

Ldg-015201-19

VITRUVIUS HIBERNICUS

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REGISTERED ARCHITECT - U.K. REG. NO. 0461701
EU REGISTERED ARCHITECT - NETHERLANDS REG. NO. 1.180615.001
ENVIRONMENTAL SCIENTIST

An Bord Pleanala,
64 Marlborough Street,
DUBLIN 1.

P.A. ref : DC 19/3

B. Kane, Knockloughlin, Longford.
Section 5 request.

16 APR 2019 12 April 2019
Fee: € 220 Type: Chere
Time: By: Post

Dear Sir/Madam,

this is a Section 5 referral of declarations made by Longford County Council, ref. no. DC 19/3
My client is Brian Kane. Knockloughlin, Longford, Co. Longford.

Attached are :

- (i) An Bord's Referral Fee €220-00
- (ii) the section 5 request to Longford Co. Co.,
- (iii) the P.A.'s declarations.

An Bord will note that of the thirteen questions posed to Longford County Council, two were deemed to be Exempted Development i.e. questions 3 and 13.
This referral deals only with the other eleven questions.

The arguments in the Section 5 request are the only arguments I raise in this referral.
I make further comments in relation to the declarations made by Longford County Council.]

- a. In page 1 para. 3 of the Council's declarations, there is reference to a mast for mapping meteorological [data], construction on behalf of a Sate authority andvisiting dignatories. I made no reference to such in the S.5 request.
This is clearly a mistake. Nothing hinges on this error.
- b. I take issue with the P.A.'s assessment in para. 3 of page 3.

My client relies on An Bord.

Yours faithfully,

Liam Madden,
Convent Road,
LONGFORD.



LONGFORD COUNTY COUNCIL

**Aras an Chontae,
Great Water St.,
Longford**

Enforcement Notice

**Pursuant to Sections 154 & 155 of the Planning & Development Act
2000 (as amended)**

Date: 6th February, 2019.

Enforcement Notice No. 19/1

Planning Enforcement File Ref: UNA1223

To: Mr Brian Kane, Knockloughlin, Longford.

Re: Unauthorised development at Knockloughlin, Longford - namely unauthorised structures and unauthorised works in the adjacent bogland, involving clearance of vegetation, drainage and filling with construction and demolition waste.

WHEREAS Longford County Council is the Planning Authority for the area in which the above mentioned property is located,

AND WHEREAS on the 30th day of January, 2019, Longford County Council, having investigated the matter in relation to unauthorised development at Knockloughlin, Longford, made a decision under S.155 of the Planning & Development Act 2000 (as amended) to issue an Enforcement Notice to you in relation to the aforementioned unauthorised development.

NOW THEREFORE YOU ARE HEREBY REQUIRED to:

- **cease all unauthorised development on the site and on the adjacent bogland, with immediate effect, and,**
- **remove the unauthorised structures/developments (see list and photos attached), and, insofar as is practicable, to restore the land to its condition prior to the commencement of the unauthorised development, within 3 months of the date of service of this Enforcement Notice.**

PLEASE TAKE NOTICE THAT, pursuant to Section 163 of the Planning and Development Act 2000, permission is not required for development required by an Enforcement Notice,

AND FURTHER TAKE NOTICE THAT if within the period specified, or within such extended period (not being more than six months in total) as Longford County Council may allow, the steps specified in this Enforcement Notice to be taken are not taken, Longford County Council may enter on the land and take such steps, including the removal of the structures, and may recover any expenses reasonably incurred by it in that behalf,

AND FURTHER TAKE NOTICE THAT you will be required to refund to Longford County Council the costs and expenses reasonably incurred in relation to the investigation, detection and issuance of this Enforcement Notice, including costs incurred in respect of the remuneration and other expenses of employees, consultants and advisers, and Longford County Council may recover these costs and expenses incurred by it in that behalf,

AND FURTHER TAKE NOTICE THAT any expenses reasonably incurred by Longford County Council may be recovered as a simple contract debt in any court of competent jurisdiction from you, or secured by charging the land under the Registration of Title Act 1964, or where you are the owner of the land, an instrument vesting the ownership of the land in Longford County Council subject to a right of redemption by you within five years,

AND FURTHER TAKE NOTICE THAT this Enforcement Notice takes effect on the date of its service,

AND FURTHER TAKE NOTICE THAT if within the period specified by this Notice or such extended period, (not being more than six months in total), as Longford County Council may allow, the steps specified in this notice are not taken, you may be guilty of an offence and subject:

- on conviction on indictment, to a fine not exceeding €12,697,381 or to imprisonment for a term not exceeding two years, or to both, or
- on summary conviction, to a class A fine, or to imprisonment for a term not exceeding six months, or to both,

AND FURTHER TAKE NOTICE THAT if you continue the offence after conviction, you may be guilty of a further offence on every day on which the offence continues and for each such offence shall be subject:

- on conviction on indictment to a fine not exceeding €12,697.38 for each day on which the offence is so continued, or to imprisonment for a term not exceeding two years, or to both, provided that if you are convicted in the same proceedings of two or more such further offences the aggregate term of imprisonment to which you may be liable shall not exceed two years, or
- on summary conviction to a class C fine for each day on which the offence is so continued, or to imprisonment for a term not exceeding six months, or to both, provided that if you are convicted in the same proceedings of two or more such further offences the aggregate term of imprisonment to which you shall be liable shall not exceed six months.



Aileen O'Brien,
Planning Department,
Longford County Council.
Tel:- 043- 3343405
Email:-aobrien@longfordcoco.ie

Date: 6th February, 2019.

The following unauthorised structures/developments must be removed within 3 months of the date of service of Enforcement Notice No. 19/1 -

- Office building at entrance to site. **Photo No 1**
- Toilet block at site entrance. **Photo No 1**
- The gravel filling over the percolation area serving the original wastewater treatment plant. **Photo No 2**

- Small shed adjacent to Timber chalet & Unauthorised Car Parking - **Photo No 3**
- 2 shed / structures at rear of yard (one is a container) - **Photo No 4**
- Unauthorised Storage of Scrap Cars in Bog Area – **Photo No 5**
- Unauthorised septic tank and percolation area in bog at the north eastern corner of the site. – **Photo No 6**
- Timber storage shed - **Photo No 7**
- Shed containing Car lift & Toilet Block – **Photo No 8**
- Toilet Block in Bog Area - **Photo No 9**
- Filling with imported C & D Waste to the bogland at the north eastern corner of the site. - **Photo No 10,11, 12 & 13**
- Concrete slab at north western corner of site also in bog. **Photo No 14**
- Filling at the rear of Mr Joseph Kane's house - **Photo No 3**



Photo No 1 Office and Toilet block at Entrance to Site



Photo No 2 Percolation area filled over

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8/1/2019

1/2

Site Survey Report



Photo No 3 Shed adjacent to Timber Cabin & Unauthorised Car Parking

205

Class 3



Photo No 4 Shed and Container /Trailer

15



Photo No 5 - 26 Cars parked in bog area

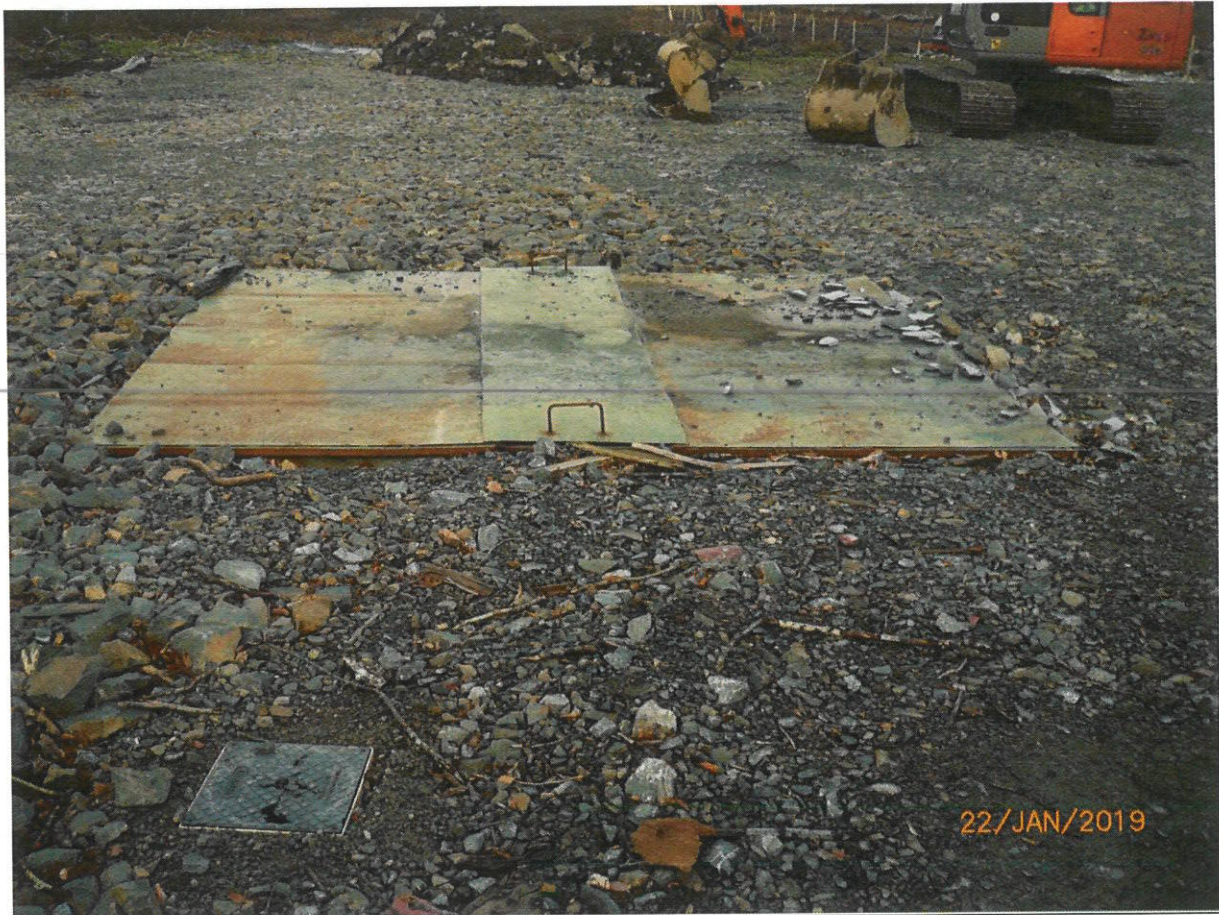


Photo No 6 - Septic Tank in Bog Area



Photo No 7 - Timber storage Shed



Photo No 8 - Shed containing Car lift & Toilet Block

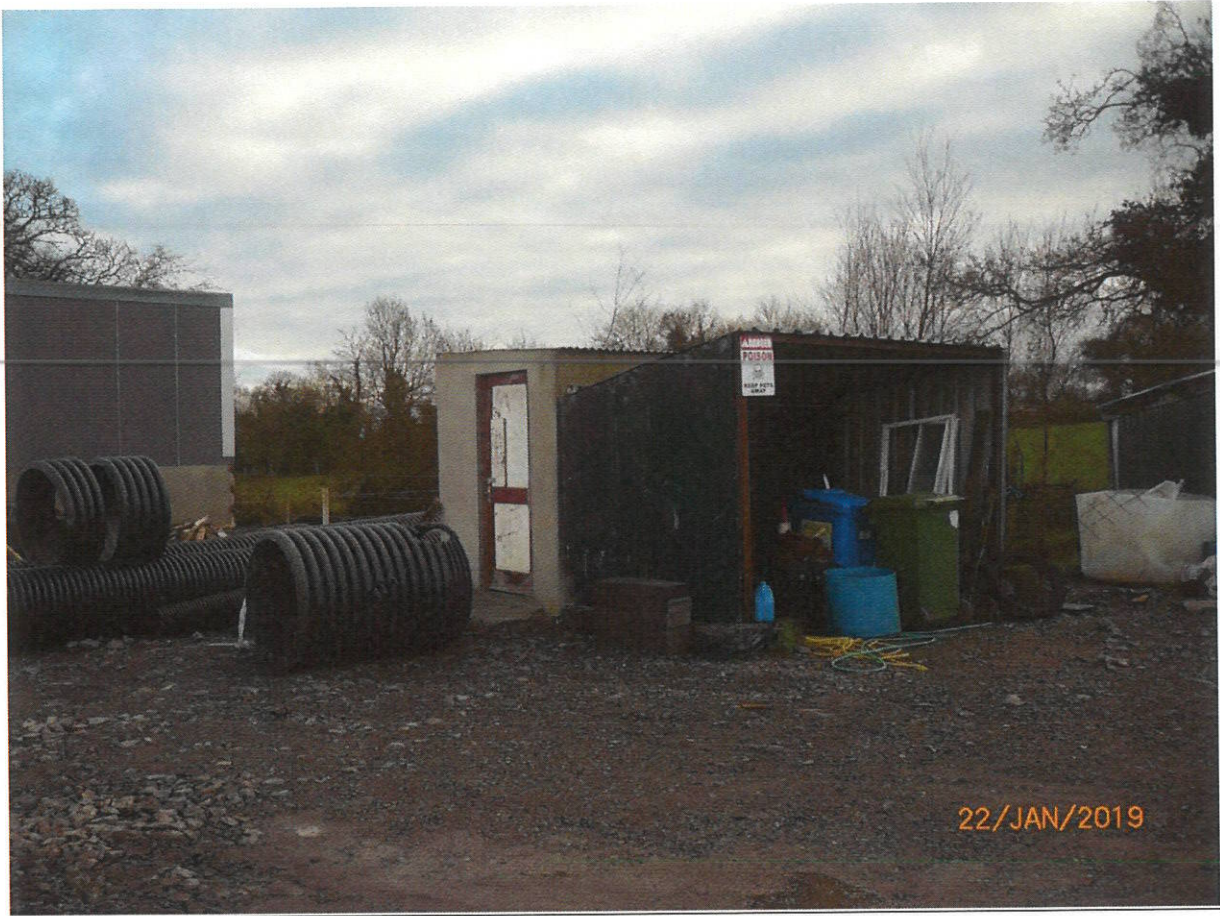


Photo No 9 - Toilet block in Bog

Handwritten notes in cursive script, mostly illegible due to fading and blurring.



Photo No 10 - Ongoing Clearance in Bog



Photo No 11 - Clearance, Drainage & Filling of Bog



Photo No 12 – Unauthorised Clearance, Drainage, Importation of Construction & Demolition Waste and Filling in Bog Area



Photo No 13 – Unauthorised Clearance, Drainage, Importation of Construction & Demolition Waste and Filling in Bog Area



Photo No 14 - Unauthorised Concrete Slab in Bog Area

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ENVIRONMENTAL SCIENTIST

Longford County Council,
Planning Department,
Great Water Street,
LONGFORD.

27 Feb. 2019

Section 5 Request.

Dear Sir/Madam,

this a Section 5 Request in respect of certain matters which have arisen at ~~Knockmartin~~^{Knockloughlin},
Longford. The person making the request is Brian Kane, Knockloughlin, Longford.
Attached is the €80-00 fee.
Attached are various papers and photos which the P.A. has served on him.

HISTORY

The lands which are the subject matter of this request are situated to the rear of a house which is a habitable house. The owner/occupier is Brian Kane, the person making this request.

The lands are the subject of ENF Notice 19/1, ENF 18/4 and a Refusal to Grant Retention Permission no. 18/261. This request addresses the various matters at the heart of the above.

REFUSAL 18/261 and ENF 18/4 refer to the same matter

By reference to the Supreme Court case *Fingal County Council v William Keeling and Sons*, my client is entitled to claim exemption from the need to seek planning permission notwithstanding his previous seeking of permission.

My client acknowledges that the matter constitutes development but claims that the development is exempted under Class 17 of Schedule 2 Part 1 of the 2001 Planning and Development Regulations, as amended, Temporary Structures and Uses.

In support of this, my client submits that most if not all the matters below either do not constitute development or are exempted development.

The single condition/limitation affecting Class 17 is that it be temporary and be removed on the completion of the other development works, whether those works be permitted or exempted.

ENFORCEMENT NOTICE 19/1

Listed in this Notice are 13 matters.

These matters are dealt with in the same order as they appear in the ENF list using the same terminology. It should be inferred from my re-use of the Council's words of description is an acceptance that the words accurately describe the matters complained of.

(I comment that there are 14 explanatory photos accompanying the ENF but these photos do not follow the same order. Nothing hinges on this.)

- (1) "Office Building at entrance to site".
My client asserts that the building is a Class 3 Schedule 2 Part 1 development.
- (2) "Toilet building at site entrance".
My client asserts that this is a Class 3 development.
- (3) "Gravel filling over percolation area serving the original wastewater treatment plant."
My client asserts this is a Class 6(b)(i) development.
- (4) "Small shed adjacent to timber chalet and unauthorised car parking."
My client asserts this is a Class 3 development.
- (5) "2 shed/structures at rear of yard (one is a container)."
My client asserts the container is not development.
My client asserts the shed is a Class ~~3~~ development Class 9
- (6) "Unauthorised storage of scrap cars in bog area"
My client asserts this is not development.
- (7) "Unauthorised septic tank and percolation area in bog at north eastern corner of the site"
My client's submission is overleaf.
- (8) "Timber storage shed."
My client asserts this is a Class 9 Agricultural shed.
- (9) "Shed containing car lift and toilet block".
My client's submission is overleaf.
- (10) "Toilet Block in bog area"
My client's submission is overleaf.
- (11) "Filling with imported C&D Waste to the bogland at the north eastern corner of the site"
My client says this is a Class 19 development.
- (12) "Concrete slab at north western corner of site also in bog"
My client's submission is overleaf.
- (13) "Filling at rear of Mr. Joseph Kanen's house."
My client says this is a Class (6)(b)(i) development.

SUPPORTING ARGUMENTS

(1)

This is a small store complying with the 6 conditions and limitations attaching to a Class 3 Schedule 2 Part 1 development. The development does not fall foul of any of the provisions of Article 9 and in particular the necessity for an AA.

(2)

This is an outside toilet complying with the 6 conditions and limitations attaching to a Class 3 Schedule 2 Part 1 development and in particular the area restriction when combined with the area of (1) above. The development does not fall foul of any of the provisions of Article 9 and in particular the necessity for an AA.

(3)

This is a Class 6(b)(i) development complying with the single attached condition/limitation.

(4)

This is a small shed complying with the 6 conditions and limitations attaching to a Class 3 Schedule 2 Part 1 development and in particular the area restriction when combined with the areas of (1) and (2) above. The development does not fall foul of any of the provisions of Article 9 and in particular the necessity for an AA.

(5)

The container is a vehicle or part of a vehicle and does not constitute development as defined. The shed is a Class 9 Schedule 2 Part 3 Agricultural shed complying with the attached 6 conditions/limitations.

The development does not fall foul of any of the provisions of Article 9 and in particular the necessity for an AA.

(6)

My client is a legal stranger to this alleged unauthorised development.

My client submits that it is not development, as defined, to park a car or cars in a bog.

The cars do not belong to my client and my client did not park them there.

(7)

My client is a legal stranger to this alleged unauthorised development.

All that is apparent from the photo no. 6 served on my client is metal cover on the ground.

There is no evidence whatsoever of a percolation area.

(8)

My client is a legal stranger to this alleged unauthorised development.

The shed is a Class 9 Schedule 2 Part 3 Agricultural shed complying with the attached 6 conditions/limitations.

The development does not fall foul of any of the provisions of Article 9 and in particular the necessity for an AA.

(9)

My client is a legal stranger to this alleged unauthorised development.

My client submits this shed is a Class 9 Schedule 2 Part 3 Agricultural shed complying with the attached 6 conditions/limitations. What's within the shed is irrelevant and is exempted under Section 4.-(1)(h) of the Act, as amended and may be used for agricultural vehicles/machines and as such is not restricted by conditions/limitations.

The Class 9 development does not fall foul of any of the provisions of Article 9 and in particular the necessity for an AA.

(10)

My client is a legal stranger to this alleged unauthorised development.

My client submits this shed is a Class 9 Schedule 2 Part 3 Agricultural shed complying with the attached 6 conditions/limitations. What's within the shed is irrelevant and is exempted under Section 4.-(1)(h) of the Act, as amended and may be in connection with/for agricultural user and as such is not restricted by conditions/limitations. What is described as a toilet is, my client suggests, is a meter box for 3-phase electricity to operate the agricultural machine lift.

The Class 9 development does not fall foul of any of the provisions of Article 9 and in particular the necessity for an AA.

(11)

My client is a legal stranger to this alleged unauthorised development.

Inasfar as it is alleged to be part of a hard surfaced area to the rear of a house, it may be submitted that it is a Class 6(b)(i) development complying with the ~~attached~~ attached conditions/limitations and not falling foul of the provisions of Article 9.

(12)

My client is a legal stranger to this alleged unauthorised development.

Notwithstanding that, my client submits this is clearly a concrete base for a Class 9 Schedule 2 Part 3 Agricultural shed complying with the attached 6 conditions/limitations and and not falling foul of the provisions of Article 9.

(13)

The alleged unauthorised development shown in photo 3 is at variance with the words used.

If what is referred to is filling at the rear of what is described Joseph Kane's house, the filling is a Class 6(b)(i) development, compliant with all conditions/limitations and not in contravention of Article 9 provisions.

If what is referred to is the small double shed, the development is a Class 3 development compliant with conditions/limitations and not in contravention of the provisions fo Article 9.

WHEREAS a question has arisen as to whether the following are or are not development and are or are not exempted development :

- (1) " Office Building at entrance to site".
 - (2) " Toilet building at site entrance".
 - (3) "Gravel filling over percolation area serving the original wastewater treatment plant"
 - (4) "Small shed adjacent to timber chalet and unauthorised car parking."
 - (5) "2 shed/structures at rear of yard (one is a container)."
 - (6) "Unauthorised storage of scrap cars in bog area"
 - (7) "Unauthorised septic tank and percolation area in bog at north eastern corner of the site"
-
- (8) "Timber storage shed."
 - (9) "Shed containing car lift and toilet block".
 - (10) "Toilet Block in bog area"
 - (11) "Filling with imported C&D Waste to the bogland at the north eastern corner of the site"
 - (12) "Concrete slab at north western corner of site also in bog"
 - (13) "Filling at rear of Mr. Joseph Kanes's house."
- my client seeks a declaration from the planning authority.

Yours faithfully,

Liam Madden,
Convent Road,
LONGFORD.

1st April, 2019

Registered Post

Mr. Brian Kane,
c/o Liam Madden,
Vitruvius Hibernicus,
Convent Road,
Longford.

**Re: Section 5 Declaration – DC19/3,
Development at Knockloughlin, Longford.**

Dear Sir,

The Planning Authority wishes to acknowledge receipt of your request for a declaration of works considered to be development or exempted development under Section 5 of the Planning and Development Act 2000 (as amended) on the 4th March 2019.

Whether the use of the land in Folios LD2639F and LD17259F for the purposes of development within the curtilage of a dwelling house (*'Office Building at entrance to site', 'Toilet building at site entrance', 'Small shed adjacent to timber chalet and unauthorised car parking', 'Gravel filling over percolation area serving the original wastewater treatment plant' 'Filling at the rear of Mr. Joseph Kane's house'*) is or is not exempted development as defined in the 2000 Act and the Regulations made thereunder.

Whether the use of the land in Folios LD2639F for the purposes of Agriculture (*'2 shed/ structures at the rear of yard', 'Timber Storage Shed', 'Toilet Block in bog area', 'Shed containing car lift and toilet block', 'Concrete slab at north western corner of site, also in bog'*) is or is not exempted development as defined in the 2000 Act and the Regulations made thereunder.

Whether or not the use of the land Folios LD2639F for the purposes of erection of a mast for mapping meteorological conditions/provision, construction or erection by or on behalf of a State authority of temporary structures or other temporary facilities required in connection with a visit of a dignitary or delegation (*'Filling with imported C&D Waste to the bogland at the north eastern corner of the site'*) is or is not exempted development as defined in the 2000 Act and the Regulations made thereunder.

Whether or not the use of the land Folios LD2639F for commercial purposes/ vehicle storage purposes (*'Unauthorised storage of scrap cars in bog area', 'Unauthorised septic tank and percolation area in bog north east of the site'*) is or is not exempted development as defined in the 2000 Act and the Regulations made thereunder.

The use of land in Folios LD2639F and LD17259F for the purposes of: development within the curtilage of a dwelling house, agriculture, commercial/vehicle storage purposes can only be considered to be exempted development having satisfied all of said definitions, conditions and limitations of Section. 4 (1), (2) (a-c), (3), (4) and (4A)) and the definition of "Development", "Works", "Structure" and "Agriculture in Section 2 (1) of the Planning and Development Act 2000 (as amended) and Articles 6-10 and Schedule 2 of the Planning and Development Regulations, 2001 (as amended)

It is the opinion of the Planning Authority, that given the information submitted as part of this Declaration, that the structures erected for purposes ancillary to the enjoyment of the dwelling house, agricultural purposes and commercial purposes would not comply with the Planning and Development Regulations 2001 (as amended) as specifically provided for under Section 4 2 (a) (i) of the Planning and Development Act 2000 (as amended) by reason of its size, nature, use and surroundings in relation to both dwelling house and land in question.

It is therefore the opinion of the Planning Authority that the use of the land in Folios LD2639F and LD17259F for purposes ancillary to the enjoyment of the dwelling house, agricultural purposes and commercial/vehicle storage purposes is **not exempted development** in this case.

With respect to both the *'Gravel filling over percolation area serving the original wastewater treatment plant'* and *'Filling at the rear of Mr. Joseph Kane's house'*, in Folios LD2639F and LD17259F respectively, (works ancillary to the enjoyment of the dwelling house), it is considered from the site inspection undertaken, ground levels in both cases have not been raised in excess of 1m, therefore both are **exempted development**.

Yours faithfully,



Administrative Officer

