Case Number ABP - 311 – 366 Planning Authority Reference Number:20081365

Marian and Thomas Boggan
Ballykelly
Drinagh
Wexford

The Secretary
An Bord Pleanala
64 Marlborough Street
Dublin 2

Case Number ABP - 311 - 366
Planning Authority Reference Number: 20081365

Submission / observation in relation to submission from Sheehan Planning on behalf of Premier Pigs Limited in relation to the following referral:

Re: Whether

i. the current use of the existing agricultural shed to house pigs is a change of use and

ii. the additional floor area, the construction of slatted tanks, the raised ground level and the addition of concrete ramp

is or is not development or is or is not exempted development

Killugger Farm, Killugger, Co. Wexford

The agricultural shed in question was permission granted in 2008 by Wexford County Council and was built between October 2009 and June 2010 see images below

Fig, 1: Goole earth screen grab showing Killuger Farm in October 2009 only the one agricultural shed permission granted 2003.

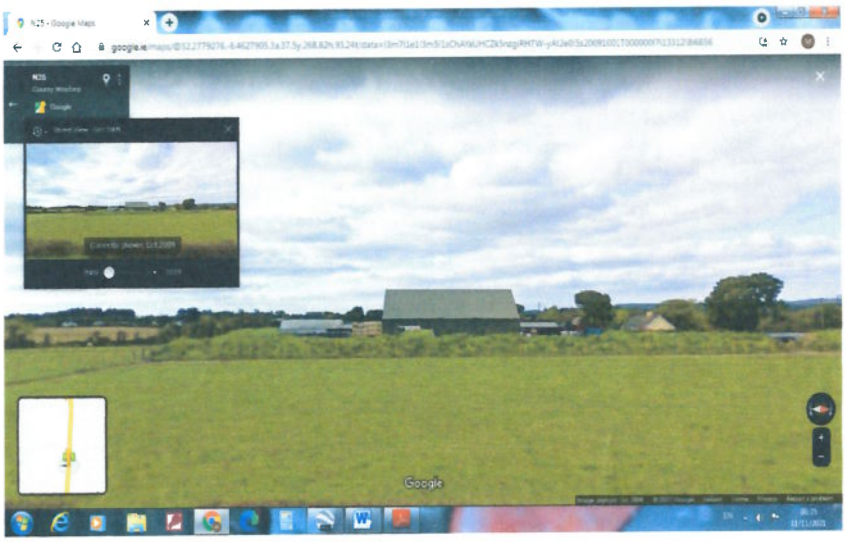


Fig. 2 Killugger farm from Goole Earth June 2010 with agricultural shed built.

This shed as built was suitable for housing agricultural animals such as cattle, sheep or for storage feedstuffs or perhaps machinery.
To my knowledge it was only ever used for above purpose (mostly as a cattle shed) and this fact is also stated in reports by Mr Steve Gooden a Wexford County Council official.

A) In an internal memo copy included appendix 1. Mr Gooden states he visited the farm in August 2020 and he stated that he met the owner who said that pigs were kept there since 2016 (this may have been an error recorded by Mr. Gooden). It was July / August 2017 before the activity of intensive pigs began see appendix 2. copy of newspaper article at the time.

The college farm as it was then known was never an intensive pig farm.
However this shed as built was never suitable for housing animals which are classed as intensive agricultural such as poultry or pigs.
The keeping of poultry or pigs also has specific requirements, conditions and controls which do not apply to other agricultural animals.
This agricultural shed as built could only be a class 6 building as the regulations state that a class 7 building is required for housing of poultry or pigs.
To render this building suitable for a commercial intensive pig finishing / fattening unit many alterations inside and out had to be carried out.
In this instance A change of use from class 6 agricultural shed to class 7 agricultural shed has occurred and requires the owners to apply for such change of use.

If that this is not the case then anyone who owns or acquires an agricultural shed can then make whatever alterations they wish to house whatever animals they wish to keep, without having to apply for change of use or planning permission providing that this shed is at least 100 meters from nearest residence and 100 meters from roadside if over 8 meters in height.
This scenario can happen nationwide and many residents in what are classed as rural areas could have intensive pig farms imposed on them without any recourse to raise concerns or objections as is their right under the planning laws of the Irish Free State / The Republic of Ireland.
Also a commercial intensive pig finishing / fattening unit is subject to many conditions, controls and regulations that do not apply to a class 6 agricultural shed. An assessment has to be made if an EIAR is required and in this instance one would have to be submitted because the building as actually built has the capacity for intensive pig rearing for over 2000 places for production / finishing pigs over 30kg and as such requires an IPC licence from the EPA. See below relevant paragraph copied from the Office of the Planning Regulator planning leaflet 9

Agricultural & Farm Development - The Planning Issues Planning Leaflet 9
Office of the Planning Regulator

5. What about Environmental Impact Assessment (EIA)? The agricultural and forestry developments listed below must always undergo EIA as part of the planning process. An application for planning permission, including an Environmental Impact Assessment Report (EIAR), must be submitted in these cases. An EIA may be required for projects "where the listed thresholds are not exceeded and/ or if the planning authority considers that there are likely to be significant effects on the environment". These are referred to as sub threshold projects. For clarity, an EIAR is required for: ••••••••••••••••••••

installations for intensive poultry rearing which would have more than 40,000 places for poultry; •
installations for intensive pig rearing which would have more than 2,000 places for production pigs, more than 400 places for sows in a breeding unit or more than 200 places for sows in an integrated unit;

••

Section 4(4) of the planning and development act 2000 (as amended) provides that development shall not be exempt if an environmental impact assessment or an appropriate assessment is required.

As this agricultural shed has a floor area in excess of 1689 sq meters not the 1012 sq meters as shown on plans submitted prior to being granted permission in 2008 and it has been used as a commercial intensive pig finishing / fattening unit sine 2017

- It has the capacity for **more than 2,000 places for production pigs** this requires an environmental assessment or an appropriate assessment is required
- This is therefore not an exempt development

Case Number ABP - 311 – 366   Planning Authority Reference Number:20081365

The EPA who is the responsible authority when an IPC licence is required for above activity has confirmed in an email that it is capacity not stated number of animals that is the relevant factor.

The following European directive is also relevant :

DIRECTIVE 2014/•52/•EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL - of 16 April 2014 - amending Directive 2011/•92/•EU on the assessment of the effects of certain public and private projects on the environment -
'ANNEX III OF THE Environmental Impact Assessment DIRECTIVE STATES;

(CRITERIA TO DETERMINE WHETHER THE PROJECTS LISTED IN ANNEX II SHOULD BE SUBJECT TO AN ENVIRONMENTAL IMPACT ASSESSMENT)

1. **Characteristics of projects**

(e) pollution and nuisances;
(g) the risks to human health (for example due to water contamination or air pollution).

2. **Location of projects**

(v) areas classified or protected under national legislation; Natura 2000 areas designated by Member States pursuant to Directive 92/43/EEC and Directive 2009/147/EC;

Subject to the above criteria this development requires Environmental Impact Assessment therefore it cannot be exempt development.

As the development is within the Zone of influence of an SAC it is not exempted development.

The following screen grabs of the area within 5 kilometers approx. of Killugger Farm and the possible SAC Zone. There is a river / stream shown close to the farm. This stream enters the Sally river which in turn enters the Drinagh intake which borders the South Slob lands.   Fig. 3 to Fig. 7 incl.

Fig.3

Case Number ABP - 311 – 366 Planning Authority Reference Number:20081365

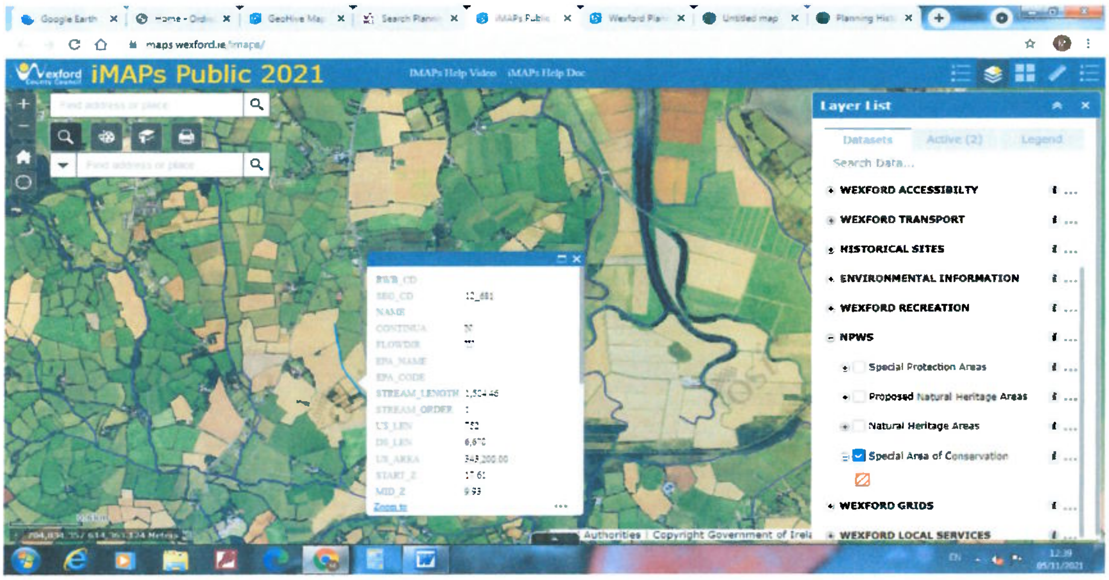


Fig. 4

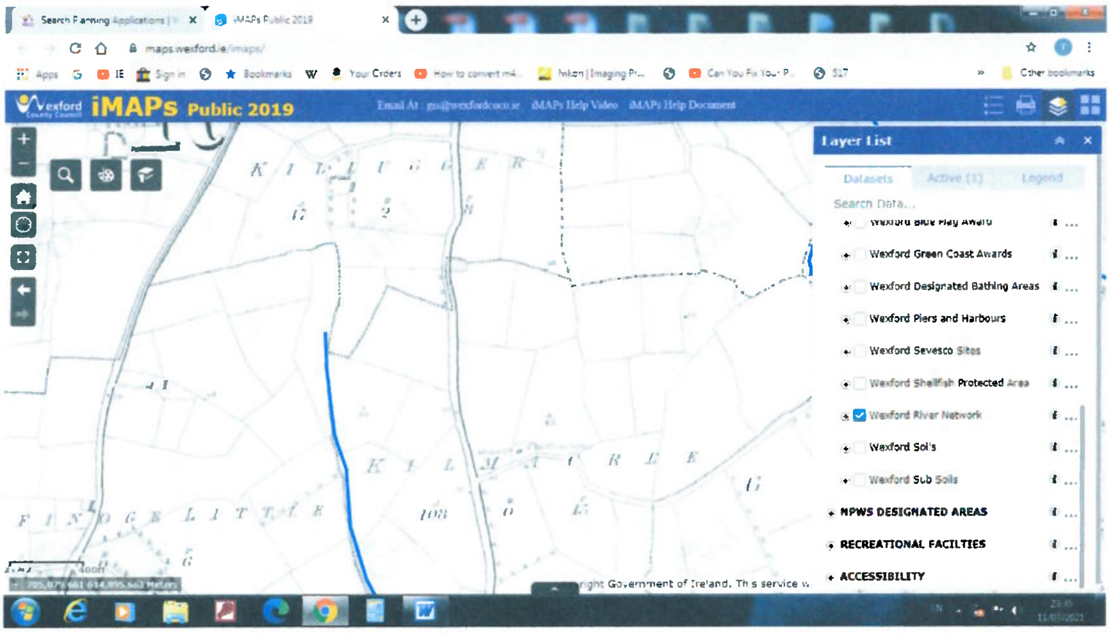


Fig. 5

Case Number ABP - 311 – 366   Planning Authority Reference Number:20081365

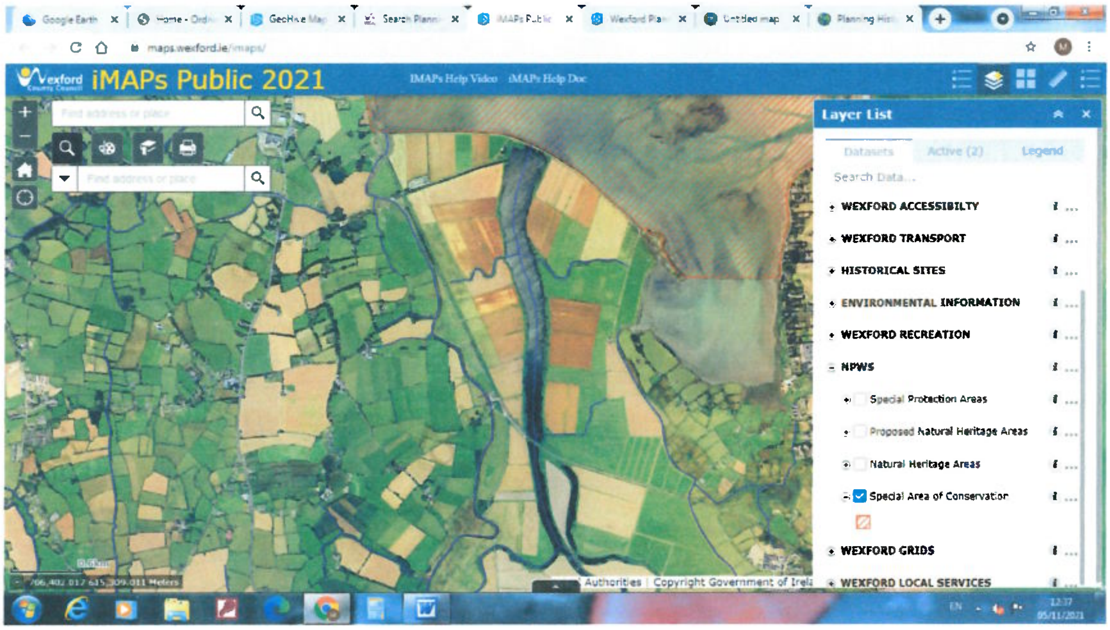
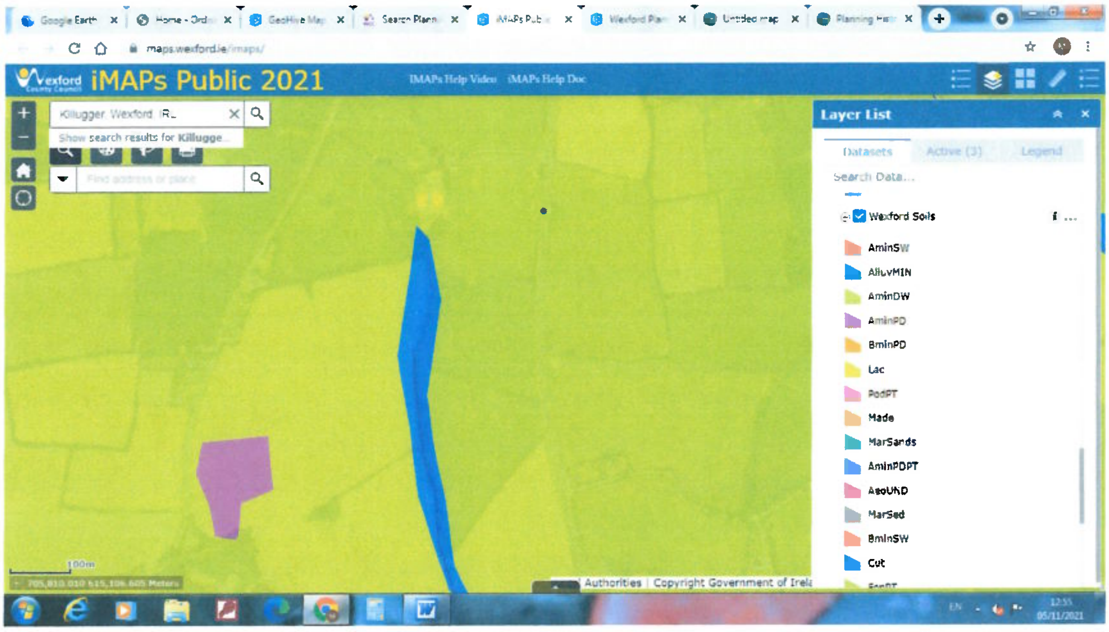
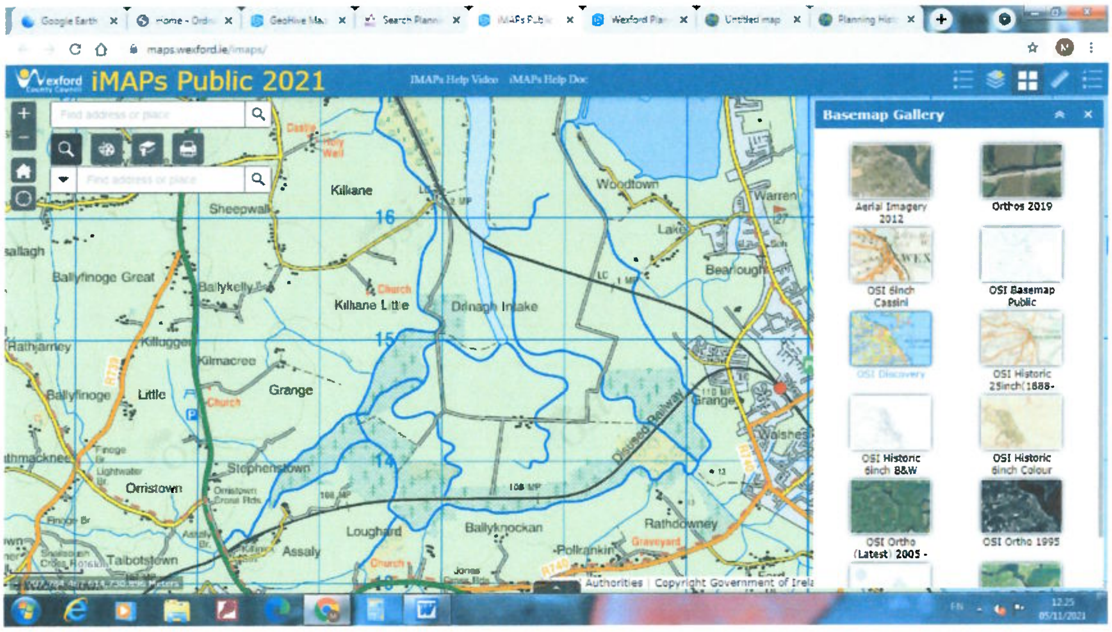


Fig. 6


iMAPs Public 2021
Layer List
Wexford Soils
AminSW
AlluvMIN
AminDW
AminPD
BminPD
Lac
PodPT
Made
MarSands
AminPDPT
AeoUND
MarSed
BminSW
Cut

Fig, 7


iMAPs Public 2021
Basemap Gallery
Aerial Imagery 2012
Orthos 2019
OSI 6inch Cassini
OSI Basemap Public
OSI Historic 25inch(1888-
OSI Historic 6inch B&W
OSI Historic 6inch Colour
OSI Ortho (Latest) 2005 -
OSI Ortho 1995
Kilkane
Sheepwalk
Ballyfinoge Great
Ballykelly
Kilhane Little
Drinagh Intake
Killugger
Kilmacree
Grange
Little
Stephenstown
Orristown
Talbotstown
Assaly
Loughard
Ballyknockan
Rathdowney
Woodtown
Warren
Bearlough

Case Number ABP - 311 – 366   Planning Authority Reference Number:20081365

Whether:

ii. the additional floor area, the construction of slatted tanks, the raised ground level and the addition of concrete ramp

is or is not development or is or is not exempted development

The agricultural shed in question was actually built larger (see Fig. 2) than the approved plans that were submitted in 2008 therefore the additional floor area was there from the very beginning as can be clearly seen in the many maps on either Wexford County Council planning website or the OSI map viewer or on Google Earth or Google maps using the historical and recent images.

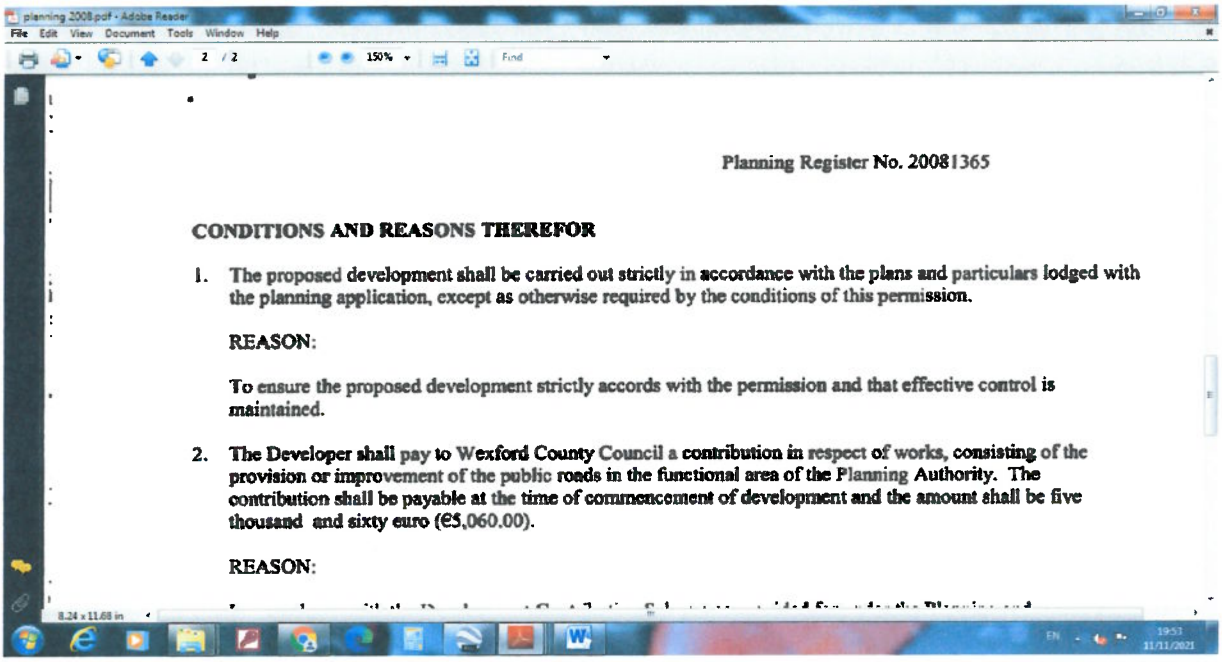
See below extract from report appendix 3 by Mr. Steve Gooden of Wexford County Council

Site Visit:
I inspected the site on 30th September 2020 and 16th October 2020 and noted the following:

Shed A:
Building dimensions measured on site:
Height = 8.8m (12.4m shown on drawings submitted with Plan Reg 20081365)
Width = 35.2m (22.21m shown on drawings submitted with Plan Reg 20081365)
Length = 48.0m (45.6m shown on drawings submitted with Plan Reg 20081365)
Actual Floor Area = 1689.6m2
Permitted Floor Area (under Plan Reg 20081365) = 1012m2

The floor level had been raised in order to incorporate slatted tanks directly beneath the floor where the pigs were kept (see attached photos 1 to 7). The slatted tanks covered the entire floor area of the building. In the south western corner of the building, I measured the top of the slatted tank to be approx. 2m above ground level.
Also, an access ramp had been built at the southern end of the shed to access for pigs and plant to enter / exit the shed.

The fact that this agricultural shed was constructed larger than the submitted plans which received planning permission in 2008 of the 5 listed conditions attached to this permission condition number 1(see below) was instantly none compliant.



Planning Register No. 20081365

CONDITIONS AND REASONS THEREFOR

1. **The proposed development shall be carried out strictly in accordance with the plans and particulars lodged with the planning application, except as otherwise required by the conditions of this permission.**

   REASON:

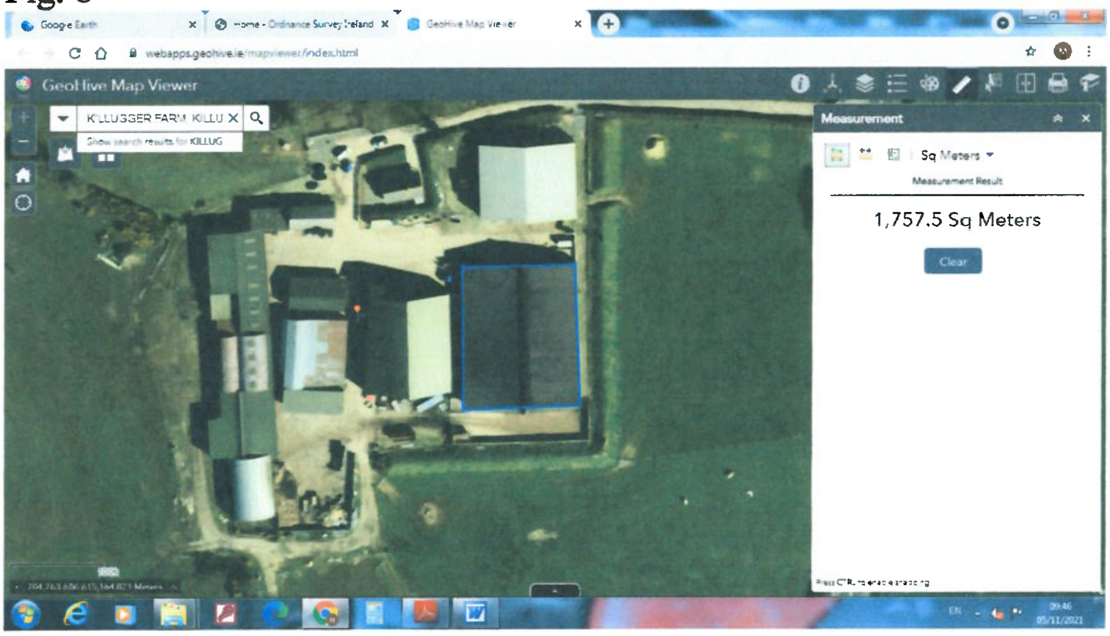
   To ensure the proposed development strictly accords with the permission and that effective control is maintained.

2. **The Developer shall pay to Wexford County Council a contribution in respect of works, consisting of the provision or improvement of the public roads in the functional area of the Planning Authority. The contribution shall be payable at the time of commencement of development and the amount shall be five thousand and sixty euro (€5,060.00).**

   REASON:

As planning conditions do not change over time this agricultural shed must require retention permission because as it stands it does not have planning permission.

Fig. 8



It is also less than 100 meters from the N25 it should be at least 100meters away as it is over 8 meters in height.

Fig 9

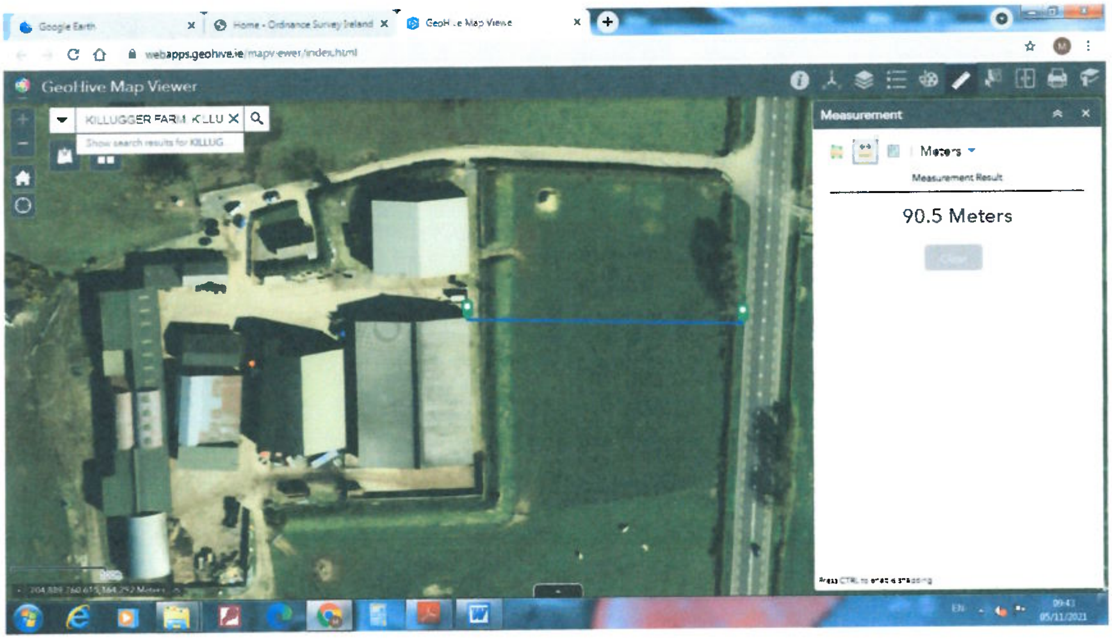
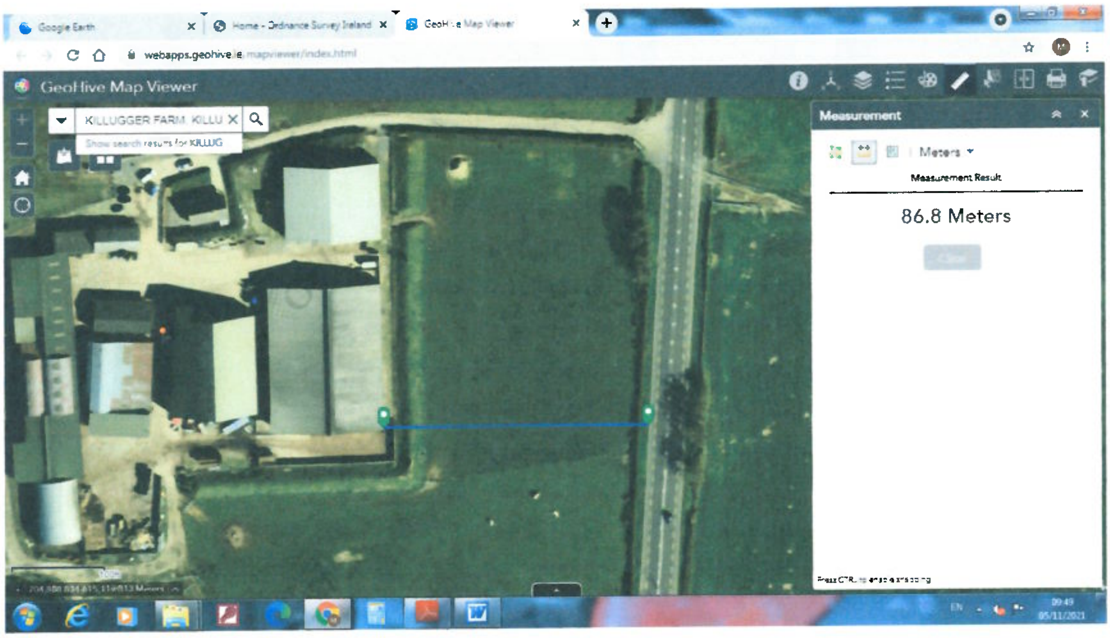


Fig 10



Whether the present owner of the farmyard at Killugger Killinick was aware or not of this lack of compliance it does not remove the requirement for the planning conditions to be regularised. Due diligence should have occurred when the farmyard was been purchased in 2017 by the present owner or by estate agent,

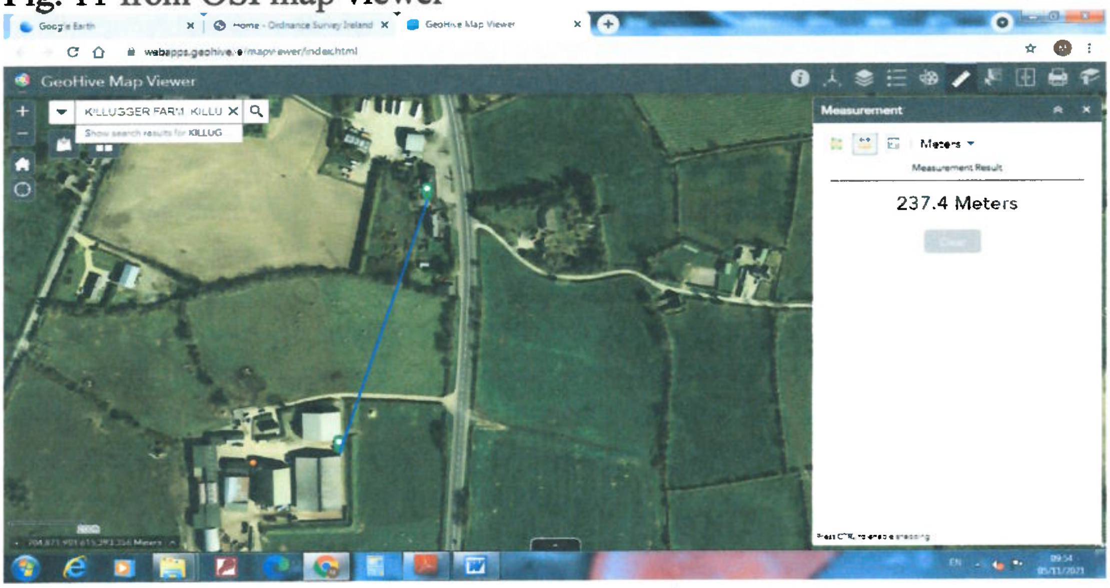
auctioneer, legal representative or any other person who acted on their behalf during the negotiations "Caveat emptor".
As such this agricultural shed cannot be exempted development as it does not have the required planning permission.

The following paragraph is copied from: a leaflet on Teagasc website
Teagasc
Planning Requirements for Farm Building Development May 2020

Other Structures
Class 7 covers the housing of pigs and poultry. The exemption limits are 75 metres for individual structures and 100 metres on aggregate. These limits are such that all commercial operations are likely to require planning permission.

The construction of the slatted tanks, the raised floor level and the addition of the concrete ramp are all developments to convert a class 6 agricultural shed into a class 7 agricultural shed for the purpose of operating an intensive pig finishing / fattening unit and is development and is not exempted development.

None of the above alterations are shown on the drawings submitted with the 2008 planning application. The raised floor level was constructed so that the slatted tanks for the slurry/ effluent could be accommodated over ground instead of inserting them underground to hold the vast quantity of slurry / effluent produced by over 2000 pigs on an ongoing basis.
This was all done without any conditions or controls that would normally be attached to a commercial intensive agricultural pig production / finishing unit, such as odour, noise, pollution, vermin, treatment of carcass, land bank for spreading of slurry etc. ever being made available to the general public.
This facility is on the edge of a quite a built up area and is approx., 140 meters to nearest residence and as per screen shot below is less than 250 meters from a pub / restaurant other business also pre-exist within 300 to 500 meters of this farm.
Fig. 11 from OSI map viewer



Case Number ABP - 311 – 366 Planning Authority Reference Number:20081365

1. This agricultural shed was granted permission in 2008 and built between October 2009 and June 2010. Shed as built does not relate in Height, Width or Length to the plans submitted to Wexford County Council in 2008. It was stated to have a 1012sq meter area but is in fact over 1689sq meters in area. There is no record in WCC planning department of an application for change of shed size or for retention therefore as it stands this agricultural shed does not have planning permission as condition 1 has not been complied with.

2. The alterations to this shed turns this premises which was built analogous to a class 6 structure into a class 7 agricultural shed but without any of the rigorous check and balances which would normally apply when permission request for such an activity goes through the ordinary planning process . Whilst it may not have been specified in the 2008 planning application that this shed was a class 6 agricultural shed the fact that it could immediately house agricultural animals such as cattle or sheep etc. as per regulations for a class 6 shed but was not suitable without major alterations and additions for intensive agricultural e.g. production of poultry or intensive pig rearing / finishing which require a class 7 building points to it being a class 6 agricultural shed.

3. This agricultural shed as built with floor area in excess of 1689sq meters It has the capacity for **more than 2,000 places for production pigs** this requires an environmental assessment or an appropriate assessment is required. This point is referred to in The Sheehan Planning report on behalf of Premier Pigs Limited:
   Page 3 of 9. Paragraph under heading
   Section 4(4) of the 2000 Act provides that: "Notwithstanding ...."
   This point is also referenced in the Opinion document of Mr Stephen Dodd SC page 2 paragraph 5 "The only express ...."

Many changes and alterations have occurred at this agricultural shed both internally and externally at Killugger Farm Killinick since 2017.

Marian Boggan

Marian Boggan

Thomas Boggan

Thomas Boggan

ABP 311366
51

Appendix 1

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 form 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.

ABP 311366

Appendix 2
Article from Wexford People Paper August 2017

Wexford residents to fight any pig farm plan

A sign has been erected in protest against the proposal.
David Tucker

August 23 2017 05:02 PM

A group of residents in Drinagh, Co Wexford are united in opposition to a large pig farm they fear could be set up in the area.

The Wexford People reports that 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.

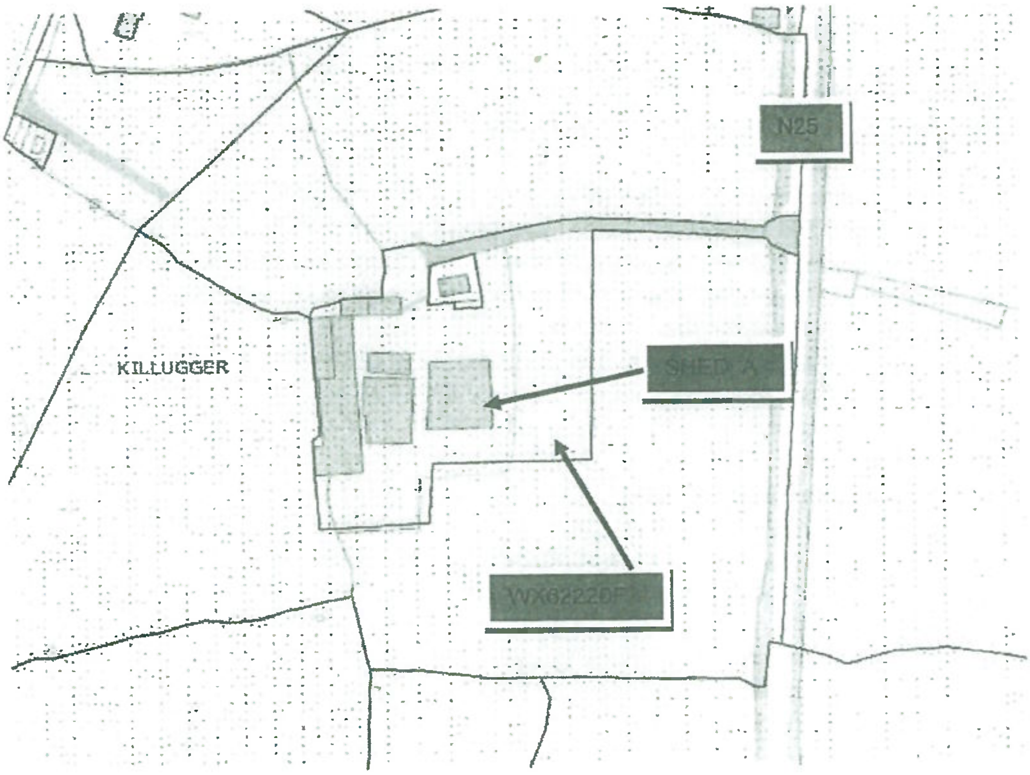
Colum Murphy, from Wexford-based Kehoe and Associates auctioneers, said negotiations are taking place, but no deal has been done yet.

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

Land Folio Map:

The sheds are located within land folio WX62220F. Registered Owner

PREMIER PIGS LIMITED (Bulgan Glynn County Wexford)



Planning History – Shed A

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 show the floor to the shed to be at ground level. Slatted tanks, a raised floor level and access ramp are not shown on the drawings.

Planning History – Shed B

Plan Reg 20100598 – Construction of an Agricultural Shed and associated works. Decision - Granted subject to conditions 27th July 2010.
Condition no. 1 of Plan Reg 20081365 states that the development be carried out strictly in accordance with the plans and particulars lodged with the planning application.

Site Visit:
I inspected the site on 30th September 2020 and 16th October 2020 and noted the following:

Shed A:
Building dimensions measured on site:
Height = 8.8m (12.4m shown on drawings submitted with Plan Reg 20081365)
Width = 35.2m (22.21m shown on drawings submitted with Plan Reg 20081365)
Length = 48.0m (45.6m shown on drawings submitted with Plan Reg 20081365)
Actual Floor Area = 1689.6m2
Permitted Floor Area (under Plan Reg 20081365) = 1012m2

The floor level had been raised in order to incorporate slatted tanks directly beneath the floor where the pigs were kept (see attached photos 1 to 7). The slatted tanks covered the entire floor area of the building. In the south western corner of the building, I measured the top of the slatted tank to be approx. 2m above ground level.
Also, an access ramp had been built at the southern end of the shed to access for pigs and plant to enter / exit the shed.

Shed B:
Building dimensions measured on site:
Height = 11m (10.76m shown on drawings submitted with Plan Reg 20100598)
Width = 30.9m (45.6m shown on drawings submitted with Plan Reg 20100598)
Length = 24.3m (22.21m shown on drawings submitted with Plan Reg 20100598)

Inside the shed I observed that it was being used for the storage of old mattresses, duvets and other textiles (see photo 8). Scrap metal was also being kept within the shed (see photo 9). As planning permission was granted for the building for Agricultural use, the storage of scrap metal, old mattresses and other textiles within Shed B is unauthorised change of use.

Conclusion:

Shed A
The floor level of the agricultural shed has been raised up to 2m above ground level so as to incorporate slatted tanks directly below where the pigs are being kept. Such development is unauthorised development as slatted tanks are not shown on the drawings.
An access ramp had been built along the south side of the shed to allow access to the raised floor area. The ramp is also unauthorised development as it is not shown on the drawings.

Shed B
Permission was granted under Plan Reg 20100598 for the use as an Agricultural Shed. The shed was being used for the storage of waste materials (scrap metal and old textiles) and is therefore unauthorised change of use.