



Comhairle Contae Chill Dara

Kildare County Council

Date: 4th March 2025
Our Ref: ED/1192.

Damien Malone
c/o RKAD Architects,
First Floor,
Unit 4, Dunboyne Business Park,
Dunboyne,
Co. Meath

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

Dear Sir/Madam,

I refer to your correspondence received on 17th February 2025 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.**





Comhairle Contae Chill Dara

Kildare County Council

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

ED/1192.

WHEREAS a question has arisen as to whether Class 14 (f) a change of use from use as a house, to use as a residence for persons with an intellectual or physical disability or mental illness and persons providing care for such persons at Boleybeg, Ballymore Eustace, Co. Kildare, is exempted development,

AS INDICATED on the plans and particulars received by the Planning Authority on 17th February 2025

AND WHEREAS Damien Malone 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) Section 3 of the Planning and Development Act 2000 (as amended);
- (b) Article 6, 9 and 10 of the Planning and Development Regulations 2001 (as amended);
- (c) The nature, extent and purpose of the development,

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 Change of use from use as a house to use as a residence for persons with an intellectual or physical disability or mental illness and persons providing care for such persons, **IS development and IS NOT EXEMPTED development pursuant to Section 3 of the Planning and Development Act as amended and Article 6, Article 9 and Article 10 of the Planning and Development Regulations as amended.**

Note: The dwelling as constructed would not appear to be in accordance with the requirements of Conditions 4 & 8 of permission 08/942.

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.

4th March 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/1192

Name Of Applicant(s):	Damien Malone
Address Of Development:	Boleybeg, Ballymore Eustace, Co. Kildare
Development Description:	Change of use from existing residence to provision of that permitted under schedule 2 part 1 class 14(f).
Due date	17/03/2025

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 proposed change of use is Exempted Development.

Site Location

The site is located in the rural townland of Boleybeg approximately 3.5km south west of Ballymore Eustace. The site comprises an existing detached bungalow dwelling, with rooflights. Access is via the local road to the south of the site. The site is bounded by existing dwellings.



Fig 1: Site Location and context



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

Description of Proposed Development

Class 14 Change of use from
(f) from use as a house, to use as a residence for persons with an intellectual or physical disability or mental illness and persons providing care for such persons.

Planning History

08/942 – permission granted for dormer bungalow and effluent treatment system.

Relevant Legislative Background

Planning and Development Act 2000 (as amended)

Section 2(1)

'works' includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.

Section 3(1)

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

Section 5(7) EIA Screening

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

Planning and Development Regulations 2001 (as amended)

Article 6(1)

Subject to **article 9**, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.

Article 9 (1)(a)(i)

Restrictions on exemption.

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

(a) if the carrying out of such development would, *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,

10. (1) Development which consists of a change of use within any one of the classes of use specified in Part 4 of Schedule 2, shall be exempted development for the purposes of the Act, provided that the development, if carried out would not—

(a) involve the carrying out of any works other than works which are exempted development,

(b) **contravene a condition attached to a permission** under the Act,

(c) be inconsistent with any use specified or included in such a permission, or

(d) be a development where the existing use is an unauthorised use, save where such change of use consists of the resumption of a use which is not unauthorised and which has not been abandoned.

Assessment

Under Class 14 (f) a change of use from use as a house, to use as a residence for persons with an intellectual or physical disability or mental illness and persons providing care for such persons is permissible subject to the following Conditions and Limitations - the number of persons with an intellectual or physical disability or a mental illness living in any such residence shall not exceed 6 and the number of resident carers shall not exceed 2. The application form makes no specific reference to the number of persons and the number of carers, however, since an exemption is sought, it is assumed that the numbers are in accordance with the class of development.

The existing dwelling on site was permitted under reg ref 08/942 and was subject to 30 no. conditions.

Condition 4 is as follows:

4. All boundaries of the site shall be planted each with a continuous deciduous hedge interspersed with broad-leaved deciduous trees, at 4 metre centres.

A timber post and rail fence shall be erected around the perimeter of the site.

This planting shall be carried out and completed within the first planting season following first occupation of the dwelling.

Reason: In order to screen the development within a reasonable period of time.

Condition 8 is as follows:

8. Double recessed entrance shall be provided to site and to parent's dwelling, and shall be constructed generally in accordance with drawing E/1516/A copy attached. The existing entrance to the family dwelling shall be permanently closed up as per revised site layout map received by the Planning Authority on 15/01/2009.

Reason: In the interest of traffic safety.

On the date of site inspection, 27/02/2025 it was observed that the development site comprises the single storey dwelling with single recessed entrance onto the public road. This access arrangement would not appear to accord with Condition 8 of the permission. Furthermore, while a timber fence has been erected at the front and rear boundary of the site, the side boundaries comprise concrete blockwork wall and this contravenes Condition 4 of the permission. There are no further permissions on the site amending the parent permission.

The status of the site is considered to be unauthorised.



Site layout plan 15/01/2009



Dwelling as of 27/02/2025

Article 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,

Article 10 states that development which consists of a change of use within any one of the classes of use specified in Part 4 of Schedule 2, shall be exempted development for the purposes of the Act, provided that the development, if carried out would not contravene a condition attached to a permission under the Act.

To this end and having regard to the development on site that has contravened conditions attached to the parent permission, a declaration of exemption is not permissible.

Conclusion

Having regard to:

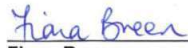
- Sections 2 and 3 of the Planning and Development Act 2000 (as amended);
- Articles 6, 9 and 10 of the Planning and Development Regulations 2001 (as amended); and
- The nature, extent and purpose of the development

it is considered that the proposed change of use **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).

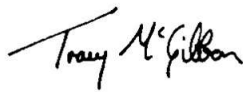
Recommendation

It is recommended that the applicant be advised that the development as described in the application *is development and is NOT exempted development*.



Fiona Breen
Executive Planner

04/03/2025



Tracy McGibbon
Senior Executive Planner
04/03/2025

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 Class 14 (f) a change of use from use as a house, to use as a residence for persons with an intellectual or physical disability or mental illness and persons providing care for such persons

AS INDICATED on the plans and particulars received by the Planning Authority on 17/02/2025

AND WHEREAS Damien Malone 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) Section 3 of the Planning and Development Act 2000 (as amended);
- (b) Article 6, 9 and 10 of the Planning and Development Regulations 2001 (as amended);
- (c) The nature, extent and purpose of the development,

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 -

Change of use from use as a house to use as a residence for persons with an intellectual or physical disability or mental illness and persons providing care for such persons.

IS development and IS NOT EXEMPTED development pursuant to Section 3 of the Planning and Development Act as amended and Article 6, Article 9 and Article 10 of the Planning and Development Regulations as amended.

Note: The dwelling as constructed would not appear to be in accordance with Conditions of permission 08/942.

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	ED1192
Applicant name	DAMIEN MALONE
Development Location	BOLEYBEG, BALLYMORE EUSTACE,
Site size	N/A
Application accompanied by an EIS (Yes/NO)	NO
Distance from Natura 2000 site in km	4.8km west of Poulaphouca Reservoir SPA
Description of the project/proposed development – Change of Use of house to residential care home	

(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	heath), or within 1 km of same?	
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)		
Location, distance from Natura 2000 sites, no impact on integrity of Natura 2000 network.		
Name:	Fiona Breen	
Position:	Executive Planner	
Date:	04/03/2025	

BOIHSR	SPINDARASECTION 5	80.00	BANK	1809725	1	0	19/02/2025
BOIHSR	365 SECTION 5 APP	80.00	BANK	1809727	1	0	19/02/2025

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
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1. Name of Applicant(s) A. Surname **MALONE**. Forenames **DAMIEN**
 Phone No XXXXXXXXXX Fax No.....
2. Address **LANDSCAPE HOUSE, BALDONNELL BUSINESS PARK, DUBLIN 22**

Section 2	Person/Agent acting on behalf of applicant (if applicable)
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1. Name of Person/Agent: Surname **KISSANE** Forenames **RORY**.....
RKAD ARCHITECTS Phone No **0874190500** Fax No.....
2. Address **FIRST FLOOR, UNIT 4, DUNBOYNE BUSINESS PARK, DUNBOYNE CO. MEATH**

Section 3	Company Details (if applicable)
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1. Name of Company**EMERALD CARE LIMITED**
 Phone No...087 6859474 Fax No.....
2. Company Reg. No.....**XXXX**.....
3. Address.....**LANDSCAPE HOUSE, BALDONNELL BUSINESS PARK, CO. DUBLIN**

Section 4	Details of Site
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1. Planning History of Site **08942**
2. Location of Proposed Development...**BOLEYBEG, BALLYMORE EUSTACE W91 C7P4**

3. Ordnance Survey Sheet No **53.1110749 – 6.6476170**
4. Please state the Applicants interest in the site **OWNER**

5. Please state the extent of the proposed development **CHANGE OF USE FROM EXISTING RESIDENTIAL HOME TO THE PROVISION OF THAT PERMITTED UNDER SCHEDULE 2 PART 1 CLASS 14f OF THE PLANNING & DEVELOPMENT REGULATIONS 2001 (as amended)**

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 14F of the Planning and Development regulations

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

CHANGE OF USE TO EXISTING RESIDENTIAL HOME TO A USE OF RESIDENTIAL CARE IN ACCORDANCE WITH THE SAID PROVISIONS UNDER 14 (f) AT BOLEYBEG, BALLYMORE EUSTACE, CO. KILDARE

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)	✓
2.	A Site Layout Plan (Scale 1:250) in full compliance with Article 23 of Planning and Development Regulations 2001 as amended	✓
3.	Drawings of the development (Scale 1:100) in full compliance with Article 23 of Planning and Development Regulations 2001 as amended	✓
4.	All drawings to differentiate between the original building, all extensions and proposed development	✓
5.	Fee of 80 Euro	✓

Section 6	Declaration
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I **MR. DAMIEN MALONE** certify that all of the above information is correct, and I have submitted all the required documents as outlined at Section 6 above.

Signature: _____Damien Malone_____

Date: **12/02/2025**

KILDARE SHEET 29-11

ARDINODE WEST T9

0-327

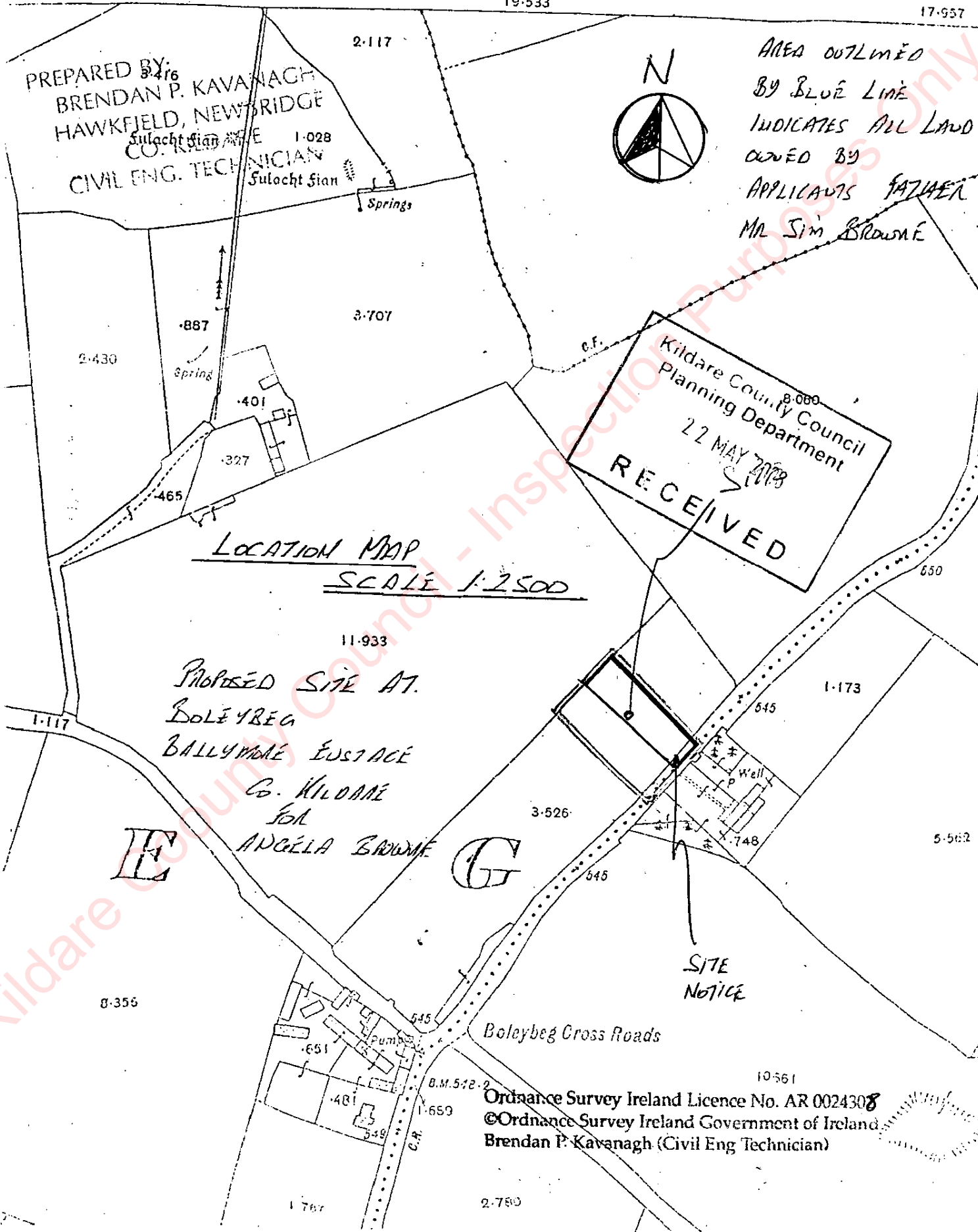
19-533

17-957

PREPARED BY
BRENDAN P. KAVANAGH
HAWKFIELD, NEWBRIDGE
CO. KILDARE
CIVIL ENG. TECHNICIAN



AREA OUTLINED
BY BLUE LINE
INDICATES ALL LAND
OWNED BY
APPLICANTS FATHER
MR SIM BROWNE



DIRECTOR OF SERVICES 