

VINCENT JP FARRY AND CO LTD

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20 December 2018

The Secretary
An Bord Pleanála
64 Marlborough Street
Dublin 1

**DEVELOPMENT AT MYLERSTOWN, TWO MILE HOUSE, NAAS, CO. KILDARE
SECTION 5 OF THE PLANNING AND DEVELOPMENT ACT, 2000 AS AMENDED
KILDARE COUNTY COUNCIL REGISTER REFERENCE NUMBER ED/00692**

Dear Sir

We refer to the above and we take this opportunity to confirm that we act for Mr. Ulric (Ollie) Barry of 'Murraville House', Mylerstown, Two Mile House, Naas, Co. Kildare on this particular occasion.

We hereby lodge a referral pursuant to s.5(3)(b) of the Planning and Development Act, 2000 in relation to a development on this land, the details of which are set out hereunder and we respectfully invite An Bord Pleanála to confirm that the works which have been undertaken on this site require permission.

The details of this case, which were presented to Kildare County Council under cover letter dated 1 November 2018 are as outlined in the attached document. The Planning Authority did not determine the matter within the statutory period and we take this opportunity to ask the Board to decide the case.

Yours faithfully



Vincent JP Farry and Co Ltd

AN BORD PLEANÁLA	
LDG- _____	03
ABP- _____	
28 DEC 2018	
Fee: € 220.00	Type: CAEQUE
Time: 10:10	By: Post

Comhairle Contae Chill Dara
Kildare County Council



08/11/2018

Our Ref: ED/00692

Mr Vincent Farry
Vincent JP Farry & Co Ltd
Suite 180, 28 South Frederick Street
Dublin 2

**RE: Application for a Declaration of Exempted Development under Section 5:
Murrayville House, Mylerstown, Two Mile House, Naas, Co Kildare.**

Dear Mr Farry

I refer to your correspondence received 07 November 2018 in connection with the above. Your application is now being considered and we will revert in due course.

Please find attached receipt no FIN1/0/413003 in respect of the €80 fee, received with thanks.

Yours sincerely


**Senior Executive Officer
Planning Department**

VINCENT JP FARRY AND CO LTD

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1 November 2018

Senior Executive Officer
Planning Department
Kildare County Council
Aras Chill Dara
Naas

DEVELOPMENT AT MYLERSTOWN, TWO MILE HOUSE, NAAS, CO. KILDARE SECTION 5 OF THE PLANNING AND DEVELOPMENT ACT, 2000 AS AMENDED

Dear Sir

We refer to the above and we take this opportunity to confirm that we act for Mr. Ulric (Ollie) Barry of 'Murraville House', Mylerstown, Two Mile House, Naas, Co. Kildare on this particular occasion.

We hereby lodge a referral pursuant to s.5 of the Planning and Development Act, 2000 in relation to a development on this land, the details of which are set out hereunder and we respectfully invite Kildare County Council, as the statutorily-charged planning authority for the area in which the subject is land is located to confirm that the works which have been undertaken on this site require permission.

1. Introduction

This town planning submission has been drafted on behalf of the owner of a house at Mylerstown, Two Mile House, Naas, Co. Kildare and has been prepared for lodgement with Kildare County Council in the context of a referral under section 5 of the Planning and Development Act, 2000 (as amended). This report seeks to show that certain works which have been undertaken on land which abuts the referrer's home comprise development and, as there are no statutory or regulatory provisions which have the effect of exempting such operations, this development requires planning permission.

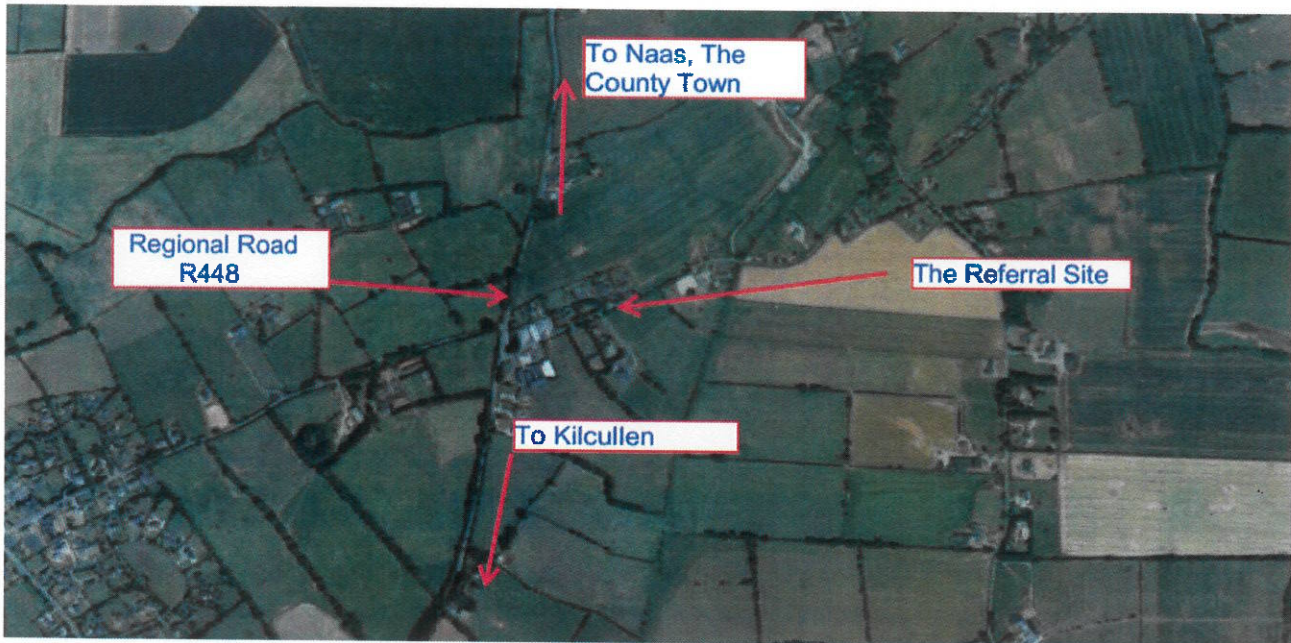
Specifically, we hereby pose the following referral question for the County Council's consideration:

'whether the formation of a vehicular entrance from an agricultural tract of land onto Local Road L2023, within the townland of Mylerstown, Two Mile House, Naas, Co. Kildare and the installation of a gate structure on or near the front boundary of this land, comprises development or constitutes exempted development'.

As the Planning Authority will be aware, Mr. Barry previously lodged an enforcement-related complaint with the Council in which he suggested that the subject feature comprises unauthorised development. We emphasise the fact that, although this present correspondence concerns the same subject matter as his previous letters, we are not asking the Planning Authority to decide whether the access and entrance feature outlined above is lawful or not, merely whether it comprises development and if so, whether such development is covered by an exemption provision in planning law. As a result, we invite the Council to overlook issues relating to the lawfulness of this entrance and gateway and to focus its attention solely on whether permission is required for the subject structure and access.

2. The Site and Its Environs

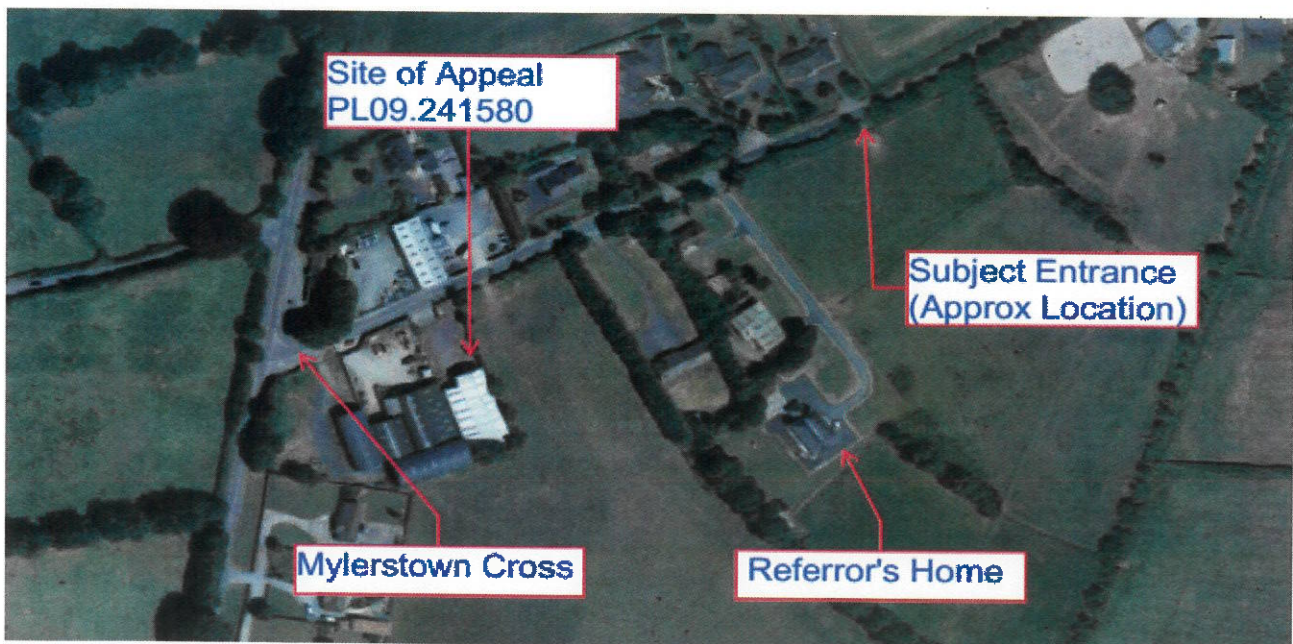
The land to which this referral relates is located to the south of the intersection of Local Road L-2023 with regional Road R448 which links Naas with Kilcullen, with this junction being known as 'Mylerstown Cross Roads'. The vicinity of the subject site is illustrated in aerial image no. 1 below.



Aerial Image 1: The site fronts onto Local Road L-2023, near Mylerstown Cross Roads.

We note how An Bord Pleanála previously overturned the Council's decision to refuse permission for a change of use proposal in an existing factory to the west of the referral site under appeal ref. PL09.241580 (reg. 12/880), in which the Report of the Inspector described this general area as follows:

"The site is located in a rural area to the south of Naas just off the old Naas-Kilcullen Road which is now Regional Road R448. Mylerstown Crossroads is a well known junction, and the subject site is 50 metres east of the crossroads. There are a number of industrial buildings at this location, the subject site a timber yard, the adjoining Christies Architectural Salvage yard and on the opposite side of the road is Hennessey's breakdown service yard".



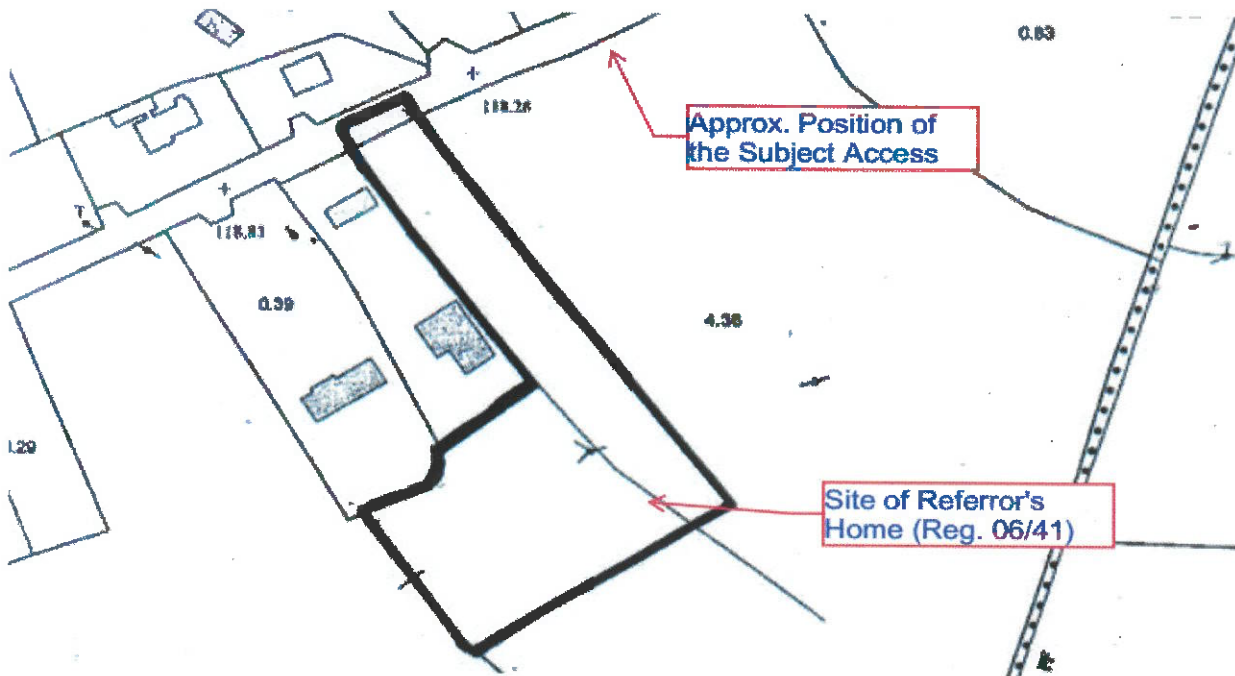
Aerial Image 2: The subject site abuts the referror's permanent home since about 2006.

3. Select Planning History

The referral site itself has no relevant planning history. It abuts, however, the site of the referrer's home, on which the Council granted permission under reg. ref. 06/41 for the following development:

'... (a) 5 bedroom 2 storey house (b) double garage with sheds (c) EPA Bison treatment plant and percolation area (d) all associated site development works to include site entrance, roads, services etc at Mylerstown Cross Roads, Two Mile House, Naas, Co. Kildare.'

The juxtaposition of this previous application site with the present referral land is as illustrated below.



Map 1: The subject site is contiguous to the site of planning permission reg. 06/41.

Condition no. 16 of the consent for the referrer's home is reproduced below, for ease of reference:

'Within 3 months from the date of completion of the development the entrance to the existing dwelling on the landholding shall be closed up and replaced with a continuous deciduous hedge interspersed with broad-leaved deciduous trees, at 4 metre centres along the road boundary inside the line of sight identified on the site layout plan'

Reason: In the interest of residential amenity'.

4. Planning Law

Section 4(1)(a) of the Planning and Development Act, 2000 (as amended) is reproduced as follows:

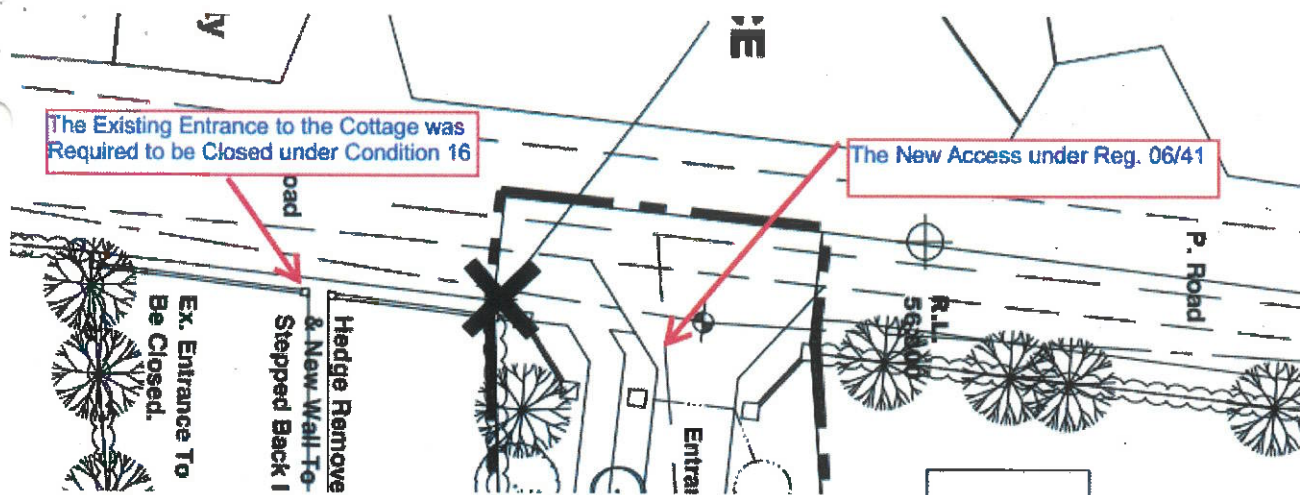
'The following shall be exempted development for the purposes this Act-

- (a) *development consisting of the use of any land for the purpose of agriculture and development consisting of the use for that purpose of any building occupied together with land so used'.*

We invite the Council to accept that works which comply with section 4(1)(h) of the Planning and Development Act, 2000 do not require permission. We reproduce this statutory provision as follows:

'The following shall be exempted development for the purposes of this Act-

- (h) *development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures'*



Map 2: Extract from the site layout drawing which was permitted under reg. 06/41, appended herein to explain the effect of condition 16 thereof, as reproduced above

5. Submission

Although we refer to certain more historical arrangements further below, we make the preliminary observation that the referral site was purchased by Mr. Barry at the same time that he bought the contiguous land, on which the Planning Authority granted permission for his home under reg. 06/41. Moreover, we also confirm that the present referrer owned this contiguous tract for a period of ten years, up to the year 2016, when it was sold to the present landowner. During this time and aside from the fact that Mr. Barry's home, by reason of its orientation, faces towards the subject site, the referrer had direct personal knowledge of this property, including the entrance arrangements thereto.



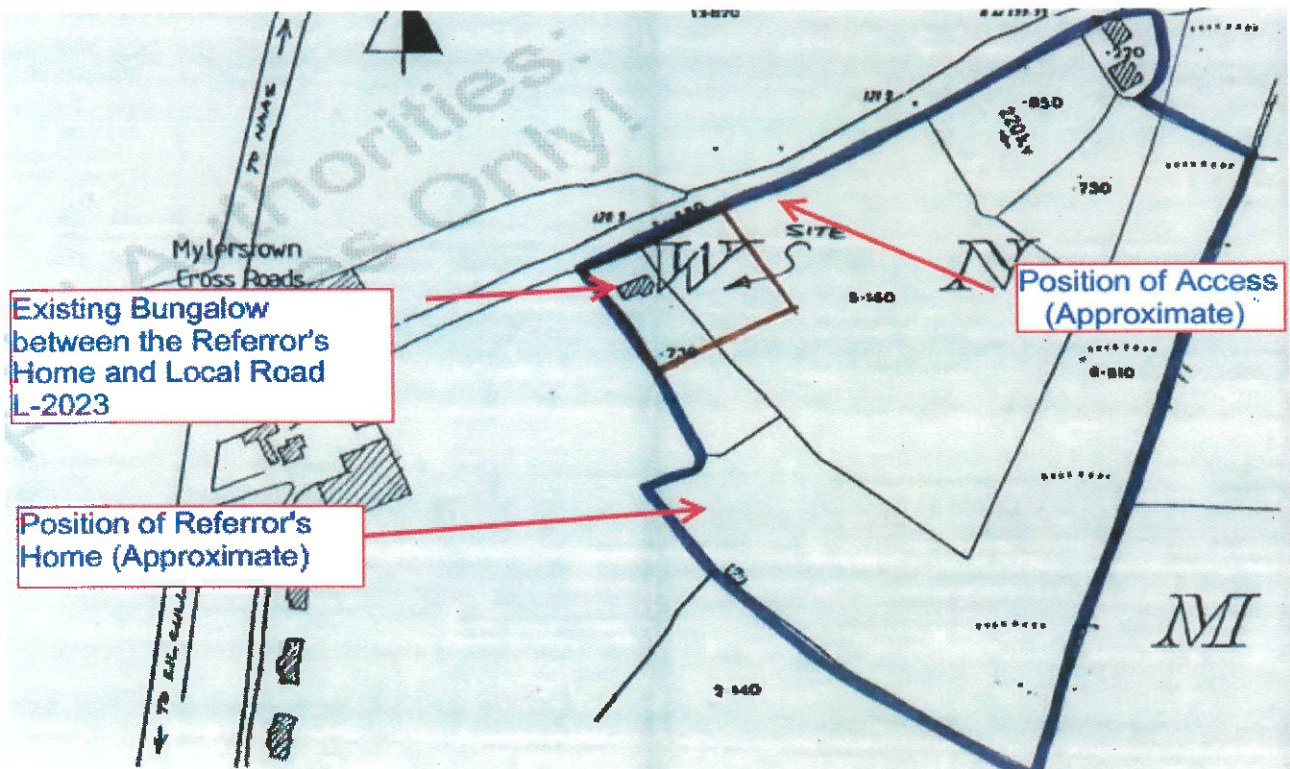
Photograph 1: The gateway which now serves the site beside the referrer's property (note: the referrer's dwelling faces the land which contains the entrance).

Mr. Barry can thus testify, from his own direct knowledge of this area and of this land over a sustained period of ten years, that the tract of land which is located to the immediate east of the driveway which serves his own home was not served by an independent vehicular entrance between the years 2006-2016 and was accessed for the duration of this period through an intra-allotment gate which is located in the agricultural fence which demarcates the western boundary of this tract, as illustrated overleaf.



Photograph 2: The gateway which separates the subject site from the referror's land

Indeed, we note how the former owner of the land on which Mr. Barry's home now stands originally secured consent in the year 2000, under reg. 99/2105, for a development which comprised a '(a) two storey extension to rear of existing bungalow and (b) replacement septic tank with effluent treatment system'. The juxtaposition of this longstanding bungalow with adjacent property, including the land which is to the immediate east of the referror's home, was illustrated on a drawing which was lodged with the Planning Authority at that time and an extract from this plan is reproduced below. Attention is drawn to the fact that the referral site historically formed part of a single allotment with adjacent land and that this ownership arrangement persisted from the turn of the century up to the year 2016.



Map 3: This site formed part of a single tract when application reg. 99/2105 was lodged.

Consistent with Mr. Barry's constant and continuous practice between 2006 – 2016 of using the existing gateway which is located in the intra-allotment boundary fence which is depicted in photograph 2 above and which still separates these adjacent, residential and agricultural sites, there was never any need for this land to have been served by an independent entrance, during his ownership of this property or indeed, prior to his acquisition of this land. As a result, streetview imagery which was recorded by Google in the year 2010 shows a continuous bank of dense natural vegetation along the roadside boundary of the referral site with Local Road L2023, as illustrated in photograph 3 below.



Photograph 3: The referral site, when viewed by Google from Local Road L-2023, in the year 2010.

Although this is a referral submission and not an enforcement complaint, we note how the Council's letter to Mr. Barry of 18 October 2018 states that '*...the entrance...has been in place at its current location since the 1980's*' and in this context, we highlight the fact that the present request seeks to establish, not whether this access and gateway is enforceable, but rather whether it requires consent.

We invite the Planning Authority to conclude that there are three routes by which a structure or a use can be lawful (viz. being established, permitted or exempted), and the fact that this access may have been extant in the 1980's is not a consideration for the purpose of this referral. A development which does not pre-date planning control or which does not have the benefit of a consent or which is not covered by a statutory or regulatory entitlement is unlawful and requires permission. There is no legal provision which renders a development lawful merely because it was in existence in the 1980's.

Indeed, it is well established (*Kildare County Council-v-Goode*), as noted by Garrett Simons in Planning and Development Law that '*the concept of abandonment equally applies to development by way of material change of use, as to development by way of works*'. We do not consider it necessary to reproduce extensive case law on the subject, but we invite the Planning Authority to accept that the key issue when considering whether or not a development has been abandoned comprises the intention of the landowner. In this regard, it is immediately apparent from the referrer's own conduct between 2006 – 2016, specifically in only using the intra-allotment gateway which is illustrated in plate no. 2, that Mr. Barry never used any direct roadside access which may have pre-dated his ownership of the site. He thus abandoned any lawful rights to use any entrance which may have existed in the 1980's.

Although art. 9(1) of the Planning and Development Regulations, 2001 (as amended) envisages the creation of an entrance in certain circumstances, we note how this Council correspondence does not seek to rely on such a provision when dealing with Mr. Barry's initial complaint. Importantly, this provision de-exempts works for the '*formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width*' and as Local Road L-2023 is wider than this stipulated measurement, the entrance is not exempt by reason of this clause.

7. Concluding Comment


It is immediately apparent that the erection of a gate comprises works and that such operations constitute development. It is equally obvious that the creation of an access from a public road of over 4 metres in width comprises a material change in the use of the land. We are unaware of any statutory or regulatory provisions which would render such developments exempt from the need to obtain planning permission. We conclude that permission is thus required for this access and gate.

Yours faithfully



Vincent JP Farry and Co Ltd

LEGEND

REV	DATE	REV BY	DRN BY	DESCRIPTION
REVISIONS:				
 RUAIRI WHELAN CONSULTING ENGINEERS <small>CIVIL, STRUCTURAL, ARCHITECTURAL, PLANNING, PROJECT MANAGEMENT</small> <small>MAIN STREET, PORTLADNATION, CO. LAC</small> <small>Phone: 01 856 81000</small> <small>Email: info@rwae.com</small>				
CLIENT: OLLIE BARRY				
PROJECT: ENTRANCE LOCATION TO SITE AT TWO MILE HOUSE, MYLESTOWN, NAAS SOUTH, CO. KILDARE				
TITLE: SITE LOCATION SHOWING SURVEYED POINTS AND PHOTOGRAPHS				
SCALE:	1:1000	DRAWN BY:	PW	
SHEET SIZE:	A3	CHECKED BY:	RW	
DATE:	23/10/2018	APPROVED BY:	RW	
DWG NO.:	18-025-001			REV: 0

