



Peter Thomson
Planning Solutions

AN BORD PLEANÁLA

LDG- _____
ABP- _____

16 AUG 2021

Fee: € 220 Type: Cheque
Time: 14:29 By: Cormac



The Secretary,
An Bord Pleanála,
64 Marlborough Street,
Dublin 1

10 August 2021

Re: Referral of a Declaration made by Tipperary County Council under Section 5 of the Planning and Development Acts 2000 (as amended) in respect of an alleged unauthorised piggery business at Killaghy, Mullinahone, County Tipperary.

Tipperary County Council reference no. S5/21/35

Dear Sir/ Madam,

Mullinahone Piggery Action Group, c/o Kevin O'Meara, Woodview, Killaghy, Mullinahone, County Tipperary, wishes to refer the above matter to the Board for consideration. Enclosed is a cheque for €220 for making the Referral under Section 5 of the Planning and Development Act 2000 as amended.

Introduction and Background

On 1 April 2021 Mullinahone Piggery Action Group submitted a Section 5 Application to Tipperary County Council in respect of the above. A copy of the entire application which details the case, the background and supporting documents are attached (Attachment 1).

Following consideration of the application, Tipperary County Council requested further information from the Applicant (Attachment 2) and the owner of the site (Attachment 3).

In response to the only matter raised with the applicant, which was in respect of the issue of abandonment, an opinion from barrister Christopher Hughes, BL was submitted (attachment 4).

In response to the matters raised with the owner of the site concerning;

1. The history, development and evidence of permissions/ exemptions and plans;
2. Drawings of the 1982 building built on-site and details and drawings of extensions to this building; and
3. Activity/ use on the site between 2013 – 2020 and commentary on this issue of abandonment of use;

David Mulcahy Planning Consultants Limited submitted a letter and attachments to the Planning Authority (Attachment 5).

The assessment of the application and AA and EIA screening were contained in a planner's report dated 16 July 2021 (report countersigned on 21 July 2021) with a recommendation as follows (summary):

1. The works undertaken to the 1982 building in 2020 were not exempted development. N.B. The question raised on the issue of the re-use of the building for pigs was not answered under this heading.
2. The re-opening of the pig farm in 2020 last used in 2013 was not development
3. The removal of the roof covering, supports and a roof bridge and associated works was required by the planning authority to comply with an Enforcement Notice. However, it was noted in the recommendation as not exempted development.

(Attachment 6)

The recommendation was accepted and a Section 5 declaration was issued on 21 July 2021 (Attachment 7).

Grounds of Referral/ appeal.

1. Previous Section 5 Determinations – In the response to the request for further information, the owner's agent makes reference to *Narconon Trust v An Bord Pleanala (2020) IEHC 25* dated 24 January 2020. He challenges the current case on the basis of the declaration issued by the Council in 1982 and suggests the Planning Authority cannot re-open the case.

It is submitted the correspondence from Tipperary County Council dated 6 July 1982 could not be a Section 5 Declaration. Under the Local Government (Planning and Development) Act, 1963 a Section 5 application was referred to the Minister for a decision; not the local authority.

From the wording of the correspondence, it appears that the then owner, Mr Liam O'Connor, had made an application for "Permission" to Tipperary (SR) County Council and was advised that permission was not required. There is no declaration from the Minister confirming this, therefore, it is assumed that neither the Council nor Mr O'Connor applied for a Declaration under Section 5 of the 1963 Act at the time.

The Council confirmed to my client it does not possess the file from 1982 and, therefore, it does not have details or plans of the structure referred to at the time. The agent for the owner did not provide a Declaration or any drawings, as requested.

For the reasons outlined in the original application for the Section 5 now being referred, it is considered the pig housing areas either side of the vented passageway along with the single underground pig slurry tank serving the entire structure, was a single building for the purposes of the Planning Acts and Regulations and was a single structure and exceeded the floor area for exemption at the time.

2. AA Screening – The AA Screening was flawed and the outcome incorrect. Please find attached an Appropriate Assessment report by Dr Jane Russell, ecologist, which was included with an objection to a recent planning application for the development of this site (Attachment 8). The application was withdrawn following the issuing of a report to Councillors by Council officials before a decision of the application was made. The recommendation was to refuse retention and permission. The general

observations and findings in the report are equally relevant to the Section 5 and Referral. It is considered that due to the proximity of the former piggery buildings and works which were undertaken on the site to streams in the site which are hydrologically linked to the SAC network, no development on the site could be screened out for Appropriate Assessment.

Unsafe roofing material was removed from most of the buildings and left laying around the site and some is still being stored on site. These roofs were all asbestos roofs (see photographs – Attachment 9).

The underground pig slurry tank spanning the entire 1982 building had the slats removed from the pig housings and passage between and all the remaining waste removed and dumped on the open ground behind the 1982 building close to the stream (see photograph taken on 28 April 2020 – Attachment 10).

All of these works and the use of the building for keeping pigs posed a serious threat to the SAC network. N.B. The stream running behind the former piggery is shown on CFRAM mapping as a watercourse prone to flooding and it forms part of a flood zone.

Finally, on this point, the Planning Authority has been inconsistent. On a farm directly opposite the site, an applicant has been required to prepare a Natura Impact Statement for a proposed effluent tower and silage slab (application 21/615). This development is beside the same stream network which passes the former piggery site.

3. EIA Screening - In terms of EIA, the Planning Authority incorrectly determined that a piggery development was not a development type that is subject to EIA. It is a listed development under Class 1(e)(ii) of Part 2 of Schedule 5 of the Act. Therefore, the Planning Authority was obliged to determine whether the works and use involved "sub-threshold" development requiring an EIAR and, if not, record its reasons and considerations for reaching the decision.
4. Withheld information - Evidence used in considering the application are contained in an enforcement file and should have been copied and put on the Section 5 file, which is a public document held on the planning register. The Section 5 file has been denied to my client. The Board is requested to demand it for the purposes of making its determination and circulating it for comment if appropriate (see correspondence – Attachment 11).
5. Abandonment - In issuing the further information requests which it did to the applicant and the owner, the Planning Authority clearly did not have sufficient information or expertise to make a determination on the issue of abandonment of use raised in the Section 5 Declaration.

The applicant furnished a legal opinion (copy attached – Attachment 4).

The owner did not properly address the request for further information. He did not give full details of the development of the site. Having stated in planning application 21/266 (page 16 of the Environmental report - Attachment 12) that the existing buildings had been in place since the 1970s, he is now

refuting the evidence presented in the Section 5 application from a former employee in relation to a structures which was built in 1985, having produced an illegible invoice apparently dated 1991.

No maps were provided as requested, details of planning permissions or exemptions and no specific information on the development of the 1982 building originally built or subsequent alterations.

The only evidence on the issue of abandonment was a letter from the last owner, Rory O'Brien.

In this letter, Rory O'Brien states that he depopulated the piggery due to disease outbreak at one of his breeding farms and that weaners were not available for fattening at Mullinahone. He states that he always intended to restock the piggery but in 2019 he took the decision to sell the site.

My client contests this evidence as it is aware that Rory O'Brien closed the piggery in 2013 due to financial reasons as he was €22 million in debt. The folio of the property in Mullinahone lists 17 judgements against it and it is the Groups understanding that the banks sold the property (Attachment 13). There were reports in farming media publications in 2011 that Rory O'Brien was exiting the piggery business. He stated in interviews that he had decided to exit the business due to poor returns. The publications also highlighted other difficulties he had encountered in the piggery business which would seriously question his ability to resume the business. Copies of quotes and the articles from various publications are attached to support the view Rory O'Brien had no plans to reopen the piggery and would have been unable to do so (Attachment 14).

The decision of the Council fails to consider and assess all the evidence relevant to the issue of abandonment presented as part of the Section 5 Application. The Council erroneously confined its consideration to a letter from the previous landowner, which the Council appears to have accepted, absent any consideration of other relevant and objective evidence presented. The Council appear to have failed to properly or adequately consider the objective evidence relevant to the consideration and determination of the issue of abandonment.

The Council appear to have relied solely on the asserted intention of the previous landowner and ignored relevant objective evidence which serves to undermine the said asserted intention. The asserted intention of the previous landowner as to abandonment must be viewed in light of the totality of the evidence available, including all objective evidence, and it is in this context, and having weighed up all of the the relevant evidence, that the issue of abandonment falls to be considered - the Council failed to properly consider the evidence presented.

Evidence relevant to this aspect of the concept of 'abandonment', which was not been addressed by the Council in consideration of this issue, includes:

- (i) The piggery ceased operations in 2013 and there was a period of non-use of seven years.

- (ii) In 2013, the piggery ceased operations. All pigs were removed from the lands and any equipment required to operate the piggery, which was physically capable of being removed from the site, was so removed. This remained the case for the seven-year period prior to 2020.
- (iii) The buildings and site remained unoccupied for seven years from 2013 to 2020 under its previous ownership and there is no evidence to suggest that the owner had any intention to maintain the site in a manner consistent with an intention to resume the use of the site as a piggery.
- (iv) The buildings and the site were damaged and fell into a state of considerable disrepair following a storm in 2014 and no steps were taken thereafter to repair the site or maintain and/or occupy same by the then-owner. This remained the case for the six-year period prior to 2020, under the previous ownership.
- (v) The building and the site were not accessible after 2014 due to damage caused by the storm. This remained the case for the six-year period prior to 2020, under the previous ownership, and there is no evidence to suggest that the owner had any intention to maintain the site in a manner consistent with an intention to resume the use of the site as a piggery.
- (vi) The site was used for a period as an unlawful dumping ground and there were no attempts made by the then-owner to address same and/or otherwise maintain the site in a manner consistent with an intention to resume the use of the site as a piggery.

The aforesaid evidence, together with the matters detailed previously herein in relation to this ground of appeal, fell to be considered against the asserted intentions of the previous landowner.

6. Other matters not considered by the Planning Authority:

- No consideration was given to the case put forward that the 1982 building renovated in 2020 was unauthorised when constructed in 1982 and, therefore, any repairs to this building were unauthorised. The Planning Authority only address the works for which enforcement was issued.
- No consideration or mention was given to the case put forward that the use of the piggery was unauthorised due to the substantial intensification of unauthorised use over the years.
- Proper consideration was not given by the Planning Authority to the extent of works which had to be carried out to renovate the 1982 building or the extent of disrepair of all the buildings on site.
- The claim by the owners planning consultant in the further information response that the piggery was in working order when his client bought it in 2020 and that the building now housing pigs required only minor

refurbishing works, is preposterous¹. The photographic evidence confirms this; see further photographs – Attachment 15). Also, from a health and safety perspective, the reuse of some of the old asbestos roof sheeting which survived the storm of 2014 on an operational farm building is highly questionable.

- On page 2 of the planner's report, it is stated the documentation submitted with the Section 5 application included a letter from Mr Quirke in which he stated he identified the buildings which existed when he sold the property in 1980, "and identifying that other buildings were sold after 1980". That was incorrect. He stated that any buildings beyond those identified by him on the photograph attached to his letter were not built when he sold the piggery in 1980.
- At the foot of the third last paragraph of page 7 of the planner's report, it is stated, "The site owner/ operator provided a letter from the previous site owner outlining the shed built in 1982 was developed with verbal agreement from the adjoining landowner in line with the correspondence from South Tipperary County Council that issues in 1982".

This letter did not accompany the owner's further information response and must be on the Enforcement file. As it is sighted in the assessment of the Section 5 application, it should be on the Section 5 file and be made available to the Board and my client. If not, no weight should be attached to the claim.

A letter from the son and daughter of the adjoining householder at the time stating they did not recall such consent being requested and would have been aware if such a request had been made, did accompany the Section 5 application.

7. Other matters:

- It is considered that the comment under the heading "Timeline" is irrelevant to the case.
- Under the heading "Timeline of the farm development", no evidence has been provided about timelines other than the suggestion that a building was built on the site in 1991. The evidence provided by Mr Mockler and Mr Brett, which are now sworn statements, refutes the suggestion that the building referred to by David Mulcahy's letter was erected in 1991 (Attachment 16). The illegible invoice is not proof and, in any event, close scrutiny suggests it does not relate to the site in Killaghy. Even if a building was erected, it was simply another unauthorised building that potentially increased the capacity of the piggery and exacerbated and intensified the existing unauthorised situation on the site. While it is stated in the owner's further information

¹ Please refer to application ref: 21/266 which proposed to demolish existing buildings due to the substantial works which would be required to renovate them.

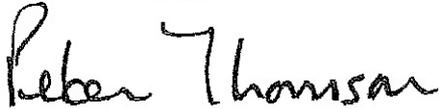
that he considered the evidence to Mr Mockler and Mr Brett to be incorrect and questions their credibility and motives, no explanation is given as to why.

Conclusion

An Bord Pleanála is requested to review the decision of the Planning Authority. It is considered all that all the evidence provided with the original Section 5 submission, the further information from the applicant and the clarification provided in the Referral should lead the Board to conclude and determine that the restoration works undertaken to the 1982 building were not exempted and that the use of the site and buildings as a piggery was abandoned. Also, in any event, the owner would never have been able to avail of any exemption given the history of unauthorised developments on the site which precluded the Planning Authority from carrying out the required Appropriate Assessment.

I look forward to hearing from you.

Yours faithfully,

A handwritten signature in black ink that reads "Peter Thomson". The signature is written in a cursive, slightly slanted style.

Peter Thomson, MSc, MIPI

Attachment 1



Peter Thomson Planning Solutions



Director of Services,
Tipperary Country Council,
Civic Offices,
Emmet Street,
Clonmel,
Co. Tipperary

30 March 2021

Re: Request for a Declaration under Section 5 of the Planning and Development Acts 2000 (as amended) in respect of an alleged unauthorised piggery business at Killaghy, Mullinahone, County Tipperary.

Dear Sir/ Madam,

This information is submitted in support of the attached application for a Section 5 Declaration.

Background/ Timelines

1973

An existing piggery business opened on a 2.36 ha site in Killaghy outside Mullinahone, County Tipperary in 1973.



Site location

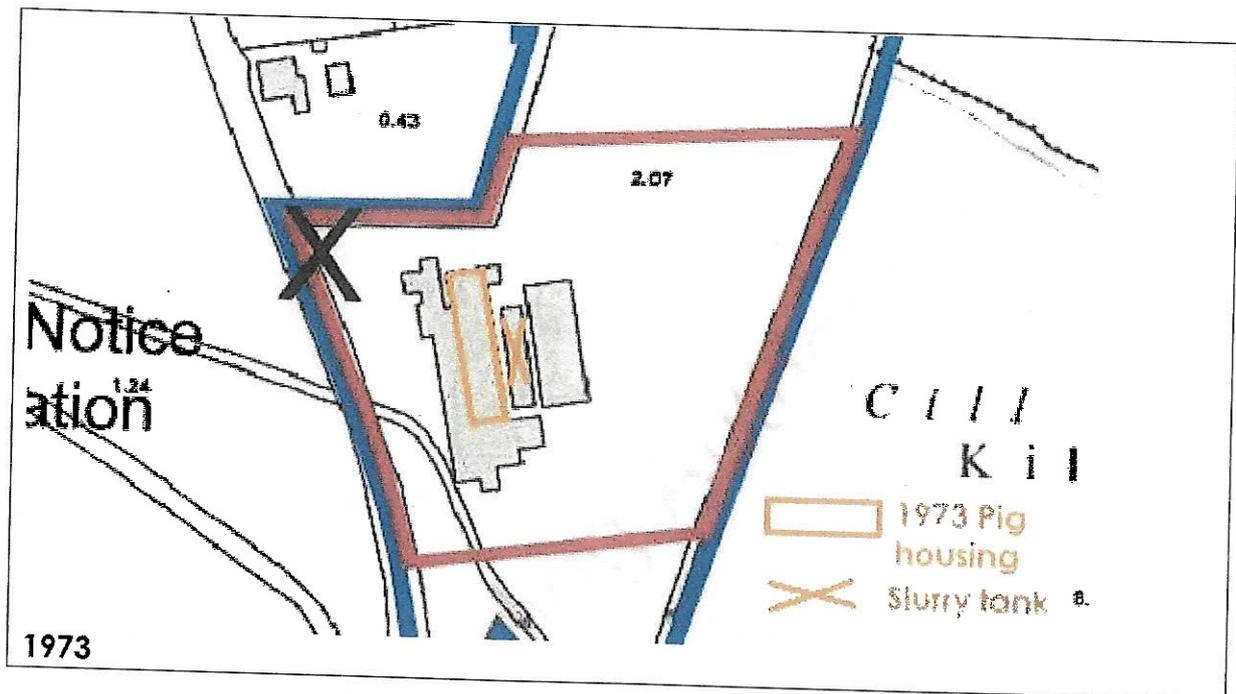
Thomson Planning Consultant Limited T/A Peter Thomson Planning Solutions
Company Registration No. 603096 VAT Registration No. IE 3469921SH
Address: 4 Priory Grove, Kells, County Kilkenny
Tel: 086 819 6856 email: ptplanningsolutions@eircom.net

It opened following an application made on 28 May 1973 by J. O'Grady and M. Quirke, c/o Mullinahone Co. Op., Mullinahone, County Tipperary for certification of exempted development for the erection of a piggery building at Killaghy, Mullinahone, County Tipperary which was declared exempted on that date subject to conditions. A copy of the Certificate of Exemption is attached (PT1).

The building deemed to be exempted was constructed and its use for housing pigs came into effect. It had a floor area of around 550m².

1980

In 1980 Michael Quirke sold the existing piggery which, at that time, comprised a single building with a slurry tank to the rear.



Please refer to the attached signed letter and photograph by Michael Quirke confirming the location of the structures on the site (hatched) at that time and the associated slurry tank which was later built over in the 1990s (PT2).

The site was acquired by Mr Liam O'Connor in 1980.

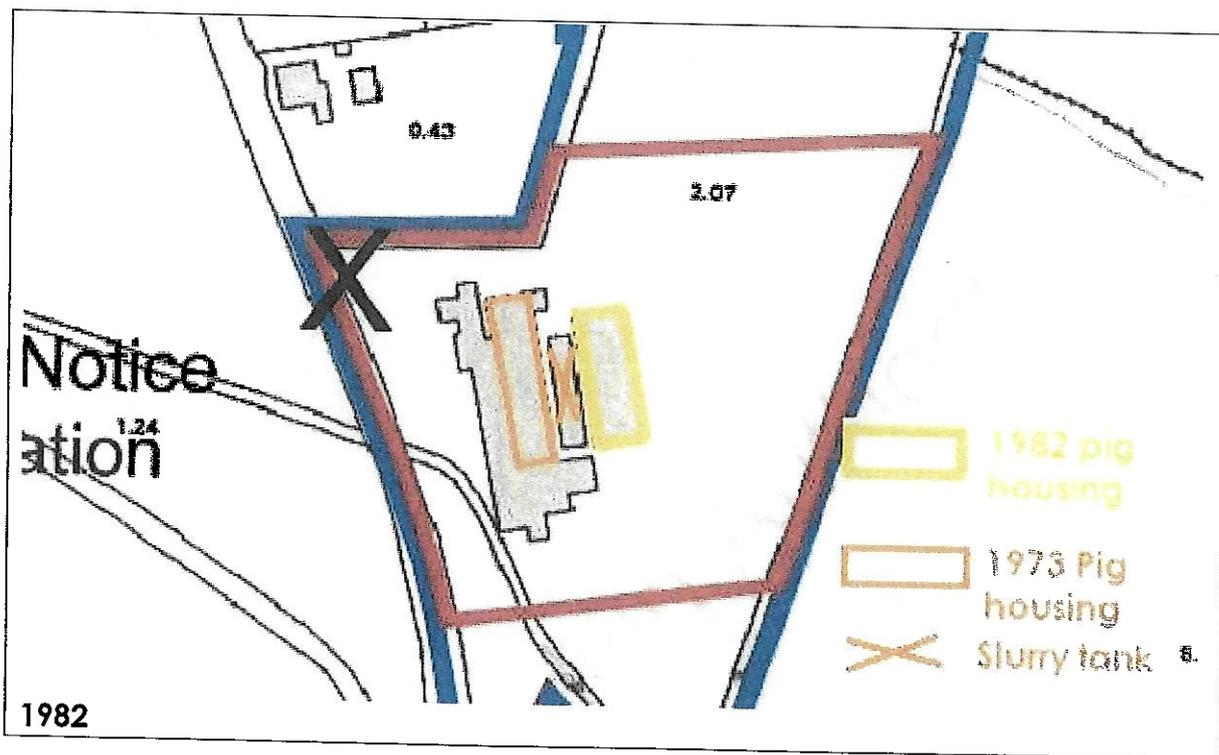
Particulars of ACTS Returned on Within Search S2021RD019					
1980100021 02-SEP-1980	Conveyance 30-MAY-1980	QUIRKE MICHAEL QUIRKE BRIDGET	O'CONNOR LIAM	Conveyance 25,000	LANDS AT KILLAGHY, BANEY, BLUEVARDAGH County Tipperary

End of Search Results. Generated at 18-MAR-2021 14:48:05
 Search return - extract - (Full document in PT3 attached)

Correspondence from Tipperary S.R. County Council dated 6 July 1982 refers to an application by Mr Liam O'Connor, Ballydavid, Bansha, Co Tipperary for "Permission for extension to rear of existing piggery at Mullinahone, County Tipperary" and documentation submitted. The correspondence advised that, on the basis of the documentation submitted, the proposed development came within the meaning of Class 7 of Part III of the Schedule of Exempted Development in the Local Government (Planning and Development) Regulations, 1977 and that formal permission was not necessary (copy attached – PT4)¹.

The exemption referred to within the meaning of Class 7 permitted a roofed structure for the housing of pigs, not exceeding 400m², whether or not by an extension of an existing structure.

The building which exists to the rear of the original piggery has a floor area of 483m², which is 83m² in excess of the exempted floor area limit. The internal gross floor area (excluding external walls), based on a drawing submitted with current planning application Ref: 21/266 by the current owner of the site (NRGE drawing number 009) is calculated at 468.38m².² (copy of NRGE drawing number 009 attached – PT5).



[N.B. In correspondence from Tipperary County Council Senior Engineer, Eamon Lonergan dated 15 March 2021, it was noted that the "original"

¹ N.B Tipperary County Council staff have been unable to locate the file and plan of the then proposed building which must have been shown under 400m² for the planning authority to state it was exempted.

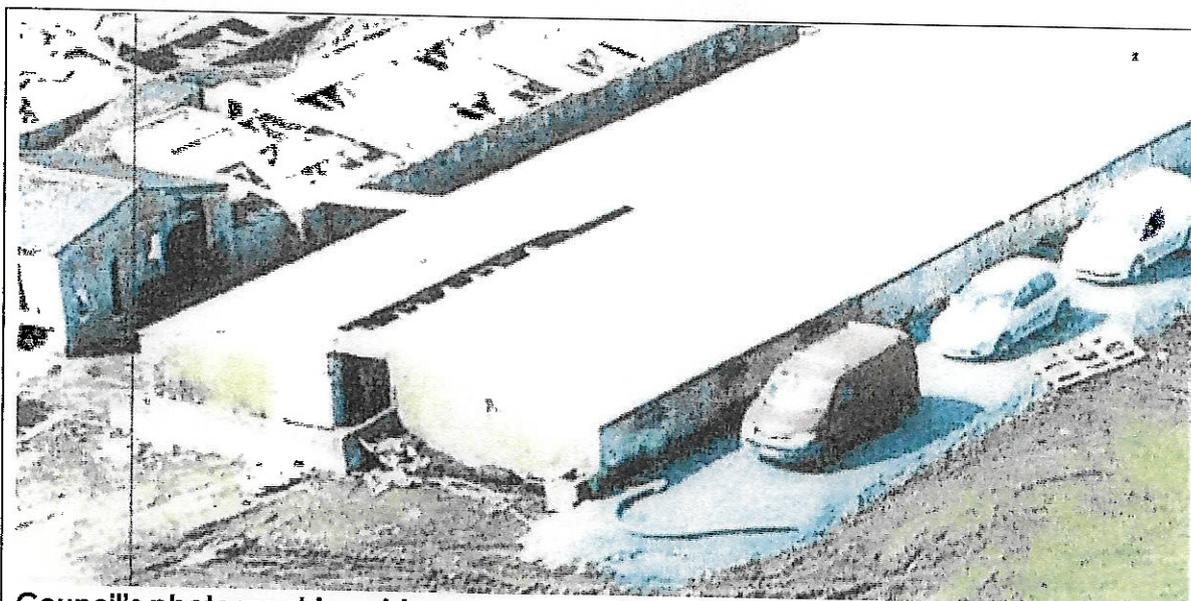
² Based on a 6" solid block wall construction.

permitted shed was a single structure with a floor area used for the keeping of pigs less than 400m². He is referring to the building constructed in 1982 on foot of the letter dated 6 July 1982 from Tipperary S.R. County Council.

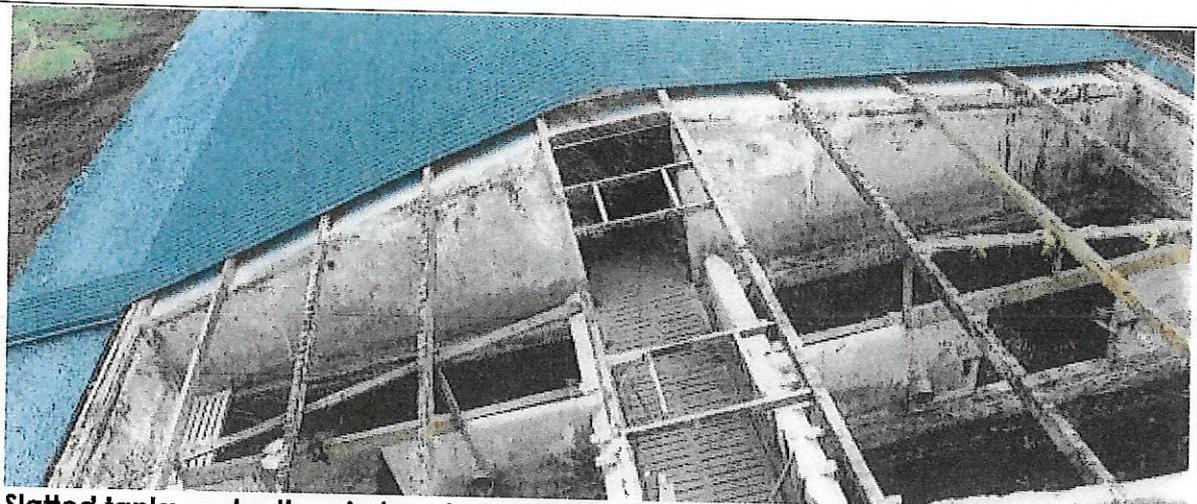
It appears he was excluding the central passageway from the gross floor area calculation. The central passage had a slatted floor with a slatted tank underneath, both of which were integral elements of the building and part of the floor space of the building. It is considered the Senior Engineer's criteria for calculating the floor area was incorrect, not a methodology I have come across in over 40 years working in Planning and not the methodology Tipperary County Council would use in calculating planning application fees or development contributions.



Evidence the building was a single structure with bridging over the gable door.



Council's photographic evidence



Slatted tanks under the pig housing and passageway, the entire structure a single structure for housing pigs; not two amalgamated pig units

NRGE drawing number 009 is inaccurate in showing a 2.13m air vent along the apex of the roof, open-ended sides to the building in the location of the slatted floor passageway. The gable walls were not open-ended as shown as they were enclosed by doors. Photographic evidence demonstrates the roof vent along the apex of the roof was around 0.6m wide; not 2.13m wide – (see attachment PT6)].

Having regard to the gross floor area of the piggery building constructed to the rear of the original piggery building, it significantly exceeded the permissible floor area for the exemption provided for under Class 7 of Part 3 of the Schedule of Exempted Development Regulations, 1977 and was, therefore, an unauthorised structure. Moreover, being an unauthorised structure, its use for housing pigs would have intensified the authorised scale of the permitted piggery, thereby, rendering the overall piggery farm an unauthorised development.

1980 – 2008

The account of Thomas Mockler, a full-time worker at the piggery between 1980 and 1988 (inclusive), confirms the date of the construction of the building erected to the rear of the original piggery as 1982. It also confirms the date of construction of most of the other buildings on the site as 1985 (copy attached – PT7).

In the Environmental Report submitted with current planning application Ref: 21/266, on page 16, it is claimed by the applicant that most of the existing buildings on the site were in use in the mid-1970s, which is incorrect and conflicts with the evidence of Michael Quirke who owned the piggery in the mid-1970s (see PT8). Mr Quirke did not build the structures referred to other than the original piggery building. Thomas Mockler confirms when the later buildings were constructed, most of which were built in 1985.

In 1985, the Local Government (Planning and Development) (Exempted Development and Amendment) Regulations, 1984 were in force. This was an amendment to the 1977 Regulations. Exemption under Class 7 of Part III permitted a roofed structure for the housing of pigs having a floor area not exceeding 300m², whether or not by the extension of an existing structure). Condition 2 of this Class of Exemption provided that the total area of such structures situated within the same farmyard complex or within 100m of the complex, could not exceed 450m² floor area in aggregate.

Article 11 (Restrictions on exemption) as provided in the 1977 Regulations applied also to the 1984 Amendment Regulations and read as follows at subparagraph (1)(vii):

"11. (1) Development to which article 10 relates shall not be exempted development for the purposes of the Acts— if the carrying out of development would;

(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".

Having regard to the Regulations in force at the time, the structures constructed in 1985, as per the account of Thomas Mocker, all breached the aggregate for exempted structures provided for in the 1984 Regulations and were, therefore, all unauthorised.

The last building to be constructed on the site was a weaner house built in the early 1990s. This was constructed over the slurry tank constructed with the original piggery building in 1973. Please refer to the attached account of former employee Timmy Brett confirming his witnessing of the last buildings to be constructed at the piggery (PT9).

The Regulations in force at the time required the consent of any household within 100m of the development to allow the developer to avail of the exemption. The son and daughter of the adjoining household, who were young adults living at home at the time, are unaware of the family giving consent, a consent they would have a party to giving (see letter from the owner of the adjoining house confirming these timelines – PT10).

This 1990s piggery building was, therefore, also unauthorised.

2008 – 2104

It is not clear when Liam O'Connor sold the piggery, but it was acquired by Rory O'Brien and Monica O'Brien from Mitchelstown, Cork in 2008 and operated as a piggery. Mr O'Brien's pig business ceased in 2011 and it is understood from local residents the piggery operation was reduced at that time and that in 2013 the last of the pigs were removed from the site and the use of site and buildings thereon abandoned (see letter from the owner of the adjoining house confirming these timelines – PT10).

Storm Darwin in 2014 felled two trees across the entrance to the piggery which remained there until the site was acquired in 2020. There was also extensive damage to all buildings on the site during that storm.

2020 – 2021

Folio 50641F confirms the site was owned by several financial institutions between 2011 and 2020 before it was acquired by a local hardware businessman from Mullinahone and then acquired by the current owner, James Foran (copy attached – PT11).

In April 2020, during a period when the construction industry was not permitted to operate, the current owner commenced works to renovate the unauthorised oversized piggery building constructed in 1982. The works undertaken included re-roofing, groundworks, the removal of asbestos sheeting and instillation of a new slats over the existing slatted tanks under the central passageway and elsewhere in the building. Works were also carried out to other buildings on the farm involving stripping off materials and part demolition. Complaints were immediately made to the Planning Authority.

In May 2020 pigs were re-introduced into the site.

The works carried out to the 1982 building were not exempted. Exempted development rights under Section 4(1)(h) of the Planning and Development Act (repair, maintenance etc) do not extend to carrying out works to "unauthorised structures".

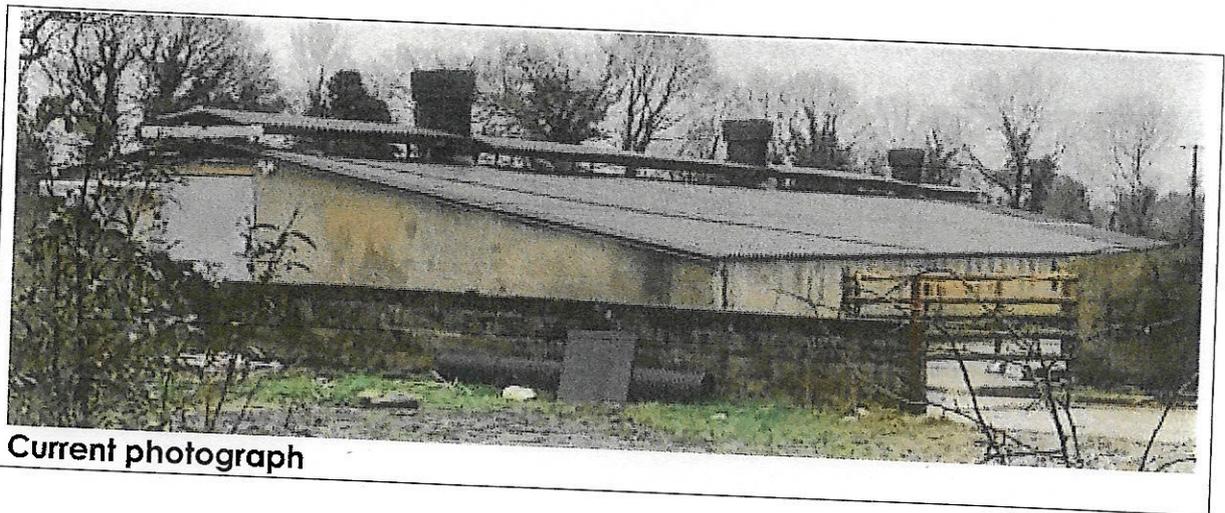
A Warning Letter under Section 152 of the Planning and Development Act 2000 (as amended) issued to the owners dated 28 April alleging, possible "demolition works and construction works to agricultural buildings".

Demolition works and construction works to agricultural buildings would also be de-exempted if such works had the potential to adversely impact on any EU Habitat site. It is considered the Planning Authority cannot screen out Appropriate Assessment for any development on this site as there are stream to the front and rear of the site which are both hydrologically linked to designated SACs sites.

On 16 December 2020 an Enforcement Notice under Section 154 of the Planning and Development Act 2000 (as amended) issued to the owner of the piggery referring to "the alteration and extension of a pig fattening house at Killaghy, Mullinahone, Co Tipperary" and required:

- (1) Remove the roof covering and associated structural supports and ventilation stacks so as to reinstate an open through-bridge passageway between the adjoining sheds.
- (2) Undertake to alter the sheds such that the enclosed internal floor area of same do not exceed 200m square individually.

The works undertaken do not meet the terms of the Enforcement Notice, in particular an elevated section of roof has been erected over open apex of the roof. This covers the "open through bridge" referred to in the Enforcement Notice. Leaving this open at the width of the passageway below would make no sense and would be a health and safety hazard. With the slatted passageway left exposed to the elements, rain water and surface water would get into the tanks. These tanks were clearly not designed to take rain and surface water.



Current photograph

Declaration sought

A declaration is now sought in respect of the following:

1. Whether the reopening of a pig farm in 2020, last used as a pig farm in 2013, is development and, if so, whether it is exempted development.

Comments: It is considered the original use of the site as a piggery was fully abandoned in 2013. At that time the piggery was operating as an unauthorised piggery, the use of which had had materially intensified from its permitted level of use conferred through the exemption availed of for the only permitted building on the site in 1973.

The authorised use of the site as a piggery with limited capacity ceased in 1982, although over time became immune from planning enforcement.

However, that immunity ceased in 2013 when the piggery was abandoned.

No attempts were made between 2013 and 2020 to clear the dereliction on the site, repair structures or reoccupy buildings. Access to the site could not be obtained due to the entrance being blocked by trees that fell across the entrance in 2014.

From 2014 unauthorised dumping of waste and fly-tipping occurred on the site which required action to be taken by the community due to the absence of the owners (see PT 12).

The site was in the possession of various financial institutions from 2011 to 2020 and there is no evidence of any attempts by these institutions to sell the site on the open market.

In the case of *Cork County Council v Ardfert Quarry Product Ltd* it was found that where the use of premises permitted as a general industrial building was suspended for a period of four years without any satisfactory explanation, it was held that the use had been abandoned.³ In the current case the unauthorised use which had been ongoing for 31 years, ceased 7 years ago with no signs of any intent to reopen the piggery.

It is submitted that the reopening of the pig farm in 2020 last used as a pig farm in 2013 is development and, is not exempted development.

2. Whether carrying out repairs in 2020 to an existing unoccupied piggery building constructed to house pigs in 1982 and its reuse for housing pigs is development and, if so, whether it is exempted development

Comments: For the reasons outlined above, the building that was constructed in 1982 exceeded the permissible floor area under the exemption and was, therefore, an unauthorised structure.

The exemption which exists under Section 4(1)(h) of the Planning and Development Act 2000 (as amended) does apply to "unauthorised structures", therefore, the works were unauthorised.

It is also relevant in this context that the overall use of the piggery site is unauthorised due to the unauthorised intensification of use that occurred over the decades. Therefore, the works which were undertaken to make the structure usable were works to facilitate an unauthorised use and a use that was abandoned.

It is not permissible to undertake any use in an unauthorised structure, therefore, the use of the upgraded building to house pigs was unauthorised.

It is considered the carrying out the repairs to an existing unoccupied piggery building constructed to house pigs in 1982 and its reuse for housing pigs is development and is not exempted development.

³ Unreported, High Court, Murphy J., December 7, 1982

3. Whether;
- a) remove the roof covering and associated structural supports and ventilation stacks so as to reinstate an open through-bridge passageway between the adjoining sheds; and
 - b) Undertake to alter the sheds such that the enclosed internal floor area of same do not exceed 200m square individually;
- is development and, if so, whether it is exempted development.

Comments: It is considered the works required by the Enforcement Notice were works to an unauthorised structure, the use of which was abandoned. While Section 163 of the Planning and Development Act 2000 (as amended) provides that permission is not required for works required to comply with an Enforcement Notice, it is considered the terms of the Enforcement Notice served on the owner are flawed. This is on the basis the Planning Authority considers the piggery building constructed in 1982 was exempted and that it is still permitted to be used for housing pigs, which this Section 5 application and supporting documentation seeks to disprove.

In terms of (b), whether or not the internal floor area of the building is fully enclosed or not is irrelevant. Likewise, what precise use the floor space within a structure is put to for the purposes of keeping pigs is irrelevant. The Planning and Development Acts and Regulations refer only to the floor areas of structures, not the floor areas of parts of single structures which are covered and those which are not covered or those areas of floor space occupied by pigs and those areas used to service/ maintain pigs and pig pens.

It is considered the works specified in the Enforcement Notice could not be screen out for Appropriate Assessment.

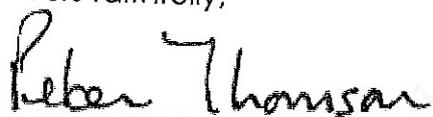
It is considered the works required by the Enforcement Notice involve work that is development and is not exempted development.

Conclusion

The Planning Authority is requested to review its position in light of all the evidence now provided with this submission and determine that the use of the site and buildings as a piggery was abandoned and that the restoration works undertaken are not exempted as they have been undertaken on an unauthorised building and that the re-use of the 1982 building for housing pigs and the site as a piggery are unauthorised.

I look forward to hearing from you.

Yours faithfully,



Peter Thomson, MSc, MIPI



Comhairle Contae Thiobraid Árann
Tipperary County Council

CASH OFFICE
CASH OFFICE
1 - APR 2021
RECEIVED
Tipperary County Council

CASH OFFICE
CASH OFFICE
1 APR 2021
RECEIVED
Tipperary County Council

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146363
1/4/21
RECEIVED
- 1 APR 2021
PLANNING & DEVELOPMENT

PLANNING & DEVELOPMENT ACT, 2000 (as amended)

**Application for a Section 5 Declaration
Development / Exempted Development**

1. Applicant's address/contact details:

Applicant	Mullinahone Piggery Action Group
Address	Mullinahone c/o Kevin & Maire Woodview, Killaghy Mullinahone, Co. Tipperary E41 P6E5
Telephone No.	[REDACTED]
E-mail	[REDACTED]

2. Agent's (if any) address:

Agent	Peter Thomson
Address	4 Priors Grove, Kells, Co. Kilkenny
Telephone No.	086 819 6856
E-mail	ptplanningsolutions@eircom.net
Please advise where all correspondence in relation to this application is to be sent;	
Applicant []	Agent [✓]

SCANNED

3. Location of Proposed Development:

Postal Address or Townland or Location (as may best identify the land or structure in question)	Killaghy, Mullinahone, County Tipperary
---	---

Please provide details of the proposed development for which an exemption under Section 5 of the Planning and Development Act is applied for.

(Note: only works and uses listed and described under this section will be assessed under this Section 5 Application. Use additional sheets if required.)

1. Whether carrying out repairs in 2020 to an existing unoccupied piggery building constructed to house pigs in 1982 and its reuse for housing pigs is development and, if so, whether it is exempted development
2. Whether the reopening of a pig farm in 2020 last used as a pig farm in 2013 is development and, if so, whether it is exempted development
3. Whether; a) remove the roof covering and associated structural supports and ventilation stacks so as to reinstate an open through-bridge passageway between the adjoining sheds; and b) Undertake to alter the sheds such that the enclosed internal floor area of same do not exceed 200m square individually; is development and, if so, whether it is exempted development.
Please see attached letter of support and attachments
Proposed floor area of proposed works/uses: Q1. 483m ² ; Q2. 1.42ha

5. Legal Interest of Applicant in the Land or Structure:

Please tick appropriate box to show applicant's legal interest in the land or structure	A. Owner	B. Occupier
	C. Other <input checked="" type="checkbox"/>	
Where legal interest is 'Other', please expand further on your interest in the land or structure	Objectors to the alleged unauthorised developments	
If you are not the legal owner, please state the name and address of the owner	Name: Jim Foran Address: c/o NRG, Moonesfort, Lattin, Co. Tipperary	

CHAIRMAN: *[Signature]*

VICE CHAIRPERSON: *[Signature]*

SECRETARY: *[Signature]*

Signature of Applicant(s)

Date: 23 March 2021

Note: If the proposed development consists of works to a (Proposed) Protected Structure and/or any structure within the curtilage of a (Proposed) Protected Structure, an application for a Section 57 Declaration may be more appropriate.

PT1

COMHAIRLE CHONTAE THIOBRAD ARANN (THEAS)

Tagairt: P.2.2

Oifig an Innealtóir Chontae,
Baile Gaelach Uachtar,
CLUAIN MEALA.

Data: 28 May, 1971.

To/ J. O'Grady & M. Ouirke,
c/o Millinshope Co-Op.,
MILLINSHOPE.

Local Government (Planning and Development) Act, 1963.

A Chara,

It is desired to refer to your application dated: 28 Inst

for permission for Erection of a pigery (kill)

It appears that as the proposed development comes within the meaning
of PART 3, CLASS 6 of the Schedule to

the Exempted Development Regulations, 1967, formal permission is not necessary.
No such structure shall be used for any purpose other than the purpose of agriculture
or forestry.
No such structure for the housing of pigs or poultry or for the making of silage shall be
situated within 100 feet of any dwellinghouse save with the consent of the owner and
neighbour thereof.
No such structure within 100 yards of any public road shall exceed 21 feet in height
above ground level.

Mise, le meas,


Ruairi.

110
height (approx 16' high)

ENGINEERING PLANNING AND FIRE DEPARTMENT

P. O'Grady

PT2

Clonagoose
Mullinahone
Thurles
Co Tipperary
28-03-2021

To Whom it my Concern_

In 1980 I sold my piggery in Killaghy Mullinahone. I wish to state that when I sold the buildings marked on the Ariel picture with the brown marker were definitely the only buildings on the property at the time and any extra buildings that are on the picture were erected after 1980

Your faithfully

Michael Quinlan



PT3

100



To the Registrar for Registering Deeds and Solicitors in IRELAND.

A Memorial

of an Indenture of Conveyance dated the 30th day of May one thousand nine

NOTE: Do not write in the margin.



5535
100

325
Dinner 502

hundred and eighty between MICHAEL QUIRRE and BRIDGET QUIRRE (^{his wife} hereinafter called "The Vendors") ~~of the County of Tipperary~~ both of Cionagoose, Mullinahone in the County of Tipperary of the one part and LIAM O'CONNOR (hereinafter called "the Purchaser") ^{of the other part} ~~of the County of Tipperary~~ ^{of the County of Tipperary} the said memorialising Indenture witnessed that in consideration of the sum of twenty nine thousand pounds paid by the Purchaser to the Vendors the Vendors as beneficial owners thereby granted and conveyed unto the Purchaser ~~and his assigns forever~~ ALL THAT AND THOSE part of the lands at Killaghy containing five acres three roads and eighteen perches or thereabouts statute measure situate in the Barony of Slieveragh and County of Tipperary and shown red on the map annexed hereto TO HOLD the same unto and to the use of the Purchaser ~~and his assigns forever~~ in fee simple which said Deed as to the execution thereof by the Vendors was witnessed by:-
 James F. O'Higgins, 4 Pembroke Road, Dublin 4, Solicitor, and John M. O'Dwyer, 4 Pembroke Road, Dublin 4, Solicitor,
 and as to the execution thereof by the Purchaser was witnessed by:-
 Michael O'Callaghan, Solicitor's Assistant,
 Tipperary.

SIGNED SEALED AND DELIVERED by the said MICHAEL QUIRRE

Michael Quirre

presence of:-

in the

John M. O'Dwyer
James F. O'Higgins
 SIGNED SEALED AND DELIVERED by the said BRIDGET QUIRRE

in the

presence of:-

Michael Quirre

John M. O'Dwyer
James F. O'Higgins
 SIGNED SEALED AND DELIVERED by the said BRIDGET QUIRRE

Particulars of ACTS Returned on Within Search S2021RD019971P

Registration Reference/ Serial Number and Date of Registration	Name and Date of the Instrument	Grantor	Grantee	Nature of Instrument; Notes; Consideration	Description and Situation of Premises	Vacate/ Satisfactions
1980082231 22-JUL-1980	Conveyance 31-JUL-1977	O GRADY JOHN QUIRKE MICHAEL	QUIRKE MICHAEL AND ANR	Conveyance 7,500	GROUND AT KILLAGHY Barony: SLEIVARDAGH County: Tipperary	
1980100021 09-SEP-1980	Conveyance 30-MAY-1980	QUIRKE MICHAEL QUIRKE BRIDGET	O CONNOR LIAM	Conveyance 29,000	LANDS AT KILLAGHY Barony: SLEIVARDAGH County: Tipperary	

End of Search Results. Generated at 18-MAR-2021 14:48:05

PT4



Tipperary (SR) County Council
IRISHTOWN CLONMEL IRELAND

TELEPHONE 052 - 21399

Comhairle Chontae Thiobrad Arann (Theas)
BAILE GAOLACH CLUAIN M'CALA ÉIRE

TELEAFON 052 - 21399

TIPPERARY S.R. COUNTY COUNCIL

Ref No P.2. 2

Room 5,
Planning Section,
Irishtown,
CLONMEL.

To Mr. Liam O'Connor,
Ballydavid,
Bansha,
Co. Tipperary.

6th July, 1982.

Local Government (Planning & Development) Act, 1976

Dear Sir/~~Madam~~,

It is desired to refer to your application dated 30th June, 1982 for permission for extension to rear of existing piggery at Mullingahone, Co. Tipperary. From the documentation submitted by you it would appear that as the proposed development comes within the meaning of Part 3 Class 7 of the Schedule to the Exempted Development Regulations, 1977, as set out below, formal permission is not necessary.

Class

Works consisting of the provision, on land not less than 10 metres from any public road the metalled part of which at the nearest point is more than 4 metres in width, of a roofed structure for the housing of pigs, cattle, sheep or poultry, having a floor area not exceeding 400 square metres (whether or not by extension of an existing structure) and any ancillary provision for effluent storage.

Conditions

1. No such structure shall be used for any purpose other than the purpose of agriculture
2. No such structure for the housing of pigs or poultry shall be situated within 100 metres of any dwelling-house save with the consent of the owner and occupier thereof.
3. No such structure within 100 metres of any public road shall exceed 7 metres in height above ground level.
4. No effluent from such structure shall be stored within 100 metres of any dwelling-house save with the consent of the owner and occupier thereof.

Yours faithfully,

C. Heade
Secretary.

PT5

PT 0.5

Front Elevation Side Elevation (Prior to Modifications)



Side Elevation

Cladding Enclosure over the Central Passage with Steel structure to support Ventilation Fans.

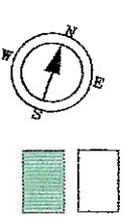
Cladding Enclosing Gable ends to ensure building is kept under negative pressure and all air is expelled by ventilator fans

Elevation (Modifications for Mechanical Ventilation)

Rear Elevation



Section



Structure as constructed in 1982
 Modification to Roof Structure constructed in 2020 requiring Retention

Roof Plan (Modifications for Mechanical Ventilation)

THIS DRAWING IS FOR PLANNING PURPOSES ONLY AND DOES NOT CONSTITUTE A CONTRACT. THE CLIENT ACCEPTS FULL RESPONSIBILITY FOR THE CONSTRUCTION OF THE WORK SHOWN ON THIS DRAWING. THE ARCHITECT ASSUMES NO LIABILITY FOR THE CONSTRUCTION OF THE WORK SHOWN ON THIS DRAWING. THE ARCHITECT ASSUMES NO LIABILITY FOR THE CONSTRUCTION OF THE WORK SHOWN ON THIS DRAWING. THE ARCHITECT ASSUMES NO LIABILITY FOR THE CONSTRUCTION OF THE WORK SHOWN ON THIS DRAWING.

Name and Address	Revision/Issue	Date

NRG
 Maresfort
 Lathin
 Co Tipperary
 Email: info@nrg.ie
 Phone: 052 59485
 Fax: 052 59485

Project Name and Address
Jimmy Foran,
 Mullinahone,
 Co. Tipperary
 Retention of Roof Structure
 enclosure to support
 Mechanical Ventilation System
 on Grower House No1

Date	Drawn By	Scale
Jan 21	M McElroy	009
1:200		

PT6

Zimbra

FINDINGS OF Review of enforcement notices
from TIPPERARY Co. Council,
15/FEB/21
jamryan1@eircom.net

RE: [External] Enforcement file: TUD 20-047

From : Lonergan Eamon <Eamon.Lonergan@tipperarycoco.ie>

Mon, 15 Feb, 2021 16:53

Subject : RE: [External] Enforcement file: TUD 20-047

1 attachment

To : James Ryan' <jamryan1@eircom.net>, O'Meara, Cllr Kevin
<kevin.omeara@tipperarycoco.ie>

Dear James & Kevin,

Further to your request to undertake a review of Enforcement File TU20-047, concerning an alleged unauthorised development at Killaghy, Mullinahone, Co. Tipperary.

Nuala O'Connell is the Senior Planner in Tipperary County Council, and as such is the best placed to conduct this internal review.

In carrying out this review, Ms O'Connell considered all reports on file, including the evidence submitted by the complainant(s), the landowner and his representatives and the most recent correspondence as submitted by yourself James, on the 3rd of February, 2021.

Ms O'Connell concludes as follows:

The Enforcement Officer has carried out a comprehensive investigation of site and development, including an appraisal of all evidence received by third parties, the landowner and his representatives. In this respect, a decision to serve an Enforcement Notice by a Planning Authority is taken where there is conclusive evidence that unauthorised development has taken place, and where this can be proven beyond reasonable doubt. Having reviewed the file and the evidence, Ms O'Connell is satisfied the decision taken by the Planning Authority was appropriate in this case.

Kevin, further to our recent discussions, you asked me on Friday for clarification on how was the decision reached to accept the claim that the large building (that exceeds 400 sqm) was at one point 2 buildings and supporting evidence.

I sought a detailed reply from the case planner over the weekend, see reply hereunder.

The decision taken by the Planning Authority to issue the Enforcement Notice dated 16/12/2020 under TUD-20-047 and content of said notice was arrived at after having considered the evidence available to the Planning Authority and the evidence and information provided to the Planning Authority by the complainants, the developers and their agents. It must be highlighted that there are gaps in evidence due to the date the original shed was constructed, also the information provided to the Planning Authority by the developers and the complainants contain conflicting information on the chronology of development on the site.

The available evidence shows that the subject pig shed was constructed in 1982 following receipt of correspondence dated 6th July 1982 by the then site owner Mr Liam O' Connor from Tipperary (SR) County Council.

The correspondence relates to a development identified as the extension to the rear of an existing piggery and confirms that same appears to meet the planning exemption for such development as set down under the Class 7 of Part 3 of the Third Schedule of S.I. No. 65/1977 - Local Government (Planning and Development) Regulations, 1977.

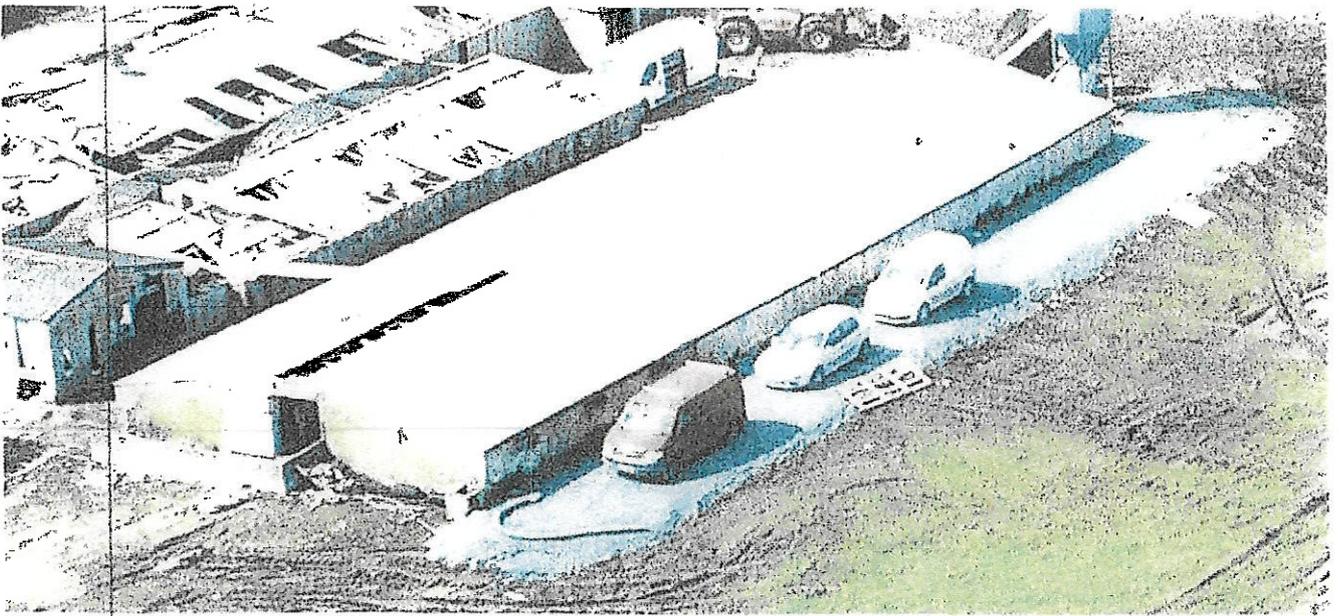
Class 7 provides an exemption for:

Works consisting of the provision, on land not less than 10 metres from any public road the metalled part of which at the nearest point is more than 4 metres in width, of a roofed structure for the housing of pigs, cattle, sheep or poultry, having a floor area not exceeding 400 square metres (whether or not by extension of an existing structure) and any ancillary provision for effluent storage

This exemption contains the following conditions

1. No such structure shall be used for any purpose other than the purpose of agriculture.
2. No such structure for the housing of pigs or poultry shall be situated within 100 metres of any dwelling- house save with the consent of the owner and occupier thereof.
3. No such structure within 100 metres of any public road shall exceed 7 metres in height above ground level.
4. No effluent from such structure shall be stored within 100 metres of any dwelling house save with the consent of the owner and occupier thereof.

The evidence provided to the Planning Authority shows the building that was constructed comprised 2no. areas for housing of pigs (each sized 198.74 sq m) separated by a central through-bridge. The floor area used for the housing of pigs is identified as 198.74 sq m for each area giving a total floor area of 397.48 sq m. The Planning Authority acknowledge there is a lack of clear evidence as to what was originally constructed but considered that it would not be uncommon for old piggery buildings to be constructed in this manner and considered the information received in this regard as reasonable. The image below and measurements taken on site by planning staff would support this consideration.



With regard to conditions 2 and 4 attached to the Class 7 exemption there is conflicting information on file regarding the matter of consent required under these conditions. Correspondence has been provided from Liam O'Connor (a previous owner of the site) outlining that a verbal agreement was reached with the adjoining landowner to construct the shed. The correspondence received from the complainant states that no consent was given. Noting the conflicting information on file the Planning Authority did not consider there was conclusive evidence that the entire shed is unauthorised development.

Kevin, you also asked for advice on the Section 5 process and I can advise on this now, if you should so wish an application under Section 5 can be made to the planning authority, a Council planner will then outline/declare the planning authority's formal opinion on the matter raised and this can subsequently be referred to An Bord Pleanála for further adjudication.

You should also note that the Planning Authority expects to receive a planning application related to this site and buildings in the coming weeks, this will afford you an opportunity to further engage in the determination process, should you be in disagreement with any future decision by the Planning Authority.

I trust that you will appreciate that we don't carry out reviews of every case and enforcement action that we deal with, for obvious practical and resource reasons.

But I have made an exception on this occasion following strong representations by Cllr O'Meara and given the complexity around this particular case, the nature of the evidence and the degree of dissatisfaction expressed around the determination process by the assigned planners.

Should you require further information or updates on the case please continue to engage directly with our Planning Enforcement Section and as you know Jonathan Flood is the planner assigned to the case and remains so after this review.

I understand that whilst you still might not fully agree or accept the findings by the Planning Authority, I am satisfied and confident in the approach taken by the case planner.

Regards,
Eamon

-----Original Message-----

From: Lonergan Eamon

Sent: 04 February 2021 10:20

To: 'James Ryan'

Subject: RE: [External] Enforcement file: TUD 20-047

Dear James

Nuala O'Connell Senior Planner will commence her review of the case file this week.

I will speak with her on same next week and I expect that her review will be concluded later next week.

Regards

the building did not fully enclose the central through bridge.

I trust that this clarifies things, again Jonathan Flood will be able to answer any further queries or provide case status updates.

Regards,

Eamon

1st Query on Review

-----Original Message-----

From: James Ryan [mailto:jamryan1@eircom.net]
Sent: 17 February 2021 15:11
To: Lonergan Eamon
Cc: Flood, Jonathan
Subject: Fwd: [External] Enforcement file: TUD 20-047

Dear Eamon,

Thank you for your reply and we wish to express our sincere thanks to Nuala for carrying out this review. Obviously we are disappointed with the findings of this review but we appreciate fully that the planning authority has received conflicting claims and evidence in relation to this case.

Having studied Nuala's reply we are somewhat confused with the following paragraph.

"The evidence provided to the Planning Authority shows the building that was constructed comprised 2no. areas for housing of pigs (each sized 198.74 sq m) separated by a central through-bridge. The floor area used for the housing of pigs is identified as 198.74 sq m for each area giving a total floor area of 397.48 sq m. The Planning Authority acknowledge there is a lack of clear evidence as to what was originally constructed but considered that it would not be uncommon for old piggery buildings to be constructed in this manner and considered the information received in this regard as reasonable. The image below and measurements taken on site by planning staff would support this consideration."

In order to clarify our understanding of this paragraph can you please ask Nuala to clarify the following queries.

- 1) Can you confirm for us whether the planning authority considers the original structure to have been one structure or two structures as defined in the planning legislation?
- 2) Can you define exactly what the planning authority means by "a central through-bridge"?
- 3) Can you clarify how the aerial photo attached supports the claim of what was originally constructed as this appears to be a photo of the building during renovation, having been re-roofed for which the local authority issued the enforcement action?

Yours sincerely,

James Ryan.

On behalf of the Mullinahone Piggery action group.

----- Original Message -----

From: "Lonergan Eamon" <Eamon.Lonergan@tipperarycoco.ie>
To: "James Ryan" <jamryan1@eircom.net>, "O'Meara, Cllr Kevin" <kevin.omeara@tipperarycoco.ie>
Sent: Monday, 15 February, 2021 16:53:39
Subject: RE: [External] Enforcement file: TUD 20-047

Dear James & Kevin,

Further to your request to undertake a review of Enforcement File TU20-047, concerning an alleged unauthorised development at Killaghy, Mullinahone, Co. Tipperary.

Fwd: Re: [External] Enforcement file: TUD 20-047

From : James Ryan <jamryan1@eircom.net>
Subject : Fwd: Re: [External] Enforcement file: TUD 20-047
To : 'Lonergan Eamon' <eamon.lonergan@tipperarycoco.ie>, 'Jonathan flood' <jonathan.flood@tipperarycoco.ie>

Tue, 02 Mar, 2021 13:03

Dear Eamon and Jonathan,
 In order to have proper understanding of planning authorities decision can you ask Nuala to clarify the query I sent last week regarding her answer to question 3. (See below)
 Thanking you,
 James Ryan.

----- Forwarded Message -----

From: James Ryan <jamryan1@eircom.net>
 To: Lonergan Eamon <Eamon.Lonergan@tipperarycoco.ie>
 Cc: jonathan flood <jonathan.flood@tipperarycoco.ie>, O'Meara, Cllr Kevin <kevin.omeara@tipperarycoco.ie>
 Sent: Tue, 23 Feb 2021 14:33:33 -0000 (GMT)
 Subject: Re: [External] Enforcement file: TUD 20-047

File ref: TUD 20-047

Dear Jonathan,

I have been advised by Eamon Lonergan to forward any further queries to you for clarification. (see below)

I have further query in relation to answer given to question 3.

Answer. "The photograph shows the building during renovation. The roof sheeting on the rear section of the building did not fully enclose the central through bridge."

In order to clarify my understanding of this answer can you clarify for me does the planning authority consider this section of roof to have been part of original roof and if so why?

Yours sincerely,
 James Ryan

Answers to 1st Queries.

----- Original Message -----

From: "Lonergan Eamon" <Eamon.Lonergan@tipperarycoco.ie>
 To: "James Ryan" <jamryan1@eircom.net>
 Sent: Monday, 22 February, 2021 09:04:05
 Subject: RE: [External] Enforcement file: TUD 20-047

James

Please see the replies to your 3 questions hereunder.

1)
It is considered that the original shed was a single structure with floor area used for the keeping of pigs less than 400 sq m.

2)
 A central passageway between the building areas used for the keeping of pigs.

3)
 The photograph shows the building during renovation. The roof sheeting on the rear section of

Enforcement file: TUD 20-047

From : Flood, Jonathan <jonathan.flood@tipperarycoco.ie> Thu, 04 Mar, 2021 08:50
Subject : Enforcement file: TUD 20-047
To : 'jamryan1@eircom.net' <jamryan1@eircom.net>
Cc : Devaney, Ann Marie
<annmarie.devaney@tipperarycoco.ie>, Kenneally, Elaine
<elaine.kenneally@tipperarycoco.ie>

External images are not displayed. [Display images below](#)

James

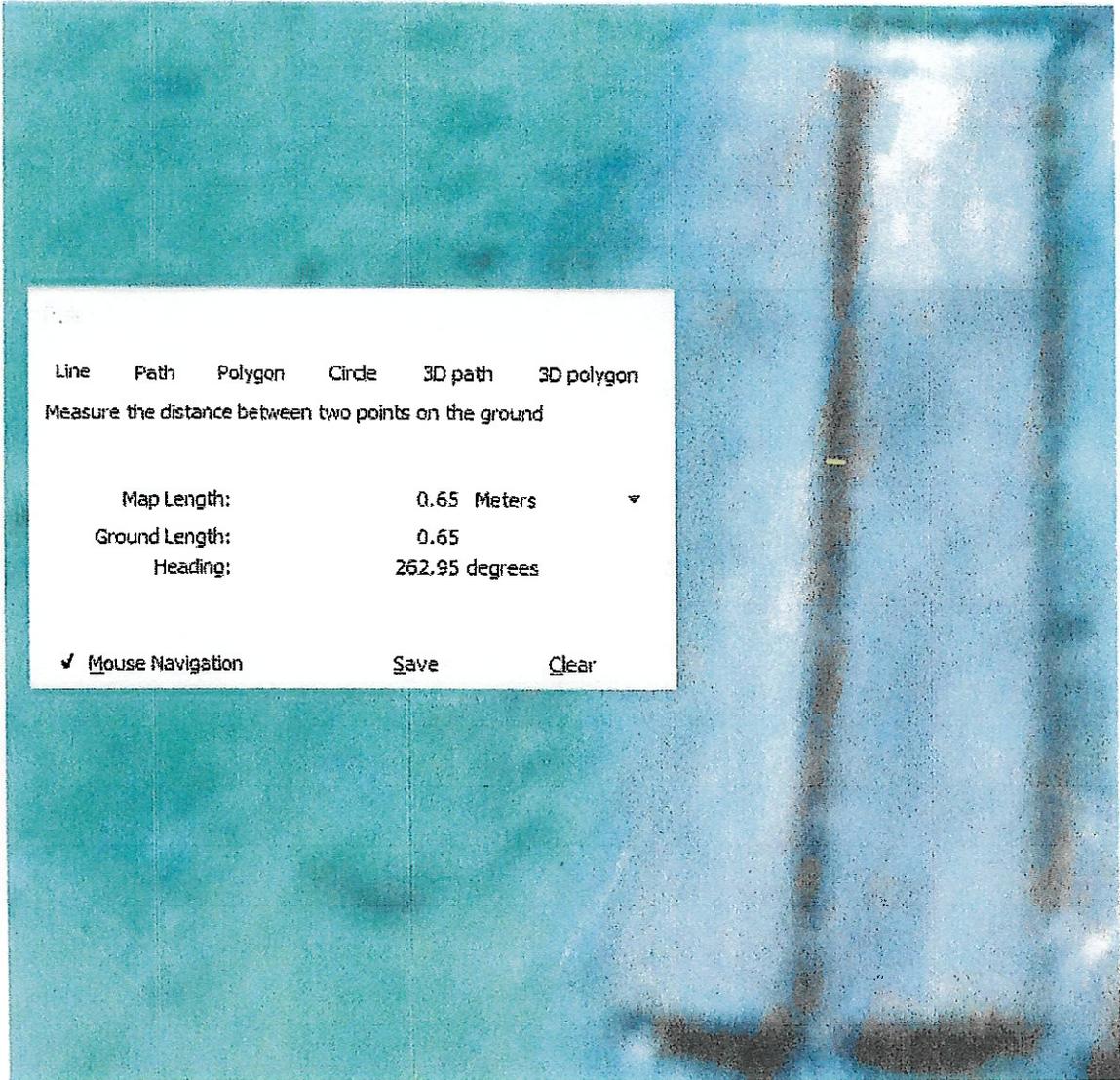
With reference to your query of the 23/02/2021.

The Planning Authority following a review of all evidence and noting the material used in construction has concluded that the rear roof section was likely to be part of the original roof. As outlined previously there are limitations in evidence regarding the development on this site and the above consideration must be viewed in this context.

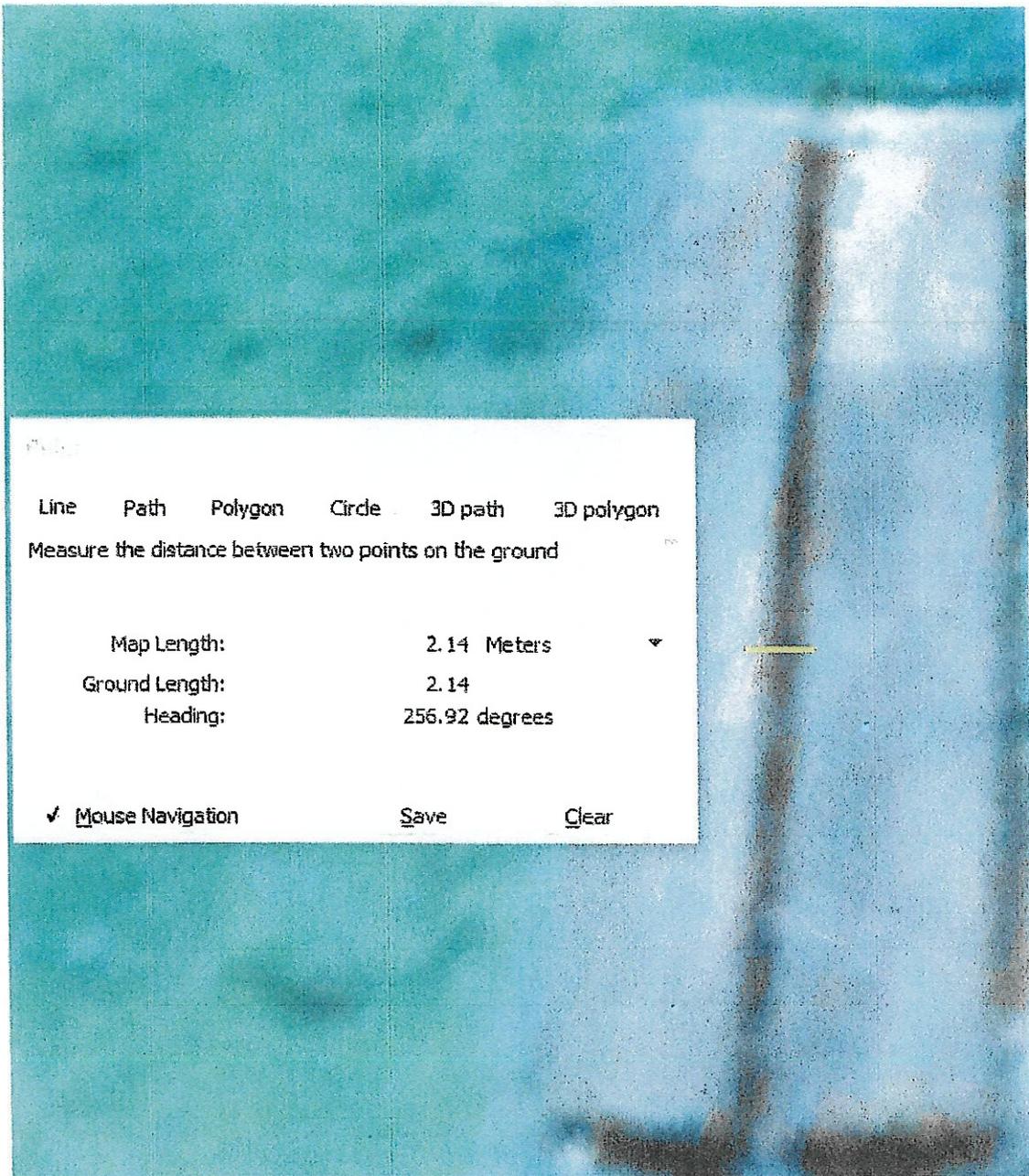
I trust this addresses all your queries.

As you will be aware this matter remains a live enforcement file. In this regard, the Planning Authority will not be corresponding further on matters relating to this investigation, save to confirm the status of same.

Jonathan Flood,
Executive Planner
Tipperary County Council
0761065000
jonathan.flood@tipperarycoco.ie



Google earth dimension of the roof vent (shown yellow)



Google earth dimension of what would have been the extent of a 2.13m opening which overarches the actual opening.

PT7

11/08/2020

RE: Piggery in Killaghy, Mullinahone, Co. Tipperary.

From the years 1980 – 1988 (inclusive) I worked full time at the piggery located in Killaghy, Mullinahone, Co. Tipperary. Throughout my employment at the piggery I was at the premises daily and have outlined on a map attached what buildings existed and were constructed during this period. Please find the map attached.

Should you have any queries, please don't hesitate to contact me.

Regards

Thomas Mocker

Thomas Mocker

PT8

ENVIRONMENTAL REPORT

**In respect of a Replacement
PIG FATTENING DEVELOPMENT**

For

Jim Foran

At

Killaghy, Mullinahone, Co. Tipperary



TIPPERARY CO. COUNCIL
RECEIVED
04 MAR 2021
PLANNING
FILE NO: 21266

Prepared by

NRGE Ltd.

Mooresfort, Lattin, Co. Tipperary

Date: Revised

3. DESCRIPTION OF PROJECT

3.1 Overall Description

The existing farm complex consists of Dry Sow Houses, Farrowing Houses, and Weaner Houses, Fattening Houses, manure storage structures, services buildings and associated feed storage and preparation structures. These structures have been in use since the mid 1970s and would require significant level of renovation.

The proposed facility is situated in a rural location where agriculture is the main industry. The site is located in a the countryside/agricultural land.

3.2 Size and Scale of the Proposed Development

The Applicant intends to apply to the Planning authority for planning permission to demolition of existing Old Pig Housing, and the construction of a Pig Fattening House, with office, store, Feed Kitchen, Feed Bins, Roof Mounted Solar Panels and a covered geomembrane lined manure store and associated works This will allow for space for a one thousand nine hundred and fifty pig places in accordance with the requirements of Welfare Regulations as per SI No. 48 of 2003. Drawings of the proposed new structures are presented in **Appendix 2.**

3.2.1 Production

In full production, 1950 weaned pigs will be transported from the Applicant's Pig Breeding Unit at Reatagh Carrick on Suir. The weaner pigs are stocked at 0.74 m² per pig place and grow to 105 kg over a ten-week period. They are kept on fully slatted concrete floors over shallow tanks and are fed ad libitum on a finisher pig pelleted diet. The pigs will be accommodated for 10 weeks. The house would be washed out thoroughly between batches. These filling and emptying cycle regime helps to maintain disease free pig production by eliminating carry-over from one batch to the next.,

below the threshold as set out in the regulations and the project site proposes the installation capacity for -2,000 places for production pigs.

A search of the Planning Register shows that the existing Pig Unit had the benefit of Planning Exemption. A letter of Exemption was issued by Tipperary SR County Council on 28 May 1973. This exempted the development of a Pig Breeding Unit breeding weaner pigs for a Co operative pig Group. A Subsequent Letter of exemption was issued to the second owner for the development of a 400m² fattening unit which expanded the Pig unit to an integrated pig unit.

The development consists of the following structures

Table 1: Existing Structures Table

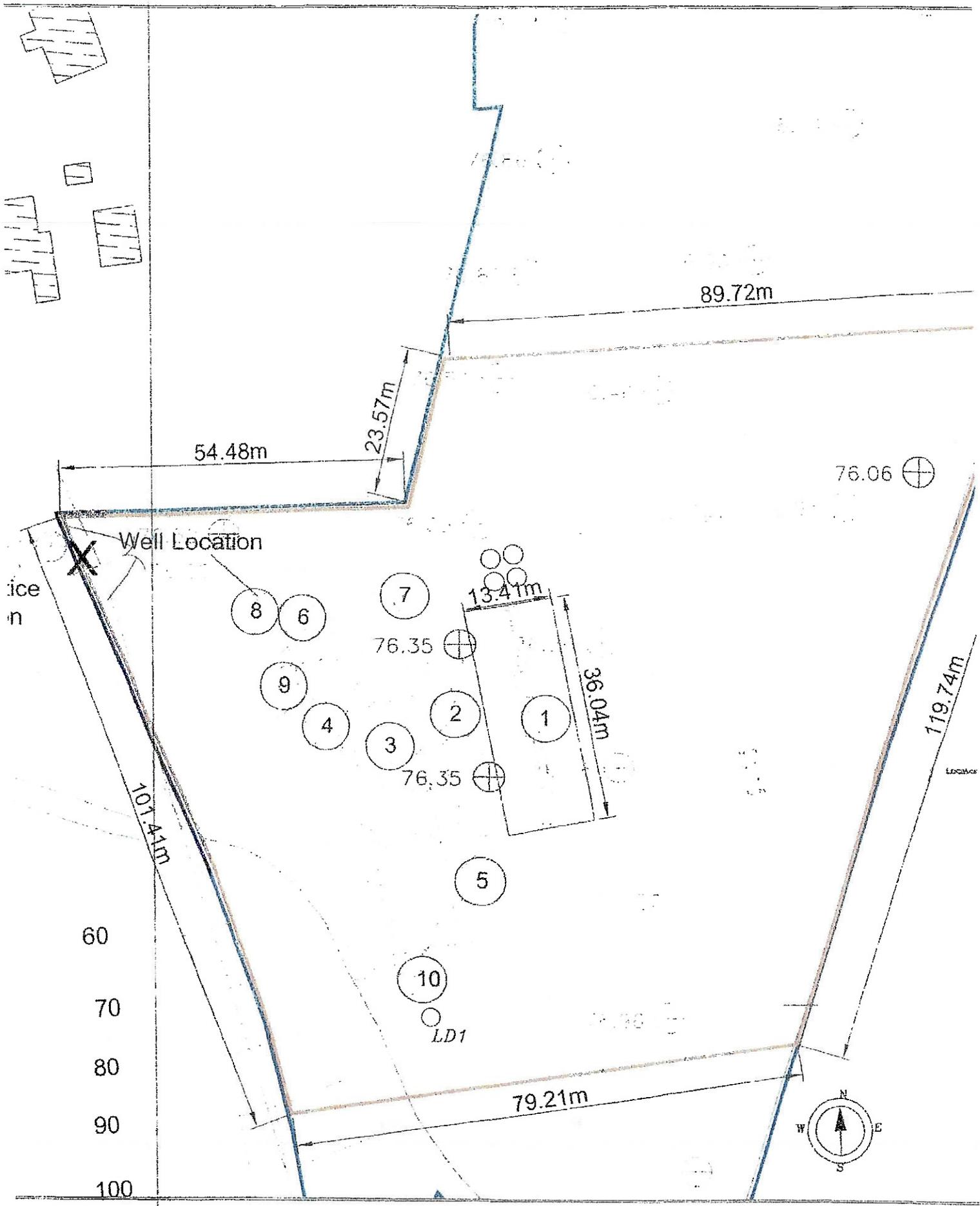
TITLE	STATUS	CLASS	HOUSE LGT (M)	HOUSE WTH (M)	AREA SQ MTS	TOTAL AREA B/F
1 STOCK HOUSE	EXISTING	7	36.6	5.4	197.6	197.6
1 STOCK HOUSE	EXISTING	7	36.6	5.4	197.6	395.3
2 WEANER HOUSE	For Demolition		29.4	5.3	155.8	551.1
3 Dry Sow / Farrowing	For Demolition		58.08	10.45	606.9	1158.0
4 Sow House	For Demolition		50.6	6.8	344.1	1502.1
5 Service House	For Demolition		8.9	9.09	80.9	1583.0
6 Weaner House	For Demolition		15.1	5.3	80.0	1683.0
7 Kitchen	For Demolition		4.79	4.13	19.8	1682.8
8 Offices	For Demolition		5.41	6.27	33.9	1716.8
9 Ancillary House	For Demolition		3.52	1.48	5.2	1722.0
9 Ancillary House	For Demolition		2.54	2.76	7.0	1729.0
10 Ancillary House	For Demolition		6.88	5.39	37.1	1766.1

Facilities

The proposed development will consist of a new Fattening House with associated works on a green field site within the holding. The buildings and their layout will be state of the art for the industry. A thorough review was undertaken of best available techniques to minimise emissions from the proposed development, and to maximise welfare conditions for animals and staff alike on site. The proposed animal houses are compliant with BAT. All run-off water from the site, is collected via the storm-water collection system (See **Site Plan 001**, in **Appendix 2**), all run-off water from the Pig Rearing Yard will be routed to a single storm water monitoring point SW1 discharging to a soak-away. The proposed structures will have an independent leak detection system identified as LD1 & LD2 on the *Site Plan 001*.

Employment

The pig farm when operating will give direct employment for one full time staff member and indirectly provides employment amounting to a total 5 of full time jobs.



PT 9

Timmy Brett

Gurteen

Mullinahone

Co Tipperary

28-03-2021

To whom it may concern,

I wish to confirm that the shed's indicated on the attached map and marked "A & B" were built during my time of employment at the piggery, located in Killaghy Mullinahone between 1986 up until it closed in early 2013.

Kind regards

Timmy Brett

Signed: Timmy Brett Date: 28/3/21



PT10

Killaghy,
Mullinahone,
Thurles,
Co. Tipperary.
26th March 2021.

RE: Derelict piggery situated at Killaghy, Mullinahone

To whom it may concern,

We the undersigned wish to confirm our understanding of the chronology of the development of this piggery at Killaghy, Mullinahone, Co. Tipperary.

The original piggery house with an open slurry tank behind it was built by local man Michael Quirke in 1973. Michael sold the site with this single pig house to Liam O'Connor who was from Co. Kerry in 1980. The piggery started to expand when a large fattening house was built circa 1982/83. Further expansion took place in 1985/86 when several smaller pig houses were constructed. The last pig house was constructed over the existing open slurry tank in the early 1990's.

It is our contention that no consent was given from our family for any of the expansion of this piggery in the 1980's which we now understand would have been required due to proximity of our dwelling to buildings (within 100 metres). As young working adults living at home, we would have been party to any discussion or decision with our parents if this consent had been sought.

The piggery was sold again circa 2007 to Rory O'Brien of Killikane, Mitchelstown, Co. Cork. It is our understanding that the breeding sows were removed around this time and only fattening of some pigs continued on site. The operations appeared to winddown substantially from 2011 with little activity on site. We are not sure of exact date the last pigs were removed from site, but it was between 2011 and 2013 as the piggery was certainly empty and abandoned early 2013.

Storm Darwin in 2014 did considerable damage to buildings especially the roofs and trees fell across the entrance blocking access. The piggery became a site of unsociable behaviour and illegal dumping of rubbish. Following complaints by local residents, Tipperary Co. Council eventually cleared the dump. There was no activity whatsoever at the piggery until construction work commenced to renovate a building last April.

Yours sincerely,



Gerry O'Meara



Annmarie O'Meara Ryan.

PT11

Land Registry

County Tipperary

Folio 50641F

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

No.	For parts transferred see Part 1(B) Description	Official Notes
1	The property with the Piggery located thereon at Killaghey, Mullinahone, Thurles, shown coloured Red as plan(s) BX28V on the Registry Map, Scheme Book 22, Map 5 to O.S. 5067/C, containing 2.3600 hectares and situate in the Townland of KILLAGHY, in the Barony of SLIEVARDAGH, in the Electoral Division of MULLINAHONE.	Instrument D2008PS030691W

The Registration does not extend to the mines and minerals

Land Registry

County Tipperary

Folio 50641F

Part 1(B) - Property

Parts Transferred

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

County Tipperary

Folio 50641F

Part 2 - Ownership

Title ABSOLUTE

No. The devolution of the property is subject to the provisions of Part II of the Succession Act, 1965

- | | | | | | |
|---|---|---|-----------|----------------|-------------|
| 1 | 23 DEC 2008
D2008PS030691W | RORY O'BRIEN of Killikane, Mitchelstown, County Cork and
MONICA O'BRIEN of Killikane, Mitchelstown, County Cork are
full owners. | Cancelled | D2020LR057292R | 30-APR-2020 |
| 2 | 30 APR 2020
D2020LR057292R | RONAN BRETT of Mullinahone, County Tipperary is full owner. | Cancelled | D2020LR092735Y | 30-JUL-2020 |
| 3 | 30-JUL-2020
D2020LR092735Y | JAMES FORAN of Retagh, Carrick-on-Suir, County Tipperary is full owner. | | | |

Land Registry

County Tipperary

Folio 50641F

Part 3 - Burdens and Notices of Burdens

No.	Particulars
1	<p>23-DEC-2008 D2008PS030691W</p> <p>Charge for present and future advances repayable with interest. ACC BANK plc. is owner of this charge.</p> <p>Note: The ownership of this charge has been transferred. See Entry No. 19</p> <p style="text-align: right;">Cancelled D2020LR057292R 30-APR-2020</p>
2	<p>23-SEP-2011 D2011LR110390P</p> <p>A judgment mortgage in respect of a judgment obtained by Agri Health Limited against Rory O'Brien and Monica O'Brien on the 25th day of July 2011 in the Circuit Court Record Number 00877/2011 in a matter of Agri Health Limited v Toomevara Farms Limited and Rory O'Brien and Monica O'Brien t/a Toomevara Pigs and Martin Purtill t/a Toomevara Pigs on the interest of Rory O'Brien and Monica O'Brien in the property.</p> <p>Note: This Judgment Mortgage is registered also on Folios TY26056F, TY34773F, TY34775F, TY50641F, CK63301F, CK50818F, CK113544F, CK57214, CK46842F, CK113116F, CK17707F, CK17786F, CK101258F, CK47807F, CK113125F, CK137428F, CK83683F, CK33580.</p> <p style="text-align: right;">Cancelled D2020LR057292R 30-APR-2020</p>
3	<p>10-NOV-2011 D2011LR126161M</p> <p>A judgment mortgage in respect of a judgment obtained by Agri Health Limited against Rory O'Brien and Monica O'Brien t/a Greenglen Farms on the 11th day of April 2011 in the Cork Circuit Court Record Number 00457/2011 in a action, matter of cause of Agri Health Limited v Rory O'Brien and Monica O'Brien t/a Greenglen Farms on the interest of Rory O'Brien and Monica O'Brien in the property.</p> <p>Note: This judgment is also registered on Folio 33580, 83683F, 137428F, 113125F, 47807F, 101258F, 17786F, 17787F, 113116F, 46842F, 57214, 113544F, 50818F, 63301F Cork 34775F, 34773F, 26856F Tipperary</p> <p style="text-align: right;">Cancelled D2020LR057292R 30-APR-2020</p>
4	<p>01-MAR-2012</p> <p>A judgment mortgage in respect of a judgment obtained by FORESTLINK LIMITED against Rory O'Brien & Monica O'Brien T/A Rory</p>

Land Registry

County Tipperary

Folio 50641F

D2012LR032459V ~~& Monica O'Brien Pig Enterprises on 7th November 2011 in the Circuit Court, Record Number 2011/03199 in a cause/matter/action of FORESTLINK LIMITED v Rory O'Brien & Monica O'Brien T/A Rory & Monica O'Brien Pig Enterprises against the interest of Rory O'Brien & Monica O'Brien in the property.~~

~~Note: This judgment is registered also on folios 17786F, 17787F, 46842F, 50818F, 63301F, 83683F, 101258F, 113116F, 113125F, 113554F, 137428F, 33580 all Co Cork and folios 34773F and 34775F Co Tipperary~~

Cancelled

D2020LR057292R

30-APR-2020

5 29-MAR-2012
D2012LR042808C

~~A judgment mortgage in respect of a judgment obtained by John Grant, James Slaine, Ian Stewart, Craig McAlister & Andrew Turkington t/a Parklands Veterinary Clinic against Rory O'Brien and Martin Purtill, t/a Toomevara Unit on 14th September 2011 in the Circuit Court Record Number 00727/2011 in a cause/matter/action of John Grant, James Slaine, Ian Stewart, Craig McAlister, Andrew Turkington, t/a Parklands Veterinary Clinic v Rory O'Brien and Martin Purtill, t/a Toomevara Unit against the interest of Rory O'Brien in the property.~~

~~Note: This judgment is registered also on folios 26856F, 34773F and 34775F all Co Tipperary and folios 63301F, 50818F, 113544F, 57214, 46842F, 11316F, 17787F, 17786F, 101258F, 47807F, 113125F, 137428F, 33580 and 83683F all Co Cork~~

Cancelled

D2020LR057292R

30-APR-2020

6 29-MAR-2012
D2012LR042635Y

~~A judgment mortgage in respect of a judgment obtained by John Grant, James Slaine, Ian Stewart, Craig McAlister & Andrew Turkington t/a Parklands Veterinary Clinic against Rory O'Brien and Tony O'Reilly, t/a Green Glen Pig Unit on 15th September 2011 in the Circuit Court Record Number 2011/02405 in a cause/matter/action of John Grant, James Slaine, Ian Stewart, Craig McAlister, Andrew Turkington, t/a Parklands Veterinary Clinic v Rory O'Brien and Tony O'Reilly, t/a Green Glen Pig Unit against the interest of Rory O'Brien in the property.~~

Land Registry

County Tipperary

Folio 50641F

~~Note: This judgment is registered also on folios 26856F, 34773F and 34775F Co Tipperary and 63301F, 50818F, 113544F, 57214, 46842F, 113116F, 17787F, 17786F, 101258F, 47807F, 113125F, 137428F, 33580 and 83683F Co Cork~~

Cancelled

D2020LR057292R

30-APR-2020

7 ~~18-MAR-2014
D2014LR027708J~~

~~A judgment mortgage in respect of a judgment obtained by JOHN GRANT, JAMES SLAINE, CRAIG MCALISTER, & ANDREW TURKINGTON T/A PARKLANDS VETERINARY CLINIC against MONICA O'BRIEN, RORY O'BRIEN, T/A PIG ENTERPRISES/COOLEMOHAN FARM UNIT on the 10th day of November 2011 in the High Court Record Number 2011/26958 in a cause/matter/action of JOHN GRANT, JAMES SLAINE, IAN STEWART, CRAIG MCALISTER, ANDREW TURKINGTON, T/A PARKLANDS VETINARY CLINIC v MONICA O'BRIEN, RORY O'BRIEN, T/A PIG ENTERPRISES/COOLEMOHAN FARM UNIT against the interest of MONICA O'BRIEN, RORY O'BRIEN, T/A PIG ENTERPRISES/COOLEMOHAN FARM UNIT in the property.~~

~~This judgment is registered on folios CK33580, CK83683F, CK137428F, CK113125F, CK47807F, CK101258F, CK17786F, CK17787F, CK113116F, CK46842F, CK57214, CK113544F, CK50818F, CK63301F, TY50641F, TY34775F, TY34773F, TY26856F~~

Cancelled

D2020LR057292R

30-APR-2020

8 ~~14-NOV-2014
D2014LR117109P~~

~~A judgment mortgage in respect of a judgment obtained by PAT DENN AGRICULTURE LIMITED against RORY O'BRIEN, MONICA O'BRIEN on 26th day of March 2014 in the Circuit Court Record Number 2014/00392 in a cause/matter/action of PAT DENN AGRICULTURE LIMITED v RORY O'BRIEN, MONICA O'BRIEN T/A Coolemohan Pig Enterprise against the interest of RORY O'BRIEN, MONICA O'BRIEN in the property~~

~~THIS JUDGEMENT IS ALSO REGISTERED ON FOLIOS CK17786F, CK17787F, TY26856F, CK33580, TY34773F, TY34775F, CK46842F, CK47807F, CK50818F, CK57214, CK63301F, CK83683F, CK101258F, CK113116F, CK113125F, CK113544F, CK137428F~~

Cancelled

D2020LR057292R

30-APR-2020

Land Registry

County Tipperary

Folio 50641F

- 12 ~~06-OCT-2016~~
~~D2016LR134887C~~ A judgment mortgage in respect of a judgment obtained by, GERARD HARRAHILL, COLLECTOR GENERAL, OFFICE OF THE REVENUE COMMISSIONERS against RORY O'BRIEN on the 27th day of July 2011 in the Circuit Court Record Number 2011/01300 in a cause/matter/action of GERARD HARRAHILL v RORY O'BRIEN against the interest of RORY O'BRIEN in the property.

Note: This Judgement is also registered on folios ~~CK17787F, TY26856F, TY33010F, CK33580, TY34773F, TY34775F, CK46842F, CK47807F, CK50818F, CK83683F, CK101258F, CK113116F~~

Cancelled D2020LR057292R 30-APR-2020
- 13 ~~07-OCT-2016~~
~~D2016LR102566G~~ A judgment mortgage in respect of a judgment obtained by GERARD HARRAHILL, COLLECTOR GENERAL, OFFICE OF THE REVENUE COMMISSIONERS against RORY O'BRIEN on the 27th day of July 2011 in the CIRCUIT Court Record Number 2011/01299 in a cause/matter/action of GERARD HARRAHILL v RORY O'BRIEN against the interest of RORY O'BRIEN in the property.

Note: This Judgement is also registered on folios ~~CK17787F, TY26856F, TY33010F, CK33580, TY34773F, TY34775F, CK46842F, CK47807F, CK50818F, CK83683F, CK101258F, CK113116F~~

Cancelled D2020LR057292R 30-APR-2020
- 14 ~~07-OCT-2016~~
~~D2016LR102564D~~ A judgment mortgage in respect of a judgment obtained by, GERARD HARRAHILL, COLLECTOR GENERAL, OFFICE OF THE REVENUE COMMISSIONERS against RORY O'BRIEN on the 13th day of March 2012 in the Circuit Court Record Number 2012/00148 in a cause/matter/action of GERARD HARRAHILL v RORY O'BRIEN against the interest of RORY O'BRIEN in the property.

Note: This Judgement is also registered on folios ~~CK17787F, TY26856F, TY33010F, CK33580, TY34773F, TY34775F, CK46842F, CK47807F, CK50818F, CK83683F, CK101258F, CK113116F~~

Cancelled D2020LR057292R 30-APR-2020
- ~~A judgment mortgage in respect of a judgment obtained by MICHAEL~~

Land Registry

County Tipperary

Folio 50641F

- 15 ~~07 OCT 2016~~ ~~D2016LR135083X~~ ~~GLADNEY COLLECTOR GENERAL against RORY O'BRIEN on 5th day of February 2013 in the The Circuit Court Court Record Number 2012/03226 in a cause/matter/action of MICHAEL GLADNEY COLLECTOR GENERAL, v RORY O'BRIEN against the interest of RORY O'BRIEN in the property.~~
Cancelled D2020LR057292R 30-APR-2020
- 16 ~~16 NOV 2016~~ ~~D2016LR151030D~~ ~~A judgment mortgage in respect of a judgment obtained by MICHAEL GLADNEY, COLLECTOR GENERAL, OFFICE OF THE REVENUE COMMISSIONERS against RORY O'BRIEN on the 19th day of MAY 2015 in the DISTRICT Court Record Number 2015/00121 in a cause/matter/action of MICHAEL GLADNEY v RORY O'BRIEN against the interest of RORY O'BRIEN in the property.~~
~~Note: This Judgement is also registered on folios CK17787F, TY26856F, TY33010F, CK33580, TY34773F, TY34775F, CK46842F, CK47807F, CK50818F, CK83683F, CK101358F, CK113116F~~
Cancelled D2020LR057292R 30-APR-2020
- 17 ~~17 JAN 2017~~ ~~D2017LR004166E~~ ~~A judgment mortgage in respect of a judgment obtained by GERARD HARRAHILL, COLLECTOR GENERAL, OFFICE OF THE REVENUE COMMISSIONERS against RORY O'BRIEN and MONICA O'BRIEN on the 7th day of August 2012 in the High Court Record Number 2011-1060R in a cause/matter/action of GERARD HARRAHILL v RORY O'BRIEN and MONICA O'BRIEN against the interest of RORY O'BRIEN and MONICA O'BRIEN in the property.~~
~~Note: This Judgement is also registered on folios CK17787F, TY26856F, TY33010F, CK33580, TY34773F, TY34775F, CK46842F, CK47807F, CK50818F, CK83683F, CK101258F, CK113116F~~
Cancelled D2020LR057292R 30-APR-2020
- 18 ~~17 JAN 2017~~ ~~D2017LR007374C~~ ~~A judgment mortgage in respect of a judgment obtained by MICHAEL GLADNEY, COLLECTOR GENERAL, OFFICE OF THE REVENUE COMMISSIONERS against RORY O'BRIEN and MONICA O'BRIEN on the 4th day of MARCH 2014 in the HIGH Court Record Number 2013/995R in a~~

Land Registry

County Tipperary

Folio 50641F

~~cause/matter/action of MICHAEL GLADNEY v RORY O'BRIEN and MONICA O'BRIEN against the interest of RORY O'BRIEN and MONICA O'BRIEN in the property~~

~~Note: This Judgement is also registered on folios CK17787F, TY26856F, TY33010F, CK33580, TY34773F, TY34775F, CK46842F, CK47807F, CK50818F, CK83683F, CK101258F, CK113116F~~

~~Cancelled D2020LR057292R 30-APR-2020~~

19 ~~12 SEP 2019~~
D2019LR136564B

~~PEPPER FINANCE CORPORATION (IRELAND) DESIGNATED ACTIVITY COMPANY is the owner of the charge registered at Entry No. 1~~

~~Cancelled D2020LR057292R 30-APR-2020~~

PT12

Mullinahone dumping upsetting local community

14 Feb 2018

share 0 comments



Mullinahone is experiencing illegal dumping

Has someone sanctioned a rubbish dump for the village of Mullinahone, residents ask? Just past the village on the way out to Killaghy Graveyard where the piggery once was, it seems as if a village rubbish dump is building up.

Lots of rubbish is being dumped in the entrance to the old piggery. This, of course, is next door to our Parish Playground.

Many people are upset by this development. No doubt, those who dump rubbish or their cars in this area can be identified. Perhaps it is time to do so and to prevent this dump building up. Please keep your eyes opened and be prepared to report what you see.



Dangerous dump near playground in Mullinahone

by Reporter 23 Feb 2018
Email: news@tipperarystar.ie

 share  0 comments



Many people last week were surprised to hear that a dump might be springing up in the vicinity of Mullinahone village on the Ballingarry road R690 to be exact.

This prospective dump is well hidden even though it is on the roadside at the entrance to the former Piggery just past the children's playground in Mullinahone.

The dump is far more dangerous than people realise as it is situated in a large drain which flows down beside the road and then winds its way around the boundary of the playground and then into the stream which flows through our village carrying

Privacy

Attachment 2



Comhairle Contae Thiobraid Árann
Tipperary County Council

Comhairle Contae
Thiobraid Árann,
Oifigi Cathartha,
Cluain Meala,
Co. Thiobraid Árann
Tipperary County Council,
Civic Offices, Clonmel,
Co. Tipperary

Comhairle Contae
Thiobraid Árann,
Oifigi Cathartha,
An tAonach,
Co. Thiobraid Árann
Tipperary County Council,
Civic Offices, Nenagh,
Co. Tipperary

t 0761 06 5000
e customerservice
@tipperarycoco.ie
tipperarycoco.ie

Ref. S5/21/35

29th April, 2021

Mullinahone Piggery Action Group
c/o Peter Thomson
4 Priory Grove
Kells
Co. Kilkenny

Re: Application for Section 5 Declaration for (1). Whether carrying out of repairs in 2000 to an existing unoccupied piggery building constructed in 1982 and it's re use for housing pigs is development and exempted development (2). Whether the re-opening of the pig farm in 2020 last used as a pig farm in 2013 is development and exempted development (3) Whether the removal of the roof covering and associated structural supports and ventilation stacks so as to reinstate an open-through bridge passageway between the adjoining sheds and undertaken to alter the sheds such that the enclosed internal floor area of same do not exceed 200 sqm individually is development and exempted development at Killaghy, Mullinahone, Co. Tipperary.

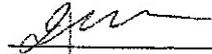
Dear Sir/Madam,

Pursuant to Section 5 (2) of the Planning and Development Act 2000, as amended, the Planning Authority requests the following information:

1. The Planning Authority note that abandonment is not defined under planning legislation. Under the case of Dublin County Council v Tallaght Block OC. Ltd (1982) the test case for abandonment considered 2 issues, the cessation of use (as distinct from suspension of use) and the intention not to resume the use. The Planning Authority consider both cases must be satisfied in order for abandonment to be considered. You are invited to respond with reference to the subject site.

NOTE: Please see attached a copy of correspondence issued to Mr Jim Foran, Reetagh, Carrick-on-Suir, Co. Tipperary pursuant to Section 5 (2) (c) of the Planning and Development Act, 2000, as amended.

Yours faithfully,

A handwritten signature in black ink, appearing to be 'J. W. ...', written above a horizontal line.

for Director of Services.



Comhairle Contae Thiobraid Árann
Tipperary County Council

Comhairle Contae
Thiobraid Árann,
Oifigi Cathartha,
Cluain Meala,
Co. Thiobraid Árann
Tipperary County Council,
Civic Offices, Clonmel,
Co. Tipperary

Comhairle Contae
Thiobraid Árann,
Oifigi Cathartha,
An tAonach,
Co. Thiobraid Árann
Tipperary County Council,
Civic Offices, Nenagh,
Co. Tipperary

t 0761 06 5000
e customerservice
@tipperarycoco.ie
tipperarycoco.ie

Ref. S5/21/35

29th April, 2021

Jim Foran
Reatagh
Carrick-on-Suir
Co. Tipperary

Re: Application for Section 5 Declaration for (1). Whether carrying out of repairs in 2000 to an existing unoccupied piggery building constructed in 1982 and it's re use for housing pigs is development and exempted development (2). Whether the re-opening of the pig farm in 2020 last used as a pig farm in 2013 is development and exempted development (3) Whether the removal of the roof covering and associated structural supports and ventilation stacks so as to reinstate an open-through bridge passageway between the adjoining sheds and undertaken to alter the sheds such that the enclosed internal floor area of same do not exceed 200 sqm individually is development and exempted development at Killaghy, Mullinahone, Co. Tipperary.

Dear Mr Foran,

Pursuant to Section 5 (2) (c) of the Planning and Development Act 2000, as amended, the Planning Authority requests the following information.

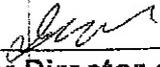
Please note that a Section 5 declaration request was received by the Planning Authority on 1/4/2021 under Reference Number S5/21/35 and accompanied by supporting documentation which relates to lands in your ownership and development undertaken by you at Kilaghy, Mullinahone, Co. Tipperary.

You are requested to submit, for the consideration of the Planning Authority, the following information:

- i) Details outlining the history of development on the site with dates at which the individual building phases were undertaken, the particular buildings to be shown on a map of the site and details of the relevant planning consent / exemption provided. Where there is no record of a planning exemption this to be stated.
- ii) Details outlining the development that was constructed in 1982 with a drawing illustrating the development constructed at this time. Any subsequent alterations to this building to be illustrated on a separate drawing with dates of alterations provided.
- iii) Details of activity / use at the site between 2013-2020 and commentary on whether you consider the use as a pig farm to have been

abandoned. In this regard under the case of Dublin County Council v Tallaght Block OC. Ltd (1982) the test case for abandonment considered 2 issues, the cessation of use (as distinct from suspension of use) and the intention not to resume the use. The Planning Authority consider both cases must be satisfied in order for abandonment to be considered. You are invited to respond with reference to the subject site.

Yours faithfully,



for Director of Services.

Attachment 4

LEGAL OPINION

Agent: Danny Morrissey Solicitor,
Dobbyn & McCoy Solicitors,
4/5 Colbeck Street, Waterford.

Querist: Mullinahone Piggery Action Group C/O Peter Thomson
Planning Solutions, 4 Priory Grove, Kells, Co.Kilkenny.

Re: Advices on the concept/doctrine of abandonment of use in
relation to lands located at Killaghy, Mullinahone, County
Tipperary.

Date: 17th June 2021.

I. Introduction

1. On or about 23rd March 2021, Querist, through its Planning Consultant, applied to Tipperary County Council for a '*Section 5 Declaration*' pursuant to s.5 of the Planning and Development Act 2000, as amended ('the 2000 Act') ('the Section 5 Application') in relation to lands/development/proposed development at Killaghy, Mullinahone, County Tipperary. The said application comprised, *inter alia*, an Application Form and a letter from Querist's Planning Consultant, dated 30th March 2021, together with 12 attachments (*marked 'PT' 1 - 12*).
2. Of relevance to the within opinion, part of the case advanced in the Section 5 Application by Querist is that an existing piggery building on the site, which is currently being used to house pigs, was constructed as an unauthorised structure without planning permission and that the use of the overall site as a piggery was abandoned in 2013 and permission is required for its reopening (*the within opinion does not purport to consider the issue of unauthorised use/development but is confined to consideration of the issue of abandonment raised by the Planning Authority in the request for further information*).
3. The Section 5 Application, which sets out (*in the information and attachments provided with same*) the relevant factual background to the application, raises three issues in relation to which the said Declaration is sought (*see Part 4 of the Section 5 Application Form*):
 - (i) Whether carrying out repairs in 2020 to an existing unoccupied piggery building constructed to house pigs in 1982 and its reuse for housing pigs is development and, if so, whether it is exempted development.
 - (ii) Whether the reopening of a pig farm in 2020 – last used as a pig farm in 2013 – is development and, if so, whether it is exempted development.
 - (iii) Whether (a) removing the roof covering and associated structural supports and ventilation stacks to reinstate an open through-bridge passageway between the adjoining sheds; and (b) Undertaking to alter the sheds such that the enclosed internal floor area of same does not exceed 200m square individually is development and, if so, whether it is exempted development.

4. On 29th April 2021, the Council, *qua* Planning Authority ('the Council'), issued a request for further information pursuant to s.5(2) of the 2000 Act. Insofar as the said request concerns Querist, the Council has sought submissions on the legal concept/doctrine of "*abandonment*". The Council's request provides:

"The [Council] note that abandonment is not defined under the planning legislation. Under the case of *Dublin City Council v Tallaght Block OC Ltd* (1982) the test case for abandonment considered 2 issues, the cessation of use (as distinct from suspension of use) and the intention not to resume use. The [Council] consider both cases must be satisfied in order for abandonment to be considered. You are invited to respond with reference to the subject site."

[Emphasis Added]

5. Querist seeks advice on the issue of 'abandonment' in the within Opinion by reference to the subject site. For the purposes of providing the within Opinion, regard has been had to: (i) the Section 5 Application; (ii) the documentation contained within same; (iii) additional information provided by Mr. Brett (*see statement from Mr Brett dated 2nd June 2021*); and (iv) additional photographs (3 no.) provided by Querist. It is understood that the aforesaid additional information will be submitted to the Council as part of the response to the Council's request for further information.
6. Prior to considering the concept/doctrine of 'abandonment' by reference to the subject site, it is first appropriate to set out and consider case law relevant to same which, as detailed hereinafter, provides useful guidance for the relevant authorities in how to approach and determine issues arising in relation to same.

II. Abandonment

7. As noted by the Council in the request for further information, the 2000 Act does not provide a definition for the concept/doctrine of 'abandonment'. Rather, the establishment of the said concept/doctrine has been developed through the jurisprudence of the Superior Courts. It is noteworthy that the origin of the concept is to be found in case law from the neighbouring jurisdiction of England and Wales, which was subsequently adopted by the Courts in this jurisdiction.

8. The Council has referred in the request for further information to *Dublin County Council v Tallaght Block Co. Ltd* [1982] ILRM 469, wherein the High Court considered the issue of abandonment and held that there had been an abandonment of use where the use of a site for block manufacturing resumed after eight years, and it was held to be a material change of use. Therein the Court relied upon and adopted the seminal authority from the neighbouring jurisdiction of England and Wales on the issue of abandonment, *Hartley v Minister for Housing and Local Government* (1970) 1 QB 413, wherein Lord Denning (*in his concurring judgment*) stated:

“[W]hen a man ceases to use a site for a particular purpose and lets it remain unused for a considerable period of time, then the proper inference may be that he has abandoned the former use. Once abandoned, he cannot start to use the site again, unless he get planning permission: and this is so, even though the new use is the same as the previous one.”

[Emphasis Added]

9. It was further stated in *Hartley (in the judgment of Lord Widgery)*, as quoted in *Dublin County Council v Tallaght Block Co. Ltd* [1982] ILRM 469, that:

“Where a previous use of land had been not merely suspended for a temporary and determined period but had ceased for a considerable time with no evinced intention of resuming it at any particular time, the Tribunal of fact was entitled to find that the previous use had been abandoned, so that when it was resumed the resumption constituted a material change of use.”

[Emphasis Added]

The Court further noted that the time for determining whether or not the use had been abandoned was at the time the new use started. See also *Wicklow County Council v Jessup & Ors* [2011] IEHC 81 (Unreported, High Court, Edwards J., 8th March 2011).

10. *Hartley* has been applied in a number of decisions in England and Wales, including in *Trustees of the Castell-y-Mynach Estate v Secretary of State for Wales* [1985] 1 WLUK 659 wherein it was held that because the land at issue had remained unused, a reasonable man might conclude that the previous use

had been abandoned and therefore the tribunal had rightly concluded that it had been abandoned. See also *Matthew Bramall v Secretary of State for Communities and Local Government, Rother District Council* [2011] EWHC 1531.

11. In this regard, and in respect of abandonment of a use and the temporal consideration in respect of non-use, see also *Cork County Council v Artfert Quarries Ltd* (Unreported, High Court, Murphy J., 2 December 1982), where there was a lapse of four years in the use of an industrial building and an absence of a satisfactory explanation which led to the use being held to have been abandoned. Therein, Murphy J., at page 8, said:-

“In fact it is significant that in the Hartley case the duration of the non-user was from March 1961 to February 1965, a period of almost four years, which is virtually identical with the period which elapsed between the cessation of the animal food processing business which ceased in the present case in 1966 and the commencement of the manufacture and storage of tyres in 1970. Having regard to that elapse of time and the absence of any satisfactory explanation therefor I must conclude that the user as of the operative date was subsequently abandoned.

If, as is the case, an unauthorised user may be lost or abandoned by non-user over a period of time so that the resumption of the original use itself would involve a material change *a fortiori* the commencement at that time of any other user would necessarily involve such a change.

It follows, in my view, that the use of the premises in question for the manufacture and storage of tyres; the fabrication of hydraulic equipment; and the warehousing of various goods and the present user for the distribution and bagging of cement all constituted an unauthorised use of the premises in the circumstances. If the land has remained unused for a considerable time, in such circumstances that a reasonable man might conclude that the previous use had been abandoned, then the tribunal may hold it to have been abandoned.”

[Emphasis Added]

12. It is also clear that a short period of non-use can amount to an abandonment of use (see *Dublin Corporation v Lowe & Signways*, (Unreported, High Court, Morris P., 4 February 2000)).

13. In *Meath County Council v Daly* [1987] I.R. 391, the use of a premises for car repairs and petrol sales was held to have been abandoned since 1964 when it had been used intermittently, but from 1969 was used for some years by a double glazing company. The Court stated therein:

“I feel constrained to hold, however, that the original "use right" in this case was abandoned on a few occasions, notably during the early years of the occupation of Windowseal Double Glazing Ltd., the periods when the premises were occupied by Basil Curran, J.B. Nevins and Michael Shanahan and finally during the period when Des Kelly Ltd. used the premises for the retail of carpets and furniture. In none of these instances was there any evidence of an evinced intention to resume the lawful user.”

[Emphasis Added]

14. As also noted by the Council in the request for further information, the intention of the user is one factor that falls to be considered in determining whether there has been an abandonment of a particular use. In this regard, as noted by the Supreme Court in *Kildare County Council v Goode* [1999] 2 IR 495, whether there is an intention to abandon a particular use is an objective test to be inferred from the conduct of the user rather than his/her subjective state of mind. Therein the Court stated, *inter alia*:

“There is ample authority, both here and in England, for the proposition that a development, which was initiated before the relevant planning code became operative and for that reason did not require permission, may subsequently be regarded as having been abandoned, resulting in the necessity; for planning permission if it is resumed: see *Hartley v. Minister of Housing and Local Government & Anor.* [1970] 1 QB413 and the decision of this court in *Dublin County Council v. Tallaght Block Company Limited* [1982] ILRM 534. There is similarly authority for the proposition that such a development, although not abandoned in that sense, may have been intensified to a degree which necessitates permission: see *Patterson v. Murphy* [1978] ILRM85....

Since there was clear evidence on which the learned trial judge was entitled to find that the use in question had long been abandoned before the present operations began and that, in any event, the present operations constituted a significant intensification of that use, it follows that permission was required...

Abandonment is the objective sign of a decision not to continue further with the development...”

15. It is further noted that the actions of the owner of the land may also demonstrate an objective intention to abandon a particular use. In *Dublin Corporation v Lowe & Signways* (Unreported, High Court, Morris P., February 4, 2000), the deliberate removal of an advertisement hoarding constituted an abandonment, and it was irrelevant that it was subsequently replaced by a hoarding of identical dimensions. See also *Fingal County Council v Crean* (Unreported, High Court, Ó Caoimh J., October 19, 2001).
16. In relation to the intention of the owner and the issue of abandonment, the decision from the Court of Appeal in England and Wales in *Hughes v Secretary of State for the Environment* [2000] 1 PLR 76 (England and Wales) offers further useful guidance. The Court noted that the state of mind of the owner would no doubt be relevant when investigating the facts of the matter, but it would not necessarily be decisive. The Court held that the intentions of the successive site owners, while relevant, were not conclusive and that, applying the test of a reasonable man with knowledge of all the relevant circumstances, the inspector had been entitled to conclude that the site had been abandoned in terms of residential use. The appeal judges noted that in this case, there had been prolonged and gross neglect which was not overcome by the appellant's stated intention to resume residential use.
17. In terms of the consideration of abandonment and the applicable test, authority from Northern Ireland provides further useful guidance. In the *Matter of an Application by Christine Alexander for Judicial Review v Causeway Coast and Glens Borough Council* [2018] NIQB 55, it was held:

“Thus the test to be applied imports the assessment of the hypothetical reasonable person [similar to the objective test referred to in *Goode*]. It is conventionally accepted, in a range of legal contexts, that this hypothetical person makes its assessment on a well-informed basis. This – my addendum to what the Court of Appeal held in *Hartley* – is confirmed by *Hughes v Secretary of State for the Environment* [2000] 1 PLR 76, where a later division of the Court of Appeal formulated the governing test as the view to be taken by a reasonable man with knowledge of all the relevant circumstances (per Kennedy LJ at 82A). The Court further, in substance, acknowledged that a reasonable man would be expected to have knowledge of the physical condition of the site, the period of time during which the previous use in question had

not been undertaken, whether the site had been used for any other purposes and the owner's intentions..."

18. Having regard to the case law detailed herein, the following criteria may be said to be relevant in determining whether a particular use has been abandoned:

- (a) the period of non-use;
- (b) the physical condition of the building(s)/site(s);
- (c) whether there had been any intervening use; and
- (d) the owner's intentions and objective evidence regarding the owner's intentions.

The aforesaid criteria fall to be considered by reference to the subject site and the relevant factual matters set out in the Section 5 Application.

19. Although the four factors set out above are relevant factors to be considered by the Council when making a decision as to whether a particular use has been abandoned, the weight to be attached to these factors will ultimately be for the decision maker to determine in light of the evidence presented.

III. The Subject Site and Abandonment

20. The Section 5 Application by Querist details that an existing piggery building on the site, which is currently being used to house pigs, was constructed as an unauthorised structure and has no planning permission (*the within opinion does not purport to consider the issue of unauthorised use/development but is confined to consideration of the issue of abandonment raised by the Planning Authority in the request for further information*). The documentation further details that the use of the overall site as a piggery was abandoned in 2013.

21. As noted in the Section 5 Application documentation, it is further contended that prior to 2013, the piggery was operating as an unauthorised piggery – the use of which had materially intensified from its permitted level of use conferred through the exemption availed of for the only permitted building on the site in

1973 (as per information submitted by Peter Thomson Planning Solutions, under cover letter, dated 30th March 2021). (As stated previously herein, the within opinion does not purport to consider the issue of unauthorised use/development but is confined to consideration of the issue of abandonment raised by the Planning Authority in the request for further information.) It is however noted that, in respect of unauthorised use, abandonment and the relevant time periods for enforcement, in *South Dublin County Council v Balfe* (Unreported, High Court, Costello P, 3 November 1995), the Court (at pg.7) held:

“In my opinion when a use has been abandoned and then recommenced nearly four years later an occupant cannot rely on an earlier use to support a claim that the limitation period in the section should run from the earlier date and not from the date of recommencement. If construed in the way urged by the respondents it would be a simple matter to drive a coach and four through the section by discontinuing an unauthorised use after a warning letter had been served and then recommencing again after several years when a limitation period based on the discontinued unauthorised user had expired, and I consider that the section should not be so construed.

Secondly, when a wrongful continuous act (such as an unauthorised user of land) has been discontinued and abandoned then the wrong has ceased. When it is recommenced a new wrongful act occurs, and it is from the date of the recommencement that the time limit in the section begins to run in respect of this new unauthorised use...”

(See also *Wicklow County Council v Tompkins* [2019] IEHC 19 in this regard)

22. Regard has been had to the information and documentation provided by Querist which comprises the Section 5 Application. Considering this documentation, together with some additional information from Mr. Timmy Bret (*referred to hereinafter*) and a number of photographs of the subject lands, the issue of abandonment of use falls to be considered in respect of the subject site.

(a) The period of non-use

23. As set out in the Section 5 Application documentation, it would appear (*in the absence of any evidence to the contrary*) an existing piggery business opened on the lands, the subject matter of the application, in 1973 and that same

operated at varying degrees of intensity up until 2013. It would further appear that pigs were reintroduced to the site in or around May 2020 (*as per information submitted by Peter Thomson Planning Solutions, under cover letter, dated 30th March 2021*).

24. It would appear (*in the absence of any evidence to the contrary*) the current owner of the site only acquired same in or around 2020 and had no previous interest in same prior to this point.

25. As is apparent from the foregoing and in the absence of any objective evidence to the contrary, it would appear the period of non-use of the site as a piggery is in or around seven years. Having regard to the case law discussed previously herein, in circumstances where the use of the site as a piggery had ceased and remained unused for a considerable period of time, and in the absence of any objective evidence of an evinced intention to resume the use since the cessation of operation in 2013 by the owner (*discussed further hereinafter*), a proper inference that may be drawn is that the former use had been abandoned. In this regard, as set out previously herein, in *Hartley*, as quoted in *Dublin County Council v Tallaght Block Co. Ltd* [1982] ILRM 469, it was noted:

“Where a previous use of land had been not merely suspended for a temporary and determined period but had ceased for a considerable time with no evinced intention of resuming it at any particular time, the Tribunal of fact was entitled to find that the previous use had been abandoned, so that when it was resumed the resumption constituted a material change of use.”

[Emphasis Added]

Regard should also be had to the case law, quoted previously herein, wherein a period of non-use (*of less than seven years*) coupled with an absence of any objective evidence of an evinced intention to resume the use has been considered as objective evidence of abandonment (see, for example, *Cork County Council v Artfert Quarries Ltd* (Unreported, High Court, Murphy J., 2 December 1982) wherein the period of non-use was four years and see also *Dublin Corporation v Lowe & Signways* (Unreported, High Court, Morris P., February 4, 2000)).

26. It is noteworthy that there is no evidence presented to suggest that the cessation of the use as a piggery in 2013 was a temporary measure or merely a suspension of the said use. The objective evidence, as detailed and discussed hereinafter, would appear to indicate that the intention of the owner in or around 2013 was to permanently cease the use of the land as a piggery. The evidence detailed herein, in the absence of any evidence to the contrary, suggests (i) that the use of the site as a piggery was permanently ceased in 2013; and (ii) that the owners had no intention to resume the said use.

(b) The physical condition of the building(s)/site(s)

27. As set out in the Section 5 Application documentation and the additional information from Mr. Timmy Brett, post-2013, the site and buildings thereon fell into a state of considerable disrepair and remained unoccupied and unkept for the said seven-year period of non-use. The objective evidence suggests that the site was not maintained at all over the said period of non-use and was not maintained in a manner consistent with an intention to resume the use of the site as a piggery.

28. As set out in the Section 5 Application documentation and in the absence of any objective evidence to the contrary, the evidence indicates that following the closing of the piggery in or around 2013, the buildings were left unoccupied, damaged and fell into a state of considerable disrepair. In this regard, it is noted that the evidence indicates that in 2014, following Storm Darwin, there was extensive damage to the site and, notably, two trees were felled across the entrance to the piggery which remained there until the site was acquired in 2020 (*as per information submitted by Peter Thomson Planning Solutions, under cover letter, dated 30th March 2021*). In the intervening six-year period, from 2014 until 2020, no attempt was made to address the damage to the site caused by the storm, to re-establish access to the site (*which remained impeded because of the storm*), or to seek to occupy the site. In this regard, the objective evidence suggests that the site was not maintained at all over the said period of non-use

and was not maintained in a manner consistent with an intention to resume the use of the site as a piggery.

29. The additional photographs of the subject site (3 no.) provided by Querist demonstrate “*real evidence*” of the poor, unkept condition of same and show the significant level of disrepair of the building(s) which had previously comprised the piggery site. A reasonable inference to draw from the condition of the building(s), as depicted in the said photographs, suggests (i) that the use of the site as a piggery was permanently ceased in 2013; and (ii) that the owners had no intention to resume the said use. The aforesaid real evidence is not consistent with an intention to resume the use of the site as a piggery.
30. It is further noted that, as indicated by Mr. Timmy Brett (*in his additional statement*) who was the last worker in the piggery when it closed in 2013, upon the closure of same, any equipment relating to the piggery and the operation of same which was physically capable of being removed from the site was so removed. In this regard, it is noted that Mr Brett indicated that the equipment that was so removed in 2013 included, *inter alia*, the computerised feeding system (i.e., feed augers, feeders, probes, computer etc.); feed troughs; and other internal fittings of pig houses. Mr Brett understands that most of the equipment was moved to other piggeries in Toomevara and Mitchelstown which had association with the then-owner (*by way of analogy, in support of an assertion that such actions are indicative of abandonment, see Dublin Corporation v Lowe & Signways (Unreported, High Court, Morris P., February 4, 2000) and Kildare County Council v Goode [1999] 2 I.R. 495, wherein it was held that “[a]bandonment is the objective sign of a decision not to continue further with the development...”*). An objective interpretation of this evidence, in the absence of evidence to the contrary, suggests an intention on the part of the owner to permanently cease the use of the site as a piggery. The aforesaid evidence is not consistent with an intention to resume the use of the site as a piggery.
31. In respect of the physical condition of the site, objective evidence which may also be relevant to the issue of abandonment is provided in the Section 5

Application documentation. Same demonstrates that the site and/or part of the site was being utilised for unlawful dumping (*as per information submitted by Peter Thomson Planning Solutions, under cover letter, dated 30th March 2021*). Again, the aforesaid evidence is not consistent with an intention to resume the use of the site as a piggery.

32. It is clear from the foregoing that having regard to the physical condition of the site since 2013 and the matters aforesaid, it can be reasonably inferred that there was an intention to abandon the use of the site as a piggery (see *Kildare County Council v Goode* [1999] 2 I.R. 495). The evidence detailed herein, in the absence of any evidence to the contrary, suggests (i) that the use of the site as a piggery was permanently ceased in 2013; and (ii) that the owners had no intention to resume the said use.

(c) Whether there had been any intervening use.

33. It is noted that there is no evidence presented to suggest that the use of the site as a piggery continued beyond 2013. Having regard to the issues detailed above and on the basis of the objective evidence provided, and in the absence of any evidence to the contrary, it would appear that the site remained in a disused state from 2013 until 2020. The site was not maintained, nor was it occupied or accessible during the period of non-use. The site appears, on the basis of the objective evidence presented, to have been used as an unlawful dumping ground for a period of time between 2013 and 2020.

(d) The owner's intentions and objective evidence regarding the owner's intentions.

34. As detailed above, one of the factors that falls to be considered is the objective intention of the owner in relation to the use. In this regard, as quoted previously herein, in *Hartley*, as quoted in *Dublin County Council v Tallaght Block Co. Ltd* [1982] ILRM 469, it was found that:

“Where a previous use of land had been not merely suspended for a temporary and determined period but had ceased for a considerable time with no evinced intention of resuming it at any particular time, the Tribunal of fact was entitled to find that the previous use had been abandoned, so that when it was resumed the resumption constituted a material change of use.”

[Emphasis Added]

35. Furthermore, as noted by the Supreme Court in *Kildare County Council v Goode* [1999] 2 IR 495, whether there is an intention to abandon is an objective test to be inferred from the conduct of the user rather than his/her subjective state of mind – “*Abandonment is the objective sign of a decision not to continue further with the development...*”.
36. The ownership details of the land/site are set out at Part 2 of Folio 50641F and the details of Burdens and Notices of Burdens on the Folio for the years comprising 2008, 2011, 2012, 2014, 2016, 2017, and 2019 are set out at Part 3 of same. The owner of the land, by reference to matters set out previously herein, from 2013 until 2020, took no action from which one might objectively infer that there was any intention to ever operate same again as a piggery.
37. As detailed in the Section 5 Application documentation, the objective evidence (*discussed previously herein*) demonstrates that the use of the land as a piggery was ceased and abandoned in 2013. By reference to the case law discussed previously herein, the objective evidence available indicates that the use of the piggery had ceased for a considerable amount of time and no evidence has been presented of an evinced intention of resuming it at any particular time by the owner (see *Dublin County Council v Tallaght Block Co. Ltd* [1982] ILRM 469). The objective evidence presented in the Section 5 Application, along with the additional information available, does not demonstrate an intention to resume the use of the piggery at any point prior to 2020, nor does it indicate or provide an explanation for the cessation of the piggery which would suggest anything other than it had been ceased and abandoned permanently since 2013. The evidence detailed herein, in the absence of any evidence to the contrary, suggests (i) that the use of the site as a piggery was permanently ceased in 2013; and (ii) that the owner had no intention to resume the said use.

Conclusion and Summary of Abandonment

38. As noted previously herein and as detailed above, certain matters fall for consideration when determining whether a particular use of land has been abandoned. The case law detailed previously herein contemplates that these factors should be considered through an objective lens. It would appear the test to be applied imports the assessment of the hypothetical reasonable person. It is conventionally accepted, in a range of legal contexts, that this hypothetical person makes its assessment on a well-informed basis. It is submitted that in applying the test to the circumstances detailed herein, the objective evidence demonstrates that the use of the land as a piggery was abandoned in 2013. Factors relevant to this conclusion include the following, *inter alia*:

- (i) The piggery ceased operations in 2013 and there was a period of non-use of seven years.
- (ii) In 2013, the piggery ceased operations. All pigs were removed from the lands and any equipment required to operate the piggery, which was physically capable of being removed from the site, was so removed. This remained the case for the seven-year period prior to 2020, under the previous owner, and there is no evidence to suggest that the owner had any intention to maintain the site in a manner consistent with an intention to resume the use of the site as a piggery. The evidence detailed herein, in the absence of any evidence to the contrary, suggests (i) that the use of the site as a piggery was permanently ceased in 2013; and (ii) that the owners had no intention to resume the said use.
- (iii) The buildings and site remained unoccupied for seven years from 2013 to 2020 under its previous ownership and there is no evidence to suggest that the owner had any intention to maintain the site in a manner consistent with an intention to resume the use of the site as a piggery. The evidence detailed herein, in the absence of any evidence to the contrary, suggests (i) that the use of the site as a piggery was permanently ceased in 2013; and (ii) that the owners had no intention to resume the said use.

- (iv) The buildings and the site were damaged and fell into a state of considerable disrepair following a storm in 2014 and no steps were taken thereafter to repair the site or maintain and/or occupy same by the then-owner. This remained the case for the six-year period prior to 2020, under the previous ownership, and there is no evidence to suggest that the owner had any intention to maintain the site in a manner consistent with an intention to resume the use of the site as a piggery. The evidence detailed herein, in the absence of any evidence to the contrary, suggests (i) that the use of the site as a piggery was permanently ceased in 2013; and (ii) that the owners had no intention to resume the said use.

- (v) The building and the site were not accessible after 2014 due to damage caused by the storm. This remained the case for the six-year period prior to 2020, under the previous ownership, and there is no evidence to suggest that the owner had any intention to maintain the site in a manner consistent with an intention to resume the use of the site as a piggery. The evidence detailed herein, in the absence of any evidence to the contrary, suggests (i) that the use of the site as a piggery was permanently ceased in 2013; and (ii) that the owners had no intention to resume the said use.

- (vi) The site was used for a period as an unlawful dumping ground and there were no attempts made by the then-owner to address same and/or otherwise maintain the site in a manner consistent with an intention to resume the use of the site as a piggery. The evidence detailed herein, in the absence of any evidence to the contrary, suggests (i) that the use of the site as a piggery was permanently ceased in 2013; and (ii) that the owners had no intention to resume the said use.

39. An objective interpretation of the evidence presented (*detailed herein and including the Section 5 Application documentation*) suggests (i) that the use of the site as a piggery was permanently ceased in 2013; and (ii) that the owners had no intention to resume the said use. It is reasonable, having regard to all the factual matters detailed herein, to infer that the owner of the site had no intention to resume the use of same as a piggery and that the use had ceased on a permanent basis in 2013.

40. Whilst ultimately a matter for the Council, it would appear that from an objective interpretation of the evidence presented in the Section 5 Application

and the additional evidence referred to herein, it is open to the Council to conclude that, in the absence of any controverting evidence, the use of the site as a piggery was abandoned in 2013.

Nothing further occurs.

Christopher Hughes BL

17th June 2021

Supporting Documentation

: Additional Statement from Timmy Brett

: Photographs depicting physical condition of
piggery housing buildings

Gurteen,
Mullinahone,
Co. Tipperary.

2nd June 2021

To whom it may concern,

I wish to confirm that I was the last worker at the Piggery in Killaghy, Mullinahone when it closed in 2013. Upon the closure of the piggery, equipment related to the operation of the piggery was removed from site. This would have included computerised feeding system i.e. feed augers, feeders, probes, computer etc..

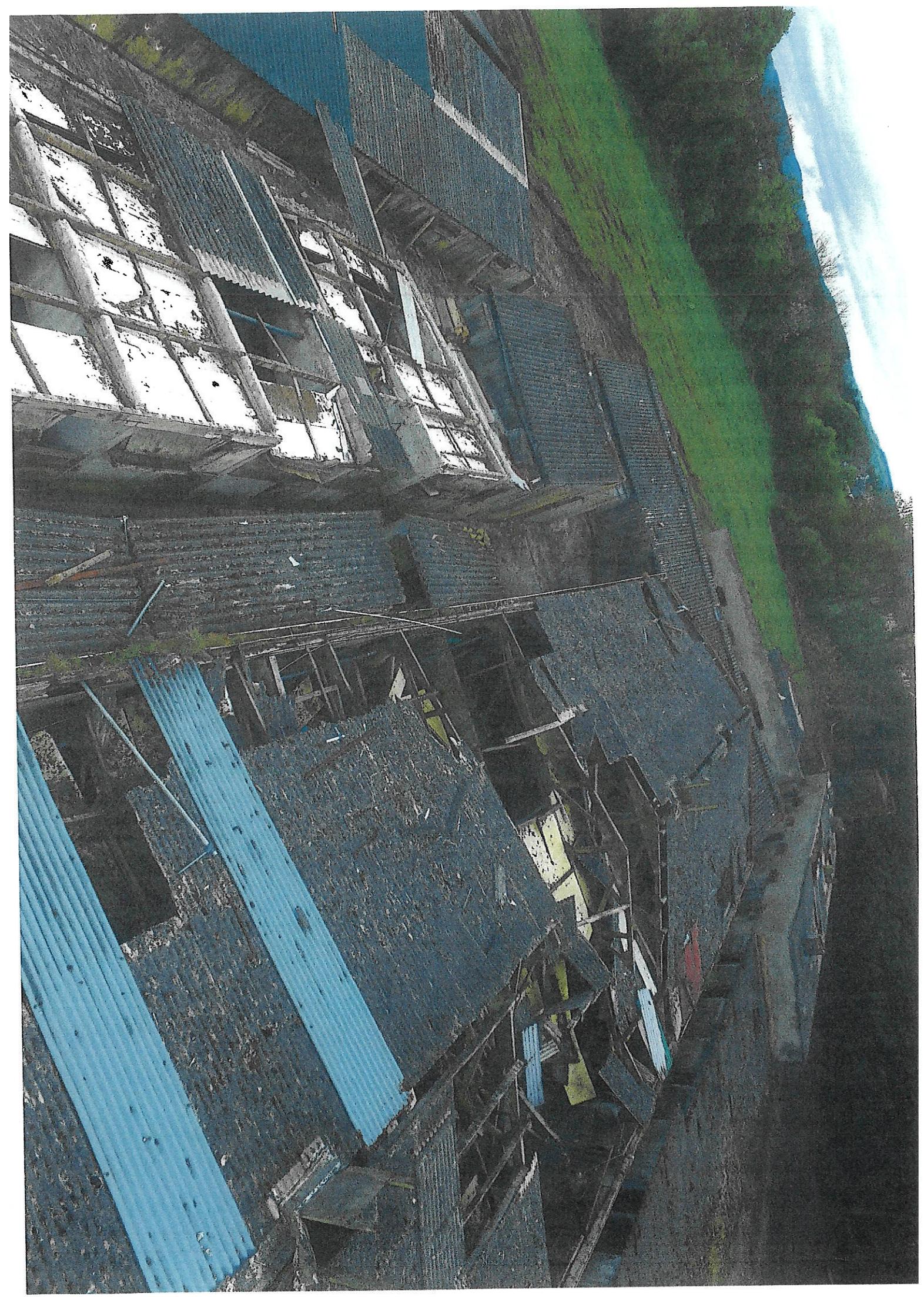
Other equipment including feed troughs, crates and other internal fittings of pig houses were also removed. It was my understanding that most of this equipment was moved to piggeries in Toomevara and Mitchelstown with which the then owner had association.

Yours sincerely,

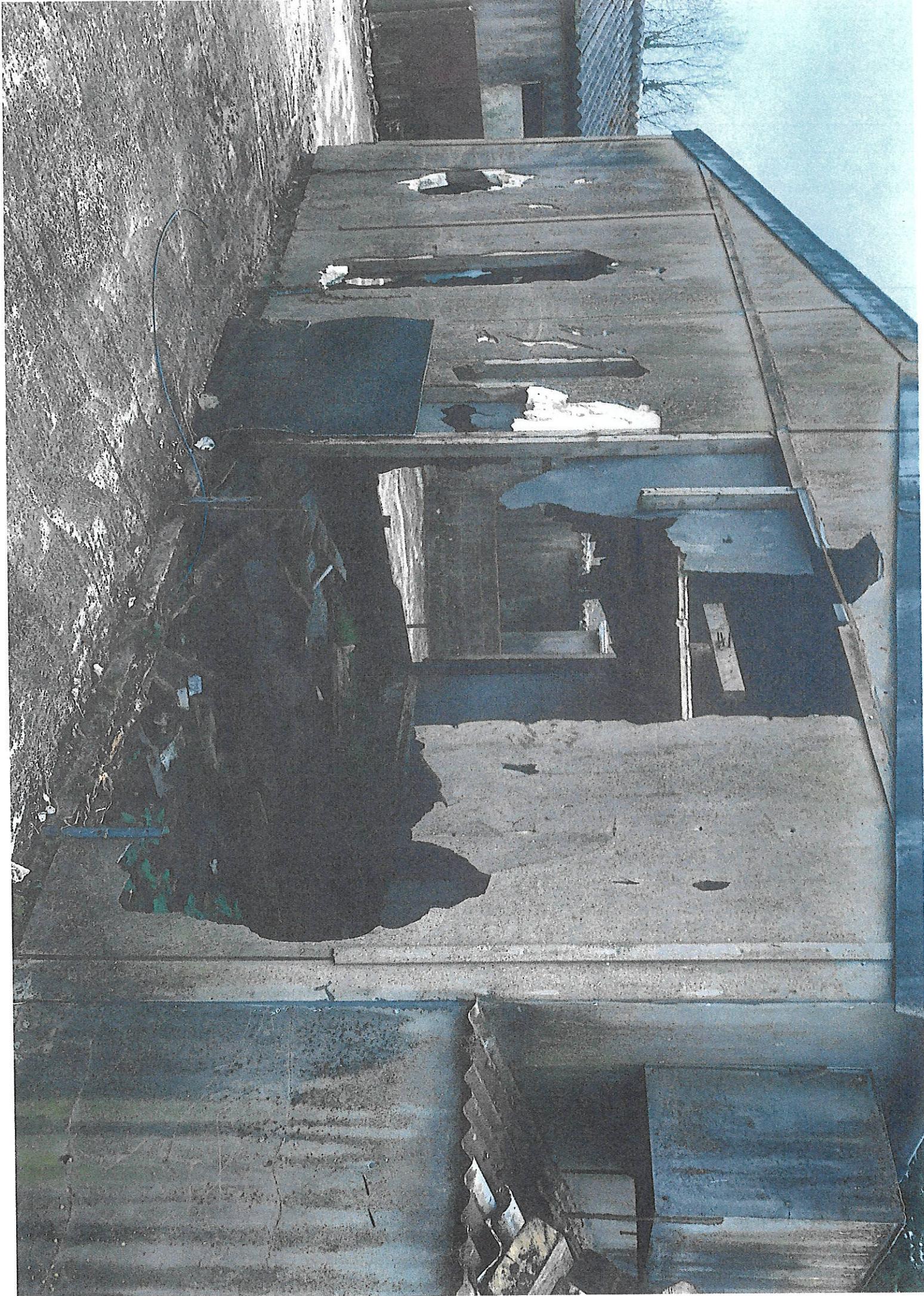
A handwritten signature in black ink, appearing to read 'Timmy Brett', written over a horizontal line.

Timmy Brett.











Attachment 5

DM

**DAVID MULCAHY
PLANNING CONSULTANTS LTD**

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Company No: 493 133 Directors: D. Mulcahy & M. Mulcahy

Planning Department
Tipperary County Council,
Civic Offices
Clonmel
Co. Tipperary

1 - JUL 2021

30th June 2021

**Re: Response to Section 5 application by Mullinahone Piggery Action Group
Ref S5/21/35**

Dear Sir/Madam,

We act on behalf of **Mr. Jim Foran** in responding to the letter from the Council dated 29th April 2021 concerning the above matter.

We wish to highlight that we fully concur with the declaration issued by the Council in July 1982 that the structure in question was exempted development under Class 7 of the 1977 Planning and Development Regulations. We agree with the Council that the central passageway should have been excluded from calculations given it does not form part of the floor area.

We further refer the Council to *Narconon Trust v An Bord Pleanála* [2020] IEHC 25 dated 24 January 2020 wherein the High Court ruled that that An Bord Pleanála was not allowed deal with subsequent section 5 referrals where there is a prior, valid unappealed Declaration made by a local planning authority in accordance with a separate reference, if the relevant planning facts or circumstances have not changed

between the issuing of the local authority's Declaration and the subsequent referral. We submit to the Council that the Council have already made a declaration in terms of the relevant building and the circumstances have not changed since i.e. the building is still being used for the housing of pigs. Therefore, the Section 5 application taken by the Action Group cannot seek to reopen a decision that the Council have already made a declaration on. We seek for the Council to dismiss the Section 5 application on this basis.

We wish to also address the following:

Abandonment of Farm

This is incorrect. Please refer to the letter attached from _____ which clearly demonstrates why the farm was not operational and that there was never any intention to abandon the farm. The buildings were still in working order when Mr. Foran purchased the farm in 2020 and this was the very purpose why he acquired the buildings. Only minor refurbishment works were required in order to make them operational.

Timeline

The report submitted with the application opens with a statement that an existing Piggery opened in 1973. With respect, this statement does not make sense - how can an existing piggery open?

Time line of the farm development

The evidence provided by Mr. Mockler and Mr. Brett is strongly contested by our client who considers it to be incorrect and furthermore, seriously questions the credibility of these two persons and their motives.

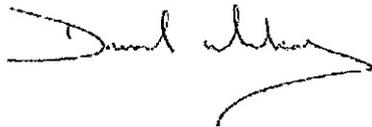
Please refer to an invoice enclosed for a Piggy Parlour building that was purchased from IDS Ltd in 1991, but which the Section 5 application submitted to the Council claims was incorrectly built in 1985.

Invoice attached for in 1991. Map attached shows the position of the building on the farm.

In view of the above we seek for the Council to dismiss the Section 5 application as there is already a Section 5 declaration relating to the key elements of the development. In the event that the Council continue to adjudicate on the Section application we invite the Council to agree that the 1977 and 1982 declarations and fully valid and continue to be relied upon. We also seek for the Council to dismiss any allegations about abandonment of the farm.

Yours sincerely,

Signed:



David Mulcahy

BA (Mod. Natural Sciences), MRUP, MSc. Urban Design, MIPI, MRTPI

David Mulcahy Planning Consultants Ltd

CHARTERED PLANNING CONSULTANTS

Enclosed:

1. Letter from _____, which clearly demonstrates why the farm was not operational and that there was never any intention to abandon the farm
2. Invoice attached for a Piggery Parlour building that was purchased from IDS Ltd in 1991.
3. Map showing the location of the Piggery Parlour on the farm.

1. Letter from [redacted] which clearly demonstrates why the farm was not operational and that there was never any intention to abandon the farm

[redacted]
[redacted]
[redacted]

14 June 2021

To follow up your concern,

This is to confirm that the Pig Farm at Killaghy, Mullinahone, Thurles, Co. Tipperary was NEVER abandoned.

In mid 2013, due to a well publicised Blue Ear (PRAS) outbreak at Heritage Genetics and the subsequent outbreak of Blue Ear at one of our breeding farms, we were left with no option but to do a Depopulation / Repopulation of the Breeding Unit.

As a result, there were no weaner pigs available for the farm at Mullinahone. This situation should have lasted between 9 and 12 months, but due to unforeseen circumstances, when the depopulation was completed, we were not in a position to carry out a repopulation. This meant that there were no pigs available for Mullinahone at that time.

It was always our intention to repopulate the farm at Mullinahone, however, after exploring all our options in 2019, we decided to sell.

If you have any further queries, please do not hesitate to contact me at 086 8159274

Yours Sincerely

[redacted]

2. Invoice attached for a Piggery Parlour building that was purchased from IDS Ltd in 1991.

Irish Dairy Services (Portlaoise) Ltd.

CLIENT _____ **Portlaoise County Laois Ireland**
Telephone 400021 21224/22081 Fax 100021 20773
VAT No. 5027 7200U **No 2451**

 _____
_____ **Quotation**
_____ **Order**

Telephone _____ **Date** _____
_____ **Date Required** _____

Qty	Description	
1	16 x 16' Piggery Parlour classics For buying classics First worth (b) P	

3. Map showing the location of the Piggery Parlour on the farm.



Adapted photo from the Section 5 report to show dates of building referred in the section 5 application.

Attachment 6

TIPPERARY COUNTY COUNCIL

Application for Declaration under Section 5

Planning & Development Act 2000, as amended
Planning & Development Regulations 2001, as amended

Planning Reference: S5/21/35

- Applicant:** Mullinahone Piggery Action Group
- Development Address:** Killaghy, Mullinahone, Co. Tipperary
- Proposed Development:**
- 1 Whether carrying out of repairs in 2020 to an existing unoccupied piggery building constructed in 1982 and it's re use for housing pigs is development and exempted development.
 - 2 Whether the re-opening of the pig farm in 2020 last used as a pig farm in 2013 is development and exempted development.
 - 3 Whether the removal of the roof covering and associated structural supports and ventilation stacks so as to reinstate an open-through bridge passageway between the adjoining sheds and undertaken to alter the sheds such that the enclosed internal floor area of same do not exceed 200 sq m individually is development and exempted development.
-

1. GENERAL

A request was made for a declaration under Section 5 of the Planning and Development Act 2000, as amended by Mullinahone Piggery Action Group as to whether or not the following constitutes development and if so, whether same constitutes exempted development:

1 Whether carrying out of repairs in 2020 to an existing unoccupied piggery building constructed in 1982 and it's re use for housing pigs is development and exempted development.

2 Whether the re-opening of the pig farm in 2020 last used as a pig farm in 2013 is development and exempted development.

3 Whether the removal of the roof covering and associated structural supports and ventilation stacks so as to reinstate an open-through bridge passageway between the adjoining sheds and undertaken to alter the sheds such that the enclosed internal floor area of same do not exceed 200 sq m individually is development and exempted development.

The application is accompanied by:

- Section 5 Declaration Application form.
- Supporting documentation prepared by Peter Thomson Planning Solutions that sets out the background and timeline to development on the site and provides details of questions raised in the Declaration.

- Supporting documentation containing:
 - A copy of an exemption that issued from South Tipperary County Council dated 1973 relating to the erection of a piggery.
 - A signed letter from Michael Quirke (previous owner of the piggery) identifying the buildings on the site at the time the site was sold in 1980 and identifying that other buildings were sold after 1980.
 - Conveyancing documentation regarding the sale of the property in 1980 from Michael and Bridget Quirke to Liam O'Connor.
 - A copy of an exemption that issued from South Tipperary County Council dated 1982 to Liam O'Connor relating to an extension to the rear of an existing piggery.
 - A copy of a drawing for a piggery building prepared by NRGE in 2021 and included with PI Ref 21/266.
 - Copies of correspondence from Eamon Lonergan, TCC to James Ryan regarding Enforcement Notice TUD-20-0247.
 - Aerial photographs showing dimensions of open area between roof covering in shed.
 - A letter and aerial photos from Thomas Mockler who worked at the piggery from 1980-1988 outlining buildings that existed and were constructed during this time.
 - A copy of part of the Environmental Report submitted with PI Ref 21/266.
 - A letter and aerial photos from Timmy Brett who worked at the piggery from 1986-2013 outlining buildings that were constructed during his time of employment at the site.
 - A letter from Gerry O'Meara and Ann Marie O'Meara outlining their chronology of the development at the site.
 - A copy of land registry Folio 50641F.

2. FURTHER INFORMATION

i) Further information request to applicants:

A further information request issued to the applicants on 29/4/2021 where the following question was posed:

1. The Planning Authority note that abandonment is not defined under planning legislation. Under the case of Dublin County Council v Tallaght Block OC. Ltd (1982) the test case for abandonment considered 2 issues, the cessation of use (as distinct from suspension of use) and the intention not to resume the use. The Planning Authority consider both cases must be satisfied in order for abandonment to be considered. You are invited to respond with reference to the subject site.

A reply was received on 22/6/2021. The reply contains a legal opinion from Christopher Hughes BL and supporting information consisting of additional information from Mr. Timmy Brett regarding the movement of equipment from the site in 2014 and additional photographs showing the condition of buildings on the site.

The legal opinion sets out cases where the matter of abandonment was considered in legal judgements and discusses the factors behind the consideration of what constituted abandonment. The opinion considers the following criteria are relevant in determining whether a use had abandoned and considers same must be viewed objectively:

- Period of non-use.
- Physical condition of buildings/site.
- Whether there had been any intervening use.
- Owners intentions and objective evidence regarding the owners intentions.

The opinion also outlines that recommencement of a use after abandonment cannot rely on previous timelines/ statute barring.

The opinion considers as follows regarding the piggery development:

- There was a period of non-use of the piggery of around 7 years from 2013 to 2020 when the current owner acquired the site.
No evidence has been presented to suggest the cessation of use of the piggery in 2013 was a temporary measure.
- The objective evidence was that the intention of the owner in or around 2013 was to permanently cease the use of the piggery.
- The site /buildings fell into significant disrepair and remained unoccupied and unkept for the 7 year period of non-use.
- Objective evidence suggests site was not maintained over the period of non-use and was not maintained in a manner consistent with an intention to resume the use. No effort was made to address damage made to the site by Storm Darwin (2014). Photographs included illustrate condition of the piggery during period of non-use.
- Statement from Mr Timmy Brett confirms that equipment relating to the operation of the piggery that was physically capable of being removed from the site was removed (feed system, feed troughs, internal fittings). This is an intention to permanently cease the use of the site as a piggery and is not consistent with an intention to resume the use of a piggery.
- The site/part of the site was utilised for unlawful dumping between 2013-2020.
- The owner of the land during the period of non-use took no action which might infer an intention to operate the site as a piggery at any point prior to 2020. The objective evidence does not provide an explanation for the cessation of the piggery which would suggest anything other than it had ceased and abandoned.

ii) Further information request to landowner:

The following further information requested issued to the site owner Mr Jim Foran on 29/4/2021:

Please note that a Section 5 declaration request was received by the Planning Authority on 1/4/2021 under Reference Number S5/21/35 and accompanied by supporting documentation which relates to lands in your ownership and development undertaken by you at Kilaghy, Mullinahone, Co. Tipperary.

You are requested to submit, for the consideration of the Planning Authority, the following information:

- i) Details outlining the history of development on the site with dates at which the individual building phases were undertaken, the particular buildings to be shown on a map of the site and details of the relevant planning consent / exemption provided. Where there is no record of a planning exemption this to be stated.
- ii) Details outlining the development that was constructed in 1982 with a drawing illustrating the development constructed at this time. Any subsequent alterations to this building to be illustrated on a separate drawing with dates of alterations provided.
- iii) Details of activity / use at the site between 2013-2020 and commentary on whether you consider the use as a pig farm to have been abandoned. In this regard under the case of Dublin County Council v Tallaght Block OC. Ltd (1982) the test case for abandonment considered 2 issues, the cessation of use (as distinct from suspension of use) and the intention not to resume the use. The Planning Authority consider both cases must be satisfied in order for abandonment to be considered. You are invited to respond with reference to the subject site.

A reply was received on 1/7/2021 from David Mulcahy Planning Consultants for Jim Foran. The following points are made in the reply:

- Concur with the Declaration issued by the Council in 1982 that the structure was exempt development under Class 7 of the 1977 Planning and Development Regulations.
- Agree that central passageway should be excluded from calculations as it does not form part of the floor area.
- Refer to Narconon Trust V An Bord Pleanala 2020 IEHC 25 where the High Court ruled that An Bord Pleanala was not allowed to deal with subsequent section 5 referrals where there is a prior, valid unappealed Declaration made by local planning authority with a separate reference and the relevant planning facts or circumstances have not changed between issuing the declaration and subsequent referral. Council have already made a declaration in terms of the relevant building and the circumstances have not changed.
- The Section 5 taken by the action group cannot seek to reopen a decision the Council has already made.
- Application to be dismissed on the above basis.
- Abandonment is incorrect. The buildings were in working order when Mr Foran purchased the farm in 2020 and only minor refurbishment works were required to make the buildings operational.
- Evidence provided by Mr Mockler and Mr Brett is contested as it is considered incorrect. (Invoice included in reply for a parlour purchased in 1991 but which the applicants claim was built in 1985, map showing this building included).
- Request that Section 5 application be dismissed. If Council continue to adjudicate on the application request we invite Council to agree that the Declarations issued in 1972 and 1982 are fully valid and continue to be relied on.

The reply includes a supporting letter from Rory and Mona O'Brien (previous farm owners). The letter confirms reason behind why the farm was not populated when they owned same and confirmed it was never their intention to abandon the farm.

2. STATUTORY PROVISIONS

The following statutory provisions are relevant to this referral case;

Section 3 (1) of the Planning and Development Act 2000, as amended, states as follows:-

"In this Act, 'development' means, except where the context otherwise requires, the carrying out of works on, in, over or under land or the making of any material change in the use of any structures or other land."

Section 2(1) of the Planning and Development Act, 2000, as amended, defines "works" as:-

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

Section 4(1) of the Planning and Development Act, 2000, as amended states:

- 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;*

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

Section 163 of the Planning and Development Act 2000, as amended states:

Notwithstanding Part III, permission shall not be required in respect of development required by a notice under section 154 or an order under section 160

The Planning and Development Act 2000, as amended contains the following definitions:

“unauthorised development” means, in relation to land, the carrying out of any unauthorised works (including the construction, erection or making of any unauthorised structure) or the making of any unauthorised use;

“unauthorised structure” means a structure other than—

- (a) a structure which was in existence on 1 October 1964, or*
- (b) a structure, the construction, erection or making of which was the subject of a permission for development granted under Part IV of the Act of 1963 or deemed to be such under section 92 of that Act F21 [or under section 34, 37G or 37N of this Act], being a permission which has not been revoked, or which exists as a result of the carrying out of exempted development (within the meaning of section 4 of the Act of 1963 or section 4 of this Act);*

“unauthorised use” means, in relation to land, use commenced on or after 1 October 1964, being a use which is a material change in use of any structure or other land and being development other than—

- (a) exempted development (within the meaning of section 4 of the Act of 1963 or section 4 of this Act), or*
- (b) development which is the subject of a permission granted under Part IV of the Act of 1963 F21 [or under section 34, 37G or 37N of this Act], being a permission which has not been revoked, and which is carried out in compliance with that permission or any condition to which that permission is subject;*

“unauthorised works” means any works on, in, over or under land commenced on or after 1 October 1964, being development other than—

- (a) exempted development (within the meaning of section 4 of the Act of 1963 or section 4 of this Act), or*
- (b) development which is the subject of a permission granted under Part IV of the Act of 1963 F21 [or under section 34, 37G or 37N of this Act], being a permission which has not been revoked, and which is carried out in compliance with that permission or any condition to which that permission is subject;*

Article 6 of the Planning and Development Regulations 2001, as amended states:

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

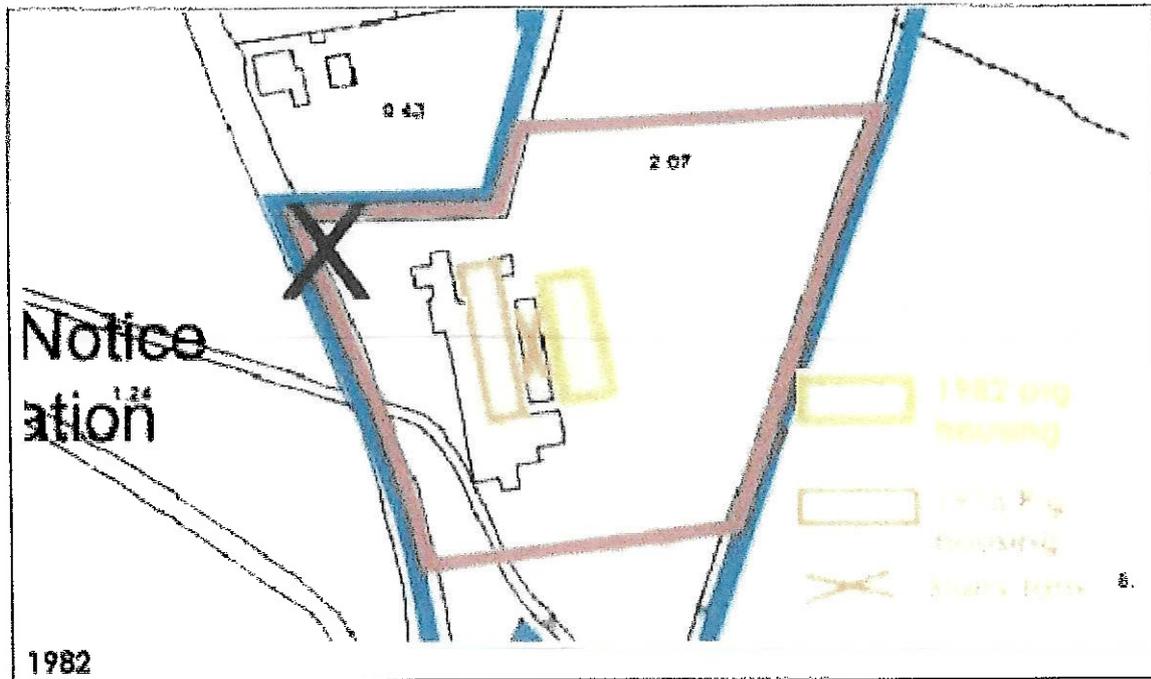


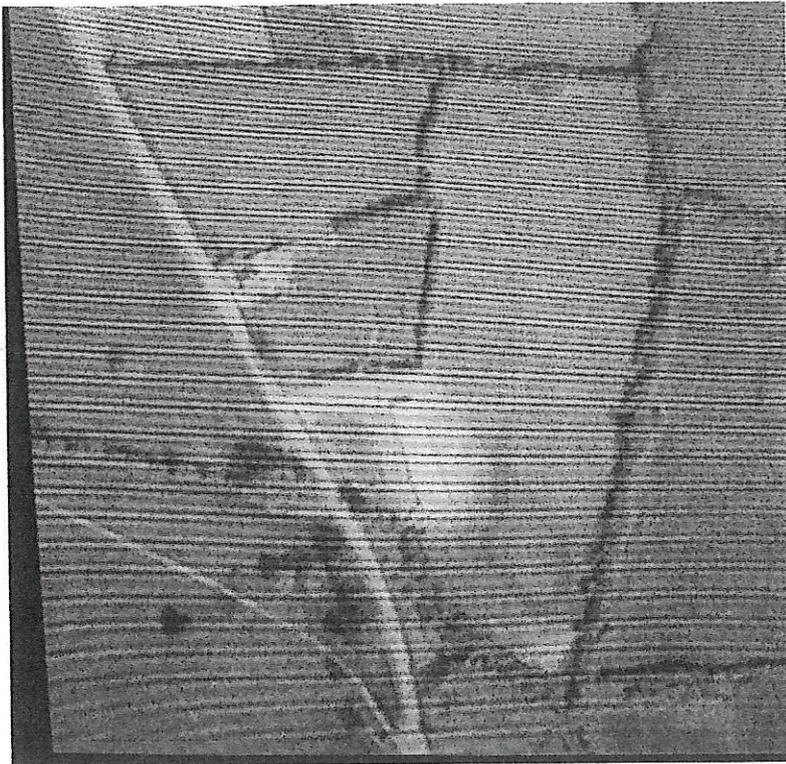
Fig 1: Showing shed repaired and restocked in 2020 outlined in yellow.

Details have been provided by the complainants under TUD-20-047 regarding the history and chronology of development on the site supported with letters of confirmation from previous employees of the piggery enterprise.

Details have also been received from the site owner / operator regarding the history and chronology of development on the site with supporting letters of confirmation from a previous site owner. The details received regarding the history and chronology of development on the site show conflicting information regarding the timing of development on the site outside the sheds developed in 1973 and 1982. The complainants under TUD-20-047 state the shed developed in 1982 did not meet planning exemptions due to its size and due to absence of written consent from the landowner to the north. The site owner/operator state the shed met with planning exemptions as 2 separate pig houses were developed separated by a central through bridge, the individual pig houses were both under 200 sq m in floor area and the central through bridge was not fully enclosed under roof. The site owner/operator provided a letter from the previous site owner outlining the shed developed in 1982 was developed with verbal agreement from the adjoining landowner in line with the correspondence from South Tipperary County Council that issued in 1982.

There are limited available independent records to draw on regarding the history and chronology of the development on the site. The following OS aerial photograph of the site dating from 16/4/1973 show a single building on site at this point in time. It appears that this building was developed pursuant to the planning exemption that issued regarding the site from South Tipperary County Council in 1973.

There are no planning records pertaining to the other buildings/structures development on the site i.e. the buildings/structure outside those developed in the 1970's and 1982.



Aerial image of site from 16/4/1973

1. Whether carrying out of repairs in 2020 to an existing unoccupied piggery building constructed in 1982 and it's re use for housing pigs is development and exempted development.

The subject building is that to which TUD-20-047 relates. The building was subject to works in 2020 that comprised the replacement of a former roof covering with a new roof covering, undertaking of internal repairs, alteration of the roof to cover and enclose a throughway between the buildings that house pigs and the installation of air extraction vents in the roof. The building was re-stocked with pigs at this time.

i) Is/is not Development

I consider there is sufficient evidence to show the repairs undertaken in 2020 comprised the undertaking of works as understood by Section 2 of the Planning and Development Act 2000, as amended and therefore constitutes development within the meaning of Section 3 of the Planning and Development Act 2000, as amended.

Regarding the re-use of the building to house pigs this matter relates to the issue of abandonment that is dealt with under item 2 below.

ii) Is/is not exempted Development

The evidence available to the Planning Authority under TUD-20-047 and information submitted with the Declaration show the carrying out of repairs to the existing piggery building in 2020 involved the undertaking of the following development that was not exempted development:

- The alterations to the existing piggery building where the roof was altered and extended to cover and enclose a throughway between the buildings that house pigs and the installation of air extraction vents in the roof.

2 Whether the re-opening of the pig farm in 2020 last used as a pig farm in 2013 is development and exempted development.

The question as I see it relates to whether the use of the site as a pig farm can be considered to have been abandoned following cessation of use in 2013.

With regard to this question it is important to note the following:

- Only 1 building on the site currently accommodates pigs.
- Planning records show letters of exemptions issued from South Tipperary County Council in 1972 and 1982 regarding development on the site pursuant to planning exemptions that applied at the time.

i) Is/is not Development

I consider that the re-opening of the pig farm elements that previously availed of planning exemptions issued by South Tipperary County Council in 1972 and 1982 is not development.

I note the pig farm ceased operating for a period of approx. 7 years from 2013 and fell into disrepair during this period. I note the cases highlighted in the further information regarding what is understood by “abandonment” but I do not accept that the use of the subject site / buildings on site (developed under planning exemptions) to keep pigs had abandoned. My reason for this is as follows:

- The correspondence from the previous owners (Rory and Monica O’Brien) confirm there was no intention to abandon the facility. Reasons as to why the facility was not populated is set out in this correspondence.
- The current owner/operator acquired the site with the intention to use same to keep pigs.
- There is no evidence of intervening use. I do not consider the use of the site intermittently for unlawful dumping can be considered an intervening use intended to replace the previous use.

In this regard the re-opening of the pig farm in 2020 (being that as developed under planning exemptions) is not development.

3 Whether the removal of the roof covering and associated structural supports and ventilation stacks so as to reinstate an open-through bridge passageway between the adjoining sheds and undertaken to alter the sheds such that the enclosed internal floor area of same do not exceed 200 sq m individually is development and exempted development.

The above referenced works were undertaken on foot of the Enforcement Notice that issued under TUD-20-047.

i) Is/is not Development

The carrying out of the above involved the undertaking of “works” to the building as defined under Section 2 of the Planning and Development Act 2000, as amended. The “works” are “development” as defined under Section 3 of the Planning and Development Act 2000, as amended.

ii) Is/is not exempted Development

There is no prior grant of permission for the “development” and it does not avail of a planning exemption.

Section 163 of the Planning and Development Act 2000, as amended states:

Notwithstanding Part III, permission shall not be required in respect of development required by a notice under section 154 or an order under section 160

I do not consider the carrying out of the above is development required by a notice under section 154 or required under the notice that issued under TUD-20-047.

4. Environmental Impact Assessment and Appropriate Assessment (AA)

The proposal has been screened as required for AA and it has been determined that same is not required (See screening report attached).

Environmental Impact Assessment is not required in respect of the proposals. See attached.

5. RECOMMENDATION

The following questions have arisen regarding development on lands at Killaghy, Mullinahone, Co. Tipperary

1 Whether carrying out of repairs in 2000 to an existing unoccupied piggery building constructed in 1982 and its re use for housing pigs is development and exempted development.

2 Whether the re-opening of the pig farm in 2020 last used as a pig farm in 2013 is development and exempted development.

3 Whether the removal of the roof covering and associated structural supports and ventilation stacks so as to reinstate an open-through bridge passageway between the adjoining sheds and undertaken to alter the sheds such that the enclosed internal floor area of same do not exceed 200 sq m individually is development and exempted development.

Tipperary County Council, in considering this referral, had regard particularly to -

- a) Sections 2 and 3 of the Planning and Development Act, 2000, as amended
- b) Articles 6 and 9 of the Planning and Development Regulations 2001, as amended
- c) S.I. No. 65/1977 - Local Government (Planning and Development) Regulations, 1977
- d) S.I. No. 176/1967 - Local Government (Planning and Development) Act, 1963, (Exempted Development) Regulations, 1967
- e) The information received with the Declaration application and further information received on 22/6/2021 from the applicant and on 1/7/2021 from the site owner.
- f) The information on file under TUD-20-047.

Tipperary County Council has concluded that –

1 Whether carrying out of repairs in 2020 to an existing unoccupied piggery building constructed in 1982 and its re use for housing pigs is development and exempted development.

The repairs undertaken in 2020 comprised the undertaking of “works” as understood by Section 2 of the Planning and Development Act 2000, as amended and therefore constitutes development” within the meaning of Section 3 of the Planning and Development Act 2000, as amended.

The evidence available to the Planning Authority under TUD-20-047 and information submitted with the Declaration application show the carrying out of repairs to the existing piggery building in 2020 involved the undertaking of the following development that was not exempted development:

- o The alterations to the existing piggery building where the roof was altered and extended to cover and enclose a throughway between the buildings that house pigs and the installation of air extraction vents in the roof.

2 Whether the re-opening of the pig farm in 2020 last used as a pig farm in 2013 is development and exempted development.

The Planning Authority consider the re-opening of the pig farm in 2020 (being that as developed under planning exemptions) is not development.

3 Whether the removal of the roof covering and associated structural supports and ventilation stacks so as to reinstate an open-through bridge passageway between the adjoining sheds and undertaken to alter the sheds such that the enclosed internal floor area of same do not exceed 200 sq m individually is development and exempted development.

The carrying out of the above involved the undertaking of "works" to the building as defined under Section 2 of the Planning and Development Act 2000, as amended. The "works" are "development" as defined under Section 3 of the Planning and Development Act 2000, as amended. The above is not exempted development.

Signed: Jonathan Flood
Jonathan Flood E.P., Planning
Date: 16/7/2021

Caroline Conway
Signed: Caroline Conway SEP Planning
Date: 21.07.21

EIA Pre- Screening			
Planning Reference:		S5/21/35	
Site location:		Killaghy, Mullinahone, Co. Tipperary	
Proposed Development:		<p>1 Whether carrying out of repairs in 2020 to an existing unoccupied piggery building constructed in 1982 and it's re use for housing pigs is development and exempted development.</p> <p>2 Whether the re-opening of the pig farm in 2020 last used as a pig farm in 2013 is development and exempted development.</p> <p>3 Whether the removal of the roof covering and associated structural supports and ventilation stacks so as to reinstate an open-through bridge passageway between the adjoining sheds and undertaken to alter the sheds such that the enclosed internal floor area of same do not exceed 200 sq m individually is development and exempted development.</p>	
1. Does the Development constitute an EIA Project?		YES: NO: <input checked="" type="checkbox"/>	
2. If YES, Does the development fall within a class of Development set out in Part 1 or Part 2, Schedule 5 of the Planning & Development Regulations?			
Tick		Threshold	Comment
No	<input checked="" type="checkbox"/>		
Yes		Exceeds/	EIA Required
		Is Equal To	
		No Threshold	
		Sub Threshold	EIA Screening Required (Issue letter to statutory consultees if IPC/Waste/ IED licence required)
Conclusion			
Development is not within Part 1 or Part 2, Schedule .			
No EIA/ Screening is required.			
Development is within Part 1 or Part 2 and is greater than, equal to, or there is no threshold.			
EIAR Required.			
Development is within Part 1 or Part 2 but is less than the threshold.			
EIA Screening Required.			
Name:	Jonathan Flood		Date: 16.07.21
Position	District Planner		

**HABITATS DIRECTIVE ASSESSMENT SCREENING REPORT
FOR SECTION 5 DECLARATIONS**

Planning Application Ref. No. S5/21/35

(A) DESCRIPTION OF PROJECT AND LOCAL SITE:	
Site location:	Killaghy, Mullinahone, Co. Tipperary
Proposed development:	<p>1 Whether carrying out of repairs in 2020 to an existing unoccupied piggery building constructed in 1982 and it's re use for housing pigs is development and exempted development.</p> <p>2 Whether the re-opening of the pig farm in 2020 last used as a pig farm in 2013 is development and exempted development.</p> <p>3 Whether the removal of the roof covering and associated structural supports and ventilation stacks so as to reinstate an open-through bridge passageway between the adjoining sheds and undertaken to alter the sheds such that the enclosed internal floor area of same do not exceed 200 sq m individually is development and exempted development.</p>
Is the application accompanied by EIS	No
(B) IDENTIFICATION OF THE RELEVANT NATURA 2000 SITE(S):	
Natura 2000 site(s) within 15km:	Lower River Suir SAC 002137 River Barrow and Nore SAC Yes Lower River Suir SAC
Sites within the zone of influence:	
Conservation objectives/qualifying interests of the site and the factors that contributes to the conservation value of the site: (which are taken from the Natura 2000 site synopses and, if applicable, a Conservation Management Plan: (all available at www.npws.ie) (ATTACH INFO if necessary)	<p><input type="checkbox"/> Objective: To maintain or restore the favourable conservation condition of the Annex I habitat(s) and/or the Annex II species for which the SAC has been selected: The overall aim of the Habitats Directive is to maintain or restore the favourable conservation status of habitats and species of community interest. These habitats and species are listed in the Habitats and Birds Directives and Special Areas of Conservation and Special Protection Areas are designated to afford protection to the most vulnerable of them. These two designations are collectively known as the Natura 2000 network. The maintenance of habitats and species within Natura 2000 sites at favourable conservation condition will contribute to the overall maintenance of favourable conservation status of those habitats and species at a national level.</p> <p>Start 002137</p> <p><input type="checkbox"/> [1029] Margaritiferamargaritifera <input type="checkbox"/> [1092] Austropotamobiuspallipes <input type="checkbox"/> [1095] Petromyzon marinus <input type="checkbox"/> [1096] Lampetraplaneri <input type="checkbox"/> [1099] Lampetrafluviatilis <input type="checkbox"/> [1103] Alosafallax <input type="checkbox"/> [1106] Salmo salar (only in fresh water) <input type="checkbox"/> [1330] Atlantic salt meadows (Glaucopuccinellietaliamaritimae)</p>

1.3	Does the proposed project involve development of drainage systems? If yes, could this cause drying out of wetland or woodland habitats within the SAC?	No
Consider the potential for impacts on water quality within the SAC <i>Consider all proposed developments within the catchment of the SAC</i>		Y/N and Comment
2.1	Are there any rivers, streams or drains connecting the proposed development site and the SAC? If yes, consider whether there is potential for construction related impacts on water quality.	Yes. Potential for impacts on waters in this stream is negligible.
2.2	Would the proposed project result in surface water or other discharges to rivers, streams or drains directly connected to the SAC? If yes, consider whether the discharges could give rise to increased eutrophication or other pollution risk within the cSAC. Consider whether increased surface water discharge could give rise to increased risk of downstream storm water surges.	No
2.3	Would the proposed project require an industrial waste water discharge license? If yes, consider the potential impacts of the discharge on water quality in the SAC.	No
2.4	Is the proposed project located within a flood zone? If yes, consider whether there is potential for construction or operational related impacts on water quality in the SAC; consider whether the proposed project increases flood risk elsewhere in the catchment and particularly the cSAC; or increases the risk of stormwater surges downstream.	No
2.5	Are the proposals for waste water treatment in compliance with EPA requirements?	N/A
2.6	Could the proposed project contribute to cumulative negative impacts on water quality? Consider the current status of the freshwater system (see www.wfdireland.ie).	No
2.7	Would the proposed project involve dredging (construction or ongoing maintenance related)?	No
Consider potential for impact on species		Y/N and Comment
<i>Freshwater Pearl Mussel</i>		
3.1	Protection of this species will be achieved by the protection of water quality (see section 2 above), by the protection of river habitats (see section 1 above), and by the maintenance of free passage for fish.	Impacts on this species not anticipated
<i>Freshwater Crayfish</i>		
3.2	Protection of this species will be achieved by the protection of river habitats (see section 1 above).	Impacts on this species not anticipated
<i>Fish species including Salmon, Lamprey spp. and Twaite Shad</i>		
3.3	Protection of these species will be achieved by the protection of water quality (see section 2 above), by the protection of river habitats (see section 1 above), and by the maintenance of free passage for fish.	Impacts on this species not anticipated
<i>Otter</i>		
3.4	Would the proposed project result in any interference with river banks within the SAC?	Impacts on this species not anticipated
3.5	Would the proposed project result in increased levels of disturbance to the habitat of the Otter?	Impacts on this species not anticipated

D) NPWS ADVICE:	
Summary of advice received from NPWS:	None

(E) SCREENING CONCLUSION:
Screening concludes that : (Tick [✓] the appropriate box A, B or C)

A) Appropriate Assessment is not required because the project is directly connected with or necessary to the nature conservation management of the site.		
B) No potential for significant effects therefore Appropriate Assessment is not required.		√
C) Significant effects are certain, likely or uncertain. (In this situation seek a Natura Impact Statement from the applicant or reject the project. Reject if too potentially damaging or inappropriate.)		
Name:	Jonathan Flood	
Position:	District Planner	Date: 16/7/2021

Attachment 7



Comhairle Contae Thiobraid Árann
Tipperary County Council

Comhairle Contae
Thiobraid Árann,
Oifigi Cathartha,
Cluain Meala,
Co. Thiobraid Árann
Tipperary County Council,
Civic Offices, Clonmel,
Co. Tipperary

Comhairle Contae
Thiobraid Árann,
Oifigi Cathartha,
An tÁonach,
Co. Thiobraid Árann
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Ref. S5/21/35

21st July, 2021

Mullinahone Piggery Action Group
c/o Peter Thomson
4 Priory Grove
Kells
Co. Kilkenny

Dear Sir/Madam,

Re: Declaration under Section 5 of the Planning and Development Act 2000

I refer to your application for a Section 5 Declaration received on 1st of April, 2021 and further information received on the 22nd June, 2021 in relation to the following proposed works: -

- 1. Whether carrying out of repairs in 2020 to an existing unoccupied piggery building constructed in 1982 and it's re use for housing pigs is development and exempted development at Killaghy, Mullinahone, Co. Tipperary.**
- 2. Whether the re-opening of the pig farm in 2020 last used as a pig farm in 2013 is development and exempted development at Killaghy, Mullinahone, Co. Tipperary.**
- 3. Whether the removal of the roof covering and associated structural supports and ventilation stacks so as to reinstate an open-through bridge passageway between the adjoining sheds and undertaken to alter the sheds such that the enclosed internal floor area of same do not exceed 200 sq m individually is development and exempted development at Killaghy, Mullinahone, Co. Tipperary.**

The following questions have arisen regarding development on lands at Killaghy, Mullinahone, Co. Tipperary

1 Whether carrying out of repairs in 2000 to an existing unoccupied piggery building constructed in 1982 and it's re use for housing pigs is development and exempted development.

2 Whether the re-opening of the pig farm in 2020 last used as a pig farm in 2013 is development and exempted development.

3 Whether the removal of the roof covering and associated structural supports and ventilation stacks so as to reinstate an open-through bridge passageway between the adjoining sheds and undertaken to alter the sheds such that the enclosed internal floor area of same do not exceed 200 sq m individually is development and exempted development.

Tipperary County Council, in considering this referral, had regard particularly to -

- a) Sections 2 and 3 of the Planning and Development Act, 2000, as amended
- b) Articles 6 and 9 of the Planning and Development Regulations 2001, as amended
- c) S.I. No. 65/1977 - Local Government (Planning and Development) Regulations, 1977
- d) S.I. No. 176/1967 - Local Government (Planning and Development) Act, 1963, (Exempted Development) Regulations, 1967
- e) The information received with the Declaration application and further information received on 22/6/2021 from the applicant and on 1/7/2021 from the site owner.
- f) The information on file under TUD-20-047.

Tipperary County Council has concluded that –

1 Whether carrying out of repairs in 2020 to an existing unoccupied piggery building constructed in 1982 and it's re use for housing pigs is development and exempted development.

The repairs undertaken in 2020 comprised the undertaking of "works" as understood by Section 2 of the Planning and Development Act 2000, as amended and therefore constitutes development" within the meaning of Section 3 of the Planning and Development Act 2000, as amended.

The evidence available to the Planning Authority under TUD-20-047 and information submitted with the Declaration application show the carrying out of repairs to the existing piggery building in 2020 involved the undertaking of the following development that was **not exempted development**:

- o The alterations to the existing piggery building where the roof was altered and extended to cover and enclose a throughway between the buildings that house pigs and the installation of air extraction vents in the roof.

2 Whether the re-opening of the pig farm in 2020 last used as a pig farm in 2013 is development and exempted development.

The Planning Authority consider the re-opening of the pig farm in 2020 (being that as developed under planning exemptions) **is not development**.

3 Whether the removal of the roof covering and associated structural supports and ventilation stacks so as to reinstate an open-through bridge passageway between the adjoining sheds and undertaken to alter the sheds such that the enclosed internal floor area of same do not exceed 200 sq m individually is development and exempted development.

The carrying out of the above involved the undertaking of "works" to the building as defined under Section 2 of the Planning and Development Act 2000, as amended. The "works" are "development" as defined under Section 3 of the Planning and Development Act 2000, as amended. The above **is not exempted development.**

This decision is based on the information presented as part of the Section 5 Declaration Application received on 1st of April, 2021 and further information received on the 22nd June, 2021.

NOTE: Any person issued with a Declaration of a Planning Authority may refer the Declaration for review to An Bord Pleanála, 64 Marlborough Street, Dublin 1, within four (4) weeks of the date of issue of the Declaration and on payment of the prescribed fee.

Yours faithfully,



for Director of Services.

Attachment 8



**Russell Environmental and
Sustainability Services**

**STAGE 1 SCREENING FOR
APPROPRIATE ASSESSMENT**
Planning reference: 21266,
Killaghy, Mullinahone

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1.0 Introduction

This Stage 1 Screening for Appropriate Assessment report relates to the planning application for the construction of further building and the operation of a piggery in Killaghy, Mullinahone, planning reference 21266. This report is an assessment of the likely impacts of the proposed development and operation on the streams adjacent to the site which are hydrologically linked to the River Suir Special Area of Conservation (SAC) IE0002170.

1.1 Background and legislative context

Article 6(1) and article 6(2) of Council Directive 92/43/EEC of 21st May 1992 on the conservation of natural habitats and of wild fauna and flora aims to promote the maintenance of biodiversity. It forms the cornerstone of Europe's nature conservation policy with the Birds Directive and establishes the EU wide Natura 2000 ecological network of protected areas, safeguarded against potentially damaging developments.” (EEC, 1992)

Article 6(1) and 6(2) are concerned with Special Areas of Conservation (SAC), whereby Member States are required to establish necessary conservation measures and appropriate statutory measures to ensure the protection of natural habitat types in Annex I and the species in Annex II present on the sites. This includes the avoiding the deterioration of natural habitats as well as the disturbance of any species included in Annex II (EHLG, 2009, p18).

The focus of Appropriate Assessment (AA) is targeted specifically on Natura 2000 sites and their conservation objectives. Articles 6(3) and 6(4) of the Habitats Directive place strict legal obligations on Member States, with the outcomes of AA fundamentally affecting the decisions that may lawfully be made. Articles 6(3) and 6(4) also detail the procedures to be completed when a development is likely to or has affected a Natura 2000 site. The River Suir is an SAC and as thus is a Natura 2000 site (EHLG, 2009, p18).

Articles 6(3) and 6(4) are detailed as follows:

6(3) – Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site’s conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.

6(4) – If, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, the Member State shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected. It shall inform the Commission of the compensatory measures adopted. Where the site concerned hosts a priority natural habitat type and/or a priority species, the only considerations which may be raised are those relating to human health or public safety, to beneficial consequences of primary

importance for the environment or, further to an opinion from the Commission, to other imperative reasons of overriding public interest (EHLG, 2009, p18).

1.1.2 Stage 1 Screening for Appropriate Assessment

There are four stages involved in completing an AA. Stages 1-2 deal with the main requirements for assessment under Article 6(3). Stage 3 may be part of Article 6(3) or may be a necessary precursor to Stage 4. Stage 4 is the main derogation step of Article 6(4).

Stage 1. Screening for Appropriate Assessment Screening is the process that addresses and records the reasoning and conclusions in relation to the first two tests of Article 6(3):

- i) whether a plan or project is directly connected to or necessary for the management of the site.
- ii) whether a plan or project, alone or in combination with other plans and projects, is likely to have significant effects on a Natura 2000 site in view of its conservation objectives.

If the effects are deemed to be significant, potentially significant, or uncertain, or if the screening process becomes overly complicated, then the process must proceed to Stage 2 (AA) and the preparation of a Natura Impact Statement (NIS) (EHLG, 2009, p18).

1.2 Author of report

Russell Environmental and Sustainability Services was contacted by the Chairman of the Piggery Action Group, Kevin O'Meara to evaluate the likely impact of the development and its operation on the surrounding ecology and the effect on the habitats and species of the Lower River Suir SAC and (Appendix ii). The setting of the site and observations of the site from the surrounds were surveyed on 27th March 2021, by Dr. Jane Russell-O'Connor, qualified Ecologist.

2.0 Site description

2.1 Site location and topography

The site is located in the parish of Killaghy on the edge of the village of Mullinahone, grid reference 633411, 640649 (Appendix i). The site is bounded on 3 sides by streams to the west, south and east (Appendix vi, Figures 1, 2 and 3). These streams divide the site from a children's playground, sports field and associated parking to the south of the site, the R690 road to the west, a house with garden and paddock to the north and a pasture field to the east. (OSI, 2021). The streams are approximately 1.5m below the elevation of the site and therefore the risk of runoff from the site is high (Appendix vi, Figures 1, 2 and 3). The topography of the site ranges from 74m above sea level to 70m above sea level, with the falling gradient of the slope to the south of the site.

2.2 Geology and soils

The base rock is that of the Ballyadams formation, which is limestone, with the lithography of medium to dark-grey thick-bedded limestone to massive crinoidal calcarenite wackestones and packstones (GSI, 2021). The sub soil is limestone till, which has moderate permeability. The overlying top soil is well drained, fine loamy drift with limestone. The soil classification is that of a Grey Brown Podzolic soil (Teagasc, 2021).

2.3 Hydrology

The three streams that bound the site flow directly into the Anner River, 3.3km from the site. The Anner River forms part of Lower River Suir SAC (Appendix ii). Therefore there is a direct hydrological link to the River Suir SAC. At a distance of approximately 2.6km is the River Barrow and River Nore SAC IE002162 (Appendix iii). However there is no direct hydrological link to this SAC.

The whole area within which the site is situated is classed as a *Margaritifera margaritifera* (Pearl Mussel) sensitive area (Biodiversity Ireland, 2021). This species is a protected and listed on the Annex II and Annex V Habitats Directive (EEC, 1992) and is sensitive to changes in water quality.

Due to the direction of the slope on the site the risk of runoff into the adjacent streams, particularly to the south of the site, is high. As the elevation of the stream is approximately 1.5m below the level of the site, this further increases the risk of surface water and foul water runoff and also water that may penetrate the permeable soil into the streams (Appendix vi, Figure 4)

The groundwater vulnerability is medium and the aquifer classification is Rkd, which is regionally important karstified bedrock (GSI, 2021). This type of aquifer has varying permeability due to limestone being dissolved by percolating waters and thus there is a strong interconnection between surface water and ground water (GSI, 2017)

2.4 Vegetation

The site itself was a former piggery that has a number of derelict buildings present with a large area of rough grassland and recolonized ground. These are classified as BL3 and ED3 respectively (Appendix vi, Figures 6 and 7) (Fossitt, 2000).

Adjacent to the site there were six habitats identified (Fossitt, 2000). These are as follows:

GA1 Improved agricultural grassland

WL1 Hedgerows

WL2 Treeline (coniferous)

BL3 Buildings and artificial surfaces (children's playground, sports field and car park)

BC4 Flower beds and borders

FW2 Lowland river

The Fossitt (2000) classification codes for the habitats identified above are detailed in Appendix iv.

3.0 Recommendations

3.1 Assessment of likely significant effects

The planning application proposed site layout plan shows an attenuation tank to the south of the site adjacent to the stream. Attenuation tanks whilst able to hold surface water and storm water in the short term, can become rapidly silted up and their capacity for retention impeded. Furthermore, it is stated in the submitted proposed site layout plan that this tank will discharge into the adjacent stream. This is of concern as there is likely to be a high level of pig excrement on the surface of the site which will flow into this tank when rainfall occurs and then discharge into the stream that is hydrologically linked to the River Suir SAC. This is further compounded by the fact that the site slopes towards the stream at the southern tip of the site, as stated above in section 2.3.

In addition, there are a number of existing drain pipes exiting from the site and discharging directly into the stream to the west of the site, further increasing the runoff of organic animal excrement/foul water to the hydrological system (Appendix vi Figure 5).

There is no treatment facility for the manure contained in the manure storage basin, detailed in the planning application proposed site layout plan. Should there be excessive rainfall and storm water there is a likelihood that slurry may be discharged into the streams, especially as this storage basin is only 5.86m from the nearest stream.

As there is a strong interconnection with surface water to the underground aquifer, there is potential risk of aquifer contamination from foul water.

3.2 Status of qualifying species and habitats of the Lower River Suir SAC.

In conclusion, the effect of the development and operating use for which planning is sought is likely to have a significant effect on the qualifying species and habitats of the Lower River Suir SAC as detailed in Table 1 and Appendix v.

3.3 Statement of screening

As stated above the piggery operation and the construction of the buildings and structures are likely to have a significant effect thereon the habitats and species of the River Suir SAC.

The site is a Special Area of Conservation (SAC) selected for the following habitats and/or species listed on Annex I / II of the E.U. Habitats Directive (* = priority; numbers in brackets are Natura 2000 codes).

Habitat Code	Habitat
1330	Atlantic Salt Meadows
1410	Mediterranean Salt Meadows
3260	Floating River Vegetation
6430	Hydrophilous Tall Herb Communities
91A0	Old Oak Woodlands
91E0	Alluvial Forests*
91J0	Yew Woodlands*
Species Code	Species
1029	Freshwater Pearl Mussel (<i>Margaritifera margaritifera</i>)
1092	White-clawed Crayfish (<i>Austropotamobius pallipes</i>)
1095	Sea Lamprey (<i>Petromyzon marinus</i>)
1096	Brook Lamprey (<i>Lampetra planeri</i>)
1099	River Lamprey (<i>Lampetra fluviatilis</i>)
1103	Twaite Shad (<i>Alosa fallax</i>)
1106	Atlantic Salmon (<i>Salmo salar</i>)
1355	Otter (<i>Lutra lutra</i>)

Table 1. Qualifying habitats and species of the Lower River Suir SAC

3.4 Recommendations for the granting of planning

It is the recommendation of Russell Environmental and Sustainability Services that however this project is progressed, the developer/ operator should be required to undertake a Remedial Stage 2 Natura Impact Statement to reflect the fact Appropriate Assessment (AA) cannot be screened out as there is unauthorised development already on the site in addition to the proposed works.

Therefore, to clarify, following this Stage 1 Screening it is recommended that the process should progress to Stage 2 whereby an AA should be conducted and a Natura Impact Statement (NIS) completed to fully determine the impact on the species and habitats of the River Suir SAC.

The Inland Fisheries for Ireland Officer for Tipperary should be consulted and advice sought on the risk to the River Suir SAC.

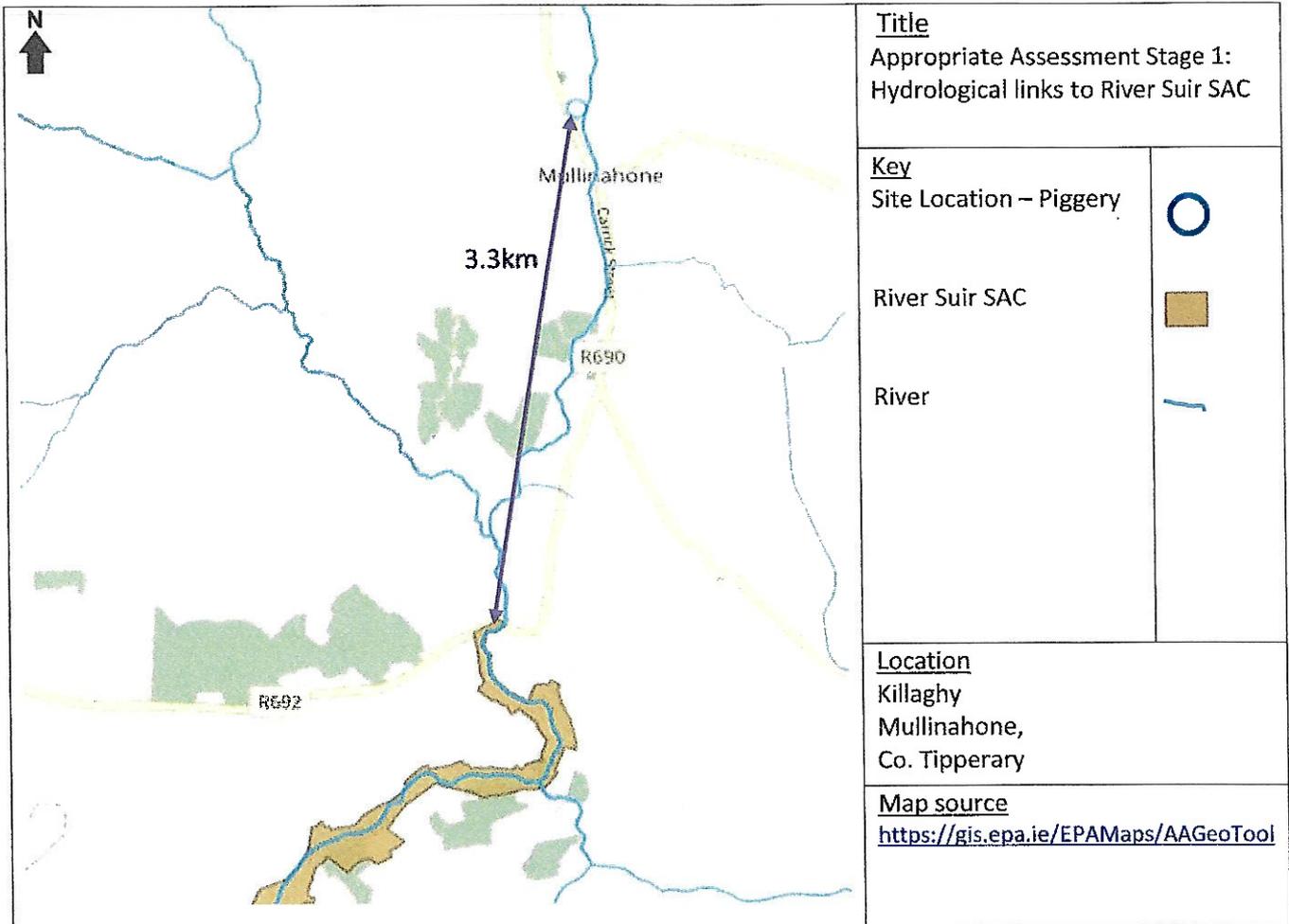
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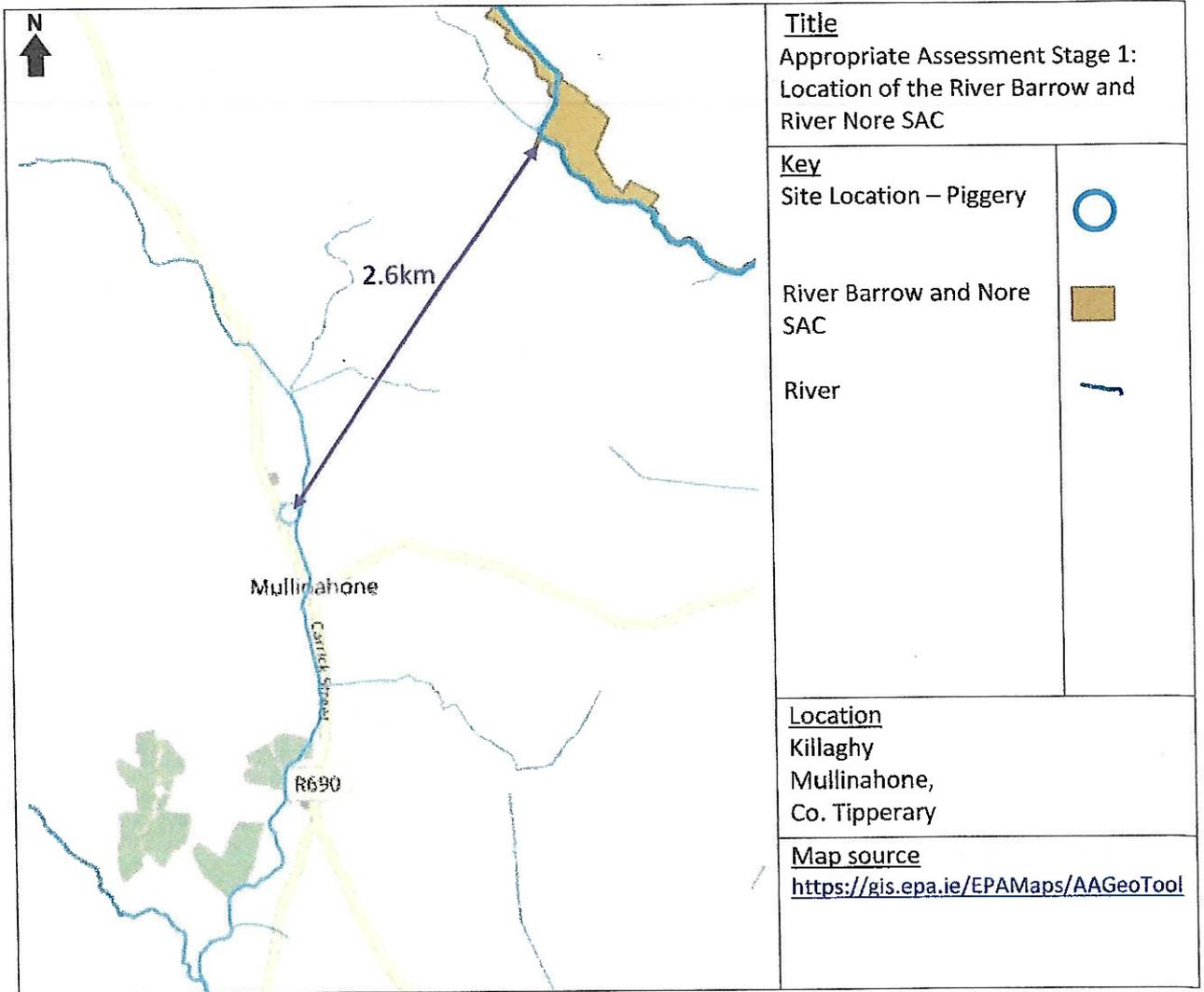
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Appendices

Appendix ii Location of hydrological links to River Suir SAC

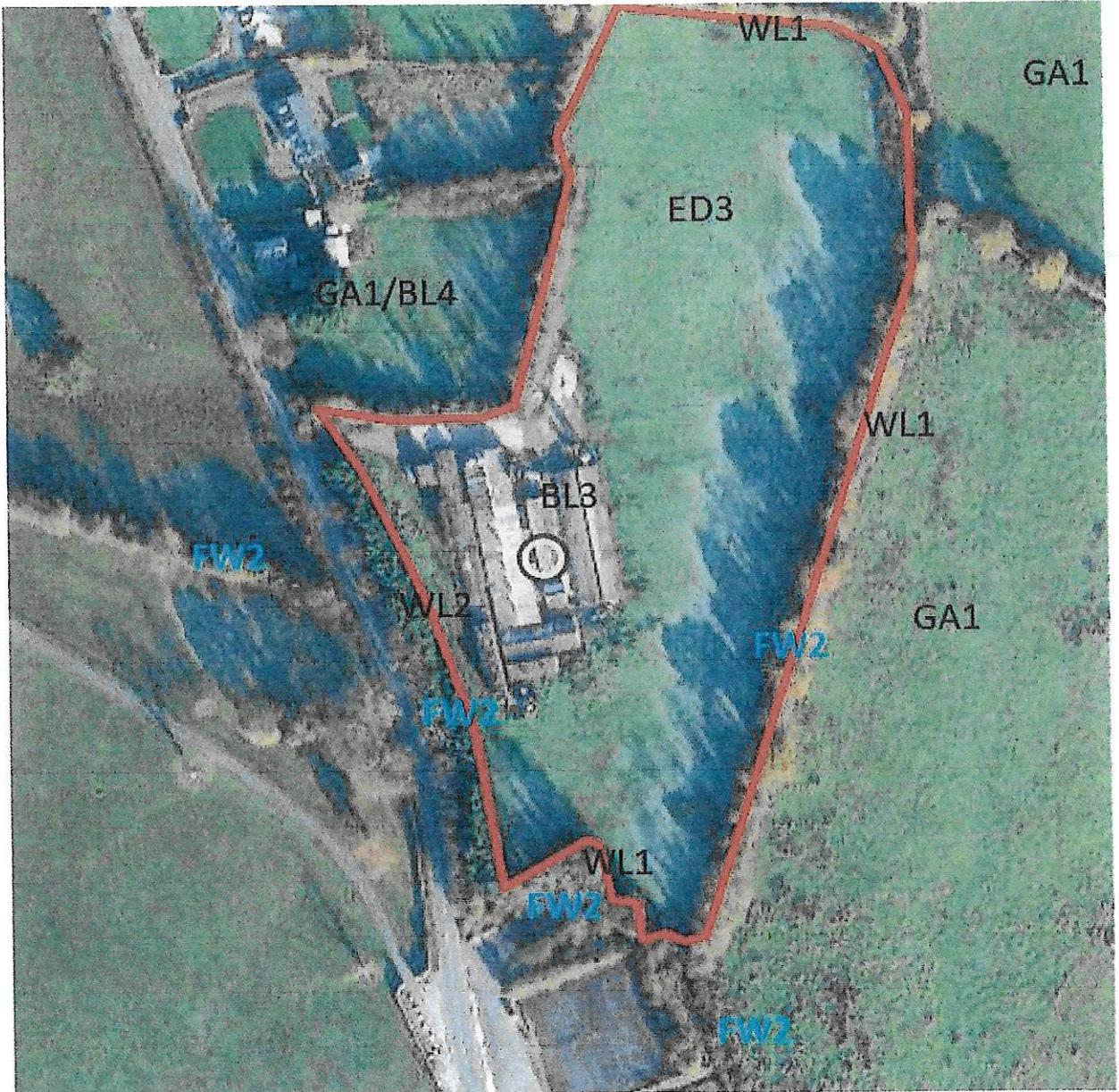


Appendix iii Location of River Barrow and River Nore SAC



Appendix iv

Fossitt (2000) Habitat Codes



Appendix v

SITE SYNOPSIS (DHAG, 2016)

Site Name: Lower River Suir SAC

Site Code:

Lower River Suir SAC consists of the freshwater stretches of the River Suir immediately south of Thurles, the tidal stretches as far as the confluence with the Barrow/Nore immediately east of Cheekpoint in Co. Waterford, and many tributaries including the Clodiagh in Co. Waterford, the Lingaun, Anner, Nier, Tar, Aherlow, Multeen and Clodiagh in Co. Tipperary. The Suir and its tributaries flow through the counties of Tipperary, Kilkenny and Waterford.

Upstream of Waterford city, the swinging meanders of the Suir criss-cross the Devonian sandstone rim of hard rocks no less than three times as they leave the limestone-floored downfold below Carrick-on-Suir. In the vicinity of Carrick-on-Suir the river follows the limestone floor of the Carrick Syncline. Upstream of Clonmel the river and its tributaries traverse Upper Palaeozoic Rocks, mainly the Lower Carboniferous Visean and Tournaisian. The freshwater stretches of the Clodiagh River in Co. Waterford traverse Silurian rocks, through narrow bands of Old Red Sandstone and Lower Avonian Shales, before reaching the carboniferous limestone close to its confluence with the Suir. The Aherlow River flows through a Carboniferous limestone valley, with outcrops of Old Red Sandstone forming the Galtee Mountains to the south and the Slievenamuck range to the north. Glacial deposits of sands and gravels are common along the valley bottom, flanking the present-day river course.

The site is a Special Area of Conservation (SAC) selected for the following habitats and/or species listed on Annex I / II of the E.U. Habitats Directive (* = priority; numbers in brackets are Natura 2000 codes):

- [1330] Atlantic Salt Meadows
- [1410] Mediterranean Salt Meadows
- [3260] Floating River Vegetation
- [6430] Hydrophilous Tall Herb Communities
- [91A0] Old Oak Woodlands
- [91E0] Alluvial Forests*
- [91J0] Yew Woodlands*
- [1029] Freshwater Pearl Mussel (*Margaritifera margaritifera*)
- [1092] White-clawed Crayfish (*Austropotamobius pallipes*)
- [1095] Sea Lamprey (*Petromyzon marinus*)
- [1096] Brook Lamprey (*Lampetra planeri*)

[1099] River Lamprey (*Lampetra fluviatilis*) Version date: 13.12.2013 2 of 6
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[1103] Twaite Shad (*Alosa fallax*)

[1106] Atlantic Salmon (*Salmo salar*)

[1355] Otter (*Lutra lutra*)

Alluvial wet woodland is a declining habitat type in Europe as a result of drainage and reclamation. The best examples of this type of woodland in the site are found on the islands just below Carrick-on-Suir and at Fiddown Island. Species occurring here include Almond Willow (*Salix triandra*), White Willow (*S. alba*), Rusty Willow (*S. cinerea* subsp. *oleifolia*), Osier (*S. viminalis*), with Yellow Iris (*Iris pseudacorus*), Hemlock Water-dropwort (*Oenanthe crocata*), Wild Angelica (*Angelica sylvestris*), Pendulous Sedge (*Carex pendula*), Meadowsweet (*Filipendula ulmaria*) and Common Valerian (*Valeriana officinalis*). The terrain is littered with dead trunks and branches and intersected with small channels which carry small streams to the river. The bryophyte and lichen floras appear to be rich. A small plot is currently being coppiced and managed by the National Parks and Wildlife Service. In the drier areas species such as Ash (*Fraxinus excelsior*), Hazel (*Corylus avellana*), Hawthorn (*Crataegus monogyna*) and Blackthorn (*Prunus spinosa*) occur.

Eutrophic tall herb vegetation occurs in association with the various areas of alluvial forest and elsewhere where the floodplain of the river is intact. Characteristic species of the habitat include Meadowsweet, Purple Loosestrife (*Lythrum salicaria*), Marsh Ragwort (*Senecio aquaticus*), Ground Ivy (*Glechoma hederacea*) and Hedge Bindweed (*Calystegia sepium*).

Old oak woodlands are also of importance at the site. The best examples are seen in Portlaw Wood which lies on both sides of the Clodiagh River. On the south-facing side the stand is more open and the oaks (mainly Pedunculate Oak, *Quercus robur*) are well grown and spreading. Ivy (*Hedera helix*) and Bramble (*Rubus fruticosus* agg.) are common on the ground, indicating relatively high light conditions. Oak regeneration is dense, varying in age from 0-40 years and Holly (*Ilex aquifolium*) is fairly common but mostly quite young. Across the valley, by contrast, the trees are much more closely spaced and though taller, are poorly grown on average. There are no clearings; large oaks extend to the boundary wall. In the darker conditions, Ivy is much rarer and Holly much more frequent, forming a closed canopy in places. Oak regeneration is uncommon since there are as yet few natural clearings. The shallowness of the soil on the north-facing slope probably contributes to the poor tree growth there. The acid nature of the substrate has induced a 'mountain' type oakwood community to develop. The site is quite species-rich throughout, including an abundance of mosses, liverworts and lichens. The rare lichen *Lobaria pulmonaria*, an indicator of ancient woodlands, is found here.

Inchinquillib Wood consists of three small separate sloping blocks of woodland in a valley cut by the young Multeen River and its tributaries through acidic Old Red Sandstone and Silurian rocks. Two blocks, both with an eastern aspect, located to the north of the road, are predominantly of Sessile Oak (*Quercus petraea*) and Hazel, with Downy Birch (*Betula pubescens*), Ash and Holly. The ground flora is quite mixed with,

for example, Wood-sedge (*Carex sylvatica*), Bluebell (*Hyacinthoides non-scripta*), Primrose (*Primula vulgaris*), Wood-sorrel (*Oxalis acetosella*), Pignut (*Conopodium majus*) and Hard Fern (*Blechnum spicant*). The base poor nature of the underlying rock is to some extent masked by the overlying drift. The third block, to the south of the road, and with a northern aspect, is a similar although less mature mixture of Sessile Oak, Birch and Holly. Here the influence of the drift is more marked, with the occurrence of Wood Anemone (*Anemone nemorosa*) amongst the ground flora.

Two stands of Yew (*Taxus baccata*) woods, a rare habitat in Ireland and the E.U., occur within the site. These are on limestone ridges at Shanbally and Cahir Park. Both are in woods planted with non-native species, including conifers. However, the area at Cahir Park is fairly substantial in size and includes some relatively undisturbed patches of wood and some very old trees. Regeneration of the Yew trees is mostly poor, due to competition from species such as Sycamore (*Acer pseudoplatanus*) and, at Shanbally, due to heavy grazing by goats. Other native species which occur with the Yew trees include Ash, Pedunculate Oak, Hazel and Spindle (*Euonymus europaeus*). Future prospects for these Yew woods are good as the sites are proposed for restoration under a Coillte E.U. LIFE programme.

Floating river vegetation is evident in the freshwater stretches of the River Suir and along many of its tributaries. Typical species found include Canadian Pondweed (*Elodea canadensis*), water-milfoils (*Myriophyllum* spp.), Fennel Pondweed (*Potamogeton pectinatus*), Curled Pondweed (*P. crispus*), Perfoliate Pondweed (*P. perfoliatus*), Pond Water-crowfoot (*Ranunculus peltatus*), other crowfoots (*Ranunculus* spp.) and the moss *Fontinalis antipyretica*. At a couple of locations along the river Opposite-leaved Pondweed (*Groenlandia densa*) occurs. This species is protected under the Flora (Protection) Order, 1999.

The Aherlow River is fast flowing and mostly follows a natural unmodified river channel. Submerged vegetation includes the aquatic moss *Fontinalis antipyretica* and Stream Water-crowfoot (*R. pectinatus*), while shallow areas support species such as Reed Canary-grass (*Phalaris arundinacea*), Brooklime (*Veronica beccabunga*) and Water Mint (*Mentha aquatica*). The river bank is fringed in places with Alder (*Alnus glutinosa*) and willows (*Salix* spp.).

The Multeen River is fast flowing, mostly gravel-bottomed and appears to follow a natural unmodified river channel. Water-crowfoots occur in abundance and the aquatic moss *Fontinalis antipyretica* is also common. In sheltered shallows, species such as Water-cress (*Nasturtium officinale*) and water-starworts (*Callitriche* spp.) occur. The river channel is fringed for most of its length with Alder, Willow and a narrow strip of marshy vegetation.

Salt meadows occur below Waterford City in old meadows where the embankment is absent, or has been breached, and along the tidal stretches of some of the in-flowing rivers below Little Island. There are very narrow, non-continuous bands of this habitat along both banks. More extensive areas are also seen along the south bank at Ballynakill, the east side of Little Island, and in three large salt meadows between Ballynakill and Cheekpoint. The Atlantic and Mediterranean sub-types are generally intermixed. The species list is extensive and includes Red Fescue (*Festuca rubra*), oraches (*Atriplex* spp.), Sea Aster (*Aster tripolium*), Sea Couch (*Elymus pycnanthus*), frequent Sea Milkwort (*Glaux maritima*), occasional Wild Celery (*Apium graveolens*), Parsley Water-dropwort (*Oenanthe lachenalii*), English

Scurvygrass (*Cochlearia anglica*) and Sea Arrowgrass (*Triglochin maritima*). These species are more representative of the Atlantic sub-type of the habitat. Common Cord-grass (*Spartina anglica*), is rather frequent along the main channel edge and up the internal channels. The legally protected (Flora (Protection) Order, 1999) Meadow Barley (*Hordeum secalinum*) grows at the landward transition of the saltmarsh. Sea Rush (*Juncus maritimus*), an indicator of the Mediterranean salt meadows, also occurs.

Other habitats at the site include wet and dry grassland, marsh, reedswamp, improved grassland, coniferous plantations, deciduous woodland, scrub, tidal river, stony shore and mudflats. The most dominant habitat adjoining the river is improved grassland, although there are wet fields with species such as Yellow Iris, Meadowsweet, rushes (*Juncus* spp.), Meadow Buttercup (*Ranunculus acris*) and Cuckooflower (*Cardamine pratensis*).

Cabragh marshes, just below Thurles, lie in a low-lying tributary valley into which the main river floods in winter. Here there is an extensive area of Common Reed (*Phragmites australis*) with associated marshland and peaty fen. The transition between vegetation types is often well displayed. A number of wetland plants of interest occur, in particular the Narrow-leaved Bulrush (*Typha angustifolia*), Bottle Sedge (*Carex rostrata*) and Blunt-flowered Rush (*Juncus subnodulosus*). The marsh is naturally eutrophic but it has also the nutritional legacy of the former sugar factory which discharged into it through a number of holding lagoons, now removed. Production is high, which is seen in the size of such species as Celery-leaved Buttercup (*Ranunculus sceleratus*), as well as in the reeds themselves.

Throughout the Lower River Suir site are small areas of woodland other than those described above. These tend to be a mixture of native and non-native species, although there are some areas of semi-natural wet woodland with species such as Ash and willow. Cahir Park Woodlands is a narrow tract of mixed deciduous woodland lying on the flat-lying floodplain of the River Suir. This estate woodland was planted over one hundred years ago and it contains a large component of exotic tree species. However, due to original planting and natural regeneration there is now a good mix of native and exotic species. About 5 km north-west of Cashel, Ardmayle pond is a long, possibly artificial water body running parallel to the River Suir. It is partly shaded by planted Lime (*Tilia* hybrids), Sycamore and the native Alder. Growing beneath the trees are shade tolerant species such as Remote sedge (*Carex remota*).

The site is of particular conservation interest for the presence of a number of Annex II animal species, including Freshwater Pearl Mussel (both *Margaritifera margaritifera* and *M. margaritifera* subsp. *durrovensis* occur), White-clawed Crayfish, Salmon, Twaite Shad (*Alosa fallax fallax*), three species of Lampreys - Sea Lamprey, Brook Lamprey and River Lamprey, and Otter. This is one of only three known spawning grounds in the country for Twaite Shad.

The site also supports populations of several other animal species. Those which are listed in the Irish Red Data Book include Daubenton's Bat, Natterer's Bat, Pipistrelle Bat, Pine Marten, Badger, Irish Hare, Smelt and Common Frog. Breeding stocks of Carp are found in Kilsheelan Lake. This is one of only two lakes in the country which is known to have supported breeding Carp. Carp require unusually high summer water temperatures to breed in Ireland. As the site is therefore unusual in this regard, it may also support interesting invertebrate populations.

Parts of the site have also been identified as of ornithological importance for a number of Annex I (E.U. Birds Directive) bird species, including Greenland White-fronted Goose (10), Golden Plover (1,490), Whooper Swan (7) and Kingfisher. Figures given in brackets are the average maximum counts from four count areas within the site for the three winters 1994-1997. Wintering populations of migratory birds use the site. Flocks are seen in Coolfinn Marsh and also along the reedbeds and saltmarsh areas of the Suir. Coolfinn supports nationally important numbers of Greylag Goose on a regular basis, with numbers between 600 and 700 recorded. Other species occurring include Mallard (21), Teal (159), Widgeon (26), Tufted Duck (60), Pintail (4), Pochard (2), Little Grebe (2), Black-tailed Godwit (20), Oystercatcher (16), Lapwing (993), Dunlin (101), Curlew (195), Redshank (28), Greenshank (4) and Green Sandpiper (1). Nationally important numbers of Lapwing (2,750) were recorded at Faithlegg in the winter of 1996/97. In Cabragh marshes there is abundant food for surface feeding wildfowl which total approximately 1,000 in winter. Widgeon, Teal and Mallard are numerous, and the latter has a large breeding population, with up to 400 in summer. In addition, less frequent species like Shoveler and Pintail occur and there are records for both Whooper and Bewick's swans. Kingfisher, a species that is listed on Annex I of the E.U. Birds Directive, occurs along some of the many tributaries throughout the site.

Land use at the site consists mainly of agricultural activities including grazing, silage production, fertilising and land reclamation. The grassland is intensively managed and the rivers are therefore vulnerable to pollution from run-off of fertilisers and slurry. Arable crops are also grown. Fishing is a main tourist attraction on stretches of the Suir and some of its tributaries, and there are a number of Angler Associations, some with a number of beats. Fishing stands and styles have been erected in places. Both commercial and leisure fishing takes place on the rivers. The Aherlow River is a designated Salmonid Water under the E.U. Freshwater Fish Directive. Other recreational activities such as boating, golfing and walking are also popular. Several industrial developments, which discharge into the river, border the site including three dairy related operations and a tannery.

The Lower River Suir contains excellent examples of a number of Annex I habitats, including the priority habitats alluvial forest and Yew woodland. The site also supports populations of several important animals species, some listed on Annex II of the Habitats Directive or listed in the Irish Red Data Book. The presence of two legally protected plants (Flora (Protection) Order, 1999) and the ornithological importance of the site adds further to the ecological interest and importance.

Appendix vi Photographic Record

Figure 1

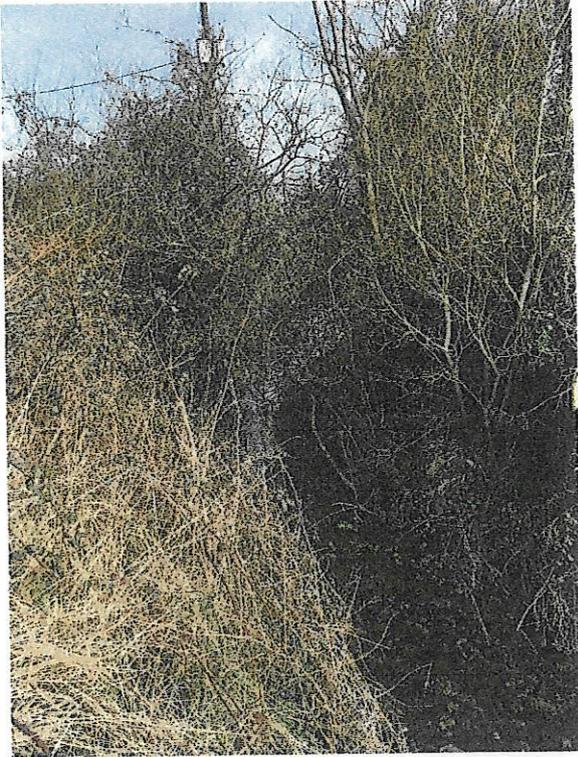


Figure 2



Figure 3



Figure 4



Figure 5



Figure 6

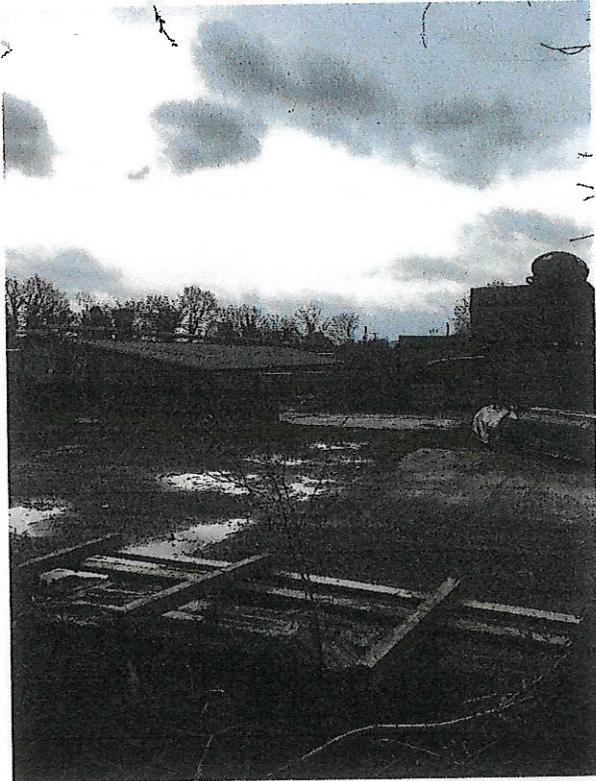


Figure 7

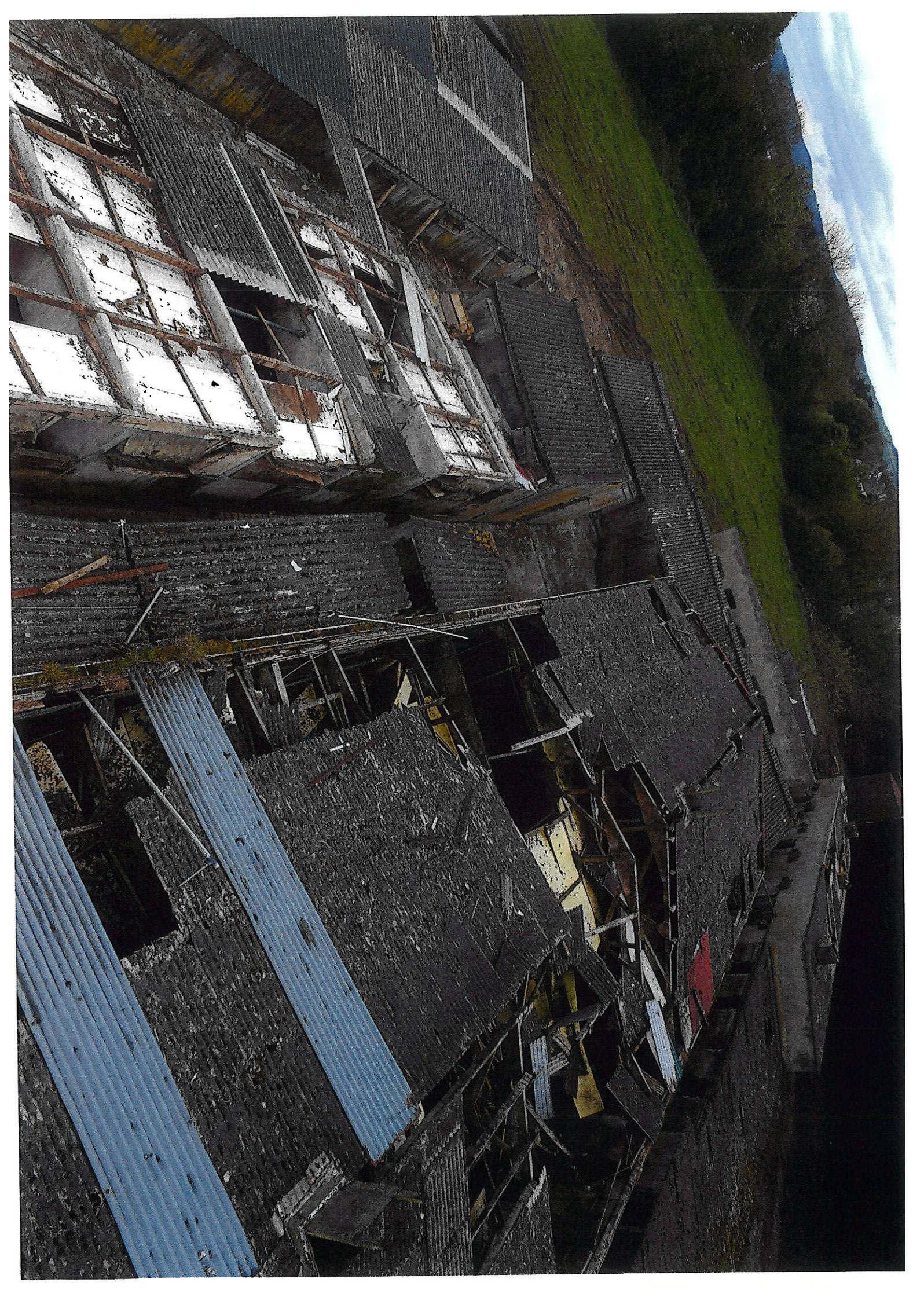


Attachment 9











Attachment 10



Attachment

11

Killaghy,
Mullinahone,
Thurles,
Co. Tipperary.
3rd August 2021.

Attention of: Director of Services Planning Division Tipperary Co. Council.

Re: S5/21/35

A Chara,

I wish to refer to planner's report relating to Section 5 declaration S5/21/35 prepared by Jonathan Flood and Caroline Conway. I have received a copy of this report from Councillor Kevin O'Meara and I wish to address references to my family contained within this report.

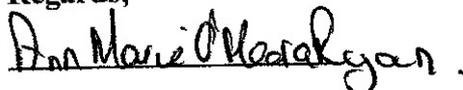
It is stated in report that the complainants state that the 1982 shed did not meet exemptions due to size and absence of written consent from landowner to the north. It is my contention that no consent of any kind was given for any expansion of this piggery in the 1970's or 1980's or 1990's. Please refer to written statement from my brother Gerry and myself which was submitted with section 5 application.

The report states that the site owner provided a letter from previous site owner outlining that there was a verbal agreement with adjoining landowner. As the declaration appears to have relied on this letter it is necessary for us to view a copy of it in order for us to address the claims made in it if we wish to appeal this declaration to An bord pleanala etc. Please forward copy of same.

The issue of what consent was required from dwellings (within 100 metres) is subject to size of structures and when they were built. I note that in relation to the council request for further information from present site owner it appears that no response was given to questions 1 & 2 which sought the history of different building phases, drawings and details of planning consent/exemptions etc. However, the declaration report refers to details received from site owner regarding the history and chronology of development on site with supporting letters of confirmation from previous owner. Again as the declaration has relied on these correspondences we request copies of same in order to prepare an appeal. This issue of what consent was required and by whom is determined by the chronology of different phases of development.

Please forward the requested documents as soon as possible as if we wish to appeal this declaration, we must do so within next two weeks.

Regards,



Annmarie O'Meara Ryan.



Comhairle Contae Thiobraid Árann
Tipperary County Council

Comhairle Contae
Thiobraid Árann,
Oifigi Cathartha,
Cluain Meala,
Co. Thiobraid Árann
Tipperary County Council,
Civic Offices, Clonmel,
Co. Tipperary

Comhairle Contae
Thiobraid Árann,
Oifigi Cathartha,
An tAonach,
Co. Thiobraid Árann
Tipperary County Council,
Civic Offices, Nenagh,
Co. Tipperary

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e customerservic
@tipperarycoco.i
tipperarycoco.ie

Ref. S5/21/35

9th August, 2021

Anmarie O'Meara Ryan
Killaghy
Mullinahone
Thurles
Co. Tipperary.

RE: Section 5 Ref S5/21/35

Dear Ms O'Meara Ryan

The Planning Authority write regarding correspondence dated 3/8/2021 received from you on 4/8/2021 regarding the Section 5 Declaration reference S5/21/35.

The Planning Authority cannot provide the information you are seeking as this information is contained on a live enforcement file TUD-20-047, the contents of which are confidential and cannot be disclosed at present as disclosure could prejudice or impair any enforcement proceedings which may be taken in this case.

Yours faithfully,

for Director of Services.

Zimbra

jamryan1@eircom.net

Fwd: S5/21/35

Mon, 09 Aug, 2021 13:04

 3 attachments

From : O'Meara, Cllr Kevin <kevin.omeara@tipperarycoco.ie>

Subject : Fwd: S5/21/35

To : James Ryan <jamryan1@eircom.net>

From: O'Meara, Cllr Kevin <kevin.omeara@tipperarycoco.ie>

Date: 9 August 2021 at 11:43:27 IST

To: Condon, Fergal <fergal.condon@tipperarycoco.ie>, Flood, Jonathan <jonathan.flood@tipperarycoco.ie>

Cc: Lonergan Eamon <Eamon.Lonergan@tipperarycoco.ie>

Subject: Re: S5/21/35

Morning Jonathan/ Fergal,

Can you confirm a couple of things please

1. The 1982 exemption letter, was there a copy on file in the council
 2. A planning application was referenced in this letter, can you provide details of this application, drawings on what it might refer to. In part 3. Assessment , under b. Relevant planning history, states no drawings on file but a bit below that under c. Assessment "there are no planning records pertaining to the other buildings on site, outside of those in 1970s/1982, this infers something is on file from 1982.
- Can you share what this is with us please

3. One more query in section 1. General
"A signed letter from Michael Quirke identifying the buildings on the site at the time was sold in 1980 and identifying that other buildings were sold after 1980"

Could you clarify the second part of this please as it doesn't make sense to us, there was only one sale from Michael Quirke and he has identified the buildings on site as part of this sale.

4. I will appeal to you once more, to make the information we requested around claims from the landowner , available to us as it's a vital piece of information used in the decision making on the section 5

I would appreciate if you could address these clarifications as a high priority , as I'm sure you are aware we only have 1 week remaining to decide on appealing this decision.

Regards,
Kevin

From: O'Meara, Cllr Kevin <kevin.omeara@tipperarycoco.ie>

Date: 3 August 2021 at 10:35:00 IST

To: Condon, Fergal <fergal.condon@tipperarycoco.ie>, Flood, Jonathan <jonathan.flood@tipperarycoco.ie>

Subject: Re: S5/21/35

Hi Fergal/Jonathan,

Thanks for that. i have a couple of questions on it though as it doesn't seem to contain everything submitted by Mr Foran in relation to the Section 5

There was some letters referred to from previous owners, that doesn't seem to be included in the documentation received on Friday, in planning application there was a claim most sheds on site were functional from mid 70s which was before Mr O'Connor owned the site. in reply D Mulcahy states evidence from T Mockler is incorrect and refers to invoice from a parlour purchased in 1991.

Could we request copies of all relevant documents referred to from Mr Foran and the County Council in arriving at this decision.

Oifigi Cathartha,
Cúisín Meola,
Co. Thiobraid Árann
Tipperary County Council,
Civic Offices, Clonmel,
Co. Tipperary

Oifigi Cathartha,
An tAonach,
Co. Thiobraid Árann
Tipperary County Council,
Civic Offices, Nenagh,
Co. Tipperary

Tipperarycoco

Ref. S5/21/35

9th August, 2021

Cllr. Kevin O'Meara
Woodview
Killaghy
Mullinahone
Co. Tipperary.

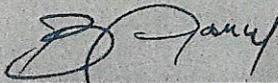
RE: Section 5 Ref S5/21/35

Dear Cllr O'Meara

The Planning Authority write regarding correspondence received from you on 3/8/2021 regarding the Section 5 Declaration reference S5/21/35 and advise as follows:

- The Planning Authority determined the Declaration on the basis of the information received and the considerations of the Planning Authority regarding the case are documented in the planner's report.
- The further information submission made for Mr Jim Foran did not contain all of the information requested in the letter that issued to Mr Foran on 29/4/2021.
- The Planning Authority has records of the planning exemption letters that relate to the lands at Killaghy, Mullinahone dating from 26/5/1973 and 6/7/1982.
- Mr Foran was presented with the information included with the Section 5 Declaration application. This information is not held as confidential.
- Enforcement file referenced TUD-20-047 is being pursued and action will be taken on same in the coming weeks.

Yours faithfully,



for Director of Services.

Killaghy,
Mullinahone,
Thurles,
Co. Tipperary.
10th August 2021.

Attention of:

Director of Services Planning Division Tipperary Co. Council.

Re: S5 /21/35

A Chara,

I refer to your reply to my letter which I sent to you on 3rd August requesting documentation in relation to Section 5 file S5/21/35. I do not accept that I am not entitled to the documentation which makes reference to my family. It is our contention that all structures on site except the 1973 shed required planning permission as none qualified for exemptions therefore consent from adjoining dwelling was not relevant. However, as it appears from the section 5 declaration that the council has accepted that all structures on site were exempt from planning permission then the Council must be satisfied that consent was received from adjoining dwellings within 100 metres for each building when constructed. This appears to have relied on evidence supplied by a previous owner claiming he had received consent.

In order for us to address this claim that a previous owner got verbal consent from adjoining landowner we need to know

- a) Who claims to have sought this consent? I note that the site owner claims most of the buildings were there from mid 1970's
- b) From whom is it claimed consent was received?
- c) What dates were these consents received? I note that the piggery was developed in different building phases from 1970's to 1990's
- d) I note that in response for further information David Mulcahy on behalf of site owner attached an illegible invoice claiming it to be for a building constructed in 1991. Has the Council record of granting planning permission for this structure?

Councillor Kevin O'Meara has also informed me that the Council now claim to have planning records in relation to the building constructed in 1982 which was subject to the section 5.

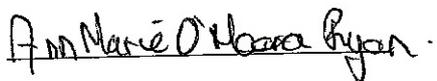
I requested a planning search for that building on 27th April 2020. I was informed by Tipperary Co. Council that no planning records existed in their archives for any development whatsoever for this piggery at Killaghy. When the site owner produced this letter of exemption in May 2020, I was informed by Jonathan Flood that the council had no record of this letter or documentation referred in it.

- a) Can you confirm that the planning file regarding this 1982 building has been found?
- b) Can you confirm that the planning application referred to in letter is in the file and can you please forward copy of same?
- c) Can you clarify if the drawings are in the file as it's states in the section 5 planning report that drawings are not on file. If they are not in the file can you explain why not?
- d) Can you confirm if documentation is on file confirming issuing of this letter dated 6th July 1982 to then owner Liam O'Connor?

Can you address these questions urgently as the discovery of this file and the documentation attached is critical to the credibility of this letter dated 6th July 1982 produced by site owner?

I'm sure you can appreciate the urgency of this matter.

Regards,



AnnMarie O'Meara Ryan.

Zimbra

jamryan1@eircom.net

SS/21/35

Fri, 13 Aug, 2021 17:03

From : Clancy, Brian <brian.clancy@tipperarycoco.ie>

Subject : SS/21/35

To : jamryan1@eircom.net

To AnnMarie O'Meara Ryan,

Dear Ms O'Meara Ryan,

I refer to your e-mail of 11th August 2021 in connection with the above. I understand that you have seen a copy of the Planner's report in this matter.

The Council consider that every effort has been made to facilitate your requests for information but as this Declaration under Section 5 of the Planning and Development 2000 issued on 21st July 2021 and is still within the statutory period for appeal to An Bord Pleanála the Council do not consider it appropriate to comment any further in relation to matters pertaining to this file.

Yours sincerely,

Brian Clancy, Administrative Officer,

Planning Section

Attachment 12

3. DESCRIPTION OF PROJECT

3.1 Overall Description

The existing farm complex consists of Dry Sow Houses, Farrowing Houses, and Weaner Houses, Fattening Houses, manure storage structures, services buildings and associated feed storage and preparation structures. These structures have been in use since the mid 1970s and would require significant level of renovation.

The proposed facility is situated in a rural location where agriculture is the main industry. The site is located in a the countryside/agricultural land.

3.2 Size and Scale of the Proposed Development

The Applicant intends to apply to the Planning authority for planning permission to demolition of existing Old Pig Housing, and the construction of a Pig Fattening House, with office, store, Feed Kitchen, Feed Bins, Roof Mounted Solar Panels and a covered geomembrane lined manure store and associated works This will allow for space for a one thousand nine hundred and fifty pig places in accordance with the requirements of Welfare Regulations as per SI No. 48 of 2003. Drawings of the proposed new structures are presented in **Appendix 2.**

3.2.1 Production

In full production, 1950 weaned pigs will be transported from the Applicant's Pig Breeding Unit at Reatagh Carrick on Suir. The weaner pigs are stocked at 0.74 m² per pig place and grow to 105 kg over a ten-week period. They are kept on fully slatted concrete floors over shallow tanks and are fed ad libium on a finisher pig pelleted diet. The pigs will be accommodated for 10 weeks. The house would be washed out thoroughly between batches. These filling and emptying cycle regime helps to maintain disease free pig production by eliminating carry-over from one batch to the next.,

Attachment 13

Land Registry

County Tipperary

Folio 50641F

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)

No.	Description	Official Notes
1	The property with the Piggery located thereon at Killaghey, Mullinahone, Thurles, shown coloured Red as plan(s) BX28V on the Registry Map, Scheme Book 22, Map 5 to O.S. 5067/C, containing 2.3600 hectares and situate in the Townland of KILLAGHY, in the Barony of SLIEVARDAGH, in the Electoral Division of MULLINAHONE.	Instrument D2008PS030691W

The Registration does not extend to the mines and minerals

Land Registry

County Tipperary

Folio 50641F

Part 1(B) - Property

Parts Transferred

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

County Tipperary

Folio 50641F

Part 2 - Ownership

Title ABSOLUTE

No. The devolution of the property is subject to the provisions of Part II of the Succession Act, 1965

- | | | | | | |
|---|--|---|-----------|----------------|-------------|
| 1 | 23 DEC 2008
D2008PS030691W | RORY O'BRIEN of Killikane, Mitchelstown, County Cork and
MONICA O'BRIEN of Killikane, Mitchelstown, County Cork are
full owners. | Cancelled | D2020LR057292R | 30-APR-2020 |
| 2 | 30 APR 2020
D2020LR057292R | RONAN BRETT of Mullinahone, County Tipperary is full owner. | Cancelled | D2020LR092735Y | 30-JUL-2020 |
| 3 | 30-JUL-2020
D2020LR092735Y | JAMES FORAN of Retagh, Carrick-on-Suir, County Tipperary is
full owner. | | | |

Land Registry

County Tipperary

Folio 50641F

Part 3 - Burdens and Notices of Burdens

No.	Particulars
1	<p>23 DEC 2008 D2008PS030691W</p> <p>Charge for present and future advances repayable with interest. ACC BANK plc. is owner of this charge.</p> <p>Note: The ownership of this charge has been transferred. See Entry No. 19</p> <p style="text-align: right;">Cancelled D2020LR057292R 30-APR-2020</p>
2	<p>23 SEP 2011 D2011LR110390P</p> <p>A judgment mortgage in respect of a judgment obtained by Agri Health Limited against Rory O'Brien and Monica O'Brien on the 25th day of July 2011 in the Circuit Court Record Number 00877/2011 in a matter of Agri Health Limited v Toomevara Farms Limited and Rory O'Brien and Monica O'Brien t/a Toomevara Pigs and Martin Purtill t/a Toomevara Pigs on the interest of Rory O'Brien and Monica O'Brien in the property.</p> <p>Note: This Judgment Mortgage is registered also on Folios TY26856F, TY34773F, TY34775F, TY50641F, CK63301F, CK50818F, CK113544F, CK57214, CK46842F, CK113116F, CK17787F, CK17786F, CK101258F, CK47807F, CK113125F, CK137428F, CK83683F, CK33580.</p> <p style="text-align: right;">Cancelled D2020LR057292R 30-APR-2020</p>
3	<p>10 NOV 2011 D2011LR126161M</p> <p>A judgment mortgage in respect of a judgment obtained by Agri Health Limited against Rory O'Brien and Monica O'Brien t/a Greenglen Farms on the 11th day of April 2011 in the Cork Circuit Court Record Number 00457/2011 in a action, matter of cause of Agri Health Limited v Rory O'Brien and Monica O'Brien t/a Greenglen Farms on the interest of Rory O'Brien and Monica O'Brien in the property.</p> <p>Note: This judgment is also registered on Folio 33580, 83683F, 137428F, 113125F, 47807F, 101258F, 17786F, 17787F, 113116F, 46842F, 57214, 113544F, 50818F, 63301F Cork 34775F, 34773F, 26856F Tipperary</p> <p style="text-align: right;">Cancelled D2020LR057292R 30-APR-2020</p>
4	<p>01 MAR 2012</p> <p>A judgment mortgage in respect of a judgment obtained by FORESTLINK LIMITED against Rory O'Brien & Monica O'Brien T/A Rory</p>

Land Registry

County Tipperary

Folio 50641F

D2012LR032459V ~~& Monica O'Brien Pig Enterprises on 7th November 2011 in the Circuit Court, Record Number 2011/03199 in a cause/matter/action of FORESTLINK LIMITED v Rory O'Brien & Monica O'Brien T/A Rory & Monica O'Brien Pig Enterprises against the interest of Rory O'Brien & Monica O'Brien in the property.~~

~~Note: This judgment is registered also on folios 17786F, 17787F, 46842F, 50818F, 63301F, 83683F, 101258F, 113116F, 113125F, 113554F, 137428F, 33580 all Co Cork and folios 34773F and 34775F Co Tipperary~~

Cancelled D2020LR057292R 30-APR-2020

5 29-MAR-2012 D2012LR042808C ~~A judgment mortgage in respect of a judgment obtained by John Grant, James Slaine, Ian Stewart, Craig McAlister & Andrew Turkington t/a Parklands Veterinary Clinic against Rory O'Brien and Martin Purtill, t/a Toomevara Unit on 14th September 2011 in the Circuit Court Record Number 00727/2011 in a cause/matter/action of John Grant, James Slaine, Ian Stewart, Craig McAlister, Andrew Turkington, t/a Parklands Veterinary Clinic v Rory O'Brien and Martin Purtill, t/a Toomevara Unit against the interest of Rory O'Brien in the property.~~

~~Note: This judgment is registered also on folios 26856F, 34773F and 34775F all Co Tipperary and folios 63301F, 50818F, 113544F, 57214, 46842F, 11316F, 17787F, 17786F, 101258F, 47807F, 113125F, 137428F, 33580 and 83683F all Co Cork~~

Cancelled D2020LR057292R 30-APR-2020

6 29-MAR-2012 D2012LR042635Y ~~A judgment mortgage in respect of a judgment obtained by John Grant, James Slaine, Ian Stewart, Craig McAlister & Andrew Turkington t/a Parklands Veterinary Clinic against Rory O'Brien and Tony O'Reilly, t/a Green Glen Pig Unit on 15th September 2011 in the Circuit Court Record Number 2011/02405 in a cause/matter/action of John Grant, James Slaine, Ian Stewart, Craig McAlister, Andrew Turkington, t/a Parklands Veterinary Clinic v Rory O'Brien and Tony O'Reilly, t/a Green Glen Pig Unit against the interest of Rory O'Brien in the property.~~

Land Registry

County Tipperary

Folio 50641F

~~Note: This judgment is registered also on folios 26856F, 34773F and 34775F Co Tipperary and 63301F, 50818F, 113544F, 57214, 46842F, 113116F, 17787F, 17786F, 101258F, 47807F, 113125F, 137428F, 33580 and 83683F Co Cork~~

Cancelled

D2020LR057292R

30-APR-2020

7 18-MAR-2014
D2014LR027708J

~~A judgment mortgage in respect of a judgment obtained by JOHN GRANT, JAMES SLAINE, CRAIG MCALISTER, & ANDREW TURKINGTON T/A PARKLANDS VETERINARY CLINIC against MONICA O'BRIEN, RORY O'BRIEN, T/A PIC ENTERPRISES/COOLEMOHAN FARM UNIT on the 10th day of November 2011 in the High Court Record Number 2011/2695S in a cause/matter/action of JOHN GRANT, JAMES SLAINE, IAN STEWART, CRAIG MCALISTER, ANDREW TURKINGTON, T/A PARKLANDS VETINARY CLINIC v MONICA O'BRIEN, RORY O'BRIEN, T/A PIC ENTERPRISES/COOLEMOHAN FARM UNIT against the interest of MONICA O'BRIEN, RORY O'BRIEN, T/A PIC ENTERPRISES/COOLEMOHAN FARM UNIT in the property.~~

~~This judgment is registered on folios CK33580, CK83683F, CK137428F, CK113125F, CK47807F, CK101258F, CK17786F, CK17787F, CK113116F, CK46842F, CK57214, CK113544F, CK50818F, CK63301F, TY50641F, TY34775F, TY34773F, TY26856F~~

Cancelled

D2020LR057292R

30-APR-2020

8 14-NOV-2014
D2014LR117109F

~~A judgment mortgage in respect of a judgment obtained by PAT DENN AGRICULTURE LIMITED against RORY O'BRIEN, MONICA O'BRIEN on 26th day of March 2014 in the Circuit Court Record Number 2014/60392 in a cause/matter/action of PAT DENN AGRICULTURE LIMITED v RORY O'BRIEN, MONICA O'BRIEN T/A Coelmohan Pig Enterprise against the interest of RORY O'BRIEN, MONICA O'BRIEN in the property~~

~~THIS JUDGEMENT IS ALSO REGISTERED ON FOLIOS CK17786F, CK17787F, TY26856F, CK33580, TY34773F, TY34775F, CK46842F, CK47807F, CK50818F, CK57214, CK63301F, CK83683F, CK101258F, CK113116F, CK113125F, CK113544F, CK137428F~~

Cancelled

D2020LR057292R

30-APR-2020

Land Registry

County Tipperary

Folio 50641F

- 9 22-SEP-2016 ~~A judgment mortgage in respect of a judgment obtained by MICHAEL GLADNEY, COLLECTOR GENERAL, OFFICE OF THE REVENUE COMMISSIONERS against RORY O'BRIEN on the 10th day of December 2014 in the District Court Record Number 2014/00441 in a cause/matter/action of MICHAEL GLADNEY v RORY O'BRIEN against the interest of RORY O'BRIEN in the property.~~
- ~~Note: This Judgement is also registered on Folios, CK17787F, TY26856F, TY33010F, CK33580, TY34773F, TY34775F, CK46842F, CK47807F, CK50818F, CK83683F, CK101258F, CK113116F~~
- Cancelled D2020LR057292R 30-APR-2020
-
- 10 23-SEP-2016 ~~A judgment mortgage in respect of a judgment obtained by MICHAEL GLADNEY, COLLECTOR GENERAL, OFFICE OF THE REVENUE COMMISSIONERS against RORY O'BRIEN, MONICA O'BRIEN on the 30th day of July 2014 in the District Court Record Number 2014 00285 in a cause/matter/action of MICHAEL GLADNEY v RORY O'BRIEN, MONICA O'BRIEN against the interest of RORY O'BRIEN, MONICA O'BRIEN in the property.~~
- ~~Note: This Judgement is also registered on Folios, CK17787F, TY26856F, TY33010F, CK33580, TY34773F, TY34775F, CK46842F, CK47807F, CK50818F, CK83683F, CK101258F, CK113116F~~
- Cancelled D2020LR057292R 30-APR-2020
-
- 11 23-SEP-2016 ~~A judgment mortgage in respect of a judgment obtained by MICHAEL GLADNEY, COLLECTOR GENERAL OFFICE OF THE REVENUE COMMISSIONERS against RORY O'BRIEN on the 26th day of June 2015 in the District Court Record Number 2015/00186 in a cause/matter/action of MICHAEL GLADNEY v RORY O'BRIEN against the interest of RORY O'BRIEN in the property.~~
- ~~Note: This Judgement is also registered on folios CK17787F, TY26856F, TY33010F, CK33580, TY34773F, TY34775F, CK46842F, CK47807F, CK50818F, CK83683F, CK101258F, CK113116F~~
- Cancelled D2020LR057292R 30-APR-2020

Land Registry

County Tipperary

Folio 50641F

- 12 ~~06-OCT-2016~~ ~~D2016LR134887C~~ A judgment mortgage in respect of a judgment obtained by, GERARD HARRAHILL, COLLECTOR GENERAL, OFFICE OF THE REVENUE COMMISSIONERS against RORY O'BRIEN on the 27th day of July 2011 in the Circuit Court Record Number 2011/01300 in a cause/matter/action of GERARD HARRAHILL v RORY O'BRIEN against the interest of RORY O'BRIEN in the property.
Note: This Judgement is also registered on folios ~~CK17787F, TY26856F, TY33010F, CK33580, TY34773F, TY34775F, CK46842F, CK47807F, CK50818F, CK83683F, CK101258F, CK113116F~~
Cancelled D2020LR057292R 30-APR-2020
- 13 ~~07-OCT-2016~~ ~~D2016LR102566C~~ A judgment mortgage in respect of a judgment obtained by GERARD HARRAHILL, COLLECTOR GENERAL, OFFICE OF THE REVENUE COMMISSIONERS against RORY O'BRIEN on the 27th day of July 2011 in the CIRCUIT Court Record Number 2011/01299 in a cause/matter/action of GERARD HARRAHILL v RORY O'BRIEN against the interest of RORY O'BRIEN in the property.
Note: This Judgement is also registered on folios ~~CK17787F, TY26856F, TY33010F, CK33580, TY34773F, TY34775F, CK46842F, CK47807F, CK50818F, CK83683F, CK101258F, CK113116F~~
Cancelled D2020LR057292R 30-APR-2020
- 14 ~~07-OCT-2016~~ ~~D2016LR102564D~~ A judgment mortgage in respect of a judgment obtained by, GERARD HARRAHILL, COLLECTOR GENERAL, OFFICE OF THE REVENUE COMMISSIONERS against RORY O'BRIEN on the 13th day of March 2012 in the Circuit Court Record Number 2012/00148 in a cause/matter/action of GERARD HARRAHILL v RORY O'BRIEN against the interest of RORY O'BRIEN in the property.
Note: This Judgement is also registered on folios ~~CK17787F, TY26856F, TY33010F, CK33580, TY34773F, TY34775F, CK46842F, CK47807F, CK50818F, CK83683F, CK101258F, CK113116F~~
Cancelled D2020LR057292R 30-APR-2020
- A judgment mortgage in respect of a judgment obtained by MICHAEL

Land Registry

County Tipperary

Folio 50641F

- 15 07-OCT-2016
D2016LR135083X
~~GLADNEY COLLECTOR GENERAL against RORY O'BRIEN on 5th day of February 2013 in the The Circuit Court Court Record Number 2012/03326 in a cause/matter/action of MICHAEL GLADNEY COLLECTOR GENERAL, v RORY O'BRIEN against the interest of RORY O'BRIEN in the property.~~
Cancelled D2020LR057292R 30-APR-2020
- 16 16-NOV-2016
D2016LR151830D
~~A judgment mortgage in respect of a judgment obtained by MICHAEL GLADNEY, COLLECTOR GENERAL, OFFICE OF THE REVENUE COMMISSIONERS against RORY O'BRIEN on the 19th day of MAY 2015 in the DISTRICT Court Record Number 2015/00121 in a cause/matter/action of MICHAEL GLADNEY v RORY O'BRIEN against the interest of RORY O'BRIEN in the property.~~
~~Note: This Judgement is also registered on folios CK17787F, TY26856F, TY33010F, CK33580, TY34773F, TY34775F, CK46842F, CK47807F, CK50818F, CK83683F, CK101258F, CK113116F~~
Cancelled D2020LR057292R 30-APR-2020
- 17 17-JAN-2017
D2017LR004166E
~~A judgment mortgage in respect of a judgment obtained by GERARD HARRAHILL, COLLECTOR GENERAL, OFFICE OF THE REVENUE COMMISSIONERS against RORY O'BRIEN and MONICA O'BRIEN on the 7th day of August 2012 in the High Court Record Number 2011-1060R in a cause/matter/action of GERARD HARRAHILL v RORY O'BRIEN and MONICA O'BRIEN against the interest of RORY O'BRIEN and MONICA O'BRIEN in the property.~~
~~Note: This Judgement is also registered on folios CK17787F, TY26856F, TY33010F, CK33580, TY34773F, TY34775F, CK46842F, CK47807F, CK50818F, CK83683F, CK101258F, CK113116F~~
Cancelled D2020LR057292R 30-APR-2020
- 18 17-JAN-2017
D2017LR007374C
~~A judgment mortgage in respect of a judgment obtained by MICHAEL GLADNEY, COLLECTOR GENERAL, OFFICE OF THE REVENUE COMMISSIONERS against RORY O'BRIEN and MONICA O'BRIEN on the 4th day of MARCH 2014 in the HIGH Court Record Number 2013/985R in a~~

Land Registry

County Tipperary

Folio 50641F

~~cause/matter/action of MICHAEL GLADNEY v RORY O'BRIEN and MONICA O'BRIEN against the interest of RORY O'BRIEN and MONICA O'BRIEN in the property~~

~~Note: This Judgement is also registered on folios CK17787F, TY26856F, TY33010F, CK33580, TY34773F, TY34775F, CK46842F, CK47807F, CK50818F, CK83683F, CK101258F, CK113116F~~

Cancelled

D2020LR057292R

30-APR-2020

19

~~12 SEP 2019~~
D2019LR136564B

~~PEPPER FINANCE CORPORATION (IRELAND) DESIGNATED ACTIVITY COMPANY is the owner of the charge registered at Entry No. 1~~

Cancelled

D2020LR057292R

30-APR-2020

Attachment 14

PigProgress

Home

News Jan 11, 2011

Ireland: A major pig farm closes its doors

One of Ireland's largest pig farms is halting its operations. Rory O'Brien is one the top five pig farmers in the country and his 2,300 sow herd is currently being cleared out at a farm in Killicane, Mitchelstown, Cork, which is a family business.

Reasons for closure

There has been no indication from Mr O'Brien that the reasons for leaving the pig industry is due to problems experienced with off-farm investments. Mr O'Brien has stated that the sow clear out is because of disease reasons and plummeting returns.

"The most efficient pig farmers in this country have costs of production of 165-170c/kg but are only paid 135-136c/kg. You couldn't sustain those levels of losses. We took a look at it and decided there was no point in continuing," said O'Brien.

With the crisis looming, Mr O'Brien stated that there are farmers that were not coping with feeding their pigs because money is tight.

Feed costs escalating

The closure of the pig farm comes at a time when issues of increasing feed costs and low pig meat prices are rife. Mr O'Brien has added that processors and retailers, and not only feed costs, have also fuelled the current pig industry crisis. "There is no commitment to Irish pig meat. The factories, secondary processors and shopkeepers have zero respect for Irish farmers. The farmer's share is down to 17pc of the shelf price - something has gone wrong somewhere." he added.

Generate losses

"At least we saw it in time and took the decision to get out. There was no point whatsoever in continuing to generate losses on that scale. It would have been downright bad business," he said.

Source: independent.ie

Editor PigProgress

To comment, login here Or register to be able to comment.

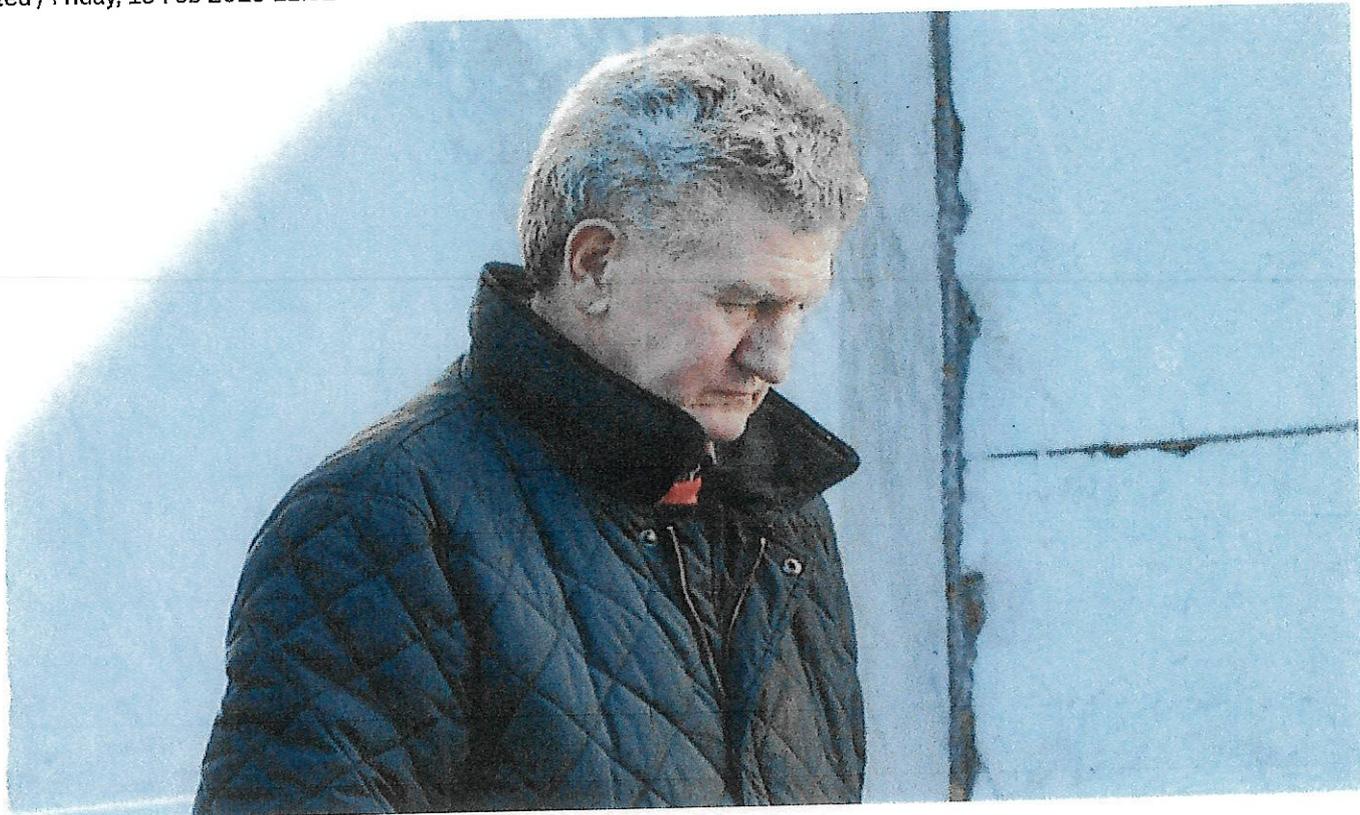


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Pig farmer jailed for 18 months over animal cruelty

Updated / Friday, 13 Feb 2015 11:02



Rory O'Brien pleaded guilty to five counts of animal cruelty

One of Ireland's biggest pig producers has been sentenced to prison for 18 months for what a judge has described as animal cruelty on an industrial scale.

Rory O'Brien, 60, of Killicane, Mitchelstown in north Cork, had pleaded guilty to five charges of animal cruelty which included the cannibalisation of animals and failing to comply with a welfare notice.

O'Brien, whose piggery once handled up to 20,000 animals, now owes €22 million to the banks but the court was told the cruelty was not as a result of his finances, which were described as catastrophic, but because of his bad management.

Department of Agriculture Veterinary Inspector John McConville told Cork Circuit Criminal Court that during several visits to O'Brien's piggery between May and September 2011 they found sick, starving and dying pigs and boars, some units were overrun by rats and animals were without access to drinking water.

The inspectors also found pigs had cannibalised each other, and in one case a boar had an abscess on his leg the size of a football.

He said his fellow inspector Mary Callinane got very upset on one occasion when she discovered workmen watering shrubs on the property but the pigs had no water, and

temperatures were in the 20s.

Ms Callinane also had to call gardaí when she was verbally abused by O'Brien during an inspection of the piggery.

Officials issued several notices to try and alleviate the suffering but these were ignored by O'Brien, who in correspondence claimed his piggery met the highest standards.

Judge Seán Ó Donnabháin said O'Brien openly defied the Department of Agriculture and described the correspondence as "brazenness in the context of the evidence".

Judge Ó Donnabháin accepted that O'Brien's animal welfare issues occurred at a time he was under severe pressure over his finances but he said the severity of the welfare and cruelty issues required a custodial sentence and he jailed him for 18 months.

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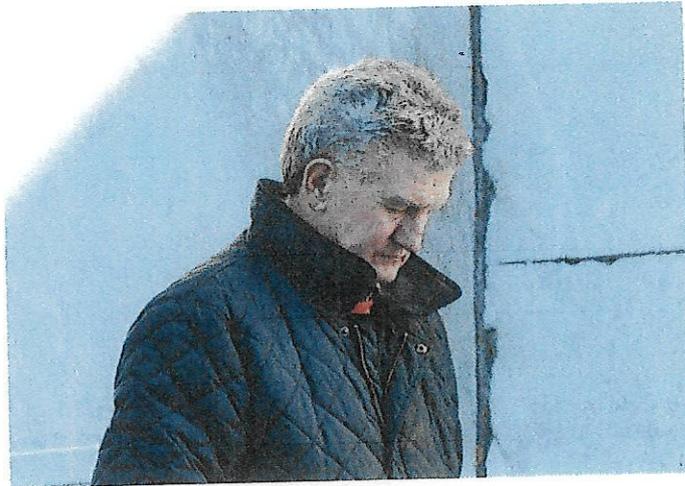
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Farmer jailed after starving pigs ate each other alive



Pig farmer Rory O'Brien from Killycane, Mitchelstown, Co Cork pictured at Cork Circuit Court Picture: Daragh Mc Sweeney/Cork Courts Limited

Ralph Riegel February 12 2015 11:25 PM



ONE of Ireland's biggest pig farmers was jailed for 18 months after his starving animals cannibalised each other in what a judge described as "cruelty on an industrial scale".

Rory O'Brien (60) was jailed after admitting he caused unnecessary suffering to his pigs - which had eaten each other alive, with some feeding off dead animals in their pens.

Other animals were found badly injured while some filthy pig units were overrun by rats.

O'Brien, whose north Cork pig unit handled up to 20,000 animals, now owes €22m to the banks with Cork Circuit Criminal Court told his finances are "absolutely catastrophic".

The father-of-five pleaded guilty to a number of animal cruelty charges.

Judge Sean O'Donnabhain said he had "never come across anything like this before".

"This was cruelty on an industrial scale. This is a different league altogether.

"He openly defied them (the Department of Agriculture). What brazenness in the context of the evidence," he said as he noted that O'Brien had even written to inspectors insisting his farm met the highest standards.

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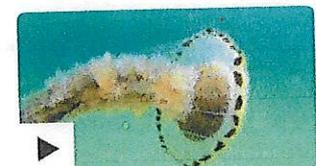


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On another occasion, an inspector became upset at workmen watering plants in the garden while pigs inside the shed suffered in May heat without adequate food and water.

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One pig had an untreated abscess the size of a small football on its leg.

O'Brien of Killicane, Mitchelstown, Co Cork, admitted five animal welfare charges.

They ranged from May 3 to September 8 2011 and involved animals left injured or, in one sample case, eaten alive.

Inspector John McConville of the Department of Agriculture's special investigations unit said the welfare issues were entirely about management and not money. "It was very bad management. This should not have been happening," he said.

Rory O'Brien ranked as one of the largest-scale pig farmers in Ireland.

He waged a high-profile campaign against the closure by Dairygold of its Galtee Meats plant in Mitchelstown in 2007.

O'Brien's pig operation was four times the size of the average Irish pig farm and employed more than 40 people.



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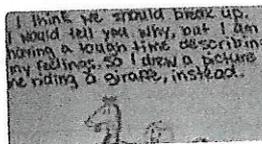
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Farmer jailed for 18 months after pigs ate each other

Court hears about horrific animal neglect at farm in Mitchelstown, Co Cork

© Thu, Feb 12, 2015, 18:17

Barry Roche

 One of the country's biggest pig producers has been jailed for 18 months for "cruelty on an industrial scale" where some of his pigs were cannibalised and eaten alive.



*** Rory O'Brien (60) pleaded guilty to five charges relating to his treatment of pigs, including that he failed to prevent unnecessary suffering to some animals which were eaten alive by others.

Judge Sean O Donnabhain said it had been his misfortune to come across a number of animal welfare and cruelty cases, but he had never encountered anything like this.

"This is cruelty on an industrial scale by one of the biggest pig farmers in the country. On a continuous basis he knowingly and without regard (acted in this way)," said the judge.

Department of Agriculture vet John McConville catalogued the inventory of neglect and cruelty when he outlined the case at Cork Circuit Criminal Court.

He told how he and colleagues encountered horrific animal neglect and cruelty at O'Brien's piggery at Killicane, Mitchelstown over the period May to September, 2011.

They had served two welfare notices on O'Brien following inspections in May 2011, but he failed to comply and the conditions of some animals deteriorated at the 20,000 animal piggery.

Mr McConville said the pigs had no fresh water supply in temperatures of 22 degrees and they were also left without food. He said stressed hungry pigs become very aggressive. This can result in some animals attacking and eating other pigs in their pen and he showed Judge O Donnabhain a photograph of one animal with half its side eaten.

The animal was still alive, but suffering cruelly said Mr McConville. He added there were also other animals that had been eaten by more aggressive animals in the rat-infested piggery.

The appropriate care involved separating out the injured animals from the other aggressive pigs for treatment and if treatment failed, the animal should be euthanised.

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However, O'Brien failed to euthanise injured animals and they were left to suffer before dying with many dead carcasses left lying about the piggery rather than being properly disposed.

Other animals had joints that were inflamed and one animal had an abscess on its leg that was the size of a football. The animal was neither treated nor euthanised, he said.

O'Brien refused to co-operate and at one point became so threatening to Department of Agriculture vet Mary Cullinane during a visit that she feared for her safety and had to call the gardaí.

O'Brien wrote to the department on one occasion and told them his own vet had certified his stock as being healthy and told them he didn't agree with their assessment.

This was at a time when pigs were being cannibalised at the piggery and when they later confronted O'Brien about it, he told he didn't have to deal with it and just walked away.

At one stage when the pigs had no water and temperatures were hitting 22 degrees, they found a staff member watering a hedge at the O'Brien home nearby, said Mr McConville.

Cross-examined by O'Brien's counsel, Ken Fogarty SC, Mr McConville said that he was aware that O'Brien was experiencing financial difficulty.

However he didn't believe the problem stemmed from financial difficulties but from poor management as it would not have cost much to ensure the pigs had water or were euthanised.

"The pigs can't be left to suffer just because he didn't have the money ... Mr O'Brien had a choice every day (on how to treat the animals), the pigs had no choice," said Mr McConville.

Mr Fogarty said it costs €40-€50 to dispose of a dead pig and Mr McConville agreed, but said one of the responsibilities of farming was to dispose of dead animals properly and safely.

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He accepted that his failure to provide the pigs, he said.

Defence witness, *Accountant Edward Cahill* said he *failed to say his financial situation was* books and it was current debts of €22 million.

did not excuse
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atastrophic with

Judge O Donnabhain noted O'Brien had saved the State the cost and time of a lengthy and complex trial by his guilty plea and that was a mitigating factor in his favour.

However, both the scale and the duration of the neglect and cruelty was extraordinary as was O'Brien's attitude towards the Dept of Agriculture when they sought to intervene.

"When first confronted by the Department he openly defied them. He wrote to them more or less looking for a gold medal for his treatment of pigs. What brazenness. I have no doubt this man was financially in a calamitous situation but that does not excuse or explain the level of what was going on here with these animals," he said

"It is not individual cruelty, it is that it went on in the face of departmental involvement over a prolonged period that makes it so bad," he said as he jailed him for 18 months.

Judge O Donnabhain said that he would have had no difficulty imposing the maximum three-year term provided for by the legislation if O'Brien had been convicted after a trial.

The legislation also provided for fines of up to €100,000 in addition to or in place of the jail term but he saw no point in imposing a fine given O'Brien's financial position.

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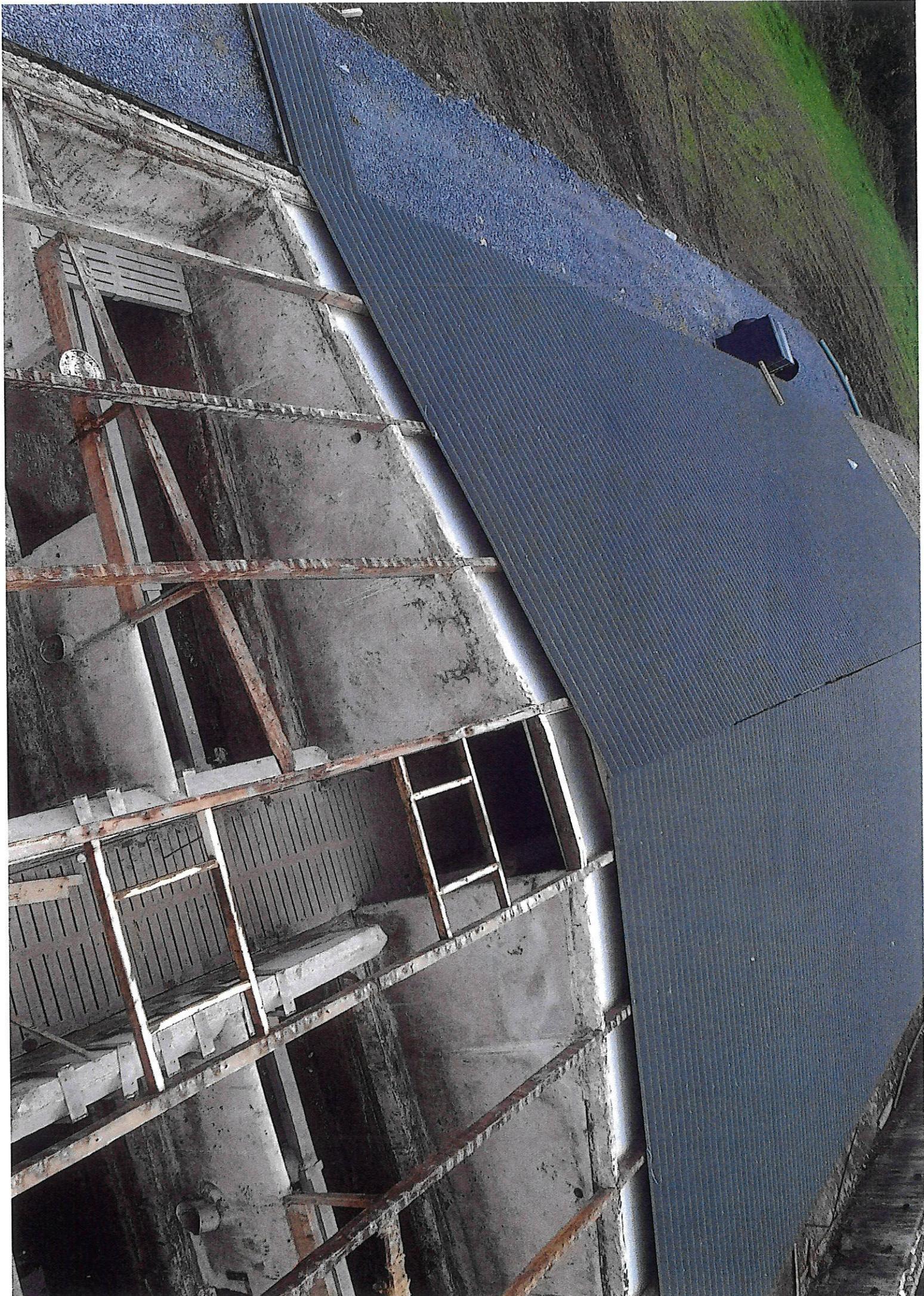
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Attachment

15







Attachment 16

AFFIDAVIT OF TIMMY BRETT

I, Timmy Brett, of Gurteen, Mullinahone, Thurles, in the County of Tipperary, being eighteen years and upwards do hereby MAKE OATH and say as follows:

1. I beg to refer to ~~4~~ documents attached hereto and referred to as Exhibit A and marked by me prior to the swearing hereof are a true record of my association with the property known as The Piggery at Killaghy, Mullinahone.

pk
TB

Sworn before me by the said Timmy Brett

On the 12th day of August 2021, at Killenaule in the County of Tipperary

Timmy Brett
Deponent

Before me a Commissioner for Oaths/Practising Solicitor and the deponent is personally known to me.

Philip M. Joyce
Commissioner for Oath/Practising Solicitor

Philip M. Joyce
Solicitor
Bailey St, Killenaule, Thurles
Co. Tipperary
052-9156206

AFFIDAVIT OF TIMMY BRETT

EXHIBIT A

Timmy Brett

Gurteen,
Mullinahone,
Co. Tipperary.

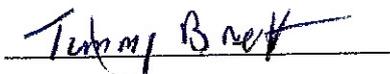
2nd June 2021

To whom it may concern,

I wish to confirm that I was the last worker at the Piggery in Killaghy, Mullinahone when it closed in 2013. Upon the closure of the piggery, equipment related to the operation of the piggery was removed from site. This would have included computerised feeding system i.e. feed augers, feeders, probes, computer etc..

Other equipment including feed troughs, crates and other internal fittings of pig houses were also removed. It was my understanding that most of this equipment was moved to piggeries in Toomevara and Mitchelstown with which the then owner had association.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Timmy Brett', written over a horizontal line.

Timmy Brett.

Timmy Brett

Gurteen

Mullinahone

Co Tipperary

28-03-2021

To whom it may concern,

I wish to confirm that the shed's indicated on the attached map and marked "A & B" were built during my time of employment at the piggery, located in Killaghy Mullinahone between 1986 up until it closed in early 2013.

Kind regards

Timmy Brett

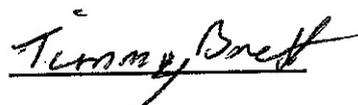
Signed: Timmy Brett Date: 28/3/21

**Gurteen,
Mullinahone,
Thurles,
Co. Tipperary.**

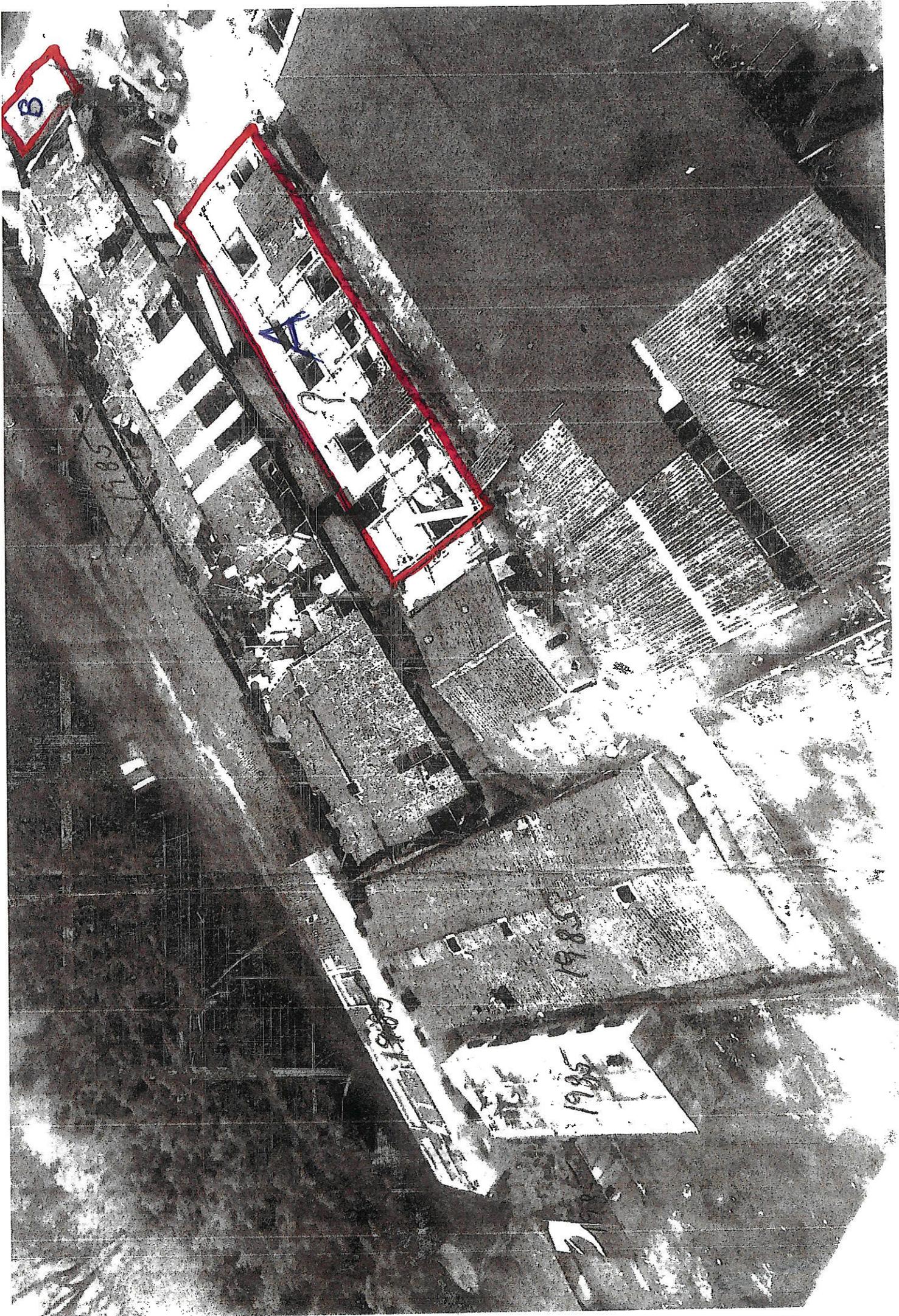
12 August 2021.

Re: Piggery situated at Killaghy, Mullinahone.

I, Timmy Brett of Gurteen, Mullinahone wish to state that the written statement (attached herewith) provided by me to Tipperary Co. Council dated 28th March 2021 in relation to buildings constructed during my time working at the piggery and statement (attached herewith) dated 2nd June 2021 in relation to the closure of the piggery at Killaghy, Mullinahone are in belief true and correct.



Timmy Brett



AFFIDAVIT OF THOMAS MOCKLER

I, Thomas Mockler, of Modeshill, Mullinahone, Thurles, in the County of Tipperary, being eighteen years and upwards do hereby MAKE OATH and say as follows:

1. I beg to refer to 3 documents attached hereto and referred to as Exhibit A and marked by me prior to the swearing hereof are a true record of my association with the property known as The Piggery at Killaghy, Mullinahone.

Sworn before me by the said Thomas Mockler

On the 12th day of August 2021, at Killenaule in the County of Tipperary

Thomas Mockler
Deponent

Before me a Commissioner for Oaths/Practising Solicitor and the deponent is personally known to me.

Commissioner for Oaths/Practising Solicitor

Philip M. Joyce
Solicitor
Bailey St, Killenaule, Thurles
Co. Tipperary
052-9156206

AFFIDAVIT OF THOMAS MOCKLER

EXHIBIT A

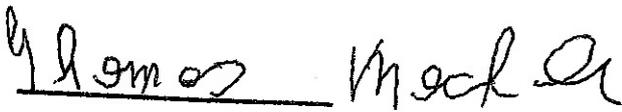
Thomas Mockler

**Modeshill,
Mullinahone,
Thurles,
Co. Tipperary.**

12th August 2021.

Re: Piggery situated at Killaghy Mullinahone.

I, Thomas Mockler of Modeshill, Mullinahone wish to state that the written statement (attached herewith) provided by me to Tipperary Co. Council dated 11th August 2020 in relation to chronology of development of the piggery at Killaghy, Mullinahone during my time working there is in my belief true and correct.



Thomas Mockler

11/08/2020

RE: Piggery in Killaghy, Mullinahone, Co. Tipperary.

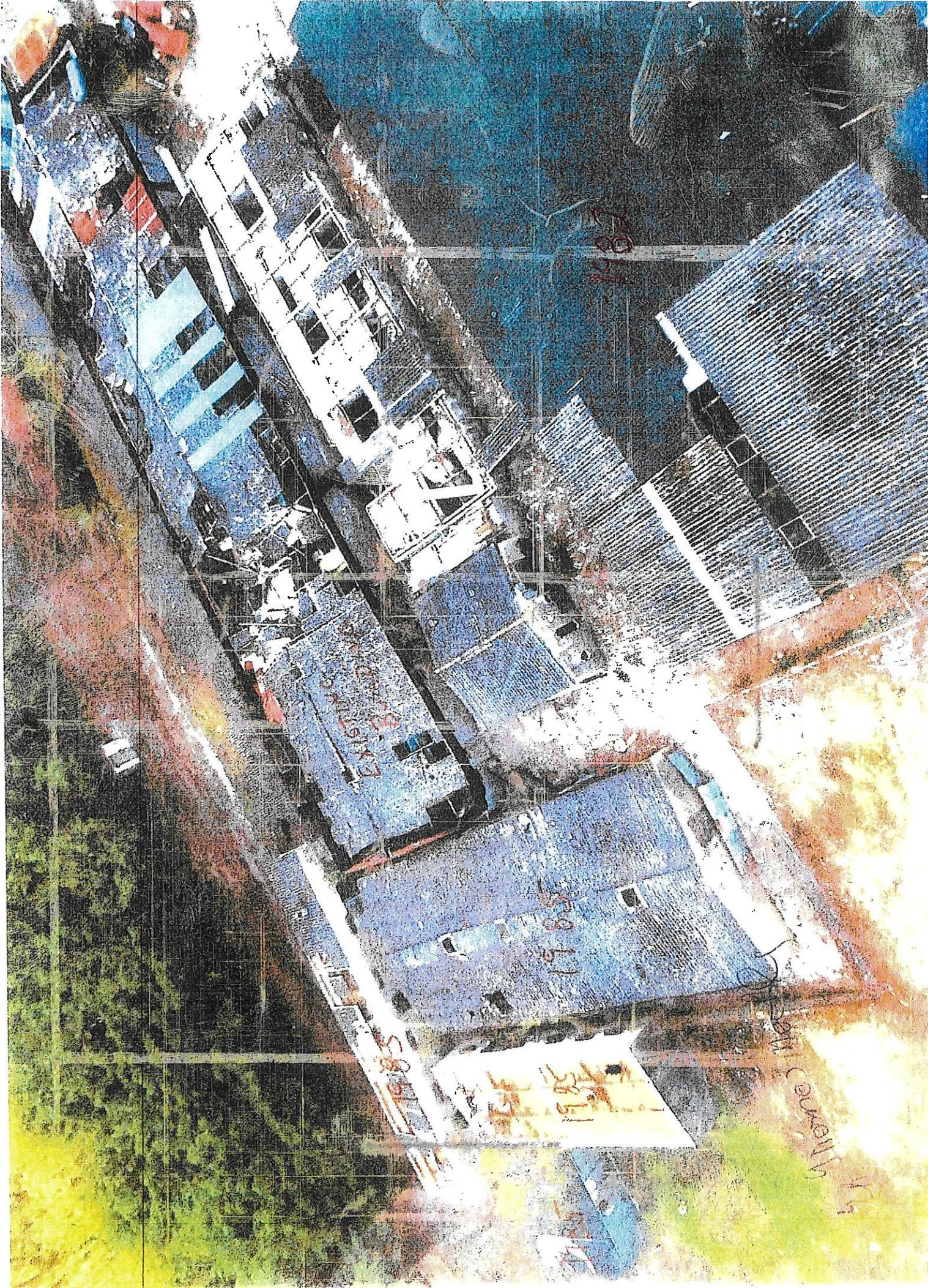
From the years 1980 – 1988 (inclusive) I worked full time at the piggery located in Killaghy, Mullinahone, Co. Tipperary. Throughout my employment at the piggery I was at the premises daily and have outlined on a map attached what buildings existed and were constructed during this period. Please find the map attached.

Should you have any queries, please don't hesitate to contact me.

Regards

Thomas Mocker

Thomas Mocker



AFFIDAVIT OF Michael Quirke

I, Michael Quirke of Clonagoose, Mullinahone, Thurles, in the County of Tipperary, being eighteen years and upwards do hereby MAKE OATH and say as follows:

1. I beg to refer to 3 documents attached hereto and referred to as Exhibit A and marked by me prior to the swearing hereof are a true record of my association with the property known as The Piggery at Killaghy, Mullinahone.

Sworn before me by the said Thomas Mockler

On the 13th day of August 2021, at Killenaule in the County of Tipperary

Michael Quirke

Deponent

Before me a /Practising Solicitor and

the deponent is personally known to me.

Philip M. Joyce
Commissioner for Oath/Practising Solicitor

Philip M. Joyce
Solicitor
Bailey St, Killenaule, Thurles
Co. Tipperary
052-9156206

AFFIDAVIT OF MICHAEL QUIRKE

EXHIBIT A

Michael Quirke

Philip M. Joyce

Philip M. Joyce
Solicitor
Bailey St, Killenaule, Thurles
Co. Tipperary
052-9156206

Clonagoose,
Mullinahone,
Thurles,
Co. Tipperary.

12th August 2021.

Re: Piggery situated at Killaghy, Mullinahone.

I, Michael Quirke of Clonagoose, Mullinahone wish to state that the written statement (attached herewith) provided by me to Tipperary Co. Council dated 28th March 2021 stating the year I sold my piggery at Killaghy, Mullinahone and outlining what buildings were on site at that time is in my belief true and correct.



Michael Quirke.

Clonagoose
Mullinahone
Thurles
Co Tipperary
28-03-2021

To Whom it my Concern_

In 1980 I sold my piggery in Killaghy Mullinahone. I wish to state that when I sold the buildings marked on the Ariel picture with the brown marker were definitely the only buildings on the property at the time and any extra buildings that are on the picture were erected after 1980

Your faithfully

Michael Quinlan

