

Sorcha Skelly

From: Sorcha Skelly
Sent: Thursday 2 December 2021 12:23
To: Sorcha Skelly
Subject: FW: s.129 Response Killaghy ABP -311139-21
Attachments: s.129 response Killaghy Tipperary ABP-311139-21.pdf

From: David Mulcahy <David@planningconsultant.ie>
Sent: Tuesday 9 November 2021 17:26
To: Bord <bord@pleanala.ie>
Subject: s.129 Response Killaghy ABP -311139-21

Dear Sir/Madam

Please find a s.129 response attached in response to your invite for a submission.

Kind Regards,

David Mulcahy
Ba. (Mod), MRUP, MSc Urban Design, MIPI, MRTPI
David Mulcahy Planning Consultants Ltd

67 Old Mill Race Athgarvan, Newbridge, Co. Kildare, W12 X248
Ph: 045 405030 M: 0863504471

Chartered Planning Consultants.

DM	DAVID MULCAHY PLANNING CONSULTANTS LTD
	67 The Old Mill Race, Athgarvan, Co. Kildare PH: 045 405030/086 350 44 71 E-mail: david@planningconsultant.ie www.planningconsultant.ie
Company No: 493 133 Directors: D. Mulcahy & M. Mulcahy	

An Bord Pleanála
64 Marlborough St
Dublin 1

9th November 2021

**Re: Section 129 Response
Response to referral lodged by Mullinahone Piggery Action Group
An Bord Pleanála Ref ABP-311139-21 (Tipperary Co. Co. Ref. S5/21/35)**

Dear Sir/Madam,

We act on behalf of **Mr. Jim Foran** in responding to the letter from the Board dated 14th October 2021 concerning the above matter. The 4-week deadline (10th November 2021) for a submission is met.

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 Board 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 Referral taken by the Action Group cannot seek to reopen a decision that the Council have already made a declaration on and was not challenged by way of a referral or a judicial review. We seek for the Council to dismiss the Section 5 application on this basis.

Much of what is raised in the referral to the Board has already been raised in the appellants section 5 application to the Board. We refer to the Board to the response submitted to the appellants Section 5 application to Tipperary County Council and trust that the Board will review same.

It is my clients strong contention that much of the so called evidence upon which the appellants rely on, and particularly the persons providing this evidence is at best inaccurate and at works false and misleading.

We wish to address the following points:

Storage Tank

The fact that there is one storage tank serving two separate buildings does not mean that it is in effect one building and there is no basis upon which to substantiate this claim. We therefore ask the Board to dismiss the argument.

Roofing materials

None of the roofing material was left lying around as claimed. It was removed and stacked on pallets and is now wrapped in plastic on site as advised by the Health and Safety Authority. Our client notes that some of the roofing is actually fibre cement.

Dumping of Organic Material

95% of material was removed and land spread as organic fertilizer. Remaining 5% dry mater content was stored on the field but not close to the stream.


Flood Risk

None of the works carried out or the storage of the pigs pose any risk to the stream as pointed out by the Council's Environmental Department verbally during their inspections.

Illegible Invoice

We dispute the view that this invoice is illegible. We also dispute the view that close scrutiny shows this invoice does not relate to Killaghy - what is the finding of the close scrutiny? What proof is there that it is from elsewhere. 'Mullinahone' is stated on the invoice. Mr. Mocklers evidence cannot be relied on.

Please refer to email below from Richie O'Sullivan who is a shareholder and employee of IDS Ltd who issued the invoice in 1991 confirming it is fully legitimate.

 Tue 09/11/2021 16:55
J W Foran <jimforan1@gmail.com>
Fwd: FW:

To: David

----- Forwarded message -----
From: SLADEVILLE LTD <info@sladeville.com>
Date: Tue, 9 Nov 2021, 16:44
Subject: FW:
To: J W Foran <jimforan1@gmail.com>

From: Richie O'Sullivan [mailto:rosullivan@ids.ie]
Sent: 09 November 2021 15:50
To: SLADEVILLE LTD <info@sladeville.com>
Subject:

Dear Jim, following our recent conversation, this is to confirm that the paperwork supplied to you ref. IDS job no. 675, relates to pig housing supplied and erected at Killaghy, Mullinahone, Co. Tipperary in 1991.

Regards
Richie ids

Abandonment of Farm

Please refer to the letter attached from Rory & Mona O'Brien 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.

Judgments

Prior to 2014 there was only 6 judgments on the property, not 17. Of those 6 one was a bank which has first charge, which is normal. Of the other 5 two are from one company and another two of the 5 are from a second company. As such there are 3 companies outside the bank. Furthermore, the bank did not sell the property; they instructed the owner who did it voluntarily.

Equipment Being Removed

Some equipment was removed in 2013 but not all of it. There was a wet feed system left on site. There was 3 feed silos left on site. Pig feeders were left on site. Ventilation controllers were left on site.

Inaccessible

The site was never inaccessible as there was horses kept on the site and ergo continual access was need to same.

Unlawful Dumping Ground

This is grossly exaggerated. Illegal fly tipping occurred at the entrance - was is noted in the newspaper article included by the appellants. Furthermore, allegations about asbestos being included in dumping on the site is also false. The Environment Section in Tipperary County Council visited the site to investigate these claims and found them to be false. It would be in the interest of the Board to request reports on this site from the Environment Department.

Substantial Unauthorised Use

For 38 years after the building was built there was no question ever asked about its planning status until the new owner took over. This is a clear attempt to retrospectively raise issues which were never an issue until an application was lodged with the Council to expand and improve the established piggery on the site.

Minor Refurbishment

All existing walls and tanks are still in place. The majority of the roof timbers were reused. Some of the slats in the house are still in use. Storm damage can happen to any building and the owner is entitled to replace same without the need for planning permission. Replacement of damaged slats does not need planning permission.

Letter

The letter in question from Liam O'Connor is with the Council and the Board are requested to obtain a copy from the Council as we can't obtain it.

Quirke claim

Mr. Quirke claims of selling one building and slurry store in 1980. Based on the layout and dimensions of the single building it is my clients expert opinion that Mr. Quirke was producing c.7kg piglets at Killaghy for sale. A subsequent building occurred in 1982 involving a finishing house with no weaner accommodation as per Mr. Mocklers evidence. However, in my client's opinion it is inconceivable that would be no weaner accommodation with the finishing house as this would never happen on any pig farm. There would have to be weaner accommodation in situ. In my client's opinion this brings into question the credibility and validity of the Quirke claim.

Closure Of Pig Business

The claim that Mr. O'Briens Pig Business closed in 2011 is farcical given the s.5 report states that in 2013 pigs were removed. It again raises concerns about the credibility of the section 5 application/referral with numerous inconsistencies.

Ownership by Financial Institutions

My client wishes to highlight that the pig farm was never owned by any financial Institutions; it was in the O'Briens ownership until purchased in 2020.

Doors

The claim that the two buildings were one on the basis of doors between the buildings is nonsensical.

Mockler Photograph

The building marked 1985 at the left side of the photograph was built in 1991 as per the invoice included below and calls into the credibility of his statement.

O'Meara Letter

This letter states that the piggery closed in early 2013. Please refer to sales docket dated July 2013. Again, the credibility of this statement is called into question. As such there is only 6.5 year gap between closure and reopening.

Please refer to financial statements in **appendix 2** which show the sale of pigs in July 2013. All specifically refer to the slat mark which is individual to each site - Ref. ZV035 = Kilaghy.

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?

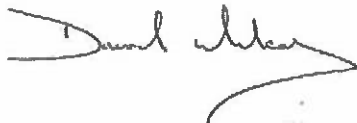
In view of the above we seek for the Council to dismiss the Referral as there is already a Section 5 declaration relating to the key elements of the development. In the event that the Board continue to adjudicate on the Section 5 application we invite the Board to agree with Tipperary County Council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

Finally, my client has consulted his solicitor, Aisling Irish, of Hartes Solicitors in Kilkenny, who has confirmed that the photographs and aerial photographs were obtained without Mr. Forans permission and was therefore obtained illegally and should not be relied upon in the assessment. This also applies to the photographs in the Russell Environmental Report.

If the Boards inspector wishes to visit the site please contact **Jim Foran at 087 644 8864** to enable entry to the site. For biosecurity and welfare reasons the inspector will have to be accompanied at all time. Under law unauthorised entry is strictly forbidden as per the signs on the site so its important that contact be made in advance - please allow 24hrs+. Mr. Foran welcomes a visit but as the Board will appreciate protocol has to be followed.

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. Invoice attached for a Piggery Parlour building that was purchased from IDS Ltd in 1991.
2. Financial statements which show the sale of pigs in July 2013.

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

Irish Dairy Services (Portlaoise) Ltd.

CLIENT: John J. Mullin
(Mullin's Farm, Mullin)
5030675
Telephone _____

Portlaoise County Laois Ireland
Telephone: (0502) 21224/22381 Fax: (0502) 20723
V.A.T. No. 9027380U

No 2451

Quotation
Order

Date 10-10-91
Date Required End Jan Early Feb

Quantity	Description	£
1	<u>16' x 16' 1991 Parlour</u> <u>includes front baytop</u> <u>& VAT includes front workshop</u>	<u>8500</u>

Reference to '91' and 'Mullinahone' highlighted.

2. Financial statements which show the sale of pigs in July 2013.

Mullinane heed *V. Luise Porcan*
 Dumber *14 1.65 5.50*

ZV035 RORY O'BRIEN - ROI

01/07/2013

This document is issued in accordance with section 17(2) of the V.A.T. Act 1972, on condition that if you are registered for V.A.T. or you are not a Farmer you are obliged to notify us.

Record of actual carcass weight are kept by Karro Food Group Ltd.
 Total Delivery Dead Weight 14062.3 kg
 Average Dead Weight 76.3 kg
 Average Pig Value

Probe mm.	In This Payment	Year To Date
10 Under	151 75.5%	810 75.7%
11	20 10.0%	117 10.9%
12	13 6.5%	59 5.5%
13	8 4.0%	38 3.6%
14	4 2.0%	22 2.1%
15	2 1.0%	10 0.9%
16 Over	2 1.0%	14 1.3%

Gross Carcase Value	[REDACTED]
Carcase V.A.T @ 4.8%	[REDACTED]
Net Carcase Value	[REDACTED]

Description	Amount	Value
SCAPPS LIMITED/ADULT	0	0.00
SCAPPS/LEET BROS	0	0.00
OFFAL CHARGE	[REDACTED]	[REDACTED]
INSPECTION FEE	[REDACTED]	[REDACTED]

Net Adjustments	[REDACTED]
Adjustments VAT	[REDACTED]
Gross Adjustments	[REDACTED]

Total Pigs	[REDACTED]
Total Net Value	[REDACTED]
Total VAT	[REDACTED]
Total Value	[REDACTED]

94/13 entered

02/07/2013

Summary

Category	Grade	Pigs	Average Probe	Average Weight	Pay Weight	Average Value	Price Per (Kg)	Value
G	SA	4	9.00	60.0	60.0			
G	SA	1	6.00	55.2	55.2			
G	SA	7	6.29	55.4	367.7			
G	SA	48	6.80	71.1	3412.8			
G	SA	89	6.52	69.7	6110.3			
G	SA	2	9.50	77.3	154.6			
G	SB	18	11.87	72.9	1312.4			
G	SB	26	12.08	73.3	1905.5			
G	SB	1	12.00	73.2	73.2			
G	SC	3	15.33	76.7	236.1			
G	SC	1	16.00	83.3	83.3			
		200	9.44	68.7				

Adjustments

				VAT Rate	Value
INSPECTION FEE	0.590	200		0.00	0.00
OFFAL CHARGE	1.800	200		0.00	0.00
SLAPPED LEFT BACK	0.000	0	0.00	0.00	0.00
SLAPS UNREADABLE	0.000	0	0.00	0.00	0.00
					0.00

Producer VAT Number 9623818C

Abattoir VAT Number

Net Carcase Value	
Carcase VAT @ 4.50%	
Gross Carcase Value	
Net Adjustments	
Adjustments VAT	0.00
Gross Adjustments	
Total Net Value	
Total VAT Value	
Total Value	

Slap Mark	Gross Weight	Weight Remark	Net Cold Weight	Pay Weight	Est. % Lean C	Z P2 Grade	Price Per Kilo	Value EUR
ZV035	58.8		58.8	58.8	85.0%	9 SA	1.570	57.78
ZV035	58.2		58.2	58.2	85.4%	8 SA	1.570	58.85
ZV035	58.6		58.6	58.6	85.0%	10 SA	1.570	58.71
ZV035	57.4		57.4	57.4	84.7%	8 SA	1.570	58.12
ZV035	58.5		58.5	58.5	85.9%	9 SA	1.570	51.85
ZV035	59.2		59.2	59.2	85.5%	7 SA	1.570	52.94
ZV035	59.5		59.5	59.5	85.5%	7 SA	1.570	53.10
ZV035	60.0		60.0	60.0	84.7%	8 SA	1.570	54.20
ZV035	60.1		60.1	60.1	85.4%	8 SA	1.520	109.55
ZV035	60.3		60.3	60.3	85.9%	7 SA	1.520	109.75
ZV035	60.6		60.6	60.6	85.0%	10 SA	1.520	110.29
ZV035	60.7		60.7	60.7	85.0%	9 SA	1.520	110.47
ZV035	61.1		61.1	61.1	85.0%	9 SA	1.520	111.20
ZV035	61.2		61.2	61.2	85.0%	9 SA	1.520	111.35
ZV035	61.4		61.4	61.4	85.5%	7 SA	1.520	111.75
ZV035	61.5		61.5	61.5	85.9%	9 SA	1.520	111.83
ZV035	61.8	KLINGELN	61.8	61.8	85.0%	9 SA	1.520	112.45
ZV035	61.9		61.9	61.9	85.0%	9 SA	1.520	112.85
ZV035	61.9		61.9	61.9	84.7%	8 SA	1.520	112.99
ZV035	62.0		62.0	62.0	85.0%	9 SA	1.520	113.84
ZV035	62.7		62.7	62.7	85.0%	10 SA	1.520	114.11
ZV035	62.8		62.8	62.8	84.7%	8 SA	1.520	114.30
ZV035	62.9		62.9	62.9	84.7%	8 SA	1.520	114.45
ZV035	63.1		63.1	63.1	84.7%	8 SA	1.520	114.84
ZV035	63.4		63.4	63.4	82.2%	11 SA	1.520	115.59
ZV035	63.6		63.6	63.6	85.0%	9 SA	1.520	115.75
ZV035	63.6		63.6	63.6	85.0%	7 SA	1.520	115.75
ZV035	63.6		63.6	63.6	82.2%	11 SA	1.520	115.12
ZV035	63.6	KLINGELN	63.6	63.6	85.0%	10 SA	1.520	115.13
ZV035	64.0		64.0	64.0	85.4%	8 SA	1.520	115.45
ZV035	64.1		64.1	64.1	85.5%	7 SA	1.520	115.85
ZV035	64.2		64.2	64.2	84.7%	8 SA	1.520	115.94
ZV035	64.3		64.3	64.3	85.4%	8 SA	1.520	117.55
ZV035	64.4	KLINGELN	64.4	64.4	84.7%	8 SA	1.520	117.21
ZV035	64.4		64.4	64.4	85.0%	9 SA	1.520	117.21
ZV035	64.5		64.5	64.5	85.4%	8 SA	1.520	117.55
ZV035	64.6		64.6	64.6	85.0%	8 SA	1.520	117.57
ZV035	64.7		64.7	64.7	85.0%	10 SA	1.520	117.75

