



Comhairle Chontae Chill Chainnigh

Halla an Chontae Sraid Eoin Cill Chainnigh
R95 A39T

Kilkenny County Council

County Hall John Street Kilkenny
R95 A39T



Pobail agus Áiteanna Inbhuanaithe a Chruthú

Creating Sustainable Communities and Places

06th May, 2026

Your ref: ACP-324191-26

Our ref: DEC 934

Comhairle Chontae Chill Chainnigh



Kilkenny County Council Response to First Party Appeal

**SUBJECT: REFERRAL OF DETERMINATION OF SECTION 5 DECLARATION
DEC934**

1. Whether the repairs and alterations carried out to the 2 no. storage warehouse buildings, a workshop and the office/ reception building on the site, and the resurfacing of the original service yard, involve development and, if so, were the works exempted development.?
2. Whether the reoccupation and continued use of the warehouse buildings and the service yards referred to in 1, for warehousing and associated use, involved development and, if so, was the use exempted development.?

Dear Sirs,

In response to the first party referral received by An Coimisiún Pleanála for the above Section 5 Declaration Application, please find below Kilkenny County Council's response to each item (sequenced as per items raised in first party appeal against imposition of certain conditions):

Item 1

Summary of Referral:

- Works for construction of retaining wall and new concrete yard extension were carried out after works and use that were subject of application for Section 5 Declaration and now Referral;
- The retaining wall and concrete yard extension works form part of refused planning application reg. ref. 2660070;
- Construction of retaining wall and new concrete works had no bearing on works undertaken to 2 no. storage buildings;
- Construction of retaining wall and new concrete works had no bearing on reoccupation and continued use of warehousing and original service yards;
- Land on which retaining wall and yard extension works carried out remote and relatively untouched;

Response:

With regard to the timing of the works for the subject concrete hard surfacing, the retaining wall to the north west, the block wall to the north east, the vast majority of the concrete hard surfacing is included in the red line site boundary and noted as 'service yard', therefore the timing of the works is completely irrelevant given they are ancillary to the function of the buildings subject of the Section 5 Declaration and form part of the red line boundary;

With regard to the level of bearing on works undertaken to and reoccupation and usage of the buildings for warehousing, again as the resurfacing and block wall are included in the red line boundary and noted/annotated as 'service yard', the level of bearing is completely irrelevant;

With regard to the assertion that the land on which the retaining wall and yard extension is untouched, I would completely disagree with this assertion as it very much appears from various edition of aerial photography courtesy of Google Maps 2025 and Google Earth Pro 2021 and 2022 (as per Appendix 1), areas of the yard within the site boundary including adjacent to the back drain have been surfaced/re-surfaced.

Item 2

Summary of Referral and Response:

With regard to the paragraph in 'Demolitions' in the Planner's Report stating '*Removal of projection of structure above main building roof and removal of a single storey lean-to, neither of which was explicitly required for the ware house use measures under 100sq.m , and not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or other structures on the site or in the vicinity. The demolitions which have occurred do not therefore constitute exempted development*'

The last line contains a 'typo' and should instead read '*the demolitions which have occurred do therefore constitute exempted development*'

Item 3

Summary of Referral and Response:

With regard to the paragraph in 'Repair and Maintenance' in the Planner's Report stating '*The other works to buildings set out in the Section 5 Declaration of Exemption Application involve repairs to existing buildings and routine maintenance of open yard areas. Activities do not constitute development requiring planning permission as limited in both scale and nature*'.

'While general repairs and maintenance may constitute works, development, I do not consider them to constitute exempted development'.

The last line contains a 'typo' and should instead read '*while general repairs and maintenance may constitute works, development, I do consider them to constitute exempted development*'.

Item 4

Summary of Referral:

- Stated that information provided in respect of past use is not substantiated with sufficient evidence. Stated Planner would ordinarily request further information for applicant to demonstrate via accredited documentation, uses of the building as far back as records allow;
- Commercial rates were being charged on the property to previous owners up to 2021 and were increased substantially when client/applicant took possession last year;
- Rates statement shows rates from 2022-2026;
- Rates increased substantially in the past 2 years due to higher valuation and more productive use of buildings and land;
- Rates demands to previous owners for the years 2017, 2018 and 2022 included with Referral;

- Stated applicants' interest in acquiring property goes back to 2018 for which the property was in use at the time and rates would not have been demanded or paid had the site been vacant;
- Stated warning letter (1 no. served) and enforcement notices (3 no. served) (ENF25036) did not reference unauthorised use or abandonment of warehousing save for unauthorised loader docks;
- Unauthorised use of loader docks, unauthorised use of land for siting containers and portacabins all subject of refused planning application 2660070 recommended for refusal by Kilkenny County Council and subject of appeal to An Coimisiún Pleanála (Ref. No. PL-501200-KK-26);
- Stated inclusion of question of continued use of warehouse building and service yards in Section 5 referral followed a conversation between Kilkenny County Council official and agent on 17/12/2024 in advance of court case in January 2025;
- Kilkenny County Council Planner/Official advised addressing that the warehouses had not been in use prior to the applicant taking possession.

Response

I note the additional evidence stated by the applicant in respect of non-abandonment of use including payment of commercial rates.

Notwithstanding the fact that there may be evidence to consider as regards abandonment of use, the two questions posed under a single declaration are inextricably linked and considered under a single declaration and hence any element of the works would impact the overall decision. The Council did not require further investigation as one of the elements, in this case the requirement for a Natura Impact Statement for work on this site that were included in the request for the declaration already affected the declaration. Please see the final reason for the Planning Authority's determination which did not mention this matter.

Item 5

Summary of Referral:

- Section 4(1) (h) and 4(4) not included in 'Conclusion' Section of Planners Report yet amongst relevant sections of legislation pertaining to questions raised;
- Section 4(h) relates to works which only affect only interior of structure and do not materially affect external appearance to render it inconsistent with character of structure or neighbouring structures;
- Section 4(4) summarises notwithstanding paragraphs (a), (i), (ia) and (l) of subsection (1) and any regulations under subsection (2), stating development shall not be exempted if an EIA or AA stage 2 is required;
- Planning authority misled itself in deeming works and use subject of Section 5 application would not be screened out for AA;
- The perimeter wall and section of concrete yard developed were carried out after development referred to in Section 5 application;

Response:

Section 4(1)(h) relates to works which only affects the interior of structure and do not materially affect external appearance to render it inconsistent with character of neighbouring structures. The Section 5 Declaration Application complies with Section 4(1)(h) as the external appearance of the structure does not change significantly resultant of works undertaken and is not inconsistent with character of structure or those surrounding.

Section 4(4) summarises that development shall not be exempted if in this case a Stage 2 Appropriate Assessment is required. As per response to 'Item 6' below, an Appropriate Assessment Stage 2 is required in this instance and the subject part of the development undertaken cannot therefore be exempted development. It is noted that the question asked includes the term 'service yard' and drawings include the subject area adjacent to the back drain to the north east of the site within the red line site boundary. This is irrespective if the same area is included in planning application 2660070 refused by Kilkenny County Council under concurrent appeal (PL-501200-KK-26). It is noted that Section 4(1)(h) and Section 4(4) were in fact listed in the 'Legislative Context' of the Planner's Report and considered as part of the overall assessment. It is noted that Article 9(1) (viiB) (Restrictions on Exemption) of the Planning & Development Regulations 2001- as amended was listed in both the 'Legislative Context' and the 'Conclusion'.

Irrespective of the time periods, or, sequence in which the works were carried out, the concrete surfacing and the block wall to the north east of the site directly adjoin the back drain forming part of the red line site boundary and constitute 'resurfacing of the original service yard' as per description. This surface area and perimeter block wall are located directly adjoining the back drain with direct connection to the Lower River Suir SAC. It cannot therefore be demonstrated beyond any reasonable doubt that these works undertaken had no potential to impact the conservation objectives of the Lower River Suir SAC and mitigation measures were not required (notwithstanding design of works for construction and operation including operational drainage systems). In the presence of such doubt, Kilkenny County Council must take the precautionary approach and seek a Stage 2 Appropriate Assessment (Natura Impact Statement)

Item 6

Summary of Appeal:

- AA Screening report by planning authority makes its assessment based on construction of retaining wall and concrete yard;
- Concludes proximity of these works to adjoining stream during construction stage, cannot be demonstrated beyond reasonable doubt works had no potential to impact conservation objectives of River Suir SAC and mitigation measures not required;
- Insufficient regard given to applicant's Appropriate Assessment Screening Report (Kingfisher Environmental Consultants);
- Kingfisher Environmental Consultants Screening Report emphasised standard design measures incorporated into design and construction which were not mitigation measures;
- Had perimeter wall and yard extension not been considered, works referred to the Section 5 declaration application would have been screened out for Appropriate Assessment;

Response:

The surfacing of the concrete service yard and construction of block wall forms part of the red line site boundary and is subject of Section 5 Declaration and Referral notwithstanding also forming part of red line boundary of planning application reg. ref. 2660070 which was recommended for refusal by Kilkenny County Council and is subject of concurrent appeal PL-501200-KK-26. Although not part of the SAC itself due to immediate proximity adjoining drainage channel (back drain) which flow into Lower River Suir SAC there is therefore a direct hydrological connection/pathway.

From a study of aerial photography (included in Appendix 1), concrete works took place across a broad area of the site between the Lower River Suir SAC and the drainage channel (extent of the 'yard upgrade' annotated in the Proposed Site Layout Plan PP-01;) in particular to the north east of the Section 5 Declaration Site which as aforementioned directly adjoins the drainage

channel flowing into the Lower River Suir SAC, hence also as aforementioned there is a direct hydrological connection present;

It was stated in the Planner's Report for Section 5 DEC 934 that a Stage 2 Appropriate Assessment is required notwithstanding the design of works including design of drainage systems given proximity adjoining and direct hydrological connection. It was also stated in same report that any construction measures to protect both the back drain and Lower River Suir SAC would constitute mitigation measures and it could not be demonstrated beyond doubt that the works had no potential to impact conservation objectives of Lower River Suir SAC. Kilkenny County Council are therefore of the view that they must take the precautionary approach in the presence of doubt and seek as Stage 2 Appropriate Assessment (Natura Impact Statement).

It is noted that concrete surfacing and other works including perimeter block wall are also shown in refused planning application 2660070 subject of concurrent appeal L-501200-KK-26 however this did not/does not affect the assessment of Section 5 declaration/referral.

The phraseology of the Section 5 Declaration Application including the wording 'service yard' serving the warehousing buildings includes concrete surfacing and related works including perimeter walls adjacent to drainage channels (inextricably linked).

It is incorrect for the agent/appellant to state that insufficient regard was had to the applicant's Appropriate Assessment Screening Report (compiled by Kingfisher Environmental Consultants). The Planning Authority is the appropriate authority for screening and the Kingfisher report was only providing information to assist with the official screening. Accordingly, the situation is such that following a detailed assessment of Kingfisher's Appropriate Assessment Screening Report, Kilkenny County Council in fact arrived at a different conclusion for the reasons as detailed in Items 5 and 6.

Conclusion

The Planning Authority trust that the response clarifies its position on the development proposal.

Yours Sincerely,

pp L. Giltane

Conor Sweeney
Administrative Officer
Planning Department

