

Comhairle Contae Chill Dara
Kildare County Council



Date: 12th May 2025
Our Ref: ED/1165

Celticqing Ltd,
c/o David Mulcahy,
67 Old Mill Race,
Athgarvan,
Newbridge,
Co. Kildare

RE: Application for a Declaration of Exempted Development under Section 5 of Planning and Development Act 2000 (as amended) for development at Former briquette factory, Kilpatrick, Lullymore, Co. Kildare.

Dear Sir/Madam,

I refer to your correspondence received on 6th November 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/1165.

WHEREAS a question has arisen as to whether the use of a yard at the former Briquette Factory, for the purpose of tyre recycling at Kilpatrick, Lullymore Co. Kildare, is exempted development,

AS INDICATED on the plans and particulars received by the Planning Authority on 6th November 2024

AND WHEREAS Celticqing Ltd 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, and 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) Schedule 2, Part 1, Class 21(a)(iii) of the Planning and Development Regulations 2001 (as amended).
- (d) The nature, extent and purpose of the works,
- (e) The planning history and established industrial use on the subject site.

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 a yard at the former Briquette Factory, for the purpose of tyre recycling at Kilpatrick, Lullymore, Co. Kildare **is DEVELOPMENT and IS EXEMPTED development pursuant to Section 2, 3, 4 & 5 of the Planning and Development Act as amended and Article 6, Article 9 and Schedule 2, Part 1, Class 21(a)(iii) 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.

12th May 2025.


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/1165

Name Of Applicant(s):	Celticquing Ltd
Address Of Development:	Former Briquette Factory, Kilpatrick, Lullymore, Co. Kildare
Development Description:	Use of yard at former briquette factory for purpose of tyre recycling
Due date	04 th December 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 the use of a yard at the former Briquette Factory, Kilpatrick, Lullymore, Co. Kildare for the purpose of tyre recycling is or is not development and is or is not exempted development.

Site Location

The proposed site is located in the rural townland of Kilpatrick, c. 6km north west of the urban area of Allenwood. The Grand Canal runs along the northern boundary of the site and beyond that there are some rural residential properties. To the west, south and east are green fields currently in agricultural use while the lands to be east appear to be used for a dirt bike track or similar activity.

The overall site is the former Bord na Mona Lullymore Briquette factory and consists of shed like structures and hard core surfacing. The subject site for this proposal is a yard area with no structures on site. It is noted from the Planning Statement that small buildings in this area were demolished as part of the decommissioning of the site by Bord na Mona.

Access to the site is across a bridge over the canal off the L-50263.

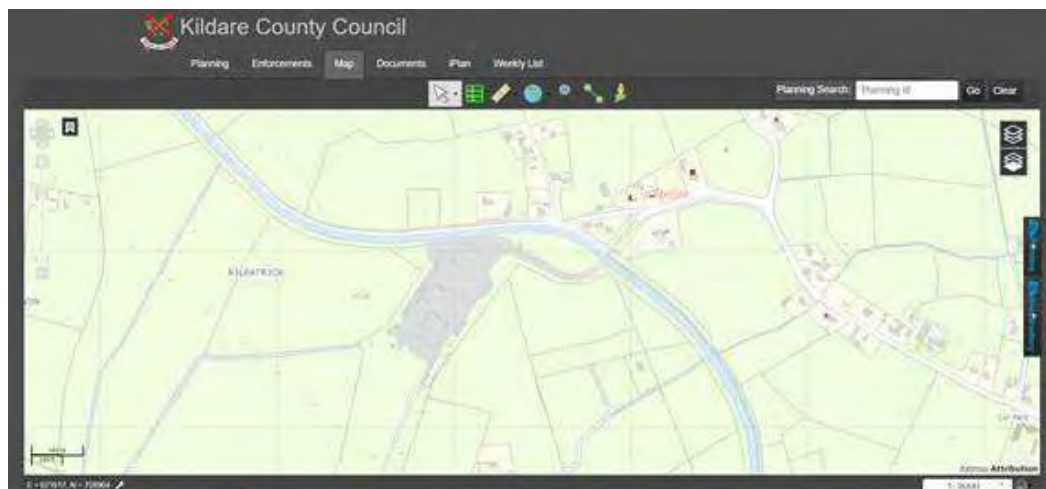


Fig 1: Site Location and context

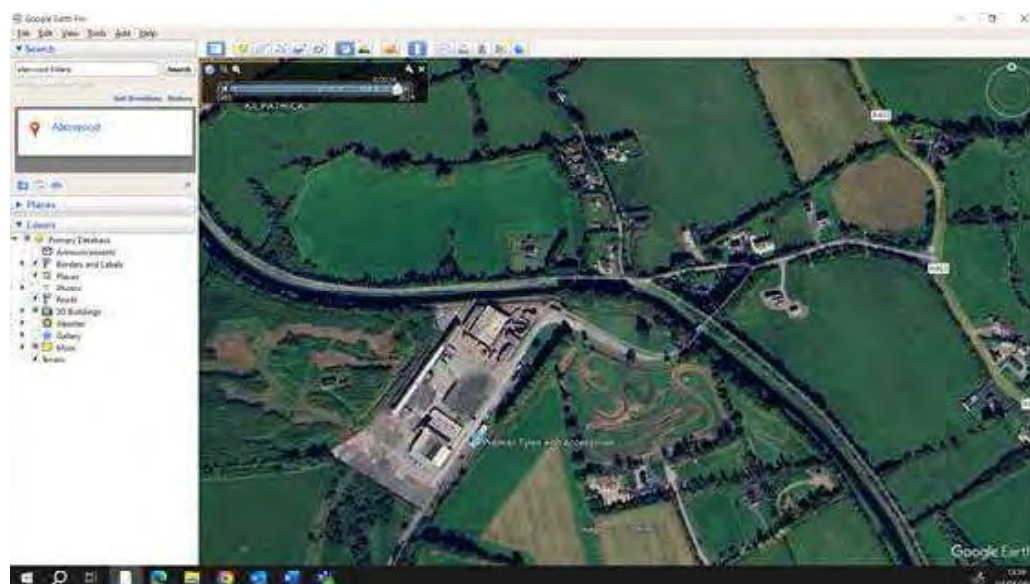


Fig 2: Aerial view of subject site (Google Images)

Description of Proposal

Whether the use of a yard at the former Briquette Factory, Kilpatrick, Lullymore, o. Kildare for the purpose of tyre recycling is or is not development and is or is not exempted development.

Planning History

Reg. Ref. 98/520

Permission granted to erect a 30m high latticework tower carrying antennae, with associated equipment housing in a fenced compound. This will form part of Eircell's digital mobile phone network

Reg. Ref. 89/128

Permission Granted for a Loose Briquette store

Reg. Ref. 84/1135

Permission Granted for a Pilot Plant

Reg. Ref. 78/83

Permission Granted for the Erection of a Workshop Extension

Reg. Ref. 72/334

Permission Granted for Extension to Buildings

Unauthorised Development

None on site

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 5 (1) - Relevant interpretation

"industrial process" means any process which is carried on in the course of trade or business, other than agriculture, and which is-

(a) for or incidental to the making of any article or part of an article, or for or incidental to the altering, repairing, ornamenting, finishing, cleaning, washing, packing, canning, adapting for sale, breaking up or demolition of any article, including the getting, dressing or treatment of minerals, and for the purposes of this paragraph, "article" includes-

(i) a vehicle, aircraft, ship or vessel, or

(ii) a sound recording, film, broadcast, cable programme, publication and computer program or other original database;

“industrial undertaker” means a person by whom an industrial process is carried on and “industrial undertaking” shall be construed accordingly;

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 —

- (i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act.,
- (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,
- (vi) interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of a development plan for the area in which the development is proposed or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,
- (vii) consist of or comprise the excavation, alteration or demolition (other than peat extraction) of places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest, the preservation of which is an objective of a development plan for the area in which the development is proposed or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan, save any excavation, pursuant to and in accordance with a licence granted under section 26 of the National Monuments Act, 1930 (No. 2 of 1930),
- (viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use,
- (ix) consist of the demolition or such alteration of a building or other structure as would preclude or restrict the continuance of an existing use of a building or other structure where it is an objective of the planning authority to ensure that the building or other structure would remain available for such use and such objective has been specified in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,

- (x) consist of the fencing or enclosure of any land habitually open to or used by the public during the 10 years preceding such fencing or enclosure for recreational purposes or as a means of access to any seashore, mountain, lakeshore, riverbank or other place of natural beauty or recreational utility,
- (xi) obstruct any public right of way,

(d) if it consists of the provision of, or modifications to, an establishment, and could have significant repercussions on major accident hazards.

Schedule 2 Part 1

CLASS 21(a)

(a) Development of the following descriptions, carried out by an industrial undertaker on land occupied and used by such undertaker for the carrying on, and for the purposes of, any industrial process, or on land used as a dock, harbour or quay for the purposes of any industrial undertaking

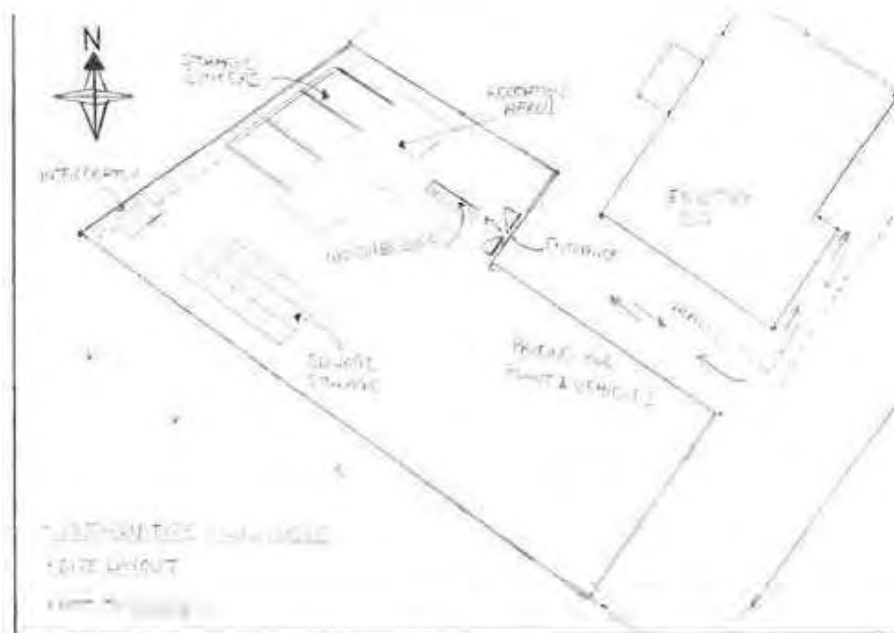
- (i) the provision, rearrangement, replacement or maintenance of private ways or private railways, sidings or conveyors,*
- (ii) the provision, rearrangement, replacement or maintenance of sewers, mains, pipes, cables or other apparatus,*
- (iii) the installation or erection by way of addition or replacement of plant or machinery, or structures of the nature of plant or machinery.*

Limitations: 1. *Any such development shall not materially alter the external appearance of the premises of the undertaking.*
2. *The height of any plant or machinery, or any structure in the nature of plant or machinery, shall not exceed 15 metres above ground level or the height of the plant, machinery or structure replaced, whichever is the greater.*

Assessment

The subject site is that of the former Bord Na Mona Briquette Factory which has ceased operations. There is a history of industrial use on this site which dates back to c.1930s.

The applicant has submitted a general site layout plan as per below.



The applicant has advised in their submitted application that the proposed works include a weighbridge and bunkers which are temporary mobile structures.

It is the applicant's opinion that the proposed works would not constitute a material change from the permitted industrial use on the subject site and that a precedent has been set by previously Section 5 declarations issued by Kildare County Council.

It is stated that the proposal would have a maximum annual waste intake of 15,000MT per annum and therefore would be below the mandatory threshold for EIA under Schedule 5, Part II, Class 11 of the Planning and Development Regulations, 2001, as amended.

In addition, it is stated that the proposed structures are temporary, mobile and small in scale. Furthermore, if the proposal is considered development that structures are considered exempt under Class 21(a) of the Planning and Development Regulations 2001 (as amended).

In terms of traffic it is stated in the planning report submitted as part of the application that the proposal will have a maximum output of 250 tonnes per week and generate approx. 8/10 inward movements per day of rigid trucks and 2/3 outward movements per day of articulated trucks and staff movements would be 4/5 cars per day. It is submitted that traffic movements will not be as intense as the established use associated with the site.

On review of the submitted documentation, the Planning Authority consider the proposed modification and redistribution of recycled tyres falls under the definition of 'industrial process' namely the altering of an article and that the Applicant would

therefore fall under the definition of an '*Industrial Undertaker*' as per Article 5 (1) of the Planning and Development Regulations, 2001, as amended.

Having regard to the previous permitted industrial uses on the subject site associated the former Briquette Factory and the current industrial uses, it is considered that there is an established industrial use in the subject site.

Having regard to the scale and nature of the proposal as stated in the submitted application, the historical and current uses, the Planning Authority consider that the proposal would be a similar industrial processing and storage use on the land, given the industrial processing and storage operations associated the former Briquette Factory subject to this application.

Having regard to the meaning of '*development*' as Section 3 of the Planning and Development Act 2000, as amended, it is considered that proposal represents '*works*' as additional temporary structures as to be placed on the subject site.

Having regard to Schedule 2 Part 1 Class 21(a)(iii) it is considered that these structures comply with limitations as set in that they would not materially alter the external appearance of the premises of the undertaking and the stated height of the structures would not exceed 15 metres above the ground level and therefore are considered exempted development.

Conclusion

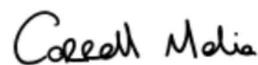
It is considered that the proposal constitutes development as defined in Section 3(1) of the Planning and Development Act 2000 (as amended) and is exempted development as per Schedule 2, Part 1, Class 21(a)(iii) of the Planning and Development Regulations 2001 (as amended).

Recommendation

It is recommended that the applicant be advised that the development as described in the application *is development and is exempted development*.



Executive Planner
Date: 09/05/2025



Carroll Melia
Senior Executive Planner
Date: 09/05/2025

Declaration of Development & Exempted Development under Section 5 of the Planning and Development Act 2000 (as amended)

WHEREAS a question has been submitted as to whether the use of a yard at the former Briquette Factory, Kilpatrick, Lullymore, Co. Kildare for the purpose of tyre recycling is or is not development and is or is not exempted development

AS INDICATED on the plans and particulars received by the Planning Authority on 6th November 2024,

AND WHEREAS Celticqing Limited has requested a declaration on the said question from Kildare County Council,

AND WHEREAS Kildare County Council as the Planning Authority, in considering this application for a declaration under Section 5 of the Planning and Development Act 2000 (as amended), had regard to;

- Planning and Development Act 2000 (as amended); and
- Planning and Development Regulations 2001 (as amended);

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

- Sections 2, 3, 4, and 5 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 1, Class 21(a)(iii) of the Planning and Development Regulations 2001 (as amended).
- The nature, extent and purpose of the works,
- The planning history and established industrial use on the subject site.

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 a yard at the former Briquette Factory, Kilpatrick, Lullymore, Co. Kildare for the purpose of tyre recycling

is DEVELOPMENT and IS EXEMPTED development pursuant to Section 2, 3, 4 & 5 of the Planning and Development Act as amended and Article 6, Article 9 and Schedule 2, Part 1, Class 21(a)(iii) 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.

A handwritten signature in black ink, appearing to read 'Lisa Rothwell'. The signature is written in a cursive, flowing style.

Executive Planner
Date: 09/05/2025

Appendix 1: Appropriate Assessment Screening

<p>APPROPRIATE ASSESSMENT SCREENING REPORT AND</p>

DETERMINATION



(A) Project Details	
Planning File Ref	ED/1165
Applicant name	Celticquing Ltd
Development Location	Kilpatrick, Lullymore, Co. Kildare
Site size	0.6ha
Application accompanied by an EIAR (Yes/NO)	no
Distance from Natura 2000 site in km	The Long Derries, Edenderry SAC is located c.4km to the west of the subject site.
Description of the project/proposed development – The use of a yard in the former Lullymore Briquette Factory for waste tyre recycling facility	

(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 Water/Carton 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. <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 proximity of the nearest SAC and given the location, nature and extent of the proposed development it is not considered there would be potential to affect the ecological integrity and conservation objectives of the site.		
Name:	Lisa Rothwell	
Position:	Executive Planner	
Date:	09/05/2025	

§ 6/11/2024

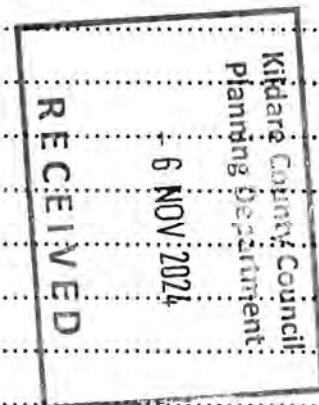
**All responses must be in block
letters**



1. Planning History of Site. Established industrial use :- 1st October 1964.....
2. Location of Proposed Development. Former Briquette Factory, Kilpatrick, Lullymore, Co. Kildare.....
.....
.....
3. Ordnance Survey Sheet No. 3317-D.....
4. Please state the Applicants interest in the site
.....
5. Please state the extent of the proposed development. Relates to use of rear yard only.....

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*).....
Refer to attached planning statement.....

7. Please give a detailed description of the Proposed Development (*Use separate page if necessary*).....
 Refer to attached planning statement - no development occurs



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

pg 24

		(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 REFER TO DISCUSSION IN THE REPORT - CHANGE OF USE ONLY	✓
3.	Drawings of the development (Scale 1:50) in full compliance with Article 23 of Planning and Development Regulations 2001	N/A
4.	All drawings to differentiate between the original building, all extensions and proposed development	N/A
5.	Fee of 80 Euro	✓

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

Signature: David Mulcahy

Date: 5.11.24

Planning Pack Map



Kildare County Council
Planning Department
- 6 NOV 2024
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CENTRE COORDINATES:
ITM 871045,729120

PUBLISHED:
05/11/2024

ORDER NO.:
50432305_1

MAP SERIES:
1:2,500
1:2,500

MAP SHEETS:
3317.D
3380.B

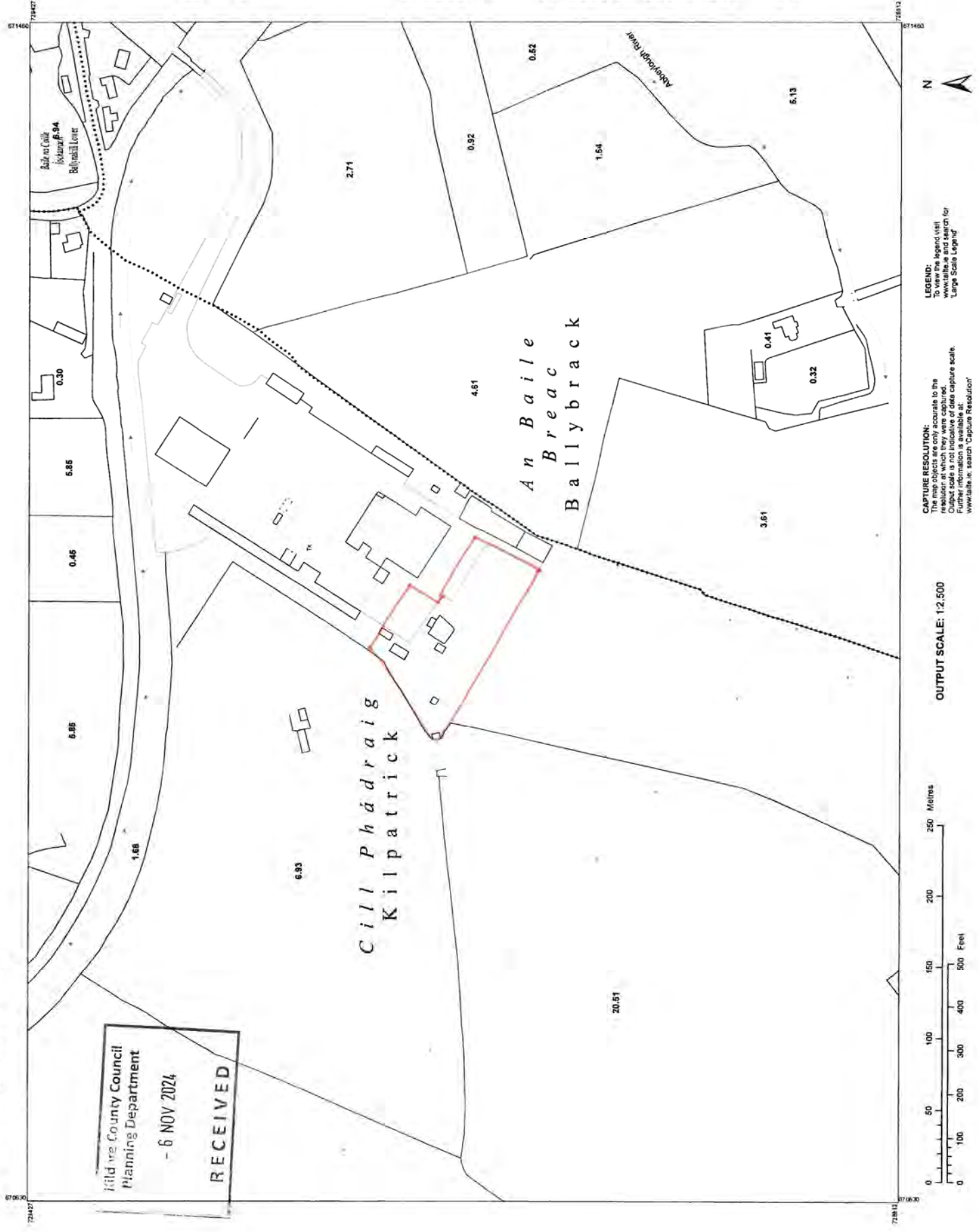
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LEGEND:
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OUTPUT SCALE: 1:2,500



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www.premierauto.ie

Foxwood Property Ltd
Unit 21 Southside Industrial Estate,
Pouladuff Road,
Cork
T15H958

24th October 2024

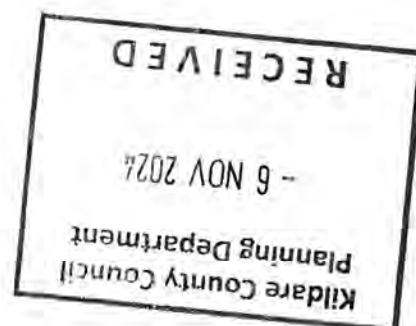
Kildare County Council
Aras Chill Dara
Devoy Park
Naas
Kildare.

We, the owners of the former Briquette Factory at Kilpatrick, Lullymore Co. Kildare, hereby give consent to Celticqing Limited to make a section 5 application relating to the lands at the former briquette factory.

Thank you for your attention to this matter.

Regards

A handwritten signature in black ink, appearing to read "Ciaran O'Reilly". The signature is fluid and cursive, with a long, sweeping tail on the final letter.





**DAVID MULCAHY
PLANNING CONSULTANTS LTD**

67 The Old Mill Race, Athgarvan, Co. Kildare

PH: 045 405030/086 350 44 71

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www.planningconsultant.ie

Company No: 493 133 Directors: D. Mulcahy & M. Mulcahy

PLANNING REPORT

TO SUPPORT SECTION 5
APPLICATION CONCERNING

USE OF YARD IN FORMER LULLYMORE BRIQUETTE FACTORY FOR WASTE TYRE RECYCLING FACILITY

AT

KILPATRICK, LULLYMORE, CO. KILDARE

Kildare County Council
Planning Department

- 6 NOV 2024

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Client: Celticqng Limited

5th November 2024

1.0 INTRODUCTION

David Mulcahy Planning Consultants Ltd have been engaged by **Cellicqing Limited** to prepare a planning report in support a section 5 application to establish if the proposed use of part of a premises at the former Briquette Factory, Kilpatrick, Lullymore, Co. Kildare for tyre recycling is development and, if so, is it exempted development.

A declaration is sought under Section 5 of the Planning and Development Act 2000 (as amended) from Kildare County Council to establish:

"Whether the use of a yard at the former Briquette Factory, Kilpatrick, Lullymore, Co. Kildare for the purpose of tyre recycling is or is not development and is or is not exempted development".

This report will demonstrate that the use of the yard in this long-established industrial yard for tyre recycling is not development we invite the Council to issue a declaration supporting this view.

Note: Cellicqing Limited do not own the yard in question but have the full consent of the owner to make this s.5 application – please refer to letter of consent enclosed in **Appendix A**.



2.0 SITE LOCATION AND DESCRIPTION

2.1 Location

The subject site (is located north west of Allenwood, County Kildare (Townland of Kilpatrick) on the south side of the Grand Canal - see Fig. No.1.



Fig No.1: Site Location Map (source: Myplan.ie - OSI Licence No.EN 0080915).

2.2 Site Description

The subject site (0.6ha) currently consists of the southern portion of the former Bord na Mona Lullymore Briquette factory.



- 6 NOV 2024

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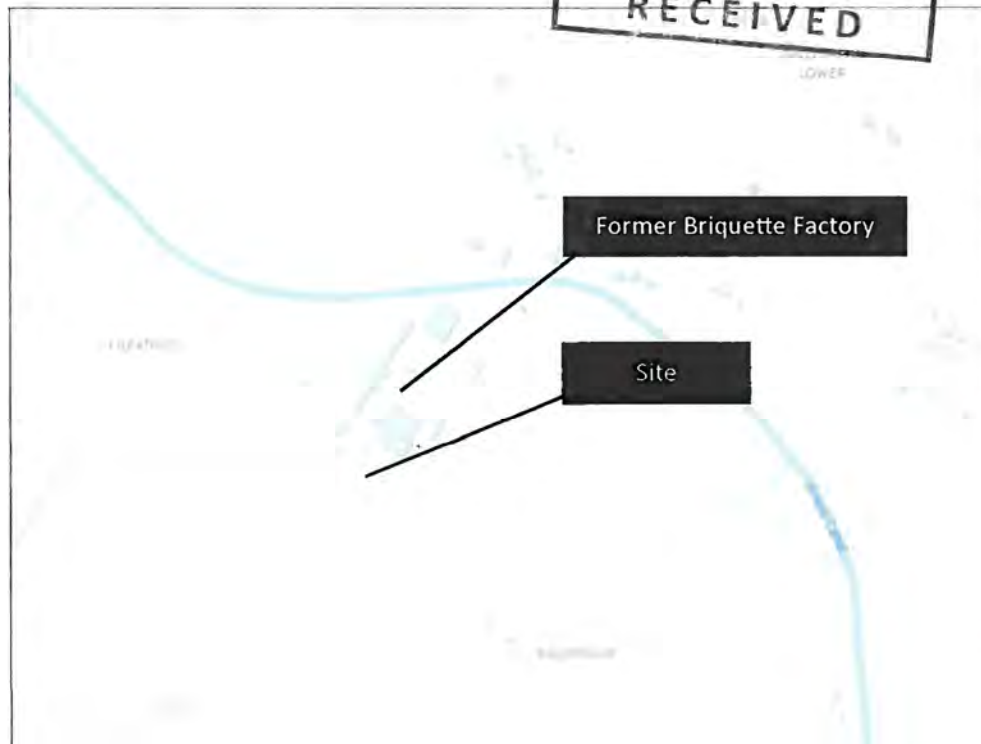


Fig No.2 Site Context (source: Myplan.ie - OSI Licence No.EN 0080915).



Fig No.3 Most recently available satellite image showing location of the subject site (source: Google Earth March 2022).

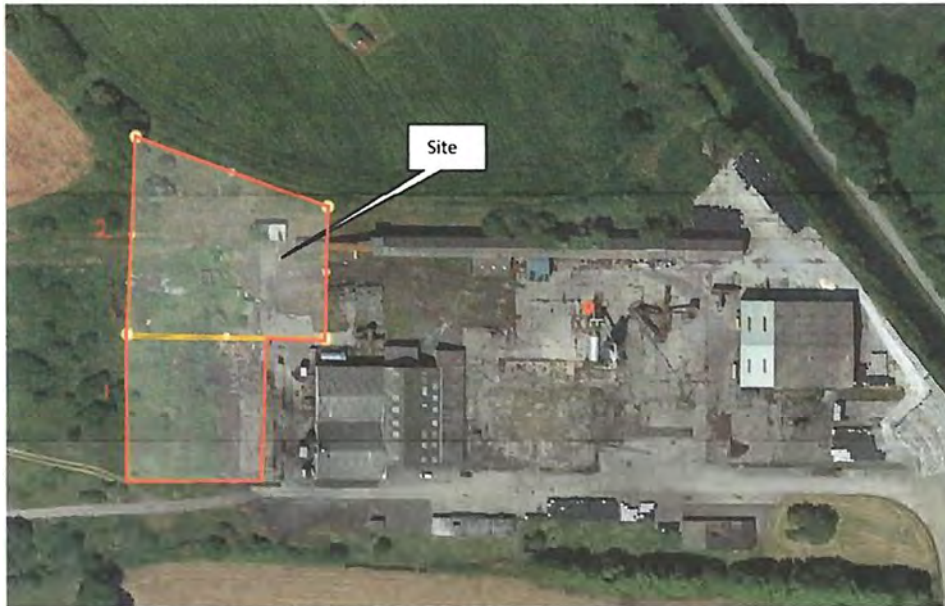


Fig No.4 Satellite image from c.2018 showing the subject site outlined in red (note the refer to 1 and 2 just relates to the two yards which make up the overall site).

2.3 Site History

The client has informed us of the site history as follows:

Lullymore Briquette factory was opened in 1936 for the manufacture of 45,000 tons per year of briquettes. Prior to this there was a large-scale turf cutting, storage, and distributed by barge to the Dublin market. The Bord Na Mona main briquetting operation ceased in 1992.

The Bord Na Mona Lullymore site comprised of a series of buildings and yard. A number of the buildings have been demolished and there are now 4 buildings as identified numbers 1 to 4 on OS Map BNM-LP-03-07A.

Building 1 – Occupied by Sligo Pallets on lease. Pallet manufacture, repair, salvage.

Building 2 – Occupied by Premier Tyres for new tyre warehousing and distribution

Building 3 – Vacant. Former Peat drying building.

Building 4 – Vacant. Store adjacent to Building 3.

Kildare County Council
Planning Department

– 6 NOV 2024

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The main briquetting factory, which has stood in the centre of the site, was decommissioned and demolished by Bord Na Mona in the years after closure and prior to sale of the site to Premier.

The yard area which is proposed to be utilised by Celticqing Limited is currently vacant and doesn't contain any structures of note.

While the Bord Na Mona briquette factory was in operation, this area of the site comprised of a series of small buildings and a yard for the storage of peat. The buildings have all been demolished and only traces of the former building floors exist as concrete pads in the hardcore yard.

The primary building was a Sand Drying building and associated conveyor. This building was engaged for the processing and drying of sand which was applied to the train track network in the bog. There was furnace for drying the sand as part of the building. There was also a Transport Office in the area. The train network from the industrially extracted Lullymore bog terminated here and deposited peat from the bog and collected sand as required for the tracks.

Adjacent to this area was a Fuel depot which comprised of a tank of 70,000 gallons to feed the factory and 500-gallon petrol for refuelling of lorries. The 70,000-gallon tank was decommissioned by Bord Na Mona prior to their sale of the site. Adjacent to the yard was a Hydraulic lift and an underground intake bunker. Lorries deposited the peat into the underground bunker from where it was transferred by the hydraulic lift to an industrial conveyor that fed the Peat Drying Building (Building 2 on BNM-Lp-03-07A. The Peat Drying facility was used to reduce the moisture of the peat before the dried peat was fed to the briquetting factory via another conveyor where the briquettes were manufactured. (This factory was decommissioned by BnaM and taken down).

The factory (industrial) use has been established since 1st October 1964.



Fig. No. 5 Photograph of Lullymore Briquette Factory in 1954 (source National Library of Ireland)

Abandonment of Use

After the Bord Na Mona briquetting operation ceased in 1992 the site was operated by an associate company of Bord Na Mona manufacturing Peat Fibre filter material for environmental wastewater and odour treatment systems. This material was a mixture of peat with oyster shells and was bagged in one tonne big bags for mostly the export market.

This continued until the site was purchased by Premier Autoparts in c.2018 for the establishment of a Leinster depot for the Premier Tyres warehousing and distribution business.



Discontinuance or abandonments of use is a rather complex area of planning law but a number of tests are generally applied these are:

- The physical condition of the premises.
- The period of non-use (case law generally has ruled this to be 4-7 years)
- The nature or character of the intervening use if any.
- The intentions of the owner.

Much of this case law appears to be predicated on the principles laid down in *Hartley versus the Minister for Housing and Local Government* (1970) where it states:

"Where previous use of land has not been merely suspended for a temporary and determined period, but had ceased for a considerable time, with no evidenced intention of resuming it at any particular time, the tribunal of fact was entitled to find that the previous use had been abandoned, so as when it was resumed the resumption constituted a material change of use".

It submitted that the industrial use of the wider site or buildings has never been abandoned and is capable of being restored.

Molloy Case

The following case law is considered to be relevant:

High Court judgement, of 30th April 2004, *Molloy & Ors - v - The Minister for Justice, Equality and Law Reform*.

In this case planning permission had been granted for the erection of a three-storey residential hostel block. The building was initially used for this purpose when erected, but was subsequently used by a religious order for administration. The question was whether the resumption of use as a hostel would require a fresh grant of permission.



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Gilligan J. held that the grant of planning permission inured for the benefits of the structure concerned and accordingly could not be abandoned. There was an existing valid planning permission for use as a hostel and no subsequent planning permission had been granted for the use of the property. In these circumstances, notwithstanding that an unauthorized material change of use had intervened, the original planning permission had not been abandoned.

The main conclusion reached by the High Court in this case (at pp 27 – 28 of the judgement), is as follows:-

"I take the view that where there is an existing valid permission for a specific use of land or property, and no subsequent planning permission has been granted for the use of the land or property concerned, and where a material unauthorised change of use has taken place and has been carried on even for a period of in excess of twenty years, and notwithstanding that there may have been no complaint raised by any adjoining interested party in respect of the material unauthorised change of use and no enforcement action has been taken by the appropriate Planning Authority, where in circumstances that the original planning permission is capable of being implemented and by this concept I mean where there has been no material structural alteration to the land or property which would render the original planning permission for use incapable of being implemented, I hold that the original valid planning permission cannot be lost or abandoned." – emphasis added.

In effect, the judgement in the Molloy case is that an original permission still applied, and was capable of implementation, and that it could therefore be resumed, since there had been no material structural alteration to the property, and did not involve an intensification of use.

This is very similar to the current case.

Intensification

The intensification of an established or permitted use is a material planning consideration.

Paterson v Murphy The High Court found that the intensification of use amounted to material change of use as object of the operation was different, the method of operation and scale of development bear no relationship to the one carried out prior to the appointed day (Quarry)

Molumby v Kearns Judge O'Sullivan found that intensification amounted to material change of use as there has been increase in the number of larger vehicles which was consistent with the account analysis of the growth of the defendant's business (industrial).

The briquette factory was a notably intense industrial operation with significant employment and frequency of transportation movements by train, HGVs and cars. The Lullymore facility produced 45,000 tonne per annum of briquettes (<https://www.bordnamonalivinghistory.ie/article-detail/peat-briquettes/>). Our client advises that the tyre operation will have a maximum output of 250 tonnes per week at its maximum and would generate approximately 8/10 inward movements per day of rigids trucks and 2/3 outward movements per day of articulated trucks. Staff movements would be 4/5 cars per day. Overall the traffic movements will not be as intense as the established use associated with the site.

2.4 Ownership

The subject site is owned by Foxwood Properties Limited which in turn is owned by Premier Tyres & Accessories Limited (who purchased the site from Bord Na Mona).

2.5 Adjoining Lands

North:	The remaining portion of the former peat factory
East:	Agricultural lands and what appears to be a track for motocross or similar beyond same.
West:	Agricultural field.
South:	Scrubland.

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2.6 Built Heritage

The Historic Environment Viewer provided by the Department of Housing, Local Government and Heritage provides details of National Monuments Service Sites and Monuments Record (SMR) and the National Inventory of Architectural Heritage (NIAH). It shows that there is no record of any archaeology or architectural heritage associated with the site or immediate area. There is a recorded monument to the north of the site.

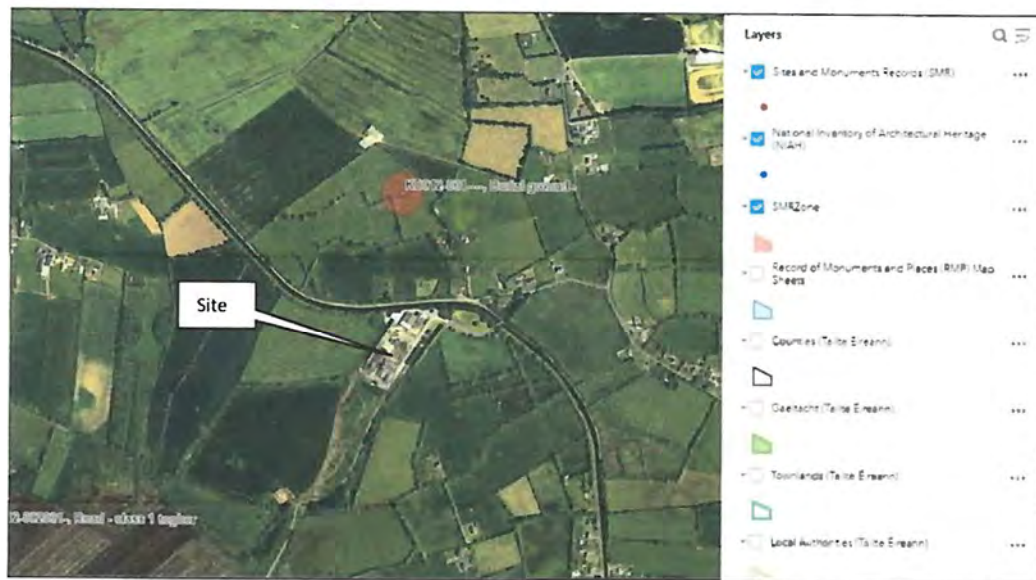


Fig No.6 Extract from The Historic Environment Viewer showing archaeological feature to the north of the site.

2.7 Natural Heritage

The northern portion of the wider former factory is located within a proposed Natural Heritage Area associated with the Grant Canal (denoted by the purple lines in the diagram below). This pNHA does not extend to the site which is the subject of this application and is a significant distance from same – c.200m with industrial buildings and structures in between. We submit that there is no risk posed by the continuation of an industrial use to this pNHA.

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Fig No.7 Extract from EPA Mapping.

2.8 Flood Risk

A review of mapping on floodinfo.ie did not reveal any flood risk associated with the site.

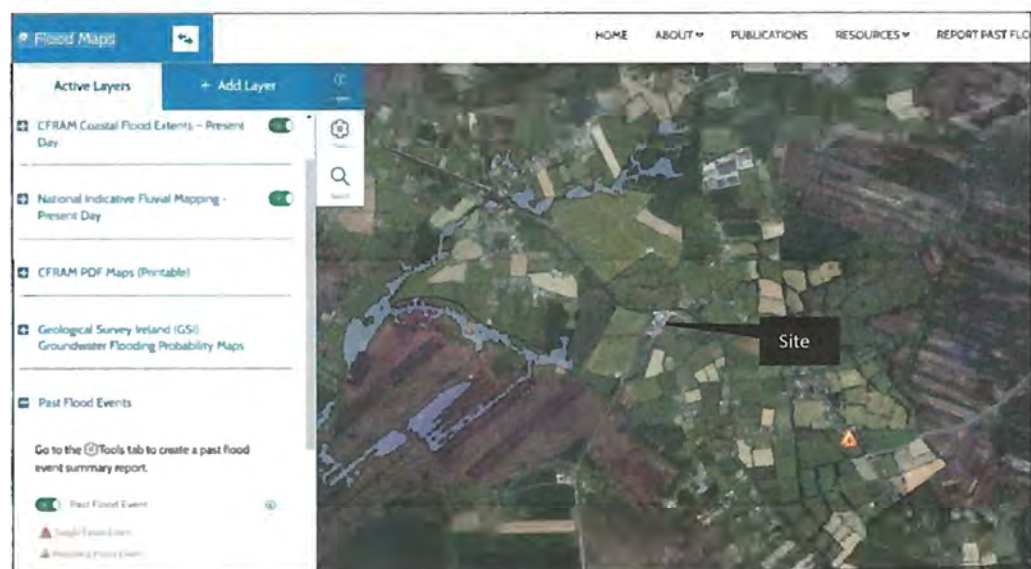


Fig No.8 Extract from floodinfo.ie mapping.

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2.9 General Area

The general area is characterised by agricultural lands and rural housing with bogland to the south and south-west. The Grand Canal is the other notable feature in the area.



3.0 PLANNING HISTORY

3.1 Introduction

This section deals with the planning history for the site and the surrounding area in order to determine if there are any relevant planning issues which have previously been raised and need to be addressed as part of the current application.

3.2 Planning History

A review of the on-line planning system for Kildare County Council revealed the following planning history associated with the site. It should be noted that all information is based on what is available on the Kildare Co. Co. planning register which for various reasons such as misspelling etc is not always accurate and information relating to a particular file may not be mapped or information missing from the file.

File Number: 72/334

Type: PERMISSION
Decision: GRANT
Grant Date: 30/03/1972
Applicant: Mona Bord Na
Description: Extension To Buildings
Address: Lullymore Factory, Carbury

Reference number 78/83

Type: PERMISSION
Decision: GRANT
Grant Date: 31/03/1978
Applicant: Bord Na Mona
Description: Erection Of Workshop Extension



Address: Lullymore

Reference number 84/1135

Type: PERMISSION

Decision: GRANT

Grant Date: 30/03/1984

Applicant: Bord Na Mona

Description: Pilot Plant

Address: Lullymore Briquette Factory, Carbury

Reference number 89/128

Type: PERMISSION

Decision: GRANT

Grant Date: 12/07/1989

Applicant: Bord na Mona

Description: Loose Briquette store

Address: Lullymore Briquette, Factory in the townland, of Kilpatrick

Appeal: PL 9/5/79201 (condition re financial contribution for roads)



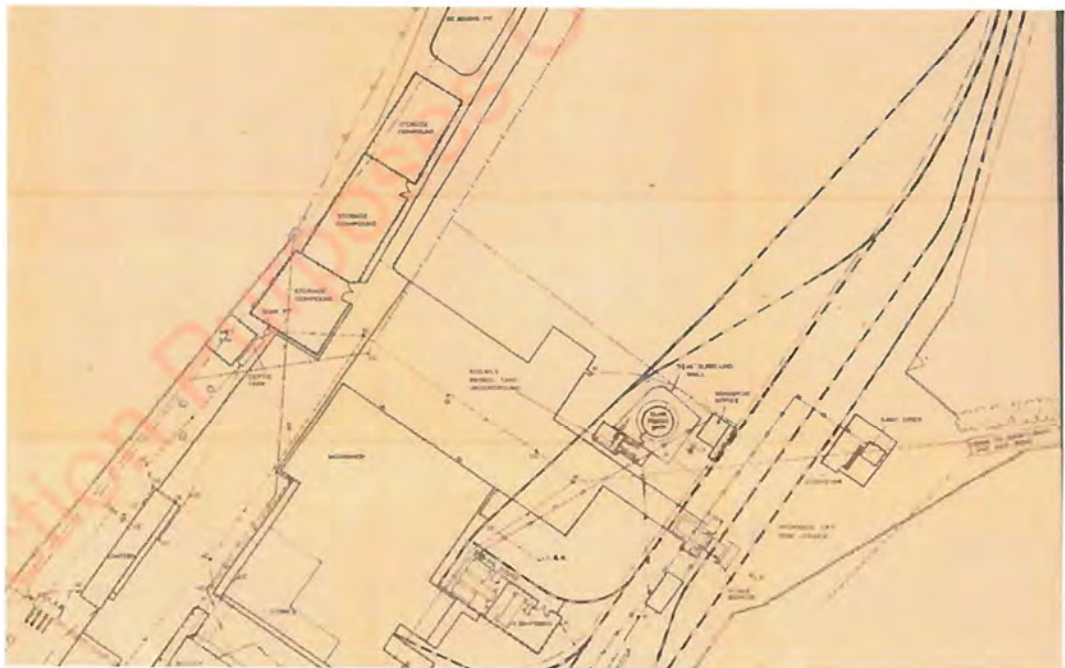


Fig No.9 Extract from Site layout plan submitted with the application under Reg. Ref. 89/128 showing the south end of the site including transport office, tank, pump house, sand drier, and hydraulic lift.

File Number: 98/520

Type: PERMISSION

Decision: GRANT

Date (MO): 05/11/1998

Applicant: Telecom Eireann/Eircell

Description: erect a 30m high latticework tower carrying antennae, with associated equipment housing in a fenced compound. This will form part of Eircell's digital mobile phone network

Address: Lullymore Briquette, Factory, Kilpatrick

Appeal: PL.09.109363 (granted temporary permission for 5 years).



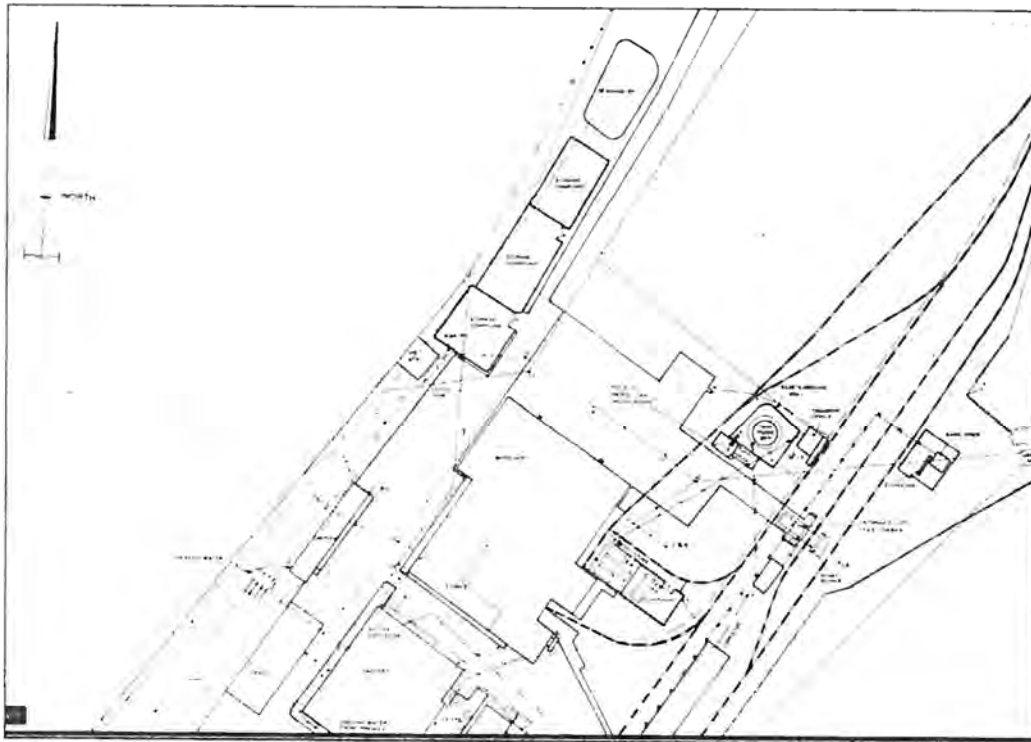


Fig No.10 Extract from site layout plan under 98/520 showing the existing layout at that time.

P82018.012

In November 2018 a Part 8 permission was granted by An Bord Pleanála for the construction of a recreational Greenway, a high quality shared cycle way and footpath predominantly on the existing towpaths of the Grand Canal - including the lands immediately north of the Lullymore Briquette Factory. This permission has been acted upon.

3.3 Satellite Images & Views

The following satellite images are obtained from public sources and available to the county council. The factory and yard are visible in all images.

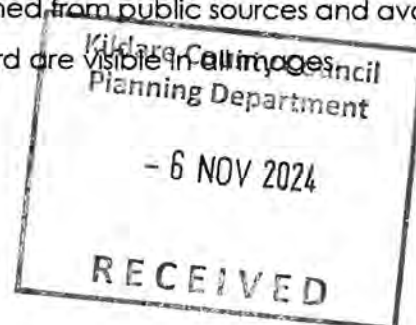




Fig No.11 Google Earth Pro – June 2018



Fig No.12 Google Earth Pro - June 2016

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Fig No.13 Google Earth Pro - April 2011



Fig No.14 Google Earth Pro - May 2006



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4.0 LEGAL CONTEXT

4.1 Development

Section 3(1) of the Planning and Development Act, 2000 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".

4.2 Works

"Works" are defined at Section 2 (1) of the Act as:

"any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal..."

"'industrial building'" means a structure (not being a shop, or a structure in or adjacent to and belonging to a quarry or mine) used for the carrying on of any industrial process;

"industrial process" means any process which is carried on in the course of trade or business, other than agriculture, and which is-

(a) for or incidental to the making of any article or part of an article, or
(b) for or incidental to the **altering**, repairing, ornamenting, finishing, cleaning, washing, packing, canning, adapting for sale, breaking up or demolition of any article, including the getting, dressing or treatment of minerals,

and for the purposes of this paragraph, "article" includes-

- (i) a vehicle, aircraft, ship or vessel, or
- (ii) a sound recording, film, broadcast, cable programme, publication and computer program or other original database.

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5.0 PLANNING CONTEXT

5.1 Kildare County Development Plan 2023-29

Zoning

The site is not zoned and deemed to be 'primarily agricultural' under the Kildare County Development Plan 2023-29.

Landscape

The site is located in a High Sensitivity Landscape (Class 3 - Western Boglands).

It is important to note that for the purpose of a Section 5 application the policies and objectives of a county development plan generally do not apply, unless Article 9 Restrictions on Exemptions are relevant.



6.0 RELEVANT PRECEDENT

6.1 Block W2, Unit A1, Ladytown Business Park, Naas, Co. Kildare

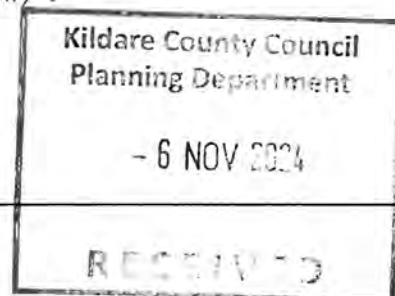
Kildare County Council declared (Ref. **ED/00620**) that the use of an existing industrial unit at Block W2, Unit A1, Ladytown Business Park, Naas, Co. Kildare for the purpose of operating a test facility for manufacturing oil or biodiesel is development and is exempted development.

6.2 Industrial Unit, Whitesland West Business Park, Kildare Town

The attention of the Council is referred to an established precedent in Whitesland West Business Park, Kildare Town where the use of an industrial unit for the purpose of housing a business **receiving, storing and baling waste (tyres) was deemed not to require a fresh planning permission.**

Kildare County Council issued a declaration under Ref. **ED/00471** that the use of an existing warehouse unit to receive, bale and store end of life car tyres from trade suppliers for collection by licensed waste collection hauliers at Whitesland West Business Park, Kildare Town was exempted development.

In that case permission had been granted in 2003 for a business park consisting of 4 new warehouse blocks. Condition No.6 of the permission required that *"the use of the proposed development shall be restricted to warehousing and industrial uses and for no other uses, unless a separate permission for such uses has been obtained from the planning authority. In addition, the units in the development shall be occupied as single units and shall not be subdivided"*. The Reason given was *"to restrict the development to uses ancillary to the use sought within the public notices, in the interest of clarity"*.



The Planner's Report noted the definition of 'industrial process' in the P&D Regulations and condition No.6 of the 2003 permission which provides that the unit can be used for industrial use. The Planner concluded that:-

"the use of the tyre baler on the site comes within the remit of the legislative definition of an 'industrial process'. It would involve the making of an article (tyre bales as a construction industry product), and the altering and adapting for sale of an article (the end of life tyres). It is considered that the site (a warehouse/industrial unit) is certainly a suitable location of the use of the tyre baler. The only other machinery/plant required on the site would be a JCB Teleram telescopic handler. I am therefore of the opinion that the proposed use is permitted under condition no.6 of 03/2320 and accordingly would not represent a change of use" – emphasis added.

6.3 Industrial Unit, Kildare Business Park, Kildare Town

The attention of the Council is also referred to an established precedent in Unit 6, Kildare Business Park, Melitta Road, Kildare Town, where the use of an industrial unit for the purpose of **receiving, storing, separating and baling dry waste** was deemed not to require a fresh planning permission.

Kildare County Council issued a declaration on 14th June 2006 under Ref. **ED/576** confirming that the use of an existing warehouse unit for receiving, storing, separating and baling dry waste was exempted development. The Council noted that the intended new use would comply with the parent permission for industrial use.



6.4 Newbridge Industrial Estate, Newbridge

The attention of the Council is further referred to an established precedent in Unit 20, Newbridge Industrial Estate, Newbridge, where the use of an industrial unit for the purpose of manufacturing wood pellets from waste straw from the equine industry was deemed not to require a fresh planning permission.

Kildare County Council issued a declaration on 21st December 2016 under Ref. **ED/598** confirming that the use of an industrial unit for manufacturing wood pellets is exempted development.

6.5 Summary

These recent precedents demonstrate that the Council have previously accepted that where planning permission for established industrial/warehouse use, new uses involving industrial use do not require the benefit of a fresh planning application. The key issues are proving:

- a) that the site in question has the benefit of permission for industrial/warehouse use and,
- b) that the intended use meets the definition of industrial process.

We note that one of the precedents referred to specifically involved receiving, storing and baling waste (tyres) and therefore is a very similar type use.



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7.0 INTENDED USE

7.1 Details of Intended Use and Operator

The focus of the facility is firstly aimed at **tyre salvage and tyre re-use**. Celticqing Limited will employ scanning systems to identify tyres that are suitable for salvage and reuse in rethreading, remolding operations. This is waste management based on the waste hierarchy and sustainability objectives. This facility will differ from other tyre recycling facilities in this regard. The Circol ELT producer compliance scheme is being extended in 2025 to include industrial and commercial tyre categories. These tyre categories are most suited for salvage and re-use and will be the focus of the facility.

Celticqing Limited t/a Southern Tyre Recycling is an approved waste tyre collector under the Circol ELT producer compliance scheme. Since its establishment the Circol ELT producer compliance scheme has had a major impact on the operation of the tyre recycling sector in Ireland. Circol ELT approved collectors must collect tyres from scheme members (tyre retailers and distributors) free of charge. The collector must demonstrate that tyres have been verifiably recycled in order to receive revenue from the scheme. It is in the best interest of Celticqing Limited to ensure a continuous through-put of waste tyres and avoid the accumulation of tyres on site. To support this operation, the business has access to transfer end-of-life tyres to markets in the UK, Europe, Turkey and India. Export contracts are in place with these suppliers. Additionally, the Agnail Groups UK based tyre processing facilities, ensures Celticqing Limited has continuous outlet availability if far-east markets are closed or restricted.

Celticqing Limited t/a Southern Tyre Recycling, is wholly owned by Markorah Limited. It is part of the Tyre Division of the Agnail Group (operating under holding company Markorah Limited). The tyre division of the Agnail Group encompasses

several tyre recycling businesses servicing waste tyre producers across the UK and Ireland, one of them being Celticqing Limited t/a Southern Tyre Recycling.

The EIA relevant threshold is 25,000MT per annum, and the intended use will be max.15,000MT per annum, so is below the mandatory threshold for EIA under Schedule 5 of the PD Regs, 2001, as amended, Part II, 11. *Other projects (b) Installations for the disposal of waste with an annual intake greater than 25,000 tonnes not included in Part 1 of this Schedule.*

The proposed works (weighbridge, bunkers, etc) are small scale, temporary mobile structures. The weighbridge will be an above ground weighbridge with on / off ramps and which will be bolted down onto the yard. The bunkers are similarly modular construction under portable precast panels and uprights. The equipment is similarly all mobile plant. The structures would not be any different to the structures that operated at this location. Notwithstanding the above, if the Council consider that the works element need to be considered separately, were refer to that the works are exempt under Class 21(a) of the Planning and Development Regulations 2001 (as amended) as it involves the installation or erection by way of addition of plant/machinery (or structures the nature of plant or machinery) which does not affect the external appearance of the premises and does not exceed 15m in height.

The yard where Celticqing Limited will be accepting and bunkering the tyres is the area where the bog train network terminated and where peat was deposited and bunkered prior to being conveyed into the drying building. The intended use is therefore is a similar type activity i.e. receiving raw product (article) before being modified and redistributed.



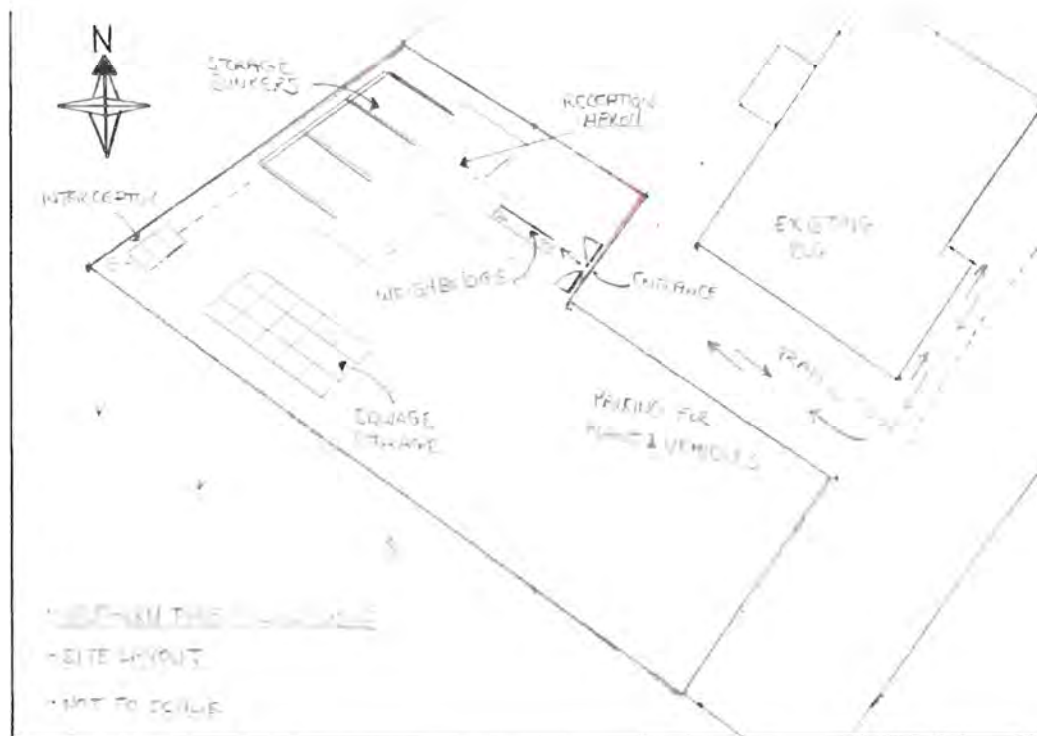


Fig No.15 Indicative layout for tyre recycling use (source: client).



8.0 APPROPRIATE ASSESSMENT SCREENING

8.1 Screening

Under Article 9 (restriction on exemption) an exemption from planning permission cannot be availed of if Stage II Appropriate Assessment is required (Art. 9 (1)(a)(viiB)).

Screening is the first stage within the overall process of 'Appropriate Assessment' (AA) or 'Habitats Directive Assessment', required by the Habitats Directive (Article 6 (3) s.1.2). Circular NPW 1/10 and PSSP 2/10, dated 11th March 2010, issued by the Department of the Environment, Heritage and Local Government states that any project must be assessed for impact upon Natura 2000 sites, in accordance with Article 6 (3) of the European Habitats Directive. The Circular further notes that while:

"all projects involving land use change are subject to screening, in the majority of cases this will not necessitate the consent authority having to seek additional information" - emphasis added.

The purpose of the screening is to assess, in view of best scientific knowledge, if the proposed development, individually or in combination with another plan or project is likely to have a significant effect on a site of European-level ecological importance (i.e. Natura 2000 sites: candidate Special Areas of Conservation and Special Protection Areas).

Screening is defined in the Appropriate Assessment for Plans and Projects in Ireland: Guidance for Planning Authorities, 2009 ('AA Guidelines, 2009') as:

"the process that addresses and records the reasoning and conclusions in relation to the first two tests of Article 6(3):



-
- i) whether a plan or project is directly connected to or necessary for the management of the site, and
 - ii) whether a plan or project, alone or in combination with other plans and projects, is likely to have significant effects on a Natura 2000 site in view of its conservation objectives.

If the effects are deemed to be significant, potentially significant, or uncertain, or if the screening process becomes overly complicated, then the process must proceed to Stage 2 (AA). Screening should be undertaken without the inclusion of mitigation, unless potential impacts clearly can be avoided through the modification or redesign of the plan or project" (emphasis added).

If no likely significant effects have been identified then the assessment process does not proceed any further.

In this context "likely" means any effect that may be reasonably predicted and "significant" means not trivial or inconsequential but an effect that is potentially relevant to the site's conservation objectives (English Nature, 1999). Any effect which would compromise the functioning and viability of a site and interfere with achieving the conservation objectives of the site would constitute a significant effect.

The closest Natura 2000 site is **c.5.6 kilometres** away – Red Bog, Kildare SAC, Site Code: 000397.





Fig No.16 Location of site relative to Natura 2000 sites (source: Myplan.ie - OSI Licence No.EN 0080915).

Taking into consideration:

- The nature of the proposed development (single dwelling and on-site treatment facility with percolation area)
- the small scale of the development,
- the significant distance from the Natura 2000 site
- the lack of any direct link to any Natura 2000 site

it is submitted that there is no need for a Stage II Appropriate Assessment



9.0 CASE FOR EXEMPTION

9.1 Introduction

The question before the Council is *"Whether the use of a yard at the former Briquette Factory, Kilpatrick, Lullymore, Co. Kildare for the purpose of tyre recycling is or is not development and is or is not exempted development"*.

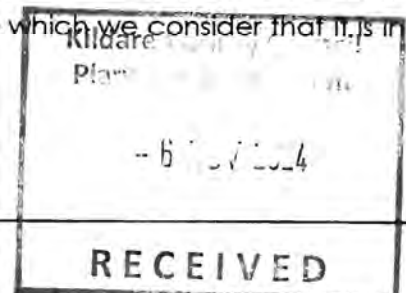
The existing yard forms part of the former Lullymore Briquette Factory which has an established industrial use since 1st October 1964.

The intended use is for tyre salvage and tyre re-use (recycling). The tyres received at the site will be altered before being redistributed and therefore the use falls under the definition of industrial in planning legislation.

It is submitted to the Council that the proposed use would not constitute a material change of use from the permitted industrial use. As such no fresh permission is required.

It is submitted to the Council that the proposed use is similar to multiple established precedents in County Kildare as listed above whereby Kildare County Council declared that a similar type industrial use is not development and could operate without the need for a fresh planning permission.

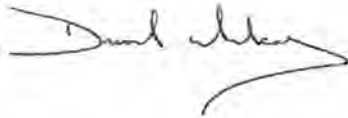
There has been continued use a Lullymore Briquette Factory since Bord Na Mona ceased use in 1992. Even if the new use was considered to be unauthorized, case law has previously found that this is not a concern in an of itself so long as the original use was capable of being restored – which we consider that it is in this instance.



Therefore, the Council are invited to issue a declaration to confirm that the use of the subject yard at the former Briquette Factory, Kilpatrick, Lullymore, Co. Kildare for the purpose of tyre recycling is not development or, is development and is exempted development.

Please contact **Mr. Michael O'Callagahn** at **086-3637016** to arrange a site visit (allow 24 hour notice).

Signed:



David Mulcahy
BA (Mod. Natural Sciences), MRUP, MSc. Urban Design, MIPI, MRTPI
David Mulcahy Planning Consultants Ltd
CHARTERED PLANNING CONSULTANTS

Appendix A – Letter of cosnent from landowner



APPENDICES

- A Letter of consent from owner to make a section 5 application



A Letter of consent from owner of to make a section 5 application





FINANCE CASH OFFICE
Kildare County Council
Ara's Chill Dara
Devoy Park
Naas
Co. Kildare
06/11/2024 14:58:46

Receipt No. : FIN10/0505808
***** REPRINT *****

ED1165 David Mulcahy Planning

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

Total : 80.00 EUR

Tendered :
Credit Card 80.00
VD
**5831
0000

Change : 0.00

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