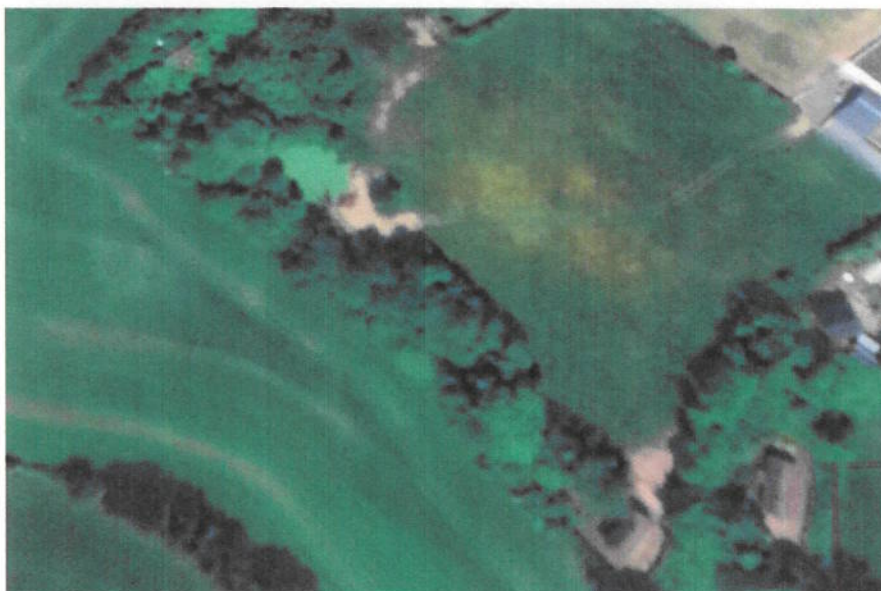


Attachment PT9



Former sand and gravel pit/ marl hole June 2015



Former sand and gravel pit/ marl hole May 2017



Former sand and gravel pit/ marl hole 2019

AN BORD PLEANÁLA
28 FEB 2020
DATE DATED _____ FROM _____

Declaration EXD00793

AN BORD PLEANÁLA

28 FEB 2020

LTR DATED _____ FROM _____

LDG- _____

ABP- _____

WEXFORD COUNTY COUNCIL PLANNING AUTHORITY
PLANNING AND DEVELOPMENT ACT 2000 (as amended)

NOTIFICATION OF DECISION ON PLANNING APPLICATION

The Decision of Wexford County Council on the application described in the Schedule to this Notice is as shown therein.

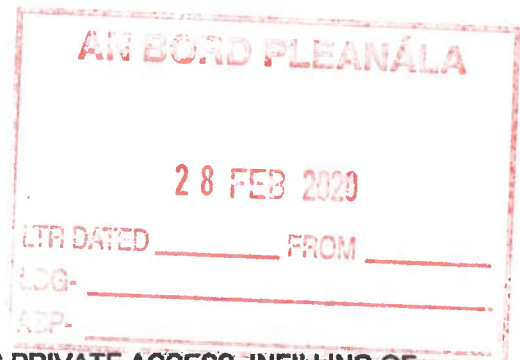
Signed on behalf of Wexford County Council R. Gordon

Date : 7 February 2020

DECLARATION OF EXEMPTED DEVELOPMENT

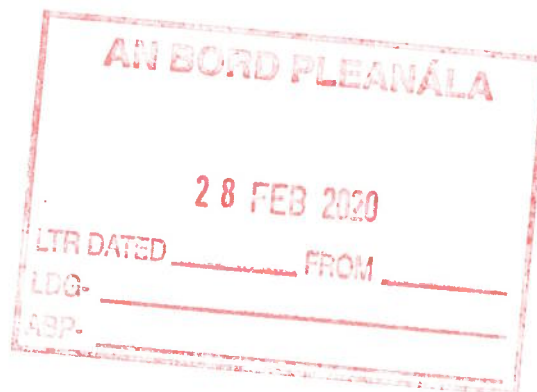
SCHEDULE

REGISTER NUMBER.:	EXD00793
DATE OF APPLICATION:	14 January 2020
APPLICANT:	FRANCES HOPKINSON
PROPOSED DEVELOPMENT:	WIDENING OF EXISTING PRIVATE ACCESS. INFILLING OF MARL-HOLE AND RESTORATION AND RE-USE OF EXISTING DERELICT HOUSE AS A HABITABLE HOUSE
LOCATION:	BALLINA UPPER (ED CASTLE ELLIS), CASTLE ELLIS
DECISION:	EXEMPTED DEVELOPMENT
DATE OF DECISION:	7 February 2020



Please note this exemption relates to Planning only. The works may require Building Control, Disability Certification and Fire Certification.

Please contact your Architect to ensure compliance.



Planners Report dated 10 February

AN BORD PLEANÁLA
28 FEB 2020
LTR DATED _____ FROM _____
LDG- _____
ABP- _____

10.02.20

WEXFORD COUNTY COUNCIL
RECEIVED
5 FEB 2020
PLANNING SECTION

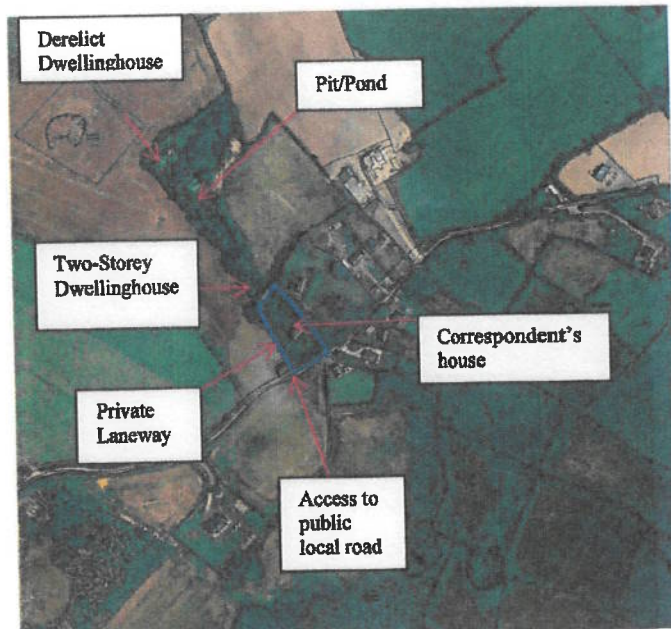
Planning and Development Act 2000 (as amended)

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

Register No.: EXD00793 ✓

Proposal: WIDENING OF EXISTING PRIVATE ACCESS. INFILLING OF MARL-HOLE AND RESTORATION AND RE-USE OF EXISTING DERELICT HOUSE AS A HABITABLE HOUSE ✓

Location: BALLINA UPPER (ED CASTLE ELLIS), CASTLE ELLIS ✓



AN BORD PLEANÁLA
28 FEB 2020
LTR DATED _____ FROM _____
LDG- _____
ABP- _____

Fig 1: Aerial View of Site

Site Location and Description:

The area subject to the application is located on a private laneway accessed from a local county road approximately 3.5km south of Blackwater. A number of one off dwellinghouses predominantly to the east of the site have been approved and constructed from the 1990's to present. The site and immediate surrounding area comprises of a number of different elements, these being a private laneway, a two-dwellinghouse (last habited c.1990's) set c.100m back from the public roadway, a derelict dwellinghouse (last habited c.1950's) set c.250m back from the public roadway with a paddock containing a newly formed pond and recently infilled marl hole in-between both houses.

For the purposes of clarity, neither dwellinghouses accessible from the laneway are in habitation, however both are in different states of repair. Therefore for the purposes of report writing, it is prudent to refer to the more recently occupied dwellinghouse c.100m to the north of the public roadway as the 'two-storey' ✓

dwellinghouse' and the dwellinghouse c.250m to the north of the public roadway as the 'derelict dwellinghouse'.

AN BORD PLEANÁLA
28 FEB 2020
LTR DATED _____ FROM _____
LDG- _____
P- _____



Fig: Entranceway and re-surfacing work, 24/01/2020. ✓



Fig: Entrance and front part of laneway; Source: Google Street View, c.2009 ✓



Fig: Laneway leading to two-storey dwellinghouse – current & previously existing



AN BORD PLEANÁLA ✓

28 FEB 2020

LTR DATED _____ FROM _____

LDG- _____

ABP- _____

Fig: Laying of piping to facilitate connection to public watermains to wall to eastern side of laneway

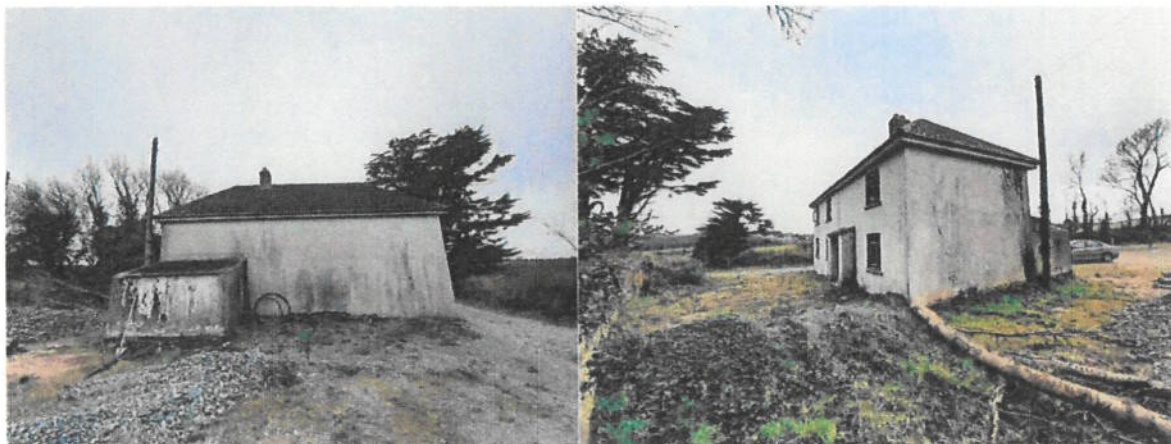


Fig: Two-Storey Dwellinghouse c.100m from access to public road ✓



Fig: Derelict Dwellinghouse to rear of laneway, c.250m from access to public road.
Part of infilled marlhole in photograph to LHS



Fig: Smaller pond recently excavated

AN BORD PLEANÁLA

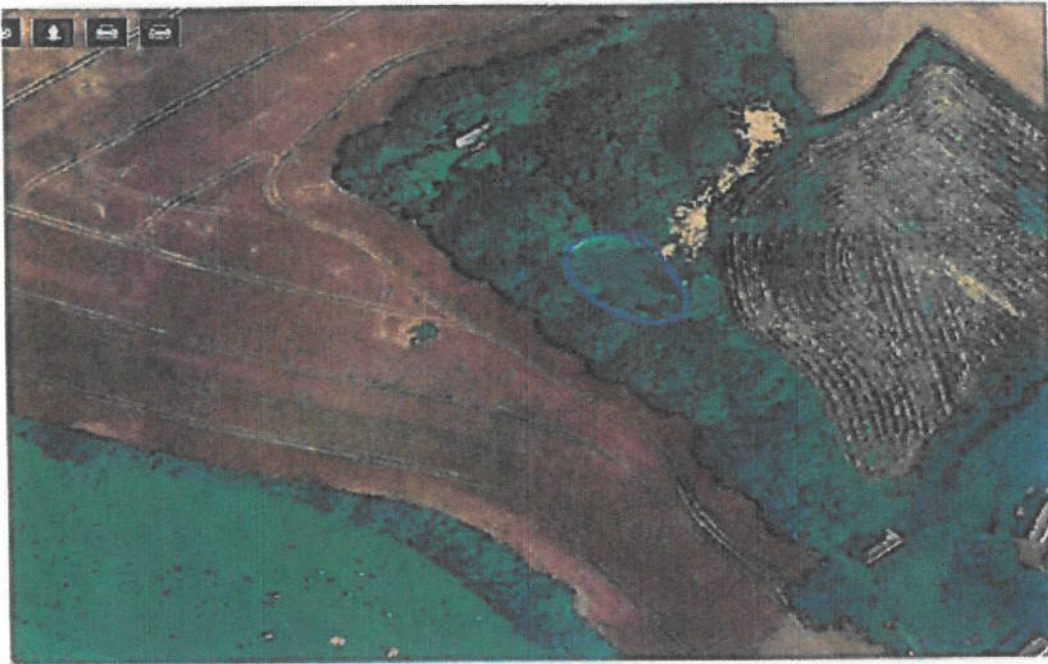
28 FEB 2020

LTR DATED _____ FROM _____

LDG- _____

ADP- _____

Previously existing Pond outlined in Blue



Area of previously existing pond



Fig: Marl hole infilled; Source: Arc GIS

AN BOND PLEANALA ✓

28 FEB 2020

LTR DATED _____ FROM _____

LOG- _____

ABP- _____

Site History:

Enforcement

Reference Number: 0010/2019;

Description of Development: Possible un-authorised development ground works;

Outcome: Case Closed

For the avoidance of doubt, works the re-profiling of the land as part of Folio WX3729 has not been requested for assessment as part of this Section 5 Declaration Application under the Planning and Development Act 2000-2019.

Development in Question:

This proposal is a request for a declaration under Section 5 of the Planning and Development Act, 2000 (as amended) to determine whether or not works to including the clearing of overgrowth surrounding the access and laneway, the spreading of hardcore fill to part of the existing private laneway, laying of pipe along the eastern side of laneway to connect to public water mains, the re-use of derelict house(s) and infilling of marl hole are development or not. For the avoidance of doubt, any landownership issues are not planning matters and are not for discussion as part of this report.

Statutory Provisions

The proposal will be assessed within the provisions of:

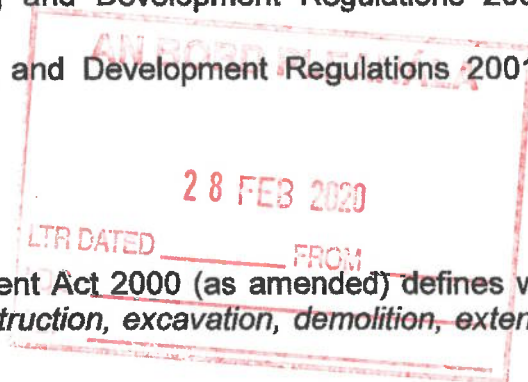
- Sections 2, 3 and 4 of the Planning and Development Act 2000 (as amended);
- Part 2, Articles 5, 6, 8B, 8C and 9 of the Planning and Development Regulations 2001 (as amended); and
- Part 1 Classes 9 and 13 of the Planning and Development Regulations 2001 (as amended);
- Part 1, Class 58 of the Planning and Development Regulations 2001(as amended);
- Part 3, Class 11 of the Planning and Development Regulations 2001 (as amended);

Works & Development

Section 2 of the Planning and Development Act 2000 (as amended) defines works as including '*any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal...*'.

Section 3(1) of the Planning and Development Act, 2000 (as amended) defines 'development' as meaning, except where the context otherwise requires, '*the carrying out of any works on, in, over or under land or the making of any material change in the use of any structure or other land*'.

Section 4(1) of the Planning and Development Act, 2000 (as amended) sets out exempted development for the purposes of the Act.



Restrictions on Exempted Development

Part 2, Article 6(1) of the Planning and Development Regulations 2001 states "Subject to Article 9 development of a class specified in Column 1 and Part 1 of Schedule 2 shall be exempted development for the purposes of the Act".

Part 2, Article 9(1) of the Planning and Development Regulations 2001 provides for restrictions on exemption and states

"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.

Alterations to private access laneway and access point onto public local roadway

Part 1, Article 6(1), Class 13 of the Planning and Development Regulations 2001 relates to the following development and states that where 'the repair or improvement of any private street, road or way, being works carried out on land within the boundary of the street, road or way, and the construction of any private footpath or paving', 'the width of any such private footpath or paving shall not exceed 3 metres'.

Part 2, Article 9(1) (a) (iii) of the Planning and Development Regulations 2001 relates to restrictions on exemptions affording to considerations such as road and public safety. ✓

Laying of piping to connect to Irish Water public mains running to public roadway

Part 1, Article 6(1), Class 58 of the Planning and Development Regulations 2001 states that 'Development by Irish Water, for the purpose of the provision of water services, consisting of one or more of the following:

(b) the installation of either or both—

(i) underground pipes, cables, water mains, sewers, including associated accessories, service connections, boundary boxes and meters'. Is considered to be exempted development

Two-Storey Dwellinghouse & Derelict Dwellinghouse to extreme rear

Part 1, Section 2, 'Interpretation' of the Planning and Development Act, 2000 (as amended) defines a 'habitable house' as meaning a house which is

(a) used as a dwelling;

(b) is not in use but when last used was used, disregarding any unauthorised use, as a dwelling and is not derelict, or, was provided for use as a dwelling but has not been occupied.

AN BORD PLEANÁLA

28 FEB 2020

LTR DATED _____ FROM _____

LDG- _____

ASP- _____

✓

Moreover, while the width of the front part of the laneway may exceed 3m in width, the excess is not considerably over 3m and this part represents only a small portion of the laneway which in fact narrows as it proceeds north towards the two-storey dwellinghouse. This portion of the laneway does not appear to have been widened, more so a level plane formed with overgrowth removed to both sides.

The uppermost portion of the private laneway between both dwellinghouses has been subject to the removal of overgrowth and the spreading of fill. The width of this part of the laneway is c.3 metres. Should any excesses occur, they would not be considerably greater than 3m. There are no photographs of the laneway available prior to works, hence it is not possible for the planning authority to decipher any potential removal of bank/increases in width. Furthermore from a site inspection undertaken on the 24/01/2020 the ditch/hedgerow and trees to the western side appears to have remained relatively unaltered apart from the potential removal of overgrowth.

While proposed alterations to the private access laneway are considered "works" and therefore constitute "development", the council considers that these works are exempted development when considered with Part 1, Article 6(1), Class 13 of the Planning and Development Regulations 2001 and subsequently do not require planning permission for their retention.

Entranceway

Any works to the junction of the laneway with the public roadway have respected the previous access point as the splayed front entrance walls and pier (to the eastern side) are still intact and in place. From previous photographs available, overgrowth surrounding both the pier and the splayed entrance wall has been removed. No such permission would be required for the removal of this overgrowth or the subsequently levelling of this ground. Furthermore no such permission would be required for the removal of render and other material to the front piers and splayed entrance walls. The levelling and surfacing of the existing front access area with hardcore fill does not require planning permission in its own right given that it represents localised works. As these works have not negatively impacted upon road safety it is therefore not considered necessary to take an application for their assessment as per Part 2, Article 9(1) (a) (iii) of the Planning and Development Regulations 2001 (as amended).

Laying of pipework

The laying of pipework to connect to Irish Water public water mains is considered to be exempted development as per Section 4(1) of the Planning and Development Act, 2000 (as amended)

Demonstration of sightlines

The works as performed have not negatively affected sightlines from the laneway to the public roadway.

Issues pertaining to demonstration of adequate sightlines for the purposes of road safety may be sought should a planning application be submitted for works to either or both dwellinghouses.

Right of way

Right of way over the laneway leading to both dwellinghouses may require to be demonstrated in the event of a planning application for the restoration/alteration/extension/provision of enhanced/replacement modern wastewater treatment system to either or both dwellinghouses. Notwithstanding it would be premature/inappropriate to assess Right of Way issues at this juncture.

Also, the Planning Authority has no control over what size of vehicles may access the site using the private laneway as iterated in previous correspondence from/on behalf of the applicant.

Removal of Trees

Finally, for the avoidance of doubt, the trees which were removed are not subject to a Tree Preservation Order, hence their removal does not require prior consent. ✓

Works to Two-Storey Dwellinghouse and Derelict Dwellinghouse

As set out above, Section 4(1) of the Planning and Development Act, 2000 (as amended) sets out exempted development for the purposes of the Act whereby maintenance or improvement works which only affect the interior and would not materially affect the external appearance would not require planning permission.

Two-Storey Dwellinghouse

The two-storey dwellinghouse is not a protected structure and appears to be structurally/substantially intact; any internal works would not require planning permission in their own right.

From a site inspection undertaken on the 24/01/2020 some hardcore fill has been deposited in heaps outside the two-storey dwellinghouse, no alterations have been performed to the exterior of, or, within the dwellinghouse. Furthermore there is no evidence of any works to the existing wastewater treatment system.

Any works to the interior of the two-storey dwellinghouse constitute exempted development as they do not significantly come within the scope of Sections 2, 3 and 4 of the Planning and Development Act 2000 (as amended).

It is therefore considered that planning permission is not required in this respect. ✓

Derelict Dwellinghouse

The derelict dwellinghouse and associated outbuilding immediately adjacent to the west are not a protected structure and appear to be structurally intact in the majority. Both buildings are boarded/closed up.

For the avoidance of doubt, from a site inspection on the 24/01/2020, no works appear to have been performed to the derelict dwellinghouse to the extreme rear of the site.

Any works to this dwellinghouse or associated outbuilding including restorations, extensions or alterations would be assessed in their own right either against the Planning and Development Regulations 2001-2019 (as amended) or as part of a planning application should such a scenario arise.

Potential Residential Amenity Issues

With respect to the potential of residential amenity issues raised in the submission from Peter Thompson Planning Solutions, arising from the prospective occupation of either or both dwellinghouses, this would only be assessed in the event of the submission of a planning application for restoration, alteration, extension of the dwellinghouse or enhancement of existing/provision of replacement modern wastewater treatment system and associated percolation area.

Hard Surfacing Works outwith

For the avoidance of doubt, no hard surfacing works have taken place to the immediate area surrounding either dwellinghouse, hence will not require to be assessed against Part 1, Article 6(1), Class 6 (b)(ii) of the Planning and Development Regulations 2001-2019 (as amended), hence no assessment is required in this respect.

Infilling of Marl Hole

Part 3, Article 6, Class 11 states that *Development consisting of the carrying out of drainage and/or reclamation of wetlands shall be exempted development where*

- (1) *The area to be affected shall not exceed 0.1 hectares*
- (2) *Where development has been carried out within a farm holding under this class, the total area of any such development taken together with the area of any previous such development within the farm holding shall not exceed the limits set out in (1)*

A planning enforcement case 0010/2019 as outlined earlier in the report has measured the approximate area of the marl hole to be 589.70sq.m. This area does not exceed 0.1ha in overall area, hence is considered to be exempted development when assessed against Part 3, Article 6, Class 11 of the Planning and Development Regulations (as amended). Furthermore from a visit to the site and a study of council documents associated with enforcement case 0010/2019, there is no evidence of

waste material being deposited to infill the marl hole. The Planning Authority cannot speculate as to what material may have been used.

Creation of pond due south of infilled marl hole

Part 3, Article 6, Class 11 states that Development consisting of the carrying out of drainage and/or reclamation of wetlands shall be exempted development where

- (1) The area to be affected shall not exceed 0.1 hectares
- (2) Where development has been carried out within a farm holding under this class, the total area of any such development taken together with the area of any previous such development within the farm holding shall not exceed the limits set out in (1)

Although not subject of application, but noteworthy nevertheless, a pond has been formed due south of the location of the infilled marl hole. This pond appears to have been formed for the collection of surface water in the field following the infill of the marl hole and is considerably less than/does exceed 0.1ha in overall area, hence is considered to be exempted development when assessed against Part 3, Article 6, Class 11 of the Planning and Development Regulations (as amended).

Land ownership/other matters

For the avoidance of doubt, any matters which exclusively concern land ownership (to eastern side of laneway) and do not require planning permission are not planning matters and will therefore not be subject to any such assessment by the planning authority.

Conclusion:

Wexford County Council, in considering this referral, had regard particularly to –

- Sections 2, 3 and 4 of the Planning and Development Act 2000 (as amended);
- Sections 2, 3 and 4 of the Planning and Development Act 2000 (as amended);
- Part 2, Articles 5, 6, 8C and 9 of the Planning and Development Regulations 2001 (as amended); and
- Part 1 Classes 9 and 13 of the Planning and Development Regulations 2001 (as amended);
- Part 1, Article 6(1), Class 58 of the Planning and Development Regulations 2001 (as amended);
- Part 3, Class 11 of the Planning and Development Regulations 2001 (as amended);

Recommendation:

Having regard to the foregoing, I recommend that it be decided that the alterations to the laneway including the access point to the public road and the spreading of hardcore fill to the front portion of the laneway, the connection/prospective

connection to Irish Water public mains and the infilling of the marl hole are all **development and are all exempted development**

No significant works have been performed to the exterior of either dwellinghouse, hence the planning authority is not in a position to comment on any future prospective works. Any small deposits/small heaps of filling around the general area are not considered to warrant the submission of a planning application.

A draft order is set out below.

WHEREAS a question has arisen as to if the clearing of overgrowth, spreading of hardcore filling to the existing private access and laneway, laying of pipe along laneway to connect to public water mains, infilling of marl hole, and restoration and re-use of dwellinghouses for habitation, all at Ballina Upper, Castle Ellis, Co. Wexford, is or is not exempted development. ✓

AND WHEREAS An Wexford County Council has concluded that –

It is concluded that the the clearing of overgrowth surrounding the access and laneway, spreading of hardcore fill to part of the existing private laneway, laying of pipe along the eastern side of laneway to connect to public water mains and infilling of marl hole all adequately meets all of the conditions and limitations as above and therefore constitute exempted development.

No significant works have been performed to either dwellinghouse, hence the planning authority is not in a position to comment on any future prospective works.

NOW THEREFORE Wexford County Council, in exercise of the powers conferred on it by section 5 of the Planning and Development Acts 2000, as amended, hereby decides that the proposed development at Ballina Upper, Castle Ellis, Co.Wexford, comprising of clearing of overgrowth surrounding the access and laneway, spreading of hardcore fill to part of the existing private laneway, laying of pipe along the eastern side of laneway to connect to public water mains and infilling of marl hole development is exempted development. ✓



Niall Sheehan
Assistant Planner

ATÉIDE PLEANALA
28 FEB 2020
LTR DATED _____ FROM _____
LOG- _____
ASP- _____

Date: 5/2/20.



Niamh Lennon
Executive Planner

Date: 5/2/20.

7

Location Map

AN BORD PLEANÁLA

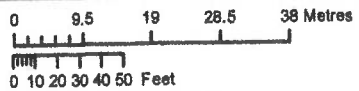
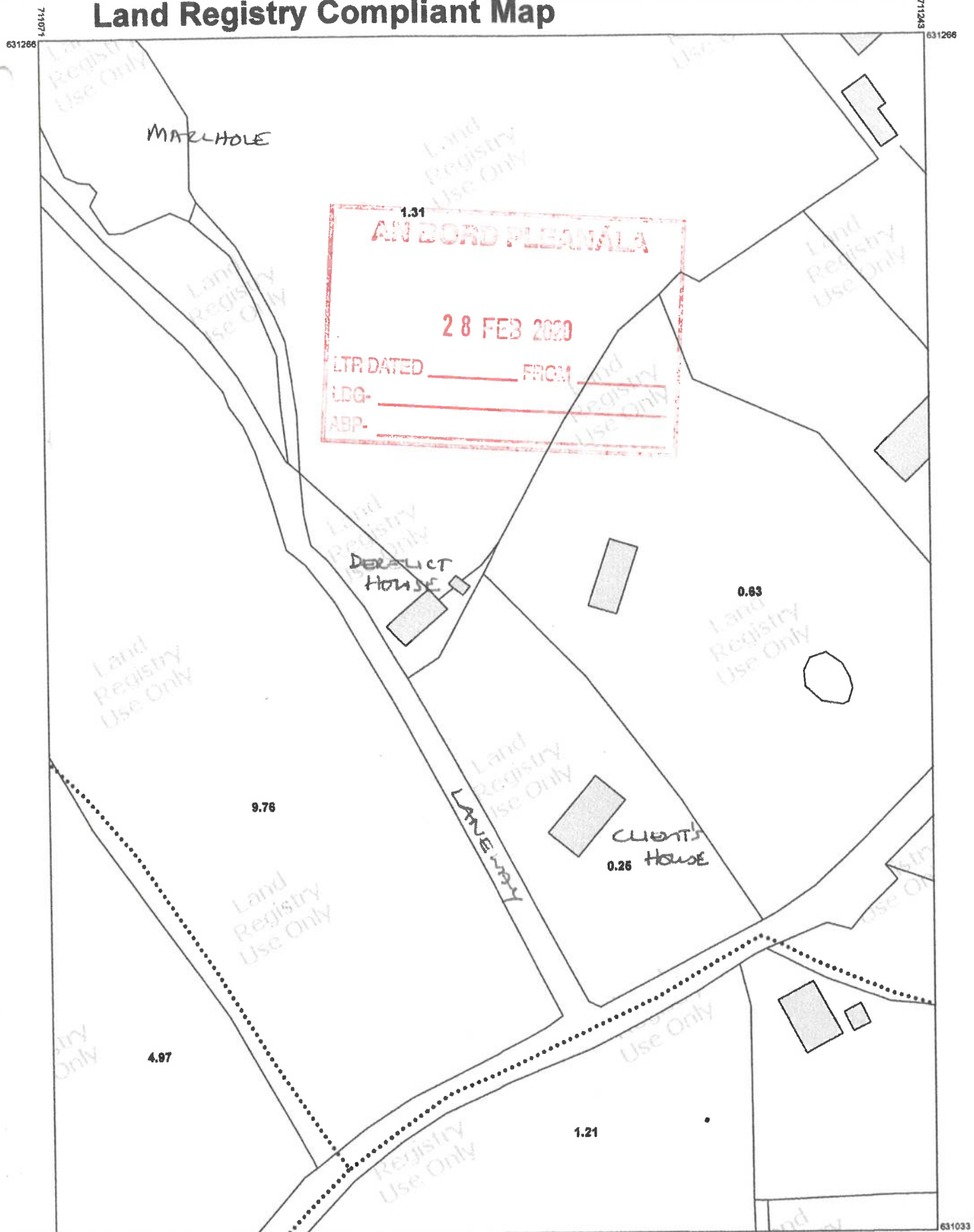
28 FEB 2020

LTR DATED _____ FROM _____

LDG- _____

ABP- _____

Land Registry Compliant Map



OUTPUT SCALE: 1:1,000



CENTRE COORDINATES:
ITM 711167,631150

PUBLISHED: 20/12/2019
MAP SERIES: 1:5,000
ORDER NO.: 50100432_1
MAP SHEETS: 5269

CAPTURE RESOLUTION:
The map objects are only accurate to the resolution at which they were captured. Output scale is not indicative of data capture scale. Further information is available at: <http://www.osi.ie>; search 'Capture Resolution'
LEGEND:
<http://www.osi.ie>; search 'Large Scale Legend'

COMPILED AND PUBLISHED BY: All rights reserved.
Ordnance Survey Ireland, Phoenix Park, Dublin 8, Ireland.
No part of this publication may be copied, reproduced or transmitted in any form or by any means without the prior written permission of the copyright owners.

Ordnance Survey maps never show legal property boundaries, nor do they show ownership of physical features.

© Suirbhéireacht Ordánais Éireann, 2019
© Ordnance Survey Ireland, 2019
www.osi.ie/copyright

Unauthorised reproduction infringes Ordnance Survey Ireland and Government of Ireland copyright.

The representation on this map of a road, track or footpath is not evidence of the existence of a right of way.



Additional Correspondence from Frances Hopkinson and Letter from Irish Water

AN BORD PLEANÁLA	
28 FEB 2000	
LTR DATED _____	FROM _____
LDG- _____	
ABP- _____	

AN BORD PLEANÁLA

28 FEB 2020

LTR DATED _____ FROM _____

LDG- _____

ABP- _____

I, Frances Hopkinson of Tinnacouse House, Skeough, Borris P.O. Co. Kilkenny-

Swear on Oath, which in relation to the building on Folio WX3729 registered to Patrick Cashe of Garryvadden, Backwater, Enniscorthy, Co. Wexford, the said building has not been occupied as claimed in the 1990's. (Recently stated in correspondence from Wexford County Council, Planning Section).

I can swear also, that since 1989 to the present date, the aforementioned building has never been occupied.

DECEASED SINCE March 2019.

I swear also that Bernard Maguire (son of Mr & Mrs Maguire owners of the site and house Folio WX 22498, purchased in 1969) told me that the building on WX3729 had not been occupied between 1969 and 1989, the duration of their ownership. Bernard Maguire made a statement dated 17th September 2018 confirming the nature of the lane adjoining the property of the Maguire Family.

I swear also that in January 2018, when Mr Patrick Cashe asked me to sign a consent form for a right of way on the laneway on my Folio Map; he stated that the house had a recent ESB supply connection. This was his response to my stating that the building had no water or electricity supply!

Signed by: *[Signature]*
Frances Hopkinson

In the presence of:
In the presence of:

Wendy Kelly
Solicitor at 2 Rose Inn Street, Kilkenny

This day: Monday 24th February 2020.

Commissioner for Oaths
to call for the City & County of Kilkenny

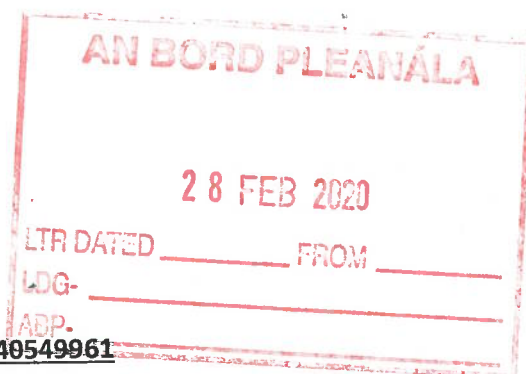
MARY MOLLOY
SOLICITOR
COMMISSIONER FOR OATHS
2 ROSE INN STREET,
KILKENNY.
TEL. NO. (056) 65829 *7765829*

FA- MM-

F.H. MM.

Frances Hopkins
Ballina Upper,
Blackwater,
Eniscorthy,
Co. Wexford,

12th March 2019



Uisce Éireann
Bosca OP 860
Oifig Sheachadta
na Cathrach Theas
Cathair Chorcaí

Irish Water
PO Box 860
South City
Delivery Office
Cork City

www.water.ie

Irish Water Reference Number: 7040549961

Dear Ms Hopkins,

I am writing to you to inform you that we have contacted our contractors regarding your defective reinstatement issue, and they have confirmed that they did not carry out the piping connection works. On this instance, we have now contacted Wexford County Council with the same query. As soon as we receive further information we will be sending this to you.

If you have any further queries, please contact us at 1850 278 278 (minicom 1890 378 378) or by email at operations@water.ie.

Thank you for contacting Irish Water.

Yours sincerely,

Natalia Fernández
Irish Water Complaints Team
Uisce Éireann
Irish Water

