

Ms. Mary Tucker
An Bord Pleanála
64 Marlborough Street
Dublin 1
D01 V902



Katherine Bail & Others
Ballykelly
Wexford
Drinagh
Y35C2N0

Re: Observation on submission by Sheehan Planning on behalf of Premier Pigs Ltd Case reference:
RL26.311366

311366: Killugger Farm, Killugger, Killinick, Co. Wexford. (20081365)

Planning Reference numbers EXD00824, 20081365, 20032095, 20100598, 20140296, a number of older farm building structures erected prior to planning acts and the development of the above-mentioned planning references.

Wexford County Council

Dear Mary,

Thank you for your letter dated 28.10.21. Following a review of the submission from Sheehan Planning on behalf of Premier Pigs Ltd provided to An Bord Pleanála, they do not appear to be addressing the issues of change of use from class 6 to class 7 and the material alterations to a former straw-based cattle shed, additional slurry tanks and silos in order to allow the site to operate in its current use as a commercial scale piggery.

Section 3.2 of Sheehan planning says

"the latter works comprised internal works (installation of slatter tank – which raised the internal floor level) and external works (the access ramp). These latter works clearly fall under the provisions s.4(1)(h) of the act, being works which affect only the interior of the structure or which do not materially affect the external appearances of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures.

Modifications include an additional external ramp for the raised floor area which is 2 meters approx. higher and now facilitates a slurry tank underneath the pigs and same has slats above, 14 external extractor fan chimneys constantly releasing gas and fumes, new ventilation system, addition of at least 4 outdoor silos attaching to at least two sheds, closing the gaps in the wall of the former straw-based cattle shed, external solar panels covering majority of roof area of an adjacent shed. These modifications were carried out by the operator without planning permission and have overhauled the former cattle farm to its current use as a commercial scale piggery. Without all these modifications the current piggery wouldn't be able to operate as a piggery.

As per the Teagasc information leaflet on the Planning Requirements for Farm Building Development May 2020 *Development is generally defined in planning legislation as meaning the carrying out of works on, in, over or under land, or the making of any material change in the use of land or buildings. Such works require planning permission unless they are exempted. In the case of farm buildings and other structures where the size exceeds certain limits, or specific conditions are not met, exemptions no longer apply. The Planning and Development Regulations (2001) outline the threshold sizes and the exemption conditions for farm buildings.*

The former owners the Staffords built the straw based shed to house their cattle in the winter months. In 2017, they sold 13 acres approx. which includes the yard and buildings only to premier pigs and sold the majority of their land to other(s).

Premier Pigs has had to significantly alter the former cattle shed and farm yard in order to be suitable for its current use as a piggery. They have had to carry out works which adapt the former cattle farm and materially altered its use. The works carried out to date include;

- Extractor fans which are constantly releasing gases and fumes directly onto the residents cover the entire shed unit and there are 14 in total.
- Ramp and raising the floor level to hold slurry tank underneath the pigs and according to FOI documents, this is approx. 2 meters in height and covers the entire floor area of approx. 1770 square meters.
- There are now silos attaching to 2 sheds [See screenshot on page 5 of FOI document obtained under FOI stating Silos were not on site pre 2016 and are used as part of current operation as piggery] [Note the operation was sold in 2017 and residents didn't have any cause to complain until 2017 as we did not experience any impacts till then].

It clearly states in the planning laws of the state that an agricultural farmer is allowed to rear pigs without planning for change of use within any agricultural farm building not exceeding more than 75 square meters or a 100 square meters in aggregate within a farm complex.

If the size of the shed(s) is bigger than 100 square meters in aggregate then planning for change of use is required from class 6 (cattle) to class 7 (pigs). Otherwise planning laws would be breached.

Given this criteria, Premier Pigs, Killugger should have zero pigs as they have not obtained the right permissions in respect of change of use.

As you can see from the significant modifications of this shed, it was never intended for pigs (extractor fans, slatted tanks, bioproducts feed system, several silos). It was not designed to house pigs.

Sheehan planning on behalf of Premier Pigs only mention the latest 3 planning reference numbers 20081365, 20032095, 20100598, and make no reference to the older farm building structures which have been erected prior to planning acts and the development of the above-mentioned planning references and at the time of each of these submissions, they were only seeking an additional shed to an already existing cattle farm complex and there is no mention of material change of use within same.

Question 15 as per the planning application form of planning reference requires the applicant to state the existing use and to state the floor area of buildings proposed for a "material change of use" to that existing or established. While the stated use as "Farmyard" not piggery is noted, more importantly, no material change of use was proposed. No material change of use from the previously established use was ever proposed by any of the planning applications submitted and approved.

As previously communicated to the council, the permissions granted are therefore limited to the class of use on site at the time of their making which was not general agriculture or piggery but the keeping of sheep and cattle. In order to determine that a change of use has occurred from Class 6 to Class 7 the council need only determine that a change from the keeping of cattle and sheep to intensive pig farming occurred after the planning permissions were granted. This is known to be the case and occurred in 2017. The herd book associated with the previous cattle farming use on site registered with the ICBF, Bord Bia Certificates, applications to the EPA for Industrial Emissions License and/or Integrated Pollution Control Licenses, land registry details, change of address from owner to owner which may reference Piggery, and company registration documentation could all also be utilized to determine when the change of use occurred.

With respect to the original planning application 20081365 of this shed and the 2003 and 2010 applications for additional sheds, the planners would have known the same was to be an additional shed to an already existing and well-established cattle farm.

The earlier shed application 20032095 of the farm specifically answered "Not applicable" on the planning application to both the size/capacity of slurry tanks existing, proposed and means of effluent disposal.

In addition to the planners report for EXD00824, the report by Steve Gooden from the planning department of Wexford County Council below and other correspondences on next page received under an FOI confirm the previous use of the farm was class 6, cattle farm.

In addition, the planning rules should consider the wider area being used and not just the shed, as the operator himself describes the facility as being part of a farm holding to the EPA and uses the yard and additional sheds for his operations, and potentially other sheds could be used for pigs.

Johnstown Castle Estate,

Wexford.

Re: Piggery at Killugger Wexford, your letter of 11/9/20.

Environmental Protection
Agency

09 OCT 2020

Dear Sirs,

I reply to your letter I wish to respond as follows: -

1. The facility is part of a farm holding and current production involves finishing or fattening pigs over 30Kgs. Places for 1900 finishers are in the shed (planning ref 20081365).
2. Activities on site do not come within the scope of activities for which an EPA licence is required.
3. The farmyard contains a number of...

Planning History:

Plan Reg 20081365 - Construction of a new Agricultural Shed and ancillary site works. Decision - Granted subject to conditions 16th July 2008.
Condition no. 1 of Plan Reg 20081365 states that the development be carried out strictly in accordance with the plans lodged with the planning application. The floor plan / elevations submitted with Plan Reg 20081365 do not show slatted tanks incorporated into the shed.

Exempt Development Application relating to the building:

Plan Reg EXD00824 - Agricultural Shed - change of use from Class 6 to Class 7. Decision - Not Exempt

Site Visit:

I inspected the site on 10th August 2020 and noted the following:

I met the owner [redacted]. He stated that pigs had been kept in the shed since 2016 (cattle were kept previous to this). In the large shed in the south east corner of the site, the floor level had been raised in order to incorporate slatted tanks directly beneath the floor where the pigs were kept (see layout plan and photos 1 and 2). The slatted tanks covered the entire floor area of the building (approx. 1770m²).

Conclusion:

The agricultural shed was initially used for the keeping of cattle (Class 6) but now is currently being used for pigs (Class 7). As per Plan Reg EXD00824 this change of use is not exempt and requires planning permission. Therefore the keeping of pigs in the shed is unauthorised change of use from Class 6 to Class 7 in Part 3, Article 6, Exempted Development - Rural.

The floor level of the agricultural shed has been raised so as to incorporate slatted tanks directly below where the pigs are being kept. Such development is not in compliance with condition no. 1 of Plan Reg 20081365 as slatted tanks are not shown on the drawings.

Recommendation:

Issue Enforcement Notice for the following:
Unauthorised change of use of the agricultural shed from Class 6 to Class 7.

Non-compliance with condition no. 1 of Plan Reg 20081365 (slatted tanks are not shown on the drawings) lodged with the planning application.

S. Gooden

Steve Gooden
Technician, Planning Department.

Note the operation was sold in 2017, and not 2016 per S. Gooden's report. Article from Wexford people dated 26/08/2017 below confirms same.

By David Tucker

August 26 2017 12:00 AM



Some residents in Drinagh are united in opposition to a large pig farm they fear could be set up in their area.

They say they are concerned that College Farm, between Wexford and Killinick, off the N25, may be sold to a pig farm company and that such a sale would have a dramatic affect on the quality of lives of people living in its vicinity and on property values.

Philip Stafford, who owns College Farm could not be reached for comment.

Colum Murphy, from Wexford-based Kehoe and Associates, said negotiations are taking place, but no deal has been done yet.

'It's an off-market transaction. There are several parties involved and they are actively bidding,' he said.

Because the premises already operates as a farm, there would be no requirement to apply for planning permission to operate a pig farm in the area should someone wish to operate on there.

From: Peadar McDonald
Sent: 06 September 2017 17:56
To: Liam Bowe
Cc: David Donegan; Tony Nolan
Subject: Exempt development

Liam,

Can you clarify if a change of use from a dairy farm or other types of farming to a pig farm is exempt development in view of the attached query from one of the residents in the local area at Killugger / Drinagh.

The restriction on exempt development referred to in that letter only relates to the construction of agricultural structures I think, and does not cover the conversion or change of use of existing buildings used for a similar activity i.e. agricultural.

We need to confirm the position in any case as there will be further complaints regarding this pig farm.

Regards

Peadar

Peadar McDonald
Planning Dept

053 9196513

more noise.

The Complaint:

A complaint was made by local residents that intensive pig farming taking place on site and the installation of pig feeding silos.

On Site:

When I called to site I noted a large feeding silo adjacent to the western side of the piggery unit. It is approximately 13 metres high. The silo is 137 metres from the public road, 197 metres from the nearest house which is not in the farm complex. The silo along with other large tanks has been installed since 2016 and it current use a piggery.

Desk Study:

There are planning exemptions for feeding silo in the current regulations and from examining the Planning and Development regulations 2001 – 2015 I have concluded that the self-feeding silo on site is exempt planning under the following -

Exempted Development — Rural - Class 8 -

Works consisting of the provision of roofless cubicles, open loose yards, self-feed silo or silage areas, feeding aprons, assembly yards, milking parlours or structures for the making or storage of silage or any other structures of a similar

Wexford Slob and Harbour SAC Site Code 000712 and SPA Site Code 004076

To date there has been no environmental impact assessment carried out to assess the effects in relation to human beings, fauna and flora, soil, water, air, landscape, traffic and ecology of the nearby Wexford Slob and Harbour SAC Site Code 000712 and Wexford Slob and Harbour SPA Site Code 004076 and we understand that if the site is within the Zone of Influence a decision must be made and shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In addition, the development has seriously injured the amenities of the area and is breaching the conditions of the original planning grant and causing environmental pollution.

Conditions with planning permissions now breached

Many planning conditions attaching to the original grant of the cattle shed ref:20081365 have now been seriously breached including

- (i) "management of the activity so as not to cause environmental pollution".
- (ii) "would not seriously injure the amenity of the area"

These are major concerns for us as we have been constantly experiencing obnoxious and overpowering odours caused by the pig operations, increase in vermin and flies and we still have an infestation of flies in the winter months. In addition, we are seriously concerned about the impact this operation may have on private and public water wells. This development is approx. 350 metres from a bore-hole supply water to the local scheme. We hadn't any of these concerns or worries when the operations were a cattle farm. These are major concerns for us now.

Under FOI letter dated 30th March 2021, there has been no checks on the water supplies.

1.a Including all assessments and impacts on all water supplies and a bore-hole supply water to the local scheme situated on the R739.

No assessments and impacts on all water supplies and a bore-hole supply water to the local scheme situated on the R739 were carried out in this matter. Therefore this element of the request is refused based on Section 15 (1) (a) of the FOI Act- "A head to whom an FOI request is made may refuse to grant the request where – the record concerned does not exist or cannot be found after all reasonable steps to ascertain its whereabouts have been taken".

EIA Assessment

We and other residents have repeatedly called for Wexford County Council to carry out an EIA assessment. We have raised concerns around our health with Wexford County Council since August 2017 and are seriously concerned with the modifications such as extractor fans and ventilation systems installed to control the levels

of gases (i.e. carbon dioxide, ammonia, methane and hydrogen sulphide are the main ones). These gases are now being released on us constantly. Also worrying is the fact Wexford County Council received a complaint on the potential of dangerous gasses being released from the pig farm and set off a gas monitor of a professional tradesman in a local business. The Council have seemed not to have taken any further action in relation to same. As we don't know or understand the short term or long-term health implications of living so close to this pig operation will have on us, we want an EIA assessment carried out to determine the full impact this operation has on our environment, health, air, water supplies, landscape, fauna and flora.

We understand the council are taking a case against Premier Pigs in relation to the Air Pollution Act and same is to be heard at the District Court. We have not been provided with a lot of information and have been advised about this course of action since March 2020.

However, this course of action is insufficient for the protection and health of the local residents and our local environment. Under this course of action, I understand that the smell and odour emissions cannot be reliably measured and we need a full and proper environmental impact assessment to be undertaken.

Slurry tanks, monitoring of waste, carcasses and flies

Further to receipt of FOI documents from Wexford County Council, we understand the Environment Department of Wexford County Council has done nothing to check the storage capacity of the slurry and waste. The slurry tank covers the full area of the shed of 1,770 square meters or 0.437 acres, and is approx. 2 metres in height. Also, how are the carcasses of dead animals being disposed of? Given the scale of the activity, why hasn't the holding of waste, spreading and transportation, impact and emissions of same been checked by anybody? Are regulations around the same being adhered to?

As per another site owned by Premier Pigs at Bulgan, Glynn, Wexford, planning reference 20110975, issues around vermin control and slurry disposal have been reviewed and conditions around same are included. Also, as per the planning conditions, the construction of the slurry tank had to be built in accordance with the relevant Department of Agriculture and food section sections and the construction work had to be certified by a chartered engineer.

We are experiencing an infestation of flies, even in the winter months and in particular when we have the pig odour which is carried on the wind. It is now November and we are still buying fly spray and cannot lay out a table for meals as there are flies constantly coming in and we are worried about the flies landing on our food and causing E. coli and other illnesses. We shouldn't have to live like this. Our basic human rights have been taken away from us.

Also, as previously mentioned, we don't have the basic human right to fresh air anymore. Our lives have changed completely since the commencement of this commercial scale pig operation.

The legislation introduced under the Planning and Development act 2000 as amended, is EU Derived and Statue binding for environmental protection, I understand it applies to all pig housing developments.

Retention permission for the size of the shed and information provided to the EPA

Aside from the change of use planning permission(s) required, the size of the shed is another issue and as it does not have the right planning permissions. Why wasn't retention planning permission applied for at the time of purchase in 2017?

The shed size far exceeds the 1,012 square meters per original planning permission of the cattle shed in 2008 ref:20081365 and is 1,708 square meters. Furthermore, it was noted in the planners report that the "shed is very large at 1,012sq.m, however it was granted as it forms part of an existing agricultural complex and on condition it did not breach conditions attached to the same.

In relation to the information provided from Premier Pigs to the EPA as part of a licence pre-application form, Premier Pigs Ltd provides details of the original planning permissions and when they access the details of the

planning ref 20081365, the original size of the shed being 1,012 m2 would be detailed; there is nothing official to confirm that the original owners of the site built the shed far in excess of the planning permission granted and built the shed approximately 1,770m2 or 0.437 acres in size. [Note the EPA have deemed the site as non-licensable and they have also said if it is the case that a facility does not have the required planning permission the EPA would not accept an application for licensing in accordance with EPA policy regarding Section 87 of the EPA Acts 1992, as amended and have also said Section 63(10) of the Environmental Protection Agency Act, 1992 (as amended), specifically prohibits the EPA from exercising any power or control in relation to the making of a decision on an application for planning permission].

We also understand section 157(4)(b) of the 2000 Act which provides that irrespective of the time that has elapsed, enforcement action can still be taken where a person has failed to satisfy a planning condition concerning the use of land.

Environmental Licensing Programme,

Office of Environmental Sustainability,

EPA Headquarters,

Johnstown Castle Estate,

Wexford.

Re: Piggery at Killlugger Wexford, your letter of 11/9/20.

Environmental Protection
Agency

09 OCT 2020

Dear Sirs,

I reply to your letter I wish to respond as follows: -

1. The facility is part of a farm holding and current production involves finishing or fattening pigs over 30Kgs. Places for 1900 finishers are in the shed (planning ref 20081365).
2. Activities on site do not come within the scope of activities for which an EPA Licence is required.
3. The farmyard comprises a number of structures. A dwelling house, a large agricultural shed (planning ref 20081365), currently used as the piggery, a second agricultural shed (planning ref 20100598) used for storage of straw and hay, a third agricultural shed (Planning ref 20030295) used for storage of machinery etc, road entrance to national primary road, road entrance to Kilmore road (planning ref 20140296), a number of older farmyard structures erected prior to planning acts and prior to development of the above.

I enclose the form required on pig numbers duly completed.

Yours sincerely,

Premier Pigs.

6/10/20.

Class 6.2 only

Please return this table to the Licensing Unit, Office of Licensing & Guidance,
EPA Headquarters, P.O. Box 3000, Johnstown Castle Estate, Wexford,
without undue delay –

Name of Piggery: PREMIER PIGS LTD
Contact Name: [REDACTED]
Address: THE COLLEGE FARM
KILLUGGER
WILLAMICK
CO. WEXFORD

No. of places for sows* in a breeding unit (i.e. a piggery in which pigs are bred and reared up to 30kg in weight)	2 ENO
No. of places for sows* in an integrated unit (i.e. a piggery in which pigs are bred and reared to slaughter)	2 ERO
No. of places for production pigs (a production pig means any pig over 30kg in weight which is being fattened for slaughter)	1900

*sow means a female pig after its first farrowing

Signed: [REDACTED]

6-10-20.

2000 pigs without planning permission

On 25/02/2020 and 22/12/2020, The Wexford People Paper (enclosed) have printed information from the council saying they are allowed 2000 pigs and no planning is required. We have asked the council to clarify and show us where the in the planning rules and regulations where an operator is allowed to keep 2000 pigs without planning permission, but we have yet to receive a response.

As above they are not allowed any pigs at the site at Killugger as the size of the shed(s) is too big as per EXD00824 to obtain an exemption for change of use planning from class 6 to class 7.

From an FOI, an inspection carried out by Wexford County Council in January 2020, they counted over 2,100 pigs on that day. The owner informed Wexford County Council it was a changeover day. Irrespective of it being a changeover day, it was still a breach to the 2,000 number.

Also, because they have the places for approx. 2,500 pigs in that shed, and given we don't actually know the methodology or accuracy of their pig count and the fact there has been planning irregularities to date, we do not know the true number of pigs being kept.

Furthermore, as you can see from the screenshot on the next page, there is significant potential to expand the operations. There are now silos attaching to 2 sheds. At present there is meant to be pigs in only one shed as highlighted on the next page. But what about the rest of the site and its future potential. What inspections have been carried out? The operator is a director and shareholder of several sites including sow units.

The operator appears to be having planning irregularities with another site that I am aware of as their EPA licence application for Rosedale Limited has been withdrawn earlier this year in respect of the site named Rosedale Limited and will re-apply as soon as planning at the site has been regularised with the planning

authority, EPA reference P1126-01 and is publicly available on the EPA website. As per the CRO records Kevin Riordan and Joe Healy are the majority shareholders of Rosedale Limited sow unit.



Our conclusion

Our conclusion is that we feel this operator has come in the back door into our community and has done as he wishes by putting pigs into a former straw-based shed in 2017, made significant modifications and is running a commercial scale pig operation without the benefit of planning permission and has caused severe stress on us and other residents of the area and has severely disrupted our enjoyment of our properties which we have all worked hard all our lives.

His planner's opinion ignores the change of use laws from class 6 to class 7 and the outcome of EXD00824 and for a commercial scale pig operation there appears to be no oversight on his piggery activities such as slurry and disposal of carcasses from the EPA or Wexford County Council or other departments such as the Department of Agriculture, Food and the Marine.

As above he has significantly modified the farmyard to make it feasible to operate as a commercial scale piggery, otherwise it would not be able to function as a commercial scale piggery. He has installed several silos which are attached to two sheds, installed chimneys and ventilation systems on the shed to release toxic gases, installed solar panels which substantially cover the entire roof area of an adjacent shed, raised the entire floor area of the shed and put slurry tank underneath and as per the planner's report by Steve Gooden dated 10/08/2020 the floor area is 1,770m² which is 0.437 acres in size, closing the gaps in wall which previously allowed air in, installed slats, installed a ramp outside, otherwise they would not be able to access the shed. Most of these modifications are external and can be visually seen.

We do not know if the slurry tank has been built within the EU specifications or signed off by a chartered engineer as there appears to be no oversight on his activities. Also, there appears to be no oversight over who is collecting the slurry or where it is being spread.

We feel that, as far as the operator is concerned it is his privilege as the owner to do as he wishes and no regard or respect for the local residents who are severely suffering because of the existence of his operation. Why do planning laws, rules and regulations, local planning authorities exist if people can do as they wish? If that were the case, a loophole would exist within the planning laws of the state and anyone can simply apply for agriculture and put in pigs, mink or poultry on site.

Below is an extract of an email we sent to Tom Banville of Wexford County Council on 5th March 2021 (full version enclosed).

Unauthorised Development

It is accepted by the council via email correspondence and by the Section 5 Declaration that a change of use has occurred from Class 6 to Class 7 at Killugger. Your email of the 9th of December states:

"However, the farm has planning permissions for general agricultural use which did not specify that it was a class 6 use and nothing in the information submitted with the planning that was granted limited its use to cattle, sheep etc.

Therefore, although technically a change of class of use would require planning permission, we cannot prove in this instance a change of class occurred or that the farm wasn't granted permission as a class 7 initially."

1. The planning authority does not have an obligation under the Planning and Development act to "prove" that unauthorised development is occurring. Once a warning letter is issued the burden of proof is on the Piggery owners to prove that a change of use has not occurred. The council are second guessing the outcome of the enforcement process as a justification for not taking enforcement action.
2. The council's opinion that the previous permissions granted on site amounts to "general agricultural use" is incorrect. A change of use has occurred from class 6 to class 7 (from sheep and cattle rearing to an intensive piggery). In order to justify enforcement action all that needs to be established is that this has occurred.

Yours Sincerely

Katherine Bail

Signed on behalf of individuals named below:

Contact Name KATHERINE BAIL Date 14th Nov 2021

Address Ballykelly, Deinsagh, Wexford Y35 C2N0

Name Katherine Bail



Kevin Bail <kevinkathybail@gmail.com>

RE: Subject: Unauthorised Development Killugger, Killinick

1 message

Tom Banville <Tom.Banville@wexfordcoco.ie>

Mon, Mar 8, 2021 at 4:19 PM

To: Marian Boggan <marian.boggan@gmail.com>, "kevinkathybail@gmail.com" <kevinkathybail@gmail.com>

Cc: Tony Larkin <Tony.Larkin@wexfordcoco.ie>, Tom Enright <Tom.Enright@wexfordcoco.ie>, Lisa McDonald <lisa.mcdonald@wexfordmcc.ie>, Ger Carthy <ger.carthy@wexfordmcc.ie>, Jim Codd <jim.codd@wexfordmcc.ie>, "heritage@antaisce.org" <heritage@antaisce.org>

Hello Marion,

I acknowledge your letter attached and the contents within. This letter will be added to the Planning Enforcement file on this matter.

The Planning Enforcement file on this case is currently with our legal agents for legal opinion on further legal action..

Under these circumstances I respectfully decline to comment any further on this case until legal opinion is provided and considered.

I trust this clarifies our current position on this matter at this present time.

Regards

Tom Banville

Senior Executive Officer- Planning

Wexford County Council, Carricklawn, Wexford, Y35 WY93

T: 053 919 6200 | M : 087-6796857

E: tom.banville@wexfordcoco.ie

W : www.wexfordcoco.ie/planning

 Comhairle Contae Loch Garman
Wexford County Council

From: Marian Boggan <marian.boggan@gmail.com>

Sent: 05 March 2021 13:12

To: Tom Banville <Tom.Banville@wexfordcoco.ie>; kevinkathybail@gmail.com

Cc: Tony Larkin <Tony.Larkin@wexfordcoco.ie>; Tom Enright <Tom.Enright@wexfordcoco.ie>; Lisa McDonald <lisa.mcdonald@wexfordmcc.ie>; Ger Carthy <ger.carthy@wexfordmcc.ie>; Jim Codd <jim.codd@wexfordmcc.ie>; heritage@antaisce.org

Subject: Subject: Unauthorised Development Killugger, Killinick

Dear Tom,

I am writing in response to your emails and our previous discussions regarding the council's failure to issue a warning letter for the unauthorised change of use from cattle and sheep farming to intensive piggery at Killugger farm.*

*Full letter included as an attachment

This email and attached letter is sent with full permission of all those named at the end of the letter.

Please read and respond

--

Regards

Marian Boggan

 **Letter Tom Banville.docx**
330K

Dear Tom,

I am writing in response to your emails and our previous discussions regarding the council's failure to issue a warning letter for the unauthorised change of use from cattle and sheep farming to intensive piggery at Killugger farm.

Unauthorised Development

It is accepted by the council via email correspondence and by the Section 5 Declaration that a change of use has occurred from Class 6 to Class 7 at Killugger. Your email of the 9th of December states:

"However, the farm has planning permissions for general agricultural use which did not specify that it was a class 6 use and nothing in the information submitted with the planning that was granted limited its use to cattle, sheep etc.

Therefore, although technically a change of class of use would require planning permission we cannot prove in this instance a change of class occurred or that the farm wasn't granted permission as a class 7 initially."

1. The planning authority does not have an obligation under the Planning and Development act to "prove" that unauthorised development is occurring. Once a warning letter is issued the burden of proof is on the Piggery owners to prove that a change of use has not occurred. The council are second guessing the outcome of the enforcement process as a justification for not taking enforcement action.
2. The council's opinion that the previous permissions granted on site amounts to "general agricultural use" is incorrect. A change of use has occurred from class 6 to class 7 (from sheep and cattle rearing to an intensive piggery). In order to justify enforcement action all that needs to be established is that this has occurred.

Obligation under the Planning and Development Act

Your email to Kevin Bail on the 20th of November 2020 states the following:

"I do sympathise with the situation you and your neighbours find yourself in with relation to the Piggery in Killugger. By all reports and accounts the odours from the piggery are obnoxious and must be very difficult to live with on a daily basis. However, with regards to my responsibility in Planning Enforcement I can only follow the Planning Laws"

All we are requesting is that you follow the Planning Laws in particular Section 152 of the Planning and Development Act which states:

Where---

- (a) a representation in writing is made to a planning authority by any person that unauthorised development may have been, is being or may be carried out, and it appears to the planning authority that the representation is not vexatious, frivolous or without substance or foundation, or
- (b) it otherwise appears to the authority that unauthorised development may have been, is being or may be carried out,

the authority shall issue a warning letter to the owner, the occupier or any other person carrying out the development and may give a copy, at that time or thereafter, to any other person who in its opinion may be concerned with the matters to which the letter relates.

Section 152 requires that a planning authority issue a warning letter where they consider that unauthorised development **may have been, is being or may be carried out**. It does not require the planning authority to prove that unauthorised development has occurred. Assuming that the piggery owners have a loophole type response available to them under the guise of "general agriculture" does not absolve the council of their legal obligation to implement Section 152 of the Act. The Council are aware that unauthorised development *may have been, is being or may be carried out* and as such are obliged to issue a warning letter for all unauthorised uses including the change of use.

The council do not know that the owners of the piggery will respond with a defence. They may respond with a planning application and or a genuine attempt to regularise their business. The issuing of a warning letter does not require the council to issue Enforcement Proceeding but it might prompt the owners of the piggery to engage with the council to regularise unauthorised development and address environmental concerns.

The issues addressed by the councils current Enforcement Notice are minor and may be treated as such by the piggery owners. In addition, it may prejudice any future Enforcement proceedings on the basis of change of use and other breaches of planning. The council should issue a warning letter for all unauthorised development that *may have been, is being or may be carried out* immediately and are legally obliged to do so.

General Agricultural Use

Your email of the the 09/12/2020 states the following:

"Essentially, if we bring an enforcement case on the use, the alleged offender would just need to simply state that they had planning permission for general agricultural use. We need to look ahead to what may be enforceable in court if that day comes."

Your statement of the 16/12/2020 states the following:

"the farm has planning permission(s) for general agricultural use which did not specify that it was class 6 use and nothing in the information submitted with the planning that was granted limited its use to cattle, sheep etc."

It has already been established above that the council do not *need to look ahead to what may be enforceable in court* to issue a warning letter. I accept the fact that issuing Enforcement proceedings are different however, it's ultimately for the courts to decide if a breach of planning has occurred not for the council to second guess or predict an outcome.

The Council have a legal obligation to issue a warning letter as soon as they are aware that unauthorised development may be occurring. The offender's response may provide justification enough to proceed with Enforcement proceedings.

Question 15 of Wexford County Councils Planning Application Form

Question 15 of Wexford County Councils planning application form requires the applicant to state the existing use and to state the floor area of buildings proposed for a "*material change of use*" to that existing or established. While the stated use as "Farmyard" not piggery is noted, more importantly, no material change of use was proposed.

No material change of use from the previously established use was ever proposed by any of the planning applications submitted and approved. Condition one of the permitted applications requires that the development be carried out in accordance with the details submitted. As a material change of use was not proposed in response to Question 15 of the associated planning application forms for any of the permitted developments, general agricultural use is not applicable.

The permissions granted are therefore limited to the class of use on site at the time of their making which was not general agriculture or piggery but the keeping of sheep and cattle. In order to determine that a change of use has occurred from Class 6 to Class 7 the council need only determine that a change from the keeping of cattle and sheep to intensive pig farming occurred after the planning permissions were granted. This is known to be the case and occurred in 2017.

The following details were provided as part of a Freedom of Information Request and consist of a report from Steve Gooden, Technician with the Planning Department of Wexford County Council. It is noted that the report specifically mentions that the owner stated to him while he was conducting a site visit, that "*Pigs had been kept in the shed since 2016*, cattle were kept previous to this*".

This statement is sufficient to determine that a change of use has occurred from cattle to pigs and as such from Class 6 to Class 7 and forms sufficient basis to proceed with enforcement proceeding on the basis of an unauthorised change of use having occurred.

Planning History:

Plan Reg 20081365 – Construction of a new Agricultural Shed and ancillary site works. Decision - Granted subject to conditions 16th July 2008.

Condition no. 1 of Plan Reg 20081365 states that the development be carried out strictly in accordance with the plans lodged with the planning application. The floor plan / elevations submitted with Plan Reg 20081365 do not show slatted tanks incorporated into the shed.

Exempt Development Application relating to the building:

Plan Reg EXD00824 – Agricultural Shed – change of use from Class 6 to Class 7. Decision – Not Exempt

Site Visit:

I inspected the site on 10th August 2020 and noted the following:

I met the owner [REDACTED] He stated that pigs had been kept in the shed since 2016 (cattle were kept previous to this). In the large shed in the south east corner of the site, the floor level had been raised in order to incorporate slatted tanks directly beneath the floor where the pigs were kept (see layout plan and photos 1 and 2). The slatted tanks covered the entire floor area of the building (approx. 1770m²).

Conclusion:

The agricultural shed was initially used for the keeping of cattle (Class 6) but now is currently being used for pigs (Class 7). As per Plan Reg EXD00824 this change of use is not exempt and requires planning permission. Therefore the keeping of pigs in the shed is unauthorised change of use from Class 6 to Class 7 in Part 3, Article 6, Exempted Development – Rural.

The floor level of the agricultural shed has been raised so as to incorporate slatted tanks directly below where the pigs are being kept. Such development is not in compliance with condition no. 1 of Plan Reg 20081365 as slatted tanks are not shown on the drawings.

Recommendation:

Issue Enforcement Notice for the following:
Unauthorised change of use of the agricultural shed from Class 6 to Class 7.

Non-compliance with condition no. 1 of Plan Reg 20081365 (slatted tanks are not shown on the drawings) lodged with the planning application.

S. Gooden

Steve Gooden
Technician, Planning Department.

The herd book associated with the previous cattle farming use on site registered with the ICBF, Bord Bia Certificates, applications to the EPA for Industrial Emissions License and/or Integrated Pollution Control Licenses, land registry details, change of address from owner to owner which may reference Piggery, and company registration documentation could all also be utilized to determine when the change of use occurred.

Alternatively, the piggery owners could be asked directly in open court as part of Enforcement Proceedings to confirm the date that the change of use occurred. The previous owner could also

be called to confirm the use as being for the keeping of sheep and cattle prior to the establishment of an intensive pig finishing unit/s.

The environmental implications of the current use of the site as an intensive pig finishing unit/s have never been determined and properly assessed. The spreading of wastes, the transportation of waste, the spreading of pig slurry and soiled waters, the potential impact on aquifers and existing wells, the formulation and implication of a nutrient management plan, the maintenance of a register in relation to land spreading, the disposal of general wastes and bunding, noise impact and odor emissions all remain unchecked, unassessed and unregulated. No vermin control plan etc. It is the responsibility of the Council to seek any means necessary to regulate what is known to be a hugely corrosive activity in terms of environmental impacts.

The council should issue a warning letter immediately in relation to the change of use requesting clarification regarding when the piggery was established on site and should consider enforcement proceedings based on the response received and legal opinion of same. The council should not, as suggested by your emails, second guess the outcome of the enforcement process and refuse to take action on that basis. Ultimately it would be for the courts to decide if the use is in breach of planning and not the Planning Authority.

Personally, in the context of the Section 5 Determination, the ability to establish the previous use verses the current use and the fact that no material alterations were included as part of previous planning permissions, I fail to see how any court could not determine that planning permission is required.

In your previous emails you refer to the extensive knowledge and expertise of your Senior Planners, Engineers and Director of Services. I request that you discuss the above in detail and seek comment also from the Councils Solicitor.

Please acknowledge receipt of this correspondence and respond in a timely manner

Regards

Kevin Bail

Kathy Bail

Thomas Boggan

Marian Boggan

*The farmyard and buildings were not sold until 2nd half of 2017

Councillors kick up stink over pig farm

Wexford People · 25 Feb 2020

THIS month's meeting of the Rosslare Municipal District took place in the Taghmon Action Group (TAG) Community Centre as Cathaoirleach Ger Carthy continued his efforts to engage with all those within the constituency.

And one of the most pressing concerns for Cllr Carthy and his colleagues was the pungent odour emanating from a piggery in Ballykelly on the N25.

Nearby residents have consistently complained about the smell coming from the premises in which approximately 1910 pigs are kept, yet because the owner is not breaching any laws Wexford County Council admits it is restricted in the actions it can take.

Gerry Forde from the Environmental Department explained, 'There's no planning issues and no planning enforcement action which can be taken there. The number of pigs is less than two thousand, if it was over that it would be eligible for an environmental assessment.

'If it can't be resolved we might have to take action under the Air Pollution Act. The operator himself does accept there is a problem there. There are a lot of houses quite close to it.' Mr Forde suggested those affected by the issue could help strengthen the council's case by providing public testimony of their experiences, saying judges were more likely to be swayed by residents than a local authority.

'We can bring this before the judge but it's a stronger case if local residents come in and give their testimony. The judge tends to listen to the local people more than the officials because they're the people living with the problem.'

However, Fianna Fáil Councillor Lisa McDonald felt the onus should not be placed on members of the public when it came to resolving this issue.

'I don't think it's fair to say to a neighbour to come in and give evidence against another person, we should be able to deal with this without resorting to that,' she said.

Reminding Mr Forde that he had come to him about this issue nine months ago, Fine Gael Councillor Frank Staples said he personally knew some of those living in the area and they were dealing with a 'horrendous' odour on a daily basis.

'There's one man in particular, quite close to it and he has young children, it's horrendous. I don't know how he's living in that house,' said Cllr Staples.

Cllr Jim Codd is another of the councillors in Rosslare with a background in farming and he said the smell caused by such a large number of pigs would be almost unimaginable.

'I grew up on a farm and we kept pigs and, I can tell you, if you can put up with the smell of 1910 of them you'd have a great nose. To keep that many pigs in the one place and not have a smell would be a miracle.'

During its most recent inspection of the piggery the council found there were 1910 pigs on the premises, a number which precludes them from prosecuting the owner.

Yet, according to Fianna Fáil Councillor Lisa McDonald, that figure was being disputed locally.

1/2/2021

Councillors kick up stink over pig farm

'The locals say there's more pigs there than are being counted. The reality is this is an intensification abuse, that was never a pig farm before now, it was never the industrial style farm that it is now.'

In response, Mr Forde said, 'He (the farmer) knows his threshold and he's keeping below that. The inspector confirmed there are no pig welfare issues, everything is being done correctly in that context.'

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Calls for further inspection of Killluger piggery

SIMON BOURKE

rosslare councillors have demanded that an Environmental Impact Statement (EIS) be provided for the controversial pig farm in Killluger.

Last month Wexford County Council (WCC) issued a Planning Enforcement Notice to the owner of the piggery but the members of the Rosslare Municipal District (RMD) believe stronger, and more immediate, action needs to be taken.

Speaking at the meeting of the RMD, their concerns centred around the odour emanating from the farm and the number of pigs contained therein.

Currently the owner of the piggery is allowed to have two thousand pigs at the farm, with anything over that amount considered an illegal intensification of use.

Addressing the councillors, Tom Banville, Senior Executive Officer with the Planning Department, said:

'The smell is not an issue for planning, because there's nothing in the planning enforcement that we can do; that's an environmental matter.

'Since 2017 it's an intensification matter that we're addressing. In 2017, there were approximately 500-600 pigs on the farm. Since then there's been an intensification up to two thousand pigs,' continued Mr Banville.

'That has come about due to alleged unauthorised development of slatted tanks and a ramp to enable the intensification of two thousand pigs.

'That's essentially what the enforcement notice is in relation to.'

To that end, the councillors had been furnished with a report detailing activities at the farm since it was established in 2017. However, the contents of that report had left them with more questions than answers.

'I raised the issue of intensification in February of 2019, and was told there's no intensification of use at the farm,' stated Fianna Fáil Cllr Lisa McDonald, who was acting chair in the absence of Cllr Frank Staples.

'In this report you have given us there isn't a mention of intensification of use.

'In your report, you do mention obnoxious smells and disgusting odour, if that isn't an issue for planning why is it in your report? I'm a little bit confused and in fairness to the residents in the area they're confused too.'

In response, Mr Banville said, 'Matters have changed in relation to the intensification. There's been a second look and a third look, and after further investigation and consultation with planners, it has been concluded that the

slatted tanks and the ramp are the key issues, that's what we've issued the enforcement notice on.'

Cllr Ger Carthy was similarly unimpressed with the report presented to local councillors.

'I think there needs to be more meat on the bone in relation to what role WCC has played in this,' he said. 'The people of that area deserve better.'

'I know you're new to the department Tom, so the blame can't be laid solely at your door but I think there needs to be an independent review in relation to what transpired in this operation, what rules and regulations under the National Planning Framework have been breached, what court action is going to be taken by the council, whether it be the environment or planning enforcement, because I for one, am not going to let this go.'

Responding to Cllr Jim Moore's query about whether it was wise to continue to discuss the matter when proceedings were still ongoing, Mr Banville said, 'We are getting into territory where any further comment could prejudice a future case. I remind the members the planning enforcement is an executive function not a reserved function.'

This sparked a reaction from the councillors, and not necessarily the one Mr Banville may have hoped for.

'I'm not going to listen to that smoke and mirrors now at all,' said Cllr Carthy. 'I'm representing the people of the RMD. I'm not going to tolerate that nonsense at all.'

'If we're going to talk about reserved and executive functions then the members of the council should have had a more concise report issued to them than we got.'

Regarding reports, Cllr McDonald noted that, in the documentation provided it had stated that, on the day of inspection, there were 1885 pigs in the shed, with a further 220 removed to a processing plant that day.

'It exceeded the two thousand limit,' she said. 'Therefore I think it would be correct and proper for us to get an Environmental Impact Statement (EIS) from that site.'

Backing his colleague, Cllr Carthy said it should be made clear that councillors had 'insisted' an EIS be provided and said the council were going too 'softly, softly' on the matter while people in the area suffered.

Meanwhile, Aontú Cllr Jim Codd found the intensification of use laws quite puzzling and wondered why the threshold was so finite.

'It's absolutely laughable that the smell of two thousand pigs is not considered offensive, but the smell of 2001 is,' he said.

'By god that'd have to be a bad one, that extra one you put in.'