

Alice Clarke
Ballyboher
Tomhaggard
Co Wexford
Y35X5Y6

An Bord Pleanála
64 Marlborough Street
Dublin 1
D01 V902

14/10/2021

AN BORD PLEANÁLA	
LDG-	_____
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26 OCT 2021	
Fee: €	_____ Type: _____
Time: <u>9:15</u>	By: <u>Reg Post</u>

Your ref: ABP-311366-21
Planning Authority ref:20081365

Dear Mr. Kelleedy,

Thank you for your letter dated 6/10/21, I wish to make the following submission.

RE: Planning Reg. No. EXD00824

Executive Order No P.0887/20

In response to a Section 5 application under the Planning and Development Act, 2000 as amended Wexford County Council confirmed that this development is NOT an exempted development under the Act.

A planner's report on the development was completed by Abigail Nuzum, signed off by James Lavin Senior Executive Planner on 03/09/2020 prior to the clarification that this development is NOT Exempted. Copy attached.

However, despite many letters from myself and local residents, Wexford Co. Council have yet to act on their own decision on this matter and have opted for an enforcement notice for installation of slats and a loading ramp. When the matter was raised at Municipal Council Meetings by local Councillors the planner present could not elaborate on what the Council Planners were doing, declaring there was a court case pending and sub judice

Also, the environmental section was expected to take a court case in response to complaints from local residents about the foul smell, and has been ongoing for some time. The last the residents heard was the case has been deferred to allow the owner to prepare files.

This problem is on going since 2017, when the shed was first used for pig housing, then straw based. Under the Planning and Development 2000 as amended, will the seven-year-exemption rule apply if the planning permission regulations are not enforced by 2024.?

I enclose a copy of an article in the Wexford People Paper, July 2021, a report from the local Councillors meeting, it tells the story. Also enclosed is some correspondence with the Planners.

The legislation introduced under the P and D Act 2000 as amended, is EU Derived and Statute binding for environmental protection, I understand it applies to all pig housing developments.

Compliance is costly, therefore allowing some large commercial entities operate outside the Regulations constitutes allowing them an unfair trading advantage.

Would they not have discussed with the owner the required planning permission for change of use, retention planning and adherence to waste disposals at their preplanning meeting on 21/12/2017 reference PP20170667 which the 12-page document relating to same has been refused under FOI requests by residents. Confirmation of refusal document attached.

Many thanks.

Yours faithfully



Alice Clarke

2021

Both Pig developments

'Unimaginable' smells drive locals around the bend

COUNCILLORS DEMAND QUICKER ACTION OVER PIG FARM ODOURS

By SIMON BOURKE

WITH residents near the piggery in Killuger continuing to endure an 'unimaginable' smell on an almost daily basis, those living near another farm in Taghmon are now reporting similar issues.

Speaking at the monthly meeting of the Rosslare Municipal District, Cathaoirleach Cllr Frank Staples first asked officials for an update on the situation at Killuger.

'The summer is coming and when you hear somebody say they're not looking forward to the summer, then you know how bad it is,' he said of a problem which has affected residents for the best part of four years now.

'We speak about people's mental health, but this is absolutely driving them round the bend here. I was there last summer myself and the smell is unimaginable. And I can just see this

running on and on and on.'

Asking whether a change in feed was responsible for the smell and whether Wexford County Council (WCC) had investigated that, Cllr Staples said he feared the issue would not be resolved this year despite two court proceedings being instigated against the farm's owner.

However, because of those proceedings Executive Planner Liam Bowe would not be drawn on the issue for fear of prejudicing either case.

Cllr Lisa McDonald has been campaigning for penalties to be put in place on the farm in Killuger since it first became an issue, and she criticised WCC for taking an overly 'conservative response' towards it.

'The legal proceedings in place are in relation to air pollution and a ramp and slats. They are not adequate, it's a limited, conservative response to something which is becoming a menace,' she said.

Yet, while WCC awaits the results of those actions, a further issue has arisen in the Taghmon area where another piggery is causing problems for locals.

'There's 20 houses out here on the Ballynagale Road, where the smell is seeping into the houses, even with the windows closed,' said Cllr Jim Codd. 'People tell me they can smell it from two kilometres away.

This farm was changed from a dairy to a pig farm - was there an application made for the change of use? And are WCC aware of the proximity of this particular pig farm to a river?

'It's nearly two years since I first heard about the pig farm in Killuger. And I, for one, am not going to be accepting a similar pace of progress in relation to the farm out here in Ballynagale.'

Cllr McDonald had also been contacted by concerned residents in Ballynagale.

'I've had the people from Ballynagale onto me over the weekend too and they've endured horrific smells,' she said. 'There was slurry spread around the land by the river, which could also have polluted the river; what in the name of God are we doing, sitting back and not reacting to this?'

'This is commercialised farming, it's buying up dairy farms and turning them into industrial use, I said it at a meeting several years ago that this is an intensification of use we need to grow a pair, literally take this on. We are planning enforcement authority in the county and we need seen as such.'

Mr Bowe said a letter had been sent to the farmer in Ballynagale and that they had months to respond.

Sept 2020

Councillors kick up stink over pig farm

and I think we need to look at it. And the Fianna Fáil council-
lor said some people were being discouraged from registering for houses in their local areas.
‘I know there’s houses in Rosslare and Taghmon in the pipeline but I’m talking about now, about the policy of saying to people “don’t put your name

services and infrastructure.”
‘I understand that,’ replied Cllr McDonald, ‘but that’s why it needs to be brought to a higher level, you can’t just keep saying “oh there’s no service, no chicken and no egg”. We’ll end up with nothing, we have to highlight it as a problem and

Mr Forde suggested those affected by the issue could help strengthen the council’s case by providing public testimony of their experiences, saying judges were more likely to be swayed by residents than a local authority.
‘We can bring this before the judge but it’s a stronger case if local residents come in and give their testimony. The judge tends to listen to the local people more than the officials because they’re the people living with the problem.’
However, Fianna Fáil Councillor Lisa McDonald felt the onus should not be placed on members of the public when it came to resolving this issue.
‘I don’t think it’s fair to say to a neighbour to come in and give evidence against another person, we should be able to deal with this without resorting to that,’ she said.
Reminding Mr Forde that he had come to him about this issue nine months ago, Fine Gael Councillor Frank Staples said he personally knew some of those living in the area and they were dealing with a ‘horrendous’ odour on a daily basis.
‘There’s one man in particular, quite close to it and he has young children, it’s horrendous. I don’t know how he’s living

THIS month’s meeting of the Rosslare Municipal District took place in the Taghmon Action Group (TAG) Community Centre as Cathaoirleach Ger Carthy continued his efforts to engage with all those within the constituency.
And one of the most pressing concerns for Cllr Carthy and his colleagues was the pungent odour emanating from a piggery in Ballykelly on the N25.

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

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

‘If it can’t be resolved we might have to take action under the Air Pollution Act. The operator himself does accept there is a problem there. There are a lot of houses quite close to it.’

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

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

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

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

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

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

Council's

and it's holding up schemes, 'We can't get expansion in villages or increased capacity, if you're not on the Irish Water infrastructure plan it's bye-bye to that village.'

It's fairly straightforward, said the councillor.

WEXFORD County Council is of its budget dealing with Cllr Jim Moore.

Having received a report almost half of the chimney fire in January 2017 and December 2019 Moore said, 'We have an issue going back five years, when the amount of remedial work and associated costs actual and deprived our budget in other areas.'

Pointing out that this money could be used to upgrade footpaths and lighting schemes throughout the county, Cllr Moore asked Executive Planning Liam Bowe for an update on the issue.

'Chimney maintenance is a huge problem,' admitted Bowe. 'The cost on average is €6,500 to repair a chimney. And we do between 30-40 a year. We do lots of other measures instead of new heating system costs between €4,000 and €5,000. Asked by Cllr Moore if it was getting smaller or bigger, Bowe said, 'Once we find a way to sort it out.'

After the meeting Cllr Moore said, 'We need to show there were 205 pigs in 2017 and 2019. We need to show we also need to ensure everyone has a role to play with chimney fire.'

123	08/07/2019	Email	3	Part grant	S35 (1) (a) Confidential
124	19/06/2019	Letter	2	Part grant	
125	19/06/2019	Letter	2	Part grant	
126	17/06/2019	Memo	1	Part grant	
127	07/05/2019	Memo	1	Part grant	
128	03/05/2019	Company search	1	Grant	
129	29/03/2019	Letter	1	Part grant	
130	27/03/2019	Complaint form	2	Part grant	
131	05/03/2019	Letter	1	Part grant	
132	28/02/2019	Photographs of shed with pigs	1	Part grant	
133	28/02/2019	Memo	1	Grant	
134	25/02/2019	Letter	1	Part grant	
135	22/02/2019	Letter	1	Grant	
136	04/02/2019	Complaint form	2	Part grant	
137	21/12/2017	Pre Planning Meeting - PP20170667	12	Refuse	

138	03/09/2010	Grant of Planning Permission 20100598	2	Grant
139	22/08/2008	Grant of Planning Permission 20081365	2	Grant
140	19/09/2003	Grant of Planning Permission 20032095	3	Grant

Planning enforcement case 0090/2017

141	04/10/2017	Letter	1	Part grant
142	22/11/2017	Letter	1	Part grant
143	21/11/2017	Letter	1	Part grant
144	22/11/2017	Letter	1	Part grant
145	09/11/2017	Enforcement Report to close file	1	Part grant
146	01/11/2017	Internal Memo	1	Part grant
147	27/10/2017	Inspector's Report	11	Grant
148	26/09/2017	Internal Memo	1	Grant
149	26/09/2017	Internal Memo	1	Grant
150	26/09/2017	Internal Memo	1	Grant
151	26/09/2017	Letter	2	Part grant

Residents must 'sit in the s***' for two more months

LACK OF ACTION ON PIG FARM SEES ONE LOCAL RESIDENT MOVE AWAY

BY SIMON BOURKE



The pig farm in Killuger.

A homeowner situated near the pig farm in Killuger has been forced to move away because of the smell emanating from the farm.

The farm, which has been issued with a planning enforcement notice by Wexford County Council (WCC), has been the source of much debate in the monthly meetings of the Rosslare Municipal District (RMD), and in July's meeting Councillor Frank Staples revealed one person had given up on anything ever happening in this ongoing case.

'Is there anything significant about the problem in Killuger?' Cllr Staples asked Liam Bowe of WCC's Planning Department. 'One lady has moved away, she won't live there anymore, and the husband is not too far behind her. It's horrendous, I don't know how people are able to live there.'

Mindful that legal proceedings were in place, Mr Bowe wouldn't be drawn on the issue but confirmed that WCC was getting 'set up' for a legal case to ensure 'all will be in order and it can't be contested'.

However, with councillors not due to meet again until September, Councillor Ger Carthy feared this would lead to the issue being kicked yet further down the road.

'It's not good enough, this is cold comfort to the people living

there in that stink. Where's the action on this? We're going to have to wait another two months now because we're not going to meet until September. Now the people in that area are going to have to, excuse the pun, sit in the shit for the next two months,' he said.

Meanwhile, having only recently asked for a breakdown of the numbers of staff in WCC's Housing Department, Cllr Carthy felt compelled to ask for a similar report on those in its planning section. With cases taking months, and even years, to get resolved, the independent councillor asked Mr Bowe whether there were enough staff in his department to deal with the volume of queries.

'I reported a planning enforcement issue a couple of weeks ago and I was informed there were 400 cases being dealt with,' Cllr Carthy said. 'Staffing in that department seems to be a big issue. I don't believe we're serious about planning enforcement and I don't believe the department is staffed appropriately.'

'And there's chaos in the rural areas because people are doing exactly what they want to do, they're moving in mobiles, caravans, they can build what they like, a shed, walls, connect to Irish Water, but don't worry if you're in breach of planning

enforcement. Unfortunately I'm going to have to ask for a report on the staffing levels of the Planning Department and the active cases they have at the moment.'

'Staffing is always an issue,' admitted Mr Bowe. 'Up to a year ago there was no planner in our Planning Enforcement section.' 'That's handy,' replied Cllr Carthy.

'But there has since been one appointed and she is exceptionally busy,' continued Mr Bowe. 'There has been a significant increase in the reporting of cases since the pandemic. Because of staffing levels certain things have to be prioritised and we just can't reach everything. I'll get a breakdown of staffing levels and active cases for you.'

With such a backlog of active cases and seemingly not enough members of staff to deal with them, Councillor Lisa McDonald said it came as no surprise that people were snubbing the local authority.

'We need more staff across the board to deal with enforcement, when it comes to things like Killuger we're at sea,' she said. 'And we, as councillors, are the point of contact on the ground for people who are disgruntled because they feel their rights are being trodden on. It's not easy when you can't give the answers. Our planning enforcement laws are not very much respected.'

REGISTER OF EXECUTIVE ORDERS

PLANNING AND DEVELOPMENT ACT 2000 (as amended)

PLANNING REGISTER NO: EXD00824

ORDER NO: P-0887/20

ORDER: In exercise of the powers, functions and duties vested in the Chief Executive of Wexford County Council by Section 149 of the Local Government Act, 2001 (as amended), which were on the 12th August, 2020, delegated to me by the Chief Executive of Wexford County Council pursuant to Section 154 of the Local Government Act, 2001 (as amended), it is hereby ordered that the decision of the Wexford County Council on the application described in the Schedule to this Order is as shown therein, and that the appropriate notifications be issued pursuant to Section 5 of the Planning & Development Act 2000 (as amended).

Signed by me at the County Hall, Wexford, on **4 September 2020**

DIARMUID HOUSTON

DIRECTOR OF SERVICE (ACTING)

DECLARATION OF EXEMPTED DEVELOPMENT

SCHEDULE

REGISTER NUMBER.: EXD00824

DATE OF APPLICATION: 14 August 2020

APPLICANT: Alice Clarke

PROPOSED DEVELOPMENT: Agricultural shed - change of use from class 6 to class 7

LOCATION: Killugger Farm, Killugger, Killinick, Co. Wexford, Y35 P3K2

DECISION: Not Exempt

DATE OF DECISION: 4 September 2020

END OF SCHEDULE

Planning Ref. No.: EXD00824

Planning and Development Act 2000 (as amended)

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

WEXFORD COUNTY COUNCIL
RECEIVED

- 3 SEP 2020

Register No.: EXD00824

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

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. ✓

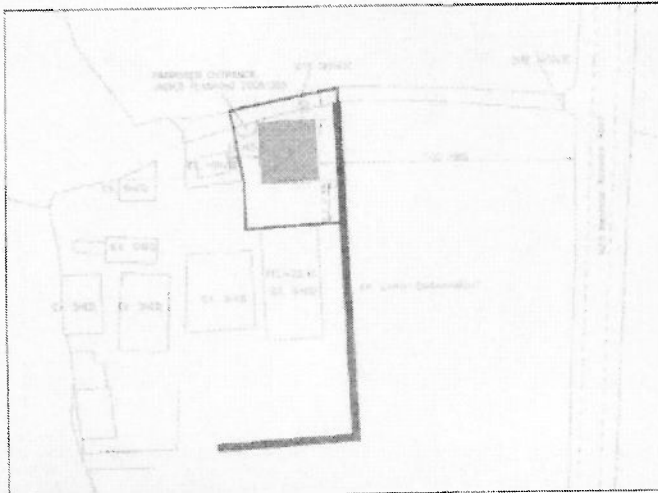
Site History:

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

Decision (Grant / Refuse) – Granted subject to conditions

Commenced? – Yes

Contributions paid? - Yes ✓



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)



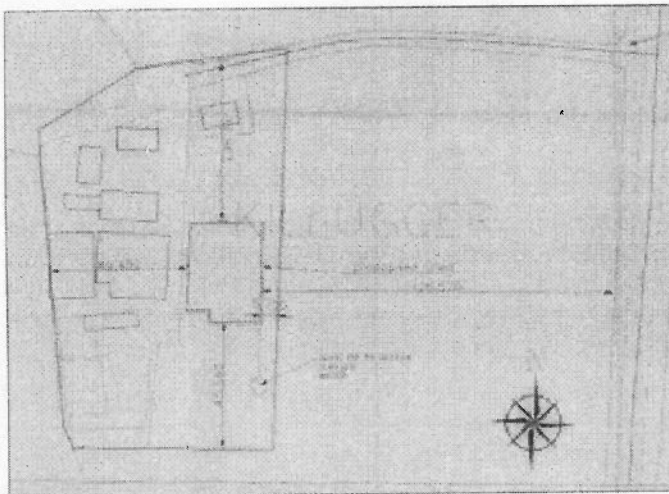
Site layout as per 20081365

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

Decision (Grant / Refuse) – Granted subject to conditions

Commenced? – Yes

Contributions paid? – n/a



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:

"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. ✓

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

DA

Ballyboher

Tomhaggard

Co Wexford

09/09/2020

For the attention of: Mr Peadar McDonald and Mr. Tom Banville.

Dear Sirs,

Ref: DECLARATION OF EXEMPTED DEVELOPMENT SCHEDULE

REG. NO EX00824 04/09/2020

LOCATION; KILLUGGER FARM, KILLINICK, CO WEXFORD Y35P3K2

DECISION: NOT EXEMPT

With reference to the above-mentioned development clarity is now available, sanctioned by Wexford County Council Planning Officers that planning permission is required for this development.

As you are aware this commercial pig unit is a matter of controversy dating back to 2017, when change of usage occurred, from Class 6 agriculture cattle shed, to Class 7, pig shed.

An article in The People newspaper states 25/02/2020 "Wexford County Council admits it is restricted in the action it can take". Copy of article attached for you convience.

Why were the Planning Regulations never enforced?

I now request Wexford County Council to issue the owners with Enforcement Orders, to apply for Planning Permission, as is required and stated in your Planners report, reference Page 6 & 7 of Planning reference no. EXD00824 signed by Senior Executive Planner James Lavin

Yours faithfully

Alice Clarke

cc An Taisce