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PLANNING

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01/10/2019

AN BORD PLEANÁLA	
LDG-	<u>019560-19</u>
ABP-	
02 OCT 2019	
Fee: €	<u>220</u> Type: <u>CH2</u>
Time:	<u>10:28</u> By: <u>hand</u>

Re: Monaghan County Council Ref: Ex19/22, Section 5 Referral, Donal Gerard McDaid, Beagh, Donaghmoynne, Co. Monaghan.

Dear Sir/Madam,

We have been requested by our client Mr. Donal Gerard McDaid, Beagh, Donaghmoynne, Co. Monaghan the owner of the lands in question to submit the following Section 5 referral in respect of the following:

Application for Declaration of Exempted Development Part 1, Section 5, Planning and Development Act 2000 (as amended) on whether the installation of a box culvert/animal underpass for the purposes of moving animals, installation of animal effluent holding tank, and all associated site works in compliance with Section 12 Notice issued by Monaghan County Council at Beagh D.E.D (Crosslare), Carrickmacross County Monaghan is exempted development or development.

Monaghan County Council by order dated 5th September 2019 decided that the forgoing is not considered exempted development under the provisions of:

"Schedule 2, Part 1, Class 41(c) of the Planning and Development Regulations 2001 (as amended).

Schedule 2, Part 3, Class 9 of the Planning and Development Regulations 2001 (as amended).

Section 4(1) of the Planning and Development Act 2000 as amended".

We note that no reasons were attached to the Section 5 Declaration.

For the purposes of this referral we have inspected the site, consulted with our client and examined the proposed development in the context of the relevant sections of the Planning and Development Act and associated Regulations and we have also sought legal advice from Ms. Mary Moran Long BL, copy of which is attached.

Section 5 of the Planning and Development Act 2000 (as amended) states as follows:

"Declaration and referral on development and exempted development.

5.—(1) If any question arises as to what, in any particular case, is or is not development or is or is not exempted development within the meaning of this Act, any person may, on payment of the prescribed fee, request in writing from the relevant planning authority a declaration on that question, and that person shall provide to the planning authority any information necessary to enable the authority to make its decision on the matter. (2) (a) Subject to F41[paragraphs (b) and (ba)], a planning authority shall issue the declaration on the question that has arisen and the main reasons and considerations on which its

decision is based to the person who made the request under subsection (1), and, where appropriate, the owner and occupier of the land in question, within 4 weeks of the receipt of the request. (6) A planning authority may require any person who made a request under subsection (1) to submit further information with regard to the request in order to enable the authority to issue the declaration on the question and, where further information is received under this paragraph, the planning authority shall issue the declaration within 3 weeks of the date of the receipt of the further information”.

AN BORD PLEANALA

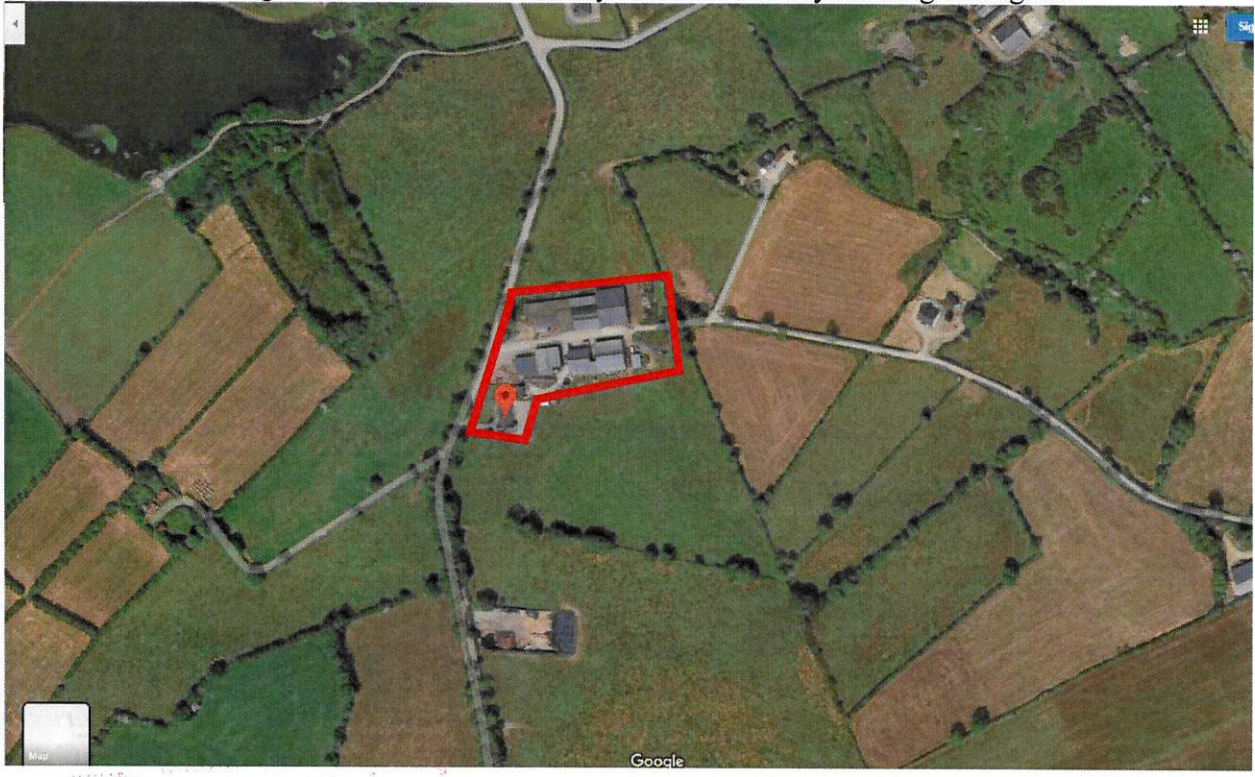
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1.0 Site Location/Description

The subject site is located on the family dairy farm comprising 200 acres owned by Donal McDaid which was previously occupied by his father Donal McDaid Snr. The cattle graze in the surrounding fields and travel the road twice daily to be milked in the milking parlour permitted under Ref: 07/715 and return to the fields twice daily after they are milked. The farm yard straddles either side of the roadway which is less than 3 metres in width and is in a poor state of repair. At the time of inspection, the roadway was closed and barricaded. The LT81011 runs in a north south direction perpendicular to the farmyard roadway There are slatted houses on both sides of the roadway which has a steep gradient rising from the LT81011 and runs through the farmyard in an easterly direction.

Aerial Photo showing location of McDaid farmyard with roadway running through it.



2.0 Planning History

94/610 Retention of roofed feeding yard and slurry tank m.o.p. 13/95

Granted: 16/01/1995

94/609 Erection of slatted house, calving box's and calf house m.o.p. 14/95

02/561 1) Retain existing storage fac. and cattle shed, erect new slurry tank, feeder area and shed
2) erect new cubicle house with straw bed and feeding passage and ancillary slurry storage tank and ancillary site works. Granted 10/09/2002

03292 change and revise plans of proposed cubicle house, feeding passage and ancillary tank originally granted in planning permission ref. 02/561 to proposed new layout drawings. Granted 25/03/2004

07/715 1) DEMOLISH existing derelict dwelling house and out buildings 2) erect new agricultural silage pit, 3) remedial works to existing entrance, 4) all other relevant ancillary site works. Granted 19/07/2007.

07/1311 1) Demolish existing silage pit 2) construct new covered slatted shed and milking parlour
3) All other relevant ancillary site works. Final Grant 27/9/07

We note that a previous Section 5 Declaration application was submitted however there were a number of errors in that application including an incorrect description of the works and as a result a fresh application for a Section 5 Declaration is being made in respect of these works which we are satisfied constitute exempted development for the reasons outlined below:

1. The works constitute works in compliance with a Notice under Section 12 of the Local Government Water Pollution Act 1977 as amended by section 9 of the Local Government (Water Pollution) Act 1990 dated 11 August 2008.
2. The works constitute exempted development under Class 9 of the Planning and Development Regulations 2001(as amended).
3. The works constitute exempted development under Section 4(1) of the Planning and Development Act 2000 as amended.

3.0 Legislation

This section sets out the relevant planning legislation in respect of this Section 5 referral:

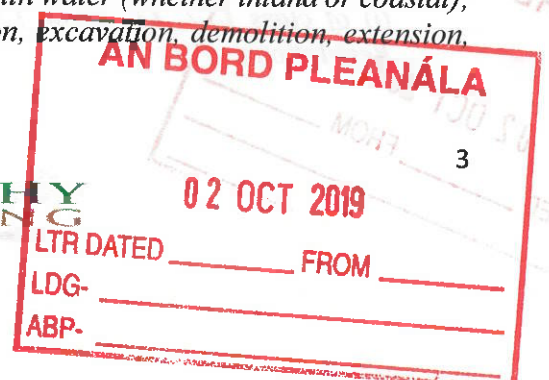
Planning and Development Act 2000-2019

Section 2(1) of the Planning and Development Act, 2000 – 2014, states the following:

“In this Act, except where the context otherwise requires – “planning authority” means a local authority,

“land” includes any structure and any land covered with water (whether inland or coastal);

“works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal...



“alteration” includes – (a) plastering or painting or the removal of plaster or stucco, or (b) the replacement of a door, window or roof, that materially alters the external appearance of a structure so as to render the appearance inconsistent with the character of the structure or neighbouring structures;

Section 3(1) of the aforementioned Act states the following:

“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”.

Article 3(5) of the aforementioned Regs states as follows:

(5) Development to which sub-article (1), (2), (3) or (4) of this article relates shall not be exempted development for the purposes of the Act—

(a) if the carrying out of such development would—

(i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,

(ii) consist of or comprise the formation, laying out or material widening of a means of access to a public road the metalled part of which is more than 12 feet in width,

(iii) endanger public safety by reason of traffic hazard or any obstruction to the view of persons using any public road at or near any bend, corner, junction or intersection,

(iv) contravene any building regulation made under section 86 of the Act or any byelaw in force under section 41 of the Public Health (Ireland) Act, 1878, in the area in which the land to which the development relates is situated,

(v) comprise the erection, construction, extension or renewal of a building on any street so as to bring forward the building, or any part of the building, beyond the front wall of the building on either side thereof or beyond a line determined as the building line by a resolution of the planning authority for the area,

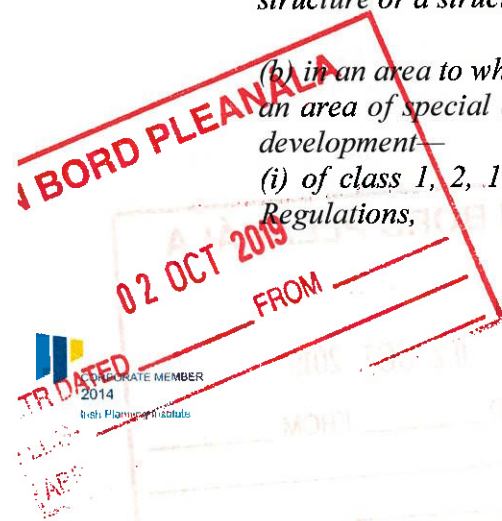
(vi) consist of or comprise the carrying out under a public road of works other than a connection to a sewer or watermain,

(vii) restrict a view or prospect of special amenity value or special interest the preservation of which is an objective of a development plan for the area which the development is proposed or, during the period prior to the making of a development plan for the said area, is declared by resolution of the planning authority for that area to be an objective which they propose to include in a development plan, or

(viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use, or

(b) in an area to which a special amenity area order relates by reference to that area being an area of special amenity by reason of its natural beauty, if such development would be development—

(i) of class 1, 2, 12, 16 or 17 specified in column 1 of Part I of the Schedule to these Regulations,



- (ii) consisting of the use of a structure or other land for the exhibition of advertisements of class 4, 5, 8, 9, 13, 14 or 17 specified in column 1 of Part II of the said Schedule or the erection of an advertisement structure for the exhibition of any advertisement of any of the said classes, or
- (iii) of class 1, 4 or 5 specified in column 1 of Part III of the said Schedule.

Section 4 (1)(a) of the Planning and Development Act 2000 as amended provides

'The following shall be exempted developments for the purposes of 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;'

Section 5(1) of the aforementioned Act, states the following:

"If any question arises as to what, in any particular case, is or is not development or is or is not exempted development within the meaning of this Act, any person may, on payment of the prescribed fee, request in writing from the relevant planning authority a declaration on that question, and that person shall provide to the planning authority any information necessary to enable the authority to make its decision on the matter".

Section 5(2) states as follows:

"(2) (a) Subject to paragraph (b), a planning authority shall issue the declaration on the question that has arisen and the main reasons and considerations on which its decision is based to the person who made the request under subsection (1), and, where appropriate, the owner and occupier of the land in question, within 4 weeks of the receipt of the request.

Section 5(3)(a) of the aforementioned Act, states the following:

"Where a declaration is issued under this section, any person issued with a declaration under subsection (2)(a) may, on payment to the Board of such fee as may be prescribed, refer a declaration for review by the Board within 4 weeks of the date of the issuing of the declaration. Section 127(1) of the aforementioned Act states the following: An appeal or referral shall –

(d) state in full the grounds of appeal or referral and the reasons, considerations and arguments on which they are based,

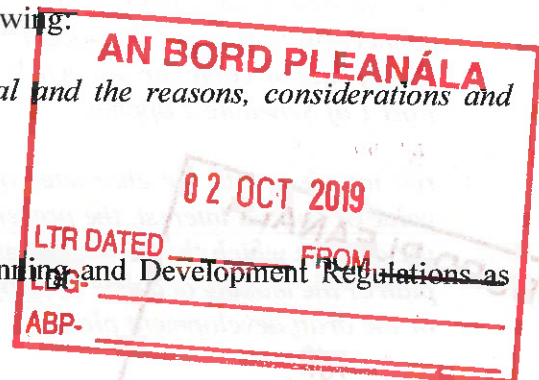
Section 127(1) of the aforementioned Act states the following:

"An appeal or referral shall –

(d) state in full the grounds of appeal or referral and the reasons, considerations and arguments on which they are based",

Planning and Development Regulations 2001 – 2019

The following sets out the relevant sections of the Planning and Development Regulations as amended:



Article 6(1) of the aforementioned Regulations states as follows:
Exempted Development.

“6. (1) Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1”.

Article 9(1) of the aforementioned Regulations states as follows:
“Restrictions on exemption.

9. (1) Development to which article 6 relates shall not be exempted development for the purposes of the Act—

(a) if the carrying out of such development would—

(i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act.

(ii) consist of or comprise 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,

(iii) endanger public safety by reason of traffic hazard or obstruction of road users,

(iv) except in the case of a porch to which class 7 specified in column 1 of Part 1 of Schedule 2 applies and which complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1, comprise the construction, erection, extension or renewal of a building on any street so as to bring forward the building, or any part of the building, beyond the front wall of the building on either side thereof or beyond a line determined as the building line in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,

(v) consist of or comprise the carrying out under a public road of works other than a connection to a wired broadcast relay service, sewer, water main, gas main or electricity supply line or cable, or any works to which class 25, 26 or 31 (a) specified in column 1 of Part 1 of Schedule 2 applies,

(vi) interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of a development plan for the area in which the development is proposed or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,

AN BORD PLEANÁLA

02 OCT 2019

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VAT Reg. No. 7078390P

(vii) consist of or comprise the excavation, alteration or demolition (other than peat extraction) of places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest, the preservation of which is an objective of a development plan for the area in which the development is proposed or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan, save any excavation, pursuant to and in accordance with a licence granted under section 26 of the National Monuments Act, 1930 (No. 2 of 1930),

(viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use,

(ix) consist of the demolition or such alteration of a building or other structure as would preclude or restrict the continuance of an existing use of a building or other structure where it is an objective of the planning authority to ensure that the building or other structure would remain available for such use and such objective has been specified in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,

(x) consist of the fencing or enclosure of any land habitually open to or used by the public during the 10 years preceding such fencing or enclosure for recreational purposes or as a means of access to any seashore, mountain, lakeshore, riverbank or other place of natural beauty or recreational utility,

(xi) obstruct any public right of way,

(xii) further to the provisions of section 82 of the Act, consist of or comprise the carrying out of works to the exterior of a structure, where the structure concerned is located within an architectural conservation area or an area specified as an architectural conservation area in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan and the development would materially affect the character of the area,

(b) in an area to which a special amenity area order relates, if such development would be development:—

(i) of class 1, 3, 11, 16, 21, 22, 27, 28, 29, 31, (other than paragraph (a) thereof), 33 (c) (including the laying out and use of land for golf or pitch and putt or sports involving the use of motor vehicles, aircraft or firearms), 39, 44 or 50(a) specified in column 1 of Part 1 of Schedule 2, or

(ii) consisting of the use of a structure or other land for the exhibition of advertisements of class 1, 4, 6, 11, 16 or 17 specified in column 1 of Part 2 of the said Schedule or the erection of an advertisement structure for the exhibition of any advertisement of any of the said classes, or

(iii) of class 3, 5, 6, 7, 8, 9, 10, 11, 12 or 13 specified in column 1 of Part 3 of the said Schedule, or

(iv) of any class of Parts 1, 2 or 3 of Schedule 2 not referred to in subparagraphs (i), (ii) and (iii) where it is stated in the order made under section 202 of the Act that such development shall be prevented or limited,

(c) if it is development to which Part 10 applies, unless the development is required by or under any statutory provision (other than the Act or these Regulations) to comply with procedures for the purpose of giving effect to the Council Directive,

(d) if it consists of the provision of, or modifications to, an establishment, and could have significant repercussions on major accident hazards.

(2) Sub-article (1)(a)(vi) shall not apply where the development consists of the construction by any electricity undertaking of an overhead line or cable not exceeding 100 metres in length for the purpose of conducting electricity from a distribution or transmission line to any premises”.

Development of a class specified in column 1 of Part 1 of Schedule 2 which relates to Article 6 of the aforementioned regulations.

CLASS 8

Works consisting of the provision of roofless cubicles, open loose yards, self feed silo or silage areas, feeding aprons, assembly yards, milking parlours or structures for the making or storage of silage or any other structures of a similar character or description, having an aggregate gross floor space not exceeding 200 square metres, and any ancillary provision for effluent storage.

Conditions and Limitations

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 the 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”.

Class 9 of Schedule 2 Part 3 ‘Exempted Development – Rural’ of the Planning and Development Regulations 2001 as amended provides for:

‘Works consisting of the provision of any store, barn, shed, glass-house or other structure, not being of a type specified in class 6, 7 or 8 of this Part of this Schedule, and having a gross floor space not exceeding 300 square metres.

Conditions and Limitations

1. No such structure shall be used for any purpose other than the purpose of agriculture or forestry, but excluding the housing of animals or the storing of effluent.

2. The gross floor space of such structures together with any other such structures situated within the same farmyard complex or complex of such structures or within 100 metres of that complex shall not exceed 900 square metres gross floor space in aggregate.

3. No such structure shall be situated within 10 metres of any public road.

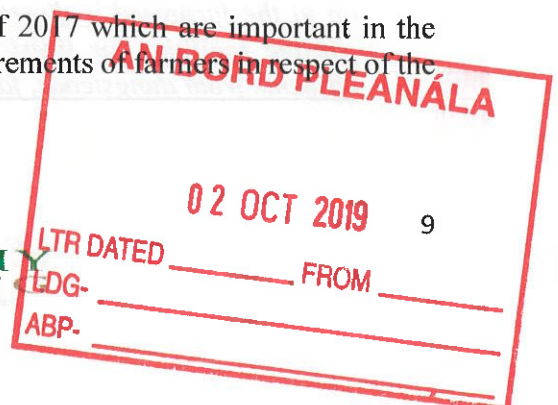
4. No such structure within 100 metres of any public road shall exceed 8 metres in height.

5. No such structure shall be situated 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.

6. No unpainted metal sheeting shall be used for roofing or on the external.

S.I. No. 605/2017 - European Union (Good Agricultural Practice for Protection of Waters) Regulations 2017

This section sets out the relevant provisions of SI No. 605 of 2017 which are important in the determination of this case and in the understanding of the requirements of farmers in respect of the protection of waters.



“agriculture” includes the breeding, keeping and sale of livestock (including cattle, horses, pigs, poultry, sheep and any creature kept for the production of food, wool, skins or fur), the making and storage of silage, the cultivation of land, and the growing of crops (including forestry and horticultural crops);

“farmyard manure” means a mixture of bedding material and animal excreta in solid form arising from the housing of cattle, sheep and other livestock excluding poultry;

“groundwater” means all water that is below the surface of the ground in the saturation zone and in direct contact with the ground or subsoil;

“organic fertiliser” means any fertiliser other than that manufactured by an industrial process and includes livestock manure, dungstead manure, farmyard manure, slurry, soiled water, silage effluent, spent mushroom compost, non-farm organic substances such as sewage sludge, industrial by-products and sludges and residues from fish farms;

“slurry” includes—

(a) excreta produced by livestock while in a building or yard, and

(b) a mixture of such excreta with rainwater, washings or other extraneous material or any combination of these, of a consistency that allows it to be pumped or discharged by gravity at any stage in the handling process but does not include soiled water;

“soiled water” has the meaning assigned by sub-article (2);

PART 2

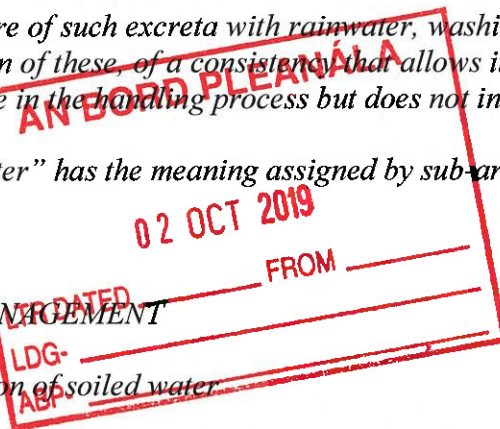
FARMYARD MANAGEMENT

Minimisation of soiled water

5. (1) *An occupier of a holding shall take all such reasonable steps as are necessary for the purposes of minimising the amount of soiled water produced on the holding.*

(2) *Without prejudice to the generality of sub-article (1), an occupier of a holding shall ensure, as far as is practicable, that—*

(a) clean water from roofs and unsoiled paved areas and that flowing from higher ground on to the farmyard is diverted away from soiled yard areas and prevented from entering storage facilities for livestock manure and other organic fertilisers, soiled water, and effluents from dungsteads, farmyard manure pits, silage pits or silage clamps and



(b) rainwater gutters and downpipes where required for the purposes of paragraph (a) are maintained in good working condition.

Collection and holding of certain substances

6. (1) Livestock manure and other organic fertilisers, soiled water and effluents from dungsteads, farmyard manure pits, silage pits or silage clamps arising or produced in a building or yard on a holding shall, prior to its application to land or other treatment, be collected and held in a manner that prevents the run-off or seepage, directly or indirectly, into groundwaters or surface waters of such substances.

(2) The occupier of a holding shall not cause or permit the entry to waters of any of the substances specified in sub-article (1).

Provision and management of storage facilities

7. (1) Storage facilities for livestock manure and other organic fertilisers, soiled water and effluents from dungsteads, farmyard manure pits, silage pits or silage clamps shall be maintained free of structural defect and be maintained and managed in such manner as is necessary to prevent run-off or seepage, directly or indirectly, into groundwater or surface water, of such substances.

(2) Storage facilities being provided on a holding on or after 31 March 2009 shall—

(a) be designed, sited, constructed, maintained and managed so as to prevent run-off or seepage, directly or indirectly, into groundwater or surface water of a substance specified in sub-article (1), and

(b) comply with such construction specifications for those facilities as may be approved from time to time by the Minister for Agriculture, Food and the Marine.

(3) Storage facilities other than those referred to in sub-article (2) shall be of such construction and design and shall be maintained and managed in such a manner so as to comply with the requirements of sub-article (1) and article 6(2).

(4) In this article “storage facilities” includes out-wintering pads, earthen-lined stores, integrated constructed wetlands and any other system used for the holding or treatment of livestock manure or other organic fertilisers.

An examination of these Regulations will show that there is a clear distinction made between clean uncontaminated water and soiled water or polluting matter. The Regulations make it clear that clean uncontaminated water from roofs and unsoiled paved areas is to be diverted away from soiled water and does not enter storage facilities.

Water from soiled paved areas, soiled yards, soiled water and effluents from dungsteads, farmyard manure pits, silage pits or silage clamps are all treated as potential pollutants for ground waters or surface water and the aforementioned regulations clearly stated that they must be collected in a manner that prevents the run-off or seepage, directly or indirectly into groundwaters or surface waters of such substances.

Definition of “Include”

According to the Oxford Dictionary the word “Include” is a verb which means “Comprise or contain as part of a whole”

Its usage is explained in the Oxford Online Dictionary as follows:

“Usage

Include has a broader meaning than comprise. In the sentence the accommodation comprises 2 bedrooms, bathroom, kitchen, and living room, the word comprise implies that there is no accommodation other than that listed. Include can be used in this way too, but it is also used in a non-restrictive way, implying that there may be other things not specifically mentioned that are part of the same category, as in the price includes a special welcome pack”

The usage of the term include shall be addressed further in my report under the section related to the issuing of the Section 12 Notice.

4.0 Background

The McDaid’s have been farmers on this farm for generations, dating back to the 1800s. We attach a map dated 1837 which shows that the roadway traversing through the McDaid farmyard is a public right of way and not a public road.

Donal McDaid Snr farmed the land under Folio MN 8394 (the home farm) which was in the ownership of his great grandfather until Donal McDaid Jnr took full charge of the said folio from 27/2/01 to run the dairy business. He became the registered owner of the folio in May 2015.

Donal McDaid Snr is over 80 years old and the attached affidavit from Mr. McDaid Snr confirms that there has never been work carried out by the Local Authority during his living memory over the 80 years including Monaghan County Council employees, District Council employees, Direct Labour Staff or any contracted Agents of Monaghan County Council or Carrickmacross District Council.

The affidavit confirms that on or about January 1978 Mr. McDaid Snr and another local farmer drafted a letter requesting that the Horseshoe road be taken in charge. Mr. McDaid Snr was subsequently advised that the road would not be taken in charge.

Mr. McDaid’s affidavit confirms that whilst works were carried out by Monaghan County Council on other parts of the Horseshoe Road “no improvement works were ever carried out on the small section of the Horseshoe road the subject matter of the Court proceedings herein that runs through our farm comprised within Folio MN8394”. The affidavit then continues that the foreman

responsible for the improvement works on behalf of Monaghan County Council advised Mr. McDaid that he had been instructed not to carry out any improvements on the section that passes through his farmyard.

We note that Pat Cunningham Director of Drummondreagh Limited made a sworn affidavit that he has been employed on a regular basis by the McDaid family to carry out work on their behalf for the past 25 years. Prior to that he operated as a sole trader contractor and has carried out work for the past 40 years on the road known locally as "McDaid's Back Lane."

It is our client's contention that this is not and has never been a public road. This is discussed later in the referral and is the subject of a legal opinions from Ms. Mary Moran Long BL attached hereto.

Due to the layout of the agricultural structures and due to the layout of the applicant's farmland and having regard to the need to milk the cows twice a day, the dairy herd passes must go along the road to enter and leave the parlour 4 times a day (cows in to be milked in the morning, cows back out to pasture after, cows back in in the evening to be milked and returned to pasture that evening).

The need for underpass is borne out of a number of issues. There was a Section 12 Notice issued by Monaghan County Council in August 2008 which required the removal of polluting matter from the road and the Notice from the Roads Section requiring the removal of water, soil and other material from flowing onto the public road.

Our client made an application in 2007 under Ref: 07/1311 for the following 1) Demolish existing silage pit 2) construct new covered slatted shed and milking parlour 3) All other relevant ancillary site works. That permission was granted on 27/9/07. Condition No. 4 of that permission stated as follows:

"The finished floor level of the proposed development shall match that of adjoining farm shed. Any facilitating cut and fill shall be graded to a natural contour to reflect the existing topography of the area"

A site inspection will show that due to the significant difference in levels as the site rises considerably, the majority of the new milking parlour building is actually lower than the road level outside, in order to comply with this condition.

The Section 12 Notice was issued on 11/08/08 one year after the grant of planning permission Under Ref: 07/1311 which had not been completed at the time of the issuing of the Section 12 notice. Conscious of the need to comply with the Section 12 notice the applicant proceeded to address the issue of animal manure on the road and as the affidavit's attached show the works for the installation of the underpass were carried out in consultation with the local Council Engineer.

In order to comply with both Condition No. 4 of the permission which resulted in the majority of the parlour being below the level of the road outside and in order to comply with the requirements of the Section 12 Notice the installation of the culvert was deemed necessary by the applicant.

AN BORD PLEANALA
02 OCT 2015
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Donal McDaid advises that he is regularly inspected by the Environment Section of Monaghan County Council and on one occasion the officers Donna MacEvoy (Field officer), Bernie O’Flaherty and Sinead Hurson informed him he would be issued with a Section 12 Notice and was instructed to immediately cease the discharge of all polluting matter including silage effluent from the farm yard to nearby roadside drains and watercourse. He was required to divert all silage effluent and slurry to leak proof storage tanks.

Animal manure is a polluting matter and must be controlled in accordance with SI 605 of 2017. As the animals were traversing the road 4 times a day it was clearly incumbent on Mr. McDaid to control the animal manure (polluting matter from entering the roadside drains and watercourse). In our professional planning opinion and having regard to the provisions of SI 605 of 2017 the animal effluent on the road formed part of the Section 12 Notice and the remedy to address that by Mr. McDaid. Mr. McDaid advises that he was informed by the Environment Section that he did not require planning permission for the construction work to remedy these problems.

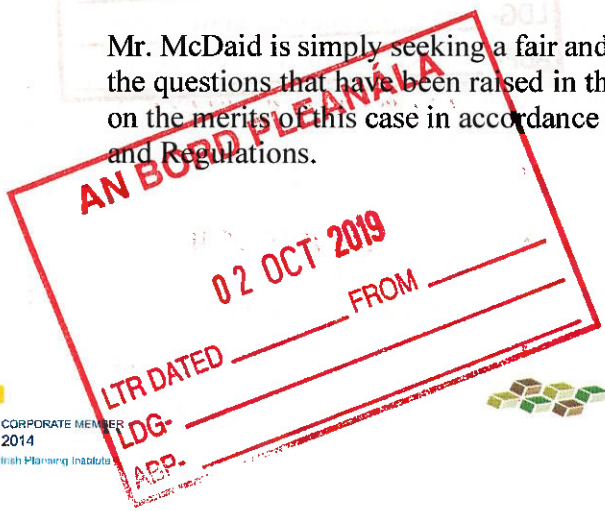
It must be noted that the new silage storage facility and effluent holding tank was constructed during the winter months of 2008 and a slatted shed was completed in January 2009 in accordance with Permission Ref: 07/1311 1) Demolish existing silage pit 2) construct new covered slatted shed and milking parlour 3) All other relevant ancillary site works which was granted 16/08/2007.

Mr. McDaid advises that in Spring 2009 his father met Alan Hall a Senior Engineer with Monaghan County Council to discuss the concerns regarding the public right of way (road) and the Section 12 Notice and how best to remedy a plan to improve the situation. Mr. McDaid advises that due to the economic crash there was no finance available to carry out the works. But the issue regarding the cows entering and exiting the farm building twice daily and traversing the public right of way continued and the problem of the soiled water entering the roadside drains continued. Mr. McDaid states at all times they were conscious of the Section 12 Notice.

During a meeting between Mr. McDaid Snr, Councillor Noel Keelan and Monaghan County Council Executive Engineer John Lennon, Mr. McDaid informed the engineer of the intention to install the underpass and Mr. McDaid states he was advised “Put it in and we will consider the road improvement then”. This is also confirmed in the affidavit of Noel Keelan.

Mr. McDaid advises that he has always been conscious of the need to comply with the Section 12 Notice. He made two attempts to apply for retention permission but on both occasions the applications were deemed invalid by the Planning Authority.

Mr. McDaid is simply seeking a fair and impartial assessment of this case by An Bord Pleanala on the questions that have been raised in the Section 5 Referral and that this will be dealt with based on the merits of this case in accordance with the provisions of the Planning and Development Act and Regulations.



5.0 Grounds for Referral

This section sets out the Grounds of referral on behalf of our client which are expanded on below:

1. The works constitute works in compliance with a Notice under Section 12 of the Local Government Water Pollution Act 1977 as amended by section 9 of the Local Government (Water Pollution) Act 1990 dated 11 August 2008.
 2. The works constitute exempted development under Class 9 of the Planning and Development Regulations 2001(as amended).
 3. The works constitute exempted development under Section 4(1) of the Planning and Development Act 2000 as amended.
-
1. The works constitute works in compliance with a Notice under Section 12 of the Local Government Water Pollution Act 1977 as amended by section 9 of the Local Government (Water Pollution) Act 1990 dated 11 August 2008.

Over the years there have been a number of complaints and issues arising from the animals traversing the road and the resultant animal manure onto the roads.

Monaghan County Council served a Notice directed to Donal McDaid, Beagh Td Donaghmoyne, Co. Monaghan under section 12 of the Local Government (Water Pollution) Act, 1977 (as amended by section 9 of the Local Government (Water Pollution) Act 1990 dated 11 August 2008. The notice required the cessation of discharge of polluting matter including silage effluent from the farmyard to land, nearby roadside drain and nearby watercourse etc.

The actual Section 12 Notice is not included in the Planner's report in respect of the Section 5 Declaration but rather two signed internal memos.

The official Section 12 Notice received by Donal McDaid a copy of which is attached which is on official Council headed paper.

The Notice issued under Section 12 of the Local Government (Water Pollution) Act 1977) No. 1 of 1977 (Copy attached) stated as follows:

1. Upon receipt of this notice, immediately cease the discharge of polluting matter including silage effluent from your farmyard to adjacent field and water course at Donal McDaid, Beagh Td. Donaghmoyne, Co. Monaghan.
2. Within a period of 4 months, cease making silage on a gravel/grass base. Prior to further silage making on site, upgrade silage effluent collection facilities and provide effluent collection channels and tank. Structures to be constructed to Department of Agriculture and Food Standards.
3. Within a period of 4 months, divert all silage effluent and slurry to leak proof storage facilities and ensure all slurries and effluent are landspread in accordance with European Communities (Good Agricultural Practice for Protection of Waters) Regulations 2006, SI No. 37 of 2006.

AN BORD PLEANALA

01 OCT 2018

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“Further Actions:

I recommend the issue of a Section 12 notice to Mr. Donal McDaid of Beagh Td. Donnaghmoynne, Co. Monaghan under the following conditions:

*“1) Immediately cease the discharge **of all polluting mater including silage effluent** from your farmyard at Beagh Td. Donnaghmoynne to land, nearby roadside drain and nearby watercourse.*

2) Cease making silage on gravel/grass base. Prior to further silage making on site, provide an adequate silage base and silage effluent collection facilities including leak proof effluent collection channels and tank. Structures to be constructed to Department of Agriculture Standards.

3)Divert all silage effluent and slurry to leak proof storage facilities and ensure all slurries and effluent are landspread in accordance with European Communities (Good Agricultural Practice for Protection of Waters) Regulations 2006, SI. No. 378 of 2006.

4) Clean out any ditch, drain or watercourse that has received polluting matter (immediately)”.

The Planner’s report incorrectly states that *“It is important to note that no matters in respect of manure or other material on the public road were raised on the day with Mr. McDaid who was present at the time of the Inspection.”* The Planner’s report refers to the Environmental Inspector’s report (Sinead Hurson) who was present on the day. An examination of that report and the extract quoted above will show that it clearly states *“Immediately cease the discharge of all polluting matter including silage effluent from your farmyard at Beagh Td. Donnaghmoynne to land, nearby roadside drain and nearby watercourse”.*

As outlined in the section in respect of Planning Legislation and Definitions polluting matter includes all soiled water in the farmyard, which includes animal manure. As explained above the definition of “Include” in the Oxford Dictionary means “Comprise or contain as part of a whole,” the fact that the word “include” was used means that the Environment Section were not just referring to silage effluent. The report specifically states “all polluting matter”.

The Planner’s report states *“Notwithstanding the inference made in the submission by Ger Fahy Planning in their letter of 05 February 2019, that section 12 Notice was issued to address matters relating to manure on the public road this is clearly not the case.*

The Notice was issued to Mr. McDaid in respect of water pollution, and this is clear from its content. It made no reference to contamination on the road or construction of an underpass,” however this ignores the fact that the Report clearly refers to “nearby roadside drain” and that the Section 12 Notice relates to “all polluting matter including silage effluent and slurry”.

As outlined in the Legal Opinion by Mary Moran Long, Mr. McDaid was informed by the Environment Section during the site inspection that he was required to take appropriate steps to cease the discharge of **all polluting matter including silage effluent and slurry (animal manure/soiled water)** to land and to the nearby roadside drain and nearby watercourse.

If the Section 12 Notice was only respect of silage effluent then that would have been stated, but the use of the word including clearly indicates that silage effluent was not the only polluting matter being raised by the Environment Section.

The Section 12 Notice came after the granting of planning permission under Ref: 07/715 1) DEMOLISH existing derelict dwelling house and out buildings 2) erect new agricultural silage pit, 3) remedial works to existing entrance, 4) all other relevant ancillary site works. Granted 19/07/2007.

The Section 12 Notice also came after a granting of Planning Permission Ref: 07/1311 for the following 1) Demolish existing silage pit 2) construct new covered slatted shed and milking parlour 3) All other relevant ancillary site works. Final Grant 27/9/07

The Planner's report is incorrect to state as follows: "*Mr. McDaid obtained planning permission for a now constructed covered slatted shed and milking parlour immediately adjacent to the cattle underpass, through Planning Permission Ref: 07/1311. The permission was granted on 26 September 2008. The constructed of that shed and parlour would have offered the applicant an appropriate opportunity to carry out works related to the notice shortly before the grant of planning permission, if he had been so inclined*".

This statement is factually incorrect as Permission Ref: 07/1311 was granted by final grant on 27/9/07. The Section 12 Notice was issued on 11/1/08 after the grant of planning permission.

The Planner's report ignores the fact that the Roads Section of Monaghan County Council had issued a Notice dated 10/1/07 (Copy attached) stating as follows:

"Take Notice that I, David Fallon the undersigned being a duly authorised officer for and on behalf of Monaghan County Council, the duly authorised Roads Authority for the County of Monaghan, in pursuance of its powers under Section 76, Subsection 6 of the Roads Act 1993 HEREBY formally give you the owner and/occupier and/or reputed owner or reputed occupier of lands situate at being lands adjacent to a public road that you require to carry out all works necessary:

(a) To prevent water, soil, or other material from flowing or falling onto a public road from the aforementioned land within 14 days from the Service of this Notice.

As this presents an immediate and serious hazard to persons using a public road or has caused, is causing or will cause serious damage to a public road, the Local Authority may, notwithstanding the provisions of subsections (6) to (12) to take immediate action to remove or reduce the hazard or prevent or reduce the damage any further damage".

It is very clear from this Notice that Monaghan County Council had notified Mr. McDaid of the need to prevent "water, soil or other material" from "flowing or falling onto the public road". The polluting matter in the Section 12 Notice is obviously the same polluting matter the subject of the Notice by the Road Section of Monaghan County Council.

AN BORD PLEANÁLA

02 OCT 2019

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For the avoidance of doubt the LT81011 is the road running along the western side of the farmyard and the farmyard and roadway slopes downwards towards that LT81011.

There was no doubt in Mr. McDaid's mind but that the polluting matter including silage effluent being referred to in the Environment Inspector's report was contaminated soiled water which arose from animals travelling this road 4 times every day.

In order to comply with the Section 12 Notice the culvert /underpass, the subject of this referral was constructed to create a new route for cows to traverse from the grazing farm lands under the farm yard to the new milking parlour avoiding the road leading to the farm and the farm yard. The culvert/underpass is designed to include a slurry tank under the cows' entrance from the grazing lands that will collect polluting materials (animal manure) as the cows pass through and into the milking parlour. The culvert/underpass was therefore constructed in order to comply with the notice under section 12 of the Local Government (Water Pollution) Act, 1977 which was served on the client.

A site inspection will show that there is a considerable difference in levels within the site. A review of the levels on the drawing will show that the lower end of the farmyard is 150.56 and the upper end of the farmyard where the culvert is located is 154.25. Condition No. 4 of the permission Ref: 07/1311 states as follows:

"The finished floor level of the proposed development shall match that of the adjoining farm shed. Any facilitating cut and fill shall be graded to a natural contour to reflect the existing topography of the area".

Due to the difference in the levels much of the milking parlour is located below the road. The culvert/underpass was installed to facilitate the safe and clean movement of animals to and from the milking parlour without them having to traverse the road and therefore would remove any animal manure from the roads in the vicinity of the farm.

The Planning and Development Regulations 2001 as amended, Schedule 2 Part 1 'Exempted Development - General' 'Miscellaneous' category, Class 41 (c) provides:

'Works consisting of or incidental to -

(c) the carrying out of development in compliance with a notice under section 12 of the Local Government (Water Pollution) Act, 1977 (No. 1 of 1977),'

The Legal Opinion attached confirms that the construction of the culvert/underpass is works consisting of the carrying out of development in compliance with the Notice under section 12 of the Local Government (Water Pollution) Act 1977 by the client and is therefore exempted development pursuant to Class 41 of Schedule 2 Part 1 of the Planning and Development Regulations 2001 as amended.

Mr. McDaid having received both a Section 12 Notice and a Notice under Roads Act was under no illusion as to what was required and he understood that he needed to take action to prevent soiled waters from entering the roadside drain thereby preventing water pollution.

The Legal Opinion from Ms Mary Moran Long confirms that Mr. McDaid raised the question on 5th August 2008 as to whether planning permission was required for construction works to remedy the water pollution problem and was informed by Ms. Hurson and Ms. McEvoy that planning permission was not required.

Our client advises that the development permitted under 07/1311 was substantially completed within the 5 year period. There was a delay in installing the milking machinery due to a grant not being available for machinery at that time by the Dept. of Agriculture. The Board will note that the timing of coincided with the economic recession which hit the country and was felt in every sector of the economy.

Therefore, the floor level (namely the installation of slats a site inspection will show that the floor is a slatted floor with an animal manure tank underneath) was not in place as was required to comply with Condition No. 4 of the planning permission which required that the floor level of the milking parlour be the same as the adjoining shed.

During the period whereby the machinery was being installed and the internal works being completed in the shed a fatal accident occurred on site and all works ceased while a full investigation was carried out. This resulted in a delay in the completion of the internal works to the permitted development and also delayed the installation of the underpass. As indicated in the legal opinion of Ms. Mary Moran Long the Planner's report is assuming that the installation of the underpass was decided solely by Mr. McDaid, however the timing of the completion of these internal works were outside the control of Mr. McDaid.

Having regard to the planning history of this case and to the notices issued by Monaghan County Council in respect of the removal of polluting matter, soiled water, animal manure and including silage effluent by the Environment Section under Section 12 and by the Roads Section under the Roads Act 1993, Section 76, Subsection 6 it is reasonable to conclude that the Section 12 Notice was not restricted to just silage effluent as the planner's report suggests but did unquestionably include all polluting matter and therefore included all soiled water and animal manure on the farmyard which was flowing down the slope of the yard into the roadside drains.

Having regard to the provisions of the Planning and Development Regulations 2001 as amended, Schedule 2 Part 1 'Exempted Development – General' 'Miscellaneous' category, Class 41 (c) provides. The installation of the underpass constitutes '*Works consisting of or incidental to (e) the carrying out of development in compliance with a notice under section 12 of the Local Government (Water Pollution) Act, 1977 (No. 1 of 1977),*' and is therefore development and is exempted development.

AN BORD PLEANALA
02 OCT 2019
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2. The works constitute exempted development under Class 9 of the Planning and Development Regulations 2001(as amended).

Class 9 of Schedule 2 Part 3 ‘Exempted Development – Rural’ of the Planning and Development Regulations 2001 as amended provides for:

‘Works consisting of the provision of any store, barn, shed, glass-house or other structure, not being of a type specified in class 6, 7 or 8 of this Part of this Schedule, and having a gross floor space not exceeding 300 square metres.

Conditions and Limitations

- 1. No such structure shall be used for any purpose other than the purpose of agriculture or forestry, but excluding the housing of animals or the storing of effluent.*
- 2. The gross floor space of such structures together with any other such structures situated within the same farmyard complex or complex of such structures or within 100 metres of that complex shall not exceed 900 square metres gross floor space in aggregate.*
- 3. No such structure shall be situated within 10 metres of any public road.*
- 4. No such structure within 100 metres of any public road shall exceed 8 metres in height.*
- 5. No such structure shall be situated 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.*
- 6. No unpainted metal sheeting shall be used for roofing or on the external.’*

The attached legal opinion by Mary Moran Long confirms that this road is not a Public Road. Therefore, the restrictions in respect of Condition No. 3 do not apply in this instance and the underpass constitutes works under Class 9 being works consisting of an “other structure not being of a type specified in Class 6, 7, or 8”.

The Planner’s report suggests that as Class 9 identifies a “store, barn, shed, glass-house” which clearly the underpass is not then it cannot fall within the category of “other structure”. This suggestion makes no sense as the intention of the term “other structure not being a type specified in Class 6,7, or 8” is to facilitate other structures.

The Planner’s report then proceeds to state that Class 9 cannot apply as the Planning Authority are of the opinion that the public right of way through the farmyard is a public road and is therefore not exempted having regard to the provisions of Article (9)(a)(v) of the Planning and Development Regulations 2001(as amended).

AN BORD PLEANALA
02 OCT 2019
LDR DATED _____ FROM _____
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ASP- _____

The matter of whether this is a Public Road is discussed in detail in the legal opinion provided by Ms. Mary Moran Long attached hereto and it is not proposed to repeat the entire content of same.

However, we would note that there is no judgement in respect of whether or not this is a Public Road and the written report and copy of the DAR has been requested in respect of this matter to clarify and confirm the judgement of the High Court. The content of the DAR is imperative to the determination of the case however it is not available at the time of lodging this Section 5 Referral, therefore we would request that An Bord Pleanála request same by way of a request for additional information within the next 2 months in order to submit a copy of same prior to the determination of this case by the Board.

The procedures in declaring a public road are discussed in detail in the opinion of Ms. Mary Moran Long and having regard to the content of that opinion we consider that Monaghan County Council have not followed the correct procedure under the Roads Act 1993 in declaring this road a public road and therefore it cannot be construed as such.

Prior to the determination of this Section 5 Referral and in the interests of Justice the Planning Authority should be required to furnish a copy of the Notice published pursuant to Section 11(1) of the Roads Act 1993 and the resolution and minutes of the Council meeting of the elected members which declared the said road a public road pursuant to Section 11(2) of the Roads Act 1993. If these procedures have not be followed then the certificate issued dated 14th August 2019 then this may be the subject of a separate judicial review as the validity of such a certificate may be at issue.

The critical determinant in whether this structure is or is not exempted development is whether or not this roadway is a public road or is merely a roadway which is a public right of way. It is clear from the 1837 map that this was a public right of way and was not a public road. The Legal Opinion of Mary Moran Long which concludes that Monaghan County Council have not followed the correct procedures and confirms that this roadway is not a public road.

"It is clear that there is no evidence that the road was ever declared a public road under the 1925 Act or the 1993 Act. In addition Monaghan County Council provided no evidence that there was ever any expenditure of public money to maintain the road and therefore the road is not a public road as understood at common law or defined by statute".

Based on the evidence provided we are satisfied that this roadway is not a public road and has never been a public road and the culvert/underpass is therefore exempted development under Class 9 of Schedule 2 Part 3 of the Planning and Development Regulations 2001 as amended.

AN BORD PLEANÁLA

02 OCT 2019

LTR DATED _____ FROM _____

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3. The works constitute exempted development under Section 4(1) of the Planning and Development Act 2000 as amended.

The works comprising the underpass/culvert were carried out are for the purposes of agricultural use. Section 4 (1)(a) of the Planning and Development Act 2000 as amended provides ‘*The following shall be exempted developments for the purposes of 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;’

The underpass/culvert is therefore exempted development pursuant to section 4(1)(a) of the 2000 Act as amended.

The Planning Authority dismisses this on the grounds that it relates to use and not works. However, this ignores the entire point of the matter that the culvert/underpass shall be used for the purposes of agriculture and is therefore exempt under Section 4(1) of the Planning and Development Act 2000.

6.0 Conclusion

Having reviewed the two planner’s reports prepared in respect of this Section 5 Declaration which was issued without any reasons or considerations and is therefore contrary to the findings of the Supreme Court in *Connelly V An Bord Pleanala* (2018) IESC 31 in which it considered it the general duty of public bodies to give reasons for decisions which affect a person or persons.

We would also submit that the report of the Planning Authority is prejudiced and relies heavily on the fact that a previous Section 5 referral was submitted and on the Section 160 action which was taken. Each application must be treated on its merits having regard to the facts of the case. The question of whether or not this underpass is or is not exempted development was not a matter for the Courts and is a planning matter for the determination of the Board under this Section 5 referral.

We would argue that the Planning Authority have not proven that this is a public road and there are outstanding matters required to be considered by An Bord Pleanala in respect of that including the need for the Board to view the DAR in respect of the judgement of Justice Meenan and also the need for Monaghan County Council to furnish evidence that they have complied with the appropriate procedures for the declaration of this as a public road. It is our client’s firm belief that it has never been a public road.

WHEREAS a question has arisen as to whether:

The installation of a box culvert/animal underpass for the purposes of moving animals, installation of animal effluent holding tank and all associated site works in compliance with a Section 12 Notice issued by Monaghan County Council constitute:

1. works in compliance with a Notice under Section 12 of the Local Government Water Pollution Act 1977 as amended by section 9 of the Local Government (Water Pollution) Act 1990 dated 11 August 2008.

2. exempted development under Class 9 of the Planning and Development Regulations 2001(as amended).
3. exempted development under Section 4(1) of the Planning and Development Act 2000 as amended.

Having regard to

- (a) sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended,
- (b) Article 6(1) of the Planning and Development Regulations 2001, as amended,
- (c) Schedule 2 Part 1 'Exempted Development – General' 'Miscellaneous' category, Class 41 (c) of the Planning and Development Regulations 2001 as amended,
- Class 9 of Schedule 2 Part 3 'Exempted Development – Rural' of the Planning and Development Regulations 2001 as amended,
- (d) the planning history of the site,
- (e) the fact that this roadway is not a public road.

NOW THEREFORE we request An Bord Pleanála, in the exercise of the powers conferred on it by section 5 (3) (a) of the Planning and Development Act, 2000, as amended, to confirm that: The installation of a box culvert/animal underpass for the purposes of moving animals, installation of animal effluent holding tank and all associated site works in compliance with a Section 12 Notice issued by Monaghan County Council is development and is exempted development.

Your sincerely,



 Geraldine Fahy BA MRUP MIPI

Attachments:

1. Section 5 Declaration issued by Monaghan County Council dated 5th September.
2. Cheque for €220 being the statutory fee for a referral.
3. Copy of Section 12 Notice dated 11/8/08 received by Donal McDaid
4. Copy of Notice under The Roads Act 1993, Section 76 of Subsection 6.
5. Legal Opinion of Ms. Mary Moran Long dated 24/7/19, 2/8/19, 29/9/19
6. Copy of two planner's reports from Monaghan County Council
7. Affidavit of Donal McDaid Snr
8. Affidavit of Donal McDaid Jnr.
9. Affidavit of Pat Cunningham
10. Affidavit of Noel Keelan Councillor Monaghan County Council
11. Folio of Lands owned by Mr. McDaid.
12. 1837 Map showing roadway being a public right of way (dotted line indicates public right of way not roadway)

AN BORD PLEANÁLA	
02 OCT 2019	
LTR DATED _____	FROM _____
LDG- _____	
ABP- _____	



Monaghan County Council

Acmhainní Daonna
Human Resources
047 30586

Ref JR

Airgeadas
Finance
047 30589

5th September 2019

Na Bóithre
Roads
047 30597

FJ Coyle & Associates,
3 High Street,
Monaghan,
Co. Monaghan

Clár na dToghthóirí
Register of Electors
047 30551

Your client: Donal Gerard McDaid,

Comhshaol
Environment
042 966 1240

Re: EX 19/22 Exempt Development Application
Donal Gerard McDaid, Beagh, Donaghmoyne, Co. Monaghan,

Na hEalaíona
Arts
047 38 182

A Chara

sachtaí /Deontais Tithíochta
Housing Loans/Grants
047 30527

In accordance with documentation submitted on 8th August 2019, the proposed development is not considered Exempted Development under the provisions of;

Leabharlann an Chontae
County Library
047 74700

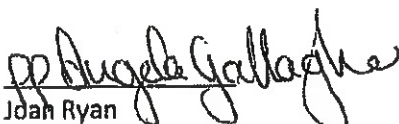
- Schedule 2, Part 1, Class 41 (c) of the Planning and Development Regulations 2001 (as amended)
- Schedule 2, Part 3, Class 9 of the Planning and Development Regulations 2001 (as amended)
- Section 4(1) of the Planning and Development Act 2000 as amended

Mótarcháin
Motor Tax
047 81175

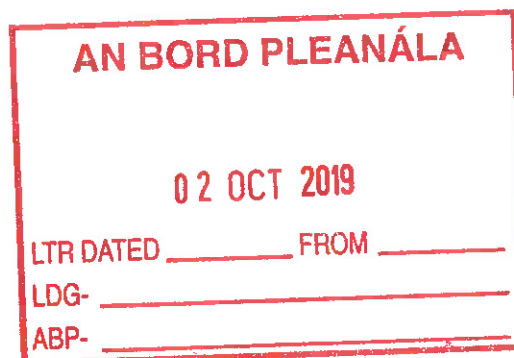
Músaem an Chontae
County Museum
047 82928

Mise le meas

Pleanáil
Planning
047 30532


Joan Ryan
Administrative Officer
Planning

Pobal
Community
047 73719



Rialú Óiteáin/Foirgnimh
Fire/Building Control
047 30521

Oifig Fiontair Áitiúil
Local Enterprise Office
047 71818

Seirbhís Uisce
Water Services
047 30504/30571

Fálann an tÚdarás Áitiúil roimh chomhfhreagras i nGaeilge.
Comhairle Contae Mhuineacháin, Oifig an Chontae, An Gleann, Muineachán, Éire
Monaghan County Council, Council Offices, The Glen, Monaghan, Ireland
(T) 00353 47 30500 (F) 00353 47 82739 (W) www.monaghan.ie
(E) eolas@monaghancoco.ie info@monaghancoco.ie

Comhairle Chontae Mhuineacháin
OIFIGÍ CONTAE,
AN GLEANN,
MUINEACHÁN.
Guthán : 047 - 30500

Seoltar comhfhreagrais go dtí
an Rúnaí.



Monaghan County Council
COUNTY OFFICES
THE GLEN, MONAGHAN.

Telephone: 047 - 30500

Fax: 047 - 82739

e-mail: secretar@monaghancoco.ie

website: www.monaghan.ie

All correspondence should be addressed
to the Secretary.

MONAGHAN COUNTY COUNCIL
LOCAL GOVERNMENT (WATER POLLUTION) ACT 1977, SECTION 12
NOTICE AS AMENDED BY SECTION 9 OF THE LOCAL
GOVERNMENT (WATER POLLUTION) (AMENDMENT) ACT 1990.

You are hereby required within the period specified from the date of issue of this Notice to carry out the following works:-

1. Upon receipt of this notice, immediately cease the discharge of polluting matter including silage effluent from your farmyard at Beagh Td, Donaghmoyne, Co Monaghan to land, nearby roadside drain and nearby watercourse. Also clean out any ditch, drain or watercourse that has received polluting matter.
2. Within a period of 4 months, cease making silage on a gravel/grass base. Prior to further silage making on site, upgrade the silage effluent collection facilities and provide effluent collection channels and tank. Structures to be constructed to Department of Agriculture and Food Standards.
3. Within a period of 4 months, divert all silage effluent/slurry/soiled waters to leak proof storage facilities and ensure all slurries/effluent/soiled waters are landspread in accordance with European Communities (Good Agricultural Practice for Protection of Waters) Regulations of 2006, SI No.378 of 2006.

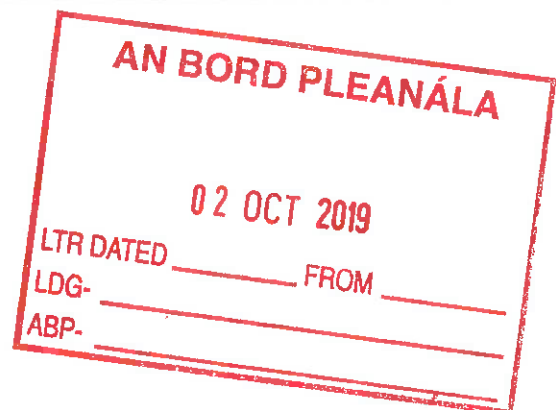
You may make representations in writing, regarding the terms of this Notice to Monaghan County Council within a period of 2 weeks from the date of issue of this Notice.

Failure to comply with the provisions of this Notice within the specified time is an offence under Section 12 of the Local Government (Water Pollution) Act 1977 as amended by Section 9 of the Local Government (Water Pollution) (Amendment) Act 1990 and shall be liable on summary conviction to a fine not exceeding €1,270.00

Dated this the 11-8-08

Signed Sandra Murphy

TO:- Donal McDaid
Beagh Td
Donaghmoyne
Co Monaghan



Comhairle Chontae Mhuineacháin
OIFIGÍ CONTAE,
AN GLEANN,
MUINEACHÁN.
Guthán : 047 - 30500

*Seoltar comhfhreagrais go dtí
an Rínaí.*



NOTICE

Monaghan County Council
COUNTY OFFICES
THE GLEN, MONAGHAN.

Telephone: 047 - 30500

Fax: 047 - 82739

e-mail: secretar@monaghancoco.ie

website: www.monaghan.ie

All correspondence should be addressed
to the Secretary.

THE ROADS ACT 1993 SECTION 76, SUBSECTION 6

TO: Mr. Donal McDaid

OF: Beagh, Carrickmacross, Co. Monaghan

Re: Property at: LT 81012 - Beagh, Carrickmacross Co. Monaghan

TAKE NOTICE that I, David Fallon the undersigned being a duly authorised officer for and on behalf of Monaghan County Council, the duly authorised Roads Authority for the County of Monaghan, in pursuance of its powers under Section 76, Subsection 6 of the Roads Act 1993 HEREBY formally give you, the owner and/occupier and/or reputed owner and or reputed occupier of lands situate at being lands adjacent to a public road that require you to carry out all works necessary:

- (a) To prevent water, soil or other material from flowing or falling onto a public road from the aforementioned land within **14 days** from the Service of this Notice.

As this presents an immediate and serious hazard to persons using a public road or has caused, is causing or will cause serious damage to a public road the Local Authority may, notwithstanding the provisions of subsections (6) to (12), take immediate action to remove or reduce the hazard or prevent or reduce the damage or any further damage

AND we hereby give you Notice that in default of the said work being carried out within the time aforesaid we shall:

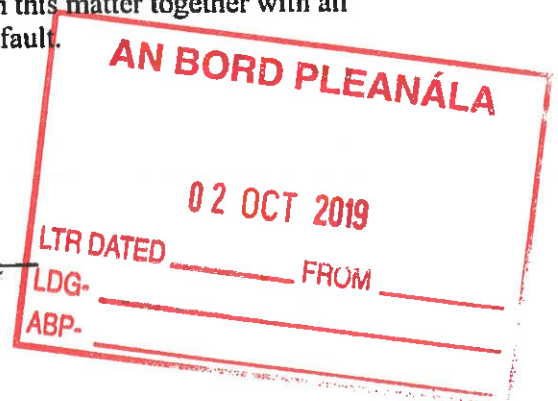
- (a) Prosecute you pursuant to Section 76, Sub Section 11 of the Roads Act 1993
- (b) Carry out all work specified by this Notice or such other works as we shall deem fit.
- (c) Institute proceedings to have the works carried out by you or in the alternative to recover all costs of actions taken by the Council in this matter together with all reasonable costs and charges attendant on such default.

DATED THIS 10/01/2007

SIGNED

David Fallon

DIRECTOR OF SERVICES.



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IN BOND PLANNING
DATE: _____
BY: _____
FOR: _____

MARY MORAN-LONG
Ph D Barrister-at-Law

Law Library, Four Courts, Inns Quay, Dublin 7
Tel: 087 2490428 /01 8176729 • Fax: 01 8720455 • E-mail: moranlong7@gmail.com

Your Ref:

Ger Fahy
Ger Fahy Planning
Annaghdown
Pagestown,
Kilcloon
County Meath

24th July 2019

Via e mail

RE: Whether culvert/underpass on the McDaid farm, Beagh, Carrickmacross County Monaghan is exempted development or development. – Referral under section 5 Planning and Development Act 2000 as amended

Client: Donal McDaid

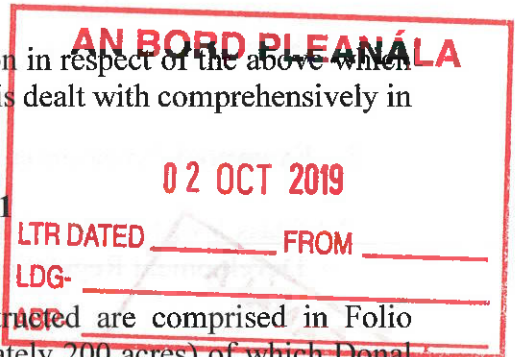
Dear Ger,

I refer to the above matter and your instructions for an opinion in respect of the above which is set out in the following. The planning history of this matter is dealt with comprehensively in the submission prepared by Ger Fahy Planning.

1. Exempted development – Class 41 Schedule 2 Part 1

1.1. The lands on which the culvert/underpass is constructed are comprised in Folio MN8394 which forms part of the farm (of approximately 200 acres) of which Donal McDaid is the registered owner. The farm is a dairy farm. The cattle graze on the farm lands and are required to be brought twice daily to the large milking parlour (for which planning permission reference 07/715 was granted by Monaghan County Council on 23rd August 2008). The cattle traverse a road leading to the farm, enter and traverse the farm yard, enter a shed adjacent to the milking parlour and from there enter the milking parlour. This results in polluting materials including slurry being released onto the road leading to the farm and farm yard which runs into the surface water drain.

1.2. Monaghan County Council served a Notice directed to Donal McDaid, Beagh Td Donaghmoynne, Co. Monaghan under section 12 of the Local Government (Water Pollution) Act, 1977 (as amended by section 9 of the Local Government (Water Pollution) Act 1990 dated 11 August 2008). The notice requires the cessation of discharge of polluting matter including silage effluent from the farmyard to land, nearby roadside drain and nearby watercourse etc.



1.3. In order to comply with the section 12 Notice the culvert /underpass, the subject of this referral was constructed to create a new route for cattle to traverse from the grazing farm lands under the farm yard to the new milking parlour avoiding the road leading to the farm and the farm yard. The culvert/underpass is designed to include a slurry tank under the cattle entrance from the grazing lands that will collect polluting materials (cow dung/slurry) as the cattle pass through and into the milking parlour. The culvert/underpass was therefore constructed in order to comply with the notice under section 12 of the Local Government (Water Pollution) Act, 1977 which was served on the client.

1.4. The Planning and Development Regulations 2001 as amended, Schedule 2 Part 1 'Exempted Development – General' 'Miscellaneous' category, Class 41 (c) provides:

'Works consisting of or incidental to -

(c) the carrying out of development in compliance with a notice under section 12 of the Local Government (Water Pollution) Act, 1977 (No. 1 of 1977),'

1.5. The construction of the culvert/underpass is works consisting of the carrying out of development in compliance with the Notice under section 12 of the Local Government (Water Pollution) Act 1977 by the client and is therefore exempted development pursuant to Class 41 of Schedule 2 Part 1 of the Planning and Development Regulations 2001 as amended.

2. Exempted development – Class 9 Schedule 2 Part 3

2.1. Class 9 of Schedule 2 Part 3 'Exempted Development – Rural' of the Planning and Development Regulations 2001 as amended provides for:

'Works consisting of the provision of any store, barn, shed, glass-house or other structure, not being of a type specified in class 6, 7 or 8 of this Part of this Schedule and having a gross floor space not exceeding 300 square metres.

Conditions and Limitations

1. No such structure shall be used for any purpose other than the purpose of agriculture or forestry, but excluding the housing of animals or the storing of effluent.

2. The gross floor space of such structures together with any other such structures situated within the same farmyard complex or complex of such structures or within 100 metres of that complex shall not exceed 900 square metres gross floor space in aggregate.

3. No such structure shall be situated within 10 metres of any public road.

4. No such structure within 100 metres of any public road shall exceed 8 metres in height.

5. No such structure shall be situated 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.

6. No unpainted metal sheeting shall be used for roofing or on the external.'

2.2. It is alleged by Monaghan County Council that the 'road' which traverses the McDaid farm is a 'public' road and therefore the culvert/underpass as constructed offends Class 9 Condition and Limitation (3) which provides '*No such structure shall be situated within 10 metres of any public road.*'

2.3. A copy of a map of the location dated 1937 shows farm lands owned by the Donaghy family (the client's ancestors) having a dotted line through the location of the current farm yard buildings. The dotted line represents a public right of way. The right of way provided an access route through the lands from the public road to the east of the lands to the 'v' shaped public road to the west of the lands. The road to the west of the lands veers in a north easterly direction and a south easterly direction from the 'v' junction. The road does not include the right of way through the McDaid farm. The culvert/underpass is constructed under the public right of way through the McDaid farm as indicated on the map of the location dated 1837.

2.4. The question arises as to whether the public right of way indicated on the map of the area dated 1837 is a public road for the purposes of Conditions and Limitations (3) of Class 9 of Schedule 2 Part 3 PDR 2001 as amended.

Public Right of Way at Common Law

2.5. At common law a public right of way was considered to be a dedicated defined tangible physical route over land which conferred a right on the public to pass and re-pass along the route. In *Walsh & Anor -v- Sligo County Council* the Supreme court held that a public right of way is not the same as a public road and may only be regarded as a public road when it is taken in charge by a local (road) authority pursuant to the Act and where the local authority is obliged by statute to maintain and repair the road.

2.6. Dedication of a public right of way occurs where the landowner dedicates a right of passage over the lands and the act of dedication is accepted by the public. A public right of way may be created by express deed or grant or by statute or by long user. Evidence of long user is but one element of evidence of dedication of a public right of way.

2.7. An inference may be drawn that the landowner dedicated the right of way depending on the duration, frequency or intensity of user. The burden of proof rests with the person so alleging. The matter of dedication is a question of fact to be decided on evidence rather than a rebuttable presumption of law. Further evidence of user as of

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right and the nature of the user requires evidence in respect of whether public money was spent on the repair and maintenance of the road with the consent of the landowner, however, a record of presentment is merely evidence of the existence of the public right of way.

2.8. It appears that a public right of way was created over the lands on which the McDaid farm yard is now located. If the right of way through the lands was an express grant by deed, the burden would have been registered on the deed and would be registered on Folio MN8394 which was created from the deeds when the lands were registered. A right of way is not registered on Folio MN8394 therefore it appears the right of way was created by long user as opposed to express grant.

2.9. The McDaid family have considered the right of way as comprising part of the farm yard, having extensive farm building on either side and have always maintained and repaired the route without any assistance financial or otherwise from Monaghan County Council.

Grand Jury (Ireland) 1836

2.10. Section 55 of the Grand Jury (Ireland) Act 1836 empowered the grand jury to create a new public road of dimensions as specified and for liability of the grand jury for repair of the road. Section 55 provides:

‘It shall and may be lawful for the grand jury at any assizes to present any new road to be laid out and made of any width not less than sixteen feet nor more than fifty feet in the clear, and to present all such sum and sums of money as shall be necessary for laying out, or for forming, levelling, and draining, or for gravelling, paving, and making the same, and also for making fences thereto, to be levied on the barony or county of a city or county of a town in which the same shall be situate, and, when it passes through more than one barony, then proportionately on each barony, unless such new line of road shall be one upon which it is intended that his Majesty’s mails shall be carried in mail carriages, in which case it shall and may be lawful for the grand jury to present one half of all such sums of money as shall be necessary for any of the purposes aforesaid to be levied off the county, and the other half off any barony or baronies through which such new road shall pass: Provided always, that no presentment shall be made for laying out any such new road unless together with the application therefor a map of such intended new road has been lodged with the secretary of the grand jury ten days at least before the day for holding the first presentment sessions after each assizes in such county, and that a notice setting forth that an application is intended to be made for a presentment to lay out such new road (distinguishing the several townlands and baronies through which it is intended to be carried, with the number of perches in length through each townland,) has been personally served upon or left at the house of each occupier of the land through which such new road is intended to be made, fifteen days at least before the day of holding such sessions, nor unless it shall appear that no part of such new road is to be made through any deer park inclosed with a wall built of lime and stone or bricks, five feet high or more, without the consent of the owner thereof, and that no part thereof is to be made through any house entirely built with lime and stone or bricks, or through any office belonging

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to any person inhabiting a house so built, without the consent of such person. '(emphasis added)

2.11. Section 52 of the 1836 Act gave authority to the grand jury for presentment for the repair and maintenance of public roads. This was not compellable unless the Lord Lieutenant decree by order on a memorial signed by twenty cess-payers in the barony following a public enquiry. Failing that the duty to repair and maintain roads remained with the inhabitants of the parish. In *(Hewson) v Wicklow County Council*, the court held that the fact that a grand jury passed a presentment for the repair of a road or a county council passed a resolution for and spent money on the repair of a road was not conclusive evidence that the road is a public road which is maintainable by the Council.

2.12. Section 51 of the 1836 Act provides the presentment for making and repairing footpaths as follows;

'It shall and may be lawful for the grand jury of any county at any assizes to present any footpath to be made or repaired along the side of any road for which they may have authority to make presentment, and to present such sum or sums of money as may be necessary for making or repairing the same to be levied either off the county or off the barony or baronies in which such footpath shall be locally situate, according as the expense of making or repairing such road shall be presented to be levied off the county or any barony or baronies thereof.'

The Local Government (Ireland) Act 1898

2.13. The Local Government (Ireland) Act 1898, section 82 imposed a duty on local authorities to maintain roads and required all county and district councils to maintain public roads in good condition and repair, at their own cost and to take all steps necessary for that purpose. Where the actions of a council amounted to a refusal to perform their duties under section 82 of the 1898 Act the duty was enforceable by an order of mandamus *R(Westropp) v Clare County Council* and *Scariff Rural District Council*. In *Brady v Cavan County Council* where the order would have involved the cooperation of other bodies not parties to the proceedings the Supreme Court held that that an order of mandamus should not be made against a public authority where the authority did not have the financial means to comply with the order. The court held also that the High Court's power to grant an order of mandamus was discretionary and could refuse to do so if it would be futile. Murphy J acknowledged that the statute created a mandatory requirement for a local authority to repair public roads as a result of section 82 of the 1989 Act and stated '*A statutory duty to keep the roads in their county in good condition and repair was thus clearly and unambiguously imposed on the Council. While other statutory provisions have been enacted since then concerning the repair and maintenance of roads, it is indisputable that the Council remains subject to that statutory duty and as the evidence before the High Court established, that the road were in a serious state of disrepair*'

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The Local Government Act 1925 and amendments under the 1953 Act

- 2.14. Part III of the Local Government Act 1925 included specific provisions for the maintenance and construction of roads. Section 24(10) imposed a duty on county councils to maintain and construct main roads in a county
- 2.15. The term maintenance was defined in section 1 of the 1925 Act as *'the widening or other reasonable improvement of such road'*. This required improvement as well as maintenance of roads taken over by a local authority. Section 27 of the 1925 Act provides for expenses of maintenance and construction of roads and the manner in which such expense are levied.
- 2.16. Section 25 of the 1925 Act set out a procedure whereby certain roads could be declared to be public roads. Section 25(1) provides
'If at any time after the appointed day the council of any county or urban district by resolution passed after such notice as is hereinafter mentioned declares any road which is not a public road, but over which a public right of way for foot passengers, animals and vehicles exists and which connects two public roads and is not less than eleven feet wide in the clear, to be a public road, such road shall for all purposes be a public road.'

This provision allowed a road authority to declare a road to be public road where 1) a public right of way connected two public roads already in existence and 2) the roads authority passed a resolution. The roadway through the client's lands is 10 feet wide and therefore is less than the "eleven feet wide" requirement for declaring the road a public road under that provision.

- 2.17. Section 25 of the 1925 Act as amended by section 2(1) of the Local Government Act 1953 provided for a roads authority with the power to declare a public right of way to be a public road provided that it was for general public utility and removed the requirement that the public right of ways connected two public roads. Section 2(3) of the 1953 Act expressly provided that the declaration was a reserved function.

The Local Government Act 1993

- LDG-2.18. Public road is defined under section 2 of the 1993 Act as follows:

"public road" means a road over which a public right of way exists and the responsibility for the maintenance of which lies on a road authority;

- 2.19. Section 11 of the Act provides:

'A road authority may, by order, declare any road over which a public right of way exists to be a public road, and every such road shall be deemed to be a public road and responsibility for its maintenance shall lie on the road authority.'

This provision suggests that a road over which there exists a public right of way is deemed a public road when the road authority (county council) makes a declaration by order. Section 11(2) provides that the making of a declaration is a reserved function. Section 11(5) provides that a certificate of a road authority that a road is a public road is *prima facie* evidence thereof.

3. Position of Monaghan County Council

- 3.1. Monaghan County Council, the roads authority have provided no evidence that the road in question was dedicated at common law as a public right of way or that a resolution was ever passed by the councils elected members pursuant to the 1925 Act or the 1993 Act. It appears that it was conceded by the Council that a resolution was never passed in accordance with its statutory function, rather it is contended by the solicitor for the Council that the road was dedicated at common law by the grand jury
- 3.2. The evidence of Donal McDaid senior is that Monaghan County Council have never maintained or repaired the stretch of road through the farm yard.
- 3.3. Monaghan County Council in respect of the status of the road rely on maps made under the Public Bodies Order 1946 (SI No 273 of 1946, the 1946 Order. Article 85(1) of the 1946 Order provided that road authority could if it thinks fit divide any road in its charge in sections of a size and nature convenient for separate reference in relation to the repair or improvement of roads. Article 85(2) provided that *'There shall be a distinguishing number assigned by a road authority to every road in its charge or where such road is divided into sections to every such section.'*
- 3.4. Article 86(2) provided that *'Three copies of the road schedule shall be sealed with the seal of the road authority. The road authority shall send one such copy to the Minister and shall retain the other two copies and keep the same available for inspection by any member of the directing body.'*
- 3.5. Article 87 referred to the official road map and provided that *'Every road authority shall cause to be prepared in triplicate a map showing on a convenient scale the roads in its charge (in this Order called the official road map) showing the distinguishing number assigned to each road and where a road is divided into sections, showing such division and the number assigned to such section.'*
- 3.6. Article 87(3) provided that *'The three copies of the official road map shall be sealed with the seal of the road authority. The road authority shall retain one such copy, shall send one copy to the Minister, and shall cause one such copy to be exhibited in a prominent position in the room in which the directing body meets.'* Hence, both the road schedule and the official road map were required to be under seal of the authority. None of the documentary evidence provided by Monaghan County Council was under seal or signed or authenticated.
- 3.7. Articles 85 to 97 of the 1946 Order were revoked by section 10(5)(e) of the 1993 Act. Section 10(5) (a) of the Act states *'a road authority shall keep a schedule and map of all public roads in respect of which it has responsibility'* Section 10(5)(b) provides *'a road authority shall prepare the schedule and map as soon as practicable after the commencement of this section and shall take all reasonable measures to keep the*

schedule and map up to date''. Section 10(4)(b) provides '*A road authority shall assign a number or other identifying mark to each road in respect of which it has responsibility.*'

3.8. Monaghan County Council has relied on the record of the schedule and map along with the identifying number assigned as evidence that the road is a public road. The council claims that the road is recorded in the Schedule at no. 790 and is included in the map for the administrative area which significantly is not authenticated by seal. Furthermore it relies on the number LT81012 assigned to the road, which merely appears to demonstrate that the council was attempting to comply with section 10(4)(b) of the Act. Monaghan County Council had not however complied with Articles 85(2) of the 1946 Order. There is no indication as to when the road schedule was prepared or by who or the precise geographical delineation of 790 which simply states '*Beagh three roads east to Rathmore three roads south*'.

3.9. It is clear that there is no evidence that the road was ever declared a public road under the 1925 Act or the 1993 Act. In addition Monaghan County Council provided no evidence that there was ever any expenditure of public money to maintain the road and therefore the road is not a public road as understood at common law or defined by statute.

Planning and Development Act 2000 as amended and regulations

3.10. The works comprising the underpass/culvert were carried out are for the purposes of agricultural use. Section 4 (1)(a) of the Planning and Development Act 2000 as amended provides

*The following shall be exempted developments for the purposes of 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;*

The underpass/culvert is therefore exempted development pursuant to section 4(1)(a) of the 2000 Act as amended.

3.11. For the purposes of Class 9 Schedule 2 Part 3 of the PDR 2001 as amended the road is not a public road and therefore the underpass/culvert constitutes exempted development. There are no restrictions, limitations or conditions that would disapply the exemption under this provision.

3.12. The 2000 Act makes no provision for the definition of 'culvert'. The structure is a box culvert (3 m wide by 2 m in height) . Class 3 Schedule 2 Part 3 - Exempted Development – Rural of the Regulations provides for

'Works relating to the construction or maintenance of any gully, drain, pond, trough, pit or culvert, the widening or deepening of watercourses, the removal of obstructions from watercourses and the making or repairing of embankments in connection with any of the foregoing works. '

The culvert/underpass structure falls within the meaning of 'culvert' set out in Class 3 and is exempted development pursuant to Class 3 Schedule 2 Part 3 of the Regulations.

Conclusion

In conclusion the culvert/underpass is is works consisting of the carrying out of development in compliance with the Notice under section 12 of the Local Government (Water Pollution) Act 1977 and is therefore exempted development pursuant to Article 41 Schedule 2 Part 1 of the Planning and Development Regulations 2001 as amended.

Furthermore section 4(1)9a) of the 2000 act as amended applies to the culvert/underpass and is therefore exempted development in accordance with that section.

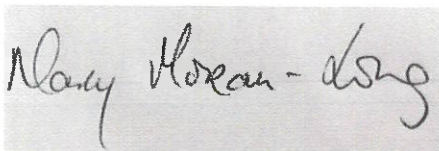
The road/route through the farmyard is not a public road and is therefore exempted development under Class 9 of Schedule 2 Part 3 of the Planning and Development Regulations 2001 as amended.

Finally the works comprise a culvert and is exempted development within the meaning of Class 3 of Schedule 2 Part 3 of the Planning and Development Regulations 2001 as amended.

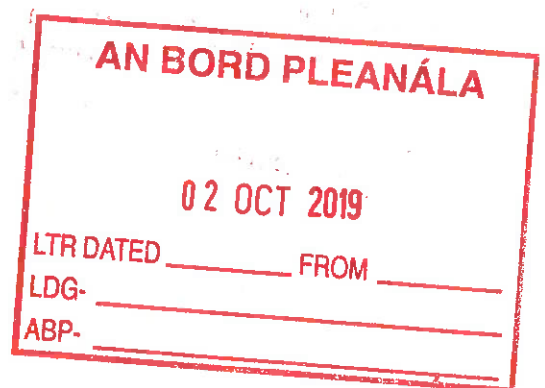
Nothing further occurs.

The foregoing is based upon the papers and information provided.

Yours sincerely



Mary Moran-Long
Mary Moran-Long BL



MARY MORAN-LONG
Ph D Barrister-at-Law

Law Library, Four Courts, Inns Quay, Dublin 7
Tel: 087 2490428 /01 8176729 • Fax: 01 8720455 • E-mail: moranlong7@gmail.com

Your Ref:

Ger Fahy
Ger Fahy Planning
Annaghdown
Pagestown,
Kilcloon
County Meath

2nd August 2019

Via e mail and post

**RE: Culvert/underpass on the McDaid farm, Beagh, Carrickmacross County
Mongahan– Declaration under section 5 Planning Development Act 2000 as
amended of Monaghan County Council and associated Planners Report.**

Client: Donal McDaid

AN BORD PLEANÁLA

02 OCT 2019

LTR DATED _____ FROM _____

LDG- _____

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Dear Ger,

I refer to the above matter and your instructions for an opinion in respect thereof.

I have been furnished with a copy of the letter dated 26th July 2019 from Monaghan County Council which appears to comprise a declaration under section 5 PDA 2000 as amended. The letter does not include reasons or consideration. I was furnished also with two versions of the Planners Report in respect of the section 5 referral. A short version which was provided to the client when he attended the offices of Monaghan County Council on Tuesday 30th July 2019 and a lengthier version forwarded to him via e mail the following day. I will address the later more comprehensive version of the Planners Report.

Monaghan County Council in its letter dated 26th July 2019 stated that it considered the development (culvert/underpass) not to be exempted development under Schedule 2 Part 3 Class 3 of the Planning and development Regulations 2001 as amended.

The application dated 3rd June 2019 submitted by F J Coyle & Associates seeking a 'exemption certificate' (a declaration under section 5 of the Planning and Development Act 2000) referred to the structure as a '*culvert works and associated site works*'. The cover letter appeared to limit the referral to section 4(1)(a) of the Planning and Development Act, 2000 (as amended) (agricultural use) and Schedule 2 Part 3 Class 3 of the Planning and Development Regulations 20001 (as amended).

The Planners Report (undated) at Section 3 entitled 'Enforcement Action' refers to the enforcement proceedings taken under section 160 of the Planning and Development Act 2000

as amended against the client in respect of the structure, the subject matter of the section 5 referral.

In the Report reference is made to the submissions made to the Circuit Court and High Court (on appeal) by the client and Monaghan County Council Planning Authority in respect of the planning status of the structure, in particular pursuant to Schedule 2 Part 3 Class 3 and whether the structure is a culvert.

Reference is made to the judgment of Mr Justice Meenan in respect of the appeal of the Circuit Court order given on 4th June 2019 as follows:

'In his judgment Justice Meenan determined that the development was not in any way to be construed as being a culvert that it was not exempted development and so planning permission was required.'

'Justice Meenan concluded that he was satisfied that the underpass in question was a development that required planning permission under the relevant legislation and affirmed the Order of the Circuit Court'

It is noted that there is no written judgment of the High Court.

Furthermore the conclusion of section 4 entitled 'Considerations' of the Report states:

'No other provisions contained within the Regulations in relation to exempted development apply to this development. This is affirmed by Mr Justice Meenan in his judgment.'

It appears from the Report that the planning authority in making its determination under section 5 of the PDA 2000 as amended was influenced by and relied upon the judgment of the High Court (on appeal) in respect of its determination of the planning status of the culvert/underpass structure in question.

The Supreme Court in *Grianan and Aileach Interpretative Centre Limited .v. Donegal County Council* [2004] 2 I.R 625 addressed the question of the jurisdiction of the High Court in making determinations on planning matters/questions arising from planning permissions and referrals under section 5 of the Planning and Development Act 2000 as amended.

Keane CJ at 937 stated:

'In considering whether the jurisdiction vested in the particular tribunal or body is an exclusive jurisdiction, the following observation of Henchy J. in Tormey -v- Ireland must be borne in mind:

"The jurisdiction to try thus vested by the Constitution in courts, tribunals, persons or bodies other than the High Court must be taken to be capable of being exercised, at least in certain instances, to the exclusion of the High Court, for the allocation of jurisdiction would otherwise be overlapping and unworkable."

Thus, in the present case, if the jurisdiction of the planning authority or An Bord Pleanala under s. 5 were invoked and they were invited to determine whether the uses in controversy were within the uses contemplated by the planning permission or constituted a material change of use for which a new planning permission would be required, either of those bodies might find itself in a position where it could not exercise its statutory jurisdiction without finding itself in conflict with a determination by the High Court. No doubt a person carrying out a development which he claims is not a material change of use is not obliged to refer the question to the planning authority or An Bord Pleanala and may resist enforcement proceedings subsequently brought against him by the planning authority on the ground that permission was not required. In that event, if the enforcement proceedings are brought in the High Court, that court may undoubtedly find itself having to determine whether there has been a material change of use or whether a development is sanctioned by an existing planning permission, as happened in O'Connor -v- Kerry County Council [1988] ILRM 660. But for the High Court to determine an issue of that nature, as though it were the planning authority or An Bord Pleanala, in proceedings such as the present would seem to me to create the danger of overlapping and unworkable jurisdictions referred to by Henchy J.' (emphasis added)

In this respect the Supreme Court restated the law stated as stated by Finley C.J in *O'Keefe v An Bord Pleanala* [1993] 1 I.R. 39 at pp71:

"Under the provisions of the Planning Acts the legislature has unequivocally and firmly placed questions of planning, questions of the balance between development and the environment and the proper convenience and amenities of an area within the jurisdiction of the planning authorities and [An Bord Pleanala] which are expected to have special skill, competence and experience in planning questions. The court is not vested with that jurisdiction, nor is it expected to, nor can it, exercise discretion with regard to planning matters."

Thus the decision of Mr Justice Meenan in his judgment given on 4th June 2019 from the appeal of the Circuit Court order made on 13 April 2018 appears to be a planning decision that by law is solely within the jurisdiction of the planning authority or the Board on appeal and in which the High Court does not have jurisdiction.

The Planners Report in its 'Considerations' relies upon and is heavily influenced by the decisions of the Circuit Court in the section 160 enforcement proceedings and the High Court on appeal in reaching its determination in this matter. In *Grianan an Aileach* the Supreme Court made it clear that the planning authority and/or An Bord Pleanala are the tribunals which have the sole jurisdiction to decide and determine such planning matters as those tribunals have the special skill, competence and experience in planning questions and found that the High Court does not have such jurisdiction. In this instance the heavy reliance on and influence of the determinations of the Circuit Court and High Court by the planning authority on its determination has created the danger of overlapping and unworkable jurisdictions as warned by the Supreme Court in *Grianan an Aileach*.

The concluding statement under 'Considerations' in the Planners Report states that no other provisions of the Planning Regulations in relation to exempted development apply to the culvert/underpass and refers to this having been confirmed by the High Court.

Notwithstanding that the High Court has no jurisdiction to make a determination on such a planning matter the statement by the Planning Authority is incorrect. First, given that the status of the road that traverses the farm yard and under which the underpass/culvert is constructed remains in question, (which is addressed in my opinion dated 24th July 2019) the possibility remains that the structure is exempted development under Schedule 2 Part 3 Class 9 of the Regulations. Second, the possibility of the underpass/culvert being exempted development under Schedule 2 Part 1 Class 41 of the Regulations has not been considered at all by the Planning Authority.

It appears, therefore, that the Planning Authority was not entitled to make such a generalised sweeping statement in its considerations without having fully, properly and independently assessed the structure in question in the context of all documentation and information available and in respect of the relevant Regulations.

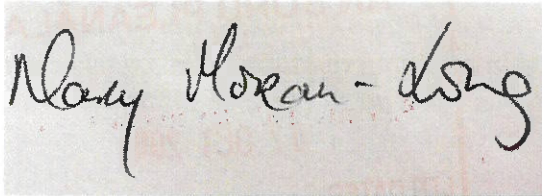
The Planning Authority, however, has the opportunity to determine these questions in the fresh application submitted under section 5 of the Planning and Development Act 2000 as amended.

A signed copy of this opinion will be forwarded in the post.

Nothing further occurs.

The foregoing is based upon the papers and information provided.

Yours sincerely



Mary Moran-Long BL



MARY MORAN-LONG
Ph D Barrister-at-Law

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Your Ref:

Ger Fahy
Ger Fahy Planning
Annaghdown
Pagestown,
Kilcloon
County Meath

29th September 2019

Via e mail

RE: Declaration in respect of Referral under section 5 Planning and Development Act 2000 as amended by Monaghan County Council dated [INSERT]

Client: Donal McDaid

Dear Ger,

I refer to the above matter and your instructions for an opinion in respect of the declaration and Planners Report in respect of referral under section 5 of the Planning and Development Act 2000 as amended to Monaghan County Council having Planning Reference EX 19/22.

1. Introduction

The referral submitted on 8th August 2019 under section 5 of the 2000 Act as amended posed the question whether the underpass structure which is located under the public right of way which traverses the client's farmyard is development or exempted development within the meaning of the Planning and Development Act 2000 as amended by operation of:

- i. Schedule 2 Part 1 Class 41(c) of the Planning and Development Regulations 2001 as amended which provides:

‘Works consisting of or incidental to the carrying out of development in compliance with a notice under section 12 of the Local Government (Water Pollution) Act 1997)No 1 of 1977;

- ii. Schedule 2 Part 3 Class 9 of the Planning and Development Regulations 2001 as amended which provides:

‘Works consisting of the provision of any store, barn, shed, glasshouse or other structure, not being of a type specified in class 6,7 or 8 of this Schedule, and having a gross floor space not exceeding 300 square meters.’

The conditions and limitations attached to Schedule 2 Part 3 Class 9 are:

1. No such structure shall be used for any purpose other than the purpose of agriculture or forestry, but excluding the housing of animals or the storing of effluent.

2. The gross floor space of such structures together with any other such structures situated within the same farmyard complex or complex of such structures or within 100 metres of that complex shall not exceed 900 square metres gross floor space in aggregate.

3. No such structure shall be situated within 10 metres of any public road.

4. No such structure within 100 metres of any public road shall exceed 8 metres in height.

5. No such structure shall be situated 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.

6. No unpainted metal sheeting shall be used for roofing or on the external finish of the structure.’

Section 4(1) of the Planning and Development Act 2000 as amended which provides:

‘4.—(1) The following shall be exempted developments for the purposes of 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;’

2. Declaration and Considerations

2.1. By letter dated 5th September 2019 (Planning Reference EX 19/22) the Planning Authority of Monaghan County Council stated that the proposed development is not considered exempted development under the provisions of the Act and Regulations as referred in the submission of 8th August 2019.

2.2. The Planners Report at 2.0 refers to a referral submitted under section 5 PDA 2000 as amended by FJ Coyle & Associates dated 2 June 2019 which posed the question whether the structure was exempted development under Schedule 2 Part 3 Class 3 (Reference 19/14) whereby the Planning Authority determined the structure did not fall within the provisions of Schedule 3 Part 3 Class 3, was not a culvert and therefore not considered exempted development.

2.3. Part 3.0 of the Planners Report addresses the background to the referral. Reference is made to ‘*a structure being built under a public road.*’ It appears that Monaghan County Council claims that the stretch of a right of way through the client’s farmyard is a public road, however, to date it has not provided any solid and conclusive evidence that it is in fact a public road. This issue was dealt with from the perspective of relevant statutory provisions and common law in my opinion dated 24th July 2019.

2.4. The report also states: ‘*Mr McDaid was advised not to carry out works to or under the public road and that he should apply for planning permission.*’ This contention is in direct conflict with the account given in the Affidavit of Donal McDaid Snr. dated 13 April 2019 and the Affidavit of Noel Keelan dated 12th April 2019 which were sworn and submitted in support of the client, Donal G McDaid Jr. defending enforcement proceeding taken by Monaghan County Council under section 160 of the Planning and Development Act 2000 as amended. (Affidavit attached to submission)

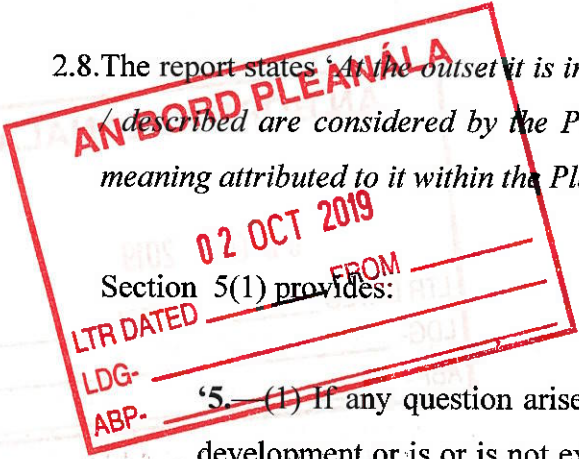
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2.5. At Part 4.0 the Planner's Report refers to the enforcement proceedings under section 160 PDA 2000 as amended and the appeal to the High Court. Reference is not made to District Court proceedings taken under section 154 PDA 2000 as amended which were struck out due to an application being made to the District Court by Monaghan County Council that the matter was moot as the section 160 proceedings were determined. As noted in my opinion of 2 August 2019 the planning authority quotes from the judgment of Mr Justice Meenan in the appeal, however, a written judgement or an agreed counsel's note of the judgment is not available. A copy of the audio recording of the judgment, the DAR is therefore being sought to confirm the judgment. It is noted also that Judge Aylmer and Mr Justice Meenan confined their decisions to the issue of whether the structure is a culvert for the purposes of Schedule 2 Part 3 Class 3.

2.6. Part 5.0 of the Planners Report addresses 'Considerations'. At 5.1 reference is made once again to the section 160 proceedings and the previous referral under section 5 (Ref 14/19) which were limited to Schedule 2 Part 3 Class 3. The fresh referral (Ref EX 19/22) is submitted under the Schedule 2 Part 1 Class 41(c), Schedule 2 Part 3 Class 9 of the Regulations and Section 4(1) of the 2000 Act as amended.

2.7. The Report suggests that the planning authority was heavily influenced by its previous determination and that of the Circuit Court and High Court in the enforcement proceedings.

2.8. The report states '~~At the outset~~ it is important to confirm that the works as carried out / described are considered by the Planning Authority to be development as per the meaning attributed to it within the Planning and Development Act (as amended).



'5.— (1) If any question arises as to what, in any particular case, is or is not development or is or is not exempted development within the meaning of this Act, any person may, on payment of the prescribed fee, request in writing from the relevant planning authority a declaration on that question, and that person shall provide to the planning authority any information necessary to enable the authority to make its decision on the matter.'

A person who submits a referral under section 5 of the 2000 Act as amended, pays the fee and provides any necessary information, if the planning authority makes a declaration the person seeking the declaration is entitled to the referral being considered objectively on its own merits in the context of the legal provisions which are relied upon and the surrounding facts set out in the application.

2.9. It appears in this instance, however, that the planning authority's decision in this fresh referral was predetermined by its previous findings in the referral having reference 19/14 and upon the decisions of the Circuit Court and High Court on appeal in the proceedings under section 160 PDA 2000 as amended which as previously stated did not address the grounds upon which the fresh referral under section 5 was submitted.

3. Schedule 2 Part 1 Class 41(c) -Considerations

3.1. At Part 5.2 the Report refers to Schedule 2 Part 1 Class 41(c) of the Planning and Development Regulations 2001 as amended which provides:

'Works consisting of or incidental to the carrying out of development in compliance with a notice under section 12 of the Local Government (Water Pollution) Act 1977) No 1 of 1977;

Reference is made to the Notice dated 11 August 2008 served under section 12 of the Local Government (Water Pollution) Act 1977 as amended on Donal McDaid junior, albeit that the Planners Report (and letter dated 12th August 2019 from Wells & O'Carroll Solicitors) erroneously refer to the Notice being served on Donal McDaid Senior. In this respect the client instructs that he took full charge of folio MN8394 and was occupier of the holding from 27th February 2001 and has operated his dairy business on the land since then, which may be proved through Department of Agriculture records. The client became the registered owner of this folio No. 8394 in May 2015. Prior to that, the registered owner of the lands was Simon Donaghy, the client's, Great Great Grandfather.

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3.2. The Planner's Report states *'It is important to note that no matters in respect manure or other material on the public road were raised on the day with Mr McDaid who was present at the time of the inspection and refers to the Inspector's Report produced by Sinead Hurson, Environmental Technician, Monaghan County Council, (Planners Report - Appendix 2) . The inspection to which the Report refers was carried out on the 5th August 2008 by Sinead Hurson and Donna McEvoy, at which Mr McDaid Jnr. the client, was present. Adrian Hughes, the Planner who prepared the Planners Report was not present at the inspection on the date in question and was not party to the conversation, directions and instructions given to the client on that date. Clearly Mr McDaid was made fully aware of the concerns of the Local Authority relating to water pollution*

3.3. The Planner's Report further states that the section 12 Notice was not in relation to manure on the public road and the Notice made *'no reference to contamination on the road or construction of an underpass.'*

The Inspector's Report refers to *'...all polluting matter including silage effluent from your farmyard at Beagh Td, Donaghmoynne to land nearby roadside drain and nearby watercourse'* The Section 12 Notice refers to *'...polluting matter including silage effluent from your farmyard at Beagh Td, Donaghmoynne to land nearby roadside drain and nearby watercourse.'*

The definition of polluting matter is addressed in the submission to An Bord Pleanála under section 5 of the Planning and Development Act 2000 as amended prepared by Gerry Fahy.

3.4. In respect of these matters set out in the Planner's Report, the client instructs that he submitted a planning application to Monaghan County Council dated the 22 June 2007 having Planning Reference 07/1311 for the construction of a new slatted shed and milking facility in the farm complex and a second application for a new silage pit and effluent holding tank at a different location. Planning permissions for the proposed development (Ref 07/1311) was granted on the 27th September 2007 having 5 No. Conditions attached including Conditions:

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3 b. Animal manure shall be collected and stored in suitably constructed tanks of a minimum of 22 weeks storage capacity. Soiled yard areas shall be kept to a minimum.

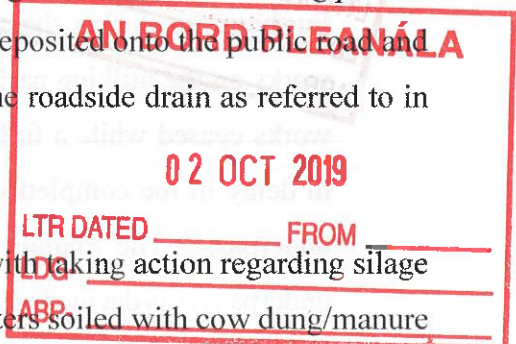
3 c. If collected separately, soiled yard waters shall be stored in suitably constructed tank(s) of a minimum of 10 days storage capacity. If it is proposed to store soiled waters with animal manure, suitable constructed tank(s) capable of a minimum of 22 weeks animal manure or storage capacity and 22 weeks soiled water storage capacity shall be provided

4. The finished floor level of the proposed development shall match that of the adjoining farm shed. Any facilitating cut and fill shall be graded to a natural contour to reflect the existing topography of the area.

The Notice under Section 12 of the Water Pollution Act 1977 as amended was issued on the 11th August 2008, some 14 months after the application for permission for the slatted shed and milking facility was submitted.

3.5. At the inspection on the 5th August 2008 the client instructs that he was informed by Ms Hurson and Ms McEvoy he was required to take appropriate steps to cease the discharge of all polluting matter including silage effluent and slurry to the near-by road side drains and watercourses, in particular the drain which is located on public road LT81011 outside the entrance to the farmyard and into which polluting materials discharge. There was no doubt in the client's mind but the polluting matter referred to by the Inspectors during the inspection included cow dung/manure deposited onto the farmyard and the public road, LT81011. The public road LT81011 which provides access to the client's farmyard and lands is used to bring the cattle to the milking parlour twice daily. This results in cow dung/manure being deposited onto the public road and soiled waters/polluting material being washed into the roadside drain as referred to in the Inspector's Report and the section 12 Notice.

The client instructs that it was very clear that along with taking action regarding silage effluent, he was required to take action to prevent waters soiled with cow dung/manure discharging into the roadside drain on the public road LT81011 leading to the farm.



The client instructs also that on 5th August 2008 he raised the question whether planning permission was required for construction works to remedy the water pollution problem and he was informed by Ms. Hurson and MsMacEvoy that planning permission was not required.

3.6. The Planner's reasoning that MsHurson and Ms. McEvoy, as part of their inspection on 5th August 2008 ignored a significant source of water pollution and that the Notice excluded or did not require any action to be taken by the client to remove polluting matter such as manure/cow dung on the public road, which is washed down the roadside drain (as referenced in the Notice and Inspectors Report) and which causes water pollution is neither logical or sustainable. The Planner's Report, therefore, clearly misinterprets the content of the Inspectors Report and the Notice under section 12. The reasoning. It follows that the further statement: *'It is completely unreasonable to link construction of the underpass with the issued Notice'* is illogical and incorrect.

3.7. The Report makes reference to the permission Ref. 07/1311 granted on 26th September 2008 and comments *'The constructed of that shed and parlour would have offered the applicant an appropriate opportunity to carry out works related to the notice which was issued shortly before the grant of planning permission, if he had of been so inclined.'* In this respect the client instructs that development for which planning permission was obtained (Ref 071311) was substantially completed in January 2009. The milking machinery at that stage was not installed in the milking parlour (due to the Department of Agriculture grant not being available for machinery at the time) Therefore, the floor level in the milking parlor could not be completed and was not in place as required to comply with Condition No 4 of the planning permission, which required the floor level of the milking parlour to be the same as the adjoining shed.

Furthermore during the period whereby the machinery was being installed and the works on the milking parlour being completed a fatal accident occurred on site and all works ceased while a full investigation into the fatality was carried out. This resulted in delay in the completion of the development and the subsequent installation of the underpass. The Planner Report assumes that the timing of the installation of the underpass was decided solely by Mr McDaid Jnr, however, the course of events relating to completion of development and installation of the underpass were entirely outside of

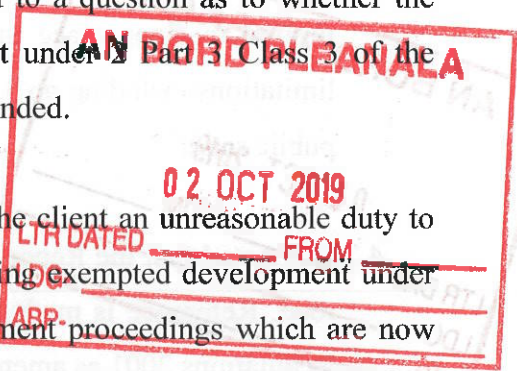
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the client's control. The reasoning in the Planners Report in this respect is therefore incorrect.

3.8. The client further instructs that the assertion in the letter from Wells & O'Carroll dated 12 August 2019 that he did not have plans for the underpass is incorrect (in addition to other inaccuracies in the letter). The underpass was constructed by O'Reilly Brothers of Kingscourt, County Cavan in accordance with plans which were in existence well in advance of the underpass being purchased and being installed in November 2017. Prior to purchasing the underpass (what the client believed was a culvert at the time) Mr McDaid inspected two similar culvert/underpasses commissioned by Monaghan County Council at Oram Castleblayney County Monaghan and Ballymore, County Monaghan. Both structures were manufactured by O'Reilly Brothers on plans similar to that of the structure purchased by the client. Further O'Reilly Brothers commissioned Richard Kinghan, a certified installer recognised throughout Europe to install the underpass on Mr McDaid's lands.

3.9. The Report states that it is '*completely untenable to suggest*' that the underpass was constructed in response to the Section 12 Notice and queries why this ground was not raised in correspondence or in evidence given in the proceedings under section 160 PDA000 as amended or the previous referral under section 5 referral date submitted in June 2019 (Re 19/14). At the material time the client had been advised and was of the opinion that the underpass fell into the category of culvert and exempted development for the purposes of Schedule 2 Part 3 Class 3 of the Planning and Development regulations 20001 as amended and the proceedings were defended on that ground only. The section 5 referral (Ref 19/14) also was limited to a question as to whether the structure was a culvert and exempted development under Part 3 Class 3 of the Planning and Development Regulations 2001 as amended.

3.10. The reasoning in the Report imposes upon the client an unreasonable duty to have argued the matter relating to the underpass being exempted development under Schedule 2 Part 1 Class 41 in section 160 enforcement proceedings which are now determined and *res judicata*. Furthermore, the Planning and Development Act, 2000 as amended does not preclude or prevent Mr. McDaid from making a fresh referral under



section 5 under different grounds or of availing of any relevant provisions set out therein.

3.11. In respect of the proposed slurry tank the Report erroneously states that ‘*a proposed slurry tank within the development was never previously indicated by the applicant at any stage*’ Conditions No. 3 b. and 3 c. attached to planning permission (Ref 07/1311) require the construction of suitably constructed tank(s) for storage of animal manure and soiled waters. The location of the said tanks is not specified in the Conditions, hence a tank or tanks may be located in the position as set in the application for permission in preparation by Ger Fahy. Clearly the Planners Report has erred in respect of this issue also.

4. Schedule 2 Part 3 Class 9 - Considerations

4.1. Schedule 2 Part 3 Class 9 of the Planning and Development Regulations 2001 as amended provides:

‘Works consisting of the provision of any store, barn, shed, glasshouse or other structure, not being of a type specified in class 6,7 or 8 of this Schedule, and having a gross floor space not exceeding 300 square meters.’

The report appears to reason that the reference to ‘other structure’ relates only to a type of structure similar to a store, barn, shed or glasshouse and concludes that the cattle underpass is not a type or character identified in Class 9. Class 9 exempted development is qualified in respect of not being a type specified in class 6,7 or 8 and limited to floor space up to 300 square meters and is subject to conditions and limitations including no 3. ‘No such structure shall be situated within 10 metres of any public road.’

4.2. It is noted that the Report refers to the right of way through the farmyard as a public road. Reference is made also to Article (9)(a)(v) of the Planning and Development Regulations 2001 as amended which de-exempts works under a public road which fall within the categories set out in the provision. The underpass does not fall within those categories and therefore the report contends that Article 9(a)(v) applies.

4.3. The report refers to the argument submitted to the High Court in respect of the status of the road and which was not decided upon by Mr Justice Meenan, although an extract from what the judgment is purported to contain is set out in the Report. A written judgment or agreed counsels note is not available therefore as previously noted a copy of the DAR is being sought to clarify and confirm the judgment of the High Court.

4.4. The Report refers to a certificate dated 14 August 2019, (attached) which is entitled '*In the matter of section 11 Sub-section 5 of the Roads Act 1993*' and certifies that local road L81012 which goes through the townland of BeaghDonaghmoyne, Carrickmacross County Council is a public road.'

The Report states that the certificate is signed by the deputy Chief Executive Officer of Monaghan County Council and subject to section 11(5) of the 1993 Act it is prima facie evidence that the route in question is a public road.

Section 11 of the Road Act 1993 provides for the procedure for a declaration of public roads as follows:

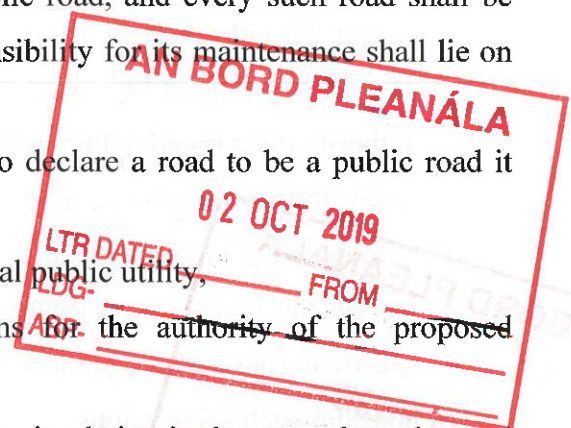
11.—(1) (a) A road authority may, by order, declare any road over which a public right of way exists to be a public road, and every such road shall be deemed to be a public road and responsibility for its maintenance shall lie on the road authority.

(b) Where a road authority proposes to declare a road to be a public road it shall—

(i) satisfy itself that the road is of general public utility,

(ii) consider the financial implications for the authority of the proposed declaration,

(iii) publish in one or more newspapers circulating in the area where the road which it is proposed to declare to be a public road is located a notice indicating the times at which, the period (which shall be not less than one month) during which and the place where a map showing such road may be inspected and stating that objections or representations may be made in writing to the road authority in relation to such declaration before a specified date (which shall be not less than two weeks after the end of the period for inspection),



(iv) consider any objections or representations made to it under *paragraph (iii)* and not withdrawn.

(2) The consideration of objections or representations and the making of an order under *subsection (1)* shall be reserved functions

(3) The Minister may prescribe criteria for the declaration of roads to be public roads and a road authority shall comply with any such prescribed criteria when exercising its functions under this section.

(4) Every national road, regional road, motorway, busway and protected road shall be a public road and it shall not be necessary for a road authority to make an order under *subsection (1)* in relation to any such road.

(5) A certificate of a road authority that a road is a public road shall be *prima facie* evidence thereof.

(6) Every road which, immediately before the repeal of an enactment by this Act, was a public road shall be a public road.

(7) Any road constructed or otherwise provided by a road authority after the commencement of this section shall, unless otherwise decided by such road authority, be a public road and it shall not be necessary for the authority to make an order under *subsection (1)* in relation to any such road.'

4.5. In order that a local authority may declare a road a public road the procedure set out in section 11(1)(b) must be followed. The local authority must be satisfied that the road is of general public utility, must consider the financial implication (given that the local authority must spend public money on maintaining the road once it is declared a public road) and publish a notice in respect of the proposed intention to declare a road a public road in one or more newspapers circulating in the area. The notice invites the public to inspect the proposal and to submit written observations and representations before a specified date and the subject to section 11(2) the elected members are required to consider such submissions.

4.6. The document dated 14th August 2019 signed by Patricia Monaghan, Deputy Chief Executive Officer of Monaghan County Council is entitled '*Certificate In the matter of section 11(5) of the Roads Act 1993*' and states '*Monaghan County Council, being the roads authority for the administrative County of Monaghan, Hereby Certifies that*

local road LT81012, part of which goes through the townland of Beagh, Donaghmore, Carrickmacross, in the County of Monaghan is a public road.'

4.7. The notice required to be published pursuant to section 11(1) of the Roads Act 1993 and the resolution and minutes of the council meeting of the elected members which declared the said road a public road pursuant to section 11(2) of the Roads Act 1993 is being sought through Voluntary Discovery from Monaghan County Council in respect of the issuing of the certificate. If Monaghan County Council has not complied with the provisions for the procedure set out in section 11 of the 1993 Act, the validity of the certificate may be at issue and may be a matter of judicial review. This matter is to be decided once Discovery has been made by the Council.

4.8. The Planners Report accompanying the letter dated 5th September 2019 which contains the declaration pursuant to section 5 PDA 2000 as sets out the reasons and considerations on which the section 5 declaration was made. The Supreme Court in *Connelly .v. An Bord Pleanála*[2018] IESC 31 considered the general duty of public bodies to give reasons for decisions which affect a person or persons. Having reviewed relevant case law Clarke CJ held:

'First, any person affected by a decision is at least entitled to know in general terms why the decision was made. This requirement derives from the obligation to be fair to individuals affected by binding decisions and also contributes to transparency. Second, a person is entitled to have enough information to consider whether they can or should seek to avail of any appeal or to bring judicial review of a decision.'

4.9. It is fair to conclude that the considerations in the accompanying Planners Report indicate why the decision was made. The Report expressly states that the planning authority had decided the underpass structure was development within the meaning of the Planning and Development Act 2000 as amended before it set out to consider the fresh application. The planning authority's decision and reasoning is heavily influenced by the previous referral under section 5 which was submitted on entirely different grounds and also by the enforcement proceedings taken under section 160 of the Planning and Development Act 2000 as amended. From a position of being so

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influenced the reasons and considerations demonstrates an entrenched view on the part of the planning authority which biased its ability to objectively assess the fresh section 5 referral.

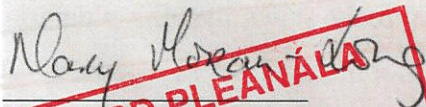
4.10. It is noted that two application for retention planning permission were submitted by F J Coyle & Associates on behalf of the client. By letter dated 26th July 2018 Monaghan County Council planning authority responded to the first application stating that it was invalid as it did not comply with the requirements of the Planning and Development Regulations 2001 as amended and cannot be considered. The letter specifies that the *'Address on the planning application is incorrect. Correct townland name is Beagh (ED Crossalare) as per Placenames (Co. Monaghan Order 2003'* and *'The development description is incomplete. The description does nor accurately describe the nature and extent of the development.'* The decision to invalidate the application was contested in a letter from the client's solicitors dated 15 August 2018

4.11. By letter dated 25th July 2019 Monaghan County Council planning authority responded to the second application for retention planning permissions stating that it was invalid as it did not comply with the requirements of the Planning and Development Regulations 2001 as amended and cannot be considered. The letter specifies: *'The development as described is not accurately reflected in the accompanied drawings. The Controlled sewage system in the description is not indicated on the drawings.'* and *'The development should state that the structure to eb retained is situated under a public road'*

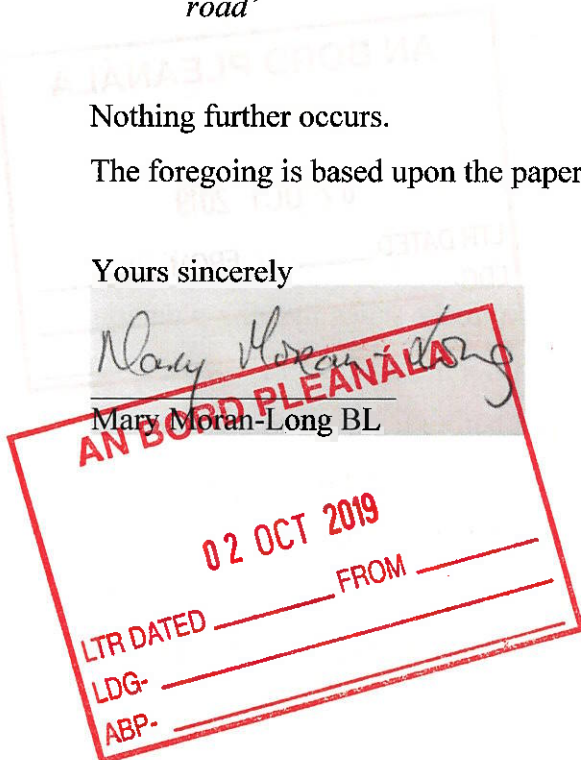
Nothing further occurs.

The foregoing is based upon the papers and information provided.

Yours sincerely



Mary Moran-Long BL



Monaghan County Council

Planning and Development

Reference Number: EX 19/22

Application for Declaration on Development and Exempted Development

Section 5 of the Planning and Development Act 2000 (as amended)

1.0 Introduction

An application for exempted development was made by Donal McDaid on 08 August 2019 for;

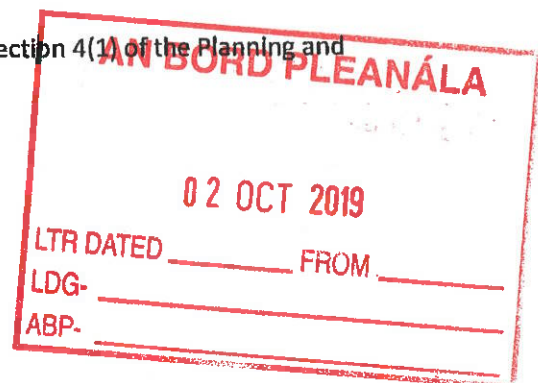
'The installation of a box culvert / animal underpass for the purposes of moving animals, installation of animal effluent holding tank and all associated works in compliance with Section 12 Notice Issued by Monaghan County Council'

The application included the following;

- An exempted development application form
- Associated drawings and maps
- A copy of a Local Government (Water pollution) Act Section 12 Notice issued by Monaghan County Council to Donal McDaid on 11 August 2008
- Letter from Ger Fahy Planning to Planning Section, Monaghan, dated 05 February 2019
- Copy of letters from Mary Moran-Long to Ger Fahy dated 24 July 2019 and 02 August 2019
- Document from O'Reilly Concrete detailing design standards et al.

Ger Fahy Planning in their letter of 05 Feb 2019 gives three grounds for exemption;

1. The works constitute works in compliance with a Notice under Section 12 of the Local Government (Water Pollution) Act 1977 as amended by Section 9 of the Local Government Act (Water Pollution) Act 1990, dated 11 August 2008
2. The works constitute exempted development under Class 9 of the Planning and Development Regulations 2001 (as amended)
3. The works constitute exempted development under Section 4(1) of the Planning and Development Act 2000 as amended.



2.0 Exempted Development Application (Reference 19/14)

A similar application for an 'exemption certificate' was made on behalf of Mr Donald Gerard McDaid by FJ Coyle & Associates, Civil & Environmental Consultants on 04 June 2019 (Reference EX 19/14). The supporting documentation attached to that earlier application referenced an 'application for an exemption certificate for the culvert and all associated site works'.

It was contested by the applicants agent though this earlier application that the development was exempted under the provisions of Schedule 2, Part 3, Class 3 of the Planning and Development Regulations 2001 as amended

Following due consideration, Monaghan County Council issued notice to Mr McDaid on 26 July 2019, advising that the development was not considered to be exempted development under Schedule 2, Part 3, Class 3 of the Planning and Development Regulations 2001 (as amended). It should be noted that this Declaration was not referred to An Bord Pleanála for review by the applicant.

A copy of the determination, assessment and drawings related to ref 19/14 are attached to this report for information. Notwithstanding this, and for purposes of easy reference, some text has been copied into this report from the earlier document.

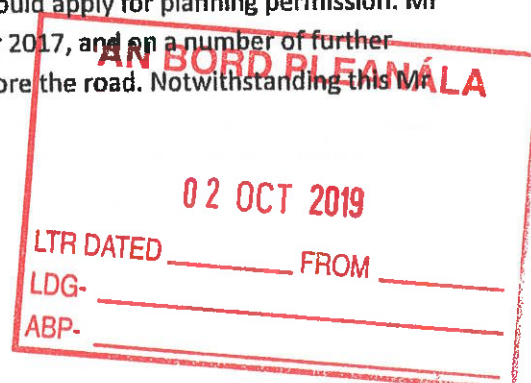
Ger Fahy Planning in their letter of 05 February 2019, references this earlier exempted development application (Reference Ex 19/14) stating that 'there were a number of errors in that application including an incorrect description of the works' and as a result a fresh application was made.

In this regards it is noted that the new application (Reference Ex 19/22) contains the following amendments to the earlier exempted development application (Reference Ex 19);

- The inclusion of a slurry holding tank to the south of the underpass
- Minor alterations to surfaces
- Changed grounds for contesting that the structure is exempted development

3.0 Background

The Local Authority visited the site of the development on 08 December 2017 at which time it was noted that a structure was being built under the public road. The Local Authority representative was advised by Mr Donal McDaid at that time that he was constructing an underpass under the public road to enable livestock to pass from one side of his farm to the other. Mr McDaid was advised not to carry out works to or under the public road and that he should apply for planning permission. Mr McDaid was subsequently advised in writing on 12 December 2017, and on a number of further occasions verbally, not to carry out further works and to restore the road. Notwithstanding this Mr McDaid continued to construct the underpass.



4.0 Enforcement Action

The Planning Authority considered the works to be unauthorised development and commenced enforcement action against Mr McDaid.

The Planning Authority brought Civil Proceedings under Section 160 of the Planning and Development Act 2000 against Mr McDaid in respect of this structure. During these proceedings Mr McDaid contested that the structure he had constructed was a culvert and thus would be entitled to exempt development status pursuant to the provisions of Schedule 2, Part 3, Class 3, of the Planning and Development Regulations 2001 (as amended), which states;

'Works relating to the construction or maintenance of any gully, drain, pond, trough, pit or culvert, the widening or deepening of any watercourse, the removal of obstructions from watercourses and the making or repairing of embankments in connection with any of the forgoing works'

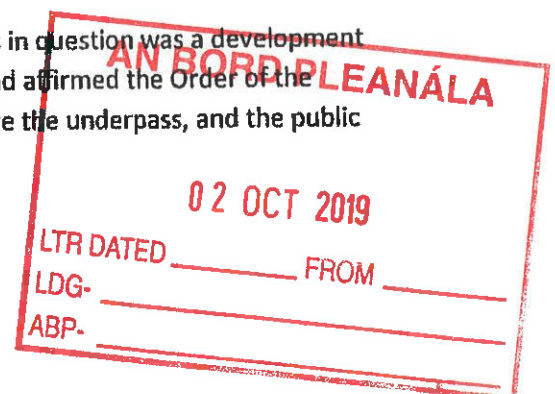
At the related Court Hearing the Planning Authority argued that the structure was for the passage of livestock from one side of Mr McDaid's farm holding to the other, and as such was clearly an underpass and not a culvert as contended. Judge Aylmer who presided over the hearing in the Circuit Court on 13 April 2018, agreed with the Planning Authority's contention and concluded that the structure was not a culvert but rather an underpass. On foot of this, Judge Aylmer, by Order of the Circuit Court, directed Mr McDaid to remove all unauthorised structures, to wit, the underpass beneath the road.

Mr McDaid subsequently appealed the Circuit Court Order to the High Court, and again put forward the argument, that the structure was a culvert and as such exempted development pursuant to the provisions of Schedule 2, Part 3, Class 3, of the Planning and Development Regulations 2001 (as amended). Other arguments in respect of the status of the public road were also presented.

Justice Meehan considered this and other arguments and gave his judgement on Tuesday 4th June 2019. In his judgement, Justice Meehan determined that development could not in any way be construed as being a culvert, 'that it was not exempted development and so planning permission was required'.

By way of explanation, he stated that the structure was significant, and of sufficient dimensions to allow cattle and humans to pass. Justice Meehan referenced the ordinary and actual meaning of a culvert as set out in the Oxford English Dictionary – 'a channel or conduit carrying water across or under roads or a canal or a channel for an electrical cable'. He stated that he was satisfied that such a definition was in accordance with the words set out in Class 3. Consequently, and despite Mr McDaid's argument to the contrary, Justice Meehan concludes that while water could pass through the underpass, that it could not in any way be construed as a culvert.

Justice Meehan concluded that he was satisfied that the underpass in question was a development that required planning permission under the relevant legislation and affirmed the Order of the Circuit Court. Notwithstanding this, Mr McDaid has failed to remove the underpass, and the public road remains closed. Legal action is ongoing.



5.0 Consideration

Mr McDaid, by way of application to the Planning Authority, is again seeking confirmation that the development is exempted development. As stated in 1.0 above the following grounds for exemption have been put forward.

1. The grounds constitute works in compliance with a Notice under Section 12 of the Local Government (Water Pollution) Act 1977 as amended by Section 9 of the Local Government Act (Water Pollution) Act 1990 dated 11 August 2008
2. The works constitute exempted development under Class 9 of the Planning and Development Regulations 2001 (as amended)
3. The works constitute exempted development under Section 4(1) of the Planning and Development Act 2000 as amended.

At this stage it is important to again note the amendments to the development from that previously present to the Planning Authority in the earlier application on 04 June 2019 (reference 19/14). These include;

- The inclusion of a slurry holding tank to the south of the underpass
- Minor alterations to surfaces
- Changed grounds for contesting that the structure is exempted development

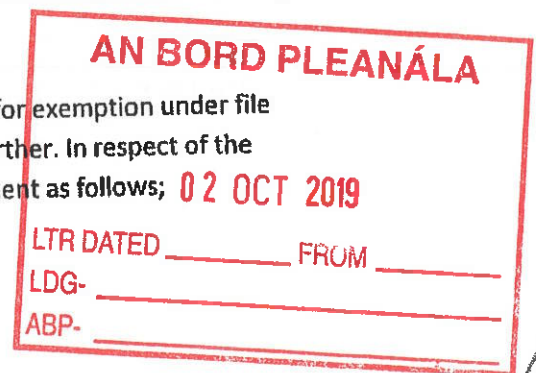
5.1 The development to which this application relates has been the subject of significant investigation and assessment by both the Planning Authority and the Courts on foot on enforcement action. The background to the development, its purpose, and the rationale behind its construction have been detailed in previous correspondence to the Planning Authority, and in affidavits and in discussions in the courts.

It has in addition been assessed previously under the provisions of Section 5 of the Planning and Development Act 2000 (as amended) and declared by the Planning Authority that it did not constitute exempted development. It should be noted that the applicant did not refer that earlier declaration to An Bord Pleanála.

The applicant has now amended the development to include a small slurry tank and has changed the grounds under which he contests that the development is now exempted development

At the outset it is important to confirm that the works as carried out / described are considered by the Planning Authority to be development as per the meaning attributed to it within the Planning and Development Act 2001 (as amended)

The Planning Authority has addressed the previous submitted grounds for exemption under file reference 19/14, and as such it is not intended to comment on them further. In respect of the grounds for exemption submitted under this application, I would comment as follows; 02 OCT 2019



5.2 The grounds constitute works in compliance with a notice under Section 12 of the Local Government (Water Pollution) Act 1977 as amended by Section 9 of the Local Government Act (Water Pollution) Act 1990 dated 11 August 2008

The Local Authority issued a Section 12 Notice, under the Local Government (Water Pollution) Act 1977, as amended by Section 9 of the Local Government (Water Pollution) (Amendment) Act 1990, to Donal McDaid Senior, the then owner of the farm on 11 August 2008. This Notice was issued on foot of an inspection by the Local Authority staff on 30 July 2008, during which time it was noted that;

- Silage effluent was discharging from Mr McDaid's farm to land and roadside drains
- A large silage pit was constructed on gravel / grass base with no containment
- A drain and stream adjacent / near Mr McDaid's farms were contaminated

It is important to note that no matters in respect of manure or other material on the public road were raised on the day with Mr McDaid who was present at the time of the inspection. A copy of the related site inspection report prepared by Sinead Hurson on 05 August 2008 is attached for information.

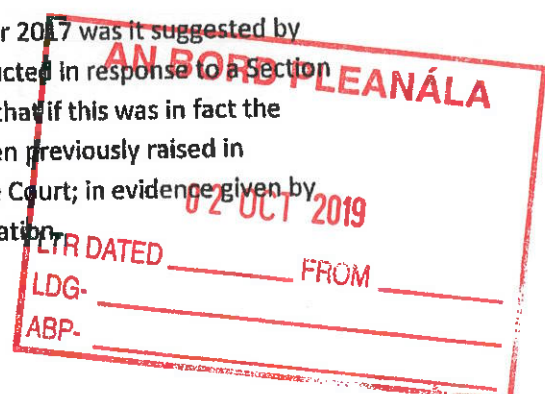
Notwithstanding the inference made in the submission by Ger Fahy Planning in their letter of 05 Feb 2019 that section 12 Notice was issued to address matters relating to manure on the public road, this is clearly not the case.

The Notice was issued to Mr McDaid in respect of water pollution, and this is clear from its content. It made no reference to contamination on the road or the construction of an underpass. Mr McDaid was in attendance during the related site inspection and it seems reasonable to assume that he would have been fully aware of the particular concerns of the Local Authority.

As stated previously, the Notice was issued on 11 August 2008. It required particular matters to be carried out no more than 4 months after its issue. Works commenced on the structure in or around December 2017, almost 9 & ½ years after the issue of the Notice. It is completely unreasonable to link the construction of the underpass with the issued Notice.

Mr McDaid obtained planning permission for a now constructed covered slatted shed and milking parlour immediately adjacent to the cattle underpass, through Planning Permission ref 07/1311. The permission was granted on 26 September 2008. The construction of that shed and parlour would have offered the applicant an appropriate opportunity to carry out works related to the notice which was issued shortly before the grant of planning permission, if he had been so inclined.

At no stage since the Planning Authority's initial inspection in December 2017 was it suggested by Mr McDaid Snr or Mr McDaid Jnr that the cattle underpass was constructed in response to a Section 12 Notice issued in August 2008. It is completely untenable to suggest that if this was in fact the reason for the construction of the structure, that it would not have been previously raised in correspondence with the Local Authority; in affidavits presented to the Court; in evidence given by Mr McDaid's Counsel in Court, or through the previous Section 5 application.



Similarly, the inclusion of a proposed slurry tank within the development was never previously indicated by the applicant at any stage. It is again untenable to suggest that its inclusion was planned prior to the construction of the underpass or that it is now being inserted to satisfy the requirements of a Section 12 Notice issued in August 2008.

Given the above, the Planning Authority is of the opinion that the underpass as constructed, and proposed slurry tank, are not exempted development under the provisions of Schedule 2, Part 1, Class 41 (c) of the Planning and Development Regulations 2001 (as amended)

5.3 The works constitute exempted development under Class 9 of the Planning and Development Regulations 2001 (as amended)

Schedule 2, Part 3, Class 9 of the Planning and Development Regulations 2001 identifies particular forms of agricultural development which are considered exempted development.

'Works consisting of the provision of any store, barn, shed, glass-house or other structure, not being of a type specified in class 6,7, or 8 of this Part of this schedule and having a gross floor space not exceeding 300 square metres'.

It is contended in the first instance that the nature and character of development to which Schedule 2, Part 3, Class 9 relates is of a type such as a store, barn, shed, glass house. A cattle underpass is clearly not of a type or character of the structures identified under this class and consequently cannot be considered as an 'other structure' as contested by the applicant.

It is noted that Column 2, point No 3, of Schedule 2, Part 3, Class 9, limits such exemption to developments which are located more than 10 metres from a public road.

It should also be noted that Article 9.(a)(v) of the Planning and Development Regulations 2001 (as amended) states that the following shall not be exempted development for the purposes of the Act;

'Consist of or comprise the carrying out under a public road of works other than a connection to a wired broadcast relay service, sewer, water main, gas main or electricity supply line or cable, or any works to which class 25, 26 or 31 (a) specified in column 1 of Part 1 of Schedule 2 applies'

In this regard, Mary Moran-Long on behalf of the applicant, has submitted an accompanying document which attempts to argue that the road which traverses Mr McDaid's farm and under which the underpass is built, is in fact not a public road.

It should be noted that Mr McDaid put forward a similar argument at the High Court Hearing presided over by Justice Meehan. As Justice Meehan found that the structure was not a culvert, and as such did not fall within the provisions of Schedule 2, Part 3, Class 3 of the Planning and Development Regulations 2001, he did not formally find on the matter of the public road. Notwithstanding this he did state in his judgement on 04 June 2019 that;

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'There was considerable debate as to whether or not the roadway in questions was a public road. Given my findings, this isn't a matter on which I have to find and determine, but I would make the observation that the various references in both the Affidavit of the respondent and his father and correspondence and an earlier application, that the submission that this road is in fact a private road, that such an issue is less than convincing'.

Notwithstanding comments made by Mary Long-Moran, it is pointed out that Section 11 (5) of the Roads Act 1993 states that a certificate of a road authority, that a road is a public road, shall be prima facie evidence thereof. In this regards I have attached a certificate signed by the deputy Chief Executive Officer of Monaghan County Council on 14 August 2019 certifying that the local road LT81012, part of which goes through the townland of Beagh, Donaghmoynne, Carrickmacross in County Monaghan is a public road. This is the public road that traversers Mr McDaid's farm and under which he has constructed the underpass.

As such, the development is not considered to be exempted development under the provisions of Schedule 2, Part 3, Class 9 of the Planning and Development Regulations 2001.

5.4 The works constitute exempted development under Section 4(1) of the Planning and Development Act 2000 as amended.

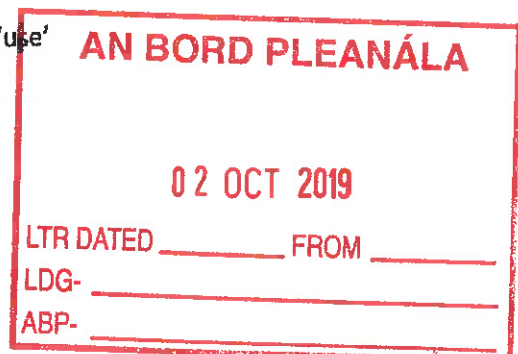
Section 4(1) of the Planning and Development Act 2000 (as amended) states that development consisting of the use of land for the purpose of agriculture and development consisting of the use for that purpose of any building occupied together with land so used shall be exempted development.

This section of the Act relates to 'use' and not to 'works' and as such is not applicable to the construction of an underpass.

The development is not considered to be exempted development under the provisions of Section 4(1) of the Planning and Development Act 2000 as amended.

6.0 Conclusion

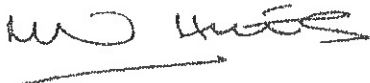
- The works were not carried out to satisfy the requirements of a Section 12 Notice issued in August 2008, and it is completely untenable to suggest so.
- The underpass is constructed under and immediately adjacent to a public road as certified under Section 11(5) of the Roads Act 1993
- The development is considered to be 'works' and not 'use'



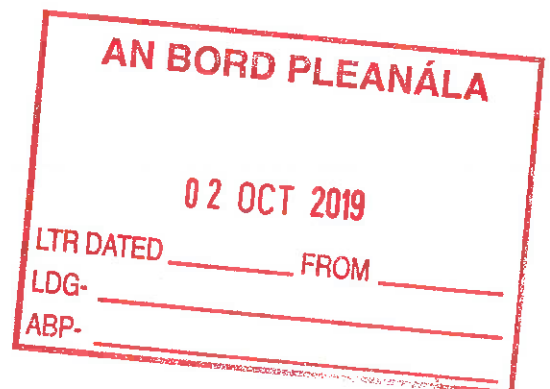
7.0 Determination

The development is not considered to be exempted development under the provisions of;

- Schedule 2, Part 1, Class 41 (c) of the Planning and Development Regulations 2001 (as amended)
- Schedule 2, Part 3, Class 9 of the Planning and Development Regulations 2001 (as amended)
- Section 4(1) of the Planning and Development Act 2000 as amended



Adrian Hughes
Senior Planner
Monaghan County Council
04 September 2019



Appendix 2

Recommendation in respect of Notice issued under Section 12 of the Local Government (Water Pollution) Act 1977 as amended by Section 9 of the Local Government (Water Pollution) (Amendment) Act 1990 and associated site inspection notes

AN BORD PLEANÁLA

02 OCT 2019

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Further Action:

I recommend the issue of a section 12 notice to Mr. Donal McDaid of Beagh Td. Donaghmoyne Co. Monaghan under the following conditions.

- 1) Immediately cease the discharge of all polluting matter including silage effluent from your farmyard at Beagh Td, Donaghmoyne to land, nearby roadside drain and nearby watercourse.
- 2) Cease making silage on a gravel/grass base. Prior to further silage making on site, provide an adequate silage base and silage effluent collection facilities including leak proof effluent collection channels and tank. Structures to be constructed to Department of Agriculture Standards.
- 3) Divert all silage effluent and slurry to leak proof storage facilities and ensure all slurries and effluent are landspread in accordance with European Communities (Good Agricultural Practice for Protection of Waters) Regulations 2006, S.I. No. 378 of 2006.
- 4) Clean out any ditch, drain or watercourse that has received polluting matter. (Immediately)

Mr. McDaid be required within a period of 4 months from the date of issue of the section 12 notice to carry out the works. You may make representations in writing to Monaghan County Council regarding the terms of this notice within a period of 2 weeks from the date of issue of this Notice.

Signed:

Sinead Hurson

Sinead Hurson

Environmental Technician Grade II

*Issue Section Notice
as outlined
17/2/19 JTH/g/08*

AN BORD PLEANÁLA

02 OCT 2019

LTR DATED _____ FROM _____

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i.O. E97/08

Subject: Local Government (Water Pollution) Act 1977 Section 12 as amended by Section 9 of the Local Government (Water Pollution)(Amendment) Act 1990.

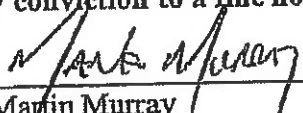
Submitted: Donal McDaid, Beagh Td, Donaghmoynes, Co Monaghan.
Recommendations received from Sinead Hurson, Environmental Technician.

Order: That Notice under Section 12 of the Local Government (Water Pollution) Act 1977 as amended by Section 9 of the Local Government (Water Pollution)(Amendment) Act 1990 be served on Donal McDaid, Beagh Td, Donaghmoynes, Co Monaghan. Requiring him within the periods specified from the date of service of the Notice to:-

1. Upon receipt of this notice, immediately cease the discharge of silage effluent and soiled waters from your farmyard to adjacent field and watercourse at Donal McDaid, Beagh Td, Donaghmoynes, Co Monaghan. Also clean out any ditch, drain or watercourse that has received polluting matter.
2. Within a period of 4 months, cease making silage on a gravel/grass base. Prior to further silage making on site, upgrade the silage effluent collection facilities and provide effluent collection channels and tank. Structures to be constructed to Department of Agriculture and Food Standards.
3. Within a period of 4 months, divert all silage effluent and slurry to leak proof storage facilities and ensure all slurries and effluent are landspread in accordance with European Communities (Good Agricultural Practice for Protection of Waters) Regulations 2006, SI No. 378 of 2006.

Mr. McDaid should be afforded a period of 2 weeks within which he may make representations to the Council in relation to the terms of the Notice.

Failure to comply with the provisions of the Notice within the specified time is an offence under Section 12 of the Local Government (Water Pollution) Act 1977 as amended by Section 9 of the Local Government (Water Pollution)(Amendment) Act 1990 and shall be liable on summary conviction to a fine not exceeding €1,270.00


Martin Murray
Senior Engineer

11-8-08
Date

Drafted by: PMcC/SM
Copies to: Files, Register

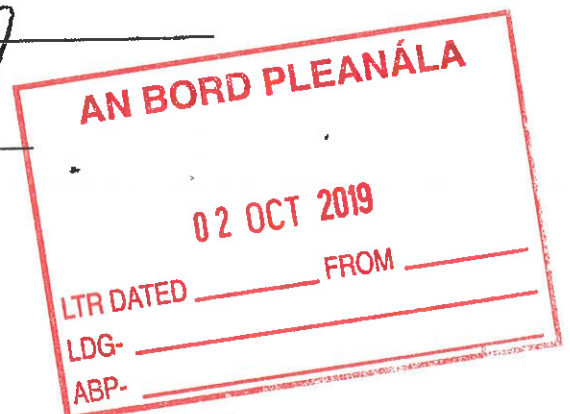
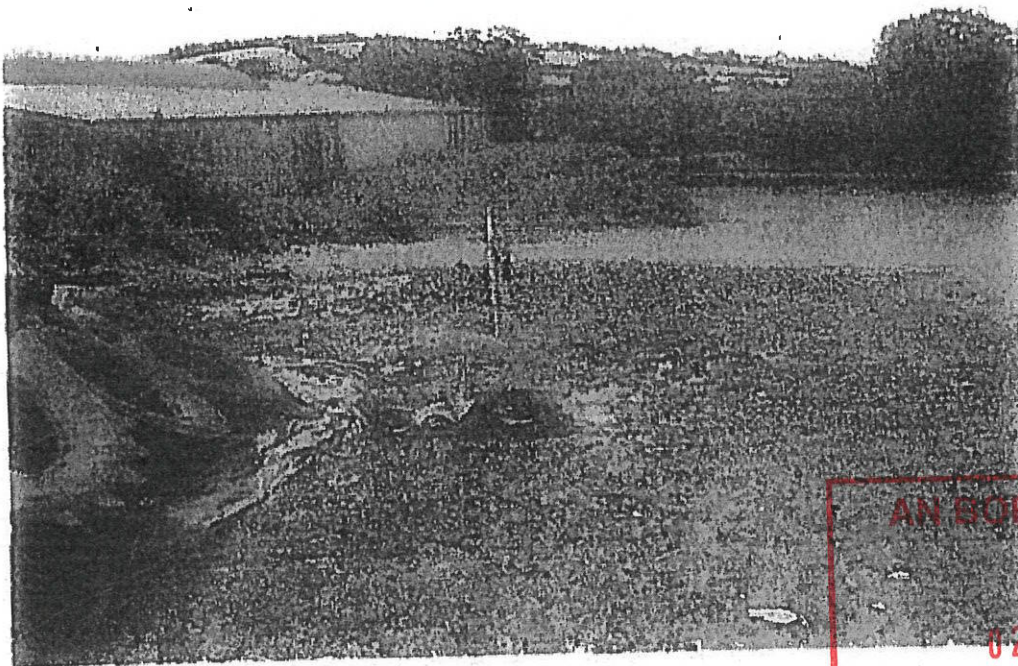




Photo 1: Silage pit made on gravel base with no silage effluent collection channels in place.



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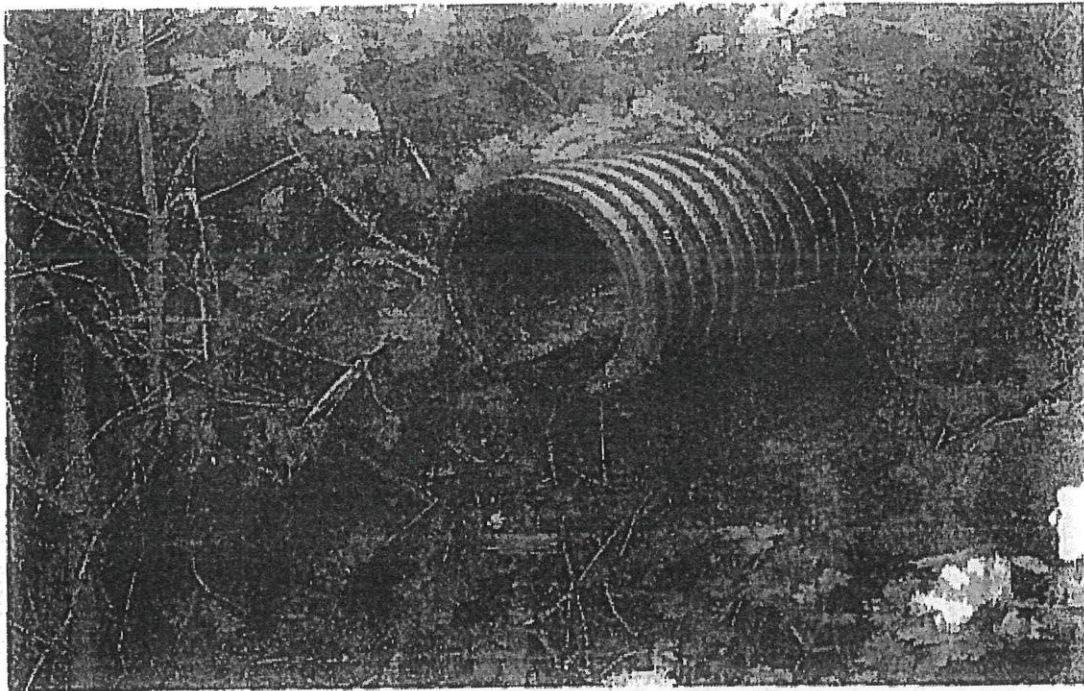


Photo 4: Pipe discharging to ditch drain from contaminated roadside drain

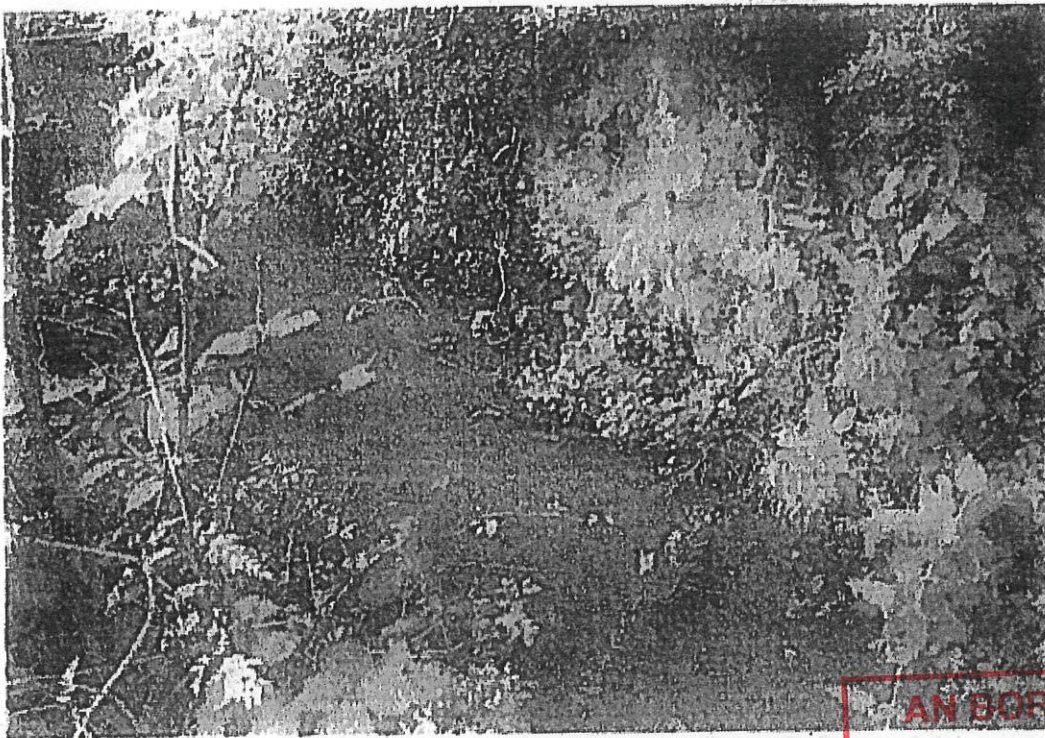


Photo 5: Contaminated stream approximately 100m below Mr. McDaid's farmyard

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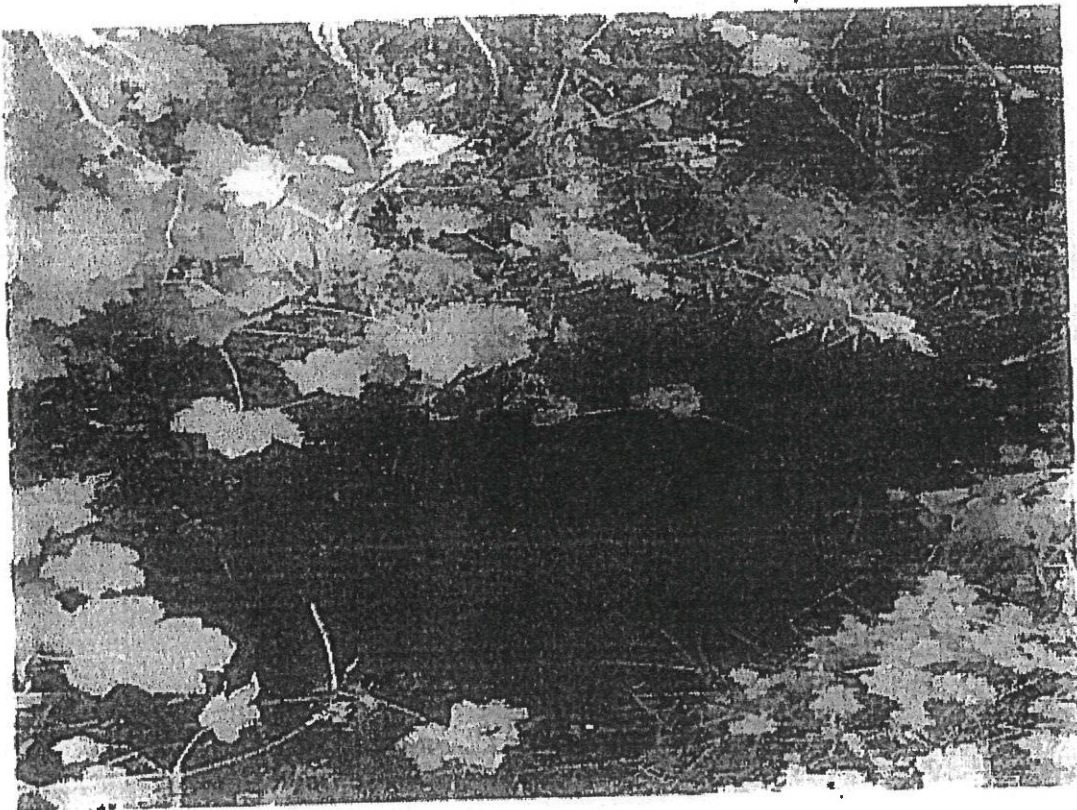


Photo 6: Contaminated ditch drain which feeds nearby stream

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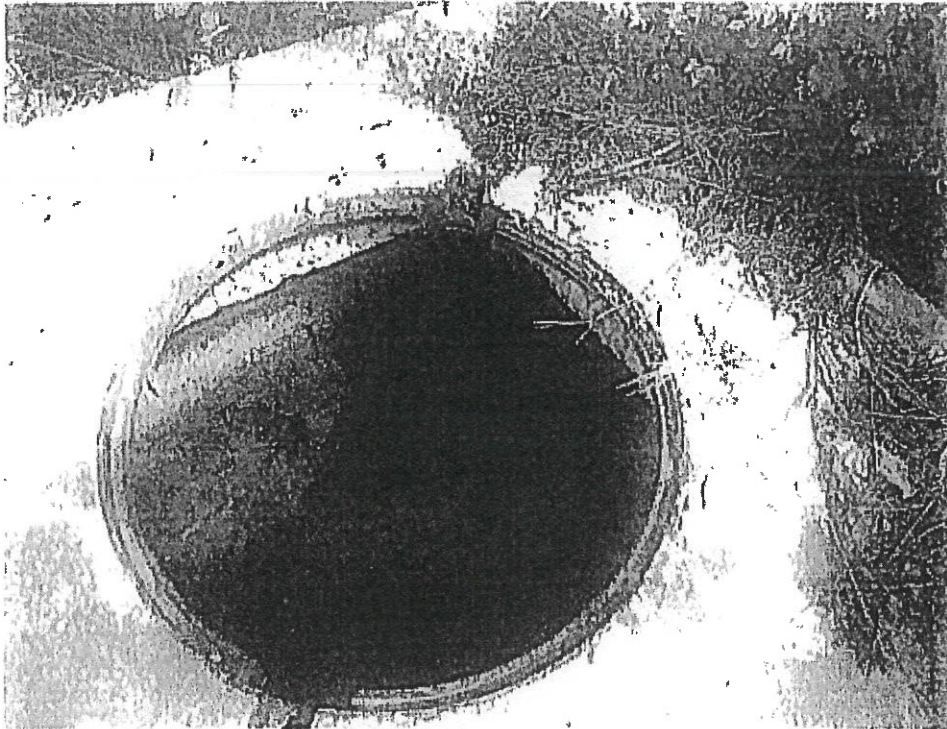


Photo No.1: Contaminated manhole in field directly opposite septic tank serving Mr. Mc Daid's Dwelling. 13/07/2011

AN BORD PLEANÁLA

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LTR DATED _____ FROM _____

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Appendix 3

Certification under Section 11(5) of the Roads Act 1993

AN BORD PLEANÁLA

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LTR DATED _____ FROM _____

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ABP- _____

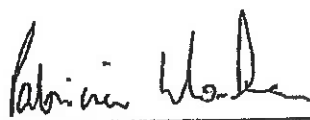
CERTIFICATE

IN THE MATTER OF SECTION 11 SUB-SECTION 5 OF THE ROADS ACT 1993

Monaghan County Council, being the roads authority for the administrative County of Monaghan, HEREBY CERTIFIES that local road LT81012, part of which goes through the townland of Beagh, Donaghmoyne, Carrickmacross in the County of Monaghan, is a public road.

Dated this 14th day of August, 2019.

Signed:


Patricia Monahan
Deputy Chief Executive Officer

AN BORD PLEANÁLA

02 OCT 2019

LTR DATED _____ FROM _____

LDG- _____

ABP- _____

Chief Executive's Order P971/19

SUBJECT: EX19/22 Exempted Development Application - Donal Gerard McDaid,
Beagh, Donaghmoynne, Co Monaghan

The installation of a box culvert / animal underpass for the purposes of moving animals, installation of animal effluent holding tank and all associated works in compliance with Section 12 Notice Issued by Monaghan County Council

ORDER: The development is not considered to be exempted under the provisions of;

- Schedule 2, Part 1, Class 41 (c) of the Planning and Development Regulations 2001 (as amended)
- Schedule 2, Part 3, Class 9 of the Planning and Development Regulations 2001 (as amended)
- Section 4(1) of the Planning and Development Act 2000 as amended

Drafted by: AG

File EX19/22
Register



Paul Clifford
Director of Services



Date

AN BORD PLEANÁLA

02 OCT 2019

LTR DATED _____ FROM _____

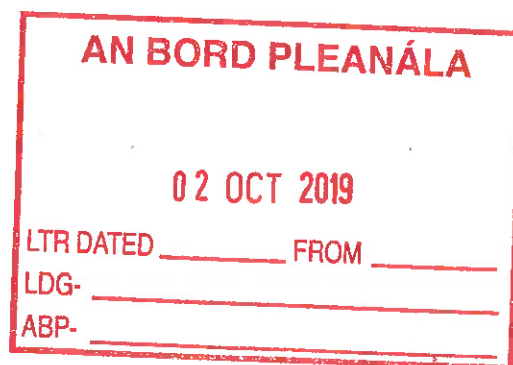
LDG- _____

ABP- _____

ORIGINAL CHIEF EXECUTIVE'S ORDER - MONAGHAN COUNTY COUNCIL

Appendices

- Appendix 1 Previous application under Section 5 of the planning and development Act 2000 (as amended) – Reference EX 19/14
- Appendix 2 Recommendation in respect of Notice issued under Section 12 of the Local Government (Water pollution) Act 1977 as amended by Section 9 of the Local Government (Water Pollution) (Amendment) Act 1990 and associated site inspection notes
- Appendix 3 Certification under Section 11(5) of the Roads Act 1993
- Appendix 4 Photographs of the underpass



Appendix 4

Photographs of the underpass

AN BORD PLEANÁLA

02 OCT 2019

LTR DATED _____ FROM _____

LDG- _____

ABP- _____

THE HIGH COURT

Record No. 2018/286CA

IN THE MATTER OF SECTION 160 OF THE PLANNING AND DEVELOPMENT
ACT 2000

Between:

MONAGHAN COUNTY COUNCIL

Applicant/Respondent

-and-

DONAL GERARD MCDAID

Respondent/Appellant

AFFIDAVIT OF DONAL MCDAID SENIOR

I, Donal McDaid Senior, aged 18 years and upwards, Beagh, Donaghmoyne, Carrickmacross in the County of Monaghan hereby **MAKE OATH** and say as follows:

1. I am the Father of the Respondent Donal Gerard McDaid in the within proceedings and I make this Affidavit from facts within my own knowledge save where otherwise so appears and where otherwise appears I believe the same to be true and accurate in every respect.
2. I beg to refer to my earlier affidavit sworn by me on the 13th April 2018 and I make this affidavit in order to give the Court some detailed historical information in respect of the meetings and communications between myself and Monaghan County Council in relation to the request by myself to Monaghan County Council in relation to the taking in charge by them of the Horseshoe road at Beagh, Donaghmoyne, Carrickmacross, Co. Monaghan which is the subject matter of the proceedings before the Court.
3. I say and believe that prior to 1978 that the Horseshoe Read, which traverses my Son Donal McDaid Junior's lands comprised within Folio MN8394 and which was previously owned by me has never during my living memory which is over eighty years that there has never been any work carried out on it by any Local Government staff which includes Monaghan County Council employees, District Council employees, Direct Labour staff or any Contracted Agents of Monaghan County Council or Carrickmacross District Council.

AN BORD PLEANÁLA

02 OCT 2019

LTR DATED _____ FROM _____

LDG

4. I say that in or about January 1978 both myself and a local farmer Patrick Owen Finnegan drafted a letter requesting Monaghan County Council to take this Horseshoe Road in charge by Monaghan County Council. The then five County Councillors in the Carrickmacross area were given a copy of my letter and they were asked to lobby on our behalf at the upcoming roads meeting for the area. Following this roads meeting Councillor Packie Jones who is still alive informed us that this road would not be taken in charge by Monaghan County Council.
5. Later that evening myself and Patrick Owen Finnegan went to meet with Mr James Deery who was a County Councillor at the time at his home in Inniskeen, County Monaghan. We discussed with him what I now know to be the possible taking in charge of this Horseshoe Road. He informed us that he was chairing a rates committee meeting in Monaghan County Council Offices in Hill Street, Monaghan and he asked for both of us to attend at 3 p.m. on the following Thursday. He also said that this meeting would be attended by senior officials of Monaghan County Council including the then County Manager, Mr Gannon and other County Councillors. At 3.30 p.m. Councillor James Deery escorted us into the proposed meeting. We presented our case and facts regarding this Horseshoe Road including that no work had ever been carried on it. All people present at the meeting listened to our presentation and no decision was reached at that meeting in our presence. However, the following day on Friday two officials who I believed to be employees of Monaghan County Council spent some time examining the said road. On the following Monday to my surprise a Contractor whom I did not know began cutting hedges on the road for some landowners who had not maintained their hedgerows. Then within a matter of days improvement works commenced on this road but it must be noted that no improvement works were ever carried out on the small section of the Horseshoe Road the subject matter of the Court proceedings herein that runs through our home farm comprised within Folio MN8394. Pat Malone who was the foreman for the improvements on the remainder of the Horseshoe Road on behalf of Monaghan County Council informed me that he had been instructed not to carry out any improvement works on our section of the road that passes through the farmyard.

AN BORD PLEANÁLA

02 OCT 2019

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6. I am now aware of the Legislation governing the taking in charge of a public right of way by a Local Authority and I say that this Horseshoe Road at this time prior to the work commencing in 1978 with regard to improvements was not dedicated by Monaghan County Council and I believe that it should have been dedicated properly as a public road prior to these improvement works being carried out. I can also say that no meeting was ever conferred or discussed by Monaghan County Council regarding the dedication of this Horseshoe Road and I say that the road still remains undedicated and is therefore officially not a public road.

Donal McDauid

SWORN by the said DONAL MCDAID
this 21st day of May 2019
at Thomas Street, Castleblayney in the
County of Monaghan

before me a Commissioner for Oaths and
I know the Deponent:

Patrick J. Carragher

Commissioner for Oaths

PATRICK J. CARRAGHER
Commissioner For Oaths,
Conabury, Castleblayney

Filed this _____ day of May 2019 by _____, Paul McCormack and Co.
Solicitors, Solicitors for the Respondent / Appellant

AN BORD PLEANÁLA
02 OCT 2019
LTR DATED _____ FROM _____
LDG- _____
ABP- _____

⑧

THE HIGH COURT

Record No. 2018/286CA

IN THE MATTER OF SECTION 160 OF THE PLANNING AND DEVELOPMENT
ACT 2000

Between:

MONAGHAN COUNTY COUNCIL

Applicant / Respondent

-and-

DONAL GERARD MCDAID

Respondent/Appellant

AFFIDAVIT OF DONAL GERARD MCDAID

I, Donal Gerard McDaid, aged 18 years and upwards, Beagh, Donaghmoynes, Carrickmacross in the County of Monaghan hereby **MAKE OATH** and say as follows:

1. I am the Respondent / Appellant in the within proceedings and I make this Affidavit from facts within my own knowledge save where otherwise so appears and where otherwise appears I believe the same to be true and accurate in every respect.
2. I beg to refer to the proceedings already had herein when produced, including the Notice of Motion of 23 January 2018 and the Affidavits of John Lennon (sworn on 19 January 2018); Craig Connolly (sworn on 19 January 2018); Alison Condra (sworn on 12 April 2018); Ronan Woods (sworn on 12 April 2018); John Lennon (sworn on 12 April 2018) which were filed on behalf of Monaghan County Council (the "Council") to ground the Notice of Motion.
3. I beg to refer also to the Affidavits of Donal McDaid Senior (who is my father), which was sworn on 13 April 2018 and Noel Keelan (sworn on 12 April 2018) and Peter Coyle (sworn on 13 April 2018) which were filed on behalf of your deponent.

AN BORD PLEANÁLA

02 OCT 2019

LTR DATED _____ FROM _____

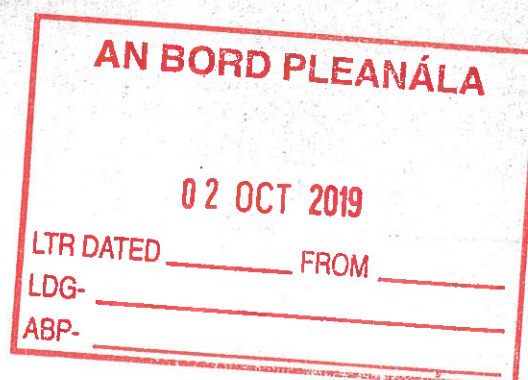
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①

4. This Affidavit is made for the purposes of setting your deponent's position on these proceedings where no Affidavit had been sworn by me (as the sole Respondent) prior to the hearing in the Circuit Court (His Honour Judge Aylmer).
5. I say and believe that when the matter came on for hearing in the Circuit Court on 13 April 2018, I understood that the matter would be adjourned as a request had been made by Councillor Noel Keelan on our behalf to arrange a meeting with Council officials. I beg to refer to correspondence with Patricia Monahan of 28 March 2018 and correspondence with Wells O'Carroll Solicitors dated 6 and 12 April 2018 upon which pinned together and marked with the letters and number 'DMcD1' I have signed my name prior to the swearing hereof.
6. The matter was ultimately heard by Judge Aylmer on that date and an order was made requiring your deponent to remove under supervision what was determined to be an unauthorised structure within four weeks. I beg to refer to a copy of the Order of the Circuit Court of 13 April 2018 upon which marked with the letters and number 'DMcD2' I have signed my name prior to the swearing hereof.
7. I beg to refer to the Affidavit of Donal McDaid Senior which was sworn on the morning of hearing on 13 April 2018 where he sets out the factual position in relation to the road in question and the works that were carried out in December 2017.
8. In addition, I would note that the road where the works were carried out traverses our farm which is located near Carrickmacross. Adjacent to the road is a cubicle house, milking parlour, covered outdoor slurry tank, dairy, collecting yard and cattle crush which were constructed in or about 1973 subject to valid grant of planning permission and have been used continuously since. My father was the owner of the property through which the road traverses until it was transferred to your deponent on or about 11 May 2015. I beg to refer to a copy of Folio 8394MN upon which marked with the letters and number 'DMcD3' I have signed my name prior to the swearing hereof.



9. Although there is some localised traffic on the roadway, the road itself is a private road and user of the road is by way of consent. I beg to refer to copies of photographs of the road upon which pinned together and marked with the letters and number 'DMcD4' I have signed my name prior to the swearing hereof.
10. The road in question is the end of a horseshoe which is used by some families in the locality to access the LT8011. The total length of the road is slightly under 1.9km and the road is approximately 3m wide. At present, two families use the northern access to the LT8011, one farmer uses both access points and another household uses the southern access.
11. I say and believe that the Council has not carried out any maintenance on the road traversing through folio MN8394 in living memory nor has any evidence been provided that the Council has taken responsibility for maintaining the road in question or has carried out any maintenance. The maintenance that was carried out was done on behalf of my father and I by Drummondreagh Developments Limited. I beg to refer to the Affidavit of Patrick Cunningham when produced..
12. While some improvement works were carried out on the horseshoe road with the assistance of the Council in or around 1979 following representations made by Donal McDaid Senior those works did not extend to your deponent's property and stopped short of the eastern side of Folio 8394MN. I beg to refer to my Father's second affidavit and letter to Monaghan County Council dated 1st January 2018 and attached exhibit DMcD5.
13. Subsequently in or about 2000, drainage works were carried out on the road following a meeting between my father and Paudge McKenna who was a senior administrative officer with the Council. Those works, which were carried out by a Noel Craven, consisted of drainage of the south side of the road from the southern entry to Patrick Donaghy's laneway and involved the extraction of approximately 2400m³ of soil which was deposited on land belonging to the McDaid Family. However, no works were carried out on the 130m stretch of road adjacent to the farm buildings on our property.
14. In or about June 2017, Noel Keelan (on behalf of my father) invited John Lennon to inspect the road and discuss a plan of action for its improvement given the condition of

AN BORD PLEANALA

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the road. At that meeting, Mr. Lennon was informed of our intention to carry out the works and construct a culvert underground and acknowledged that the Council might be in a position to provide funding once the culvert was installed. I beg to refer to a copy of my email to the Roads Section of the Council dated 2 January 2018 upon which marked with the letters and number 'DMcD6' I have signed my name prior to the swearing hereof.

15. Subsequently on 8 December 2017, work started on the culvert at approximately 2:30pm. However, the works were adequately signposted for any passing members of the public and did not represent a traffic hazard. All road users of said road were informed of the proposed works prior to the commencement of these works including the complainants. I beg to refer to copies of photographs that were taken of the works and roadway that were taken on 8 March 2017 upon which pinned together and marked with the letters and number 'DMcD7' I have signed my name prior to the swearing hereof.

16. I say and believe that, notwithstanding the assertions in the Council's Affidavit, there is no evidence of when the road in question was allegedly dedicated as a public road. In fact, the Council's solicitors have confirmed that it does not know when this particular road became a public road or whether it was conferred following a formal act of dedication, following an exchange of correspondence between my solicitors and the Council's solicitors. I beg to refer to letters dated 20 July 2018, 24 July 2018, 31 October 2018, 13 December 2018, 5 February 2019 and 11 February 2019 upon which pinned together and marked with the letters and number 'DMcD8' I have signed my name prior to the swearing hereof.

17. I say and believe that the Council has adduced no evidence of historic expenditure of public monies on the road in question or indeed any evidence that it has carried out any maintenance works and appears to be relying on maps exhibited in the Affidavit of Alison Condra which are not sealed or authenticated by any formal seal of the Council.

18. On 7th February 2019 my Solicitor, Paul MacCormack, my father Donal McDaid Senior and myself attended the Road Section of Monaghan County Council by appointment to view the alleged official road map and the alleged road schedule. The current road schedule which was presented to us as the official road map and road schedule was

AN BORD CEANALA

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twenty six years out of date and related to the Public Bodies Order 1946. Neither of these instruments had the seal of the Council.

- 19. I say that when I carried out works on my private road the Safety Health and Welfare at Work (Construction) Regulations Act 2005 were fully adhered to during the development, including informing all road users and residents in the area of work that was to be carried out including the complaints . There are two photo sensitive flood lights installed permanently at this site for night time and for safety enhancement. It has come to my attention that the Health and Safety Authority received a complaint regarding the development on the 12th December 2018. I witnessed Craig Connolly of the Council remove the security fencing and the then proceeded to take photographs. He did not replace the security fencing. The Health and Safety Authority have investigated this complaint and have not issued any improvement notices or prohibition notices in respect of the complaint made by the Council.
- 20. Accordingly, I pray this Honourable Court to allow the appeal and refuse the reliefs sought in the Notice of Motion.

Donal J. McJannet

SWORN by the said DONAL GERARD MCDAID this 20th day of May 2019 at Thomas Street, Castleblayney, in the County of Monaghan

before me a ^{Commissioner for Oaths} ~~Practising Solicitor~~ and I know the Deponent:

Patrick J. Carragher
~~Practising Solicitor~~

PATRICK J. CARRAGHER
Commissioner For Oaths,
Conabury, Castleblayney

Filed this _____ day of May 2019 by _____, Paul McCormack and Co. Solicitors, Solicitors for the Respondent / Appellant

AN BORD PLEANÁLA

02 OCT 2019

LTR DATED _____ FROM _____

LDG- _____

ABP- _____

(S)

THE HIGH COURT

Record No. 2018/286CA

IN THE MATTER OF SECTION 160 OF THE PLANNING AND DEVELOPMENT
ACT 2000

Between:

MONAGHAN COUNTY COUNCIL

Applicant / Respondent

-and-

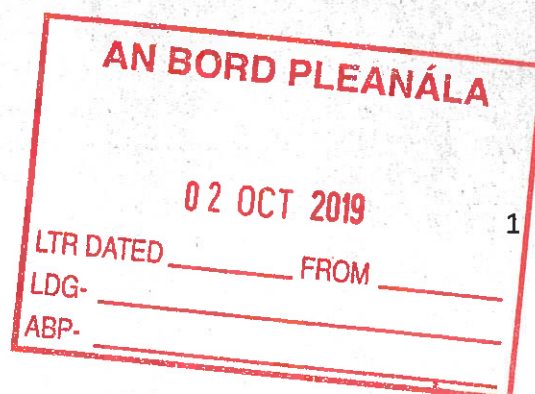
DONAL GERARD MCDAID

Respondent/Appellant

AFFIDAVIT OF PAT CUNNINGHAM

I, Pat Cunningham, aged 18 years and upwards, Director of Drummondreagh Limited, having a registered address at Clonavogy, Broomfield, Castleblayney in the County of Monaghan hereby MAKE OATH and say as follows:

1. I make this Affidavit from facts within my own knowledge save where otherwise so appears and where otherwise appears I believe the same to be true and accurate in every respect.
2. I beg to refer to the proceedings and, in particular, the Affidavit of Donal Gerard McDaid.
3. I am a director of Drummondreagh Limited, Clonavogy, Broomfield, Castleblayney, in the County of Monaghan since in or about October 1993 and have been employed by the McDaid family on a regular basis to carry out work on their behalf in the past 25 years. Prior to 1993 I worked as a sole trader contractor and have carried out work for the McDaid family for the past 40 years, including on the road locally known as "McDaid's Back Lane".



4. Those works included resurfacing the road with shale rock and compact rolled with vibrating roller in October 1998. In October 2001, my company prepared a section of road for concreting. The dimensions were appropriately 15 m long by 3.2m wide and the same dimensions were also prepared adjacent to this section of road. The McDaid's carried out the concreting work themselves.
5. In December 2008, the road was drained using 100m to 225mm storm water pipes and approximately 40m of 150mm storm water pipes used. The trench was filled with 3-inch stone and the road received light covering with shale rock and compact rolled and finished off with 804 quarry dust and again compact rolled. In December 2015, the road surface was levelled and received some shale rock in worst areas before being compact rolled and finished off with 804 quarry dust and compact rolled.

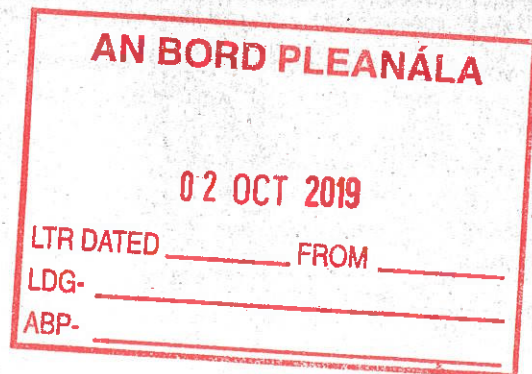
Pat Cunningham

SWORN by the said PAT
CUNNINGHAM this 21st day of May 2019
at Thomas Street, Castleblayney, Co.
Monaghan

before me a Practising Solicitor and I
know the Deponent:

Linda Smyth
Practising Solicitor

Filed this _____ day of May 2019 by _____, Paul McCormack and Co.
Solicitors, Solicitors for the Respondent / Appellant



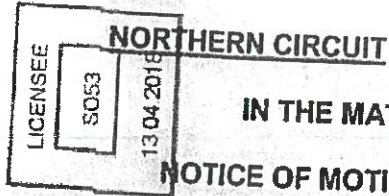
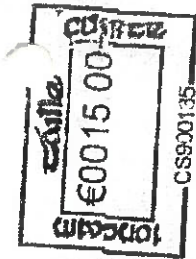
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THE CIRCUIT COURT

Record no. 2018/23

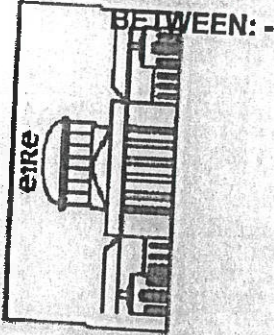
COUNTY OF MONAGHAN

IN THE MATTER OF THE PLANNING & DEVELOPMENT ACT, 2000

NOTICE OF MOTION FOR RELIEF UNDER SECTION 160 OF THE PLANNING & DEVELOPMENT ACT 2000



15051
18354849



MONAGHAN COUNTY COUNCIL

Applicant

And

DONAL GERARD McDAID

Respondent

AFFIDAVIT OF NOEL KEELAN

I, NOEL KEELAN of 10 Monaghan Road, Carrickmacross, County Monaghan aged 18 years and upwards make oath and say as follows: -

1. I am an elected member of Monaghan County Council and I make this Affidavit from facts within my own knowledge save where otherwise appears and whereso appearing I believe the same to be true.
2. I met with Donal McDaid Senior who is the father of Donal Gerard McDaid who is the owner of the property at the location of his farm at Beagh, Donaghmoyne, County Monaghan in June 2017. Also present at the meeting was John Lennon who is an Executive Engineer employed by Monaghan County Council who has the responsibility for roads in the local area.
3. I was invited to view the section of roadway and discuss the plan of action regarding its improvement.
4. I arrived on site and had discussions with Donal McDaid Senior and John Lennon, Road Engineer at the location of the southern end of his farm. Donal McDaid Senior explained to myself and John Lennon of his son Donal Gerard McDaid's intentions to put a culvert / underpass underneath the road. The exact location of the area of the proposed culvert / underpass was identified to both myself and John Lennon, Road Engineer.

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5. The main intention of the meeting was to discuss whether or not Monaghan County Council would be prepared to pay a contribution to the cost of the concreting of the road when the works would be finalised.
6. As part of the discussions, the culvert / underpass was discussed. The benefit to the local road users by having the culvert / underpass installed were obvious in that there would be no more manure getting on to the road as a result of the cattle going underneath the ground in the culvert / underpass.
7. I was present when I heard the conversation between Donal McDaid Senior and John Lennon, Roads Engineer when Donal McDaid Senior asked if Monaghan County Council would be prepared to make a contribution towards the financial cost of concreting the road if the culvert / underpass was installed. The preferred option of Donal McDaid Senior was to concrete the whole area between the building on both sides including the roadway and would Monaghan County Council make a contribution towards the cost of the project?
8. I am aware that Donal McDaid also offered to extend his public liability insurance to cover the works period of the said project.
9. I heard the conversation with regard to the response that was made by John Lennon, Roads Engineer in Monaghan County Council to Donal McDaid Senior and it was made at the location of the site where the proposed culvert / underpass was to be constructed and John Lennon said "put it in and we will take it from there". The meaning that I took from those words which were said by John Lennon, Roads Engineer of Monaghan County Council were that it was okay for Donal McDaid Senior and his son Donal Gerard McDaid Junior to proceed to put in the culvert / underpass and whenever the work was completed that there would be a further discussion with regard to what contribution Monaghan County Council would make to the works.
10. At no time was there ever any mention by John Lennon or by Donal McDaid Senior with regard to having to apply for planning permission for an underpass / culvert.
11. At no time was there any discussions with regard to Donal McDaid Senior having to apply for a road opening licence.
12. On a number of occasions after that meeting I met with Donal McDaid Senior and I asked him if he had started the construction work on the underpass. I was told by him that works had been done at the entrance but that he would not be in a position financially to have the work completed until more money was available.
13. I would have to say that there have been problems with regard to this road with regard to its maintenance for at least 20 years and definitely for as long as I have been involved in local politics with Monaghan County Council. I believe that the idea that Donal McDaid had with regard to the underpass was an excellent one with regard to keeping the road clean and free from manure which would have been of benefit to the local community and the local residents/road users.
14. I can definitely say that from the discussions that took place in June 2017 between Donal McDaid Senior and John Lennon who is the roads engineer with Monaghan County Council that the impression was left with me that there was no difficulty with regard to Donal McDaid being allowed put in the culvert / underpass to take away the difficulty of the cows crossing the road which was obviously a difficulty for other local road users and I would say that the impression was left that there would be no

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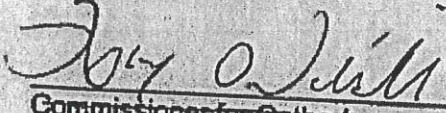
objections by Monaghan County Council about putting in the culvert / underpass and I believe that Donal McDaid could have been left with no other impression that he had the permission of Monaghan County Council to go ahead and do the work as had been described at the meeting.

15. As an elected member of Monaghan County Council, I am desirous of ensuring that any matters which involve public expenditure involving Monaghan County Council can be reduced to a minimum including the unnecessary occurrence of expensive legal fees arising from litigation.

16. I was contacted by Paul MacCormack, Solicitor who represents Donal Gerard McDaid and he informed me about the Court Proceedings which had been instituted by Monaghan County Council against Donal Gerard McDaid in both the District Court and the Circuit Court. I said that I would try and arrange a meeting between the officials in Monaghan County Council who deal with roads and Donal Gerard McDaid in the presence of their legal advisors to see if some arrangement could be arrived at which would save the necessity of expensive court proceedings. I met with Donal Gerard McDaid and Donal McDaid Senior and Paul MacCormack Solicitor on the 23rd March 2018. Following same, I arranged with Patricia Monahan who is in Monaghan County Council to arrange a meeting between all parties to try and have the matter resolved before there was any Court Case. I was assured that such a meeting would take place and I am disappointed that the Court Proceedings are now continuing without the chance of a meeting taking place between the parties to see if all difficulties could be resolved without litigation.

Sworn by Noel Keelan
On the 12th day of April 2018
at Thomas Street, Castleblayney,
in the County of Monaghan
before me a Commissioner for Oaths /
Practising Solicitor
and I know the Deponent.


Noel Keelan


Commissioner for Oaths /
Practising Solicitor

Mallon Solicitors
Glencarn Centre
Castleblayney, Co. Monaghan
Tel: 042 9740293
Fax: 042 9740725

AN BORD PLEANÁLA

02 OCT 2019

LTR DATED _____ FROM _____

LDG- _____

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(10)



The Property Registration Authority
An tÚdarás Clárúcháin Maoine

Land Registry Sealed and Certified Copy Folio (& Filed Plan)

PAUL MACCORMACK & CO., SOLICITORS
DX 71007
CASTLEBLAYNEY

This page forms part of the official document. Do not detach.

Folio Number: MN8394
Application Number: P2018LR024033J
Your Reference: MCD44/8/CL.46

This document comprises an office copy of the Land Registry record for the above mentioned folio/filed plan as of the date appearing.

Details of dealings pending (if any) on the enclosed folio/filed plan are listed in the Schedule below.

An officer duly authorised by the Property Registration Authority.

Schedule

Notes:

1. Filed plans should be read in conjunction with the Register. The description of the land in the Register or on the filed plan is not conclusive as to the boundaries or extent of the land (see Section 85 of the Registration of Title Act 1964, as substituted by Section 62 of the Registration of Deeds and Title Act, 2006).
2. Filed plans greater than A3 in size may be provided as separate A3 tiles with an overlap and print gutter. When aligning the tiled sheets, customers are advised to use the underlying topographical detail.
3. On receipt of this record, please check to verify that all the details contained therein are correct. If this is not the case, please return the document to the Property Registration Authority immediately.

Folio Number: MN8394
Date Printed: 20/03/2018

Application Number: P2018LR024033J

INTORD PLEANÁLA
02 OCT 2018
LTR DATED _____ FROM _____
Page 1 of 6
ASP

Land Registry

County Monaghan

Folio 8394

Register of Ownership of Freehold Land

Part 1(A) - The Property

Note Unless a note to the contrary appears, neither the description of land in the register nor its identification by reference to the Registry Map is conclusive as to boundaries or extent

For parts transferred see Part 1(B)
Description

Official Notes

No.

1 The property shown coloured Red as plan(s) 1 on the Registry Map, situate in the Townland of BEAGH, known as BEAGH, CARRICKMACROSS, CO. MONAGHAN, in the Barony of FARNEY, in the Electoral Division of CROSSALARE.

From App. 5070

Description revised 11-MAY-2015 D2015LR059735C. Area removed.

2 The property shown coloured Red as plan(s) 12 on the Registry Map, situate in the Townland of CULLENTRAGHDUFF, in the Barony of FARNEY, in the Electoral Division of CROSSALARE.

From App. 5070

Description revised 11-MAY-2015 D2015LR059735C. Area removed.

Land Cert Issued: No

Page 1 of 4

Collection No.:

Date Printed: 20/03/2018

AN BORD PLEANÁLA

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LTR DATED _____ FROM _____

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ASP- _____

Page 2 of 6

(24)

Land Registry

County Monaghan

Folio 8394

Part 1(B) - Property
Parts Transferred

No. Prop No:	Instrument:	Date:	Area (Hectares):	Plan:	Folio No:

AN BORD PLEANALA
02 OCT 2019
LTR DATED _____ FROM _____
LDG _____
ABP _____



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Land Registry

County Monaghan

Folio 8394

Part 2 - Ownership

Title ABSOLUTE

No. The devolution of the property is subject to the provisions of Part IV of the Registration of Title Act, 1891.

- 1. ~~13 FEB 2015~~ ~~SINON DONAGHY of BEAGH, LEARASH, CASTLEBLAYNEY, COUNTY MONAGHAN~~
First Reg ~~is full owner.~~
Cancelled D2014LR119818B 19-NOV-2014
- 2. ~~19 NOV 2014~~ ~~DONAL MCDAID of BEAGH, LISDOONAN, CARRICKMACROSS, COUNTY~~
~~D2014LR119818B~~ ~~MONAGHAN is full owner.~~
Cancelled D2015LR059735C 11-MAY-2015
- 3. 11-MAY-2015 DONAL GERARD MCDAID (JNR) of Beagh, Lisdoonan, Carrickmacross,
D2015LR059735C County Monaghan is full owner.

AN BORD PLEANALA

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ABP- _____



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Part 3 - Burdens and Notices of Burdens

No.	Particulars
1	The property is subject to the provisions prohibiting letting, subletting or subdivision specified in Section 12 of the Land Act, 1965, and to the provisions restricting the vesting of interests specified in Section 45 of the said Act in so far as the said provisions affect same.
2	For the purposes of Section 67(3) of the Irish Land Act 1903 these lands are to be deemed one holding with the lands comprised in Folio MN8460. Note: Apportionment Order No. 2570.
3a	11-MAY-2015 D2015LR059735C The rights and privileges specified in Instrument Number D2015LR059735C in favour of Donal McDaid during his life. Note: This burden affects Plan 1 only of the folio and ranks equal in priority to the burdens registered at entries 3b and 3c.
3b	11-MAY-2015 D2015LR059735C The rights and privileges specified in Instrument Number D2015LR059735C in favour of Margaret Mary Philomena (or se Ena) McDaid during her life. Note: This burden affects Plan 1 only of the folio and ranks equal in priority to the burdens registered at entries 3a and 3c.
3c	11-MAY-2015 D2015LR059735C The rights and privileges specified in Instrument Number D2015LR059735C in favour of Catherine McDaid during her life. Note: This burden affects Plan 1 only of the folio and ranks equal in priority to the burdens registered at entries 3a and 3b.

AN BORD PLEANALA

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LDG- _____

ABP- _____

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File Number: BNS3304

682060 mE, 810890 mN

Application Number: P2018LR024023.1


 The Property Registration Authority
 An tAidmhaire
 Cláracháin Mairne
 Folio: BND334

This map should be read in conjunction with the facts.

Registry maps are based on OSI topographic maps. Where registry maps are printed at a scale that is larger than the OSI publisher's scale, accuracy is limited to that of the original OSI map scale.

For details of the terms of use and limitations as to scale, accuracy and other conditions relating to Land Registry maps, see www.orai.ie.

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(continuation of map(s) sheet(s))

Freehold

Leasehold

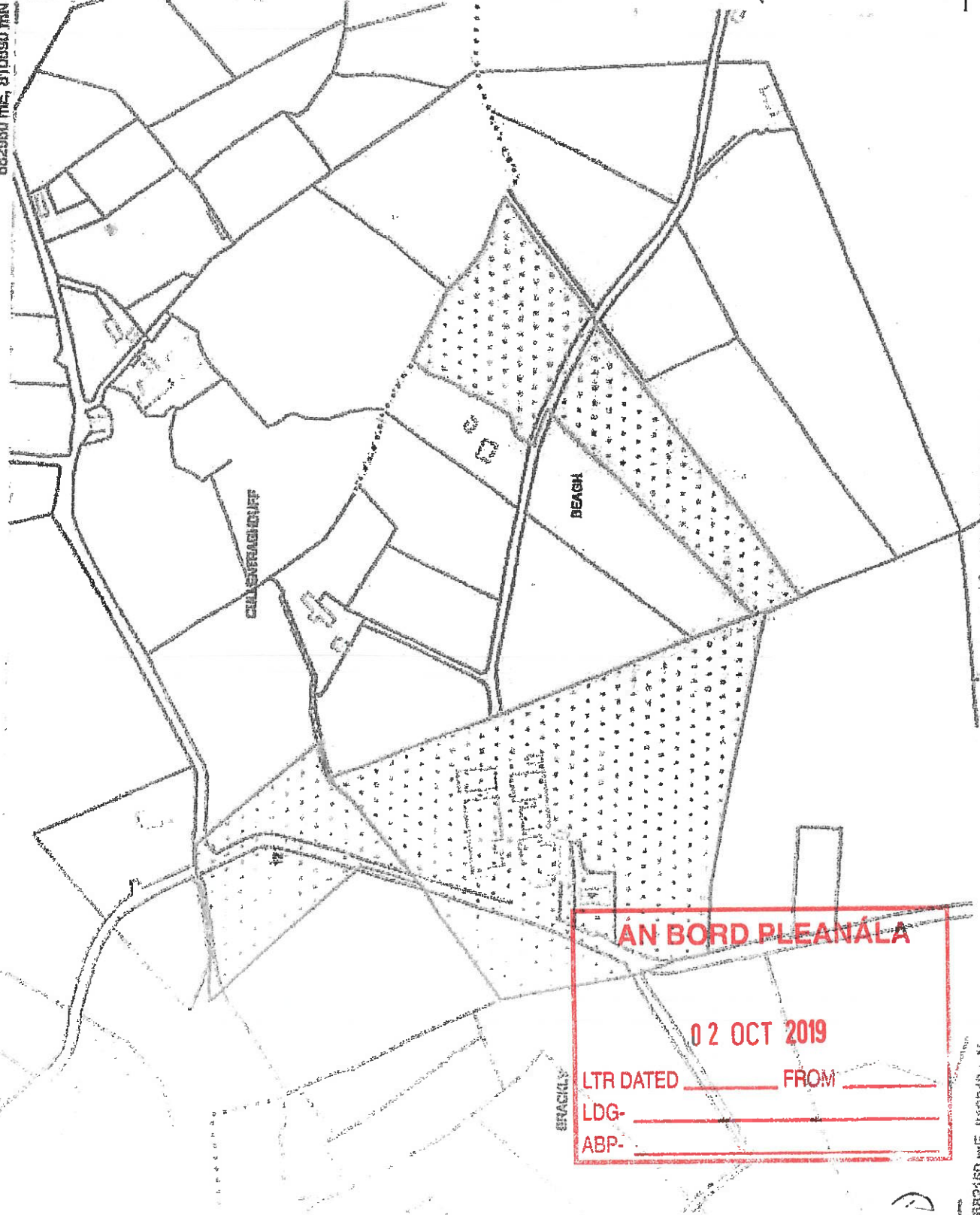
SubLeasehold

Surdens (may not all be represented on map)

- Right of Way / Viejtasas
- Turbary
- Phishing
- Well
- Pump
- Sepic Tank
- Soak Pit

A full list of burdens and their symbols may be found at www.landregister.ie

The registry operates a non-conclusive boundary system. The Registry Map identifies properties not boundaries meaning neither the description of land in a register nor its identification by reference to a registry map is conclusive as to the boundaries or extent. (see Section 65 of the Registration of Title Act, 1964). As inserted by Section 62 of the Registration of Deeds and Title Act 2006.



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02 OCT 2019

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682060 mE, 810890 mN
Date Printed: 2018-02-28

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Handwritten scribble or signature.

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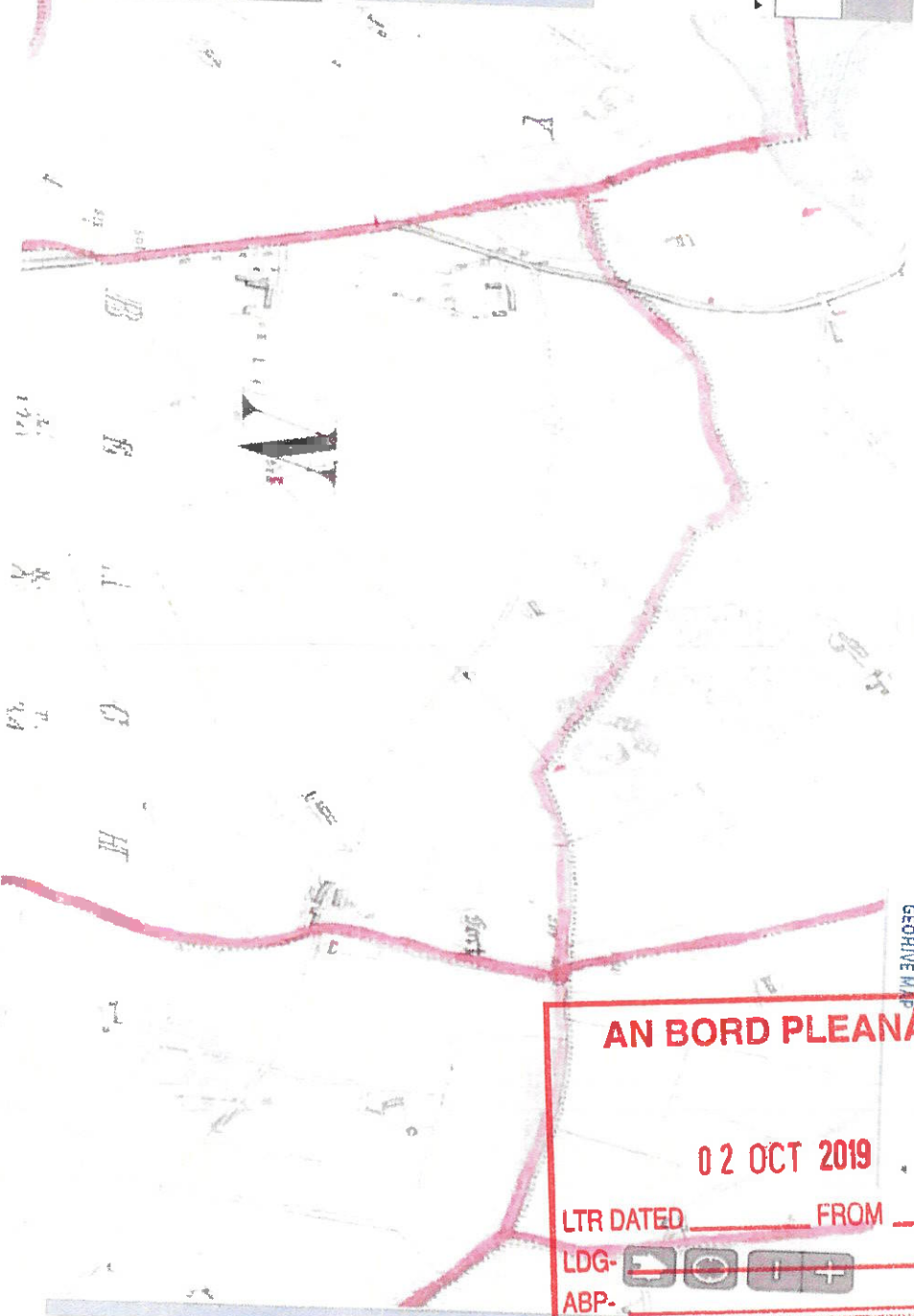
Data Catalogue

- Aerial 2000
- Aerial 1996
- Digital Globe 2011-2013
- Historic Map 25 inch (1888-1913)
- Historic Map 6 inch B&W (1837-1...)
- Historic Map 6 inch Colour (1837...)
- 6 inch Cassini

- Nature and Environment
- Population and Economy

Selection

- Historic Map 6 inch Colour (1837...)
Transparency
- Historic Map 6 inch B&W (1837-1...)
Transparency
- 6 inch Cassini



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GEORHIVE MAP

AN BORD PLEANÁLA

02 OCT 2019

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LDG-

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