

Comhairle Contae Chill Dara  
Kildare County Council



OUR REF: MAB/ ED00702 / ABP-303807-19

27<sup>th</sup> March 2019

**REGISTERED POST:**

Mr. Eoin O'Sullivan,  
Administrative Assistant,  
An Bord Pleanála,  
64 Marlborough Street,  
Dublin 1.

**RE: Whether works to an existing turf shed which is located to the rear of "The Bungalow", Newtown, Kill, Co. Kildare comprising the physical alteration of its three external walls, the erection of one internal wall and the installation of a garage door and surrounding apron is/is not development and is/is is not exempted development.  
"The Bungalow", Newtown, Kill, Co. Kildare.**

Dear Mr. O'Sullivan,

I refer to your correspondence of 28<sup>th</sup> February 2019 in the above regard.

I attach herewith copy of the Planning Search carried out by our Technician dated 27<sup>th</sup> March 2019.

I also enclose copy of our Planner's previous report dated 31<sup>st</sup> January 2019 and wish to advise that this Council has no further comment to make in relation to this case.

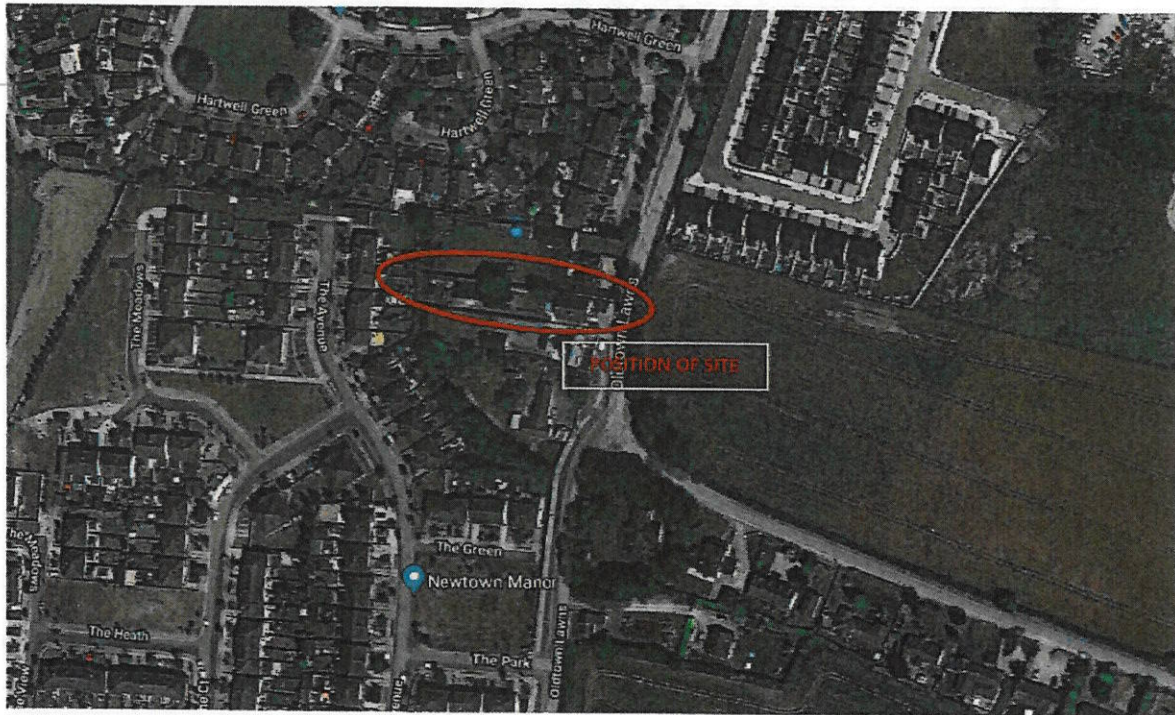
Yours sincerely,

**SENIOR EXECUTIVE OFFICER**

Encls.

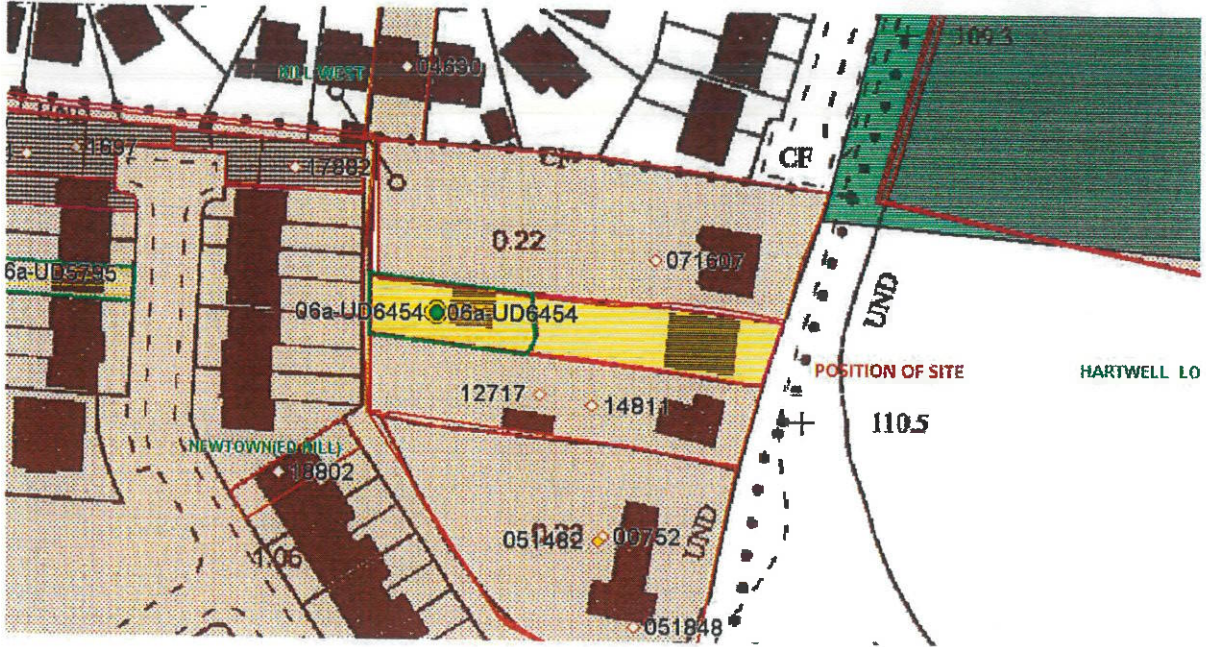
# PLANNING SEARCH

<b>Reference No. ED692 303326-18</b>		<b>DATE: 10-01-19</b>
<b>Applicant</b>	Mark Brady	
<b>Development</b>	Whether works to an existing turf shed is / is not exempt development	
<b>Referred by</b>	Joanne Farrell	
<b>Date Due</b>	28-03-19	
<b>Search Carried out by</b>	Martin O'Loughlin	
<b>Date of Search</b>	27-03-19	

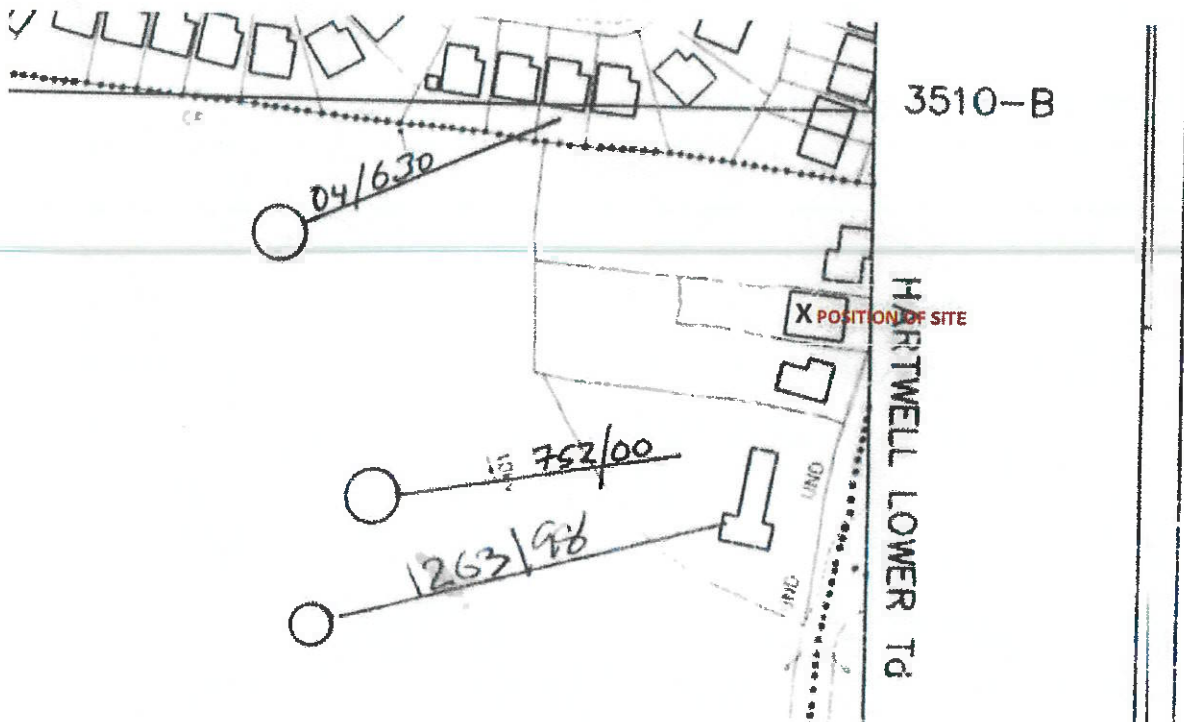




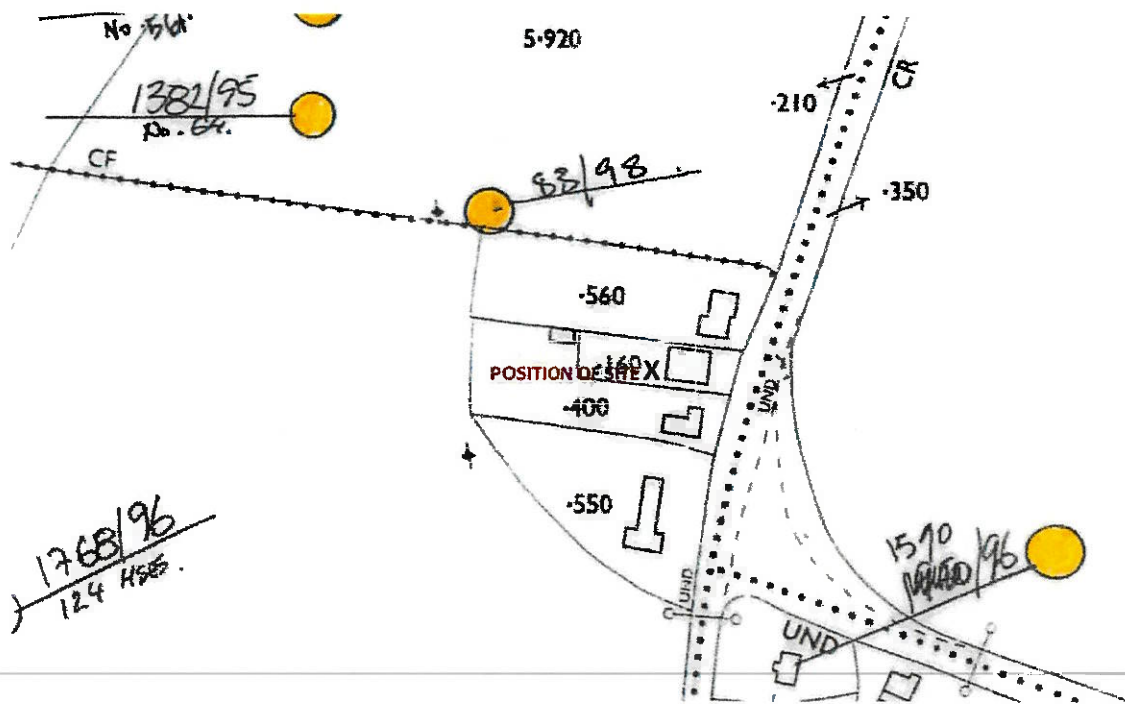
# PLANNING APPLICATIONS



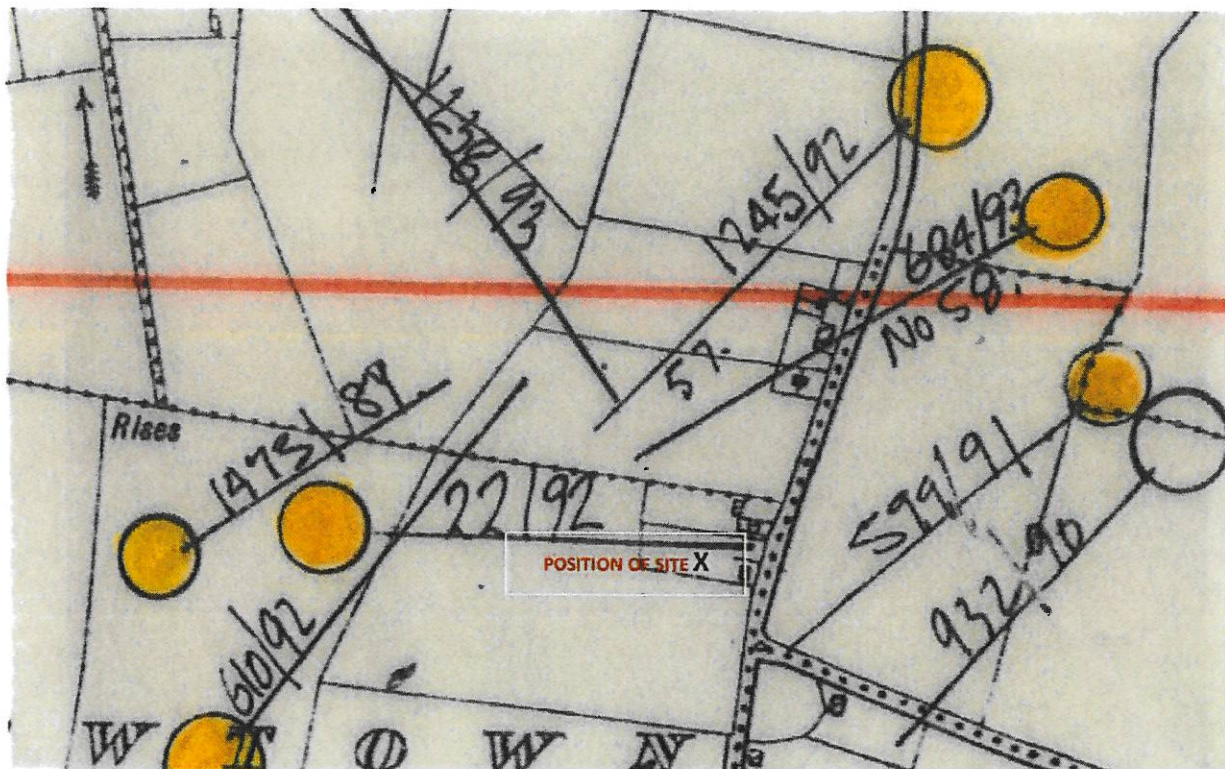
## ONLINE GIS



1999 - 2004 3510-A

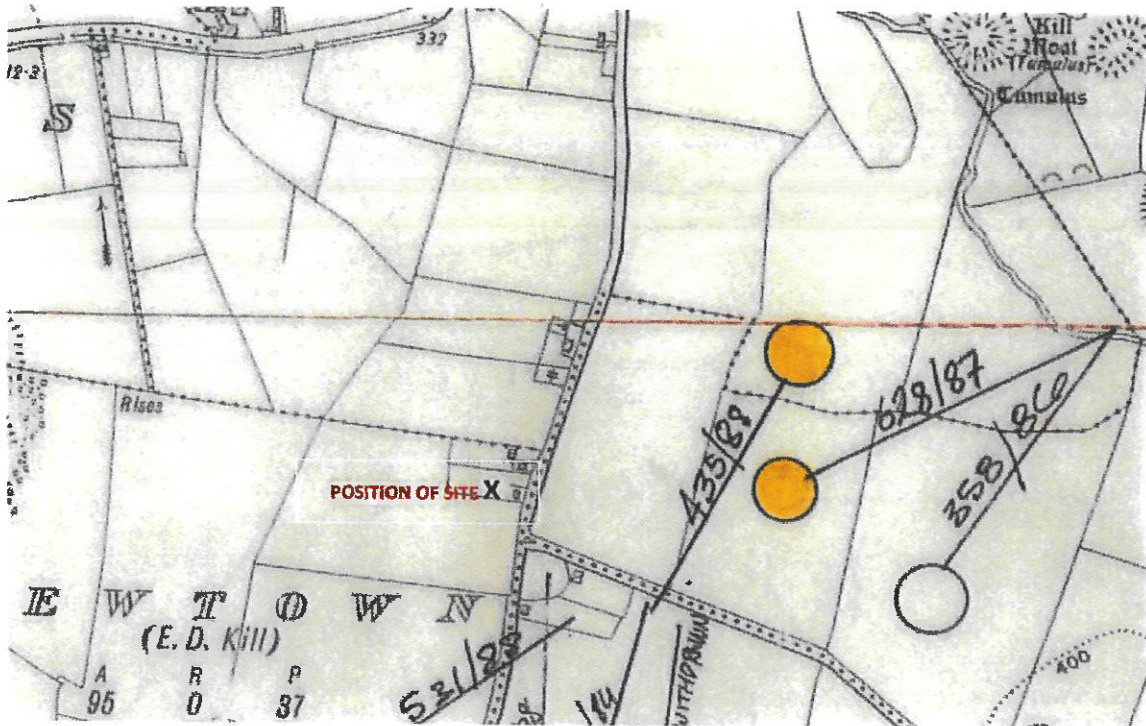


1994 – 1998 KE19-8

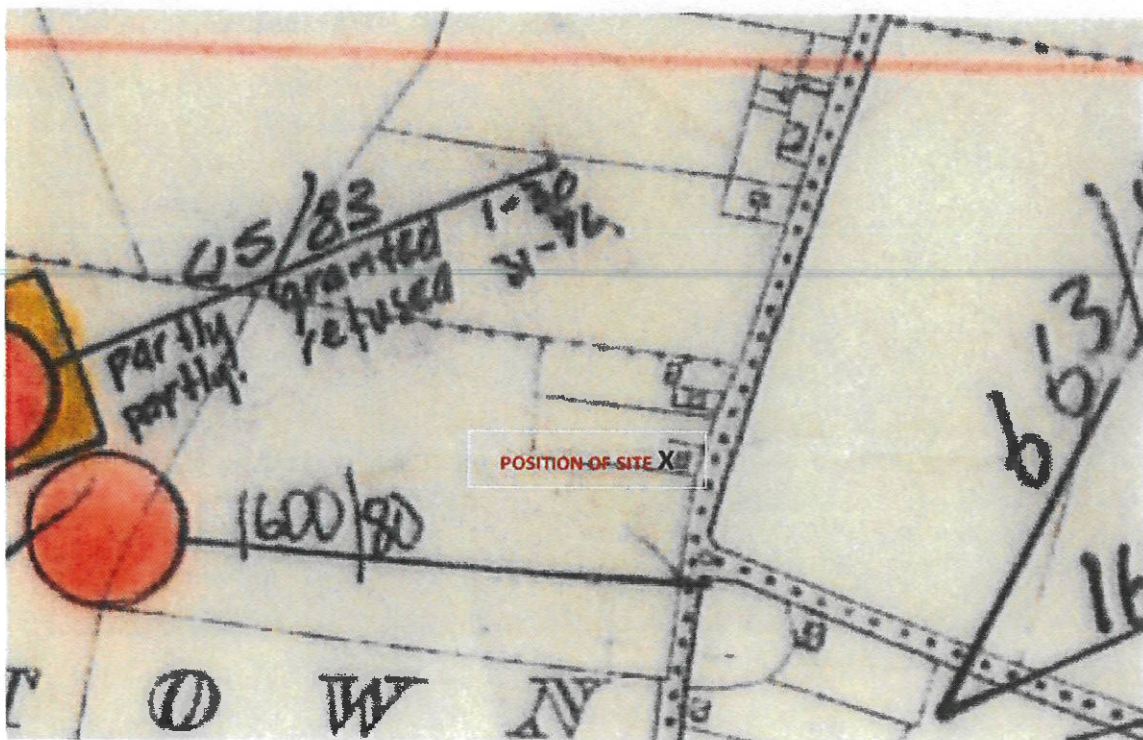


1989 – 1993 KE19-8



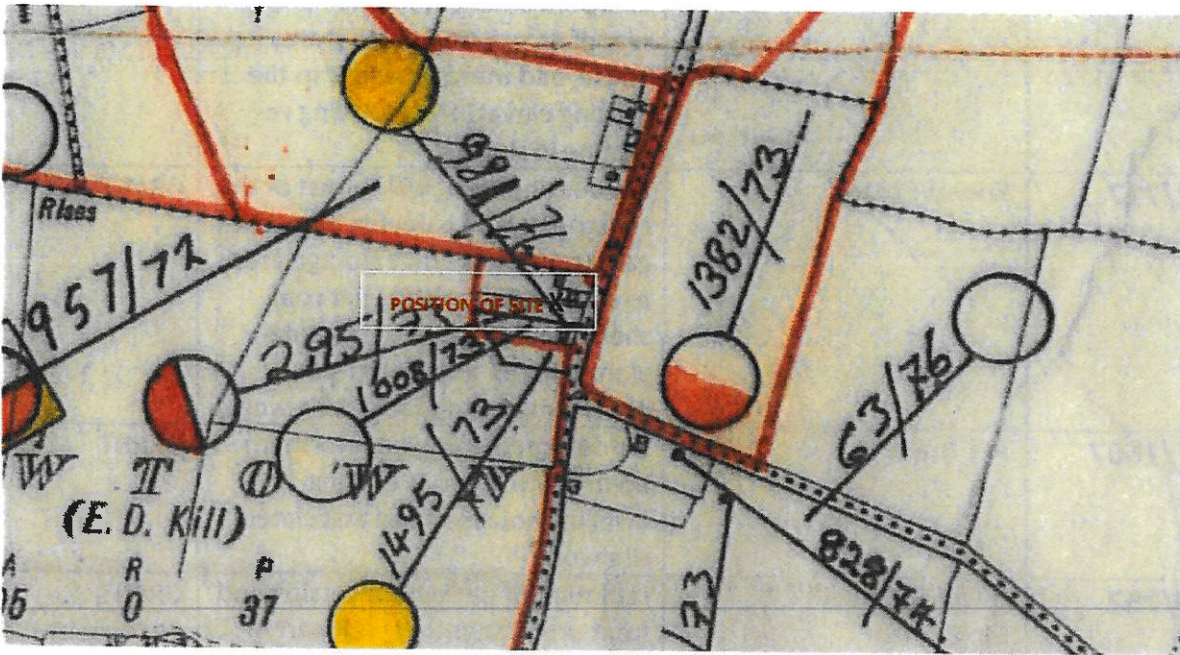


1984 – 1988 KE19-8

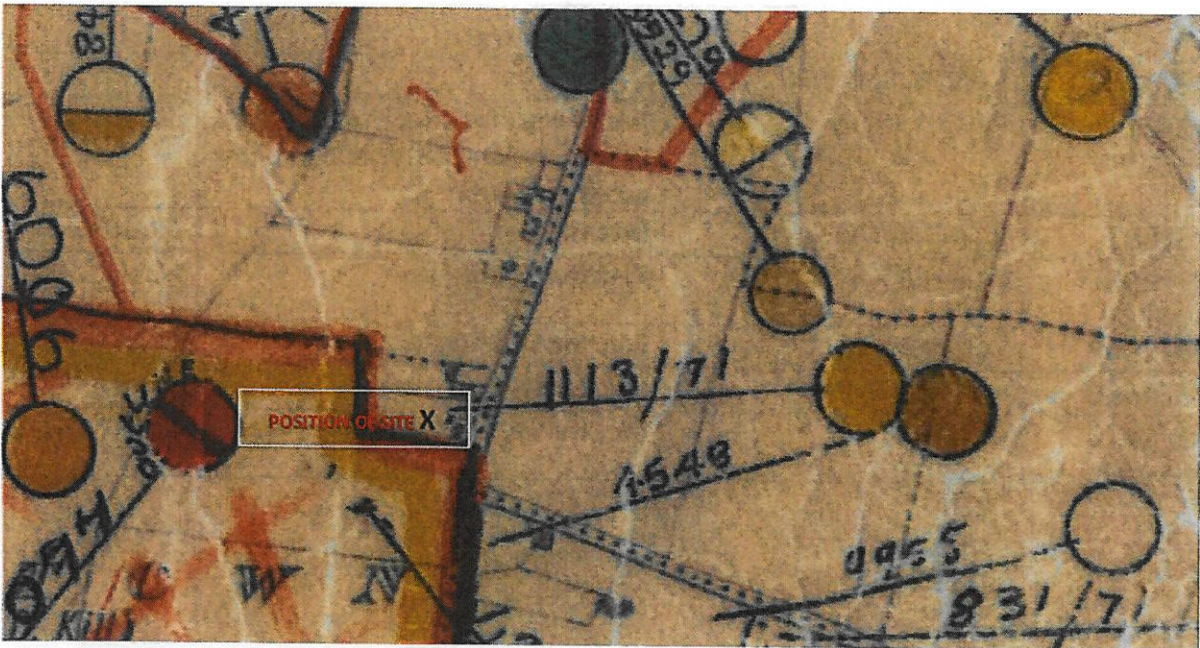


1978 – 1983 KE19-8





1972 - 1977 KE19-8

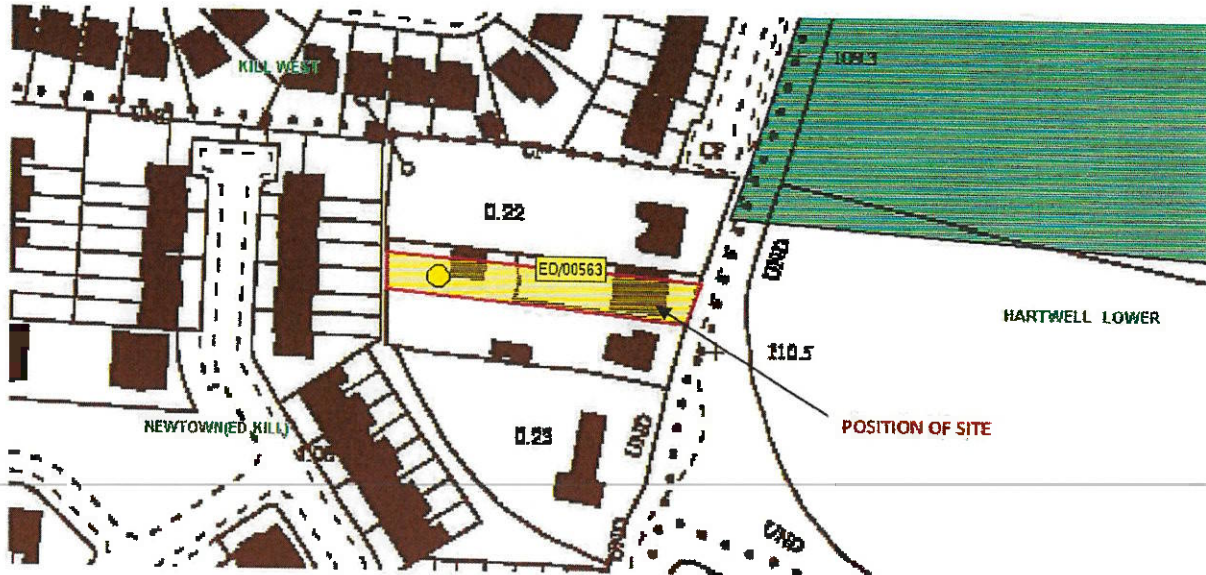


1964 - 1971 KE19-8

<b>14/811</b>	Paul Brady	A new single storey kitchen and bedroom extension to side and rear of an existing single storey house, and minor changes to the existing elevations, including re-roofing in slate.	GRANT
<b>12/717</b>	Robert Bready	the development will consist of the construction of a double domestic garage with attic/loft storage area to replace the existing flat roof sheds located in the rear garden, along with all associated site development and facilitating works	GRANT
<b>07/1607</b>	J&T Brady	for detached garage on Northern boundary to rear of existing dwelling house and all associated site works	GRANT
<b>00/752</b>	Oliver & Carmel McKiernan	retention of garage conversion and front porch together with part of bungalow for use as builders offices and remainder as caretakers apartment for a period of three years	GRANT
<b>98/1263</b>	NO INFORMATION		
<b>92/22</b> SUBJECT SITE	Philip R. Brady	the raising of pitch of existing roof for conversion of attic to bedroom accommodation	GRANT
<b>76/981</b>	Patrick Brady	Extension	GRANT
<b>73/295</b> SUBJECT SITE	Robert Brady	Erection Of Bungalow	REFUSE
<b>73/1008</b>	Robert Brady	Erection Of Bungalow	GRANT
<b>73/1495</b>	Matthew Lacey	Erection Of Bungalow	GRANT
<b>71/1113</b> SUBJECT SITE	Philip Brady	Construction Of Bungalow	GRANT



## SECTION 5 APPLICATIONS

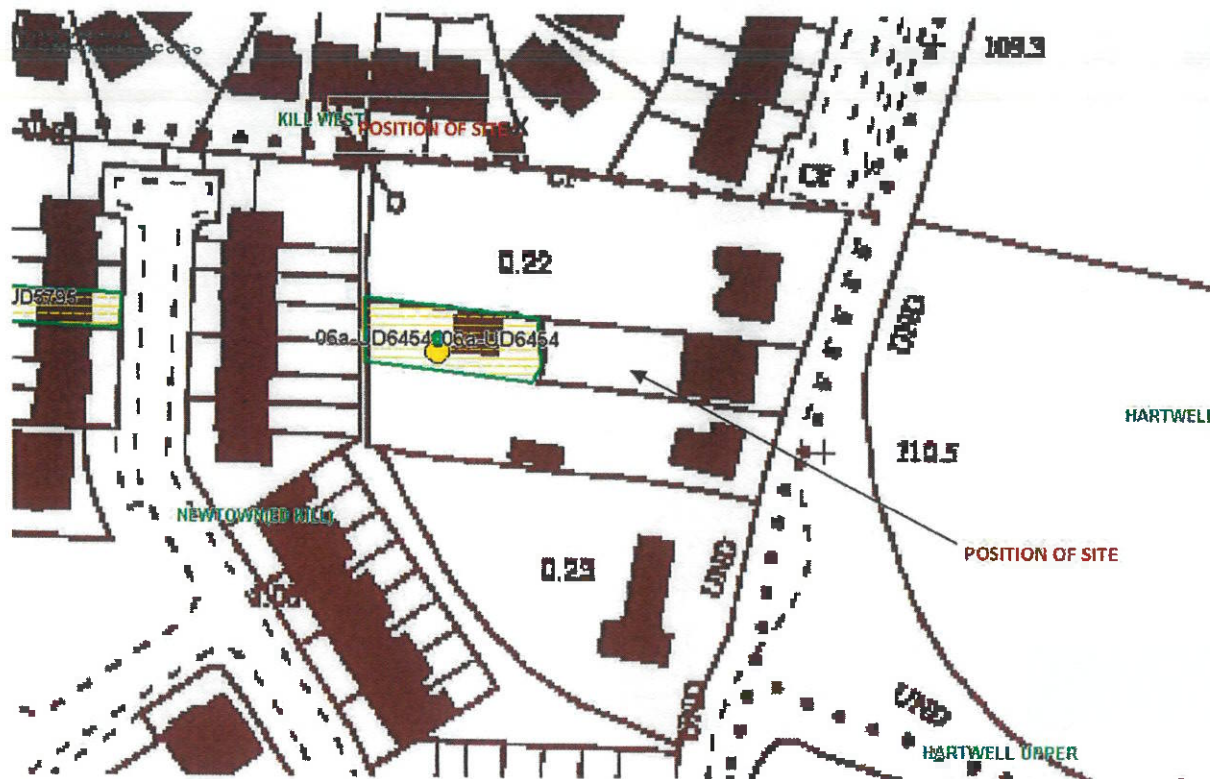


### ONLINE GIS

<b>ED563</b> SUBJECT SITE	Mark Brady	Whether works to an existing turf shed which is located to the rear of "The Bungalow" etc comprise exempt development.	WITHDRAWN
<b>ED702</b> SUBJECT SITE	Mark Brady	Wheather works to an existing turf shed is / is not exempt development	WITH ABP



## UNAUTHORISED DEVELOPMENT



### ONLINE GIS

<b>UD6454</b> SUBJECT SITE	Mary Brady	Spray painting / crash repair garage.	Warning letter & enforcement notice issued, currently the subject of court proceedings.
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## LAND REGISTRY DETAILS



**FOLIO NUMBER KE18677**

**Registered owners are PHILIP BRADY AND MARY BRADY of NEWTOWN, KILL, Co. KILDARE.**

**It is unknown if the registered owner is also the occupier.**

Signed: *Mant Singh*  
Planning Technical Office

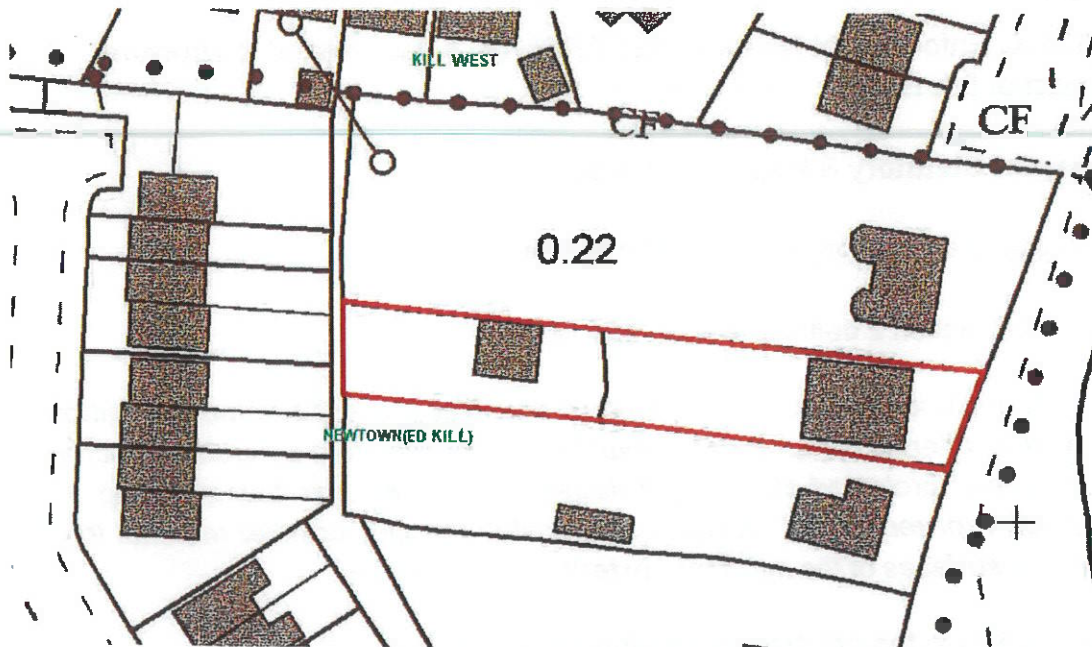
Date: 27/03/2019



KILDARE COUNTY COUNCIL	
PLANNING & ECONOMIC DEVELOPMENT DEPARTMENT	
Section 5 Declaration & referral on development & exempted development	
Planning & Development Act 2000 (as amended)	
Reference No. ED/00702	
<b>Name Of Applicant(s):</b>	Mark Brady
<b>Address of Development:</b>	"The Bungalow", Newtown, Kill, Co. Kildare
<b>Is Fee paid (€ 80)</b>	Yes
<b>Development Description:</b>	Works to an existing turf shed.
<b>Is Building Listed</b>	No
<b>Date Inspected</b>	28/01/19

**Site Location**

The subject site is located in Newtown, on the outskirts of Kill. The subject site contains a detached dormer dwelling with a number of sheds to the rear. The Meadows housing development is located to the rear of the site and the M7 motorway is approximately 700m west of the subject site.



**Fig 1. Site Location Map**



**Fig 2. Aerial view of subject site (Google Maps)**

### **Relevant Planning History**

**71/1113:** Permission granted to Philip Brady for the Construction of Bungalow.

**92/22:** Permission granted to Philip Brady to the raise the pitch of existing roof for conversion of attic to bedroom accommodation.

**UD6454:** Enforcement Notice served 07/05/15. Notice related to structure subject of this referral.

### **Relevant Statutory & Regulatory Provisions**

#### Planning and Development Act 2000 (as amended)

Part 1 of Section 2 defines “works” as follows:

*“works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.*

Section 3(1) in the Act defines development as follows:



*In this Act, "development" means, 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 structures or other land.*

Section 4 relates to exempted development. Section 4(1) describes which developments shall be 'exempted development'. Section 4(1)(h) specifies:

*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.*

#### Planning and Development Regulations 2001 (as amended)

The provisions of Article 6 and 9 Planning and Development Regulations 2001 (as amended) have been reviewed in the context of this application and are determined not to apply in this instance.

#### **The Question;**

Whether works to an existing turf shed which is located to the rear of "the Bungalow" Newtown, Kill, Co. Kildare comprising the physical alteration of its three external walls, the erection of one internal wall and the installation of a garage door and surrounding apron comprise exempted development.

#### **Description of the Development**

It is stated that the subject structure was originally a three walled turf shed. The referrer carried out works to the former turf shed which consist of the erection of an internal partition to create a corridor, separate from the works area. Works were also carried out to the three external walls by increasing their stability, together with what is described as maintenance and alteration of its roof to make it impenetrable to rain. The western wall of the structure was also improved and subsumed into the garage immediately adjoining. Works were also carried out to install a garage-type door and wall to the fill the void on the open fourth side. The entire structure was then plastered. The referrer suggests the original turf shed was built in tandem with the dwelling on site and seeks the Section 5 Declaration under Section 4(1)(h) and 57(1) of the Planning and Development Act, 2000 (as amended). The referrer argues that the works as carried 'affect only the interior of the structure' and 'do not render the appearance inconsistent with the character of the structure or of neighbouring structures'. It is noted that the referrer has not submitted

any drawings of the building footprint or photographic evidence of the original turf shed.

### **Assessment**

As part of the assessment of this referral, a review of the planning history of the subject site has been undertaken including the Enforcement File and the information therein. A review of historic OSi mapping has also been undertaken. A site inspection was also undertaken on 28/01/19, in the company of the referrer Mr Brady. Mr Brady informed me during the course of the inspection that the original turf shed was a three sided structure constructed as follows;

- The eastern side comprised a brick / blockwork wall at lower level, to a height of c.1m, the remainder of the wall was clad with galvanised corrugated sheeting.
- The rear wall was constructed of wood and also clad with galvanised corrugated sheeting.
- The third side was effectively the side wall of the existing blockwork shed.
- The roof was a lean too, clad with galvanised corrugated sheeting.

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Mr Brady informed me that to provide additional space, of a suitable standard to accommodate the operation of his business the turf shed was replaced with the existing structure in 2013.

The works as carried out effectively constructed a new shed replacing the existing structure, including replacing the external finishes and construction materials with blockwork and external render. It is noted that a ventilation system to accommodate the stated unauthorised use has also been installed and protrudes through the eastern elevation. This in addition to the construction of a fourth wall to enclose what was an open three sided structure, the installation of a garage door and a pedestrian door, and what is the construction of a replacement structure does constitute works of a material nature and do materially affect its external appearance.

In light of the above and based on the conversation with and the information submitted by the referrer, it appears that in effect the original turf shed has been entirely replaced under the guise of "improvements to the three external walls and maintenance and alteration of its roof". It is considered that these works extend beyond what would be reasonably considered maintenance or alteration works and are therefore considered to be works which materially affect the character of the original turf shed, therefore render its appearance inconsistent with its original character.

Kildare County Council has therefore concluded that:



- (a) The works as described to what was an existing turf shed constitutes material works which materially affect its external appearance of the structure and render the appearance inconsistent with the character of the structure and cannot be considered to be exempted development under Section 4(1)(h) of the Planning and Development Act 2000 as amended and
- (b) The said development does not come within the scope of any exempted development provision in the Planning and Development Act 2000 (as amended) or the Planning and Development Regulations 2001 (as amended).

**Conclusion.**

Having regard to:

- Sections 3 and 4 of the Planning and Development Act 2000 (as amended),
- The nature and extend of the development as carried out.

It is considered that the works to the existing turf shed comprising the physical alteration of its three external walls, the erection of one internal wall and the installation of a garage door and infill wall to enclose an open elevation located to the rear of "The Bungalow" Newtown Kill, Co. Kildare **constitutes development** as defined in Section 3(1) of the Planning and Development Act 2000 (as amended) and is **not exempted development** as defined by the Planning and Development Act 2000 (as amended) in particular as defined by Section 4(1)(h) of the Act and the Planning and Development Regulations 2001 (as amended).

**Recommendation**


It is recommended that the applicant be advised that the development as described in the application is development and is not exempted development.

  
**John O' Hara**  
**Assistant Planner**

31/01/19.  
**Date**

  
**Senior Executive Planner**

31.01.2019  
**Date**

 31/01/19

**Declaration on Development and Exempted Development  
under Section 5 of the  
Planning and Development Act 2000 (as amended)**

**WHEREAS** a question has arisen as to whether works to an existing turf shed is or is not development and is or is not exempted development.

**AS INDICATED** on the particulars received by the Planning Authority on 14<sup>th</sup> December 2018.

**AND WHEREAS** Mark Brady, c/o Vincent Farry, Vincent JP Farry & Co Ltd, Suite 180, No 28 South Frederick Street, Dublin 2, requested a declaration on the said question from Kildare County Council;

**AND WHEREAS** Kildare County Council as the Planning Authority, in considering this application for a declaration under Section 5 of the Planning and Development Act 2000 (as amended), had regard to;

(a) Sections 3 and 4 of the Planning and Development Act 2000 (as amended);

**AND WHEREAS** Kildare County Council has concluded that:

(a) The works as described to the original turf shed constitutes material works which materially affect its external appearance of the structure and render the appearance inconsistent with the character of the structure and cannot be considered to be exempted development under Section 4(1)(h) of the Planning and Development Act 2000 as amended and

(b) The said development does not come within the scope of any exempted development provision in the Planning and Development Act 2000 (as amended) or the Planning and Development Regulations 2001 (as amended).

**NOW THEREFORE** Kildare 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 works to an existing turf shed comprising the physical alteration of its three external walls, the erection of one internal wall and the installation of a garage door and infill wall to enclose an open elevation located to the rear of "The Bungalow" Newtown Kill, Co. Kildare Mylerstown, is development and is not exempted development.

Please note that any person issued with a declaration under subsection 2(a) of the Planning and Development Act 2000 (as amended) may on payment to the Board of the prescribed fee, refer a declaration to An Bord Pleanála within 4 weeks of the issuing of the decision.

Signed \_\_\_\_\_

Date: \_\_\_\_\_