack of works required to use the proposed entrance, the planning permission pertaining to dwelling specifically permits access via the entrance to the south and this is reflected at Condition 13 of the grant of planning permission. The use of an alternative access to serve the permitted dwelling would contravene a condition attached to the permission for the dwelling and to this end, would not be considered to fall within the provisions of Article 6 (1). The provisions of Article 9 are applicable in this instance and the proposal is therefore not exempt.

Conclusion

Having regard to:

- Sections 2, 3, 5 of the Planning and Development Act 2000 (as amended) and;
- Articles 6 and 9 of the Planning and Development Regulations 2001 (as amended) and
- Nature of the development

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

Article 9 (1) of the Planning and Development Regulations 2001 as amended restrict exemptions in certain circumstances including if the carrying out of such development would contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act.

Condition 13 of permission granted under Reg Ref 19/548 requires the entrance to the house to be as per details received with the application. The proposed use of a revised access arrangement to serve the permitted dwelling would contravene Condition 13 of Reg Ref 19/548 and would not therefore be exempted development.

It is considered that the provisions of Article 9 (1) are applicable in this instance.

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: Liana Green

Executive Planner:

Date: 14/10/2024

Signed:

Elaine Donohoe
A/Senior Executive Planner

05/11/2024

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 *use of an alternative access to serve the dwelling permitted under Reg Ref 19/548*.

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

AND WHEREAS *the Applicant* 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, etc of the Planning and Development Act 2000 (as amended);
- (b) 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 use of an alternative access to serve the dwelling permitted under Reg Ref 19/548.

IS development and IS NOT EXEMPTED development pursuant to Section 3 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: _____

Appendix 1: Appropriate Assessment Screening



**APPROPRIATE ASSESSMENT SCREENING REPORT
AND
DETERMINATION**

| (A) Project Details | |
|---|------------------------------------|
| Planning File Ref | ED1158 |
| Applicant name | Rebecca Griffin and Jason Loughrey |
| Development Location | Tuckmilltown, Straffan |
| Site size | n/a |
| Application accompanied by an EIS (Yes/NO) | No |
| Distance from Natura 2000 site in km | 7km south of Red Bog SAC |
| Description of the project/proposed development – Use of alternative access to serve permitted dwelling | |

| (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. <u>Sites to consider:</u> River Barrow and Nore, Rye | <i>Is the development within a Special Area of Conservation whose qualifying interests include wetland habitats (bog, marsh, fen or</i> | NO |

| | | | |
|----------|--|--|-----------|
| | Water/Carton Valley, Pollardstown Fen, Mouds Bog, Ballynafagh Bog, Red Bog, Ballynafagh Lake | <i>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) | | |
| Nature, location, distance = no impact on integrity of Natura 2000 network | | |
| Name: | Fiona Breen | |
| Position: | Executive Planner | |
| Date: | 14/10/2024 | |

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: DO55593 **Section:** Planning

SUBJECT: ED1158.
Application for a Declaration of Exempted Development under Section 5 of Planning and Development Act 2000 (as amended) for development at Tuckmilltown, Straffan, Co. Kildare.

SUBMITTED: File Ref. ED1158 with recommendation from the A/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.

MADE THIS 6th DAY
OF November YEAR 2024

SIGNED: 
DIRECTOR OF SERVICES

Kildare County Council

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

**Incomplete application forms will
be deemed invalid and returned**



**All responses must be in block
letters**

Section 1 Details of Applicants

1. Name of Applicant(s) A. Surname: Griffin Forenames: Rebecca
Surname: Loughrey Forenames: Jason
Phone No: [REDACTED] Fax No: -
2. Address: River Cottage, Tuckmilltown, Straffan, Co. Kildare W23V8WR

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: Application no. 19548 – Permission granted in 2019.
2. Location of Proposed Development: Proposed development is part of adjoining property (Folio 6615F). This property belongs to my parents
3. Ordnance Survey Sheet No. : KE015/ KE020 – Grid ref: 3449-B 3450-A
4. Please state the Applicants interest in the site: Proposed change of route for driveway to my home (folio KE72458F)
5. Please state the extent of the proposed development: This development requires that I will be just to identify the driveway area of the current driveway.



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

Class 13: The repair or improvement of any private street, road or way, being works carried out on land within the boundary of the street, road or way, and the construction of any private footpath or paving.

7. Please give a detailed description of the Proposed Development :

Rebecca Griffin & Jason Loughrey were granted planning permission for application (application no.19548) in 2019. Building completed in 2020 (December).

The original planning permission has a driveway (right of way) granted through the property of Rebecca's parents Ruth and Stephen Griffin (as per map#1 with yellow highlight).

It is the preference of Ruth and Stephen Griffin that we utilise a current entrance (Folio # KE6615F) to access our property. The reasons for this are as follows:

1. It is less invasive into their property (the current right of way is through the centre of their garden)
2. There is a current working driveway with access to my home
3. It would not require any building/digging or works to access or use this driveway: Current driveway is recessed from the road (by approximately 10 metres and the driveway itself is an average of 14 metres wide – photo enclosed) and it could be used immediately.

We have enclosed a letter with consent from Ruth and Stephen Griffin to utilise the current entrance



| | |
|------------------|--|
| 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 as amended | ✓ |
| 3. | Drawings of the development (Scale 1:50) in full compliance with Article 23 of Planning and Development Regulations 2001 as amended | N/A |
| 4. | All drawings to differentiate between the original building, all extensions and proposed development | ✓ |
| 5. | Fee of 80 Euro | |

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

REBECCA GRIFFIN

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

Signature:

R. Griffin


Date:

1/10/24

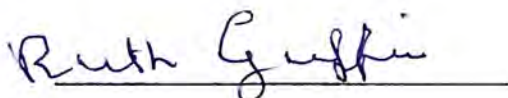


Coquitlam
Tuckmilltown
Straffan
Co. Kildare
W23N128

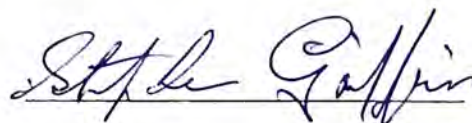
To Whom it may concern,

We, Ruth & Stephen Griffin, grant consent to our daughter Rebecca Griffin & son-in-law Jason Loughrey to utilise the current driveway on my land (Folio #KE6615F) as an access driveway to their property (Folio # KE72458F). We will be happy to make the new route a right of way legally once it is approved.

Kind regards
Ruth & Stephen Griffin



Ruth Griffin



Stephen Griffin

01/10/24

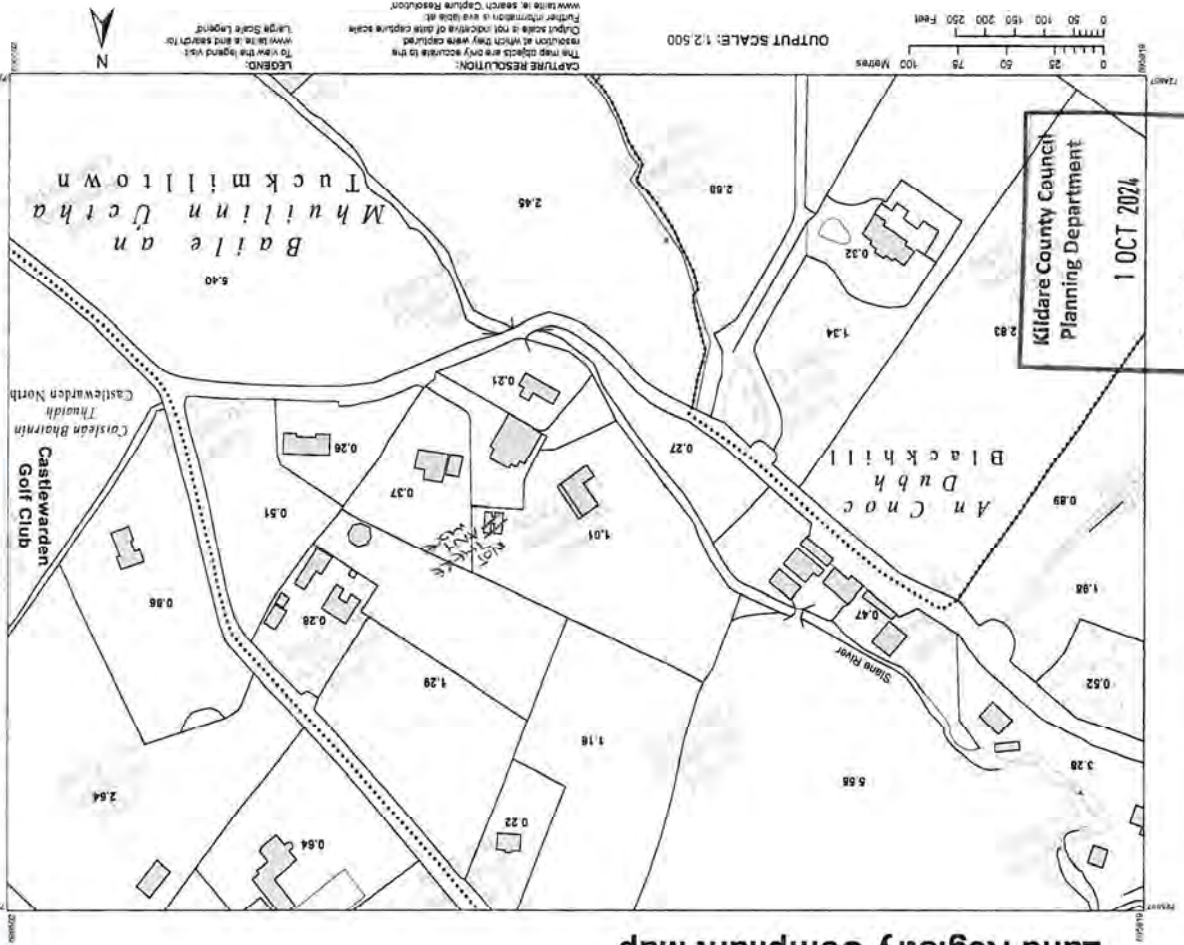


Land Registry Compliant Map

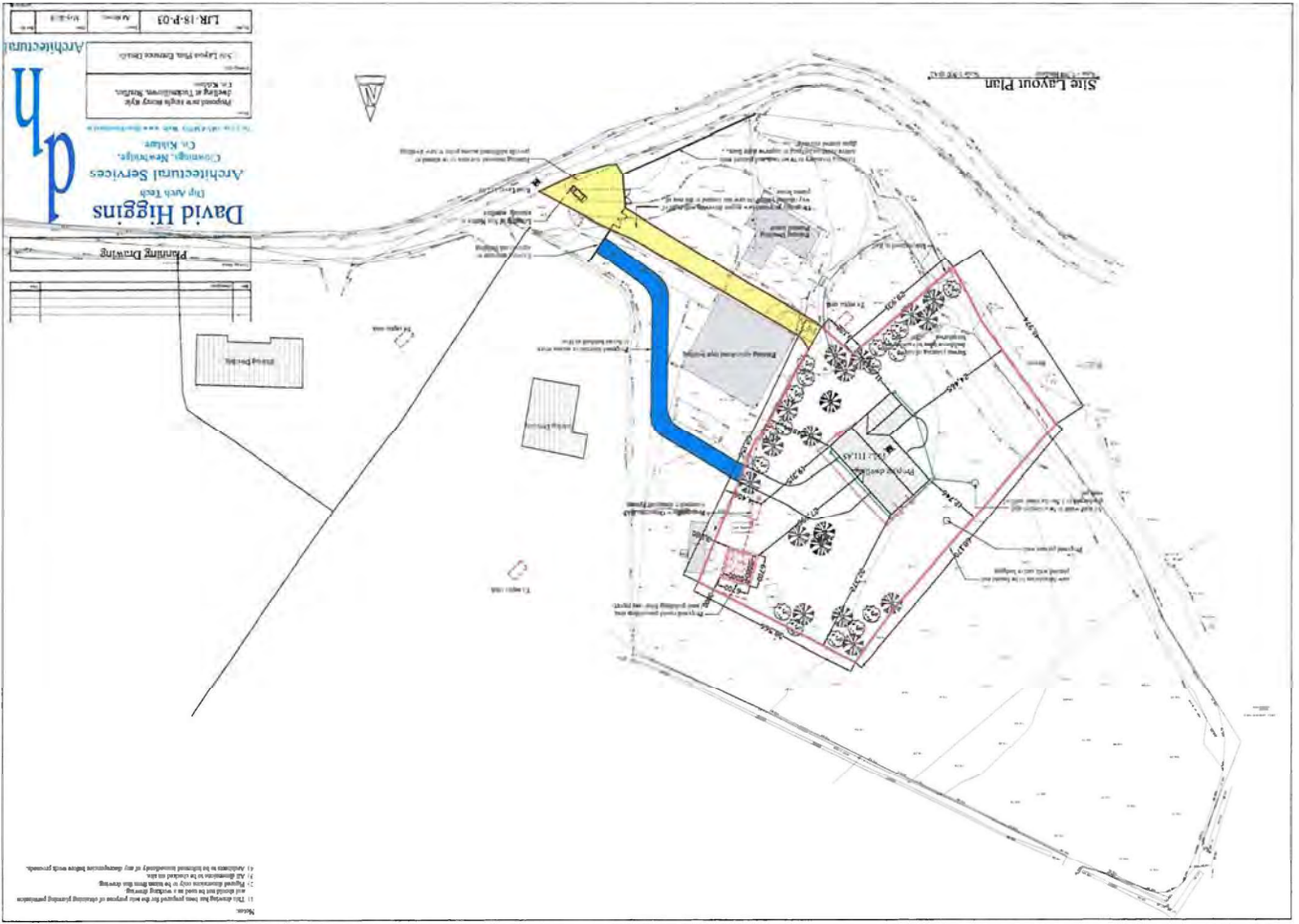


COORDINATES:
 CENTRE: ITM 696211 724882
 ORDER NO.: 50424036_1
 PUBLISHED: 23/09/2024
 MAP SERIES: MAP SHEETS:
 1:2,500 3448-B
 1:2,500 3450-A
COMPILED AND PUBLISHED BY:
 Tailte Éireann,
 Phoenix Park,
 Dublin
 Ireland
 D08FEE4
 www.tailte.ie

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Kildare County Council
 Planning Department
 1 OCT 2024
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696320 mE, 724930 mN



Official Tailte Éireann Registration Map
This map should be read in conjunction with the folio.

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(centre-line of parcel(s) edged)

- Freehold
- Leasehold
- SubLeasehold
- 'S' Register

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

Burdens (may not all be represented on map)

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

A full list of burdens and their symbology can be found at: www.landireg.ie

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1:500



Kildare County Council
Planning Department
1 OCT 2024
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696160 mE, 724800 mN

24 September 2024
Creation Date: 07:45:59

Application Number: S2024LR013039W



**Kildare County Council
Planning Department**

1 OCT 2024

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FINANCE CASH OFFICE
Kildare County Council
Aras Chill Dara
Devoy Park
Naas
Co. Kildare
01/10/2024 10:07:05

Receipt No. FIN10/504835
***** REPRINT *****

Rebecca Griffin & Jason Loughrey

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

Total 80.00 EUR

Tendered :
Credit Card 80.00
VD
**5108
0000

Change : 0.00

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