

Comhairle Contae Chill Dara
Kildare County Council



Date: 23rd May 2025
Our Ref: ED/1222

Richard Rogers,
Ballynakill Lower,
Carbury,
Co. Kildare
W91 E9H7

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

Dear Sir/Madam,

I refer to your correspondence received on 8th April 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,

PP 
Senior Executive Officer,
Planning Department.



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

ED/1222.

WHEREAS a question has arisen as to whether the raising of the site levels of 1.32ha by c.300mm on average above the existing ground level and recontouring of land c.0.85ha(2.1 acres) and the importation of uncontaminated greenfield soil and stone material under article 27 by product regulations at Ballynakill Lower, Carbury, Co. Kildare, is exempted development,

AS INDICATED on the plans and particulars received by the Planning Authority on 8th April 2025

AND WHEREAS Richard Rogers requested a declaration on the said question from Kildare County Council,

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

- (a) Planning and Development Act 2000 (as amended) and
- (b) Planning and Development Regulations 2001 (as amended); and
- (c) Documentation received with the application

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

- (a) Sections 2, 3, of the Planning and Development Act 2000 (as amended)
- (b) Article 8C of the Planning and Development Regulations 2001(as amended),
- (c) 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 raising of the site levels of 1.32ha by c.300mm on average above the existing ground level, the recontouring of land c.0.85ha(2.1 acres) and the importation of uncontaminated greenfield soil and stone material under article 27 by product regulations at Ballynakill Lower, Carbury, Co. Kildare ***IS development and IS NOT EXEMPTED development pursuant to the Planning and Development Act as amended and Article 6, Article 8 and Article 9 of the Planning and Development Regulations as amended.***

Please note that any person issued with a declaration under subsection 2(a) of the Planning and Development Act 2000 (as amended) may on payment to the Board of the prescribed fee, refer a declaration to An Bord Pleanála within 4 weeks of the issuing of the decision.

23rd May 2025

PP 
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/1222

Name Of Applicant(s):	Richard Rogers
Address Of Development:	Ballynakill Lower, Carbury, Co. Kildare
Development Description:	Raise site levels by approximately 300MM on average, re-contouring of land and to import uncontaminated greenfield soil and stone material under Article 27 By-Products Regulations
Due date	6 th May 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 works proposed is to raise the site levels of 1.32ha by c.300mm on average above the existing ground level, recontouring of land c.0.85ha(2.1acres) and the importation of uncontaminated greenfield soil and stone material under article 27 by product regulations.

Site Location

The site is situated in a rural area approximately halfway between Allenwood and Derrinturn with access provided from the R403 regional road. The site comprises a detached single storey dwelling with a number of detached sheds/outbuildings to the rear and an assortment of agricultural buildings associated with a farmyard located in the southern part of the site. Boundaries comprise of dense leylandii hedges and native hedgerow to the front with some more mixed species hedgerows and trees to the northwest and southern boundary. The Grand Canal is situated c.450m south of the site. There is a stream situated at the northwest corner of the site which flows north away from the site.



Fig 1: Site Location and context

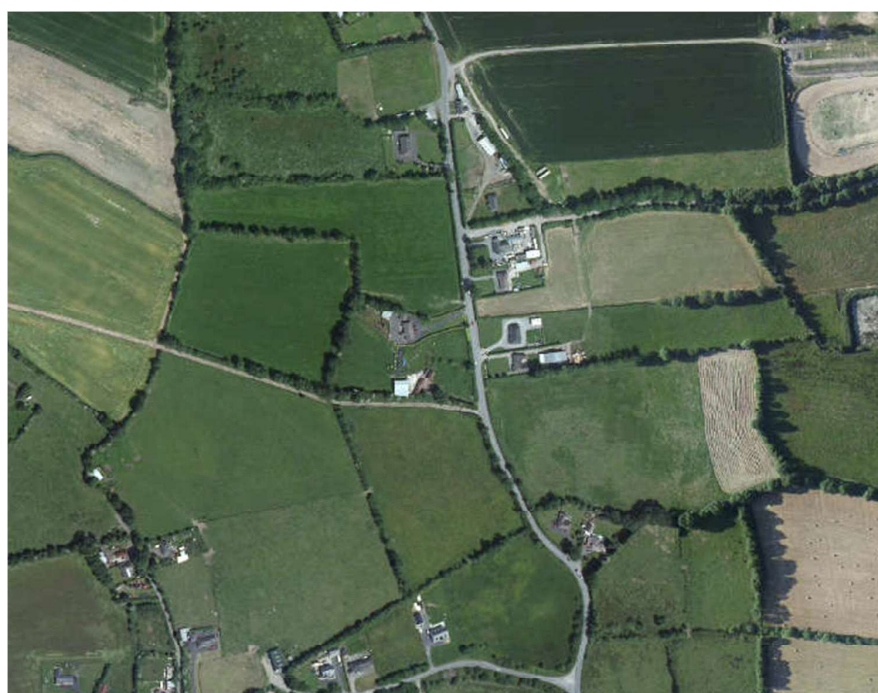


Fig 2: Aerial view of subject site

Description of Proposed Development

The proposed development as described is to raise the site levels of 1.32ha by c.300mm on average above the existing ground level. It is also proposed to recontour 0.85ha(2.1acres). It is proposed to import uncontaminated greenfield soil and stone material under article 27 by product regulations.



Planning History

23/60223: Anne Donoghue - Legal Personal Rep of the estate of John Kelly was **granted** permission for a garage and retention of a fuel store for domestic purposes.
83/624: John Kelly was **granted** permission for a bungalow and septic tank.

The following is of relevance in relation to An Bord Pleanála decisions regarding land reclamation for agricultural purposes and is relevant in this declaration.

ABP Ref. 316012-23- in April 2024 the Board decided that, in the question as to whether:

- (a) the importation and deposit of soil and/or subsoil from off-site into a number of heaps on the land,
 - (b) the parking of an industrial vehicle bearing a large arm (or a type which can be used to distribute/move soil and/or subsoil) on this land and parking of commercial trucks on site,
 - (c) the use of this property for non-agricultural external storage,
 - (d) the erection of a circa 3.0-metre-tall timber fence on the land,
 - (e) the sorting of soil and subsoil, the placing the sorted matter into bags and the transportation of these bags off the site, and
 - (f) the use of a large barrel-vaulted structure which has been erected on the site for the sorting, bagging and dispatch of soil and subsoil,
- all at Painestown, Kill, County Kildare is or is not development or is or is not exempted development,

The Board decided that the importation of and deposit of soil and/or subsoil, the use of the shed and activities on site for sorting bagging of soil and/or subsoil and

transportation off site, the parking of commercial vehicles, and the erection of a three metre high timber fences development and is not exempted development.

ABP Ref. RL2987 – in April 2013 the Board decided that, in the question of whether the importation of soils and overburden materials for spreading on agricultural land at Barntick, Clarecastle, Co. Clare is or is not development or is or is not exempted development:

- o The importation of soils and spreading on agricultural land constituted development (Section 3, P&D Act, 2000, as amended),
- o The soils and overburden materials to be imported to the farm holding constituted 'waste', and the activity, therefore, did not come within the scope of Article 8(c) of the Planning and Development Regulations, 2001, as amended.

ABP Ref. RL3034 – In May 2013 the Board decided that, in the question of whether land reclamation for agricultural purposes involving the re-contouring of land using soil as infill material at Bunnahowen, Belmullet, Co. Mayo is or is not development or is or is not exempted development:

- o The importation of soil for infilling of land constitutes 'works' (Section 2(1) P&D Act 2000, as amended) and 'development' (section 3(1) P&D Act, 2000, as amended),
- o Article 8C of the Planning and Development Regulations, 2001, as amended does not provide an exemption for the importation of soil from external sources to a farm holding for the purpose of re-contouring of land,
- o It is not possible to state beyond reasonable doubt that the infilling of soil on this particular site would not have a significant negative impact on European sites.

The act of works referred to therefore was determined to be development and not exempted development (Section 4(4) P&D Act 2000, as amended).

ABP Ref. RL3116 – In January 2014 the Board decided that, in the question of whether a waste recovery site involving the deposition, over a period of less than two years of less than 100,000 tonnes of fill consisting of clays and topsoil, at Woodford, Listowel, Co. Kerry, is or is not development or is or is not exempted development:

- o The reclamation and re-contouring of land through deposition of fill constitutes an act of works and development (Sections 2 and 3 of the P&D Act 2000, as amended).
- o Land reclamation coming within the scope of works referred to in the Land Reclamation Act, 1949, would normally constitute exempted development (Section 4(1)(l) P&D Act 2000, as amended),
- o The deposition of a significant quantity of clays and topsoil alongside a stream that is directly connected to and in close proximity to an SAC would be likely to cause environmental pollution by way of siltation and it could not be

excluded that the development would be likely to have a significant effect on a European site,

o The works also come within the scope of section 4(4)(a) of the Planning and Development Act, 2000 (as amended) and therefore do not constitute exempted development, and (e) for the avoidance of doubt, the fill material of clays and topsoil that are imported from outside the landholding constitutes waste, and the development, therefore does not come within the scope of article 8C of the Planning and Development Regulations, 2001, as amended.

The act of works referred to therefore was determined, therefore, to be development and not exempted development.

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 8(C) states

Land reclamation works (other than reclamation of wetlands) consisting of re-contouring of land, including infilling of soil (but not waste material) within a farm holding, shall be exempted development.

Article 6 (1) of the Planning and Regulations 2001 (as amended) states as follows: '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) of the Planning and Regulations 2001 (as amended) sets out the instances where development, to which Article 6 relates, shall not be exempted development for the purposes of the Act if the carrying out of such development would:

- contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,
- (iii) endanger public safety by reason of traffic hazard or obstruction or road users.

Appropriate Assessment Screening

A screening for Appropriate Assessment accompanies this report.

Assessment

Having regard to the statutory definition of the terms 'works' and 'development', referred to above, which define works as, amongst other things, any act or 'operation of construction' or 'alteration' and development as the 'carrying out of works on land', I would consider that the creation of new surface layer/s and the alteration of the existing land form would comprise both 'works' and 'development', as defined in the Planning and Development Act, 2000 (as amended).

Article 8C, of the Planning and Development Regulations, 2001 (as amended) states "Land reclamation works consisting of re-contouring of land, including infilling of soil (but not waste material) within a farm holding shall be exempted development."

An Bord Pleanála has traditionally held that the exemption provided by article 8C is confined to land reclamation works where soil is sourced from within the landholding (RL3034, RL3116 & ABP316012-23).

I note from the application form submitted with the declaration that it is stated that there will be importation of uncontaminated, greenfield soil and stone.

Consequently, as material would not be sourced within the land holding, the proposed development would be inconsistent with article 8C of the Regulations. Further, the Waste Management (Facility Permit and Registration) Regulations, 2007, as amended, define the recovery of natural materials (clay, silt, sand, gravel or stone) as a waste activity. It is noted that the declaration seeks importation of soil and stone and subject to an Article 27 licence.

Notwithstanding that soil and stone is to be imported and not waste, it is not considered that the proposal complies with Article 8C of the Regulations.

Conclusion

Having regard to:

- Sections 2 & 3 of the Planning and Development Act 2000 (as amended);

- Articles 8C of the Planning and Development Regulations 2001 (as amended); and
- The nature, extent and purpose of the works;

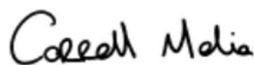
It is considered that to raise the site levels of 1.32ha by c.300mm on average above the existing ground level, recontouring of land c.0.85ha(2.1acres) and the importation of uncontaminated greenfield soil and stone material under article 27 by product regulations **constitutes development** as defined 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) as it does not fit within the interpretation of Article 8C 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 NOT exempted development.**

Signed: 
L. Murphy
Executive Planner

Date: 19/05/2025



Carroll Melia

Senior Executive Planner

23rd May 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 the raising of the site levels of 1.32ha by c.300mm on average above the existing ground level and recontouring of land c.0.85ha(2.1acres) and the importation of uncontaminated greenfield soil and stone material under article 27 by product regulations is or is not exempted development.

AS INDICATED on the plans and particulars received by the Planning Authority on 08/04/2025

AND WHEREAS Richard Rogers requested a declaration on the said question from Kildare County Council,

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

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

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

- (a) Sections 2, 3, of the Planning and Development Act 2000 (as amended);
- (b) Article 8C of the Planning and Development Regulations 2001(as amended);
- (c) 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 raising of the site levels of 1.32ha by c.300mm on average above the existing ground level, the recontouring of land c.0.85ha(2.1acres) and the importation of uncontaminated greenfield soil and stone material under article 27 by product regulations

IS development and IS NOT EXEMPTED development pursuant to the Planning and Development Act as amended and Article 6, Article 8 and 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	ED/1222
Applicant name	Richard Rogers
Development Location	Ballynakill Carbury Co. Kildare
Site size	1.32ha
Application accompanied by an EIAR (Yes/NO)	No
Distance from Natura 2000 site in km	The site is located c.4km east of the Long Derries, Edenderry Special Area of Conservation

Description of the project/proposed development –

the raising of the site levels of 1.32ha by c.300mm on average above existing ground level and recontouring of land of c.0.85ha(2.1acres) and the importation of uncontaminated greenfield soil and stone material under article 27 by product regulations

(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.	<i>Is the development within a Special Area of Conservation whose qualifying interests</i>	No

	<u>Sites to consider:</u> River Barrow and Nore, Rye Water/Carton Valley, Pollardstown Fen, Mouds Bog, Ballynafagh Bog, Red Bog, Ballynafagh Lake	<i>include wetland habitats (bog, marsh, fen or 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)		
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 negatively affect the ecological integrity or conservation objectives of European Sites		
Name:	L. Murphy	
Position:	Executive Planner	
Date:	19/05/2025	

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

E01222

rec'd 8/4/25

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 ROGERS Forenames RICHARD
Phone No. [REDACTED] Fax No.
2. Address BALLYNAKILL LOWER, CARBURY, CO. KILDARE, W91 E9H7

Section 2	Person/Agent acting on behalf of applicant (if applicable)
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1. Name of Person/Agent: Surname..... Forenames.....
Phone No..... Fax No.....
2. Address.....
.....

Section 3	Company Details (if applicable)
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1. Name of Company
Phone No..... Fax No.....
2. Company Reg. No.....
3. Address.....
.....

Section 4	Details of Site
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1. Planning History of Site PLANNING PERMISSION GRANTED UNDER FILE REF. 83/624 FOR BUNGALOW AND SEPTIC TANK; RETENTION PERMISSION GRANTED UNDER FILE REF. 23/60223 FOR GARAGE AND FUEL STORAGE SHED; SHEDS ARE AN EXEMPT STRUCTURE
2. Location of Proposed Development BALLYNAKILL LOWER, CARBURY, CO. KILDARE, W91 E9H7. THE DWELLING HOUSE IS SITUATED ON FOLIO NUMBER 10894F CO. KILDARE AND THE FARM SHEDS AND REMAINING FARM LANDS ARE COMPRISED ON FOLIO NUMBER 10117F CO. KILDARE
3. Ordnance Survey Sheet No 3317-D
4. Please state the Applicants interest in the site OWNER

Kildare County Council
Planning Department

08 APR 2025

RECEIVED

5. Please state the extent of the proposed development EXTENT OF THE PROPOSED DEVELOPMENT IS OUTLINED IN BLUE ON THE DRAWING OF THE DEVELOPMENT SUBMITTED WITH THIS APPLICATION

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*)

ARTICLE 8C OF THE 2001 REGULATIONS: "LAND RECLAMATION WORKS (OTHER THAN RECLAMATION OF WETLANDS) CONSISTING OF RE-CONTOURING OF LAND, INCLUDING INFILLING OF SOIL (BUT NOT WASTE MATERIAL) WITHIN A FARM HOLDING, SHALL BE EXEMPTED DEVELOPMENT."

7. Please give a detailed description of the Proposed Development (*Use separate page if necessary*)
THE EXISTING SITE CIRCA 1.32 HA OUTLINED IN RED ON THE MAP SUBMITTED WITH THIS APPLICATION IS CHARACTERISED BY ITS LOW-LYING AND UNEVEN TOPOGRAPHY. IT IS PROPOSED TO RAISE SITE LEVELS BY APPROXIMATELY 300MM, ON AVERAGE, ABOVE EXISTING GROUND LEVEL. RE-COUNTURING OF LAND INCLUDES THE AREA OF CIRCA 0.85 HA (2.1 ACRES) AND IS OUTLINED IN BLUE ON THE MAP SUBMITTED WITH THIS APPLICATION. FOR THIS PURPOSE IT IS PROPOSED TO IMPORT UNCONTAMINATED, GREENFIELD SOIL AND STONE MATERIAL UNDER ARTICLE 27 BY-PRODUCT REGULATIONS.

Section 5	The following must be submitted for a valid application
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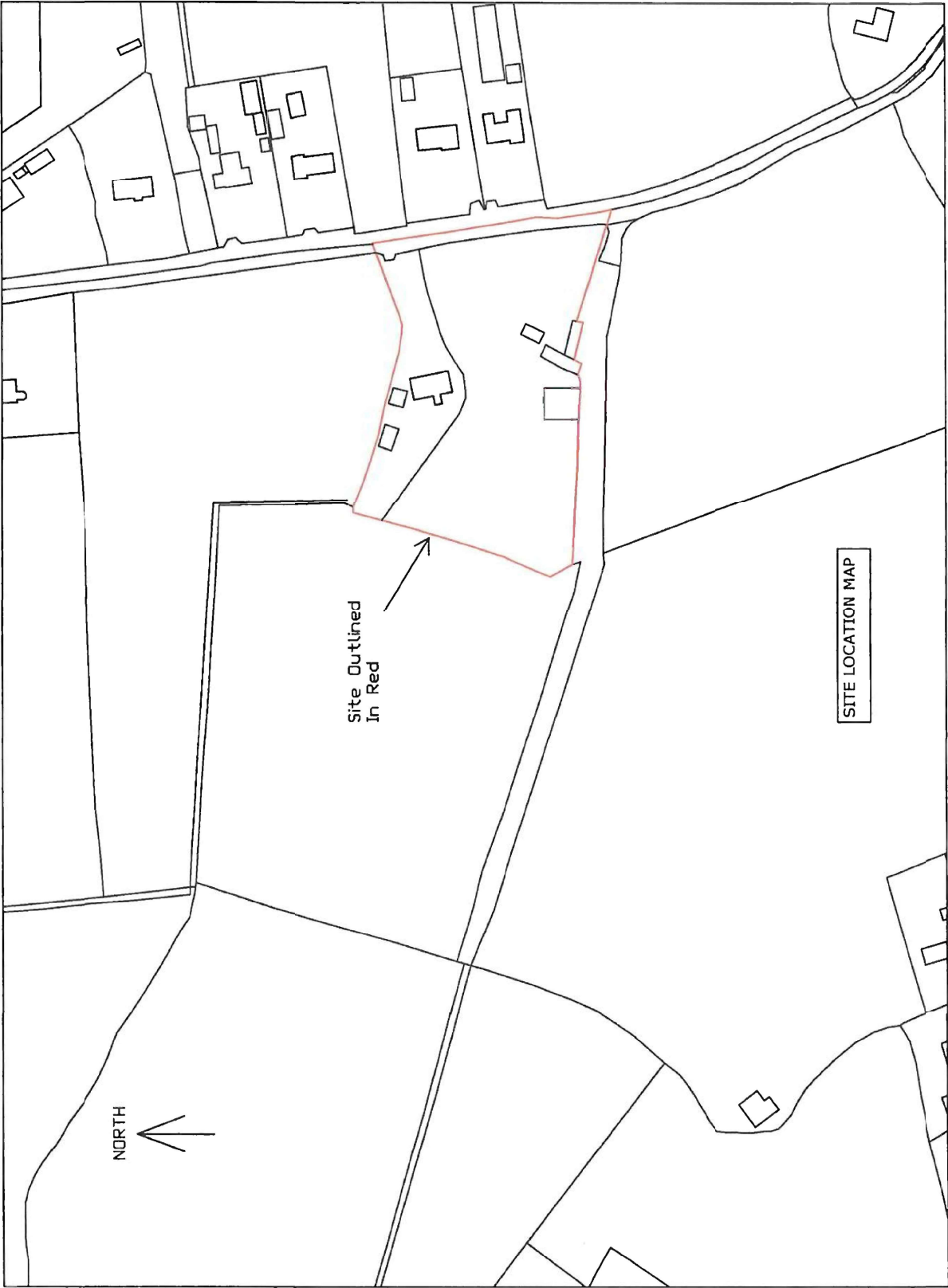
(Please Tick)		
1.	Site Location Map (1:2500 Rural Areas) (1:1000 Urban Areas)	✓
2.	A Site Layout Plan (Scale 1:500) in full compliance with Article 23 of Planning and Development Regulations 2001 as amended	✓
3.	Drawings of the development (Scale 1:500) in full compliance with Article 23 of Planning 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, _____ certify that all of the above information is correct and I have submitted all the required documents as outlined at Section 6 above.

Signature: Richard Hogeto

Date: 08-4-2025



Description:

Digital Landscape Model (DLN)

Publisher / Source:

Taitte Éireann

Data Source / Reference:

PRIME2

File Format:

Autodesk AutoCAD (DWG, R2013)

File Name:

v_50432331.dwg

Clip Extent / Area of Interest

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URX,LY= 671739.053,725549.2305

LLX,LY= 671156.053,725979.2305

URX,LY= 671739.053,725979.2305

Projection / Spatial Reference:

Projection:

IRNET95_Irish_Transverse_Mercator

Centre Point Coordinates:

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Reference Index:

Map Series / Map Sheets

12,500 | 3317-0

Data Extraction Date:

Date= 05-Nov-2024

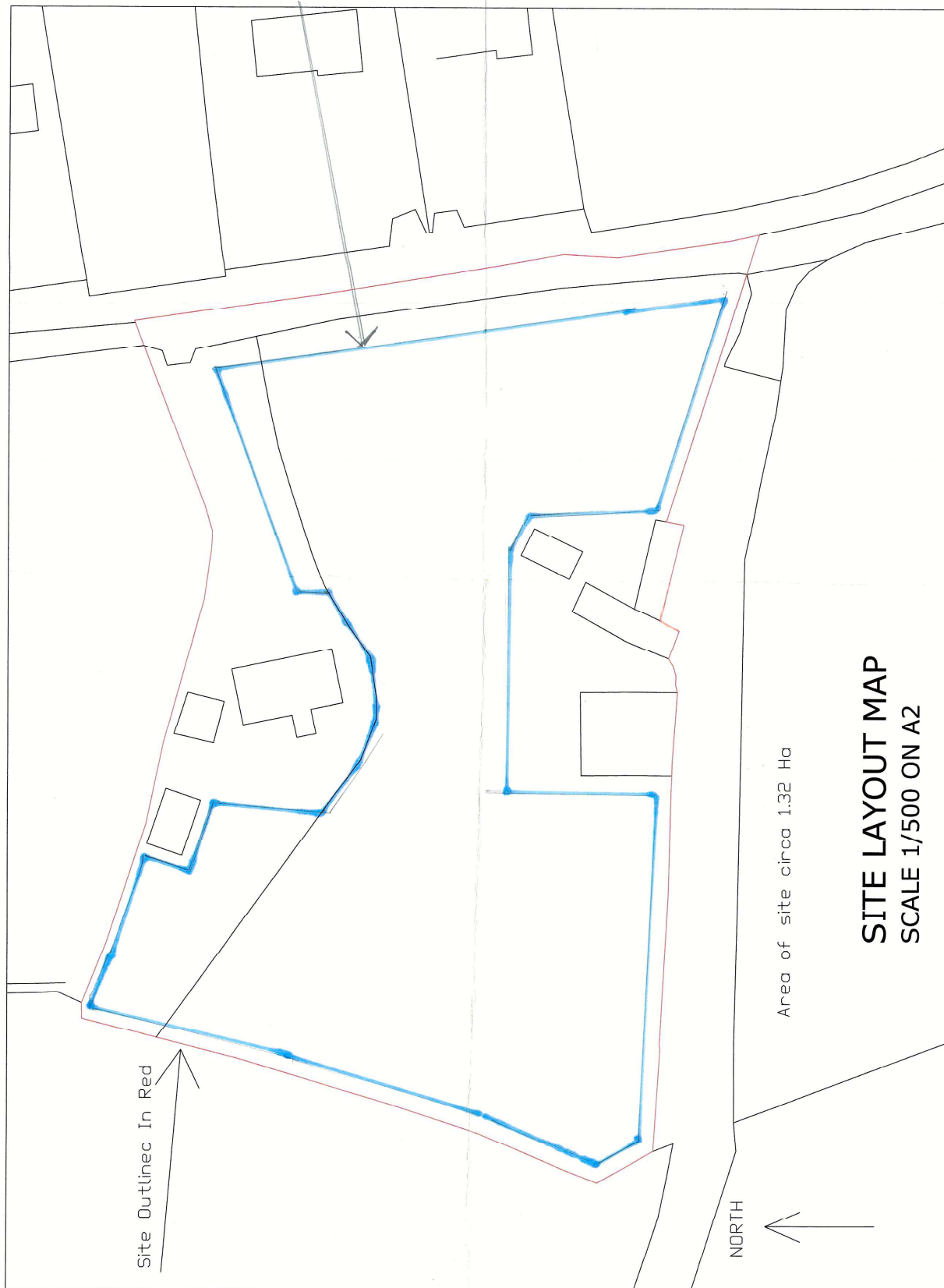
Source Data Release:

DDMLS Release V1180119

Product Version:

Version= 1.4

License / Copyright:



PROPOSED AREA OF
RE-COUNTING OF LAND
IN BLUE
AREA OF CIRCA 0.85 Ha.

Site Outline in Red

NORTH

Area of site circa 1.32 Ha

SITE LAYOUT MAP
SCALE 1/500 ON A2



SITE LAYOUT MAP
SCALE 1/500 ON A2



Description:

Digital Landscape Model (DLM)

Publisher / Source:

Taita Éireann

Data Source / Reference:

PRUNE2

File Format:

Autodesk AutoCAD (DWG, R2013)

File Name:

v_50432331_dwg

Clip Extent / Area of Interest

(ADD):

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LRX,LRV= 671735.053,725979.2305

LLX,LLY= 671156.053,725979.2305

URX,URV= 671735.053,725979.2305

Projection / Spatial Reference:

Projection:

IRNET95 Irish Transverse_Mercator

Centre Point Coordinates:

X,Y= 671447.553,725764.2305

Reference Index:

Map Series / Map Sheets

12,300 / 3317-0

Data Extraction Date:

Date= 05-Nov-2024

Source Data Release:

DCHLS Release V1180119

Product Version:

Version= 1.4

License / Copyright:



FINANCE CASH OFFICE
Kildare County Council
Áras Chill Dara
Devoy Park
Naas
Co. Kildare
08/04/2025 15:07:19

Receipt No. : FIN1/0/510851
***** REPRINT *****

ED1222 Richard Rogers

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

Total : 80.00 EUR

Tendered :
Credit Card 80.00
VD
**6561
0000

Change : 0.00

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