

The Secretary
an Bord Pleanála
64 Marlborough Street
Dublin 1
D01 V902

AN BORD PLEANÁLA	
LDG-	044110-21
ABP-	
04 OCT 2021 G.K	
Fee: €	50 type: PMO
Time:	By: Regpost

Re: Observation to 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

A Chara,

I am writing in relation to the referral submitted by Wexford County Council in respect to the change of use from class 6 to class 7 of a former cattle farm to a now commercial scale pig operation at Killugger, Killinick, Wexford. This commercial scale pig operation has severely impacted our lives and property, depriving us of our basic human right of fresh air, causing environmental pollution and we do not know the full impact that the emissions from this operation will have on our health long term.

We have been raising our concerns with Wexford County Council since our first letter dated 20th of August 2017 which also mentioned the change of use from class 6 to class 7 (Letter attached - Planning file reference PMcD/GC/PE 0090/2017). The original case file was closed on 22nd of November 2017 as Wexford County Council were satisfied that there was no unauthorised development at that site.

We are constantly suffering from the obnoxious smells, increase in flies and vermin. We are worried about our health and we can't go about our normal day living without worrying about which direction the wind is going to be and can't enjoy our home and garden. Furthermore, our home which we have worked all our lives for has been significantly devalued.

This operation is constantly emitting gas fumes, including ammonia being taken directly from the pig shed through the extractor fans and released directly onto us and other residents. If the extractor fans (which no planning permission was sought for) stopped working, the pigs would be killed from the gasses. Why is it then ok for these same gasses and toxins to be extracted from this pig shed and released directly onto us to breathe in the same? Ammonia alone is very dangerous and is known to cause damage to a person's respiratory system.

Wexford county council has said they sympathise with us about the situation, but we feel they have not done enough to protect the resident of the area.

Tom Banville email dated November 20th and attached.

"Firstly, 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".

In April 2020 a warning letter was issued in respect of the slats and ramp. In September 2020 the outcome of a section 5, reference EXD00824 stated that the development was not exempt from change of use planning. In November 2020 Wexford County Council issued an enforcement order in relation to the "installation of slatted tanks and ramp without the benefit of planning permission" but there was no mention of the matter on change of use from class 6 to class 7.

In addition to having no planning for change of use from cattle to pigs, there are many other planning issues associated with this operation including;

- Shed size far exceeds the 1,012 square meters per original planning permission of the cattle shed in 2008 ref:20081365. As per Steve Gooden's report it is approximately 1,770 square meters. Furthermore, it was noted in the planners report of 20081365 that the "shed is very large at 1012sq.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. Would retention planning permission not be required for this?
- Furthermore, Premier Pigs does not have planning permission to change the structures of the sheds from that of a straw-based cattle shed to a large commercial pig finishing unit with slurry tanks, slats, internal automatic thermostatically controller ventilation system, external chimneys constantly releasing gas and fumes onto the residents.
- Other 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". This has been our biggest cause of complaint as we have been constantly experiencing an obnoxious and overpowering smells with toxins caused by the pig operations and are seriously concerned about the impacts on our health. We have a public bore hole well on the R739 road and situated approx. 350m away from the pig operation, which feeds into the local scheme.
- Having regard to the residential nature of the area and the scale of the commercial scale piggery development, the significant modifications and upgrades are clearly in breach with the conditions attaching to planning reference 20081365.
- Also, they keep adding silos on site, also without planning. There are at least 5 silos on site. The last of them installed late last summer in 2020. Many of them are higher than the sheds, so over 12 meters in height and are now attaching to two sheds at least.
- 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
- An earlier shed application 20032095 of the farm specifically answered "Not applicable" on the planning application on the question regarding both the size/capacity of slurry tanks existing, proposed and means of effluent disposal. Activities associated with a piggery, not cattle.
- As per the conditions and planning grant of 20081365 the shed was to be constructed in accordance with Department of Agriculture and food section 101, November 2003, Minimum specifications for the structure of agricultural buildings. this aforementioned document outlines the minimum EU basic agriculture housing requirement needs for the housing of animals such as cattle, but the S101 standard alone would not meet the housing needs of intensive farm animals, ventilation being one. The housing of pigs is very specific and would need to be covered by additional standards. This is clearly demonstrated by the fact premier pigs has had to significantly convert and upgrade the cattle shed by inserting extractor fans, slats and many silos. Therefore, specific pig specifications have not been met nor mentioned in the planning of 20081365.
- We have a public bore hole well on the R739 road and situated approx. 350m away from the pig operation, which feeds into the local scheme.

Also, from an FOI document, it would appear Wexford County Council would have no issue granting permission for slats and ramp, and seem to ignore the issue of the pig operator not having planning for change of use for class 6 to class 7.

Environment do not have any issue with the management of the pig facility and are happy with their environmental compliance in general. Although I don't think they were aware of the unauthorised use occurring in Shed B. Regarding EIA we considered the various thresholds for pig farms and based on the information we have available to us Kilrigger is not meeting those thresholds at the moment (there were less than 2000 pigs on site at the most recent count).

It is also likely that if the operator applies for retention permission for the development works carried out to date they will be granted as essentially the use is in principle acceptable at this location. However none of the above will be welcome news to the third party.

I'm at ext 6386 today if you'd like to discuss any of the above further,

Regards,

Susan

Susan Mahon | Executive Planner | Planning and Development
Wexford County Council, County Hall, Carricklawn, Wexford Y35 WY93
T: 053 919 6386 | E: Susan.Mahon@wexfordcoco.ie | W: www.wexfordcoco.ie

Slurry and Monitoring of waste

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 odour emissions all remain unchecked, unassessed and unregulated. No vermin control plan, checks on how carcasses of dead animals being disposed etc. We understand from the information obtained under an FOI request, there has been no checks on the storage capacity of the slurry and waste.

Lillie O'Brien

EMO20

From: Dermot Leahy
Sent: 18 February 2020 12:29
To: Hugh Maguire
Cc: Gerry Forde; Brendan Cooney
Subject: FW: ENV-COMP-151704047
Attachments: image001.png

- What has Wexford County Council done to investigate the smell and release of effluents?

Wexford County Council responds to odour complaints and engaged with Premier pigs submit an odour abatement plan. There are no effluents released from the facility in Killugger, all slurries are exported to land and spreading practices are the responsibility of the importing farmer

- How was it measured

Unsure of what the question is being asked

- How long do the risk assessment(s) take

Wexford County Council environment section does not provide risk assessments

- What were the number and nature of the risk assessment(s) undertaken

Wexford County Council environment section does not provide risk assessments

- What period(s) do the risk assessment(s) undertaken cover

Wexford County Council environment section does not provide risk assessments

- Was an impact done on the assessment of local people's lives and wellbeing.

Wexford County Council environment section does not provide risk assessments

- How is the position of the commercial operation monitored for changes and ongoing activities

Wexford County Council has assessed the site and found it is within planning regulations

- How many pigs does the commercial operation have and how many can it hold

The number of pigs varies; to the knowledge of Wexford County Council the farm has not exceeded 1,910 pigs. Maximum capacity has not been measured by Wexford County Council

- What amount of effluent does it produce

The pig farm produces pig slurry only, storage capacity has not been measured by Wexford County Council

- How do they get rid of the effluents

The pig farm produces pig slurry only and this is exported for land spreading

- How much of an impact does this operation have on local streams and rivers and ground water

Wexford County Council has not identified any threat to water quality from the pig farm

- How often and regular have inspections been on the farm

Inspections are not routine and carried out in response to complaints

- Were these inspections notified.

No

- If unnotified inspections were carried out, how was same done if there is no access to the farm as it is secured with gates and a lot of the processes are automated and does not require human intervention.

Wexford County Council have been provided with a key code by Premier Pigs for the pig farm in Killugger

If this development is allowed to proceed without the relevant planning permissions for change of use and retention, does this set precedence for anyone to acquire a property and do what they wish with it without the relevant planning permissions in place?

I appeal to the Board to consider our observations in the overall context of this commercial scale pig farm and our residential community.

Yours Sincerely

Katherine BAIL

Signed on behalf of individuals named below:

Contact Name KATHERINE BAIL

Date 1st Oct 2021

Address BALLYKELLY, DEINAGH WEXFORD Y35C2NO

Name Chelsie Bail Address Ballykelly Deinagh Wexford

Name Kate Bail Address Ballykelly Deinagh Wexford

Kevin Bail
Ballykelly Lane
Drinagh
Wexford
Y35 C2N0
20th August 2017

Wexford County Council
Planning Department
Customer Service Unit
Block B, County Hall
Carricklawn
Wexford

Re: Objection to Killugger Farm change of substantial nature which has an impact on neighbours and the local community

Dear Sir/Madam,

I am writing today to object to the farming of pigs at Killugger farm, which previously farmed cattle.

The farming of pigs represents a material change in the use of the buildings at Killugger farm. The Planning and Development Regulations (2001) Class 7 sets out the planning exemption limits for the housing of pigs, poultry and mink. Roofed structures for the housing of cattle, sheep, goats, donkeys, horses of all kinds, deer and rabbits are defined under Class 6. This distinction in class clearly identifies cattle farming and pig farming to be substantially different activities – and as such Killugger Farm should require planning permission to farm pigs [if the exemption limits in The Planning and Development Regulations are exceeded].

In the past week, I have experienced a strong and unpleasant odour from Killugger farm due to the farming of pigs. I understand that they plan to house a large number of pigs in this location.

Studies show that pig farming has many negative impacts:

1. Pig waste is toxic: High levels of ammonia, hydrogen sulfide and nitrates will pollute the local area.
2. Pig farms contribute to air pollution: Hydrogen sulfide and endotoxin come from pig farms and pollute air.
3. Pig farms hurt human health: Increased levels of respiratory problems, anxiety, depression, and sleep disturbances, blue baby syndrome, disruption of thyroid function, bladder cancer and many more health issues have been documented in people who live near pig farms.
4. The smell is unpleasant. Having a pig farm in the area will reduce the value of land owned by local residents.

I insist that the county council review recent developments at Killugger Farm, and take appropriate action to negate any potentially negative impact on the local community.

Yours Sincerely
Kevin Bail

22nd November 2017

Ref: PMcD/GC /PE 0090/2017

(Please quote this reference number in all correspondence)

Kevin Bail
Ballykeilly Lane
Drinagh
Co. Wexford
Y35 C2N0

Re: Unauthorised Development at Killugger, Killinick Co. Wexford.

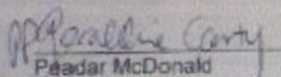
Dear Mr Bail,

Further to your complaint regarding the above.

Following a recent site inspection Wexford County Council is satisfied that there is no unauthorised development at this site.

The agricultural activity currently in one shed i.e. pig farming, is in accordance with the relevant planning permission reg. no. 20061365, therefore this case is now closed.

Yours sincerely,


Peadar McDonald
Senior Staff Officer
Planning Enforcement



Comhairle Contae
Loch Garman
Wexford County
Council

An Charrraig Leathan, Loch Garman
Carricklawn, Wexford Y35 WY93
053 919 6000 | postmaster@wexfordcoco.ie
www.wexfordcoco.ie | www.twitter.com/wexfordcoco

RE: Unauthorised Development Killugger, Killinick - Planning Ref Number EXD00824**Tom Banville** <Tom.Banville@wexfordcoco.ie>

Fri 18/12/2020 10:20

To: Jaimie-Leigh Bail <Jaimie-Leigh.bail@outlook.ie>

Cc: heritage@antaisce.org <heritage@antaisce.org>; alice108@eircom.net <alice108@eircom.net>; Tom <boggantom@gmail.com>; Jim Codd MCC <Jim.codd@wexfordmcc.ie>; Ger Carthy MCC <ger.carthy@wexfordmcc.ie>; marian.boggan@gmail.com <marian.boggan@gmail.com>; Kevin Bail <kevinkathybail@gmail.com>; Lisa McDonald MCC <lisa.mcdonald@wexfordmcc.ie>; Planning Enforcement <Planenf@wexfordcoco.ie>; Peadar McDonald <Peadar.McDonald@wexfordcoco.ie>

Hello Jamie,

I note your comments below, but in the event of future legal action by Planning Enforcement on this case, I respectfully decline to comment any further on this matter.

As a complainant, you will be kept informed of any further major developments on this case, as you have been to date.

However, we as the Planning Authority will continue to investigate and pursue this matter through the appropriate powers within Planning Law.

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.ieW : www.wexfordcoco.ie/planningComhairle Contae Loch Garman
Wexford County Council**Need information and advice on COVID-19? Go to www.hse.ie/coronavirus**

From: Jaimie-Leigh Bail [mailto:Jaimie-Leigh.bail@outlook.ie]**Sent:** 09 December 2020 23:08**To:** Tom Banville**Cc:** heritage@antaisce.org; alice108@eircom.net; Tom; Jim Codd MCC; Ger Carthy MCC; marian.boggan@gmail.com; Kevin Bail; Lisa McDonald MCC**Subject:** Re: Unauthorised Development Killugger, Killinick - Planning Ref Number EXD00824

Tom,

Further to your email below, why is the planners report EXD00824 contradictory to your email below and why have our enforcement forms still not been acted upon?

In April 2020 a warning letter was issued in respect of the slats. In September 2020 your Senior executive planner signed EXD00824 stating that the development was not exempt from change of use planning. In November you issue an enforcement order in relation to the slats but the fact is the operator doesn't even have permission to operate and the outcome of EXD00824 would supersede the issue of the slats.

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.

This indicates anyone is allowed to keep 158 finishing pigs approximately within the same. [Not relevant to the 2000 pig places criteria in respect of the IPPC Licence or EIA assessment].

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 currently has too many pigs on site and 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.

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

An 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. Activities associated with a piggery, not cattle.

Department of Agriculture and food section 101, November 2003, Minimum specifications for the structure of

for the housing of animals such as cattle, but the S101 standard alone would not meet the housing needs of intensive farm animals, ventilation being one. The housing of pigs is very specific and would need to be covered by additional standards. This is clearly demonstrated by the fact premier pigs has had to significantly convert and upgrade the cattle shed by inserting extractor fans, slats and many silos. Therefore, specific pig specifications have not been met nor mentioned in the planning of 20081365. Also, as previously mentioned the shed has significantly been altered to house the pigs. From talking to the DAFM they advised me that the needs of pigs far exceed the needs of cattle as they are more sensitive to dust, have requirements around ventilation, insulations and feeding systems. Also, the nutrient content of slurry with ammonia and phosphorus with respect to pig slurry is far greater than that of cattle and they produce far more slurry than cattle. Furthermore, piggeries are required to have storage capacity for slurry for 6 months of the year which would also require planning permission.

3. The development shall be constructed in accordance with Department of Agriculture and Food Section 101, November 2003, Minimum specifications for the structure of agricultural buildings.

The change of use and requirement for planning is supported in the attached by the planners report as signed by your Senior Executive Planner James Lavin on 02/09/20 and assistant planner Abigail Nuzum on 03/9/20 under EXD00824. And also attached the Register of Executive orders P0887/20 signed by Diarmuid Houston on 04/09/20. Are these not important and respected documents?

Assessment

The existing farmyard complex contains a number of agricultural sheds, three of which were permitted for development within the last 20 years (2003, 2008 and 2010 – see 'Site History' above). The floor area alone of the three sheds most recently permitted exceeds 2,491 sq.m. and the ridge heights of these three sheds all exceed 10.6m (the highest being 12.4m). Based on the conditions and limitations of both Class 6 and Class 7, a change of use for any of the sheds on this site would require planning permission, as the floor area exceeds 100 sq.m. and the height exceeds 8.0m where the sheds are within 100m of a public road (N25 to the east).

Moreover, the sheds on site are known locally to be used for pig rearing / finishing, and where the sheds were previously used for the housing of cattle, as per Class 6, the change of use to housing of pigs, as per Class 7, is not exempted development, and such a change of use requires planning permission.

I would find it hard to believe that a planner in their capacity would issue such a blanket planning permission. If that were the case, anyone can simply apply for agriculture and put in pigs, mink or poultry on site or buy an existing agriculture site and do what they want with it. I have searched the planning register from several counties and examined several planning applications in respect of pig operations and have yet to find an application for an intensive pig operation where pigs were omitted from the entire application. I have included a sample below for your reference.

Local Authority	Applicant Name	Reference	Brief Development description	Number of pigs	EIA Assessment Y/N
Tipperary County Council	Future Pigs Ltd	20650	Permission to construct a Pig fattening house, feed kitchen, bins, geomembrane lined manure storage basin, water tanks, roof mounted solar panels	1950	YES
Laois County Council	Garrett Behan	2024	Full planning permission for the development of pig finishing unit, 2 meal bins and associated site works	1932	NIS currently being done
Wexford County Council	Healy Pigs Limited	20171191	Permission for the erection of a pig rearing facility with associated feed storage, ancillary services and site works, with improvements to existing access lane including the realignment of the access point onto the public road. an appropriate assessment screening report forms part of this application.	1880	Planning refused but no EIA/NIS carried out

8/09/2021, 20:46

Mail - Jaimie-Leigh Bail - Outlook

You were copied in on my email yesterday to the environment department and it is a concern that planning conditions that were attaching to the original grant of this shed in its capacity as cattle shed 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"

Also, there is no planning for the several additional silos on site.

However, the bottom line is that they do not have planning to operate in their capacity as a pig operator and they require change of use from class 6 cattle to class 7 pigs.

I would greatly appreciate it if all recipients of this e-mail were kept in copy on future correspondence regarding the above.

Awaiting your response.

Jaimie-Leigh

Extracts from Planners report – EXD00824

Planning Ref. No.: EXD00824

NOW THEREFORE Wexford County Council, in exercise of the powers conferred on it by section 5(2)(a) of the Planning and Development Act 2000 (as amended), hereby decides that the change of use from Class 6 to Class 7 of the 'Exempted Development Regulations – Rural' is development and is not exempted development.

Moreover, the sheds on site are known locally to be used for pig rearing / finishing, and where the sheds were previously used for the housing of cattle, as per Class 6, the change of use to housing of pigs, as per Class 7, is not exempted development, and such a change of use requires planning permission.

Conclusion:

It is considered therefore that the change of use from Class 6 to Class 7 of the 'Exempted Development Regulations – Rural' constitutes development and is not exempted development having regard to the nature of agricultural practice on site, the gross floor space and heights of the existing structures on site.

Recommendation: Not Exempt

Having regard to the foregoing, it be decided that the change of use from Class 6 to Class 7 of the 'Exempted Development Regulations – Rural' is development and is not exempted development.

From: Tom Banville <Tom.Banville@wexfordcoco.ie>

Sent: Friday 20 November 2020 10:39

To: Kevin Bail <kevinkathybail@gmail.com>

Cc: heritage@antaisce.org <heritage@antaisce.org>; alice108@eircom.net <alice108@eircom.net>; Tom <boggantom@gmail.com>; jaimie-leigh.bail@outlook.ie <jaimie-leigh.bail@outlook.ie>; Jim Codd MCC <Jim.codd@wexfordmcc.ie>; Jim Moore MCC <jim.moore@wexfordmcc.ie>; Ger Carthy MCC <ger.carthy@wexfordmcc.ie>; marian.boggan@gmail.com <marian.boggan@gmail.com>

Subject: RE: Unauthorised Development Killugger, Killinick - Planning Ref Number EXD00824

18/09/2021, 20:46

Mail - Jaimie-Leigh Bail - Outlook

agricultural buildings. Following correspondences with the Department of Agriculture, Food and the Marine (DAFM) they

1/09/2021, 20:46

Mail - Jaimie-Leigh Bail - Outlook

Hello Kevin,

Let me try to respond as fully as I can to your email below. Firstly, 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 regard to my responsibility in Planning Enforcement I can only follow the planning laws and any actions I can take must comply with Planning Laws. Separately, my colleague in Environment – Gerry Forde - is also taking action on this matter through appropriate environmental legislation.

As you know, Wexford County Council issued a Planning Enforcement Notice on this site on the 6th November (copy attached). This notice was issued following several inspections by the Planning Enforcement team and after much consideration by the Planning Team here in Wexford County Council. In considering what enforcement action to take on this matter, we concluded to focus on the main issue of unauthorised development which are of major concern to the Planning Authority. As you point out in your email below there are other issues such development distance from road, shed heights and sizes, and other conditions from PP20081365 which we considered either of less significance or possibly statute barred.

Let me address the issue of the Section 5 – Exempt Development Application EXD00824 - Whilst technically a change of use from class 6 to 7 would require planning permission, the planning permissions granted on the subject site did not limit the agricultural use specifically to Class 6. Therefore in this instance planning permission for a change of use is not required and the use of the sheds for rearing pigs is in accordance with the permissions granted.

With regard to the solar panels we have checked the regulations again and its 50% of the total roof area within the overall agricultural holding so currently the site does not meet the limitations and are exempt in this case.

In relation to additional silo's these may require planning but it would be difficult to prove that they hadn't replaced existing silo's that were authorised based on the info we have on file. It is something we can certainly keep an eye on going forward as we can use the more recent inspections as reference points.

Regarding EIA we considered the various thresholds for pig farms and based on the information we have available to us, the piggery at Killugger is not meeting those thresholds at the moment (there were less than 2000 pigs on site at the most recent count). There have been two inspections on this site in the current year, and in both cases the count of pigs on site was less than 2,000 pigs.

The Enforcement Notice issued on the 6th November has a six week response period so we await a response from Premier Pigs Limited in this regard. All development within the relevant site would be considered in the event that a planning application is submitted to resolve the specific unauthorised development.

I understand you may not agree with our considerations nor our actions on this matter, but let me assure you we are doing all we can to take planning enforcement on this site within the confines of planning law.

Sincerely

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

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From: Kevin Bail [mailto:kevinkathybail@gmail.com]

Sent: 15 November 2020 12:21

To: Tom Banville

Cc: heritage@antaisce.org; alice108@eircom.net; Tom; jaimie-leigh.bail@outlook.ie; Jim Codd MCC; Jim Moore MCC; Ger Carthy MCC; marian.boggan@gmail.com

Subject: Unauthorised Development Killugger, Killinick - Planning Ref Number EXD00824

FAO: Tom Banville

Re: Unauthorised Development Killugger, Killinick Wexford Y35 P3K2

Planning Ref Number EXD00824 and Reg of Executive Orders P0887/20

Tom,

We collectively as a group request a response from Wexford County Council as to why our Planning Enforcement forms in response to EXD00824 and P0887/20 have not been acted upon.

Further to the outcome of planning reference EXD00824 confirming that the pig operation at Killugger, Killinick Co. Wexford Y3SP3K2 has **no planning permission** to operate in its current capacity to operate as a pig operation as it does not have the relevant permissions in respect of change of use class 6 to class 7.

In addition to having **no planning for change of use from cattle to pigs** and therefore not having permission for current level of operations and works, there are many other planning issues associated with this operation including;

- Less than 100m from the main Rosslare road
- Exceeds 8m in height
- Shed size far exceeds the 1012 square meters per original planning permission of the cattle shed in 2008 ref:20081365 and is 1708 square meters. Furthermore, it was noted in the planners report that the "shed is very large at 1012sq.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.
- Other 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".
- Following a council inspection in January 2020, there were more than 2100 pigs present on that day.
 - Traffic has increased significantly with significant increase in desludging activity associated with commercial scale piggery and we reported an accident to council with slurry tank (never occurred previously with cattle farm operation).
 - Ballykelly/Killugger/Ballyfinogue is a heavy residential area with 40-50 houses within 1km radius of this commercial pig operation, by no means a rural agricultural setting. In addition, there are several small local businesses based in the locality also impacted.
 - Also noted there is no planning permission for the modifications to the cattle shed being the extractor fans to take the gasses and smells out of the shed and release them into the air onto the residents.
 - Further note is the fact they have covered both sides of another shed with solar panels and planning is required if more than 50% of the roof is covered with the panels.
 - Also, they keep adding silos on site, also without planning.

EIA Assessment

This has had a significant impact in a residential area. In addition to the size of the commercial scale property, the fact the shed is 0.43 acres in size and on the day of an inspection there was more than 2000 pigs on site, Wexford county Council should as their duty put the people of the locality first and conduct an environmental impact assessment and not the interests of a commercial pig operator first who has a number of registered companies. Part 10 (Art 92) of the planning and development regulations 2001 allows for a sub threshold where it is determined that it is "likely to have significant effects on the environment". Also, as previously communicated to Wexford County Council there are 2 other pig farms also in the area within 3km and we occasionally get the smell from one of the farms. The stench from the Killugger farm is far worse than the others and far more frequent (daily). The smell from Killugger is absolutely horrendous and not a normal slurry smell. It seems to have chemicals/acid mixed in with it. Likely to be feeding the pigs with pot ales which would explain both the significant increase in the number of flies in the area and strange smell.

We would greatly appreciate it if all recipients of this e-mail were kept in copy on future correspondence regarding the above.

Awaiting your reply.

Kevin, Kathy, Tom, Marian, Alice, Jaimie-Leigh

Tá an t-eolas sa ríomhphost seo agus in aon chomhad a ghabhann leis rúnda agus ceaptha le haghaidh úsáide an té nó an aonair in ar seoladh chuige iad agus na húsáide sin amháin. Is tuairim níos dearctha an dair amháin aon tuairim níos dearctha ann, agus níos gurb ionann iad agus tuairim níos dearctha Comhairle Contae Loch Garman. Mí bhfuair tús an ríomhphost seo tríd, ar mhíste leat sin a chur in iúl don seoltóir níos le customerservice@wexfordcoco.ie. Scanann Comhairle Contae Loch Garman ríomhphoist agus ceangaltóir le haghaidh vreas, ach níos ríontaonn sé go bhfuil ceachtar d'obh saor vreas agus níos glacann dliteanas ar bith as aon damáiste de dhroim vreas.

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Tá an t-eolas sa ríomhphost seo agus in aon chomhad a ghabhann leis rúnda agus ceaptha le haghaidh úsáide an té nó an

18/09/2021, 20:46

Mail - Jaimie-Leigh Bail - Outlook

aonáin ar seoladh chuige iad agus na húsáide sin amháin. Is tuairimí nó dearcthaí an údair amháin aon tuairimí nó dearcthaí ann, agus ní gá gurb ionann iad agus tuairimí nó dearcthaí Comhairle Contae Loch Garman. Má bhfuair tú an ríomhphost seo trí earráid, ar mhiste leat é sin a chur in iúl don seoltóir nó le customerservice@wexfordcoco.ie. Scanann Comhairle Contae Loch Garman ríomhphoist agus ceangaltáin le haghaidh víreas, ach ní ráthaíonn sé go bhfuil ceachtar díobh saor ó víreas agus ní glacann dliteanas ar bith as aon damáiste de dhroim víreas.

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Date: Mon, Mar 8, 2021 at 4:20 PM

Subject: RE: Subject: Unauthorised Development Killugger, Killinick

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

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

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---

W

- (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 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.



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

10.9.20
Planning Ref. No.: EXD00824

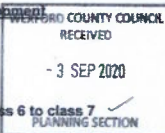
Planning and Development Act 2000 (as amended)

**Application for Declaration of Exempted Development
(Part 1, Section 5)**

Register No.: EXD00824

Proposal: Agricultural shed - change of use from class 6 to class 7 ✓

Location: Killugger Farm, Killugger, Killinick, Co. Wexford, Y35 P3K2 ✓



Location of application site



Aerial View of farmyard complex

Site Location and Description:

Existing farmyard complex located off the N25 at Killugger, about 2.4km northwest of Killinick. The farmyard is surrounded by agricultural land, and is known to be in use as a pig-rearing facility in recent times. The eastern-most shed is set back about 90m from the N25, while the western-most shed is about 160m from the R739 Kilmore road. The nearest residential property (excluding the dwelling associated with the site) is located about 130m northeast of the application site. ✓

Site History:

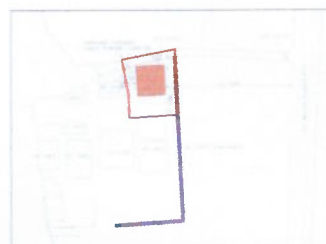
20100598 - PAULA STAFFORD - CONSTRUCT AN AGRICULTURAL SHED AND ASSOCIATED SITE WORKS

Decision (Grant / Refuse) - Granted subject to conditions

Commenced? - Yes ✓

Contributions paid? - Yes ✓

Planning Ref. No.: EXD00824



Site layout as per 20100598

20081365 - GERRARD & PHILIP STAFFORD - CONSTRUCTION OF A NEW AGRICULTURAL SHED AND ANCILLARY SITE WORKS.

Decision (Grant / Refuse) - Granted subject to conditions

Commenced? - Yes

Contributions paid? - Yes (refunded as nitrates compliant)



Site layout as per 20081365

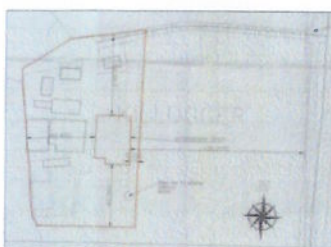
20032095 - GERARD & PHILIP STAFFORD - ERECTION OF AN AGRICULTURAL SHED

Decision (Grant / Refuse) - Granted subject to conditions

Commenced? - Yes

Contributions paid? - n/a

Planning Ref. No.: EXD00824



Site layout as per 20032095

Development in Question:

This proposal is a request for a declaration under Section 5 of the Planning and Development Act, 2000 (as amended) to determine whether or not the change of use from Class 6 to Class 7 of the 'Exempted Development Regulations - Rural' constitutes exempted development.

Legislative Context

The proposal will be assessed within the provisions of:

- Sections 3 and 4 of the Planning and Development Act 2000 (as amended);
- Articles 6 and 9 of the Planning and Development Regulations 2001 (as amended) and
- Schedule 2, Part 3 Class 6 and Class 7 of the Planning and Development Regulations 2001 (as amended).

"Section 3(1) of the Planning and Development Act, 2000 (as amended) defines 'development' as meaning, except where the context otherwise requires, 'the carrying out of any works on, in, over or under land or the making of any material change in the use of any structure or other land'."

It is considered having regard to the above definition that the proposal constitutes 'works' and 'development' within the meaning of the Act.

Class 6 of Part 3 of Schedule 2 relates to the following development:

Planning Ref. No.: EXD00824

"Works consisting of the provision of a roofed structure for the housing of cattle, sheep, goats, donkeys, horses, deer or rabbits, having a gross floor space not exceeding 200 square metres (whether or not by extension of an existing structure), and any ancillary provision for effluent storage."

There are a number of conditions and limitations attached to this exemption:

1. No such structure shall be used for any purpose other than the purpose of agriculture.
2. The gross floor space of such structures together with any other such structures situated within the same farmyard complex or within 100 metres of that complex shall not exceed 300 square metres gross floor space in aggregate.
3. Effluent storage facilities adequate to serve the structure having regard to its size, use and location shall be constructed in line with Department of Agriculture, Food and Rural Development and Department of the Environment and Local Government requirements and shall have regard to the need to avoid water pollution.
4. No such structure shall be situated, and no effluent from such structure shall be stored, within 10 metres of any public road.
5. No such structure within 100 metres of any public road shall exceed 8 metres in height.
6. No such structure shall be situated, and no effluent from such structure shall be stored, within 100 metres of any house (other than the house of the person providing the structure) or other residential building or school, hospital, church or building used for public assembly, save with the consent in writing of the owner and as may be appropriate, the occupier of person in charge thereof.
7. No unpainted metal sheeting shall be used for roofing or on the external finish of the structure.

Class 7 of Part 3 of Schedule 2 relates to the following development:

"Works consisting of the provision of a roofed structure for the housing of pigs, mink or poultry, having a gross floor space not exceeding 75 square metres (whether or not by extension of an existing structure), and any ancillary provision for effluent storage."

There are a number of conditions and limitations attached to this exemption:

1. No such structure shall be used for any purpose other than the purpose of agriculture.

2. The gross floor space of such structure together with any other such structures situated within the same farmyard complex or within 100 metres of that complex shall not exceed 100 square metres gross floor space in aggregate.
3. Effluent storage facilities adequate to serve the structure having regard to its size, use and location shall be constructed in line with Department of Agriculture, Food and Rural Development and Department of the Environment and Local Government requirements and shall have regard to the need to avoid water pollution.
4. No such structure shall be situated, and no effluent from such structure shall be stored, within 10 metres of any public road.
5. No such structure within 100 metres of any public road shall exceed 8 metres in height.
6. No such structure shall be situated, and no effluent from such structure shall be stored, within 100 metres of any house (other than the house of the person providing the structure) or other residential building or school, hospital, church or building used for public assembly, save with the consent in writing of the owner and, as may be appropriate, the occupier or person in charge thereof.
7. No unpainted metal sheeting shall be used for roofing or on the external finish of the structure.
8. Boundary fencing on any mink holding must be escape-proof for mink.

Assessment

The existing farmyard complex contains a number of agricultural sheds, three of which were permitted for development within the last 20 years (2003, 2008 and 2010 – see 'Site History' above). The floor area alone of the three sheds most recently permitted exceeds 2,491 sq.m. and the ridge heights of these three sheds all exceed 10.6m (the highest being 12.4m). Based on the conditions and limitations of both Class 6 and Class 7, a change of use for any of the sheds on this site would require planning permission, as the floor area exceeds 100 sq.m. and the height exceeds 8.0m where the sheds are within 100m of a public road (N25 to the east).

Moreover, the sheds on site are known locally to be used for pig rearing / finishing, and where the sheds were previously used for the housing of cattle, as per Class 6, the change of use to housing of pigs, as per Class 7, is not exempted development, and such a change of use requires planning permission.

This is especially so where pig farming is concerned, as such development is required to be screened for Environmental Impact Assessment (Part 1 of Schedule 5, article 17).

Overall having regard to the details concerning the referral it is considered that the development consisting of a change of use from Class 6 to Class 7 of the 'Exempted Development Regulations – Rural' is development and is not exempted development, as the aggregate floor area exceeds 100 sq.m. and ridge height exceeds 8.0m where the structures are within 100m of a public road.

Conclusion:

It is considered therefore that the change of use from Class 6 to Class 7 of the 'Exempted Development Regulations – Rural' constitutes development and is not exempted development having regard to the nature of agricultural practice on site, the gross floor space and heights of the existing structures on site.

Recommendation: Not Exempt

Having regard to the foregoing, it be decided that the change of use from Class 6 to Class 7 of the 'Exempted Development Regulations – Rural' is development and is not exempted development.

A draft order is set out below.

WHEREAS a question has arisen as to whether the change of use from Class 6 to Class 7 of the 'Exempted Development Regulations – Rural' constitutes development and is not exempt;

AND WHEREAS Wexford County Council, in considering this referral, had regard particularly to –

- Sections 3 and 4 of the Planning and Development Act 2000 (as amended);
- Articles 6 and 9 of the Planning and Development Regulations 2001 (as amended); and
- Schedule 2, Part 3 Class 6 and Class 7 of the Planning and Development Regulations 2001 (as amended)

Wexford County Council has concluded that the change of use from Class 6 to Class 7 of the 'Exempted Development Regulations – Rural' constitutes development and is not exempted development.

Planning Ref. No.: EXD00624

NOW THEREFORE Wexford County Council, in exercise of the powers conferred on it by section 5(2)(a) of the Planning and Development Act 2000 (as amended), hereby decides that the change of use from Class 6 to Class 7 of the 'Exempted Development Regulations - Rural' is development and is not exempted development. ✓

Abigail Nuzum
Abigail Nuzum
A/Assistant Planner

Date: 02 September 2020

James Lavin
James Lavin
Senior Executive Planner

Date: 03/09/2020

DL