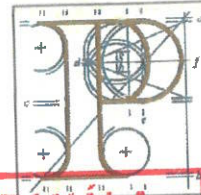


Our Case Number: ABP-311192-21

Planning Authority Reference Number: EX931



An  
Bord  
Pleanála

Brian Gallivan  
Homely Developments Limited  
Lacka  
Templenoe  
Co. Kerry

**AN BORD PLEANÁLA**

LDG- \_\_\_\_\_  
ABP- \_\_\_\_\_

10 SEP 2021

Fee: € \_\_\_\_\_ Type: \_\_\_\_\_  
Time: \_\_\_\_\_ By: neg post

Date: 24 August 2021

**Re:** Is the stripping back and removal of all of the topsoil and trees on lands at Reenagappul, Kenmare, Co. Kerry, adjacent to an SAC (Kenmare River SAC), to create an alleged unauthorized extension of 2.75 hectare to the existing unauthorized quarry at Reenagappul, Kenmare, and the importation of broken stone from the alleged unauthorized 2.75 hectare quarry extension for storage in the existing unauthorized quarry at Reenagappul, Kenmare, development or is it exempted development?  
Lands at Reenagappul, Kenmare, Co. Kerry.

Dear Sir / Madam,

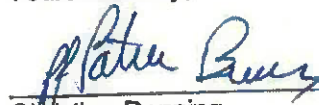
Enclosed is a copy of a referral under the Planning and Development Act, 2000, (as amended).

In accordance with section 129 of the Planning and Development Act, 2000, (as amended), you may make submissions or observations in writing to the Board in relation to the referral within a period of 4 weeks beginning on the date of this letter.

Any submissions or observations received by the Board outside of that period shall not be considered and where none have been validly received, the Board may determine the referral without further notice to you.

Please quote the above referral number in any further correspondence.

Yours faithfully,

  
Christine Denning  
Direct Line: 01-8737140

BPRL05

Tel  
Glaó Áitiúil  
Facs  
Lálthreán Gréasáin  
Ríomhphost

Tel  
LoCall  
Fax  
Website  
Email

(01) 858 8100  
1890 275 175  
(01) 872 2684  
www.pleanala.ie  
bord@pleanala.ie

64 Sráid Maoilbhríde  
Balle Átha Cliath 1  
D01 V902

64 Marlborough Street  
Dublin 1  
D01 V902

*Martin Arthur*

Lime Kiln Lodge, Market Street, Kenmare, County Kerry 087 223 7820

Friday the 30<sup>th</sup> of July 2021

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

AN BORD PLEANÁLA  
LDG- 042219-21  
ABP-  
04 AUG 2021  
Fee: € 220 Type: \_\_\_\_\_  
Time: 14:40 By: \_\_\_\_\_

Ref: Kerry County Council Planning Authority - Section 5 Decision EX 931  
Homely Developments Limited and KPK Properties Limited  
Re: Lands at Reenagappul, Kenmare, County Kerry

Dear Sir or Madame,

I refer to the above matter.

A Section 5 referral, [See Exhibit 1] was received by the Kerry County Council Planning Authority (KCCPA) on the 11<sup>th</sup> of June 2021 and a decision from them was due on the 8<sup>th</sup> of July 2021. I provided further unsolicited information on the 28<sup>th</sup> of June 2021.

The Question I asked is as follows:

"Is the stripping back and removal of all of the topsoil and trees on lands at Reenagappul, Kenmare, County Kerry, adjacent to an SAC (Kenmare River SAC), to create an alleged unauthorized extension of 2.75 hectare to the existing unauthorized quarry at Reenagappul, Kenmare, and the importation of broken stone from the alleged unauthorized 2.75 hectare quarry extension for storage in the existing unauthorized quarry at Reenagappul, Kenmare, development or is it exempted development?"

Kerry County Council has failed to deliver their decision within the statutory time period, hence this appeal.

On the 7<sup>th</sup> of July 2021 KCCPA sent out a letter to the owner/occupiers, [See Exhibit 2] seeking further information. I enquired of the KCCPA if there was a time limit for the developer to respond to their letter. I was told that there was no time limit. The developer, as of today, has not responded to the KCCPA. As my time limit to appeal to the board is fast expiring, I have no choice but to lodge my ABP appeal.

The development, adjacent to an SAC, is currently being investigated as an unauthorized development under KCCPA enforcement case reference No: 8097, dated the 17<sup>th</sup> of May 2020.

The owner occupiers are involved in quarrying business and excavated stone has been removed from their lands and processing has taken place. There is plant and machinery normally associated with a quarrying operation on the lands.

Thousands of tons of stone removed from the unauthorized quarry was sold to the Kerry County Council Housing Authority from Jan 2020 until May 2020 for a social housing development at Gortamullen, Kenmare, a full four months before the KCC PA served an enforcement notice on the owner occupiers in May 2020, on foot of a letter from my Solicitor that is contained in the enforcement file dated the 24<sup>th</sup> of January 2020..

Quarrying activity commenced in December 2019 and has continued on the subject lands to the present day. Stone has and is being processed and removed on a regular basis by the owner/occupiers as evidenced in our further information email to the KCC PA dated the 28<sup>th</sup> of June 2021 [See Exhibit 3]

I trust that this appeal is in order; the requisite fee of €220 is attached.

I shall await hearing from you in due course.

Regards,

Martin Arthur

# *Martin Arthur*

Lime Kiln Lodge, Market Street, Kenmare, County Kerry 087 223 7820

Thursday the 6<sup>th</sup> of June 2021

The Secretary  
Kerry County Council Planning Authority  
County Buildings  
Tralee  
County Kerry

Ref: Section 5 Declaration Application - Homely Developments Ltd and KPK Properties Limited  
Re: Lands at Reenagappul, Kenmare, County Kerry

---

Dear Sir or Madame,

The above matter refers.

This is a Section 5 Declaration Application on the following grounds:

Because of concerns I had following a recent conversation with your enforcement officer, I took the opportunity to contact the Department of Agriculture, Fisheries and the Marine (DAFM) directly.

The DAFM informed me that no such application for consent to re-contour lands was lodged by Homely Developments Ltd or KPK Properties Limited nor granted. Based on the nature of works being undertaken and the location of the subject site adjacent to an SAC, the DAFM is saying that a full EIA would have been required prior to consent being applied for. Considering the fact that no application was lodged with the DAFM by Homely Developments Ltd and KPK Properties Limited and that the extent of works exceed 2ha the Planning Authority should have cross-reported the works in the first instance to the DAFM particularly considering the works were likely to impact on the conservation status of a European designate Site (Kenmare River SAC.) The local authority should have been concerned about the potential risks to the adjacent SAC. A key objective of the county development plan is the conservation and protection of natural heritage of the county including semi-natural habitats and designated sites (including SACs).

The ongoing works cannot be exempted development because the works are impacting on the conservation interest of Kenmare River SAC. The SAC is located directly adjacent to the subject site. The SAC is designated for the protection of Lesser Horseshoe Bat, which are known to occur in the area. Lesser Horseshoe Bats are known to forage throughout wooded habitat in the area (scrub, hedgerows, and woodland). The works appear to have caused the loss of wooded habitat that would have been of value to Lesser Horseshoe Bat. Furthermore the extent of bare soil and exposed rock presents a risk to water quality within the adjacent SAC which is designed for a range of aquatic habitats and species. The SAC is designated for Otter,



a species that may utilise the area as commuting habitat. Works are likely to give rise to disturbance of this protected species. The works have also led to the clearance of woody vegetation throughout during the bird breeding season (1st March - 1st September). Section 40 of the Wildlife Act 1976, as amended by Section 46 of the Wildlife (Amendment) Act 2000, restricts the cutting, grubbing, burning or destruction by other means of vegetation growing on uncultivated land or in hedges or ditches during the nesting and breeding season for birds and wildlife, from 1 March to 31 August. These restrictions apply not only to private land-users but also to local authorities, public bodies and to contractors. The works do not come in under any exemption provided for by the act.

I am told that the local authority was obliged to cross-report to the DAFM where they believed that a farmer was in breach of cross-compliance requirements\*. There were potential cross-compliance breaches based on the extent of works being undertaken and the associated environmental risks.

If the Planning Authority had cross – reported my concerns that I raised in my Section 5 application (Ref: EX 918) to the DAFM they would have learned that the works would have been interpreted by the DAFM as re-contouring of lands BUT because the extent of works exceed 2ha an application for EIA by DAFM should have been made in advance of an application for consent by Homely Developments Ltd and KPK Properties Limited. A Natura Impact Statement and a full Environmental Impact Assessment Report should then have accompanied the application for consent. The DAFM has responsibility for EIA / AA where the works are defined as agricultural activity. The subject lands are not being claimed for basic payment from DAFM by the entities undertaking the works.

In these circumstances, I shall now submit this question for a Declaration under Section 5.

“Is the stripping back and removal of all of the topsoil and trees on lands at Reenagappul, Kenmare, County Kerry, adjacent to an SAC (Kenmare River SAC), to create an alleged unauthorized extension of 2.75 hectare to the existing unauthorized quarry at Reenagappul, Kenmare, and the importation of broken stone from the alleged unauthorized 2.75 hectare quarry extension for storage in the existing unauthorized quarry at Reenagappul, Kenmare, development or is it exempted development?”

74 WORDS

In support of my application, please find the attached four photographs, three of which are downloaded from Google Maps dated the 10<sup>th</sup> of June 2021.

I trust that this Section 5 Declaration Application is in order, the requisite fee of €80 is attached.

I shall await hearing from you in due course.

Regards,

Martin Arthur

\*Cross Compliance  
From Department of Agriculture, Food and the Marine

**28<sup>th</sup> of June 2021**

**Copy of Email to The Kerry County Council Planning Authority  
Enforcement Section**

**Ref: Further information - Section 5 Declaration Application EX 931 -  
Homely Developments Ltd and KPK Properties Limited Re: Lands at  
Reenagappul, Kenmare, County Kerry**

**Good morning Michelle,**

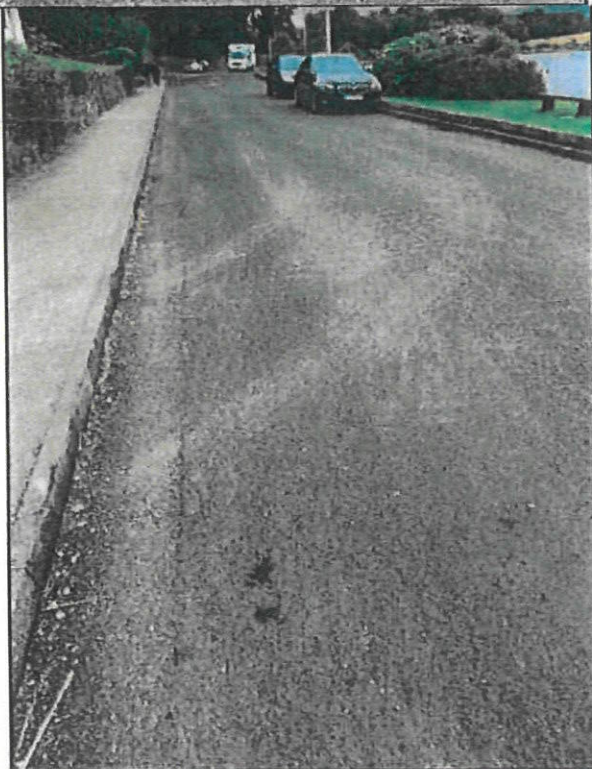
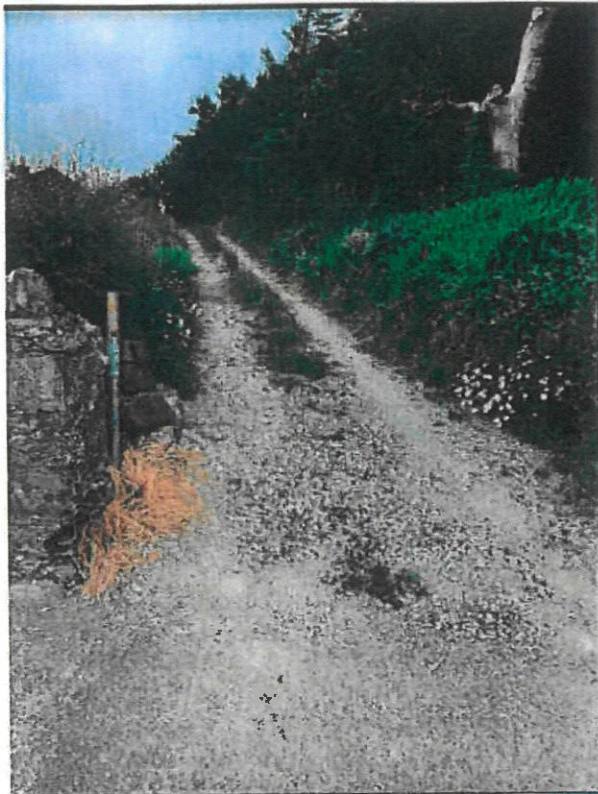
**The above matter refers**

**Our current Section 5 question is as follows:**

**“Is the stripping back and removal of all of the topsoil and trees on lands at  
Reenagappul, Kenmare, County Kerry, adjacent to an SAC (Kenmare River  
SAC), to create an alleged unauthorized extension of 2.75 hectare to the  
existing unauthorized quarry at Reenagappul, Kenmare, and the  
importation of broken stone from the alleged unauthorized 2.75 hectare  
quarry extension for storage in the existing unauthorized quarry at  
Reenagappul, Kenmare, development or is it exempted development?”  
74 WORDS**

**This photographic sequence of events was recorded on Thursday evening, the  
24th of June and Friday morning, the 25th of June 2021 and it shows quarrying  
activity on the subject 2.75ha lands at Reenagappul, the laneway from the subject  
lands leading onto Pier Road, Kenmare and the transportation of stone from the  
subject landholding.**









AN BORD PLEANÁLA

04 AUG 2021

LTR DATED \_\_\_\_\_ FROM \_\_\_\_\_

LDG- \_\_\_\_\_

ABP- \_\_\_\_\_



**I trust that this further information is in order.**

**I shall await hearing from you in due course.**

**Kind Regards,**

**Martin Arthur**

Administrative Officer  
An Bord Pleanála  
64 Marlborough Street,  
Dublin 1  
D01 V902

Brian Gallivan  
KPK Properties Ltd  
Lacka,  
Templenoe,  
Co Kerry

Date: 7<sup>th</sup> September 2021

Your Case Number: ABP-311192-21

Planning Authority Reference Number: EX931

RE: Is the stripping back and removal of all the topsoil and trees on lands at Reenagappul, Kenmare, Co Kerry, adjacent to an SAC (Kenmare River SAC), to create an alleged unauthorised extension of 2.75 hectare to the existing unauthorised quarry at Reenagappul, Kenmare, and the importation of broken stone from the alleged unauthorised 2.75-hectare quarry extension for storage in the existing unauthorised quarry at Reenagappul, Kenmare, development or is it exempted development?

Lands at Reenagappul, Kenmare, Co Kerry.

Dear Sir/Madam,

I write to you today in reply to the copy of the referral that you sent to me on 24<sup>th</sup> August to try and clear up a few misunderstandings and disingenuous claims by Mr Arthur.

Firstly, I would like to point out that the topsoil that was stripped from the lands in question was stored whilst I removed some rock and levelled out the field, the topsoil was replaced, raked, seeded, and set. I have attached photos of the finished field in Appendix 1. This field has been finished for over a month as Mr Arthur knows full well as he flies drones over my land constantly to see what he can complain about next.

Mr Arthur has reported me to the Planning Enforcement Section, DAFM Agri Environmental Section, DAFM Forestry Department and even to the local Gardai. I have had 7nr separate visits from representatives from all of those and each and has told me that I am doing nothing wrong in converting rough pastureland into good quality flat farmland. The latest being a Ms Eileen Gilmartin from the DAFM Agricultural Environmental Section who called to me on the 7<sup>th</sup> May 2021 and the 7<sup>th</sup> September 2021.

I shall now try to answer the other allegations within Mr Arthurs submission dated 30<sup>th</sup> July 2021.

A section 5 was submitted by Mr Arthur to the KCC Planners number EX 918 (Copy attached in Appendix 2) which asked basically the same question as he has asked above. This Section 5 was ruled on by the council and a decision was issued on 21<sup>st</sup> May 2021 (a copy of this is also in Appendix 2).

Mr Arthur was unhappy with this so, A further section 5 (nr EX931) was issued by Mr Arthur to the KCC Planners on 6<sup>th</sup> June 2021 which was sent on to me on 21<sup>st</sup> June 2021 (Copy attached in Appendix 3). I replied to this on 28-06-21 and then I was issued with a 2<sup>nd</sup> letter from the council dated 7<sup>th</sup> July 2021. I replied to this on 27<sup>th</sup> July and am awaiting a Decision from the council on this Section 5. Mr Arthur's statement that I did not reply to the Council Letters is untrue.

Mr Arthur further claims that 'The Development, adjacent to an SAC, is currently being investigated as an unauthorised development under KCCPA enforcement case reference No; 8097, dated the 17<sup>th</sup> of May 2020.

This again is untrue.

KCCPA enforcement case No 8097 was opened by the council in February 2020 when the quarrying issue was first reported by Mr Arthur (see letter dated 07-02-20 in Appendix 3). We immediately stopped works and several letters went back on fourth resulting in the Council confirming that no stone was to be removed unless it was treated as waste and removed by a licensed contractor (see letter dated 18-05-20 in appendix 4). We accepted this position and left all the stone lying in the disused quarry. On 19-04-21 we received a further letter stating that an excavator was seen in the quarry and could we explain it's presence. We explained that this was parked awaiting removal by low loader and that it had been used in preparing the new field nearby. On 21-07-21 we received the latest letter from the enforcement section under reference no. 8097 (see Appendix 4), this queried the stockpiling of stone at the disused quarry and the removal of a few loads of stone. I replied on the 27-07-21 (see appendix 4) and let the council know that the stone being stockpiled was from the forming of the new field on the other side of my land and that I was hoping to use this stone with the farm later. The few loads that had been removed were by licensed Waste Collector and transported to a Licensed Waste Facility. To say that the development of my new field is being investigated under case no. 8097 is untrue as case no. 8097 is concerning the disused quarry only. Either Mr Arthur is deliberately trying to confuse matters, or he has sent in so many complaints, he cannot keep them straight himself.

Mr Arthur than goes back to his previous complaints concerning quarrying at the disused quarry which has been the subject of the planning enforcement case no. 8097, the section 5 ref nr EX833 and the An Bord Pleanala Appeal dated 07-07-20, for which we are still awaiting a decision. (See appendix 5). I do not believe he should be allowed to further blur the lines between all his different complaints as this is not relevant to the question that he has asked the Board to consider at this time.

I can confirm that no stone was 'sold' to Kerry County Council and that 'Thousands of tons of stone' were not removed from the site. As stated previously, we did remove some stone in January 2020, and this went to a Kerry County Council Housing Project that I was working on but was only used for temporary haul roads that I needed for the works. This was halted as soon as I received the letter from the Planning Authority at the start of February asking me to stop. Mr Arthur knows that this did not continue for 4 months as stated and the council know this as well.



To say that 'Quarrying started on my lands in December 2019 and has continued to the present day' is again extremely disingenuous. The various visits from the council enforcement officers, DAFM Officials and even Mr Arthurs own correspondence on the matters supports our version of the facts. Mr Arthur has not mentioned any quarrying works in the disused quarry in over a year now. Currently his issue is with the field that I have just finished.

As stated at the start of this letter, the field in question that Mr Arthur is trying to allege is an extension to an unauthorised quarry, is now fully finished and I will be cutting silage from this very shortly. Anyone can see that this is not a quarry extension.

To put all of this and ABP-307488-20 into context, I just want to give you a bit of history on the site. Mr Arthur and his family used to own this land and they along with their business partners, lost them all to NAMA. I bought them from NAMA and MR Arthur has been trying to cause mischief ever since. The 'unauthorised quarry' on the land was his quarry, he was the last person to blast any stone, which he did to sell to the Kerry County Council when they built the Water Treatment Plant adjacent to the site some 25 years ago. Mr Arthur never registered the quarry and left a large quantity of stone lying around when he vacated the lands.

On buying the land, I assumed that I would be able to take that stone, just lying on my land, and use it for works on some of my construction sites. Mr Arthur took exception to this and complained me to the Council Enforcement section straight away. I stopped all exporting as soon as the council told me that I was not allowed to remove any stone laying on top of the ground, that removing loose stones laying on top of the ground was considered quarrying even though it was not me who originally quarried the rock. That was back in January 2020 (within a week or two of me starting) and nothing has been removed since.

Mr Arthur has now issued 3nr section 5 applications, appealed 2 of them to yourselves, reported me to the KCC Planning Enforcement section several times and lodged complaints to every branch of the government who he could think of all just to cost me time and money, having to continually answer letters and allegations. The latest for a quarry extension that he knows full well isn't a quarry as he lives next door to the site and regularly flies a drone over it.

I am sorry that you are being dragged into Mr Arthurs games and will of course answer any questions that you may have.

Yours Sincerely

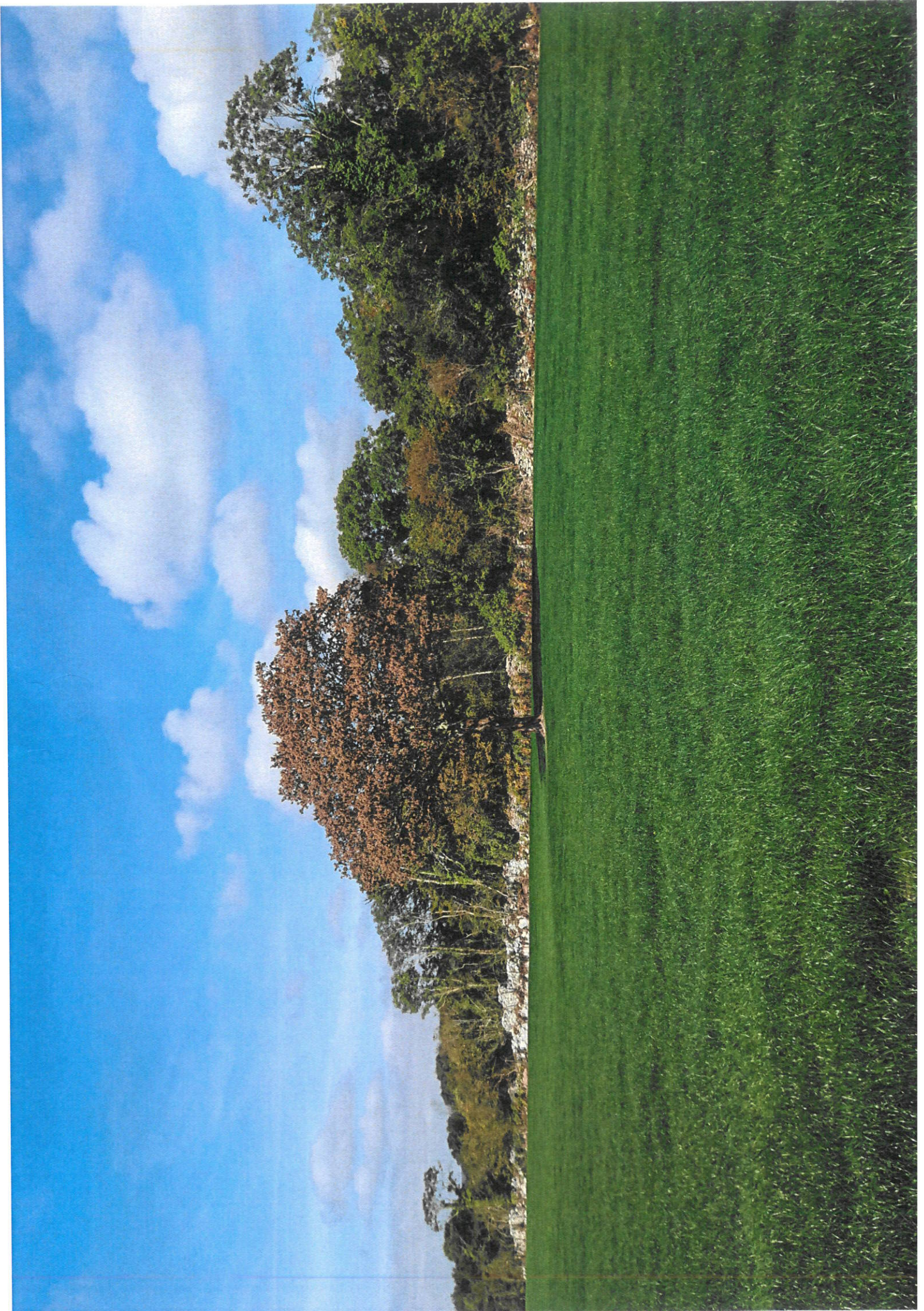
*P.P. A. Healy*

Brian Gallivan



# Appendix 1









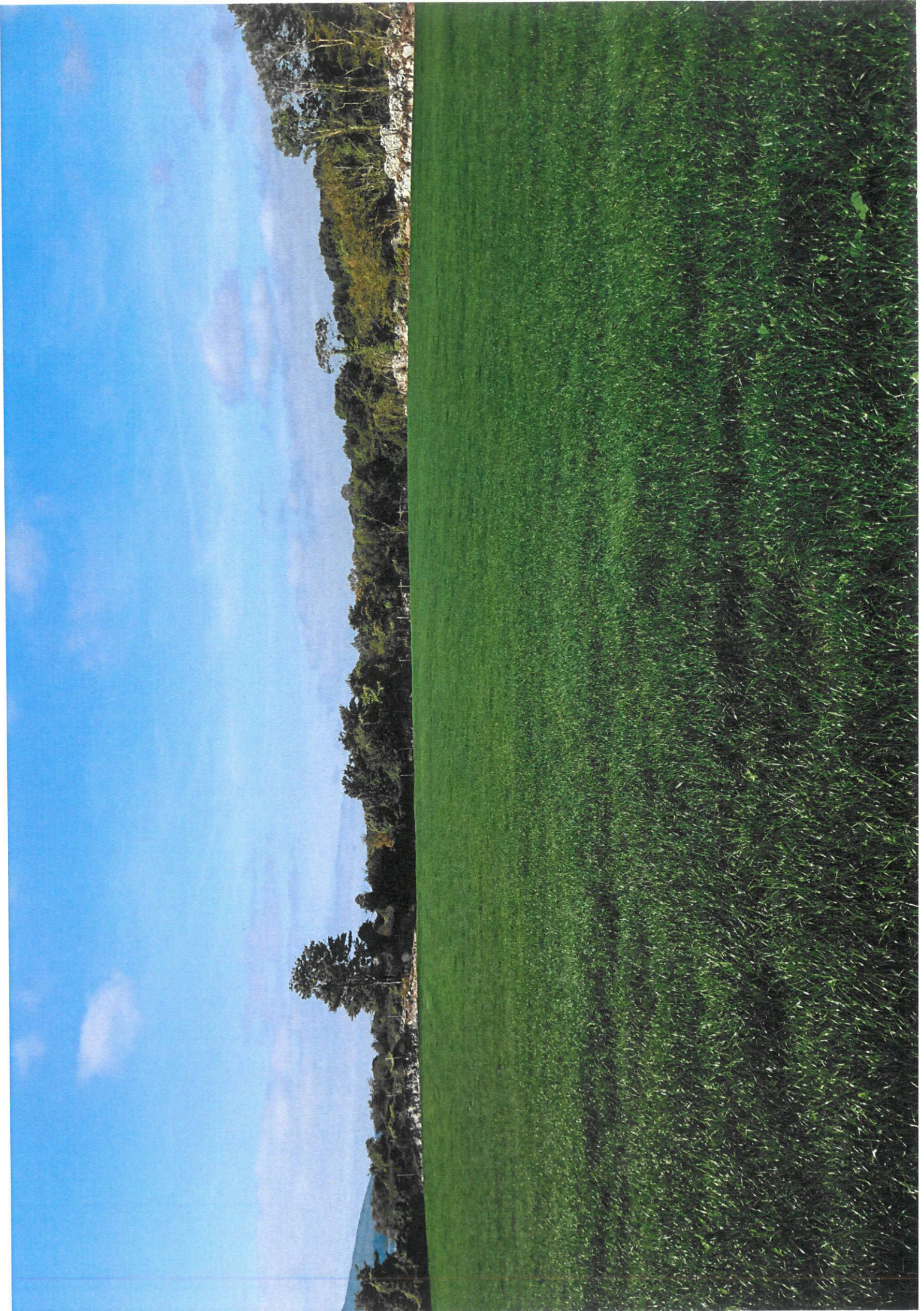


























# Appendix 2



Kerry County Council,  
County Buildings, Tralee, Co. Kerry.  
Tel: (066) 7183582 Fax: (066) 7120328  
E-mail: [plan@kerrycoco.ie](mailto:plan@kerrycoco.ie)

Comhairle Chontae Chiarraí,  
Áras an Chontae, Trá Lí, Co. Chiarraí.  
Gutháin: (066) 7183582 Faisc: (066) 7120328  
Web: <http://www.kerrycoco.ie>

29<sup>th</sup> April 2021

Brian Gallivan and Homely Developments,  
Lacka,  
Templenoe,  
Co. Kerry

VIA REGISTERED POST.

Re: EX918 – Referral pursuant to Section 5 of the  
Planning and Development Act 2000 to 2020.

Dear Sir,

I wish to inform you that a Section 5 Application has been received by the Planning Authority, which refers to lands which are registered to you and relates to whether a development is or is not exempted development within the meaning of the legislation. This application was received from Martin Arthur and refers to lands at Reenagappul, Kenmare, Co Kerry.

If you wish to view this file or to submit any further information, in order to enable the Planning Authority to issue the declaration on the question, please do so on or before 17<sup>th</sup> May 2021.

Yours faithfully

David O' Brien,  
A.O. Planning.

p1

**Michelle Lane**

---

**From:** Martin Arthur <pmarthur@gmail.com>  
**Sent:** 27 April 2021 08:23  
**To:** Michelle Lane  
**Subject:** Re: Re Section 5 Form

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

[CAUTION FROM KERRY COUNTY COUNCIL I.T. DEPARTMENT: EXTERNAL SENDER] This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Good morning Michelle,  
Please find attached photos of section 5 application form.  
Regards  
Martin Arthur

## TÁILLE €80 FEE

ected is in compliance with the requirement  
(GDPR) 2016, and Data Protection Acts 198  
ces for each section/service are available

Inm  
adh

Martin Arthur

Nam  
Add

Limekiln Lodge,

Market Street, Kenmare

087/2237522 - Tel:

PH: 01 492 20411 - Fax:

Name/Address of Agent

Tel:

Location of Subject Site

Reenagipul,  
Kenmare  
Co Kerry  
No

Is this a Protected Structure or within the  
curtilage of a Protected Structure?

If yes, has a Declaration under Section 57 of  
the Planning and Development 2000 been  
requested or issued for the property by the  
Planning Authority?



Luaigh leis an iarratasóir a suíomh le do thoil Please state applicant's interest in this site

Adjoining land owner

Luaigh ainm agus seoladh an úinéara murar é/i an t-iarratasóir Unknown by MC. If applicant is not the owner please provide owner's name and address

The owner is Either KPK Properties Ltd, Market St, Keshore, Co Kerry  
or Botha. Hiney Developments Ltd, Lister, Templemore, Co Kerry

Brian Callaway  
Tabhair faoi deara go n-eisefar cóip den Dearbhú ar Fhorbairt agus ar Dlíodine Forbartha de réir Ait 5(2a) den Acht um Pleanáil agus Forbairt 2000 don úinéir/dáititheoir.

Please note that in accordance with section 5(2a) of the Planning & Development Act 2000 the owner/occupier of the site will be issued with a copy of the Declaration on Development and Estimated Development.

Llista pleananna, líníochtaí srl curtha ar fáil leis an iarratas seo.

List of plans, drawings, etc submitted with this application

1 cover letter, 5 Photo Exhibits

Tabhair tuairisc ar na h-oibreacha (má bhaineann) nó ar an bhforbairt beartaithe.

Please provide details of works (where applicable) or proposed development.

(Tabhair faoi deara: Is iad na h-oibreacha atá liostaithe agus sonraíte, agus sin amháin, a cheinfeir measúnú orthu fé Ait 5. Úsáid feathanaigh breise más gá)

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

Is the stripping back and removal of all of the Topsoil and trees on lands at redeveloped Keshore, Co Kerry to create an alleged unauthorized extension of 2.75 hectare to the existing unauthorized quarry at Keshore, Keshore, and the installation of broken stone from the alleged unauthorized 2.75 hectare quarry extension for storage in the existing unauthorized quarry at Keshore, Keshore, Keshore. Is it exempted development?

An eol duit aon iméachtaí  
fortheachtmíche ar an suíomh seo?  
Má tá, tabhair sonraí le do thail

Are you aware of any enforcement  
proceedings connected to this site?  
If yes, please supply details

Enforcement Notice Ref No 8097

An rabh farrata(i)s pleanála ar an suíomh seo  
cheana? Má bhí, tabhair sonraí le do thail



Were there previous planning application(s)  
on this site? If yes, please supply details

95846

25.06.2017

Sínte: \_\_\_\_\_

Signed

*Markus Arthur*

Dáta: \_\_\_\_\_

Date

26/4/2021

#### NÓTAÍ:

Ní mór 4 cóip de léarscáil den léithair shuímh  
leis an suíomh léirithe go soiléir i ndearg a  
chur ar fáil agus táille €80 leis. Cuir 2 cóip de  
phleananna/tuairiscí breise srl. a theastaíonn  
uait bheith mar chuid den iarratas.

Seol na h-iarratais líonta go 'n seofadh thíos:

#### NOTES:

Application shall include 4 copies of the Site  
Location Map with the site clearly outlined in  
red and a fee of €80. Please submit 2 copies  
of any additional plans/reports etc you may  
wish to be included as part of the application.

Send your completed applications to:

An Roinn Pleanála  
Comhairle Contae Chiarraí

T. (066) 7183562  
F. (066) 7120328

Planning Department  
New County Council



*Martin Arthur*

Lime Kiln Lodge, Market Street, Kenmare, County Kerry 087 223 7820

21<sup>st</sup> of April 2021

The Secretary  
Kerry County Council Planning Authority  
County Buildings  
Tralee  
County Kerry

Ref: Kerry County Council Planning Authority - Section 5 Declaration Application  
Re: Lands at Reenagappul, Kenmare, County Kerry

Dear Sir or Madame,

This is a Section 5 declaration application, the question being as follows:

Is the stripping back and removal of all of the topsoil and trees on lands at Reenagappul, Kenmare, County Kerry, to create an alleged unauthorized extension of 2.75 hectare to the existing unauthorized quarry at Reenagappul, Kenmare, and the importation of broken stone from the alleged unauthorized 2.75 hectare quarry extension for storage in the existing unauthorized quarry at Reenagappul, Kenmare, development or is it exempted development?

In support of my application, please find the attached five photographs:

Photograph 1 - Aerial map with the field outlined in red

Photograph 2: Aerial view, outlined in red, of the stripping back and removal of all of the topsoil and trees on lands at Reenagappul, Kenmare, County Kerry, to create an alleged unauthorized extension of 2.75 hectare to the existing unauthorized quarry at Reenagappul, Kenmare.

Photograph 3 & 4: Aerial views evidencing recent and current quarrying activity.

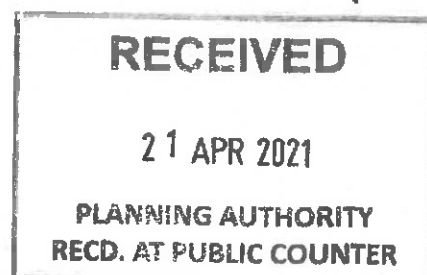
Photograph 5: Evidence of the importation of broken stone from the alleged unauthorized 2.75 hectare quarry extension for storage in the existing unauthorized quarry at the alleged unauthorized quarry extension of 2.75 hectare at Reenagappul, Kenmare.

I trust that this Section 5 Declaration Application is in order, the requisite fee of €80 is attached.

I shall await hearing from you in due course.

Regards,  
Martin Arthur

*Martin Arthur*



*Am lucas  
rec'd  
27/04  
by  
mar.*

EXHIBIT No 1





NO 2

EXHIBIT







— — — — —



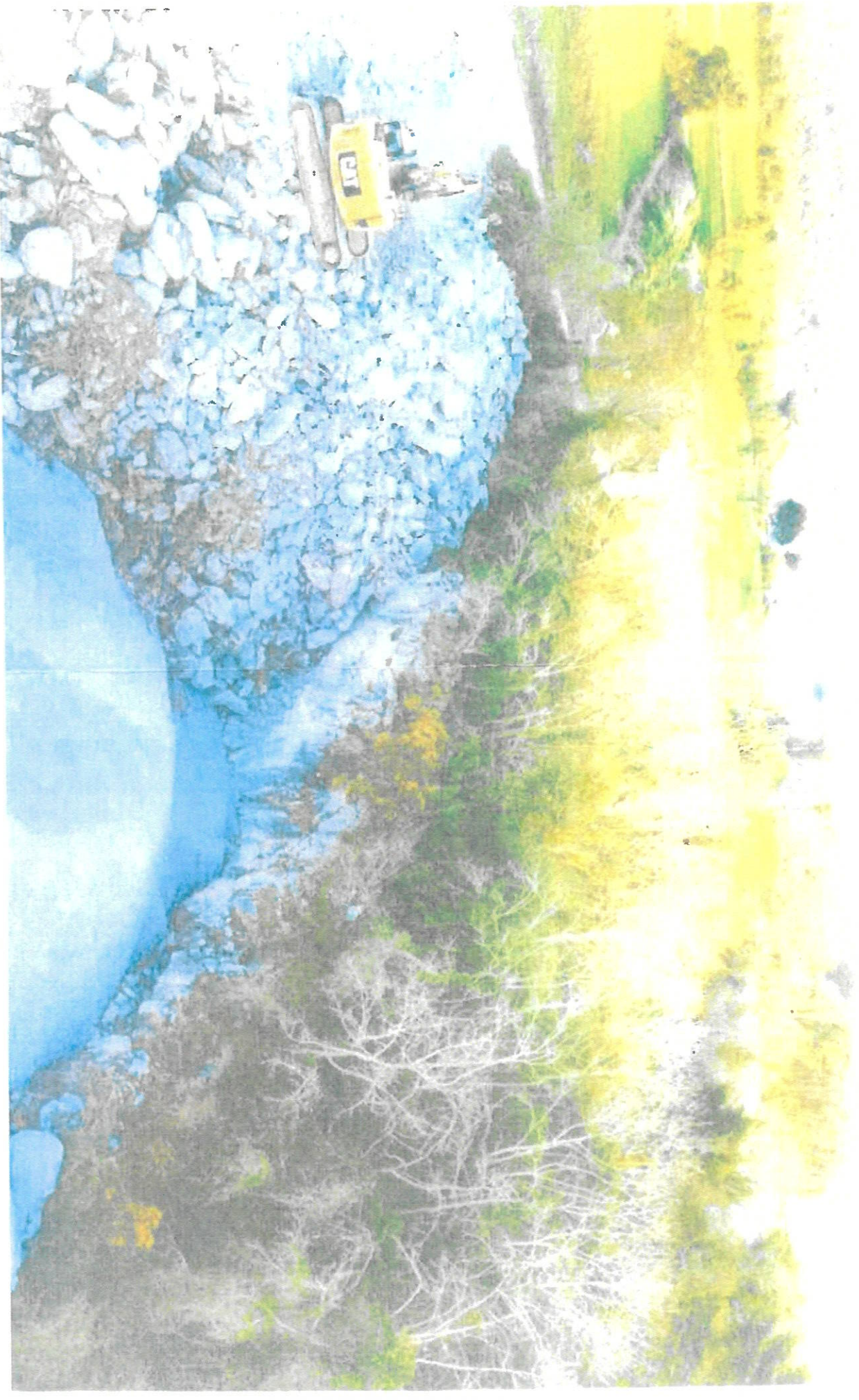
CHILLI NO. 4





EXHIBIT

No 5



**An Roinn Pleanála**

Comhairle Contae Chiarraí,  
Áras an Chontae,  
Trá Lí, Co. Chiarraí.



**COMHAIRLE CONTAE CHIARRAÍ  
KERRY COUNTY COUNCIL**

**Planning Department**

Kerry County Council,  
County Buildings,  
Tralee, Co. Kerry.

Guthán | Tel 066 7183582 Facs | Fax 066 7120328 Rphost | Email [plan@kerrycoco.ie](mailto:plan@kerrycoco.ie) Suíomh | Web [www.kerrycoco.ie](http://www.kerrycoco.ie)

**21<sup>st</sup> May 2021**

**Brian Gallivan and Homely Developments,  
Lacka,  
Templenoe,  
Co. Kerry**

**REGISTERED POST**

**EX918 – Referral pursuant to Section 5 of the  
Planning and Development Act 2000 to 2020.**

**Dear Sir,**

Please find enclosed copy of decision in relation to Section 5 Application **EX918** which was received from **Martin Arthur** in relation to Development Location at **Reenagappul, Kenmare, Co Kerry**

Yours faithfully

**David O'Brien,  
A.O. Planning.**





**An Roinn Pleanála**

Comhairle Contae Chiarraí,  
Áras an Chontae,  
Trá Lí, Co. Chiarraí.



**COMHAIRLE CONTAE CHIARRAÍ  
KERRY COUNTY COUNCIL**

**Planning Department**

Kerry County Council,  
County Buildings,  
Tralee, Co. Kerry.

Guthán | Tel 066 7183582 Facs | Fax 066 7120328 Rphost | Email [plan@kerrycoco.ie](mailto:plan@kerrycoco.ie) Suíomh | Web [www.kerrycoco.ie](http://www.kerrycoco.ie)

**Application No:** EX918

**Decision Date:** 21<sup>st</sup> May 2021 **Registration Date:** 27<sup>th</sup> April 2021, 7<sup>th</sup> May 2021,  
20<sup>th</sup> May 2021

**Applicant:** Martin Arthur, Lime Kiln Lodge, Market Street, Kenmare, Co. Kerry

**Development Location:** Reenagappul, Kenmare, Co Kerry

**Development Description:** Whether stripping and removal of topsoil and trees and alleged unauthorised quarrying activity on land constitutes development or is exempted development.

**DECLARATION ISSUED UNDER AND IN ACCORDANCE WITH SECTION 5 OF THE  
PLANNING AND DEVELOPMENT ACTS, 2000 – 2020**

In pursuance of its functions under the Planning & Development Acts 2000 to 2020, Kerry County Council, being the Planning Authority for the County Health District of the County of Kerry, has by order dated 21<sup>st</sup> May 2021 authorised the issue of a declaration under the provisions of Section 5 of the Planning & Development Acts, 2000 -2020 in accordance with plans and particulars submitted on 27<sup>th</sup> April 2021, 7<sup>th</sup> May 2021, and 20<sup>th</sup> May 2021. I hereby certify that, the Planning Authority considers that the works, the subject of the referral under the said Section 5, namely **whether stripping and removal of topsoil and trees and alleged unauthorised quarrying activity on land constitutes development or is exempted development at Reenagappul, Kenmare, Co Kerry does constitute exempted development under the Planning & Development Acts 2000-2020 having regard to the considerations inserted hereunder:-**

***Schedule 1***

- (i) The works carried out on the site constitute works that would come within the scope of Section 2(1) of the Planning and Development Act 2000 - 2020,
- (ii) The said works would constitute development that comes within the scope of Section 3(1) of the Planning and Development Act 2000 – 2020
- (iii) The nature and extent of the said works would come within the scope of exemption provided at Article 8(c) of the Planning and Development Regulations, 2001 - 2021.

Therefore, the works at Reennagappul, Kenmare constitute development which is exempted development.

Signed on behalf of Kerry County Council

Date: 21<sup>st</sup> May 2021



GAEILGE AGUS FÁILTE



# Appendix 3



Kerry County Council,  
County Buildings, Tralee, Co. Kerry.  
Tel: (066) 7183582 Fax: (066) 7120328  
E-mail: [plan@kerrycoco.ie](mailto:plan@kerrycoco.ie)

Comhairle Chontae Chiarraí,  
Áras an Chontae, Trá Lí, Co. Chiarraí.  
Gutháin: (066) 7183582 Faisc: (066) 7120328  
Web: <http://www.kerrycoco.ie>

21<sup>st</sup> June 2021

Brian Gallivan and Homely Developments,  
Lacka,  
Templenoe,  
Co. Kerry

VIA REGISTERED POST.

Re: EX931 – Referral pursuant to Section 5 of the  
Planning and Development Act 2000 to 2020.

Dear Sir,

I wish to inform you that a Section 5 Application has been received by the Planning Authority, which refers to lands which are registered to you and relates to whether a development is or is not exempted development within the meaning of the legislation. This application was received from Martin Arthur and refers to lands at Reenagappul, Kenmare, Co Kerry.

Please find attached copy of file. If you wish to submit any further information, in order to enable the Planning Authority to issue the declaration on the question, please do so on or before 1<sup>st</sup> July 2021.

Yours faithfully

David O'Brien,  
A.O. Planning.





Comhairle Contae Chiarraí  
Kerry County Council

copy do  
EX931.

CC-P27

09-2013\_BG

## FOIRM IARRATAIS ALT 5 SECTION 5 APPLICATION FORM

Receipt 83175  
Date 11/06/21  
FF.

IARRATAS MAIDIR LE DEARBHÚ AR FHORBAIRT AGUS  
AR DÍOLÚINE FORBARTHA (Alt 5 den Acht um Pleanáil  
agus Forbairt leasaithe)

REQUEST FOR A DECLARATION ON DEVELOPMENT  
AND EXEMPTED DEVELOPMENT (Section 5 of the  
Planning & Development Act 2000 as amended)

**TÁILLE €80 FEE**

All personal data collected is in compliance with the requirements of the General Data Protection Regulation (GDPR) 2016, and Data Protection Acts 1988 to 2003. Individual privacy notices for each section/service are available at [www.kerrycoco.ie](http://www.kerrycoco.ie)

Ainm Máire Arthur Name

Seoladh Limekiln Lodge Address

Market Street, Kenmare

Co Kerry

Teil. 087/2237820

Tel:

R-phost P.MARTHUR@GMAIL.COM Email

Ainm/Seoladh Gníomhaire

Name/Address of Agent

Teil.

Tel:

Láthair an Suímh Ábhartha

Reenagappul, Kenmare

Location of Subject Site

An Struchtúr Cosanta é nó 'bhfuil sé laistigh  
de chúirtealáiste Struchtúir Chosanta? NO

Is this a Protected Structure or within the  
cartilage of a Protected Structure?

Luaigh leas an iarratasóra sa suíomh le do thoil

Please state applicants interest in this site

Adjoining Landowner

Luaigh ainm agus seoladh an  
úinéara murar é/í an  
t-iarratasóir

Unknown by ME

If applicant is not the owner  
please provide owner's name  
and address

Tabhair faoi deara go n-eiseofar cóip den Dearbhú ar  
Fhorbairt agus ar Díolúine Forbartha de réir Alt 5(2a)  
den Acht um Pleanáil agus Forbairt 2000 don úinéir/  
áititheoir.

Please note that in accordance with section 5(2a) of the  
Planning & Development Act 2000 the owner/ occupier  
of the site will be issued with a copy of the Declaration  
on Development and Exempted Development.

Liosta pleananna, líníochtaí srl  
curtha ar fáil leis an iarratas seo.

List of plans, drawings, etc  
submitted with this application

As attached Please find.

Tabhair tuairisc ar na h-oibreacha (má  
bhaineann) nó ar an bhforbairt beartaithe.

(Tabhair faoi deara: Is iad na h-oibreacha atá liostaithe  
agus sonraithe, agus sin amháin, a dheinfear measúnú  
orthu fé Alt 5. Úsáid leathanaigh breise más gá)

Please provide details of works (where  
applicable) or proposed development.

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

As attached, Please find.



An eol duit aon imeachtaí  
forfheidhmithe ar an suíomh seo?  
Má tá, tabhair sonraí le do thoil

Are you aware of any enforcement  
proceedings connected to this site?  
If yes, please supply details

~~No~~ Yes

Enforcement Notice 8097

An raibh iarrata(i)s pleanála ar an suíomh seo  
cheana? Má bhí, tabhair sonraí le do thoil

Were there previous planning application(s)  
on this site? If yes, please supply details

95 846

06 2077

Sínithe:  
Signed

*Mark Ault*

Dáta:  
Date

10/6/2021

#### NÓTAÍ:

Ní mór 4 chóip de léarscáil den láthair shuímh  
leis an suíomh imlínithe go soiléir i ndearg a  
chur ar fáil agus táille €80 leis. Cuir 2 chóip de  
phleananna/tuairiscí breise srl. a theastaíonn  
uait bheith mar chuid den iarratais.

#### NOTES:

Application shall include 4 copies of the Site  
Location Map with the site clearly outlined in  
red and a fee of €80. Please submit 2 copies  
of any additional plans/reports etc you may  
wish to be included as part of the application.

Seol na h-iarratais líonta go 'n seoladh thíos:

Send your completed applications to:

An Roinn Pleanála,  
Comhairle Contae Chiarraí,  
Ráth Teas, Trá Lí, Co. Chiarraí.

T. (066) 7183582  
F. (066) 7120328  
[www.kerrycoco.ie](http://www.kerrycoco.ie)

Planning Department,  
Kerry County Council,  
Rathass, Tralee, Co. Kerry.



# *Martin Arthur*

Lime Kiln Lodge, Market Street, Kenmare, County Kerry 087 223 7820

Thursday the 6<sup>th</sup> of June 2021

The Secretary  
Kerry County Council Planning Authority  
County Buildings  
Tralee  
County Kerry

Ref: Section 5 Declaration Application - Homely Developments Ltd and KPK Properties Limited  
Re: Lands at Reenagappul, Kenmare, County Kerry

---

Dear Sir or Madame,

The above matter refers.

This is a Section 5 Declaration Application on the following grounds:

Because of concerns I had following a recent conversation with your enforcement officer, I took the opportunity to contact the Department of Agriculture, Fisheries and the Marine (DAFM) directly.

The DAFM informed me that no such application for consent to re-contour lands was lodged by Homely Developments Ltd or KPK Properties Limited nor granted. Based on the nature of works being undertaken and the location of the subject site adjacent to an SAC, the DAFM is saying that a full EIA would have been required prior to consent being applied for. Considering the fact that no application was lodged with the DAFM by Homely Developments Ltd and KPK Properties Limited and that the extent of works exceed 2ha the Planning Authority should have cross-reported the works in the first instance to the DAFM particularly considering the works were likely to impact on the conservation status of a European designate Site (Kenmare River SAC.) The local authority should have been concerned about the potential risks to the adjacent SAC. A key objective of the county development plan is the conservation and protection of natural heritage of the county including semi-natural habitats and designated sites (including SACs).

The ongoing works cannot be exempted development because the works are impacting on the conservation interest of Kenmare River SAC. The SAC is located directly adjacent to the subject site. The SAC is designated for the protection of Lesser Horseshoe Bat, which are known to occur in the area. Lesser Horseshoe Bats are known to forage throughout wooded habitat in the area (scrub, hedgerows, and woodland). The works appear to have caused the loss of wooded habitat that would have been of value to Lesser Horseshoe Bat. Furthermore the extent of bare soil and exposed rock presents a risk to water quality within the adjacent SAC which is designed for a range of aquatic habitats and species. The SAC is designated for Otter,

a species that may utilise the area as commuting habitat. Works are likely to give rise to disturbance of this protected species. The works have also led to the clearance of woody vegetation throughout during the bird breeding season (1st March - 1st September). Section 40 of the Wildlife Act 1976, as amended by Section 46 of the Wildlife (Amendment) Act 2000, restricts the cutting, grubbing, burning or destruction by other means of vegetation growing on uncultivated land or in hedges or ditches during the nesting and breeding season for birds and wildlife, from 1 March to 31 August. These restrictions apply not only to private land-users but also to local authorities, public bodies and to contractors. The works do not come in under any exemption provided for by the act.

I am told that the local authority was obliged to cross-report to the DAFM where they believed that a farmer was in breach of cross-compliance requirements\*. There were potential cross-compliance breaches based on the extent of works being undertaken and the associated environmental risks.

If the Planning Authority had cross – reported my concerns that I raised in my Section 5 application (Ref: EX 918) to the DAFM they would have learned that the works would have been interpreted by the DAFM as re-contouring of lands BUT because the extent of works exceed 2ha an application for EIA by DAFM should have been made in advance of an application for consent by Homely Developments Ltd and KPK Properties Limited. A Natura Impact Statement and a full Environmental Impact Assessment Report should then have accompanied the application for consent. The DAFM has responsibility for EIA / AA where the works are defined as agricultural activity. The subject lands are not being claimed for basic payment from DAFM by the entities undertaking the works.

In these circumstances, I shall now submit this question for a Declaration under Section 5.

“Is the stripping back and removal of all of the topsoil and trees on lands at Reenagappul, Kenmare, County Kerry, adjacent to an SAC (Kenmare River SAC), to create an alleged unauthorized extension of 2.75 hectare to the existing unauthorized quarry at Reenagappul, Kenmare, and the importation of broken stone from the alleged unauthorized 2.75 hectare quarry extension for storage in the existing unauthorized quarry at Reenagappul, Kenmare, development or is it exempted development?”

74 WORDS

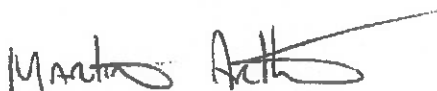
In support of my application, please find the attached four photographs, three of which are downloaded from Google Maps dated the 10<sup>th</sup> of June 2021.

I trust that this Section 5 Declaration Application is in order, the requisite fee of €80 is attached.

I shall await hearing from you in due course.

Regards,

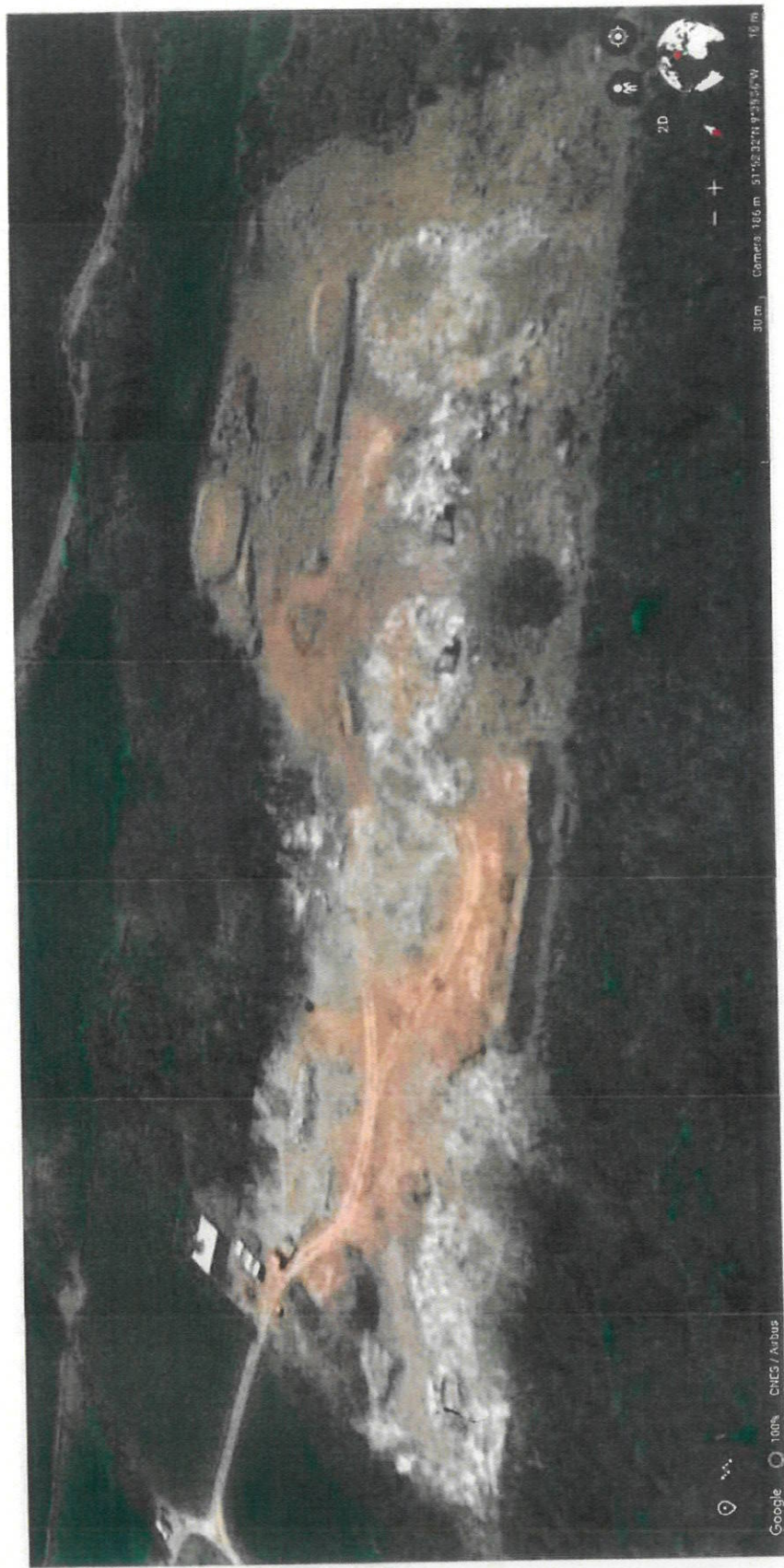
Martin Arthur



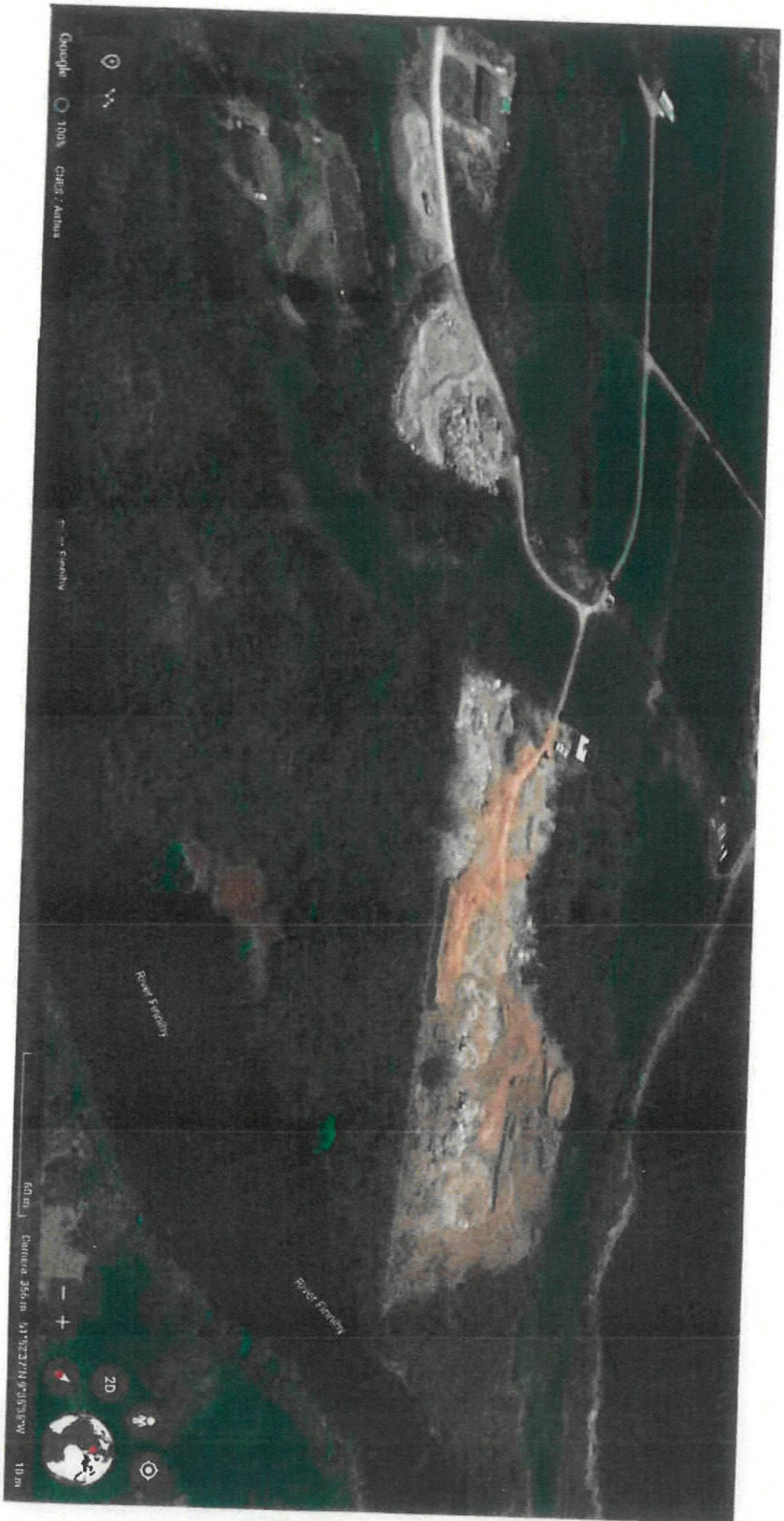
\*Cross Compliance

From Department of Agriculture, Food and the Marine

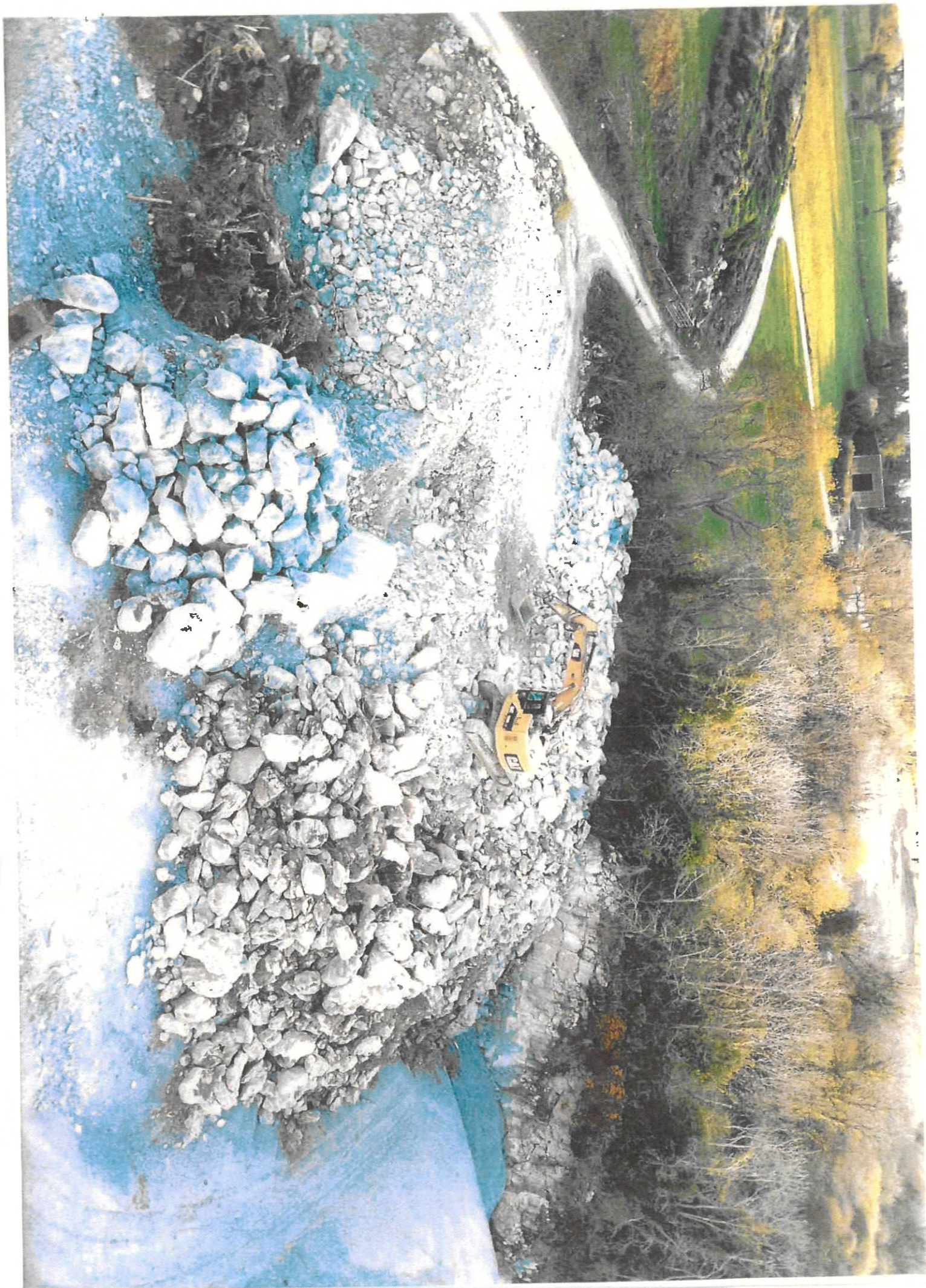




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Planning Department,  
Kerry County Council,  
County Buildings,  
Tralee,  
Co. Kerry

28<sup>th</sup> June 2021

**Re: EX931 – Referral pursuant to Section 5 of the  
planning and Development Act 2000 to 2020**

Dear Sirs,

Thank you for sending through a copy of yet another Section 5 Application submitted by Martin Arthur regarding my lands in Reenagappul, Kenmare, Co Kerry.

I would like to start by saying that the allegations of me creating an extension to the existing quarry on the site is still an outrageous load of rubbish. Martin knows that the field that I am creating is not even close to the existing quarry, he also knows that it is still for an agricultural field and that this is fully planning exempt. You have told him this yourselves in reply to his last Section 5 Application (Ref 8097) which you answered in your letter dated 18-05-21.

Your own Mr Fox from the Enforcement Section, Mr Conor Moriarty, Ms Eileen Gilman and Mr Eugene Curran from the DAFM have all visited site already and said that nothing was amiss. He knows this as he himself invited them all and met them outside of the site.

To claim that you the DAFM did not know what was happening on my lands is disingenuous and is just another attempt to cause trouble and delay, if he can.

Nothing has changed since all of the above visited the site or since you made your decision on the last Section 5 application, except that we have progressed the works and hope to have the new field fully seeded in September.

He is again making up stories in an intentional attempt to cause me stress. He knows that answering his constant groundless allegations is costing me time, money and effort.

He is constantly flying a drone over my property and has cameras trained on the gate to my property. All designed to interfere with my peace & privacy and that of my children who play in these fields.

When does this end being an annoyed ex-owner of the land trying to cause trouble for the new owner and become criminal harassment? Do I need a court injunction in order to stop these scurrilous claims?

As always, I remain ready and willing to answer any questions or queries that you may have.

Best Regards

*PP. A. Healy*  
Brian Gallivan

An Roinn Pleanála

Comhairle Contae Chiarraí,  
Áras an Chontae,  
Trá Lí, Co. Chiarraí.



COMHAIRLE CONTAE CHIARRAÍ  
KERRY COUNTY COUNCIL

Planning Department

Kerry County Council,  
County Buildings,  
Tralee, Co. Kerry.

Guthán | Tel 066 7183582 Facs | Fax 066 7120328 Rphost | Email [plan@kerrycoco.ie](mailto:plan@kerrycoco.ie) Suíomh | Web [www.kerrycoco.ie](http://www.kerrycoco.ie)

7<sup>th</sup> July 2021

Brian Gallivan and Homely Developments,  
Lacka,  
Templenoe,  
Co. Kerry

**VIA Registered Post**

Re: EX931

A Chara,

I refer to the Section 5 application form submitted by a 3<sup>rd</sup> Party on 11<sup>th</sup> June 2021.

**Before a declaration in relation to exempted development can be made, the landowner is requested to submit the following information:**

1. Please outline the type, extent and location of the work taking place on your lands at Reenagappul, Kenmare, Co Kerry.
2. The Planning Authority has received a report from a third party concerning the removal of material from your lands at Reenagappul, Kenmare. You are kindly asked to confirm to the Planning Authority if material has left the site. If so, please outline the quantum and type of material that has left the site and the destination of this material.

Upon receipt of this further information, this application will be given further attention.

Yours sincerely,

David O'Brien  
A.O. Planning



GAEILGE AGUS FÁILTE



Enforcement Unit,  
Planning Department,  
Kerry County Council,  
County Buildings,  
Tralee,  
Co Kerry

KPK Properties  
Lacka,  
Templenoe,  
Kenmare  
Co Kerry

27<sup>th</sup> July 2021

**Re: your ref EX931**

Dear Sir/ Madam,

I refer to your letter of 7<sup>th</sup> July 2021 and can again confirm that no quarrying works are being carried out at Reenagappul, Kenmare.

I can confirm yet again that I am creating a field on my lands in Reenagappul in Kenmare, the exact same as I was some months ago when your inspector (Mr Fox) called to site to view the works and confirm that what I am doing is planning exempt. This is the exact same work that the 3nr inspectors from the DAFM looked at and the same work that the Gardai were called out to look at.

It is the exact same work that was the subject of a Section 5 Application which you ruled on and agreed that the work was planning exempt, a copy of which I have attached for your attention.

What more do I need to do to be able to finish the work without further harassment?


The only material that has been removed in the last 6 months is 4nr loads of stone which were removed by licensed waste collector and taken to a licensed waste facility.

The rest of the stone that has been removed from this field has been stored near the old quarry for future use on the site including the re-building of a stone boundary wall that was stolen when one of the neighbours was building their house.

You might be pleased to know that the first section of the field is being seeded this week (if you would like to send someone down to inspect it) and the last section will be broken out and seeded early September.

If you need photos or copies of the waste dockets, please let me know.

Best Regards



Brian Gallivan

**An Roinn Pleanála**

Comhairle Contae Chiarraí,  
Áras an Chontae,  
Trá Lí, Co. Chiarraí.



**COMHAIRLE CONTAE CHIARRAÍ  
KERRY COUNTY COUNCIL**

**Planning Department**

Kerry County Council,  
County Buildings,  
Tralee, Co. Kerry.

Guthán | Tel 066 7183582 Facs | Fax 066 7120328 Rphost | Email [plan@kerrycoco.ie](mailto:plan@kerrycoco.ie) Suíomh | Web [www.kerrycoco.ie](http://www.kerrycoco.ie)

**21<sup>st</sup> May 2021**

**Brian Gallivan and Homely Developments,  
Lacka,  
Templenoe,  
Co. Kerry**

**REGISTERED POST**

**EX918 – Referral pursuant to Section 5 of the  
Planning and Development Act 2000 to 2020.**

**Dear Sir,**

Please find enclosed copy of decision in relation to Section 5 Application EX918 which was received from Martin Arthur in relation to Development Location at Reenagappul, Kenmare, Co Kerry

**Yours faithfully**

**David O'Brien,  
A.O. Planning.**



**GAEILGE AGUS FÁILTE**



An Roinn Pleanála

Comhairle Contae Chiarraí,  
Áras an Chontae,  
Trá Lí, Co. Chiarraí.



COMHAIRLE CONTAE CHIARRAÍ  
KERRY COUNTY COUNCIL

Planning Department

Kerry County Council,  
County Buildings,  
Tralee, Co. Kerry.

Guthán | Tel 066 7183582 Facs | Fax 066 7120328 Rphost | Email [plan@kerrycoco.ie](mailto:plan@kerrycoco.ie) Suíomh | Web [www.kerrycoco.ie](http://www.kerrycoco.ie)

**Application No:** EX918

**Decision Date:** 21<sup>st</sup> May 2021 **Registration Date:** 27<sup>th</sup> April 2021, 7<sup>th</sup> May 2021, 20<sup>th</sup> May 2021

**Applicant:** Martin Arthur, Lime Kiln Lodge, Market Street, Kenmare, Co. Kerry

**Development Location:** Reenagappul, Kenmare, Co Kerry

**Development Description:** Whether stripping and removal of topsoil and trees and alleged unauthorised quarrying activity on land constitutes development or is exempted development.

**DECLARATION ISSUED UNDER AND IN ACCORDANCE WITH SECTION 5 OF THE  
PLANNING AND DEVELOPMENT ACTS, 2000 – 2020**

In pursuance of its functions under the Planning & Development Acts 2000 to 2020, Kerry County Council, being the Planning Authority for the County Health District of the County of Kerry, has by order dated 21<sup>st</sup> May 2021 authorised the issue of a declaration under the provisions of Section 5 of the Planning & Development Acts, 2000 -2020 in accordance with plans and particulars submitted on 27<sup>th</sup> April 2021, 7<sup>th</sup> May 2021, and 20<sup>th</sup> May 2021. I hereby certify that, the Planning Authority considers that the works, the subject of the referral under the said Section 5, namely whether stripping and removal of topsoil and trees and alleged unauthorised quarrying activity on land constitutes development or is exempted development at Reenagappul, Kenmare, Co Kerry does constitute exempted development under the Planning & Development Acts 2000-2020 having regard to the considerations inserted hereunder:-

**Schedule 1**

- (i) The works carried out on the site constitute works that would come within the scope of Section 2(1) of the Planning and Development Act 2000 - 2020,
- (ii) The said works would constitute development that comes within the scope of Section 3(1) of the Planning and Development Act 2000 – 2020
- (iii) The nature and extent of the said works would come within the scope of exemption provided at Article 8(c) of the Planning and Development Regulations, 2001 - 2021.

Therefore, the works at Reennagappul, Kenmare constitute development which is exempted development.

Signed on behalf of Kerry County Council

Date: 21<sup>st</sup> May 2021



GAEILGE AGUS FÁILTE

# Appendix 4



**Arr Ránnóg Forfheidhmithe,  
An Roinn Pleanála**

Comhairle Contae Chiarraí,  
Áras an Chontae,  
Trá Lí, Co. Chiarraí.



**COMHAIRLE CONTAE CHIARRAÍ  
KERRY COUNTY COUNCIL**

**Enforcement Unit,  
Planning Department**

Kerry County Council,  
County Buildings,  
Tralee, Co. Kerry.

Guthán | Tel 066 7183774 Facs | Fax 066 7120328 Rphost | Email [enforcement@kerrycoco.ie](mailto:enforcement@kerrycoco.ie) Suíomh | Web [www.kerrycoco.ie](http://www.kerrycoco.ie)

**Our Ref: 8097**

**7<sup>th</sup> February 2020**

**The Manager,  
Kenmare Plant Hire Limited,  
Gortamullen Business Park,  
Gortamullen,  
Kenmare,  
Co. Kerry**

**Planning and Development Act 2000 to 2019**

**A Chara,**

It has come to the attention of the Planning Authority that stone is being crushed and removed from your lands at **Reennagappul, Kenmare, Co. Kerry** adjacent to the Kenmare Waste Water Treatment Plant. There is no record of planning permission for this activity.

Development of this nature may require planning permission and in the absence of same is therefore unauthorised.

In this regard, I enclose herewith a Warning Letter under Section 152 of the Planning & Development Act 2000 to 2019. You may make submissions or observations in writing to the Planning Authority regarding same not later than **6<sup>th</sup> March 2020.**

**The Planning Authority wishes to inform you that in the event of unauthorised development taking place, an Enforcement Notice may be served on you under Section 154 of the Planning & Development Act 2000 to 2018. You should note that you are liable for all costs and expenses incurred by Kerry County Council in relation to this matter**

I trust your co-operation will be forthcoming in this matter.

**Mise le meas,**

**S.O. Enforcement Unit  
Planning and Sustainable Development**



An Rannóg Forfheidhmithe,  
An Roinn Pleanála

Comhairle Contae Chiarraí,  
Áras an Chontae,  
Trá Lí, Co. Chiarraí.



COMHAIRLE CONTAE CHIARRAÍ

KERRY COUNTY COUNCIL  
**WARNING LETTER**

Enforcement Unit,  
Planning Department

Kerry County Council,  
County Buildings,  
Tralee, Co. Kerry.

Guthán | Tel 066 7187774 | Fax 066 7187775 | Email [enforcement@kerryco.ie](mailto:enforcement@kerryco.ie) | Website [www.kerryco.ie](http://www.kerryco.ie)  
**Warning Letter** Issued under Section 152 of the Planning and Development Act 2000-2019, in relation to Unauthorised development

**Name and Address: The Manager, Kenmare Plant Hire Limited,  
Gortamullen Business Park, Gortamullen, Kenmare, Co. Kerry**

**Ref: No. 8097**

A Chara,

It has come to the attention of Kerry County Council that an unauthorised development as described in the schedule hereunder may have been, is being or may be carried out on lands described in the schedule hereunder. You may make submissions or observations to Kerry County Council regarding the purported offence by **6<sup>th</sup> March 2020**.

When Kerry County Council considers that unauthorised development has been, is being or may be carried out, an Enforcement Notice may be issued under Section 154 of the Planning and Development Act 2000-2018. Officials of Kerry County Council may at all reasonable times enter on the land for the purposes of carrying out an inspection in relation to the purported unauthorised development.

A person who is guilty of an offence in relation to an unauthorised development under the provisions of the Planning and Development Act 2000, as amended, shall be liable to the following:-

- (a) On conviction on indictment, to a fine not exceeding EUR 12,697,380 or to imprisonment for a term not exceeding 2 years or both.
- (b) On summary conviction, to a fine not exceeding EUR 5,000 or to imprisonment for a term not exceeding six months or both.

In addition, any costs reasonably incurred by Kerry County Council in relation to enforcement proceedings may be recovered from a person on whom an Enforcement Notice is served or where court action is taken. These costs can relate to remuneration and expenses of employees carrying out inspections and may be substantial.

### **SCHEDULE**

**Description of land and nature of works to which this Notice refers.**

**Lands at Reennagappul, Kenmare, Co. Kerry – namely the operation of a quarry.**

**Signature**

**S.O. Enforcement Unit  
Planning and Sustainable Development**

**Date: 7<sup>th</sup> February 2020**



GAEILGE AGUS FÁILTE



An Rannóg Forfheidhmithe,  
An Roinn Pleanála

Comhairle Contae Chiarraí,  
Áras an Chontae,  
Trá Lí, Co. Chiarraí.



COMHAIRLE CONTAE CHIARRAÍ  
KERRY COUNTY COUNCIL

Enforcement Unit,  
Planning Department

Kerry County Council,  
County Buildings,  
Tralee, Co. Kerry.

Guthán | Tel 066 7183774 Facs | Fax 066 7120328 Rphost | Email [enforcement@kerrycoco.ie](mailto:enforcement@kerrycoco.ie) Suíomh | Web [www.kerrycoco.ie](http://www.kerrycoco.ie)

**Our Ref: 8097**

**Date: 18/05/2020**

**The Secretary,  
KPK Properties Limited  
Market Street,  
Kenmare,  
Co Kerry**

**Planning and Development Acts 2000 to 2020.**

**A Chara,**

It has come to the attention of the Planning Authority that unauthorised quarrying is taking place at Reenagappal, Kenmare, Co Kerry.

As there is no planning permission for this development, I enclose herewith an **Enforcement Notice** requiring the development **cease**.

The Planning Authority wishes to inform you that in the event of the Enforcement Notice not being complied with, your file shall be forwarded to the County Solicitor's office to Institute Legal Proceedings against you, without any further notice or correspondence. You should note that you are liable for all costs and expenses incurred by Kerry County Council in relation to this matter.

**Furthermore, you have incurred an Enforcement Fine of €250 being the costs incurred to date by Council in dealing with this matter. The aforementioned fine is payable not later than 4 weeks from the date of this letter.**

I trust your co-operation will be forthcoming in this matter.

**Yours faithfully,**

**S. G. Enforcement Unit  
Planning & Sustainable Development  
(066)718 3774**



GAEILGE AGUS FÁILTE

**KERRY COUNTY COUNCIL**  
**SECTION 154(5) PLANNING AND DEVELOPMENT ACTS 2000 to 2020.**  
**ENFORCEMENT NOTICE**

**To: The Secretary, KPK Properties Limited, Market Street, Kenmare, Co Kerry**  
**Ref: 8097**

**WHEREAS** Kerry County Council (hereinafter called "the Council") is the Planning Authority for the County of Kerry in which are situate lands in the Townland of Kenmare, in the Electoral Division of Kenmare, County Kerry.

**AND WHEREAS** the following development has been carried out at the said lands namely:

**the operation of a quarry.**

**AND WHEREAS** the said development is not exempted and no permission for the said development has been applied for or granted by the Council in respect of the said development, the Council in exercise of the powers conferred on it by Section 154 of the Planning and Development Act 2000 as amended requires that the development cease.

A person who is guilty of an offence in relation to an unauthorised development under the provision of the Planning and Development Act 2000 (as amended) shall be liable to the following:-

- (a) On conviction on indictment, to a fine not exceeding EUR 12,697,381, or to imprisonment for a term not exceeding 2 years, or to both, or
- (b) On summary conviction, to a fine not exceeding EUR 5,000 or to imprisonment for a term not exceeding 6 months, or to both.

In addition you are required in accordance with section 154(5)(d) of the Planning and Development Act 2000 (as amended) to refund to the Council, the sum of EUR **250.00** being the costs and expenses reasonably incurred by the Council in relation to the investigation, detection and issue of the Enforcement Notice.

Dated this

*18 May 2020*

Signed:

*[Signature]*  
S.O. Enforcement Unit  
Enforcement Unit  
Planning & Sustainable Development



**An Rannóg Forfheidhmithe,  
An Roinn Pleanála**

Comhairle Contae Chiarraí,  
Áras an Chontae,  
Trá Lí, Co. Chiarraí.



**COMHAIRLE CONTAE CHIARRAÍ  
KERRY COUNTY COUNCIL**

**Enforcement Unit,  
Planning Department**

Kerry County Council,  
County Buildings,  
Tralee, Co. Kerry.

Guthán | Tel 066 7183774 Facs | Fax 066 7120328 Rphost | Email [enforcement@kerrycoco.ie](mailto:enforcement@kerrycoco.ie) Suíomh | Web [www.kerrycoco.ie](http://www.kerrycoco.ie)

Brian Gallivan  
KPK Properties,  
Lacka,  
Templenoe  
Kenmare  
Co. Kerry

Date: 19/04/2021

Ref: 8097

Re: Quarrying at Reenagappul, Kenmare, Co. Kerry

Dear Mr. Gallivan,

Further to the Enforcement Notice served on you dated the 18/05/2020 concerning the operation of a quarry in the townland of Kenmare.

We have reason to believe that an excavator has been moved into this quarry. You might confirm by return that quarrying will remain ceased as ordered, at this location.

For the purposes of clarity we are not referring to the field adjacent to the quarry but the quarry itself.

I look forward to hearing from you,

Yours faithfully,

Helen Burke SO  
Enforcement Unit  
Planning & sustainable Development  
(066) 718 3626

[enforcement@kerrycoco.ie](mailto:enforcement@kerrycoco.ie)



Enforcement Unit,  
Planning Department,  
Kerry County Council,  
County Buildings,  
Tralee,

Co Kerry

KPK Properties  
Lacka,  
Templenoe,  
Kenmare  
Co Kerry

23<sup>rd</sup> April 2021

**Re: your ref 8097**

Dear Sir/ Madam,

I refer to your letter of 19<sup>th</sup> April 2021 and can again confirm that no quarrying works are being carried out at Reenagappul, Kenmare.

The excavator that was reported to be parked in the quarry, had been in use in the field adjacent to the quarry and is waiting to be collected by a low loader.

This is the closest location that a low loader large enough to take the excavator can get to the field in question.

Best Regards

*PP. A. Healy*

Brian Gallivan



**An Roinn Pleanála**

Comhairle Contae Chiarraí,  
Áras an Chontae,  
Trá Lí, Co. Chiarraí.



**COMHAIRLE CONTAE CHIARRAÍ  
KERRY COUNTY COUNCIL**

**Planning Department**

Kerry County Council,  
County Buildings,  
Tralee, Co. Kerry.

Guthán | Tel 066 7183582 Facs | Fax 066 7120328 Rphost | Email [plan@kerrycoco.ie](mailto:plan@kerrycoco.ie) Suíomh | Web [www.kerrycoco.ie](http://www.kerrycoco.ie)

**21<sup>st</sup> July 2021**

**KPK Properties,  
Market Street,  
Kenmare,  
Co. Kerry**

**Re: 8097 – Reenagppul, Kenmare, Co. Kerry**

***A Chara,***

I refer to previous in relation to the above-mentioned planning enforcement file.

This Planning Authority notes that a large stockpile of rock has accumulated on the site where quarrying took place historically. It has been our understanding that this rock would remain on the site. However, we now suspect that this rock is being moved off site. This indicates to us that your lands are being used for quarrying. As you are aware, you do not have planning permission to quarry these lands. You might outline in your response, your intentions with respect to this newly formed stockpile of rock by no later than **30<sup>th</sup> July 2021**.

This file is being kept under review.

***Mise le meas,***

**Staff Officer,**

**Enforcement Unit**

**Planning and Sustainable Development – 066 718 3774**



Enforcement Unit,  
Planning Department,  
Kerry County Council,  
County Buildings,  
Tralee,

Co Kerry

KPK Properties  
Lacka,  
Templenoce,  
Kenmare  
Co Kerry

27<sup>th</sup> July 2021

**Re: your ref 8097**

Dear Sir/ Madam,

I refer to your letter of 21<sup>st</sup> July 2021 and can again confirm that no quarrying works are being carried out at Reenagappul, Kenmare.

As Mr Arthur knows this new rock is coming from a field that I am forming on the other side of my lands which are a subject of a section 5 (ref EX918) which you have already ruled on and confirmed that these works are exempted development.

I have removed a few loads of rock by licensed waste collector to a licensed waste facility, the rest I am leaving over near the old quarry and hope to use it within the lands when I get planning in the future. Part of the stockpile of rough hewn rock will also be used to restore a boundary wall which was stolen when one of my neighbours was building his house.

Mr Arthur knows that no rock breaking has occurred in or near to the quarry and that the lands are not being used as a quarry. This is just, yet another attempt by a disgruntled ex-owner of the lands to cause mischief.

Best Regards

PP. *P. Healy*

Brian Gallivan



**An Roinn Pleanála**

Comhairle Contae Chiarraí,  
Áras an Chontae,  
Trá Lí, Co. Chiarraí.



**COMHAIRLE CONTAE CHIARRAÍ  
KERRY COUNTY COUNCIL**

**Planning Department**

Kerry County Council,  
County Buildings,  
Tralee, Co. Kerry.

Guthán | Tel 066 7183582 Facs | Fax 066 7120328 Rphost | Email [plan@kerrycoco.ie](mailto:plan@kerrycoco.ie) Sufomh | Web [www.kerrycoco.ie](http://www.kerrycoco.ie)

**21<sup>st</sup> May 2021**

**Brian Gallivan and Homely Developments,  
Lacka,  
Templenoce,  
Co. Kerry**

**REGISTERED POST**

**EX918 – Referral pursuant to Section 5 of the  
Planning and Development Act 2000 to 2020.**

**Dear Sir,**

Please find enclosed copy of decision in relation to Section 5 Application **EX918** which was received from **Martin Arthur** in relation to Development Location at **Reenagappul, Kenmare, Co Kerry**

**Yours faithfully**

**David O'Brien,  
A.O. Planning.**



**GAEILGE AGUS FÁILTE**

**An Roinn Pleanála**

Comhairle Contae Chiarraí,  
Áras an Chontae,  
Trá Lí, Co. Chiarraí.



**COMHAIRLE CONTAE CHIARRAÍ  
KERRY COUNTY COUNCIL**

**Planning Department**

Kerry County Council,  
County Buildings,  
Tralee, Co. Kerry.

Guthán | Tel 066 7183582 Facs | Fax 066 7120328 Rphost | Email [plan@kerrycoco.ie](mailto:plan@kerrycoco.ie) Suíomh | Web [www.kerrycoco.ie](http://www.kerrycoco.ie)

**Application No:** EX918

**Decision Date:** 21<sup>st</sup> May 2021 **Registration Date:** 27<sup>th</sup> April 2021, 7<sup>th</sup> May 2021,  
20<sup>th</sup> May 2021

**Applicant:** Martin Arthur, Lime Kiln Lodge, Market Street, Kenmare, Co. Kerry

**Development Location:** Reenagappul, Kenmare, Co Kerry

**Development Description:** Whether stripping and removal of topsoil and trees and alleged unauthorised quarrying activity on land constitutes development or is exempted development.

**DECLARATION ISSUED UNDER AND IN ACCORDANCE WITH SECTION 5 OF THE  
PLANNING AND DEVELOPMENT ACTS, 2000 – 2020**

In pursuance of its functions under the Planning & Development Acts 2000 to 2020, Kerry County Council, being the Planning Authority for the County Health District of the County of Kerry, has by order dated 21<sup>st</sup> May 2021 authorised the issue of a declaration under the provisions of Section 5 of the Planning & Development Acts, 2000 -2020 in accordance with plans and particulars submitted on 27<sup>th</sup> April 2021, 7<sup>th</sup> May 2021, and 20<sup>th</sup> May 2021. I hereby certify that, the Planning Authority considers that the works, the subject of the referral under the said Section 5, namely whether stripping and removal of topsoil and trees and alleged unauthorised quarrying activity on land constitutes development or is exempted development at Reenagappul, Kenmare, Co Kerry does constitute exempted development under the Planning & Development Acts 2000-2020 having regard to the considerations inserted hereunder:-

***Schedule 1***

- (i) The works carried out on the site constitute works that would come within the scope of Section 2(1) of the Planning and Development Act 2000 - 2020,
- (ii) The said works would constitute development that comes within the scope of Section 3(1) of the Planning and Development Act 2000 – 2020
- (iii) The nature and extent of the said works would come within the scope of exemption provided at Article 8(c) of the Planning and Development Regulations, 2001 - 2021.

Therefore, the works at Reennagappul, Kenmare constitute development which is exempted development.

Signed on behalf of Kerry County Council

Date: 21<sup>st</sup> May 2021



GAEILGE AGUS FÁILTE



Enforcement Unit,  
Planning Department,  
Kerry County Council,  
County Buildings,  
Tralee,

Co Kerry

KPK Properties  
Lacka,  
Templenoe,  
Kenmare  
Co Kerry

27<sup>th</sup> May 2020

**Re: your ref 8097**

Dear Sir/ Madam,

I refer to your letter of 19<sup>th</sup> April 2021 and can again confirm that no quarrying works are being carried out at Reenagappul, Kenmare.

The excavator that was reported to be parked in the quarry, had been in use in the field adjacent to the quarry and is waiting to be collected by a low loader.

This is the closest location that a low loader large enough to take the excavator can get to the field in question.

Best Regards

Brian Gallivan

# Appendix 5





Kerry County Council,  
County Buildings, Tralee, Co. Kerry.  
Tel: (066) 7183582 Fax: (066) 7120328  
E-mail: [plan@kerrycoco.ie](mailto:plan@kerrycoco.ie)

Comhairle Chontae Chiarraí,  
Áras an Chontae, Trá Lí, Co. Chiarraí.  
Gutháin: (066) 7183582 Fais: (066) 7120328  
Web: <http://www.kerrycoco.ie>

29<sup>th</sup> May 2020

Brian Gallivan and Homely Developments,  
Lacka,  
Templenoe,  
Co. Kerry

VIA REGISTERED POST.

Re: EX833 – Referral pursuant to Section 5 of the  
Planning and Development Act 2000 to 2020.

Dear Sir,

I wish to inform you that a Section 5 Application has been received by the Planning Authority, which refers to lands which are registered to you and relates to whether a development is or is not exempted development within the meaning of the legislation. This application was received from **Martin Arthur**.

If you wish to view this file or to submit any further information, in order to enable the Planning Authority to issue the declaration on the question, please do so on or before 15<sup>th</sup> June 2020.

Yours faithfully

Liam Brosnan,  
A.O. Planning.

pp



**Kerry County Council,**  
County Buildings, Tralee, Co. Kerry.  
Tel: (066) 7183582 Fax: (066) 7120328  
E-mail: [plan@kerrycoco.ie](mailto:plan@kerrycoco.ie)

**Comhairle Chontae Chiarraí,**  
Aras an Chontae, Trá Lí, Co. Chiarraí,  
Gutháin: (066) 7183582 Faisc: (066) 7120328  
Web: <http://www.kerrycoco.ie>

**29<sup>th</sup> May, 2020**

**Martin Arthur,  
Lime Kiln Lodge,  
Market Street,  
Kenmare,  
Co Kerry**

**Re: Declaration and Referral on Development and Exempted  
Development under and in accordance with Section 5 of the  
Planning & Development Acts 2000 – 2020**

**Dear Sir,**

**I wish to acknowledge receipt of your application for a Section 5 Declaration.**

**Register No. EX833 refers and the Planning Authority will be in touch with  
you in due course.**

**I attached herewith receipt for same.**

**Yours sincerely,**

**ASO Planning**



Kerry County Council,  
County Buildings, Tralee, Co. Kerry  
Tel: (066) 7183582 Fax: (066) 7120328  
E-mail: [plan@kerrycoco.ie](mailto:plan@kerrycoco.ie)



Comhairle Chontae Chiarraí,  
Áras an Chontae, Trá Lí, Co. Chiarraí  
Guthán: (066) 7183582 Faisc: (066) 7120328  
Web: <http://www.kerrycoco.ie>

29<sup>th</sup> May 2020

Brian Gallivan and Homely Developments,  
Lacka,  
Templenoce,  
Co. Kerry

VIA REGISTERED POST.

Re: EX833 – Referral pursuant to Section 5 of the  
Planning and Development Act 2000 to 2020.

Dear Sir,

I wish to inform you that a Section 5 Application has been received by the Planning Authority, which refers to lands which are registered to you and relates to whether a development is or is not exempted development within the meaning of the legislation. This application was received from Martin Arthur.

If you wish to view this file or to submit any further information, in order to enable the Planning Authority to issue the declaration on the question, please do so on or before 15<sup>th</sup> June 2020.

Yours faithfully

Liam Brosnan,  
A.O. Planning.

# Martin Arthur

Lime Kiln Lodge, Market Street, Kenmare, County Kerry

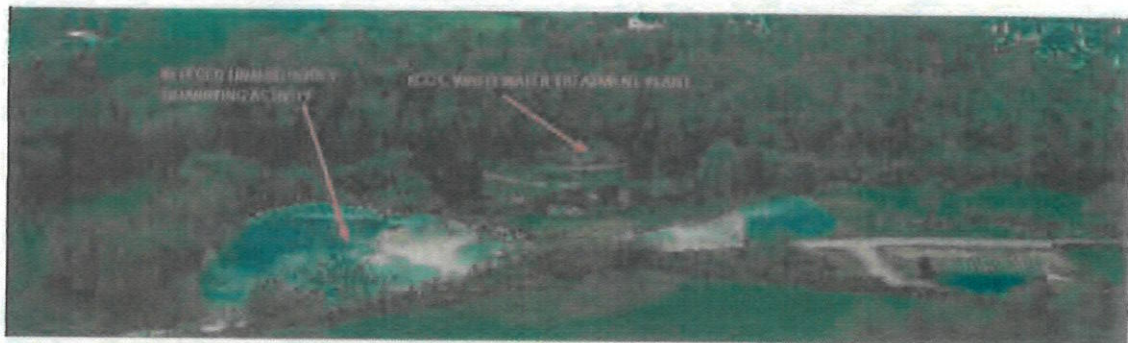
25<sup>th</sup> of May 2020

The Secretary  
Kerry County Council Planning Authority  
County Buildings  
Tralee  
County Kerry

Re: Section 5 Referral pertaining to lands at Reenagappal, Kenmare, County Kerry

Dear Sir or Madam,

This section 5 referral refers to an alleged unauthorized quarry on lands adjacent to my own lands at Reenagappal, Kenmare, County Kerry. The said lands are also adjacent to the KCC Kenmare wastewater treatment plant as is evidenced by this photograph here.



My Section 5 referral question is:

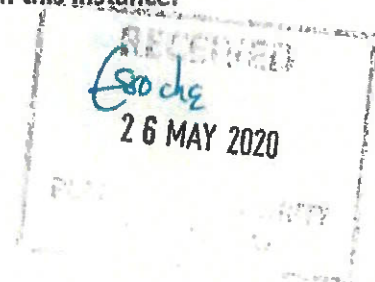
**Does this quarrying activity constitute development or is it exempted development?**

Please find attached a cheque for €80, it being the requisite fee in this instance.

I shall await hearing from you within 4 weeks.

Yours faithfully,

Martin Arthur







Comhairle Contae Chiarraí  
Kerry County Council

CC-P27  
09-2013\_BG

## FOIRM IARRATAIS ALT 5 SECTION 5 APPLICATION FORM

IARRATAS MAIDIR LE DEARBHÚ AR FHORBAIRT AGUS  
AR DÍOLÚINE FORBARTHA (Alt 5 den Acht um Pleanáil  
agus Forbairt (leasaithe)

REQUEST FOR A DECLARATION ON DEVELOPMENT  
AND EXEMPTED DEVELOPMENT (Section 5 of the  
Planning & Development Act 2000 as amended)

**TÁILLE €80 FEE**

All personal data collected is in compliance with the requirements of the General Data Protection Regulation (GDPR) 2016, and Data Protection Acts 1988 to 2003. Individual privacy notices for each section/service are available at [www.kerrycoco.ie](http://www.kerrycoco.ie)

Ainm	MARTIN ARTHUR	Name	
Seoladh	Line Kila Lodge	Address	MARKET STREET
	Kelmore		
	CO. KERRY		
Teil.	[REDACTED]	Tel:	
R-phost	[REDACTED]	Email	
Ainm/Seoladh Gníomhaire		Name/Address of Agent	
Teil.		Tel:	
Láthair an Suímh Ábhartha		Location of Subject Site	

An Struchtúr Cosanta é nó 'bhfuil sé laistigh  
de chúirtealáiste Struchtúir Chosanta? \_\_\_\_\_

Is this a Protected Structure or within the  
cartilage of a Protected Structure? \_\_\_\_\_

Más é, 'bhfuil Dearbhú faoi Alt 57 den Acht  
um Pleanáil agus Forbairt 2000 iarrtha nó  
eisithe don fhorbairt ag an tÚdarás Pleanála? \_\_\_\_\_

If yes, has a Declaration under Section 57 of  
the Planning and Development 2000 been  
requested or issued for the property by the  
Planning Authority? \_\_\_\_\_

Luaigh leas an iarratasóra sa suíomh le do thoil

Please state applicants interest in this site

Adjacent Landowner

Luaigh ainm agus seoladh an  
úinéara murar é/í an  
t-iarratasóir

Brian GALLIVAN

If applicant is not the owner  
please provide owner's name  
and address

AND

HomeLy Developments Ltd

Tabhair faoi deara go n-eiseofar cóip den Dearbhú ar  
Fhorbairt agus ar Diolúine Forbartha de réir Alt 5(2a)  
den Acht um Pleanáil agus Forbairt 2000 don úinéir/  
áititheoir.

Please note that in accordance with section 5(2a) of the  
Planning & Development Act 2000 the owner/ occupier  
of the site will be issued with a copy of the Declaration  
on Development and Exempted Development.

Liosta pleananna, línóichtaí srl  
curtha ar fáil leis an iarratas seo.

List of plans, drawings, etc  
submitted with this application

As per Attached Letter

Tabhair tuairisc ar na h-oibreacha (má  
bhaineann) nó ar an bhforbairt beartaithe.

(Tabhair faoi deara: Is iad na h-oibreacha atá liostaithe  
agus sonraithe, agus sin amháin, a dheinfear measúnú  
orthu fé Alt 5. Úsáid leathanaigh breise más gá)

Please provide details of works (where  
applicable) or proposed development.

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

As per Attached Letter



An eol duit aon imeachtaí  
forfheidhmithe ar an suíomh seo?  
Má tá, tabhair sonraí le do thoil

Are you aware of any enforcement  
proceedings connected to this site?  
If yes, please supply details

Not aware

An raibh iarrata(i)s pleanála ar an suíomh seo  
cheana? Má bhí, tabhair sonraí le do thoil

Were there previous planning application(s)  
on this site? If yes, please supply details

Not aware

Sínithe:  
Signed



Dáta:  
Date

25/5/2020

#### NÓTAÍ:

Ní mór 4 chóip de léarscáil den láthair shuímh  
leis an suíomh imlíniú go soiléir i ndearg a  
chur ar fáil agus táille €80 leis. Cuir 2 chóip de  
phleananna/tuairiscí breise srl. a theastaíonn  
uait bheith mar chuid den iarratais.

#### NOTES:

Application shall include 4 copies of the Site  
Location Map with the site clearly outlined in  
red and a fee of €80. Please submit 2 copies  
of any additional plans/reports etc you may  
wish to be included as part of the application.

Seol na h-iarratais líonta go 'n seoladh thíos:

Send your completed applications to:

An Roinn Pleanála,  
Comhairle Contae Chiarraí,  
Ráth Teas, Trá Lí, Co. Chiarraí.

T. (066) 7183582  
F. (066) 7120328  
[www.kerrycoco.ie](http://www.kerrycoco.ie)

Planning Department,  
Kerry County Council,  
Rathass, Tralee, Co. Kerry.



*Mapping*

Client/s: Kerry County Council & Henmely Developments Ltd.  
Location: - Rostinella, Kenmare, Co. Kerry

Area "A" outlined in RED = 13.7 acres to be transferred to Kerry County Council

Area "B" outlined in BLUE = 36.95 acres to be transferred to Henmely Developments Ltd.

Right of way over road area shaded yellow for KCC

Right of way over provision road area shown broken yellow line for KCC

Right of way over area shaded green for services for Henmely Devs. Ltd.

Future right of way over hatched red line subject to KCC securing it as it is outside the site

Folio: Scale 1: 2500 Date: 14/03/18

Prepd. By: Declan O Shea B.E.M.I.E.I.

Consulting Engineer

"Market Square"

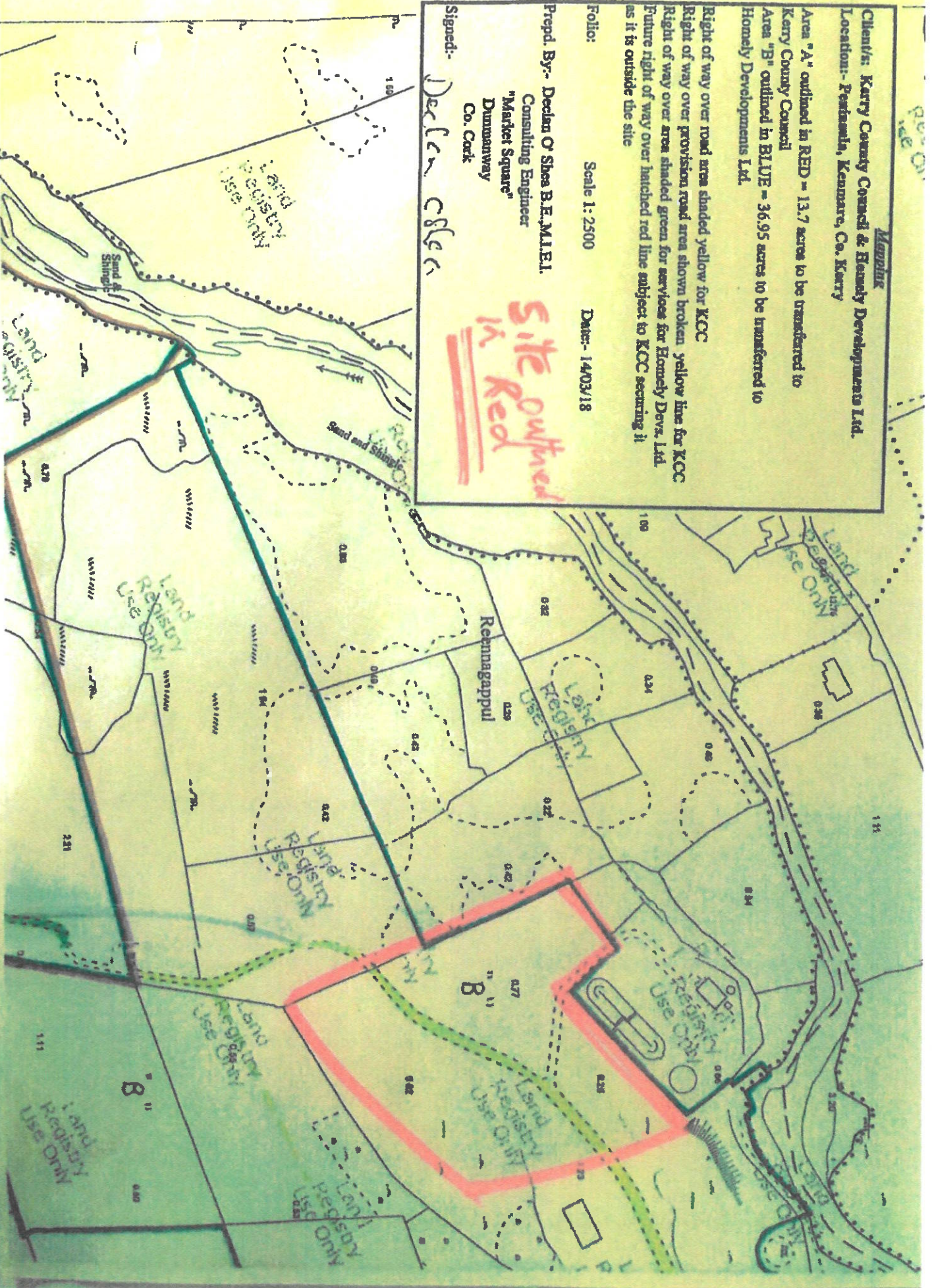
Dumanaway

Co. Cork

Signed:-

Declan O Shea

**Site outlined in Red**





**Memorandum**  
 to: Mr. John J. O'Sullivan, Chairman, Kerry County Council  
 from: Mr. John J. O'Sullivan, Chairman, Kerry County Council  
 subject: Transfer of land to Kerry County Council

Area "A" outlined in RED - 13.7 acres to be transferred to Kerry County Council  
 Area "B" outlined in BLUE - 36.95 acres to be transferred to Kerry County Council

Right of way over road area shaded yellow for KCC  
 Right of way over provision road area shown broken yellow line for KCC  
 Right of way over area shaded green for services for Honeyside Dairy Ltd.  
 Future right of way over hatched red line subject to KCC securing it is outside the site

Scale 1:2500 Date: 14/03/18

Prep'd By: Deanna O'Sullivan B.E.M.I.E.I.

Consulting Engineer  
 "Market Square"  
 Dunmore  
 Co. Cork

Deanna O'Sullivan



**Memorandum**  
 to: Mr. John J. O'Sullivan, Chairman, Kerry County Council  
 from: Mr. John J. O'Sullivan, Chairman, Kerry County Council  
 subject: Transfer of land to Kerry County Council

Area "A" outlined in RED - 13.7 acres to be transferred to Kerry County Council  
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Scale 1:2500 Date: 14/03/18

Prep'd By: Deanna O'Sullivan B.E.M.I.E.I.

Consulting Engineer  
 "Market Square"  
 Dunmore  
 Co. Cork

Deanna O'Sullivan





**HRA | PLANNING**  
chartered town planning consultants

3 Hartstonge Street,  
Limerick  
Tel: 061 435000  
Fax: 061 405555  
info@hraplanning.ie  
www.hraplanning.ie

Our Ref: 20028/061220/mh

Planning Department,  
Kerry County Council,  
County Buildings,  
Tralee,  
Co. Kerry

15<sup>th</sup> June 2020

**Re: Your Ref: EX833**  
**Referral Pursuant to Section 5 of the Planning & Development Act 2000 - 2020**

Dear Sir / Madam,

We confirm that we have been retained by Brian Gallivan and KPK Properties to respond to your letter of the 29<sup>th</sup> May, inviting comments on the Section 5 application received from Martin Arthur.

It is submitted to the planning authority that the Section 5 application is devoid of basic information relating to the alleged activity on site.

The querist poses the specific question – “Does this quarrying activity constitute development or is it exempted development?”. The quarrying activity refers to a photograph of a hole in the ground filled with water. There is no evidence of any quarrying activity. Therefore, it is submitted to the planning authority that because there is no evidence or information provided of any activity taking place, the planning authority cannot make a determination on the Section 5 application.

Under section 2.0 of the Planning & Development Act 2000 – 2020 (the Act) “quarry” means an excavation or system of excavations made for the purpose of, or in connection with, the getting of minerals (whether in their natural state or in solution or suspension) or products of minerals, being neither a mine nor merely a well or bore-hole or a well and bore-hole combined



**RTPI**  
mediation of space - making of place



Our client has advised that KPK Properties purchased the lands at Reennagappul, Kenmare, almost two years ago. The property when purchased had an established pre 1963 quarry. Our client has further advised that Kerry County Council were the last persons to make an 'excavation' from the quarry and that such excavation was made during the installation of the new Kenmare Waste-Water Treatment Plant.

The 'quarry' as we understand was established pre 1963. Therefore, we would submit that the 'quarry' feature itself is not unauthorised. The last excavation from the quarry was made by Kerry County Council some 20 years ago. Whether such excavation constitutes development is a matter for determination by Kerry County Council having regard to the provisions of Section 4 of the Act relating to Exempted Development.

Presently there is no 'quarrying activity' on site.

We acknowledge that the lands in question have not been registered as a quarry under Section 261A of the Planning & Development Act 2000 as amended. This being the case, we acknowledge that if quarrying activity was to recommence, planning permission would be required.

We trust that the above clarifies our client's position at this time. Should you require clarification on any issue please do not hesitate to contact us.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'MH', is written over a horizontal line.

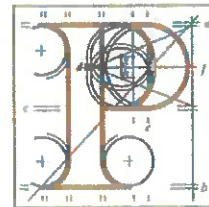
Mary Hughes MIPI

Director HRA | Planning chartered town planning consultants DAC

**Our Case Number:** ABP-307488-20

**Planning Authority Reference Number:** EX833

**Your Reference:** Brian Gallivan and KPK Properties



**An  
Bord  
Pleanála**

HRA Planning  
Chartered Town Planning Consultants  
3 Hartstonge Street  
Limerick City  
Co. Limerick

**Date:** 07 July 2020

**Re:** Whether the alleged unauthorised quarrying activity constitutes development or is exempted development.  
Reennagappul, Kenmare, County Kerry.

Dear Sir / Madam,

Enclosed is a copy of a referral under the Planning and Development Act, 2000, (as amended).

In accordance with section 129 of the Planning and Development Act, 2000, (as amended), you may make submissions or observations in writing to the Board in relation to the referral within a period of 4 weeks beginning on the date of this letter.

Any submissions or observations received by the Board outside of that period shall not be considered and where none have been validly received, the Board may determine the referral without further notice to you.

Please quote the above referral number in any further correspondence.

Yours faithfully,

Mary Ledwith  
Administrative Assistant  
Direct Line: 01-8737137

BPRL05

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<b>Láithreán Gréasáin</b>	<b>Website</b>	<a href="http://www.pleanala.ie">www.pleanala.ie</a>
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64 Marlborough Street  
Dublin 1  
D01 V902



# Martin Arthur

Lime Kiln Lodge, Market Street, Kenmare, County Kerry 087 223 7820

30<sup>th</sup> of June 2020

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

<b>AN BORD PLEANÁLA</b>	
LDG-	<u>627569-20</u>
ABP-	
01 JUL 2020	
Fee: €	<u>220</u> Type: <u>Cheque</u>
Time:	By: <u>Post</u>

**Ref: Kerry County Council Planning Authority Section 5 Decision - PL Ref No: EX833**  
**Re: Lands at Reenagappul, Kenmare, County Kerry**

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Dear Sir or Madame,

I refer to the abovementioned matter and to the attachment at EXHIBIT 1, of a Section 5 decision determined by the Kerry County Council of the 22<sup>nd</sup> of June 2020.

In this appeal, I would ask the board to review the determination and decision of the planning authority in this case.

I am concerned that the Kerry County Council has not gone far enough in their decision.

In my Section 5 referral, I asked the question *whether the alleged unauthorised quarrying activity constitutes development or exempted development?*

In a letter to the Kerry County Council, attached at EXHIBIT 2, dated the 15<sup>th</sup> of June 2020, HRA Planning Chartered Town Planning Consultants from Limerick, on behalf of Brian Gallivan and KPK Properties, stated as follows:

*"The quarrying activity refers to a photograph of a hole in the ground filled with water. There is no evidence of any quarrying activity. Therefore, it is submitted to the planning authority that because there is no evidence or information provided of any activity taking place the planning authority cannot make a determination on the section 5 application."*

In Kerry Council's determination and decision it is clearly demonstrated that there was 'quarrying activity' on site and that the 'quarrying activity' on the subject site constitutes development which is not exempted development.

I shall ask the Board to agree with me that because "quarrying activity" has taken place on the subject site abutting a Kerry County Council "right of way" through the subject lands, that Brian Gallivan and KPK Properties has now created a public safety hazard, and that the Board should direct that the lands be reinstated and made safe.

Again, I shall ask the board to review the determination and decision of the planning authority in this case.

I trust that this appeal is in order and I shall await the Board's decision in due course.

Please find attached the requisite fee of €220.00

Yours faithfully,

A handwritten signature in dark ink, appearing to read "Martin Arthur", is written over a horizontal line.

Martin Arthur





**HRA | PLANNING**  
chartered town planning consultants

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Our Ref: 20028/280720/mh

Administrative Officer,  
An Bord Pleanála,  
64 Marlborough Street,  
Dublin 1

By email: bord@pleanala.ie

29<sup>th</sup> July 2020

**Re: Your Ref: ABP-307488-20**

**PA Ref No. EX833**

**Whether the alleged unauthorised quarrying activity constitutes development or is exempted development**

Dear Sir / Madam,

We confirm that we have been retained by Brian Gallivan and KPK Properties to respond to your letter of the 07<sup>th</sup> July 2020, inviting comments on a referral made by Martin Arthur.

It is submitted to the Board that the question posed by the Querist appears to have been changed throughout the determination period. The Querist states in the appeal submission that he asked the question "*whether the alleged unauthorised quarrying activity constitutes development or is exempted development*". This is not the question that the querist posed to the planning authority. Rather the question posed was "*Does this quarrying activity constitute development or is it exempted development*" with reference made to a photograph of stockpiles of limestone. This was the question posed by the querist and this is the question that the determination must be based on.

It is submitted to the Board that the Section 5 application is devoid of basic information relating to the alleged activity on site. Contrary to the provisions of Section 5(1) of the Planning & Development Act 2000 as amended (the Act) the querist did not provide to the planning authority any information necessary to enable the authority to make its decision on the matter. In the absence of sufficient information and having regard to the question posed by the querist in the first instance, we would submit that the Board that there is currently no quarrying activity on site and therefore no development arises.



**RTPI**  
mediation of space · making of place

### **Background Information**

The Querist's family previously owned this land and retained an interest in the land until it was acquired by NAMA via a Receiver. In 1995, the Querist owned the land when Kerry County Council blasted rock from the quarry to facilitate construction of the neighbouring Waste Water Treatment Plant and renewal of the main sewage pipework throughout Kenmare. The Council blasted more rock than they required, and this resulted in the existing stockpiles on site. Accordingly, the 'development' comprising quarrying excavation, as shown in the photographs, took place in excess of 25 years ago when the site was in the ownership of the Querist.

Our client subsequently purchased the land from NAMA in late 2018. Earlier this year our client commenced site clearance, in an attempt to ready the site for future development, including the removal of existing stockpiles. To facilitate removal, the client crushed the existing granite on site prior to removal, unbeknownst to the fact that planning permission was required for such processing.

Kerry County Council issued a Warning Notice in February 2020 and following this all crushing on site immediately ceased. An Enforcement Notice was issued by the Council in May 2020 alleging continuing quarrying activity. However, no quarrying (stone crushing) was undertaken on site since February and our client submits that the Enforcement Notice was issued without substance. Around the time that the Enforcement Notice was issued our client used some of the crushed stone on site to repair the existing private roadways within the landholding. In this regard we would note that Class 13 of the Planning & Development Regulations 2001 – 2020 exempts the repair or improvement of any private street or road not exceeding 3m.

Today there remains stockpiles of crushed and uncrushed material, but no quarrying activity currently occurs on site. Further, no material is being removed from the site.

### **Quarrying Activity**

Our client has advised that KPK Properties purchased the lands at Reennagappul, Kenmare, almost two years ago. The property when purchased had an established pre 1964 quarry which has not been actively worked since 1995, with the last excavation from the quarry made by Kerry County Council some 25 years ago. We would submit that the quarry has a pre-1964 authorisation, that the works undertaken in 1995 had pre 1964 authorisation such that the quarry which commenced prior to 1 October 1964 was lawfully completing the quarrying which would have reasonably been envisaged when the quarry commenced.

We acknowledge that the lands in question have not been registered as a quarry under Section 261A of the Act, because at the time of registration all quarrying had ceased and the quarry was no longer active. However, it is submitted to the Board but this does not mean that the historical quarrying activity and its associated stockpiles are unauthorised. We acknowledge that if quarrying activity was to recommence, planning permission would be required. Presently there is no 'quarrying activity' on site.



The Planners Report on file dated 18<sup>th</sup> June 2020 states that *"it is clear that limestone from the site subject of this referral has been crushed and graded and that stockpiles of processed rock are being stored on the land in question. Thus, it is considered that the use of the site falls under the description of a quarry"*. It must be clarified for the purpose of the Board that the stockpiles have been present on site since 2005 and were generated by authorised quarry activity. We acknowledge that the process of crushing did take place earlier this year, but the process did cease in February 2020 upon receipt of an Enforcement Notice. As the activity has ceased there is no 'development' occurring on the site.

### **Direction Requested**

The Querist requests that the Board direct that the lands be reinstated and made safe.

The Board will be mindful of the fact that it is not the purpose of a Section 5 Determination to direct an action or activity. The function of a Section 5 is purely to determine whether an activity or use is / is not development and is / is not exempted development.

Further it is noted that the Board has no powers of enforcement and so cannot enforce an action

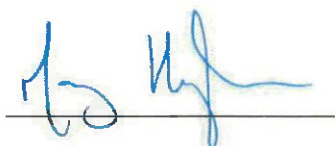
### **Conclusion**

The planning authority's determination is based on the premise that quarrying activity is / has taken place. The Querist's question asks *"Does this quarrying activity constitute development or is it exempted development"* and points to stockpiles of stone. There is currently no quarrying activity on site and the stockpiles were generated at a time when the quarry was authorised and operational.

Accordingly, we would submit to the Board that contrary to the determination of Kerry County Council, there is no activity on site and therefore no development occurs at this time.

We trust that the above clarifies our client's position at this time. Should you require clarification on any issue please do not hesitate to contact us.

Yours sincerely,



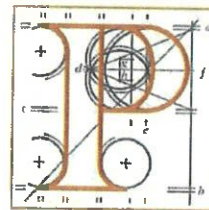
Mary Hughes MIPI

Director HRA | Planning chartered town planning consultants DAC

**Our Case Number:** ABP-307488-20

**Planning Authority Reference Number:** EX833

**Your Reference:** Brian Gallivan and KPK Properties



An  
Bord  
Pleanála

HRA Planning  
Chartered Town Planning Consultants  
3 Hartstonge Street  
Limerick City  
Co. Limerick

**Date:** 03 November 2020

**Re:** Whether the alleged unauthorised quarrying activity constitutes development or is exempted development.  
Reennagappul, Kenmare, County Kerry.

Dear Sir / Madam,

I have been asked by An Bord Pleanála to refer to the above mentioned referral.

In accordance with section 126(2)(a) of the Planning and Development Act, 2000, (as amended), it is a statutory objective of the Board to ensure that every referral received is determined within 18 weeks beginning on the date of receipt of the referral. Where it appears to the Board that it would not be possible or appropriate to determine a referral within this period, a notice must be sent to the parties to the referral in accordance with section 126(3)(a) of the 2000 Act, (as amended).

The Board hereby serves notice under section 126(3)(a) that it will not be possible to determine the case within the statutory objective period due to further consideration of the case.

The Board now intends to determine the above referral before **3rd January, 2021**. The Board will take all such steps as are open to it to ensure that the referral is determined before that date.

Yours faithfully,

Karen Byrne  
Executive Officer  
Direct Line: 01-8737136

BPRL90 Registered Post

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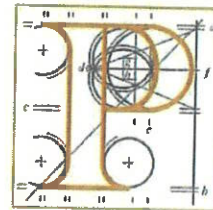
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**Our Case Number:** ABP-307488-20

**Planning Authority Reference Number:** EX833

**Your Reference:** Brian Gallivan and KPK Properties



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**06 JAN 2021**

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**Date:** 04 January 2021

**Re:** Whether the alleged unauthorised quarrying activity constitutes development or is exempted development.  
Reennagappul, Kenmare, County Kerry.

Dear Sir / Madam,

I have been asked by the Board to refer to the above-mentioned appeal and, in particular, to the Board's notice to you under section 126 of the Planning and Development Act, 2000, (as amended), in which it was indicated that the Board intended to determine this appeal before 3rd January 2021.

I regret to inform you that, the Board will not now be in a position to determine the appeal before that date. An Inspector's report has been received and the file is at Board level. The continuing delay is due to a backlog of cases. .

The delay involved is regretted.

Yours faithfully,

Karen Byrne  
Executive Officer  
Direct Line: 01-8737136

BP93

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