



An
Coimisiún
Pleanála

Inspector's Report ACP-323903-25

Question

Whether land reclamation and drainage works comprising of the recontouring an area of agricultural land by the stripping of topsoil to a depth of 50 mm, placing drainage stone to a depth of 20 cm and the replacement of topsoil on the area of land, all carried out within the farm holding is or is not development and is or is not exempted development.

Location

Coolagarranroe, Burncourt, Co. Tipperary.

Declaration

Planning Authority

Tipperary County Council

Planning Authority Reg. Ref.

S5/25/131

Applicant for Declaration

William O'Donnell

Planning Authority Decision

Is not exempted development

Referral

William O'Donnell

Referred by

William O'Donnell

Owner/ Occupier	William O'Donnell
Observer(s)	None
Date of Site Inspection	24 March 2026
Inspector	Claire McVeigh

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1.0 Introduction

- 1.1. In the consideration of this referral, I have had regard to previous referrals, and these are detailed in section 5.0 of my report.

2.0 Site Location and Description

- 2.1. The subject site (noted as 0.46 hectares as per submitted cover letter as part of the submitted application for Section 5 Declaration with the area of land over which the land reclamation works carried out as having an area of 0.15¹ hectares) is located to the south of the M8 (Cashel to Mitchelstown Motorway) c. 11km northeast of Mitchelstown and c. 5km north/northwest of Ballyporeen. The subject site is accessed off the local road (L73141 Coolagarranroe) running south from the R639. There are a few one off rural detached dwellings and a farm complex accessed off this local cul-de-sac road.
- 2.2. The entrance to the site is defined by a boundary of corrugated sheeting and gateway. The subject site is defined by a sparse treeline to the northern boundary with drainage ditch, no water evident at time of my site visit, and to the southern boundary there is a stream/drainage ditch with water. The surface of the site is covered in stone with rushes evident to the rear (eastern boundary).

3.0 The Question

- 3.1. Whether land reclamation and drainage works comprising of the recontouring an area of agricultural land and by the stripping of topsoil to a depth of 50mm, placing drainage stone to a depth of 200mm² (20cm) and the replacement of topsoil on the area of land all carried out within the farm holding is or is not development and is or is not exempted development.
- 3.2. The referrer in their appeal submission suggests that the question should be reworded as they are of the view that recontouring works were not carried out. It is put forward that the original reference made to recontouring in the section 5

¹ I highlight for the Commission that there is a discrepancy in the relevant site area subject to reclamation as the submitted Application form for Section 5 Declaration indicates an area of 0.25 hectares.

² My insertion for coherency in measurement referencing.

application to the planning authority was in the context of the possible marginal raising of the level of the section of the land in question where the drainage works were implemented.

- 3.3. From the documentation available to me on the case file there is a stated change in the level of the ground of 150mm over an area of between a stated 0.25ha (as per application for section 5 declaration) or as stated in cover letter prepared by Potter & Finn Chartered Consulting Engineers an area of 0.15ha. The submitted drawing: Site Layout indicates the area of drainage stone applied and re-topsoiled. There is a lack of clarity in respect to the total area of land which the works have been carried out subject to this Section 5 Declaration. In addition, I highlight to the Commission that there is an area identified as '*preexisting area of reclaimed/contoured land*' in the centre of the site (as per the submitted Site Layout drawing), which from the documentation submitted appears to have been carried out pre purchase of the land by the current landowner.
- 3.4. In my opinion, looking solely at the area identified by the current landowner as subject to the works the ground levels have been raised by 150mm from their existing levels over an area which equates to between 54% - 33% of the total site area depending on which figure is used (please refer to 3.3 above in terms of the different areas provided in the submitted documentation) and as such would not constitute 'marginal raising of land' and would in my view equate to recontouring. In this regard, I do not consider that it is necessary to change the wording of the question as submitted with exception to providing the drainage depth of stone in mm for coherency in measurement referencing.

4.0 Planning Authority Declaration

4.1. Declaration

Tipperary County Council has concluded that:

- The subject site does not constitute a farm holding,
- Inert stone, a waste material was imported onto the site for the purposes of land reclamation,

- The development does not fall under Article 8C or any exempted development provision under the Regulations or Act,
- The development would not be likely to have a significant effect on the Lower River Suir SAC or any other European site.

The planning authority has determined that the development as presented in the details provided with the declaration application constitutes development within the meaning of the Planning and Development Act 2000 but does not constitute exempted development.

The planning authority had regard to section 2, 3 and 4 of the Planning and Development Act 2000 as amended and article 8 of the Planning and Development Regulations 2001 as amended.

4.2. Planning Authority Reports

4.2.1. Planning Reports

The main points of the report dated 3 November 2025 are:

- The stripping of topsoil constitutes development as it involves the process of extraction.
- The site is not considered to be a wetland. The planning authority is satisfied that the works undertaken constitute reclamation.
- The planning authority does not consider the site to constitute a farm - The parcel of land is small (c. 0.46 hectares) that was previously covered in trees prior to being cleared. In its current state, evidence of hardcore and lack of agricultural structures, the subject site does not appear capable of being used for agricultural purposes as defined under the Act. Regard also taken to the definition of farming provided for by Revenue in Notes for Guidance – Taxes Consolidation Act 1997 Finance Act 2024 edition (Dec 2024). In this note “farming” is defined to mean farming farmland, that is, land in the State which is wholly or mainly occupied for husbandry, other than market garden land. Husbandry refers to the care, cultivation, and breeding of crops and animals. Small farms report 2022 prepared by Teagasc defines a small farm as a farm with a standard output of €8,000 derived from farm related activities.

- No indication is given to the source of the infill material (drainage stone). Considers that the inert stone, which is a waste material, must have been imported onto the site for the recontouring purpose. There is no exemption allowing for the importation of waste onto a landholding for the purposes of recontouring land levels.
- The quantum of material deposited on site is not quantified but is of the view that it would be significantly below the 25,000-tonne threshold as per Class 11 (b) installations for the disposal of waste with an annual intake greater than 25,000 tonnes (Schedule 5 Part 2 of the Planning and Development Regulations 2001 (as amended)). EIA not required. EIA screening attached to the report.
- The stream on the southern boundary of the sites likely discharges to the Glengarra River c. 480m east of the site which discharges to the Shanbally River which forms part of the Lower River Suir SAC at a point 7.8km downstream. Having undertaken an Appropriate Assessment screening determines that given the small-scale nature of the development and location of the development relevant to the European Site (Lower River Suir) consider that the development would not be likely to have significant effects individually, or in combination with other plans and projects on Natura 2000 network and appropriate assessment is not required.

4.2.2. Other Technical Reports

None.

5.0 Planning History

No relevant planning history records pertaining to the subject site were provided by Tipperary County Council.

Planning register reference 061948 is referred to in the planner's report and relates to a withdrawn application (Withdrawn on 29 January 2007) which sought permission for a one and a half storey style dormer dwelling, new vehicular entrance, biotech treatment unit, domestic garage & associated works (Applicant Barry Kiely). Documentation is available on Tipperary County Council's ePlan.

Enforcement History

TUD-23-195 – A revised enforcement notice dated 18 March 2025 in respect of the infilling of the lands within folio TY47177F with imported crushed stone to provide vehicular access with turning area and storage/parking area. Enforcement notice issued on 28 February 2024 was withdrawn on 21 February 2025 as legal proceedings did not commence on foot of same (William O'Donnell)

TUD-23-195 – Enforcement notice dated 28 February 2024 in respect of the infilling of the lands within folio TY47177F with imported crushed stone to provide vehicular access with turning area and storage/parking area. Use of the site for the storage of timber logs (William O'Donnell)

TUD-23-195 – Warning letter dated 24 November 2023 in respect of the removal of trees and infilling of the lands within folio TY47177F with imported crushed stone to provide vehicular access with turning area and storage/parking area. Use of the site for the storage of timber logs (William O'Donnell).

Other enforcement records included in the planner's report:

TUD-22-076 A warning letter was issued to William O'Donnell for the removal of trees and infilling of lands within folio TY47177F with crushed stone to provide vehicular access with turning area and parking area. File closed April 2023.

ENF 149/09 A warning letter issued to Noel Bradley for alleged unauthorised development works consisting of the construction of a hard standing measuring approximately 560 sq. metres without the prior grant of permission File closed in January 2011.

Referrals noted as relevant to the question the subject of this appeal: -

RL.17.RL.3604 – An Bord Pleanála (August 2018) decided that the reinstatement of land by the importation of 94,683 cubic metres of non-waste/by-product soil and stones, consisting of 43,900 cubic metres of topsoil and 50,783 cubic metres of subsoil sourced from greenfield development sites in the Dublin Region of Basketstown, Summerhill, County Meath is development and is not exempted development.

ABP-306103-19 – An Bord Pleanála decided (July 2020) that (a) land reclamation through re-contouring of lands at Binnion, Clonmany, County Donegal is

development and is exempted development, where it has taken place or is intended to take place within fields A, B, C, E and F, and (b) the activity which has taken place at field D is development and is not exempted development, as this field does not form part of the farm holding.

ABP-308854-20 – An Bord Pleanála concluded (October 2024) that (a) the reclamation works in question constitutes development as defined under Section 3(1) of the Planning and Development Act 2000 (as amended) as it involves a material change of use of the lands in question. It is considered that the ploughing and harrowing of the lands in question resulted in a material change of use, as the lands prior to the ploughing and harrowing activities constituted undisturbed wetlands as defined in Article 5 of the Planning and Development Regulations 2001 (as amended); The activities undertaken therefore do not fall within the scope of 4 (1) (a); (b) the area affected exceeds the limitations set out in Class 11 of Part 3 of Schedule 2 of the Exempted Development Regulations being in excess of 0.1 hectares. The Board decided that the land reclamation works is development that is not exempted development.

ABP-322783-25 - An Coimisiún Pleanála (November 2025) decided that the importation of material to raise the level of lands by up to one metre to construct a forestry road and staging apron for felled timber at Ballyleary Farm, Cobh, County Cork is development and is exempted development.

6.0 Policy Context

6.1. Tipperary County Development Plan 2022-2028

The subject site is located in the open countryside and sits outside the designated Class 2 Scenic Area which encompasses the R639-2 and north of same. The R-639-2 is a designated scenic route 'Views to the Galtees along Cahir-Killbehenny road (N8).

6.2. Natural Heritage Designations

Proposed Natural Heritage Areas: Mitchelstown Caves (Site Code 000651) are located 2.45km to the south/southeast of the subject site.

The Special Area of Conservation: Lower River Suir SAC (Site Code: 002137) is located approximately 5km to the southeast of the subject site

Proposed Natural Heritage Areas: Galtee Mountains (Site Code: 000646) and Special Area of Conservation: Galtee Mountains SAC (Site Code 000646) is approximately 2.8km north of the subject site.

The Special Area of Conservation: Blackwater River Cork/Waterford SAC (Site Code:002170) is located approximately 11.7km south/southwest of the subject site.

7.0 The Referral

7.1. Referrer's Case

- Accepts that the works carried out constitute development.
- Background provided to the purchase of the land in March/April 2022 for the intention of using it for hobby farmer or other farming horticultural use. The entrance and stoned access into the site were already in place prior to purchase.
- The land on the southern side adjacent to the stream/drainage ditch was found to be quite wet, waterlogged and covered in rushes. The subject site is almost an island, surrounded by drainage ditches/ streams, but for a short section of the west side close to the entrance.
- The landowner decided to drain the land by removing the top surface of the soil adjacent to the southern side opposite the stream and placing a layer of 75-150mm round stone fill (not crushed stone as referenced) and replace the topsoil and cultivate the land as normal.
- Do not assert that the land reclamation drainage works as carried out are an efficient way of effecting drainage of the land in question.
- No evidence that the landowner has used the land for any other purpose other than agriculture and related activity. Highlights that the management of harvested forestry, reference in TCC's first correspondence was and is an agricultural activity and that this is evidence of the continued use of the land for agriculture.

- Indicates that the question should be restated as no recontouring works were carried out nor was there any intention to carry out recontouring works.

Suggested rewording of the question:

Whether the following works carried out comprise exempted development under Section 8B of the Planning and Development Regulations 2001-2024 as amended: *“Land reclamation and drainage works comprising: The stripping of topsoil to a depth of 0-50mm or thereabouts and placing drainage stone on the area of land to a depth of 0-20cm or thereabouts, and replacement of the topsoil on the area of land, all carried out within the farm holding”*.

- Asserts that the land has not or is not being used for any purpose other than its existing use for agriculture. It is not accepted that any change of use has occurred and the landowner has taken steps to comply with TCC’s stipulation to restore the land to agricultural use by spreading a layer of topsoil over part of the ground affected by the drainage works and grass seeding and indicated his intention to complete these works for the remaining area of land he carried out drainage works on, “in due course”³.
- Reference made to the Farm Tax Act 1985 definition of agricultural land holding and also reference made to the Central Statistics Office in respect to how a farm/holding or agricultural holding is defined as a single unit in which listed agricultural activities are undertaken, including support activities to agriculture such as fallow land and set aside land (EU agricultural set-aside system abolished in November 2008 but similar to Ecological Focus Areas EFAs referred to).
- TCC’s issue is whether the works carried out constitute drainage works.

7.2. Planning Authority Response

- The planning authority has no further comments with respect to this appeal outside of those already made in the planning report on the file.

³ For clarity of the scale of works sought by Tipperary County Council (TCC) I highlight to the Commission that Enforcement Notice TUD-23-195 dated 18 March 2025 requires the following works: “Restore the lands within the curtilage of the site to agricultural use though removal of the hardcore material and spreading a layer of topsoil (150mm) deep on the ground surface occupied by said areas, rake and remove unsuitable debris and seed with grass” (underline my emphasis).

8.0 Statutory Provisions

8.1. Planning and Development Act, 2000

The following definitions under Section 2 (1) are pertinent to the question:

“*agriculture*” includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the training of horses and the rearing of bloodstock, the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and “*agricultural*” shall be construed accordingly;

“*waste licence*” means a waste licence under Part V of the Waste Management Act, 1996;

“*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 works on, in, over or under land or the making of any material change in the use of the structures or other land.

4(1) The following shall be exempted developments for the purposes of this Act—

(a) development consisting of the use of any land for the purpose of agriculture and development consisting of the use for that purpose of any building occupied together with land so used;...

(i) development consisting of the thinning, felling or replanting of trees, forests or woodlands or works ancillary to that development, but not including the replacement of broadleaf high forest by conifer species;

Section 4(2)(a) The Minister may by regulations provide for any class of development to be exempted development for the purposes of this Act...

Section 4 (4) Notwithstanding paragraphs (a), (i), (ia) and (i) of subsection (1) and any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required.

Section 177U (9) In deciding upon a declaration or referral under section 5 of this Act a planning authority or the Board, as the case may be, shall where appropriate, conduct a screening for Appropriate Assessment in accordance with the provisions of this section.

8.2. **Planning and Development Regulations, 2001**

Wetlands are “natural or artificial areas where biogeochemical functions depend notably on constant or periodic shallow inundation, or saturation, by standing or flowing fresh, brackish or saline water”.

Article 6(3) states: Subject to Article 9, in areas other than a city, a town or an area specified in section 19 (1)(b) of the Act or the excluded areas as defined in section 9 of the Local Government (Reorganisation) Act, 1985 (No. 7 of 1985), development of a class specified in column 1 of Part 3 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.

Article 8B. Works consisting of field drainage for agriculture, other than drainage and/or reclamation of wetlands, shall be exempted development.

Article 8C: 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 9(1): Development to which Article 6 relates shall not be exempted development for the purposes of the Act in circumstances including these below: (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,

(iii) endanger public safety by reason of traffic by reason of obstruction of road users,

(vi) interfere with the character of the landscape, or review our prospect of special

amenity value or special interest... (viiB) comprise development in relation to which a planning authority or ABP is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site (viiC) consist of or comprise development which would be likely to have an adverse impact on an area designated as a natural heritage area by order made under section 18 of the Wildlife (Amendment) Act 2000.

Schedule 2 - Part 3 Exempted Development – Rural –

Land Reclamation

Class 11:

Development consisting of the carrying out of drainage and/or reclamation of wetlands. Conditions and limitations refer to the area not exceeding 0.1 ha.

Condition 2 clarifies that where development within a farm holding under this class has been carried out the total area shall not exceed the specified 0.1 ha.

8.3. Other

As referred to in the planner's report the **Notes for Guidance - Taxes Consolidation Act 1997 now updated to include the Finance Act 2025** (Available at: <https://www.revenue.ie/en/tax-professionals/legislation/notes-for-guidance/taxes-consolidation-act-tca.aspx> as accessed by me on 18 March 2026).

"farming" is defined to mean farming farmland, that is, land in the State which is wholly or mainly occupied for husbandry, other than market garden land.

9.0 Assessment

- 9.1. The purpose of this assessment is not to determine the acceptability or otherwise of the above referral question in terms of the proper planning and sustainable development of the area, but rather whether or not the matter in question constitutes development, and if so, falls within the scope of exempted development.

9.2. Is or is not development

- 9.2.1. The first question to consider is whether or not the proposal constitutes 'development' under the definition in the Planning and Development Act 2000 (as amended) (referred to herein as the Act). Section 3 (1) of the Act defines 'development' as the 'carrying out of any works on, in, over or under lands or the making of any material change in the use of any structures or other land'.
- 9.2.2. In this referral it is agreed by both the planning authority and the referrer that works have been carried out, these works including the stripping of topsoil to a depth of 50mm, placing of drainage stone to a depth of 200mm (20cm) and the replacement of topsoil on the area of land.
- 9.2.3. I am of the opinion that the activities are "works" and "development" within the meaning of the Act.

9.3. Is or is not exempted development

- 9.3.1. In respect to whether the development is or is not exempted development I note that the key areas of dispute between the landowner and the planning authority relates to whether the 'works' comprise drainage/reclamation works to overcome wet conditions and secondly whether the lands are in use as 'agriculture'. I shall address these areas of dispute as I determine whether the works can be construed to fall within exempted development provisions as contained in Section 4 of the Planning and Development Act, or of a class provided for in Article 6 of the Planning and Development Regulations (Part 3 of Schedule 2), or Article 8B of the Planning and Development Regulations, or Article 8C of the Planning and Development Regulations.

Section 4(1)(a) of the Act

- 9.3.2. Section 4 (1)(a) sets out that development consisting of the use of any land for the purpose of agriculture and development consisting of the use for that purpose of any building occupied together with land so used shall be exempted development for the purposes of the Act.

- 9.3.3. The subject question relates to works carried out to the land and, as such, do not relate to the use of same, as such Section 4 of the Act is not relevant to the subject referral.

Article 6 of the Planning and Development Regulations and Class 11 Part 3 of Schedule 2

- 9.3.4. Article 6 provides for certain classes of development to be exempted provided that such development complies with the conditions and limitations specified in column 2 of the said Part, and subject to the restrictions on exemption contained in Article 9. Part 3 of Schedule 2 relates to exempted development in rural areas.
- 9.3.5. In Part 3 of Schedule 2 Class 11 allows for the carrying out of drainage and/or reclamation of wetlands. As already set out in my report, please see section 8.0, the term wetlands is defined in the Planning and Development Regulations 2001 (as amended). It has not been demonstrated by the information on file that the subject site would meet with the definition of wetlands. The proposed development does not fall within this class as it does not consist of the carrying out of drainage and/or the reclamation of wetlands and exceeds 0.1ha in size.

Article 8B of the Planning and Development Regulations

- 9.3.6. Specifically, article 8B states: "Works consisting of field drainage for agriculture, other than drainage and/or reclamation of wetlands, shall be exempted development". The referrer sets out that the works as undertaken only comprise field drainage and that the land is currently in a state of temporary fallow land given over to natural regeneration, biodiversity and wilding with an intention to add further topsoil and grass seed.
- 9.3.7. The agent on behalf of the referrer indicates that the question of how effective the works are in terms of providing field drainage is a separate question but highlight that the area of land adjacent to the stream/drainage ditch is no longer wet and boggy underfoot. It is further stated by the agent that: - *"How productive the land will be when finally completed is again another matter and a matter for the landowner/farmer as to whether the monies expended are good value or not"*.
- 9.3.8. As set out in section 3.0 and consideration of the question I am of the view that the works include more than just field drainage and recontouring of the land has

occurred given the level change across at least 33% of the subject site and potentially up to 54% of the subject site depending on which figure is taken as accurate, not including for the identified recontoured central section.

9.3.9. The provision under article 8B relates to field drainage for agriculture. I note the referrer has put forward an argument based on the definition of agriculture and sets out that the land is currently in a temporary state of fallow land. From the summary provided by the referrer the set-aside system (now abolished) would allow a certain percentage of the arable land to be put out of production in the interest of reducing food surpluses and providing environmental benefits. In this instance it is the totality of the lands in ownership that are described as fallow land/set aside. I do not accept the argument made in respect to the agricultural use of the lands. It has not been set out what future agricultural use is intended for the lands. No documentary evidence has been provided to support the argument put forward.

9.3.10. For these reasons, I consider that the development would not come within the scope of article 8B of the Planning and Development Regulations 2001 (as amended).

Article 8C of the Planning and Development Regulations 2001 (as amended)

9.3.11. Specifically, article 8C 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'. I note that the landowner (the referrer) in their appeal states that in their opinion, following further consideration, re-contouring of land has not been undertaken and as such the issue of whether the landholding constitutes a farm holding does not arise and article 8C is not the applicable provision under which they seek exemption from planning permission. Notwithstanding the referrers point of view in respect to recontouring not occurring and the farm holding question not being relevant an argument is presented with respect to the use of the land as agriculture, a broader discussion presented also in respect to fallow land and set aside land referring to the concept of 'Ecological Focus Areas', and that no change of use has occurred. It is put forward by the referrer that the land is currently in a state of temporary fallow land while 'further topsoiling and grass seeding is awaited'.

9.3.12. As already set out above, and in section 3.0 of my assessment, I do not accept the referrers point of view and the development would, in my opinion, equate to

recontouring given there is an increase in the ground levels of 150mm over at least 33% (potentially up to 54% of the subject site depending on which figure is taken not including for the identified recontoured central section). Applying article 8C to the question referred I highlight that the Board, now the Commission, has held that article 8C does not provide an exemption for the importation of soil/stones from external sources to the farm holding. Further, the European Waste Framework Directive and the EPA's guidance on classification of waste, includes soil, stones and dredging spoil as a waste category. I would consider, therefore, that the development would not comprise exempted development as the works involve the importation of waste to the site.

9.3.13. Secondly, as already set out in my assessment and in agreement with the planning authority I do not consider that it has been demonstrated evidentially that the subject site by reason of the size and current condition of the land constitutes a farm holding or is currently in agricultural use. Therefore, the development would not come within the scope of article 8C of the Planning and Development Regulations 2001 (as amended).

9.4. Restrictions on exempted development

9.4.1. As set out above in section 8.0 of my report under Section 4(4) of the Act development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required. Please see sections 9.5 and 9.6 relating to Screening for Appropriate Assessment and Environmental Impact Assessment Screening.

9.4.2. Article 9 of the Regulations, sets out a number of circumstances in which development to which article 6 relates, shall not be exempted development. As the proposed development does not fall within a category of development set out in article 6, the restrictions on exempted development contained within article 9 do not apply.

9.4.3. I am satisfied that there are no other restrictions on exempted development which would be relevant to this case.

9.5. Screening for Appropriate Assessment

- 9.5.1. Please also refer to Appendix 3: Screening for AA. In accordance with Section 177U of the Planning and Development Act 2000 (as amended) and on the basis of the information considered in this AA screening, I conclude that the proposed development individually or in combination with other plans or projects would not be likely to give rise to significant effects on the Lower River Suir SAC [Site Code:002137] in view of the conservation objectives of this site and is therefore excluded from further consideration. Appropriate Assessment is not required.
- 9.5.2. This determination is based on:
- Nature of works
 - The AA screening undertaken by the planning authority.

9.6. Environmental Impact Assessment (EIA) Screening

- 9.6.1. Development in respect of which an environmental impact assessment or appropriate assessment is required cannot be exempted development (Section 4(4) of the Planning and Development Act 2000 (as amended)). Schedule 5, Part 1 and Part 2 of the Planning and Development Regulations, 2001 (amended) sets out specified development for which EIA is mandatory and development which requires screening for EIA.
- 9.6.2. The proposed development has been subject to preliminary examination for environmental impact assessment (refer to Form 1 and Form 2 in Appendices of this report). Having regard to the characteristics and location of the proposed development and the types and characteristics of potential impacts, it is considered that there is no real likelihood of significant effects on the environment. The proposed development, therefore, does not trigger a requirement for environmental impact assessment screening and an EIAR is not required.

9.7. Water Framework Directive (WFD) Screening

The planner's report outlines that the stream on the southern site boundary is likely discharged to the Glengarra River c. 480m east of the site which discharges to the Shanbally River which forms part of the Lower River Suir SAC at a point 7.8km downstream.

The River Waterbody Shanbally_010 (IE_SE_16S010400), status categorised as Good (16-21) and 'not at risk, is located immediately adjacent to the eastern boundary of the site. The Ground waterbody is Clonmel (IE_SE_G_040) categorised as Good status (16-21) but 'at risk' with pressures identified as agricultural and unknown in terms of nutrient issues.

The development involves land reclamation and drainage works comprising of the recontouring an area of agricultural land by the stripping of topsoil to a depth of 50 mm, placing drainage stone to a depth of 20 cm (200mm) and the replacement of topsoil on the area of land.

No water deterioration concerns were raised in the referral and consideration of same by the planning authority.

I have assessed the works and have considered the objectives as set out in Article 4 of the Water Framework Directive which seek to protect and, where necessary, restore surface & ground water waterbodies in order to reach good status (meaning both good chemical and good ecological status), and to prevent deterioration. Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment because there is no conceivable risk to any surface and/or groundwater water bodies either qualitatively or quantitatively.

The reason for this conclusion is as follows:

- Nature of works - small scale and nature of the development.

Conclusion

I conclude that on the basis of objective information, that the proposed development will not result in a risk of deterioration on any water body (rivers, lakes, groundwaters, transitional and coastal) either qualitatively or quantitatively or on a temporary or permanent basis or otherwise jeopardise any water body in reaching its WFD objectives and consequently can be excluded from further assessment.

10.0 Recommendation

10.1. I recommend that the Commission should decide this referral in accordance with the following draft order.

WHEREAS a question has arisen as to whether land reclamation and drainage works comprising of the recontouring an area of agricultural land by the stripping of topsoil to a depth of 50 mm, placing drainage stone to a depth of 20 cm (200mm) and the replacement of topsoil on the area of land, all carried out within the farm holding is or is not development and is or is not exempted development

AND WHEREAS William O'Donnell requested a declaration on this question from Tipperary County Council and the Council issued a declaration on the 4 day of November 2025 stating that the matter was development and was not exempted development:

AND WHEREAS William O'Donnell referred this declaration for review to An Coimisiún Pleanála on the 28 day of November 2025:

AND WHEREAS An Coimisiún Pleanála, in considering this referral, had regard particularly to –

- (a) Section 2(1), 3 (1) and 4(1)(a) of the Planning and Development Act, 2000, as amended,
- (b) Article 6(3) and article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (c) Part 3 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (d) Article 8B and article 8C of the Planning and Development Regulations, 2001, as amended
- (e) the submissions on file by the referrer to the planning authority, and
- (f) the nature of the development.

AND WHEREAS An Coimisiún Pleanála has concluded that:

- (a) The activity which has taken place at Coolagarranroe, Burncourt, Cahir, Co. Tipperary including stripping of topsoil and recontouring the ground levels by the importation of soil and stones is ‘development’.
- (b) The development does not come within scope of Class 11 (Part 3 of Schedule 2 of the Planning and Development Regulations 2001 (as amended) as it does not consist of the carrying out of drainage and/or the reclamation of wetlands and the subject area exceeds 0.1ha in size.
- (c) The development does not come within scope of the provisions of article 8B as (i) the development site is not in agricultural use and (ii) the works involve more than just field drainage as recontouring of the land has occurred, given the level change of approximately 150mm

across at least 33% of the subject site and potentially up to 54% of the subject site (depending on which figure provided with the referral is accurate) not including for the identified recontoured central section.

- (d) The development does not come within scope of the provisions of article 8C as (i) it has not been demonstrated evidentially that the subject site by reason of the size and current condition of the land constitutes a farm holding and (ii) the works involve the importation of soil and stone to the site. The soil and stones to be imported to the site constitute 'waste'.

NOW THEREFORE An Coimisiún Pleanála, in exercise of the powers conferred on it by section 5 (3) of the 2000 Act, hereby decides that the activity which has taken place at Coolagarranroe, Burncourt, Cahir, Co. Tipperary is development and is not exempted development.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence me, directly or indirectly, following my professional assessment and recommendation set out in my report in an improper or inappropriate way.

Claire McVeigh
Planning Inspector

25 March 2026

Appendix 1: Form 1 - EIA Pre-Screening

Case Reference	323903-25
Referral question	Whether land reclamation and drainage works comprising of the recontouring an area of agricultural land by the stripping of topsoil to a depth of 50 mm, placing drainage stone to a depth of 20 cm and the replacement of topsoil on the area of land, all carried out within the farm holding is or is not development and is or is not exempted development.
Development Address	Coolagarranroe, Burncourt, Co. Tipperary.
	In all cases check box /or leave blank
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (For the purposes of the Directive, "Project" means: - The execution of construction works or of other installations or schemes, - Other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources)	<input checked="" type="checkbox"/> Yes, it is a 'Project'. Proceed to Q2.
	<input type="checkbox"/> No, no further action required.
2. Is the proposed development of a CLASS specified in Part 1, Schedule 5 of the Planning and Development Regulations 2001 (as amended)?	
<input type="checkbox"/> Yes, it is a Class specified in Part 1. EIA is mandatory. No Screening required. EIAR to be requested. Discuss with ADP.	State the Class here
<input checked="" type="checkbox"/> No, it is not a Class specified in Part 1. Proceed to Q3	
3. Is the proposed development of a CLASS specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) OR a prescribed type of proposed road development under Article 8 of Roads Regulations 1994, AND does it meet/exceed the thresholds?	
<input type="checkbox"/> No, the development is not of a Class Specified in Part 2,	

<p>Schedule 5 or a prescribed type of proposed road development under Article 8 of the Roads Regulations, 1994.</p> <p>No Screening required.</p>	
<p><input type="checkbox"/> Yes, the proposed development is of a Class and meets/exceeds the threshold.</p> <p>EIA is Mandatory. No Screening Required</p>	
<p><input checked="" type="checkbox"/> Yes, the proposed development is of a Class but is sub-threshold.</p> <p>Preliminary examination required. (Form 2)</p> <p>OR</p> <p>If Schedule 7A information submitted proceed to Q4. (Form 3 Required)</p>	<p>Part 2, Class 11 (b) Installations for the disposal of waste with an annual intake greater than 25,000 tonnes not included in Part 1 of this Schedule.</p>

<p>4. Has Schedule 7A information been submitted AND is the development a Class of Development for the purposes of the EIA Directive (as identified in Q3)?</p>	
<p>Yes <input type="checkbox"/></p>	
<p>No <input checked="" type="checkbox"/></p>	<p>Pre-screening determination conclusion remains as above (Q1 to Q3)</p>

Inspector: _____ Date: _____

Appendix 2: Form 2 - EIA Preliminary Examination

Case Reference	323903-25
Proposed Development Summary	Whether land reclamation and drainage works comprising of the recontouring an area of agricultural land by the stripping of topsoil to a depth of 50 mm, placing drainage stone to a depth of 20 cm and the replacement of topsoil on the area of land, all carried out within the farm holding is or is not development and is or is not exempted development.
Development Address	Coolagarranroe, Burncourt, Co. Tipperary.
This preliminary examination should be read with, and in the light of, the rest of the Inspector's Report attached herewith.	
Characteristics of proposed development (In particular, the size, design, cumulation with existing/proposed development, nature of demolition works, use of natural resources, production of waste, pollution and nuisance, risk of accidents/disasters and to human health).	<p>The subject site is 0.46ha in total and the area subject to recontouring/drainage works is stated as 0.25ha or 0.15ha (note discrepancy in figures provided by the referrer).</p> <p>The quantum of the material deposited is not quantified. The planning authority in their assessment considered that the quantity of material would be significantly below the 25,000-tonne threshold. I would concur with this view.</p> <p>The project due to its size and nature would not give rise to significant production of waste or give rise to significant risk of pollution and nuisance in respect to conclusions reached for EIA Screening purposes.</p>
Location of development (The environmental sensitivity of geographical areas likely to be affected by the development in particular existing and approved land use, abundance/capacity of natural resources, absorption capacity of natural environment e.g. wetland, coastal zones, nature reserves, European sites, densely populated areas, landscapes, sites of historic, cultural or archaeological significance).	<p>The subject site is located in the open countryside. The subject site sits outside the designated Class 2 Scenic Area which encompasses the R639-2 and north of same.</p> <p>The R-639-2 is a designated scenic route 'Views to the Galtees along Cahir-Killbehenny road (N8).</p> <p>It is considered that, having regard to the limited nature and scale of the development, there is no real likelihood of significant effect on other significant environmental sensitivities in the area.</p>

<p>Types and characteristics of potential impacts</p> <p>(Likely significant effects on environmental parameters, magnitude and spatial extent, nature of impact, transboundary, intensity and complexity, duration, cumulative effects and opportunities for mitigation).</p>	<p>The works include are stated to include land drainage and reclamation works - removal of the top surface of the soil adjacent to the southern side of the site opposite the stream and placing a layer of 75-150mm round stone fill on the land and then replacing the topsoil and cultivate the land as normal. The replacement of the topsoil on top of the drainage stone is not completed.</p> <p>The drainage stone is stated to be placed at a depth of 20cm (200mm).</p> <p>There is no real likelihood of significant cumulative considerations having regard to other existing and/or permitted projects in the adjoining area.</p>
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Conclusion	
Likelihood of Significant Effects	Conclusion in respect of EIA
There is no real likelihood of significant effects on the environment.	EIA is not required.
There is significant and realistic doubt regarding the likelihood of significant effects on the environment.	
There is a real likelihood of significant effects on the environment.	

Inspector: _____ Date: _____

DP/ADP: _____ Date: _____

(only where Schedule 7A information or EIAR required)

Appendix 3 - Screening for AA

Screening for Appropriate Assessment

Test for likely significant effects

Step 1: Description of the project and local site characteristics

Brief description of project	Land reclamation and drainage works comprising of the recontouring an area of agricultural land by the stripping of topsoil to a depth of 50 mm, placing drainage stone to a depth of 20 cm and the replacement of topsoil on the area of land, all carried out within the farm holding is or is not development and is or is not exempted development. Please refer to section 2.0 of my report for further detail.
Brief description of development site characteristics and potential impact mechanisms	The subject site is located in a rural area adjacent to residential one-off detached properties. A stream/drainage ditch runs adjacent to the northern, eastern and southern boundary of the site.
Screening report	Y/N
Natura Impact Statement	Y/N
Relevant submissions	None

Step 2. Identification of relevant European sites using the Source-pathway-receptor model

There are three Special Area of Conservation within 15km of the subject site, as below:

- Special Area of Conservation: Lower River Suir SAC (Site Code: 002137) is located approximately 5km to the southeast of the subject site
- Special Area of Conservation: Galtee Mountains SAC (Site Code 000646) is approximately 2.8km north of the subject site.

- Special Area of Conservation: Blackwater River Cork/Waterford SAC (Site Code:002170) is located approximately 11.7km south/southwest of the subject site

The planning authority identifies in their screening for Appropriate Assessment that the stream on the southern site boundary is likely discharged to the Glengarra River c. 480m east of the site which discharges to the Shanbally River which forms part of the Lower River Suir SAC at a point 7.8km downstream. The planning authority has determined that there are no ecological or hydrological connections between the subject site and any other Natura 2000 site. I would concur with this assessment.

European Site (code)	Qualifying interests ¹ Link to conservation objectives (NPWS, date)	Distance from proposed development (km)	Ecological connections ²	Consider further in screening ³ Y/N
Special Area of Conservation: Lower River Suir SAC (Site Code: 002137)	https://www.npws.ie/protected-sites/sac/002137 (Accessed on 20/03/26) Conservation Objectives Series March 2017.	Approximately 5km to the southeast of the subject site	Y, indirect surface water hydrological link.	Y
Special Area of Conservation: Galtee Mountains SAC (Site Code 000646)	https://www.npws.ie/protected-sites/sac/000646 (Accessed on 20/03/26) Conservation Objectives Series August 2016	Approximately 2.8km north of the subject site.	N	N
Special Area of Conservation: Blackwater River Cork/Waterford SAC (Site Code:002170)	https://www.npws.ie/protected-sites/sac/002170 (Accessed on 20/03/26)	Approximately 11.7km south/southwest of the subject site.	N	N

¹ Summary description / **cross reference to NPWS website** is acceptable at this stage in the report.

² Based on source-pathway-receptor: Direct/ indirect/ tentative/ none, via surface water/ ground water/ air/ use of habitats by mobile species.

³if no connections: N

Step 3. Describe the likely effects of the project (if any, alone or in combination) on European Sites

AA Screening matrix

Site name Qualifying interests	Possibility of significant effects (alone) in view of the conservation objectives of the site*	
	Impacts	Effects
<p>Special Area of Conservation: Lower River Suir SAC (Site Code: 002137)</p> <p>Atlantic salt meadows (Glauco-Puccinellietalia maritimae) [1330]</p> <p>Water courses of plain to montane levels with the Ranunculion fluitantis and Callitriche-Batrachion vegetation [3260]</p> <p>Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels [6430]</p> <p>Old sessile oak woods with Ilex and Blechnum in the British Isles [91A0]</p> <p>Alluvial forests with Alnus glutinosa and Fraxinus excelsior (Alno-Padion, Alnion incanae, Salicion albae) [91E0]</p> <p>Taxus baccata woods of the British Isles [91J0]</p>	<p>Direct: None</p> <p>Indirect: Construction phase surface water runoff from soil excavation, infill, and dust and noise.</p> <p>Operation phase surface water runoff containing sediment.</p>	<p>Direct: None</p> <p>Indirect: Not likely to be significant given the separation between the site and the Lower River Suir SAC.</p>

Margaritifera margaritifera (Freshwater Pearl Mussel) [1029]		
Austropotamobius pallipes (White-clawed Crayfish) [1092]		
Petromyzon marinus (Sea Lamprey) [1095]		
Lampetra planeri (Brook Lamprey) [1096]		
Lampetra fluviatilis (River Lamprey) [1099]		
Alosa fallax fallax (Twaite Shad) [1103]		
Salmo salar (Salmon) [1106]		
Lutra lutra (Otter) [1355]		
	Likelihood of significant effects from proposed development (alone): Y/N	
	If no, is there a likelihood of significant effects occurring in combination with other plans or projects? No	
	Possibility of significant effects (alone) in view of the conservation objectives of the site* No	
Step 4 Conclude if the proposed development could result in likely significant effects on a European site.		

I conclude that the proposed development (alone) would not result in likely significant effects on Lower River Suir SAC (Site Code 002137). The proposed development would have no likely significant effect in combination with other plans and projects on any European site(s). No further assessment is required for the project.

No mitigation measures are required to come to these conclusions.

Screening Determination

Finding of no likely significant effects

In accordance with Section 177U of the Planning and Development Act 2000 (as amended) and on the basis of the information considered in this AA screening, I conclude that the proposed development individually or in combination with other plans or projects would not be likely to give rise to significant effects on the Lower River Suir SAC (Site Code: 002137) in view of the conservation objectives of these sites and is therefore excluded from further consideration. Appropriate Assessment is not required.

This determination is based on:

- Nature of works
- The Appropriate Assessment (AA) Screening of the planning authority.